

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

Present:

**MR. JUSTICE GULZAR AHMED  
MR. JUSTICE QAZI FAEZ ISA  
MR. JUSTICE SAJJAD ALI SHAH**

**CIVIL APPEALS NO. 145 TO 148 OF 2010**

*(On appeal from the judgment dated 08.05.2009 of the Islamabad High Court, Islamabad passed in Tax Reference No. 46/02, Tax Appeal No. 53/02 and Tax Appeals No.33 and 39/03)*

*Civic Centres Company (Pvt.) Limited.*

*(in all cases)*

**... Appellant**

**VERSUS**

*Commissioner of Income Tax/Wealth Tax,  
Companies Zone, Islamabad.*

*(in all cases)*

**... Respondent**

For the Appellant : Mr. Khalid Anwar, Sr. ASC.  
*(In all cases)* Syed Rifaqat Hussain Shah, AOR.

For the Respondent : Mr. Muhammad Habib Qureshi, ASC.  
*(In all cases)* Mr. Ahmed Nawaz Ch., AOR.

Date of Hearing : 23.05.2018.

**J U D G M E N T**

**QAZI FAEZ ISA, J.** In order to understand the controversy it is necessary to mention certain undisputed facts. The appellant is a private limited company owned by the Government of Pakistan. A letter dated October 31, 1994 was written by the Prime Minister's Secretariat, incorporating a decision taken by the Prime Minister which proposed to transfer to the appellant two properties on cost basis from two State owned entities, respectively the KDA Commercial Centre/Complex situated on Shahrah-e-Faisal in Karachi owned by the Employees Old Age Benefits Institution ("**EOBI**") and the Zulfiqar Ali Bhutto (ZAB) Centre

in Islamabad (also known as Islamabad Awami Markaz) owned by the State Enterprises Development Centre (Pvt.) ("**SEDC**") (hereinafter collectively referred to as "**the properties**"). Pursuant to the Prime Minister's decision the possession of the properties was handed over to the appellant. Subsequently, the Prime Minister recalled his earlier decision and the appellant was directed to return the properties to their owners. The appellant complied and returned the properties to their owners.

2. The rental income of the properties during the period they were in the possession of the appellant was declared by the appellant in its income tax returns for the income assessment years 1997-98, 1998-99 and 1999-2000 under the head "Income from business or profession" in terms of section 22 of the erstwhile Income Tax Ordinance, 1979 ("**the Ordinance**"). The appellant paid income tax on the rate prescribed on "Income from business" in terms of section 22 of the Ordinance. The department however considered that the income from the properties was "Income from house property" in terms of section 19 of the Ordinance, which attracted a higher income tax rate. The income tax department issued notices to the appellant under section 62 of the Ordinance alleging that the appellant should have declared its rental income from the properties under the head "Income from house property" under section 19 of the Ordinance since the appellant was the owner of the properties. The appellant replied to the notices denying that it was the owner of the properties and that it had declared its income under the correct head, that is "Income from business or profession". The department did not agree with the appellant and its Deputy Commissioner of Income Tax/Wealth Tax Circle-03, Islamabad ("**the**

**Deputy Commissioner**") determined that, *"The properties in question have been transferred to the assessee under a P.M.'s directive", therefore, "the contention of the assessee that its income is assessable under section 22 as business income is rejected and income is computed as 'income from house property' u/s 19 of the Income Tax Ordinance, 1979."*

3. The appellant filed appeals challenging the aforesaid order of the Deputy Commissioner before the Commissioner of Income Tax (Appeals) ("**the Commissioner**") which were accepted and the Commissioner found that as the appellant did not own the properties, therefore, income from the properties could not be "Income from house property" and the appellant had correctly declared such income under the head "Income from business or profession." The department filed reference applications before the Income Tax Appellate Tribunal, Islamabad ("**the Tribunal**") against the order of the Commissioner which were dismissed. The Tribunal in dismissing the reference applications also referred to its order dated April 17, 1999 in respect of the appellant's earlier assessment years wherein, *"it was held that the 'condition (or test)' specified in section 19 is that the property must be owned by the assessee and since the assessee company was not found to be owner of the building rental income [sic] it could not be assessed u/s 19."* The income tax department then filed a tax reference before the Islamabad High Court where the following question was framed, *"Whether on the facts and in the circumstances of the case the learned ITAT was justified in holding that buildings did not belong to the assessee company and as such not chargeable to tax under Section 19 of the Income Tax Ordinance, 1979?"* The question was answered by the learned judges of the High Court in the "negative"; thus, the appellant's liability to tax was to be

calculated on the rate in respect of "Income from house property" and not under the head of "Income from business or profession". Civil Appeal No. 147 of 2010 pertains to this controversy and involves the interpretation of section 19 and section 22 of the Ordinance.

4. Civil Appeal Nos. 145, 146 and 148 of 2010 pertain to the imposition of wealth tax under the Wealth Tax Act, 1963 ("**the Act**"). The department had issued notices under section 14(2) of the Act to the appellant requiring it to submit wealth tax returns. The appellant submitted returns declaring that as it did not own any immovable property it was not liable to pay wealth tax. The Assessing Officer disagreed and imposed wealth tax as, according to the Assessing Officer, the appellant was the owner of the properties. The appellant filed appeals before the Commissioner and the Commissioner set aside the orders of the Assessing Officer by determining that the properties were not owned by the appellant and, therefore, the appellant was not liable to pay wealth tax in respect thereof. The department filed wealth tax appeals before the Tribunal and the learned members of the Tribunal *vide* order dated December 4, 2001 upheld the order of the Commissioner. The Tribunal in deciding the appeals referred to its earlier order dated April 17, 1999, wherein the Tribunal had decided in favour of the appellant, that the "*properties did not 'belong' to the assessee company*" and, therefore, it was not liable for payment of wealth tax under the Act. The department then filed tax appeals in the High Court which were allowed and the appellant was held liable to the payment of wealth tax in respect of the properties.

5. The Islamabad High Court decided all the four cases by a common judgment. The appellant's liability as determined by the department was

dependent on the appellant being the owner of the properties. The High Court employed the same reasoning in interpreting both the statutes (the Ordinance and the Act) and decided that the appellant was liable as it was the owner of the properties. The learned judges of the High Court reproduced the meaning of the word "owner" from the Oxford English and Black's Law dictionaries, referred to section 54 of the Transfer of Property Act, 1882 and concluded, that, *"The payment of sale consideration is not necessary for sale to complete. Price paid, promised to be paid or partly paid and partly promised to be paid in exchange of transfer of ownership, is sufficient for completion of the sale. Even, if the sale consideration has not been paid by the assessee to the Federal Government, the assessee has become the owner of the property."*

6. The learned senior counsel Mr. Khalid Anwar representing the appellant referred to the documents on record and states that the properties were never bought or otherwise acquired by the appellant nor did the appellant pay a single rupee as sale consideration, and, a fortiori, the owners thereof (EOBI and SEDC) never sold/conveyed/transferred the properties to the appellant. He submits that the possession of the properties was handed over to the appellant pursuant to the orders of the Prime Minister but before they could be acquired by the appellant the Prime Minister withdrew his decision and the properties were handed back to their respective owners. The rental income derived from the properties, during the period the properties remained in possession of the appellant, was declared in the income tax returns filed by the appellant and income tax was paid thereon, the learned senior counsel emphasizes. Merely because the properties were temporarily handed over to the appellant did not mean that the appellant became their owner and

was liable to pay income tax in terms of section 19 of the Ordinance. As regards the appellant's liability to the payment of wealth tax, the learned senior counsel contends that, the appellant was not liable to pay wealth tax on the properties since wealth tax is paid on the "assets belonging to the assessee" under the Act, and as the appellant was not the owner of the properties they did not belong to the appellant. He also referred to two appeals (Wealth Tax Appeal No. 557/IB/1997-98 for the assessment year 1995-96 and Wealth Tax Appeal No. 558/IB/1997-98 for the assessment year 1996-97) in respect of the same properties which were decided on December 23, 1998 by the Tribunal holding that, *"there was no legal sale/transfer of the said buildings. In view of this position we have no doubt in our mind that the properties in question do not belong to the assessee company as such not liable to wealth tax"*. Since this decision of the Tribunal had attained finality, therefore, the department could not, the learned senior counsel states, raise the very same issue in respect of subsequent assessment years. Reliance by the learned senior counsel is also placed on the following cases: (1) Nawab Sir Mir Osman Ali Khan v C. W. T. (1986 I.T.R. 888 SC), (2) case reported in 1996 PTD (Trib.) 905, (3) B.D. Avari v C.I.T (1989 60 TAX 79 [H.C. Kar]) and (4) Bachu Bai F. E. Dinshaw v C.I.T (1967 (H.C. Kar) 37).

7. The learned Mr. Muhammad Habib Qureshi representing the respondent-department states that pursuant to the decision taken by the Prime Minister the appellant became the owner of the properties and received their possession therefore the appellant was liable to pay income tax on the income derived from the properties in terms of section 19 of the Ordinance, that is under the head of "Income from house property" as payable by an owner, and not under the head of "Income from

business or profession" in terms of section 22 of the Ordinance. By the same analogy, the learned counsel submits, the appellant was also liable to pay wealth tax under the Act. Referring to section 54 of the Transfer of Property Act, 1882 the learned counsel states that all the ingredients of a "sale" mentioned therein were attracted, therefore, the department and the learned judges of the High Court were correct to treat the appellant as the owner of the properties. He concludes by stating that the impugned judgment is well reasoned, in accordance with the law and does not merit interference.

8. We have heard the learned counsel for the parties and have examined the documents on record with their assistance. Admittedly, there is no document on record with regard to the sale, conveyance or acquisition of the properties by the appellant. We also specifically asked the learned counsel for the respondent whether there was any document available with the department which was executed by the owners of the properties in favour of the appellant and the learned counsel confirmed that whilst there is no document executed by the owners conveying title to the appellant, however, this would not make a difference because the properties were acquired by the appellant pursuant to the decision of the Prime Minister. In response to our query with regard to the sale consideration the learned counsel for the respondent conceded that no payment had been made but states that the amount of sale consideration was mentioned in the abovementioned letter issued by the Prime Minister's Secretariat, which was on "cost basis", and since the appellant had become the owner of the properties it would not make a difference if the sale consideration was not paid.

9. To better understand the controversy it would be appropriate to reproduce the relevant provisions from the Ordinance and the Act. Section (19)(1), (2)(a) and section 22(a), (b) and (c) of the Ordinance are reproduced hereunder:

**"19. Income from house property:** (1) The annual value of property shall be chargeable under the head "Income from house property".

(2) For the purpose of sub-section (1) -

(a) "house property" means any property consisting of any building or lands appurtenant thereto of which the assessee is the owner, but does not include any such property (or any portion thereof) which is occupied by the assessee for purposes of any business or profession carried on by him the profits whereof are chargeable to tax under this Ordinance;"

**"22. Income from business or profession.** The following incomes shall be chargeable under the head "Income from business or profession", namely:-

- (a) profits and gains of any business or profession carried on, or deemed to be carried on, by the assessee at any time during the income year;
- (b) income derived by any trade, professional and similar association from specific services performed for its members; and
- (c) value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of profession.

The relevant provisions of section 3 of the Act; which creates the "charge of wealth tax", and section 2(1)(16) of the Act, which defines "net wealth", are reproduced hereunder:

**"3. Charge of Wealth-tax.** Subject to the other provisions contained in this Act, there shall be charged for every financial year commencing on and from the first day of July, 1963, a tax (hereinafter referred to as wealth-tax) in respect of the net wealth or assets on the correspondent valuation date of every individual, Hindu undivided family, firm, association of persons or



body of individuals whether incorporated or not, and company at the rate or rates specified in the Schedule.

Provided that wealth-tax shall not be chargeable in respect of any assessment year commencing on or after the first day of July, 2001.

**"2. Definition.** (1) In this Act, unless the context otherwise requires –

(16) "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 the date under this Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date other than.

10. In the case of Bachu Bai (above), a Division Bench of the then Karachi High Court, comprising of Waheeduddin Ahmed and Abdul Qadir Sheikh, JJ, considered section 9 of the Income Tax Act, 1922, which was the law prior to the Ordinance, and held, that:

"It will be manifest from the language of Section 9 of the Income-tax Act that the incidence of taxation under the said section is the ownership and not the possession or occupation of immovable property." (page 42)

"So far as the income from the property is concerned it is computed in accordance with Section 9 of the Income-tax Act. According to this provision of law the income from property, which is made liable to tax, is not the actual income but an artificial or statutory income as defined under Section 9 which is the *bona fide* annual value of the property. It is for this reason that the circumstance whether the true owner receives that true income of the property or not has no material bearing for purposes of assessment. What the Income-tax authorities are concerned is the annual value of the property and to charge if from the person who is found to be the owner of the property. The question whether the owner is recovering the rent or will be able to recover the rent or there is likelihood to recover rent of such property by him is not taken into consideration for determining his liability. In these circumstances, we are satisfied that the Income-tax authorities were perfectly justified in holding that as

the property in dispute had not been properly conveyed by a registered sale-deed to Mrs. S. G. M. Eduljee, the assessee being its owners were liable to be taxed for its income." (page 50)

In B. D. Avari's case (above) the owner of a hotel had entered into an agreement to sell with his sons, consequently, he did not pay income tax on the income derived from the hotel alleging that his sons were now its owners. Section 9 of the then Income Tax Act, 1922 was under consideration of a Division Bench of the Sindh High Court, comprising of Saleem Akhtar and Imam Ali Qazi, JJ, who held, that having entered into a sale agreement with his sons it did not mean that the sons had become the owners of the property. The learned Judges referred to section 54 of the Transfer of Property Act and observed:

"In the present case the applicant had merely entered into an agreement for sale. Under Section 54 of the Transfer of Property Act a contract of sale does not create any right in the property. The right in the property is created on registration of the sale-deed if value of the property is Rs. 100 or more. Under Section 9 it is the owner of the property who is liable to pay tax. Applying these principles we are of the view that during the assessment year under consideration the applicant was the owner of the property and was liable to pay tax in respect of income under Section 9 of the Income Tax Act." (page 82B)

The Supreme Court of India in the case of Nawab Sir Mir Osman Ali Khan (above) considered whether, properties in respect of which registered sale deeds had not been executed but the sale consideration was paid and received, belonged to the assessee for the purpose of inclusion in his net wealth within the meaning of the Indian Wealth-tax Act, 1957 and answered the question in the affirmative, in favour of the Revenue and against the assessee. The Supreme Court observed that the

law used the expression "belonging to" and that the property cannot be stated not belonging to the assessee (vendor), holding, that, "*The property in question legally, however, cannot be said to belong to the vendee. The vendee is in rightful possession only against the vendor*" (page 900). It was further held, that the liability to wealth tax arises on account of the "belonging of the assets" and the mere possession of property would not bring it within the definition of "net wealth" because it is not an asset "belonging" to the assessee. The Act (of Pakistan) uses the same expression, that is "belonging to", which expression was the basis of the judgment of the Indian Supreme Court.

The word "belonging" was also considered by the Tribunal in the case reported in 1996 PTD (Trib.) 905 (which decided Wealth Tax Appeals Nos. 13, 14 and 15/LB of 1990-91) and the Tribunal held that an agreement to sell did not confer any right or title in the property and the word "belong" or its grammatical derivative "belonging" means ownership and mere possession of property would not bring the property within the definition of "net wealth" as it would not be an asset of the assessee. The Tribunal determined, that:

"15. From the above we have concluded that the word "belonging" used in sub-clause (m) of section 2 of the Act [now section 2(1)(16)] while defining "net wealth" refers to a complete and full owner. Also that mere agreement to sell does not confer any right or title in the property. The assessee entered into the premises under the terms of agreement to sell and was at best entitled to the safeguards provided in section 53-A of the Transfer of Property Act (IV of 1882)." (page 917)

The aforesaid decision of the Tribunal and the other unreported decisions of the Tribunal (mentioned above) show the consistent view of

the Tribunal in the determination of liability, which the department sought to undo in collateral proceedings.

11. We can not bring ourselves to agree with the proposition that an owner can be deprived of his property and it be bestowed on another through Prime Minister dictate, and such a concept is completely alien to the laws of Pakistan. Moreover, neither the language of the Ordinance nor of the Act supports the contention of the respondent-department. The cited precedents considered the same propositions which are canvassed before us but repelled them, and, we do not see any reason to take a different view. In the present case the owners of the properties had not executed a sale/conveyance/transfer deed in favour of the appellant, had not even entered into a sale agreement with the appellant (unlike the case of Bachu Bai and B. D. Avari) nor had paid the owners the sale consideration (as in the case of Nawab Sir Mir Osman Ali Khan). The appellant had also returned the possession of the properties to the owners. Therefore, the impugned judgment can not be sustained.

12. The learned judges of the High Court gave unwarranted extended meaning to the words "owner" and "sale" and then applied such extended meanings to create liability under two fiscal statutes by disregarding the provisions of the Ordinance and Act. The Commissioner and the Tribunal had correctly decided the matter in favour of the appellant and these two concurrent decisions the High Court set aside without examining the relevant sections of the Ordinance and the Act. The learned judges simply relied on the dictionary meaning of the word "owner" without realizing that there can not be two owners of a property at the same time, which is essentially what the impugned judgment amount to. The High Court also disregarded the meaning of the words and expressions

("owner" and "belonging to") used in the Ordinance and the Act. The learned judges of the High Court also misconstrued the definition of "sale" provided in section 54 of the Transfer of Property Act. With utmost respect the learned Judges of the High Court were wrong to declare that the appellant had, "become owner of the property".

13. By order dated May 23, 2018 we had allowed these appeals for reasons to be recorded later and the aforesaid are the reasons for doing so.

JUDGE

JUDGE

JUDGE

*Bench-II*  
**Islamabad:**  
28.05.2018  
(M. Tauseef)

Approved for Reporting