

Aditya Minerals Pvt. Ltd.

Vs

Commissioner of Income Tax, Hyderabad

Civil Appeals Nos. 4858-59 of 1989

(B. N. Kirpal, S. P. Kurdukar JJ)

05.02.1998

ORDER

1. The appellant had taken 25 acres of land on lease for 15 years and had agreed to pay rent at the rate of Rs 35 per month per acre. The land was taken on lease so that it could carry out excavation thereon and recover manganese ore for sale. It claimed that Rs 10,752 being the yearly rent was allowable as a revenue deduction the same having been incurred in connection with the carrying on of its business of mining. Following the decision of this Court in *Pingle Industries Ltd. v. CIT* [(1960) 40 ITR 67 : AIR 1960 SC 1034] the Income Tax authorities, the Tribunal as well as the High Court have held that the expense of Rs 10,752 has to be regarded as a capital expense and not a revenue expense.

2. In *Pingle Industries* [(1960) 40 ITR 67 : AIR 1960 SC 1034] the assessee had acquired a right to extract stones by taking land on lease for a period of 12 years from a Jagirdar. The question which arose was whether the amount paid to the Jagirdar and the amount paid to the Government was allowable as a revenue deduction. By a majority judgment (2 : 1), this Court held that the assessee had acquired by his long-term lease the right to win stones. The stones in situ were not stock-in-trade in the business sense but were a capital asset which he converted into stock-in-trade and, therefore, neither the rent nor the royalty which he paid was allowable as revenue deduction as by making these payments, the assessee had acquired a capital asset of enduring benefit.

3. Ms Janaki Ramachandran, learned counsel for the appellant, has drawn our attention to another decision of three Judges of this Court in *Gotan Lime Syndicate v. CIT* [(1966) 59 ITR 178 : 1966 SC 1564]. In that case, the assessee which was carrying on the business of manufacturing lime from limestone, was granted a lease with a right to excavate limestone. The lease was initially for a period of five years and contained an option for renewal. Dead rent was charged at the rate of Rs 10 per acre while royalty was charged on the amount of limestone excavated. The question arose whether the dead rent and the royalty which was paid was capital expenditure or business expenditure. It was held by this Court that the royalty as well as the dead rent which was paid was relatable to the lime deposits and the annual amount paid by the assessee was allowable as a revenue expenditure. Reference in this judgment was made to the aforesaid decision in *Pingle Industries* [(1960) 40 ITR 67 : AIR 1960 SC 1034] and in regard thereto this Court observed as follows :

"The case of *Pingle Industries Ltd. v. CIT* [(1960) 40 ITR 67 : AIR 1960 SC 1034] 171 is distinguishable because on the facts it was a lump sum payment in instalments for acquiring a capital asset of enduring benefit to his trade."

4. We have carefully perused the judgments and it appears to us that the facts in the two cases were

essentially very similar. It is no doubt true that in Gotan Lime [(1996) 59 ITR 178 : 1966 SC 1564] it has been observed that the case of Pingle Industries [(1960) 40 ITR 67 : AIR 1960 SC 1034] is distinguishable but we find that the payments in Gotan Lime [(1996) 59 ITR 178 : 1966 SC 1564] were essentially not different from the type which were made in Pingle Industries [(1960) 40 ITR 67 : AIR 1960 SC 1034].

5. It is contended by learned counsel for the appellant that the manganese ore is a stock-in-trade of the assessee and any payment made for acquiring the same cannot be regarded as a capital expenditure. Furthermore, in order to extract manganese ore, land is taken on lease and rent is paid which facilitates the carrying on of the business activities of the assessee. The position is stated to be analogous to that of a trader who takes a shop on rent for the purpose of carrying on his trade of buying and selling goods. If in such a case, it is submitted, the rent paid to the landlord for the shop is regarded as a revenue expenditure which enables the assessee to carry on its business activities in the said shop, similarly land taken on lease should be regarded as a revenue expenditure because that enables the appellant to carry on its business activity of mining of manganese ore.

6. Our attention has also been invited to a subsequent decision of this Court in R. B. Seth Moolchand Suganchand v. CIT [(1973) 3 SCC 257 : 1973 SCC (Tax) 169 : (1972) 86 ITR 647]. In this judgment, by a Division Bench of two Judges, the decision in Pingle Industries [(1960) 40 ITR 67 : AIR 1960 SC 1034] was followed and it was held that the amount paid, for obtaining mining lease for 20 years was a capital expenditure. We, however, find that the attention of the Court was not drawn to the decision in Gotan Lime [(1996) 59 ITR 178 : 1966 SC 1564]. Prima facie, it appears that there is a conflict in the decisions of this Court delivered by Coordinate Benches in Pingle Industries [(1960) 40 ITR 67 : AIR 1960 SC 1034] and Gotan Lime [(1996) 59 ITR 178 : 1966 SC 1564]. The question involved is of a recurring nature and it is essential that the conflict should be resolved authoritatively.

7. We, therefore, direct that the papers of this case be laid before Hon'ble the Chief Justice for constituting a larger Bench for deciding the case and resolving the aforesaid conflict.

Court Masters