

**Rajasthan Tax Board, Ajmer**

1. Appeal No. 413/2014/Kota
2. Appeal No. 414/2014/Kota
3. Appeal No. 861/2014/Kota
4. Appeal No. 862/2014/Kota
5. Appeal No. 863/2014/Kota
6. Appeal No. 65/2015/Kota

M/s Career Point Infosystems Ltd.  
112, Shakti Nagar, Kota

**Appellant**

**VERSUS**

1. Commercial Taxes Officer,  
Anti-Evasion, Kota
2. Deputy Commissioner  
(Appeals), Ajmer

**Respondents**

7. Appeal No. 363/2014/Kota
8. Appeal No. 364/2014/Kota
9. Appeal No. 1181/2014/Kota
10. Appeal No. 1182/2014/Kota
11. Appeal No. 1183/2014/Kota

Commercial Taxes Officer,  
Anti-Evasion, Kota

**Appellant**

**VERSUS**

M/s Career Point Infosystems Ltd.  
112, Shakti Nagar, Kota

**Respondent**

**D.B.**

**SHRI K.L. JAIN, MEMBER**

**SHRI OMKAR SINGH ASHIYA, MEMBER**

Present :


Shri M.L. Patodi, Advocate  
Shri Anil Pokharna,  
Dy. Govt. Advocate

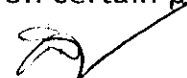
for Assessee  
  
for Revenue

**Dated : 01/11/2018**

**JUDGMENT**

1. Appeal Nos. 413 to 414/2014/Kota, 861 to 863/2014/Kota and 65/2015/Kota have been filed by the appellant dealer (**hereinafter called the "assessee"**) and Appeal Nos. 363 to 364/2014/Kota and 1181 to 1183/2014/Kota have been filed by the Department against orders of the Deputy Commissioner (Appeals) Commercial Taxes, Ajmer (**hereinafter called the "appellate authority"**) who vide appellate orders dated 17.10.2013, 12.02.2014 and 30.09.2014, has partly accepted the appeals and remanded the matter back to the assessing authority on certain points.





These appeals relate to the assessment years 2006-07 to 2010-11.

2. As the common issues are involved in all these appeals, therefore, these are disposed off by a common order. Copy of the order be placed on each relevant appeal file.
3. Brief facts leading to the present appeals are that the assessee is an institute engaged in the field of coaching for Medical and Engineering Entrance Examinations and related services through the agreements executed between it and its affiliates, and the entities so affiliated are allowed to use the brand name/trade mark of the assessee company, i.e. 'CAREER POINT'. The assessee agrees to provide, render, make available and furnish the advice, assistance, services, information and material for the purpose of imparting coaching to the potential students. In consideration of the assessee's agreement to grant the right to use the facilities as agreed upon between the two parties, an affiliate fee is charged from the user entities. Further, the affiliate entities are obliged to pay a certain amount varying from 20% to 22% of the Gross Fees as collected from the students for classroom courses. For Test series and postal courses, the assessee supplies study material and postal series, all India Tests Series etc. only against full payment received in advance. Apart from this, the assessee collects a certain amount for sale of prospectus and admission forms to its students, supplies printed study material to the students, student kit comprising uniform, work book, note sheets, practice sheets, I-Card, Pullover, Jersey and Bags etc.
4. The affiliate entities, in turn, are required to provide suitable premises to run the Career Point Centers; arrangement of competent faculty for expert coaching; management for admissions; record keeping and reporting; proper collection and deposition of fee and proper reporting to the assessee; conducting classes, course completion and monitoring; local advertising and publicity; and, conducting Test series. All the expenses incurred to meet these obligations are required to be borne by the affiliate entity/ entities.

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5. The Assistant Commissioner, Anti-evasion, Kota (hereinafter called the "assessing officer" or "AO") while finalizing the assessments for the years 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12, assessed the tax and levied interest and penalties u/s 58, 61 and 73 of the Rajasthan Value Added Tax Act, 2003 (hereinafter called the "Act"), on the alleged sale of (i) 'intangible goods' in the form of upfront Royalty and the amount received as part the agreed fee portion collected from the students by its affiliates, (ii) sale of prospectus and application forms, (iii) study material, (iv) student kits etc.
6. Aggrieved of the assessment orders, the appellant preferred appeals before the appellate authority who vide his order dated 17.10.2013, 12.02.2014 and 30.09.2014, partly accepted these appeals. It is against these appellate orders that the assessee as well as the Revenue are in appeal before the Tax Board under section 83 of the Act.
7. Precisely, the issues before the appellate authority for consideration were:-
  - i) Whether the upfront royalty and agreed portion of fee as received from the affiliate entities/franchises would construe to be a sale of goods and attract VAT ?
  - ii) Whether the amount received on sale of prospectus and application forms as sold to the students, would form sale of the goods?
  - iii) Whether the printed study material supplied to the students would be exigible to VAT or not; and
  - iv) Whether the 'student kit' comprising uniform, work book, note sheets, practice sheets, I-Card, Pullover, Jersey and Bags etc. would attract VAT or not ?
  - v) whether the penalties imposed u/s 58, 61 and 73 of the Act and late fee levied u/rule 19A, were rightly imposed or not ?
8. The appellate authority while deciding these appeals by the impugned orders, has held that:-

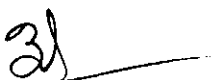


- i) The amount received from the affiliates for use of brand name/trademark called as 'Upfront Royalty', would be exigible to tax. The levy of tax and interest was upheld thereupon, however, the share of fees collected from the participating students was held not to be taxable and tax and interest was set aside on it; and
- ii) Sale of the prospectus and the application forms would attract VAT, hence, the levy of tax and interest has been upheld;
- iii) Printing material and stationery given to students would come under the category of sale and it would be taxable accordingly, however, it has been directed that ITC be allowed on the purchases made within State after paying VAT. The presumptive addition of profit on the basis of overall profit of the institute has been disallowed and the matter on this issue has been remitted back to the AO;
- iv) The supply of study material to students in the bounded book form was held not to be taxable and tax and interest was set aside. Study bags or school bags as given to the students were held to be exempted because per bag value was below Rs. 200/- per piece, accordingly the tax and interest on it was set aside.
- v) As the uniforms as such were not supplied to the students but only fabric or cloth was given and the stitching was done by the student themselves, therefore, the textiles being exempted from tax, the tax and interest was set aside;
- vi) Pullovers and Jerseys were held to be taxable but the matter was remanded to allow ITC on the purchases made within the state and also to add profit as per the readymade garments trade and not as per the coaching institute's trade;

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vii) Penalty u/s 61 was set aside because all the transactions were entered in the books of accounts of the assessee and the issue essentially relates to classification of the goods or interpretation of the taxing entries.

9. At the outset, learned counsel for the assessee submits that the assessee is essentially engaged in educational activities on which no VAT is applicable and the other activities viz. sale of application forms and prospectus, supply of study material, printed material and stationary, student kit comprising of school bag, uniforms, jerseys and pullovers etc. can't be termed as the business activity, hence no tax liability should arise for him. He, therefore, termed the whole proceeding of imposition of tax, interest and penalty as beyond the ambit of the law and requests to set aside the levy as confirmed by the appellate authority in the impugned orders.
10. Learned counsel for the appellant further submits that the issue of 'upfront royalty' collected from the affiliate entities or the franchise holders and the issue of sharing of fees as collected from the students by the affiliate entities has already been decided in assessee's own case by the Tax Board in Appeal No. 182/2012/Kota, by the judgment dated 10.07.2018. It was also submitted that assessee has supplied study material in bound book form, which is covered under the entry of 'books' and the same is exempted from tax as per entry 5 of the Schedule-I of the Act, therefore, the appellate authority has rightly set aside the tax and interest on it. Apart from this, it was argued that the assessee has sold application forms and prospectus to the potential students for coaching classes and these items in combined form should fall under the category of books, hence not taxable under the Act. Not only this, the assessee has supplied printing material, stationary and students' kit comprising therein the school bags valuing below Rs 200 per piece, unstitched uniforms, jerseys & pullovers, i-cards etc. on which the tax levied by the AO has been wrongly upheld by the appellate authority. He argues that the AO has wrongly levied tax on these items and the appellate authority has erred in upholding the same,





therefore, the orders of the lower authorities are liable to be quashed.

11. He, therefore, requests to accept these appeals and to set aside the appellate orders in which some issues have been decided against the assessee and/ or the matter has been remanded to the AO.
12. Learned Deputy Government Advocate appearing for the respondent-Revenue has agitated that the AO has rightly levied tax, interest and penalty on the 'upfront royalty' and a portion of the fee collected from the students by assessee's affiliate entities as these receipts tantamount to the sale of intangible goods. For levy of tax on supply of prospectus and application forms, printing material, stationary, study material, uniforms, pullovers and jersey etc., he supported orders of the AO and requests that there was no need to remand the matter on some issues and that penalty should have been maintained by the appellate authority looking into the fact that assessee has deliberately avoided to pay the taxes, therefore, he requests to set aside the appellate orders on the issues of penalty as well as remand of the cases as per the directions given in the appellate orders.
13. We have gone through the submissions of both the parties and perused the relevant record. It is admitted fact that the assessee is a brand name holder of the brand 'CAREER POINT' and engaged in the business of imparting coaching for Medical and Engineering Entrance Examinations and related services. The assessee establishes its franchises at various places through its affiliate entities by a joint agreement with them. The assessee receives two types of consideration, i.e. (i) in the form of upfront royalty amount for use of the brand name, and (ii) affiliate fees which is 22% of the fee collected from the students. The AO has treated both these receipts as valuable consideration for sale of 'intangible goods' and has levied tax @ 4% and interest thereupon. This issue has emphatically been decided by a division bench of the Tax Board in assessee's own case in **Appeal No. 182/2012/Kota, order dated 10.07.2018** in favour of the assessee wherein it has been held that upfront royalty or the part of fee collected

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from the students through the affiliate entities is not amenable to State tax (VAT). So, on this issue, the appeals of the assessee deserves to be accepted.

14. So far as the other issues are concerned, the same are taken up one by one in the following paras. However, before discussing these issues, the definitions of various terms as given under the RVAT Act, 2003 would be worthwhile to peruse, which are as follows:

**"(6) "business" includes—**

- (i) any trade, commerce or manufacture; or**
- (ii) any adventure or concern in the nature of trade, commerce or manufacture – whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit, and whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure or concern; or**
- (iii) any transaction in connection with or incidental or ancillary to such trade, commerce, manufacture, adventure or concern; or**
- (iv) any transaction in connection with or incidental or ancillary or consequential to the commencement or closure of such business; or**
- (v) any occasional transaction in the nature of such trade, commerce, manufacture, adventure or concern whether or not there is volume, frequency, continuity or regularity of such transaction; "**

**"(11) "dealer" means any person, who carries on business in any capacity, of buying, selling, supplying or distributing goods directly or otherwise, or making purchases or sales as defined in clause (35) for himself or others, whether for cash or deferred payment, or for commission, remuneration or other valuable consideration and shall include—**

- (i) a factor, broker, commission agent, del credere agent or any other mercantile agent, by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of buying, selling, supplying or distributing any goods belonging to any principal whether disclosed or not;**
- (ii) an auctioneer, who sells or auctions goods belonging to any principal, whether disclosed or not and whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal;**
- (iii) a manager or an agent, of a non-resident dealer who buys, sells, supplies or distributes goods in the State belonging to such dealer;**

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- (iv) any society, club, trust or other association, whether incorporated or not, which buys goods from or sells goods to its members;
- (v) a casual trader;
- (vi) the Central or any State Government or any of their Departments or offices which, whether or not in the course of business, buy, sell, supply or distribute goods directly or otherwise, whether for cash or deferred payment or for commission, remuneration or other valuable consideration; and
- (vii) any trading, commercial or financial establishment including a bank, an insurance company, a transport company and the like which, whether or not in the course of its business, buys, sells, supplies or distributes goods, directly or otherwise, whether for cash or deferred payment, commission, remuneration or other valuable consideration;"

"(15) "goods" means all kinds of movable property, whether tangible or intangible, other than newspapers, money, actionable claims, stocks, shares and securities, and includes materials, articles and commodities used in any form in the execution of works contract, livestock and all other things attached to or forming part of the land which is agreed to be severed before sale or under the contract of sale;"

"(35) "sale" with all its grammatical variations and cognate expressions means every transfer of property in goods by one person to another for cash, deferred payment or other valuable consideration and includes—

- (i) a transfer, otherwise than in pursuance of a contract, of property in goods for cash, deferred payment or other valuable consideration;
- (ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
- (iii) any delivery of goods on hire—purchase or other system of payment by instalments;
- (iv) a transfer of the right to use goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
- (v) a supply of goods by an unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration; and
- (vi) a supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not







*profit-motive is statutorily excluded from the definition of "business" yet the person could be doing "business".*

*14. The word "carrying on business" requires something more than merely selling or buying, etc. **Whether a person "carries on business" in a particular commodity must depend upon the volume, frequency, continuity and regularity of transactions of purchase and sale in a class of goods and the transactions must ordinarily be entered into with a profit-motive.** [Board of Revenue v. A.M. Ansari [1976] 38 STC 577 (SC) : (1976) 3 SCC 512]. Such profit-motive may, however, be statutorily excluded from the definition of "business" but still the person may be "carrying on business".*

15. The Hon'ble Supreme Court in **Board of Revenue Vs A.M. Ansari [1976] 38 STC 577 (SC) : (1976) 3 SCC 512** also had an occasion to deal with the very same words/phrases. The observations made by the Supreme Court in the said judgment are relevant for the instant issue too, which read thus:

*"whether a person carries on business in a particular commodity must depend upon the volume, frequency, continuity and regularity of transactions of purchase and sale in a class of goods and the transactions must ordinarily be entered into with a profit-motive. The court further went on to observe that when a subsidiary product is turned out in the factory of the assessee regularly and continuously and it is being sold from time to time, an intention to carry on business in such product may be reasonably attributed to the assessee. As the consideration of profit-motive cannot be regarded as an essential constituent of the term 'business' in view of the amendment introduced in the definition of the term 'dealer' in 1966, what we are left to consider is whether the other ingredients of the term "business", viz., volume, frequency, continuity and regularity of transactions of sale and purchase are satisfied in the instant cases..."*

16. It is not in dispute that the assessee is a business entity or a 'concern' engaged in imparting coaching on commercial basis to aspirant students appearing in various entrance examinations and the activity is definitely a commercial one having a profit motive. As an incidental or ancillary activity to its main business, the assessee sells / supplies application form/ prospectus; study material & stationary; study kits comprising uniforms, work books, note sheets, i-cards,



pullovers, jerseys and study bags etc. So, looking into the definition of business and above referred judgments of the Hon'ble Supreme Court, it is held that the assessee is engaged in a business and sale or supply of articles abovementioned, is an activity incidental or ancillary to its core business. Accordingly, if any sale or supply of taxable goods has been made by the assessee, the same shall attract the tax liability under the Act. So, it is held that the AO has rightly held the assessee liable to tax.

17. It is not in dispute that the assessee has sold application forms along with brochures and prospectus by charging a certain amount from the students participating in the specialized coaching courses for Medical and IIT Entrance Examinations. The Hon'ble Karnataka High Court in the case of **Manipal University Vs State of Karnataka (2014) 71 VST 442 (Karn.)** was considering the issue of sale of prospectus and it was held that the same would be termed as business and thus exigible to VAT. The concluding para of the said judgment is as under:-

*"21. Thus, having regard to meaning of the word "prospectus", we have no doubt that the prospectus of the University cannot be treated as "book" or "book meant for reading" It is a printed document which could be called a brochure or a catalogue or a printed document detailing the courses, facilities etc. of their colleges. In any case, it cannot be treated as a book meant for reading as is known in common parlance. The prospectus of the University cannot be treated even as periodical or journal. In this view of the matter, the contentions urged on behalf of the University must be rejected. We are in agreement with the view taken by the Tribunal that the sale of prospectus and application forms would fall under Entry 71 of the Third Schedule. Thus, the questions raised in these revision petitions are answered against the petitioner-University and in favour of the respondent-State. The revision petitions are accordingly dismissed. However, there shall be no order as to costs."*

18. As can be seen from definition of the terms- 'goods' and 'sale' as well as the judgment of the Hon'ble Karnataka High Court, the activity of sale of application form kit or the admission packet consisting of application form, prospectus and brochure etc. shall fall under the category of goods and since the transaction in question fulfills the parameters of 'sale', therefore, it is liable to be taxed. The AO has thus rightly





levied tax on these items and the appellate authority has rightly remanded the matter back to the AO with the instructions to allow ITC credit to the assessee after due examination of the VAT invoices. So, on this issue the appellate order is confirmed.

19. The assessee has supplied the printed material consisting of 'Daily Practice Problem Sheets'/ stationary etc. to its affiliate entities/students and the AO has found it to be a taxable supply of goods and has accordingly levied tax, interest and penalty on sale of these items. The AO has given certain deductions for use of printing material/ stationary by assessee's own office or the faculty members and has added a gross profit (GP) on the basis of the overall GP shown by the assessee in his books of accounts. The appellate authority has though upheld the levy of tax and interest, but on the issue of gross profit held that GP cannot be taken at the same rate as that of the assessee's core business of imparting coaching, instead should be taken as per the profit margin prevalent in similar trade and has thus remanded the matter for re-determination of gross profit and to tax the material thereafter allowing the ITC.
20. To calculate the GP in ancillary business activities like sale of stationary items, taxable study material, uniforms if supplied in stitched form, pullovers and jerseys etc., the directions of the appellate authority to take the GP figures from the relevant similar trade/commodities and then arrive at the sales figures, in our considered view, are not found to be logical one, hence the same are set aside. Had the assessee maintained separate accounts of each business vertical, then the profit could have been ascertainable but in absence of any such separate accounting the GP shall be calculated as per assessee's overall GP and not as prevalent in the relevant trades of stationary & printing material or readymade garments or woolen hosiery etc. So, on this count the appellate orders are set aside and it is held that the profit calculated by the AO on the basis of assessee's overall profit margin is correct.





21. The assessee has continuously supplied study material to the participating students, which consisted of books, photocopies of some reading material, loose printed sheets etc. and the AO has considered all these items as 'stationary items' and not as 'books' which are exempted from tax, and has levied tax, interest and penalty. **It is important to point out that in common parlance, a 'book' is generally known as a bunch of printed, serially numbered and bounded papers written or compiled by an author or authors, used or read for learning, education, reference or recreational purposes. Books are exempted under the Act by entry 5 of Schedule-I appended to the Act, which is as under:-**

*"5. Books, Workbooks prescribed by any Board of School Education or University or used for educational purpose, periodicals and journals including maps, charts and globe"*

Whereas the entries of 'stationary items' and 'printed materials' are appearing in entry 97 and 104 of Schedule-IV, which are as under:

*"97. Paper of all kinds other than hand made paper, all kinds of stationary goods, all types of exercise book, graph book, laboratory note book other than made from handmade paper, paper board and waste thereof"*

*"104. Printed materials including diary, calendar etc."*

It is important to point out that sometimes, such compilation of textual narration may or may not contain the specific names of the writer(s) or the compiler(s), still that does not lose the basic character of being called a 'book', as it contains the printed text required for learning, education reference or recreation etc. Accordingly, the assessee has prepared such printed study material in bound book form which is used by the coaching students for learning, education or reference to appear in higher educational entrance exams, so the same shall construe to be a 'book'. It is noteworthy that study material in concise form, commonly known as 'pass book', 'one-week series' or alike are widely used by the students and the same have historically been treated as books and these were considered as such even by the tax authorities over the time, right from the days of the RST Act, 1954.



22. In the present case, the AO has noted that assessee has not furnished the exact information about the quantity or ratio of the books in the overall study material supplied to students or the affiliate entities. In the circumstances narrated so, we consider it appropriate to remand the matter back to the AO to determine the ratio or quantum of books in the study material. The assessee shall make available the standard study material to the AO who shall calculate the quantum of books and give deduction of the same from the turnover of the study material. Any printed material in bound book form known in common parlance as 'books' as described in para 21 above, shall be considered as 'books' and would remain exempted, but loose printed sheets or photocopies of any study material and other printed material etc. in non-binding form shall not be considered as books and would be taxable under the entry 97 or 104 of Schedule-IV, as the case may be.
23. The assessee has also supplied 'study kits' comprising uniform, work books, note sheets, practice sheets, I-Card, Pullover, Jersey and Bags etc., on which the AO has levied tax, interest and penalty. The appellate authority has held that the study bags supplied so were having a value less than Rs 200/- per piece, therefore, the same are exempted from tax. In this regard the relevant entry in Schedule-I, is under:-

The entry as existed upto 08.03.2011:

*"46. Chalk stick, Takhti and unbranded school bags upto Rs. 200/-"*

The entry as existed from 09.03.2011 onwards:

*"46. Chalk stick, Takhti and school bags upto Rs. 500/-"*

As the school bags as such have not been defined anywhere, therefore, it is held that the school bags used by the students in the coaching classes run by the assessee or its affiliates are exempted from tax if the value of the same did not exceed Rs. 200/- apiece during the period upto 08.03.2011, or Rs. 500/- afterwards. So, on this issue the appellate orders deserve to be confirmed.

Needless to say, the other items namely, note sheets, practice sheets, i-cards would be taxable under entry 97 of





the Schedule-IV. However, the 'workbooks used for educational purposes' as mentioned in entry 5 of the Schedule-I, shall remain exempted.

24. In the impugned appellate orders, the appellate authority has directed the AO to allow ITC credit to the assessee where the tax liability has been confirmed by him and the goods has been purchased within the State after paying VAT. These directions are well in accordance with the law, therefore, deserve to be confirmed.
25. The assessee has allegedly supplied uniforms to the coaching participants on which the AO has levied tax, interest and penalty, though the assessee has agitated before us that only fabric was supplied, and that stitching was done by the students themselves. On this issue the appellate authority has remanded back the matter with the instructions that if assessee has supplied only unstitched cloth then no tax is leviable. It was directed to ascertain from the books of accounts of the assessee if the goods in question were supplied purely in unstitched form or it were the stitched uniforms. Since, this is a matter of fact finding which is possible at the level of assessing officer only, therefore, the appellate authority has rightly remanded the matter back to AO for necessary enquiry and levy of tax if need be. However, we would like to add that the AO shall ascertain from books of accounts, if the assessee has incurred any expenses towards stitching of the dress material. If such expenses are found to have incurred by the assessee, then the turnover of uniform shall be taxable at the appropriate rate. In such an eventuality the AO may also consider to impose penalty u/s 61 of the Act, for deliberate intent of the assessee to evade tax.
26. The assessee has also supplied pullovers and jerseys to the coaching participants on which the AO has levied tax, interest and penalty. The appellate authority has remanded back the matter with the instructions that if the assessee has purchased these goods within the State after paying VAT, then the ITC credit should be allowed, so, on this count the appellate orders deserve to be confirmed. However, on the

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appellate directions to remand the matter to re-determine the GP as prevalent in the hosiery/woolen garments trade, are set aside for the reason mentioned in para 20 above.

27. The assessee has also challenged the penalties imposed by the AO u/s 58 and 73 of the Act and late fee imposed u/r 19A for late submission/non-submission of returns and audit reports, and the same have been upheld by the appellate authority. Since the assessee is liable to get registration, furnish quarterly as well as annual returns, to submit audit report as prescribed u/s 73 of the Act, and to pay the taxes, but has failed to comply with the regulatory requirements, therefore, the AO has rightly imposed these penalties/ late fee and the appellate authority has rightly confirmed the same. Thus, the appellate orders on this issue deserve to be upheld.
28. Resultantly, the issues as arisen from the impugned appellate orders are decided as under:-
- i) The issue of levy of tax on upfront royalty and fee component has already been decided by a co-ordinate bench of the Tax Board in **Appeal No. 182/2012/Kota, order dated 10.07.2018 (Career Point Infosystem Ltd Vs. CTO)** in favour of the assessee, therefore, the assessee's appeals on this count are accepted and those of the revenue are rejected;
  - ii) Sale of the prospectus and the application forms shall attract VAT, hence, the levy of tax and interest is upheld and the appellate orders are confirmed to this extent and the assessee's appeals stand rejected on this count;
  - iii) Printing material and stationery given to students would come under the category of sale and it would be taxable accordingly;
  - iv) For the study material supplied to the students the supply of books shall not attract any tax as the same is exempted from tax, however other items shall be taxable as 'stationary'. The AO has mentioned in his orders that assessee has not given details about the

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quantity of the books out of the total study material, therefore, we consider it proper to remit back the matter to AO to ascertain exact quantum of books out of the total study material and give deduction of that amount. The assessee shall submit the necessary record before the AO on the first date of hearing.

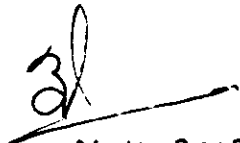
- v) For the uniforms as supplied to the students, so as to ascertain whether only fabrics or cloth was given and the stitching was done by the students themselves, or the stitched uniform/ readymade garments were supplied to the students, the matter is remanded to the AO to ascertain from books of accounts, if the assessee has incurred any expenses towards stitching of the dress material. If such expenses are found to have incurred by the assessee, then the turnover of uniform shall be taxable at the appropriate rate. In such an eventuality the AO may also consider to impose penalty u/s 61 of the Act, for deliberate intent of the assessee to evade tax.
- vi) For the Pullovers and Jerseys are held to be taxable in the hands of the assessee. So, the appellate orders are confirmed on the issue wherein levy of tax and interest has been upheld and the matter is remanded for allowing ITC. However, the directions to calculate the gross profit (GP) on the basis of the GP as prevalent in similar trade, is set aside;
- vii) In the assessment orders, the AO has though levied tax on several items but has not allowed any ITC on the goods purchased in the State after paying VAT. On this issue the appellate authority has rightly directed the AO to allow ITC to the assessee after verifying the VAT invoices. So, the impugned appellate orders are upheld on this issue.
- viii) On the gross profit calculation methodology, the appellate authority's instructions that GP be calculated on the basis of profit margins as prevalent in the relevant





trade and not as per assessee's overall profit margin, is not based on sound reasoning, hence set aside.

- ix) Penalty u/s 61 has rightly been set aside by the appellate authority because all the transactions were entered in the books of accounts of the assessee and the issues relate to classification of the goods or interpretation of the taxing entries. There has been a consistent view of the Hon'ble Rajasthan High Court as well as the Tax Board that in such cases penalty for evasion should not be resorted to, therefore, Revenue's appeals on this issue are disallowed.
- x) Penalties u/s 58 and 73 of the Act and late fee u/rule 19A has rightly been confirmed by the appellate authority, hence the appellate orders on this issue, are upheld .
- xi) For disposal of the issues as remanded by the appellate authority and confirmed in this order or any issue(s) remanded by this Bench, the assessee shall appear before the AO on 05.12.2018 and the AO shall pass necessary orders within three months from that day.
29. Accordingly, the appeals filed by the assessee as well as by the Revenue are partly accepted.
30. Order pronounced.

  
01-11-2018  
(OMKAR SINGH ASHIYA)  
Member

  
(K.L. Jain)  
Member