

DR. KARAN SINGH  
v.  
STATE OF JAMMU & KASHMIR & ANR.

DECEMBER 20, 1985

[V.D. TULZAPURKAR AND R.S. PATHAK, JJ.]

Wealth Tax Act, 1957, s.5(1)(xiv) - Claim for exemption in respect of jewellery and valuable articles of personal use lying in Toshakhana - Assessee in wealth tax proceedings claiming ownership - State contesting the claim - CBDT informing assessee to arrange physical inspection - High Court approached with application for inspection - Refusal of inspection by High Court - Validity of - Necessity for inspection indicated.

The appellant filed a writ petition in the High Court claiming ownership and title of six boxes containing jewellery and other valuable articles lying in Srinagar Toshakhana. These were kept under lock and seal of the Commissioner appointed by the High Court. The petition was the result of two matters pending before the Government of India: (i) Whether the appellant was the owner of the jewellery or other valuable articles of personal use lying in those boxes on the ground that the properties are heirlooms, and (ii) whether exemption in respect of such items of properties as heirlooms under s.5(1)(xiv) of the Wealth Tax Act in wealth tax assessment proceedings of the appellant as HUF was available to him or not. Pursuant to a request and the suggestion of the Central Board of Direct Taxes to have physical inspection of the items in question by the Members (W.T.&J) alongwith experts to establish whether the properties are heirlooms or not, an application was accordingly moved before the High Court for inspection of the jewellery and other articles. The High Court dismissed the application on the ground that no useful purpose will be served to grant inspection.

Being aggrieved, the appellant appealed to this Court. The appeal was opposed by counsel for the Respondents on the grounds (1) that the appellant's claim of ownership or title to these items has been refuted in the counter-affidavit that had been filed in the main Writ Petition where property has been claimed to be State property; (2) that unless the appellant showed some prima facie title to the property in question, inspection would be premature and uncalled for, and (3) that the writ petition itself was not maintainable in view of Article 363 (1) of the Constitution.

A           Allowing the appeal,

B           **HELD:** 1(i) The order dated July 20, 1985 is clearly  
erroneous, and inspection sought ought to have been granted. The  
six boxes containing the jewellery and other valuable articles  
lying in Srinagar Toshakhana shall be opened for the purpose of  
inspection by the Member, Central Board of Direct Taxes (WT&J)  
who will be accompanied by the Director General of Archaeological  
Survey of India, Director Antiques, Director National Museum and  
Approved Valuers of Jewellery for determining whether any and if  
so what items constitute heirlooms or articles of personal use of  
the appellant and his family. Such inspection will be taken in  
the presence of the appellant's representative as also a  
representative of the State Government but such representatives  
shall not work on the panel of the Inspection Committee but may  
render assistance as may be necessary. [1073 E-G]

D           (ii) The relevance and necessity of such inspection in the  
instant case cannot be disputed. The main issue arising between  
the parties is whether the jewellery and other valuable articles  
of personal use contained in the six boxes lying in Srinagar  
Toshakhana are heirlooms of the appellant and his family as  
claimed by him or not. Such inspection by experts will  
unquestionably facilitate its determination. [1072 B-C]

E           2. Questions of maintainability of the writ petition and  
appellant's title to the property in question would undoubtedly  
be gone into at the final hearing of the writ petition but it  
cannot be gainsaid that the inspection by experts will be useful  
for determination of the appellant's title to the property. At  
this stage no one can proceed on the assumption that the  
preliminary objection as regards maintainability will necessarily  
be upheld. Moreover, the assessment order for the 3 assessment  
years, 1978-79, 1979-80 and 1980-81 though made on protective  
basis and subject to final valuation of the assets, clearly show  
that the Wealth Tax Authorities, and the CBDT are treating the  
estate lying in the Srinagar Toshakhana as property belonging to  
the appellant's family. [1072 F-H; 1073 A]

G           CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5720 of  
1985.

From the Judgment and Order dated 20.7.1985 of the J. & K.  
High Court in CMP No. 645 of 1985 in W.P. No. 122 of 1983.

H           Soli J. Sorabjee, J.B. Dadachanji, F.H. Talyarkhan, S.P.  
Gupta, Mrs. A.K. Verma and D.N. Mishra for the Appellant.

B. Datta, Additional Solicitor General, Gauri Shankar S.N. Kacker, R.N. Poddar, Ms. A. Subhashini, M. Beg, E.C. Agarwala, Z.A. Shah, Pradeep Bakshi and Lalit Gupta for the Respondents.

The Order of the Court was delivered by

**TULZAPURKAR, J.** Leave granted.

Heard Counsel for the parties as also for CBDT and Wealth Tax Officer.

The short question raised in this appeal is whether inspection of the jewellery and other valuable articles of personal use contained in six boxes lying in Srinagar Toshakhana - which boxes are at present kept under lock and seal of the Commissioner appointed by the J & K High Court under its order dated June 22, 1984 - was improperly declined by the learned Single Judge by his order dated July 20, 1985 pending disposal of the main writ petition no. 122 of 1984. The learned Judge has rejected the appellant's prayer for inspection by observing thus:

"Be that as it may, at this stage without speculating on the merits of the petition, I find that no useful purpose will be served by granting relief to the petitioner which he has prayed in the present CMP."

According to the appellant there were two matters before the Government of India (i) whether the appellant was the owner of the jewellery or other valuable articles of personal use lying in those boxes on the ground that the properties are heirlooms and (ii) whether exemption in respect of such items of properties as heirlooms under s.5(1) (xiv) of the Wealth Tax Act in Wealth Tax Assessment proceedings of the appellant as HUF was available to him or not and for both these matters it was necessary to have an inspection of the items by experts to establish whether the properties are heirlooms or not. In fact the prayer for inspection was made by him on the basis of two letters one dated 12th of February 1985 and the other dated 13th of June, 1985 issued from the Ministry of Finance, Central Board of Direct Taxes, particularly the former wherein, in the context of the appellant's application for exemption under s.5(1) (xiv), it was suggested by the CBDT that the appellant should arrange for the physical inspection of the items in question by the Member (WT&J) who would be accompanied by some experts such as Director General, Archaeological Survey of India; Director Antiques,

A Director National Museum and Approved Valuers of jewellery and others for that purpose. Even then the prayer for such inspection was rejected.

B The relevance and necessity of such inspection in the context of the two matters that are pending before the Government of India cannot be disputed, for, the main issue arising between the parties is whether the jewellery and other valuable articles of personal use contained in the six boxes lying in Srinagar Toshakhana are heirlooms of the appellant and his family as claimed by him or not and such inspection by experts will unquestionably facilitate its determination. We, therefore, fail to appreciate how the learned Judge felt that no useful purpose will be served by the inspection sought by the appellant.

C Counsel for the Union of India as well as the learned Advocate General of J & K appearing for the State strenuously urged before us that the appellant's claim of ownership or title to these items has been refuted in the counter affidavits that have been filed in the main writ petition where the property has been claimed to be State property and in this behalf reference was also made to one of the preliminary objections raised by the Union of India to the maintainability of the writ petition on the ground that at the time of the settlement arrived at between the acceding Ruler Maharaja Hari Singh and Government of India no such claim was made and that under Art. 363(1) of the Constitution neither Covenant/Merger agreement nor any dispute or obligation arising therefrom is justiciable and therefore the writ petition deserves to be dismissed. It was, therefore, urged that unless the appellant shows some prima facie title to the property in question inspection would be premature and uncalled for. Questions of maintainability of the writ petition and appellant's title to the property in question would undoubtedly be gone into at the final hearing of the writ petition but it cannot be gain-said that the inspection by experts which will have a bearing on the nature and character of the property in question will be useful for determination of the appellant's title to the property in case the preliminary objection fails and at this stage no one can proceed on the assumption that the preliminary objection will necessarily be upheld. But apart from this, on prima facie title, the claim for exemption under s.5(1)(xiv) of the Wealth Tax Act (under both the limbs of the provision) was pending before the Wealth Tax authorities and we are now informed that for the three assessment years, 1978-79, 1979-80, 1980-81 assessment orders under the Wealth Tax Act have

been passed by the Wealth Tax Officer, A Ward, Jammu wherein the estate belonging to the appellant's family lying in the Srinagar Toshakhana has been valued at a considerably enhanced figure over and above the value returned by the appellant in his returns, and the exemption claimed by him under s.5(1) (xiv) of the Wealth Tax Act in respect of the heirlooms has been declined and his estate has been assessed. The relevant portion in each of the assessment orders in this behalf runs thus:

"2. The assessee has claimed exemption of this estate (estate lying in Srinagar Toshakhana) under s.5(1) (xiv) of the W.T. Act, 1961. However, I have been given to understand that the CBDT has not given recognition to the claim of the assessee. Therefore, the estate is assessed."

The appellant has challenged these assessment orders in appeals which are pending. These assessment orders, though made on protective basis and subject to the final valuation of the estates, clearly show that the Wealth Tax authorities, and the CBDT, Revenue Department, Ministry of Finance, Government of India are treating the estate lying in the Srinagar Toshakhana as property belonging to the appellant's family.

Having regard to the aforesaid facts the impugned order dated July 20, 1985, in our view, is clearly erroneous and the inspection sought ought to have been granted.

We, therefore, direct that the six boxes containing the jewellery and other valuable articles lying in Srinagar Toshakhana under the lock and seal of the Commissioner of the High Court shall be opened for the purposes of inspection by the Member, Central Board of Direct Taxes (WT&J) who will be accompanied by the Director General of Archaeological Survey of India, Director Antiques, Director National Museum and Approved Valuers of jewellery for determining the true nature and character of the same and whether any and if so what items constitute heirlooms or articles of personal use of the appellant and his family. Such inspection will be taken in the presence of the appellant's representative as also a representative of the State Government but such representatives shall not work on the panel of the Inspection Committee but may render such assistance as may be necessary to the members of the panel. The Inspection Committee will complete the inspection and submit its report to the High

A Court within three months from the commencement thereof. The parties are directed to obtain further directions in the matter of such inspection from the High Court.

B Appeal is allowed. No costs.

M.L.A.

Appeal allowed.