

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 intro-
duce 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 how-
ever, between these assurances and
the practice of the Ministry there is
a wide variance, and this has only
contributed to making the existing
confusion worse confounded.

The purpose of the proposed amend-
ment, 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 back-
ground of the case law in this con-
text, 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 major-
ity 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 ac-
quiring 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 remov-
ed the doubt and the confusion, the

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