Bombay High Court Tulsidas vs Patel (P) Ltd. V. Wealth Tax ... on 17 June, 1997 Equivalent citations: (1998) 61 TTJ Mumbai 282 ORDER T.V. Rajagopala Rao, P. This is an appeal filed by the assessee and it relates to assessment year 1990-91. The assessee is a private limited company. The relevant valuation date was 31-3-1990. It filed wealth-tax return on 20-9-1991 returning a net wealth of Rs. 2 lakh. The assessee has three pieces of land at Juhu, Chunabhatti and Baroda besides having land and building called "Bella Vista" property at Peddar Road. It had also "Patel House" as one of its assets besides having movable properties like motor cars. By his assessment order dated 15-5-1993, the Wealth Tax Officer assessed the net wealth of the assessee at Rs. 31,53,02,500. Against the said assessment order, the assessee went in appeal before the Commissioner of Wealth Tax (Appeals) IV, Mumbai. The learned Commissioner of Wealth Tax (Appeals), Mumbai, by his order dated 3-5-1994, partly allowed the appeal. Now, against the unsuccessful portion of the claim of the assessee before the Commissioner of Wealth Tax (Appeals), the present second appeal is filed. 2. In this wealth-tax appeal the, first ground is with regard to valuation of Chunabhatti and Chembur properties whose value was confirmed at Rs. 20,30,000. This ground was withdrawn by Shri Prakash Jotwani, learned counsel for the assessee, on 11-11-1996. So also, the 4th ground, which deals with valuation of land at Baroda, which was fixed by the lower authorities at Rs. 1,26,750, was also withdrawn on 11-11-1996 itself. Out of ground Nos. 2, 3, 5 and 6, ground No. 6 is general in nature under which leave to amend, alter or vary the grounds only was prayed for. However, no petition praying leave either to amend, alter or vary the grounds of appeal was filed. Therefore, we are virtually left with ground Nos. 2, 3 and 5, which are as follows :- 2. In this wealth-tax appeal the, first ground is with regard to valuation of Chunabhatti and Chembur properties whose value was confirmed at Rs. 20,30,000. This ground was withdrawn by Shri Prakash Jotwani, learned counsel for the assessee, on 11-11-1996. So also, the 4th ground, which deals with valuation of land at Baroda, which was fixed by the lower authorities at Rs. 1,26,750, was also withdrawn on 11-11-1996 itself. Out of ground Nos. 2, 3, 5 and 6, ground No. 6 is general in nature under which leave to amend, alter or vary the grounds only was prayed for. However, no petition praying leave either to amend, alter or vary the grounds of appeal was filed. Therefore, we are virtually left with ground Nos. 2, 3 and 5, which are as follows :- "2. The Commissioner of Wealth Tax (Appeals) erred in taking Patel House as wealth of the assessee though appellant is not owner of the same as it is a lease-hold property. 3. Without prejudice to what is stated above the Commissioner of Wealth Tax (Appeals) erred in confirming the valuation of Patel House at Rs. 1,75,00,000 without taking into consideration the merits of the appellants case. 4. The learned Commissioner of Wealth Tax (Appeals) also erred in confirming the addition of wealth of Bella Vista and valuing the same at Rs. 22,74,37,800 though the property is not owned by the appellant, but is lease-hold property. 5. The learned Commissioner of Wealth Tax (Appeals) erred in not giving specific finding on the liabilities claimed by the appellant in the Grounds of Appeal and instead of giving a finding, the Commissioner of Wealth Tax (Appeals) has

referred the issue back to the assessing officer to consider the liabilities as per law." Out of them, the major ground is ground No. 3, which is as follows : 3. "The learned CWT(Appeals) also erred in confirming the addition of wealth of Bella Vista and valuing the same at Rs. 22,74,37,800 though the property is not owned by the appellant, but it is lease hold property". On 11-11-1996, we directed the assessee to produce the lease deed relating to their property at "Bella Vista" and in complying with our direction, copy of the registered lease deed was filed. As can be seen from the lease deed, it was executed for 98 years beginning from 1-1-1971. The date of the lease deed is 31-12-1970. The lossors under the lease deed were M/s. Nevilla Wadia Pvt. Ltd. (hereinafter referred to as "the lessors") and the lessees were M/s. Tulsidas V. Patel P. Ltd. (hereinafter called "the lessees"). The property, which was leased out under this deed was 27,650 sq. yds. situated on the Western side of Peddar Road (now known as Dr. Gopaldas Deshmukh Marg) at Cumbala Hill in the city of Bombay bearing old Survey No. 67 and new Survey No. 7129 and Cadastral Survey No. 609 of the Malabar and Cumbala Hill Division, in the Registration District and Sub-district of Bombay, together with the buildings, dwelling house, out-houses, other structures standing thereon, including the house known as "Bella Vista" and the building known as "Peddar House", which are all set out in the Schedule to the lease deed. It is submitted by the learned counsel for the assessee that this property is situated in a commercial area though the bungalow called "Bella Vista" is used for residential purposes. It is submitted that in the remaining land a multi-storied building of 22 floors was raised and in that multi-storied building the ground floor was intended to be a commercial complex and the other flats were intended for residential purposes. It is further submitted that the shopping complex was sold to a sister concern called Bama Departmental Stores Pvt. Ltd. It is submitted that in the earlier years the Tribunal held that the whole property was not liable for wealth- tax under section 40 of the Finance Act, 1983, and in support thereof, the assessee produced the Tribunals order dated 9-12- 1994 for assessment years 1988-89 and 1989-90 at pages 1 to 5 of the small paper book filed. The assessee also filed an order of the Tribunal dated 11-8-1995 rejecting the reference sought by the revenue for assessment years 1988-89 and 1989-90. It is submitted that in the earlier years the Tribunal based its decision on the decision rendered by the Calcutta Bench of the Tribunal in Asstt. CWT v. Park Hotel (P) Ltd. (1992) 41 ITD 501 (Cal-Trib) wherein it was held that the provision of section 40 is a self-contained code, that the immovable property could be brought to tax in the hands of the assessee-company only if the property belonged to the assessee-company. If the assessee-company was not the owner, it would be doing violence to the express provisions of section 40 of the Finance Act, 1983, if the provisions of section 2(3) were invoked to bring to tax the leasehold interest of the assessee in the immovable property even though the lease was for a period exceeding six years. It is vehemently contended that since the leasehold property was not covered under section 40 of the Finance Act, the same cannot be charged to wealth-tax. In section 40 of the Finance Act, 1983 if the provisions of section 2(3) were invoked to bring to tax the leasehold

interest of the assessee in the immovable property even though the lease was for a period exceeding six years. It is vehemently contended that since the leasehold property was not covered under section 40 of the Finance Act, the same cannot be charged to wealth-tax. In section 40 of the Finance Act, 1983, nowhere it is found that the leasehold property held by a company belongs to the company or the company would be the owner of the said leasehold property. It is further argued that unless there is fresh material justifying departure from the earlier stand, the Income Tax Appellate Tribunal cannot depart from its earlier order and in support of this proposition the learned counsel relied upon CIT v. Manaklal Porwal (1986) 160 ITR 243 (Raj). We have questioned as to who raised the 22 storeyed building in the said leasehold land and at what cost. The learned counsel submitted in reply to our query that the assessee-company raised the building of 22 storeyes after incurring an expenditure of Rs. 3 to 5 crore. It is contended that at the most the building thus raised may be said to belong to the assessee but, in any event, the land on which it is raised does not belong to the assessee. It is further submitted that section 2(e)(2)(iii) of the Wealth Tax Act speaks of or includes a leasehold interest in a land for more than 6 years. Simply because such leasehold land held for more than 6 years should be considered as an asset within the meaning of section 2(e) of the Wealth Tax Act, it does not automatically give answers to the description of an asset belonging to the assessee-company within the meaning of section 40 of the Finance Act, 1983, since this is the purported meaning of the words "belonging to" given in Park Hotels case. The learned counsel for the assessee relied upon the following decisions also : (1) CIT v. L.G. Ramamurthi (1977) 110 ITR 453 (Mad) (2) CIT v. Velimalai Rubber Co. Ltd. (1990) 181 ITR 299 (Ker) (3) CIT v. Vrajlal Manilal & Co. (1981) 127 ITR 512 (MP) (4) Sterling Foods v. CIT (1991) 190 ITR 275 (Karn) and (5) CIT v. Goodlass Nerolac Paints Ltd. (1991) 188 ITR 1 (Bom) and contended that if this Tribunal feels that the decision in this case given for earlier years should not be followed for the year in question, then the only way for this Tribunal is to refer the matter to a Special Bench but not to pass a considered order or order on merits by the Tribunal itself. The learned counsel for the assessee relied upon Mohan Exports (I) (P) Ltd. v. Asstt CWT (1977) 60 ITD 473 (Del-Trib) for the proposition that section 40 Finance Act, 1983, is a special provision and, therefore, it will prevail over of the general provisions of the Wealth Tax Act contained under section 2(m) Explanation 1 after it is amended with effect from 1-4-1988 as can be seen from clause (5)(b) of section 40 of the Finance Act which categorically excludes application of any provisions of the Wealth Tax Act not conforming to section 40 of the Finance Act. On the other hand, the learned Departmental Representative submitted the following arguments. In view of the unmistakable indicia available in the various terms of the lease deed now produced by the assessee, the assessee can easily be found to be the owner of the property. It is submitted that in the earlier order of the Tribunal relied on by the assessee the lease deed was not considered by the Tribunal. It is not correct to contend that section 40 of the Finance Act is a self-contained code as it is the view taken in Park Hotels case. On the other hand, section 40 of the Finance Act

is clearly intertwined with the Wealth Tax Act provisions and the wealth of private limited companies coming within the ambit of section 40 should be considered by applying the provisions of the Wealth Tax Act. He had cited Plasticotes Investments Ltd. v. Asstt. CWT (1992) 40 ITD 332 (Bom-Trib) which is the earlier order delivered by the Bombay Tribunal, which would reveal that section 40 of the Finance Act is not a self-contained code. Further, they have considered the order delivered in the assessees case for assessment years 1988-89 and 1989-90 dated 9-12-1994 in Wealth Tax Act Nos. 45 & 46 of Bombay 1993. Further, the learned Departmental Representative also filed the recent order delivered by the E Bench of the Bombay Tribunal dated 30-1-1997 passed in Wealth Tax Appeal Nos. 267 to 270 (Mum) for assessment years 1987-88 to 1990-91 in the case of A.M. Bhiwandiwalla & Co. (Bom) (P) Ltd. In that case also, one of the assets held by the assessee-company was the leasehold interest in land at Gandhidham. There also, the plot of land was allotted to the assessee by the government on lease for a period of 99 years. Thus, the facts of that case are almost identical with the facts of the present case. In that case also, the earlier order of the Tribunal in the assessees case for assessment years 1988-89 and 1989-90 was sought to be cited in support of the assessees contention, whereas the learned Departmental Representative relied upon Plasticotes Investments Ltds case (supra). The Tribunal, in its order dated 31-1-1997, held that the leasehold right in the land constitutes a right and the value thereof is liable to be included in the net wealth by virtue of the provisions contained in section 40(3)(v) of the Finance Act, 1983. A copy of the order of E-Bench of the Tribunal dated 30-1-1997 was furnished to us in a paper compilation filed by the revenue. The learned Departmental Representative submitted before the Tribunal that this latest decision of the Bombay Bench is worthy to be followed rather than Park Hotel (P) Ltd.s case (supra) delivered by the Calcutta Tribunal. Further, he submitted that the Calcutta High Court in CWT v. M.D. Ismail (1979) 117 ITR 273 (Cal) held that the leasehold right in favour of the assessee for more than 6 years is an asset within the meaning of the Wealth Tax Act and its value should be included in the Wealth, Therefore, the learned Departmental Representative contended that in this case the lease is for 98 years. Several clauses of the lease deed would clearly show that the assessee can exercise all the rights of an absolute owner of the property. Therefore, the assessee-company should be considered to be the owner of the property and the leasehold property should be considered as belonging to the assessee. The learned Departmental Representative also contended that neither the earlier order passed by this Tribunal for assessment years 1988-89 and 1989-90 nor the Park Hotel (P) Ltd.s case (supra) are not worthy to be followed inasmuch as they missed to consider the most important facts of the case. In Park Hotels case, the term of lease was only just above 6 years. In the earlier years, while deciding the assessees case for assessment years 1988-89 and 1989-90, this Tribunal did not summon either the lease deed, did not examine the salient stipulations of the lease deed and did not record its findings with reference to those terms of the lease deed. 3. In reply, the learned counsel for the assessee submitted that

M.D. Ismalis case (supra) relied on by the Departmental Representative should not be followed in view of the fact that what was considered in that case was not the provisions of section 40 of the Finance Act but only the provisions of section 2(e) of the Wealth Tax Act, whereas (1992) 41 ITD 501 (Cal-Trib) relied on by the assessee is a direct decision on section 40 of the Finance Act. Thus, we heard the arguments on both the sides completely on this ground. We have to first consider whether the earlier order of this Tribunal for assessment years 1988-89 and 1989-90 in this very case of the assessee should be followed and applied even for this year under consideration or if it is not to be followed what are the reasons. In our considered opinion, the earlier order of this Tribunal for assessment years 1988-89 and 1989-90, which is provided at pages 1 to 5 of the paper book, should not be followed for the following reasons. Firstly, in the earlier order, neither the lease deed for 98 years dated 31-12-1970 was taken into consideration nor its provisions kept in view nor in the light of those provisions the issue whether the assessee- company can be said to be the owner of Bella Vista or Bella Vista can be said to be belonging to the assessee-company decided. The learned Members, who passed the earlier order, also not considered the Bombay Tribunals decision Plasticotes Investments Ltds case (supra). further, they have simply followed the Park Hotels case without any critical examination and without considering for themselves whether the proposition laid down in that case is a self-contained code and what constitutes "net wealth" was given only under the provisions of that Act and we should not travel beyond the said provisions in order to determine what is net wealth held by the company apart from what is stated in sub-section (3) of section 40 of the Finance Act, without themselves examining the provisions of the Finance Act and by proper discussion of the provisions, they did not come to the conclusion whether the propositions laid down in Park Hotel (P) Ltd.s case (supra) are correct and stand to the test of judicial scrutiny. Therefore, firstly, let us take up the issue whether Park Hotel (P) Ltds case (supra) was in conformity with the provisions of the Finance Act, 1983, or whether the propositions laid down under the said decision would pass muster after a critical scrutiny of the provisions of section 40 of the Finance Act, 1983. Firstly, in our view, the proposition laid down in that case that section 40 of the Finance Act is a self-contained code cannot by supported by a bare reading of the provisions of that Act. Under sub-section (1) of section 40 of the Finance Act, it is stated that wealth-tax shall be charged under the Wealth Tax Act for every assessment year commencing from 1-4-1987 in respect of net wealth on the corresponding valuation date of every company not being a company in which public are substantially interested. Sub-section (2) as far as relevant to our purpose, reads as follows : 3. In reply, the learned counsel for the assessee submitted that M.D. Ismalis

case (supra) relied on by the Departmental Representative should not be followed in view of the fact that what was considered in that case was not the provisions of section 40 of the Finance Act but only the provisions of section 2(e) of the Wealth Tax Act, whereas (1992) 41 ITD 501 (Cal-Trib) relied on by the assessee is a direct decision on section 40 of the Finance Act. Thus, we heard the arguments on both the sides completely on this ground. We have to first consider whether the earlier order of this Tribunal for assessment years 1988-89 and 1989-90 in this very case of the assessee should be followed and applied even for this year under consideration or if it is not to be followed what are the reasons. In our considered opinion, the earlier order of this Tribunal for assessment years 1988-89 and 1989-90, which is provided at pages 1 to 5 of the paper book, should not be followed for the following reasons. Firstly, in the earlier order, neither the lease deed for 98 years dated 31-12-1970 was taken into consideration nor its provisions kept in view nor in the light of those provisions the issue whether the assessee-company can be said to be the owner of Bella Vista or Bella Vista can be said to bebelonging to the assessee-company decided. The learned Members, who passed the earlier order, also not considered the Bombay Tribunals decision Plasticotes Investments Ltds case (supra). further, they have simply followed the Park Hotels case without any critical examination and without considering for themselves whether the proposition laid down in that case is a self-contained code and what constitutes "net wealth" was given only under the provisions of that Act and we should not travel beyond the said provisions in order to determine what is net wealth held by the company apart from what is stated in sub-section (3) of section 40 of the Finance Act, without themselves examining the provisions of the Finance Act and by proper discussion of the provisions, they did not come to the conclusion whether the propositions laid down in Park Hotel (P) Ltd.s case (supra) are correct and stand to the test of judicial scrutiny. Therefore, firstly, let us take up the issue whether Park Hotel (P) Ltds case (supra) was in conformity with the provisions of the Finance Act, 1983, or whether the propositions laid down under the said decision would pass muster after a critical scrutiny of the provisions of section 40 of the Finance Act, 1983. Firstly, in our view, the proposition laid down in that case that section 40 of the Finance Act is a self-contained code cannot by supported by a bare reading of the provisions of that Act. Under sub-section (1) of section 40 of the Finance Act, it is stated that wealth-tax shall be charged under the Wealth Tax Act for every assessment year commencing from 1-4-1987 in respect of net wealth on the corresponding valuation date of every company not being a company in which public are substantially interested. Sub-section (2) as far as relevant to our purpose, reads as follows : "(2) For the purpose of sub-section (1), the net wealth of a company shall be the amount by way the aggregate value of all the assets referred to in sub-section (3), wherever located, belonging to the company on the valuation

date is in excess of the aggregate value of all the debts owed by the company on the valuation date which are secured on, or which have been incurred in relation to, the said assets." Sub-section (3) of section 40 lists out what are the assets referred to in sub-section (2). Clause (v) of sub-section (3) of section 40 mentions land other than agricultural land. Clause (vi) of sub-section (3), which appears to be important, is extracted in the subsequent para of this order (Page 15). Clause (viii) of section 4(3) of the Finance Act appears to be a omnibus clause and it reads as follows : "(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)". Sub-section (5) as far as relevant for our purpose reads as follows : "(5) For the purposes of the levy of wealth-tax under the Wealth Tax Act, in pursuance of the provisions of the section,- (a) ** ** ** (b) the remaining provisions of that Act shall be construed so as to be in conformity with the provisions of thie section". Therefore, it is obvious that under the provisions of the Finance Act, 1983, what is levied is wealth-tax only. None of the items listed out in sub-section (3) of the Finance Act are items not covered by the definition"net wealth" under the Wealth Tax Act. "Net wealth" is defined in section 2(m) of the Wealth Tax Act as follows : "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, belong 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 owed by the assessee on the valuation date which have been incurred in relation to the said assets". All or each of the items mentioned in clauses (i) to (viii) under sub-section (3) of section 40 of the Finance Act also come under or covered by the definition "net wealth" under the Wealth Tax Act. Sub-section (5) of section 40 of the Finance Act clearly states that it is only section 5 of the Wealth Tax Act and clause (d) of section 45 of the Wealth Tax Act and Part II of Schedule I to that Act are the provisions which should not apply while dealing a case under section 40 of the Finance Act and clause (b) of sub-section (5) clearly states that the remaining provisions of the Wealth Tax Act shall be construed so as to be in conformity with the provisions of section 40 of the Finance Act. Therefore, having regard to the above provisions of the Finance Act, we are unable to agree with the proposition laid down in Park Hotel (P) Ltd.s case (supra) that the provision of section 40 is a self-contained code and the definition of "Assets" under section 2(e) of the Wealth Tax Act cannot be invoked while dealing with a case under section 40 of the Finance Act, 1983. More particularly, the ratio of Park Hotel (P) Ltd.s case (supra) is that the leasehold interest of more than 6 years held by an assessee-company in a particular land cannot be included in the net wealth of the assessee-company. In our view, the finding of the Calcutta Tribunal on this aspect of the matter also cannot be supported under law. The only discussion in this regard in Park Hotel (P) Ltd.s case (supra) is the following : It further directs that the remaining provisions of Wealth Tax Act shall be so construed as to be in conformity with the provisions of section 40 of the Finance Act, 1983. Section 2(e) of the Wealth Tax Act is one such

provision which should be read only in conformity with the subject code. If while applying the provisions of section 2(e) of the Wealth Tax Act it is found that it is not in conformity with the provisions of section 40 of the Finance Act, 1983 that section cannot be applied. As already stated sub-section (3) of section 40 of the Finance Act, 1983 lists out various items of assets that are to be charged to wealth-tax. The immovable property at No. 15, Park Street, Calcutta can be brought to tax in the hands of the assessee- company only if that property belongs to the asessee-company. It is common ground that the said property is not owned by the assesee-company. It would be doing violence to the express provisions of section 40 of the Finance Act, 1983 if the provisions of section 2(e) of the Wealth Tax Act are invoked to bring to tax the leasehold interest of the assessee in the said immovable property even though the lease is for a period exceeding six years. When section 40 of the Finance Act, 1983 enacted by the Legislature as a separate and self-contained code for the purpose of levy of wealth-tax on closely-held companies it is not possible for us to look into the provisions of the Wealth Tax Act and supply, wherever necessary, the omissions." Under sub-section (2) of section 40 of the Finance Act, 1983, the crucial words which require interpretation are "belonging to the company." The legislative mandate is that all the assets enumerated in sub-section (3) of section 40 belonging to the assessee-company should be considered to the assets of that company for the purpose of levy of wealth-tax. The Calcutta Tribunal unfortunately did not bestow its pointed attention on the crucial words "belonging to the company" and also did not interpret the correct meaning of those words before deciding that leasehold interest of the assesee-company for more than six years is not covered under section 40 and simply it is covered by section 2(e) of the Wealth Tax Act. It would appear that these words "belonging to the company" are not synonymous to "to be the owner of the asset". It is enough in order to bring the asset under Finance Act, 1983 that the asset should be belonging to the company and not necessarily the company should be the owner of it. These crucial words "belonging to the company" bear specific legal connotation. Assuming without admitting that the words "belonging to"are synonymous of conveying the ownership rights in an asset to the assessee is correct, let us examine the facts of the present case before us. In this case, the lease deed contained several important clauses. The lease deed, as already stated, if for 98 years. Under the terms of clause IV (2), it is stated that if the lessees shall desire of having further lease of the said premises after the expiry of the term hereby granted and if such desire is expressed by a notice in writing to the lessors not less than 6 months before the expiry of the term hereby granted, the lessors shall grant to the lessees a further lease of the said premises for a term of 98 years at the same rent upon the same terms, covenants, stipulations, provisions and agreements as are herein contained including the present covenant for renewal. Therefore, it is seen that no doubt in the first instance the lease is for a periods of 98 years but it can go on renewing for successive block period of 98 years each. Under clause II(11), though the absolute assignment of the whole interest or part thereof cannot be made by the lessees, the said assignment is clearly possible

with the written consent of the lessors. It is clearly laid down that the said written consent shall not be unreasonably withheld in respect of respectable and substantial party. Thus, it is seen that the assignment of leasehold right can be made over to any other party. The right of mortgage of the leasehold property was exclusively vested with the lessees only inasmuch as the clause with regard to the said right is as follows vide clause 2(11) : "The Lessees shall be at liberty to assign the whole or any part of the said property by way of mortgage in favour of any institution or with the consent of the lessors, which consent shall not be unreasonably withheld in the case of a respectable and substantial party in favour of any other party." Further, the right to sublet the property is also given under clause II(11) as follows : "The Lessees shall also be at liberty to underlet or part with the possession of any portion or portions of the said premises by way of monthly or other tenancies or leave and licence, or by any other mode (but not by assignment) for a period not exceeding thirty years (but so that such period falls within the term of the present demise)." Under clause III, the lessors guarantee quiet possession and enjoyment of the demised premises to the lessees. Under clause IV(3), in case the demised property is compulsorily acquired, all moneys payable by way of compensation shall go to or be receivable by or shall be paid over to the lessees only. Now, having regard to the important clauses of the lease deed extracted above, we will have to consider whether they confer upon the lessees (assessee-company herein) with absolute rights which are the attributes of a full owner. Now, in this connection, we can usefully refer to the legal meaning of the word owner given in Attorneys Pocket Dictionary (published by Law & Business Publications Inc. U.S.A.) at page 349 follows : "Owner : The person who is beneficially entitled to a right. However, the term is frequently added to denote a person who is beneficially entitled to corporeal thing such as land, chattels, goods, animals, etc. The term also has the extended meaning of denoting the person who has the dominion or control over a thing although the title to the same may be in another, such as a conditional sales purchaser. The term also has the extended meaning of a person whose right to a thing is short of entire beneficial ownership such as a lessee for a term of years." The words "belonging to"occurring in a deed had fallen for interpretation of the Honble Supreme Court in Raja Mohammad Amir Ahmad Khan v. Municipal Board of Sitapur AIR 1965 SC 1923. At page 1929, the interpretation and true meaning of the words "belonging to me" occurring in a deed was taken up by the Honble Supreme Court for discussion and consideration. It was argued that the words would amount to asserting the full ownership rights by a tenant and thus denoted repudiation of landlords title. The Honble Supreme Court, repelling that contention, held the following : "(14) Now to revert to paragraphs 2, 5 and 8 which the learned Judges considered amounted to a clear and unequivocal denial of the governments title, they referred in para 2 to the words belonging to me as constituting a disclaimer of the tenancy and a repudiation of the landlords title. We do not agree that this is the only or proper construction which the words are capable of bearing. Though the word belonging no the mortgage deed employed the following words to describe the

property mortgaged house with the lands which belong to me. The landlord of the site claimed that this amounted to a denial of his title. The court, however, held that the words were not ambiguous and as the denial was not unequivocal it did not entail a forfeiture. In the case before us there had been a bungalow constructed on the property and learned counsel for the respondent conceded that if that bungalow were in existence and the property had been referred to as my bungalow or bungalow belonging to me it would not be a disclaimer or rather the denial would not be unequivocal but he urged that if the same terms were used in respect not of the super-structure and the land together but of the site alone on which the super-structure stood, the interpretation of the assertion would be different. It is in this contex that the circumstances of the tenancy become material for determining the nature of the assertion made. There was a tenancy whose origin was not definitely known. The lessee had constructed super-structures and the appellant and his ancestors had been in enjoyment of the property for over three quarters of a century. There had been transfers effected of the property and the same had been the subject of inheritance. There had been a document in which there had been a public assertion that though it was government land for which a nominal rent was payable, they had a permanent hereitable and transferable right. Notwithstanding enjoyment of this nature with public assertions of the type, when the property was sought to be enjoyed by sub-leasing it to others for construction of houses the municipality had come in and asserted rights in denial of these claims. It is with that background that one has to judge as to whether when the tenant stated that the land belonged to him he was asserting merely the substantial character of his interest in the property or was disclaiming the reversionary interests of government or its right to demand and receive a fixed rent in respect of the property. We consider that the words employed did not, in the circumstances, amount to a disclaimer or a renunciation of the tenancy". (Emphasis, here, italicized in print, supplied) Therefore, it is clear from the above decision of the Honble Supreme Court that "belonging to" does not denote absolute title. Even possession of an interest less than that of full ownership could be signified by those words. Therefore, from the above, it is clear that for an asset belonging to the company need not necessarily mean that the assessee should be full owner of that asset. It also includes the possession of an interest less than that of full ownership. After going through the various important clauses of the lease deed, we have no hesitation to come to the conclusion that the asset (Bella Vista Property) can be said to be belonging to the assessee-company within the meaning of sub-section (2) of section 40 of the Finance Act, 1983. Sub-section (3), (5) and (6) of section 40 of the Finance Act cover all the assets with which we are concerned in this appeal, Bella Vista, which not only comprises of the land but also the residential property situated therein. Sub-section (3)(vi) is as follows : "(vi) building or

land appurtenant thereto other than building or part thereof used by the assessee as factory, godown, wharehouse, cinema house, hotel or office for the purpose 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 building or part." The building as well as the apprutenant land do not come under the prohibited categories enumerated in the said sub-section, i.e., factory godown, warehouse, etc., we hold, therefore, that the leasehold interest of the assessee for 98 years renewable successively for another term of 98 years is an asset which can fairly be said to be belonging to the assessee-company and, therefore, should come under the net wealth of the assessee. We also hold that section 40 of the Finance Act is not a self-contained code but should be read conjointly with the Wealth Tax Act and the provisions thereunder except the excluded provisions enumerated under sub-section (5) of section 40 of the Finance Act, 1983. Plasticotes Investment Ltds case (supra) had taken a view as follows as per the headnote obtaining at page 332. "In this view of the matter, the submissions of the assessee that section 40 of the Finance Act, 1983, is a self-contained code and, therefore, the provisions of the Act, could not be considered in determining whether the value of the flats in question would be exigible to the wealth-tax also without any merit". Plasticotes Investment Ltd.s case (supra) is a Bombay A Bench decision of the Tribunal rendered on 18-10-1991, whereas the earlier decision of the Tribunal in the very case of the assessee for assessment years 1988-89 and 1989-90 in Wealth Tax Act, Nos. 45 and 46 of Bombay 1993 is delivered on 9-12-1994. However, the Bombay Tribunal decision itself was not even referred to in their order at least to the limited extent of considering whether the provisions of section 40 of the Finance Act is a self-contained code or not. The above discussion makes it clear that the earlier decision of the Tribunal for assessment years 1988-89 and 1989-90 was against the interpretation of the words "belonging to" by the Honble Supreme Court in Raja Mohammed Amrir Ahmad Khans case (supra). Further, in the case of A. M. Bhiwandiwalla (supra), the E-Bench of the Bombay Tribunal had taken a view that the interest of the assessee in a land leased for 98 years in its favour should be considered as the wealth of the assessee under section 40 of the Finance Act. At para 8 of the decision, the following is what is held by the Tribunal: Plasticotes Investment Ltd.s case (supra) is a Bombay A Bench decision of the Tribunal rendered on 18-10-1991, whereas the earlier decision of the Tribunal in the very case of the assessee

for assessment years 1988-89 and 1989-90 in Wealth Tax Act, Nos. 45 and 46 of Bombay 1993 is delivered on 9-12-1994. However, the Bombay Tribunal decision itself was not even referred to in their order at least to the limited extent of considering whether the provisions of section 40 of the Finance Act is a self-contained code or not. The above discussion makes it clear that the earlier decision of the Tribunal for assessment years 1988-89 and 1989-90 was against the interpretation of the words "belonging to" by the Honble Supreme Court in Raja Mohammed Amrir Ahmad Khans case (supra). Further, in the case of A. M. Bhiwandiwalla (supra), the E-Bench of the Bombay Tribunal had taken a view that the interest of the assessee in a land leased for 98 years in its favour should be considered as the wealth of the assessee under section 40 of the Finance Act. At para 8 of the decision, the following is what is held by the Tribunal: "8. We have considered the rival submissions. From the facts already noted above it is evident that the value of the leasehold rights in the land in question had been included in the assessees wealth in the past. It is the accepted position that the assessee has obtained lease of this land for a period of 99 years. The right of a lessee in an estate, in the absence of a contract to the contrary, is a transferable property. We are, therefore, of the opinion that the leasehold right in the land constitutes as asset and the value thereof is liable to be included in the net wealth by virtue of the provision contained in section 40(3)(v) of the Finance Act, 1983. We, therefore, uphold the order of the Commissioner of Wealth Tax (Appeals) on the point". We hold that the facts in the case decided by theE-Bench in the above noted case are quite nearer to the facts on hand than the facts in Park Hotel (P) Ltd.s case (supra). One of us, the Accountant Member, was a party to that order also. 4. For the reason that the earlier orders come in conflict with the Supreme Court decision as to the interpretation of the words"belonging to", there is no necessary to refer the matter to any Full Bench even though there was a conflict of opinion between the Park Hotels case on the hand one and Plasticotes Investments Ltd.s case (supra) on the other. Thus, we hold that the value of the land and building at Bella Vista, which is valued at Rs. 22,74,37,800 is to be added to the wealth of the assessee. 4. For the reason that the earlier orders come in conflict with the Supreme Court decision as to the interpretation of the words"belonging to", there is no necessary to refer the matter to any Full Bench even though there was a conflict of opinion between the Park Hotels case on the hand one and Plasticotes Investments Ltd.s case (supra) on the other. Thus, we hold that the value of the land and building at Bella Vista, which is valued at Rs. 22,74,37,800 is to be added to the wealth of the assessee. 5. Now, let us deal with the second issue in the grounds of appeal which relates to the valuation of Patel House. It was valued at Rs. 1,75,00,000. In the assessment order, it was stated with regard to this property that for assessment years 1984-85

to 1986-87 the learned Commissioner of Wealth Tax (Appeals) vide para 17 of his appellate order had determined the market value of this property at Rs. 1,75,00,000. The same value was determined even for the assessment year 1990-91, with which we are concerned, by the assessing officer. The learned Commissioner of Wealth Tax (Appeals), in his impugned orders dated 3-5-1994, confirmed the said valuation of this property holding that the said valuation of Rs. 1,75,00,000 had been confirmed by the Income Tax Appellate Tribunal for the earlier years for this property (Patel House) the learned counsel for the assessee, Shri Prakash Jotwani, had stated before us that this property was also constructed on a leasehold land taken for 93 years. However, no lease deed was produced before us and no arguments were addressed to us with regard to the valuation of this property. The earlier order of the Tribunal for the earlier assessment years was also not produced before us and the learned counsel did not attempt to argue in what way the earlier order of the Tribunal should not be applied for the assessment year 1990-91 also as regards the valuation of this property. Section 114(g) of the Evidence Act is as follows: 5. Now, let us deal with the second issue in the grounds of appeal which relates to the valuation of Patel House. It was valued at Rs. 1,75,00,000. In the assessment order, it was stated with regard to this property that for assessment years 1984-85 to 1986-87 the learned Commissioner of Wealth Tax (Appeals) vide para 17 of his appellate order had determined the market value of this property at Rs. 1,75,00,000. The same value was determined even for the assessment year 1990-91, with which we are concerned, by the assessing officer. The learned Commissioner of Wealth Tax (Appeals), in his impugned orders dated 3-5-1994, confirmed the said valuation of this property holding that the said valuation of Rs. 1,75,00,000 had been confirmed by the Income Tax Appellate Tribunal for the earlier years for this property (Patel House) the learned counsel for the assessee, Shri Prakash Jotwani, had stated before us that this property was also constructed on a leasehold land taken for 93 years. However, no lease deed was produced before us and no arguments were addressed to us with regard to the valuation of this property. The earlier order of the Tribunal for the earlier assessment years was also not produced before us and the learned counsel did not attempt to argue in what way the earlier order of the Tribunal should not be applied for the assessment year 1990-91 also as regards the valuation of this property. Section 114(g) of the Evidence Act is as follows: (g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it"; It is obvious that since the assessee is the lessee of this property, it should have been in possession of the registered lease deed concerning this property also which is stated to be a lease for 93 years. No reasons are assigned as to why it was not produced before us. Therefore, we feel that it is quite justified to draw an adverse inference against the assessee and we hold that if really the lease deed is produced before us, it would be unfavourable to the assessee or the provisions of the said lease deed do not in any way support any of the contentions of the assessee. Therefore, since no arguments worth the name were addressed on this issue and having regard to the earlier orders of the Tribunal fixing the value of this property at Rs.

1,75,00,000 for the earlier years and since the assessee was not able to produce anything to show that the Tribunals order was disturbed by the High Court in a reference taken to it, we feel that we are justified in confirming the order of the Commissioner of Wealth Tax (Appeals) with regard to the valuation of this property (Patel House). 6. The 5th ground is with regard to the liabilities claimed. Before the assessing officer, the assessee claimed deduction of the liabilities of Rs. 1,47,50,000 against the Patel House. The assessee also claimed a liability of Rs. 37,00,000 being the amount received from Industrial Development Bank of India and Rs. 6,50,000 being the cost of construction, both in regard to Rear Tower. The assessing officer perused the balance-sheet which showed the liability of B tower (Rear Tower) at Rs. 16,19,000. In view of the balance-sheet entry regarding the liability against the Rear Tower having been shown at Rs. 16,19,000, the assessing officer felt that the assessee is not entitled to Rs. 37,00,000 as liability against it. Therefore he restricted the allowance of the liabilities only to Rs. 16,19,000. 6. The 5th ground is with regard to the liabilities claimed. Before the assessing officer, the assessee claimed deduction of the liabilities of Rs. 1,47,50,000 against the Patel House. The assessee also claimed a liability of Rs. 37,00,000 being the amount received from Industrial Development Bank of India and Rs. 6,50,000 being the cost of construction, both in regard to Rear Tower. The assessing officer perused the balance-sheet which showed the liability of B tower (Rear Tower) at Rs. 16,19,000. In view of the balance-sheet entry regarding the liability against the Rear Tower having been shown at Rs. 16,19,000, the assessing officer felt that the assessee is not entitled to Rs. 37,00,000 as liability against it. Therefore he restricted the allowance of the liabilities only to Rs. 16,19,000. 7. When the matter came up before the Commissioner of Wealth Tax (Appeals), the following disallowances of the liabilities were stated to be not correct: 7. When the matter came up before the Commissioner of Wealth Tax (Appeals), the following disallowances of the liabilities were stated to be not correct: (1) Disallowance of claim of assessee with regard to Shri S. P. Seth: Rs. 6,30,000. (2) do: Rs. 2,00,000. (3) + Interest payable in respect of agreement for sub-lease of Rear Tower. (4) Rs. 2,83,000 together with interest payable to Industrial Development Bank of India (5) Rs. 60,00,000 payable to Bombay Builders Co. Pvt. Ltd. (6) Liability for repayment of amounts received in respect of agreement for sale of some of the flats and interest payable thereon. Now, with regard to the liabilities, the matter was remanded to the assessing officer with the following directions: “Under the circumstances of the assessing officer is directed to verify the amount payable to Shri. S. P. Seth and to Bombay Builders Co. Pvt. Ltd. and accordingly allow the claim as per the direction of my learned predecessor as well Income Tax Appellate Tribunal in the matter. The learned Income Tax Appellate Tribunal has already confirmed the valuation with regard to Patel House agreed to be sold to Modi Rubber Ltd. and accordingly, the assessing officer has to verify the claims and counter claims and after ascertaining the decision the concerned liability is to be allowed if the same amount has taken into capital formation/acquiring of the assets of the assessee”. As regards the liabilities, the learned counsel for the

assessee did not address any arguments whatsoever. After going through the records of the case and also after knowing what happened in the earlier years, we feel that the direction given by the Commissioner of Wealth Tax (Appeals) regarding verification and allowing of the liabilities under certain conditions appears to be just and reasonable. Therefore, in the absence of any specific evidence produced before us in this regard and in the absence of arguments having been advanced before us, we feel it justifiable to confirm the order of the Commissioner of Wealth Tax (Appeals) on this issue. 8. In the result, the appeal of the assessee fails and is dismissed. 8. In the result, the appeal of the assessee fails and is dismissed.