R.M. AMBERKAR
(Private Secretary)

# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
**O.O.C.J.**

## INCOME TAX APPEAL NO. 1935 OF 2017

Pr. Commissioner of Income Tax-Exemption .. Appellant

Versus

The Indian Institute of Banking & Finance
(Formerly known as The Indian Institute of Bankers) .. Respondent

……………….

- Mr. Suresh Kumar a/w Ms. Priyanka Tiwary & Sumandevi Yadav for the Appellant
- Mr.Nitesh Joshi a/w Mr. Sameer Dalal for the Respondent

……………….

**CORAM : UJJAL BHUYAN &**
**MILIND N. JADHAV, JJ.**

**DATE : JANUARY 29, 2020.**

**P.C.:**

**1.** Heard Mr. Suresh Kumar, learned standing counsel, revenue for the appellant and Mr. Sameer Dalal, learned counsel for the respondent - assessee.

**2.** This appeal under Section 260A of the Income Tax Act, 1961 (**"the Act"** for short) is preferred by the revenue against the order dated 23.6.2016 passed by the Income Tax Appellate Tribunal, Mumbai "I" Bench, Mumbai (**"Tribunal"** for short) in Income Tax Appeal No. 3087/M/2013 for the assessment year 2009-10.

**3.** Though a number of questions have been proposed, basically the controversy revolves around as to whether Tribunal was justified in holding that respondent - assessee is a charitable association and is eligible for deduction under Section 11 of the Act.

**4.** Mr. Suresh Kumar has taken us through the impugned order passed by the Tribunal where from we find that Tribunal had followed its own order in the case of the assessee itself in Income Tax Appeal No. 5725/Mum/2012 for the assessment year 2008-09 dated 11.2.2015. In the order passed by the Tribunal on 11.2.2015, it was held that respondent - assessee was an institute for charitable purpose as defined under Section 2(15) of the Act.

**5.** On a query by the Court, Mr. Suresh Kumar submits that against the aforesaid order dated 11.2.2015, revenue had preferred an appeal before this Court which was registered as Income Tax Appeal No. 1368 of 2015. By order dated 28.3.2018, this Court had dismissed the said appeal by holding that there was no error in the view taken by the Tribunal and no substantial question of law arises therefrom. It was 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.
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> 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.
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> 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.
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> 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.

**[ MILIND N. JADHAV, J. ]** **[ UJJAL BHUYAN, J. ]**

Ravindra M. Amberkar

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Date: 2020.01.31 14:47:10 +0530