

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MS.JUSTICE K.B.K.VASUKI

T.C. (A) Nos.168 to 170 of 2015

The Commissioner of Income Tax,
Chennai. ... Appellant/Appellant in all TC(A)

Vs

M/s.MIL Industries Ltd,
25A Industrial Estate, Ambattur,
Chennai 600 098. ... Respondent/Respondent in All Tc(A)

Prayer:- These Tax Case (Appeals) are filed under Section 27 a of the Wealth - Tax Act 1957 against the order of the Income Tax Appellate Tribunal, Madras "B" Bench, Chennai dated 29.7.2011 in WTA Nos.42/Mds/2010, 44/Mds/2010 and 43/Mds/2010 respectively.

Against the Order of the Commissioner of Income Tax(A)-V, dated 27.9.2010 made in ITA.No.417, 418 & 419/09-10, and against the Order of the Assistant Commissioner of Income Tax Company Circle-IV(3) (I/c) Chennai-34, dated 23/12/09 made in PA.No.AAACM43800.

For Appellant : Mr.T.R.Senthilkumar

COMMON JUDGMENT

(Judgment was delivered by K.B.K.VASUKI, J.)

All these Tax Case Appeals are filed by the Revenue against the order of the Tribunal, relating to the Assessment Years 2003-04, 2004-05 and 2005-06 respectively, raising the following questions of law :

1) Whether on the facts and circumstances of the case, the Tribunal was right in upholding the order of the CIT(A) who directed the assessing officer to exclude the value of the land at Ambattur while computing the net wealth of the assessee?

2) Whether on the facts and circumstances of the case, the land sold at Ambattur would fall within the exclusion clause of proviso to Section 2(ea) of the Wealth Tax Act?

2.The issue that arises for consideration herein is as to whether the land at Ambattur sold by the assessee would fall within the exclusion clause of Section 2(ea) of the Wealth Tax Act?

3.It is the contention of the assessee that every part of the land sold comprise of factory building i.e. administrative and research and development block and considering the nature of use to which the land sold prior to the sale, it cannot be treated as urban land and the levy of wealth tax on the entire portion of the land is hence against law. Whereas, according to the Revenue, the constructed area was very less and highly disproportionate as compared to the total area of the land, as such, the land in question is not exclude under Section 2(ea) of the Wealth Tax Act.

4.While the Assessing Officer, accepting the contention of the Revenue, levied Wealth Tax, the learned CIT(A) set aside the order of the Assessing officer, on the basis of the remand report of the Assessing Officer. The Tribunal, on the basis of the remand report obtained from the Assessing Officer and objections filed by the assessee on such report and after duly appreciating the facts and circumstances involved in the present case, in the light of relevant provisions of law under Wealth Tax Act, dismissed the appeals filed by the Revenue, thereby upheld the order of the learned CIT(A).

5.The Tribunal, in para 7 of the impugned order extracted paras 20 to 24 of the order of the learned CIT(A) and found the same to be well reasoned order by considering all the materials and to be based on materials. The Tribunal was of the view that there was no infirmity or flaw in the order passed by the learned CIT(A). The relevant paras 7 and 8 of the impugned order of the Tribunal are reproduced hereunder:

"7.We have heard both the sides, considered the material on record and also gone through the relevant provisions of law as well as approved site map filed before the Assessing Officer and copy placed before us and find that the ld.CIT(A), while considering the plea of the assessee in the light of remand report obtained from the Assessing Officer and objections filed by the assessee has concluded to exclude such land from the definition of asset as per proviso to section 2(ea) of the Wealth Tax Act. The relevant paras from 20 to 24 reproduced as under :

"20. I have carefully considered the arguments of the Ld AR and the Remand Report of the Assessing Officer and also the records and the documents before me. I find that the argument of the Appellant that the lands sold during the assessment years 2005-06 and 2006-07 cannot be treated as urban land or unused land has some force. As can be

seen from the plan submitted before me and the Assessing Officer, the land was purchased by the Appellant for the purpose of putting up a factory at Ambattur and in fact the Appellant has put up the factory as can be seen from the plan submitted. The plan submitted by the Appellant clearly indicates the various construction on the land at Ambattur as well as the purpose for which the other portion of the land have been earmarked including the lands sold during assessment year 2005-06 and 2006-07.

21.I find that the argument of the Assessing Officer that only 31100sq.ft of land can be said to be covered by building constructed with the approval of the concerned authorities and that the balance land is to be treated as vacant unused land is misconceived. In any land, the owner has to leave a certain portion of the land in accordance with the regulations governing the constructions at the place where the land situated. It is also necessary that the owner has to provide for parking space for the executives, visitors and also for the employees which is true in all the buildings constructed.

22.Every building has to have open space for the proper enjoyment of the buildings constructed on the land. In this sense, the argument of the Ld AR has force that once a building is constructed on the land, then it ceases to be vacant land and becomes land and building. A reading of the provisions of Section 2(ea) would make it clear that the terms "urban land" does not include land on which any building is constructed.

23.In this connection, it may be appropriate to refer to the observations of the Delhi High Court in the case of CWT vs. D.C.M.Ltd., (290 ITR 615) wherein at page 621, the said High Court has held as under :

"In the maxim, *generalalia verba sunt generaliter interlligenda* - it would be helpful precept to interpretation of the provisions which uses the words of general would have to be construed generally. The intention of the Legislature appears to be that land which falls within the exception afore referred would have to be excluded form 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 urban land, then it could not be an asset as defined under Section 2(ea) of the Act."

24.In view of the foregoing provisions of law and having regard to the facts and circumstances of the case. I hold that the Assessing Officer erred in treating the entire land as well as the lands sold during the

assessment years 2005-06 and 2006-07 as urban land and including the same in the net wealth of the Appellant. The Assessing Officer is directed to exclude the value of the land at Ambattur while computing the net wealth of the Appellant.

8.From the perusal of the conclusion of the ld.CIT (A) as reproduced above. It is seen that he has passed a well reasoned order by considering each and every aspect of the matter in the light of factual aspect, which has also been properly demonstrated by the ld. Counsel for the assessee before us while referring to the approved site map of Superintendent of Central Excise. No infirmity or flaw has been pointed out by the ld.Dr or noticed by us in the conclusion as drawn by the ld.CIT(A). Therefore, in view of the facts, circumstances and material on record, we concur with the finding and conclusion of the ld.CIT(A) and uphold his action while dismissing the appeals of the Department being devoid of any merits."

6.Thus, as the issue involved herein being pure question of fact and as both the Appellate Authorities, after verifying the records, arrived at such conclusion, we find no question of law much less any substantial question of law arises for consideration in these appeals.

7.Accordingly, all these tax case Appeals are dismissed. No costs.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1.The Income Tax Appellate Tribunal Chennai-'B' Bench, Chennai.

2.The Commissioner of Income Tax(A)-V, Chennai.

3.The Assistant Commissioner of Income Tax,
Company Circle -IV(3), (I/c) Chennai-34

1 cc to Mr.T.R.Senthil Kumar , Advocate Sr.No.27162

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