IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1368 OF 2015

Commissioner of Income
Tax (Exemptions) ....Appellant
V/s.
Indian Institute of Banking
and Finance ....Respondent

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Mr. Ashok Kotangle i/by. Ms. Padma Divakar, Advocate for the appellant.

Mr. Nitesh Joshi i/by. Mr. Sameer Dalal, Advocate for the respondent.

CORAM :- M.S. SANKLECHA, &

SANDEEP K. SHINDE, JJ.

DATE :- 28TH MARCH, 2018.

P.C. :-

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 11th February, 2015 passed by the Income Tax Appellate

Tribunal (the Tribunal). The impugned order dated 11th February, 2015 is in respect of Assessment Year 2008-09.

2 Revenue urges only the following question of law, for our consideration:

> *" Whether on the facts and in the circumstance of the case and in law, the Tribunal was justified in law in holding that the assessee is a charitable organization and is eligible for deduction under Section 11 of the Income Tax Act, 1961 ?"*

3 The respondent- assessee is a Company registered under Section 26 of the Indian Companies Act, 1913 as a non-profit making Company. The principal objects of the respondent-assessee as per the Memorandum of Association is to inter-alia conduct educational activities in respect of the banking and kindred subjects by holding courses and also disbursing knowledge by lectures, discussions, books, correspondence with public bodies and individuals or otherwise etc.

4 It is an undisputed position before us that, respondent-institute is registered under Section 12A of the Act.

5. During the course of assessment proceedings, the respondent-assessee sought benefit of exemption under Section 11 of the Act. The Assessing Officer in his order dated 31st December, 2007 passed under Section 143(3) of the Act denied the same on the ground that the claim for exemption under Section 10(22) of the Act for the Assessment Years 1996-97 to 1998-99 which had been granted by the Tribunal was pending in Appeal filed by the Revenue in this Court, as well as, application under Section 10(23C)(vi) of the Act was pending before the CIT. It was on the aforesaid basis that the Assessing Officer held that the benefit under Section 11 cannot be granted to the petitioners. This without dealing with the petitioner's primary contention that they are entitled to exemption as they satisfy the definition of charitable purpose as they are an educational institution. The

Assessing Officer without dealing with the aforesaid contention denied the same on the ground that the respondent's activities are not charitable in nature as the public at large is not benefited.

6. Being aggrieved, the respondent preferred Appeals to the Commissioner of Income-Tax (Appeals). By an order dated 29th March, 2012 the Commissioner of Income-Tax (Appeals) rejected the petitioner's Appeal.

7. On further Appeal, the impugned order of the Tribunal allowed the respondent-assessee's appeal. The impugned order of the Tribunal after examining the object clause as given in the Memorandum of Association gave a finding that the respondent-institute has been created for the purpose of development of banking personnel for/in the banking industry. The institute imparts education to the candidates who are connected with the banking industry. It has library facility, organizes lectures, seminars and undertake examinations for promoting bank officers. In the

aforesaid context, the impugned order of the Tribunal concluded on facts which were before the Revenue Authorities that it exists for advancement of learning in the field of banking. Besides, on facts it found the fee structure of the institute for these courses was not on the higher side. Further, the impugned order places reliance upon the decision of this Court in **Director of Income-tax (Exemption), Mumbai v. Samudra Institute of Maritime Studies Trust, reported in [2014] 49 taxmann.com 510 (Bombay)** to inter-alia hold that the activity which is carried out by the respondent-assessee is educational in nature. This is for the reason that it imparts education to the members of the banking industry and prepares them to discharge their duties as bankers more efficiently. Further, with regard to the objection of the Assessing Officer that as the benefit of the respondent-Institute is restricted only to the persons working in the banking industry, it is not available to the public at large was negatived by placing reliance upon the decision of the Apex Court in **Ahmedabad Rana Caste Association vs. Commissioner of Income-Tax, reported in 82 ITR 704.** In the above case, it has been held that the object beneficial to a section of the public is an object of general public utility and 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. In the above view, it was, held that the petitioners were an institute for a charitable purpose as defined in Section 2(15) of the Act.

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 first 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 (23c)(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.

(SANDEEP K. SHINDE, J) **(M.S. SANKLECHA, J)**