

**IN THE INCOME TAX APPELLATE TRIBUNAL
 "C" BENCH, MUMBAI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
 SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.6954/Mum/2019
 (A.Y. 2004-05)**

Indian Institute of Banking and Finance (formerly known as the Indian Institute of Bankers) Tower-I, Kohinoor City Commercial-II, 3 rd Floor, Kiroi Road, Kurla (West), Mumbai - 400070	Vs.	Commissioner of Income Tax (Exemptions) Room No. 617, Piramal Chambers Lalbaug, Mumbai - 400012
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAATT3309D		
Appellant	..	Respondent

Appellant by :	Mr. Nitesh Joshi
Respondent by :	Mr. Ashok Kumar Kardam

Date of Hearing	02.06.2022
Date of Pronouncement	.07.2022

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the assessee is directed against the order passed by the Id. CIT(A)-6, Mumbai, which in turn arises from the order passed by the A.O u/s 143(3) r.w.s 254 of the Act for A.Y.2004-05. The assessee has raised the following grounds before us:

“1. Validity of set aside assessment order:

That, on the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in:

- 1.1 *not considering the fact that learned Assessing Officer has not taken any concrete steps in following up with the CBDT/CCIT for disposal of appellant's application under section 10(23C)(vi) of the Act as per the directions issued by the Hon'ble tribunal in its order.*
- 1.2 *rejecting the contention of the appellant that order under section 143(3) r.w.s. 254 passed by learned AO is barred by limitation, on the ground that appellant has not produced any details, documents suggesting that the said order was not passed on 26 03 2014, by ignoring the fact that the courier tracking receipt showing that the order was posted to appellant only on 09.05.2014 was filed before CIT(A).*

2. *Re: Exemption under Section 11 of the Act:*

That, on the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in

- 2.1 *upholding the Assessing Officer's action in rejecting the appellant's claim for exemption under Section 11 by making general and unsubstantiated remarks that Hon'ble ITAT left open the said issue while setting aside the matter to the file of the AO and that no relief on merits had been granted*
- 2.2 *making factually incorrect statement that the appellant has not brought out any facts which were not considered by the CIT (A) while passing the order dated 30.03.2010, without appreciating the fact that the Bombay High Court has granted exemption u/s 11 for the subsequent year being AY 2008-09 vide order dated 28.03.2018.*
- 2.3 *not following the order passed by the Hon'ble Bombay High Court in appellant's own case for AY 2008-09 and Mumbai Tribunal for the AY 2009-10 wherein the High Court has concurred with the finding of the Mumbai Tribunal that the activities of the appellant are educational in nature. That the Ld. CIT(A) also failed to appreciate the fact that the order being passed by the jurisdictional High Court/Tribunal was binding on the Ld. CIT(A).*
- 2.4 *holding that the contentions and submissions of the appellant on merits cannot be reconsidered once again and therefore continuing the deal of exemption under section 4 in consistence with The finding of learned CITA) and learned A.O.*

Your appellants crave leave to add after, amend vary, emit or substitute the aforesaid grounds of anal or add a new ground or grounds of appeal at any time before or at the tons of heating of the appeal as they may be advised.”

2. The facts in brief is that assessment u/s 143(3) of the Act was completed on 11.12.2006 without allowing claim of exemption u/s 11 as well as 10(23C)(vi) of the Act. The ld. CIT(A) has dismissed the appeal of the assessee vide order dated 30.03.2010. The ITAT vide composite order for A.Y. 2001-02 to 2007-08 dated 16.05.2012 has restored the case to the file of the Assessing Officer for fresh adjudication after disposal of the application of the assessee for claim of exemption u/s 10(23C)(vi) by the concerned authorities and also left open the issue of assessee's claim for exemption u/s 11 of the Act.

3. However, the A.O has simply rejected the claim of the assessee stating that application for exemption u/s 10 (23C)(vi) is still pending before the CBDT.

4. Without any reasoning and finding the A.O has passed unreasonable order stating that exemption u/s 11 cannot be considered as the ld. CIT(A) has confirmed the disallowance earlier. The ld. CIT(A) has also passed non speaking order without giving relevant reasons holding that once the issue has been decided by his predecessor that cannot be revisited by him.

5. During the course of appellate proceedings before us, the ld. Counsel referred the decision of ITAT, dated 16.05.2012 in the case of the assessee itself vide which the matter was restored to the file of the A.O. for adjudication and A.O was directed to pursue the matter with the CBDT for early disposal of the pending application filed by the assessee u/s 10(23C) of the Act. The ld. Counsel has also referred the copy of the decision of the ITAT in the case of the assessee itself pertaining to A.Y. 2001-02 dated 08.12.2006 vide which the matter was

also restored to the file of the A.O. with the direction to frame the assessment only upon receiving the direction of the CBDT. The ld. Counsel also submitted that order passed u/s 143(3) r.w.s 254 was time barred and referred courier tracking that the order was posted to the assessee on 09.05.2014. The ld. Counsel also referred the page no. 121 of the paper book showing the detail of educational courses offered by the assessee and also referred the page no. 120 of the paper book pertaining to the detailed list of activities carried out by the assessee. The ld. Counsel vehemently contended that claim of deduction u/s 11 has already been adjudicated by the different benches of the ITAT, Mumbai in favour of the assessee. He also submitted that Hon'ble Jurisdictional Bombay High Court has also sustained such order as no question of law admitted. The detail of such cases are as under:

- (i) ITA No. 6103/Mum/1999 & ITA No. 401/Mum/2000 for A.Y. 1996-97, dated 12.02.2001.
- (ii) ITA No. 5725/ Mum/2012, dated 11.02.2015 for A.Y. 2008-09.
- (iii) ITA No. 674/Mum/2012, dated 07.05.2014 A.Y. 2009-10.
- (iv) ITA No. 3087/Mum/2013, dated 23.06.2016 A.Y. 2009-10

On the other hand, the ld. Departmental Representative stated on the submission of the assessee that order passed u/s 143(3) r.w.s 254 was time barred stated that nowhere on the tracking detail placed at page No. 164 of the paper book it is established that the same was pertained to the assessment order passed by the assessing officer and the assessee has never asked such details pertaining to service of notice from the assessing officer. Regarding claim of deduction u/s 10(23C)(vi). Ld. D.R submitted that assessee has not pursue the matter at the level of CBDT.

6. Heard both the side and perused the material on record. The assessee is a company incorporated u/s 25 of the Indian Company Act. The assessee company was established by the bank and financial institution in the country. The assessee's affairs are managed by its council, interalia comprising of representatives of major public and private banks, academicians and finance professional. The object of the assessee company are to impart education in the field of banking, training examination and professional development program. The detail of various courses offered by the assessee are as under:

INDIAN INSTITUTE OF BANKING AND FINANCE
COURSES OFFERED

A. Flagship Courses

- *JAIIB*
- *CAIIB*
- *CAIIB Electives*
- *Diploma in Banking and Finance (DB & F)*

B. Specialized Diploma Courses

- *Diploma in Banking Technology*
- *Diploma in Treasury, Investment and Risk Management (OLD SYLLABUS)*
- *Diploma in Treasury, Investment and Risk Management (REVISED SYLLABUS)*
- *International Banking and Finance*
- *Commodity Derivatives for Bankers*
- *Advanced Wealth Management (OLD SYLLABUS)*
- *Advanced Wealth Management (REVISED SYLLABUS)*
- *Diploma in Home Loan Advising*
- *Diploma in Retail Banking*
- *Urban Co-op Banking (OLD SYLLABUS)*
- *Urban Co-op Banking (REVISED SYLLABUS)*

C. Specialized Blended Certificate Courses

- *Certified Bank Trainer*
- *Certified Banking Compliance Professional*

- *Certified Credit Officer*
- *Certified Treasury Professionals*
- *Risk in Financial Services*
- *Certified accounting and audit professional*

D. Certificate Courses

- *MSME Finance for Bankers*
- *Certificate in International Trade Finance*
- *Certificate Examination in Information System Banker.*
- *Certificate Examination in AML/KYC*
- *Customer Services and Banking Codes and Standards*
- *Certificate Examination in IT Security*
- *Certificate Examination in Rural Banking Operations*
- *Certificate Examination in Prevention of Cyber Crimes and Fraud Management*
- *Certificate Examination in Foreign Exchange Facilities for Individuals*
- *Certificate Examination in Micro Finance*

The detail of activities of the assessee institute are also reproduced as under:

**INDIAN INSTITUTE OF BANKING & FINANCE
 DETAILED LIST OF INSTITUTE'S ACTIVITIES**

- “(i) *Design and develop appropriate syllabus in the banking and finance field;*
- (ii) *Prepare and publish specific courseware covering the syllabus for study by the candidates taking the course. These courseware is also available in the libraries of many banks and financial institutions as well as in academic institutions, viz, colleges/universities in the country for dissemination of knowledge in banking and finance areas;*
- (iii) *Publish work books to help the candidates understand the question and examination pattern;*
- (iv) *Put updates on the subjects where further developments have taken place after the preparation of courseware, on the website of the Institute to help the examinees to answer the questions that may be asked on the latest developments;*
- (v) *Offer structured tutorial classes for specified number of hours for each subject through accredited centres whose faculties are trained by the Institute by offering a Trainers Training Program;*
- (vi) *Offer contact classes, a few weeks before the examination, in major cities in the country to clear the doubts of the candidates in the subject before the examination;*

- (vii) Offer virtual classes by telecasting lectures by the subject matter specialists;
- (viii) Offer e-learning through portal. Also provide through portal the latest news in banking and finance, Financial Quotient and Learning Vault for self study;
- (ix) Offer daily e-newsletter and publish monthly newsletter (dispatch it to over 3 lakh members free of cost every month) and quarterly Journal on banking, finance and allied subjects. These publications are also available on the portal, free of cost;
- (x) Commission Research works and publish Research Reports.
- (xi) Maintain Library with collections of books on Banking, Laws Relating Banking, Money, Finance, Economics Accountancy, Management, Information Technology, etc.
- (xii) Offer courses through collaborations with (a) Indira Gandhi National Open University (IGNOU); (b) DOEACC under Ministry of Communications and Information Technology, Government of India; (c) Reserve Bank of India, and a few other Management Institutes.
- (xiii) Prepare Question Bank and conduct Certificate and Diploma Examinations and issue Certificates for Professional Qualifications In Banking and Finance to the successful candidates;
- (xiv) Conduct Seminars and organize conferences and lectures as part of the continuing professional development programmes.”

The assessee derived its income primarily from two sources i.e (i) Examination and educational services fees; (ii) individual and institutional subscription.

On the similar facts and identical issue in the case of the assessee itself the coordinate benches have decided the claim of deduction in favour of the assessee. The relevant part of decisions are reproduced as under:

- (i) ITAT, Mumbai vide ITA No. 6103/Mum/1999, dated 12.02.2001 for A.Y. 1996-97 held as under:

“We have heard the Ld. DR. in support of the appeal by the Department. We have also heard Mr. Mistry, the learned counsel for the assessee. We are unable to accept the contention of the s the assessee does not qualify for exemption u/s 10(22). Its objects, which we have enacted earlier, are clearly to carry on educational activities. Conducting examinations is only the logical culmination of the pursuit of education. We have gone through

the mass of material contained in the paper book filed by the assessee. The objects are implemented by conducting coaching classes and by supplying study material. There are also continuous educational programmes. The syllabus, to which our attention has been drawn on behalf of the assessee, contains subjects which are connected to the banking business and are similar to the syllabus for any professional course. Various subjects are taught-rural economics, banking law and practice, principles of economics, Indian Economic Problems and so on and so forth. The fees charged for tutorial classes are low, only Rs.50 per subject and appear to be heavily subsidised. The fees for correspondence course is Rs.150 per subject and is subsidized. The examination fees are also low (Rs.100 for six subjects) and also appear to be subsidized. It is no doubt true that there is formal school or college in the sense in which we understand modern schools or colleges- fixed hours of study, lunch recess principal, staff, playground, rules for discipline and the like- but that is no ground for holding that the activities pursued are not educational activities. There is no requirement in sec 30(22) that the assessor should run a school or college in the formal sense in order to qualify for the exemption. We are therefore satisfied, having regard to the objects and the activities pursued by the assessee, that it is an educational institution qualifying for exemption u/s 10(22)."

(ii) ITAT, Mumbai, vide ITA No. 4449/Mum/2001 for A.Y. 1997-98, dated 31.12.2004 held as under:

- “4. *However coming to the year under consideration, the order for the preceding year was followed by the Assessing Officer on the ground that Revenue is in further appeal before the Tribunal against the order of the CIT(Appeals) for A.Y 1996-97. The CIT(Appeals) allowed the claim of the assessee following the Tribunal order in the case of the assessee for the AY 1996-97. The Revenue is in appeal.*
5. *When the matter was taken up for hearing, the Id counsel for the assessee produced copy of the order of the Tribunal in assessee's own case for A.Y. 1996-97, dated 12.02.2001. Since the now stands covered in assessee's favour by the order of the Tribunal cited supra in assessee's own case, we dismiss the appeal of the Revenue.*
6. *Coming to the Cross Objection by the assessee, it is stated that the CIT(Appeals) erred in not deciding the additional grounds of appeal raised before him. The first objection is regarding the entitlement to benefit u/s. 11. Since the claim of the assessee u/s. 10(22) is upheld, it is not necessary to adjudicate on this objection. The next objection is regarding the levy of interest u/s, 234B of the Act. The question of levy of interest u/s 234B does not arise since the assessee is held to be entitled for exemption. The Cross Objection filed by the assessee is dismissed.”*

(iii) ITAT, Mumbai vide ITA No. 586/Mum/2022 for A.Y. 1998-99:

“5. We have heard the parties to the date and have gone through the material available on record. We find that the CIT(A) has allowed the claim of the assessee following the Tribunal order in the assessee's own case for AY 1996-97. In the said order, the Tribunal has deliberated upon the issue in detail and has allowed the assessee exemption under section 10(27) of the Act. It was also held that the other income is incidental to the main income and the income of dividend interest etc. is also covered u/s 10(22) Facts and circumstances being similar consistent with the view taken we do not see any justification to interfere with the impugned order on this issue. It is accordingly, upheld.”

(iv) ITAT, Mumbai vide ITA No. 5725/Mum/2012 for A.Y. 2008-09 dated 11.02.2015 held as under:

“21. Since the Institute does not undertake any other activities other than what is stated above. The activities as seen are educational in nature, which leaves no apprehensions. In our view the activities would squarely be covered by the definition of "charitable purpose", as defined in Section 2(15) of the Act, as these activities are meant for general public utility, i.e. whoever wants to advance his/her qualifications in the banking industry. From the above details and description, we are of the opinion that the assessee is a charitable organization and eligible for deduction u/s 11 of the Act.”

(v) The Hon'ble Bombay High Court vide Income Tax appeal No. 1368 of 2015, dated 28.03.2018 held as under:

“9. We find that this objection/grievance of the Revenue has been taken up for the first time across the bar. There is not such objection taken before the authorities by the Revenue. Besides, nothing has been shown to us why it should be considered as a coaching class. Further, we find that the impugned order of the Tribunal has only applied the decision of this Court in Samudra Institute of Maritime Studies Trust (supra) to conclude that the activities which are run by the respondent institute is an educational activity and not in the nature of running & Coaching Center or a Class. The Revenue is not able to point why it would not apply. We may also point out that the grant or refusal to grant exemption under Section 10(22) and/or (230) of the Act cannot govern the application of Section 11 of the Act. In any case, we are informed that no appeals in respect of Section 10(22) and/or (230)(vi) of the Act are pending disposal.”

(vi) ITAT, Mumbai vide ITA No. 3087/Mum/2013 for A.Y. 2009-10 dated 23.06.2016 held as under:

“20. On the issue of "educational institution", we are also benefitted by the decision of Hon'ble Gujarat High Court, besides the decisions referred to by us earlier in the order, to come to a fair conclusion that the assessee was an educational association. The decisions as referred earlier were not agitated against by the DR, which are City Montessori School vs UOI (supra), DIT(E) vs Ahmedabad Management Association (supra) and DIT vs Samudra Institute of Meritime Studies Trust (supra). Also placing reliance on the decision of Ahmedabad Rana Caste Association vs CIT, reported in 82 ITR 704, wherein it was held, "It is well-settled that an object beneficial to a section of the public is an object of general public utility. To serve a charitable purpose it is not necessary that the object should be to benefit the whole of mankind or all persons in a country or State. It is sufficient if the intention to benefit a section of the public as distinguished from a specified individual is present. The section of the community sought to be benefitted must be sufficiently definite and identifiable by some common quality of a public or impersonal nature". The AR submitted that since the assessee was giving benefit to persons perusing banking industry, is not only education but by not making any profit, it was charitable in nature.

21. Since the Institute does not undertake any other activities other than what is stated above. The activities as seen are educational in nature, which leaves no apprehensions. In our view the activities would squarely be covered by the definition of "charitable purpose", as defined in Section 2(15) of the Act, as these activities are meant for general public utility, i.e. whoever wants to advance his/her qualifications in the banking industry. From the above details and description, we are of the opinion that the assessee is a charitable organization and eligible for deduction u/s 11 of the Act.

5.1 The activities of the institute for the year under consideration are the same which has been shown at page 79 of the paper book. The courses run by the assessee are also the same which have been shown at page 80 to 84 of the paper book. Therefore the order for the A.Y. of 2008-09 has been passed under the similar circumstances hence the same is applicable in this assessment year also. No distinguishable material was produced before us to which it can be assumed that the activity of the institute has now being changed. The object and activity of the institute are quite similar with the assessment year of 2008-09 vide which the above mentioned order has been passed. We found no ground to deviate with the finding of the order of the Tribunal mentioned above. Therefore, in the said circumstances we are of the opinion that the assessee is charitable organization and eligible for deduction u/s.11&12 of the Act. Since the matter of controversy has been decided by the Tribunal in the above mentioned case therefore, by honoring the order passed by the Tribunal in

the assessee's own case for the A.Y. 2008-09, we decide this issue in favour of the assessee against the revenue.”

(vii) Hon’ble Bombay High Court vide Income Tax Appeal No. 1935 of 2017 dated 29.01.2020 held as under:

- “8. *The grievance of the Revenue before us is that the activity carried out by the respondent assessee is in the nature of running Coaching Classes or Center and therefore the benefit of Section 11 of the Act cannot be extended to the respondent.*
9. *We find that this objection/grievance of the Revenue has been taken up for the Best time across the bar. There is no such objection taken before the authorities by the Revenue. Besides, nothing has been shown to us why it should be considered as a coaching class. Further, we find that the impugned order of the Tribunal has only applied the decision of this Court in Samudra Institute of Maritime Studies Trust (supra) to conclude that the activities which are run by the respondent-institute is an educational activity and not in the nature of running a Coaching Center or a Class. The Revenue is not able to point why it would not apply. We may also point out that the grant or refusal to grant exemption under Section 10(22) and/or (23C) of the Act cannot govern the application of Section 11 of the Act. In any case, we are informed that no appeals in respect of Section 10(22) and/or (230)(vi) of the Act are pending disposal.*
10. *In the above view, the question as proposed does not give rise to any substantial question of law as the impugned order has only applied the decision of this Court in Samudra Institute of Maritime Studies Trust (supra) to the facts of the present case.*
11. *Accordingly, the Appeal is dismissed. No order as to costs.”*
6. *In the light of the above, no substantial question of law arises in the present appeal as well. The appeal is accordingly dismissed. However, there shall be no order as to cost.”*

After taking into consideration the aforesaid judicial pronouncements it is observed that facts and circumstances in this year are also similar to the fact and issue as discussed supra in the various finding of the ITAT,

Mumbai benches, wherein held that assessee is eligible for deduction u/s 11 & 12 of the Act in the case of the assessee for different years which was upheld by the Hon'ble jurisdictional Bombay High Court. The object and activity of the assessee are similar to the other assessment years as discussed supra in this order. It would not be appropriate for us to deviate from the view taken in earlier years without pointing out any material change in the facts and circumstances in subsequent years. Since, identical issue on similar fact was dealt with by the Hon'ble High Court and ITAT, Mumbai, in earlier years as supra in the assessee's own case following the principle of consistency we consider that assessee is eligible for deduction u/s 11 of the Act. Therefore, ground No. 2 to 2.4 of the appeal of the assessee are allowed.

7. Ground No. 1.1 regarding pending application of the assessee u/s 10(23C)(vi) with the CBDT:- Vide ITAT order 5909/Mum/2010 for A.Y. 2001-02 regarding pending application of the assessee u/s 10(23C) (vi) with the CBDT the A.O was directed to pursue the matter with the CBDT and the matter was set aside to the file of the A.O for fresh adjudication after disposal of the application of the assessee for claiming exemption u/s 10(23C)(vi) of the Act. However, it is observed that the A.O has not brought on record any detail of follow up action made with the CBDT for the disposal of unresolved application pending over a long time with the CBDT, therefore, we direct the A.O to immediately pursue the matter with the CBDT for the disposal of application u/s 10(23C)(vi) pending for long time. After taking the aforesaid action the A.O is directed to pass a speaking order after disposal of the application of the assessee for exemption u/s 10(23C)(vi) by the concerned authorities.

8. Regarding ground no. 1.2 of the assessee that order u/s 143(3) r.w.s 254 passed by the assessee was barred by limitation, on the basis of courier tracking report assessee claimed that order passed u/s 143(3) r.w.s 254 was posted on 09.05.2014. The ld. D.R submitted that copy of the tracking result placed at page no. 164 of the paper book did not show that same was pertained to the dispatch of order passed by the AO. Even the assessee has not called for any evidence from the A.O about the passing and servicing of the impugned order. In the light of the above facts we consider that for want of complete evidence it is not established that the order was passed u/s 143(3) r.w.s 254 was time barred. Therefore, this ground of appeal of the assessee stand dismissed.

9. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 15.07.2022

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated 15.07.2022

PS: Rohit

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,
सत्यापित प्रति //True Copy//

(Asst. Registrar)
ITAT, Mumbai