

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **20.02.2018**

CORAM:

THE HONOURABLE MR.JUSTICE **S.MANIKUMAR**

and

THE HONOURABLE MRS.JUSTICE **V.BHAVANI SUBBAROYAN**

T.C.A.Nos. **857** & **858** of **2017**

C.M.P.Nos. **21291** of **2017**

Dr.S.F.V.Selvaraj

.. Appellant in both cases

Vs.

The Asst. Commissioner of Wealth Tax,
Central Circle-2(4),
46, Nungambakkam High Road,
Chennai – 600 034.

.. Respondent in both cases

Prayer: Appeals filed under Section 260A of the Income Tax Act, 1961, against the common order of the Income Tax Appellate Tribunal, 'A' Bench, Chennai, dated 16.08.2017 in W.T.A.No.18/Mds/2017 & W.T.A.No.19/Mds/2017. सत्यमेव जयते

For Appellant
in both appeals

: Mr.M.P.Senthil Kumar

For Respondent
in both appeals

: Mr.T.R.Senthil Kumar

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COMMON JUDGEMENT

(Judgement of the Court was made by **S.MANIKUMAR, J.**)

Instant tax appeals are filed by the assessee against the common order of the Income Tax Appellate Tribunal 'A' Bench, Chennai (in short, "the Tribunal") dated 20.12.2012, passed in W.T.A.No.18/Mds/2017 & W.T.A.No.19/Mds/2017, pertaining to the Assessment Years 2007-08 and 2008-09.

2. When these appeals came up for admission today (20.02.2018), Mr.T.R.Senthil Kumar, learned counsel accepted notice on behalf of the Revenue. With consent of the learned counsel on either side, instant tax appeals are taken up for final disposal.

3. Since common issues are involved in both these tax appeals, they were heard together and disposed of by means of this common judgement.

4. Short facts leading to filing of these appeals, are as follows:

(i) The appellant/assessee, is an individual, regularly assessed, under the Income Tax Act. A search was conducted in his premises,

on 24.11.2011, under Section 132, of the Income Tax Act.

(ii) The assessee, though, liable to pay wealth tax, did not file any wealth tax return, for the assessment years 2007-08 and 2008-09.

(iii) The Assessing Officer, issued a Notice under Section 17 of the Wealth Tax Act, 1957 (hereinafter referred to as "the Act") to the assessee on 12.11.2013, calling upon him to file the wealth tax returns.

(iv) In response to the said notice, the assessee, filed wealth tax Returns on 19.02.2014, declaring a net worth of Rs.8,85,84,300/-, for assessment year 2007-08 and Rs.19,22,50,591/- for assessment year 2008-09.

(v) These returns were taken up for scrutiny and assessments were completed on 30.01.2015, accepting the net wealth as stated in the returns. However, the respondent, proposed levy of interest under Section 17B(1) of the Act to the tune of Rs.6,70,550/- for the assessment year 2007-08 and Rs.12,39,879/- for the assessment year 2008-09, respectively.

(vi) But the assessee, calculated the interest payable under Section 17B(3), and submitted that interest was chargeable only from the date of issuance of the notice under Section 17 of the Act, and the same cannot be chargeable from the due date under Section 14 of the Act.

(vii) The assessee, further submitted that since the Return of wealth had not been filed before the due date under Section 14(1) of the Act and within the time provided under Section 15 of the Act, the assessee, could file the Returns only after the issuance of Notice under Section 17 of the Act and hence the delay in filing the Returns, on account of the inability of the assessee to file the return, in the absence of statutory provisions for filing belated Returns, could not be attributed to the assessee under Section 17B(1) of the Act.

(viii) The Assessing Officer, however, calculated the interest under Section 17B(1) of the Act, from the due date of filing the return of wealth under Section 14(1) of the Act. While calculating the interest, in the assessment order, the Assessing Officer, observed as

under:

"....Since the assessee has not filed return u/s 14(1), there is no processing u/s 16(1) or assessment made u/s 16(3), interest u/s 17B(1) comes into operation. According to explanation 1, the due date is due date u/s 14(1) and not the due date u/s 17. Hence, the assessee is liable to pay interest u/s 17B(1) from the due date u/s 14(1) to the date of filing of return u/s 17. Accordingly, interest u/s 17B(1) is recalculated...."

5. Aggrieved by levy of interest, under Section 17B(1) of the Act, in the order of assessment under Section 16(3) r/w Section 17 of the Act, dated 30.01.2015, the assessee preferred appeals before the Commissioner of Wealth Tax (Appeals)-18, Chennai – 600 034.

6. The Commissioner of Wealth Tax (Appeals)-18, Chennai – 600 034, relied on a decision, in the case of ***ITO Vs. Amar Chand Boarad in ITA No.425 (JODH) of 2009***, wherein, it was held that if any assessment is made for the first time under Section 147, then the assessee cannot be made liable to pay interest for the period during which it was not possible on the part of the assessee to file return, i.e.,

after one year from the end of the assessment year till issuance of notice under Section 148. Following the said decision, vide order dated 10.01.2017, the Commissioner of Wealth Tax (Appeals) -18, Chennai, allowed the appeals filed by the assessee and held as follows:

"As the facts of the instant case are identical with the case quoted above, respectfully following the Hon'ble Tribunal's decision, the AO is directed to modify the interest calculated accordingly. Hence this ground of appeal, for both the Ays 2007-08 and 2008-09, is allowed."

7. Aggrieved by the order of the Commissioner of Wealth Tax (Appeals)-18, the Revenue preferred appeals before the Income Tax Appellate Tribunal 'A' Bench, Chennai (in short "the Tribunal") in W.T.A.Nos.18 and 19 of 2017.

8. By placing reliance on the decision in the case of **Smt.M.T.Prabhavathy Vs. ACIT reported in 80 ITD 520 (Bang)** by a common order dated 16.08.2017, the Tribunal, reversed the order of the Commissioner of Wealth Tax (Appeals)-18, Chennai in respect of assessment years 2007-08 and 2008-09. The Tribunal observed that

merely because the due date for filing of the Wealth Tax Return expired and the assessee had not filed his return within the due date, it cannot be said that the assessee is exempt from the levy of interest u/s 17B of the Wealth Tax Act. In respect of the period between the due date under Section 14(1) of the Wealth Tax Act and the date of Notice u/s 17 of the Act, the Tribunal further held that, since the filing of wealth tax return is a mandatory duty of the assessee and the interest u/s 17B is admittedly compensatory in nature, the assessee was liable to pay the same. At paragraph Nos.7 to 11, the Tribunal has held as follows:

"7. We have considered the rival submissions. In respect of the AYS 2007-08 & 2008-09, the filing of the return of wealth is mandatory duty on the assessee once the net wealth exceeds the prescribed limit. Just because, the due date for filing of the Wealth Tax Returns expire and the assessee had not filed his return within the due date, it cannot be said that the assessee is exempted from the levy of interest u/s.17B in respect of the period between the due date and the date of the notice u/s.17. The levy of interest u/s.17B is admittedly compensatory in nature. In these

circumstances, respectfully following the decision of Co-ordinate Bench of this Tribunal in the case of Smt.M.R. Prabhavathy v. ACIT referred to supra, the order of the Ld.CIT(A) on this issue stands reversed and that of the AO restored. In these circumstances, appeals of the Revenue in WTA Nos.18 & 19/Mds/2017 stands allowed.

8. In respect of the AYs 2009-10, 2010-11 & 2011-12, it is noticed that the assessee has filed his return of income within the due date. The Revenue has not been able to dispute this fact. Even considering the submission of the Ld.DR that the return was not before the AO, the same would not stand, in so far as, that is not the ground raised by the Revenue. In these circumstances, respectfully following the decision of Co-ordinate Bench of this Tribunal in the case of Smt.M.R. Prabhavathy v. ACIT referred to supra, the order of the Ld.CIT(A) for the AYs 2009-10, 2010-11 & 2011-12 stands confirmed.

9. In the result, appeals of the Revenue in WTA Nos.20, 21 & 22 stands dismissed.

10. Cross-Objections filed by the assessee are in support of the order of the Ld.CIT(A). We have already reversed the order of the Ld.CIT(A) for the AYs 2007-08 & 2008-09 and confirmed the order of the Ld.CIT(A) for the AYs 2009-10, 2010-11 & 2011-12. In these circumstances, Cross Objections filed by the assessee are infructuous and consequently dismissed as infructuous.

11. In the result, WTA Nos.18 & 19/Mds/2017 stands allowed and WTA Nos.20 to 22/Mds/2017 stands dismissed and CO Nos.68 to 72/Mds/2017 stands dismissed as infructuous."

9. Aggrieved by the common order of the Tribunal dated 16.08.2017, the assessee has filed the instant tax case appeals before this Court with the following substantial questions of law:

"(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the interest for defaults in furnishing return of net wealth would commence from the

due date of filing of Wealth Tax return u/s.14(1) of the Wealth Tax Act, 1957, even in the case of a first time assessment u/s.17 of the Wealth Tax Act ?

(ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in confirming the levy of interest u/s.17B(1) of the Wealth Tax Act instead of Section 17B(3) in the case of a first time assessment u/s.17 of the Wealth Tax Act ?

(iii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in confirming the levy of interest u/s.17B(1) of the Wealth Tax Act from the due date u/s/14(1) of the Wealth Tax Act in the absence of statutory provision for filing of the Wealth Tax returns after the due date u/s.15 of the Act ?

10. Mr.M.P.Senthil Kumar, learned counsel for assessee, briefly submitted the facts of the case, drew the attention of this Court to the relevant provisions of the Act and assailed the order of the Tribunal,

inter alia, as follows:

(i) That the Tribunal failed to note that the assessment under Section 17 of the Act, being a first time assessment, the interest leviable on the assessee would commence from the date of issuance of the notice under Section 17 of the Act.

(ii) That the Tribunal ought to have upheld the order of the Commissioner of Wealth Tax (Appeals), who followed the decision of Income Tax Appellant Tribunal, Jodhpur in the case of **ITO vs Amarchand Board in ITA No.425 (Jodh) of 2009**, which followed the decision in the case of **Ms.Priti Pithawala vs. ITO (2003) 129 Taxman 79 (Mum) (Mag)**, while allowing the appeals of the assessee.

(iii) That the Tribunal erred in not holding that the assessee was liable to pay interest only as per Section 17B(3) of the Act.

(iv) That the Tribunal has erred in placing reliance upon the decision in the case of **Smt M.R.Prabhavathy vs. ACIT, 80 ITD 520 (Bang)**.

(v) That the Tribunal has failed to note that the assessee could not file his returns of income in the absence of statutory provision for filing of the same beyond the due date under Section 15 of the Act.

(vi) That the Tribunal has erred in confirming the levy of interest for the period between the due date under Section 14(1) of the Act and the date of notice under Section 17 of the Act when there is admittedly no statutory provision for the same.

(vii) That the Tribunal ought to have considered that the assessee could not be held liable for the non-performance of an act which is not specifically prescribed under the provisions of the Act, which is beyond his control and prayed for quashing the order of the Tribunal.

11. The learned counsel for the Revenue, justifying the order of Tribunal, inter alia, stated as follows:

(i) The Tribunal was right in holding that filing of return of wealth

is mandatory duty on the assessee once the net worth exceeds the prescribed limit.

(ii) The Tribunal was right in holding that just because, the due date for filing of the wealth tax returns expired and the assessee had not filed his return within the due date, it cannot be said that the assessee is exempted from the levy of interest u/s.17B in respect of the period between the due date and the date of notice u/s.17.

(iii) That the levy of interest u/s.17B was compensatory as held in **Smt.M.R.Prabhavathy Vs. ACIT**, reported in **80 ITD 520 (Bang.)**.

12. Learned counsel for the Revenue relied on a Hon'ble Division Bench decision of this Court in **Textile Dye-Chem Corporation Vs. Assistant Commissioner of Income Tax** reported in **(2013) 85 CCH 0096** and prayed for dismissal of the tax appeals.

13. Heard the learned counsel appearing for the parties and perused the materials available on record.

14. From the materials available on record, it can be seen that at the first instant, before the Assessing Officer, the assessee, calculated interest under Section 17B(3) for 3 months only for the delay i.e. from the due date u/s 17 i.e. 12.11.2013, to the date of filing of return of wealth i.e. 19.02.2014, for the assessment years 2007-08 and 2008-09 respectively and accordingly, paid interest to the tune of Rs.52,248/- and Rs.1,14,449/-, for assessment years 2007-08 and 2008-09 respectively. Before the Assessing Officer, the assessee contended that since notice u/s 17 has been issued in this case, only Section 17B(3), is applicable.

15. But the Assessing Officer rejected the claim made by the assessee. According to the Assessing Officer, Section 17B(3), is applicable in a case where the assessee had already furnished return of wealth u/s 14(1) and the return of wealth is processed u/s 16(1) or an assessment has been made u/s 16(3), but in this case, since the assessee has not filed return u/s 14(1), there was no case u/s 16(1) or assessment made u/s 16(3) and therefore, Section 17B(1) comes into operation. Further, according to Explanation 1 to Section 17B(1), the

due date is due date u/s 14(1) and not the due date u/s 17. Hence, as per the said provision, the assessee, is liable to pay interest u/s 17B(1) from the due date u/s 14(1) to the date of filing of return u/s 17.

16. Accordingly, for the assessment year 2007-08, the Assessing Officer, calculated interest u/s 17B(1), which works out to 77 months (i.e. from 01.10.2007 to 19.02.2014) and the amount of interest payable at Rs.6,70,550/-. Likewise, for the assessment year 2008-09, the Assessing Officer, calculated interest u/s 17B(1), which works out to 65 months (i.e. from 01.10.2008 to 19.02.2014) and the amount of interest payable at Rs.12,39,879/-.

17. On an appeal filed by the assessee, following the decisions made under the Income Tax Act in ***ITO Vs. Amar Chand Boarad*** in ***IT Appeal No.425 (Jodh.) of 2009*** and ***Ms.Priti Pithawala Vs. ITO*** reported in ***2003 129 Taxman 79 (Mum.) (Mag.)*** the Commissioner of Wealth Tax (Appeals), allowed the appeal and held that if any assessment is made for the first time under Section 147 of the Income Tax Act, then the assessee cannot be made liable to pay interest for the period during which it was not possible on the part of

the assessee to file return, i.e. after one year from the end of the assessment year till issuance of notice under Section 148 of the Income Tax Act and directed the Assessing Officer to recalculate interest.

18. Before the Tribunal, the contention of the Revenue was that the provision for levy of interest u/s 17B(1) of the Act provided vide Explanations to the said Section are very clear that, in case the assessment is being made for the first time, then, such assessment, has to be treated, as a regular assessment and thus, the interest has to be levied from the due date u/s 14(1) of the Act and not from the date of issue of notice u/s 17 of the Act.

19. Following the decision in ***Smt.M.R.Prabhavathy Vs. ACIT*** reported in ***80 ITD 520 (Bang)*** the Tribunal held that in respect of the assessment years 2007-08 & 2008-09, the filing of the return of wealth is a mandatory duty on the assessee once the net wealth exceeds the prescribed limit. Just because, the due date for filing of the Wealth Tax Returns expired and the assessee had not filed his return within the due date, it cannot be said that the assessee is

exempted from the levy of interest u/s.17B in respect of the period between the due date and the date of the notice u/s.17. Further stating that the levy of interest u/s.17B is compensatory in nature, the Tribunal reversed the order of the Commissioner of Wealth Tax (Appeals) levying interest u/s 17B(3) and restored the order of the Assessing Officer levying interest u/s 17B(1) of the Act.

20. In nut shell, the contention of the assessee is that interest should be calculated under Section 17B(3). But, according to the Assessing Officer, on the facts and circumstances of the case, interest has to be calculated under Section 17B(1). In the appeal filed by the assessee, the Commissioner of Wealth Tax (Appeals) held that assessee is liable to pay interest under Section 17B(3) and allowed the appeal. On further appeal by the Revenue, the Tribunal, allowed the appeal filed by the Revenue and reversed the order of the Commissioner of Wealth Tax (Appeals) and upheld the interest calculated by the Assessing Officer under Section 17B(1).

21. Therefore, contending inter alia that the assessee is liable to pay interest under Section 17B(3), as against the contention of the

Revenue that the assessee is liable to pay interest under Section 17B(1) of the Act, instant tax appeals are filed.

22. The core issue, before us, for consideration, is as to whether the assessee, is liable to pay interest for default in furnishing returns of net wealth, under Section 17B(1) or 17B(3) of the Act ?

23. Before we proceed further, the following Sections which requires for the purpose of disposing of the instant tax appeals viz., **Section 2(m)** "Net Wealth"; **Section 2(ob)** "regular assessment"; **Section 2(q)** "Valuation date"; **Section 14** "Return of Wealth"; **Section 15** "Return after due date and amendment of return"; **Section 16** "Assessment"; **Section 17** "Wealth escaping assessment"; **Section 17B** "Interest for defaults in furnishing return of net wealth", of the Wealth Tax Act, 1957, are extracted hereunder:

*" **2(m)** "net wealth" means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on*

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.

2(ob) "regular assessment" means the assessment made under sub-section (3) or sub-section (5) of section 16.

2(q) "valuation date", in relation to any year for which an assessment is to be made under this Act, means the last day of the previous year as defined in section 3 of the Income-tax Act if an assessment were to be made under that Act for that year: Provided that?

[***]

(ii) in the case of a person who is not an assessee within the meaning of the Income-tax Act, the valuation date for the purposes of this Act shall be the 31st day of March immediately preceding the assessment year;

(iii) where an assessment is made in pursuance of section 19A, the valuation date shall be the same valuation date as would have been adopted in respect of the net wealth of the

deceased if he were alive;

"14. Return of Wealth.

(1) Every person, if his net wealth or the net wealth of any other person in respect of which he is assessable under this Act on the valuation date exceeded the maximum amount which is not chargeable to wealth-tax, shall, on or before the due date, furnish a return of his net wealth or the net wealth of such other person as on that valuation date in the prescribed form and verified in the prescribed manner setting forth particulars of such net wealth and such other particulars as may be prescribed.

Explanation. In this sub-section, "due date" in relation to an assessee under this Act shall be the same date as that applicable to an assessee under the Income-tax Act under the Explanation to sub-section (1) of section 139 of the Income-tax Act.

(2) Notwithstanding anything contained in

any other provision of this Act, a return of net wealth which shows the net wealth below the maximum amount which is not chargeable to tax shall be deemed never to have been furnished: Provided that this sub-section shall not apply to a return furnished in response to a notice under section 17.

15. Return after due date and amendment of return.

If any person has not furnished a return within the time allowed under sub-section (1) of section 14 or under a notice issued under clause (i) of sub-section (4) of section 16, or having furnished a return discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier: Provided that?

(a) where such return or revised return relates to the assessment year commencing on the 1st day of April, 1987, or any earlier assessment year, it may be furnished at any

time upto and inclusive of the 31st day of March, 1990, or before the completion of the assesment, whichever is earlier;

(b) where such return or revised return relates to the assessment year commencing on the 1st day of April, 1988, it may be furnished at any time upto and inclusive of the 31st day of March, 1991, or before the completion of the assesment, whichever is earlier.

16. Assessment.

(1) *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),*

(i) if any tax or interest is found due on the basis of such return, after adjustment of any amount paid by way of tax or interest, then, without prejudice to the provisions of sub-section (2), an intimation shall be sent to the assessee specifying the sum so payable and such intimation shall be deemed to be a notice of demand issued under section 30 and all the provisions of this Act shall apply accordingly; and

(ii) if any refund is due on the basis of such return, it shall be granted to the assessee and an intimation to this effect shall be sent to the assessee:

Provided that except as otherwise provided in this sub-section, the acknowledgement of the return shall be deemed to be intimation under this sub-section where either no sum is payable by the assessee or no refund is due to him:

Provided further that no intimation under this sub-section shall be sent after the expiry of two years from the end of the assessment year in which the net wealth was first assessable.

(2) 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 under-paid 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 sub-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.

(3) *On the day specified in the notice issued under sub-section (2) or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by order in writing, assess the net wealth of the assessee and determine the sum payable by him on the basis of such assessment.*

(4) *For the purposes of making an assessment under this Act, the Assessing Officer may serve, on any person who has made a return under section 14 or section 15 or in whose case the time allowed under sub-section (1) of section 14 for furnishing the return has expired, a notice requiring him, on a date to be specified therein,*

(i) where such person has not made a return within the time allowed under sub-section (1) of section 14 to furnish a return of his net wealth or the net wealth of any other person in respect of which he is assessable under this Act on the valuation date, in the prescribed form and verified in the prescribed manner, setting forth the particulars of such net wealth and such other particulars as may be prescribed, or

(ii) to produce or cause to be produced such accounts, records or other documents as the Assessing Officer may require.

(5) 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: Provided further that it shall not be necessary to give such opportunity in a case where a notice under sub-section (4) has been issued prior to the making of the assessment under this sub-section.

(6) Where a regular assessment under sub-section (3) or sub-section (5) is made?

(a) any tax or interest paid by the assessee under sub-section (1) shall be deemed to have been paid towards such regular assessment.

(b) if no refund is due on regular assessment or the amount refunded under sub-section (1) exceeds the amount refundable on regular assessment, the whole or the excess amount so refunded shall be deemed to be tax payable by the assessee and the provisions of this Act shall apply accordingly.

17. Wealth escaping assessment.

(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, 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 14 or section 15 or in response to a notice issued under sub-section (4) of section 16 or this section or to disclose fully and truly all material facts necessary for his assessment for that assessment year:

Provided further that the Assessing Officer shall, before issuing any notice under this sub-section, record his reasons for doing so:

Provided also that the Assessing Officer may assess or reassess such net wealth, other than the net wealth which is the subject matter of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.

Explanation: Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

(1A) No notice under sub-section (1) shall be issued for the relevant assessment year,

(a) if four years have elapsed from the end of the relevant assessment year unless the case falls under clause (b);

(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the net wealth chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees ten lakh or more for that year.

Explanation. For the purposes of sub-section (1) and sub-section (1A), the following shall also be deemed to be cases where net wealth chargeable to tax has escaped assessment, namely:

(a) where no return of net wealth has been furnished by the assessee although his net wealth or the net wealth of any other person in respect of which he is assessable under this Act on the valuation date exceeded the maximum amount which is not chargeable to wealth-tax;

(b) where a return of net wealth has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the net wealth or has claimed excessive exemption or deduction in the return.

(1B)(a) In a case where an assessment under sub-section (3) of section 16 or sub-section (1) of this section has been made for the relevant assessment year, no notice shall be issued under sub-section (1) by an Assessing Officer, who is below the rank of Assistant Commissioner or Deputy Commissioner, unless the Joint Commissioner is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for the issue of such notice:

Provided that after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the Chief

Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid, that it is a fit case for the issue of such notice.

(b) In a case other than a case falling under clause (a), no notice shall be issued under sub-section (1) by an Assessing Officer, who is below the rank of Joint Commissioner, after the expiry of four years from the end of the relevant assessment year, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.

(2) Nothing contained in this section limiting the time within which any proceeding for assessment or reassessment may be commenced, shall apply to an assessment or reassessment to be made on such person in consequence of or to give effect to any finding or direction contained in an order under section 23, 24, 25, 27 or 29 or by a court in any proceedings under any other law:

Provided that the provisions of this sub-section shall not apply in any case where any such assessment or reassessment relates to an

assessment year in respect of which an assessment or reassessment could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any provision limiting the time within which any action for assessment or reassessment may be taken.

17A Time-limit for completion of assessment and reassessment.....

17B Interest for defaults in furnishing return of net wealth.

(1) Where the return of net wealth for any assessment year under sub-section (1) of section 14 or section 15, or in response to a notice under clause (i) of sub-section (4) of section 16, is furnished after the due date, or is not furnished, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period commencing on the date immediately following the due date, and,

(a) where the return is furnished after the due date, ending on the date of furnishing of the return, or

(b) where no return has been furnished, ending on the date of completion of the assessment under sub-section (5) of section 16, on the amount of tax payable on the net wealth as determined under sub-section (1) of section 16 or on regular assessment.

Explanation 1. In this section, "due date" means the date specified in sub-section (1) of section 14 as applicable in the case of the assessee.

Explanation 2. In this sub-section, "tax payable on the net wealth as determined under sub-section (1) of section 16" shall not include the additional wealth-tax, if any, payable under section 16.

Explanation 3. Where, in relation to an assessment year, an assessment is made for the first time under section 17, the assessment so made shall be regarded as a

regular assessment for the purposes of this section.

Explanation 4. In this sub-section, "tax payable on the net wealth as determined under sub-section (1) of section 16 or on regular assessment" shall, for the purposes of computing the interest payable under section 15B, be deemed to be tax payable on the net wealth as declared in the return.

(2) The interest payable under sub-section (1) shall be reduced by the interest, if any, paid under section 15B towards the interest chargeable under this section.

(3) Where the return of net wealth for any assessment year, required by a notice under sub-section (1) of section 17 issued after the determination of net wealth under sub-section (1) of section 16 or after the completion of an assessment under sub-section (3) or sub-section (5) of section 16 or section 17 is furnished after the expiry of the time allowed under such notice, or is not furnished, the assessee shall be liable to pay simple interest at the

rate of one per cent. for every month or part of a month comprised in the period commencing on the day immediately following the expiry of the time allowed as aforesaid, and,

(a) where the return is furnished after the expiry of the time aforesaid, ending on the date of furnishing the return; or

(b) where no return has been furnished, ending on the date of completion of the reassessment under section 17, on the amount by which the tax on the net wealth determined on the basis of such reassessment exceeds the tax on the net wealth as determined under sub-section (1) of section 16 or on the basis of the earlier assessment aforesaid.

(4) Where, as a result of an order under section 23 or section 24 or section 25 or section 27 or section 29 or section 35 or any order of the Wealth-tax Settlement Commissioner under sub-section (4) of section 22D, the amount of tax on which interest was payable under this section has been increased or reduced, as the

case may be, the interest shall be increased or reduced accordingly, and,

(i) in a case where the interest is increased, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be a notice under section 30 and the provisions of this Act shall apply accordingly, and

(ii) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded.

(5) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989 and subsequent assessment years.”
(emphasis added)

24. A perusal of the above provisions of the Wealth Tax Act, shows that interest under Section 17B is attracted in a case where the return of net wealth is furnished after the due date or where no such return is filed before the completion of the assessment.

25. In the case on hand, the assessee has filed the return of net wealth on 19.02.2014, as against the due date of 01.10.2007, for the assessment year 2007-08 and for the assessment year 2008-09 return of net wealth has been filed on 19.02.2014, as against the due date of 01.10.2008. Thus, apparently, there is a delay in filing the return.

26. Since these assessments were made for the first time, they are "regular assessment" made under the Act. Therefore, we have to proceed that a regular assessment has been completed under the Act and all natural consequences of such assessment will have to follow under the different sections of the Act. No doubt, assessment implies not only the determination of net wealth liable to be taxed under the Act, but also the wealth-tax payable by the assessee on the net wealth assessed including liability to interest under Section 17B, if chargeable.

27. The intention of the Legislature in enacting the provisions of Section 17B is clear. It is to levy interest which is compensatory in nature for withholding the revenue due to the Government on account of delay in filing the return of net wealth.

28. In the present case, such a delay has occurred on the part of the assessee in not filing the return of net wealth for the assessment years 2007-08 and 2008-09 on or before the due date, i.e., 01.10.2007 and 01.10.2008 respectively. The assessee chose to do so only on 19.02.2014. The return disclosed substantial net wealth assessable to tax. There is a delay in the filing of the return of net wealth during the period between the aforesaid dates. Hence, interest is clearly chargeable under Section 17B. In these circumstances, we conclude that the Assessing Officer has rightly levied interest under Section 17B which is mandatory under the provisions of the Act.

29. Since Section 17B is attracted, on the facts and circumstances of the case, now we have to analyse whether the interest has to be levied under sub-section (1) or sub-section (3) of Section 17B of the Act.

30. Sub-section (3) of Section 17B is attracted only in a case where assessment has been done originally and return is filed subsequently, in pursuance to notice under Section 17 of the Act.

Therefore, we have no doubt that sub-section (3) of Section 17B does not apply to the facts of the case as in the present cases assessments have been done for the first time, and, therefore, now we have to see the applicability of Sub-section (1) of Section 17B which envisages the following situations :

- (a) Return is furnished after the due date under Sub-section (1) of Section 14;*
- (b) Return is furnished after the due date under Section 15;*
- (c) Return is furnished after the due date in response to notice under Section 16(4)(i);*
- (d) Where no return is filed before completion of assessment.*

(i) Section 14(1) deals with voluntary filing of the return on the part of the assessee, for which a due date has been prescribed.

(ii) Section 15 deals with a case where the assessee wants to file a return where he has not furnished a return under Section 14(1) or 16(4) or where he wants to file a revised return when the earlier return is found to have any omission or mistake.

(iii) Section 16(4)(i) comes into play when the Assessing Officer calls upon the person to file a return of wealth when there is an omission to file the return under Section 14(1).

(iv) Section 17 deals with a case of reopening of assessment in case of escapement of net wealth for assessment or a fresh assessment for an assessment year for which the normal time for assessment has elapsed.

(v) Section 17 inter alia provides that the provisions of the Wealth Tax Act, 1957 shall, so far as may be, apply as if the return filed under the section were a return required to be furnished under Section 14.

(vi) **Explanation 3 under Section 17B(1)** makes it very clear that where in relation to an assessment year an assessment is made for the first time under Section 17, **the assessment so made shall be regarded as a regular assessment for the purpose of this section.**

31. Learned counsel for Revenue brought to our notice a Hon'ble Division Bench decision of this Court in ***Textile Dye-Chem Corporation Vs. Assistant Commissioner of Income Tax*** reported in **(2013) 85 CCH 0096**. The issue in the said case was:

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that interest under Section 234B (Interest for defaults in payment of advance tax) is chargeable under Section 234B(1) and Section 234B(3) has no application?"

The Hon'ble Division Bench at paragraph 4 to 6 held as follows:

"4. We do not agree with the submission of the assessee herein on the admitted fact that the assessment made on the assessee is a regular assessment made for the first time under Section 147 read with Section 143(3) of the Income Tax Act.

5. Given the fact that the assessment is a regular assessment, rightly, the Assessing Officer levied interest under Section 234B(1), as

confirmed by the Tribunal. For the sake of convenience, we extract the relevant portion from Section 234B(1) Explanation (2) and Section 234B(3) of the Income Tax Act:

"234-B. Interest for defaults in payment of advance tax:

(1) Subject to the other provisions of this section, where, in any financial year, an assessee who is liable to pay advance tax under Section 208 has failed to pay such tax or, where the advance tax paid by such assessee under the provisions of Section 210 is less than ninety per cent of the assessed tax, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period from the 1st day of April next following such financial year to the date of determination of total income under sub-section (1) of Section 143 and where a regular assessment is made, to the date of

such regular assessment, on an amount equal to the assessed tax or, as the case may be, on the amount by which the advance tax paid as aforesaid falls short of the assessed tax.

Explanation 1.

Explanation 2. Where, in relation to an assessment year, an assessment is made for the first time under Section 147 or Section 153-A, the assessment so made shall be regarded as a regular assessment for the purposes of this section.

Explanation 3....

(2)

(3) Where, as a result of an order of reassessment or recomputation under Section 147 or Section 153-A, the amount on which interest was payable under sub-section (1) is increased, the assessee shall be liable to pay simple interest at the rate of one per cent for every

month or part of a month comprised in the period commencing on the day following the date of determination of total income under sub-section (1) of Section 143 and where a regular assessment is made as is referred to in sub-section (1) following the date of such regular assessment and ending on the date of the reassessment or recomputation under Section 147 or Section 153-A, on the amount by which the tax on the total income determined on the basis of the reassessment or recomputation exceeds the tax on the total income determined under sub-section (1) of Section 143 or on the basis of the regular assessment aforesaid.

(4)

(5)"

6. Going by the clear wording of the Section and the admitted fact position that the assessment is a regular assessment and not a reassessment, we have no hesitation in confirming the order of the Tribunal, thereby

dismissing the Tax Case Appeal. In the result, the Tax Case Appeal stands dismissed. No costs."

Thus, under the Income Tax Act, interest has to be levied as per the provision of Section 234B(1) of the Income Tax Act and not as per the provisions of Section 234B(3) of the Income Tax Act, in view of the explanation to Section 234B of the Income Tax Act, which are equally applicable, to the case on hand, under the Wealth Tax Act also.

32. Therefore, considering the facts and circumstances of the present case, we are of the considered view that the assessment made for the assessment years 2007-08 and 2008-09 is made for the first time under Section 17, the same is a regular assessment and therefore attracts Section 17B(1) of the Act and not otherwise. Hence the Assessee is liable to pay interest u/s 17B(1) from the due date u/s 14(1) to the date of filing of the return u/s 17. In view of the above, we reject the argument advanced by the learned counsel for the assessee that the assessee could not be asked to do the impossible, as the due date for filing of the wealth tax returns expired and the assessee had not filed his return within the due date and there was no

provision for the assessee to file his returns beyond the due date and the assessee had to await the issuance of notice u/s17 of the Act and therefore the assessee must be exempted from the levy of interest u/s 17B in respect of the period between the due date and the date of the notice u/s 17 of the Act.

33. In the light of the above discussion and decisions, we do not find any question of law much less a substantial question of law warranting interference by this Court, the Tax Case Appeals fail and they are accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

[S.M.K., J.] [V.B.S., J.]
20.02.2018

Index: Yes
Internet: Yes
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To

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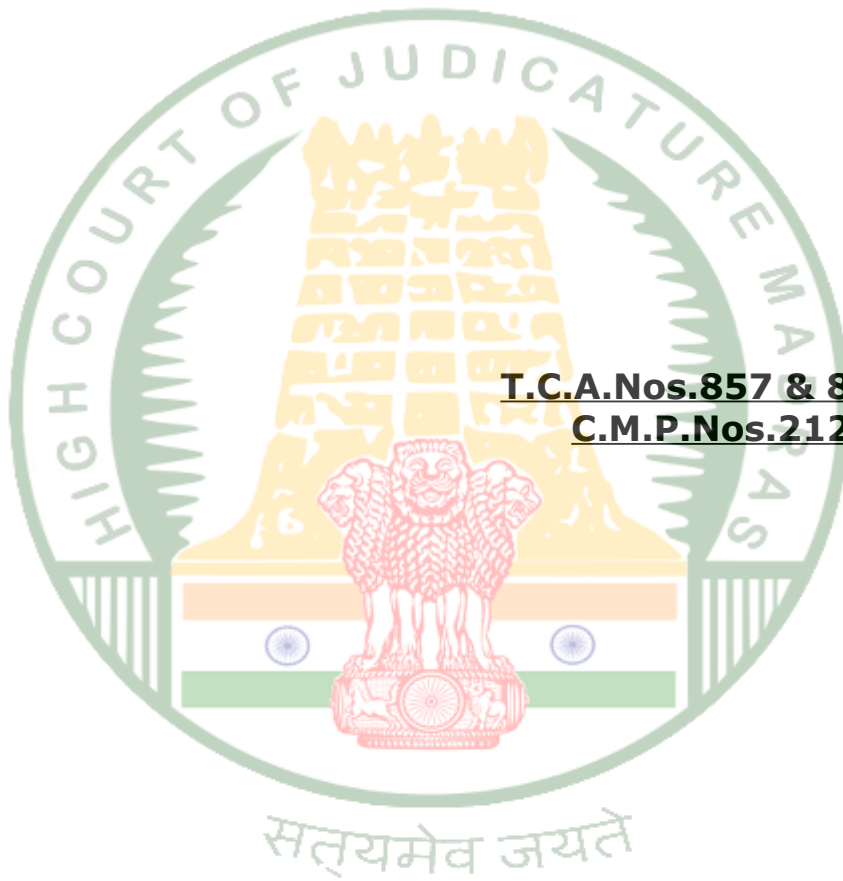
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S.MANIKUMAR, J.

AND

V.BHAVANI SUBBAROYAN, J.

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T.C.A.Nos.857 & 858 of 2017

C.M.P.Nos.21291 of 2017

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