(1979) 02 AP CK 0010

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2437 of 1976

Noka Narasimhulu APPELLANT

Vs

Wealth Tax Officer RESPONDENT

Date of Decision : 07-02-1979

Acts Referred:

Finance Act, 1968 — Section 2(6)(d)
Wealth Tax Act, 1957 — Section 25, 5, 5(1), 5(1)(xxxi)

Citation : (1979) 2 TAXMAN 141

Hon'ble Judges : A. Sambasiva Rao, C.J;P. Ramachandra Raju, J

Bench : Division Bench

Advocate : S. Dasaratharam Reddy and S.R. Ashok, for the Appellant; A. Krishna Kumar and P. Rama Rao, for the Respondent

Final Decision : Allowed

Judgement

A. Sambasiva Rao, C.J.—What is an "industrial undertaking" within the meaning of section 5 (1)(xxxi) of the Wealth-tax Act, 1957 and whether a groundnut oil mill, which extracts oil by crushing groundnut kernel is an "industrial undertaking" are the questions which are to be answered in this writ petition. The petitioner is a partner of Mahalakshmi Groundnut Oil Mills, Dharmavaram, which carries on business of crushing groundnut kernel and extracting oil there from. The groundnut oil mills valued at Rs. 1,08,757 is exempt from wealth-tax u/s 5 (1)(xxxi) read with Explanation thereto. There is no dispute in regard to the value of the writ petitioner''s interest in the said mill. The only dispute is whether the mill is an "industrial undertaking". However, it must be noticed that before the assessing authority this exemption was not claimed; nor was it claimed before the appellate authority, viz., the AAC. But in a revision u/s 25 of the Wealth-tax Act before the Commissioner this exemption was claimed and the Commissioner ruled that the under taking is not an "industrial undertaking" within the meaning of section 5 (1)(xxxi) so that the relief postulated by clause (xxxii) can not be given to the petitioner. Hence this writ petition by the assessee.

2. We will now read section 5 (1)(xxxii) and (xxxi) section 5 occurs under the title "Exemption in respect of certain assets". Section 5(1) says:

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.

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(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 assets 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.

The expression "industrial undertaking" is defined in the Explanation to clause (xxxi).

The Explanation reads thus:

For the purposes of clause (xxxi) and clause (xxxii) 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 of processing of goods or in mining.

There is no dispute about the fact that the petitioner has an interest in this oil mill of the value of Rs. 1,08,757. The exemption is claimed under clause (xxxii) of section 5 in respect of this Rs. 1,08,757 alone. In this connection we may usefully refer to subsection (1A) of section 5 which says that nothing contained in sub-section (1) shall operate to exclude from the net wealth of the assessee any assets referred to, amongst other clauses, in clause (xxxii) to the extent the" value thereof exceeds, in the aggregate, a sum of Rs. 1,50,000. Since the value of interest is admittedly Rs. 1,08,757 only, the exemption that is now claimed does not come within the ambit of section 5.

3. The Commissioner ruled and the learned Standing Counsel for the Revenue contends that this oil mill is not an "industrial undertaking" within the meaning of the Explanation to clause (xxxi) and that it is only a "trading concern". On the other hand, the learned Counsel for the Petitioner contends that since in this oil mill there is clearly manufacture of groundnut oil and groundnut cake and processing of groundnut kernel into oil and cake, it is an "industrial undertaking", and that since that groundnut kernel is purchased and the resultant groundnut oil and groundnut cake are sold, it is also a trading concern. Indeed, any industrial undertaking for that matter and particularly so, the industrial undertaking mentioned in the Explanation to clause (xxxi) also partake of the characteristic of a trading concern. When electrical power or any other power is generated and distributed it is a business enterprise. Indeed the word "business" is used while giving the meaning of the "industrial undertaking". Simply because there is purchase and sale, which is inevitable in any undertaking of an industrial

establishment, that establishment does not cease to be an '' ''industrial undertaking", if it otherwise has the characteristics which are enunciated in the Explanation. Therefore, it is only a trading concern, cannot be accepted.

4. When the question is whether this oil mill, which admittedly crushes groundnut kernel and extracts oil there from is an "industrial undertaking". Going by the plain language used in the Explanation, it is reasonable to come to the conclusion that the oil mill in which the Petitioner has an interest is engaged in the manufacture or processing of goods, viz., groundnut oil and groundnut cake. Groundnut kernel is put in the crusher and the kernel is crushed out of which marketable commodities, viz., groundnut oil and groundnut cake come into existence. There is thus a complete transformation of the shape and form of the original groundnut kernel. In the place of groundnut kernels, groundnut oil and groundnut cake came into being. There is thus a total alteration or change in the goods. It results in the loss of identity of the original goods, viz., groundnut kernel. Therefore, in the groundnut oil mill in which the Petitioner is a partner, manufacture of oil and groundnut cake is being made.

5. We may usefully refer to three or four decisions in this respect. The Supreme Court it self has clarified the meaning of the expression "manufacture" though in a different context. In Devidas Gopala Krishnan v. State of Punjab [1967] 20 STC 430 the Supreme Court held, though dealing with a sales tax matter, that when oil is produced from oil seeds, that process certainly transforms the raw material into different articles for use and oil seeds can therefore be said to be used in the manufacture of goods.

6. In CST v. Harbiles Rao & Sons [1968] 21 STC 17 once again relating to a sales tax matter, the Supreme Court observed that the word "manufacture" has various shades of meaning and in the context of the sales tax legislation, if the goods to which some labour is applied remain essentially the same commercial articles, it cannot be said that the final product is the result of manufacture. They were considering the case of pig bristols which were boiled and washed with chemicals and sorted according to their size and colour. The Supreme Court held that there was no manufacture. But at the same time the Supreme Court laid down the guiding principle for determining what is "manufacture". In the observation to which we have already referred, the idea is clearly brought out, viz., if the goods to which some labour is applied remain essentially the same commercial article, it is not "manufacture", if the goods change substantially, then it is "manu facture". As we have said, by crushing groundnut kernels the kernel disappears and instead, oil and groundnut cake come into existence. While enunciating this characteristic of manufacture, the Supreme Court followed the earlier decision in Devidas Gopala Krishnan s case (supra).

7. These decisions fully support the view we have taken that in the oil mill in which the petitioner has a share, manufacture of groundnut oil and groundnut cake is being done.

8. Further, the other requirement of the limb, viz., processing of goods also exists in this case. In common parlance, by processing of goods, it is meant that the goods are dealt with either mechanically or manual labour and something is done to them to change them into some other article or to keep them fine or clean. This aspect is clearly explained by the Kerala High Court in the case of Commissioner of Income Tax Vs. Casino (Pvt.) Ltd., . The Division Bench was referring to the same expression "manufacture or precessing of goods". Subramonian Poti, J. who spoke for the Division Bench, explained the meaning of the word "manufacture" as a process which results in an alteration or change in the goods which are subjected to such manufacture. When commercially new article is produced, that production may be by manual force, mechanical force or even by nature''s own process such as drying by heat of the sun as in a salt pan. But the real test is to see whether a commodity, which in a commercial sense is different from the raw material, has resulted due to the manufacture. Then adverting to the expression "process" the learned Judge observed that it has in one sense a wider meaning than the word "manufacture". Referring to the four categories to whom certain benefits were given under the Finance Act, 1968, it was pointed out that the reference is only to the manufacturing concerns as against trading concerns. The learned Judges held that a hotel is only a trading concern and preparation of food materials in a hotel cannot be called as "manufacture or processing of goods."

9. The Madras High Court had to consider the scope of the words "processing of goods" in Commissioner of Income Tax Vs. Commercial Laws of India Pvt. Ltd., There the assessee folded and stitched printed sheets. The question was whether it was processing of goods. The learned Judges held that though the printing of the sheets was done by a different concern and, therefore, there was no question of the assessee carrying on any "manufacture", the folding and stitching of the printed sheets would constitute "processing of goods" as to fall within the scope of section 2 (6)(d) of the Finance Act, 1968.

10. If groundnut kernel is put in the crusher and the crusher is operated on account of which the kernel is crushed and oil and groundnut cake are extracted there from it is certainly "processing of goods". Thus, the groundnut oil mill in which the petitioner has an interest of Rs. 1,08,757 is certainly an "industrial undertaking" within the meaning of clauses (xxxi) and {xxxii) because in it there is not only "manufacture" but also "processing of goods".

11. However, the learned Counsel for the Revenue tries to get over this application of the exemption by calling it as a "trading concern". We have already rejected this contention by saying that it is essentially an "industrial undertaking", though it is also a "trading concern" in the sense that it purchases groundnut kernel and sells the manufactured or processed goods. But it does not for that reason go out of the ambit of the definition of the expression "industrial undertaking" contained in the Explanation to clause (xxxi).

12. The learned Revenue''s Counsel also contends that the four categories

mentioned in the Explanation should be understood as being in the nature of ejusdem generis. This doctrine of ejusdem generis, we are afraid, cannot be applied to the Explanation. In it, there are four categories of undertakings mentioned. One is generation or distribution of electricity or any other form of power, the second is construction of ships, the third is manufacture or processing of goods and the fourth is mining. One class stands apart from the other three. It is impossible to introduce the doctrine of ejusdem generis into this Explanation because it is impossible to say by any stretch of imagination that they belong to a single category.

13. The learned Counsel for the Revenue relies on certain observations in Bindra''s Interpretation of Statutes, 6th Edition at page 286. But the same learned Author points out that before the rule of ejusdem generis can be applied it is necessary that there must be a distinct genus which must comprise more than one species. Further, the general words are not restricted in meaning to objects ejusdem generis if there is a clear manifestation of contrary intent. While the rule of ejusdem generis is a well established and useful one, it is like other cannons of statutory construction, only an aid to the ascertainment of true meaning of the statute. The rule shall not be applied if it results in a construction inconsistent with the statute''s legislative history. Other controlling rules of construction or statutes are in pari materia.

14. These principles, pointed out by the learn ed Author, do not help the Revenue''s learned Standing Counsel. On the other hand, they are against the application. Patently the Parliament intended to give exemption up to a limit prescribed in sub-section (1A) of section 5 to the four categories of the industrial undertakings mentioned in the Explanation to clause (xxxi). Moreover, it is under clause (xxxii), the exemption is given for the value of the interest of the assessee in the assets 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. In our view, it would be wholly inappropriate and untenable if the doctrine of ejusdem generis is introduced into the Explanation to clause (xxxi). Each one of the four is an independent category by itself. Therefore, we have no hesitation in repelling this contention advanced by the Revenue.

15. The learned Revenue''s Counsel also contends that since the Petitioner did not raise the question either before the assessing officer or before the AAC, he is estopped from raising this contention now. We cannot accept this. This was raised in the revision before the Commissioner u/s 25 and the Commissioner has considered this contention on its merits. It is not the first time for the Petitioner to raise it in the writ petition. Further, there cannot be an estoppel of this nature. The above discussion shows that the groundnut oil mill in which the Petitioner has an interest of the value of Rs. 1,08,757 is an "industrial undertaking" and to the extent of the said amount, he is entitled to exemption. The writ petition is accordingly allowed. Since there is no direct decision on this question, we direct the parties to bear their own costs.

