

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 8113-8116 OF 2004

M/S. COSMOPOLITAN HOSPITALS (P) LTD. ... Appellant

VERSUS

COMMISSIONER OF WEALTH TAX, TRIVANDRUM ... Respondent

O R D E R

The appellant company carries on the business of running a Hospital at Thiruvananthapuram. The issue arose as to whether the said Hospital property would be subjected to wealth tax under the Wealth Tax Act, 1957 (hereinafter referred to as 'Act'). The assessment years with which we are concerned in this appeal are 1987-1988, 1988-1989, 1989-1990 and 1990-1991. Invoking the provisions of Section 40 of the Finance Act, 1983 by which the levy of wealth tax in the case of closely-held companies was revived, the assessing officer took the view that on the building where the appellant-Hospital was carrying on its business activity of running a Hospital would be subjected to the wealth tax inasmuch as under sub-Section (3) of Section 40, the nomenclature of those assets are mentioned which are to be included for the purposes of assessing the wealth tax and building and land appurtenant thereto is specifically stipulated therein. The appellant challenged the order by filing appeal before the Commissioner of Income Tax (Appeals) which was dismissed. In further appeal to the

Income Tax Appellate Tribunal (hereinafter referred to as 'ITAT'), the appellant succeeded. However, the order of ITAT has been reversed by the High by the impugned judgment dated 04.03.2003. This is how, in the present appeal, the correctness of the order of the High Court arises for consideration.

Section 40 which is the charging Section clearly mandates that wealth tax shall be charged under the Wealth Tax Act for assessment years commencing on and from the 1st day of April, 1984, in respect of the net wealth on the corresponding valuation date of every company, not being a company in which the public are substantially interested, at the rate of 2 per cent of such net wealth. Thus, excluding those companies in which public has a substantial interest and share holding, assets and wealth of every company is excisable to wealth tax under the aforesaid provision. Sub-section (2) of Section 40 deals with the net wealth of a company on which the wealth tax is to be levied. The assets which are referred to in sub-section (2) are specifically stipulated in sub-section (3). As mentioned above, building and land appurtenant thereto are mentioned in those assets. This is so stated in clause (vi) of sub-section (3). However, this very clause excludes certain kinds of buildings or parts thereof. The only question is as to whether the building of the appellant where the aforesaid Hospital is run would fall in that excluded

category. In order to answer this question, we reproduce clause (vi) of sub-section (3) of section 40 hereunder: -

"(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 (vi-a) and (vi-b), and the land appurtenant to such building or part;

(vi-a) any building used as residential accommodation in the nature of a guest house and land appurtenant thereto;

(vi-b) 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 purposes of this clause, 'relative' shall have the meaning assigned to it in Explanation 1 to Section 13 of the Income-tax Act."

This provision makes it clear that insofar as factory, godown warehouse and hotel are concerned, they are specifically excluded. Likewise residential accommodation for the employees or the accommodation which is run as hospital, creche, school, canteen, library, recreational centre, shelter, rest-room or lunch room mainly for the welfare of its employees and land appurtenant to such building or part thereto is excluded. Any building or part thereto, used by the assessee as "office for the purposes of its business" also stands excluded. The appellant wants its case to be covered by the aforesaid category. To put it

otherwise, the contention of the appellant is that the Hospital building should be treated as "office" which is used for the purposes of its business.

As mentioned above, the Hospital building is used as a business, viz., for outsiders. The building used for the purpose of hospital by no stretch of imagination can be treated as 'office'.

This aspect is dealt with by the High Court in detail in para 17 and 18 of the impugned judgment that reads as under:

"17. We have already noted clause (vi) excludes building or part thereof used by the assessee as factory, godown, warehouse, hotel, cinema house or office for the purposes of its business and also buildings which are used for residential accommodation for its employees or as a hospital, creche, school, canteen, library, recreational centre, shelter, rest room or lunch room mainly for the welfare of its employees and the land appurtenant to such building. A company can do a variety of business. It need not have a factory or a godown or a warehouse. It may carry on business of a hotel, business of a cinema theatre, business of a hospital and so on. If the legislative intention was to exclude all the buildings which are used for the purpose of its business as a productive asset certainly the legislature need not have undertaken the exercise of separately specifying the buildings with reference to the nature of its user used by an assessee which is a closely held company for the purposes of exclusion. It is also relevant to note that clause (vi) apart from factory, godown, warehouse also refers to hotel and cinema theatre. If all buildings other than factory, godown, warehouse will fall within the expressions "office for the purposes of its business" there was no need at all for the legislature to classify the buildings for the

purpose of this exclusion. That apart, the inclusion of hotel and cinema theatre in the excluded category also indicates that the legislative intention was to exclude only the buildings which are specified in clause (vi) and used for industrial purposes and in that context office for the purpose of its business must be understood in a limited sense as including only the administrative wing of a closely held company. So far as the cinema theatre is concerned apart from the building in which the cinema is exhibited there will only be a small counter in the very same building which is used as its office. In the circumstances if cinema theatre will come within the ambit of the expressions "office for the purposes of its business" there was absolutely no requirement for specifically including a cinema theatre in the exclusion clause. This is so in the case of a hotel also. A hotel is a place where the business of serving food to customers is transacted. Hence if a closely held company is engaged in the business of running a hotel if the view taken by the Tribunal is adopted there was no need for specifically including a hotel in the excluded category in clause (vi).

18. This internal aid in understanding the meaning of the expressions "office for the purpose of its business" indicate that all the buildings which are used as a productive asset for the purpose of the business of a closely held company are not intended to be excluded under clause (vi). It is only buildings used for 'industrial purposes' which are excluded from net wealth under clause (vi). If we understand the main part of clause (vi) in this fashion the further internal aid available is regarding the specific exclusion of a building used as a hospital mainly for the welfare of its employees. For the exclusion the 'hospital' must be one held by an industrial unit for the welfare of its employees. Thus the intention of the legislature as can be understood from this internal aids is that the legislature did not intend to exclude all the buildings which are used for the purpose of its business and that it was intended to exclude only such of those buildings which are specifically mentioned as excluded in clause (vi) which are used for industrial purposes and not for all business purposes."

We are in agreement with the aforesaid view taken by

the High Court. Finding no merit in the present appeals,
the same are, accordingly, dismissed.

....., J.
[A.K. SIKRI]

....., J.
[ROHINTON FALI NARIMAN]

New Delhi;
April 27, 2015.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 8113-8116/2004

M/S. COSMOPOLITAN HOSPITALS (P) LTD.

Appellant(s)

VERSUS

COMMNR. OF WEALTH TAX, TRIVANDRUM

Respondent(s)

(with office report)

Date : 27/04/2015 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s)

Mr. Yashraj Singh Deora, Adv.

Mr. K. Rajeev, Adv.

Mr. S. Rajjan, Adv.

For Respondent(s)

Mr. Kavin Gulati, Sr. Adv.

Mr. Arijit Prasad, Adv.

Ms. Anil Katiyar, Adv.

Mr. B. V. Balaram Das, Adv.

UPON hearing the counsel the Court made the following
O R D E RThe appeals are dismissed in terms of the signed
order.(Nidhi Ahuja)
COURT MASTER(Suman Jain)
COURT MASTER

[Signed order is placed on the file.]