IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

ITA No.1272/Bang/2019
Assessment Year : 2014-15

M/s. P. Venganna Setty and Brothers, 1, Baldota Enclave, Abheraj Baldota Road, Hospet – 583 203. **PAN : AADFP 3949 A**	Vs.	ACIT-1, Bellary.
APPELLANT		RESPONDENT

Appellant by	:	Shri. Vijay Mehta, CA
Respondent by	:	Shri. Priyadarshi Mishra, Addl.CIT(DR)(ITAT), Bengaluru

Date of hearing	:	28.10.2021
Date of Pronouncement	:	10.11.2021

O R D E R

Per N.V. Vasudevan, Vice President

This is an appeal by the assessee against the order dated 27.03.2019 of CIT(A), Kalburgi, relating to Assessment Year 2014-15.

2. The only issue that arises for consideration in this appeal is as to whether Revenue authorities were justified in disallowing a sum of Rs.13,02,180/- being expenses incurred by the assessee towards reclamation and rehabilitation of mine area.

3. The assessee is a partnership firm and is in the business of extraction and sale of run-of-mines (ROM), service in respect of rising of mining of ROM and generation and sale of electricity from wind turbine generator. In the course of assessment proceedings under section 143(3) of the Act, the AO noticed that the assessee had claimed a sum of Rs.2,35,03,176/- under

the head "mining and raising expenses". It is an admitted position that the assessee was in the business of mining since 1952 and had a licence for carrying out mining operations. In 1992, the mining licence was renewed for 20 years. The assessee made an application for renewal of the mining lease on 29.04.2011. The Hon'ble Supreme Court in its order dated 29.07.2011 passed in the case of GoI Vs. Obulapuram Mining Company Pvt. Ltd., (2011) 12 SCC 491 suspended all mining and transportation activities in the district of Bellary. The assessee could not therefore get renewal of its licence for mining activity. However, it had a licence for prospecting operation w.e.f. 07.11.2011. The Assessee's lease of land over which it had mining rights, stood extended up to 31.3.2020 vide order No.C1 10 MMM dated 31.1.2017 of the Department of Commerce & Industries, Government of Karnataka. In the course of assessment proceedings, the AO came across letter dated 07.11.2012 issued by the Government of Karnataka permitting the assessee to undertake prospecting operation in mining. In that letter, it has been mentioned that under no circumstances mining should be resorted to in the garb of prospecting. The AO therefore called upon the assessee to bifurcate the prospecting and mining expenses. The assessee filed the following chart bifurcating expenses pertaining Prospecting and Mining.

Prospecting Expenses		**Mining Expenses**	
Nature of Expense	**Amount (Rs.)**	**Nature of Expense**	**Amount (Rs.)**
Consumption of Diesel	82,00,235	Lease Hold Charges	14,969
Consumption of spares and others	1,01,21,266	Raising Expenses	24,832
Forest NPV barges	29,59,972	R&R Work	1,08,371
Entry Tax	4,58,873	Environment & Ecology	11,54,008
Electricity Charges	4,60,650		
Total Prospecting Expenses	**2,22,00,996**	**Total Mining Expenses**	**13,02,180**
Grand Total (Claimed as Mining & Raising Expenses)			**2,35,03,176**

4. The AO disallowed mining expenses of Rs.13,02,180/- with the following observations:

> *"6.3. As the assessee is permitted by DMG to carry out only prospecting operations and not mining operations, the expenditure claimed by assessee as Mining expenses we not allowable as per Explanation to Sec. 37(1) of the Act which is reproduced as under :*
>
> > *"[Explanation.] — For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.]"*
>
> *4.4 It is clear from the plain reading of the above Explanation that as assessee is not permitted for Mining, the expenditure claimed by assessee as Mining expenses cannot be deemed to have been incurred for the purpose of business and hence, not able as per Sec.371(1). Accordingly, amount of Rs.13,02,180/- is disallowed and back to the returned income and brought to tax."*

5. On appeal by the assessee, the CIT(A) confirmed the order of the AO observing as follows:

> *"3.8 After carefully examining all the facts and circumstances of the case, and also taking into account the explanations offered by the appellant it is held that the addition made in respect of mining expenses for which the Government of India has not permitted. The expenditure incurred is for mining activity which was specifically discontinued. Therefore it cannot be said that the expenditure incurred is wholly and exclusively for the advantage of the assessee's business activity. Keeping in view the above facts I unable to accept the*

contentions of the appellant. ***Therefore the Ground no. 3 of appeal is dismissed."***

6. Aggrieved by the order of the CIT(A), the assessee is in appeal before the CIT(A). The short question that arises for consideration before the Tribunal is as to whether Revenue authorities were justified in disallowing the mining expenses by invoking the provisions of explanation to section 37(1) of the Act. In this regard, it is necessary to understand the factual background with regard to the banning of mining operations by the Hon'ble Supreme Court and the subsequent development that took place.

7. The Hon'ble Supreme Court by order dated 29/07/2011 passed in GOI vs. Obulapuram Mining Co. Pvt. Ltd., reported in (2011) 12 SCC 491, suspended all mining and transportation activities in area admeasuring approximately 10,868 ha, pertaining to district of Bellary. Subsequently, by order dated 26/08/2011 passed in Samaj Parivartana Samudaya vs state of Karnataka, reported in (2013) 8 SCC 209, Hon'ble Apex Court extended ban to Tumkur and Chitradurga mines, based upon a report filed by Central Empowered Committee (hereinafter referred to as CEC). Hon'ble Apex Court directed Ld. Amicus Curiae to submit quantity which could be released from existing stock of 25,000,000 Ton of iron ore, subject to reclamation and rehabilitation plans being submitted. This was in pursuance to plea raised by Association of Steel Industry and other affected parties. On 23/09/2011, Hon'ble Apex Court was appraised with Central Empowered Committee (hereinafter referred to as CEC) report dated 01/09/2011, containing modalities of sale of existing stock of iron ore through E-Auction, sale proceeds to be deposited in nationalised bank. It was submitted in the report that, where there is no illegal mining, 80% of sale proceeds to be released and 20% to be retained. Monitoring Committee (MC) was to be constituted to supervise and control E- Auction, size of lot, transportation

etc. It was submitted therein that, MC would utilise sale proceeds for payment of royalty, taxes etc. Subsequently, a plea by Karnataka Iron and Steel Manufacturers Association was raised regarding shortage of supply of minerals due to suspension of mining activity, before Hon'ble Apex Court. The association also sought for a direction to reopen Category 'A' mines. Thereafter, by order dated 03/09/2012 Hon'ble Apex Court in case of Samaj Parivartana Samudaya vs state of Karnataka, reported in (2013) 8 SCC 219 approved report dated 29/08/2012 filed by CEC, Hon'ble Apex Court ordered for reopening of category 'A' mines, and vacated order dated 29/07/2011 passed in case of GOI vs. Obulapuram Mining Co. Pvt. Ltd., (supra) and order dated 26/08/2011 in case of Samaj Parivartana Samudaya vs State of Karnataka (supra). Thereafter, by order dated 28/09/2012, CEC filed detailed report dated 03/02/2012, categorising mines into 'A', 'B' and 'C', depending on various types of violations by mining lessee.

8. The Report considered 63, Category 'B' mining lessee that includes Assessee's mining lease and suggested compensatory payments by leaseholders for repairing environmental deprecation brought by leaseholders to the extent of unplanned illegal mining done in their respective areas. The report suggested reclamation and rehabilitation plan by each leaseholders by constituting a special purpose vehicle by State of Karnataka, to carry out highly essential comprehensive environment plans for mining impact zone, in order to restore environmental damage, caused in such area due to illegal and reckless mining on a very large scale, and to ensure that environment in such areas may not suffer from any such type of abuse and destruction in future. Hon'ble Apex Court in its order dated 28.9.2012, observed in para 5.1 to 5.4 as under:

> "5.1. Compensatory payment: (a) each of the leaseholders must pay compensation for the areas under illegal mining pits outside the sanctioned area, as found by the joint team (and as finally held by

CEC) at the rate of Rs.5 crores per hectare, and (b) for the areas under illegal overburden dumps, roads, offices, etc. Outside the sanctioned the lease area, as found by the joint team (as might have been finally held by CEC) at the rate of Rs.1 crore per hectare.

5.1.1. it is made clear that the payment at the rates aforesaid is the minimum payment and each leaseholders may be liable to pay additional amounts on the basis of the final determination of the national loss caused by the illegal mining and the illegal use of the land for overburden dumps, roads, offices etc. Each leaseholder, besides making payment as directed above, must give an undertaking to CEC for payment of the additional amounts, if held liable on the basis of the final determination.

.....

5.2. Guarantee money for implementation of the R & R Plan in the respective sanctioned lease areas: The CEC shall take an estimate of the expenses required for the full implementation of the art and are planned in each of the 63 category B mines and each of the leaseholders must pay the estimated amount as guarantee for implementation of the R & R plans in their respective sanctioned a lease area and in the areas where they carried on illegal mining activities which were used for illegal overburden dumps, roads, offices etc beyond the sanctioned lease area. In case, any leaseholder defaults in implementation of the R&R plan, it will be open to CEC is to carry out the R&R plan for that leasehold to some other proper agency from the guarantee money deposited by the leaseholder. However, on the full implementation of the R&R plan to the complete satisfaction of CEC and subject to the approval of the court, the guarantee money would be refundable to the leaseholder.

5.3 In addition to the above, each leaseholder must pay a sum equivalent to 15% of sale proceeds of its iron oversold through the monitoring committee as per the earlier orders of this court. In this regard, it may be stated that though the Amicus suggests the payment at 10% of the sale proceeds, having regard to the overall facts and circumstances of the case, we have enhanced this payment is to 15% of sale proceeds.

5.3.1. Here it needs to be clarified that CEC/monitoring committee is holding the sale proceeds of the iron ores of the leaseholders, including the 63 leasehold being the subject of this order. In case, the money held by CEC/monitoring committee on the account of any leaseholder is

sufficient to cover the payments under the aforesaid 3 heads, the lease holder may, in writing, authorize CEC to deduct from the sale proceeds on its account the amounts under the aforesaid 3 heads and an undertaking to make payment of any additional amount as compensatory payment. On submission of such authorisation and undertaking, CEC shall retain the amounts covering the aforesaid 3 heads and pay to the leaseholder concerned the balance amount, if any. It is expected that the balance amount, after making the adjustment as indicated here, would be paid to the leaseholder concerned within one month from the date of submission of authorisation and the undertaking.

5.3.2. In case of any leaseholder, if the money held on his account is not sufficient to cover the aforesaid 3 heads, he must pay the deficit within 2 months from today.

5.4. The R&R plans for the aforesaid 63 category B mines may be prepared as early as possible, as directed by orders of this court dated 13/04/2012, 20/04/2012 and 04/05/2012, and in case where the R & R plan is already prepared and ready, the leaseholder may take steps for is comprehensive implementation, both within and outside the sanctioned lease area, without any delay." 7.8.3. In aforesaid paras, Hon'ble Apex Court refers to orders dated 13/04/2012, 20/04/2012 and 04/05/2012 passed in case of State of AP vs Obulapuram Mining Co. Pvt. Ltd., reported in (2013) 8 SCC 213, (2013) 8 SCC 216 and (2013) 8 SCC 217 respectively.

9. The learned Counsel for the assessee filed before us the following documents with a prayer to accept them as additional evidence:

Particulars	**Page No.**	**Filed Before**	
		AO	**CIT(A)**
Copy of R&R Report dated 09.09.2012	4-122	No	No
Copy of CEC Report regarding R&R Plans dated 13.03.2012	123-166	No	No
Copy of letter of Monitoring Committee dated 04.12.2018 for resumption of mining activities	167-174	No	No
Copy of Statement of Profit & Loss for FY 2016-17	175-176	Yes	No

10. We have considered the submissions and we find that all these documents are public documents and are in the public domain. These documents are necessary for us to adjudicate the issue in this appeal and therefore we admit the aforesaid documents are additional evidence.

11. From a perusal of the sequence of events relating to mining operations and orders of the Hon'ble Apex Court especially in the order dated 28.09.2012, it is clear that the Hon'ble Supreme Court directed compensatory payment to be made by the lease holders of various mines for Restoration and Rehabilitation of damage to ecology owing to mining operations. This payment was made for the purpose of restoring the ecological balance consequent to damaged ecology owing to mining operations. It is pursuant to the aforesaid directions that the assessee had to make the aforesaid payment and this fact is not in dispute. In fact, in the decision rendered by this Tribunal in the case of Ramgadh Minerals and Mining Ltd., Vs. ACIT ITA 1270, 1271/Bang/2019 order dated 04.11.2020, identical issue had come up for consideration before this Tribunal and this Tribunal held as follows:

"8. There is one more issue for assessment year 2014-15, which is in respect of sum of Rs.59,45,711/- contributed towards R &R expenses by assessee. This issue has been raised by assessee as revised Ground 2 filed before us.

8.1. In respect of this issue, assessee relied on submissions made in respect of Ground No.1, reproduced herein above, to support its contention to consider contribution towards R&R plan as expenditure allowable under section 37 of the Act.

8.2. Ld. CIT DR also placed reliance on the submissions made in respect of Ground No. 1 reproduced hereinabove.

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

It is relevant to note the observations of Hon'ble Supreme Court in respect of such contribution, to understand its correct nature.

Hon'ble Supreme Court observed as under:

"II. Guarantee money for implementation of the R&R plan in the respective sanctioned lease areas. The CEC shall make an estimate of the expenses required for the full implementation of the R&R plan in each of the 63 category B mines and each of the leaseholders

must pay the estimated amount as guarantee for implementation of the R&R plans in their respective sanctioned lease areas and in the areas where they carried on illegal mining activities or where used for illegal overburden dumps, roads, offices, etc beyond that the sanctioned lease areas. In case, any leaseholder defaults in implementation of the R&R plan, it will be open to the CEC to carry out the R&R plan for that leasehold through some other proper agency from the guarantee money deposited by the leaseholder. However, on the full implementation of the R&R plan to the complete satisfaction of the CEC and subject to the approval by the court, the guarantee money would be refundable to the leaseholder."

8.3.2. We note that Hon'ble Supreme Court directed lease holders to give undertaking to make any additional payment. On perusal of above observation/directions by Hon'ble Supreme Court, we feel that the assessee could not have ignored the notice and that only upon making good such payments, assessee would have resumed its mining activity. Further it is noted that in the event assessee is not able to make good the full payment towards R&R plan as directed by CEC, the guarantee money paid by assessee would be forfeited to that extent. We therefore, cannot concur with the observations of the authorities below that such payment is hit by Explanation 1 to Section 37 (1). In support of the same, we refer to and rely on our observation in paragraph7.8.1 to 7.8.17 and hold that this payment is in the nature of expenditure incurred for purposes of business, and is allowable under section 37 of the Act."

12. The ration laid down in the aforesaid decision is squarely applicable to the facts of the present case. As laid down in the aforesaid decision, the payment in question cannot be regarded as the payment which is hit by explanation to section 37(1) of the Act. Revenue authorities proceeded on the basis that since the assessee did not have licence for mining and could undertake only prospecting operations, the assessee could not have incurred these expenses which are in relation to mining operations and by doing so, the assessee has violated the conditions imposed on them by the Government of Karnataka in their order dated 07.11.2012 permitting the

assessee to undertake prospecting operations. In our opinion, the aforesaid conditions imposed in the order dated 07.11.2012 cannot be the basis to construe these expenses in question as the payment which is hit by the provisions of explanation to section 37(1) of the Act. In other words, these payments cannot be said to be the expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law. As the sequence of event would go to show that the payment in question is for the purpose of reclamation and rehabilitation of mine area and paid consequent to the directions of Hon'ble Supreme Court.

13. We therefore hold that the expenditure in question was the revenue expenditure and had to be allowed as a deduction under section 37(1) of the Act as expenditure incurred wholly and exclusively in connection with the business of the assessee. In this regard, that the AO has not doubted the claim of the assessee that the payment in question has been made towards reclamation and rehabilitation of mines. In these circumstances, we direct that the deduction claimed should be allowed.

14. In the result, appeal by the assessee is allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-	**Sd/-**
(CHANDRA POOJARI)	**(N. V. VASUDEVAN)**
ACCOUNTANT MEMBER	**VICE PRESIDENT**

Bangalore,
Dated : 10.11.2021.
/NS/*

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.