

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'A', NEW DELHI**

**BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER**

ITA No. 2755/Del/1993

AY: 1985-86

ACIT, Investigation Circle – 8(1) New Delhi	vs.	Sh. S.S.Ahluwalia F-5, South Extension Part II, New Delhi
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ITA No. 2866/Del/1993

AY: 1985-86

Sh. S.S.Ahluwalia F-5, South Extension Part II, New Delhi	vs.	ACIT, Investigation Circle – 8(1) New Delhi
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ITA No. 2756/Del/1993

AY: 1986-87

ACIT, Investigation Circle – 8(1) New Delhi	vs.	Sh. S.S.Ahluwalia F-5, South Extension Part II, New Delhi
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ITA No. 2867/Del/1993

AY: 1986-87

Sh. S.S.Ahluwalia F-5, South Extension Part II, New Delhi	vs.	ACIT, Investigation Circle – 8(1) New Delhi
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ITA No. 2757/Del/1993

AY: 1987-88

ACIT, Investigation Circle – 8(1) New Delhi	vs.	Sh. S.S.Ahluwalia F-5, South Extension Part II, New Delhi
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ITA No. 2868/Del/1993

AY: 1987-88

Sh. S.S.Ahluwalia F-5, South Extension Part II, New Delhi	vs.	ACIT, Investigation Circle – 8(1) New Delhi
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ITA No. 2735/Del/2003

AY: 1985-86

ITA No. 2736/Del/2003

AY: 1986-87

ITA No. 2737/Del/2003

AY: 1987-88

I.T.O. Ward 48(4) New Delhi	vs.	Sh. S.S.Ahluwalia F-5, South Extension Part II, New Delhi
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ITA No. 2634/Del/1997

AY: 1985-86

ITA No. 2635/Del/1997

AY: 1986-87

ITA No. 2636/Del/1997

AY: 1987-88

Sh. S.S.Ahluwalia F-5, South Extension Part II New Delhi	vs.	ACIT, Circle – 15(2) New Delhi
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WTA No. 74/Del/2005

AY: 1987-88

Wealth Tax Officer Ward 47(3) New Delhi	vs.	Sh. S.S.Ahluwalia F-5, South Extension Part II, New Delhi
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WTA No. 82/Del/2005

AY: 1987-88

Sh. S.S.Ahluwalia F-5, South Extension Part II, New Delhi	vs.	Wealth Tax Officer Ward 48(4) New Delhi
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WTA No. 75/Del/2005
AY: 1988-89

Wealth Tax Officer Ward 47(3) New Delhi	vs.	Sh. S.S.Ahluwalia F-5, South Extension Part II, New Delhi
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WTA No. 83/Del/2005
AY: 1988-89

Sh. S.S.Ahluwalia F-5, South Extension Part II, New Delhi	vs.	Wealth Tax Officer Ward 48(4) New Delhi
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WTA No. 80/Del/2005
AY: 1985-86

WTA No. 81/Del/2005
AY: 1986-87

Sh. S.S.Ahluwalia F-5, South Extension Part II, New Delhi	vs.	Wealth Tax Officer Ward 48(4) New Delhi
(Appellant)		(Respondent)

Assessee by : Sh. K.Sampath, Adv.

Department by : Smt. Aastha Lakshmi, Sr.D.R.

Date of Hearing : 07/03/2019

Date of Pronouncement: 13/03/2019

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

Present Cross Appeals have been filed by assessee as well as revenue against order passed by Ld.CIT(A) in Income Tax as well as Wealth Tax Orders, for assessment years 1985-86 to 1988-89.

2. Ld.Counsel submitted that all subject appeals pertain to the period when Ld.CIT(A) possessed powers to set aside appeal to the

file of Ld.AO. He submitted that there are multiple orders of Ld.CIT(A) for same assessment year due to remand by Ld.CIT(A) against which parties came into appeal before this Tribunal as well as Ld.AO simultaneously passed order giving effect to direction of Ld.CIT(A).

2.1. Ld.Counsel submitted that revenue's grievance was regarding finding of Ld.CIT(A) that jurisdiction under section 148 of Income Tax Act, 1961 as well as section 16 of Wealth Tax Act, 1957 has not been validly assumed by Ld.AO. Whereas assessee's grievance was that, once Ld.CIT (A) was convinced that jurisdiction was not validly assumed by Ld.A.O., he should have quashed the assessment.

2.2. Ld.Counsel submitted that in this manner several appeals relating to same issues under Income Tax as well as Wealth Tax for various years were filed which got consolidated subsequently. He submitted that this Tribunal vide its order dated 19/03/02 quashed notices under section 148 of Income Tax Act and vide order dated 08/02/06, quashed notice under section 16 of Wealth Tax Act.

2.3. It has been submitted that aggrieved by these orders of Tribunal, revenue preferred appeal before *Hon'ble Delhi High Court*. *Hon'ble High Court* held that jurisdiction was validly assumed by Ld. AO in entire set of appeals filed (Income Tax appeals and Wealth Tax appeals) and issued directions of remand to this Tribunal as under:

“ 52. In view of the aforesaid discussion, we answer the substantial questions of law relating to the first round, i.e., **ITA Nos. 256/02, 257/02 and 255/02** holding:-

(i) There was failure on the part of the Assessing Officer, Delhi and ITO, Dimapur in not following the procedure prescribed under [Section 124](#) of the Act, but this would not make the assessment in the first round a nullity. The assessment order passed should have been set aside as was directed by CIT(Appeals) and assessments remitted for a fresh decision. Question of law is accordingly answered in favour of the Revenue and against the respondent-assessee but in the aforesaid terms.

(ii) **ITA Nos. 314/02, 315/02 and 316/02** which relate to the second round, the substantial question of law is answered in favour of the Revenue and against the respondent-assessee. The tribunal clearly erred in not noticing that in the second round assessment order were passed by ITO, Dimapur and consequent to the order under [Section 127](#), the first appeal was decided by CIT(Appeals) at Delhi. In view of the decision in ITA Nos. 256/02, 257/02 and 255/02 relating to the first round, the order of the tribunal dated 13.05.2002 cannot be sustained.

(iii) In view of the answers to the substantial questions of law mentioned above relating to the first and the second round, the substantial question of law in the fourth round i.e. **ITA Nos. 1577/2006, 1578/2006 and 1580/2006** has to be answered in favour of the Revenue and against the respondent-assessee but subject to the observations made above.

53. In light of the aforesaid discussions, **ITA Nos. 314/02, 315/02, 316/02, 1577/06, 1578/06 and 1580/06** relating to the second and the fourth round are remitted to the tribunal for fresh decision on merits on the additions made by the Assessing Officer. Paper books relating to the first round subject matter of **ITA Nos. 256/02,**

257/02 and 255/02 will be also made available and placed before the tribunal. To cut short delay, parties are directed to appear before the tribunal on 15th April, 2014, when a date of hearing will be fixed.

WTAs 13/2006, 14/2006, 15/2006, 16/2006 & 18/2006

54. At the outset, we notice that two appeals being **WTA Nos. 15/2006 and 16/2006** have been filed in respect of assessment year 1986-87. The reason, it appears, is that there were two cross appeals before the tribunal for the said assessment year.

55. By order dated 20th February, 2007, the following substantial question of law has been framed in the Wealth Tax Appeals:

—Whether the Income Tax Appellate Tribunal was correct in law in holding that the Wealth Tax Officer has no jurisdiction to pass the assessment order in the case of Assessee and thereby quash the assessment framed?

56. For the purpose of record, we observe that the tribunal had passed a common order dated 8th February, 2006 in respect of four assessment years and has held that the Wealth Tax Officer had no jurisdiction to pass the assessment orders under the [Wealth Tax Act, 1957](#) (WT Act, for short) in view of the orders passed by the Income Tax Appellate Tribunal under the Act i.e. [Income Tax Act, 1961](#) in different income tax appeals relating to assessment years 1985-86, 1986-87, 1987-88 and 1988-89 vide orders dated 13th May, 2002 and 9th August, 2002. The tribunal in the impugned order has not discussed factual matrix or details relating to wealth tax proceedings. Section 11 of the WT Act before its amendment by the Direct Tax Laws (Amendment) Act, 1987 before 31st March, 1988 stipulated that the authorities shall perform their functions in accordance with such orders as the Commissioner may make for allocation of work to be performed. With effect from 1st April, 1988, Section 11(1) of the WT Act stipulated that the provisions of [Section 124](#) and [127](#) of the

Act i.e. the *Income Tax Act* so far as it may be, shall apply subject to modifications in sub-section (2). (The said sub section is not relevant for the present decision).

57. We may now refer to the factual matrix as is apparent from the assessment orders and appellate orders relating to assessment years 1985-86 to 1988-89.

WTA 13/2006 (A.Y. 1985-86) -Valuation dated 31st March, 1985 (1)
A notice under Section 17 of the WT Act was issued and return of wealth tax declaring wealth of Rs.1,14,900/- dated 18th October, 1994 was filed by the respondent assessee. By assessment order dated 17th March, 1997, the net wealth was assessed at 67,80,000/-.

(2) The respondent assessee did not object to the jurisdiction of the Assessing Officer in Delhi and the address as disclosed in the wealth tax assessment order was F-5, N.D.S.E. Part II, New Delhi.

(3) The respondent assessee filed an appeal but did not question the jurisdiction of the Assessing Officer. Commissioner (Appeals) by order dated 27th January, 1999 passed an order of remand on the ground that question of ownership of 18 flats assessed as wealth of the assessee was to be examined and was a subject matter of the income tax proceedings. These flats as per the assessee belonged to assessee's relatives. Assessment order was accordingly set aside for de novo assessment in accordance law with the direction that the question of ownership of the assets could be examined and established more appropriately in the income tax proceedings. The assessee did not prefer any appeal against the order of the Commissioner (Appeals) and as noticed above, the question of jurisdiction of the Assessing Officer was not challenged.

(4) The Assessing Officer thereupon passed order dated 23rd March, 2001 and taxable wealth was assessed at Rs.23,48,670/-.

(5) Commissioner (Appeals) substantially upheld the additions made by the Assessing Officer including additions made on account of 18 commercial flats and he also upheld the issue of notice under Section 17 of the WT Act. He also upheld addition of Rs.18,54,000/- as unexplained deposits and Rs.5,00,000/- and Rs.60,450/- on account of FDRs etc. He directed that income tax and wealth tax liabilities should, however, be allowed as deduction. It is noticeable that the question of territorial jurisdiction of the Assessing Officer was not challenged before the Commissioner (Appeals).

WTA 15/2006 (A.Y. 1986-87)

1) In this year notice under [Section 17](#) was issued and return of net wealth of Rs.1,06,900/- was filed on 18th October, 1993 with the address F-5 N.D.S.E. Part II, New Delhi. Respondent did not object to jurisdiction of the Assessing Officer. By assessment order dated 17th March, 1997, net taxable wealth tax was assessed at Rs.1,24,91,000/-.

2) Commissioner (Appeals) vide order dated 27th January, 1999 set aside the said assessment with direction for de novo assessment on the basis of income tax proceedings as in the last year. Respondent assessee did not challenge jurisdiction of the Assessing Officer before the Commissioner (Appeals).

3) By de novo assessment order dated 23rd March, 2001, assessment was again framed at taxable wealth of Rs.1,19,91,400/- . Commissioner (Appeals) substantially upheld the said additions including additions made on account of 18 flats but held that that income tax and wealth tax liability should be allowed as per [Wealth Tax Act](#). The assessee did not challenge and question jurisdiction of the Assessing Officer before the Commissioner (Appeals).

WTAs 16/2006 and 18/2005 (Assessment year 1987-88)

1) Return of income was filed after issue notice under [Section 17](#) on 18th October, 1993 declaring net wealth of Rs.1,19,900/-. The assessee did not challenge jurisdiction of the Assessing Officer. By assessment order dated 17th March, 1997, assessment made at taxable wealth of Rs. 99,49,000/-.

2) The assessment was set aside with direction for de novo assessment for reasons and as in the assessment year 1985-86 and 1986-87. The assessee did not challenge the jurisdiction of the Assessing Officer at Delhi.

3) De novo fresh assessment order dated 23rd March, 2001 was passed computing the taxable wealth of Rs.99,49,000/-.

4) Commissioner (Appeals) by order dated 31st March, 2005 upheld the validity of [Section 17](#) notice and substantially upheld the additions. However, he granted exemption/relief in respect of value of trees on agricultural land which were held to be exempt. He further directed that liabilities on account of wealth tax and income tax should be allowed as per laws. The assessee did not challenge and question the jurisdiction of Assessing Officer at Delhi.

WTA 14/2006(A.Y. 1988-89)

1) Notice under Section 17 of the WT Act was issued and return of wealth declaring wealth of Rs.1,38,400/- was filed on 18th October, 1993. By assessment order dated 17th March, 1997, assessment was framed at a taxable wealth of Rs.53,34,100/-. The assessee did not question jurisdiction of the Assessing Officer in Delhi in the assessment proceedings.

2) Commissioner (Appeals) set aside the assessment order as done in earlier orders vide order dated 27th January, 1999. Question of jurisdiction was not raised before the Commissioner (Appeals).

3) The assessment was again framed by de novo assessment order dated 23rd March, 2001 at taxable wealth of Rs.53,34,100/-.

4) On appeal, Commissioner (Appeals) vide order dated 31st March, 2005 upheld the validity of notice under [Section 17](#) and several additions made by the Assessing Officer. However, relief was granted in respect of value of construction of structure and eucalyptus trees on the agricultural land, income tax and wealth tax liabilities. Some other reliefs were also granted.

58. In light of the aforesaid discussion and the position of law, the substantial question of law raised in the present wealth tax appeals are answered in favour of the appellant-Revenue and against the respondent-assessee. It is apparent that the respondent assessee did not challenge and object to the jurisdiction of the Assessing Officer at any stage. Reference to the Commissioner/Commissioners was not required as per the [Section 124](#) of the Act. There was waiver and respondent/assessee had accepted jurisdiction of the AO, Delhi. Tribunal could not have, therefore, held to the contrary. The tribunal will now decide the appeals of the assessee/Revenue pending before them on merits and not on the question of jurisdiction of the Assessing Officer. To cut short delay, parties are directed to appear before the tribunal on 15th April, 2014, when a date of hearing will be fixed."

3. Ld.Sr.DR submitted that the issue has not been decided by Ld. CIT (A) on merits.

4. We have perused submissions of both sides in light of records placed before us.

4.1. For sake of convenience, we shall list appeals before this Tribunal corresponding to appeals filed by revenue before Hon'ble High Court as under:

Income Tax Appeals

S. No.	Asst Yr	ITA before Tribunal	ITA before Hon'ble High Court
1.	1985-86	2634/Del/97	314/02
2.	1985-86	2735/Del/03	1578/06
3.	1985-86	2755/Del/93 and 2866/Del/93	256/02
4.	1986-87	2736/Del/03	1579/06
5.	1986-87	2756/Del/93 and 2867/Del/93	257/02
6.	1986-87	2635/Del/97	315/02
7.	1987-88	2636/Del/97	316/02
8.	1987-88	2737/Del/03	1580/06
9.	1987-88	2757/Del/03 and 2868/Del/93	255/02

Wealth Tax Appeals against Order of Ld.CWT(A)

S. No	Asst Yr	WTA before Tribunal	WTA before Hon'ble High Court
1.	1985-86	80/Del/2005	13/2006
2.	1996-87	81/Del/2005	15/2006
3.	1987-88	82/Del/2005	16/2006
4.	1987-88	74/Del/2005	18/2006
5.	1988-89	75/Del/2005	14/2006
6.	1988-89	83/Del/2005	17/2006

4.2. It is observed that *Hon'ble Delhi High Court* in its direction recorded that Ld. CIT (A) has not given any finding on merits in any of the orders (Income Tax as well as Wealth Tax) passed for assessment years under consideration.

5. We have perused records placed before us and observed that grounds of appeal taken by both revenue as well as assessee before this Tribunal do not challenge any finding on merits of the case. That being so, in our considered opinion it is fit and proper that present appeals be restored to the file of Ld.CIT (A)/CWT (A) to be heard and decided in the light of directions of *Hon'ble High Court* on merits.

5.1. Needless to say that Ld.CIT (A) is directed to pass detailed order on merits by giving proper opportunity to assessee as per law on disallowances made by Ld.AO in Income Tax as well as Wealth Tax appeals. Assessee shall file all requisite details as required by Ld.CIT (A) for disposing of appeals on merits in Income Tax as well as Wealth Tax appeals.

6. As regards appeals filed by assessee, as challenge therein was regarding direction of Ld.CIT (A), setting aside appeals to Ld.AO. We are inclined to allow appeals filed by revenue directing Ld.CIT (A) to

hear appeals on merits, these appeals become *non est* as the issue of jurisdiction assumed by Id.AO u/s 148 and Sec.16 of Income Tax as well as Wealth Tax Act has been upheld by Hon'ble High Court (supra).

7. With aforestated observations/directions, we allow appeals filed by revenue on statistical purposes.

8. In the result the appeals filed by revenue stands allowed for statistical purposes, and the appeals filed by assessee in Income Tax as well as Wealth Tax become *non est* and are dismissed.

Order pronounced in the open court on 13/03/2019.

Sd/-

(N.S. SAINI)
ACCOUNTANT MEMBER

Sd/-

(BEENA A PILLAI)
JUDICIAL MEMBER

Dt. 13th March, 2019

- GMV

Copy forwarded to: -

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2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

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By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches

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