Karnataka High Court Commissioner Of Income Tax vs Gogte Minerals on 19 September, 1995 Equivalent citations: ILR 1995 KAR 3358, 1996 220 ITR 29 KAR, 1996 220 ITR 29 Karn Author: R Babu Bench: K Rajaratnam, S R Babu ORDER Rajendra Babu, J. 1. This is a reference arising under s. 256(1) of the IT Act. Three questions are referred for our opinion and they are as follows : "(i) Whether, on the facts and in the circumstances of the case, r. 34 of the Mineral Conservation & Development Rules, 1988, incorporated w.e.f. 24th Oct., 1988, is retrospective in nature, and as such applicable to earlier agreements entered into by the mining operators with the State Government ? (ii) Whether, on the facts and in the circumstances of the case, r. 34 is clarificatory in nature and as such imposed no obligation in regard to leases granted earlier to the incorporation of the said provision ? (iii) Whether, on the facts and in the circumstances of the case, the assessee was entitled to claim deduction of"pit filling expenses", claimed in the assessment, on the basis of r. 34 of the Mineral Conservation & Development Rules, 1988 ?" We are concerned in these cases with assessments pertaining to asst. yrs. 1982-83, 1983-84, 1986-87 and 1987-88. The assessee is a partnership firm engaged in extracting iron ore. It obtained mining lease from the State of Maharashtra for the purpose of extracting iron ore in terms of Mineral Conservation & Development Rules. The terms of the agreement is at Annexure E. The assessee entered into separate agreements with the occupants who were in possession of the lands in question to carry on mining operations. For the relevant years in question the assessee claimed deduction in respect of "pit filling expenses". By reason of the mining operations carried on, the surface of the land had been disturbed and the assessee claimed that it was required to restore the land to its original position by filling up the pits. The assessee claimed the deduction under the provisions made in that regard on the basis of actual liability. The assessing authority, the first appellate authority and the second appellate authority rejected the claim and the authorities held that there was no actual or contingent liability in that regard. In fact the Tribunal relied upon an earlier decision of this Court in ITRC Nos. 149 and 150 of 1979 (decided on 20th June, 1988) in the case of the assessee for the asst. yrs. 1969-70 and 1970-71. However, before the Tribunal the assessee brought to its notice amendment to r. 34 of the Mineral Conservation & Development Rules, 1988, and submitted that the said rule must be read along with the agreement and, therefore, should give the benefit of deduction as the liability does arise in terms of the said agreement. This point was sought to be urged after disposal of the main petition in a miscellaneous petition filed before the Tribunal on the basis of the opinion given by the Indian Bureau of Mines. The Tribunal, however, did not hold the said rule to be retrospective in nature and the miscellaneous petition was also dismissed. It is at the instance of the assessee this reference is made. 2. The learned counsel for the assessee submitted that when this Court decided ITRC Nos. 149 and 150/1979. Rule 34 of the Mineral Conservation & Development Rules, 1988 was not available. He, however, submitted that Part VII of the indenture of mining lease provides for the covenants between the lessee and the lessor and cl. 12 thereof provides that the lessee shall be bound by such rules as may be issued from time to time by the Government of

India under s. 18 of the Mines & Minerals (Regulation & Development) Act, 1957 and shall not carry on mining or other operations under the said lease in any way other than as prescribed under the said rules. Rule 34 of the rules provides for reclamation and rehabilitation of lands. Every holder of prospecting licence or mining lease shall undertake the phased restoration, reclamation and rehabilitation of lands affected by prospecting or mining operations and shall complete this work before the conclusion of such operation and the abandonment of prospect of mine. Relying upon the decision of the Supreme Court in the case of Dr. Indramani Pyarelal Gupta vs. W. R. Nathu & Ors. the learned counsel submitted that when a provision of rule or enactment gets engrafted into an existing contract and operates so as to produce a result which is something quite different from original intention of the contracting parties, such a statute has in effect a retrospective operation. It is, therefore, submitted that an obligation does arise even in respect of the activities that might have been carried on earlier and, therefore, submitted that the liability of the assessee is clear and complete. Hence, the Tribunal ought to have allowed the claim made by the assessee. The approach of the Tribunal in stating that the rule is not retrospective because the provision of law does not enable the authorities to make retrospective rules and that pre-existing rights arise under a contract cannot be modified with reference to rules are all decisive. He, therefore, contended that in these cases, taking into consideration the effect of r. 34 upon the contract it must be held that the directions had to be granted. 3. The learned senior standing counsel contended that unless a statute provides for making retrospective rules, rules cannot be framed retrospectively by any subordinate authorities. In these cases the lease gives rise to certain obligations and those obligations which are arising at the inception of the lease get crystallised and they cannot be impaired by reason of subsequent amendment made to the rules. It is the endeavour of the learned senior standing counsel to submit that even though a rule may get engrafted into contract such a clause will operate only from the date of getting it engrafted in the contract and not earlier. Thus, in respect of pits which are sought to be filled by reason of the contract as in force prior to r. 34 coming into force, it would not be open to the assessee to claim any deduction. In view of the law declared by this Court in ITRC Nos. 149 and 150 of 1979 in the case of the assessee for earlier assessment period, he submitted that the reference has to be answered in favour of the Department. 4. The lease had been granted to the assessee in terms of r. 31 of the Mineral Concession Rules, 1960 and Part VII of the contract provides for cl. 12 which clearly states that the lessee shall be bound by such rules as may be issued from time to time by the Government of India under s. 18 of the Mines & Minerals (Regulation & Development) Act, 1957 and shall not carry on mining or other operations under the said lease in any way other than as provided under these rules. The clear effect of cl. 12 of Part VII of the lease is that any rule that may be framed under s. 18 of the Mines & Minerals (Regulation & Development) Act, 1957 becomes part of the agreement and the lessee cannot carry on the mining or other operations under the lease in any other manner except in the manner that is provided under the rules. Therefore, when the contract itself

provides for carrying on the operations in terms of the rules to be framed from time to time, what is to be seen is whether the rule has any effect upon the contract in respect of the acts done prior to coming into force of the rules. If the said rules have a bearing upon the acts done earlier, then those rules also will have to be given effect to without deciding whether they are prospective or retrospective. In the present case, as stated earlier, while adverting to the arguments on behalf of the assessee we referred to r. 34. Rule 34 is to the effect that a holder of prospecting licence or mining lease shall undertake the phased restoration, reclamation and rehabilitation of lands affected by prospecting or mining operations and shall complete this work before the conclusion of such operation and the abandonment of prospect of mine. Therefore, the point at which the obligation arises under r. 34 to be performed is before the conclusion of mining operation or the abandonment of prospect of mine. If the lease is in force and operations are being carried on in terms of the said lease, before the conclusion of those operations, the obligation arising under r. 34 will have to be fulfilled. Thus what we have to look at in this matter is the operative nature of r. 34 and its effect upon the contract rather than whether the rule by itself is prospective or retrospective. The Tribunal in this context has missed essence of the matter and has gone at tangent in analysing the provisions and setting forth the law whether the rule is prospective or retrospective. This discussion is enough to answer the questions referred for our opinion. However, we may advert to the law in the matter. In a somewhat identical situation in the case of Indramani vs. W. R. Nathu (supra), the law on the matter is stated thus by the Supreme Court while referring to a decision of the Queen's Bench Division wherein Cockburn, C.J. said in Duke of Devonshire vs. Barrow, Haematite Steel Co. Ltd. (1877) 2 QBD 286 that where two persons enter into a contract, and afterwards a statute is passed, it 'engrafts an enactment upon existing contracts' and thus operates so as to produce a result which is something quite different from the original intention of the contracting parties, such a statute has, in effect a retrospective operation. Elaborating, the Supreme Court observed that it is clear law that a statute which could validly enact a law with retrospective effect could in express terms validly confer upon a rule making authority a power to make a rule or frame a bye-law having retrospective operation and that position cannot be disputed. If this were so, the same result would follow where the power to enact a rule or bye-law with retrospective effect so as to affect pending transactions is conferred not by express words but where the necessary intendment of the Act confers such a power. If, in the present case, the power to make a rule or bye-law so as to operate on contracts subsisting on the day the same was framed, would follow as a necessary implication that the same will have to be fulfilled in terms of cl. 12 of Chapter VII of the lease agreement and it would not be necessary to discuss the larger question raised in this case whether and in what circumstances in which the subordinate legislation with retrospective effect could be validly made. 5. In Gardner & Co. Ltd. vs. Cone & Ors. (1928) All ER 458, the expression "retrospective" has been very clearly explained. An Act may be called retrospective because it affects contracts existing at the date when it comes into operation. An Act may

be more properly described as retrospective because it applies to transactions completed, or to rights and remedies accrued, before it came into force. It may apply, again, to such matters as procedure and evidence. In this case what is sought to be shown, it does effect the rights that had arisen which creates a fresh obligation on the assessee concerned to fulfil the terms of r. 34 and that arises only at the end of the contract and not earlier. The contention advanced on behalf of the Department that r. 34 is prospective in nature and, therefore, has no application to the circumstances arising in this case is clearly misconceived. We may usefully refer in this context to what was said by Craies in his Treatise on Statue Law, 5th Edn. page 366 while referring to Cockburn, C.J. in Duke of Devonzhire vs. Barrow, Haematite Steel Co. Ltd. (referred to earlier), "When the terms of the contract engrafts an enactment upon existing contracts and thus operates so as to produce a result which is something quite different from the original intention of the contracting parties, such a statue has, in effect, a retrospective operation.". We cannot improve upon the language used by Craies. That clearly sets out the law on the matter. 6. The upshot of the discussion is that the lessees are bound by such rules as may be framed under s. 18 of the Mines & Minerals (Regulation & Development) Act, 1957 and they cannot carry on the mining or other operations except in terms of the rules and those rules become part of the contract and if those conditions required filling up of the pits at the end of the contract, it cannot be said obligation does not arise then. The obligation would certainly arise. Hence, we have to reject the contention advanced on behalf of the Department and uphold that of the assessee. 7. The next question that arises for consideration is whether the Tribunal ought to interpret on the language of r. 34 so as to mean that it does not create an obligation. It is stated by the Tribunal that r. 34 imposes only obligation on the mining operator to undertake the task of reclamation and rehabilitation of the lands affected by prospecting or mining operations and shall complete this work within the time limit mentioned therein. In view of the same they inferred that the lessee of a mining lease "may have to furnish the undertaking before an indenture of mining lease is granted by the State Government", be that as it may, r. 34 as such does not impose any statutory obligation regarding the lease granted earlier to the incorporation in this behalf. The later part of the discussion has already been dealt with by us. So far as the former part is concerned, we may state that the Tribunal has completely misread the provision that r. 34 does state that the lessee will have to give an undertaking before an indenture of mining lease is granted by the State Government. What is provided in r. 34 is that the lessee shall undertake the phased restoration, reclamation and rehabilitation within the time stated therein. The expression "undertake" means to make a promise to do something at a future date, according to the Tribunal, but what the rule provides for, is to perform in a phased manner the restoration, reclamation and rehabilitation within the time stipulated under the rule. 8. If as interpreted for the Department or the view taken by the Tribunal is accepted, it would cause immense public hardship. The intention of r. 34 is that in order to provide for maintaining ecology and development a provision is made that a lessee shall rehabilitate the lands before completion of the operation. If

it merely to mean that in respect of certain acts which might have been done as part of the mining activity those calling for rehabilitation in respect of such activity need not be performed, would clearly defeat the very purpose of the rule. An interpretation of a statute will have to be given which advances the cause of public good and not otherwise. This Court cannot merely look at the matter from a narrow angle, but interpret the contract as a whole with reference to the statute. Viewed from that angle we find no substance in the contention advanced on behalf of the Department nor the view taken by the Tribunal is justified. Hence, we answer the question No. 3 referred to us in the affirmative and in favour of the assessee. It is unnecessary to answer question Nos. 1 and 2 in the view we have taken. Now, after the matter goes back to the Tribunal, the Tribunal may refer the matter to the original assessing authority to find the extent of deduction, whether the deductions are available to the assessee or not on the quantum and from what stage, on the basis of the interpretation given by us. Reference answered accordingly.