

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

BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.2910/Mum./2022
(Assessment Year : 2021-22)

Indian Institute of Banking and Finance
(Formerly known as The Indian Institute
of Bankers), Tower-1
Kohinoor City Commercial-II
2nd Floor, Off LBS Marg, Kurla (West)
Mumbai 400 070 PAN – AAATT3309D

..... Appellant

v/s

Commissioner of Income Tax (Exemp.)
Mumbai

.....Respondent

Assessee by : Shri Nitesh Joshi
Revenue by : Shri K.C. Selvamani

Date of Hearing – 14/02/2023

Date of Order – 27/02/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 18/09/2022 passed by the learned Commissioner of Income Tax (Exemptions) [*learned CIT(Exemptions)*] under section 12AB(1)(b) of the Income Tax Act, 1961 ("the Act").

2. In this appeal, the assessee has raised the following grounds: –

"The appellant objects to the order dated 18 September 2022 in Form no. 10AD passed by CIT(Exemptions), rejecting the appellant's application for registration

under section 12AB of the Act made under section code 12A(1)(ac)(iv) of the Act, on the following grounds which are without prejudice

"1.1 The Learned CIT (Exemptions) erred in rejecting the appellant's application for registration under section 12AB of the Act.

1.2 The Learned CIT (Exemptions) failed to appreciate that since the appellant had received provisional approval under section 10(23C)(vi) in Form 10AC, the question of providing Form 10AC for registration under section 12AB did not arise.

1.3 The learned CIT (Exemptions) erred in holding that Institute has not filed form 10A for grant of registration under section 12AB of the Act.

1:4 The learned CIT(Exemptions) erred in considering the application for registration under section 12AB made in Form 10AB as invalid.

1.5 The learned CIT (Exemptions) erred in issuing the letter dated 22 September 2022 after the date of the Order under appeal, rejecting the application in Form no. 20AB by holding that the proviso to section 11(7) is not applicable when the trust or Institution is provisionally approved.

Your appellants crave leave to add, alter, amend, vary, omit or substitute the aforesaid grounds of appeal or add a new ground or grounds of appeal at any time before or at the time of hearing of the appeal as they may be advised."

3. The only grievance of the assessee is against rejection of its application filed under section 12 A(1)(ac)(iv) of the Act.

4. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case as emanating from the record are that the assessee was registered under section 12A of the Act with effect from 08/11/1974. The registration granted to the assessee under section 12A of the Act was withdrawn vide order dated 28/12/2011 passed by the DIT (Exemptions) in view of the applicability of the proviso to section 2(15) of the Act. In appeal, the Tribunal vide its order dated 07/05/2014 decided the appeal in favour of the assessee, restoring the registration under section 12A of the Act. In Revenue's appeal, the Hon'ble jurisdictional High Court vide order dated 28/03/2018 confirmed the order passed by the Tribunal holding

that the question proposed did not give rise to any substantial question of law as the Tribunal's order had only applied the decision of the Hon'ble Bombay High Court in the case of DIT vs Samundra Institute of Maritime Studies Trust, (2014) 49 Taxmann.com 510 (Bombay). In the present case, there is no dispute that the registration granted to the assessee under section 12A of the Act is still continuing.

5. For its alternative claim of exemption under section 10(23C)(vi) of the Act, the assessee filed an application in accordance with 1st proviso to the said section seeking approval from the assessment year 2020-21. As per the amended provisions for registration/approval for charitable institutions effective from 01/04/2021, since the application for approval under section 10(23C)(vi) was pending as on 31/03/2021, the assessee received a provisional approval under section 10(23C)(vi) in Form 10AC on 09/07/2021 effective for assessment years 2021-22 to 2023-24. Upto the assessment year 2020-21, the assessee claimed exemption under section 11 in its income tax returns on the basis of its registration under section 12A of the Act. As the assessee was in receipt of provisional approval under section 10(23C)(vi) on 09/07/2021, the assessee filed an application under section 12A(1)(ac)(iv) of the Act, in accordance with 2nd proviso to section 11(7), seeking revival of its registration under section 12A of the Act. The learned CIT(Exemptions) vide impugned order rejected the application filed by the assessee on the basis that along with Form 10AB, the assessee has not filed provisional registration/provisional approval in Form 10AC. It was also held that since the assessee has applied and received provisional approval under section 10(23C)

in Form 10AC dated 09/07/2021 application directly in Form 10AB for registration under section 12AB is not valid. Vide another order dated 22/09/2022 the learned CIT(Exemptions) held that the provisional approval granted under section 10(23C) is not equivalent to the grant of registration under section 10(23C) for the purpose of section 11(7) of the Act and the language of section 11(7) does not mention the term 'provisional registration'.

6. Before proceeding further, it is relevant to analyse the provisions of section 11(7) of the Act, which reads as under:-

*"Income from property held for charitable or religious purposes.
11(1) to (6)*

(7) Where a trust or an institution has been granted registration [under section 12AA or section 12AB] or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)] and the said registration is in force for any previous year, then, nothing contained in section 10 [other than [clause (1), clause (23C) and clause (46)] thereof] shall operate to exclude any income derived from the property held under trust from the total income of the person in receipt thereof for that previous year:

[Provided that such registration shall become inoperative from the date on which the trust or institution is approved under clause (23C) of section 10 or is notified under clause (46) of the said section, as the case may be, or the date on which this proviso has come into force, whichever is later:

Provided further that the trust or institution, whose registration has become inoperative under the first proviso, may apply to get its registration operative [under section 12AA] [or section 12AB] subject to the condition that on doing so, the approval under clause (23C) of section 10 or notification under clause (46) of the said section, as the case may be, to such trust or institution shall cease to have any effect from the date on which the said registration becomes operative and thereafter, it shall not be entitled to exemption under the respective clauses.]

[Explanation.—For the purposes of this section, any sum payable by any trust or institution shall be considered as application of income in the previous year in which such sum is actually paid by it (irrespective of the previous year in which the liability to pay such sum was incurred by the trust or institution according to the method of accounting regularly employed by it):

Provided that where during any previous year, any sum has been claimed to have been applied by the trust or institution, such sum shall not be allowed as application in any subsequent previous year.]

7. Thus, as per 1st proviso to section 11(7) of the Act, where a trust has been granted registration, inter-alia, under section 12A such registration shall become inoperative from the date on which the trust is approved under section 10(23C) of the Act. As per 2nd proviso to aforesaid section, the trust whose registration has become inoperative may apply to get its registration operative subject to the condition that in doing so the approval granted under section 10(23C) of the Act shall cease to have any effect. As noted above, in the present case, the learned CIT(Exemptions) rejected the application filed by the assessee under section 12A(1)(ac)(iv) of the Act in terms of 2nd proviso to section 11(7) of the Act, inter-alia, on the basis that the registration granted to the assessee under section 10(23C) was provisional in nature and therefore, same is not identical to the approval granted under section 10(23C) for the purpose of section 11(7) of the Act. Without going into the correctness of the aforesaid view, even if the aforesaid findings of the learned CIT(Exemptions) are accepted, the same leads to the conclusion that the 1st proviso to section 11(7) of the Act is not even triggered in the facts of the present case, as the learned CIT(Exemptions) has rejected the submission of the assessee to treat provisional approval under section 10(23C) identical to approval under section 10(23C) for the purpose of section 11(7) of the Act. Therefore, in view of the above, once the 1st proviso to section 11(7) is not triggered there is no question of the registration granted under section 12A of the Act becoming inoperative. Since there is no dispute regarding the fact that the assessee is

still holding registration under section 12A of the Act, therefore, the issue of the validity of rejection of assessee's application under section 12A(1)(ac)(iv) of the Act becomes solely academic in the facts of the present case. Therefore, in view of the above, the grounds raised by the assessee are rendered academic in nature and therefore, are dismissed as infructuous.

8. During the hearing, it was submitted that the assessee had filed an application in Form 10A as per section 12A(1)(ac)(i) of the Act on 23/11/2022, and consequent thereto, registration in Form 10AC has been granted on 01/12/2022, as per section 12AB(1)(a) of the Act, for the period being assessment years 2022-23 to 2026-27. We may however clarify that our findings in the present appeal will not and cannot have any consequence, in case, the assessee at any time is found to be at fault for violation of any condition specified under the Act in respect of registration granted to it, in which case the Revenue can take appropriate action as per law.

9. In the result, the appeal by the assessee is dismissed.
Order pronounced in the open Court on 27/02/2023

Sd/-
M. BALAGANESH
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 27/02/2023

Copy of the order forwarded to:

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The CIT(A);*
- (4) The CIT, Mumbai City concerned;*
- (5) The DR, ITAT, Mumbai;*
- (6) Guard file.*

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Assistant Registrar
ITAT, Mumbai