
(1979) 01 BOM CK 0015

Bombay High Court

Case No: IT Ref. No. 15 of 1964

Commissioner of
Income Tax

APPELLANT

Vs

Associated Cement
Companies Ltd.

RESPONDENT

Date of Decision: Jan. 15, 1979

Acts Referred:

- Income Tax Act, 1922 - Section 15C

Citation: (1979) 1 TAXMAN 256

Hon'ble Judges: S.K. Desai, J; M.N. Chandurkar, J

Bench: Division Bench

Advocate: R.J. Joshi, V.J. Pandit and Miss S.G. Shah, for the Appellant; R.J. Colah and D.H. Dwarkadas, for the Respondent

Judgement

M.N. Chandurkar , J.

In respect of the assessment year 1959-60 the assessee - Associated Cement Companies Ltd., claimed exemption of profits u/s 15C of the income tax Act, 1922, amounting to, Rs. 8,74,036. This was in respect of four new kilns which were commissioned at the assessee's factories at Shahabad, Bhupendra, Kistna and Chaibasa. The income tax Officer declined to give relief to the assessee on the ground that the starting of the new kilns did not amount to creation of a new industrial undertaking as contemplated by section 15C of the income tax Act, 1922, and he took the view that these were improvements of or extensions to the existing factories and since part of the old buildings, machinery and plant were utilised in working of the new kilns, the assessee was not entitled to relief u/s 15C in respect of the profits arising as a result of the introduction of these kilns. The appeal filed by the assessee was, however, allowed by the Appellate Assistant Commissioner and the Department then went in appeal against the order of the Appellate Assistant Commissioner to the income tax Appellate Tribunal. Before the Tribunal the assessee had referred to a certificate by the company's

engineer according to which, the new kilns specially at Shahabad, Bhupendra, Kistna and Chaibasa worked independently of the old kilns and that considerable auxiliary machinery had to be installed to increase the production capacity. The certificate has now been treated by consent as a part of the statement of the case and is exhibited as Ex. A to the statement of the case. Attached to the certificate are two other statements which show the additional capacity obtained by installation of new kilns at the existing works together with the production therefrom for the accounting year ended 31st July, 1958. The other table shows the total capital expenditure incurred on each of the new units up to 31st July, 1958. By consent we have also taken on record a "flow chart" which gives a diagrammatic sketch of the new kiln at the Bhupendra Cement Works and it has been exhibited as Ex.B. The Tribunal while considering the provisions of section 15C of the income tax Act, 1922, took the view that the provisions of that section applied not only to new undertakings but also to new units of old undertakings and that it had to be considered as to whether a particular expansion or extension of an industrial undertaking was a new unit by itself or whether it was merely an improvement or renovation of the old one. The test which the Tribunal adopted was that if the new installation brought about a sizable increase in the production capacity of the undertaking, it must be called a new unit regardless of the fact that some old staff did the routine work for the new unit as for the old and that some godowns and office buildings of the old unit were available for use for the products of the new unit. The Tribunal thus found that it had to be ascertained whether the capacity generated by the new installation was such that it could have sustained an independent viable unit by itself if it was started afresh. On the basis of the figures before the Tribunal, as shown in Ex. A, the Tribunal found that the increased capacity of the factories as a consequence of the new kilns varied from 33 percent to 183 percent and such increases in the production capacity of the undertakings, according to the Tribunal, must be considered large enough to be called new units for the purposes of section 15C. The Tribunal, therefore, declined to interfere with the order made by the Appellate Assistant Commissioner. The Revenue had asked for the following question to be referred to this Court by the Tribunal:

Whether on the facts and in the circumstances of the case the assessee-company was entitled to relief u/s 15C of the Income tax Act, 1922, for the assessment year 1959-60 in respect of the new kilns.

The Tribunal had declined to refer the aforesaid question, but the said question was required to be referred to this Court by an order made on 14th November, 1973 on a notice of motion taken out by the Commissioner of income tax. Accordingly, a supplementary statement of case has been forwarded to this Court as the original reference related to another question at the instance of the Revenue, with which were are not now concerned.

2. Mr. Joshi who appears on behalf of the Revenue has contended that the addition of the four kilns in question was nothing more but an expansion of the already existing business of the assessee and the four kilns at four different factories could not be categorised as

an independent industrial undertaking as contemplated by section 15C of the income tax Act, 1922.

3. Now, before we go to this contention, it is necessary to refer to the data which is available with respect to the four different kilns as indicated in the certificate and the statements annexed thereto. The certificate is quite clear that the new kiln at each factory works independently of old kilns and if on account of lack of demand, production has to be curtailed, any of the kilns, whether old or newly erected, could be stopped. The certificate also specifies the main auxiliary machinery installed together with the kiln such as crusher, raw mill, coal mill, cement mill, compressors, transformers and quarry machinery. The statement attached to the certificate also discloses the additional capacity of the new kilns as compared with the existing works. In respect of the kilns at Bhupendra, Kistna, Chaibasa, and Shahabad, the capacity of the new kilns is stated to be 1,00,000 tons, 1,65,000 tons, 1,00,000 tons and 1,00,000 tons respectively. It is important to point out that in respect of the newly erected kiln at Kistna, the capacity of the newly constructed kiln alone is much more than the capacity of the entire factory which had been shown to be only 90,000 tons. The other table which has been made available shows the several amounts running into several lakhs spent in construction of buildings, purchase of plant and machinery, construction of water works and railway siding and tram lines, purchase of rolling stock and expenses of electric installation necessitated by the construction of the new kilns at each of the four factories. There can be no doubt that the construction of each of the new kilns at each of the four factories has resulted in an expansion of the factory itself. That by itself would, however, not disentitle the assessee to the relief u/s 15C. Establishment of a new industrial unit as a part of an already existing industrial establishment may no doubt result in an expansion of the industry or the factory, but if the newly established unit is itself an integrated independent unit in which new plant and machinery is put up and is itself independently of the old unit capable of production of goods, then, in our view, it could be classified as a newly established industrial undertaking. In [Textile Machinery Corporation Limited, Calcutta Vs. The Commissioner of Income Tax, West Bengal](#), the Supreme Court has pointed out that if a new undertaking is an integrated unit by itself, wherein articles are produced and at least a minimum of 10 persons with the aid of power and a minimum of 20 persons without the aid of power have been employed, such an integrated unit will qualify for the relief u/s 15C of the income tax Act, 1922. The Supreme Court has pointed out in that case that such a new industrially recognisable unit of an assessee cannot be said to be reconstruction of his old business, since there is no transfer of any assets of the old business to the new undertaking which takes place when there is reconstruction of the old business. It was held in that case that for the purpose of section 15C the industrial unit set up must be new in the sense that new plants and machinery must be erected for producing either the same commodities or some distinct commodities. The facts which we have referred to earlier, clearly establish that the new kilns are a completely integrated unit which could be put into production independently of the other units or production therefrom can cease without affecting the production from the other kilns. There is also no

doubt that all these four kilns at the four different factories have been established with the plant and machinery newly purchased and required exclusively for the purposes of these new kilns. Thus, even though the business or the industrial establishment as a whole has been expanded by the addition of a new kiln, each new kiln by itself would, in our view, clearly constitute a new industrial undertaking within the meaning of section 15C of the income tax Act, 1922. The Tribunal was, therefore, right in taking the view that the assessee was entitled to the benefit of section 15C of the income tax Act, 1922. The question referred to us is, therefore, answered in the affirmative and in favour of the assessee. We, however, make no order as to costs in respect of this matter.