

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A”BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.1655/Bang/2018
Assessment Year: 2013-14

M/s. Kumaraswamy Mineral Exports Pvt. Ltd. No.58, Cunningham Road Cross Bengaluru 560 052. PAN NO :AAQCS4798A	Vs.	Principal CIT Bengaluru-6
APPELLANT		RESPONDENT

Appellant by	:	Shri Narendra Sharma, A.R.
Respondent by	:	Shri Sumer Singh Meena, D.R.

Date of Hearing	:	15.02.2022
Date of Pronouncement	:	21.02.2022

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed this appeal challenging the validity of revision order passed by Ld. Principal CIT-6, Bengaluru u/s 263 of the Income-tax Act,1961 [‘the Act’ for short] for assessment year 2013-14.

2. The facts relating to the case are stated in brief. The assessee is engaged in the business of mining of iron ore. The assessment in the hands of the assessee for assessment year 2013-14 was completed by the A.O. u/s 143(3) of the Act on 31.3.2016. On examination of the assessment order, the Ld. Principal CIT noticed

Page 2 of 5

that the assessee has debited a sum of Rs.65,35,000/- in the profit & loss account towards donation paid by it under the head “other expenses”. However, the assessee has not added back the above said amount in the computation of income. The A.O. also did not examine this issue and he did not disallow the above said claim. Accordingly, he took the view that the assessment order is erroneous and prejudicial to the interest of the revenue. Accordingly, he initiated revision proceedings u/s 263 of the Act.

3. Before Ld. Principal CIT, the assessee submitted that the above said amount was paid to M/s. Federation of Indian Mineral Industries (FIMI) and the same is the trade association related to the business carried on by the assessee. It was submitted that the payment has been made to the trade association on business interests of the assessee. Accordingly it was submitted that the above said payment is allowable as business expenditure. It was also submitted that the Ld PCIT was not justified in initiating revision proceedings on this issue.

4. However, the Ld. Principal CIT noticed that the A.O. did not examine this issue at all in the assessment order. Accordingly, referring to the provisions of section 263 of the Act wherein it is provided that the order passed without making enquiries or verification, which should have been made, is deemed to be erroneous and prejudicial to the interest of the revenue. Accordingly, the Ld. Principal CIT held that the revision proceedings have been rightly initiated. Thereafter, the Ld. Principal CIT referred to the provisions of section 37(1) of the Act and took the view that “donation” payment is not allowable as deduction u/s 37(1) of the Act. He also expressed the view that the deductibility of donation should be considered in terms of section 80G of the Act.

Page 3 of 5

Accordingly, he held that the assessment order passed by the A.O. u/s 143(3) of the Act is erroneous in so far as it is prejudicial to the interest of the revenue. Accordingly, the Ld. Principal CIT directed the A.O. to recompute the total income by disallowing the donation amount of Rs.65,35,000/-.

5. We heard the parties and perused the record. The Ld. A.R. contended that the impugned amount has been paid to a trade association which is protecting the business interests of the trade carried on by the assessee. Accordingly he submitted that it is deductible as expenditure, since the said payment has been made out of commercial expediency and in the interest of the business carried on by the assessee. Accordingly, he submitted that the Ld. Principal CIT was not right in directing the A.O. to disallow the above said claim and in rejecting the above said explanations of the assessee.

6. On the contrary, the Ld. D.R. submitted that the A.O. did not enquire into this issue at all during the course of assessment proceedings. He submitted that the donation paid is not allowable as deduction and accordingly, lack of enquiry by the AO has rendered the assessment order to be erroneous and prejudicial to the interests of revenue. The Ld. D.R. submitted that the question of A.O. taking a plausible view does not arise in the instant case. Accordingly he submitted that the Ld. Principal CIT has rightly initiated revision proceedings u/s 263 of the Act.

7. In the rejoinder, the Ld. A.R. submitted that the Ld. Principal CIT has directed the A.O. to straight away disallow the claim and accordingly did not give opportunity to the AO to examine the claim of the assessee.

8. Having heard the rival contentions, we are of the view that there is merit in the alternative submission of the assessee. In our view, the Ld. Principal CIT should have given open hand to the A.O. to decide on the claim made by the assessee, instead of directing him to disallow the claim. Since the AO did not examine this issue during the course of assessment proceedings, in our view, the Ld PCIT was justified in initiating revision proceedings and passing the impugned revision order. However, we are of the view that the final decision of Ld PCIT requires modification. Accordingly, we modify the order passed by Ld. PCIT and direct the A.O. to examine the claim of donation of Rs.65,35,000/- made to FIMI in accordance with law after duly considering the explanation and information furnished by the assessee in support of the claim. We also make it clear that the A.O. should not be influenced by the observations made by the Principal CIT or direction given in the revision order.

9. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 21st Feb, 2022.

Sd/-
(N.V. Vasudevan)
Vice President

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 21st Feb, 2022.
VG/SPS

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore.