**(2004) 03 GUJ CK 0072**

**In the Gujarat High Court**

**Case No :** Special Civil Application No. 2736 of 2004

Arvind Mills Ltd. APPELLANT

Vs

Assistant Commissioner of Wealth Tax RESPONDENT

**Date of Decision :** 03-03-2004

**Acts Referred:**
Constitution of India, 1950 — Article 226
Wealth Tax Act, 1957 — Section 17

**Citation :** (2004) 191 CTR 233 : (2004) 270 ITR 467 : (2005) 144 TAXMAN 290

**Hon'ble Judges :** M.S. Shah, J;A.M. Kapadia, J

**Bench :** Division Bench

**Advocate :** Swati Soparkar, for the Appellant;

## Judgement

M.S. Shah, J.—What is challenged in this petition under Article 226 of the Constitution is the notice for reassessment of the petitioner-company''s wealth for the asst. yr. 1997-98 u/s 17 of the WT Act, 1957 (hereinafter referred to as "the Wt Act") read with the reasons as contained in the communication dt. 28th Jan., 2004 (Annex. "F1", pp. 25-27).

2. Although challenge to the notice dt. 26th March, 2002 may, prima facie, appear to be belated, in view of the fact that reasons have been communicated only very recently on 28th Jan., 2004, the petition cannot be considered as having been filed at a belated stage. The petitioner-company has already filed return in response to the notice u/s 17 of the WT Act and by submissions dt. 19th Feb., 2004, the petitioner has lodged its objections to the notice for reassessment after having received the aforesaid reasons as contained in the communication dt. 28th Jan., 2004.

3. It is, however, not necessary to go into the merits of the controversy raised in this petition for the simple reason that in GKN Driveshafts (India) Ltd. Vs. Income Tax Officer and Others, the apex Court has now clarified that when a notice u/s 148 of the IT Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The AO

 

is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the AO is bound to dispose of the same by passing a speaking order.

4. The above principle laid down in respect of the notice for reassessment under the IT Act would apply with full force to the notice for reassessment u/s 17 of the WT Act as well. The petitioner-company had already filed its return in response to the impugned notice and requested for furnishing reasons, which request has been acceded to only very recently and the petitioner has thereafter submitted its objections on 19th Feb., 2004. The AO is, therefore, now required to dispose of the objections by passing a speaking order as per the aforesaid decision of the Hon''ble Supreme Court.

5. The AO is accordingly required to decide the preliminary objections lodged by the petitioner to the notice for reassessment and pass a speaking order. Until such speaking order is passed, obviously the AO cannot undertake reassessment. Hence, it is only after the AO passes a speaking order deciding the petitioner''s preliminary objections against the notice for reassessment that any cause of action would arise for the petitioner.

6. In view of the above observations, this petition is rejected as premature with , an observation that if at all the respondent AO decides to reject the petitioner''s preliminary objections, the respondent shall pass a speaking order and it will be open to the petitioner to challenge such order.

7. The petition is accordingly rejected in terms of the aforesaid direction and observations and liberty.