

(1997) 08 P&H CK 0115

In the Punjab And Haryana At Chandigarh

Case No : Wealth-tax Reference No"s. 27 and 28 of 1982

Commissioner of Wealth-tax

APPELLANT

Vs

Smt. Shanti Devi and Another

RESPONDENT

Date of Decision : 11-08-1997

Acts Referred:

Wealth Tax Act, 1957 — Section 5(1)

Citation : (1998) 234 ITR 81

Hon'ble Judges : N.K. Agrawal, J;Ashok Bhan, J

Bench : Division Bench

Advocate : B.S. Gupta and Sanjay Bansal, for the Appellant; None, for the Respondent

Judgement

N.K. Agrawal, J.—These are two references made by the Income Tax Appellate Tribunal (for short, "the Tribunal"), at the instance of the Department in the cases of two assesseees, relating to the assessment year 1976-77. The following question of law has been referred in each of the two references u/s 27(1) of the Wealth-tax Act, 1957 (for short, "the Act") :

"Whether, on the facts and in the circumstances of the case, the Income tax Appellate Tribunal erred in law in allowing the exemption u/s 5(1)(xxxii) of the Wealth-tax Act, 1957 ?"

2. The assesseees, Smt. Shanti Devi and Shri Sat Dev, were partners in the firm, Ram Nath Anil Kumar, Jagraon. The firm purchased groundnuts and got them crushed by an outside party. The two partners, above-named, claimed the benefit of Clause (xxxii) of Sub-section (1) of Section 5 of the Act on the ground, that the firm, in which they were partners, was engaged in the business of manufacturing groundnut oil and was, therefore, an industrial undertaking. Since the assesseees were its partners, they were entitled not to include the value of their respective interests in the assets of the firm. The plea of the assesseees was that under Sub-section (1) of Section 5 of the Act, wealth-tax was not payable by an assessee in respect of the assets specified in the clauses of Sub-section (1).

Clause (xxxii) was inserted in Section 5(1) of the Act by the Finance Act, 1972, with effect from April 1, 1973, and it laid down as under :

"5. Exemption 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-- . . .

(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 . . ."

3. The expression "industrial undertaking" was defined in the Explanation to Clause (xxxii). The said Explanation reads as under :

"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 ;"

4. The Wealth-tax Officer, while making assessment under the Act, declined to exclude the value of the assessee's interest in the assets of the firm and added its value at Rs. 1,04,165 in the case of Shrimati Shanti Devi and Rs. 1,43,000 in the case of Sat Dev. The plea put forward by the assessee was thus not accepted that the firm, in which they were partners, was an industrial undertaking engaged in the manufacture or processing of goods.

5. The two assessee went in appeal before the Appellate Assistant Commissioner but did not succeed. In second appeal before the Tribunal, their plea was accepted.

6. The business of the firm, in which the assessee were partners, was, as per the assessee, manufacturing of groundnut oil. The firm owned groundnuts and got the processing done through an outside agency. The question, therefore, arises whether the firm was engaged in the manufacture or processing of goods or not.

7. Shri B. S. Gupta, learned senior counsel for the Department, has explained that the oil mill, where groundnuts were sent for being crushed by the firm of the assessee, belonged to Ganda Ram Ram Nath. The assessee's firm Ram Nath Anil Kumar, had no interest in that oil mill. The assessee's firm got the groundnuts and other oil-seeds crushed in that mill and paid for the services to the mill-owners, Ganda Ram Ram Nath. Since the firm acted only as traders, they did not qualify to be an undertaking engaged "in the manufacture or processing of goods". Shri Gupta has argued that the assessee's firm had not invested any money in establishing the mill and the manufacturing work was not

actually done by the assessee's firm but by the mill. The assessee's firm gave groundnuts to the mill for crushing and, on receipt of oil and oil cakes, sold these to the buyers. The assessee's firm was, in fact, a mere trader.

8. The benefit of Clause (xxxii), read with the Explanation under Clause (xxxi), would be available to an assessee after the entire activity or the various steps or stages in the manufacture or processing of the goods beginning with the point where the same was purchased and ending with the point where it was made marketable and sold by the assessee's firm, are examined in detail. It has to be seen as to which, if any, of the various steps or stages of the manufacturing or processing activities between these two end-points is performed by the assessee's firm directly so as to be treated as being done by the firm itself. It would be also material to find whether the activity got done through skilled labourers, who are paid on the basis of work done, is an activity of the firm itself and not of an outside agency. For this purpose, the juristic relationship between the assessee's firm and the skilled labourers has to be determined. It will have to be decided whether the employer-employee relationship exists between them. This view finds support from the decision of the Rajasthan High Court in *CWT v. Vimal Chand Daga* (HUF) [1988] 172 ITR 264.

9. A question once arose before the Allahabad High Court in *Commissioner of Wealth Tax Vs. Radhey Mohan Narain*, as to whether a firm, engaged in purchasing plain white cloth and getting it converted into printed bedspreads, scarves, garments, etc., was an industrial undertaking within the meaning of Clause (xxxii) of Section 5(1) of the Act. The Wealth-tax Officer took the view that the said firm was engaged in trading in printed cloth and it 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 not to include the value of his interest in the firm. The assessee's claim was, however, accepted in appeal. The High Court upheld the view taken in appeal on the ground that the methods adopted to convert the plain white cloth into printed and dyed bedspreads, etc., entitled the business to be treated as an industrial undertaking. The further question that the work was got done from others on job-work basis, though not examined in detail, was also decided in favour of the assessee.

10. A similar question happened to be again examined by the same High Court in *Commissioner of Wealth-tax Vs. Dinesh Prakash*. In that case, the Wealth-tax Officer had refused the exemption and included the value of the assessee's interest in the assets of the firm on the ground that the firm got the printing done on job-work basis. It was found by the Appellate Tribunal that the firm had incurred expenses on the purchase of raw materials, for example, colour, gong and blocks; and paid charges for washing, finishing, printing, etc. The Tribunal took the view that, for carrying on the business of printing and dyeing, the firm had purchased raw materials and it was engaged in the processing of goods. The High Court upheld the view taken by the Tribunal that the firms, in which the

assessee was a partner, were industrial undertakings.

11. In Commissioner of Wealth-tax Vs. Mahmooda Ashraf and Arif Ashraf, , the Allahabad High Court followed its earlier view and held that the firm, in which the assesseees were partners, was an industrial undertaking within the ambit of Section 5(1)(xxxii) of the Act despite the fact that it got the leather boots manufactured on job-work basis from others to whom the raw material was supplied and labour charges were paid on contract basis. The firm purchased the various raw materials and supplied the various articles after getting them manufactured by contract labour. It was held that the activity of getting leather boots manufactured on job basis by the firm thus qualified the firm to claim it as an industrial undertaking,

12. A question, whether a company publishing a fortnightly journal, was an industrial undertaking within the meaning of Section 2(6)(d) of the Finance Act, 1968, has been examined by the Madras High Court in Commissioner of Income Tax Vs. Commercial Laws of India Pvt. Ltd., . The assessee-company, in that case, acted as the printer and publisher of a journal. It entrusted the printing of the journal to another concern and, on receipt of the printed sheets, engaged the labour contractors who folded and stitched the printed sheets and, thereafter, packed and despatched the parts to the subscribers. The Income Tax Officer refused the claim of the assessee-company for the lower rate of Income Tax at 55 per cent, of its total income as an industrial company. It was held that the expression used in the definition of "industrial company" in Section 2(6)(d) of the Finance Act, 1968, is "manufacture or processing of goods". Therefore, it is enough if the assessee, in order to get the benefit of the lower rate of tax, is engaged in the "processing" of goods. Though the printing of the sheets was done by a different concern, there was no question of the assessee carrying on any "manufacture". The folding and stitching of the printed sheets would constitute "processing of goods" so as to fall within the scope of Section 2(6)(d) . The assessee was held to be liable to pay Income Tax only as an "industrial company".

13. A question whether an assessee who was a partner in a firm was entitled to claim exemption u/s 5(1)(xxxii) of the Act was also examined by the Madras High Court in CWT v. Kanakarajan (K.) [1987] 164 ITR 750. It was noticed that the benefit of exemption had been given to another partner of the firm after examining the activities of the firm in detail in Commissioner of Wealth-tax, Tamil Nadu-II Vs. K. Lakshmi, and, therefore, it was held that the assessee was entitled to exemption,

14. The question, whether an industrial undertaking was engaged in the manufacture or processing of goods, has been examined in detail in respect of different assesseees in Commissioner of Wealth-tax, Tamil Nadu-II Vs. K. Lakshmi, . While examining the case of one assessee, it was noticed that he purchased art silk yarn, dyes, lace, etc., and gave them to the weavers to convert them into cloth, for which weaving charges, dyeing charges, etc. were

paid. The cloth so manufactured, was sold by the assessee. It was held that the assessee cannot be said to have been engaged in the manufacture or processing of goods. While examining the case of another assessee, it was noticed that roughly half of the work was done by master weavers and the rest was done in the looms operated in the factory belonging to the firm itself. It was noticed that there was no limitation imposed under the provision prescribing that, unless the whole manufacturing is done by the assessee, he cannot avail of the exemption. It was held that, even if the manufacturing is done in part by the assessee, he is entitled to take advantage of exemption. While examining the case of the third assessee in the same case, the High Court noticed that the firm, in which the assessee was a partner, was engaged in dyeing garments and also twisting yarn. After examining the facts, it was held that the manufacturing may contain a series of processing. If the assessee is directly involved in any of the processing, he will be said to have been engaged in processing of goods. In the case of yet another assessee in the same case, it was noticed by the High Court that the business of the assessee consisted of purchasing art silk yarn, dyes, lace, etc., and giving them to the handloom weavers who made cloth for wages and the firm sold such cloth as finished products. It was held that the assessee could not be said to be engaged in the manufacture or, at least processing of goods.

15. It would be thus clear that the facts of each case are to be examined so as to ascertain whether the firm in question was engaged in some activity of manufacture or processing of goods.

16. In Additional Commissioner of Income Tax, Madras-1 Vs. Chillies Export House Ltd., , the Madras High Court was examining the assessee's claim that it was an industrial company within the meaning of Section 2(6)(c) of the Finance (No. 2) Act, 1971. It was noticed that the assessee, an exporter of chillies, purchased the chillies, sorted them, graded them, clipped and stemmed them and subjected them to fumigation under expert technical hands. The assessee claimed that it was entitled to be taxed at the concessional rate of 55 per cent. It was found that the treatment given to the chillies by the assessee-company did not amount to "processing" and even if it was so, since the assessee-company got the same done by another company, it could not be considered as having been engaged in "processing". It was held that the company should engage in an activity and that should be the business of the company. It was held that the activity done by the assessee, nameiy, sorting and grading of chillies, did not fall within the definition of "processing". The fumigation and treatment with methylbromide was done by another firm. Consequently, the assessee was held to be not an industrial company.

17. In yet another case, the Madras High Court in Commissioner of Wealth-tax Vs. V.O. Angadi Veeriah Chettiar, , noticed that the assessee was a partner in two firms, namely, Onni Chettiar and Sons and Ajantha Bleaching and Dyeing Works. The firm, Onni Chettiar and Sons, purchased grey yarn and got it bleached by Ajantha Bleaching and Dyeing Works for charges. It was held that the bleaching

process was undertaken only by the firm, Ajantha Bleaching and Dyeing Works, and the other firm, Onni Chettiar and Sons, only got the grey yarn, purchased by it, bleached by Ajantha Bleaching and Dyeing Works. The interest of the assessee in the assets of the firm, Onni Chettiar and Sons, was held to be not entitled to exemption u/s 5(1)(xxxii), though the assessee was held to be entitled to the exemption in respect of his interest in the assets of Ajantha Bleaching and Dyeing Works, because that firm alone satisfied the test of Clause (xxxii).

18. In Commissioner of Wealth-tax Vs. S. Venkatachalam Pillai, , the Madras High Court, following its earlier view, again held that, where a firm, was not involved directly in the manufacturing and processing of the gold ornaments, it was not an industrial undertaking and its partners were not entitled to exemption u/s 5(1)(xxxii) of the Act. The business activity of the firm consisted of sale of gold ornaments to a limited extent. Gold was given to the workmen for converting into ornaments with specific directions. The wages were paid to the goldsmiths. It was noticed that the manufacturing and processing of gold was done by an outside agency. The assessee had no control over the goldsmith who were making the ornaments. The firm was doing business in selling gold ornaments only. Since the firm was not involved directly in manufacturing and processing of the gold ornaments, it was held that the firm was not an industrial undertaking.

19. In the case of the assessee before us, no activity, during the course of the manufacture or the processing, has been shown to have been done by the firm in which they are partners. The activity is confined to the purchase of groundnuts and sale of the groundnut oil and oil cakes. The purchase and sale are trading activities. Nothing has been shown to indicate that the firm did any other activity except the purchase of groundnuts and sale of oil and oil cakes. In the absence of any material on record to show that the firm did engage itself in any part of the manufacture or processing, it may not be held that the firm was engaged in the manufacture or processing of goods. There is also no doubt on the finding that the crushing of groundnuts, namely, the manufacture of oil and oil-cakes, was done by an outside agency. It is not a case where the firm got the work done through labourers on contract basis and that the employer-employee relationship existed between them. Here is a case where the activity of the manufacture of oil was not done by the assessee's firm but was done by a different concern.

20. Since the firm, in which the assessee were partners, did not engage itself in the manufacture or processing of goods directly and the activity of the manufacture was done by an outside agency, the firm is not an industrial undertaking within the meaning of the Explanation under Clause (xxxi) of Section 5(1) of the Act. The firm was not engaged in any stage of the manufacturing or processing activity. This view finds support from the decision of the Rajasthan High Court in Vimal Chand Data's case [1988] 172 ITR 264 and also the decisions of the Madras High Court in V. O. Angadi Veeriah Chettiar's case

[1987] 167 ITR 541 and in Commissioner of Wealth-tax Vs. S. Venkatachalam Pillai, .

21. The question is, therefore, answered in the affirmative, i.e., in favour of the Department and against the assesseees.