

**5TH JUSTICE DR B.P. SARAF NATIONAL TAX MOOT
COURT COMPETITION, 2019**

MOOT PROBLEM

The assessee company-M/s Indian Mining Company Ltd.(In short IMCL) is primarily, as the name suggests, a mining company, headquartered in Kolkata. It had taken iron ore mines from the Govt. Of Orissa on lease in the Jajang iron and Manganese Ore mining leasehold area, Dist Keonjhar, Orissa.

2. A PIL was filed in the Apex Court in regard to illegal mining and connected issues. Pursuant to the interim order dated 16.05.2014 of the Hon'ble Supreme Court in the matter of W.P.(C) No. 114 of 2014; Common Cause vs. Union of India & Ors., the Central Empowered Committee (CEC) submitted its final report on 16.10.2014 before the Hon'ble Supreme court, inter alia, in connection with the issue of production vis-a-vis without or in excess of environmental clearance (EC) by all the lessees in the state of Odisha during the years 2000-01 to 2010-2011. Accordingly, a notice dated 02.09.2015 was issued by the Deputy Director of Mines, Dist. Keonjhar demanding a sum of Rs. 300 crore, being the price towards compensation u/s 21(5) of Mines and Minerals (Regulations and Development) Act, 1957 (in short, MMRDA) as per the final decision rendered in W.P. No. 114 of 2014 in the matter of Common Cause vs Union of India, judgement dated 02.08.2015.

Copy of demand notice is attached and marked as **Annexure: 'A'**.

3. The assessee company had made the entire payment before 31.03.2016 and debited the said amount in its Profit & Loss a/c for the F.Y.: 2015-16 and, accordingly, claimed a deduction u/s 37 from its taxable profits. In the course of the assessment proceedings, the Assessing Officer (A.O.) enquired about the deductibility of the said amount as expenses as per the Income Tax Act. The assessee's Authorised Representative (A/R) submitted a short reply stating that the amount in question was paid as compensation to the state govt pursuant to Apex Court decision in Common Cause's case, W.P.(C) No. 114 of 2014, decision dated 02.08.2015 and was allowable as deduction. The A.O. closed the matter and allowed the deduction and framed the assessment on 31.08.2018.

4. Thereafter, the assessee received a notice u/s 263 of the Act on 01.12.2018. In the Show Cause Notice (SCN) u/s 263, the Principal Commissioner of Income Tax, Kolkata-1 (PCIT) stated that the A.O. had disallowed the deduction in respect of the payments made to the Deputy Director of Mines, which were for a purpose, which is an offence or which is prohibited by law and were not incurred for the purpose of business and were not an allowable expense in terms of Explanation 1 below section 37. According to him, because of the said reason, the order passed by the A.O. was erroneous insofar as it is prejudicial to the interest of the revenue.

The PCIT, further stated in the SCN that in his opinion, the A.O. had passed the order without making inquiries or verification which should have been made in the facts and circumstances. He stated that the A.O. did not even care to obtain a copy of the Hon'ble Apex Court decision from the assessee and merely accepted the submissions of the assessee without any further inquiry and effort. He further observed that the A.O. passed a cryptic order without adverting to the relevant facts.

5. The assessee responded to the SCN and entered appearance through his Authorised Representative C.A. R. Sen. The A/R of the assessee submitted elaborate submissions. The PCIT rejected his submissions and passed an order on 30.01.2019 holding the order of the A.O. to be erroneous and prejudicial to the interest of the revenue and directed him to decide the issue after considering the provisions of the Act and relevant decisions.

6. The assessee challenged the order of the PCIT, Kolkata-1 before the Income Tax Appellate Tribunal (ITAT), Kolkata raising the following issues-

(a) The expense in question is an allowable expense, being compensatory in nature.

(b) The A.O. had raised a query in this regard during the assessment proceedings and after having satisfied, he closed the matter. So, it cannot be said that the order was passed without making inquiries or verification as were required.

(c) The issue is debatable, as such, provision of section 263 will not apply.

(d) There is no change in the position of law in as far as insertion of Explanation 2 below section 263 is concerned. The opinion of the CIT/PCIT cannot be his private opinion.

7. The Ld. ITAT dismissed the appeal of the assessee. The High Court of Calcutta also did not admit the appeal u/s 260A holding that no Substantial Questions of Law (SQL) arise in the matter.

Now, you are required to file an SLP before the Hon'ble Supreme Court and argue the matter. The SQL that arise in the matter are also required to be framed by you as per the facts and circumstances of the case and legal issues involved. The revenue can also plead and argue that no SQL arise in the matter.

Note:

- (1) The final decision in W.P. No. 114 of 2014 in the case of Common Cause vs. Union of India is dated 02.08.2017 and is available in the public domain. However, in the Moot Problem, the date is deliberately mentioned as 02.08.2015 so that the problem is given realistic time frame as per the Income Tax Act.
- (2) Sections / Sub-sections/ explanations referred to in the problem relate to the Income tax Act, 1961 unless otherwise mentioned.

Annexure : A

OFFICE OF THE DEPUTY DIRECTOR OF MINES, ODISHA

No.3501 /Mines

Date: 02.09.2015

DEMAND NOTICE

To

M/s Indian Mining Co. Ltd

Kolkata

1. Whereas, it has been observed that **M/s Indian Mining Co. Ltd**, the mining lease holder of Jajang Iron and Mn, Ore mines over an area of 600.150 Ha. has undertaken production of Iron Ore from the above referred mining lease hold area without or in excess of the approved limit of production under Environmental Clearance during 2000-01 to 2010-11.

2. And Whereas pursuant to the interim order dated 16.05.2014 of the Hon'ble Supreme Court in the matter of W.P.(C) No. 114 of 2014 Common Cause vs. Union of India and others, the CEC has dealt among others, the issue of production without or in excess of EC and has submitted its final report on dated 16.10.2014 before the Hon'ble Supreme Court. In the said report the CEC under para 34 has calculated the notional value of the total quantities of iron and manganese produced without EC / beyond EC by all the lessees in the State of Odisha during the years 2000-01 to 2010-2011. The details of year wise production of Iron Ore in the Jajng Iron and Mn Ore mining leasehold area alongwith the approved limit of production under EC, the excess production, price

of mineral and the notional value (price of minerals) of total quantities of iron ore produced without E.C. / beyond the E.C by you during the years 2000-01 to 2010-11 as have been indicated in the said report.

3. Whereas the Hon'ble Supreme Court in its judgement dated 2.8.2015 in the W.P. (C) No 114 of 2014 has observed under para 128 that

“..... the holder of a mining lease is required to adhere to the terms of the mining scheme, the mining plan and the mining lease as well as the statutes such as the ERPA, the FCA, the Water (Prevention and Control of Pollution Act 1974 and the Air (Prevention and Control of Pollution) Act, 1981. If any mining operation is conducted in violation of any of these requirements, then that mining operation is illegal or unlawful. Any extraction of a mineral through an illegal or unlawful mining operation would become illegally or unlawfully extracted mineral”.

4. Whereas, the Hon'ble Supreme Court in the said judgement has further observed under para 150 that

“ In our opinion, Section 21(5) of the MMDR Act is applicable when any person raises without any lawful authority, any mineral from any land. In the event, the State Government is entitled to recover from such person the mineral so raised or where the mineral has already been disposed of, the price thereof as compensation. The words ‘ any land’ are not confined to the mining leaser area. As far as the mining lease area is concerned, extraction of a mineral over and above what is permissible under the mining plan or under the EC undoubtedly attracts the provisions of section 21(5) of the MMDR Act being extraction without lawful authority.....”

5. Whereas, the Hon'ble Supreme Court in the said judgement has further held in para 156 that-

“Since the recommendation made by the CEC in this regard is not totally unreasonable, we accept that the compensation should be payable from 2000-2001 onwards at 100% of the price of the mineral, as rationalised by the CEC”.

6. Whereas considering the above excess production as production without lawful authority, you are liable to pay sum of Rs. 300 cr, being the price thereof towards compensation under section 21(5) of MMDR Act, 1957 for production without / in excess of the environmental clearance as rationalised by the CEC, in pursuance to the judgement dated 02.08.2015 of the Hon'ble Supreme Court in the matter of W.P. (C) No. 114/14 Common Cause vs Union of India & Others.

Now therefore, you are hereby directed that you shall pay the compensation of Rs. 300 cr as detailed in Annexure I on or before 31.12.2015 in pursuance to the para 225 of the order dated 02.08.2015 of the Hon'ble Supreme Court.

It is also made clear that the aforesaid demand is relatable to recovery of price of minerals produced without / beyond the EC alone under section 21(5) of MMDR Act.1957 as adjudicated vide para 156 of the judgement as referred above and does not include recoveries under section 21(5) of the said act for violation of mining plan, consent requirements under Air / Water Act and Forest violations, for which the demands, if any would be raised separately.

DEPUTY DIRECTOR OF MINES
ODISHA