

FORM E

[See Rule 5 of the Wealth-tax Rules, 1957]

FORM OF APPEAL TO THE DEPUTY COMMISSIONER (APPEALS) AND COMMISSIONER OF WEALTH-TAX (APPEALS) UNDER SECTION 23 OF THE WEALTH-TAX ACT, 1957

Wealth-tax Range... **1st Range.**

Filed on 30/10/92

*No. of 19

Name and address of the Appellant.

**Master Mohan S Modi
1-10-72/2/1, Begumpet,
Hyderabad**

Permanent Account Number.

2-739

Assessment year in connection with which the appeal is preferred.

1987-88

Assessing Officer/Valuation Officer passing the order appealed against.

A.C. 1 (2) Hyd

Where valuation of any asset has been referred to the Valuation Officer, designation and address of such Valuation Officer.

N.A.

Section and sub-section of the Wealth-tax Act, 1957, under which the Assessing Officer/Valuation Officer passed the order appealed against and the date of such order.

18 (1) (b)

Where the appeal relates to any assessment, penalty/ fine, the date of service of the relevant notice of demand.

30-09-1988

In any other case, the date of service of the intimation of the order appealed against.

N.A.

Where return has been filed by the appellant for the assessment year in connection with which the appeal is preferred, whether tax due on the net wealth returned has been paid in full. (If the answer is in the affirmative, give details of the date of payment and amount paid.)

YES, Rs. 2,454/- 22-12-1987

Section of the Wealth-tax Act, 1957, under which the appeal is preferred.

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Deletion of Penalty of Rs. 245/-

†Relief claimed in appeal.

**Where an appeal in relation to any other assessment year is pending in the case of the appellant with any Deputy Commissioner (Appeals)/Commissioner (Appeals), give the details as to the,—

- (a) Deputy Commissioner (Appeals)/Commissioner (Appeals) with whom the appeal is pending;
- (b) assessment year in connection with which the appeal has been preferred;
- (c) Assessing Officer/Valuation Officer passing the order appealed against;
- (d) section and sub-section of the Act, under which the Assessing Officer/Valuation Officer passed the order appealed against and the date of such order.

NIL

M/S G. A. Jay and Company Chartered Accountants
C/o Mehta Automobiles
58/3, M.G. Road,
Secunderabad-500 003.

Patel L. mod.
Signed
(Appellant)

STATEMENT OF FACTS : (ATTACHED)

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GROUNDS OF APPEAL :

A T T A C H E D

Satish Modi
Signed
(Appellant)

FORM OF VERIFICATION

Satish Modi CPA Holder of Saham Modi

I, ... the appellant, do hereby declare that what is stated above is true to the best of my information and belief.

Place... **Hyderabad**

Date... **29/10-92**

Signature... *Satish Modi*

Status of Appellant... **Individual CPA Holder of Saham Modi**

- NOTES :—(1) The form of appeal, grounds of appeal and the form of verification appended thereto shall be signed by a person in accordance with the provisions of section 15A of the Wealth-tax Act, 1957.
- (2) The memorandum of appeal, statement of facts and the grounds of appeal must be in duplicate and should be accompanied by a copy of the order appealed against and the notice of demand in original, if any.
- (3) Delete the inappropriate words.
- (4) *The particulars will be filled in, in the office of the Deputy Commissioner (Appeals)/ Commissioner (Appeals).
- (5) †If the space provided herein is insufficient, separate enclosures may be used for the purpose.
- (6) **If appeals are pending in relation to more than one assessment year, separate particulars in respect of each assessment year may be given.

STATEMENT OF FACTS

The assessee is a minor and is one of the beneficiary in a private determined trust M/s M & M Associates. Notice u/s 17(1) dated 27-03-1989 was served on 15-06-1989 for A.Y.1980-81 to 1989-90. The assessee had already filed Return of Wealth and the notice u/s 17(1) was issued with a view to assess the beneficial interest of the assessee in M/s M & M Associates .

No Return of Wealth was filed in response to nitice u/s 17(1). However, a letter dated 26-03-1992 explaining the reasons for non-inclusion of assesee's interest in M/s M & M Associates in the total wealth as returned earlier was submitted to A.C.1(2)Hyd. A copy of the letter is enclosed herewith.

Non filing of return in response to notice u/s 17(1) was due to mis-understanding with the old auditor and was beyond assessee's control and was not intentional.

The wealth assessed on ex-parte assessment is the same wealth as assessed earlier in response to Return of Wealth filed voluntarily. There is no additional demand of tax.

GROUND OF APPEAL

1. The Assistant Commissioner has failed to appreciate that there was a reasonable cause for non-filing of return in response to notice u/s 17(1)
2. The Assistant Commissioner has failed to appreciate the fact that the wealth assessed on ex-parte assessment is the same wealth as assessed earlier as per Return of Wealth filed voluntarily.
3. Any other ground or grounds, that may be submitted at the time of hearing.


APPELLANT

Proceedings of the Assistant Commissioner of Wealthtax, Cir.1(2), Hyd

Mrs.S. Narasamma
Asst. Commissioner of W.T.
Cir.1(2), Hyderabad.

GIR, NO.S.739

dated: 25.9.1992

Wealthtax assessment - Asst. year 1987-88
Shri Soham S. Modi, 1.10.72/2/3, Begumpet
Hyderabad - Levy of penalty u/s 18(1) (a)
of the W.T. Act - Order passed .

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O R D E R

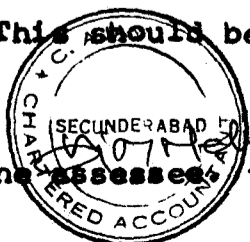
A notice u/s 17(1) was issued to the assessee on 27.3.89 and served on the assessee on 15.6.89. But there was no response since the assessee has not filed any return of income. The assessment was however completed exparte on 31.3.92 basing on the information available on record. While doing so, penalty proceedings were initiated u/s 18(1)(a). A penalty notice was therefore issued to the assessee asking him as to why penalty should not be levied for non-compliance of the notice issued u/s 17(1). In response to the said notice, the assessee filed his explanation stating that - due to certain mis-understanding with the previous auditor, a new auditor was appointed. The entire back records were being maintained with the previous auditor. The new auditor was not aware of the receipt of the notice and he could not fully appraised of the pending matters since the entire back records were being with the previous auditor. Non-filing of returns in response to notice u/s 17(1) was brought to the knowledge of the new auditor only at the fag end of March'92. Due to his prior commitments, return of wealth in the last moment could not be prepared and filed. The failure to file the return in response to notice u/s 17(1) was due to above reasons, which were beyond his control and was not intentitonal. The assessee requested to drop the penalty proceedings.

I am not satisfied with the explanation offered. Misunderstanding with the previous auditor is not a real reason which is beyong his control by which he was prevented him to file the return. It is the assessee's responsibility to respond to any notice under the Wealthtax Act but not the auditor to file return in response to notice u/s 17(1). I am therefore convinced that the assessee was not prevented by sufficient cause in not filing the return of income. I, therefore, levy a penalty of Rs. 245/- u/s 18(1)(a) for the above default.

This should be paid as per challan enclosed.

CERTIFIED TRUE COPY.

Copy to the assessee.



(S. Narasamma)
Asst. Commissioner of W.T.
Cir.1(2), Hyderabad.

25/9/92

26/03/92

From
Soham Modi
(per father & natural guardian)
Beneficiary in M/s.M&M Associates,
1-10-72/2/3, Begumpet,
Hyderabad - 500 016.

To
Assistant Commissioner of Wealth Tax,
Circle 1(2)/HYD
Hyderabad.

Sir,

Sub: Notice U/s 17(1) - filing of Wealth
Tax Returns - own - Asst.Year 1980-81
to 1988-89 - Reg.

- - -

In connection with the above matter it is submitted
as under.

1. The above notice is received as a beneficiary in
M/s.M & M Associates.
2. M/s.M&M Associates is a private family trust evidenced
by Deed of Trust dated 31.03.1981. The trust has adopted
its previous year beginning from August and ending on July
every year. The first previous year of the trust is for
a period from 31.03.81 to 31.07.1981. The first Assessment
year for the Trust is therefore 1982-83.
3. Wealth Tax Returns for Asst.Years 1980-81 to 1988-89 are
already filed and the assessments are also completed.
4. As per Balance Sheet of M/s.M & M Associates, the trust
has a negative wealth. Further the trust is an accumulative
trust wherein the share of the beneficiary is to be
accumulated till he attains majority.
5. The share of assessee is negative wealth of M/s.M & M
Associates is therefore not included in the Wealth Tax
returns.
6. The net wealth of M/s. M & M Associates for AY 1983-84
to 1989-90 is negative and the share of the assessee is
also negative.

Yours faithfully,

Satish Modi

(SATISH MODI)
(Father & Guardian)