

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

**BEFORE SHRI N.S SAINI, ACCOUNTANT MEMBER**

**ITA No.408/CTK/2014**

Assessment Year : 2010-2011

ACIT, Circle 2(2), Sambalpur	Vs.	Shakuntala Bidyadhar Trust, Nivedita, Kalyan Nagar, Budharaja, dist: Sambalpur
PAN/GIR No. AABTS 1540 G		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

C.O.No.23/CTK/2016

**(arising out of ITA No.408/CTK/2014)**

Assessment Year : 2010-2011

Shakuntala Bidyadhar Trust, Nivedita, Kalyan Nagar, Budharaja, dist: Sambalpur	Vs.	ACIT, Circle 2(2), Sambalpur
PAN/GIR No. AABTS 1540 G		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : S/Shri B.Panda, B.R.Panda, AR

Revenue by : Shri D.K.Pradhan, DR

**Date of Hearing : 17 /01/ 2017**

**Date of Pronouncement : 17/01/ 2017**

**ORDER**

This is an appeal filed by the revenue against the order of CIT(A)-II, Bhubaneswar, dated 22.8.2014, for the assessment year 2010-2011. The assessee has also filed cross objection.

2. The revenue has taken the following grounds:

"1. The Id CIT(A) has erred in giving full relief to the assessee trust as the activities of the assessee trust are not charitable in nature and it did not qualify to claim exemption u/s.11 of the I.T.Act, 1961.

2. The Id CIT(A) has erred in accepting the additional documentary evidences produced by the assessee during the hearing of the appeal without giving opportunity of being heard to the AO which is violating Rule 46A(3) of I.T.Rules, 1962."

3. At the outset, Id D.R. argued and submitted that the Id CIT(A) while adjudicating the appeal of the assessee has accepted the additional evidence in violation of Rule 46A of I.T.Rules, 1962. Hence, the order of Id CIT(A) is not sustainable. For this, he relied on para 12 page 4 of Id CIT(A)'s order.

4. Ld A.R. of the assessee agreed with the submission of Id D.R. and submitted that the matter may be restored back to the file of Id CIT(A) for adjudicating the appeal of the assessee afresh after calling for a Remand Report from the Assessing officer on the additional evidences filed by the assessee before Id CIT(A).

5. I have heard the rival submissions and perused the orders of lower authorities and materials available on record. I find that Id CIT(A) while adjudicating the appeal of the assessee in para 12 page 4 has held as under:

"This is therefore a case where the provisions of Rule 46A of the Income-tax Rules, 1962 apply inasmuch as they relate to the

existence of sufficient cause and the lack of providing or adequate opportunity to the Appellant that prevented him from submitting substantiating and supporting evidences in his possession. I am duty bound to accept the documents submitted before me by the Appellant, which include evidences bearing out the tax exempt nature of its activities, evidences that include copies of the Trust Deed, certificate of registration, Sources from where the funds were received, Utilisation certificate, confirmations of receipts by the beneficiaries and photographs testifying to activities."

6. Therefore, in view of submissions of both the parties, I set aside the order of Id CIT(A) and remand the matter back to his file for adjudicating the appeal of the assessee afresh after allowing reasonable and proper opportunity of hearing to the assessee and after calling a remand report from the Assessing Officer on the additional evidences filed by the assessee before Id CIT(A).

7. The cross objection filed by the assessee is in support of the order of Id CIT(A). As the appeal of the revenue is restored back to the file of Id CIT(A) for fresh adjudication, the cross objection of the assessee has become infructious and hence, dismissed.

8. In the result, appeal filed by the revenue is allowed for statistical purposes and the cross objection of the assessee is dismissed.

Sd/-

(N.S Saini)  
**ACCOUNTANT MEMBER**

Cuttack; Dated 17/01 /2017

B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The Appellant : ACIT, Circle 2(2), Sambalpur
2. The Respondent. Shakuntala Bidyadhar Trust, Nivedita, Kalyan Nagar, Budharaja, dist: Sambalpur
3. The CIT(A)-II Bhubaneswar.
4. CIT, Sambalpur
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

BY ORDER,

ASST.REGISTRAR,  
**ITAT, Cuttack**