M/S. Gotan Lime Syndicate vs Commissioner Of Income-Tax, Delhi And ... on 15 November, 1965

Equivalent citations: 1966 AIR 1564, 1966 SCR (2) 596, AIR 1966 SUPREME COURT 1564

Author: S.M. Sikri

Bench: S.M. Sikri, J.C. Shah

PETITIONER:
M/S. GOTAN LIME SYNDICATE

Vs.

RESPONDENT:
COMMISSIONER OF INCOME-TAX, DELHI AND RAJASTHAN

DATE OF JUDGMENT:
15/11/1965

BENCH:
SIKRI, S.M.
BENCH:
SIKRI, S.M.
SUBBARAO, K.
SHAH, J.C.

CITATION:
1966 AIR 1564 1966 SCR (2) 596
CITATOR INFO :
R 1968 SC 745 (4)
E 1973 SC2326 (9)
E 1991 SC 227 (11)

ACT:
Income-tax--Royalty paid for mining lease-Capital or Revenue expenditure--Tests.

HEADNOTE:
The appellant was a registered firm carrying on the business of manufacturing lime from lime-stone. By an indenture dated March 4, 1949, it was granted by the Government of Rajasthan the right to excavate limestone in a certain area, subject to certain conditions. The lease expired on July 14, 1952. The lease was extended from time to time by the

Government for short periods. While working out a new scheme for leasing out lime-stone quarries the Government sanctioned the leasing out of 15 sq. miles of lime deposits to the appellant. Till the new lease was given effect to the appellant agreed to pay Rs. 96,000 per year to the Government as royalty. For each of the assessment years 1954-55, 1955-56 and 1956-57 the assessee paid a sum of Rs. 96,000 to the Government and claimed it as a deduction against its profits for those years. The Income-tax Officer disallowed this expenditure as being of a capital nature. On reference the High Court also upheld that view.

In appeal to the Supreme Court it was contended on behalf of the appellant that under the Rajasthan Mineral Concession Rules and the arrangement with the Government the appellant did not get exclusive possession of the mines as such; what he got was a right to get lime for manufacturing and the payment had direct relation to the amount of lime removed by the appellant.

HELD : Under the, arrangement read with, the Rajasthan Mineral Concession Rules, 1955. the assessee was certainly entitled to upon the land and had some rights to build premises for the purpose of mining, the lime. But it was also clear that the assessee could not carry away any other mineral which might be found on the mine and further he was obliged to allow other lessees of other minerals to go on the land and win their minerals. [603 B-D]

The, royalty payment by the assessee in the present case was not a direct payment for securing an enduring advantage; it had relation to the raw material to be obtained. No material had been placed on the record to show that any part of the royalty must in view of the circumstances,of the case be treated as permium and be referable to the acquisition of the mining lease. [605 E-G]

The yearly payment of Rs. 96,000 must therefore be treated as revenue expenditure. [605 H]

H. R. Rorke Ltd. v. Commissioner of Inland Revenue, 39 T.C. 194, Ogden v. Medway Cinemas Ltd., 18 T.C. 691 and Allenza Company v. Bell, [1904] L.R. 2 K.B. 666, relied on.

Abdul Kayoom v. Commissioner of Income-tax, 44 I.T.R. 689 and Pingle Industries Ltd. v. Commissioner of Income-tax, 40 I.T.R. 67, distinguished.

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Assam Bengal Cement Co. Ltd. v. Commissioner of Income-tax, 27 I.T.R. 34 and British Insulated and Helsby Cables Ltd. v. Atherton, 10 T.C. 155, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 692 to 694 of 1964.

Appeal from the judgment and order dated October 9, 1963 of the Rajasthan High Court in D. B. Civil Income-tax Reference No. 73 of 1961.

N. A. Palkhivala, T. A. Ramachandran and J. B. Dadachanji for the appellant.

C. K. Daphtary, Attorney-General, S. T. Desai, R. Ganapathy Iyer, R. N. Sachthey and B. R. G. K. A char, for the respondent.

A. V. Viswanatha Sastri, J. B. Dadachanji, for interveners Nos. 1 and 2.

M. M. Tiwari, .S. S. Khanduja and Ganpat Rai, for Intervener No. 3.

The Judgment of the Court was delivered by Sikri, J. These three appeals are directed against the judg- ment of the Rajasthan High Court in a consolidated reference made to it by the Income Tax Appellate Tribunal, Bombay Branch, under S. 66(1) of the Indian Income Tax Act, 1922 (hereinafter referred to as the Act). The question referred to by the Appellate Tribunal is as follows "whether on the facts and in the circumstances of the case. the sum of Rs. 96,000 paid by the assessee during each of the relevant accounting,, years was rightly allowed as a revenue deduction in computing the business profits of the assessee company."

The reference arose out of the following facts : The appel- lant, M/s Gotan Lime Syndicate, hereinafter referred to as the assessee, is a registered firm and carries on the business of manufacturing lime from lime-stone. By an indenture dated March 4, 1949, the assessee was granted the right to excavate lime-stone in certain area at Gotan and Tunkaliyan, subject to certain conditions. It is not necessary to detail the conditions contained in this indenture except that the lease expired on July 14, 1952. The lease was extended from time to time by the Government Sup. CI/66-8 for short periods. The last letter dated December 17, 1952, extending the lease was in the following terms :

> "In continuation to this office letter cited above, Government have been-pleased to convey extension up to the 31st March, 1953, or till the finalisation of the proposals for leasing out the area whichever may be shorter, with the clear understanding that you will have to vacate the area, when you may be asked to do so, and will have no claim whatsoever over the area after it"

By letter dated December 1, 1953, the Government intimated to. the Director of Mines and Geology, Rajasthan, Udaipur, that the Government had adopted a new policy for leasing out lime-stone quarries. The proposal Was to divide the lime- stone quarries in Jodhpur Division in blocks of 5 sq. miles each and the dead rent was to be charged at Rs. 10/- per acre while royalty was to be charged at Re. -/1/- per md. of lime-stone. It was further contemplated that the period of lease will be for five years with option to renewal for another five years, and the minimum area to be granted to each party would be 10 sq. miles and maximum 30 sq. miles and the other terms and conditions would be generally the same as were in practice in such cases. But as it was necessary to give legal form to these proposals, the Director of Mines and Geology was directed to frame rules on the lines of the

Mineral Concession Rules. It appears that on October 4, 1954, the Government sanctioned the leasing out of 15 sq. miles of lime deposits to the assessee. The Government in this letter further stated as follows :

> "2. As regards the payment of arrears by M/s Gotan Lime Syndicate for the period between 30-7-52, and the date the new lease is given effect to, it has been decided that they may pay @ Rs. 96,000/(Rupees Ninety six thousand) per year which has also been agreed to by them before the Chief Minister (Industries) on the basis of dead rent under the new proposals for 15 sq. miles at Rs. 10/- per acre.
>
> 3. Lease agreement may be got executed by them at an early date and the arrears recovered.
>
> 4. The new rules may be incorporated in the Mines Mineral Concession Rules for Rajasthan."

It further appears that the assessee never executed any lease but continued,to work the lime deposits and the payments to be made were finalised by letter dated November 30, 1959 from the Mining Engineer, Jodhpur, to the assesee. The Mining Engineer stated in this letter as follows :

> "On checking the figures of export of lime stone, limekali and lime kachra for the settlement of royalty, the figures of royalty amount payable in the following years is as under : -
>
> From 1st April Year Export figures Amount, to 31st March Rs. as. p.
>
> | | | | | | |
> |---|---|---|---|---|---|
> | 1953-54 | 13511 | tons | 30,553 | 10 | 6 |
> | 1954-55 | 13308 | tons | 27,965 | 11 | 6 |
> | 1955-56 | 18033 | tons | 37,3321 | 9 | 0 |
> | 1956-57 | 18382 | tons | 37,740 | 0 | 6 |
> | 1957-58 | 614946 | mds | 49,162 | 14 | 6 |
> | 1958-59 | 604498 | mds | 43,673 | 15 | 0 |
>
> At the end of each financial year the accrued royalty amount is far less actually and as such as per agreement royalty payable is Rs. 96,000/- in all the years above written. The royalty for each of these years was settled -after the end of each year i.e. in the subsequent year."

At this stage it would be convenient to mention the terms on which the assessee remained in possession. It is common ground that these terms are contained in the Jodhpur Division Vindhyan Lime-stone Mining Leases Rules, 1954, and the Rajasthan Minor Mineral Concession Rules, 1955. These rules were made in exercise of the powers conferred by r. 4 of the Central Mineral Concession Rules, 1949. In the Jodhpur Division Vindhyan Lime-stone Mining Leases Rules, 1954, "Mining' lease" was defined to mean "a lease to mine, quarry, bore, dig, search for, win, work and carry away lime-stone". Under these rules the assessee had to make an application for a mining lease in

response to a Notification issued by Director of Mines and Geology, Rajasthan, inviting applications in respect of a lime-stone- deposit. Rules 13 provided that the lease shall be in respect of plots comprising of 5 sq. miles each. The applicant had to deposit security equal to one-fourth of the annual dead rent of the lease in cash or Government bonds, for due observance of the terms and conditions of the lease. The lessee was entitled to transfer his lease or any right, title or interest therein, to a person holding a certificate of approval on payment of a fee, subject to the previous sanction of the Director of Mines and Geology, and subject to some other conditions. Rule 18 prescribed a period of 6 00 five- years for a lease and the lease was renewable at the option -of the assessee- for a further period of five years. Rule 19 prescribed the conditions which had to be inserted in the lease. The following conditions are relevant (1)the lessee shall not encroach upon cultivable land or Bapi holdings, within, the leased area, unless otherwise after ,obtaining permission of Director of Mines and Geology;

(2)the lessee shall perform a minimum development work as instructed from time to time by the Director of Mines and Geology, whose instructions in this respect and in maintaining standards of lime products, and arranging an adequate supply of the same in the market at reasonable price shall be binding upon the.' lessee;. (3)On expiry or sooner determination of lease the lessee

-shall remove all stock of limestone or its products and movable property within six months from the date of expiry of the, lease and shall pay the royalty on the stock within this period. There was a proviso to this condition to the effect that the Rajasthan Government would be free to lease out the deposits afresh to any person on expiry of the tenure of the lease, and the lessee shall hand over the quarry to the new lessee in a workable condition. Rule 31 of the Rajasthan Minor Mineral Concession Rules, 1955, prescribed inter alia the following conditions

(i) - The lessee shall pay the royalty on minerals despatched from, the leased area at the rate specified in the First Schedule to these rules.

(ii)The lessee shall pay for the surface area used by him for the purpose of mining, surface rent at such rate 'not exceeding the land -revenue as may be specified by the Government in such case.

(iii) The lessee shall also pay, for every year, such,yearly dead-rent within the -limits specified in the Second Schedule to these rules as may be. fixed, by the Director in each case, and if the lease permits. the working of more than one mineral in the same area;- the Government may charge separate deed-rent in respect of each,mineral.

(iv)The lessee shall keep correct accounts showing the, quantity and particulars of all minerals obtained from the mines, etc.

(v)The lessee shall allow existing and future licensees or lease-holders of any land'-which is comprised in or adjoins or is reached by the land held by the lessee, reasonable facilities for access thereto.

(vi) The lessee may erect on the area granted to him any building required for bona fide purposes and such buildings shall be the property of the Government after expiry of the lease.

(Vii) The lessee if he discovers any new mineral was entitled to apply for a mining lease in respect of the newly discovered mineral.

(viii) The Government shall the have right of preemption at current market rates over all minerals demised by the lease and shall be indemnified by the lessee against claims of any third party in respect of such minerals.

(ix) In case of any breach on the part of the lessee, of any covenant or condition contained in the lease other than a condition regarding rent or royalty, the Government may determine the lease and take possession of the said premises, or in the alternative, may impose payment of a penalty not exceeding twice the amount of the annual dead-rent from the lessee.

(x) At the end or sooner determination of the lease the lessee shall deliver up the said premises and all mines, if any, dug therein in a proper and workable state, save in respect of any working as to which the Government might have sanctioned abandonment.

For each of the assessment years 1954-55, 1955-56 and 1956-57, the assessee paid a sum of Rs. 96,000/- to Government and claimed it as a revenue deduction against its profits for those years. The Income Tax Officer disallowed this expenditure, as being of a capital nature. The Appellate Assistant Commissioner upheld his view, but on appeal, the Appellate Tribunal held that the payment should be treated as a revenue expenditure. The High Court held on a reference that the payment was capital expenditure and could not be allowed as a revenue deduction in computing the business profit of the assessee.

These appeals raise the difficult question of distinguishing between revenue expenditure and capital expenditure. The learned counsel for the assessee, Mr. N. A. Palkhiwala, and the leaned counsel for the Revenue, the Attorney General both cited a number of cases before us but we agree with Hidayatullah J.'s observations in Abdul Kayoom v. Commissioner of Income Tax(1) that "none of the tests (laid down in various Authorities) (1) 44 I.T.R. 689.

is exhaustive or universal. Each case must depend on its own facts, and a close similarity between one case and another is not enough , because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases..... by matching the colour of one case against the colour of another." Therefore, we do not propose to review all the cases cited before us, especially as this Court has, after reviewing the relevant cases, formulated certain tests in Assam Bengal Cement Co. Ltd. v. Commissioner of Income Tax(1). The cases were reviewed again in Pingle Industries Ltd. v. Commissioner of Income-tax, Hyderabad (2) , and Abdul Kayoom v. Commissioner of Income Tax (3).

In this case, in view of the-arguments of the respondent and the judgment of the High Court, we have to concentrate on the following test laid down by Viscount Cave in British Insulated and Helsby

Cables Ltd. v. Atherton (4):

> "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 a 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."

The learned Attorney-General, relying on this test, urges that what the assesses got by entering into the mining lease was an asset or advantage of an enduring nature; that this asset or advantage was an interest in land for not only has the assessee the right to go upon the land and excavate but also has the right to use part of the area as premises, and it was by virtue of this that the assessee eventually got raw-material for his manufacturing business.

Mr. Palkhiwala, the learned counsel for the assessee, on the Other hand, contends that under the Rajasthan Minor Mineral Concession Rules and the arrangement between the assessee and the Government, the assessee did not get exclusive possession of the mines as such; what he got was a right to get lime for manufacturing and the payment had direct relation to the amount of lime removed by the assessee. He says that the cases decided in this Court (Pingle Industries Ltd. v. Commissioner of Income (1) 27 1. T. R. 34. (2) 40 I. T. R. 67.

(3) 44 I. T. R. 689. (4) 10 T. C. 155 at p. 192.

Tax Hyderabad(1), and Abdul Kayoom v. Commissioner of Income Tax (2) were distinguishable. He further urges that in no case has royalty payment been treated as capital expenditure, and as a matter of fact, in Pingle Industries Ltd. v. Commissioner of Income Tax(1) it was a lumpsum payment that was under dispute and not the royalty payable under the lease.

We do not think there is any necessity to decide whether the assessee got a licence or a lease or profits a prendre. Under the arrangement, read with the Rajasthan Minor Mineral Concession Rules, 1955, the assessee was certainly entitled to go upon the land, win the raw-material and had some rights to build premises for the purpose of winning the lime. But it is also clear that the assessee could not carry away any other mineral which might be found in the mine, and further he was obliged to allow other lessees of other minerals to go on the land and win their minerals. Thus there is no doubt that the assessee did derive an advantage by having entered into this arrangement. We will assume for the sake of this case that this advantage was to last atleast for a period of five years. The question then arises whether the circumstances of this case fall within the test laid down by Viscount Cave and relied on strongly by the learned Attorney-General. In our opinion, the test does not apply fully to this case because there is no payment once for all; it is a yearly payment of deadrent 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 instalments, 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. No lumpsum payment was ever settled or paid. We have not been referred to any case in which payments of royalty under a mining

lease have been treated as capital expenditure. In H. R. Rorke Ltd. v. Commissioner of Inland Revenue(3) Cross, J., while dealing with a similar question observed as follows :

> "The case then proceeds to set out the leases in question, which were substantially in the same form. The first was an agreement made on 16th December, 1957, between a Mr. Parker, the lessor, and the Company. Clause 1 provided that the lessor, being the owner of the land in question (four acres and five per- ches of agricultural land in Yorkshire) should let the (1) 40 I. T. R. 67 (3) 39 T. C. 194 at 202 (2) 44 I. T. R. 689.

land,to the lessee-that is, the Appellant Company from 5th November, 1957, for one year, paying therefor a royalty of Is. 3d. per ton for all coal recovered from the demised land and accepted by the coal sales department of the National Coal Board or, the sum of pound 312 10s. whichever was the greater, such payment to be made by calendar monthly instalments. There is, of course, no doubt that those rents or royalty payments would be allowable as deductions on revenue account." He had no doubt in his mind that rent and royalty payments, would be deductible as revenue expenditure. In Pingle Industries Ltd. v. Commissioner of Income Tax(1) the assessee had already been allowed payments of royalty as revenue expenditure and the only dispute was regarding lumpsum payment. In; Ogden v. Medway Cinemas, Ltd.(2) an annual payment in respect of the goodwill of the business was held to be an admissible deduction on the ground that "this is a revenue payment for the use during a certain period of certain valuable things and rights." The reason why royalty has to be allowed as revenue expenditure must be the relation which the royalty has to the raw-material which is going to be excavated or extracted. The more you take the more royalty you pay, and the minimum payment or the deadrent also has the same characteristic, i.e., it is an advance payment in respect of certain amount of raw-material to be excavated. We find that it is on this ground that the case strongly relied on by the learned Attorney-General Abdul Kayoom v. Commissioner of Income Tax(3) is distinguishable because payments there had no relation whatsoever to the amount of conchshells taken. As observed by Hidayatullah, J., in obtaining the lease, the respondent obtained a speculative right to fish for chanks which it hoped to obtain and which might be in large quantities or small, according to its luck The respondent changed the nature of its business to fishing for chanks instead of buying them." Hidayatullah, J., then put the case in a nutshell as follows "That amount was paid to obtain an enduring asset in the shape of an exclusive right to Ash, and the payment was not related to the chanks, which it might or might not have brought to the surface in this speculative business.

(1) 40 I. T. R. 67.

(3) 44 I. T. R. 689.

(2) 18 T. C. 691 The case of Pingle Industries Ltd. v. Commissioner of Income Tax(1) is distinguishable because on the facts it was a lumpsum payment in instalments for acquiring capital asset of enduring benefit to his trade.

It is not the law that in every case, if an enduring advantage is obtained the expenditure for securing it must be treated as capital expenditure, for as pointed out by Channell, J., in Allanza Company v.

Bell(2) "in the ordinary case, the cost of the material worked up in a manufactory is not a capital expenditure; it is a current expenditure, and does not become a capital expenditure merely because the material is provided by something like a forward contract, under which a person for the payment of a lumpsum down secures a supply of the raw material for a period extending over several years." This illustration shows that it is not in every case that an expenditure in respect of an advantage of an enduring nature is capital expenditure. The reason underlying the illustration is that the payments made to enter into a forward contract have relation to the raw material eventually to be obtained. Viscount Cave acknowledged that in certain cases an expenditure for obtaining an enduring advantage need not be capital expenditure for he inserted the words "in the absence of special circumstances leading to an opposite conclusion"

within brackets.

We are of the opinion that in the present case the royalty payment is not a direct payment for securing an enduring advantage; it has relation to the raw material to be obtained. Ordinarily, a mining lease provides for a capital sum payment; but the fact that there is no lumpsum payment here cannot by itself lead to the conclusion that yearly payments to be made under the mining lease have relation to the acquisition of the advantage. No material has been placed on the record to how that. any part Of the royalty must, in view of the circumstances of the case, be treated as premium and be referable to the acquisition of the mining lease.

Therefore, on the facts of this case we must hold that the royalty payment, including the dead-rent, have relation only to the lime deposits to be got. If it has no direct relation to the acquisition of the asset, then the principle relied on by the learned Attorney-General does not afford him any assistance. We, therefore, hold that the yearly payment of Rs. 96,000/- should (1) 40 I. T. R. 67.

(2) (1904) L. R. 2 K. B. 666 at p. 673.

be treated as revenue expenditure and the answer to the question referred to the High Court must be in favour of the assessee.

In the result the appeals are accepted and the question referred to the High Court answered in the affirmative. The appellant will have his costs incurred in this Court, one set of hearing fee.

Appeals allowed.