

The Northern
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ers Insurance
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v.
Amra Wati and
another
—
Dulat, J.

children, being girls, are shown to be earning some income of their own, but that is not in my opinion sufficient justification for depriving them of their share of the compensation as the Tribunal below appears to have done. They are both girls and certainly in need of money for their future. I do not, therefore, propose to make any distinction between them and the other children and, as already mentioned. I would direct that each of the seven children be paid Rs. 4,000 and the widow of course Rs. 8,000. Out of this total sum of Rs. 36,000, the insurance company, the Northern India Transporters Insurance Company, is ordered to pay only Rs. 2,000, and the balance, that is, Rs. 34,000; must be paid by the transport company, namely, the Sheikhpura Transport Company Limited, Ludhiana. The costs of the two appeals by the Insurance Company (F.A.Os. 145 and 155 of 1960) will be borne by the parties themselves, while the costs of the claimants' appeals (F.A.Os. 6 and 7 of 1961) will be paid by the Transport Company.

The result is that all the four appeals are allowed in terms and to the extent indicated above.

Pandit, J.

PREM CHAND PANDIT, J.—I agree.

B.R.T.

WEALTH TAX REFERENCE

Before Mehar Singh and Prem Chand Pandit, JJ.

THE COMMISSIONER OF WEALTH TAX PUNJAB, ETC.,—
Applicant.

versus

M/S. DALMIA DADRI CEMENT, LTD,—*Respondent.*

Wealth Tax Reference No. 21 of 1962.

1965
December, 15th.

*Wealth Tax Act (XXVI of 1957)—S. 5(1) (xxi)—“Set-up”—
Meaning of—Whether covers the whole process of establishing
a separate unit—S. 45(d)—Exemption under—Date of operation—
Whether the next financial year after the establishment of the
separate units.*

Held, that the expression “set up”, as used in clause (xxi) of section 5(1) of the Wealth Tax Act, means completed or ready to be commissioned or ready to commence business, all of which expressions mean in this context exactly the same. It does not cover the whole process from the commencement of the operations to establish a new and separate unit to the end when such

a unit is completed; it means the last of the final stage when such a unit is complete and ready to be commissioned.

Held, that the exemption granted by clause (d) of section 45 of the Act is made operative from the date of the establishment of the company as if the Act came into force, on that date, and in the proviso also the expression used is that the exemption is available only for a period of five successive assessment years 'commencing with the assessment year next following the date on which the company is established . . .', and this, when read with the retrospective effect of the clause that the Act itself is operative from the date of the establishment of the company, obviously means that the next financial year after the date of the establishment would be the assessment year and the meaning of the words 'commencing with the assessment year next following the date on which the company is established' obviously is that the date of establishment precedes the assessment year as falling within the preceding year to the assessment year and not further back.

Reference under Section 27(1) of the Wealth Tax Act by the Income Tax Appellate Tribunal (Delhi Bench) for decision of question of law which is as follows:—

"Whether on the facts and in the circumstances of the case, the sum of Rs. 33,01,964 was exempt under Sub-section 5(1) (xxi) of the Wealth—Tax Act?"

D. N. AWASTHY AND B. S. GUPTA, ADVOCATES, for the Petitioner.

N. N. GOSWAMY, AND L. M. SURI, ADVOCATES, for the Respondent.

JUDGMENT

MEHAR SINGH, J.—The assessee-company, the Dalmia Dadri Cement Limited, respondent, has a cement factory at Dalmia Dadri. It commenced operations for the establishment of a new and separate unit in July, 1955 and the unit was completed in February, 1958, by which I understand that it was ready to be commissioned or to go into production in February, 1958. Meharsingh, J

The Wealth Tax Act, 1957 (Act 27 of 1957), came into force on April 1, 1957. In the case of the assessee-company the valuation date in the wake of section 2(q) of the Act was December 31, 1956. The Act having come into force was completed in February, 1958, by which I understand on April 1, 1957, the first assessment year under its provisions has been from April 1, 1957, to March 31, 1958 (hence 1957-58). In regard to the assessment of the wealth of the

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Mehar Singh, J

Section 5(1) (xxi) of the Act reads—

“5. Exemption in respect of certain assets—

(1) 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—

* * * *
* * * *

(xxi) that portion of the net wealth of a company established with the object of carrying on an industrial undertaking in India within the meaning of the Explanation to clause (d) of section 45, as is employed by it in a new and separate unit set up after the commencement of this Act by way of substantial expansion of its undertaking:

Provided that—

- (a) separate accounts are maintained in respect of such unit; and
- (b) the conditions specified in clause (d) of section 45 are complied with in relation to the establishment of such unit;

Provided further that this exemption shall apply to any such company only for a period of five successive assessment years commencing with the assessment year next following the date on which the company commences operations for the establishment of such unit.”

It has not been denied that the assessee-company has been carrying on an industrial undertaking within the meaning of the Explanation to clause (d) of section 45 of the Act, and in relation to the new and separate unit set up the conditions of clause (d) of section 45 of the Act have been

complied with and further that separate accounts have been maintained in respect of that new and separate unit. So the substantial part of clause (xxi) and the conditions in the first proviso to that clause have been complied with. The question before the wealth tax authorities was whether the new and separate unit of the assessee-company has or has not been set up after the commencement of the Act, that is to say, after April 1, 1957, and, if it has been set up after that date, how is the exemption period of five successive assessment years, as referred to in the second proviso to clause (xxi), to be reckoned, or rather how to have the commencing or starting point? The Order of the Wealth-Tax Officer is not a part of the case stated on reference, but what the Wealth Tax Officer decided on the question has in substance been reproduced in the appellate order of the Appellate Assistant Commissioner of Wealth Tax in this manner— "The Wealth Tax Officer has not accepted the claim of the appellant company on the ground that the word 'set-up' used in the above section means 'when a unit is fully established and ready to start production.' As the new unit was not in that condition and did not start production on or before the valuation date, the exemption was not available to it." The Wealth Tax Officer, therefore, disallowed the claim to exemption by the assessee-company. On appeal, the Appellate Assistant Commissioner of Wealth Tax in his order of May 30, 1959, maintained the order of the Wealth Tax Officer in this respect. He said—"From the above facts, it has to be held that the separate unit for which the exemption is claimed was not completely established and ready to commence production on the date of valuation, namely, 31st December, 1956. The appellant's argument, however, still remains that section 5(1) (xxi) requires the unit to be established after the commencement of the Wealth Tax Act, namely, 1st April, 1957. But the main provision of this section has to be read along with the provisos attached to it. The second proviso to this section says that the exemption provided in section 5(1) (xxi) shall apply to any such company only for a period of five successive assessment years commencing with the assessment year next following the date on which the company commences operations for the establishment of such unit. The Wealth Tax Act came into force on 1st April, 1957. The proviso has not been given retrospective effect by the legislature as has been done in respect of section 45(d) wherein it was provided

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that if a company had been established before the commencement of the Act, period of five successive assessment years would be computed from the date on which the company was established as if the Wealth Tax Act had been in force on and from the date of its establishment. The learned counsel for the appellant argues that similar provision would apply to section 5(1) (xxi) and the period of five years of exemption, commencing from the assessment year next following the date on which the company commenced operations for the establishment of such unit, shall start prior to 1st April, 1957 and would continue till after 1st April, 1957 when five years are completed just as in the case of proviso in section 45(d) of the Wealth Tax Act. He argues that the computation of the exemption period of five assessment years is independent of the applicability of exemption itself to a new unit set up after 1st April, 1957, which is provided by the main provision of section 5(1) (xxi). I am afraid I cannot accept this proposition put forth by the appellant. An Act cannot be given retrospective effect unless the law making authority does so while placing it on the statute book. * * * * * As far as the provisions of section 5(1) (xxi) are concerned, they would be applicable only with effect from 1st April, 1957 and not earlier. The conditions prescribed in the proviso to this section would also naturally stipulate that the commencement of the operations for the establishment of a new unit must start on or after 1st April, 1957 because the period of exemption under this section would start only from or after 1st April, 1957 as stated above. It may further be noted here that the underlying idea behind this exemption was to give encouragement to the future expansion of the industrial undertakings in India and as such this exemption will be available only to the expansions, which start taking place after the commencement of the Act and not before it. In view of the above facts, I am of the opinion that the exemption under section 5(1) (xxi) can be available only if the operations to commence the establishment of the new unit start after the commencement of the Wealth Tax Act and the separate unit is also set up after a similar date, along with the other provisions provided for in this section. "The assessee-company took the matter in second appeal before the Income-Tax Appellate Tribunal, Delhi Branch, which is also the Tribunal for the purpose under the Act. The only question that was for consideration by the Tribunal

was the disallowance of the exemption claimed by the assessee-company. The tribunal accepted the appeal of the assessee-company and reversed the orders of the officers below. It held that whatever the interpretation of section 45(d) of the Act, in its opinion that section was wholly unnecessary for the purposes of the appeal before it and proceeded to say that "Section 5(1) (xxi) is, in our opinion, quite clear and admits of no ambiguity. In the present case the new unit was started after the commencement of the Wealth Tax Act and since the other conditions prescribed by section 5(1) (xxi) have been duly complied with and the assessee's case falls within the ambit of that section, the assessee would be entitled to the exemption for a period of five years from July 1955. "It, therefore, allowed the appeal for the amount claimed as exempt in this respect to the assessee-company. On an application of the Commissioner of Wealth Tax, Punjab, Jammu and Kashmir, and Himachal Pradesh, the Tribunal has referred this question to this Court for opinion—

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"Whether on the facts and in the circumstances of the case, the sum of Rs. 33,01,964 was exempt under sections 5(1)(xxi) of the Wealth-Tax Act.?"

It will be seen that the scope of the question on the facts is confined only to the assessment year 1957-58.

The assessee-company having commenced operations for the establishment of the new and separate unit in July, 1955 and having completed the unit by February, 1958, the first question that arises for consideration is whether the new and separate unit has been set up after the commencement of the Act as the expression 'set-up' is used in clause (xxi) of section 5(1)? The learned Tribunal has answered this question in the affirmative. But the learned counsel for the applicant, the Commissioner of Wealth Tax, contends that the meaning of that expression extends to the whole process beginning with the commencement of operations for the establishment of the unit and ending in the completion of that operation. In this approach he has urged that as the operations for the establishment of the unit commenced before the coming into force of the Act, so within clause (xxi) of section 5(1) it cannot be said that the new and separate unit has been set up after the coming into force of the Act. He says that the expression 'set-up' embraces the whole process

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with the commencement of the operations to establish the unit, the intermediate steps towards its establishment, and the final completion of the establishment. The whole process, according to him, must from the beginning to the end be after the coming into force of the Act before it can be said that the new and separate unit has been set up after that date. He has not been able to support his argument in reference to any decided cases or on any logical basis. The second proviso to clause (xxi) of section 5(1) uses the words 'commences operations for the establishment of such unit in contradiction to the use of the words' employed by it in a new and separate unit set up after the commencement of this Act' and, in my opinion, those words used in the second proviso give a clear indication of the intention of the legislature that the commencement of operations for the establishment of a new separate unit was not to be a part of what is referred to in the main body of that clause under the words 'set-up', as has been contended by the learned counsel for the applicant. This is one consideration which speaks against that contention. In the shorter Oxford English Dictionary, among other meanings, the meaning of the expression 'set-up' is "to erect and make ready for use; to pitch (a tent); to erect (a building—). To put together the parts of (a machine) and erect it in position. To start (a piece of work) on a loom." Similarly, in Webster's Dictionary this expression has been defined, with some other meanings, in this manner— "To place upright; erect; raise; elevate; as, to set up a building, a post, a wall, a pillar. To place upright and put together in readiness for use, as in pitching a tent * * * * To assemble and erect in position (a machine)." The dictionary meanings of this expression thus also do not support, or rather speak against, the contention of the learned counsel. In *Armitage v. John Naigh and sons (Limited)* (1), Lord Esher, M. R., Lindley and Bowen, L. JJ. concurring, held in relation to the setting up of machines that the words 'set-up' meant completed. In *Ramaraju Surgical Cotton Mills Ltd. v. Commissioner of Wealth Tax, Madras* (2), the learned Judges have held that this expression means 'ready to commence business'. This has been followed in *Commissioner of Wealth Tax, Kerala v. Travancore Cements Ltd.* (3), and a similar

(1) (1893)9 Times Law Reporter 287.

(2) (1962)46 I.T.R. 820.

(3) (1964)54 I.T.R. 583.

view has prevailed in *K. C. P. Ltd. Vuyyuni v. The Commissioner of Wealth Tax Andhra Pradesh* (4). There is thus no basis for this contention of the learned counsel for the applicant and the expression 'set-up' as used in clause (xxi) of section 5(1) means completed or ready to be commissioned or ready to commence business, all of which expressions mean in this context exactly the same. It does not cover the whole process from the commencement of the operations to establish a new and separate unit to the end when such a unit is completed; it means the last of the final stage when such a unit is complete and ready to be commissioned. So the assessee-company is, within the meaning and scope of clause (xxi) of section 5(1) of the Act, entitled to the exemption claimed by it, it having set up a new and separate unit after the commencement of the Act as provided in that clause.

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The next matter that comes for consideration is whether the assessee-company is entitled to the exemption as claimed by it in the particular assessment year 1957-58? And the contention of the learned counsel for the applicant is that it is not. He points out that once the conditions of the main body of the clause have been fulfilled, the assessee-company is entitled to exemption 'for a period of five successive years', but he says that it is only entitled to such exemption if it commenced operations for the establishment of the unit on or after the valuation date, which in this case, as already said, is December 31, 1956. The second proviso says that exemption is only for a period of five successive years commencing with the assessment year next following the date on which the company commences operations for the establishment of such unit, and what the learned counsel for the applicant presses is that the assessment year 1957-58 next follows the preceding year within which must fall the date of commencement of operations for the establishment of the unit, and hence the assessee-company cannot have the benefit of the exemption unless it commenced operations for the establishment of the unit on or after the valuation date, and that if it did so, as has happened in the present case, before that date, is still is not entitled to exemption. The only possible reason for this argument, which the learned counsel has been able to advance is that the words 'commencing with the assessment year next following the date' can only

(4) A.I.R. 1965 Andh. Prad. 4.

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possibly mean the assessment year next following the date falling within the year preceding, otherwise it would be so remote from the assessment year as not to be within the words 'the assessment year next following the date on which the company commences operations'. It is the proximity of time upon which emphasis is laid by the learned counsel. The learned Tribunal has not accepted this approach. There was another argument before the learned Tribunal that in view of the language used in the proviso to section 45(d) of the Act, the only meaning possible that can be given to the second proviso with clause (xxi) of section 5(1) is the one that has been urged by the learned counsel in this application, because while the provisions of section 45 (d) are made retrospective by the proviso but that is not the case with regard to clause (xxi) of section 5(1). This was not accepted by the learned Tribunal. Section 45(d) with the proviso, omitting the Explanation which is not necessary here, reads thus—

"45. Act not to apply in certain cases. The provisions of this Act shall not apply to—

* * *
* * *

(d) any company established with the object of carrying on an industrial undertaking in India in any case where the company is not formed by the splitting up, or the reconstruction of a business already 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 referred to therein only for a period of five successive assessment years commencing with the assessment next following the date on which the company is established, which period shall, in the case of the 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."

It is true that the exemption granted by clause (d) of section 45 is made operative from the date of the establishment of the company as if the Act came into force on that date, and in the proviso also the expression used is that the exemption is available only for a period of five successive assessment years commencing with the assessment year next following the date on which the company is established.....', and this when read with the retrospective effect of the clause that the Act itself is operative from the date of the establishment of the company, obviously means that the next financial year after the date of the establishment would be the assessment year and the meaning of the words 'commencing with the assessment year next following the date on which the company is established' obviously is that the date of establishment precedes the assessment year as falling within the preceding year to the assessment year and not further such. This is the result of the express provisions in the proviso to section 45(d). It is true that normally same expressions used in a statute are to be given the same meaning, but this at best is a rather weak consideration, for the real consideration still remains that an expression of which meaning and scope is to be ascertained has to be considered in the context in which it has actually been used. If the similar expression used in the second proviso to clause (xxi) of section 5(1) was given the same meaning as in proviso to section 45(d), the object of the exemption in clause (xxi) of section 5(1) will practically be defeated; besides, if the legislature intended that to be so, it could have made the provisions of the second proviso to clause (xxi) of section 5(1) operative retrospectively in somewhat the same manner as proviso to clause (d) of section 45. So that this argument on the side of the appellant does not succeed. In *Ramaraju Surgical Cotton Mills Ltd.'s case* the learned Judges repelled a similar argument and observed that "In cases where the company had commenced operations for the establishment of the unit prior to the advent of the Act, the assessment year next following that date would be the first assessment year under the Act, namely, 1st April, 1957, to 31st March, 1958. This means that the exemption will be available to the assessee only for a period of the first five assessment years under the Act, where, though the unit is set up after the Act, the operations for the establishment commenced earlier than the Act. It seems to us that the scope of the second proviso

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is quite clear and that there is no need to strain the expression 'set up' occurring in section 5(1)(xxi) because of the language of the proviso." So this argument of the learned counsel for the applicant does not succeed and the assessee-company is entitled to the exemption under clause (xxi), read with the proviso to it, of section 5(1) of the Act.

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The only matter that remains for consideration is the commencement of the five years, that is to say, the date from which five years are to commence according to second proviso to clause (xxi) of section 5(1), and the learned counsel for the assessee-company contends that that must be from the first assessment year 1957-58 and the assessee-company will, therefore, have five years' exemption including that year. This obviously is opposed by the learned counsel for the applicant who, in fact, as already pointed out, says that having regard to the language of this proviso, in spite of the assessee-company's case falling in the main body of the clause, it still is not entitled to the exemption claimed. In this case it is not necessary to decide this particular matter because the assessment year 1957-58 falls within the period of five years whether the commencement of that period is taken from May, 1955, the commencement of the operations to establish the new and separate unit, as was the opinion of the learned Tribunal, or whether it is treated from April 1, 1957, the first date of the assessment year 1957-58. As the assessment year 1957-58, for which exemption is claimed, in any event, falls within five years of either date, the assessee-company is entitled to the exemption as claimed by it.

The answer to the question posed in this reference, in connection with the assessment year 1957-58, therefore, is that on the facts and in the circumstances of this case the assessee-company is entitled to the exemption under section 5(1) (xxi) of the Act for the amount of Rs. 33,01,964 as claimed by it. There is no order in regard to costs in this reference.

PREM CHAND PANDIT, J.—I agree.

K.S.K.