

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2019

CORAM:

THE HON'BLE DR. JUSTICE VINEET KOTHARI
and
THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

T.C.(A).No.986 of 2009

M/s.Orient Hospital Ltd
No.13, Kamraj Nagar IV Street
Chinna Chokkikulam
Madurai.

...Appellant /Respondent

..Vs..

The Deputy Commissioner
of Income Tax
Company Circle-I
Madurai.

...Respondent

Prayer: Tax Case (Appeal) is filed under Section 27A of Wealth Tax Act, 1957, against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, dated 15.09.2006 passed in W.T.A.No.81/Mds/2004 for Assessment Year 1998-1999 against the Order of the Commissioner of Wealth Tax (A)I, Madurai, dated 21.04.2004 made in PAN No./GIR No.AAA CO 1757D, and against the Deputy Commissioner of Wealth Tax Company Circle - I, Madurai, dated: 26/12/2002 made in PA No.AAA CO 2757 D .

For Appellant : Mr.R.Venkatnarayanan
Mr.G.R.Vijayaraghavan

For Respondent : Mr.M.Swaminathan
Assisted by Ms.S.Premalatha
Senior Standing Counsel

J U D G M E N T
(Delivered by DR.VINEET KOTHARI, J.)

The Assessee has filed this Appeal, raising the purported Substantial Questions of Law, arising from the order of the Income Tax Appellate Tribunal dated 15.09.2006, by which the learned Tribunal allowed the Appeal filed by the Revenue by holding that the Assets like factory building and motor cars leased out by the Assessee to the third party was subject to

wealth tax as per clause (vi) of Section 40 (3) of the Finance Act 1943.

2. The observations of the learned Tribunal are quoted below for ready reference:

"12.After hearing both the parties, we find that the issue has been settled in favour of the Revenue by the decision of the Hon'ble Madras High Court in the case of K.N.Chari Rubber & Plastics P. Ltd. V.CWT (260 ITR 164) (Mad). In that case also, the assessee had leased out assets consisting of factory, building and motor cars. The Hon'ble High Court, referred to clause (vi) of Section 40 (3) of the Finance Act, 1983, which reads as under:-

"(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 purpose of its business or as residential accommodation for its employees or as a hospital, creche, school, canteen, library, recreational centre, rest room or lunch room mainly for the welfare of its employees and the land appurtenant to such building or part:"

The Hon'ble High Court clearly held that until and unless the assets were used by the assessee for the purpose of its own business, same were not exempt from wealth-tax and ultimately it was held that factory building was subject to wealth-tax. In any case, we have already held while adjudicating the Revenue's appeal under income-tax that the assessee cannot be said to be carrying on business or profession and income has to be assessed as income from other sources. Therefore, respectfully following the decision of the Hon'ble Madras High Court in the case of K.N.Chari Rubber and Plastic P. Ltd. Vs. CWT (Supra), we decide this issue in favour of the Revenue.

13.In the result, the appeal is allowed."

3. This Appeal was admitted by the Co-ordinate Bench of this Court, on 26.10.2009 on the following Substantial Questions of Law:

"Whether on the facts and in the circumstances of the case the Tribunal was right in law in following the decision of this Court in the case of K.N.CHARI RUBBER AND PLASTICS P LTD. VS.COMMISSIONER OF WEALTH TAX reported in (2003) 260 ITR 164, wherein the amendment incorporated to the word "asset" by the Finance Act, 1992 with effect from 1.4.1993 has not been taken into consideration?

4. The learned counsel for the Appellant had urged that the said provisions of Section 40 A(3) introduced by the Finance Act, 1983 were omitted with effect from 01.04.1993 by Finance Act, 1992 for the Assessment Year 1998-1999, involved in the present case. The learned counsel for the Assessee submitted that the Tribunal was bound to consider the definition of 'Asset' under Section 2 (ea) of the Wealth Tax 1957 with effect from 01.04.1993 which reads as under:

"Section 2(ea): "assets" in relation to the assessment year commencing on the 1st day of April, 1993, or land appurtenant thereto (hereinafter referred to as "house"), whether used for residential or commercial purposes or for the purpose of maintaining a guest house or otherwise including a farm house situated within twenty-five kilometres from local limits of any municipality (whether known as Municipality, Municipal Corporation or by any other name) or a Contonment Board, but does not include-

(1) a house meant exclusively for residential purposes and which is allotted by a company to an employee or an officer or a director who is in whole-time employment, having a gross annual salary of less than five lakh rupees;

(2) any house for residential or commercial purposes which forms part of stock-in-trade.

(3) any house which the assessee may occupy for the purposes of any business or profession carried on by him;

(4) any residential property that has been let-out for a minimum period of three hundred days in the previous year;

(5) any property in the nature of commercial establishments or complexes;"

5. He submitted that the Clause 5 of the said definition excludes from the ambit of 'Asset' i.e, any property in the nature of commercial establishments or complexes. He further

submitted that since the Assessee Hospital and equipment therein amounts to commercial establishments or complexes, the same is not subject to wealth Tax. But the learned Tribunal has failed to consider the definition and proceeded on the basis of old law relied upon by the Judgment of this Court in K.N.CHARI RUBBER AND PLASTICS P LTD. VS.COMMISSIONER OF WEALTH TAX reported in (2003) 260 ITR 164. Therefore, he submitted that the Appeal may be restored back to the Income Tax Appellate Tribunal for deciding the Appeal afresh in accordance with law.

6.The learned counsel for the Revenue submitted that this aspect of the matter appears to have been escaped from the notice of the learned Tribunal.

7. In view of the aforesaid facts and circumstances of the case, we are of the opinion that the matter deserves to be remanded back to the Income Tax Appellate Tribunal and the learned Income Tax Appellate Tribunal is requested to look into the amended position of law with effect from 01.04.1993 by insertion of definition of 'Asset' under Section 2 (ea) of the Wealth Tax 1957. We are not making any observations on the merits of the claim of the Assessee here.

8. Therefore, without answering the Substantial Questions of Law as framed above, We set aside the order passed by the learned Tribunal on 15.09.2006 and restore the appeal to the file of Income Tax Appellate Tribunal to consider the same afresh, in accordance with law, within a period of six months for the Assesment Year 1998-1999 only.

9. In the result, this Tax Case Appeal is disposed of. No order as to costs.

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Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Deputy Commissioner of Wealth Tax,
Company Circle-I, Madurai.

2.The Commissioner of Wealth-Tax
(Appeals)-I, Madurai.

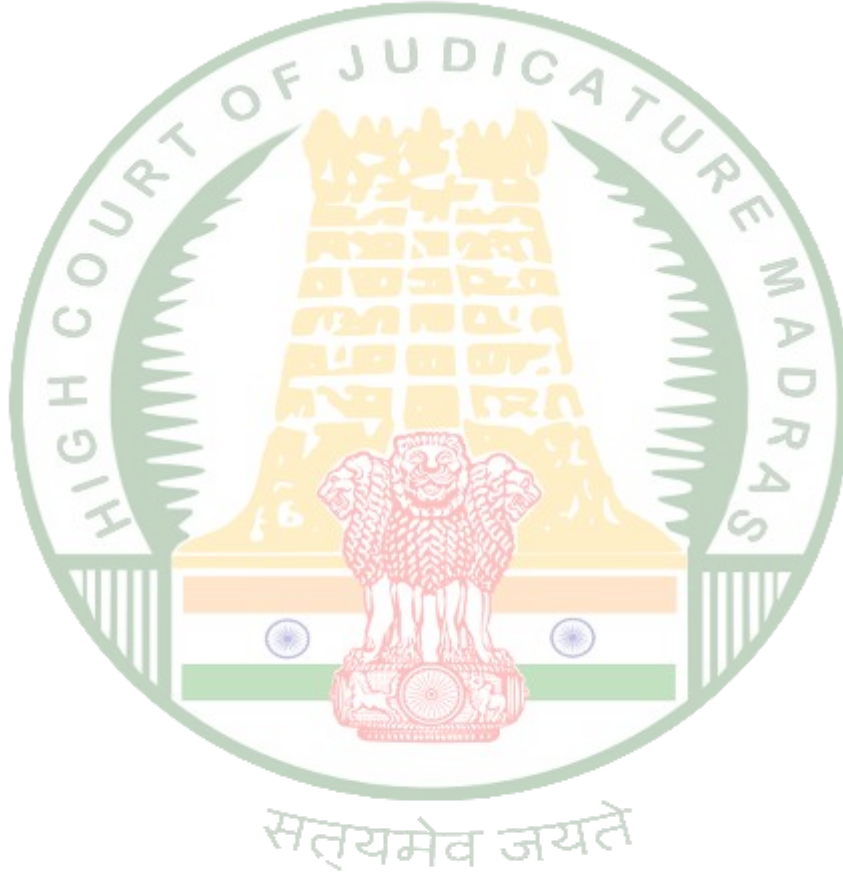
3. The Income Tax Appellate Tribunal
'C' Bench, Chennai.

+1cc to Mr.Subbaraya Aiyar Padmanabhan, Advocate, SR.No.35478

+1cc to Mr.M.Swaminathan, Advocate, SR.No.35477

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Kak (27/05/2019)



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