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IN THE HIGH COURT OF DELHI

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W.T.A. No. 7 OF 2003Judgment Reserved on : January 19, 2005

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Date of Decision: February 03, 2005

COMMISSIONER OF WEALTH TAX ... Petitioner
Through
Mr. R.D. Jolly, with Mr. Ajay Jha, Advocates.

Versus

M/S.D.C.M. LTD. ...Respoondent
Through
Mr.S.K.Aggarwal with Mr.V.P.Gupta,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SWATANTER KUMAR
HON'BLE MR. JUSTICE MADAN B. LOKUR

1. Whether reporters of local paper may be allowed to see the judgment?
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be referred in the Digest?

SWATANTER KUMAR, J.

According to the appellant, in this appeal, under Section 27A of the Wealth Tax Act (hereinafter referred to as the Act), the question of law as to the scope and meaning of the expression "land and urban land" chargeable to wealth tax in relation to assets of the assessee for the

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physical file have been compared and
the digital data is as per the physical
file and no page is missing.

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assessment year 1993-94 under the amended provisions of the Act arises for consideration in the present appeal.

2. It is well settled principle of law that a question which has either been answered by the judgment of the Court or on plain reading of the provisions of the relevant section, the interpretation is so clear as not to invite any legal controversy, there the question of law would not arise as contemplated under section 27A of the Act. The provisions of section 27A of the Act are pari materia to section 260A of the Income-tax Act. The court should be satisfied that the case in appeal involves a substantial question of law. A Division Bench of this Court, after applying the principle enunciated by the Supreme Court in different cases held that in both the abovesaid circumstances, the case would not involve substantial question of law. Reference in this regard can be made to the judgment by a Division Bench of this Court in Commissioner of Income-tax Vs. S.R. Fragnances Ltd. 270 ITR 560.

3. Thus, now we have to consider whether the controversy involved in the present case and particularly as formulated by the Department in the proposed question of law is answered by judgment or on the plain reading of the provisions of the Act. Before discussing this

aspect of the case in some elucidation, it would be necessary for us to refer to the facts giving rise to the present appeal. The assessee filed a return of wealth of Rs.95,36,700/- for the assessment year 1993-94. The Assessing Officer issued a notice under section 17 of the Act to the assessee on the ground that during the course of assessment for the assessment year 1994-95 it was noticed that assessee has not disclosed urban land worth crores of rupees held by the assessee as stock-in-trade which were liable to wealth tax for the relevant year of 1993-94. To this notice, the assessee submitted the reply stating that the urban land owned by the assessee could not be included in the net wealth of the assessee, as such the land and the building thereupon was constructed without approval of the relevant authorities, were converted into stock-in-trade on 1.9.1992. The Assessing Officer while rejecting the contention raised on behalf of the assessee, held that no exemption was available to the assessee in case of conversion of urban land into stock-in-trade till the assessment year 1993-94. According to the Assessing Officer, the land was acquired in 1980, possession is taken as on 1.4.1981, thus the assessee is not covered under exception inserted w.e.f. 1.4.1994. Thus, the Assessing Officer added the value of the land towards the net wealth of the assessee. Aggrieved, from the order of the Assessing Officer dated 30.3.2001, an appeal was preferred by the assessee before the

Commissioner, Wealth Tax (Appeals), who vide his order dated 2.2.2001, held that Supreme Court vide his order 1.5.1991 had permitted the re-development of the mill area to flatted factory complex and group housing complex and ordered the existing building to be demolished, thus the remaining building could not be remained to be standing there with the approval of the appropriate authority. While dismissing the appeal of the assessee, by a detailed order, the First Appellate Authority, inter alia, held as under :-

"The assessee in its contention from Nos. 1 to 26 relating to this 6th ground of appeal has not been able to refute the decision of the AO that urban land held by it as stock in trade is not exempt in A.Y. 1993-94. In order that there is no ambiguity left while not allowing exemption to the assessee company, the amendment by Finance Act 1992 in WT Act was also discussed on page 2 of the assessment order. It has been discussed that clause 2(ea) to Section 2 was inserted to the WT Act w.e.f. 1/4/1993 and the inserted provision provided for exemption of any unused land held by the assessee company for industrial purposes for a period of 2 years from the date of its acquisition by it. As discussed further in the assessment order the assessee converted its land into stock in trade in 1/9/1992 which corresponds to A.Y. 1993-94. It is obvious that the assessee should not have claimed the exemption because in A.Y. 1993-94 no exemption is available. The exemption in such cases is available from A.Y. 1994-95 and not in 1993-94."

24.0 From the above it becomes clear that the AR is admitting that it is only on the basis of the amendment brought about by the Finance Act

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1993 applicable from A.Y. 1994-95 that exemption is being claimed by the appellant. In spite of it being clearly and unambiguously mentioned that the amendment on the strength of which the exemption is being claimed by the appellant would be applicable only w.e.f. 1/4/1994, the AR is trying to claim the exemption in the year under consideration which against the clear unambiguous provisions of WT Act had the amendment been applicable to A.Y. under consideration, certainly the same would have mentioned in the amendment. In view of the specific mention of the date of 1/4/1994 mentioned in the amendment, the AR's contention that exemption should be allowed in view of the amendment brought about by the Finance Act 1993 in the A.Y. under consideration is clearly misplaced, the same cannot be accepted and is accordingly rejected.

25.0 In view of the foregoing discussion the AO's action in including in the appellant's net wealth the value of factory premises and residential colony is held to be justified.

4. Aggrieved from the above order, the assessee preferred an appeal before the Income-tax Appellate Tribunal, Delhi Bench, which vide a very detailed order accepted the appeal of the assessee by holding as under :-

"We have no doubt in our mind that in order to decide taxability of an asset, we have to go by the factual position as on the valuation date. It is not permitted under law to assume a hypothetical situation which never existed. We are fully convinced with the factual position as

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explained by the counsel for the assessee company that as on the valuation date old factory premises as well as residential colony were existing, except for a small portion which has been demolished. As per the conditions imposed by the Municipal Corporation of Delhi, complete demolition had to be done before any activity for construction could be commenced. Approval for construction had been granted much later by the Municipal Corporation of Delhi and that too only for one phase for the factory complex. Above approval had also been withdrawn by way of work stoppage notice. Therefore, even as on date of permission for construction does not exist. Residential premises had been occupied by the ex-employees of the assessee company as on the valuation date. Legal disputes have been going on before the Courts. In view of these factual circumstances premises in question cannot be said to be land. Therefore, we are agreeable to the contentions of the learned counsel for the assessee that said premises cannot be said to be urban land for the purpose of section 2(ea) of W.T. Act. On the basis of above factual position itself, claim of the company deserve to succeed. We find from the orders of lower authorities that the factual position as submitted by the assessee company has not been considered and appreciated by them. The AO, in fact did not even consider it necessary to give any weightage to the factual position and he just concluded that whatever arguments have been put forth it is urban land taxed under WT Act. Further, he has said that under no circumstances the urban land is exempt CWT (A) though considered and recorded factual position in his order, he disregarded the same by taking into account a hypothetical situation for each claim. Supreme Court though, had permitted redevelopment of area in principle but case of the assessee company for granting approval etc. was to be considered by MCD, DDA, etc. with reference to relevant regulations and bye-laws. It

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cannot be said that approval of maps etc. was only a routine matter.

10. We accordingly uphold claim of the assessee company. Firstly, on the ground that premises under reference cannot be said to be land and, therefore, were not in the nature of "Urban Land" chargeable to wealth-tax. Further, as per the Explanation to sub-section (ea) of section 2 of W.T. Act also, the land in question is not chargeable also for the reason....."

5. As is clear from the above two orders, different reasons have been given by the authorities for accepting and/or rejecting the case of the assessee. Basically, two grounds appeared to have influenced the authorities in coming to their respective conclusions. Firstly, that the assessee himself had treated the land and building as "stock-in-trade" and thus did not disclose it in the wealth tax return for the year 1993-94. This by itself would be an admission on the part of the assessee that the said land is an asset chargeable to wealth tax in terms of the statutory provisions. Secondly, on the interpretation of the relevant provisions, the First Appellate Authority had found that the "stock-in-trade" would not deprive the respondent of the benefit available to it under the Act, in so far as it was exempted specifically from being an asset of land for the purpose of its chargability under the Wealth Tax Act.

6. Section 3 of the Act is the charging section which contemplates that subject to the provisions of the Act, there shall be charge for every assessment year commencing from the specified date, a tax in respect of the net wealth as specified in Schedule I of the Act. Section 2(e) defines the expression "assets" which includes property of every description moveable or immovable but does not include what is specifically included in that definition. Section 2(ea) again defines 'assets' in relation to the assessment year commencing on the first day of April, 1993 and/or in subsequent assessment year; wherein urban land is stated to be inclusive in the definition of the assets. Sub-clause (b) of explanation to section 2(ea) explains the "urban land" as well as illustrates what exemption is permissible for landed property not to be included as net wealth/asset of the assessee. The said provision reads as under :-

(b) "urban land" means land situate--

(i) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the valuation date; or

(ii) in any area within such distance, not being more than eight kilometers from the local limits of any municipality or cantonment board referred to in sub-clause (i), as the Central government may, having

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regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette,

but does not include land on which construction of a building is not permissible under any law for the time being in force in the area in which such land is situated or the land occupied by any building which has been constructed with the approval of the appropriate authority or any unused land held by the assessee for industrial purposes for a period of two years from the date of its acquisition by him * [or any land held by the assessee as stock-in-trade for a period of three years from the date of its acquisition by him];”

7. The above provisions were inserted by the Finance Act, 1993 and made effective from 1.4.1994. We are dealing with the relevant assessment year for 1993-94. On the bare reading of the above provision, it is clear that urban land would not include a land, on which construction of a building is not permissible under any law for the time being in force in the area where land is situated or the land occupied by any building which has been constructed with the approval of the appropriate authority or in any unused land held by the assessee for an industrial purpose for a period of two years from the date of its acquisition. It is an admitted case before us that the assessee does not claim benefit of the third clause of the category specified in the provisions. The assessee would obviously have

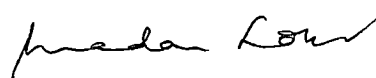
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advantage of the land being not included as an urban land because no construction at the relevant time was permissible on the land in question. In alternative, the building which has been constructed, if at all, with the approval of the appropriate authorities. The Maxim, Generalia verba sunt generaliter intelligenda - would be a fair percept to interpretation of the provisions as the words used being of general nature should be understood generally and despite the fact that they relate to the law of revenue, the general construction thereof would further the cause of legislation. The intention of the legislature appears to be that land which falls within the exception afore-referred would have to be excluded from the ambit and scope of the expression "urban land". Once the land or any building thereupon making it a combination of land and building is not an urban land, then it could not be an asset as defined under section 2(EA) of the Act. The result thereof would be not to treat the same as net-wealth of an assessee for the purposes of the provisions of the Wealth Tax Act. The First Appellate Authority had proceeded on the assumption that now orders of Supreme Court dated 1.5.1991 qua re-development had been permitted of the mill area to flatted factory complex and group housing complex. Leave was also granted to demolish the existing building. It is not in dispute before us that till date no permission/approval has been granted by the appropriate authority to the assessee to raise the building

in-consonance with the plans and as such the old structure existing is not in-confirmity with law and had not been raised with the leave of any authority. In other words, on the land in question, no construction was permitted and the authorities concerned have not granted its approval so far for raising construction on that land. In either of these cases, the land would stand excluded from the definition of "urban land" chargeable to wealth tax. In relation to one phase, the permission was granted much subsequent to the relevant year of assessment, which as stated on record before us, had also been withdrawn and work was stopped.

In the facts and circumstances afore noted, we are of the considered view that no substantial question of law arises for consideration of the Court in the present appeal, as such the appeal is dismissed leaving the parties to bear their own costs.


SWATANTER KUMAR
JUDGE


MADAN B. LOKUR
JUDGE

February 03, 2005
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