

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

WEALTH TAX APPEAL NO.2 OF 2006

J U D G M E N T

(Per Sri Justice Sanjay Kumar)

This appeal by the revenue under Section 27A of the Wealth-Tax Act, 1957 (for brevity, 'the Act of 1957'), in relation to the assessment year 1998-99, seeks to raise the following substantial questions of law:

- '1. On the facts and in the circumstances of the case, whether the failure of the Tribunal to note that the relevant statutory definition of "assets" u/S.2(ea) of the Wealth Tax Act for the asst. year 1998-99 does not provide any exemption of the asset in question as claimed by the assessee, vitiates its findings in law or not?
2. Whether the failure of the Tribunal to consider the factual aspect of the asset in question, duly considered by the authorities below in regard to the fact of receiving of rentals and interest free deposit from the tenants etc., vitiates its findings in law or not?
3. Whether the assessee is entitled to claim exemption of its commercial property let out to the tenants in terms of Sec.2(ea) of W.T.Act, 1957 as it was in force for the relevant assessment year, 1998-99?'

The issue therefore revolves around the definition of 'assets' in Section 2(ea) of the Act of 1957.

The respondent assessee company filed an I.T. return for the assessment year in question disclosing income from house property amounting to Rs.26,20,096/-. As it had not filed a return under the Act of 1957, a notice was issued to it under Section 17 thereof. The assessee company thereupon filed its wealth-tax return on 17.03.2003 disclosing NIL wealth. As regards its commercial complex from which rental income was derived, the assessee company claimed that it did not fall within the scope of 'assets' as defined under

Section 2(ea) of the Act of 1957. The Assistant Commissioner of Wealth-Tax, Circle-3(3), Hyderabad, the Assessing Officer, however opined that the commercial complex of the assessee company did not fall within the exceptions provided in the statutory provision and therefore assessed it to tax. The tax payable was accordingly computed and with interest thereon, the assessee company was held liable to pay Rs.16,61,053/-. In appeal by the assessee company, the Commissioner of Income Tax (Appeals)-IV, Hyderabad, confirmed the order of the Assessing Officer. In its second appeal before the Income-Tax Appellate Tribunal, Hyderabad Bench 'B', the assessee company again contended that the definition of 'assets' in Section 2(ea) of the Act of 1957 would not cover its commercial complex. The Tribunal disagreed with the authorities below on the interpretation and application of the definition of 'assets' in Section 2(ea) of the Act of 1957 and held that the commercial complex of the assessee company stood excluded thereunder. The appeal was accordingly allowed on this ground. Aggrieved thereby, the revenue is before this Court.

Heard Sri B.Narasimha Sarma, learned senior standing counsel for the revenue, and Sri A.V.Krishna Kaundinya, learned senior counsel appearing for the assessee company.

At the relevant point of time, Section 2(ea) of the Act of 1957 read as under:

'2(ea) "assets", in relation to the assessment year commencing on the 1st day of April, 1993, or any subsequent assessment year, means –

(i) any building or land appurtenant thereto (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 farmhouse situated within twenty-five kilometers from the 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 director who is in whole-time employment, having a gross annual salary of less than two 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;”

It is clear from the statutory provision that any building for residential or commercial purposes which formed part of the stock-in-trade of the assessee was not liable to be treated as an ‘asset’ for the purposes of the Act of 1957. One of the main objects of the assessee company, extracted by the Tribunal in its order, reads as under:

‘4. To purchase, acquire, take on lease, or in exchange or in any other lawful manner any land, building, structure and to turn the same into account, develop the same and dispose of or maintain the same and to build townships, markets or other buildings or convenience thereon and to equip the same or any part thereof with all or any amenities or conveniences, drainage facility, electric, telephonic, television installations and to deal with the same in any manner whatsoever.’

The ambit of this object is patently wide enough to include letting out of any building or structure acquired by the assessee company. It is not in dispute that the commercial complex of the assessee company was let out and rental income therefrom was reflected in its IT return. When the business of the assessee company was to let out any land, building or structure after development of the same, then such land, building or structure would become part of the stock-in-trade of the assessee company. The exception envisaged under Section 2(ea) of the Act of 1957 therefore stood attracted.

Having come to the same conclusion, the Tribunal allowed the assessee company’s appeal.

We find ourselves in complete agreement with the opinion expressed by the Tribunal on facts and in law. We therefore find no question of law, much less a substantial one, arising for consideration in this appeal and it is accordingly dismissed at the stage of admission. No order as to costs.

SANJAY KUMAR,J

GUDISEVA SHYAM PRASAD,J

4th AUGUST, 2017

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