
(1987) 12 KL CK 0020

In the High Court Of Kerala

Case No : Income-tax Reference No. 103 of 1982

Commissioner of Income Tax

APPELLANT

Vs

Smt. Ammini Varoo

RESPONDENT

Date of Decision : 04-12-1987

Acts Referred:

Income Tax Act, 1961 — Section 2(14)

Citation : (1988) 67 CTR 250 : (1988) 173 ITR 57

Hon'ble Judges : T. Kochu Thommen, J; K.P. Radhakrishna Menon, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant; G. Sivarajan, for the Respondent

Judgement

T. Kochu Thommen, J.—The following question has been, at the instance of the Revenue, referred to us by the Income Tax Appellate Tribunal, Cochin Bench :

" Whether, on the facts and in the circumstances of the case and on an interpretation of Section 2(14)(ii) of the Income-tax Act, 1961, the silver vessels would come within the mischief of "personal effects" ? "

2. During the year relevant to the assessment year 1976-77, the assessee sold about 240 items of silverware, including dinner plates of different sizes, goblets of different kinds, finger bowls, jugs and the like for a sum of Rs. 1,64,340. These articles had been purchased by her years earlier and their cost of acquisition in 1961 was determined by the Income Tax Officer at Rs. 29,880. The difference in value was treated by the Officer as long-term capital gains. The assessee's claim that they were personal effects and were, therefore, excluded from the definition of "capital asset" u/s 2(14) of the Income Tax Act, 1961, was rejected by the Officer. This finding was confirmed by the Commissioner of Income Tax (Appeals). The Tribunal, on further appeal by the assessee, accepted the contention that the articles were personal effects. The Tribunal stated :

" 2. ...On the other hand, it is pointed out that the articles in question here can be used on a day-to-day basis but because of the considerable value they were

not put to daily use so as to minimise the chances of its being lost on such daily use. Nevertheless the assessee had occasions to use these articles, during the period she possessed them on various occasions during the year like birthdays of her several children and also on such festival occasions like X "Mas, New Year and so on.

3.Nevertheless, taking into account the original outlay by the assessee, these articles should be considered to be intended by the assessee for her daily use, in the sense that they will be used on such occasions as are necessary.

5.These are articles of the nature of items to be used on the table at the time of meals. The Commissioner of Income Tax (Appeals) has pointed out that it consists of dinner plates, half plates, quarter plates, soup plates, finger bowls, glasses for water and wine, beer glasses, jugs and so on. By the very nature, they are capable of being put to use as and when they are required by the assessee. It is clear that the assessee has been putting them to use on such occasions when they could be put to use with advantage. These occasions have been enumerated on behalf of the assessee before us. We do not consider the fact that they have not been used every day as of any material significance.....They may have to be used only when the occasion requires the use of such large number of articles at the same time,The only way those articles could be put to use would be on occasions when there is a large gathering like feasts and so on. "

3. These are the facts found by the Tribunal. The question referred to us at the instance of the Revenue contains no challenge against these findings of fact.

4. Counsel for the Revenue, however, submits that the Tribunal has misdirected itself as to the legal principle laid down by the Supreme Court in deciding what is a personal effect. In H.H. Maharaja Rana Hemant Singhji, Dholpur Vs. Commissioner of Income Tax , Rajasthan, , the Supreme Court referred to personal effects as articles which are associated with the person in an intimate way. Such articles must be meant for personal use. They should be intended for normal, ordinary and common use. Citing with approval the observation of the Bombay High Court in G.S. Poddar Vs. Commissioner of Wealth Tax, Bombay City II, , the Supreme Court stated (pp. 65 and 66):

"It was further held in that case that the expression "intended for personal or household use" did not mean capable of being intended for personal or household use. It meant normally, commonly or ordinarily intended for personal or household use. This, in our opinion, is the true concept of the expression "personal use"."

5. Referring to this principle, counsel for the Revenue, with some justification, contends that the Tribunal misdirected itself in law. It is most unusual that a person should keep numerous silver plates, silver goblets and the like for personal or household use. These articles are, if at all, seldom ever used for personal or household purposes. But then whether in a given case they were so

used or normally, commonly or ordinarily intended to be so used is a question of fact, the finding of which, in the absence of a challenge, is not open to question in the present proceeding. Rightly or wrongly the Tribunal, to which the assessee's representative had enumerated the occasions on which these articles were used, accepted the assessee's claim that they were intended for personal or household use and were in fact so used on "various occasions" every year. The Tribunal's reference to "various occasions" implies that these articles were not only "capable of being intended for personal or household use", but were "normally, commonly or ordinarily intended" for such use, and were in fact so used on those occasions. On what evidence the Tribunal came to that conclusion, we do not know. Whether the Tribunal was justified in drawing that inference merely because the assessee's representative stated so, and whether that finding was perverse for want of reasonably acceptable evidence, is a matter on which we cannot express any view in the absence of a specific challenge. In the circumstances, the question must necessarily be answered, as we do, in the affirmative, that is, against the Revenue and in favour of the assessee.

6. We direct the parties to bear their respective costs in this tax referred case.

7. A copy of this judgment under the seal of the High Court and the signature of the Registrar shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.