

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री वी.दुर्गा राव, न्यायिक सदस्य एवं श्रीजी.मंजुनाथ, लेखासदस्यके समक्ष
BEFORE SHRIV.DURGA RAO, JUDICIAL MEMBER
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

W.T.A No.77 & 78/Chny/2018

(निर्धारणवर्ष / Assessment Years: 2008-09 & 2009-10)

Mr. D.Jayaraman, 14/A5, Wasan Street, T.Nagar, Chennai-600 017.	Vs	The Assistant Commissioner of Wealth Tax, Non-Corporate Circle-1, Chennai.
PAN: ACEPJ 0343D		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. B.Ramakrishnan, C.A
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. G.Johnson, Addl.CIT

सुनवाईकीतारीख/Date of hearing	:	24.08.2021
घोषणाकीतारीख /Date of Pronouncement	:	01.09.2021

आदेश / ORDER

PER G.MANJUNATHA, AM:

These two appeals filed by the assessee are directed against separate, but identical orders of the learned CWT(A)-2, Chennai dated 24.04.2018 and pertain to assessment year 2008-09 and 2009-10. Since, facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off by this consolidated order.

2. The assessee has more or less raised common grounds of appeal for both the assessment years, therefore, for the sake

of brevity, grounds of appeal filed for assessment year 2008-09 are reproduced as under:-

“1. For that the order of the Commissioner of Wealth Tax (Appeals) is contrary to law, facts and circumstances of the case.

2. For that the Learned Commissioner of Wealth Tax (Appeals) erred in confirming the additions of Rs. 51,00,000/- to the wealth of the appellant, made by the learned Assessing Officer with respect to the land purchased from Mr Balaji Prem Raj

3. For that the Learned Commissioner of Wealth Tax (Appeals) erred in confirming the additions of Rs. 41,00,000/- to the wealth of the appellant, made by the learned Assessing Officer with respect to the land purchased from Mr. Maheswaran and Mrs.Uma Maheswaran;

4. For that the Learned Commissioner of Wealth Tax (Appeals) erred in confirming the additions of Rs. 19,20,000/- to the wealth of the appellant, made by the learned Assessing Officer with respect to the land at plot No. 278 & 279 Astalakshmi Nagar.”

3. Brief facts of the case are that the assessee has not filed wealth tax returns, therefore, assessment has been reopened u/s.17 of the Wealth Tax Act, 1957. During the course of assessment proceedings, the Assessing Officer noticed that the assessee owned several properties, however, not considered for wealth tax purposes. Therefore, called upon the assessee to file necessary evidences and also to justify as to why those properties cannot be considered for wealth tax purposes. In

response, the assessee submitted that out of seven properties, four properties were treated as stock-in-trade and profits from sale of said properties has been offered to tax under the head 'income from business' and therefore, same are not included for the purpose of wealth tax. The Assessing Officer, however, was not convinced with the reply furnished by the assessee and according to him, although, the assessee claims to have treated certain properties as stock-in-trade, but on perusal of balance sheet, it was noticed that said properties were treated as assets only and not as stock-in-trade. Therefore, he opined that properties were coming within the definition of asset as defined u/s.2(e)(a) of the Wealth Tax Act,1957 and accordingly, included those assets for the purpose of Wealth Tax Act, and determined total taxable wealth at Rs.3,57,57,335/- for assessment year 2008-09 and Rs.4,02,94,000/- for assessment year 2009-10.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before CWT(A). Before the learned CWT(A), the assessee has reiterated his arguments made

before the Assessing Officer and submitted that entries in books of account is not relevant criteria to decide nature of asset, but what is relevant is nature of the asset and purpose of holding asset. In this case, the assessee has purchased assets for the purpose of business and income from sale of said asset was offered to tax under the head 'income from business'. Therefore, the Assessing Officer was incorrect in assessing those assets for the purpose of wealth tax. The learned CWT(A), after considering relevant facts and also taken note of various reasons given by the Assessing Officer, held that on perusal of balance sheet and trading & profit & loss account filed for the relevant assessment year, it was very clear that contention of the assessee that these properties were stock-in-trade of his business is not substantiated. Had it been so, the assessee should have shown impugned properties as stock-in-trade in the balance sheet as well as in trading & profit & loss account. Therefore, he opined that there is no error in the reasons given by the Assessing Officer to include those assets for the purpose of wealth tax, hence, dismissed appeal filed by

the assessee. Aggrieved by the Id.CWT(A) order, the assessee is in appeal before us.

5. The learned A.R for the assessee submitted that the Id.CWT(A) has erred in confirming additions made by the assessee towards certain properties without appreciating fact that those properties were held as stock-in-trade in the business of the assessee and further, profit from sale of said properties had been offered to tax under the head 'income from business'. Therefore, merely not showing said properties as stock-in-trade in the balance sheet is not a reason for considering those properties as assets within the definition of assets as defined u/s.2(e)(a) of the Wealth Tax Act. 1957.

6. The learned DR, on the other hand, strongly supporting order of the Assessing Officer as well as learned CWT(A), submitted that facts brought out by the authorities are very clear, as per which, assets were never intended to hold for the purpose of business, which is evident from the fact that all these assets were shown as investments in the books of account of the assessee. Had these assets were bought for the

purpose of business, the assessee should have shown these assets under the head stock-in-trade. But, fact remains that these assets were never considered as stock-in-trade and hence, offering profit under the head income-from business does not take away right of the Assessing Officer to tax those assets for the purpose of wealth tax, when nature of asset comes under definition of assets as defined u/s.2(e)(a) of the Wealth Tax Act, 1957.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The Assessing Officer has considered seven properties for the purpose of wealth tax. According to him, all seven properties are coming within the definition of asset as defined u/s.2(e)(a) of the Wealth Tax Act, 1957. It was contention of the assessee before the Assessing Officer that although assets were shown as land purchased in books of account, but those assets were bought for the purpose of business of the assessee. The assessee further claimed that profit from sale of those assets had been offered to tax under the head income

from business and the Assessing Officer has accepted claim of the assessee. Therefore, merely for the reason of not showing all those assets as stock-in-trade, it cannot be held that those assets are investments, which comes under the definition of assets as defined u/s.2(e)(a) of the Wealth Tax Act, 1957, when nature of asset is stock-in-trade and further, conduct of the assessee proves that those assets are held as stock-in-trade.

8. Having heard both sides and considered materials available on record, we find merit in the arguments of the learned A.R for the assessee for the simple reason that when the Assessing Officer has accepted profits earned from sale of said assets as income assessable under the head 'income from business or profession', then there is no reason for the Assessing Officer to treat said assets as investments only for the reason that those assets are not classified as stock-in-trade in books of account of the assessee. It is well settled principles of law by the decision of various courts, as per which entries in the books of account is not relevant criteria to decide

nature of asset or income or expenses, but what is relevant is nature of assets and intention of the assessee to hold such assets in the business of the assessee. In this case, the assessee has filed necessary evidence to prove that Balaji Premraj land was held as stock-in-trade and profit from sale of said land was assessed under the head 'income from business'. Similarly, M/s. Maheswaran & Uma Mahesswaran land was held as stock-in-trade and profit from sale of said land was offered as business income for assessment year 2012-13. Similarly, land at Astalakshmi Nagar, Porur was sold in assessment year 2008-09 itself, and further has reflected in profit from sale of land in the profit & loss account. Similarly, another land at Astalakshmi Nagar, Porur was also held as stock-in-trade, and since no profit was derived from sale, same is not reflected in profit & loss account of the assessee. Therefore, from the intent and conduct of the assessee, it was very clear that those lands were held in the business of the assessee as stock-in-trade and further, profits derived from sale of said land was rightly assessed under the head income from business or profession. The Assessing Officer having accepted

income declared from sale of land under the head profits & gains from business, was erred in considering those lands as investments which falls under the definition of assets u/s.2(e)(a) of the Wealth Tax Act, 1957, and to charge for wealth tax. Therefore, we are of the considered view that the Assessing Officer as well as learned CWT(A) completely erred in considering assets held as stock-in-trade within definition of assets for the purpose of wealth tax. Hence, we set aside impugned order passed by learned CWT(A) and direct the Assessing Officer to delete four assets as claimed by the assessee as stock-in-trade for the purpose of wealth tax.

9. In the result, appeal filed by the assessee for both assessment years are allowed.

Order pronounced in the open court on 1st September, 2021

Sd/-
(वी.दुर्गा राव)
(V.Durga Rao)
न्यायिक सदस्य /Judicial Member

Sd/-
(जी. मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 1st September, 2021
DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.