

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES "B", BANGALORE**

**Before Shri Chandra Poojari, AM & Shri George George K, JM**

ITA No.3300/Bang/2018 : Asst.Year 2015-2016  
SA No.51/Bang/2021

M/s.M.Hanumantha Rao 37, Ground Floor, Near Park Main Road, Patel Nagar, Bellary Karnataka – 583 101. <b>PAN : AANFM1777H.</b>	v.	The Assistant Commissioner of Income-tax, Circle (1) Bellary.
(Appellant)		(Respondent)

Appellant by : Sri.Laxminiwas Sharma, CA  
Respondent by : Dr.Manjunath Karkihalli, CIT-DR

<b>Date of Hearing : 30.11.2021</b>	<b>Date of Pronouncement : 01.12.2021</b>
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**ORDER**

**Per George George K, JM**

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 30.10.2018. The relevant assessment year is 2015-2016. The assessee has also preferred a Stay Petition seeking to stay the outstanding demand.

2. The grounds raised read as follows:-

“1. The order of the learned Commissioner of Income Tax (Appeals), Gulbarga [CIT(A)] is erroneous both on facts and in law to the extent it is prejudicial to the assessee.

2. The learned CIT(A) erred in holding that the concept of “diversion of income by overriding title” is not applicable to the facts of the present case ignoring that sales are being made and part of it is retained at the source itself by monitoring committee for contribution to SPV on the direction of Hon’ble Supreme Court.

3. The learned CIT(A) erred in ignoring the fact that appellant does not have right to receive the amount retained by the monitoring committee.

4. *Without prejudice to the ground no.2 and 3, the learned CIT(A) erred in confirming the addition made by AO of Rs.6,08,17,568/- by treating the amounts paid by appellant (i.e. retained by monitoring committee) on the order of Supreme Court as penal in nature ignoring that the amount paid is compensatory in nature and paid exclusively for the purpose of business.*

5. *Without prejudice to the ground no.2 and 3, the learned CIT(A) erred in applying the concept of corporate social responsibility, ignoring that appellant is a partnership firm and under no obligation to comply with the corporate social responsibility provisions which are applicable to companies and has made contribution to SPV only on the direction of Supreme Court and that too exclusively for the purpose of continuance of mining (business) operations failing which the assessee could not have continued the business.*

6. *For these and any other grounds which may be raised on or before hearing of the appeal.”*

3. Brief facts of the case are as follows:

The assessee is a firm engaged in the business of Iron Ore extraction. For the relevant assessment year 2015-2016, return of income was filed on 24.09.2015 declaring income of Rs.23,02,08,540. The case was selected for scrutiny by issue of notice u/s 143(2) of the I.T.Act. During the course of assessment proceedings, it was noticed by the A.O. that the assessee firm has credited an amount of Rs.46,22,21,329 as iron ore sales through e-auction as against Rs.52,51,17,080 (after reducing an amount of Rs.6,28,95,751 comprising of commission paid to MSTC Rs.20,78,188 and Special Purpose Vehicle (SPV) deduction of Rs.6,08,17,563). On show caused by the Assessing Officer, it was submitted that the assessee's mine falls within B category and as per the Hon'ble Supreme Court judgment, the Central Empowered Committee (CEC) appropriated 15% of the total sale proceeds of iron ore

extractions as a compensatory payment towards damages caused to the environment and forest degradation on account of mining. It was submitted by the assessee that an amount of Rs.6,08,17,563 representing 15% of sale proceeds of iron ore does not form part of the income since it was appropriated by the CEC at the very source. Further, it was submitted that in the event the 15% of sale proceeds retained by CEC is to be held as income, the assessee is entitled to the deduction of the same u/s 37 of the I.T.Act. The A.O., however, rejected the contentions of the assessee and held that 15% of the sale proceeds retained by the CEC is to meet penal liabilities for contravention of law and cannot be held to be deductible in view of *Explanation* to section 37(1) of the I.T.Act. Therefore, the A.O. disallowed a sum of Rs.6,08,17,563 and added the same to the total income.

4. Aggrieved by the assessment order, assessee filed an appeal before the first appellate authority. The CIT(A) upheld the view taken by the Assessing Officer.

5. Aggrieved by the order of the CIT(A), the assessee has filed this appeal before the Tribunal. The learned AR submitted that the issue raised in ground 2, 3 and 4 are covered by the order of the Tribunal in assessee's own case for assessment years 2013-2014 and 2014-2015 in ITA Nos.3298 and 3299/Bang/2018 (order dated 25.02.2021). Further, as regards ground 5, the learned AR submitted that the observation of the A.O. and the CIT(A) that contribution to SPV is nothing but Corporate Social Responsibility (CSR) is erroneous because the assessee is a partnership firm, which

is not under any statutory obligation for complying with CSR provisions that are applicable to the corporate. In this context, the learned AR relied on the order of the Bangalore Bench of the Tribunal in the case of Shri B.Rudragouda v. ACIT in ITA Nos.314 & 315/Bang/2020 (order dated 15.04.2021).

6. The learned Departmental Representative strongly supported the orders of the Income Tax Authorities.

7. We have heard rival submissions and perused the material on record. The Co-ordinate Bench of the Bangalore Tribunal in assessee's own case for assessment years 2013-2014 and 2014-2015 (supra) had considered various issues raised in grounds 2 to 4 hereinabove. The ITAT in assessee's own case had rejected the plea of the assessee that 15% of the sale proceeds retained by the CEC is to be excluded from the total turnover on the principle of diversion of income by way of overriding title. The Tribunal had categorically held that 15% of sale proceeds was payable to SPV account after it accrued to the assessee. However, the ITAT held that 15% of the sale proceeds constitute an allowable business expenditure u/s 37 of the I.T.Act. The relevant finding of the Co-ordinate Bench of the Bangalore Tribunal in assessee's own case for assessment years 2013-2014 and 2014-2015 (supra), reads as follow:-

*“4.4 We heard the parties on this issue and perused the record. We notice that identical issue has been examined by the co-ordinate benches in the cases relied upon by the assessee. For the sake of convenience, we extract below the relevant observations made by the co-ordinate bench in the case of M/s Veerabhadrapappa Sangappa & Co (supra):-*

**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.*

.....

**7.10.8.** *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 / 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. Fregade & 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 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. 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.”

4.5 The Ld D.R, however, contended that the decision rendered in the case of NMDC Ltd (supra) cannot be relied upon by the assessee. He submitted that NMDC Ltd is a public sector undertaking and further, there is no allegation of illegalities. He also submitted that the Hyderabad bench of Tribunal has taken the view that these payments are not punitive in nature, but compensation for scientific exploitation of minerals. However, the ld D.R contended that these amounts have been collected from the assessees, since they have caused damage to the environment and hence it is penal in nature.

4.6 The Hyderabad bench of Tribunal has also noticed that NMDC Ltd falls under “Category A”. There is no dispute about the same. However, the CEC has recommended that M/s

NMDC Ltd shall be liable to deposit penalty/compensation as payable for the mining leases falling in "Category B". The said recommendation was accepted by Hon'ble Supreme Court and hence NMDC Ltd has paid compensation @ 5.00 crores & 1.00 crores and also deduction from sale proceeds was made @ 15%. In any case, the question is here is about the nature of such payments.

4.7 We notice that, in the case of NMDC Ltd (supra), Hyderabad bench of Tribunal has relied upon the decision rendered by Hon'ble Kolkatta High Court in the case of Shyam Sel Ltd (supra) and also the decision rendered in the case of State Pollution Control Board vs. Swastik Ispat (P) Ltd (supra). In both the cases, the payment made by an assessee to the Pollution Control Board in order to take remedial action in respect of the pollution caused by the assessee would be compensatory in nature.

4.8 We have earlier noticed that the CEC, vide its report dated 3-2-2012 and 13-3-2012 had made certain recommendations to the Hon'ble Supreme Court. The Hon'ble Supreme Court has incorporated those recommendations in Paragraph 7 (Page 164 to 171 of its order reported in (2013)(8 SCC 154). The CEC had made following recommendation with regard to setting up of Special Purpose Vehicle, transfer of funds collected from all lease holders under various heads, the purpose of utilisation of said funds etc.

"(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;"

*The Hon'ble Supreme Court @ 176 of its order has 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”*

*4.9 The Hon'ble Supreme Court has observed as under in respect of Reclamation and Rehabilitation Plans (R & R Plans) at page 168:-*

*“8. As previously noticed, the CEC in its Report dated 13.3.2012 had set out in detail the objectives of the Reclamation and Rehabilitation (R&R) plans and the guidelines for preparation of detailed R & R plans in respect of each mining lease. The origins of the idea (R & R plans) are to be found in an earlier Report of the CEC dated 28.7.2011. As the suggestions of the CEC with regard to preparations of R & R plans for each mine is crucial to scientific and planned exploitation of the mineral resources in question it will be necessary for us to notice the said objectives and the detailed guidelines which are set out below. In this connection it would be worthwhile to take note of the fact that the guidelines in question have been prepared after detailed consultation with different stakeholders including the Federation of Indian Mineral Industries (FIMI) which claims to be the representative body of the majority of the mining lessees of the present case.*

**II. BROAD OBJECTIVES/PARAMETERS OF R&R PLANS**

*8. The broad objectives/parameters of the R&R Plans would be:*

- i) to carry out time bound reclamation and rehabilitation of the areas found to be under illegal mining by way of mining pits, over burden/waste dumps etc. outside the sanctioned areas;*
- ii) to ensure scientific and sustainable mining after taking into consideration the mining reserves assessed to be available within the lease area;*
- iii) to ensure environmental friendly mining and related activities and complying with the standards stipulated under the various environmental/mining statutes e.g. air quality (SPM, RPM), noise/vibration level, water quality (surface as well as ground water), scientific over burden/waste dumping, stabilization of slopes and benches, proper stacking and preservation of top soil, sub grade mineral and saleable minerals, proper quality of internal roads, adequate protective measures such as dust suppression/control measures for screening and crushing plants, beneficiation plants, provision*

for retention walls, garland drains, check dams, siltation ponds, afforestation, safety zones, proper covering of truck, exploring possibility of back filling of part of over burden/waste dumps in the mining pits, sale/beneficiation of sub grade iron ore, water harvesting, etc.

iv) for achieving (ii) and (iii) above, fixation of permissible annual production; and

v) regular and effective monitoring and evaluation.

The Hon'ble Supreme Court has also recorded lease wise R & R Plans in continuation of the above said observations.

4.10 The Hon'ble Supreme Court has accepted the recommendations of CEC with the following observations at page 194:-

*"52. The conditions subject to which Category 'A' and 'B' mines are to be reopened and the R&R Plans that have been recommended as a precondition for reopening of Category 'B' mines are essentially steps to ensure scientific and planned exploitation of the scarce mineral resources of the country. **The details of the preconditions and the R&R plans have already been noticed and would not require a repetition. Suffice it would be to say that such recommendations are wholesome and 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.***

*53. FIMI was actively associated in the framing of the guidelines and the preparation of the R&R Plans. There is nothing in the preconditions or in the details of the R&R plans suggested which are contrary to or in conflict or inconsistent with any of the statutory provisions of the MMDR Act, EP Act and FC Act. In such a situation, while accepting the preconditions subject to which the Category 'A' and 'B' mines are to be reopened and the R&R plans that must be put in place for Category 'B' mines, we are of the view that the suggestions made by the CEC for reopening of Category 'A' and 'B' mines as well as the details of the R&R plans should be accepted by us, which we accordingly do. This will bring us to the most vital issue of the case, i.e., the future of the Category 'C' mines."*

4.11 It can be noticed that all the amounts collected from the lessees under different categories 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) came to the same conclusion by following the decision

*rendered by 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. Hence, as held by Hyderabad bench of Tribunal in the case of NMDC Ltd (supra), these expenses are allowable as deduction u/s 37(1) of the Act.”*

7.1 As regards the observation of the AO and the CIT(A) (ground No.5) that the contribution to SPV is nothing but CSR, we find that the assessee is a partnership firm, which is not under the statutory obligation for complying with CSR provisions. The Bangalore Bench of the Tribunal in the case of Shri B.Rudragouda v. ACIT (supra) had held that the assessee being an individual and not a company, is not governed by section 135 of the Companies Act, 2013 and the impugned expenditure incurred by the assessee is not in the nature of CSR expenditure as mentioned in that section and it cannot be disallowed by invoking the provisions of *Explanation 2* to section 37 of the I.T.Act. The relevant finding of the Tribunal reads as follows:-

*“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.”*

7.2 In view of the aforesaid reasoning and the judicial pronouncements, cited supra, we hold that the assessee is entitled to deduction u/s 37 of the I.T.Act in respect of 15% of sale proceeds retained by the CEC. It is ordered accordingly.

8. Since we have disposed of the appeal filed by the assessee, the Stay Application filed by the assessee becomes infructuous and the same is dismissed as such.

9. In the result, the appeal filed by the assessee is allowed and the stay application filed by the assessee is dismissed.

Order pronounced on this 01<sup>st</sup> day of December, 2021.

**Sd/-**  
**(Chandra Poojari)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(George George K)**  
**JUDICIAL MEMBER**

Bangalore; Dated : 01<sup>st</sup> December, 2021.  
Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Gulbarga.
4. The Pr.CIT, Gulbarga.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore