IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 179 of 2000
With
TAX APPEAL No. 180 of 2000
To
TAX APPEAL No. 182 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI
HONOURABLE MS.JUSTICE HARSHA DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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W.T.O. - Appellant(s)
Versus
LALLUBHAI JOGIBHAI PATEL - Opponent(s)

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Appearance:
MRS MAUNA M BHATT for Appellant(s): 1,
MR MJ SHAH FOR MR JP SHAH for Opponent(s): 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MS.JUSTICE HARSHA DEVANI

Date: 04/09/2012

ORAL JUDGMENT

(Per: HONOURABLE MS.JUSTICE HARSHA DEVANI)

1. Since all these appeals arise out of a common order dated 15.12.1999 passed by the Income-tax Appellate Tribunal (hereinafter referred to as “the Tribunal”) and controversy involved in all the appeals is also common, the same were taken up for hearing together and are disposed of by this common judgement.

2. The assessment years are 1984-85, 1985-86, 1988-89 and 1989-90. Briefly stated the facts of the case are that silver bars weighing 518 kgs (hereinafter referred to as the “subject assets”) came to be seized from the respondent-assessee by the authorities under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976(in short “SAFEMA”). By an order dated 8.6.1979 passed by the competent authority under section 7 of SAFEMA, the subject assets were ordered to be forfeited to the Central Government. The assessee carried the matter in appeal before the Appellate Tribunal for Forfeited Property, New Delhi which came to be allowed on 24.6.1992 and the forfeiture was set aside. In the wealth tax proceedings in relation to the assessment years under consideration, the assessee claimed that the value of the silver bars could not be included in the wealth of the assessee as he was not the owner of the silver bars on the valuation dates corresponding to the assessment years under consideration. The

Assessing Officer rejected such contention and included the value of the subject assets in the total wealth of the assessee for the assessment years under consideration. Being aggrieved, the assessee preferred separate appeals before the Commissioner of Wealth Tax (Appeals) against the assessment orders passed by the Assessing Officer. By a common order dated 28.7.1998, the Commissioner (Appeals) dismissed the appeals by holding that the order of the competent authority on which reliance had been placed by the assessee whereby silver was confiscated on 8.6.1979 was not final and the assessee had right of appeal against such order. He was of the view that by exercising right of appeal, the assessee had moved the appellate forum, which eventually, on 24.6.1992 had set aside the order of competent authority and the silver was restored to the assessee. It, therefore, could not be said that under order of the competent authority, the assessee had lost legally the silver in question. The Commissioner (Appeals), accordingly, upheld the inclusion of the value of subject assets in the net wealth of the assessee for the assessment years under consideration. The assessee carried the matter in further appeals before the Tribunal. By the impugned order, the Tribunal allowed the appeals by holding that in light of the order of forfeiture dated 8.6.1979, the assessee could not be treated as the owner of the silver bars. These silver bars stood confiscated and forfeited and were thus the property of the Central Government. According to the

Tribunal, till the order of forfeiture was set aside by the Appellate Tribunal for Forfeited Property vide order dated 24.6.1992, it remained in operation. The Tribunal was of the opinion that the order of the Appellate Tribunal could not operate so as to make the forfeiture nonexistent. As the assessee had lost the ownership of the silver bars on the respective valuation dates, the value of silver bars could not be added to the assessable wealth of the assessee. Revenue is in appeal against the order of the Tribunal.

3. While admitting the appeals, this court, by an order dated 11.10.2000, had framed the following substantial question of law:

"Whether the Appellate Tribunal was right in law and facts in holding that the value of the silver bars which stood confiscated under the Smugglers & Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, could not be added to the wealth of the assessee despite the fact that the confiscation order was subsequently set aside in appeal and the appeal was pending on the date of valuation?"

4. Mrs. Mauna Bhatt, learned senior standing counsel appearing on behalf of the appellant vehemently assailed the impugned order of the Tribunal submitting that in view of the subsequent order dated 24.6.1992 passed by the Appellate Tribunal For

Forfeited Property whereby the order of the competent authority under SAFEMA had been set aside, there was no forfeiture of the silver bars which remained of the ownership of the assessee. Thus, the cloud, if any, over the ownership rights of the assessee in the silver bars was removed by the said order of the Tribunal. Against the order under section 7 passed by the competent authority under SAFEMA, the assessee had preferred an appeal before the Appellate Tribunal for Forfeited Property and as such, the order of the competent authority had not attained finality. Such proceedings under section 7 of SAFEMA attained finality only when the order dated 24.6.1992 came to be made by the Appellate Tribunal whereby the order of the competent authority was set aside. Under the circumstances, the subject assets continued to remain the property of the assessee and were assessable as his wealth under the provisions of the Wealth Tax Act. Reliance was placed upon the decision of the Supreme Court in case of ***Kunhayammed and others v. State of Kerala and another,*** *AIR 2000 SC 2587* for the proposition that mere pendency of an application seeking leave to appeal does not put in jeopardy the finality of the decree or order sought to be subjected to exercise of appellate jurisdiction by the Supreme Court. It is only if the application is allowed and leave to appeal granted then the finality of the decree or order under challenge is jeopardised as the pendency of appeal reopens the issues decided and Court is then scrutinising the correctness of

the decision in exercise of its appellate jurisdiction. It was submitted that the order of the competent authority being subject matter of scrutiny by the Appellate Tribunal, had not attained finality, and as such during the pendency of the appeal, the assessee continued to remain the owner of the subject assets till the proceedings attained finality. It was, accordingly, urged that the Tribunal was not justified in holding that the value of the subject assets could not be added while computing the net wealth of the assessee.

4.1 The learned counsel vehemently contended that the Tribunal has equated confiscation with forfeiture and while doing so has failed to consider the distinction between the two expressions. In support thereof, the learned counsel placed reliance on the decision of Supreme Court in the case of ***State of W.B and others v. Sujit Kumar Rana,*** *(2004) 4 SCC 129*, more particularly on the observations made in paragraph 34 and 43 thereof that an order of confiscation in respect of a property must be distinguished from an order of forfeiture thereon. A confiscation envisages a civil liability whereas an order of forfeiture of the forest produce must be preceded by a judgment of conviction. Strong reliance was placed upon a communication dated 6.11.1992 addressed by the assessee to the Assistant Commissioner of Wealth Tax in relation to assessment year 1990-1991 wherein he had, inter alia, stated thus: *“(2) The silver is forfeited by C.A. (SAFEMA), I have obtained the interim stay from the High Court. At*

present the order of the C.A. (SAFEMA) stands and hence I do not become the owner of the Silver by interim stay as on 31.3.90." It was submitted that from the aforesaid communication it is apparent that the order of the competent authority had been stayed in the interregnum and as such, the order of forfeiture cannot be stated to have been in operation at the relevant time. The assessee was, therefore, the owner of the silver bars on the respective valuation dates and as such, the Assessing Officer had rightly included the same while computing his net wealth. It was urged that the Tribunal while passing the impugned order does not appear to have taken into consideration the fact that there was a stay order operating against the order passed by the competent authority under SAFEMA and as such, the matter is required to be remanded for taking into consideration such facts.

5. Vehemently opposing the appeal, Mr. Manish Shah, learned counsel for the respondent-assessee invited the attention of the court to the relevant provisions of the Wealth Tax Act, 1957 (hereinafter referred to as "the Act"). It was submitted that "net wealth" as defined in section 2(m) of the Act, is the aggregate value of all the assets, wherever located, belonging to the assessee on the valuation date, computed in accordance with the provisions of the Act. Thus, it is the assets which belong to the assessee as on the valuation date that are required to be taken into consideration. It was pointed out that by virtue of the order passed by the competent

authority under the SAFEMA the subject assets stood forfeited to the Central Government. Consequently, the same did not belong to the assessee on the relevant valuation dates and as such, could not be included in the net wealth of the assessee for the assessment years under consideration. According to the learned counsel, wealth tax being an annual levy, what is relevant is as to whether or not such assets belong to the assessee on the valuation date. In the present case, on the respective valuation dates corresponding to the assessment years under consideration, the subject assets did not belong to the assessee and as such, the Tribunal was justified in holding so.

5.1 In support of his submissions, the learned counsel placed reliance upon the decision of a Division Bench of this Court in the case of ***Jayantilal Amritlal v. Commissioner of Wealth-tax,*** *(1982) 135 ITR 742*, wherein the assessee had not included the value of gold in his net wealth on the ground that as the gold was seized and proceedings were pending, their value as on the valuation date was “nil”. The Wealth Tax Officer had rejected the assessee's contention and assessed the market value of the gold and included it in the value of the net wealth of the assessee in each of the assessment years. The Appellate Commissioner as well as the Tribunal confirmed the view taken by the Wealth Tax Officer. On a reference, the High Court held in

favour of the revenue. However, while doing so, it was observed that in the instant case, gold articles were merely seized by the Excise Authorities. They were not confiscated on the relevant dates though in view of the contravention of the relevant rules of Gold (Control) Rules, they were liable to be confiscated. In the opinion of the court, the seizure and possibility of confiscation, however, did not in any way impair the ownership of the assessee in those articles. The assessee continued to be the full owner of the articles on the relevant valuation dates. Mere possibility of confiscation cannot be said to impose legal restriction, limitation or impediment on the ownership of the assessee. It was however, observed that if the gold articles were confiscated, the assessee would have lost his ownership over them, but till that event occurred the assessee continued to be the owner thereof. Reverting to the facts of the present case, the learned counsel submitted that by virtue of the order of the competent authority, the subject assets stood forfeited and as such, the assessee had lost his ownership over them and, therefore, the value of such assets could not have been included while computing his net wealth.

5.2 Reliance was also placed upon the decision of the Supreme Court in the case of ***Commissioner of Wealth-tax, West Bengal v. Bishwanath Chatterjee***

and others, *(1976) 103 ITR 536*, wherein the court, in the context of the provisions of the Wealth Tax Act, had observed that the expression “belong” has been defined in the Oxford English Dictionary as “To be the property or rightful possession of” so it is the property of a person, or that which is in his possession as of right, which is liable to wealth tax. In other words, the liability to wealth-tax arises out of ownership of the asset, and not otherwise. Mere possession, or joint possession, unaccompanied by the right to, or ownership of property would therefore not bring the property within the definition of “net wealth” for it would not then be an asset “belonging” to the assessee.

5.3 Attention was also invited to the definition of “forfeiture” in different dictionaries to which reference shall be made at a later stage.

5.4 Dealing with the contention raised by the learned counsel for the appellant that the order of the competent authority had not attained finality as the appeal was pending and therefore, the subject assets belonged to the assessee during the relevant period, the learned counsel for the assessee placed reliance upon the decisions of the Supreme Court in ***Kedarnath Jute Mfg. Co. Ltd v. Commissioner of Income-tax (Central), Calcutta,*** *(1971) 82 ITR 363*, in ***Commissioner of Income-tax v. Kalinga Tubes Ltd.,*** *(1996)218 ITR*

164 and in ***Commissioner of Income-tax v. Bharat Carbon and Ribbon Manufacturing Co. P. Ltd.,*** *(1999) 239 ITR 505* to which reference shall be made at an appropriate stage. It was contended that in the absence of any stay having been granted against the order of forfeiture, the same would continue to operate and as such, the assessee having no legal right over the said assets during the relevant period, the same having vested in the Central Government free from all encumbrances, such assets could not be included in the net wealth of the assessee. It was, accordingly, submitted that the impugned order passed by the Tribunal being just, legal and proper, does not call for interference by this court.

6. Before adverting to the merits of the case, it may be necessary to refer to the relevant provisions of the Act. Section 2(m) of the Act defines “net wealth” to mean the amount by which the aggregate value computed in accordance with the provisions of the Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under the Act, is in excess of the aggregate value of all the debts owned by the assessee on the valuation date other than the debts specified thereunder.

7. Section 2(q) of the Act defines valuation date in relation to any year for which an assessment is to be made under the Act, to mean the last day of the previous year as defined in section 3 of the Income-tax Act, if an assessment were to be made under that

Act for that year. Section 3 of the Act, which is the charging section, makes provision for "Charge of wealth-tax" and lays down that subject to the other provisions contained in the Act, there shall be charged for every assessment year commencing on and from the first day of April, 1957, a tax (referred to as wealth-tax) in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in Schedule I.

8. Thus, it is manifest that under the scheme of the Wealth Tax Act, section 3 imposes a charge in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in the Schedule. Thus, liability to pay wealth-tax gets crystallized on the valuation date. Net wealth as noticed earlier, is the aggregate value of all the assets, wherever located, belonging to the assessee on the valuation date computed in accordance with the provisions of the Act. Thus, for the purpose of determining the wealth tax liability of an assessee what is required to be taken into consideration is value of all assets belonging to him as on the valuation date. As held by the Supreme Court in the case of ***Bishwanath Chatterjee*** (supra), the liability to wealth-tax arises out of ownership of the asset, and not otherwise. Reverting to the facts of the present case, therefore, unless the subject assets belonged to the assessee as on the relevant valuation dates corresponding to the assessment years under consideration, they would not fall within the ambit of "net wealth" and would not be chargeable to wealth tax.

9. Thus, what is required to be examined in the present case is as to whether the subject assets belonged to

the assessee as on the respective valuation dates so as to be liable to be included while computing his net wealth for the purpose of deciding his liability to pay wealth tax for the corresponding assessment years.

10. It may be recalled that 518 kgs of silver bars belonging to the assessee came to be forfeited by an order dated 8.6.1979 passed by the competent authority under the SAFEMA, in exercise of powers under section 7 of the said Act. Section 7 of the SAFEMA provides for forfeiture of property in certain cases. Sub-section (3) thereof, which is relevant for the present purpose, postulates that where the competent authority records a finding under the said section to the effect that any property is illegally acquired, it shall declare that such property shall, subject to the provisions of the Act, stand forfeited to the Central Government free from all encumbrances. Thus, in the light of the provisions of sub-section (3) of section 7 of the SAFEMA, upon the passing of the order under section 7 of the Act, the subject assets stood forfeited to the Central Government free from all encumbrances. Such position continued to exist till the order of the competent authority came to be set aside by the Appellate Tribunal for Forfeited Property on 24.6.1992. On a perusal of the impugned order, it appears that the order of forfeiture remained in operation till it was set aside by the Appellate Tribunal on 24.6.1992. It is the case of the assessee that in light of the order of forfeiture which was in operation as on the relevant valuation dates, the assessee was not the owner of the subject assets which stood vested in the Central Government and, therefore, such assets could not be included in the net wealth of the assessee. Whereas, it is the case of the appellant that the order of the competent authority having not attained finality on the relevant valuation dates and ultimately by the order dated 24.6.1992 of the Appellate Tribunal, the order of forfeiture having been set aside,

the assessee continued to remain the owner of the subject assets and as such, the same were liable to be included while computing his net wealth during the years under consideration. Thus, the next question that arises for consideration is as to what would be the effect of the order of forfeiture passed by the competent authority under section 7 of the Act.

11. As noticed earlier, sub-section (3) of section 7 of the SAFEMA provides that when the competent authority passes an order under section 7, the property stands forfeited to the Central Government free from all encumbrances. The expression "forfeiture" has been defined in different dictionaries as follows:

1. The Oxford Encyclopedia English Dictionary

"Property lost as a legal penalty"
"lost the right to"
"be deprieved of"

2. Shorter Oxford English Dictionary

"The fact of losing (goods, estate...) in consequence of a crime, offence"

3. Webster's Third New International Dictionary

"The loss of some estate in consequence of a crime offence"

4. Black's Law Dictionary

"Loss of property as a penalty for some illegal act."

5. STROUD's Judicial Dictionary

"Forfeiture" means "the loss of all interest' in the property."

6. K.J. Aiyar's Judicial Dictionary

"Deprivation of lands, goods or other property usually in consequence of sentence passed by a court of law, or some breach of the law."

12. Thus, the dictionary meaning of the term "forfeiture" is loss of all interest in the property in consequence of a crime. In ***Jayantilal Amritlal*** (supra), this court has observed that if the articles were confiscated, the assessee would have lost the ownership over the same. Applying the aforesaid legal position to the facts of the present case, it is amply clear that upon the order of forfeiture being passed by the competent authority, the subject assets property stood vested in the Central Government free from all encumbrance and as such, the assessee ceased to have any legal interest in the subject assets during the period when the said order of forfeiture was in operation.

13. At this juncture reference may be made to the decision of the Supreme Court in ***Sujit Kumar Rana*** (supra), on which strong reliance has been placed by the learned counsel for the appellant. The said decision was rendered in context of the provisions of the Forest Act, 1972 as amended by the State of West Bengal. The question involved in the said case was as regards the applicability of section 482 of the Code of Criminal Procedure, 1973 for quashing a proceeding for confiscation of forest produce etc. under the provisions of the Indian Forest Act, 1972 as amended by the State of West Bengal. The State of West Bengal had inserted sections 59A to 59G in the principal Act. Section 59A provided for confiscation by Forest Officer of forest produce in case of forest offence believed to have been committed. Sub-section(3) of section 59A provided that if the authorised officer is satisfied that a forest offence has been committed irrespective of the fact whether a prosecution has been instituted for the commission of such offence or not, he may direct confiscation of the property together with all tools, etc. used in committing the offence.

Section 59G of the Act provided for bar of jurisdiction in certain cases and expressly barred the jurisdiction of any court or other authority except that specified thereunder with regard to custody, possession etc. of any property, tools, etc. seized under section 52 of the Act. It is in the context of the above statutory provisions that the court held that an order of confiscation of forest produce in a proceeding under section 59A would not amount either to penalty or punishment. An order of confiscation in respect of a property must be distinguished from an order of forfeiture thereof. Although the effect of both confiscation and forfeiture of a property may be the same, namely, that the property would vest in the State but the nature of such order having regard to the statutory scheme must be held to be different. A proceeding for confiscation can be initiated irrespective of the fact as to whether prosecution for commission of a forest offence is lodged or not. A confiscation proceeding, therefore, is independent of a criminal proceeding.

14. Adverting to the facts of the present case, the subject assets have been forfeited under section 7 of the SAFEMA. Forfeiture of the goods, as held in the above decision, results in vesting of the property in the State. Thus, the distinction sought to be drawn between forfeiture and confiscation by the learned counsel for the appellant by placing reliance upon the above decision does not in any manner come to the aid of the appellant. In the present case, undisputedly, there was an order of forfeiture of the subject assets, which was in operation during the period between 8.6.1979 to 24.6.1992 till it was set aside by the Appellate Tribunal. Thus, during the said period, which encompasses the valuation dates corresponding to the assessment years under consideration, the subject assets stood vested in the Central Government free from all encumbrances. During such period, though the assessee had challenged the order of forfeiture before the Appellate Tribunal for Forfeited

Property, the assessee could not claim to be the legal owner of the subject assets nor could it be stated that the goods belonged to him. As noted earlier, for the purpose of computing the net wealth of an assessee what is to be taken into consideration is the aggregate value of all the assets, wherever located, belonging to the assessee on the valuation date. Thus, for the purpose of computing the net wealth of an assessee, the assets have to belong to the assessee on the valuation date corresponding to the said assessment year. In the present case, on each valuation date in relation to the assessment years under consideration, admittedly the subject assets stood forfeited. The forfeiture came to an end only on 24.6.1992 when the order of competent authority came to be set aside by the Appellate Tribunal for Forfeited Property. However, till then, the same stood vested in the Central Government. Under the circumstances, when the subject assets did not legally belong to the assessee during the period under consideration, the same could not have been included while computing his net wealth.

15. As regards the contention that in view of pendency of the appeal, the order of the competent authority had not attained finality and as such, the subject assets continued to remain vested in the assessee, it may be apposite to refer to the decision of Supreme Court in **Kedarnath Jute Mfg. Co. Ltd** (supra), wherein the Court was dealing with the question as to whether unpaid and disputed sales tax could be deducted for computation of business income even under section 10(2) of the Income-tax Act, 1922. On behalf of the assessee it had been contended that sales tax paid or unpaid would be admissible deduction under section 10(2)(xv) as well as under section 10(1) of the said Act. It was pointed out that if the method of accounting adopted by the assessee is cash system, it would qualify for deduction only in the year in which it has been actually paid. If the method of accounting is mercantile system, then the deduction will be permissible in the year to

which the liability relates irrespective of the point of time when the liability has actually been discharged. In the facts of the said case liability had been quantified and a demand had been created for a specified sum by means of a notice during the pendency of assessment proceedings before the Income Tax Officer and before the finalisation of the assessment. The court held that it was not possible to comprehend how the liability would cease to be one because the assessee had taken proceedings before higher authorities for getting it reduced or wiped out so long as the contention of the assessee did not prevail with regard to the quantum of liability. The court approved of the decision of Madras High Court wherein it was held that the assessee had incurred an enforceable legal liability on and from the date on which he received the Collector's demand for payment and that his endeavour to get out of the liability by preferring appeals could not in any way detract from or retard the efficacy of the liability which had been imposed upon him by the competent excise authority.

16. In ***Kunhayammed*** (supra), the Supreme Court has held that in spite of a petition for special leave to appeal having been filed, the judgment, decree or order against which leave to appeal has been sought for, continues to be final, effective and binding as between the parties. Once leave to appeal has been granted, the finality of the judgment, decree or order appealed against is put in jeopardy though it continues to be binding and effective between the parties unless it is a nullity or unless the court may pass a specific order staying or suspending the operation or execution of the judgment, decree or order under challenge.

17. In ***Kalinga Tubes Ltd.*** (supra), the Supreme Court held that when the assessee is following the mercantile system of accounting in the case of sales tax payable by the assessee, the liability to pay sales tax would accrue the moment the dealer made sales, which are subject to sales

tax. At that stage, the obligation to pay the tax arises. Raising of dispute in this connection before the higher authorities would be irrelevant.

18. In ***Bharat Carbon and Ribbon Manufacturing Co. P.Ltd.***(supra), the Supreme Court in facts of the said case wherein the liability had accrued over the accounting period because of the demand notice issued by the Excise Department, held that obligation under the law to pay the excise duty arose at the stage when demand notice was issued. Raising of the dispute by the assessee by filing a writ petition for quashing or deduction of the said liability would not be a ground for holding that that the liability to pay the excise duty as per the demand notice was not incurred.

19. From the above decisions, the legal proposition that can be culled out is that a judgment, decree or order which is subject matter of challenge before the higher forum, continues to be final, effective and binding as between the parties till such order is set aside, unless it is a nullity or unless the higher forum passes a specific order staying or suspending the operation or execution of the judgment, decree or order under challenge.

20. Reverting to the facts of the present case, by the order dated 8.6.1979 passed by the competent authority under section 7 of the SAFEMA, the subject assets stood vested in the Central Government free from all encumbrances. Such order continued to be operation till the same was set aside by the Appellate Tribunal for Forfeited Property on 24.6.1992. Thus, merely because the assessee had challenged the order of forfeiture before the Appellate Tribunal, the same would not detract from the fact that in view of the order passed by the competent authority under section 7 of the SAFEMA, the assessee stood divested of his

ownership over the subject assets which stood vested in the Central Government free from all encumbrances. Thus, in the interregnum, that is, from the date of passing of the order of forfeiture, till the same was set aside, the said order was in operation and the pendency of the appeal would not reduce the efficacy of such order. The subject assets, therefore, did not belong to the assessee on the relevant valuation dates and could not have been taken into consideration while computing the net wealth of the assessee.

21. A faint attempt has been made by the learned counsel for the appellant to submit that during the relevant valuation dates, the order of forfeiture had been stayed by the higher forum. In support of such contention, the learned counsel had placed reliance upon a communication dated 6.11.1992 addressed by the assessee to the Assistant Commissioner of Wealth Tax. On a perusal of the said communication, it is apparent that it is nowhere stated therein that the High Court had granted interim stay against the order passed by the competent authority under section 7 of the Act. From the facts as emerging from the record, it is apparent that against the order passed by the competent authority under the SAFEMA, the assessee had preferred an appeal before the Appellate Tribunal for Forfeited Property. Before the Tribunal, no order staying the order passed by the competent authority appears to have been placed on record. Under the circumstances, on the basis of above communication addressed by the assessee, it is not possible to accept the say of the learned counsel that the order of forfeiture was stayed during the pendency of the appeal before the Appellate Tribunal. More so because, the Tribunal, in the impugned order has specifically observed that the order of forfeiture remained in operation till it was set aside by the Appellate Tribunal for Forfeited Property vide order dated 24.6.1992. As to whether or not the order of the competent authority was stayed during the pendency of the appeal is a question of fact. The

above communication dated 6.11.1992 is sought to be brought on record during the course of hearing of the present appeal without any formal application having been made in this regard. Also, at no point of time does it appear to have been contended before the authorities below that the order of forfeiture was ever stayed at any point of time. Under the circumstances, the contention that the order of forfeiture was stayed during the pendency of the appeal which is solely based on the above communication dated 6.11.1992, can be stated only to be rejected.

22. The submission that the matter should be restored to the Tribunal for the purpose of examining as to whether the order passed by the competent authority was stayed, also cannot be accepted inasmuch as no order has been brought to the notice of this court whereby the order of forfeiture had actually been stayed. In the absence of any specific pleading or supporting material, merely on the bare say of the learned counsel, which too is not asserted with certainty, no case has been made out to remand the matter to the Tribunal.

23. In light of the aforesaid discussion, the question is answered in the affirmative. The Appellate Tribunal was right in law and facts in holding that the value of silver bars which stood confiscated under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 could not be added to the wealth of the assessee despite the fact that the confiscation order was subsequently set aside in appeal and the appeal was pending on the date of valuation.

24. The appeals are accordingly dismissed with no order as to costs.

(Akil Kureshi, J.)

(Harsha Devani, J.)

(raghu)