

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 114 of 2002****With****TAX APPEAL NO. 115 of 2002****TO****TAX APPEAL NO. 116 of 2002****With****TAX APPEAL NO. 244 of 2003****TO****TAX APPEAL NO. 248 of 2003****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE AKIL KURESHI****Sd/-****and****HONOURABLE MR.JUSTICE BIREN VAISHNAV****Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

SHANTADEVI P. GAEKWAD....Appellant(s)**Versus****W.T.O.....Opponent(s)****Appearance:****MR MANISH J SHAH, ADVOCATE for the Appellant(s) No. 1****MR KM PARIKH, ADVOCATE for the Opponent(s) No. 1**

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CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**
and
HONOURABLE MR.JUSTICE BIREN VAISHNAV

Date : 07/06/2017

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. These appeals arise in common background. We may record facts from Tax Appeal No.114 of 2002.

2. This appeal is filed by the assessee challenging the judgment of the Income Tax Appellate Tribunal ("Tribunal" for short) dated 26.9.2001. Appeal was admitted for consideration of following substantial question of law.

"Was the Tribunal right in holding that the Royal Buggy in question was not exempted under section 5 (1) (xii) of the Wealth Tax Act, 1957, because, it was covered under the first proviso to clause (viii) of sub-section (1) of Section 5 of the said Act?"

3. This question arises in the following background.

4. The appellant-assessee is an individual and is a member of the erstwhile royal family of Vadodara. The assessee owned a horse chariot popularly referred to as *Baggi*. This *Baggi* had substantial gold contents. The case of the assessee was that *Baggi* was a work of art and was, therefore, exempt from wealth tax under Section 5 (1) (xii) of the Wealth Tax Act, 1957. The case of the assessee is that he had inherited the said

article as a member of the royal family. The *Baggi* was used by his father and grandfather on important ceremonial occasions. That the *Baggi* was otherwise operational. It contained gold panels on the sides of the seat for the royalty. According to the assessee, there was exquisite engraving and embossing on these gold panels, which contained figures of animals like elephants and horses. The *Baggi* was made specially for the use on ceremonial occasions with extensive art work on the gold panels and elsewhere also.

5. The department however held a belief that the article in question was meant for personal or household use and would therefore fall within Clause (viii) of Sub-section (1) of Section 5. Consequently, as per the first proviso, since this article contains gold, the exemption would not be available. While framing the assessment on the wealth tax return filed by the assessee for the assessment year 1972-73, the Assessing Officer disallowed the claim of exemption and included the value of gold estimated at Rs.9,07,525/- for the purpose of computing the assessee's total wealth. The Assessing Officer, however, did not record any reasons. He merely rejected the claim and made the addition without any discussion.

6. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Commissioner. Since the Assessing Officer had not recorded any reasons, the Commissioner thought it appropriate to take the first-hand inspection of the article in question. Along with the department representative, he, therefore, visited the site where the *Baggi* was kept. Having inspected the article, he proceeded to pass the order in appeal of the assessee and

allowed the same. He was of the opinion that the engraving and embossing on the gold panels was exquisite. The art work was breathtaking. The designs contained figures of animals like elephants and horses and the extended figures were hollow from behind and not made of solid gold. The use of gold was therefore incidental and the assessee did not intend to pack the article with solid gold. The Commissioner (Appeals) thus was influenced by two factors. First was that according to him the article was a work of art and second that use of gold was incidental. On such considerations, he held that the article would fall under Clause (xii) of Sub-section (1) of Section 5 of the Wealth Tax Act and would, therefore, qualify for the exemption claimed by the assessee.

7. The department carried the matter before the Tribunal. The Tribunal was of the opinion that article was covered under Clause (viii) of Sub-section (1) of Section 5 of the Act since it was intended for personal use. Further, since the article contained gold, the exclusion clause of the first proviso to the said Clause (viii) would apply. The Tribunal noted that CIT (Appeals) was not justified in granting exemption by taking recourse to Clause (xii), treating the royal coach as a “work of art”. The Tribunal observed that “In our opinion the Id. CWT(A) is not justified in granting exemption by taking resort to clause (xii) treating the royal coach as a work of art. Merely because there are exquisite engraving and embossing on the gold panels used in the royal coach and the work done is of superior artistic quality would not by itself exclude the operation of the proviso appended below clause 5(1)(viii) for bringing the royal coach, which is an article for personal use of the assessee, within the ambit of taxation for wealth tax purposes. Since the

benefit of exemption has been specifically and unequivocally excluded by the legislative intention by introducing the proviso to clause (viii), we feel that it would be violative of accepted canons of interpretation of statutes to confer exemption by bringing the article for personal use under clause (xii) as a work of art. Even if an article of personal use possess exquisite beauty and in characteristic by superior artistic quality, it would still be covered under the specific exclusion as envisaged under the proviso to clause (viii). The interpretation sought to be placed by the Id. CWT(A) is in our opinion entirely misconceived and clearly runs contrary to the express legislative intention as contained u/s. 5(1)(viii)."

8. We have heard learned advocates for the parties, who have relied on decisions in support of their cases. We would refer to these decisions at appropriate stage. Having perused the documents and having heard learned advocates what emerges is that the Assessing Officer having denied the exemption without any discussion, the Commissioner (Appeals) after personal inspection of the article in question recorded his finding that the same was a "work of art". According to him, the engraving and embossments were exquisite and of breathtaking beauty. The Tribunal did not disturb these findings but formed an opinion that since the article in question was meant for personal use, it should appropriately fall within Clause (viii) of Sub-section (1) of Section 5 and not in Clause (xii) as a "work of art". Though some of the observations of the Tribunal seem to be hinting on the very question whether article could be said to be one of work of art, in clear terms, the Tribunal has based its conclusions on a

single factor viz. even if a particular article is a “work of art”, as long as it falls under Clause (viii), it would be governed by the said provision with all exclusions provided in the provisos. Two issues, therefore, present themselves before us. (i) Is article in question a “work of art”, and (ii) if so, if it also happens to be an article for personal use would it fall under Clause (viii) and be automatically excluded from Clause (xii).

9. In order to answer these questions, we may reproduce the relevant statutory provisions.

“Exemption in respect of certain assets.

5. (1)

(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 byway of embedding, covering or otherwise), gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals:

Provided further that nothing in this clause shall operate to exclude from the net wealth of the assessee any conveyance or conveyances to the extent the value or the aggregate value thereof exceeds the sum of [thirty thousand rupees].

.....

(xii) any works of art, archaeological, scientific or art collections, books or manuscripts belonging to the assessee and not intended for sale;”

10. It can thus be seen that clause (viii) of Sub-section (1) of Section 5 would include furnitures, household utensils, wearing

apparels and other articles intended for personal and household use of an assessee but not jewellery. Proviso to clause (viii) clarifies that such furniture, utensils or other articles are neither made wholly or partly of, nor contain gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals. In plain terms thus as per Clause (viii) of Sub-section (1) of Section 5, furniture, household utensils, wearing apparel etc. would be excluded while computing the net wealth. However, this exemption would not apply if the furniture, utensils etc. are made wholly or partly of or contain gold, silver, platinum or any other precious metal or alloys of such precious metals.

11. Clause (xii) of Sub-section (1) of Section 5 is also an exemption clause and covers any works of art, archaeological, scientific or art collections, books or manuscripts belonging to the assessee and not intended for sale. The work of art is clubbed with archaeological, scientific or art collection and the additional requirement of this exclusion clause is that it should not be intended for sale.

12. The expression “work of art” is not defined under the Act. We would therefore have to fall back on the understanding of the term in common parlance. Two past cases where interpretation of this term was attempted have been cited before us. In the case of **SB. Zainab Noorul Sayeeda and Others** reported in **262 ITR 306**, Division Bench of Andhra Pradesh High Court considered a question whether the Tribunal was correct in law in allowing exemption under Clause (xii) of the Wealth Tax Act in respect of certain items of jewellery which were claimed to represent the art treasures originally

belonging to the Nizam family of Hyderabad, which was later on settled in a trust. In this context, the Court observed as under:-

“16. What is a “work of art”?

According to Chambers Dictionary, “work of art” means a painting, sculpture or other production in the fine arts, esp., one of high quality; anything constructed or composed with manifest skill.

17. Problems of definition as to what are the arts and “work of art” elude solution. In the New Encyclopedia Britannica, Vol. 2, 15th edition, it is stated: What are the arts, and what is art in general? This is still a controversial question after centuries of debate. No particular definition commands universal assent. Several meanings are still frequently used, of which the oldest is the broad, technical sense. In this sense, the English term art and its equivalents in Greek and Latin covered not only what are now called “fine arts” or “aesthetic arts” but any kind of transmitted, useful skill, such as agriculture, medicine, and war.... In the 19th and 20th centuries, there has been a tendency to abandon the term art in speaking of the purely utilitarian skills and to call them instead “industries,” “technics,” “branches of engineering,” or “applied sciences.” Without the prefix fine, the word art alone is now commonly understood to mean the fine or aesthetic arts. To produce an experience of beauty or aesthetic satisfaction is said to be their distinguishing function or characteristic but not necessarily their only one. In this moderately broad, technical sense, some, but not all, architecture, furniture, and clothing can qualify as arts in spite of their useful purposes... The decorative arts are a species of visual art whose main function is to combine utility with beauty or aesthetic satisfaction. They tend to emphasize visual ornamentation and design along with fitness for some useful end or ends. Although Western painting and sculpture in the past traditionally tended to emphasize representation, the decorative arts used both abstract and representational design. Utility, design, and representation appear with varying degrees of emphasis in such arts as medieval book illumination, ‘jewellery,’

Greek or Chinese vase painting, Persian rugs, and French rococo furniture.

18. It would not be possible to exclude an article even if it is jewellery from the expression “work of art” if it is made or composed with manifest skill. It is not as if the Revenue found these seven articles to be not any “works of art” based on expert assessment of the articles. It is, however, difficult for this Court to make any value judgment.”

13. On behalf of revenue it was contended that being jewellery the article would not be covered by the exemption of Clause (xii). The Court held that if the case falls under any of the exemptions, the assessee would be entitled to benefit of exemption under Clause (xii) of Sub-section (1) of Section 5 of the Act and the revenue was not correct in contending that once it is established that the article is a jewellery, even if it is a work of art, the same is to be included in the net wealth of the assessee.

14. This judgment, therefore, approached the term “work of art” to mean a painting, sculpture or other productions in the fine arts, one of high quality, which is constructed or composed with manifest skills.

15. The decision of the Madras High Court in the case of **M.A.Chidambaram** reported in **239 ITR 371** was brought to our notice by Shri Parikh, learned counsel for the revenue, which had adopted somewhat restrictive interpretation of this term while explaining the term “work of art”. The Court observed as under:-

“The expression “works of art” is not a term of art,

however, its meaning has to be construed in the context of the provision of section 5(1)(xii) of the Act, and the expression "works of art" is employed along with other expressions like archaeological, scientific or art collections, books or manuscripts belonging to the assessee. Therefore, there must be an element of human skill involved or applied in the manufacture of the product which on mere look up it can be regarded as works of art. In Halsbury's Laws of England, fourth edition, in paragraph 892, the expression "works of art" is defined as follows:

"Works of art" applies to painting, drawings and pastels executed by hand, original engraving prints and lithographs and original sculptures and statutory (sic) in any material."

In Sampath Iyengar's *The Three New Taxes*, the expression and term "works for art" (at page 388) is as under:

"Works of art are those which are the result of human skill applied in various directions, such as, sculptures by Michael Angelo, painting by Raphael, Ruben, Vandyke, Leonardo da Vinci, Botticelli, Rembrandt, etc., or portraits by Ravi Varma, etc. Leading examples of private art collections in India but to which public entry is permitted are:

- (1) the collections of Sir Salar Jang situate in Hyderabad;*
- (2) the Mullick Art collections at Calcutta;*
- (3) the Vizianagaram collections at Varanasi, and*
- (4) the Singhania collections at "The Retreat", Kanpur."*

A reading of the above two extracts clearly shows that there must be an element of human skill employed in the making of the article and the result of human skill should be apparent in the article to regard them as works of art. It is not every article which is manufactured manually that can be regarded as a work of art and there must be some artistic innovation which would turn into works of art. The tribunal on inspection found that the trophies carry certain engraved markings of the occasion and events in which the assessee won the cups and trophies

and there was no human skill applied on the said trophies or cups."

16. The Court thus referring to the Halsbury's Laws of England and Sampath Iyengar's commentary on taxation observed that for work of art, there must be an element of human skill employed in making of the article and the result of the human skill should be apparent in the article to regard them as works of art. Not every article manufactured manually can be regarded as a work of art and there must be some artistic innovation which would turn them into works of art. We may notice in the commentary by Sampath Iyengar, the term "works of art" is explained in somewhat restrictive sense representing sculptures by Michael Angelo, paintings by Raphael, Ruben, Vandayke, Leonardo Da Vinci etc.

17. We may advocate perhaps not so restrictive understanding of the term "work of art" as to confine it to the work of greatest of the artists of the bygone era. The examples cited in the Madras High Court decision from the commentary of Sampath Iyengar while explaining the term "work of art" of sculptures and paintings of such legendary artists such as Raphael, Ruben, Vandayke, Leonardo Da Vinci etc., we would perhaps sit with an understanding adopted by the Andhra Pradesh High Court in the case of Zainab Noorul Sayeeda and Others (supra). We would still emphasize that a "work of art" must be a creation through human skill and must present exquisite and rare aesthetic beauty. No article brought into existence by human effort can be called "work of art" but has to be something which is rare and/or exceptional aesthetic beauty with artistic input.

18. The Commissioner (Appeals) had visited the site and found that the engravings on the panels of the *Baggi* are exquisite and of breathtaking beauty. The Tribunal did not disturb these findings. In fact, the Tribunal proceeded on the footing that even if the article was one of “work of art”, being an article for personal use would not qualify for exemption under Clause (xii).

19. While the Commissioner (Appeals) has pursuant to his personal inspection found the article to be one of the “work of art” by applying the parameters, which we do not find incorrect, and when the Tribunal has not disturbed these findings, we would conclude that the *Baggi* presents the “work of art”.

20. Once it is so held, the article would fall under Clause (xii) of Sub-section (1) of Section 5. Merely because incidentally it may also fall in Clause (viii), by itself, would not destroy its very essence of an article of “work of art”. Being an exemption clause, the Court would apply the provision which furthers the intention of the legislation rather than frustrating it. This was so held and observed by a Division Bench of Allahabad High Court in the case of **S.N.Kackar** reported in **175 ITR 129**. The issue can be looked from a slightly different angle. As is bound to happen, when several exemption entries are provided in the Legislature, a particular article or a thing may fall in more than one of them. Since incidental overlapping is unavoidable, the attempt on the part of the Court in such case would be to ascertain in which clause the article would more appropriately be covered. Clause (xii), as noted, provides for exemption in

case of works of art of archeology, scientific or art collection, books or manuscripts, not intended for sale. If any “work of art” can be incidentally also be put to personal use, it would not destroy its very essence or basic character of being an art work. By very nature of things its use may be rare or on special occasions. The element of such an article being one of personal use would be wholly incidental. In the present case itself, the assessee has been pointing out that the *Baggi* was not meant for ordinary or daily use. Though functional, it would be used on rare ceremonial occasions. That fact that it can be put to such a use was wholly incidental to the article being a “work of art”. The Tribunal, in our opinion, therefore committed an error in holding that even if the article was one of “work of art”, since it is possible to be put to personal use, it would get ejected from Clause (xii) and would fall only under Clause (viii) of Sub-section (1) of Section 5 of the Act. The question framed is answered in favour of the assessee. Tax Appeals are allowed. Judgment of the Tribunal is set aside and that of Commissioner (Appeals) is restored.

Sd/-
(AKIL KURESHI, J.)

Sd/-
(BIREN VAISHNAV, J.)

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