

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI ABRAHAM P. GEOERGE, ACCOUNTANT MEMBER

ITA NOs.	A.Y.	APPELLANT	VS.	RESPONDENT
1159/Bang/2011	2006-07	The Asst. Director of Income Tax (Exemption), Circle 17(1), Bangalore.		Karnataka State Co-operative Federation Ltd., No.32, Race Course Road, Bangalore – 560 001. PAN:AAAJK 0471H
381/Bang/2014	2005-06	The Income Tax Officer, Ward 6(1), Bangalore.		
1243/Bang/2015	2005-06	Karnataka State Co-operative Federation Ltd., Bangalore.		The Deputy Commissioner of Income Tax, Exemption Circle I, Bangalore.
1244/Bang/2015	2006-07			
45/Bang/2015	2008-09	Karnataka State Co-operative Federation Ltd., Bangalore.		The Dy. Director of Income Tax (Exemptions), Circle 17(1), Bangalore.
46/Bang/2015	2009-10			

Appellant by	:	Shri S. Ramasubramanian, CA
Respondent by	:	Dr. P.K. Srihari, Addl. CIT(DR)

Date of hearing	:	11.05.2016
Date of Pronouncement	:	25.05.2016

ORDER

Per Sunil Kumar Yadav, Judicial Member

These are appeals preferred by the assessee as well as Revenue against the respective order of the CIT(Appeals). Certain common issues are involved in these appeals, therefore, these appeals were heard together and are disposed of by this consolidated order. We, however, prefer to adjudicate these appeals one after other.

ITA Nos.381/2014 & 1159/2011

2. These appeals are preferred by the Revenue assailing the order of CIT(Appeals) on a solitary ground that CIT(Appeals) has erred in allowing exemption u/s. 10(23C)(iiiab) of the Income-tax Act, 1961 [hereinafter referred to as "the Act"] without appreciating the fact that assessee society was neither an university nor an educational institution existing solely for educational purpose, though various grounds are raised in these appeals.

3. During the course of hearing, the Id. DR has invited our attention to judgment of Hon'ble Apex Court in the case of *Visvesvaraya Technological University v. ACIT, Civil Appeal Nos.4361-4366 of 2016 dated 22.04.2016* in support of his contention that for claiming exemption u/s. 10(23C)(iiiab), the assessee is required to establish that the educational institution or university existed solely for educational purpose and not for the purpose of profit and which is wholly or substantially financed by the Government. Until

and unless both the conditions are fulfilled, exemption u/s. 10(23C)(iiiab) would not be available to the assessee.

4. Besides, the Id. DR has invited our attention to the objects of the assessee society with the submission that the objects of the assessee Federation are not educational in nature. The main functions of the assessee society was enumerated in para 3 of the assessment order for the AY 2005-06 under the head 'Objectives of the federation'. He has also invited our attention to the gross receipts appearing at page 7 of assessment order for AY 2005-06, wherefrom it is clearly evident that out of gross receipts of Rs.6,96,37,994, the amount received by the assessee from the Government is only Rs.22 lakhs, which is less than 4% of gross receipts. Therefore, it was rightly concluded by the Assessing Officer that assessee is not wholly or substantially financed by the Government. In light of these facts, the AO has rightly denied the benefit of exemption u/s. exemption u/s. 10(23C)(iiiab) of the Act to the assessee; but the Id. CIT(Appeals) having ignored these facts has allowed the exemption to the assessee.

5. The Id. counsel for the assessee, on the other hand, has placed heavy reliance upon the order of CIT(Appeals). Besides, it was also contended that as per clause (iii) of the objects of the assessee society, assessee was created to impart training to employees of Co-op. Societies, the employees of Dept. of Co-operation and employees of Dept. of Co-op.

Audit and also to impart education and training to the members of the potential members, the directors and office bearers of the co-operative societies and the members of the public; meaning thereby that the assessee society was engaged solely in imparting education, therefore, assessee is an educational institution and eligible for exemption u/s. 10(23C)(iiiab) of the Act.

6. Having carefully examined the orders of authorities in light of the rival submissions and judgment of the Hon'ble Apex Court in the case of *Visvesvaraya Technological University v. ACIT (supra)*, we find that for claiming exemption u/s. 10(23C)(iiiab), the assessee should be either university or educational institution existing solely for educational purpose and not for the purpose of profit and which is wholly or substantially financed by the Government. Therefore, before claiming exemption u/s. 10(23C)(iiiab), the assessee is required to establish that it is either university or educational institution existing solely for educational purpose and not for the purpose of profit and it is wholly or substantially financed by the Government. These aspects were examined by the AO in his order after recording the objects of the assessee society.

7. Undisputedly, the assessee is a State Co-operative Federation of co-operative societies and its members are District Co-operative Unions, Apex Federal Co-operative Society, Co-operative Spinning Mills, Co-operative Sugar Factories, Co-operative Societies whose area of operation

is more than districts but extends upto State and Co-operative Societies registered under Multi State Co-operative Societies and whose Had Office is located in the State of Karnataka. The main objects of the assessee are to function as the accredited representative of the co-operative movement in Karnataka State with a view to further its progress and to safeguard its interest and also to impart training to the employees of Co-op. Societies, Dept. of Co-operation and Dept. of Co-op. Audit, Govt. of Karnataka. For the sake of reference, we extract the objects of the assessee society as under:-

- “(i) To function as the accredited representative of the co-operative movement in Karnataka State with a view to further its progress and to safeguard its interest in such a way that the benefits of the co-operative movement shall be open to all irrespective of caste, creed and religion;
- (ii) To propagate co-operative principles and practices for the purpose of ensuring their adoption by all Cooperative organizations throughout the State;
- (iii) To impart training to the employees of Co-op Societies, the employees of Dept. of Co-operation and the employees of Dept. of Co-op Audit. To impart education and training to the members, the potential members, the directors and the office-bearers of the co-operative societies and the members of the public;
- (iv) To act as coordinating agency on all matters pertaining to cooperative education and function as a body of experts in matters relating to education;
- (v) To serve as the exponent of co-operative opinion and function as a focusing centre of non-official opinion on

various subjects affecting the movement and for representing it in proper forum and to carry on propaganda and create public opinion on such subjects;

- (vi) To promote different types of cooperative activity in accordance with the plans of cooperative development and to strengthen the existing societies in the State by providing assistance and guidance technical and otherwise.
- (vii) To bring about coordination among different types of cooperative organizations in the State for their mutual benefit;
- (viii) To cooperate with the National Cooperative Union of India and implement to the extent possible the policies adopted by the National Cooperative Union of India and the Indian Cooperative Congress for the development of the movement;
- (ix) To open libraries & reading rooms, to publish or arrange publication, purchase and sale of periodicals, books and pamphlets on literature, in general, and on cooperation, rural development and allied subjects in particular and arrange for the production of audio-visual aids including films, film-strips and documentaries etc. on co-operation and allied subjects and to maintain or cause to be maintained cooperative publicity vans;
- (x) To arrange for the exhibition of articles relating to agriculture, cottage industries, village and small scale industries, minor forest produce and processing units belonging to the co-operative institutions;
- (xi) To establish Co-operative Training Centres, Schools and Colleges for running prescribed courses of training and imparting instructions, holding examinations, awarding Diploma and issuing certificates;
- (xii) To develop inter-co-operative relationship and help the co-ordinated functioning of the co-operative movement in various sectors;

- (xiii) To conduct State Level / National Level Co-operative Conferences, Seminars, Meetings, Workshops, Exhibitions and competitions in Essay writing, Debates etc. among students of High Schools, Colleges and Universities;
- (xiv) To acquire, purchase, own or dispose of the immovable property by way of sale, lease, exchange or otherwise for the furtherance of the objects of the Federation with approval of the general body;
- (xv) To promote study and research on problems connected with rural development in general and cooperation in particular and to conduct socio-economic surveys of rural and urban areas and to take up consultancy work, valuation etc.,
- (xvi) To establish printing press for printing of books, journals, periodicals and newspapers, including text books, magazines. other books and other requirements of co-operatives;
- (xvii) To raise funds including corpus fund and administer the funds so raised according to these bye-laws and subsidiary rules framed by the board from time to time;
- (xviii) To advise the Government on matters relating to cooperative movement from time to time;
- (xix) To supervise and inspect the work of the Dist. Co-op Unions and represent their interest;
- (xx) To advance interest free loan and subsidy to District Co-op. Unions for construction of new buildings depending upon the financial position, the budget allocation and the capacity to pay of the Federation,
- (xxi) To discharge such functions and such duties as the State Government/the Registrar or the National Co-operative Union of India might vest in the Federation;
- (xxii) To arrange study tours outside the State and outside the country, if need be, to enable the co-operators of the State

to have a first hand knowledge of the co-operative development in such places;

(xxiii) To conduct examinations for the purpose of recruitment and promotion of the employees of the co-operative societies, if required;

(xxiv) To generally undertake all such other activities as are incidental to or conducive to the attainment of the above objectives.”

8. From a careful perusal of the objects of assessee society, we find that one of the object of the assessee society may be to impart training to employees of co-operative societies, employees of Department of Co-operation and employees of Department of Co-operative Audit and also to impart education and training to members, directors and office bearers of co-operative societies; but from a careful perusal of Income & Expenditure account, we find that expenditure was incurred under different heads not to impart education to the members of different co-operative societies. The details of Income & Expenditure are available at pages 31 to 41 of compilation of the assessee. Therefore, in light of these facts, it cannot be said that assessee exists solely for educational purpose and not for the purpose of profit. The assessee society has also earned profit from other activities. Therefore, we are of the view that the AO has rightly held that assessee does not exist solely for educational purpose and not for the purpose of profit.

9. So far as the funding from the Government is concerned, it is also evident from the assessment order that the main fund comes from its members and not from the State Govt. and having analysed the details of receipts which is available at page 7 of the assessment order, the AO has held that out of gross receipts of Rs.6,96,37,994 in AY 2005-06, the assessee has received from the Government Rs.22 lakhs, which is less than 4% of the gross receipts. Therefore, it cannot be said that the assessee is wholly or substantially financed by the Government. This evidences of fact have not been rebutted by the CIT(Appeals) while allowing exemption u/s. 10(23C)(iiiab) of the Act. Moreover, during the course of hearing of these appeals, the assessee has not placed any evidence on record to substantiate that it has fulfilled both the requisite conditions for claiming exemption u/s. 10(23C)(iiiab) of the Act. Moreover, the Hon'ble Apex Court has categorically held in the case of *Visvesvaraya Technological University v. ACIT (supra)* that for claiming exemption u/s. 10(23C)(iiiab) of the act, the assessee is required to fulfill both the conditions and if it fails to satisfy any one of them, assessee is not entitled for exemption u/s. 10(23C)(iiiab) of the Act. The relevant portion of the judgment of the Hon'ble Apex Court is extracted hereunder:-

“10. The above would require the Court to go into the further question as to whether the appellant University is wholly or substantially financed by the Government which is an additional requirement for claiming benefit under Section 10(23C)(iiiab) of the Act. It is not in dispute that grants/direct financing by the

Government during the six (06) Assessment Years in question i.e. 2004-2005 to 2009-2010 had never exceeded 1% of the total receipts of the appellant - University- Assessee. In such a situation, the argument advanced is that fees of all kinds collected within the four corners of the provisions of Section 23 of the VTU Act must be taken to be receipts from sources of finance provided by the Government. Such receipts, it is urged, are from sources statutorily prescribed. The rates of such fees are fixed by the Fee Committee of the University or by authorized Government Agencies (in cases of Common Entrance Test). It is, therefore, contended that such receipts must be understood to be funds made available by the Government as contemplated by the provisions of Section 10 (23c) (iiiab) of the Act.

11. Universities and Educational Institutions entitled to exemption under the Act have been categorized under three different heads, namely, those covered by Section 10(23C)(iiiab); Section 10(23C)(iiiad) and 10(23C)(vi) of the Act. The requirement of the University or the educational institution existing "solely for educational purposes and not for purposes of profit" is the consistent requirement under Section 10(23C)(iiiab), 10(23C)(iiiad) and 10(23C)(vi). However, in cases of Universities covered by Section 10(23C)(iiiab) funding must be wholly or substantially by the Government whereas in cases of universities covered by Section 10(23C)(iiiad) the aggregate annual receipts should not exceed the amount as may be prescribed. Universities covered by Section 10(23C)(vi) are those other than mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which are required to be specifically approved by the prescribed authority.

12. Having regard to the text and the context of the provisions of Section 10 (23c) (iiiab), 10 (23c) (iiiad) and 10 (23c) (vi) it will be reasonable to reach a conclusion that while Section 10 (23c) (iiiab) deals with Government Universities, Section 10 (23c) (iiiad) deals with small Universities having an annual "turnover" of less than Rupees One Crore (as prescribed by Rule 2 (BC) of the Income Tax Rules). On a similar note, it is possible to read Section 10 (23c) (vi) to be dealing with Private Universities whose gross receipts exceeds Rupees One Crore. Receipts by way of fee collection of different kinds continue to a

major source of income for all Universities including Private Universities. Levy and collection of fees is invariably an exercise under the provisions of the Statute constituting the University. In such a situation, if collection of fees is to be understood to be amounting to funding by the Government merely because collection of such fees is empowered by the Statute, all such receipts by way of fees may become eligible to claim exemption under Section 10 (23c) (iiiab). Such a result which would virtually render the provisions of the other two Sub-sections nugatory cannot be understood to have been intended by the Legislature and must, therefore, be avoided.

13. It will, therefore, be more appropriate to hold that funds received from the Government contemplated under Section 10(23c)(iiiab) of the Act must be direct grants/contributions from governmental sources and not fees collected under the statute. The view of the Delhi High Court in *Mother Dairy Fruit & Vegetable Private Limited vs. Hatim Ali & Anr.*[(2015) 217 DLT 470] which had been brought to the notice of the Court has to be understood in the context of the definition of 'public authority' as specified in Section 2(h)(d)(ii) of the Right to Information Act, 2005 which is in the following terms:

(h) "public authority" means any authority or body or institution of self- government established or constituted,-

(a)

(b)

.....

(d) by notification issued or order made by the appropriate Government, and includes any

(i)

(ii) non-Government Organization substantially financed, directly or indirectly by funds provided by the appropriate Government."

14. Reliance has been placed on the judgment of the High Court of Karnataka in *Commissioner of Income-tax, Bangalore vs. Indian Institute of Management* (2014) 49 Taxmann.com 136

(*Karnataka*), particularly, the view expressed that the expression "wholly or substantially financed by the Government' as appearing in Section 10(23C) cannot be confined to annual grants and must include the value of the land made available by the Government. In the present case the High Court in paragraph 53 of the impugned judgment has recorded that even if the value of the land allotted to the University (114 acres) is taken into account the total funding of the University by the Government would be around 4% - 5% of its total receipt. That apart what was held by the High Court in the above case, while repelling the contention of the Revenue that the exemption under Section 10(23c) (iiiab) of the Act for a particular assessment year must be judged in the context of receipt of annual grants from the Government in that particular year, is that apart from annual grants the value of the land made available; the investment by the Government in the buildings and other infrastructure and the expenses incurred in running the institution must all be taken together while deciding whether the institution is wholly or substantially financed by the Government. The situation before us, on facts, is different leading to the irresistible conclusion that the appellant University does not satisfy the second requirement spelt out by Section 10 (23c) (iiiab) of the Act. The appellant University is neither directly nor even substantially financed by the Government so as to be entitled to exemption from payment of tax under the Act.”

10. In light of the aforesaid judgment and legal proposition observed hereinbefore, we are of the considered view that assessee society has not fulfilled both the requisite conditions for claiming exemption u/s. 10(23C)(iiiab) of the Act. It neither exists solely for educational purpose, nor was it substantially or wholly financed by the Government. Therefore, the CIT(Appeals) was not correct in holding that the assessee is entitled for exemption u/s. 10(23C)(iiiab) of the act. We accordingly set aside the

order of CIT(Appeals) and restore the order of Assessing Officer in this regard.

ITA Nos.1243, 1244, 45 & 46/Bang/2015

11. These appeals are preferred by the assessee assailing the order of CIT(Appeals) on the following common grounds and for the sake of reference, we extract the grounds raised in ITA No.1243/B/2015:-

1. "That the order of the learned Commissioner of Income Tax (Appeals) in so far it is prejudicial to the interests of the appellant is bad and erroneous in law and against the facts and circumstances of the case.
2. That the learned Commissioner of Income Tax (Appeals) ought to have held that the amount received from the Co-operative Societies towards Co-operative Education Funds u/s 57(2A) of Karnataka Co-operative Societies Act 1959 is not income.
3. That the learned Commissioner of Income Tax (Appeals) ought to have held that the amount received from the Co-operative Societies u/s 57(2A) of Co-operative Societies Act 1959 is not liable to tax as it diverted at source in view of the statutory obligations cast under Co-operative Societies Act 1959.

Additional Grounds:

- 1) That the learned lower authorities erred in law and on facts in assessing the appeal in the status of "Co-operative Society" and not in the status of "Artificial Juridical Person".
- 2) That the learned lower authorities ought to have held that the interest received from Co-operative Banks is exempt u/s 80P(2)(d) of the Act.

Each of the above is without prejudice to one another and the appellant craves leave of the Hon'ble Income Tax Appellate Tribunal, Bangalore, to add, delete, modify or otherwise amend all or any of the above grounds either before or during the hearing.”

12. Out of these appeals, two appeals bearing Nos. ITA 1243 & 1244/Bang/2015 are filed late. Delay in filing of ITA No.1243/B/2015 is of 621 days and ITA No.1244/B/2015 is of 1446 days. For condonation of delay in filing of the appeals, the assessee has filed applications stating therein that initially the assessee was under a *bonafide* belief that it need not take any further action, except to defend the order of CIT(Appeals) before the Tribunal, if the Department files an appeal. But, after the judgment of the Hon'ble jurisdictional High Court in the case of *CIT v. Children's Education Society, 358 ITR 373 (Kar)* in which it was held that society registered under a statute is to be assessed as an Artificial Juridical Person (AJP), the assessee has realized that it was assessed in a wrong status. Therefore, the assessee has filed the present appeals assailing the order of the CIT(Appeals) that the assessee ought to have been assessed in the status of AJP, instead of AOP.

13. In these appeals, though the assessee has filed the applications for condonation of delay, but these were not argued by the Id. counsel for the assessee during the course of hearing. We, however, examined the contents of the applications and are of the view that the assessee has not raised any dispute with regard to the status of the assessee before the lower

authorities. The lower authorities have assessed the assessee in the same status in which the return of income was filed. Therefore, after the judgment of the Hon'ble jurisdictional High Court, no cause of action has arisen in favour of assessee to file the present appeal. Moreover, it was for the assessee to decide as to whether appeal is to be filed against the order of CIT(Appeals) or not in the prescribed period. If it does not do so, the assessee cannot take shelter of judgment of Hon'ble jurisdictional High Court in which certain proposition of law is laid down in certain circumstances. Since the delay in filing these appeals was intentional, it cannot be called that under *bonafide* belief, the assessee could not file the appeals in time. Finding no force in the applications for condonation of delay, we hold that these appeals are barred by limitation, therefore, not admitted for hearing.

14. We, however, adjudicate the issues involved in these appeals as the same are also raised in other appeals which are filed in time.

15. In the remaining appeals, the assessee has raised an additional ground with regard to non-adjudication of the claim of assessee u/s. 80P(2)(d) of the Act. This ground was specifically raised before the CIT(Appeals) in these appeals, but it escaped the attention of the CIT(Appeals) and this ground remained to be adjudicated. Since the CIT(Appeals) has not adjudicated this ground of appeal, we restore the issue to the CIT(Appeals) with a direction to adjudicate this ground relating

to claim u/s. 80P(2)(d) of the Act with respect to interest received by the assessee.

16. In these appeals, one more ground was also raised with respect to nature of receipt of co-operative education fund u/s. 57(2A) of Karnataka Co-operative Societies Act, 1959 from various co-operative societies. Though this ground was also raised before the CIT(Appeals) in its appeals, but it also remained to be unadjudicated by the CIT(Appeals), because the CIT(Appeals) has mainly dwelt upon the issue of claim of exemption u/s. 10(23C)(iiiab) of the Act. Therefore, this issue is restored to the CIT(Appeals) with a direction to adjudicate this ground by passing a reasoned order after affording opportunity of being heard to the assessee.

17. During the course of hearing of these appeals, the assessee has also raised one more additional ground with regard to status in which it is to be assessed. In this regard, the Id. counsel for the assessee has admitted during the course of hearing that it has shown its status as "Co-operative Society" in its return of income before the AO and it was also assessed as the same, whereas as per the judgment of *CIT v. Children's Education Society, 358 ITR 373 (Kar)*, co-operative societies are to be assessed as Artificial Juridical Person (AJP). Though this ground was not raised before any of the lower authorities, but the Id. counsel for the assessee has pleaded that even in that situation, assessee can raise additional ground before the Tribunal. In support of his contention, he has

placed reliance upon the judgment of Hon'ble Apex Court in the case of *CIT v. National Thermal Power Corporation*, 229 ITR 383. It was further contended that if the assessee is to be assessed as AJP and the AO has assessed it to be an AOP in a wrong status, the assessment order deserves to be quashed. In support of that proposition of law, he has placed reliance upon the order of Tribunal in the case of *Ziaulla Sheriff v. ACIT*, 316 ITR (AT) 92 (ITAT Bang).

18. During the course of hearing, the Id. counsel for the assessee has admitted that in the return of income it never claimed to be the Artificial Juridical Person (AJP) against the status. Copies of returns of income are not filed before us for our perusal. During the course of hearing, the Id. counsel for the assessee candidly admitted that assessee society was taxed at the rates of co-operative societies and there would not be any change in tax effect or computation of income, even if the assessee is to be assessed as AJP. The Id. counsel for the assessee further contended that since as per the judgment of Hon'ble jurisdictional High Court in the case of *CIT v. Children's Education Society (supra)*, co-operative societies are to be assessed as AJP, the assessee should be assessed as such and the assessment framed in the status of AOP deserves to be quashed and fresh assessment should be made in the hands of the assessee as an AJP.

19. The Id. DR, on the other hand, has contended that assessee has never claimed it to be AJP against its status. It filed return in the status of a Co-operative Society or claimed the status to be AOP. Therefore, the AO

was not under any obligation to assess the assessee as AJP. Moreover, the assessee has never raised this objection either before the AO or before the first appellate authority. For the first time, the assessee has raised this additional ground before the Tribunal to unsettle the assessment framed by the AO. The Id. DR further contended that there will be no change either in the computation of income or in the tax liability. Under the garb of change of status, the assessee tries to get the assessment declared as bad, which is not permissible at this stage. The Id. DR further contended that the facts in the case of *CIT v. National Thermal Power Corporation (supra)* are different. In that case the claim of assessee was under adjudication before the AO, though he has offered it to tax. But in the instant case, the assessee has never raised any claim with regard to status of AJP. Moreover in that case, the computation of income would be changed if the claim of assessee is allowed which would effect the tax liability. But in the instant case, neither the computation nor the tax liability would be effected, even if the status is changed, as the assessee society was charged to tax at the rates applicable to co-operative societies. Therefore, this ground was raised with an ulterior motive.

20. Having carefully examined the orders of lower authorities in light of the rival submissions, we find that despite directions, original returns of income are not filed produced before us. From the records available for the AY 2005-06, we find that the status of assessee was shown to be co-

operative society. The AO has shown the same status of the assessee in the assessment order on the basis of status shown in the return of income, therefore the AO cannot be held responsible for assessing the assessee under different status. It is also an admitted fact that there would neither be any change in the computation of income nor tax effect, even if the status of the assessee is to be changed from AOP to AJP, because the assessee has already been assessed at the rates applicable to the co-operative societies. It is also noticed from the record that during the AY 2005-06 in the tax computation form, the status of the assessee was shown to be AJP, meaning thereby in the income tax computation form, the AO has assessed the assessee in the status of AJP. Therefore, no grievance of the assessee is left out in the AY 2005-06. For the remaining assessment years, the assessee has not filed the income tax computation form issued by the AO. Therefore, in the absence of this information, we cannot hold conclusively that assessee was not finally assessed in the status of AJP in the income tax computation form.

21. During the course of hearing, a specific query was raised as to what benefit the assessee will get even if the status is changed from AOP to AJP, the Id. counsel for the assessee candidly admitted that it would not get any monetary benefit. But from the arguments of both the parties, it appears that once the assessee is held to be AJP at this very stage, it would try to unsettle the assessment order by saying that the assessment

order was passed under a wrong status, therefore it should be quashed. If this practice is to be allowed at any stage under the garb of admission of additional ground in light of the judgment of *CIT v. National Thermal Power Corporation (supra)*, it would be a misuse of the process of law and there would not be any end to litigation. In this case, since the assessee has been assessed in the status which has been shown by it in the return of income, the change of status at this very stage is not desirable by allowing the assessee to raise the additional ground. We therefore find no merit in the request of the assessee for admission of additional ground at this stage and we accordingly reject the request for admission of additional ground in this regard.

22. Accordingly, these appeals of the assessee are dismissed.

23. In the result, the appeals of the Revenue are allowed and that of the assessee are partly allowed for statistical purposes.

Pronounced in the open court on this 25th day of May, 2016.

Sd/-

Sd/-

(ABRAHAM P. GEORGE)
Accountant Member

(SUNIL KUMAR YADAV)
Judicial Member

Bangalore,
Dated, the 25th May, 2016.
/D S/

Copy to:

1. Appellants
2. Respondents
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.