

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

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.874/Mum./2021
(Assessment Year : 2016-17)

ITA no.7447/Mum./2018
(Assessment Year : 2017-18)

ITA no.6955/Mum./2019
(Assessment Year : 2018-19)

ITA no.875/Mum./2021
(Assessment Year : 2019-20)

The Indian Institute Of Banking & Finance
(Formerly known as The Indian Institute of
Bankers), Tower-I, Kohinoor City
Commercial-II, 3rd Floor, Kirod Road
Kurla (West), Mumbai 400 070
PAN - AAATT3309D

..... Appellant

v/s

Commissioner of Income Tax (Exemptions)
Mumbai

..... Respondent

Assessee by : Shri Nitesh Joshi,
Ms. Mrunmayee Kajrekar
Revenue by : Shri Purushottam Tripuri,
Ms. Richa Gulati

Date of Hearing - 24/03/2023

Date of Order - 17/05/2023

ORDER

PER BENCH

The present batch of 4 appeals has been filed by the assessee challenging the separate impugned orders passed by the learned Commissioner of Income Tax (Exemptions), Mumbai, [*learned CIT(E)*], rejecting the applications filed by the assessee seeking exemption under

section 10(23C)(vi) of the Income Tax Act, 1961 ("*the Act*"), for the assessment year 2016-17, 2017-18, 2018-19 and 2019-20.

2. Since in these appeals, the common grievance of the assessee is against denial of exemption under section 10(23C)(vi) of the Act, therefore, as a matter of convenience, these appeals were heard together and are being disposed off by way of this consolidated order. With the consent of the parties, the assessee's appeal for the assessment year 2017-18 is taken up as a lead case and the decision rendered therein shall apply *mutatis mutandis* to other appeals.

3. For reference, the grounds raised by the assessee in its appeal for the assessment year 2017-18 are reproduced as under:-

"Based on the facts and circumstances of the case, Indian Institute of Banking & Finance (hereinafter referred to as the 'Appellant') craves leave to prefer an appeal against the order passed by the learned Commissioner of Income-tax (Exemptions), Mumbai [hereinafter referred to as the learned CIT]" under section 10(23C)(v) of the Income-tax Act, 1961 (hereinafter referred to as the 'Act'), on the following grounds, each of which are without prejudice to one another.

Non-grant of exemption under Section 10(23C)(vi):

On the facts and circumstances of the case and in law, the learned CIT, has erred in:

1. holding that the Appellant does not exist solely for educational purpose and is involved in commercial activities within the meaning of section 10(23C) (vi) of the Act;

2. not taking into consideration the order passed by the Hon'ble Income Tax Appellate Tribunal in Appellant's own case for the Assessment Year 2008-2009 which has been confirmed by the Bombay High Court and for the Assessment Year 2009-10 holding inter-alia that the activities conducted by the Appellant are educational in nature and activities would squarely be covered by the definition of "Charitable purpose" as defined in section 2(15) of the Act.

3. not appreciating that the Appellant is carrying out the same educational activities for over past about 90 years and that there is no change in the objects of the Petitioner since inception and that similar exemption has been granted to the Appellant in the past under the erstwhile section 10(22);

4. not appreciating that the sole purpose of existence of the Appellant is imparting education and training bank officers and personnel and not to earn profit and these courses have been recognized and accepted by institutions like Reserve Bank of India which is the Apex Bank of the Country.

5. not appreciating that the activities such as counselling and consulting, publication of books are carried out by the Appellant only as incidental activities, that too in the field of banking for the purpose of guiding various other organizations with regards to banking education and training.

6. not appreciating that there is no prohibition under the section 10(23C) (vi) of the Act against earning surplus from the activities of an assessee provided the purpose of existence thereof is not for profit and such surplus is ploughed back to advance the educational objects of the Appellant.

7. not appreciating the fact that the Members were not entitled to any surplus made by the Appellant and that Appellant's bye-laws prohibited any distribution of dividends and repayment of any surplus to its members and that such distribution was even not possible in the case of winding-up;

8. holding that the proviso to section 2(15) is applicable to the instant case even though the activities have been considered to be educational in nature for the earlier years by the Hon'ble ITAT and Bombay High Court.

9. holding that formal education presupposes approval by educational bodies of Central/ State Government and since IIBF does not have any approval from AICTE, the activities cannot be considered as educational in nature.

The Appellant craves, to consider each of the above grounds of appeal without prejudice to each other and craves leave to add, alter, delete or modify all or any of the above grounds of appeal."

4. The brief facts of the case as emanating from the record are: The assessee is an Indian company incorporated under section 26 of the Indian Companies Act, 1913 on 30/04/1928. Initially, the company was an association called the Indian Institute of Bankers and subsequently, the assessee's name was changed to the Indian Institute of Banking and Finance

from 28/08/2003. The assessee claiming itself to be an educational institution existing solely for educational purposes and not for the purpose of profit filed an application dated 24/10/2017 seeking exemption under section 10(23C)(vi) of the Act for the assessment year 2017-18. Upon perusal of the aforesaid application and the details filed by the assessee, it was observed that the object of the assessee prima facie shows that the entire work of the institution is related to developing professionally qualified and competent bankers and financial professionals, to encourage innovation and creativity among finance professionals. Thus, no general public is being served with the services of the institution and the assessee is not imparting any formal education or normal schooling which shows that it does not exist solely for education. It was also observed that every year there is a huge surplus which indicates that the activities are conducted with the motive of profit. Accordingly, vide show cause notice the learned CIT(E) asked the assessee to show cause as to how the assessee is eligible for registration under section 10(23C)(vi) of the Act. In response thereto, the assessee filed its detailed submissions. However, the learned CIT(E) vide impugned order did not agree with the submissions of the assessee and rejected the application filed by the assessee seeking exemption under section 10(23C)(vi) of the Act. The learned CIT(E) held that since the assessee is conducting very substantial non-educational activities such as collecting fees for examination, earning Royalty from publications, providing services to members, and earning hefty fees for membership, it certainly cannot be said to be existing solely for education. The learned CIT(E) further held that the assessee is carrying out the activities with a clear objective of earning profit year after year and generating surplus and by its activities, it

certainly cannot be said that it solely exists for education and not for profit, which is the spirit of section 10(23C)(vi) of the Act. Being aggrieved, the assessee is in appeal before us.

5. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that the main object of the assessee is to facilitate the study of the theory and practice of banking and finance and hold examinations with a view to provide the certificate to successful candidates upon completion of the courses. The learned AR further submitted that the other objects are also in support of the said object relating to education. By referring to the litigation history of the assessee, the learned AR submitted that up to the assessment year 1995-96 there was no dispute regarding the eligibility of erstwhile section 10(22) of the Act. It was further submitted that in the assessment year 1996-97, the assessee's claim under section 10(22) of the Act was denied for the first time by the Revenue. However, the Tribunal after referring to the objects of the assessee granted exemption under section 10(22) of the Act. The said order was followed in assessment years 1997-98 and 1998-99. The learned AR submitted that the objects of the assessee continued to remain the same without any change. For assessment years 1999-2000 to 2007-08, assessee's applications for grant of exemption under section 10(23C)(vi) of the Act are still pending disposal. For the assessment years 2008-09 to 2014-15, the assessee's claim for grant of approval was rejected by the prescribed authority which orders have been the subject matter of challenge before the Hon'ble jurisdictional High Court by way of the writ petition, wherein the Hon'ble Court has admitted the petitions and same are pending for final disposal. For the

assessment year 2016-17, the coordinate bench of the Tribunal restored the assessee's application for *de novo* consideration, which has again been rejected by the learned CIT(E) and the assessee is in appeal before the Tribunal in the present batch. The learned AR by referring to the list of activities conducted by the assessee and the details of courses forming part of the paper book submitted that the assessee conceptualises the courses which may be relevant for the field of banking and finance and it also designs and develops the syllabus of such courses including the courseware. The assessee regularly updates the courseware based on the development in the field of economy and changes in statutory positions, etc. Further, the assessee conducts tutorial classes in association with various accredited institutes, provides contact classes, virtual classes, and e-learning facilities, conducts and organises seminars and conferences on the relevant subjects to enable continuous professional development. The learned AR submitted that all the courses are available for anyone interested in pursuing them except a few courses wherein only members of the assessee are entitled to enrollment. The learned AR by referring to the annual report of the assessee highlighted the various activities such as examination, e-learning, seminars and lectures, training, research, etc. conducted by the assessee. The learned AR also referred to the RBI's letter dated 24/04/2008 in support of the submission that the Reserve Bank of India had requested the Indian Banks' Association to formulate a certificate course for Direct Recovery Agents in consultation with the assessee. Further, once the course is introduced by the assessee, the RBI directed the banks to ensure that over a period of one year, all their Recovery Agents undergo the above training and obtain the certificate from the

assessee. The learned AR submitted that the assessee is using funds for the object of the assessee and has constructed education centers in New Delhi, Mumbai, Kolkata, and Chennai. The learned AR submitted that earlier the course material was published by the assessee but thereafter the assessee gave the same to the publishers, namely, Taxmann and MacMillan, and is earning royalty. The learned AR submitted that merely because the assessee is not conducting regular classes like a school or college the same will not disentitle the assessee from claiming exemption under section 10(23C)(vi) of the Act. As regards the life membership fees charged by the assessee, the learned AR submitted that the member can pursue any of its courses as well as receive newsletters and participate in continuing professional development programs for his whole life. It was further submitted that the assessee charges a one-time fee of Rs.1500 which is initially taken to the balance sheet and then annually proportionately credited to the income and expenditure account over a period of 35 years. Thus, it was submitted that the assessee was existing solely for the purpose of education and therefore it is entitled to exemption under section 10(23C)(vi) of the Act.

6. On the contrary, the learned Departmental Representative ("*learned DR*") by vehemently relying upon the impugned order submitted that the RBI never approved the assessee and only the committee of RBI recommended that one of the courses may be offered by the assessee. The learned DR submitted that the assessee is only involved in the capacity building of existing employees of the bank and its membership is only for skill upgradation. By referring to the compilation, the learned DR submitted that out of 50 courses,

the e-learning facility is only available in 13 courses. Further, the main source of income of the assessee is from examination, and even for more than one attempts the assessee is charging the examination fees. By referring to para 7.2 of the impugned order, the learned DR submitted that the assessee has earned a huge surplus in comparison to the preceding year. Thus, it was submitted that the assessee was only engaged in conducting examinations and cannot be said to be existing solely for the purpose of education rather it was existing for the purpose of profit.

7. We have considered the rival submissions and perused the material available on record as well as the written submissions filed by both parties. As per the assessee, it was incorporated with the basic objective and purpose of educating bank officers and other people working in the banking sector to improve their knowledge of banking practices and making them aware and efficient in the latest banking trends and functions. As per the assessee, since its activities are solely for the purpose of education, therefore it is entitled to exemption under section 10(23C)(vi) of the Act. In order to decide the claim of the assessee, it is relevant to analyse the provisions of section 10(23C)(vi) of the Act, which reads as under:-

"(vi) any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiid) and which may be approved by the prescribed authority;"

8. Thus, for the applicability of the aforesaid provision following criteria are to be fulfilled:- (i) the person claiming the exemption must be a university or other educational institution; (ii) such university or education institution must

exist solely for educational purposes and not for the purpose of profit; and (iii) education institution must be approved by the prescribed authority. As per the assessee, in the assessment year 1996-97, for the first time, assessee's claim for exemption under section 10(22) of the Act was denied on the ground that it was not an educational institution as its primary activity was that of conducting the examination. In this regard, reference was made to the decision of the coordinate bench of the Tribunal in assessee's own case in *The Indian Institute of Bankers vs DDIT*, in ITAs No. 6103/Mum./1999 and 401/Mum./2000, for the assessment year 1996-97. From the perusal of the said decision dated 12/02/2001, we find that the coordinate bench of the Tribunal held that the object and activities pursued by the assessee qualify for exemption under section 10(22) of the Act. The coordinate bench also referred to the decision of the Hon'ble Supreme Court in *Sole Trustee Lok Shikshana Trust vs CIT*, [1975] 101 ITR 234, which has also been relied upon by the learned CIT(E) in the present case, and held there is nothing in the judgment to suggest that the court meant to convey that educational activities could be pursued only in a formal atmosphere such as a school or college in the sense in which we know them. The coordinate bench after referring to the decision of the Hon'ble Supreme Court in *ADIT vs Surat Art Silk Cloth Manufacturers' Association* [1978] 121 ITR 1 (SC) held that the law does not place an embargo on profit-making or surplus resulting, and what is prohibited is profiteering or the profit motive. The coordinate bench further held that the assessee has collected subscriptions from its members including institutional members (banks) which are substantial, which in part have gone to subsidise the expenses of conducting tutorial classes and examinations and the supply of study material.

Accordingly, the coordinate bench directed the Assessing Officer to grant exemption to the assessee under section 10(22) of the Act.

9. We find that before its omission by Finance (No.2) Act, 1998, w.e.f. 01/04/1999, section 10(22) read as under:-

"any income of a university or other educational institution, existing solely for educational purposes and not for purposes of profit"

10. Thus, it is evident that the first 2 conditions in section 10(22) and section 10(23C)(vi) of the Act, i.e., the person claiming exemption should be a university or other educational institution, and they must exist solely for educational purposes and not for the purposes of profit, are identical in both the sections. We find that recently in *New Noble Educational Society vs Chief Commissioner of Income Tax*, [2022] 448 ITR 594 (SC), the Hon'ble Supreme Court while examining section 10(23C)(vi) of the Act considered all the previous decisions and came to the conclusion that a trust, university or other institution imparting education should necessarily have all its objects aimed at imparting or facilitating education, for the purpose of claiming the exemption under the aforesaid section. The Hon'ble Supreme Court further in para 51 held that the expression "*solely*" is therefore important. The Hon'ble Supreme Court also held that the "*predominant object*" test laid down in *Surat Art Silk Cloth Manufacturers' Association* (supra) was in the context of charitable organisations set up for the advancement of objects of general public utility and the same was wrongly adopted in subsequent decisions in *American Hotel and Lodging Association vs CBDT*, [2008] 301 ITR 86 (SC) and *Queen's Educational Society v. CIT* [2015] 372 ITR 699 (SC). Accordingly,

the Hon'ble Supreme Court overruled the decisions rendered in American Hotel and Lodging Association (supra) and Queen's Educational Society (supra). We find that the Hon'ble Supreme Court in New Noble Educational Society (supra) further upheld that surplus generated in the course of providing education or education activities is not a bar in claiming approval under section 10(23C)(vi) of the Act.

11. Though the decision of the coordinate bench of the Tribunal in assessee's own case for the assessment year 1996-97 did not apply the "*predominant purpose*" test, however, since the same was rendered prior to the Hon'ble Supreme Court's decision in New Noble Educational Society (supra), wherein the Hon'ble Supreme Court emphasised on the meaning of the term "*solely*" in section 10(23C)(vi) of the Act, it becomes necessary to examine the objects of the assessee in light of the aforesaid decision of the Hon'ble Supreme Court. In any case, the Hon'ble Supreme Court in Aditanar Educational Institution vs ACIT, [1997] 224 ITR 310 (SC) held that availability of exemption should be evaluated each year to find out whether the institution existed during the relevant year solely for educational purposes and not for purposes of profit.

12. We find that the following objectives of the assessee are enumerated on page 107 of the paper book:-

"3(c)(i) To facilitate the study of the theory and practice of banking and finance and for that purpose to institute a scheme of certificates, scholarships, and prizes.

(ii) To develop professionally qualified and competent bankers and finance professionals primarily through a process of education, training, examination, consultancy, counseling and continuing professional development programs.

(iii) To test and certify attainment of competence in the profession of banking and finance.

(iv) To collect, analyse and provide information needed by professionals in banking and finance.

(v) To promote continuous professional development.

(vi) To promote and undertake research relating to operations, products, instruments, process etc. in banking and finance.

(vii) To encourage innovation and creativity among finance professionals so that they could face competition and succeed.

(viii) To promote information on banking and finance and kindred subjects by lectures, discussions, books, correspondence with public bodies and individuals, or otherwise.

(ix) To collect and circulate statistics, and other information, relating to the business of banking and finance."

13. From the perusal of the above objectives of the assessee, it is evident that some of the objectives pertain to the study of theory and practice of banking and finance; developing the professional qualified and competent bankers and finance professionals through a process of education, training, examination; testing and certifying attainment of competence in the profession of banking and finance; lectures, discussions to promote information on banking and finance. While other deals with the collection, analysis, and provision of information needed by professionals in banking and finance; encouraging innovation and creativity among finance professionals so that they could face competition and succeed. Thus, the first leg of assessee's objectives may seem to be for the purpose of education, while the other objectives appear to be to promote professional development, sharing information with such professionals, and sharing statistics relating to the business of banking and finance. In the list of activities of the assessee, on page 3 of the paper book, it is mentioned that the assessee provides a daily e-

newsletter, publishes monthly newsletter and quarterly journal on banking, finance, and allied subjects, to its over 3 lakh members free of cost every month. It is also mentioned that these publications are also available on the portal free of cost. The fact that the assessee charges lifetime membership fees of Rs.1500 from its members cannot thus be said to be only to entitle the members to certain courses for which non-members are not eligible to be enrolled and the same is also for sharing the other information periodically by the assessee. The fact that these publications are also available on the portal free of cost raises a question about sharing the same information specifically with its members on a daily/monthly/quarterly basis. Even by following the accounting treatment of initially taking the membership fees to the balance sheet and then annually proportionately crediting to the income and expenditure account over a period of 35 years, the assessee in the year ending 31/03/2017 has still declared lifetime membership fees of Rs.4,85,04,165 in its profit and loss account as compared to Rs.2,92,53,302 in the preceding year. Further, it is undisputed that the membership is available only to employees of the bank and financial institutions. Therefore, from the above, we are of the considered opinion that all the objects of the assessee are not for the purpose of education but the same also include the dissemination of information helpful to professionals in the banking and finance industry for their professional development. Thus, from the above, it is evident that all the objects are not aimed at or related to imparting education or in relation to educational activities. In this regard, the observation of the Hon'ble Supreme Court in Sole Trustee Lok Shikshana Trust (supra) becomes relevant wherein it was held that the word "education" has not been used in that wide and

extended sense, according to which every acquisition of further knowledge constitutes education.

14. From the perusal of financials of the assessee, forming part of the paper book, we find that during the year assessee earned a Royalty income of Rs.2,04,98,322 on publications. As per the assessee, upto the financial year 2003-04, the assessee was itself publishing its courseware which had to be then transported to the candidates pursuing its courses, who were spread over the whole country. From the financial year 2004-05, the assessee provided copyright in the course material to certain publishing houses (namely, Taxmann Publications Pvt. Ltd. and Macmillan India Ltd) for the purpose of publishing the same. These books would then be made available by the publishers across the country, in respect of which the assessee received Royalty on books. During the hearing, it was submitted that the reason for providing copyright in the course material to the publishing house is to provide easy access to the books to everyone. We, however, do not agree with such a basis for providing copyright to the publishing house. As per assessee's own submission, the candidates, who pursue its courses, are spread over the whole country. If that be the case, the earlier mode of publishing its own courseware and then transporting it to the candidate's doorstep ensures the availability of the course material even to the candidate at a remote place in India. The provision of study material through posts to the students by the Institutes, like ICAI and ICSI, is not unknown. On the other hand, books published by a publishing house have to be purchased from the bookstore, without any guarantee of their availability. It is pertinent to note that in the assessment

year 1996-97, when the coordinate bench of the Tribunal decided the claim of exemption under section 10(22) in its favour, the assessee was, inter-alia, supplying study material in lieu of the fees charged. Thus, it is evident that even though the assessee has claimed that its objects have remained unchanged, however, the assessee has modified the way of its functioning in comparison to previous years. Thus, earning Royalty from publishing houses cannot be equated with the sale of textbooks, which was considered an educational activity in the case of New Noble Educational Society (supra). Further, though the books are recommended for a particular certificate course, there is no restriction on their purchase from the bookstore by a person, who is not pursuing the said certificate course and is only interested in the subject. It cannot be denied that payment of Royalty generally depends on the amount of sale. Therefore, we are of the considered opinion that the decision of the assessee, to provide copyright in the course material to the publishing houses and earn royalty from them, is to earn more profit and is not solely for the purpose of education.

15. Therefore, from all the above findings, it is evident that even if the objects of the assessee, as claimed, have remained the same since the preceding years, the assessee has modified the way of its functioning and thus cannot be said to be existing "*solely*" for the purpose of education. It is pertinent to note that in section 10(23C)(vi) of the Act, before the term "*solely for educational purposes and not for purposes of profit*", the word "*existing*" is used. Therefore, even if for any year the taxpayer is found to be existing solely for educational purposes and not for purposes of profit, the assessee still has

to continuously satisfy this pivotal condition each and every year. Section 10(23C)(vi) of the Act is not worded in the same manner as other provisions pertaining to deduction such as sections 10A, 10B, 80IB, etc., which provides for the satisfaction of formation conditions as well as continuing conditions, and the fulfilment of formation conditions are to be tested only in the initial year. We find that other decisions relied upon by the learned AR rendered in assessee's own case pertains to either exemption under section 11 or registration under section 12A, wherein the provisions are not as stringent as section 10(23C)(vi) of the Act. Before concluding, it is also relevant to note the following findings of the Hon'ble Supreme Court rendered in New Noble Educational Society (supra) in para-76(f) of the judgment:-

"f. While considering applications for approval under section 10(23C), the Commissioner or the concerned authority as the case may be under the second proviso is not bound to examine only the objects of the institution. To ascertain the genuineness of the institution and the manner of its functioning, the Commissioner or other authority is free to call for the audited accounts or other such documents for recording satisfaction where the society, trust or institution genuinely seeks to achieve the objects which it professes. The observations made in American Hotel (supra) suggest that the Commissioner could not call for the records and that the examination of such accounts would be at the stage of assessment. Whilst that reasoning undoubtedly applies to newly set up charities, trusts etc. the proviso under section 10(23C) is not confined to newly set up trusts - it also applies to existing ones. The Commissioner or other authority is not in any manner constrained from examining accounts and other related documents to see the pattern of income and expenditure."

(emphasis supplied)

16. Since the assessee has been found to be not 'existing' solely for the purposes of education on the basis of the above findings, therefore, the other aspects raised in the impugned order become academic. Accordingly, the denial of exemption under section 10(23C)(vi) of the Act is upheld. As a result,

the appeal filed by the assessee for the assessment year 2017-18 on the impugned issue is dismissed.

17. As the facts for other assessment years are agreed by the parties to be similar to the assessment year 2017-18, therefore, our aforesaid findings/conclusion shall apply *mutatis mutandis* to other appeals of the assessee before us. Accordingly, the other appeals filed by the assessee on the impugned issue are also dismissed.

18. In the result, all the appeals by the assessee are dismissed.

Order pronounced in the open Court on 17/05/2023

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 17/05/2023

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai