

**Cwt Vs. Jodhana Real Estate Development Co. (P) Ltd.**

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**Court :** Rajasthan

**Decided On :** Oct-04-2002

**Reported in :** (2002)178CTR(Raj)305

**Appeal No. :** WT Ref. No. 34 of 1997 4 October 2002 A.Y. 1984-85 to 1988-89

**Appellant :** Cwt

**Respondent :** Jodhana Real Estate Development Co. (P) Ltd.

**Advocate for Pet/Ap. :** Sandeep Bhandawat, *for the Revenue* Rajendra Mehta, *for the Assessee*

**Judgement :**

**N.N. Mathur, J.**

The Tribunal, Jaipur Bench, Jaipur has made the instant reference under section 27(1) of the Wealth Tax Act seeking opinion of this court on the following questions.

1. 'Whether, on the facts and in the circumstances of the case the Tribunal was justified in holding that the amendment made by the Finance Act, 1988 removing wealth-tax on stock-in-trade was a substantive law and hence not retrospective in operation

2. Whether, on the facts and in the circumstances of the case the Tribunal was legally justified in directing that the immovable properties be valued as per Schedule III to the Wealth Tax Act for the assessment of assessment year 1984-85 whereas the said Schedule III came into existence with effect from assessment year 1989-90?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in holding that the decision of the Hon'ble Supreme Court in the case of CWT v. Sharvan Kumar Sawarup & Sons : 1995ECR425(SC) given in respect of WT Rules was applicable to the provisions of Schedule III to the Wealth Tax Act and thereby in giving retrospective effect to the provisions contained in Schedule III to the Wealth Tax Act ?'

2. The material facts necessary for answering the reference are that the assessee M/s Jodhana Real Estate Development Co. (P) Ltd. is a wholly-owned subsidiary of Jodhana Investment & Finance Corporation (P) Ltd. The holding company is a closelyheld company wherein the shares are held by Shri Gaj Singh of Jodhpur and his family members. The main business of the company is that of dealing in real estate, purchasing and developing of land, acquire, take on lease, sublease, etc., any property and to invest and deal in lands, buildings, shares, debentures, etc. The company purchased following properties for consideration as mentioned against each of them from Shri Gaj Singh :

Rs.

Jawahar Khana

48,000

Saloon House

1,57,000

Large House, Mt. Abu

46,000

Land near Stadium, Jodhpur

77,000

Land to the East & West of Circuit House

80,000

The assessee also constructed a cinema hall in the name of Darpan Cinema costing Rs. 50.67 lakhs. The cinema was made open for public in June, 1985. The sale consideration for properties purchased in the year, 1971, was not paid upto assessment year 1988-89. The property of Darpan Cinema was shown as fixed asset in the balance sheet of the company, other properties have been shown as stock-in-trade valued at cost amounting to Rs. 4,30,500. On account of revival of levy of wealth-tax in the case of closely-held companies by section 40 of the Finance Act, 1983, the assessee filed its return of wealth for the assessment year 1984-85 on 30-3-1985, declaring a total wealth of Rs. 14,52,800. The assessing officer enhanced the valuation of the properties and computed the net wealth at Rs. 1,14,62,300. The assessments for the remaining years i.e. 1985-86, 1986-87, 1987-88, and 1988-89, were also completed. However, by the time the assessments were completed, section 40 of the Finance Act was amended whereby it was provided that certain assets which were held by the company as stock-in-trade in a business carried on by it, such assets shall not form part of the net wealth of the company for the purpose of levy of wealth-tax. The Commissioner of Wealth Tax (Appeals) held that the amendment brought by the Finance Act, 1988, was effective from 1-4-1989, and as such the assessee was not entitled to any exemption for the assessments from 1985 to 1989. He, however, revised the valuation of various properties. The Tribunal also held that the amendment by the Finance Act, 1988, removing the levy of wealth-tax on stock-in-trade being in the realm of substantive law, does not have a retrospective operation. The Tribunal accordingly directed the assessing officer to value the properties as per Schedule III of the Wealth Tax Act, 1957.

Question No. 1

3. This question has been referred at the instance of the assessee. It is submitted by Mr. Rajendra Mehta, learned counsel for the assessee, that by the Finance Act, 1988, thereby certain amendments were carried out excluding stock-in-trade from purview of the wealth-tax. The said amendment was brought to remove the unintended hardship caused by section 40 of the Finance Act, 1983. As such it is declaratory in nature. It is argued that while reviving the levy of the wealth-tax of the companies the intention was to impose tax on unproductive assets in closely-held companies. This necessitated the clarification. Thus, the amendment has to be treated as retrospective in nature. It is submitted that the assets which were held by the assessee in stock-in-trade from the beginning, they should not be visited with levy of wealth-tax for the period 1984-85 to 1988-89, only. On the other hand, it is submitted by Mr. Bhandawat, learned counsel appearing for the revenue, that the amended provision being substantive in nature, it cannot have the retrospective effect.

4. Before dealing with the contentions of the respective parties it will be apposite to look into the background in which the subject amendment has been introduced. The net wealth of the companies was taxable under the Wealth Tax Act till 1960. Thereafter by Finance Act, 1960, the banking companies, insurance companies, finance companies, shipping companies and registered companies under section 25 of the Companies Act were exempted from tax liability. The rationale underlying the revival of the levy of wealth-tax in respect of certain assets held by the closely-held companies was to curb the tendency of avoidance of personal tax liability by forming closely-held companies and transferring the unproductive assets like real estate, jewellery, etc. to such companies. Thus, under section 40 of the Finance Act, 1983, a provision was made to levy wealth-tax on certain companies. The object was highlighted by the Finance Minister while introducing the Bill as follows :

'It has come to my notice that some persons have been trying to avoid personal wealth-tax liability by forming closely-held companies to which they transfer many items of their wealth, particularly, jewellery, bullion and real estate. As companies are not chargeable to wealth-tax, and the value of the shares of such companies does not also reflect the real worth of the assets of the company, those who hold

such unproductive assets in closely-held companies are able to successfully reduce their wealth-tax liability to a substantial extent. With a view to circumventing tax avoidance by such persons, I propose to revive the levy of wealth-tax in a limited way in the case of closely-held companies. Accordingly, I am proposing the levy of wealth-tax in the case of closely-held companies at the rate of two per cent, on the net wealth represented by the value of specified assets, such as, jewellery, gold, bullion, buildings and lands owned by such companies. Buildings used by the company as factory, godown, warehouse, hotel or office for the purposes of its business or as residential accommodation for its low paid employees will be excluded from net wealth.'

5. The relevant sections as appeared in the Finance Bill, 1983, is extracted as follows :

'(3) The assets referred to in sub-section (2) shall be the following namely :

(i) gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals;

(ii) precious or semi-precious stones whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel;

(iii) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel;

(iv) utensils made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals;

(v) land other than agricultural land;

(vi) building or land appurtenant thereto, other than building or part thereof used by the assessee as factory, godown, warehouse, hotel or office for the purposes of its business or as residential accommodation for its employees whose income chargeable under the head 'Salaries' is ten thousand rupees or less;

(vii) motor cars; and

(viii) any other asset which is acquired or represented by a debt secured on any one or more of the assets referred to in clause (i) to clause (vii).'

6. However, it was later on realised that the said amendment was causing unintended hardship. Thus, with a view to remove the unintended hardship of the closely held companies on account of provisions of sub-section (3) and to provide incentive for growth and modernisation, the Finance Act, 1988, has amended sub-section (3) of section 40 of the Finance Act, 1983, by amending clause (i), inserting a proviso to clause (v), substituting the existing clause (i), substituting the existing clause (vi) by new clauses (vi), (via) and (vib), and inserting a proviso to, the sub-section. The reason for revival of wealth-tax on closely held companies was expressed by the Finance Minister while introducing the bill as follows :

'It has come to my notice that some persons have been trying to avoid personal wealth-tax liability by forming closely-held companies to which they transfer many items of their wealth, particularly jewellery, bullion, and real estate. As companies are not chargeable to wealth-tax and value of the shares of such companies does not reflect the real worth of the assets of the company, those who hold such unproductive assets in closelyheld companies are able to successfully reduce their wealth-tax liability to a substantial extent. With a view to circumventing tax avoidance by such persons, I propose to revive the levy of the wealth-tax in a limited way in the case of closely-held companies.'

7. The amended provisions on insertion of Finance Act, 1988, are extracted as follows :

'(3) The assets referred to in sub-section (2) shall be the following, namely :

(i) gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals not being any such precious metal or alloy held for use as raw material in industrial production;

(ii) precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel;

(iii) ornaments made of gold, silver, platinum, or any other precious metal or any alloy containing any one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel;

(iv) utensils made of gold, silver, platinum, or any other precious metal or any alloy containing one or more of such precious metals;

(v) land other than agricultural land :

Provided that nothing in this clause shall apply to any unused land held by the assessee for industrial purposes or for construction of a hotel for a period of two years from the date of its acquisition by him.

(vi) building or land appurtenant thereto, other than building or part thereof used by the assessee as factory, godown, warehouse, cinema house, hotel, or office, for the purposes of its business or as a hospital, creche, school, canteen, library, recreational centre, shelter, rest-room, or lunch room, mainly used for the welfare of its employees or used as residential accommodation, except as provided in clauses (via) and (vib), and the land appurtenant to such buildings or part;

(via) any building used as residential accommodation in the nature of a guesthouse, and land appurtenant thereto;

(vib) any building and the land appurtenant to such building used as residential accommodation by any director, manager, secretary, or any other employee of the assessee, such employee holding not less than one per cent of the equity share of the assessee or by any relative of any person who holds not less than one per cent of the equity share of the assessee.

Explanation. For the purpose of this clause, 'relative' shall have the meaning assigned to it in Explanation 1 to section 13 of the Income Tax Act.

(vii) motor cars; and

(viii) any other asset which is required or represented by a debt secured on any one or more of the assets referred to in clause (i) to clause (vii) :

Provided that this section shall not apply to any asset referred to in clauses or (vi), which is held by the assessee as stock-in-trade in a business carried on by it or, in the case of motor cars referred to in clause (vii), they are held as stock-in-trade in such business or registered as taxies and used as such in a business of running motor cars on hire carried on by the assessee.

Explanation. Where any question arises as to whether all or any of the assets referred to in clause (i), (ii), (iii) or (iv) are held by the assessee as stock-in-trade in a business carried on by it, the question shall be decided in accordance with such direction as the board may, by general or special order, issue for the guidance of the assessing officer having regard to the ratio which the yearly turnover of a business of trading in such assets bears to the average of the stocks of such assets held from time to time during the year in such business ordinarily and other relevant factors.

(4) The value of any asset specified in sub-section (3) shall, be either its value as on the valuation date determined in the manner laid down in Schedule III to the Wealth Tax Act, or its value disclosed in the balance sheet of the company on the valuation date, whichever is higher.

Explanation. For the purposes of this sub-section, 'balance sheet' as drawn up on the valuation date shall have the same meaning as in rule 11 of Schedule III to the Wealth Tax Act.

(5) For the purposes of the levy of wealth-tax under the Wealth Tax Act, in pursuance of the provisions of this section,

(a) Section 5, clause (a) of sub-section (2) of section 7 and clause (d) of section 45 of that Act and Part II of Schedule to that Act shall not apply and shall have no effect.

(b) the remaining provisions of that Act shall be construed so as to be in conformity with the provisions of this section.

(6) Nothing in this section shall apply to any institution, association or body, whether incorporated or not and whether Indian or non-Indian, which the Central

Government may, having regard to the nature and object of such institution, association or body, specify by notification in the Official Gazette and every notification issued under this sub-section shall be laid, as soon as may be after it is issued, before each House of Parliament.

(7) Subject to the provisions of sub-section (5), this section shall be construed as one with the Wealth Tax Act.'

8. It is evident that by virtue of substitution of clause (vi) the cinema house has been excluded from building or land appurtenant thereto, which was included for computation of wealth-tax. In other words a cinema house is specifically excluded from being constituent of a wealth by virtue of the amendment introduced by the Wealth Tax Act, 1988 (sic Finance Act, 1988). As per Circular No. 528, dated 16-12-1988, the proviso was brought on the statute with a view to removing the unintended hardship of the closely-held companies on account of the provisions of sub-section (3) and providing incentive for growth and modernisation, and, therefore, the proviso can be safely applied retrospectively.

9. Looking to the curative nature of the amendment made by the Finance Act, 1988, it has been submitted before us that the proviso which is inserted by amending Finance Act, 1988, should be given retrospective effect and should be read as forming part of section 40(3) of the Act from its inception.

10. G.P. Singh in his Principles of Statutory Interpretation, 4th Edition, page 291, has observed :

'It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended.'

Once it is held that the proviso is inserted as a remedial curative measure for removing the difficulties faced by the taxpayers because of inadvertent mistake or omission which has crept in drafting the provision, it would be just and proper to hold that it would relate back to the very inception of the provision. It would be relevant to extract the passage from Craies Statute Law, page 395, as follows :

'Where a statute is passed for the purpose of supplying an obvious omission in a former statute, or as Parke, J. (afterwards Baron Parke) said in R.V. Dursley, to 'explain' a former statute, the subsequent statute has relation back to the time when the prior Act was passed. Thus, in Att.-Gen. v. Pougett, it appeared that by a Customs Act of 1873 (53 Geo. 3, c. 33) a duty was imposed upon hides of 9s,4d, but the Act omitted to state that it was to be 9s, 4d. per cwt, and to remedy this omission another Custom Act (53 Geo. 3 c. 105) was passed later in the same year. Between the passing of these two Acts some hides were exported, and it was contended that they were not liable to pay the duty of 9s, 4d, per cwt., but Thomson C.B., in giving judgment for the Attorney- General, said: 'The duty in this instance was in fact imposed by the first Act, but the gross mistake of the omission of the weight for which the sum expressed was to have been payable occasioned the amendment made by the subsequent Act, but that had reference to the former statute as soon as it passed, and they must be taken together as if they were one and the same Act.'

Where an act is in its nature declaratory the presumption against construing it retrospectively is inapplicable. In Att-Gen. v. Theobald, section 11 of the Customs and Inland Revenue Act, 1889, as to the liability of voluntary settlements to stamp duty, was held retrospective, although the litigation in which its terms were involved had commenced before it was passed, Acts of this kind, like judgments, decide similar cases pending when the judgments are given, but do not reopen decided cases.'

11. The Apex Court in Channan Singh v. Smt. Jai Kaur : [1970]1SCR803 has held :

'It is well settled that if a statute is curative or merely declares the previous law retroactive operation would be more, rightly ascribed to it than the legislation which may prejudicially affect past rights and transactions.'

The Gujarat High Court in CIT v. Chandulal Venichand : [1994]209ITR7(Guj) while dealing the first proviso to section 43B has held the said proviso retrospective. The court laid down following principles of interpretation :

'(a) Where a 'statute' is passed for the purpose of supplying an obvious omission in a former statute, the subsequent statute would relate back to the time when the prior Act was passed. In the present case, it can be held that the first proviso was added for supplying an obvious omission in section 43B, and

(b) where an Act is declaratory in its nature, the presumption against construing it retrospectively is inapplicable. The proviso is declaratory in its nature. It declares that nothing contained in section 43B shall apply in relation to any sum referred to in clause (a), (c) or (d) which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of section 133 in respect of the previous year in which the liability to pay such sum was incurred.'

12. The Apex Court in *Allied Motors (P) Ltd. v. CIT* : [1997]224ITR677(SC) has affirmed the view taken by the Gujarat High Court. It is held therein that an amendment remedial in nature and designed to eliminate unintended consequences making the provision unworkable or unjust, causing undue hardship to the assessee, on taking into consideration of the Budget Speech of the Finance Minister and also taking into consideration the object of the statute, external aids can safely be held as retrospective. The same view has been taken by the another decision of the Apex Court in *Brij Mohan Das Laxman Das v. CIT* : [1997]223ITR825(SC) . A learned Single Judge of the Karnataka High Court in the case of cinema theatre has taken the same view in *CWT v. Prakash Talkies* : [1993]202ITR121(KAR) .

13. Therefore, in our view, the subject provisions are remedial and curative in nature and as such retrospective in operation. Thus, the first question is answered in favour of the assessee and against the department.

Question Nos. 2 & 3

14. It is not in controversy that both the questions stand answered by the Division Bench of this court in *CIT v. Chhagan Lal Gupta* . It is held therein that the amendment with regard to the procedure or of evidence are to be construed as

retrospective and applies to all the pending matters on the date when the amendment was made unless there is a specific indication that such was not the intention of the legislature. The court answered the questions referred as follows :

'The controversy in the present case stands concluded by the judgment of the Supreme Court in CWT v. Sharvan Kumar Swarup & Sons (1994) 210 ITR 836 , it has been held by the Apex Court in this case that 'rule 1BB partakes of the character of a rule of evidence. It deems the market value to be the one arrived at on the application of a particular method of valuation which is also one of the recognised and accepted methods. The rule is procedural and not substantive and is applicable to all proceedings pending on 11-4-1979, when the rule came into force. The procedural law, generally speaking is applicable to pending cases. No suitor can be said to have a vested right in procedure.'

Since the controversy stands concluded by the aforesaid judgment of the Supreme Court, no referable question of law arises in the matter and the learned members of the Tribunal were justified in refusing to state the case and to refer the question for adjudication to this court. The applications under section 27(3) of the Wealth Tax Act, therefore, deserve to be dismissed.'

15. In view of the aforesaid, all the three questions are answered in favour of the assessee and against the revenue.

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