



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

**BEFORES/SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

ITA Nos.99, 100 & 101/RAN/2025

Assessment Years: 2013-14,2015-16 & 2018-19

S.A. No.10, 11 & 12/Ran/2025

| | | |
|---|----|--|
| Jharkhand Bhawan Evam Any SanirmanKarmkar Kalyan Board, Joint Labour Building, Behind Ashoka Hotel, Doranda, Ranchi | vs | Income Tax Officer, War- 1(1), Central Revenue Building, Main Road, Ranchi |
| PAN/GIR No.AABAJ 41569 K | | |
| (Appellant) | .. | (Respondent) |

Assessee by : Shri M.K.Chowdhary, Adv
Revenue by :Smt. Rinku Singh, CIT DR

Date of Hearing : 13/06/2025

Date of Pronouncement :13/06/2025

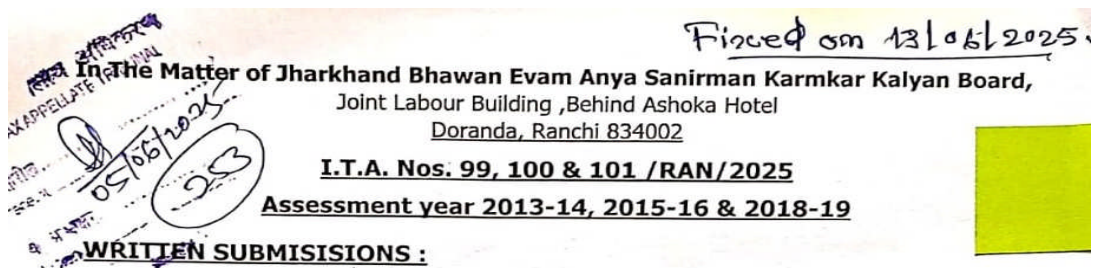
ORDER

Per Bench

These are appeals filed by the assessee against the separate orders of the
Id CIT(A)-NFAC, Delhi all dated 12.3.2025 in Appeal No.NFAC/2012-
13/10231287, Appeal No.NFAC/2014-15/10266681 and Appeal No.NFAC/2017-
18/10245078 for the assessment years 2013-14,2015-16 & 2018-19,
respectively. The assessee has also filed stay petitions.

2. Smt. Rinku Singh, Ld CIT DR appeared for the revenue and Shri M.K.Chowdhary, Ld AR appeared for the assessee.

3. It was submitted by Ld AR that the assessee proposed to file written submission and same are filed, which reads as follows:



WRITTEN SUBMISISIONS :

It is submitted that our Board meets the conditions of 5 points as required for declaration of State as had been held in **Som Prakash Rekhi v. Union of India 1981 AIR 212 : (1981) 1 SCC 449** and as in **WATCO vs. Commissioner of Income-tax (Exemption) [2023] 146 taxmann.com 4 (Cuttack - Trib.)**, as under :

1. **"One thing is clear that 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 Government."**
- 1.1 The appellant Board is instrumentality of Central Government i.e. to implement directions under the 2 enactments of Central Government, the two Central Acts being **Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (in short BOCW Act, 1996)** -and- **Building and Other Construction Workers' Welfare Cess Act, 1996 (in short BOCW Cess Act, 1996)** which provided, under Section 6 of the **BOCW Act, 1996**, that the appropriate Government has to appoint registering officers and under Section 7 of the said Act every employer shall register their establishment. The building workers are given various benefits and in order to enable the workers to avail the benefits, each State has to constitute a State Welfare Board. The Board shall consist of a Chairman nominated by the Central Government, and such other members, not exceeding 15, as may be appointed by the State Government. The Board shall appoint a Secretary as its Chief Executive Officer. Hon'ble Apex Court has also issued directions in **National Campaign Committee v. Union of India, (2009) 3 SCC 269** for the formation of Boards in each state under the aforesaid **BOCW Act, 1996**.
- 1.2 To implement the said scheme of parliament and as directed under the aforesaid 2 enactments, the State Government of Jharkhand has formed **Building and Others Construction Welfares (RE&CS) Jharkhand Rules, 2006 (in**

short BOCW Jharkhand Rules, 2006) which was notified vide Notification No.[2/T2-1075/01S.No-1336] Dt.08.08.2007 of the Labour Department, Government of Jharkhand and thereafter "**Jharkhand Bhawan Evam Anya Sanirman Karmkar Kalyan Board**" (in short BOCW Board), was constituted on 07.07.2008 vide Notification no.1140 dt. 11.07.2008.

- 3 It is stated that since the **Labour Cess has been declared to be one of the species of the Tax** within the meaning of **Article 366 (28) of the Constitution** of India in the case of **Commissioner of Income Tax, Udaipur, Rajasthan Vs. Mcdowell & Co. Ltd.** reported in (2009) 10 SCC 755 (21 & 22), and which has been affirmed by the **Constitution Bench** of the Hon'ble Supreme Court of India in the case of **Jindal Stainless Steel Ltd. & Anr. Vs. State of Haryana & Ors** reported in (2016) (11) SCALE 1, and which has been further concurred in the case of **TATA Iron and Steel Company Limited & Anr. Vs. State of Bihar & Ors.**, reported in (2018) 12 SCC 107.
- 1.4 As clarified above the appellant Board is empowered, under the aforesaid Acts and Rules, to the collect the aforesaid Labour Cess and **as such it is undisputable that it is an instrumentality or agency of Government.**
- 1.5 Out of the aforesaid Labour Cess collected, the appellant is engaged in a **Sovereign Function of State** by way of welfare activities of labours of unorganized workforce, involved in the welfare of labourers within the unorganized workforce, particularly construction workers, who represent a highly vulnerable segment of unorganized labourers in India. These workers face challenges such as casual and temporary employment, unpredictable working hours, inadequate basic amenities and welfare facilities, inherent risks to their life and limb and not so permanent employer-employee relationship. Currently, the appellant implements 13 schemes designed for the welfare of these labourers.
- 1.6 As regards share holding pattern, since this is a board of state government, it does not have any shares capital, whatever is collected from Cess, as stated above, is the General fund of the Board i.e. of the government.

It is submitted that there is deep control of the State Government over its management, functions and the funds of the appellant Board.

"Existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality."

1. The **constitution of Board**, as per section 18 of the Central Government's BOCW Act, 1996 and as per Rule 260 of the Building and Others Construction Welfares (RE&CS) Jharkhand Rules, 2006 (in short BOCW Jharkhand Rules, 2006) is as under :-

| Sl. No. | Details of Member | Post |
|---------|---|---------------------|
| 1. | Labour Commissioner, Jharkhand | Ex officio Chairman |
| 2, | Central Government Nominated Representative (Welfare Commissioner Of Central Government) | Member |
| 3. | 5 persons representing the building and other construction workers nominated by the Government of which one member shall be a woman i. Jharkhand Bhartiya Rashtriya Majdur Congress, ii. Bhartiya Janta Majdur Sangh, iii. Jharkhand Rajya Nirman Kamgar Union (Dihadi Majdur Sangh Atak), iv. Bhartiya Rashtriya Majdur Congress (INTUC) v. National Hawkers Federation Baidhkaro | 5 Members |
| 4. | 5 persons from among the employers of construction and other building workers nominated by Government i. Federation of Jharkhand Chambers of Commerce and Industries ii. Builder Association of India, iii. Gramin Vikash Vibhag, iv. Bhawan Nirman Vibhag v. Jharkhand Rajya Housing Board | 5 Members |
| 5. | 5 members representing the state government : | 5 Members |

| | | |
|------|---------------------------------|--|
| i. | Road Construction Department | |
| ii. | Law Department | |
| iii. | Finance Department | |
| iv. | Director, Employment & Training | |
| v. | Director, ESIC | |

2.2 That Rule 273 of the BOCW Jharkhand Rules, 2006 is as under :-

273. Appointment of Secretary and other Officers :-

- (1) The Board may with the prior concurrence of the State Government, appoint an officer of the Government not below the rank of a Joint Labour Commissioner of the Labour Department of Jharkhand government as Secretary of the Board.
- (2) The Board may with the prior concurrence of the State Government, appoint;
 - (i) as many officer of the Government, not below the rank of, Assistant Labour commissioner of the Labour Department of Jharkhand Government
 - (ii) Such other officers and employees of any other department of Government, as it considers necessary, to assist the Board in efficient discharge of its function under the Act.

2.3 That Rule 274 of the BOCW Jharkhand Rules, 2006 regarding administrative and financial powers of the Secretary is as under :-

274. Administrative and financial powers of the Secretary :-

- (1) The Secretary of the Board may, without reference to the Board, sanction expenditure and contingencies, supplies and services and purchase of article, refund for administering the fund subject to the limits upto which he may be authorized to sanction expenditure on any single item from time to time by the Board.
- (2) The Secretary may also exercise such other administrative and financial power other than those specified in sub-rule (1) above, as may be delegated to him from time to time by the Board.

- (3) The Board may, from time to time delegate, subject to such condition as it may deem fit, administrative and financial power to any other officer under its control supervision to the extent considered necessary for its efficient functioning.

2.4 That functions of the Board are enumerated in section 22 of the said BOCW Act, 1996 and under those guidelines the functions of the Jharkhand BOCW is as under :

- (a) provide immediate assistance to a beneficiary in case of accident;
- (b) make payment of pension to the beneficiaries who have completed the age of sixty years;
- (c) sanction loans and advances to a beneficiary for construction of a house not exceeding such amount and on such terms and conditions as may be prescribed;
- (d) pay such amount in connection with premia for Group Insurance Scheme of the beneficiaries as it may deem fit;
- (e) give such financial assistance for the education of children of the beneficiaries as may be prescribed;
- (f) meet such medical expenses for treatment of major ailments of a beneficiary or, such dependant, as may be prescribed;
- (g) make payment of maternity benefit to the female beneficiaries; and
- (h) make provision and improvement of such other welfare measures and facilities as may be prescribed.

2.5 That there is a State Advisory Committee also u/s 4 of the BOCW Act, 1996. The following are the members of such Committee :-

4. State Advisory Committee.

1. The State Government shall constitute a committee to be called the State Building and Other Construction Workers' Advisory Committee (hereinafter referred to as the State Advisory Committee) to advise the State Government on such matters arising out of the administration of this act as may be referred to it.
2. The State Advisory Committee shall consist of-
 - a. a Chairperson to be appointed by the State Government;

- b. two members of the State Legislature to be elected from the State Legislature members;
 - c. a member to be nominated by the Central Government;
 - d. the Chief Inspector- member, ex officio;
 - e. such number of other members, not exceeding eleven" but not less than seven, as the State Government may nominate to represent the employers, building workers, associations of architects, engineers, accident insurance institutions and any other interests which, in the opinion of the State Government, ought to be represented on the State Advisory Committee.
- 2.6 That for work for the welfare/wellbeing of Building and Other construction workers in the State of Jharkhand. The Assessee collects 1% Cess from all State and Central government organizations, private organizations like National Highway Authority, MECON, Road Construction Department, Municipalities, Railways, Electricity Boards etc. and also from individuals and builders engaged in construction activities of more than 10 Lacs, under the provisions of **BOCW Cess Act, 1996** which is covered under Entry 97 of List – I, Union List, read with Entry at serial 23 and 24 of List III in Schedule VII. Apart from this, the Assessee also collects registration fees from workers and annual membership contribution from them. Assessee has utilized all the proceeds received under various heads in various schemes for welfare activities of workers in the State of Jharkhand. All transactions of the Board are carried out through NEFT, RTGS, or cheque. Thus, the receipts are under the deep and pervasive control of the state.
- 2.7 The appellant Board is not engaged in any commercial activity but is engaged in a Sovereign Function of State by way of welfare activities of the construction workers being most important for the development of the country being unorganized workforce.
3. **"It may also be a relevant factor whether the corporation enjoys monopoly status which is the State conferred or State protected."**
- 3.1 As stated above the Appellant Board is the sole government Board constituted in the state of Jharkhand and is state conferred and under the control and

(3) The Board may, from time to time delegate, subject to such condition as it may deem fit, administrative and financial power to any other officer under its control supervision to the extent considered necessary for its efficient functioning.

† That functions of the Board are enumerated in section 22 of the said BOCW Act, 1996 and under those guidelines the functions of the Jharkhand BOCW is as under :

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4. State Advisory Committee.

1. The State Government shall constitute a committee to be called the State Building and Other Construction Workers' Advisory Committee (hereinafter referred to as the State Advisory Committee) to advise the State Government on such matters arising out of the administration of this act as may be referred to it.
2. The State Advisory Committee shall consist of-
 - a. a Chairperson to be appointed by the State Government;

a State and they are not confined to statutory corporations alone. We may delect the tests for ready reference:

1. "One thing is clear that 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 Government."
 2. "Existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality."
 3. "It may also be a relevant factor whether the corporation enjoys monopoly status which is the 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 Government."
 5. "Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference" of the corporation being an instrumentality or agency of Government."
- ii. Applying the aforesaid tests, as enunciated in the case of *Som Prakash Rekhi v. Union of India*, it has been held in the case of **WATCO vs. Commissioner of Income-tax (Exemption) [2023] 146 taxmann.com 4 (Cuttack - Trib.)/[2023] 198 ITD 658 (Cuttack - Trib.)[27-09-2022]** that Assessee contended that WATCO was a wholly owned company of Government of Odisha and was to be held as a 'State' making it not liable to pay income-tax - Whether assessee would fall under definition of 'State' within meaning of article 12 of Constitution of India as it satisfied tests laid down by Apex Court in case of *Som Prakash Rekhi v. Union of India* 1981 AIR 212 and, thus, it would be entitled for immunity from taxation under Income-tax Act, 1961 as directed under article 289 of Constitution of India - Held, yes [Paras 15 and 16]
- iii. **In DCIT(Exemption) v. Maharashtra Labour Welfare Board, (2024) 118 ITR (Trib) 494 : 2023 SCC OnLine ITAT 1291** at para **Para 32** it has been held that in view of the above facts and settled legal position, we hold that the assessee is a "State" within the meaning of article 289(1) of the Constitution of India being an instrumentality of State within the meaning thereof. Here there is an existence of deep and pervasive State control may afford an indication that the assessee is a State agency or instrumentality. Here the assessee enjoys monopoly status which is State conferred or State protected. Here the functions of the assessee are of public importance and closely related to

Governmental functions. It would be a relevant factor in classifying the assessee as an instrumentality or agency of the Government. If a Department of a Government is transferred to an entity like assessee, it would be a strong factor supporting this inference of the assessee being an instrumentality or agency of the Government.

iv. In the case of **State Pollution Control Board v. ITO, (2025) 172 taxmann.com 12 (Cuttack - Trib.)** it has been held that assessee-Board was completely controlled financially as well as administratively, by State Government and, constitution of India and, thus, it would be entitled for immunity from taxation under Income-Tax Act, 1961 as directed under article 289 of Constitution of India - Held, yes Paras [12 and 13].

v. In the case of **Maharashtra State Board of Technical Education v. ITO [2019] 104 taxmann.com 98 (Mumbai - Trib.)** it has been held that Maharashtra State Board of Technical Education, a statutory body established under Maharashtra State Board of Technical Education Act, 1997, being under complete superintendence, and control of State Government financially as well as administratively fall under definition of 'State' as per Article 12 of Constitution of India and therefore, its income is not chargeable to tax [Para 34].

vi. In the case of **DCIT v. Vinod Arora 137 taxmann.com 450 (Amritsar - Trib.)**, the Hon'ble Bench, applying the tests as propounded in the case of **Som Prakash Rekhi v. Union of India**, has also held that payment to (i) M/s Rajasthan State Beverages Corporation Ltd and (ii) M/s Rajasthan State Ganganagar Sugar Mills Ltd. would not be hit by the provisions of section 40A(3) of IT Act, 1961 as these undertakings fall within the meaning of the term "Government".

That in view of that aforesaid facts and in law the appellant, Jharkhand Bhawan Evam Anya Sanirman Karmkar Kalyan Board, be declared as a State, not liable to income tax under the provisions of The Income tax Act, 1961.

For this we shall ever pray.

Dt. 05.06.2025

Filed by,



(M. K. Chowdhary)
Advocate

4. It was the submission that the assessee is an instrumentality of Central Government to implement the direction of the execution of building and other construction workers (Regulation of Employment and Conditions of Service) Act, 1996 and building and other construction workers 's welfare Cess Act, 1996,. It was the submission that the Board of the assessee consisted of nominated representatives and State Government officials. It was the submission that in view of the decision of the Co-ordinate Bench of this Tribunal Cuttack bench in the case of WATCO vs CIT, 146 taxmann.com 4 (CTC) as also the decision of ITAT Mumbai in the case of CIT vs Maharashtra Labour Welfare Board (2-24) 118 ITR (Trib) 494 and the decision of the ITAT Cuttack in the case of State Pollution Control Board vs ITO, 172, taxmann.com 12 (CTC) and in the case of Maharashtra State Board of Technical Education vs ITO, 104 TAXMANN.COM 98 (Mum), the assessee is liable to be treated as "State". It was the prayer that the issue AO may be directed to treat the assessee as "State".

5. In reply, Id CIT DR submitted that the assessee has not appeared before the Assessing Officer nor provided any information. It was the submission that on account of non-representation, the assessment has been done ex parte. It was the submission that's the issue may be restored to the file of the AO for readjudication including the issue of "State".

6. We have considered the rival submissions. A perusal of the facts in the present case clearly shows that the assessee has not made any representation and provided all the details before the AO. This being so, the issues in this appeal are restored to the file of the AO for readjudication after con allowing adequate opportunity of hearing to the assessee. The AO shall consider the applicability of the status of "State". The AO shall also examine whether the assessee falls within the criterion as mentioned in the decisions of the Co-ordinate Bench of this Tribunal in the case of WATCO, Maharashtra Labour Welfare Board, State Pollution Control Board and Maharashtra State Board of Technical Education ,referred to (supra) by Id AR of the assessee. All issues including the issue of reopening such as legal issue are left open for the assessee to raise before the AO. In these circumstances, with the above directions, the issues are restored to the file of the AO.

7.. In the result, appeals` of the assessee stand partly allowed for statistical purposes.

8. The assessee has filed stay petitions being S.A. 11 and 12/RAN/2025. As we have already disposed off the appeals filed by the assessee, the Stay Petitions have become infructuous and same are dismissed as infructuous.

Order dictated and pronounced in the open court on 13/06/2025.

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER
Ranchi; Dated 13/06/2025

Sd/-
(GEORGE MATHAN)
JUDICIAL MEMBER

B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Jharkhand Bhawan Evam Anya SanirmanKarmkar Kalyan Board, Joint Labour Building, Behind Ashoka Hotel, Doranda, Ranchi
2. The Respondent: Income Tax Officer, War-1(1), Central Revenue Building, Main Road, Ranchi
3. The CIT(A)-NFAC
4. Pr.CIT,Ranchi
5. DR, ITAT,
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Ranchi