

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक
IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK
(THROUGH VIRTUAL HEARING)

श्री जार्ज माथन, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष ।

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

**ITA No.520/CTK/2025: Asst.Year-2013-14
ITA No.517/CTK/2025: Asst.Year-2017-18
ITA No.518/CTK/2025: Asst.Year-2018-19
ITA No.521/CTK/2025: Asst.Year-2018-19**

Deputy Commissioner of Income Tax (Exemption), Bhubaneswar	Vs	State Pollution Control Board, Paribesh Bhawan, Unit-VIII, Bhubaneswar.
PAN No. : AAALS 2490 J		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

**C.O.No.09/CTK/2025: Asst. Year: 2013-14
CO.No.10/CTK/2025: Asst.year- 2017-18
CO.No.11/CTK/2025: Asst.year- 2018-19
CO.No.12/CTK/2025: Asst.year- 2018-19**

State Pollution Control Board, Paribesh Bhawan, Unit-VIII, Bhubaneswar	Vs	Deputy Commissioner of Income Tax (Exemption), Bhubaneswar
PAN No. : AAALS 2490 J		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by	:	Ms. Sarmila Agarwal, CA and Shri S.K.Agarwal, CA
राजस्व की ओर से /Revenue by	:	Shri Ashim Kumar Chakraborty, Id CIT DR
सुनवाई की तारीख / Date of Hearing	:	03 /12/2025
घोषणा की तारीख/ Date of Pronouncement	:	03 /12/2025

आदेश / ORDER

Per Bench :

These are appeals filed by the revenue against the separate orders all dated 17.7.2025 by the Id CIT(A), NFAC, Delhi passed in Appeal No. CIT(A), Bhubaneswar-2/10287/2019-20, NFAC/2016-17/10418285, NFAC/2017-18/10135149 & NFAC/2017-18/10087368 for the assessment years, 2013-14, 2017-18 & 2018-19, respectively.

2. The assessee has filed cross objections in the respective assessment years in appeals filed by the revenue.

3. Shri Ashim Kumar Chakraborty, Id CIT DR appeared for the revenue and Ms Sarmila Agarwal and Shri S.K.Agarwal, Id ARs appeared for the assessee.

4. It was submitted by Id CIT DR that in the quantum matter, Id CIT(A) has held that the assessee is a 'State'. It was fairly agreed by Id CIT DR that while deciding the issue, the Id CIT(A) has followed the decision of the Co-ordinate Bench of this Tribunal in assessee's own case in ITA No.301/CTK/2024 for the assessment year 2017-18. It was the submission that the Revenue has not accepted the said judgment and has filed the appeal before the Hon'ble Jurisdictional High Court. It was the submission that this appeal may be kept in abeyance as the appeal is pending before the Hon'ble Jurisdictional High Court against the order of the Tribunal.

5. It was the submission that ITA No.517 & 817/CTK/2025 are against the penalty u/s. 270A deleted by the Id CIT(A) for the assessment year 2017-18 & 2018-19 and ITA No.520 & 502/CTK/2025 are against the quantum orders for the assessment year 2013-14 and 2018-19, respectively.

6. In reply, Id Ars has placed before us the copy of the order of the Co-ordinate bench in assessee's own case dated 24.10.2024 for the assessment year 2017018 wherein, the Co-ordinate Bench in paras 11 to 13 held as under:

"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 Coordinate 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 Sate, 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."

7. It was the submission that the cross objections filed by the assessee are only in support of the orders of Id CIT(A).
8. We have considered the rival submissions. As it is noticed that the Id CIT(A) has followed the judicial discipline to follow the decision of the Co-ordinate Bench of this Tribunal in assessee's own case for the assessment year 2017-18 (supra) to hold that the assessee is liable to be treated as 'State'. We find no error in the order of Id CIT(A), which calls for any interference. On account of the assessee to be treated as 'State', the penalty levied by the AO against the assessee is deleted by the Id CIT(A). This being so, the appeals filed by the revenue stand dismissed.
9. As we have dismissed the appeals of the revenue and as the cross objections are only in support of the orders of Id CIT(A), the cross objections filed by the assessee have become infructuous and same are dismissed.
10. In the result, appeals filed by the assessee and cross objections filed by the assessee are dismissed.

Order dictated and pronounced in the open court on 3/12/2025.

Sd/-

(राजेश कुमार)

(RAJESH KUMAR)

लेखा सदस्य/ **ACCOUNTANT MEMBER**

दिनांक Dated 03/12/2025

Prakash Kumar Mishra, Sr.P.S.

Sd/-

(जार्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य / **JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant- Deputy Commissioner of Income Tax (Exemption), Bhubaneswar
2. प्रत्यर्थी / The Respondent- State Pollution Control Board, Paribesh Bhawan, Unit-VIII, Bhubaneswar
3. आयकर आयुक्त(अपील) / The CIT(A), NFAC, Delhi
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)
आयकर अपीलीय अधिकरण, कटक/ITAT,
Cuttack