

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH**

**BEFORE SHRI GEORGE GEORGE K., VP
AND SHRI INTURI RAMA RAO, AM**

**ITA No. 919/Coch/2024
Assessment Year: 2012-13**

The Kerala Minerals and Metals Ltd. Appellant
Sankaramangalam, Chavara, Kollam 691583
[PAN: AA ACT8118R]

vs.

Asst. Commissioner of Income Tax Respondent
Circle - 1, Kollam

Appellant by: Shri Rajeev R., CA
Respondent by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 13.05.2025
Date of Pronouncement: 16.05.2025

ORDER

Per: Inturi Rama Rao, AM

This appeal filed by the assessee is directed against the orders of the National Faceless Appeal Centre, Delhi [CIT(A)], dated 1192.09.2024 for Assessment Year (AY) 2012-13.

2. Brief facts of the case are that the appellant is a company incorporated under the provisions of Companies Act, 1956. It is a Kerala Government undertaking engaged in the business of production of Titanium Dioxide. The return of income for AY 2012-13 was filed on 29.09.2012 declaring income of Rs. 111,08,84,540/-.

Against the said return of income, the assessment was completed by the ACIT, Circle -1, Kollam (hereinafter called "the AO") vide order dated 31.03.2015 passed u/s. 143(3) of the Income Tax Act, 1961 (the Act) at a total income of Rs. 126,94,95,680/-. Subsequently, on review of the assessment order the Id. Pr. CIT, Thiruvananthapuram formed an opinion that the assessment order passed on 31.03.2015 is erroneous and prejudicial to the interests of Revenue for the failure of the AO to examine the allowability or otherwise of social responsibility expenses in view of Explanation 2 to section 37(1) of the Act. Accordingly, issued a show cause notice u/s. 263 of the Act on 19.02.2016 calling upon the appellant to explain as to why the assessment order should not be set aside. In response to the show cause notice the appellant had filed a detailed explanation stating that the exercise of power u/s. 263 of the Act is illegal as there was no error in the assessment order passed u/s. 143(3) of the Act. It is submitted that Explanation 2 to section 37(1) has no application as it is effective from AY 2015-16 and moreover the expenditure is not incurred mandatorily u/s. 135 of the Companies Act, 2013 but the expenditure is incurred wholly and exclusively for acquiring goodwill of the community. The Id. Pr. CIT considered the above explanation and held that non-examination of the issue rendered the assessment erroneous and prejudicial to the interests of Revenue. Accordingly, the Id. Pr. CIT set aside the assessment for fresh disposal in accordance with law after affording reasonable

opportunity of hearing to the appellant. Thus, the Pr. CIT passed an order of remand to the AO. Pursuant to the order u/s. 263, the AO passed assessment order dated 14.12.2017 u/s. 143(3) r.w.s. 263 of the Act disallowing the CSR expenditure of Rs. 79,12,974/- after hearing the appellant.

3. Being aggrieved, an appeal was filed before the CIT(A). who vide the impugned order confirmed the action of the AO.

4. Being aggrieved, the appellant is in appeal before us in the present appeal.

5. The learned counsel for the assessee submits that the appellant is in the business of chemical industry which causes air and water pollution and also sand mining by dislocating the people who were inhabiting there for generation has been susceptible to public agitation always. Therefore, in order to earn goodwill of the people of that locality the appellant had incurred an expenditure of Rs. 85,74,874/- out of which donations of Rs. 6,61,900/- has been disallowed by the appellant itself and the balance of Rs. 79,12,974/- was incurred on the following items: -

Payment to Confederation of Indian Industry for Conducting Job Fest in Chavara	5,00,000
Payment to KSEDC Ltd for Electronic Toilet for Government/Aided Schools in Chavara	17,00,000
Payment to Gender Rest – 2012	10,00,000
Expense incurred for flood relief and dewatering of surrounding area	13,84,550

Construction of female ward in Community Health Centre (CHC)	12,00,000
Hospital and other miscellaneous expenses to meet Alleged Toxic Gas Leak	1,91,763
Contributions to Various Programmes of Panmana Grama Panchayat	3,66,100
Expenses Towards Drinking water for Public	3,44,652
Contribution to Govt/Public Institution	2,73,712
Honorarium to Staff of CHC and Cost of Medicines	2,73,712
Constuction to Thevalakkara Panchayath for Consturcting Kanjiravila Pallikadavu Road	2,71,500
Contribution to Club/Sports Charitable and Other Institutions	1,30,629
Expenses for Renovation of Panmana Village Office	1,11,218
Contribution to Educational Institutions	63,750
Contribution to Various Programmes of Chavara Block Panchayath	34,600
Contribution to Kudumasree Units	15,000
Contribution to Chavara Grama Panchayath	13,000
Contribution to Thevalakkara Grama Panchayath	10,000
Treatment Assistance to Local Public	2,500
Total	79,12,974

6. It is submitted that Explanation 2 to section 37(1) of the Act has not application for the year under consideration. It is further submitted that these expenditures were not incurred mandatorily under the Companies Act, 2013 but the expenditures were incurred in order to earn goodwill of the people of that locality where the plant of the company was situated. In support of this proposition he relied on the following judgements: -

- i) CIT v. Tata Engineering and Locomotive Co. Ltd [2024] 165 taxmann.com 227 (Bom)
- ii) PCIT v. Sandur Manganese & Iron Ore Ltd. [2024] 158 taxmann.com 409 (Kar)
- iii) Hindustan Coca Cola Beverages (P) Ltd. v. ACIT [2025] 170 taxmann.com 633 (Delhi Trib)
- iv) Kanhaiyalal Dudheria v. JCIT [2019] 418 ITR 410 (Kar)
- v) Mecon Ltd. v. ACIT [2024] 165 taxmann.com 149 (Ranchi Trib)

7. On the other hand, the learned Sr. DR submits that the expenditure incurred on Corporate Social Responsibility (CSR) cannot be allowed u/s. 37(1) of the act as it amounts to application of income.

8. We have heard the rival contentions and perused the material available on record. The issue that arises for our consideration is whether the CIT(A) was justified in confirming the disallowance of Rs. 79,12,974/- incurred towards community development on the ground that it was not an expenditure allowable u/s. 37(1) of the Act. It is the contention of the appellant that this expenditure was incurred towards community of the locality where the plant of the company was located in order to earn goodwill of the society. There is no dispute about the fact that the expenditure was incurred by the assessee for a public cause in the locality of the business operations of the appellant company. The genuineness of the expenditure is not under challenge before us. The purpose of the expenditure was on the ground of commercial expediency. The ratio of the decision of

the Hon'ble Supreme Court in the case of Sri Venkata Satyanarayana Rice Mill Contractors Co. vs. CIT [1997] 223 ITR 101 (SC) is squarely applicable to the facts of the case, wherein it is held as follows: -

“The principles for determining whether the payment of the kind made by assessee could be regarded as a business expense are well-settled. What is to be seen is not whether it was compulsory for the assessee to make the payment or not but the correct test is that of commercial expediency. As long as the payment which is made is for the purposes of the business, and the payment made is not by way of penalty for infraction of any Law the same would be allowable as a deduction.”

9. It appears that the lower authorities merely carried away by the nomenclature given to the expenditure incurred. It is not incurred mandatorily on CSR activity under the Companies Act, 2013. So this expenditure is proved to be incurred out of business expediency from the point of businessman and the same is required to be allowed u/s. 37(1) of the Act.

10. In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 16th May, 2025.

Sd/-
GEORGE GEORGE K.
VICE PRESIDENT

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 16th May, 2025

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin