

Recent amendments - Wealth Tax Act & Rules

CA. VINAY V. KAWDIA

BASIC STRUCTURE:

The Wealth-tax Act, 1957 was enacted to levy wealth-tax on value of all kinds of property with certain exclusions. However, with a view to stimulate investment in productive assets, wealth-tax has been restricted only on the 'non-productive assets' from 1st April, 1993. Only six assets detailed in section 2(ea) after exclusions, inclusions and exemptions are liable to be taxed after arriving at fair market value and deduction for debt owed.

- Section 2(ea) has been inserted by the Finance Act, 1992, with effect from 1st April, 1993, to define 'assets'.
- Section 2(m) defines 'net wealth' to mean the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located, belonging to the assessee on the valuation date including assets required to be included under section 4 exceeds 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.
- Section 3(2) of the Act provides that wealth-tax is leviable on every individual, Hindu Undivided Family and company, at the rate of one per cent of the amount by which the net wealth exceeds fifteen lakh rupees (Thirty Lakh from A.Y. 2010-11).
- Section 4 deems assets for inclusion. Section 5 provides for exemptions. Section 7 provides for valuation.

Thus, unless the property in question falls within the list of items enumerated in s. 2(ea) on 31st March of the financial year, it will not be an "asset" and consequently will not form part of assessee's net wealth under s. 2(m).

Assets u/s 2(ea) in brief:

- Any building or land appurtenant thereto, whether used for residential or commercial purposes
- Motor cars excluding those used by the assessee in the business of running them on hire or as stock-in trade

- Jewellery, bullion, or any other article made wholly or partly of any precious metal excluding those used as stock-in-trade.
- Yachts, boats and aircrafts excluding used for commercial purposes.
- Urban land - with certain exclusions
- Cash in hand in excess of fifty thousand rupees, of individuals and Hindu undivided families

A) Chargeability of Agricultural Land: [position prior to Amendment by F.A. 2013]

Pre amendment, Wealth Tax Act nowhere specifically dealt with Agricultural lands separately. No specific exemption has been provided to the agricultural land. As per section 2(ea)(v), Urban land is an 'asset' liable to wealth tax. Urban land has been explained in clause (b) to Explanation 1. It includes –

(i) Land situated within the jurisdiction of a municipality, cantonment board, etc. which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the valuation date; (ii) Any land which is situated in any area not being more than 8 kms. from the local limits of any municipality or cantonment board, etc. notified in Notification No. 9401 dated 9th November, 1993. Thus land irrespective of its nature was treated as an urban land chargeable to wealth tax, if above conditions are satisfied.

In all following decisions, it was consistently been held that, agricultural land situated in urban area would be an asset chargeable to wealth tax act.

- *Meera Jacob v. WTO (2007) 14 SOT 486 (Coch.), Tara Singh v. Dy. Comm. of Wealth Tax (2005) 97 ITD 482 (Asr), Bhagwandas V. Kalro vs. WTO (2006) 5 SOT 330 (Bang.), Sunil Kumar vs. WTO [2012] 21 taxmann.com 36 (Delhi - Trib.), [2012] 25 taxmann.com 10 (Chennai - Trib.), Etc.*

HELD:

Asset—Urban land—Agricultural land—No distinction has been made in respect of agricultural land and in the definition of "urban land" given in cl. (b) to Expln. 1 to s. 2(ea)—Agricultural land is not excluded—Therefore agricultural land which is urban land is includible in the definition of "asset" in s. 2(ea)

B) Amendment by Finance Act 2013:

The Wealth-tax Act, 1957 was enacted to levy wealth-tax on value of all kinds of property with certain exclusions. However, with a view to stimulate investment in productive assets, wealth-tax has been restricted only on the 'non-productive assets' from 1st April, 1993. **However this legislative intent was not reflected in the Act as regards agricultural lands situated in urban area.** Recently it has been held by the Hon'ble Supreme Court also that agricultural land situated in urban area is liable for wealth tax. As the wealth tax is levied only on unproductive assets, there was no intention to levy wealth tax on the agricultural land which cannot be termed as unproductive assets.

In view of the above, the definition of urban land in the Wealth-tax Act, 1957 has been amended to specifically provide that wealth tax is not leviable on urban land which is,

- (i) classified as agricultural land in the records of the Government; and
- (ii) used for agricultural purposes.

Finance Act 2013, as passed by both the houses of parliament, has amended the above clause (b) w.e.f. A.Y. 2014-15 to provide that, "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, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand; or

*(ii) in any area within the distance, **measured aerially**,—*

(I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in sub-clause (i) and which has a population of 10001 to one lakh; or

(II) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in sub-clause (i) and which has a population of 100001 to ten lakh; or

(III) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in sub-clause (i) and which has a population of more than ten lakh.

Further, in addition to exclusions already available in respect of urban land, under the newly inserted sub-clause (A) in clause (b) of Exp. 1 to section 2(ea) **with retrospective effect from A.Y. 1993-94, urban land does not include land classified as agricultural land in the records of the Govt. and used for agricultural purposes.**

Example: [In the context of Dhule Municipal Corporation (MC) having pop. Between 1,00,000 to 10,00,000]

Chargeability of Land situated in:

Village within limits of MC & Population of MC >10K: Taxable

Village within limits of MC & Population of MC <10K: Exempt

Village outside limits of nearest MC - but within 6 KM from limit: Taxable

Village outside limits of nearest MC-beyond 6 KM from limit: Exempt

(It is assumed that nearest M.C. is Dhule from land under question)

Immediate issues arising from the amendment:

- *It is now imperative that the assessee files his return of income with details of net agricultural income/loss corresponding to such urban agricultural land to claim exemption from wealth tax!!*

[Where on perusal of earlier returns filed by assessee, it was found that agricultural income shown was nil and assessee was unable to dispute that land was falling within municipal limits and, it could not be conclusively held that agricultural activities were being carried on land, petitioner was not entitled for benefit under section 10(37)- **[2014] 46 taxmann.com 121 (Punjab & Haryana)**]

- *For measuring aerial distance, use of GPS technology and the logics of Longitudes and Latitudes may be applied. (Aerial maps are generally available with DTO)*

[Amendment is in line with section 11 of the General Clauses Act, 1897 which read as:

"Section 11: Measurement of distances - In the measurement of any distance, for the purpose of any Central Act or Regulation made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane."

- *Whether Gram Panchayat, Panchayat Samiti are covered under term Municipality for purpose of Wealth Tax Act?*

The terms 'municipality', 'notified area committee', 'town area committee,' and 'town committee' used in section 2(14)(iii)(a) has legal conceptions and must, therefore, be given their legal meaning and consequently, they would be entirely different concepts from the term 'panchayat', be it a village panchayat or a town Panchayat. [**Chandar HUF [2011] 12 taxmann.com 305**]

- *Whether, where population of town is more than 10,000 but said town is not within the limits of a Municipality, agricultural land in such town could be treated as capital asset?*

For the purpose of bringing land within the mischief of section 2(14), it should be situated within a Municipality, Municipal Corporation, Cantonment Board, etc., which has a population of not less than 10,000. In the instant case, though the population of the town, where the land was situated, was more than 10,000, the said town was not within the limits of a Municipality, Municipal Corporation or Cantonment Board. [**P. Venkataramana (1993) 46 TTJ (Hyd) 706**]

Similarly:

Section 2(14), read with section 45, of the Income-tax Act, 1961 - Capital asset [Agricultural land] - Whether any agricultural land which is situated within 8 kms of a notified municipality etc., will be treated as a capital asset, subject to condition that population of that municipality should not have population of less than 10,000 persons - Held, yes - Further 'population less than 10,000' that is to be considered must be that of municipality, etc., and not that of village Panchayat [**Srichand Dembla v. DCIT [2013] 39 taxmann.com 180 (Jod.)**]

Therefore, in case of land outside the limits of MC, Population of nearest Municipal Corporation from location of land is to be considered & not of area/village within which the land is situated.

- *As per explanation to section 2(ea) "Population means the population according to last preceding census of which the relevant figures have been published before the date of valuation." – Which census- 2001 or 2011?*

Since as on 31.03.13 the census data of 2011 was not published, hence the benefit of population data of 2001 can be taken Up to A.Y. 13-14. From A.Y. 14-15 population as per 2011 census should be the base.

- *We have filed the return of Wealth for previous years and have paid wealth tax on urban agricultural land. In light of retrospective amendment in the definition of urban land (w.e.f. A.Y. 1993-94), can we claim refund of wealth tax paid on urban agricultural land by applying u/s 35 (Similar to section 154 of IT Act) ?*

As per the provisions of section 35 of the Act, the rectification application can be made within expiry of four years from the end of the financial year in which the order sought to be amended was passed and the application made by the assessee is well within the time limit prescribed u/s 35(7)(b) of the Act.

The courts have decided in favour of the revenue wherein rectification u/s. 35 of the Wealth Tax Act, 1961 or u/s. 154 of the Income Tax Act, 1961 has been proposed and upheld in the event of retrospective amendments to the Wealth Tax Act, 1957 or Income Tax Act, 1961 wherein tax is due from assessee as a consequence of such retrospective amendment. **[CIT v. Poonamchand D. Shah [1992] 60 TAXMAN 152 (BOM)]** Similarly, Notice issued under section 148, on basis of retrospective legislative amendment of provision dealing with issue, has also been held to be valid. **[Easter Industries Ltd. v. Union of India (2013) 31 taxmann.com 154]** Obviously, reverse should also be permissible.

- Up to A.Y. 2013-14, if agricultural land fell beyond specified distance (generally 8 kms) from notified municipal Limits on date of publication of relevant CBDT notification [No. 9447 dt. 06.01.1994] but fell within 8 kms on date of sale of land, it would still fall outside term 'capital asset' for s. 2(14). **[Subha Tripathi Vs. DCIT (2013) 34 taxmann.com 286, Satya Dev Sharma vs. ITO (2014) 46 taxmann.com 149]**

Same analogy shall apply for section 2(ea) of Wealth Tax Act.

- **Impact of Amendments by F.A. 2013 on pending assessments:**

Section 2(ea) of the Wealth-tax Act, 1957 - Definition - Urban Land [Exemption to agricultural land] - Assessment years 2002-03 to 2005-06 - Whether, where assessee claimed his agricultural land to be exempt under Wealth Tax Act, same was to be examined in view of retrospective amendment made by Finance Act, 2013 in Explanation 1 to section 2(ea): [**Bawa Yadwinder Singh v. WTO [2013] 36 taxmann.com 547 (Amritsar)**]

C) **Enabling provisions for facilitating electronic filing of annexure-less return of net wealth:**

- Section 14 of the Wealth-tax Act provides for furnishing of return of net wealth as on the valuation date in the prescribed form and verified in the prescribed manner setting forth such other particulars as may be prescribed.
- The Bill proposed to insert new sections 14A and 14B in the Wealth-tax Act on similar lines as per Sections 139C and 139D of the Income-tax Act containing provisions for facilitating filing of annexure-less return of income in electronic form.
- Consequently, it was also proposed to amend provisions of section 46 of the Wealth-tax Act which provides for rule making powers of the Board.

Accordingly, CBDT has vide notification No. 32/2014 dated 23.06.2014 prescribed new WT **Return Form BB w.e.f. A.Y. 2014-15** in place of old form BA. CBDT has also prescribed that this form can be filed online with or without digital signature. For certain class of Assessee i.e. Individual/HUF not liable to tax audit e-filing is optional but for other class of Assesseees i.e. Individual/HUF liable to audit and Companies return of net wealth in **FORM BB** shall be furnished electronically under digital signature.

Form BB is attached herewith for reference.

Startling changes in Form BB:

- Form is in two Parts – Part A- **GENERAL** & Part B – **Computation of Net Wealth & Tax Liability**
- Part B contains various Schedules as follows:

Schedule	Details	Remark/ Section
IP	Immovable Property	S.2(ea)(i) or S.2(ea)(v)
MP	Movable Property	Other than jewellery etc. referred in S. 2(ea)(iii)
JE	Jewellery etc	referred to in S. 2(ea)(iii)
INW	Includible net wealth of other persons	-
IFA	Interest held in the assets of a firm or association of persons (AOP) as a partner or member thereof	-
ACE	Assets as per section 2(ea) which are claimed as exempt u/s 5	Section 5
OPR	Other Properties	See point no. 9 below

- E-mail address is now mandatory in part A
- Bank account details in part B for direct deposit of refund (if any) in bank a/c
- New Question in Part A- Whether Citizen of India?

Under the provision of section 6, in case of an Individual who is not a citizen of India or of an Individual or HUF not resident in India or resident but not ordinary resident in India, or of a company not resident in India during the year ending on a valuation date, the value of assets located outside India is not to be included in the net wealth.

- Whether this return is being filed by a person in a special case referred to in:

Chapter V: Liability to assessment in special cases:

Section 19: Tax of a deceased person payable by legal representative

Section 19A: Assessment in case of executors

Section 20: Assessment after partition of HUF

Section 20A: Assessment after partial Partition of HUF

Section 21A: Assessment in case of diversion of property, or of income from property, _____ held under trust for public charitable or religious purposes

Section 22: Assessment of persons residing outside India

- Earlier in form BA there was question: *Aggregate value of movable property*

Now in Part B-NW of Form BB:

2) *Aggregate Value of movable property (other than jewellery)*

3) *Aggregate Value of jewellery- detailed schedule **JE***

8) Now Valuer's (registered u/s 34AB of WT Act) details are required below Schedule JE & IP

- in case value of jewellery is above Rs. 5 Lacs – report in form O-8 (Rule 8D)

- in case of chargeable immovable properties- report in Form O-1 (Rule 8D)

[Alert: *Where assessee, a legal heir of 'W', declared certain loss arising from sale of jewellery belonging to 'W', in view of fact that nothing had been disclosed in respect of said jewellery in Wealth tax return, sale in question being bogus, sale amount deposited in bank was to be treated as assessee's income from unexplained sources [2014] 45 taxmann.com 224 (Punjab & Haryana)]*

9) Schedule OPR: Other Properties A) Immovable B) Movable

(Schedule is only for IND & HUF)

OPR: All Movable & Immovable properties OTHER THAN:

- assets referred to in section 2(ea) and liable for wealth tax;
- assets claimed as exempt under section 5;
- assets excluded under section 6 (exclusion of assets & debts outside India based on citizenship or residential status of assessee); or
- Assets being part of business or profession which is subject to audit under section 44AB of the Income-tax Act, 1961(43 of 1961).

Assets that need to be disclosed in part A of Schedule OPR (Immovable Property):

- Agricultural Land: All agri. lands claimed exempt in view of amendment by F.A. 2013
 - Non Agri. Land: Ex.
 - a) Land on which construction of building is not permissible.
 - b) NA plots beyond specified limits as specified in Explan. 1(b) to section 2(ea)
 - c) Land occupied by any building which has been constructed with the approval of the appropriate authority.
 - d) Land remaining unused for industrial purposes for a period of two years from the date of its acquisition by the assessee. Etc.
- III. Commercial Building: Commercial establishments and complexes
- IV. Residential Building: Ex.
- Any house which the assessee **may occupy** for the purpose of his own business or profession
 - Any residential property which has been let out for a minimum period of 300 days in the previous year.
 - A guest-house/ farm-house situated within 25 km from the local limits of municipality. Etc.

10) In verification part of return, below signature of assessee following alert is added:

** Before signing the verification, the signatory should satisfy himself that this return is correct and complete in every respect. Any person making a false statement in this return shall be liable to prosecution under section 35D of the Wealth-tax Act, 1957(27 of 1957), and on conviction be punishable:*

(i) In a case where the tax sought to be evaded exceeds one lakhs rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) In any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

Presumption as to holding of Gold/ Silver by an Indian as per culture/ religion/ customs of family: (It is to be kept in mind that the said Instruction and judgment relate to search cases)

"Instruction no. 1916 Dt. 11-5-1994

Seizure of jewellery and ornaments in course of search--Guidelines issued by CBDT:

Instances of seizure of Jewellery of small quantity in course of search operation under section 132 have come to the notice of the CBDT. The question of a common approach to situation where search parties come across items of jewellery, has been examined by the CBDT and the following guideline are issued for strict compliance.

(i) In the case of wealth tax assessee, gold jewellery and ornaments found in excess of the gross weight declared in the wealth-tax return.

(ii) In the case of a person not assessed to wealth-tax gold jewellery and ornaments to the extent of 500 grams per married lady, 250 grams per unmarried lady and 100 grams per male member of the family need not be seized.

(iii) The authorised officer may, having regard to the status of the family and the custom and the practices of the community to which the family belongs and other circumstances of the case, decide to exclude a large quantity of jewellery and ornaments of seizure. This should be reported to the Director of Income-tax/CIT authorizing the search at the time of furnishing the search report.

(iv) In all cases, a detailed inventory of the jewellery and ornaments found must be prepared to be used for assessment purposes."

As per the judgment of the Honourable Karnataka High Court in Smt. Pati Devi vs. ITO and Another (1999) 240 ITR727 (Kar), the said guidelines would apply even to block assessment and the assessee is entitled to take benefit thereof.

[The above circular was literally followed by Hon'ble Rajasthan High Court while deciding on issue of income from undisclosed sources –addition u/s 69A- Unexplained jewellery found during search - CIT vs. Satya Narain Patni – (2014) 269 CTR (Raj.) 466]