
(1988) 04 RAJ CK 0016

In the Rajasthan High Court

Case No : Income Tax Reference No. 54 of 1982

Commissioner of Wealth-tax

APPELLANT

Vs

Vimal Chand Daga (HUF)

RESPONDENT

Date of Decision : 14-04-1988

Acts Referred:

Wealth Tax Act, 1957 — Section 5(1)

Citation : (1988) 72 CTR 144 : (1988) 172 ITR 264

Hon'ble Judges : J.S. Verma, C.J.; Inder Sen Israni, J

Bench : Division Bench

Advocate : V.K. Singhal, for the Appellant; N.M. Ranka and T.C. Jain, for the Respondent

Judgement

J.S. Verma, C.J.—This order shall dispose of Wealth-tax References Nos. 66 of 1981, 110 of 1984, 111 of 1984, 117 of 1984, 118 of 1984, 6 of 1985, 14 of 1985, 57 of 1985, 60 of 1985, 65 of 1985, 83 of 1986, 84 of 1986 and 75 of 1986, all of which are similar matters involving the same point for decision.

2. This reference u/s 27(1) of the Wealth-tax Act, 1957, is at the instance of the Commissioner of Wealth-tax, Jaipur, to decide the following question of law, namely :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that M/s. Vimal Gems and M/s. Jus Gems are industrial undertakings within the meaning of the Explanation to Section 5(1)(xxxi) read with Clause (xxxii) of the Wealth-tax Act, 1957, and the assessee being a partner is entitled to exemption u/s 5(1)(xxxii) of the said Act in respect of his interest in the assets of these partnership firms ?"

3. The relevant assessment year is 1977-78. The assessee claims to be an "industrial undertaking" within the meaning of the Explanation to Clause (xxxi) of Sub-section (1) of Section 5 of the Wealth-tax Act, 1957, and on this basis it claims the benefit of Clause (xxxii) of Sub-section (1) Section 5 of the Act. These

provisions read as under :

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

"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;

Section 5(1)(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 Wealth-tax Officer rejected the assessee's claim and the Appellate Assistant Commissioner affirmed that view dismissing the assessee's appeal. Further appeal of the assessee to the Tribunal has been allowed. Hence, this reference at the instance of the Commissioner.

5. The facts found proved by the Tribunal on the basis of which the above question of law has been decided by the Tribunal in the assessee's favour are now stated. The assessee is a partner in two firms which carry on the business of purchasing rough emerald from local market and then convert it into tawdda, potta and cut emerald by processing. It is said that in this process, rough emeralds are sorted out, converted into ghats and finally shaped, polished and coloured and that manufacturing is got done through skilled labourers who are paid on the basis of work done. The assessee contended that the firms of which he is a partner manufacture and process emerald and this activity make them "industrial undertakings" entitled to the benefit of Section 5(1)(xxxii) read with the Explanation to Section 5(1)(xxxi) of the Act. The Tribunal has held in the assessee's favour on these findings alone,

6. Learned counsel for the Revenue contended that there is no finding of the Tribunal that the manufacture or processing of goods is done either wholly or even in part by the firms of which the assessee is a partner and, therefore, the requisite finding to give the benefit of these statutory provisions is absent. Learned counsel further contends that the Tribunal was not justified in giving this benefit to the assessee without recording the findings requisite to attract this statutory provision.

7. In reply, learned counsel for the assessee strenuously urged that the benefit of this provision was rightly given to the assessee. He argued that the skilled labourers through whom the work was got done by these firms were piece-rated workmen of these firms and the jural relationship of employer and employee existed between the firms and these skilled labourers. He argued that the

conditions necessary to make them "industrial undertakings" are present and at least a part of the manufacture or processing of goods if not the entire activity was done by the firms themselves in their own premises in addition to the work which was got done through skilled labourers. On this basis, it was contended that even if the work which was got done through the skilled labourers was treated as a part of the manufacture or processing of goods by an outside agency, the remaining part of the manufacture or processing of goods done in the premises of the firms directly was sufficient to attract this provision in order to entitle the assessee to this benefit. The findings of fact recorded by the Tribunal in all the connected matters is similar and, therefore, our decision in all of them is the same.

8. It is obvious that for getting the benefit of Section 5(1)(xxxii) of the Act and construing the expression "industrial undertaking" as defined in the Explanation to Section 5(1)(xxxi), the existence of the ingredients of these provisions have to be proved by the assessee. It is equally obvious that the corresponding finding of the existence of these ingredients had to be given by the Tribunal before it gave the assessee this benefit. The Tribunal's decision to give this benefit without recording the requisite findings of fact which attract the applicability of the provision cannot, therefore, be justified. We may briefly refer to these requirements at this stage.

9. 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. According to this definition, the term "industrial undertaking" for the purpose of the business activity of the assessee means an undertaking engaged in the business of manufacture or processing of goods, namely, conversion of raw material purchased by the firms into finished product or gem which is the marketable commodity. It is not disputed on behalf of the Revenue that this entire process which results in conversion of the raw material into finished product of gem in marketable shape is an activity satisfying the requirement of manufacture or processing of goods. The real question, therefore, is whether the whole or any part of it is done by the assessee's firms so as to attract this statutory provision for its benefit. It is in this light that we have to see whether the requisite findings of fact have been recorded by the Tribunal before giving to the assessee the benefit of this provision.

10. 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(j) 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 the manufacturing or processing activity of the gems beginning with the raw material known as "kharad" and ending up with the gems in the marketing form. A perusal of the same indicates that there are several stages 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.

11. In view of the above, we consider it appropriate to require the Tribunal to decide the matter afresh with advertence to the observations contained herein. Merely calling for an additional statement of case will not solve the difficulty because the entire matter is required to be re-examined and in the circumstances of the case, the parties have also to be given an opportunity to produce further material, if they so desire to enable the Tribunal to record its findings. It is clear that as a result of misapprehension of the requirements of these statutory provisions by both the sides as well as the Tribunal and the authorities below it, the attention of none was directed towards the real points in controversy. In such a situation and on account of the fact that the question is of considerable importance since it affects the entire gem industry in this area, it will be appropriate to require the Tribunal to decide the matter afresh after giving both the sides an opportunity to produce further material, if they so desire.

12. It follows from the above discussion that the question of law which has been referred does not really arise out of the Tribunal's order for the reasons already given. We, therefore, decline to answer the same and require the Tribunal to decide the matter afresh as indicated earlier.

13. No costs.