

M/S. ADITYA MINERALS PVT. LTD.

A

v

COMMISSIONER OF INCOME TAX, ANDHRA PRADESH

SEPTEMBER 7, 1999

[S.P. BHARUCHA, B.N. KIRPAL, V.N. KHARE, S.S. MOHAMMED
QUADRI AND D.P. MOHAPATRA, JJ.]

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Income Tax Act, 1961

*Revenue—Expenditure—Assessee obtaining mining lease for 15 years—
Amount equal to rent of lease for full period deposited with lessor as guarantee
and it was adjustable against rent of every month—Held, the claim of assessee
that the rent amount was revenue expenditure was rightly negated by
Revenue authorities.*

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The appellant-assessee was granted lease of certain land for excavation purposes at a monthly rent of Rs. 35 per acre. It was stipulated that the lessee would deposit with the lessor by way of guarantee for due performance of the lease deed for fifteen years, the amount equal to the rent of lease for full period of lease which would be adjustable against rent of every month and the guarantee deposit would not carry any interest. For the relevant assessment year the assessee claimed the rent amount as revenue expenditure. The claim was negated by the revenue authorities, Income Tax Appellate Tribunal as also by the High Court. Aggrieved, the assessee filed the present appeals. The Division Bench hearing the appeals felt that there was conflict between two judgments of this Court delivered by the Benches of three Judges in *Gotan Lime Syndicate** and *Pingle Industries Ltd.***, and referred the matter to a larger Bench. Accordingly, the appeals were heard by the Bench of five Judges.

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Dismissing the appeals, the Court

HELD : 1.1. There is a material difference between the facts of *Gotan Lime Syndicate.*** and *Pingle Industries Ltd.*** The judgment of *Gotan Lime Syndicate* clearly shows that in that case there was no payment once for all; it was an yearly payment of dead-rent and royalty. The Court took the view that the royalty payment was not a direct payment for securing an enduring advantage; it had relation to the raw material to be obtained; and what the

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A company got was a right to get lime for manufacturing and the payment had a direct relation to the amount of lime that was removed. The judgment adds that the case of *Pingle Industries Ltd.* was distinguishable because on the facts it was a lump sum payment in instalments for acquiring a capital asset of enduring benefit to the trade. [235-F-G]

B **Gotan Lime Syndicate v. Commissioner of Income tax, Rajasthan & Delhi*, (1966) 59 I.T.R. 718, explained and distinguished.

C 1.2. The instant case is on a par with *Pingle Industries Ltd.*** According to the lease deed in the present case, what was to be paid by the assessee was rent for the land that was leased. The assessee was required to pay in advance the rent, calculated at monthly rate, for the entire period of the lease, i.e., fifteen years, in the form of a "deposit". The deposit was by way of guarantee for due performance of the lease deed for fifteen years, that is, towards fifteen years rent. It was adjustable against the rent of each month and it carried no interest. [236-B-C]

D ***Pingle Industries Ltd. v. Commissioner of Income-tax, Hyderabad*, (1960) 40 I.T.R. 67, affirmed.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4858-59 of 1989.

E From the Judgment and Order dated 4.12.84 of the Andhra Pradesh High Court in C.R. Nos. 38 and 75 of 1980.

Sanjay Kunur and R.N. Keshwani for the Appellant.

F M.L. Verma, Ranbir Chandra, S.K. Dwivedi and S. Wasim A. Quadri for the Respondent.

The Judgment of the Court was delivered by

G **BHARUCHA, J.** These appeals have been referred to a Constitution Bench to resolve the apparent conflict between the judgments of two Benches of this Court, of three learned Judges each, in *Pingle Industries Ltd. v. Commissioner of Income-tax, Hyderabad*, (1960) 40 I.T.R. 67 and *Gotan Lime Syndicate v. Commissioner of Income tax, Rajasthan & Delhi*, (1966) 59 I.T.R. 718.

H The common question to be considered reads thus :

“Whether on the facts and in the circumstances of the case, the sum of Rs. 10,752 paid by the assessee in the accounting year was not expenditure allowable as a deduction in computing the business profit of the assessee- company?” A

The appellant-assessee obtained a lease dated 8th March, 1972 from Aditya Minerals Private Limited. It was a term of the lease deed that “the Lessor will grant lease of the land more particularly described in Schedule ‘A’ attached to this lease deed and forming part of the same for a period of FIFTEEN YEARS from first December, One thousand nine hundred and seventy one at a monthly rent of Rs.35 (Rupees Thirty Five) only per acre.” Clause 2 of the lease deed stated “that the Lessee shall deposit with the Lessor by way of the guarantee for due performance of this lease deed for fifteen years, the amount equal to the rent of lease of land for the full period of lease which will be adjustable against rent of every month. This entire guarantee deposit shall not carry any interest payable to the Lessee by the Lessor.” The lease deed granted to the assessee the liberty “to use the land for excavation purposes and subsidiary purposes.” C D

For the assessment years in question, the assessee claimed the rent amounts worked out at Rs.10,752 per annum as revenue expenditure. The claim of the assessee in this behalf was turned down by the authorities, the Income Tax Appellate Tribunal and, finally, by the High Court of Andhra Pradesh, against whose judgment the assessee is in appeal. E

We find that there is a material difference in the facts of the case of *Pingle Industries Ltd.* and the facts of the case of *Gotan Lime Syndicate*. As the judgment in *Gotan Lime Syndicate*, relied upon by the assessee, clearly shows, in that case “there is no payment once for all; it is an yearly payment of dead-rent 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”. The judgment adds that the case of *Pingle Industries Ltd.* was “distinguishable because, on the facts, it was a lump sum payment in instalments for acquiring a capital asset of enduring benefit to his trade”. The Court in *Gotan Lime Syndicate* took the view that the royalty payment therein was “not a direct payment for securing an enduring advantage; it has relation to the raw material to be obtained.” The Court thus accepted the argument on behalf of H

A Gotan Lime Syndicate that what it got was a right to get lime for manufacturing and the payment had a direct relation to the amount of lime that was removed.

B In the case before us, as indicated by the lease deed, what was to be paid by the assessee was rent for the land that was leased. It was payable at the rate of Rs.35 per acre per month. The assessee was required to pay in advance the rent calculated at this rate for the entire period of the lease, i.e., fifteen years, in the form of a "deposit". The deposit was "by way of the guarantee for due performance of this lease deed for fifteen years", that is, towards fifteen year's rent. It was adjustable against the rent of each month and it carried no interest.

C On the facts, as it appears to us, this case is on a par with *Pingle Industries Ltd.* and accordingly, the civil appeals must fail and are dismissed.

No order as to costs.

R.P.

Appeals dismissed.