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GA 2977 of 2015  
In  
ITAT 133 of 2015  
IN THE HIGH COURT AT CALCUTTA  
SPECIAL JURISDICTION (INCOME TAX)

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-I, KOLKATA

Versus

RUNGTA MINES LTD.

BEFORE:

The Hon'ble JUSTICE SANJIB BANERJEE

The Hon'ble JUSTICE ABHIJIT GANGOPADHYAY

Date : 21st June, 2018.

Ms. Smita Das De, Advocate appears.

Mr. Subash Agarwal, Advocate appears.  
Mr. Brijesh Kr. Singh, Advocate appears.  
Mr. Pranit Bag, Advocate appears.

The Court :- The legal issue that the Revenue seeks to assert is as to whether the payment of the net present value by an assessee engaged in mining for use of forest land for mining purpose would be a capital expenditure or a revenue expenditure.

It is not in dispute that pursuant to a lease for mining manganese ore in village Konthar-Koira in the district of Sundergarh, Odisha, the assessee has

been carrying on mining business in the area. Pursuant to a Supreme Court order in a matter pertaining to forest lands, it was made mandatory for all persons engaged in mining on forest land to pay the fee. The Supreme Court itself has described it to be a one-time fee. It is the treatment of such fee which is the subject of the present discussion.

The Assessing Officer reasoned that since it was a one-time payment for the assessee to continue its business operations or undertake mining operations in the relevant area for the first time, it had to be regarded as a capital expenditure and could not be deducted from the income as a revenue expenditure. In the assessee's appeal before the Commissioner (Appeals), the Commissioner observed that the assessee did not get any fresh right to mining by making the payment of the NPV in terms of the Supreme Court order; it was only that if the payment had not been made, the assessee would have been liable to be hauled up for contempt or have its mining operations stopped.

Both the Commissioner (Appeals) and the Appellate Tribunal have referred to a judgment reported at 107 ITR 39 (*Bikaner Gypsums Ltd. v 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 the 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 Gypsums 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 Gypsums Ltd.*, has to be regarded as a revenue expenditure in accordance with the ratio in the *Bikaner Gypsums 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 *Bikanker Gypsums Ltd* is that in *Bikaner Gypsums 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.

ITAT No. 133 of 2015 and GA No. 2977 of 2015 are dismissed.

There will be no order as to costs.

(SANJIB BANERJEE, J.)

(ABHIJIT GANGOPADHYAY, J.)