IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND SHRI JASON P BOAZ, ACCOUNTANT MEMBER

ITA No.2843/Bang/2018
Assessment year : 2012-13

M/s. Vibhutigudda Mines Pvt. Ltd., No.60/356-A, "Modi Bhavan" Hospet Road, Allipur, Bellary – 583 105. **PAN : AAACV 5851 D**	Vs.	The Assistant Commissioner of Income Tax, Circle – 1, 'Aaykar Bhavan' Staff Road, Fort, Bellary – 583 103.
APPELLANT		RESPONDENT

Assessee by	:	Shri. B. S. Balachandran, Advocate
Revenue by	:	Shri. A. Ramesh Kumar, JCIT

Date of hearing	:	07.05.2019
Date of Pronouncement	:	03.07.2019

O R D E R

Per Jason P Boaz, Accountant Member:

This appeal by the assessee is directed against the order of CIT(A), Gulbarga, dated 30.08.2018 for Assessment Year 2012-13.

2. Briefly stated, the facts relevant for disposal of this appeal are as under:

2.1 The assessee, a company engaged in the business of mining of iron ore and power generation, filed its return of income for Assessment Year 2012-13 on 29.09.2012 declaring loss of (-) Rs.11,17,87,318/-. The return of income was processed under section 143(1) of the Income Tax Act, 1961 (in short 'the Act') and

the case was taken up for scrutiny for this Assessment Year. The assessment was concluded under section 143(3) of the Act vide order dated 25.03.2015, wherein the assessee's loss was determined at Rs.(-) 10,54,76,673/- in view of the following additions / disallowances:-

(i)	Under Section 14A r.w.r. 8D	-	Rs.38,04,113/-
(ii)	Interest from GESCOM	-	Rs. 6,532/-
(iii)	Disallowance of contribution to FIMI	-	Rs.25,00,000/-

The assessee's appeal was dismissed by the CIT(A), Gulbarga vide order dated 30.08.2018.

3.1 Aggrieved by the order of CIT(A)-Gulbarga, dated 30.08.2018 for Assessment Year 2012-13, the assessee has preferred this appeal before the Tribunal, wherein it has raised the following grounds:-

1. The impugned assessment order is opposed to the acts of the case and the law and therefore, it is liable to be set-aside.

ADDITION OF CONTRIBUTION TO FIMI.

2. The Learned Assessing Officer as well as the Learned CIT(A) erred in disallowing Rs.25,00,000/-, without appreciating that the said sum was incurred on grounds of commercial expediency and accordingly allowable expenditure under section 37(1) of the Act.

3. The grounds are taken without prejudice to one another and the Appellant craves leave to add or delete or modify or revise any ground at the time of hearing before the Hon'ble ITAT.

3.2 The only issue agitated by the assessee in this appeal, in the grounds raised (supra), is in assailing the impugned order of the CIT(A) for upholding the disallowance of the assessee's contribution to the Federation of Indian Mineral Industries (FIMI) of an amount of Rs.25,00,000/-, without appreciating the fact that the said sum was incurred on grounds of commercial expediency and accordingly allowable expenditure under section 37(1) of the Act. The learned AR was heard in support of the grounds raised (supra) and reiterated the assessee's submissions put forth before the authorities below. In support of the assessee's contentions, the learned AR placed reliance on the decision of the ITAT – Delhi Bench in the case of Rio Tinto India Pvt. Ltd., Vs. ACIT in ITA No.363/Del/2012 dated 22.06.2012; wherein on the similar issue of contribution to FIMI by that assessee, the said expenditure was held to be allowable revenue expenditure.

3.3 Per contra, the learned DR for Revenue supported the orders of the authorities below.

3.4.1 We have considered the rival contentions / submissions and the material on record; including the judicial pronouncement cited. The facts of the matter, as emerge from the record, are that in the year under consideration, the assessee made a contribution of Rs.25,00,000/- to FIMI by way of cheque bearing No.496968 dated 29.10.2011 and claimed it as a revenue expenditure. The authorities below disallowed the assessee's claim as they were of the view that the contribution of Rs.25 lakhs to 'FIMI' cannot be termed as expenditure incurred wholly and exclusively for the assessee's business and therefore not an allowable expenditure under section 37(1) of the Act.

3.4.2 After having heard the parties and considering the facts on record, we are of the view that the identical issue of the assessee's claim for being allowed deduction of its contribution to 'FIMI' as revenue expenditure, was considered and

allowed by the ITAT – Delhi Bench in the case of Rio Tinto India Pvt. Ltd., Vs. ACIT, wherein its order in ITA No.363/Del/2012 dated 22.06.2012, at paras 13 to 17 thereof, it was held as under:-

"13. Ground no.4 in the appeal relates to disallowance of an amount of Rs.50 lacs on account of contribution towards Federation of Indian Mining Industries Building Fund. To a query by the AO during the course of assessment proceedings, the assessee replied that Federation of Indian Mining Industries was engaged in liaisoning with various Government bodies on mining related issues and since it provides support to mining industries and the assessee is rendering services to the mining industries, the expenditure was wholly and exclusively incurred for the purpose of business. However, the AO did not accept the submissions of the assessee on the ground that the assessee failed to establish that expenditure was incurred wholly and exclusively for the purpose of business. Inter alia, the AO relied upon decision in CIT Vs. Chandulal Keshavlal & Co. (1960) 38 ITR 601 (SC) and distinguished the decision relied upon by the assessee in CIT Vs. Kamal and Co. 203 ITR 1038(Raj.).

14. *On appeal, the Id. CIT(A) upheld the disallowance, holding as under:-*

> *"6.1 I have carefully considered the assessment order and the submission made by the learned AR. The payments of '5·0 lacs is towards the building fund of FIMI i.e. Federation of Indian Mineral Industries. The payment cannot be said to be for the purpose of business and revenue in nature. The appellant's plea that the payment has been made to FIMI as it provides support to the mining industries and therefore should be allowed as revenue expense is not acceptable. The expense is in the nature of donation and is capital in nature cannot be said to have been incurred wholly and exclusively for the purpose of business as required under the provisions of section 37(1) of the Act. The same is, therefore, rejected."*

15. *The assessee is now in appeal before us against the aforesaid findings of the Id. CIT(A). The Id. AR on behalf of the assessee relied upon the decision in Chemicals & Plastics India Ltd. 292 ITR 115 (Mad): CIT Vs. Cooperative Sugars Ltd., 304 ITR 259(Kerala); ACIT Vs. Rajasthan Spinning and Weaving Mills Ltd.,274 ITR 463(Rajasthan) while contending that since activities of the FIMI are closely linked with the welfare of mining industry, the expenditure is admissible as revenue .*

16. *On the other hand, the Id. DR supported the findings of the Id. CIT(A) on the ground that the amount conferred enduring benefit to the assessee, spread over a number of years and thus, could not be allowed as revenue expenditure.*

17. *We have heard both the parties and gone through the facts of the case as also the aforesaid decisions relied upon by the Id. AR.. As is apparent from the aforesaid facts, an amount of Rs.50,00,000/- has been contributed towards building fund of Federation of Indian Mineral Industries, the assessee being one of the members of the said Federation. The Id. CIT(A) treated the amount in the nature of donation and capital in nature. Whether the amount is revenue or capital in nature, Honble Apex Court in K. T. M. T. M. Abdul Kayoom v. CIT.44 ITR 689 (SC) held that each case depends on its own facts and close similarity between one case and another is not enough. even a significant detail may alter the entire aspect. It was observed that what is decisive is the nature of business, the nature of the expenditure, the nature of the right acquired, and their relation inter se, and this is the only key to resolve the issue in the light of the general principles, which are followed in such cases. In Sri Venkata Satyanarayana Rice Mill Contractors Co. v. CIT,223 ITR 101(SC),Honble Apex Court held that the correct test is that of commercial expediency. In Chemicals & Plastics India Ltd.(supra), Hon'ble Madras High Court while adjudicating as to whether or not the amount of Rs. 1.5 lakhs paid towards the construction of building of the Madras Chamber of Commerce was allowable as business expenditure, held that since the contribution made by the company is for the Chamber of Commerce, whose activities are closely linked with the welfare of the corporate entities. who are members therein and whose interest are taken care of by the Chamber of Commerce. irrespective of whether the expense incurred is compulsory or otherwise., it satisfies the commercial expediency test . In CIT vs. T. V. Sundaram lyengar And Sons Pvt. Limited.,186 ITR 276(SC), Hon'ble Apex Court upheld the findings of the ITAT that the amount advanced by the assessee-employer for construction of houses under "Subsidised Industrial Scheme" for its employees would be in the nature of a revenue expenditure and the fact that the scheme was not for any temporary or particular duration makes little difference to the nature of the expenditure. In Rajasthan Spinning and Weaving Mills Ltd(supra) contribution to the export promotion fund made by the assessee for promoting its business interest by augmenting exports was held to be incurred and laid out wholly and exclusively for the purpose of the assessee's business. In L.H. Sugar Factory and Oil Mills P. Ltd. v. CIT [1980] 125 ITR 293(SC) the Hon'ble Supreme Court allowed the contribution made by a sugarcane factory for construction of a road, at the request of the District Collector. Following this decision, Hon'ble Kerala*

High Court in Co-operative Sugars Ltd.(supra) held that the contribution made by the company at the suggestion of the State Minister concerned, for sharing of cost incurred for cement lining of an irrigation canal serving sugarcane cultivators was allowable as revenue expenditure under section 37(1) of the Act, as it went to the advantage of the company in the form of better supply of sugarcane.

17.1 In the instant case, the assessee, rendering services to mining Industry, contributed towards building fund of Federation of Indian Mineral Industries , of which the assessee is a member . Indisputably, the assessee is rendering services to the mining industry The said federation has over 44 years of experience in mining technology solutions for the mineral Industry. In 1966, the individual mine operators and associations established an all-India federation, a non-profit corporate body under the Companies Act, 1956 to promote the interests of mining, mineral processing, metal making and other mineral-based industries and to attend to the problems faced by them in lease grants, renewals, tenures, production, taxation, trade, exports, labour, etc. The Federation envelopes in its fold mining, mineral processing, metal making, cement and other mineral-derived industries as well as granite, stone, marble and slate industries private, joint and public sectors of the country. It represents the entire non-fuel mining and mineral processing activities of the nation. Apparently, the expenditure incurred by the assessee by way of contribution towards building fund of the said federation, is for commercial consideration and it is not incurred for the purpose of securing any capital assets. In the light of view taken in the aforesaid decisions, we are of the opinion that contribution towards building fund of Federation of Indian Mineral Industries, of which the assessee is a member, has been incurred with a view to obtaining a commercial advantage and is allowable as revenue expenditure. In view thereof, ground no. 4 in the appeal is allowed."

3.4.2 Respectfully following the above cited decision of the ITAT – Delhi Bench in the case of Rio Tinto India Pvt. Ltd., Vs. ACIT (supra), we uphold the assessee's claim for the expense of Rs.25 lakhs paid as contribution to FIMI to be allowed as revenue expenditure incurred in the course and for the purposes of the assessee's business and consequently delete the disallowance made by the AO in this regard. We hold and direct accordingly.

4. In the result, the assessee's appeal for Assessment Year 2012-13 is allowed.

Order pronounced in the open court on this 3rd day of July, 2019.

Sd/-	Sd/-
(N. V. VASUDEVAN)	**(JASON P BOAZ)**
Vice President	**Accountant Member**

Bangalore.
Dated: 3rd July, 2019.
/NS/*

Copy to:

1.	Appellants	2.	Respondent
3.	CIT	4.	CIT(A)
5.	DR	6.	Guard file

By order

Assistant Registrar,
ITAT, Bangalore.