Karnataka High Court Cwt vs Chikymagalur Club on 25 August, 2005 Equivalent citations: (2005) 197 CTR Kar 609 Author: H Dattu JUDGMENT H.L. Dattu, J. Since the parties in these reference proceedings are common, and since the issues involved are inter-related, both these cases are heard together and disposed of by this common order. 2. Facts in Income-tax Referred Case No. 120/1998 (Old TRC Nos. 120 123/1998) are as under -. 2. Facts in Income-tax Referred Case No. 120/1998 (Old TRC Nos. 120 123/1998) are as under -. The assessee is a club registered under the provisions of Karnataka Societies Registration Act, 1960. For the assessment years 1980-81, 1981-82, 1982-83 and 1983-84, the assessee-club had filed the return of wealth in the status of AOP declaring net wealth of Rs. 'nil'. Rejecting the claim made in the returns filed, the Wealth Tax Officer had assessed the wealth of the assessee in the status of individual and charged wealth-tax, under the provisions of the Wealth Tax Act, 1957 ('Act' hereinafter referred to as). 3. In the appeals filed against these assessment orders, it was the stand of the assessee-club that it is an AOP and not liable for payment of wealth-tax. Reliance was placed on the decision of the Tribunal for the earlier assessment years in the assessee's own case, wherein it was held that it was not liable to wealth-tax in view of the language employed in the charging provision, namely, section 3 of the Act. The first appellate authority has allowed the assessee's appeals for the assessment year 1980-81 and insofar as assessment years 1981-82, 1982-83 and 1983-84 are concerned, keeping in view the provisions of section 21AA of the Act, which has been inserted in Wealth Tax Act by Finance Act, 1981, with effect from 1-4-1981, has noticed in his order that : 3. In the appeals filed against these assessment orders, it was the stand of the assessee-club that it is an AOP and not liable for payment of wealth-tax. Reliance was placed on the decision of the Tribunal for the earlier assessment years in the assessee's own case, wherein it was held that it was not liable to wealth-tax in view of the language employed in the charging provision, namely, section 3 of the Act. The first appellate authority has allowed the assessee's appeals for the assessment year 1980-81 and insofar as assessment years 1981-82, 1982-83 and 1983-84 are concerned, keeping in view the provisions of section 21AA of the Act, which has been inserted in Wealth Tax Act by Finance Act, 1981, with effect from 1-4-1981, has noticed in his order that : "4. Assessment years. 1981-82 to 1983-84 : A new section 21AA was inserted in the Wealth Tax Act by the Finance Act, 1981, with effect from 1-4-1981. Subsection (1) of section 21AA provides that where assets chargeable to wealth-tax are held by an AOP (other than a company or co-operative society) and the individual shares of the members of the association in the income or assets or both are indeterminate or unknown, wealth-tax shall be levied and recovered from such association in the same manner and to the same extent as an individual, citizen and resident in India, at the rate prescribed. 5. Admittedly, the appellant is an AOP and the members are owners of the assets of the association and their shares are indeterminate as on the respective valuation dates. The provisions of section 21AA are squarely applicable in the instant case. In this connection, it is worthwhile referring to the memorandum explaining the relevant provisions in the Finance Bill, 1981 : 'Under the Wealth Tax Act, 1957,

individuals and HUF are taxable entities. An AOP is not charged to wealth-tax on its net wealth. Where an individual or an HUF is a member of the AOP, the value of the interest of such member is determined in accordance with the rules and included in the net. wealth of the members. It has come to the notice of the Government that some taxpayers are increasingly resorting to the creation of AOPs without defining the shares Pf the members with a view to avoiding proper tax liability. The modus operandi in such cases is that a taxpayer with large assets creates a number of AOPs without specifying the shares of its members. In such cases, no part of the assets of the association is liable to be taxed in the hands of its members as their shares are indeterminate or unknown and, as a result, the taxpayers pay only a small fraction of the wealth-tax that would otherwise be due from him. In order to counter such attempts at tax avoidance through the creation of multiple AOPs without defining the shares of members, the Bill proposes to make provision in the Wealth Tax Act, in order to provide that such associations will be liable to tax in the like manner and to the same extent as an individual citizen of india resident in India at the rates specified in Part I of Schedule I or at the rate of 3 per cent, whichever course would be more beneficial to the revenue. For this purpose, the shares of the members of the AOP will be regarded as indeterminate or unknown if such shares are not ascertainable at time of the formation of association or at any time thereafter.' 6, The decision of the Tribunal for the assessment year 1979-80 is not applicable for the assessment year 1981- 82 onwards in view of the change in law. The Tribunal's decision as rendered. on, the interpretation of the word 'individual' occurring in section 3. There is, therefore, no doubt regarding the liability of the appellant for wealth-tax for the assessment years 1981-82 to 1983-84. 7. The appeal for assessment year 1980-81 is allowed and the 'appeals' for the assessment year 1981-82, 1982-83 and 1983-84 are accordingly dismissed." 4. On further appeals by the assessee-club against the aforesaid order passed by the first appellate authority, the Tribunal has allowed the appeals, on the ground that the assessee is an entity not susceptible to be assessed for its relying on the decision of the Karnataka High Court in the case of CWT v. Bowning Institute Wealth (1992) 194 1TR 287 (Kar). 4. On further appeals by the assessee-club against the aforesaid order passed by the first appellate authority, the Tribunal has allowed the appeals, on the ground that the assessee is an entity not susceptible to be assessed for its relying on the decision of the Karnataka High Court in the case of CWT v. Bowning Institute Wealth (1992) 194 1TR 287 (Kar). 5. The Tribunal, pursuant to the directions issued by this court in C.P. Nos. 406 to 409/1993, dated 14-2-1994 has referred the following question of law arising out of the orders passed in WTA Nos. 498 to 500/1998 and WTA No. 553/1988, dated 29-11-1991 pertaining to assessment years 1980-81, 1981-82, 1982-83 and 1983-84 for our consideration and opinion. The question of law is as under 5. The Tribunal, pursuant to the directions issued by this court in C.P. Nos. 406 to 409/1993, dated 14-2-1994 has referred the following question of law arising out of the orders passed in WTA Nos. 498 to 500/1998 and WTA No. 553/1988, dated 29-11-1991 pertaining to assessment years 1980-81, 1981-82, 1982-83 and 1983-84 for our consideration and opinion. The question of law is as under

"Whether in the facts and circumstances, of the case. the Tribunal is right in law in confirming the order of the CWT(A) who held that the assessee cannot be treated as an 'entity'. assessable to wealth-tax ?" 6. The facts in TRC Nos. 1/1998 and 2/1998 are as under : The assessee-club had not filed the return of wealth under the provisions of Wealth Tax Act, 1957, within the time provided for filing of such return. Subsequently, a notice came to be issued by the Wealth Tax Officer, inter alia, directing the assessee to file its wealth-tax returns for the accounting periods 31-12-1980 and 31-12-1981. Pursuant to the notice so issued, the assessee-club filed its wealth-tax returns only on 31-3-1980. The Wealth Tax Officer, after passing the assessment orders for the period in question, had issued a show-cause notice to the assessee-club under section 18(1)(a) of the Act, inter alia, directing the assessee-club to show cause, why penalty should not be levied for filing wealth-tax returns belatedly. In reply to the said show-cause notice, the assessee-club had pleaded that it was under a bona fide impression that the wealth-tax was not payable by a club registered under the provisions of Karnataka Societies of Registration Act, 1960, in view of several decisions of the High Courts and the orders passed by the Tribunal in assessee's own case for the previous years. The Wealth Tax Officer rejecting the cause shown by the assessee-club for filing the returns belatedly, had levied penalties in a sum of Rs. 58,503 and Rs. 56,592 for the assessment year 1981-82 and 1982-83, respectively. 7. The assessee-club aggrieved by the orders so passed, had filed appeals before the first appellate authority. In the appeals, it was not disputed regarding belated filing of wealth-tax returns, but it was its specific stand that it had sufficient cause for filing the wealth-tax returns belatedly, i.e., only after issuance of a notice by the Wealth Tax Officer, as it was under a bona fide belief that the returns under Wealth Tax Act need not be filed, as it is a club registered under the Karnataka Societies Registration Act, 1960, and the provisions of Wealth Tax Act would not apply to a club. The first appellate authority while allowing the appeals filed by the assessee, in its order has observed that the cause shown by the assessee is not only reasonable but also sufficient and, therefore, the Wealth Tax Officer was not justified in levying penalty, on the ground that the returns under Wealth Tax Act was filed belatedly. The findings and the conclusion reached by the first appellate authority is as under 7. The assessee-club aggrieved by the orders so passed, had filed appeals before the first appellate authority. In the appeals, it was not disputed regarding belated filing of wealth-tax returns, but it was its specific stand that it had sufficient cause for filing the wealth-tax returns belatedly, i.e., only after issuance of a notice by the Wealth Tax Officer, as it was under a bona fide belief that the returns under Wealth Tax Act need not be filed, as it is a club registered under the Karnataka Societies Registration Act, 1960, and the provisions of Wealth Tax Act would not apply to a club. The first appellate authority while allowing the appeals filed by the assessee, in its order has observed that the cause shown by the assessee is not only reasonable but also sufficient and, therefore, the Wealth Tax Officer was not justified in levying penalty, on the ground that the returns under Wealth Tax Act was filed belatedly. The findings and the conclusion reached by the first appellate authority is as under "4. The only

question for determination here would be whether the appellant had sufficient or reasonable cause to believe that it was under any obligation to file the returns of wealth. Prior to 1-4-1981, there were several decisions at clubs, which were AOPs, could not be treated as a taxable units; Gujarat High Court in Orient Club v. Wealth Tax Officer (1980) 123 ITR 395 Guj), Bombay High Court in Orient Club v. CWT (1982) 136 ITR 697 (Bom) and Willingdon Sports Club v. C.B. Patil, Addl, WTO & Anr. (1982) 137 ITR 83 (Bom). The Bangalore Bench of the Tribunal had also held similarly in the appellant's own case as well as in the case of other clubs, etc. Which effect from 1-4-1981, section 21AA was introduced, but there is some doubt as to whether the provisions of section 21AA would apply to a members club where the members have a right to enjoy and use the club assets, but little else. For example, there would be no right to alienation. This view is also supported by the Tribunal, Hyderabad Bench, in Rajendra Prasad Memorial Club v. Wealth Tax Officer (1989) 43 Taxrnan 153 (Hyd)(Mag), In these circumstances, it cannot be said that the appellant club did not have any sufficient cause to believe that it was liable to wealth-tax. The omission to file the returns of wealth voluntarily and the filing of the returns belatedly after issue of notice is, therefore, with sufficient cause. 5. In these circumstances, I hold that the penalties are not leviable and the penalties levied are, therefore, cancelled." 8. The appeals filed by the revenue against the orders passed by the first appellate authority is rejected by the Tribunal, on the sole ground that in the quantum appeals filed by the assessee for the same assessment years, the Tribunal has held that the provisions of section 21AA of the Act would not apply to a mutual club like the assessee and therefore, the assessment orders are not sustainable as the assessee is not an entity susceptible for wealth-tax under the Act, and therefore, no penalty for belated filing of the returns can be imposed on such assessee. To arrive at the aforesaid conclusion, it has placed reliance on the decision of the Andhra Pradesh High Court in the case of CWT v. George Club (1991) 191 ITR 368 (AP) and the decision of the Karnataka High Court in the case of CWT v. Bowring Institute (supra). 8. The appeals filed by the revenue against the orders passed by the first appellate authority is rejected by the Tribunal, on the sole ground that in the quantum appeals filed by the assessee for the same assessment years, the Tribunal has held that the provisions of section 21AA of the Act would not apply to a mutual club like the assessee and therefore, the assessment orders are not sustainable as the assessee is not an entity susceptible for wealth-tax under the Act, and therefore, no penalty for belated filing of the returns can be imposed on such assessee. To arrive at the aforesaid conclusion, it has placed reliance on the decision of the Andhra Pradesh High Court in the case of CWT v. George Club (1991) 191 ITR 368 (AP) and the decision of the Karnataka High Court in the case of CWT v. Bowring Institute (supra). 9. At the instance of the revenue, the Tribunal has referred the following question of law for our consideration and opinion arising out of the orders passed by the Tribunal in Wealth Tax Act Nos. 500 and 501/1990, dated 9-5-1996. The question is as under: 9. At the instance of the revenue, the Tribunal has referred the following question of law for our consideration and opinion arising out of the orders passed by the Tribunal in

Wealth Tax Act Nos. 500 and 501/1990, dated 9-5-1996. The question is as under: "Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that when the assessee is not an entity for assessment, it cannot be an entity for levy of penalty, though legally notice have been issued to call for the return and there was delay in filing the return ?" Re-issues in TRC No. 120/1998 (Old TRC Nos. 120-123/1998): 10. Several High Courts and the Tribunals have taken different view on the question whether a club registered under the provisions of Karnataka Societies Registration Act is exigible to tax under the provisions of the Wealth Tax Act, but in our view, for the present, the issue is now settled by the pronouncement of the Supreme Court in the case of CWT v. Ellis Bridge Gymkhana, Etc. Etc (1998) 229 ITR 1 (SC), wherein it is held that 'club is not assessable to wealth-tax in assessment years 1970-71 to 1977-78 as an AOPs, and while saying so, the court has observed that 'the position has been placed beyond doubt by the insertion of section 21AA in the Wealth Tax Act itself'. 10. Several High Courts and the Tribunals have taken different view on the question whether a club registered under the provisions of Karnataka Societies Registration Act is exigible to tax under the provisions of the Wealth Tax Act, but in our view, for the present, the issue is now settled by the pronouncement of the Supreme Court in the case of CWT v. Ellis Bridge Gymkhana, Etc. Etc (1998) 229 ITR 1 (SC), wherein it is held that 'club is not assessable to wealth-tax in assessment years 1970-71 to 1977-78 as an AOPs, and while saying so, the court has observed that 'the position has been placed beyond doubt by the insertion of section 21AA in the Wealth Tax Act itself'. 11. The facts in the aforesaid decision was that, the assessee was a club and the assessment years involved were 1970-71 to 1977-78. Pursuant to a notice issued by the Wealth Tax Officer, the assessee-club had filed its return of wealth-tax for aforesaid assessment years, but had contended that it was not liable to be assessed under the Wealth Tax Act, 1957. The Wealth Tax Officer had rejected the claim of the assessee. The assessee was successful before an the forums, including before the High Court, where the court has confirmed the orders passed by the Tribunal in holding that the assessee is not liable to wealth-tax under the Wealth Tax Act, 1957, for the assessment years in question. The Apex Court while affirming the view expressed by the Gujarat High Court has observed : 11. The facts in the aforesaid decision was that, the assessee was a club and the assessment years involved were 1970-71 to 1977-78. Pursuant to a notice issued by the Wealth Tax Officer, the assessee-club had filed its return of wealth-tax for aforesaid assessment years, but had contended that it was not liable to be assessed under the Wealth Tax Act, 1957. The Wealth Tax Officer had rejected the claim of the assessee. The assessee was successful before an the forums, including before the High Court, where the court has confirmed the orders passed by the Tribunal in holding that the assessee is not liable to wealth-tax under the Wealth Tax Act, 1957, for the assessment years in question. The Apex Court while affirming the view expressed by the Gujarat High Court has observed : "All these provisions go to show that the Wealth Tax Act has been drafted on thd same lines as the Indian Income Tax Act, 1922. There is great similarity of wording between the various provisions of the Wealth Tax

Act and the corresponding provisions of the Indian Income Tax Act, 1922. But in the case of the charging section 3 of the Wealth Tax Act, the phraseology of the charging section 3 of the Indian Income Tax Act, 1922, has not been adopted. Unlike section 3 of the Income Tax Act, section 3 of the Wealth Tax Act does not mention a firm or an AOP or a BOI as taxable units of assessment. The position has been placed beyond doubt by the insertion of section 21AA in the Wealth Tax Act itself. This amendment was effected by the Finance Act, 1981, with effect from 1-4-1981. It provides for assessment of AOP in certain special cases and not otherwise." 12. The Apex Court after concluding that the club is not assessable to wealth-tax in assessment years 1970-71 to 1977-78 as an AOP, has made reference to insertion of section 21AA in the Wealth Tax Act by the Finance Act, 1981, with effect from 1-4-1981, which provides for assessment of AOP in certain specified cases and not otherwise. While saying so, the court has observed that "an AOP cannot be taxed at all under section 3 of the Act. That is why an amendment is made by the Finance Act, 1981, whereby section 21AA of the Act was inserted to bring to tax the net wealth of an AOP where individual shares of the members of the association were unknown or indeterminate". In. this regard, the court has observed 12. The Apex Court after concluding that the club is not assessable to wealth-tax in assessment years 1970-71 to 1977-78 as an AOP, has made reference to insertion of section 21AA in the Wealth Tax Act by the Finance Act, 1981, with effect from 1-4-1981, which provides for assessment of AOP in certain specified cases and not otherwise. While saying so, the court has observed that "an AOP cannot be taxed at all under section 3 of the Act. That is why an amendment is made by the Finance Act, 1981, whereby section 21AA of the Act was inserted to bring to tax the net wealth of an AOP where individual shares of the members of the association were unknown or indeterminate". In. this regard, the court has observed "It will he seen that assessment as an AOP can be made only individual shares of the members of the association in the income or assets or both the association on the date of its formation or any time thereafter are indeterminate or unknown. It is only in such an eventuality that an assessment can be made on an AOP, otherwise not. Sub-section (2) of section 21AA deals with cases of such associations as mentioned in sub-section (1). That means only AOP in which individual shares of the members were unknown or indeterminate can be subjected to wealth-tax. Sub-section (3) also deals with AOP referred to in sub-section (1). Sub-sections (4) and (5) deal with some consequences which will follow the members of an AOP spoken of in sub-section (1) in the case of discontinuance or dissolution." 13. In reference proceedings, namely, TRC No. 120/1 998 (Old TRC Nos. 120123/1998), we are primarily concerned with assessment years, namely, 1981-82, 1982-83 and 1983-84. In fact, for the assessment year 1980-81, the first appellate authority has given the relief to the assessee by cancelling the assessment order passed by the Wealth Tax Officer under section 16(3) of the Wealth Tax Act, treating the status of the assessee as an 'individual'. However, he has confirmed the orders of assessment passed for the assessment years 1981-82 to 1983-~4, keeping in view the amendment effected to Wealth Tax Act by t 'he Finance Act, 1981, by which amendment

section 21AA is inserted with effect from Ist April, 1981, which is applicable for and from the assessment year 1981-82. Now that the scope of section 21AA of the Act has been explained by the Apex Court in Ellis Bridge Gymkhana Club's case (supra), we need not dilate much on the scope and interpretation of the said section. It would be suffice to notice that assessment as an AOP can be made only when the individual shares of the members of the association in the income or assets or both of the association on the date of its formation or any time thereafter are indeterminate or unknown can be subjected to wealth-tax. In the present case, the assessee is a club registered under the provisions of the Karnataka Societies Registration Act and had declared 'nil' wealth and had claimed that it is not susceptible to the provision of Wealth Tax Act, since it is only an AOP providing creation facilities to its members. This claim, in our view, is rightly rejected by both the assessing authority as well as by the first appellate authority on the ground that the assessee is an AOP and the members are the owners of the assets and the individual shares of the members in the income or assets or both of the association on the date of formation or any time thereafter are indeterminate or unknown and accordingly, has subjected the assessee to wealth-tax. The findings and the conclusion reached both by the assessing authority and the first appellate authority is in consonance with the observations made by the Apex Court in the case of Ellis Bridge Gymkhana's case (supra), though the said decision was not available, when they passed their orders of assessments and its confirmation by the first appellate authority in the appeals filed by the assessee. In our opinion, the contrary view expressed by the Tribunal cannot be accepted for the assessment years 1981-82 to 1983-84. Accordingly, we answer the question of law referred to us for our opinion that the assessee is not exigible to wealth-tax for the assessment year 1980-81 and is exigible for wealth-tax for and from the assessment years 1981-82 to 1983-84. 13. In reference proceedings, namely, TRC No. 120/1 998 (Old TRC Nos. 120123/1998), we are primarily concerned with assessment years, namely, 1981-82, 1982-83 and 1983-84. In fact, for the assessment year 1980-81, the first appellate authority has given the relief to the assessee by cancelling the assessment order passed by the Wealth Tax Officer under section 16(3) of the Wealth Tax Act, treating the status of the assessee as an 'individual'. However, he has confirmed the orders of assessment passed for the assessment years 1981-82 to 1983-~4, keeping in view the amendment effected to Wealth Tax Act by t 'he Finance Act, 1981, by which amendment section 21AA is inserted with effect from Ist April, 1981, which is applicable for and from the assessment year 1981-82. Now that the scope of section 21AA of the Act has been explained by the Apex Court in Ellis Bridge Gymkhana Club's case (supra), we need not dilate much on the scope and interpretation of the said section. It would be suffice to notice that assessment as an AOP can be made only when the individual shares of the members of the association in the income or assets or both of the association on the date of its formation or any time thereafter are indeterminate or unknown can be subjected to wealth-tax. In the present case, the assessee is a club registered under the provisions of the Karnataka Societies Registration Act and had declared 'nil' wealth and had claimed that it is not susceptible to

the provision of Wealth Tax Act, since it is only an AOP providing creation facilities to its members. This claim, in our view, is rightly rejected by both the assessing authority as well as by the first appellate authority on the ground that the assessee is an AOP and the members are the owners of the assets and the individual shares of the members in the income or assets or both of the association on the date of formation or any time thereafter are indeterminate or unknown and accordingly, has subjected the assessee to wealth-tax. The findings and the conclusion reached both by the assessing authority and the first appellate authority is in consonance with the observations made by the Apex Court in the case of Ellis Bridge Gymkhana's case (supra), though the said decision was not available, when they passed their orders of assessments and its confirmation by the first appellate authority in the appeals filed by the assessee. In our opinion, the contrary view expressed by the Tribunal cannot be accepted for the assessment years 1981-82 to 1983-84. Accordingly, we answer the question of law referred to us for our opinion that the assessee is not exigible to wealth-tax for the assessment year 1980-81 and is exigible for wealth-tax for and from the assessment years 1981-82 to 1983-84. Re-issues in TRC Nos. 1/1998 and 2/1998: 14. Now coming to the question of law referred to in TRC Nos. 1/1998 and 2/1998, firstly, the provisions of section 18(1)(a) as it existed during the relevant assessment years requires to be noticed. Omitting what is not necessary for the purpose of this case, the said provision is extracted and it reads as under 14. Now coming to the question of law referred to in TRC Nos. 1/1998 and 2/1998, firstly, the provisions of section 18(1)(a) as it existed during the relevant assessment years requires to be noticed. Omitting what is not necessary for the purpose of this case, the said provision is extracted and it reads as under "Section 18. Penalty for concealment:-(1) If the Wealth Tax Officer, Appellate Assistant Commissioner, Commissioner of Wealth Tax or Tribunal in the course of any proceedings under this Act, is satisfied that any person (a) has without reasonable cause failed to furnish the return of his net wealth which is required to furnish under sub-section (1) or sub-section (2) of section 14 or section 17 or has without reasonable cause failed to furnish it within the time allowed and in the manner required or (b) xxxxxxxxx (c) xxxxxxxxx he or it may, by order in writing, direct that such person, shall pay by way of penalty (i) in the case referred to clause (a), in' addition to the amount of wealth-tax payable by him, a sum not exceeding one and a half times the amount of such tax, and (ii) xxxxxxxx (1) No order shall be made under sub-section (1) unless the person concerned has been given a reasonable opportunity of being heard." 15. The Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, apart from others, made the following amendments with effect from 10-9-1986 : "(1) The words 'without reasonable clause' wherever they occurred, were omitted. 16. The Direct Tax Laws (Amendment) Act, 1987, apart from making changes in the designations with effect from 1-4-1988, substituted this section by a new section with effect from 1-4-1989, but that substitution was deleted and instead, certain amendments were made by the Direct Tax Laws (Amendment) Act, 1989, with effect from 1-4-1989 and thereby clauses (a) and (i) of the original section were omitted. 16. The Direct Tax Laws (Amendment) Act, 1987, apart from

making changes in the designations with effect from 1-4-1988, substituted this section by a new section with effect from 1-4-1989, but that substitution was deleted and instead, certain amendments were made by the Direct Tax Laws (Amendment) Act, 1989, with effect from 1-4-1989 and thereby clauses (a) and (i) of the original section were omitted. 17. A brief analysis of the section as it existed during the relevant assessment year would indicate, that a Wealth Tax Officer, Appellate Assistant Commissioner, Commissioner of Wealth Tax or Tribunal, in the course of proceedings under the Wealth Tax Act, may impose a penalty for delayed filing or nonfiling of return (till 31-3-1989) on any person, who has without reasonable cause has committed any of the following defaults, namely : 17. A brief analysis of the section as it existed during the relevant assessment year would indicate, that a Wealth Tax Officer, Appellate Assistant Commissioner, Commissioner of Wealth Tax or Tribunal, in the course of proceedings under the Wealth Tax Act, may impose a penalty for delayed filing or nonfiling of return (till 31-3-1989) on any person, who has without reasonable cause has committed any of the following defaults, namely : (a) failure to furnish return required to be furnished under section 14(1) or by a notice under section 14(2) or section 17; (b) failure to furnish return within the time allowed and in the manner required by section 14(l) or by notice under section 14(2) or section 17. 18. A careful reading of the section would amply demonstrate that penalty could not be imposed, if there existed a sufficient cause that an assessee has failed to furnish return within the time stipulated under section 14 of the Act. If sufficient and reasonable cause is pleaded by any person, the concerned authority under the Act is required to consider the same and pass a speaking order. 18. A careful reading of the section would amply demonstrate that penalty could not be imposed, if there existed a sufficient cause that an assessee has failed to furnish return within the time stipulated under section 14 of the Act. If sufficient and reasonable cause is pleaded by any person, the concerned authority under the Act is required to consider the same and pass a speaking order. 19. The reference proceedings in TRC Nos. 1/1998 and 2/1998 pertains to the assessment years 1981-1-82 and 1982-83. The assessee is a club registered under the provisions of the Karnataka Societies Registration Act. It had not filed the return of wealth under the Wealth Tax Act, 1957, within the time stipulated for filing of such return. Subsequently, a notice had been issued by the Wealth Tax Officer inter alia directing the assessee to file its wealth-tax returns for the accounting period 31-12-1980 and 31-12-1981. Pursuant to the notice so issued, the assessee had filed its wealth-tax return. The Wealth Tax Officer after completing the assessments for the aforesaid period, had issued a show-cause notice to the assessee, inter alia, directing the assessee to show cause why penalty should not, be, levied for filing wealth-tax returns belatedly. In the reply filed to the show-cause notice, the assessee had brought to the notice of the Wealth Tax Officer that it was under a bona fide impression that wealth-tax was not payable by a club, which is a society registered under the Karnataka Societies Registration Act, in view of the law declared by several High Courts and also the orders passed by the Tribunal in the assessee's own case for the earlier assessment years. This explanation is rejected by the Wealth Tax Officer

while passing the order levying penalty. However, the assessee has succeeded in persuading both the first appellate authority and the Tribunal to accept its explanation for belated filing of the return under the Act. The question now before us is, whether the Tribunal is justified in setting aside the orders passed by the Wealth Tax Officer in levying penalty under section 18(1)(a) of the Act for belated filing of the wealth-tax returns for the assessment year 1981-82 and 1982-83 ? 19. The reference proceedings in TRC Nos. 1/1998 and 2/1998 pertains to the assessment years 1981-1-82 and 1982-83. The assessee is a club registered under the provisions of the Karnataka Societies Registration Act. It had not filed the return of wealth under the Wealth Tax Act, 1957, within the time stipulated for filing of such return. Subsequently, a notice had been issued by the Wealth Tax Officer inter alia directing the assessee to file its wealth-tax returns for the accounting period 31-12-1980 and 31-12-1981. Pursuant to the notice so issued, the assessee had filed its wealth-tax return. The Wealth Tax Officer after completing the assessments for the aforesaid period, had issued a show-cause notice to the assessee, inter alia, directing the assessee to show cause why penalty should not, be, levied for filing wealth-tax returns belatedly. In the reply filed to the show-cause notice, the assessee had brought to the notice of the Wealth Tax Officer that it was under a bona fide impression that wealth-tax was not payable by a club, which is a society registered under the Karnataka Societies Registration Act, in view of the law declared by several High Courts and also the orders passed by the Tribunal in the assessee's own case for the earlier assessment years. This explanation is rejected by the Wealth Tax Officer while passing the order levying penalty. However, the assessee has succeeded in persuading both the first appellate authority and the Tribunal to accept its explanation for belated filing of the return under the Act. The question now before us is, whether the Tribunal is justified in setting aside the orders passed by the Wealth Tax Officer in levying penalty under section 18(1)(a) of the Act for belated filing of the wealth-tax returns for the assessment year 1981-82 and 1982-83 ? 20. The omission to file returns within the time stipulated in the Act would attract penalty, but the assessee could still prove that because of various factors and reasons, there was failure on his/its part for non-filing of the returns within the time prescribed under the Act. A"cause" could be said a reasonable cause, if it is not actuated by bad faith, or false grounds. 20. The omission to file returns within the time stipulated in the Act would attract penalty, but the assessee could still prove that because of various factors and reasons, there was failure on his/its part for non-filing of the returns within the time prescribed under the Act. A "cause" could be said a reasonable cause, if it is not actuated by bad faith, or false grounds. 21. In the present case, the assessee's explanation in the reply filed to the show-cause notice issued under section 18(1)(a) of the Act by the Wealth Tax Officer is that, a club. registered under the provision of the Karnataka Societies Registration Act is an AOP and, therefore, not susceptible to the wealth-tax. This is the bona fide belief of the assessee. This belief was not without any reason. Various High Courts have held since club is an AOP, they are not taxable under the provisions of the Wealth Tax Act in view of the language employed in the charging provisions of Wealth Tax Act,

1957. Yet another reason is, in the assessee's own case, the Tribunal for the previous assessment years had taken the view that the assessee is not exigible to wealth-tax. These circumstances, in our view, is sufficient for any person to have a bona fide impression that wealth-tax was not payable by a club under the provisions of the Wealth Tax Act, in spite of insertion of section 21AA in the Act with effect from 1-4-1981. The explanation for belated filing of returns is not only reasonable but also wholly satisfactory. 21. In the present case, the assessee's explanation in the reply filed to the show-cause notice issued under section 18(1)(a) of the Act by the Wealth Tax Officer is that, a club. registered under the provision of the Karnataka Societies Registration Act is an AOP and, therefore, not susceptible to the wealth-tax. This is the bona fide belief of the assessee. This belief was not without any reason. Various High Courts have held since club is an AOP, they are not taxable under the provisions of the Wealth Tax Act in view of the language employed in the charging provisions of Wealth Tax Act, 1957. Yet another reason is, in the assessee's own case, the Tribunal for the previous assessment years had taken the view that the assessee is not exigible to wealth-tax. These circumstances, in our view, is sufficient for any person to have a bona fide impression that wealth-tax was not payable by a club under the provisions of the Wealth Tax Act, in spite of insertion of section 21AA in the Act with effect from 1-4-1981. The explanation for belated filing of returns is not only reasonable but also wholly satisfactory. 22. The Tribunal while rejecting the revenue's appeals against the orders passed by the Commissioner (Appeals), Bangalore, has observed that when the assessee is not an entity for assessment, it cannot be an entity for levy of penalty. The conclusion of the Tribunal cannot be said either erroneous or perverse, for the reason, for the purpose of levy of penalty, an assessee must be an entity for assessment, otherwise no penalty proceedings are permissible under law. It is now well-settled legal position in law that it is only after completion of the assessment proceedings, penalty proceedings could be initiated by an authority under the Act. 22. The Tribunal while rejecting the revenue's appeals against the orders passed by the Commissioner (Appeals), Bangalore, has observed that when the assessee is not an entity for assessment, it cannot be an entity for levy of penalty. The conclusion of the Tribunal cannot be said either erroneous or perverse, for the reason, for the purpose of levy of penalty, an assessee must be an entity for assessment, otherwise no penalty proceedings are permissible under law. It is now well-settled legal position in law that it is only after completion of the assessment proceedings, penalty proceedings could be initiated by an authority under the Act. 23. In IT Referred Case No. 120/1998 (Old TRC Nos. 120-123/1998), we have taken the view, that, in view of section 21AA of the Act, the assessee-club is exigible to Wealth Tax Act. Therefore, the reasoning of the Tribunal to cancel the order passed by the Wealth Tax Officer in levying penalty may not be justified. However, for the reasons stated by us, we are of the view that the order passed by the Wealth Tax Officer in levying penalty for belated filing of the wealth-tax returns for the assessment years 1981-82 and 1982-83 cannot be sustained. Accordingly, we answer the question of law referred to us in the affirmative, i.e., in favour of the assessee and against the revenue. 23. In

IT Referred Case No. 120/1998 (Old TRC Nos. 120-123/1998), we have taken the view, that, in view of section 21AA of the Act, the assessee-club is exigible to Wealth Tax Act. Therefore, the reasoning of the Tribunal to cancel the order passed by the Wealth Tax Officer in levying penalty may not be justified. However, for the reasons stated by us, we are of the view that the order passed by the Wealth Tax Officer in levying penalty for belated filing of the wealth-tax returns for the assessment years 1981-82 and 1982-83 cannot be sustained. Accordingly, we answer the question of law referred to us in the affirmative, i.e., in favour of the assessee and against the revenue. 24. With these observations, these reference proceedings are disposed off. 24. With these observations, these reference proceedings are disposed off. Ordered accordingly.