

# GUJARAT HIGH COURT

Commissioner of Expenditure Tax

Vs.

Smt. Manorama Sarabhai

Expenditure Tax Ref. No. 1 of 1962, with Civil Appln. No. 10 of 1962

(K.T. Desai, C.J. and Bhagwati, J.)

07.12.1962

## JUDGMENT

### **Desai, C.J.**

1. This is a reference under Section 25 (1) of the Expenditure Tax Act, 1957, at the instance of the Commissioner of Expenditure Tax, Gujarat. The assessee in this case is Shrimati Manorama Sarabhai. The assessment year with which we are concerned is the assessment year 1959-60, the accounting year being the year which ended on 31st March, 1959. The assessee is a B.Sc., in Social Sciences of the London University and a graduate of the Bombay University. She, devotes part of her time to running educational institutions for children. She has been associated with the Shreyas School at Ahmadabad for about fourteen years and is one of the persons running the same. The school is run in the same way as other institutions with the help of paid employees, but in view of her financial position, the assessee renders service to the school in an honorary capacity. At the time when she left India in or about April 1958, she applied to the Reserve Bank of India for allotment of the necessary foreign exchange. In her application she stated that she was thinking of going abroad for one year for seeing some progressive experimental schools in England and Europe, that since 1947, she and her sister-in-law had founded a school named Shreyas which had been recognized by the Bombay State as an experimental school and that her idea in going abroad was two-fold. One of her ideas was that she wanted to study educational psychology which she felt would help her in the understanding of children and that she had written to the Tavistock Institute to let her have the benefit of their course in educational psychology and that the Institute had agreed to do so. She also wanted to see the working of schools both in England and Europe whenever time permitted her to do so. She further stated that if given the requisite exchange, she would be going with ten years' experience in a school and felt that it would help her to imbibe what was best abroad and bring it out to be incorporated in the education imparted in India. She secured admission in the Tavistock Clinic of Mental Hygiene, London, for the purpose of training in education and clinical psychology. She completed the

training in June 1959 and was accepted for a further year as an associate student in the adult department of the clinic for the year 1959-60 also. She travelled to places like Switzerland, Holland and Scandinavia for the purpose of studying institutions connected with children in those countries. In the aforesaid activities, she incurred expenses to the extent of Rs. 13,952/- during the year ending on 31st March, 1959. She claimed that she was entitled to an exemption in respect of the expenditure incurred as aforesaid under Section 5 (a) of the Expenditure Tax Act, 1957. She succeeded in her contention before the Income Tax Appellate Tribunal. Thereupon, at the instance of the Commissioner of Expenditure Tax, this reference has been made for the purpose of determining the question following :-

"Whether on a true interpretation of Section 5 (a) of the Expenditure Tax Act, 1957, the educational activities of the respondent amount to 'business, profession, vocation or occupation'."

Section 5 (a) of the Expenditure Tax Act, 1957, runs as follows :-

"5. No expenditure-tax shall be payable under this Act in respect of any such expenditure as is referred to in the following clauses, and such expenditure shall not be included in the taxable expenditure of an assessee -

(a) any expenditure, whether in the nature of revenue expenditure or capital expenditure, incurred by the assessee wholly and exclusively for the purpose of the business, profession, vocation or occupation carried on by him or for the purpose of earning income from any other source." The learned Advocate General, who appears on behalf of the Commissioner, urged that the words "business, profession, vocation or occupation" as used in this section should be understood in the same sense in which the words "business, profession or vocation" have been used under the Indian Income Tax Act, 1922. He submitted that unless an activity is carried on with the dominant motive of deriving income or profit, it would not fall within the words "business, profession, vocation or occupation" used in Section 5 (a) of the Expenditure Tax Act, 1957. He further urged that the legislature has, in the section, also provided that any expenditure incurred by an assessee wholly and exclusively for the purpose of earning income "from any other source" was expenditure which was excluded for the purpose of the expenditure tax and that the said provision indicated the general intent of the legislature in enacting Section 5 (a). The words "from any other source" clearly meant from any source other than business, profession, vocation or occupation. In his submission, it was necessary that the words "business, profession, vocation or occupation" should also refer to activities carried on for the purpose of earning income and if any activity was not carried on for the purpose of earning income, then, having regard to the context in which the words were used in the section, such activity would not constitute business, profession, vocation or occupation. The meaning sought to be given by the learned Advocate General cannot be attributed to those words in the light of the context in which the words have been used. If

the legislature intended to confine the exemption to the expenditure incurred for the purpose of earning income, the legislature would have used the words "for the purpose of earning income from business, profession, vocation or occupation" and not merely the words "for the purpose of business, profession, vocation or occupation". The words "for the purpose of" have been used in connection with the words "the business, profession, vocation or occupation" and have been repeated in connection with the words "earning income from any other source". The legislature has thus provided disjunctively for different categories of expenditure and it is not right that the concept underlying one category should be imported into the other. For the purpose of the present case, we will have to consider whether the assessee carried on any "vocation or occupation". It is not necessary that the income or profit motive should exist before an activity can be termed vocation or occupation. A vocation or occupation may be carried on without any profit motive. A vocation or occupation may be carried on out of considerations of social service or of conferring some benefit to humanity or to a class of persons. One cannot say that merely because income has not been derived or income has not been desired, an activity cannot be regarded as vocation or occupation. The earning of income or the desire to earn income cannot be regarded as the dominant consideration or the requisite element for the purpose of constituting an activity into a vocation or occupation. It may be that a vocation or occupation carried on by a person may yield income or may not yield income. The mere fact that no income is intended to be derived or to be received from such activity would not make that activity cease to be vocation or occupation. Even as regards business it has been held that it is not essential to the carrying on of a business, that the person carrying it on should make a profit, or even that he should desire or want to make a profit. A business may be carried on on "no profit no loss" basis. Co-operative societies or mutual insurance companies may carry on business although they may not make and may not want to make any profit. A reference may be made to a decision of the Supreme Court in the case reported in *P. Krishna Menon v. Commissioner of Income Tax, Mysore*<sup>1</sup>, Travencore-Cochin and Coorg, Bangalore. It has been held in that case that in order that an activity might be called a vocation it was not necessary to show that it was an organised activity and that it was indulged in with a motive of making profit. The word "occupation" is a word of wider import than the word "vocation." A person who is carrying on an occupation need not necessarily be carrying on a vocation, but every person carrying on a vocation must be regarded as one carrying on an occupation. If a profit motive is not the prerequisite of the activity "vocation", it cannot be regarded as the pre-requisite of the activity which could be termed "occupation". On the facts of the present case, the activity carried on by the assessee must be regarded as an occupation within the meaning of Section 5 (a) of the Expenditure Tax Act, 1957. If she had, for the service rendered by her, been receiving remuneration, then, in accordance with the argument advanced by the learned Advocate General, such activity was liable to be regarded as occupation and any expenditure incurred by the assessee wholly and exclusively for the purpose of such occupation would have been exempt from expenditure

tax. Merely because the assessee being in affluent circumstances does not receive any remuneration, the character of her activity does not change. If her activity could be regarded as an occupation within the meaning of the section, if she received remuneration therefor, it is not possible not to regard it as occupation merely because she is carrying on the same activity from the motive of doing social service or social good without taking any remuneration therefor.

2. The learned Advocate General drew our attention to certain authorities which made a distinction between a vocation or occupation on the one hand and a hobby on the other. A hobby, by and large, is referable to an activity which occupies the leisure moments of an individual. It is not necessary for the purpose of the present case to consider the question

<sup>1</sup>(1959) 35 ITR 48

whether if the activity carried on by the assessee constitutes occupation, it also constitutes a hobby. It is sufficient for the purpose of satisfying the provisions of Section 5 (a) that the activity constitutes an occupation.

3. The learned Advocate General pressed us to reframe the question in the manner stated in Civil Application No. 10 of 1962. He desired us to reframe the question in terms following :-

"Whether on the facts and in the circumstances of the case, and on a true interpretation of Section 5 (a) of the Expenditure Tax Act, the sum of Rs. 13,952/- is to be excluded from the taxable expenditure under Section 5 (a) of the Expenditure Tax Act."

The learned Advocate General very frankly stated to us that he desired the question to be re-framed in this form so that he can agitate before us the question whether the assessee had carried on the activity during the year of assessment. He indicated that the assessee, during the assessment year, had gone abroad and that she was not actively carrying on the activity of running a school during that period. This point was at no stage canvassed before the Tribunal and we would not reframe the question with a view to enlarge the scope of the reference. A question of the nature sought to be agitated before us does not arise out of the order of the Tribunal. In our view, the question as framed by the Tribunal is sufficient for the purpose of disposing of the matter in controversy between the parties which arises out of the order of the Tribunal.

4. Our answer to the question is that on a true interpretation of Section 5 (a) of the Expenditure Tax Act, 1957, the educational activities of the respondent amount to occupation within the meaning of the said section. The Commissioner will pay to the assessee the costs of the reference.

Reference answered.