IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WEALTH TAX APPEAL NO. 33 OF 2001

Jaya Hind Sciaky Limited]
D-1 Block, Plot No.18/1,]
Chinchwad, PUNE 411 019.] .. Appellant.

V/s.

Dy. Commissioner of Income tax]
Special Range 4, Pune] .. Respondent.

Mr. Mihir Naniwadekar, for the Appellant.
Mr. Suresh Kumar, for the Respondent.

CORAM: M.S.SANKLECHA, &
G.S.KULKARNI, JJ.
RESERVED ON : 19th NOVEMBER, 2015.
PRONOUNCED ON : 18th DECEMBER, 2015.

JUDGMENT (Per M. S. Sanklecha,J.):-

This appeal under Section 27-A of the Wealth Tax Act, 1957 (the Act) challenges the order dated 26th July, 2000 passed by the Income Tax Appellate Tribunal (the Tribunal), Pune. This appeal relates to Assessment Year 1988-89.

2 The appeal against the impugned order dated 26th July, 2000 was admitted on 29th July, 2002 on the following substantial questions of law:-

> *"(a) Whether on the facts and in the circumstances and on a proper interpretation of Lease Deed dated 29/9/1978, the*

tribunal was right in law in holding that for the purposes of S. 40 of Finance Act 1983, the expression "land" will include any interest in land also?

(b) Whether on a fair interpretation of the lease deed dated 29/9/1978 the tribunal was right in law in holding that the demised land belongs to the appellant on the valuation date so as to be includible in its net wealth?"

3 Briefly, the facts leading to the present appeal are as under:-

(a) The appellant-assessee is closely held company i.e. a company in which the public are not substantially interested. Therefore, for the subject assessment year, it was chargeable to Wealth Tax under Section 40 of the Finance Act, 1983 (the Act);

(b) On 29th September, 1978, the Appellant-Company had taken on lease a plot of land bearing nos. 18/1, Pimpri Industrial Area, village – Akrudi (the said plot) for a period of 95 years from Maharashtra Industrial Development Corporation (MIDC). The total area of the said plot under the above lease deed was 9605 sq. mtrs. On a part of the said plot, the Appellant-assessee had constructed its factory building, leaving a balance area of 2175 sq. mtrs. of the said plot as open land;

(c) During subject Assessment Year, the Appellant- Company filed its Wealth Tax Returns under Section 40 of the Act, returning a net wealth of Rs. 13 lacs. In its return of Wealth, the Appellant had in computing its net wealth, not taken into account its leasehold interest in the said plot or any part thereof. However, the Assessing Officer in his order dated 30th March, 1992 held that the Respondent is liable to include in its assets the 2175 sq. mtrs open

land (un-constructed) out of 9605 sq. mtrs of the said plot to determine its net wealth under the said Act. This on the basis that the open land taken on lease by the Appellant-assessee was an asset belonging to the Appellant in terms of Section 40(2) and (3) of the Act to be included to determine the net wealth chargeable to Wealth Tax under the Act. The Assessing Officer on examination of the lease deed and its tenure for 95 years concluded that in substance and for all practical purposes, the open land was an asset belonging to the Appellant-assessee and an amount of Rs. 2.17 lakhs was included as the value of open land to compute net wealth. This resulted in order dated 30 March 1992 of the Assessing Officer enhancing the net wealth from Rs.13 lakhs as declared to Rs.15 lakhs;

(d) Being aggrieved, the Appellant-assessee preferred an appeal to the Commissioner of Wealth Tax (Appeals). By an order dated 5th February, 1994, the Commissioner of Wealth Tax(Appeals) did not disturb the order dated 30th March, 1992 of the Assessing Officer. The order dated 5th February, 1994 of the Commissioner of Wealth Tax (Appeals) held that the open land in which the Appellant-assessee has lease hold rights over the next 95 years, is chargeable to wealth tax, as for all practical purposes, it belongs to the Appellant-assessee. In particular, the order notes that Section 40(2) of the Act to emphasise that the words used are assets belonging to the Company and not assets owned by the Company. Therefore the order dated 30 March 1992 of the Wealth Tax Officer was sustained; and

(e) Being aggrieved, the Appellant-assessee carried the issue in appeal to the Tribunal. By order dated 26th July, 2000, the Tribunal dismissed the Appellant's appeal. The impugned order holds that even though the legal ownership of the open land in the plot is vested in MIDC, yet it also belonged to the appellant as the lease hold rights therein for a period of 95 years was with the Appellant. Therefore, the imugned order holds the value of the open area of land in the plot taken on lease will form part of the assets belonging to Appellant for the purposes of determining the net wealth of the Appellant. Accordingly, Appellant's appeal was dismissed.

4 Mr. Mihir Naniwadekar, learned Counsel appearing for the Appellant in support of the appeal submit as under:-

(a) Section 40(3) of the Act defines assets inter alia as land other than agricultural land which when read with Section 40(2) of the Act have to belong to the company. This is contrasted with the definition of assets as provided at the relevant time in Section 2(e) of the Wealth Tax Act 1957 which defines assets to mean property of every description movable or immovable. Thus, a lease hold right or any other right in a property would be considered to an asset under the Wealth Tax Act 1957 but not so under the Act. This difference in language is with the purpose of giving a restricted meaning to the word assets in the Act;

(b) The charge of Wealth Tax under Section 40 (1) of the Act, is on the net wealth of a closely held company such as the appellant. The net wealth in terms of Section 40(2) of the Act is the aggregate value of all assets belonging to the Company in excess

of the aggregate value of all debts owed by the company. It is submitted that the open area of 2175 sq. mtrs of the said plot does not belong to Appellant as it is not owned by the Appellant. It is submitted that the word 'belonging' in regard to open land means possession of the land along with a legal title to it; and

(c) A reading of the MIDC Act along with the lease deed dated 29th September, 1978 obtained by the Appellant from MIDC would clearly establish that the open land of 2175 sq. mtrs, of the said plot taken on lease from MIDC does not belong to the Appellant. Thus, the value of open land could not be taken into account as its asset to determine the net wealth under Section 40 of the Finance Act. It is submitted that the impugned order ignores the provisions of the lease deed and yet concludes the open land belongs to the Appellant.

5 On the other hand, Mr. Suresh Kumar, learned Counsel appearing for the Revenue in support of the impugned order submits as under:-

(a) The intent of Parliament to include possession of open land even without legal title as an asset belonging to the Company under Section 40 of the Act is evident from the proviso to Section 40(3)(v) of the Act. The proviso includes as an asset any unused land held i.e. possessed by an assessee for a period in excess of two years from date of acquisition of the land. It does not speak of legal title but only of land being held by the Assessee;

(b) In any view, it is submitted that by virtue of Section 40(5) of the Act, except the sections of the Wealth Tax Act 1957, specifically excluded therein, the other provisions are to be construed so as to be in conformity with the Act. On the above basis, it is submitted that Section 4(8) of the Wealth Tax Act 1957 would be applicable. This includes acquisition of any rights including by way of lease (excluding lease from month to month or not exceeding one year) is also considered to be an asset of the person/ individual. Therefore, it is an asset for purposes of this Act;

(c) The words '*all assets belonging to the company*' used in Section 40(2) of the Act has been advisedly used by the Parliament as opposed to '*owned by the Company*'. This with a view to include interest less than full ownership. Thus, a leasehold interest of the appellant for 95 years even if not accompanied by legal title, would belong to the company; and

(d) On examination of the lease deed dated 29th September, 1978 entered into between the MIDC and the appellant would clearly establish that the open land of 2175 sq.mtrs of the said plot, that it belong to the Appellant.

6 Before dealing with the rival submissions, it may be necessary to reproduce the provisions which arise for our consideration as under:-

(A) Finance Act, 1983:-

*"**Section 40 (1):-** Notwithstanding anything contained in section 13 of the Finance Act, 1960 (13 of 1960), relating to exemption of companies from levy of wealth-tax under the Wealth-tax Act, 1957 (hereinafter referred to as the Wealth-tax Act), wealth-tax shall be charged under the Wealth-tax Act for every assessment year 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 two per cent of such net wealth.*

Provided …. …. …. ….

(2) For the purposes of sub-section (1), the net wealth of a company shall be the amount by which the aggregate value of all the assets referred to in sub-section (3), wherever located, belonging to the company on the valuation date which are secured on, or which have been incurred in relation to, the said assets:

Provided…. …. …. ….

(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 such precious metals 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 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) …. …. …. ….

(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 for a period of two years from the date of its acquisition by him;

(vi) to (viii) …. …. ….

(4) …. …. …. ….

(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 I 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) …. …. …. ….

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

(B) The Wealth Tax Act, 1957 :-

"2(e) assets includes property of every description, movable or immovable but does not include:-

(1) …. …. …. ….
(2) in relation t the assessment year commencing on the 1st day of April, 1970, or any subsequent assessment year [but before the 1st day of April, 1973]-
(i) & (ii) …. …. ….

(iii) any interest in property where the interest is available to an assessee for a period not exceeding six years from the date the interest vests in the assessee.

Provided that in relation to the assessment year commencing on the 1st day of April, 1981 and the assessment year commencing on the 1st day of April, 1982, this sub-clause

shall have effect subject to the modification that for item (i) thereof, the following item shall be substituted-
(1)(a) …. …. …. …. "

"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 his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts incurred in relation to the said assets."*

"Section 4 Net wealth to include certain assets- (1) In computing the net wealth -

(a) to (7) …. …. …. ….

8 **A Person-**

(a) who is allowed to take or retain possession of any building or part thereof in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1982);

(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 is referred to in clause (f) of section 269UA of the Income Tax Act.

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.

Explanation:-For the purposes of this section-

(a) the expression 'transfer' includes any disposition settlement, trust, covenant, agreement or arrangement;
(aa) the expression 'child' includes a step-child and an adopted child]

(b) the expression 'irrevocable transfer' includes a transfer of assets which, by the terms of the instrument effecting it, is not revocable for a period exceeding six years or during the lifetime of the transferee, and under which the transferor derives no direct or indirect benefit, but does not include a transfer of assets if such instrument-

(i) contains any provision for the re-transfer, directly or indirectly, of the whole or any part of the assets or income therefrom to the transferor, or

(ii) in any way gives the transferor a right to re-assume power, directly or indirectly, over the whole or any part of the assets or income therefrom; and

(c) the expression 'property' includes any interest in any property, movable or immovable, the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale thereof and where the property is converted into any other property by any method, such property."

7 The charge of wealth tax under Section 40(1) of the Act is on the net wealth of a closely held company like the Appellant. The net wealth of a company has been defined in Section 40(2) of the Act to mean the aggregate value of all the assets of the company which are in excess of the debt owed by the company. Therefore, in the aforesaid facts, the two issues arising for our consideration are – firstly, whether the open land ad-measuring 2175 sq.mtr of the said plot taken on lease by the Appellant is an asset under Section 40(3) of the Act. Further, if it is an asset, whether it is belonging to the Appellant for the purposes of determining its net asset chargeable to Wealth Tax under the Act.

8 **Question (a):-**

(a) It is submitted on behalf of the Appellant a lease hold interest in open land is not includable in net wealth under Section 40(2) of the Act as it is not an asset in terms of Section 40(3) of the Act. Thus, it cannot be included for computing the net wealth under Section 40(2) of the Act. In support, attention is invited to the definition of asset in Section 2(e) of the Wealth Tax Act, 1957 as then existing which includes within its fold property of every description movable or immovable. These words are conspicuous by their absence in Section 40(3) of the Act. In these circumstances, it is submitted that leasehold interest is not included as an asset under Section 40(3) of the Act as it is not '*property of every description*' which is defined as an asset;

(b) There can be no dispute that there is a difference between leasehold right and ownership right as is evident from the Transfer of Property Act. In this case, we are concerned with leasehold right. However, the absence of the words '*property of every description*' movable or immovable *i*n Section 40(3) of the Act by itself would not lead to the conclusion that only a property owned by an assessee would be covered and not property of any other kind. Be that as it may, so far as Section 40(3)(v) of the Act, which is the applicable provision, there is a proviso thereto which excludes unused land held by the assessee for an industrial purposes for a period in excess of two years from the date of its acquisition from the definition of asset. The Parliament has used the word held and not owned by the assessee in the proviso to cover a case of

open land other than the agricultural land as an asset if the same is held for industrial purposes in excess of over two years. There is no need to compare and contrast the provisions of the Act with the provisions of the Wealth Tax Act, 1957, when there is sufficient indication in the Act itself to include the property in land to be an asset even if it is not owned;

(c) Therefore, we do not find any merit in the above submission. We hold that land other than agricultural land held unused in excess of two years from the date its acquisition is an asset as defined under Section 40(3) of the Act even if it is not owned;

(d) We may at this stage refer to the contention of the Revenue that in view of Section 40(5) of the Act, all the provisions of the Wealth Tax Act, 1957 (except those specifically excluded) would apply to the Act. Therefore, it is submitted that in view of the above, Section 4 of the Wealth Tax Act, 1957 which includes lease (not beginning from month to month or less than one year) in the net wealth of lessee who would be deemed to be owner and includable as an asset in computing of net wealth thereunder will apply also under the Act in case of closely held companies;

(e) This submission ignores the difference in the definition of the net wealth as found in Section 40(2) of the Act and 2(m) of the Wealth Tax Act, 1957. Section 40(2) of the Act defines net wealth to mean all assets belonging to the Company on the valuation date in excess of the aggregate value of its debts. While Section 2(m) of the Wealth Tax Act, 1957 defines net wealth to mean an aggregate value of all assets belonging to the assessee including assets

required to be included in his net wealth as on the date in excess of the aggregate value of debts owed by the assessee. It would, therefore, be noted that under Section 2(m) of the Wealth Tax Act, 1957, net wealth as defined does not only mean asset belonging to the assessee but by an inclusive definition includes all assets which are set out in Section 4 of the Wealth Tax Act, 1957 which invokes a lessee in excess of one year the deemed owner. There is no such inclusive provision found in Section 40(2) of the Act nor any deeming provision of ownership. Therefore, the net wealth under the Act, has to be restricted in terms of the definition of assets as provided under the Act and cannot artificially include assets not includable under the Act. Section 40(5) of the Act may apply in cases where an issue has not specifically provided for under the Act;

(f) Further, in any case, the Wealth Tax Act 1957 has to be read in conformity with the Act and not to destroy and/or restrict the meaning of Asset as given under the Act;

(g) Therefore, the decision of the Himachal High Court in ***C.W.T. v/s. H. P. Small Industries & Export Corpn.,*** reported in ***2013 (212) Taxman 84*** and the decision of the Full Bench of the Andhra Pradesh High Court in ***Nawab Mir Barkat Ali Khan v/s. CWT 226 ITR 654*** relied upon by the Revenue will have no application as they were dealing with the provisions of Wealth Tax Act,1957 and not that of the Act which are undisputedly different; and

(h) Accordingly, it would be appropriate to hold that leasehold interest in open land will for purposes of Section 40 of the Act would be an asset as on the valuation date for A. Y. 1998-99.

9 **Question (b):-**

(a) The primary submission on behalf of the appellant that we have to first determine is the meaning of the word 'belonging to' and thereafter to examine whether the meaning so determined is satisfied in the context of the lease deed dated 29th September, 1978. It is submitted that the word '*belonging to*' as used in Section 40(2) of the Act would necessarily mean possession along with legal title to the open land. On a plain reading of the word '*belonging to*' the submission did not appear to us to be appropriate as otherwise the parliament would have found it appropriate to use the word '*owned by*' instead of '*belonging to*'. However Mr. Naniwadekar the learned Counsel for the appellant in response pointed out that the meaning of the words '*belonging to*' is no longer res-integra as it has been subject of consideration by the Courts. In support, learned Counsel draws our attention to the order of Supreme Court in ***Commissioner of Wealth Tax v/s. Bishwanath Chatterjee 103 ITR 536 –*** wherein the Commissioner of Wealth Tax sought to bring to tax under the Wealth Tax Act 1957 certain properties inherited by the heirs of an Hindu male and jointly possessed by them in its status as an Hindu Undivided Family governed by the Dayabhaga school of Hindu law. This on the ground that the inherited properties belonged to the Hindu Undivided Family. The court held that under the Dayabhaga school

of Hindu law there is no unity of ownership in the joint family unlike in the Mitakshara law. Each coparcener under the Dayabhaga law has full powers of disposal over his share in the property as it does not fluctuate with each birth and death in the family as in the case of Mitakshara law. It was in the above context that that the court considered the definition of net wealth as provided in Section 2(m) of the Wealth Tax 1957 and concluded that on the death of an Hindu male governed by the Mitakshara law his property devolved upon his heirs in definite shares and each coparcener was the owner of his share and therefore the property belonged to the individual members to the extent it was owned by the individual members and not to the Hindu Undivided Family. Thus in the context of the Dayabhaga School of Hindu law, it was held that the inherited property even if possessed jointly by all the coparceners constituting the Hindu Undivided Family, it was owned by individual coparcener to the extent of his definite share. It was in the above facts that the Court held that the property concerned did not belong to the Hindu Undivided Family in the context of Section 2(m) of the Wealth Tax Act 1957 but to the individual coparceners to the extent of their share.

(b) According to us, the above decision in Bishwanath Chatterjee(supra) would not apply to the present facts as it was rendered in the backdrop of the Dayabhaga school of law where inherited property though possessed jointly was individually owned to the extent of a particular share by each coparcerner. On the facts before it, the Court took the view that mere possession of the property jointly by all the members of Hindu Undivided Family,

without anything more, would not render the property as belonging to the Hindu Undivided Family. In the present facts the open land is not only possessed by the appellant but it is coupled with further rights (short of ownership) as provided in the lease deed. Therefore, the decision of the Apex Court in Bishwanath Chatterjee(supra) does not deal with the issue arising for our consideration and is completely distinguishable on facts. This is so as in the Bishwanath Chatterjee (supra), though the possession was jointly with all the coparcerners, it was at the sufferance of each coparcerner. Any coparcerner can at his will and fancy transfer his share of the property jointly held to the third parties. As against that, in the present case under consideration no party to the lease deed can exercise rights with regard to possession of the land unilaterally as it is to be decided/exercised only in terms of the lease deed.

(c) Further, in support of his submission that the word belonging to has to mean owned, reliance is placed by Mr. Mihir Nanwadekar, upon the decision of this Court in ***CIT v/s. O. P. Monga 162 ITR 224*** –wherein this Court was concerned with a claim for depreciation under the Income Tax Act 1961 by the assessee in respect of the structure along with land leased to an assessee by MIDC. This Court held that the assessee is not entitled to depreciation. In view of the above, it is submitted that when the assessee therein is held not entitled to depreciation on the land leased to it by MIDC, it certainly cannot be said to be belonging to the Appellant. However, according to us, this case would not apply to the present facts. This is so as the above decision of this Court is

distinguishable for the reason that the Court was concerned with the meaning of the word '*owned by*' not so before us. The condition precedent to make a claim for depreciation is not only user of the assets but also the ownership thereof. It was in that context that this Court held after examination of the lease deed that the Respondent before it not being the owner of the asset was not entitled to depreciation. Therefore, this case would have no application to the present facts.

(d) As against the above, Mr. Suresh Kumar, learned Counsel appearing for the Revenue places reliance upon the impugned order of the Tribunal which dismiss the appeal of the Appellant holding itself bound by following observations in the decision of the Apex Court in ***(Late) Nawab Sir Mir Osman Ali Khan v/s. Commissioner of Wealth Tax – 162 ITR 888*** as under:-

" Even in some cases the phrase 'belonging to' capable of connecting interest which is less than absolute perfect legal title. In this connection, the observations of this Court in Raja Mohammad Amir Ahmed Khan v/s. Municipal Board of Sitapur, AIR 1965 SC 1923. This Court observed in that case that though the expression 'belonging to' no doubt was capable of denoting an absolute title, it was nevertheless not confined to connoting that sense. Full possession of an interest less than of full ownership could also be signified by that expression."

(emphasis supplied)

(e) In fact, the Apex Court in (late) Nawab Sir Osman Ali (supra) after making the above observations, finally held itself bound by the restricted meaning to the word '*belonging to*' i. e. possession coupled with legal ownership, even though it does observe that it may result in injustice. In the aforesaid case before the Supreme

Court, the Commissioner of Wealth Tax sought to bring the property which had not only been sold by the assesse but possession also given to the transferee on receipt of consideration, to the charge of wealth tax in the hands of the assessee. This was because the registered sale deed with regard to the property had not been executed. On the aforesaid facts the Court was concerned with the meaning of the word '*belonging to*' as found in Section 2 (m) of the Wealth Tax Act, 1957 which define net wealth. The Apex Court held that in the facts and circumstances of the case and in the eyes of the law, the purchaser cannot be and is not treated as legal owner of the property in question. To reach the above conclusion, the Apex Court noted the ingredients of ownership as given in Salmond on Jurisprudence as under:

" …. …. …. ….

"Ownership" according to Salmond, denotes the relation between a person and an object forming the subject matter of his ownership. It consists of a complex of rights, all of which are rights in rem, being good against all the world and not merely against specific persons. Firstly, Salmond says, the owner will have a right to possess the thing which he owns. He may not necessarily have possession. Secondly, the owner normally has the right to use and enjoy the thing owned: the right to manage it, i.e. the right to decide how it shall be used; and the right to he income from it. Thirdly, the owner has the right to consume, destroy or alienate in duration. Fourthly, ownership has the characteristic of being indeterminate in duration. The position of an owner differs from that of a non-owner in possession in that the latter's interest is subject to be determined at some future time. Fifthly, ownership has a residuary character. Salmond also notes the distinction between legal and equitable ownership. Legal ownership is that which has its origin in the rules of the common law, while equitable ownership is that which proceeds from rules of equity different from the common law. The courts of common law in England refused to recognize equitable

ownership and denied that the equitable owner was an owner at all.

All the rights embedded in the concept of ownership of Salmond cannot strictly be applied either to the purchasers or the assessee in the instant case.

In the instant appeal, however, we are concerned with the expression "belonging to" and not with the expression "owner".

(f) The Apex Court thereafter observes that the property in question legally cannot be said to belong to the buyer/vendee. The vendee has rightful possession only against vendor. In the circumstances, the property should be treated as belonging to the assessee i.e. the vendor. Even though, the same may work some injustice to the assessee as he would be liable to tax without having enjoyment of the property in question. In the circumstances, it concludes that the legal title is important in the Scheme of Wealth Tax Act as it stands and the legislature may consider the suitability of amendment. Therefore the observations of the Apex Court relied upon by the impugned order were only observations, at the highest in nature of obiter and though worthy of the highest respect will not displace the ratio of the decision viz. Possession coupled with legal ownership would alone amount to '*belonging to*' in the facts before the Court. In these circumstances, the issue would appear to be concluded against the Revenue and in favour of the Appellant-assessee.

(g) However the decision in the (Late) Nawab Sir Mir Osman Ali Khan (supra) may not ipso facto apply to the case at hand as there are factual differences as pointed out hereinafter. In the present facts,

the assets i.e. open land though owned by the MIDC is in the possession of the Appellant under the lease deed for a period of 95 years which has been executed. This document of lease admittedly evidenced transfer of some interest. Further, the decision of the Apex Court in (Late) Nawab Sir Mir Osman Ali Khan (supra) dealt with a situation where there was no legal document, evidencing transfer of any interest which would entitle the vendee to claim some right and/or rights in respect of land in its possession so as to claim that the land belongs to him albeit not owned. Therefore, the facts in the present case are distinguishable as the Appellant on the basis of document executed by the lessor – (MIDC) can claim interest in the open land which may be less than full ownership to be covered by the expression '*belonging to*' subject to the terms of the lease deed. Further the decision to tax the land in the hands of the vendor i.e. the (Late) Nawab Sir Mir Osman Ali Khan (supra) was premised on the facts that there was no document executed which would enable the buyer to claim that the land belongs to him. In this case, there is a lease deed and its clauses would determine the nature of interest the assessee has and is the interest sufficient for the Revenue to proclaim that it is belonging to the Appellant, for the subject Assessment Year.

(h) In fact the Supreme Court in ***Raja Mohammad Amir Ahmed Khan v/s. Municipal Board of Sitapur, AIR 1965 SC 1923*** had occasion to consider the word '*belonging*' in the context of a contractual document and held that :

" Though the word 'belonging' no doubt is capable of denoting an absolute tittle, is nevertheless not confined to connoting that sense.

> *Even possession of an interest less than that of full ownership could be signified by that word. In Webster "belong to" is explained as meaning inter alia " to be owned by, be the possession of". The precise sense which the word was meant to be convey can therefore be gathered only by reading the document as a whole and adverting to the context in which it occurs".*

The appellant submits that the decision in Raja Mohammed Amir Ahmed Khan (supra), cannot be relied upon as it was rendered not in the context of a statutory provision but on the basis of contractual documents. However, is not disputed that it deals with the normal meaning of the word 'belonging to' when read in a contractual document as a whole and the context in which it occurs. An identical test would satisfy the laws of interpretation of statutes i.e. to read the statute as a whole and interpret its provisions in the context in which it occurs to determine the meaning of the word '*belonging to*' in Section 40(2) of the Act.

(i) We find that the word '*belonging to the company*' has advisedly been used by the Parliament in Section 40 (2) of the Act. In case the Parliament sought to equate the word '*belonging to*' mean ownership then in such a case, there would be no reason to use the word '*belonging to*' and in stead use the word '*owner of*'. The intent in using the word '*belonging to*' is to include within the provisions of the Act, assets in possession of the Company without full ownership, but sufficient domain over it, to exercise the powers which would otherwise normally vest in the owner on the valuation date. Therefore, the concept of less than full ownership is sought to be introduced by the use of the word '*belonging to*'. However whether the asset belong to an asessee or not would have to be determined on the facts of each case, depending upon the

documents executed and the nature of domain the lessee exercises over the asset. The determination of the same in the present facts would require examination of the lease deed. Of course, the occasion to examine the same would only arise when there is some right more than mere possession, even if it is not full ownership. It is only on examination of the document, if any, under which the possession is held would the issue whether the property/asset can be said to belong to the person who is being charged to wealth tax can be determined.

(j) As pointed out herein above, the words 'belonging to' is capable of being construed as possession of assets along with less than full ownership thereof. However, the character of the Appellant's relation with the open land would necessarily have to be determined on the basis of the various clauses in the lease deed dated 29th September,1978 under which the Appellant is in possession of the land.

(k) The various clauses of the lease deed dated 29th September, 1978 have to be examined for the purposes of determining whether these would establish such a relationship of the Appellant to the open land as is sufficient to conclude that it is belonging to the Appellant on the valuation date. For the purposes of determining the relationship of the Appellant to the land, one would have to consider the terms of the lease deed in the context of the Act. A lease as ordinarily understood as defined in Section 105 of the Transfer of Property Act, 1882 to mean a transfer of right to enjoy immovable property for a certain time or in perpetuity for

consideration of price paid or promised. A lease would by its very definition mean a transfer of right to enjoy the property along with right to possess till the lease expires and/or terminates. It is, therefore, different from transfer of ownership as it only transfer of rights to enjoy the property and not the transfer of ownership of the property in its entirety. A lease again by definition would differ from license, as a lease would necessarily create an interest in the property while a license only permits a person to use the property of another which continues to be in the legal possession of such other. A license does not create any interest or estate in the property to which the license is granted. Therefore, a lease by itself would establish that the relationship with the land is much more than a casual relationship but includes a right to possession and user subject to fulfillment of conditions of the lease on a continues basis on the part of lessee. Therefore, even if, the lessee is not the owner of the open plot of land, yet he would certainly have some interest in the open plot of land for the period of lease – in this case 95 years and certainly so on the date of valuation, for the purposes of the Act. However, the issue still is whether the interest is sufficient to satisfy the test of 'belonging to' to the lessee.

(l) The question as framed for our consideration is whether in terms of the lease deed,it could be said that the open land of 2175 sq.mtrs. of the said plot was belonging to the Appellant. Therefore, the lease deed is to be examined in the context of determining whether the clauses indicate that a lease in fact was created in the land or not in the so called lease deed dated 29th September, 1978.

(m) The Appellant places reliance upon various clauses in the lease deed, in particular, the clauses which oblige the Appellant to pay rent during terms of the lease, not to excavate any part of the land which is held on lease, the full rights of the lessor to enter upon the leased premises and to inspect the same, to use the leased premises by the Appellant only for the purposes of a factory, the objections of the Appellant at expiration of the lease or sooner determination thereof to hand over the leased premises to MIDC and the Appellant not to sub let or part with possession of the leased premises or any part thereof without previous written consent of the MIDC. On the other hand, the lessor has full rights to enter upon the plot and inspect the same with proper notice. If any breach of the clauses contained in the lease deed is committed, the lessor would have a right to re-enter upon the leased premises and the lease granted shall come to an end. On the basis of the above, it was submitted on behalf of the Appellant that in view of the above clauses in the lease deed, the open land cannot be said to belong to the Appellant.

(n) As against above, the Respondent-Revenue submitted that the lease is for a period of 95 years, subject to further renewal. Further, the lessee i.e. the Appellant has complete domain over the leased plot including the open land for a period of 95 years, subject to paying rates and taxes. The lease is further renewable for a period of 95 years under the deed. All this according to the Respondent would indicate that the open land is belonging to the Appellant.

(o) We find that various clauses of the terms of lease deed relied upon

by the Appellant such as – obligation of the Appellant to pay rent to the MIDC; a prohibition from extracting any part of the said demised land, the prohibition to make any alternations to the building without a previous approval of the MIDC; the right of MIDC to enter and inspect the demised premises; after giving one week's previous notice to the Appellant. Further, user of the premises is only for the purposes of a particular type of factory. There is a prohibition on the Appellant to assign or part with the possession of the demised premises without the previous written consent of the MIDC. All this according to the Appellant, would indicate that it is not the owner of the premises and the interest, if any, are very limited. This, however, does not in any way detract and/or negate from the fact that the lease deed dated 29th September, 1978 is a lease of the plot of land. Various clauses of the agreement does not in any manner detract from the agreement being a lease. In fact, the terms of the lease deed establishes that the Appellant has a right to use the property provided the terms and conditions of the lease, are adhered to by the Appellant. Much was said on behalf of the Appellant that lease is only for 95 years with rights of a single renewal. This according to us, would have no impact in holding;

(a) the document dated 29th September, 1978 is, in fact, a lease deed for a period of 95 years; and

(b) during that period of 95 years, subject to lease being in existence; the Appellant has interest in the land of which it can claim protection on satisfying its obligation under the deed.

(p) The Appellant certainly has an interest in the property for a period of 95 years. This is sufficient to hold that on the valuation date, this land belongs to the Appellant, notwithstanding the fact that the ownership in the land would belong to MIDC. For this purpose, the valuation of the leasehold land is as computed in terms of Section 7 read with Schedule III – part (b) of the Wealth Tax Act, 1957. Thus, the value of the leasehold interest in land has to be included for in determining the net wealth under the Act.

(q) In these circumstances, it would be appropriate to hold that the lease of the open land ad-measuring 2175 sq.mtrs. is belonging to Appellant-Company as on the valuation date for A. Y. 1988-89.

10 In view of the above, we shall now answer the substantial questions of law posed for our consideration as under:-

(i) Question -A is answered in the affirmative i.e. in favour of the Revenue and against the Appellant-Assessee;

(ii) Question -B is answered in the affirmative i.e. in favour of the Revenue and against the Appellant-Assessee.

11 Accordingly, **Wealth Tax Appeal** is **disposed of** in the above terms. No order as to costs.

(G.S.KULKARNI,J.) **(M.S.SANKLECHA,J.)**