

(2000) 11 MAD CK 0084

In the Madras High Court

Case No : Tax Case No"s. 46 of 1981 and 1243 of 1984 (Reference No"s. 33 of 1981 and 1262 of 1984)

Commissioner of Wealth Tax

APPELLANT

Vs

T.M.S.M. Augusteen (Decd.)

RESPONDENT

Date of Decision : 15-11-2000

Acts Referred:

Citation : (2003) 179 CTR 190 : (2002) 257 ITR 655

Hon'ble Judges : R. Jayasimha Babu, J;K. Gnanaprakasam, J

Bench : Division Bench

Advocate : Chitra Venkataraman, for the Appellant; V. Ramachandran, for K. Mani, for the Respondent

Judgement

R. Jayasimha Babu, J.—The Revenue has called into question the correctness of the view recorded by the Tribunal that when the owner of

the industrial undertaking leased out the machinery he is to be granted the benefit of exemption of the value of such machinery provided for in

Section 5(1)(xxxi) of the Wealth-tax Act, 1957, during the assessment years 1978-79 and 1979-80.

2. The assessee is a Hindu undivided family which owns machinery used for oil extraction. The machinery was leased out by it to another firm and

was being used for the extraction of groundnut oil ; that the machinery formed part of the industrial undertaking was not questioned by the Revenue

at any time. The Income Tax Officer and also the Appellate Assistant Commissioner denied the benefit of exemption solely on the ground that the

machinery though belonging to the assessee did not form part of the industrial undertaking belonging to the assessee. The Tribunal having held

otherwise, the Revenue sought the reference which is now before us.

3. Section 5(1)(xxxi) of the Wealth-tax Act, 1957, reads thus :

5. (1)(xxxi) the value, as determined in the prescribed manner, of assets (not being any land or building or 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.

4. Section 3 of the Wealth-tax Act, 1957, provides for the levy of tax on the net wealth on the corresponding valuation date of every individual,

Hindu undivided family, and company at the rate specified in Schedule I. All the assets owned by the assessee are required to be taken note of for

the purpose of computing the net wealth. Assets which are exempted are not to be included in such computation. Emphasis is on the ownership of

the assets.

5. The use of the expression ""belonging to"" in Section 5(1)(xxxi) has, therefore, to be understood in the sense of the assessee being the owner of

the industrial undertaking. The fact that the machinery itself may have been leased out to another does not have the effect of depriving the assessee

of his ownership of the undertaking. This clause does not require that the owner himself should run the undertaking or use the machinery forming

part of the industrial undertaking himself. So long as it can be said that the assessee is the owner of the industrial undertaking, the industrial

undertaking is to be regarded as one belonging to the assessee.

6. Learned counsel for the Revenue, however, contended that this court in the case of Commissioner of Wealth Tax, Tamil Nadu-IV Vs. P.T.N.

Shensagamoorthy and Another, has taken a different view. The court in that case considered that the assessee who had leased out the salt pans,

the salt pans being the industrial undertaking he was not entitled to the benefit of Section 5(1)(xxxi) in respect of the same. That decision must be

understood in the context of the facts which required consideration therein. In a salt pan it is the land itself which is used for the purpose of

manufacturing salt. By the very terms of the Explanation in Section 5(1)(xxxi)

land is not to be taken as forming part of the industrial undertaking. If the owner of the land leases out the land to another who uses the same as the salt pan in the industrial undertaking the ownership of such an industrial undertaking would then be with the person who has put the land to use as a salt pan. The lessee of the land in such circumstances can be regarded as the one to whom the industrial undertaking belongs. Though some of the observations found in the judgment may tend to support the proposition canvassed by the Revenue, the observations must be read in the context of the facts which were required to be dealt with in that case. That case is clearly distinguishable from the facts requiring consideration in this case.

7. There is no dispute here that the assessee is the owner of the machinery used for extracting oil, that he had acquired the machinery for that purpose, and that he had temporarily leased it out to another who was using the machinery for the very same purpose. The machinery, therefore, belongs to the assessee although the use thereof for the time being was by the lessee. Had it been the intention of the Legislature to extend the benefit of the exemption only to those actually running the industrial undertaking, the language employed in the provision would have been different. Instead of the term ""belonging to"" the words ""being run by"" would have been used. The word ""belonging to"" implies the ultimate control which is an incidence of ownership. The emphasis is therefore, on the ownership part of the industrial undertaking of which the asset forms a part.

8. Learned senior counsel for the assessee invited our attention to the decision of the Allahabad High Court in the case of Commissioner of Wealth-tax Vs. Jetha Nand, and that of the Andhra Pradesh High Court in the case of Commissioner of Wealth Tax Vs. C.S. Rao, wherein also it has been held that Section 5(1)(xxxi) of the Wealth-tax Act does not require the actual use of the asset by the assessee so long as the asset is owned by the assessee and such asset forms part of the industrial undertaking.

9. We answer the question referred to us in favour of the assessee and against the Revenue. Parties to bear their respective costs.