

**Enterprising Enterprises Vs. the Deputy Commissioner of Income Tax
Special Range Viii**

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Court : Chennai

Decided On : Apr-01-2004

Reported in : [2004]268ITR95(Mad)

Judge : A.S. Venkatachalamoorthy and ;P.K. Misra, JJ.

Appeal No. : Tax Case (Appeal) No. 169 of 2001

Appellant : Enterprising Enterprises

Respondent : The Deputy Commissioner of Income Tax Special Range Viii

Advocate for Def. : J. Naresh Kumar, Junior Standing Counsel

Advocate for Pet/Ap. : Philip George, Adv.

Disposition : Appeal dismissed

Judgement :

P.K. Misra, J.

1. The following questions of law arise for determination :-

1. Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in law in holding that the quarry lease rent paid to the

Government for acquiring the right to excavate the granite on lease for 10 years is capital expenditure ?

2. Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in law in not appreciating that the lease was not of the land as such but only a lease of the right to excavate the granite blocks under the surface for a period of ten years?

2. The facts giving rise to the above questions of law are as follows :-

Appellant is a partnership firm carrying on the business of cutting, polishing and exporting granites. The questions raised relate to the assessment year 1991-92. The appellant had taken quarry on lease for a period of 10 years for extraction of granites. The proportionate lease rent paid for the period from 10.1.1991 to 31.10.1991 was claimed by the assessee as revenue expenditure. The Assessing Officer disallowed the claim and treated such expenditure as capital expenditure. In the appeal filed by the assessee, the appellate authority was of the opinion that no enduring asset had been obtained and the proportionate rent for the period in question was considered as revenue expenditure. Being aggrieved, the matter was taken to the Income Tax Appellate Tribunal by the Revenue. The Income Tax Appellate Tribunal relying upon the decision reported in : [1960]40ITR67(SC) (PINGLE INDUSTRIES LTD. v. COMMISSIONER OF INCOME-TAX, HYDERABAD), came to the conclusion that the expenditure was capital expenditure and accordingly allowed the appeal filed by the Revenue, giving rise to the present appeal before the High Court.

3. Learned counsel appearing for the appellant has contended that no asset of enduring character had been acquired and only the right to use the raw material had been conferred and even though initially a lumpsum had been paid, such amount should be taken to be revenue expenditure.

4. Learned counsel for the appellant has placed strong reliance upon the decision of the Supreme Court reported in : [1966]59ITR718(SC) (GOTAN LOIME SYNDICATE v. COMMISSIONER OF INCOME-TAX, RAJASTHAN AND DELHI), wherein the Supreme Court distinguished the earlier decision reported in 40 ITR

67 (cited supra) and came to the conclusion that royalty payment including the dead rent on the facts and circumstances of the said case had to be treated as revenue expenditure. Two decisions reported in : [1960]40ITR67(SC) were subsequently considered by the Supreme Court in : [1999]239ITR817(SC) (ADITYA MINERALS PVT. LTD. v. COMMISSIONER OF INCOME-TAX). In the said case, the assessee had obtained lease in respect of a land for a period of 15 years on payment of certain amount calculated at the basis of monthly rent, which was payable in advance and to be adjusted towards the rent for every month. The lease granted to the assessee the liberty to use the land for excavation purposes and subsidiary purposes. Considering the fact that there was payment once for all and distinguishing the case reported in : [1966]59ITR718(SC) , the Constitution Bench of the Supreme Court came to the conclusion that the expenditure was capital expenditure. The facts and circumstances of the case are almost similar of the aforesaid Supreme Court decision.

5. Following the aforesaid decision, which had approved : [1960]40ITR67(SC) , we are of the opinion that on the facts and circumstances of the present case, the questions raised have to be answered against the assessee and in favour of the revenue.

6. On the aforesaid conclusion, we dismiss the appeal. No costs.