

PETITIONER:
THE COMMISSIONER OF INCOME-TAX, MADHYA PRADESH, BHOPAL

Vs.

RESPONDENT:
H.H. MAHARANI USHA DEVI

DATE OF JUDGMENT: 14/05/1998

BENCH:
SUJATA V. MANOHAR, S. RAJENDRA BABU

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Mrs. Sujata. V. Manohar, J.

The assessee is the ex-Ruler of the erstwhile Holkar State. The assessee was assessed as an individual and the assessment year involved is 1972-73.

In 1949, the Ministry of States, New Delhi had accepted certain heirloom jewellery as private properties of His late Highness Maharaja Keshaw Rao Holkar of Indore. These included a 'Sirpech' and a Ceremonial belt. All the listed jewellery and gold in the Huzur Jawahirkhana at Indore in 1949 and used by the Ruler of Indore on ceremonial occasions as in the past, were exempt under the provisions of Section 5(1)(xiv) of the wealth-Tax Act.

During the accounting year relating to the assessment year 1972-73, the assessee sold two items of heirloom jewellery for Rs. 13,80,001/-. The assessee claimed before the Tribunal that the heirloom jewellery constituted personal effects of the assessee within the meaning of Section 2(14) of the Income-Tax Act, 1961, and, therefore, the sale of this jewellery did not give rise to any taxable capital gains. This contention was negatived by the Tribunal. The Tribunal, however, framed the following question for reference before the High Court of Madhya Pradesh under Section 256(1) of the Income-Tax Act, 1961:

"Whether on the facts and in the circumstances of the case, the heirloom jewellery constituted 'personal effects' within the meaning of Section 2(14) of the Income-tax Act, 1961, therefore, the sale thereof did not give rise to any taxable capital gains?"

The High Court has answered the question in favour of the assessee. Hence the present appeal.

Under Section 45 of the Income-tax Act any profits or gains arising from the transfer of a capital asset effected in the previous year is chargeable to Income-tax under the head 'Capital Gains'. Such profits or gains shall be deemed to be the income of the previous year in which the transfer took place. The term 'Capital asset' has been defined in

Section 2(14) of the Income-tax Act. Section 2(14), as it stood at the relevant time, was as follows:

Section 2(14):

"Capital asset means property of any kind held by an assessee whether or not connected with his business or profession, but does not include:

- (i)
- (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 dependant on him.

....."

Personal effects which are excluded from capital assets include jewellery for personal use. We have to consider whether jewellery held for personal use by the assessee would cover heirloom jewellery of the assessee. Heirloom jewellery is also meant for the personal use of the assessee. it is, however, not meant for daily use but for use on ceremonial occasions. This does not deprive such jewellery of its character as jewellery meant for personal use. For example, clothes meant for use at weddings or formal occasions are not used daily. Yet they are stitched for personal use of the wearer. As such, they would form a part of his personal effects. Heirloom jewellery may be passed down from generation to generation. But it is nevertheless for the personal use of the owner. The High Court has rightly held that the frequency of use of the property must necessarily depend on the nature of the property. Merely because from the nature of the property, it can be used on ceremonial occasions only, it does not follow that the property is not held by the assessee for personal use.

On behalf of the department, however, it is contended that because the jewellery is meant for use on ceremonial occasions, it will not be a part of the assessee's personal effects. Learned counsel for the department has relied upon a decision of this Court in the case of H.H. Maharaja Rana Hemant Singhji v. Commissioner of Income-Tax, Rajasthan (103 ITR 61). In that case silver bars, sovereigns and rupee coins which were said to be used on special occasions for worship were held not to be the personal effects of the assessee. This Court said that only those articles which were "intimately and commonly used by the assessee" would be considered as personal effects. The Phrase "intimately and commonly" should not be taken literally. What was meant was property which is individually or personally used. One must remember that even furniture is included in personal effects. Also this judgment does not deal with jewellery which is meant to be worn personally by the assessee. it deals with gold sovereigns, silver rupees and silver bars. This Court rightly held that these could not be considered as personal effects of an assessee. it also observed that enumeration of articles like wearing apparel, jewellery and furniture, mentioned by way of illustrations in the definition of "personal effects" also showed that the legislature intended only those articles to be included in the definition which were intimately and commonly used by the assessee.

Jewellery is expressly included in the personal effects of an assessee as per Section 2(14) as it stood at the

relevant time. In the case of Commissioner of Income-Tax, Bombay City-VIII v. Sitadevi N. Poddar (148 ITR 506) (to which one of us was a party) the Bombay High Court considered a case where the assessee sold certain silver utensils of the type which were used in the kitchen or in the dinning room. The assessee contended that the silver articles were the personal effects of the assessee and hence were not capital assets within the definition of Section 2(14) of the Income-Tax Act, 1961. Kania, J. (as he then was,) distinguished the decision in the case of H.H. Maharaja Rana Hemant Singhji (supra) and held that "personal effects" would include articles which were intimately and commonly used by the assessee. Personal effects need not be confined only to those article which were worn on the person of the assessee. The inclusion, for example, of furniture would negative such a contention.

The above case of Sitadevi N. Poddar (Supra) has been followed by the Bombay High Court in a subsequent decision in Jayantilal A. Shah V. K.N. Anantharam Aiyar, Commissioner of Income-tax & Ors. (156 ITR 448). The Andhra Pradesh High Court, however, in the case of Commissioner of Income-tax, A.P., Hyderabad v. Trustees of H.E.H. The Nizam's Wedding Gifts Trusts (154 ITR 573) has held that jewellery which was meant for use on ceremonial occasions was not jewellery meant for personal use and would not be covered by the definition of "Capital asset" under Section 2(14). In our view, this decision of the Andhra Pradesh High Court does not appear to be correct. The occasion on which the jewellery is used will depend upon the nature of the jewellery is used will depend upon the nature of the jewellery. but if it is meant for the assessee's personal use, it will form a part of the assessee's personal effects.

In the case of G.S. Poddar V. Commissioner of Wealth-tax, Bombay City, II (57 ITR 207), the Bombay High Court considered a case where certain gold certain gold articles made in the shape of utensils like cups, saucers, trays were sold by the assessee. it was found that the articles were kept in a show-case in the drawing room of the assessee. The court, therefore, held that though the articles had the shape of household articles, they were neither regarded as household utensils by the assessee nor were they used or intended to be used as such. They were not personal effects of the assessee.

In the present case, however, the jewellery is to be worn on the person of the assessee. It would, in any event, form a part of the personal effects of the assessee. In the premises, since the definition of "Capital asset" in Section 2(14) does not include personal effects including jewellery, the High Court rightly came to the conclusion that on the facts found by the Tribunal, the items of jewellery in question were the personal effects of the assessee held for personal use by her and were, therefore, excluded from the definition of the term capital asset. As Such, profits and gains arising from the sale of these items was not taxable under the provisions of Section 45.

The appeal is, therefore, dismissed. There will, however, be no order as to costs