
(2007) 04 RAJ CK 0074
In the Rajasthan High Court

Commissioner of Wealth Tax

APPELLANT

Vs

Shyam Mohan

RESPONDENT

Date of Decision : 10-04-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 2
Wealth Tax Act, 1957 — Section 5(1)(xxxii)

Citation : (2007) 210 CTR 219 : (2009) 313 ITR 416 : (2007) 3 RLW 2101

Hon'ble Judges : R.S. Chauhan, J; R.M. Lodha, J

Bench : Division Bench

Judgement

R.M. Lodha, J.—This order shall dispose of the reference made by the Tribunal, Jaipur Bench, Jaipur for our answer to the following two questions:

(i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that for the purpose of applying Rule 2B(2) of the WT Rules, the onus was on the Revenue to prove that the market value of the closing stock of M/s Rawats Bombay exceeded the value as shown in the firm's accounts by more than 20 per cent ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in upholding the finding of AAC that the firm M/s Rawats of Bombay is an industrial undertaking within the meaning of Explanation to s. 5(1)(xxxi) and consequently in holding that the value of assessee's interest in that firm is exempt u/s 5(1)(xxxii) of the WT Act, 1957 ?

2. The aforesaid two questions of law arise from the facts and circumstances that have been stated by the Tribunal in the statement of the case thus:

Shyam Mohan Rawat, assessee, is a partner in the firm M/s Rawats Bombay. The said firm has been carrying on business in gold jewellery, precious and semi-precious stones. The firm declared GP of 20.1 per cent in the account relating to precious and semi-precious stones. As the firm had shown the closing stock in its accounts at cost, the WTO was of the view that Rule 2B(2) of the WT Rules, 1957

(for short "the Rules"), was applicable and the value of the closing stock would exceed the book value by a margin of more than 25 per cent. The assessee contended before the WTO that the rate of GP did not establish the value of the closing stock and, therefore, Rule 2B(2) could not be applied by making reference to the rate of GP only. The assessee also contended before the WTO that the business in the precious and semi-precious stones was of a peculiar type and a part of the stock may not at all be saleable. The WTO negated the aforesaid contentions and applied Rule 2B(2) of the Rules and made an addition proportionate to the assessee's share in the firm. The WTO in respect of the interest of the assessee in the firm where he was a partner held that the assessee was not entitled to deduction u/s 5(1)(xxxii) of the WT Act, 1957 (for short, "the Act") from the capital employed with M/s Rawats, Bombay as according to him that firm was not an "industrial undertaking" as no manufacturing process at all was being carried on by the firm. The WTO, accordingly, held that the assessee was not entitled to exemption u/s 5(1)(xxxii) of the Act and disallowed the deduction claimed by the assessee. In the appeal carried by the assessee to the AAC, the assessee succeeded on both counts. The AAC held that Rule 2B(2) of the Rules was not applicable. The AAC also held that the firm was an "industrial undertaking" in view of the processing of the rough stones. The AAC accordingly granted exemption u/s 5(1)(xxxii) of the WT Act, 1957 to the assessee. The Tribunal by its detailed order upheld the order of the AAC and held that Rule 2B(2) of the WT Rules was not applicable and that the assessee was entitled to exemption u/s 5(1)(xxxii) of the WT Act as the business carried on by the firm in processing of the precious stones has to be considered as "industrial undertaking" within the meaning of the aforesaid section.

Re : Question (i)

3. The Division Bench of this Court in the case of COMMISSIONER OF WEALTH-TAX Vs. MOTI CHAND DAGA., , while dealing with the identical question, on consideration of the statutory provisions contained in Sections 2(m), 7 of the Act and rRule 2, 2A and 2B of the Rules and also the few judgments, namely : (i) Juggi Lal Kamlapat Bankers and Another Vs. Wealth Tax Officer, Special Circle C-Ward, Kanpur and Others, , (ii) Commissioner of Wealth Tax, Calcutta Vs. Tungabadra Industries Ltd., Calcutta, and (iii) Commissioner of Wealth Tax, Calcutta Vs. Hindustan Motors Ltd., , held thus:

It is, therefore, obvious that where the only material available is the GP rate and there is no positive material to indicate the extent of deduction which has to be made therefrom for the purpose of arriving at a figure which alone can be added to the cost price for determining the market value, there is no definite evidence to determine the market value on the sole basis of GP rate. This conclusion flows even from the reasoning adopted by the WTO and the principle indicated in the WTO's order. It is, therefore, clear that unless there be any positive material or discernible principle justifying computation of the percentage of deduction at the figure applied, it has to be held that there is no positive material to hold that the

market value exceeds by more than 20 per cent the value of the closing stock disclosed in the balance sheet even though the GP rate appears to exceed the figure of 20 per cent....

It is obvious from the above conclusion that the condition precedent for the applicability of Rule 2B(2) is not satisfied and that the Tribunal was, therefore, justified in holding that Rule 2B(2) could not be invoked. In short, the burden was on the Revenue to prove that the valuation of the closing stock given in the balance sheet was not the true value and that the market value of the closing stock exceeded the valuation disclosed by more than 20 per cent. It is only after this burden had been discharged by the Revenue by determining the market value u/s 7(2)(a) at an amount exceeding the valuation disclosed in the balance sheet by more than 20 per cent on the basis of positive or relevant material that Rule 2B(2) could be invoked. Since even the very first step had been reached in the present case, the question of attracting Rule 2B(2) did not arise. The Tribunal's conclusion to this effect was, therefore, justified.

4. That the view of the Division Bench in the case of Motichand Daga (supra) squarely answers the question under consideration by us is not even disputed by the counsel for the Revenue.

5. As a matter of fact, this Court has taken the same view in the long line of cases being : (i) Commissioner of Wealth-tax Vs. Manmohan Lal, ; (ii) CWT v. Umraomal Dhadda (1990) 85 CTR (Raj) 91 ; (iii) Commissioner of Wealth-tax Vs. Gopi Chand Rawat and Others, ; (iv) CWT v. Gulab Devi (1999) 155 CTR (Raj) 100 : (1999) 22 Tax World 433 ; (v) COMMISSIONER OF WEALTH-TAX Vs. S. K. BADER AND OTHERS., and (vi) Commissioner of Wealth-tax Vs. Kanchan Bai Bader (Decd.) and Others (by legal representatives, H.C. Bader and K.C. Bader), .

6. We appreciate the fair stance of the counsel for Revenue that in the light of the consistent view of this Court in series of cases referred to hereinabove, Rule 2B(2) of the WT Rules, 1957 could not have been invoked as the onus was on the Revenue to prove that the market value of the closing stock of M/s Rawats, Bombay exceeded the value as shown in the firm's account more than 20 per cent.

7. We deem it unnecessary to elaborately discuss the matter. We adopt the reasoning given in the case of Moti Chand Daga (supra) and hold that the onus was on the Revenue to prove by positive material that the market value exceeded by more than 20 per cent the value of the closing stock disclosed in the balance sheet even though the GP rate seems to exceed the figure of 20 per cent.

Re : Question (ii)

8. Mr. Anuroop Singhi, counsel for the Revenue vehemently submitted that in view of the categorical finding recorded by the WTO that cutting, grinding, polishing and processing was not being done by the firm itself but the rough (kharad) was given to various karigars for the aforesaid jobs and that these

karigars would return the finished precious stones to the firm; that these karigars were not the employees of the firm; that they were only paid the wages for the work done by them and they did not receive any regular salary from the firm, the assessee was not entitled to claim deduction/exemption u/s 5(1)(xxxii) from the capital employed with the firm, the firm cannot be held to be an "industrial undertaking" within the meaning of Explanation to Section 5(1)(xxxii) of the Act and consequently u/s 5(1)(xxxii) of the Act.

9. On the other hand, Mr J.K. Ranka, counsel for the assessee supported the finding of the Tribunal that the firm was an "industrial undertaking" and that the assessee was entitled to exemption to the extent of the value of interest in the firm u/s 5(1)(xxxii) of the Act.

10. Section 5 of the Act provides for exemption in respect of the assessee referred therein. Accordingly, the assets mentioned in Sub-section (1) of Section 5 shall not be included in the net wealth of the assessee.

11. For our purpose, the relevant clauses are Clauses (xxxi) and (xxxii) of Section 5(1) of the Act as were existing in the relevant year. The said clauses read thus:

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--

(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 [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 of power or in the construction of ships or in the manufacture or processing of goods or in mining;

(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 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 AOP of which the assessee is a partner or, as the case may be, a member.

12. It needs no emphasis that an undertaking engaged in the manufacture or processing of goods is covered by the term "industrial undertaking" for the purpose of Clauses (xxxi) and (xxxii).

13. From a careful reading of the order of the AO, we find that he proceeded to consider the matter from the point of view as to whether cutting emerald from rough emerald was an activity of manufacture. The WTO held that since the end

product after cutting, grinding and polishing was the same as starting product, the activity was not "manufacture". While holding so, he also held that the manufacturing activity was not carried by the firm as it was got done through karigars who though were paid wages for the work done by them, they were not employed by the firm and they did not receive any regular salary from the firm. What the WTO missed to notice was that the assessee engaged in processing of the goods is also covered by the term "industrial undertaking" for the purposes of Clauses (xxxi) and (xxxii) of Section 5 of the Act. When the order of the WTO was carried in appeal, the AAC, specifically held that the business of the processing of rough stones by the firm has to be treated as an industrial undertaking for the purposes of Section 5(1)(xxxii) of the Act and, accordingly, the assessee being partner was entitled to deduction u/s 5(1)(xxxii) of the Act. The Tribunal upheld the said finding.

14. As a matter of fact, it transpires from the order of the Tribunal that the firms carrying on the business of processing of the precious stones have been consistently held by the Tribunal as "industrial undertaking" for the purposes of Clauses (xxxi) and (xxxii) of Section 5(1) of the Act.

15. The counsel for the Revenue relied upon two judgments of this Court, namely : (i) CWT v. Vimal Chand Daga (HUF) (1988) 72 CTR (Raj) 114 : (1988) 172 ITR 264 and (ii) CIT v. Dhandia Gems Corporation (1994) 121 CTR (Raj) 96 : (1994) 208 ITR 923 .

16. In Vimal Chand Daga HUF (supra), the Division Bench of this Court held thus:

Examining the matter in the above background, we find that the Tribunal has not recorded the requisite findings of fact on the basis of which alone the benefit of the above statutory provision can be given to the assessee. It was necessary for the Tribunal to record a clear finding about the entire activity or the various steps or stages in the manufacture or processing of these gems beginning with the point where the same was purchased in the local market and ending with the point where it was made marketable and sold by the assessee's firms. It has then to be further found as to which, if any, of the various steps or stages of this manufacture or processing activity between these two end points is performed by the assessee's firms directly so as to be treated as being done by the assessee's firms themselves and also whether the activity got done through the skilled labourers who are paid on the basis of work done is an activity of the firms themselves and not of an outside agency. For this purpose, the jural relationship between the assessee's firms and these skilled labourers has to be determined and it has to be decided whether the employer-employee relationship exists between them as claimed before us on behalf of the assessee. We may add that the meaning of an "industry" defined in Section 2 of the Industrial Disputes Act as indicated in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, , may also be borne in mind in this context. The triple tests indicated the existence which show prima facie that there is an "industry" in that enterprise would also

be helpful for this purpose. The matter has not been decided by the Tribunal or any of the authorities below it in this perspective for the obvious reason that the case was not put up by the parties in the correct perspective. Reference was made before us to a book "Indian Gemmology" by Raj Roof Tank which is stated to be an authoritative book on the subject in order to show the various stages of (sic) manufacturing or processing activity of the gems beginning with the (sic) material known as "kharad" and ending up with the gem (sic) the marketing form. A perusal of the same indicates that there are several ages in between these two end points which together constitute the manufacture or processing of these goods. There is no finding by the Tribunal as to which, if any, of these several steps in the manufacture or processing of the goods is carried on by the assessee's firms directly and whether the work got done through the skilled labourers is not the entire manufacturing or processing activity. Without these findings of fact, it is not possible to decide the question of applicability of the statutory provision, of which the assessee has claimed the benefit.

17. In Dhandia Gems Corporation (supra), the Division Bench referred to the decision in Vimal Chand Daga HUF (supra) and held thus:

The Tribunal has not recorded any finding to the effect that the industrial undertaking is owned by the assessee. It has referred to the order of the CIT(A) wherein he has observed that the assessee was engaged in manufacturing and, therefore, it was a small scale exporter exporting its own manufactured goods. An assessee who has got the goods manufactured from any other industrial undertaking or from any other person may be a manufacturer but the condition which is contemplated in the Explanation to Section 35B(1A) is that such small scale industrial undertaking must be owned by the exporter. The decision in the case of CWT v. Vimal Chand Daga (HUF) (1988) 72 CTR (Raj) 114 : (1988) 172 ITR 264 relied on by the CIT(A) has already been the subject-matter of reference to this Court and it was found that the triple test mentioned therein have to be established even under the language of Section 5(1)(xxxii) of the WT Act. u/s 5(1)(xxxii), the value of the assets forming part of an industrial undertaking belonging to a firm has to be determined. Even if the words "belonging to a firm" is interpreted equivalent to owned by the firm still the assessee has to establish that the triple test which was laid down in the case of CWT v. Vimal Chand Daga (HUF) (supra) referred to above is satisfied. Looking to the factual position as found by the Tribunal, lacking on the point of the triple test, we are of the view that the Tribunal was not justified in upholding the finding of the CIT(A) that the firm is an industrial undertaking and as such weighted deduction u/s 35B(1A) of the IT Act, 1961, cannot be allowed. The matter could have been remanded to the Tribunal for deciding the triple test as was done in the case of Vimal Chand Daga (HUF) referred to above but since the finding has been given in this case that the manufacturing is got done through skilled labourers who are paid on the basis of work, it establishes that there was no small scale industrial undertaking and the requirements of Section 35B(1A) are not satisfied. The burden was on the assessee and there is no document on the basis of which it could be said that

the goods which are manufactured or produced were thus goods which were from a small scale industrial undertaking owned by the assessee.

18. We, at the first blush, thought of restoring this question to the Tribunal for a fresh look to the aspect of exemption u/s 5(1)(xxxii) claimed by the assessee in the light of the decision in the case of Vimal Chand Daga (HUF) (supra). However, on a deep thought, we found this exercise unnecessary. First, the Tribunal proceeded to rely on its earlier decisions that in the activity of the nature in which the firm is involved has been held to be "industrial undertaking" in similar cases. Second, in the case of the assessee's brother who is also partner of the firm, for the asst. yr. 1981-82, in the matter that reached this Court in the CWT v. Gopi Chand Rawat and Ors. (supra), the Division Bench held "so far as the findings on the question whether the firm was an industrial undertaking in several cases and also in the case of the assessee, are concerned, it had been held that it was an industrial undertaking and the exemption u/s 5(1)(xxxii) shall apply". Third and more importantly, the Tribunal in bunch of appeals being WTO v. Smt. Rajkumari Jain and Ors. 2001 (26) Tax World 1 involving the identical issue on the similar facts after taking into consideration a large number of decisions including the decision of this Court in the case of Vimal Chand Daga (HUF) (supra) held thus:

From all these judgments, only ratio that emerges for determining whether a person is an employee or not is that whether the employer exercises "due control and supervision" over the other person who is doing the work and in each such case, question of control and supervision is a question of fact. We accordingly after looking into the material before, us find that the employer in these cases carried out a strict supervision over the commodity having regard to the value thereof. He is vigilant in respect to the commodity alone and due control and supervision on the work of the karigars is not there which is supported by the facts brought out hereinafter. The activity of Ghat making, also known as shaping is performed by the skilled workers. They are independent workers and do not work whole time for the assessee's firms alone. The employers do direct them about the work to be done by them but they do not have any control over the manner and method of doing the work by these karigars nor do they exercise any discipline in reporting for the work. The karigars are free to report to work or abstain from doing the work. The job performance is done according to the will and wisdom of the worker though a constant vigil of the employer remains on the commodity. We did ask Shri Dhadda, the counsel for the respondent on the four indicia of contract of service as pointed out hereinabove but his assertions being without any supportive evidence, are of little credence to the material issue before us. The last activity of polishing also suggests clearly that when the unfinished gem is taken out for polishing by the karigar at his own premises, how and under what process he carries out the polishing activity is of no control and supervision of the employer. From all these findings it clearly emerges that there is only a contract for service between the employer and the karigars. The karigars carry out the activity as a vocation but not as an employee to the

employer and accordingly we hold that there is no employer-employee relationship between the assessee's firm and the karigars.

The assessee, however, claims to be an industrial undertaking within the meaning of the Explanation to Clause (xxxi) of Sub-section (1) of Section 5 of WT Act, 1957 and on this basis it claimed the exemption as per Clause (xxxii) of Sub-section (1) of Section 5 of the Act. This provision reads as under:

Explanation to Clause (xxxi) of Sub-section (1) of Section 5 of the Act:

Explanation--....

Section 5(1)(xxxii)--....

The meaning of the expression "industrial undertaking" used in Section 5(1)(xxxii) has to be understood as defined in the Explanation to Section 5(1)(xxxi) of the Act and accordingly the term "industrial undertaking" means an undertaking engaged in the business of manufacture or processing of goods. From the above findings, it is evident that the whole activity is not done by the karigars alone. But some of it is also done by the assessee's firms themselves dominant of which is marking and removal of deposits from various edges of the stone. This results into change in physical characteristics of the commodity. The effect of each operation on the commodity is material, which make it a marketable commodity as cut stone or gem. Thus the stages through which the rough stone undergoes so as to end up as a marketable commodity involves the activity of processing. We also find that in some of these cases Government of Rajasthan has issued registration certificates as industry. Also in some cases the AO has himself treated the assessee's firms as engaged in manufacturing where we have been given to understand and is accepted position by the rival parties also that the activity being similar, same arguments can be adopted. The provisions of the WT Act also do not require the entire activity to be carried out by the assessee himself nor there is any requirement that the activity of processing should be dominant where the assessee carries a trading as well as processing of goods for becoming eligible for exemption. The only requirement is that the assessee's firms should be engaged in the business of manufacture or processing of goods. Keeping in view the nature of activity it even need not own any machinery himself. In view of these findings and as the respondent assessee is engaged in the processing of goods within the meaning of Explanation to Clause (xxxi) of Sub-section (1) of Section 5 of WT Act, we hold that the assessee is an industrial undertaking entitled for exemption u/s 5(1)(xxxii) of the Act and accordingly uphold the conclusion arrived at by the learned CIT(A) though for different reasons.

19. We have been informed by the counsel for the assessee that to his knowledge this judgment has attained finality having not been challenged. The counsel for the Revenue could not show us to the contrary.

20. In Vimal Chand Daga (HUF) (supra), the Division Bench thought it fit to

restore the question?whether the firm in which the assessee was a partner in claiming exemption u/s 5(1)(xxxii) of the Act in respect of his interest in the assets of the partnership firm?because in their view the question was of considerable importance as it affected the entire gem industry of the Jaipur area. It is in this background, the entire question concerning the gem industry has been considered threadbare by the Tribunal in Smt. Rajkumari Jain and Ors. (supra) connected matters and these firms have been held "industrial undertaking" within the meaning of Section 5(1)(xxxii) of the Act. The firm M/s Rawats Bombay falls in the same category of firms being part of the same gem industry and the activity of processing of the gems beginning with the raw material (rough) and ending up in marketing form is no different.

21. We thus, hold that the firm M/s Rawats Bombay is an industrial undertaking within the meaning of Explanation to Section 5(1)(xxxii) of the Act and, consequently, the Tribunal did not err in holding that the value of the assessee's interest in the firm is exempt u/s 5(1)(xxxii) of the WT Act, 1957.

22. We answer the reference accordingly. No order as to costs.