SUREME COURT OF INDIA

Commissioner of Income-Tax, West Bengal

Vs.

Indian Mica Supply Co. P. Ltd.

(A G Shah and K Hedge JJ.)

16.04.1970

JUDGMENT

A.N. GROVER, J.

1. This is an appeal by special leave from the judgment of the Calcutta High Court refusing to require the Income-tax Appellate Tribunal to state the case and to refer to it certain questions of law which it was claimed arose from the order of the Tribunal, dated March 13, 1964, relating to the assessment year 1954-55.

2. The respondent-company was engaged during the previous year ending on December 31, 1953, relevant to the assessment year 1954-55 in mining mica and dealing therein. Madan Lal was one of the directors of the company. He had taken for himself a lease of mining rights of village Gadi Majladih in the district of Hazaribagh for a period of 15 years from April 1, 1928. The lease was to expire on March 31, 1943. According to the terms of the lease the lessee had the option of renewal for a further period of 20 years on the expiry thereof. Madanlal gave a sub-lease of the mining rights to the respondent-company with the same covenants for renewal for a like period. On the expiry of the lease on April 1, 1943, the lessee refused to renew the lease. Madanlal filed a suit on April 15, 1953, for specific performance of the contract. The suit was dismissed by the learned Subordinate Judge but during the pendency of the appeal to the High Court a compromise was entered into. The respondent-company was a party to the appeal as also to the compromise. According to the compromise the lease was to be renewed with retrospective effect from April 1, 1943. The respondent-company had to pay the rent from April 1, 1943, to March 31, 1953. This amount came to Rs. 42,473 which was paid during the previous year in question as rent for the aforesaid period. The respondent-company claimed a deduction in the sum of Rs. 42,473 on the ground that it was revenue expenditure and was deductible in the computation of its income for the assessment year 1954-55. The Income- tax Officer did not allow the claim. The Appellate Assistant Commissioner allowed only a part of the claim to the extent of Rs. 2,341, being the rent payable for one year. According to him, the balance of the rent which had been paid was relatable to the period prior to the said previous year and, therefore, it was not deductible. The Income-tax Appellate Tribunal on appeal held that the entire amount of Rs. 42,473 was deductible as revenue expenditure from the business profits of the respondent for the aforesaid assessment year. The Tribunal was. of the view that after the expiry of the lease on April 1, 1943, and the refusal of the lessor to renew the same the

respondent was in the position of a trespasser particularly after the dismissal of the suit for specific performance by the trial court. Until the suit was compromised in the High Court in 1953 it could not be said that the respondent's liability had become ascertained. In other words, it was only as a result of the compromise in the year 1953, that the respondent became entitled to remain in possession of the, land on payment of rent, The payment of the sum of Rs. 42,473 thus represented revenue expenditure" by the respondent.

3. The Commissioner of Income-tax applied to the Tribunal to state the case and refer the following question of law :

Whether, on the facts and in the circumstances of the case, the sum of Rs. 40,132 was payment of a revenue nature and, as such, allowable as deduction under Section 10(2)(xv) of the Indian Income-tax Act, 1922 ?

4. The Tribunal dismissed the application for reference. The High Court also did not accede to the prayer of the present appellant to direct that a case be submitted and the aforesaid question be referred.

5. In our judgment the High Court was justified in refusing to direct the Appellate Tribunal to state the case and refer the question which was sought to be referred. It was perfectly clear that the amount which had been paid by the respondent was an expenditure which was wholly and exclusively incurred for the purpose of carrying on its business. If the compromise had not taken place and its terms not satisfied by payment of the amount of Rs. 42,473 the respondent would not have been in the position of a lessee and entitled to carry on mining operations on the demised lands. It is well-settled that it is a question of fact in each case, whether the amount which is claimed as a deductible allowance under Section 10(2)(xv) of the Income-tax Act, 1922, was laid out wholly and exclusively for the purpose of the assessee's business. If the fact-finding Tribunal comes to the conclusion on evidence that the expense incurred is : wholly and exclusively for the purpose of the business, then the decision of the Tribunal cannot be disturbed if there is evidence upon which it could it arrive at such a conclusion (see Commissioner of Income-tax v. Chandulal Keshavlal & Co. . The Tribunal, in the present case, had clearly found that it was only as a result of the compromise that the respondent became entitled to remain in possession of the demised land. Its liability also became ascertained only at that point of time. It cannot be disputed that the respondent in incurring the expenditure had acted in the interest of and for the purpose of its business. The expenditure was not laid out for any purpose other than that of carrying on the business. The deduction was properly admissible under Section 10(2)(xv) of the Act and the matter being self-evident the High Court was fully justified in declining to accede to the prayer made under Section 66(2) of the Income-tax Act, 1922.

6. The appeal fails and it is dismissed with costs.