

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

WTA 16/2005

Reserved on: September 12, 2017

Date of decision: September 21, 2017

COMMISSIONER OF WEALTH TAX

..... Appellant

Through: Mr. Raghvendra Singh, Senior standing
counsel.

versus

ATMA RAM PROPERTIES (P) LTD.

..... Respondent

Through: Mr. V.P. Gupta with Mr. Arunav Kumar,
Advocates.

With

+

WTA 17/2005

COMMISSIONER OF WEALTH TAX

..... Appellant

Through: Mr. Raghvendra Singh, Senior standing
counsel.

versus

ATMA RAM PROPERTIES (P) LTD.

..... Respondent

Through: Mr. V.P. Gupta with Mr. Arunav Kumar,
Advocates.

With

+

WTA 18/2005

COMMISSIONER OF WEALTH TAX

..... Appellant

Through: Mr. Raghvendra Singh, Senior standing

counsel.

versus

ATMA RAM PROPERTIES (P) LTD. Respondent
Through: Mr. V.P. Gupta with Mr. Arunav Kumar,
Advocates.

With

+

WTA 20/2005

COMMISSIONER OF WEALTH TAX Appellant
Through: Mr. Raghvendra Singh, Senior standing
counsel.

versus

ATMA RAM PROPERTIES (P) LTD. Respondent
Through: Mr. V.P. Gupta with Mr. Arunav Kumar,
Advocates.

With

+

WTA 21/2005

COMMISSIONER OF WEALTH TAX Appellant
Through: Mr. Raghvendra Singh, Senior standing
counsel.

versus

ATMA RAM PROPERTIES (P) LTD. Respondent
Through: Mr. V.P. Gupta with Mr. Arunav Kumar,
Advocates.

With

+

WTA 25/2005

COMMISSIONER OF WEALTH TAX

..... Appellant

Through: Mr. Raghvendra Singh, Senior standing
counsel.

versus

ATMA RAM PROPERTIES (P) LTD.

..... Respondent

Through: Mr. V.P. Gupta with Mr. Arunav Kumar,
Advocates.

With

+

WTA 26/2005

COMMISSIONER OF WEALTH TAX

..... Appellant

Through: Mr. Raghvendra Singh, Senior standing
counsel.

versus

ATMA RAM PROPERTIES (P) LTD.

..... Respondent

Through: Mr. V.P. Gupta with Mr. Arunav Kumar,
Advocates.

With

+

WTA 27/2005

COMMISSIONER OF WEALTH TAX

..... Appellant

Through: Mr. Raghvendra Singh, Senior standing
counsel.

versus

ATMA RAM PROPERTIES (P) LTD.

..... Respondent

Through: Mr. V.P. Gupta with Mr. Arunav Kumar,

Advocates.

With

+

WTA 28/2005

COMMISSIONER OF WEALTH TAX

..... Appellant

Through: Mr. Raghvendra Singh, Senior standing
counsel.

versus

ATMA RAM PROPERTIES (P) LTD.

..... Respondent

Through: Mr. V.P. Gupta with Mr. Arunav Kumar,
Advocates.

With

+

WTA 34/2005

COMMISSIONER OF WEALTH TAX

..... Appellant

Through: Mr. Raghvendra Singh, Senior standing
counsel.

versus

ATMA RAM PROPERTIES (P) LTD.

..... Respondent

Through: Mr. V.P. Gupta with Mr. Arunav Kumar,
Advocates.

And

+

WTA 35/2005

COMMISSIONER OF WEALTH TAX

..... Appellant

Through: Mr. Raghvendra Singh, Senior standing
counsel.

versus

ATMA RAM PROPERTIES (P) LTD. Respondent
Through: Mr. V.P. Gupta with Mr. Arunav Kumar,
Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

JUDGMENT
21.09.2017

%

Dr. S. Muralidhar, J.:

1. These are eleven appeals by the Commissioner of Wealth Tax (hereafter 'Revenue') under Section 27A of the Wealth Tax Act, 1957 ('WTA'), against the orders of the Income Tax Appellate Tribunal (ITAT) for Assessment Years ('AYs') 1984-85 to 1992-93 and AYs 1997-98 to 1998-99.

Facts in brief

2. The facts relevant to the present appeals are in a narrow compass. The Assessee executed an agreement to sell dated 31st January 1979 whereby it agreed to purchase the Scindia House Connaught Place, New Delhi ('Scindia House property') from its erstwhile owners for a consideration of Rs. 75 lakhs. Possession of the said property was delivered to the Assessee on the execution of the agreement to sell. At the time, the entire property was tenanted. Under the agreement to sell, the Assessee became entitled to receive the rent from the tenants. A sale deed in respect of the Scindia House property was executed on 31st May 1980 and thereby the Assessee became its owner.

3. According to the Assessee the purpose of acquiring the said property was to construct one floor thereon and sell the property in piecemeal to different persons. According to the Assessee, consistent with its Memorandum of Association ('MoA') it proposed to deal with the said property as a 'trader'.

Position under the Income Tax Act

4. For the purposes of the Income Tax Act 1961 (ITA), the Assessee categorised the rental income from the Scindia House property in its return for AY 1980-81 as 'business income'. However, the Assessing Officer (AO) held the rental income to be taxable as 'income from other sources'. After the Commissioner of Income Tax (Appeals) [CIT (A)] agreed with the AO, the Assessee went in appeal before the ITAT. The contention of the Assessee that its investment of Rs. 75 lakhs was not for just earning a meagre rental income, but to exploit the property commercially in the course of business found favour with the ITAT. The ITAT agreed with the Assessee that the letting out of the property was only incidental to its main business and that, therefore, the rental income should be treated as business income. The said order of the ITAT attained finality when the Revenue's reference petition before this Court for AY 1980-81 (ITR No. 128 of 1983) was dismissed by this Court on account of the failure to file a paper book.

5. For AY 1981-82 the rental income was shown as business income by the Assessee and accepted as such by the AO. However, for AY 1982-83, the AO took note of the change brought about by the sale deed dated 31st May 1980 whereby the Assessee became the owner of the property. The AO held

that the rental income was taxable as 'income from house property'. This was confirmed by the CIT (A) but on appeal, the ITAT relied on its order for AY 1980-81 and held it to be taxable as 'business income'. The said orders were followed by the ITAT for the subsequent AYs holding the rental income to be 'business income'.

6. Against the above decisions of the ITAT for AYs 1981-82 to 1986-87, no appeals were filed or reference sought to this Court by the Revenue. The reference to this Court (ITR No. 6 of 1995) by the Revenue For AY 1987-88 was dismissed by this Court by an order dated 26th April 2011 for low tax effect. No appeal was filed by the Revenue before the ITAT for AY 1988-89.

7. For AYs 1989-90 to 1991-92, the ITAT again held that the rental income of the Assessee was taxable as business income. No appeal was filed by the Revenue in this Court against the decision of the ITAT for AY 1989-90. However, as regards AYs 1990-91 and 1991-92, the Revenue filed ITA Nos. 355 of 2002 and 101 of 2002 respectively in this Court.

8. The ITAT changed its view for AY 1992-93. It held that there was material change in the facts inasmuch as the Assessee was not the owner of the property in AY 1980-81 but became the owner from AY 1981-82 onwards. According to the ITAT, this material change escaped its attention which resulted in it erroneously accepting the claim of the Assessee that the rental income was 'business income'.

9. From AY 1992-93 onwards up to 1999-2000 the ITAT consistently held

that the rental income received by the Assessee was taxable as 'income from house property'. Against the order of the ITAT for AY 1992-93, Assessee filed an appeal being ITA No. 162 of 2003 in this Court.

10. For AYs 1993-94 to AYs 1998-99 after the AO and the CIT (A) held against the Assessee, by treating the rental income as 'income from house property' and not 'business income', the Assessee filed appeals before the ITAT. A Special Bench (SB) of the ITAT was constituted to consider the question whether the said decisions of the AO and CIT (A) for the said AYs were contrary to the decisions of the ITAT from AYs 1980-81 till 1987-88 and subsequent AYs.

11. By an order dated 7th April 2006 in *Atma Ram Properties (P) Limited v. Joint Commissioner of Income Tax (2006) 102 TTJ (Del) 345*, the SB of the ITAT answered the said question in favour of the Revenue by holding that the rental income was 'income from house property'.

12. After discussing the decisions of the Supreme Court in *East India Housing and Land Development Trust Limited v. Commissioner of Income Tax (1961) 42 ITR 49 (SC)*; *Karanpura Development Co. Ltd. v. CIT (1962) 44 ITR 362 (SC)*; *Sultan Bros. P. Ltd. v. CIT (1964) 51 ITR 353 (SC)*; *CIT v. Chugandas & Co. (1965) 55 ITR 17 (SC)*; *S. G. Mercantile Corporation (P) Ltd. v. CIT (1972) 83 ITR 700 (SC)*; *Universal Plast Ltd. v. CIT (1999) 237 ITR 454 (SC)* and a host of decisions of the High Courts the SB of the ITAT concluded as under:

".... the legal position which emerges can be summarized as follows.
If in the given case, the assessee is found to be the owner of the

property and rental income is earned by him by letting out predominantly the said property, such rental income will be assessable under the head "Income from house property" and not "Profits and gains of business or profession". What is let out should be predominantly the said property inasmuch as the rental income should be from the bare letting of the tenements or from letting accompanied by incidental services or facilities. The subject hired out should not be a complex one and the income obtained should not be so much because of the facilities and services rendered than because of their letting of the tenements. If such a situation is found to be obtained, the other aspects such as nature of the property being commercial/business asset, etc. in the hands of the assessee as well as nature of the business of the assessee do not change the character of the income and the rental income does not become income from trade or business.

26. In the present case, the subject property let out by the assessee-company was undisputedly owned by it and it was a case of bare letting of tenement and the subject hired out was not a complex one. It was thus a case of letting out of a property owned by the assessee simpliciter and not a case of exploitation of the property by way of complex commercial activity. The rental income earned from the said property thus was chargeable to tax under the head "Income from house property" and not under the head "Profits and gains of business or profession" as claimed by the assessee. As such, considering all the facts of the case and keeping in view the legal position emanating from the various judicial pronouncements discussed hereinabove, we hold that the rental income received by the assessee in the year under consideration was assessable to tax under the head "Income from house property" and not under the head "Profits and gains of business". Accordingly, we answer the question referred to us in the negative, i.e., in favour of the Revenue and against the assessee."

13. Against the above order of the SB of the ITAT, the Assessee filed ITA Nos. 859, 849, 848, 841, 860, 850, and 836 of 2007 for AYs 1992-93 to 1999-2000 respectively in this Court.

14. The above appeals, i.e. the two appeals by the Revenue for AYs 1990-91 and 1991-92 and the Assessee's eight appeals for AYs 1992-93 to 1999-2000 were disposed of by this Court by its common order dated 4th September 2015. As noted therein, it was stated by counsel for the Assessee that he had instructions to withdraw the Assessee's appeals. It was further stated by him that the Assessee had no objection to the Revenue's appeals for AYs 1990-91 and 1991-92 being allowed. This portion of the Court's order dated 4th September 2015, which is relevant for the present appeals, reads thus:

“3A. Mr. Gupta further submits that in view of the fact that the Assessee has accepted the orders of the ITAT for the above AYs and its appeals have been dismissed as withdrawn, the Assessee has no objection to the appeals of the Revenue being ITA Nos.355/2002 and 101/2002 for AYs 1990-91 and 1991-92 respectively being allowed.

4. As far as the Revenue's aforementioned appeals are concerned, the questions of law framed by the Court in ITA 355/2002 against the order dated 31st May 2002 in ITA No. 2543/Del/1995 relating to AY 1990-91 were:

(i) Whether the Income-tax Appellate Tribunal was correct in law in holding that the rental income received by the assessee from the tenants in occupation of the property known as Scindia House, Connaught Place, New Delhi is to be taxed under the head 'income from business' and not 'income from house property'?

(ii) Whether on the facts and in the circumstances of the case the learned ITAT was correct in law in holding that the income from sale of flat in Scindia House as 'income from business' instead of income taxable under the head 'capital gains'?

5. The question of law framed by the Court in ITA No. 101/2002 against the order dated 13th August 2001 of the ITAT in ITA No. 5769/Del/95 relating to AY 1991-92 was:

Whether the Income-tax Appellate Tribunal was correct in law in holding that the rental income received by the assessee from the tenants in occupation of the property known as Scindia House, Connaught Place, New Delhi is to be taxed under the head 'income from business' and not 'income from house property'?

6. In view of the fact that the Assessee has accepted the decision of the Income Tax Appellate Tribunal for the AYs 1992-93 till 1999-2000 and has expressed no objection to the Revenue's appeals for AYs 1990-91 and 1991-92 being allowed, the above questions in the Revenue's aforementioned appeals are answered in the negative i.e. favour of the Revenue and against the Assessee. In other words, ***it is held that even for the said AYs 1990-91 and 1991-92, the rental income received by the Assessee from the tenants in occupation of the property known as Scindia House, Connaught Place, New Delhi shall be taxed as income from house property.*** Accordingly, the impugned orders dated 31st May 2002 of the ITAT in ITA No. 2543/DEL/1995 and 13th August 2001 in ITA No. 5769/Del/95 as regards the above issue are hereby set aside. The Revenue's appeals ITA Nos. 101 and 355 of 2002 are accordingly allowed." (emphasis supplied)

15. The resultant position is that as far the ITA is concerned for the AYs 1990-91 upto 1999-2000 the Revenue's position that the rental income received by the Assessee from the tenants in the Scindia House property was taxable as 'income from house property' and not 'business income' was accepted by the Assessee.

Position under the Wealth Tax Act

16. As far as the present WTA appeals of the Revenue are concerned, it is first necessary to understand the background in which the questions that have been framed arose. The Finance Act, 1960 (FA 1960) exempted

companies from the levy of wealth tax on their assets. However, the Finance Act 1983 (FA 1983) revived wealth tax in respect of the assets of companies. Section 40 (1) of the FA 1983 stated that notwithstanding anything contained in Section 13 of the FA, 1960, wealth tax was chargeable for every AY commencing on and from the 1st 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 2% of such net wealth. The net wealth was defined as the amount by which the aggregate value of all the assets, wherever located, belonging to the company on the valuation date was 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.

17. The assets referred to were:

- “(i) gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals;
- (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 for 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;
- (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, crèche, school, canteen, library, recreational centre, shelter, rest-room or lunch room mainly for the welfare of its employees and the land appurtenant to such building or part:

Provided that each such employee is an employee whose income (exclusive of the value of all benefits or amenities not provided for by way of monetary payment) chargeable under the head 'Salaries' under the Income Tax Act does not exceed eighteen thousand rupees;

(vii) motor-cars; 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)."

18. Section 87 of the FA 1988 amended Section 40 (3) of the FA 1983 by inserting the following proviso and Explanation after sub-clause (viii):

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

19. The rationale for bringing about the above change was set out in para 54 of the Memorandum explaining the provisions of the Finance Bill, 1988 as under:

“54. Under the existing provisions of Section 40 of the Finance Act, 1983, wealth tax is levied in respect of the net wealth of all closely-held companies. For the purposes of determining the net wealth of the company, the value of only specified assets like building, land (other than agricultural land), gold, silver, platinum, ornaments or utensils made of gold, silver etc. are taken into account.

The rationale underlying the revival of levy of wealth-tax on companies was to curb the tendency of avoidance of personal wealth tax liability by forming closely held companies and transferring the unproductive assets like real estate, jewellery etc to such companies.

Under the existing provisions, wealth-tax is leviable even in cases, where the assets specified in the section are held as stock-in-trade or are used for industrial purposes.

With a view to remove this unintended hardship and provide incentive for growth and modernisation, it is proposed to amend this section to provide that the following assets shall not form part of the net wealth for the purposes of levy of wealth-tax under the Section :-

- (i) Precious metals used as raw material in industrial production;
- (ii) Land other than agricultural land proposed to be utilized for industrial purposes, for a period of two years from the date of its acquisition;
- (iii) Cinema house;
- (iv) Gold, silver, platinum or other precious metals, precious and semi-precious stones and utensils made of gold, silver, platinum, buildings and motorcars, if held as stock-in-trade. In the case of gold, silver, platinum or other metals, precious or semi-precious stones and buildings and land appurtenant thereto, on the question as to whether

these items are held as investment or stock-in-trade, guidelines by way of general or specific order will be issued by the Board. In issuing such guidelines, the Board will, *inter alia*, take into account the ratio of the yearly turnover to the average value of stock of such assets held from time to time during the year and other relevant factors.

(v) Motor cars registered as taxis and used for the business of running of motor cars on hire.

The amendment also seeks to provide that in respect of a residential accommodation it will form part of the net wealth, only if it is used (i) as residential accommodation in the nature of guest house or (ii) as residential accommodation of any Director, Manager, Secretary or any employee of the company holding not less than one per cent of the equity shares of the Assessee company or (iii) as residential accommodation of any relative of a person holding not less than one per cent, of the equity shares of the company. For this purpose, relative shall have the same meaning as assigned to it in clause (b) of Explanation (i) to Section 80F of the Income Tax Act.

This amendment will take effect from 1st April 1989, and will, accordingly, apply in relation to the Assessment Year 1989-90 and subsequent years. (Clause 87).”

20. Thus, by the above change, the stock-in-trade held by a company would not be considered to be part of its assets for the purpose of wealth tax. It was made explicit that the change was to be effective from 1st April 1989.

Relevant facts for the WTA assessments

21. The facts relevant for the wealth tax assessments are that for AY 1984-85, the Assessee on 24th June 1988 filed a 'nil' return under the WTA not including the Scindia House property as part of its assets. The Wealth Tax Officer (WTO) referred the issue of valuation of the Scindia House property to the Departmental Valuation Officer (DVO). On the basis of the report

submitted by the DVO, the WTO completed the assessment on 28th March 1989 taking the value of the said property at Rs. 1,38,15,000. The wealth tax was determined accordingly.

22. The said assessment order was set aside by the Commissioner of Wealth Tax (CWT) under Section 25 (2) of the WTA. The CWT directed the WTO to make a fresh assessment after making enquiries. The WTO then framed a fresh assessment on 20th March 1992 whereby the claim of the Assessee that the said property constituted its stock-in-trade and, therefore, not liable to wealth tax, was rejected.

23. For AYs 1986-87, 1987-88 and 1988-89, the WTO completed the assessments on the same lines by the orders dated 27th March 1991 (for AYs 1986-87 and 1987-88) and 20th March 1992 (for AY 1988-89).

24. The Assessee's four appeals against the aforementioned orders of the WTO for AYs 1984-85, 1986-87, 1987-88 and 1988-89 were dismissed by the Commissioner of Wealth Tax (Appeals) [CWT (A)] by a common order dated 11th October 1995. Before the CWT (A) the Assessee did not press the ground regarding the liability to wealth tax. That ground was accordingly rejected. The Assessee urged two other grounds. It was contended that if the property was taxable then its valuation of the asset had to be in terms of Schedule III to the WTA which was retrospective. The CWT (A) agreed with the Assessee on this issue. However, the other ground of the Assessee that the amendment to Section 40 (3) of the FA 1983 by the FA 1988 was retrospective was rejected by the CWT (A).

ITAT's order dated 27th December 2004

25. The Assessee's further appeals to the ITAT for AYs 1984-85, 1986-87, 1987-88 and 1988-89 were allowed by it by the impugned order dated 27th December 2004. The two questions considered by the ITAT were as under:

- (i) Is Section 40 of the FA 1983 as subsequently amended procedural in nature and therefore retrospective?
- (ii) Whether the Scindia House property has been held by the Assessee as stock-in-trade?

26. In its order dated 27th December 2004, the ITAT held as under:

(i) The decision of the ITAT under the ITA for AY 1992-93 holding that the rental income earned by the Assessee from the Scindia House property was taxable as 'income from house property' and not 'business income' was distinguishable.

(ii) Going by the rule of consistency, and by the decisions of the ITAT for AYs 1980-81, 1982-83 to 1987-88, 1990-91 and 1991-92, it must be held that the rental income from the Scindia House property was taxable as 'business income'.

(iii) Since the rental income from the Scindia House property was taxable as 'business income', the said property had to be held to be a business asset i.e. stock-in-trade of the Assessee.

(iv) The amendment to Section 40 (3) of the FA 1983 by the FA 1988 was

retrospective and applied to "all pending matters". Therefore, the property in question was exempt from wealth tax for all the four AYs 1984-85, 1986-87, 1987-88 and 1988-89.

27. As far as AY 1985-86 is concerned, against the order dated 30th March 1990 of the WTO, the Assessee filed an appeal which was dismissed by the CWT (A) by an order dated 9th March 1992, *inter alia*, rejecting the plea of the Assessee that the Scindia House property being its stock-in-trade could not form part of the assets for the purpose of the WTA. Against the said order, the Assessee filed an appeal before the ITAT.

28. As regards AYs 1989-90 to 1991-92, by the common order dated 30th October 1995, the CWT (A) held that since the rental income from the Scindia House property had been held to be business income, the said property had to be treated as its stock-in-trade and which, with effect from 1st April 1989, was exempt from wealth tax. Against this order the Revenue filed appeals before the ITAT. The Assessee filed cross appeals on some other issues pertaining to the valuation of the Niti Bagh property.

29. As regards AY 1992-93, the CWT (A) by order dated 27th March 1996 held that since the rental income from the Scindia House property for that AY had been held to be taxable as income from house property, the said property had to be included in the net wealth of the Assessee for the purposes of the WTA. The Assessee then went in appeal before the ITAT. The Revenue also filed a cross appeal on the valuation of the Niti Bagh property of the assessee.

ITAT's order dated 12th January 2005

30. The appeals of the Revenue (for AYs 1989-90 to 1992-93) and the Assessee (for AYs 1985-86 and 1989-90 to 1992-93) were disposed of by the ITAT by the common impugned order dated 12th January 2005.

31. The ITAT in the said order observed that although in its order dated 27th December 2004, it had already held the Scindia House property to be the Assessee's stock-in-trade, with which conclusion the ITAT now agreed, it nevertheless wished to examine the issue afresh. After doing so, the ITAT came to the same conclusion viz., that the said property had rightly been treated as the assessee's stock-in-trade.

32. Further, even on the second issue which was relevant for AY 1985-86, the ITAT held that the amendment to Section 40 (3) of the FA 1983 by the FA 1988 was retrospective and applied to "all pending matters". The ITAT noted that the said conclusion found support from the decisions in ***Commissioner of Income Tax v. Jodhan Real Estate Development Co. P. Ltd.*** (2003) 259 ITR 79 (Raj), ***Commissioner of Wealth Tax v. Prakash Talkies Pvt. Ltd.*** (1993) 202 ITR 121 (Kar), ***Commissioner of Wealth Tax v. Devshree Cinema*** (2002) 258 ITR 425 (MP) and ***CWT v. Sun Jute Press P Ltd.*** (1993) 202 ITR 350 (Cal).

ITAT's order dated 5th April 2005

33. For AYs 1997-98 and 1998-99, the CWT (A) by a common order dated 5th July 2004 allowed the assessee's appeals and deleted the Scindia House property from the net wealth of the Assessee. The Revenue's appeals against

the said order were dismissed by the ITAT by the common order dated 5th April 2005. The ITAT chose to follow its order dated 12th January 2005 in the appeals for AYs 1989-90 to 1992-93.

Questions of law

34. In all the nine appeals by the Revenue against the aforementioned three orders of the ITAT, one common question that has been framed is: "Whether the Scindia House Property of the Respondent-Assessee, Atma Ram Properties (P) Limited, is its 'business asset/stock-in-trade' and therefore, cannot form part of its 'wealth' for the purposes of the WTA?"

35. In respect of the appeals for AYs 1984-85 to 1988-89, the additional question that has been framed for consideration is:

“Whether the Income Tax Appellate Tribunal (ITAT) was correct in law in holding that the amendment to sub-section 3 of Section 40 by the Finance Act, 1988 (FA 1988) by way of insertion of a proviso to the same is clarificatory and hence retrospective in nature?”

Submissions of counsel for the Revenue

36. Mr. Raghvendra Singh, learned Senior standing counsel for the Revenue, first submitted that in view of the order dated 4th September 2015 passed by this Court in the appeals under the ITA, the fact that the rental income received by the Assessee from the Scindia House Property should be treated as 'income from house property' and not 'business income' now stands settled. This position holds good for the AYs 1990-91 upto 1999-00. Mr. Singh submits that if indeed the rental income has to be treated as income from house property and not business income, then the question of the

property being considered as stock-in-trade does not arise.

37. Mr. Singh pointed out that the decision of the ITAT for AY 1992-93 was concurred with by the Full Bench of the ITAT in *Atma Ram Properties (P) Limited v. Joint Commissioner of Income Tax* (*supra*) holding the income to be income from house property.

38. Mr. Singh sought to distinguish the decision of this Court in *Commissioner of Income Tax v. Ansal Housing Finance and Leasing Co. Ltd. (2013) 354 ITR 180 (Del)* on facts. Mr. Singh pointed out in that case that the flats in question were held by the Assessee as part of its inventory to be stock-in-trade and were not let out. Likewise the decision of the Supreme Court in *East India Housing and Land Development Trust Limited v. Commissioner of Income Tax* (*supra*) was also distinguishable on facts and in any event did not contradict the Revenue's case. He submitted that the mere fact that the Assessee may have shown the Scindia House property as its stock-in-trade in its balance sheet and P&L account will not be determine whether for the WTA it could at all to be considered as stock-in-trade.

39. On the question of retrospective applicability of the amendment to Section 40 (3) of the FA 1983 by the FA 1988, Mr. Singh relied on the decision of the Madras High Court in *Commissioner of Wealth Tax v. Varadharaja Theatres (P.) Ltd. (2001) 250 ITR 523* and contended that the legislative intent was clear that it would be prospective. He pointed out that the Madras High Court in aforementioned decision disagreed with the decision of the Karnataka High Court in *Commissioner of Wealth Tax v. Prakash Talkies Pvt. Ltd. (1993) 202 ITR 121 (Kar)*.

40. Lastly, Mr. Singh submitted that the rule of consistency as explained by the Supreme Court in ***Radhasoami Satsang v. Commissioner of Income Tax (1991) 193 ITR 321 (SC)*** and by this Court in ***Mool Chand Khairati Ram v. DIT (2015) 377 ITR 650 (Del)*** would also apply to earlier AYs as long as there was no change in the circumstances. According to him, by this yardstick even for AY prior to 1990-91 since there was no change in the circumstances, it should be held that Scindia House property was not stock-in-trade and therefore, did form part of the assets of the Assessee for the purposes of the WTA.

Submissions of counsel for the Assessee

41. Mr. V.P. Gupta, learned counsel appearing for the Assessee, on the other hand first submitted that merely because for the purpose of the ITA, the Assessee did not question the treatment of the rental income received by it as income from house property did not mean that the property ceased to be its stock-in-trade. According to him, the stand taken by the Assessee in the appeals under the ITA would not affect its case under the WTA.

42. Mr. Gupta submitted that for the purpose of exigibility to tax under the WTA, the taxability of the rental income as income from house property under the ITA would not be relevant. The said issue had to be decided independent of the ITA. He referred to the observations of the SB of the ITAT in ***Atma Ram Properties (P) Limited v. Joint Commissioner of Income Tax (supra)*** and the decision of this Court in ***CIT v. Ansal Housing Finance and Leasing Co. Ltd. (supra)*** and submitted that notwithstanding

that the rental income may be treated as income from house property the Scindia House property would remain its stock-in-trade. Reliance was placed on the decisions of the Madras High Court in *Commissioner of Wealth Tax v. Kumudum Printers P. Limited* (2012) 341 ITR 514 (Mad) and *Commissioner of Wealth Tax v. Donatus Victoria Estates and Hotels P. Limited* (2012) 346 ITR 114 (Mad).

43. Mr. Gupta submitted that the amendment made to Section 40 (3) of the FA 1983 by the FA 1988 was retrospective. It was inserted in order to relieve the companies of the unintended hardship caused as a result of the change brought about by Section 40 (3) of the FA 1983. He relied on the decision of the Karnataka High Court in *Commissioner of Wealth Tax v. Prakash Talkies Pvt. Ltd.* (*supra*) which was in turn followed by the Madhya Pradesh High Court in *Commissioner of Wealth Tax v. Devshree Cinema* (*supra*) and the Rajasthan High Court in *Commissioner of Income Tax v. Jodhan Real Estate Development Co. P. Ltd.* (*supra*).

44. Mr Gupta pointed out that the Assessee had showed the property in question as 'stock-in-trade' in its books of account throughout, and in particular for the AYs in question. He placed before the Court the balance sheets and profit and loss ('P&L') accounts of the Assessee for all the AYs in question, which reflects the above position.

Is the Scindia House property the Assessee's stock-in-trade?

45. The first question that requires to be addressed is whether the Scindia House property is the Assessee's stock-in-trade for the purposes of the WTA? The case of the Assessee is that it is whereas the case of the Revenue

is to the contrary. The reason for this is that if the property is indeed the Assessee's stock-in-trade, then it would not form part of the net wealth of the Assessee for the period from 1st April 1989 onwards. Further if the Assessee is right in its contention that the amendment to Section 40 (3) of the FA 1983 by the FA 1988 is retrospective then even from 1st April 1984 i.e. from AY 1984-85, the Scindia House property, as its stock-in-trade, would not form part of the Assessee's net wealth for the purposes of the WTA.

46. A careful perusal of the assessment orders passed under the WTA, as well the orders of the CWT (A) and the ITAT either affirming or reversing them reveals that the treatment, for the purposes of the ITA, of the rental income from the Scindia House property as 'business income' was the principal reason for treating the property as its stock-in-trade for the purposes of the WTA. The two were seen as inter-related. This is evident from the order dated 27th December 2004 of the ITAT which is under appeal in these matters.

47. In the order dated 27th December 2004, for AYs 1984-85, 1986-87 to 1988-89, the ITAT observed in para 23 as under:

"23....we are of the opinion that the rental income from Scindia House being taxable as income from business, the Scindia House is to be held a business asset i. e. stock-in-trade in the hands of the assessee company and since the assessee has been selling the flats constructed in this building and the Tribunal has given specific in assessment year 1980-81 that this building had been purchased for carrying on the sale and purchase business of flats to be constructed thereupon, we are of the opinion that the same has been held by the assessee as stock-in-trade."

48. If indeed the Scindia House property was taken to be the Assessee's stock-in-trade since the rental income earned therefrom was taxable as its business income, then the converse position must hold good too viz., if the rental income were not to be taxable as business income then the property too cannot be treated as the Assessee's business asset i.e. its stock-in-trade. The order dated 4th September 2015 of this Court in the Revenue's appeals under the ITA for AYs 1990-91 and 1991-92 and the Assessee's appeals for AYs 1992-93 to 1999-2000 has brought about a changed scenario as a result of the Assessee conceding that for these AYs the rental income should be taxable as 'income from house property'.

49. The Assessee has been unable to show that there was any change in the circumstances for these AYs from the earlier AYs preceding them that warranted this concession. In written note titled 'Facts in brief and Broad Propositions' dated 12th September 2017, it is submitted on behalf of the Assessee in these matters that in view of the legal position explained in the decisions in *East India Housing and Land Development Trust Limited v. Commissioner of Income Tax* (*supra*); *CIT v. Chugandas & Co.* (*supra*) and the decision of this Court in *CIT v. Ansal Housing Finance and Leasing Co. Ltd.* (*supra*) holding that that even where the property is held as stock-in-trade the rental income would be taxable as income from house property, and in view of the fact that the "tax effect in each of the year was a small amount", the assessee withdrew its aforementioned appeals for those AYs. However, the fact remains that the Assessee could not have been unaware of the legal consequences of such concession especially without there being any change whatsoever in the circumstances in these AYs when

compared to the AYs from 1982-83 onwards. The above concession, which could not have been anticipated when the ITAT passed the impugned orders in the WTA appeals. As a result of the above concession resulting in the order dated 4th September 2015 in the ITA appeals holding the rental income was taxable as income from house property, the Scindia House property cannot possibly be treated as the Assessee's business asset for AYs 1990-91 onwards.

50. What about the position for the AYs earlier to AY 1990-91? For this, it is necessary to examine the main objects of the Assessee as spelt out in its MoA. They read as under:

"1. To purchase, sell, deal and traffic in lands, estates, houses or other landed properties of any tenure, whether freehold, leasehold or otherwise, and any interest therein and generally to deal in, traffic develop and turn to account land by laying out and preparing the same for building purposes, to act as builders and/or contractors and in that connection construct, alter, pull down and improve buildings, flats, garages, offices, hotels and theatres.

2. To carry on the business of land, real estate and property agents, brokers, representatives, and dealers and to render services of hiring, renting, leasing, sale or purchase of buildings, lands and real estate on a commission, fee or brokerage basis."

51. It is significant that while the Assessee was formed for purchasing and selling properties, earning of income by letting out the properties owned by it was not one of its business objects. The general object of 'dealing' with the properties had to be read ejusdem generis the main object. This did not include renting out the properties for income.

52. This crucial distinction in the purpose for which the Scindia House property was purchased by the Assessee determined the nature of the rental income earned by it. This was what led the SB of the ITAT to hold in its decision in *Atma Ram Properties (P) Limited v. Joint Commissioner of Income Tax* (*supra*) for AYs 1993-94 to 1998-99 that the rental income earned from the said property was taxable as 'income from house property' and not 'business income.' It was pointed out by the SB of the ITAT in the said decision, which incidentally stands affirmed by the order dated 4th September 2015 of this Court, that there have been two lines of decisions of the Supreme Court which underscore the distinction when rental income is from a property that is owned by an Assessee and from a property that is held by it on lease. One line of cases include *East India Housing & Land Development Trust Ltd. v. CIT* (*supra*) and the other *S. G. Mercantile Corporation (P) Ltd. v. CIT* (*supra*) and *Karanpura Development Co. Ltd v. CIT* (*supra*). This position becomes clear from the following passages in the decision of the SB of the ITAT in *Atma Ram Properties (P) Limited v. Joint Commissioner of Income Tax* (*supra*):

"17. In the case of *S. G. Mercantile Corporation (P) Ltd. v. CIT* (*supra*) as well as in the case of *Karanpura Development Co. Ltd v. CIT* (*supra*) relied upon by the learned Counsel for the assessee, the assesseees were not the owner of the property but they were, holding the leasehold rights of the subject property and considering that the liability to tax under the head "Income from house property" under the relevant provisions is that of the owner of the buildings or lands, appurtenant thereto, Hon'ble Supreme Court proceeded to hold the income derived by the assessee from the property not owned by them as assessable under the head "Income from business" and not "Income from house property". While doing so, the law laid down in the case of *East India Housing & Land Development Trust Ltd. v. CIT* (*supra*) was held to be inapplicable by the Hon'ble Supreme Court on the

ground that the assessee in the said case was owner of the property whereas in the case of *S. G. Mercantile Corporation (P) Ltd. (supra)* before it, the assessee was a tenant and not the owner. It was, however, observed by the Hon'ble Supreme Court in their judgment rendered in the case of *S. G. Mercantile Corporation (supra)* that in case the assessee is the owner of the buildings or lands appurtenant thereto, the income derived from rent in respect of the property owned by him would be liable to tax under the head "Income from house property" even if the object of the assessee in purchasing the landed property was to promote and develop market thereon. It was further observed by the Hon'ble Supreme Court that it would also make no difference if the assessee was a company which had been incorporated with the object of buying and developing landed properties and promoting and setting up markets thereon.

18. It is thus clear that the facts involved in the case of *S. G. Mercantile Corporation (P) Ltd. (supra)* and *Karanpura Development Co. Ltd. (supra)* cited by the learned Counsel for the assessee were materially different and the decisions came to be rendered in the light of such different facts. Similar is the position as regards the other cases cited by the learned Counsel for the assessee. On the other hand, a careful reading of all these decisions relied upon by the learned Counsel for the assessee reveals that the ratio laid down therein is in consonance with the proposition propounded by the Hon'ble Supreme Court in its earlier decisions in the cases of *East India House & Land Development Trust Ltd. (supra)* and *Karnani Properties Ltd. (supra)*. The learned Counsel for the assessee, however, has attempted to pick out and rely on some sentences from the said judgments in support of the assessee's case. It is a first and foremost principle of reviewing the binding nature of precedents that the precedent is an authority for what it actually decides and not what may remotely or even logically follow from it. As held by Hon'ble Supreme Court in the case of the *CIT v. Sun Engineering Works (P) Ltd.* it is neither desirable nor permissible to pick out a word or sentence from the judgment of the Court divorced from the context of the question under consideration and to treat it to be the law declared by the Court.

19. It is no doubt true that in the case of *Sultan Brothers (supra)*, the Constitution Bench of Hon'ble Supreme Court has held that whether a particular letting is a business has to be decided in the circumstances of each case and that each case has to be looked at from a businessman's point of view to find out whether the letting was the doing of a business or the exploitation of his property by an owner. At the same time, it is also true that in all the cases which have been decided by the Hon'ble Supreme Court involving commercial or residential buildings owned by the assessee, it has been held that the income realized by such owners by way of rental income from a building, whether commercial building or residential house, is assessable under the head "Income from house property". While taking note of this position in its judgment rendered in the case of *Karanpura Development, Co. Ltd. (supra)*, Hon'ble Supreme Court held that the only exception to this proposition are cases where the letting of building is inseparable from the letting of the machinery, plant and furniture, etc. where the rental received for the building is to be assessed under the head "Income from other sources" along with the rental received for other assets such as machinery, plant, furniture, etc."

53. It may be noticed that in its decision in *Chennai Properties and Investments Ltd. v. CIT (2015) 373 ITR 673 (SC)*, the Supreme Court found on facts that the objects of the Assessee company in that case were not only to buy and sell properties but also specifically to let out properties and earn income thereby. It was in those circumstances that it was held that the rental income so earned would be taxable as business income.

54. The position in the case of the Assessee is that it has since AY 1981-82 been owning the Scindia House property and the purpose was to exploit it commercially and not merely earn rent from it. It is true that in some years it did sell some portions thereof. From the details placed before the Court by the Assessee it is seen that the Assessee sold some flats in 1986 and 1987

but none at all thereafter till January 1996. Again from May 1996 till January 2000 it did not sell any portion of the property. After January 2000 it sold two portions in 2004. However, that warranted a different treatment only to that extent and in those years as was noted by the SB of the ITAT in para 24 of its decision in *Atma Ram Properties (P) Limited v. Joint Commissioner of Income Tax* (*supra*) as under:

“Even if the said property was held by the Assessee-company as stock-in-trade in its capacity as a trader going by the nature of its business activities, the rental income was not earned by it from the tenants in its capacity as a trader. *On the other hand, when the vacant possession of the tenements was obtained by the Assessee-company and the vacant tenements were sold to the different parties from time to time, the Assessee-company acted as a trader in the said transactions and the income arising out of such transaction was rightly assessed to tax under the head "Profits and gains of business or profession"*. However, when it comes to the rental income, the said income was earned by the Assessee-company not as a trader but as a owner of the said property and there was no business connection between the tenants and the Assessee-company but it was a case of tenant-owner relationship.” (emphasis supplied)

55. Further, in para 26 of the same decision the SB of the ITAT again observed as under:

“26. In the present case, the subject property let out by the Assessee-company was undisputedly owned by it and it was a case of bare letting of tenement and the subject hired out was not a complex one. It was thus a case of letting out of a property owned by the Assessee simpliciter and not a case of exploitation of the property by way of complex commercial activity. The rental income earned from the said property thus was chargeable to tax under the head "Income from house property" and not under the head "Profits and gains of business or profession" as claimed by the Assessee. As such, considering all the facts of the case and keeping in view the legal position emanating from the various judicial pronouncements discussed hereinabove, we

hold that the rental income received by the Assessee in the year under consideration was assessable to tax under the head "Income from house property" and not under the head "Profits and gains of business".

56. The above observations, in the considered of the Court, far from helping the case of the Assessee, go against its plea that the property in question had to be treated as its stock-in-trade. They underscore the position that as long as the property fetches rental income that was taxable as 'income from house property' it could not be treated as the Assessee's business asset or stock-in-trade. The ITAT was not concerned with the question whether for the purpose of the ITAT, Scindia House property should be treated as stock-in-trade. It was only concerned with the nature of the income.

57. Even in ***CIT v. Ansal Housing Finance and Leasing Co. Limited*** (*supra*), the question that engaged this Court was regarding the nature of the income. The specific question was Question No. 4 namely "Whether the Assessee was liable to pay income tax on the annual letting value of the unsold flats owned by it under the head 'income from house property'? Specific to the above question, finding in para 13 of the same decision was as under:

"13. In the present case, the assessee is engaged in building activities. *It argues that flats are held as part of its inventory of stock in trade, and are not let out.* The further argument is that unlike in the other instances, where such builders let out flats, here there is no letting out and that deemed income - which is the basis for assessment under the ALV method, should not be attributed. This Court is of the opinion that the argument, though attractive, cannot be accepted. As repeatedly held, in *East India, Sultan, and Karanpura*, the levy of income tax in the case of one holding house property is premised not on whether the Assessee carries on business, as landlord, but on the

ownership. The incidence of charge is because of the fact of ownership.

XX XX XX XX XX

While there can be no quarrel with the proposition that "occupation" can be synonymous with physical possession, in law, when Parliament intended a property occupied by one who is carrying on business, to be exempted from the levy of income tax was that such property should be used for the purpose of business. The intention of the lawmakers, in other words, was that occupation of one's own property, in the course of business, and for the purpose of business, i.e. an active use of the property, (instead of mere passive possession) qualifies as "own" occupation for business purpose. This contention is, therefore, rejected. Thus, this question is answered in favour of the revenue, and against the Assessee." (emphasis supplied)

58. It is, therefore, seen that again the Court in the above decision was not concerned with the question whether the property should be treated as stock-in-trade of the Assessee. In fact the finding that the rental income was taxable as income from house property would help the Revenue in the present case. This is despite the fact that in the said case the flats in question were not let out but occupied by the Assessee.

59. In the impugned order dated 12th January 2005 passed by the ITAT for AY 1985-86, the ITAT referred to its decision for AY 1992-93 wherein it was held in para 15 as under:

“We also hold that even if the property in question were stock in trade, the rental income from the said property could not be taxable under the head income business and the same was rightly and legally taxable under the head income from house property. The decisions cited by the learned CIT (DR) in this regard are relevant and directly on the issue. The Hon’ble Supreme Court in *CIT v. Chugandas & Co.* reported in 55 ITR 17 held that if the securities constitute stock in

trade of the business of an Assessee interest received from those securities was taxable under the head interest on securities and not under the head income from business."

60. In both its orders dated 27th December 2004 and 12th January 2005, the ITAT differed from its earlier decision for AY 1992-93 where it held that the rental income was taxable as 'income from house property.' In para 6 of the impugned order dated 12th January 2005, the ITAT observed as under:

"6. Even when we examined the question afresh, we find that Scindia House property has rightly been treated as stock in trade. There is no dispute that as per its memorandum of article, the Assessee is entitled to deal with properties. In fulfilment of above objects the property in question, was acquired and right from assessment year 1990-81, the Assessee has been trying to exploit the property commercially. There can be no doubt on its intention of treating the property as stock in trade. Right from very beginning Assessee tried to construct the flats on roof available to the Assessee and when it did not succeed in above objection, it has been selling part of the property in different years. **The consideration realized has all along been assessed as business receipt. Even the rental income was assessed under the head 'business'. Only assessment year in which a contrary view was taken under the Income Tax Act was assessment year 1992-93.** The relevant extract of aforesaid order has also been reproduced above. In the order question of stock in trade is not discussed. However, on the basis of ratio of decisions of Supreme Court in the case of *CIT v. Chugandas & Co.* 55 ITR 17, and in the case of *S.G. Mercantile Corpn. P. Ltd. v. CIT* 83 ITR 700, it held that income realized even when building was stock in trade was to be assessed under the head 'house property income'. The aforesaid finding in no way affects the claim of the Assessee that Scindia House property is stock in trade in the hands of the Assessee. If it is stock in trade, then it has to be treated as exempt under the Wealth Tax Act. We hold accordingly." (emphasis supplied)

61. The above premise of the order of the ITAT has undergone a drastic change as a result of the order of the ITAT for AY 1992-93 being upheld by

this Court by its order dated 4th September 2015 on a concession by the Assessee. Further the ITAT's decision for AY 1992-93 has been affirmed by the SB of the ITAT in ***Atma Ram Properties (P) Limited v. Joint Commissioner of Income Tax*** (*supra*). Consequently the very basis of the above order dated 12th January 2005 of the ITAT, viz., that all along the rental income has been taxed as business income, has been altered and that alteration has attained finality since it was brought about by a concession made by the Assessee. The altered position has endured far beyond AY 1992-93.

62. The position since AY 1982-83 as regards the nature of the Scindia House property cannot be said to have been any different. Its essential character as a property owned by the Assessee has not undergone any change. Notwithstanding that it may have been shown as the Assessee's stock-in-trade in its balance sheet, the fact remains that it was not the Assessee's business asset. The earning of rental income therefrom was not the business object of the Assessee company. Consequently the decisions relied upon by the Assessee viz., ***Commissioner of Wealth Tax v. Kumudum Printers P. Limited*** (*supra*) and ***Commissioner of Wealth Tax v. Donatus Victoria Estates and Hotels P. Limited*** (*supra*) are of no assistance to the Assessee. In those cases, one of the business objects of the Assessee was the leasing out of properties.

63. The Assessee has accepted that from AY 1990-91 the income earned by it from the Scindia House property is not its business income. Applying the rule of consistency as explained by the Supreme Court in ***Radhasoami***

Satsang v. Commissioner of Income Tax (supra), as further explained by this Court in *Mool Chand Khairati Ram v. DIT* (supra), it must be held that even for AYs 1984-85 onwards till AY 1990-91 the Scindia House property cannot be considered to be the Assessee's stock-in-trade. In other words even for the said AYs, the Scindia House property formed part of the Assessee's net wealth for the purposes of the WTA.

64. For the above reasons, the Court holds that the ITAT erred in holding by its orders dated 27th December 2004 and 12th January 2005 that the Scindia House property was the Assessee's stock-in-trade and was therefore to be excluded from its net wealth for the purposes of the WTA.

Is the amendment to Section 40 (3) retrospective?

65. The question whether the amendment to Section 40 (3) of the FA 1983 by the FA 1988 is retrospective is rendered academic in view of the above conclusion that the Scindia House property cannot be considered to be the Assessee's stock-in-trade either for the period after AY 1989-90 or earlier from AY 1984-85 onwards. Nevertheless, the Court proceeds to answer the question inasmuch as it has been framed for the appeals concerning AYs 1984-85 to 1989.

66. The Assessee has relied on the decision of the Karnataka High Court in *Commissioner of Wealth Tax v. Prakash Talkies Pvt. Ltd.* (supra) which has been followed by the Rajasthan High Court in *Commissioner of Income Tax v. Jodhan Real Estate Development Co. P. Ltd* (supra) and Madhya Pradesh High Court in *Commissioner of Wealth Tax v. Devshree Cinema* (supra).

67. In *CWA v. Prakash Talkies Pvt. Ltd.* (*supra*) the question that arises for consideration was whether retrospective effect could be given to the aforementioned amendment. What weighed with the Court was the speech of the Finance Minister which explained that the object was to tax unproductive assets and this was further alluded to in the Memorandum explaining the amendment in 1988 that it was to remove “unintended hardship”. Accordingly it was held that the amendment was curative and therefore "normally it could be declared as declaratory of existing law."

68. The Court is unable to agree with the above reasoning of the Karnataka High Court in *CWA v. Prakash Talkies Pvt. Ltd.* (*supra*). It is plain from the language of the amendment, and the Memorandum explaining it that the amendment was prospective. It was to take effect from 1st April 1989. The amendment was substantive and not merely procedural. There was no warrant for attributing retrospectivity to such an amendment.

69. In *Allied Motors (P) Limited v. Commissioner of Income Tax (1997) 224 ITR 677 (SC)* the Supreme Court held that if an amendment was remedial it could be retrospective. However, there the Court was not concerned with an amendment that was substantive in nature but a procedural one. The Court is, therefore, unable to agree with the decisions of the Madhya Pradesh High Court in *Commissioner of Wealth Tax v. Devshree Cinema* (*supra*) and the Rajasthan High Court in *Commissioner of Income Tax v. Jodhan Real Estate Development Co. P. Ltd.* (*supra*).

70. On the other hand, the Court concurs with the following reasoning and conclusion of the Madras High Court in *CWT v. Varadharaja Theatres (P) Ltd.* (*supra*):

“2. One possible way of testing as to whether an amendment is merely declaratory or is substantive and therefore prospective is to examine the amended provision with a view to ascertain as to whether that provision without the aid of the amendment is capable of taking within it what was subsequently included after the amendment. Applying that test to the facts of this case it is clear that Section 40(3)(vi) of the said Act as it stood at the relevant time was not capable of being construed as including cinema house when what was regarded as business assets had been exhaustively listed and that list did not include cinema house.

3. Counsel for the Revenue very fairly brought to our notice the decision rendered by the Karnataka High Court in the case of *CWT v. Prakash Talkies Pvt. Ltd.* [1993] 202 ITR 121 wherein that court took the view that the mentioning of cinema houses in Section 40(3)(vi) of the said Act is to be regarded as only curative and declaratory. Having perused that judgment, with great respect to the learned judges who decided that case, we are unable to agree with that view. The memorandum explaining the provisions of the amending Act does not support the view that Parliament intended this amendment to be declaratory. If, as already observed, without the aid of the amendment, it is not possible to treat cinema houses as exempted from wealth-tax as per unamended provision, the fact that that provision was subsequently amended does not of its own force make it declaratory.”

Conclusions

71. The questions framed are answered thus.

(i) The common question framed in all the appeals is answered in favour of the Revenue and against the Assessee by holding that the Scindia House property of the Assessee is not its ‘business asset/stock-in-trade’ and

therefore, forms part of its 'net wealth' for the purposes of the WTA. Further, applying the rule of consistency, even for the AYs earlier to AY 1990-91, the Scindia House property of the Assessee cannot be considered to be its stock-in-trade.

(ii) The additional question for AYs 1984-85 to 1988-89 is answered in favour of the Revenue and against the Assessee by holding that the amendment to Section 40 (3) of the FA 1983 by the FA 1988 is not retrospective and will not apply to a period prior to 1st April 1989.

72. Consequently, the impugned orders of the ITAT dated 27th December 2004, 12th January 2005 and 5th April 2005 insofar as they answer the above questions in favour of the Assessee are hereby set aside and the corresponding orders of the WTO and CWT (A) are hereby restored. The appeals are accordingly allowed, but in the facts and circumstances of the case, with no orders as to costs.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

SEPTEMBER 21, 2017

Rm