

**IN THE HIGH COURT OF SINDH, KARACHI**

W.T.C. No.236 of 2005

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DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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*BEFORE: Irfan Saadat Khan,  
Mehmood Ahmed Khan, JJ*

The Commissioner of Wealth Tax,  
Companies Zone-II,  
Appellant.

: through Mr.Kafeel Ahmed Abbasi,  
Advocate.

Vs.

Sind Steel Corporation  
(Pvt) Ltd., Karachi,  
Respondent

: None present.  
Mr. Arshad Siraj Memon, Amicus  
Curiae.

Date of hearing : 12.05.2022

Date of decision : 12.05.2022

JUDGEMENT

**Irfan Saadat Khan, J.** This Wealth Tax Case (WTC) was filed impugning the order dated 29.5.2000 passed by the Income Tax Appellate Tribunal (ITAT) in ITA No.286/KB/2001 pertaining to the assessment year 1997-98 by raising a number of questions. However, this Court vide order dated 01.09.2005 admitted the following questions only for consideration.

“Whether on the facts and circumstances of the case the learned ITAT was justified to annul the assessment order passed u/s.16(3) of Wealth Tax Act, 1963 on the basis that notice u/s 17 was not issued.”

“Whether on facts and circumstances of the case, the learned ITAT was justified in holding that the jurisdiction of officer can be challenged by the assessee after filing of return when there are specific provision u/s 10(5) of the Wealth Tax Act, 1963.”

“Whether the return filed by the assessee company is the return filed u/s 15 of the Wealth Tax Act, 1963 and proceedings under section 16 are valid.”

2. Briefly stated the facts of the case are that the Respondent is a private limited company, which did not file its return of wealth tax for the year under consideration. The Department, received an information that the Respondent was deriving income from letting out its property bearing Plot No.13, Warehouse Area, West Wharf Road, Karachi. The Department then issued a notice under Section 14(2) of the Wealth Tax Act, 1963 (the Repealed Act) on 07.12.1998 for filing its return of wealth by 12.12.1998. However, no return in response to the above notice was filed by the Respondent. The Department then issued notice under Section 16(2) of the Act, which also remained un-complied with. Thereafter the Department issued notice under Section 18(2) of the Act, for imposition of penalty for non-filing of the return. In response to the above notice the respondent filed its return by declaring a wealth of Rs.31,190/- with negative wealth of Rs.7,90,274/-. The Department then again issued notice under Section 16(2) of the Act, in response to which Respondent filed a detailed reply explaining that since they were not the owners of the above mentioned property and were only licensee, hence were not liable to file wealth tax return. The Assessing Authority (A.A) however, did not accept the said reply and thereafter worked out the net wealth of the Respondent at Rs.53,00,000/- and imposed wealth tax of Rs.1,07,500/-. The Department also imposed additional tax, under Section 31(b) of the Act, at Rs.41,483/- vide consolidated order dated 29.05.2000.

3. Being aggrieved with the said order an appeal was preferred before the Commissioner of Income Tax Appeals (CITA) on 26.6.2000, who vide order dated 21.11.2000, dismissed the same after considering it to be without any substance. An appeal

thereafter was preferred before the ITAT, who vide order dated 04.02.2002 not only annulled the assessment order but also deleted the additional tax imposed by the department. It was then the present WTC was filed by the department.

4. Mr. Kafeel Ahmed Abbasi, Advocate has appeared on behalf of the appellant/Department. The learned counsel while arguing the matter does not press Questions No.2 & 3 and states that he will confine his arguments to the extent of Question No.1 only, which was admitted on 01.09.2005. Hence Questions No.2 & 3 are dismissed as not pressed. Mr. Abbasi, stated that the Respondent was obliged to file its return of wealth tax since they were earning rental income and as per the provisions of the Wealth Tax Act, any person earning rental income above a minimum threshold was liable to pay wealth tax on the said property let out on rent and file its return accordingly, whereas in the instant matter the Respondent has neither filed its return nor has paid the due tax on its wealth.

5. While explaining the matter the learned counsel stated that the ITAT has erred in annulling the assessment on the ground that under the given circumstances notice under Section 17 of the Act should have been issued by the department hence the notice issued under Section 14(2) of the Act, was invalid therefore all the proceedings issued by the department were illegal and uncalled for. The learned counsel then readout the provisions of Section 14(2) and 17 of the Act and stated that the law has given the authority to the A.A to issue notice under Section 14(2) of the Act wherein he was of the opinion that an assessee, who was required to file its wealth tax return, has not furnished the same for the

current as well as previous years, as the case may be, till such time the limitation does not expire. He stated that the ITAT went wrong in mis-interpreting Section 14(2) of the Act that notice under this sub-Section could only be issued for the current year and in case of previous years, where the income had escaped assessment, notice under Section 17 of the Act has to be issued. According to the learned counsel Section 17 of the Act could only be applied where assessee, had filed its return and its assessment had already been completed and thereafter the Department comes to the conclusion that the wealth of the assessee had escaped assessment; whereas notice under Section 14(2) of the Act could be issued by the A.A where no return of wealth was filed by an assessee, pertaining to the current year or the previous year, subject to limitation. Hence in his view the two provisions of law i.e. Section 14(2) and 17 of the Act caters two different situations and in the present matter it was the provision of Section 14(2) of the Act, which were applicable, therefore, the ITAT misinterpreted the provisions of Section 14(2) as well as Section 17 of the Act.

6. Nobody has appeared on behalf of the Respondent despite proper service of notice. Mr. Arshad Siraj Memon, Advocate has represented the assessee before the CIT(A) and the ITAT and in our view is quite well versed with the facts of the case, we, therefore, appointed him as Amicus Curiae to assist the Court.

7. Mr. Arshad Siraj Memon, Advocate has stated that the parameters as provided for issuance of notice under Section 14(2) and Section 17 of the Act are quite different. The learned counsel explained that under the provisions of Section 14 of the Act every person whose net wealth "on the valuation date" was above the

minimum threshold of the wealth was liable to file wealth tax return and to pay wealth tax accordingly. According to him the term “valuation date” is of prime importance. Learned counsel explained that “valuation date” always is the last date of the year previous to the year for which tax is chargeable, as explained under Section 2(24) of the Act, which was the 30<sup>th</sup> June ending of the previous year. According to him in the present circumstances the valuation date would be, as admitted by the A.A, would be 30.6.1997, which was the assessment year 1997-98.

8. According to Mr. Memon, any assessee having wealth above the minimum threshold was liable to file wealth tax return and in case where a wealth tax return was not filed, pertaining to the valuation date which relates to the last date of the previous year, and in the present case it was 30.6.1998 whereas, the Department has issued the notice under Section 14(2) of the Act after the end of the valuation date, which started from 01.7.1998 hence the Department could only proceed under Section 17 of the Act, as the wealth of the assessee pertained to the valuation date relevant to the previous year which had escaped assessment. Hence according to Mr. Memon, the department went legally wrong by calling wealth tax return from the assessee with regard to the wealth which had escaped assessment by issuing a notice under Section 14(2) of the Act. According to the learned counsel there is a clear distinction between the provisions of Section 14(2) and 17 of the Act, as if the intention of the legislature was to call a return from the assessee, in cases where no return was filed in respect of the previous years also where wealth had escaped assessment, under Section 14(2) of the Act the provisions of Section 17 of the Act would become

redundant. He stated that no law should be interpreted and read in such a manner so as to render any provision of law as redundant.

9. The learned counsel also explained that the law with regard to the interpretation and applicability of Section 56 & 65 of the Repealed Ordinance, 1979 and that Section 22(2) & 34 of the 1922 Act and Sections 14(2) and 17 of the Act are quite different. Learned counsel further explained that the interpretation placed by the Department, as well as the learned counsel appearing for the Department, was contrary to the law and the ITAT quite justifiably held that the notice issued under Section 14(2) of the Act, under the given circumstances, was invalid and has rightly annulled the assessment framed by the A.A as illegal. He therefore, finally submitted that the answer to the question may therefore in his view be given in affirmative i.e. against the Department and in favour of the Respondent.

10. We have heard both the learned counsel at considerable length and have perused the record and have also made research on our own.

11. Before proceeding any further, we would like to reproduce hereinbelow the relevant provisions of law.

Sr. No.	Income Tax Act, 1922	Income Tax Ordinance, 1979	Wealth Tax Act, 1963
1.	<b>Section 22(2)</b>	<b>Section 56</b>	<b>Section 14(2)</b>
	(2) In the case any person * * * whose total income is, in the Income-tax Officer's opinion, of such an amount as to render such person liable to income-tax, the Income-tax Officer [may serve] a notice	<b>56. Notice for furnishing return of total income.</b> —The [Deputy Commissioner] may, at any time by notice in writing, require any person who, in his opinion, is chargeable to tax [or	[(2) If the <sup>3</sup> [Deputy Commissioner is of the opinion that,---  (i) the next wealth of any person is of such an amount; or  (ii) the assets of any person are of such

	upon him 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 (alongwith such other particulars as may be provided for in the notice) his total income [and total world income] during the previous year:	is required to file return of total income under section 55] for any income year to furnish a return of total income for such year within thirty days from the date of service of such notice or such longer or shorter period as may be specified in such notice or as the <sup>3</sup> [Deputy Commissioner] may allow [:]	nature, as to render him liable to wealth tax under this Act, then notwithstanding anything contained in sub-section (1), he may serve a notice upon such person requiring him to furnish within thirty days from the date of service of such notice, or such longer or shorter period as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be required in respect of the net wealth or assets of such person as on the valuation date mentioned in the notice.
2.	<b>Section 34</b>	<b>Section 65</b>	<b>Section 17</b>
	<b>34.—[(1)]</b> If [for any reason] income, profits or gains chargeable to income-tax <sup>5</sup> [have escaped assessment in any year, or have been under-assessed, or have been assessed at too low a rate, or have been the subject of excessive relief [or refund] under this Act], the Income-tax Officer may, * * * serve on the person liable to pay tax on such income, profits or gains, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22, and may proceed to assess or re-assess such income, profits or gains, and the provisions of this Act shall, so far as may be, apply accordingly	<b>65. Additional assessment.—</b> (1) If, in any year, for any reason,-  (a) any income chargeable to tax under this Ordinance has escaped assessment or  (b) the total income of an assessee has been under assessed, or assessed at too low a rate, or has been the subject of excessive relief or refund under this ordinance, or  <sup>4</sup> [(c) the total income of an assessee and the tax payable by him has been assessed or determined under sub-section (1) of section 59 or section 59A or deemed to have been so assessed or determined under sub-section (1) of section 59 or section	<b>17. Wealth escaping assessment.</b> --- [(1)] If the [Deputy Commissioner]---  <b>(a)</b> has reason to believe that by reason of the omission or failure on the part of the assessee to make a return of his net wealth under Section 14 for any assessment year or to disclose fully and truly all material facts necessary for his assessment for that year, the net wealth chargeable to tax has escaped assessment for that year, whether by reason of under-assessment or assessment at too low a rate or otherwise[: or***]  <b>(b)</b> has, in consequence of any information in his

	<p>as if the notice were a notice issued under that sub-section:</p>	<p>59A,] The [Deputy Commissioner] may, at any time, subject to the provisions of sub-sections(2) (3) and (4), issue a notice to the assessee containing all or any of the requirements of a notice under section 56 [ ] and may proceed to assess or determine, by an order in writing, the total income of the assessee or the tax payable by him, as the case may be, and all the provisions of this Ordinance shall, so far as may be, apply accordingly:  Provided that the tax shall be charged at the rate or rates applicable to the assessment year for which the assessment is made.  (2) No proceedings under sub-section (1) shall be initiated unless definite information has come into the possession of the [Deputy Commissioner] <sup>4</sup>[and] he has obtained the previous approval of the Inspecting [Additional Commissioner] of Income Tax in writing to do so.</p>	<p>possession, reason to believe, notwithstanding that there has been no such omission or failure as is referred to in clause (a), that the net wealth chargeable to tax has escaped assessment for any year, whether by reason of under-assessment or assessment at too low a rate or otherwise [; or]</p>
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12. We are of the view that the parameters as enshrined under Section 14(2) & 17 of the Act, and Section 22(2), 34 of the Act, 1922 and Section 56 & 65 of the repealed Ordinance, 1979 connotes different meanings and interpretation. If facts of the present case are examined, it would be noted that notice under Section 14(2) of the Act, could be issued by the Department calling for the returns of a person who was required to file return as

pertaining to his net wealth as on the valuation date. The term valuation date has also been explained under Section 2(24) of the Act, according to which valuation date was 30<sup>th</sup> June, ending of the previous year; meaning thereby that the Department could only issue notice under Section 14(2) regarding the valuation date in respect of 30<sup>th</sup> June ending of the previous year. Whereas, Section 17 provides that in case where the wealth of an assessee has “escaped assessment” then under these circumstances the notice under Section 17 has to be issued by the Department. If facts of the present case are examined, it could be seen that notice under Section 14(2) was issued by the Department in respect of the valuation date of the previous year, which admittedly expired on 30.6.1997, whereas the notice was issued on 07.12.1998, which is much after the valuation date of the previous year meaning thereby that the Department does not have the jurisdiction or the authority under Section 14(2) of the Act to call for the return of the net wealth in respect of the valuation date of the previous year but under the circumstances could only issue notice under Section 17 of the Act, as the wealth of the assessee had by that time escaped assessment.

13. Hence, in our view, under the given circumstances the Department did not vest with the power or the authority to issue notice under Section 14(2) of the Act but was fully empowered by that time to had issue notice under Section 17 of the Act, which admittedly was not done. The Tribunal in its decision has highlighted this aspect in a comprehensive manner and in our view was quite correct in observing that under the given circumstances, it was the notice under Section 17 of the Act, which should have

been issued by the department instead of issuing the notice under Section 14(2) of the Act, for assuming the jurisdiction in determining the wealth of an assessee as on the valuation date pertaining to the previous year. Hence as observed above since the parameters of Section 22(2) & 34 of the Act, 1922 or the Sections 56 & 65 of the repealed Ordinance, 1979 were not found to be similar to those of Section 14(2) & 17 of the Act, these provisions of law hence could not be considered to be parametria to these sections, as in our view the wordings of the sections 22(2) and 34 of the Act 1922 and Section 56 & 65 of the Ordinance 1979, though claimed to be parametria to each other, but are found to be different in their applications.

14. We agreed with the submissions made by the Amicus Curiae that the intention of the legislature was to call for the return of the net wealth of a person as on the valuation date of the previous year under the provision of Section 14(2) of the Act, and for the year previous to the previous year under Section 17(2) of the Act and if the interpretation of the department is applied and the department is permitted to issue notice U/s.14(2) of the Act previous to the previous year where wealth has escaped assessment Section 17 would become redundant as it cannot be said that both these provisions of law caters to a similar situation or position. In our view both these provisions of law caters and deals with two different situations, as explained above. It is a settled proposition of law that no redundancy could be attributed to the law. Reference in this regard may be made to the decision given in the cases of *Aftab Shaban Mirani...Vs.... Muhammad Ibrahim (PLD 2008 S.C. 779)* and *Collectorate of Sales Tax and Central Excise*

*Enforcement and another....Vs....Mega Tech (Pvt.) Ltd., (2005 SCMR 1166).*

15. In the light of what has been discussed above, we answer the Question No.1 against the Department and in favour of the Respondent and above are the reasons for our short order dated 12.05.2022 by which the instant WTC was disposed of.

16. We appreciate the assistance provided to us by the learned Amicus Curiae.

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