

**(1997) 03 BOM CK 0068****Bombay High Court****Case No:** Income-tax Reference No. 113 of 1988

Salgaonkar Mining Industries

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

**Date of Decision:** March 26, 1997**Acts Referred:**

- Income Tax Act, 1961 - Section 144B

**Citation:** (1998) 144 CTR 651 : (1997) 228 ITR 183**Hon'ble Judges:** Pratibha Upasani, J; B.P. Saraf, J**Bench:** Division Bench**Advocate:** Deokinandan, F.B. Andhyarujina, for the Appellant; Dr. V. Balasubramanian, K.M.L. Majele and J.P. Deodhar, for the Respondent**Judgement**

Dr. B.P. Saraf, J.

By this reference u/s 256(1) of the Income Tax Act, 1961, the Income Tax Appellate Tribunal has referred the following question of law to this court for opinion at the instance of the assessee :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the payments made by the assessee-company to Zacaria Antao and Babul Naik Tari under the agreements dated December 13, 1975, and July 14, 1975, were expenditure of a capital nature ?"

2. This reference pertains to the assessment year 1978-79. The assessee was engaged in the business of screening iron ore, sale of iron ore, making provision for truck transport and barge transport. On July 14, 1975, the assessee entered into an agreement with one Mr. Babul Naik Tari, who was the owner of a mining concession of iron ore, viz., "Chormola", for raising iron ore from the said mine. On December 14, 1975, the assessee entered into another agreement with one Mr. Zacaria Antao, who was also the owner of a mining concession of iron ore, viz., "Irnqui", for extraction of iron ore from the above mine. The assessee did not operate the said

two mines in the previous year relevant to the assessment year 1977-78 as also in the previous year relevant to the assessment year 1978-79. The previous year of the assessee for the assessment year 1978-79 was the year which ended on June 30, 1977. In its assessment for the assessment year 1978-79, the assessee claimed deduction of a sum of Rs. 1,50,500, out of which a sum of Rs. 42,000 pertained to liquidated damages paid to Mr. Zacarias Antao and Rs. 50,000 paid to Mr. Babul Naik Tari for non-operation of the mines in the previous year relevant to the assessment year 1978-79, a sum of Rs. 21,000 and Rs. 37,500 being a provision for the period from January 1, 1976, to June 30, 1976, and October 1, 1975 to June 30, 1976, respectively, towards the dead rent or liquidated damages payable to the above two persons. The claim for deduction of Rs. 21,000 and Rs. 37,500 was rejected by the Income Tax Officer on the ground that the said provision was not relatable to the previous year relevant to the assessment year under consideration. So far as the claim of Rs. 92,000, which pertained to the previous year relevant to the assessment year which is the subject-matter of this reference is concerned, the Income Tax Officer rejected the claim of the assessee for deduction on the ground that the payment was a payment of capital nature. The Income Tax Officer completed the assessment under the directions of the Inspecting Assistant Commissioner u/s 144B of the Act. The above finding of the Income Tax Officer was confirmed by the Commissioner of Income Tax (Appeals) and by the Income Tax Appellate Tribunal. Aggrieved by the same, the assessee is in reference before us.

3. We have heard Mr. Andhyarujina, learned counsel for the assessee. There is no dispute about the fact that the assessee, after entering into the agreements with the two parties for lease of the mines, did not operate the mines. The amount of Rs. 92,000 was payable by the assessee by way of liquidated damages for acquisition of the mining lease which he did not operate. Obviously, the expenditure is referable to acquisition of the mining lease and not operation of the same. Moreover, the business of the assessee was also not of mining. In such a situation, we do not find any reason to accept the contention of learned counsel for the assessee that the above expenditure should be regarded as revenue expenditure. In fact, the expenditure of Rs. 92,000 incurred by the assessee in the instant case is clearly referable to the acquisition of mining leases which the assessee did not operate at all. That being so, it is capital expenditure. The Tribunal, in our opinion, was justified in holding so.

4. In view of the above, we answer the question referred to us in the affirmative and in favour of the Revenue.

5. This reference is disposed of accordingly. There shall be no order as to costs.