

14.33 hrs.

CONSTITUTION (AMENDMENT)
BILL* 1965

(Amendment of Preamble)

श्री कृष्ण रेव त्रिपाठी (उनाव) :
मैं प्रस्ताव करता हूँ कि भारत के संविधान में भागे संशोधन करने वाले विधेयक की पेश करने की अनुमति दी जाय।

Mr. Deputy-Speaker: The question is:

"That leave be granted to introduce a Bill further to amend the Constitution of India".

The motion was adopted.

श्री कृष्ण रेव त्रिपाठी : मैं विधेयक का पेश करता हूँ ।

14.34 hrs.

INCOME-TAX (AMENDMENT) BILL
1965—contd.

Dr. L. M. Singhvi (Jodhpur): I beg to move:

"That the Bill further to amend the Income-tax Act, 1961, be taken into consideration."

Mr. Deputy-Speaker, Sir, I have raised this matter on the floor of this House on more than one occasion. Each time there has been some kind of an assurance. Unfortunately however, between these assurances and the practice of the Ministry there was a wide variance, and this has only contributed to making the existing confusion worse confounded.

The purpose of the proposed amendment, as I have explained in the Statement of Objects and Reasons to this Bill, is to ensure that royalty payments under Mining Leases are allowed as deductible expenditure in computing business income under the

parent Act. This has been a vexed question in our own jurisprudence, and there are several judgments of the Privy Council and the Supreme Court in this matter. But if I may be permitted to recapitulate the background of the case law in this context, I would like to refer to the decision of the Full Bench of the Lahore High Court and the decision of the Judicial Committee of the Privy Council which had held in 1947 and 1949 that the payment of royalty was the price of the raw material or stock-in-trade and therefore it should be construed as revenue expenditure. In the case of Pingle Industries Ltd. the Supreme Court held, by a majority judgment of two to one, that the assessee acquired by long-term lease a part of the land and that the payment was neither rent nor royalty but a lump-sum payment in instalments for acquiring a capital asset of enduring benefit to the trade.

Building on this foundation, the Rajasthan High Court in the recent case, of Gotan Lime Syndicate made a further departure and pronounced that even the royalty and dead rent, which were calculated with reference to the production of the mineral, were capital expenditure and were therefore not allowable as deductible expenditure.

As a result of this decision of the Rajasthan High Court it seems that the Department of Income-tax came down on the entire mining industry with an almost unprecedented gusto and a relentless lack of appreciation of their difficulties. Luckily, Mr. Deputy-Speaker, only a few days ago the Supreme Court has intervened by laying down, in an appeal from the case of Gotan Lime Syndicate, that in the facts of that case obviously this was to be construed as revenue expenditure and was allowable as an asset. This has naturally removed the doubt and the confusion, the

*Published in the Gazette of India, dated 19-11-65.