

OD-8

ITAT/295/2017
IA No.GA/1/2017 (Old No.GA/2836/2017)

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF INCOME
TAX, (CENTRAL), KOLKATA-1

-Versus-

M/S. RUNGTA SONS PVT. LTD.

Appearance:
Mr. Smarajit Roychowdhury, Adv.
...for the appellant.

Mr. Subash Agarwal, Adv.
...for the respondent.

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 10th December, 2021.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' in brevity) is directed against the order dated 15th March, 2017 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (the 'Tribunal' in short) in IT(SS)A No.42/Kol/2015 for the assessment year 2011-12.

The revenue has raised the following substantial questions of law for consideration:

(i) *Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal, has erred in*

law in upholding the deletion of addition of Net Present Value of Rs.12,14,61,050/- and in treating the Net Present Value as revenue expenses whereas true nature is capital expenditure?

(ii) Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal, has erred in law in not considering the decision of the Hon'ble Supreme Court of India in the case of Bikaner Gypsum Ltd. vs. CIT reported in [1991] 187 ITR 39 (SC) and in the case of R.R.B. Seth Moolchand Sugam Chand vs. CIT reported in [1972] 86 ITR 647 (SC)?"

We have heard Mr. Smarajit Roychowdhury learned counsel for the appellant/revenue and Mr. Subash Agarwal, learned counsel for the respondent/assessee.

It is not disputed before us that identical substantial questions of law were considered by this Court in the case of group company of the respondent/assessee in ITAT/133/2015 and by judgment dated 21st June, 2018 the appeal filed by the revenue was dismissed. The operative portion of the judgment reads as follows:

"Both the Commissioner (Appeals) and the Appellate Tribunal have referred to a judgment reported at 107 ITR 39 (Bikaner Gypsums Ltd. vs. CIT), where a similar question arose. A licence in respect of a certain area had been granted in favour of the assessee in that case for undertaking mining operations. The railways purported to set up railway tracks and even a station on the land without reference to the assessee and unmindful of the assessee's underground rights in respect

thereof. The dispute between the assessee and the railways was resolved upon the relevant stakeholders including the assessee, the railways and the State Government agreeing to share the additional expenses for removing the railway station and tracks to allow the area to be mined by the assessee. The payment made by the assessee in that case fell for consideration of the Supreme Court. The Supreme Court observed that since the assessee was entitled to carry on mining operations and such payment had been made for the removal of the difficulty in the assessee carrying on its business in accordance with its licence, the expenditure had to be regarded as a revenue expenditure and could not be treated as a capital expense.

The dictum in *Bikaner Gypsum Ltd.* is squarely applicable in the present case. This is not a case where the assessee, upon payment of the NPV, obtained a fresh right to undertake any business. That right of the assessee was covered by the licence previously granted in its favour by the State of Odisha. The NPV payment is a kind of a compensation for using forest land for non-forest purpose pursuant to an order of the Supreme Court. The payment of the NPV in this case, like in the case of *Bikaner Gypsum Ltd.*, has to be regarded as a revenue expenditure in accordance with the ratio in the *Bikaner Gypsum Ltd.* case, since it was a one-time payment made to remove an obstacle from the path of the assessee carrying on its business operations.

On behalf of the Revenue, a judgment reported at 86 ITR 647 (*R.B.Seth Moolchand Sugachand v CIT*) has been cited where a prospecting licence fee was found to be a capital expenditure. However, as is evident from paragraph 11 of the report, the fee was paid for obtaining a prospecting licence and it was such fee that entitled the business to be conducted in the relevant area. The distinction between the judgment in *R.B.Seth Moolchand Sugachand* and the judgment in *Bikaner Gypsum Ltd.* is that in *Bikaner Gypsum Ltd.* there was a pre-existing right and the expenditure was incurred not to assert a new right but to

exercise a pre-existing right. In the present case, it is the same as in Bikaner Gypsums Ltd. since the mining licence was previously issued in favour of the assessee and the payment of the NPV did not extend the area of the assessee's mining operations, it merely removed an impediment in the carrying on of the operations in terms of the original licence.

In R.B.Seth Moolchand Sugachand a fee was paid to obtain a prospecting licence. In other words, the right to carry on any prospecting or mining business was conditional upon the fee being paid. Even if the assessee in that case had been conducting mining or prospecting operations prior to obtaining the relevant licence, it was relevant licence which gave the assessee the right in respect of a particular area and that is the distinguishing feature.

For the reasons aforesaid, the concurrent findings of the Commissioner (Appeals) and the Appellate Tribunal based on a long-standing judgment of the Supreme Court does not call for any interference."

Thus, following the above decision, the appeal filed by the revenue is dismissed. In the result, the substantial questions of law are answered against the revenue.

The connected application for stay (IA No.GA/1/2017) also stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)