



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WEALTH TAX APPEAL NO. 1001 OF 2007

The Commissioner of Wealth Tax
City 18, Mumbai, Room No. 517,
Piramal Chambers, Parel,
Mumbai 400 012.

... Appellant

Versus

HUF of H.H. Late Shri. J.M. Scindia,
Nevillia House, 42, Turf View,
Hornby House, Dr. A.B. Road,
Mumbai 400 018.

... Respondent

Mr. R.G. Bhat with Mr. P.S. Sahadevan for the
Appellant.

Mr. J.D. Mistry with Mr. A.K. Jasani for
Respondents.

**CORAM: F.I. REBELLO &
R.S. MOHITE, JJ.**

DATED: FEBRUARY 05, 2008

ORAL JUDGMENT (Per F.I. REBELLO, J.):

. Admit on the question of law reproduced below.

"Whether on the facts and in the
circumstances of the case and in law, the
Hon'ble Tribunal was right in cancelling the
assessment u/s. 16(3) r.w.s.17 of the
Wealth Tax Act, by holding that the notice
under section 16(2), being out of time
ignoring the sections crucial feature of its
applicability to the returns filed under
section 14, 15 or u/s. 16(4)(i) only and
not to the one filed u/s. 17, as in the
instant case?"

3. The appeal is in respect of the assessment year
1989-90. It is the contention of the Revenue that

the reassessment proceedings under Section 17 are entirely different from the regular assessment proceedings. The notice under section 16(2) is necessarily and compulsorily to be issued only in a regular assessment. In the instant case, it is submitted that on notice dated 19.8.1997 being issued under Section 17, the assessee had filed return of wealth on 14.10.1997. The assessment had to be completed within two years from the end of financial year in which notice was issued which in the instant case would be 31.3.2000. The Assessing Officer issued notice under Section 16 (2) on 24.9.1999 which is after the expiry of one year from filing of the return. The assessment notice under section 16(3) read with section 17 was issued on 29.3.2000. It is therefore, submitted that considering the terminology of section 17, there is no requirement that notice under section 16(2) has to be served to proceed with the assessment as the assessment under section 17 is independent. It is therefore, submitted that the impugned order of the tribunal be set aside.

. On the other hand, on behalf of the appellant, the learned counsel submitted that a perusal of section 17 of the Wealth Tax Act makes it clear, that other provisions of the Act shall so far as may be apply, as if the return was filed under section 14. It is therefore, submitted that the return filed pursuant to proceedings under Section 17 of the W.T.Act has to be treated as return under section 14 and as the section falls in Chapter IV,

of "Assessment", the other provisions to the extent applicable would be attracted including section 16(2) and as such the view taken by the tribunal is the correct view. It is further submitted that there was similar omission in procedure for reassessment under section 148 of the Income Tax Act. Noting the lacunae, Parliament amended section 148 of the Income Tax Act by Finance Act, 2006 with effect from 1.10.1991. Consequently it is submitted that the question as framed would not arise.

4. The learned tribunal by a common order disposed of the appeal from which the present appeal arises along with other appeals by its order dated 4.3.2003 for the assessment years 1987-88 to 1992-93. The arguments advanced before the tribunal on behalf of the revenue are similar to what were advanced by the learned counsel before this court. The appeal before the tribunal was against the order of the Commissioner (Appeals) which has taken a view that the provision of section 17(1) of the Wealth Tax Act are similar to section 14 of the said Act and as the notices were issued beyond the time prescribed, the assessments are not correct in law and therefore, cancelled. The Tribunal noted that the Assessing Officer himself was of the view that in proceedings for re-assessment under Section 17, the procedure under section 16 was to be followed. The Tribunal placed reliance on the judgment of the Supreme Court in the case of R. Dalmia's Vs. CIT 236 ITR 480. The tribunal noted from the facts of that case, that under the I.T. Act, at the material time under

section 144(B) of the Income Tax Act if assessment had to be made under Section 143 (3) of the Act (which corresponds to Section 16(3) of the Wealth Tax Act), if the ITO proposed to make variation to the returned income, the procedure laid down therein had to be followed. Before the Supreme Court the question was whether in a case of reassessment to be made under section 147, the I.T.O. can invoke section 144(B) and thereby extend time limit for completion thereof. The assessee had contended that section 144(B) did not apply to assessment made under section 147 and applies only to assessments made under section 143. The contention of Revenue on the other hand was that section 147 by itself did not permit assessment and determination of tax due and therefore, recourse to section 143 was necessary. It was argued that the assessment or reassessment was not under section 147 but under sections 143/147. The argument of the assessee was rejected. The Supreme Court noted that the submission of Assessee cannot be accepted because the language of section 148 cannot be ignored. Section 144(B) the court held is a procedural provision. It fits into the procedural scheme and, therefore, it cannot be excluded by reason of the use of the words "so far as may be" Nor was there any other good reason to exclude it from the procedure to be followed subsequent to notice u/s.

148. The court then observed as under :

"As to the argument based upon sections 144A, 246 and 263 we do not doubt that

assessments under section 143 and assessments and re-assessments under section 147 are different, but in making assessments and re-assessments under section 147 the procedure laid down in section subsequent to section 139 including that laid down by section 144B, has to be followed."

. Considering this judgment, the tribunal held that section 16 is applicable to reassessment under section 17 which goes without saying that the requirement of giving notice under the proviso to section 16(2) is a mandatory requirement and consequently notice has to be issued before the time prescribed by the proviso to the sub section 16(2) expires.

5. The question that we are called upon to answer is whether the view taken by the tribunal flows from the provisions of section 17 read with sections 14 to 16 of the Wealth Tax Act. The relevant provisions as they then stood read as under :

"17(1). If the Assessing Officer has reason to believe that the net wealth chargeable to tax in respect of which any person is assessable under this Act has escaped assessment for any assessment year (whether by reason of under-assessment or assessment at too low a rate or otherwise), he may, subject to the other provisions of this section and section 17A, serve on such

person a notice requiring him to furnish within such period, not being less than thirty days, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth the net wealth in respect of which such person is assessable as on the valuation date mentioned in the notice, along with such other particulars as may be required by the notice, and may proceed to assess or reassess such net wealth and also any other net wealth chargeable to tax in respect of which such person is assessable, which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section for the assessment year concerned (hereafter in this section referred to as the relevant assessment year) and the provisions of this Act shall so far as may be apply as if the return were a return required to be furnished under section. 14.

. Provided that where an assessment under sub section (3) of section 16 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any net wealth chargeable to tax has escaped assessment for such assessment year by reason of the

failure on the part of the assessee to make a return under section 16 or this section or to disclose fully and truly all material facts necessary for his assessment for that assessment year."

. The crucial words are "and the provision of this Act shall so far as may be apply as if the return were a return required to be furnished under section 14".

. Would these words "as far as may be" mean thereby that section 17 is the assessing section and for that purpose the provisions of section 14 to 16 to the extent they are applicable only would apply. In other words does section 17 confer power on the Assessing Officer in case where section 17 is invoked to independently make an order of assessment in a case where a return is filed under Section 14 after notice and after the period of twelve months have expired from the date of filing the return.

. Section 16(2) reads as under :

"Where a return has been made under section 14 or section 15, or in response to a notice under clause (i) of sub section (4) of this section the Assessing Officer shall, if he considers it necessary or expedient to ensure that the assessee has not understated the net wealth or has not underpaid the tax

in any manner, serve on the assessee a notice requiring him, on a date to be specified therein, either to attend at the office of the Assessing Officer or to produce, or cause to be produced there, any evidence on which the assessee may rely in support of the return.

. Provided that no notice under this section shall be served on the assessee after the expiry of twelve months from the end of the month in which the return is furnished."

. Section 16, therefore, requires that if a return has been made under section 14 or 15, if the assessing officer considers it necessary or expedient, to ensure that the assessee has not understated the net wealth or has not underpaid the tax in any manner, to serve on the assessee a notice requiring him, on a date to be specified therein either to attend the office of the Assessing Officer or to produce, or cause to be produced there, any evidence on which the assessee may rely in support of the return. The proviso lays down a timeframe for serving the notice under section 16(2). In other words, if the period of twelve months have expired from the date of filing the return, the A.O. is precluded from serving notice under Section 16(2) and the return filed will have to be accepted.

. We may now gainfully reproduce section 16(5) for the purpose of our discussion and it reads as under :

"If any person, -

(a) fails to make the return required under sub section (1) of section 14 and has not made a return or a revised return under section 15, or

(b) fails to comply with all the terms of a notice issued under sub section (2) or sub section (4),

the Assessing Officer, after taking into account, all relevant material which he has gathered, shall, after giving such person an opportunity of being heard, estimate the net wealth to the best of his judgment and determine the sum payable by the person on the basis of such assessment;

. Provided that such opportunity shall be given by the Assessing Officer by serving a notice calling upon the person to show cause, on a date and time to be specified in the notice, why the assessment should not be completed to the best of his judgment."

. This sub section therefore, will confer a power on the Assessing officer in case of failure to file

return under subsection 14 or revised return under section 15 or to comply with the terms of a notice under section 16(2) to make a best judgment assessment.

. Section 17A provides a time limit for making an order of assessment both under Section 16 and Section 17. The normal period for assessment under Section 16 is two years from the end of the assessment year in which the net wealth was first assessable and for an assessment under Section 17 within two years from the end of the financial year in which the notice under sub section (1) of Section 17 was served.

6. Section 17 can be invoked when the Assessing Officer has reason to believe that the net wealth chargeable to tax in respect of an assessee has escaped assessment for any assessment year for the reasons set out therein. The A.O. may serve on such person a notice. If on the notice being served the assessee fails to file a return, there is no independent provision in section 17 to make a best judgment assessment like in section 16(5). The language used in fact is that the A.O. may proceed to assess or reassess such net wealth. If the argument of the Revenue has to be accepted, it must mean that once Section 17 has been invoked and the notice served on the assessee and the assessee either does not furnish the return in the prescribed form, then the A.O. is empowered to proceed to

assess or reassess such net wealth and also any other net wealth chargeable to tax in respect of which such person is assessable irrespective of the requirement of Section 16(2), under Section 17 itself. This submission if accepted must lead to the conclusion that section 17 is a self contained code for assessment of wealth tax which has escaped assessment. In that event, will not the expression "the provisions of the Act shall, so far as may be, apply as if the return were a return required to be furnished under section 14, be defeated. The Assessing Officer may be satisfied with the return deemed to be filed under Section 14 and choose not to proceed further. In such a case we shall have to read Section 16(5) into a case of re-assessment under section 17.

7. What would happen in the case where the Assessing Officer is not satisfied with the return and wants to proceed to reassess. Firstly is there a power outside Section 16 to pass an order of assessment and or re-assessment. Secondly in such cases, is there a limitation for issuing notice of assessment or reassessment if the A.O. is not satisfied with the return filed or is there no such limitation as set out in the proviso to section 16(2) and it would wholly lie within the discretion of the Assessing Officer to proceed to reassess in a case where the A.O. is of the belief that the income has accepted assessment except as to the time limit as set out in Section 17A. Section 17A applies to both assessment and reassessment under

Section 16 and 17. In our opinion, this would defeat the scheme of the chapter. Section 17 only use the expression assess or re-assess, however, the expression as contained in Section 16(3) namely "order in writing" is missing. Even if we assume considering the first proviso to Section 17 that the assessment is under Section 17, in issuing notice if dissatisfied with the return filed, the proviso to Section 16(2) would be applicable.

8. The effect of accepting the argument of Revenue would be that in so far as the assessment under section 16, if the A.O. in order that the assessee has not understated the net wealth or has underpaid tax in issuing notice, there is time limit, in so far as section 17, there is no such limitation once jurisdiction is invoked under section 17. Further the expression "as far as may be" in the context of the returns being treated as a return under Section 17 would be rendered meaningless.

. In our opinion, it will not be possible to construe the provisions as are sought to be contended on behalf of the revenue. All the provisions of Chapter IV will have to be read in tandem so as to bring about an uniformity and certainty to an order of assessment. Proviso to Section 16(2) is in the nature of an embargo on the Assessing Officer, if the period has expired not to issue notice after that period. In other words, the Assessing Officer is bound to accept the return as filed. Though the notice under Section 16(2) may be

procedural, the proviso is not merely procedural but is in the nature of a limitation on the power of the Assessing Officer not to proceed further in a case where return has been filed under section 14 or under section 15. That will have to read as applicable to a case of re-assessment under Section 17.

8. Let us now examine Sections 143 and 148 of the provisions of the Income Tax Act, where similar language had been employed. Under Section 143(2)(ii) there is a limitation on the A.O. not to issue notice if the period of twelve months had expired. Section 148 of the I.T. Act had come up for consideration before several High Courts. A learned Bench of the Madras High Court in Commissioner of Income Tax Vs. M. Chellappan and another, (2006) 281 ITR 444 (Mad) had occasion to consider the provision. The Assessing Officer proceeded to reassess under section 147 of the I.T. Act and completed the assessment without issuing notice under section 143(2) within the time stipulated. The order was confirmed in appeal. The Tribunal had set aside the order on the ground that notice under section 143(2) was not served on the assessee within the stipulated period. The learned Bench of the Madras High Court held that as the notice under section 143(2) was not served within the stipulated period, the procedure under section 143 came to an end and the matter attained finality. Similarly is the judgment of Gauhati High Court in Smt. Bandana Gogoi Vs. Commissioner of Income Tax

and another, (2007) 289 ITR 28 (Gauhati) which also dealt with an issue of reassessment under Section 147. That was a case of Block assessment. It was found that notice under section 143(2) was not issued. The learned Bench came to the conclusion that requirement of section 143(2) cannot be dispensed with as it is mandatory. Parliament subsequently by Finance Act 2006, with effect from 1.10.1991 introduced the second proviso to Section 148 saving proceedings where return had been filed pursuant to proceedings under Section 147 and no notice had been served under Section 143(2) within the period prescribed by the proviso to Section 143(2).

. The language used in section 143(2) is similar to the language used in section 16(2). Parliament in the case of I.T. Act under Section 148 noting, the omission in the section which was likely to affect assessments done, pursuant to powers conferred under Section 147, inserted the proviso to section 148 to protect the assessments already done. It is true that merely because Parliament has as a matter of abundant caution intervened and amended the provisions of section 148 cannot be read to mean that there is a lacunae. Two High Courts, Madras and Gauhati, have taken a view that notice under section 143(2) is mandatory even in a case of re-opening of assessment under Section 148 of the I.T. Act. In our opinion, the view taken by the two High Courts reflects the language of Section 147. Therefore, even in a case of re-opening of

assessment under Section 147, the A.O. is bound to comply with the requirement of Section 143(2) of the I.T. Act.

9. Even independently, we have examined the scope and effect of sections 14 to 16 on the one hand and section 17 on the other. In our opinion, there is no escape from arriving at the conclusion that when the Assessing Officer invokes section 17, the provision of section 14 and 16 to the extent applicable, for the purpose of making an order of reassessment will have to be followed which will include the time limit for notice under section 16(2). Once the language of section 17 itself requires that other provisions to the extent applicable would apply considering the return as filed under Section 14, it contemplates that both procedural and substantive provisions will apply. In our opinion, therefore, while invoking powers under section 17, the Assessing Officer is bound by the mandate of the proviso to Section 16 (2) and on failure the order of re-assessment will be without jurisdiction and consequently the order of reassessment will have to be set aside.

. Having said so, we are clearly of the opinion that no error of law can be found with the view taken by the tribunal. Consequently the appeal is dismissed.

(R.S. MOHITE, J.)

(F.I.REBELLO, J.)