
(2009) 02 RAJ CK 0108
In the Rajasthan High Court

Commissioner of Wealth Tax

APPELLANT

Vs

Smt. Bhanwari Devi and Others

RESPONDENT

Date of Decision : 12-02-2009

Acts Referred:

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

Citation : (2009) 224 CTR 34 : (2009) 313 ITR 427

Hon'ble Judges : R.C. Gandhi, Acting C.J.; M.N. Bhandari, J

Bench : Division Bench

Judgement

1. The following questions of law have been referred by the Tribunal, Jaipur Bench, Jaipur at the instance of the Revenue in the following reference petitions:

(1) D.B. WT Ref. No. 4 of 1988:

(1) 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 Rawat Jewellers, Jaipur exceeded the value as shown in the firm's accounts by more than 20 per cent ?

(2) Whether on the facts and in the circumstances of the case, the Tribunal was right in upholding the findings of AAC that the firm M/s Rawat Jewellers, Jaipur is an industrial undertaking within the meaning of Explanation to Section 5(1)(xxxi) and consequently in holding that the value of assessee's interest in that firm is exempt u/s 5(1)(xxxi) of WT Act, 1957?

(2) D.B. WT Ref. No. 5 of 1988:

(1) 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 ?

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

(3) D.B. WT Ref. No. 7 of 1988:

(1) 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 Rawat Jewellers, Jaipur exceeded the value as shown in the firm's accounts by more than 20 per cent ?

(2) Whether on the facts and in the circumstances of the case, the Tribunal was right in upholding the findings of AAC that the firm M/s Rawat Jewellers, Jaipur is an industrial undertaking within the meaning of Explanation to Section 5(1)(xxxi) and consequently in holding that the value of assessee's interest in that firm is exempt u/s 5(1)(xxxi) of WT Act, 1957 ?

(4) D.B. WT Ref. No. 66 of 1988:

Whether on the facts and in the circumstances of the case the Tribunal was justified in directing the WTO to arrive at the value of the immovable property by applying Rule 1BB and further in directing if the value arrived at by applying Rule 1BB does not exceed the value as per the books by 20 per cent then he shall not apply Rule 2B(2) in respect of immovable property ?

(5) D.B. WT Ref. No. 6 of 1988:

(1) 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 and M/s Rawat Jewellers, Jaipur exceeded the value as shown in the firms' accounts by more than 20 per cent ?

(2) Whether on the facts and in the circumstances of the case, the Tribunal was right in upholding the findings of AAC that the firm M/s Rawats Bombay and M/s Rawat Jewellers, Jaipur are industrial undertakings within the meaning of Explanation to Section 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 WT Act, 1957 ?

(6) D.B. WT Ref. No. 49 of 1988:

(1) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the firm M/s Maliram Puranmal is an industrial undertaking within the meaning of Explanation to Section 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 WT Act, 1957?

(2) 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 Maliram Puranmal exceeded the value as shown in the firm's accounts by more than 20 per cent ?

(7) D.B. WT Ref. No. 65 of 1988:

Whether on the facts and in the circumstances of the case the Tribunal was justified in directing the WTO to arrive at the value of the immovable property by applying Rule 1BB and further in directing if the value arrived at by applying Rule 1BB does not exceed the value as per the books by 20 per cent then he shall not apply Rule 2B(2) in respect of immovable property ?

(8) D.B. WT Ref. No. 7 of 1989:

(1) Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the onus of proof that the market value of the closing stock exceeded by more than 20 per cent the value disclosed in the balance sheet of the firm was on the Revenue, and the same not having been proved, Rule 2B(2) of the WT Rules was not attracted ?

(2) Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee's interest in the firm is exempt u/s 5(1) (xxxii) r/w Explanation to Section 5(1)(xxxi) of the WT Act, 1957 ?

(9) D.B. WT Ref. No. 34 of 1989:

(1) Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the onus of proving that the market value of the closing stock exceeded by more than 20 per cent the value disclosed in the balance sheet of the firm was on the Revenue and the same not having been proved, Rule 2B(2) of the WT Rules was not attracted ?

(10) D.B. WT Ref. No. 82 of 1986:

(1) Whether on the facts and in the circumstances of the case, the Tribunal was justified in upholding the findings of the AAC that Rule 2B(2) of the WT Rules was not applicable in the assessee's case and consequently in deleting the addition of Rs. 4,13,270 ?

(2) Whether on the facts and in the circumstances of the case, the Tribunal was right in not holding that onus was on the assessee to prove that the market value of the closing stock of M/s Hazarimal Milapchand Surana, Jaipur did not exceed by more than 20 per cent than the value disclosed by him and whether the assessee could be said to have discharged that onus ?

(3) Whether on the facts and in the circumstances of the case, the Tribunal was right in upholding the findings of AAC that the firm M/s Hazarimal Milapchand Surana, of Jaipur is an industrial undertaking within the meaning of Explanation

to Section 5(1)(xxxi) and consequently in holding that the value of assessee's interest in that firm is exempt u/s 5(1)(xxxi) of WT Act, 1957 ?

(11) D.B. WT Ref. No. 16 of 1990:

Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that GP cannot be the only basis for invoking the provisions of Rule 2B(2) of WT Rules ?

(12) D.B. WT Ref. No. 32 of 1990:

(1) Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that Rule 2B(2) of the WT Rules cannot be invoked in the case of the assessee for valuing the closing stock only on the basis of GP rate declared by the assessee in the year ?

(2) Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding the firm (M/s Jewels Emporium, Jaipur), in which the assessee is a partner, is an industrial undertaking and also holding that the assessee's interest in the firm is exempt u/s 5(1)(xxxi) of the WT Act, 1957 ?

(13) D.B. WT Ref. No. 38 of 1990:

Whether on the facts and in the circumstances of the case the Tribunal is justified in holding that the firm M/s Bhuramal Rajmal Surana (Mfrs.) is an industrial undertaking within the meaning of Section 5(1)(xxxi) and consequently the value of the assessee's interest in that firm is exempt u/s 5(1)(xxxi) of the WT Act, 1957 ?

(14) D.B. WT Ref. No. 3 of 1992:

(1) Whether on the facts and in the circumstances of case, the Tribunal was justified in holding that onus of proof that the market value of the closing stock exceeded by more than 20 per cent the value disclosed in the balance sheet of the firm was on the Revenue and the same not having been proved, Rule 2B(2) of the WT Rules was not attracted ?

(2) Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee's interest in the firm is exempt u/s 5(1)(xxxi) r/w Explanation to Section 5(1)(xxxi) of the WT Act, 1957 ?

(15) D.B. WT Ref. No. 5 of 1992:

(1) Whether on the facts and in the circumstances of case, the Tribunal was justified in holding that the onus of proving that the market value of the closing stock exceeded by more than 20 per cent of the value disclosed in the balance sheet of the firm was on the Revenue and the same not having been proved, Rule 2B(2) of the WT Rules was not attracted ?

(2) Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee's interest in the firm is exempt u/s 5(1)

(xxxi) of the WT Act, 1957 ?

(16) D.B. WT Ref. No. 6 of 1992:

(1) Whether on the facts and in the circumstances of case, the Tribunal was justified in holding that onus of proof that the market value of the closing stock exceeded by more than 20 per cent the value disclosed in the balance sheet of the firm was on the Revenue, and the same not having been proved, Rule 2B(2) of the WT Rules was not attracted ?

(2) Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee's interest in the firm is exempt u/s 5(1)(xxxii) r/w Explanation to Section 5(1)(xxxi) of the WT Act, 1957 ?

(17) D.B. WT Ref. No. 28 of 1995:

Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in upholding the decision of the CWT(A) wherein it was held that the share capital investment of the assessee is exempt u/s 5(1)(xxxii) of the WT Act, 1957 despite the fact that the firm M/s Nissar Brothers is not an industrial undertaking ?

(18) D.B. WT Ref. No. 8 of 2003:

Whether in the facts and circumstances of the case, the learned Tribunal was right in holding that the firm M/s Kotawala is an industrial undertaking within the meaning of Explanation to Section 5(1)(xxxi) of the WT Act, 1957 and consequently in holding that the value of the assessee's interest in that firm is exempt u/s 5(1)(xxxi) of the WT Act, 1957 ?

(19) D.B. WT Ref. No. 14 of 1990:

Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that GP cannot be the only basis for invoking the provisions of Rule 2B(2) of WT Rules ?

2. The following reference applications have been preferred by the Revenue seeking to issue directions to the Tribunal to refer the following questions of law to the Court for its opinion:

(1) D.B. WT Ref Appln. No. 20 of 1988:

Whether on the facts and in the circumstances of the case and in law the Tribunal was justified in holding that the provisions of Rule 2B(2) of WT Rules were not applicable for determination of the value of the assessee's interest in the firm M/s K.D. Jhaveri, Jaipur and consequently in deleting the addition from the assessee's net wealth ?

(2) D.B. WT Ref. Appln. No. 26 of 1988:

Whether on the facts and in the circumstances of the case and in law, the

Tribunal was justified in holding that the provisions of Rule 2B(2) of WT Rules were not applicable for determination of the value of the assessee's interest in the firm M/s K.D. Jhaveri, Jaipur and consequently in deleting the addition from the assessee's net wealth ?

(3) D.B. WT Ref. Appln. No. 27 of 1988:

Whether on the facts and in the circumstances of the case and in law the Tribunal was justified in holding that the provisions of Rule 2B(2) of WT Rules were not applicable for determination of the value of the assessee's interest in the firm M/s K.D. Jhaveri, Jaipur and consequently in deleting the addition from the assessee's net wealth ?

(4) D.B. WT Ref. Appln. No. 118 of 1988:

(1) Whether on the facts and in the circumstances of the case the Tribunal was justified in holding that Rule 2B(2) of WT Rules was not applicable in the assessee's case and consequently in deleting the addition made by the WTO ?

(2) Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the firm M/s Cosmopolitan Trading Corporation, Jaipur is an industrial undertaking within the meaning of Section 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 ?

(5) D.B. WT Ref. Appln. No. 156 of 1988:

(1) Whether on the facts and in the circumstances of the case does the GP rate taken in the case of the firm constitute adequate material to the conclusion that market value of the closing stock of the firm exceeds the cost price as adopted by the firm by more than 20 per cent and whether on that basis the Rule 2B(2) of the WT Rules, 1957 could be invoked ?

(2) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the provisions of Rule 2B(2) were not applicable in the assessee's case and consequently in deleting the addition made by the WTO ?

(3) Whether on the facts and in the circumstances of the case, the Tribunal was right in not holding that the assessee is not entitled to exemption u/s 5(1)(xxxii) of the WT Act, 1957 in respect of investment in the firm M/s Cosmopolitan Trading Corporation, Jaipur ?

(6) D.B. WT Ref. Appln. No. 140 of 1988:

(1) Whether on the facts and in the circumstances of the case the WTO has not discharged the burden of proof to establish that the value of stock as disclosed in the balance sheet of the firm in which the assessee is a partner exceeded by more than 20 per cent ?

(2) Whether on the facts and in the circumstances of the case the Tribunal was justified in holding that the provisions of Rule 2B(2) of WT Rules, 1957 were not

applicable to the assessee's case and consequently in deleting the addition made by the WTO ?

(7) D.B. WT Ref. Appln. No. 144 of 1988:

(1) Whether on the facts and in the circumstances of the case, does the GP rate taken in the case of the firm constitute adequate material to come to the conclusion that market value of the closing stock of the firm exceeds the cost price as adopted by the firm by more than 20 per cent and whether on that basis the Rule 2B(2) of the WT Rules, 1957 could be invoked ?

(2) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the provisions of Rule 2B(2) were not applicable to the assessee's case and consequently in deleting the addition made by the WTO ?

(3) Whether on the facts and in the circumstances of the case, the Tribunal was right in not holding that the assessee is not entitled to exemption u/s 5(1)(xxxii) of the WT Act, 1957 in respect of investment in the firm M/s K.D. Javeri, Jaipur ?

(8) D.B. WT Ref. Appln. No. 125 of 1988:

(1) Whether on the facts and in the circumstances of the case the Tribunal was justified in holding that Rule 2B(2) of WT Rules was not applicable in the assessee's case and consequently in deleting the addition made by the WTO ?

(2) Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the firm M/s P.V. Jewellers is an industrial undertaking within the meaning of Section 5(1)(xxxii) 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 ?

(9) D.B. WT Ref. Appln. No. 7 of 1995:

Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in upholding the order of the CWT(A) in directing the WTO to allow assessee's claim in respect of deduction u/s 5(1)(xxxi) of the WT Act, 1957 ?

3. The WT Appeal Nos. 3, 4, 6, 7, 9, 10 and 11 of 2000 have been preferred by the Revenue for opinion of the Court on following substantial question of law which is common in the aforesaid appeals and is reproduced hereunder:

Whether manufacture of jewellery is an industrial undertaking within the meaning of Section 5(1)(xxxii) of the WT Act, 1957 ?

4. For convenience, we are taking the facts of WT Ref. No. 4 of 1988 for disposal of all the aforesaid cases. The assessee is carrying on the business in gold jewellery and precious and semi-precious stones. The WTO on examination of the returns filed by the assessee found that the firm has declared GP above 20 per cent in the accounts relating to the precious and semi-precious stones. The WTO was of the view that Rule 2B(2) of the WT Rules, 1957 was applicable and the

value of the closing stock would exceed the book value by a margin of more than 20 per cent. The assessee contended before the WTO that the rate of GP did not establish the value of the closing stock, therefore, the Rule 2B(2) has no application. It was also the plea of the assessee that the business in precious stones was of a particular type and a part of the stock may not be at all saleable. The WTO did not accept the plea of the assessee and was of the view that GP rate was to be the average of the transactions as good indicator of the market value of the closing stock. He was further of the view that there was no evidence on record to support the contention of assessee that a part of this stock may not be saleable. The WTO observed that the overall market value has to be adopted and it could not be taken as nil. The WTO, therefore, applied Rule 2B(2) of the Rules of 1957 for valuing the closing stock of the firm. An appeal was preferred before the AAC (hereinafter referred to as "the Appellate Court"). The Appellate Court following certain orders of the Tribunal held that Rule 2B(2) has no application. The orders of the WTO and the Appellate Court were challenged before the Income Tax Appellate Tribunal (Special Bench, Jaipur) (hereinafter referred to as "the Tribunal"). The Tribunal disposed of the four appeals by a common order holding as under:

We do not agree that the matter should be set aside and the WTO should be directed to do what he had not done at the time of the assessment. The WTO having failed to bring the case of the assessee under the exception provided under Rule 2B(2) the main rule of 2B(1)(c) would be applicable. Here it is not a case where the WTO had asked for the relevant details in a specific manner and the assessee had failed to furnish them. Had that been the position an interference could have been drawn from such circumstances.

5. There was another question before the Tribunal which relates to the exemption u/s 5(1)(xxxii) of the WT Act in respect of the interest of the assessee in the firm being a partner. According to the Revenue, the business carried on by the assessee was not an industrial undertaking as there was no element of manufacture or furnishing (sic-processing) of goods involved. The Appellate Court following certain earlier orders of the Tribunal held that processing of goods was involved, therefore, the undertaking of the assessee is entitled to the benefit of Section 5(1)(xxxii) of the WT Act. On these controversies, the aforesaid references have been made.

6. We have heard learned Counsel for the parties and perused the record.

7. Learned Counsel for the respondents has brought to our notice that a similar proposition of law was contained in some wealth-tax reference applications which have been decided by the Full Bench of this Court vide judgment dt. 2nd Feb., 2005. We have examined the judgment delivered by the Full Bench.

8. Mr. R.B. Mathur, learned Counsel for the Revenue has submitted that the Full Bench of this Court has dealt with these references and an observation has been made that the references can be decided in terms of the mandate contained in

Judgment delivered by the Supreme Court in case title Juggi Lal Kamlapat Bankers and Another Vs. Wealth Tax Officer, Special Circle C-Ward, Kanpur and Others, . We have examined the reference applications dealt with by the Full Bench. The dispute referred by the Division Bench to be decided by the Full Bench was because of the divergent views of the Division Benches, whether the references could be declined to be referred by the Tribunal to the Court for its opinion. The Revenue framed questions/references and referred to the Tribunal for its reference to the High Court for its opinion. The Tribunal declined to refer the reference made by the Revenue to the High Court. Under such circumstances, an application was filed before this Court seeking direction for reference of the dispute to the Court. Issue before the Full Bench was as to whether the reference which has been declined to be referred by the Tribunal should have been referred. The Full Bench, instead of this, relying upon the judgment of Juggi Lal (supra) observed as under:

6. On scanning the controversy, we notice that question of law involve in these matters relates to the interpretation of Rule 2B(2) of WT Rules and the controversy in question has already been settled by the apex Court in Juggi Lal Kamlapat Bankers and Anr. v. WTO (supra) and these matters can be decided by the Division Bench bearing in mind the ratio indicated in Juggi Lal Kamlapat Bankers and Anr. v. WTO (supra).

7. We, therefore, remit the matter back to the Division Bench with the request to dispose of all these applications in the light of ratio indicated in Juggi Lal Kamlapat Bankers and Anr. v. WTO (supra). We request the Division Bench to decide the applications expeditiously because they are pending since 1988. The reference is answered accordingly.

9. We find that there were no references before the Court which could be disposed by the Division Bench and there were only the applications as to whether references should be made to the Court and the approach of the Tribunal in declining the references was justified or not.

10. So far as the answer to the references made to the Court as noticed above is concerned, similar references have been dealt with by the Division Bench of this Court vide judgment delivered in case title COMMISSIONER OF WEALTH-TAX Vs. MOTI CHAND DAGA., Perusal of this judgment reveals that the judgment of Juggi Lal Kamlapat Bankers (supra) has been considered by the Division Bench. So far as the question pertaining for the reference and application of Rule 2B(2) of the WT Rules and the onus on the Revenue to prove the market value of the stock of the firm is concerned, the Division Bench held as under:

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 reduction 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 not 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.

The plea of the learned Counsel Mr. R.B. Mathur, does not find favour with us noticing the judgment (*supra*) and we reject it.

11. So far as the question that the assessee's firm is an industrial undertaking within the meaning of Explanation to Section 5(1)(xxxi) and consequently the assessee's interest in the firm is exempted u/s 5(1)(xxxii) of the WT Act is concerned, this issue was considered by the Division Bench of this Court vide judgment delivered in case title Commissioner of Wealth Tax Vs. Shyam Mohan, Considering the scope of the applicability of the aforesaid provisions of law the Division Bench observed as under:

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)(xxxi) shall apply". Third and more importantly, the Tribunal in bunch of appeals being WTO v. Smt. Rqjkumari Jain and Ors. (2001) 26 Tax W 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's, 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)(xxxi)...

The meaning of the expression "industrial undertaking" used in Section 5(1) (xxxi) 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 materials, 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 Rqjkumari Jain and Ors. (supra) connected matters and these firms have been held "industrial undertaking" within the meaning of Section 5(1)(xxxi) 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.

12. We subscribe to the view of the Division Bench delivered in judgment of Shyam Mohan (supra) and answer the references accordingly against the Revenue and in favour of the assessee.