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**(1991) 02 AHC CK 0019**

**In the Allahabad High Court**

**Case No : Wealth-tax Reference No. 174 of 1979**

Commissioner of Wealth-tax

APPELLANT

Vs

Jetha Nand

RESPONDENT

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**Date of Decision : 07-02-1991**

**Acts Referred:**

Wealth Tax Act, 1957 — Section 5(1), 5(2)

**Citation : (1991) 192 ITR 650**

**Hon'ble Judges : B.P. Jeevan Reddy, C.J.; R.A. Sharma, J**

**Bench : Division Bench**

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## **Judgement**

B.P. Jeevan Reddy, C.J.—u/s 27(1) of the Wealth-tax Act, 1957, the Tribunal has stated the following question:

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the assessee was entitled to exemption as laid down under Clause (xxxi) of Sub-section (1) of Section 5 of the Wealth-tax Act, 1957, on the value of the oil mill machinery owned by the assessee, even though the oil mill was not run by the assessee but by another person, to whom it had been rented out ?"

2. The assessee is an individual. The assessment years concerned are 1973-74 and 1974-75. The assessee was the owner of an oil mill engaged in manufacture of oil.

3. He was not himself doing the business. He had let out the mill on rent. In his wealth-tax assessment, he claimed exemption for the amount representing the value of machinery comprised in the said oil mill under Clause (xxxi) of Sub-section (1) of Section 5 of the Wealth-tax Act. This was rejected by the Wealth-tax Officer, but on appeal the Appellate Assistant Commissioner agreed with the assessee. The Tribunal dismissed the appeal preferred by the Revenue. Section 5 specifies the assets which shall not be included in the net wealth of the assessee. In so far as it is relevant, Section 5(1) reads as follows :

"5. Exemptions in respect of certain assets. --(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 ...

(xxxi) the value, as determined in the prescribed manner of 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 the assessee ..."

The Explanation appended to the clause defines the expression "industrial undertaking."

4. A reading of the clause discloses that the exemption is provided with respect to the assets forming part of an industrial undertaking belonging to the assessee. The two requirements to be established are : --

(1) that it is an industrial undertaking as defined in the Explanation to the clause ; and

(2) that it belongs to the assessee. There is no further requirement that the assessee himself must be running or managing the said industrial undertaking. This is the view taken by a Bench of the Andhra Pradesh High Court in Commissioner of Wealth Tax Vs. C.S. Rao, and we agree with it.

5. Learned standing counsel for the Revenue, however, relied upon a Division Bench judgment of the Madras High Court in Commissioner of Wealth Tax, Tamil Nadu-IV Vs. P.T.N. Shensagamoorthy and Another, . The decision, no doubt, supports the contention of learned counsel but we, find ourselves unable to accept the said decision. That was a case where the assessee owned certain salt pans. Some of them he was working himself and some he had leased out.

6. So far as the salt pans leased out are concerned, the question was whether they should be exempted u/s 5(1)(xxxi) of the Act. The Madras High Court held that for claiming the said deduction, what is relevant is not mere ownership of an asset but the activity of manufacture. We think that, taking the said view, amounts to reading words into the clause which are not there. More particularly, when the Wealth-tax Act deals with tax on assets owned by an assessee, it would not be appropriate to adopt the interpretation placed upon the said clause by the Madras High Court, We, therefore, disagree with the said view respectfully.

7. For the above reasons, the question referred is answered in the affirmative, i.e., in favour of the assessee and against the Revenue.