$~10 to 15

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

10

\+ **WTA 1/2017**

PRINCIAL COMMISSIONER OF WEALTH TAX - 7..... Petitioner

Through : Mr. Sanjay Kumar, Mr.Rahul Chaudhary, Advocates.

versus

M/S ORIENTAL BUILDING & FURNISHING CO. LTD. ..... Respondent

Through : None.

WITH

11

\+ **WTA 2/2017**

PRINCIAL COMMISSIONER OF WEALTH TAX - 7..... Petitioner

Through : Mr. Sanjay Kumar, Mr.Rahul Chaudhary, Advocates.

versus

M/S ORIENTAL BUILDING & FURNISHING CO. LTD. ..... Respondent

Through : None.

WITH

12

\+ **WTA 3/2017**

PRINCIAL COMMISSIONER OF WEALTH TAX - 7..... Petitioner

Through : Mr. Sanjay Kumar, Mr.Rahul Chaudhary, Advocates.

versus

M/S ORIENTAL BUILDING & FURNISHING CO. LTD. ..... Respondent

Through : None.

WITH
13
+ **WTA 4/2017**

PRINCIAL COMMISSIONER OF WEALTH TAX - 7..... Petitioner

Through : Mr. Sanjay Kumar, Mr.Rahul Chaudhary, Advocates.

versus

M/S ORIENTAL BUILDING & FURNISHING CO. LTD. ..... Respondent

Through : None.

WITH
14
+ **WTA 5/2017**

PRINCIAL COMMISSIONER OF WEALTH TAX - 7..... Petitioner

Through : Mr. Sanjay Kumar, Mr.Rahul Chaudhary, Advocates.

versus

M/S ORIENTAL BUILDING & FURNISHING CO. LTD. ..... Respondent

Through : None.

WITH
15
+ **WTA 6/2017**

PRINCIAL COMMISSIONER OF WEALTH TAX - 7..... Petitioner

Through : Mr. Sanjay Kumar, Mr.Rahul Chaudhary, Advocates.

versus

M/S ORIENTAL BUILDING & FURNISHING CO. LTD. ..... Respondent

Through : None.

3

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

ORDER

% 18.07.2017

CM APPL. No. 18292/2017 (delay in filing) IN WTA 1/2017
CM APPL. No. 18293/2017 (delay in filing) IN WTA 2/2017
CM APPL. No. 18295/2017 (delay in filing) IN WTA 3/2017
CM APPL. No. 18297/2017 (delay in filing) IN WTA 4/2017
CM APPL. No. 18302/2017 (delay in filing) IN WTA 5/2017
CM APPL. No. 18308/2017 (delay in filing) IN WTA 6/2017

1. For the reasons stated in the applications, the delay of 9 days in filing these appeals is condoned and these applications, accordingly, stand disposed of.

CM APPL. No. 18294/2017 (Exemption) in WTA 2/2017
CM APPL. No. 18296/2017 (Exemption) in WTA 3/2017
CM APPL. No. 18298/2017 (Exemption) in WTA 4/2017
CM APPL. No. 18303/2017 (Exemption) in WTA 5/2017
CM APPL. No. 18309/2017 (Exemption) in WTA 6/2017

2. Allowed, subject to all just exceptions.

WTA Nos. 1/2017, 2/2017, 3/2017, 4/2017, 5/2017, 6/2017

3. The Revenue is in appeal against an order dated 26th October, 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in WTA Nos. 20/Del/ 2013, 28/Del/ 2013, 29/Del/ 2013, 30/Del/ 2013, 31/Del/ 2013 and 32/Del/ 2013 for the assessment years ('AY's') 2004-05 to 2009-10.

4. The question sought to be urged by the Revenue is whether the ITAT was correct in holding, in the facts of the case, that the properties of the Respondent/Assessee at M-7, Connaught Circus, New Delhi and Sardar Mohan Singh Building, Connaught Lane, New Delhi were 'Commercial Establishments or Complexes' and therefore outside the purview of 'assets' under Section 2 (ea) (i) (5) of the Wealth Tax Act, 1957 (WTA)?

5. The Assessee classified the three properties belonging to it in the following manner:

(a) 9, Friends Colony (West), New Delhi (residential)

(b) M-7, Connaught Circus, New Delhi (commercial) and

(c) Sardar Mohan Singh Building, Connaught Lane, New Delhi (commercial).

6. Therefore, according to the Assessee, the properties at M-7, Connaught Circus, New Delhi and Sardar Mohan Singh Building, Connaught Lane, New Delhi were in the nature of 'Commercial Establishments or Complexes' and therefore not 'assets' for the purposes of the WTA . The Assessing Officer ('AO'), however, disagreed. As regards the property at M-7, Connaught Circus, the AO held that the Assessee's business "is neither to let the properties on hire nor this property is a portion of stock-in-trade of the assessee. The assessee is getting only the rental income out of it, therefore, the said property cannot be considered out of the purview of the WTA." As regards the property at Connaught Lane, the AO held that since

5

the said building was presently lying vacant and not in use by the Assessee or any third party, it was not outside the purview of the WTA.

7. While the CIT(A) disagreed with the AO for AY 2004-05, the CIT(A) agreed for the AYs 2005-06 to 2009-10. Therefore, the Revenue was in appeal before the ITAT for the AY 2004-05 and the Assessee for the AYs 2005-06 to 2009-10.

8. The ITAT disagreed with the AO and the CIT (A) and held that both properties formed part of larger commercial establishments. The ITAT referred to the decision dated 1st November 2013 of the Gujarat High Court in ITA No. 932 of 2012 (***CWT, Rajkot v. Vasumati Ben Chhaganlal Virani***).

9. Before us, it was urged by Mr Sanjay Kumar learned counsel for the Revenue, that the expression 'commercial establishments or complexes' should be understood only in the plural and not in the singular. In other words, in order to fall outside the purview of 'assets' under Section 2 (ea) (i) (5) WTA, the commercial building had to be let out to several tenants and not just one..

10. The Court is unable to agree with the above submission. It is obvious from a reading of the entire Section 2 (ea) WTA that the legislative intent was not to restrict the benefit of exemption any particular type of commercial establishments or complexes. By reading such a restrictions into the said clause, the Court would be writing into Section 2 (ea) WTA

6

something which is not there.

11. The Bombay Bench of ITAT has sought to suggest that a commercial establishment means a building comprising more than one establishment meant for commercial purpose and having the infrastructure and ancillary facilities and establishments such as banking, financial institution, supermarket, bar etc. The Court is unable to find any such qualification attaching to the expression 'Commercial Establishments or Complexes' in Section 2 (ea) (i) (5) of the WTA.

12. In ***CWT, Rajkot v. Vasumati Ben Chhaganlal Virani*** (*supra*) the Gujarat High Court held as under:

> "To our mind sub-clause (5) of clause(i) of section 2(ea) nowhere requires that a commercial establishment or a complex cannot be established in a house property. It only provides that any property in the nature of commercial establishment or complexes shall be excluded from the term assets as defined in clause(i) of section 2(ea). Further that it nowhere provides that only if such commercial complex is occupied by the owner then alone the exclusion shall take effect. On both counts thus contention of the Revenue cannot be accepted. It is significant to note that exception sub-clause (5) of clause(i) of section 2(ea) pertains to any house which the assessee may occupy for the purposes of any business or profession carried on by him. Thus whenever legislature desired that exclusion may apply only if property is self occupied, it was so provided. Significantly, in sub-clause (5), there is no such insistence. "

13. This Court concurs with the above view of the Gujarat High Court as regards the interpretation of Section 2 (ea) (i) (5) WTA. Therefore, we find that the impugned order of the ITAT does not suffer from any legal infirmity. No substantial question of law arises.

14. The appeals are dismissed.

S.MURALIDHAR, J

Prathiba. M. Singh

PRATHIBA M. SINGH, J

JULY 18, 2017
j/dk