
(1987) 08 AP CK 0008

In the Andhra Pradesh High Court

Case No : Case Referred No. 257 of 1982

Commissioner of Wealth Tax

APPELLANT

Vs

C.S. Rao

RESPONDENT

Date of Decision : 03-08-1987

Acts Referred:

Wealth Tax Act, 1957 — Section 27(1), 5(1)

Citation : (1988) 73 CTR 251 : (1988) 174 ITR 612 : (1988) 40 TAXMAN 236

Hon'ble Judges : Y.V. Anjaneyulu, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : M. Suryanarayana Murthy, for the Appellant; S.R. Ashok, for the Respondent

Judgement

Y.V. Anjaneyulu, J.—The Income Tax Appellate Tribunal has made this reference u/s 27(1) of the Wealth-tax Act, 1957, at the instance of the Commissioner of Wealth-tax. The question referred for the consideration of this court is :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was entitled to the benefit of section 5(1) (xxxii) of the Wealth-tax Act in respect of the assessee's interest in the assets of Venugopal Rice Mills which has been leased out ?"

2. The assessee filed his wealth-tax return for the assessment year 1974-75 declaring his net wealth which included interest in a partnership firm known as Venugopal Rice Mills. The partnership interest was assessed at Rs. 9,029 and exemption was claimed in respect of the same u/s 5(1)(xxxii) of the Act. The Wealth-tax Officer rejected the claim for exemption on the ground that the firm was defunct and no business was carried on during the previous year relevant to the assessment year 1974-75. The matter was carried in appeal to the Appellate Assistant Commissioner of Wealth-tax, but without success. The assessee then appealed to the Income Tax Appellate Tribunal. The Tribunal came to the conclusion that the assessee is entitled to claim exemption in respect of his aforesaid interest in the partnership firm and, accordingly, allowed the appeal.

Aggrieved by the order of the Tribunal, the Commissioner of Wealth-tax sought and obtained reference of the above question of law for the consideration of this court.

3. Learned standing counsel for the Revenue contended before us that the partnership firm was defunct in the previous year relevant to the assessment year 1974-75 and was not carrying on any business. Consequently, the question of allowing exemption u/s 5(1)(xxxii) of the Act does not arise. The conclusion that the partnership firm became defunct was arrived at, taking into consideration the fact that during the previous year relevant to the assessment year 1974-75, the firm as such did not carry on the business of producing rice in the rice mill, but leased out the rice mill. From the factum of lease, the Revenue drew the inference that the partnership closed its business and, therefore, the question of granting exemption does not arise.

We may notice the exemption provided by section 5(1)(xxxii) of the Act, which is in the following terms :

"5(1) Subject to the provisions of sub-section (1A), 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 ...

(xxxii) the value, as determined in the prescribed manner of the interest of the assessee in the assets (not being any land or building or any rights in any land or building or any asset referred to in any other clause of this sub-section) forming part of an industrial undertaking. belonging to a firm or an association of persons of which the assessee is a partner, or, as the case may be, a member ..."

4. The expression "industrial undertaking" occurring in clause (xxxii) is defined in the Explanation occurring after clause (xxxi). The term "industrial undertaking", according to the Explanation, means an undertaking engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining.

5. Looking into the terms of the exemption as per clause (xxxii) read with the definition of the term "industrial undertaking", it is clear that the only requirement is that a firm must own an industrial undertaking which is engaged in the manufacture or processing of goods. Undoubtedly, the operation of converting paddy into rice amounts to "manufacture" and also processing of goods. Therefore, the rice mill satisfies the requirement of being an industrial undertaking for purposes of clause (xxxii). The only question is whether this industrial undertaking was engaged on the valuation date in the manufacture or processing of goods. Learned standing counsel claims that the partnership was not so engaged because of the fact that the rice mill was leased out to others. We do not see how a partnership firm can be said to be not engaged in the manufacture or processing of goods merely because the industrial undertaking (rice mill in the present case) was leased out. There is no finding to the effect that the partnership firm has abandoned permanently the carrying on of the

business and that the assets employed in the manufacture or processing of goods ceased to be commercial assets. It is conceivable that the partnership firm might have stopped carrying on the business for a temporary period by leasing out the rice mill to outsiders and may resume the business in course of time. Unless it can be said that there is a permanent abandonment of the partnership firm carrying on business, it cannot be said that the terms of clause (xxxii) are not satisfied. As we have already pointed out, it is not possible to support the inference that the partnership firm ceased to carry on business, or that it became defunct, merely from the fact that it had leased out the rice mill to outsiders during the previous year. It must be said that in the previous year relevant to the assessment year 1974-75, and, therefore, on the valuation date corresponding to the assessment year 1974-75, the partnership firm was an "industrial undertaking" engaged in the manufacture or processing of goods, so that the exemption under clause (xxxii) is available. In our opinion, the Tribunal was justified in granting exemption to the assessee in respect of his interest in the partnership firm.

6. The question is, accordingly, answered in the affirmative, i.e., in favour of the assessee and against the Revenue. No costs.