

आयकर अपीलीय अधिकरण, न्यायपीठ – “C” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA**  
 (समक्ष) Before श्री जे. सुधाकर रेड्डी, लेखा सदस्य एवं/and श्री ऐ. टी. वर्की, न्यायीक सदस्य)  
 [Before Shri J. Sudhakar Reddy, AM & Shri A. T. Varkey, JM]

**I.T.A. Nos. 997 & 998/Kol/2016**  
**Assessment Years: 2005-06 & 2011-12**

Deputy Commissioner of Income-tax, Circle-35, Kolkata.	Vs.	M/s. Kolkata Port Trust (PAN: AAAJK0361L)
Appellant		Respondent

Date of Hearing	14.12.2017
Date of Pronouncement	21.12.2017
For the Assessee	Shri g. Mallikarjuna, CIT, DR
For the Revenue	Mrs. Saheli Dutt, OSD (Taxation)

**ORDER**

**Per Shri A.T.Varkey, JM**

Both these appeals filed by the revenue against the separate orders of Ld. CIT(A)-10, Kolkata dated 02.02.2016 for AYs. 2005-06 and 2011-12.

2. The only issue to be decided in both the appeals of the revenue is that whether the assessee Port Trust can be assessed in the status of “Local Authority” or in the status of “Company” in the facts and circumstances of the case.

3. At the outset itself, the Ld. AR brought to our notice that for AYs 2003-04 to 2005-06 in ITA No. 2628 to 2630/Kol/2013 preferred by the assessee Port Trust and in ITA Nos. 2868 to 2870/Kol/2013 for AYs 2003-04 to 2005-06 preferred by the department the same issue arose and the Tribunal was pleased to hold that the assessee Port Trust has to be assessed as a “Local Authority” and not in the status of the “Company”. On the other hand, ld. DR submitted the following :

i) The Ministry of Shipping Guidance Note provides that 'the format of financial statement prescribed by the Indian Companies Act, 1956 has been used as the basis for developing the accounting format of port trusts together with the requirement of Accounting

Standards' vide Ministry of Shipping (Ports wing) letter no. PR-20021/2/98-PG Dated 6.11.2002.

ii) The Port Trust thus follows accrual system of accounting and the identification of revenue and expenditure is based on the principles of the Companies Act.

iii) Ld. CIT (A) has erred in admitting the submission of Assessee that "Under 2 (17) (ii) of the said Act, only those body corporate are considered" as a company, which are incorporated by or under the laws of a country outside India, which condition is obviously not satisfied by the Appellant therein".

iv) We would like to highlight the fact that Appellant has only produced half baked fact as per the original argument forwarded by the A.O. it was explained that "Section 2(26)(i) of the Income Tax Act,1961 states that Company also means any Indian Company ,and when read with the section 2 (26) (ia) which states that 'Indian Company' means a company forms and registered under the Companies Act,1956 and includes a corporation established by or under a central, State or Provincial Act" which obviously is the case with Kolkata Port Trust.

v) Kolkata Port Trust is reshaped and continued under Major Port Trusts Act, 1963 which had come into force on such date 1 [as the Central Government, may, by notification in the Official Gazette, appoint.

vi) We would also like to highlight that Kolkata Port Trust works as a company and major criteria as given in Companies Act, 1956 is satisfied in its form, structure and functioning.

vii) In this regard govt. of India has already made efforts, steps has already been taken for corporatization of JNPT, New Mangalore and Tuticorin Port Trusts viz. registering with Jurisdictional Registrar of Companies.

viii) Accordingly, in October 1996 policy guidelines were issued which provided for private sector participation/investment in the many areas. As a further step towards securing private participation, policy guidelines were issued in 1997 to enable the major ports to set up joint ventures with foreign ports, minor ports or private companies. The major Port Trust Act was amended to give effect to the guidelines issued in 1996 and 1997.

ix) On the above line Kolkata Port Trust has also set up different joint ventures e.g. Haldia Bulk Terminals, a joint venture of ABG Infra logistics and LOA, this is in tune with Kopt working as a Company. Berth No. 12 (at HDC of Kolkata Port) was allotted on 30.1.2002 to a Private Operator viz. Mls Tata Martrade International Logistic Ltd. (TMILL), (a Joint

Venture of M/s. Tata Steel and a holding Co. of Company) for a period of 30 years for its operation, management and maintenance.

x) Recognizing that port operations cannot be made efficient or cost effective, unless ports were encouraged to operate on commercial lines, the Government Port restructuring in India, as part of the 1996 policy guidelines, substantially increased the financial and other powers of the Port Trusts.

xi) The Government of India also took a decision that all new ports will be set up as companies under the Indian Companies Act and the existing Port Trusts will also be gradually corporatized and set up as companies. Action has also been initiated to corporatize the Jawaharlal Nehru Port Trust (JNPT) and the Haldia port, which are among the newer of the major ports.

xii) Appellant in his submission has also mentioned this fact that the assessee Port Trust has not been corporatized till date.

xiii) In continuation with the above arguments, we would like to bring to the notice to the Appellate authority that endlessly non acceptance of an agreed and realistic position as proved by the govt of India does not make the assessee free from the burden of realizing the consequential remedies and action taken in this regard. It may continue to withheld its current position and deny the tax consequences and prolong with tax avoidance, which certainly negates the basic spirit of law and related rules.

xiv) Appellant has simply ignored the main argument highlighted by Hon'ble Supreme Court in the R.C.Jain case (supra) that ---

*"We finally come to the important question whether the legislature has vested any power of taxation in the Authority. One of the submissions of the learned counsel for the respondent was that the fund of the Authority, required to be maintained by Sec. 23 of the Delhi Development Act, was not a local fund as no part of it flowed directly from any taxing power vested in the Delhi Development Authority. The submission of the learned counsel was that the fees collected under Sec. 12 of the Act and the charges levied under Sec. 37 of the Act did not part-take the character of tax but were mere fees which were the quid pro quo for the services which were required to be performed by the Delhi Development Authority under the Act. We were referred to Hingir-Rampur Coal Co. Ltd. &Ors. v. The State of Orissa &Ors. We are unable to agree with the submission made on behalf of the respondents. In the first place when it is said that one of the attributes of a local authority is the power to raise funds by the method of taxation, taxation is to be understood not in any fine and narrow sense as to include only those compulsory exactions of money imposed for public purpose and requiring no consideration to sustain it, but in a broad generic sense as to also include fees levied essentially for services rendered. It is now well recognised that there is no generic difference between a tax and a fee; both are compulsory exactions of money by public authority. In deciding the question whether an authority is a local authority, our concern is only to find out whether the public authority is authorised by Statute to make a compulsory exaction of money"*

On the above proposition Kolkata Port Trust for obvious reason cannot be regarded as a Local Authority, as it has not right to impose Tax of any kind and use that for public purpose but only to exact fees and charges that too for commercial benefit.”

4. However, we are not persuaded to accept the aforesaid contention of the Id. DR because by reasoned order of the co-ordinate bench cited (supra) we are not inclined to take a different view. We also note that the AO has accepted the status of the assessee Port Trust as a “Local Authority” in the recently concluded scrutiny assessment for AY 2012-13 u/s. 143(3) of the Act dated 28.03.2015. We find that all the Port Trusts such as Chennai Port Trust, Marmagao Port Trust, New Mangalore Port Trust, Cochin Port Trust and Vishakapatnam Port Trust are being assessed to income tax as “Local Authority.” Taking note of the aforesaid facts and the coordinate bench decision in assessee’s own case on the issue in hand, respectfully following the same cited (supra), we uphold the impugned order of Ld. CIT(A). Therefore, we do not find any merit in the appeal preferred by the Revenue so it stands dismissed.

5. In the result, appeal revenue is dismissed.

Order is pronounced in the open court on 21st December. 2017.

Sd/-  
(J. Sudhakar Reddy)  
Accountant Member

Sd/-  
(Aby. T. Varkey)  
Judicial Member

Dated : 21st December, 2017

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – DCIT, Circle-35, Kolkata
2. Respondent –. M/s. Kolkata Port Trust, 15, Strand Road, Kolkata-1.
3. The CIT(A) Kolkata.
4. CIT Kolkata
5. DR, Guwahati Bench, Guwahati

/True Copy,

By order,

Sr. Pvt. Secretary