



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

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER  
AND  
MANISH AGARWAL, ACCOUNTANT MEMBER**

S.P.No.11/CTK/2024  
**ITA No.301/CTK/2024**  
Assessment Year :2017-18

State Pollution Control Board, Plot No.A-118, Paribesh Bhawan, Nilakantha Nagar, Nayapali, Unit-VII, Bhubaneswar	Vs.	ITO, Ward 5(2), Bhubaneswar
PAN/GIR No.AAALS 2490 J		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri S.K.Agrawalla, CA  
Revenue by : Shri Sanjay Kumar, CIT DR

**Date of Hearing : 24/10/2024**  
**Date of Pronouncement : 24/10/2024**

**ORDER**

**Per Bench**

This is an appeal filed by the assessee against the order of the Id CIT(A), NFAC, Delhi dated 24.5.2024 in Appeal No.CIT(A), Bhubaneswar-2/10139/2019-20 for the assessment year 2017-18.

2. Shri S.K.Agrawalla, Id AR appeared for the assessee and Shri Sanjay Kumar, Id CIT DR appeared for the revenue.

3. At the time of hearing, Id AR has filed additional ground as follows:

“That the appellant is a Board constituted in pursuance of sub-section(1) of Section 4 of the Orissa Water (Prevention and Control of Pollution) (Amendment) Act, 1974 vide notification No.1481-VII-HI-11/83(Vol.II) S.T.E. dated 15<sup>th</sup> July, 1983 issued by the Department of Science, Technology and Environment, Govt. of Orissa which was re-designed as State Pollution Control Board, Odisha vide notification No.Env.E(F)/8/89/1882.F&E dated 16<sup>th</sup> July, 1999. Hence, the appellant is a ‘State’ within the meaning of Article 12 of Constitution of India and its incomes are exempted as per the provisions of Article 289 of Constitution of India, therefore, the Id AO is wrong in imposing of tax and the Id CIT(A) committed an error of law in confirming the action of the AO.”

4. As the issue raised in the additional ground is purely legal in nature, same is admitted.

5. Id AR has filed written submissions as follows:

That, the appellant filed an additional ground of appeal on 19.09.2024 before the Hon’ble Bench claiming it to be a “State” within the meaning of Article 12 of the Constitution of India and its income is not liable for taxation as per the provisions of Article 289(1) of the Constitution of India.

This ground of appeal being a legal ground and by deciding of this ground of appeal the correct tax liability of the assessee can be determined, therefore we pray this Hon’ble Bench to admit the same as per Rule 11 of the Income Tax (Appellate Tribunal) Rules 1963 and allow the appellant to argue on this ground of appeal.

The Hon’ble Apex Court in the case of “**National Thermal Power Co. Ltd. Vs. CIT, reported in (1998) 229 ITR 383 (SC)**” the Hon’ble Apex Court had held that;

Held:

Under s. 254 of the Income-tax Act, the Appellate Tribunal may after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing

*authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of that item. We do not see any reason to restrict the power of the Tribunal under s. 254 only to decide the grounds which arise from the order of the CIT(A). Both the assessee as well as the Department have a right to file an appeal/cross objections before the Tribunal. We fail to see why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier.*

*The view that the Tribunal is confined only to issues arising out of the appeal before the CIT(A) takes too narrow a view of the powers of the Appellate Tribunal (vide, e.g., CIT vs. Anand Prasad (1981) 128 ITR 388 (Del), CIT vs. Karamchand Premchand (P) Ltd. (1969) 74 ITR 254 (Guj) and CIT vs. Cellulose Products of India Ltd. (1985) 44 CTR (Guj) 278 (FB) : (1985) 151 ITR 499 (Guj)(FB)).*

**Now coming to the assessee's case whether it can be termed as a "State" or not we submit that: -**

That, on 23<sup>rd</sup> March 1974, "**The Water (Prevention and Control of Pollution) Act, 1974**" had been notified for the purpose of prevention and control of water pollution and maintaining or restoring of wholesomeness of water.

With a view to carry out the purpose aforesaid, the Central Govt. constituted "Central Board" for some states and for other states, the Central Govt. authorized the State Governments to Constitute the "State Pollution Control Board".

In pursuance of the sub-section (1) of Section- 4 of the Water (Prevention and Control of Pollution) Amendment Act, 1974, the Orissa State Government constituted "The Odisha State Prevention and Control of Pollution Board" vide Government of Odisha Notification No.1481-VII-HI-11/83 (Vol. II)-S.T.E., dated 15.07.1983 after the Odisha Legislative Assembly adopted the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of

Pollution) Act, 1981. The Board was re-designated as State Pollution Control Board, Odisha vide Notification No. Env-E(F)/8/99/1882 F&E, dated 16.07.1999 of the Forest and Environment Department, Govt. of Odisha. The functions of the Board is clearly defined in the Water and Air Acts can be broadly classified into 3 main categories viz. (i) Enforcement, (ii) Advisory & (iii) Monitoring, research, creation of public awareness and facilitator. Initially the Board was constituted with the following members;

<b>Sl. No.</b>	<b>Particulars</b>	<b>Designation</b>
1	Dr. M. K. Rout, Chairman	Chairman
2	Secretary, Department of Science, Technology & Environment	Member
3	Director Of Mines	Member
4	Chief Engineer, Public Health	Member
5	Director, Health Services, Orissa	Member
6	Inspector of Factories	Member
7	Chairman, Choudwar Municipality	Member
8	Chairman, Brajarajnagar N.A.C.	Member
9	Chairman, Talcher Municipality	Member
10	Chairman, Rourkela N.A.C. (Civil Township)	Member
11	Chairman, Rayagada Municipality	Member
12	Shri, P.K. Das, M.L.A	Member
13	Dr. P.K. Jena, Director Regional Research Laboratory	Member
14	Shri, J. Tripathy, Retired Chief Engineer, Irrigation	Member

15	Secretary, Industries Department	Member
16	Chairman, Orissa State Electricity Board	Member
17	Shri, P.C. Rath, Superintending Engineer	Member Secretary

Further in "The Water (Prevention and Control of Pollution) Act, 1974) in Chapter IV of the Act, the functions of the State Pollution Control Boards specified which are as under;

- (1) *Subject to the provisions of this Act, the functions of a State Board Shall be ---*
- (a) *To plan a comprehensive programme for the prevention, control or abatement of pollution of streams and wells in the state and to secure the execution thereof;*
- (b) *To advise the State Government on any matter concerning the prevention, control or abatement of water pollution;*
- (c) *To collect and disseminate information relating to water pollution and the prevention, control or abatement thereof;*
- (d) *To encourage, conduct and participate in investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution;*
- (e) *To collaborate with the Central Board in organizing the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of water pollution and to organize mass education programmes relating thereto;*
- (f) *To inspect sewage or trade effluents, works and plants for the treatment sewage or trade effluents and to review plans, specifications or other data relating to plants set up for the treatment of water, works for the purification thereof and the system for disposal of sewage or trade effluents or in connection with grant of any consent as required by this Act;*
- (g) *Lay down, modify or annul effluent standards for the sewage and trade effluents and for the quality of receiving waters (not being water in an inter-State stream) resulting from the discharge of effluents and to classify waters of the state;*

- (h) *To evolve economical and reliable method of treatment of sewage and trade effluents, having regard to the peculiar conditions of soil, climate and water resources of different regions and more especially the prevailing flow characteristics of water in streams and wells which render it impossible to attain even the minimum degree of dilution;*
- (i) *To evolve methods of utilization of swage and suitable trade effluents in agriculture;*
- (j) *To evolve efficient methods of disposal of sewage and trade effluents on land, as are necessary on account of the predominant conditions of scant stream flows that do not provide for major part of the year the minimum degree of dilution;*
- (k) *To lay down standards of treatment sewage and trade effluents to discharged into any particular stream taking into account the minimum fair weather dilution available in that stream and the tolerance limit of pollution permissible in the water of the stream, after discharge of such effluents;*
- (l) *To make, vary or revoke any order-*
- (i) *For the prevention, control or abatement of discharge of waste into stream or wells;*
- (ii) *Requiring any person concerned to construct new systems for the disposal of sewage and trade effluents or to modify, alter or extend any such existing system or to adopt such remedial measures as are necessary to prevent control or abate water pollution;*
- (m) *To lay down effluent standards to be complied with by persons while causing discharge of sewage or sullage or both and to lay down, modify or annul effluent standards for the sewage and trade effluents;*

- (n) To advise the State Government with respect to location of any industry the carrying on of which is likely to pollute a stream or well;
- (o) To perform such other functions as may be prescribed or as may, from time to time be entrusted to it by the Central Board of the State Government.
- (2) The Board may establish or recognize a laboratory or laboratories to enable the Board to perform its functions under this section efficiently, including the analysis of samples of water from any stream or well or of samples of any sewage or trade effluents.

Similarly, the Air (Prevention and Control of Pollution) Act, 1981 has also specifies the similar functions of the State Boards. The assessee Board has to function as per the mandate given in the said Acts.

The Officers of the Board are Government employees and many cases they come under deputation from different departments of the Govt. and again returned back to the parent department of the Govt. The Board is reconstituted from time to time and at present the "State Pollution Control Board" is constituted with the following members;

<b>Sl. No.</b>	<b>Particulars</b>	<b>Designation</b>
1	Chairman, State Pollution Control Board, Odisha	Chairman
2	Secretary to Government, Housing & Urban Development Department, Govt. of Odisha or his nominee not below the rank of Joint Secretary	Member
3	Secretary to Government, Industries Department, Govt. of Odisha or his nominee not below the rank of Joint Secretary	Member
4	Secretary to Government, Steel & Mines Department, Govt. of Odisha or his nominee not below the rank of Joint Secretary	Member
5	Director Environment cum Special Secretary,	Member

	Govt. of Odisha, FE & CC Department or his nominee	
6	Director of Factories & Boilers, Bhubaneswar or his nominee	Member
7	Commissioner, Bhubaneswar Municipal Corporation, Bhubaneswar, Dist.: -Khurda	Member
8	Commissioner, Berhampur Municipal Corporation, Berhampur, Dist.: -Ganjam	Member
9	Chairman/Executive Officer, Paradeep Municipality, Paradeep, Dist.: - Jagatsinghpur	Member
10	Chairman/Executive Officer, Talcher Municipality, Dist.: - Angul	Member
11	Commissioner, Cuttack Municipal Corporation, Cuttack	Member
12	Prof. (Dr.) Lalit Mohan Gamayak, Emeritus Professor (Agronomy), OUAT, Bhubaneswar	Member
13	Dr. S. K. Biswal, Technical Advisor, TGMRC, Bhubaneswar	Member
14	Professor (Dr.) Sudhanwa Chandra Patra, HIG-158, Dharma Vihar, Bhubaneswar-751030	Member
15	Managing Director, Odisha Mining Corporation Ltd., Bhubaneswar	Member
16	Managing Director, Odisha Industrial Development Corporation (IDCO), Bhubaneswar	Member
17	Member Secretary, State Pollution Control Board, Odisha, Bhubaneswar	Member Secretary

From appraising of the above table, it can be seen that all the members of the Board are Govt. Officers not below the rank of Joint Secretary or the Govt. Nominees.

Further it is submitted that all the financial and administrative control are with the Govt. and also all the assets of the Board belong to the State Govt.

Article 12 of the Constitution of India defines the state as: -

*In this part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.*

Further in the case of ***Som Prakash Rekhi vs Union Of India & Anr 1981 AIR 212, 1981 SCR (2) 111***, some of the tests laid down by the Hon'ble Apex Court for deciding whether a body is State within the meaning of Article 12 are :

- (i) If the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of the Government;
- (ii) A finding of State financial support plus an unusual degree of control over the management and policies might lead, one to characterise an operation as State action.
- (iii) The existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality.
- (iv) Whether the corporation enjoys monopoly status which is State conferred or State protected is a relevant factor.
- (v) If the functions of the corporation are important public functions and related to governmental functions it would be a relevant factor in classifying the corporation as instrumentality or agency of the Government.
- (vi) If a department of Government is transferred to a corporation, it would be a strong factor supportive of the inference that it is an instrumentality of the State.
- (vii) Where the chemistry of the corporate body answers the test of State it comes within the definition of Article 12.
- (viii) Whether the legal person is a corporation created by a statute, as distinguished from under a statute is not an important criterion although it may be an indicium.

Applying the above ratio, the Hon'ble Pune Bench of ITAT in the case of "**Smt. Sapna Sanjay Rasoni Vs. ITO, (2016) 159 ITR 1 (Pune)**" it was held that, "*Maharashtra State Road Transport Corporation is a "State" within the meaning of Art. 12 of the Constitution and, therefore, the cash payments made by the assessee to MSRTC are covered by the provisions of r. 6DD(b) and consequently, the same cannot be disallowed under s. 40A(3)*".

Similarly, the Hon'ble Amritsar Bench of ITAT in the case of "**DCIT Vs. Vinod Arora, (2022) 194 ITD 605 (Asr.)**" held that, "*Business Expenditure—Disallowance under s. 40A(3)—Payment towards purchase of wine from undertaking of Government—Assessee has made payment for purchase of wine to entities viz RBSC, RSGSML and both these entities are State Government Companies wherein 100 per cent share holding is held by the State Government; there is an existence of deep and pervasive control of the State Government on the said undertakings, and the full control of their working, policy and framework is vested with the State Government, therefore, they can safely be brought within the meaning of "State"—Payments in question to the aforementioned State Government undertakings have been made by the assessee in Indian currency, therefore, it can safely, or in fact inescapably be concluded that the same have been made in legal tender—Hence, payments made by the assessee to RSBC and RSGML, the Government undertaking would fall within the realm of the exception carved out in cl. (b) of r. 6DD of the IT Rues, 1962, qua, the applicability of the provisions of s. 40A(3)—Hence, CIT(A), had rightly concluded that as the payments in question made by the assessee to the State Government entities in legal tender were covered by the exception contemplated in r. 6DD(b) of the IT Rules, 1962, therefore, the same could not have been disallowed under s. 40A(3)—Smt. Sapna Sanjay Rasoni vs. ITO (2016) 179 TTJ 34 (Pune)(Trib) followed.*"

In the case of "**Maharashtra State Board of Technical Education Vs. ITO, (2019) 176 ITD 47 (Mumbai)**" the Hon'ble Mumbai Bench of ITAT it was held that;

*There is complete control of the State Government over the affairs of the assessee-Board. The powers and duties of the Board as prescribed*

*under s. 22, show that none of the activities undertaken or entrusted to the assessee-Board are in the nature of trade, commerce or business. The assessee is engaged in advancement of object of general public utility as set up by the State Government. The receipt/income/source of income of the assessee consists of grants from State Government, fees collected from candidate who appears in various examinations, receipt from printed education material, receipt from other Government bodies for conducting courses and exams like Common Entrance Test (CET) or interest on deposits. None of these activities can be said to be in the nature of trade, commerce or business. Further, the assessee is not rendering any services in the nature of trade, commerce or business for a fees or any other consideration, rather, the assessee is engaged in regulation of educational activities as per the statutory obligation conferred on it. Even otherwise, every activities of the assessee-Board is subject to superintendence, instruction and control of the State Government. The assessee-Board is completely controlled financially as well as administratively by the Government—Thus, it falls under the definition of "State" as per Art. 12 of the Constitution of India.—Narayan Rice Mill vs. CIT (ITA No. 732/Kol/2015, dt.7th June, 2017) and Smt. Sapna Sanjay Raisonni vs. ITO (2016) 179 TTJ (Pune)(UO) 34 applied.*

*(Para 30)*

*Further, the assessee-Board made an application under cl. (46) of s. 10 for exemption of specified income of the assessee and CBDT vide its notification dt. 29th March, 2016 exempted the income of assessee-Board arising from : (a) fees, fines and penalties; (b) receipts from printed educational material; (c) receipts from scrap or waste paper; (d) receipts from other Government Bodies; (e) interest income from surplus funds kept in bank accounts and fixed deposits; (f) rent received from let out of properties; (g) royalty or license fees for providing technical knowledge and infrastructure; (h) dividend earned from Maharashtra Knowledge Corporation Ltd; (i) capital gains, if any, from disposal of assets as per Government financial guideline and rules of Government of Maharashtra. The exemption in the CBDT notification dt. 29th March, 2016 is valid for financial years 2015-16 to 2018-19. Considering the facts that the assessee-Board is under complete superintendence, and control of the State Government financially as well as administratively, it falls under the*

*definition of "State" as per Art. 12 of the Constitution of India and is entitled for immunity from taxation of its income under the provisions of IT Act.*

*(Paras 33 & 34)*

The Hon'ble Jurisdictional ITAT, Cuttack Bench, Cuttack in the case of **"WATCO Vs. CIT (Exemption), ITA No.-78/CTK/2021 order dated 27.09.2022"** at para no. 15-18 it was held that;

15. We have carefully perused the submissions of the assessee (supra) regarding fulfilment of the aforesaid tests/conditions carved out by the Apex court and found that the assessee company has satisfied the said tests, thus, we hold that the assessee company falls under the definition of "State" within the meaning of Article 12 of the Constitution of India and, therefore, in our considered opinion entitle for immunity from the taxation under the provisions of Income Tax Act 1961 as directed under article 289 of constitution of India 1949, which read as under:-

***Article 289 in The Constitution Of India 1949***

*289. Exemption of property and income of a State from Union taxation*

*(1) The property and income of a State shall be exempt from Union taxation*

*(2) Nothing in clause (1) shall prevent the Union from imposing, or authorising the imposition of, any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operations connected therewith, or any property used or occupied for the purposes of such trade or business, or any income accruing or arising in connection therewith*

*(3) Nothing in clause (2) shall apply to any trade or business, or to any class of trade or business, which Parliament may by law declare to be incidental to the ordinary functions of government.*

16. After thoughtful analysis of the facts, in the backdrop of aforesaid observations, mandates from the Article 12 & 289 of the Constitution of India and respectfully following the principle of law laid down by

*Hon'ble Apex Court followed by coordinate benches of the ITAT, referred to supra, we are of the view that the WATCO, the assessee company hold the status of "State" within the meaning of Article 12 of the Constitution of India and entitle for immunity from taxation under the provisions of Income Tax Act 1961 as declared by Article 289 of the Constitution of India 1949. Consequently, the additional ground of the assessee stands allowed.*

*17. Since the additional legal ground of the assessee is allowed culminating that the income of the assessee is not taxable in terms of our aforesaid observations, the original ground Nos. 1, 2 & 3 of the appeal are became academic and thus needs no separate adjudication.*

*18. In the result appeal of the assessee allowed.*

In the Case of "**State Council of Technical Education Vs. CIT (Exemption), ITA No.-414/2018 order dated 17.05.2022**" the Hon'ble Jurisdictional ITAT at para no. 11 it was held that;

*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.*

In the case of the assessee Board, it is an authority within the territory of Odisha and also administratively as well as financially under the Control of the State Government. The assessee Board empowered by Govt. of Odisha, is the sole governmental agency to

regulate and control the Water & Air Pollution in different parts of Odisha by implementing the Govt. guidelines in different Industries, Hotels, Business Establishments etc. It acts as advisory to the industrial houses and other business establishments for installing of pollution control equipment for prevention of Air & Water Pollution. The functions of the assessee Board are of public importance and closely related to governmental functions.

On the facts and circumstances as stated above, the assessee is a "State" as defined in Article 12 of the Constitution of India and it is prayed before this Hon'ble Bench to declare the assessee Board as "State".

Article 289 of the Constitution of India provides the exemption of property and income of a State from Union of taxation. For the better appreciation of the law Article 289 of the Constitution of India is reproduced as under;

*(1) The property and income of a State shall be exempt from Union taxation.*

*(2) Nothing in clause (1) shall prevent the Union from imposing, or authorising the imposition of, any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operations connected therewith, or any property used or occupied for the purposes of such trade or business, or any income accruing or arising in connection therewith.*

*(3) Nothing in clause (2) shall apply to any trade or business, or to any class of trade or business, which Parliament may by law declare to be incidental to the ordinary functions of Government.*

The analysis of the above three clauses of Article 289 is under;

The first clause of Article 289 is very simple and straight forward. It clearly states that all of the property that is under the ownership of the State shall not be liable to payment of taxes levied by the Union government. The same applies for the income that is generated by a State Government.

The second clause of Article 289 of the Indian Constitution makes it very clear that the Union Government has the power to impose taxes only on certain activities of the State government. Specifically, it states that the Union Government can impose taxes on any trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operations connected with such trade or business.

The third, or the final clause of this article states that the provisions mentioned in the previous clause will not apply to certain types of trade or business that are deemed to be "incidental to the ordinary functions of Government."

In the instant case, the assessee does not carry out any business or trade and the income of the assessee qualifies in the first clause of the Article 289 of the Constitution of India. Further the Ministry of Finance, Govt. of India vide its notification dated 20<sup>th</sup> July 2017 has notified the income of the assessee is exempted u/s 10(46) of the Income Tax Act, 1961 which gives more support to the argument of the assessee and therefore it is prayed before this Hon'ble Bench to declare the assessee as "State" and its income not liable for taxation as per the Article 12 read with Article 289(1) of the Constitution of India.

It is a matter of fact that the assessee for the first time come with this ground of appeal before this Hon'ble Bench. The officers of the assessee Board are Odisha State Govt. employees, they don't understand the intricacies of the Income Tax Laws due to which the assessee Board had never claimed itself as a "State". As per the CBDT circular No.014(XL-35) dated 11<sup>th</sup> April 1955, "the officers of the Departments must not take advantages of the ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the officer should take the initiative in guiding the taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him".

In the instant case even if, the assessee never claimed itself as a "State", the legitimate benefit which the assessee should get, cannot be denied and therefore it is prayed before this Hon'ble Bench to declare the assessee as "State" and immunity from taxation should be granted under Article 12 read with Article 289(1) of the Constitution of India, and for this act of kindness the assessee shall remain ever pray."

6. The Revenue has also filed written submission, as follows:

"1. In the instant case as per the statement of fact filed before the Ld. Commissioner of Income Tax (Appeals), the appellant has submitted that *"The appellant is a Board constituted in pursuance of sub-section(1) of section 4 of the Orissa Water (Prevention and Control of pollution) (Amendment) Act, 1974 vide notification No.1481-VII-HI-11/83(Vol.II)-S.T.E. dated 15th July 1983 issued by the Department of Science, Technology and Environment, Govt. of Orissa. Thereafter, the Board was re-designed as State Pollution Control Board, Odisha vide notification No.-Env.-E(F)/8/89/1882.F & E dated 16th July 1999. The appellant's accounts are subject to Audit by a Chartered Accountant appointed by CAG. Since the appointment took late and the accounts could not be finalized, the appellant filed its return of income u/s 139 of the Income Tax Act, 1961 (Herein after referred as the Act) on the basis of provisional accounts on 30th March 2018 by declaring the total income at Rs.NIL.*

1.1 The assessing officer vide its assessment order u/s 143(3) of Income Tax Act dated 23<sup>rd</sup> October 2018 had denied the exemption claimed by the Appellant u/s 10(46) of Income Tax Act on the ground that the appellant failed to file its return of Income as per the provisions of section 139(4C)(g) of the Income Tax Act. The AO had also observed that the notification No. 65 of 2017, relied upon by the appellant for claiming the exemption u/s 10(46) of the Income Tax Act had also mandated in specific term that "The notification shall be effective subject to the conditions that State Pollution Control Board, Odisha **SHALL FILE RETURN OF INCOME IN ACCORDANCE WITH THE PROVISION OF CLAUSE (G) OF SUB SECTION (4C) OF SECTION 139 OF THE INCOME TAX ACT, 1961 "**

1.2 The appeal filed against the order of the Assessing officer dated 23.10.2018 was dismissed by the Ld. Commissioner of Income Tax(Appeals)/NFAC, vide his order dated 24.05.2024. In the appellate order the Ld. CIT(A) has held that: *"In instant case, the appellant has not filed his return of income within due date as mandatory for claiming exemption .The appellant failed to file its return of income in accordance with the provisions of clause (g) of sub section (4C) of the section 139 of the income tax act,1961.Thus assessing officer has rightly denied the claim of exemption u/s 10(46)."*

1.3 While coming to the above conclusion the Ld. CIT(A) had strongly relied on the Judgment of the Hon'ble Supreme Court of India in the case of the Pr. CIT vs Wipro Limited [ 2022] 140 taxmann.com 223(SC) dated 11.07.2022. Though the aforesaid Judgment was delivered in respect of filing of declaration u/s 10B(8), within the time limit prescribed u/s 139(1) of Income tax Act and claim of carry forward losses. But the ratio of the aforesaid judgment is squarely applicable on the facts of the instant case as in para 11 of its judgment the Hon'ble Supreme Court has held that **"As per the settled position of law, an assessee claiming exemption has to strictly and literally comply with the exemption provisions."**

1.4 Against the order the Ld. CIT(A) dated 24.05.2024, the appellant has filed the instant appeal before the Hon'ble ITAT, Cuttack on 15.07.2024, which has been taken up for hearing by the Hon'ble ITAT, Cuttack Bench in ITA No. 103/CTK/2024.

1.5 Further during the course of hearing in the instant appeal on 30.09.2024, the Hon'ble ITAT Bench has directed to file written submissions on the grounds of appeals raised in the instant appeal as well as the additional ground of appeal dated NIL raised during the course of the hearing of the instant appeal on 30.09.2024.

2. In this regard, the ground wise written submissions are being submitted for kind consideration of the Hon'ble Bench is as under:

2.1 FIRST GROUND OF APPEAL:

**(1) That, the Ld. Commissioner of Income Tax (Appeals) committed an error of law in disallowed the exemption u/s 10(46) Act even if the income of the assessee is exempted as per the notification issued by the Ministry of Finance, Govt. of India, therefore the exemption u/s 10(46) is to be allowed.**

2.2 During the course of the instant appellate proceedings the appellant has filed on 13.09.2024 a paper book consisting of the following:

- (i) Copy of the Government of India Notification u/s 10(46) of the Income Tax Act, 1961 (Notification No. 65/2017 dated 30.07.2017;
- (ii) The CBDT circular No. 014(XL-35) dated 11.04.1955;
- (iii) Copy of statutory audit report for FY. Y. 2016-17;
- (iv) Breakup of year wise fee collected.;
- (v) Copy of Written Submission filed before Ld. CIT(A) and

(vi) Copies of case laws:

- (i) Maharashtra State Board of technical Education Vs ITO, (2019) 200 TTJ (Mumbai) 810
- (ii) Manoj Kumar Nayak Vs JCIT(OSD), International Taxation, Bhubaneswar vide ITA No. 389/CTK/2014 dated 17.05.2018.

2.3 As the appellant has not filed any written submission in the instant appeal before the Hon'ble ITAT, the written submission is being filed the submissions filed before the Ld. CIT(A) and the documents submitted vide the aforesaid paper book filed on 13.09.2024.

2.4 In the statement of fact part of the written submission dated 04.12.2023 filed before the Commissioner of Income Tax (Appeals), the appellant has contended that *"The appellant accounts are subject to Audit by a Chartered Accountant appointed by CAG. Since the appointment took late and the accounts could not be finalized, the appellant filed its return of Income u/s 139 of Income Tax Act, 1961 (Herein after referred as the ACT on the basis of provision accounts on 30.03.2018"*.

2.4.1 On this contention it is respectfully submitted that though the appellant has contended that the Return of Income for the relevant assessment could not be filed before the prescribed time limit mandated under section 139 of the Income Tax Act, but the appellant has not submitted any evidence in support of its contentions either before the Assessing Officer, or the Ld. CIT(A) or before this Hon'ble Court. In this respect the following facts are submitted for kind consideration of the Hon'ble Bench

(a) The appellant has not mentioned or submitted any communication with the office of the Hon'ble CAG in connection with the delay in appointment of the Statutory Auditors despite there being delay of more than four years in getting the accounts audited from the prescribed time limit.

(b) The appellant in its submissions has stated that it has filed the return of income for the relevant assessment year on 30.03.2018 on the basis of provisional account. The appellant could have filed its return of Income before the due dated prescribed u/s 139(1) of the Income Tax Act which was statutory requirement for claiming exemption u/s 10(46) of Income Tax Act, as per explicit provisions of section 139(4C)(g) of Income Tax Act.

(c) If the appellant had bonafide reasons for not filing its return of income within the statutory time limit, the appellant could have filed application for condonation of delay for not filing of its return of income within the statutory time limit, before the CBDT u/s 119(2)(b) of Income Tax Act, which has expressed provision for admission of claim of any exemption after the expiry of the period specified in the Income Tax Act.

2.4.2 In view of the above, it is humbly submitted that in the instant case the appellant has not fulfilled the mandatory requisite of filing its return within the prescribed time limit for its claim of exemption u/s 10(46) of Income Tax Act. Further, the appellant has also not taken recourse of the provisions of the section 119(2)(b) of Income Tax Act if the delay in filing of the return of income is on account of the bonafide reasons.

**2.4.3 In view of the reasons enumerated in the above para, it is submitted before the Hon'ble Bench that the contention of the appellant that the delay in filing of the return of income for the relevant assessment year was on account of bonafide reasons is not tenable and is liable to be rejected.**

2.5 In para 2.3 of the submission made before the Ld. Commissioner of Income Tax(Appeals) the appellant has submitted that

*"As may be appreciated that, the notification (u/s 10(46) of Income Tax Act bearing no. 65/2017 dated 30.07.2017) obligates on the appellant to file the return of income as per the provisions of clause (g) of section 139(4C) of the Act for availing of benefits of exemptions u/s10(46). Nowhere in the notification issued by the Ministry of Finance it is specified that the return of income should be filed within the due date for availing of exemption, it had only stated that the return of income to be filed as per the provisions of clause (g) of section 139(4C)(g) also requires to filed the return of income. Nowhere in the Act also it has been pointed out that the return of income is to be filed within the time limit as prescribed u/s 139(1) for claiming exemption u/s 10(46), otherwise it would have been explicitly specified in the ACT"*

2.5.1 In this regard, it is humbly submitted before the Hon'ble Bench that this contention of the appellant is blatantly incorrect and amount to misquoting the statutory provisions. In support this contention the undersigned would like to reproduce the relevant part of the section 139(4C) of the Income Tax Act as under:

"139(4C) Every-.....

(g) body or authority or Board or Trust or Commission (by whatever name called) referred to in clause (46) of section 10;....

...shall, if the total income in respect of which such research association, news agency, association or institution, person or fund or trust or university or other educational institution or any hospital or other medical institution or trade union or body or authority or Board or Trust or Commission or infrastructure debt fund or Mutual Fund or securitisation trust or venture capital company or venture capital fund is assessable, without giving effect to the provisions of section 10, exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1)."

2.5.2 From the plane reading of the aforesaid provision that the section 139(4C)(g) mandates every Board referred in section 10(46) of the Income Tax Act to file its return of Income in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed. It further states that all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1). Thus, the provision unequivocally mandates the appellant to file its return of income within the prescribed time limit as provided in the subsection (1) of section 139 of the Income Tax Act.

**2.5.3 Thus, in view of the explicit provisions of the section 139(4C) of the Income Tax Act it is humbly submitted before the Hon'ble Bench that the contention of the appellant that it was not required to file its return of income within the due date prescribed u/s 139(1) of Income Tax Act is against the explicit provisions of the Act and therefore, is liable to be rejected.**

2.6 In para 2.4 of the submission made before the Ld. CIT(A), in respect of filing ITR-5 in place of the prescribed ITR-7, the appellant has submitted that "*For this allegation it is humbly submitted that, the appellant filed the return on income in ITR-5 due to wrong advice by the tax consultant. Assessee does not know the intricacies of the income Tax Laws. Due to inadvertent mistake of assessee, the legitimate rights which it is otherwise available cannot be denied*".

In support of its contention the appellant has relied upon the circular No. 014(XL-35) dated 11.04.2055. The appellant has further relied upon the judgment of the Hon'ble Jurisdictional ITAT Cuttack bench dated 17.05.2018, in the case of Manoj Kumar Nayak Vs JCIT(OSD), International Taxation, Bhubaneswar in ITA No. 389/CTK/2014.

2.6.1 In this regard, the undersigned relies on the judgment of the Ld. CIT (A) who has considered this issue in para 10 of its appellate order. The relevant para of the order of the Ld. CIT(A) is submitted as under:

*10. Further, the reason stated by the appellant for filing of ITR-5 instead of ITR-7 is also not tenable. The mistake termed as inadvertent by the appellant could have been revised and submitted before the Assessing Officer during the assessment proceedings. But no such steps were taken by the appellant to avail the benefit of the exemption u/s 10(46) of the Act.*

2.6.2 It is also submitted that the exemption u/s 10(46) of the Income Tax Act has been denied to the appellant on account of non-adherence of the twin mandatory statutory requirement of filing its ITR in prescribed form and within the time limit prescribed u/s 139(4C) read with 139(1) of the Income Tax Act.

**2.6.3 Thus, it is humbly submitted before the Hon'ble Bench that the contention of the appellant in respect of filing of ITR in wrong ITR form is also liable to be rejected.**

2.6.4 It is also submitted that the circular No. 014(XL-35) dated 11.04.1955 will not help the cause of the appellant as this circular mandates the Income Tax authorities to guide and advice and to bring about to the notice of the tax payer the legitimate refunds, reliefs etc. The para 4(c) of the Circular talks about "mandatory relief about exemption from tax". However, there is a limitation that "if not time barred". However, in the instant case the appellant had failed to file its return of income in prescribed form within the time limit prescribed u/s 139(4C) of the Income Tax Act. Thus, the assessing officer could not have guided the appellant as the time limit for filing of ITR had passed when the issue was analyzed by the Assessing Officer.

2.6.5 The relied upon judgment of the Hon'ble jurisdictional ITAT, Cuttack Bench in the case of Sh. Manoj Kumar Nayak Vs JCIT(OSD), International Taxation, Bhubaneswar (Supra) is distinguishable to the extent that in Manoj Kumar Nayak case, the only issue for adjudication before the Hon'ble ITAT was "Whether the residential

status of the applicant could be said as mistake apparent from record and any mistake in the residential status is a rectifiable mistake under the provisions of section 154 of the Income Tax Act. In Manoj Kumar Nayak's judgment the Hon'ble ITAT has held that the mistake in the residential status of the appellant is mistake apparent from record and accordingly, the Hon'ble ITAT has directed the AO to rectify the mistake after verification. **Thus, it is humbly submitted that the relied upon judgment in the case of Sh. Manoj Kumar Nayak is distinguishable and the facts of that case are not related to the facts or issues before the Hon'ble Bench for adjudication in the instant case.**

2.7 In para 2.5 and 2.6 of the submission made before the Ld. CIT(A), the appellant has contended that the judgments of the Hon'ble jurisdictional ITATs and Hon'ble jurisdictional High Courts are binding on all subordinate authorities. The appellant has also submitted some judicial precedents in support of this contention.

2.7.1 In this regard, it is humbly submitted before the Hon'ble Bench that the contention of the appellant in this regard is an established doctrine of judicial discipline and it is admitted that all the judgments of Hon'ble Jurisdictional ITAT and Hon'ble High Court given on any issue on similar facts and circumstances are binding on all subordinate authorities.

### **3. Second Ground of Appeal**

**2. That the Ld. Commissioner of Income Tax (Appeals) erred in facts in circumstances in confirming the amount of ` 53,48,75,077 as income of the appellant which is as per the provisional accounts whereas the actual income of the appellant is Rs. 22,03,68,314, therefore the relief of Rs.31,45,06,763 is to be allowed.**

3.1 Vide second ground of appeal the appellant has contended that the actual income of the Appellant is Rs. 22,03,68,314/- against the total disallowance of exemption claimed u/s 10(46) of the Income tax Act has been made by the AO and confirmed by the Ld. CIT(A), of Rs. 53,48,75,077/-.

3.2 This issue was not raised by the appellant before the Assessing Officer. However, before the Commissioner of Income Tax(Appeals) the appellant has submitted that:

*"That, the appellant is a Board constituted by the State Government whose accounts are subject audit by a chartered accountant appointed by the CAG. In the instant case CAG has*

*appointed the Statutory Auditor in late due to which the books of account were audited in late. However, since the accounts were not audited, the Board filed its return of income on the basis of provisions accounts in which the net profit was shown at Rs. 53,48,75,077/ and the assessment was also completed on the basis of the provisional figures. After finalization of the accounts the net profit comes to Rs. 49,76,91,623/-, for your kind perusal copy of the audited final accounts are enclosed."*

3.3 During the instant appellate proceedings before the Hon'ble Bench the Appellant has also filed audited income and expenditure account (Page 11 of paper book). In this Income and expenditure account the Excess Income over Expenditure has been shown at Rs. 49,76,91,623/-

3.4 The appellant has not submitted any computation in support of its contention in the 2<sup>nd</sup> Ground of Appeal made before the Hon'ble ITAT, in support of its contention that the actual income of the appellant was Rs. 22,03,68,314/- only and not Rs. 53,48,75,077/- or Rs. 49,76,91,623/-.

3.5 In view of the above facts it is prayed before the Hon'ble Bench that there have been inconsistencies in the submissions made by the appellant before this Hon'ble Bench and those made before the Ld. CIT(A). It is settled principle of Law that any person approaching the court should come with clean hands. The inconsistencies in submissions itself can be basis of rejection of claim of the appellant.

3.6 Notwithstanding above submissions, it is also submitted that the Audit Report on its first page itself has stated that the appellant maintains its books of accounts by following "Cash System of accounting". Therefore, the claim of the appellant that only the receipt related to the current year should be taken for determination of income of the appellant for the relevant previous year is not tenable. Thus, it is prayed that this contention of the appellant be rejected.

**4. Submission on Mandatory requirement of filing on return of Income in Prescribed Form and within prescribed time limit as prescribed in Section 139(4C) read with Section 139(1) of the Income Tax Act for claiming exemption u/s 10(46) of the Income Tax Act.**

4.1 In the instant case the appellant has claimed exemption u/s 10(46) of the Income Tax Act, however the appellant has not

submitted its ITR in the prescribed ITR -7 and not filed its ITR within the time limit prescribed under the provisions of section 139(4C).

4.2 The Learned CIT(A) in its order has heavily relied on the Judgment of the Hon'ble Supreme Court of India dated 11.07.2022 in the case of the Pr. Commissioner of Income Tax Vs M/S Wipro Limited in CA no 1449 of 2022. Though, the Hon'ble Supreme Court of India in the Wipro Case(supra) has given its judgment on the issue of non-compliance of the conditions prescribed in section 10B(8) of Income Tax Act which prescribes furnishing of declaration under section 10B(8) of Income Tax Act before the due date of filing of return of income u/s 139(1) of the Income Tax Act, the ration laid down by the Hon'ble Supreme Court of India will be applicable in all cases where any exemptions have been claimed without complying the conditions laid down in the Income Tax Act.

4.3 Apart from the para of the aforesaid judgment of the Hon'ble Supreme Court quoted and relied upon by the Learned CIT(A), the undersigned would like to reproduce the relevant para of the aforesaid judgment in support of the contention that the adherence of the pre-requisite conditions of filing of return of income in prescribed form and within the prescribed time limit is mandatory conditions for claiming exemption u/s 10(46) of the Income Tax Act.

4.4 In its judgment the Hon'ble Supreme Court has mentioned in para 11 of the Judgment that "*As per the settled position of law, an assessee claiming exemption has to strictly and literally comply with the exemption provisions.*" Further, in the same para, while distinguishing Chapter III(Exemptions) and Chapter VIIA(Deductions) of the Income Tax Act, the Hon'ble Supreme Court has also held that "None of the decisions which are relied upon on behalf of the assessee on interpretation of Chapter VIA shall be applicable while considering the claim u/s 10B(8) of the Act. "

4.5 Further, the Hon'ble Supreme Court in para 12 of the aforesaid judgment has reiterated that "As observed hereinabove, the exemption provisions are to be strictly and literally complied with and the same cannot be construed as procedural requirement."

4.6 The Hon'ble Supreme Court has also held that if the language of the section prescribing the conditions for claim of any exemption is unambiguous, and interpretation contrary to the provision is erroneous. The relevant part of para 14 of the abovementioned Judgment is reproduced as under:

". In view of the above discussion and for the reasons stated above, we are of the opinion that the High Court has committed a grave

error in observing and holding that the requirement of furnishing a declaration under Section 10B (8) of the IT Act is mandatory, but the time limit within which the declaration is to be filed is not mandatory but is directory. The same is erroneous and contrary to the unambiguous language contained in Section 10B (8) of the IT Act. We hold that for claiming the benefit under Section 10B (8) of the IT Act, the twin conditions of furnishing a declaration before the assessing officer and that too before the due date of filing the original return of income under section 139(1) are to be satisfied and both are mandatorily to be complied with."

4.7 Further, a three Judge Bench of Hon'ble Supreme Court of India in its judgment dated 12.10.2012 in the case of M/S Checkmate Services P. Ltd vs Commissioner of Income Tax in CA No. 2833 of 2016 has formulated the guiding principle for interpretation of tax statute when exemptions or deduction have been claimed. In para 48 of this judgment the Hon'ble Supreme Court of India has observed that:

*48. "One of the rules of interpretation of a tax statute is that if a deduction or exemption is available on compliance with certain conditions, the conditions are to be strictly complied with. This rule is in line with the general principle that taxing statutes are to be construed strictly"*

4.8 In para 49 of the Checkmate Judgment the Hon'ble Supreme Court has reiterated the aforesaid conclusion by affirming its own judgment in the case of the State of Jharkhand Vs M/S Ambay Cements (2005) 1 SCC 368. The quoted part of the judgment of M/S Ambay Cement (supra) is reproduced as under:

*26. Whenever the statute prescribes that a particular act is to be done in a particular manner and lays down that failure to comply with the said requirement leads to severe consequences, such requirement would be mandatory. It is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way. It is also settled rule of interpretation that where a statute is penal in character, it must be strictly construed and followed. Since the requirement, in the instant case, of obtaining prior permission is mandatory, therefore, non-compliance with the same must result in cancelling the concession made in favour of the grantee, the respondent herein."*

4.9 In view of the above, and particularly the ratio laid down by the Judgments of the Hon'ble Supreme Court of India in the cases of The Pr. CIT Vs Wipro Limited (supra), M/S Checkmate Services Pvt Ltd Vs CIT-1(supra) and State of Jharkhand Vs M/S Ambay Cement (supra), it is abundantly clear that the pre conditions as provided in the Section 139(4C) of the Income Tax Act, i.e. filing of ITR in prescribed form and within the due date prescribed u/s 139(1) of Income Tax Act are mandatory pre-conditions for claiming exemption under section 10(46) of the Income Tax Act. Any contrary interpretation of the provisions of section 139(4C) would be erroneous as the language of the provision is unambiguous.

4.10 Further, the notification 65/2017 dated 20.07.2017 issued u/s 10(46) of the Income Tax Act, relied upon by the appellant for claiming exemption u/s 10(46) of Income Tax Act, specifically provides in unambiguous term the pre-condition in its para 2 that the appellant "*shall file return of income in accordance with the provision of clause (g) of subsection (4C) of section 139 of the Income Tax Act, 1961*". It is settled principle of law that the same document cannot be simultaneously relied on and denied by the appellant. **Therefore, the contention of the appellant that it was not required to file its return of income within the prescribed time limit as provided in section 139(1) of Income Tax Act is against the expressed provisions of the Income Tax Act as well as that of the notification dated 20.07.2017.**

4.11 Based on the above, it is humbly submitted before the Hon'ble Bench that in the instant case the appellant has not complied with the twin mandatory conditions prescribed under section 139(4C) of Income Tax Act namely (i) Filing or return of income for relevant previous year in prescribed form (ITR-7) and (ii) Filing of return of Income in terms of provisions of section 139(1) (within prescribed time limit).

4.12 In view of the unambiguous language of the provision of section 139(4C) and that of notification u/s 10(46) dated 20.07.2017 and the judicial precedents cited above, it is humbly and respectfully submitted that the appellant in the instant case will not be entitled for exemption u/s 10(46) of the Income Tax Act.

4.13 Accordingly, it is prayed before the Hon'ble Bench that the order of the Commissioner of Income Tax(Appeals), denying the exemption u/s 10(46) of Income Tax Act may kindly be confirmed.

## **5. Submissions on the Addition Ground of Appeal:**

5.1 During the course of the hearing in instant appeal before the Hon'ble Bench on 30.09.2024, the appellant has filed Additional Grounds of Appeal. The Additional Ground of appeal are reproduced as under:

*"That, the appellant is a Board constituted in pursuance of sub-section (1) of section 4 of the Orissa Water (Prevention and Control of pollution) (Amendment) Act, 1974 vide notification No.1481-VII-HI-11/83(Vol.II)-S.T.E. dated 15th July 1983 issued by the Department of Science, Technology and Environment, Govt. of Orissa which was re-designed as State Pollution Control Board, Odisha vide notification No.-Env.-E(F)/8/89/1882.F & E dated 16th July 1999. Hence, the appellant is a "State" within the meaning of Article 12 of Constitution of India and its incomes are exempted as per the provisions of Article 289 of Constitution of India, therefore, the Ld. AO is wrong in imposing of tax and the Ld. CIT(A) committed an error of law in confirming the action of the Ld. AO."*

5.1 In support of its contention the appellant has submitted the copies of the Notification of Science, Technology & Environment dated 15.07.1983. The appellant has also submitted the copy of notification dated 16.07.1999 vide which the appellant board was redesignated as "State Pollution Control Board, Odisha." The appellant has also submitted a copy of the judgment of Hon'ble Mumbai ITAT bench in ITA Nos. 2203,6248/Mum/2016, vide which the Hon'ble ITAT has held the Maharashtra State Board of Technical Education as state for the AY 2007-08 and AY 2010-11( when section 10(46) was not brought to the statute). The case law cited by the appellant is distinguishable in view of another judgment of the Hon'ble ITAT, Hyderabad Bench in case of Pollution Control Board of Andhra Pradesh, which was constituted under the same Act and perform same functions and a subsequent judgment of Hon'ble Supreme Court interpreting the exemption provisions under Income Tax Act for statutory/non-statutory bodies engaged in public functions/services. These two judgments have been discussed at length in the following paragraphs.

5.2 On identical set of facts the Hon'ble Hyderabad Bench of hece ITAT in the case of A. P. Pollution Control Board, Hyderabad Vs DDIT(Exemptions)-II, Hyderabad in ITA No. 337,338,339/Hyd/2011, vide its order dated 19.12.2014 has held that the appellant in that case i.e. the A.P. Pollution Control Board, was not "state" within the meaning of article 289 of the Constitution of India. The facts of the

instant case are squarely covered by the facts of the aforementioned case.

5.3 The relevant parts of the judgment of the Hon'ble ITAT is reproduced as under:

*11. We have considered the elaborate submissions made from both sides and perused the orders of the departmental authorities as well as other materials on record. We have also carefully applied our mind to the decisions relied upon by the parties before us. At the outset, we need to observe that though the assessee board was created with effect from 24/01/1976 as Andhra Pradesh State Board for the Prevention and Control of Water Pollution and subsequently rechristened as Andhra Pradesh Pollution Control Board after enactment of the AIR (prevention and control of pollution) Act, 1981, but, the assessee board never claimed immunity from payment of income-tax under article 289 of the Constitution of India. Only after assessee lost the claim of exemption u/s 10(20) of the Act, by virtue of amendment to the definition of the expression local authority w.e.f. 01/04/2003 and it failed in its attempt, either in getting approval u/s 10(23C)(vi) or being registered u/s 12AA of the Act for the impugned AY, as a last resort it staked its claim of immunity from payment of income-tax under article 289 of the Constitution of India, that too at the stage of proceeding before the first appellate authority. It is a fact on record that during the assessment proceeding also for the impugned AY, assessee never claimed that its income is exempt from taxation by virtue of article 289(1) of the Constitution of India. Be that as it may, the issue before us is whether the income of the assessee board can be said to be the income of the state govt. so as to get immunity from taxation under article 289(1) of the Constitution of India. In this regard, it is the submission of assessee that as the activities carried on by assessee is of such a nature which the state alone can carry on and no other person or organization can carry on such activity, the income derived by assessee while carrying out such activity has to be treated as the income of the state. In this context, ld. AR has taken us through various provisions of the Water (prevention and pollution control) Act, 1974 and AIR (prevention and control of pollution) Act, 1981, to submit that the activity carried on by assessee board under the said provisions is only as an agent or extended arm of the state. Hence, the income of the board has to be treated as income of the state govt. Before deciding the validity of the aforesaid claim of assessee, it is necessary to look into the provision contained under article 289(1) of the Constitution of India, which is extracted hereunder for the sake of convenience:*

*"Exemption of property and income of a State from Union taxation*

*(1) The property and income of a State shall be exempt from Union taxation*

*(2) Nothing in clause ( 1 ) shall prevent the Union from imposing, or authorising the imposition of, any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operations connected therewith, or any property used or occupied for the purposes of such trade or business, or any income accruing or arising in connection therewith (3) Nothing in clause ( 2 ) shall apply to any trade or business, or to any class of trade or business, which Parliament may by law declare to be incidental to the ordinary functions of government."*

*12. On careful analysis of Article 289, extracted above, it is to be observed, the said article is divided into three parts. Clause (1) of Article 289 says that the property and income of State shall be exempt from union taxation. Article 289(2) however provides that nothing in clause(1) shall prevent the union from imposing and authorizing the imposition of any tax to such extent, if any, as parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of the government or State, or any operation connected therewith, or any property used or occupied for the purpose of such trade or business, or any income accruing or arising in connection therewith. Article 289(3) provides that nothing in clause(2) shall apply to any trade or business or to any class of trade or business, which parliament may by law to be incidental to the ordinary functions of government. Thus, a plain reading of the aforesaid clauses of Article 289 makes it clear that they are independent of each other and speaks of three different situations.*

*13. On a perusal of The Water (prevention and control of Pollution) Act, 1974, it is to be noticed that section 4 of the said Act empowers the state govt. to constitute a state pollution control board through a notification published in the official gazette for exercising such powers and functions as may be assigned to the board under the Act. Similarly, section 4 of The AIR (prevention and control of pollution) Act, 1981, provides that state pollution control boards constituted under section 4 of the water (prevention and control of pollution) Act, 1974 shall be deemed to be the state board for the*

*prevention and control of air pollution. Further, other provisions of both the aforesaid Acts does not leave any room for doubt that the state govt. exercises control over the functioning of the board, but at the same time, section 37 of The Water(prevention and control of pollution) Act, 1974 makes it clear that the board shall have its own fund constituted by the sums paid by the state govt. and all other receipts by way gifts, grants, donations, benefactions, fee or other wise shall be carried to the fund of the board and all payments by the board shall be made there from. It further provides that the board may expend such sums as it thinks fit for performing its functions under the Act and such sums shall be treated as expenditure payable out of the fund of the board. Section 37A also empowers the board to borrow money from any source by way of loans or issue of bonds debentures or such other instruments as it may deem fit for the performance of any of its functions under the Act, but, of course with the consent of the or the authority given by the Central or State govt. Section 38 provides that the board for each financial year shall prepare its own budget showing estimated receipt and expenditure for the next FY and copy of the said budget shall be forwarded to the Central/State Govt. From the aforesaid provisions, it becomes abundantly clear that the income generated by the board which goes to constitute its own fund does not go to the consolidated fund of the state and is distinct and separate from the fund of the state govt. Section 62 of The Water (prevention and control of pollution) Act, 1974 empowers the state govt. to supersede the state pollution control board, if it is of the opinion that the state board has persistently made defaults in the performance of the functions imposed on it by or under the Act or circumstances exist which render it necessary in the public interest to do so. Only upon supersession of the state board the state govt. takes over all the powers and functions and duties performed by the state board and also property owned or controlled by the board shall vest in the state govt. Therefore, from the aforesaid provision, it becomes clear that until supersession of the state board, not only it retains its distinct and independent identity but also the funds and property of the board also remains in its possession.*

*14. Therefore, examining the aforesaid facts vis-à-vis the provisions contained under Article 289 of the Constitution of India, it is evident that the powers/functions exercised by the board cannot considered to be in the nature of trade or business. Therefore, clause (2) and (3) of Article 289 may not be applicable to the facts of assessee's case. The only provision under which assessee can possibly claim immunity from taxation is clause (1) of Article 289. On a plain*

*reading of the said clause, it is clear that only property or income of state is exempt from union taxation. The expression 'income of a state' as incorporated under Article 289(1) has to be interpreted to mean, the income of the state govt. itself and not the income of some authority other than the state, such as statutory authority or board which is a independent/separate juristic entity, even though it may be owned or controlled by the state govt. As we have stated earlier, provisions of both the water (prevention and control of pollution) Act, 1974 and Air (prevention and control of pollution) Act, 1981, make it clear that the funds of the board are its own funds and does not belong to the state govt. Only in case of supersession of the board, the property of the board vests with the state govt. Therefore, until such supersession the fund of the board is distinct from the fund of state govt. Considered in the aforesaid perspective, the income/receipts of the Board cannot be considered to be the income/receipts of the state govt. It also cannot be disputed that assessee is an independent/separate juristic entity distinct from the state govt., though, the state may be exercising control over the board. Further, the facts and materials on record also make it clear that the income/receipts of the board remain as its own funds and not transferred to the coffers of the state govt. In the aforesaid facts and circumstances when the income/receipts of the board remain with the board itself and not transferred to the state govt. such income/receipt has to be considered as income/receipt of the board and not of the state govt. Therefore, such income/receipt cannot be immune from taxation under article 289(1) of the Constitution of India.*

*15. The Hon'ble Supreme Court in case of Adityapur Industrial (supra) while examining provisions under Bihar Industrial Area Development Authority, 1974 which are akin to section 37 and 62 of The Water (prevention and control of pollution) Act, 1974 observed as under:*

*"Having regard to the provisions of the Bihar Industrial Areas Development Authority Act, 1974, particularly s. 17 thereof, we have no manner of doubt that the income of the appellant/Authority constituted under the said Act is its own income and that the appellant/Authority manages its own funds. It has its own assets and liabilities. It can sue or be sued in its own name. Even though, it does not carry on any trade or business within the contemplation of cl. (2) of Art. 289, it still is an Authority constituted under an Act of the legislature of the State having a distinct legal personality, being a body corporate, as distinct from the State. Sec. 17 of*

*the Act further clarifies that only upon its dissolution its assets, funds and liabilities devolve upon the State Government. Necessarily therefore, before its dissolution, its assets, funds and liabilities are its own. It is, therefore, futile to contend that the income of the appellant/Authority is the income of State Government, even though the Authority is constituted under an Act enacted by the State legislature by issuance of a notification by the Government thereunder."*

16. The Hon'ble Supreme Court after analyzing the provisions contained under article 289 as a whole and taking note of the principles laid down by the Hon'ble Supreme Court in case of AP State Road Transport Corpn. Vs. ITO (52 ITR 524) observed as under:

*"Considerable reliance was placed on the principles laid down in the aforesaid decision by learned counsel appearing for the Union of India. He submitted that having regard to the provisions of the Act under which the appellant/Authority is established, the same conclusion may be reached. In particular, emphasizing the fact that as in Andhra Pradesh State Road Transport Corporation case (supra), so in the instant case as well, s. 17 of the Act provides that upon dissolution of the appellant/Authority, the properties, funds and dues realizable by the Authority along with its liabilities shall devolve upon the State Government. Impliedly, therefore, such properties, funds and dues vest in the Authority till its dissolution, and only thereafter it vests in the State Government. He also referred to various other provisions of the Act and submitted that there was nothing in the Act which attempted to lift the veil from the face of the corporation. Even though the Authority was created under an Act of the legislature, it was still an Authority which had a distinct personality of its own, having perpetual succession and a common seal, with powers to acquire, hold and dispose of property, and to contract, and could sue and be sued in its own name. Shri Venugopal, on the other hand, tried to distinguish the judgment on the ground that the Andhra 23 ITA Nos. 337, 338, 339/Hyd/2011 A.P. Pollution Control Board Pradesh Road Transport Corporation is being run on business lines, and a corporation that runs on business lines is distinguishable and different from a corporation which is not run on those lines. Even if such a distinction is drawn, that will not have the effect of making the income of the corporation*

*the income of the State Government having regard to the other features noticed above.”*

*The Hon’ble Supreme Court finally held that exemption can be claimed under Article 289(1) of the Constitution of India only if the income can be said to be the income of the state govt.*

*17. Considered in the light of the ratio laid down by the Hon’ble Supreme Court as aforesaid and facts involved in the present appeal, under no circumstances it can be held that the income/receipts of the assessee is that of the state govt.. This is because, not only assessee is a distinct and separate legal/juristic entity but funds of the assessee also belong to assessee. Though, the learned AR has tried to impress upon us that the principles laid down in case of Adityapur Industrial. (supra) will not be applicable to assessee, but, we are unable to agree with the same. In our view, the principles laid down by the Hon’ble Supreme Court squarely applies to the facts of the case of assessee. While dealing with identical issue in case of AP Housing Board (supra), a coordinate bench of this Tribunal has held that Housing Board being a separate juristic entity, income derived by it cannot be considered to be the income of the state under article 289 of the Constitution of India.*

*18. The entire issue can also be looked into from another angle. As can be seen till AY 2002-03, assessee had been claiming exemption u/s 10(20) by treating itself to be a local authority. Moreover, assessee has also applied for registration u/s 12AA of the Act as a charitable institution and has also been granted such registration in pursuance to the directions of the ITAT. Furthermore, it is a fact on record that assessee has also applied for approval u/s 10(23C)(iv) of the IT Act, and approval has also been granted to assessee from AY 2009-10 onwards. From the aforesaid facts, it becomes clear that assessee by its own actions considers itself to be a separate legal entity distinct from the state govt. That being the case, the income/receipts of the board has to be treated as its own income and not of the state govt. In the aforesaid facts and circumstances, we agree with the ld. CIT(A) that assessee cannot get immunity from taxation under article 289 of the Constitution of India.*

5.4 In respect of the observations made in para 18 of the aforesaid judgment of the Hon’ble ITAT in the AP Pollution Control Board case(Supra), it is submitted that in the instant case also the appellant had filed its return of income from AY 2013-14 to 2016-17 claiming status of Local Authority. During the relevant assessment year the appellant has filed its Return of Income with status of

“Artificial Judicial Person”, thus the findings of the Hon’ble ITAT in para 18 of the aforesaid judgment squarely covers the facts of the instant case.

5.5 Further, the Hon’ble Supreme Court of India vide its landmark judgment dated 19.10.2022, involving interpretations of provisions related to exemptions available in the Income Tax Act, to various statutory/non-statutory or private entities engaged in services of general public utility, in the case of The Assistant Commissioner of Income Tax(Exemptions) Vs Ahmedabad Urban Development Authority in CA No. 21762 of 2017 along with a large bunch of Civil Appeals, has given finality to the issue of exemptions available to various statutory/non-statutory or private entities engaged in activities of public utilities. The three Judge bench of the hon’ble Supreme Court in its comprehensive judgment has given detailed findings with clear guidelines on the available exemptions to the various statutory, non-statutory and private entities engaged in different activities of general public importance. In its judgment the Hon’ble Supreme Court of India has also interpreted the provisions of section 10(46) of Income Tax Act (para 178 to 189).

5.6 In its judgment the Hon’ble Supreme Court has given a finding that if a statutory board or other entity engaged in the services of public nature is not eligible for exemption provided in any particular section of the Income Tax, there is no bar in applying and claiming the other exemption provisions available in the Income Tax Act. Even for the period when the section 10(46) of Income Tax was not brought in the statute, the hon’ble Supreme Court has held that income of the Statutory Bodies are still subject to the Income Tax Act and they are mandated to apply for registrations provided in the Act for claiming exemptions available in the Act.

5.7 The relevant para of the aforesaid Judgment of the Hon’ble Supreme Court is reproduced as under:

*"189. As was observed in the earlier part of this judgment – while considering whether for the period 01.0.2003 - 31.05.2011, statutory boards, corporations, etc. could have lawfully claimed to be GPU charities, this court has observed that the nature of such corporations is not to generate profit but to make available goods and other services for the benefit of public weal. If such corporations (falling within the description of Section 10(46)) applied to the Central Government for exemption, the treatment of their receipts, should be no different than how such receipts can and should have been treated for the purposes of determining whether*

*they are GPU charities, during the period when Section 10(46) was not in existence. Furthermore, this court is of the opinion that having regard to the observations in Gujarat Maritime Board case (supra), the denial of exemption under one category cannot debar such corporations from claiming income exempt status under another category."*

5.8 Further, the operative part of the aforesaid Judgment of the Hon'ble Supreme Court of India given in sub para B-3 and B-4 of para 253(B), in respect of the entities claiming exemption u/s 10(46) of Income Tax Act, which is the case for the appellant in the instant appeal, are reproduced as under:

*B.3. In clause (b) of Section 10(46) of the IT Act, "commercial" has the same meaning as "trade, commerce, business" in Section 2(15) of the IT Act. Therefore, sums charged by such notified body, authority, Board, Trust or Commission (by whatever name called) will require similar consideration – i.e., whether it is at cost with a nominal mark-up or significantly higher, to determine if it falls within the mischief of "commercial activity". However, in the case of such notified bodies, there is no quantified limit in Section 10(46). Therefore, the Central Government would have to decide on a case-by-case basis whether and to what extent, exemption can be awarded to bodies that are notified under Section 10(46).*

*B.4. For the period 01.04.2003 to 01.04.2011, a statutory corporation could claim the benefit of Section 2(15) having regard to the judgment of this Court in the Gujarat Maritime Board case (supra). Likewise, the denial of benefit under Section 10(46) after 01.04.2011 does not preclude a statutory corporation, board, or whatever such body may be called, from claiming that it is set up for a charitable purpose and seeking exemption under Section 10(23C) or other provisions of the Act.*

5.9 From the comprehensive reading of the conclusions particularly laid down by the Hon'ble Supreme Court in sub para B-3 and B-4 of para 253 of the above mentioned judgment in case of the Ahmedabad Urban Development Authority Case (supra), It is apparent that the statutory bodies engaged in public functions/services like the appellant in the instant appeal, were liable to apply for necessary registrations or notifications for claiming any exemption available in the Income Tax Act.

5.10 In view of the judgment of the Hon'ble Hyderabad Bench of the ITAT in the identical case of A.P. Pollution Control Board (supra) and ratio laid down by the Hon'ble Supreme Court of India in the Ahmedabad Urban Development Authority Case (supra), it is apparent that the claim of the appellant being "state" in terms of article 289 of the constitution of India is not sustainable and is liable to be rejected.

5.11 Thus, it is respectfully submitted before the Hon'ble Bench that the additional ground of appeal raised by the appellant be rejected on the grounds of submissions made hereinabove.

#### 6. Prayer

In view of the facts and circumstances of the instant appeal and above written submissions made by the undersigned, it is prayed that the all the grounds including the additional ground of appeal raised by the appellant may be rejected and the order of the Ld. Commissioner of Income Tax Appeal may kindly be upheld."

7. It was submitted by Id AR that the assessee is a Board constituted under the Water (Prevention and Control Pollution) (Amendment Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981. It was the submission that the Chief Secretary of the State Government of Odisha holds the post of the Chairman of the Board. It was the further submission that the assessee Board consists of the employees of the Government of Odisha and the constitution was shown at page 7 of the Gazette Notification, which is as follows:

GOVERNMENT OF ORISSA  
FOREST & ENVIRONMENT (ENVIRONMENT) DEPARTMENT.  
\*\*\*\*\*

NOTIFICATION

Bhubaneswar, dated the 16th. July, 1999.

No.Env-E(F)-8/99/1882/F&E., In exercise of the powers conferred under sub-section (1) of Section 4 of the Water (Prevention and Control of Pollution) Act, 1974 (Central Act 6 of 1974) and Section 4 of the Air (Prevention & Control of Pollution) Act, 1987 (Act 14 of 1981), the State Government hereby appoint and constitute the State Pollution Control Board, Orissa, consisting of the following, to exercise the powers conferred on & perform the functions assigned under aforesaid Acts, for a period of three years, with effect from the date of its notification.

- |  |                   |
|--|-------------------|
| 01. Chairman, Orissa State Pollution Control Board, Bhubaneswar.                   | Chairman          |
| 02. Secretary, Finance Department or his nominee.                                  | Member            |
| 03. Chief Engineer, Electrical Power, Planning Project & Development of GRIDCO.    | Member            |
| 04. Chief Engineer, Public Health, Orissa.   | Member            |
| 05. Director, Environment.   | Member.           |
| 06. Chief Inspector of Factories & Boilers, Orissa.                                | Member.           |
| 07. Chairman, Bhubaneswar Municipal Corporation.                                   | Member.           |
| 08. Chairman, Rayagada Municipality.   | Member.           |
| 09. Chairman, Bolangir Municipality.   | Member.           |
| 10. Chairman, Sambalpur Municipality.  | Member.           |
| 11. Chairman, Balasore Municipality.   | Member.           |
| 12. Sri Lalatendu Mahapatra, MLA, Balikuda.  | Member.           |
| 13. Prof. G.C.Kar, Director, Nabakrishna Choudhury Centre for Development Studies. | Member.           |
| 14. Prof. G.Behera, Retired Professor of Chemistry, Sambalpur University.          | Member.           |
| 15. Secretary, Industries Deptt. or his nominee.                                   | Member.           |
| 16. Secretary, Steel & Mines Deptt. or his nominee.                                | Member.           |
| 17. Member Secretary, State Pollution Control Board.                               | Member Secretary. |

BY ORDER OF THE GOVERNOR

Sd/-  
COMMISSIONER-CUM-SECRETARY TO GOVT.

8. It was the further submission that the financial and administrative matter is also controlled by the Government of Odisha. The appellant Board cannot function without the permission of the Government of Odisha and the source of income of the appellant Board is decided by the Government of Odisha and notified in the Official Gazette. It was the further submission that in view of the principles laid down by the Hon'ble Supreme Court in the case of Som Prakash Rekhi vs Union of India & Anrs, 1981 AIR 212, various tests have been laid down for deciding whether a body is 'State' within the meaning of Article 12. Ld AR drew our attention to page 6 of the written submission, where the said tests are laid down. It was the submission that eight test have been laid down and in respect of eight tests laid down by the Hon'ble Supreme Court, in the case of appellant, the answer was in the positive. It was thus the submission that the assessee is liable to be treated as 'State'. It was also submitted that the assessee has been granted recognition u/s.10(46) of the Income Tax Act, 1961 vide notification issued on 20.7.2017, which reads as follows:

[To be published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii)]

Government of India  
Ministry of Finance  
Department of Revenue  
(Central Board of Direct Taxes)

NOTIFICATION

New Delhi, the 20<sup>th</sup> July, 2017

S.O.....(E).- In exercise of the powers conferred by clause (46) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies for the purposes of the said clause, the State Pollution Control Board, Odisha, a board established by the Government of Odisha, in respect of the following specified income arising to that board, namely:-

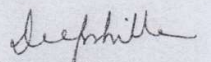
- a) statutory Consent fees;
- b) share of Water Cess from MOEF &CC, of Government of India;
- c) penalties & Levies collected under governing statutes;
- d) grant-in-aid received from Central & State Governments;
- e) grant in Aid received on behalf of Central & State Governments in the capacity of nodal agency;
- f) income by way of interest;
- g) share of contributions received for carrying out environmental studies & research.

2. This notification shall be effective subject to the conditions that State Pollution Control Board, Odisha,-

- (a) shall not engage in any commercial activity;
- (b) activities and the nature of the specified income shall remain unchanged throughout the financial years; and
- (c) shall file return of income in accordance with the provision of clause (g) of sub-section (4C) of section 139 of the Income-tax Act, 1961.

3. This notification shall be deemed to have been applied for the financial Years 2015-2016, 2016-2017 and shall apply with respect to the Financial Years 2017-2018, 2018-2019 and 2019-2020.

[Notification No. 65/2017, F.No.300196/10/2017-IT(A-1)]

  
(Deepshikha Sharma)  
Director, Government of India

Explanatory Memorandum:-It is certified that no person is being adversely affected by giving retrospective effect to this notification.

To  
The Manager,  
Government of India Press,  
Mayapuri Press,  
New Delhi.

9. It was the submission that the assessment year in dispute is also mentioned in the notification and the assessee had also filed its return of

income on 30.3.2018, which has also been recorded in the assessment order. It was thus the prayer that the assessee may be treated as "State".

10. In reply, Id CIT DR vehemently supported the order of the Assessing Officer and Id CIT(A). It was thus the submission that for the purpose of section 10(46) of the Act, the assessee ought to have filed its return of income within the time provided u/s.139(1) of the Act. He drew our attention to the notification dated 20<sup>th</sup> July, 2017, extracted earlier, to submit that the notification itself specifically provides for filing of the return in accordance with the provisions of clause (g) of sub-clause (4C) of Section 139 of the Act. A perusal of the provisions of section 139(4C)(g) provides that the State Board is to file the return setting forth such other particulars as may be prescribed and all the provisions of the Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section(1) of Section 139 of the Act. It was the submission that as the assessee has not filed its return of income u/s.139(1), the claim of exemption u/s.10(46) was no more available to the appellant. It was the further submission that the Co-ordinate Bench of Hyderabad Tribunal has categorically held that the A.P.Pollution Board of Andhra Pradesh was not liable to be treated as "State". Ld CIT DR drew our attention to the decision of the Co-ordinate Bench of Hyderabad Bench in the case of A.P.Pollution Control Board, Hyderabad vs DDIT (Exemption) in ITA No.337,338, 339/Hyd/2011 order dated 19.12.2014, wherein, it has been held, same has

been extracted in the written submission filed by the Revenue at para 5.3 therein. It was the submission that consequently, the assessee also could not be treated as "State".

11. We have considered the rival submissions. At the outset, a perusal of the decision of the Co-ordinate Bench of Hyderabad ITAT in the case of A.P.Pollution Control Board (supra) clearly shows that in the said case in para 17, the Co-ordinate Bench has relied upon the decision of the Hon'ble Supreme Court in the case of Adityapur Industrial as also the case of A.P. State Road Transport Corporation vs ITO, 52 ITR 524 (SC). The Co-ordinate Bench of this Tribunal, Hyderabad Bench followed the decision in the case of A.P.Housing Board, whose facts are entirely different insofar as the assets and liabilities of the said Housing Board belong to the Board and was disposable at the discretion of the Housing Board. The rates and fees were fixed by the State Board. In the case of the appellant, the assessee has no control over the finance insofar as the fees and charges are also fixed by the Government of Odisha and published in the State Gazette Notification. In the event of winding up of the impugned assessee-appellant, the funds would revert to the State Government.

12. It was submitted by Id AR at the time of hearing that the assessee cannot even open a bank account without specific permission of the State Government. A further perusal of the decision of the Co-ordinate Bench of this Tribunal Hyderabad Bench in the case of A.P.State Pollution Control

shows that in para 18, the Bench has categorically given a finding that in that case, the assessee therein had applied for registration u/s.12AA of the Act as also applied u/s.10(23)(iv) of the Act. In the case of the impugned appellant, herein, no such application had been made. On account of the action of the assessee appellant-A.P.Pollution Control Board, the Tribunal held that in the said case, the assessee therein, by its own action, considers itself to be a separate legal entity distinct from the State Government. In the impugned assessee's case, this is not so. The assessee has not done anything to dislodge itself from the protection granted to the State or Constituent of the State, of immunity from taxation under Article 289 of the Constitution of India. Further, it is noticed that the tests laid down by the Hon'ble Supreme Court in the case of Som Prakash Rekhi (supra) have also been answered in the affirmative in the case of impugned appellant. This being so, in view of the principles laid down by the Hon'ble Supreme Court in the case of Som Prakash Rekhi (supra) and applying the tests laid down therein, as it is found that in the case of the appellant all the tests are in the affirmative, is held to be a 'State'.

13. This view of ours also finds support from the decision of the Coordinate Bench of this Tribunal Mumbai Bench in the case of Maharashtra State Board of Technical Education vs Ito, 176 ITD 47 (Mumbai), wherein, it has been categorically held that every activity of the assessee Board is subject to superintendence, instruction and control of the State

Government. The appellant Board is completely controlled financially as well as administratively by the Government. Consequently, it is held that the appellant herein falls within the definition of 'State' under Article 12 of the Constitution of India. Accordingly, additional ground raised by the assessee stands allowed.

14. As we have already held the issue raised in the additional ground in favour of the appellant Board, other grounds raised are not adjudicated upon.

15. As the appeal of the assessee has been disposed of, the stay petition filed by the assessee stands dismissed.

16. In the result, appeal of the assessee stands allowed and stay petition stands dismissed.

Order dictated and pronounced in the open court on 24/10/2024.

Sd/-  
**(Manish Agarwal)**  
**ACCOUNTANT MEMBER**

sd/-  
**(George Mathan)**  
**JUDICIAL MEMBER**

Cuttack; Dated 24/10/2024  
B.K.Parida, SPS (OS)

**Copy of the Order forwarded to :**

1. The Appellant : State Pollution Control Board,  
Plot No.A-118, Paribesh Bhawan, Nilakantha  
Nagar, Nayapali, Unit-VII, Bhubaneswar
2. The respondent: ITO, Ward 5(2),  
Bhubaneswar
3. The CIT(A)- NFAC, Delhi
4. Pr.CIT, Bhubaneswar
5. DR, ITAT,
6. Guard file.  
//True Copy//

**By order**

Sr.Pvt.Secretary  
**Itat, cuttack**

