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

Date of decision: 24.01.2018

+ WTA 9/2006

DIRECTOR OF WEALTH TAX Petitioner
Through Ms. Vibhooti Malhotra, Adv.

versus

HERSH W.CHADHA Respondent
Through Ms. Kavita Jha and Mr. Vaibhav
Kulkarni, Advs.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A.K. CHAWLA

HON'BLE MR. JUSTICE S. RAVINDRA BHAT (ORAL)

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The following questions of law were framed in the instant
Wealth Tax appeal :

1. Whether the Tribunal was correct in law in holding that the value of the property bearing No. E-1, Placeno Estate, Bombay, declared by the Assessee was the correct fair market value of the property as on the relevant valuation date?

2. Whether the Tribunal was correct in law in holding that the value of the Mercedes Benz Car could not be included in the net wealth of the Assessee?

2. The necessary facts are that in the Wealth Tax Returns for Assessment Year 1992-93, the declared net worth was ₹35,29,000/-. The assessment was completed under section 16(3) by the Wealth Tax Officer (WTO) on 22.3.1995 at a net wealth of ₹70,10,34,244/-. The CIT(A) in the first round set aside the assessment order and directed it to be framed afresh, which the WTO did again on 17.9.1998. The Assessing Officer (AO) while concluding that the assets declared had to be assessed at a higher rate, took note of certain facts and concluded that the valuation of the flat at Palcimo, Bombay was ₹ 52,48,968/-. The assessee had declared a return value at ₹ 2,65,200/-. The WTO took into account the rent receivable at ₹ 62,145/- and also added 15% on the deposits accepted by M/s Hertz Agencies Pvt. Ltd (the lessee/tenant, hereinafter referred to as 'HAPL') from M/s BASF, the sub-lessee (hereinafter referred to as 'BASF'). The assessee contended that the higher valuation of the property was unjustified since what it received was only ₹2,600/- from HAPL. The CIT(A) rejected the assessee's contentions and upheld the value at ₹52,48,963/-. The ITAT, in the impugned order noticed that the deposit, upon which interest was generated, had not been in fact, received by the assessee but by HAPL, its tenant/lessee. The ITAT followed the decision in *CIT Vs. Hemraj Mahabir Prasad Ltd.*, 2005, 279 ITR 522 (Calcutta). The Calcutta High Court held- however, in the context of Section 23 of the Income Tax Act (while determining the annual letting value i.e. ALV of the property) that the adoption of the gross rent received by the assessee as lessor from the let out property for computing income from house property, as against the higher rent fetched by the lessee

through sub-lease, was correct.

3. Ms. Vibhooti Malhotra, learned counsel relies upon Rules 3, 4 & 5 of the Wealth Tax Rules, especially, explanation (2) to Rule 5 and contended that the expression “rent received or receivable” is broad enough for the Revenue’s official to include all payments for the use of the property by any nomenclature, the value of benefits or perquisites etc., obtained from a tenant or occupier. The said Rule reads as follows :

"rent received or receivable" shall include all payments for the use of the property, by whatever name called, the value of all benefits or perquisites whether convertible into money or not, obtained from a tenant or occupier of the property and any sum paid by a tenant or occupier of the property in respect of any obligation which, but for such payment, would have been payable by the owner."

4. Learned counsel for the assessee contended that the impugned order of the ITAT should not be disturbed. It was submitted that even though, the expression “rent received or receivable” has been used in the Wealth Tax Rules, a similar regime exists in respect of calculation of annual letting value, in Section 23(1)(b) of the Act. It was also pointed out that the ITAT relied upon the judgment in *CIT Vs. Hemraj Mahabir Prasad Ltd.*, 2005, 279 ITR 522 (Calcutta), where a similar question had been decided.

5. During the course of hearing, learned counsel for the Revenue fairly conceded that a question identical to the first one framed in this

appeal was the subject matter of a decision in *Commissioner of Income Tax Vs. Akshay Textiles and Agencies Pvt. Ltd.*, (2008) 304 ITR 401 (Bom) whereto, the precise question was whether the rent and deposits received by the intermediary tenant from the user/occupier of the property (sub-leasee) –as in the present case, can be taken into account for computation of net wealth of an asset under the Wealth Tax Rules. The relevant discussion in *Akshay Taxeiles and Agencies Pvt. Ltd. (supra)*, is as follows :

“8. The assessee aggrieved preferred an appeal before the CIT(A). The ground of recomputation of annual letting value was in issue. The CIT(A) noted that in the case of the appellant for the asst. yr. 1997-98 the addition made on account of enhanced annual letting value is deleted. That decision was followed. In other words the finding of fact of the tenant company being the alter ego of Reliance was not accepted. The finding recorded by the AO was thus set aside by the CIT(A). An appeal was preferred before Tribunal. In the grounds of appeal no contention was taken that the agreement between Reliance as intermediary tenant is a sham and/or that it was a colourable device which may properly be called a device or a dubious method or a subterfuge clothed with apparent dignity.

8.1 From the order of the Tribunal also it does not appear that the issue of colourable exercise and/or sham contract was argued or raised. The Tribunal dismissed the appeal preferred by the Revenue. Once the issue of sham and bogus contract had not been raised before the Tribunal the finding of fact recorded by the CIT(A) stood confirmed. From the judgment of the Tribunal the issue which is sought to be now contended or canvassed of sham contract or a colourable device on the ground that the intermediary is an alter ego of RIL was not in issue. It is not the case of the Revenue that the intermediary was another face of the assessee and consequently the agreement

entered into with the tenant by the assessee was a colourable device. In these circumstances considering Section 23, what is assessable to tax is the income received from the tenant falling either under Sub-section (a) or (b) of Section 23(1). The compensation received by the tenant would be taxable in the hands of the tenant. Appeal would lie on substantial question of law from the order of the Tribunal in respect of the matters which were taken up before it and/or on a pure question of law based on undisputed material on record. That is not the case over here.

9. We may also note that Section 23 before its amendment by Finance Act, 2001 w.e.f. 1st April, 2001 reads as under:

23(1) For the purposes of Section. 22, the annual value of any property shall be deemed to be:

(a) the sum for which the property might reasonably be expected to let from year to year;

(b) where the property is let and the annual rent received or receivable by the owner in respect thereof is in excess of the sum referred to in clause (a), the amount so received or receivable.

This was necessitated on account of the Supreme Court interpreting Section 23(1) as it then stood and to bring within its ambit those cases where higher rent had been received than the annual letting value. In other words where the annual rent receivable was more than the annual letting value.

On behalf of the Revenue considering the expression 'receivable' in Section 23(1)(b), learned Counsel seeks to contend that what has to be considered is the rent which is receivable as rent from the premises. It is, therefore, submitted that the rent which the tenant was receiving from Reliance would be the rent receivable. On the other hand on behalf of the assessee learned Counsel explains that the expression

"receivable" is in the context of the rent reserved in terms of the agreement. As an illustration, it is submitted that if the rent received per annum is Rs. 12,000 even though Rs. 6,000 is paid for the purpose of tax incidence what has to be considered is Rs. 12,000 as that is the rent receivable.

We have given our anxious consideration to the rival contentions. Section 23(1)(a) uses the expression "the sum for which the property might reasonably be expected to be let from year to year." This has to be considered in the context of the applicable rent laws. The Courts have construed the rent receivable in such circumstances to be either the standard rent or the rateable value as fixed by the local authority. Though the rateable value may also on occasions has to consider the standard rent in cases where the rent law may be applicable. Before the amendment brought about to Section 23 by the Finance Act, 2001 w.e.f. 1st April, 2002 even if an assessee had received higher rent than the standard rent the additional amount would not be the subject of tax. To overcome this omission the section was substituted to cover also those cases where rent received was higher than the standard rent or rent based on municipal rateable value. If the argument of the assessee (sic-Revenue) is to be considered then expression "reasonable" would have to be given different meaning. In our opinion it is not possible to give a meaning of wider amplitude than what is contained in Section 23(1)(a). The legislature has substituted the provision and brought in Section 23(1)(b) to cover the part of the annual value which otherwise would not fall within the tax ambit before its amendment. In that context the expression "receivable" would mean that though the annual value is fixed in terms of the agreement even though it is not received in the relevant year, yet the same would be assessable to tax in terms of the illustration given on behalf of the assessee. The contention, therefore, as urged on behalf of the Revenue on the construction of expression "receivable" will have to be rejected.

10. The issue whether the contract between Reliance and the

intermediary tenant is a sham cannot be gone into as the question would not arise in the absence of it being in issue raised before the Tribunal. That question as framed does not therefore arise. Further as noted earlier it is not the contention of Revenue that the contract between the assessee and the tenant is sham. The annual value would and be the value in terms of that contract. Therefore, the annual value is the annual value received or receivable by the owner from the tenant irrespective whether tenant on such letting has received higher rent from RIL”.

6. This Court is of the considered view that the opinion expressed by Bombay High Court is sound and reasonable and requires to be followed. The emphasis placed upon expression “rent received or receivables” in explanation (2) to Rule 5 ought not to be given wide interpretation as is sought to be urged. For these reasons, the first question of law framed is answered against the Revenue and in favour of the assessee.

7. As far as the second question with respect to the valuation of the Mercedes Benz Car is concerned, the Court notices that the CIT(A) observed that for the past years i.e. 1986-87, 1987-88, 1990-91 and 1991-92, the value of the motor car was not included. It was also held on facts that though the Mercedes Car was held by the assessee in his name, it was in fact funded and maintained by his Foreign Principal, on whose behalf it was held by him. The foreign principal did not have any office or branch in India. The ITAT had taken note of all these facts and vide its order dated 5.11.2011 for a previous year deleted a similar inclusion of the value of the car. This

reasoning persuaded the ITAT in the facts of the present case for the current Assessment Year to direct the deletion of such value. Being concurrent findings of facts and having regard to the circumstances that the car was funded by the assessee's foreign principal and apparently also maintained on its behalf, the question of law is answered in favour of the assessee and against the Revenue.

8. The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

A.K. CHAWLA, J

JANUARY 24, 2018

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