



Tax Case (Appeal) Nos.555, 556 of 2015 and 717 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved Date : **22-10-2024**

Pronounced Date : **29-04-2025**

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR
and

THE HON'BLE MR.JUSTICE C.SARAVANAN

Tax Case (Appeal) Nos.555 and 556 of 2015
and 717 of 2016

The Commissioner of Wealth Tax
Chennai.

..... Appellant in
all the cases

-VS-

M/s. Express Infrastructure (P) Ltd.,
Express Estates 2, Club House Road,
Mount Road, Chennai - 600 002.

..... Respondent in
all the cases

Prayer in TC(A).No.555 of 2015 : Appeal preferred under Section 27A of the Wealth Tax Act, 1957 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, dated 30.09.2013 in W.T.A.No.7/Mds/2013 (Assessment Years 2008-09).

Prayer in TC(A).No.556 of 2015 : Appeal preferred under Section 27A of the Wealth Tax Act, 1957 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, dated 30.09.2013 in W.T.A.No.8/Mds/2013 (Assessment Years 2009-10).



Tax Case (Appeal) Nos.555, 556 of 2015 and 717 of 2016

Prayer in TC(A).No.717 of 2016 : Appeal preferred under Section 27A of the Wealth Tax Act, 1957 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, dated 13.11.2014 in W.T.A.No.4/Mds/2013 (Assessment Years 2007-08).

For Appellant : Mr.Avinash Krishnan Ravi
Junior Standing Counsel
in all the appeals

For Respondent : Mr.Ajay Vohra, Senior Counsel
for Mr.P.J.Rishikesh
in all the appeals

COMMON JUDGMENT

R.SURESH KUMAR, J

The aforestated Tax Case (Appeals) were admitted on the following
Substantial Questions of Law :

"(i) Whether on the facts and circumstances of the case, the Tribunal was right in holding that the land remained vacant land in as much as the construction of the building was not completed as on relevant valuation date the said land would not be liable to be charged for wealth tax under Section 2(ea) of the Wealth Tax Act?

(ii) Whether the assessee would be entitled to exemption under the Wealth Tax Act, if the building construction is not completed by the end



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of relevant previous year as the building was under construction as a business asset?

(iii) Whether the land on which a complete building would alone qualify for exemption or not ?

(iv) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the assessee's 'vacant urban land' is not an 'asset' and not liable to tax under Section (ea) of the Wealth Tax Act?

(v) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that even a 'building under construction' exempts the land being assessed as 'vacant urban' from the Wealth Tax provisions?"

2. Since these Appeals were filed by the Revenue against the same Assessee in respect of three Assessment Years, i.e., 2007-08, 2008-09 and 2009-10 under Section 27A of the Wealth Tax Act, 1957, all these Appeals were heard together and are disposed of by this common order.



3. The necessary facts which are required to be noticed for the

disposal of these Appeals are as follows :

3.1. The respondent Assessee, herein after called as “Assessee Company” develops and maintains commercial complexes which had not filed any Wealth Tax Return initially. Since the assessing authority formed reasons to believe that its wealth is liable to be assessed, since had escaped assessment, he issued a notice under Section 17(1) of the Wealth Tax Act (hereinafter referred to as “the Act”) on 04.08.2010. The Assessee / Respondent filed a return of wealth on 15.09.2010 declaring Nil wealth.

3.2. The Assessee has taken out a vacant land admeasuring 10.64 acres from its sister concern namely Express Newspapers Pvt., Ltd., in short, “the Lessor” on 18.01.2006. Thereafter the lease was surrendered by the Assessee on 26.03.2007, on the same date, i.e., 26.03.2007, a sale was effected to the extent of 9.59 acres, out of the total 10.64 acres and the remaining land had been entrusted to the Chennai Metropolitan Development Authority [CMDA] for public purposes.



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3.3. The consideration had been shown as Rs.225 Crores for the said sale under which the land to the extent of 9.59 acres of vacant land had been transferred to the Assessee company. In the said vacant land, the Assessee raised construction of a shopping mall and the construction went on up to 2010 and in May 2010, the shopping mall after full construction was inaugurated.

3.4. Only in this context, it is the stand of the Revenue, i.e., Assessing Authority that, the land where construction had been made and completed only in May 2010 was considered to be a vacant urban land liable to be assessed an asset under Section 2(ea) of the Act, which alone culminated in the notice under Section 17(1) of the Act issued by the Assessing Authority.

3.5. It is in this context the issue had come up or carried to the ITAT, Chennai in W.T.A.No.4/MDS/2013 in respect of the Assessment Year 2007-08 and W.T.A.No.7 and 8/MDS/2013 in respect of the Assessment Years 2008-09 and 2009-10.



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3.6. It is to be noted that, the Tribunal in fact disposed W.T.A.Nos.7 and 8 of 2013 by a common order, dated 30.09.2013, whereby the ITAT having followed the dictum of this Court, which is the jurisdictional High Court in the case of Wealth Tax v. Rohini Hotels (Madras) Limited, reported in 2011 SCC Online Mad 1542, dismissed the Appeals filed by the Revenue in this regard.

3.7. However, the W.T.A.No.4/Mad/2013 for the Assessment Year 2007-08 was decided only later, i.e., on 13.11.2014, where also the ITAT having taken note of the order passed by the Tribunal in W.T.A.No.7 and 8/Mad/2013, dated 30.09.2013 as well as the decisions of the Madras High Court in Rohini Hotels (Madras) Limited, case *cited supra*, allowed the Appeals filed by the Assessee. As against the order of dismissal in respect of the two Appeals filed by the Revenue for the Assessment Years 2008-09 and 2009-10 by order, dated 30.09.2013 as well as the allowing of the Appeal in W.T.A.No.4 of 2013 for the Assessment Year 2007-08 by order, dated 13.11.2014, the present appeals have been filed. That is how all these three Appeals came to be filed before this Court raising the Substantial Questions of Law as quoted herein above.



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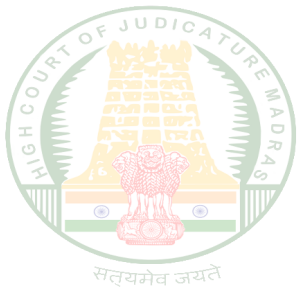
3.8. Since the order passed by the ITAT, dated 30.09.2013 in respect of the Assessment Years 2008-09, 2009-10 is concerned, it is a very short order, where the ITAT having simply followed the decision in the Rohini Hotels (Madras) Limited case (*cited supra*) has dismissed the Appeals filed by the Revenue. However insofar as the order passed by the ITAT on 13.11.2014 in W.T.A.No.4 of 2013 in respect of the Assessment Year 2007-08, a detailed order has been passed by the ITAT. Therefore the said order has been traversed mainly in this disposal.

3.9. It is the contention of the Appellant / Revenue that, Section 2(ea) of the Act define the word Assets, where the word urban land also has been explained in the explanation (1)(b).

3.10. To have a easy reference, the relevant portion of the provisions, i.e., 2(ea) which includes explanation (1)(b) is extracted hereunder :

[(ea) “assets”, in relation to the assessment year commencing on the 1st day of April, 1993, or any subsequent assessment year, means—

(i) any building or land appurtenant thereto



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(hereinafter referred to as “house”), whether used for residential or commercial purposes or for the purpose of maintaining a guest house or otherwise including a farm house situated within twenty-five kilometres from local limits of any municipality (whether known as Municipality, Municipal Corporation or by any other name) or a Cantonment Board, but does not include—

- (1) a house meant exclusively for residential purposes and which is allotted by a company to an employee or an officer or a director who is in whole-time employment, having a gross annual salary of less than 8 [ten lakh rupees];
- (2) any house for residential or commercial purposes which forms part of stock-in-trade;
- (3) any house which the assessee may occupy for the purposes of any business or profession carried on by him;
- (4) any residential property that has been let-out for a minimum period of three hundred days in the previous year;
- (5) any property in the nature of



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commercial establishments or complexes;]

(ii) motor cars (other than those used by the assessee in the business of running them on hire or as stock-in-trade);

(iii) jewellery, bullion, furniture, utensils or any other article made wholly or partly of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals:

Provided that where any of the said assets is used by the assessee as stock-in-trade, such asset shall be deemed as excluded from the assets specified in this sub-clause;

(iv) yachts, boats and aircrafts (other than those used by the assessee for commercial purposes);

(v) urban land;

(vi) cash in hand, in excess of fifty thousand rupees, of individuals and Hindu undivided families and in the case of other persons any amount not recorded in the books of account.

Explanation 1 —For the purposes of this clause,—

(a) “jewellery” includes—

(i) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious



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metals, whether or not containing any precious or semiprecious stones, and whether or not worked or sewn into any wearing apparel;

(ii) precious or semi-precious stones, whether or not set in any furniture, utensils or other article or worked or sewn into any wearing apparel;

(b) “urban land” means land situate—

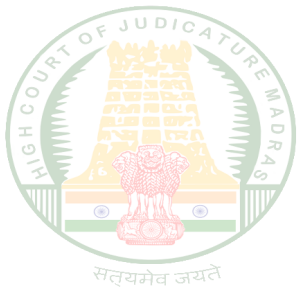
(i) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand; or

(ii) in any area within the distance, measured aerially,—

(I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in sub-clause

(i) and which has a population of more than ten thousand but not exceeding one lakh; or

(II) not being more than six kilometres, from



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the local limits of any municipality or cantonment board referred to in sub-clause (i) and which has a population of more than one lakh but not exceeding ten lakh; or (III) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in sub-clause (i) and which has a population of more than ten lakh, but does not include land classified as agricultural land in the records of the Government and used for agricultural purposes or 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 ten years from the date of its acquisition by him."



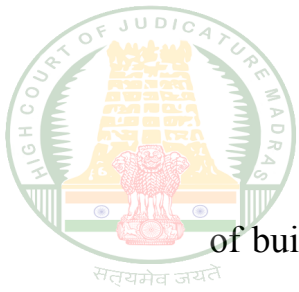
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3.11. Relying upon these provisions, the learned counsel for the Revenue would contend that, as per the explanation in Section 2(ea), assets has been defined, where the urban land also has been explained, which not included certain lands or buildings.

3.12. The inclusion clause which was relevant for the concerned Assessment Years reads thus :

"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 ten years from the date of its acquisition by him."

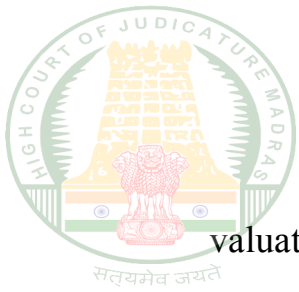
3.13. There are four situations which have been mentioned in the exclusion clause, where the first situation is the land on which construction



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of building is not permissible under any law for the time being insofar as in the area in which the land is situated. The second situation is the land occupied by any building which has been constructed with the approval of the appropriate authority. The third situation is any unused land held by the assessee for industrial purposes for a period of two years from the date of its acquisition by him and the fourth situation is any land held by the assessee as stock in trade for the period of 10 years from the date of its acquisition by him.

3.14. Taking into account of this exclusion provision under explanation 1 to Section (ea) of the Act, the assessee had taken a stand right from the beginning, i.e., from the Assessing Authority till the Tribunal that, after the land was taken on lease on 18.01.2006, the assessee started making constructions by laying the pile foundations for the proposed construction of a commercial complex consisting of three basements, one stilt plus 11 floors and such construction has been continuing after the lease was surrendered on 26.03.2007 and the sale was effected on the same day. Therefore insofar as the Assessment Year 2007-08 is concerned, the date for



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valuation and assessment is 31.03.2007, on that date, already construction since has been commenced in the land in question, which cannot be considered as a vacant land, especially urban vacant land and therefore the assessee is not liable to be assessed for any wealth tax within the meaning of the provisions of the Wealth Tax Act.

3.15. This was the stand taken by the assessee from the beginning and this was accepted by the ITAT in both the Judgments, of course by following the decision of the Rohini Hotels (Madras) Limited cited supra.

3.16. In this context, the learned counsel appearing for the Revenue would contend that, the said decision of this Court in Rohini Hotels (Madras) Limited case cited supra has been considered by the Hon'ble Supreme Court in the case of Giridhar G.Yadalam v. Commissioner of Wealth Tax and another reported in (2015) 17 SCC 664.

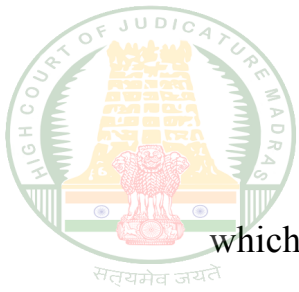
3.17. In the said decision, the Judgment in Rohini Hotels (Madras) Limited case cited supra was reversed by the Hon'ble Supreme Court and in



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this context, the Judgment of the Karnataka High Court in Giridhar G.Yadalam's case was affirmed.

3.18. Therefore the learned counsel appearing for the Revenue would contend that, since the law has now been settled by the decision of the Giridhar G.Yadalam's case cited supra which is holding the field, where the Judgment of this Court in Rohini Hotels (Madras) Limited case, since has been reversed, based on such a decision since the ITAT has dismissed the Revenue's Appeal and allowed the assessee's appeal which are impugned herein are concerned it is completely unlawful. Therefore the decisions which are impugned herein are liable to be interfered with, he contended.

3.19. On the other hand, Mr.Ajay Vohra, learned Senior counsel appearing for the respondent / Assessee would submit that, the land in question during the relevant point of time, i.e., 2007-08, 2008-09 and 2009-10 had been in the construction activities of the Assessee and therefore it cannot be stretched upon to say that, it was the land of urban vacant. He has also stated that, the charging section is Section 3 of the Act, according to



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which, the Wealth Tax can be charged for every Assessment Year commencing on and from the first day of April 1993 but before the first day of April 2016 in respect of the net wealth on the corresponding valuation date of the every individual, Hindu Undivided Family and Company at the rate of 1% of the amount by which the net wealth exceeds Rs.15 lakhs.

3.20. Since Section 3(2) being the charging section insofar as the period which is being covered in these cases where if at all the wealth tax is to be charged, it can be charged only on the Assets which had been defined in Section 2(ea).

3.21. The learned Senior counsel for the Assessee would further contend that, insofar as the present assessee is concerned, admittedly the land has been taken on lease w.e.f 18.01.2006 and before it was surrendered on 26.03.2007, construction activities were commenced and even after the sale was effected w.e.f 26.03.2007, where the construction activities already commenced was continued and it was completed in 2010, where the commercial complex constructed by the assessee company was inaugurated

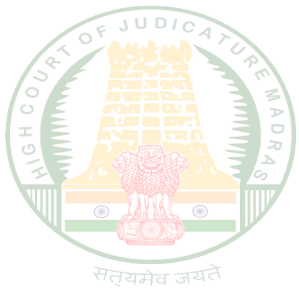


in May 2010. Therefore at no point of time, covering these Assessment

Years, i.e., 2007-08, 2008-09 and 2009-10, the land was urban vacant and

therefore the very charging of wealth tax on the landed property belongs to the assessee itself is out of the purview of the Wealth Tax Act, therefore such a notice issued by the Assessing Authority and ultimately imposing the Wealth Tax is thoroughly outside the scope of the Act, he contended.

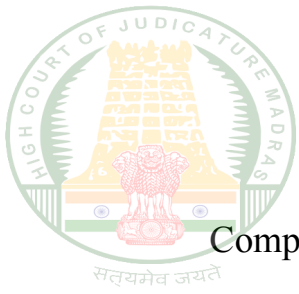
3.22. The learned Senior counsel appearing for the Assessee would also submit that, in respect of the exclusion clause, one of the situation under which the land could be excluded from the purview of the urban land under Explanation 1 to Section 2(ea) of the Act is that, any unused land held by the assessee for Industrial purposes for the period of two years from the date of its acquisition by him. He would submit that, the said exclusion clause or one of the situation under exclusion clause would mean that, if the land is reserved for the purpose of establishing an Industrial Establishment for a period of two years, it cannot be stated as an urban land vacant.



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3.23. In aid of his contention, the learned Senior counsel relied upon the Bangalore water supply and Sewerage Board v. A.Rajappa and others reported in (1978) 2 SCC 213. By citing the said decision, the learned Senior counsel would contend that, the word Industry since has been defined in the said Judgment by the Hon'ble Supreme Court, the activities to be undertaken by putting up the construction of a huge commercial complex, where various activities of shopping malls, auditorium, cinema theatre etc., since are going to be provided, it could very well be construed as Industrial House or Industrial activities and therefore for the said purpose if the land in question is reserved for two years, assuming that there are no construction completed or fulfilled during the relevant point of time, even then under the said portion of the exclusion clause to reserve the land for two years proposed to establish an Industrial establishment, the land can be excluded from the purview of charging of wealth tax.

3.24. Apart from the said argument, the learned Senior counsel would also contend that, as per the decision of the Hon'ble Supreme Court in Commissioner of Customs (Import), Mumbai v. M/s.Dilip Kumar and



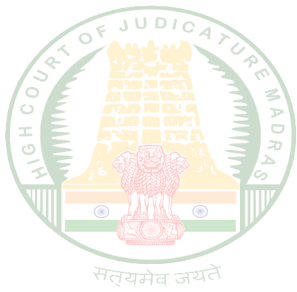
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Company & Ors., in Civil Appeal No.3327 of 2007 SC, the Hon'ble

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Supreme Court has held that, it is a law that any ambiguity in a taxing statute should be construed to the benefit of the subject / assessee but any ambiguity in the exemption clause or exemption notification must be construed in favour of the Revenue and such exemption should be allowed to be availed only to those subjects / assessees who demonstrate that a case for exemption, squarely falls within the parameters enumerated in the notification and that the claimant satisfy all the condition precedent for availing exemption.

3.25. By citing this portion of the order in para 40 of the said Judgment in Dilip Kumar's case, the learned Senior counsel would contend that, insofar as the exclusion clause is concerned, since it was intended by the legislature to exclude certain lands from the purview of Section 2(ea) of the Act, when such an exclusion clause is interpreted, it must be interpreted only in favour of the assessee not in favour of the Revenue. Therefore insofar as the interpretation sought for with regard to the exclusion clause under Section 2(ea) is concerned, that should be interpreted only in favour of the assessee, he contended.

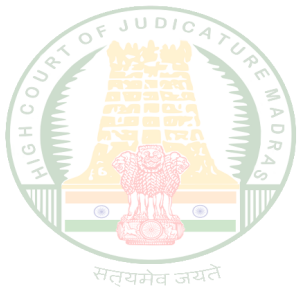


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3.26. Insofar as the decision that has been made by the Hon'ble Supreme Court in *Giridhar G.Yadalam v. Commissioner of Wealth Tax* and another reported in (2015) 17 SCC 664 cited supra is concerned, the learned Senior counsel by giving his interpretation to what has been stated by the Hon'ble Supreme Court in para 16 of the order that, the benefit of the said clause would be applicable only in respect of the building which has been constructed, means constructed after getting necessary approval or permission from the planning authorities, therefore it cannot be stretched upon beyond what has been stated therein, he contended.

3.27. By making all these arguments, the learned Senior counsel would canvass the point that, the decision rendered by the Tribunal in both the Judgments, which are impugned herein, are to be sustained and these appeals filed by the Revenue are liable to be dismissed.

4. We have given our anxious consideration to the said submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.



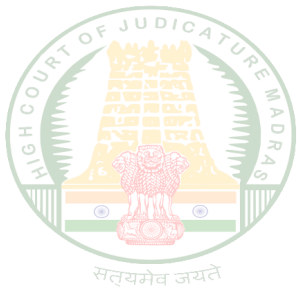
5. In fact the Judgment of the ITAT in W.T.A.Nos.7 and 8/Mad/2013

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is concerned for the Assessment Year 2008-09 and 2009-10, the Judgment came to be passed on 30.09.2013. In the short Judgment, the ITAT has passed the following order :

"2. The common ground raised by the Revenue in both these appeals is that if the building construction is not complete by the end of the relevant previous year, exemption cannot be given to the assessee for the building under construction as business asset. It is the case of the Revenue that the Hon'ble Karnataka High Court in the case of CWT v. Giridhar G.Yadalam, 325 ITR 223, has held that a land on which a complete building stands alone would qualify for exemption. It is also the case of the Revenue that the judgment of the Hon'ble Madras High Court in the case of CWT v. Rohini Hotels (Madras) Ltd., in TC(A) Nos.557 and 558 of 2005 has not become final and the Revenue has filed SLP before the Hon'ble Supreme Court.

3. As things stand now, we find that the contention of the assessee is covered by the judgment of the Hon'ble jurisdictional High Court in the case of



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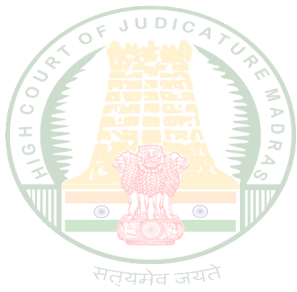


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CWT v. Rohini Hotels (Madras) Ltd., rendered by their Lordships on 21.09.2011 in TC(A) Nos.557 and 558 of 2005. The Hon'ble jurisdictional High Court has held that even the building under construction makes the urban land a commercial property entitled for wealth-tax exemption, as the nature of the land has been altered. Therefore, we find that the orders of the Commissioner of Income-tax (Appeals) are justified in law.

4. In result these two appeals filed by the Revenue are dismissed."

6. If we peruse the order of the ITAT dated 30.09.2013, the Tribunal has come to the conclusion that, the contention of the assessee is covered by Judgment of the jurisdictional High Court, i.e., this Court in the case of CWT v. Rohini Hotels (Madras) Limited., cited supra. The Tribunal also has noted that, the High Court has held that even the building under construction makes urban land a commercial property entitled for wealth tax exemption, as the nature of the land has been altered. Therefore this was the sole reason under which by following the decision in Rohini Hotels (Madras) Limited case, the ITAT has dismissed the two Appeals filed by the Revenue insofar as the AY 2008-09 and AY 2009-10 is concerned.

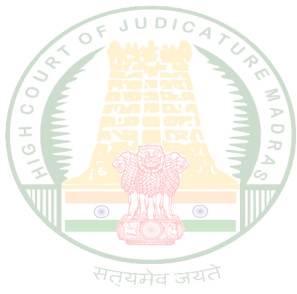


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7. After an year, the other Appeal, i.e., WTA No.4/Mad/2013 pertaining to AY 2007-08 came to be dismissed by the ITAT, where though a detailed order has been passed, here also the ITAT has mainly relied upon the decision of this Court in Rohini Hotels (Madras) Limited case.

8. Though the decision of the Karnataka High Court in Commissioner of Wealth Tax and another v. Giridhar G.Yadalam reported in (2010) 325 ITR 223 = 2007 SCC Online Karnataka 662 was cited by the Revenue, the Tribunal has held in paragraph 16 of the order, dated 13.11.2014 to the following effect :

"16. This leaves us with the last question. We find that in case law Rohini Hotels (Madras) Ltd., as well as the Tribunal's order (supra), it has been held that even a 'building under construction' exempts the land from being assessed as 'vacant urban' from the Wealth-tax provisions. We have already discussed in the preceding paragraphs that the assessee's 'pile foundation work' which is very much mandatory for the superstructure's safety stood commenced in the year 2006 itself. This culminated into raising of a full fledged high rise



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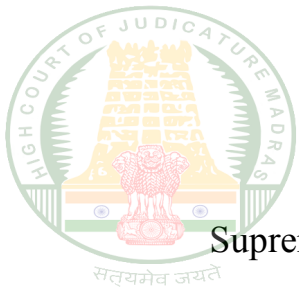


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building inaugurated in May 2010. So, the said 'pile foundation work' forms an integral part of the main construction work. The relevant outgo is Rs.17,42,42,863/- (details already submitted). We hold that this amounts to a 'building under construction'. The net corollary is that the assessee's land is entitled for exemption from the purview of the wealth tax law as per the aforesaid precedents. The Revenue's reliance on the case law CWT v. Giridhar G.Yadalam and Vysya Bank Ltd., v. DCWT (supra) stand distinguished by the Hon'ble jurisdictional High Court in Rohini Hotels (supra). We also follow the order of the jurisdictional high court and decide this question as well in the assessee's favour."

9. Therefore in both the cases, the Judgment rendered by the Madras High Court in Rohini Hotels (Madras) Limited case alone has been followed.

10. However it is to be noted that, the Rohini Hotels (Madras) Limited case came up for consideration at the time when the Hon'ble



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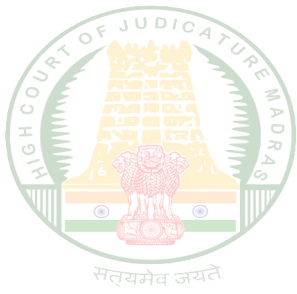
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Supreme Court taken up the appeal arise out of the Judgment of the Karnataka High Court in respect of Commissioner of Wealth Tax and another v. Giridhar G.Yadalam.

11. In the decision of the Giridhar G.Yadalam v. Commissioner of Wealth Tax reported in (2015) 17 SCC 664 cited supra, the Hon'ble Supreme Court in the opening paragraph has stated that, it is concerned with the interpretation, that is to be accorded to the provisions of Explanation 1(b) to Section 2(ea)(v) of the Wealth Tax Act, 1957. This explanation defines urban land. Urban land is exigible to wealth tax under the aforesaid Act, however, the definition of urban land in explanation (1b) excludes certain category of lands.

12. Stating this, the Supreme Court has further stated about the exclusion provisions. In order to appreciate the same, the opening paragraph is extracted hereunder :

" Leave granted in SLPs. In these cases, we are concerned with the interpretation that is to be accorded to the provisions of Explanation 1(b) to



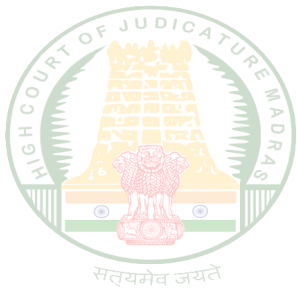
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Section 2(ea)(v) of the Wealth Tax Act, 1957 (hereinafter referred to as the 'Act'). This Explanation defines 'Urban Land'. Urban land is exigible to wealth tax under the aforesaid Act. However, the definition of 'urban land' in explanation 1(b) excludes certain category of lands. As per Explanation 1(b) to Section 2(ea)(v), 'urban land' to mean land situate – but does not includes:-

- (i) land classified as 'agricultural land' in the records of the Government and used for agricultural purposes or 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
- (ii) the land occupied by any building which has been constructed with the approval of the appropriate authority; or
- (iii) 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



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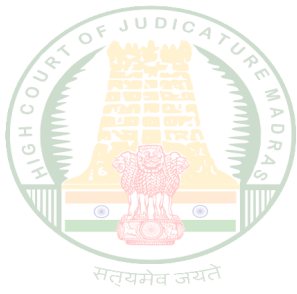
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(iv) any land held by the assessee as 'stock-in-trade' for a period of ten years from the date of its acquisition."

13. The question that was posed for consideration before the Hon'ble Supreme Court as recorded in paragraph 3 of the order is that, as to whether the land would be excluded from the urban land only when building is completely constructed there upon or it would be covered by the aforesaid clause even if the building activity is started and the building is not yet completed ?

14. In paragraph 5 of the order, the Hon'ble Supreme Court has further recorded that, in the appeals which are filed by the Revenue challenge is to the orders passed by the Madras High Court which has taken a contrary view.

15. What are all the three conditions which have to be satisfied to avail the benefit of exclusion also has been explained in paragraph 7 of the Judgment which reads thus :



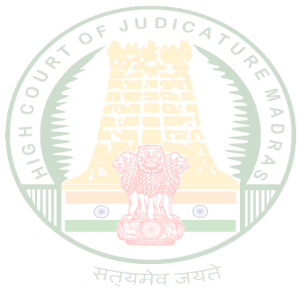
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"7. It is not in dispute that 'urban land' is to be included to calculate 'net wealth' for the purpose of wealth tax under the Act. However, certain lands are not to be treated as 'urban land' which are mentioned in Explanation 1(b). But Section 2(e)(a) of the Act was inserted by the Finance Act 1992 (Act No.18/1992) w.e.f. 01.04.1993. The purpose was to exempt some of the lands from wealth tax with the objective of stimulating investment in productive assets. It is in the context that the land occupied by any building which has been constructed with the approval of the appropriate authority is excluded from the definition of urban land. On a plain reading of the said clause it becomes clear that in order to avail the benefit, following conditions have to be satisfied:

- (a) The land is occupied by any building;
- (b) Such a building has been constructed;
- (c) The construction is done with the approval of the appropriate authority;"

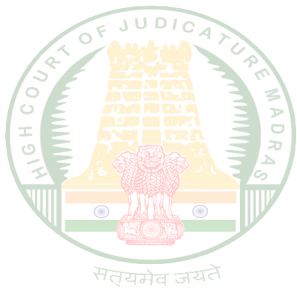


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16. Having considered the Judgment of the Karnataka High Court, Madras High Court and Kerala High Court, the Hon'ble Supreme Court has ultimately held in Giridhar G.Yadalam's case cited supra to the following effect:

"15. After giving our due consideration to the submissions of the learned counsel for both the parties and after going through the judgments of different High Courts, we are of the opinion that the view taken by the High Court of Karnataka in its judgment dated 21.03.2007 is the correct view in law and the contrary view taken by the Kerala and Madras High Courts is erroneous and is liable to be set aside.

16. We have already pointed out that on the plain language of the provision in question, the benefit of the said clause would be applicable only in respect of the building 'which has been constructed'. The expression 'has been constructed' obviously cannot include within its sweep a building which is not fully constructed or in the process of construction. The opening words of clause (ii) also become important in this behalf, where it is stated that 'the land occupied by any

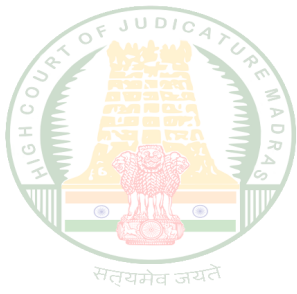


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building'. The land cannot be treated to be occupied by a building where it is still under construction. If the contention of Mr. Jain is accepted, an assessee would become entitled to the benefit of the said clause, at that very moment, the commencement of construction even with construction the moment one brick is laid. It would be too far fetch, in such a situation, to say that the land stands occupied by a building that has been constructed thereon. Even Mr. Jain was candid in accepting that when the construction of building is still going on and is not completed, literally speaking, it cannot be said that the building 'has been constructed'. It is for this reason that he wanted us to give the benefit of this provision even in such cases by reading the expression to mean the same as 'is being constructed'. His submission was that the moment construction starts the urban land is put to 'productive use' and that entitles the land from exemption of wealth-tax. This argument of giving so called purposive interpretation has to be rejected for more than one reasons. These are:



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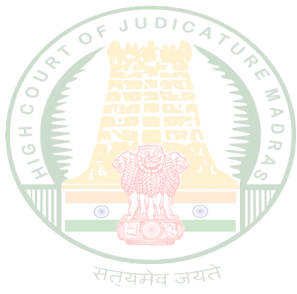
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(i) In taxing statute, it is the plain language of the provision that has to be preferred where language is plain and is capable of one definite meaning.

(ii) Strict interpretation to the exemption provision is to be accorded, which is the case at hand.

(iii) The purposive interpretation can be given only when there is some ambiguity in the language of the statutory provision or it leads to absurd results. We do not find it to be so in the present case.

17. No doubt, the purpose and objective of introducing Section 2(e)(a) in the Act was to stimulate productive assets. However, the event when such a provision is to be attracted is also mentioned in Explanation 1(b) itself carving out those situations when the land is not to be treated urban land. The Legislature in its wisdom conferred the benefit of exemption in respect of urban vacant land only when the building is fully constructed and not when the construction activity has merely started. On the contrary, if the argument of the assessee is accepted, that would lead to absurd results in certain cases. For example, what would be the position if the construction of the



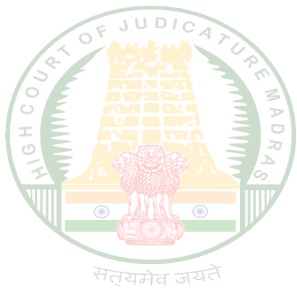
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building starts but the said construction is abandoned mid way? If we accept the argument of the assessee, in such a case, assessee would be given the exemption from payment of wealth tax in the initial years and the same benefit would be denied in the year when it is found that construction was abandoned and, therefore, not complete. It would result in granting of benefit in the previous year(s), though that was not admissible. Such a situation cannot be countenanced. Presumably, because of this reason, the Legislature wanted to treat only that land to be excluded from the definition of 'urban land' at the stage when the building has been fully constructed on the said land.

18. We do not agree with the submission of Mr. Jain that the situation when building is fully constructed has been covered by Section 2(e)(a)(v) read with Explanation 1(b) as it would fall under Section 2(e)(a)(i). We have already reproduced the aforesaid Section and find that it deals with altogether different situations. As pointed out above, Explanation (1) thereof excludes certain categories of 'Urban Land' and we are concerned



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herewith clause (ii) of this Explanation. By 1992 amendment, Section 2(e)(a) was added which contains the definition of 'asset'. Clause (v) thereof includes urban land. Thus, urban land is to be included as an 'asset' for the purpose of giving extended meaning to it. Urban Land is defined in Explanation 1 Clause (b) to Section 2(e)(a).

19. The Kerala High Court as well as Madras High Court have been influenced by the arguments premised on purposeful construction which was the argument of Mr. Jain and has not been accepted by us."

17. From the reading of the said decision of the Hon'ble Supreme Court in Giridhar G.Yadalam's case cited supra, the issue raised on behalf of the assessee right from the beginning till the ITAT has been given a complete answer. In fact the ITAT in the first order in respect of the AY 2008-09 and 2009-10 dated 30.09.2013, in a very short order had dismissed the appeals filed by the Revenue on a short ground that, the issue was covered by the decision of this Court in the case of Rohini Hotels (Madras) Limited. Almost same view has been taken by the ITAT in the order, dated



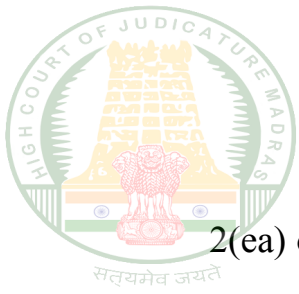
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13.11.2014 pertains to AY 2007-08, where also even though the Judgment of the Karnataka High Court in Commissioner of Wealth Tax and another v. Giridhar G.Yadalam and another Judgment in Karur Vysya Bank Ltd., v. Commissioner of Income-tax, Trichy reported in (2016) 338 ITR 37 had been stated. It was the view of the ITAT that, those Judgments are distinguished by the Madras High Court in Rohini Hotels case cited supra.

18. Therefore the sum and substance of these two decisions which are impugned herein of the ITAT, Chennai is concerned, the Tribunal mainly relied upon the decision of this Court in Rohini Hotels (Madras) Limited case which has been reversed by the decision in Giridhar G.Yadalam's case cited supra of the Hon'ble Supreme Court.

19. The Hon'ble Supreme Court has given a complete answer to the stand taken by the assessee to state that, the expression, "has been constructed", obviously cannot include within its sweep a verdict which is not fully constructed or in the process of construction. The Hon'ble Apex Court has further held that, the purpose and objective of introducing Section



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2(ea) of the Act was to stimulate productive assets. The situations where the land could not be treated as a urban land as given in explanation (1b) has also been dealt with and interpreted by the Supreme Court saying that the legislature in its wisdom conferred the benefit of exemption in respect of urban vacant land only when the building is fully constructed and not when the construction activity has merely started.

20. Here in the case in hand, admittedly it is the claim of the assessee that, the assessee after having taken over the land on lease from 18.01.2006, started the construction by laying the pile foundation, though the land was surrendered on 26.03.2007, on that date, i.e., on 26.03.2007 since the land was transferred by way of effecting the sale to and in favour of the assessee, the construction activities that has already been commenced under the lease hold right of the assessee was continuing after becoming the owner of the property and that was over by 2010 and ultimately the project was inaugurated in 2010 May. Therefore in all these period since there has been a continuous construction activities going on, the relevant Assessment Years, i.e., 2007-08, 2008-09 and 2009-10, the land in question cannot be

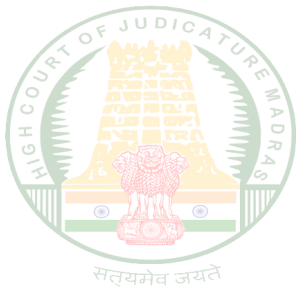


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treated as a urban vacant for the purpose of levying tax under the Wealth Tax Act, therefore such a move made by the Revenue imposing tax on the assessee is bad in law. This stand of the assessee stood shattered by virtue of the categorical decision made by the Hon'ble Supreme Court in the Giridhar G.Yadalam's case cited supra.

21. Before the decision was made by the Hon'ble Supreme Court since the orders were passed by the ITAT on 30.09.2013 and 13.11.2014, the Tribunal's decision was saved by the decision of this Court in Rohini Hotels (Madras) Limited case. Since the Rohini Hotels (Madras) Limited case decision has been reversed by the decision of the Hon'ble Supreme Court as cited supra, the orders passed by the ITAT which are impugned herein would have no legs to stand.

22. Resultantly, the arguments advanced by the learned Senior counsel appearing for the assessee since could not be accepted, the Revenue's stand and the arguments advanced by the Revenue counsel is to be accepted.



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23. In the result, the following orders are passed in these Appeals :

(a) that the orders of the ITAT which are impugned herein are set aside.

(b) The Questions of Law that have been framed in these cases are answered in favour of the Revenue and against the assessee.

24. Accordingly, all these Appeals filed by the Revenue are allowed.

However there is no order as to costs.

(R.S.K., J.)

(C.S.N., J.)

29.04.2025

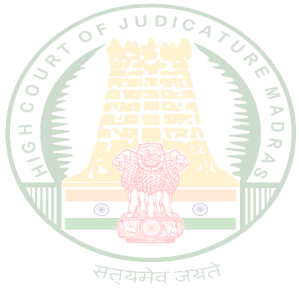
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Speaking order

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To

The Income Tax Appellate Tribunal
Madras 'C' Bench



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Tax Case (Appeal) Nos.555, 556 of 2015 and 717 of 2016

**R.SURESH KUMAR, J.
and
C.SARAVANAN, J**

tsvn

**Common Judgment
in Tax Case (Appeal)
Nos.555, 556 of 2015
and 717 of 2016**

29.04.2025