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**(1985) 06 MP CK 0003**  
**In the Madhya Pradesh High Court**  
**Case No : M.C.C. No. 88 of 1984**

Sardar Satnam Singh

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

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**Date of Decision :** 29-06-1985

**Acts Referred:**

Income Tax Act, 1961 — Section 2(14), 256(1), 256(2)

**Citation :** (1986) 159 ITR 130

**Hon'ble Judges :** G.L. Oza, C.J.; B.M. Lal, J

**Bench :** Division Bench

**Advocate :** B.L. Nema, for the Appellant; B.K. Rawat, for the Respondent

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## Judgement

G.L. Oza, C.J.—This case and M.C.C. No. 92 of 1984 have been filed by the petitioner-assessees u/s 256(2) of the Income Tax Act for a direction to the Income Tax Appellate Tribunal to make a reference in respect of the following question :

"Whether, on the facts and circumstances of the case and the material on record, there is justification in law for the Tribunal to hold that the silver utensils were not personal effects held for the personal use of the applicant within the meaning of Section 2(14)(ii) of the Income Tax Act?"

2. This order shall also govern the disposal of M.C.C. No. 92 of 1984 (Sardar Triloksingh v. CIT).

3. The facts necessary for the disposal of this petition are that the petitioner claims to be a Hindu undivided family and is assessed to Income Tax by the Income Tax Officer, Chhindwara. The relevant year for the assessment is 1977-78 and the accounting year ended on March 31, 1977. It is alleged that the applicant submitted a return showing a total income of Rs. 23,900 against which the assessment was made on an income of Rs. 36,320. It is stated that the Income Tax Officer included in the income of Rs. 57,537 on account of alleged capital gains on the sale of gold ornaments and silver utensils and allowing

statutory deduction u/s 80T to the tune of Rs. 26,015, the income was determined on account of capital gain at Rs. 31,522.

4. It is alleged that aggrieved by this order, an appeal was preferred before the Appellate Assistant Commissioner who confirmed the order of the Income Tax Officer and against that order, an appeal was preferred before the Income Tax Appellate Tribunal. The Tribunal rejected the claim of the petitioner by placing reliance on the decision of the Bombay High Court reported in G.S. Poddar Vs. Commissioner of Wealth Tax, Bombay City II, and of this court reported in Chandra Kumar Singh Kasliwal Vs. Addl. Commissioner of Wealth Tax, and of the Supreme Court in H.H. Maharaja Rana Hemant Singhji, Dholpur Vs. Commissioner of Income Tax, Rajasthan, . The Tribunal took the view that it was for the assessee to show that the utensils belonged to a class of the society in which it was an ordinary habit or custom to use silver utensils and as this test was not satisfied, the Tribunal rejected the plea of the assessee-petitioner. It is also stated that an application u/s 256(1) was made to the Tribunal, but it was rejected. It is on this basis that in view of the language of Section 2(14)(ii) of the Act, what is to be found only is whether these things are held for personal use of the assessee or of any member of the family.

5. In this context, it is contended that the question of law that arises is as to whether silver utensils which, by their very nature, indicate that they are meant for personal use, could be said to fall within the ambit of Section 2(14)(ii) of the Act and it is on this ground, it is contended by the learned counsel for the assessee that a question of law, i.e., the question quoted above, arises and, therefore, this court should direct the Tribunal to state the case and make a reference for answering this question.

6. Learned counsel for the assessee, referring to the decision of this court reported in Chandra Kumar Singh Kasliwal Vs. Addl. Commissioner of Wealth Tax, contended that in that case, the assessee was a male minor and the articles which were claimed to be of personal effects, were the articles which could only be used by females and, in this view of the matter, this court observed that as to whether the articles could be said to be of personal use at a particular time is a relevant question and, on that basis, the reference was answered against the assessee. But, it was contended by the learned counsel that the true test that can be applied is what has been indicated in the language of Section 2(14)(ii) of the Act, i.e., "held for personal use by the assessee". It was also contended that in the judgment of the Supreme Court on which reliance is placed by the Tribunal, their Lordships held that coins made of silver or gold could not be said to be articles which are held for personal use, although it was contended that they were used at the time of worship, but, in the present case, the contention advanced by the learned counsel is that these are silver utensils which in India were commonly used in rich families and, therefore, by the very nature of those articles, it is clear that they are held for personal use.

7. Learned counsel for the respondent, on the other hand, contended that the

test laid down in Chandra Kumar Singh Kasliwal Vs. Addl. Commissioner of Wealth Tax, is that there should be material to indicate that the assessee comes from a class of persons where the use of these articles is normal and it has further to be established that they are used regularly. In fact the decision in Chandra Kumar Singh Kasliwal Vs. Addl. Commissioner of Wealth Tax, turned on the peculiar facts of that case, The language used in Section 2(14)(ii) of the Act only requires that the things should be such which are held for personal use and, in that context, in our opinion, a question of law does arise.

8. The application is, therefore, allowed and it is directed that the Tribunal should state the case for answering the question quoted in para. 1 of this order. In the circumstances of the case, parties are directed to bear their own costs so far as these proceedings are concerned.