Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 2812 OF 2015

Maharao Bhim Singh of Kota
Thr. Maharao Brij Raj Singh, Kota .....Appellant(s)

VERSUS

Commissioner of Income-tax,
Rajasthan-II, Jaipur .....Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1. This appeal is filed against the final order dated 26.03.2014 passed by the High Court of Rajasthan at Jaipur in D.B. Income Tax Reference No. 64 of 1986 relating to the Assessment Year 1978-79 whereby the Full Bench of the High Court answered the question of law referred to it against the appellant herein.

2. In order to appreciate the issue involved in the

appeal, it is necessary to state the relevant facts in brief infra.

3. The appellant was the Ruler of the princely State of Kota, now a part of State of Rajasthan. He owned extensive properties which, *inter alia,* included his two residential palaces known as "**Umed Bhawan Palace**" and "**City Palace**". The appellant is using Umed Bhawan Palace for his residence. So far as this appeal is concerned, the issue involved herein centers around "**Umed Bhawan Palace**".

4. In exercise of the powers conferred by Section 60A of the Indian Income Tax Act, 1922 (XI of 1922), the Central Government issued an order called "The Part B States (Taxation Concessions) Order, 1950" (hereinafter referred to as "The Order"). It was issued essentially to grant exemptions, reductions in rate of tax and the modifications in relation to specified kinds of income earned by the persons (Ruler and his family

members) from various sources as specified therein. The Order was published in the Gazette of India, extraordinary, on 02.12.1950.

5. Paragraph 15 of the Order deals with various kinds of exemptions. Item (iii) of Paragraph 15, which is relevant for this appeal, provides that the *bona fide* annual value of the residential palace of the Ruler of a State which is situate within the State and is declared by the Central Government as his inalienable ancestral property would be exempt from payment of Income-tax.

6. In pursuance of the powers conferred under item (iii) of Paragraph 15 of the Order, the Central Government, Ministry of Finance(Revenue Division) issued a notification bearing No. S.R.O.1619 dated 14.05.1954 declaring the appellant's aforementioned two palaces, viz., Umed Bhawan and City Palace as his official residences (Serial no. 21 of the Table).

7. On 20.09.1976, the Ministry of Defence requisitioned portion of the Umed Bhawan Palace (918.26 Acres of the land including houses and other construction standing on the land) for their own use and realized Rs.80,000/- as rent by invoking the provisions of Requisition and Exhibition of Immovable Property Act, 1952. According to the appellant, the period for which the land was requisitioned expired in 1993 though the land still continues to remain in the occupation of the Ministry of Defence.

8. With the aforementioned factual background, the question arose in the appellant's income-tax assessment proceedings regarding taxability of the income derived by the appellant (assesse) from the part of the property requisitioned by the Defence Ministry, which was a portion of the appellant's official residence (Umed Bhawan Palace). The question was whether the rental income received by the appellant from the

requisitioned property by way of rent is taxable in his hands. In other words, the question was as to whether the appellant is entitled to get full benefit of the exemption granted to him under Section 10 (19A) of the Income Tax Act 1961 (for short, "the I.T. Act") from payment of income-tax or it is confined only to that portion of palace which is in his actual occupation as residence and the rest which is in occupation of the tenant would be subjected to payment of tax.

9. The Commissioner of Income Tax(Appeals) Rajasthan-II by order dated 23.02.1984 in Appeal No. CIT(A)/JPR/8/81-82 answered the question in appellant's favour and held that since the appellant was in occupation of part of his official residence during the assessment year in question, he was entitled to claim full benefit of the exemption for his official residence as provided under Section 10 (19A) of the I.T. Act notwithstanding the fact that portion of the

residence is let out to the Defence Ministry. The Revenue, felt aggrieved, carried the matter in appeal before the Income Tax Appellate Tribunal. By order dated 11.07.1985, the Tribunal affirmed the order of the Commissioner of Income Tax and dismissed the Revenue's appeal. The Tribunal, however, on an application made by the Revenue under Section 256(1) of the I.T. Act referred the following question of law to the High Court of Rajasthan for answer.

> **"Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the rental income from Umed Bhawan Palace was exempt under Section 10(19A) of the IT Act,1961."**

10. The Division Bench of the High Court while hearing the reference noticed cleavage of opinion on the question referred in this case in two earlier decisions of the High Court of Rajasthan. One was in the case of **Maharawal Laxman Singh** vs. **C.I.T.,** (1986) 160 ITR 103(Raj.) and another was in

appellant's own case, **C.I.T.** vs. **H.H. Maharao Bhim Singhji,** (1988)173 ITR 79(Raj.). So far as the case of **Maharwal Laxman Singh** (supra) is concerned, the High Court had answered the question in favour of the Revenue and against the assesse, wherein it was held that in such factual situation arising in the case, annual value of the portion which was in the occupation of the tenant is not exempt from payment of Income-tax and, therefore, income derived therefrom is required to be added to the total income of the assessee, whereas in case of **H.H. Maharao Bhim Singhji** (supra), the High Court answered the question against the Revenue and in favour of the assesse holding therein that in such a situation, the assessee is entitled to claim full exemption in relation to his palace under Section 10(19A) of the I.T. Act notwithstanding the fact that portion of the palace is let out to a tenant. It was held that any rental income

derived from the part of his rental property is, therefore, not liable to tax. The Division Bench, therefore, referred the matter to the Full Bench to resolve the conflict arising between the two decisions and answer the referred question on merits.

11. By impugned order dated 26.03.2014, the High Court answered the question against the appellant (assessee) and in favour of the Revenue. While referring to various authorities of this Court and the High Courts, it was held that the law laid down in **C.I.T.** vs. **H.H. Maharao Bhim Singhji,** (supra) does not lay down correct principle of law whereas the law laid down in **Maharawal Laxman Singh** vs. **C.I.T.** (supra) lays down the correct principle of law. It was held that so long as the assessee continues to remain in occupation of his official residential palace for his own use, he would be entitled to claim exemption available under Section 10(19A) of the I.T. Act but

when he is found to have let out any part of his official residence and at the same time is found to have retained its remaining portion for his own use, he becomes disentitle to claim benefit of exemption available under Section 10(19A) for the entire palace. It was held that in such circumstances, he is required to pay income-tax on the income derived by him from the portion let out in accordance with the provisions of the I.T. Act and the benefit of exemption remains available only to the extent of portion which is in his occupation as residence. It is against this order, the assessee has filed this appeal.

12. Heard Mr. Gopal Subramaniam, learned senior counsel, for the appellant (assessee) and Mr. Y.P. Adhyaru, learned senior counsel, for the respondent (Revenue).

13. Mr. Gopal Subramaniam while assailing the legality and correctness of the impugned order

contended that the reasoning and conclusion arrived at by the High Court is not legally sustainable for various reasons.

14. In the first place, learned senior counsel urged that when the question involved in this appeal, was already decided in favour of the appellant in all previous assessment years (1973-74 to 1977-78), by this Court, there was no justifiable reason for the Revenue to have pursued the same question again only for the assessment year in question (1978-79) to the High Court. Learned counsel urged that in any event, the High Court should have taken note of this fact and answered the reference in appellant's favour by placing reliance on the earlier decision in the case of **H.H. Maharao Bhim Singhji** (supra). In support of this submission, learned counsel placed reliance on the decisions of this Court in **M/s Radhasoami Satsang, Saomi Bagh, Agra** vs. **Commissioner of Income Tax,**

(1992) 1 SCC 659, **The Parashuram Pottery Works Co. Ltd.** vs. **The Income Tax Officer, Circle-I, Ward 'A' Rajkot, Gujarat,** (1977) 1 SCC 408 and **Commissioner of Income Tax** vs. **Excel Industries Ltd.**, (2014) 13 SCC 459.

15. In the second place, learned counsel contended that since the issue involved herein pertains to grant of exemption to the assessee from payment of income-tax under Section 10(19A) of the I.T. Act read with paragraph 15 of the Order, such provisions should be regarded as exception and construed liberally in appellant's favour unlike the charging provisions, which are interpreted strictly. Reliance was placed on the decision of this Court in the case of **Union of India & Ors.** vs. **Wood Papers Ltd. & Anr.,** (1990) 4 SCC 256 and other decisions.

16. In the third place, learned counsel contended that the High Court was not justified in placing

reliance on Section 5(iii) of the Wealth Tax Act,1957 while interpreting Sections 10(19A), 22 and 23 of the I.T. Act and Paragraph 15 of the Order. Learned counsel pointed out that Section 5(iii) of the Wealth Tax Act and Section 23 of the I.T. Act are neither *in pari materia* with each other and nor identically worded. Learned counsel pointed out the difference in the language employed in both the aforementioned sections in support of his submission.

17. In the fourth place, learned counsel contended that the question involved in this appeal has already been answered by the M.P. High Court in the case of **Commissioner of Income-tax** vs. **Bharatchandra Banjdeo,** (1985) 154 ITR 236(MP) = 1986 (27) Taxman 456 (M.P.) in favour of the assessee. It was urged that there was no justifiable reason for the High Court to have departed from the view taken by the M.P. High Court. Learned counsel urged that the reason given for

distinguishing the view taken by the M.P. High Court is not well founded and more so when it has already been relied on by the Rajasthan High Court in **H.H. Maharao Bhim Singhji** (supra) in appellant's own case.

18. In the fifth place, learned counsel contended that there is a significant departure in the wordings of Section 10(19A) and Section 23 of the I.T. Act. Learned counsel pointed out that Section 10(19A) does not use the same expression which occurs in Section 23(2), namely, "*annual value of such house or part of the house*". According to learned counsel, absence of these words in Section 10(19A) of the I.T. Act goes to show that the appellant is entitled to claim exemption applicable to the entire palace even though the part of palace is in occupation of tenant. It was urged that splitting of palace is not permissible under Section 10 (19A) of the I.T. Act though it is permissible in 'house".

19. It is these submissions, which were elaborated by the learned counsel with reference to case law and interpretative process of the relevant provisions of the I.T. Act and Order.

20. In reply, learned counsel for the respondent (Revenue) supported the reasoning and the conclusion arrived at by the High Court and prayed for its upholding.

21. Having heard learned counsel for the parties and upon perusal of the record of the case and the written submissions, we find force in the submissions urged by the learned counsel for the appellant (assessee).

22. Section 10(19A) of the I.T. Act and Paragraph 15(iii) of the Order, which are relevant for this case, read as under:

Section 10(19A) of the I.T. Act

"Section 10. Incomes not included in total income.-In computing the total income of a previous year of any person,

any income falling within any of the following clauses shall not be included-
1 to 19.....
(19A) The annual value of any one palace in the occupation of a Ruler, being a palace, the annual value whereof was exempt from income-tax before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, by virtue of the provisions of the Merged States (Taxation Concessions) Order, 1949, or the Part B States (Taxation Concessions) Order, 1950, or, as the case may be, the Jammu and Kashmir (Taxation Concessions) Order, 1958:

Provided that for the assessment year commencing on the 1st day of April, 1972, the annual value of every such palace in the occupation of such Ruler during the relevant previous year shall be exempt from income-tax;]"

<u>Paragraph 15 of the Order</u>

15. Exemptions-Any income falling within the following classes shall be exempt from income-tax and super-tax and shall not be included in the total income or total world income of the person receiving them:
(i).....
(ii).....
(iii) The *bona fide* annual value of the residential palace of the Ruler of a State which is situate within the State and is declared by the Central Government as his inalienable ancestral property."

23. Section 10 provides that in computing the total income of a previous year of any person, any income

falling within any of the sub-clauses of Section 10 shall not be included. Sub-clause (19A) says that the annual value of any one palace which is in occupation of a Ruler and whose annual value was exempt from income-tax before the commencement of the Constitution (Twenty-sixth Amendment) by virtue of the provisions of the Merged States (Taxation concessions) Order, 1949 or the Part B States (Taxation Concessions), Order 1950 would be exempt from payment of income-tax.

24. As mentioned above, Paragraph 15 (iii) grants exemption to the *bona fide* annual value of the residential palace of the Ruler of a State, which is declared by the Central Government to be Rulers ancestral property from payment of income-tax.

25. In order to claim exemption from payment of income-tax on the residential palace of the Ruler under Section 10(19A), it is necessary for the Ruler to satisfy

that first, he owns the palace as his ancestral property; second, such palace is in his occupation as his residence; and third, the palace is declared exempt from payment of income-tax under Paragraph 15 (iii) of the Order, 1950 by the Central Government.

26. Now, the question arises that where part of the residential palace is found to be in occupation of the tenant and remaining is in occupation of the Ruler for his residence, whether in such circumstances, the Ruler is entitled to claim exemption for the whole of his residential palace under Section 10(19A) or such exemption would confine only to that portion of the palace which is in his actual occupation. In other words, whether the exemption would cease to apply to let out portion thereby subjecting the income derived from let out portion to payment of income-tax in the hands of the Ruler.

27. This very question was examined by the M.P.

High Court in the case of **Bharatchandra Banjdeo** (supra) in detail. It was held that no reliance could be placed on Section 5(iii) of the Wealth Tax Act while construing Section 10(19A) for the reason that the language employed in Section 5(iii) is not identical with the language of Section 10(19A) of the I.T. Act. Their Lordships distinguished the decision of Delhi High Court rendered in the case of **Mohd Ali Khan** vs. **CIT,** (1983)140 ITR 948(Delhi), which arose under the Wealth Tax Act. It was held that even if the Ruler had let out the portion of his residential palace, yet he would continue to enjoy the exemption in respect of entire palace because it is not possible to split the exemption in two parts, i.e., the one in his occupation and the other in possession of the tenant.

28. Justice G.L. Oza, the learned Chief Justice (as His Lordship then was), speaking for the Bench held as under:

"8. It is, therefore, clear that under this

order the income from all the palaces of a Ruler which are declared to be the official residence were exempt. Under clause (19A) of Section 10, only one palace in occupation has been exempted and it appears that similarly in the W.T. Act instead of using the word "palace" they have used the words "one building in occupation of a Ruler" which has been exempted from tax.

9. It is not in dispute that in this reference the property in question is a palace. It is also not in dispute that a portion of it is in occupation. The only question which has been raised by learned counsel for the Revenue is that if only a portion of the palace is in occupation, the exemption under clause (19A) of Section 10 would be available only for that part and not for the whole. The change brought about by the insertion under the Merged States (Taxation Concessions) Order is clearly illustrated by the two provisions quoted above. By clause (19A), the exemption has been limited only to one palace in occupation. If the Legislature intended a further splitting up, it would have been provided in clause (19A) that such portion of the palace in occupation is only exempted, but it appears that the language used by the Legislature did not contemplate a further splitting up. In Mohd. Ali Khan's case: [1983] 140 ITR 948(Delhi) which is a case under the W.T. Act, the only question considered was that if the palace which was declared to be an official residence had a number of buildings, as the exemption under the W.T. Act is available only in respect of one building which is in occupation and, therefore, the assessee's contention, that the other buildings which may not be in

occupation but declared to be an official residence should be exempted, was not accepted. In clause (19A) of Section 10, in the place of "building", the phrase employed is "one palace" and so far as the case in hand is concerned, it is not disputed that this official residence is only one palace and not more than one. Under these circumstances, in our opinion, clause (19A) could not be interpreted to mean that it contemplates further splitting up of portions of a palace. The language of clause (19A) of Section 10 does not justify it. It is settled that in cases of exemption, the language of the statute has to be liberally construed but even if this principle is not considered, there are no words in clause (19A) of Section 10 from which an intention for splitting up of the palace into portions could be gathered. In this view of the matter, therefore, the contention advanced by the learned counsel for the Revenue cannot be accepted."

29. Relying upon the aforesaid decision, Rajasthan High Court in the case of the appellant herein in **Commissioner of Income-Tax vs. H.H. Maharao Bhim Singhji,** (supra) answered the question in favour of the appellant for the assessment years (1973-74 to 1977-78).

30. Justice J.S. Verma, the learned Chief Justice (as

His Lordship then was) speaking for the Bench held as under:

> **"So far as the first question relating to exemption claimed under section 10(19A) is concerned, there is a direct decision in CIT v. Bharatchandra Banjdeo, [1985]154ITR236(MP) . It was held therein that it is not possible to split up one palace into parts for granting exemption only to that part in self-occupation of the ex-Ruler as his official residence and to deny the benefit of exemption to the other portion of the palace rented out by the Ruler, since the entire palace is declared as his official residence. Accordingly, it was held that even if only a part of the palace is in the self-occupation of the former Ruler and the rest has been let out, the exemption available under section 10(19A) will be available to the entire palace. No decision taking a contrary view has been cited before us. We do not find any good ground to depart from that view, when the view taken in that decision is undoubtedly a plausible view. In the case of a taxing statute, a plausible view in favour of the assessee should be preferred in these circumstances. Following that decision, the first question has to be answered against the Revenue and in favour of the assessee."**

31. Following the aforesaid view, the High Court of Rajasthan declined to make reference to the High Court under Section 256(1) of the I.T. Act in later

Assessment Years and dismissed the application made by the Revenue under Section 256(2) of the I.T. Act (see- (**Commissioner of Income-Tax** vs. **H.H. Maharao Bhim Singh** (2002)124 Taxman 26) with the following observations.

> **" 5. In coming to this conclusion, this Court has followed another decision of the Madhya Pradesh High Court in CIT vs. Bharatchanda Banjdeo (1985) 154 ITR 236 (M.P.). The decision of this Court in CIT vs. H.H. Maharao Bhim Singhji (1988) 173 ITR 79, we are informed by the learned counsel, has not been appealed against.**
>
> **6. In that view of the matter, we are of the opinion that the application under Section 256(1) has rightly been rejected by the Tribunal and do not deserve further consideration."**

32. In our considered opinion, the view taken by the Madhya Pradesh High Court in the case of **Bharatchandra Banjdeo** (supra) and the one taken in the case of the appellant in **Maharao Bhim Singhji's case** (supra) by rightly placing reliance on **Bharatchandra Banjdeo's case** (supra) is the correct view and we find no good ground to take any other

view.

33. As rightly held in the case of **Bharatchandra Banjdeo** (supra), no reliance could be placed on Section 5(iii) of the Wealth Tax Act while construing Section 10(19A) of the I.T. Act. It is due to marked difference in the language employed in both sections. It is apposite to reproduce Section 5 (iii) of the Wealth Tax Act as under:

> "**5. Exemptions in respect of certain assets-Wealth-tax shall not be payable by an assessee in respect of the following assets and such assets shall not be included in the net wealth of the assessee-**
> **(i).....**
> **(ii).....**
> **(iii) any one building in the occupation of a Ruler, being a building which immediately before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, was his official residence by virtue of a declaration by the Central Government under paragraph 13 of the Merged States (Taxation Concessions) Order, 1949, or paragraph 15 of the Part B States (Taxation Concessions) Order, 1950;"**

34. We find that in Section 10(19A) of the I.T. Act, the Legislature has used the expression "**palace"** for

considering the grant of exemption to the Ruler whereas on the same subject, the Legislature has used different expression namely "**any one building**" in Section 5 (iii) of the Wealth Tax Act. We cannot ignore this distinction while interpreting Section 10(19A) which, in our view, is significant.

35. In our considered opinion, if the Legislature intended to spilt the Palace in part(s), alike houses for taxing the subject, it would have said so by employing appropriate language in Section 10(19A) of the I.T. Act. We, however, do not find such language employed in Section 10(19A).

36. As rightly pointed out by the learned senior counsel for the appellant, Section 23(2) and (3), uses the expression "**house or part of a house**". Such expression does not find place in Section 10(19A) of the I.T. Act. Likewise, we do not find any such expression in Section 23, specifically dealing with the

cases relating to **"palace"**. This significant departure of the words in Section 10(19A) of the I.T. Act and Section 23 also suggest that the Legislature did not intend to tax portion of the **"palace"** by splitting it in parts.

37. It is a settled rule of interpretation that if two Statutes dealing with the same subject use different language then it is not permissible to apply the language of one Statute to other while interpreting such Statutes. Similarly, once the assessee is able to fulfill the conditions specified in section for claiming exemption under the Act then provisions dealing with grant of exemption should be construed liberally because the exemptions are for the benefit of the assessee.

38. In the light of these reasonings, we are of the considered opinion that the view taken by the M.P. High Court in **Bharatchandra Banjdeo's case** (supra)

and the Rajasthan High Court in **H.H. Maharao Bhim Singhji's case** (supra) is a correct view.

39. We also notice that the question involved in this case had also arisen in previous Assessment Years' (1973-74 till 1977-78) and was decided in appellant's favour when Special Leave Petition(c) No. 3764 of 2007 filed by the Revenue was dismissed by this Court on 25.08.2010 by affirming the order of the Rajasthan High Court referred supra.

40. In such a factual situation where the Revenue consistently lost the matter on the issue then, in our view, there was no reason much less justifiable reason for the Revenue to have pursued the same issue any more in higher courts.

41. Though principle of *res judicata* does not apply to income-tax proceedings and each assessment year is an independent year in itself, yet, in our view, in the absence of any valid and convincing reason, there was

no justification on the part of the Revenue to have pursued the same issue again to higher Courts. There should be a finality attached to the issue once it stands decided by the higher Courts on merits. This principle, in our view, applies to this case on all force against the Revenue. [see **M/s Radhasoami Satsang, Saomi Bagh, Agra's case** (supra)].

42. Learned Counsel for the respondent (Revenue) though made sincere attempt to persuade us to uphold the view taken by the High Court but in the light of what we have held above, we are unable to accept his submissions.

43. In the light of foregoing discussion, in our considered opinion, the reasoning and the conclusion arrived at by the High Court in the impugned order including the view taken by the Rajasthan High Court in **Maharaval Lakshmansingh's case** (supra) does not lay down correct principle of law whereas the view

taken by the M.P. High Court in cases of **Bharatchandra Bhanjdeo** (supra), **Commissioner of Income-Tax** vs. **Bharatchandra Bhanjdev** (1989)176 ITR 380 (MP) and **H.H. Maharao Bhim Singhji** (supra) lays down correct principle of law.

44. This takes us to the last submission of learned counsel for the appellant who made a feeble attempt to question the legality and propriety of the requisition proceedings initiated by the Central Government (Ministry of Defence) in relation to portion of land. It was urged that even after expiry of the period of requisition, the Defence Ministry, continues to remain in possession of the land to the detriment of the interest of appellant. To say the least, in our view, this submission is wholly misplaced in this appeal. The appellant, in our view, has to raise this issue in appropriate proceedings before competent Fora for their adjudication and not in this appeal which arises

out of income-tax proceedings and has nothing to do with requisition proceedings of the land.

45. In view of foregoing discussion, the appeal succeeds and is accordingly allowed. The impugned order is set aside. As a consequence, the question referred to the High Court in the reference proceedings out of which this appeal arises is answered in favour of the appellant (assessee) and against the Revenue.

.....J.
[RANJAN GOGOI]

.....J.
[ABHAY MANOHAR SAPRE]

New Delhi,
December 05, 2016.