

(1957) 08 PAT CK 0007
In the Patna High Court
Case No : Misc. Judicial Case No. 264 of 1956

Bharat Collieries Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 13-08-1957

Acts Referred:

Income Tax Act, 1961 — Section 10(2)(xv)

Citation : AIR 1958 Patna 66 : (1957) 5 BLJR 684 : (1957) 32 ITR 547

Hon'ble Judges : Ramaswami, C.J.; Raj Kishore Prasad, J

Bench : Division Bench

Advocate : S.N. Dutta, for the Appellant; R.J. Bahadur, for the Respondent

Judgement

Ramaswami, C.J.—In this case the assessee is an incorporated Company, called Bharat Collieries Limited, which owns coal mines and carries on the business of winning coal therefrom. For the accounting year ending on the 30th of June, 1949, which corresponds to the assessment year 1950-51, the Company incurred an expenditure amounting to Rs. 10,266/- which was the amount paid by the Company to the owners of the surface land just above the coal mines at the time when depillaring operations started. In a coal mine it is the usual practice that coal is extracted through gallery working when the roof of the mine remains supported on the pillars of coal. After the gallery working, coal is extracted from these pillars which have to be demolished in that very process.

This operation, of winning coal from such pillars is called depillaring operation. When depillaring operation starts, the roof which the pillars support necessarily subsides & a colliery owner has to pay compensation for surface lands to the owners of the surface lands. The amount of Rs. 10,266/- represents the amount of compensation paid by the Company to the surface owners for the accounting year ending on the 30th of June, 1949. Before the Income Tax Tribunal the Company claimed that this amount should be deducted u/s 10 (2) (xv) of the Income Tax Act on the ground that it was expenditure wholly and exclusively laid out for the purpose of its coal extracting business. The Income Tax Tribunal

rejected the claim and expressed the view that the aforesaid expenditure was of capital nature and, therefore, was not an admissible deduction u/s 10 (2) (xv).

2. In these circumstances the Income Tax Tribunal has submitted the following question of law for the opinion of the High Court u/s 66 (1) of the Income Tax Act :--

"Whether the amount of Rs. 10,266/- paid for the surface land by the Company for the purpose of winning coal by de-pillaring operations is an admissible deduction u/s 10 (2) (xv) of the Income Tax Act"?

3. On behalf of the assessee Mr. S. N. Dutta put forward the argument that the compensation paid to the surface owners was in the nature of revenue expenditure in the circumstances of the case, and the view taken by the Appellate Tribunal was erroneous. In support of this argument learned Counsel referred to O'Grady v. Bullcroft Main Collieries, Ltd. (1932)Tax Cas. 93 (A) in which the assessee had taken certain leases of coal seams, under which, in consideration of covenants by the lessors indemnifying the assessee against liability for surface damage, the assessee undertook to make payments to the lessors on specified dates in respect of each acre or part of an acre beneath which coal seams had first been worked since the previous accounting date.

It was contended on behalf of the assessee in that case that the payments to the lessors under the surface damage provisions, of these leases were admissible deductions in computing profits. The Special commissioners held that the amounts paid by the assessee to the lessors in consideration of the indemnities against liability for surface damage were of the nature of recurring business expenditure and allowed the sums as deductions. This view was affirmed by the King's Bench Division and it was held that the amounts paid by the assessee in that case were not in the nature of capital payments but they were incidental payments made by the assessee in the process of conducting the mine.

In my opinion, the ratio of this case has no application to the present case for the material facts are different, In the present case the surface right was bought outright by the assessee at the beginning of the mining operations from the surface owners, but in the case (1932) Tax Cas 93 (A) the assessee did not purchase the surface right outright at the beginning of the operations, but the assessee made the payments progressively as he proceeded to work the mine year by year or acre by acre in other words as he proceeded in time and went on with his work.

That is the distinction upon which Rowlatt. J. laid considerable stress. It further appears that Rowlatt. J. was inclined to treat the question as a question of fact upon which the finding of the Special Commissioners ought not to be disturbed. It is manifest that the material facts in the present case are different.

4. In a case of this description the proper test to be applied is this--have you provided by capital payment for purchasing the surface right of the land outright

from the surface owners, or are you really conducting the mine upon the principle of having to make incidental payments as you go along so as to enable you to work the mine? For instance, it was held in *Robert Addie and Sons Collieries, Limited v. Commissioners of Inland Revenue* (1922) Tax Cas 671 (B) that the sum paid by the Colliery Company for restoring to an arable state all ground occupied by it or damaged by its workings was in the nature of capital expenditure and was not, therefore, a proper deduction in computing the Company's liability to Income Tax.

The question is, on which side of the line the the present case falls. In my opinion the expenditure incurred by the assessee is capital expenditure in the circumstance's of this case and is not a permissible deduction u/s 10 (2) (XV) of the Income Tax Act. I think that the present case falls within the ratio of (1922) Tax Cas 671 (B) and not within the principle laid down in (1932) Tax Cas 93 (A). As I have already pointed out, the assessee Company purchased the surface right from the owners of the surface land before the depillaring operations started.

The purchase was made outright from the surface owners at the beginning of the operation. It is not the case of the assessee that the payments were made progressively as the mining work was proceeded with, either acre by acre or progressively in point of time. In my opinion, therefore, the present case falls within the principle laid down in (1922) Tax Cas 671 (B). The matter has been put very clearly by Lord President Clyde at page 677 of the report :--

"The ₹6,104 also includes a payment for damage done to land by subsidence consequent on the lowering of the surface by the removal of the coal. It will be observed that the damage to the land here in question is not mere occupational damage, say, to the crop of a particular year, caused by a temporary dislocation of drainage, which can be prevented from recurring by a readjustment of the drains. Occupational damage of that sort is often met by a payment to the tenant for the damage done to his crop for the year, or year by year until the drains are relaid.

I express no opinion on the character of expenditure required to meet such payments or repairs as these. The whole terms of the lease are not before the court, but, as far as they have been put before us in the case, it is clear that it was within the contractual contemplation of parties that the lessees working under the lease and in accordance with its provisions would, or might, cause damage to land by subsidence of a character so serious and permanent as to destroy its value unless restored in some way.

A right to work the coal in such a manner, as to sacrifice the value of the surface was a material asset for the Company to possess, and, not unnaturally or usually, the same principle was applied in the lease to the conferment of that right on the company as in the case of surface occupation by debris heaps and the like. The price of acquiring that right is a capital outlay." In my opinion this

principle applies to the present case and it must be held that the amount of Rs. 10,266/- paid for the surface land by the assessee Company is in the nature of capital expenditure and is not an admissible deduction u/s 10 (2) (xv) of the Income Tax Act.

5. I would accordingly answer the question of law referred by the Appellate Tribunal in favour of the Income Tax Department and against the assessee. The assessee must pay the cost of this reference. Hearing fee Rs. 250/-.

Raj Kishore Prasad, J.

6. I agree.