

**\*IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on : 03<sup>rd</sup> July, 2013  
Judgment pronounced on: 11<sup>th</sup> July, 2013

+ **WTA 1/2013**

COMMISSIONER OF WEALTH TAX ..... Appellant

Through Mr. Kamal Sawhney, Sr.  
Standing Counsel

versus

JAY PEE VENTURES LTD ..... Respondent

Through Nemo

**CORAM:**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

**HON'BLE MR. JUSTICE SANJEEV SACHDEVA**

**SANJEEV SACHDEVA, J.**

1. This is an appeal filed by the Revenue impugning the order dated 30<sup>th</sup> March 2012 passed by the Income Tax Appellate Tribunal whereby the appeal of the Revenue against the order of the Commissioner of Wealth Tax (appeals) dated 24.12.2010 has been dismissed.
2. The assessment year in issue is 2004 – 2005.
3. The question that arises for consideration in the present appeal is whether the aircraft owned by the

Assessee and used for its business would be exempt from wealth tax?"

4. The Assessing Officer vide order dated 31.03.2006 has held that the two aircrafts owned by the Assessee and used for its own business purposes were chargeable to wealth tax. The Assessing Officer while interpreting the provisions of section 2 (ea) (iv) of the Wealth Tax Act - 1957 held that aircraft being used other than for commercial purposes were chargeable to wealth tax. As per the Assessing Officer the aircraft which were either used for running the same for earning business income or held as stock in trade would be exempt from wealth tax but an aircraft used by the Assessee for its own business would not be treated as used for commercial purposes and as per the Assessing Officer aircraft used for transportation of goods of the Assessee's own business or aircrafts used by the directors or any other executive of the company were not to be treated as used for commercial purposes and hence would be treated as an asset for wealth tax purposes. As per the Assessing Officer aircraft used by an airline would be treated as used for commercial purposes. We record and note that the Assessing Officer did not dispute or record that the aircrafts were not used for Assessee's business.

5. Aggrieved by the order dated 31.3.2006 of the Assessing Officer, the Assessee filed an appeal before the Commissioner Income Tax (Appeal). Relying upon the judgement of the Income Tax Appellate Tribunal, Mumbai Bench in the case of *Garware Wall ropes Ltd versus additional Commissioner of income tax (2004) 89 ITD 221 (Mumbai)* the Commissioner Income Tax (Appeal) held that the aircrafts owned by the Assessee were not taxable assets within the meaning of section 2 (ea) (iv) of the Wealth Tax Act.
6. Aggrieved by the said order the Revenue filed an appeal before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal vide its order dated 30 March 2012 has dismissed the appeal of the Revenue as it was not in dispute that the two aircrafts were used by the Assessee for its business. Aggrieved, Revenue has filed the present appeal.
7. The learned counsel for the Revenue submitted that the Assessee was neither in the business of commercially operating the aircrafts for hire nor was holding the same as stock in trade but was using the said aircrafts for the purposes of transportation/travel of its directors and executives and as such the same were not being used for commercial purposes and were not exempt from wealth tax.

8. We find no merit in the submission of the Learned Counsel for the Revenue. Section 2 (ea)(iv) of the Wealth tax act, 1957 lays down as under:

(ea) "assets", in relation to the assessment year commencing on the first day of April, 1993, or any subsequent assessment year means-

.....

(iv) yachts, boats and aircrafts (other than those used by the Assessee for commercial purposes);

9. The term "commercial purposes" has not been defined by the Wealth Tax Act - 1957. The words "used by the Assessee for commercial purposes" have to be understood to mean used by the Assessee for the purposes connected with its business. When the Assessee uses the aircrafts in connection with its business as distinct from using it for personal purposes or non-business purposes, the use of the aircraft would be a use for commercial purposes and would be thus exempt from the purview of wealth tax.

10. When the directors or executives of a company use an aircraft owned by the company to travel to its various offices or to various places for meeting or business purposes connected with the operation and activities

of the company, the use of the aircraft would amount to usage for commercial purposes. In the today's need and requirement for the efficient running of businesses, the directors and executives of a company instead of taking commercial flights prefer to travel by their own aircrafts which in turn saves them time and provides them the flexibility of travelling at short notices to various destinations without having the need to plan in advance. This is a practical necessity and help business grow, expand and generate profit.

11. The use of an aircraft for commercial purposes does not necessarily entail hiring to third parties, ferrying of passengers or leasing of the aircrafts for consideration. The intention of the legislature while creating the exception by using the expression “used by the Assessee for commercial purposes” was not to restrict the meaning of the words “commercial purposes” to running the same on hire or as stock in trade.
12. The use of an aircraft by the executives or directors of a company for the purposes connected with its business would amount to use by the Assessee for commercial purposes. In case the Assessee was using the aircrafts for transporting its directors or executives for excursion purposes or for personal purposes the same would not qualify as use of the aircraft for commercial purposes and would not be exempt from

wealth tax. In the present case the ITAT has recorded that it is undisputed that the two aircrafts were used by the Assessee for its business. Since this is the undisputed factual position, the same would be exempt from wealth tax.

13. Learned counsel for the appellant has submitted that the decision of the tribunal in Garware Wall Ropes Ltd (supra) has not been taken up in appeal in the revenue before the Bombay High Court and has been accepted
14. We find no infirmity in the impugned order of the Income Tax Appellate Tribunal. The appeal being devoid of merit as no substantial question of law arises for consideration and is thus dismissed with no order as to costs.

**SANJEEV SACHDEVA, J.**

**July 11, 2013**

**SANJIV KHANNA, J.**