IN THE INCOME TAX APPELLATE TRIBUNAL DELHI 'F' BENCH
BEFORE SHRI U.B.S. BEDI, JM & SHRI A.N. PAHUJA, AM

ITA No.363/Del/2012 Assessment year:2007-08		
Rio Tinto India Pvt. Ltd., Unit No.103A, Right Wing, 3rd Floor, The Capital Court, Plot No.MS1 at LSC, Munirka Phase-III, New Delhi	**V/s.**	Assistant CIT, Circle 15(1), New Delhi
[PAN : AAACR 5591 A]		

(Appellant)		(Respondent)

Assessee by	Shri Nageshwar Rao,AR
Revenue by	Shri B.R.R. Kumar,DR

Date of hearing	03-05-2012
Date of pronouncement	22-06-2012

O R D E R

A.N.Pahuja:- This appeal filed on 24.01.2012 by the assessee against an order dated 25.11.2011 of the ld. CIT(A)-XVIII, New Delhi, raises the following grounds:-

1. *"The entire order of the CIT(A)-XVIII[CIT(A)] is based on conjectures, surmises, incorrect application of law and erroneous assumptions and is hence liable to be quashed.*

2. *That the CIT(A) has grossly erred in facts and law by upholding the order of the ACIT, Circle 15(1)[AO] in disallowing the principal payments made towards finance lease amounting to `₹11,03,600/- alleging that such payment is towards acquisition of capital asset and accordingly, is an expenditure of capital nature.*

2.1 *Without prejudice to the above ground, the CIT(A) has also erred in facts of the case and in law by upholding order of the*

Assessing Officer of not allowing depreciation u/s 32 of the Act on cost of assets taken on lease.

3..That the CIT(A) has grossly erred in facts and law by upholding the order of the AO in disallowing preliminary expenses amounting to ₹`31,000/- alleging that complete details/explanation were not provided during the course of assessment proceedings.

4. That the CIT(A) has grossly erred in facts and law by upholding the order of the AO in disallowing contribution made towards Federation of Indian Mining Industries building fund amounting to ₹`50 lacs alleging that the same has not been incurred wholly and exclusively for the purpose of business.

The above grounds are mutually exclusive and without prejudice to each other.

The appellant craves leave to add, alter, amend, modify or withdraw any one or more of the above grounds of appeal.

2. Adverting first to ground nos.2 & 2.1 in the appeal, facts, in brief, as per relevant orders are that return declaring income of `₹2,83,48,467/- filed on 01.11.2007 by the assessee, engaged in providing services for the development of mining sector in India, after being processed u/s 143(1) of the Income-tax Act, 1961 (hereinafter referred to as the Act), was selected for scrutiny with the service of a notice issued u/s 143(2) of the Act. During the course of assessment proceedings, the Assessing Officer (A.O. in short) noticed that the assessee debited an amount of ₹`11,03,660/- on account of principal payment towards financial lease. While analyzing the definition of financial lease, the AO asked the assessee as to why the claim be not disallowed. In reply, the assessee submitted that they had taken certain vehicles in terms of a financial lease arrangement and capitalized the same in their books in accordance with accounting standard-19 on 'Leases' issued by the Institute of Chartered Accountants of India. Though the depreciation on capitalized leased vehicles was debited to P & L account, the same was added back in the computation of income. It was further pointed out that circular no.2 of 2001 dated 9th February, 2001, issued by CBDT clarified that accounting standard-19 by itself did not have any implications on the

allowance of depreciation on assets acquired under the finance lease agreement in the hands of the lessee and also the amount of lease charges incurred during the year will be allowed as deduction. Accordingly, the repayment of principal amount of ₹`11,03,660/- was reduced from the computation of income, the assessee submitted. However, the AO did not accept the submissions of the assessee on the ground that in schedule 15 to the accounts, clause 1(f) on leases reads as under:-

> *"Assets acquired under leases where the Company has substantially all the risks and rewards of ownership, are classified as finance leases."*

2.1 Moreover, Accounting Standard 19 on leases, inter alia, stipulated as under:-

> *"4.7.1 The lease has to recognize it as capital asset and liability and depreciation and financial charge is charged in the P L account in place of lease rent payment.*
>
> *4,7,2 Thus, the accounting standard recognizes that the principal payment towards acquisition of the asset is capital in nature."*

2.2 Accordingly, while referring to circular no.2 dated 9th February, 2001 issued by CBDT, the AO concluded that the said circular does not help the assessee and the assessee is not entitled depreciation on base payments, only the lessor being entitled to claim depreciation. Therefore, while referring to decisions in D.P. Chirania and Co. Vs. CIT, (1978) 112 ITR 12 (Karn.); CIT Vs. Ashok Leyland Ltd., (1972) 86 ITR 549(SC); CIT Vs. Ashok Leyland Ltd., (1969) 72 ITR 137(Mad) affirmed in 86 ITR 549 (SCt); Southern Vs. Borax Consolidated Ltd. (1942) 10 ITR (Supp) 1, 5 (KB) ,the AO concluded that the principal payments towards financial lease being for acquisition of assets, are capital in nature and, therefore, could not be allowed as revenue expenditure.

3. On appeal, the ld. CIT(A) upheld the findings of the AO while rejecting claim for depreciation on the leased assets, in the following terms:

"4.2 I have carefully considered the assessment order and the submission made by the ld. AR. The facts of the case are that during the relevant assessment year the appellant had taken certain vehicles on financial lease and had capitalized these in its books of account in accordance with the requirement of AS 19 on leases issued by the Institute of Chartered Accountants of India which requires capitalization of assets acquired by the lessee in the financial lease agreement. The AO noted that the assessee had deducted an amount of ₹`11,03,660/- being principal payments towards financial lease and disallowed this expense on the basis that it has been incurred for the creation of a capital asset and is for the enduring benefit of the concern. Facts of the case as confirmed during the course of the appellate proceedings show that the vehicles are registered in the name of the appellant company, the insurance policy is also on its name. The lease is for the period of 48 months. If the cost of one vehicle is `₹16,20,439/-, the principal and interest payment over the lease term is ₹`16,87,212/-. The appellant has not claimed depreciation u/s 32 of the Act in accordance with CBDT Circular No.2/2001 dated 09.02.2001.

The appellant has paid ₹`11,03,660/- as principal payment towards financial lease besides making payment on account of interest. The AO has allowed payment of interest as revenue expenses but has treated `₹11,03,660/- as a capital expenses. Since, the lease period is for 48 months thus the appellant gets enduring benefit of the vehicles for the period of lease. The terms and conditions of the agreement shows that it is a financial lease in which the vehicle has been financed by the lessor while the ownership and the right to use vehicle remains with the lessee. The lessee is using the vehicle/asset for substantial part of its economic life and may even continue to use the asset even after the expiry of the lease period by making a notional payment for the vehicle. Even the registration of the vehicle and insurance is in the name of the lessee. All the terms and conditions of the lease agreement show that the appellant has entered into a financial lease and not an operational lease and thus only interest payment can be allowed as an expense and not the repayment of principal. The appellant's claim for allowing the depreciation in case it is held to be the owner of the vehicle cannot be accepted in view of the CBDT Circular No.2/2001 dated 09.02.2001 and the decision of the Hon'ble ITAT-Mumbai in the case of J.M. Shares and Stock Brokers Vs. DCIT (2009) 311 (A.T.) 0115. The addition of `₹11,03,660/- made by the AO is, therefore, upheld."

4. The assessee is now in appeal before us against the aforesaid findings of the ld. CIT(A). The ld. AR on behalf of the assessee while carrying us through the impugned order contended that the assessee is entitled to deduction of ₹`11,03,660/- on account of payment of principal amount under the lease finance arrangement. Alternatively, the ld. AR sought depreciation on the original amount of assets taken on financial lease in the light of decision dated 14.3.2012 in IndusInd Bank Limited vs. Addl. CIT in ITA nos.6566/Mum./2002 for the AY 1998-99 & ITA no.606/Mum./2003 for the AY 1999-2000..

5. On the other hand, the ld. DR supported the findings of the ld. CIT(A), relying, inter alia, on the decision in the case of J.M. Shares and Stock Brokers Vs. DCIT (2009) 311 ITR (A.T.) 0115.

6. We have heard both the parties and gone through the facts of the case as also the decisions relied upon by both the sides. Indisputably, the assessee claimed deduction of ₹`11,03,660/- towards principal amount payable under the lease agreement entered into with M/s LeasePlan India Ltd.[LPIN] on 18.4.2006 for taking on lease certain vehicles for its use. Admittedly, vehicles have been taken under a finance lease arrangement and not under operational lease. In this connection clause 1(f) of notes to the accounts [pg. 22 of the PB] reads as under:-

"1(f) Leases

> *"Assets acquired under leases where the Company has substantially all the risks and rewards of ownership, are classified as finance leases. Such leases are capitalized at the inception of the lease at lower of the fair value or the present value of the minimum lease payments and a liability is created for an equivalent amount. Each lease rental paid is allocated between the liability and the interest cost, so as to obtain a constant periodic rate of interest on the outstanding liability for each period.*
>
> *Assets acquired as leases, where a significant portion of the risk and rewards of ownership are retained by the lessor, are classified as operating leases. Lease rentals are charged to the profit and loss account on accrual basis."*

6.1 Here ,we may also have a look at the relevant terms and conditions of the agreement with LPIN. Article 2.2 of the agreement with LPIN provides for arrangement for the registration & insurance of the vehicles and inter alia, stipulates that vehicles shall be insured and registered in the name of the client i.e the assessee as required under the Motor Vehicles Act, 1988. In terms of Clause vi) of Article 2.2 LPIN is required to pay for maintenance of vehicles. Article 3 of the agreement provides for lease period while the Article 4 provides for payment of lease rentals in advance for every quarter and stipulates that in case, LPIN is required to make advance payment to the manufacturer/dealer to book the vehicle ordered by the client, the client shall be liable to pay to LPIN a simple interest computed using the contracted interest rate as built in the quotation for the period starting from the date of payment to the manufacturer/dealer till the date of delivery of the vehicle. Besides, the assessee is also required to deliver a promissory note for each vehicle, for such sum as may be required by LPIN based on the lease rentals and LPIN may seek a bank guarantee/corporate guarantee, guaranteeing due payment by the assessee of any amounts that may be due under this Agreement and under the relevant order. Article 10 of the agreement ,stipulating rights, title and interest in the vehicles, reads as under:

" Client's convenants"

Article 10

"During the subsistence of this Agreement and till the vehicle is delivered back to LPIN in good order and condition in terms hereof, the client shall;

10.1 not claim any right, title or interest in the vehicle and/or parts, components thereof other than that of a lessee or contest LPIN's sole and exclusive ownership thereof.

10.2 use and operate the vehicle carefully and maintain it in conformity with the manufacturer manual and LP driver's

manual and comply with all statutory and other requirements of law, rules, regulations or directions applicable to use and operation of the vehicle in that behalf. The client shall not do or omit to do, cause to be done any act or thing by which the warranties and performance guarantees given by the manufacturer would be invalidated or become unenforceable, wholly or partly.

10.3 Not transfer, assign or otherwise dispose of or purport to transfer, assign or dispose of LPIN's rights or obligations or interest hereunder by way of mortgage, charge, sublease, sale or other assignment, hypothecation, pledge, hire, encumbrance, license or otherwise in any manner part with the possession of the vehicle or any part thereof or allow or purport to do or allow or create any lien, charge, attachment or other claim of whatsoever nature on the vehicle or any part thereof.

10.4 indemnify and keep indemnified LPIN, at all times, against any loss or seizure of the vehicle under distress, execution or other legal process or destruction or damage to the vehicle by fire, accident or other cause, from any claim or demand arising out of the use/handling of the vehicle, or any risk or liability for death or loss of limb of any person whether employee of the client or any third party and hold LPIN harmless, against all losses, damages, claims, penalties, expenses, suits or proceedings of whatsoever nature made, suffered or incurred consequent thereupon and for this purpose take out such workmen's compensation as may be necessary, customary or the practice in the business carried on by the client.

10.5 (i) not claim any relief by way of any deduction, allowance or grant available to LPIN as the owner of the vehicle under the Income-tax Act, 1961 or under any other statute, rule, regulation or guideline issued (or as may be amended and existing from time to time) by the Government of India or any statutory authority and not do or omit to do or be done any act, deed or thing whereby LPIN is deprived, whether wholly or partly, of such relief by way of deduction, allowance or grant. The client shall, at the end of each financial year of LPIN, provide to LPIN such information as it may require to claim relief by way of deduction, allowance, or grant, as the owner of the vehicle under /the Income-tax Act, 1961 and the client undertakes to comply with and observe, at all

times, all the terms and conditions to be complied with or observed in respect of the use of the vehicle to entitle LPIN to obtain such relief.

(ii) In case of a sale and lease back, the client agrees to make available all necessary documents immediately on request of LPIN to enable the endorsement of LPIN's name as financier and transfer of name, if required, in the registration certificate of the vehicle. In case the required documents are not available or the transfer of name is not allowed by the concerned registration authorities, the client agrees to foreclose the vehicle as per the provisions of this agreement and also agrees to pay to LPIN all losses including the depreciation loss under the Income-tax Act, 1961 or any amendments or replacement to such law.

10.6 sign, execute and deliver all such documents as may be reasonably requested by LPIN, in relation to the vehicle, including such forms, affidavits, powers of attorney etc., as may be required to be filed with the transport authorities or the insurance companies.

10.7 authorise LPIN to sell, alienate, transfer, charge, hypothecate or otherwise encumber the said vehicles and in this regard, to sign and deliver necessary forms, documents and/or to give notice to the appropriate Regional Transport Authority for effecting transfer of the said vehicles at the end of the lease period.

10.8 authorise LPIN to fill in, alter, amend, sign or complete such forms, documents or papers relating to the regional transport office or the insurance companies and to give full and complete effect thereof."

6.2 Article 12 of the agreement ,concerning sale and lease ,stipulates as under:

Sale and lease back

"Article 12

12.1 In case of sale and lease back of vehicles, quotation will be provided by LPIN based on information provided by the client

as per LIPN requirement. Client will provide all the required documents as requested by LPIN along with the order confirmation.

12.2 If any of the information/documents provided by the client is found to be incorrect, or if LPIN discovers that the condition of the vehicle is such that it requires resetting of either the residual value or the maintenance budget, LPIN reserves the right to recalculate the lease rentals according to the correct figures and/or condition. If the particular vehicle shall cease and the client will need to pay to LPIN the outstanding book value and the applicable taxes. In order to assess the condition of the vehicles, the client on LPIN's advice, will make available the identified vehicles at a place and time mutually agreed upon.

12.3 In case the vehicle is previously financed, payment will be released by LPIN after receiving all the documents requested by LPIN. In case LPIN agrees to release payments without certain documents and if such documents are not provided to LPIN by the client within two weeks of release of the payment, LPIN will reserve the right to foreclose the lease of the particular vehicle and the client will need to pay to LPIN the outstanding book value and all the applicable taxes.

12.4 If for any reason it is not possible to transfer the registration certificate of the vehicle in the name of the client and/or it is not possible to endorse the registration certificate with LPIN's name as the 'lessor', LPIN will reserve the right to foreclose the lease of the particular vehicle and the client will need to pay to LPIN the outstanding book value and all the applicable taxes. "

6.3 In the light of aforesaid terms and conditions of the agreement it is apparent that the assessee entered in to a financing lease arrangement with LPIN for taking certain vehicles for its use. A finance lease is one where the lessee uses the asset for substantially the whole of its useful life and the lease payments are calculated to cover the full cost together with interest charges. It is thus a disguised way of purchasing the asset with the help of a loan**.** An operating lease is any other type of lease where the asset is not wholly amortised during the non-cancellable period, if any, of the lease and where the lessor does

not rely for his profit on the rentals in the non-cancellable period. This distinction has been explained in Asea Brown Boveri Ltd vs. IFCI (2004) 12 SCC 570, Association of Leasing and Financial Service Companies vs. UOI (2011) 2 SCC 352 & Sundaram Finance Ltd vs. State of Kerala AIR 1966 SC 1178. In a recent decision dated 17.4.2012 in CIT vs. The Instalment Supply Ltd. in ITA no. 447 of 2007,Hon'ble jurisdictional High Court concluded that, financial lease is a transaction current in the commercial world, the primary purpose whereof is the financing of the purchase by the financier. In the light of viw taken in these decisions, on analyzing various terms and conditions of the agreement with LPIN, we are of the view that the assessee is not entitled to deduction of payment of principal amount under the aforesaid financing arrangement. The ld. AR on behalf of the assessee did not place any material before us, controverting the aforesaid findings recorded by the ld. CIT(A) and various clauses of the agreement and facts narrated before us stare in the face of the assessee. Accordingly, we are not inclined to interfere with the findings of the ld. CIT(A) in upholding disallowance of claim for deduction of ₹`11,03,660/- towards payment of principal amount.

7. As regards alternate claim of depreciation, no doubt in terms of the clause 2..2 (ii) & (iii) of the agreement the registration of the vehicle and insurance is in the name of the lessee, not even a whisper has been made before us by the ld. AR in the light of terms and condition stipulated in Article 10 of the agreement, particularly clause 10.1. & 10.5, whereunder, the assessee is not entitled to claim any right, title or interest in the vehicle and/or parts, components thereof other than that of a lessee or contest LPIN's sole and exclusive ownership thereof. In terms clause 10.5 of the agreement, the assessee agreed that the assessee shall not claim any relief by way of any deduction, allowance or grant available to LPIN as the owner of the vehicle under the Income-tax Act, 1961 or under any other statute, rule, regulation or guideline issued by the Government of India or any statutory authority and not do or omit to do or be done any act, deed or thing whereby LPIN is deprived, whether wholly or partly, of such relief by way

of deduction, allowance or grant. Inter alia, the assessee is also required to provide to LPIN, at the end of each financial year of LPIN, such information as it may require to claim relief by way of deduction, allowance, or grant, as the owner of the vehicle under the Income-tax Act, 1961 and the assessee undertook to comply with and observe, at all times, all the terms and conditions of the agreement. In view of these specific covenants in the agreement, especially when the ld. AR did not make even a whisper before us in the light of terms and conditions stipulated in Article 10 of the agreement, we are not prepared to accept the alternate claim of the assessee. As regards certain observations in respect of depreciation available to the lessee in the decision of Special Bench in IndusInd Bank Limited(supra) ,which was the case of a lessor and not the lessee, since the relevant terms and conditions of the agreement in that case, have not been placed before us nor the ld. AR stated as to why the terms and conditions stipulated in Article 10 of the agreement in the instant case , are not applicable , we are of the opinion, that the said decision is not of any assistance to the assessee.

8. In the light of aforesaid discussion, ground nos.2 & 2.1 in the appeal are dismissed.

9.. Ground no.3 in the appeal relates to disallowance of `₹31,000/- on account of preliminary expenses. The AO noticed that the assessee claimed deduction for an amount of ₹ `31,000/- towards preliminary expenses. Despite specific request made by the AO, the assessee did not submit the relevant details, resulting in disallowance of the amount.

10. On appeal, the ld.CIT(A) upheld the disallowance in the following terms:-

> *"5.1 I have carefully considered the facts of the case as well as the submissions made by the learned AR. I find that the appellant has failed in providing necessary information and in explaining how*

the expenses come in the ambit of section 35D. The right of the Assessing Officer to ask for details is paramount and it cannot be denied as he has to scrutinize the underlying expenses. Similar issue on the same ground, for assessment year 2006-07, has already been upheld by my predecessor ld. CIT(A). This ground of appeal is accordingly dismissed and /the addition of ₹`31,000/- is upheld."

11. The assessee is now in appeal before us against the aforesaid findings of the ld. CIT(A).Neither the ld. AR on behalf of the assessee nor the ld. DR made any submissions before us on this ground.

12. We have gone through the facts of the case. Indisputably, the assessee failed to submit necessary information required by the AO in support of the claim of expenses written off while in the preceding assessment year, similar disallowance has been upheld by the ld. CIT(A). Since the ld. AR did not place any material before us controverting the aforesaid findings of the ld. CIT(A) so as to enable us to take a different view in the matter, we are not inclined to interfere. Therefore, ground no.3 in the appeal is dismissed.

13.. Ground no.4 in the appeal relates to disallowance of an amount of ₹50 lacs on account of contribution towards Federation of Indian Mining Industries Building Fund. To a query by the AO during the course of assessment proceedings, the assessee replied that Federation of Indian Mining Industries was engaged in liaisoning with various Government bodies on mining related issues and since it provides support to mining industries and the assessee is rendering services to the mining industries, the expenditure was wholly and exclusively incurred for the purpose of business. However, the AO did not accept the submissions of the assessee on the ground that the assessee failed to establish that expenditure was incurred wholly and exclusively for the purpose of business. Inter alia, the AO relied upon decision in CIT Vs. Chandulal Keshavlal & Co. (1960) 38 ITR 601 (SC) and distinguished the decision relied upon by the assessee in CIT Vs. Kamal and Co. 203 ITR 1038(Raj.).

14. On appeal, the ld. CIT(A) upheld the disallowance, holding as under:-

> *"6.1 I have carefully considered the assessment order and the submission made by the learned AR. The payments of `₹50 lacs is towards the building fund of FIMI i.e. Federation of Indian Mineral Industries. The payment cannot be said to be for the purpose of business and revenue in nature. The appellant's plea that the payment has been made to FIMI as it provides support to the mining industries and therefore should be allowed as revenue expense is not acceptable. The expense is in the nature of donation and is capital in nature cannot be said to have been incurred wholly and exclusively for the purpose of business as required under the provisions of section 37(1) of the Act. The same is, therefore, rejected."*

15. The assessee is now in appeal before us against the aforesaid findings of the ld. CIT(A). The ld. AR on behalf of the assessee relied upon the decision in Chemicals & Plastics India Ltd. 292 ITR 115 (Mad); CIT Vs. Co-operative Sugars Ltd., 304 ITR 259(Kerala); ACIT Vs. Rajasthan Spinning and Weaving Mills Ltd.,274 ITR 463(Rajasthan) while contending that since activities of the FIMI are closely linked with the welfare of mining industry, the expenditure is admissible as revenue .

16. On the other hand, the ld. DR supported the findings of the ld. CIT(A) on the ground that the amount conferred enduring benefit to the assessee, spread over a number of years and thus, could not be allowed as revenue expenditure.

17. We have heard both the parties and gone through the facts of the case as also the aforesaid decisions relied upon by the ld. AR.. As is apparent from the aforesaid facts, an amount of ₹`50,00,000/- has been contributed towards building fund of Federation of Indian Mineral Industries, the assessee being one of the members of the said Federation. The ld. CIT(A) treated the amount in the nature of donation and capital in nature. Whether the amount is

revenue or capital in nature, Hon'ble Apex Court in K. T. M. T. M. Abdul Kayoom v. CIT,44 ITR 689 (SC) held that each case depends on its own facts and close similarity between one case and another is not enough, even a significant detail may alter the entire aspect. It was observed that what is decisive is the nature of business, the nature of the expenditure, the nature of the right acquired, and their relation inter se, and this is the only key to resolve the issue in the light of the general principles, which are followed in such cases. In Sri Venkata Satyanarayana Rice Mill Contractors Co. v. CIT,223 ITR 101(SC),Hon'ble Apex Court held that the correct test is that of commercial expediency. In Chemicals & Plastics India Ltd.(supra), Hon'ble Madras High Court while adjudicating as to whether or not the amount of ₹ 1.5 lakhs paid towards the construction of building of the Madras Chamber of Commerce was allowable as business expenditure, held that since the contribution made by the company is for the Chamber of Commerce, whose activities are closely linked with the welfare of the corporate entities, who are members therein and whose interest are taken care of by the Chamber of Commerce, irrespective of whether the expense incurred is compulsory or otherwise., it satisfies the commercial expediency test . In CIT vs.T.. V. Sundaram Iyengar And Sons Pvt. Limited.,186 ITR 276(SC), Hon'ble Apex Court upheld the findings of the ITAT that the amount advanced by the assessee-employer for construction of houses under "Subsidised Industrial Scheme" for its employees would be in the nature of a revenue expenditure and the fact that the scheme was not for any temporary or particular duration makes little difference to the nature of the expenditure. In Rajasthan Spinning and Weaving Mills Ltd(supra) contribution to the export promotion fund made by the assessee for promoting its business interest by augmenting exports was held to be incurred and laid out wholly and exclusively for the purpose of the assessee's business. In L.H. Sugar Factory and Oil Mills P. Ltd. v. CIT [1980] 125 ITR 293(SC) the Hon'ble Supreme Court allowed the contribution made by a sugarcane factory for construction of a road, at the request of the District Collector. Following this decision,Hon'ble Kerala High Court in Co-operative Sugars Ltd.(supra) held that the contribution made by the company at the

suggestion of the State Minister concerned, for sharing of cost incurred for cement lining of an irrigation canal serving sugarcane cultivators was allowable as revenue expenditure under section 37(1) of the Act, as it went to the advantage of the company in the form of better supply of sugarcane.

17.1 In the instant case, the assessee, rendering services to mining Industry, contributed towards building fund of Federation of Indian Mineral Industries , of which the assessee is a member . Indisputably, the assessee is rendering services to the mining industry The said federation has over 44 years of experience in mining technology solutions for the mineral Industry. In 1966, the individual mine operators and associations established an all-India federation, a non-profit corporate body under the Companies Act, 1956 to promote the interests of mining, mineral processing, metal making and other mineral-based industries and to attend to the problems faced by them in lease grants, renewals, tenures, production, taxation, trade, exports, labour, etc. The Federation envelopes in its fold mining, mineral processing, metal making, cement and other mineral-derived industries as well as granite, stone, marble and slate industries - private, joint and public sectors of the country. It represents the entire non-fuel mining and mineral processing activities of the nation. Apparently, the expenditure incurred by the assessee by way of contribution towards building fund of the said federation, is for commercial consideration and it is not incurred for the purpose of securing any capital assets. In the light of view taken in the aforesaid decisions, we are of the opinion that contribution towards building fund of Federation of Indian Mineral Industries, of which the assessee is a member, has been incurred with a view to obtaining a commercial advantage and is allowable as revenue expenditure. In view thereof, ground no. 4 in the appeal is allowed.

18.. Ground no.1 in the appeal being general in nature, does not require any separate adjudication while no additional ground having been raised before

us in terms of residuary ground in the appeal ,accordingly, these grounds are dismissed.

19. No other plea or argument was made before us.

20. In the result, appeal is partly allowed.

Order pronounced in open Court

Sd/-	Sd/-
(U.B.S. BEDI)	(A.N. PAHUJA)
(Judicial Member)	(Accountant Member)

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Copy of the Order forwarded to:-

1. Assessee
2. Assistant CIT,Circle 15(1),New Delhi
3. CIT concerned
4. CIT (Appeals)-XVIII, New Delhi.
5. DR, ITAT,'F' Bench, New Delhi
6. Guard File.

By Order,

Deputy/Asstt.Registrar
ITAT, Delhi