

CALCUTTA HIGH COURT

Commissioner of Wealth-Tax

Vs

Aditya Vikram Birla

(D K Sen and C Banerji, J.)

16.01.1978

JUDGMENT

D.K. Sen, J.

1. The question of law which has been referred to this court under Section 27(1) of the Wealth-tax Act, 1957, at the instance of the Commissioner of Wealth-tax, West Bengal-I, Calcutta, is as follows :

"Whether, on the facts and in the circumstances of the case and on a correct interpretation of Section 5(1)(viii) of the Wealth-tax Act, 1957, as it stood before and after amendment by Finance (No. 2) Act of 1971, the Tribunal was right in holding that ornaments intended for personal use not studded with precious or semi-precious stones were not liable to be included in the assessee's net wealth for the assessment year 1970-71 ?"

2. The reference arises out of the assessment of wealth-tax of Aditya Vikram Birla, the assessee, for the assessment year 1970-71. In his return the assessee did not include jewellery intended for his personal use in his net wealth on the ground that on the relevant valuation date such jewellery, that is, jewellery intended for personal use was exempt under Section 5(1)(viii) of the Wealth-tax Act, 1957, from inclusion in the assessable net wealth.

3. The Wealth-tax Officer accepted the above contention of the assessee and completed the assessment without including the said jewellery in the net wealth chargeable to tax.

4. In exercise of his powers under Section 25(2) of the Wealth-tax Act, 1957, the Additional Commissioner of Wealth-tax initiated revision proceedings in view of the amendment of Clause (viii) of Section 5(1) of the Wealth-tax Act, 1957, by the Finance (No. 2) Act of 1971. By the said Act the said clause was amended with retrospective effect from 1st April, 1963, so as to exclude jewellery from the scope of the exemption under that clause. By the same Act an

Explanation 1 was inserted in the clause with effect from 1st April, 1972. By the said Explanation an extended meaning was given to the word "jewellery". The Additional Commissioner held that the assessee's ornaments of all descriptions were jewellery and as such liable to be included in his chargeable net wealth in the assessment year in question and directed the Wealth-tax Officer to modify the assessment accordingly.

5. Aggrieved by the order of the Additional Commissioner of Wealth-tax the assessee preferred an appeal to the Tribunal. The Tribunal noted the difference between "jewellery" and "ornaments" and held that ornaments were included in jewellery with effect from the 1st April, 1972, when the Explanation was added to Section 5(1)(viii) of the Wealth-tax Act by the Finance (No. 2) Act, 1971. The Tribunal followed an earlier decision of another Bench of the Tribunal in the case of Smt. Rajashree Birla v. Wealth-tax Officer for the assessment years 1969-70 and 1970-71 where it was held that ornament for personal use not containing precious or semiprecious stones should not be included in the assessment of wealth-tax of the assessee and set aside the order of the Appellate Assistant Commissioner ; the appeal of the assessee was allowed.

6. For appreciation of the dispute involved in this reference it is necessary to consider first the precise language of the Section involved, that is, Section 5(1)(viii) of the Wealth-tax Act, 1957, as it stood before the promulgation of the Finance (No. 2) Act, 1971, on the 10th August, 1971, and also the same section as it stands after amendment.

7. The material point of the said section before it was amended was as follows :

"5. Exemptions in respect of certain assets.--(1) 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--.....

(viii) furniture, household utensils, wearing apparel, provisions and other articles intended for the personal or household use of the assessee." After the amendment, the said section materially reads as follows:

"5. (1) Subject to the provisions of Sub-section (1A), 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--.....

(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:.....

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

(a) 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 stone, 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."

8. Mr. B. L. Pal, learned counsel for the revenue, drew our attention to the Finance (No. 2) Act, 1971, which resulted in the amendment of Section 5 of the Wealth-tax Act as noted hereinabove and also cited a decision of the Gujarat High Court in the case of *Commissioner of Wealth-tax v. Jayantilal Amratlal*¹. In the case before the Gujarat High Court, the very same question as the one before us was involved in the background of the following facts. The assessee was a Hindu undivided family. In the relevant assessment years, viz., 1962-63 to 1964-65, the assessee claimed that the value of its jewellery and ornaments amounting to over Rs. 1,85,000 was exempt under Section 5(1)(viii) of the Wealth-tax Act on the ground that the same were meant for the personal use of the ladies of the family. The Wealth-tax Officer rejected the claim of the assessee and, on appeal, the Appellate Assistant Commissioner upheld the decision of the Wealth-tax Officer. On further appeal, the Tribunal, in line with the decision of the Supreme Court in the case of *Commissioner of Wealth-tax v. Arundhati Balkrishna*², held that the entire value of jewellery was exempt from inclusion in the net wealth as the jewellery and ornaments were intended for the personal use of ladies of the family.

9. The following question, amongst others, stated to be arising out of the order of the Tribunal was referred to the Gujarat High Court:

"Whether, on the facts and in the circumstances of the case, jewellery held by the Hindu undivided family was exempt under Section 5(1)(viii) ?"

10. The Gujarat High Court found that the effect of the amendment brought about by the Finance (No. 2) Act, 1971, so far as it excluded jewellery from the purview of exemption with effect from 1st April, 1963, was to supersede the decision of the Supreme Court in the case of *Commissioner of Wealth-tax v. Arundhati Balkrishna* [1970] 77 ITR 505(Supra), but noted that on account of

the Explanation added to the said section by which the word "jewellery" had been denned for the purposes of Section 5(1)(viii) there remained a scope for further dispute. It was contended on behalf of the assessee before the High Court that because of the specific prospective operation of the Explanation, the assessee was entitled to exemption in respect of "ornaments" which were not originally within the meaning of the term "jewellery" but were now brought by the said Explanation under the said term. The High Court considered its earlier decision in the case of Commissioner of *Wealth-tax v. Mrs. Arundhati Balkrishna*³ and subsequently affirmed by the Supreme Court where it had considered the dictionary meaning of the term "jewellery" and had held that, according to the dictionary the terms "jewellery" and "ornaments" could be collectively described as "jewellery" and would fall outside the area of exemption afforded by Section 5(1)(viii). The High Court called the meaning of the term "jewellery" from two dictionaries. The first was Random House Dictionary, unabridged edition, page 767, where the meaning of the word "jewellery" was given as follows:

"1. a number of articles of gold, silver, precious stones, etc., for personal adornment.

2. any ornament for personal adornment, as a necklace, cuff-links, etc., including those of base metals, glass, plastic, or the like....."

11. The other was the Shorter Oxford English Dictionary, third edition, page 1064, where the term "jewellery" was explained as "jewellers' work ; gems or ornaments made or sold by jewellers ; jewels collectively, or as a form of adornment."

12. From the above, the High Court came to the conclusion that the dictionary meaning of "jewellery" was clear enough to include "ornaments" irrespective of whether they were of precious metal and contained precious stones or not.

13. The Gujarat High Court further held that the Explanation to Section 5(1)(viii) of the Wealth-tax Act having come into force only with effect from April 1, 1972, could not be considered as being in the statute book in the earlier years and for all intents and purposes would be a later Act of Parliament. The natural meaning of the term "jewellery" would, however, remain unaffected and the Explanation 1 should not be relied on in construing the meaning of the term in respect of any assessment year prior to 1st April, 1972. The High Court concluded with the following observation--[1976] 102 ITR 105, 118 (Guj) :

"In the ultimate analysis, however, it is always the question of legislative intent and we are of the opinion that having regard to the obvious fact that gold, silver or platinum ornaments studded with jewels could not have been articles otherwise than of jewellery, Parliament could have only by way of abundant caution thought fit to include the same articles in jewellery by Explanation 1,

which has been made effective prospectively. The parliamentary exposition of the term "jewellery" so as to include ornaments studded with jewels could not have been, in our opinion, for purposes of enlarging the term of the meaning for the first time, and, therefore, to make it applicable prospectively. The interpretation canvassed on behalf of the assessee would defeat the legislative intent of removing with retrospective effect from April 1, 1963, the cover of exemption to jewellery by excluding it from articles intended for personal use of an assessee, because on that interpretation...the ornaments made of gold, etc., and studded with precious stones would be considered jewellery, only from April 1, 1972, The result would be patently absurd, inasmuch as the articles admittedly of jewellery can be included in the net wealth of an assessee only from April I, 1972. We cannot accept any such interpretation which would lead to such absurd result when the intention of Parliament in excluding the jewellery from the purview of exemption under Section 5(1)(viii) with effect from April 1, 1963, is manifestly clear in the Finance (No. 2) Act of 1971. As stated by us, it is only by way of greater caution that the ornaments of gold, etc., have been also included along with the other articles such as furniture, apparel, etc., studded or sewn with jewels which could not have been obviously termed as jewellery but for the inclusive definition given in Explanation 1 and to that extent the said Explanation is prospective. In that view of the matter, therefore, the last contention..... that this definition is exhaustive should be rejected. It was ultimately urged that when two reasonably possible interpretations are open, the court should prefer one which would be favourable to the assessee. In our opinion, the question of preference does not arise as the interpretation canvassed on behalf of the assessee cannot be said to be reasonable or possible interpretation."

14. Mr. B. L. Pal adopted the entire reasons in this judgment and rested his argument on the above case.

15. Dr. D. Pal, learned counsel for, the assessee, contended on the other hand that the conclusion of the Gujarat High Court that the ordinary meaning of the term Jewellery" included "ornaments" was not acceptable. According to him, the term jewellery in the ordinary parlance did not include ornaments without precious stones and for that reason the Explanation to the said section was promulgated and deliberately given a prospective effect in the Finance (No. 2) Act of 1971.

16. He drew our attention to the reply given by the Finance Minister in Parliament in the debate on this particular Finance Act. The relevant part of the reply is as follows:

"In giving an extended meaning to the term 'jewellery' and excluding furniture, utensils and other articles falling under the categories described above from the scope of the exemption, it is not the intention to enter into pettifogging enquiries into the details of such articles so as to cause embarrassment or harassment to taxpayers. This will be

secured through suitable administrative instructions."

17. He submitted that it was quite clear from this speech that Parliament wanted to give an extended meaning to the term "jewellery ", which the term did not have.

18. Dr. Pal in further support of his contentions cited several decisions of other High Courts which it will be convenient to consider in their chronological order.

(a) In *State of Orissa v. Jamula Srirangam* [1961] 12 STC 135, the Orissa High Court in this case had to construe the dictionary meaning of the term "jewellery ". After considering the Standard Oxford Dictionary. the High Court held that the expression "jewel", though ordinarily meaning an ornament containing precious stones, has also a secondary meaning which was applied to imitations in glass or enamel of a real gem. The meaning of the word "jewellery" from the same dictionary was noted as follows:

"gems or ornaments made or sold by jewellers, especially precious stones in mounting; jewels collectively or as a form of adornment."

The High Court observed (page 137):

"Thus the dictionary meaning seems to indicate that though ordinarily precious stones must be an essential ingredient of the ornament in order to make it 'jewellery' there is no invariable rule that an ornament containing imitation stones must on no account be treated as jewellery. The value of the imitation stones set is wholly immaterial in deciding this question."

(b) Commissioner of Income-tax v. Kulu Valley Transport Co. P. Ltd.

was cited by Dr. Pal for an observation of the Supreme Court at page 530 of the report as follows:

"It cannot be overlooked that even if two views are possible the view which is favourable to the assessee must be accepted while 'construing the provisions of a taxing statute.'"

(c) *Commissioner of Income-tax v. Taj Mahal Hotel* . In this case, the Supreme Court considered the effect of the word "includes" in the definition or interpretation clauses in statutes. The relevant observation of the Supreme Court at page 47 of the report was as follows:

"Now it is well settled that where the definition of a word has not been given, it must be construed in its popular sense if it is a word of every day use. Popular sense means ' that sense which people conversant with the subject-matter with which the statute is dealing,

would attribute to it'. In the present case, Section 10(5) enlarges the definition of the word 'plant' by including in it the words which have already been mentioned before. The very fact that even books have been included shows that the meaning intended to be given to 'plant' is wide. The word 'includes' is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute. When it is so used, these words and phrases must be construed as comprehending not only such things as they signify according to their nature and import, but also those things which the interpretation clause declares that they shall include. The word 'include' is also susceptible of other constructions which it is unnecessary to go into."

(d) *Commissioner of Wealth-tax v. Smt. Binapani Chakraborty*⁴ The Orissa High Court in this case dealt with a question identical to the question before us in the present case, that is, whether the word "jewellery" in Section 5(1)(viii) of the Wealth-tax Act, 1957, prior to the amendment of the section and the introduction of the Explanation by the Finance (No. 2) Act, 1971, could mean any gold ornament without precious or semi-precious stones embedded on it. The High Court, after considering the decision of the Supreme Court in the case of Arundhati Balkrishna [1970] 77 ITR 505(Supra) and taking into account the clear retrospective Explanation held that gold ornaments could not be included within the term "jewellery" before 1st April, 1972, when the Explanation 2 introduced of the Finance (No. 2) Act, 1971, came into force.

(e) Dattatraya Govind Mahajan v. State of Maharashtra, , for an observation of the Supreme Court at page 928 of the report as follows:

"It is true that the orthodox function of an Explanation is to explain the meaning and effect of the main provision to which it is an Explanation and to clear up any doubt or ambiguity in it. But ultimately it is the intention of the legislature which is paramount and mere use of a label cannot control or deflect such intention. It must be remembered that the legislature has different ways of expressing itself and in the last analysis the words used by the legislature alone are the true repository of the intent of the legislature and they must be construed having regard to the context and setting in which they occur. Therefore, even though the provision in question has been called an Explanation, we must construe it according to its plain language and not on any a priori considerations."

19. On a careful consideration of Section 5(1)(viii) as it stood before the amendment introduced by Finance (No. 2) Act, 1971, the dictionary meaning of the terms "jewel and jewellery" as also the respective submissions of the parties on the point, we have to record our respectful disagreement with the decision of the Gujarat High Court. From the compact edition of the Oxford English Dictionary, 1971 edition, the relevant meaning of the word "jewel" appears to be,

(a) costly ornament, especially one made of gold, silver or precious stones. It is further noted in this dictionary that this meaning is obsolete in general sense and in the modern sense the word is now restricted to a small ornament containing a precious stone or stones worn for personal adornment; (b) a precious stone, a gem.

20. The meanings of the word "jewellery" from the same dictionary are, (a) jeweller's work, (b) gems or ornaments made or sold by jewellers especially precious stones in mountings, (c) jewels collectively.

21. In Stroud's Judicial Dictionary, 3rd edition, the words "jeweller's work" vis-a-vis the statute, Plate (Offences) Act, 1738, have been held to mean any gold or silver wherein any jewels or other stones are or shall be set.

22. In Webster's Third New International Dictionary, 1971 edition, the word "jewellery" is stated to mean ornament pieces made of materials that may or may not be precious, often set with genuine or imitation gems and worn for personal adornment.

23. It appears to us 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 it appears to us that in the popular parlance "jewellery" connotes use of stones, precious, semi-precious or even imitation in the ornament concerned.

24. Furthermore, in construing this word, it will not be safe to go only by the original or modern English meaning. We have to keep in view the widespread use of ornaments and jewellery in our country and the specific connotation of various types of jewellery in use in the country and described in the various local languages. In Hindustani and Bengali at least a clear distinction is made between ornaments which are made of gold or silver and ornaments which are set with stones.

25. In our opinion, it is for this very reason that the Explanation was introduced by the Finance (No. 2) Act, 1971, and the meaning of the word "jewellery" was extended to include ornaments made of gold, silver, platinum or any other precious metal or alloy containing one or more of such precious metals whether or not containing any precious or semiprecious stone.

26. If we accept the contentions of Mr. B. L. Pal and hold that in its ordinary meaning the term "jewellery" always included all ornaments made out of precious metals with or without stones, then the introduction of the above Explanation to Section 5(1)(viii) with prospective effect would be redundant and also absurd. We cannot impute a redundancy to any clause which has been embodied in a statute. If the Explanation was added to the section for reasons of greater caution

as held by the Gujarat High Court in the case of Jayantilal Amratlal [1976] 102 ITR 105 (Guj)(Supra), then it was all the more necessary to make the Explanation retrospective as the main amendment and not prospective.

27. For the reasons given above, with respect, we follow the decision of the High Court of Orissa in Commissioner of Wealth-tax v. Smt. Binapani Cha-kraborty [1978] 114 ITR 82. We hold that the ornaments of the assessee not studded with stones, precious or semi-precious or imitation, and which were meant for personal use of the assessee were not includible in the net wealth of the assessee for the assessment year 1970-71.

28. Accordingly, we answer the question in the affirmative and in favour of the assessee. There will be no order as to costs.

C. K. Banerji, J.

29. I agree.

Cases Referred.

1[1976] 102 ITR 105

2[1970] 77 ITR 505

3[1968] 70 ITR 203 (Guj)

4[1978] 114 ITR 82 (Ori)