

SUPREME COURT OF INDIA

Gorelal Dubey

Vs.

Commissioner of Income-Tax

(S.B. Bharucha and V.N. Khare JJ.)

12.09.2000

ORDER

1. The question with which the High Court (see [1998] 232 ITR 246 (MP)) was concerned read thus (page 247) :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law to hold that the provisions of Section 43B of the Income-tax Act, 1961, were not applicable to the unpaid liability towards royalty payment of Rs. 76,956 since royalty was neither tax nor duty ?"

2. The High Court answered the question in the negative and against the assessee relying upon the judgments of this court in India Cement Ltd. v. State of Tamil Nadu [1991] 188 ITR 690 and State of Madhya Pradesh v. Mahalaxmi Fabric Mills Ltd. . The assessee is in appeal by special leave.

3. This court in Quarry Owners Association v. State of Bihar has considered afresh the submission that royalty was not a tax. It has, however, followed the decisions in India Cement Ltd.'s case [1991] 188 ITR 690 (SC) and Mahalaxmi Fabric Mills Ltd.'s case , and explained that tax on royalty is distinct from other forms of taxes ; it does not constitute usual tax as commonly understood. Learned counsel for the assessee relied upon this latest judgment to contend that royalty was not a tax within the meaning of Section 43B of the Income-tax Act, 1961.

4. It is not possible to accept the submission. The Constitution Bench judgment in India Cement Ltd. v. State of Tamil Nadu [1991] 188 ITR 690 (SC), lays down the law, namely, royalty is tax, and it is a tax for all purposes including Section 43B.

5. In the result, the judgment and order of the High Court is affirmed and the appeal is dismissed.

6. No order as to costs.