



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND ARUN KHODPIA, ACCOUNTANT MEMBER**

ITA No.414/CTK/2018

Assessment Year : 2016-17

State Council for Technical Education & Vocational Training,, Unit-VIII, Near Raj Bhavan, Bhubaneswar.	Vs.	CIT (Exemptions), Hyderabad
PAN/GIR No.AAQAS 2676 F		
(Appellant)	..	(Respondent)

Assessee by : Mrs Swati Kejriwal,CA
Revenue by : Shri S.K.Mohapatra, CIT (DR)

Date of Hearing : 17 /5/ 2022
Date of Pronouncement : 17 /5/2022

ORDER

Per Bench

This is an appeal filed by the assessee against the order of the Id CIT(Exemptions), Hyderabad dated 28.9.2018 under section 12AA(1)(b)(ii) of the Income tax Act, 1961, for the assessment year 2016-17.

2. Mrs Swati Kejriwal, Id AR appeared on behalf of the assessee and Shri S.K.Mohapatra, CIT DR appeared on behalf of the revenue.

3. The assessee has raised the following grounds:

"1. That on the facts and circumstances of the case and in law, the CIT(E) has gross erred in denying registration to the assessee society u/s.12(A) (a) of the Income tax Act, 1961('the Act') as claimed.

2. That on the facts and circumstances of the case and in law, the CIT(Exemptions) has grossly erred in denying registration to the assessee society u/s.12A(a) of the Income tax Act, 1961 as claimed in gross violation to the principle of natural justice & fairness.

4. The assessee has also raised an additional ground under Rule 29 of the Income Tax Rules, 1963, which reads as under:

“On the facts and in the circumstances of the case, the Id CIT (Exemptions) has erred in holding that the appellant is not a “State” and, therefore, liable to tax under the Income tax Act, 1961.”

5. The assessee is a State Council for Technical Education & Vocational Training Society in the State of Odisha. The assessee is set up by the Government of Odisha for the purpose of objects, as stated in para 6 pages 6 & 7 of the CIT(E) order. The assessee is under the total control of the State Government. The director of the assessee society is the Principal Secretary, Higher Education Department, Govt of Odisha and Ex-officio members of the assessee society are also State Government employees. Their appointment and removal are also decided by the State Government alone.

6. It was the submission by Id A.R. that the assessee had applied for registration u/s.12A of the Act in Form No.10A on 30.3.2018. The same came to be rejected by the CIT(Exemptions), wherein, the Id CIT(E) has questioned the genuineness of the assessee. It was further submission that the Id CIT(E) in para 4.1 of his order has also held that the assessee is not

a 'State' and consequently, would not be entitled to immunity from taxation.

7. Ld counsel for the assessee placed before us a decision of Co-ordinate Bench of ITAT Mumbai 'D' Bench in the case of Maharashtra State Board of Technical Education vs ITO in ITA No.508/Mum/2019 for A.Y. 2011-12 order dated May 27th, 2020, wherein, similarly placed State Government Organisation more specifically the parallel Organisation for the State of Maharashtra has been held to be "State" under Article 289 of the Constitution of India and is entitled for immunity from taxation. It was the submission that the assessee had submitted before the CIT(E) that the assessee was not filing its return of income because the assessee was under bonafide belief that it was "State" and not liable to tax under the Income tax Act. It was further submission that in paras 4.3 & 4.4 of his order, the CIT(E) stated that the assessee had substantial taxable income and the assessee was not filing its return of income and further alleged that the assessee had taken a conscious decision to defraud revenue. It was the submission that the CIT(E) had taken the decision by holding that the assessee has willfully defrauded the revenue and was not a genuine assessee and not entitled for registration u/s.12A of the Act.

8. It was further submission that the assessee being a "State" was entitled for immunity from taxation under the Income tax Act, 1961. It was the submission that the assessee admittedly had applied for registration

u/s.12A of the Act only as a precaution. It was the prayer that the assessee may be granted registration u/s.12A of the Act and recognize as "State" under Article 289 of the Constitution of India.

8. In reply, Id CIT DR vehemently supported the order of the Id CIT(E). It was his submission that there is no charitable activity being done by the assessee. If at all, the assessee was looking after the education requirement in the State, the assessee was collecting fees and the fact that the assessee has generated substantial income over expenditure shows that there is no involvement of charity. It was further submission that perusal of order of the CIT(E) in para 5 para 5, clearly shows that the assessee was doing business profiteering in so far as the income over expenditure, the profit of the assessee was ranging from 84% to 97% of the revenue. It was submission that the assessee was not liable to be granted registration u/s.12A of the Act.

9. In respect of additional Ground that the assessee is a 'State', Id CIT DR opposed the same.

10. We have considered the rival submissions. A specific query was raised to Id AR about the fact that as to what has been done with the excess of income over expenditure, to which, Id AR replied that same was kept in fixed deposit. This clearly shows that there is no application of income for any charitable activity. Further the fact that the assessee has

generated such huge funds in the form of income over expenditure and the same having not been used for the purpose of any charitable activity, the assessee is not entitled for registration u/s.12A of the Act. It is true that the assessee is the primary organization looking after the education requirement in the State of Odisha but that does not *per se* make it liable for registration u/s.12A of the Act. In these circumstances, we find no error in the order of the Id CIT(E) in refusing registration u/s.12A of the Act on the ground that the assessee has not done any charitable activity nor has shown any intention to do so.

11. We are not in agreement with the order of Id CIT(E) in respect of genuineness of the organization. Admittedly, the organization has been created by the Govt of Odisha and the claim of CIT(E) is farfetched. It is in fact questioning the act of State itself. We are also not in agreement with the findings of Id CIT(E) that the assessee is not a "State" as required under Article 289 of the Constitution of India. The assessee is the Education State Council for imparting technical training in the State under Government of Odisha and Ex-Officio members are the employees of the State Government. Their term of posting with the assessee is at par with the employees of the Government of Odisha. Thus, the assessee is nothing but a "State". Our view finds support from the decision of Co-ordinate Bench of ITAT Mumbai 'D' in the case of Maharashtra State Board of Technical Education(supra). In these circumstances, we hold that the

assessee is a "State" under the Article 289 of the Constitution of India and is entitled for immunity from taxation under the Income Tax Act, 1961.

12. In the result, appeal of the assessee is partly allowed.

Order dictated and pronounced in the open court on 17 /5/2022.

Sd/-
(Arun Khodpia)
ACCOUNTANT MEMBER

sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 17 /05/2022
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : State Council for Technical Education & Vocational Training,, Unit-VIII, Near Raj Bhavan, Bhubaneswar
2. The Respondent. CIT (Exemptions), Hyderabad
3. DR, ITAT, Cuttack
4. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack