

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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI NARENDER KUMAR CHOUDHRY, JM

ITA No. 757/Mum/2023
(Assessment Year: 2018-19)

National Institute of Bank
Management,
S-14, Pemino, Altamount
Road,
Mumbai-400 026

(Appellant)

PAN No. AAATNP0040P

Assessing Officer,
National Faceless
Vs. Assessment Centre, Delhi

(Respondent)

ITA No. 1192/Mum/2023
(Assessment Year: 2018-19)

Dy. Commissioner of
Income Tax, (Exemption)
2(1)

Room No.608,
6th floor
MTNL Building,
Cumballa Hill,
Mumbai-400 026

(Appellant)

National Institute of Bank
Management,
S-14, Pemino, Altamount
Road,
Mumbai-400 026

(Respondent)

Assessee by

: Shri S. Ananthan,
Mrs. Lalitha
Rameshwaram, ARs



Revenue by : Shri Suresh Gaikwad, DR

Date of hearing: 06.07.2023

Date of

pronouncement : 26.07.2023

ORDER

PER PRASHANT MAHARISHI, AM:

01. ITA No.757/Mum/2023 filed by the National Institute of Banking Management [Assessee] and ITA No.1192/Mum/2023 is filed by the Dy. Commissioner of Income-tax (Exemption) 2(1), Mumbai, [the learned Assessing Officer] for A.Y. 2018-19 against the appellate order passed by the National Faceless Appeal Centre, Delhi [the learned CIT (A)] dated 15th February, 2023. By this appellate order, the appeal filed by the assessee against the assessment order passed under Section 143(3) read with section 144B of the Act passed by the National Faceless Appellate Centre, Delhi was partly allowed. Therefore, both the parties are aggrieved and are in appeal before us.
02. The brief facts of the case shows that assessee is a trust filed its return of income on 3rd October, 2018, at ₹ nil. It was further revised its ROI on 30th March, 2019, at ₹ nil. Assessee is having the object of

promotion and provision of education and training in operation and management of banking large financial institutions. It conducts written examination and also arranges oral and postal tuitions. It is registered under Section 12A of the Act and is also approved under Section 10(23c)(iv) of the Act. The return of income was selected for scrutiny and the learned Assessing Officer held that the proviso to section 2[15] of the Act is applicable in case of the assessee and exemption under Section 11 of the Act is required to be denied. The assessee submitted that identical issue arose in case of the assessee for earlier years where the claim of the assessee is allowed holding it to be engaged in educational activity. It was claimed that it is not engaged in other object of general public utility. The learned Assessing Officer rejected the claim of the assessee because in the earlier assessment orders the exemption under Section 11 was denied. The learned Assessing Officer computed the total income of the assessee at ₹7,52,88,696/-. The assessment order passed on 29th September, 2021.

03. The assessee challenged the assessment order before the learned Commissioner of Income-tax (Appeals). The learned CIT (A) passed the appellate order on 15th February, 2023, holding that appellant is a charitable trust engaged in educational activities. The learned

CIT (A) noted that from A.Y. 2009-10 to A.Y. 2014-15, the co-ordinate Bench in the case of the assessee itself held so. He held that assessee is a educational institute. He further held that the assessee is established by Government of India through RBI is a means to, further, the national policy relating to banking section consequent to nationalization of banks and therefore, it can hardly be stated that there is a profit motive in carrying out its activities. Therefore, the claim of exemption under Section 11 of the Act was also allowed. The learned CIT (A) dismissed the alternative claim of the assessee for exemption under Section 10(23)(c) of the Act as there was no approval submitted in case of the assessee. Therefore, the appellate order passed on 15th February, 2023, both the parties were aggrieved.

04. The appeal of the learned Assessing Officer was that though the co-ordinate Bench has decided the issue in favour of the assessee for earlier years, however, same has not been accepted by the Revenue and therefore, the appeal is preferred.
05. After hearing the counsel for both the parties, we find that when the co-ordinate Bench in assessee's own case, for earlier years has categorically held that assessee is a educational institute, carrying on the educational activity, the proviso of Section 2[15] of

the Act does not apply to the assessee. The proviso applies only in case of charitable trust carrying on the object of advancement of any other object of general public utility. Here the assessee is carrying on educational activities. Therefore, respectfully following the decision of the co-ordinate Bench in assessee's own case for earlier years, we do not find any merit in the appeal of the Revenue. Though the Revenue might not have accepted the order of the co-ordinate bench in assessee's own case for earlier years but judicial discipline binds us so to follow those decision in case of the assessee. Accordingly, all grounds of appeal appeal of the learned Assessing Officer is dismissed.

06. In the result, appeal of the learned Assessing Officer is dismissed.
07. Assessee is in appeal before us stating that the exemption denied to the assessee under Section 10(23C) of the Act is not proper. Further, the learned CIT (A) has not given any direction for allowing benefit of Section 11,12 of the Act. Ground no.2 is also with respect to capital expenditure.
08. After hearing the parties, we find that the learned CIT (A) rejected the argument of the assessee for exemption under Section 10(23C) of the Act for the reason that such approval is granted by the Chief Commissioner of Income Tax. Further, no approval



was subsisting for the year and therefore, he held that learned CIT (A) is not empowered to examine the claim of exemption under Section 10(23C) of the Act. However, before us the assessee has claimed that there is an approval available under Section 10(23)(C)(IV) of the Act with the assessee. We direct the learned Assessing Officer to examine the same if same is subsisting then the issue may be decided in case of the assessee by following the decision of the Hon'ble Supreme Court in case of New Noble education society 448 ITR 594. Accordingly Ground no 1 & 2 are allowed for statistical purposes.

09. With respect to the benefit under Section 11,12 of the Act, we direct the learned Assessing Officer to compute the income of the assessee under the provisions of Section 11, 12 of the Act. Accordingly, ground no.3, 4 of the appeal are allowed.

010. In the result, the appeal of the assessee is allowed with above direction.

Order pronounced in the open court on 26.07.2023.

Sd/-
(NARENDER KUMAR CHOUDHRY)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 26.07.2023

Sudip Sarkar, Sr.PS



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai