

(1989) 04 MAD CK 0035

In the Madras High Court

Case No : Writ Appeal No's. 652 and 653 of 1987

Thanthi Trust

APPELLANT

Vs

Wealth-tax Officer

RESPONDENT

Date of Decision : 20-04-1989

Acts Referred:

Income Tax Act, 1961 — Section 11, 11(1), 139, 139(1), 139(4A)
Wealth Tax Act, 1957 — Section 14, 14(1), 14(2), 16, 16(2)

Citation : (1989) 78 CTR 54 : (1989) 178 ITR 1

Hon'ble Judges : S. Mohan, O.C.J.; Venkataswami, J

Bench : Division Bench

Advocate : Debi Pal, for the Appellant; Nalini Chidambaram, for the Respondent

Judgement

S. Mohan, Offg. C.J.

1. These two writ appeals arise out of the judgment of our learned brother, Justice Nainar Sundaram. Except that the years of assessment involved

are different, the point involved is one and the same.

2. The appellant is a trust known as ""Thanthi Trust"". This was created under an instrument of declaration of trust dated March 1, 1954. The

purpose of the trust was to found a Tamil daily newspaper called ""Daily Thanthi"" as an organ of educated public opinion for the Tamil-reading

public. This was to facilitate the dissemination of views and ventilation of opinion on all matters of public interest through the said newspaper.

3. The appellant is an assessee on the file of the respondent. The trust was claiming exemption u/s 4(3)(i) of the Indian Income Tax Act, 1922,

from 1955-56 onwards in respect of its income. Though there were several proceedings, ultimately, the claim for exemption came to be granted.

After the coming into force of the Income Tax Act, 1961, exemption was again

claimed u/s 11 of the said Act. There were several protracted proceedings which led to the filing of numerous writ petitions.

4. To the deed of declaration of trust dated March 1, 1954, a supplementary deed was executed by the donor on June 28, 1961, directing that the surplus income of the trust should be utilised only for educational purposes. The appellant thereupon filed C.S. No. 90 of 1961, by way of originating summons in the High Court. It was held by the High Court that the trustees were bound by the supplementary deed and, therefore, the entire income had to be spent for the purposes mentioned in the supplementary deed.

5. There were proposals for the reopening of assessments. For the years 1968-69 and 1969-70, the Income Tax Officer rejected the assessee's claim for exemption u/s 11(1) of the Income Tax Act. Aggrieved by such assessments, the appellant preferred I.T.A. Nos. 21 and 41 of 1972-73.

6. During the pendency of the appeals, the appellant had questioned the validity of the reopening of assessments in Writ Petitions Nos. 611, 1557

to 1559 and 3352 to 3357 of 1969 and succeeded. It was held by this court that there was no possibility of the subsequent Income-tax Officers

considering the nature of the trust and the application of its funds for the purpose of determining the question regarding the genuineness and validity

of the trust. The said judgment was reported in *Thanthi Trust Vs. Income Tax Officer*, .

7. The Revenue filed S.C.P. Nos. 213 to 221 of 1972 and 27 and 66 to 69 of 1974 praying for leave of this court to appeal to the Supreme

Court against the judgment in Writ Petitions Nos. 1557 to 1559 of 1969 and 3352 to 3357 of 1969. Leave was refused by this court. Thereupon,

the Revenue filed SLP Nos. (Civil) 2959 to 2997 of 1975 in the Supreme Court and the Supreme Court by its order dated January 29, 1976,

dismissed the same.

8. While the matter stood thus, the appeal filed against the assessments stated above came to be allowed. The Revenue preferred an appeal to the

Income Tax Appellate Tribunal. The Tribunal, by orders dated April 22, 1978, and September 25, 1978, held that by reason of the judgment and

decree in C.S. No. 90 of 1961, the objects of the trust are only those that are set out in the schedule to the decree and that they are charitable

objects. The petitioner-appellant would be entitled to exemption in respect of such income derived from business as was shown to have actually

parted with by it and actually spent on such charitable objects during the relevant previous years.

9. Aggrieved by the Tribunal's order, the appellant as well as the Revenue sought reference to this court. By judgment dated January 29, 1981,

the reference was answered in favour of the appellant. It was held that the appellant-trust was a public charitable trust and could claim exemption

u/s 11 of the Income Tax Act. Against the said judgment, the Revenue preferred SLP (Civil) Nos. 10007 to 10012 of 1981 before the Supreme

Court. By order dated February 24, 1984 [1984] 146 ITR 187, the Supreme Court dismissed (sic) the same. Thus, it is now beyond dispute that

the appellant is a public charitable trust.

10. As far as wealth-tax is concerned, for the assessment years 1977-78, 1978-79 and 1980-81, it was held that the appellant was not liable to

assessment under the Wealth-tax Act in view of section 5(1) of the said Act. However, for the assessment year 1982-83, the respondent issued a

notice dated October 7, 1982, calling upon the appellant-trust to file a return u/s 14(2) of the Wealth-tax Act. Similarly, for the assessment year

1983-84 also, another notice dated September 13, 1983, was issued u/s 14(2) of the Act calling upon the appellant to file a return under the Act.

11. The appellant-trust sent its replies on November 16, 1982, and January 10, 1983, respectively, contending that the appellant was not liable to

pay wealth-tax since there is a final adjudication to the effect that the appellant is a public charitable trust. Notwithstanding and same, the appellant

filed a "nil" return for these years. Thereafter, no action was taken and the appellant was expecting, as a matter of course, a "nil" assessment order

as in the previous years. But, to its shock and surprise, the respondent issued notices on January 22, 1987, calling upon the appellant to attend an

enquiry with regard to the assessment of wealth-tax for the years 1974-75 and 1975-76. The appellant was also called upon to produce the

balancesheet and other records. It is under these circumstances that a writ of mandamus was filed restraining the respondent from proceeding

further with the wealth-tax assessment. The grounds raised are :

(i) The appellant is a public charitable trust and is, therefore, not liable to

assessment in respect of its assets u/s 5(1) of the Wealth-tax Act.

(ii) In so far as by orders dated November 30, 1982, and March 15, 1985, the respondent himself had held that the appellant is not assessable to

wealth-tax, the Revenue is now estopped from proceeding to assess.

(iii) In view of the decision of this court which has become final between the parties as to the nature of the trust, it is no longer possible for the

Revenue to take any decision otherwise than holding the appellant as a public charitable trust.

(iv) In view of the mandatory provisions of section 5(1) of the Wealth-tax Act, the respondent has no power and jurisdiction to make any

assessment on the assets of the appellant. Hence, the proceedings initiated are null and void.

12. Thus, two writ petitions, Writ Petitions Nos. 2288 and 2289 of 1987, one for the year 1974-75 and the other for the year 1975-76, came to

be filed. They were dismissed in limine by our learned brother, Justice Nainar Sundaram, by order dated March 10, 1987. He was of the view that

the appellant can put forth all its contentions before the assessing authority who would consider the same with due care and caution without giving

room for any grievance to the appellant. Thus, Writ Appeals Nos. 652 and 653 of 1987 came to be filed.

13. In the counter-affidavit filed by the present assessing authority, the stand taken is that no doubt, the decision in Commissioner of Income Tax

Vs. Thanthi Trust, , held that the appellant is a public charitable trust. However, the contention that on the basis of the said decision, the appellant

would be entitled to exemption u/s 5(1)(i) of the Wealth tax Act cannot be accepted. As was rightly held by the learned single judge, the appellant

could advance all its objections against the proposed assessments before the respondent. Bypassing the statutory remedy, it cannot come by way

of a writ petition. No doubt, section 5(1)(i) of the Wealth-tax Act, 1957, provides for exemption. However, the said provision is subject to section

21A of the Act which was introduced by the Finance Act, 1972, with effect from April 1, 1973. The non obstante clause present in that section is

very significant. The very object of introducing that section it to see that the funds of the trust are properly applied. Therefore, the exemption

granted u/s 5(1)(i) is not absolute and unconditional but is subject to section

21A of the Act. Should the appellant come within the mischief of section 21A, it would be liable to wealth-tax in the manner provided in that section.

14. Each assessment year is a separate and self-contained one. Therefore, the question of estoppel or res judicata will not arise. Merely because for the assessment years 1977-78, 1978-79 and 1980-81 one view was taken, it does not estop the respondent from taking proceedings for the assessment years in question, namely, 1974-75 and 1975-76.

15. For the assessment year 1974-75, proceedings u/s 17 of the Wealth-tax Act were initiated on March 17, 1983, on the ground that the respondent had reason to believe that by reason of the omission on the part of the assessee-trust to furnish a return of wealth u/s 14(1) of the Wealth-tax Act, wealth chargeable to tax has escaped assessment. In response to the said notice, the appellant has filed a ""nil"" return of wealth on April 16, 1983. In that it claimed exemption . Therefore, it became necessary to issue a notice u/s 16(2) of the Act for the production of certain records.

16. It becomes necessary to find out the applicability of section 21A of the Wealth-tax Act which involves consideration of the user or application of the properties and income of the assessee-trust during the relevant year of assessment, namely, 1974-75. Should the appellant satisfy that section 21A is not attracted to it, then, exemption must be granted to it. Such a factual enquiry cannot be gone into within the narrow scope of writ jurisdiction.

17. Similarly, for the assessment year 1975-76, proceedings u/s 17 of the Wealth-tax Act were taken on March 24, 1984, on the ground that the assessee would be liable to wealth-tax. The appellant did not file any return u/s 14(1). On April 7, 1984, the appellant filed a ""Nil"" return for the assessment year 1975-76 claiming exemption. A notice u/s 16(2) of the Wealth-tax Act, was issued on February 24, 1987, requiring the production of certain documents. As submitted above, since the applicability of section 21A to the appellant-trust has to be determined, it is open to the appellant to raise all the points before the assessing authority. Hence, the writ petitions are not maintainable.

18. A detailed reply affidavit has been filed stating that notice u/s 17 of the

Wealth-tax Act can be issued and jurisdiction assumed by the Wealth-tax Officer only if the conditions precedent for the assumption of jurisdiction u/s 17 of the Wealth-tax Act are satisfied. The conditions precedent for the assumption of jurisdiction do not exist in this case. Therefore, the appellant is entitled to invoke article 226 of the Constitution. Therefore, the question of invoking the alternative remedy available under the Wealth-tax does not arise.

19. In any event, for the purpose of determining the factual position u/s 21A, notice u/s 17 cannot be issued. On the basis of this stand, the factual position for the assessment years 1976-77 to 1985-86 is fully set out in the reply affidavit. On that basis, it is contended that no net wealth of the trust as on the relevant valuation date for the year 1974-75 could be said to have escaped assessment as, in spite of the return having been filed, the Wealth-tax Officer had not completed the assessment. In any event, no net wealth can be said to have escaped assessment by reason of the non-filing of the return by the trust for the relevant assessment year. Likewise, there has not been any omission or failure on the part of the trust to disclose fully and truly all material facts.

20. For the assessment year 1975-76, the notice u/s 17(1) is invalid and inoperative because it has been addressed to ""Thanthi Trust"" and not to the proper person. The said notice has also not been served in accordance with section 41 of the Wealth-tax Act. The trust is not an assessee liable to assessment.

21. When the Wealth-tax Officer himself had granted exemption u/s 5(1) of the Act and has dropped proceedings for the earlier years, the net wealth cannot be said to have escaped assessment by reason of the trust not having filed any return of net wealth for the relevant assessment year; nor can the net wealth of the trust be said to have escaped assessment by reason of any omission or failure on the part of the trust to disclose fully and truly all material facts.

22. Dr. Debi Pal, learned counsel for the appellant, after taking us through the relevant provisions of the Wealth-tax Act as well as the Income Tax Act, submits that u/s 21A of the Wealth-tax Act, the trustee or the manager of the trust alone is liable where the trusts are of public charitable nature. It is not the case of the other side that there is any change in the

constitution of the appellant-trust. As a matter of fact, the records in this case clearly disclose that the return for the year 1974-75 has been filed. It was in that connection that the particulars for the assessment year 1974-75 were required.

23. In so far as section 16A of the Wealth-tax Act says ""the value of the asset as returned"" and the same phraseology is used, it is clear that the return has been filed for that year. The Valuation Officer could act u/s 16A on reference by the Income Tax Officer. Therefore, it is beyond doubt that the return has been filed for the said year. Under such a situation, where a date has been fixed for inspection of the property and later it was cancelled due to official reasons, how could it ever be contended that there has been an omission on the part of the assessee-trust to file a return of net wealth. Therefore, such a stand taken in the counter-affidavit is palpably wrong.

24. In *Chhugamal Rajpal Vs. S.P. Chaliha and Others*, , which arose u/s 148 of the Income Tax Act and which corresponds to section 17 of the Wealth-tax Act, it has been clearly held that there must be prima facie ground necessary for taking action u/s 148 of the Income Tax Act. In other words, there must be an escapement of assessment and such an escapement is due to the non-filing of the return of due to the filing of an incorrect return.

25. In the case on hand, what is stated by the Wealth-tax Officer is about the applicability of section 21A of the Wealth-tax Act to the appellant-trust. In other words, it is not because of the failure of the assessee to file a return. Looked at from that point of view, it is clear that there is no material to issue notice u/s 17 of the Wealth-tax Act. In order to investigate about the applicability of section 21A of the Wealth-tax Act, no power is conferred u/s 17 of the said Act. To put it in other words, no roving enquiry is permissible.

26. Even if reasons had been recorded, whether they have a reasonable nexus is a matter which can certainly be gone into by this court. In this case, it is not even stated by the Wealth-tax Officer that section 21A of the Act is applicable to the facts and circumstances of the case. He would have it in the counter-affidavit that the applicability of the provisions of section 21A has to be considered. This certainly does not fall within the

scope of section 17 of the Act.

27. Citing the decision in Sheo Nath Singh Vs. Appellate Assistant Commissioner of Income Tax, Calcutta, , it is submitted that there must be

reason to believe that income has escaped assessment. So long as that is lacking in this case, the issue of notice cannot be supported.

28. Regarding the assessment year 1974-75, returns have been filed as of fact. That cannot be gainsaid. It is somewhat surprising that for the

assessment year 1976-77, the trust has received a ""nil"" demand notice on December 4, 1981. This is squarely based on the judgment in

Commissioner of Income Tax Vs. Thanthi Trust, . For the subsequent years also, it was a case of ""nil"" demand though section 21A was there. All

that the appellant would endeavour to contend is that there is no finding or reasonable belief that section 21A is applicable.

29. It has been held in Writ Petition No. 540 of 1981, ect., batch, as well as in Hari Babu Vs. Commissioner of Income Tax, , that the mere non-

filing of a return will not enable action to be taken u/s 34 of the Indian Income Tax Act.

30. In this case also, there is no whisper in the counter-affidavit that section 21A of the Wealth-tax Act is applicable and that by reason thereof, net

wealth has escaped assessment. In Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, , it has been

categorically laid down that to confer jurisdiction for invocation of such a power, two pre-conditions are necessary :

(i) The officer must have reason to believe that net wealth has escaped assessment; and

(ii) The escapement is due to the non-filing of return or omission or failure to disclose in the return all material facts.

31. The same view has been taken in several cases, namely, Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, ; Ganga Saran

and Sons P. Ltd. Vs. Income Tax Officer and Others, ; Indian Oil Corporation Vs. Income Tax Officer, Calcutta and Others, and Income Tax

Officer and Others Vs. Madnani Engineering Works Ltd., Calcutta, .

32. If a return has been filed, unless there is an assessment, no question of escapement would ever arise. This submission is supported by the ruling

in The Commissioner of Income Tax, Bombay Vs. Ranchhoddas Karsondas,

Bombay, and Commissioner of Income Tax, Madras Vs. M.K.K.R.

Muthukaruppan Chettiar, .

33. Though an attempt was made to urge that the reopening of assessment is time-barred and that the notices are time-barred, that has not been persisted with.

34. The next submission of learned counsel for the appellant is that, assuming without admitting that section 21A applies to this case, no notice can

be issued to the trust as the trust is not liable but it is only the manager or the trustee who is liable. This proposition is beyond dispute since in The

Commissioner of Wealth Tax, Andhra Pradesh, Hyderabad Vs. Trustees of H.E.H. Nizam's Family Hyderabad, , the Supreme Court has

categorically laid down the same. The same view is also found expressed in Commissioner of Income Tax, Kerala Vs. Thayaballi Mulla Jeevaji

Kapasi (Decd.) (by his Legal representatives), . Then the question would be that, if the notice is invalid, what happens. Section 41 of the Wealth-

tax Act speaks of service of notice.

35. Section 3 of the Wealth-tax Act is the charging section. When that section says that net wealth is chargeable, one has to obviously refer to

section 2(m) which defines ""net wealth"". Such net wealth must belong to the assessee. In the case of a trust, the assets belong to the trustee.

Hence, the trust cannot be made liable. In other words, a trust is not an assessable unit.

36. A careful reading of section 17 of the Wealth-tax Act postulates an obligation to file a return u/s 14 of the said Act. In other words, only if the

net wealth is exigible to tax, there is an obligation to file a return. Therefore, section 5(1)(i) does not impose a statutory obligation on the appellant-

trust which is a public charitable trust to file a return. For this proposition, reliance is placed on the decision in Commissioner of Income Tax Vs.

Thanthi Trust, . As a matter of fact, this position has been made still clearer in Modi Charitable Fund Society and Another Vs. Income Tax Officer

and Others, , wherein the Allahabad High Court has held that if there is no statutory obligation to file a return, it could not be said that income

chargeable to tax has escaped assessment. In that case, it has been pointed out that u/s 139(4A) of the Income Tax Act, even if the trust is

exempt, the Income Tax return will have to be filed. As far as the Wealth-tax Act

is concerned, there is no such provision. Section 21A of the Wealth-tax Act merely enables assessment if there is a diversion of the income by the trustees. In the case on hand, the stand of the appellant-trust is that it is exempt. If that be so, there is no statutory obligation on it to file a return u/s 14(1) of the Wealth-tax Act.

37. Mrs. Nalini Chidambaram, learned counsel appearing for the respondent, would submit that this is not a case, first and foremost, where it could be said that the officer has no reason to believe. The officer has recorded his reasons on a perusal of the Income Tax returns. As of fact, no return was filed for the year 1974-75. For the year 1975-76, reasons had been recorded and, therefore, the Department is placing the records before this court to establish that there were justifications for invocation of section 17 of the Wealth-tax Act.

38. The next submission is that there is an obligation on the part of every trust to file a return after introduction of section 21A in the Wealth-tax Act. In *Managing Shebait of Bhukailash Debutter Estate Vs. Wealth Tax Officer, F-Ward and Another*, a lacuna was pointed out in the then existing Wealth-tax Act and only to remove that lacuna, section 21A was enacted. Therefore, to say that merely because the trust considers itself to be exempt and consequently no return need be filed is untenable.

39. In this case, there was every justification for invocation of section 17(1)(a) of the Wealth-tax Act because the Income Tax return of the appellant clearly shows that section 21A of the Wealth-tax Act is applicable. It was only after recording the reasons that the notice u/s 17(1)(a) of the Wealth-tax Act came to be issued.

40. As far as the assessment year 1974-75 is concerned, if, in fact, no return was filed, that would be clearly applicable. The delay in filing the writ petition would establish acquiescence by filing a return. It is not correct on the part of the assessee to contend that for the years anterior and posterior to the years in question, exemption had been granted and, therefore, for the years in question, the appellant-trust should be exempt. Such an argument ignores the fact that each assessment year is an independent unit.

41. The contention that the notice to the trust is invalid cannot be accepted. The decision in *Thiagesar Dharma Vanikam Vs. Commissioner of Income Tax, Madras*, puts the matter clearly beyond doubt. Furthermore, such

a point was raised only in the reply affidavit. In any event, having regard to the terms of section 42C of the Wealth-tax Act, the defect in the impugned notice is curable. The decision in Coimbatore Club Vs. Wealth-tax Officer, , is a clear authority for the proposition. Again, in the case of a club which is a society registered under the Societies Registration Act, it was held to be an individual unit as could be seen from the decision in I. Devarajan and Others Vs. Tamil Nadu Farmers Service Co-operative Federation and Others, . Thus, it is urged that there are no valid grounds for the assessee to come by way of a writ petition and claim exemption.

42. In reply, Dr. Debi Pal would submit that the argument of the Department does violence to section 14 of the Wealth-tax Act. Section 14 throws an obligation to file a return only when the net wealth is assessable under the Act. Should the Wealth-tax Officer be of opinion that the net wealth is assessable and yet no return has been filed, he could always call upon the assessee to file a return u/s 14(2) of the Act. Should the assessee fail to file a return, then again, there is section 16. Imposition of penalty for failure to comply with the requirement is talked of u/s 18 of the Act. Therefore, to say that after the introduction of section 21A, every trust must file a return in order to find out whether section 21A is applicable to it or not is an argument which cannot be accepted at all. In this case, the gravamen of the charge is that no reasons have been recorded for invoking section 17. If they have been so recorded, they ought to have been mentioned in the counter-affidavit. That takes the stand that investigation is necessary to find out whether section 21A is applicable to the appellant or not. This certainly is not the scope of a notice u/s 17. The mere production of records by the Department is not proper. It has been so laid down in Income Tax Officer and Others Vs. Madnani Engineering Works Ltd., Calcutta, by the Supreme Court.

43. In this case, Krishnamurthy, an Income Tax Officer, forms an opinion. Another officer Sridharan Thambi issues the notice. Therefore, it can only be a case of information in which event section 17(2) alone will be applicable and the limitation period is only four years. It is rather strange that the Appellate Assistant Commissioner sets aside the Income Tax assessment for the years in question on that very day when the notice u/s

17(1) is issued under the Wealth-tax Act.

44. On the question whether the notice is valid, the contention that the defect in the notice is a curable defect is totally wrong. Section 2(31) of the

Income Tax Act defines "person" which term includes a plurality of individuals. Such a case came to be dealt with in *Thiagesar Dharma Vanikam*

Vs. Commissioner of Income Tax, Madras, . But, here, certainly, it cannot be contended that the trust is a juristic person or a corporate person.

The decision in *Trustees of Gordhandas Govindram Family Charity Trust Vs. Commissioner of Income Tax, Bombay*, , is a clear authority on this

proposition. This will also be clear because section 21(1) of the Wealth-tax Act says that wealth-tax shall be levied upon and recoverable from the

manager or the trustee. Section 21(2) of the said Act gives an option to the Wealth-tax Officer to levy either on the trustee or on the beneficiary.

These two sections are not applicable to public charitable trusts since the beneficiary is indefinite. That is why section 21A of the Act specifically

provides for the assessment to be made on the trustee since the beneficiary is indefinite.

45. Section 41 of the Wealth-tax Act contemplates service of notice on a "person" since a trust is not a "person". The contention that service of

notice is a mere procedural requirement has been rejected in *Commissioner of Income Tax, Kerala Vs. Thayaballi Mulla Jeevaji Kapasi (Decd.)*

(by his Legal representatives), . In the case on hand, notice was not served either on the manager or on the trustee but was merely addressed to

Thanthi Trust". It is the service of notice which must be at reasonable hours that gives jurisdiction as seen from the above decision, namely,

Commissioner of Income Tax, Kerala Vs. Thayaballi Mulla Jeevaji Kapasi (Decd.) (by his Legal representatives), . Section 42C of the Wealth-tax

Act cannot come to the aid of the Department. That talks merely of procedural defects. The decision cited in this behalf is *P.N. Sasikumar and*

Others Vs. Commissioner of Income Tax, . Likewise, in *SEWLAL DAGA Vs. COMMISSIONER OF Income Tax, CALCUTTA.*, , Where

there was an improper service of notice, the notice was held to be invalid.

46. The points that arise for determination in this case are as follows :

(i) Whether there is scope for invoking section 17(1) of the Wealth-tax Act in this case for the assessment years in question ?

(ii) Whether there is scope for invoking section 21A of the Wealth-tax Act in this case ?

(iii) Whether the notice issued is valid ?

47. We well set out now the facts as briefly as possible. On November 23, 1976, for the assessment year 1976-77, a notice u/s 14(2) of the

Wealth-tax Act (hereinafter called the ""Act"") was issued.

48. On september 11, 1978. for the assessment year 1973-74, the Wealth-tax Officer asked the appellant to give the details of location of the

land, the extent of the land and the total value of the land. It was specifically stated in the letter of the Wealth-tax Officer that the said information

was asked for several assessment years including the assessment year 1974-75. On September 19, 1978, the appellant-trust requested the

Wealth-tax Officer to disclose the reasons. On September 20, 1978, the Wealth-tax Officer again wrote to the appellant to furnish the particulars

referred to in the letter dated September 11, 1978. It was pointed out by the Wealth-tax Officer that as the assessments for the said assessment

years including the assessment year 1974-75 were getting time-barred, no further extension of time would be granted.

49. On October 21, 1978 and October 27, 1978, the appellant-trust received notices from the District Valuation Officer to the effect that the

valuation of the property belonging to the trust has been referred u/s 16A(1) of the Act by the appropriate Wealth-tax Officer. On October 23,

1978, a similar notice was received from the Valuation Officer, Valuation cell, Coimbatore. On November 3, 1978, the trust wrote to the

Valuation Officer stating that the trust claims exemption u/s 5(1) of the Act and, as such, the proceedings u/s 16A of the Act should be dropped.

On December 19, 1978, the Valuation Officer stated that, on a reference of the matter to the Wealth-tax Officer, Central Circle XII, Madras, the

Wealth-tax Officer had reiterated his request for valuation of the property. Therefore, it was not possible to stay the valuation proceedings.

50. On December 20, 1978, the Valuation Officer sent two notices to the appellant-trust pointing out that the Valuation Officer would be visting

the Maduri office on January 5, 1979, and the Madras office on January 2, 1979. On December 29, 1978, the Valuation officer cancelled the

proposed visit for some official reasons. Thereafter, no proceedings were

continued in relation to the assessment year 1973-74. On March 31, 1979, the Wealth-tax Officer wrote to the trust stating that the wealth-tax proceedings for the assessment years 1965-66, 1966-67, 1967-68 and 1969-70 were dropped.

51. It requires to be stated at this stage that no proceedings were initiated for the assessment of the net wealth of the trust in respect of the assessment years 1970-71, 1971-72 and 1972-73. While the matter stood thus, on January 29, 1981, this court held, as could be seen from the decision in Commissioner of Income Tax Vs. Thanthi Trust, , that the property held by the Thanthi Trust was entitled to exemption u/s 11 of the Income Tax Act, 1961. As the trust is for public charitable purposes, as referred to earlier special leave to appeal against the said decision on that question was refused (sic) by the Supreme Court. On December 4, 1981, the trust received a ""nil"" demand notice for the assessment year 1976-77.

52. On March 7, 1985, for the assessment year 1977-78, the trust filed a ""nil"" return under protest because it was visited with a notice u/s 14(2) of the Act on September 3, 1977. On March 13, 1985, the trust received a ""nil"" demand notice for the assessment year 1980-81. For the assessment year 1979-80, no proceedings were initiated.

53. As regards the assessment year 1981-82, no notice u/s 14(2) of the Act was served simply because the proceedings were barred by limitation. This gives a complete gist of the case.

54. In this factual conspectus of the case, we will now proceed to determine the questions involved in this case after referring to the important provisions of the Act.

55. Section 3 of the Act is the charging section. That lays down that wealth-tax is leviable in respect of the net wealth of,

- (i) every individual;
- (ii) Hindu undivided family; and
- (iii) company.

56. As to what is ""net wealth"", section 2(m) defines it as follows :

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...

(the rest is omitted as unnecessary for our present purpose).

57. It will be useful even at this stage to refer to a corresponding provision of the Income Tax Act. Section 4 of the said Act is the charging section.

Sub-section (1) of section 4 reads as follows;

4. Charge of Income Tax. - (1) Where any Central Act enacts that Income Tax shall be charged for any assessment year at any rate or rates

Income Tax at that rate or rates shall be charged for that year in accordance with, and subject to the provision of this Act in respect of the total

income of the previous year or previous years as the case may be of every person :

Provided that where by virtue of any provision of this Act Income Tax is to be charged in respect of the income of a period other than the previous

year, Income Tax shall be charged accordingly.

58. Because Income Tax is levied on the total income of every person, it becomes necessary for us to refer to section 2(31) of the Income Tax

Act which defines "person" as follows;

"person" includes -

- (i) an individual.
- (ii) a Hindu undivided family,
- (iii) a company.
- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) a local authority and
- (vii) every artificial juridical person not falling within any of the preceding sub-clauses;

59. It is beyond dispute that "person" includes a plurality of individuals.

60. The next section that has to be looked at is section 5 of the Wealth-tax Act. That talks of exemption in respect of certain assets. Section 14

occurring in Chapter IV in relation to the assessment of an assessee throws an

obligation on the assessee to file a return of wealth in the prescribed form if his net wealth is assessable under the Act. Sub-section (2) states that notwithstanding anything contained in sub-section (1), if the Wealth-tax Officer is of the opinion that the net wealth is assessable, he may serve a notice on the assessee calling upon him to file a return.

61. Then comes the important section which has a bearing on this case, namely, section 17. That deals with wealth escaping assessment as the marginal note clearly indicates. That section is extracted in full.

17. (1) If the Wealth-tax Officer -

(a) has reason to believe that by reason of the omission or failure on the part of any person to make a return u/s 14 of his net wealth or the net

wealth of any other person in respect of which he is assessable under this Act for any assessment year or to disclose fully and truly all material facts

necessary for assessment of his net wealth or the net wealth of such other person 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) has, in consequence of any information in his 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;

he may, in cases falling under clause (a), at any time within eight years and in cases falling under clause (b) at any time within four years of the end

of that assessment year, serve on such person a notice containing all or any of the requirements which may be included in a notice under sub-

section (2) of section 14, and may proceed to assess or reassess such net wealth and the provisions of this Act shall, so far as may be, apply as if

the notice had issued under that sub-section.

(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

u/s 23, 24, 25, 27 or 29 :

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.

62. Section 147 of the Income Tax Act which is in pari materia with section 17 of the Act also deals with a similar situation of income escaping

assessment.

63. As far as the assessment year 1974-75 is concerned, Dr. Debi Pal would urge that the letter of the Income Tax Officer dated September 11,

1978, will show that a return had been filed because it mentions about the balance-sheet. Therefore, without a return being filed, the question of

furnishing a balance-sheet would not arise. The subsequent proceedings dated September 19, 1978 and September 20, 1978 also make this clear.

Then again, a notice u/s 16A of the Act was issued on October 21, 1978, for determining the market value of the assets as on June 30, 1973. That

relates to the assessment year 1974-75. Having regard to the terms of section 16A of the Act, that section could be invoked only in a case where

the value of the asset as returned is in accordance with the estimate made by a registered valuer, if the Wealth-tax Officer is of opinion that the

value so returned is less than its fair market value. As a matter of fact, the matter did not rest there. A date was fixed for inspection. That came to

be cancelled. Therefore, notwithstanding the fact that a return was filed, the counter-affidavit takes the stand that section 17 had come to be

invoked because the respondent had reason to believe, by reason of the omission on the part of the appellant-trust to furnish a return of wealth u/s

14(1) of the Act, that wealth chargeable to tax has escaped assessment. That this is palpably wrong is the contention.

64. In opposition to this, Mrs. Nalini Chidambaram, learned counsel for the respondent, would submit that in response to the notice u/s 17 issued

on March 17, 1983, the assessee-trust has filed a ""nil"" return of wealth on April 18, 1983, and claimed exemption u/s 5(1) of the Act. That letter

dated April 18, 1983, from the trust to the respondent reads as follows :

In reply to your notice under reference, we state as follows :

Our trust is a public charitable trust entitled to exemption u/s 5(1) of the Wealth-tax Act and hence we are not assessable to wealth-tax.

The Department has also accepted the judgment of the Hon'ble High Court, Madras, dated February 3, 1981, made in the six reference cases

holding that our trust is a public charitable trust entitled to exemption u/s 11 of the Income Tax Act, since no appeal has been filed to the Supreme Court by the Department.

However, without prejudice to our claim regarding exemption, we are filing a "nil" return...

65. Thereafter, the respondent issued a notice u/s 16(2) of the Act for the production of the documents and account books.

66. The reason for invocation of section 17 is that the applicability of the provisions of section 21A has to be considered and that involves

consideration of the user or application of the properties and income of the assessee-trust during the relevant year, namely, 1974-75. The counter-

affidavit further proceeds to say that should the appellant satisfy the respondent that the provisions of section 21A are not attracted to it, then the

respondent would have no option but to grant exemption u/s 5(1)(i) of the Act. Therefore, such a factual enquiry cannot be gone into under article

226 of the Constitution.

67. For the year 1975-76, admittedly, no return was filed by the assessee. Here again, the stand of the Revenue is that the applicability of section

21A requires to be examined. Whether such a stand is tenable is the question.

68. For the invocation of section 17(1), it appears to our mind that two conditions are necessary. They are :

(1) The Wealth-tax Officer must have reason to believe :

(a) by reason of omission or failure on the part of any person to make a return u/s 14 of his net wealth; or

(b) failure to disclose fully and truly all material facts;

(2) the net wealth chargeable to tax has escaped assessment.

69. This position has been made clear in several decisions. Let us first refer to the decision in Chhugamal Rajpal Vs. S.P. Chaliha and Others, .

That case clearly lays down that the officer must have some prima facie ground

before him for taking action u/s 148 of the Income Tax Act, 1961.

Though that case relates to section 148 of the Income Tax Act, that section corresponds to section 17 of the Wealth-tax Act. Therein, it has been

observed as follows (at p. 607) :

In other words, he must have some prima facie grounds before him for taking action u/s 148. Further his report mentions : "Hence proper

investigation regarding these loans is necessary". In other words, his conclusion is that there is a case for investigating as to the truth of the alleged

transactions. That is not the same thing as saying that there are reasons to issue notice u/s 148. Before issuing a notice u/s 148, the Income Tax

Officer must have either reasons to believe that by reason of the omission or failure on the part of the assessee to make a return u/s 139 for any

assessment year to the Income Tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income

chargeable to tax has escaped assessment for that year or alternatively, notwithstanding that there has been no omission or failure as mentioned

above on the part of the assessee, the Income Tax Officer has, in consequence of information in his possession, reason to believe that income

chargeable to tax has escaped assessment for any assessment year. Unless the requirements of clause (a) or clause (b) of section 147 are satisfied,

the Income Tax Officer has no jurisdiction to issue a notice u/s 148. From the report submitted by the Income Tax Officer to the Commissioner, it

is clear that he could not have had reasons to believe that by reason of assessee's omission to disclose fully and truly all material facts necessary

for his assessment for the accounting year in question, income chargeable to tax has escaped assessment for that year; nor could it be said that he,

as a consequence of information in his possession, had reasons to believe that the income chargeable to tax has escaped assessment for that year.

70. In *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, , it has been observed as follows (at p.

199) :

To confer jurisdiction under this section to issue notice in respect of assessments beyond the period of four years, but within a period of eight

years, from the end of the relevant year, two conditions have, therefore, to be satisfied. The first is that the Income Tax Officer must have reason to

believe that income, profits or gains chargeable to Income Tax have been underassessed. The second is that he must have also reason to believe

that such "underassessment" has occurred by reason of either (i) omission or failure on the part of an assessee to make a return of his income u/s

22, or (ii) omission or failure on the part of an assessee to disclose fully and truly all material facts necessary for his assessment for that year. Both

these conditions are conditions precedent to be satisfied before the Income Tax Officer could have jurisdiction to issue a notice for the assessment

or reassessment beyond the period of four years, but within the period of eight years, from the end of the year in question.

71. From this it is clear that two conditions require to be satisfied. They are that :

(i) the Officer must have reason to believe that net wealth has escaped assessment; and

(ii) such escapement is due to the non-filing of the return or omission or failure to disclose all material facts in the return.

72. In *Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das*, , the headnote reads as under :

Two conditions have to be satisfied before an Income Tax Officer acquires jurisdiction to issue notice u/s 148 in respect of an assessment beyond

the period of four years but within a period of eight years from the end of the relevant year, viz., (i) the Income Tax Officer must have reason to

believe that income chargeable to tax has escaped assessment, and (ii) he must have reason to believe that such income has escaped assessment

by reason of the omission or failure on the part of the assessee (a) to make a return u/s 139 for the assessment year to the Income Tax Officer, or

(b) to disclose fully and truly material facts necessary for his assessment for that year. Both these conditions must co-exist to confer jurisdiction on

the Income Tax Officer. It is also imperative for the Income Tax Officer to record his reasons before initiating proceedings as required by section

148(2).

73. In *The Commissioner of Wealth Tax, Andhra Pradesh, Hyderabad Vs. Trustees of H.E.H. Nizam's Family Hyderabad*, , it has been held as

follows (headnote) :

Section 3 of the Wealth-tax Act, 1957, imposes the charge of wealth-tax "subject to the other provisions" of the Act, and these other provisions

would include section 21. Being made expressly subject to section 21, section 3 must yield to that section in so far as section 21 makes special provisions for assessment of the trustee of a trust. Therefore, whenever assessment is made on a trustee, it must be made in accordance with the provisions of section 21. Every case of assessment on a trustee must necessarily fall u/s 21 and he cannot be assessed apart from and without reference to the provisions of that section.

74. In *Sheo Nath Singh Vs. Appellate Assistant Commissioner of Income Tax, Calcutta*, which arose under the old Income Tax Act, at page 152, it is observed as follows :

It is abundantly clear that the two reasons which have been given for the belief which was formed by the Income Tax Officer hopelessly fail to satisfy the requirements of the statute. In a recent case, *Chhugamal Rajpal Vs. S.P. Chaliha and Others*, which came up before this court, a similar situation had arisen and under the directions of the court, the Department produced the records to show that the Income Tax Officer had complied with the conditions laid down in the statute for issuing a notice relating to escapement of income. There also, the report submitted by the Officer to the Commissioner and the latter's orders thereon were produced. In his report, the Income Tax Officer referred to some communications received by him from the Commissioner of Income Tax, Bihar and Orissa, from which it appeared that certain creditors of the assessee were mere name-lenders and the loan transactions were bogus and, therefore, proper investigation regarding the loans was necessary. It was observed that the Income Tax Officer had not set out any reason for coming to the conclusion that it was a fit case for issuing a notice u/s 148 of the Income Tax Act, 1961. The material that he had before him for issuing notice had not been mentioned. The facts contained in the communications which had been received were referred to only vaguely and all that had been said was that from those communications, it appeared that the alleged creditors were mere name-lenders and that the transactions were bogus. It was held that from the report submitted by the Income Tax Officer to the Commissioner it was clear that he could not have had reasons to believe that on account of the assessee's omission to disclose fully and truly all material facts, income chargeable to tax had

escaped assessment.

In our judgment, the law laid down by this court in the above case is fully applicable to the facts of the present case. There can be no manner of

doubt that the words "reason to believe" suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds

and land that the Income Tax officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The Income Tax

officer would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to

the belief required by the section. The court can always examine this aspect though the declaration or sufficiency of the reasons for the belief

cannot be investigated by the court.

75. In this legal background, we will analyse the position for the assessment year 1974-75.

76. Point No. 1 :- Since there was a factual controversy as to whether the return was filed or not, we will take it that the return had not been filed

for 1974-75 just as for the succeeding year. Even then, the question would be whether section 17(1) of the Act could be invoked ? It is not even

stated before us by the Revenue that this is a case to which section 21A is applicable. On the contrary, the stand taken by the Revenue is that ""the

applicability of the provisions of section 21A has to be considered"". To our mind, it is clear that on such a stand, there is hardly any scope for the

invocation of section 17(1) because the officer must have reason to believe. The words ""has reason to believe"" are stronger than the words ""is

satisfied"" as was pointed out by the Supreme Court in Ganga Saran and Sons P. Ltd. Vs. Income Tax Officer and Others, . Therefore, to enable

the authority to find the applicability of section 21A, there is no necessity on the part of the assessee to file a return. Such an insistence is not borne

out by the statutory requirements. To put it in other words, for investigation as to the applicability of section 21A, no power is conferred to issue

notice u/s 17(1).

77. What the Revenue wants to do now is to conduct a roving enquiry. It is also settled law that the reasons must have reasonable nexus. They

must be relevant and have a bearing on matters in regard to which the officer is required to entertain the belief before he can issue the notice. As a

matter of fact, the Supreme Court points out in *Ganga Saran and Sons P. Ltd. Vs. Income Tax Officer and Others*, as follows :

It is well settled as a result of several decisions of this court that two distinct conditions must be satisfied before the Income Tax Officer can

assume jurisdiction to issue notice u/s 147(a). First, he must have reason to believe that the income of the assessee has escaped assessment and,

secondly, he must have reason to believe that such escapement is by reason of the omission or failure on the part of the assessee to disclose fully

and truly all material facts necessary for his assessment. If either of these conditions is not fulfilled, the notice issued by the Income Tax Officer

would be without jurisdiction. The important words u/s 147(a) are "has reason to believe" and these words are stronger than the words "is

satisfied". The belief entertained by the Income Tax Officer must not be arbitrary or irrational. It must be reasonable or, in other words, it must be

based on reasons which are relevant and material. The court, of course, cannot investigate into the adequacy or sufficiency of the reasons which

have weighed with the Income Tax Officer in coming to the belief, but the court can certainly examine whether the reasons are relevant and have a

bearing on matters in regard to which he is required to entertain the belief before he can issue notice u/s 147(a). If there is no rational and

intelligible nexus between the reasons and the belief, so that, on such reasons, no one properly instructed on facts and law could reasonably

entertain the belief, the conclusion would be inescapable that the Income Tax Officer could not have reason to believe that any part of the income

of the assessee had escaped assessment and that such escapement was by reason of the omission or failure on the part of the assessee to disclose

fully and truly all material facts and the notice issued by him would be liable to be struck down as invalid.

78. Where, therefore, it is not even the definite stand of the Revenue that section 21A is applicable to the appellant-trust as a result of which it is

found that the net wealth of the trust has escaped assessment, we are unable to see as to how section 17(1) could be invoked.

79. So far, we have proceeded on the footing that no return for 1974-75 had been filed. But, the proceedings do show that the return had been

filed. Where, therefore, the proceedings above referred to including the proposed valuation do show that the return had been filed, it must be

actually found that the return is incomplete in its particulars or does not disclose fully and truly all the material facts. Such a finding is totally wanting

in this case. However, that need not detain us because, as we had observed above, in order to find out the applicability of section 21A, section

17(1) cannot be invoked at all.

80. It requires to be stated that, at all relevant times, the stand of the appellant-assessee has always been that the ruling in Commissioner of Income

Tax Vs. Thanthi Trust, has become final and is binding between the assessee and the Revenue, as a result of which the trust is exempt u/s 5(1) of

the Act. We cannot subscribe to the view that, in response to the notice dated September 11, 1978, the assessee filed a ""nil"" return and that it did

not disclose fully and truly all material facts and, therefore, section 17(1) could be invoked. The short answer to this is that there is not even a

finding that section 21A is applicable to the assessee and by reason of that its net wealth has escaped assessment. It is all the more surprising that

based on the judgment in Commissioner of Income Tax Vs. Thanthi Trust, for the subsequent years, namely, 1977-78, 1978-79 and 1980-81,

when only ""nil"" demand notices were issued and when no proceedings were initiated for the assessment year 1979-80, how could there be a

sudden change in the character of the trust.

81. Even earlier to these assessment years, the position was the same because, on March 31, 1979, the Wealth-tax Officer wrote to the trust

saying that the wealth-tax proceedings for the assessment years 1965-66, 1966-67, 1967-68 and 1969-70 were dropped. No proceedings were

initiated for assessment of the net wealth of the trust in respect of the assessment year 1970-71, 1971-72 and 1972-73. Therefore, it cannot be as

if by any strange situation in respects of the assessment year in question alone, the applicability of section 21A to the trust requires to be examined.

82. In I.T.A. Nos. 21 and 41 of 1972-73, the Appellate Assistant Commissioner set aside the assessment for the year 1974-75 on the very day

when the impugned notice had come to be issued, namely, March 24, 1984. It cannot be by a curious act of coincidence. Therefore, the very basis

of relying on the returns of the assessee under the Income Tax Act for invoking section 17(1) is not tenable. Thus, it is clear that there is no

possibility of invoking section 17(1) at all in this case.

83. Point No. 2 :- According to Mrs, Nalini Chidambaram, learned counsel for the respondent, after the introduction of section 21A, there is an

obligation on the part of every assessee to file a return. Section 21A was inserted by the Finance Act 16 of 1972 with effect from April 1, 1973. It

is clear by a reading of the marginal note that it relates to assessment in cases of diversion of property or of income from property held under trust

for public charitable or religious purposes. By a careful reading of the said section, we find that it does not even indirectly suggest the filing of a

return. The section merely enables an assessment being made if there is a diversion of funds. We do not find the basis for the argument that after

the introduction of section 21A, there is an obligation on the part of the assessee to file a return. However, reliance is placed by the Revenue on

Managing Shebait of Bhukailash Debutter Estate Vs. Wealth Tax Officer, F-Ward and Another, . At page 908, the following passage occurs :

This position manifests a lacuna in the present provision of law. The position, therefore, is that if the trustees hold the property for public purpose

of a charitable or religious nature and if they misapply or commit breach of trust, they will continue to enjoy exemption under the Wealth-tax Act.

This position should receive consideration by the Legislature in order to bring it at par with the provisions of the Income Tax Act. But until that is

done, in my opinion the petitioners are entitled to succeed on the point that there were no grounds for believing that the wealth of the assessee had

escaped assessment or had been underassessed.

84. This, in our considered view, does not advance the case of the Revenue.

85. Section 14(1) of the Act categorically lays down that only if the net wealth is assessable, there is an obligation on the part of an assessee to file

a return. In the instant case, having regard to the dictum laid down in Commissioner of Income Tax Vs. Thanthi Trust, , which is binding between

the parties, and, further, having regard to the fact that exemption was granted to the trust with regard to the assessment years prior to the years in

question and "nil" demand notices were issued for the years posterior to the years in question, could it be now said that there is any obligation on

the part of the appellant trust to file a return. We are unable to see as to how it could ever be contended that after the introduction of section 21A,

every trust ought to file a return.

86. According to Mrs. Nalini Chidambaram, otherwise, even a trust which is not exempt need not file a return. First of all, this is no answer to

circumvent section 14(1) of the Act. Secondly, the argument tends to ignore the power of the Wealth-tax Officer u/s 14(2). Where, therefore, the

assessee takes up a positive stand that no return need be filed, merely because of section 21A, the assessee is not obliged to file a return. Only

when there is an obligation to file a return and if in spite of that no return is filed, section 14(2) could be invoked. In response to that, if no return is

filed, section 16 is there for the Wealth-tax Officer to invoke. Then again, penalty is imposable u/s 18 of the Act for failure to furnish a return, or to

comply with a notice or for concealment of assets. All these provisions are not there without any purpose. If, therefore, there is no obligation on the

part of the assessee to file a return, it could not be said that his net wealth has escaped assessment. In this connection, we may usefully refer to the

decision in *Modi Charitable Fund Society and Another Vs. Income Tax Officer and Others*, wherein the headnote reads as follows :

(ii) Since the petitioner was under no statutory obligation to file the return for the relevant year, it could not be said that income chargeable to tax

had escaped assessment by reason of its omission or failure to file the return. The petitioner-society had been granted a certificate of exemption

and, therefore, there could be no omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for its

assessment for the relevant year. Therefore, clause (a) of section 147 would not apply to the present case.

87. This point is elaborated at page 823, wherein the following observation is found :

Coming to the merits of the case, the undisputed facts are that the society was granted a certificate of exemption u/s 4(3) of the 1922 Act by the

Income Tax Officer, A-Ward, Meerut, on February 17, 1958. Thus, it was under no obligation to file a voluntary return u/s 22(1) of that Act or

section 139(1) of the 1961 Act when the latter Act came into force. After the insertion of sub-section (4A) in section 139 of this Act from April 1,

1971, the assessee was under a statutory obligation to file a voluntary return of its income. In compliance with that provision, the assessee did file a

voluntary return for the first time for the assessment year 1971-72. It claimed that its income was exempt from tax and that contention was

accepted for 1971-72 and 1972-73. The assessee continued to file voluntary returns up to the assessment year 1977-78. For the assessment years 1973-74 and 1974-75, the Income Tax Officer assessing the assessee took a different view and held that the income of the assessee was not exempt from tax. Against those assessment orders, the assessee filed appeals before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner accepted the assessee's contention and held that its income was exempt from tax u/s 11 of the 1961 Act. The Income Tax Officer then took up the matter in appeals before the Tribunal. These appeals have been decided by the Delhi Bench-B, Delhi, by its consolidated order dated April 7, 1982. The Tribunal has confirmed the view taken by the Appellant Assistant Commissioner and in doing so has rightly relied upon the decision of the Supreme Court in *Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association*, . It would be seen that there could be escapement of assessment under clause (a) of section 147 by reason of the omission or failure on the part of the assessee to make a return u/s 139 or to disclose fully and truly all material facts necessary for his assessment for that year. This clause would not apply to the present case because the assessee being under no statutory obligation to file a return for the assessment year under consideration, it cannot be said that income chargeable to tax has escaped assessment by reason of its omission or failure to file the return. The same is the case with regard to the other condition because the assessee had been granted a certificate of exemption. Thus, there could be no omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for this year.

88. In this connection, it is necessary to note that u/s 139(4A) of the Income Tax Act, 1961, even if a trust is exempt, the Income Tax return will have to be filed. But, unfortunately, for the Revenue, there is no corresponding provision in the Wealth-tax Act to that effect. Therefore, section 21A of the Wealth-tax Act cannot be invoked because it is merely an enabling provision to make an assessment if there is a diversion of the funds of the trust. In the case on hand, the categorical stand of the trust is that it is exempt u/s 5(1) of the Wealth-tax Act. If that be so, there is no statutory obligation on its part to file a return. This is an important point to be borne in mind. However, as we have already stated, if at all section

17(1) could be invoked in a case where no return is filed, it could be done subject to the satisfaction of two conditions, namely, the Wealth-tax

Officer having reason to believe -

(i) that the net wealth escaped assessment; and

(ii) that the escapement is due to the failure to file a return or by reason of the failure to disclose fully and truly all the material facts in the return

filed.

89. That is not case here. Therefore, we conclude that it cannot be contended, as is contended on behalf of the Revenue, that after the introduction

of section 21A, there is an obligation on the part of every trust to file a return. The contention of Dr. Debi Pal has, therefore, to be accepted in this

regard.

90. Point No.3 :- No doubt, the point relating to notice has come to be taken only in the reply affidavit. Nevertheless, since it goes to the root of

the matter, namely, the question of jurisdiction, we allowed both the sides to address the arguments on that aspect. We now set out the impugned

notice.

To :

M/s. Thanthi Trust,

46, E. V. K. Sampath Road,

Madras. 7.

I have reason to believe that your net wealth chargeable to tax for the assessment year 1975-76 has escaped assessment within the meaning of

section 17 of the Wealth-tax Act.

I, therefore, propose to assess the said net wealth that has so escaped assessment.

I hereby request you to deliver to me within 35 days of the receipt of this notice, a return in the attached form of your net wealth chargeable to tax

along with such other particulars as are required to complete the form for the said assessment year.

Sd.....

Wealth-tax Officer,

Central Circle VI,

Madras. 34.

91. This notice has been addressed to the Thanthi Trust. It is well-settled law that a trust is not a juristic person or a corporate person. In

Thiagesar Dharma Vanikam Vs. Commissioner of Income Tax, Madras, , it is stated thus :

A trust is an institution which has no corporate personality. It is not a legal person. The word "trust" is a convenient and a compendious

description of the trustees, the beneficiaries and the subject-matter of the trust. Sometimes, the expression "trust" is used to denote the trustees.

For example, when the trustees carry on a business, we generally say that the trust is doing so. When we refer to the fact that the trust is owning

properties, we only refer to the interest of the beneficiaries in the property, as in Indian law there is no line dividing title into legal and equitable.

The trustees of a trust in India have no title to the trust properties; the properties only vest in them for administration and management. The

instrumentality of the trustees to hold and manage trust properties should not cause any misapprehension of the real position of the trustees vis-a-

vis the trust. They occupy a representative position representing the trust and they are not strangers to the trust. When the trustee acts, it is only the

trust that acts, as the trustee fully represents the trust. A business carried on on behalf of a trust rather indicates a business which is not held in trust,

than a business of the trust run by the trustees.

92. In Trustees of Gordhandas Govindram Family Charity Trust Vs. Commissioner of Income Tax, Bombay, . it was laid down as follows :

Now, let us turn to the other question, viz., whether the trust in question can be considered as a trust created for public purpose of a charitable or

religious nature. As seen earlier, the trust in question was created primarily for the benefit of the members of the family of Gordhandas Govindram

Seksaria. That is clear from the title given to the trust as well as from the various provisions to which we have made reference earlier. Therefore, it

is not possible to hold that the trust in question is a trust for any public purpose. It is clearly a private trust. The character of the trust in question

came to be considered by the Bombay High Court in Trustees of Gordhandas Govindram Family Charity Trust Vs. Commissioner of Income Tax

(Central), Bombay, , u/s 4(3)(i) of the Indian Income Tax Act. After examining

the various provisions, the High Court opined that it was not a trust for charitable purpose within the meaning of the Indian Income Tax Act, 1922. It was held that the primary purpose of the settlor was to benefit the members of his family and remotely and indirectly to benefit the general public. We agree with that conclusion. The decision in the above case came up for consideration by this court in *The Trustees of The Charity Fund, Esplanade Road, Fort, Bombay Vs. The Commissioner of Income Tax, Bombay*, . This court did not differ from the view taken by the High Court, but distinguished the same.

93. As rightly urged by Dr. Debi Pal, section 21(1) of the Wealth-tax Act clearly postulates that wealth-tax shall be levied upon and recoverable from the manager or the trustee. Section 21(2) gives an option to the Wealth-tax Officer to levy either on the trustee or on the beneficiary. These provisions do not apply to a public charitable trust since the beneficiary is indefinite. That is why section 21A specifically provides for assessment on the trustee since the beneficiary is indefinite. The decision in *The Commissioner of Wealth Tax, Andhra Pradesh, Hyderabad Vs. Trustees of H.E.H. Nizam's Family Hyderabad*, , is a useful citation in this regard wherein the headnote reads as under :

Section 3 of the Wealth-tax Act, 1957, imposes the charge of wealth-tax "subject to the other provisions" of the Act, and these other provisions would include section 21. Being made expressly subject to section 21, section 3 must yield to that section in so far as section 21 makes special provision for assessment is made on a trustee, it must be made in accordance with the provisions of section 21. Every case of assessment on a trustee must necessarily fall u/s 21 and he cannot be assessed apart from and without reference to the provisions of that section.

94. Therefore, it is the trustee who is assessable. Section 41 of the Act lays down the procedure in relation to the service of notice. That makes it very clear that the notice must be served not the person. It is clear by a reading of the decision in *Commissioner of Income Tax, Kerala Vs.*

Thayaballi Mulla Jeevaji Kapasi (Decd.) (by his Legal representatives), that service of notice is not a procedural requirement. At page 153 it was laid down as follows :

Counsel for the respondent contended that in failing to follow up the information

that the respondent was in Bombay or in Ceylon; the Income Tax Officer was guilty of negligence, and, therefore, service by affixing cannot be regarded as duly made. Counsel relied upon the decision of the Madras High Court in *Myitkyina Trading Depot Vs. Dy. Tahsildar, Paramakudi, Ramnad Dist. and Others*, and the decision of the Calcutta High Court in *Gopiram Agarwalla Vs. First Additional Income Tax Officer and Others*. In *Myitkyina Trading Depot Vs. Dy. Tahsildar, Paramakudi, Ramnad Dist. and Others*, an unregistered firm which had its business mainly in Rangoon and had a branch office in Madras was assessed for the assessment year 1939-40. Proceedings for assessment were commenced against the firm after the partners had left for Burma and notice was served after the business was closed by affixing it on the house in which the respective wives of the partners resided and proceedings of reassessment were completed *ex parte*. Assessments for the subsequent year 1940-41 and 1941-42 were also completed in their absence. On these facts the Madras High Court held that there was no proper or due service by affixing did not constitute due service. The court pointed out that at the material time the two partners of the respondent-firm were resident in a country occupied by Japan which was at war with India and postal communication between India and Burma was severed. In the circumstances the court held that service by affixing the notice at the known residence of the partners, where their respective wives reside, could not be regarded as due service. In *Gopiram Agarwalla Vs. First Additional Income Tax Officer and Others*, it was held that the mere fact that the serving officer did not find the party to be served with the notice at his address is not sufficient to establish that he cannot be found. It must be shown not only that the serving officer went to the place at a reasonable time when he would be expected to be present but also that if he was not found proper and reasonable attempts were made to find him either at that address or elsewhere. If after such reasonable attempts the position still was that the party is not found then and then only can it be said that he cannot be found. The principle laid down in that case is unexceptionable but it has, in our judgment on application in this case.

95. It is also clear from this ruling that service of notice alone gives jurisdiction.

96. Then the next question is whether it is a curable defect. In our considered

view, section 42C cannot cure the defect because this is not a procedural defect since the service of notice on the proper person alone gives jurisdiction for the authority concerned. It is so vital in character. the

following observations in P.N. Sasikumar and Others Vs. Commissioner of Income Tax, makes this position very clear :

Page 84 : ""..... It is settled law that the issue of a notice u/s 148 of the Income Tax Act is a condition precedent or a matter of jurisdiction to

the validity of any reassessment order to be passed u/s 147 of the Act. It is also settled law that if no such notice is issued or if notice issued is

invalid or not in accordance with the law or is not served on the proper person in accordance with law the assessment would be illegal and without

jurisdiction. The notice should specify the correct assessment year and should be issued to the particular assessee.

Page 85 and 86; ""..... Such a fundamental infirmity cannot be called a "technical objection" or mere "irregularity" and such vital infirmity

cannot be cured or obliterated by relying on section 292B of the Income Tax Act. It is not a case of a notice issued or served but which is beset with

any mistake, defect or omission. This is a case of "no notice" to "the assessee"s. AS stated by the Calcutta High court in Sunrolling Mills P. Ltd.

Vs. Income Tax Officer, , 416, section 292B does not empower the Income Tax officer to act without jurisdiction. In that case, the Calcutta High

Court held that section 292B does not authorise the Income Tax officer to convert a proceeding u/s 14 & (b) to the Act into a proceedings u/s

147(a) and that action cannot be justified by taking recourse to section 292B of the Act. It is not a mere technicality and it is a question of

jurisdiction. We are of the view that the said reasoning will apply in this case also. On this basis, we hold that the Appellate Tribunal was in error in

holding the section 292B is applicable in the instant case and in reversing the orders of the Appellate Assistant Commissioner for these four

assessment years.

97. One other case that can be usefully referred to in this connection is Sewtal Daga v. CIT [1965] 55 406 (Cal). therein, the headnote reads as

follows :

Held, that the notice which was issued and served in the instant case was obviously invalid and the proceedings before the Income Tax officer

were consequently, illegal and void. The service of notice on the assessee was a condition precedent to the assumption of jurisdiction by the

Income Tax officer u/s 34. Consent cannot be confer jurisdiction upon a court if the court has no jurisdiction and the reassessment proceedings

were invalid ?

98. From this point of view we find that the observation in Thiagesar Dharma Vanikam Vs. Commissioner of Income Tax, Madras, extracted

above cannot be held to be applicable tot he present case.

99. Once we come to the conclusion that the trust is not an assessable unit, we are unable to see how the decision in Coimbatore Club Vs.

Wealth-tax Officer, , which relates to a club which is an association of person and wherein the term ""individual"" came up for interpertation and it

was held that a body of individuals would fall within the meaning of the term ""individual"", could advance the case of the Revenue. Therefore, this

case, we hold that the notices itself is invalid.

100. For all these reason we allow these appeals. However, there will be no order as to costs.