

H. H. MAHARAJ RANA HEMANT SINGHJI, DHOLPUR

v.

COMMISSIONER OF INCOME-TAX, RAJASTHAN

February 17, 1976

[A. C. GUPTA AND JASWANT SINGH, JJ.]

Income Tax Act (11 of 1922), s. 2(4A)(ii)—'Personal effects', what are.

Section 2(4A)(ii), Income Tax Act, 1922, provides that 'personal effects, that is to say, movable property (including wearing apparel, jewellery, and furniture) held for personal use by the assessee or any member of his family dependent on him,' shall not be included in the 'capital assets' of the assessee.

The context in which the expression 'personal effects' occurs and the enumeration of articles like wearing apparel, jewellery and furniture, show that only those articles are to be included as personal effects which are intimately and commonly used by the assessee. The dictionary meaning of the expression is also the same. Therefore, 'personal effects' mean those items which are normally, commonly or ordinarily intended for personal use and not items which are capable of being intended for personal use. [425E-426F-427C-D]

Where the assessee was in possession of a large number of gold sovereigns, silver rupee coins and silver bars, which were used at the time of the *pūja* of deities on special religious festivals or rituals, they could not be deemed to be 'effects' meant for personal use. They are capital assets and not personal effects and so, when sold, could not be excluded while computing the capital gains liable to capital gains tax under s. 12B, Income Tax Act, 1922. [427F]

G. S. Poddar v. The Commissioner of Wealth Tax, Bombay City, II, I.L.R. [1965] Bom. 1062, approved.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 779 of 1971.

Appeal by special leave from the judgment and order dated the 2nd December, 1969 of the Rajasthan High Court in I.T.R. No. 5 of 1966.

S. T. Desai, Rameshwar Nath, for the appellant.

B. B. Ahuja and S. P. Nayar, for the respondent.

The Judgment of the Court was delivered by

JASWANT SINGH, J.—This appeal by special leave is directed against the judgment dated December 2, 1969 of the High Court of Rajasthan.

Briefly stated the facts giving rise to this appeal are : Maharaja Shri Udebhan Singhji of Dholpur died issueless on October 22, 1954. On the day following his demise all the movable valuables possessed by him were taken over and sealed by the Government of Rajasthan because of the dispute regarding succession to the gaddi. On December 13, 1956 Maharaja Shri Hemant Singhji, the appellant herein, who was then a minor, was recognised by the Government of India as successor of the former Maharaja and the aforesaid assets which *inter alia* consisted of 4,825 gold sovereign, 7,90,440 old silver rupee coins and silver bars weighing 2,54,174 totals were released by the Rajasthan Government and handed over to Rajmata in her capacity

- A as the adoptive mother and guardian of the appellant on March 24, 1957. During the financial year 1957-58, the aforesaid sovereigns, silver coins and silver bars were sold at the suggestion of the Government of India for a net consideration of Rs. 20,78,257. Overruling the contentions raised on behalf of the appellant to the effect that as there was no voluntary sale chargeable to capital gains tax under section 12B of the Indian Income Tax Act, 1922, hereinafter referred to as 'the Act', and the aforesaid items did not constitute 'capital assets' as contemplated by section 2(4A) of the Act but fell within the purview of the exception carved out by clause (ii) thereof and as such were to be excluded in computing the gains because they were held for personal use by the assessee and the members of his family as was evident from the fact that they were used for the purpose of
- B Maha Lakshmi Puja and other religious festivals and rituals in the family, and taking into account the market value of the assets as on January 1, 1954, the Income Tax Officer, Bharatpur, worked out capital gains at Rs. 3,44,303. Dissatisfied with this order, the appellant took the matter in appeal to the Appellate Assistant Commissioner but remained unsuccessful. A further appeal to the Income Tax Appellate Tribunal was taken by the appellant but the same also proved abortive as the Tribunal was of the view that the expression
- C "personal effects" meant such items of movable property as were necessary adjuncts to an individual's own personality and the nature of sale being voluntary or otherwise was irrelevant for the purpose of section 12B in view of the decision of this Court in *James Anderson v. Commissioner of Income Tax, Bombay City*(1). The Tribunal, however, referred the following question of law at the instance of the appellant to the High Court of Rajasthan at Jodhpur under section 66(1) of the Act :
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"Whether on the facts and in the circumstances of the case the assets sold were capital assets within the meaning of section 2(4A) chargeable to capital gains tax under section 12B of the Income-tax Act, 1922."

- F By its order dated December 2, 1969, the High Court answered the question in the affirmative holding that in order that an article should constitute a part of personal effects, it is necessary that the article must be associated with the person of the possessor and that the aforesaid items consisting of gold sovereigns, silver rupees and silver bars could not be deemed to fall within the exception carved out by clause (ii) of section 2(4A) of the Act merely because they
- G were placed before Goddess Lakshmi while performing Puja. The appellant thereupon made an application to the High Court of Rajasthan for a certificate of fitness which was refused. Thereafter, the appellant applied to this Court for special leave under Article 136 of the Constitution which was granted on May 6, 1971.

- H Appearing in support of the appeal, Mr. Desai has vehemently contended that the question as to whether an item of movable property held for personal use is a part of personal effects of an assessee should be determined not in a commercial sense but 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 his family. He has in support of his contention referred us to a decision in *Commissioner of Wealth-tax Gujarat v. Arundhati Balkrishna*⁽¹⁾. He has further urged that in construing section 2(4A) of the Act it must be borne in mind that the Legislature intended to lay emphasis on the nature of the use of the article rather than on the person of the assessee.

Mr. B. B. Ahuja appearing for the Revenue has, on the other hand, urged that the interpretation sought to be placed on behalf of the assessee on the expression "personal effects" is not correct and while determining whether the effects are personal it is essential to see whether they are meant for the personal use of the assessee.

We have given our earnest consideration to the submissions, of learned counsel for the parties. For a proper decision of the point in question, it is necessary to refer to section 2(4A) of the Act, the relevant portion whereof runs thus :

"2(4A). 'Capital asset' means property of any kind held by an assessee, whether or not connected with his business, profession or vocation, but does not include—

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(ii) personal effects, that is to say, movable property (including wearing apparel, jewellery, and furniture) held for personal use by the assessee or any member of his family dependent on him;"

The expression "personal use" occurring in clause (ii) of the above quoted provision is very significant. A close scrutiny of the context in which the expression occurs shows that only those effects can legitimately be said to be personal which pertain to the assessee's person. In other words, an intimate connection between the effects and the person of the assessee must be shown to exist to render them "personal effects".

The enumeration of articles like wearing apparel, Jewellery, and furniture mentioned by way of illustrations in the above quoted definition of "personal effects" also shows that the Legislature intended only those articles to be included in the definition which were intimately and commonly used by the assessee.

The meaning assigned to the expression "personal effects" in various dictionaries also lends support to this view. In the Unabridged Edition of the Random House Dictionary of the English Language at page 1075, the expression is given the following meaning :—

"Personal effects, privately owned articles consisting chiefly of clothing, toilet items etc. for intimate use by an individual".

- A In Black's Law Dictionary, Fourth Edition at Page 1301, the expression is assigned the following meaning :

"Personal effects. Articles associated with person, as property having more or less intimate relation to person of possessor;"

- B In Cyclopedic Law Dictionary, Third Edition, at page 832, the expression "personal effects" without qualifying words is interpreted to include generally such tangible property as is worn or carried about the person.

- C In 'Words and Phrases' (Permanent Edition), Volume 32 at page 277 it is stated that the words "personal effects" when used without qualification, generally include such tangible property as is worn or carried about the person, or to designate articles associated with the person. At another place at the same page, it is stated that the words "personal effects" are used to designate articles associated with person, as property having more or less intimate relation to person of possessor or such tangible property as attends the person.

- D Bearing in mind the aforesaid meaning assigned to the expression in various dictionaries and cases the silver bars or bullion can by no stretch of imagination be deemed to be "effects" meant for personal use. Even the sovereigns and the silver coins which are alleged to have been customarily brought out of the iron safes and boxes on two special occasions namely, the Ashtmi Day of 'Sharadh Pakh' for Maha Lakshmi Puja and for worship on the occasion of Diwali festival cannot also be designated as effects meant for personal use. They may have been used for puja of the deities as a matter of pride or ornamentation but it is difficult to understand how such user can be characterised as personal use. As rightly observed by the Income Tax authorities if sanctity of puja were considered so essential by the assessee, the aforesaid articles would not have been delivered by this guardian to the Banks for sale.

- F The language of section 5(1)(viii) of the Wealth Tax Act, 1957 which is *pari materia* with the definition of the expression "personal effects" as given in section 2(4A) (ii) of the Act is also helpful in construing the latter provision. That provision runs as follows :—

- G "5. (1) Subject to the provisions of sub-section (1-A), wealth-tax shall not be payable by an assessee in respect of the following assets, and such assets shall not be included in the net wealth of the assessee.

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

- H In *G. S. Poddar v. The Commissioner of Wealth Tax, Bombay City-II*⁽¹⁾ where the assessee at the time of his appointment in the year

(1) I.L.R. [1965] Bom. 1062.

1945 as a Justice of the Peace was presented with two gold caskets, a gold tray, two gold glasses, a gold cup, saucer and spoons, and photo frames as souvenirs by the dealers and brokers in cloth with whose business he was connected and he kept these articles in a glass show case for display in his drawing room and in assessment year 1959-60 claimed exemption in respect of these articles under the above quoted provision i.e. under section 5(1)(viii) of the Wealth Tax Act, 1957, it was held that merely because the gold caskets were kept in the show case did not make them part of the furniture and the rest of the articles could not be considered to be household utensils as that expression did not embrace within its sweep gold articles meant for ornamental use for special occasions but meant household articles which were normally, ordinarily, and commonly so used. It was further held in this case that the use as a decoration in the drawing room which is only calculated to give a pride of possession is not contemplated by the exemption and that the personal use which is contemplated by the exemption is the use of like nature as the use of other items mentioned in the clause, namely, furniture, household utensils, wearing apparel and provisions. 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".

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It is also significant that no exemption on behalf of the assessee was claimed in respect of the aforesaid effects under the aforesaid provision of the Wealth-Tax Act.

The decision of this Court in *Commissioner of Wealth Tax, Gujarat v. Arundhati Balkrishna* (supra) on which strong reliance has been placed by Mr. Desai is of no assistance to the appellant as the point now sought to be agitated before us was never canvassed or considered in that case.

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We are, therefore, of the considered view that the aforesaid articles were capital assets and not personal effects as contended on behalf of the assessee-appellant and as such could not be excluded while computing the gains.

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For the foregoing reasons, we do not find any merit in this appeal which is hereby dismissed with costs.

V.P.S.

Appeal dismissed.