

PETITIONER:
COMMISSIONER OF WEALTH TAX BOMBAY AND ANOTHER

Vs.

RESPONDENT:
MRS. KASTURBAI WALCHAND & OTHERS

DATE OF JUDGMENT 28/03/1989

BENCH:
PATHAK, R.S. (CJ)
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PATHAK, R.S. (CJ)
MISRA RANGNATH

CITATION:
1989 AIR 1326 1989 SCR (2) 131
1989 SCC Supl. (1) 640 JT 1989 (2) 4
1989 SCALE (1) 728

ACT:

1) Wealth Tax Act, 1957--Cl. (b) of Proviso to Sub-s. (1) of s. 25--When an appeal against an order of the Appellate Assistant Commissioner by either party is pending before the Appellate Tribunal, a revision application to the Commissioner against the same order is not competent.

HEADNOTE:

Sub-s. (1) of s. 25 of the Wealth Tax Act, 1957 investing the Commissioner with the power to revise an order passed by any authority subordinate to him stipulates in cl. (b) of the proviso thereto that the power of revision shall not extend to an order which is the subject of an appeal before the Appellate Assistant Commissioner or the Appellate Tribunal.

The respondent, a share-holder in a company, adopted for the purpose of assessment under the Act, valuation of shares at their breakup values with paid up capital and reserves which was rejected by the Wealth Tax Officer who estimated their value on the basis of capitalisation of profits for the assessment year 1960-61 and on the basis of the break-up value with certain modifications for the assessment years 1958-59 and 1959-60. The respondent's appeal

were partly allowed by the Appellate Assistant Commissioner against which the Commissioner of Wealth Tax preferred appeals to the Appellate Tribunal. The Appellate Tribunal dismissed the appeals. During the pendency of the appeal before the Tribunal, the respondent preferred revision applications to the Commissioner of Wealth Tax and contend that the valuation of the shares adopted by the Appellate Assistant Commissioner was unreasonable and excessive and should be duly modified. The Commissioner rejected the applications on the ground that they were incompetent in view of cl. (b) of the proviso to sub-s. (1) of s. 25. Against that order the respondent filed a writ petition which was allowed by a Single Judge of the High court holding that the revision applications were competent since the aforesaid provision would not operate as a bar against assessee in a case where the appeal before the Appellate Tribunal is filed by the Revenue. An appeal filed against his order was

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dismissed by a Division Bench of the High Court.

Allowing the appeal,

HELD: Where an appeal is filed before the Appellate Tribunal against an order of the Appellate Assistant Commissioner, the impugned order merges in the order of the Appellate Tribunal when the appeal is disposed of on merits.

If meanwhile a revision application has been filed before the Commissioner against the same order of the Appellate Assistant Commissioner, it will not be open to the Commissioner to pass any order in revision against the order of the Appellate Assistant Commissioner as the latter will have merged with the order of the Appellate Tribunal. It is immaterial that the appeal and the revision application have not been filed by the same party. This would be plainly so as in the present case, the subject matter of the appeal before the Appellate Tribunal is the same as that of the revision

on application before the Commissioner. [135B-D]

he In this case the High Court omitted to consider that t
nd appeals filed before the Tribunal had been disposed of, a
er the impugned order of the Appellate Assistant Commission
ng had merged in the order of the Appellate Tribunal renderi
nt the revision applications infructuous. What the responde
he should have done was to file her own appeals before t
te Appellate Tribunal. It must be noted that the Appella
ar Tribunal is a superior body to the Commissioner, as is cle
ll from sub-s. (1) of s. 26 which provides that an appeal sha
lie to the Appellate Tribunal from an order under sub-s. (2)
2) of s. 25 of the Commissioner. There would have been
no difficulty in the Appellate Tribunal considering the appea
ls of both parties and passing suitable orders in regard to t
he valuation of the shares. [135F-G; 136A-B]

JUDGMENT:

93 CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 88 to
to 1974.

he From the Judgment and Order dated 10.1. 1973 of t
Bombay High Court in Appeal Nos. 102 to 107 of 1966.
1- Dr. V. Gauri Shankar and Ms. A. Subhashini for the Appe
lants.

Nemo for the Respondents.

The Judgment of the Court was delivered by
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he PATHAK, CJ. These appeals by special leave raise t
he question whether the High Court is right in holding that t
ot proviso to sub-s. (1) of s. 25 of the Wealth Tax Act cann
be invoked by the Revenue on the facts of this case.

u- The respondent is assessed in the status of an individ
te al under the Wealth Tax Act, 1957, and these appeals rela
or to the assessment years 1958-59, 1959-60, and 1960-61 f
8, which the corresponding valuation dates are 31 March, 195
31 March, 1959 and 31 March, 1960 respectively.

ny The respondent is a share holder in Walchand and Compa
he Private Limited. On each of the three valuation dates s

held 140 shares in the Company. For the purpose of assessment under the Wealth Tax Act, the respondent adopted the valuation of the shares at their break-up values with paid up capital and reserves as there was no market quotation for those shares. When making the assessment Orders for each of the three assessment years, the Wealth Tax Officer rejected the valuation of the shares as claimed by the respondent and estimated their value on the basis of capitalisation of profits at six per cent for the assessment year 1960-61 and on the basis of the break-up value with certain modifications for the assessment years 1958-59 and 1959-60. The respondent appealed to the Appellate Assistant Commissioner of Wealth Tax, and the Appellate Assistant Commissioner determined the value of the shares on the basis of capitalisation of the investment income at six per cent and other income at twelve and half per cent. He allowed the appeal of the respondent in part by separate orders dated 10 November, 1961. The Commissioner of Wealth Tax preferred appeal to the Appellate Tribunal on the question relating to valuation of the shares.

The Appellate Tribunal passed a consolidated order on 23 July, 1963, dismissing the appeals for the three assessment years. It observed that the valuation of the shares of the company on the relevant valuation dates determined by two valuers on arbitration in the case of another assessee should be taken as the valuation in the case of the assessee also. The value of the shares, the Appellate Tribunal said, worked out to an amount much less than the valuation determined by the Appellate Assistant Commissioner, and therefore, the question of enhancing the value determined by the Appellate Assistant Commissioner did not arise. The Appellate Tribunal did not reduce the values determined by the Appellate Assistant Commissioner as no appeals had been

filed by the respondent. Meanwhile, however, during the
pendency of the appeals before the Appellate Tribunal, the
respondent preferred revision applications on 29 June, 1962
under subsection (1) of section 25 to the Commissioner
Wealth Tax in respect of the aforesaid assessment years and
contended that the valuation of the shares adopted by the
Appellate Assistant Commissioner was unreasonable and excessive
and should be duly modified. The Commissioner made an order
dated 12 August, 1964 rejecting the revision applications on the
ground that they were incompetent in view of cl. (b) of the proviso
to sub-s. (1) of s. 25 of the Act. Against that order the respondent
filed a writ petition in the High Court of Bombay and contended
that the Commissioner had erred in dismissing the revision applications
as incompetent. On 10-11 October, 1966 a learned Single Judge of the
High Court allowed the writ petition holding the revision applications
to be competent, and accordingly directed the Commissioner to entertain
and dispose of the revision applications in accordance with law. The
Commissioner appealed to a Division Bench of the High Court and the
appeal was dismissed on 10 January, 1973.

The relevant provisions of s. 25 of the Wealth Tax Act read as follows:

"Powers of Commissioner to revise orders of subordinate authorities.--The Commissioner may either of his own motion or on application made by an assessee in this behalf, call for the record of any proceeding under this Act in which an order has been passed by any authority subordinate to him, and may make such inquiry, or cause such inquiry to be made, and, subject to the provisions of this Act, pass such order thereon, not being an order prejudicial to the assessee, if the Commissioner thinks fit;

Provided that the Commissioner shall not revise an order under this sub-section in any case--

(a) where an appeal against the order lies to the

Appellate Assistant Commissioner or to the Appellate Tribunal, the time within which such appeal can be made has expired or in the case of an appeal to the Appellate Tribunal the assessee has not waived his right of appeal;

(b) where the order is the subject of an appeal before the Appellate Assistant Commissioner or the Appellate Tribunal.

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The High Court has taken the view that cl, (b) of the proviso to sub-s. (1) of s. 25 of the Act operates as a bar to revision application by an assessee before the Commissioner only where the assessee has also filed an appeal before the Appellate Tribunal. According to the High Court, the bar does not come into operation against an assessee where the appeal before the Appellate Tribunal has been filed by the Revenue..It seems to us that the view taken by the High Court cannot be sustained. Where an appeal is filed before the Appellate Tribunal against an order of the Appellate Assistant Commissioner, the impugned order merges in the order of the Appellate Tribunal when the appeal is disposed of on merits. If meanwhile a revision application has been filed before the Commissioner against the same order of the Appellate Assistant Commissioner, it will not be open to the Commissioner to pass any order in revision against the order of the Appellate Assistant Commissioner as the latter will have merged with the order of the Appellate Tribunal. It is immaterial that the appeal and the revision application have not been filed by the same party. This would be plainly as in the present case, the subject matter of the appeal before the Appellate Tribunal is the same as that of the revision application before the Commissioner. Here, the subject matter of the appeal before the Appellate Tribunal was the valuation of the shares held by the respondent. So it was also in the revision application before the Commi

S- sioner.

he In the circumstances, we are unable to agree with t
as reasoning adopted by. the High Court. The High Court h
er proceeded on the view that it was open to the Commission
e- to dispose of the revision applications filed by the r
n- spondents. The High Court, it seems to us, omitted to co
en sider that the appeals filed before the Tribunal had be
t- disposed of, and the impugned order of the Appellate Assis
er ant Commissioner must be taken to have merged in the ord
in of the Appellate Tribunal. The revision applications,
short, had become infructuous.

ow What the respondent should have done, on coming to kn
l- of the filing of the appeal by the Revenue before the Appe
ns late Tribunal, was to have withdrawn the revision petitio
ls filed before the Commissioner and filed her own appea
o- before the Appellate Tribunal with an application for cond
he nation of delay under sub-s. (3) of s. 24, in case t
he period of limitation had expired, and accordingly both t
he sets of appeals would have been disposed of by the Appella
te Tribunal. In case the respondent came to know of the fili
ng of the appeals by the Revenue before the Appellate Tribun
al and had not yet applied in revision to the Commissioner s
he should not have filed the revision

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ls applications but should have preferred her own appea
he before the Appellate Tribunal. It must be noted that t
r, Appellate Tribunal is a superior body to the Commissione
es as will be clear from sub-s. (1) of s. 26 which provid
an that an appeal will lie to the Appellate Tribunal from
re order under sub-s. (2) of s. 25 of the Commissioner. The
al would have been no difficulty in the Appellate Tribun
le considering the appeals of both parties and passing suitab
no orders in regard to the valuation of the shares. There is
of difficulty now in dealing with such a situation in view

sub-s. (2A) of s. 24.

In the case of the other respondents, there is a similar history of proceedings with similar orders passed therein, and this judgment will be considered as disposing of the appeals filed here in those cases also.

In the result, the appeals are allowed and the impugned orders of the Division Bench and the Single Judge on the writ petitions are set aside and the writ petitions are dismissed. In the circumstances of the case there is no order as to costs.

H.L.C.
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Appeals allowed.