

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISA KHAPATNAM "DIVISION" BENCH, VISA KHAPATNAM**

(HYBRID HEARING)

**श्री के.नरसिम्हा चारी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्यके समक्ष
BEFORE SHRI K. NARASIMHA CHARY, HON'BLE JUDICIAL MEMBER**

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

**आयकर अपीलसं./I.T.A.Nos.376 & 377/VIZ/2024
(निर्धारण वर्ष/ Assessment Year: 2018-19 & 2019-20)**

Asst. CIT– Circle – 1(1) 2nd Floor, Standard House Nagarampalem – 522004 Guntur, Andhra Pradesh	v.	Andhra Pradesh State Council of Higher Education Atmakur Village Mangalagiri-522503 Andhra Pradesh [PAN: AAMFA3316R]
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri GVN Hari, AR
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Aparna Villuri, Sr. AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	20.11.2024
घोषणा की तारीख/Date of Pronouncement	:	28.11.2024

आदेश /O R D E R

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. These appeals are filed by the revenue against different orders of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal centre,

Delhi [hereinafter in short “Ld.CIT(A)”] vide respective DIN & Order No. as stated below: -

ITA No. & A.Y.	DIN & Order No.	Dated
ITA No. 376/VIZ/2024 (A.Y. 2018-19)	ITBA/NFAC/S/250/2024-25/1066651568(1)	12.07.2024
ITA No. 377/VIZ/2024 (A.Y. 2019-20)	ITBA/NFAC/S/250/2024-25/1066651938(1)	12.07.2024

2. Since the grounds raised by the revenue for both the appeals are identical in nature, these appeals are being clubbed and a consolidated order being passed. We now take up the appeal in ITA No. 376/VIZ/2024 for the A.Y.2018-19 as a lead appeal.

ITA No. 376/VIZ/2024 (A.Y. 2018-19)

3. This appeal is filed by the revenue against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in DIN & Order No. ITBA/NFAC/S/250/2024-25/1066651568(1) dated 12.07.2024 for the A.Y. 2018-19 arising out of order passed under section 147 r.w.s. 144 of the Income Tax Act, 1961 (in short ‘Act’) dated 21.02.2024.

4. Brief facts of the case are that, assessee council came into being by virtue of Act no.16 of 1988 (The Andhra Pradesh State Council of Higher Education Act, 1988). The Ld. Assessing Officer [hereinafter in short “Ld. AO”] received information that during the relevant financial year the assessee

received interest of Rs.1,87,80,736 from which tax was deducted at source under section 194A of the Act and that the assessee did not file the return of income for A.Y.2018-19. Subsequently, the Ld. AO issued show cause notice under section 148A(b) of the Act requiring the assessee to explain why the case should not be reopened. Thereafter, Ld. AO passed order under section 148A(d) of the Act on 09.04.2022 and issued notice under section 148 of the Act on 09.04.2022. In response, assessee has not complied to the notices. Therefore, the Ld. AO obtained the information from the banks and noticed that the assessee received interest of Rs.1,76,54,863 from Union Bank of India and Rs.11,26,068 from State Bank of India on the fixed deposits made with these banks. The Ld. AO further issued show cause notice on 23.01.2024 proposing to make addition of Rs.1,87,80,863 towards interest income. In response, assessee has not filed any reply. Therefore, Ld. AO completed the assessment on 21.02.2024 under section 147 r.w.s 144 r.w.s 144B of the Act by making addition of Rs.1,87,80,863 towards interest and determined the total income of the assessee at Rs.1,87,80,870 and the tax payable was computed at Rs.1,52,19,144 which included interest of Rs.40,94,748 under section 234A and Rs.46,14,716 under section 234B of the Act.

5. Aggrieved by the order of the Ld. AO, assessee filed an appeal before the Ld. CIT(A), NFAC, Delhi and filed its submissions. After considering the submissions of the assessee, Ld. CIT(A) allowed the appeal of the assessee.

6. Aggrieved by the order of the Ld. CIT(A), revenue is in appeal before us by raising the following grounds of appeal: -

“1. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in considering that the assessee is under complete superintendence and control of State Government financially as well as administratively to fall under the definition of the State as per Article 12 of the Constitution and is entitled for immunity from taxation of its income under the provisions of Income-tax Act.

2. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in considering that the assessee is eligible to claim the benefit under Article 289(1) of the Constitution.

3. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in not considering the fact that the scope of Article 12 which is limited only for the purpose of application of the provisions contained in Part III of the constitution and cannot be extended to Part X!) of the Constitution which contains Article 289(1) which stipulates that property and income of state shall be exempt from Union Taxation.

4. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deciding that the assessee is entitled for immunity from taxation of its income while observing that 'the assessee has satisfied majority of the conditions' and not all the conditions.

5. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deciding that the assessee is entitled for immunity from taxation of its income even though the assessee has not been notified by the Central Government in the official Gazette as per the provisions of section 10(46) of the I.T. Act, 1961.”

7. At the time of hearing, Ld. Authorised Representative [hereinafter “Ld.AR”] reiterated the submissions made before the Ld.CIT(A) and

supported the order of the Ld.CIT(A). Ld.AR pleaded that the order of the Ld. CIT(A) may be sustained.

8. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] vehemently supported the orders of the Assessing Officer.

9. We have heard both the sides and perused the material available on record. On a perusal of the order of the Ld.CIT(A), we find that the Ld.CIT(A) considered this aspect of the matter elaborately with reference to the submissions of the assessee and the averments in the Assessment Order and following decision of the Co-ordinate Bench of the Tribunal in assessee’s own case in ITA No. 130/VIZ/2024 to 134/VIZ/2024 for the A.Y. 2013-14 to 2016-17 decided the issue in favour of the assessee by observing as under: -

“5. Ground no. 3 is against the addition of Rs.1,87,80,863/- made by the AO on account of interest earned by the appellant. It has been submitted that the appellant council came into existence by virtue of Act No. 16 of 1988 (The Andhra Pradesh State Council of Higher Education Act, (1988). Considering the mode of constitution of the appellant council and also the functions and duties of the council, Hon’ble ITAT, Visakhapatnam in appellant’s own case in I.T.A. Nos. 130/Viz/2024 to 134/Viz/2024 for the A.Ys. from 2013-14 to 2016-17 has held that the appellant is an instrument of state and hence the income of the appellant is not taxable under the Act. The relevant findings of the Hon’ble ITAT are at para no. 8 on page nos. 10 to 16 of its order which are as under –

8. We have considered the submissions of both the parties and gone through the orders of the authorities below. Ground No.2 relates to invalidity of notice issued u/s 148. The Ld.AR has not made any submission with regard to ground no.2, therefore, the ground No.2 is treated as not pressed and dismissed as not pressed.

With respect to Ground No.3, it relates to the assessee, not liable to tax, as being a State under Article 289 of the Constitution of India engaged in public utility services. The AO was of the view that the assessee is a partnership firm, having perpetual succession. However, the assessee is an Artificial Juridical person as defined u/s 2(31) of the Act. We have examined the APSCHE Act, 1988. The State Legislature enacted the APSCHE Act, 1988 to provide for the constitution of State Council to advise the Government in matters relating to higher education in the state and to oversee development with prospective planning and for matters connected therewith not incidental thereto. Section 4 of the APSCHE Act constitutes the State Council shall consist of the following members namely :

I Full Time Members :

(i) a Chairman and

*(ii) *two Vice-Chairmen to be appointed by the Government from among eminent educationists*

II. Ex-Officio Members :

(i) The Secretary to Government, Education Department

(ii) The Secretary to Government, Finance Department

(iii)The Secretary to Government, Labour, Employment and Technical Education

(iv)The Secretary or any other officer of the University Grants Commission not below the rank of a Joint Secretary nominated by the Chairman, University Grants Commission

(v) The Vice Chancellors of the Osmania University, Andhra University, Sri Venkateswara University, Sri Krishnamadevaraya University, Acharya Nagarjuna University, Kakatiya University and Jawaharlal Nehru Technological University.

The functions of the Council include, planning and coordination for development of higher education in the state and to encourage and promote the functions including, improving the standards of examinations conducted by the Universities, academic cooperation to college teachers to conduct examinations and to prepare overview report of the working of the universities and the colleges in the State Council and furnish a copy of report to the UGC. The functions also include advisor to the Government regarding maintenance, grants, setting of a Research board, liaisoning with AICTE in the formulation of schemes in the states to any other functions necessary for the furtherance of the State. Section 22 of

APSCHE Act may by notification make rules for carrying out all or any of the purposes of this Act, which shall be laid before the Legislative Assembly of the State. The assessee is under obligation to furnish report and statement relating to any matter connected to its work as the Government may call for. From the above, we note that every activity of the assessee is governed subject to the superintendence, instruction and control of the State Government. Therefore, in our view the assessee has complete superintendence and control of the state government financially as well as administratively by the Government and thus falls under the definition of 'State' as per Article 12 of Constitution. The co-ordinate bench of Tribunal in Smt.Sapna Sanjay Roisoni (supra) while considering the scope of Article 12 of the Constitution of India gave the following finding :

“11. The definition of the State under Article 12 has come for the consideration on number of occasions before the Hon'ble Supreme Court. The State consists of three departments, the Legislature, the Executive and the Judiciary. We need not go into all the limits of the State as only the limited issue before us is whether the term Government used in clause(b) to Rule 6DD includes even the autonomous bodies which partakes the character of instrumentalities of the Government. The core test to be applied whether a particular Corporation which is autonomous body is a part of Government, to be seen in the context of degree of control over management and policy decisions.”

We find that in the instant case, APSCHE is incorporated under Special Legislation i.e. APSCHE Act, 1988. As per the said Act, the State Government is only having power to appoint Chairman and other members in the Government Council, i.e. full control of the State Government on the policy decisions as well as management. The Hon'ble Supreme Court has therefore held that the autonomous bodies like State Transportation Corporation or Warehousing Corporation, where there is full control by the Government either State or Central, these are instrumentalities of State only. Further perusal of Article 12 shows that the definition of 'the State' given in Article is inclusive and not exhaustive. 'The State' includes :

- (a) the Government and Parliament of India*
- (b) the Government and the Legislature of each of the States*
- (c) all local and other authorities within the territory of India and*
- (d) all local and other authorities under the control of the Government of India*

The expression 'other authorities' used in Article 12 is neither defined in the Constitution of India nor in any other statute. Therefore, the Hon'ble Supreme Court of India and the Hon'ble High Court have interpreted this expression in various judgements. The Hon'ble Supreme Court of India while interpreting the expression "other authorities" in the case of Som Prakash Rekhi v. Union of India reported as AIR 1981 SC 212 have culled out certain tests to determine as to when a Corporation should be said to be an instrumentality or Agency of the Government. The tests laid down by the Hon'ble Apex Court are summarized as under :

- 1. If the entire share capital of the corporation is held by the Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of the Government.*
- 2. Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.*
- 3. Whether the Corporation enjoys monopoly status which is State conferred or State protected.*
- 4. If the functions of the corporation are of public importance and closely related to governmental functions. It would be a relevant factor in classifying the corporation as an instrumentality or agency of the Government.*
- 5. If a department of a Government is transferred to a corporation, it would be a strong factor supporting this inference of the corporation being an instrumentality or agency of the Government.*

After applying the cumulative effect of all the relevant factors mentioned above, if the body is found to be an instrumentality of the agency of the Government, it would be an authority included in term 'State' under Article 12 of the Constitution of India. However, the tests indicated by the Hon'ble Apex Court in the case of Som Prakash Rekhi are merely indicative and not absolute and thus, have to be applied discretely. If any Body or organisation falls within the criteria as laid down by the Hon'ble Apex Court it can be considered that it falls within the term "State".

From the application of the above to the APSCHE, we observe that the assessee has satisfied majority of the conditions. We also further note that the assessee's Govt. Counsel has made an application, both for cancellation of PAN, which was issued wrongly as a partnership firm and also an application under 10(46) of the Act for exemption of specified income to the assessee. Considering the arguments of the Ld.AR that the assessee is under bonafide mistaken

belief as being instrument of state is exempt from filing the return of income, the assessee has not filed the return of income for the impugned year under consideration. Therefore, considering the facts and circumstances of the instant case that the assessee is completely under the superintendence and control of the State Government, financially and administratively, the assessee falls under the definition of 'State' as per Article 12 of the Constitution of India and in our view, the assessee is entitled for immunity from taxation of it's income under the provisions of Income Tax Act., We are therefore, inclined to allow Ground No.3 raised by the assessee. Further, we are also of the opinion that since the assessee is fully exempt from tax, there cannot be taxation on the income of the assessee or the receipts collected by the assessee.

Other grounds are merely academic in nature and needs no adjudication.

In this background, the appellant has requested for deletion of the additions as the facts for A.Y. 2019-20 i.e. the year under consideration are identical to those of the earlier years.

5.1 I have duly considered the submissions of the appellant. Hon'ble ITAT, Visakhapatnam in appellant's own case in I.T.A. Nos. 130/Viz/2024 to 134/Viz/2024 for the A.Ys. from 2013-14 to 2016-17 held the following -

Considering the facts and circumstances of the instant case that the assessee is completely under the superintendence and control of the State Government, financially and administratively, the assessee falls under the definition of 'State' as per Article 12 of the Constitution of India and in our view, the assessee is entitled for immunity from taxation of it's income under the provisions of Income Tax Act., We are therefore, inclined to allow Ground No.3 raised by the assessee. Further, we are also of the opinion that since the assessee is fully exempt from tax, there cannot be taxation on the income of the assessee or the receipts collected by the assessee.

I agree with the contention of the appellant. In view of the facts and circumstances of the case in totality and respectfully following the decision of the Hon'ble ITAT, Visakhapatnam in appellant's own case for the A.Y. from 2013-14 to 2016-17, I hold that the additions of Rs.1,87,80,863/- made by the AO on account of interest earned by the appellant are not sustainable in law and hence deleted. Accordingly, ground no. 3 is allowed."

10. On a careful perusal of the order of the Ld.CIT(A) and the reasons given therein, this Bench has taken a view in the assessee's own case for

earlier AY, that the assessee is completely under the superintendence and control of the State Government, financially and administratively, the assessee falls under the definition of 'State' as per Article 12 of the Constitution of India and in our view, the assessee is entitled for immunity from taxation of it's income under the provisions of Income Tax Act and hence we do not find any infirmity in the order passed by the Ld.CIT(A) in deleting the interest income earned by the assessee. Grounds raised by the revenue are dismissed.

11. In the result, appeal filed by the revenue is dismissed.

ITA No. 377/VIZ/2024 (A.Y. 2019-20)

12. Coming to appeal relating to ITA No. 377/VIZ/2024 for the A.Y. 2019-20, the revenue has raised identical grounds. Therefore, the decision taken in ITA No. 376/VIZ/2024 for the A.Y. 2018-19 in the aforesaid paragraph shall apply mutatis mutandis to the appeal number in ITA No. 377/VIZ/2024. Accordingly, appeal filed by the revenue is dismissed.

13. To sum-up, appeals filed by the revenue are dismissed.

Order pronounced in the open court on 28th November,2024.

Sd/-
(के.नरसिम्हा चारी)
(K. NARASIMHA CHARY)
न्यायिक सदस्य/JUDICIAL MEMBER
Dated: 28.11.2024
Giridhar, Sr.PS

Sd/-
(एस बालाकृष्णन)
(S. BALAKRISHNAN)
लेखा सदस्य/ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : **Andhra Pradesh State Council of Higher Education**
Atmakur Village
Mangalagiri-522503
Andhra Pradesh
2. राजस्व/ The Revenue : **Asst. CIT– Circle – 1(1)**
2nd Floor, Standard House
Nagarampalem – 522004
Guntur, Andhra Pradesh
3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam