

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

WEALTH TAX REFERENCE NO.118 OF 1998

Motwane Manufacturing Co.Pvt.Ltd.,)
222-224, Midas, Sahar Plaza,)
Mathurdas Vasanji Road,)
Andheri (E), Mumbai-59.)..Applicant

Versus

The Commissioner of Wealth-tax)
Mumbai City-I Mumbai.)..Respondents

Mrs.Beena Pillai i/by D.M.Harish & Co. for the
applicant.

Mr.P.S.Sahadevan for the respondents.

Coram : F.I.Rebello & R.S.Mohite,JJ

Date : 20.2.2009.

Judgment :- (Per : R.S.Mohite,J)

1. The questions of law as referred to this Court
under Section 27(1) of the Wealth Tax Act are as
follows :-

1) Whether the Tribunal was right in law in holding
that land used for internal roads of the factory and
play ground for workers of the factory is taxable as
wealth of the company, when the factory building has
not been charged for wealth-tax ?

2) Whether the Tribunal was right in law in holding
that the approach road and internal roads are
treated as part of the building for the purpose of
depreciation under the Income-tax Act, 1961 and
therefore, the assessee is the owner of the land ?

2. The brief facts of the case were as under :-

(a) The applicant company was the owner of a plot of

land with several structures standing thereon. For the assessment year 1990-91, an assessment was filed by the assessee detailing the details of the user of the aforesaid open plot of land. These details as shown by the assessee were as follows :-

Buildings :-

(1) Land surrendered to the Municipal Corpn. for Road widening in frong	313.155 M2
(2) Land under factory building	1374.355 M2
(3) Land under R & D building	578.310 M2
(4) Land under Transformer & Gen.room	33.540 M2
(5) Canteen	95.985 M2
(6) Cycle stand & Store rooms	278.132 M2

	2673.486 M2

2. <u>Open land</u> : Appurtenant to above building	5346.972 M2
3. <u>Open land</u> : Under internal roads & playgrounds	3720.00 M2
4. <u>Open vacant</u> : Land to be considered for this valuation	3334.130 M2

(b) The assessing officer passed an order valuing the open land at Rs.18,59,715/- on the basis of value as determined for earlier assessment years 1988-89 and 1989-90.

(c) In an appeal filed by the assessee before the CIT(A) it was contended that the Assessment Officer had not considered the grant of exemption from the wealth-tax in respect of land appurtenant, land reserved for play ground and other common services. CIT(A) partly allowed the appeal by granting relief in respect of the land appurtenant admeasuring 5346.972 but refused to grant exemption in respect of the open land admeasuring 3728.00 sq.mtrs. over which there were internal roads and a play ground. Both revenue as well as the assessee preferred an appeal before the ITAT and by its common judgment and order dated 26.2.1997, the ITAT dismissed the appeal of the assessee and allowed the appeal of the revenue to the limited extent of land admeasuring 313.155 sq.mtrs. said to have been surrendered to the Bombay Municipal Corporation. Being aggrieved by the judgment of the ITAT, the assessee therefore, requested for a reference and the questions already mentioned here-in-above have been therefore, referred.

3. It is a common ground that for the relevant year, wealth tax in respect of the assessee company was chargeable in accordance with section 40 of the Wealth Tax Act which was introduced by the Finance Act 1983. Section 40(3) set out assets which were

chargeable to wealth tax and section 40(3)(vi) was in the following terms :-

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

. Provided that each such employee is an employee whose income (exclusive of the value of all benefits or amenities not provided for by way of monetary payment) chargeable under the head "Salaries" under the Income-tax Act does not exceed eighteen thousand rupees.

. On a plain reading of the section, it is clear that internal approach roads or play grounds were not within the exceptions which were carved out by the said sub-section. The exception themselves pertain to certain kinds of building and land appurtenant to such buildings or part thereof. Therefore, it is clear that first a building which fell in the category covered by the exception had to exist. Then and only then land appurtenant to such building would also fall within the exception. We are unable to accept the contention that a play ground, approach road or internal road can be said to be a building.

4. Counsel for the applicant made some attempt to contend that land on which construction of a

building was not permissible would amount to the vacant land. Reliance was placed on the definition of vacant land in section 2 of the Urban Land Ceiling Act. The definition clause in the said Act expressly sets out that definitions are restricted for the purposes of the said Act. Counsel for the applicant drew our attention to the judgment of the Apex Court in the case of Angoori Devi(Smt) Vs. State of U.P. & Ors. reported in AIR 1997 SC 875. That judgment also pertains to the definition of vacant land as contained in the Urban Land Ceiling Act. In our view, it would have no bearing on the issue in question.

5. In our view, therefore, issue no.1 is required to be answered in the affirmative and in favour of revenue.

6. In so far as question no.2 is concerned, it is seen from the record that the assessee himself has never controverted the fact that he was the owner of the entire plot with the structures standing thereon. Since his ownership of the plot in question is admitted, such ownership will include the ownership of the internal roads and approach roads which fall within the plot. It appears that the second question was referred on the basis of a contention raised by the assessee that he was not

the owner because the municipal bye-laws required him to reserve a part of his land for approach roads and internal roads. In our view, such approach roads and internal roads even if required to be kept by municipal bye-laws, do not result in change of ownership of the land. These approach/internal roads continue to be used by the owners for their own purposes and it is in this background that such approach roads or internal roads are treated as a part of the building for the purpose of depreciation as per the Income-tax Act 1961. In our view, the issue of ownership of the asset is not dependant upon the provisions of the Income Tax Act 1961. Since the ownership of the asset is an independant facet which can be determined independantly of the Income Tax Act and as the applicant has categorically admitted his ownership over the plot of land, we do not find it necessary to answer issue no.2. Hence, issue no.2 is returned unanswered. Reference stands disposed off accordingly.

(R.S.Mohite,J)

(F.I.Rebello,J)