

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF FEBRUARY 2016

PRESENT

THE HON'BLE MR.JUSTICE JAYANT PATEL

AND

THE HON'BLE MRS.JUSTICE S SUJATHA

WTA No.34/2015

C/w

WTA Nos.36/2015, 37/2015, 40/2015

AND WTA No.41/2015

WTA No.34/2015

Between

1. Pr. Commissioner of Wealth Tax
C.R. Building, Queens Road,
Bangalore-560 001.
2. The Assistant Commissioner of Income
Tax, Circle 6 (1), Bangalore

... Appellants

(By Sri E.I.Sanmathi, Advocate)

And

Shri. M.R. Jayaram (HUF)
Gokula House, Gokula

Mathikere,
Bangalore-560 054.
PAN: AACHM 1949Q

.. Respondent

This WTA / Wealth Tax Appeal Under Sec.27-A of Wealth Tax Act 1957, arising out of order dated:17/04/2015 passed in WTA No.8/Bang/2014, for the Assessment Year 2006-07 praying to decide the foregoing question of law and / or such other questions of law as may be formulated by the Hon'ble Court as deemed fit and set aside the appellate order dated: 17/04/2015 passed by the ITAT, 'C' Bench, Bangalore, in Wealth Tax Appeal No. 08/Bang/2014 for Assessment Year 2006-07 as sought for in this appeal; and to grant such other relief as deemed fit, in the interest of justice.

WTA No.36/2015

Between

1. Pr. Commissioner of Wealth Tax
C.R. Building, Queens Road,
Bangalore-560 001.
2. The Assistant Commissioner of Income
Tax, Circle 6(1), Bangalore

... Appellants

(By Sri E I Sanmathi, Advocate)

And

Shri. M.R.Kodandaram (HUF)
Gokula House, Gokula
Mathikere,

Bangalore-560 054.
PAN: AABHM 9893E

... Respondent

This WTA / Wealth Tax Appeal is filed Under Sec.27-A of Wealth Tax Act 1957, arising out of order dated:17/04/2015 passed in WTA No.10/Bang/2014, for the Assessment Year 2007-08 praying to decide the foregoing question of law and / or such other questions of law as may be formulated by the Hon'ble Court as deemed fit and set aside the appellate order dated: 17/04/2015 passed by the ITAT, 'C' Bench, Bangalore, in Wealth Tax Appeal No.10/Bang/2014 for Assessment Year 2007-08 as sought for in this appeal; and to grant such other relief as deemed fit, in the interest of justice.

WTA No.37/2015

Between

1. Pr. Commissioner of Wealth Tax
C.R. Building, Queens Road,
Bangalore-560 001.
2. The Assistant Commissioner of income
Tax, Circle 6(1), Bangalore

... Appellants

(By Sri E.I.Sanmathi, Advocate)

And

Shri. M.R. Kodandaram
(Indl)
Gokula House, Gokula,

Mathikere,
Bangalore-560 054.
PAN: ADIPK 7939H

... Respondent

This WTA / Wealth Tax Appeal is filed under Sec.27-A of Wealth Tax Act 1957, arising out of order dated:17/04/2015 passed in WTA No.11/Bang/2014, for the Assessment Year 2006-07 praying to decide the foregoing question of law and / or such other questions of law as may be formulated by the Hon'ble Court as deemed fit and set aside the appellate order dated: 17/04/2015 passed by the ITAT, 'C' Bench, Bangalore, in Wealth Tax Appeal No.11/Bang/2014 for Assessment Year 2006-07 as sought for in this appeal; and to grant such other relief as deemed fit, in the interest of justice.

WTA No.40/2015

Between

1. Pr. Commissioner of Wealth Tax
C.R. Building, Queens Road,
Bangalore-560 001.
2. The Assistant Commissioner of Income
Tax, Circle 6(1), Bangalore.

... Appellants

(By Sri. E I Sanmathi, Advocate)

And

Shri. M.r. Janakiram (HUF)
Gokula House, Gokula,
Mathikere,

Bangalore-560 054.
PAN:AAEHM 0685F

... Respondent

This WTA / Wealth Tax Appeal is filed under Sec.27-A of Wealth Tax Act 1957, arising out of order dated:17/04/2015 passed in WTA No.14/Bang/2014, for the Assessment Year 2006-07 praying to decide the foregoing question of law and / or such other questions of law as may be formulated by the Hon'ble Court as deemed fit and set aside the appellate order dated: 17/04/2015 passed by the ITAT, 'C' Bench, Bangalore, in Wealth Tax Appeal No. 14/Bang/2014 for Assessment Year 2006-07 as sought for in this appeal; and to grant such other relief as deemed fit, in the interest of justice.

WTA No.41/2015

Between

1. Pr. Commissioner of Wealth Tax
C.R. Building, Queens Road,
Bangalore-560 001.
2. The Assistant Commissioner of Income
Tax, Circle 6(1), Bangalore.

... Appellants

(By Sri E I Sanmathi, Advocate)

And

Shri. M.R.Anandram (Indl.)
Gokula House, Gokula,
Mathikere,

Bangalore-560 054.
PAN: ABNPA 3153A

... Respondent

This WTA / Wealth Tax Appeal is filed under Sec.27-A of Wealth Tax Act 1957, arising out of order dated:17/04/2015 passed in WTA No.15/Bang/2014, for the Assessment Year 2006-07 praying to decide the foregoing question of law and / or such other questions of law as may be formulated by the Hon'ble Court as deemed fit and set aside the appellate order dated: 17/04/2015 passed by the ITAT, 'C' Bench, Bangalore, in Wealth Tax Appeal No. 15/Bang/2014 for Assessment Year 2006-07 as sought for in this appeal; and to grant such other relief as deemed fit, in the interest of justice.

These Appeals coming on for Orders this day,
JAYANT PATEL J., delivered the following:

JUDGMENT

As in all appeals there is a delay of 10 days in preferring the appeals. Considering the facts and circumstances, we have found it appropriate to consider the main subject matter of the appeals too.

2. As such, the delay of 10 days a very short delay and therefore, lenient view could be taken on the aspects of delay for exercising the discretion to condone the delay.

3. However, when we have heard Sri E.I.Sanmathi, the learned Counsel appearing for the appellants, on the merits of the appeals, we find that the appropriate course for the appellants would be to prefer an application for rectification and the grounds as sought to be canvassed would be unavailable for the appellate jurisdiction of this Court.

4. On the merits of the appeals, we may record that Tribunal in the impugned order at paragraphs-7 and 8 has observed thus:

“7. Aggrieved by the order of the CWT(A), the Revenue has preferred the aforesaid appeals before the Tribunal. The effective ground of

appeal raised by the Revenue is common in all the appeals and it reads thus:

“2. On the facts and in the circumstances of the case the learned CWT(A) erred in law in holding that in the absence of proof of issuance of Notice u/s 17 of the WT Act, the assessment proceedings completed by the AU u/s.16(3) are bad in law without appreciating the fact that in the assessment order, the AO has specifically mentioned issuance of Notice u/s.17 on 27.3.2012 and the AR of the assessee has attended the assessment proceedings.”

8. The learned DR reiterated the stand of the revenue as reflected in the grounds of appeal of the Revenue. He could not however show as to how the remand report of the WTO before the CWT(A) that no notice was issued u/s.17 to the Assesseees in these appeals is incorrect. He could not also file before us any evidence to

disprove the findings of the CWT(A). In these circumstances, we are of the view that the order of the CWT(A) does not call for any interference and they are confirmed.”

5. An attempt on the part of the learned Counsel for the appellants was to contend that by virtue of Section 42 of the Wealth Tax Act, 1957 (hereinafter referred to as ‘the Act’ for short), once an assessee has power before the Assessing Officer, and has made submission, he would be precluded from raising contention that the notice under Section 17 has not been served and in his submission, such aspect is not at all considered by the Tribunal, though Section 42 remained on the statute book and was in operation at the relevant point of time, when the assessment proceedings were undertaking and also subsequently when the Tribunal decided the matter.

6. Section 42 of the Act reads as under:

“[42. Notice deemed to be valid in certain circumstances.

Where an assessee has appeared in any proceeding or cooperated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was-

- (a) not served upon him; or
- (b) not served upon him in time; or
- (c) served upon him in an improper manner:

Provided that nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment.]”

7. There may be a case to be considered under Section 42 of the Act, but if we further consider the above referred reasons recorded by the Tribunal, it appears that the attention of the Tribunal has not been brought pertaining to Section 42 of the Act, at the time when the matter was heard before the Tribunal. Resultantly, we do not have any discussion whatsoever of the Tribunal in the impugned order for consideration of Section 42 of the Act, its applicability or the effect.

8. If the appellants were to contend and press in service Section 42, prevailing at the relevant point of time, it would be for the appellants to move an appropriate application for rectification of the order and it is only after the Tribunal considers the matter and the reasons are recorded, a ground may be available before this Court in the appellate jurisdiction.

9. In view of the above, we are not inclined to entertain the appeals, with the observation that in event, if any rectification application is filed by the appellants-Revenue before the Tribunal, the rights and contentions of both the sides shall remain upon and the Tribunal shall pass the order after giving opportunity of hearing to both the sides and in accordance with law.

10. Subject to the aforesaid observations, the present appeals as well as I.As for condonation of delay are disposed of.

11. The learned Counsel for the appellants states that the same subject matter is involved in WTA No.41/2015.

12. In our view, when the same subject matter is involved in the present appeal, same position will prevail as observed by us for the rectification of the

order and for entertaining of the appeal. Hence, WTA No.41/2015 also shall stand disposed of accordingly.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

JT/-