Binny Limited Vs. the Acwt, Jt. Cwt, Special Range Vi

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Court : Income Tax Appellate Tribunal ITAT Chennai

Decided On : May-30-2005

Reported in : (2006)280ITR179(Chennai)

Judge : T Sood, N Ganesan

Appellant : Binny Limited

Respondent : The Acwt, Jt. Cwt, Special Range Vi

Judgement :

1. These are cross appeals by the assessee and the Revenue and most of the issues involved are common. Therefore, all these appeals were heard together and are being disposed of by this common order.

2. Before we proceed to decide individual appeals, we would like to note that principally there are three main issues for our adjudication and we think once these issues are determined, the appeals can be easily decided. Therefore, we proceed to examine these principal issues, which are as follows :- i) Whether properties owned by the assessee company can be charged to wealth tax? ii) Whether deduction of debt claimed is permissible under the provisions of the Wealth-tax Act? (i) Whether properties owned by the assessee company can be charged to wealth tax? 3. The brief facts of the case are that assessee is a sick industrial company and the company made a reference to Board of Industrial Financial Reconstruction (in short BIFR) under Section 15 of the Sick Industrial Companies (Special Provision) Act in May, 1993. It seems that properties were

pledged with financial institutions and banks and some restrictions were imposed by the BIFR for alienation of the properties. These properties consisted of factory buildings and vacant land appurtenant thereto, guest houses with land appurtenant thereto and vacant lands.

4. According to the ld. AR, number of schemes were sanctioned by BIFR from time to time to rehabilitate the company and under such schemes directions were given to the promoters to bring further investments, which promoters failed to bring. In this background, the company ultimately made a proposal to sell some of its immovable properties and bring monies to rehabilitate the company. Such proposal was initially rejected by the BIFR by its order dated 24.2.2003 against which an appeal was filed before the appellate authority, which also confirmed the rejection. Further appeal was filed before the Hon'ble Madras High Court and Hon'ble High Court directed the Industrial Development Bank of India (for short IDBI) [operating agency] to issue advertisements for sale of 1260 grounds of land keeping the reserve price at Rs. 60 crores. The property was ultimately sold for Rs. 62.10 crores which conforms to the conditions laid down by the Hon'ble High Court and was accepted by other parties concerned. The ld. AR submitted that as per the definition of assets given in Section 2(ea), any house which is occupied by the assessee for the purpose of business or profession is not included in the definition of assets and therefore same cannot be charged under the Wealth-tax Act. He further submitted that it is settled position of law that land appurtenant to such houses is also part of the house and the same cannot be brought separately under the definition of urban land, as has been done by the Department. He submitted that if, e.g. assessee is owning a guest house, and if there is a tennis court or garden or other vacant land appurtenant thereto, such lands cannot be called urban vacant land, because they part and parcel of such guest houses. In this regard, he referred to the decision of the Hon'ble Madras High Court in the case of M.K. Kappur Raj (HUF) v. CWT 257 ITR 780 (Mad), where it was held that once it is found that a house is in fact a residential house, the sale of the ground attached to the house remains a part of the house for the purpose of benefit of proviso to Section 7(4). It is not permissible for the purpose of Wealth-tax Act to determine the extent of land, which can be regarded as either reasonable necessary or as being appurtenant to the house. It is not for the authority to decide

as to what size the assessee's house may be, or the extent of the garden or other area attached to the house. Any such enquiry is outside the scope of the Wealth-tax Act. As long as the house is used solely for the residence and benefits of those grounds are confined to the residence or the house, and such a house along with its ground would qualify for benefit Under Section 7(4). He also relied on the decisions of CIT v.Smt. M. Kalpagam, 227 ITR 333 (Mad), ITO v. H.H. Raghavachari, 1 ITD 192(Mad) and WTO v. N.N. Atal, 61 TTJ 496 (Jp). He submitted that the same analogy would apply to the business assets also. He further submitted that as per the provisions of the Act, urban lands cannot be put to tax 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. He further submitted that according to Section 48 and 49 of The Tamil Nadu Town & Country Planning Act, 1971, where in it specifically provided that no person other than any State Govt. or Central Govt. will erect any building except with the written permission of the appropriate planning authority and in accordance with the conditions. He admitted that some of the lands had already been converted into stock -in-trade and no such permission has been granted by the appropriate authority under the Act. He pointed out that in The Tamil Nadu Town & Country Planning Act, 1971, in Sections 48 & 49, the term used is "permissible" and not the term "prohibited", which means that such lands cannot be subjected to wealth-tax unless permission has been given by the authorities because permissible would mean that permission is a pre-requisite and prohibition would refer to total ban on construction, e.g., in Coastal Regulation Zone. Other detailed submissions were also made in respect of individual properties, which we shall discuss separately while discussing individual properties.

5. The principal contention of the ld. DR on the other hand is that assessee company has constructed a small house other building in most of the properties and open land is very huge. E.g., in case of Chiddingstone House, Bangalore, the aggregate area is 25,140 sq.ft. and built area is 4166 sq.ft. Thus in this property the unbuilt area comes to 20,974 sq.ft. Specified area as per Rule 6 of Schedule III to Wealth-tax Act would be 16,341 sq.ft. (i.e. 65% of the aggregate area) and the difference between unbuilt area and specified area exceeds 5% i.e. 18%. Similarly in case of Rother House, Bangalore, the aggregate area is 79,280 sq.ft., built area

is 6111 sq.ft. and therefore unbuilt area is 73,169 sq.ft and specified area is 51,532 sq.ft. which comes to 27%, which is more than 20%. Similarly, different between unbuilt area and specified area in case of Strathern House, Bangalore and Boat Club Road, Chennai, is more than 20%. He then referred to Rule 8 of Schedule III of the Wealth Tax Act, which provides that wherever difference between unbuilt area and specified area exceeds 20% of the aggregate area, then Rule 3 is not applicable and the value of the property has to be determined as per Rule 20, which means either the market value or value determined by the Valuation Officer. This clearly shows that urban vacant land was available with the assessee which has correctly been referred to the DVO. In this connection he also submitted that the assessee has included tennis court and servant quarters etc. as the built-up area, whereas the Chennai Benches of the Tribunal in case of DCIT v. Wheels India Ltd. in WTA No. 81/Mds/98 (copy of the order filed), has held that the tennis court cannot be taken as a built-up area or building.

6. The ld. DR further submitted that there is no force in the contention of the ld. AR that no construction is permissible on such lands. The reference made by the ld. AR to Section 48 & 49 of the Tamil Nadu Town & Country Planning Act, 1971, is totally misplaced. He explained that in any municipal area, a building can be constructed only after plans, etc. are sanctioned and permission is obtained from the authorities concerned. Therefore, it cannot be said that construction was not permissible. He also submitted that in any case assessee has converted most of the lands into stock-in-trade. Perhaps, this step was taken to save income-tax on capital gains because appreciation in the stock-in-trade on account of properties has been adjusted against the normal business losses. But it also shows that assessee was having clear intention to save such lands and such intention can be found only if there were surplus vacant lands. He submitted that though there is a provision for exemption of stock-in-trade, but this limit was originally fixed at 3 years from the date of acquisition by the Finance Act, 1993 and the limit of 3 years was extended to 5 years by the Finance Act, 1994, w.e.f. 1.4.1995 and it was further extended to 10 years by Finance (No. 2) Act, 1998, w.e.f. 1.4.99; which means that for the assessment year 1993-94, the limit was only three years and upto assessment year 1998-99 the limit was 5 years. At this juncture, a specific query was posed by the Bench that why lands were converted into stock-in-trade

and the ld. counsel of the assessee admitted that the conversion was done with a view to sell these lands, because assessee company was suffering business losses.

7. After considering the rival submissions carefully, we are unable to agree with the contentions of the ld. AR Firstly, it is not correct that construction is not permissible. Section 48 & 49 of the Tamil Nadu Town and Country Planning Act, 1971, reads as under :- ""48. Restrictions on buildings and lands in the area of the planning authority. - On or after the Hate of the publication of the resolution under Sub-section (2) of Section 19 or of the notice in the Tamil Nadu Government Gazette under Section 26, no person other than any State Government or the Central Government or any local authority, shall, erect any building or make or extend any excavation or carry out any mining or other operation, in, on, over or under any land or make any material change in the use of land or construct, form or layout any work except with the written permission of the appropriate planning authority and in accordance with the conditions, if any, specified therein.

49. Application for permission - (1) Except as otherwise provided by the rules made in this behalf, any person not being any State Government or the Central Government or any local authority intending to carry out any development on any land or building on or after the date of the publication of the resolution under Sub-section (2) of Section 19 or of the notice in the Tamil Nadu Government Gazette under Section 26, shall make an application in writing to the appropriate planning authority for permission in such form and containing such particulars and accompanied by such document as may he prescribed " The above provisions clearly show that whenever a person intends to carry out any development on any land, then he shall have to seek the permission of appropriate planning authority. Such plans are required to be approved to meet the civic requirements and plans are generally in keeping with the overall requirements issued by the various municipalities, taking into consideration availability of infrastructure in particular area in respect of electricity, water and sanitary facilities etc. The word "permissible" has been defined in Cambridge Dictionary as "if something is permissible, it is allowed".

This word cannot be read, as pointed out by the ld. counsel of the assessee, as "prohibited". "Prohibition" refers to something different when something is not allowed even after obtaining a permission; whereas the word "permissible" refers to a situation when something is allowed after taking appropriate permission. In that sense, there was no prohibition on construction and it was very much permissible. Had the assessee sought permission, same would have been given as per guidelines of Local Authorities and thus construction was very much possible Clause (b) of Section 2(ea) to the Wealth-tax Act defines "urban land" and excludes only those lands where construction of a building is not permissible under any law and the provisions of The Tamil Nadu Town and Country Planning Act, 1971, relied on by the ld. AR are not of much help because, construction is very much permissible.

There may be some controversy in respect of whether such lands can be called as urban lands or not, when some buildings have been constructed on a small plot of land. E.g., in case of Rother House, Bangalore, constructed area is only 611 sq.ft. whereas the plot area is 79,280 sq.ft. Similarly, in case of Boat Club Road, Chennai, the constructed area is only 3369 sq.ft. whereas the total area of the plot is 63,168 sq.ft. Now let us examine Rule 6 and Rule 8 of Schedule III to Wealth-tax Act, 1957, which reads as under :- "Adjustments to value arrived at under Rule 3, for unbuilt area of plot of land.

6. Where the unbuilt area of the plot of land on which the property referred to in Rule 3 is constructed exceeds the specified area, the value arrived at in accordance with the provisions of Rule 3 shall be increased by an amount calculated in the following manner, namely :- (a) where the difference between the unbuilt area and the specified area exceeds five per cent but does not exceed ten per cent of the aggregate area, by an amount equal to twenty per cent of such value; (b) where the difference between the unbuilt area and the specified area exceeds ten per cent but does not exceed fifteen per cent of the aggregate area, by an amount equal to thirty per cent of such value; (c) where the difference between the unbuilt area and the specified area exceeds fifteen per cent but does not exceed twenty per cent of the aggregate area, by an amount equal to forty per cent of such value.

(a) "aggregate area", in relation to the plot of land on which the property is constructed, means the aggregate of the area on which the property is constructed and the unbuilt area; (b) "specified area", in relation to the plot of land on which the property is (i) where the property is situate at Bombay, Calcutta, Delhi or Madras, sixty per cent of the aggregate area ; (ii) where the property is situate at Agra, Ahmedabad, Allahabad, Amritsar, Bangalore, Bhopal, Cochin, Hyderabad, Indore, Jabalpur, Jamshedpur, Kanpur, Lucknow, Ludhiana, Madurai, Nagpur, Patna, Pune, Salem, Sholapur, Srinagar, Surat, Tiruchirapalli, Trivandrum, Vadodara (Baroda) or Varanasi (Benaras), sixty-five per cent of the aggregate area; and (iii)where the property is situate at any other place, seventy per cent of the aggregate area: Provided that where, under any law for the time being in force, the minimum area of the plot of land required to be kept as open space for the enjoyment of the property exceeds the specified area, such minimum area shall be deemed to be the specified area; (c) "unbuilt area", in relation to the aggregate area of the plot of land on which the property is constructed, means that part of such aggregate area on which no building has been erected.

(a) where, having regard to the facts and circumstances of the case, the Assessing Officer, with the previous approval of the Deputy Commissioner, is of opinion that it is not practicable to apply the provisions of the said rule to such a case; or (b) where the difference between the unbuilt area and the specified area exceeds twenty per cent of the aggregate area; or (c) where the property is constructed on leasehold land and the lease expires within a period not exceeding fifteen years from the relevant valuation date and the deed of lease does not give an option to the lessee for the renewal of the lease, and in any case referred to in Clause (a) or Clause (b) or Clause (c), the value of the property shall be determined in the manner laid down in Rule 20." 8. As has been pointed out by the ld. DR. in most of the cases, difference between the unbuilt area and specified area exceeds 20% and therefore such properties have to be valued on the basis of Rule 20 as prescribed under Rule 8. Rule 20 reads as under :- 20. (1) The value of any asset, other than cash, being an asset which is not covered by Rules 3 to 19, for the purposes of this Act, shall be estimated to be the price which, in the opinion of the Assessing Officer, it would fetch if sold in the open market on the valuation date.

(2) Notwithstanding anything contained in Sub-rule (1), where the valuation of any asset referred to in that Sub-rule is referred by the Assessing Officer to the Valuation Officer under Section 16A, the value of such asset shall be estimated to be the price which, in the opinion of the Valuation Officer, it would fetch if sold in the open market on the valuation date.

(3) Where the value of any asset cannot be estimated under this rule because it is not saleable in the open market, the value shall be determined in accordance with such guidelines or principles as may be specified by the Board from time to time by general or special order." The Rule 20 clearly shows that assets which come in the ambit of Rule 6 and Rule 8 have to be valued on the market value.

9. Schedule III was inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989 and in view of the provisions of these rules, the case laws relied on by the assessee is of no assistance to him.

10. In any case, the properties in question were treated as stock-in-trade by the assessee right from 1982 and assessee was holding the same as stock-in-trade from 1982 onwards. The contention of the ld.counsel of the assessee that land should be treated as industrial land in this context, becomes contrary to its own treatment of land as stock-in-trade in the books of accounts. The lands in question were not only treated as stock-in-trade, but even increase in the value of such land was treated as income of the respective years, as admitted before us by the ld. counsel of the assessee. We find that income so recognized has not suffered any taxation because of the other business losses suffered by the assessee and therefore such treatment may have been given only to take possible tax benefit. By doing this, assessee has increased the value of such lands without paying any tax so that when they are ultimately sold, the same suffers minimum capital gains tax. When assessee has taken the benefit under the Income-tax Act, and has also admitted that there was intention to sell these properties, then assessee cannot be allowed to treat these assets differently under the Wealth-tax Act. A piece of land cannot be considered as industrial land as well as stock-in-trade at the same time. We also find that in the later years some of these lands have actually been sold without selling a particular building and/or along with buildings. In these

circumstances, such lands have to be held as surplus urban vacant lands.

11. As far as individual properties are concerned, we shall discuss the same in detail while dealing with the each property individually.

(ii) Whether deduction of debt claimed is permissible under the % provisions of the Wealth-tax Act? 12. The ld. AR submitted that assessee company has lot of liabilities and such debts are secured by way of equitable mortgage of immovable properties and therefore same should have been allowed to be deducted as liability.

13. On the other hand, the ld. DR submitted that properties owned by the assessee have been brought to charge of wealth-tax after assessment year 1993-94 and Section 2(m) of the Wealth-tax Act also stood amended w.e.f. 1.4.1993 and it clearly lays down that only those assets can be deducted, which have been incurred in relation to the said assets. The properties owned by the assessee have been acquired for a very long period and in most of the cases, even prior to 1957, when Wealth-tax Act was introduced and no debt was incurred by the company ever in relation to such assets. The debts incurred by the company have been secured against such assets, which cannot become the basis for deducting the assets. He submitted that even in view of the amendment.

Board has issued Circular No. 663 dated 28.9.1993, which has clarified that even liabilities like income-tax and wealth-tax liability are no more deductible.

14. We have considered the rival submissions carefully. Section 2(m) of the Wealth-tax Act, 1957, which was inserted by Finance Act, 1992, w.e.f. 1.4.1993 reads as under :- (m) "net wealth" means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date which have been incurred in relation to the said assets;" "(m) "net wealth" means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located, belonging to the

assessee on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date other than - (ii) debts which are secured on, or which have been incurred in relation to, any property in respect of which wealth-tax is not chargeable under this Act; and (iii) the amount of the tax, penalty or interest payable in consequence of any order passed under or in pursuance of this Act or any law relating to taxation of income or profits or the Estate Duty Act, 1953 (34 of 1953), the Expenditure-tax Act, 1957 (29 of 1957), or the Gift-tax Act, 1958 (18 of 1958)- (a) which is outstanding on the valuation date and is claimed by the assessee in appeal, revision or other proceedings as not being payable by him; or (b) which, although not claimed by the assessee as not being payable by him, is nevertheless outstanding for a period of more than twelve months on the valuation date; Explanation 1 : A building or part thereof referred to in Clause (iii), Clause (iiia) or Clause (iiib) of Section 27 of the Income-tax Act shall be includible in the net wealth of the person who is deemed under the said clause to be the owner of that building or part thereof; Explanation 2 : Where a debt falling under sub-clause (ii) is secured on, or has been incurred in relation to, any asset which is not to be included wholly or partly in the net wealth by virtue of the provisions of Sub-section (1A) of Section 5, the amount of such debt shall, for the purposes of the said sub-clause, be limited to the value of the said asset which is not includible in the net wealth under Sub-section (1A) of Section 5." 16. A plain reading of the section makes it clear that net wealth has been defined in the section and the same means amount by which aggregate value of all the assets belonging to the assessee on the valuation date is in excess of value of all the debts owed by the assessee which have been incurred in relation to the said assets. This clearly shows that only those debts can be deducted which have been incurred in relation to the assets, which are included in the said assets. The phrase "in relation to" would clearly indicate that if the debt was incurred for purchasing that asset, only then same can be allowed to be deducted from the value of such assets. E.g., if an assessee buys an house and for buying that house, he obtains a loan, then such debt becomes deductible, However, if the same house is purchased from assessee's own funds and a loan is raised against the mortgage of such house, then such debt cannot be held to be deductible under

the provisions of Section 2(m) of the Wealth tax Act. Since none of the debts have been shown to be incurred in relation to the assets included in the net wealth, such debts cannot be held to be deductible.

This concept further becomes clear from the old provision of Section 2(m), where all debts were allowed to be deducted. But even under the old provision under Clause (ii), the debts which were secured on any property in respect of which wealth-tax was not charged, were not allowed to be deductible, which clearly shows that even under the old provision, whenever a debt was secured against an asset which was not taxable, then such debt was not deductible. Under the new provision of Section 2(ea), only productive assets which have been defined in the section are taxable and there are many assets which are not taxable.

E.g., plant and machinery in case of industrial companies. Now in case before us, it is obvious that loans and advances must have been advanced against such properties as working capital limits to finance stock-in-trade and/or debtors and other current assets, which are not part of assets subject to Wealth-tax Act and thus such debts cannot be held to be deductible.

17. Regarding valuation, the principal submissions of the ld. AR are that the company was a sick company and had made reference to BIFR for rehabilitation and by various orders, some restrictions were imposed on sale of properties owned by the assessee company and therefore, same were not readily saleable in the market. He further submitted that labour unions were demanding retrenchment compensation and were also obstructing the sale of properties belonging to the company, which also dampened the value of properties. He contended that ultimately the company was able to sell 1260 grounds of land comprising of 13,24,000 sq.ft. through court option in October, 2003 for Rs. 62.10 crores, which works out to Rs. 205 per sq.ft. The guideline value for this property was Rs. 550 per sq.ft. and in this respect he referred to the guidelines issued by the Sub Registrar Office Website (copy of which has been filed at page 20 of the written submissions). Therefore, property was sold at 37.28% of the guideline value and thus same value may be adopted for valuation of various properties.

18. On the other hand, the ld. DR while supporting the order of the Assessing Officer, where he has relied on the decision of Hon'ble Supreme Court in case of Purshottam N. Amarsay v. CWT, 88 ITR 417 and Ahmed G.H. Ariff v. CWT, 76 ITR 471, where it was held that when Section 3 imposed a charge on wealth-tax under the net wealth, it necessarily includes in its ambit property of every description. He submitted that it is not necessary that property should be actually sold in the market, but only a hypothetical situation has to be contemplated, where it should be assumed that there existed open market for sale of such an asset. He referred to various clauses of BIFR order and submitted no restriction as such was imposed on the sale of properties. Only certain procedures were prescribed and such sale could be conducted by a sale committee, which comprised the nominees of State Government of Tamil Nadu and Karnataka. nominees of IDBI and SBT and two representatives of management and Special Director appointed by the BIFR. In fact, some agreements were entered for development and sale of certain properties. E.g., on 11.12.1995, a Sale Deed was executed for sale of 17,125 grounds of property No. 9, Boat Club Road for Rs. 25,56,66,250. He submitted that there is no force in the contention that labour union was obstructing the sale as no evidence has been produced before the lower authorities and perhaps, labour union was simply asking for their dues under the labour legislation, 19. After considering the rival submissions carefully and the relevant judgment and material on record, we find that Hon'ble Supreme Court in case of Ahmed G.H. Ariff v. CWT (supra) had observed, when Wealth-tax act, 1957, uses in Section 7(1) the words "if sold in the open market" it does not contemplate actual sale or the actual state of the market, but only enjoins that it should be assumed that there is an open market and the property can be sold in such a marked and, on that basis the value has to be found out. It is a hypothetical case which is contemplated and the Tax Officer must assume that there is an open market in which the asset can be sold.20. Again in case of Purshottam N. Amarsay (supra), it was observed by the Hon'ble Apex Court as follows :- "The definition of assets in Section 2(e) and that of net wealth in Section 2(m) were comprehensive provisions and all assets were included in the net wealth by the very definition. Therefore, when Section 3 imposed a charge of wealth tax on the net wealth, it necessarily included in it every description of the property of the

assessee, movable and immovable, barring the exceptions stated in Section 2(e) and other provisions of the Act. There is no reason or justification to give any restricted meaning to the word 'asset' as defined by Section 2(e) of the Act when the language employed shows that it was intended 10 include property of every description....." What this court ruled in Ahmed G.F. Ariff's case, 76 ITR 471 was that even if the property in question is incapable of being sold in the open market in that even also the interest of the assessee has to be valued by the Wealth Tax Officer.....".

21. We have perused the order of the BIFR of June, 1994, which contained the following clauses :- (1) The scheme envisages restructuring of the company by having all the Engineering Division and Process House into two separate companies, viz., Binny Engineering Works Limited and Binny Processors Limited, modernization of the Textile Division with labour rationalisation, development and sale of real estate properties besides one-time settlement of dues of the banks and limitations with the association of new 1 promoters (M/s. Dynamix Group) (2) To vacate the charge on the non-factory lands and buildings, held in fixed assets/stock-in-trade by the company proposed to be developed by its Real Estate Division, in a scheduled manner and in proportion to the amount received to enable the company to develop the property, enter into sale agreement with the prospective customer which would be possible only when the title is clear.

(3) To constitute an asset sale committee comprising nominees of State Government of Tamil Nadu and Karnataka, nominees of IDBI and SBI, two representatives of Management and Special Director appointed by the BIFR to monitor sale of real estate properties and utilisation of sale proceeds".

Therefore, the clauses clearly show that no restrictions on sale of property were imposed by the BIFR, rather the order envisages restructuring of the company and for such restructuring, development and sale of real estate properties was clearly envisaged. Similarly, there is no evidence on record that the labour unions were obstructing or were capable of obstructing the sale of properties, perhaps they were interested in their own dues only. In any case, as has been held by the Hon'ble Supreme Court that even if the property in question is incapable of being

sold in the open market, in that event also, the interest of the assessee has to be valued by the Wealth Tax Officer. As far as the guidelines issued by the Sub Registrar Office are concerned, we are reproducing the note submitted by the ld. counsel of the assessee at page 20 of the written submissions :- " The valuation of the property arrived through this website is only indicative based on the information furnished by you. This value cannot be cited as an authority for final determination of building value. Additional information are required to arrive at the exact value of the property.

The rates adapted here are only for normal residential buildings whereas special types of buildings and factories are to be assessed after building inspection by the authorities concerned.Corporation / Zone : CHENNAI From the above, it is clear that the value quoted by the Sub-Registrar is not authentic and the same cannot be cited as an authority.

Moreover, it refers to rates adopted for normal residential buildings and it is not clear whether the same are only for me building or for a place of land and therefore, we are unable to consider the same. In any case, in most of the cases, assessee has himself filed valuation certificate from the Registered Valuers for the purpose of income tax, which has been adopted by the assessing authority with suitable reduction if the valuation relates to later years. In these circumstances, we think generally values adopted by the assessing authority on the basis of valuation certificate of registered valuer or valuation estimated by DVO, against which no defect was pointed out by the ld. counsel by the assessee, were rightly adopted.

22. We are not dealing with the valuation of individual properties at this juncture, because we think the same should be dealt while adjudicating appeals for various years and now therefore, we take up adjudication of appeals for various years.

"1(a) The Commissioner of Income Tax (Appeals) erred in confirming that the guest houses are includible in the net wealth.

(b) The Appellant submits that guest houses being in the nature of transit houses are business assets and were therefore not includible in the net wealth.

(c) The Commissioner of Income Tax (Appeals) erred in not considering the alternate ground of the Appellant that the transit houses would fall within the scope of Rule 3 of Schedule III to the Wealth Tax Act." 24. The brief facts of the case are that the assessee owned four guest houses known as Boat Club Area Guest House, Chiddingstone House, Rother House and Strathern House, Out of these, the Assessing Officer assessed the valuation of the Chhidingstone Guest house as per Rule 3, whereas it was held in case of other guest houses that valuation has to be done as per Rule 20 to Schedule III. It was so because the AO recorded a finding that in case of other guest houses, the difference between the unbuilt area and specified area exceeded 20% of the aggregate area and therefore as per Rule 8 such property has to be valued in terms of Rule 20 to Schedule III. The assessee was issued a show cause notice to this effect and vide its written submissions dated 28.3.96, the assessee had mainly submitted that it was a sick company under the BIFR and these properties were not allowed to be sold etc. But finding of the AO was not controverted. In this background, the AO adopted the value in case of Boat Club Road Guest House on the basis of sale agreement as this property was sold in December, 1995 at Rs. 90,90,000 per ground, after allowing discount in conformity with the cost of inflation index. In case of guest house at Bangalore, the value was adopted as per the valuation done by the Registered Valuer of the assessee, which was filed during the course of income-tax proceedings. The value of Strathern Guest House was also estimated on the basis of value of the adjacent property. The total value of the guest houses was taken at Rs. 21,81,52,524 comprising of the following :-Boat Club Area Guest House Rs. 18,98,44,844Chiddingstone Guest House Rs. 72,462Rother House Guest House Rs. 1,96,20,000Strathern Guest House Rs. 86.15.218 ---------- 25 On appeal, similar contentions were raised before the CWT(Appeals).

It was further contended that guest houses were business assets and in any case, roads, servant quarters, tennis court etc. should form part of built area. The CWT(Appeals) rejected the contention that these are business assets or the roads, servant quarters, tennis court, etc., are part of the built-up area on the reasoning that no such claims were made before the AO.26. Before us, similar contentions were raised by both the parties.

This issue has been discussed by us while discussing the principal issues involved in this case and following that decision, we think that the ld. CWT(Appeals) has correctly decided this issue because no such claims that these are business assets or same consisted of servant quarters, tennis court, etc., were made before the AO. Similarly, we have already decided that once the difference between unbuilt area and specified area exceeds 20%, then property cannot be valued as per Rule 3 to Schedule III. As AO has already recorded the findings that difference between unbuilt area and specified area exceeds 20% of the aggregate area, the same has to be valued as per Rule 20. In these circumstances, we find nothing wrong with the order of the ld.CWT(Appeals) and confirm the same.

28. In this appeal, the Revenue has raised the following effective grounds :- (1) The CIT(A) has erred in holding that the market value of the properties (Guest House) owned by the assessee company has been diminishing in view of the fact that the assessee company is sick and is before BIFR. (2) The CIT(A) erred in allowing disproportionate debts claimed by the assessee company.

(3) The CIT(A) erred in admitting fresh evidence which was not produced before the Assessing Officer regarding vacant land in Magadi Road being leased out to Hindustan Petroleum Corporation Ltd. (4) The CIT(A) has erred in directing the Assessing Officer to exclude the value of urban land claimed to be stock in trade from the assessable wealth.

(5) The CIT(A) erred in deleting the entire addition to the value of surplus land, in excess of land occupied by buildings." 29. Ground (1) : This issue has already been discussed by us while deciding the principal issues, where we have observed that there is no restriction on sale of properties by the BIFR and hence there could be no diminution in the value of the property and therefore, this ground is decided in favour of the Revenue.

30. Ground (2) : This issue has also been decided by us while discussing the principal issues. The ld. CWT(Appeals) has reduced the value of guest houses on the basis of the decision of the Hon'ble Gujarat High Court in the case of CIT v. Shirinbanoo, 102 ITR 735 (Guj). In this case, it was held, "it is no doubt true that for purposes of determining the net wealth which is the basis of the liability of

wealth-tax, the amount by which the aggregate value of an asset of a person exceeds the aggregate value of the debts is to be looked into. But, none the less, while estimating the valuation of an encumbered asset, the price which such asset would fetch, if sold in the open market, is first to be ascertained and the only method of evaluating an encumbered asset is to consider the valuation of the asset less the valuation of encumbrance thereon." However, this decision was rendered for assessment year 1965-66 and 1966-67 when all debts were allowed to be deducted from all the assets belonging to the assessee. As noted by us while deciding the principal issue of deducibility of debts, the definition has been amended w.e.f. 1.4.1993 and now only debts incurred in relation to assets are allowed to be deducted. This decision is therefore of no help to the assessee. The ld. CWT(Appeals) on the basis of this decision has allowed the value of guest houses to be taken in the proportion of total assets and total debts, which is quite contrary to the law. In these circumstances, we set aside the order of the ld. CWT(Appeals) and restore that of the Assessing Officer and direct the Assessing Officer not to deduct any debts outstanding because, same have not been incurred by the assessee in relation to the assets included in the net wealth. Therefore this ground is decided in favour of the Revenue.

31. Ground (3) : The brief facts of the case are that the AO considered the value of the property situated at Magadi Road as vacant land, which was though given on rent, but the same was shown as vacant land. The value was adopted on the basis of adjacent land of the assessee at Rs. 58,88,839. The CWT(Appeals) adopted the value at Rs. 1 lakh as this land was given on rent by the assessee to Hindustan Petroleum Corporation Ltd., a Government organization, on a lease rent or Rs. 1,000 per month and the lessee had already put up a building on the above property.

32. The ld. AR submitted that vacant plot was leased out to Hindustan Petroleum Corporation Ltd., who have erected a building and therefore same is to be valued as per Schedule III.33. On the other hand, the ld. DR submitted that even if it is considered as let out property, even then the value was not adopted at the appropriate figure, because municipal taxes itself was Rs. 3,930 per year and thus it is not possible that the property was let out at Rs. 1000 per month.

34. After considering the rival submissions, we find that the application of Schedule III has been held to be mandatory and even on retrospective basis by the Hon'ble Supreme Court in the case of Bharat Hari Singhania v. CWT, 207 ITR 1(SC). Once the property has been let out, the same has to be valued on the basis of Schedule III. However, there is some controversy regarding rent and municipal taxes and therefore, we set aside the order of the CWT(Appeals) and direct AO to value this property as per Schedule III on the basis of rent capitalization method, after verifying the details of rent and municipal taxes.

35. Ground (4): During the assessment proceedings, AO noticed that assessee was holding several plots of land, which were treated as stock-in-trade by the assessee. As these lands were converted into stock-in-trade in the year 1982 and as per original provision Under Section 2(ea) of the Wealth-tax Act, 1957 the exemption was available only for three years. Since the time of three years has lapsed long back, the value of these properties which comprised of Ashwell Maidan, Boat Club Road, Baider Halli property, Hosakere property and Nandidurg property, the AO adopted the value furnished by the assessee and included the same in net wealth of the assessee. The CWT(Appeals) deleted this addition, as according to him, the exemption provision would apply w.e.f. 1.4.1993 for three years.

36. Before us, the ld. AR submitted that most of these lands were part and parcel of the factory premises and assessee company was using the same for dumping of coal, ash, etc., therefore they should be held to be business assets only and not includible in the definition of assets.

In any case, the exemption is to be given for plots held as stock-in-trade for three years.

37. On the other hand, the ld. DR submitted that once the assessee has himself converted its properties into stock-in-trade, it clearly shows that the intention was to sell these properties and they must be presumed to be vacant lands only. He further submitted that there was exclusion clause for unused land held in stock-in-trade, but the exclusion was applicable originally only for three years and it was enhanced to five years by the Finance Act, 1994, w.e.f. 1.4.1995 and it was further

enhanced to ten years by the Finance (No. 2) Act, 1998 w.e.f. 1.4.1999. But this clause, as would be clear from the provision, is applicable from the date of acquisition.

38. After considering the rival submissions, we find force in the contention of the ld. DR. While adjudicating the principal issues, we have held that once the lands are converted into stock-in-trade and it was further admitted before us that the intention was to sell these properties, then the same has to be held as vacant surplus land. May be, the properties were converted into stock-in-trade to save capital gain tax liability. But then, similar treatment has to given under both the Acts, and assessee cannot blow hot and cold at the same time. That is, when in income-tax proceedings properties have been considered to be stock-in-trade, then these cannot be considered as factory premises while deciding the wealth-tax issues. In any case, no claim that such properties were used for dumping the coal, ash, etc. were raised before the AO and no new claim on the facts can be made before us for the first time. As far as exclusion clause is concerned, "urban land" is defined in Section 2(ea) Clause (b) as under :- (i) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have, been published before the valuation date : or (ii) in any area within such distance, not being more than eight kilometres from the local limits of any municipality or cantonment board referred to in sub-clause (i), as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specity in this behalf by notification in the Official Gazette, but does not include 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 the land occupied by any building which has been constructed with the approval of the appropriate authority or any unused land held by the assessee for industrial purposes for a period of two years from the date of its acquisition by him (Inserted by the Finance Act, 1993, w.e.f. 1.4. 1994) [or any land held by the assessee as stock-in-trade for a period of (Substituted for "five" by the Finance Act, 1998, w.e.f. 1.4.1999, Earlier "five" was substituted for "three"

by the Finance Act, 1994, w.e.f. 1.4.1995.) [ten] years from the date of its acquisition by him.]" A plain reading of this provision clearly shows that exclusion clause applied initially for three years and then w.e.f. 1.4.1995 it was enhanced to five years and later on, w.e.f. 1.4.1999 for ten years. But in all cases, exclusion clause applied from the date of its acquisition, which clearly means the date of acquisition of the asset.

In the case before us, the assets have been acquired long back and were converted into stock-in-trade in the year 1982. Therefore, exclusion clause is not applicable for the assessment year 1993-94 because three years would elapse long back. In these circumstances, we set aside the order of the ld. CWT(Appeals) and restore that of the Assessing Officer.

39. Ground (5) : Here, the AO found in case of certain properties that huge pieces of land were involved and buildings were erected only on a small portion. AO took the view that when unbuilt area was used, then land appurtenant to the building would mean unbuilt area of the specified by the municipal authorities. AO raised a specific query in this regard, but no specific reply was given. In this background, AO held that in case of various properties, there was surplus vacant land after excluding the land appurtenant thereto as interpreted by him and balance of such lands were put to charge of wealth-tax under the head 'surplus lands' on the basis of valuation by the registered valuers filed by the assessee during income-tax proceedings.

40. The CWT(Appeals) deleted this addition after observing that the school requires play grounds, the club requires open space for conducting its activities, the residential colony requires space for market, park and pen area of common utility to accommodate gathering in social functions like marriages etc.

41. Before us, various contentions were raised which have already been considered while discussing the principal issues. After considering such contentions and decision taken by us while adjudicating the principal issues, we find that the Buckingham Gardens property and the Carnatic Gardens property at Chennai were converted into stock-in-trade in financial year 1981-82 and it was admitted before us that the intention of the assessee was to sell the same.

Similarly, the Joint School Compound property, Binny fields property and Binny stone Gardens property was also converted into stock-in-trade in the financial year 1981-82 and it was admitted that the intention was to sell the same.

Once the assessee has me intention of selling these surplus lands and was treating the same as stock-in-trade, then as discussed in the above noted grounds, we hold that the same cannot be treated differently for wealth-tax purposes. In these circumstances, we set aside the order of the ld. CWT (Appeals) and restore that of the AO. "2.1 The CIT(A) has erred in admitting fresh evidence which was not produced before the AO regarding vacant land at Magadi Road being leased out to Hindustan Petroleum Ltd." 44. This issue has been decided by us while adjudicating WTA No.47/2000, wherein the matter was set aside to the file of the AO and following the same, this issue is set aside to the file of Assessing Officer with identical directions.

"1(a) The Commissioner of Income Tax (Appeals) erred in holding that the guest houses were assessable to wealth tax.

(b) He should have found that these assets were transit houses and being used for purpose of business was not assessable to wealth tax.

(c) Without prejudice to the above claim the Appellant submits that in any event the Commissioner of Income Tax (Appeals) should have held that in view of the fact that the difference between the unbuilt area and specified area did not exceed 20% of the aggregate area the value should be in accordance with Rule 3 of Schedule III to Wealth Tax Act.

(d) The Commissioner of Income Tax (Appeals) erred in confirming that the value of these assets should be made without reducing the value of debts.

2. The Commissioner of Income Tax (Appeals) erred in confirming that the value of the following assets should be included in the net wealth though these assets had been transferred and were not in existence on the date of valuation.

3.(i) The Commissioner of Income Tax (Appeals) erred in confirming that the following fixed assets held as stock in trade were includible in net wealth: (ii) He

should have found that these assets being used for business purpose were not assessable to wealth." 47. Grounds No. (1) & (3) have been decided while adjudicating the appeals of the assessee and Revenue for the assessment year 1993-94 in the above noted paragraphs and following that order, we decide these issues against the assessee.

48. Ground (2): In respect of Rother, Chiddingstone and Strathern guesthouses, the only objection taken before us was that the same had already been transferred and therefore the same cannot be included in the net wealth of the assessee.

49. In the written submissions at page 8, it has been pointed out that these properties were converted into stock-in-trade in the financial year 1981-82 and later on these properties were demolished pursuant to a joint development agreement on 21.3.1995 with HMG Engineering Pvt.

Ltd., from whom Rs. 6 crores was received as consideration for granting them the right to develop these properties and to take 50% of the net profit on the sale of the developed property. From these submissions, it becomes clear that the properties were never transferred by assessee company and it still keeps on enjoying rights on these properties in the current year. The AO has adopted the value of Boat Club Road guest house on the basis of sale agreement filed while obtaining certificate Under Section 230A in December, 1995 after suitable discount. In case of Rother House the value has been adopted as per the registered valuer's report submitted by the assessee for the A.Y. 1993-94 after enhancing the same on the basis of cost inflation index notified by the Government. In case of Strethern Guest House, the value has been adopted on the basis of the value of adjacent property. We think that this is very correct criteria adopted by the Assessing Officer for valuation of such properties and the ld. CWT(Appeals) has correctly confirmed the same. Hence this ground of appeal is also rejected.

51. In this appeal, the issues raised in Ground No. 1 & 2 have already been discussed while adjudicating the appeals of assessee as well as Revenue for A.Y. 1993-94 in the above noted paragraphs and following that decision, both these grounds are rejected.

"The Commissioner of Income tax (Appeals) erred in confirming the inclusion of a portion of the Vrindavan property in the net wealth at the estimated market value of Rs. 1,3 8,82,618/-." 53. This ground shall be considered by us while adjudicating the Revenue's appeal for this year in the following paragraphs and the issue raised by the assessee has been rejected. Hence this ground of appeal is also dismissed.

55. In this appeal, the Revenue has raised the following effective ground:- "2.1 The learned CIT(A) has erred in holding that 16.79 grounds abutting the building known as "Virundhavan" should be left out of valuation and is exempt Under Section 2(ea)(i)(3) of the WT Act.

2.2 The learned CIT(A) has failed to appreciate that the actual built up area of the building is 5550 sq.ft. while the abutting vacant land is of the dimension of 37,610 sq.ft. which cannot be regarded as appurtenant land.

2.3 The learned CIT(A) has failed to appreciate that the vacant land being as large as 7 times the dimension of the cannot by any stretch of imagination be regarded as appurtenant land.

2.4 The learned CIT(A) has failed to appreciate that under normal circumstances only such part of land which are required for the beneficial enjoyment of the building with minimum basic needs can alone be regarded as appurtenant land. V 2.5 The learned CIT(A) has failed to appreciate that the direction to allow 16.79 grounds as appurtenant land when compared to the size and building is luxuriant and has no sanction under the law." 56. The brief facts regarding this issue are that the assessee was the owner of the property called Vrindavan measuring 18.79 grounds. Since the property was sold to India Cement Ltd. during A.Y. 1996-97 for Rs. 16,30,64,000, hence AO concluded the same remained with the assessee on valuation dated 31.3.1994 and 31.3.1995. After allowing * 10% discount, value of the same was taken at Rs. 14,67,57,000 and Rs. 13,20,81,000 for A.Y. 1995-96 and 1994-95 respectively.

57. The CWT(Appeals) noted that this property basically consisted of 26.29 grounds and built up area was only 5550 sq.ft. Out of the above, 10 grounds were

converted into stock-in-trade in 1982. Out of 10 grounds treated as stock-in-trade, 8 grounds were sold to India Cement Ltd. on 12.7.1986. After this sale, only 2 grounds were left from the converted stock-in-trade. Thus the balance of 16.79 grounds of land and building having built up area of 5550 sq.ft. were treated as fixed assets. During A.Y. 1996-97, assessee sold the entire land consisting of 18.79 grounds including the building (which includes 2 grounds converted into stock-in-trade, which remained unsold earlier) for a consideration of Rs. 16.30 crores.

58. The CWT(Appeals) held that 16.79 grounds have to be treated as business assets Under Section 2(ea)(i)(3). However, 2 grounds which were converted into stock-in-trade were directed to be included in the net wealth of the assessee. The average value of sale per ground was determined at Rs. 86.76 lakhs and after allowing a deduction of 20%, the same was determined at Rs. 1,38,82,618.

59. Both the parties have made various contentions which have been dealt by us while discussing the principal issues. We are of the view that the ld. CWT(Appeals) has correctly decided the issue. While deciding the principal issues, we have directed that since assessee had itself converted its properties into stock-in-trade and that the same should have been assessed under the Wealth-tax Act. But in this particular case, assessee had converted only a portion of land into stock-in-trade out of which, some portion was sold and unsold portion measures only 2 grounds of land. The balance of 16.79 grounds has to be treated as business assets, even if only 5550 sq.ft. area was built area. This is so particularly in view of the decision of the jurisdictional High Court in the case of M.K. Kappur Raj (HUF) v. CWT 257 ITR 780 (Mad), where it was observed that it was not permissible for the purpose of Wealth-tax Act to determine the extent of land which could be regarded as either reasonable or necessary or as being appurtenant to the house. It was further observed that it is not for the authority to decide as to what size the assessee's house may be, or the extent of garden or other area attached to the house. Any such enquiry is outside the scope of Wealth-tax Act. This clearly means, even if only small portion was constructed, rest of the unbuilt area has to be treated as land appurtenant to this building, which has been treated as fixed assets by the assessee company and thus

exempt Under Section 2(ea) as business assets. However, as far as 2 grounds which were converted into stock-in-trade by the assessee company in 1982 is concerned, the same has been rightly included in the net wealth by the ld. CWT(Anneals) and we confirm the same, following our observations made while discussing the principal issues. Here it is pertinent to note that the ld. CWT(Appeals) has adopted the sale value of this land, which was made in the A.Y. 1996-97. Therefore, even if Rule 20 is applied, it will lead only to determination of market value which has already been done by him. In these circumstances, we find nothing wrong with the order of the ld. CWT(Appeals) and confirm the same.

"1(a) The Commissioner of Income Tax (Appeals) erred in holding that the guest houses were assessable to wealth tax.

(b) He should have found that these assets were transit houses and being used for purpose of business was not assessable to wealth tax.

(c) Without prejudice to the above claim the Appellant submits that in any event the Commissioner of Income Tax (Appeals) should have held that in view of the fact that the difference between the unbuilt area and specified area did not exceed 20% of the aggregate area the value should be in accordance with Rule 3 of Schedule III to Wealth Tax Act.

(d) The Commissioner of Income Tax (Appeals) erred in confirming that the value of these assets should be made without reducing the value of debts.

2. The Commissioner of Income Tax (Appeals) erred in confirming that the value of the following assets should be included in the net wealth though these assets had been transferred and were not in existence on the date of valuation.

3.(i) The Commissioner of Income Tax (Appeals) erred in confirming that the following fixed assets held as stock in trade were includible in net wealth : (ii) He should have found that these assets being used for business purpose were not assessable to wealth." 62. After hearing both the parties, we find that these issues nave already been decided by us against the assessee while adjudicating the

assessee's appeal for the A.Y. 1993-94 as well as the principal issues.

Therefore, these issues are decided against the assessee.

64. In this appeal, Revenue has raised the following effective ground :- " The CIT(A) has erred in admitting fresh evidence which was not produced before the AO regarding vacant land at Magadi Road being leased out to Hindustan Petroleum Ltd. " 65. After hearing both the parties, we find that this issue has been set aside to the file of the Assessing Officer while deciding the Revenue's appeal for A.Y. 1993-94 and following that, we set aside this issue to the file of the Assessing Officer with similar directions as noted in the above paragraphs.

67. In this appeal, assessee has raised the following grounds of appeal:- "1(a) The Commissioner of Income tax (Appeals) erred in confirming the inclusion of the following properties held as 'stock-in-trade' at the estimated market value in the computation of net wealth : (b) The Appellant submits that the valuation of the properties, which were encumbered, cannot be taken at the estimated market value.

2 (a) The Commissioner of Income tax (Appeals) erred in confirming the inclusion of the following properties at the estimated market value in the computation of net wealth : (b) The Appellant submits that the assets having been used for industrial purpose does not lose its character merely because it has been considered as stock-in-trade in the books.

3. The Commissioner of Income tax (Appeals) erred in confirming the inclusion of a portion of the Vrindavan Property in the net wealth at the estimated market value of Rs. 1,52,70,879/-." 68. Ground No. 1 & 2 : After hearing both the parties, we find that these issues have already been decided by us against the assessee while adjudicating the assessee's appeal for the A.Y. 1993-94 as well as the principal issues. Therefore, these issues are decided against the assessee.

69. Ground No. 3 : This issue shall be considered by us while considering the Revenue's appeal for this year in WTA 51/Mds/2003 where we have confirmed the order of the ld. CWT(Appeals).

71. In this appeal, the Revenue has raised the effective issue of taxability of 16.79 grounds of properly known as Vrindavan. This issue has been discussed by us in detail in the above noted paragraphs while deciding the Revenue's appeal for the A.Y. 1994-95, where we have confirmed the order of the ld. CWT(Appeals) and rejected the grounds raised by the Revenue. Following that decision, we reject the grounds raised by the Revenue.

"1(a) The Commissioner of Income Tax (Appeals) erred in holding that the guest houses were assessable to wealth tax.

(b) He should have found that these assets were transit houses and being used for purpose of business was not assessable to wealth tax.

(c) Without prejudice to the above claim the Appellant submits that in any event the Commissioner of Income Tax (Appeals) should have held that in view of the fact that the difference between the unbuilt area and specified area did not exceed 20% of the aggregate area the value should be in accordance with Rule 3 of Schedule III to Wealth Tax Act.

(d) The Commissioner of Income Tax (Appeals) erred in confirming that the value of these assets should be made without reducing the value of debts.

2. The Commissioner of Income Tax (Appeals) erred in confirming that the value of the following assets should be included in the net wealth though these assets had been transferred and were not in existence on the date of valuation.

3.(i) The Commissioner of Income Tax (Appeals) erred in confirming that the following fixed assets held as stock in trade were includible in net wealth: (ii) He should have found that these assets being used for business purpose were not assessable to wealth." 74. Grounds No. (1) & (3) have been decided while adjudicating the appeals of the assessee and Revenue for the assessment year 1993-94 in the above noted paragraphs and following that order, we decide these issues against the assessee.

75. Ground (2): In respect of Rother, Chiddingstone and Strathern guesthouses, we have discussed in detail in the above noted paragraphs in Assessee's appeal

for 1994-95 and have confirmed the order of the ld. CWT(Appeals). Following that decision, the order of the CWT(Appeals) is confirmed and the issue is decided against the assessee.

77. In this appeal, the Revenue has raised the only effective ground as under:- " The CIT(A) has erred in admitting fresh evidence which was not produced before the AO regarding vacant land at Magadi Road being leased out to Hindustan Petroleum Ltd.." 78. This issue has been decided by us while adjudicating WTA No.47/2000 for A.Y. 1993-94, wherein the matter was set aside to the file of the AO and following the same, this issue is set aside to the file of Assessing Officer with identical directions.

80. In this appeal, assessee has raised the following grounds of appeal:- "1(a) The Commissioner of Income tax (Appeals) erred in confirming the inclusion of the property at Ashwell Maidan, Chennai held as 'stock in trade', at the estimated market value, in the computation of net wealth.

(b) The Appellant submits that the valuation of the property, which was encumbered, cannot be taken at the estimated market value.

2 (a) The Commissioner of Income tax (Appeals) erred in confirming the inclusion of the following properties at the estimated market value in the computation of net wealth.

(b) The Appellant submits that the assets having been used for industrial purpose does not lose its character merely because it has been considered as stock-in-trade in the books.

3. The Commissioner of Income Tax (Appeals) erred in ignoring the debts secured on the assets of the company in computing their value for wealth tax purpose." 81. These issues have already been decided by us in the above noted paragraphs while adjudicating the appeals of the Revenue and assessee for the A.Y. 1993-94 and following that decision, these issues are decided against the assessee.

83. In this appeal, Revenue has raised the effective ground that the CWT(Appeals) has wrongly deleted the addition on account of Boat Club Road property

amounting to Rs. 13,34,85,000 which was given for development to M/s. Somdutt Builders.

84. The brief facts of the case regarding this property are that on a total area of 46.79 grounds which is approx. 1,15,000 sq.ft., only building which was constructed was 9262 sq.ft. In respect of this property, 20 grounds were converted into stock-in-trade. This property seems to have been given for development to M/s. Somdutt Builders for joint development for Rs. 25,27,20,000. According to the AO, the assessee was still the owner of the property, because no Sale Deed has been executed. Therefore, a sum of Rs. 13,34,85,000 was added to the net wealth on account of this property.

85. The ld. CWT(Appeals) observed that assessee had already entered into MoU with Somdutt Builders because assessee has already received the consideration.

86. After hearing both the parties, we find it is not clear from the records whether assessee was also to share some amount of property after development because copy of MoUs etc. was not filed. However, we think that the amount raised from Somdutt Builders has to be treated as a liability deductible against this property, if the value of this property is included in the net wealth of the assessee. In the bakground, we set aside this issue to the file of the AO for re-examination of the issue, after going though the details of agreement entered into with Somdutt Builders and decide the issue in the light of the observations made by us.

87. In the result, the appeal is allowed for statistical purposes.

WTA 19/Mds/2001 A.Y. 1997-98 (Assessee's appeal) "1(a) The Commissioner of Income Tax (Appeals) erred in holding that the guest houses were assessable to wealth tax.

(b) He should have found that these assets were transit houses and being used for purpose of business was not assessable to wealth tax.

(c) Without prejudice to the above claim the Appellant submits that in any event the Commissioner of Income Tax (Appeals) should have held that in view of the fact that the difference between the unbuilt are and specified are did not exceed

20% of the aggregate area the value should be in accordance with Rule 3 of Schedule III to Wealth Tax Act.

(d) The Commissioner of Income Tax (Appeals) erred in confirming that the value of debts.

2. The Commissioner of Income Tax (Appeals) erred in confirming that the value of the following assets should be included in the net wealth though these assets had been transferred and were not in existence on the date of valuation.

3. The Commissioner of Income Tax (Appeals) erred in confirming that the following assets not included in stock in trade were includible in net wealth : 4. The Commissioner of Income Tax (Appeals) erred in confirming that the following fixed assets held as stock in trade were includible in net wealth: (iii) He should have found that these assets being used for business purpose were not assessable to wealth." 89. Ground (1) & (2)_ have been decided while adjudicating the anneals of the assesses and Revenue for the assessment year 1993-94 in the above noted paragraphs and following that order, we decide these issues against the assessee.

90. Ground (3): Some properties consisted of vacant land comprising of properties viz., Vyasarpadi, Cooks Road, Tank Bund and Magadi Road, which were charged to tax as same were vacant lands and not includible in the stock-in-trade. The action of the AO has been confirmed by the CWT(Appeals).

91. Before us, the ld. AR submitted that Cooks Road property is basically land appurtenant to canteen, therefore same should be held to be I business asset and cannot be charged to tax. In this regard, he relied on the decision of Bangalore Bench of the Tribunal in case of Sree Suryodhaya Industries Ltd. v. DCWT, 63 ITD 287(Bang.). In respect of Vysarpadi property, it was submitted that same was used for paring of the vehicles of employees and therefore same should be treated as business assets.

92. After considering the rival submissions, we find that though in grounds of appeal and in the orders of the lower authorities, these lands have been considered as vacant surplus lands not converted into stock-in-trade, but in the

written submissions by the ld. counsel of assessee at page 6 & 7, it has been submitted that these lands have been converted into stock-in-trade. However, even if it is assumed that these lands were not converted into stock-in-trade, even then they have been rightly charged to tax by the lower authorities because no claim was made before the AO that land was appurtenant to factory premises or canteen premises and was being used for the purpose like parking of the vehicles. It is settled position of law that no fresh claim can be made before the Tribunal for the first time on facts of the case. Since this is a new claim being made for the first time, even decision of the Bangalore Bench in the case of Sree Suryodhaya Industries Ltd. v. DCWT (supra) is not of any help to the assessee. We also find from the assessment order that assessee has himself admitted that Vyasarpadi property, Cooks Road property and Tank Bund property is taxable and have shown the value of Rs. 1,52,625, Rs. 9,80,000 and Rs. 21,07,800 respectively. These values were increased by the AO to Rs. 1,68,900 and Rs. 10,78,000 in case of Vysarpadi and Cooks Road property by enhancing by 10% since value from Valuation Officer was not available and was awaited. In case of Tank Bund property, value was adopted at Rs. 5,71,11,000 on the basis of valuation estimated by DVO vide his order Under Section 16A(5). These facts also clearly show that there was no dispute at the assessment stage whether such properties were taxable or not. Hence there is no question of entertaining the claims being made now before us.

93. However, as far as the property known as Magadi Road property is concerned, same has been let out to Hindustan Petroleum Corporation Ltd. and we have already set aside this issue to the file of the AO for determination of the value of this property on the basis of Schedule III and therefore in this case also, we set aside the valuation of this property to the file of the AO for fresh examination after following our directions given while deciding the Revenue's appeal for A.Y.1993-94 and the same cannot be charged to tax at Rs. 2.61 crores, as observed by the AO.95. In this appeal, Revenue has challenged the order of the CWT(Appeals) for reducing the value of Magadi Road property from Rs. 2.61 crores to Rs. 1 lakh.

96. This issue has already been set aside by us to the file of the Assessing Officer while deciding the Revenue's appeal for the A.Y 1993-94 and therefore following

that order, this issue is set aside to the file of the AO with direction to follow our observations made for A.Y 1993-94.

"1(a) The Commissioner of Income tax (Appeals) erred in confirming the inclusion of the property at Ashwell Maidan, Chennai, held as 'stock-in-trade' at the estimated market value in the computation of not wealth.

(b) The Appellant submits that the valuation of the properties, which was encumbered, cannot be taken at the estimated market value.

2 (a) The Commissioner of Income tax (Appeals) erred in confirming the inclusion of the following properties at the estimated market value in the computation of net wealth : (b) The Appellant submits that the assets having been used for industrial purpose does not lose its character merely because it has been considered as stock-in-trade in the books.

3. The Commissioner of Income tax (Appeals) erred in ignoring the debts secured on the assets of the company in computing their value for wealth tax purpose." 99. These issues have been decided while adjudicating the appeals of the assessee and Revenue for the assessment year 1993-94 in the above noted paragraphs and following that order, we decide these issues against the assessee.

101. In this appeal, Revenue has challenged the order of the CWT(Appeals) for deleting the addition amounting to Rs. 13,34,85,000 in respect of Boat Club Road property.

102. Identical issue was raised by the Revenue for the A.Y. 1995-96 where the same has been set aside to the file of the AO. Following that decision, here also, the issue is set aside to the file of the AO with a direction to follow directions given in A.Y. 1995-96.

104. In this appeal, Revenue has challenged the order of the CWT(Appeals) by raising the following grounds :- (1) The learned CIT(A) has erred in deleting the addition made in the WT Asst. with regard to vacant land at Boat Club Road, Chennai amounting to Rs. l3,34,85,000.

(2) The learned CIT(A) erred in directing to allow Rs. 6 crore received by the assessee from M/s. HMG Engineering P. Ltd. for development of property at Strathern House, Rather House and Chidding Stone House, Bangalore from the value of the property as a liability.

(3) The learned CIT(A) erred in directing to adopt the value of the Magadi Road property at Rs. 1 lakh.

105. The issue raised in Ground (1) has already been decided for A.Y.1995-96 and the same was set aside to the file of the AO. Following that decision, here also, we set aside the issue to the file of the AO with a direction to follow the same directions as given in A.Y.1995-96.

106. The issue raised in ground (3) has been discussed in detail for A.Y. 1993-94 and was set aside to the file of the AO. Here also, we set aside this issue to the file of the AO with a direction to follow same directions.

107. Ground (2) : The AO estimated the value of properties situate at Chhidingstone House Bangalore, Rother House Bangalore and Sirethem House Bangalore at Rs. l3,12,41,000 on the basis of valuation made by DVG. The ld. CWT(Appeals) confirmed the taxability of these three properties. However he observed that assessee company had entered into joint agreement with HMG Engineering Pvt. Ltd. on 21.3.95 and received a sum of Rs. 6 crores from the said company as consideration for giving them the right to develop these properties and to take 50% of the net property on the sale of developed properties. He observed that matter was under dispute therefore AO should again fix the value of the such properties. However, he directed the AO to adopt a sum of Rs. 6 crores received from HMG Engg. Pvt. Ltd. as debt.

108. Before us, the ld. DR referred to the agreement entered into with HMG Engineering Pvt. Ltd. and carried us through various clauses and emphasized that assessee had received sum of Rs. 6 crores not towards sale consideration, but in consideration paid for entering into joint development with the assessee. In these circumstances, a sum of Rs. 6 crores cannot be called a debt and cannot be reduced from the value of the property.

109. On the other hand, the ld. AR supported the order of the CWT(Appeals).

110. After considering the rival submissions, we find that clause 15 of the development agreement with HMG Engg. Pvt. Ltd. reads as under :- "15. It is repeated for the sake of clarity that the relationship between the parties hereto is as Co-Developer of the said property belonging to the party of the First Part and the right of the party of the Second Part is to receive 50% of the Net Sale proceeds after accounting for expenses. It is however agreed that the amount of land cost and/or premium paid by the party of the Second Part of the party of the First Part shall not be included time premium paid by the party of the Second Part to the party of the First Part which will not be taken into calculation for the purpose of costs. If the sale price realised is Rs. 2500/- then from the said amount of Rs. 2500/- the cost of construction say Rs. 1000/- will be deducted and further expenses of say Rs. 500/- towards miscellaneous expenses if any, will be further deducted then the Net Profit realized i.e. Rs. 1000/- will be divided on 50-50 basis between the parties hereto." This clause clearly shows that money was received as a one time premium and cannot be considered to be a debt. Therefore, we find no justification in the direction of the ld. CWT(Appeals) that this amount should be deducted from the value of the property. However, at the same time, the ld. CWT (Appeals) has correctly held that alter this agreement the right of assessee stands reduced to 50% of developed property and therefore value of such property has to be determined on the basis of such agreement. In this background, we set aside this issue to the file of the AO with a direction to determine the value of this property after considering the agreements entered into with HMG Engineering Pvt. Ltd. without deducting the advance received amounting to Rs. 6 crores.

1(a) The Commissioner of Income tax (Anneals) erred in confirming the inclusion in the net wealth, the following properties uses as transit houses: (b) He should have found that the transit house was used only for the (c) In any event and without prejudice to the above claim, the Commissioner of Income Tax (Appeals) erred in confirming the rejection of rent capitalization method and adoption of estimated market value for valuation of the above mentioned properties.

(d) The Commissioner of Income tax (Appeals) erred in confirming that the value of these assets should be made, without reducing the value of debts.

(e) He should have found that there was an embargo on the sale of the property and adopting market value based on hypothetical sale was not justified.

2.A(a) The Commissioner of Income tax (Appeals) erred in confirming the valuation of the Assessing Officer at the estimated market value in respect of the following properties : (b) He should have found that the value shown in the return was proper.

(c) He should also have found that the property at Cooks Road was subject to acquisition by the Tamil Nadu Government.

B. (a) The Commissioner of Income tax (Appeals) erred in valuing of the property at Magadi Road, Bangalore at Rs. 1,00,000.

(b) He should have found that there was an embargo on the sale of the property and the value shown in the return was proper.

3.(a) The Commissioner of Income Tax (Appeals) erred in confirming the valuation of the following properties held as stock in trade at the estimated market value.

(b) He should have found that the valuation of the property, which was encumbered, cannot be taken at the estimated market value.

4.(a) The Commissioner of Income tax (Appeals) erred in confirming the inclusion in the net wealth, the following lands appurtenant thereto and used as factories, canteens, administrative office and work place at the estimated market value.

(b) The Appellant submits that the assets having been used for industrial purpose does not lose its character merely because it has been considered as stock-in-trade in the books.

(c) He should have found that the properties being used for industrial purposes were not assessable to wealth tax.

5. The Commissioner of Income tax (Appeals) erred in ignoring the debts secured on the assets of the company in computing their value for wealth tax purpose.

113. Ground (1) : This issue has been decided while adjudicating the appeals of the assessee and Revenue for the assessment year 1993-94 in the above noted paragraphs and following that order, we decide this issues against the assessee.

114. Ground (2) : This issue has been by us while adjudicating the assessee's appeal for A.Y. 1997-98 and following that decision, we find nothing wrong with the orders of the lower authorities regarding inclusion and valuation of properties situated at Vysarpadi, Cooks Road and Tank Bund Road property.

115. As far as Magadi Road property is concerned, this issue has already been set aside by us and following our decision in the Revenue's appeal for A.Y. 1993-94, here also we set aside the issue to the file of the AO and direct him to follow the directions given by us in A.Y. 1993-94.

116. Ground (3): After hearing both the parties, we find that Baiderhalli property, Hosakere property and Nandidurg property all situated in Bangalore have been treated as stock-in-trade by the assessee. Details regarding Ashwell Maidan have already been discussed for earlier years. This issue has been decided while adjudicating the appeals of the assessee and Revenue for the assessment year 1993-94 in the above noted paragraphs and following that order, we decide these issues against the assessee.

117. Ground (4) & (5) : These issues have been decided while adjudicating the appeals of the assessee and Revenue for the assessment year 1993-94 in the above noted paragraphs and following that order, we decide these issues against the assessee.

119. In this appeal, Revenue has raised the following effective grounds:- 1. The learned CIT(A) has erred in deleting the addition made in the WT Asst. with regard to the vacant land at Boat Club Road, Chennai amounting to Rs. 13,34,85,000/-.

2. The learned CIT(A) has erred in directing to allow Rs. 6 crore received by the assessee from M/s. HMG Engineering P. Ltd. for development of property at

Strathern House, Rother House and Chidding Stone House, Bangalore from the value of the property as a liability.

3. The learned CIT(A) has erred in directing to adopt the value of the Magadi Road property at Rs. 1 lakh.

120. Ground (1) : As decided in A.Ys. 1995-96, 1996-97 and 1998-99, this issue has been set aside to the file of the Assessing Officer and therefore here also, we set aside this issue to the file of the AO with a direction to follow the same directions given for earlier years.

121. Ground (2) : This issue has been decided by us while adjudicating the Revenue's appeal for A.Y. 1993-94 in the above paragraphs and following that decision, we restore this matter back to the file of AO for determination of the value of the property after considering the agreements with HMG Engineering Pvt. Ltd. However, as held earlier, the debt of Rs. 6 crores cannot be allowed to be deducted.

122. Ground (3) : This issue has been decided in the earlier years and for A.Y. 1993-94 in Revenue's appeal, the issue has been set aside to the file of the AO. Here also, we set aside the matter back to the file of the AO with same directions as in earlier years.

124. In this appeal, identical grounds have been raised as raised by the assessee in A.Y. 1998-99 in WTA 60/2003. Following that decision for A.Y. 1998-99, the grounds raised in this appeal are rejected.

127. In this appeal, the assessee has raised the following grounds of appeal :- "1.(a) The Commissioner of Wealth Tax, Appeals erred in assessing the Appellant to Wealth Tax.

(b) The Commissioner of Wealth Tax should have found that in the Wealth Tax Act 1957 in Section 2(h) the Company has been defined as having the meaning assigned to it in clause 17 of Section 2 of the Income Tax Act. Section 2(17) of the Income Tax Act defined only the Company in general. Sub-section 18 of Section 2 of the Income Tax Act defines the Companies in which public are substantially

interested inter alia the shares of the Company are listed in the stock exchange. The Appellant will be coming in the definition of Section 2(18) of the Income Tax Act. In the absence of exclusive definition in the Wealth Tax Act in respect of Companies in which the public are substantially interested as defined in Section 2(18) of the Income Tax Act, the Company will not be coming under the purview of definition of Section 2(17) of the Income tax Act.

(c) Even though the charging Section 3 of the Wealth Tax Act speaks about the inclusion of Company for the purpose of Wealth Tax, the definition of Section 2(m) specifically omits company from charge of Wealth Tax. The definition under Section 2(m) mentions "assets required to be included in his net wealth" and hence it speaks about charging assets only of individuals and HUF and not Companies.

2. Without prejudice to the above claim that the company is not assessable to wealth-tax, the Appellant submits :- (a) The Commissioner of Wealth Tax, Appeals erred in assessing Waterside Area Transit House at Chennai at an estimated market value of Rs. 31,84,03,856, while the asset falls outside the ambit of Wealth Tax Act.

(b) The Commissioner of Wealth Tax, Appeals erred in assessing Boat Club Road, vacant land at Chennai at an estimated market value of Rs. 17,62,02,000/- while the asset falls outside the ambit of Wealth Tax Act.

(c) In any event, the Commissioner of Wealth Tax Appeals should have found that there was an embargo on the sale of the property and adopting market value based on hypothetical sale was not justified.

3.(a) The Commissioner of Wealth Tax, Appeals erred in assessing an amount of Rs. 14,43,65,000/- to Wealth tax for the following properties which have been demolished and/are under development as on valuation date: (b) The Commissioner of Wealth Tax should have found that there was an embargo on the sale of property and adopting market value based on hypothetical sale was not justified.

(c) In any event, the Commissioner of Wealth Tax should have found that the properties have been demolished and are in development stage. Since the company has no absolute title over the properties, the money received from the Joint Developer, HMG Engineering Ltd., amounting to Rs. 6,00,000/- that was offered for tax in the A.Y. 1995-96 is to be reduced from the market value of the properties.

4.(a) The Commissioner of Wealth Tax, Appeals erred in adopting an estimated value in respect of the following business assets :-a) Property at Vysarpadi, Chennai 3,30,66,000b) Tank Bund Road property at Bangalore 6,85,33,200c) Property at Cooks Road, Chennai 6,56,64,000 b) The Commissioner of Wealth Tax should have found that the property at Cooks Road was property subject to acquisition by the Tamil Nadu Government as on the valuation date.

5.(a) The Commissioner of Wealth Tax, Appeals erred in valuing the property at Magadi Road, Bangalore, at the estimated market value of Rs. 3,13,93,200/-.

(b) The Commissioner of Wealth Tax should have found that there was an embargo on the sale of the property.

6.(a) The Commissioner of Wealth Tax, Appeals erred in including the net wealth an estimated market value of the following assets held as stock-in-trade, which are encumbered.

Ashwell Maidan, Madras 4,39,29,655 Baiderhalli Property, Bangalore 1,40,33,241 Hosakpre Road. Bangalore 1,08,19,160 Nandidurg Road, Bangalore 82,23,600 (b) The Appellant submits that the valuation of the property, which is encumbered, cannot be taken at the value of a property, which is free from encumbrance.

7. The Commissioner of Wealth Tax, Appeals erred in including the net wealth the value of land appurtenant to building used as factories, canteens, administrative office and work place at an estimated market value.

8. The Commissioner of Wealth Tax, Appeals erred in ignoring the debts secured on the assets of the company in computing their value for wealth tax purpose." 128. Ground (1): The ld. AR reiterated the grounds of appeal. On the other hand,

the ld. DR submitted that it is clear from the provisions of the Wealth-tax Act that the assessee company is assessable to wealth-tax and therefore grounds raised by the assessee are totally misplaced and misconceived.

129. After considering the rival submissions, we find that the ld.CWT(Appeals) has decided this issue vide para 4.1, which is reproduced as under :- "4.1 I have carefully considered the issue. As regards to the argument of the appellant that it is not exigible for wealth tax, it may be stated that Section 2(h) of the Wealth Tax Act says that the word "company" shall have the meaning assigned to it in Clause (17) of Section 2 of the Income-tax Act and as per Section 2(17) of the Income tax Act, company means, (ii) any body corporate incorporated by or under the laws of a country outside India, or (iii) any institution, association or body which is or was assessable or was assessed as a company for any assessment year under the Indian Income-tax Act, 1922 (11 of 1922), or which is or was assessable or was assessed under this Act as a company for any assessment year commencing on or before the 1st day of April, 1970, or (iv) any institution, association or body, whether incorporated or not and whether Indian or non-Indian, which is declared by general or special order of the Board to be a company : Provided that such institution, association or body shall be deemed to be a company only for such assessment year or assessment years (whether commencing before the 1st day of April, 1971, or on or after that date) as may be specified in the declaration ;] An "Indian company has been defined in Section 2(26), according to which, an Indian Company is a company formed and registered under the Companies Act, 1956 and includes (i) a company formed and registered under any law relating to companies formerly in force in any part of India (other than the State of Jammu and Kashmir [and the Union territories specified in sub-clause (iii) of this clause]); [(ia) a corporation established by or under a Central, State or Provincial Act; (ib) any institution, association or body which is declared by the Board to be a company under Clause (17);] (ii) in the case of the State of Jammu and Kashmir, a company formed and registered under any law for the time being in force in that State ; [(iii) in the case of any of the Union territories of Dadra and Nagar Haveli, Goa, Daman and Diu, and Pondicherry, a company formed and registered under any law for the time being in force in that Union territory:] Provided that the [registered or, as the case may be, principal office of the company, corporation,

institution, association or body] in all cases is in India; The appellant being a company formed and registered under the Companies Act, 1956, it has to be treated as an Indian company and therefore it squarely comes under the definition of Section 2(17) of the Income-tax Act and therefore it is exigible to wealth tax. The definition under Section 2(18) is for the phrase "company in which the public are substantially interested" and it has no relevance to the case of the appellant." 130. We think the ld. CWT(Appeals) has correctly decided this issue, because Section 3, which is the charging section, very clearly includes companies also in its ambit and therefore wealth-tax provisions are applicable in case of companies also. In these circumstances, we find nothing wrong with the order of the Id- CWT (Appeals) and confirm the same.

131. Ground (2) to (7): These issues are discussed by us while adjudicating the principal issues as well as the grounds raised in various appeals and all these issues have been rejected by us in the above noted paragraphs and following the same, we reject these grounds.

"2.1 The Learned CIT(A) has erred in withdrawing enhancement proposal with regard to the vacant land at Boat Club Road, Chennai for the assessment year 2000-01.

2.2 The Learned CIT(A) has failed to appreciate that the agreement with M/s. Somdutt Builders was only for half of the property and the assessee had ownership of the balance of 50% of the property on the valuation date.

2.3 The Learned CIT(A) has failed to appreciate that when the assessee was endowed with the ownership of 50% of the vacant land at Boat Club Road, Chennai on the valuation date, he ought to have sustained 50% of the valuation made by the Assessing Officer." 134. This issues has been set aside by us while adjudicating the Revenue's appeal for the A.Y. 196-97 and following that we set aside this issue to the file of the Assessing Officer with the same directions.

136. In this appeal, assessee has raised identical grounds as in A.Y.2000-01 in WTA 135/04, which we have rejected. Following that decision, we reject these grounds of appeal.

138. In this appeal, Revenue has raised identical grounds as raised in A.Y. 2000-01 and as decided in WTA 137/04, we set aside this issue to the file of the Assessing Officer with similar directions.