

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 684 of 2010

To

TAX APPEAL No. 685 of 2010

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COMMISSIONER OF INCOME TAX - Appellant(s)

Versus

GUJARAT STATE PETROLEUM CORPORATION LTD - Opponent(s)

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Appearance :

MRS MAUNA M BHATT for Appellant(s) : 1,

None for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MS JUSTICE SONIA GOKANI

Date : 16/08/2011

COMMON ORAL ORDER

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

In two separate assessment years, identical issue is raised in these Tax Appeals by the Revenue. The Revenue has challenged the common judgment of the Tribunal dated 13.11.2009 raising following question for our consideration:

*“Whether the Appellate Tribunal is right in law and on facts in confirming the order passed by CIT(A) deleting the addition of Rs.1,55,40,445/- made on account of rental income from properties shown in the income tax return which is liable to be taxed under the provision of Wealth Tax ?”*

Briefly stated the issue arises in following factual background. The respondent company is a State Owned Corporation viz. Gujarat State Petroleum Corporation Limited. The assessee company owned certain immovable properties. Such properties included a constructed building called “Udyog Bhavan” and another guest house called “Hazira Guest House”. The Assessing Officer noted that for the assessment years 1999-2000 and 2000-2001, the assessee had declared properties incomes of

Rs.14,47,700/- and Rs.3,90,653/- respectively, the Assessing Officer therefore formed an opinion that such properties were not used by the assessee for its business and that therefore the value of such properties should be included in the assessable wealth for the purpose of computing wealth tax liabilities. The Assessing Officer, therefore, issued notice to the assessee who contended that the property at Udyog Bhavan was let out to Department of Energy and Petrochemicals, Government of Gujarat for a short period from 01.04.1988 to 31.04.1999 and usages charges of Rs.1,59,000/- was collected. With regard to Hazira Guest House, it was pointed out that the guest house was located at Village Hazira near the exploration of mineral site of the company, the guest house was located at the distance of about 30 K.M. from Surat and was meant for the assessee's own use but only recovered usage charges from the officers of joint venture partners, subsidiary company, group companies and consultants who were required to stay near the work site.

The Assessing Officer, however, discarded such defence and added return down value of Rs.50,80,000/- towards Udyog Bhavan and Rs.1,06,00,000/- towards Hazira Guest House for the purpose of computing wealth tax liabilities, the total sum of Rs.1,57,00,000/- was added combined towards these properties in computing assessing wealth.

The assessee carried the issue in appeal before CIT (A) who deleted the addition accepting the assessee's version that the properties were used preliminary for the purpose of assessee's business and they were neither created nor let out for earning rental income.

Revenue approached the Tribunal by filing Appeal which however confirmed the view of the CIT (A) making following observations:

*“Having heard both the sides, we have carefully gone through the orders of the authorities below. It is pertinent to note that the assessee-company is not engaged in the business of letting out of properties. In the case of Anand Estate Pvt. Ltd. (supra), Anand Estate has leased out its godowns. Therefore, it was held that godowns were not used for business because those were occupied or used by the tenants for their businesses. In the instant case, the assessee-company has let out only a very small portion (i.e. less than 10%) of its office premises to the Directorate of Petroleum, Department of Energy and Petrochemicals and that too under directions from the Government. The main purpose of this arrangement was to have, close liaison with the Directorate of Petroleum, Department of Energy and Petrochemicals in its day-to-day business liability. The decision of the Hon'ble Bombay High Court in the case of Anand Estate Pvt. Ltd. (supra) relied the Id. D.R. pertained to the assessment years 1997-98 and 1998-99 when Clause (5) which was inserted in section 2(ea)(i) of Wealth Tax Act by Finance (No.2) Act, 1998 was not there. In our opinion, this property falls within the exceptions under sub-clause (5) of clause (I) of section 2(ea) because it is in the nature of commercial establishment or complex. Therefore, it is not necessary that it should be used and occupied by the assessee. Such commercial establishment or complex is not includible in that wealth as held by the ITAT, Pune Bench in the case of Satvinder Singh Kalra – vs. - DCWT reported in (2007) 112 TTJ 489 (Pune). In that case, the assessee was having two office premises, which were let out by him and were claimed as specifically exempt from net wealth under section 2(ea)(i)(5) as commercial establishment. The A.O. Treated them as “assets” defined u/s. 2(ea). This was confirmed by the Id. Learned Commissioner of Wealth Tax (Appeals). On further appeal, the Tribunal held that having regard to the nature of property as well as its use, the property can be classified as commercial establishment within the meaning of section 2(ea)(i)(5) and, as such, value thereof is not includible in the net wealth chargeable to tax under the Wealth Tax Act. Therefore, the decision of the Hon'ble Bombay High Court in the case of Anand Estate Pvt. Ltd. (supra) relied by the Id. D.R. is not applicable in this case. Apart from this, in the assessment year 2001-02, the Learned Commissioner of Wealth Tax (Appeals) assessed the rental income under the head “income from business”. This fact is not controverted by the Id.D.R. The guest house at Hazira, Surat is primarily maintained by the assessee for its business purposes and recovery charges for the use of such guest house by officials of joint venture partner and professionals, who rendered services, was rightly regarded by the Learned Commissioner of Wealth Tax (Appeals) as incidental to business activity. Whatever income earned from guest house is also assessed by the Learned Commissioner of Wealth Tax (Appeals) in the assessment year 2001-02 under the head “business”. The guest house maintained at nearby site from where exploration and exploitation of oil resources were carried out by the assessee is maintained for the purpose of business. Therefore, its value is not includible in net wealth of the assessee for both the assessment years*

*under clause (3) as well as clause (5) of section 2(ea)(i) of the Wealth Tax Act, 1957. The view taken by the Learned Commissioner of Wealth Tax (Appeals) in respect of guest-house is-also upheld for both the assessment years.”*

Having heard learned counsel for the Revenue and having perused orders on record, we find that the CIT (A) as well as the Tribunal have both concurrently come to the conclusion that the said two immovable properties were utilized by the assessee for the purpose of its own business. We may recall that the assessee, Government Owned Company, had pointed that the property at Udyog Bhavan was permitted to be used by the Government Officer for the short period and usage charges were collected. It has come on record that only a small portion of properties i.e. less than 10% of the premises were thus used by the Office of the Directorate of Petroleum, Department of Energy and Petrochemicals. This was done by the direction of the Government. The main purpose of this arrangement was to have close liaison with the Directorate of Petroleum. It has also come on record that the guest house at Hazira was located at the distance of 30 K.M. from Surat, it was in the vicinity of the exploration site of the assessee. In the said guest house as per the need of the business, the officer of the joint venture and subsidiary companies and other officers were permitted to reside and in the process usage charges were collected. Principally the guest house constructed for the assessee's own business.

Though the Revenue has heavily relied on the decision in the case of *Anand Estate Pvt. Ltd. Vs. Deputy Commissioner of Income Tax reported in 316 ITR 94*, we may notice that the Tribunal had distinguished the case on the basis of sub-clause (5) of clause(i) of Section 2(ea) of the Wealth Tax Act which was introduced with effect from 01.04.1999.

On cumulative facts on record, we find that CIT (A) and the Tribunal committed no error in holding that both the properties were used by the assessee's own business and not creating rental income.

No question of law arises. Tax Appeals are, therefore, dismissed.

(Akil Kureshi, J.)

(Ms. Sonia Gokani, J.)

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