

# IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.D-1779 of 1999

**Present:**

**Mr. Justice Irfan Saadat Khan**

**Mr. Justice Zafar Ahmed Rajput**

Dates of hearing: 18.02.2016, 23.02.2016 and 22.03.2016 .

Petitioner: Seedat Chambers through Dr. Farogh Naseem,  
Advocate.

Respondents: Wealth Tax Officer and two others through  
Mr. Javed Farooqi, Advocate.

## **J U D G M E N T**

**IRFAN SAADAT KHAN, J.** This Constitutional Petition has been  
filed with the following prayers:

- (i) *declare that clause 2(e)(ii) of the Wealth Tax Act alongwith Explanation added by the Finance Act, 1991 is ultra vires of Entry 50 of the Fourth Schedule of the Constitution of Islamic Republic of Pakistan and in the manner implemented is also hit by Article 2A, 3, 18 and 23 of the Constitution;*
- (ii) *declare that the petitioner is not holding the property for the purposes of letting out;*
- (iii) *declare that Rule 8(3) of the Wealth Tax Rule is violative and ultra vires of section 7 of the Wealth Tax Act and it also militates against the concept of bonafide letting value of any property;*
- (iv) *declare that the taxation of properties at the rate of 25% on the rent received is beyond the taxes, expenses, charges and are oppressive, unreasonable, confiscatory, expropriatory and in conflict with fundamental rights;*

- (v) *declare that the notices issued in the name of Seedat Chambers are incompetent and invalid and have not been served on the fictional Association of Persons or on the persons themselves and hence the entire assessment proceedings are invalid, unlawful, without jurisdiction and incorrect and permanently injunct and stay the recovery of Rs21,98,000/= or any other amount in substitution;*
- (vi) *declare that the assessments of the individuals have already been framed. There was no legal warrant to frame assessment for the AOP;*
- (vii) *declare in the alternate that for valuation Collector's formula may be adopted;*
- (viii) *direct that the refund/additional refund may please be issued as under:*
  - (a) *Rs3,62,500/= for the assessment year 1980-81 and 1981-82;*
  - (b) *Rs3,38,287/= in the case of individual co-owners after given benefit as non-residents and non-citizen of Pakistan;*
  - (c) *Rs33,720/= collected by the officer of Excise and Taxation, C Division u/s 13A of the Wealth Tax, 1963;*
  - (d) *Rs6,24,536/= paid alongwith return for the assessment year 1998-99;*
  - (e) *Rs6,47,768/= paid alongwith return for the assessment year 1999-2000;*
- (ix) *the penalty proceedings may be cancelled;*
- (x) *grant interim stay to recovery and penalty proceedings;*
- (xi) *award costs;*
- (xii) *award any other relief.*

2. Briefly stated the facts of the case are that the petitioner has been treated as an Association of Persons for the wealth tax purposes in respect of the property known as "Seedat Chambers" (hereinafter referred as "AoP"). The assessment for the years under

consideration i.e. assessment years 1992-93 to 1998-99 (except 1996-97) were finalized by the Assistant Commissioner of Wealth Tax (ACWT) on 20.10.1999 under Section 16(3) of the Wealth Tax Act, 1963 (**the Act**) by observing that since the AoP has rented out its property to M/s. Delta Shipping Company Pvt. Ltd. as per Section 2(c) read with Explanation (iii) of Section 2(m) and Section 2(5)(ii) read with Explanation (i) of the Act the property is liable to be assessed for wealth tax in their hands. Since the AOP has not filed the returns of wealth tax for the corresponding years, a notice under Section 17 of the Act was served upon it for filing their returns. The AoP in response to the notice filed their objections through their counsel, which were not found to be tenable and thereafter assessments under the provisions of Section 16(3) of the Act were made by assessing the wealth of the AoP at Rs.1,82,00,000/- for the years 1992-93, 1993-94, 1994-95 and 1995-96, respectively, however, for the assessment years 1997-98 and 1998-99 wealth was computed at Rs.2,01,20,000/- and Rs.2,22,32,000/- respectively, vide orders dated 20.10.1999. It is against these assessment orders that the AoP, without availing the remedy of appeals, has filed a direct petition before this Court challenging the orders passed by the ACWT mentioned supra.

3. Dr. Farogh Naseem Advocate has appeared on behalf of the AoP and submitted that due to typographical error the name of the AoP has been mentioned as “Abdul Cadir Seedat”, whereas all the proceedings were initiated against “Seedat Chambers” through Abdul Cadir Adam Seedat, hence, this mistake being apparent may

be allowed to be corrected. In support of this contention, the learned counsel has relied upon the decisions reported as:

- i) ***AIR 1921 Sindh 59***, [*Firm of Gerimal Hariram Vs. Firm of Raghunath Kalianji and another*]
- ii) ***AIR 1939 PC 170*** [*Mongbibai Vs. Cooverji Umersey*]
- iii) ***PLD 1968 Karachi 345*** [*Muhammad Ali H. Allah Rakhya Vs. Piarali H. Ladha Bhai & others*]

Thereafter vide order dated 18.02.2016 we allowed the AoP to make necessary correction in the title of the petition with red ink which, however would be subject to the objections raised on behalf of the respondents.

4. The learned counsel further submitted that the building Seedat Chambers is owned by five individuals, namely, Haji Adam Mohammad Seedat, Mohammad Adam Seedat, Esuf Adam Seedat, Abdul Cadir Adam Seedat and Ismail Adam Seedat, hence, the ACWT was not justified in treating Seedat Chambers as AoP as the same would amount to double taxation since portions of the property falling under the respective shares of above named persons have already been declared in their wealth hence taxing the property independently and thereafter again in the hands of the respective owners the same property would be double taxation, which is not permissible under the law. In support thereof, the learned counsel has placed reliance on the decisions reported as:

- i) ***(1959) 37 ITR 107 (All)***, [*Joti Prasad Agarwal and others Vs. Income-Tax Officer, B Ward, Mathura*]
- ii) ***(1966) 60 ITR 95 (SC)***, [*Commissioner of Income-Tax, Bombay South Vs. Murlidhar Jhawar and Purna Ginning and Pressing Factory*]
- iii) ***(1969) 73 ITR 459 (Ker)***, [*Commissioner of Income-Tax, Kerala Vs. P.P. Johnny and another*]

- iv) **(1974) 95 ITR 130 (AP)** [*Commissioner of Income-Tax, A.P. Vs. Hyderabad Deccan Liquor Syndicate*]
- v) **(1978) 112 ITR 839 (Mad)**, [*Commissioner of Income-Tax, Madras-II Vs. Blue Mountain Engineering Corporation*]
- vi) **(1978) 113 ITR 602 (Mad)**, [*Commissioner of Income-Tax, Madras Vs. R. Dhandayutham and others*]
- vii) **1992 SCMR 891** [*Pakistan Industrial Development Corporation Vs. Pakistan through the Secretary, Ministry of Finance*]
- viii) **2014 SCMR 1630** [*Federation of Pakistan Vs. Durrani Ceramics & others*]

5. The learned counsel further stated that the sole intention behind the impugned assessments was to wipe-out the refunds claimed by the above named persons. He further states that through various letters written to the ACWT this issue was agitated but no heed was paid by the ACWT and the assessments which are challenged in the instant petition, have illegally been made. He further states that the ACWT had issued a consolidated notice under Section 17 of the Act for all the years under consideration, whereas he should have given separate notice for each assessment year, since every assessment year is a separate and distinct entity. In support thereof, the learned counsel has placed reliance on the decisions reported as:

- i) **2011 PTD 1558** [*Shahnawaz (Pvt.) Ltd. Vs. Pakistan through the Secretary Ministry of Finance, Government of Pakistan, Islamabad*]
- ii) **1987 PTD 325 (T)** [*I.T. As. Nos. 136 to 143/IB of 1985-86, decided on 17th November, 1986*]
- iii) **2015 PTD 1771** [*Commissioner Inland Revenue Vs. Sheikh Manzoor Ahmad*]

6. The learned counsel further submitted that Section 17 of the Act provides two periods of limitation, 17(A) provides limitation for

8 years, whereas 17(B) provides limitation for 4 years. He states that though the ACWT initiated the proceedings under Section 17 of the Act but had failed to specify as to under which relevant provision of Section 17 i.e. (A) or (B) has he initiated the proceedings. Hence, according to him, the notice issued under Section 17 of the Act was vague and unspecific and is liable to be vacated. In this regard he has placed reliance on the decisions reported as:

- i) **2011 SCMR 838** [*Assistant Collector Customs Vs. Khyber Electric Lamps*]
- ii) **2003 PTD 1257** [*Zamindara Paper & Boards Mills (Pvt.) Limited, Faisalabad Vs. Collector, Central Excise And Sales Tax, Lahore*]
- iii) **2003 PTD 1797** [*D.G. Khan Cement Company Limited, Lahore Vs. Collector of Customs, Sales Tax And Central Excise, Multan*]
- iv) **2005 PTD 480** [*Caltex Oil (Pakistan) Ltd. Vs. Collector, Central Excise and Sales Tax and others*]
- v) **(2003) 88 Taxation 128 (Lah)** [*Atlas Tyres (Pvt.) Ltd., Vs. Additional Collector (Adjudication), Collectorate of Central Excise, Lahore and another*]
- vi) **2003 PTD 1047** [*Rose Colour Laboratories Nayab No.1 (Pvt.) Ltd Vs. Chairman, C.B.R.*]

7. The learned counsel further states that in the notice under Section 17 of the Act issued by the ACWT he has failed to tick the relevant category, as specifically provided in the said notice, hence, on this score also the notice issued was bad in law. In respect of the above contention he has placed reliance on the decisions reported as:

- i) **1997 PTD 47 (Lah)** [*Saleema Bibi Vs. Muhammad Aslam*]
- ii) **1997 PTD 1994 (T)** [*I.T. As. Nos.7739/LB of 1996 and 253/LB of 1997*]

8. The learned counsel further submits that even otherwise the valuation of the taxable wealth worked out by the ACWT were

erroneous as the ACWT, while assessing the value of the taxable wealth, has totally failed to take into consideration the provisions of Rule 8(3) of the Wealth Tax Rules, 1963 (**the Rules**). In support thereof, the learned counsel has placed reliance on the decision reported as:

- i) (1998) 78 Taxation 217 (Lahore) [Munir Ahmad and others Vs. Federation of Pakistan]*

9. The learned counsel further stated that as per Sections 7 and 46 of the Act though powers have been given to the Assessing Officer to make the assessment but without providing proper guidelines in respect thereof, which are necessary, hence, the method of assessing the value of the property adopted by the ACWT was without being proper guidelines, therefore, the provisions of Sections 7(1) and 46 of the Act are unconstitutional. In support of this contention the learned counsel has placed reliance on the judgments reported as:

- i) PLD 1985 Karachi 572 [Cannon Products Ltd. Vs. I.T. Officer, Companies Circle, Karachi]*
- ii) PLD 2001 SC 1 [Director Food, N.W.F.P. and another Vs. Messrs Madina Flour And General Mills (Pvt.) Ltd. and 18 others]*
- iii) PTCL 2014 CL 154 [Sakrand Sugar Mills Ltd. Vs. Federation of Pakistan and others]*
- iv) PTD 2014 SC 531(a)*

10. The learned counsel further stated that for constituting an AoP there has to be common intention of the person forming the same without which an AoP could not be constituted. He, therefore, stated that in the instant case “Seedat Chambers” has been considered as an AoP by the ACWT which he legally could not do until and unless persons with common intention join hands together

to form an AoP. In support thereof, the learned counsel has relied upon the decisions reported as:

- i) **(1960) 39 ITR 546 (SC of India)** [*Commissioner of Income-Tax, Bombay North, Kutch and Saurashtra*]
- iii) **(1966) 59 ITR 728 (SC of India)**
- iv) **(1962) 46 ITR 301 (Mad)** [*M.M. Ipoh Vs. Commissioner of Income-Tax, Madras*]
- v) **(1959) 35 ITR 676 (Ker)** [*N.S. Choodamani and another Vs. Commissioner of Income-Tax, Madras*]
- v) **(1973) 88 ITR 432 (SC of India)** [*G. Murugesan & Brothers Vs. Commissioner of Income-Tax, Madras*]
- vi) **(1979) 117 ITR 256 (Cal)** [*Rama Devi Agarwalla and others Vs. Commissioner of Income-Tax, West Bengal-III*]
- vii) **(1958) 33 ITR 767 (Mad)** [*Estate of Khan Sahib Mohd. Omer Sahib Vs. Commissioner of Income-Tax, Madras*]
- viii) **(1969) 72 ITR 579 (Ker)** [*R. Valsala Amma Vs. Commissioner of Gift-Tax, Kerala*]
- ix) **2003 PTD (Trib.) 2734** [*W.T.As Nos. 1439/LB to 1446/LB of 2001, decided on 25<sup>th</sup> September, 2001*]
- x) **(1936) 4 ITR 412 (All)** [*Mohammad Aslam Vs. Commissioner of Income Tax, United Provinces*]
- xi) **(1971) 82 ITR 828 (SC)** [*Commissioner of Gift-Tax, Kerala Vs. R. Valsala Amma*]
- xii) **(1974) 95 ITR 130 (AP)** [*Commissioner of Income-Tax, A.P. Vs. Hyderabad Deccan Liquor Syndicate*]

11. The learned counsel further submitted that a perusal of the various notices issued by the ACWT, from time to time to the AoP, would reveal that in the said notices it has nowhere been mentioned by the ACWT as to what procedure was he going to adopt while framing the assessments and thus his notices were vague and



uncalled for and are liable to be declared void. In support thereof the learned counsel has placed reliance on the decision reported as:

- i) **1999 PTD 1358** [*Siemens Pakistan Engineering Co. Ltd. Vs. Pakistan and others*]

12. The learned counsel further stated that Seedat Chambers since was considered as an AoP, hence, the ACWT was required to serve a notice upon the principal officer of the AoP which, according to him, was not done, therefore, the orders passed by the ACWT without properly serving the notice on the Principal Officer are ab-initio void. In support thereof the learned counsel has relied upon the judgments reported as:

- i) **(1974) 95 ITR 130 (AP)** [*Commissioner of Income-Tax, A.P. Vs. Hyderabad Deccan Liquor Syndicate*]
- ii) **(1973) 28 Taxation 73 (Lah)** [*Commissioner of Income-Tax (North Zone), Lahore Vs. Abdul Hamid Muhammad Jamil, Lyallpur*]
- vi) **(1979) 120 ITR 576 (Mad)** [*Jayanthi Talkies Distributors Vs. Commissioner of Income-Tax, Madras*]
- vii) **PLD 1967 SC 49** [*Commissioner of Income-Tax Vs. Muhammad Idris Barry & Co.*]
- v) **(1979) 117 ITR 256 (Cal)** [*Rama Devi Agarwalla and others Vs. Commissioner of Income-Tax, West Bengal-III*]

13. The learned counsel further submitted that in the previous years also an attempt was made by the department to tax the petitioner in the same manner, however, appeals were preferred by the petitioner and the Commissioner of Appeals decided the matters in favour of the petitioner and no appeals thereafter, according to the learned counsel, were preferred by the department before the Tribunal thus the orders passed by the Commissioner of Appeals had

attained finality. He further submitted that the ACWT, who had made the assessments, had no jurisdiction over the matter since according to him the proper jurisdiction of the petitioner was with Circle E-01, Zone E, Karachi, and not Circle E-06, Zone E, Karachi, where the impugned assessments have been framed. In support of this contention, the learned counsel has placed reliance on the decisions reported as:

- i) **1986 PTD (Trib) 314** [I.T.As. Nos. 821/LB, 822/LB and 823/LB of 1984-85, decided on 9th December, 1984]
- ii) **2006 PTD (Trib) 1534** [ I.T.As. Nos. 427(IB) of 2005, 721(IB), 722(IB), 723(IB), 724(IB) and 725(IB) of 2004, decided on 9th April, 2005]
- iii) **2002 PTD (Trib) 2942** [I.T.A. No.3496/LB of 2001, decided on 18th April, 2002]
- iv) **1999 PTD 4037** [Messrs Tapal Energy Ltd. Vs. Federation of Pakistan]

14. The learned counsel has conceded that the issue raised in the instant petition with regard to Section 2(e)(ii) of the Act is not available to him in view of the decision given by this Court reported as 2006 PTD 236. He states that so far as availability of alternate remedy is concerned, since in this petition various legal aspects have been raised and the petition was admitted vide order dated 06.03.2002, hence, the ground, if any, raised on behalf of the respondents with regard to availability of alternate remedy could not come in his way, since the petitioner could not now prefer appeals against the assessment orders due to the limitation involved in the matter and in support thereof has placed reliance on the decisions reported as:

- i) **2005 YLR 252** [Siddiqua Faiz Vs. Deputy Registrar, Cooperative Housing Society, Karachi]

- ii) **PLD 1963 SC 322** [*Vagina Silk Mill, Lyallpur Vs. The Income-Tax Officer, A-Ward Lyallpur and another*]
- iii) **PLD 1976 Lah 655** [*Commissioner of Sales Tax, Lahore Vs. Hilal Tanneries, Lahore*]
- iv) **1992 SCMR 250** [*Julian Hoshang Dinshaw Trust Vs. Income-Tax Officer, Circle XVIII, South Zone, Karachi*]
- v) **PLD 1990 SC 399** [*Edulji Dinshaw Limited Vs. Income Tax Officer*]
- vi) **PLD 1989 Quetta 74** [*Noori Trading Corporation (Pvt.) Ltd. Vs. Federation of Pakistan*]
- vii) **1998 PTD 2012** [*Board of Intermediate & Secondary Education Vs. Central Board of Revenue*]
- viii) **NLR 1995 Tax 163** [*Messrs Gec Avery (Pvt.) Limited Vs. Government of Pakistan through Central Board of Revenue, Islamabad and 2 others*]
- ix) **1994 MLD 1136** [*Fecto Cement Limited Vs. Collector of Customs Appraisement*]
- x) **1999 PTD 1892** [*Attock Cement Pakistan Ltd. Vs. Collector of Customs, Collectorate of Customs and Central Excise, Quetta*]
- xii) **1999 PTD 1668** [*Central Board of Revenue through Secretary Finance, Islamabad and another Vs. Pioneer Steel Mills (Pvt.) Ltd.*]

15. The learned counsel further stated that no objection with regard to availability of alternate remedy was raised by the department when the petition was admitted on 06.03.2002, hence, according to him, this objection, if any, raised by the department would not be available to them. In support thereof the learned counsel has relied upon the decisions reported as:

- i) **1984 CLC 216** [*Ishrat & Company Vs. Controller of Insurance, Karachi*]
- ii) **PLD 1997 Lah. 484** [*Bushra Qasim Khan Vs. Abdul Rashid*]

16. The learned counsel further submitted that it is a settled proposition of law that where statutory functionaries act malafidely and without proper jurisdiction, the only remedy available to an aggrieved person is to file a direct petition before this Court, without exhausting the other legal remedies available to the said person. In support of above proposition, the learned counsel has placed reliance on the decisions reported as:

- i) **PLD 2004 SC 271** [*Brig. Muhammad Bashir Vs. Abdul Karim*]
- ii) **2009 SCMR 1279** [*Commissioner of Income Tax Vs. Eli Lilly Pakistan (Pvt.) Ltd.*]
- iii) **PLD 2011 SC 44** [*Pakcom Limited Vs. Federation of Pakistan*]
- iv) **1991 PTD 663** [*The Income-Tax Officer, Central Circle III, Karachi Vs. Eruck Maneckji*]
- v) **2012 SCMR 455** [*Dr. Akhtar Hassan Khan Vs. Federation of Pakistan*]
- vi) **2006 SCMR 901** [*Messrs Chanar Sugar Mills Ltd. Vs. Collector (Sales Tax)*]

17. The learned counsel further stated that an objection has been raised in the comments filed by the respondents that since the petitioner has complied with the various notices issued by the department, hence, he is refrained from raising objection on the legality or otherwise of the notices issued to the AoP. He states that this stance taken by the department is uncalled for since there cannot be any waiver in the law and that the petitioner has the authority under the law to challenge any notice/order, if the same is palpably void, illegal and without jurisdiction. In support thereof the learned counsel has relied upon the decisions reported as:

- i) **1996 SCMR 700** [*Central Board of Revenue Vs. Seven-Up Bottling Company (Pvt.) Ltd.*]

- ii) *PLD 1999 Lah. 139 [Zahoor Ahmad Vs. Federation of Pakistan]*
- iii) *PLD 2009 Kar. 392 [Muhammad Ali Abbasi Vs. Pakistan Bar Council through Secretary]*

18. The learned counsel, in the end, stated that the matter may not be remanded since the time for filing appeals against the assessment order has been elapsed and the matters have become time barred a long time back and in his view this is a fit case where the proceedings initiated by the ACWT are liable to be annulled. In support thereof he has placed reliance on the decision reported as:

- i) *2001 SCMR 838 [Assistant Collector Customs Vs. Khyber Electric Lamps]*

19. Mr. Javed Farooqi Advocate has appeared on behalf of the respondents and at the very outset submitted that the prayer clauses 1, 3, 4 & 7 relate to the legal issues, whereas prayer clauses 2, 5 & 8 relate to disputed facts. He submitted that so far as prayer clauses 1, 3, 4 & 7 are concerned these issues have already been decided against the petitioner in certain decisions given by the High Courts or by the Hon'ble Supreme Court of Pakistan. He further submitted that so far as factual aspects of the petition are concerned the same could only be agitated before the appellate forum, which the petitioner has not done, hence, according to him, the instant petition is liable to be dismissed being misconceived. While elaborating his viewpoint, the learned counsel submitted that on the issue of Section 2(e)(ii) a Division Bench of this Court in the case of Messrs Volkart Pakistan (Private) Limited Vs. Federation of Pakistan through Secretary, Ministry of Finance, Islamabad and others (**2006 PTD 236**) has held the provisions of the Wealth Tax Act, if read with Entry No.50 of the Constitution of Islamic Republic of Pakistan (**the**

**Constitution**), are intra vires. He stated that so far as the issue of AoP, agitated by the learned counsel for the petitioner is concerned, this issue also stands decided in the decision in the case of Haji Muhammad Shafi and others Vs. Wealth Tax Officer and others (**1992 PTD 726**). The learned counsel further submitted that so far as the issue of Rule 8(3), this issue also stands decided in the case of Miss Itrath Qazilbash Vs. Special Officer of Wealth Tax, Circle 22, Zone-A, Lahore and 2 others (**1999 PTD 1060**). He submits that as regards the other aspects taken by the petitioner are concerned these grounds pertain to method of assessment, which could not be agitated in a writ petition, as the same could only be challenged before the Commissioner of Appeals. The learned counsel, in the end, submitted that it has also been held in a plethora of decisions given by the High Court and the Hon'ble Supreme Court of Pakistan that a person could not bypass the remedy of appeal by directly approaching this Court under Article 199 of the Constitution and has always discouraged the practice of bypassing the appellate forum and approaching the High Court under Article 199 of the Constitution. In support of his submissions, he placed reliance on the decision given in the case of Income-Tax Officer and another Vs. M/s. Chappal Builders (**1993 SCMR 1108**).

20. We have heard both the learned counsel at considerable length and have also perused the record and the decisions relied upon by them.

21. From the pleadings of Dr. Farogh Naseem it is apparent that his arguments revolve around some legal aspects as well as some factual aspects. It is an admitted position that so far as the issue with

regard to Section 2(e)(ii) of the Act is concerned the same has already been laid at rest by this Court in the case of Volkart Pakistan (Private) Limited (supra) wherein a Division Bench of this Court by placing reliance on various judgments of the Hon'ble Supreme Court observed as under:

16. .... *It was held that the Wealth Tax was a Federal Tax imposed under law* .....

17. .... *It has been held that the Courts while interpreting laws relating to economic activities view the same with greater latitude than the laws relating to civil rights such as freedom of speech, religion etc., keeping in view the complexity of economic problems which do not admit of solution through any doctrinaire or strait jacket formula. It was also observed that the Legislature particularly in economic activities, enjoys a wide latitude in the matter of selection of persons, subject-matter, events etc., for taxation. The presumption is in favour of the validity of the Legislation. The burden to prove that the same is invalid is on the person who alleges it.*

22. The other emphasis of Dr. Farogh Naseem being that the respondents were not justified in assessing the AoP which amounts to double taxation since respective shares of the wealth were assessed in the individual hands. Suffice to say that this argument, in our view, is also not available to the petitioner since for the tax purposes AoP is always considered to be a separate and distinct entity from the wealth of individual persons. Attention in this regard may be made to Section 2(3) of the Act wherein "assessee" has been defined as under:

2(3) "assessee" means a person by whom any tax or any other sum of money is payable under this Act, and includes --

- (i) *every person in respect of whom any proceeding under this Act has been taken for the assessment of his wealth or the wealth of any other person in respect of which he is assessable or of the amount of refund due to him or to such other person; and*
- (ii) *every person who is required to furnish a return of wealth under any of the provisions of this Act;*

3. **Charge of wealth-tax.** --- Subject to the other provisions contained in this Act, there shall be charged for every financial year commencing on and from the first day of July, 1963, a tax (hereinafter referred to as wealth-tax) in respect of the net wealth [or assets] on the corresponding valuation date of every [individual, [Hindu undivided family, firm, association of persons or body of individuals, whether incorporated or not,] and company]] at the rate or rates specified in the Schedule [:]

(Underline ours)

23. This issue came up for hearing in the case of Haji Muhammad Shafi (supra) wherein the leviability of the wealth tax on an AoP was challenged by contending that the Wealth Tax Act is beyond the legislative competence under Item 50 of the Fourth Schedule of the Constitution called Federal Legislative List read with Articles 141 and 142 of the Constitution and it was held by the Hon'ble Supreme Court of Pakistan as under:

*Item 50 of the Fourth Schedule provides for tax on capital value of the assets not including taxes on capital gain on immovable property. Therefore, tax on capital value of assets can be levied which is not disputed at all. Wealth Tax is one of those taxes which intends to subject the assets to taxation. It is nobody's case that the Wealth Tax Act does not charge the assets. The Act has provided a mechanism for imposing and calculating the tax on capital assets. The provision for calculating such tax is provided by the Act. Section 3 denotes which part of the capital value shall be taken into consideration for the purposes of charging wealth tax. It is nobody's case that the net value of assets is not a part of the capital value. The capital value of the assets includes the net value of the assets. The definition of the net wealth under section 2(m) clearly provides that first the aggregate value of all the assets belonging to the assessee has to be taken into consideration. This is the basis for charging the tax. Now, in order to calculate the tax the aggregate value of liabilities and debts are to be deducted from the aggregate value of assets and the excess so calculated has been termed as 'net wealth' on which tax is calculated at the specified rate. This process of calculating the tax does not exclude the capital value of assets from wealth tax charged under section 3.*

24. So far as the issue of Rule 8(3) of the Act is concerned this issue also stands decided in the case of Itrat Qazilbash by a



Division Bench of Lahore High Court as under:

*Applying this test to language of sub-rule (3) of Rule 8 of Wealth Tax Rules, 1963, it is crystal clear that this rule relates to calculation of the valuation of the land and buildings for computing the net wealth of assessee within the terms of section 3 read with section 2(5) and section 2(16) of the Act. This rule is of a facilitative character and provides methodology for calculation of net wealth. As already held, section 3 does not discriminate between corporeal and incorporeal property, the land and buildings over it and applies to property of every kind. We are of a considered conclusion that the phrase/word "and" used in sub-rule (3) of Rule 8 is of a disjunctive character. Whatever it mandates is that the Deputy Commissioner shall estimate the value of the lands and building with due regard to nature and size of the property, the amenities available and the price which similarly situated property may fetch in the open market. The Deputy Commissioner/Assessing Authority is empowered to evaluate the land/building on the basis of its letting value.*

25. It is noted from the pleadings of Dr. Farogh Naseem that his other arguments were based upon method of assessment which, in our view, is the subject matter of appeal. Section 23 of the Wealth Tax Act clearly stipulates that if any person is aggrieved against the assessment, the remedy lies with the Appellate Additional Commissioner now Commissioner of Income Tax Appeals, which is reproduced hereinbelow:

**[23. Appeal to the Appellate Additional Commissioner from orders of Deputy Commissioner].** --- (1) Any assessee objecting to an assessment made, or penalty imposed upon him, or denying his liability to be assessed under this Act, or objecting to an order under sub-section (2) of section 20 may, within thirty days of the date on which he is served with the notice of demand or copy of order under sub-section (2) of section 20 appeal to the Appellate [Additional Commissioner] against such assessment, penalty or order, as the case may be, in the prescribed form and verified in the prescribed manner [and shall be accompanied by a fee of [one thousand] rupees or ten per cent of the tax levied, whichever is less, provided that where no tax is levied, a fee of [one thousand] rupees shall be paid]:

*Provided that no appeal shall lie unless the wealth-tax admitted to be due by the appellant has been paid.*

26. Apart from raising some legal issues which, as stated above, have already been laid at rest through some judgments of this Court

and the Hon'ble Supreme Court of Pakistan, the issues with regard to non-ticking of the notice, availability of the refund of previous years, certain rectification matters pending, non-service of the notice on the Principal Officer and other related issues could only be decided in an appeal and not in a writ petition, since these issues require factual determination as well as deals with method of assessment. In the case of M/s. Chappal Builders (supra), the Hon'ble Supreme Court of Pakistan has observed as under:

*..... the learned counsel for the appellants brought to our notice that the respondent in this case approached the High Court in its writ jurisdiction without socking and exhausting the statutory remedies. In several of the very recent judgments we have not approved in such situation the interference by the High Court in tax matters, when the normal course being adopted by almost all the High Courts in matters other than tax, rule of alternate remedy is being followed.*

Reference may also be made to the decisions given in the following cases:

i) *Messrs Al Amna International through Proprietor and others Vs. Federation of Pakistan through Secretary /Chairman, Federal Board of Revenue and others (2014 PTD 370)*

*Article 199 of the Constitution reveals that it is an extraordinary jurisdiction, which can be availed only when no alternate remedy is provided under the law. By this time it is the established legal position that constitutional petition is not maintainable in presence of statutory remedy provided under the relevant law. To invoke the constitutional jurisdiction, condition precedent is non-availability of equally efficacious alternate remedy. [p. 373]A*

ii) *Government of Punjab through Secretary, Excise and Taxation Department, Lahore and others Vs. Metropole Cinema and others (2014 SCMR 649)*

4. *Having considered the ratio of above three cases and the facts and circumstances of the present case, we find that there are no exceptional circumstances, which may justify the act of appellants/petitioners to bypass the remedy of Intra Court Appeal available to them under section 3(2) of the Ordinance of 1972, thus, the two judgments referred to by the learned Advocate Supreme Court for the appellants/petitioners are of no help to their case on the point*

of maintainability. This being the position, all these appeals/petitions, being not maintainable are dismissed .....

iii) Collector of Customs and another Vs. Messrs Fatima Enterprises Ltd. and others (2012 SCMR 416)

6. The contentions of the learned Attorney-General are not without force and we, after perusal of judgment impugned in these proceedings, are of the considered view that the learned Sindh High Court had encroached upon the jurisdiction of the Collector (Appeals) while passing the impugned judgment. Even otherwise, it was a factual controversy which the learned High Court could not have decided.

iv) BP Pakistan Exploration and Production Inc., Karachi Vs. Additional Commissioner, Inland Revenue-B Enforcement and Collection Division-I, Karachi and another (2011 PTD 647) (authored by one of use namely Irfan Saadat Khan J.)

8. It is a well-settled proposition of the law that it is incumbent upon the petitioner to have availed the alternate remedy under the law before approaching the High Court for redressal of the grievance by invoking constitutional jurisdiction under this Article. Where an alternate forum is provided, provisions of Article 199 are not to be attracted. Article 199 is attracted where the order passed by an authority purportedly lacks jurisdiction. Whereas in the instant petitions the only grievance of the petitioner was with regard to the alleged misinterpretation of section 187 by the Additional Commissioner which could be agitated, if so advised, before the Commissioner of Income Tax (Appeals) and invoking of constitutional jurisdiction under Article 199 at this stage appears to be quite premature. The alternate remedy provided is a remedy in law and could in no way be considered to be less convenient, beneficial or effective. Hence in our opinion the principle of "remedium juris" is fully applicable to the present petitions. Not a single word has been uttered by the learned counsel appearing on behalf of the petitioner that no alternate remedy is available to him against the orders passed by the Additional Commissioner under the provisions of section 187 of the Ordinance. It would not be out of place to refer to a decision given by the Hon'ble Supreme Court of Pakistan in the case of Syed Match Company Ltd. v. Authority under Payment of Wages Act reported as 2003 SCMR 1493 wherein the Hon'ble apex Court observed that "party had no discretion to ignore provisions of appeal and file constitutional petition instead".

v) AVM (R) S.J. Raza Vs. Securities and Exchange Commission of Pakistan through Registrar and another (2013 CLD 1886)

17. In view of the above discussion, we are of the view that on merits as well as on the point of maintainability of the

*petition due to non-availing of the adequate alternate remedy provided under the law, this petition is liable to be dismissed. Writ jurisdiction of this Court cannot be used to circumvent limitation and/or as a substitute of alternate and efficacious remedy available under the law. See Khalid Mehmood v. Collector of Customs, Customs House, Lahore (1999 SCMR 1881). We accordingly, dismissed this petition in limine vide our short order dated 16-1-2013. The above are the reasons for the same.*

In view of the above noted judgments, we are of the considered view that the petitioner should have availed his remedy by filing appeals rather than approaching this Court.

27. The learned counsel for the petitioner has further submitted that the jurisdiction of the case did not lie with the ACWT, who had passed the orders, rather with some other ACWT. Suffice to say it is a settled proposition of law that after filing the return a person is refrained from raising objection with regard to assumption of jurisdiction. Reference in this regard may be made to Section 10(5) of the Act, which is reproduced hereinbelow:

*10(5) No person shall be entitled to call in question the jurisdiction of a Wealth Tax Officer after he has made the return of total income or, where he has not made such return, after the time allowed by any notice served on him for making such return has expired.*

28. The learned counsel for the petitioner has also invited our attention to certain mistakes made by the ACWT while passing the assessment orders. In this regard also we would like to state that as per Section 45A of the Act, it is clear that certain mistakes would not vitiate the assessment proceedings. The provisions of Section 45A are reproduced hereinbelow:

***[45A. Certain mistakes not to vitiate assessment, etc. --- No assessment order, notice, warrant or other document made, issued or executed or purporting to be made, issued or executed under this Act shall be void or otherwise inoperative merely for want of form, or for a mistake, defect or omission***

*therein, if such want of form, or mistake, defect or omission is not of a substantial nature prejudicially affecting an assessee.]*

29. The learned counsel for the petitioner has further stated that since in respect of the assessments made by the ACWT rather than filing appeals this Constitutional Petition has been filed, hence, if this matter is remanded, the issue of limitation would come in his way. It is noted that the assessment orders for the years 1992-93 to 1998-99 (except 1996-97) were framed on 20.10.1999, whereas this petition has been filed on 15.11.1999. The time limit for filing of appeal is 30 days from the date of receipt of the order. Thus, it is noted that the instant petition has been filed by the petitioner within the limitation period of the appeal though no appeals were filed, meaning thereby rather than adopting the procedure of filing appeals the petitioner has preferred to file a petition by challenging the orders of the ACWT. Under somewhat similar circumstances a Division Bench of this Court in the case of Messrs Safe Life (Pvt.) Ltd. Vs. Federation of Pakistan (**2015 PTD 1555**) has observed as under:

*6. A regards submissions of the learned counsel for the petitioner as to the merits of the case, we are not inclined to dilate upon merits of the case as this Court does not exercise any appellate jurisdiction under Article 199 of the Constitution, which is an extra ordinary jurisdiction which can be invoked sparingly in those cases where some jurisdictional error or patent illegality has been pointed out by an aggrieved person and no adequate alternate remedy is available for redressal of such grievance. The petitioner has not been able to make out a case requiring this Court to exercise its discretionary jurisdiction under Article 199 of the Constitution against an appellate order passed by Commissioner (Appeals) while exercising lawful authority/jurisdiction under the Statute, whereas, such order can also be challenged by filing an appeal before the Appellate Tribunal under section 34 of the Federal Excise Act, 2005.*

30. We, therefore, direct the petitioner, if advised, to prefer appeals against the assessment orders passed for the years 1992-93 to 1998-99 (except 1996-97) alongwith an application under Section 14 of the Limitation Act 1908 and the Appellate Authority, if appeals are filed, would consider the said application sympathetically.

Petition stands disposed of in the above terms alongwith the listed application.

JUDGE

JUDGE