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

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

ITA No. 938/Bang/2018
Assessment Year : 2012-13

Shri B. Rudra Gouda, No. 2198, BKG House, KHB Colony, Sandur, Bellary – 583 101. PAN: AFUPG1386A	**Vs.**	The Assistant Commissioner of Income Tax, Circle 1, Bellary.
APPELLANT		**RESPONDENT**

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ITA No. 1199/Bang/2018
Assessment Year : 2012-13

The Deputy Commissioner of Income Tax, Circle 1, Bellary.	**Vs.**	Shri B. Rudra Gouda, No. 2198, BKG House, KHB Colony, Sandur, Bellary – 583 101. PAN: AFUPG1386A
APPELLANT		**RESPONDENT**

Assessee by	**:**	Shri Tatakrishna, Advocate
Revenue by	**:**	Shri Pradeep Kumar, CIT (DR)

Date of Hearing	**:**	25-10-2021
Date of Pronouncement	**:**	27-10-2021

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals are cross appeals filed by assessee and revenue against the order of Ld.CIT(A), Gulbarga dated 30.01.2018 for A.Y. 2012-13.

The grounds raised by the assessee in its appeal are as under:

"***1. The Assessment Order passed by the Learned Assessing Officer is not justified in law and on facts and circumstances of the case.***

2. As regards disallowance of amount expended towards Corporate Social Responsibility:

2.1. The Learned Assessing Officer and Learned CIT(A) have erred in law and on facts by disallowing Rs 75,00,000 without application of mind and on the basis of alternate reasons which are conflicting with one another.

2.2. The Learned Assessing officer and Learned CIT(A) have erred in law and on facts in stating that the repair expenditure was not incurred wholly and exclusively for the purpose of the business without appreciating that the repair of roads would facilitate transportation of mines.

2.3. The Learned Assessing officer and Learned CIT(A) have erred in law and on facts in failing to appreciate that the Appellant has satisfied all the conditions under section 37(1) of IT Act where the amount expended by the Appellant is towards the repair of road.

2.4. The Learned Assessing Officer and Learned CIT(A) are not justified in law in failing to appreciate that payment as per statutory direction for compensating the expenditure on repair is a revenue expenditure.

2.5. The Learned Assessing Officer and Learned CIT(A) have erred in law and on facts in deeming the repair of roads as capital expenditure without appreciating that no new asset ever came into existence as a result of the said expenditure.

2.6. The Learned Assessing Officer and Learned CIT(A) are not justified in law in disallowing the expenditure of Rs.75,00,000/- incurred by the Appellant towards repair of roads as Corporate Social Responsibility based on nomenclature of account and ignoring the substance over form.

2.7. Without prejudice to above, the Learned Assessing officer and Learned CIT(A) have erred in law in failing to appreciate that the expenditure laid out or expended wholly and exclusively for the purpose of business as a part of corporate social responsibility, is an admissible expenditure under Section 37(1) of the Act.

2.8. Without prejudice to above, the Learned Assessing Officer and Learned CIT(A) have erred in law by failing to appreciate that the Explanation 2 to section 37 introduced by Finance Act 2015 barring the allowability of CSR applies only to the companies and not to others.

2.9. The Learned Assessing Officer and Learned CIT(A) have erred in law in stating that the law is settled that CSR expenditure is not allowable as expenditure under Income Tax Act, 1961, where the said prohibition has been introduced by Finance (No.2) Act, 2014 by inserting Explanation 2 to Section 37(1) of IT Act which is prospective in nature and in the impugned case the assessment year involved is prior to said amendment.

2.10. The Learned Assessing officer and Learned CIT(A) have erred in law and on facts in disallowing the impugned expenditure incurred for compensating the damage to roads suffered incidentally on transportation of iron-ore on the basis that the same is penal in nature.

2.11. Without prejudice to above, if the expenditure is held to be capital in nature, the Learned Assessing Officer and Learned CIT(A) ought to have granted statutory depreciation suo-moto under section 32(1) of the Act.

3. As regards disallowance of Reclamation & Rehabilitation expenses:

3.1 The Learned Assessing officer and Learned CIT(A) have failed to appreciate that the amount deducted by Central Empower Committee (CEC) of Rs.14,54,31,191/- is nothing but diversion of income by overriding title as the stock is confiscated by the CEC who has control over the sale proceeds.

3.2 The Learned Assessing Officer and Learned CIT(A) have failed to appreciate that the forfeited sale proceeds were diverted to the Monitoring Committee before it reached the Appellant, as per the directions of the Honourable Supreme Court and hence it is a case of diversion of income by overriding title and not an application of income.

3.3 The Learned Assessing officer and Learned CIT(A) have failed to appreciate that the forfeited sale proceeds never ever reached the Appellant directly or indirectly and therefore, the same did not accrue to the Appellant at all.

3.4 Without prejudice to the above, the Learned Assessing officer and Learned CIT(A) have failed to appreciate that the forfeiture of sale proceeds of confiscated stock as per the direction of the Honourable Supreme Court is an allowable business loss under Section 28 itself.

3.5 The Learned Assessing officer and Learned CIT(A) are not justified in adding the forfeited sales proceeds by invoking Explanation 1 to Section 37(1) when the said Explanation applies only to an expenditure and not to a loss.

3.6 Without prejudice to the above, the sale proceeds which were utilized by the Monitoring Committee towards SPV charges as per the direction of Hon'ble Supreme Court is allowable expenditure under section 37.

3.7 The Leaned Assessing Officer and Learned CIT(A) have erred in law and on fact in failing to appreciate that Appellant's lease was placed in the 'Category A of clean lease' and therefore, there is absolutely no illegality associated with the appellant's business.

3.8 The Learned Assessing officer and Learned CIT(A) have failed to appreciate that the Hon'ble Supreme has directed the CEC to deduct 20% of the sale proceeds of the stock in possession of CEC as a compensation for reclamation 86 rehabilitation of the mining area, which, being "ameliorative and mitigative measures", is allowable expenditure under section 37 of IT Act.

3.9 The Learned Assessing officer and Learned CIT(A) are not justified in treating the aforesaid sum as being in the nature of penalty as he has failed to appreciate that the aforesaid sum does not relate to any infraction of law but towards rehabilitation more particularly in the light of the observations in para (IX) of page no.15 of the order of the apex court as noted by him in para 4 at page 9 of his order.

3.10 Without prejudice to the above, the Explanation 1 to section 37(1) is not at all applicable as in the instant case, no illegality whatsoever was noticed in the case of appellant.
3.11 The Learned Assessing officer and Learned CIT(A) are not justified in taking contradictory position by first calling the impugned sum as towards corporate social responsibility not relating to business and next calling it as expenditure on illegality associated with the business.

3.12 The Learned Assessing officer and Learned CIT(A) having accepted the sale proceeds transferred to SPV is part of Corporate Social Responsibility, are unjust in denying the said expenditure which is expended towards the conservation of eco-system.

3.13 Without prejudice to the above, the Learned Assessing officer and Learned CIT(A) have failed to appreciate that the Explanation 2 to section 37 introduced by Finance Act 2015 barring the allowability of CSR applies only to the companies and not to other assessees.

3.14 Without prejudice to the above, the Learned Assessing Officer and Learned CIT(A) have erred in law and on facts in disallowing Rs 7,27,15,596 representing ten percent of sale proceeds which stood already taxed in AY 14-15.

4. The Learned Assessing Officer is not justified in levying interest under Section 234B of Rs. 3,44,80,540/-, when the said disallowance is not tenable, and thus question of levy of interest does not arise.

For the above grounds and for such other grounds which may be allowed by the Honourable Members to be urged at the time of hearing, it is prayed that the aforesaid appeal be allowed."

Similarly, the grounds raised by the revenue in its appeal are as under:

"*1. The order of the learned Commissioner of Income-tax (Appeals) is opposed to law and facts of the case.*

2. In the facts and circumstances of the case, the Id. CIT(A), has erred in treating the legal expenses incurred "to protect the lease, for defending the claim made against the assessee by third parties" as revenue expenditure. The said expenditure was incurred to protect and defend the lease "a source of business" and not for carrying on the business as contended by the business. The legal expenditure was incurred for "protecting source of business" and not for "protecting or defending business interest" resulting in expenditure to P&L account. Therefore, the said expenditure is clearly in the nature of capital expenditure.

3. On the same issue pertaining to AYs.2008-09 and 2009-10 in the case of the assessee, appeals are still pending before the Hon'ble High Court of Karnataka.

4. Any other facts and grounds of the case which may arise during the hearing."

Brief facts of the case are as under.

2. The assessee is an individual, engaged in the business of extraction and trading of iron ore during the impugned year. The assessee filed its return of income for the AY 2012-13 on 26.09.2012 declaring a total income of Rs. 87,97,62,240/-. The return of income of Appellant was processed under section 143(1) of IT Act on 17.10.2013. The case of the assessee was selected for scrutiny and notice under section 143(2) was issued on 06.08.2013. Notice under section 142(1) was issued on

16.11.2013. The Appellant in response to the said notices appeared from time to time and produced the details called for. Accordingly, the Learned Assessing officer passed an assessment order under section 143(3) of the Income Tax Act, 1961, by making the following adjustments:

- By disallowing the expenditure incurred by the Appellant towards construction of roads as a Corporate Social Responsibility for the purpose of business of Rs.75,00,000/;
- By disallowing the expenditure of Rs. 14,54,31,191/ - claimed towards Reclamation 86 Rehabilitation of mining area as per the direction of Hon'ble Supreme Court;
- By treating the legal expenses of Rs. 9,41,07,014/- incurred for defending the lease property against the claim by the third party as capital expenditure;
- By levying of interest under section 234B of Rs. 3,44,80,540/-.

Aggrieved by the order of Ld.AO, assessee preferred appeal before Ld.CIT(A). The Ld.CIT(A) upheld the disallowance in respect of Corporate Social Responsibility as well as Reclamation and Rehabilitation expenditure but treated the legal expenses incurred by assessee as revenue.

Aggrieved by the order of Ld.CIT(A), both assessee as well as revenue are in appeal before us now.

Assessee's appeal:

Ground No. 1 is general in nature. **Ground No. 2,** the issue involved is in respect of disallowance at expenditure incurred toward construction of roads as Corporate Social Responsibility amounting to Rs. 75 Lakhs The Ld.CIT(A) has observed that the

said amount was spent on upkeep of the road as per the directions of the Deputy Commissioner, Bellary. The Ld.AO treated the expenditure as capital expenditure whereas the assessee contends the said expenditure to be revenue in nature.

2.1 At the outset, the Ld.AR submitted that issue stands squarely covered by the decision of the co-ordinate bench of the *Tribunal* in the case of *M/s. Veerabhadrappa Sangappa & Co. Vs. ACIT* in *ITA No. 1054/Bang/2019* vide order dated *08.12.2020* for A.Y. 2013-14, wherein an identical expenditure has been allowed by observing as under:

> "***10. Ground No.3*** *is in respect of disallowance of Rs.31,27,668/- expended towards Corporate Social responsibility.*
> ***10.1.*** *Ld.AO noted that assessee has claimed deduction of Rs. 31,27,668/- as expenditure under section 37(1). Assessee submitted that it had made such payment in view of complying the directions of government of Karnataka towards payment of school fees of students in providing of books to the students and hence the expenditure incurred is not of capital or personal in nature.*
> ***10.2****. Ld.AO disallowed the said sum by holding that it was not incurred for purposes of business. He placed reliance upon decision of Hon'ble Supreme Court in case of Indian Molasses Co. (P) Ltd vs CIT reported in 37 ITR 66 and decision of Hon'ble Karnataka High Court in case of CIT vs Infosys Technologies Ltd., reported in reported in 203-TOIL-507-High Court-Kar-IT.*
> ***10.3****. On an appeal before Ld.CIT(A), observations of Ld.AO was upheld.*
> ***10.4****. Aggrieved by the order of Ld.CIT(A), assessee is in appeal before us now..*
> ***10.4.1.*** *Ld.Counsel placed reliance on page 290 of paper book, wherein, Deputy Commissioner, Bellary, directed assessee to contribute towards education of students residing/studying in schools around mining area. It has been submitted that assessee is engaged in business of mines on the land leased by government, activity consumes enormous amount of natural resources in surrounding area, and that, such amount was paid to support welfare of the locality. He also submitted that Explanation 2 to Section 37 of the Act, is introduced by Finance Act 2014, which is in relation to CSR contributed by companies, whereas, assessee is a partnership firm.*
> ***10.4.2.*** *Ld.Counsel submitted that commercial expediency should be judged in the context of prevailing social economic condition and that business undertaking is a product of combined effort's of all. He submitted that such expenditure incurred by assessee satisfies the*

requirement of commercial expediency in the present scenario. He placed reliance on order dated 31/07/2019 by Hon'ble Karnataka High Court, Dharwad Bench, in case of Kanhaiyalal Dudheria vs JCIT in ITA NO. 100016/2018 c/w. ITA NO. 100017/2018. He submitted that mining activity in the lease areas causes ecological disbalances thereby hampering inhabitation in the nearby villages. Assessee incurred expenses towards re-establishing various facilities to support livelihood of people living in nearby villages.

10.4.3. *On the contrary, Ld.CIT.DR placed reliance on observations of authorities below.*

10.5. *We have perused submissions advanced by both sides, in light of records placed before us.*

10.5.1. *We heard rival contentions and perused the record. We notice that an identical issue was examined by the Hon'ble Karnataka High Court in the case of Kanhaiyalal Dudheria (supra). In the case before Hon'ble High Court, the assessee was carrying on the business of extraction of iron-ore and also trading in iron-ore. Assessee had incurred expenses of Rs.1,61,30,480/- and Rs.55,90,080/- in FY 2010-11 and 2011-12 towards construction of houses in certain flood affected villages as per MOU entered with Government of Karnataka. Assessee's claim of above said expenses were disallowed on the ground that it was not incurred in the course of business but for philanthropic purposes. Hon'ble Karnataka High Court, however, held that it is allowable as deduction. The relevant observations made by Hon'ble High Court are extracted below:-*

"8. It is not in dispute that an MOU came to be entered into between appellants and the Government of Karnataka, represented by jurisdictional Deputy Commissioner on 02.07.2010, a copy of which has been made available for our perusal. It would clearly indicate on account of unprecedented floods and abnormal rain which severely ravaged the North Interior Karnataka during last week of September and first week of October, 2009, which claimed more than 226 human lives and loss of nearly 8000 head of cattle, flattened about 5.41 lakhs houses and destroyed standing crops in about 25 lakh hectares of land huge destruction of infrastructure, Government of Karnataka which was facing an undaunted task of rehabilitating the persons who were in destitute and to restore the normalcy for nearly about 7.2 lakh people and to build 5.41 lakhs houses spread over 12 affected districts, an appeal came to be made by then Hon'ble Chief Minister to all to lend their hands for restoring normalcy.

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13. A plain reading of Section 37 would also indicate that emphasis is on the expression "wholly and exclusively for the purposes of the business or profession". These two expressions namely, "wholly" and "exclusively" being adverb, has reference to the object or motive of the act behind the expenditure. If the expenditure so incurred is for promoting the business, it would pass the test for qualifying to be claimed as an expenditure under Section 37 of the Act. What is to be seen in such circumstances is, what is the motive and object in the mind of the two individuals namely, the person who spend and the

person who receives the said amount. Thus, the purpose and intent must be the sole purpose of expending the amount as a business expenditure. If the activity be undertaken with the object both of promoting business and also with some other purpose, such expenditure so incurred would not be disqualified from being claimed as a business expenditure, solely on the ground that the activity involved for such expenditure is not directly connected to the business activity. In other words, the issue of commercial expediency would also arise.

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20. In fact, the Hon'ble Apex Court approving the observation of ATHERTON's case - 1926 AC 205 in the matter of EASTERN INVESTMENT LIMITED vs COMMISSIONER OF INCOME TAX reported in (1951) 20 ITR 1, held:

"..a sum of money expended, none of necessity and with a view to a direct and immediate benefit to the trade, but voluntarily on the grounds of commercial expediency, and in order indirectly to facilitate the carrying on of the business, may yet be expended wholly and exclusively for the purposes of the trade", can be adopted as the best interpretation of the crucial words of Section 10(2)(xv). The imprudence of the expenditure and its depressing effect on the taxable profits would not deflect the applicability of the section.

The acid test, "did the expenditure fall on the assessee in this character as trader and was it for the purpose of the business".

21. The co-ordinate Bench in the matter of CIT & ANOTHER vs INFOSYS TECHNOLOGIES LIMITED reported in (2014)360 ITR 174(Kar) while examining the claim of the assessee to treat the expenditure incurred by it for installing the traffic signals as business expenditure under Section 37(1) of the Act, had held " for purpose of business" used in Section 37(1) of the Act should not be limited to meaning of earning profit alone and it includes providing facility to its employees also for the efficient working . It came to be held:

24. As is clear from the case of Mysore Kirloskar Ltd, the expenditure claimed need not be necessarily spent by the assessee. It might be incurred voluntarily and without any necessity, but it must be for promoting the business. The fact that somebody other than the assessee is also benefited by the expenditure should not come in the way of an expenditure being allowed by way of deduction under Section 37(1) of the Act, if it satisfies otherwise the tests laid down by law. Similarly, the words 'for the purpose of business' used in Section 37(1) of the Act, should not be limited to the meaning of earning profit alone. Business expediency or commercial expediency may require providing facilities like schools, hospitals, etc., for the employees or their children or for the children of the ex- employees. The employees of today may become the ex-employees tomorrow. Any expenditure laid out or expended for their benefit, if it satisfied the other requirements, must be allowed as deduction under Section 37(1) of the Act. Expenditure primarily denotes the idea of spending or paying out or away. It is something which is gone irretrievably, but should not be in respect of an unascertained liability of the future.

Expenditure in this sense is equal to disbursement which, to use a homely phrase means something which comes out of the traders pocket."

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23. In the matterof SRI VENKATASATYANARAYANARICE MILL CONTRACTORSCOMPANY vs CIT reported in (1997) 223 ITR 101 (SC), ***question arose as to whether contribution made to District Welfare Fund maintained by the District Collector would be against public policy or is an expenditure allowable under Section 37(1) of the Act and it came to be held that such contribution is not against public policy and would be allowable under Section 37(1) of the Act.*** *It was also held 'any contribution made by an assessee to a public welfare fund which is directly connected or related with the carrying on the assessee's business or which results in the benefit of the assessee's business has to be regarded as an allowable deduction under Section 37(1)'. In the facts obtained in the said case, it was noticed that assessee was doing business of export of rice and contributing 50 paise per quintal to the district welfare fund maintained by the District Collector, without which contribution, he would not get permit and as such, it came to be held that expenditure so incurred by way of contribution is directly connected with the assessee's carrying on the business. It is further held:*

"10. From the abovesaid discussion it follows that any contribution made by an assessee to a public welfare fund which is directly connected or related with the carrying on of the assessee's business or which results in the benefit to the assessee's business has to be regarded as an allowable deduction under s. 37(1) of the Act. Such a donation, whether voluntary or at the instance of the authorities concerned, when made to a Chief Minister's Drought Relief Fund or a District Welfare Fund established by the District Collector or any business, cannot be regarded as payment opposed to public policy. It is not as if the payment in the present case had been made as an illegal gratification. There is no law which prohibits the making of such a donation. The mere fact that making of a donation for charitable or public cause or in public interest results in the Government giving patronage or benefit can be no ground to deny the assessee a deduction of that amount under s.37(1) of the Act when such payment had been made for the purpose of assessee's business."

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28. In the light of the analysis of the case laws above referred to, it cannot be gain said by the revenue that contribution made by an assessee to a public welfare cause is not directly connected or related with the carrying on of the assessee's business. As to whether such activity undertaken and discharged by the assessee would benefit to the assessee's business has to be examined in the light of the observations made by us herein above. Tribunal committed a serious error in arriving at a conclusion that MOU entered into between the assessee and the Government of Karnataka is opposed to public policy and void under Section 23 of the Contract Act. In fact, Hon'ble Apex Court in case of SRI VENKATA SATHYANARAYANA RICE MILL

CONTRACTORS COMPANY's case referred to herein supra has held that where a donation, whether voluntary or at the instance of the authorities concerned, when made to a Chief Ministers Drought Relief Fund or a District Welfare Fund established by the District Collector or any other fund for the benefit of the public and with a view to secure benefit to the assessee's business cannot be regarded as payment opposed to public policy. It came to be further held making of a donation for charitable or public cause or in the public interest results in the Government giving patronage or benefit can be no ground to deny the assessee a deduction of that amount under Section 37(1) of the Act, when such payment has been made for the purposes of assessee's business. In fact, it can be noticed under the MOU in question which came to be entered into by the assessee with Government of Karnataka was on account of the clarion call given by the then Chief Minister of Karnataka in the hour of crisis to all the Philanthropist, industrial and commercial enterprises to extended their whole hearted support and the entire logistic support has been extended by the Government of Karnataka namely, providing land and design of the house to be constructed, approval of layout and to take care of all local problems. In fact, the State Government had also agreed to exempt such of those persons who undertake to execute the work from the purview of sale tax, royalty, entry tax and other related State taxes and is said to have extended to the appellant also. In this background it cannot be construed that MOU entered into between the assessee and the Government of Karnataka is opposed to public policy.

29. In the facts on hand, it requires to be noticed that assessee is carrying of business of iron ore and also trading in iron ore. Thus, day in and day out the assessee would be approaching the appropriate Government and its authorities for grant of permits, licenses and as such the assessee in its wisdom and as prudent business decision has entered into MOU with the Government of Karnataka and incurred the expenditure towards construction of houses for the needy persons, not only as a social responsibility but also keeping in mind the goodwill and benefit it would yield in the long run in earning profit which is the ultimate object of conducting business and as such, expenditure incurred by the assessee would be in the realm of "business expenditure". Hence, the orders passed by the authorities would not stand the test of law and is liable to be set aside.

30. However, it requires to be noticed that while examining the claim for deduction under Section 37(1) of the Act the assessing officer would not blindly or only on the say of the assessee accept the claim. In other words, assessing officer would be required to scrutinise and examine as to whether said deduction claimed for having incurred the expenditure has been incurred and only on being satisfied that expenditure so incurred is relatable to the work undertaken by the assessee namely, only on nexus being established, assessing officer would be required to allow such expenditure under Section 37(1) of the Act and not otherwise.

> *31. For the reasons afore stated, we are of the considered view that substantial question law formulated herein is to be answered in the negative i.e., against the revenue and in favour of the assessee."*
> ***10.5.3.*** *In the instant case also, the assessee has contributed funds at the specific request of local administration, which is meant to be used for the benefit of public. As observed in the above said case, the assessee would also be required to approach the appropriate Government and its authorities for grant of permits, licenses. Hence it is a prudent decision of the assessee to oblige to the appeal made by the local administration and incurred the expenses for public purposes. Hence the assessee has incurred expenses not only on account of social responsibility, but also keeping in mind the goodwill and benefit it would yield in the long run in earning profit. Hence this expenditure would be in the realm of "business expenditure". Accordingly, we hold this expenditure is allowable as deduction. Accordingly, we set aside the order passed by Ld.CIT(A) on this issue and direct the AO to delete this disallowance.*"

2.2 In the instant case also, the assessee has incurred the expenditure at the behest of the Deputy Commissioner, Bellary which was necessary to be incurred for the purposes of business, in public interest. Respectfully following the aforesaid view, we direct the Ld.AO to delete the disallowance.

Accordingly, this ground raised by assessee stands allowed.

3. Ground No. 3 is in respect of disallowance of Rs. 14,54,31,191/- deducted by Central Empower Committee (CEC) towards Reclamation and Rehabilitation expenses.

3.1 It has been submitted by Ld.AR that the said expenses was as per the directions of *Hon'ble Supreme Court* towards the Special Purpose Vehicle account. He submitted that this issue also stands squarely covered by the decision of the co-ordinate bench of the *Tribunal* in the case of *M/s. Veerabhadrappa Sangappa & Co. Vs. ACIT(supra)* wherein the *Tribunal* observed as under:

> **"*7.10.*** *We have perused submissions advanced by both sides in light of records placed before us.*

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 udaliar & 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 assesee 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 Karanataka & 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 Karanataka & 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 Hydrabad 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 / illegalities 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 affluent 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 SitaldasTirathdasreported 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. <u>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.</u>"

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 Hydrabad 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.*

Accordingly we allow grounds 2.3.8-2.3.9 and dismiss grounds 2.3.1-2.3.7."

3.2 The Ld.AR submitted that the facts are identical and circumstances under which the disallowance was made by the Ld.AO are similar. We therefore, respectfully following the view taken hereinabove direct the Ld.AO to allow the same as business expenditure for year under consideration. Accordingly we allow ground no. 3.6 raised by the assessee. Therefore alternative grounds raised does not arise and the same is dismissed.

Ground No. 3 stands partly allowed.

Revenue's appeal:

4. All grounds raised by the revenue is against the disallowance being deleted in respect of the legal fees incurred by assessee to

protect and defend the claim made against the assessee by third parties.

4.1 It has been submitted that assessee incurred expenditure of Rs. 9,41,07,014/- towards legal expenditure. The Ld.AO treated the said expenditure as capital in nature and disallowed the same.

4.2 The Ld.CIT(A) following the order passed by the *Tribunal* in the case of assessee's brother, treated the expenditure to be revenue in nature, with the direction to the Ld.AO to verify, whether TDS was deducted and also to verify applicability of provisions of section 40(a)(ia).

4.3 Before us, the Ld.AR submitted that, the facts are same and the circumstances under which the disallowance was made by the Ld.AO are identical. He placed before us the order passed by the co-ordinate bench of this *Tribunal* in case of *DCIT Vs. Shri B. Kumara Gowda* in *ITA Nos. 1053 & 1054/Bang/2012* vide order dated 28.08.2014 for A.Ys. 2008-09 & 2009-10, wherein the identical expenditure was allowed by observing as under.

> "*9. We have perused the orders and heard the rival contentions.*
> *There is no dispute that expenditure incurred for defending Writ Petitions filed by the third parties in which the grant of mining lease to the assessee by the Government was challenged. It is also not disputed that the lease of the mines were granted to the assessee in the year 2006, and it had started commercial production, from that year itself. Thus, in our opinion, assesseee was only protecting a right which it was already enjoying under the mining lease. It had a turnover of Rs.41.30Crores in the previous year relevant to assessment year 2008-09 with a net profit of Rs.20.02 Crores from mining business. Thus, the assessee was already exploiting the mining lease and doing business by virtue of the lease. The litigation expenditure incurred by the assessee to defend the suits did not in any way create a new asset nor help in improving the lease in such a manner so as to give it an advantage which was in the capital field. Though, the learned AO has made every effort to distinguish the judgment of the Hon'ble Apex Court in the case of Dalmia Jain &*

Co.,Ltd., relied by the assessee, we are of the opinion that the said judgment clearly helps the assessee. There also the assessee concerned was resisting a suit for protecting its business and not with a view get a new lease. Hon'ble Apex Court in the case of Sree Meenakshi Mill Ltd., has clearly held that taxability of expenditure must depend on the purpose of the legal proceeding, in relation to the business and cannot be computed by the final outcome of the proceedings. We are therefore, of the opinion that the CIT(A) was justified in holding that the expenses of litigation expenses made by the AO. Ground no.1 to 5 of the revenue stands dismissed."

Nothing has been brought on record before us which could factually distinguish the case before us and the facts in case of assessee's brother considered by this *Tribunal* in the case of *DCIT Vs. Shri B. Kumara Gowda(supra).*

Respectfully following the same, the legal expenses incurred by assessee for litigation deserves to be deleted.

Accordingly, grounds raised by revenue stands dismissed.

In the result, the appeal filed by assessee stands partly allowed and the appeal by revenue stands dismissed.

Order pronounced in the open court on 27th October, 2021.

Sd/-	Sd/-
(CHANDRA POOJARI)	**(BEENA PILLAI)**
Accountant Member	**Judicial Member**

Bangalore,
Dated, the 27th October, 2021.
/MS/

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.