

GIRIDHAR G. YADALAM

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v.

COMMISSIONER OF WEALTH TAX & ANR.

(Civil Appeal No. 728 of 2011)

JULY 24, 2015

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[A. K. SIKRI AND R. F. NARIMAN, JJ.]

Wealth Tax Act, 1957: s.2(ea)(v), Explanation 1(b) – Urban land – Exemption to wealth tax – Held: Benefit of exemption in respect of urban land is available only when the building is fully constructed and not when the construction activity has merely started – In the instant case, assessee is not entitled to benefit of exemption under the clause as the building was still under construction during the assessment year.

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Interpretation of Statutes: Taxing statute – Held: In taxing statute, it is the plain language of the provision that has to be preferred where language is plain and is capable of one definite meaning.

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Disposing of the matters, the Court

HELD: 1. The plain language of the provision in question conveys that the benefit of the said clause would be applicable only in respect of the building 'which has been constructed'. The expression 'has been constructed' obviously cannot include within its sweep a building which is not fully constructed or in the process of construction. The opening words of clause (ii) also become important in this behalf, where it is stated that 'the land occupied by any building'. The land cannot be treated to be occupied by a building where it is still under construction. In taxing statute, it is the plain language of the provision that has to be preferred where language is plain and is capable of one definite meaning.

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- A** **Strict interpretation to the exemption provision is to be accorded, which is the case at hand. The purposive interpretation can be given only when there is some ambiguity in the language of the statutory provision or it leads to absurd results. There is no ambiguity as such in the present case. [Para 16] [551-G-H; 552-A-B, E-G]**

M. Nizamuden v. Chemplast Sanmar Limited and Ors. (2010) 4 SCC 240 : 2010 (3) SCR 315 – referred to.

C **Case Law Reference**

2010 (3) SCR 315 referred to. **Para 11**

CIVILAPPELLATE JURISDICTION: Civil Appeal No. 728 of 2011.

- D** From the Judgment and Order dated 21.03.2007 of the High Court of Karnataka at Bangalore in WTA No. 25 of 2006.

WITH

- E** C.A. Nos. 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780 OF 2011

SLP(C) Nos. 19011 and 19012 of 2012 .

- F** Gopal Jain, Sr. Adv., Ms. Chinmayee Chandra, Ms. Khushboo Bari, Mrs. Nandini Gore, Kartik Bhatnagar, Ms. Trishula Kulkarni, M/s. Karanjawala & Co., Advs. for the Appellant.

- G** Rupesh Kumar, S. A. Haseeb, Mrs. Anil Katiyar, Ms. Sadhna Sandhu, Vikash Malhotra, Ms. Swarupama Chaturvedi, B. V. Balaram Das, Abhijat P. Medh, Advs., for the Respondents.

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The Judgment of the Court was delivered by A

A. K. SIKRI, J. 1. In these cases, we are concerned with the interpretation that is to be accorded to the provisions of Explanation 1(b) to Section 2(ea)(v) of the Wealth Tax Act, 1957 (hereinafter referred to as the 'Act'). This Explanation defines 'Urban Land'. Urban land is exigible to wealth tax under the aforesaid Act. However, the definition of 'urban land' in explanation 1(b) excludes certain category of lands. As per Explanation 1(b) to Section 2(ea)(v), 'urban land' to mean land situate – but does not includes:- B

(i) land classified as 'agricultural land' in the records of the Government and used for agricultural purposes or land on which construction of a building is not permissible under any law for the time being in force in the area in which such land is situated; or C

(ii) the land occupied by any building which has been constructed with the approval of the appropriate authority; or D

(iii) any unused land held by the assessee for industrial purposes for a period of two years from the date of its acquisition by him; or E

(iv) any land held by the assessee as 'stock-in-trade' for a period of ten years from the date of its acquisition.

2. To put it pithily, what calls for interpretation is clause (ii) above, namely, what is the meaning that is to be attributed to the expression "the land occupied by any building which has been constructed with the approval of the appropriate authority." F

3. In the context of these appeals the question is as to whether the land would be excluded from the 'urban land' only when building is completely constructed thereupon or it would be covered by the aforesaid clause even if the building activity is started and the building is not yet complete. G

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A 4. Civil Appeal No.728/2011 has arisen from the
judgment of Karnataka High Court which has been filed by
the appellant/assessee (hereinafter referred to as the
'assessee'). It has taken the view that from the plain language
of the aforesaid clause, the building has to be completely
B erected on the land in order to get it covered by exclusion
clause.

5. In the appeals which are filed by the Revenue,
challenge is to the orders passed by the Kerala and Madras
High Courts which have taken a contrary view. From this
C narration, it becomes clear that there is one common issue
and that was the reason for hearing of these appeals together.

6. Mr. Gopal Jain, learned senior counsel appeared for
the assessee in the lead matter i.e. Civil Appeal No.728/2011.
D For the sake of brevity we would take note of the facts from
this appeal:

Assessee herein is the HUF which is the co-owner of a
land measuring 30,663.04 sq. metres, situated at Survey
No.67/2, 67/3, 67/4 and 67/5 of Adugodi Village and a portion
E of Survey No. 151 of Kornamangala Village of Begur Hobli of
Bangalore South Taluq, Bangalore District, bearing City
Survey No. CTS/2. The assessee entered into various
development agreements with one M/s. Prestige Estates
Properties Private Ltd. for construction of residential flats. The
F development agreement was considered by the assessing
officer in the course of assessment proceedings. Assessee
claimed that it had retained ownership of the land until flats
are fully constructed and possession of the assessee's share
was handed over to it. The development agreement constituted
G only permissive possession according to the assessee for the
limited purpose of construction of flats. Assessee contended
that assessee continues to be the owner of the land for the
Financial Years 1995-96 and subsequent years till the sale of
flats. Notice under Section 17 of the Act was issued to the

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assessee and he filed return of wealth of Rs.8,48,000/- on 20.08.2003. After considering the contention to treat the property as urban land and brought it to tax under an order dated 31.03.2005, an appeal was filed before the Assistant Commissioner of Wealth Tax (Appeals), Bangalore. The appeal stood allowed in the light of an earlier order of the Tribunal. Revenue thereafter filed an appeal to the Tribunal. The Tribunal following its decision in WTA No. 4-5/B/03 dated 22.03.2004 dismissed the appeal filed by the Revenue. The Revenue took up the matter in further appeals before the High Court of Karnataka. The High Court has upset the order of the ITAT holding that the assessee is not entitled to the benefit of clause (ii) of Explanation 1(b) to Section 2(e)(a)(v) of the Act, as the building had not been constructed and was still under construction during the Assessment Year.

7. It is not in dispute that 'urban land' is to be included to calculate 'net wealth' for the purpose of wealth tax under the Act. However, certain lands are not to be treated as 'urban land' which are mentioned in Explanation 1(b). But Section 2(e)(a) of the Act was inserted by the Finance Act 1992 (Act No.18/1992) w.e.f. 01.04.1993. The purpose was to exempt some of the lands from wealth tax with the objective of stimulating investment in productive assets. It is in the context that the land occupied by any building which has been constructed with the approval of the appropriate authority is excluded from the definition of urban land. On a plain reading of the said clause it becomes clear that in order to avail the benefit, following conditions have to be satisfied:

- (a) The land is occupied by any building;
- (b) Such a building has been constructed;
- (c) The construction is done with the approval of the appropriate authority;

8. Notwithstanding the aforesaid plain language, an endeavour of Mr. Gopal Jain is to impress upon us to read the

A said clause to include even that land where the construction of building activity has been started. He, thus, wants that the words 'has been constructed' is to be read as 'is being constructed'. His attempt to persuade us is predicated on the following premise.

B Mr. Jain argued that the clause added purposes-
interpretation i.e. the objective for which this clause was added, namely, to stimulate investment in productive assets, has to be kept in mind. In this behalf, he argued that Explanation 1(b) has carved out exceptions/exemptions based on the object
C and purpose of the amendment to the Wealth Tax Act in 1992. These exceptions have to be construed in line with the legislative intent at the time which Section 2(ea) was inserted, which was to stimulate investment in productive and non-productive assets and only specified assets were subject to
D wealth tax. On that premise, he emphasised that in each of the aforesaid clauses this objective was kept in the forefront. Qua Exception (I) he stressed that where land is classified as 'agricultural' and used for agricultural purposes, it will not fall within the definition of 'urban land' and is exempted from wealth
E tax. Agricultural land, although vacant, if put to agricultural use (i.e. productive) is exempt from wealth-tax. He argued that this exception is with reference to land which is vacant for the reason that construction is not permissible under any law. As the reason for non-construction of a building cannot be
F attributed to the assessee, an exception has been made on account of which it will not be considered as an asset and is exempted from wealth tax.

9. Mr. Jain further argued that in this very hue, exception
G (ii) also needed to be interpreted. His submission was that the word 'constructed' is used in the context of exempting a land "occupied by any building which is being constructed with the approval of appropriate authority". With the commencement of construction of a building, land ceases to be identifiable as

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'urban land' due to constructive utilization of vacant land. When a building is under construction, it is 'work-in-progress'/ construction activity is on-going but spills over. However, the character of land has changed – it is being put to use and, therefore, it ceases to be urban land during the period of conversion.

10. According to Mr. Jain, if a building is constructed and construction is complete, the asset will go out of the definition of 'urban land' contained in Section 2(ea)(v) read with Explanation 1(b) as it would fall under Section 2(ea)(i) which covers buildings. Section 2(ea)(i) reads as follows:

“(i) any building or land appurtenant thereto (hereinafter referred to as 'house'), whether used for residential or commercial purposes or for the purpose of maintaining a guest house or otherwise including a farm house situated within twenty-five kilometers from local limits of any municipality (whether known as Municipality, Municipal Corporation or by any other name) or a Cantonment Board, but does not include—

(1) a house meant exclusively for residential purposes and which is allotted by a company to an employee or an officer or a director who is in whole-time employment, having a gross annual salary of less than ten lakh rupees;

(2) any house for residential or commercial purposes which forms part of stock-in-trade;

(3) any house which the assessee may occupy for the purposes of any business or profession carried on by him;

(4) any residential property that has been let-out for a minimum period of three hundred days in the previous year;

(5) any property in the nature of commercial establishments or complexes;”

A 11. Mr. Jain also submitted that the stand of the
respondent that only completed buildings are to be brought
into the ambit of the word 'has been constructed' is not tenable
since completed buildings fall under a different clause i.e.
clause (ea)(i). According to him, if that is accepted then in
B such cases, Section 2 (ea)(v) read with Explanation 1(b) would
not be required at all since a completed building is covered
independently in Section 2(ea)(i). He, thus, submitted that seen
in this context, the expression 'has been constructed' must be
read as 'is being constructed' in order to give effect to the
C legislative intent. He relied upon the decision of this Court in
the case of *M. Nizamuden v. Chemplast Sanmar Limited
and Others*¹, wherein it is held that:

D "It is well settled that if exception has been added to
remedy the mischief or defect, it should be so construed
that remedies the mischief and not in a manner which
frustrates the very purpose. Purposive construction has
often been employed to avoid a lacuna and to suppress
the mischief and advance the remedy. It is again a settled
E rule that if the language used is capable of bearing more
than one construction and if construction is employed that
results in absurdity or anomaly, such construction has to
be rejected and preference should be given to such a
construction that brings it into harmony with its purpose
and avoids absurdity or anomaly as it may always be
F presumed that while employing a particular language in
the provision absurdity or anomaly was never intended."

G 12. Taking his argument further, Mr. Jain submitted that
likewise, exception (iii) is with reference to 'unused land' held
by the assessee for industrial purposes. The exemption from
wealth tax for such land is for a period of two years from the
date of its acquisition by the assessee. After two years, such
land, if unused is amenable to wealth tax. However, if an
assessee starts construction of either a factory or any building

H ¹ (2010) 4 SCC 240

for industrial purpose within a period of two years and construction spills over beyond the exempted period, the exemption would still continue irrespective of whether the construction is completed within two years. Similarly, land held as 'stock-in-trade' is exempt from wealth tax for a period of ten years since, though vacant, it is held for business purposes.

13. Learned senior counsel also extensively read the judgment of the Kerala High Court wherein the interpretation suggested by him has been accepted and the benefit of exemption from wealth tax in respect of such a land where the building is still under construction has been extended.

14. Mr. Rupesh Kumar, learned counsel appearing for the Revenue emphatically countered the aforesaid submissions of Mr. Jain. He submitted that the cardinal principle of interpreting taxing statute was to give literal construction to the language used therein. He further submitted that the provision in question was in the nature of 'exemption provision' where again strict interpretation is to be accorded and onus is upon the assessee to show that he falls within the four corners of the exempted clause. He also submitted that when the language of the statute was unambiguous and clear, question of giving purposive interpretation does not arise in the matters pertaining to taxing statutes.

15. After giving our due consideration to the submissions of the learned counsel for both the parties and after going through the judgments of different High Courts, we are of the opinion that the view taken by the High Court of Karnataka in its judgment dated 21.03.2007 is the correct view in law and the contrary view taken by the Kerala and Madras High Courts is erroneous and is liable to be set aside.

16. We have already pointed out that on the plain language of the provision in question, the benefit of the said clause would be applicable only in respect of the building 'which has been constructed'. The expression 'has been constructed'

- A obviously cannot include within its sweep a building which is not fully constructed or in the process of construction. The opening words of clause (ii) also become important in this behalf, where it is stated that 'the land occupied by any building'. The land cannot be treated to be occupied by a building where
- B it is still under construction. If the contention of Mr. Jain is accepted, an assessee would become entitled to the benefit of the said clause, at that very moment, the commencement of construction even with construction the moment one brick is laid. It would be too far fetch, in such a situation, to say that the
- C land stands occupied by a building that has been constructed thereon. Even Mr. Jain was candid in accepting that when the construction of building is still going on and is not completed, literally speaking, it cannot be said that the building 'has been constructed'. It is for this reason that he wanted us to give the
- D benefit of this provision even in such cases by reading the expression to mean the same as 'is being constructed'. His submission was that the moment construction starts the urban land is put to 'productive use' and that entitles the land from exemption of wealth-tax. This argument of giving so called
- E purposive interpretation has to be rejected for more than one reasons. These are:

(i) In taxing statute, it is the plain language of the provision that has to be preferred where language is plain and is capable of one definite meaning.

- F (ii) Strict interpretation to the exemption provision is to be accorded, which is the case at hand.

- (iii) The purposive interpretation can be given only when there is some ambiguity in the language of the statutory
- G provision or it leads to absurd results. We do not find it to be so in the present case.

17. No doubt, the purpose and objective of introducing Section 2(e)(a) in the Act was to stimulate productive assets.

However, the event when such a provision is to be attracted is also mentioned in Explanation 1(b) itself carving out those situations when the land is not to be treated urban land. The Legislature in its wisdom conferred the benefit of exemption in respect of urban vacant land only when the building is fully constructed and not when the construction activity has merely started. On the contrary, if the argument of the assessee is accepted, that would lead to absurd results in certain cases. For example, what would be the position if the construction of the building starts but the said construction is abandoned mid way? If we accept the argument of the assessee, in such a case, assessee would be given the exemption from payment of wealth tax in the initial years and the same benefit would be denied in the year when it is found that construction was abandoned and, therefore, not complete. It would result in granting of benefit in the previous year(s), though that was not admissible. Such a situation cannot be countenanced. Presumably, because of this reason, the Legislature wanted to treat only that land to be excluded from the definition of 'urban land' at the stage when the building has been fully constructed on the said land.

18. We do not agree with the submission of Mr. Jain that the situation when building is fully constructed has been covered by Section 2(e)(a)(v) read with Explanation 1(b) as it would fall under Section 2(e)(a)(i). We have already reproduced the aforesaid Section and find that it deals with altogether different situations. As pointed out above, Explanation (1) thereof excludes certain categories of 'Urban Land' and we are concerned herewith clause (ii) of this Explanation. By 1992 amendment, Section 2(e)(a) was added which contains the definition of 'asset'. Clause (v) thereof includes urban land. Thus, urban land is to be included as an 'asset' for the purpose of giving extended meaning to it. Urban Land is defined in Explanation 1 Clause (b) to Section 2(e)(a).

19. The Kerala High Court as well as Madras High Court

A have been influenced by the arguments premised on purposeful construction which was the argument of Mr. Jain and has not been accepted by us.

B 20. The appeals of the assessee are accordingly dismissed and those appeals which are preferred by the Department against the judgments of the High Court of Kerala and Madras are hereby allowed. SLPs also stand disposed of, likewise. The parties are left to bear their own costs.

Devika Gujral

Matters disposed of.