

---

**(1980) 09 CAL CK 0040**

**In the Calcutta High Court**

**Case No : Income-tax Reference No. 532 of 1973**

Commissioner of Income Tax

APPELLANT

Vs

West Chusick Coal Co. Ltd.

RESPONDENT

---

**Date of Decision : 24-09-1980**

**Acts Referred:**

Companies Act, 1956 — Section 326  
Income Tax Act, 1961 — Section 256(1)  
Mines and Minerals (Development and Regulation) Act, 1957 — Section 30A, 9(1)  
West Bengal Estates Acquisition (Amendment) Act, 1964 — Section 5(2)  
West Bengal Estates Acquisition Act, 1953 — Section 5, 5(1), 6(3)

**Citation :** (1981) 20 CTR 269 : 85 CWN 304 : (1981) 129 ITR 62

**Hon'ble Judges :** Sudhindra Mohan Guha, J; Sabyasachi Mukharji, J

**Bench :** Division Bench

**Advocate :** Suhas Sen and B.D. Halder, for the Appellant; R.N. Das and S.K. Majumdar, for the Respondent

---

## **Judgement**

Sabyasachi Mukharji, J.—In this reference u/s 256(1) of the I.T. Act, 1961, the following question has been referred to this court:

" Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the royalty amounting to Rs. 23,330 was admissible as a business expenditure for the assessment year 1965-66?"

2. In order to appreciate the question, it is necessary to refer to certain facts. We are concerned in this reference with the assessment year 1965-66, for which the previous year ended on March 31, 1965. The assessee is engaged in raising of coal from coal mines. It claimed royalty of Rs. 28,725 as payable to the Govt. of West Bengal. The ITO disallowed the claim on the ground that it related to the earlier years. Aggrieved by the said order of the ITO, the assessee preferred an appeal to the AAC. It appears that the Government had raised royalty to 21/2 per cent. with retrospective effect which the assessee was required to pay. That was done by a notification dated December 29, 1961. The said notification is to the following effect:

" New Delhi--the 29th December, 1961.

S.O. No. 3094 : In exercise of the powers conferred by Section 30A of the Mines and Minerals (Regulation and Development) Act, 1957 (67 of 1957), the Central Government hereby directs that the provision of subsection (1) of Section 9 of the said Act shall apply, with immediate effect, to or in relation to mining leases in respect of coal, granted before the 25th day of October, 1949, subject to the modification that the lessee shall pay royalty at the rate specified in any agreement between the lessee and lessor or at 21/2 per cent. of f.o.r., price, whichever is higher, in lieu of the rate of royalty specified in respect of coal in the Second Schedule to the said Act. "

3. The AAC, after considering the said notification as well as the circular dated July, 1964, issued by the Mining Federation was of the opinion that the liability had not accrued in the year under reference. He, therefore, confirmed the order of the ITO. There was a further appeal before the Tribunal. The claim was restricted to Rs. 22,330 and it was urged that the claim for payment of royalty was settled in 1964 and only after the Mining Federation had issued the circular to the colliery owners. The Tribunal, after considering the facts and circumstances of the case, held that the assessee was within its right to make a claim within the year 1964 for previous years and, therefore, allowed the claim of the assessee. Upon this, the question, as indicated before, has been referred to this court.

4. It is necessary in order to appreciate the question further to refer to certain legal position. Under the West Bengal Estates Acquisition Act, 1953, Section 5 vested the right of the intermediaries in the estate in the Government. Now, this provision came up for consideration before this court in the case of Katras Jharia Coal Co. Ltd. Vs. State of West Bengal and Others, , Mr. Justice Sinha, as his Lordship then was, delivered the judgment. The effect of that judgment was that so far as the State of West Bengal was concerned, the State was not entitled to claim royalty from those who were operating the mines, viz., the type of people like the assessee. As a result of this, certain amount of confusion arose and the right to claim royalty by the State which was payable to the lessor of the mining lease had become ineffective. Realising such position, the Government amended the provision by the West Bengal Estates Acquisition (Amendment) Act, 1964, whereby Sub-section (2) of Section 5 was added and the relevant clause was to the following effect :

"Amendment of Section 5 of West Bengal Act 1 of 1954--Section 5 of the West Bengal Estates Acquisition Act, 1953 (hereinafter referred to as the said Act), shall be re-numbered as Sub-section (1) of that section, and-

(1) in Sub-section (1) as so re-numbered, in Clause (c), for the words " every non-agricultural tenant holding any land ", the words " subject to the provisions of Sub-section (3) of Section 6, every non-agricultural tenant holding any land" shall be, and shall be deemed to have always been substituted.

(2) after Sub-section (1) as so re-numbered, the following sub-section shall be added, namely :--

"(2) For the removal of doubts it is hereby declared that notwithstanding anything to the contrary contained in any judgment, decree or order of any court or tribunal or in any other law, all rights and interests in mines and minerals of all intermediaries, being lessees and sub-lessees, in any notified area shall be deemed to have vested in the State with effect from the date of vesting mentioned in the notification u/s 4 in respect of such notified area."

5. Therefore, when the Government issued the notification raising the rate of royalty to be paid to the Government to 21/2 per cent. on December 29, 1961, it became inoperative in West Bengal by virtue of the decision of the High Court referred to hereinbefore until the amendment was made in 1964. When the Amendment Act, 1964, was passed, it became effective with retrospective effect and the liability to pay royalty arose and the assessee settled the claim. The assessee's liability, even for the earlier years, would have been barred, if such amendment was not passed. On behalf of the assessee, reliance was placed on the case of Nonsuch Estate Ltd. Vs. The Commissioner of Income Tax, Madras, . There, under an unwritten agreement, H & C Ltd. were the managing agents of the assessee-company and were entitled to a commission of 11/2 per cent. on all sales and a sum of Rs. 12,000 per annum for secretarial work. After the coming into force of the Companies Act, 1956, a new agreement was entered into for repayment of H & C Ltd. for a period of 10 years with effect from 1st April, 1956, at a remuneration of 5 per cent. commission on the net profits of the company. Approval of the Central Govt. was applied for in August, 1957, and by a letter dated 2nd September, 1957, the Central Govt. conveyed its approval to the payment of H & C Ltd. for a period of 10 years with effect from 1st April, 1956. In its accounts for the periods ending June 30, 1956, and June 30, 1957, the assessee-company had credited the account of the managing agents with the commission payable under the new agreement and made the corresponding debits in the managing agency remuneration but in computing the income chargeable to Income Tax had added back those amounts. For the period ending June 30, 1958, relevant to the assessment year 1959-60 the assessee-company claimed deduction of a sum of Rs. 97,188 towards remuneration of the managing agents from April 1, 1956, to June 30, 1957, on the ground that the sum became payable only after the Government's approval. The Tribunal and the High Court, on a reference, negatived the claim. On appeal to the Supreme Court, it was held by the Supreme Court that in view of Section 326 of the Companies Act, 1956, which contained an absolute prohibition against payment or repayment of a managing agent before approval of the Central Govt. was obtained, the assessee-company's liability to pay the remuneration of the managing agents arose only when the Government conveyed its approval by its letter dated September 2, 1957, and not prior to that date. The sum of Rs. 97,188 was, therefore, deductible, according to the Supreme Court, in computing the profit for the year ending June 30, 1958. Now, learned advocate for the revenue contended before

us that the royalty payable became due on raising of the coal. For this proposition, he drew our attention to the observations of the Judicial Committee in the case of *Raja Bahadur Kamakshya Narain Singh of Ramgarh v. CIT* [1943] 11 ITR 513. His submission was that there was a claim for royalty by the lessee to the lessor. That claim had only become due to the State instead of to the lessor because of the vesting of the estates by virtue of the West Bengal Estates Acquisition Act, 1953, in the State. Therefore, according to him, the liability had accrued in the earlier years but its destination was changed or the payability was re-determined in respect of the lease to the State. In these circumstances learned advocate for the revenue contended that changing the destination of the payability or fixation of payability would not stop the accrual of liability for the assessee's maintaining the system of accounting under mercantile system of accounting. As the assessee was maintaining the mercantile system of accounting his claim for deduction must be related to the earlier years when the claim arose. It cannot be disputed that the claim for royalty arose on the raising of the coal. But that was a bargain or a contract between the lessee and the lessor. After the coming into operation of the West Bengal Estates Acquisition Act, 1953, there was a doubt as to whose the liability would be. Section 5 of the Act vests the property in the State of West Bengal. Therefore, it was contended that the claim for getting royalty had become vested in the State of West Bengal. This position was disturbed in the meantime in view of the judgment delivered by Sinha J., as referred to hereinbefore, until the amendment of the Act in 1964. Therefore, the State had no right to recover any royalty from the lessee. That right, though it was made to have retrospective effect for the first time, was ineffective until the amendment was made in 1964 because that gave the State the right to realise the royalty. The notification or the communication of the circular issued in 1961 only raised the quantum of royalty but that right remained ineffective in West Bengal and it became effective only with the introduction of the West Bengal Estates Acquisition (Amendment) Act, 1964, though the original Act was given retrospective effect. So, on that date with retrospective effect, it revived the claim. The result of the retrospective operation is not that it made the accrual of any liability as prior to that date. The claim of the lessor to get the royalty was revived with retrospective effect by the coming into operation of Section 5(2) of the amended Act. If that is the correct position, then, in our opinion, in the facts and circumstances of the case., it is not the question of really changing the payability or liability. Legal liability cannot be in vacuum. The right of the State to receive royalty accrued with the coming into operation of the amended Act of 1964. In that view of the matter, we are of the opinion that the Tribunal was right in the conclusion that it reached and the question, therefore, must be answered in the affirmative and in favour of the assessee.

6. In the facts and circumstances of the case, each party will pay and bear its own costs.

Sudhindra Mohan Guha, J.

7. I agree.