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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 28th April 2016
Decision on: May 16, 2016

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WTA 7/2004

COMMISSIONER OF WEALTH TAX Petitioner
Through: Mr. Rahul Chaudhary, Senior Standing
counsel with Mr. Anup Kesari, Advocate.

versus

MOHAN EXPORTS INDIA P. LTD Respondent
Through: Mr. V.P.Gupta and Mr. Anuj Bansal,
Advocates.

With

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WTA 8/2004

COMMISSIONER OF WEALTH TAX Petitioner
Through: Mr. Rahul Chaudhary, Senior Standing
counsel with Mr. Anup Kesari, Advocate.

versus

MOHAN EXPORTS INDIA P. LTD Respondent
Through: Mr. V.P.Gupta and Mr. Anuj Bansal,
Advocates.

With

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WTA 9/2004

COMMISSIONER OF WEALTH TAX DEL Petitioner
Through: Mr. Rahul Chaudhary, Senior Standing
counsel with Mr. Anup Kesari, Advocate.

versus

M/S MOHAN EXPORTS INDIA P.LTD. Respondent
Through: Mr. V.P.Gupta and Mr. Anuj Bansal,
Advocates.

With

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WTA 10/2004

COMMISSIONER OF WEALTH TAX Petitioner
Through: Mr. Rahul Chaudhary, Senior Standing
counsel with Mr. Anup Kesari, Advocate.

versus

MOHAN EXPORTS INDIA P. LTD Respondent
Through: Mr. V.P.Gupta and Mr. Anuj Bansal,
Advocates.

And

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WTA 11/2004

COMMISSIONER OF WEALTH TAX Petitioner
Through: Mr. Rahul Chaudhary, Senior Standing
counsel with Mr. Anup Kesari, Advocate.

versus

MOHAN EXPORTS INDIA P.LTD. Respondent
Through: Mr. V.P.Gupta and Mr. Anuj Bansal,
Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

J U D G E M E N T

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16.05.2016

Dr. S. Muralidhar, J.:

1. These appeals by the Revenue are directed against a common judgment dated 29th September 2003 passed by the Income Tax Appellate Tribunal ('ITAT') in WTA Nos. 180, 181, 431 and 691/Del/96 for the Assessment Years ('AYs') 1989-90, 1990-91, 1991-92 and 1985-86, as well as WTA No. 286/Del/98 for AY 1992-93.

2. At the outset, it must be noticed that the impugned common judgment was also passed by the ITAT in WTA No. 1/Del/98 for AY 1992-93 in the appeal filed by the Revenue against another Assessee M/s Pawan Builders (P) Ltd., having its address at 7, Zamrudpur Community Centre, Kailash Colony, New Delhi. However, no appeal appears to have been filed by the Revenue as far as the decision of the ITAT in WTA No. 1 of 1998 is concerned.

Background facts

3. The Respondent Assessee M/s Mohan Exports (I) Ltd. is stated to be the owner of the land and building at 8 and 9, Zamrudpur Community Centre, Kailash Colony, New Delhi. During the assessment proceedings, the Assessing Officer ('AO') noted that the Assessee had not disclosed the value of the property in its total taxable wealth. In response to a query raised by the AO in that regard, the Assessee stated that the property in question had not been registered in its name and therefore in terms of the Wealth Tax Act, 1957 ('WT Act') the value of the said property could not be added in

computing the net wealth of the Assessee.

4. For AY 1985-86, initially the assessment was completed by an order under Section 16(3) of the WT Act for total value at Rs. 1,47,42,259 which included the value of the property at 8 and 9, Zamrudpur Community Centre, Kailash Colony as well as land in Daruhera, District Mahendargarh.

5. In an appeal filed against the said assessment order by the Assessee the Commissioner of Wealth Tax ('CWT') set aside the assessment order on the issue of the value of the aforementioned properties and remanded the matter to the AO for a fresh determination. Upon remand, the AO referred the issue concerning the fair market value of both the properties to the valuation officer. By report dated 28th March, 1994 the valuation officer of the Income Tax Department determined the value of the property at 8 and 9, Zamrudpur Community Centre, Kailash Colony, New Delhi at Rs.1,49,50,600. This value formed the basis for computation of the net wealth of the Assessee. The valuation of the land in Daruhera, District Mahendargarh was determined at Rs. 13 lakhs. The AO finalized the fresh assessment order on 30th March 1994 computing the total wealth at Rs. 1,67,36,100.

6. The further appeal filed by the Assessee was allowed by the Commissioner of Income Tax (Appeals) [CIT(A)] by an order dated 30th August 1996. Specific to the property at 8 and 9, Zamrudpur Community Centre, Kailash Colony, New Delhi, the claim of the Assessee was that since on the date of such valuation the Assessee was not yet the legal owner of the property as the lease deed had not been executed by the DDA in favour of the Assessee. Therefore it was not an 'asset' under Section 40 (3) of the

Finance Act 1983. The CIT (A) accepted the above plea and held that the value of the land at 8 and 9, Zamrudpur Community Centre, Kailash Colony, New Delhi was not liable to be included in the net wealth of the Assessee as on the relevant date the lease deed had not been executed in favour of the Assessee. The CIT (A) followed the order dated 30th November 1995 passed in the appeals for AYs 1989-90 and 1990-91 in favour of the Assessee.

7. As far as AY 1989-90 is concerned, the AO passed the assessment order on 31st March 1989 holding that notwithstanding that the property had not been formally registered in its name, the Assessee was the real owner of the property. It was held that the decision of the Supreme Court in *Nawab Sir Mir Osman Ali Khan v. CWT (1986) 162 ITR 888* was not applicable in the facts of the case. It was further held that the building in any case was covered by Section 40 (3) (vi) of the Finance Act 1983 and the Assessee was its real owner.

8. As far as AY 1990-91 is concerned, the AO passed an order on 17th March 1993 again determining the value of property as per Schedule III of WTA at Rs. 4,19,45,260.

9. The Assessee's appeals for both AYs 1989-90 and 1990-91 were disposed of by the CIT(A) by a common order dated 30th November 1995. The CIT (A) accepted the case of the Assessee that notwithstanding the amendment to the expression 'net wealth' by insertion of Explanation 1 below Section 2 (m) of the WT Act, under Section 40 (3) of the Finance Act 1983 "all the wealth of the company has not been charged to tax but only certain specified

assets have been charged to tax." Following the decision of the Supreme Court in *Nawab Sir Mir Osman Ali Khan v. CWT* (*supra*) it was held that "unless the property has been registered in the name of the Assessee, it cannot be said to be belonging to the Assessee." Appeals were filed by the Revenue before the ITAT against the aforementioned common order of the CIT(A).

10. As far as AY 1991-92 is concerned, the AO passed the assessment order on 17th March 1994, determining the value of the property at Rs.1,14,32,574. The contention of the Assessee that the value of the property was not liable to wealth tax since it was not registered in the name of the Assessee was rejected by the AO. In the appeal before the CIT(A) it was noted that the CIT (A) had not accepted the Revenue's case on similar lines for AYs 1989-90 and 1990-91. It was held that the land on which the super structure was constructed by the Assessee was not to be included in computation of the net wealth of the Assessee. However, the value of the superstructure was to be included. The Revenue went in appeal against this order as well.

11. As far as AY 1992-93 is concerned, the AO passed the assessment order on 14th March 1995, computing the value of the property at Rs. 27,03,031. In the appeal filed against the said order, the CIT(A) passed an order dated 31st July 1998 accepting the case of the Assessee that the premises were used by the Assessee for its office and therefore its value was not to be included in the net wealth. The additions made by the AO were deleted.

12. As already noted, against the above orders of the CIT (A), the Revenue filed appeals before the ITAT which came to be disposed of by the common

impugned order dated 29th September 2003. The ITAT chose to follow the decision in *Nawab Sir Mir Osman Ali Khan v. CWT* (*supra*) and distinguished the decision in *CIT v. Poddar Cement Ltd. (1997) 226 ITR 625(SC)*. It was held that the CWT was justified in holding that the wealth tax could not be levied on properties which were not registered in the name of the Assessee. Following the decision of the ITAT for AY 1988-89, the orders of the CWT were confirmed for all the AYs in question.

WTA 8/2004 for AY 1985-86

13. At the outset, it is pointed out by Mr. V.P. Gupta, learned counsel for the Assessee that the appeal for AY 1985-86 viz., WTA 8 of 2004, was not maintainable. He submitted that as far as AY 1985-86 is concerned, it was governed by Section 40 of the Finance Act 1983 as it stood prior to the amendment to Section 2 (m) of the WT Act with effect from 1st April 1988. The position as regards AYs 1986-87 and 1987-88 was no different. The decisions of the CIT (A) for the subsequent AYs 1986-87 and 1987-88 in favour of the Assessee was accepted by the Revenue. Therefore, it was submitted that on the principle of consistency the Revenue's appeal AY 1985-86 should not be entertained.

14. As noted hereinbefore the position as regards the inclusion of the building for the purposes of computation of wealth tax underwent a change with effect from 1st April 1988, on account of the insertion of Explanation 1 below Section 2 (m) of the WT Act. Therefore the assessments for the AYs prior to AY 1988-89 had to merit the same treatment on the principle of consistency as far as the Revenue was concerned. As already noticed, the

decision of the CIT (A) for AYs 1986-87 and 1987-88, subsequent to AY 1985-86, has been accepted by the Revenue. In fact, even for AY 1988-89, the decision of the ITAT holding that the value of neither the land nor the building can be included in the net wealth of the Assessee, notwithstanding the amendment to Section 2 (m) of the WT Act, has been accepted by the Revenue.

15. In that view of the matter, the Assessee is justified in contending that the Revenue should not be permitted to take a different stand for AY 1985-86. Accordingly, WTA No. 8 of 2004 for AY 1985-86 is not entertained and the question framed in the said appeal for AY 1985-86 is answered in the affirmative, i.e., in favour of the Assessee and against the Revenue.

WTA 7/2004 for AY 1992-93

16. As regards WTA No. 7 of 2004 relating to AY 1992-93, Mr Gupta pointed out that the CIT(A) returned a factual finding that the building on the property at 8 and 9 Zamrudpur Community Centre and consequently the land appurtenant thereto was being used for the purposes of running the Assessee's office. Therefore, in terms of Section 40 (3) (vi) of the Finance Act 1983, the value of the building could not be included in the net wealth. Mr Gupta further points out that the Revenue did not question this factual finding in its appeal in this Court and that in any event no question was framed by the Court on the said issue. He accordingly submits that the Revenue's appeal WTA 7 of 2004 must fail on this short ground.

17. The Court finds that the Revenue indeed has not questioned the factual finding of the AO, which was confirmed by the CWT, that during the

financial year relevant to AY 1992-93 the building in question was being used for the purpose of the Assessee's office and this finding appears to have attained finality. The Court is unable to agree with the submission of Mr. Rahul Chaudhary, learned Senior Standing counsel for the Revenue, that merely because a question was not framed in that regard by this Court while admitting the appeal WTA 7 of 2004, the Revenue ought not be precluded from questioning the above finding of fact at the stage of final hearing.

18. The following question was framed in the present appeals, including WTA 7 of 2004, by the Court way back on 27th August 2004:

“Whether ITAT was correct in law in holding that value of the land at 8 and 9, Zamrudpur Community Centre, Delhi cannot be included in the taxable wealth of the Assessee under the Finance Act, 1983 read with the Wealth Tax Act, 1957?”

19. After perusing the memorandum of appeal in WTA No. 7 of 2004, the Court was not persuaded to frame a question on the correctness of the above factual finding. Nearly twelve years later, the Court does not propose to review the aforementioned order to examine any other question that may have arisen. The fact remains that the Revenue has accepted the above finding of fact for AY 1992-93 that the building in question was used for the purposes of office. If the building was being used for office purpose, the land appurtenant thereto was also being used for the same purpose. Therefore the value of neither the land nor the building could, in terms of Section 40 (3) (vi) of the Finance Act, 1983, be included in the Assessee's net wealth.

20. As far as AY 1992-93 is concerned the above question framed in WTA 7 of 2004 is answered in the affirmative, i.e., in favour of the Assessee and against the Revenue. WTA No. 7 of 2004 for AY 1992-93 is also dismissed.

WTAs 9, 10 and 11 of 2004

21. In order to appreciate the issue that arises in WTA Nos. 9, 10 and 11 of 2004 for AYs 1990-91, 1991-92 and 1989-90 respectively, it is necessary to refer to the legislative history of the relevant provisions.

22. Initially under Section 13 of the Finance Act 1960, it was mandated that notwithstanding anything contained in WT Act “no tax shall be charged in respect of the net wealth of a company for any financial year commencing on or after 1st April 1960”. This position changed with the Finance Act, 1983. Section 30 of the said statute provided for the revival of the levy of wealth tax in the case of closely held companies. This underwent further changes by the Finance Act, 1988 with effect from 1st April 1989. Section 40 as it stands with effect from 1st April 1989 reads as under:

“40. (1) Notwithstanding anything contained in Section 13 of the Finance Act, 1960, (13 of 1960) relating to exemption of companies from levy of wealth-tax under the Wealth-tax Act, 1957 (27 of 1957) (hereinafter referred to as the Wealth-tax Act), wealth-tax shall be charged under the Wealth-tax Act for every assessment year commencing on, and from the 1st day of April, 1984 in respect of the net wealth on the corresponding valuation date of every company, not being a company in which the public are substantially interested, at the rate of two per cent of such net wealth.

Provided that the amount of wealth-tax computed in accordance with the provisions of this sub-section shall, in relation to the

assessment year commencing on the 1st day of April, 1988, be increased by a surcharge calculated at the rate of ten percent of such wealth-tax.

Explanation—For the purposes of this sub-section, "company in which the public are substantially interested" shall have the meaning assigned to it in clause (18) of section 2 of the Income-tax Act.

(2) For the purpose of sub-section (1), the net wealth of a company shall be the amount by which the aggregate value of all the assets deferred to in sub-section (3), wherever located, belonging to the company on the valuation date is in excess of the aggregate value of all the debts owed by the company on the valuation date which are secured on, or which have been incurred in relation to, the said assets:

Provided that where any debt secured on any asset belonging to the Assessee is incurred for, or ensures to, the benefit of any other person, or is not represented by any asset belonging to the Assessee, the value of such debt shall not be taken into account in computing the net wealth of the Assessee.

(3) The assets referred to in sub-section (2) shall be the following, namely: —

(i) gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals [not being any such precious metal or alloy held for use as raw material in industrial production];

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

(iii) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or

semi-precious stone, and whether or not worked or sewn into any wearing apparel;

(iv) utensils made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals;

(v) land other than agricultural land

[Provided that nothing in this clause shall apply to any unused land held by the Assessee for industrial purposes for a period of two years from the date of its acquisition by him;]

(vi) building or land appurtenant thereto, other than building or part thereof used by the Assessee as factory, godown, warehouse, hotel or office for the purposes of its business or as residential accommodation for its employees or as a hospital, creche, school, canteen, library, recreational centre, shelter, rest-room or lunch room mainly for the welfare of its employees or used as residential accommodation, except as provided in clauses (via) and (vib) and the land appurtenant thereto;

(via) any building used as residential accommodation in the nature of a guest house and land appurtenant to such building or part;

(vib) any building and the land appurtenant to such building used as residential accommodation by any director, manager, secretary or any other employee of the Assessee, such employee holding not less than one per cent of the equity share of the Assessee or by any relative of any person who holds not less than one per cent of the equity share of the Assessee.

Explanation: For the purposes of this clause, “relative” shall have the meaning assigned to it in clause (b) of Explanation 1 to Section 80F of the Income tax Act]

(vii) motorcars, and

(viii) any other asset which is acquired or represented by a debt secured on any one or more of the assets referred to in clause (i) to clause (vii)

[Provided that this section shall not apply to any asset referred to in clause (i), (ii), (iii), (iv) are held by the assessee as stock in trade in a business carried on by it or, in the case of motor-cars referred in to clause (vii), they are held as stock in trade in such business or registered as taxis and used as such in a business or running motor-cars on hire carried on by the Assessee.

Explanation: Where any question arises as to whether all or any of the assets referred to in clause (i), (ii), (iii) or (iv) are held by the Assessee as stock in trade in a business carried on by it, the question shall be decided in accordance with such directions as the Board may, by general or special order, issue for the guidance of the Assessing Officer, having regard to the ratio which the yearly turnover of a business of trading in such assets bears to the average of the stocks of such assets held from time to time during the year in such business ordinarily and other relevant factors.

(4) The value of any asset specified in sub-section (3) shall, subject to the provisions of sub-section (3) of section 7 of the Wealth-tax Act, be estimated to be the price which, in the opinion of the Wealth-tax Officer, it would fetch if sold in the open market on the valuation date.

(5) For the purposes of the levy of wealth-tax under the Wealth-tax Act, in but sequence of the provisions of this section,—

(a) section 5, clause (a) of sub-section (2) of section 7 and clause (d) of section 45 of that Act and Part II of Schedule I to that Ad shall not apply and shall have no effect,

(b) the remaining provisions of that Act shall be construed so as to be in conformity with the provisions of this section.

(6) Nothing in this section shall apply to any institution, association or body, whether incorporated or not and whether Indian or non- Indian, which the Central Government may, having regard to the nature and object of such institution, association or body, specify by notification in the Official Gazette and every notification issued under this sub-section shall be laid, as soon as may be alter it is issued, before each House of Parliament.

(7) Subject to the provisions of sub-section (5), this section shall be construed as one with the Wealth-tax Act.”

23. Specific to the issue at hand is the definition of assets for the purposes of Section 40(2) of the Finance Act, 1983 as amended by the Finance Act, 1988. Under Section 40(3) (vi) the assets shall include building or land appurtenant thereto, as well as “land appurtenant to such building or part”. It is inconceivable that while a building may form part of an asset, the land appurtenant thereto will not. In the present case it is not in dispute that the building has been constructed on the land in question and the building belongs to the Assessee. It is not possible that the Assessee does not have effective control over the land appurtenant to such building. What is excluded from the definition is a building or part thereof used by the Assessee as ‘factory, godown, warehouse, hotel or office for the purposes of its business’. Thus for AY 1992-93, since the factual finding that the building in question has been used for an office has not been questioned by the Revenue, it stands excluded from the computation 'net wealth'.

24. Turning to the Section 2(e) of the WT Act, the word ‘assets’ includes property of every description both ‘movable or immovable’. The negative list only excludes agricultural land, livestock animals or a property in which

the Assessee has a limited interest for a period not exceeding six years or a building owned or occupied by a cultivator. Under Section 2(m) of the WT Act, the expression 'net wealth' is defined as the aggregate values of all the assets, wherever located, "belonging to the Assessee...". Therefore the central question veers around the said expression "belonging to". In other words, can it be said that, for the purposes of Section 40 (3) of the Finance Act 1983 read with Sections 2 (e) and 2 (m) of the WT Act, the property in question 'belongs' to the Appellant Assessee?

25. Section 4 of the WT Act sets out the manner of computation of 'net wealth'. What is significant as far as Section 4 is concerned is Explanation (a) which defines the expression 'transfer' to include "any disposition, settlement, trust, covenant, agreement or arrangement". Further Explanation (c) defines property as including any "interest in any property, movable or immovable".

26. This much is clear that the legislative intent is to bring within the ambit of the expression 'asset' and therefore within the expression 'net wealth' all kinds of property including any interest in such property both movable and immovable, which stands transferred under any 'agreement or arrangement', not limited to an actual deed of conveyance.

27. The ITAT has relied upon the decision of the Supreme Court in **Nawab Sir Mir Osman Ali Khan** (supra) in answering the question in favour of the Assessee. The facts of that case were that the Assessee was the Nizam of Hyderabad and the question arose whether immovable property in respect of which the Assessee had received the full sale consideration but had not

executed any registered sale deed in favour of the vendee could be included in the Assessee's net wealth. The Wealth Tax Officer (WTO) had held that the Assessee still owned those properties and therefore the value thereof had to be included in his net wealth. The Supreme Court agreed with the High Court that “in the eyes of law” the purchasers “cannot be and are not treated as legal owners of the property in question”. It was pointed out that the expression ‘belonging to’ in Section 2(m) of the WT Act indicates “something over which a person has dominion and lawful dominion should be the person assessable to wealth tax for this purpose”. It was further observed that “even in some cases the phrase 'belonging to' is capable of connoting an interest less than absolute perfect legal title.” The Court referred to an earlier decision in ***Raja Mohammad Amir Ahmed Khan v. Municipal Board of Sitapur AIR 1965 SC 1923*** where it was observed that though the expression 'belonging to' "no doubt was capable of denoting an absolute title, it was nevertheless not confined to connoting that sense. Full possession of an interest less than that of full ownership could also be signified by that expression”. It was held that even though an Assessee had a mere husk of title and “as against the vendee” the Assessee had “no reality of title but as against the world, he was still the legal owner and real owner”. It was further observed:

“We are conscious that if a person has the user and is in the enjoyment of the property, it is he who should be made liable for the property in question under the Act; yet the legal title is important and the legislature might consider the suitability of an amendment if it is so inclined”.

28.1 The question was revisited in *Poddar Cement Ltd.* (supra) in the context of Section 22 of the Income Tax Act, 1961 (IT Act). The issue concerned income from house property and in that context who could be said to be an ‘owner’ for the purposes of Section 22 of the IT Act. The question was whether the income derived by the Assessee from flats in a building in Bombay was taxable under the head income from other sources under Section 56 of the IT Act and not income from house property under Section 22 of the IT Act. The flats had been purchased by the Assessee and it had also taken possession thereof. However, it was not the real owner since the title to the four flats had not been formally conveyed. A three - judge bench of the Supreme Court posed the question and answered it as under:

“A plain reading of clause 4 of the agreement, as extracted above, clearly goes to show that the physical possession of the properties has passed on or is deemed to have passed on to the Assessee to have and to hold forever and absolutely with the power to use the same in whatsoever manner it thinks best and the Assessee shall derive all income and benefits together with full power of disposal of the properties as well as the income thereof. Can it then be said that the recipient of the income being the Assessee only having an absolute and exclusive control over the property without any let or hindrance on the part of the so-called vendor which, indeed, under law it was not entitled to do, as we shall presently show, shall be immune from the taxing provision in Section 22 of the Act? The answer in our view is clearly in the negative. The reason is simple. The consideration money has been paid in full. The Assessee has been put in exclusive and absolute possession of the property. It has been empowered to deal with the income as it likes. It has been empowered to dispose of and even to alienate the property”.

28.2 The Supreme Court in *Poddar Cement Ltd.* (supra) gave the following example:

“The matter can be considered from another angle. Under the Income Tax Act, the assessing authority has power to assess the income in the hands of the real owner. If 'A' purchases the property in the name of 'X', simply because the property is registered in the name of 'X', 'A' cannot escape his liability. Secondly, there can be a partnership where the partners have contributed the property and the property has become the partnership property, then no registration is required, the income in such a case has to be assessed in the hands of the partnership-firm and not the individuals who have contributed the property. Thirdly, the transferee who has received the income has already been assessed in respect of income derived from such property as income from the property, whether Section 22 can again be invoked against the transferor in respect of such income, fourthly, in respect of a co-operative society the members thereof are given the property on the basis of allotment letters which may or may not be registered. The members thereafter transfer the property from one hand to another and if it is considered that it is only the registered owner or the society who can be assessed to tax, then the person who has enjoyed the income would escape liability of tax. Fifthly, if it is considered that the registered owner alone is liable to pay tax while the income is received by the transferee, the transferee would enjoy the income but the tax will be levied from the registered owner who may or may not be in a position to make the payment of tax. Sixthly, there could be diversion of income by overriding title as was considered in the case of *Savita Mohan, (1985) 154 ITR 449 (Raj.)*, seventhly, if the property is in the name of a trust and the beneficiary is entitled to a specific share of the income, whether the other provisions of the Act can be said to be inoperative and, eighthly, there may be some similar other instances”.

29. Consequently the question in *Poddar Cement Ltd.* (supra) was answered in favour of the Revenue by holding that even though the formal title had

not been conveyed to the Assessee by executing a sale deed in respect of the four flats, the income derived from the property was income from house property and that for all practical purposes "owner is a person who is entitled to receive income from the property in his own right." Significantly, in arriving at the above conclusion, the Supreme Court distinguished the decision in *Nawab Sir Mir Osman Ali Khan (supra)* on the ground that it was rendered in the context of the WT Act, the language of which was different. In this context, it requires to be noticed that while Section 22 of the IT Act uses the expression 'owner', both Section 40 (2) of the Finance Act, 1983 and Section 2 (m) of the WT Act refer to assets that 'belong to' the Assessee. Section 4 (1) (a) of the WT Act also uses the expression 'belonging to'. This expression, which appears to be consistently used in the statutes governing wealth tax, in their application to companies, has been interpreted, in the decisions discussed hereafter, to have a much wider scope than 'ownership' as is generally understood.

30.1 The Court now turns to the decision of the Full Bench of the Andhra Pradesh High Court in *Nawab Mir Barkat Ali Khan v. Commissioner of Wealth Tax [1997] 226 ITR 654*. The Full Bench considered the decision in *Nawab Sir Mir Osman Ali Khan (supra)* and pointed out that the Supreme Court had, in rendering the said decision not considered the scope of Section 4 of the WT Act. The Full Bench observed:

"It is worth noticing here that the provisions of section 4 of the Act were not brought to the notice of the Supreme Court and were not considered in *Nawab Sir Mir Osman Ali Khan v. CWT [1986] 162 ITR 888 (SC)*. There was, however, no occasion for consideration of those provisions in the other cases referred to above. For the

purpose of construing the expression “belonging to” in section 2(m) of the Act and in view of the judgment of the Supreme Court in *Nawab Sir Mir Osman Ali Khan’s case* [1986] 162 ITR 888, the judgments of our High Court in *CIT v. Nawab Mir Barkat Ali Khan* [1974] Tax LR 90, *Nawab Mir Barkath Ali Khan v. CIT* [1988] 171 ITR 541 and *CIT v. Sahney Steel and Press Works (P.) Ltd.* [1987] 168 ITR 811, will not be of much assistance much less will they be binding authorities on the interpretation of the expression “belonging to” in section 2(m) of the Act for the term considered in those income-tax cases was “owner” within the meaning of section 9 of the 1922 Indian Income-tax Act (section 22 of the 1961 Income-tax Act)."

30.2 The Full Bench of the Andhra Pradesh High Court in *Nawab Mir Barkat Ali Khan v. Commissioner of Wealth Tax* (*supra*) then discussed at length Section 2 (m) and Section 4 of the WT Act and held as follows:

"A close reading of section 4, the Explanation thereto and section 2 (m) of the Act makes the intention of Parliament evident as to what should be treated as belonging to the individual for the purposes of computing the net wealth. It appears to us that a property which has been transferred by the individual in favour of another under any disposition, settlement, trust, covenant, even an agreement or arrangement will cease to belong to him and cannot be brought within the fold of "belonging to" under section 2(m) of the Act and it is for that purpose that section 4 of the Act specifically provides that the properties held by persons enumerated in clause (a) of sub-section (1) under such inchoate transfer shall be included as belonging to that individual. Therefore, it follows that in the case of a transfer as defined in the Explanation to section 4 by the individual, the property cannot be said to belong to the individual unless it is within the clutches of section 4 of the Act, notwithstanding the fact that the transfer had not been effected as contemplated under section 54 of the Transfer of Property Act or under the Registration Act."

31. In *CWT v. HP Small Industries & Export Corp. (2012) 22 taxmann.com 32 (HP)*, an identical question arose on whether the property from which the Assessee was deriving rental income but in respect of which there was no formal transfer of legal ownership in favour of the Assessee could be said to 'belong' to the Assessee for the purposes of Section 4(1)(a) of the WT Act. The Court after referring to the decisions in *Nawab Sir Mir Osman Ali Khan (supra)* *Poddar Cement (supra)* and the decision of the Full Bench of the Andhra Pradesh High Court in *Nawab Mir Barkat Ali Khan (supra)* held:

11.....The Assessee, in the present case, was allotted the land by the State Government. It constructed shops thereupon and rented out the same and derived income therefrom. The sheds were therefore under the domain and control of the Assessee. Even if legal ownership had not passed to the Assessee the property in question belonged to it. The Assessee was deriving rental income and collecting the same which itself shows that it was the Assessee to whom the property belonged.

12. We are therefore of the considered view that the assets in question should be deemed to belong to the Assessee and these assets are liable to be included in the assets by the Assessee."

32. In the considered view of the Court, the view taken by the Full Bench of the Andhra Pradesh High Court, as followed by the Himachal Pradesh High Court, merits acceptance.

33. Learned counsel for the Assessee sought to rely on a decision of the Special Bench of the ITAT in *Pallonji Shapoorji & Co. (P) Ltd. v. Dy. CWT (2006) 102 ITD 101(SB)*. What appears to have weighed with the Special Bench of the ITAT is the decision in *Nawab Sir Mir Osman Ali*

Khan (supra) which, as already noticed, failed to consider Section 4 of the WT Act.

Conclusion

34. The resultant position is that in a situation like the present one where the possession and control of the property vests with the Assessee to the exclusion of everyone else and it is the Assessee who is exploiting the property for its own purposes, it is not open to the Assessee to contend that the property in question does not belong to it. Consequently the question framed is answered in the negative, i.e., in favour of the Revenue and against the Assessee by holding that the ITAT erred in holding that the property at 8 and 9 Zamrudpur could not be included in the net wealth of the Assessee for AYs 1989-90, 1990-91 and 1991-92. The impugned order dated 29th September 2003 of the ITAT to that extent is hereby set aside.

35. WTA Nos. 9, 10 and 11 of 2004 are allowed and WTA Nos. 7 and 8 of 2004 are dismissed but in the circumstances with no orders as to costs.

S.MURALIDHAR, J

VIBHU BAKHRU, J

May 16, 2016
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