

(1986) 07 RAJ CK 0033

In the Rajasthan High Court

Case No : Wealth-tax Reference No. 15 of 1975

Hanuman Mal Sekhani

APPELLANT

Vs

Commissioner of Wealth-tax

RESPONDENT

Date of Decision : 28-07-1986

Acts Referred:

Wealth Tax Act, 1957 — Section 4(1), 5(1)

Citation : (1986) 57 CTR 185 : (1987) 168 ITR 364

Hon'ble Judges : Dwarka Prasad, C.J.; Kanta Bhatnagar, J

Bench : Division Bench

Advocate : B.L. Prohit, for the Appellant; J.P. Joshi, for the Respondent

Judgement

Dwarka Prasad, C.J.—The question which arises for determination in this reference relates to the interpretation and application of Section 5(I)(viii) of the Wealth-tax Act, 1957.

2. The assessee is an individual who owned 3,505 tolas of gold ornaments prior to 1949 which were received by him from his father. The assessee sold 1,133 tolas of gold ornaments on various dates, retaining 2, 372 tolas of gold ornaments with him. When the question relating to the inclusion of the value of the said gold ornaments in the net wealth of the assessee arose in connection with his assessment to wealth-tax pertaining to the assessment year's 1959-60, 1962-63, 1963-64, 1964-65, 1965-66, 1967-68 and 1968-69, a plea was taken by the assessee that the said gold ornaments did not belong to him but they were the exclusive property of his wife, Smt. Pushpa Devi, to whom he had gifted the said gold ornaments in the year 1949 at the time of engagement with her. According to the assessee, the gift was made by him to his wife prior to the coming into force of the Wealth-tax Act, and so the value of the gold ornaments could not be included in his wealth u/s 4(1)(a)(i) of the Act. The Wealth-tax Officer did not accept the assessee's case of gift of the gold ornaments before his marriage and the value of the said ornaments was worked out at the rate of Rs. 145 per tola in the assessment order. Appeals preferred before the Appellate

Assistant Commissioner were dismissed. In the further appeals preferred by the assessee before the Income Tax Appellate Tribunal, a new plea was raised on his behalf that even if the gold ornaments are includible in the net wealth of the assessee u/s 4(1)(a)(i) of the Act, yet they were excluded on account of the exemption provided by Clause (viii) of Sub-section (1) of Section 5 of the Act, as they were used by his wife who was a member of his household. This argument was advanced in the alternative, besides the argument based on the alleged gift said to have been made by the assessee to Smt. Pushpa Devi in the year 1949 before their marriage had taken place. The Income Tax Appellate Tribunal, Jaipur Bench, Jaipur (hereinafter referred to as "the Tribunal"), rejected the assessee's story about the alleged gift, It was held that the assessee was married in May, 1957, and there was no evidence on record to support the assertion of the assessee that the gold ornaments in question were gifted by the assessee to Smt. Pushpa Devi in the year 1949 or they were with Smt. Pushpa Devi since the year 1949. It was held by the Tribunal that if the gold ornaments were gifted by the assessee to his wife at or about the time of his marriage which took place in May, 1957, the said gold ornaments were includible in the net wealth of the assessee in terms of Section 4(1)(a)(i) of the Act. The Tribunal proceeded to hold that the gold ornaments were not articles intended for the personal use of the assessee, more so, as no such claim was advanced on behalf of the assessee at any stage. The Tribunal was also of the view that the gold ornaments could not be held to be articles intended for personal or household use of the assessee, as in its view the word "household" was used in Section 5(1)(viii) in contradistinction to the word "personal" and that the articles meant for the personal use of the wife could not be held to be articles of household use. The Tribunal further held that as in Explanation 1 added to Section 5(1)(viii) with effect from April 1, 1972, the words "but not including jewellery" occurred, the exemption did not include gold ornaments up to March 31, 1972. However, in view of the fact that the gold ornaments in the present case were not intended for personal or household use of the assessee as such, they could not be exempted from payment of wealth-tax under Clause (viii) of Section 5(1) of the Wealth-tax Act.

3. The assessee applied to the Tribunal for making a reference to this court u/s 27(1) of the Wealth-tax Act. The Tribunal was of the view that two questions of law did arise out of its order dated December 19, 1973, and as such by the order of the Tribunal dated December 27, 1974, the following two questions have been referred by the Tribunal to this court for its opinion :

" 1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal erred in law in holding that Section 4(1)(a)(i) of the Wealth-tax Act, 1957, applied to the case of the assessee to warrant the inclusion of the value of gold ornaments in the net wealth of the assessee ?

2. Whether, on a true construction of Section 5(1)(viii) of the Act, the assessee is entitled to the exclusion of the value of gold ornaments from the computation of

his net wealth ? "

4. By the Finance (No. 2) Act of 1971, Clause (viii) of Section 5(1) of the Act was amended by adding the words " but not including jewellery " at the end of the clause and two Explanations were also added by the same amending Act. Thus, Section 5(1)(viii), as it stood after its amendment by the Finance (No. 2) Act of 1971, reads as under :

"(viii) furniture, household utensils, wearing apparel, provisions and other articles intended for the personal or household use of the assessee, but not including jewellery:

Provided that the furniture, utensils or other articles are neither made wholly or partly of, nor contain (whether by way of embedding, covering or otherwise), gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals :

Provided further that nothing in this clause shall operate to exclude from the net wealth of the assessee any conveyance or conveyances to the extent the value or the aggregate value thereof exceeds the sum of thirty thousand rupees.

Explanation 1.--For the purposes of this clause and Clause(xiii), " jewellery " includes-

(a) ornaments made of gold, silver, platinum or any other precious metals or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stones, and whether or not worked or sewn into any wearing apparel;

(b) precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel.

Explanation 2.--For the purposes of this clause, " conveyance" means any motor car or other mechanically propelled vehicle, aircraft or boat."

5. Here, we may point out that the addition of the words "but not including jewellery" made in section Section 5(1)(viii) was given retrospective effect from April 1,1963, while the two provisos and the two Explanations added to the aforesaid clause were prospectively made applicable with effect from April 1, 1972.

6. It may be observed that assets which would not be includible in the net wealth of the assessee for the purpose of assessment and payment of wealth-tax have been enumerated in Section 5 and while Clause (viii) thereof does not specifically refer to jewellery, Clauses (xiii), (xiv) and (xv) as they were contained in the original Act of 1957 referred to jewellery. Under Clause (xiii), any drawings, paintings, photographs, prints and any other heirloom not falling within Clause (xii) and not intended for sale, but not including jewellery, were exempted from payment of wealth-tax. Similarly, in Clause (xiv), jewellery in the possession of any Ruler, not being his personal property, which was recognised before the

commencement of the Act, by the Central Government as his heirloom was exempted from payment of wealth-tax. Under Clause (xv), as it then stood, jewellery belonging to the assessee, subject to a maximum of twenty-five thousand rupees in value was also exempted from payment of tax under the Wealth-tax Act. Clause (xv) was deleted with effect from April 1, 1963.

7. The question whether jewellery belonging to an assessee would fall under Clause (xv) alone or jewellery intended for personal or household use of the assessee could be exempt from payment of tax under the Act under Clause (viii) was raised before the Gujarat High Court in *CWT v. Mrs. Arundhati Balkrishm* [1968] 70 ITR 203. The learned judges of the Gujarat High Court held that the scheme of Section 5 appeared to be that if any particular asset or assets of the assessee fell within any one of the clauses of Section 5(1), such asset or assets must not be included in the net wealth of the assessee. Under Clause (xv) of Section 5(1), jewellery belonging to the assessee up to the maximum limit of Rs. 25,000 was not includible in the net wealth, while under Clause (viii), exemption could be claimed only in respect of jewellery and ornaments which were intended for the personal use of the assessee like any other articles of personal use. Their Lordships expressed the view that jewellery and ornaments though they can be collectively described as jewellery, if they fall within the four corners of Section 5(1)(viii) can be excluded from the net wealth of the assessee and need not necessarily be governed by Section 5(1)(xv), but the exemption u/s 5(1)(viii) would be available only when the article was intended for the personal use of the assessee concerned and, in that event, the exemption would apply to all articles of jewellery and ornaments intended for personal use, irrespective of the limit of Rs. 25,000 which is imposed by the Legislature in respect of jewellery and ornaments falling under Clause (xv) of Sub-section (1) of section 5.

8. In *Lakshmi Kant Jha Vs. Commissioner of Wealth Tax*, the case of the assessee before the Wealth-tax Officer was that the entire jewellery worth Rs. 27,27,330 was intended for the personal use of the assessee and it should be excluded from his total wealth. The claim of the assessee that the jewellery in question was intended for the personal use of the assessee was not rejected by the Wealth-tax Officer but he disallowed the claim of the assessee in this respect on the ground that items of jewellery were covered by Clause (xv) of Section 5(1) of the Wealth-tax Act and not by Clause (viii) of that section. The learned judges of the Patna High Court held that the only object of inserting a separate Clause (xv) dealing with " jewellery " was obviously to fix an exemption limit of Rs. 25,000 for " jewellery" and not to fix any such limit for the " other articles " intended for the personal use of the assessee described in Clause (viii) of Section 5(1) of the Act. According to the learned judges of the Patna High Court, the reasonable inference, therefore, seemed to be that all classes of jewellery, excluding perhaps ornaments and precious stones sewn or worked into wearing apparel, would be outside the scope of Clause (viii) altogether and should be dealt with only under Clause (xv). The learned judges, therefore, agreed with the view taken by the taxing authorities that the special provision contained in

Clause (xv) must override the general Clause (viii) and that jewellery should be excluded from the other articles intended for the personal or household use of the assessee.

9. The decision of the Patna High Court in the aforesaid case was set aside by their Lordships of the Supreme Court in *Lakshmi Kant Jha Vs. Commissioner of Wealth Tax, Bihar and Orissa*, in respect of the interpretation of Sections 5(I)(viii) and 5(I)(xv) of the Wealth-tax Act and the entitlement of the assessee to the exclusion of the value of jewellery amounting to Rs. 27,27,330 from the computation of total wealth of the assessee. Their Lordships of the Supreme Court observed that the view of the High Court could not be sustained because of the decision of the Supreme Court in the case of *Commissioner of Wealth-tax, Gujarat Vs. Arundhati Balkrishna*, . Section 5(I)(xv) of the Act dealt with jewellery in general, whether intended for personal use of the assessee or not, while jewellery intended for the personal use of the assessee specifically came within the scope of Section 5(I)(viii) of the Act. Thus, the value of all jewellery of an assessee intended for his personal use would stand excluded u/s 5(I)(viii) of the Act in the computation of the net wealth of the assessee. It was pointed out by their Lordships of the Supreme Court that jewellery was excluded from the purview of Clause (viii) of Section 5(1) of the Act with effect from-Aprill, 1963, and so the amendment made in Clause (viii) would become operative with effect from April 1, 1963. Thus, the amended provisions of Section 5(1) would be effective in relation to assessments made in respect of the accounting years from April 1, 1963. It may be observed that in *Commissioner of Wealth-tax, Gujarat Vs. Arundhati Balkrishna*, their Lordships of the Supreme Court approved the decision of the Gujarat High Court and it was held that the provisions of Sections 5(1)(viii) and 5(1)(xv) dealt with different situations and while Clause (viii) of Section 5(1) exempted from the net wealth of the assessee the entire jewellery intended for the personal use of the assessee, Clause (xv) of that section dealt with jewellery in general which was exempted to the extent of Rs. 25,000.

10. It may be pointed out that the exemption allowed u/s 5(I)(viii) of the Wealth-tax Act is in respect of articles intended for personal and household use of the assessee. It was observed in *G.S. Poddar Vs. Commissioner of Wealth Tax, Bombay City II*, by the Bombay High Court that the expression " intended for personal or household use of the assessee" in Section 5(I)(viii) relates to articles which are normally of common and ordinary personal or household use of the assessee according to the ordinary ideas, habits, customs and notions of the class of society to which the assessee belongs or according to the well-established habits, customs and traditions of the family of the assessee. It was also observed by their Lordships that the mere possibility of the articles being put to personal use would not be sufficient to treat them as intended for personal or household use. The question whether the articles are intended for personal or household use must be considered with reference to facts as they exist at the time when the question has to be determined. In that case, the assessee claimed exemption in respect of the value of the articles made of gold in the form of

utensils like cups, saucers, trays, etc., which were found kept in a show-case in the drawing room of the assessee. It was held by their Lordships of the Bombay High Court that, on the facts found in that case, the assessee did not intend to put those articles to personal or household use nor had he taken them in such use at any time and so the assessee could not get exemption in respect of the value of the said articles on the ground that they were intended for personal or household use.

11. In H.H. Maharaja Rana Hemant Singhji Vs. Commissioner of Income Tax, a Division Bench of this court held that gold sovereigns, silver coins and silver bars kept for pooja of Goddess Lakshmi on Deepawali day did not constitute articles of personal use of the assessee and could not be exempted from payment of wealth-tax u/s 5(I)(viii) of the Act. The aforesaid decision of this court was affirmed by the Supreme Court in H.H. Maharaja Rana Hemant Singhji, Dholpur Vs. Commissioner of Income Tax, Rajasthan, . Their Lordships of the Supreme Court observed in the aforesaid decision that silver bars could by no stretch of imagination be deemed to be articles or effects meant for personal use, nor could the sovereigns and silver coins by their use on special occasions of worship of Mahalakshmi be considered as effects meant for personal use.

12. In CWT v. Arti Goenka [1980] 121 ITR 632, it was held by their Lordships of the Madras High Court that loose diamonds cannot be put on by a person and so they cannot be used by a person and do not fit into the connotation of " personal use " and could not be excluded from payment of wealth-tax u/s 5(I)(viii) of the Act. It was observed that the intention of putting any article to personal use has to be tested in the light of what a reasonable person will do and cannot be examined in the light of individual preferences.

13. In Chandra Kumar Singh Kasliwal Vs. Addl. Commissioner of Wealth Tax, the assessee who were minors, claimed exemption u/s 5(I)(viii) of the Act in respect of their share of gold ornaments and jewellery of their deceased mother. The Tribunal allowed exemption in respect of gold ornaments and jewellery meant for male use, but did not allow exemption in respect of the gold ornaments and jewellery meant for female use. The High Court agreed with the view taken by the Income Tax Appellate Tribunal and held that the ornaments meant for female use could not be intended for the personal use of the assessee who were minors and were not married.

14. Thus, it is firmly established in view of the decisions referred to above, that articles in respect of which exemption can be allowed u/s 5(I)(viii) of the Act must be of such a nature as could ordinarily be put to use by the assessee personally or for his household purposes. As the gold ornaments and jewellery were alleged to have been given by the assessee to Smt. Pushpa Devi by way of gift and were meant for her use exclusively, in such a case ornaments or jewellery could not be considered as articles for household use. An article can be of personal use if it is used or could be used by the person of its possessor and must have more or less intimate relation with the assessee.

15. As regards the use of jewellery and ornaments as household goods, it may be observed that the Tribunal did not accept the case of the assessee that those articles were gifted in the year 1949 to Smt. Pushpa Devi at the time of her engagement and that those articles belonged to his wife. The Tribunal upheld the contention of the Department with regard to the gold ornaments and jewellery that the same were gifted by the assessee to his wife on or after his marriage in the year 1957 and as the gift was made to the spouse, in terms of Section 4(I)(a) (i) of the Wealth-tax Act, the same was includible in the wealth of the assessee. It was also held by the Tribunal that the gold ornaments and jewellery were exclusively intended for use by the wife of the assessee who was a member of the family. It could not be said that those articles were intended for household use and could not, therefore, be exempted u/s 5(I)(viii) of the Act.

16. Lastly, the question which arises is whether jewellery as specified in Section 5(I)(viii) includes ornaments. The Explanation I added to Section 5(I)(viii) provides that for purposes of Clause (viii) and Clause (xv), "jewellery" includes ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stones, and whether or not worked or sewn into any wearing apparel.

17. In CWT v. Aditya Vikram Birla [978] 114 ITR 711, it was held that the dictionary meaning of the word "jewellery" is not so wide or clear as to bring in all valuable ornaments within its fold. On the contrary, in popular parlance, "jewellery" connotes use of stones, precious, semi-precious or even imitation in the ornaments concerned. It is because of this reason that Explanation 1 was introduced in Section 5(1)(viii) and although the amendment, so as to include the words "but not including jewellery", was introduced retrospectively with effect from April 1, 1963, yet Explanation 1 was inserted prospectively with effect from April 1, 1972. Thus, after the amendment was made, the ambit of the word "jewellery" was extended so as to include ornaments made of gold, silver, platinum or any other precious metal or any alloy containing any precious or semi-precious stones. It appears that earlier there was a difference of opinion between the various High Courts as to whether ornaments containing precious stones made of gold or silver were exempted from the net wealth of the assessee u/s 5(1)(viii), but after the introduction of the words "but not including jewellery", jewellery was excluded from the scope of exemption under that clause and then an extended meaning was given to the word "jewellery" with the introduction of Explanation 1.

18. It may be observed that the Supreme Court in Commissioner of Wealth-tax, Gujarat Vs. Arundhati Balkrishna, affirming the decision of the Gujarat High Court in COMMISSIONER OF WEALTH-TAX, GUJARAT II Vs. MRS. ARUNDHATI BALKRISHNA., , held that jewellery is widely used as articles of personal use by ladies in this country, specially by those belonging to richer classes and is excluded from the computation of the net wealth of the assessee u/s 5(1)(viii) of

the Act.

19. The Calcutta High Court in *Commissioner of Wealth Tax Vs. Aditya Vikram Birla*, did not agree with the view taken by the Gujarat High Court in *Commissioner of Wealth Tax, Gujarat I Vs. Jayantilal Amratlal*, wherein it was held that jewellery always included all ornaments made out of precious metals with or without stones. It, was observed by the Calcutta High Court that if the view of the Gujarat High Court is accepted, the introduction of Explanation 1 to Section 5(1)(viii) with prospective effect would become redundant and would also be absurd. The Calcutta High Court agreed with the view taken by the Orissa High Court in *CWT v. Binapani Chakraborty* [1978] 114 ITR 82 . The view taken by the Calcutta High Court in *Commissioner of Wealth Tax Vs. Aditya Vikram Birla*, was followed by the Madhya Pradesh High Court in *Commissioner of Wealth-tax Vs. Smt. Sonal K. Amin*, and in *Commissioner of Wealth-tax Vs. Smt. Tarabai Kanakmal*, . In *Commissioner of Wealth-tax Vs. Smt. Tarabai Kanakmal*, , a Full Bench of the Madhya Pradesh High Court overruled another decision of the Madhya Pradesh High Court in *Nandkishore Girdharilal Modi Vs. Commissioner of Wealth Tax*, and held that the intention of Parliament in adding the words " but not including jewellery" in Section 5(1)(viii) retrospectively with effect from April 1, 1963, by the Finance (No.2) Act, 1971, and the addition of Explanation 1 giving a wider meaning to the word " jewellery " prospectively with effect from April 1, 1972, by the same Finance (No. 2) Act, 1971, showed that the wider meaning the word " jewellery " as contained in Explanation 1 could not be applied to any assessment year prior to April 1, 1972. Therefore, in respect of the assessment years prior to April 1, 1972, " jewellery " could not be held, to include gold or silver ornaments not studded with precious or semiprecious stones, within the meaning of Section 5(1)(viii) of the Act. The Full Bench of the Madhya Pradesh High Court did not agree with the view taken by the Gujarat High Court in *Commissioner of Wealth Tax, Gujarat I Vs. Jayantilal Amratlal*, and the decision of the Allahabad High Court in *Commissioner of Wealth-tax Vs. His Highness Maharaja Vibhuti Narain Singh*, .

20. In *Smt. Meera Jaiswal Vs. Commissioner of Wealth-tax*, the Punjab and Haryana High Court also followed the decision of the Calcutta High Court in *Commissioner of Wealth Tax Vs. Aditya Vikram Birla*, , and did not agree with the view taken by the Gujarat High Court and the Allahabad High Court in *Commissioner of Wealth Tax, Gujarat I Vs. Jayantilal Amratlal*, and *Vibhuti Narain Singh*'s case [1079] 117 ITR 246 respectively.

21. In *Commissioner of Wealth Tax Vs. Smt. Savitri Devi*, , the learned judges of the Delhi High Court struck a dissenting note and while disagreeing with the view taken by the Orissa, Calcutta and Madhya Pradesh High Courts in the cases referred to above the Delhi High Court preferred to follow the decisions of the Gujarat and Allahabad High Courts and of the Punjab High Court in *CWT v. Rajetihwar Prasad* [1975] Tax LR 194 , and held that silver utensils were not jewellery and were exempt u/s 5(1)(viii) and that even gold ornaments not

studded with precious stones fell within the term " jewellery " and were not exempted u/s 5(1)(viii) for the assessment years 1964-65 to 1970-71 when Explanation 1 was added to Section 5(1)(viii). It may also be pointed out that the Bombay High Court in *Mukundkumari Vs. K.V.S. Namondari*, 17Th Ito, D-i Ward, Bombay and Another, and in a subsequent decision in *Commissioner of Wealth Tax Vs. Rasesh N. Mafatlal*, , held that the effect of the retrospective amendment of Section 5(1)(viii) of the Act was that jewellery stands excluded from the articles in respect of which exemption could be claimed with effect from April 1, 1963.

22. Thus, a consideration of the provisions of Section 5(1)(viii) and the amendment introduced therein by the Finance (No. 2) Act, 1971, with retrospective effect from April 1, 1963, and the insertion of Explanation 1 in that Sub-section prospectively with effect from April 1, 1972, go to show that Parliament intended that ornaments made of gold, silver or other precious metals would be included in the term " jewellery " only after Explanation 1 was added to Section 5(1)(viii) with .effect from April 1, 1972, and earlier thereto gold, and silver ornaments could be included in jewellery only in case they were studded with precious or semi-precious stones or sewn into any wearing apparel. Thus, the view of the Orissa, Calcutta, Punjab and Haryana and Madhya Pradesh High Courts appears to be justified, in preference to the view taken by the Gujarat, Allahabad and Delhi High Courts.

23. We, therefore, hold that both the questions referred to us must be answered in the affirmative, in favour of the Revenue and against the assessee.

24. We have held above that gold ornaments were not articles intended for personal or household use of the assessee and as such they were not exempt from assessment of wealth-tax in the hands of the assessee u/s 5(1)(viii) of the Wealth-tax Act. We have also held above that the word " jewellery " was not comprehensive enough so as to include gold ornaments not studded with precious or semi-precious stones prior to the insertion of Explanation 1 to Section 5(1)(viii) by the Finance (No. 2) Act, 1971, with effect from April 1, 1972. In this view of the matter, we uphold the view taken by the Income Tax Appellate Tribunal and answer both the questions referred to us in the affirmative. The parties are left to bear their own costs.