



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK
(Through virtual hearing)**

**BEFORE S/SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND RAJESH KUMAR, ACCOUNTANT MEMBER**

ITA Nos.105 & 106/CTK/2023

Assessment Years : 2018-19 & 2019-2020

Income Tax Officer (Exemption), Pratakyakar Bhawan, Inside Regional Telecom Training Centre, BSNL, Vani Vihar, Bhubaneswar.	Vs.	State Council for Technical Education & Vocational Training, Unit-8, Near Raj Bhawan, Bhubaneswar.
PAN/GIR No.AAQAS 2616 F		
(Appellant)	..	(Respondent)

Assessee by : Shri Sarata Kumar Muduli, DY.controller of Examination

Revenue by : Shri M.K.Gautam, Pr. CIT (OSD)

Date of Hearing : 26 /06/2023

Date of Pronouncement : 26 /06/2023

ORDER

Per Bench

These are appeals filed by the revenue against the order of the Id CIT(A), NFAC, Delhi both dated 8.2.2023 in Appeal No.ITBA/NFAC/S/250/2022-23/1049544248(1) and ITBA/NFAC/S/250/2022-23/10495456074 (1) for the assessment years 2018-19 & 2019-2020, respectively.

2. Shri M.K.Gautam, Id Pr. CIT (OSD) appeared for the revenue and Shri Sarata Kumar Muduli, DY. Controller of Examination in person on behalf of the assessee.

3. The revenue has raised the common grounds in both the appeals, as under:

"1. Whether on the facts and in the circumstances of the case and in law, is the order of the Hon'ble ITAT correct in holding that the assessee is a "State" when the assessee society is registered under the Societies Act and has a separate legal existence different from that of "State".

2. Whether on the facts and circumstances of the case and in law, is the order of the Hon'ble ITAT correct in holding that the assessee is a State when the assets will be handed over to a similar registered society or Government, thus clearly differentiating itself as a separate entity from Government.

3. Whether on the facts and in the circumstances of the case and in law, is the order of the Hon'ble ITAT correct in holding that the assessee is a "State" as the same is settled by the Hon'ble Supreme Court in the case of "Adityapur Industrial Area Development Authority vs Union of India" wherein it is held that the income of the authority/entity is not the income of the Government, even though the authority/entity is constituted under an Act enacted by the State Legislature and income derived by the "State" from business (distinguished from Governmental purposes) shall not have exemption from union taxation unless the parliament declares such business as incidental to ordinary functions of the "State"."

4. It was submitted by Id Pr. CIT (OSD) that there is no charitable activity being done by the assessee. It was the submission that the assessee has generated substantial income over expenditure by collecting fees and, therefore, there is no involvement of charity. It was submitted that similar issue had come up for consideration before the Tribunal for the

assessment year 2016-17 and the Tribunal has allowed the appeal of the assessee holding that the assessee is a "State" when the assessee society is registered under the Societies Act and has a separate legal existence different from that of "State". It was his submission that against the order of the Tribunal, the department has filed appeal before the Hon'ble Jurisdictional High Court of Orissa and the appeal has been admitted. It was the prayer that the hearing of the appeals be kept in abeyance till final disposal of appeals by the Hon'ble Jurisdictional High Court.

5. In reply, Shri Sarata Kumar Muduli, Dy. Controller of Examination of the assessee submitted that the issue is covered in favour of the assessee by the decision of the Co-ordinate Bench of this Tribunal for the assessment year 2016-17 order dated 17.5.2022 in ITA No.414/CTK/2018, wherein, it is stated 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. It was the submission that by following the decision of the Tribunal, the Id CIT(A) has allowed the appeal of the assessee and, therefore, the appeals filed by the revenue be dismissed.

6. We have considered the rival submissions and also perused the order of this Tribunal in the case of the assessee for the assessment year 2016-17(supra). We find that the CIT(A) has allowed the appeals of the assessee by following the decision of the Co-ordinate Bench of this Tribunal, wherein, it has been held in para 10 to 12 as under:

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."

7. Except submitting that the decision of the Tribunal has not been accepted by the department and the appeal has been filed before the Hon'ble Jurisdictional High Court against the decision of the Tribunal, no

other contrary decision has been placed by the Ld. Pr. CIT (OSD). We find that the Id CIT (A) has followed the decision of the Tribunal while allowing the claim of the assessee. Hence, we do not find any infirmity in the order of the Id CIT(A) and uphold the same. Consequently, the appeals filed by the revenue are rejected.

8. In the result, appeals of the revenue are dismissed.

Order dictated and pronounced in the open court on 26/06/2023.

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 26/06/2023
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Income Tax Officer (Exemption), Pratakyakar Bhawan, Inside Regional Telecom Training Centre, BSNL, Vani Vihar, Bhubaneswar.
2. The Respondent: State Council for Technical Education & Vocational Training, Unit-8, Near Raj Bhawan, Bhubaneswar
3. The CIT(A)-, NFAC, Delhi
4. Pr.CIT-,
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack