
(2006) 09 MAD CK 0236

Madras High Court

Case No: Tax Case (Reference) No's. 371 to 373 and 192 of 2000

The Commissioner of
Wealth-tax

APPELLANT

Vs

Fagun Co. P. Ltd.

RESPONDENT

Date of Decision: Sept. 11, 2006

Acts Referred:

- Finance Act, 1960 - Section 13
- Finance Act, 1983 - Section 3, 40, 40(3)
- Income Tax Act, 1961 - Section 2, 32A, 32A(2)

Citation: (2007) 1 CTC 13 : (2006) 205 CTR 225 : (2006) 286 ITR 297 : (2006) 4 MLJ 836

Hon'ble Judges: V. Dhanapalan, J; R. Balasubramanian, J; P.P.S. Janarthana Raja, J

Bench: Full Bench

Advocate: T. Ravikumar, for the Appellant; R. Meenakshi Sundaram, for Mahalingam Associates, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.

Income Tax Appellate Tribunal (hereinafter referred to as the "Tribunal"), Madras, "D" Bench referred the matter u/s 27(3) of the Wealth-tax Act, as per the direction of this Court in T.C.P. Nos.202 to 205/97 dated 08.09.1998, for opinion of this Court.

2. The facts leading to the above tax cases are as under:

i)The assessee is a company in which the public are substantially interested. It is a closely held company. The relevant assessment years are 1984-85 and 1985-86 and the corresponding valuation dates are 31.03.1984 and 31.03.1985. The issue involved in these appeals relate to the assessment of multi storeyed building belonging to the assessee company. The property is at No.26, Commander-in-Chief Road, Chennai consisting of land to an extent of 26.65 grounds with a six storeyed building on a built-up area of 469 Sq.M. There is also another old building of 818 Sq.M. at the back. Of the total

area of 26.65 grounds, an extent of 10.52 grounds had been taken as land appurtenant to the main building and the balance of 16.3 grounds was treated as vacant land. The building is partly used by the assessee company for its own business and partly let out to various tenants. The Wealth-tax Officer excluded a part of the main building occupied by the assessee for its own business and assessed the rest of the property to wealth-tax. He also rejected the claim of the assessee that the entire building must be exempted as a building used in the business of the assessee.

ii) Aggrieved by the order, the assessee filed an appeal to the Commissioner of Income Tax (Appeals). The C.I.T.(A) upheld the view taken by the Assessing Officer, but granted certain relief which are as follows:

- a) Liabilities to be allowed in computing the net wealth.
- b) A reduction of 15% in the value of the property due to restricted marketability.
- c) Exclusion of the portion of the land appurtenant to the building which was used in the business.

Aggrieved by the order of the C.I.T.(A), further appeals were preferred by the Revenue as well as by the assessee. The Tribunal held that the tenanted portion of the new building was also used in the assessee's business and therefore excluded from the operation of Section 40 of the Finance Act, 1983. The Tribunal also confirmed the order of the C.I.T.(A) on the reliefs granted by the C.I.T.(A), from the value of the property and the Tribunal referred the following questions of law at the direction of this Court.

1. Whether on facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the tenanted portion of the property at No.26, Commander in Chief Road was used in the assessee's business and was, therefore, excludible from the operation of Section 40 of the Finance Act, 1983?
 2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the advance amounts of rental deposits, electricity deposit, water tax and generator deposits, etc., were to be allowed as liabilities in computing the net wealth of the assessee?
 3. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in confirming the orders of the Commissioner of Income Tax (Appeals) regarding exclusion of land appurtenant to the building and reduction of market value of the property on account of restricted marketability?
3. Eventhough there are three questions referred to this Court, we are concerned with Question No.1 alone. The said Question No.1 arising for consideration in the reference, appears to be covered by the Division Bench judgment of this Court consisting of Justice P.D. Dinakaran and Justice K. Raviraja Pandian dated 22.09.2004 in Tax Case No. 207

and 208 of 1999, now reported in [The Commissioner of Wealth Tax Vs. Fagun Estates Pvt. Ltd.](#), in the assessee's own case, for the earlier assessment years. However, when the present case came up for hearing before another Division Bench consisting of Justice N.V.Balasubramanian and Justice P.K. Misra, they expressed a doubt as to the correctness of the earlier bench decision reported in [The Commissioner of Wealth Tax Vs. Fagun Estates Pvt. Ltd.](#), and therefore they requested the Hon"ble the Chief Justice to refer the matter to a larger bench, which reads as follows:

2. We are of the view, the decision requires reconsideration as the facts of the instant case show that the main business of the assessee was letting out its premises, and in the course of its business, the assessee has let out a portion of the building. We are of the view, there are no acceptable reasons why the assessee should be denied the benefit only because it let out a portion of the building for business purpose. In our view, the classification of income under the Income Tax Act under various heads is not of much relevance while considering the question under the Wealth-tax Act, whether a portion of the building let out by the assessee is its business asset or not. We are of the view, the question has to be decided with reference to the provisions of the Wealth-tax Act. Further, the Supreme Court has taken the view that the assessee should not be denied the benefit of investment allowance when the assessee has let out its machinery in the course of its business. We are therefore of the view that the decision relied upon by the learned Counsel for the Revenue (judgment in T.C. Nos.207 & 208 of 1999 dated 22.9.2004) requires deeper consideration and accordingly, it requires reconsideration also. We therefore direct the Registry to place the matter before the Hon"ble the Chief Justice to place the matter before a larger Bench to reconsider the entire issue.

This is how the matter has come before the full bench.

4. Learned Standing Counsel appearing for the revenue submitted that Section 40 of the Finance Act, 1983 clearly provided for assessment of closely-held companies to wealth-tax. Further it was stated that the exemption provided under Clause (vi) of Sub-section (3) of Section 40 of the said Act does not provide for exclusion of the tenanted portion of the building and only the specified assets as mentioned in the said clause alone are exempt and hence, the assessee is not entitled to exemption. The learned Counsel for the revenue relied on the following judgments, to support his proposition.

- i) [Commissioner of Wealth Tax Vs. Reliance Motor Co. Ltd.](#) .
- ii) [Commissioner of Income Tax Vs. Ashoka Betelnut Co. \(P\) Ltd.](#) .
- iii) [K.N. Chari Rubber and Plastics Pvt. Ltd. Vs. The Commissioner of Wealth Tax](#) .
- iv) [The Commissioner of Wealth-tax Vs. B.R. Theatres and Industrial Concerns P. Ltd.](#) .
- v) [The Commissioner of Wealth Tax Vs. Fagun Estates Pvt. Ltd.](#) .

- vi) [Commissioner of Wealth-tax Vs. Vummidi Bangaru Chetty \(P.\) Ltd.,](#) .
- vii) [Commissioner of Wealth Tax Vs. Indian Warehousing Industries Ltd.,](#)
- viii) [Commissioner of Wealth Tax Vs. Cosmopolitan Hospitals \(P\) Ltd.,](#) .

5. Learned Counsel appearing for the assessee submitted that once the assets are commercial assets and used for the purpose of business, the revenue has no right to levy wealth-tax on closely held companies. Here, the Tribunal had given a finding that the assets are commercial assets and also the same is used for leasing business and hence, the assessee cannot be subjected to wealth-tax at all. Learned Counsel further submitted that once it is a commercial asset, it is not subject to Wealth-tax Act and it is not necessary that the assets should come within the exclusionary clause of Section 40(3)(vi) of the Finance Act. He relied on the Bombay High Court judgment reported in [Commissioner of Wealth Tax Vs. Cema \(P.\) Ltd.,](#) Learned Counsel further submitted that while interpreting the provision, the Court must ascertain the intent of the Legislature and for doing so, the speech made by the Finance Minister in Parliament is relevant. However, it was stated that the purpose of introducing the provision is to levy wealth-tax only on unproductive assets held by the closely-held companies. In the present case, the assets are commercial assets and hence no wealth-tax is leviable.

6. Heard both the counsel. It is useful to know the background of the introduction of Section 40 of the Finance Act of 1983. Earlier, wealth-tax was leviable on companies u/s 3 of the Finance Act. Section 13 of the Finance Act, 1960 provided that wealth-tax is not leviable on a company with effect from April 1, 1960. Later, 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. Section 40 provides for the charge of wealth-tax from the assessment year 1984-85 onwards in respect of net wealth of closely-held companies. The wealth-tax is levied at the rate of 2% on the net wealth of the assessee. Later, the Parliament deleted the said provision of Section 40 of the Finance Act with effect from 01.04.1993. The said amendment was introduced by Finance Act of 1992. The purpose of introducing Section 40 of the Finance Act was explained by the then Finance Minister in his budget speech. The said speech is reported in 140 ITR 32, which 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 two 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.

7. It is now necessary to refer to the provision of Section 40 of the Finance Act, 1983 and the same reads as follows:

Revival of levy of wealth-tax in the case of closely-held companies -

(1) Notwithstanding anything contained in Section 13 of the Finance Act, 1960 (13 of 1960), relating to exemption of companies from levy of wealth-tax under the wealth-tax Act, 1957 (27 of 1957) (hereinafter referred to as the Wealth-tax Act), wealth-tax shall be charged under the Wealth-tax Act for every assessment year commencing on and from the 1st day of April, 1984, in respect of the net wealth on the corresponding valuation date of every company, not being a company in which the public are substantially interested, at the rate of two per cent of such net wealth.

Explanation - For the purposes of this sub section, "company in which the public are substantially interested" shall have the meaning assigned to it in Clause (18) of Section 2 of the Income Tax Act.

(2) For the purposes of Sub-section (1), the net wealth of a company shall be the amount by which the aggregate value of all the assets referred to in Sub-section (3), wherever located, belonging to the company on the valuation date is in excess of the aggregate value of all the debts owed by the company on the valuation date which are secured on, or which have been incurred in relation to, the said assets:

Provided that where any debt secured on any asset belonging to the assessee is incurred for, or enures to, the benefit of any other person, or is not represented by any asset belonging to the assessee, the value of such debt shall not be taken into account in computing the net wealth of the assessee.

(3) The assets referred to in Sub-section (2) shall be the following, namely:

- (i) gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals;
- (ii) precious or semi-precious stones whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel;
- (iii) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel;

(iv) utensils made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals;

(v) land other than agricultural land;

(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;

(vii) motorcars; and

(viii) 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).

(4) The value of any asset specified in Sub-section (3) shall, subject to the provisions of Sub-section (3) of Section 7 of the Wealth-tax Act, be estimated to be the price which, in the opinion of the Wealth-tax Officer, it would fetch if sold in the open market on the valuation date.

(5) For the purposes of the levy of Wealth-tax under the Wealth-tax Act, in pursuance of the provisions of this section, -

(a) Section 5, Clause (a) of Sub-section (2) of Section 7 and Clause (d) of Section 45 of that Act and Part II of Schedule I to that Act shall not apply and shall have no effect,

(b) the remaining provisions of that Act shall be construed so as to be in conformity with the provisions of this section.

(6) Nothing in this section shall apply to any institution, association or body, whether incorporated or not and whether Indian or non-Indian, which the Central Government may, having regard to the nature and object of such institution, association or body, specify by notification in the Official Gazette and every notification issued under this sub section shall be laid, as soon as may be after it is issued, before each House of Parliament.

(7) Subject to the provisions of Sub-section (5), this section shall be construed as one with the Wealth-tax Act.

8. We are concerned with Section 40(3)(vi) of the Finance Act. The said Clause was later amended with effect from 01.04.1989, which reads as under:

Building or land appurtenant thereto, other than building or part thereof used by the assessee as factory, godown, warehouse, cinema house, hotel or office for the purposes of its business or as a hospital, creche, school, canteen, library, recreational centre, shelter, rest-room or lunch room mainly used for the welfare of its employees or used as residential accommodation, except as provided in Clauses (via) and (vib), and the land appurtenant to such building or part.

(via)...

(vib)...

(vii)...

(viii)...

Provided that this section shall not apply to any asset referred to in Clause (i), (ii), (iii), (iv), (v) or (vi), which is held by the assessee as stock-in-trade in a business carried on by it or, in the case of motor-cars referred to in Clause (vii), they are held as stock-in-trade in such business or registered as taxis and used as such in a business of running motor-cars on hire carried on by the assessee.

The above mentioned amendment came into effect from 01.04.1989 and therefore we are not dealing with the same. No argument has also been advanced by learned Counsel for the assessee in respect of the effect of the amendment.

9. From a reading of Section 40 of the Finance Act, it is clear that the wealth tax is levied on closely held companies. The wealth-tax is chargeable under the Wealth-tax Act for every assessment year commencing from 01.04.1984. The wealth-tax is chargeable on the assets of the company at the rate of 2% of such net wealth. The explanation also make it clear that "company in which public are substantially interested" shall have the same meaning assigned to, under Clause (18) of Section 2 of the Income Tax Act. Sub Section (2) contemplates the computation of net wealth of the company, which says that the amount by which the aggregate value of all the assets referred to in Sub-section (3), wherever located, on the valuation date is in excess of the aggregate value of all the debts owed by the company on the valuation date. The excess asset over liability on the valuation date is taxable. Sub-section (3) enumerates the assets. Section 40 of the Finance Act indicates that it covers not only unproductive assets like gold, silver, platinum, stones, ornaments, utensils, but also other properties like land and building appurtenant thereto and motor cars. Clause (v) of deals with the land other than agricultural land. Clause (vi) deals with the building or land appurtenant thereto. Clause (vii) deals with motor cars. Clause (viii) deals with any other asset which are acquired or represented by a debt secured on any one or more of the assets referred to in Clause (i)

to Clause (vii). It is no doubt that only certain commercial assets alone are mentioned for the purpose of exemption. It does not exempt all the commercial assets. Clause (vi) of Sub-section 3 of Section 40 of the Finance Act, specifically excludes buildings or part thereof used by the assessee as factory, godown, warehouse, cinema house, hotel or office for the purposes of its business or as residential accommodation for its employees and it also provides for exclusion of buildings or part thereof used 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.

10. Unless and until the assets are used by the assessee as factory, godown, warehouse, hotel or office, the assessee cannot claim exemption under the provision. These specified assets alone are excluded from taxation. The assets other than the specified assets in the exclusionary clause, are not entitled for exemption. The assessee, in this case, let out a portion of the building to various tenants. The let out portions are not coming under any of the specified assets mentioned earlier. Business of the assessee is leasing out the assets and hence the assets are commercial one. Eventhough the assets used are commercial assets, still the assessee is not entitled to exemption unless the assets come within the specified assets mentioned in the said Clause (vi) of Sub-section (3) of Section 40 of the Finance Act. It is noted that Parliament has clearly specified the assets which are excluded under the said clause. All the commercial assets are not exempt from the purview of the Wealth-tax Act. If the intention is to exclude all the commercial assets, the wording in the provision would be different. The Parliament need not enumerate various assets for exclusion. If they want to exclude commercial assets from the purview of Wealth-tax Act, the section would be that all commercial assets used for the purpose of the business is exempt or excluded from wealth-tax. Instead of using the same, they have only picked and chosen the specified assets for the purpose of excluding from wealth-tax. So, the intention of the Parliament is also very clear to exclude only particular type of buildings used as factory, godown, warehouse, hotel or office and also residential accommodation for its employees, buildings or part thereof used 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. Clause (vi) of Sub-section (3) of Section 40 is very plain, clear, unambiguous and it is also specific. When the statute is plain, clear, unambiguous and specific, it is not necessary to rely on the statement of object and reason or refer to the speech made by the Finance Minister. The argument of the learned Counsel for the revenue relying on the Finance Minister's speech for the purpose of introducing the impugned provision is not relevant, as the impugned provision is plain, clear, unambiguous and specific. The statement of objects and reasons should be used only for limited purposes and cannot be used to construe the provisions of statute. When the words in the statute are clear, it is not open to the Courts to fall back upon statement of objects and reasons and to construe the provisions of the Act in the light of the statement of objects and reasons. The Supreme Court judgment reported in [State of Haryana and Another Vs. Chanan Mal and Others](#), , held that the statement of objects and reasons cannot control the plain and obvious meaning which the

sections, obviously convey; it cannot be referred to as an aid to interpretation when the language of the operative provisions of the Act is clear and unambiguous. The Supreme Court judgment reported in [P.V. Narsimha Rao Vs. State \(CBI/SPE\)](#), held that the speech of the Minister should not be looked into, except for the limited purpose of ascertaining the mischief which the Act seeks to remedy. Normally, the Courts will not rely on statement of Minister or explanatory notes on clauses of a bill for construing the provision except in cases where the language is vague, capable of different interpretations. When the statute is ambiguous, uncertain, clouded or more than one meaning, the external lights if any, which the statute was intended to remedy or of the circumstances that led to the passing of the statute may be looked into for the purposes of ascertaining the object which the Legislature had in view in using the words of question. A statutory provision must be construed, if possible, to see that absurdity and mischief should be avoided. Where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the Court may modify the language used by the legislature or even do some violence to it, so as to achieve the obvious intention of the legislature and produce a rational construction. The Court can rely on the speech made by the mover of the Bill explaining the reason for its introduction for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation is enacted. When the statute is plain, clear, unambiguous and specific, the argument of the counsel for the assessee, to resort to any interpretative process to unfold the legislative intent, becomes impermissible. The need for relying on external aids arises only if the statute is ambivalent. The Court will not refer to intention of the Legislature, debate in the Parliament, speech of the Finance Minister and notes on clauses, if the statute is plain, clear, unambiguous and specific. Recently, the Supreme Court in the case of [K.P. Sudhakaran and Another Vs. State of Kerala and Others](#), held that the alleged intention behind a provision could not be used to defeat the express words of the provision. Once, statutory rule is made without providing any exceptions, no exceptions can be carved out to such rule by judicial interpretation. All that the Court has to see at the very outset is what does that provision to say. If the statute is clear, plain, specific and unambiguous, the Court need not call into aid the other rules of Constitution of Statutes. We are of the view that Section 40(3)(vi) of the Finance Act, is plain, clear, unambiguous and specific and hence, referring the Finance Minister's speech in introducing the provision is not relevant for the purpose of interpretation. Hence, the argument of the counsel for the assessee is rejected.

11. It is useful to refer to this Court judgment reported in [Commissioner of Income Tax Vs. Ashoka Betelnut Co. \(P\) Ltd.](#), wherein it was held that unless the business assets fall within the exclusionary clause of Section 40(3)(vi) of the Finance Act, 1983, the business assets would be liable to be taxed under the Wealth-tax Act, 1957. In that case, there was a claim that the building owned by it was not exigible to wealth-tax u/s 40 of the Finance Act, 1983. So, the main argument advanced by the assessee was that the shopping complex was a commercial asset and the assessee was exploiting the

commercial asset by letting it out. Hence, the property used should be considered to be used in the assessee's business and therefore it was not liable for levy under the wealth-tax. The Court rejected the contention and held that Section 40 of the Finance Act, 1983 covers not only unproductive assets like gold, silver, platinum, stones, ornaments, utensils but also other properties like land and the building appurtenant thereto and motorcars. Hence, the commercial complex owned by the assessee, namely, building with the land appurtenant thereto, fell within Clause (vi) of Sub-section (3) of Section 40 of the Finance Act, 1983 and it did not fall within any of the excluded items mentioned in Section 40(3)(vi) of the Finance Act. Therefore, it was held that the assessee was liable to be taxed on the value of the commercial complex u/s 40(3). Merely because the assets are commercial assets, it does not mean that the assets are exempt from wealth-tax. The view expressed by the above judgment is in accordance with law and we fully agree with the said judgment. It is also held in the said judgment as follows:

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 learned Counsel for the assessee that all buildings used for the purpose of the business are 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 the 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.

12. Learned Counsel appearing for the assessee relied on the Bombay High Court judgment reported in [Commissioner of Wealth Tax Vs. Cema \(P.\) Ltd.](#), wherein it was held as follows:

The Tribunal, on facts, came to the conclusion that the abovementioned office premises was a business asset not liable to wealth-tax. That, merely because the said office premises have been leased out for five years, did not change the commercial character of

the said asset. Apart from the order of the Tribunal which is passed, on facts, we ourselves examined the returns filed by the assessee right from the assessment year 1985-86 which clearly indicate that even under the Income Tax Act, the assessee has been given the benefit of depreciation and the income received by the assessee has been treated as income from business. Taking into account the above facts and circumstances of the case, we are of the view that a pure finding of fact has been recorded by the Tribunal. Hence, no interference is called for. Appeal dismissed.

With great respect, we are unable to agree with the view of the Bombay High Court judgment cited supra. They have not considered the scope of Section 40 of the Finance Act, 1983. The reasons given in the said Bombay High Court judgment that the assets are not includible in the net wealth of the assessee are:

- a) It is a commercial asset.
- b) The assessee was given the benefit of depreciation.
- c) Income received by the assessee by letting out of the commercial asset had been treated as income from business.

The above reasons are not at all relevant for wealth-tax purposes. The computation under the Income Tax and the wealth-tax are different. Under the Income Tax Act, there are five heads of income and the income has to be computed on the basis of the heads of income. While computing the income, there are various exemptions and deductions provided under the Income Tax, and also for the purpose of claiming deduction or exemption, there are various conditions stipulated and the Assessing Officer has to consider the provision of the Act and allow deduction. As far as the wealth-tax is concerned, what are all the assets chargeable under the Wealth-tax Act, will be taken into consideration and if any asset is exempt as per the provisions, the same is exempted. The Income Tax computation has no basis in computing the wealth of the assessee. In our opinion, the criteria mentioned in the Bombay High Court judgment is not at all relevant for the purpose of excluding from wealth-tax, unless the assets come within the exclusionary clause as contemplated u/s 40(3)(vi) of the Finance Act and hence, even though the let out portion is a commercial asset, it is not exempt because the same is not coming within the scope of exclusionary clause contemplated u/s 40(3)(vi) of the Finance Act. Hence, we are unable to agree with the view of the Bombay High Court judgment cited supra.

13. In the case of [Commissioner of Income Tax, Karnataka, Bangalore Vs. M/s. Shaan Finance \(P\) Ltd., Bangalore](#), the Apex Court held as follows:

We have already set out the three requirements of Section 32A(1) which entitle an assessee to claim investment allowance. One of the requirements is that the machinery must be wholly used for the purpose of such assessee's business. When the business of the assessee is leasing of such machines, the machines so leased out are being used for

the purpose of the assessee's business. The income by way of hire charges which the assessee receives is also taxed as business income of the assessee.

The above judgment considered the scope of Section 32A of the Income Tax Act and held that the assessee is entitled to the investment allowance on plant and machinery let out to the third parties. Further it was held that the let out plant and machinery, were used in the business of leasing. Hence, the Apex Court granted investment allowance u/s 32A of the Income Tax Act. In the present case, the Article of Association indicates the main object, which is extracted hereunder:

2. To acquire by purchase, lease, exchange or otherwise farms, lands, buildings and hereditaments of any tenure of description and any estate or interest therein, and any rights over or connected with lands so situated and to turn the same to account as many seem expedient and in particular by preparing building sites and by constructing, reconstructing, altering, improving, decorating, furnishing and maintaining offices, flats, houses, hotels, restaurants, shops, factories, warehouses, wharves buildings works and conveniences of all kinds and by consolidating or connecting or subdividing properties and by leasing and disposing of the same.

From the object, it is clear that the assessee is carrying on leasing business. No doubt the assets are used in the leasing business. Section 40 of the Finance Act levy tax on the assets as enumerated under the provision and only the assets that are excluded under the exclusionary clause alone will be entitled to the exemption. If the leasing company let out factory, building or warehouse as stated in the exclusionary clause, the assessee is certainly entitled to the relief. All the leasing assets are not entitled to exemption unless the same comes under any of the specified assets, for example, if the assessee lets out the specified assets like factory, godown or warehouse in the leasing business, certainly it will come within the exclusionary clause. It is useful to refer to the Madras High Court judgment in the case of [Commissioner of Wealth Tax Vs. Indian Warehousing Industries Ltd.](#), which held as follows:

The Supreme Court in the said case had observed that a leasing company which owns machinery and leases such machinery to third parties for manufacture of articles is entitled to investment allowance of such machinery u/s 32A of the Income Tax Act. Even though at the first glance such decision appears to support the contention of the assessee, but on deeper scrutiny, we are of the view that the ratio of the said decision is not applicable to the present case. To attract the provisions u/s 32A, as observed by the Supreme Court, the assessee must satisfy the following conditions (page 312):

(1) the machinery should be owned by the assessee;

(2) it should be wholly used for the purposes of the business carried on by the assessee and

(3) the machinery must come under any of the categories specified in Sub-section (2) of Section 32A.

The relevant provision in Section 32A is to the effect that the machinery should be wholly used for the purpose of the business carried on by the assessee. Even though it can be said that leasing out of godowns was for the purpose of carrying out of the business by the assessee in the present case, as per Section 40(3)(vi) there is an additional requirement that the building should be used by the assessee as godown or warehouse for the purpose of its business. The nature of use by the assessee as godown or warehouse is an important aspect. There is no such similar provision contained in Section 32A of the Income Tax Act. The ratio of the Supreme Court is, therefore, inapplicable to the present case.

In Wealth-tax Act, in computing the net wealth of the assets, all commercial assets as per the provision of Section 40 of the Finance Act are taxable and only particular assets as specified in the exclusionary clause alone are exempt from taxation. If the leasing companies let out the factory, warehouse or godown, the same is exempt from taxation. The Supreme Court judgment in the case of C.I.T. v. Shaan Finance Limited cited supra, held that the assessee is entitled to investment allowance u/s 32A of the Income Tax Act on the ground that the let out plant and machinery were used for the purpose of the leasing business and the income derived from leasing out, was assessed under the head "Income from business". As the conditions enumerated in Section 32A of the Income Tax Act were satisfied, the Supreme Court granted investment allowance. Section 32A of the Income Tax Act reads as follows:

32A. (1) In respect of a ship or an aircraft or machinery or plant specified in Sub-section (2), which is owned by the assessee and is wholly used for the purposes of the business carried on by him, there shall, in accordance with and subject to the provisions of this section, be allowed a deduction, in respect of the previous year in which the ship or aircraft was acquired or the machinery or plant was installed or, if the ship, aircraft, machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that previous year, of a sum by way of investment allowance, equal to twenty-five per cent of the actual cost of the ship, aircraft, machinery or plant to the assessee:

In the Finance Act, the relevant provision in Section 40(3), reads as follows:

(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;

In both the provisions, one of the conditions to be satisfied by the assessee is that, the assets must be used in the assessee's business. There is no dispute in the present case that the let out assets are used in the leasing business. That alone is not sufficient to claim exemption from the Wealth-tax Act. The yardstick of the Income Tax Act cannot be applied in the present case for the purpose of exemption under the Wealth-tax Act. The exemptions or exclusionary clause are different from granting deduction or allowance under the Income Tax Act. Not all the business asset used in the business are exempt from the purview of the wealth-tax. Once the let out assets comes within the specified clause as contemplated u/s 40(3)(vi) of the Finance Act, the assessee is certainly entitled to exemption from Wealth-tax Act. The Division Bench judgment of this Court reported in [Commissioner of Wealth Tax Vs. Indian Warehousing Industries Ltd.](#), following the principles enunciated by this Court judgment reported in [K.N. Chari Rubber and Plastics Pvt. Ltd. Vs. The Commissioner of Wealth Tax](#), held that, as per Section 40(3)(vi) of the Finance Act, there is an additional requirement that the building should be used by the assessee as godown or warehouse for the purpose of its business. We are of the view that the let out assets are used by the assessee in its leasing business. If the leased out assets such as, godown, warehouse, hospital or other assets, come within the specified assets in Clause 40(3)(vi) of the Finance Act, certainly the assessee is entitled to the exemption, because the same is used in leasing business. The view of the Division Bench judgment that the leased assets are not used for the purposes of business, is contrary to the Supreme Court judgment cited supra. Hence, we are unable to agree with the Division Bench judgments reported in [K.N. Chari Rubber and Plastics Pvt. Ltd. Vs. The Commissioner of Wealth Tax](#), and [Commissioner of Wealth Tax Vs. Indian Warehousing Industries Ltd.](#), In the present case, the let out portion are not coming in any of the specified assets. Hence, the earlier judgment reported in [The Commissioner of Wealth Tax Vs. Fagun Estates Pvt. Ltd.](#), is correctly decided. The remaining judgments relied on by the learned standing counsel for the revenue are not relevant to the facts of the present case and hence we are not referring the same. Hence, 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 tenanted portion of the building u/s 40 of the Finance Act, 1983.

14. In view of the foregoing reasons, the question No.1 referred to us is answered in favour of the revenue and against the assessee. Question Nos.2 and 3 are referred back to the Division Bench as they are not the subject matter of the Full Bench. No costs.