

**(1973) 05 CAL CK 0027**

**In the Calcutta High Court**

**Case No : Wealth-tax Reference No. 697 of 1968**

Jwaladutt Jiwan Kumar

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

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**Date of Decision :** 30-05-1973

**Acts Referred:**

Wealth Tax Act, 1957 — Section 16(5), 23(4), 23(5)

**Citation :** (1974) 95 ITR 183

**Hon'ble Judges :** Sabyasachi Mukharji, J; S. Hazra, J

**Bench :** Division Bench

**Advocate :** S.L. Saraf and Sasanka Banerjee, for the Appellant; B.L. Pal and Ajit Sengupta, for the Respondent

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## **Judgement**

Sabyasachi Mukharji, J.—IN this reference u/s 27(1) of the Wealth-tax Act the following question has been referred to this court :

" Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that in disposing of an appeal against an assessment u/s 16(5), the Appellate Assistant Commissioner should confine himself only to the "materials on record at the time of assessment, i.e., the previous assessment order ? "

2. This reference relates to the assessment year 1960-61. The relevant valuation date is 31st March, 1960. The assessee is an individual. A notice u/s 14(2) of the Wealth-tax Act was served on the assessee on the 20th August, 1960. No return was filed. There was no application for extension. A notice u/s 16(4) was issued fixing the case on the 24th February, 1961. The assessee applied for adjournment." No return was filed even thereafter and the Wealth-tax Officer made the assessment u/s 16(5) of the Wealth-tax Act on the 23rd March, 1961, " due to the failure to comply with the notice u/s 14(2)". The wealth was estimated at Rs. 20,00,000. The assessee appealed to the Appellate Assistant Commissioner. In the additional grounds tiled before the Appellate Assistant Commissioner the assessee claimed that the market value of the quoted shares

and the break-up value of the unquoted shares should be considered in determining the total value. Some exemptions were also claimed. The assessee filed various statements regarding the assets held by him on the date of valuation. The Appellate Assistant Commissioner went into the details and reduced the net wealth from Rs. 20 lakhs to Rs. 14,06,000. Both the assessee and the Wealth-tax Officer appealed to the Tribunal. The main ground urged on behalf of the Wealth-tax Officer in his appeal was that the Appellate Assistant Commissioner in an appeal against an assessment order u/s 16(5) of the Wealth-tax Act was not justified and competent to go into the materials other- than those on record at the time of assessment. The Tribunal relying on the decision in the case of Gridhar Javer and Co. Vs. Commissioner of Income Tax/Excess Profits Tax, Bombay City, accepted the department's contention, and held that the Appellate Assistant Commissioner should have confined himself to the previous assessment made on the assessee in making an estimate as to the assessee's net wealth. The Tribunal after taking into consideration the past assessments estimated the net wealth at Rs. 16,00,000. Thereafter, the assessee made an application for reference of two questions of law to this court, namely :

" (1) Whether, on a true interpretation of the provisions of Section 23(5) of the Wealth-tax Act, the Tribunal was correct in holding that the Appellate Assistant Commissioner in making an estimate of the net wealth should have confined himself to the previous assessments only ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in enhancing the figure of net wealth, when the quantum of net wealth determined by the Appellate Assistant Commissioner was not challenged by the department in the other grounds of appeal ?"

3. The Tribunal, however, referred the first question and did not refer the second question and the assessee did not make any application for direction on the Tribunal to make any reference upon the second question. It appears to us that the section is clear on this point. Section 23(4) and (5) of the Wealth-tax Act, 1957, provides, inter alia, as follows: " (4) The Appellate Assistant Commissioner may-

(a) at the hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal ;

(b) before disposing of an appeal, make such further inquiry as he thinks fit or cause further inquiry to be made by the Wealth-tax Officer.

(5) In disposing of an appeal the Appellate Assistant Commissioner may pass such order as he thinks fit which may include an order enhancing the assessment or penalty."

4. Therefore, it is clear that before disposing of an appeal the Appellate Assistant Commissioner has the authority to make further inquiry as he thinks fit or to cause further inquiry to be made. On what materials he should make further

inquiry and what materials he should admit depend upon the facts and circumstances of each case and the propriety of the decision of the Appellate Assistant Commissioner to admit further evidence and materials cannot be judged by any fixed rule and must necessarily depend upon the facts of each particular case but there is undoubtedly in the section the authority for the Appellate Assistant Commissioner to go into further evidence if in any case he thinks fit and proper to do so. It has also been so held in the case of *SUNDERMUL and CO. Vs. COMMISSIONER OF Income Tax A. P.*, . It was there held by a Division Bench of the Andhra Pradesh High Court that in an appeal u/s 23(4) the Appellate Assistant Commissioner had to consider the merits of the assessment and for which it was open to him to hold that the Income Tax Officer acted without material or acted arbitrarily or capriciously. He could, before disposing of such appeal, make such further enquiry as he thinks fit or cause further enquiry to be made by the Income Tax Officer and it was not improper for the Appellate Assistant Commissioner even in cases of best judgment assessments u/s 23(4) to look into the books which the assessee failed to produce when asked to do so u/s 22(4) in order to ensure that the judgment of the assessing officer was not capricious or arbitrary and, if it is defective, to rectify it on a valid and proper basis. The court also relied on the judgment of the Punjab High Court in the case of *BRIJ MOHAN RAMESHWAR DASS Vs. COMMISSIONER OF Income Tax, DELHI.*, and the decision in the case of *M. M. Muthuwappa Vs. Commissioner of Income Tax, Madras.* . The Tribunal had relied on the decision in the case of *Girdher Javer & Co. v. Commissioner of Income Tax*. That case dealt with a different problem, namely, the power of the Appellate Assistant Commissioner to direct a remand. It cannot be said that that was a decision which had held that the Appellate Assistant Commissioner in disposing of the appeal did not have the power in appropriate cases to consider fresh evidence. What weight, however, would be put upon evidence subsequently produced and the nature of evidence permitted to be adduced subsequently depends upon the facts and circumstances of each case. There is, however, another aspect of the matter. The Tribunal after making the observation that the Appellate Assistant Commissioner should have confined himself only to the past assessments made and should not have made an estimate of his own, has quantified the net wealth at the figure of Rs. 16,00,000. As the Appellate Assistant Commissioner has the right to make further enquiry, the Tribunal similarly has also that right. The propriety of the Tribunal's decision is not before us. Therefore, it was contended that this question had become of academic interest now. In view, however, of the Tribunal's decision about the Appellate Assistant Commissioner's power we must hold that the Tribunal was not right in holding that in disposing of an appeal against an assessment u/s 16(5), the Appellate Assistant Commissioner should confine himself only to the materials on record. The question is, therefore, answered in the negative and in favour of the assessee.

5. There will be no order as to costs.

Hazra, J.

6. I agree.