

(1990) 08 DEL CK 0038

Delhi High Court

Case No: Wealth-tax References No's. 2 of 1987, 228 and 229 of 1988 and 1 of 1989 and
Wealth-tax Case No. 46 of 1989

Commissioner of Wealth Tax

APPELLANT

Vs

A.K. Sen

RESPONDENT

Date of Decision: Aug. 9, 1990**Citation:** (1990) 87 CTR 216 : (1991) 187 ITR 338 : (1991) 55 TAXMAN 117**Hon'ble Judges:** Rabindranath Pyne, J; P.N. Nag, J**Bench:** Division Bench**Advocate:** P.N. Misra, Adv G.C. Sharma, for the Appellant;

Judgement

Rabindra Nath Pyne, C.J.

These reference applications raised an interesting and common question of law and as such can be disposed of by a common judgment.

2. The following question has been referred to this court for its opinion at the instance of the Commissioner of Wealth-tax, Delhi-VIII, at New Delhi, u/s 27(1) of the Wealth-tax Act, 1957 (hereinafter referred to as "the Act") :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in confirming the order of the Commissioner of Wealth-tax (Appeals) who held that the books in law library held by the assessed and used by him in carrying on his profession qualify for exemption u/s 5(1)(xii) of the Wealth-tax Act, 1957 ?"

3. Shri A. K. Sen, former Union Law Minister, a well-known barrister and a senior advocate, is reputed to have a very good library for practicing as a lawyer. The Wealth-tax Officer (for short "the WTO"), while assessing the Wealth-tax of the assess for the assessment year 1977-78 (Wealth-tax Reference No. 2 of 1987) valued his library books at Rs. 2,00,000 on an estimated basis and added the amount to his assets/wealth. This was objected to by the assessed on the ground that the value of the library objected to by the assessed on the ground that the value of the library

cannot be added to the wealth of the assessed while assessing the net wealth ad relied upon the provisions of section 5(1)(xii) of the Wealth-tax Act, 1957, under which the exemption for Wealth-tax has been given for Books or manuscripts belonging to the assessed and which are not intended for sale. However, such a contention was rejected by the Wealth-tax Officer on the ground that the books or manuscripts mentioned in section 5(1)(xii) of the Act cannot apply to the library Books on the principle of ejusdem generis, a well-known principle of interpretation of statutes, as books or manuscripts can be considered to refer to only works of art and collection of archaeological, scientific or art and not books used by the assessed for his profession in the library.

4. Aggrieved by the order of the Wealth-tax Officer, the assessed preferred an appeal to the Commissioner of Wealth-tax (Appeals) who reversed the finding of the Wealth-tax Officer and held that the principle of ejusdem generis cannot be applied while interpreting section 5(1)(xii) of the Act as "works of art", "archaeological collections", "scientific collections" which precede the word "books" in section 5(1)(xii) of the Act decided on not all fall into same category or genus.

5. The Income Tax Appellate Tribunal before whom Appeal was filed by the Commissioner of Wealth-tax, vide its order dated May 21, 1981, confirmed the view of the Commissioner of Wealth-tax (Appeals) and held that the assessed is entitled to exemption u/s 5(1)(xii) of the Act.

6. It has been brought to our notice that the Department has accepted the above findings of the Income Tax Appellate Tribunal and has not sought review/revision of the facts u/s 25 or other provisions of the Act for subsequent years.

7. However, the present references have been referred to this court for opinion at the instance of the Commissioner of Wealth-tax u/s 27(1) of the Act.

8. Mr. Misra, learned counsel for the Department, while interpreting section 5(1)(xii) of the Act, tried to invoke the principle of ejusdem generis and submitted that the books or manuscripts mentioned in section 5(1)(xii) of the Act cannot cover the books of the library of the assessed.

9. On the other hand, Mr. Sharma, learned counsel for the assessed, submitted that the words "books or manuscripts" mentioned in section 5(1)(xii) of the Act are of general import and that it is the duty of the court to give these words a plain and unrestricted meaning and the context and the scheme of the enactment does not require otherwise. Therefore, "books" mentioned in section 5(1)(xii) of the Act covers the books of the library of the assessed as well and the value of the books cannot be added to the wealth of the assessed for the purpose of determining net wealth.

10. In order to appreciate the rival contentions of the parties, it would be appropriate to reproduce the relevant portion of the Act.

"5. (1) Subject to the provisions of Sub-section (1A), Wealth-tax shall not be payable by an assessed in respect of the following assets, and such assets shall not be included in the net wealth of the assessed-...

(xii) any works of art, archaeological, scientific or art collections, books or manuscripts belonging to the assessed and not intended for sale."

11. Clause (xii) of section 5(1) of the Act on critical analysis can be divided into three parts : (1) any Works of art; (2) archaeological, scientific or art collections; and (3) books or manuscripts belonging to the assessed and not intended for sale. It is apparent that the subjects enumerated in different parts of the section decided on not constitute a same class or category or genus. The first part refers to any work of art. The second part refers to the collections relating to the archaeological, scientific and of art-different subject, classes and categories and the third part refers to manuscripts and books belonging to the assessed and not intended for sale.

12. Furthermore, it appears, that the Legislature, in its wisdom, has not placed any restrictions while referring to manuscripts and books in section 5(1)(xii) of the Act the purpose of determination of the net wealth unlike the other two parts. The only restriction placed is that there should not be intended for sale. The object of this provision appears to be to promote education and learning amongst the mass who in this country mostly are illiterate and without whose education amongst the country cannot develop and progress. Therefore, it is not surprising that the law-makers decline to place restriction u/s 5(1)(xii) of the Act in the case of books. It goes without saying that the books and manuscripts are undoubtedly words of wide and unqualified amplitude and, Therefore, these words must receive full and unrestricted meaning. We, Therefore, see no grounds as to why the books and manuscripts referred to in section 5(1)(xii) of the Act should not cover the library books of the assessed and why these books be not exempted from the purview of the Wealth-tax.

13. In [Amar Chandra Chakraborty Vs. The Collector of Excise, Government of Tripura and Others](#), the Supreme Court has laid down in what circumstances the principle of ejusdem generis can apply and has observed that the ejusdem generis rule strives to reconcile the incompatibility between specific and general words. This doctrine applies when (i) the statute contains an enumeration of specific words; (ii) the subject of the enumeration constitutes a class or category; (iii) that class or category is not exhausted by the enumeration; (iv) the general term follows the enumeration; and (v) there is no indication of a different legislative intent.

14. As ready discussed above, the phraseology used in different parts decided on not form the same class, category or genus and, Therefore, the general words used in part (3) cannot be construed of the same kind as those specified earlier. Further, the legislature intent and context in which the words "books and manuscripts" are used in section 5(1)(xii) of the Act also indicate a different intention and the principle

of ejusdem generis cannot be applied. No restrictions have been laid down for restricting and cutting down the general import of such words. Therefore, these words "manuscripts and books" must be given their natural and unrestricted meaning and these cannot be read down as to be confined only to the subjects dealt with earlier.

15. In this connection, reference may be made to [Commissioner of Wealth-tax Vs. S.N. Kacker](#), wherein a similar question of interpretation of the provisions of section 5(1)(xii) of the Act arose for consideration before the Allahabad High Court and an exactly a similar view has been expressed by that court. It has been held therein that the principle of ejusdem generis cannot be applied and that "books and manuscripts" are undoubtedly words of wide and unqualified amplitude. They must, Therefore, receive their full and unrestricted meaning. Books and manuscripts must, Therefore, be deemed to refer to any kind of books or manuscripts so long as they are not intended for sale so as to entitle the assessed under clause (xii) to te exemption of the total value therof. We are in respectful agreement with the views expressed therein. Hence, we hold that the assessed is entitled to exemption from Wealth-tax in respect of the library books u/s 5(1)(xii) of the Act.

16. In view of the above, we, Therefore, answer the question referred to us in the affirmative, in favor of the assessed and against the Revenue.

17. The assessed will be entitled to his costs.

18. Question answered in the affirmative.