
(1979) 12 AHC CK 0038
In the Allahabad High Court
Case No : WT Reference No. 867 of 1978

Commissioner of Wealth Tax	Vs	APPELLANT
Mubarak Ali Khan		RESPONDENT

Date of Decision : 12-12-1979

Acts Referred:

Wealth Tax Act, 1957 — Section 5(1)(xxxi), 5(1)(xxxii)

Citation : (1980) 3 TAXMAN 505

Hon'ble Judges : C.S.P. Singh, J

Bench : Single Bench

Advocate : R.K. Gulati and A. Gupta, for the Appellant; V. Swarup, for the Respondent

Final Decision : Disposed Off

Judgement

C.S.P. Singh, J.—The income tax Appellate Tribunal, Allahabad Bench, Allahabad, has sought our opinion on the following two questions: 1. Whether the Tribunal was justified in holding that the preparation of biris from tendu leaves and tobacco can be called manufacturing or processing of goods within the meaning of section 5(1)(xxxii) of the Wealth-tax Act, 1957?

2. If the answer to the above question is in the affirmative, whether, on the facts and the circumstances of the case, the Tribunal was justified in holding that the assessee-firm was an industrial undertaking?

The dispute relates to the assessment years 1973-74 and 1974-75. The assessee during these years was a partner in two firms, viz., M/s. Mubarak Ali & Co. and M/s. Mujahid Ali & Co. These firms were engaged in manufacture of biris, and the assessee's contention was that, as these firms were an industrial undertaking as defined in the Explanation to section 5(1)(xxxi), the assessee's share in the aforesaid firm was liable to be exempted from payment of tax in view of section 5(1)(xxxii). This contention did not find favour with the WTO, but it succeeded before the AAC. The matter was then taken up by the revenue before the

Tribunal but the appeal failed.

2. The method of manufacture of biris as found by the authorities is stated hereinafter. The firms purchased tendu leaves and tobacco. Both these commodities were then given to local contractors for getting biris manufactured. The labourers cut the useless portion of tendu leaves from all sides and then cut the leaves to small pieces of required size. These pieces were then rolled in the shape of biris. Tobacco was filled and the top portion was closed, and the biri was tied up with a thread. The biris were then brought to the factory of the firms, and were heated for a short time. They were then packed in bundles of 25 each, wrapped in specially designed paper bearing trade mark and label of the firms. The bundles so packed were kept in larger packets and the packets wrapped in hessian and dispatched to customers. The question is as to whether this activity was one of manufacture or processing of goods as contemplated by the Explanation to section 5(1)(xxxii). It will be convenient to extract this Explanation and also section 5(1)(xxxi) under which claim for exemption is made:

5. (1)(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.

Explanation. -For the purposes of clause (xxxa), this clause (xxxii) and clause (xxxiv), the term "industrial undertaking" means an undertaking engaged in the business of generation or distribution of electricity or any other form or power or in the construction of ships or in the manufacture or processing of goods or in mining.

3. Let us first see as to whether the firms of which the assessee was a partner was engaged in a manufacture or processing of goods, for, unless this is so, the assessee cannot get advantage of exemption u/s 5(1)(xxxii). As to what would amount to manufacture was considered by the Supreme Court in the case of Union of India (UOI) Vs. Delhi Cloth and General Mills, . Das Gupta J. has this to say:

"Manufacture" implies a change, but every change is not a manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation, a new and different article must emerge having a distinctive name, character or use.

4. The process by which biris are made has already been noticed earlier. It is clear that from the tendu leaves and the tobacco, a new and different article, viz., biris, emerge as a result of various processes to which tendu leaves and the tobaccos were subjected. The firm was as such an industrial undertaking as contemplated by the Explanation to section 5(1)(xxxi). Once this position is reached, the assessee was clearly entitled to exemption of the value of his shares held in two firms on account of section 5(1)(xxxii). The Tribunal was as such right in treating the firm as an industrial undertaking within the meaning of

the Explanation to section 5(1)(xxxi) and granting exemption u/s 5(1)(xxxii). We, accordingly, answer both the questions in the affirmative, in favour of the assessee, and against the department. The assessee is entitled to its costs, which are assessed at Rs. 200. Counsel's fee is assessed at the same figure. This order will govern W.T.R. No. 868 of 1978 (CWT v. Sri Mujahid Mi Khan), where similar questions have been referred and the facts are the same.