

Voltas Ltd. Vs. Asstt. Cwt

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SooperKanoon Citation : sooperkanoon.com/75955

Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Nov-16-2007

Reported in : (2008)113ITD19(Mum.)

Judge : D Srivastava, K Singhal, S C Ms.

Appellant : Voltas Ltd.

Respondent : Asstt. Cwt

Judgement :

1. In exercise of the powers conferred by Section 255 of the Income Tax Act, the Hon'ble President has constituted this Special Bench to decide upon the following issues: 1. Whether the value of the immovable asset owned by an assessee is includible in the net wealth of the owner/assessee or the lessee in terms of Section 4(8)(b) of the Wealth Tax Act read with Section 269UA(f) of the Income Tax Act where the term of the lease is (i) exceeding 12 months but less than 12 years; and/or (ii) exceeding 12 years 2. Whether the words in parenthesis in Section 4(8)(b) of the Wealth Tax Act "(excluding any rights by way of lease from month to month or for a period not exceeding one year)" in fact relate to the nature of the lease agreement, which will not qualify for applying the provisions of Section 4(8)(b) of the Wealth Tax Act 3. Whether lease agreement for a period for less than one year with an extension clause which is normally an agreement of leave and licence, will not be covered by Section 4(8)(b) of the Wealth Tax Act and Section 269UA(f) of the Income Tax Act 3. Facts relevant for deciding the issues under reference are that the assessee company is the owner of the following

properties: (i) Industrial shed at Pune, which has been leased out in part to a wholly owned subsidiary of the assessee, namely, Perfect Moulds (P) Ltd. and another part to a joint venture company of the assessee, namely, Voltas Air International Ltd. The assessee entered into an agreement of "leave and license" on 10-11-1995 with Perfect Moulds (P) Ltd. for a period of 11 months, which was renewed three times for a further period of 11 months each. It is stated in the said agreement that Perfect Moulds (P). Ltd. is going to be a wholly owned subsidiary of the licensor. Clause 1.1 of the said agreement provides that the licensor conveys and grants to the licensee a license for a period of 11 months effective 15-11-1995 to use on leave and license basis an area of 4,356 sq. mtrs. built up in the licensor's premises against payment of Rs. 1 lakh per month to the licensor. Clause 3.2 of the said agreement provides that the licensee shall have the option to renew the agreement for three further periods of 11 months each. Three facts clearly emerging from the said agreement are : (i) Both the parties have expressed their intention that the agreement is of leave and license and not of lease; (ii) The licensee has the right to use the licensed premises on leave and license basis; and (iii) The total period for which the license can be renewed cannot exceed three further periods of 11 months each. Likewise the assessee has entered into agreement of "leave and license" with Voltas-AIG (P) Ltd. on 24-5-1996. It is stated in the agreement that the assessee licensor and Air International (India) (P) Ltd., a wholly owned subsidiary of Air International Group Ltd. having its registered office in Australia have agreed to subscribe to the equity capital of the licensee in equal shares. According Clause 1 of the agreement the licensor has granted to the licensee the use on leave and license basis an area of 7,220 sq. mtrs. in the licensed premises effective 1-8-1996.

Clause 3.4 of the agreement provides that the licensee shall have the option to renew the agreement for two further periods of 11 months each. Three facts clearly emerging from the said; agreement are : (i) Both the parties have expressed their intention that the agreement is of "leave and license" and not of lease, (ii) The licensee has the right to use the licensed premises on leave and license basis, and (iii) The total period for which the license can be renewed cannot exceed two further periods of 11 months each. It is important to observe that both the aforesaid licensees have been given the mere right to use the

licensed premises and not the right of possession or any right in the properties.

(ii) Office premises admeasuring 8,000 sq. ft. in Saran Chambers at Lucknow part of which has been leased out to a group company, i.e.

Telco. The assessee entered into a lease agreement with Telco on 31-12-1993 for a period of five years, which has been renewed for a further period of five years. Clause 1 of the said agreement provides that the lessees shall use the said premises for their business purposes only and that they have the option of renewing the lease for a further period of five years on such higher rent and security deposit and other terms and conditions as may be mutually agreed upon. It is important to observe that the parties have used the expression "agreement of lease" but the fact remains that what has been granted to the lessees is mere use of the premises and not the right of occupation/possession or any right in the properties under consideration. It is therefore for the Division Bench hearing the matter to decide as to whether the said transaction is, in substance, a transaction of lease or leave and licence.

(iii) Factory at Verona out of which 400 sq. ft. has been leased out to Bank of India for establishing extension/ATM counter. The assessed submits that no agreement has been entered into with bank of India.

4. It is thus clear that all the agreements entered into by the assessee are for less than one year at a time (except the agreement with Telco, which his for a period of five years) and that the combined period of licence/lease, after extensions, does not exceed twelve years. In the case of Bank of India, there is no lease agreement as per the, assessee. Another significant aspect is that the assessee, in its income-tax return, has declared the rental income from the aforesaid properties as income from house property under Section 22 of the Income Tax Act in its capacity as their owner. It is fairly submitted by the assessee that the licensees/lessees in the present case have not included the impugned properties in their net wealth either.

5. However, the assessee excluded, in its wealth-tax return, the aforesaid properties from its net wealth on the ground that they stood licensed/leased out for

a period exceeding one year and, therefore, it would be the licensees/lessees, and not the assessee lessor, who would be deemed to be their owner in terms of Section 4(8)(b) of the Wealth Tax Act read with Section 269UA(f) of the Income Tax Act.

6. The assessing officer however treated the assessee to be the owner of the aforesaid properties notwithstanding that it had licensed/leased them out. On appeal, the learned Commissioner (Appeals) has also decided the issue against the assessee.

7. Aggrieved by the order of the Commissioner (Appeals), the assessee is now in appeal before this Tribunal. The matter came up for hearing before a Division Bench of this Tribunal. The assessee contended that the impugned properties had been licensed/leased out, after the licences/leases were renewed, for a period exceeding one year and, therefore, they were not includible in its wealth but in the wealth of the licensees/lessees in view of the provisions of Section 4(8)(b).

The assessee further submitted that where the property was licensed/leased out initially for a period of less than one year but it was required to be renewed so as to put the combined period of license/lease as exceeding one year, the value of such property would not be includible in the hands of the lessor but in the hands of the licensee/lessee who is deemed to be the owner of such properties under Section 4(8) (b) of the Wealth Tax Act read with Section 269UA(f) of the Income Tax Act.

8. In support of its submissions before the Division Bench, the assessee relied upon the order dated 16-7-2003 in Dy. CWT v. Sanghvi Exports(P) Ltd., WTA No. 31/Mum/2003 passed by a Division Bench of this Tribunal in which the Tribunal has held as under: The term of the said agreements being for more than one year, Clause (b) of Sub-section (8) of Section 4 of the Wealth Tax Act is applicable to the present case and the lessees are to be treated or deemed as owners of the respective properties and wealth-tax in respect of the said properties for the assessment year under appeal is to be levied on them, it is settled law that both the lessor and the lessee cannot be assessed to wealth-tax in respect of the same leased property.

9. The department, on the other hand, invited the attention of the Division Bench to the order passed by a Division Bench of this Tribunal in *Asstt. CIT v. Precision Wires India Ltd.*, WTA Nos. 345 & 346/Mum/2004 in which the Tribunal has held as under: The substance of the arguments of the learned Counsel is that only deemed owner is liable to wealth-tax and not the owner. The assessee company is receiving the rent, exercising all the powers which an owner can exercise except the possession of the property in question. As a matter of fact, the assessee company is enjoying monthly rent in lieu of physical possession. The assessee is declaring rental income under the head 'Income from house property' and also claiming fixed allowance under Section 24(1)(i) in respect of repair which an owner can claim. Therefore, following the decision of the co-ordinate Bench of the Tribunal, Mumbai in the case of *Mafatlal Industries Ltd. v. WTO* (2005) 95 TTJ (Mumbai) 723 : (2005) 95 ITD 66 (Mumbai) we hold that it is not permissible (or assesses to take a stand in respect of an asset in wealth-tax proceedings diametrically opposite to stand taken in income-tax proceedings. In our opinion, the assessee continued to remain the owner because the property in question belonged to the assessee.

10. The department also invited the attention of the Division Bench to another order passed by this Tribunal in *Anew Electronic Industries (P) Ltd. v. Wealth Tax Officer*, WTA No. 318/Mum/2004 in which the Tribunal has held as under: The owner in respect of house property is liable to tax on annual value under the Income Tax Act, 1961. A perusal of Sections 27(iiib) and 269UA(1) leave no room for any doubt where the period of lease is more than 12 years the lessee is deemed to be the owner of the property for the purpose of assessment under the provisions of the Income Tax Act. Undisputedly, in the case of the assessee, provisions of Section 4(8)(b) of the Wealth Tax Act are not applicable because the assessee leased out the premises on month to month basis for a period of two years. This is evident from the lease deed itself filed before us. We have also carefully gone through the various clauses of lease deed and found that the ownership of this property transferred the lessee in respect of any building or part thereof by virtue of any such transaction as referred to in Clause (1) of Section 269UA of the Income Tax Act requires that the property must be leased out for a period of 12 years or more. Admittedly, in the case of the assessee this condition is

not fulfilled. Therefore, it cannot be said that lessee has become the owner of the property in question. In view of this, we are of the opinion that the Commissioner (Appeals) has given cogent reason for holding that the assessee is liable to tax.

11. Faced with the divergent views taken by the Division Benches of this Tribunal, the Division Bench hearing the appeal referred the matter to the Hon'ble President for constitution of a larger Bench to resolve the controversy. This is how the present Special Bench has been constituted.

12. The case of the assessee as canvassed before us is that it is the lessees who should be deemed to be the owner of the property as they have acquired rights in or with respect to any building or part thereof under a lease for a period exceeding one year, in terms of the words used in the parenthesis in Section 4(8)(b) of the Wealth Tax Act. The assessee seeks to classify the leased properties into two categories.

First category, according to the assessee, consists of those leases where the total period (including extended periods) of lease does not exceed one year. In such cases, the lessor, according to the assessee, continues to be the owner of the property and not the lessee. Second category according to the assessee, consists of those leases where the total period of lease (including the extended periods) exceeds one year. In cases falling under the second category, the lessor, according to the assessee, ceases to be the owner of the property as it is the lessee who is deemed to be the owner of such properties by Section 4(8) (b) of the Wealth Tax Act. The assessee submits that its case falls under second category and, hence, it cannot be treated as the owner of the impugned properties. The assessee further submits that any other interpretation would make the words used in the parenthesis in Section 4(8)(b) of the Wealth Tax Act otiose. He contends that any interpretation, which renders the words used in a statute otiose, should be avoided.

13. The case of the department, on the other hand, is that the provisions of Section 4(8)(b) should be read in their entirety and not in a fragmented manner and if it is so read then it is clear that only those leases which are for a period of twelve years or more alone will come within the purview of Section 4(8) (b) of the

Wealth Tax Act.

According to the department, the ownership of the properties covered by the leases answering the description of the words in parenthesis of Section 4(8) (b) of the Wealth Tax Act will continue to be of the lessor unless such leases have been made for aggregate period of twelve years or more. The department submits that the aggregate period of licensees/lease of the impugned properties is less than twelve years and, hence, the licensees/lessees can neither be treated as deemed owners under Section 4(8)(b) nor have they treated themselves as the deemed owners of the impugned properties in their own WT returns and, therefore, it is the assessee who continues to be the owner of the impugned properties. It is submitted that there is no conflict in the words used in Section 4(8)(b) in that it is the lessees who are deemed to be owners of only those properties which are leased out to them for aggregate period of twelve years or more and that they are not the deemed owners of the properties in cases involving (i) month to month lease or year to year lease or (ii) a lease not exceeding a term of twelve years. According to the learned departmental Representative, while leases exceeding 12 years would fall under Section 4(8)(b) and make the lessees deemed owners of such properties but month to month or year to year leases or leases not exceeding a term of twelve years are clearly excluded from the purview of Section 4(8)(b) of the Wealth Tax Act.

14. In the rejoinder submissions, the assessee contends that if the requirement of twelve years is to be read and applied without having regard to the words used in the parenthesis, then exclusion of (a) month to month lease; and (b) lease of less than a year as indicated by the words in parenthesis of Section 4(8)(b) would become redundant.

According to the learned Authorized Representative for the assessee, the question of excluding month to month leases or leases for a period not exceeding one year in such a case cannot arise on the face of it as such leases are obviously for a period of less than twelve years and to that extent the words used in the parenthesis would become redundant, the assessee reiterates its submission that it is only month to month leases and leases not exceeding one year, which have

been excluded from the scope of fiction created by Section 4(8)(b) and, therefore, all other leases would be covered by the fiction created by Section 4(8)(b).

15. We have heard the parties and considered their rival submissions including the authorities referred to by them. Section 3 of the Wealth Tax Act creates charge of wealth-tax in respect of the net wealth on the corresponding valuation date of every individual, HUF and company.

According to Section 2(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 the net wealth as on that date under this Act, is in excess of the aggregate value of the debts owed by the assessee on the valuation date which have been incurred in relation to the said assets". In *CWT v. Bishwanath Chatterjee*, the Hon'ble Supreme Court has dealt with the nature and scope of the expression "belonging to" as occurring in Section 2(m). The Hon'ble Court has held : "The expression 'belong' has been defined as follows in the Oxford English Dictionary : "To be the property or rightful possession, of." So it is the property of a person, or that which is in his possession as of right, which is liable to wealth-tax. In other words, the liability to wealth-tax arises out of ownership of the asset, and not otherwise. Mere possession or joint possession, unaccompanied by the right to, or ownership of property would therefore not bring the property within the definition of net wealth for it would not then be an asset belonging' to the assessee." The aforesaid observations have been cited with approval and relied upon by the Hon'ble Supreme Court in *Late Nawab Sir Mir Osman Ali Khan v. CWT*. It therefore follows that an asset can be included in the wealth of the assessee for the purposes of wealth-tax levy only when the assessee is the legal owner of such an asset, in accordance with the provisions of the Wealth Tax Act. An exception to the aforesaid general rule is provided in Section 4(8) of the Wealth Tax Act as existing on the statute book in the assessment year under consideration.

16. The expression "ownership" meaning legal ownership had the effect of excluding cases where an assessee possessed all rights to an immovable

property except the husk of the title. As rightly explained in Circular No. 495, dated 22-9-1987 (1988) 67 CTR (St) 1) issued by the CBDT, the Finance Act, 1987 has shifted the liability to taxation from the legal owner to the real owner in respect of some transfers by introducing deeming provisions. Sub-section (iiib) in Section 27 of the Income Tax Act has been inserted by the Finance Act, 1987 for treating certain holders of property as deemed owners. Sub-section (iiib) of Section 27 of the Income Tax Act provides that a person who acquires any rights (excluding any rights by way of a lease from month to month or for a period not exceeding one year) in or with respect to any building or part thereof, by virtue of any such transaction as is referred to in Clause (f) of Section 269UA, shall be deemed, to be the owner of that building or part thereof for the purposes of Sections 22 to 26 of the Income Tax Act. Section 269UA(f) of the Income Tax Act reads as under: (i) in relation to any immovable property referred to in Sub-clause (i) of Clause (d), means transfer of such property by way of sale or exchange or lease for a term of not less than twelve years, and includes allowing the possession of such property to be taken or retained in part performance of a contract of the nature referred to in Section 53A of the Transfer of Property Act, 1882.

Explanation. For the purposes of this sub-clause, a lease which provides for the extension of the term thereof by a further term or terms shall be deemed to be a lease for a term of not less than twelve years, if the aggregate of the term for which such lease is to be granted and the further term or terms for which it can be so extended is not less than twelve years; (ii) in relation to any immovable property of the nature referred to in Sub-clause (ii) of Clause (d), means the doing of anything (whether by way of admitting as a member of or by way of transfer of shares in a co-operative society or company or other association of person or by way of any agreement or arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of such property.

17. Likewise, the newly introduced (with effect from 1-4-1997) Section 4(8) in the Wealth Tax Act by the Finance (No. 2) Act, 1996 has enacted certain deeming provisions. In the matter before us, we are concerned with the provisions of Clause (b) of Sub-section (8) of Section 4 in the Wealth Tax Act, which read as under: (b) who acquires any rights (excluding any rights by way of a lease from

month to month or for a period not exceeding one year) in or with respect to any building or part thereof by virtue of any such transaction as referred to in Clause (f) of Section 269UA of the Income Tax Act, 1961, shall be deemed to be the owner of that building or part thereof and the value of such building or part shall be included in computing the net wealth of such person.

18. Section 4(8)(b) in the Wealth Tax Act is a deeming provision by which a lessee is deemed to be the owner in a case where he acquires any right in respect of a building or part thereof by virtue of any such transaction as is referred to in Clause (f) of Section 269UA of Income Tax Act, 1961. The language of Section 4(8)(b) is quite plain, clear and unambiguous without leaving manner of doubt that a lessee shall be deemed to be the owner of any building or part thereof only when he acquires any right therein by virtue of a transaction falling under Clause (f) of Section 269UA of Income Tax Act, 1961 and not otherwise. In other words, a lessee cannot be deemed to be the owner by virtue of a transaction not falling under Clause (f) of Section 269UA of the Income Tax Act. According to Section 269UA(f)(i) of the Income Tax Act, "transfer", in relation to any immovable property referred to in Section 269UA(f)(i), means transfer of such property by way of, inter alia, lease for a term of not less than twelve years, and a lease, which provides for the extension of the term thereof by a further term or terms, shall be deemed to be a lease for a term of not less than twelve years, if the aggregate of the term for which such lease is to be granted and the further term or terms for which it can be so extended is not less than twelve years. It is therefore, clear that it is the lessee who will be deemed to be the owner of any building or part thereof and the value of such building or part thereof shall be included in computing his net wealth only if he acquires the requisite rights in or with respect to any building or part thereof under a lease for a term of not less than twelve years. Section 4(8)(b) enacts a deeming provision and, therefore,' it requires to be strictly construed. A lessee cannot be deemed to be the owner under Section 4(8) (b) if the term of lease is less than twelve years. In such a case, the legal owner shall continue to be liable to Wealth-tax by virtue of the provisions of Section 2(m) of the Wealth Tax Act. This position is quite evident on bare perusal of Section 4(8){b) of the Wealth Tax Act read with Section 269UA(f) of the Income Tax Act.

19. We shall now deal with the submission of the learned Authorized Representative for the assessee regarding the interpretation of the words used in the parenthesis "(excluding any rights by way of a lease from month to month or for a period not exceeding one year)". The submission of the assessee is that similar position would have automatically emerged even if the aforesaid words in parenthesis were not inserted in Section 4(8)(b) as any right acquired under a lease from month to month or for a period not exceeding one year will obviously be for a term of less than twelve years and consequently fall outside the scope of both Section 269UA(f) of the Income Tax Act and Section 4(8)(b) of the Wealth Tax Act. We have already held earlier that Section 4(8)(b) is a deeming provision by which the legislature has treated the lessee as deemed owner in a case where the lessee acquires any rights in or with respect to any building or part thereof by virtue of any transaction referred to in Section 269UA(f) of the Income Tax Act. However, the legislature in its wisdom has expressly excluded any right acquired under a lease from month to month or for a period not exceeding one year also from the purview of fiction created by Section 4(8)(b) of the Wealth Tax Act. Once such a right acquired under a lease from month to month or for a period not exceeding one year is excluded for whatever reasons from the scope of fiction created by Section 4(8)(b), the courts, in our opinion, should not try to find out the reasons as to why such right has been excluded by the legislature. The fact that they have been excluded from the scope of the fiction created by Section 4(8)(b) is plainly clear and therefore there is no necessity to ascertain as to why they have been excluded from the fiction created by Section 4(8)(b); it is at this juncture that we may fruitfully quote the words of Oliver Wendell Holmes : "It is sometimes more important to emphasize the obvious than to elucidate the 'obscure'." (Extracted from the judgment in *Bhavnagar University v. Palitana Sugar Mill* . It is for this reason that we have emphasized the plain position emerging from bare perusal of Section 4(8)(b) that it is the acquisition of rights in or with respect to any building or part thereof by virtue of any such transaction as is referred to in Clause (f) of Section 269UA of the Income Tax Act, 1961 which has the effect of shifting the ownership from legal owner to real owner, namely, the lessee. It is also plainly clear from the language of Section 4(8)(b) that the rights acquired under a lease from month to month or for a period not exceeding one year and also those

acquired by virtue of any transaction not falling under Section 269UA(f) are clearly outside the scope of the fiction created by Section 4(8)(b) of the Wealth Tax Act. Since the aforesaid position emerges clearly and plainly on bare perusal of Section 4(8)(b), it is not necessary, as stated earlier, to elucidate the possible intention of the legislature in inserting the words in the parenthesis appearing in Section 4(8)(b).

It is a cardinal principle of interpretation that plain and natural meaning should be given to the language employed by the legislature where there is no ambiguity in such language, and the courts should not unnecessarily take recourse to find out the intention of the legislature. Reference can be made to the judgment of the Hon'ble Supreme Court in the case of Keshavji Ravji & Co. v. CIT wherein their Lordships have observed as under: As long as there is no ambiguity in the statutory language, resort to any interpretative process to unfold the legislative intent becomes impermissible. The supposed intention of the legislature cannot then be appealed to whittle down the statutory language which is otherwise ambiguous. If the intendment is not in the words, it is nowhere else. The need for interpretation arises when the words used in the statute are, on their own terms, ambivalent and do not manifest the intention of the legislature.

20. The Constitution Bench of the Hon'ble Supreme Court in CIT v. Anjum M.H. Ghaswala has held as under: This exercise of purposive interpretation by looking into the object and scheme of the Act and the legislative intendment would arise, in our opinion, if the language of the statute is either ambiguous Or conflicting or gives a meaning leading to absurdity, 21. A bare look at the provisions of Section 4(8)(b) of the Wealth Tax Act clearly reveals that the words used in the parenthesis are plain, simple and unambiguous which clearly exclude any rights acquired under month to month lease as well as lease for a period not exceeding one year from the scope of the said section, i.e., Section 4(8)(b) itself.

Therefore, the question of invoking the rules of interpretation to unfold the intention of the legislature in inserting the words in the parenthesis in Section 4(8)(b) does not arise. The contention of the learned Counsel for the assessee that the words used in the parenthesis would become otiose is misconceived for the reasons

given above. On the contrary, if the contention of the learned Authorized Representative for the assessee that a right acquired under a lease for a term exceeding one year would make the lessee as deemed owner is accepted, then the main provisions of Section 4(8)(b) would become otiose since a person acquiring right under a lease exceeding one year would become deemed owner which is not the intention of the legislature, as the legislature has used specific words to exclude the rights acquired under a lease for a period upto 12 years from the purview of the fiction created thereunder.

22. There is yet another aspect to the matter. Section 4(8)(b), as stated earlier, carves out an exception to the general rule that it is the legal owner of the specified assets who is subjected to the wealth-tax assessment. Section 4(8)(b) shifts the ownership from legal owner to what it considers to be the real owner by deeming the lessee as owner. Crawford in Statutory Construction has stated: "...the exception is also subject to the rule of strict construction; that is, any doubt will be resolved in favour of the general provision and against the exception, anyone claiming to be relieved from the statute's operation must establish that he comes within the exception." In *Desu Rayudu v. Andhra Pradesh Public Service Commission*, it has been held that it is obvious that an exception cannot be so interpreted as to nullify or destroy the main provision. In *Shree Raghuttiakathirtha Sreepadangalvaru Swamiji v. State of Mysore*, it has been held that the exception cannot swallow the general rule. The operation of general rule cannot be ousted unless the exception covers the issue of ownership. The moment the applicability of the exception fails the general rule will automatically come into operation. The lessee cannot be deemed to be the owner unless he acquires the lease made by a registered instrument for a term of not less than 12 years. The legal owner cannot be divested of his ownership under the general rule till the lessee is invested with the ownership created by the exception, i.e., Section 4(8)(b). The substitution of legal ownership by deemed ownership cannot mean absence of ownership both in the hands of the legal owner under the general rule as well as deemed owner under the exception created by Section 4(8)(b). Section 4(8)(b) shifts the ownership from legal owner to the deemed owner. If this shifting fails, the general rule will immediately come into play. The asset must be owned either by the legal owner under the general rule or by a person who is deemed by law to be the

owner thereof. If the lessee is not a deemed owner within the meaning of Section 4(8)(b), the legal owner will continue to be the owner of the property under the general rule and consequently liable to wealth-tax thereon.

23. As regards the issue as to whether leave and license transactions are outside the scope of the fiction created by Section 4(8)(b), the learned Authorized Representative for the assessee has invited our attention to Section 52 of the Indian Easements Act which reads as under: 52. Where one person grants to another, or to a definite number of other persons, a right to do or continue to do, in or upon, the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence.

Apart from inviting our attention to the provisions of Section 52 of the Indian Easements Act, the learned Authorized Representative for the assessee has not elaborately addressed us on the issue though one of the questions referred to us is whether an agreement of leave and licence is covered by Section 4(8)(b) of the Wealth Tax Act and Section 269UA(f). The learned departmental Representative has also not addressed us on this issue.

Fiction created by Section 4(8)(b) applies only to those transactions which are covered by Section 269UA(f) of the Income Tax Act. Section 269UA(f) refers to the transfer of a property by way of sale or exchange or lease for a term of not less than twelve years. It is thus clear that the legal fiction created by Section 4(8)(b) would apply only if the transaction is by way of, inter alia, lease. As regards licence, it is well established that a license is a purely personal privilege or right enabling the licensee to do something on the land of the licensor, which would otherwise be unlawful. It is an excuse by reason of consent of the licensor for an act, which would otherwise be unlawful. It is merely leave to do a thing, which enables a licensee to do lawfully what he could not otherwise do except unlawfully. A dispensation or licence neither passes any interest nor alters nor transfers property in anything but only makes an action lawful, which without the licence would have been unlawful. A licence to use the property is traditionally distinguished from a lease in the respect that a licensee does not have possession

or any interest in the property. Leave and licence is thus materially different from lease and therefore clearly outside the scope of the fiction created by Section 4(8) (b). In case of licence, all the ingredients of ownership including the right to possession vest in the owner licensor and not in the licensee. Since a leave and licence is not "lease" and also does not transfer any interest in the property to the licensee, it will obviously be outside the scope of Section 4(8) (b) of the Wealth Tax Act and Section 269UA(f) of the Income Tax Act. A pure and simple licensee cannot therefore be treated as a deemed owner within the meaning of Section 4(8)(b) of the "Wealth Tax Act., 26. In view of the foregoing, we answer each of the question's referred To us as under: Question 1 : "Whether the value of an immovable asset owned by an assessee is includible in the net wealth of the owner/assessee or the lessee in terms of Section 4(8)(b) of the Wealth Tax Act read with Section 269UA(f) of the Income Tax Act where the term of the lease is (i) exceeding 12 months but less than 12 years; and/or (ii) exceeding 12 years"? Answer: It is the legal owner (i.e. the assessee in the case before us) who is liable to the wealth-tax levy on the value of specified assets licensed/leased by him for a term of less than twelve years as laid down in Section 269UA(f). However, the legal owner shall not be liable to wealth-tax levy on the value of specified assets leased by him for a term of not less than twelve years by virtue of any such transaction as is referred to in Section 269UA(f) of the Income Tax Act. It is in fact the person acquiring any rights (i.e., lessee) in or with respect to any building under a lease for a term of not less than twelve years by virtue of any such transaction as is referred to in Section 269UA(f) of the Income Tax Act who shall be deemed to be the owner thereof in terms of the provisions of Section 4(8)(b) of the Wealth Tax Act.

Question 2 : "Whether the words in parenthesis in Section 4(8)(b) of the Wealth Tax Act' (excluding any rights by way of lease from month to month or for; a period not exceeding one year)' in fact relate to the nature of the lease agreement, which will not qualify for applying the provisions of Section 4(8)(b) of the Wealth Tax Act"? Answer : The words in parenthesis are clear enough to indicate that any rights acquired by the lessee by way of lease from month to month or for a period not exceeding one year shall not affect the legal ownership of the owner and that the legal owner in such a case shall be liable to the wealth-tax levy

notwithstanding the fact that he has transferred the rights to the lessee by way of lease from month to month or for a period not exceeding one year. Legal ownership will remain unaffected so long as the term of lease is less than twelve years in terms of the provisions of Section 269UA(f) of the Income Tax Act.'

Question 3 : "Whether lease agreement for a period for less than one year with an extension clause which is normally an agreement of leave and licence, will not be covered by Section 4(8)(b) of the Wealth Tax Act and Section 269UA(f) of the Income Tax Act"? Answer : The fiction created by Section 4(8)(b) applies to leases and not to leave and licence agreements. Leave and licence agreements are clearly outside the scope of Section 4(8)(b) of the Wealth Tax Act. In a leave and licence arrangement, the legal owner shall continue to be the owner of the licensed premises and assessable to wealth-tax as such.

27. The matter shall now go back to the Division Bench for disposal of the appeals.

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