

Assessment concluded without hearing assessee is invalid even if assessee did not comply with notice for filing of return

Summary – The Pune ITAT in a recent case of Vasantrao Sudam Pingle., (the Assessee) held that where in response to notice issued under section 17(1) assessee did not file any return and Assessing Officer without giving proper notice affording opportunity of being heard proceeded to pass best judgment assessment order, assessment framed by Assessing Officer was null and void.

Facts

- The Assessing Officer issued notice to the assessee under section 17 calling for the return of the wealth.
- The assessee did not file any return in compliance with the notice but only filed a letter that he was not liable for wealth-tax.
- Thereafter, the Assessing Officer proceeded to pass the order to the best of his judgment under section 16(5).
- The Commissioner (Appeals) held that there was no proper notice to the assessee affording opportunity of being heard, therefore, the assessment framed by the Assessing Officer was null and void as it was completed in gross violation of mandatory provisions of second proviso to section 16(5).

Held

- Admittedly, all the assessments are completed ex-parte under section 16(5). The Assessing Officer issued the first notice under section 17(1) but the assessee did not file any return of wealth but only filed a letter that he is not liable for wealth tax. The Assessing Officer issued the second notice under section 16(4) requesting the assessee to file his return of wealth. There is no other notice issued to the assessee.
- The stand taken by the Assessing Officer is that the assessee was issued notice under section 16(4) and hence, there is no requirement to give further opportunity to the assessee in view of second proviso to sub-section (5) of section 16. Said stand of the Assessing Officer is not as per the provisions of law.
- In fact, once the Assessing Officer issues notice under section 17(1) then there is no further requirement to issue the notice under section 16(4) directing the assessee to file the return of income as said sub-section is applicable in a situation where the assessee did not file return of income under section 14(1) within the time allowed.
- Section 17 operates when there is escapement of the income and the requirement of filing the return is incorporated in the said sub-section itself and once the notice is issued by the Assessing

Officer under section 17(1) requiring the assessee to file the return of wealth and then section 16(4) does not apply when notice under section 17(1) is issued.

- In view of the first proviso to section 16(5), the Assessing Officer is bound to give opportunity to the assessee before passing the assessment order, which is not the case here.
- Therefore, the findings of the Commissioner (Appeals) that the assessment order passed by the Assessing Officer is not with conformity of law is to be concurred with.