(1959) 06 BOM CK 0024

Bombay High Court

Case No: Income-tax Ref. No. 36 of 1958

Madhya Pradesh Industries Ltd.		APPELLANT
	Vs	
Commissioner of Income Tax, Nagpur		RESPONDENT

Date of Decision: June 15, 1959

Acts Referred:

- Income Tax Act, 1922 - Section 10(2)

Citation: AIR 1960 Bom 137 : (1959) 61 BOMLR 1333 : (1959) 37 ITR 342

Hon'ble Judges: Shah, J; S.T. Desai, J

Bench: Division Bench

Advocate: N.A. Palkhivala, for the Appellant; G.N. Joshi and R.J. Joshi, for the Respondent

Judgement

Shah, J.

(1) The Income Tax Appellate Tribunal has referred the following three questions to this Court :

(I) Whether the sum of Rs. 15,27,000/- paid by the assessee-company for the leasehold interest in several manganese mines was capital expenditure and as such not an allowable deduction?

(ii) Whether even a proportionate amount of the total sum paid for the leasehold manganese mines, I. e., Rs. 98,280/- per annum was not deductible in determining the profits of the business?

(iii) Whether the legal and other expenses incurred for the leases of the manganese mines were not admissible deduction u/s 10(2)(xv) of the Income Tax Act?

(2) The facts which give rise to the reference may be briefly stated. The assessee-company was originally a private (limited company having its registered office at Nagpur. It was converted into a public limited company on 17th march

1952. R. B. Bansilal abirchand Mining Syndicate hereinafter referred to as the Minning Syndicate were lessees from the Government of Madhya Pradesh of certain mining rights under leases executed before and after the year 1949. Under the mining leases the Mining Syndicate were entitled to enter upon the lands described in the leases and to search for and win manganese ore and to raise and carry away and dispose of the same. The right of the Mining Syndicate under the leases were sold by the Court Receiver appointed in a suit for dissolution of partnership and rendition of accounts of that syndicate and were purchased on 13th December 1951 by the assessee-company for a lump sum of Rs. 17,00,000/. Out of the sum of Rs. 17,00,000/- , Rs. 15,27,000/- were allocated to the price of the rights in the mines, Rs. 21,320/- for buildings and other Immovable properties, Rs. 14,900/- for machinery, furniture and other moveable properties and Rs. 1,36,780/- for stock of raw and ready manganese ore. The Income Tax Officer held that the amount of Rs. 15,27,000/ paid by the assessee company for the interest it purchased from the Mining Syndicate in the manganese mines was capital expenditure. In appeal to the Appellate Assistant Commissioner, the order passed by the Income Tax Officer was confirmed. That order was further confirmed by the Income Tax Appellate Tribunal. The assessee-company then applied to the Tribunal for a reference to this Court u/s 66(1) of the Income Tax Act, and a reference was accordingly made and the three questions, which we have already set out, have been referred to us for decision.

(3) This reference raises the rather familiar question as to what may, having regard to the facts and circumstances, be regarded as capital expenditure as distinct from revenue expenditure. In the mining lease obtained by the Mining Syndicate before the year 1949 it was recited that in consideration of the rents and royalties, covenants and agreements the lessor, i.e., the Government of the Central Provinces and Berar, granted and demised unto the lessees the mines, beds, veins and seams of manganese ore situate, lying and being in or under the lands referred to in Part I of the Schedule together with the lberties, powers and privileges to be exercised or enjoyed in connection therewith set out in Part II of the Schedule subject to the restrictions and conditions as to the exercise and enjoyment of such liberties, powers and privileges set out in Part III of the Schedule except and reserving out of the demise unto the lessor the liberties, powers and privileges set out in Part IV of the Schedule. The lease included a schedule consisting of nine parts. In part II were set out the liberties, powers and privileges to be exercised or enjoyed by the lesses subject to the restrictions and conditions in Part III. Under this part the lesses were entitled to work minies, to sink pits, to erect or construct machinery, to make roads, to get building and road materials, to use water, to use the land adjacent to the land granted on lease for stacking, to prepare manganese ore and to take timber from reserved forest. These liberties were made subject to the restrictions set out in Part III. Certain liberties were also set out in Part IV which were exercisable by the lessor. We are not concerned in this reference with the restrictions and liberties set out in Parts III and IV of the Schedule. In the leases executed after the year 1949 it was

recited that in consideration of the rents and royalties, covenants and agreements by and in the presents and the schedule thereunder the State Government granted and demised to the lessees all the mines, bed/veins and seems situate, lying and being in or under the lands referred to in Part I of the Schedule together with the liberties, powers and privileges to be exercised or enjoyed in connection therewith set out in Part II of the Schedule subject to the restrictions and conditions as to the exercise and enjoyment of such liberties, powers and privileges set out in Part III of the Schedule except and reserving out of the demise unto the State Government the liberties, powers and privileges set out in Part IV of the schedule. This lease also included a Schedule the first four parts of which set out respectively the area of the lease, the liberties, powers and privileges to be exercised and enjoyed by the lessees, the restrictions and conditions as to such exercise or enjoyment and the liberties, powers and privileges reserved to the State Government.

(4) Though different phraseology has been used in these two sets of leases, it is evident that in substance by the leases the Government of the Central Provinces and Berar granted to the Mining Syndicate the beds, veins, and seams of manganese ore lying in or under the lands described in the Schedule with certain rights and subject to certain restrictions. all those rights of the Mining Syndicate under the leases were transferred to the assessee-company under the agreement, dated 13th December 1951. The principal question which falls to be determined is whether the consideration paid by the assessee for purchasing the rights of the lessees under the mining leases was capital expenditure.

(5) Mr. Palkhivala for the assessee-company contends that by the leasses no right or interest in land was created but manganese ore lying underground though unascertained but nonetheless ascertainable-was sold to the Mining Syndicate; and by the transfer of all those rights the assessee in substance acquired a stock of manganese ore for the purpose of its business. Evidently expenditure incurred for acquiring the stock-in-trade of a business is revenue expenditure. But we are unable to agree with the contention raised by Mr. Palkhivala that by the leases the Government of the Central Provinces and Berar sold any definite or identifiable quantity of manganese ore to the Mining Syndicate; in our opinion, they only authorised the Mining syndicate to win manganese ore from the area defined by the leases and subject to the restrictions and conditions set out therein. The right conferred by the leases was not a proprietary right to any stock of manganese ore readily indentifiable, but merely a right during the period specified in the leases to get at the ore, and to remove and dispose of the same. By exercising the right and obtaining ore, the lessees may obtain a stock-in-trade; but the consideration paid for acquiring the means to obtain the stock-in-trade may not be regarded as consideration paid for acquiring the stock-in-trade itself. Therefore, the consideration paid by the assessee-company for purchasing the benefits and the rights under the leases to win the manganese ore from the lands described in the leases must, in our judgment, be regarded as capital expenditure.

(6) In our judgment, the question has been conclusively decided by their Lordships of the Privy Council in AIR 1943 153 (Privy Council) , where the material facts were closely similar to the facts of the present case. In that case, the assessee had received large paymens by way of royalty under various mining leases. By the leases the lessees were granted and demised for a period of 999 years the underground coal mining rights specified in the schedule to the leases and all the estate, right, title and interest of the lessor into and upon the same and every part thereof with full liberty and power to the lessees to search for, work, make merchantable and carry away the coal there found and with power to dig and sink pts, to erect engines, machinery, buildings, workshops, cottages and to make such railways, tramways and roads as were requuired. In consideration of these rights the lessees were to pay a sum by way of salami or premium and an annual sum as royalty computed at a certain rate per ton on the amount of coal raised and coke manufactured, subject to a minimum annual sum. It was contended before the taxing authorities by the lessees that the sums received as salami and royalty did not constitute income but was a capital receipt representing the price of the minerals removed, and their Lordships of the Privy Councilheld that the salami was paid for the acquisition of the rights of the lessees to enjoy the benefits granted to them by the lease and that right being a capital asset, the money paid to purchase it was a payment on capital account. In the present case, the transferee from the lessees is contending that the payment made by it for acquiring the rights of the lessees was revenue expenditure and treated as allowable deduction in assessing its table income. In kamakshya narain Singh''s case 1943-11 ITR 513: (AIR 1943 PC 153), in dealing with the argument that the salami received by the lessees for transferring their rights was received on capital account, their Lordships observed :
"It is a single payment made for the acquisition of the right of the lessees to enjoy the benefits granted to them by the lease. that general right may properly be regarded as a capital asset, and the money paid to purchase it may properly be held to be payment on capital account."

In the present case the assessee-company has purchased all the rights which the transferors had obtained from the Government of the Central Provinces and Berar. There was no stock-in-trade in the hands of the transferors and for purchasing merely the rights or benefits granted under the leases and not the stock-in-trade the assessee-company must, in our judgment, be regarded as having incurred a capital expenditure. By the leases merely a source from which the raw materials required for the business of the assessee-company were to be ontained was indicated, with rights to tax the source and it was not a sale of the raw materials in situ.

(7) A similar view was taken by their Lordships of the House of Lords in Hood v. Inland Revenue Commissioner (1958) 36 ITR 238. In that case, a timber merchant soon after commencing business, entered into two agreements with a company undertaking to pay certain sums of money in respect of a large number of trees

growing on the company''s land. The merchant acquired the right to

"mark, fell and carry away all the said trees and complete all the operations authorized at such times as he ..... shall consider convenient."

no time limit being fixed. The trees had not been selected or inditified. The House of Lords held (Lord Oaksey dissenting) that in computing the timber merchant''s Income Tax liability the sums payable should be treated as capital expenditure and not as the price for stock-in-trade and accordingly should not be debited in calculating his tradiang profits.

(8) In STOW BARDOLPH GRAVEL CO. LTD. Vs. POOLE (INSPECTOR OF TAXES)., , a company of sand and gravel merchants, in consideration of a payment of .... 2,000/-, acquired the benefit of a contract to take a deposit of sand and gravel. They later exercised an option contained in the contract under which they acquired for ....2,250/- a right to take a further deeposit. It was held that the amounts paid were not expended on the purchase of stock-in-trade and were not, therefore, admissible as deductions in the computation of the company''s profits under the relevant Income Tax provisions, the reason for that conclusion being that by the contract and option the company did not acquire any proprietary right in the deposits in situ but merely had the right to work them and to take away what was won, and the company had not, on the facts, purchased stock-in-trade readily identificable as such from the moment of purchase but merely a means of getting gravel and sand which when excavated and taken into possession would be part of their stock-in-trade. The same reasoning will, in our judgment, apply to the facts of the present case for holding that the rights purchased by the assessee-company are not rights to stock-in-trade readily indentifiable as such from the moment of purchase but merely the rights to the means of getting manganese ore which if excavated and taken into possession may from part of its stock-in-trade.

(9) But Mr. Palkhivala relies upon a judgment of their Lordships or the Privy Council in AIR 1949 311 (Privy Council) in which it was held that the consideration paid for purchasing a right to tendu leaves required for manufacturing bidis was revenue expenditure and not capital expenditure. In that case, the Privy Council held that the contracts made by the assessees were wholly and exclusively for the purpose of supplying themselves with one of the raw materials for their business, that under the contracts no interest in land or in the trees or plants was conveyed to the assessecs, that under the contracts it was the tendu leaves and nothing but the tendu leaves that were acquired, that the right to pick the leaves or to go on to the land for the purpose was merely ancillary to the real purpose of the contracts, that under such a contract, even if not expressed, by the clearest implication of law there was a transfer of a growing crop and that therefore, the expenditure incurred in acquiring the raw material was in a business sense on revenue account and not on capital account. In our view, this case is clearly distinguishable from the facts of the present case and the cases to which we have already referred. Bu the contracts

which the assessees had made in AIR 1949 311 (Privy Council) , no interest in land was conveyed to the assessees and the assessees merely acquired a right to the tendu leaves, I. e., a right to the growing crops, and having regard to the nature of the business and the purpose for which the commodity was acquired, their Lordships of the Privy Council regarded the expenditure as expenditure incurred for obtaining raw materials for the business of the assessees. In the present case, the expenditure having been incurred by the assessee-company for acquiring a right to the manganese ore, which was not indentifiable in sity, the expenditure must be regarded as capital expenditure.

(10) We accordingly answer the three questions referred for decision as under :

(i) The sum of Rs. 15,27,000/- paid by the assessee-company for the leasehold interest in several manganese mines was capital expenditure and not revenue expenditure and as such it was not an allowable deduction.

(ii) Even a proportionate amount of the total sum paid for the leasehold manganese mines, i.e., Rs. 98,280/- per annum, was not deductible in determining the profits of the business.

(iii) The legal and other expenses incurred for the leases of the manganese mineswere not admissible deductions u/s 10 (2) (xv) of the Income Tax Act.

The assessee-company to pay the costs of the Commissioner of Income Tax.

(11) Answer accordingly.