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**(1964) 07 KL CK 0052**

**In the High Court Of Kerala**

**Case No : Income Tax R. No. 26 of 1963**

Commissioner of Wealth Tax

APPELLANT

Vs

Travancore Cements Ltd.

RESPONDENT

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**Date of Decision :** 20-07-1964

**Acts Referred:**

Wealth Tax Act, 1957 — Section 27, 27(1), 45, 5, 5(1)(xxi)

**Citation :** (1964) KLJ 956

**Hon'ble Judges :** M.S. Menon, C.J;M. Madhavan Nair, J

**Bench :** Division Bench

**Advocate :** C.T. Peter, for the Appellant; P. Subramonian Potti and S.A. Nagendran, for the Respondent

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## **Judgement**

M.S. Menon, C.J.—This is a reference by the Income Tax Appellate Tribunal, Madras Bench, u/s 27 (1) of the Wealth Tax Act, 1957. The assessee is the Travancore Cements Limited, Kottayam. The assessment year with which we are concerned is 1959-60; and the valuation date, 31-12-1958. The question referred is:

Whether on the facts and circumstances of the case, the assessee company was entitled to exemption from wealth tax u/s 5 (1) (xxi) of the Wealth Tax Act in regard to the white cement plant?.

The relevant portion of sub-section (1) of Section 5 of the Wealth Tax Act, 1957 reads as follows:

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.

2. It is clear from the provision extracted above that the conditions to be satisfied to obtain the exemption claimed by the assessee are: (1) the assessee should be 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; (2) the exemption claimed should be in respect of that portion of the net wealth of the assessee as is employed by the assessee in a new and separate unit; (3) the unit should have been set up after the commencement of the Wealth Tax Act, 1957, that is, after 1-4-1957; (4) the setting up of the unit should have been by way of substantial expansion of the assessee's undertaking; (5) separate accounts should have been maintained in respect of the unit; (6) the conditions specified in clause (d) of Section 45 should have been complied with in relation to the establishment of the unit; and (7) five successive assessment years commencing with the assessment year next following the date on which the assessee commenced operations for the establishment of the unit should not have elapsed.

3. According to the explanation to clause (d) of Section 45, the expression "Industrial undertaking" means "an undertaking engaged in the manufacture, production or processing of goods or articles or in mining or in the generation or distribution of electricity or any other form of power". The assessee is engaged in the manufacture or production of cement; and there can be no doubt that the first of the seven conditions enumerated above is satisfied in this case.

4. The setting up of the unit has been by way of substantial expansion of the assessee's undertaking. It is admitted that separate accounts are maintained in respect of the unit; and it is not contended that condition No. 7 is not satisfied. In these circumstances condition Nos. (4), (5) and (7) cannot but be considered as satisfied.

5. The relevant portion of Section 45-substituting the word "unit" for "company"-reads as follows:

The provisions of this Act shall not apply to-

- (d) any unit established with the object of carrying on an industrial undertaking in India in any case where the unit 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.

The unit was 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"; and it must follow that condition No. (6) also is satisfied.

6. Condition No. (3) is that the unit should have been set up after the commencement of the Wealth Tax Act, 1957, that is, after 1-4-1957. The controversy is as to the meaning to be attributed to the expression "set up" The question as to when a unit can be considered to have been "set up" came up for discussion before the High Court of Madras in Ramaraju Surgical Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, the Court said:

In our opinion, the proper meaning to be assigned to the expression "set up" in Section 5 (1) (xxi) would be "ready to commence business".

7. The Tribunal has taken the view that the date of the setting up of the unit in this case should be taken as the date on which the trial run was completed. We are in agreement with this view. It is admitted that the trial run was completed only in or about May 1959, that is after 1-4-1957. It must follow that condition No. (3) is satisfied.

8. Only condition No. (2) now remains for consideration: Is the exemption claimed in respect of that portion of the net wealth of the assessee as is employed by the assessee in a new and separate unit: There is no dispute as regards the quantum of the net wealth in respect of which the exemption is claimed.

9. Two further elements, however, have to be satisfied : (a) the unit must be a new unit; and (b) the unit must be a separate unit. It is common ground that the unit is new. But is it separate? According to the assessee it is; and according to the Department it is not.

10. We have come to the conclusion that the Department is right when it says that the white cement plant cannot be considered to be a separate unit and that the assessee's contention to the contrary cannot be accepted. The white cement plant has no kiln of its own. It uses the kiln which was all along being used for the manufacture of grey cement; the result being that grey cement cannot be manufactured when white cement is being manufactured and white cement cannot be manufactured when grey cement is being manufactured.

11. One need not go beyond the popular book of knowledge (Volume II, page 288) to realise how important is the kiln in the manufacture of cement. It is into the kiln that the slurry is fed; it is its temperature of about 2500° F that evaporates the water, drives off the carbonic acid and changes the mixture into the masses of small clinkers which when eventually ground into the required fineness constitute the cement we know.

12. The word "separate", according to Ballentine's Law Dictionary means "disconnected; independent; distinct". The sharing of a common kiln between the old unit which produces the grey cement and the new unit which produces the white cement should certainly preclude the conclusion that the units are separate, and we must hold that condition No. (2) to the extent indicated above is not satisfied and that the exemption claimed cannot be granted.

13. In the light of what is stated above the question referred has to be answered in the negative, that is, against the assessee and in favour of the Department. We do so; though in the circumstances of the case without any order as to costs. A copy of this judgment under the seal of the High Court and the signature of the Registrar will be forwarded to the Appellate Tribunal as required by sub-section (6) of Section 27 of the Wealth Tax Act, 1957.