

# ANDHRA PRADESH HIGH COURT

Singareni Collieries Co. Ltd

Vs

Commissioner of Income-Tax

(Jaganmohan Reddy C.J.)

26.10.1966

## JUDGMENT

### **Jaganmohan Reddy C.J.**

1. The Income-tax Tribunal has referred the following question, viz. :

"Whether, on the facts and in the circumstances of the case, the dead rent paid in respect of the coal fields which were not worked was an allowable deduction ?"

The assessee, which is a public limited company carrying on coal mining business, took over as a going concern the business of Hyderabad-Deccan Co. Ltd., for a sum of 45 lakhs, and have since then been working the mines. The assets of the company comprise of mining leases entered into with the then Government of Hyderabad, under which yearly payments of what is known as "dead rent" has to be paid separately under each of the leases. For the six assessment years 1954-55, 1955-56, 1956-57, 1957-58, 1958-59 and 1959-60 dead rents of Rs. 45,521 for each of the first four years, Rs. 67,214 for 1958-59 and Rs. 2,08,468 for 1959-60, were claimed as deductions under section 10(2) (xv) of the Income-tax Act, 1922, as revenue expenditure. Those amounts were disallowed by the Income-tax Officer, the Appellate Assistant Commissioner and the Tribunal, on the ground that the payments related to the fields which were not worked and that the amount incurred each year in unworked fields amount to additional expenditure incurred on capital assets already acquired, omission to do which would have lost the assets, as such the amounts were in the nature of a capital expenditure. The Tribunal observed :

"In order to entitle the company to continue holding such rights, it had to pay the dead rent. Such payments made to retain the lease right in respect of unworked coal fields will be by way of additional investment in acquiring and holding the lease right till such time as the company would be ready to start exploitation of the field. Any expenditure incurred on the coal fields before production starts will be only of the nature of preliminary

expenditure. In this view, we hold that the expenditure incurred was of a capital nature and was rightly disallowed."

The above observations of the Tribunal are not based on any principle or authority. Before the decision in Gotan Lime Syndicate v. Commissioner of Income-tax there were two decisions in which the Supreme Court had reviewed all the cases relating to capital expenditure and revenue expenditure, viz., Pingle Industries Ltd. v. Commissioner of Income-tax and Abdul Kayoom v. Commissioner of Income-tax. While the principle underlying the ascertainment of capital expenditure or revenue expenditure may be clearly stated, it has always been a matter of great difficulty in applying these principles and ascertaining what in a given set of circumstances or given set of facts amounts to capital expenditure or revenue expenditure. There is in fact no single decisive test, the application of which would give the answer one way or the other. Their Lordships of the Supreme Court in Gotan Lime Syndicate v. Commissioner of Income-tax approved the following tests laid down in Atherton v. British Insulated and Helsby Cables Ltd., viz. :

"But when an expenditure is made, not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of the trade, I think that there is very good reason (in the absence of special circumstances leading to an opposite conclusion) for treating such an expenditure as properly attributable not to revenue but to capital."

This test was also applied in Pingle Industries Ltd. v. Commissioner of Income-tax. The application of the said test to the facts in both those cases as well as the facts in Gotan Lime Syndicate v. Commissioner of Income-tax has resulted in arriving at different conclusions on the facts of each case. In the first case, the amount of lease money though payable in yearly installments was held to be necessary for acquiring an enduring benefit, namely, capital asset, while in the other case, since the dead rent was payable yearly and relatable to the winning of the mineral, it was held to be a revenue expenditure deductible under section 10(2) of the Indian Income-tax Act, 1922. The similarity of the facts in that case and in the instant case has been pointed out both by the learned advocate for the assessee as well as the learned counsel for the department. However, Mr. Kondaiah pointed out certain dissimilarities which, according to him, ought to weigh in determining the question whether the amount claimed would be of capital nature or revenue nature. It is, therefore, necessary to briefly examine the facts of this case : We have already stated that the assessee has purchased the assets from the Hyderabad Deccan Co. Ltd. for a certain sum of money, which admittedly is the capital required to acquire the asset. Apart from this, the assets of the company so acquired contained 16 leases of coal bearing areas under each of which dead rent has to be paid annually. This annual rent is relatable to the royalty

to be paid on winning the coal, that is to say, in each of the cases, the rent is at the rate of minimum royalty whether the field is worked or not. The dead rent for one year is computed in the same manner as if quantity of coal sufficient according to the said royalties to produce that sum had been actually worked, got and won. These clauses indicate clearly and without doubt that the dead rent has a direct relation with the working of the coal. Two points have been urged by the learned advocate for the department; firstly, that their Lordships of the Supreme Court were not called upon to decide whether in the event of certain coal fields not being worked, the dead rent payable on the lease of those coal fields would be deductible as expenditure, and, secondly, that the duration in this case is for 99 years whereas in Gotan Lime Syndicate v. Commissioner of Income-tax it was only for 5 years. But we do not think that these dissimilarities would make any difference in holding that the dead rent is deductible as an expenditure. Whether the mines are worked or not, they are a part of the assets and the expenditure which the company is called upon to incur has to be borne as if the entire undertaking is one unit and not, as the income-tax department seems to think, different units constituted by each of the leases. Further, it is immaterial whether the leases are for five years or for 99 years. The business of the assessee must be taken as if it is a continuing business and the deductibility of the expenditure cannot depend upon whether it is incurred for a certain number of years or throughout. These two dissimilarities, in our view, cannot militate against the claim of the assessee to have the dead rent deducted as expenditure. We are, therefore, of the view that the dead rent payable in this case, particularly having regard to the term which we have extracted above, is not direct payment for enduring benefit but has a relation to the raw material to be obtained. In this view, our answer to the question is in the affirmative and is in favour of the assessee with costs. Advocates fee Rs. 250.

Question answered in the affirmative.

