

IN THE INCOME TAX APPELLATE TRIBUNAL,  
'PATNA' BENCH, KOLKATA  
[VIRTUAL COURT HEARING AT KOLKATA]

Shri Sanjay Garg, Judicial Member  
&  
Shri Rajesh Kumar, Accountant Member

I.T.A. Nos. 25 & 26/PAT/2018  
Assessment Years: 2014-2015 & 2009-2010

*Bihar Combined Entrance Competitive Examination Board, .... Appellant*  
*IAS Bhawan, Near Airport,*  
*Patna- 800014*  
*[PAN:AAAJT2383 F]*

-Vs.-

*Assistant Commissioner of Income Tax (Exemptions),.....Respondent*  
*Patna*

**Appearances by:**

*Shri D.V. Pathy, Advocate, appeared on behalf of the assessee*

*Shri Rupesh Agrawal, Sr. D.R., appeared on behalf of the Revenue*

Date of concluding the hearing : June 08, 2022

Date of pronouncing the order : June 13, 2022

**O R D E R**

**Per Sanjay Garg, Judicial Member:-**

These two appeals filed by the assessee are directed against two separate orders both dated 27. 11.2017 passed by the Id. Commissioner of Income Tax (Appeals)- 1, Patna for A. Ys. 2014- 15 and 2009- 10 and since identical issues are involved therein, the same have been heard together and are being disposed of by a single consolidated order for the sake of convenience.

2. Brief facts of the case are that the assessee is a Board constituted under the Bihar Combined Entrance Competitive Examination Act, 1995 to provide for combined competitive examination for entrance in Graduate Level Vocational Courses of the Universities, Colleges, Institutions in the State. The examinations conducted by the assessee are for admission to Graduate and Post-Graduate Courses of different faculties of Medical, Engineering and Polytechnic Courses etc. The assessee has filed its return showing a total income at Rs. 'NIL' against which the assessment has been completed at a total income of Rs.8,64, 28, 996/-. In making the assessment, the ld. Assessing Officer brought to tax the surplus of income over expenditure as shown in the Income and Expenditure Account. The assessee in its return has claimed exemption in respect of its total income under section 10( 23C)(iiiab) of the Act on the grounds that it is constituted and substantially financed by the Government. The assessee also claimed exemption under section 10( 23C)(iiiad) of the Act. The claim of exemption has, however, been disallowed on the ground *inter alia* that the assessee is not wholly and substantially financed by the Government and is also not involved in educational activities. The ld. Assessing Officer also disallowed payments made to printer amounting to Rs.2,85, 85, 395/- under section 40(a)(ia) of the Income Tax Act (hereinafter called the 'Act'). The disallowances of payments to printer for printing of examination question papers has been made on the ground that the assessee has filed to deduct tax at source on payment made for printing of examination question papers. The ld. Assessing Officer also mentions that there is no provision in the Act, which permit allowance of expenditure in certain contingent circumstances where tax at source is not deducted.

3. Being aggrieved by the aforesaid order of the Id. Assessing Officer, the assessee preferred appeals before the Id. CIT( Appeals), however, remained unsuccessful.

4. Being aggrieved, the assessee has come in appeals before us.

5. At the outset, the Id. counsel for the assessee has brought to our attention that the assessee earlier had filed separate applications for exemption under section 10( 23C) of the Income Tax Act, which were rejected by the Id. CIT(Exemption). The assessee preferred appeal against the said orders before the Hon'ble High Court, whereupon the Hon'ble High Court vide its order dated 03. 12. 2020 remanded the matter back to the Id. CIT(Exemption) for consideration afresh. The Id. counsel for the assessee has further brought to our attention to the order dated 30. 03.2021 of the Id. CIT(Exemption), whereby, the application of the assessee for grant of exemption under section 10( 23C( vi) has been allowed for assessment year 2004- 05 to assessment year 2010- 11. Id. Counsel has further brought to our attention to the order dated 27. 03.2022 of Id. CIT(Exemption), whereby, the Id. CIT(Exemption) following the direction of the Hon'ble High Court has granted exemption to the assessee under section 10(23C)( vi) for the assessment year 2014- 15 also i.e. for the assessment year under consideration. Since the application of the assessee for exemption under section 10( 23C)( vi) has already been allowed, therefore, the assessee is entitled to exemption under section 10( 23C)( vi) and, therefore, the income of the assessee stands exempted.

6. So far as the disallowance made by the Id. Assessing Officer under section 40(a)(ia) of the Income Tax Act is concerned, it is noted that since the income of the assessee is exempt under section 10(23C)(vi),

therefore, any disallowance made under section 40(a)(ia) by the Id. Assessing Officer will only add to the income of the assessee, which otherwise is exempt under section 10(23C) as stated above. Therefore, the disallowance made by the Id. Assessing Officer will not create any tax liability of the assessee. In view of this, the impugned order of the Id. CIT( Appeals) is set aside and the additions made by the lower authorities are deleted.

7. In the result, both the appeals of the assessee are allowed.  
Order pronounced in the open Court on June 13, 2022.

**Sd/-**  
**(Rajesh Kumar)**  
**Accountant Member**

**Sd/-**  
**(Sanjay Garg)**  
**Judicial Member**

***Kolkata, the 13<sup>th</sup> day of June, 2022***

- Copies to :* (1) ***Bihar Combined Entrance Competitive Examination Board,  
IAS Bhawan, Near Airport, Patna-800014***
- (2) ) ***Assistant Commissioner of Income Tax (Exemptions),  
Patna***
- (3) ) ***Commissioner of Income Tax (***  
***Appeals)-1 , Patna;***(4) ***Commissioner of Income Tax,***  
(5) ***The Departmental Representative***  
(6) ***Guard File***

***TRUE COPY***

***By order***

***Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata***

***Laha/Sr. P.S.***