

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

W.T.A. No.2 of 2017, W.T.A. Nos.1, 2 AND 3 of 2018

W.T.A.No.2 of 2017:

Between:

Devineni Avinash

.... Appellant

and

The Principal Commissioner of Income Tax, Vijayawada

.... Respondent

DATE OF JUDGMENT PRONOUNCED: 11.10.2018.

SUBMITTED FOR APPROVAL:

**HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? --
2. Whether the copies of judgment may be marked to Law Reports/Journals Yes
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes

RAMESH RANGANATHAN, J

*** HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
* HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI
+ W.T.A. No.2 of 2017, W.T.A. Nos.1, 2 AND 3 of 2018**

% Dated:11.10.2018

W.T.A.No.2 of 2017:
Between:

Devineni Avinash

.... Appellant

and

\$ The Principal Commissioner of Income Tax, Vijayawada

.... Respondent

! Counsel for Appellant: Sri Challa Gunaranjan, Learned Counsel

^ Counsel for respondent: Sri J.V.Prasad, Learned Senior Standing
Counsel for Income Tax.

< GIST:

> HEAD NOTE:

? Citations:

- 1) AIR 1959 SC 359
- 2) (1976) 4 SCC 614
- 3) (2003) 260 ITR 491 (Bom)
- 4) 1965 (57) ITR 21
- 5) 1968 (68) ITR 573
- 6) AIR 1955 SC 176 = 26 ITR 765 = (1955) 1 SCR 952
- 7) AIR 1959 SC 1252 = (1959) 37 ITR 242 (SC)
- 8) (1930) 15 T.C. 333
- 9) 34 Tax Cas 389
- 10) [2000] 3 Mah LJ 131

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

W.T.A. No.2 of 2017, W.T.A. Nos.1, 2 AND 3 of 2018

COMMON JUDGMENT: (per Hon'ble Sri Justice Ramesh Ranganathan)

W.T.A. Nos.2 of 2017 and 3 of 2018 are filed by Sri Devineni Avinash aggrieved by the order passed by the Income Tax Appellate Tribunal, Visakhapatnam bench, Visakhapatnam in WTA No.1/Vizag/2015 for the assessment year 2009-2010, and in W.T.A. No.20/Vizag/2017 for the assessment year 2008-09. W.T.A. Nos.1 and 2 of 2018 are filed by Smt. Devineni Lakshmi aggrieved by the orders passed by the Income Tax Appellate Tribunal, Visakhapatnam in W.T.A. Nos.22/Vizag/2017 and W.T.A. No.21/Vizag/2017 for the assessment years 2009-10 and 2008-09 respectively. As the question which arises for consideration in all the four appeals is common, all the four appeals were heard together, and are disposed of by a common order.

Facts, to the extent necessary, are that the assessee filed his return of wealth, for the assessment year 2009-2010, on 17.09.2010 declaring a net wealth of Rs.1,86,620/-; a notice was issued to him thereafter, under Section 17 of the Wealth Tax Act, 1957, calling upon him to file his return of wealth for the assessment year 2009-2010; pursuant to the notice, the assessee filed a letter dated 04.04.2014 requesting that the return originally filed on 17.09.2010 be treated as a return in response to the notice under Section 17 of the Act; as the case was selected for scrutiny, a notice under Section 16(2) of the Act was issued; and after

completing the assessment, the assessing officer determined the assessee's taxable wealth as Rs.7,34,12,780/. Aggrieved thereby the assessee filed an appeal to the Commissioner of Wealth Tax who dismissed the appeal holding that the subject vacant land was liable to wealth tax, as it was not held by the assessee as stock-in-trade.

Before the Income Tax Appellate Tribunal it was contended, on behalf of the assessee, that, under Section 2(e)(a) of the Wealth Tax Act, the subject land was undoubtedly an asset; however, in terms of the Explanation thereto, lands held by the assessee, as stock-in-trade, would not fall within the definition of an "asset"; and, since the assessee's intention, in purchasing the subject land on 30.07.2007, was to enter into a development agreement to carry on business, the said vacant land would not fall within the definition of an "asset" liable to tax under the Wealth Tax Act.

In the order under appeal, the Tribunal held that the assessee's contention that, the land was held by him as stock in trade, was devoid of merit as the assessee had himself admitted that he had purchased the land as an investment; the assessee had filed the statement of affairs before the Assessing Officer, and had claimed that the subject land was immovable property; just because the land was under a joint development agreement, it could not be presumed that it was held for the purpose of commercial exploitation, for it to be classified as stock-in-trade; the assessee had failed to prove with evidence that the subject vacant land was held by him as stock in trade; on the other hand, the Income Tax return, filed by the assessee for the assessment year 2009-2010, was in ITR Form No.2 which was the form prescribed

for individuals and Hindu undivided families not having income from business or profession; this abundantly proved that the assessee was not involved in any business; by his conduct, the assessee had proved that he was not carrying on any business either in the past or in the future; on a development agreement being entered into, the activities of the developer would constitute business activities, and not that of the assessee; the assessee had purchased the land as an investment; consequently any accretion from the land would be assessable only under the head “income from capital gains”; and the assessee had failed to prove that the subject land was held by him as stock-in-trade. The appeal filed by the assessee was dismissed.

While the appeal was allowed on another ground, it is wholly unnecessary for us to dwell on those aspects. Suffice it to note that WTA No.1 of 2017 preferred there against, by the revenue, was allowed by a Division bench of this Court by its order dated 07.09.2017. We shall therefore confine our examination, in this appeal, only to the question whether purchase of subject land by the assessee on 30.07.2017, and his having entered into a development agreement the very next day i.e., 31.07.2007, would by itself show that the assessee intended to carry on an adventure in the nature of business, and as having treated the subject land as stock-in-trade, which would then require the subject land not to be treated as an “asset” under Section 2(ea)(v) of the Wealth Tax Act.

Sri Challa Gunaranjan, Learned Counsel for the appellant-assessee, would submit that the very fact that the appellant had entered into a joint development agreement with the developer on

31.07.2007, the very next day after he had purchased the said property on 30.07.2007, itself proved that the subject land was purchased by the assessee only with the intention of carrying on business; as it is clear that the assessee intended to carry on business, the mere fact that he had filed his income tax return in TR Form No.2 is of no consequence; because of the long drawn litigation between the appellants vendor and another, the subject property could not be developed during the assessment period; it is because it was not developed, during that period, that the petitioner did not derive any income therefrom; it is because no income was derived from the said asset as business income was a return, in ITR Form No.2, filed disclosing the subject property as immovable property; that, by itself, would not mean that the assessee did not intend to treat the subject land as stock-in-trade, or that they had no intention to carry on any business; if, as is contended by the revenue, the subject property was purchased by the appellant as an investment, then transfer of land, pursuant to the joint development agreement, should have been subjected to tax as capital gains under Section 45 of the Income Tax Act; and the very fact that the income tax authorities did not themselves treat the subject land as an investment, but considered it to be a stock-in-trade, is established by the fact that no proceedings were initiated to assess the appellant to tax under the head “capital gains” on the execution of a joint development agreement. Learned Counsel would rely on **G. Venkataswamy Naidu v. Commissioner of Income Tax**¹; **Dalmia Cement Limited v. The Commissioner**

¹ AIR 1959 SC 359

of Income Tax² and Chaturbhuj Dwarkadas Kapadia v. Commissioner of Income Tax³.

On the other hand Sri J.V. Prasad, Learned Senior Standing Counsel for Income Tax, would submit that the assessee's proclaimed intention to carry on business, and to treat the subject land as stock-in-trade must be evidenced from certain other facts apart from their self-serving claim; merely because a memorandum of understanding had been entered into, between the assessee and the developer, would not justify the inference that the assessee intended to carry on business using the subject land as stock-in-trade; it is evident from the material on record that the assessee neither carried on business before, or at any time thereafter; in fact the return filed by them, in ITR Form No.2, is a return which is required to be filed by individuals or HUFs other than those carrying on any business, and those who do not derive any income from business and profession; the balance sheet, filed by the assessee for the year ending 31.03.2008 and subsequently for the year ending 31.03.2009, would show that the subject land was shown therein as a fixed asset (immoveable property); the subject land was not reflected in their balance sheet as stock-in-trade under the head "current assets"; accepting the assessee's contention, that their having entered into a development agreement by itself reflected their intention to carry on business and to treat the subject land as stock-in-trade, would render Section 45 of the Income Tax Act redundant; if, as is now contended, the assessee always intended to use the subject land as

² (1976) 4 SCC 614

³ (2003) 260 ITR 491 (Bom)

stock-in-trade for the purpose of carrying on business, the return, which he should have filed is in ITR Form No.4; except for this self-serving statement that the subject land was intended to be used as stock-in-trade for the purpose of carrying on business, no evidence has been adduced by the assessee in support thereof, though the onus was on him to do so; the circumstances, necessary to establish the intention of the assessee to carry on business, must be discernible from the material on record; concurrent findings of fact recorded by three authorities (the assessing authority, the Commissioner of Wealth Tax (Appeals), and the Income Tax Appellate Tribunal), show that the asset was treated as a capital asset by the assessee, and not as stock-in-trade; and this submission, that the assessee intending to treat the subject land as stock-in-trade, is made only with a view to avoid payment of wealth tax under the Act. Learned Senior Standing Counsel for Income Tax would rely on **Janakiram Bahadur Ram v. Commissioner of Income Tax, Calcutta**⁴; **Khan Bahadur Ahmed Alladin v. Commissioner of Income Tax**⁵; and **G. Venkataswami Naidu & Co.**¹.

Section 3(2) of the Wealth Tax Act, 1957 ("the Act" for brevity) stipulates that, subject to the other provisions contained in the Wealth Tax Act, there shall be charged, for every assessment year commencing on and from the 1st day of April, 1993, wealth-tax in respect of the net wealth, on the corresponding valuation date, of every individual, at the rate of one percent of the amount by which the net wealth exceeds fifteen lakh rupees. Under the proviso thereto, in the case of every assessment year, commencing

⁴ 1965 (57) ITR 21

⁵ 1968 (68) ITR 573

on and from the 1st day of April, 2010, the provisions of this Section shall have effect as if for the words “fifteen lakh rupees”, the words “thirty lakh rupees” had been substituted.

Section 2(m) of the Act defines “net wealth” to mean the amount by which the aggregate value, computed in accordance with the provisions of this Act, of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assessee (on the valuation date which have been incurred in relation to the said assets). Section 2(ea)(v) of the Act defines “assets”, in relation to the assessment year commencing on the 1st day of April, 1993, or any subsequent assessment year, to mean ‘urban land’. Explanation (1)(b) thereunder defines ‘urban land’, among others, not to include the land held by the assessee as stock-in-trade for a period of ten years from the date of its acquisition by him.

The dispute, in the present case, revolves around the question whether the subject land is “urban land” or not, for if it is urban land, it would then fall within the definition of an “asset” under Section 2(ea)(v) of the Act, and would form part of the net wealth of the assessee under Section 2(m) of the Act liable to tax under Section 3(2) of the Act.

The appellants claim that they had purchased the site in July, 2007 having borrowed money from M/s. Vulcon Project Developers Pvt. Ltd. on the premise that the land would be given for development to them; it was their intention, after receipt of the developed property, to sell and realise the maximum benefit;

immediately after purchase of the property, they had entered into a development agreement with M/s. Vulcon Project Developers Pvt. Ltd, and had filed a copy of the same before the assessing authority; they had kept this land as stock-in-trade in business, and were eligible for its benefit as such, upto a period of ten years from the date of purchase; and all the authorities had erred in treating this land as a capital asset falling within the ambit of Section 2(ea)(v) of the Act liable to tax under Section 3(2) thereof.

The purchase of property by the appellants is an isolated transaction, and they have not carried on any business either before or thereafter. Granting that the appellants made a profitable bargain when they purchased the property, and granting further that the appellants had, when they purchased it, a desire to sell the property would not, without other circumstances, justify an inference that the appellants intended, by purchasing the property, to start a venture in the nature of business or trade. **(Janki Ram Bahadur Ram⁴).**

The words “*adventure in the nature of trade*” clearly suggest that the transaction cannot properly be regarded as a trade or business. It is allied to transactions that constitute trade or business, but may not be trade or business itself. It is characterised by some of the essential features that make up trade or business but not by all of them; and so, even an isolated transaction, can satisfy the description of an adventure in the nature of trade. **(G. Venkataswami Naidu & Co.¹).**

Even a single and isolated transaction can be held to be capable of falling within the definition of an adventure in the nature of trade if it bears the clear indicia of trade **(Narain**

Swadeshi Weaving Mills v. Commissioner of Excess Profits⁶; **G. Venkataswami Naidu & Co.**¹; **Saroj Kumar Mazumdar v. Commissioner of Income-tax, West Bengal**⁷; **Dalmia Cement Ltd.**²). The fact that the transaction is not in the way of business of the assessee does not alter the character of the transaction (**G. Venkataswami Naidu & Co.**¹; **Saroj Kumar Mazumdar**⁷; **Dalmia Cement Ltd.**²).

It is impossible to evolve any formula which can be applied in determining the character of isolated transactions which come before the Courts in tax proceedings. It would also be inexpedient to make any attempt to evolve such a rule or formula. Generally speaking, it would not be difficult to decide whether a given transaction is an adventure in the nature of trade or not. It is the cases, on the border line, that cause difficulty. (**G. Venkataswami Naidu & Co.**¹).

Sometimes it is said that a single plunge in the waters of trade may partake the character of an adventure in the nature of trade. This statement may be true; but in its application due regard must be shown to the requirement that the single plunge must be in the waters of trade. In other words, at least some of the essential features of trade must be present in the isolated or single transaction. On the other hand, it is sometimes said that the appearance of one swallow does not make a summer. This may be true if, in the metaphor, summer represents trade; but it may not be true if summer represents an adventure in the nature of trade because, when the Section refers to an adventure in the nature of trade, it obviously refers to transactions which, individually,

⁶ AIR 1955 SC 176 = 26 ITR 765 = (1955) 1 SCR 952

⁷ AIR 1959 SC 1252 = (1959) 37 ITR 242 (SC)

cannot themselves be described as trade or business but are essentially of such a similar character that they are treated as in the nature of trade. (**G. Venkataswami Naidu & Co.**¹).

In **Leeming v. Jones**⁸ a syndicate was formed to acquire an option over a rubber estate with a view to resell it at a profit. On finding the estate too small, the syndicate acquired another estate and sold the two estates at a profit. It was held that the transaction was not in the nature of trade. The same view was expressed in **Saroj Kumar Mazumdar**⁷, wherein the assessee, who carried on business in engineering works, purchased land which was under requisition by the Government, negotiated a sale before the land was de-requisitioned, and sold it after the land was released. In **Commissioners of Inland Revenue v. Reinhold**⁹ the respondent, who carried on business of warehousemen, bought four houses in January 1945, and sold them at a profit in December, 1947. He admitted that he had bought the property with a view to resell, and had instructed his agents to sell whenever a suitable opportunity arose. On behalf of the Crown it was contended that the purchase and sale constituted an adventure in the nature of trade and the profits arising therefrom were chargeable to income tax. It was held by the Court of Sessions that the initial intention of the respondent to purchase the property, with a view to resell, did not per se establish that the transaction was an adventure in the nature of trade. (**Khan Bahadur Ahmed Alladin and Sons**⁵).

In considering judicial decisions on this question, it is necessary to remember that they do not purport to lay down any

⁸ (1930) 15 T.C. 333

⁹ 34 Tax Cas 389

general or universal test. The presence of all the relevant circumstances mentioned in any of them may help the Court to draw a similar inference; but it is not a matter of merely counting the number of facts and circumstances pro and con; what is important to consider is their distinctive character. In each case, it is the total effect of all relevant factors and circumstances that determines the character of the transaction; and so, though we may attempt to derive some assistance from decisions bearing on this point, we cannot seek to deduce any rule from them and mechanically apply it to the facts before us. (**G. Venkataswami Naidu & Co.**¹).

Judges appear to be agreed that no principle can be evolved which would govern the decision of all cases in which the character of the impugned transaction falls to be considered. (**G. Venkataswami Naidu & Co.**¹). No general principle can be laid down to cover all cases because of their varied nature, and each case should be decided on the basis of its own facts and circumstances. (**Dalmia Cement Ltd.**²). The decision, about the character of a transaction in the context, cannot be based solely on the application of any abstract rule, principle or test and must, in every case, depend upon all the relevant facts and circumstances. (**G. Venkataswami Naidu & Co.**¹). The answer to the question will depend on a consideration of all the facts and circumstances. (**Dalmia Cement Ltd.**²).

In deciding the character of such transactions several factors are treated as relevant. Was the purchaser a trader and were the purchase of the commodity and its resale allied to his usual trade or business or incidental to it? An affirmative answer to this

question, among others, may furnish relevant data for determining the character of the transaction. (**G. Venkataswami Naidu & Co.**¹). Another test, sometimes applied in determining the character of the transaction, is whether the purchase was made with the intention to resell it at a profit ? It is often said that a transaction of purchase followed by resale can either be an investment or an adventure in the nature of trade. There is no middle course and no half-way house. This statement may be broadly true; and so some judicial decisions apply the test of the initial intention to resell in distinguishing adventures in the nature of trade from transactions of investment. Even in the application of this test, distinction will have to be made between initial intention to resell at a profit which is present but not dominant or sole; in other words, cases do often arise where the purchaser may be willing and may intend to sell the property purchased at a profit, but he would also intend and be willing to hold and enjoy it if a really high price is not offered. The intention to resell may in such cases be coupled with the intention to hold the property. Cases may, however, arise where the purchase has been made solely and exclusively with the intention to resell it at a profit and the purchaser has no intention of holding the property for himself or otherwise enjoying or using it. The presence of such an intention is no doubt a relevant factor, and unless it is offset by the presence of other factors it would raise a strong presumption that the transaction is an adventure in the nature of trade. Even so, the presumption is not conclusive; and it is conceivable that, on considering all the facts and circumstances in the case, the Court may, despite the said initial intention, be inclined to hold that the

transaction was not an adventure in the nature of trade. (**G. Venkataswami Naidu & Co.**¹). A profit motive, in entering into a transaction, is not decisive, for an accretion to capital does not become taxable income, merely because an asset was acquired in the expectation that it may be sold at a profit. (**Janki Ram Bahadur Ram**⁴).

It must also be borne in mind that, unlike cases of commercial commodities, a transaction of purchase of land cannot be assumed, without anything more, to be a venture in the nature of trade, as these are cases in which the commodity purchased and sold is not ordinarily commercial, and the manner of dealing with the commodity does not stamp the transaction as a trading venture. (**Janki Ram Bahadur Ram**⁴; **Reinhold**⁹; **Saroj Kumar Mazumdar**⁷; **Leeming**⁸). If a person invests money in land intending to hold it, enjoys its income for some time, and then sell it at a profit, it would be a clear case of capital accretion and not profit derived from an adventure in the nature of trade. Cases of realisation of investment consisting of purchase and resale, though profitable, are clearly outside the domain of adventures in the nature of trade. (**G. Venkataswami Naidu & Co.**¹).

While even a single instance can constitute an adventure in the nature of trade and would suffice to treat the asset, used for the purpose of business, as stock-in-trade, the question whether purchase of the subject land is a single instance of an adventure in the nature of trade must be examined in the light of the surrounding facts and circumstances, and not in isolation. While it does appear that the appellants-assesseees had purchased the subject land on 30.07.2007, and had entered into a joint

development agreement on the very next day i.e. on 31.07.2007, the question which necessitates examination is whether that, by itself, would reflect the appellants' intention to treat the land as stock-in-trade for the purpose of carrying on business, in which event alone would it not fall within the definition of "asset" under Section 2(ea)(v) of the Act; and would, consequently, not be included in his net wealth liable to tax under Section 3(2) of the Act.

The Tribunal, and the authorities below, have relied on the fact that the appellants-assesseees had filed their return, for the year ending 31.03.2008, in Form No. ITR-2; they had shown the asset as a fixed asset (immovable property) in their balance sheet for the year 31.03.2008 and 31.03.2009; and, except for their self-serving statement that the subject land was intended to be used as stock-in-trade for the purpose of carrying on business, no other evidence had been adduced by the assesseees in support of such a claim, though the onus was on them to prove the same.

In this context, it is useful to note that Rule 12 of the Income Tax Rules, 1962 ("the Rules" for brevity), as it then stood, related to the return of income required to be furnished under Section 139 or 142 or 148 or 153 of the Income Tax Act, 1961. Rule 12(1)(b) of the Rules stipulated that the return of income shall in the case of a person being an individual, where the total income does not include any income chargeable to income-tax under the head "Profits or gains in business or profession", be in Form No. ITR-2, and be verified in the manner indicated therein. Form No. ITR-2 is the return of income, for individuals not having income from business or profession, in terms of Rule 12 of the Rules. Rule

12(1)(d) of the Rules, as it then stood, stipulated that the return of income, in the case of an individual deriving income from a proprietary business or profession, shall be in Form No. ITR-4, and be verified in the manner indicated therein. Form No. ITR-4 is the return of income, for individuals having income from a proprietary business, in terms of Rule 12(1)(d) of the Rules.

The appellants-assesseees had filed their return, for the assessment years subsequent to the date of purchase of the property, in Form No. ITR-2 and not in Form No. ITR-4, thereby treating the subject land as an investment or a capital asset, and not as stock-in-trade under the head 'current assets'. Further, in their Balance Sheet, filed in the immediately following assessment years (i.e. after the date of purchase of the subject land), the subject land was shown as a fixed asset (immovable property), and not as a current asset (stock-in-trade). If the appellants-assesseees had intended to use the land for the purpose of carrying on business, it would have been shown in the Balance Sheet as stock-in-trade under the head 'current assets', and not as immovable property under the head 'fixed assets'. Further, if the subject land was intended to be used for the purpose of business, the appellants-assesseees would have filed their return in Form No. ITR-4, and not in Form No. ITR-2. The fact that the appellants-assesseees had filed their return only in Form No. ITR-2 also lends support to the contention of the revenue that they intended to treat the subject land only as a 'capital asset' and as an investment, and not to carry on business treating the subject land as stock-in-trade. It is also not in dispute that, even though a joint development agreement was executed on 31.07.2007, no

development has taken place on the subject land for the past more than a decade. Yet another factor which would belie the appellants-assessees' claim to have intended to use the subject land for the purpose of carrying on business, is that they had not, either before or after purchase of this land, carried on any business, much less in relation to land.

In **Chaturbhuji Dwarkadas Kapadia**³, the Division bench of the Bombay High Court held that the agreement in question was a development agreement; such development agreements did not constitute transfer in general law; they are spread over a period of time; they contemplate various stages; the Bombay High Court, in various judgments, has taken the view in several matters that the object of entering into a development agreement is to enable a professional builder/contractor to make profits by completing the building and selling the flats at a profit; the aim of these professional contractors was only to make profits by completing the building and, therefore, no interest in the land was created in their favour under such agreements; such agreements were only a mode of remunerating the builder for his services of constructing the building (**Gurudev Developers v. Kurla Konkan Niwas Co-operative Housing Society**¹⁰); and if the contract, read as a whole, indicated passing of or transferring of complete control over the property in favour of the developer, then the date of the contract would be relevant to decide the year of chargeability.

On the execution of a joint development agreement, the developer would undoubtedly be carrying on business. The mere fact that the appellants-assessees had entered into a joint

¹⁰ [2000] 3 Mah LJ 131

development agreement with a builder, the very next date of purchase of the subject property, would not, in the absence of any other material on record, by itself amount to the assessee having treated the said subject land as stock-in-trade for the purpose of carrying on business. Mere execution of a development agreement would not, by itself and without anything more, mean that the owner of the land also intended to carry on business using the subject land as stock-in-trade, for the owner may well have decided to part with the said land for other reasons also.

Sri Challa Gunaranjan, learned counsel for the appellants-assessee, would submit that, if the appellants are held to have treated the subject land as a “capital asset”, the assessing authority would have treated transfer of the said asset, pursuant to the joint development agreement, as liable to tax as capital gains under Section 45 of the Income Tax Act; and the very fact that they did not, reflects their understanding that the assessee intended to treat this asset only as a stock-in-trade for the purpose of carrying on business. It is possible that the assessing authority was of the view that execution of a joint development agreement did not automatically result in the transfer of the asset. The mere fact that the appellants-assessee were not subjected to tax towards capital gains under Section 45 of the Income Tax Act would not necessitate the inference that the subject “land” was treated as stock-in-trade for the purpose of carrying on business; and is, therefore, exempt from tax under Section 3(2) of the Wealth Tax Act.

The question, which the Tribunal and the authorities below have considered, and which this Court is called upon to consider,

is whether the subject land is an “asset” within the meaning of Section 2(ea)(v) of the Wealth Tax Act, and not whether execution of a joint development agreement has resulted in the transfer of the subject land from the appellants-assesseees to the developer requiring capital gains tax to be levied, on the appellants-assesseees, under Section 45 of the Income-Tax Act. The question, whether execution of a joint development agreement had resulted in the transfer of the asset liable to tax as capital gains under Section 45 of the Income Tax Act, is wholly extraneous to the present proceedings under the Wealth Tax Act.

The Income Tax Appellate Tribunal is the final Court of fact. An appeal to the High Court lies, under Section 27A(2) of the Wealth Tax Act, only if the High Court is satisfied that the case involves a substantial question of law. We are satisfied that the findings of fact recorded by the Tribunal, and its conclusions on law, are not such as to necessitate interference in proceedings under Section 27A of the Wealth Tax Act. We see no reason, therefore, to interfere with the impugned orders passed by the Tribunal.

All the appeals fail and are, accordingly, dismissed. The miscellaneous petitions pending, if any, shall stand closed. No costs.

RAMESH RANGANATHAN, J

KONGARA VIJAYA LAKSHMI, J

Date: 11.10.2018

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