(1989) 02 CAL CK 0042

In the Calcutta High Court

Case No : IT Reference No. 437 of 1977

Commissioner of Income Tax — APPELLANT

Vs

Bengal Coal Co. Ltd. — RESPONDENT

Date of Decision : 14-02-1989

Acts Referred:
Income Tax Act, 1961 — Section 256(1)

Citation : (1989) 02 CAL CK 0042

Hon'ble Judges : Suhas Chandra Sen, J;Baboo Lall Jain, J

Bench : Division Bench

Advocate : B.K. Bagchi and B.K. Naha, for the Appellant;Manisha Seal, for the Respondent

Judgement

Suhas Chandra Sen, J.—the following three questions of law have been referred to this Court u/s 256(1) of the income tax Act, 1961 (''the Act''):

1.Whether, on the facts and in the circumstances of the case and on a proper interpretation of the provision of the Mines & Minerals (Regulation & Development) Act, 1957 and the Mining Leases (Modification of Terms) Rules, 1956, the legal expenses of Rs. 45,764, Rs. 7,071, Rs. 7,500, Rs. 76,956 and Rs. 2,477 were allowable as revenue expenditure during the assessment years 1965-66 to 1969-70 respectively (consolidated for all the 5 years)?

2. Whether, on the facts and in the circumstances of the case, the liability to pay the royalty of Rs. 55,723 relating to the period from 1-6-1958 to 31-10- 1963 arose in assessment year 1965-66 and the assessee was accordingly entitled to deduction of the same in assessment year 1965-66?

3. Whether, on the facts and in the circumstances of the case, the sums of Rs. 1,49,912, Rs. 10,648 and Rs. 1,450 representing book credit on account of the royalty receivable by the assessee were not its income for the assessment years 1965-66, 1967-68 and 1968-69 respectively (consolidated for the assessment years 1965-66, 1967-68 and 1968-69)?

So far as question No. 3 is concerned, this is concluded by the decision of this Court in the assessee''s own case in IT Reference No. 140 of 1977 by a judgment delivered on 18-8-1981. Therefore, question No. 3 does not create any difficulty and it is answered in the affirmative and in favour of the assessee.

The question No. 1 also does not pose any difficulty in which legal expenses that had been incurred in connection with proceedings for the assessment years 1965-66 to 1969-70 were disallowed by the ITO as capital expenditure. The AAC was of the view that the ITO was right in treating the expenditure as of capital nature. The Tribunal held that the legal expenses were allowable as revenue expenditure in all those five years. The Tribunal noted that there was no dispute that the expenditure claimed as deductible by the assessee represented legal expenses incurred by the assessee in conducting various proceedings before various Courts and authorities. The proceedings were in respect of a mining lease. The Tribunal has found for a fact that this expenditure was incurred exclusively for the purpose of protecting the coal mining lease. The coal mining lease was a capital asset of the assessee.

2. In our view the Tribunal has not committed any error of law. Therefore, the first question must be answered in the affirmative and in favour of the assessee.

3. So far as the second question is concerned, the Tribunal has found that in the assessment year 1965-66 for which the corresponding accounting year ended on 31-10-1964, the assessee had executed an undertaking on coal mining lease in these areas and had also given an undertaking to pay the royalty relating to the period from 1-6-1958 to 31-10-1963. The Tribunal held that since the assessee had given this undertaking to pay this royalty within the relevant period of accounts, the assessee was entitled to claim this amount as deduction.

4. We see no reason to interfere with this finding made by the Tribunal. The actual liability had taken place by virtue of an agreement entered into by the assessee with the Government of Bihar and an undertaking had been given to the Bihar Government relating to that earlier period. The Tribunal had come to the conclusion that the liability for payment of royalty had arisen in this particular year of accounting. In that view of the matter, the second question must also be answered in the affirmative and in favour of the assessee.

5. Question No. 1 is answered in the negative and in favour of the revenue. Question Nos. 2 and 3 are answered in the affirmative and in favour of the assessee. There will be no order as to costs.

Jain, J.

I agree.

