IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.681 OF 2003

Narendra I. Bhuva ....Appellant
versus
Assistant Commissioner of Income Tax
Circle 13, (1), Mumbai ....Respondent

WITH
INTERIM APPLICATION NO.4204 OF 2022
IN
INCOME TAX APPEAL NO.681 OF 2003

Mehool Narendra Bhuva
(Legal Heirs of Original
Appellant & Anr. ....Applicants
IN THE MATTER BETWEEN
Narendra I. Bhuva ....Appellant
versus
Assistant Commissioner of Income Tax
Circle 13, (1), Mumbai ....Respondent

Mr. Vipul Joshi with Mr. Prashant Ghumare i/b i/b M/s. Namrata S. Kasale *for the Assessee-Appellant/Applicants.*

Mr. Prakash C. Chhotaray with Ms. Sangita Choure *for Revenue - Respondent.*

CORAM: ALOK ARADHE, CJ. &
SANDEEP V. MARNE, J.
DATE : 14 AUGUST 2025.

ORAL JUDGMENT *(Per Chief Justice)*

1. This Appeal under Section 260-A of the Income Tax Act, 1961 is filed by the Assessee and pertains to assessment year 1992-1993.

The Appeal was admitted on 22 November 2004 by a Bench of this Court on following substantial question of law:

> "Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that vintage car owned by the Appellant was not his personal effect and thus the gain arising on sale thereof was liable to be taxed under the head 'Capital Gains'?

2. Facts giving rise to filing of this Appeal, in a nutshell, are that the Assessee was an employee of M/s. Indu Nishan Oxo-Chemical Indusries Ltd. and was a salaried employee. The Assessee had income from house property, share income, dividend etc. The Assessee filed the return of income on 28 November 1992 for Assessment Year 1992-1993 declaring a total income of Rs.2,79,440/-. In the course of assessment proceedings, the Assessee appeared personally and his statement was also recorded. The Assessing Officer noticed that the Assessee has purchased a vintage car namely "Ford Tourer" 1931 Model from one Mr. Jesraj Singh of Delhi sometime in the year 1983 for a consideration of Rs.20,000/-. The said car was sold for a consideration of Rs.21,00,000/- to one Mrs. Kamalaben Babubhai Patel. On a query made by the Assessing Officer, the Assessee by a communication dated 28 January 1994, apprised the Assessing Officer that the car was shown as a personal asset in Wealth-tax and same was an exempt asset. The Assessing Officer by an order dated 8 March 1994, added the sum of Rs.20,80,000/- as income to the Assessee on account of sale of motor car as business income.

3. The Assessee thereupon filed an Appeal. The Commissioner of Income Tax (Appeals) **[CIT (A)]** by an order dated 31 August 1994 *interalia* held that vintage cars are not generally used frequently as maintenance costs of these cars are very high. That the car was shown as personal asset in wealth tax returns. That the Assessee never claimed any depreciation in respect of the car. That there was no need for purchase of foreign exchange for spare parts as the parts were locally fabricated. The Commissioner of Income Tax (Appeals), set aside the deletion of sum of Rs.20,80,000/- under the head 'profits from sale of car'. Accordingly, the Appeal was partly allowed.

4. Being aggrieved by the order passed by the Commissioner of Income Tax (Appeals), the Revenue preferred an Appeal before the Income Tax Appellate Tribunal (**ITAT**). The ITAT reversed the finding of CIT (A) and held that the vintage car was not used by the Assessee as personal effect. The order passed by the CIT (A) was set aside by the ITAT and the Appeal preferred by the Revenue was allowed and the decision of the Assessing Officer was restored. Hence this Appeal.

5. Learned counsel for the Assessee submitted that the Tribunal was not justified in law in holding that vintage car owned by the Assessee was not his personal asset and thus the gain arising on sale whereof was liable to be taxed under the head 'capital gain'. It is further submitted that the Tribunal has not disputed or controverted any of the basic facts or arguments of the Assessee that the car was being accepted as personal asset by the department

itself and the maintenance expenses were debited to the capital account as part of personal withdrawals. It is also submitted that the finding recorded by the Tribunal that no evidence has been adduced by the Assessee to show that the car was used as a personal asset is perverse. It is submitted that the finding that the car was not part of any car rally organized by the Government is irrelevant. In support of his submission reliance has been placed on decisions of Supreme Court in ***Commissioner of Income-tax vs. Smt. Sitadevi N. Poddar***, (1984) 17 Taxman 345 (Bombay), ***Jayantilal A. Shah vs. K.N. Anantharama, CIT***, (1985) 156 ITR 448 (Bombay), ***Commissioner of Income-tax vs. Benarashilal Kataruka***, (1990) 185 ITR 493 (Calcutta), ***Smt. Shree Kumari Mundra vs. Commisioner of Income-tax,*** (2000) 112 Taxman 253 (Calcutta), ***Commissioner of Income-tax vs. H.H. Maharani Usha Devi***, (1998) 231 ITR 793 (SC), ***Himatlal C. Valia vs. Commissioner of Income-tax***, (2001) 248 ITR 262 (Gujarat), ***Faiz Murtaza Ali vs. Commissioner of Income-tax***, (2013) 31 taxmann.com 232 (Delhi), ***G.S. Poddar vs. Commissioner of Wealth-tax***, (1965) 57 ITR 207 (Bombay), ***Commissioner of Wealth-tax vs. Smt. Arti Goenka***, (1980) 3 Taxman 253 (Madras), ***Poonawalla Estate Stud & Agricultural Farm vs. Commissioner of Income-tax***, (2025) 176 taxmann.com 308 (Bombay) .

6. On the other hand, learned counsel for the Revenue has supported the order passed by the Tribunal and has submitted that the finding recorded by the Tribunal does not suffer from any infirmity warranting interference of this Court in exercise of powers under Section 260-A of the Income Tax Act, 1961. In support of his

submissions, reliance has been placed on decision of the Supreme Court in ***H.H. Maharaja Rana Hemant Singhji vs. Commissioner of Income-Tax, Rajasthan,*** (1976) 103 ITR 61 SC.

7. We have considered the submissions made on both sides and have perused the record. Before proceeding further, it is apposite to take note of Section 2(14) of the Income Tax Act, 1961, which reads as under:

> "2(14) "capital asset" means-
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> (a) property of any kind held by an assessee, whether or not connected with his business or profession;
>
> (b)
>
> (c)
>
> but does not include-
>
> (i)
>
> (ii) **personal effects, that is to say, movable property (including wearing apparel and furniture) held for personal use by the assessee or any member of his family dependent on him**, but excludes-
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> (a) jewellery;
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> (b) archaeological collections;
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> (c) drawings;
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> (d) paintings;
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> (e) sculptures; or
>
> (f) any work of art.
>
> *Explanation.* For the purposes of this sub-clause, "jewellery" includes-
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> (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;

(emphasis and underlining added)

8. Thus, from perusal of Section 2(14) of the Income Tax Act it is evident that capital assets do not include personal effects, that is to say movable property including wearing apparel and furniture but excluding jewellery held for personal use by the Assessee or any other member of his family dependent on him. Thus, the personal effects must be for personal use for being excluded from the definition of the term 'capital assets'.

9. A *pari-materia* provision namely Section 2(4A) of the Income Tax Act, 1922 was interpreted by the Supreme Court in ***H.H. Maharaja Rana Hemant Singhji*** (supra). The Supreme Court in the said decision dealt with the expression 'personal effects' and the relevant extract of the judgment reads as under:

> 7. The expression "personal use" occurring in clause (ii) of the above quoted provision is very significant. A close scrutiny of the context in which the expression occurs shows that only those effects can legitimately be said to be personal which pertain to the assessee's person. **In other words, an intimate connection between the effects and the person of the assessee must be shown to exist to render them "personal effects"**.
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> 8. The enumeration of articles like wearing apparel, jewellery, and furniture mentioned by way of illustration in the above quoted definition of "personal effects" also shows that the legislature intended only those articles to be included in the definition which were intimately and commonly used by the assessee.
> 12. In "Words and Phrases" (Permanent Edition), Volume 32 at p. 277 it is stated that the words "personal effects" when used without qualifica-

tion, generally include such tangible property as is worn or carried about the person, or to designate articles associated with the person. **At another place at the same page, it is stated that the words "personal effects" are used to designate articles associated with person, as property having more or less intimate relation to person of possessor or such tangible property as attends the person.**

13. Bearing in mind the aforesaid meaning assigned to the expression in various dictionaries and cases the silver bars or bullion can by no stretch of imagination be deemed to be "effects" meant for personal use. Even the sovereigns and the silver coins which are alleged to have been customarily brought out of the iron safes and boxes on two special occasions, namely, the Ashtmi day of "Sharadh Paksh" for Maha Lakshmi Puja and for worship on the occasion of Diwali festival cannot also be designated as effects meant for personal use. **They may have been used for puja of the deities as a matter of pride or ornamentation but it is difficult to understand how such user can be characterised as personal use.** As rightly observed by the income tax authorities if sanctity of puja were considered so essential by the assessee, the aforesaid articles would not have been delivered by his guardian to the banks for sale.

15. In ***G.S. Poddar v. Commissioner of Wealth Tax, Bombay City-II*** [ILR 1965 Bom 1062] where the assessee at the time of his appointment in the year 1945 as a Justice of the Peace was presented with two gold caskets, a gold tray, two gold glasses, a gold cup, saucer and spoons, and photo frames as souvenirs by the dealers and brokers in cloth with whose business he was connected and he kept these articles in a glass showcase for display in his drawing room and in Assessment Year 1959-60 claimed exemption in respect of these articles under the above quoted provision i.e. under Section 5(1)(viii) of the Wealth Tax Act, 1957, it was held that merely because the gold caskets were kept in the showcase did not make them part of the furniture and the rest of the articles could not be considered to be household utensils as that expression did not embrace within its sweep gold articles meant for ornamental use for special occasions but meant household articles which were normally, ordinarily, and commonly so used. It was further held in this case that the use as a decoration in the drawing room which is only calculated to give a pride of possession is not contemplated by the exemption and that the personal use which is contemplated by the exemption is the use of like nature as the use of other items mentioned in the clause, namely, furniture, household utensils, wearing apparel and provisions. **It was further held in that case that the expression "intended for personal or household use" did not mean capable of being intended for personal or household use. It meant normally, commonly, or ordinarily intended for personal or household use. This, in our opinion, is the true concept of the expression "personal use".**

(emphasis added)

10. Thus, from aforesaid enunciation of law it is evident that for treating a movable property as personal effects, an intimate connection between the effects and the person of the Assessee must be shown. In case before the Apex Court though the silver bars and silver coins were proved to be used for puja, the same was held to be not constituting personal use. It is also held that the expression 'intended for personal or household use' does not mean capable of being intended for personal or household use but it means normally or commonly intended for personal or household use. Thus capability of a car for personal use would not *ipso facto* lead to automatic presumption that every car would be personal effects for being excluded from capital assets of the Assessee.

11. Thus, before arriving at a finding with regard to personal effects, the evidence with regards to personal use is necessary. The Income Tax Appellate Tribunal in paragraph 23 as of its order dated 12 May 2003 has held as under:

> "23. **After going through all the decisions, we find that the test which is to be applied for ascertaining, whether a particular asset is "personal effect", would be, whether the particular asset was intimately and commonly used by the assessee.** If we apply this test to the facts of the case, which is before us, we find that the antique car in question cannot be taken as "personal effect" of the assessee. From the facts gathered by the AO, it is clear that the subject car was not used even occasionally by the assessee for his personal purpose. Whatever submissions has been made before authorities below and before us, in support of the claim, that car was used for personal purposes, is not supported by any evidence. Whatever evidence has been produced, they are self-serving unsupported by any evidence. **The assessee has failed to produce**

> **any evidence that some expenditure was incurred on repair of the car or running of the car or having used occasionally like participating in any car rally organized by Govt. or by any other organization.** The fact that the car was not even parked at the residence of the assessee also strengthen the case of the ITO that it was not used by the assessee. The reason for parking at a distant place at the residence of relative has been given by the assessee before the CIT (A) i.e. "*assessee being prudent business man will not think of parking such a valuable article in open compound or on the road*", also goes against the assessee. One of the plea taken by the assessee that assessee had purchased the car as a pride of possession. It may have been kept as a matter of pride but it is difficult to understand how such user can be characterized as a "personal use". The "personal use" which is contemplated by the exemption is not a pride of possession. The element of pride of possession can be understood, to some extent, in the case of Maharaja or Maharani, but it is difficult to understand in the case of a salary employee like the assessee."
>
> *(emphasis added)*

12. Thus, it is evident that the Assessee has failed to adduce any evidence with regard to the vintage car being put to personal use and therefore the Tribunal has rightly reversed the order passed by the Commissioner of Income Tax (Appeals), which had applied irrelevant considerations of wealth tax returns and non-claiming of depreciation in respect of the car by the Assessee. The CIT(A) had failed to appreciate that the said aspects were irreverent for deciding personal use of the car by the Assessee. The ITAT on the other hand concentrated only on the aspect of personal use of the car by the Assessee. It is pertinent to note that it is not the case of the Assessee that the finding of fact recorded by the CIT(A) is perverse.

13. Reliance on various judgments by the learned counsel for Assessee is inapposite in the facts and circumstances of the case. The whole case turns on peculiar facts of the case. In none of the judgments, requirement of personal use of the asset has been dispensed with. We briefly deal with the judgments cited on behalf of the Assessee:

(i) In ***Commissioner of Income-tax vs. Smt. Sitadevi N. Poddar*** (supra) and ***Jayantilal A. Shah*** (supra) the issue before this Court was treatment of silver utensils as personal effects. This Court held that even if the utensils were not used daily but occasionally, the same would constitute personal use. In the present case even occasional use of the car is not proved.

(ii) In ***Benarashilal Kataruka*** (supra) and ***Smt. Shree Kumari Mundra vs. Commissioner of Income-tax*** (supra) also the issue before Calcutta High Court was about silver utensils being used occasionally.

(iii) The case before Gujarat High Court in ***Himatlal C. Valia vs. Commissioner of Income-tax*** (supra) involved sale of silver dinner set which was being used occasionally.

(iv) The case before Delhi High Court in ***Faiz Murtaza Ali vs. Commissioner of Income-tax*** (supra) involved sale of personal items such as Carpets, Paintings, antique watches, rings and decorative items, crystal items, Antique Furniture which includes table, chairs, centre table, chest, etc. which were proved for personal use.

(v) The Apex Court judgment in ***G.S. Poddar vs. Commissioner of Wealth-tax*** (supra) has been discussed in ***H.H. Maharaja Rana Hemant Singhji.***

(vi) In ***Commissioner of Wealth-tax vs. Smt. Arti Goenka*** (supra) the issue before Madras High Court was about treatment of personal jewellery for wealth tax assessment and the judgment has no application for deciding the issue at hand.

(vii) The judgment delivered by us in ***Poonawalla Estate Stud & Agricultural Farm vs. Commissioner of Income-tax*** (supra) involved an altogether different issue of treatment of insurance claim received against dead horses as income of the Assessee.

Thus, none of the judgments relied upon by the Assessee are relevant for deciding the present Appeal which involves failure on the part of the Assessee to lead evidence to prove personal use of the vintage car.

14. Therefore, what needed to be proved in the present case is that the car was used as a personal asset by the Assessee. It was therefore incumbent upon the Assessee to lead evidence to show that he actually used the car personally. It is an admitted position that the Assessee failed to adduce evidence to prove that the car was used personally by him. On the other hand, there are several indicators showing that the car was never used by the Assessee for personal use, such as (i) Assessee using company's car for commute (ii) car not being used even occasionally by the Assessee (iii) vintage car not being parked at the Assessee's residence (iv) Assessee's

inability to prove that he spent any amount on its maintenance for keeping the same in running condition and (v) a salaried employee purchasing a vintage car as pride of possession.

15. No attempt is made before us to indicate that the finding of ITAT that Assessee failed to produce evidence to prove personal use of the car is perverse by inviting our attention to any particular piece of evidence. In fact, failure to produce evidence to prove personal use appears to be an admitted fact. We therefore find no reason to interfere in the order passed by the ITAT.

16. In view of the preceding analysis, the substantial question of law framed by this Court is answered in the negative and against the Assessee. In the result, Appeal fails and is hereby dismissed.

17. In view of the disposal of the Income Tax Appeal, nothing would survive in the Interim Application and the same is also disposed of.

(SANDEEP V. MARNE, J.) **(CHIEF JUSTICE)**