



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

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

ITA No.375/CTK/2024
Assessment Year : 2015-16

Indira Gandhi Institute of Technology, Saranga, Kamakhya Nagar, Dist: Dhenkanal-759146	Vs.	ITO, Bhubaneswar. Exemption,
PAN/GIR No.AAATI 5050 J		
(Appellant)	..	(Respondent)

Assessee by : Shri Natabar Panda, Adv
Revenue by : Shri S.C.Mohanty, Sr DR

Date of Hearing : 30/01/2025
Date of Pronouncement : 30/01/2025

ORDER

Per Bench

This is an appeal filed by the assessee against the order of the Id CIT(A), NFAC, Delhi dated 11.7.2024 in Appeal No.NFAC/2014-15/27.3.2023 for the assessment year 2015-16

2. Shri Natabar Panda, Id AR appeared for the assessee and Shri S.C.Mohanty, Sr. DR appeared for the revenue.

3. The appeal of the assessee is delayed by 4 days. The assessee has filed necessary condonation petition, which is found to be substantiated. Therefore, we condone the delay of 4 days and the appeal is admitted for hearing on merits.

4. It was submitted by Id AR that the assessee is a registered society, which is imparting technical education and research facilities to its students having no motive to earn profit. It is fully owned and substantially financed by the Government of Odisha and Government of India. The assessee is entitled to exemption u/s.10(23C) of the Act. It was the submission that the assessee had not filed its return of income for the relevant assessment year. It was the submission that the assessee was under bonafide belief that the assessee did not have to file its return of income insofar as its income were exempt u/s.10(23C) of the Act. It was the submission that notice u/s.148A came to be issued on the assessee and subsequently, notice u/s.148 of the Act. The reason for the notice was in regard to cash deposit in the bank account. In response to notice u/s.148 of the Act, the assessee has filed its return of income declaring 'Nil' income on 9.2.2023. Notice u/s.148 of the Act was issued on 30.3.2022 being the last date of prescribed time for issuing notice u/s.148 of the Act. Intimation u/s.143(1) of the Act came to be issued on the assessee on 17.8.2022 accepting the return of income filed. The assessment came to be completed u/s.147/144B on 27.3.2023, wherein, the returned income was accepted.

However, the refund claimed by the assessee in its return of income to an extent of Rs.19,09,262/- was denied to the assessee because the assessee had not filed its original return u/s.139(1) of the Act. It was the submission by Id AR that there was a circular No.4.2002 dated 16.7.2002, which provided that an Organisation which is having income exempt u/s.10(23C)(iiiab) of the Act was not liable to file its return of income. The said Circular No.4/2002 reads as follows:

निष्पक्ष सुलभ
Circular No.4/2002
F.No.153/127/2002-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
(TPL Division)

New Delhi, the 16th July, 2002

To
All the Chief Commissioners/Directors General of Income tax

Subject: Requirement of tax deduction at source in case of entities whose income is exempt under section 10 of the Income tax Act.

Subsequent to the amendment to section 197A made by the Finance Act, 2002 whereby a new sub-section (1B) has been inserted with effect from 1st June, 2002, representations have been received seeking clarification whether the prescribed self-declaration under the said section can be submitted by entities exempt from tax under section 10 even if the payments referred to in sub-section (1A) to be made to them exceed the threshold limit not subject to tax.

2. This matter has been examined by the Board. It has been decided that in case of those funds or authorities or Boards or bodies, by whatever name called, whose income is unconditionally exempt under section 10 of the Income-tax Act and who are statutorily not required to file return of income as per section 139 of the Income-tax Act, there would be no requirement for tax deduction at source since their income is anyway exempt under the Income-tax Act. The institutions whose income is unconditionally exempt under section 10 and who are statutorily not required to file return of income as per the provisions of section 139 are :

(i) "local authority", as referred to in the *Explanation* to clause (20);

- (ii) Regimental Fund or Non-public Fund established by the armed forces of the Union referred to in clause (23A4);
- (iii) Fund, by whatever name called, set up by the Life Insurance Corporation of India on or after 1st August, 1996, or by any other insurer referred to in clause (23AAB);
- (iv) Authority (whether known as the Khadi and Village Industries Board or by any other name) referred to in clause (23BB);
- (v) Body or authority referred to in clause (23BBA);
- (vi) SAARC Fund for Regional Projects set up by Colombo Declaration referred to in clause (23BBC);
- (vii) Secretariat of the Asian Organisation of the Supreme Audit Institutions referred to in clause (23BBD) till assessment year 2003-2004;
- (viii) Insurance Regulatory and Development Authority referred to in clause (23BBE);
- (ix) Prime Minister's National Relief Fund referred to in sub-clause (i), Prime Minister's Fund (Promotion of Folk Art) referred to in sub-clause (ii), Prime Minister's Aid to Students Fund referred to in sub-clause (iii), National Foundation for Communal Harmony referred to in sub-clause (iiia), any university or other educational institution referred to in sub-clause (iiiab) and any hospital or other institution for the reception and treatment of persons as referred to in sub-clause (iiiac) of clause (23C);
- (x) Credit Guarantee Fund Trust for Small Scale Industries referred to in clause (23EB) till assessment year 2006-2007;
- (xi) Provident fund to which the Provident Funds Act, 1925 (19 of 1925) referred to in sub-clause (i), recognised provident fund referred to in sub-clause (ii), approved superannuation funds referred to in sub-clause (iii), approved gratuity fund referred to in sub-clause (iv) and funds referred to in sub-clause (v) of clause (25);
- (xii) Employees' State Insurance Fund referred to in clause (25A);
- (xiii) Corporations referred to in clause (26BB);
- (xiv) Boards referred to in clause (29A).

3. The contents of this circular may be brought to the notice of all the officers working in your region.

Sd/-
(Deepika Mittal)
Under Secretary(TPL-III)

Copy to:

1. The Chairman, Members and all other officers of the Central Board of Direct Taxes of the rank of Under Secretary and above.
2. The Comptroller & Auditor general of India (40 copies)
3. The IT(RS&PR) for printing in the quarterly tax bulletin and for circulation as per his usual mailing lift.
4. All Directorates of Income tax

5. Js & Legal Advisor, Ministry of Law.
6. The DCIT (Inspection Div.) Mayur Bawan, New Delhi.
7. All chambers of Commerce
8. Secretary, Settlement Commission, CIT (WT), 3rd floor, Lok Nayak Bhawan, Khan Market, New Delhi.
9. ITCC Section, CBDT.

5. It was the submission that the provisions of section 10(23C)(iiiab) admittedly refers to any income of any University or educational institution existing solely for educational purposes wholly and substantially funded by the Government. It was the submission that the assessee is wholly or substantially financed by the Government of Odisha and Government of India. It was the submission that it was on account of the said circular that the assessee had not filed its return of income. It was also the submission that once the return is filed u/s.148 of the Act, the return is deemed to be a return filed u/s.139 (1) of the Act. It was the submission that admittedly the provisions of section does not refer to the provisions of section 139(1) of the Act. It was the submission that the provisions of section 139(1) of the Act provided for the return to be filed within the time prescribed u/s.139(1) of the Act and for such, the assessee who have not filed the return u/s.139(1) of the Act, the provisions of section 139(4) was provided for an extended period and for such assessee who have filed the return u/s.139(1) of the Act, the provision for filing a revised return u/s.139(5) was also provided, where any mistake could have been corrected. It was the submission that admittedly, the return filed by the assessee cannot be a return u/s.139(4) of the Act nor a return

u/s.139(5) and, therefore, the return as mentioned in the provisions of section 148 could have been deemed to be a return u/s.139(1) of the Act. It was also the submission that the assessee has filed a petition before the Central Board of Direct Taxes (CBDT) u/s 119(2)(b) for condoning the delay in filing of the return and granting of refund. It was the submission that what is taxable under the Indian Income Tax Act, 1961 is income of an assessee. In the present case, as per Indian Income Tax Act, the income of the assessee has been exempted from taxation but on a technical ground, the refund due to the assessee is being curtailed. It was the submission that the curtailment of the refund itself is an act of levying tax. It was the submission that the return filed by the assessee in response to notice u/s.148 of the Act may be treated as return u/s.139(1) of the Act and direct to the revenue to grant the refund of taxes collected.

9. In reply, Id Sr DR submitted that the circular referred to by the assessee refers to various institutions and the assessee's name is not figured out in the said institution. It was the submission that the assessee has not filed the return u/s.239 of the Act, which provides a return required to be filed for claiming refund. It was the submission that the order of the Assessing Officer and that of Id CIT(A) is liable to be upheld.

10. We have considered the rival submissions. A perusal of the present case clearly shows that the assessee's arguments though gives substantial strong impression to grant the order on the assessee, however, the Tribunal

being the Statutory authority is bound by the word of the Statute as per the provisions of section 148 of the Act treating the return as u/s.139 of the Act. The word is not 139(1). The Tribunal being a Statutory Body, does not have power to add or delete the words from the Statute. As also rightly pointed out by Id Sr DR that the circular which is referred to by Id AR admittedly does not contain the name of the assessee in the exempted persons/institution mentioned in the said circular. Further, the claim of the assessee is merely in the nature of seeking relief in respect of technical violation. We are live to the fact that when a technicality is pitted against substantial justice, it is substantial justice that has to be prevailed. However, as per the creature of a Statute, the Tribunal as mentioned earlier, cannot read and write the Act. This is why necessary powers have been granted to the CBDT to consider such technical violation in filing petition u/s.119(2)(b) of the Act. Admittedly, the assessee has also filed necessary petition before the CBDT. Without going into the grounds of the assessee filed before the CBDT, as we find no error in the findings of the Id CIT(A) and that of the Assessing Officer, refuse to interfere with the same.

11. In the result, appeal of the assessee stands dismissed.

Order dictated and pronounced in the open court on 30/01/2025.

SD/-
(Manish Agarwal)
ACCOUNTANT MEMBER

SD/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 30/01/2025

B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Indira Gandhi Institute of Technology, Saranga, Kamakhya Nagar, Dist: Dhenkanal-759146
2. The Respondent: ITO, Exemption, Bhubaneswar
3. The CIT(A)- NFAC, Delhi
4. Pr.CIT, Cuttack
5. DR, ITAT,
6. Guard file.
//True Copy//

By order

Sr.Pvt.Secretary
ITAT, CUTTACK

