IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2660 OF 2019

Mohandas Isardas Chatlani	)	
601, Rizvi Heights, Pitamber Lane,	)	
Behind Paradise Cinema,	)	
Mahim, Mumbai – 400 016	)	….Petitioner

V/s.

1. ITO (International Taxation – 2 (1) (1)	)	
17th Floor, Air India Building,	)	
Nariman Point, Mumbai – 400 021	)	
2. Additional Commissioner of Income	)	
Tax (International Taxation) – 2 (1)	)	
17th Floor, Air India Building,	)	
Nariman Point, Mumbai – 400 021	)	
3. Commissioner of Income Tax	)	
(International Taxation) – 2	)	
17th Floor, Air India Building,	)	
Nariman Point, Mumbai – 400 021.	)	
4. Union of India	)	
Aaykar Bhavan,	)	
M.K. Road, Mumbai – 400 020.	)	….Respondents

WRIT PETITION NO.2662 OF 2019

Mohandas Isardas Chatlani	)	
601, Rizvi Heights, Pitamber Lane,	)	
Behind Paradise Cinema,	)	
Mahim, Mumbai – 400 016	)	….Petitioner

V/s.

1. ITO (International Taxation – 2 (1) (1)	)	
17th Floor, Air India Building,	)	
Nariman Point, Mumbai – 400 021	)	
2. Additional Commissioner of Income	)	
Tax (International Taxation) – 2 (1)	)	
17th Floor, Air India Building,	)	
Nariman Point, Mumbai – 400 021	)	
3. Commissioner of Income Tax	)	
(International Taxation) – 2	)	
17th Floor, Air India Building,	)	

Nariman Point, Mumbai – 400 021.	)	
4. Union of India	)	
Aaykar Bhavan,	)	
M.K. Road, Mumbai – 400 020.	)	….Respondents

WRIT PETITION NO.2664 OF 2019

Mohandas Isardas Chatlani	)	
601, Rizvi Heights, Pitamber Lane,	)	
Behind Paradise Cinema,	)	
Mahim, Mumbai – 400 016	)	….Petitioner
V/s.		
1. ITO (International Taxation – 2 (1) (1)	)	
17th Floor, Air India Building,	)	
Nariman Point, Mumbai – 400 021	)	
2. Additional Commissioner of Income	)	
Tax (International Taxation) – 2 (1)	)	
17th Floor, Air India Building,	)	
Nariman Point, Mumbai – 400 021	)	
3. Commissioner of Income Tax	)	
(International Taxation) – 2	)	
17th Floor, Air India Building,	)	
Nariman Point, Mumbai – 400 021.	)	
4. Union of India	)	
Aaykar Bhavan,	)	
M.K. Road, Mumbai – 400 020.	)	….Respondents

WRIT PETITION NO.2661 OF 2019

Mohandas Isardas Chatlani	)	
601, Rizvi Heights, Pitamber Lane,	)	
Behind Paradise Cinema,	)	
Mahim, Mumbai – 400 016	)	….Petitioner
V/s.		
1. ITO (International Taxation – 2 (1) (1)	)	
17th Floor, Air India Building,	)	
Nariman Point, Mumbai – 400 021	)	
2. Additional Commissioner of Income	)	
Tax (International Taxation) – 2 (1)	)	
17th Floor, Air India Building,	)	
Nariman Point, Mumbai – 400 021	)	
3. Commissioner of Income Tax	)	

(International Taxation) – 2)
17th Floor, Air India Building,)
Nariman Point, Mumbai – 400 021.)

4. Union of India)
Aaykar Bhavan,)
M.K. Road, Mumbai – 400 020.) ….Respondents

Mr. Pankaj Toprani a/w. Ms. Krupa Toprani i/b. PRH Juris Consults for petitioner in all petitions.
Ms. Ranjita Kumari i/b. Mr. Charanjeet Chanderpal for respondents in all petitions.

CORAM : K.R.SHRIRAM, &
ABHAY AHUJA, JJ
DATED : 10th AUGUST 2021

ORAL JUDGMENT : (PER K.R. SHRIRAM, J.)

1 Rule. Considering the nature of the petitions and the fact that it was listed on 10th October 2019, 21st November 2019 and 5th December 2019, Rule made returnable forthwith.

2 On 5th December 2019 learned counsel for respondents sought time to take instructions and file an affidavit in reply, if necessary. Till date no reply has been filed. Mr. Toprani states that even he has not been served a copy of any such reply. Ms. Ranjita Kumari states that no reply has been filed.

3 There are four petitions filed by petitioner in which petitioner is seeking Writ of Mandamus or Writ in the nature of Mandamus and for a direction to respondents to refund various amounts, viz., for Assessment Year 2006-2007 refund sought is Rs.2,67,215, Assessment Year 2007-2008

refund sought is Rs.3,46,392/-, Assessment Year 2008-2009 refund sought is Rs.4,77,274/- and Assessment Year 2009-2010 refund sought is Rs.4,58,766/-.

4 Petitioner, who according to petition, in 2019 was 90 years old owned various properties. Petitioner owned commercial properties at Chennai and Mumbai. Those properties petitioner had given on leave and license and was earning compensation which was his source of income. The compensation earned have been disclosed in the income tax returns and income tax has been paid.

5 Respondent no.1, by an order dated 24th December 2009 passed under Section 16 (5) read with Section 17 of the Wealth Tax Act, 1957 (the Act), for Assessment Year 2005-2006 assessed petitioner to wealth tax for immovable property in the sum of Rs.2,08,39,500/-. After giving Rs.15 lakhs as basic exemption, the net wealth, according to the Wealth Tax Officer, that was liable for wealth tax was Rs.1,93,39,500/-.

This order was passed notwithstanding petitioner's explanation that these were commercial properties and exempted under the definition of asset under Section 2 (ea) of the Act. This submission of petitioner was rejected on the grounds that these commercial properties were not used by petitioner for his own business and therefore, form a part of the total wealth of petitioner. As such, the total wealth of these commercial properties was liable to wealth tax.

6 Against this order, petitioner preferred an appeal being Appeal No.CIT(A)-10/WTO(IT)1(1)/IT-134/09-10, before the Commissioner of Income Tax (Appeals) – 10, Mumbai. The Appellate Authority, after considering the provisions of the Act and after hearing petitioner, was satisfied that petitioner was correct and the Assessing Officer was not correct and by an order dated 8th July 2010 set aside the order of the Assessing Officer. The Appellate Authority rightly concluded that the Assessing Officer's finding that these commercial properties should be used by appellant in his own business otherwise would form a part of the total wealth of petitioner was erroneous.

7 We endorse the view of the Appellate Authority. Section 2 (ea) of the Act reads as under :

> *"Therefore these commercial establishments or complexes are covered by exclusion clause of section 2 (ea) (i) (5) which reads as under :*
>
> *2 (ea) "assets", in relation to the assessment year commencing on the 1st day of April, 1993, or any subsequent assessment year, means -*
>
> *(i) any building 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 Corportation or by any other name) or a Cantonment Board, but does not include -*
>
> *(1) ....*
>
> *(2) ....*
>
> *(3) ....*
>
> *(4) ....*
>
> *(5) any property in the nature of commercial establishments*

or complexes".

The exemption is to any property in the nature of commercial establishments or complexes and it does not provide anywhere that such commercial properties should be used by assessee for his own purpose.

8 Before the Appellate Authority passed the order dated 8th July 2010, in view of the order passed by the Wealth Tax Officer for Assessment Year 2005-2006, petitioner had paid the following amounts :

Sr. No.	*Date of payment*	*A.Y.*	*Wealth-Tax paid*
1	19.01.2010	2006-07	Rs.2,67,215
2	19.01.2010	2007-08	Rs.3,46,392
3	19.01.2010	2008-09	Rs.3,72,822
	22.01.2010	2008-09	Rs.1,04,452
4	19.01.2010	2009-10	Rs.3,49,186
	22.01.2010	2009-10	Rs.1,09,580
Total Wealth Tax Refund			Rs.15,49,647

Writ Petition No.2664 of 2019 pertains to Assessment Year 2006-2007, Writ Petition No.2660 of 2019 pertains to Assessment Year 2007-2008, Writ Petition No.2661 of 2019 pertains to Assessment Year 2008-2009 and Writ Petition No.2662 of 2019 pertains to Assessment Year 2009-2010.

9 Petitioner, therefore, by his letter dated 5th December 2011 forwarded to the Income Tax Officer, I.T.O. (I.T.) - 1 (1), Mumbai, a copy of the order dated 8th July 2010 passed by the Appellate Authority and sought

refund of the wealth tax amount of Rs.15,49,647/- paid. As no response was received, a grievance application on 6th May 2016 was filed to the Director of Income Tax, International Taxation, Mumbai. To this letter also there was no response. The Chartered Accountant of petitioner later addressed a communication in the form of a reminder on 15th June 2018. Petitioner then sent a reminder dated 27th March 2019 that was delivered on 11th April 2019.

10 By a letter dated 3rd May 2019 the Income Tax Officer (International Taxation) responded to reminder letter dated 15th June 2018 and informed petitioner for the first time that his request for refund of wealth tax paid for A.Y. 2006-2007 to 2009-2010 cannot be entertained as each wealth tax assessment year is separate assessment year and it is also separate proceedings for each year. According to the Income Tax Officer (International Taxation), the cognisance of the Appellate Authority order for A.Y. 2005-2006 dated 8th July 2010 cannot be straightaway taken for A.Y. 2006-2007 to 2009-2010 unless appeals were filed by appellant before the Appellate Authority and orders have been passed therein. In our view, this is the most unreasonable and illogical view any officer of the Income Tax Department could take.

11 Mr. Toprani correctly submitted that the Income Tax Officer (International Taxation) should have first passed assessment orders for the years 2006-2007 to 2009-2010, which orders have not been passed, and

therefore, the question of filing any appeal and obtaining separate order for each year would not arise. In any event, the commercial premises are the same. Wealth tax was assessed for A.Y. 2005-2006 erroneously on these commercial properties and such an assessment was erroneous has been confirmed by the Appellate Authority. Hence, such a stand taken by the Income Tax Officer (International Taxation), i.e., respondent no.1, in our view defies sensibility.

12 It is not respondents' case that the order passed by the Appellate Authority has been stayed or set aside or any appeal impugning the same has been filed.

We would ofcourse hasten to repeat what we have stated earlier that the view expressed by the Appellate Authority in its order dated 8th July 2010 in Appeal No.CIT(A)-10/WTO(IT)1(1)/IT-134/09-10 has our endorsement.

13 In the circumstances, rule in terms of prayer clause – (a) in all the petitions is made absolute.

14 Respondents are directed to refund the amounts paid, as mentioned in these four petitions, after verifying their records, together with interest, if any, payable in accordance with law within four weeks from today. If there are no provisions for payment of interest, then interest shall become payable at 12% p.a. on the amounts due after expiry of four weeks.

15 All four petitions disposed.

16 All to act on authenticated copy of this order. Respondents shall not insist on certified copy for releasing the payments.

(ABHAY AHUJA, J.) **(K.R. SHRIRAM, J.)**