

Amberkar/Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

WEALTH TAX APPLICATION NO.3 OF 1984

Nirajkumar N. Rungta & Anr.	..Applicants
Versus	
Commissioner of Wealth Tax Bombay City VII, Bombay	..Respondent

**WITH
WEALTH TAX REFERENCE NO.8 OF 1991**

Nirajkumar N. Rungta & Anr.	..Applicants
Versus	
Commissioner of Wealth Tax Bombay City VII, Bombay	..Respondent

**WITH
WEALTH TAX REFERENCE NO.2 OF 1992**

Nirajkumar N. Rungta & Anr.	..Applicants
Versus	
Commissioner of Wealth Tax Bombay City VII, Bombay	..Respondent

**WITH
WEALTH TAX REFERENCE NO.4 OF 1993**

Nirajkumar N. Rungta & Anr.	..Applicants
Versus	
Commissioner of Wealth Tax Bombay City VII, Bombay	..Respondent

**WITH
WEALTH TAX REFERENCE NO.3 OF 1994**

Nirajkumar N. Rungta & Anr.	..Applicants
Versus	
Commissioner of Wealth Tax Bombay City VII, Bombay	..Respondent

**WITH
WEALTH TAX REFERENCE NO.8 OF 1994**

Nirajkumar N. Rungta & Anr.	..Applicants
Versus	
Commissioner of Wealth Tax Bombay City VII, Bombay	..Respondent

**WITH
WEALTH TAX REFERENCE NO.102 OF 1998**

Nirajkumar N. Rungta & Anr.	..Applicants
Versus	
Commissioner of Wealth Tax Bombay City VII, Bombay	..Respondent

**WITH
WEALTH TAX REFERENCE NO.11 OF 2000**

Nirajkumar N. Rungta & Anr.	..Applicants
Versus	
Commissioner of Wealth Tax Bombay City VII, Bombay	..Respondent

**WITH
INCOME TAX APPEAL NO.362 OF 2003**

Nirajkumar N. Rungta & Anr.	..Appellants
Versus	
Wealth Tax Officer, 16(2) (4) Mumbai & Anr.	..Respondents

**WITH
INCOME TAX APPEAL NO.608 OF 2003**

Nirajkumar N. Rungta & Anr.	..Appellants
Versus	
Wealth Tax Officer, 16(2) (4) Mumbai & Anr.	..Respondents

**WITH
WRIT PETITION NO.793 OF 2005**

Nirajkumar N. Rungta & Anr.	..Petitioners
Versus	
Tax Recovery Officer, 16(2)Mumbai & Ors.	..Respondents

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- Mr. Ashish Kamat a/w. Anoshak Davar, Ms. Kausar Banatwala, Gauri Sakhardande, Advocates i/by Mr. Tushar Goradia for the Appellants / Petitioners.
- Mr. Suresh Kumar a/w. Ms. Mohinee Chougule, Advocates for the Respondents.

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**CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.**

RESERVED ON : MARCH 11, 2021.
PRONOUNCED ON : MAY 05, 2021.

JUDGMENT : (PER : MILIND N. JADHAV, J.)

1. Heard Mr. Ashish Kamat a/w. Mr. Anoshak Davar, Ms. Kausar Banatwala, Ms. Gauri Sakhardande, Advocates i/by Mr. Tushar Goradia, Advocate for the appellants / petitioners and Mr. Suresh Kumar a/w. Ms. Mohinee Chougule, Advocates for the respondents.

Proceedings before the Court :-

2. The appellants have filed Wealth-tax Application No.3 of 1984 under the provisions of section 27(3)(b) of the Wealth Tax Act, 1957 (hereinafter referred to as "**the said Act**") for a direction to the Income Tax Appellate Tribunal, Bombay Bench 'C', Bombay to refer the 5 questions of law arising out of its orders dated 19.07.1983 in WTA Nos.598 to 612(BOM)/1981 for the assessment years 1961-62 to 1975-76. By order dated 28.08.1984, this court admitted the above Wealth-tax Application and restricted rule to the following two questions of law :

"(i) Whether, on the facts and in the circumstances of the case the Tribunal erred in law in including the market value of the said gold in the computation of net wealth of the original petitioner ?

(ii) Whether, on the facts and in the circumstances of the case the Tribunal erred in law in rejecting the assessee's submissions that even if the said gold were to be included in the net wealth, the value thereof to be taken ought to be NIL or ought to be arrived at, bearing in mind the liability for confiscation, fine and penalty and bearing in mind that what had to be valued was the price which the assessee claim to be restored possession of the said gold would fetch, if sold in the open market ?"

2.1. The Income-Tax Appellate Tribunal, 'B' Bench Bombay (hereinafter referred to as "**the Tribunal**") in seven separate Wealth-tax References i.e. WTR Nos.8/1991, 2/1992, 4/1993, 3/1994, 8/1994,

102/1998 and 11/2000 filed at the instance of the assessee, referred to us the following two questions as questions of law for our opinion under section 27 (1) of the said Act in respect of Assessment Years 1961-62 to 1975-76, 1979-80 and 1980-81, 1981-82 to 1984-85, 1986-87 to 1988-89, 1990-91 and 1991-92 and 1989-90, 1992-93 and 1993-94 :

"(i) Whether on the facts and in circumstances of the case, the Tribunal erred in including the market value of the gold to the computation of net wealth of the original petitioner i.e. Chiranjial Shrimal Goenka?

(ii) Whether on the facts and in circumstances of the case, the Tribunal erred in rejecting the assessee's submissions that even if the said gold was included in the net wealth the value thereof to be taken ought to be NIL or to be arrived at bearing mind liability for confiscation, fine and penalty and bearing in mind that what had to be valued was the price which the assessee claim to be restored possession of the said gold would fetch if sold in open market ?"

2.2. Income Tax Appeal No.362 of 2003 has been filed by the assessee under the provisions of Section 27-A of the said Act to challenge the order dated 25.11.2002 passed by the Income Tax Appellate Tribunal, Bench - H, Mumbai in Wealth Tax Appeal Nos. 178, 179 and 180 / Mumbai / 2002 for the assessment years 1996-97, 1997-98 and 1998-99. Income Tax Appeal No.608 of 2003 has been filed by the assessee under the provisions of Section 27-A of the said Act to challenge the order dated 04.03.2003 passed by the Income Tax Appellate Tribunal, Bench - E, Mumbai in Wealth Tax Appeal Nos.221 and 222/Mum/2002 for the assessment years 1994-95 and 1995-96.

2.3. Income Tax Appeal Nos.362 of 2003 and 608 of 2003 have been filed under the provisions of Section 27A of the said Act to challenge the order dated 25.11.2002 and 04.03.2003 passed by the Tribunal in WTA Nos.178, 179 and 180/Mumbai/2002 for the

assessment years 1996-97, 1997-98 and 1998-99 and WTA Nos.221, and 222/Mumbai/2002 for the assessment years 1994-95 and 1995-96. There were admitted by this court on 08.09.2006 and 20.10.2006 for determination of the following common questions of law:-

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal erred in law in including the market value of the gold and gold coins in the computation of net wealth of the appellant ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal erred in law in rejecting the assessee's submissions that even if the gold and gold coins were to be included in the net wealth the value thereof to be taken ought to be NIL, or ought to be arrived at, bearing in mind the liability for confiscation, fine and penalty and bearing in mind that what had to be valued was the price which the assessee claim to be restored possession of the gold would fetch, if sold in the open market ?

(3) Whether, on the facts and in the circumstances of the case, Tribunal erred in law in rejecting the assessee's claim that matter had to be considered on the footing of the assessee having invested the said gold and gold coins in gold bonds which were exempt from wealth-tax ?

(4) Whether, on the facts and in the circumstances of the case, the Department having knowingly and consciously prevented the assessee from investing the gold and gold coins in the purchasing of the gold bonds under the Gold Bond Scheme which was then in operation, can in law charge the assessee to wealth-tax on the footing that the assessee continues to be the owner of the gold (and not gold bonds) and was thus liable to wealth-tax on the value of the said gold and gold coins ?

(5) Whether, the Tribunal erred in law in holding that the rules and principles of equity would have no application to the present case ?

(6) Whether, the Tribunal erred in law in valuing gold on the basis of a national sale when the assessee was not in possession of the gold and could not have sold the gold but could have at best entered into an agreement to sell the gold with a condition to deliver the gold, if and when he became entitled to and acquired possession thereof ?

(7) Whether, instead of determining the value of gold on the basis of a national sale of gold which was not legally possible, the Tribunal ought to have included, if at all, the consideration which any wise and prudent person would have offered for entering into an agreement to purchase the gold subject to the condition that delivery of gold would be given and sale would be completed, if and when the assessee became entitled to and acquired possession of gold ?"

2.4. Writ petition No.793 of 2005 is filed by the petitioners for the following relief:-

"(a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Order or direction calling for the records and proceedings in connection with the Notice of Demand to Defaulter dated 22nd September, 2004 and all further recovery proceedings initiated in furtherance thereof including the proposed auction sale of gold lying in the Treasury at Jaipur and after examining the legality, validity and propriety of the same to quash and set aside the same."

2.5. On 25.07.2005, this Court had passed the following order :-

"1. Heard the learned counsel for the Petitioner and the learned counsel for the Respondents. Rule. Leave to amend prayer clause (c). Amendment to be carried out forthwith. There shall be interim relief in terms of prayer clause (b) and (c), however, it is made clear that the order of attachment, as per Exhibit MM dated 17.2.2005 to continue till the final hearing of the above Writ Petition. The above order, is without prejudice to the rights and contentions of both the parties. The learned counsel Dr. Daniel for the Respondents waives service.

2. The above Writ Petition be heard expeditiously alongwith Wealth Tax Reference Nos.2 of 1992, WTR No.4 of 1993, WTR No.8 of 1994, WTR No.8 of 1991, WTR No.3 of 1994, WTR No.102 of 1998, WTR No.11 of 2000 and Wealth Tax Appeal Nos. 608 of 2003 and WTA No.362 of 2003. Liberty to both the parties to move for a fixed date of hearing."

3. On 30.10.2018, Supreme Court passed a common order in respect of the subject matter of the above cases in Civil Appeal No.723 of 1973 heard alongwith companion Civil Appeal Nos.10824 of 2018 to 10833 of 2018 and issued the following directions in paragraph 12 which are relevant and read thus :-

".....

12. The impugned order records that owing to counsel not turning up in time, the reference of questions made under the Wealth Tax Act at that point of time would remain unanswered. Given the fact that the show cause notice and proceedings thereafter have now disappeared as a result of the repeal of the Gold Control Act, we give liberty to both parties to add to or amend or delete the questions in the Wealth Tax Reference within a period of eight weeks from today. Once this is done, the writ petitions will be taken up and decided on their merits. Considering these writ petitions are of 2005, we request the High Court to hear the same expeditiously.

....."

4. This Common judgment and order shall therefore dispose of Wealth Tax Application No.3 of 1984, Wealth Tax Reference Nos.8 of 1991, 2 of 1992, 4 of 1993, 3 of 1994, 8 of 1994, 102 of 1998, 11 of 2000, Income Tax Appeal No.362 of 2003, Income Tax Appeal No.608 of 2003 and Writ Petition No.793 of 2005.

5. Before we advert to the submissions made by learned counsel for the parties, it will be apposite to refer to the relevant facts briefly :-

5.1. On 19.10.1965 notification was issued by the Ministry of Finance, Central Government of India for issuance of 'National Defence Gold Bonds' (hereinafter referred to as "**the Gold Bond Scheme**") without any limit of amount applicable from 27.10.1965 to 31.01.1966; subscriptions were to be in the form of gold, gold coins

and/or gold ornaments; date of issue of bonds was to be the date on which the gold was tendered at the receiving office. Such investments were exempt from Wealth-tax.

5.2. On 18.11.1965 Chiranjilal Shrimal Goenka the original assessee / applicant / appellant (hereinafter referred to as "**C.S. Goenka**") filed application with the State Bank of India, Indore Branch for investing gold under the Gold Bond Scheme and met the concerned Wealth-Tax Officer in order to obtain certain clarification about the operation of the scheme and the detailed provisions thereunder; the Wealth-Tax Officer on becoming aware of the intention of C.S. Goenka to invest gold in the Gold Bond Scheme used the information elicited by him during his discussion with C.S. Goenka for the purpose of getting a warrant dated 24.11.1965 issued for search and seizure under Section 132 of the Income Tax Act, 1961 (hereinafter referred to as "**the Income Tax Act**"); on executing the warrant 85,617.80 grams of gold alongwith other valuables including silver coins, silverware etc. were seized from C.S. Goenka's house and deposited with the Custodian of Income-Tax department in the Jaipur Treasury; in December 1965 the Custodian of Income Tax withdrew the gold from the Jaipur Treasury and thereafter it was seized by the Deputy Collector, Central Excise for violation of the Defence of India (Gold Control) Rules, 1962 (hereinafter referred to as "**the said rules**"); on 03.02.1966 the Deputy Collector, Central Excise issued show cause notice to C.S. Goenka as to why the seized gold should not be confiscated under Rule 126(m) of the said rules.

5.3. By order dated 04.03.1966 the Income Tax Officer included the value of the seized gold in the estimate of income filed by the assessee C.S. Goenka under Section 132(5) of the Income Tax Act.

5.4. In March 1966 C.S. Goenka filed two separate writ petitions before the Rajasthan High Court to challenge the show cause notice dated 03.02.1966 and order dated 04.03.1966 issued under Section 132(5) of the Income-Tax Act; on 17.05.1966 the Rajasthan High Court dismissed the writ petitions, *inter alia*, holding that the Income Tax authorities and Excise authorities had jurisdiction to institute proceedings against C.S. Goenka under the Income-Tax Act and the said rules and rejected the assessee's case that he had filed application dated 18.11.1965 with the State Bank of India, Indore Branch for disclosure / investment of gold in the Gold Bond Scheme while observing that the application appeared to be forged and the evidence produced was fabricated; being aggrieved C.S. Goenka filed appeal against the order of dismissal of the writ petitions before the Supreme Court; on 12.08.1969 the Hon'ble Supreme Court passed order in the appeal directing the Income-Tax Officer to determine the Wealth-tax liability of C.S. Goenka in accordance with law.

5.5. On 19.09.1969 Commissioner of Income Tax, Mumbai wrote to the Collector, Central Excise, New Delhi stating that if the Central Excise department eventually decided not to confiscate the seized gold, the Income Tax department be immediately informed, to enable the Income Tax department to seize the gold from the Central Excise department under Section 132(1) of the Income Tax Act; on 30.09.1969 the Collector of Central Excise informed the Commissioner, Income Tax that they will forward copy of the adjudication order as and when decided by their office.

5.6. By order dated 03.01.1970 Collector of Central Excise adjudicated the case and directed release of the seized gold to C.S.

Goenka for investing it in the Gold Bond Scheme pursuant to application filed with the State Bank of India, Indore Branch in 1965, subject to payment of penalty of Rs.25,000.00 by C.S. Goenka for failure to disclose the gold in his possession.

5.7. C.S. Goenka deposited the penalty amount of Rs.25,000.00 on 06.01.1970 and addressed letter dated 07.01.1970 to the Assistant Collector of Central Excise, requesting for deposit of the seized gold with the State Bank of India, Indore Branch in the Gold Bond Scheme; however the gold was not released / deposited and it was attached by the Tax Recovery Officer, Jaipur on 14.01.1970; C.S. Goenka was informed that the Tax-Recovery Officer, Jaipur had served a notice of attachment directing that the gold should be held till further orders of the Tax Recovery Officer.

5.8. On 08.02.1971 the Tax Recovery Officer, Jaipur filed an appeal to challenge the order of the Collector, Central Excise dated 03.01.1970 before the Gold Control Administrator; on 25.03.1970 the appeal was dismissed by the Gold Control Administrator holding that the Tax Recovery Officer was not competent to file such an appeal and the remedy to modify the order of the adjudicating officer would lie by invoking the provisions of Sections 81, 82(2) and (3) of the Gold Control Act, 1968 (hereinafter referred to as "**the Gold Control Act**").

5.9. On 01.06.1971 the Gold Control Administrator exercising *suo moto* powers under the said rules issued show cause notice to C.S. Goenka to show cause as to why the order of the Collector dated 03.01.1970 should not be set aside and the gold be confiscated; this show cause notice was challenged by C.S. Goenka by filing a writ petition before the Delhi High Court; Delhi High Court dismissed the

writ petition; an appeal was thereafter filed against the judgment of the Delhi High Court before the Supreme Court; on 09.08.1973 the Supreme Court in CMP No.3057 of 1973 (numbered as Civil Appeal No.723 of 1973) directed stay of all proceedings under the Gold Control Act including the show cause notice dated 01.06.1971 pending the final disposal of the appeal.

5.10. On 29.12.1975 C.S.Goenka made voluntary disclosure under Section 14(1) of the Voluntary Disclosure of Income and Wealth Ordinance, 1975 of his wealth of Rs.18,00,000.00 which included the value of the seized gold (85,617.80 grams) at Rs.7,50,000.00. Minutes were recorded between C.S.Goenka and the Commissioner of Income Tax that the seized gold will be released and sold and out of the sale proceeds, the Income-Tax and Wealth tax liabilities will be paid over to the Income-Tax department first.

5.11. On 09.03.1979 C.S. Goenka addressed letter to the Income Tax Officer claiming exemption from Wealth Tax liability in respect of the seized gold on the ground that when the gold was seized in 1965 there was an adjudication by the Collector of Central Excise by order dated 03.01.1970, wherein the case of the assessee to invest the said gold in the Gold Bond Scheme with the State Bank of India, Indore Branch was upheld; hence under the Gold Bond Scheme, any person investing gold in the Gold Bond Scheme before 31.03.1966 would have been exempted from Wealth-tax liability and therefore he was not liable for payment of Wealth-tax on the seized gold.

5.12. On 22.03.1979 assessment order was passed by the Income Tax Officer assessing the wealth of C.S. Goenka for the years 1961-62 to 1975-76 by rejecting the contention that valuation of the

gold for the purpose of assessment should be considered as "NIL" as the gold was not in his possession and therefore it could not be tendered under the Gold Bond Scheme since it remained seized.

5.13. By order dated 18.02.1981, the first appellate authority i.e. the Commissioner of Wealth Tax (Appeals) dismissed the appeal filed against the order of the Income-Tax Officer. By order dated 29.09.1982, the second appellate authority i.e. the Tribunal dismissed the appeal filed against the order of Commissioner of Wealth-tax (Appeals). The Tribunal however stated in the concluding paragraphs of its judgment that the situation that the assessee i.e. C.S. Goenka found himself in was brought about by the department itself and it is by the (department's) action that the assessee had been deprived of the chance of investing the gold in Gold Bonds and getting the exemption.

5.14. C.S. Goenka filed 15 appeals challenging each of the separate orders computing the wealth-tax liability for the period 1961-62 to 1975-76 before the CIT (Appeals). CIT (Appeals) partly allowed the 15 appeals and granted certain reductions for each of the years i.e. 1961-62 to 1975-76. Thereafter C.S. Goenka filed 15 second appeals before the Tribunal challenging the wealth-tax assessments for the period 1961-62 to 1975-76. Tribunal by two consolidated orders dated 26.09.1982 for the assessment years 1961-62 to 1967-68 and dated 18.10.1982 for the assessment years 1968-69 to 1975-76 partly allowed the appeals and granted further reliefs to C.S. Goenka. Tribunal however dismissed 8 wealth-tax appeals filed by C.S. Goenka for the assessment years 1976-77 to 1998-99. It was the contention of C.S. Goenka before the aforesaid authorities that the value of the gold had been wrongly included while computing his total wealth for the

period 1961-62 to 1998-99. Being aggrieved C.S. Goenka filed 39 reference applications in respect of the assessment years 1961-62 to 1992-93 calling upon the Tribunal to refer to this Court, the following 5 questions of law which are extracted as under:

- "1) Whether on the facts and in the circumstances of the case, the Tribunal erred in law in including the market value of the said gold for the computation of the net wealth of the Petitioner (Chiranjilal Shrimal Goenka) ?
- 2) Whether on the facts and in the circumstances of the case, the Tribunal erred in law in rejecting the Assessee's submissions that even if the gold was to be included in the net wealth, the value thereof to be taken ought to be Nil or ought to be arrived at bearing in mind the liability for confiscation, fine and penalty and bearing in mind that what had to be valued is the price which Assessee claim to be restored possession of the said gold would fetch if sold in the open market ?
- 3) Whether on the facts and in the circumstances of the case, the Tribunal erred in law, in rejecting the Assessee's claim that the matter had to be considered on the footing of the Assessee having invested the said gold in the Gold Bonds which were exempt from Wealth-tax ?
- 4) Whether on the facts and in the circumstances of the case, the Department having knowingly and consciously prevented the Assessee from investing the gold in the purchase of the Gold Bonds under the Gold Bond Scheme which was then in operation, can in law charge the Assessee to wealth-tax on the footing that the Assessee continues to be owner of the said gold (and not Gold Bonds) and was thus liable to wealth-tax on the value of the gold ?
- 5) Whether the Tribunal erred in law in holding that the rules and principles of equity would have no application to the present case ?"

5.15. Tribunal rejected all reference applications filed by the C.S. Goenka. In view of rejection of the reference applications by the Tribunal, C.S. Goenka filed Wealth-tax Reference Application No.3 of 1984 under Section 27(3)(b) of the Wealt-tax Act in this Court, *inter alia*, praying that the Tribunal be ordered and directed to draw up a

statement of the case and to refer to this court the 5 questions of law as stated therein.

5.16. On 28.08.1984 this Court admitted Wealth Tax Application No.03 of 1984 filed by C.S. Goenka under Section 27 (3) (b) of the said Act for a direction to the Tribunal to refer the questions of law raised by the assessee for the assessment years 1961-62 to 1975-76 and restricted the hearing of the reference to the first two questions of law only as extracted in paragraph 2 above.

5.17. Similarly Wealth-tax Reference Application Nos.8 of 1991, 2 of 1992, 4 of 1993, 3 of 1994, 8 of 1994, 102 of 1998 and 11 of 2000 were also admitted by this Court on the aforementioned 2 questions of law subsequently by passing similar order as passed on 28.08.1984.

5.18. On 24.11.1985 C.S. Goenka expired. Thereafter the name of Sushila Nirmalkumar Rungta (daughter and sole executrix of the will of C.S. Goenka) was substituted in place of C.S. Goenka in the proceedings. Sushila N. Rungta filed Writ Petition Nos.3535 of 1990 and 529 of 1994 seeking stay of recovery proceedings by the Income-Tax department. Writ Petition No.3565 of 1990 was withdrawn on 09.04.1991 with liberty to file a fresh writ petition. Writ Petition No. 529 of 1994 was allowed and the additional condition of adequate security to be furnished by the assessee was set aside.

5.19. On 22.09.2004 Notice of Demand was issued to Sushila N. Rungta by the Recovery Officer calling upon her to pay Rs.5,01,86,611.00 alongwith interest. On 17.02.2005 order of attachment of her residential flat was passed by the respondents. On

09.03.2005 Sushila N. Rungta filed Writ Petition No.793 of 2005 in this Court. Several ad-interim orders were passed. However by order dated 25.07.2005 the writ petition was admitted, attachment order was stayed and it was directed that the writ petition be heard alongwith Wealth Tax Reference Nos.2 of 1992, 4 of 1993, 3 of 1994, 8 of 1994, 102 of 1998, 11 of 2000 and Income Tax Appeal Nos.362 of 2003 and 608 of 2003.

5.20. On 22.08.2016, Wealth-tax Reference Nos. 2 of 1992, 4 of 1993, 8 of 1994, 8 of 1991, 3 of 1994, 102 of 1998, 11 of 2000 and Income Tax Appeal Nos.362 of 2003 and 608 of 2003 were dismissed due to non prosecution. Sushila N. Rungta filed 10 special leave petitions (SLPs) in the Supreme Court challenging the order dated 22.08.2016.

5.21. Sushila N. Rungta expired on 07.09.2017 during the pendency of the SLPs. On 30.10.2018 Supreme Court disposed of the 10 SLPs alongwith Civil Appeal No. 723 of 1973 impugning the order dated 29.09.1972 holding that the show cause notice dated 01.06.1971 did not survive in view of the repeal of the Gold Control Act and gave liberty to both parties to add, amend or delete the questions of law and directed this Court to decide the pending matters i.e. the Wealth-tax References, Income Tax Appeals and Writ Petition No.793 of 2005 expeditiously.

5.22. On 30.10.2018, Supreme Court passed the following order in Civil Appeal Nos.10824 to 10833 of 2018 alongwith Civil Appeal No.723 of 1973:-

"10. This being the case, we are of the view that the show cause notice dated 01.06.1971, which is the subject matter of this appeal, no longer survives. In this view of the matter, the appeal is disposed of.

11. Leave granted.

12. The impugned order records that owing to counsel not turning up in time, the reference of questions made under the Wealth Tax Act at that point of time would remain unanswered. Given the fact that the show cause notice and proceedings thereafter have now disappeared as a result of the repeal of the Gold Control Act, we give liberty to both parties to add to or amend or delete the questions in the Wealth Tax Reference within a period of eight weeks from today. Once this is done, the writ petitions will taken up and decided on their merits. Considering these writ petitions are of 2005, we request the High Court to hear the same expeditiously."

5.23. This Court thereafter allowed the civil applications for substitution of the names of the applicants / appellants in place of Sushila N. Rungta in the various proceedings pending before this Court. In the above background and circumstances we have heard the parties at length.

5.24. On 06.01.2021 when this group of matters was heard by this Court, the appellants / petitioners prayed for amendment to the prayer clause in Writ Petition No.793 of 2005 as under :-

"1. After prayer clause (a) the following be added as prayer clause a-1 :-

a-1. That this Hon'ble Court be pleased to pass an Order and/or direction directing the Respondents to forthwith release 85617 grams of gold, jewellery, cash and other valuable articles seized from the premises as per the Panchanama and hand it over to the Petitioners / Applicants."

5.25. Since all the above cases were already taken up for final hearing by this Court, the amendment was not immediately granted and kept in abeyance for consideration at a later stage. Hearing by the parties was concluded on 11.03.2021 and judgment reserved.

5.26. In the above background we are therefore called upon to consider and give our opinion on the following 7 questions of law; 5 questions of law in the Wealth-tax References and Income-Tax Appeals which were framed by this court on 08.09.2016 and the 2 questions of law in Wealth-tax Application No.3 of 1984 which are extracted together for convenience :-

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal erred in law including the market value of the gold and gold coins in the computation of net wealth of the appellant ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal erred in law in rejecting the assessee's submissions that even if the gold and gold coins were to be included in the net wealth the value thereof to be taken ought to be Nil or ought to be arrived at, bearing in mind the liability for confiscation, fine and penalty and bearing in mind that what had to be valued was the price which the assessee claim to be restored possession of the gold would fetch, if sold in the open market ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal erred in law in rejecting the assessee's claim that the matter had to be considered on the footing of the assessee having invested the said gold and gold coins in gold bonds which were exempt from Wealth Tax ?

(4) Whether, on the facts and in the circumstances of the case, the Department having knowingly and consciously prevented the assessee from investing the gold and gold coins in the purchasing of the gold bonds under the Gold Bond Scheme which was then in operation, can in law charge the assessee to wealth - tax on the footing that the assessee continues to be the owner of the gold (and not gold bonds) and was thus liable to wealth - tax on the value of the said gold and gold coins ?

(5) Whether the Tribunal erred in law in holding that the rules and principles of equity would have no applicable to the present case ?

(6) Whether the Tribunal erred in law in valuing gold on the basis of a notional sale when the assessee was not in possession of the gold and could not have sold the gold but could have at best entered into an agreement to sell the gold with a condition to deliver the gold, if and when he became entitled to and acquired possession thereof ?

(7) Whether, instead of determining the value of gold

on the basis of a notional sale of gold which was not legally possible, the Tribunal ought to have included, if at all, the consideration which any wise and prudent person would have offered for entering into an agreement to purchase the gold subject to the condition that delivery of gold would be given and sale would be completed, if and when the assessee became entitled to, and acquired possession of gold ?"

6. C.S. Goenka is the original assessee. He expired on 24.11.1985 leaving behind a will. Sushila N. Rungta his daughter claimed to be his sole executrix and beneficiary. She expired on 07.09.2017, leaving behind her son Nirajkumar Rungta and daughter Bharati Saraf as her legal heirs. Save and except the above statement that Sushila N. Rungta is the daughter and sole executrix and beneficiary of the will of C.S. Goenka, no other document evidencing the above issue by a civil court / statutory authority is placed on record in the present proceedings. Ofcourse, the same is also not disputed by the respondent.

7. Mr. Kamat, learned counsel appearing for the appellants / petitioners at the outset submitted that the Order-in-Original dated 03.01.1970 passed by the Collector Central Excise, New Delhi directing release of the seized gold to C.S. Goenka on payment of penalty of Rs.25,000/- has become final; appeal against the said order to the Gold Control Administrator being dismissed on 28.06.1971; the Gold Controller Administrator thereafter *suo moto* issued show cause notice under the Defence of India Rules to C.S. Goenka; the said show cause notice was challenged before the Delhi High Court and thereafter carried to the Supreme Court whereafter Supreme Court stayed all proceedings on 09.08.1973; Supreme Court by its final order dated 30.10.2018 held that the show cause notice did not survive as the Gold Control Act was repealed. Hence he submitted that C.S. Goenka was the de jure owner of the seized gold.

7.1. He submitted that Civil Appeal No.723 of 1973 having being decided by the Supreme Court has given finality to the order dated 03.01.1970; order dated 03.01.1970 passed by the Collector, Central Excise considered and took into account evidence from both parties, after due cross-examination of the parties C.S. Goenka established his bonafides in making a complete and true disclosure of the seized gold to the Income-Tax department under the Gold Bond Scheme and completed and executed the relevant documentation and handed over the same to the officers of the State Bank of India, Indore Branch; these facts having being accepted, the seized gold was therefore directed to be returned back to C.S. Goenka as prayed for in the writ petition.

7.2. According to Mr. Kamat, the order dated 22.03.1979 passed by the Wealth Tax Officer for the assessment year 1961-62 merely places reliance on the finding returned by the Rajasthan High Court in its order dated 17.05.1966 wherein it was held that C.S. Goenka was not able to satisfy the court by unimpeachable evidence that he had made the original application dated 18.11.1965 to State Bank of India, Indore Branch for disclosure of the seized gold. He submitted that the order dated 23.09.1979 passed by the Rajasthan High Court did not refer to the order dated 03.01.1970 and completely ignored the findings returned in the said order passed by the Collector of Central Excise after considering detailed evidence led by the parties proving that C.S. Goenka was entitled to exemption under the Gold Bond Scheme and that he intended to disclose the seized gold and had taken concrete steps by executing and filling up the requisite forms and documents and had submitted the said documents to the officials in the State Bank of India, Indore Branch; however the said approach

of C.S. Goenka and disclosure was misused by the Wealth-tax Officer and C.S. Goenka was raided leading to seizure of the gold from his possession. He submitted that the Rajasthan High Court order dated 22.03.1979 therefore is a defective order in as much as despite the adjudication order dated 03.01.1970 being available on record the same was not considered at all.

7.3. He submitted that the order dated 18.02.1981 passed by the 1st Appellate Authority i.e. the Wealth Tax Commissioner (Appeals) for the assessment year 1961-62 is also erroneous when it holds that gold becomes exempted assets under the Wealth-Tax Act only when the said gold is invested in the Gold Bond Scheme and the Bonds are issued to the assessee; ignoring the fact that the gold was seized from C.S. Goenka and never in the custody and possession of C.S. Goenka to enable him to invest in the Gold Bond Scheme; the said order confirming addition of the value of the seized gold as if in the hands of C.S. Goenka was contrary to law and did not adhere to and take into cognizance the findings returned in the order dated 03.01.1970 passed by the Collector, Central Excise directing release of the seized gold after adjudication.

7.4. Mr. Kamat submitted that the common order dated 29.09.1982 passed by the 2nd Appellate Authority i.e. the Tribunal for the assessment years 1961-62 to 1967-68 has once again erroneously and incorrectly held that there is no denial that the assessee stood possessed and owned the gold on the respective valuation dates even though it was the assessee's case that since the gold had been seized by the authorities it should either be treated as not owned by the assessee or that its value is 'Nil'; the Tribunal disagreed that in such a case principles of equity could be invoked in favour of the assessee.

However, he vehemently stressed on the observation of the Tribunal in paragraph 18 of the said order wherein it was stated as under :

"18.

We are aware that the situation the assessee finds himself is brought about by the department themselves. It is by their action that the assessee had been deprived of the chance of investing the gold in Gold Bonds and getting the exemption. However, we with our limited powers, cannot under these circumstances, invoke any rule of equity in favour of the assessee. Perhaps, there are the occupational hazards of having taxable assets not disclosed to the department. Such an assessee runs these risks."

7.5. Mr. Kamat thereafter drew our attention to the order dated 30.10.2018 passed by the Supreme Court in Civil Appeal No. 10824 of 2018 and other companion appeals which had challenged the order dated 03.01.1970 passed by the Collector, Central Excise. He submitted that the statutory first appeal against this order was dismissed on 08.02.1971; however in exercise of *suo moto* powers under the Defence of India Rules, show cause notice dated 01.06.1971 was issued to C.S. Goenka seeking to confiscate the seized gold and enhance the penalty imposed by the order dated 03.01.1970; this show cause notice came to be challenged by C.S. Goenka in 4 writ petitions which were dismissed by the Delhi High Court on 29.09.1972. Thereafter C.S. Goenka filed appeal against the judgment and order dated 29.09.1972 being the subject civil appeal which was decided on 30.10.2018; in the meanwhile the Gold (Control) Act, 1968 was repealed and considering that the Gold (Control) Act was repealed without a saving clause, Section 6 of the General Clauses Act would not apply; thus the original show cause notice for confiscation of the seized gold would therefore no longer survive. He submitted that the Supreme Court in its order dated 30.10.2018, after considering the submissions of the parties and the effect of the Gold

(Control) Repeal Act, 1990 finally concluded that the original show cause notice dated 01.06.1971 for confiscation would no longer survive; however considering that in the interregnum since the wealth tax references were made and pending with the Bombay High Court, the same were directed to be disposed of alongwith the pending writ petition.

7.6. He submitted that C.S. Goenka, his legal heir Sushila N. Rungta and the petitioners were not in a position to exercise their right of ownership in the seized gold on the respective dates of valuation since the gold was seized on 06.12.1965 and continues to remain so till date; that though the gold belonged to the ownership of the assessee, his right on the valuation date was in jeopardy and mere legal ownership in the seized gold was not enough to fasten wealth tax liability on the assessee in respect of the market value of the seized gold as done by the revenue. He therefore submitted that the market value of the seized gold had to be excluded from the computation of net wealth of the assessee for the respective assessment years and the authorities be directed to return the seized gold to the petitioners.

8. In support of his submissions, Mr. Kamath has referred to and relied on the following decisions of the Supreme Court and Gujarat High Court:-

- 1. *Murari Mohan Dutta Vs. Commissioner of Wealth Tax*¹;**
- 2. *Commissioner of Income Tax, Bangalore Vs. J.H. Gotla, Yadagiri*²;**
- 3. *Commissioner of Central Excise, New Delhi Vs. Hari Chand Shri Gopal & Ors*³;**

1 (1991) SCC Online Cal 323 :: (1993) 200 ITR 226

2 (1985) 4 SCC 343

3 (2011) 1 SCC 236

4. *Aims Oxygen Pvt. Ltd. Vs. Commissioner of Wealth Tax*⁴.

8.1. In the case of **Murari Mohan Dutta (supra)**, emphasis is placed on the findings given in paragraph Nos.6, 7, 9 and 10 of the said judgment to contend that a person whose valuable property had been seized could not exercise the right of ownership so far as possession, enjoyment and sale of such property is concerned and thus there cannot be any market value which could be fetched in the open market on the valuation date. The question framed and answered by the court was, "what would be the value of the seized assets on the valuation date.....?" and the answer was in the negative i.e. there cannot be any market value for such seized and confiscated property on the valuation date. Paragraph Nos.6, 7, 9 and 10 read thus :

"6. We are of the view that the real controversy before the authorities below as well as the Tribunal was ownership of the seized assets on the relevant valuation date. The question which has been raised before us is about the ownership of the assets on the relevant valuation date. If the ownership of the seized assets had vested in the Government on the date of passing the adjudication order of confiscation, then certain consequences would follow and, if not, the assessee would be the owner of the assets though the articles were in the possession of the Customs Authority, the real question, however, is what would be the value of the seized assets on the valuation date which had been subsequently confiscated by the Customs Authorities.

7. It appears that the seizure was effected during the relevant previous year but, ultimately, it was confiscated on June 29, 1978. On the valuation date the goods were seized and lying with the Customs Authority, and those goods were liable to confiscation in view of the contravention of the provisions of section 126 of the Customs Act, 1962. The fact of confiscation is no doubt a subsequent event. But the value of such a property belonging to the assessee which is liable to confiscation has to be arrived at.

9. We may also refer to the observation of the Division Bench in that case to the following effect (at page 43) :

4 MANU GJ 1520/2011 :: (2012) 251 CTR (Guj) 19

"Counsel for the assessee, in our opinion, was justified in contending that a man who was the owner of movable property like a diamond or jewellery and if that property or goods had been lost due to stealing or theft, even then if the assessee was made liable as the owner of that property and as such liable to pay wealth-tax ad infinitum year after year in respect of that property that would lead to great hardship and anomaly. We might here mention the observations of the Select Committee on the 'assets stolen, lost or destroyed' which is noted in paragraph 13 of the report and are as follows :

"With regard to the definition of "net wealth", the Committee have noted the assurance given by the Minister of Finance that if any asset referred to in the said definition was lost or stolen or destroyed, it would not be included in computing the net wealth of an asset, provided the same had not been insured and that necessary instructions in this respect would be issued to the authorities concerned'."

10. In our view, a person whose valuable property had been seized could not exercise the right of ownership so far as possession, enjoyment and sale of such property is concerned. There cannot be any market value for such property inasmuch as Section 7(1) provides that the market value shall be estimated to be the price which in the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation date. In view of the aforesaid restriction on the ownership and the goods being liable to confiscation, mere legal ownership will not be enough to fasten liability on the assessee in respect of the market value of the seized assets as made by the Customs Authority on the date of seizure. The assets no doubt belong to the assessee but his right on the valuation date was in jeopardy being subjected to confiscation proceedings. Such a right has to be valued. This aspect of the matter was not adverted to by the Tribunal. The Tribunal proceeded on the legal contention as to whether the assessee was the owner of the seized goods on the relevant valuation date."

8.2. In the case of **Commissioner of Income Tax, Bangalore (supra)**, reliance has been placed on the findings in paragraph Nos. 46 and 47 of the said judgment. Though the facts were different in the said case and involved the right of the assessee to carry forward and set off the lossess against the share income of the assessee's wife and

minor children under Section 24(2) of the Income Tax Act, it was contended that where the plain literal interpretation of a statutory provision produces a manifestly unjust result which could never have been intended by the legislature, the Court might modify the language used by the legislature so as to achieve the intention of the legislature and produce a rational construction. The task of interpretation of a statutory provision is an attempt to discover the intention of the legislature from the language used. Paragraph Nos.46 and 47 read thus :-

"46. Where the plain literal interpretation of a statutory provision produces a manifestly unjust result which could never have been intended by the legislature, the Court might modify the language used by the legislature so as to achieve the intention of the legislature and produce a rational construction. The task of interpretation of a statutory provision is an attempt to discover the intention of the Legislature from the language used. It is necessary to remember that language is at best an imperfect instrument for the expression of human intention. It is well to remember the warning administered by judge Learned Hand that one should not make fortress out of dictionary but remember that statutes always have some purpose or object to accomplish and sympathetic and imaginative discovery is the surest guide to their meaning.

47. We have noted the object of Section 16(3) of the Act which has to be read in conjunction with Section 24(2) in this case for the present purpose. In the purpose of a particular provision is easily discernible from the whole scheme of the Act which in this case is, to counteract the effect of the transfer of assets so far as computation of income of the assessee is concerned then bearing that purpose in mind, we should find out the intention from the language used by the Legislature and if strict literal construction leads to an absurd result i.e. result not intended to be subserved by the object of the legislation found out in the manner indicated before, and if another construction is possible apart from strict literal construction then that construction should be preferred to the strict literal construction. Though equity and taxation are often strangers, attempts should be made that these do not remain always so and if a construction results in equity rather than in injustice, then such construction should be preferred to the literal construction. Furthermore, in the instant case we are dealing with an artificial liability created for counteracting the effect only of attempts by

the assessee to reduce tax liability by transfer. It has also been noted how for various purposes the business from which profit is included or loss is set off is treated in various situations as assessee's income. The scheme of the Act as worked out has been noted before."

8.3. In the case of **Commissioner of Central Excise, New Delhi (supra)**, reliance has been placed on the findings given in paragraph Nos.32, 33 and 34 of the said judgment relating to the doctrine of substantial compliance and "intended use" based on the concept of reasonableness to contend that substantial compliance of an enactment is insisted where mandatory and directory requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithstanding non-compliance of directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted. Paragraph Nos.32, 33 and 34 read thus :-

"32. The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably be expected of it, but failed or faulted in some minor or inconsequential aspects which cannot be described as the "essence" or the "substance" of the requirements. Like the concept of "reasonableness", the acceptance or otherwise of a plea of "substantial compliance" depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation. Such a defence cannot be pleaded if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met. Certainly, it means that the Court should determine

whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means "actual compliance in respect to the substance essential to every reasonable objective of the statute" and the court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed.

33. A Fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefits of an exemption clause that are important. Substantial compliance of an enactment is insisted, where mandatory and directory requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithstanding the non-compliance of directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted.

34. The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the "substance" or "essence" of the statute, if so, strict adherence to those requirements is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the "essence" of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In other words, a mere attempted compliance may not be sufficient, but actual compliance of those factors which are considered as essential."

8.4. In the case of **Aims Oxygen Pvt. Ltd. (supra)**, reliance has been placed on the findings rendered in paragraph No.17 of the said judgment relating to the concept of property in the hands of an assessee if sold in the open market which do not denote actual sale or

the actual state of the market and further that whenever there is any restriction on transfer of such property, the value of the property would stand reduced. Paragraph No.17 read thus :-

"17. From the aforesaid decisions rendered by one or the other Court, the settled law can be summarized as follows:

[i] The words 'if sold in open market' do not contemplate actual sale or the actual state of the market, but only enjoins that it should be assumed that there is an open market and the property can be sold in such a market and on that basis, the value has to be found out. It is a hypothetical case which is contemplated and the Tax Officer must assume that there is an open market in which the asset can be sold.

[ii] Whenever there is any restriction on transfer of any land, value of the property or land, as the case may be, would be normally reduced and the valuation is to be ascertained taking note of the restrictions and prohibitions contained in the Ceiling Act as if the land is notified as excess land.

[iii] Once the competent authority issues any notification under Section 10[1] or Section 10[3] of the Land Ceiling Act, the land has to be deemed to have been acquired by the Government and what the assessee owned was the right to compensation and in such case, the compensation amount would only be the maximum compensation as provided under the Ceiling Act which is to be taken into consideration."

9. PER CONTRA Mr. Suresh Kumar learned counsel appearing for the respondents has supported the orders dated 22.03.1979 passed by the Wealth Tax Officer, order dated 18.02.1981 passed by the first appellate authority i.e. the Wealth-tax Commissioner (Appeals) and the order dated 19.09.1982 passed by the second appellate authority i.e. the Tribunal and contended that the conclusion by the Tribunal that the appellants / petitioners are not entitled to invoke equity jurisdiction of this Court and that the assessee stood possessed of / owned the seized gold on the respective valuation dates has been correctly arrived at. He submitted that to treat the

assessee as not having owned the seized gold on the respective valuation dates cannot be substantiated as the gold was not confiscated so as to deprive the assessee of his legal right in the said gold; it was merely a seizure; therefore submission of the assessee that value of the seized gold has to be considered as 'Nil' asset for computation of Wealth-tax assessment as it was seized property in the hands of the government is an issue which has already been decided by a decision of the Division Bench of the Gujarat High Court in the case of **Jayantilal Amritlal Vs. Commissioner of Wealth Tax**⁵, wherein the court held that so long as the property has not been confiscated the assessee continued to be the owner of the property and was liable to be assessed to wealth tax.

9.1. He submitted that in the present case though seizure took place on 07.12.1965, admittedly no confiscation of the seized gold has been done till date and no order for confiscation has been passed to confiscate and divest the assessee of his legal right and entitlement in the seized gold; thus the seized gold has to be considered as the asset owned by the assessee and liable for assessment to wealth tax; the assessable value would be the valuation of the seized gold i.e. the market value that would be fetched in the open market on the respective valuation dates; Commissioner of Wealth Tax (Appeals) rightly rejected the assessee's case that the seized gold could have become exempted asset / nil if the same was invested in the Gold Bond Scheme and had the bonds been issued to the assessee; however since the bonds were not issued to the assessee, claim of the assessee for exemption on the basis of theory of conversion could not be accepted; case of the assessee that the seized gold had no value for the assessee on the respective valuation dates because of seizure was

5 135 ITR 742

erroneous; the seized gold had to be valued even though the same was not released and returned back to the assessee as the value of the gold in the hands of the respondents did not reduce. He therefore submitted that the decision of the Tribunal be upheld and the appellants / assessee are not entitled to exemption of the value of the seized gold from computation of net wealth for the respective years. Therefore the references be answered accordingly.

10. In support of his submissions, Mr. Suresh Kumar has referred to and relied on the following decisions :-

(i) Jayantilal Amritlal Vs. Commissioner of Wealth Tax (supra)

(ii) Commissioner of Wealth Tax Vs. Purshottam N. Amersey⁶

(iii) Ahmed G.H. Ariff Vs. Commissioner of Wealth Tax⁷

10.1. In the case of **Jayantilal Amritlal (supra)**, the income tax authorities had searched the assessee's premises between November 18 and 21 November 1964 and large quantity of gold in various forms was recovered and seized. The value of the gold was found to be Rs.2,83,320/-. Central excise officials seized the gold on 17.12.1964 and proceedings under the Defence of India (Gold Control) Rules, 1963 were initiated against the assessee. The assessee unsuccessfully challenged the seizure of the gold and proceedings against him before the Gujarat High Court and the Supreme Court. On 30.09.1975 Collector of Central Excise, Baroda passed an order of confiscation of the gold under Section 71 of the Gold (Control) Act, 1968 and passed a further order to redeem the confiscated gold on payment of fine of one lakh of rupees and declare the same in the wealth-tax return. In the wealth-tax returns filed for the assessment years 1965-66 to 1972-

6 [1969] 71 ITR 180 (Bombay)

7 [1970] 76 ITR 471 (SC)

73 after return of the gold, the assessee did not include the value of the said gold in his net wealth on the ground that as the gold articles were seized and proceedings were pending, their value as on the relevant valuation dates was 'Nil'. The Wealth-tax Officer rejected the assessee's contention that the value of the gold was 'Nil' on account of its seizure and liability to confiscation and assessed the market value of the gold and included that value in the net wealth of the assessee in each of the assessment years. The first appellate authority and the Tribunal confirmed the view taken by the Wealth-tax Officer in the appeals preferred by the assessee. In this background the Tribunal at the instance of the assessee referred the following two questions of law for opinion under Section 27(1) of the Wealth Tax Act, 1957 to the Gujarat High Court:-

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was the owner of the seized gold articles on each of the eight valuation dates ?
2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the cloud on ownership in the form of seizure did not reduce the value of the gold 'if sold in the open market' for the purposes of wealth-tax assessments for the eight years ?

10.2. Gujarat High Court held that since the gold was not confiscated on the relevant dates the possibility of confiscation did not in any way impair the ownership of the assessee of the gold and thus the assessee continued to be full owner on the relevant valuation dates. It was held that the mere possibility of confiscation cannot be said to impose any legal restriction, limitation or impediment on the ownership of the assessee and that the mere fact that the gold in

question was liable to confiscation did not in any way affect the market value of the gold under Section 7(1) of the Wealth Tax Act, 1957. This decision was relied upon by the Tribunal in its judgment and order dated 19.09.1982.

10.3. Reliance is placed by Mr. Suresh Kumar on paragraph Nos.1 and 7 of the above judgment which read thus:-

"1. The Income Tax Appellant Tribunal (hereinafter referred to as "the Tribunal") has, at the instance of the assessee, referred the following two questions for our opinion under Section 27 of the Wealth Tax Act, 1957 (hereinafter referred to as "the Act") :

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was the owner of the seized gold articles on each of the eight valuation dates ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the cloud on ownership in the form of seizure did not reduce the value of the gold 'if sold in the open market' for the purposes of wealth-tax assessments for the eight years ?

Facts giving rise to this reference are as follows :
The income tax authorities searched the premises of the assessee known as "Shree Sadan" between November 18 and November 21, 1964. In the course of the search, large quantity of gold in various forms was recovered from the strong room in the cellar. The gold which was recovered was in the form of 154 gold coins and 8 gold bars. The value of the gold found was Rs.2,83,320. The Central Excise officials seized the gold on 17-12-1964. Proceedings under rule 126L(16) of the Defence of India Rules, 1963 (Gold Control) were initiated against the assessee. The assessee unsuccessfully challenged the seizure of the gold and the proceedings taken against him by the Central Excise Department before this court and the Supreme Court. The Collector of Central Excise, Baroda passed the following order against the assessee on 30-09-1975 in the proceedings taken out against the assessee :

Therefore, I confiscate the 8 gold bars and 154 gold coins under section 71 of the Gold (Control) Act, 1968 (corresponding to rule 126M of the Defence of India (Amendment) Rules, 1968). In lieu of confiscation, the owner, Shri J. A. Shodhan, may pay a fine of one lakh of rupees and redeem the confiscated gold, within three months of the receipt of this order, subject to the condition that, on

redemption, the gold bars and coins shall be converted into ornaments within one month from the date of their redemption, in accordance with the provisions of the Gold (Control) Act, 1968, and subject to the further condition that, on conversion, the ornaments shall be duly declared, under section 16 of the said Act.

7. Mr. Shah urged that no doubt an open market in which the shares could be sold was to be presumed by what was important to bear in mind was that while estimating the value of the shares, the House of Lords had made it clear that the provisions of the articles of association including those relating to alienation and transfer of shares of the company have to be taken into account. On the same principle, submitted Mr. Shah, while estimating the market value of the gold articles in question under s. 7(1) of the Act, the liability of their being confiscated, which was attached to them, must be taken into account. Now, what is important to be borne in mind is that in the case before the House of Lords, there was a legal impediment or restriction against a transfer of the shares. The articles of association of the company imposed restriction upon the alienation and transfer of share in the company. The restriction was real and not imaginary and it had its basis in law. The purchaser, who would purchase shares in the open market, was, therefore, bound to take into account the limitation attached to the shares while purchasing it. It is no doubt true that if there is a legal bar or restriction or impediment upon the alienation and transfer, such bar, restriction or impediment has to be taken into account. But if there is no such bar, restriction or impediment, there would be no fetter which would in any way affect the market value of the property in question. In the instant case, gold articles were merely seized by the excise authorities. They were not confiscated on the relevant dates though in view of the contravention of the relevant rules of the Gold (Control) Rules, they were liable to be confiscated. In our opinion, the seizure and possibility of confiscation, however did not in any way impair the ownership of the assessee of these articles. The assessee continued to be the full owner of the articles on the relevant valuation dates. Mere possibility of confiscation cannot be said to impose legal restriction, limitation or impediment on the ownership of the assessee. Therefore, in our opinion the mere fact that the gold articles in question were liable to be confiscated, does not in any way affect the market value of the articles under s. 7(1) of the Act as urged by Mr. Shah. It was not disputed by Mr. Shah that it is to be assumed that there is an open market and gold articles could be sold in such market, and on that basis the value has to be determined. Seizure of the gold articles also did not in any way affect the ownership of the assessee. It was only a temporary measure, akin to an attachment before judgment. If the gold articles were confiscated, the assessee would have

lost his ownership over them, but till that event occurred the assessee continued to be the owner thereof. There cannot be said to be any cloud over the title of the assessee over those articles unless and until they were confiscated. Mr. Shah also did not dispute that the assessee was the owner of these articles. His only contention was that in view of the possibility of the gold articles being confiscated their value in the open market would diminish. As discussed above, we are unable to accept this argument."

10.4. In the case of **Commissioner of Wealth Tax** (*supra*) question was framed in connection with the assessment of wealth tax of two individuals brothers, Purshottam N. Amersey and Manoranjan N. Amersey, who were partners along with others in the firm M/s. Amersey Damodar of Bombay. Purshottam Amersey had to the credit of his account in the year 1949 a sum of Rs.4,50,000/- lying as deposit in the firm. On 08.09.1949 Purshottam declared a trust of this amount by a mere book entry and the amount standing to the credit of Purshottam was held to the credit of the trust fund. Under provisions of the trust both assesseees were entitled to certain benefits which in the assessment year 1960-61 the authorities under the wealth tax act sought to bring to tax in the hands of the two brothers as individuals. The revenue found it advantageous to tax the beneficial interest arising out of the trust in the hands of the trustees and add it to the net wealth of the assesseees as the beneficiaries under the trust fund and assess the assesseees along with their other considerable wealth. The question which had therefore arisen for determination was whether, in the facts and circumstances of the case the Tribunal was justified in holding that the interest of the assessee under the trust had 'Nil' value. This Court after deliberating on the above issue and considering the terms of the trust and the interest granted to the assessee held that the conclusion reached by the Tribunal that the value of the said interest was 'Nil' was erroneous. It was held that merely because the property was not capable of being transferred is not a consideration which

ought to have prevailed with the Tribunal. This Court held that the words 'if sold in the open market' as appearing in sub-section (1) of Section 7 would have to be interpreted in a manner of proper construction of the provisions of the said Section.

10.5. In the case of **Ahmed G.H. Ariff** (*supra*) the appellants, who were the beneficiaries under the deed of wakf, were paying income-tax on the amount which was being received by them in terms of that deed from the mutawalli. In the year 1957 the Wealth-tax Act came into force. During the assessment years 1957-58 and 1958-59 appellants were not only assessed to income-tax in respect of the income received by them from the wakf estate but were also assessed to wealth-tax by the Wealth-tax Officer on the basis that they had a share in the wakf estate. The total value of the immovable property belonging to the wakf estate was valued at 20 times the annual municipal valuation and 1/6th of the value of the immovable property along with other properties was taken to be the net wealth of each assessee.

10.6. The question of law referred to the High Court under Section 27 of the Act was as follows:

"Whether, on the facts and circumstances stated, the right of the assessee to receive a specified share of the net income from the wakf estate is an asset the capitalised value of which is assessable to wealth-tax?"

10.7. The High Court negatived the contention of the appellants that the right to receive a definite share of the net income from wakf property did not fall within the meaning of the word "assets" as defined by Section 2 (e) of the Act or that it was a mere right to an annuity which under the Mohammedan law could not be commuted into a lump sum. It was held that the right of each assessee was to

receive an aliquot share of the net income of the properties which were made the subject matter of the wakf and there was a clear distinction between an aliquot share of income and an annuity. The High Court was of the view that even if the asset of the nature under consideration was non-transferable and could not be sold in the open market it could not be said that such an asset had no value. For the purpose of the Act, the Wealth-tax Officer must proceed to value it as if it was an asset which was saleable in the market and that would depend on actuarial valuation. The question was consequently answered in the affirmative and in favour of the revenue. Supreme Court while considering the above case referred to the decision of the **Commissioner of Wealth Tax (supra)** and held that the words 'if sold in the market' as appearing in sub-section (1) of Section 7 of the Act were rightly construed by the High Court and that does not contemplate actual sale or the actual state of the market, but only enjoins that it should be assumed that there is an open market and the property can be sold in such a market hypothetically and that the tax officer must assume that it is an asset on the open market and assume that the asset can be sold.

11. Mr. Suresh Kumar submitted that based on the above 3 judgments the finding returned by the Tribunal is a correct finding and thus the contention of the appellants that the value of the subject gold seized by the authority was 'Nil' for the purpose of assessment under the Wealth -tax Act as on the relevant date of valuation cannot be accepted.

12. Submissions made by learned counsel for the parties have been considered. Also duly examined and considered the materials on record.

13. Before we advert to adjudicate the issues, we may briefly refer to the relevant statutory provisions as are applicable to the present case.

13.1. Section 7 of the Wealth Tax Act, is relevant and reads thus :-

"7. Value of assets how to be determined. -

(1) Subject to the provisions of sub-section (2), the value of any asset, other than cash, for the purposes of this Act shall be its value as on the valuation date determined in the manner laid down in Schedule III.

(2) The value of the house belonging to the assessee and exclusively used by him for residential purposes throughout the period of twelve months immediately proceeding the valuation date, may, at the option of the assessee, on the valuation date next following the date on which he became the owner of the house or the valuation date relevant to the assessment year commencing on the 1st day of April, 1971, whichever valuation date is later."

14. In the present case, it is evident that seizure of the gold had taken place on 07.12.1965 and from that date onwards the gold is in the custody of the Collector of Central Excise, Jaipur. The moot question that therefore arises for determination is whether G.S. Goenka i.e. the original assessee was prevented from investing the seized gold in the Gold Bond Scheme and what net value of the gold should be considered on the respective valuation dates for the respective assessment years for the purpose of assessing the value of the gold in the wealth tax returns filed by the assessee. On a reading of the provisions of sub-section (1) of Section 7 of the Wealth Tax Act, appellants have asserted that the value of the gold on the respective dates of valuation for each assessment year is to be taken as 'Nil' because the appellant's predecessor-in-title i.e. C.S. Goenka was

prevented from investing the gold in the Gold Bond Scheme due to its seizure by the Collector of Central Excise. Further it is seen that even after the order of release having been passed on 03.01.1970 and the penalty amount having been paid, the gold continued to remain in the custody of the Collector of Central Excise and was not returned back to the assessee, depriving the assessee to invest the same in the Gold Bond Scheme.

15. We may usefully refer to the judgment of the Calcutta High Court in the case of **Murari Mohan Dutta (supra)** and relied upon by the appellants to answer the question on valuation. Though in that case seizure of gold had taken place on 17.01.1975 and order of confiscation was passed on 29.06.1978, in the present case admittedly only seizure had taken place. We are in complete agreement with the views expressed by the Calcutta High Court in paragraph Nos.8, 9 and 10 of the said judgment that sub-section (1) of Section 7 emphasises that mere legal ownership will not be enough to fasten liability on the assessee in respect of the market value of the seized assets even though the said seized assets belong to the assessee. The Court held that on the valuation date the right of the assessee was in jeopardy and therefore having regard to the definition of "net wealth" and "asset" as appearing in Section 2(e) of the Wealth-tax Act, the Wealth-tax Officer was not justified in estimating the value of such asset. Relevant portions of paragraph Nos.8, 9 and 10 of the said judgment are extracted hereinbelow and read thus :-

"8. Our attention has been drawn to a decision of this court in the case of CWT v. Smt. Sumitra Devi Jalan [1974] 96 ITR 35. In that case, the Division Bench observed as follows (at page 43) :

"the right, however, was in jeopardy on the relevant valuation date because according to the assessee she had lost the shares because of stealing or otherwise. Therefore, all that she had

at the relevant moment was the right to recover her equitable ownership in respect of these shares. The Tribunal or the Revenue authority, however, had not considered whether that right of equitable ownership was capable of having any market value in terms of Section 7 (1) of the Wealth-tax Act, 1957. We need not, therefore, advert to this aspect of the matter. It may, incidentally be mentioned that in the case of Smt. Chandra Jalan v. CWT (in Matter No. 378 of 1962) in respect of dividends declared in East Pakistan which the shareholder had the right to get was property within the meaning of the definition of asset in Section 2 (e) of the Act, it was held that in respect of such property, in view of the restrictions in respect of such property, the Wealth-tax Officer was not justified in estimating the value on the face value thereof."

9. We may also refer to the observation of the Division Bench in that case to the following effect (at page 43) :

"Counsel for the assessee, in our opinion, was justified in contending that a man who was the owner of movable property like a diamond or jewellery and if that property or goods had been lost due to stealing or theft, even then if the assessee was made liable as the owner of that property and as such liable to pay wealth-tax ad infinitum year after year in respect of that property that would lead to great hardship and anomaly. We might here mention the observations of the Select Committee on the 'assets stolen, lost or destroyed' which is noted in paragraph 13 of the report and are as follows :

"With regard to the definition of "net wealth", the Committee have noted the assurance given by the Minister of Finance that if any asset referred to in the said definition was lost or stolen or destroyed, it would not be included in computing the net wealth of an asset, provided the same had not been insured and that necessary instructions in this respect would be issued to the authorities concerned'."

10. In our view, a person whose valuable property had been seized could not exercise the right of ownership so far as possession, enjoyment and sale of such property is concerned. There cannot be any market value for such property inasmuch as Section 7(1) provides that the market value shall be estimated to be the price which in the opinion of the Wealth-tax Officer it would fetch if

sold in the open market on the valuation date. In view of the aforesaid restriction on the ownership and the goods being liable to confiscation, mere legal ownership will not be enough to fasten liability on the assessee in respect of the market value of the seized assets as made by the Customs Authority on the date of seizure. The assets no doubt belong to the assessee but his right on the valuation date was in jeopardy being subjected to confiscation proceedings. Such a right has to be valued. This aspect of the matter was not adverted to by the Tribunal. The Tribunal proceeded on the legal contention as to whether the assessee was the owner of the seized goods on the relevant valuation date."

16. In the above background, it is required to be decided as to whether the petitioners are entitled to get the benefit of exemption from including the value of the gold which though belonged to the petitioners, but was seized in 1965 and continues to remain seized till date with the Collector of Central Excise, for the purpose of filing wealth tax returns. Interpretation of sub-section (1) of Section 7 and more specifically the expression "if sold in the open market" do not contemplate actual sale and the actual state of the market as held in the case of **Aims Oxygen Pvt. Ltd. (supra)**; however in the facts of the present case if the petitioners predecessor was prevented from exercising his right due to seizure of the gold, it could not be said that the assessee continued to be the full owner of the said gold on the relevant valuation dates. In the present case despite the order of adjudication dated 03.01.1970 passed by the Collector of Central Excise to invest the gold in the Gold Bond Scheme, the same was not released by the respondents.

17. We are therefore not in agreement with the view expressed by the Division Bench of the Gujarat High Court in the case of **Jayantilal Amritlal (supra)**, which held that since the gold articles in question were liable to be confiscated it does not in any way affect the market value of the articles under Section 7(1) as urged by the

appellants therein.

18. We may refer to the order dated 03.01.1970 passed by the Collector of Central Excise, New Delhi passed in C. No. 3-Gold/Seizure/66/49, Order No. 1/1970 under the Gold Control Act, 1968 on adjudication. Perusal of the order narrates the entire facts pertaining to the original assessee i.e C.S. Goenka's case pertaining to the seizure of the primary gold, gold jewellery as well as documents by the Income Tax Officers under panchnama dated 07.12.1965. In the said proceedings, the original assessee C.S. Goenka filed his reply to the show-cause memorandum, requesting for grant of personal hearing and also cross-examination of the witness on whose evidence the department had relied upon. C.S. Goenka was heard on 13.07.1967, 29.06.1967, 11.08.1967, 07.09.1967, 23.02.1968 and 17.10.1969. During the said hearings and cross-examination of the witnesses, every crucial issue was recorded and considered by the Adjudication Officer. The deposition of Shri. Vanchinath, Income Tax Officer, Bombay during the course of the examination clearly mentioned that prior to 24.11.1965, the original assessee C.S. Goenka had met him and inquired from him about the provisions of the Gold Bond Scheme. Further the employee of the State Bank of Indore also stated in his deposition that after 21.11.1965, an application was presented before him for tendering the gold. This fact was also mentioned to Shri. Vanchinath, the Income Tax Officer, Bombay during his visit prior to 21.11.1965. What is relevant to be noted is that in the present case, the gold was not smuggled nor it was foreign marked gold. The gold was indigenous which the original assessee had acquired over a period of years and had kept it with him for future security. The Adjudicating Officer returned clear findings that it was the duty of Shri. Vanchinath, the Income Tax Officer, Bombay to have

correctly guided the original assessee C.S. Goenka to avail the concession of the Gold Bond Scheme so granted by the Government Notification. It was further held that the records of the case and the evidence led by the defence counsel revealed that the original assessee had submitted an application in the revised form meant for tendering of gold to the State Bank of India, Indore Branch and further taking into possession the gold by the Central Excise Authorities from the Income Tax department was not maintainable in law as seizure. Considering the above facts, the Adjudicating Officer returned the findings in paragraphs 14 to 20 of the said order which are extracted below for reference:-

" 14. Considering all the facts and circumstances of the case, I hold that the seizure of this gold by Central Excise officers on 9.12.65 was valid. I do not accept the plea of the party charged that since gold was not seized under Gold Control Rules on 6.12.65, it cannot be confiscated under Gold Control Rules. I also do not accept the plea of the party charged that the proceedings under the Gold Control Rules are barred just because the gold had been seized by the Income-tax Department from the party charged 3 days prior to its seizure by the Central Excise Officers under the Gold Control Rules. I hold that Central Excise Officers rightly seized the gold under the Gold Control Rules on 9.12.65 and I declare that the seizure was valid.

15. I concede the plea of the party charged that he had intended to invest their gold in gold bonds. This intention is clearly borne out from the evidence on records. The depositions of Shri. Vanchinath, Income-tax Officer during the course of cross-examination confirm this plea of the party charged. Enquiries made from the employees of the State Bank of Indore also indicate that an attempt was made to put this intention into practice.

16. It is also true that the party charged was not properly guided in the initial stages. Had he discussed this matter with any Gold Control or Central Excise Officer he had talked the matter over with Shri. Vanchinath, Income-tax Officer, he would have been completely exonerated in these proceedings and also would have been allowed the full benefit of the amnesty granted by the Government to the owners of the Gold.

17. In view of the above mentioned facts, the party charged is entitled to the benefit of the amnesty granted by the Government. Even though he had initially failed to declare the gold, time was available to him upto 31.5.66 to invest the gold into gold bonds and his intentions would have materialised but for the fact that seizure of gold prevented him from tendering the Gold to the Bank, as it was not in his possession at that time.

18. While intention to invest the gold in gold bonds is conceded failure to declare was, no doubt, there. He was required by law to declare his gold to the Government. Since he did not declare this gold, even though he is given the benefit of the gold bond scheme, he has rendered himself liable to punishment for not declaring his gold, at the appropriate time, as required by law.

19. Considering all the facts and circumstances of the case and weighing the merits of the evidence available on record, I order that the gold shall be released to the party charged for invest in gold bond in pursuance of the application tendered by him to the State Bank of Indore in 1965.

20. I also order that for failure to declare the gold in his possession, which involves contravention of gold control rules, I impose upon him a penalty of Rs.25,000/- (Rupees twenty-five thousands only) under Rule 126-L(16) of the Gold Control Rules, 1962 (Corresponding to Section 74 of the Gold Control Act, 1968)."

19. The Income Tax department filed an appeal before the Gold Control Administrator against the above order which came to be dismissed on 08.02.1971. The relevant findings returned by the appellate authority in paragraphs 15 to 17 of the said order are extracted herein below for reference:-

"15. I do not also believe that the finding given by the Collector in his order was in any way binding on the Income-tax authorities in their proceedings under the Income-tax and other allied Acts. In fact, after the Collector passed the order, the Income-tax authorities served an attachment order on the gold. The contention made by Shri. Joshi that the order passed by the Collector is binding on the Income-tax Officer by virtue of the provisions of Section 84 of the Gold (Control) Act does not have much force as the finality referred to in the aforesaid section is with reference to the proceedings under the Gold (Control) Act.

16. A point could be raised that even in a case where a patently wrong or even malafide order has been passed by an Adjudicating Officer in favour of a person, no action would be possible to modify such an order as the person concerned would evidently not file any appeal. The law has not left any such vacuum. It is true that unless the person in respect of whose order has been passed files an appeal, no rectification of the order would be possible under Section 80 of the Gold (Control) Act. In such an eventuality, however, the remedy would lie in invoking the provisions of Section 81 and Section 82(2) and (3) of the Gold (Control) Act.

17. In the result, I hold that the first contention of Shri. Sorabjee that an appeal in this case can be filed only under Rule 126-M(3) of the Defence of India Rules, and not under Section 80 of the Gold (Control) Act, 1968, is not correct. On the point whether the Income-tax Officer, Section X (Central), Bombay is competent to file an appeal against Order No.1/1970 dated the 3rd January, 1970, passed by the Collector of Central Excise, Delhi, I hold that on the facts of this case, he is not competent to file an appeal against the aforesaid order. The appeal filed by him is, therefore, incompetent and not maintainable under the Gold (Control) Act, 1968. That being so, no action can be taken thereon under the said Act."

19.1. This order in appeal became final and was not challenged further, thus, rendering finality to the original order dated 03.01.1970. The original assessee paid the penalty of Rs. 25,000.00 as directed under Rule 126-L(16) of the Gold Control Rules 1962 (corresponding to Section 74 of the Gold Control Act, 1968) for seeking return, release and investment of seized gold in the Gold Bond Scheme. However, the same has not been released, nor invested till date thereby rendering the valuable right of the assessee completely infructuous. Therefore, we are unable to accede to the contention raised by the Revenue i.e. the respondent that the assessee stood possessed and owned the gold and gold coins on the respective valuation dates for the purpose of computation of Wealth-tax assessment. On the other hand, we are inclined to accept the case of the applicant / assessee that since the gold had been seized by the Gold Control Authorities,

the market value of the seized gold is to be considered at "NIL" for the purpose of computation of wealth tax assessment on the respective valuation dates. At this stage we may usefully refer to the definition of 'Gold' as appearing in Section 8(4)(a) of the Wealth Tax Act, 1957 which reads as follows:-

" (a) "Gold" means gold, including its alloy, whether virgin, melted, remelted, wrought or unwrought, in any shape or form, and includes any gold coin whether legal tender or not), any ornament and any other article of gold."

19.2. We may also extract the provisions of Section 8(2) of the said Act relevant to computation of the net wealth of a person under the Wealth Tax Act, 1957. Section 8(2) reads as follows:-

"
8(1)
(2) In computing the net wealth of a person under Wealth-tax Act, 1957 (27 of 1957) the value of the assets represented by the income, which under sub-section (1) is not includible in his income profit or gains, shall, notwithstanding anything contained in the said Act, not be taken into account in an assessment or reassessment for any assessment year made under the said Act on or after the 20th day of October, 1965."

20. From the above, it is discernible in the present case, that the original assessee would not be liable to wealth tax assessment on the value of the seized gold if the assessments were made on any date after 20.10.1965. We may also usefully extract the observations and findings returned by the Tribunal in its order dated 29.09.1981 which finds favour with the original assessee. The said extract in paragraph 18 reads as under:-

".... We are aware that the situation the assessee finds himself is brought about by the department themselves. It is by their action that the assessee had been deprived of the chance of investing the gold in Gold Bonds and getting the exemption. However, we, with our limited powers, cannot under these circumstances, invoke any rule of equity in favour of the assessee. Perhaps, there are occupational hazards of having taxable assets not

disclosed to the department. Such as assessee runs these risks."

21. Applying the ratio in the case of **Murari Mohan Dutta (supra)**, we are inclined to hold in the present case that there cannot be any market value ascribed for valuation of the seized gold on the respective valuation dates in view of the fact that the gold being seized was in the custody of the Central Excise Authorities on the respective valuation dates and the right of the original assessee was in jeopardy. Thus, we do not agree with the findings returned by the Tribunal in its order dated 29.09.1982 in so far as the issue of valuation is concerned.

22. In view of the above, we therefore answer the seven questions of law as stated in paragraph 5.26 herein above in the Wealth-tax Application, Wealth-tax References and Income Tax Appeals as under:-

(1) Whether, on the facts and in the circumstances of the case, the Tribunal erred in law in including the market value of the gold and gold coins in the computation of net wealth of the appellant ?

Ans. : Yes

(2) Whether, on the facts and in the circumstances of the case, the Tribunal erred in law in rejecting the assessee's submissions that even if the gold and gold were to be included in the net wealth the value thereof to be taken ought to be NIL, or ought to be arrived at, bearing in mind the liability for confiscation, fine and penalty and bearing in mind that what had to be valued was the price which the assessee claim to be restored possession of the gold would fetch, if sold in the open market ?

Ans. : Yes

(3) Whether, on the facts and in the circumstances of the case, Tribunal erred in law in rejecting the assessee's claim that matter had to be considered on the footing of the assessee having invested the said gold and gold coins in gold bonds which were exempt from wealth-tax ?

Ans. : Yes

(4) Whether, on the facts and in the circumstances of the case, the Department having knowingly and consciously prevented the assessee from investing the gold and gold coins in the purchasing of the gold bonds under the Gold Bond Scheme which was then in operation, can in law charge the assessee to wealth-tax on the footing that the assessee continues to be the owner of the gold (and not gold bonds) and was thus liable to wealth-tax on the value of the said gold and gold coins ?

Ans. : No

(5) Whether, the Tribunal erred in law in holding that the rules and principles of equity would have no application to the present case ?

Ans. : Yes

(6) Whether, the Tribunal erred in law in valuing gold on the basis of a national sale when the assessee was not in possession of the gold and could not have sold the gold but could have at best entered into an agreement to sell the gold with a condition to deliver the gold, if and when he became entitled to and acquired possession thereof ?

Ans. : Yes

(7) Whether, instead of determining the value of gold on the basis of a notional sale of gold which was not legally possible, the Tribunal ought to have included, if at all, the consideration which any wise and prudent person would have offered for entering into an agreement to purchase the gold subject to the condition that delivery of gold would be given and sale would be completed, if and when the assessee became entitled to and acquired possession of gold ?"

Ans. : In view of the answers to the questions (1) to (6) herein above, the Tribunal ought not to have included any consideration for the seized gold for computation of wealth tax assessment on the respective valuation dates as the gold still stands seized and not released.

23. Writ Petition No. 793 of 2005 was filed by Smt. Sushila N. Rungta to challenge the notice dated 22.09.2004 issued for the sum of

Rs. 5,01,86,611.00 along with interest being the alleged dues of income tax and wealth tax payable by the estate of Shri. C.S. Goenka (original assessee). Originally the writ petition was filed for the following relief:-

"(a) that this Hon'ble Court be pleased to issue a writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, order or direction calling for the records and proceedings in connection with the Notice of Demand to Defaulter dated 22nd September 2004 and all further recovery proceedings initiated in furtherance thereof including the proposed auction sale of gold lying in the Treasury at Jaipur and after examining the legality, validity and propriety of the same to quash and set aside the same;"

24. During the course of hearing, the petitioners sought amendment to implead the following as prayer clause (a-1) which was kept in abeyance to be decided since the final hearing of the Wealth Tax References and Income Tax Appeals was already under way.

"(a-1) that this Hon'ble Court be pleased to pass an Order and / or direction directing the respondents to forthwith release 85617 grams of gold, jewellery, cash and other valuable articles from the premises as per the panchanama and hand it over to the petitioners / Applicants".

24.1. By the amended prayer, the petitioners have sought an order and direction to the respondents to forthwith release 85617 grams of gold, jewellery, cash and other valuable articles from the premises as per the panchnama and hand it over to the petitioners / Applicants. In view of the Wealth Tax References and Income Tax Appeals being answered by us in the above manner, the writ petition is now required to be adjudicated. The writ petition specifically challenges notice of recovery issued under sub-section (2) to section 223 of the Income Tax Act, 1961 seeking recovery in accordance with the provisions of Section 222 to Section 232 of the Income Tax Act and the second schedule to the said Act and the rules made thereunder along with interest, cost, charges and expenses. The facts which have

been narrated in the writ petition are identical to those in the references in as much as the same relate to seizure of 85617 grams of gold from the original assessee and consequential notice of demand for Rs.5,01,86,611.00 along with interest. Petitioners have challenged the notice of demand on various grounds i.e the notice of demand does not contain any details of the alleged dues of the estate of late Shri. C.S. Goenka; petitioners could not have been issued notice of recovery as the petitioner was never served with any notice of demand earlier; the Income Tax Officer failed to give effect to all the orders of the appellate authorities and give credit to the amounts recovered by the department from the debtors of late Shri. C.S. Goenka (original assessee); if such credit was given then there would not be any tax dues payable by the estate of late Shri. C.S. Goenka, rather the estate shall be entitled to refund; that the notice of recovery issued is without application of mind and without considering various orders passed by the Adjudicating Authorities and this Court from time to time; the petitioners have challenged the notice of demand pertaining to wealth tax demand in the sum of Rs.2,07,67,923.00 as being incorrect because the petitioners were never served with any notice of demand under Section 31(2) of the Wealth Tax Act and finally unless and until the amount of wealth tax dues payable is quantified, no such recovery can be made.

25. Respondents in the writ petition have filed affidavit in reply dated 30.06.2005 through L.P. Saigal, TRO-16(2) in the office of the Commissioner of Income Tax, City 16 and contended that all due credits have been given from the amounts directly realized from the borrower of valuable goods, silver utensils, coins etc to the original assessee; with respect to claim of refund of the assessee for the assessment years 1967-68 to 1970-71 and interest of Rs. 24,278.24

totalling to Rs. 67,632.24 as per order dated 03.12.1977, the same had been adjusted against the outstanding demand and the assessee was intimated about the said adjustment; there are several disputed questions of facts raised in the reply which cannot be adjudicated in the absence of any material on record save and except the statements on affidavit.

26. Petitioners have filed affidavit in rejoinder dated 15.07.2005 to contest the claim of the respondents in the reply with respect to each and every claim and have challenged the recovery proceedings as being high handed and unlawful. It is submitted that seizure of gold by the Customs and Excise Department and thereafter by the Income Tax Department was illegal and malafide.

27. We have perused the averments made in the writ petition as well as the materials on record. A perusal of recovery notice dated 22.09.2004 does not evince confidence in the Court as the same is inadequate in terms of any details. Therefore, we are inclined to set aside the notice of recovery dated 22.09.2004 with liberty to the respondents / Revenue / Income Tax department to issue a fresh notice in accordance with law and if permissible in law to the legal heirs of the original assessee. If such a recovery notice is issued, it shall be open to the petitioners to contest the same whereafter law will take its own course.

28. In so far as the amended prayer for seeking forthwith release of 85,617.80 grams of gold, jewellery, cash and other valuable articles from the premises of the original assessee as per the panchnama to the petitioners is concerned, it is seen from the record i.e IA No.16 of 2015 in Civil Appeal No.723 of 1973 filed in the

Supreme Court, that the late Shri. C.S. Goenka had three legal heirs namely Smt. Sushila N. Rungta - daughter, Radheshyam Goenka - son and Rajkumari R. Goenka - daughter. It appears that an arbitrator was appointed by the Supreme Court vide order dated 01.11.1991 to settle the dispute as to who would be the legal heir to the estate of late Shri. C.S. Goenka. Probate Suit No.65/85 was also filed wherein the genuineness of the will dated 29.10.1982 of the original deceased assessee C.S. Goenka was held undisputed and the genuineness of the will was conceded on 27.10.1999 by the non applicants therein. The learned arbitrator passed an award holding that the will in favour of Sushila N. Rungta was inoperative and Radheshyam was the sole heir as adopted son. This award was challenged by Sushila N. Rungta in the Supreme Court. On 01.12.2000 the Supreme Court held that the award of the learned arbitrator was inoperative and on the basis of the probated will, Sushila N. Rungta was the legal heir of the deceased C.S. Goenka. Therefore, Sushila N. Rungta made an application before the Supreme Court that she be brought on record as the sole heir and representative of the deceased original assessee C.S. Goenka. On 18.07.2008, the Supreme Court was pleased to allow Interim Application No.15/2008 filed by Sushila N. Rungta and brought her name on record as the legal heir and representative of the appellant i.e Shri. C.S. Goenka.

29. The copies of the above orders and the probate however are not on record so as to guide us in considering and directing the amended prayer as sought for by the petitioners. If the petitioners place the certified copies of the aforesaid orders and probate order on record to the satisfaction of the concerned authorities i.e the respondents / department of Income Tax, we direct that the respondents shall forthwith release 85617 grams of gold, jewellery,

cash and other valuable articles as per the panchnama and hand it over to the petitioners being the legal heirs of Sushila N. Rungta.

30. Petitioners i.e Nirajkumar N. Rungta and Bharti Saraf are the son and daughter of Smt. Sushila N. Rungta. Petitioners have to place on record the documentary evidence of they being the true and legal heirs of Sushila N. Rungta in order to seek release of the aforesaid articles to themselves. Not to mention that once the above articles are released into the hands of the petitioners, petitioners shall be liable to wealth tax assessment in respect of the value of the said articles in accordance with law. The present petitioners shall place the appropriate documentation of they being the only legal heirs of Sushila N. Rungta to the satisfaction of the respondents for seeking release of the articles. The seized gold shall be released by the respondents within a period of 6 (six) weeks of furnishing of the required documents by the petitioners.

31. With the above directions, writ petition No.793 of 2005 is disposed of. However, there shall be no order as to costs.

[MILIND N. JADHAV, J.]

[UJJAL BHUYAN, J.]