Triveni Engineering and Vs. Dcit

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Nov-22-2004

Reported in : (2005)93ITD561(Delhi)

Judge : V Gandhi, B Saini

Appellant : Triveni Engineering and

Respondent : Dcit

Judgement :

1. This appeal by assessee is directed against the order of Commissioner, Wealth Tax (Appeals)-XIX, New Delhi dated 25-10-2002 for the Assessment year 1997-98 on the following grounds:- 1. "That in the facts and circumstances of the case, the Commissioner of Wealth Tax (Appeals) erred in not holding that the reassessment under Section 17 of Wealth Tax Act was bad in law, beyond jurisdiction and void ab-intio.

1.21 That in the facts and circumstances of the case, the Commissioner of Wealth Tax (Appeals) erred in holding that the Joint Commissioner of Wealth Tax (Appeals) erred in holding that the Joint Commissioner of wealth Tax, Special Range-18, New Delhi (who exercised jurisdiction over the erstwhile Triveni Engineering & Industries Limited) had valid jurisdiction to reopen the completed assessment, even after the said company had merged with the appellant and ceased to exist.

1.22 That the Commissioner of Wealth-tax (Appeals) erred on facts and in holding that the Joint Commissioner of Wealth Tax, Special Range-18, New Delhi validly exercised jurisdiction to the exclusion of Joint Commissioner, Special Range-10, New Delhi, exercising jurisdiction over the appellant on the date of issue of notice under Section 17 of the Act.

1.3 That the Commissioner of Wealth-tax (Appeals) erred on facts and in law in holding that the notice issued under Section 17 of the Wealth Tax Act to the erstwhile Triveni Engineering & Industries Limited, which was non existent as on the date of notice, was bad in law and the assessment framed pursuant to issue of such notice was void ab-initio.

1.4 That the Commissioner of Wealth-tax (Appeals) erred on facts and in law in holding that the appellant could not, in terms of Section 124(3) of the Act, seek to challenge the jurisdiction for the first time in the appellate proceedings.

2. That the Commissioner of Wealth-tax (Appeals) erred on facts and in law in holding that the reassessment was had in law, being based on mere change of opinion.

3. That in the facts and circumstances of the case, the Commissioner of Wealth-tax (Appeals) erred in not treating the premises let out to Joint Venture companies as having been used for the purpose of business and, therefore, not liable to Wealth Tax.

4. That in the facts and circumstances of the case, the Commissioner of Wealth-tax (Appeals) erred in not holding that the housing colony in the sugar Mill premises was in the nature of business asset and was wholly utilized for the purpose of business and, therefore, not liable to Wealth Tax.

5. That the Commissioner of Wealth-tax (Appeals) erred on facts and in law in upholding part levy of interest under Section 17B of the Act." 2. We have heard the learned representative of both the parties and gone through the observations of the authorities below and details submitted in paper book by representative of both the parties. Written submission filed by counsel for assessee also perused.

3. The facts as taken from the record for the purpose of disposal of the appeal are that the appellant/assessee is stated to be public limited company engaged inter alia in business of manufacture of sugar.

The Triveni Engineering and Industries Limited company had merged with the company M/s. Gangeswar Limited with effect from 31-3-2000 vide order dated 6-3-2000 of Allahabad High Court approving the merger. The amalgamating Company was assessed with JCIT, S.R.18, New Delhi and M/s.

Gangeswar Limited was assessed with JCIT, S.R.10, New Delhi. As per the Order of the Allahabad High Court, the transferred company shall function under the name of Triveni Engineering and Industries Limited, which has been made available by the Registrar of Company, U.P. Kanpur vide letter dated 4-6-1999. Therefore, the new name of the amalgamated company remained the same name as of the amalgamating company. It is stated that valuation dated is 31-3-1997.

4. The return of erstwhile company of wealth for the Assessment Year 1997-98 declaring total wealth of Rs. 56.20 lakhs was filed on 30-3-98.

The assessment was completed accepting the return of wealth vide order dated 4-2-2000. We may mention that in this Assessment year only the movable assets that is value of motor vehicles was shown assessed and accepted at the same value which was filed by the assessee in the valuation report filed along with the return of wealth. The appointed date of merger is 1-10-1997. Subsequently, it was noticed that the assessee was in receipt of rental income of Rs. 16,23,093/- from the following persons in respect of immovable properties:- (4) Rent received from employees in respect of residential premises at Khathavli Rs. 63,093/-.

5. The Assessing Officer (J.C., W.T. S.R. 18, New Delhi) issued notice dated 4-10-2000 under Section 17 of the W.T. Act as assessment was reopened on the ground that as per Wealth Tax provisions of Schedule-III read with Section 2(ea)(i) of W.T.Act, 1957 the capitalized value of rented properties are includable in the net wealth of the assessee. The assessee company did not file return in response to the notice under Section 17 of the W.T.Act issued on 4-10-2000. The Assessing Officer issued notice under Section 16(4) for the purpose of completion of the

assessment. The assessee vide letter dated 12-12-2000 informed the Assessing Officer that the rent received from parties mentioned above does not fall under the mischief of Section 2(ea)(i) because the above three companies are joint ventures in which the assessee is a major stake holder which leads to inference that the above premises have been used by the assessee solely for the purpose of its business and the rent received is only in respect of portion of the premises which were being occupied by the assessee for the purpose of its business. The Assessing Officer did not accept the explanation given by the assessee on the ground that the above three joint ventures are separate entities and were separately incorporated with Registrar of Companies. As regards the rent received from the employees amounting to Rs. 63,093/- in respect of residential premises at Khathavli assessee's contention was that under W.T.Act accommodation provided to the employees is not chargeable to tax at all. As per Section 2(ea)(i) of the W.T.Act, any house which the assessee may occupy for the purposes of any business or profession carried by him is exempt from tax. The accommodation provided to employees for their residence is situated within the sugar mill premises and is linked to the nature of the business of sugar manufacture carried on by the assessee. This contention of the assessee was rejected on the ground that provision to Section 2(ea) will be applicable if the accommodation is provided to its employees free of rent. The contention of assessee was therefore rejected and the value of immovable assets after giving deduction on the basis of capitalized value of rented property was included in the net wealth of the assessee and the addition was made accordingly vide assessment order dated 22-3-2002 under Section 16(5) of the I.T.Act.

The assessment order was framed by DCIT, Circle-16(1), New Delhi. The assessment order was challenged before the CWT(A) and it was submitted before the CWT(A) that the Assessing Officer had no jurisdiction to proceed in the matter as the assessee company was merged with M/s.

Gangeshwar Limited with effect from 1-10-1997 and therefore the jurisdiction after this date vested with the Assessing Officer who was having jurisdiction over M/s. Gangeshwar Limited which is known as Triveni Engineering and Industries Ltd., after the merger. It was also submitted that intimation of the merger was given to

Assessing Officer (JCIT, S.R.18 as well as to JCIT, SR10). It was not appreciated by the JCIT, S.R.18, New Delhi that on merger the erstwhile Triveni Engineering and Industries Limited had ceased to exist as a legal entity and no notice could have been validly issued and served to such a non existent entity. On merits, the same submissions were reiterated which were made before the Assessing officer claiming that joint venture companies are part of the assessee and that the rent received from the employees using the property of the assessee are exempt from tax. The CWT(A) rejected both the contentions of the assessee and rejected the appeal of the assessee on both the issues. However, CWT(A) directed the Assessing Officer to make certain corrections as regards arithmetical mistakes in the assessment order by which excess addition is made. The CWT(A) also directed the Assessing Officer to allow relief to the assessee as regards the rent received from some of the employees. The Assessing Officer was directed to make addition in respect of residential accommodation allotted to four employees who were drawing salary more than Rs. 2 lakhs. The appeal of he assessee was therefore allowed partly. The assessee is in appeal before us on the grounds mentioned above.

6. On consideration of the submission of the parties and facts available on record, the three issues arise for consideration are:- (i) Whether the Assessing Officer has jurisdiction to issue notice dated 4-10-2000 under Section 17 of the W.T.Act.

(ii) Whether the Assessing Officer initiated reassessment proceedings under Section 17 of the W.T.Act on mere change of opinion.

(iii) Whether authorities below were justified in making additions in the net wealth of the assessee in respect of value of immovable assets.

7. Whether the Assessing Officer has jurisdiction to issue notice dated 4-10-2000 under Section 17 of the W.T. Act? 8. The learned representative of the assessee submitted that the assessee company merged with M/s. Gangeshwar Limited and as per amalgamation the name of the amalgamated company changed to M/s.

Triveni Engineering and Industries Limited. He has further submitted that though it was the same name of the assessee, but, fact remains that it merged with M/s.

Gangeshwar Limited with effect from 31-3-2000.

He has further submitted that intimation of the amalgamation was given to both the Assessing Officer of the amalgamating company as well as amalgamated company. He has further submitted that the assessee dissolved without winding up, so it ceased to be company existing in law because of amalgamation. He has further submitted that reassessment notice cannot be issued to non existent company who is not on the role of Registrar of Companies. The learned representative of the assessee relied upon the following decisions.Saraswati Ind. Syndicate Ltd., v. Commissioner of Income-tax 186 ITR 278 (Supreme Court)Singer India Ltd. v. Chander Mohan Chadha and Ors. (2004) 113 DLT 80 (Supreme Court) The learned representative of the assessee further argued that issue of notice to a dead person and any assessment framed thereto would be nullity and of no consequence. He has relied upon following decisions.

(2) Commissioner of Income-tax v. Amarchand N. Shroff 48 ITR 59 (Supreme Court (4) Commissioner of Income-tax v. Surendra Kumar Bhadani 164 ITR 323 (Patna) The learned representative of the assessee also argued that the issue of notice to the amalgamating company subsequent to the amalgamation become effective is bad in law and void ab-initio. The learned representative of the assessee relied upon decision of Madras High Court in the matter of Commissioner of Income-tax v. Express News Paper [40 ITR 38] and Order of Bombay Bench of ITAT reported in 41 TTJ 301 in the matter of Makers Development Services Ltd. v. Commissioner of Income-tax. The learned representative of the assessee further submitted that Section 124 of the I.T.Act defines territorial jurisdiction and transfer of file under Section 127 of the I.T.Act can be made in the case of existing assessee, but, in this case amalgamating ceased to exist. Therefore, there cannot be transfer of file. The learned representative of the assessee further submitted that jurisdiction by acquiescence is not valid in law. He has relied upon decision of the Delhi High Court in the matter 138 ITR 734 [SWARAN YASH].

9. On the other hand, the learned Departmental Representative reiterated the findings of the authorities below and submitted that the Registrar of Companies

changed the name of both the companies after amalgamation vide letter dated 31-3-2000. He has further submitted that since the name of amalgamated company stats with the same alphabet, therefore, the same assessing Officer having jurisdiction of name starting with T-series had proceeded against amalgamated company. He has further submitted that as per Section 8 of the W.T.Act, the Assessing Officer under Income Tax Act shall be the Assessing Officer under Wealth Tax Act and would be having same jurisdiction over the area of the assessee. The learned Departmental Representative further submitted that in this case amalgamating company got merged with amalgamated company in the same name and address, therefore, Wealth Tax Officer got the jurisdiction over the amalgamated company automatically. He has further submitted that Section 124 of the Income Tax Act is applicable to the present case and as per Sub-section (3) the jurisdiction of the Assessing Officer cannot be challenged after expiry of one month from the service of the notice. He has submitted that in the above case assessee never challenged the jurisdiction of the Assessing Officer till the completion of the assessment. Therefore, assessee is not entitled to raise this point at the appeal stage. The learned Departmental Representative further submitted that notice dated 4-10-2000 was served upon the assessee on 11-10-2000 and the amalgamated company did not challenge the jurisdiction of the Assessing Officer and even no return was filed in time allowed by the Assessing Officer, therefore, assessee cannot challenge the jurisdiction. The learned Departmental Representative further submitted that the assessee (amalgamated company) filed letter dated 4-12-2000 before the Assessing Officer and the contents of this letter would prove that the Assessing Officer proceeded against the successor company. The learned Departmental Representative further submitted that after re-structuring of the department the file of the JCIT, S.R.18, New Delhi transferred to DCIT, Cir.16, New Delhi who was having jurisdiction of the same alphabet. Therefore, is no illegality in the issue of the notice. The learned Departmental Representative submitted that the case laws relied upon by the counsel for the assessee are not applicable to the present case as they pertain to older law.

10. We have considered rival submissions and material pointed out by learned representative of the parties and observations of the authorities below.

11. According to Section 3 of the Wealth Tax, there shall be charged for every Assessing Year, a tax in respect of net wealth on the corresponding valuation date of the every individual, Hindu undivided family and company at the rate or rates specified in Schedule-I. The definition of net wealth is provided in Section 2(m) of the W.T.Act and provides - "net wealth means, the amounting 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 available date which have been incurred in relation to the said asset." Section 2(ea)(i) of the Wealth Tax Act as is relevant for the purpose of disposal of this appeal provides the definition of asset (immovable property) and provides as under : [w.e.f. 1-4-1997] "{(ea) "assets", in relating to the Assessment Year commencing on the 1st day of April, 1993, or any subsequent assessment year, means- {(i) any building or land appurtenant thereto (hereinafter referred to as "house"), whether used for residential or commercial purposes or for the purpose of maintaining a guest house or otherwise including a farm house situated within twenty five kilometers from local limits of any municipality (whether known as Municipality, Municipal Corporation or by any other name) or a Cantonment Board, but does not include- (1) a house meant exclusively for residential purposes and which is allotted by a company to an employee or an officer or a director who is in whole time employment, having a gross annual salary of less than two lakh rupees; (2) any house for residential or commercial purposes which forms port of stock-in-trade; (3) any house which the assessee may occupy for the purposes of any business or profession carried on by him;" 12. It is not in dispute that the amalgamating company that is M/s.

Triveni Engineering and Industries Limited amalgamated with M/s.

Ganeshwar Limited vide order of the Allahabad High Court dated 6/3/2000 effective date 31-3-2000. According to the amalgmation scheme as approved by the High Court the name of the amalgamated company shall be the same name M/s. Triveni Engineering and Industries Ltd., with the same address. It is also not disputed before us that the Assessing Officer can proceed against the

amalgamated/successor company in respect of matters of erstwhile amalgamating company even under Section 17 of the W.T.Act. What has been disputed is that no notice could be issued to the amalgamating company subsequent to the amalgamation become effective and that the issue of notice to dead person is of no consequence. On such assumptions, it was submitted before us that the Assessing Officer cannot issue notice dated 4-10-2000 to the amalgamating company and that Section 124(3) is not applicable.

Therefore, Assessing Officer has no jurisdiction to issue notice under Section 17 of the W.T.Act.

13. In this case, the assessee has filed return of Wealth Tax for the Assessment Year 1997-98 under appeal showing the net wealth that is movable assets (value of the motor vehicles). No value of the immovable property was shown in the return of wealth tax. The Assessing Officer accepted the value of motor vehicles as per valuation report and completed the assessment vide order dated 4-2-2000. The Assessing Officer reopened the assessment on the ground that as per wealth tax provisions of Schedule-III read with 2(ea)(i) of the Wealth Tax Act the capitalized value of the rented property are includable in the net wealth of the assessee. This fact was brought to his notice by the internal audit party and the Assessing Officer duly recorded the reasons for the same and issued notice under Section 17 of the W.T.Act to the assessee. The show cause notice dated 4-10-2000 under Section 17 (copy of which is filed at page 74 of paper book) shows that it was issued and addressed to the assessee company M/s. Triveni Engineering and Industries Limited. "Kailash", 2nd floor, 26, K.G.Market, New Delhi. The assessee company very well responded the show cause notice though no return was filed within 35 days of the receipt of this notice. The assessee filed reply dated 4-12-2000 (before the Assessing Officer (JCIT, S.R.18, New Delhi) which reads as under (copy of which is filed at page 75 of the paper book) - [Formed by the Amalgamation of Triveni Engineering & Industries Ltd. with Ganeshwar Ltd.,] Rc : Notice Under Section 17 of Wealth Tax Act - Assessment Year 1997-98 We are in receipt of your notice issued Under Section 17 of the Wealth Tax Act, in the case of the erstwhile Triveni Engineering & Industries Ltd., for the Assessment Year 1997-98, proposing to reopen the assessment for the

said Assessment Year.

In this regard we would like to submit that the wealth two return for Assessment Year 1997-98 filed by the erstwhile Triveni Engineering & Industries Ltd., had already been assessed Under Section 16(3) of the Wealth Tax Act vide order dated 4-2-2000.

We are therefore surprised to receive the above notice proposing to reassess the wealth. we rely on the return already filed by us and assessed earlier by the department. The reason for seeking to reopen the assessment may kindly be intimated, to enable us to make our submissions in regard thereto.

Copy of the return filed (along with the statement of computation of wealth) as well as the assessment order dated 4-2-2000 are enclosed herewith.

The contents of the above letter/reply of the assessee shows that it was filed by amalgamated/successor company as on the top of it, it is clearly mentioned that M/s. Triveni Engineering and Industries Limited (formed by the amalgamation of M/s. Triveni Engineering and Industries Limited with Gangeshwar Limited). The address is also same. This letter shows that the amalgamated/successor company received the show cause notice under Section 17 of the W.T.Act for the Assessment year 1997-98 in respect of the matter of the erstwhile Co., M/s. Triveni Engineering and Industries Limited proposing to reopen the assessment. The contents of the letter would also reveal that the amalgamated/successor company was aware of the fact that the assessment of the erstwhile company was already framed and now it was subject to reopen. The amalgamated/successor company also sought for the reasons for reopening of the assessment. Therefore, it clearly proved that the Assessing Officer issued notice to the amalgamated/successor company which was also properly responded, which also proved that notice was served on the amalgamated/successor company having the same name and address as of the erstwhile company. Admittedly, Assessing Officer can proceed against amalgamated/successor company and could pass order also in respect of matters of erstwhile amalgamating company. The CWT(A) in the impugned order at page 5 has specifically mentioned that the assessee company was assessed with JCIT, S.R.18, New Delhi. After reorganization of the

department, the proceedings were transferred to DCIT, Circle 16(1), New Delhi. According to the CWT(A), DCIT, Cir.16 (1), New Delhi is also having jurisdiction in respect of amalgamated company that is M/s. Triveni Engineering and Industries Ltd., formed after merger. The CWT(A) was also of the view that as regards the pending matters of the erstwhile company after merger, the same had to be handled by the successor company. The CWT(A) was also of the view that it is not correct to say that notice cannot be issued to the erstwhile company after merger. The finding of the CWT (A) about reorganization of the department have not been rebutted by the assessee by any material. The show cause notice under Section 17 of the W.T. Act is addressed to the successor company and was served upon the successor company. Therefore, CWT (A) rightly justified the issue of the notice for reassessment in the matter. Even the reassessment is also framed in the same name. The assessee has not produced any material on record to show that the notice was addressed to amalgamating company or non existent company.

Under Section 8 of the W.T.Act, the income tax authorities referred in Section 116 of the I.T.Act shall be wealth tax authorities for the purposes of wealth tax and every such authority shall exercise the powers and perform the functions of wealth tax authorities questioning of any individual; HUF or company and for this purpose the jurisdiction under this section shall be the same as has been under Income tax Act, Section 11 of W.T. Act provides that provisions of Section 124 and 127 of I.T.Act shall apply for the purpose of this Act. Section 124 of the I.T. Act defines the jurisdiction of the Assessing Officer. Section 124(3) provides the time limit for challenging the jurisdiction of the Assessing Officer. It provides that no person shall be entitled to call in question the jurisdiction of the Assessing Officer where he has made a return under Sub-section (1) of the Section 139; after the expiry of one month from the date on which he was served with the notice under Sub-section (1) of Section 142 or Sub-section (2) of Section 143 or after the completion of the assessment which ever is earlier. It also provides that jurisdiction cannot be challenged where he has made no such return after the expiry of the time allowed by the notice under Sub-section (1) of Section 142 of under Section 148 for making the return or by the notice under the first proviso to Section 144 to show cause why assessment should not be completed to the best of the judgment of the Assessing Officer, which ever is earlier. The learned Department Representative

submitted that notice date 4-10-2000 was served upon the assessee on 11-10-2000. The assessee was allowed 35 days time for filing return under Section 17 of the W.T.Act. The assessee however did not file return of Wealth and only filed reply dated 4-12-2000 whereby it was stated that the assessee rely on the return already filed by us and assessed earlier by the department.

Therefore, it proves that the assessee did not file return of income in response to notice under Section 17 of the W.T.Act within the time allowed by the Assessing Officer. The CWT (A) was therefore justified in holding that the time limit for calling in question and dispute the jurisdiction of the Assessing Officer is lost as soon as the assessment has been completed. It is an admitted fact that the assessee has not challenged the jurisdiction of the Assessing Officer at any stage of the assessment proceedings. Therefore, CWT (A) rightly held that at the appeal stage the plea of the assessee cannot be entertained. We may also mention that Section 127 is meant for transfer of the case, but, it is not such a case before us. Since the name of erstwhile amalgamating company and amalgamated/successor company starts with the same alphabet, therefore, same Assessing Officer could have jurisdiction over the successor company. Even as per finding of this CWT (A) after restructuring of the department the proceedings before JCIT, S.R.18, New Delhi were transferred to DCIT, S.R.16(1), New Delhi.

Therefore, the provisions contained in Section 127 would not be helpful to the assessee. The learned counsel for the assessee submitted that the jurisdiction can be challenged at any stage. We do not agree with the submission of the assessee, as after insertion of Section 124(3) in the I.T.Act, it could be challenged during the specified period mentioned above. The record also shows that the appeal before the CWT (A) as well as before us has been filed by the successor company. The learned representative of the assessee relied upon the case laws referred to above on the proposition that on amalgamation the amalgamating company is dissolved without winding up and therefore amalgamating company ceased to exist in the eyes of law. There is no dispute about the legal proposition decided in number of cases. The learned representative of the assessee also referred to the decisions in which it was held that notice could not be issued to a dead person and that issuance of notice to amalgamating company subsequent to the

amalgamation is bad in law. But, the facts in the present appeal before us clearly suggest that the Assessing Officer proceeded against the amalgamated/successor company which is existing company and it was not disputed before us that the Assessing Officer can proceed against amalgamated/successor company. Therefore, the case laws referred to by counsel for assessee are clearly distinguishable and are not applicable to advance the contention of the counsel for the assessee. The learned counsel for the assessee filed copies of intimation in case of Gangeshwar Ltd., showing in its case Assessing Officer is JCIT, S.R.10, but, in view of our finding that notice of reassessment is issued in the name of amalgamated/successor company these orders have no relevancy to the matter in dispute. Merely GIR No. is similarly mentioned is not enough to conclude against department. Assessing Officer of Gangeshwar Ltd., is not relevant as it merged with amalgamated company. Whole of substance of matter is to be considered The Hon'ble Allahabad High Court in the matter of Hindustan Transport Company v. ACIT, reported in 189 ITR 326, considering the objection to the jurisdiction of the Assessing Officer held that objection cannot be raised after assessment is completed. In this case, the assessment year under consideration was 1985-86 and Hon'ble Allahabad High Court considering the provisions of Section 124 of the I.T.Act and considered the following points:- (i) What is the nature of power of transfer conferred by the Act? and (ii) How the Act itself views a defect of the nature involved in the present case? We may mention that the provisions of Section 124 (5) as were applicable in Assessment Year 1985-86 are almost similar to the provisions contained in Section 124 (3) of the I.T.Act after amendment which are applicable to the present case. The Hon'ble Allahabad High Court further held:- "Being an enactment aimed at collecting revenue, the Legislature did not intend collection of revenue to be bogged down on account of technical plea of jurisdiction. It has, therefore, prescribed the limit up to which the plea of jurisdiction may be raised. As provided in Section 124 (5)(a), the right is lost as soon as the assessment has been completed. Even where the right is exercised before the assessment is completed, the question is to be decided by the Commissioner or by the Board. Courts do not come into the picture.

From the above provisions of the Act, it is apparent that the act does not treat the allocation of functions to various authorities or officers as one of substance. it

treats the matter as one of procedure and a defect of procedure does not invalidate the end action. The answer to the first question, therefore, is that the power is administrative and procedural and is to be exercised in the interest of exigencies of tax collection and the answer to the second question is that, under the Act, a defect arising from allocation of functions is a mere irregularity which does not affect the resultant action." Considering the above discussion, we are of the view that the Assessing Officer has jurisdiction to issue notice Section 17 of the Wealth Tax Act against the assessee. We, uphold the finding of the CWT(A) and dismiss the appeal of the assessee on this issue.

14. Whether the Assessing Officer initiated reassessment proceedings under Section 17 of the W.T. Act on mere change of opinion? 15. The learned counsel for the assessee submitted that the Assessing Officer initiated the proceeding under Section 17 of the W.T.Act on mere change of opinion. He has submitted that all the facts were disclosed in the original return as in the audited balance sheet the receipt of the rent in a sum of Rs. 16,23,093/- was specifically mentioned and the same audit report was filed with the return of wealth. The learned representative of the assessee submitted that reopening is not possible on reversal of the same facts. According to him, facts were within the knowledge of the Assessing Officer as per audited balance sheet. Therefore, on mere change of opinion, Assessing Officer cannot initiate proceedings for reopening of the assessment. He has relied upon the decision of the Delhi High Court in the matter of Kelvinator of India Ltd., 256 ITR page 1. On the other hand, the learned Departmental Representative submitted that as per the return and valuation report filed with the return of wealth, assessee has shown the valuation of motor vehicles. He has further submitted that in the original return the rented properties have not been shown. So, there is failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the Assessment Year. He has submitted that explanation to Section 17 (1) is applicable to the facts of the case. The learned Departmental Representative further submitted that after amendment to Section 2(ea), only three items were exempted from wealth tax, but the assessee has not shown how it was entitled for exemption in the return of wealth.

The learned Departmental Representative further submitted that no specific details were mentioned in the audited balance sheet as merely rent is stated to have been received. Assessee has not given any break up of the rented property. Therefore, true and full facts were not disclosed to the Assessing Officer. The learned Departmental Representative filed copy of the order sheet of the original assessment and pointed out that even no discussion had taken place at the original stage in respect of rent received of the immovable properties.

Therefore, there is no question of change of opinion in the aforesaid case by the Assessing Officer and Assessing Officer has rightly initiated the proceedings under Section 17 of the W.T. Act. The learned Departmental Representative pointed out that the internal audit party pointed out factual mistake and error upon which Assessing Officer properly formed his opinion and recorded reasons for the same and initiated the reassessment proceedings. The learned Departmental Representative relied upon decision of Hon'ble Supreme Court in the matter of Commissioner of Income-tax v. PVS Beedies Pvt. Ltd., 237 ITR 132 in which it was held that reopening on the basis of factual information given by internal audit party is valid reopening of assessment.

16. We have considered the rival submissions and material available on record. In this case, the assessee in the original return of income has disclosed the value of the motor vehicles for the purpose of wealth tax. Assessee has not filed any detail with regard to rent received from rented properties. Even in the audited balance sheet only rent is shown, but, no details or break up is given as to from which property rent is received. Thus, the assessee has failed to disclose fully and truly all material facts necessary for assessment. Explanation to proviso to Section 17 (1) of the W.T.Act provides "production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been recovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of foregoing proviso." 17. The explanation to the proviso to Section 17 (1) of the W.T.Act is clearly applicable against the assessee. The learned Departmental Representative filed copy of reasons recorded by Assessing Officer for reassessment and the internal audit report by which factual error was pointed to by the Assessing Officer in the assessment and the

Assessing Officer on that basis formed his opinion for reassessment for including the value of the rented properties for the purpose of wealth tax act.

The Assessing Officer duly recorded reasons for initiating proceeding under Section 17 of W.T.Act as the wealth of assessee had escaped assessment. The decision of the Hon'ble Supreme Court in the matter of PVS. Beedi Pvt. Ltd., clearly supports the submission of learned Departmental Representative in which it was held that reopening of the assessment is valid if factual error is pointed out by audit part to the Assessing Officer.

18. Considering the above discussion and the facts mentioned above, we do not find it to be a case of change of opinion. Nothing was brought to the knowledge of the Assessing Officer at original assessment stage and as such Assessing Officer cannot be said to have formed any Opinion as regards value of the immovable property for the purpose of wealth tax. Therefore, there cannot be a charge of opinion by the Assessing Officer for reopening the assessment. The decision relied on by the learned counsel for the assessee of the Delhi High Court in the matter of Kelvinator of India Ltd., is therefore clearly distinguishable and is not applicable. Considering the above discussion, we do not find any justification to interfere in the orders of the authorities below. We uphold their finding and dismiss this ground of appeal of the assessee.

19. Whether authorities below were justified in making additions in the net wealth of the assessee in respect of value of immovable assets? 20. On this issue, it was submitted that three joint ventures from whom rent has been received are separate entities. According to the assessee, erstwhile M/s. Triveni Engineering and Industries Limited in terms of memorandum of articles of association was authorized to enter into partnership and other forms of occupation that any person or persons engaged in the similar area of business or enter into transaction with other companies engaged in any business or transaction capable of being conducted to the benefit of the assessee. The assessee stated to have entered into collaboration agreement that the companies mentioned above. It was also stated that the object of the collaboration was, to expand activities of the assessee company.

Therefore, the premises were used by the assessee for business purposes. The CWT (A) did not accept the submission of the assessee as the premises were let out to joint venture companies cannot be treated to have been used for the purpose of business of the assessee company.

As far as addition of the value of the residential premises allotted to its employee, the Assessing Officer was of the view that the provisions to Sub-section 2(ea)(i) of the W.T. Act will not be applicable on the ground that the assessee has charged rent from its employees. According to the Assessing Officer the exemption will be allowable to the assessee if accommodation is allotted on free of rent. The assessee submitted before the authorities below that housing colony in the mill premises is in the nature of business asset and was being wholly utilized for the purpose of business of the assessee. The CWT (A) however did not accept the submission of the assessee as clearly properties were let out to the employees and rent is discharged from the employees. Further, the CWT (A), directed the Assessing Officer to make addition in respect of residential accommodation allotted to four employees who were drawing salary more than Rs. 2 lakhs. The learned counsel for the assessee submitted that Clause (3) of Section 2(ea)(i) is applicable. The learned counsel for the assessee submitted that the assessee occupied the properties with joint venture companies for its business purpose and that houses are exclusively given for residential purpose to the employees of the companies. On the other hand, the learned Departmental Representative submitted that occupation of the property by assessee is not possible as per Clause 3 of Section 2(ea)(i) of the W.T. Act, the assessee was receiving rent for the aforesaid premises.

21. We have considered the rival submissions and material available on record. The definition of asset as is applicable after 1-4-1993 does not include a house meant exclusively for residential purpose and which is allotted by a company to an employee or officer or a Director who is in whole time employment having a gross annual salary less than rs. 2 lakhs as was applicable. In the present case, the CWT(A) found that four of the employees were drawing salary more than Rs. 2 lakhs.

Therefore, he has directed the Assessing Officer to make the part addition. as such, we do not find any infirmity in the order of the CWT (A). Clause-3 provides that any house which the assessee may occupy for the purpose of any business or profession carried on by him would nor include in the definition of land and building for the purpose of definition of asset. Admittedly, assessee rented out the properties to the joint venture companies which were separate entities. Rent is paid for use and occupation of the property by the tenant. As such, assessee cannot be said to have occupied the rented property. Therefore, CWT (A) was justified in rejecting the claim of the assessee. Accordingly, we do not find any merit in the submission of counsel for the assessee on this issue. We uphold the finding of the authorities below and dismiss the appeal of the assessee on this issue also. No other issue is argued or prescribed.

22. As a result, the appeal of the assessee has no merit. The same is accordingly dismissed.