www.taxguru.in

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. Wealth Tax Appeal No.17 of 2008

Commissioner of Income-tax (Cental), Ludhiana ...Appellant

VERSUS

Smt.Neena Jain c/o M/s Sweety Fabrics (P) Ltd. 18, Sunder Nagar, Ludhiana.

...Respondent

2. Wealth Tax Appeal No.18 of 2008

Commissioner of Income-tax (Cental), Ludhiana ...Appellant

VERSUS

Smt.Neena Jain c/o M/s Sweety Fabrics (P) Ltd. 18, Sunder Nagar, Ludhiana.

...Respondent

3. Wealth Tax Appeal No.19 of 2008

Commissioner of Income-tax (Cental), Ludhiana ...Appellant

VERSUS

Kimti Lal Jain c/o M/s Sweety Fabrics (P) Ltd. 18, Sunder Nagar, Ludhiana.

...Respondent

4. Wealth Tax Appeal No.20 of 2008

Commissioner of Income-tax (Cental), Ludhiana ...Appellant

VERSUS

Kimti Lal Jain c/o M/s Sweety Fabrics (P) Ltd. 18, Sunder Nagar, Ludhiana.

...Respondent

Date of Decision:-19.2.2010

CORAM: HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA
HON'BLE MR. JUSTICE MEHINDER SINGH SULLAR

Present: Mr.Krishan Mehta, Senior Standing Counsel for the appellant-Revenue.

None for the respondent.

::: Downloaded on - 16-10-2018 16:15:26 :::

MOHINDER SINGH SULLAR, J.

As common questions of law and facts are involved in the present appeals filed by the revenue against the respondent-assessee-Smt.Neena Jain c/o M/s Sweety Fabrics (P) Ltd. (for brevity "the assessee"), pertaining to the same property of different assessment years, therefore, we propose to dispose of the aforementioned four appeals, vide this single judgment, in order to avoid the repetition of facts. However, for facilitation, the facts have been extracted from W.T.A.No.17 of 2008 titled as "Commissioner of Income-tax (Cental), Ludhiana Versus Smt.Neena Jain c/o M/s Sweety Fabrics (P) Ltd.

2. The matrix of the facts, culminating in the commencement of, relevant for disposal of present appeals and emanating from the record, is that during the course of examination of return, for the relevant assessment year 2003-2004, it revealed that the assessee has started construction of residential house on plot jointly owned by her and her husband, situated at Gurdev Nagar, Ludhiana, in the month of February 2002. The construction was still incomplete as on the valuation date under consideration. Although the assessee was stated to have spent an amount of her share to the tune of Rs.38,26,447/-, half of the total amount of Rs.76,52,894/-, in construction of their joint house, but it was not shown in the return. Therefore, the assessee was asked to explain, as to why addition of the value of the plot and the amount of investment in the construction of the said house relating to her share, be not made to her net wealth.

3. In pursuance thereto, the assessee explained that since the residential house is still under construction, it does not fall within the definition of assets in section 2 (ea) of the Wealth Tax Act, 1957 (for short "the Act"), and so as such, it was not so declared in the return of net wealth.

4. The explanation put forth by the assessee did not find favour and the Assessing Authority concluded that the incomplete house of the assessee very much falls within the purview of assets in section 2 (ea) of the Act, and as such, it is liable to wealth tax. Consequently, the value of the plot and investment of her share in construction of residential house was added and tax was, accordingly, assessed, vide order dated 7.6.2006 (Annexure A1).

::: Downloaded on - 16-10-2018 16:15:26 :::

5. Aggrieved by the order (Annexure A1), the assessee filed the appeal, which was accepted by the Commissioner of Wealth Tax (Appeals)-I, Ludhiana, vide order dated 9.1.2007 (Annexure A2).

6. The revenue filed the appeal against the order (Annexure A2), which was dismissed by the Income Tax Appellate Tribunal, Chandigarh, vide order dated 18.9.2007 (Annexure A4).

7. The revenue still did not feel satisfied with the impugned order (Annexure A4) and filed the present appeal, invoking the provisions of section 27A of the Act.

8. The appeal was admitted to consider the following substantial questions of law:-

> "*(i) Whether, on the facts and in the circumstances of the case, the Hon'ble ITAT is justified in law in dismissing appeal of the Revenue against the Ld. CIT(A)'s order holding that a house under construction neither being a house nor a plot is not liable to tax under the Wealth Tax Act, 1957?*
>
> *(ii) Whether, on the facts and in the circumstances of the case, the value of a house under construction including the investment made on construction thereof as on the relevant valuation date is not liable to wealth tax as 'building' or 'urban land' as per clause (i) or clause (v) of section 2(ea) of the Wealth Tax Act, 1957 until the house is complete?*"

9. We have heard the learned counsel for the revenue and have perused the record with his help.

10. The main celebrated argument of learned counsel for the revenue that since the incomplete building of the assessee falls within the definition of assets as defined in section 2(ea) of the Act, so, the impugned amount is liable to be added, for the purpose of wealth tax, is neither tenable nor the observations of Gujarat High Court in case Commissioner of Wealth Tax v. Cadmach Machinery Co.(P) Ltd. **(2007) 212 CTR Reports 285** and Delhi High Court in case Commissioner of Wealth-Tax v. Prem Nath Motors Pvt. Ltd. **(1999) 238 Income Tax Reports 41,** are at all applicable to the facts of the present

::: Downloaded on - 16-10-2018 16:15:26 :::

controversy.

11. In Cadmach Machinery Co. (P) Ltd.'s case (supra), the factory and research building were under the process of construction during the year under consideration. The assessee claimed exemption from wealth tax on the building under construction as per clause (v) of sub-section (3) of section 40 of the Finance Act, 1983. On the peculiar facts and circumstances of that case, while interpreting the provisions of section 40 (3) of the Finance Act, 1983, it was ruled that "under such circumstances, such building could not have fallen in exceptional clause provided in clause (vi). It was further observed that "if the building under construction was not to be regarded as "building", then the land on which the construction is started will have to be included in the assets under clause (v) because the land mentioned therein does not carry any qualification or the "adjective vacant." Even otherwise, land does not lose its value as an asset simply because construction is started thereon and the building does not cease to be a "building" only because it is incomplete in some respect."

12. Sequelly, in Prem Nath Motors Pvt. Ltd.'s case (supra), the Delhi High Court observed as under:-

> *"To attract the applicability of the abovesaid clause the building or part thereof must be capable of being used by the assessee. The facts as found and the question itself suggest that the investment was in an incomplete and unfinished factory building, the construction whereof was still in progress. It is not the case of the Revenue that the building or part thereof as it stood in the relevant assessment year was capable of being subjected to any use by the assessee. Obviously, the building or part thereof is not covered by clause (vi), abovesaid. The answer to the question is obvious. The Tribunal did not err in refusing to make a reference to the High Court. The petition under section 27(3) of the Wealth-tax Act, is without any merit and is therefore dismissed."*

13. Possibly, no one can dispute about the aforesaid observations in Cadmach Machinery Co.(P) Ltd.'s case (supra), but the same would not come to the rescue of the revenue in the present case. Moreover, the reproduced

::: Downloaded on - 16-10-2018 16:15:26 :::

observations in Prem Nath Motors Pvt. Ltd.'s case (supra) support the case of the assessee in this relevant connection.

14. Now, in the instant case, the core question, that arises for determination, is whether the incomplete building of the assessee falls within the ambit of assets as defined in section 2(ea) of the Act or not, which postulates that "assets" in relation to the assessment year commencing on Ist day of April, 1993, or any subsequent assessment year, means 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 Corporation or by any other name) or a Cantonment 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 etc.etc.

15. The contention of the learned counsel for the revenue that "any building would" fall within the definition of assets, is not only devoid of merit but misplaced as well, because the word "any building" cannot possibly be read in isolation and it has harmoniously to be construed with the remaining portion of section 2(ea) of the Act, i.e. whether the building used for residential or commercial purposes or for the purpose of maintaining a guest house, because incomplete building, as in the present case of the assessee, cannot possibly either be used for residential or commercial purposes or for purposes of maintaining a guest house. Therefore, the word "building" has to be interpreted to mean a completely built structure having a roof, dwelling place, walls, doors, windows, electric and sanitary fittings etc. If one or more such components are lacking, then it cannot possibly be saith that the building is a complete structure for the purpose of section 2(ea) of the Act. A residential house is an unit, which

::: Downloaded on - 16-10-2018 16:15:26 :::

is complete for habitation having the minimum bare required facilities. The Legislative intent underlying the amended provisions of section 2(ea) is clear and implicit that the legislature sought to bring within the ambit of this section all those buildings, which are completed and ready for use of residential, commercial or guest house, as the case may be, as incomplete structure cannot be put to any such use.

16. It is not a matter of dispute that the assessee started the construction in the month of February 2002, which was still incomplete at the period of relevant assessment year.

17. The next argument of learned counsel for the revenue that if the incomplete building does not fall within the ambit of assets under section 2(ea) of the Act, then the incomplete building of the assessee is liable to wealth tax under the definition of "urban land", again has no force, because Explanation 1 (b) defines "urban land" to mean the land situated in any area, which is comprised within the jurisdiction of a municipal corporation or committee, any area of committee within such distance, not being more than eight kilometres from the local limits of a municipality or cantonment board etc.

but does not include the land occupied by any building, which has been constructed with the approval of the appropriate authority. Again, it is not a matter of dispute that the assessee is constructing the building after obtaining sanction from the appropriate authority. Therefore, we are of the considered view that the incomplete building of the assessee neither falls within the definition of a building, as contemplated under section 2(ea) of the Act, nor within the purview of "urban land" as excluded by Explanation 1(b) of the Act.

18. There is another aspect of the matter, which can be viewed from a different angle. The perusal of the scheme of the Act posits that it is not always that any building or land appurtenant thereto are straightway liable to wealth tax. There are many exceptions contained in section 2(ea) (i) of the Act in this respect, such as, house meant exclusively for residential or commercial purposes, which forms part of the stock-in-trade or any house which the assessee may occupy for the purposes of any business or profession carried on

::: Downloaded on - 16-10-2018 16:15:26 :::

by him or any property in the nature of commercial establishments or complexes etc. Sequelly, there is an exclusion clause contained in Explanation 1(b) of the Act, in regard to urban land as well. In that eventuality, the burden of proof was on the revenue and the Adjudicating Authority was required to record a categoric finding that the building of the assessee actually exigible to wealth tax. Meaning thereby, it was incumbent upon the revenue to prove that the incomplete building/urban land of the assessee is such, that squarely falls within the four corners of assets, as defined in section 2(ea) of the Act and liable to wealth tax, which is totally lacking in the present case. Thus seen from any angle, we are of the considered opinion that the value of the investment in constructing the indicated building cannot possibly be added for the purpose of levying wealth tax, during the relevant assessment year, in the obtaining circumstances of the case.

19. In the light of the aforesaid reasons, it is held that the Tribunal was justified and correctly negatived the claim of the revenue and was thus right in holding that the value of house under construction including investment on construction is not liable to wealth tax. Thus, the substantial questions of law are answered accordingly against the revenue.

20. For the reasons recorded above, the aforesaid appeals are hereby dismissed with no order as to costs.

(MEHINDER SINGH SULLAR)
JUDGE

19.2.2010
AS

(ASHUTOSH MOHUNTA)
JUDGE

Whether to be referred to reporter? Yes/No

::: Downloaded on - 16-10-2018 16:15:26 :::