M/S HINDUSTAN LEVER LTD. A

v.

THE MUNICIPAL CORPORATION OF GREATER BOMBAY AND ORS.

APRIL 26, 1995 B

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Bombay Municipal Corporation Act, 1888: Sections 146(1) Proviso and 154(2)

C

Property tax—Building—Rateable value—Determination of—Cost of Air Condition machinery and false ceiling—Held should be excluded while determining rateable value—Embedding of machinery held not a relevant factor while deciding the applicability of exemption provision.

Cost of wooden partition used to divide each floor into parts—Held D *rightly included in calculating rateable value.*

Ground rent—Inclusion in determination of rateable value—Held valid.

Notional interest on amount deposited by assessee with Corporation for E *undertaking construction as well as on total cost of construction—Inclusion in reteable value held not valid.*

Taxing Provision—Two reasonable interpretation possible—Interpretation beneficial to the assessee should be given.

F

A building constructed by the appellant-Company was assessed by the respondent-Corporation under the Bombay Municipal Corporation Act, 1988 for levy of property tax. Its rateable value was fixed at Rs. 12,16,285 by adopting comparative method instead of contractor's method. The Small Cause Court held that the comparative method was not unsuitable but reduced the rateable value to Rs.9,97,555. The High Court held G **that comparative method was unsuitable and that while determining the rateable value (i) cost of air condition machinery and false ceiling; (ii) ground rent and (iii) notional interest on amount deposited by assessee with corporation as well as on total cost of construction were to be taken into account. Accordingly, it enhanced the rateable value to Rs. 11,81,450.** H

A In assessee's appeal to this Court on the question whether while adopting the contractor's method any wrong have been committed in fixation of the rateable value:

Allowing the appeal in part, this Court

B HELD : 1. The High Court erred in law not excluding the cost incurred by appellant on air condition machinery and on false ceiling. [810-F]

2. When the legislature sought to exclude the value of machinery of the type mentioned in sub-section (2) of Section 154 of the Bombay C Municipal Corporation Act from forming a part of rateable value, some meaning has to be ascribed to the provision, otherwise the intention of the legislature would get frustrated. The fact that a machinery gets embedded to a building or becomes an integral part of it has no relevance while deciding the question of applicability of the exemption provision. It could not have been intended by the legislature that, say, only unembedded D air-conditioners used for cooling a building would get the exemption, but not if the apparatus gets embedded and a central air-conditioning is provided in the building. [813-D-E, 814-D]

Haji Dawood v. *Municipal Commissioner, Pune,* AIR (1922) Bom. 386, E held inapplicable.

Commissioner of Income Tax, Madras v. *Mir Mohd. Ali,* [1964] 7 SCR 846; *Corporation of Calcutta* v. *Chairman, Cossipore and Chitpore Municipality,* 48 I.A. 435; *Poona Municipal Corporation* v. *Shankar Ramkrishna Jabade,* (1957) Bom. Law Reporter 25; *London County Council* F v. *Wilkins (Valuation Officer),* (1955) 2 All E.L.R. 180; *London County Council* v. *Wilkins,* [1956] 3 All E.L.R. 38; *Field Place Caravan Park Ltd.* v. *Harding (Valuation Officer),* [1966] 3 All E.L.R. 247; *Dick Hampton (Earth Moving) Ltd.* v. *Lewis (Valuation Officer),* [1975] 3 All E.L.R. 946; *Industrial Weavers Cooperative Society Ltd.* v. *Collector, Hardoi,* I.L.R. (1976) 2 Allahabad 161 and *Musai Kurmi* v. *Sub Karan Kurmi,* AIR (1914) Allahabad G 176 (2), referred to.

3. The value of wooden partitions was rightly included in calculating reteable value. The wooden partitions in question do not apparently attract the provision of section 154(2) of the Act. They having been used to divide H each of the floors into parts and even ceiling columns having been designed

with such partition in mind, there is no doubt that the value of these partitions did constitute and were rightly regarded as, part of construction cost. The fact that these partitions are fixed on sockets and are easily removable do to make any difference, as the building was from the inception conceived as an office building and it being spacious, division in separate blocks and cabins was conceived from the beginning for which purpose the partitions were used. [814-G-H]

4. There is no infirmity in the inclusion of the amount of ground rent in determining the reteable value, as the proviso to the sub-section (1) of section 146 has no application. However, the appellant would not be asked to pay the tax on the land over again. [815-D]

5. All amount of interest covered by items in question represent notional interest inasmuch as the appellant had in fact not paid interest. Its inclusion as cost of construction was not permissible. [815-E]

Challapalli Sugar Ltd. **v.** *C.I.T.,* **(98) I.T.R. 167, referred to.**

6. In a taxing provision, an interpretation beneficial to the assessee, in case two interpretations be reasonably possible, has to be given. This is a well settled position in law. [814-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2312 of 1979.

From the Judgment and Order dated 19/27.4.79 of the Bombay High Court in F.A. Nos. 617 & 618 of 1979.

S. Ganesh and C.S. Srinivasa for the Appellant.

R.F. Nariman, D.N. Mishra for JBD & Co. for the Respondents.

The Judgment of the Court was delivered by

HANSARIA, J. The appellant is liable to property tax leviable under the Bombay Municipal Corporation Act, 1888 (the 'Act'). It constructed a building on two plots bearing nos. 165 and 166. The construction started in February, 1962 and was completed by December, 1964. The Bombay Municipal Corporation, for short the 'Corporation', asked the assessee to show-cause as to why the rateable value should not be raised to Rs.

A 17,36,420 with effect from 16th June, 1963. The assessee raised objection to the enhancement. After considering the objection, the Corporation fixed the rateable value at Rs. 12,16,285 by adopting a method styled as comparative. The assessment as finalised by the Corporation came to be challenged by the assessee-appellant before the Chief Judge of the Small Cause Court, under section 217 of the Act. One of the contentions advanced by the assessee was that instead of the comparative method adopted by the Corporation, the suitable basis for assessment was contractor's method. Both the parties led evidence and the Chief Judge came to the conclusion that the comparative method was not unsuitable. It was secondly held that even if the contractor's method were to be adopted, the result would not have been different. After going through the merits of the controversy the Chief Judge reduced the rateable value to Rs. 9,97,555. Both the Corporation and the assessee appealed before the High Court of Bombay and by the impugned judgment the High Court has accepted the appeal of the Corporation by enhancing the reteable value to Rs. 11,81,450. The appeal of the assessee was dismissed. This appeal by special leave is by the assessee.

2. A perusal of the impugned judgment shows that the comparative method was held to be unsuitable inasmuch as there being no other building within the area comparable in all respects to the building in question, that method could not apply, as, what would have been the rent of the building if let out to a tenant could not be known. This view taken by the High Court is not assailed before us by any of the parties. We would, therefore, see whether while adopting the contractor's method, any wrong have been committed in fixation of the rateable value at Rs. 11,81,450.

3. According to the appellant the High Court erred in including the following items in the cost of construction :

(a) Cost of air-condition machinery amounting to Rs. 5,91,767.50.

(b) Cost of false ceiling amounting to Rs. 7,80,289.

(c) Cost of wooden partitions dividing the floor spaces amounting to Rs. 3,45,032.10.

(d) Cost of mural figure on the outside wall amounting to Rs. 15,000.

(e) Amount of ground rent for 4 years and 4 months @Rs. 59,000

per year - the total of which comes to Rs. 1,94,065.60. A

(f) A sum of Rs. 1,61,721.28 being the interest on Rs. 2,98,562.50 which the appellant had deposited with the Corporation while undertaking the construction of the building.

(g) A sum of Rs. 14,38,589.83 representing interest @6-1/2 % on Rs. B 82,99,557.07 which was the total cost of construction.

4. We would express our views on the aforesaid objections as listed:

Items (a) and (b) C

Both these items have been taken together as they relate to air-conditioning of the building. The type of air-conditioning device put up has been well explained in the impugned judgment at pages 54 and 55 of the paper book. It is embedded and mounted on a concrete foundation and the building has been so designed as to have the whole of it centrally D air-conditioned. For this purpose, a provision was made for concrete cooling towers on the terrace and steel pipes have been laid to ensure the circulation of the cooling water from the tower to the ground floor and then back to the tower. To ensure this, false ceiling on each floor was required which costed Rs. 7,80,289 in all, which is more than the cost of the machinery which was Rs. 5,91,767.50. E

5. The aforesaid leaves no manner of doubt that the air-conditioning machinery had been installed for the purpose of better enjoyment of the building itself increasing its utility. Relying on this factor as well as on the type of air-conditioning done in the building, it is contended by Shri F Nariman, appearing for the Corporation, that the case is not covered by section 154(2) of the Act, as per which the value of any machinery contained in or situate upon any building is not to be included in the rateable value. According to learned counsel, this provision of the Act which alone has been pressed into service by the appellant to get excluded the valuation of items (a) and (b), takes care of that machinery only which has its G separate existence and about which it cannot be said that it is embedded to the building to become its integral part. It is also urged that the type of apparatus and contrivance used in air-conditioning the building, has made the device more a plant than a machinery; and what has been exempted by the aforesaid provision is a machinery and not a plant. H

A 6. Shri Nariman has strenuously urged that when a chattel becomes a part of hereditament, the value of the same has to be included in fixing rateable value of a building, as was opined in *London County Council* v. *Wilkins (Valuation Officer),* [1955] 2 All E.L.R. 180, which view of the Court of Appeal was upheld by the House of Lords in *London County* B *Council* v. *Wilkins,* [1956] 3 All E.L.R. 38, which decision was subsequently relied upon by the Court of Appeal in *Field Place Caravan Park Ltd.* v. *Harding (Valuation Officer),* [1966] 3 All E.L.R. 247 and *Dick Hampton (Earth Moving) Ltd.* v. *Lewis (Valuation Officer),* [1975] 3 All E.L.R. 946. The learned counsel then draws our attention to some of the decisions of the High Courts of the country where movable properties like Kolhu, C powerloom and furniture were held to have become part of "land", as defined in section 3 of the Transfer of Property Act. (The definition of "land" in the Act is similar). These decisions are *Musai Kurmi* v. *Sub Karan Kurmi,* AIR (1914) Allahabad 176 2, *Industrial Weavers Co-operative Society Ltd.* v. *Collector, Hardoi,* I.L.R. (1976) 2 Allahabad 161, *Poona Municipal* D *Corporation* v. *Shankar Ramkrishna Jabade,* (1957) Bombay Law Reporter 25 and *Haji Dawood* v. *Municipal Commissioner, Pune,* AIR (1922) Bombay 386.

7. In *Poona Municipal Corporation's* case, the Bombay High Court had examined the question with reference to the Act at hand and so what E was opined therein is more material for our purpose. The Bench speaking through Chagla, CJ., opined that to decide whether fixture like furniture has become part of the building two tests are required to be applied. These are : (1) nature and extent or degree of annexation of the property; and (2) object, intention or purpose of the annexation. On the first question F what has to be considered is how permanent is the annexation and qua the second test the question to be examined is whether the furniture is for the permanent enjoyment of itself or permanent enjoyment of that to which it is attached. *Haji Dawood's* case, the Bombay High Court was called upon to decide as to whether the cost incurred in electric fittings would be excluded from the rateable value in view of what has been provided in G section 154 (2) of the Act. The Bench, in the short judgment, felt that when electric fittings become part of the premises and as such necessary for the user of the premises deduction cannot be claimed under section 154(2). A perusal of the judgment shows that this view was taken as a matter of first impression, after stating that the Bench had not been referred to any H authority under which it is said that electric fittings in residence come

within the term "machinery". This decision is, therefore, not really relevant. Shri Nariman referred to the same, nonetheless, because, according to him, that is the only decision of the Bombay High Court known to him dealing with the scope of section 154(2). A

8. Relying on Chagla CJ's judgment in *Poona Municipal Corporation's* case, and the aforesaid English decisions, Shri Nariman submits that as the air-conditioner machinery in the present case had been embedded in the building and became its integral part, the same must be deemed to become a part of the building, the value of the same has to be included in fixing rateable value of the building. To put it differently, the submission is that the machinery which is exempted by section 154 (2) is one which has its separate existence, which submission has been advanced because of the use of the expression "contained in" or "situate upon" in the sub-section. We cannot accept this contention, because in that case this provision would be rendered otiose, as rightly urged by Shri Ganesh, inasmuch as a type of the machinery which Shri Nariman has in mind keynote in any case form part of rateable value. When the legislature sought to exclude the value of machinery of the type mentioned in sub-section (2) from forming a part of rateable value, some meaning has to be ascribed to the provision, otherwise the intention of the legislature would get frustrated. We, therefore, state that the fact that a machinery gets embedded to a building or becomes an integral part of it has no relevance while deciding the question of applicability of the exemption provision. B C D E

9. Shri Nariman has not left the matter at that. He has further argued that the contrivance at hand had ceased to be machinery, and become plant; and so, sub-section (2) would not apply in any case. That 'plant' is different from machinery is sought to be brought home to us by referring to the decision of this Court rendered in *Commissioner of Income Tax, Madras* v. *Mir Mohd. Ali,* [1964] 7 SCR 846. A perusal of that judgment shows that the assessee claimed depreciation allowance for new diesel engines costing Rs. 18, 544 which had been purchased to replace the petrol engines in two of his buses. The allowance was claimed under the second para of clause (vi) and clause (vi a) of section 10(2) of the Income Tax Act, 1922, apart from normal depreciation allowance under the first para of clause (vi). The assessee was granted depreciation only under the first para of clause (vi) and not under other provisions because it was held that the engine was only part of an equipment and could not by itself become F G H

machinery. On appeal to this Court, the majority, however, held that the assessee was entitled to extra depreciation allowance as well, because the definition of machinery given by the Privy Council in the case of *Corporation of Calcutta* v. *Chairman, Cossipore and Chitpore Municipality,* 48 I.A. 435 was applicable and satisfied. Shri Nariman has drawn our attention to that part of the majority judgment in which it was held that as the diesel engine had not been installed in any vehicle they could not be regarded as plant. It is contended that in the case at hand, however, the machines had been embedded in the building and as such ceased to be machines and became plant; and the cost of such a machinery would not get excluded on the language of section 154(2).

10. Learned counsel for the appellant, however, submits that the ratio of the aforesaid case has no application because a perusal of the relevant section of the Income Tax Act shows that it had used two expressions, namely, machinery and plant and it is because of this that the Court treated the two differently. According to us, this dichotomy may not be applied to section 154(2), as it could not have been intended by the legislature that, say, only unembedded air-conditioners used for cooling a building would get the exemption, but not if the apparatus gets embedded and a central air-conditioning is provided in the building. In any case, as we are concerned with a taxing provision, an interpretation beneficial to the assessee, in case two interpretations be reasonably possible, has to be given. This is a well settled position in law.

11. We, therefore, hold that the High Court erred in law in not excluding the cost incurred by the appellant in items (a) and (b). We would, therefore, order for the exclusion of the same.

Item (c)

12. The wooden partitions in question do not apparently attract the provision of section 154 (2) of the Act. They having been used to divide each of the floors into parts and even ceiling columns having been designed with such partition in mind, we entertain no doubt that the value of these partitions did constitute and were rightly regarded as, part of construction cost. The fact that the partitions are fixed on sockets and are easily removable do not make any difference, as the building was from the inception conceived as an office building and it being spacious, division in separate blocks and cabins was conceived from the beginning for which

purpose the partitions were used. We, therefore, hold that the value of wooden partitions was rightly included in calculating rateable value.

Item (d)

13. Learned counsel for the appellant does not press for the exclusion of the cost of mural figure.

Item (e)

14. In so far as the ground rent is concerned, the contention of Shri Ganesh is that as the property tax under the Act is imposed both on and and building, to include the ground rent, which the appellant was paying, would be double tax option. The land in question, however, being Government land, Shri Nariman refers us to section 146(1) of the Act, according to which if the premises be of the Government, the property tax is realised from the actual occupier. Therefore, on facts of this case, we find no infirmity in the inclusion of the amount of ground rent in determining the rateable value, as the proviso to the sub-section has no application. It is apparent that the appellant would not be asked to pay the tax on the land over again.

Items (f) and (g)

15. There is no dispute on facts that the all amounts of interest covered by these items represent notional interest inasmuch as the appellant had in fact not paid interest. This being the position, it is strenuously urged by the learned counsel for the appellant that notional interest cannot in any case form part of cost of fixed assets. That was the decision of this Court in *Challapalli Sugar Ltd.* v. *C.I.T.,* (98) ITR 167. It is brought to our notice that the view of the institute of Chartered Accountants, which was also noted in the aforesaid decision, is still the same, as would appear from what has been stated in the recent circular of the Institute under the heading 'Financial Expenses', a xerox copy of which is made available to us by the learned counsel.

16. In rebutting the aforesaid contention, Shri Nariman urges that in case a builder actually pays interest, he would definitely regard that as a cost of construction and charge rent from the tenant accordingly. If that be so, the counsel contends, loss of interest which accrues on investment of one's own capital in construction of a building has also to be regarded

A as a cost, which the builder would like to realise from a future tenant. As per the submission of the learned counsel, there can be no distinction between actual interest paid and accrual notional interest.

17. We are unable to concede this submission. According to us, no tenant would be prepared to pay to a landlord, who makes construction
B from his own fund, but would like to charge higher rent on the ground that if he would have invested the amount elsewhere he would have earned interest. As the landlord would be earning rent on the investment made by him in the construction of the building, we are of the view that it would not be acceptable to a tenant to pay higher rent on the ground of loss of
C interest.

18. We are, therefore, of the view that the inclusion of items (f) and (g) as cost of construction was not permissible.

CONCLUSION

D 19. The appeal is, therefore, allowed by ordering for exclusion of the cost incurred under items (a), (b), (f) and (g). The rateable value would be fixed accordingly. In the facts and circumstances of the case we make no order as to costs.

T.N.A. Appeal allowed.