

Aditya Minerals Pvt. Ltd.

Vs

Commissioner of Income Tax, A. P.

Civil Appeal Nos. 4858-59 of 1989

(S. P. Bharucha, B. N. Kirpal, V. N. Khare, Syed Shah Mohammed Quadri, D. P. Mohapatra JJ)

07.09.1999

JUDGMENT

BHARUCHA, J.:-

1. These appeals have been referred to a Constitution Bench to resolve the apparent conflict between the judgments of two Benches of this court, of three learned Judges each, in *Pingle Industries Ltd. v. CIT* [(1960) 40 ITR 67 : AIR 1960 SC 1034] and *Gotan Lime Syndicate v. CIT* [(1966) 59 ITR 718 : AIR 1966 SC 1564].

2. The common question to be considered reads thus:

"Whether on the facts and in the circumstances of the case, the sum of Rs 10,752 paid by the assessee in the accounting year was not expenditure allowable as a deduction in computing the business profit of the assessee Company?"

3. The appellant assessee obtained a lease dated 08.03.1972 from Aditya Minerals Private Limited. It was a term of the lease deed that

"the lessor will grant lease of the land more particularly described in Schedule 'A' attached to this lease deed and forming part of the same for a period of FIFTEEN YEARS from the first December, one thousand nine hundred and seventy-one at a monthly rent of Rs 35 (Rupees thirty-five) only per acre".

Clause 2 of the lease deed stated

" that the lessee shall deposit with the lessor by way of the guarantee for due performance of this lease deed for fifteen years, the amount equal to the rent of lease of land for the full period of lease which will be adjustable against rent of every month. This entire guarantee deposit shall not carry any interest payable to the lessee by lessor".

The lease deed granted to the assessee the liberty "to use the land for excavation purposes and subsidiary purposes".

4. For the assessment years in question, the assessee claimed the rent amounts worked out at Rs 10,752 per annum as revenue expenditure. The claim of the assessee in this behalf was turned down by the authorities, the Income Tax Appellate Tribunal and, finally, by the High Court of Andhra Pradesh, against whose judgment the assessee is in appeal.

5. We find that there is a material difference in the facts of the case of Pingle Industries Ltd ((1960) 40 ITR 67 : AIR 1960 SC 1034) and the facts of Gotan Lime Syndicate ((1966) 59 ITR 718 : AIR 1966 SC 1564). As the judgment in Gotan Lime Syndicate<sup>2</sup> relied upon by the assessee, clearly shows, in that case.

"There is no payment once for all; it is an yearly payment of dead-rent and royalty. It is true that if a capital sum is arrived at and payment is made every year by chalking out the capital amount in various installments, the payment does not lose its character as a capital payment if the sum determined was capital in nature. But it is an important fact in this case that it is a case of an annual payment of royalty or dead-rent".

The judgment adds that the case of Pingle Industries Ltd.<sup>1</sup> was "distinguishable because on the facts it was lump sum payment in installments for acquiring a capital asset of enduring benefit to his trade". The Court in Gotan Lime Syndicate<sup>2</sup> took the view that the royalty payment therein was "not a direct payment for securing an enduring advantage; it has relation to the raw material to be obtained". The deposit was "by way of the guarantee for due performance of this lease deed for fifteen years", that is, towards fifteen years' rent. It was adjustable against the rent of each month and it carried no interest.

7. On the facts, as it appears to us, this case is on a par with Pingle Industries Ltd.<sup>1</sup> and accordingly, the civil appeals must fail and are dismissed.

8. No order as to costs.