

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक
IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK
BEFORE SHRI N.S.SAINI, AM & SHRI PAVAN KUMAR GADALE, JM

आयकर अपील सं./ITA No.467/CTK/2015
(निर्धारण वर्ष / Assessment Year :2010-201)

ACIT, Circle-2(1), Sambalpur	Vs.	M/s Gayatri College of Pharmacy, At-Jamadarpalli, PO-Ainthapalli, District-Sambalpur
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAATG 7115 L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

राजस्व की ओर से /Revenue by : Shri Subhendu Dutta, CITDR
निर्धारिती की ओर से /Assessee by : None

सुनवाई की तारीख / **Date of Hearing** : **25/07/2017**
घोषणा की तारीख/**Date of Pronouncement** **27/07/2017**

आदेश / O R D E R

Per Shri Pavan Kumar Gadale, JM:

The revenue has filed the appeal against the order of CIT(A)-II, Bhubaneswar, passed in Appeal Reference No.0511/2013-14, dated 18.09.2014.

2. The revenue has raised the following grounds of appeal :-

"01. Whether in the facts and circumstances of the case, the Ld. CIT(A) is correct in law & facts in giving full relief to the assessee trust though the activities of the assessee did not qualify to claim exemption u/s.10(23C)(vi) of the I.T.Act.

02. Whether in the facts and circumstances of the case, the Ld. CIT(A) is correct in law & facts in giving full relief to the assessee trust though the accumulated profit is more than 15% of total income."

3. Brief facts of the case are that the assessee is a society registered under the Society Registration Act, 1860 on 9-9-1986 and runs educational institution and imparting education of pharmacy at graduation and post graduation levels and filed the return of income on 13.09.2010 declaring total income of Rs.Nil and the sources of income of the assessee mainly from admission fees, sale of application form, hostel

fees, grant in aid and interest on deposits. Return of income was processed u/s.143(1) of the Act. Subsequently, the case was selected for scrutiny and notice u/s.143(2) & 142(1) of the Act were issued. In compliance, the Id. AR appeared from time to time and furnished the details as required by the AO. The AO verified the financial documents filed by the assessee and found during the current financial year the assessee disclosed gross receipts of Rs.2,5,77,578/- from admission fees, sale of application form, hostel fees, grant in aid and interest on deposits and after claiming expenditure under different heads and disclosed excess of income over expenditure of Rs.93,26,623/- and claimed the same as exemption u/s.10(23C)(vi) of the Act. The AO compared the income and expenditure for the financial year 2007-08 to 2009-10. The contention of the AO that the assessee society is making profit systematically and charging exorbitant fees resulting to enormous surplus and such activity cannot be treated as charitable and relied on the judicial decisions and dealt exhaustively at pages 2 to 4 of the order and observed that exemption u/s.10(23C)(vi) of the Act is available solely for the purpose of education and not for profits and assessed the assessee as AOP with total income of Rs.93,26,620/- and passed the order u/s.143(3) dated 26.03.2013.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the CIT(A). Ld. AR argued the grounds and reiterated the submissions made before the AO. The Id. CIT(A) considered the findings of AO and the submissions of the assessee and discussed elaborately at

page 3 to 7 of his order on the grounds of judicial decisions and the submissions and allowed the appeal and observed at para 10 as under :-

“10. Exemptions u/s.10(23C)(vi) as well as u/s.11(i)(a) r.w.s.12A are both available to the Appellant for this Assessment Year. In any event, even if any violations of applicable conditions have taken place, the remedy for the AO was not unilaterally lift the claims of exemption, but to inform the Chief Commissioner/Commissioner of Income-tax of the violations/infractions. That this was not followed through indicates irresponsibility, scant regard for the legal process and premeditated misuse of authority. Assessments of this nature set a damaging and dangerous precedent with wider adverse ramifications for the authority, credibility and image of the Department and the Government.”

5. Being aggrieved with the order of CIT(A), the revenue is in appeal before the Tribunal.

6. Ld. DR's contention that the assessee trust objects does not qualify for benefit of exemption u/s.10(23C)(vi) of the Act. The CIT(A) has not considered major facts as observed by the AO and prayed for restoration to the lower authorities.

7. None appeared on behalf of the assessee.

8. We heard the submissions of Id. DR and perused the material on record. The Id. CIT(A) has dealt on the submissions of the assessee where the assessee was granted registration u/s.12A of the Act. The assessee has submitted various details which were not dealt in assessment and the Id. CIT(A) has not called for the remand report or comments from the AO on the information which was relied. Accordingly, in the interest of justice, we set aside the order of CIT(A) and remit the entire disputed issue to the file of CIT(A) to consider afresh and call for the comments/report from the AO and the assessee should be provided adequate opportunity of hearing before the disposal of the appeal.

9. Thus, appeal of the revenue is allowed for statistical purposes.

Order pronounced in the open court on this 27/07/2017.

Sd/-

(N. S. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 27/07/2017

प्र. कु. मि / PKM, Senior Private Secretary

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
ACIT, Circle-2(1), Sambalpur
2. प्रत्यर्थी / The Respondent-
M/s Gayatri College of Pharmacy,
At-Jamadaripalli, PO-Ainthapalli,
District-Sambalpur
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)

आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack