

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

(WTA No. 1-13/BIL/2012)

(Assessment Years: 1989-90, 1990-91, 1991-92, 1992-93, 1994-95, 1995-96, 1996-97, 1999-2000, 2000-01, 2001-02, 2002-03, 2003-04 and 2004-05)

Deputy Commissioner of Wealth Tax, CC-18, New Delhi, Room No.269B, E-2, ARA Centre, Jhandewalan Extension, New Delhi	Shri Surendra Kumar Jain, Through Legal Heir Smt. Poonam Jain, B-5, Maharani Bagh, Shrinivaspuri, South East, New Delhi- 110065
PAN: ACGPJ0878H	
(अपीलार्थी/Appellant)	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	: Shri S.R. Rao, Adv.
राजस्व की ओर से /Revenue by	: Shri Satya Prakash Sharma, Sr. DR
सुनवाई की तारीख/ Date of Hearing	: 09.04.2024
घोषणा की तारीख/ Date of Pronouncement	: 15.04.2024

आदेश / ORDER

Per Bench:

The captioned bunch of Wealth Tax Appeals all pertaining to Shri Surendra Kumar Jain, the assessee, filed by the department against the order of Commissioner of Wealth Tax(Appeals), Raipur, (in short “CWT(A)”) dated 20.07.2012, which in turn arose from the order u/s 16(3) of the Wealth Tax Act, passed by Assistant Commissioner of Wealth Tax, Bhilai (in short, (the AO, Raipur, in short “the AO”), dated 31.12.2007.

2. The grounds of appeal raised by the revenue are common in all the aforesaid appeals, which are extracted as under:

1. Whether in law and on facts & circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 1,09,19,110/- made by the AO for A. Yrs. 1989-90 to 1996-97 on account of value of Sainik Farm Land.
 2. Whether in law and on facts & circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 1,55,20,000/- made by the AO on account of Panchwati Farmhouse Land into the net wealth of the assessee.
 3. The order of the Ld. CIT(A) is erroneous both in law and on facts.
 4. The appellant craves leave to add, alter or amend any / all of the grounds of appeal before or during the course of the hearing of the appeal.
3. The brief facts of the case are that during search & seizure action by the CBI in the case of the assessee and one of his company's employee Shri J.K. Jain, several incriminating material in the form of diaries etc. were found and seized, copies of the seized material were forwarded to Income Tax Department, accordingly actions have been taken under Income Tax, Wealth Tax and Gift Tax Acts and Assessments were completed. The assessments so completed by the department were challenged by the assessee before the first appellate authority and thereafter before tribunal, wherein the matter have been set aside to the files of Ld. AO, observing that the issue agitated by the parties require proper consideration by the Ld. AO, as the onus of chargeability of the asset to wealth tax has not been discharged either by the revenue or by the assessee, and denial of cross examination to the assessee, purely for the purpose of enhancing the value returned by the assessee, was fatal. The Ld. AO was directed to frame assessments after affording proper opportunity of being heard to the assessee and to bring on record the

corroborative evidence, apart from merely taking cognizance of noting in the diary. Subsequently *de novo* assessment order was passed by the Ld. AO, however, the assessee being aggrieved from the said order had assailed the issues before the Ld. CWT(A), wherein Ld. CWT(A) had partly allowed the grounds raised by the assessee. Such decision of Ld. CWT(A) was not found acceptable by the department and accordingly, they carried the matter before us challenging the decision under which the relief was granted to the assessee.

4. Since, all the aforesaid appeals are assailed by the revenue on common grounds, we shall be dealing with such grounds raised by way of this common order, deliberating on respective ground of appeal, our decision wherein shall be equally applicable on all the appeals. Our ground wise adjudication follows as under:

5. Apropos, **Ground no. 1** of the present appeal, wherein the revenue has challenged the decision of Ld. CWT(A) in allowing the contentions of the assessee by deleting the additions of Rs. 1,09,19,110/- made by the Ld. AO. The brief facts of this ground and the findings of Ld. CWT(A), are extracted hereunder for the sake of completeness and clarity:

5. Ground No. 3 & 4

These grounds of appeal relate to the addition of value of land at Sainik Farm in the Taxable Wealth for assessment years 1989-90 to 1992-93 and 1994-95 to 1996-97. The precise facts relating to this issue are that the appellant had, vide

agreement dated 18th October, 1988, agreed to purchase farmland measuring 4 Bighas and 6 Biswas at Sainik Farm in Khasra No. 418 situated in Village Nebsarai, Tehsil Mehrauli, New Delhi (in short 'Sainik farmland') for total consideration of Rs. 1,96,000/- out of which, the appellant paid advance of Rs. 1,95,000/- at the time of agreement, vide cheque dated 15th October, 1988 and the balance amount of Rs. 1,000/- was agreed to be paid at the time of registration of the sale deed. In the return of wealth filed by the appellant for assessment years 1989-90 to 1992-93, the appellant included the aforesaid amount of Rs. 1,95,000/- as part of his taxable asset. This amount was, however, not included in the returns filed for the assessment years 1994-95 to 1996-97.

5.1 In the original assessments, the A.O. had held that as per certain notings in a diary marked as MR77/91 seized from the residence of Shri J. K. Jain, an employee of M/s BEC, apart from the payments made by cheque, the appellant also made payment in cash amounting to Rs. 19 lakhs. Accordingly, he held in the assessment order for assessment year 1989-90, that the value of land shall be adopted at Rs. 20,95,000/- (Rs. 19 lacs by cash + Rs. 1.95 lacs by cheque). He had further held that valuation of the property shall be increased annually by 10% every year to arrive at its market value in succeeding years as per Rule 20(1) of Schedule III of the Act and accordingly, determined the assessable value of the land.

5.2 In the set aside proceedings, the present A.O. has issued notices, summons to various persons, as noticed on page 2 of the assessment order for assessment order 1989-90 and conducted and recorded the cross-examination of Shri P. Ghoshal, Shri Daniel P. Rambal, Shri B.R. Jain, Shri J. K. Jain & Shri Pramod Kumar Jain. The result of cross examination of the aforesaid five persons is discussed on pages 2 to 7 of the assessment order. The final findings of the A.O. on the basis of the statements and the result of cross-examination are contained in pages 8-9 of the order, which are reproduced hereunder:

"Findings:

- i) *The action of the assessee, Shri S.K. Jain in not cross-examining Shri J.K. Jain, when he had categorically mentioned that he along with the other directors of the company used to maintain the diaries and go them written by Shri J.K. Jain, confirms that he was in agreement with whatever Shri J.K. Jain stated.*
- ii) *This also proves that these persons were maintaining various documents in which noting of financial and other transactions were noted in codes.*
- (iii) *The farm-house by the name of Panchavati Farm-house is an asset of M/s BEC Impex International Pvt. Ltd., a Company, in which Shri S.K. Jain was the Managing Director. The expenses noted in various documents written by Shri J .K. Jain and maintained by various Directors of the Company were actually incurred and unrecorded to the extent of Rs. 3,44,25,592/-. This amount is to be assessed in the hands of M/s BEC Impex International Pvt. Ltd and not in the hands of Mr. S.K. Jain.*
- (iv) *The Directors of M/s. BEC Group of Companies indulged themselves in maintaining documents containing record of various unaccounted transactions, which is not a moral practice in the corporate world. However, for Income Tax purposes, the terms," Group of Companies" is a vague one. It may imply that various coded accounts were maintained by the Directors for the Companies like M/s BEC Ltd., M/s BEC Impex International Pvt. Ltd., M/s Syndicate Engineering, M/s Vishwa Visahal etc. The other aspect of this finding is that the figures definitely pertain to M/s BEC Impex International Pvt. Ltd. Thus, it can be stated that the unaccounted transactions noted as the Farm A/c or SKJ(F) can be considered as the expenses meant for the farm-house of M/s BEC Impex International Pvt. Ltd on the land of Shri S.K. Jain and Smt.Poonam Jain.*
- v) *Mr. B.R. Jain has continued to hide the actual state of affairs. It is an established fact now that he was well aware of the notings in the diaries and also understood the various codes used therein and the meaning thereof. From the very beginning, he is misguiding the authorities. This time, when this fact surfaced from the statement of Mr. J.K. Jain, he decided not to appear before the A.O., taking the cover of his present age of 88 years and his chronic illness.*
- vi) *The various diaries were regularly shown to Shri S.K. Jain, Shri B.R. Jain & Shri N.K. Jain. This fact is explicit from the notings in the diaries-MR-71/91 & MR-76/91. During the cross-examination, Shri J.K. Jain accepted that he showed the diary MR-71/91 to Shri B.R. Jain & Shri N.K. Jain. The diary MR-76/91 was shown to Shri S.K. Jain. It is clear from the fact that page-3 of MR-76/91 bears his signature. Similarly, page 44 of MR-73/91 bears the signature of Shri S.K. Jain. Here, it is remarked that during the cross examination of Shri J.K. Jain, the*

AR of the assessee mistakenly questioned him about the signature of Shri S.K. Jain in the Spiral Notebook-MR-71/91.

- vii) It can also be concluded that some of the Directors including Shri S.K. Jain indulged in activities behind the back of Shri Arvind Jain and the other employees.*
- viii) Shri J. K. Jain cannot be expected to be aware of any payment made in cash by Shri S.K. Jain for purchase of farm-house at Panchavati. Hence, the question No. 11 of the AR of Shri S.K. Jain, in which he asked Shri J.K. Jain whether he was aware of any payment made in cash by Shri S.K. Jain for purchase of the farm-house at Panchavati is unwarranted. Similarly, Shri J.K. Jain cannot be held to be aware of any cash payment made by Shri S.K. Jain for purchase of plot of land in Sainik farm. Hence, suitable addition to the value of the declared by Shri S.K. Jain on the basis of the notings in the diaries will be made”*

Thereafter, the A.O. proceeded to consider the issue of taxability of various items, one of the same being addition on account of Sainik farmland made in the original assessment order. As per the findings given by the A.O. on pages 9-10 of the order for the assessment year 1989-90, the A.O. concluded that the appellant had suo moto included the value of Sainik farmland in its return of income for assessment year 1989-90, hence it is taxable. The contents of document marked as MR-77/91 (2) makes it clear that the appellant and the other co-owner had made cash payment of Rs. 19 lakhs over and above the consideration as mentioned in the agreement to sell. Shri J.K. Jain, from whose possession the aforesaid document was found, cannot be said to be aware of any payment and since the notings in the diary were explicit and referred to cash payment of Rs. 19 lakhs being made by the appellant and the other co-owner. Therefore, according to the A.O, there is no way that the appellant could contend that no cash payment was made for purchase of Sainik farmland.

5.3 *The A.O. further observed that the contention that the Sainik farmland is not in appellant's possession and is presently occupied by a trespasser has no substance. On the basis of enquiry made through Inspector of the Department, the A.O. observed that the Sainik farmland is located in a posh locality having large number of residential houses and, therefore, the land is not agricultural*

land. The A.O. did not agree with the legal submission of the appellant that since Sainik farmland is not registered in the name of the appellant, the same could not be brought to tax in the hands of the appellant. The decision of the Hon'ble Supreme Court in the case of Nawab Mir Osman Ali Khan reported in 162 ITR 888, relied upon by the appellant, is held to be misplaced, as the appellant himself included the Sainik farmland in his Wealth Tax Return.

5.4 On the basis of the aforesaid findings, the A.O. had concluded that the value of Sainik farmland, including cash payment as noted in the aforesaid seized document, was assessable in the taxable wealth of the appellant. Identical findings are contained in the assessment orders for the assessment years 1990-91 to 1992-93 and assessment years 1994-95 to 1996-97. The A.O., however, accepted the alternative contention of the appellant that the unaccounted payment of Rs. 19 lacs should be equally divided between two co-owners, i.e. the appellant and Smt. Kanika Jain. Accordingly, the A.O. determined the assessable value of the land for various assessment years as under:

For assessment year 1989-90	Rs. 10,95,000/-
For assessment Year 1990-91	Rs. 12,04,500/-
For Assessment Year 1991-92	Rs. 13,24,950/-
For Assessment Year 1992-93	Rs. 14,57,445/-
For Assessment Year 1994-95	Rs. 17,63,509/-
For Assessment Year 1995-96	Rs. 19,39,860/-
For assessment year 1996-97	Rs. 21,33,846/-

5.5 In the course of appeal proceedings, the Ld. Counsel for the appellant pointed out that the appellant has included the advance of Rs. 1,95,000/- paid for purchase of land at Sainik Farm as taxable 'asset' in the return of wealth filed for assessment years 1989-90 to 1992-93, but not in the returns filed for the assessment years 1994-95 to 1996-97. Section 3, the charging section in the Act brings to charge the net wealth of every individual as on the valuation date and as per sec. 2(m) of the Act, 'net wealth' means the aggregate value of all the assets belonging to an assessee on the valuation date, as reduced by aggregate value of all debts owed by him. It was further submitted that the definition of the

term "assets" in section 2 of the Act has undergone various changes. The definition of "assets" as applicable for assessment years 1989-90 to 1992-93 is different from that, which is applicable from assessment year 1993-94 and onwards. Accordingly, separate legal submissions were made for the assessment years 1989-90 to 1992-93 and assessment years 1994-95 to 1996-97.

5.6 In the written submissions filed for the A.Y.rs 1989-90 to 1993-94, referring to definition of the term 'assets' in sec. 2 of the Act, the appellant contended that, for the value of any asset/ item to be included in the net wealth of the assessee for the purposes of the Act, the prerequisites, inter alia, are the following:

- (a) the assets/ item should be an 'assets' as defined in the Act; and
- (b) the 'assets' should **belong** to the assessee.

It was contended that the expression 'belonging to' has not been defined in the Act. The expression "belonging to the assessee", means the legal ownership of the assessee and mere possession of any asset by the assessee, does not come within its scope. To support his contention, the Ld. A.R. has relied on the decision of the Hon'ble Supreme Court in the case of **Nawab Mir Osman Ali Khan: 162 ITR 888**. This decision of the Hon'ble Apex Court has also been stated as followed in the case of **CIT V. Smt. Badhurani Deepinder Kaur : 262 ITR 403 (P&H)**.

5.7 Regarding the A.O.'s observation that the Revenue is merely including the asset already included by the appellant in the return of wealth, the appellant contended that the observation of the A.O. is factually incorrect for he had only included the advance paid in the wealth for the assessment years 1989-90 to 1992-93, when the definition of "asset" was very wide to cover every asset, except certain assets specified in the definition. It was further submitted that, as per settled legal position, the net wealth has to be determined in accordance with the provisions of the Act and not merely on the ground that the assessee

himself included any particular asset in the taxable wealth. The appellant has relied on the following cases to support his contention.

- *CIT vs. Mahalakshmi sugar Mills co. Ltd: 160 ITR 920 (SC)*
- *National Thermal Power Limited v. CIT: 229 ITR 383 (SC)*
- *Ahmedabad Electricity co. V. CIT: 199 ITR 351 (Bom) (FB)*
- *Assam Company (India) Ltd. vs. CIT: 256 ITR 423, 439 (Gauh.)*
- *Nathmal Bankatlal Parikh & co. V. CIT: 122 ITR 168 (AP)(FB)*
- *Chokshi Metal Refinery vs CIT: 107 ITR 63 (Guj.)*
- *Circular No. 14(XL-35), dated 11.4.1955.*

Therefore, the appellant emphatically submitted that as per provisions of section 2(m) of the Act, only an asset, which belongs to the assessee, i.e. asset in respect of which the complete legal title vests in the assessee, can be included in the taxable wealth of the assessee and not otherwise.

5.8 *The appellant further contended that up to assessment year 1992-93, as per the definition of "asset", the advance paid was includible in the taxable net wealth as advance but not as 'land' as assessed by the A.O. He had opposed the increase of 10% per year by the A.O., as the includible item was 'advance' and not the 'land'.*

5.9 *On the issue of cash payment for purchase of the land as per notings in the diary, the appellant categorically and vehemently denied of having made any such payment of Rs. 19 lacs. It was contended that the allegation was leveled on the basis of following entries contained in one of the diaries marked as MR-77/91 seized from the premises of Shri J.K. Jain and without any corroborative evidence.*

“PAGE '10th' Jan. 1989 ' of MR-77/91(2)

Sainik Farm A/c

Two cheques of 1.95 lakhs were given on 15. 10. 88

Jagram Kanika Jain	<u>1.95</u>
	<u>3.90</u>
Cash	<u>19.00</u>
	<u>22.90"</u>

The above diary was admittedly seized from the premises of Shri J.K. Jain, who was not the appellant's personal employee but of BEC and the above notings in the said diary were also in his own writing. Therefore, only Shri J.K. Jain could have explained the nature and the contents of the above notings. In the original assessments, the A.O., added the amount on the presumption that Shri J. K. Jain admitted of having made above notings in the diary on the instructions of the appellant, which is without any basis and factually incorrect. There is no evidence on record to suggest that the appellant paid any amount in cash for purchase of land at Sainik Farm. There is nothing on record to connect the appellant with the above notings. Referring to page Nos. 252-255 of his paper book, the appellant contended that even in his cross-examination carried out on 14th December, 2007, in reply to question No. 12, Shri J.K. Jain has categorically denied of being aware of any cash payment made by the appellant for purchase of the aforesaid farmland. Therefore, according to the appellant, there is no evidence, whatsoever; on record to suggest that any cash payment was made in addition to the consideration declared in the return of wealth.

5.10 *The appellant further contended that, even as per the Hon'ble Tribunal, the aforesaid notings in the diary, (a) did not constitute adequate and sufficient basis to sustain the addition; (b) do not have any evidentiary value in light of the writer of the diary categorically denying of having knowledge of any such cash payment. Unless there is any corroborative evidence to suggest that the appellant actually paid said amount in cash to the vendor for purchase of land in Sainik Farms no addition is possible. The Department has not made any enquiries, which are extremely material for making the addition, with the seller of land to confirm its stand. Relying on the decision of Hon'ble Supreme Court in the case of K.P. Varghese v. ITO: 131 ITR 597, the appellant contended that it is for the Revenue to prove that the assessee has actually received/ paid money/ cash more than what is declared by the assessee.*

5.11 Finally, the appellant has summarized his contentions for assessment years 1989-90 to 1992-93, which are as under:

- a) The appellant only paid advance consideration for purchase farm land at Sainik Farm and the legal title of the said land did not vest in the appellant. Consequently, the land at Sainik Farm did not "belong to the assessee" and is not includible in the taxable net wealth of the appellant as 'land'.
- b) In the taxable net wealth of the appellant only, advance paid for purchase of land ainik Farm was includible as 'advance', as a separate and distinct taxable asset within the scope of definition of 'asset' as defined in section 2(e)(2) of the
- c) The taxable value of 'advance' for purchase of farm land was Rs. 1,95,000/- only,
i.e., the actual advance paid by the appellant.
- d) There is no evidence on record to suggest that the appellant has paid cash amounting to Rs. 19 lacs over and above declared consideration of Rs. 1.95 lacs and consequently, the A.O. erred in adopting the total advance as Rs. 20.95 lacs as against actual advance of Rs. 1.95 lacs only.
- e) Since, only advance is includible in the net wealth of the appellant and not the 'land', the A.O. is not correct in increasing the value of the advance by 10% in the subsequent assessment years.

5.12 In the submissions for the assessment years 1994-95 to 1996-97, the Id. AR for the appellant contended that the definition of "asset" has undergone material change and in terms of section 2(ea) of the W.T. Act, 1957 only "urban land" is a taxable asset and apart from the main submissions as taken in the assessment years 1989-90 to 1992-93 regarding the appellant not being the legal owner of the land, the Id. AR for the appellant made further submissions the summary of which is as under:

- (a) The appellant only paid advance consideration for purchase farm land at Sainik Farm and the legal title of the said land did not vest in the appellant.

Consequently, land at Sainik Farm did not "belong to the assessee" and was not includible in the taxable net wealth of the appellant as 'land'.

- (b) Under the provisions of the Act, only 'urban land' is a taxable asset falling within the scope of definition of 'asset' as defined in section 2(ea) of the Act. The Sainik farmland was not land' and thus, was not a taxable asset under section 2(ea) of the Act.*
- (c) Without prejudice, the taxable market value of farm land was Nil or almost negligible since: (i) farmland was in illegal occupation of the trespassers, and (ii) construction on the land was not permitted.*
- d) Further, without prejudice to above, the taxable value of farmland was at the most Rs. 1,95,000/- only, i.e. the actual advance paid by the appellant. There is no evidence on record to suggest that the appellant paid cash amounting to Rs. 19 lacs over and above declare consideration of Rs. 1.95 lacs, and consequently, the A.O. erred in adopting the total advance as Rs. 20.95 lacs as against actual advance of Rs. 1.95 lacs only."*

On the basis of the aforesaid, the Id. AR for the appellant submitted that the addition made by the A.O. on account of value of the Sainik farmland in all the years is not correct.

5.13 *I have carefully gone through the observations of the A.O, submissions of the appellant and the orders of the Hon'ble Tribunal. The primary dispute in this ground of appeal revolves around the very taxability of Sainik farmland and it's taxable value. For the sake of convenience, the primary issues arising in relation to the above ground of appeal are summarized as under:*

- (a) Whether the Sainik farmland belongs to the appellant under the Wealth-tax Act, 1957 and forms part of the 'net wealth' within the meaning of sec. 2(m) for the purpose of subjecting the same to tax under the Act?*

(b) *Whether the alleged cash payment of Rs. 19 lakhs towards purchase of above Sainik farmland is includible in the taxable value of advance for purchase of land solely on the basis of notings contained in MR-77/91 (2) and relied upon by the A.O.?*

(c) *What is the taxable value of the asset, if any, taxable in the hands of the appellant and whether action of the A.O. is correct in enhancing such value of the taxable asset by 10% in each year?*

5.14 *In order to address the first question, the following definition of the term "net wealth" is more relevant:*

"(m) "net wealth" means the amount by which the aggregate values computed in accordance with the provisions of this Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assessee [on the valuation date which have been incurred in relation to the said assets;" (emphasis supplied)

*Thus, the aggregate value of all the assets 'belonging to the assessee' on the valuation date can only form part of net wealth of an assessee. The meaning of the expression "belonging to the assessee" was subject matter of consideration before the Hon'ble Supreme Court in the case of **Nawab Mir Osman Ali Khan reported in 162 ITR 888**. In that case, the assessee the Nizam of Hyderabad, owned certain properties, which were taken over by the government. The assessee was paid full consideration of the property but the sale deeds were not executed in favour of the vendee. The A.O. included the market value of the said properties in the assessable wealth of the assessee. The Tribunal, however, held in favour of the assessee and deleted the additions made by the A.O. holding that since the assessee received consideration from the purchaser and the purchaser having been put into possession, c e In terms of section 53A of the Transfer of Property Act, 1882, such properties were not includible in the assessable wealth of the assessee. On further appeal by the Revenue, the High Court, however, reversed the order of the Tribunal and upheld the addition made by the A.O. On further appeal by the assessee, the Supreme Court affirmed the order of the High Court. The Supreme Court held as under (refer ITR page 893):*

"The material expression with which we are concerned in this appeal is "belonging to the assessee on the valuation date". Did the assets in the circumstances mentioned hereinbefore, namely, the properties in respect of which registered sale deeds had not been executed but consideration for sale of which had been received and possession in respect of which had been handed over to the purchasers belong to the assessee for the purpose of inclusion in his net wealth ? Section 53A of the Transfer of Property Act gives the party . in possession, in those circumstances, the right to retain possession. Where a contract has been executed in terms mentioned hereinbefore and full consideration has been paid by the purchasers to the vendor and where the purchasers have been put in possession by the vendor, the vendees have the right to retain that possession and resist any suit for eviction. The purchasers can also enforce a suit for specific performance for execution of a formal registered deed if the vendor was unwilling to do so. **But, in the eye the law, the purchasers cannot be and are not treated as legal owners of the property in question. It is not necessary, in our opinion, for the purpose of this case to be tied down with the controversy whether in India there is any concept of legal ownership apart from equitable ownership or not or whether under sections 9 and 10 of the Indian Income-tax Act, 1922, and sections 22 to 24 of the Income-tax Act, 1961. where "owner" is spoken of in respect of house properties, the legal owner is meant and not the equitable or beneficial owner.** Salmond on Jurisprudence, twelfth edition, discusses the different ingredients of "ownership on pages 246 to 264. " Ownership ", according to Salmond, denotes the relation between a person and an object forming the subject matter of his ownership. It consists of a complex of rights, all of which are rights in rem, being good against all the world and not merely against specific persons. Firstly, Salmond says, the owner will have a right to possess the thing, which he owns. He may not necessarily have possession. Secondly, the owner normally has the right to use and enjoy the thing owned: the right to manage it, i.e., the right to decide how it shall be used; and the right to the income from it Thirdly, the owner has the right to consume, destroy or alienate the thing. Fourthly, ownership has the characteristic of being indeterminate in duration. The position of an owner differs from that of a nonowner in possession in that the latter's interest is subject to be determined at some future time. Fifthly, ownership has a residuary character. Salmond also notes the distinction between legal and equitable ownership. Legal ownership is that which has its origin in the rules of the common law, while equitable ownership is that which proceeds from rules of equity different from the common law. The courts of common law in England refused to recognize equitable ownership and denied that the equitable owner was an owner at all.

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

In the instant appeal, however, we are concerned with the expression "belonging to and not with the expression " owner This question had come up before this court before a Bench of five learned judges in CWT v. Bishwanath Chatterjee [1976] 1032 ITR 536 (SC). At page 539 of the report, this court referred to the definition of the expression " belong?" in the Oxford English Dictionary, " To be the property or rightful possession of". So it is the property of a person, or that which is in his possession as 01 right, which is liable to wealth-tax. In other words, the liability to wealth-tax arises because 01 the belonging of the asset, and not otherwise. Mere possession, or joint possession,

unaccompanied by the right to be in possession or ownership or property, would, therefore, not bring the property within the definition or "net wealth" for it would not then be an asset "belonging" to the assessee. The first limb of the definition indicated in the Oxford Dictionary may not be applicable to these properties in the instant appeal because these lands were not legally the properties of the vendees and the assessee was the lawful owner of these properties. The vendees were, however, in rightful possession of the properties as against the vendor in view of the provisions of section 53A of the Transfer of Property Act, 1882. The scheme of the Act has to be borne in mind. It has also to be borne in mind that unlike the provisions of the Income-tax Act, section 2(m) of the W. T. Act uses the expression "belonging to" and as such indicates something over which a person has dominion and lawful dominion and he should be the person assessable to wealth-tax for this purpose.

5.15 On page 899 of the ITR, the Court observed as under:

*"Salmond's conception of "ownership" has been noted. The meaning of the expression "belonging to" has also been noted. We have discussed the cases where the distinction between "belonging to" and "ownership" has been considered. The following facts emerge here (1) the assessee has parted with the possession which is one of the essentials of ownership; (2) the assessee was disentitled to recover possession from the vendee and the assessee **alone until the document of title is executed was entitled to sue for possession against others, i.e., other than the vendee in possession in this case. The title in rem vested in the assessee ; (3) the vendee was in rightful possession against the vendor; (4) the legal title, however, belonged to the vendor; and (5) the assessee had not the totality of the rights that constitute title but a mere husk or it and a very important element of the husk.***

*The position is that though all statutes including the statute in question should be equitably interpreted, there is no place for equity as such in taxation laws. The concept of reality in implementing a fiscal provision is relevant and the Legislature in this case has not significantly used the expression "owner" but used the expression "belonging to". The property in question legally, however, cannot be said to belong to the vendee. The vendee is in rightful possession only against the vendor. It may be id that the Legislature having designedly used the expression "belonging to" and the expression "owned by" had perhaps expected judicial statesmanship in the interpretation of this expression as leading to an interpretation that in a situation like this, it should not be treated as belonging to the assessee but, as said before, times are not yet ripe and in spite of some hesitation, I have persuaded myself to come to the conclusion that for all legal purposes, the property must be treated as belonging to the assessee and perhaps the Legislature would remedy the hardship of the assessee in such cases if it wants. **Even though the assessee had a mere husk of title and as against the vendee no reality of title, as against the world he was still the legal owner and the real owner.**"*

The Hon'ble Supreme Court has thus, held that for the purposes of inclusion of any asset in the net wealth of the assessee, the asset must belong to the assessee, which means that the asset must legally belong to the assessee and the assessee must have acquired a clear legal title over the asset.

5.16 Now coming to the facts of the appellant's case, it is noticed that there is no dispute regarding the fact that the appellant had advanced an amount of Rs. 1,95,000/- out of agreed consideration of Rs. 1,96,000/- for purchase of Sainik farmland. Admittedly, the farmland has not been registered in the name of the appellant. Meaning thereby, legal title over the land still does not vest in the appellant. Therefore, applying the binding principles laid down in the aforesaid decision of the Supreme Court in the Case of Nawab Mir Osman Ali Khan (*supra*) and the definition of 'net wealth' u/s. 2(m) of the Act, the Sainik farmland cannot be held to be taxable as "land" belonging to the appellant.

5.17 The second question that needs to be addressed relates to the assessability of alleged cash payment of Rs. 19 lakhs, solely on the basis of notings contained in MR-77/91 (2) relied upon by the A.O.

5.18 I have carefully considered the submissions of the Id. Counsel detailed at paras 5.5 to 5.12 above. Admittedly, the appellant had paid an advance of Rs. for purchase of land. The notings given in the diary MR-77/91 (2) (page No. 10, second row from the bottom) Sainik Farm A/c. shows an entry as 'Cash 19.00' and on the basis of this entry, the A.O. inferred that the appellant has made cash payment of Rs. 19 lakhs over and above the amount of Rs. 1,95,000/- towards this land and accordingly, he had included one half of the value in the net wealth of the appellant. In order to support his inference, the A.O. has strongly relied on the statements of Shri J. K. Jain, from whose possession this diary was seized. Shri J. K. Jain was an employee of BEC, in which the appellant was one of the directors. Shri J. K. Jain making the entries in the diaries as per instructions of the directors and officials of the group companies, including the appellant. The statements of Shri J.K. Jain were recorded twice i.e. once by the DDIT(lnv) on 02.03.1995 and second time by the A.O. on 14.12.2007. Copies of these statements were filed by the appellant. Some of the questions put to Shri J. K. Jain in his statement recorded on 2nd March 1995 are reproduced hereunder:

Q. 1. I understand there was a search by CBI at your premises on 03.05.1991. Certain documents were seized in addition to cash and foreign exchange currency. Is it correct?

Ans. Yes, it was correct. The search was conducted by CBI under TADA.

Q.2 I show you photostat copy of some documents title marked as MR-70/91, MR69/91, MIR-72/91, M-208/93, M-209/93, please confirm whether these are photostat copies of the documents seized from your residence? These are the documents received from CBI.

Ans. Yes, these are some photostat copies of the documents seized from my residence.

Q.5. You have stated in above statement you were making entries in the diary seized by the CBI and whose photostat copies I have shown to you. Will you please confirm whether you were also receiving the cash or both?

Ans. I used to make entries in the diaries and also received money from Shri S K Jain and staff members of the company.

Q.6. What is the basis of making entries in the diaries seized by the CBI as referred above? Whether used to receive the written communication or oral communication or both about the transactions?

Ans. Yes, I used to get oral instructions for making entries.

Q.7. Who used to give instructions?

Ans. The instructions were used to be given to me by Shri S K Jain and Shri N K Jain only.

Q.8. So according to you, there was no third person for telling you for recording the transactions?

Ans. Yes Sir.

Q.13. You have stated before CBI that you used to show the account to Shri S K Jain. Whether it is correct, whether you used to take the signature after showing the account?

Ans. Only once or twice the accounts were shown to him on my own and he has signed as a token of approval.

Q. 52. In seized document titled MR-72/91 at set-V and on page 24, there is a (Panchwati Farm account up to Sep. 1990). In whose writing is this?

Ans. I do not know.

Q. 53. But this document was seized from your house?

Ans. Yes.

Q. 54. How do you receive this document?

Ans. Some papers were given to me by Shri S K Jain for keeping. I have no knowledge about these."

5.19 *On perusal of the aforesaid statement recorded by DDIT(Inv), Shri J. K. Jain, it is noticed that the documents/diaries were maintained on the instructions received from Shri S. K Jain, Shri N.K. Jain and some employees of the company. Some of the documents, on few occasions, were also stated to have been shown to the appellant. However, the capacity in which such documents were maintained by Shri J.K. Jain and whether such documents were maintained on behalf of Shri S.K. Jain is not clear from the aforesaid statement. However, the statement of Shri J.K. Jain recorded at the time of cross-examination on 14th December, 2007, throws some light on the issue. The relevant extracts of the questions put to Shri J.K. Jain in his cross-examination on 14th December, 2007, a copy whereof is placed on pages 262 to 263 of the appellant's paper book, are as under:*

"2. How do you know Shri S.K. Jain

Ans. Shri S.K. Jain is MD of BEC group of companies.

3. Was he doing any other business?

Ans. He was working for BEC group of companies.

4. Do you mean he was working for group companies and firms?

Ans. He was handling company affairs of BEC group of companies BEC, BIW, Syndicate Engineering Co; BEC Impex Intl; Vishwa Vishal, Panatech Consultants.

5. You have been associated with him. Do you know of any other personal business of Shri S.K. Jain.

Ans. No, I don't know.

6. *Were you managing Sh S.K. Jain's personal business or finance?*

Ans. No never

7. *Please refer to your statement dated 2nd March, 1995, recorded by DDI, Investigation. In the said statement, in response to question Nos. 5,6,7 and 8, you have stated that entries in the diary seized from your premises were recorded on the basis of instructions given by Shri S.R. Jain and Shri N.K. Jain and money and accounts submitted by others.*

Do you mean to say that instructions were received from Shri S.K. Jain and Shri N.K. Jain personally?

Ans. No- various directors, partners and various senior executives of the company also gave directions.

8. *On the basis of your aforesaid statement, the Department has been holding that the diary marked MR71/91 and other documents seized from your premises exclusively relates to Shri S.K. Jain. How do you say that the entries made in the diary relate to Shri S.K. Jain in his personal capacity?*

Ans. I have never said in any of my statements that these diaries or entries belong to Shri S.K. Jain.

9. *What were the natures of transactions recorded by you in the diary?*

Ans. I am not aware of the nature of transactions recorded.

10. *In response to question No.49, you have stated that you are not aware what 'SKJ(F)' written on page 8 of annexure M-209-93 denotes.*

Ans. I am very sure, I don't know what SKJ(F) denotes.

11. *Are you aware of any payment made in cash by Shri S.K. Jain for purchase of a farmhouse in Panchwati?*

Ans. No, I am not aware.

12. *I am showing you Page of MR — 77/91 (2). Are you aware of any cash payment made by Shri S.K.Jain for purchase of plot of land in Sainik farm ?*

Ans. No, I am not aware.

13. *Some employees like Mr. H.P. Guha Roy in this statement to DDI(Inv.) has stated that he used to receive money from you for expenses. Is it correct?*

Ans. Yes, I used to give money; I used to take account from them. It is correct.

14. *I am showing to you the diary MR 71/91 also referred to as M-209/93. Can you show the signature of Shri S.K. Jain on any of the pages as evidence of having inspected the diary.*

Ans. No Page

15. *I am now showing to you three pages of the diary MR 71/91 also referred to as M-209/93 wherein you have written as under :*

On page 7 - A/c given to Shri BRJ and also shown to NKJ

On reverse of page 8 - A/c given to Shri BRJ.

On Page 10 – up to Dec A/c given to Shri BRJ 25/1/91

Is it correct?

Ans. All the three notings are mine."

The reply given by Shri J.K. Jain in his cross-examination clearly goes to show that he had denied of having ever said that the seized documents belong to the appellant in his personal capacity. The main diary, MR-71/91 was admitted to have never been shown to the appellant by Shri J. K. Jain, though it was shown to Shri B.R. Jain and Shri N.K. Jain, brothers of the appellant. Shri J. K. Jain also denied being aware of any of the cash payments being made on behalf of the appellant, particularly in respect of Sainik Farmland and Panchvati Farmland, which are under dispute in the present appeals.

5.20 *Statement of Shri J.K. Jain was again recorded by the A.O. after cross-examination by the representative of the appellant. The following questions were put to him by the A.O., as reproduced in the assessment orders:*

"Immediately after cross-examination, the statement of Shri J. K. Jain was recorded on oath. In answer to the question No. 13, Shri J.K. Jain stated "Thus, as an employee of M/S BEC Ltd., why were you supposed to maintain a spiral notebook marked "MR71/91"?"

Ans: This diary was maintained by me as per the instruction of all the Directors of the Group Company viz. Shri B.R. Jain, Shri N.K. Jain, Shri S.K. Jain, Shri Arvind Jain & Shri Vinu Jain. They used to tell me the codes as well as the amounts like 1.0, 10.0 etc. to be written against the code. I never dared to ask them the implications of the codes dictated by them to me. Since all the Directors used to give me instruction, I can only say that each of them was well aware of the notings in the diary.

Q- 14: In your earlier statement given on 02.03.1995 to the DDIT(lnv.), Unit-I, New Delhi, you answered question No. 8 as there was no third person except for Mr. S.K. Jain and Mr. N.K. Jain who instructed you to record the transactions. What do you say now?

Ans. I don't remember, how I said Yes.

.....”

5.21 *On perusal of the aforesaid, it is again noticed that Shri J.K. Jain denied of having said that the seized documents belong to the appellant in his personal capacity. He has stated maintained the diary as per the instruction of various directors of the group and not appellant.*

5.22 *In the operative part of the Hon'ble Tribunal's order setting aside the matter to the A.O., it has been held that the A.O. is the primary fact finding authority in so far as applicability of the Wealth Tax Act with reference to the notings in the diary. Therefore, the matter was set-aside for bringing on record the corroborative evidences, apart from merely taking cognizance of the notings in the diary. However, as apparent from the assessment order, the A.O. did not bring forth any corroborative evidence to support his inferences. After allowing cross-examination to the appellant, he had again made the addition solely on the basis of entries contained in the diary. He has admitted that Shri J. K. Jain was an employee of the BEC and not of the appellant; therefore, he cannot be expected to be aware of the nature of payments. He has denied having any knowledge of the alleged cash payment. There is no evidence to support movement of cash from the buyer to the seller. The A.O. did not conduct any inquiry even during the second innings afforded to him. Undoubtedly, the entry contained diary may offer a reason for suspicion but as per the law laid down by the Hon'ble Supreme*

Court in the case of Uma Charan Shaw & Bros vs. CIT 37 ITR 271 applied by the Hon'ble P& H HC in the case of CIT vs Anupam Kapoor 299 ITR 179, suspicion, however great, cannot take place of proof and in this case, the A.O. has not brought any corroborative evidence on record to support his suspicion, as prescribed by the Hon'ble Tribunal. In the case of K.P.Varghese, relied upon by the Ld. Counsel for the appellant, the Hon'ble Supreme Court has held in the matters of addition on account of understatement of consideration that no addition on this score can be made unless there is positive evidence of actual movement of money. Under these circumstances, I am of the considered view that no addition is possible solely on the basis of the entries contained in the diaries.

5.23 *The last question set out above attempts to quantify the value of advance for Sainik farmland to be included in the applicable assessment years. As discussed above, the appellant had made payment of Rs. ,95,000/-. It is contented on behalf of the appellant that the farmland is presently in occupation of certain trespassers and is not in the appellant's possession and hence, it's value has been highly depreciated. However, I do not find any merit in the said contentions of the Ld. AR for the appellant. In view of the prevailing definition of 'asset', "advance for purchase of land" only is includible in the net wealth of the appellant for the A Y 's 1989-90 to 1992-93 and there is no justification for increasing the value of the advance at 10% every year, as it will not increase with the efflux of time. ever, for A. Yrs 1994-95 to 1995-06, the definition of 'asset' given in sec. 2(e) of the Act, only specific assets and the 'advance' for purchase of land does not fall in the specified assets. Therefore, the A.O. is directed to exclude the value of this 'advance' of Rs. from the net wealth of the appellant for these assessment years.*

5.24 *My conclusions with regard to Grounds of Appeal Nos. 3 & 4 are summarized as under:*

- i) Since the legal title of Sainik farmland is not vested in the appellant, it is not an asset 'belonging to the assessee' and accordingly, in view of*

provisions of sec. 2(m) and the decision of the Hon'ble Supreme Court in the case of Nawab Mir Osman Ali Khan (supra), it is not includable in the net wealth of the appellant.

- (ii) *The value of advance paid for purchase of land is assessable to tax in A Yrs 1989-90 to 1992-93 as "advance" and not as 'land' and due to amended definition of 'asset' under the Act, there is no taxable asset in the hands of the appellant qua Sainik farmland for the A Yrs. 1994-95 to 1996-97.*
- (iii) *In the absence of any corroborative evidences regarding actual payment of cash, there is no basis for making addition of Rs. 19 lacs, while determining the taxable value of the asset for the purpose of Wealth Tax Act.*

In the result, ground No. 3 and 4 of the grounds of appeal are allowed.

5.1 Considering the aforesaid facts and decision of Ld CWT(A), Ld Sr DR submitted that the Ld CWT(A) had erred in deciding the issue regarding addition of Rs. 1,09,19,100/- made by the AO for the AY 1989-90 to 1996-97. Ld Sr DR drew our attention to the observations by the Ld AO that assessee himself had declared the property Sainik Farms as taxable asset in the return of wealth filed for the AY 1989-90 to AY 1992-93, therefore, the contentions raised by the assessee that it is not an asset being the registration of sale of the said property is yet to be done and the assessee had only received an advance of Rs. 1,95,000/-. Also, the cash received by the assessee should not be doubted as the same was found recorded in the document/diaries written by Shri JK Jain which were seized from possession of Shri JK Jain. On this issue Ld AO had described all the facts and had very fairly made the disallowance. Based on observation of the AO Ld Sr DR, vehemently

supported the same and submitted that the addition made was justified and deserves to be sustained.

5.2 Contradicting the aforesaid contentions of the Ld. Sr DR, Ld. AR on behalf of the assessee submitted that the grounds raised in the present appeal are misconceived, without any substantial support to dislodge the decision accorded by Ld. CWT(A), who had very thoroughly deliberated upon the facts of the case and has decided the same following the settled ratio of the law.

5.3 Ld. AR further submitted that in first three years (AY 1989-90 to 1992-93), the assessee has shown the impugned property as taxable asset in the wealth tax return since the advanced paid towards purchase of such land was taxable according to provisions of Sections 2(e) of the Wealth Tax Act, however the assessee has not shown the Sainik Farmland as taxable asset in the AY 1994-95 to 1996-97 for the reason that the definition of asset is amended w.e.f. 01.04.1993 and according to new definition of Asset u/s 2(ea) r.w.s. 2(m) the impugned land is not a taxable asset, as the assessee had only paid the amount as advanced towards the said land and registration of the same is still not done. Accordingly, following the principle of law laid down by the Hon'ble Apex Court in the case of **Nawab Mir Usman Ali Khan reported in 162 ITR 888**, wherein Hon'ble Apex Court has held that the expression "belonging to the assessee", means the legal ownership of the assessee and mere possession of any asset by the assessee does not come

within the scope of asset. Ld. AR further submitted that regarding cash payment of Rs. 19 lacs out of which 50% i.e., Rs. 9.5 lac was added to the asset of the assessee, the department was unable to brought on record any corroborative evidence to substantiate that such amount was actually paid by the assessee, therefore, the directions of tribunal to brought on record the corroborative evidence, apart from merely taking cognizance of noting in the diary were also found to be overlooked by the department. In view of such submissions, it was the prayer of Ld. AR that the order passed by Ld. CWT(A), was a justified order which in absence of any corroborative evidence or support of adverse legal precedence by the revenue , thus, qualifies to be sustained.

5.4 On a thoughtful consideration of rival contentions, submissions, perusal of material available on record and case laws relied upon. We are of the considered opinion that the Ld. CWT(A) had elaborately deliberated upon various aspects of the issue. The factual position of the issue is also correctly reflected in the order of Ld. CWT(A) that the amount paid by the assessee towards purchase of the land was only an advance and the registration of the sale deed of the said land was never executed. This fact was not disputed by the department. Ld. CWT(A) has accordingly, decided that the amount so paid as the advance would be assessable to tax in the AYs. 1989-90 to 1992-93, since the advance paid for purchase of land also comes within the ambit of definition of asset as per clause (v) of Section 2(e) of the Wealth Tax Act. There was an amendment in definition of 'assets', under the provisions of

Section 2(e), which was replaced by Section 2(ea) of the Wealth Tax Act, effective from 01.04.1993, accordingly, the advance made by the assessee towards the impugned property is observed to be out of this scope of asset w.e.f. 01.04.1993, since the same does not qualifies to be an asset belonging to the assessee. The ratio of decision in the case of **Nawab Mir Usman Ali Khan** (supra) is further fortified by Hon'ble Apex Court in the case of **CIT vs. Poddar Cement Pvt. Ltd.** reported in **226 ITR 625**, wherein while deciding the income tax appeal, Hon'ble Apex Court had observed that '**the owner**' in the context of Section 22 is a person, who is entitled to receive income in his own right, Section 22 does not require registration of sale deed, further Hon'ble Apex Court w.r.t. applicability of such finding in the case of Wealth Tax matters have approved the decision in the case of **Nawab Mir Usman Ali Khan** (supra) and had observed that "*so far as the view taken by the Apex Court in the case of **Nawab Sir Mir Usman Ali Khan (1986) 162 ITR 888** is concerned that was in context of Wealth Tax Act, where the language of Section was different*".

5.5 Regarding disallowance of Rs. 19 lacs out of which 50% i.e., Rs. 9.5 lac was added to the asset of the assessee, the department could not be brought on record any corroborative evidence to substantiate that such amount was actually paid by the assessee, therefore, the contentions raised by the Ld. AR, are found to be correct that the revenue has squarely failed in adhering to the directions of the tribunal to brought on record the corroborative evidence apart from merely taking cognizance of noting in the diary.

5.6 In view of aforesaid facts, observations and respectfully following the decision of Hon'ble Apex Court, we have no hesitation to concur with the decision of Ld. CWT(A), against which no further explanations, arguments or corroborative and cogent evidence or judicial pronouncement in support of their contention could be brought on record by the revenue, thus, ground no. 1 of the revenue being deprived of any merits is liable to be rejected and we do so. **In result, Ground No. 1 of the revenue stands dismissed.**

6. **Ground No. 2** of the revenue is regarding deleting the addition of Rs. 1,55,20,000/- made by the Ld. AO, on account of Panchwati Farmhouse land.

6.1 Ld. Sr DR, on this issue have reiterated the facts and decision of the Ld. CWT(A) from the order of Ld. CWT(A), accordingly, for the sake of completeness of facts, the same is extracted as under:

6. **Ground Nos. 5**

This ground of appeal for assessment years 1990-91 to 1992-93 and 1994-95 to 1996-97 is directed against the addition made on account of purchase of land at Mehrauli (also called Panchvati Farmland).

6.1 *The facts in brief in respect of this ground of appeal are that the appellant had purchased an open piece of land situated at Khatauni No. 108-109, Village Gadaipur, Tehsil Mehrauli, Delhi, vide sale deed dated 2nd February, 1990, for total consideration of Rs. 4 lac and incurred expenditure on stamp papers amounting to Rs. 32,000/- and thus, the total cost of land was Rs. 4,32,000/-. On 1st February, 1990, the appellant's wife, Smt. Poonam Jain, also purchased other half of the same land for similar consideration of Rs. 4,32,000/-*

. Subsequently, as per the license agreement entered into by the appellant along with his wife with a company called M/S. BEC Impex International Pvt. Ltd. (in short 'BEC Impex') the entire land was leased out for total lease rent of Rs. 1 lac per annum. The said company, BEC ex, is stated to have constructed a building on the above land covering around 878.31 sq. of total area of land admeasuring 19,167.42 sq. mts. In the original assessment, on the basis of the notings contained in some of the seized documents found from the premises of Shri J.K. Jain (referred above) the A.O. had held that cash of Rs. 1,55,20,000/- was also paid for purchase of the above farmland and accordingly he worked out the total consideration of the land at Rs. 1,63,20,000/- The A.O. concluded that after reducing payment of Rs. 4 lacs by Smt. Poonam Jain, the balance consideration of Rs. 1,59,20,000/- was paid by the appellant and determined the total cost of the land at Rs. 1,59,52,000/- after including registration fees of Rs. 32,000/-. Thus, in the assessment year 1990-91, the value of the land was taken at Rs. 1,59,52,000/- and in the subsequent assessment years, the said value was increased by 10% to determine the market value of the land and subjected to wealth tax as under:

Assessment year 1991-92	Rs. 1,75,47,200/-
Assessment year 1992-93	Rs. 1,93,01,920/-
Assessment year 1994-95	Rs. 2,33,55,323/-
Assessment year 1995-96	Rs. 2,56,90,855/-
Assessment year 1996-97	Rs. 2,82,59,941/-

6.2 In the assessment order passed in the set-aside proceedings for the assessment year 1990-91, on the issue of taxability of Panchavati/Mehrauli farmland, the A.O. has observed that it is not agricultural property. As a result of cross examination of various persons, BEC Impex has invested Rs. 3,44,25,592/- in the superstructure, which is assessable in the hands of the said company. The wealth of the appellant should be limited to the value of land purchased as his share, which would amount to Rs. 4.32 lacs plus the amount of Rs 1,55,20,000/- noted in the diary - MR 72/91 on page 25 and the total comes to Rs. 1,59,52,000/-. The A.O. has given the following reasons for clubbing the amount of Rs. 1,55,20,000/- as investment in purchase of land:

"1. Page 25 of MR-72/91 is not written in codes. Whatever is written, the names and well as the amounts are explicit. The entries in the name of Shri P. Ghosal and Shri D.P. Ramball tallies with their statements and cross tally with the amounts written in codes at other places. It is noticeable that it is written as : Shri S. K. Jain Farm 1,55,20,000=00

It is noticeable that the name is explicit and not in codes. Further the amount is explicit and not codes.

2.No cross examination has been carried on this issue by the assessee.

3.It is also explicit in this document that the expenses through M/S BEC Impex Intl. Ltd. are separately noted and quantified.

No where the name of other owner Smt. Poonam Jain is noted.

5. The entries are comparable to the entries made for the purchase of Sainik farm house for which unaccounted money was found the Coincidence and Analogy is noteworthy. "

He had also held that an annual appreciation in value at 10% is as reasonable for the subsequent assessment years as per Rule 20(1) of schedule III to the Act.

6.3 *Before me. the Ld. AR for the appellant, in so far as, in the appeals for the assessment years 199-91 to 1992-93 submitted that the land under reference is agricultural land and as per clause (i)(a) of the second proviso to section 2(e)(2)(iii) of the Act, 'agricultural land' is excluded from the definition of 'assets' as applicable from assessment years 1983-84 to 1992-93. He also contended that the said land is governed by the Delhi Land Reform Act and is reserved for agricultural purpose. In support of his contention, copies of Khasra/ Girdawari issued by the State Revenue Department were filed.*

6.4 *In respect of appeals for the assessment years 1994-95 to 1996-97, the Ld. AR additionally submitted that from assessment year 1993-94, only 'urban land' is includible in the taxable wealth. The term 'urban land' has been defined*

in clause (b) of Explanation (l) of section 2(ea) of the Act and excludes the following:

- (a) Land which is not situated within the local limits of a Municipality or a Cantonment Board and is also not situated within the notified/ specified distance from such Municipality or Cantonment Board; and*
- (b) Land on which construction of a building is not permitted under any law for the time being in force, even though such land falls within the limits of a Municipality or a Cantonment Board or falls within the specified distance from the Municipality or a Cantonment Board.*

The Panchwati farmland is reserved for green belt under the Master Plan of Delhi. In accordance with the said applicable law, construction has been done only to the extent of 878.31 sq. mtrs, out of total land area of 19, 167.42 sq. mtrs. Beyond that construction was not permissible under the Master Plan of Delhi. Therefore, the only proportionate amount of Rs. 19,795.56, out of the total purchase consideration of Rs. 4,32,000 can be included in the appellant's net wealth.

6.5 *Regarding the entry of cash payment appearing at Page No. 25 of diary marked MR72/91, the appellant mainly reiterated his contentions made with reference to Sainik Farmland discussed above. It was contended that no such payment was made by the appellant. The was seized from the premises of Shri J. K. Jain and the entries were in his handwriting, it should be presumed to be belonging to him and it is only he who could have explained the contents recorded therein. The appellant has always denied the ownership of the seized documents. Appropriate notings were also made in the returns. In the statements recorded. Shri J. K. Jain has categorically stated that he has never made any statement that the seized diary/document and the entries contained therein belonged to the appellant and for this purpose he referred to the answers given by Shri J. K. Jain in the statement recorded by the A.O. It was contended that perusal of the statement demonstrates that Shri J. K. Jain has categorically stated that: (a) he was not managing the personal business or finance of the*

appellant, (b) he never stated that the seized diary/document belonged to the appellant, (c) he is not aware of the nature of the transactions recorded in the seized document and (d) he is not aware of any cash payment being made by the appellant for purchase of farmhouse in Panchvati. He further contended that the statement of Shri J. K. Jain establishes beyond any shred of doubt that the seized document including diary marked as MR-71/91 does not belong to the appellant. Hence, the inference drawn on the basis of the said seized document that the appellant had made substantial cash payment for purchase of farmland in Panchavati is factually incorrect and without any basis. Relying on the order of the Hon'ble Tribunal dated 24th Nov. 2006, the Id. A.R. contended that the addition made in the original assessment solely on the basis of the aforesaid documents has been held to be not legally sustainable and the Revenue was required to bring on record corroborative evidence apart from merely relying upon the entries in the seized documents for making additions. It was contended that the present A.O. has repeated the addition in gross violation of the binding directions of the Hon'ble Tribunal, hence it, is legally unsustainable and deserves to be deleted.

6.6 I have gone through the observations of the A.O. and submissions made on behalf of the appellant. The primary issue to be decided with regard to the taxation of Panchavati farmland is the alleged cash payment of Rs. 1,55,20,000 which has been added by the A.O. in the assessment year 1990-91 and has thereafter, been increased by 10% every year. The said addition has been made solely on the basis of notes contained in certain annexures found and seized from the possession of Shri J. K. Jain. While adjudicating the issue of taxability of Sainik farmland in ground of appeal Nos. 3 and 4 above, I have elaborately discussed the issue relating to the connection/ ownership of the seized documents qua the appellant. As per my findings given earlier, the A.O. has not brought forth any corroborative evidences to support his findings that the appellant has invested the money over and above declared investment, which was

prescribed by the Hon'ble Tribunal. The aforesaid notings do lead to suspicion, but suspicion cannot be the basis for making addition, particularly when the Hon'ble Tribunal specifically remanded the matter back to the A.O. to bring corroborative evidence on record. Merely repeating the addition on the basis of the very same entries is not proper.

6.7 In these circumstances, in view of the detailed findings in the context of addition of cash payment for purchase of Sainik farmland in the earlier part of this order, I am of the considered view that the addition of Rs. 1.55 crores made by the A.O. is not correct and it is, therefore, liable to be deleted, hence, deleted.

6.8 Now coming to the taxability of the Panchavati farmland, there is no dispute that the farmland is owned by the appellant and his wife. The appellant's contention that for AYrs 1990-91 to 1992-93, it was "agricultural land" and not a taxable asset under section 2(e)(2)(i) of the Act is not correct. It is not correct for the very reason that the appellant in the same breadth has contended that they have entered into a lease agreement for the entire land with BEC Impex and the company has erected superstructure on a part of the land and rest of the land is also in the company's possession for total lease rent of Rs. 1 lakh per annum. This itself shows that the land cannot be termed as 'agricultural land', though the revenue records might display its nature as 'agricultural land'. Therefore, the A.O. has rightly treated this land as non-agricultural lands. Similarly, for assessment years 1994-95 to 1996-97 also the action of the A.O. treating the land as non-agricultural urban land is correct. There is no valuation rule for valuation of urban land. However, identical issue was examined by the Hon'ble ITAT, Delhi 'WT' Bench in the case of ACWT vs Dr. H .R. Virmani, reported in (2006) 99 TTJ (Del) 242 and it was held that property, including vacant plot of land, which is in the occupation of the tenant in entirety, is to be valued on the basis of yield method based on rental value of the property. In this case, the appellant has leased out the property. Under such circumstances, the A.O. is directed to apply yield method based on rental value of the property, provided in Part-B of Schedule-III of the Act.

6.9 *My conclusions with regard to Ground No. 5 are summarized as under:*

i) Panchvati farmland is non-agricultural urban land and is liable for wealth tax and it has to be valued by applying the valuation rules for immovable property given Part-B of Schedule-III to the Wealth Tax Act, 1957

(ii) In the absence of any corroborative evidence regarding actual payment of cash, there is no basis for making addition of Rs. 1,55,20,000/-, while determining the taxable value of the asset for the purpose of Wealth Tax Act.

Accordingly, this ground of appeal is partly allowed.

6.2 Based on aforesaid facts and decision, it was the submission of Ld. Sr DR that as per order of Ld. AO, the assessee had jointly purchased a land, in which assessee's share was one half which stands at Rs.4,32,000/- and the same has been declared by the assessee in his Wealth Tax Return as on valuation date 31.03.1990. On the said land M/s BEC Impex International Pvt. Ltd. has constructed a farmhouse consisting of building, underground music room, games room, and other facilities accordingly, it was a luxury retreat and not an agriculture property. Ld. AO has categorically observed that there was a noting in the diary marked as MR-72/91 on page 25, therefore, an amount of Rs. 1,55,20,000/- was to be clubbed with the amount of Rs. 4.32 lacs, accordingly, the asset was valued at Rs.1,59,52,000/- as on valuation date 31.03.2019. Ld. AO has reasonably considered an appreciation of 10% annually in the value of asset and accordingly had taken the value of asset in the ensuing years. It is the submission of Ld. Sr DR that the noting in the diary should be considered as a corroborative evidence and accordingly the additions made by Ld. AO shall be sustained by setting aside the order of Ld. CWT(A).

6.3 In rebuttal, Ld. AR of the assessee submitted that all the facts pertaining to noting in the diary were there before the ITAT when the issues were restored back to the file of Ld. AO with the directions to brought on record corroborative evidence regarding actual payment of cash, however, the revenue has squarely failed in following the directions of ITAT and has again made the addition without substantiating the same by establishing that the actual payment in cash were made by the assessee. Under such facts and circumstances, Ld. CWT(A) had concluded that the Panchwati Farmhouse is a non-agriculture land and is liable to be assessed under the Wealth Tax, value of the same shall be arrived at as per valuation rules of immovable property given in Part-B of Schedule-III to the Wealth Tax Act, 1957, but the alleged amount on account of cash payment added by the Ld. AO without any basis should not be considered while determining the taxable value of asset for the purpose of Wealth Tax. Ld. AR further submit that the order of Ld. CWT(A) is an exhaustive and speaking order the same therefore, requires to be upheld.

6.4 We have considered the rival submissions, perused the material available on record and the orders of revenue authorities. The issue raised in the Ground No. 2 of the present appeal of the revenue is identical to the second limb of the issue raised in Ground No. 1, wherein the addition was made on the basis of noting in the diary, but no further corroborative evidence could be brought on record by the revenue to substantiate that the amount as noted in the diary was actually paid by the assessee in cash against the

alleged land transactions. Ld. CWT(A) had rightly decided the issue by observing that in absence of any corroborative evidence regarding actual payment of cash, there is no basis for making addition of Rs. 1,55,20,000/-, while determining the taxable value of the asset for the purpose of Wealth Tax Act. Under such facts and circumstances, since the matter was restored by the ITAT to the files of Ld. AO but the directions of tribunal have not been followed by, the revenue is unable to substantiate their claim by way of any material evidence. The contention of the revenue that the diary found during the search shall be considered as corroborative evidence fails because such evidence was already before the tribunal when the matter was earlier heard and restored back to the files of Ld. AO to bring on record corroborative evidence other than the noting in the diary. In view of such facts and circumstances, our decision w.r.t. addition on account of unsubstantiated alleged cash payment by the assessee for the land purchased in Ground No. 1 of the present appeal shall *mutatis mutandis* apply on Ground No. 2 also. In view of such observations, the decision of Ld. CWT(A) is found to be correct on facts and in law, which does not require any interference, we, thus, approve the same. **In result, Ground No. 2 of the present appeal of the department is dismissed.**

7. Ground Nos. 3 and 4 of the appeal of the revenue are general in nature, wherein no further arguments or grounds of appeal are advanced, consequently, the same needs no separate adjudication. Ground No. 3 & 4, thus, are rendered as infructuous and dismissed.

8. In result, Wealth Tax Appeal Nos. 1-13/BIL/2012 of the revenue are **dismissed** in terms of our aforesaid observations.

Order pronounced in the open court on 15/04/2024.

Sd/-
(RAVISH SOOD)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 15/04/2024

Vaibhav Shrivastav

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. The Pr. CIT -1, Raipur, (C.G.)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

// सत्यापित प्रति True Copy //

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur