

Amendment to sec. 2(14) providing aerial distance for determining agricultural land has no retro-effect

Summary – The Bengaluru ITAT in a recent case of M.R. Padmavathy Trust, (the Assessee) held that Provisions of item (b) of sub-clause (iii) of section 2(14) of 1961 Act which provides for considering distance aerially, not by road, and which have been substituted by Finance Act, 2013 with effect from 1-4-2014 are applicable only for and from assessment year 2014-15 onwards; and, therefore, would operate prospectively and cannot be given retrospective operation

Facts

- The assessee, who were owners of lands at village, had not included the value of the land in their returns of net wealth. Consequently, the Assessing Officer initiated proceedings and issued notice under section 17.
- The assessee had stated that the said lands did not come under the ambit of the definition of wealth as per *Explanation 1(b)* to section 2(ea) which defines 'urban land', as it is situated 11 kms. away from BBMP limits.
- The Assessing Officer concluded the order of assessment holding that the land was situated within 8 kms. from the BBMP limits in straight line method and further held that the said land fell within the jurisdiction of the newly created administrative authority, *i.e.* BIAPPA. The Assessing Officer also held that BIAPPA has all the power assigned to any local administrative authority and, therefore, should also be considered to be Municipality for the purpose of tax administration. The Assessing Officer brought the aforesaid lands under the ambit of wealth and adopting the guideline value of the lands, brought the same to tax.
- The Commissioner (Appeals) allowed the assessee's appeals.
- On appeal, the revenue submitted, that the calculation of the distance of 8 kms. from BBMP limits has to be measured as the crow flies, *i.e.*, that the aerial distance has to be calculated and not the distance as per road.

Held

- BIAPPA does not qualify to be an authority and, therefore, the said lands are agricultural lands and not urban land or capital assets as canvassed by revenue.
- The revenue relied on the provisions of clause (b) of clause (iii) of section 2(14) as substituted by Finance Act, 2013 with effect from 1-4-2014 which he submitted were to be given retrospective operation as they are only clarificatory in nature. It is not tenable for the following reasons - Firstly, the assessment year in the two appeals is assessment year 2007-08 and the law in operation at that point in time is to be considered, unless retrospective operation is specifically provided in the statute. For assessment year 2007-08, the provisions of sub-clause (b) of clause (iii) of section 2(14) (providing for considering distance aerially not by road) which have been substituted by the Finance

Act, 2013 with effect from 1-4-2014 are not applicable and they are applicable only for and from assessment year 2014-15 onwards; and, therefore, operate prospectively and cannot be given retrospective operation.

- Substitution has the effect of deleting the old rule and making the new rule operative. In common parlance, the word 'substitute' would ordinarily mean 'to put one in place of another person or thing' or 'to replace' or 'to exchange'. Substitution of a provision results in the repeal thereof and its replacement by the new provisions. The process of substitution consists of two steps; the first being that the existing provision/rule would cease to exist and the new provision/rule is brought into existence in its place. It is well settled rule of construction that every statute is prospective unless it is expressly OR by necessary implication made to have retrospective effect. If the amendment Act expressly states that the substituted provision shall come into force from the date the amendment comes into force, then the said provision is prospective in nature and it would not be open to any Court to give retrospective operation to such provision. Ultimately, the intention of Legislature is the sole guide for deciding whether provisions are prospective OR retrospective. In the light of the above discussion, the contention raised by the revenue, that sub-clause (b) of clause (iii) of section 2(14) which is substituted by the Finance Act, 2013 with effect from 1-4-2014 is clarificatory in nature and needs to be given retrospective operation in considering the distance to be calculated aerially; cannot be accepted.
- On a perusal of the orders of assessment that in the course of assessment proceedings, the assessee has filed a letter from the Anneshwara Gram Panchayat office confirming that the land does not come within the limits of any Corporation or Municipality and confirmation from the office of the Tahsildar, Devarahalli measuring the distance from BBMP limits. Per contra, revenue's case is that the said lands are situated within BIAPPA which has an authority as per the definition of 'asset' which proposition has been negated by Tribunal in the case of *M.R. Seetharam v. Asstt. CIT* [IT Appeal No. 1654 (Bang.) of 2012, dated 1-4-2013].
- Thus, said lands in question are not 'urban lands' but 'agricultural lands' and, hence, not exigible to wealth-tax.