IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE
BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No. 1654/Bang/2018
Assessment Year : 2011-12

M/s. Kumaraswamy Mineral Exports Pvt. Ltd., [For and on behalf of erstwhile Partnership Firm M/s. Kumaraswamy Mineral Exports], No. 58, Cunningham Road Cross, Bangalore – 560 052. PAN: AABFK8539K	**Vs.**	The Joint Commissioner of Income Tax, Bellary Range, Bellary.
APPELLANT		**RESPONDENT**

Assessee by	:	Shri S.V. Ravishankar, Advocate
Revenue by	:	Shri Sumer Singh Meena, CIT DR(OSD)

Date of Hearing	:	21-12-2021
Date of Pronouncement	:	04-01-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by assessee against the order dated 22/03/2018 passed by Ld.CIT(A), Gulbarga for assessment year 2011-12 on following grounds of appeal:

> *"1. The order passed by the learned Commissioner of Income-tax [Appeals]-4, Bengaluru dated 22/03/2018 and the order of assessment passed by the learned Assessing Officer under section 143 [3] of the Act dated 28/03/2014, in so far as it is against the Appellant, is opposed to the law, weight of evidence, probabilities, facts and circumstances in the appellant's case.*

2. The appellant denies itself liable to be taxed over and above the income reported by the appellant of Rs. 80,57,19,700/-, on the facts and circumstances of the case.
3. The learned Commissioner of Income-tax [Appeals] is not justified in confirming the disallowance made by the learned assessing officer amounting to Rs. 11,24,000/- being the expenditure incurred by the appellant towards Economic Social a Economic Development of the Society, erroneously holding that the said amounts incurred by the appellant is not an allowable expenditure and is not relating to the business of the appellant, on the facts and circumstances of the case.
4. The learned authorities below failed to appreciate that the expenditure incurred by the appellant towards Economic Social Et Economic Development of the Society is for the purposes of business and the said expenditure is allowable as per the provisions of section 37 of the Act on the facts and circumstances of the case.
5. Without prejudice to the right to seek waiver as per the parity of reasoning of the decision of the Hon'ble Apex Court in the case of Karanvir Singh 349 ITR 692, the Appellant Trust denies itself liable to be charged to interest under section 234 B Et 234 C of the Income Tax Act under the facts and circumstances of the case. Further the levy of interest under section 234 B a 234 C of the Act is also bad in law as the period, rate, quantum and method of calculation adopted on which interest is levied are all not discernible and are wrong on the facts of the case.
6. The Appellant craves leave to add, alter, substitute and delete any or all the grounds of appeal urged above.
7. For the above and other grounds to be urged during the hearing of the appeal, the Appellant prays that the appeal be allowed in the interest of equity and justice."

2. Brief facts of the case are as under:

2.1 The assessee was a registered Partnership Firm during the impugned A.Y. 2011-12 and was carrying on the business of extraction of Iron Ore and trading in Iron Ore and also owns wind mills.

2.2 The assessee for the impugned assessment year filed its return of income on 30/09/2011, declaring a total income of Rs.80,57,19,700/- being income derived from income from

mining of Rs.260,45,81,668/- and from Power generation of Rs.11,22,98,536/- along with other receipts. The return of income filed by the assessee was processed under section 143 [1] of the Act on 13/06/2012.

2.3 The case of the assessee was selected for scrutiny and statutory notices were issued by the Ld.AO and details were called for and the same were furnished by the assessee. The Ld.AO concluded the assessment by passing order of assessment under section 143 [3] of the Act, dated 28/03/2014, by making following additions determining the total income of the assessee at Rs.81,69,16,200/-.

Particulars	Amount in Rs.
(i) Deferred Revenue Expenditure; (ii) Eco. Socio & Eco Deve. Expenses; (iii) Amt. disallowed u/s. 14A rwr 8D	99,45,000/- 11,24,000/- 1,27,500/-
Total Taxable Income [Rounded Off]	81,69,16,200/-

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

2.4 The assessee made representation and filed detailed written submission along with supporting documents. The Ld.CIT(A) partly allowed the appeal of the assessee by deleting the additions made by the Ld.AO on account of Deferred Revenue Expenditure and Disallowance u/s. 14A r.w.s. Rule 8D. Whereas the Ld.CIT(A) confirmed the addition made by the Ld.AO on account of Eco. Socio Et Eco Deve. Expenses amounting to Rs.11,24,000/-

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

3. Before us, the Ld.AR submitted that as a matter of Socially Responsibility the assessee distributed frocks to the school children in and around Ramadurga. By doing the same the reputation of the assessee increased and the children of people in and around the mining area go to school with proper dress. He submitted that the said expenditure incurred by the assessee is in connection to the business of the assessee and for smooth running of business without any problems from people of Ramadurga. It is submitted that as a part of business expediency and commercial thinking process these expenditure were incurred and connected with activities of assessee and is in the nature of Corporate Social Responsibility or CSR nature.

He further submitted that if an entity does any activity which is helpful and useful to the general public at large. He submitted that the activity of assessee requires to be appreciated and the revenue cannot take the contention that the expenditure incurred is not relating to the business of the assessee. It is also submitted that by carrying out of certain Social Responsibility activities the assessee is contributing to the development of infrastructure of the country. Thus, it is submitted that the assessee incurred expenditure which is in the nature of CSR expenditure to the development of the country. The Ld.AR placed reliance on the parity of reasoning of the *Hon'ble Madras High Court* in the case of *CIT Vs. Madras Refinery Ltd.*, reported in *266 ITR 170*, wherein the *Hon'ble Court* has held that the amount spent for bringing the drinking water as also for establishing or improving the school meant for the residents of the locality in which the business was situated could not be regarded as being

wholly outside the ambit of business concerns of the assessee. Thus the *Hon'ble Court* held that, the expenditure was a deductible expenditure under section 37 of the Act. *Hon'ble Court* has held that public benefit in the discharge of social responsibility need not be a bar for deduction as under:

> *"The concept of business is not static. It has evolved over a period of time to include within its fold the concrete expression of care and concern for the society at large and the people of the locality in which the business is located in particular. Being known as a good corporate citizen brings goodwill of the local community, as also with the regulatory agencies and the society at large, thereby creating an atmosphere in which the business can succeed in a greater measure with the aid of such goodwill...."*

4. He also submitted that the expenditure may not have resulted in direct profit to the assessee but resulted in benefit to the assessee. This view is also supported by the finding of the *Hon'ble High Court of Rajasthan* in case of *CIT Vs. Kamal & Company* reported in *203 ITR 1038*. It is also submitted that *Hon'ble High Court of Allahabad* in the case of *CIT Vs. Development Trust Pvt. Ltd.* reported in *198 ITR 766* also support the view that CSR expenses are allowable business expenditure.

On the contrary, the Ld.CIT.DR relied on the orders passed by the authorities below.

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

5. We note from the assessment order that assessee incurred expenditure pursuant to a letter addressed by the Deputy Commissioner, Bellary wherein assessee participated in the State Government Programme ("Bhagyalakshmi Scheme") by contributing sum of Rs. 11 Lakhs which is acknowledged by the

Deputy Commissioner as donation. The Ld.AO also records that the amount donated by the assessee was to the State Government and assessee failed to obtain certificate of exemption u/s. 80G. It was under such circumstances that an expenditure u/s. 37(1) was claimed by assessee in the profit & loss account. The Ld.AO disallowed the same only for the reason that certificate u/s. 80G was not obtained. Admittedly, the entire payment has gone for social development of an area wherein mining activities were undertaken and assessee was one of the licensee to the mines allotted by the Indian Bureau of Mines. An identical issue has been considered by the *Coordinate Bench* of this *Tribunal* in case of *M/s. Veerabhadrappa Sangappa & Co. vs. ACIT* in *ITA No. 1054/Bang/2019 dated 08.12.2020,* wherein this *Tribunal has observed as under:*

> *"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:-*
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> *"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…….

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.

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".

27. 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:

28. 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."

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."

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."

6. 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."

Respectfully following the above view and the ratio laid down by the *Hon'ble Madras High Court* in the case of *CIT Vs. Madras Refinery Ltd. (supra)*, the ratio laid down by the *Hon'ble Rajasthan High Court* in case of *CIT Vs. Kamal & Company (supra)* and *Hon'ble High Court of Allahabad* in the case of *CIT*

Vs. Development Trust Pvt. Ltd. (supra), we direct the Ld.AO to delete the disallowance made.

Accordingly, grounds raised by assessee stands allowed.

In the result, the appeal of the assessee stands allowed.

Order pronounced in the open court on 04th January, 2022.

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

Bangalore,
Dated, the 04th January, 2022.
/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