(1982) 03 AHC CK 0031

In the Allahabad High Court

Case No : Income-tax Reference No. 1415 of 1977

Commissioner of Wealth Tax APPELLANT

Vs

Radhey Mohan Narain RESPONDENT

Date of Decision : 17-03-1982

Acts Referred:
Wealth Tax Act, 1957 — Section 5(1)

Citation : (1982) 29 CTR 299 : (1982) 135 ITR 372

Hon'ble Judges : R.R. Rastogi, J;K.N. Seth, J

Bench : Division Bench

Advocate : M. Katju, for the Appellant; R.K. Gulati, for the Respondent

Judgement

K.N. Seth, J.—In this reference u/s 27(1) of the W.T. Act 1957, the following question has been referred for the opinion of this court :

"Whether, on the facts and in the'' circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that the firm, M/s. Radhey Mohan Narain Laxman Babu, was an industrial undertaking within the meaning of Section 5(1)(xxxii) of the Wealth-tax Act, 1957 ?"

2. The assessee is a partner in M/s. Radhey Mohan Narain Laxman Babu. For the assessment year 1973-74, the assesses claimed relief u/s 5(1)(xxxii) of the W.T. Act in respect of his interest in the firm. The WTO found that the said firm was engaged in trading in printed cloth, had no fixed assets of its own and was getting its trade requirements of goods from others on job work basis. The firm''s work itself did not involve manufacturing or processing work and, consequently, he rejected the assessee''s claim. On appeal, the AAC upheld the claim of the assessee. The Tribunal dismissed the appeal preferred by the Commissioner of Wealth-tax upholding the view taken by the AAC that the firm was an industrial undertaking.

3. Section 5(1) of the W.T. Act provides that 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 Explanation appended to Clause (xxi) defines the term "industrial undertaking" to mean "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". This Explanation has been made applicable to Clause (xxxii) also. It is obvious that an undertaking in order to satisfy the test of an "industrial undertaking" must be (i) engaged in the business of generation or distribution of electricity or any other form of power, or (ii) in the construction of ships, or (iii) in the manufacture or processing of goods, or (iv) in mining.

5. The modus operandi of the firm in which the assessee is a partner is, as noted by the AAC in his order, that the undertaking purchases big rolls of plain cloth from outside Farrukhabad. The cloth thus purchased is got bleached and thereafter it is dyed in different colours. After dyeing the rolls are cut into pieces and are got printed. In order that the colour may become fast, steam is applied to the dyed and printed cloth. Thereafter, it is washed and calendering is got done. After calendering, the pieces are cut into pieces of small size. Thereafter, baby calendering is done to give good finish and, after folding, the bed-spreads, scarves and handicraft goods are got packed. Some garments are also got stitched. It is clear that as a result of going through these different processes the end product is different from the feed-in material. The word "process" has not been defined in the W.T. Act. It should be understood in that sense in which it is understood in common parlance, i.e., the sense in which the people conversant with the subject-matter, with which the statute is dealing, will refer to it. According to Webster''s International Dictionary, Vol. III, one of the meanings given to the word "process" as verb is as follows :

"to subject to a particular method, system, or technique of preparation, handling, or other treatment designed to effect a particular result, put through a special process."

6. In processing the original article need not lose its identity altogether but some changes are brought into it. When a cloth is dyed, printed and cut into pieces, the original identity of the cloth is not lost but a change is brought about as a result of going through these different processes and the end product is different from the feed-in material,

7. The methods or techniques adopted to convert the plain white cloth into printed and dyed bed-spreads, scarves and garments entitles the business to be

treated as an industrial undertaking belonging to the firm of which the assessee is a partner. The assessee is, therefore, entitled to claim exemption with regard to the value of his interest in the undertaking u/s 5(1)(xxxii) of the Act.

8. Our answer, therefore, to the question referred is in the affirmative, in favour of the assessee and against the department. The assessee is entitled to costs which are assessed at Rs. 250.

