

(2002) 11 MAD CK 0082

Madras High Court

Case No: Tax Case (Reference) No"s. 83 and 230 of 1998

The Commissioner of Income
Tax

APPELLANT

Vs

Asoka Betelnut Co. Pvt. Ltd.

Asoka Betelnut Co. Pvt. Ltd.
Vs The Commissioner of Income
Tax

RESPONDENT

Date of Decision: Nov. 20, 2002

Acts Referred:

- Finance Act, 1983 - Section 40, 40(3)

Citation: (2003) 180 CTR 178

Hon'ble Judges: N.V. Balasubramanian, J; K. Raviraja Pandian, J

Bench: Division Bench

Advocate: T. Ravikumar, Junior Standing in T.C. No. 83/98 and R. Meenakshi Sundaram, in T.C. No. 230 of 1998, for the Appellant; T. Ravikumar, Junior Standing Counsel in T.C. No. 230 of 1998 and R. Meenakshi Sundaram in T.C. No. 83/98, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

N.V. Balasubramanian, J.

T.C. 83 of 1998 is a reference at the instance of the Commissioner of Wealth Tax with reference to the assessment year 1988-89 of the assessee. The question of law referred by the Income Tax Appellate Tribunal under the Wealth Tax Act reads as under:-

Whether on the facts and in the circumstances of the case the Appellate Tribunal is right in law in holding that property let out by the assessee was not an asset exigible to wealth tax within the meaning of Section 40(3)(vi) of Finance Act, 1983?

2. T.C. 230 of 1998 is a reference at the instance of the assessee and the question of law referred by the Income Tax Appellate Tribunal at the instance of the assessee

for the assessment year 1986-87 reads as under:-

Whether the Tribunal was right in law in holding that the building Asoka Plaza is not to be treated as "plant" of the applicant's business of real estate developing and managing office and commercial complexes duly authorised by the applicant's Memorandum of Association of the company but is to be treated as "Building" chargeable to wealth tax in the hands of the applicant under the provisions of Section 40 of the Finance Act, 1983?

3. It is seen that on the same set of facts, two different Tribunals have arrived at a diametrically opposite view, one holding that the property let out by the assessee was not exigible to Wealth Tax u/s 40(3)(vi) of the Finance Act 1983, but on the same set of facts the Appellate Tribunal for an earlier assessment year though rendered subsequently, took a different view holding that the same property was liable to be taxed under the provisions of Section 40 of the Finance Act.

4. The assessee is a private limited company dealing in manufacture and sale of betelnut as also managing the business of real estates, office premises, shopping and commercial complexes. So far as the assessment year 1986-87 is concerned, the assessee originally filed a "nil" return . Subsequently it filed a revised return claiming that the building Asoka Plaza owned by the assessee was not exigible to wealth tax u/s 40 of the Finance Act 1983, since the same was intended for running a hotel. The Assessing Officer rejected the claim of the assessee and completed the assessment. The Commissioner of Income Tax (Appeals) on appeal upheld the view of the Assessing Officer holding that the building was exigible to wealth tax, but granted some reduction in the valuation of the building. The Appellate Tribunal held that the assessee has constructed 57 units in the complex, viz., Asoka Plaza out of which 55 units constitute shops and one office, which have been let out to tenants on the valuation date and the Tribunal held that the building was liable to be taxed as it was not used for any of the purposes mentioned in Section 40(3)(vi) of the Finance Act, 1983 and dismissed the appeal.

5. As far as T.C. No. 83 of 1998 which is at the instance of the Revenue is concerned, the Appellate Tribunal held that the shopping complex was a commercial asset and the assessee was exploiting the commercial asset by letting it out and the Appellate Tribunal following its earlier order in the case of "Fagun Co.(P) Ltd., .vs. Deputy Commissioner of Wealth" 45 I.T.T.D 117 held that since the business of the assessee was to let out the property, the property used should be considered to be used in the assessee's business and therefore, it was liable for levy under the wealth tax. Both the orders of the Tribunal are the subject matter of the Tax Cases Reference.

6. We heard Mr. T. Ravikumar, learned junior standing counsel for the Income Tax Department and Mr.R.Meenakshisundaram, learned counsel appearing for the assessee. The submission of the learned counsel for the Revenue is that the

building, viz., Asoka Plaza was used by the assessee only as a shopping complex and the shopping complex is not one of the items excluded from the levy of wealth tax and the entire building with the land appurtenant thereto is liable to wealth tax. On the other hand, Mr.R.Meenakshisundaram, learned counsel appearing for the assessee submitted that the property is a commercial asset and the intention of the Legislature when enacting Finance Act 1983 is not to levy wealth tax on the commercial assets. He submitted that the speech of the Finance Minister while introducing the Finance Act 1983 shows that the wealth tax was intended only on the properties transferred to the closely held companies and the levy of wealth tax is limited to levy on the unproductive assets and not on commercial assets. The learned counsel therefore submitted that the commercial asset belonging to the assessee is exempt under the provisions of the Wealth Tax Act. The learned counsel also submitted that the assessee has not claimed exemption u/s 40(3)(vi) of the Finance Act 1983, but the case of the assessee is that since it is a commercial asset, it is not liable to be taxed under the provisions of the Wealth Tax Act. The learned counsel submitted that the commercial complex owned by the assessee is used by the assessee for the business and is not liable to be taxed u/s 40 of the Finance Act.

7. We carefully considered the submissions of the learned counsel for the Revenue and the learned counsel for the assessee. The levy of wealth tax on companies was introduced in the year 1957. Section 13 of the Finance Act 1960 provided that wealth tax is not leviable on company with effect from 1.4.1960. By the Finance Act 1983 the exemption granted to the companies from the levy of the wealth tax was partially withdrawn in respect of certain categories of companies and certain categories of assets and Section 40 provides for the charge of wealth tax from the assessment year 1984-85 onwards in respect of the net wealth of closely held companies. Sub Section 2 of Section 40 of the Finance Act provides that net wealth of such company shall be the amount of aggregate value of all the assets referred to in Sub Section 3 of Section 40 in excess of the aggregate value of all the debts owned by the company on the valuation date which are secured on, or which have been incurred in relation to, the said assets. In other words the Legislature has not brought into tax all the assets belonging to the closely held companies, but in a limited way only certain assets which are listed in Section 40(3) of the Finance Act were brought to tax. The Finance Minister while introducing the Finance Bill 1983 has given the reason for introduction of Section 40 of the Finance Act 1983 and the speech of the Finance Minister reads as under:-

"It has come to my notice that some persons have been trying to avoid personal wealth tax liability by forming closely held companies to which they transfer many items of their wealth, particularly jewellery, bullion and real estate. As companies are not chargeable to wealth tax, and the value of the shares of such companies does not also reflect the real worth of the assets of the company, those who hold such unproductive assets in closely-held companies are able to successfully reduce their wealth tax liability to a substantial extent. With a view to circumventing tax

avoidance by such persons, I propose to revive the levy of wealth tax in a limited way in the case of closely-held companies. Accordingly, I am proposing the levy of wealth-tax in the case of closely-held companies at the rate of 2 per cent, on the net wealth represented by the value of specified assets, such as, jewellery, gold, bullion, buildings and lands owned by such companies. Buildings used by the company as factory, godown, warehouse, hotel or office for the purposes of its business or as residential accommodation for its low paid employees will be excluded from net wealth".

A reading of the speech of the Finance Minister shows that Section 40 of the Finance Act was introduced as a tax avoidance measure and the Sub Section (3) of Section 40 of the Finance Act shows that the levy of wealth tax is not confined to assets transferred to closely held companies by the director of the company or his relatives. Section 40 of the Finance Act shows that it covers not only unproductive assets like gold, silver, platinum, stones, ornaments, utensils but also other properties also like land building appurtenant thereto and motorcars. Hence we are unable to accept the submission of the learned counsel for the assessee that the charge u/s 40 of the Finance Act 1983 is confined to the assets transferred to closely held companies by Director or his relatives as it includes within its sweep all the assets whether commercial or non-commercial belonging to the closely held companies listed in Sub Section 3 of Section 40 of Finance Act.

8. In as far as the items of assets mentioned in Sub Section 3 of Section 40 of the Finance Act are concerned, clause (v) deals with the land other than agricultural land. Clause (vi) deals with the building or land appurtenant thereto and clause (vii) deals with motorcars and clause (viii) deals with any other asset which is acquired or represented by a debt secured on any one or more of the assets referred to in clause (i) to clause (vii). Undoubtedly, the commercial complex, viz., building with the land appurtenant thereto falls within clause (vi) of Sub Section 3 of Section 40 of the Finance Act. We are unable to accept the submission of the learned counsel for the assessee that Section 40(3) of the Finance Act is not intended to cover the commercial asset owned by the assessee. This court in the unreported decision in T.C. No. 60 of 1997 dated 5.9.2002 "The Commissioner of Wealth Tax, Madras .vs. M/s Reliance Motor Co., Ltd., Madras" has taken the view that the motor cars, owned as stock in trade of the dealer are liable to be taxed as the words used in Section 40(3) of the Finance Act 1983, do not preclude the exclusion of stock in trade from the list of assets to be valued for the purpose of wealth tax. This Court also in "[Commissioner of Wealth-tax Vs. Varadharaja Theatres Pvt. Ltd.](#)", has taken the view that unless a business asset is excluded from the scope of Section 40(3)(vi) of the Finance Act 1983, the asset though a business asset would be liable to be taxed as the list is exhaustive and when the list does not exclude a particular asset, the asset would be liable to be taxed under wealth tax. Therefore, the question that is to be seen is whether the shopping complex owned by the assessee falls within the list of the assets mentioned in Section 40(3)(vi) of the Finance Act 1983.

9. Learned counsel for the assessee relied on the decision of the Supreme Court in "[Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad](#), . The Supreme Court was dealing with the question whether the sanitary and pipeline fittings installed in the hotel would constitute a "plant" . We are of the view that the decision of the Supreme Court has no application, as we are concerned with the question whether the building viz., commercial complex owned by the assessee would fall within the clause found in Section 40(3)(vi) of the Finance Act 1983 and therefore, the question whether it is a plant or not is not of much relevance. Learned counsel for the assessee also relied upon the decision of the Kerala High Court in "[Commissioner of Wealth-tax Vs. Mrs. Sara Varghese](#), and the Kerala High Court was dealing with the case of a land which was used for agricultural purposes. The Kerala High Court held that the such land would fall within the definition of the expression "business premises" as defined in Rule 1(i) Para B, Part I of the Schedule to the Wealth Tax Act, 1957. This decision also has no application as we are concerned with the question whether the commercial complex would fall within clause (vi) of Sub Section 3 of Section 40 of the Finance Act, 1983.

10. The next question that arises is whether the assessee is entitled to the exemption in view of the exclusionary clause found in Section 40(3)(vi) of the Finance Act 1983. Section 40(3)(vi) while including the building and the land appurtenant thereto for levy of wealth tax, excludes certain items of assets listed in the Sub Section. In other words, certain specific items of assets are excluded from the scope of levy of wealth tax and the assets so excluded are factory, godown, warehouse, hotel or office used for the purposes of its business. The commercial complex owned by the assessee is not one of the excluded items mentioned in Clause (vi) of Sub Section 3 of Section 40 of the Finance Act. The latter part of the same clause only deals with the building let out to employees and it has no application. The submission of the learned counsel for the assessee that all building used for the purpose of the business is exempt is not acceptable and the acceptance of the said submission would mean that the expression in Section 40(3)(vi) of the Finance Act, factory, godown, warehouse, hotel or office used for the purpose of business would become redundant. Hence, the primary condition for the assessee to claim that certain assets are excluded from levy of tax is that the assets must be the building and the land appurtenant thereto and it should be a factory or a godown or warehouse , hotel or office used for the purpose of business. The commercial complex of the assessee does not fall within any of the excluded items mentioned in Section 40(3) of the Finance Act 1983. We are of the view that since the case of the assessee does not fall within the exclusionary clause mentioned in Section 40(3)(vi) of the Finance Act 1983, the assessee is liable to be taxed on the value of the commercial complex u/s 40(3) of the Finance Act 1983. We affirm the order of the Appellate Tribunal rendered in W.T.A. No. 1020/Mds/1992 for the assessment year 1986-87 which is the subject matter of Tax Case No. 230 of 1998 and we do not approve the reasonings rendered in W.T.A. No. 853/Mds/1992, which is the subject

matter of Tax Case No. 83 of 1998. Accordingly, we answer the questions as under:-

T.C. No. 83 of 1998:- The question is answered in the negative in favour of the Revenue and against the assessee.

T.C. No. 230 of 1998:- The question is answered in the affirmative against the assessee and in favour of the Revenue.

However, in the circumstances, there will be no order as to costs.