

M. A. Jabbar

Vs

Commissioner of Income-Tax, Andhra Pradesh

Civil Appeals Nos. 2514 and 2515 of 1966

(J. C. Shah, V. Ramaswami –I, V. Bharagava JJ)

23.11.1967

JUDGMENT

BHARGAVA J. –

The appellant assessee, who is in individual, carries on business of supplying lime and sand. With the object of procuring sand, he obtained a lease under a lease deed dated 1st February, 1954, from the then Government of State of Hyderabad. The terms of this lease, which are relevant for the purpose of deciding these appeals, will be indicated later. At this stage, it may be mentioned that, under this lease, the assessee was required to pay a sum of Rs. 82,500 as lease money to the Government. The period of lease was from 1st February, 1954 to 31st December, 1954. The assessee's account year ends with the last day of September each year. The assessee paid a sum of Rs. 56,100 in respect of the account year ended 30th September, 1954, for the assessment year 1955-56, and another sum of Rs. 26,400 for the account year ended 30th September, 1955, relevant to the assessment year 1956-57. Both these payments were claimed by the assessee, in the proceedings for assessment to income-tax, as revenue expenses.

"Whether, on the facts and in circumstances of the case, the payments of Rs. 56,100 for the assessment year 1955-56 and Rs. 26,400 for the assessment year 1956-57 made under the lease deed dated February 1, 1954, were expenditure of revenue nature?"

The High Court answered the question in the negative, accepting the case of the department, and thus upsetting the decision given by the Appellate Assistant Commissioner and the Tribunal. The assessee has now come up to this court in appeal by certificate granted by the High Court.

Learned counsel appearing for the assessee firm contended before us that an examination of the terms of the lease deed would show that no right at all in the land was acquired by the assessee under the lease and that the only right which had been acquired was the right to remove sand lying on the land constituting the beds of the river and the nallahs specified in the deed and the ancillary right to enter the land for that purpose. It appears to us that, on the language of the lease deed, this submission cannot be accepted. The lease specifically mentions in paragraph 3 that, under it, the Government do hereby demise and grant unto the lessee exclusive lease and liberty to enter, occupy, and use for quarrying purpose and to rise, render marketable, carry away, sell and dispose of sand within or under or upon the lands specified in this lease and for the period named therein. Thus, there were specified provisions that the lessee was to have an exclusive right to enter and occupy the land. Further, there was a p

In the present case, there are a number of factors which lead to the conclusion that the expenditure incurred by the assessee in obtaining the lease was revenue expenditure for the purpose of obtaining stock-in-trade and not capital expenditure. The first point is that the lease was for a very short period of 11 months only. Consequently, it is clear that the assessee did not obtain any capital assets of an enduring nature by obtaining this lease. Then, the second circumstance is that the sole right which was acquired by him under the lease deed was to take away the sand lying on the leased land. No doubt, the document mentioned that he was entitled to raise, render marketable, carry away, sell and dispose of the sand within or under or upon the land specified in this lease but there is a clear finding of fact recorded by the Appellate Assistant Commissioner and affirmed by the Tribunal that all the sand that could be removed was lying on the surface and there is no question of raising, digging or excavating.

During the course of arguments before us, a number of cases were brought to our notice which related to quarrying leases of various types in India and in England. We do not consider it necessary to refer to those cases, because the question whether a particular expenditure is of a capital nature or is a revenue expenditure has always to be decided on the special facts of each case. We may, however, make a reference to the decision of this court in *Gotan Lime Syndicate v. Commissioner of Income-tax*. In that case also, rule 13 of the Rajasthan Minor Mineral Concession Rules, 1955, which was applicable, provided that the lease shall be in respect of plots comprising of 5 square miles each. The lessee was even entitled to transfer his lease and any right, title or interest therein to a person holding a certificate of approval on payment of a fee, subject to the previous sanction of the Director of Mines and Geology, and subject to some other conditions. Rule 18 prescribed a period of 5 years for a lease and the lease

In *Bombay Steam Navigation Co. (1953) Private Ltd. v. Commissioner of Income-tax* this court explained the principle of determining the nature of an expenditure. The court held :

"Whether a particular expenditure is revenue expenditure incurred for the purpose of business must be determined on a consideration of all the facts and circumstances, and by the application of principles of commercial trading. The question must be viewed in the larger context of business necessity and expediency. If the outgoing or expenditure is so related to the carrying on or conduct of the business, that it may be regarded as an integral part of the profit-earning process and not for acquisition of an asset or a right of a permanent character, the possession of which is a condition of the carrying on of the business, the expenditure may be regarded as revenue expenditure."

Clearly, in the present case, the expenditure incurred by the assessee was not related to the acquisition of an asset or a right of a permanent character. It was for the specific object of enabling the assessee to remove sand lying loose on the surface which was the stock-in-trade of the business of the assessee, so that the expenditure has to be regarded as revenue expenditure.

Counsel appearing for the department relied on decision of this court in *K. T. M. T. M. Abdul Kayoom v. Commissioner of Income-tax*. The majority judgment in that case shows that the assessee, which was carrying on business in "conch" shells locally known as "chanks", took on lease the exclusive right, liberty and authority to take and carry away all chanks found in the sea for a period of three years ending on June 30, 1947, along a specified portion of the coast. The consideration of Rs. 6,111 per year was payable in advance. It was held on the facts of that case that "this expenditure was of the nature of capital expenditure and not revenue expenditure". On the fact

of it, the distinguishing feature was that, in that case, the lessee had to obtain fish from the sea and, consequently, had to operate in the waters of the sea itself, and that was the main reason why the court held against the assessee. This difference is clearly brought out in the judgment of the majority where it was held :

"This is not a case of so much clay or so much salt-petre or a dump of tallings or leaves on the trees in a forest. The two modes in which the respondent did the business furnish adequate distinguishing characteristics. Here is an agreement to serve a source, where the respondent hoped to find shells which, when found, became its stock-in-trade but which, in situ, were no more the firm's than a shell in the deepest part of the ocean beyond the reach of its divers and nets. The expenses of fishing shells were its current expenses as also the expenses incurred over the purchases of shells from the divers. But to say that the payment of lease money for reserving an exclusive right to fish for chanks was on a par with payments of the other character is to err."

It is clear that, in the present case, there is not such reservation of an exclusive right in respect of any land. In fact, the first sentence in the quotation above is clearly applicable to the present case if, for the word "clay", the word "sand" is substituted. The present is a case where sand lying loose on the surface of the land is to be removed and the whole object of the lease was to obtain the right to the sand which was to be the stock-in-trade of the assessee. The appeals, are, consequently, allowed with costs, the order of the High Court is set aside and the question referred is answered in the affirmative.

Appeals allowed.

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