

PETITIONER:
TRAVANCORE-COCHIN CHEMICALS (P.) LTD.

Vs.

RESPONDENT:
COMMISSIONER OF WEALTH-TAX, KERALA

DATE OF JUDGMENT:
06/04/1967

BENCH:
SIKRI, S.M.
BENCH:
SIKRI, S.M.
SHAH, J.C.
RAMASWAMI, V.

CITATION:
1967 AIR 1534 1967 SCR (3) 448

ACT:
Wealth Tax Act (27 of 1957) s. 45(d), proviso-Company incorporated on one date and commencing business on a later date- When "established"-Meaning of "established".

HEADNOTE:

The appellant, which was a private limited company, was formed and registered under the Indian Companies Act, 1913, on 8th November, 1951. The erection and construction of its factory was completed in December 1953 and production commenced from 1-1-1954. On the question-whether the company was established on 8th November, 1951, the date of its incorporation and was therefore liable to pay wealth tax for the assessment years 1957-58, 1958-59 and 1959-60, on the basis that the exemption from payment of wealth tax under the proviso to s. 45(d) was only for five successive assessment years commencing with the assessment year next following the date on which the company was established.

HELD : A comparison of clauses (d) and (f) of s. 45 shows that the word "established" in cl. (d) and its proviso, does not mean "incorporated". The word "established" has the same meaning it has in s. 5(1) (xxi) of the Act, namely, that the Company has been put into such a shape that it can start functioning as a business or a manufacturing Organisation. So construed, the appellant was established within s. 45(d) only in December, 1953, or 1st January 1954, and the five assessment years next following would be 1954-55, 1955-56, 1956-57, 1957-58 and 1958-59. Therefore, the appellant would be entitled to exemption for the assessment years 1957-58 and 1958-59 but not for 1959-60. [451F; 452D-E; 453B-C]

Commissioner of Wealth Tax, Madras v. Ranzaraju Surgical Cotton Mills Ltd. [1967] 1 S.C.R. 761, followed.
Thomas J. Davidson v. W. L. Lanier, 18 L.Ed. 377, 379, referred to.

JUDGMENT:
CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 405- 407 of 1966.

Appeals by special leave from the judgment and order dated March 9, 1964 of the Kerala High Court in Income Tax Referred Case No. 4 of 1963.

S. T. Desai and G. L. Sanghi, for the appellant (in all the appeals).

T. V. Vishwanatha Iyer, Gopal Singh, S. P. Nayyar and R. N. Sachthey, for the respondent (in all the appeals).

The Judgment of the Court was delivered by Sikri, J. These appeals by special leave are directed against the judgment of the High Court of Kerala in a reference made to it by the Income-Tax Appellate Tribunal, Madras Bench, under S. 27(1) of the Wealth Tax Act, 1957, hereinafter referred to as the Act. The reference was made at the instance of the

449 Commissioner of Wealth Tax, Kerala, and the question referred was as follows :-

"Whether the exemption from tax for the assessment years 1957-58, 1958-59 and 1959-60 was not rightly granted."

The High Court held that the exemption from tax granted to the assessee under s. 45(d) of the Act for the assessment years 1957-58, 1958-59 and 1959-60 was not rightly granted and answered the question against the assessee. The relevant facts are as follows :-The appellant, Travancore Cochin Chemicals (P) Ltd., hereinafter called the assessee, was formed and registered under the Indian Companies Act on November 8, 1951. The prior history of the Company is given in the statement of the case as follows :-

"On 22-7-1949, a partnership was formed between two public limited companies, viz., Fertilisers & Chemical Travancore Ltd., Alway, and the Mettur Chemical & Industrial Corporation Ltd., Mettur, for establishing a Caustic Soda Factory with an estimated capital of Rs. one crore. The firm could not function due to lack of finance. The Government of Travancore was approached for necessary finance to complete the purchase of plants and machinery which had been started in August 1949, and that Government entered the Company and subscribed a large share capital and a new private limited company was formed and registered under the Indian Companies Act on 8-11-1951."

Further facts given in the statement of the case are as follows

buildings, construction stores, materials, etc., at different stages of erection and also all book debts and liabilities.

erection

and construction of the factory was completed in December, 1953, and production commenced from 1-1-1954. The trading accounts were closed for the first time on 31-3-1954. There was a loss of Rs. 16,04,212/- incurred."

For the assessment year 1957-58 (the relevant date of valuation being March 31, 1957) the assessee claimed before the Wealth Tax Officer that it was not liable to pay wealth tax during the year of account as it was exempted from wealth tax under s. 45 (d) of the Act. The Wealth Tax Officer rejected the claim on the ground that the assessee was established within the meaning of s. 45(d) and the proviso thereto, in November 1951, and consequently the period of five years exemption was over with the assessment year 1956-

57.

450

The relevant portion of S. 45 of the Act reads as follows

"45. The provisions of this Act shall not apply to

(a)

(b)

(c) any company established with the object of financing, whether by way of making loans or advances to, or subscribing to the capital of', private industrial enterprises in India, in any case where the Central Government has made or agreed to make to the company a special advance for the purpose or has guaranteed or agreed to guarantee the payment of moneys borrowed by the company from any institution outside India;

(d) any company established with the object of carrying on an industrial under-taking in India in any case where the company is not formed by the splitting up, or the reconstruction of a business already in existence or by the transfer to a new business of any building, machinery or plant used in a business which was being previously carried on :

Provided that the exemption granted by clause (d) shall apply to any such company as is referred to therein only for a period of five successive assessment years commencing with the assessment year next following the date on which the company is established, which period shall, in the case of a company established before the commencement of this Act, be computed in accordance with this Act from the date of its establishment as if this Act had been in force on and from the date of its establishment;

Explanation.-

(e)

(f) any company registered under section 25 of the Companies Act, 1956."

The Wealth Tax Officer followed the same reasoning for the -assessment years 1958-59 and 1959-60. The Appellate Assistant Commissioner of Wealth Tax upheld the orders of the Wealth Tax Officer. The Income Tax Appellate Tribunal, however, allowed the appeals of the assessee. It held that the word "established" in S. 45(d) was used in contradistinction to the word "incorporated". It observed :

"It seems to us that this 'establish' (sic) can be inferred only when the object with which the company was formed or incorporated is begun to be achieved."

451

It further held :

"To attract tax under sec. 3 there must be an assessment year as defined in sec. 2 (d). In this case, the assessment has commenced for the first time in 1954-55 and having regard to Part 11 of the Schedule to the Wealth Tax Act, the first year 1954-55 having ended in a loss, the assessment year can be said to commence only from 1955-56. For five years from then, the assessee would be entitled to the exemption."

As mentioned above, the Appellate Tribunal referred the question at the instance of the Commissioner, and the High Court answered the question against the assessee. The assessee having obtained leave from the High Court, the appeal is now before us-

The learned counsel for the assessee contends that the word "established" in s. 45(d) has the same meaning as it has in s. 5(1)(xxi) of the Act, which was interpreted by this Court in Commissioner of Wealth Tax, Madras v. Ramaraju Surgical Cotton Mills Ltd.(1) He says that the word "established" cannot be equated with the word "incorporated". The learned counsel for the respondent, on the other hand, contends that the word "established" in s. 45(d) has a different meaning to that in s. 5 (1) (xxi), as s. 45 (d) deals with a company being established while s. 5(1)(xxi) deals with a unit being established. Bhargava, J., speaking for the Court, in Commissioner of Wealth Tax, Madras v. Ramaraju Surgical Cotton Mills Ltd.,(1) observed:

"A unit cannot be said to have been set up unless it is ready to discharge the function for which it-is being set up. It is only when the unit has been put into such a shape that it can start functioning as a business or a manufacturing Organisation that it can

be said

that the unit has been set up. The expression used in the proviso, under which the period for which the exemption is available is to be determined, is not the same as that used in the principal clause. In the proviso, the period of five successive years of exemption has to commence with the assessment year next following the date on which the company commences operations for the establishment of the unit. Operations for the establishment of a unit, from the very nature of that expression, can only signify steps that have to be taken to establish the unit. The word 'set up' in the principal clause, in our opinion, is equivalent to the word 'established', but operations for establishment cannot be equated with the establishment of the unit itself or its setting up. The applicability of the proviso has, therefore, to be decided

(1) [1967] I.S.C.R. 761, 764 : 63 I.T.R. 478, 481-482.

L5Sup CI/67--16

452

by finding out when the company commenced operations for establishment of the unit, which operation must be antecedent to the actual date on which the company is held to have been set up for purposes of the principal clause. This is also the meaning that the Bombay High Court derived in the case in Western India Vegetable Products Ltd.,(1) where that Court was concerned with the interpretation of the expression set up' as in section 2 (II) of the Income-tax Act. That court held- : 'it seems to us that the expression setting up means, as is defined in the Oxford English Dictionary, -to place on foot or to establish, and in contradistinction to commence. The distinction is this that

when a business is established and is ready to commence business, then it can be said of that business that it is set up. But before it is ready to commence business it is not set up. This view was expressed when that Court was considering the difference between the meaning of the expression setting up a business and commencing of a business."

It seems to us that the same meaning must be given to the word "established" in s. 45 (d) as in s. 5 (1) (xxi). It would be noticed that s. 45 uses the word "established" in cl. (c) and in the proviso to cl. (d), while the word "formed" is also used, apart from the word "established" in cl. (d); and in cl. (f) the word "registered" is used. There is a clear distinction between the word "registered" or "incorporated" and the word "established". If the Legislature was thinking of incorporation of a company, then we fail to understand why this word was not used instead of the word "established". Further, if we look at cl. (d), it excludes certain industrial undertakings from the benefit of s. 45; what are excluded are companies "formed by the splitting up, or the reconstruction of a business already in existence or by the transfer to a new business of any building, machinery or plant used in a business which was being previously carried on." Ordinarily the date of incorporation of a company has nothing to do with the transfer of a machinery or plant to it.

The case of Thomas J. Davidson v. W. L. Lanier 2) also lends support to the interpretation which we have placed on the word "established". Chase, C.J., observed :

"What is meant by putting in operation or establishing a Banking Company ? We think that this language has a much wider import than mere commencement of business. To establish a company for any business means complete and permanent provision for

(1) 26 I.T.R. IS 1.

(2) 18 L. Ed. 377, 379.

453

carrying on that business, and putting a company in operation may well include its continued as well as its first or original operation."

We may mention that no other point was debated before us.

In the result we hold that the assessee was established within s. 45(d) of the Act in December 1953, or January 1, 1954. The first year following the date of establishment of the Company was 1954-55, and the next four assessment years would be 1955-56, 1956-57, 1957-58 and 1958-59. The only assessment year in dispute that is not covered is 1959-60. Consequently the answer to question referred is that the exemption for the assessment years 1957-58 and 1958-59 was wrongly withheld while the exemption for the year 1959-60 was rightly not granted. We accordingly accept the appeals and answer the question as indicated above. There will be no order to costs.

V.P.S.

Appeal allowed in part.