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**(1991) 05 BOM CK 0018**

**Bombay High Court**

**Case No:** Wealth-tax Reference No. 21 of 1978

Commissioner of Wealth Tax

APPELLANT

Vs

Miss. Sudha P. Patel and another

RESPONDENT

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**Date of Decision:** May 3, 1991

**Acts Referred:**

- Wealth Tax Act, 1957 - Section 2, 27(1)

**Citation:** (1992) 196 ITR 8

**Hon'ble Judges:** T.D. Sugla, J; B.N. Srikrishna, J

**Bench:** Division Bench

**Advocate:** Dr. V. Balasubramanian, Smt. Shobha Jagtiani, for the Appellant;

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### **Judgement**

B.N. Srikrishna J.

1. This reference has been made by the Tribunal u/s 27(1) of the Wealth-tax Act, 1957, at the instance of the Revenue and pertains to the assessment years 1968-69 to 1974-75. The question referred for the opinion of this court is :

"Whether, on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that the right of occupation or use of the premises granted by the company to the assesses did not demand any market value and, consequently, in upholding the order of the Appellate Assistant Commissioner ?"

2. The reference is a consolidated reference in respect of two assesses whose are sisters, the cases of both the assesses being identical. The two assesses jointly acquired by purchase 100 shares of Rs. 100 each in a company named M/s. Shyam Estates Pvt. Ltd. (herein referred to as "the company"). The shares of the company were purchased by the two assesses from a partnership firm styled M/s. Tulsidas V. Patel. By virtue of the holding of these shares, together with a deposit of Rs. 1,80,000 and upon a further deposit of Rs. 5,000, the assesses obtained the right to occupy the whole of the fourth floor of the property known as Udyog Bhavan

situated at Ballard Estate in Bombay. In addition to the aforesaid amounts, the assesses were also required to pay a monthly compensation which was to be determined by the directors of the company according to the articles of association and further payments on account of taxes and other items of expenditure.

3. For the relevant years, the compensation paid by the assesses for the portion of the property occupied by them, an area admeasuring approximately 5,000 sq. ft was Rs. 42,000. The assesseees, in turn, allowed the use of the premises by a firm by the name Central Gulf line Agency, from whom they recovered total compensation of Rs. 1,10,000 per year. The Wealth-tax Officer concluded that the assesseees' right of occupation of the premises belonging to the company was a valuable right and constituted an asset of the assesseees in computing the wealth-tax. He determined the value of the said right of occupation by taking the compensation received by the assesseees minus the compensation paid by the assesseees and, after deducting the expected yield on the amounts deposited and a further four per cent for the other expenses, he arrived at a net figure of Rs. 47,736 which he capitalised at 10% interest to Rs. 4,77,360 as the value of the asset enjoyed by the assesseees. He added half the said amount to the wealth of each assessee during the assessment proceedings.

4. The assesseees objected in appeal to the inclusion of any amount on account of the right of occupation of the premises; the Appellate Assistant Commissioner, accepting their contention, deleted the value thereof in computing their net wealth. In the appeal preferred by the Department, the Tribunal considered the matter in greater detail. It examined the terms of the agreement under which the assesseees were entitled to occupy the premises, and took the view that the right conferred on the assesseees under the agreement was only a leave and licence to use the premises and not any interest or title therein and, having regard to the nature of the licence under law, the Tribunal held that the said right was not a right of a substantial nature so as to constitute property, but was merely a licence which also was precarious as it was dependent upon the payment of compensation determined from time to time by the directors of the company and subject to restrictions on use. The fact that the assesseees had utilised to their advantage, such right was held irrelevant and incapable of enlarging and altering the extent and/or quantum of the right so as to make it substantial or an interest in property. In this view of the matter, the Tribunal held that the right of occupation of the premises granted by the company to the assesseees did not command any market value and, consequently, upheld the deletion of the addition made by the Wealth-tax Officer in this behalf. The reference has been made at the instance of the Revenue as aforesaid.

5. Dr. Balasubramanian, learned counsel for the Revenue, seriously assailed the view taken by the Tribunal that the right of occupation and use of the premises granted by the company to the assesseees did not command any market value. He pointed out that considering that the property was situate in a prime locality in Bombay and,

as demonstrated by the facts, that the assessee had been able to obtain compensation which was almost thrice the compensation paid by them for permitting Central Gulf line Agency to occupy the premises, the market value of the right of occupation was undeniable. He contended that wealth-tax was leviable under the Act on net wealth and net wealth meant the aggregate of the assets belonging to the assessee on the valuation date, excluding the aggregate value of the assets specifically excludible u/s 2(n) of the Act. He pointed out that the section 2(e) of the Act defines the expression "assets" as under :

""assets" includes property of every description, movable or immovable, but does not include, -...."

6. He contended that this definition is an inclusive one, and, therefore, anything that amounts to property of every description, movable or immovable, would fall within its ambit, unless specifically excluded from the definition. He, therefore, contended that it was not incontestable that the right of occupation of a large premises in a prime locality in Bombay was valuable property and could not be excluded from the assessable wealth of the assessee.

7. Mrs. Jagtiani, learned counsel appearing for the assessee, on the other hand, contended that the occupation of the premises was subject to restrictive conditions and, therefore, it amounted to no interest in property and its market value was nil. She took us through the memorandum of association and articles of association of the company as well as the agreement between the company and M/s. Tulsidas V. Patel under which the right of occupation of the premises was granted.

8. We have been taken through the facts in great detail. From the articles of the association of the company and the agreement, what emerges is this : Any shareholder holding such number of shares as may be allotted by the directors of the company has a right of occupation, either by himself or through his nominee or nominees to be approved by the directors, of a specified portion of the immovable property upon the terms contained in the agreement to be entered into between the company and the shareholder. The terms of the agreement make it clear that the shareholder, apart from holding the shares, is required to deposit and keep deposited with the company a specified amount permanently. The shareholder has the right under the agreement to occupy the premises allotted to him either by himself or to transfer or permit or to nominate any other person of his choice to occupy the said premises. Though it is true that the agreement provides that the nominee shall be approved by the directors of the company, the agreement also provides that consent to such transfer shall not be unreasonably withheld. The shareholder is free to change his nominees from time to time and collect from them such compensation as he pleases. What is peculiar about the agreement is that it is to remain in force for an indefinite period till the shareholder ceases to hold the requisite number of shares. As and when the shareholder sells his share to any other person, he shall make it a condition to the purchaser that the purchaser shall

pay to the shareholder the amount equivalent to the amount given by the said shareholder for deposit with the company and, after receiving information from the shareholder, the company shall transfer the amount of deposit in its books to the name of the purchaser. It is on these facts and in these circumstances that the contention is advanced on behalf of the assesseees that the right which the shareholders (assesseees) obtained had no market and, therefore, was not an "asset" within the meaning of section 2(e) of the Wealth-tax Act.

9. In our view, the contention advanced on behalf of the assessee is unsound and had to be rejected. We agree with the contention of the learned counsel for the Revenue that the definition of the term "assets" in section 2(e) is an inclusive definition and anything that amounts to "property" would fall within its ambit, unless specifically excluded by the Act. The concept of property is no longer what it used to be. As Pollock J., observed in *Smelting Co. of Australia v. Commissioners of Inland Revenue* [1896] 2 QB 179, "the term "property" is one of very general meaning and comprehensiveness. It cannot be precisely defined". As the Supreme Court observed in [J.K. Trust, Bombay Vs. Commissioner of Income Tax, Excess Profits Tax, Bombay City](#), "property is a term of the widest import and subject to any limitations or qualifications which the context may require, it signifies every possible interest which a person can acquire, hold or enjoy." Similar view has been expressed in the judgement of the Gujarat High Court in [Commissioner of Wealth Tax Vs. Raipur Manufacturing Co. Ltd.](#), of the Patna High Court in [Maharaj Kumar Kamal Singh Vs. The Commissioner of Wealth Tax](#), and of the Bombay High Court in [Commissioner of Wealth-tax Vs. V.M. Shah](#).

10. In a recent judgment delivered by us on April 25, 1991, in Income Tax Reference No. 108 of 1977 and Income Tax Reference No. 216 of 1977, *Shree Nirmal Commercial Ltd v. CIT* [1992] 193 ITR 694, we had occasion to consider a somewhat similar situation, though in the context of the Income Tax Act. Although, in the said cases, the deposits were refundable, considering the indefinite period for which the deposits were to be held, we have taken the view therein that such deposits were really in the nature of consideration for sale of the occupancy right of premises. In the present cases also, we are of the view that, despite the assertion in the agreement between the company and the shareholder that the agreement created no interest whatsoever in the property, whatever right was obtained by the assesseees as a result of the agreement, viz., the right to occupy the allotted premises by themselves or through their nominee, was property within the meaning of the said word as used in the definition of the expression "assets" in section 2(e) of the Wealth-tax Act. In as much as the said right was transferable for consideration, the said right had a market value and, therefore, the Tribunal was in error in taking the view that the said right had no market value and did not constitute part of the wealth of the assesseees. We are conscious of the fact that the right enjoyed by the assesseees was subject to restrictions. But these restrictions, in our judgement, may, perhaps, affect the valuation thereof but do not destroy its character as an asset.

11. Learned counsel for the assesseees relied on the judgment of the Supreme Court in the case of [F. S. Gandhi \(Dead\) by LRs. Vs. Commissioner of Wealth tax, Allahabad](#), in support of his submissions. In our view, this judgement has no application to the facts before us, as it pertained to a case of a tenant holding over after expiry of the lease and who was liable to be evicted at the end of the month. In the instant case, we have a right of occupation which is of indefinite duration and is also transferable for valuable consideration. We, therefore, do not think that the judgement of the Supreme Court in [Faridabad Complex Administration Vs. Yadu etc.](#), has any relevance to the case of the assesseees.

12. In the result, we answer the question referred to us in the negative and in favour of the Revenue.

13. There will be no order as to costs.