

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.04.2017

CORAM

**THE HONOURABLE MR. JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR**

Tax Case Appeal Nos.1061 to 1064 of 2007

M/s.Balaji Industries Ltd.,
(Amalgamated with Balaji Hotels &
Enterprises Ltd.,)
9, Bazullah Road,
T.Nagar, Chennai – 600 017.

.. Appellant in the
above appeals.

Vs.

The Deputy Commissioner of Wealth Tax,
Special Range IV,
121, Nungambakkam High Road,
Chennai – 600 034.

.. Respondent in the
above appeals.

PRAYER: Tax Case Appeal No.1061 of 2007 filed under Section 27A
(1)of the Wealth Tax Act, 1957 against the common order of the
Income Tax Appellate Tribunal, "A" Bench, Chennai, dated
19.06.2007 passed in W.T.A.No.58/Mds/1999.

Tax Case Appeal No.1062 of 2007 filed under Section 27A
(1)of the Wealth Tax Act, 1957 against the common order of the
Income Tax Appellate Tribunal, "A" Bench, Chennai, dated
19.06.2007 passed in W.T.A.No.59/Mds/1999.

Tax Case Appeal No.1063 of 2007 filed under Section 27A

(1)of the Wealth Tax Act, 1957 against the common order of the Income Tax Appellate Tribunal, "A" Bench, Chennai, dated 19.06.2007 passed in W.T.A.No.60/Mds/1999.

Tax Case Appeal No.1064 of 2007 filed under Section 27A (1)of the Wealth Tax Act, 1957 against the common order of the Income Tax Appellate Tribunal, "A" Bench, Chennai, dated 19.06.2007 passed in W.T.A.No.61/Mds/1999.

For Appellant : Mrs.Mallika Srinivasan

For respondent : Mr.T.Ravikumar,
Senior Standing Counsel for
I.T.Department

JUDGMENT

(Judgment of the Court was delivered by ***D.KRISHNAKUMAR, J.***)

These Appeals have been filed under Section 27A (1)of the Wealth Tax Act, 1957 against the common order of the Income Tax Appellate Tribunal, "A" Bench, Chennai, dated 19.06.2007 passed in W.T.A.Nos.58 to 61/Mds/1999 in respect of the assessment years 1990-91 to 1993-94, respectively.

2. Since the point involved in all these Appeals are similar, these Writ Appeals are taken up together for disposal.

3. For the sake of convenience and better understanding

of the facts, the facts of the case in TCA No.1061 of 2007 is given hereunder:-

The assessee company filed its return of wealth for the assessment year 1990-91 on 28.8.1995 declaring deficit wealth of Rs.99,38,700/- in response to the notice issued under Section 17 of the Wealth Tax Act on 7.3.1995. The assessee showed the following as assets assessable for wealth tax:-

(i) Property at Mount Road (Abbotsbury)	.. Rs. 5,47,20,000
(ii) Lands at Nellore	<u>.. Rs. 22,27,742</u>
	Rs. 5,69,47,742

According to the assessee, the property at Mount Road was being held for productive use and the asset is not assessable to wealth tax. Without prejudice to this contention, the assessee contended that, on the valuation date, the property consisted of buildings and land appurtenant thereto, was to be valued as per Rule 3 of Schedule III to the Wealth Tax Act. The assessee arrived at the value of the asset as on 31.3.1991 at Rs.5,47,46,181/- taking into account the Gross Maintainable rent at Rs.56,784/- (as per Rule 5 (ii) based on the receipt issued by the Corporation of Madras. It is the further contention of the assessee that since the property was not let out, the annual value fixed for the property tax purposes at Rs.56,784/- is to be taken as the annual rent payable.

4. Pursuant to the filing of returns, the Assessing Officer issued a letter dated 26.12.1996 to the assessee with regard to the above assets. According to the Assessing Officer, the provision of Rule 3 for the valuation of the property cannot be applied to the Mount Road Property as the property has not fetched any income to the assessee and that the rule applicable is clause (a) to Rule 8. The guideline value of the property was ascertained from the Sub-Registrar's Office, Madras Central and that the guideline value of the property per ground was Rs.17,00,000/-. Accordingly, the value of the Mount Road Property was computed as Rs.14,14,23,000/-. In so far as lands at Nellore is concerned, in view of proviso 3(v) to section 40 of the Finance Act, 1983, the unused land by the assessee for the purpose of construction of a hotel for a period of two years from the date of acquisition would be liable to wealth tax. The assessee had acquired the land during the previous year relevant to Assessment Year 1988-89 (i.e. 17.4.1986 to 30.06.1992). Therefore, this property would attract levy. Accordingly, the Assessing Officer determined the total tax payable as Rs.14,85,990/- by Assessment Order dated 31.3.1991 for the assessment year 1991-92. Against this order, an appeal was preferred before the Commissioner of Income Tax (Appeals). By order dated 17.2.1999 in Appeal Nos.15,16,17 and 18 of 1997-98, the Commissioner of Income Tax (Appeals) allowed the claim of the

assessee in respect of the lands at Nellore and confirmed the findings with regard to the property at Mount Road and accordingly, the appeal was partly allowed. Against this order, appeals were preferred before the Income Tax Appellate Tribunal and the same were dismissed confirming the order of the lower appellate authority. Against this order, the present Appeals have been filed before this Court.

5. According to the learned counsel for the appellant, the present appeal has been filed challenging the order of the Income Tax Tribunal. The following substantial questions of law were framed at the time of admission:-

“(i) Whether on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the assessment to wealth tax in respect of the assessment years 1990-91, 1991-92, 1992-93 and 1993-94 of the amalgamated company, is valid in law?

(ii) Whether on the facts and in the circumstances of the case, the Tribunal is right in law in not considering the issue of the valuation of the properties which are under challenge in appeals?

(iii) Whether the valuation declared by the appellant in respect of the aforesaid properties ought not to have been accepted?

6. The assessment order was passed by the Deputy Commissioner of Income Tax, Special Range IV, Chennai, by stating that the assessee company filed its return of wealth for the assessment year 1991-92 on 28.8.1995 declaring deficit wealth of Rs.1,77,53,000/- in response to the notice issued under section 17 of the Wealth Tax Act on 7.3.1995. The assessee showed the assets assessable for wealth-tax as Rs.5,69,73,923/-. Assessment under section 16(3) r/w section 17 of the Wealth Tax Act, 1957 was completed by the Assessing Officer on 31.3.1991 and the net wealth of the tax as assessable was determined as Rs.6,75,72,900/- and net tax payable was determined as Rs.14,85,990/-.

7. Aggrieved against the said assessment, assessee preferred appeal before the Commissioner of Income Tax (Appeals) on the grounds that the Assessing Officer has not properly determined the value of the property at Mount Road, Madras and the Assessing Officer had not appreciated the case of the appellant that holding of the aforesaid property is for productive use and

therefore, the asset is not amenable to Wealth Tax. The Assessing Officer has not accepted the contention of the appellant that the appellant was engaged in the business and that the property shown by the assessee are not assessable to Wealth Tax Act 1993 and further, it was submitted by the appellant that the Assessing Officer did not consider the appellant's claim that the property has to be valued as per Rule 3 of Schedule III to Wealth Tax Act. There is no justification by rejecting the appellant's claim for the Mount Road Property as application of Rule 3 would not give the true and correct value of the asset. The Assessing Officer ought to have seen that under Rule 8, an asset could be valued under Rule 20 only if the conditions laid down in Rule 8 are satisfied. Therefore, Rule 3 was not adopted by the Assessing Officer and determining the value of the property on the basis of guideline value is improper and the same is not acceptable one. Further, M/s. Balaji Industries Ltd., Chennai, was not in existence. Therefore, the assessment order passed against a non-existent entity is *ab-intio void*. In the appeal, various grounds were raised by the appellant. It has been held that the appellant had purchased the land in the year 1996 and the two year period was already over by the assessment year under consideration. On submission of the balance sheet for the relevant years, it is also seen that the property in question was held by the appellant as fixed asset and not as stock-in-trade. Therefore, the

Mount Road Property cannot be exempted under sub.section (iii) to Finance Act 40 of 1983. To the aforesaid issue, the definition of asset under section 2 of the Wealth Tax Act has been considered and held that none of those conditions are fulfilled in the case of lands held.

8. Further, the decisions relied on by the appellant before the Commissioner of Income Tax were considered and they are as follows:-

- (i) K.P.Varghese vs. ITO (131 ITR 597)
- (ii) Laksh Shiksha Trust vs. ITO (101 ITR 234)
- (iii) Indian Chamber of Commerce vs. CIT (101 ITR 234)
- (iv) CIT vs. Surat Silk Cloth Manufacturers Association (121 ITR 1)
- (v) Indian Chamber of Commerce vs. CIT (101 ITR 196)

The appellant/Commissioner has held that the aforesaid decision was not applicable to the facts of the instant case. The other contention of the appellant before the Commissioner is that the valuation of the property at Mount Road was not taken into consideration as per the provisions of law. It is observed by the Commissioner of Income Tax that section 7(1) of the Wealth Tax act lays down the value of any assets, other than the cash, shall be valued in the manner laid down in Schedule III. Further Rule 3 of

Schedule III deals with the valuation of any immovable property (including a commercial property) unlike the analogue Rule IBB, which was operative upto 31.3.1989. Under Rule 5 (ii) where the property is not let, the amount of annual rent assessed by the local authority for the purpose of levy of property tax will be the gross maintainable rent. Thus, it is pleaded that the Assessing Officer was not justified in rejecting the application of Rule 3 of Schedule III. Under Rule 8 of Schedule III, an asset could be valued under Rule 20 if it is not practicable to apply the provisions of rule 3 to a case or the difference between the unbuilt area exceeds twenty per cent of the aggregate area of the property is constructed on lease hold land and the lease expires within a period not exceeding 15 years.

9. Rule 8 of Schedule III states:

"Nothing contained in rule 3 shall apply,--

- (a) where, having regard to the facts and circumstances of the case, the Assessing Officer, with the previous approval of the Deputy Commissioner, is of opinion that it is not practicable to apply the provisions of the said rule to such a case ; or
- (b) where the difference between the unbuilt area and the specified area exceeds twenty per cent, of the aggregate area ; or
- (c) where the property is constructed on leasehold

land and the lease expires within a period not exceeding fifteen years from the relevant valuation date and the deed of lease does not give an option to the lessee for the renewal of the lease, and in any case referred to in Clause (a) or Clause (b) or Clause (c), the value of the property shall be determined in the manner laid down in Rule 20."

10. By taking into consideration the submission of the appellant and the relevant rules, the Commissioner of Income Tax has come to the conclusion and directed the Assessing Officer to apply Rule 8 of Schedule III for valuing the property. The other submission, with regard to valuation of lands at Nellore for the Assessment Years 1992-93 and 1993-94. These lands were purchased during the financial year 1987-88 to 1989-90. The lands were purchased in order to establish Aqua Farm. These lands were not suitable for breeding fisheries. Therefore, the appellant returned the book value as market value. The Assessing Officer accepted the value returned for the assessment years 1990-91 and 1991-92. However, he enhanced the value by 10% for the subsequent assessment years. According to the appellant, the enhancement made by the Assessing Officer was contrary to the facts and circumstances governing the asset. The Commissioner of Income Tax found merit in the submission. The enhancement was found to be made arbitrarily overlooking the relevant facts.

11. The appellant further filed appeal challenging the appeal further filed by the Commissioner of Income Tax on the ground that the assessment made after its amalgamation with another company is not valid and the Commissioner of Income Tax ought to have accepted the value of the property at Mount Road, Chennai, as the appellant was holding the property for productive purpose. Therefore, the order of the Commissioner of Income Tax is not correct in view of the proviso to Sub-Section (3) of Section 40 of the Finance Act 1983. The aforesaid assets are not assessable as per the Act. These are the grounds on which the appeal has been preferred.

12. The appellate Tribunal has considered the validity of the assessment made after amalgamation and held that as per the scheme of amalgamation, all actions and legal proceedings by or against the transferor company pending on the completion of procedure date shall be continued and be enforced or against the transferee company as the case may be. Therefore, the Tribunal has held even after amalgamation, the transferee company, M/s. Balaji Hotels and Enterprises Ltd., will discharge the wealth-tax liabilities of the transferor company i.e., M/s. Balaji Industries Pvt.Ltd.,. So, the other question involved is valuation of the

property at Mount Road, which was also considered. They say the property was not eligible to tax. The land already held by the assessee was kept for industrial purpose or for construction of a hotel for a period of two years from the date of its acquisition by him for that period it will not be subjected to tax. In the present case, the assessee did purchase the Mount Road Property in the year 1986. The property in question was not considered by the appellant within the prescribed period of two years. Therefore, it was held that the property was a fixed asset and not as stock in trade and hence, liable to pay wealth tax. The other contention in respect of the conclusion, the appellate Tribunal has confirmed the order passed by the Commissioner of Income Tax (Appeals). Therefore, challenging the said order, the present appeal has been filed on the above said question of law framed by this Court.

13. The property at Mount Road was purchased on 25.9.1986 from Sri Sathyasai Central Trust and the total cost incurred on the purchase of this property amounted to Rs.4.56 crores. The total extent of the property is 83.19 grounds (1,99,657 sq.ft. The total built up area is 61891 sq.ft. The said property was purchased by the assessee/appellant for the purpose of productive use and the said asset was not assessable to wealth tax. As per proviso 3(v) to Section 40 of the Finance Act, 1983, if

the land is unused for a period of two years from the date of acquisition, the said property is liable to wealth tax. In this case, the assessee had acquired the property on 25.9.1986 i.e., during the previous year relevant to Assessment Year 1988-89. Therefore, as per the above proviso, the property would attract levy of wealth tax. The Commissioner of Income Tax held that clauses of the Scheme of Amalgamation was considered. Clause 9 of the Scheme is extracted below:-

"9. All action and legal proceedings by or against the Transferor Company pending on the Completion of Procedures Date shall be continued and be enforced by or against the Transferee Company as the case may be."

Further, clause 10 of the Scheme reads as follows that "If any suit, appeal or other proceedings of whatever nature (hereinafter called "the proceedings") by or against the Transferor Company be pending the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the transfer of the undertaking of the Transferor Company or anything contained in the Scheme but the proceedings may be continued, prosecuted and enforced by or against the Transferor Company as if this scheme had not been." Therefore, by relying upon the aforesaid clause of the scheme,

proceedings initiated by the authority has been continued for the completion of wealth tax assessment against the appellant company. The liability of the notices under section 17 was not challenged at the relevant time. Therefore, the proceedings initiated is valid and in accordance with law as contended by the learned standing counsel for the revenue. He has further drawn our contention that the factum of amalgamation was not disclosed in the return filed and only intimated on 5.1.1999 about the amalgamation and the assessment related to the period prior to the date of amalgamation. The present case relates to the period prior to the date of amalgamation. Returns were also filed prior to the amalgamation and the notices were issued before the date of amalgamation when the assessee existed during the assessment. Amalgamation was done with effect from 1.4.1995 before the date of completion of assessment. As per the scheme, all actions and legal proceedings pending on the completion of procedures date shall be continued to enforce transfer as held by the Commissioner of Income Tax. The existing liability has to be discharged by M/s.Balaji Industries Ltd., as continued. Therefore, the contention of the appellant would not be valid and cannot be accepted. The said proviso for continuation of the liabilities forms part and parcel of the scheme of the amalgamation and the same was approved by the High Court of Andhra Pradesh. Further, it is seen that both the

appellate authority and the Tribunal has come to the conclusion on factual aspects that the property at Mount Road was purchased in the year 1986 and the period of two years from the date of purchase was over during the relevant assessment year. Therefore, on examination of the Balance Sheet for the relevant assessment year, the property has been held as fixed asset and not stock in trade. Therefore, the assessee is liable to be assessed to the wealth tax. Insofar as the lands at Nellore is concerned, the same was purchased to establish Aqua Farm. As the water on the lands was not suitable for breeding fishes, the project had been given up. Therefore, the land is amenable to wealth tax. The aforesaid contention was decided by the appellate authority as well as the Tribunal on facts. Therefore, the liability of M/s.Balaji Industries Limited would continue against the M/s.Balajai Hotels and Enterprises Ltd. Learned counsel for the appellant would not raise any of the grounds which has already been discussed by the appellate Tribunal and in accordance with clause 9 and 10 of the scheme. Therefore, we are of the opinion that the said fact was considered by relying upon the relevant clause of the amalgamation scheme which was approved by the High Court of Andhra Pradesh. Therefore, no interference is required insofar as the aforesaid question of law raised by the appellant. We confirm the factual findings of the lower authorities.

14. The other contention in respect of the provision under clause (v) sub-section 3 is as follows:-

The land holding for the purpose of construction of Hotel for a period of two years from the date of acquisition is exempted from wealth tax. The appellant had purchased the property in 1986 and the period of two years was over during the relevant assessment year. As per explanation to Section 2 of the Wealth Tax Act, the following categories of lands are exempted:-

(i) Land on which construction of building is not permissible.

(ii) Land occupied by any building which has been constructed with approval of the appropriate authority.

(iii) Unused land held for industrial purpose for a period of two years from the date of acquisition.

(iv) Any land which is held as stock-in-trade for a period of five years from the date of acquisition.

15. None of these conditions are fulfilled in the case of the land held by the appellant. The appellate authority has also gave its finding confirming the order of the Commissioner of Income tax. Insofar as the valuation of the property, Rule 3 of Schedule III of the Wealth Tax Act governs the valuation of the immovable property with effect from 1.4.1989.

Rule 3 of Schedule III states as follows:-

"3. Subject to the provisions of Rules 4, 5, 6, 7 and 8, for the purposes of Sub-section (1) of [Section 7](#), the value of any immovable property, being a building or land, appurtenant thereto, or part thereof, shall be the amount arrived at by multiplying the net maintainable rent by the figure 12.5.

Provided that in relation to any such property which is constructed on leasehold land, this rule shall have effect as if for the figure 12.5,

(a) where the unexpired period of the lease of such land is fifty years or more, the figure 10.0 had been substituted ; and

(b) where the unexpired period of the lease of such land is less than fifty years, the figure 8.0 had been substituted.

Provided further that where such property is acquired or construction of which is completed after March 31, 1974, if the value so arrived at is lower than the cost of acquisition or the cost of construction, as increased, in either case, by the cost of any improvement to the property, the cost of acquisition or, as the case may be, the cost of construction, as so increased, shall be taken to be the value of the property under this rule."

17. The guideline value fixed by the State Government for value of the property disputed by the appellant before the Court. Therefore, in the absence of any other evidence produced before

the authority by the assessee, the authority has considered the guideline value fixed by the Commissioner of Income Tax and directed the Assessing Officer for valuation and directing the Assessing Officer to apply Rule 3. Therefore, that was also confirmed by the Tax Tribunal. The contention of the appellant for the valuation of the property which are not in accordance with the law cannot be accepted. In the absence of any documentary evidence produced before the appellate authority, there cannot be an acceptance of valuation as declared in the declaration in respect of the aforesaid properties.

18. In ***Marshall Sons and Co.(India) Ltd., vs. Income Tax Officer reported in 1997 Income Tax Reports 809 [Volume 223]*** wherein it has been held that “every scheme of amalgamation of companies has necessarily to provide a date with effect from which the amalgamation/transfer shall take place. It is true that while sanctioning the scheme, it is open to the company court to modify the said date and prescribe such date of amalgamation/ date of transfer is the date specified in the scheme as “the transfer date”. It cannot be otherwise.

19. In ***Giridhar G.Yadalam v. Commissioner of Wealth Tax and another reported in [2016] 384 ITR 52 (SC),***

the Hon'ble Supreme Court of India, has held as follows:-

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;

8. Notwithstanding the aforesaid plain language, an endeavour of Mr. Gopal Jain is to impress upon us to read the said clause to include even that land where

the construction of building activity has been started. He, thus, wants that the words "has been constructed" is to be read as is being constructed. His attempt to persuade us is predicated on the following premise.

Mr. Jain argued that the clause added purposes interpretation i.e. The objective for which this clause was added, namely, to stimulate investment in productive assets, has to be kept in mind. In this behalf, he argued that Explanation 1(b) has carved out exceptions/exemptions based on the object and purpose of the amendment to the Wealth Tax Act in 1992. These exceptions have to be construed in line with the legislative intent at the time which Section 2(ea) was inserted, which was to stimulate investment in productive and non-productive assets and only specified assets were subject to wealth tax. On that premise, he emphasised that in each of the aforesaid clauses this objective was kept in the forefront. Qua Exception (I) he stressed that where land is classified as "agricultural" and used for agricultural purposes, it

will not fall within the definition of urban land and is exempted from wealth tax. Agricultural land, although vacant, if put to agricultural use (i.e. productive) is exempt from wealth-tax. He argued that this exception is with reference to land which is vacant for the reason that construction is not permissible under any law. As the reason for non-construction of a building cannot be attributed to the assessee, an exception has been made on account of which it will not be considered as an asset and is exempted from wealth tax.

9. Mr. Jain further argued that in this very hue, exception (ii) also needed to be interpreted. His submission was that the word "constructed" is used in the context of exempting a land "occupied by any building which is being constructed with the approval of appropriate authority". With the commencement of construction of a building, land ceases to be identifiable as "urban land" due to constructive utilization of vacant land. When a building is under construction, it is "work-in-progress" or construction activity is on-going but spills over. However, the character of land has changed - it is being put

to use and, therefore, it ceases to be urban land during the period of conversion.

10. According to Mr. Jain, if a building is constructed and construction is complete, the asset will go out of the definition of "urban land" contained in Section 2(ea)(v) read with Explanation 1(b) as it would fall under Section 2(ea)(i) which covers buildings. Section 2(ea)(i) reads as follows:

"(i) any building or land appurtenant thereto (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 kilometers 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 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 commercial
 establishments or complexes;
 ?

11. Mr. Jain also submitted that the stand of the respondent that only completed buildings are to be brought into the ambit of the word "has been constructed" is not tenable since completed buildings fall under a different clause i.e. clause (ea)(i). According to him, if that is accepted then in such cases, Section 2 (ea)(v) read with Explanation 1(b) would not be required at all since a completed building is covered independently in Section 2(ea)(i). He, thus, submitted that seen in this context, the expression "has been constructed" must be read as "is being constructed" in order to give effect to the legislative intent. He relied upon the decision of this Court in the case of *M. Nizamuden v. Chemplast Sanmar Limited and Others* [2010] 4 SCC 240, wherein it is held that:

"It is well settled that if exception has been added to remedy the mischief or defect, it should be so construed that remedies the mischief and not in a manner which frustrates the very purpose.

Purposive construction has often been employed to avoid a lacuna and to suppress the mischief and advance the remedy. It is again a settled rule that if the language used is capable of bearing more than one construction and if construction is employed that results in absurdity or anomaly, such construction has to be rejected and preference should be given to such a construction that brings it into harmony with its purpose and avoids absurdity or anomaly as it may always be presumed that while employing a particular language in the provision absurdity or anomaly was never intended."

12. Taking his argument further, Mr. Jain submitted that likewise, exception (iii) is with reference to " unused land" held by the assessee for industrial purposes. The exemption from wealth tax for such land is for a period of two years from the date of its acquisition by the assessee. After two years, such land, if unused is amenable to wealth tax. However, if an assessee starts construction of either a factory or any building for industrial purpose within a period of two years

and construction spills over beyond the exempted period, the exemption would still continue irrespective of whether the construction is completed within two years. Similarly, land held as "stock-in-trade" is exempt from wealth tax for a period of ten years since, though vacant, it is held for business purposes.

13. Learned senior counsel also extensively read the judgment of the Kerala High Court wherein the interpretation suggested by him has been accepted and the benefit of exemption from wealth tax in respect of such a land where the building is still under construction has been extended.

14. Mr. Rupesh Kumar, learned counsel appearing for the Revenue emphatically countered the aforesaid submissions of Mr. Jain. He submitted that the cardinal principle of interpreting taxing statute was to give literal construction to the language used therein. He further submitted that the provision in question was in the nature of "exemption provision" where again strict interpretation is to be accorded and onus is upon the assessee to show that he falls within the four corners of the exempted clause. He also submitted that when the language of the statute was unambiguous and clear, question

of giving purposive interpretation does not arise in the matters pertaining to taxing statutes.

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 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:

- (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 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 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.

20. In ***CWT v. Giridhar G.Yadalam [2010] 325 ITR 223 (Karn), Karnataka High Court*** has held as follows:-

6. We have to see as to whether the vacant land owned by the land owner is exempt for the purpose of Wealth Tax proceedings.

7. [Section 2\(ea\)](#) would define the term 'asset' and Urban land has been defined in [Section 2\(ea\)\(b\)](#). The said definition reads as under;

8. 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, tow 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 relevant figures have been published before the valuation date; or
- (ii) in any area within such distance, not being more than eight kilometres from the local limits of any municipality or cantonment board referred to in subclause (i) , as the Central Government may, having 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 ten years from the date of its acquisition by him;"

9. The said definition of urban land would show that certain lands are not includable for the purpose of 'urban land'. We are concerned in the case on hand with regard to the lands occupied by any building which has been constructed with the approval of the appropriate authority. Approval by appropriate authority is not disputed. What is argued before us is that since the building is being constructed, the same is exempt for the purpose of wealth tax in terms of the meaning to be given to urban land. A careful reading of the said definition would show that what is excluded is the land occupied by any building which has been constructed (underlining is ours). Admittedly, in the case

on hand, the building is not fully constructed. It is in the process of construction. Building in the process of construction cannot be understood as a building which has been constructed as sought to be argued before us. Courts have to interpret any definition in a reasonable manner for the purpose of fulfilling the object of the Act. Courts cannot interpret a term in such an unreasonable manner making thereby unworkable of the Act as sought to be argued before us. Constructed has its own meaning. Constructed would mean 'fully constructed' as understood in the common parlance. The tribunal unfortunately, without noticing the intention of the legislature and the specific wordings in the section has chosen to blindly follow its earlier order. If the order of the tribunal is accepted then neither the owner nor the builder nor the occupant would pay any tax to the Government in terms of the [Wealth Tax Act](#). In these circumstances, we are unable to accept that argument advanced by the learned counsel for the appellant. On the other hand, we would accept the reasonable argument of the learned Counsel for the department in the matter of the proper understanding of the word 'land occupied by any building which has been constructed', since that would fulfill the intention of legislature.

10. In fact, we have been provided with the order of the tribunal, passed on an earlier occasion, on which reliance is placed by the tribunal. We have also gone through the order in WTA 4/2003. A reading of the said order would show that the tribunal seems to have not properly considered the word 'constructed' in the said order. The tribunal seems to have been swayed away by the theory of openness of the land for the purpose of taxation. The tribunal has failed to notice the principle that each word in taxing statute has its own significance for the purpose of taxation. The word, land on which the building is constructed has not been properly appreciated considered by the tribunal. The said order can not be a bar for the department to seek tax in respect of the land on which building is constructed in terms of the defence.

11. Sri Parthasarathy, learned Counsel would place before us the Law Lexicon in the matter of meaning of the word 'building'. We have noticed the various definitions in terms of the case laws as referred to us. The interpretation of any word would depend upon the wordings in a particular statute and the object of the Act as understood in law. Therefore, we are not prepared to blindly accept the contention of the assessee on the basis of the meaning given to building in

terms of the Law Lexicon. However the wordings in the case on hand would support the department and those words 'building constructed' would make all the difference for the purpose of interpretation. At this stage, we must notice a recent Bench judgment of this Court in WTA No. 7/2003 c/w 8/2003. The facts as narrated by the Division Bench in that case would show that the assessee Vysya Bank has entered into an agreement for purchase of property on 17-6-1978. Assessee was put in possession of the property. Proceedings were initiated by the State Government. Thereafter, assessment proceedings were initiated by the assessee. Assessing officer ruled that the assessee has become the owner of the property for the purpose of taxation. Appeals were filed before the appellate authority. Appeals were allowed and the findings were reversed. The revenue took up the matter before the tribunal. The tribunal ruled in favour of the revenue. On a further appeal by the assessee to this Court, this Court noticed the terminology 'assets' and also the meaning of the word 'urban land' in its order. The Division Bench also noticed [Section 4\(8\)](#) of the Act and also the judgment of the Apex Court in 103 ITR 536 and ultimately ruled that the assessing authority was not justified in including vacant land in the net wealth of the assessee for the

purpose of computation of wealth as on the valuation date for the purpose of [Wealth Tax Act](#). The said judgment to a certain extent would support the revenue.

12. We must also refer to the judgment of the Orissa High Court and the judgment of the Supreme Court as referred to by Sri Parthasarathi, learned Counsel. 130 ITR 393, is a case in which the court was considering the word 'house' for the purpose of [Wealth Tax Act](#). The said case is of no assistance to the assessee since in the said case, the court was considering only the word 'house' in that case and not building construction as in the present case. Even otherwise, it is seen from the said case, the court was considering as to the house being habitable or not, as we see from the order itself. That judgment is of no assistance to the assessee.

13. AIR 66 SC 991 is a case dealing with Madhya Pradesh Abolition of Proprietary Rights Act. The Apex Court in para 11 noticed as to whether 'ottas' and 'chabutras' can be regarded as buildings. The court ruled that the word 'buildings' should therefore be given its literal meaning as something, which is built. Sri Bindra, learned Counsel in the said case contended that for a structure to be regarded as building it should have walls and a roof and in support of this contention he relied upon the decision in *Moir v. Williams*

(1892)1 QB 264. In that case Lord Esher has observed that the term generally means all enclosures of brick and stone covered by a roof. But he has also made it clear that the meaning to be given to that word must depend upon the enactment in which the word is used and the context in which it is used. The Supreme Court ultimately ruled that these observations must be considered in the context of the Act which was being construed and in the context in which they were made. That case is also of no assistance to the assessee in the light of clear words available in the case on hand.

14. This court cannot forget that the parliament in its wisdom has chosen to provide an exemption only under certain circumstances. The Court cannot extend the exemption without any legal compulsion in terms of the Act. Since in our view, the wordings that the urban land would mean a land on which complete building stands, such lands alone would qualify for exemption. That conclusion is inevitable and we accept the appeal of the revenue.

21. In ***Amrit Banaspati Co.Ltd., v. Commissioner of Income Tax reported in [2002]256 ITR 337 (All)***], a Division Bench of Allahabad High Court has held as follows:-

"6. It may be noted that where Rule 8 is applicable Rule 3 will not be applicable. The question in this case is whether it could be said that it was not practicable to apply Rule 3.

7. The Tribunal has held in paragraphs 2.10 and 2.11 of its judgment that Rule 8 was rightly applied in this case and it has given cogent reasons for its opinion as mentioned in the said paragraphs. There was wide variation between the market value of the property and valuation done by the assessee on the basis of the municipal authorities where the rateable value determined by the municipal authorities was Rs. 6,573 and valuation so arrived was Rs. 1,55, 130. In fact the assessee himself agreed to sell his property through his agreement dated May 11, 1995, for a sum of Rs. 10.26 crores. The assessee had also made improvements.

8. In our opinion, it would be shocking to say that a flat in a locality like Worli in Bombay was worth only Rs. 1,55, 130. Everyone knows that prices of flats in Bombay are very high and the petitioner himself had agreed to sell it on September 15, 1995, at Rs. 10.26 crores. It would be ridiculous to say that the price of the flat is only Rs. 1,55, 130. Moreover, we cannot interfere with the findings of fact of the Tribunal."

21. In ***Commissioner of Income Tax v. S.V.Electricals Pvt.Ltd., reported in [2005] 274 ITR 334 (MP), a Division Bench of the Madhya Pradesh High Court*** has held as follows:-

3. We have seen and perused the memo of appeal. What we find therein is that the issue raised in appeal relates to imposition of penalty on the assessee for the alleged concealment in the year in question. The penalty imposed by the Assessing Officer was set aside by the Commissioner of Income-tax (Appeals) and a latter order of the Commissioner of Income-tax (Appeals) was upheld by the Tribunal in an appeal filed by the Revenue. It is against this order of the Tribunal which resulted in upholding of the order of the Commissioner of Income-tax (Appeals) which is impugned by the Revenue in this appeal.

4. In our opinion, the Tribunal seems to be right in upholding the order of the Commissioner of Income-tax (Appeals). When the assessee surrendered their full income, there was no question of any concealment on their part. This was one of the factors which weighed in the mind of the Commissioner of Income-tax (Appeals) in setting aside the penalty imposed by the Assessing Officer. In substance, there was no deliberate intention to evade payment of lawful tax by indulging in concealment of true income. When the disclosure was total though at a later stage, the authorities in their discretion did not consider it proper to impose any penalty under [Section 271\(1\)\(c\)](#) *ibid* as a case of concealment. We do not consider it to be a fit

case to overturn the concurrent finding of the two appellate authorities on this issue as in our opinion, the appeal though admitted does not involve any question of law much less a substantial question of law within the meaning of [Section 260A](#) of the Act. This aspect we can always look into at the time of final hearing by virtue of [Section 260A\(4\)](#) of the Act. We can frame any additional question of law though not framed but is noticed to have arisen or may hold that what is framed does not satisfy the requirement of [Section 260A](#) *ibid* at the instance of the respondent. It is pursuant to this power, we have formed an opinion that the view taken by the Tribunal does not call for any interference as no question of law is involved in the appeal, calling any interference.

23. In ***Helios and Metheson Information Technology Ltd., v. Assistant Commissioner of Income Tax reported in [2011] 332 ITR 403 (Mad)***, the Hon'ble Supreme Court has held as follows:-

"4. When we consider the submission of this particular issue viz., as to raising a substantial question of law apart from what has been framed by this Court while entertaining

this appeal, as a matter of fact, we find that when the appellant was issued with notice under section 148 of the Income tax Act (hereinafter referred to as "the Act"), on December 20, 2003, the appellant submitted a reply on March 21, 2005. In paragraph (b)(vi) of the reply, the appellant raised a contention to the effect that there was no fresh material to conclude that the transaction has not taken place at all and therefore, the notice issued under section 148 of the Act was not in accordance with law. That apart, under section 260A of the Act, the proviso to sub-section (4) specifically provides that nothing in the sub-section should be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is specified that the case involved such question. Therefore, there is every power vested in this Court to deal with the substantial question of law not formulated at the time when the appeal was entertained, subject however to the satisfaction of the Court, that such a question was involved in the case and for reasons to be recorded for that purpose."

24. Therefore, no question of law arises as contended.

There is no question of law *muchless* substantial questions of law

involved in the above appeal as framed by this Court.

25. In the light of the decision and discussion, we answer the substantial questions of law against the assessee. Accordingly, the instant Appeals are dismissed. No costs.

(S.M.K., J.) (D.K.K., J.)

18.04.2017

Index : Yes / No

Internet : Yes / No.
asvm

To

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S.MANIKUMAR, J
AND
D.KRISHNAKUMAR, J

(asvm)

Pre-delivery Judgment
in
T.C.A.Nos.1061 to 1064 of 2007

18.04.2017

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