

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

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| ITA No.1780 - 1782/Bang/2018 |
| Assessment Year : 2012-13 - 2014-15 |

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| M/s Zeenath Transport Company, Mine Owners, Zeenath House, Door No.24, Ward No.22, Main Road, Cowl Bazar, Bellary-583 102. PAN - AAFZ 0512 E | Vs. | The Asst. Commissioner of Income-Tax, Circle-1, Bellary. |
| APPELLANT | | RESPONDENT |

| | | |
|-------------|---|----------------------------------|
| Assessee by | : | Shri Siva Prasad Reddy, Advocate |
| Revenue by | : | Ms. Neera Malhotra, CIT (DR) |

| | | |
|-----------------------|---|------------|
| Date of Hearing | : | 23-07-2021 |
| Date of Pronouncement | : | 18-08-2021 |

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals are filed by the assessee against orders dated 22/03/2018 passed separately by the Ld.LCIT(A), Gulbarga for assessment year 2012-13 to 2014-15 on following grounds mentioned of appeal.

ITA No.1780/Bang/2018

"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.

10% OF THE SALE PROCEEDS WITHHELD & RETAINED.

2.1. *The Learned Assessing Officer as well as the Learned Commissioner of Income-tax (Appeals) ought to have appreciated that the amount of Rs.1,22,93,688/-, withheld and retained by the Central Empowered Committee (CEC) constituted by the Hon'ble Supreme Court as a percentage (10%) of sale proceeds, is not income of the assessee-appellant as it never reached the appellant at any point of time, and it was diversion of income by overriding title.*

2.2. *Without prejudice to the Ground No.2.1 above, the Authorities below failed to appreciate that the expenditure in question has acquired the character of statutory deduction, since it is withheld and retained by the CEC on the directions of the Hon'ble Supreme Court and as such, it is allowable expenditure wholly and exclusively laid out and expended for the purposes of business.*

2.3. *Without prejudice to the Ground Nos.2.1 & 2.2 above, the Authorities below failed to appreciate that the expenditure in question is not prohibited by Law, and on the contrary, it is mandated by Law, since it is withheld and retained by the CEC on the directions of the Hon'ble Supreme Court, and as such, Explanation-1 under subsection (1) of section 37 of the Act has no application.*

2.4. *Without prejudice to the Grounds in Nos.2.1, 2.2 & 2.3 above, the Learned Assessing Officer as well as the Learned Commissioner of Income-tax (Appeals) ought to have appreciated that the Explanation-2 in section 37(1) of the Act is not retrospective in operation and therefore, the expenditure being contribution towards SVP could not be disallowed applying the said Explanation for the present assessment year, which is a pre-amendment assessment year.*

2.5. *The Learned CIT(A) failed to appreciate that the assessee/appellant is a partnership firm, and not a company, and accordingly the restrictive clause in Explanation-2 of section 37(1) of the Act, relating to expenditure on Corporate Social Responsibility (CSR) was not applicable to the amount withheld and retained by the CEC.*

2.6. *The Learned CIT(A) ought to have appreciated that the amount in question retained by the CEC was not set apart as per section 135 of the Companies Act, 2013 and therefore, the restriction in the said Explanation-2 is not attracted, even if the said Explanation is ultimately held to be retrospective in operation and as applicable to non-corporate assesseees also.*

CONTRIBUTION TOWARDS FLOOD RELIEF.

3.1. *The Authorities below ought to have appreciated that the contribution of Rs.2,40,00,000/- towards Flood Relief as per the MOU executed with the Government of Karnataka is an eligible expenditure of business u/s 37 of the Act, since it is expended wholly and exclusively for the purpose of the business.*

3.2. *The Learned AO and the Learned CIT(A) have failed to appreciate that the amount of Rs.2,40,00,000/- towards flood relief was contributed under*

an element of compulsion, at the instance of Government of Karnataka, and accordingly, it is an expenditure incurred wholly and exclusively for the purpose of the business, and allowable u/s 37(1) of the Act.

3.3. The Authorities below ought to have appreciated that Explanation-2 u/s 37(1) of the Act was inserted by the Finance Act, 2014, w.e.f. 01-04-2015, cannot be applied retrospectively for the present assessment year to disallow, the expenditure towards flood relief.

3.4. The Learned CIT(A) failed to appreciate that the assessee/appellant is a partnership firm, and not a company, and accordingly the restrictive clause in Explanation-2 of section 37(1) of the Act, relating to expenditure on Corporate Social Responsibility (CSR) was not applicable.

3.5. The Learned CIT(A) ought to have appreciated that the expenditure in question was not set apart as per section 135 of the Companies Act, 2013 and therefore, the restriction in the said Explanation-2 is not attracted, even if the said Explanation is ultimately held to be retrospective in operation and as applicable to non-corporate assessees also.

CONTRIBUTION TO FIMI TOWARDS LEGAL EXPENSES.

4.1. The Authorities below failed to appreciate that payments made to FIMI towards legal expenses amounting to Rs.20,00,000/- are expended wholly and exclusively for the purpose of business and therefore, allowable as business expenditure under section 37(1) of the Act.

4.2. The Authorities below ought not to have restricted the payment of Rs.20,00,000/- to FIMI towards legal expenses under section 50G of the Act, failing to appreciate that the entire expenditure is allowable under section 37(1) of the Act.

TRAVELLING EXPENSES.

5. The Learned CIT(A) ought to have appreciated that there is no defect in claiming the expenditure on foreign travel as per his own finding and therefore, ordered deletion of the entire addition of Rs.4,68,259/- consistent with his own finding.

6. The Appellant denies the liability to pay the interest u/s 234B and 234C of the Act.

7. The Grounds of Appeal 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.

For these and other grounds that may be urged at the time of hearing, it is prayed that the Hon'ble ITAT may be pleased to allow the appeal in the interest of the equity and justice.

ITA No.1781 & 1782/Bang/2018

"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.

10% OF THE SALE PROCEEDS WITHHELD & RETAINED.

2.1. *The Learned Assessing Officer as well as the Learned Commissioner of Income-tax (Appeals) ought to have appreciated that the amount of Rs.1,22,93,688/-, withheld and retained by the Central Empowered Committee (CEC) constituted by the Hon'ble Supreme Court as a percentage (10%) of sale proceeds, is not income of the assessee-appellant as it never reached the appellant at any point of time, and it was diversion of income by overriding title.*

2.2. *Without prejudice to the Ground No.2.1 above, the Authorities below failed to appreciate that the expenditure in question has acquired the character of statutory deduction, since it is withheld and retained by the CEC on the directions of the Hon'ble Supreme Court and as such, it is allowable expenditure wholly and exclusively laid out and expended for the purposes of business.*

2.3. *Without prejudice to the Ground Nos.2.1 & 2.2 above, the Authorities below failed to appreciate that the expenditure in question is not prohibited by Law, and on the contrary, it is mandated by Law, since it is withheld and retained by the CEC on the directions of the Hon'ble Supreme Court, and as such, Explanation-1 under subsection (1) of section 37 of the Act has no application.*

2.4. *Without prejudice to the Grounds in Nos.2.1, 2.2 & 2.3 above, the Learned Assessing Officer as well as the Learned Commissioner of Income-tax (Appeals) ought to have appreciated that the Explanation-2 in section 37(1) of the Act is not retrospective in operation and therefore, the expenditure being contribution towards SVP could not be disallowed applying the said Explanation for the present assessment year, which is a pre-amendment assessment year.*

2.5. *The Learned CIT(A) failed to appreciate that the assessee/appellant is a partnership firm, and not a company, and accordingly the restrictive clause in Explanation-2 of section 37(1) of the Act, relating to expenditure on Corporate Social Responsibility (CSR) was not applicable to the amount withheld and retained by the CEC.*

2.6. *The Learned CIT(A) ought to have appreciated that the amount in question retained by the CEC was not set apart as per section 135 of the Companies Act, 2013 and therefore, the restriction in the said Explanation-2 is not attracted, even if the said Explanation is ultimately held to be retrospective in operation and as applicable to non-corporate assesseees also.*

CONTRIBUTION TOWARDS FLOOD RELIEF.

3.1. *The Authorities below ought to have appreciated that the contribution of Rs.2,40,00,000/- towards Flood Relief as per the MOU executed with the Government of Karnataka is an eligible expenditure of business u/s 37 of the Act, since it is expended wholly and exclusively for the purpose of the business.*

3.2. *The Learned AO and the Learned CIT(A) have failed to appreciate that the amount of Rs.2,40,00,000/- towards flood relief was contributed under*

an element of compulsion, at the instance of Government of Karnataka, and accordingly, it is an expenditure incurred wholly and exclusively for the purpose of the business, and allowable u/s 37(1) of the Act.

3.3. The Authorities below ought to have appreciated that Explanation-2 u/s 37(1) of the Act was inserted by the Finance Act, 2014, w.e.f. 01-04-2015, cannot be applied retrospectively for the present assessment year to disallow, the expenditure towards flood relief.

3.4. The Learned CIT(A) failed to appreciate that the assesseeappellant is a partnership firm, and not a company, and accordingly the restrictive clause in Explanation-2 of section 37(1) of the Act, relating to expenditure on Corporate Social Responsibility (CSR) was not applicable.

3.5. The Learned CIT(A) ought to have appreciated that the expenditure in question was not set apart as per section 135 of the Companies Act, 2013 and therefore, the restriction in the said Explanation-2 is not attracted, even if the said Explanation is ultimately held to be retrospective in operation and as applicable to non-corporate assessees also.

4. The Appellant denies the liability to pay the interest u/s 234B and 234C of the Act.

5. The Grounds of Appeal 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.

For these and other grounds that may be urged at the time of hearing, it is prayed that the Hon'ble ITAT may be pleased to allow the appeal in the interest of the equity and justice.”

Brief facts of the case are as under :

2. The assessee is engaged the business of mining, manufacture and sale of iron ore. The assessee filed its return of income on 30.09.2013 declaring total income of Rs.170,44,59,280/-. During the course of assessment proceedings, the Ld.AO observed that the assessee has debited an amount of Rs. 28,60,12,206/-under the head Special Purpose Vehicle (SPV) Charges. The said amount being, 10% & 15% of sales value e-auctioned Iron-ore under Category-A & Category-B Mines respectively, deducted by Monitoring Committee (ME) towards SPV Charges. The said amount was retained by the Central Empower Committee (CEC) as per the directions of the

Hon'ble Supreme Court, out of sale proceeds, for the purpose of taking various ameliorative and mitigative measures. Ld.AO was of the opinion that, as the said retention of amount is in the nature of appropriation of profit and compensatory payment towards damages caused due to the environment and forest due to contravention of laws, the said payment cannot be said to be incurred wholly and exclusively for the purpose of business within the meaning of the provisions of section 37 of the IT Act. The Ld.AO thus sought for explanation towards the disallowance of the deduction claimed by the assessee.

2.3 In response, the assessee submitted that,

“As per the procedure adopted, based on the directions issued by the Hon'ble Supreme Court from time to time inclusive of the directions given while disposing the Writ Petition bearing No. CIVIL 562 of 2009 dated 18.04.2013, from sale proceeds a percentage of 10% is to be deducted from the e-auction sale proceeds in respect of 'A' category of Mines and 15% in respect of 'B' category and to spend the said amount under "Special Vehicle Purpose". As stated in the directions, this deduction is for the purpose mitigating the effects as per "Comprehensive Environment Plans for the Mining Impact Zone". Hence, this is a legal amount deducted as per the directions of the Hon'ble Supreme Court which is towards mitigative measures. This is nothing but an expenditure and which should be allowed as such in our hands as we do not have any right to claim from the amount earmarked for "Special Purpose Vehicle" as per the directions of Hon'ble Supreme Court.”

2.4 The Ld.AO, however determined assessed Income at Rs.203,94,98,140/- by making following additions/disallowances in the hands of assessee;

| | | | |
|----------------------------------|-----------------------------------|---|---------------------------------|
| (i). | Disallowances of SPV expenses | : | Rs.28,60,12,206/- |
| (ii). | Contribution to Flood Relief Work | : | Rs. 1,40,14,000/- |
| (iii). | Retrieval of stock u/s.40(1)(a) | : | Rs. 3,44,76,848/- |
| (vi) | Disallowance of amt. paid to BATF | : | Rs. <u>5,35,800/-</u> |
| TOTAL ADDITIONS/ DISSALLOWANCES: | | | <u>Rs.33,50,38,854/-</u> |

3. The Ld.CIT(A) upheld the disallowance made by the Ld.AO by observing as under:

“5.6 Further it is a General rule that, if an assessee is penalised under one Act, he cannot claim that the amount to be set off against his income under another Act, because that will be frustrating/defeating the entire object of penalising under the other Act. If the assessee resorts to unlawful means to augment his profits or reduce his loss, then the expenditure incurred for these unlawful activities cannot be allowed to be deducted whether the business is lawful or otherwise. Even if the entire business of the assessee is illegal and income is sought to be taxed by the assessing Officer, the expenditure in the illegal activities is not deductible after the insertion of Explanation to Section 37(1) by the Finance Act, 1998. It has been consistently held by the Courts that fines or penalties payable for Violation of law of the land cannot be permitted as deduction under the Income-tax Act. That will be against public policy to allow the benefit of deduction under one statute, of any expenditure incurred in violation of the provisions of another statute or any penalty imposed under another statute [Maddi Venkataraman & Co. (P) Ltd vs. CIT (1998) 229 ITR 534 (SC)]. Even though the need for making such payments arose out of trading operation, the payments were not wholly and exclusively for the purpose of the trade.

Infraction of the law is not a normal incident of business and therefore, no expense which is paid by way of penalty for breach of the law can be said to be an amount wholly and exclusively laid for the purpose of business [Haji Aziz & Abdul Shakoor Bros. Vs. CIT (1961) 41 ITR 350 (SC)]. A payment made under a statutory obligation because the assessee was in default could not constitute expenditure laid out for the purpose of assessee's business [Indian Aluminium Co. Ltd Vs. CIT (SC) 79 ITR 514].

In the case of Indian Aluminium Co. Ltd Vs. CIT (SC) 79 ITR 514 it was held by the Apex Court that - A payment made under a statutory obligation because the assessee was in default could not constitute expenditure laid out for the purpose of assessee's business.

It is not out of place to emphasise once again the judgement in the case of Maddi Venkataraman & Co. (P) Ltd vs. CIT (1998) 229 ITR

534 (SC) wherein the Hon'ble Supreme Court has held that - Even if the entire business of the assessee is illegal and income is sought to be taxed by the assessing Officer, the expenditure in the illegal activities is not deductible after the insertion of Explanation to Section 37(1) by the Finance Act, 1998. It has been consistently held by the Courts that fines or penalties payable for Violation of law of the land cannot be permitted as deduction under the Income-tax Act. That will be against public policy to allow the benefit of deduction under one statute, of any expenditure incurred in violation of the provisions of another statute or any penalty imposed under another statute.

The fines /penalties paid for violating the law in the course of the conduct of business cannot be regarded as deductible expenditure, as the assessee is expected to carry on the business in accordance with law and not violation of law. In the instant case, the assessee has violated the law and has formed Illegal Mining Pits and Illegal Dumping of waste, whereby, the Hon'ble Apex Court on the recommendation of CEC has directed to collect the amounts for violation of such law.

In view of the above, the relevant ground of appeal is dismissed.

In the light of the above, the appellant's contention that the AO is not justified in making the impugned addition of Rs. 28,60,12,206, is baseless and has no merits, stands on a weak footing and is without basis and lacks merits. The AO is justified and I do not find any need to interfere with the order. Therefore, the addition made is sustained. The relevant ground of appeal is hereby dismissed.

Therefore, the addition of Rs. 28,60,12,206/- made by the AO is sustained.”

4. Aggrieved by order of Ld.CIT(A) assessee is in appeal before us now.

Ground No.2.1 to 2.6

5. The Ld.AR submitted the details of mining leases owned by the assessee and its classifications as per the orders of the Hon'ble Supreme Court as under:

| SL No. | Area (In Hectares) | Category as per the CEC/Order of the Hon'ble SC |
|--------|--------------------|---|
| 2547 | 50.00 | A |
| 2239 | 43.58 | B |
| 2309 | 38.50 | B |
| 2488 | 26.59 | B |

5.1. The Ld.AR submitted that the assessee debited the above amount to P & L Account as SPV Expenses as, this amount was deducted by MC as per the directions of *Hon'ble Supreme Court* out of sale proceeds for the purpose of taking various ameliorative and mitigative measures. Ld.AR submitted that, assessee filed reply before authorities below and submitted that *Hon'ble Supreme court* in Category 'A' mines, directed contribution of 10% out of e auction sales towards SPV and in Category 'B' mines, the contribution was to the extent of 15% of e- auction sales. Ld.AR submitted that SPV expenses were for socio economic development of the mining area. He further submitted that Ld.AO invoked *Explanation 1 to section 37 (1)* of Act.

5.2. Ld.AR relied on decision of *Hon'ble Hyderabad Tribunal* in case of *NMDC Ltd. Vs. ACIT* reported in *175 ITD 332*. Our attention was drawn to paras 9 to 11 of the said order. The Ld.AR pointed out that in Para 10 of order, *Hon'ble Hyderabad Tribunal* noted that assessee therein was classified as 'A' Category mine and in para 11, it was held by the *Tribunal* that 10% of sale proceeds being SPV in 'A' category mine was to be contributed

without which, assessee therein could not have resumed its activities and therefore, is a 'business expenditure' and is allowable u/s 37(1) of Income tax Act. He submitted that the only difference is in percentage of SPV contribution, which is 15% of sale proceeds in 'B' Category as against 10% of sale proceeds in 'A' Category. Ld.AR submitted that it does not change the nature/character of expenditure and therefore, in the present case, decision of Hon'ble Hyderabad Tribunal is squarely applicable.

5.3 The Ld.AR submitted that the issue of allowability of 10/15% of sale proceeds remitted to SPV has been considered at length by the Co-ordinate Bench of this Tribunal in following cases:

(i). *M/s. Veerabhadrappa Sangappa & Co., in ITA No.1054/Bang/2019 order dated, 08-12-2020.*

(ii). *M/s. Ramgad Minerals & Mining Ltd. in ITA Nos.1270 & 12711Bang12019 order dated, 04-11-2020).*

(iii). *Sri B.Rudragouda- ITA Nos. 314 & 315/Bang/2020, dated, 15-04-2021 for the assessment years, 2015-16 &2016-17.*

5.4 On the contrary Ld.CIT.DR relied on observations by Ld.CIT(A).

5.5 The Ld.AR in the written submission submitted the issues for consideration for years under consideration as under:-

| Issue No. | Issue | Ground Nos (Form No 36, Appeal Papers) | Assessment Year | | |
|-----------|-------------------------|--|-----------------|----------|----------|
| | | | 2012 -13 | 2013 -14 | 2014 -15 |
| 1. | SPV deduction - 10%/15% | 2.1 to 2.6. | Yes | Yes | Yes |

| | | | | | |
|----|------------------------------|-------------|-----|-----|------|
| 2. | Contribution to Flood Relief | 3.1 to 3.5. | Yes | Yes | Yes |
| 3. | Contribution to FIMI | 4.1 to 4.2. | Yes | -- | -- |
| 4. | Travelling Expenses | 5 | Yes | -- | ---- |

5.6 He also submitted the assessee do not wish to press Ground No.5 for AY 2012-13 since the issue was not raised *before the Ld.CIT(A)*.

Accordingly Ground No.5 stands dismissed as not pressed.

5.7 As the issues raised by assessee in all years under consideration are common and identical, they are disposed off by way of common order.

Ground No.2.1-2.6:

6. We have considered rival submissions in light of records placed before us.

6.1 The allowability of this expenditure first came up for consideration before the coordinate Bench of this *Tribunal* in the case of *Ramgad Minerals & Mining Ltd. in ITA Nos.1270 & 1271/Bang/2019, order dated 4.11.2020 for the assessment years 2013-14 & 2014-15*, wherein it was held as under:-

“7.8.12. On careful reading of decision of Hon’ble Supreme Court dated 18/04/2013, it is clear that 15% contribution to SPV account was guarantee payment for implementing of R & R plan, which would be deducted from sale proceeds. This was one of the conditions for resuming mining operations under Category ‘B’. We refer to and rely on observations by Hon’ble Supreme Court in case of CIT vs Sitaldas Tirathdas reported in (1961) 41 ITR 367. Hon’ble Supreme Court laying down following principal referred to various rulings that illustrated aspects of diversion of income by overriding title.

“These are the cases which have considered the problem from various angles. Some of them appear to have applied the principle correctly and some, not. But we do not propose to examine the correctness of the decisions in the light

of the facts in them. In our opinion, the true test is whether the amount sought to be deducted, in truth, never reached the assessee as its income. Obligations, no doubt, there are in every case, but it is the nature of the obligation which is the decisive fact. There is a difference between an amount which a person is obliged to pay out of his income and an amount which by the nature of the obligation cannot be said to be a part of the income of the assessee. Whereby the obligation income is diverted before it reaches the assessee, it is deductible but where the income is required to be applied to discharge an obligation after such income reaches the assessee the same consequence in law does not follow. It is the first kind of payment which can truly be excused and not the second. The second payment is merely an obligation to pay another portion of one's own income which has been received and essence applied. The first is a case in which the income never reaches the assessee, who, even if he were to collect it, does so, not as part of his income but for and on behalf of the person to whom it was payable."

Emphasis Supplied

7.8.13. In the present case, we note that 15% of sale proceeds was payable to SPV account after it accrued to assessee and the fact that, assessee was obliged to part with such portion of income, by virtue of directions of Hon'ble Supreme Court, as a precondition to resume mining operations under Category 'B'. At this juncture, we also emphasise that, but for the intervention by Hon'ble Supreme Court, assessee would not have contributed 15% to SPV account for implementation of reclamation and rehabilitation scheme on its own, as there was no statutory requirement to do so under relevant statutes that regulate mining activities.

7.8.14. Hon'ble Supreme Court has been very clear regarding the types of payments that needs to be recovered from lessee's under Category 'B', from the sale proceeds as well as otherwise. All the payments form part of R&R plan for recouping and rehabilitating the environment. Certain payments are onetime payment and some others are recurring depending upon the sale of iron ore sold in the name of each licensee or depending on the need for rehabilitation.

7.8.15. In our view, contributing 15% to SPV account on account of Category 'B', would be application of income, and therefore, should be considered as expenditure incurred for carrying out its business activity. This we hold so, for the reason that, contributions determined by Hon'ble Supreme Court are in the nature of guarantee payment necessary for resuming mining activity. We also note that, alleged sum in these grounds are for implementation of R&R Plans in respective sanctioned lease areas held by assessee, where illegal mining activities or which were used for illegal overburden dumps, roads, offices etc., beyond sanctioned lease area were carried out. Here, we also note that, Hon'ble Supreme Court directed CEC to refund any leftover guarantee money, after completion of implementation of R& R plan, subject to

satisfaction of CEC and approval by Hon'ble Supreme Court. For this peculiar reason, amount so contributed towards SPV being 15% of sale proceeds, under Category B, cannot be treated as penal in nature. We, therefore, reject observations of authorities below that, such sum having contributed by assessee fall within ambit of explanation 1 to section 37 (1) of the Act.

.....

Based on above discussions and analysis, we are of opinion that contribution to SPV being 15% of sale proceeds, under category B, is an allowable expenditure for year under consideration.”

7. This issue again came up for consideration before this Tribunal in the case of *Veerabhadrappa Sangappa & Co. in ITA No.1270 & 1271/Bang/2019 for AY 2013-14*, wherein this Tribunal by order dated 4.11.2020 followed the above view by observing as under :-

“7.10.1. Ld.Counsel again raised 3 prepositions before us in respect of the contribution made to SPV account from the sale proceeds.

- *Primarily he contended that there is diversion of income by overriding title to SPV account, and therefore such amount is not liable to tax in the hands of assessee.*
- *Alternatively he submitted that the said sum may be treated as loss under section 28 while computing profit and loss under the head income from business and profession. Or*
- *He submitted that it may be treated as an expenditure incurred by assessee for purposes of business.*

7.10.2. On the contrary, Ld.CIT DR submitted that it is an application of income and therefore has to be disallowed in the hands of assessee. He submitted that Ld.AO in support of disallowing the claim of expenditure relied on following decisions:

- *CIT vs.KCP Ltd. reported in 245 ITR 421(SC)*
- *G.Padnabha Chettiyar & Sons vs.CIT reported in 182 ITR 1(Mad)*
- *ReformFlour Mills Pvt.Ltd Vs.CIT reported in 132 ITR 184,196(Cal)*
- *CIT vs.A.Krishnaswamy Mudaliar & Ors reported in 53 ITR 122(SC)*

We note that these decisions are on the accrual of income, which has been considered by us in forgoing paras. We have already held

that entire income accrued to assessee while deciding grounds 2.1 & 2.2. In the issue of contribution towards SPV, one has to consider its correct nature. In our opinion these decisions do not assist revenue in any manner.

7.10.3. On careful reading of decision of Hon'ble Supreme Court in case of Samaj Parivartana Samudaya & Ors. Vs. State of Karnataka & Ors. (supra), it is clear that 10%/15% contribution to SPV account was guarantee payment for implementing of R & R plan, which would be deducted from sale proceeds. This was one of the conditions for resuming mining operations under categories 'A' and 'B' respectively.

7.10.4. With this background, we once again refer to and rely on observations by Hon'ble Supreme Court in case of CIT vs Sitaldas Tirathdas (supra). Hon'ble Supreme Court laying down following principal referred to various rulings that illustrated aspects of diversion of income by overriding title.

"These are the cases which have considered the problem from various angles. Some of them appear to have applied the principle correctly and some, not. But we do not propose to examine the correctness of the decisions in the light of the facts in them. In our opinion, the true test is whether the amount sought to be deducted, in truth, never reached the assessee as its income. Obligations, no doubt, there are in every case, but it is the nature of the obligation which is the decisive fact. There is a difference between an amount which a person is obliged to pay out of his income and an amount which by the nature of the obligation cannot be said to be a part of the income of the assessee. Whereby the obligation income is diverted before it reaches the assessee, it is deductible but where the income is required to be applied to discharge an obligation after such income reaches the assessee the same consequence in law does not follow. It is the first kind of payment which can truly be excused and not the second. The second payment is merely an obligation to pay another portion of one's own income which has been received and essence applied. The first is a case in which the income never reaches the assessee, who, even if he were to collect it, does so, not as part of his income but for and on behalf of the person to whom it was payable."

Emphasis Supplied

7.10.5. Applying, thin line of difference interpreted by Hon'ble Supreme Court to present facts, we are of the opinion that, contribution to SPV account, cannot be considered to be diversion of income. This is because, we have already held while deciding ground 2.1 and 2.2 hereinabove, that entire sale proceeds accrued

to assessee, and it is only due to direction of Hon'ble Supreme Court that such amount was contributed to SPV account, for which assessee was to authorise CEC/MC in relevant paragraph 11(III) refer to and relied by Ld.CIT DR.

7.10.6. In the present facts of the case, we note that 10%/15% of sale proceeds was payable to SPV account, after it accrued to assessee, and the fact that, assessee was obliged to part with such portion of income, by virtue of directions of Hon'ble Supreme Court in case of *Samaj Parivartana Samudaya & Ors. Vs. State of Karnataka & Ors.* (supra), as a precondition to resume mining operations under Category 'A and 'B'. At this juncture we also emphasise that, but for the intervention by Hon'ble Supreme Court, assessee would not have contributed 10%/15% to SPV account for implementation of reclamation and rehabilitation scheme on its own, as there was no statutory requirement to do so under relevant statutes that regulate mining activities.

7.10.7. In our view contributing 10%/15% to SPV account on account of Category 'A'/'B' respectively, would be application of income, and therefore should be considered as expenditure incurred for carrying out its business activity. This we hold so, for the reason that, contributions determined by Hon'ble Supreme Court are in the nature of guarantee payment necessary for resuming mining activity. We also note that, alleged sum in these grounds are for implementation of R&R Plans in respective sanctioned lease areas held by assessee, where illegal mining activities or which were used for illegal overburden dumps, roads, offices etc., beyond sanctioned lease area were carried out. Here, we also note that, Hon'ble Supreme Court directed CEC to refund any leftover guarantee money, after completion of implementation of R&R plan, subject to satisfaction of CEC and approval by Hon'ble Supreme Court. For this peculiar reason amount so contributed towards SPV being 10%/15% of sale proceeds, under category A/B, cannot be treated as penal in nature.

7.10.8. We note that co-ordinate Hyderabad bench of Tribunal in *NMDC* (supra) was the case of Category 'A' wherein it was allowed as expenditure by observing as under:

"2. Brief facts of the case are that the assessee-company, a Public Sector Undertaking, engaged in the business of 'mining of iron ore diamonds; and generation and sale of wind power', filed its return of income for the relevant Assessment Years 2013-14 and 2014-15 both under the normal provisions as well as u/s 115JB of the Act for the relevant AYs. During the assessment proceedings u/s 143(3) of the Act, the A.O. observed that the assessee-company is carrying

out mining activity in India and particularly in Karnataka and that the Hon'ble Supreme Court of India took note of the large scale illegal mining activity carried on by various companies in Karnataka at the cost or detriment of environment and delivered their judgment on 18.04.2013 levying appropriate charges on the leaseholders. A.O. also observed that the Hon'ble Supreme Court, based on the extent of illegal mining, classified the mining leases into three categories viz., Category "A", "B" and "C" and that the assessee is falling in Category-B in respect of Donimali Complex and that in their order, the Apex Court observed that before consideration of any resumption of mining operations by Category-B leaseholders, each of the lease holder must pay compensation for the areas under illegal mining pits outside the sanctioned area at the rate of Rs. 5 Crs per hectare and for illegal overburden for at the rate of Rs. 1 Cr per hectare. Further, A.O. observed that the said direction of the Apex Court was subject to the final determination of the notional loss caused by the illegal mining and illegal use of the land; and that the Hon'ble Supreme Court had directed that each of the leaseholder should pay a sum equivalent to 15% of the sale proceeds of its iron ore sold through the Monitoring Committee. In accordance with the said direction, the assessee made payment of Rs. 337.13 Crs towards contribution for the Special Purpose Vehicle and the sum of Rs. 68.66 Crs towards penalty / compensation for encroachment of the mining area beyond the sanctioned / leased area. The A.O. observed that the total of the above payment of Rs. 405.79 Crs was punitive in nature and accordingly sought to disallow the same by issuance of a show-cause notice.

.....

4. The A.O. however did not accept the assessee's explanation and held that the assessee, being a Category-B leaseholder, has been directed to make the payment for infringement of MMDR Act and other allied laws. Therefore, he observed that the payment of Rs. 405.79 Crs is punitive in nature and brought it to tax.

.....

10. Thus, from the table reproduced above, it is seen that the assessee has been classified as Category-'A' whereas the Assessing Officer has considered the assessee as Category-'B' company. The Hon'ble Supreme Court has clearly indicated that Category-A comprises of (i) 'working' leases wherein no illegality / marginal illegality have been found and (ii) 'non-working leases' wherein no marginal / illegality have been found, whereas Category-B comprises of (i) mining leases wherein illegal mining is 10% to 15% of the sanctioned lease areas. However, CEC had

recommended that both "A" and "B" categories may be allowed to resume the mining activity subject to the payment of penalty / compensation decided by the Court. Thus, according to the assessee, the said expenditure is nothing but a payment which was required to be made without which the assessee could not have carried on the mining activities and therefore, it is a 'business expenditure'. Since the CEC had categorised the assessee as a Category-A company and the Hon'ble Supreme Court has accepted the said categorization, there would have been marginal illegalities committed by the assessee and the compensation / penalty as directed by the Hon'ble Supreme Court is only to compensate the Government for the loss of revenue from such mining or marginal illegalities and not as a penalty. Though the nomenclature given is "penalty" it is not for infraction or violation of any law to hold it to be punitive in nature, as presumed by the Assessing Officer. Learned Counsel for the Assessee placed reliance on various case law, particularly the decision of the Coordinate Bench of the ITAT, Kolkata in the case of Essel Mining & Industries Ltd vs. Addl. CIT (ITA No. 352/Kol/2011 and others, dated 20.05.2016); ACIT vs. Freegade & Co. Ltd (ITA No.934/Kol/2009, dated 05.08.2011) and also the decision of the Hon'ble Calcutta High Court in the case of ShyamSel Ltd vs. DCIT (72 Taxmann.com 105) (Cal.). On going through the said decisions, we find that the Hon'ble Calcutta High Court has considered the case of an assessee who failed to install Pollution Control Device within factory premise within prescribed time and that the assessee had to pay Rs. 12.50 lakh for compensating damage to environment and the same was recovered by State Pollution Control Board on the principle of 'polluter pays' and the A.O. had treated it as penalty and did not allow the same as business expenditure. The Hon'ble High Court had taken note of the fact that the assessee's business was not illegal and that compensation was paid because of its failure to install pollution control device within prescribed time and therefore, such payment was undoubtedly for the purpose of business and in consequence of business carried on by the assessee and was thus covered by section 37 of the Act. For coming to this conclusion, Hon'ble High Court has also considered the judgment of the Hon'ble National Green Tribunal in the case of State Pollution Control Board vs. Swastik Ispat (P.) Ltd wherein at para 38 of the judgment the Tribunal held as under:-

"Being punitive is the essence of 'penalty'. It is in clear contradistinction to 'remedial' and / or 'compensatory'. 'penalty' essentially has to be for result of a default and imposed by way of punishment. On the contrary, 'compensatory' may be resulting from

a default for the advantage already taken by that person and is intended to remedy or compensate the consequences of the wrong done. For instance, if a unit has been granted conditional consent and is in default of compliance, causes pollution by polluting a river or discharging sludge, trade effluent or trade waste into the river or on open land causing pollution, which a Board has to remove essentially to control and prevent the pollution, then the amount spent by the Board, is thus, spent by encashing the bank guarantee or is adjusted thread and this exercise would fall in the realm of compensatory restoration and not a penal consequence. In gathering the meaning of the word 'penalty' in reference to a law, the context in which it is used is significant."

11. Applying this ratio to the facts of the case before us, we find from para 43 of the Hon'ble Supreme Court's order reproduced above that the condition of payment for resuming the mining activity by Categories 'A' & 'B' companies is to not to punish the companies for any violation of law but is to ensure scientific and planned exploitation of mineral resources in India. Further the Hon'ble Supreme Court had directed as under:-

"(X) Out of the 20% of sale proceeds retained by the Monitoring Committee in respect of the cleared mining leases falling in "Category- A", 10% of the sale proceeds may be transferred to the SPV while the balance 10% of the sale proceeds may be reimbursed to the respective lessees. In respect of the mining leases falling in "Category-B", after deducting the penalty/compensation, the estimated cost of the implementation of the R & R Plan, and 10% of the sale proceeds to be retained for being transferred to the SPV, the balance amount, if any may be reimbursed to the respective lessees;"

The fact that the compensation is proportionate to area of illegal mining outside the leased area and that the assessee has paid the proportionate compensation for mining in the areas outside the sanctioned area allotted to it and that 10% of sum is to be transferred to SPV and the balance 10% is to be reimbursed to the respective lessees, according to us, proves that it is a payment made as 'compensation' for extra mining, without which the assessee could not have resumed its activities. Therefore, we are inclined to accept the contention of the assessee that it is compensatory in nature and is a 'business expenditure' and is allowable u/s 37(1) of the Act. Thus, Grounds No.2 and 3 raised by the assessee are allowed."

7.10.9. We also notice that the co-ordinate Bangalore bench of Tribunal has also considered identical issue in the case of Ramgad

Minerals & Mining Ltd (ITA No.1270 & 1271/B/2019 dated 04-11-2020) being Category 'B', an identical addition made by Ld.AO was held to be allowable as expenditure with following observations:-

"7.8.9. In present appeals, only issue raised for our consideration is in respect of 15% contribution made to SPV for assessment year 2013-14 and 2014-15; and issue in respect of R&R expenses incurred during assessment year 2013 - 14. First of all, we summarise objections of Ld.AO as in respect of SPV expenses as under:-

(a) This is one of the objections of the AO that the SPV Expenses is not allowable because it is not compensation but it is penal in nature for contravention of law as observed by him in para 4.3 of the assessment order for AY:2013-14.

(b) Second objection of the Ld.AO is contained in para 4.9 of the assessment order for AY:2013-14 and as per the same, this is the objection of Ld.AO that the said SPV is nothing but CSR Expenses only and therefore not allowable.

(c) Third objection of Ld.AO is also contained in para 4.9 of the assessment order for AY:2013-14 and as per the same, this is the objection of the Ld.AO that the said SPV is not allowable u/s 37 (1) as it was not incurred by the assessee wholly and exclusively for the purpose of business.

(d) In para 4.8 of the assessment order for AY:2013-14, Ld.AO is stating this that SPV rate is 10% in category 'A' Mines but 15% in Category 'B' Mines and this extra 5% in Category 'B' Mines is for various violations and illegal mining and even after this observation, he finally held in the same para that whole SPV Expenses of 15% is not allowable.

7.8.10. Ld.AO observed that, these SPV were deducted pursuant to directions of Hon'ble Supreme Court (supra) by order dated 18/04/2013, wherein, it was directed that, sum so paid towards SPV charges should be exhaustively and exclusively used to undertake socio economic and infrastructure development, afforestation, soil and biodiversity conservation and for ensuring inclusive growth of the area surrounding mining leases.

7.8.11. Ld.AO further observed that these payments are nothing but appropriation of profits earned by assessee that cannot be said to have incurred for purpose of business or earning profits. Accordingly, entire amount adjusted towards SPV was disallowed by Ld.AO. Ld.AO was of opinion that entire sale proceeds as per E auction bid Sheets/invoices were to be assessed as trading receipts. The amount retained by CEC/monitoring committee as per

directions of Hon'ble Supreme Court, on behalf of assessee for SPV purposes, was on account of damages and loss caused to environment due to contravention of law, and therefore, cannot be allowed as deduction out of sale proceeds, even after accrual of such liability. Ld.AO was of opinion that, even in Category 'A' mines, there was marginal illegality found by CEC, because of which 10% of contribution was attributed out of sale proceeds to the SPV.

7.8.12. On careful reading of decision of Hon'ble Supreme Court dated 18/04/2013, it is clear that 15% contribution to SPV account was guarantee payment for implementing of R & R plan, which would be deducted from sale proceeds. This was one of the conditions for resuming mining operations under Category 'B'.

We refer to and rely on observations by Hon'ble Supreme Court in case of CIT vs Sitaldas Tirathdas reported in(1961) 41 ITR 367.Hon'ble Supreme Court laying down following principal referred to various rulings that illustrated aspects of diversion of income by overriding title.

"These are the cases which have considered the problem from various angles. Some of them appear to have applied the principle correctly and some, not. But we do not propose to examine the correctness of the decisions in the light of the facts in them. In our opinion, the true test is whether the amount sought to be deducted, in truth, never reached the assessee as its income. Obligations, no doubt, there are in every case, but it is the nature of the obligation which is the decisive fact. There is a difference between an amount which a person is obliged to pay out of his income and an amount which by the nature of the obligation cannot be said to be a part of the income of the assessee. Whereby the obligation income is diverted before it reaches the assessee, it is deductible but where the income is required to be applied to discharge an obligation after such income reaches the assessee the same consequence in law does not follow. It is the first kind of payment which can truly be excused and not the second. The second payment is merely an obligation to pay another portion of one's own income which has been received and essence applied. The first is a case in which the income never reaches the assessee, who, even if he were to collect it, does so, not as part of his income but for and on behalf of the person to whom it was payable."

Emphasis Supplied

7.8.13. In the present case, we note that 15% of sale proceeds was payable to SPV account after it accrued to assessee and the fact that, assessee was obliged to part with such portion of income, by

virtue of directions of Hon'ble Supreme Court, as a precondition to resume mining operations under Category 'B'. At this juncture, we also emphasise that, but for the intervention by Hon'ble Supreme Court, assessee would not have contributed 15% to SPV account for implementation of reclamation and rehabilitation scheme on its own, as there was no statutory requirement to do so under relevant statutes that regulate mining activities.

7.8.14. Hon'ble Supreme Court has been very clear regarding the types of payments that needs to be recovered from lessee's under Category 'B', from the sale proceeds as well as otherwise. All the payments form part of R&R plan for recouping and rehabilitating the environment. Certain payments are onetime payment and some others are recurring depending upon the sale of iron ore sold in the name of each licensee or depending on the need for rehabilitation.

7.8.15. In our view, contributing 15% to SPV account on account of Category 'B', would be application of income, and therefore, should be considered as expenditure incurred for carrying out its business activity. This we hold so, for the reason that, contributions determined by Hon'ble Supreme Court are in the nature of guarantee payment necessary for resuming mining activity. We also note that, alleged sum in these grounds are for implementation of R&R Plans in respective sanctioned lease areas held by assessee, where illegal mining activities or which were used for illegal overburden dumps, roads, offices etc., beyond sanctioned lease area were carried out. Here, we also note that, Hon'ble Supreme Court directed CEC to refund any leftover guarantee money, after completion of implementation of R& R plan, subject to satisfaction of CEC and approval by Hon'ble Supreme Court. For this peculiar reason, amount so contributed towards SPV being 15% of sale proceeds, under Category B, cannot be treated as penal in nature. We, therefore, reject observations of authorities below that, such sum having contributed by assessee fall within ambit of explanation 1 to section 37 (1) of the Act."

7.10.10. We note that the CEC, vide its report dated 3-2-2012 and 13-3-2012 made recommendations with regard to setting up of SPV, transfer of funds collected from all lease holders under various heads, manner of utilisation of said funds etc., to Hon'ble Supreme Court, which is incorporated in Paragraph 7 at Page 164 to 171 as under:

"(IX) A Special Purpose Vehicle (SPV) under the Chairmanship of Chief Secretary, Government Karnataka and with the senior officers of the concerned Departments of the State Government as Members may be directed to be set up for the purpose of taking various

ameliorative and mitigative measures in Districts Bellary, Chitradurga and Tumkur. The additional resources mobilized by (a) allotment/ assignment of the cancelled mining leases as well as the mining leases belonging to M/s. MML, (b) the amount of the penalty/ compensation received/ receivable from the defaulting lessee, (c) the amount received/ receivable by the Monitoring Committee from the mining leases falling in "Category- A" and "Category-B", (d) amount received/ receivable from the sale proceeds of the confiscated material etc., may be directed to be transferred to the SPV and used exclusively for the socio- economic development of the area/local population, infrastructure development, conservation and protection of forest, developing common facilities for transportation of iron ore (such as maintenance and widening of existing road, construction of alternate road, conveyor belt, railway siding and improving communication system, etc.). A detailed scheme in this regard may be directed to be prepared and implemented after obtaining permission of this Hon'ble Court;"

7.10.11. Hon'ble Supreme Court at 176 of its order made following observations with regard to SPV:-

"By order dated 28-09-2012, this Court had constituted a Special Purpose Vehicle (for short "SPV") on the suggestion of the learned amicus curiae. The purpose of constitution of the SPV, it may be noticed, is for taking of ameliorative and mitigative measures as per the "Comprehensive Environment Plans for Mining Impact Zone (CPEMIZ) around mining leases in Bellary, Chitradurga and Tumkur. By order dated 28-09-2012, the Monitoring Committee was to make available the payments received by it under different heads of receivables to the SPV"

7.10.12. It is noticed that amounts collected from assessee are directed to be given to the SPV, which will in turn take various types of ameliorative and mitigative steps in the interest not only of the environment and ecology but the mining industry as a whole so as to enable the industry to run in a more organized, planned and disciplined manner. Under these set of facts, it cannot be said that these amounts are penal in nature. We notice that the Hyderabad bench of Tribunal in the case of NMDC Ltd (supra) and Co-ordinate bench of Bangalore Tribunal in Ramgad Minerals (supra) came to the same conclusion. We note that in NMDC case (supra), Hon'ble Hyderabad Tribunal followed decision of Hon'ble Kolkatta High Court in the case of ShyamSel Ltd (supra) and State Pollution Control Board vs. Swastik Ispat (P) Ltd (supra), wherein identical types of payments made to remedy the river pollution caused by the parties were held to be compensatory in nature. Hence the

provisions of Explanation 1 to sec.37 will not apply to these payments. We also note that Hon'ble Supreme Court at page 171 observed that, these payments are necessary to be made by the mining lease holders. Hence there is merit in the submission of Ld.Counsel that, without making these payments, assessee could not have resumed the mining operations. Hence, these expenses are incidental to carrying on the business and hence allowable u/s 37(1) of the Act.

7.10.13. Based on above discussions and analysis, we are of opinion that contribution to SPV being 10%/15% of sale proceeds, under category A/B, is to be allowable as expenditure for year under consideration. Thus, alternative plea raised by assessee in ground 2.3.6 and 2.3.7 does not arise. In any event, such payment cannot be considered to be loss in the hands of assessee.

8.2 Admittedly the facts considered by coordinate bench in above cases and the facts before us in the present case are identical and disallowances are made on similar reasoning for asst. year 2012-13 & 2013-14.

Asst. Year 2014-15

9. For assessment year 2014-15 identical contribution towards SPV under both the Category mines was disallowed by the Ld.AO by applying *Explanation 2 to section 37 (1)* of the Act. This issue has been analysed on identical facts by coordinate bench of this Tribunal in the following case of *B.Rudragouda Vs.ACIT in ITA No.314&315/Bang/2020, by order dated 15/04/2021 for assessment years 2015-16 & 2016-17* as under:

7. Without prejudice to above, the ld. AR submitted that the lower authorities have erred in law by failing to appreciate that the Explanation 2 to section 37 introduced by Finance (No.2) Act 2014 barring the allowability of CSR applies only to the companies and not to others. A reference is made to Explanation 2 to section 37(1) inserted by the Finance (No.2) Act, 2014. Prior to amendment by Finance (No.2) Act, 2014 there was no restriction as to the allowability of CSR expenditure incurred wholly and exclusively for the purposes of the business as

deduction in computing the taxable business income. From the above provision it is evident that the Explanation refers to CSR as referred in section 135 of Companies Act, 2013. Thus, the said restriction is applicable only to Companies and not to others. Therefore, the Appellant being an individual the restriction imposed under Explanation 2 to section 37 is not applicable in the instant case. Therefore, it is submitted that the impugned expenses incurred for the purpose of business are an admissible expenditure under Section 37.

8. On the other hand, the ld. DR submitted that the finance minister has announced some tax incentives in the Budget to encourage companies to participate in 'Swachh Bharat Abhiyan' and 'Clean Ganga campaign'. It is announced that the donations (other than the corporate social responsibility or CSR contributions) made to 'Swachh Bharat Kosh' (both by resident and non-resident) and Clean Ganga Fund (by resident) shall be eligible for 100 per cent deduction under section 80G of the Income Tax Act. As per the CSR provisions, Companies have been mandated to spend 2 per cent of their three-year average net profit on CSR under the Companies Act, 2013. The companies are also required to disclose the CSR activities and the amount spent on it in their annual reports. But the Income Tax Act does not provide for any incentives for such expenditure either for companies or for any other class of assesseees. The Budget for 2014-15 has clarified that the expenditure incurred on CSR activities is not for the purpose of business and hence cannot be allowed as deduction for computing tax liability of the company under the residuary provisions of section 37(1). The deduction for CSR expenditure is allowed if it falls under Section 30 to Section 36 of the Income Tax Act. Also, as per the memorandum explaining the provisions in the Finance (No. 2) Bill, 2014, it is clarified that the CSR expenditure is an application of income (which is not incurred wholly and exclusively for the purposes of carrying on business) and hence the tax benefit of the same will not be given in computing the income as per the normal provisions and also in computing book profits of the company for MAT purposes.

9. We have heard both the parties. For this assessment year, the assessee incurred the above expenditure for the purpose of upkeep of roads as per the directions of Deputy Commissioner, Bellary. The lower authorities invoked the provisions of Explanation 2 to section 37 of the Act which Explanation 2 to section 37 of the Act was introduced by the Finance (No.2) Act, 2014 w.e.f. 1.4.2015 as follows:-

“Explanation 2. — For the removal of doubts, it is hereby declared that for the purposes of sub-section (1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 (18 of 2013) shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.”

10. The Memorandum to Finance (No. 2) Bill, 2014 explaining provisions relating to direct taxes on Corporate Social Responsibility is extracted below:-

“CORPORATE SOCIAL RESPONSIBILITY (CSR)

Under the Companies Act, 2013 certain companies (which have net worth of Rs.500 crore or more, or turnover of Rs.1000 crore or more, or a net profit of Rs.5 crore or more during any financial year) are required to spend certain percentage of their profit on activities relating to Corporate Social Responsibility (CSR). Under the existing provisions of the Act expenditure incurred wholly and exclusively for the purposes of the business is only allowed as a deduction for computing taxable business income. CSR expenditure, being an application of income, is not incurred wholly and exclusively for the purposes of carrying on business. As the application of income is not allowed as deduction for the purposes of computing taxable income of a company, amount spent on CSR cannot be allowed as deduction for computing the taxable income of the company. Moreover, the objective of CSR is to share burden of the Government in providing social services by companies having net worth/turnover/profit above a threshold. If such expenses are allowed as tax deduction, this would result in subsidizing of around one-third of such expenses by the Government by way of tax expenditure.

The existing provisions of section 37(1) of the Act provide that deduction for any expenditure, which is not mentioned specifically in section 30 to section 36 of the Act, shall be allowed if the same is incurred wholly and exclusively for the purposes of carrying on business or profession. As the CSR expenditure (being an application of income) is not incurred for the purposes of carrying on business, such expenditures cannot be allowed under the existing provisions of section 37 of the Income-tax Act. Therefore, in order to provide certainty on this issue, it is proposed to clarify that for the purposes of section 37(1) any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to have been incurred for the purpose of business and hence shall not be allowed as deduction under section 37. However, the CSR expenditure which is of the nature described in section 30 to section 36 of the Act shall be allowed deduction under those sections subject to fulfilment of conditions, if any, specified therein.

This amendment will take effect from 1st April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent years.”

11. The amendment introduced w.e.f. 1.4.2015 cannot be construed as disadvantageous to the assessee and it cannot cover the impugned expenditure incurred by the assessee in these two assessment years. We have gone through the amended provisions including Note on Clauses and

explanatory notes and note that as per the Companies Act, 2013, certain companies (which have net worth of Rs.500 crores or more, or turnover of 1000 crore or more or net profit of 5 crores or more during any financial year) are required to spend certain percentage of their profit on activities relating to Corporate Social Responsibility (CSR). Under the existing provisions of the Act, expenditure incurred wholly and exclusively for the purpose of business is only allowed as deduction for computing taxable business income. CSR expenditure being an application of income is not incurred wholly and exclusively for the purpose of carrying on business. As application of income is not allowed as deduction for the purpose of taxable income of a company, the amount spent on CSR cannot be allowed as a deduction for computing taxable income of the company. The object of the CSR expenditure is to share the burden of the Govt. in providing social service by companies having import/turnover/profit above a threshold. If such expenses are allowed as deduction, it will result in subsidizing the amount of one-third of such expenses by Govt. by way of tax expenditure. The provisions of section 37(1) provide that deduction for any expenditure which is not mentioned specifically in section 30 to 36 of the Act, shall be allowed if the same is incurred wholly and exclusively for the purpose of carrying on business or profession. As CSR expenditure being application of income is not incurred for the purpose of carrying on of business, such expenditure cannot be allowed under the provisions of section 37 of the Act. Therefore, in order to provide certainty on this issue, the said section 37 has been amended to clarify that for the purpose of sub-section (1) of section 37 any expenditure by an assessee on the activities relating to CSR referred to in section 135 of the Companies At, 2013 should not be allowed as deduction under sub-section 37. However, CSR expenditure which is of nature described sections 30 to 36 of the Act, shall be allowed as deduction under this section, subject to fulfillment of conditions, if any, specified therein. But this amendment takes effect from 1.4.2015 and will be applicable in relation to AY 2015-16 and subsequent years.

*12. Now the issue before us is whether the department is justified in invoking this Explanation 2 to section 37 to disallow above expenditure incurred by the assessee. Explanation (2) to section 37 reads as follows:-
“Explanation 2. — For the removal of doubts, it is hereby declared that for the purposes of sub-section (1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 (18 of 2013) shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.”*

13. A reading of the above Explanation makes it clear that it only refers to corporate social responsibility as referred in Section 135 of the Companies Act, 2013. Corporate social responsibility which is mentioned in Section

135 of the Companies Act, 2013 is applicable to company only, which is as follows:-

“[135. (1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during 3[the immediately preceding financial year] shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

[Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors.]

(2) The Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.

(3) The Corporate Social Responsibility Committee shall,—

(a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company [in areas or subject, specified in Schedule VII];

(b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and

(c) monitor the Corporate Social Responsibility Policy of the company from time to time.

(4) The Board of every company referred to in sub-section (1) shall,—

(a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and

(b) ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

(5) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years [or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years], in pursuance of its Corporate Social Responsibility Policy:

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount [and, unless the unspent amount relates to any ongoing project referred to in sub-section (6), transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year].

[Provided also that if the company spends an amount in excess of the requirements provided under this sub-section, such company may set off such excess amount against the requirement to spend under this sub-section for such number of succeeding financial years and in such manner, as may be prescribed.]

[Explanation.—For the purposes of this section "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.]

[6] Any amount remaining unspent under sub-section (5), pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.

[(7) If a company is in default in complying with the provisions of sub-section (5) or sub-section (6), the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or one crore rupees, whichever is less, and every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or two lakh rupees, whichever is less.]

(8) The Central Government may give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this section and such company or class of companies shall comply with such directions.]

[(9) Where the amount to be spent by a company under sub-section (5) does not exceed fifty lakh rupees, the requirement under sub-section (1) for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.]

14. Schedule VII to the Companies Act, 2013 is extracted hereunder:-

“SCHEDULE VII (See Section 135)

Activities which may be included by companies in their Corporate Social Responsibility Policies Activities relating to:—

[(i) Eradicating hunger, poverty and malnutrition, [“promoting health care including preventive health care”] and sanitation [including contribution to the Swachh Bharat Kosh set-up by the Central Government for the promotion of sanitation] and making available safe drinking water.

(ii) promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects.

(iii) promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups.

(iv) ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water 4[including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga].

(v) protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional art and handicrafts;

(vi) measures for the benefit of armed forces veterans, war widows and their dependents, 9[Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows];

(vii) training to promote rural sports, nationally recognised sports, paralympic sports and olympic sports

(viii) contribution to the prime minister's national relief fund 8[or Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund)] or any other fund set up by the central govt. for socio economic development and relief and welfare of the schedule caste, tribes, other backward classes, minorities and women;

[(ix) (a) Contribution to incubators or research and development projects in the field of science, technology, engineering and medicine, funded by the Central Government or State Government or Public Sector Undertaking or any agency of the Central Government or State Government; and

(b) Contributions to public funded Universities; Indian Institute of Technology (IITs); National Laboratories and autonomous bodies established under Department of Atomic Energy (DAE); Department of Biotechnology (DBT); Department of Science and Technology (DST); Department of Pharmaceuticals; Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH); Ministry of Electronics and Information Technology and other bodies, namely Defense Research and Development Organisation (DRDO); Indian Council of Agricultural Research (ICAR); Indian Council of Medical Research (ICMR) and Council of Scientific and Industrial Research (CSIR), engaged in

conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs).]

(x) rural development projects]

[(xi) slum area development.

Explanation.- For the purposes of this item, the term 'slum area' shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being in force.]

[(xii) disaster management, including relief, rehabilitation and reconstruction activities.]”

15. By going through the provisions of Explanation 2 to section 37, it is evident that the said Explanation refers to CSR expenditure as referred in section 135 of the Companies Act, 2013. Thus said restriction is applicable only to the companies, not others.

16. The ld. DR submitted that Explanation to s. 37 is applicable to assesses including individual assesses like the present assessee. We are not in agreement with the above contention of the ld. DR. While interpreting the word in the section, particularly in the Explanation 2 to s. 37, which are enacted under beneficial legislation, the basic principle that has to be kept in mind is the object and intention of the Legislature for enactment of the Act. If that is kept in mind, then strict technical interpretation of the terms used in the section, detrimental to the main object, can easily be avoided. Further if a harmonious interpretation is given to all the provisions, keeping in view the object, then the intention of the Legislature for enacting this legislation, will be fulfilled and the economic and social justice aimed by the Legislature will be reached to one and all. When in a statute there are general words following particular and "specified words", the general words are some times construed as limited to things of the same kind as those specified. This rule of interpretation generally known as ejusdem generis rule has been pressed into service on behalf of the assessee. This rule reflects an attempt to reconcile incompatibility between the specified and general words, in view of the other rules of interpretation, that all words in a statute are given effect if possible, that a statute is to be construed as a whole and that no words in a statute are presumed to be superfluous. Ejusdem Generis rule being one of the rules of interpretation, only serves, like all such rules, as an aid to discover the legislative intent; it is neither final nor conclusive and is attracted only when the specific words enumerated, constitute a class, which is not exhausted and are followed by general words and when there is no manifestation of intent to give broader meaning to the general words. Being so, the word "assessee" used in this Explanation 2 to s. 37 (1) is with regard to the companies for which section 135 of the Companies Act is applicable, not to other assesses which is not covered by the Companies Act.

17. In the present case, the assessee being an individual, the restriction imposed under Explanation (2) to section 37 is not applicable to assessee's case. At this stage, it is appropriate to draw support from the judgment of Hon'ble Gujarat High Court in the case of Pr. CIT v. Gujarat Narmada Valley Fertilizers & Chemicals Ltd., 422 ITR 164 (Guj). In that case, the following question was before the Hon'ble High Court :-

“Whether in the facts and in circumstances of the case, the learned ITAT has erred in law and on facts in deleting disallowance u/s 37(1) of the Act in respect of expenses being contribution/donation to educational institutions, trust, local bodies?”

18. The Hon'ble Gujarat High Court held as under:-

“8.10 We have also noted that the amendment in the scheme of section 37(1) is not specifically stated to be retrospective and the said Explanation is inserted only with effect from 1st April 2015. In this view of the matter also, there is no reason to hold this provision to be retrospective in application. As a matter of fact, the amendment in law, which was accompanied by the statutory requirement with regard to discharging the corporate social responsibility, is a disabling provision which puts an additional tax burden on the assessee in the sense that the expenses that the assessee is required to incur, under a statutory obligation, in the course of his business are not allowed deduction in the computation of income. This disallowance is restricted to the expenses incurred by the assessee under a statutory obligation under section 135 of Companies Act 2013, and there is thus now a line of demarcation between the expenses incurred by the assessee on discharging corporate social responsibility under such a statutory obligation and under a voluntary assumption of responsibility. As for the former, the disallowance under Explanation 2 to section 37(1) comes into play, but, as for latter, there is no such disabling provision as long as the expenses, even in discharge of corporate social responsibility on voluntary basis, can be said to be "wholly and exclusively for the purposes of business". There is no dispute that the expenses in question are not incurred under the aforesaid statutory obligation. For this reason also, as also for the basic reason that the Explanation 2 to section 37(1) comes into play with effect from 1st April 2015, we hold that the disabling provision of Explanation 2 to section 37(1) does not apply on the facts of this case.”

19. Thus, it is evident that the disallowance is restricted to the expenses incurred by the assessee under a statutory obligation u/s. 135 of the Companies Act, 2013 and there is thus now a line of demarcation between the expenses incurred by the assessee on discharging corporate social responsibility under such a statutory obligation and under a voluntary assumption of responsibility. As for the former, the disallowance under Explanation 2 to section 37(1) comes into play, but as

for latter, there is no such disabling provision as long as the expenses, even in discharge of corporate social responsibility on voluntary basis, can be said to be “wholly and exclusively for the purposes of business”. There is no dispute that the expenses in question are not incurred under the aforesaid statutory obligation. In the present case, the said expenditure is incurred by the assessee on discharging social responsibility so as to earn the goodwill of the society and it is wholly and exclusively for the purpose of business.

20. Therefore, the provisions of Explanation to section 37 of the Act cannot be applied. Further, in the present case, the assessee being an individual, and not a corporation under the Companies Act, 2013, Explanation 2 to section 37 cannot be applied so as to deny the voluntary expenditure incurred by assessee towards community welfare. Accordingly, we are of the opinion that the expenditure incurred is wholly and exclusively for the purpose of business of assessee and has to be allowed as business expenditure. Accordingly, this ground of appeal is allowed.”

9.1 Respectfully following the view taken by coordinate Bench in the decision referred to herein above, we allow grounds 2.1 to 2.6 raised by assessee for asst. year 2012-13.

The same view is applied for grounds 2.1 to 2.6 *mutatis mutandis* for asst. year 2013-14 and 2014-15 respectively.

Ground No.3.1 to 3.5

10. During the course of assessment proceedings, it was submitted that sum of Rs.2.4 crores was contributed towards Flood Relief Works in pursuant to MOU dated 2/7/2010 entered with local Dy.Commissioner for asst. year 2012-13. He submitted that, the amount was spent for social cause and that to at the instance of Govt. of Karnataka. The Ld.AO after considering various submissions by assessee made addition of

such amount by holding that assessee did not obtain exemption certificate u/s 80G of the Act.

10.1 Aggrieved by the order of AO, the assessee preferred an appeal before the Ld.CIT(A).

10.2 The Ld.CIT(A) on verifying the asst. order and submissions filed by assessee, observed that, as per the MOU entered by assessee with Govt. of Karnataka the donations were given to Chief Minister's Relief Fund and was eligible for exemption u/s 80G of the Act. He observed that, the Ld.AO denied the claim of assessee as it did not comply with all the conditions of the MOU.

The Ld.CIT(A) also observed that assessee has not brought out any material evidence on record to establish the nexus between the expenses incurred and the business of assessee. He thus held that the contribution made cannot be allowed as an expenditure u/s 37(1) of the Act.

10.3 Aggrieved by the order of Ld.CIT(A), the assessee is in appeal before us now.

10.4 The ld.AR submitted that assessee made following contributions towards flood relief as per the MOU with Govt. of Karnataka.

| AY | Nature of Expenditure | Amount (In Rs.) |
|-----------|---|----------------------------|
| 2012-13 | Contribution towards flood relief as per the MOU with Government of Karnataka | 2,40,00,000/- |
| 2013-14 | --do-- | 1,40,14,000/- |
| 2014-15 | --do-- | 8,78,704/- |

10.5 He submitted that the above payments were made by assessee in accordance with the MOU dated 2/7/2010 which is placed at page 383 of paper book. It is submitted that the MOU is also allowing donations to be claimed as exemption u/s 80G of the Act as same were given to the chief Minister's Relief Fund (calamity). He also placed reliance on the decision of *Hon'ble Karnataka High Court* in the case of *M/s Kanhaiyalal Dudheria [2020] 113 taxmann.com 217*.

10.6 On the contrary the Ld.CIT.DR submitted that the MOU clearly states that assessee is eligible to claim exemption u/s 80G of the Act. She submitted that the decision relied by the Ld.AR is in respect of certain construction carried out by assessee on behalf of the Govt. of Karnataka which was claimed as an expenditure u/s 37 of the Act. She thus placed reliance on the orders passed by the authorities below.

10.7 We have perused the submissions advanced for both sides and the records placed before us.

10.8 Admittedly, in the instant case, the expenditure incurred towards flood relief work is not in dispute by the authorities below. The clause granting relief to the assessee u/s 80G in the MOU dated 02/07/2010 reads as under:-

"h) The donations given to the Chief Ministers Relief Fund (calamity) are eligible for exemption under Section 80 (G) of the Income Tax Act. Those desirous of seeking exemption may make their donations in the first stage to Chief Minister's Relief Fund (calamity) and obtain income tax exemption certificate. Then, in the second stage, this money will be

deposited in a joint account in the name of the Donor and designated officer who together shall spend it on the specified resettlement work.”

10.9. The only reason for not granting relief u/s.80G is that assessee did not obtain the exemption certificate under the relevant provisions of the Act. It is not the case of the Revenue that said expenditure has not been incurred for the purpose as entered into Govt. of Karnataka. The above reproduced clause clearly states that assessee is eligible for exemption u/s 80G of the Act.

10.10. We note that authorities below even after admitting these facts have not granted relief to the assessee as per the provisions of sec.80G of the Act. We thus remand this issue to the Ld.AO for computing the deduction eligible to assessee under 80G of the Act for the donations given to the Chief Minister's Relief Fund (calamity).

Accordingly the grounds raised by assessee for year under consideration stands allowed for statistical purposes for all years under consideration.

Ground No.4.1 to 4.2:

11. This issue is only relevant to asst. year 2012-13.

The assessee during the year made payment of Rs.10 lakhs and 20 lakhs towards membership fee and legal fund respectively to Federation of Indian Mineral Industries. The federation of Indian Mineral Industries is an association of industries i.e engaged in the business of minerals and is a non profit corporate body registered under the Companies Act 1956 to promote the interest

of the mining and mineral processing, metal making and other mineral based industries and to attend to the problems faced by them in lease grants, tenure, production, taxation, trade export labour etc. The Ld.AO restricted the claim to 50% of expenditure incurred on account of legal fees u/s 80G of the Act.

11.1 Aggrieved by the order of the Ld.AO, assessee preferred appeal before the Ld.CIT(A).

11.2 The Ld.CIT(A) upheld the disallowance by observing as under:-

“7.2. However, the plea for allowing contribution made to FIMI u/s 80G of the IT Act can be considered. The AG also has not denied the fact and AO himself has mentioned in assessment order that the amount contributed is not allowable u/s 37(1) of the IT Act but eligible for deduction restricted to the limit imposed by section 80G of the IT Act. In this regard, during the appeal proceedings, the assessee was asked to submit the recognition/renewal certificate granting recognition u/s 80G of the IT Act to FIMI by the competent authority as a documentary evidence for claiming the deduction. In response, the AR of the assessee has appeared and explained the same. On perusal it is seen that the FIMI is recognized u/s 80G for accepting donation. Hence, contribution made by the assessee is also eligible for deduction u/s 80G subject to 50% of the total contribution. The AR did not dispute the same. As the contribution made is eligible for deduction to the extent of 50% only the disallowance made by the AO is upheld and relevant ground is dismissed.”

11.3 Aggrieved by the order of the Ld.CIT(A), assessee is in appeal before us.

11.4 The Ld.AR during the course of argument relied on the decision of this *Tribunal* in the case of *M/s Vibhutigudda Mines Pvt. Ltd., for asst. year 2012-13, in ITA No. 2843/Bang/2018*, wherein identical issue was considered vide order dated

03/07/2019 by the coordinate bench in the above case is as under:-

"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 appellants 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.”

11.5 We note that the legal payment incurred by assessee is towards representing case filed of FIMI against which TDS has been deducted as observed by the Ld.CIT(A). It is also an admitted fact that this organization has been formed to safeguard the rights of mine owners and to protect interest of industries, present in this spear of mineral exploration and production. In

our opinion the said amount does not qualify to be considered as donation. It is an expenditure incurred to safe-guard assessee's business interests and has to be considered under the provisions of sec.37(1) of the Act. In our view the decision of coordinate bench of this *Tribunal* reproduced herein above squarely covers the issue under consideration.

Accordingly the ground raised by the assessee stands allowed for assessment year 2012-13.

In the result, appeal filed by the assessee stands partly allowed as indicated herein above.

Order pronounced in the open court on 18th August, 2021

Sd/-
(CHANDRA POOJARI)
Accountant Member
Bangalore,
Dated, the 18th Aug, 2021.
/Vms/

Sd/-
(BEENA PILLAI)
Judicial Member

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar, ITAT, Bangalore

| | | Date | Initial | |
|-----|--|-------------|----------------|----------|
| 1. | Draft dictated on | On Dragon | | Sr.PS |
| 2. | Draft placed before author | -8-2021 | | Sr.PS |
| 3. | Draft proposed & placed before the second member | -8-2021 | | JM/AM |
| 4. | Draft discussed/approved by Second Member. | -8-2021 | | JM/AM |
| 5. | Approved Draft comes to the Sr.PS/PS | -8-2021 | | Sr.PS/PS |
| 6. | Kept for pronouncement on | -8-2021 | | Sr.PS |
| 7. | Date of uploading the order on Website | -8-2021 | | Sr.PS |
| 8. | If not uploaded, furnish the reason | -- | | Sr.PS |
| 9. | File sent to the Bench Clerk | -8-2021 | | Sr.PS |
| 10. | Date on which file goes to the AR | | | |
| 11. | Date on which file goes to the Head Clerk. | | | |
| 12. | Date of dispatch of Order. | | | |
| 13. | Draft dictation sheets are attached | No | | Sr.PS |