

BOMBAY HIGH COURT

G.S. Poddar

Vs.

Commissioner of Wealth-Tax

Wealth Tax Reference No. 8 of 1962

(Tambe and V.S. Desai, JJ.)

18.02.1965

JUDGMENT

V.S. Desai, J.

1. In the wealth-tax assessment of the assessee for the assessment year 1959-60, for which the relevant valuation date was 31st March, 1959, the assessee claimed exemption in respect of certain gold and silver articles under section 5(1)(viii) of the Wealth-tax Act. He was allowed exemption in respect of the silver articles, but the exemption was disallowed in respect of the gold articles which were valued at ₹ 51,600. The question which arises for consideration on this reference under section 27(1) of the Wealth-tax Act, at the instance of the assessee, is :

"Whether on the facts and in the circumstances of the case the assessee was entitled to exemption from tax in respect of the gold articles valued at ₹ 51,600. in terms of section 5(1)(viii) of the Act ?"

2. The gold articles in question consist of two gold caskets weighing 225 tolas, gold tray of 70 tolas, two gold glasses weighing 42 tolas, a gold cup, saucer and spoons together weighing 32 tolas, and photo-frame weighing 61 tolas. The total gold contained in these articles is 431 tolas, and its valuation at the relevant time was ₹ 51,600. The assessee was connected with the business in cloth manufactured by the textile mills under the management of Messrs. Tata Sons Ltd., In the year 1945, the assessee was appointed a justice of peace, and the occasion was celebrated by the dealers and brokers in cloth manufactured by the mills, with whose business the assessee was connected. On the occasion of the celebration, these articles were presented to the assessee as souvenirs. Even since that time the assessee kept these articles in a glass show case for display in his drawing room. Before the Wealth-tax Officer, the assessee contended that these articles were household utensils, which were put to daily use, and therefore entitled to exemption. The claim

was rejected by the Wealth-tax Officer, who held that the household utensils for daily use, which were exempted under section 5(1)(viii) of the Wealth-tax Act were ordinary utensils for day to day or ordinary use, and not utensils of gold which were meant for ornamental use for special occasions. Before the Appellate Assistant Commissioner, the same stand was taken by the assessee, namely, that in view of the traditions of the family, the articles in question were of normal nature and were utensils for the day to day use of the appellant-assessee. The Appellate Assistant Commissioner took the view that the exemption under the relevant provisions of the Wealth-tax Act applied only to the normal requirements of household from day to day, and not to articles which were in the form of jewellery. He, therefore, confirmed the decision of the Wealth-tax Officer, disallowing the exemption.

3. In the second appeal before the Income-tax Appellate Tribunal, the assessee did not persist in saying that the articles were household utensils for the personal or household use of the assessee, but contended that they fell within the expression "other articles intended for the personal or household use of the assessee" contained in section 5(1)(viii) of the Act. That claim of the assessee was negatived by the Tribunal, although the two Members of the Tribunal put their reasons for negating the claim on slightly different grounds. According to the Accountant Member, the expression "other articles intended for personal or household use of the assessee" used in the relevant provision must be construed judgment generis with the other items which were specified in the said provision, namely, furniture, household utensils, wearing apparel and provisions, and when so construed, they must be taken to mean articles which are intended for consumption as distinguished from decoration or ornamentation. According to him, the word "use" as used in the expression "other articles intended for the personal or household use of the assessee", meant "something different from ornamentation or decoration, and necessarily in the context, the use contemplated, whether it is personal use or household use, is such that the article itself is consumed by the use to which it is put". He pointed out that the assessee had clearly admitted that the articles were put in a glass show case which was kept in the drawing room, and they served not only the purpose of decoration, but as souvenirs, so that the assessee when he looked at them recalled happily the memory of the event that took place in 1945 when he was appointed a justice of peace. Having regard to the use to which the articles were put according to the assessee, the Accountant Member was of the opinion that the said use was not the personal or household use which was intended by the relevant provision. The Judicial Member was of the opinion that in order to find out whether the articles in question were intended for the personal or household use of the assessee, it was the intention of the assessee and the use to which he had actually put the articles, which was the main criterion for determining the question. Since, on the facts and in the circumstances of the case, the assessee had never intended to put the articles to a personal or household use and had used them only as articles of drawing-room decoration, the articles could not be regarded as being qualified for the exemption under the relevant provision. Since both the learned Members of the Tribunal were of the opinion that the articles were not entitled to exemption, they confirmed the decision of the departmental authorities, and dismissed the appeal of the assessee. Thereafter, at the instance of the assessee, they have drawn up the

statement of the case, and referred to this court the question which we have stated earlier.

4. The relevant clause under which the exemption is claimed, allows exemption in respect of :

"furniture, household utensils, wearing apparel, provisions and other articles intended for the personal or household use of the assessee."

5. In order to come within the exemption given by this clause, the articles in question must fall within any of the items mentioned therein. Before the departmental authorities, the exemption was claimed on the basis that they were household utensils. The two gold caskets together weighing 225 tolas can by no stretch of imagination be regarded as household utensils. Mr. Mehta, learned counsel appearing for the assessee, has contended that on the facts and on the material on record, they could be regarded as items of furniture. He points out that they are kept in the drawing room in a show case. The show case, according to him, is undoubtedly a part of the furniture. and he suggests that the show case with its contents is also intended to be and forms part of the drawing room furniture of the assessee. We do not think that gold caskets, simply because they are put in a show case, which is part of the drawing room furniture, also become items of furniture. Nor do we think that the legislature has intended to include in the items of furniture what is placed or contained in the articles of furniture. A reference to clauses (xii) and (xiii) of the said section will show that works of art, archaeological, scientific or art collections, books or manuscripts belonging to the assessee and not intended for sale are allowed exemption. Works of art, or books or manuscripts or scientific or art collections may be exhibited in show cases in the drawing rooms. They would not be parts of the furniture. Similarly, under clause (xiii), drawings, paintings, photographs, prints and any other heirloom not falling within clause (xii) and not intended for sale, but not including jewelery, are also exempted. Several of these items may be exhibited in show cases. The articles, therefore, which are contained in the show cases exhibited in the drawing rooms are not intended by the legislature as forming part of the show cases as items of furniture, and where they are intended to be excluded, a specific provision is made for their exclusion. We do not think, therefore, that the gold caskets, which by themselves are not an item of furniture, will come in for inclusion as a part of the furniture, because they are contained in a show case kept in the drawing room. There is no doubt whatsoever, therefore, that the two gold caskets would not be entitled to exemption.

6. As to the rest of the articles, namely, the gold tray, two gold glasses, gold cup, saucer and spoon, and the photo frames, all of them perhaps with the exception of the photo frames, which are ornamental, have the shape of household utensils. The question, however, to be considered is whether, because the articles are in the shape of household utensils, they would necessarily be entitled to exemption under clause 5(1)(viii) of the Act. Now, in the first place, it may be stated that the assessee before the Tribunal did not argue his case on the basis that the articles in question were household utensils. He admitted that they were not household utensils, and that they had not been put to any such use at any time. His case before the Tribunal was that they were articles other than household utensils intended for the personal use of the assessee. It seems

to us that even apart from the circumstance that it was not the assessee's case before the Tribunal that they were household utensils, what is meant by the expression "household utensils" in the clause are utensils which are in fact household utensils and not something which is merely in the shape of household utensils but never intended to be used as such. It seems to us that the intention of the legislature in prescribing the exemption under the said provision is to allow exemption in the case of articles which are of common and ordinary personal or household use of the assessee. In other words, the articles which are normally and commonly used by the assessee either for his personal or household use like the furniture, household utensils, provisions and wearing apparel, etc. are allowed exemption. The idea in allowing exemption has reference to the use and the purpose of the article and not to the form or shape that it has. Suppose for instance the assessee were to have the gold and silver in his possession given the shape of articles of furniture as for instance claims, tables, benches, etc. it is hardly possible to contend that because the articles have the shape of articles of furniture that they must qualify themselves for exemption as furniture. It is no doubt true in the present case that the articles have the shape of household utensils, but they would not by their very shape be qualified for exemption as household utensils if they are in fact and in truth not household utensils and neither held or possessed for that purpose nor meant or intended to be used as such. On the facts which are admitted by the assessee, and are found by the Tribunal there is no doubt whatsoever that these articles, though having a shape of household utensils, were never regarded by the assessee as household utensils and he never intended to use them as such, nor did he ever put them to any such use. It is not possible for the articles, therefore, to claim exemption as household utensils.

7. It next falls to be considered whether they could claim exemption as "other articles intended for personal use of the assessee". It seems to us in the first place that the personal use which is contemplated by the expression is the use of a like nature as the use of other items mentioned in the clause, namely, furniture, household utensils, wearing apparel and provisions. The use as a decoration in the drawing room in the house, which is only calculated to give the person making the use a pride of possession is not contemplated under this provision under which the exemption is claimed. The articles which are intended to give pride of possession and not intended for sale by the assessee are provided for in the other clauses of the section, for instance, clauses (xii) and (xiii), to which we have already referred. Mr. Mehta has contended that the articles with which we are concerned, like the articles mentioned in clauses (xii) and (xiii) are not intended for sale, but are only intended to give the assessee a pride of possession and help him to recall a happy memory of the distinction and honour which he received years ago. Mr. Mehta argues that the articles which are not intended for sale but are only possessed to give the possessor a pride of possession are intended to be excluded by the legislature. There is no reason why the articles, with which we are concerned in the present case, should why the articles, with which we are concerned in the present case, should also not be granted exemption. It must, however, be remembered in the first place that no exemption has been claimed on any such ground, or under any other clause of section 5, excepting 5(1)(viii). Secondly, section 5 is exhaustive of the exceptions, and the

articles entitled to exemption must find their place in any of the clauses of section 5 providing for such exemption. Of the category of articles which could be exempted on the ground that they are not intended for sale, but only give the owner a pride of possession, the exempted articles are mentioned in clauses (xii) and (xiii). It may well be asked as to why the articles of the present nature, which are souvenirs or mementoes and which stand on par with the articles mentioned in clauses (xii) and (xiii) should not have been allowed exemption. That, however, is for the legislature to consider and not for us. What we have got to consider is whether they are actually exempted under the existing provision, and the circumstance that we may be inclined to be of the view that they deserve exemption, will not enable us to allow exemption if the existing provisions of the statute do not allow it.

8. Mr Mehta, has then argued that the expression "intended for the personal or household use" should be interpreted to mean capable of being intended for personal or household use so that if the articles are such as can be put to a personal or household use if so intended by their owners they would be entitled to exemption. The articles in the present case are such, says Mr. Mehta, because it is possible that the assessee in his declining age may think of using them for taking his morning or evening tea. We think that the expression "intended for the personal or household use" would mean normally commonly or ordinarily intended for personal or household use 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 the family of the assessee. The mere possibility, therefore, that the articles are capable of being put to a personal or household use would not be sufficient to treat them as intended for a personal or household use. Moreover the question whether the articles are intended for personal or household use has got to be considered with reference to the facts and circumstances as they exist at the time when the question has to be determined. On the facts as found, at the time when the assessee came in possession of these articles he did not intend to put them to a personal or household use nor has he put them to any such use at any time thereafter so far. In the present assessment at any rate the assessee cannot get exemption for the said articles on the ground that they are intended for personal or household use. What the position will be in future assessment if the assessee starts using these articles for his personal use hereafter we need not consider at present. As things stand at present, we are of the opinion that the decision of the Tribunal is correct, and the assessee is not entitled to exemption under section 5(1)(viii) of the Wealth-tax Act in respect of the gold articles.

9. Our answer, therefore, to the question which has been referred to us is in the negative. The assessee will pay the costs of the Commissioner.

Answer accordingly.