Chapter-5

Wealth-Tax
5.1 Applicability and Charge of Wealth-tax

The Wealth-tax act, 1957 extends to the whole of India and come into force on 1st April, 1957. Subject to other provisions contained in the Wealth-tax Act, every individual, HUF or company, who is an assessee, shall be charged wealth-tax @ 1% on the amount by which his net Wealth, determine on the basis of nationality and residence status, on the corresponding valuation date relevant to the assessment year 193-94 and onwards, exceeds Rs. 3000000.

Thus, wealth-tax is chargeable on the following basis:
(i) Wealth-tax is chargeable only in case of three categories of persons viz., individual, HUF and company.
(ii) Wealth-tax is chargeable @ 1% on the net wealth exceeding Rs. 3000000 (Prior to A.Y. 2010-11 it was Rs. 1500000).
(iii) Net wealth of the assessee is to be computed as on the valuation date i.e., on 31st March, immediately proceeding the relevant assessment year.
(iv) Net wealth is to be computed:
   a. In case of individual – on the basis of his nationality and residential status of the previous year ending on the valuation date. The residential status is to be determined in the same manner as laid down u/s 6 of Income Tax Act.
   b. In case of HUF and company - on the basis of its residential status of the previous year ending on the valuation date.

What is included in “individual”: The expression individual is section 3 includes the following:
(i) The trustee of a private trust. Further, the joint trustees of a
private trust are regarded as a unit for purpose of taxation and they can be assessed to Wealth-Tax in the status of individual in respect of the value of the properties held by them in the trust and they cannot be trusted as an association of persons.¹

(ii) Trust established for the benefit of Hindu deities.²

(iii) Holder of an impartial estate.

(iv) Heirs of an individual, who died intestate leaving behind his self acquired property, will be assessed in their individual capacity and not as HUF.³

(v) AOP, Where the shares of the members are indeterminate or unknown [Section 21AA].

(vi) Mapilla Marumakkathayam Tarwards.⁴

5.2 **Persons not liable to Wealth-tax [Section 45]**

Section 45 specifically provides that no Wealth-tax shall be levied in respect of the Net Wealth of the following persons:

a. Any company registered under section 25 of the Companies Act, 1956 (non-profit making companies);

b. Any Commissioners-operative society;

c. Any social club;

d. Any political party;

e. A Mutual Fund specified under section 10(23D) of the

¹ Trustee of Gordhandas Govindram Family Charity Trust v CIT (1973) 88 ITR 47 (SC)
² B.C. Gupta & Sons Ltd. (1990) 182 ITR 240 (Guj)
³ CWF v Chander Sen (1986) 161 ITR 370(SC)

Beside the above persons, who have been specifically excluded from the purview of wealth-tax, other categories of persons like firm, AOP, local authority, artificial juridical person, public charitable or religious trusts other than those covered u/s 21 A, etc. are not liable to wealth-tax. However the partners of the firm/members of AOP, where shares are determinate, shall be taxable on their respective share in the net wealth of the firm/AOP, in their individual assessment.

An incorporated club, being an association of persons, is not an assessable entity.\(^5\)

Trade union is an artificial juristic entity and cannot be assessed as individual.\(^6\)

A social registration under the Society Registration Act is not an assessable entity and hence shall not be liable to wealth-tax.

1. Where the shares of the members are indeterminate or unknown, the AOP as per section 21AA, shall be leviable wealth-tax in the like manner and to the same extent as it would be leviable upon an individual who is a citizen of India and resident in India.

2. A trust or other legal obligations for public purpose of charitable or religious nature are exempt from payment of wealth-tax as per Section 5(1). But if such trust, etc. diverts its property /income in a manner given under Section21A,

\(^5\) Willingdon Sports Club v WTO (1982) 137 ITR 83 (Bom)

\(^6\) State Bank of Travancore Employees Union v CWT (1999)238 ITR 466 (Mad.)
then, the trustee of such trusts shall be chargeable to wealth-tax in the like manner and to the same extent as it should be leviable upon an individual who is citizen of India and resident in India.

3. Where an association for promoting the game of cricket was a residential society and held the property under for charitable purpose, it was held that it is exempt from wealth-tax under Section 5(1).\(^7\)

*Person- Whether liable to wealth-tax or not*

The above provisions may be summarized s under:

<table>
<thead>
<tr>
<th>Person</th>
<th>Whether taxable or not</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual</td>
<td>Yes</td>
</tr>
<tr>
<td>HUF</td>
<td>Yes</td>
</tr>
<tr>
<td>Company registered under Section 25 of the Company Act</td>
<td>No, in view of Section 45</td>
</tr>
<tr>
<td>Any other company</td>
<td>Yes</td>
</tr>
<tr>
<td>Firm</td>
<td>No. However, the value of interest of the partner in the assets of the firm shall be taxable in the hands of the partner</td>
</tr>
<tr>
<td>AOP/BOI</td>
<td>No. However, the value of interest of the member in the assets of AOP/BOI shall be taxable in the hands of the member</td>
</tr>
<tr>
<td>Co-operative society</td>
<td>No, in view of section 45</td>
</tr>
<tr>
<td>Social Club</td>
<td>No, in view of section 45</td>
</tr>
</tbody>
</table>

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\(^7\) CWT v Bombay Cricket Association 250 ITR 663 (sc)
<table>
<thead>
<tr>
<th>Political Party</th>
<th>No, in view of section 45</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mutual Fund specified u/s 10(23D)</td>
<td>No, in view of section 45</td>
</tr>
<tr>
<td>Public Charitable or Religious trust</td>
<td>Exempt u/s 5(i). However, it will be taxable if it diverts its property/income in a manner given u/s 21A.</td>
</tr>
<tr>
<td>Private Trust</td>
<td>Yes, taxable as individual in view of Supreme Court case of Trustees of Gordhan Das Govind Ram Family Charitable Trust (SC)</td>
</tr>
<tr>
<td>Trust established for the benefit of Hindu deities</td>
<td>Yes, Taxable as individual in view of B. C Gupta and Sons Ltd. (Gau).</td>
</tr>
</tbody>
</table>

### 5.3 Meaning of Net Wealth [Section 2(m)]

Net Wealth means the amount by which the aggregate value (computed in accordance with the provisions of this Act) of all the assets, whenever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date which have been incurred in relation to the said assets.

In other words, net wealth means: Value of assets belonging to the assessee on the valuation date
Add: Deemed wealth under section 4
Less: Assets expected under section 5
Less: Debts incurred in relation to

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8 Section 2 (m) of Wealth-Tax Act, 1957
Assets including in the net wealth

Net Wealth

The following three conditions must be satisfied before an asset forms part of net wealth:

a. It must be an asset as defined under section 2(ea)\(^9\); 
b. Such asset must belong to the assessee; however, the deemed asset as described under section 4 through belonging to others will also be included; 
c. Such asset must be held by the assessee or the person mentioned under section 4 on the valuating date. 
d. Assets and debts whenever located from part of net wealth unless these are excluded as per section 6.

5.3.1 Location of assets\(^{10}\)

The question as to where the asset is located is essentially one of fact and issued for general guidance:

a. Tangible immovable property is situated in India if the property lies in India
b. Right so the interests in or over immovable property (otherwise than by way of security) or benefits arising out of immovable properties to which the right are attached or out of which the benefits arise, lies in India.
c. Rights or interests (otherwise than by way of security) in or over tangible movable property are located in India if such properties is located in India. Goods on high sea cannot be

\(^9\)Section 2 (m) of Wealth-Tax Act, 1957

\(^{10}\)Circular No. 3(WEALTH-TAX), dated 28-9-1957 as amended by Circular No. 392 dated 24-8-1984
said to be located in India.\textsuperscript{11}

d. Debts, secured or unsecured are located in India if they are contracted to be repaid in India or if the debtor is residing in India.
e. Aircraft or motor car is located in India if they are registered in India.

It is not possible to give an exhaustive list of assets and the principle to b applied in determining the location of all such assets. For assets which are not covered by the above items, the location has to be fixed having regard to the nature of the assets.

\textit{Asset [Section 2(ea)]}\textsuperscript{12}:

Section 2(ea) coins an exhaustive definition of the expression assets so as to mean the following six assets to be included in the net wealth for wealth-tax purposes:

1) House (including farm house): House means, any building or land appurtenant thereto, —

Weather used for residential or commercial purpose or for the purpose of maintaining a guest house or otherwise, and includes a farm house if it is situated within 25 kilometres from local limits of any municipality (whether known as municipality, Municipal Corporation or by any other name) or a cantonment board.

However the following shall not be included in the meaning of house:

(i) A house meant exclusively for residential purposes and which is allotted by a company to an employee or an officer or a

\textsuperscript{11} CWT v Consolidated Pneumatic Tools Co. Ltd. (1971) 81 ITR 752 (SC)
\textsuperscript{12} Section 2 (ea) of Wealth-Tax Act, 1957
director who is in whole time employment, having a gross annual salary of less than five lakh rupees.

(ii) Any house for residential or commercial purpose which forms part of stock-in-trade.

(iii) Any house which the assessee may occupy for the purpose of any business or profession carried on by him.

(iv) Any residential property that has been let-out for a minimum period of 300 days in the previous year.

(v) Any property in the nature of commercial establishments or complexes.

(2) Motor Car: All motor cars, whether Indian or foreign, other than the following:

(a) Cars used by the assessee in the business of running them on hire.

(b) Cares held by the assessee as stock-in-trade, whether as a manufacturer or dealer.

(3) Jewellery, Bullion, furniture utensils etc. made of precious metal: Assets include jewellery, bullion, furniture, utensils or any other article made wholly or partly of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metal, but does not include the said assets if it is held by the assessee as stock-in-trade.

1. Jewellery for this purpose includes:

   (i) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metal, whether or not containing any precious or semi-precious stones, and whether or not worked or sewn in to any wearing apparel.
Precious or semi-precious stones, whether or not furniture, utensils or other articles or worked or sewn into any wearing apparel.

2. Jewellery shall not include Gold Deposit Bonds issued under the Gold Deposited Scheme 1999, nothing by the Central Government.

4. Yachts, beats and aircrafts (other than those used by the assessee for commercial purpose).
   (i) Only yachts, beats and aircrafts have been included. Ships shall therefore, not be treated as an assets.
   (ii) The word commercial purpose has not been defined under the Act. In common parlance it will mean those yachts, beats and aircraft which are either used for running the same for earning business income or these are held as stock-in-trade.

   Aircraft used by the assessee for its own business shall be treated as commercial purpose e.g. aircrafts used for transportation of goods of the assessor’s own business shall be treated as used for commercial purpose hence it will not be treated as asset for Wealth-tax purpose. Similarly an aircraft used by an airline shall be treated as used for commercial purposes.

5. Urban Land: Urban land means land situate:
   (i) in any area which is comprised within the jurisdiction of a municipality (Whether known as a municipality, municipal corporation, notification are committee, town Are committee, town committee or by any other name) or a cantonment board

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13 Garware Wall Ropes Ltd. V Addl. CIT (2004) 89 ITD 221 (Mum)
and which has a population of not less than 10000 according to the last preceding census of which the relevant figures have been published before the valuation date; or

(ii) in any area within such distance, not being more than 8 kilometre from the local limits of any municipality or cantonment board referred to in sub-clause (i), as the Central Government may, having regard to the extent of, and scope for, transition of that area and other relevant consideration, specify in this behalf by notification in the Official Gazette.

The following land shall not be treated as urban land and shall therefore, not be treated as asset for wealth-tax purpose:

(a) Land on which construction of a building is not permissible under any law for the time being in force in the area in which such land is situated;

(b) The land occupied by any building which has been constructed with the approval of the appropriate authority;

(c) Any unused land (i.e. not put to any use ) held by the assessee for industrial purpose for a period of two years from the date of its acquisition by him;

(d) Any land held by the assessee as stock-in-trade for a period of ten years from the date of its acquisition by him.

(6) Cash in hand

(a) In case of individual and HUF: Cash in hand in excess of Rs. 50000 will be treated as assets, whether it is recorded in the books of accounts or not.

(b) In the case of other persons: Any cash not recorded in the books of account will only be treated as asset.

5.3.2 Assets held by a minor child [Section 4(1)(a)(ii) and
**provision 2 and 3 to section 4(1)(a)]**

Assets held by minor child are included in the net wealth of the parent. However the following shall not be included in the net wealth of the parent and would be taxable in the hands of the minor only:

1. Assets held by a minor child suffering from any disability of the nature specified u/s 80 U of the Income-Tax Act, i.e., disability of severe disability [Section 4(1)(a)(ii)]

2. Assets held by a minor married daughter [Section 4(1)(a)(ii)].

3. Assets acquired by a minor child out of the following income referred to in proviso to section 64(1A) of the Income-tax Act:
   - (a) income from mutual work done by him;
   - (b) Income from activity involving application of his skill, talent or specialized knowledge or experience.

Parents in whose net wealth asset held by minor child are to be included [Proviso 3 to section 4(1)(a)]: Assets held by the minor child shall be included in the net wealth of the parents as under:

1. Where the marriage of his parents subsists, such assets of the minor shall be included in the net wealth of that parent, whose net wealth (excluding the assets of the minor child so includible) is greater.

2. Where the marriage of his parents does not subsist, the assets held by the minor shall be included in the net wealth of that parent, who maintains the minor child in the relevant previous year ending on the valuation date.

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Where any such assets of the minor are once included in the net wealth of either parent, it shall not be included in the net wealth of the other parent in any succeeding year unless the Assessing Officer is satisfied, after giving that parent an opportunity of being heart, that it necessary so to do.

5.3.3 Assets/ Deemed assets which are exempt [Section 5]^{15}

Wealth-tax shall not be payable by an assessee in respect of the following assets, allocated these assets are covered under section 2(ea) and belong to the assessee or are deemed to be his assets under section 4:

(1) **Property held under a trust [Section 5(i)]**: any property (i.e. six assts) held by the assessee under trust or other legal obligation for any public purpose of charitable or religious nature in India is exempt from tax. However, this exemption is subject to provision of section 21 a, which has an over-riding effect on section 5(i). As per section 21A, the exemption under section 5(1) will be forfeited and the trustee of the trust will become taxable under wealth tax as if the property was held by an individual who is a citizens of India and resident in India if:

(a) any part of such property or any income of such trust is used or applied for the benefit of person referred to in section 13(3) of the Income Tax Act, or

(b) any part of income of the trust ensures for the benefit of the person referred to in section 13(3)_{16}, or

^{15} Section 5 of Wealth-Tax Act, 1957

^{16} Sub-Section (3) of Section 13 of Wealth-Tax Act, 1957
(c) Any funds of the trust are invested or deposited in the any mode other than given under section 11(5)\(^{17}\). For detail study of section 21A\(^{18}\).

Except in certain cases exemption also not applicable if any property is held for business by the trust: The above exemption shall not apply to any property forming part of any business carried on by the above trust. However in the following cases the assets, though held in business shall contain to be exempt from wealth-tax:

i) Where such business is incidental to the attainment of the objectives of the trust/institute and separate books of account are maintained by such trust/ institution in respect of such business;

ii) Where a business is carried on by an institution/fund or trust referred to in the following clauses of section 10 of the Income Tax Act:

(a) Clause 23B—Institution for development of Khadi or Village Industries or both, not for the purpose of profit.

(b) Clause 23C—Certain funds or institutions like Prime Minister National Relief, National Foundation for Communal Harmony, University or education institution, Hospitals/medical institutions etc.

(2) **Interest in the coparcenaries property of the HUF [Section 5(ii)]:** As the Hindu undivided family is itself a unit of taxation under the Wealth-tax Act, the interest of the assessee in the coparcener property of any Hindu undivided family of which he is a

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\(^{17}\) Sub-Section (5) of Section 11 of Wealth-Tax Act, 1957

\(^{18}\) Section 21A of Wealth-Tax Act, 1957
member, shall be exempt.

In this case, it is immaterial whether the Hindu Undivided family or the coparcener is separately taxable under the Wealth-tax Act or not. The above exemption is absolutely in respect of interest of the coparcener in the family property. To illustrate, a Hindu undivided family with two coparceners with a net wealth of say Rs. 12 lakh will be exempt from taxation as the statutory exemption limit is Rs. 15 lakh. Supposing the coparceners has self-acquired property worth Rs. 14 lakh each. The individual coparceners will again be exempt as their wealth does not exceed the statutory exempted limit.

(3) One official residence of a Ruler [Section 5(iii)]: The erstwhile Ruler of an Indian State has been given an exemption in respect of any one building in his occupation, being a building which has been declared by the Central Government as his official residence, immediately before the commencement of the Constitution (Twenty Sixth Amendment) Act, 1971.

However, the Supreme Court in the matter of Mohammad Ali & Khan\(^{19}\) held that where a palace consisted of a number of building was declared to be the residence of the ruler, some of the building of the palace were occupied by the assessee and others were let out to tenants, the exemption shall be available only in respect of the building occupied by the assessee.

The exemption under this clause shall be available even though the place was reconstructed after demolishing dilapidated

\(^{19}\) Mohammad Ali & Khan v CWR (1997) 224 ITR 672 (SC)
Where ex-ruler has already opted for one house for exemption under section 5(iii), he will not be entitled to exemption of another house under section 5(iv).²¹

Exemption under section 5(iii) of wealth-tax Act is available in respect of building which is in occupation of ruler and not in occupation of heirs of ruler. In the instant case property was occupied by the widow/heir of the ex-ruler, hence exemption under section 5(1)(iii) will not be allowed.²²

(4) Heirloom jewellery of an erstwhile Ruler [Section 5(iv)]: A former Ruler is entitled to an exemption in respect of jewellery in his possession provided the following conditions are satisfied:

(a) Such jewellery should not be his personal property;
(b) Such jewellery must have been recognized before 1-4-1957 by the Central Government as his heirloom; or where no such recognition exists, it must have been recognized by the CBDT as his heirloom jewellery at the time of his first wealth-tax assessment.

However, where the recognition has been granted by the Central Government, the following further condition must be satisfied w.e.f. 9-9-1972:

(i) That the jewellery should be permanently kept in India and should not be removed outside India except for a purpose and period approved by the Board.

²⁰ CWT v D.S. Virawala Suragwala (2003)259 ITR 405 (Guj)]
(ii) That reasonable step should be taken for keeping the jewellery substantially in the original shape.

(iii) Those reasonable facilities should be allowed to any officer of Government authority by the Board in this behalf to examine the jewellery as and when necessary.

(5) \textit{Money and the assets brought into India by citizen of India or persons of Indian origin [Section 5(v)]}: An assessee who is an individual is entitled to exemption under this clause in respect of any money or asset brought into India provided the following conditions are satisfied:

(i) Such individual should be a citizen of India or a person of Indian origin;

(ii) He was ordinarily residing in a foreign country;

(iii) He, on leaving such country, has returned to India with the intention of permanently residing in India.

\textit{Assets which are exempt, if the above conditions are satisfied}

(i) Moneys and the values of assets brought by him into India; and

(ii) The value of the asset acquired by him out of such moneys within one year immediately preceding the date of his return and/or at any time thereafter.

\textit{Period of Exemption}: The exemption in this case is available for a period of seven successive assessment years, commencing with the assessment year next following the date on which such eligible assessee returned to India. For example, if an eligible individual has returned to India on 1-12-2009 and brought money and assets into India, he will be entitled to exemption for assessment year 2010-11 and for six subsequent assessment years in respect of such assets.

(6) \textit{One house or part of a house [Section 5(vi)]: Exemption}
under this clause is allowed only to individual and HUF assessee. The exemption is allowed in respect of:

(i) One house, or

(ii) A part of the house or

(iii) A plot of land not exceeding 500 sq. mts., in any area, belonging to such individual or HUF.

5.4 Valuation of Assets [Section 7 and schedule III]\(^{23}\)

As per section 7(1), the value of the assets, other than cash, as on the valuation date, shall be determine in the manner laid down in Schedule-III of the Wealth-tax Act.

5.4.1 Valuation of immovable property [Rule 3 to 8 of Part-B of Schedule- III]:

For purpose of valuation, these can be following three categories of immovable property.

(a) Property construction on a free-hold land;

(b) Property constructed on s lease-hold land, whose un-expired period of lease is 50 years or more;

(c) Property constructed on a lease-hold land, whose un-expired period of lease is less than 50 years.

According to rule 8, where the unexpired period of lease does not exceed 15 years from the relevant valuation date and the deep of lease does not give an option to the lessee for the renewal of the lease, the value of that property shall not be determined as per rule 3 but it will be determine in the manner laid down under rule 20\(^{24}\) i.e. it will be market value.

\(^{23}\) Section 13 and Schedule III of Wealth-Tax Act, 1957

\(^{24}\) Rule 20 of Schedule III of Wealth-Tax Act, 1957
Although the method of determination of value, in the case of aforesaid properties, is different but the first step towards the determination of value i.e. computation of net maintainable rent is same of all the above properties.

Step 1: Compute the net maintainable rent of the immovable property [Rule 4]: Net maintainable rent means the amount of gross maintainable rent as reduced by the following:

(a) The amount of taxes levied by any local authority in respect to the property; and

(b) A sum equal to 15% of the gross maintainable rent.

Meaning of gross maintainable rent [Rule 5]: Gross maintainable rent in relation to an immovable property shall be determined in the following cases:

(A) **Gross maintainable rent of property which is let-out [Rule 5(i)]:** The gross maintainable rent in this case will be:

(i) The amount received or receivable by the owner as annual rent;

(ii) The amount value assessed by the local authority in whose area the property is situated;

Whichever is higher?

*Meaning annual rent [Explanation 1 to Rule 5],* *Annual rent* means:

(a) Where the property is let throughout the year ending on the valuation date i.e. the previous year, the actual rent received or receivable by the owner in respect of such year;

(b) Where the property is let for only a part of the previous year, the amount which bears the same proportion to the amount of

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25 Rule 5 of Schedule III of Wealth-Tax Act, 1957
actual rent received or receivable by the owner for the period for which the property is let as the period of twelve months bears to the number of months (including part of month) during which the property is let during the previous year.

Meaning of rent received/receivable [Explanation 2 to Rule 5]:

Rent received or receivable shall include all payment for the use of the property, by whatever name called the value of all benefits or perquisites whether convertible into money or not, obtained from a tenant or occupier of the property and any sum paid by a tenant or occupier of the property in respect of any obligation which, but for such payment, would have been payable by the owner.

(B) Gross maintainable rent of property which is not let-out: In this case the gross maintainable rent shall be:

(i) If the property is assessed by the local authority- the annual rent so assessed by the local authority in which area the property is situated.

(ii) If there is no such assessment or the property is situated outside the jurisdiction of local authority - the amount which the owner can reasonably be expected to receive as annual rent had such property been let.

However, the valuation in case (ii) above cannot exceed the Standard Rent.

5.4.2 Valuation of self-occupied residential house [Section 7(2)]


27 Sub-Section (2) of Section 7 of Wealth-Tax Act, 1957
The valuation of a house or part of the house belonging to the assessee and exclusively used by him for residential purposes throughout the period of 12 months immediately preceding the valuation date:

(1) Where the assessee becomes the owner of the house prior to 1-4-1971: The value will be:

(i) The value determine in the manner laid down in Schedule-III as on valuation date relevant to assessment year 1971-72; or

(ii) The value determine as per Schedule-III, on the valuation date of the assessment year,

Whichever is beneficial to the assessee.

Where the house has been constructed by the assessee, he should be deemed to have become the owner thereof on the date on which the construction of such house was completed.

Thus, if the assessee has himself construct the house, he shall be the owner of the house on the date when the house was completed. On the other hand, if he has purchased the house, he shall become the owner on the date of its purchase.

(2) Where the assessee become the owner of the house after 31-3-1971 but before 1-4-1974

The value will be:

(i) The value determine in the manner laid down in Schedule III as on the valuation date next following the date on which the assessee became the owner of the house; or

(ii) The value determine as per Schedule-III on the valuation date of the relevant assessment year,

28 Schedule III of Wealth-Tax Act, 1957
Whichever is beneficial to the assessee.

(3) Where the assessee become the owner of the house after 31-3-1974

(i) The value determine in the manner laid down in Schedule-III as on the valuation date next following the date on which the assessee become the owner of the house; or

(ii) The value determine as per Schedule-III on the valuation date of the relevant assessment year.

Whichever is beneficial to the assessee.

In this case, the capitalized value of the property which was acquired after 31-3-1974 was to be taken as higher of the following two:

(i) Net maintainable rent 12.5 or 10 or 8 depending upon whether the property is free hold or lease hold; or

(ii) Cost of construction/acquisition + cost of improvement.

However, for determining value of ONE house property belonging to the assessee, which is acquired/constructed after 31-3-1974 and used exclusively by the assessee of his own residential purposes. Throughout the period of 12 months immediately prior to the relevant valuation date, The cost of acquisition/construction + cost of improvement shall not be taken into account in the following cases:

(a) If the house is situated at Calcutta, Chennai, Delhi, Mumbai, its cost of acquisition/cost + cost of improvement, does not exceed Rs. 5000000.

(b) If the house is situated at any other place, it does not exceed Rs. 2500000.

In other words, for one such house, the capitalization value shall be calculated on the basis of Net Maintainable Rent only and
cost of acquisition/cost of improvement shall not be considered in this case.

5.4.3 Valuation of interest in Firm or associated of person [Rule 15 and 16]:

According to rule 15, the value of the interest of a person in a firm of which he is a partner or in an association of persons of which he is a member, shall be determined in the manner provided in rule 16, which is as follows:

Step-1: The net wealth of the firm or associated of persons on the valuation date shall first be determined as if such firm or association of person were the assessee and the assets of such firm/association will be valued as per rule 14. On the other hand, if the assets are not assets of business, they will be valued as per rules given in Schedule-III.

Step-2: The value so arrived at in step no 1 shall be allocated the partners in the following manners:

i) That portion of the net wealth of the firm or association as in equal to the amount of its capital shall be allocated among the partners or members in the proportional in which capital has been contributed by them;

ii) The residue of the net wealth of the firm or association shall be allocated amongst the partners or members in according with the agreement of partnership or association for the distribution of assets in the event of dissolution of the firm or association or, in the absence of such agreements, in the proportion in which the partners or members are entitled to share the profits.

Step-3: The sum total of amounts so allocated to a partner or
member under clause (i) and clause (ii) shall be treated as the values of the interest of that partner or member in the firm or association:

No exemption u/s 5 to allow to firm [Proviso and explanation (b) to rule 16: while valuing the assets of the firm/AOP, any exemption will be allowed to firm/AOP in respect to assets exempt u/s 5. However, the exemption will be allowed to the partner member for the proportionate share in the said exempt asset which has been included in the net wealth of the firm/AOP for calculating the interest of the partner/member in the firm/AOP. In other words, proportionate value of such exempt asset (which was not allowed to the firm/AOP) shall be allowed to the partner/member in their individual assessment.

Assets exempt under section 5 should be distributed amongst the partners in the agreed dissolution ratio. Where there is no such agreement, it should be distributed in the profit sharing ratio.

Allocation of the assets of the firm/AOP located outside India and in India amongst the partners/members [Explanation (a) to rule 16]: Where the net wealth of the firm or AOP includes the value of any assets located outside India, the value of the interest of any partner or member in the assets located in India shall be determined.

This is relevant where the partner/member is a foreign nation or where he is resident but not ordinarily resident in India or non-resident in India as in the case of such partner his interest in the value of assets of the firm/AOP which are located in India shall only be taxable.
5.4.4 Valuation of life interest [Rule 17]²⁹:

The value of the life interest of an assessee shall be arrived as under:

Average annual income×[(1/P+d)-1]

In the above case ‘P’ represents the annual premium for a whole life insurance without profits on the life tenant for unit sum assured, ‘d’ is equal to (i/1+i), ‘i’ being the rate of interest which shall be 6.5% p.a.

(a) “Life tenant” means a person for the duration of whose life interest is to subsist;

(b) “Average annual income” means the average of the gross income derived by the assessee from the life interest during each year of the period ending on the valuation date, reduced by the average of the experience incurred on the collection of such income in each of these years:

Provided that the amount of the reduction for such expenses shall, in no case, exceed five percent of the average of the annual gross income:

Provided further that in case the income so derived is for a period exceeding three years only that income derived during the three years ending on the valuation date shall be taken into account.

However, the Assessing Officer, may, if he is of the opinion that in the case of the life tenant, a life insurance company would not take the risk of insuring his life at the normal premium rates in force but would not take the risk of insuring his life at the normal premium rates in force but would demands a higher premium, very

the valuation suitably.

Further, the value of the life interest so determined shall, in no cases, exceed the value as on the valuation date as determined under this Schedule, of the corpus of the trust from which the life interest is derived.

In other words, the valuation of life interest will be calculated in following steps:

1. Compute the average of the annual gross income derived by the assessee from the life interest asset during each of the last three years ending with the valuation date. Where gross income is earned for more than 3 years average of the last 3 years is to be taken. If the income earned is for less than 3 years average of so many years ending with the valuation date is to be computed.

2. From the average of the gross income reduce the average of the expenses incurred on the collection of such income in each of those years/less numbers of years, as the case may be, subject to the limit of 5 percent of the average of the annual gross income.

3. Multiply the average annual income so arrived at with the value factor given in the Appendix against the age of the assessee which will give the value of life interest as on the valuation date.

4. The value factors are arrived at on the basis of formula based on annual premium for a whole life insurance, without profits.

5. Where the life tenant cannot be insured at normal premium rates but only at higher premium rates, then the assessing officer may vary the validation suitably.
6. The value of life-interest shall, in no case, exceed the value as on the valuation date, as determined under the Schedule, of the corpus of the trust from which the life interest is derived.

5.4.5 Valuation of jewellery [Rule 18]\textsuperscript{30}:

The value of jewellery shall be estimated to be the price which it would fetch, if sold in the open market on the valuation done, which may be referred to as Fair Market Value.

Valuation of jewellery shall be determined in the following manner:

(a) Where the Fair Market Value, as estimated by the assessee, does not exceed Rs. 500000; in this case the assessee shall have to file a statement in Form No. 0-8-A, along with a return of net wealth submitted by him. However, if the Assessing Officer is of the opinion that the Fair Market Value of the jewellery exceeds the value of the jewellery declared by the assessee in his return by more than 33-1/3% oft returned value or Rs. 50000, he may refer the valuation of such jewellery to a Valuation Officer u/s16A (1) and the value of the jewellery in such case shall be the Fair Market Value as estimated by the Valuation Officer.

(b) Where the Fair Market Value, as estimated by the assessee, exceeds Rs. 500000: in this case, the assessee has to obtain and furnish a report of a Registered Value in Form No. o-8 along with the return of net wealth submitted by him. However, if the Assessing Officer is of the opinion that the Fair Market Value of the jewellery exceeds the value of the jewellery declared by the assessee in his return, he may refer the

\textsuperscript{30} G. Ahuja and R. Gupta(2010), Income-Tax, page no. 1803-04
valuation of such jewellery to a Valuation Officer u/s 16A (1) and the value of the jewellery in the such case, shall be the Fair Market Value as estimated by the Valuation Officer. It may be observed, that in this case, the reference to the Valuation Officer can be done irrespective of the excess of the Fair Market Value as estimated by the Assessing Officer over the Fair Market Value estimated by the Register Valour.

In additional in the above two cases, the reference to a Valuation Officer can also be made by the Assessing Officer, if, having regard to the nature of the assets and other relevant circumstances. He is of the opinion, that it is necessary so to do.

5.5 Return of Wealth [Section 14] or Submission of Return of Wealth [Section 14(1)]

Section 14(1) requires every person to furnish return if his net wealth or the net wealth of any other person in respect of which he is assessable under the Wealth-tax Act, on the valuation date, exceeds the maximum amount (i.e. it exceeds Rs. 1500000) which is not chargeable to tax.

The return of wealth must be submitted in the prescribed form i.e. Form No. BA and verified in the prescribed manner, on or before the due date mentioned under the explanation to section 139(1) of the Income tax- Act, 1961.

(i) Section 14(1) of the wealth-tax Act, is similar to section 139(1) of the Income Tax Act, 1961.

(ii) Where the assessee is carrying on a business, a copy of the

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31 Sub-Section (1) of Section 14 of Wealth-Tax Act, 1957
32 Sub-Section (1) of Section 139 of Income-Tax Act, 1961
balance sheet or trial balance as on the valuation date or on the
date of the closing of accounts immediately preceding the
valuation date, and a copy of the auditor’s report, if any, shall
also be furnished along with the return of the net wealth.

(iii) Delay in filing Income Tax Return cannot be an automatic
reasonable cause for delay in filing of Wealth-tax Return.\(^{33}\)

Provision relating to belated return, revised return, return by whom
to be singed, self assessment, procedure of assessment wealth
escaping assessment time limit for completion of all assessment,
rectification of mistakes appeals etc. are also same like income-tax.

5.5.1 Return declaring net wealth below Rs. 1500000 [Section
14(2)]:
A return of net wealth which shows the net wealth below the
maximum amount which is not chargeable to tax (i.e. Rs. 1500000)
shall be deemed never to have been furnished.

However, the above provision is not applicable if the return is
furnished by the assessee in respect to a notice u/s 17 which deals
with wealth escaping assessment.

5.5.2 Return after due date [belated return] and amendment of
return (revised return) [Section 15]\(^{34}\):
If any person has not furnished a return within time allowed
under section 14(1) or in response to a notice issued under section
16(4)(i), he may furnish a return at any time before the expiry of one
year from the end of the relevant assessment year or before the

\(^{33}\) CIT (Wealth Tax) v Maharaja Amarinder Singh (2005) 275 ITR 365
(p&h)

\(^{34}\) Section 15 of Wealth-Tax Act, 1957
completion of assessment, whichever is earlier.

Similarly, if a person having furnished the return discovers any omission or wrong statement therein, he may furnish a revised return before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment whichever is earlier.

5.5.3 Return by whom to be signed [Section 15A](#):  
The return made under section 14 and section 15 shall be signed are verified:

(a) In the case of an individual:
   i) By the individual himself.
   ii) Where he is absent from India, by individual himself or by some person duty authorized by him.
   iii) Where he is mentally incapacitated from attending to his affairs by his guarding or any person competent to act on his behalf.
   iv) Where for any other reason, it is not possible to sign the return, by any person duly authorized by him.

(c) in case of HUF:
   i. the karta,
   ii. If karta is absent or mentally incapacitation by any audit member of such HUF.

(d) in case of company
   i. by the managing director, or
   ii. If due to unavoidable reason the managing director is unable to sign or there is no managing director, by any director thereof.

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35 Section 15A of Wealth-Tax Act, 1957
Provided that:

(1) where the company is being wound-up, whether under the orders of the court or otherwise, or where any person has been appointed as the receiver of any assets of the company, the return shall be signed and verified by the liquidator referred to in sub-section (1) of section 178 of the Income tax Act:

(2) Where the management of the company has been taken over by the Central Government or any state Government under any law, the return of the company shall be signed and verified by the principle officer thereof.

5.5.4 **Time limit for completion of assessment [Section 17 A]**

Section 17A prescribed the time limit for completion of various assessments which is as follows:

<table>
<thead>
<tr>
<th></th>
<th>Time limit for completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Assessment u/s 16[ section 17A(1)]</td>
<td>21 months from end of relevant assessment year.</td>
</tr>
<tr>
<td>2. Assessment/residential-assessment u/s 17 [section 17A(2)]</td>
<td>9 months from the end of financial year in which the notice u/s 17 was served.</td>
</tr>
<tr>
<td>3. Fresh assessment where original assessment has been set aside or cancelled by any Appellate Authority or CIT [Section 17A(3)].</td>
<td>9 months from the end of the financial year in which such order was received by CIT/was passed by the CIT, as the case may be.</td>
</tr>
<tr>
<td>4. Assessment or Residential-</td>
<td>21 months from the end of the</td>
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</tbody>
</table>

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36 Section 17A of Wealth-Tax Act, 1957
assessment to give effect to any finding or direction contained in an order passed by any Appellate Authority.

<table>
<thead>
<tr>
<th>Financial year in Which such order was passed by the relevant authority.</th>
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Period to be excluded in computing the above time limit: As per explanation 1 to section 17 A, the following period will be excluded in computing the period of limitation

(i) The time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be under the provision to section 39, or

(ii) The period during which the assessment proceeding is stayed by an order or injunction or any court, or

(iii) the period (not exceeding sixty days) commencing from the date on which the Assessing Officer received the declaration under section 18C(1) and ending with the date on which the order u/s 18C(3) is made by him, or

(iv) in a case where an application made before the Wealth-Tax Settlement Commission u/s 22C is rejected by it or is not allowed to be proceeded with by it, the period commencing from the date on which such application is made and ending with the date on which the order u/s 22D (1) is received by the Commissioner u/s 22D (2).

Where immediately after the execution of the aforesaid period, the period of limitation, as discussed above, available to the Assessing Officer for making as assessment is less than 60 days, such remaining period shall be extended to 60 days and the period of limitation shall be deemed to be extended accordingly.

When direction given u/s 17(4) in case of an assessee are
deemed to be directions for other assessee: Explanation 2 to section 17A, provide that where in a direction u/s 23A, 24, 25, 27 or 29 or an order of Court, any asset is excluded from the net wealth of one person and held to be the asset of another person, then an assessment in respect of such asset on such other person, shall, for the purposes of section 17(2) and section 17A, contained in the said order. However, before passing the order, such other person should be given an opportunity of being heard.

Time period for completing assessment where proceeding before Settlement Commission abates [second proviso to section 17A(4)] [inserted by the Finance Act, 2008 w.r.e.f. 1-6-2007]: Where a proceeding before the Settlement Commission abates under section 22HA, the period of limitation referred to in this section available to the Assessing Officer for making an order of assessment or reassessment, as the case may be, shall, after the exclusive of the period under section 22HA(4), be not less than one year; and where such period of limitation is less than one year, it shall be deemed to have been extended to one year.

5.5.5 Interest for default in furnishing return of net wealth [section 17B]

(A) Interest in case of first assessment

When interest is payable: The assessee is liable to pay interest in the following cases:

(i) Where the return of Net wealth is furnished after the due date specified u/s 14(1).

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37 Section 23A, 24, 25, 27 & 29 of Wealth-Tax Act, 1957

38 Section 17B of Wealth-Tax Act, 1957
(ii) Where the return of net wealth is not furnished by the assessee.

Rates of interest: Simple interest @1% per month or part of the month. Period for which interest is payable: the interest will be payable for the period commencing on the date immediately following the due date and would end on:

(c) In case (i), above the date of furnishing the return of net wealth.

(d) In case (ii), above the date of completion of assessment u/s 16(5) (Best judgment Assessment).

Amount on which interest is payable: Tax payable on net wealth as determined under section 16(1) or on regular assessment. However, where no return has been furnished. Interest will be charged on the tax payable on net wealth determined on assessment u/s 16(5)/17.

The interest payable as per above shall be reduced by the interest, if any paid, towards the interest chargeable under this section.

(B) Interest in case of residential-assessment of wealth

Where an assessment has already been made u/s 16(1)/16(3)/16(5) or section 17 and the Assessing Officer has issued a notice u/s 17(1) requiring the assessee to file his return of net wealth for any assessment year, interest shall be payable in the following cases:

(i) Where the return is furnished after the expiry of the time, allowed by the Assessing Officer of file return u/s 17(1);

(ii) Where no return is furnished in response to notice u/s 17(1).

39 Sub-Section (5) of Section 16 & Section 17 of Wealth-Tax Act, 1957
Rates of interest: Simple interest @1% per month or part of the month.

Period for which interest is payable: the interest will be payable for the period commencing on the date immediately following the expiry of time allowed u/s 17(1) and would end on:

(a) In case (i), above the date of furnishing the return of net wealth:
(b) In case (ii), above the date of completion of re-assessment u/s 17.

Amount on which interest is payable: it will be payable on the difference between the tax on net wealth determined on the basis of such residential-assessment and the tax on net wealth as determined under section 16(1) or on the basis of regular assessment.

5.6 Appeal, Revision and Reference [section 23A to 29]40

The provision regarding appeals, revision and references under the Wealth-tax, are analogous to the provision contained in the Income Tax Act. Like provision under the Income Tax Act, the following two alternatives are available to the assessee if he is not satisfied with the order of the Assessing Officer.

(i) **Appeals:** First appeal against the order of Assessing Officer shall in all cases be filed before the Commissioner (Appeals).

(ii) **Revision:** Alternatively, if the appeal is not preferred or if it could not be filed within the time limit allowed, the assessee can apply to the Commissioner for revision of the order of the Assessing Officer u/s 25(1). This is known as revision in favor of the assessee. The Commissioner can also take up sue motto the case for revision u/s 25(1).

40 Section 23A & 29 of Wealth-Tax Act, 1957
In some cases, the Commissioner can also take up the case for revision u/s 25(2). This is known as revision of the order of the Assessing Officer which is prejudicial to revenue.

This first appeal can only be made by the assessee. The Assessing Officer cannot appeal to any higher authority against his own order.

5.6.1 Remedy available against the order of the First Appellate Authority/Revision Orders

The Following remedy is available against the order of the First Appellate Authority of the revision order of the Commissioner:

(a) Second Appeals: If the assessee or the Commissioner is not satisfied with the order passed by the First Appellate Authority, the assessee can appeal against that order to the Appellate Tribunal. Similarly, the Commissioner may also direct the Assessing Officer to file an appeal against that order with the Appellate Authority.

(b) Appeal against revision: if the revision of the order of the Assessing Officer is done u/s 25(1), by the Commissioner which is revision in favour of the assessee, no further remedy is available to the assessee. However, writ under article 226/227 is possible. On the other hand, if the revision order is passed u/s 25(2), by the Commissioner which is known as revision of orders prejudicial to the revenue, the assessee can file an appeal with the Appellate Authority.

5.6.2 Appeals to the Supreme Court [Section 29]41

The assessee or the Commissioner may prefer an appeal to the

41 Section 29 of Wealth-Tax Act, 1957
Supreme Court from any judgment of the High Court delivered on a reference made u/s 27 or on appeal made under section 27A to the High Court or the National Tax Tribunal as the case may be. The appeal against the order of the High Court will lie to the Supreme Court. Thus, this certificate of fitness is a must for preferred an appeal to the Supreme Court. If, however, the High Court decides not to give such a certificate, than the aggrieved party may make an application to the Supreme Court under Article 136 of the Constitution for Special Leave to Appeal against the decision of the judgment. There is no such requirement where the appeal is filled against the decision or order of the National Tax Tribunal.

Judgment by the Supreme Court: The Supreme Court upon hearing any such case shall decide the question of law raised there in and shall deliver its judgment thereon containing the grounds on which such decision is founded. A copy of the judgment shall be sent to the Appellate Tribune, Assessing Officer as the case may be which shall pass such order as are necessary to dispose off the case in conformity to such judgment.

5.6.3 Revision by the Commissioner (Revision of order in favour of Assessee) [Section 25(1)]:

Revision of orders not covered by section 25(2), can be made by the Commissioner either on his own motion or on an application made by the assessee, provided orders have been passed by an authority subordinate to him. The application made by the assessee shall be accompanied by a fee of Rs. 25. The Commissioner may call for r record of any proceeding under this Act on the basis of which such order has been passed and may make such inquiry or cause such inquiries to be made. He may pass such orders thereon as he
thinks fit as are not prejudicial to the assessee.

The Commissioner shall not revise any order under this section in the following Cases:

(a) Where the order has been made than one year previously, the Commissioner shall not, on his own motion, revise such an order; or

(b) Where the application for revision by the assessee has been made after one year from the date on which the order in question was communication to him; or

(c) Where an appeal against the order lies to the Commissioner (Appeals) or the Appellate Tribunal but it has not made and the time within which such appeal may be made has not expired; or

(d) Where in case of an appeal to the Commissioner (Appeals)/Appellate Tribunal, the assessee has not waived his right to appeal; or

(e) Where the order is pending on an appeal before the Dy. Appellate Tribunal (Appeal); or

(f) Where the order has been made the subject of an appeal to the Commissioner [Appeals] or to the Appellate Tribunal.

5.6.4 Revision of orders prejudicial to Revenue [Section 25(2)]

The Commissioner may call from and examine the record of any proceeding under the Act, if he considers that any order passed there in by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue. He may pass order thereon as the circumstances of the case justify.

42 Sub-Section (2) of Section 25 of Wealth-Tax Act, 1957
He may pass an order enhancing or modifying the assessment or cancelling the assessment and direction a fresh assessment. However, he has to pass such order only after giving the assessee an opportunity of being heard and after making or causing to be made such enquiries as he deems necessary.

Therefore, the Commissioner can revise the order passed by the Assessing Officer only if he considers that the order passed is prejudicial to the interest of the revenue. The Commissioner cannot revise the order of the Assessing Officer after the expiry of 2 years from the end of the financial year in which the order sought to be revised was passed.

However, an order of revision may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, the High Court or the Supreme Court.

5.7 Penalties

Under the wealth-tax Act, penalty is imposable on the assessee who has committed a default. Such default can be of two types:

(A) Default for:
(a) Non-payment of tax and interest due on self assessment;
(b) Non-payment of tax, interest, penalty, fine or any other sum which is payable in consequence of any order passed under the Wealth-tax Act.

An assessee who commits the default of non-payment of tax etc., in the above cases, is known as assessee in default.

Amount of penalty imposable: [Section 32]\(^43\): In the above case, he shall,

\(^{43}\) Section 32 of Wealth-Tax Act, 1957
in addition to any other consequences if any, be treated as an assesssee in default in respect of such tax etc. an assesssee in default like under Income Tax Act is liable to pay penalty of such amount as the Assessing Officer may direct. However, the amount of penalty cannot exceed the amount of tax in arrears.

(B) Default of certain specified nature: These defaults are of following types:

(i) Failure to comply with notice and concealment of assets etc. [Section 18];

(ii) Failure to answer question, sign statement, furnish information, allow inspection etc. [Section 18A];

(i) Failure to comply with notice and concealment of assets etc.: if the Assessing Officer, Commissioner (Appeals), Commissioner of wealth-tax, chief Commissioner or Appellate Tribunal, in the course of any proceedings under the Wealth-tax Act, is satisfied that any person:

(i) has failed to comply with a notice to section 16(2) or (4), he or it may by order, in writing, direct such person to pay a minimum penalty of Rs. 1000 which may extent to Rs. 25000 for such failure. However, in case of such default, no penalty shall be imposed if the person proves that there was a reasonable cause for such failure.

(ii) has concealed the particular of any assets or has filed inaccurate particulars of any assets or debts, he or it may be order in written, direct that such person shall pay a minimum penalty of 100% the tax sought to be so evaded by reason of

44 Section 18A of Wealth-Tax Act, 1957
such default. The maximum penalty shall be 500% the amount of tax sought to be evaded.

There are six explanation which have been added to section 18 for expanding the scope of levy of such penalty

**Explanation 1:** Meaning of the expression the amount of tax sought to be evaded-This expression:

(a) In a case, to which Explanation 3 applied i.e., no return of Wealth has been submitted means the tax on wealth assessed.

(b) In any other case, means:

(i) Tax on net wealth assessed

    Minus

(ii) Tax chargeable on net wealth excluding the concealed wealth or assets/debts in regards to which inaccurate particulars have been furnished.

**Explanation 2:** Facts material to the computation of net wealth not explained/substantiated: if the facts material to the computation of net wealth of a person are:

(a) Not explained; or

(b) The explanation given is found to be false; or

(c) The explanation offered is not substantiated,

And the assessee fails to prove that such explanation is bona fide and that all the facts related to the computation of net wealth, have been disclosed by him, then the amount added or disallowed in computing the net wealth of such a person, shall be deemed to represent the value of the assets in respect of which particular have been concealed.

**Explanation 3:** Non-filing of return within the prescribed time: A(1) (i.e. within the time allowed as per section Non-filing of a
return u/s, 14,16(4) and section 17, within the time allowed as per section 17A(1) (i.e. 2 years), shall be treated as if the assessee has concealed the wealth or furnished inaccurate particulars, provided the Assessing Officer or the Appellate Authority is satisfied that such person has assessable net wealth in respect of such assessment year.

**Explanation 4:** Value of any assets returned is less than 70% of the value assessed: Where the values of any assets returned by any person is less than 70% of the value of such asset as determined in an assessment u/s 16 and 17, such person shall be deemed to have furnished inaccurate particulars of such asset, unless he proves that the value of the asset as returned by him is the correct value.

**Explanation 5:** Undeclared assets found during course of search: Where undeclared assets have been found during the course of a search u/s 37A, the assessee shall be deemed to have concealed the particular of such assets. However, these provisions will not apply in a case where the relevant assets are recorded, on or before the date of search in the books of account maintained by the assessee or they are otherwise disclose to the Commissioner before the date of search.

**Explanation 6:** Adjustment made u/s 16(1)(a): Adjustment made u/s 16(1)(a) which were apparent from the record, shall not be treated as concerted wealth or wealth in respect of which inaccurate particulars have been furnished.

### 5.8 Collection and recovery of tax

(1) **Notice of demand:** The Assessing Officer is under an obligation to serve upon the assessee a Notice of Demand in the prescribed form (form No. C) Specifying the sum payable, if any as
tax, interest penalty, fine or any other sum is payable in consequence of any order passed under this Act [Section 30].

(2) **Time limit for payment of Tax etc**: The amount specified in the aforesaid notice of demand is to be paid within 30 days of the service of notice. However, the Assessing Officer may specify in the notice a lesser period than that of 30 days, if he has any reason to believe that the full period of 30 days is likely to be detrimental or revenue. But he may do so only with the provision approval of the Joint Commissioner [Section 31(1) and the provision].

(3) **Consequences of non-payment of tax etc**: Any failure on the part of the assessee to pay the amount within such period as specified above will render him liable to payment of interest @1% for every month or part of a month comprised in the period commencing from the day immediately following the end of the period mentioned in section 31(1) and ending with the day on which the amount is paid. But if in consequence of an order under section 23A, 24, 25, 26, 27A, 29 or section 35 or any order of the Settlement Commission, the amount on which interest paid in excess, shall be refunded [Section 31(2) and the provision]. Sub-Section (2AA) empowers the Chief Commissioner or the Commissioner to reduce or waive the interest payable under section 31(2) for reasons of hardship, circumstances beyond control and the co-operation extended by the assessee.

(4) **Extension of time for payment of tax etc**: Without prejudice to the provisions of sub-section (2), if the assessee makes an application before the due date under sub-section (1) expires, the

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45 Section 30 of Wealth-Tax Act, 1957
Assessing Officer may either extent the time for payment or allows payment by instalments. But while doing so the Assessing Officer may lay down such condition as the circumstance of the case might warrant [Section 31(3)].

(5) **Mode of recovery:** The modes of recovery of tax interest, penalty, etc. are similar to those prescribed under section 221 to 227, 228A, 229, 231, 232 of the Income tax Act and the Second and Third Schedules thereto and any rules made there under [Section 32].

Any reference to section 173 and section 222(2) or (6) or (7) of the Income tax Act will be treated as references to section 22(7) and section 31(2) or (6) or (7) of the Wealth-tax Act respectively. The tax Recovery Commissioner, and the Tax Recovery Officer referred to in the Income Tax Act shall be deemed to be the Tax Recovery Commissioner and The Tax Recovery Officer for the purpose of recovery of Wealth-tax and sums imposed by way of penalty, fine and interest.

### 5.9 Prosecution

*Permission of prosecution:* Section 35A to 35N of Wealth-Tax Act, 1957 deal with prosecution for offences under the Wealth-tax Act. These provisions envisage a variety of offences and harsh punishment for the same.

The nature of the offences and the quantum of penalty or other punishment prescribed are briefly indicated:

`For the purpose of both the offences, wilful attempt to evade tax etc. shall also include a case, where any person:

(i) Has in his possession or control, any books of account or other

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46 Section 221-227, 228A, 229, 231, & 232 of Income-Tax Act, 1961

47 Section 35A to 35N of Wealth-Tax Act, 1957
document relevant to any proceeding under the Act containing a false entry or statement; or

(ii) Makes or causes to be made any false entry property or statement in such books of account or other document; or

(iii) Will fully omits or causes to be omitted, any relevant entry or statement in such books of account or other documents or

(iv) Causes any other circumstances to exist which will have the effect of enabling a person to evade any tax, penalty or interest.

5.10 Power of Commissioner to grant, immunity from prosecution [Section 35GA] [Inserted by the Finance Act, 2008, w.e.f. 1-4-2008]

Commissioner to grant immunity from prosecution:-

1. A person may make an application to the Commissioner for granting immunity from prosecution, if he has made an application for settlement under section 22C and the proceedings for settlement have abated under section 22HA.

2. The application to the Commissioner shall not be made after institution of the prosecution after abatement.

3. The Commissioner may, subject to such condition as he may think fit to impose, grant to the person immunity from prosecution for any offence under this Act, if he is satisfied that the person has, after the abatement, co-operated with the wealth-tax authority in the proceedings before him and has made a full and true disclosure of his net wealth and the manner in which such net wealth has been derived:

Where the application for settlement under section 22C had
been made before 1-6-2007, the Commissioner may grant immunity from prosecution for any offence under this Act or under the Indian Penal Code or under any other Central Act for the time being in force.

4. The immunity granted to a person shall stand withdrawn, if such person fails to comply with any condition subject to which the immunity granted and thereupon the provision of this Act shall apply as if such immunity had not been granted.

5. The immunity granted to a person may, at any time, be withdrawn by the Commissioner, if he is satisfied that such person had, in the course of any proceedings, after abatement, concealed any particular, material to the assessment, from the wealth-tax authority or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the proceedings.