Taxation Of Charitable Trust

Registration and Taxation of charitable & Religious Trust

Preamble:

According to one survey in India there is 1 N.G.O per 800 Indian Citizen. We can’t find even a single village in India where there is no Religious place. We might not find School, Hospital or Common Pay and use toilets but we certainly have religious places in each and every corner of the India, howsoever remote village it may not be. There is an elaborate and multi layer Exemption Scheme available for all this religious and charitable trust in Income Tax Act, 1961.

Constitutional Validity:

It is well established fact that any legislature contrary to the Constitution of India can’t survive. We, the people of India by virtue of Preamble of Constitution of India have decided to unite in Secular, socialistic, republic union of India. One may argue that if we have constituted in secular India how a legislature can encourage the religious activity by rendering exemption from taxation laws. However, as per constitution of India, state is indifferent from the religions and can’t be Religion bias. However India has prosperous heritage of all the religions in the world and India is the birth place of four major religions in the world namely Hinduism, Sikhism, Buddhism and Jainism. So, it is the duty of the State to preserve this heritage and spread them as a matter of heritage. Thus it stands constitutionally valid. Moreover, Every Indian citizen has right to observe the religion of his/her faith. So, if state tax the religious activities then it will be tantamount to garbing down the rights of Indian Citizens.

Exemption under Income Tax
Income tax act provides exemption to the Income of Charitable and religious trusts. However, the process of Exemption is not as simple as it seems in words. There are multi-layered exemptions depending upon the Trust.

**Registration of Trusts**

To execute a Trust, there must be a trust deed. Trust is a fictional person so it must be given the form of legal fiction by the written Indenture which is technically known as trust deed. So far as Gujarat is concerned Bombay Public Trusts Act 1950 deals with the registration and inception of the trust. However trust can be registered under Companies Act as well and those are termed as Section 25 Companies as per the erstwhile Companies Act 1956. However we focus on registration in Income Tax Act.

**Religious vis-à-vis Charitable Purpose**

Income Tax Act,1961 grants the exemption to both the religious as well as the charitable trusts. Now it is very material to decide what constitutes "Religious Activities" and what constitutes "Charitable activities". So far as religious activities are concerned the law is silent. However religious activities can easily be inferred out from the trust deed itself. Any trusts formed in order to encourage the religious activity can be understood as religious trust. The term religious activities don't leave much scope for subjective interpretation.

**CBDT Circular No.395 dated 24-9-1984**

The word “Religious purpose” is not defined in the Act. Hence it is to be understood as per common sense.

**Charitable Activity**

However the term “Charitable Activities” is open to subjective interpretations. The law has provided inclusive meaning of “Charitable Purpose” vide section 2(15) to the Act. It read as follows:

“Charitable purpose” includes relief of the poor, education, medical relief. Preservation of environment including watersheds, forests and wildlife and preservation of monuments or places or objects of artistic or historic interest and the advancement of any other object of general public utility:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity:

Most of the litigations for rejection of applications are pertaining to the charitable purpose of the trust. The purpose can be inferred out from the indenture of the trust. So, it is advisable to draft trust deed in a very meticulous manner at very first instance so as to avoid unnecessary interpretational disputes.

**CIT Vs. Andhra Chamber of Commerce (1965)(SC)**
Definition of term “Charitable purpose” is inclusive and not exhaustive. The expression is not restricted to the objects beneficial to whole mankind. An object which is beneficial to a section of the public is also a charitable object.


The expression “advancement of general public utility” includes any object beneficial to public or a section of the public as distinguished from an individual or a group of individual.

**Status of Trust**

Section 4 of the income tax Act creates a charge of tax on every ‘person’. The term person has been defined in section 2(31). It may be noted that the term person doesn’t make any reference to ‘trust’. Hence there had been a great litigation in the courts as to what is the status of trust. Basically the root of the dispute was in a dilemma to treat the trust as an Individual or an A.O.P. However, in **CIT Vs. Deepak Family Trust (1995) 211 ITR (Guj.)**, **CIT Vs. Venu Suresh Sanjay Trust (1996) 221 ITR 649 (Mad.)**, it was held that a trust is an Individual for the purpose of Income tax law.

**Registration Procedure**

**Income Tax Act 1961** requires a trust to get registered under **Section 12AA** to claim the exemptions as mentioned in the Section 11 & 12 to the Act. Let’s have a look on the procedure laid down under **Section 12AA**.

Every trust shall make an Application to the **Commissioner of Income Tax** or **Director Of Income Tax [Exemption]** in the prescribed format and along with prescribed documents. It is worth noted that the authority to whom the application is made is the **C.I.T or D.I.T [Exem.]**. There has been a wide debate on this fact that the Application shall be made to **Income tax officer** and not to such higher Ranked officers as they have to spent their lot of time in just administrative tasks. However, in practical Situation **Income Tax Officers** takes care of all the application received in this regard on behalf of **C.I.T or D.I.T [Exempt.]**

**Prescribed Form:**

Form No.10A

**Prescribed Documents:**

So far as the prescribed documents are concerned there is no such list in Income Tax Act or in Income Tax rules [Except providing for Indenture of Trust & details of Trustees]. CBTD is purporting to make a standard Code of Procedure in this regard. We can expect it to come in very short time. However, from the practical experience we can list out following certain documents:

i. Duly filed Form No.10A

ii. Copy of Registration certificate under Public Trusts Act
iii. Certified Copy of Trust Deed [In English, if not in English]

iv. Certified Copy of Object Clause of trust Deed

v. List of Names & Addresses of all the trustees

vi. Copies of Pan Card of all the Trustees

vii. Audit Reports [Maximum to the Last three years]

viii. Undertaking under section 11(5) and 13(1)( c)

ix. Affidavit of the Managing Trustee for Utilization of Income for Objects Only

All this are the prima facie circumstantial evidences to satisfy the C.I.T that the trust is genuine. After providing necessary documents Commissioner may pass an order either granting or rejecting the registration.

However any order giving rejection to the registration can't be passed without giving opportunity of being heard. Opportunity of being heard is given only by mean on written show-cause notice to that regard.

However, the Communication of Acceptance or rejection of any application shall be made within the six months from the end of the month in which the application was received. If no communication is received within 6 months then trust will be deemed to be registered under section 12AA. The various legal pronouncements of Tribunal & high courts have settled the position to the greater extent. Ld. ITAT, Delhi 'B' Special Bench, has held that the officers are bound to pass the verdict to the application in the stipulated time [i.e Six Months]. Not passing the order within 6 months and asking assessee to file application again means to put the assessee to the grind all over again for no fault of his. The intention of legislature can never be as such. Moreover, time frame of Six months is mandatory for the C.I.T to dispose of the application for registration. Once CIT doesn't pass order within given time it becomes “Functus Officio”, hence it can't make the assesee to file the application again. [ 111 ITD 175 ]

**Types of Trust & Taxation**

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<thead>
<tr>
<th>Type of trust</th>
<th>Taxation Effect</th>
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<td>Oral trust</td>
<td>Exemption not Allowed</td>
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<td>Private Trust</td>
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<tr>
<td>Public Trust</td>
<td>Exemption Allowed Subject to Condition</td>
</tr>
<tr>
<td>Combined Trust (Public-cum-private)</td>
<td>Exemption Allowed Subject to Condition</td>
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**Effect of Registration u/s 12AA**
The registration is granted on the basis of assessment years. As per general rule the registration is granted from the assessment year relevant to previous year in which the application was received in other terms registration is granted from the 1st day of financial year in which the application was filed.

However for the applications made before 1st June 2007, if the commissioner is so satisfied that there were certain reasonable causes for not making an application within a period of one year, then commissioner, with reasons so recorded in writing may grant registration from the date of creation of the trust.

However the benefit of this fictional extrapolation can't be extended the applications made on or after 1st June 2007.

The income of the trust gets exempted from the Income tax subject to following conditions mentioned u/s 11&12:

i. The trust shall expend 85% of the total donation received by it during the year in a year in which it has been received. If the 85% of the total receipts is spent for its purpose then rest of the 15% will not be treated as Income and thus it will be Exempt from the Tax.

ii. Trust can claim exemption even when it has not spent 85% of its income. If it sets apart the residual amount for the specific objects of the trust and passes a resolution to spend it in next 5 years. However the Copy of the resolution along with form No.10 shall be sent to the Assessing Officer before time specified u/s 139(1).

To claim the deduction of set apart amount the set apart amount shall be invested only in the securities Specified u/s 11(5) of the Act and within the prescribed time limit and in prescribed manner.

**Corpus Donation – Not an Income**

The question of Exemption arises when there is an Income. There are certain donations which are not the Income. Such as if Trust receives the Corpus donation then it is not treated as the Income and thus criteria of 85% don't apply to the Corpus receipt.

**What Constitutes a Corpus Donation?**

There is no such definition of Corpus Donation in Income Tax Act neither in any governing laws of trusts. In this situation of ambiguity there have been number of litigations involving corpus donation pending. However in general parlance, any donation to be called as corpus shall be donated by the specific instruction of donor specifying the modes and ways of its utilization and shall specifically be instructed to be the part of corpus.

If any donation is given for the construction of fund and with the clear direction that only interest of the fund shall be used then it is the Corpus donation.

**Instructions need not to be in writing.** However there must be circumstantial evidences to support any donation as corpus donation.
Corpus donation is not routed through Income & Expenditure account, it is generally credited to the respective fund account.

**Consequences if Registration is not granted:**

If application is rejected then assessee may challenge the decision in **Income Tax Appellate tribunal**. However, if registration is not granted then,

i. Exemption u/s 11 & 12 is not available

ii. It doesn't become entitled to obtain registration u/s 80G

iii. The amount donated by it to any person becomes taxable income in the hands of receiver u/s 56(2)(vi) [i.e as gift]

**Common Grounds Of Rejection of Registration u/s 12AA:**

i. **Actual Activity has not been carried out by the Trust:**

There used to be the objection of Income Tax Authorities that Registration u/s 12AA may not be granted if Trust has not undertaken the Actual Activities as per its objects.

However Gujarat high court has settled this disputed position of law in its verdict in the case of **CIT vs Kutchi Dasa Oswal Moto Pariwar Ambama Trust.** [29 Taxman 228] The learned court has held that registration can't be denied merely on the ground that trust has not undertaken any activities in the previous year.

ii. **Inconsistencies in the Object clauses:**

If there are any objects of the trust deed which gives the Commissioner reasons to believe that the Beneficiaries of the Trust activities will be based on the particular cast, creed or sex. Then he may refuse the registration.

iii. **Inconsistencies in Revocation clause of Trust deed:**

As per Bombay Public Trust Act 1950 the trusts are always irrevocable. Generally the trust can't be revoked. However if the Circumstances arise than trust can be revoked by passing an unanimous resolution by all the trusses to that effect and with the prior approval of the **Charity Commissioner.** And in that scenario none of the asset will go in hands of any of the trustees/settler or to the members of the trust, on the contrary it will be handed over to the trust having same objects. Now days, Income tax officer demands such clear mention of all this formalities in revocation clause of the trust deed. In many cases the trusts do not have revocation clause altogether and if they have the resolution clause then it is not proper. In such cases, Authorities may refuse the registration. However, when we have such a elaborate provisions under Trusts act and when **Charity Commissioner** himself has granted the registration, then I personally believe that it is out of jurisdiction of tax authorities to reject the Application.

iv. **Business Purpose in Objects:**
If the commissioner is of the view that the objects of the trusts are not the charitable purposes as defined u/s 2(15) and on the contrary the activities are such which is in the nature of trade and Commerce. The commissioner may reject such application. Currently D.I.T [Exemption] have rejected the application of Gujarat Cricket Association, Auda, GAHED etc. [Ref. Navgujarat Samay 22nd April '14]

v. Rejection under any other section for exemption

This ground for rejection/cancellation was taken especially for the trusts which are rejected registration under any other section for exemption. In Sunbeam English School Society Vs. Commissioner Of Income Tax ITAT, Allahabad Bench has held that it is not justifiable to reject the application u/s 12AA, on the ground that trust has been refused registration under any other section.

All the above grounds of rejection have not been mentioned neither in Income tax Act nor in Income Tax rules, these are the common practical grounds which assessing officer extracts out of the verification and investigation of the records and its correspondent legality and validity.

Remedies:

In case of all the above mentioned ground of rejection there are remedies. Ground 1 has already been settled by the Gujarat High court. Where as in case when there is some inconsistent object in object clause or revocation clause is not proper than such an improper clause can be deleted and new proper clause can be inserted by submitting change report and affidavit to that regard with Charity Commissioner. However the interpretation of Section 2(15) is subjective matter, in that matter only harmonious legal interpretation is the only way left for saving.

The registration u/s 12AA is given on the basis of number of assessment years. The registration is effective from the assessment year relating to the previous year in which the application for registration u/s 12AA was made.

Consequences if the Compliance to the Conditions is not made:

The registration u/s 12AA is granted on the basis of the condition that all the condition u/s 11 & 12 will be fulfilled. If conditions are not satisfied then following situation may arise:

i. If 85% of the Income is not spent then the residual part of the Income will be subject to tax at M.M.R.

ii. If the accumulated amount is not spent within 5 years then It will be part of the Total income In 6th year.

iii. If the donation is general and shown as the corpus donation then the relevant amount will be added as an Income.

Taxability of Business income of the trust [Section 11(4)/(4A)]

Any business income received by trust also enjoys exemption, if the business activity is incidental to the attainment of objects of the trust and the separate books of accounts have been maintained by the assessee trust.
Assessing officer can exercise all its power to assess and where the income assessed by Assessing officer is more than income disclosed by trust, then such excess shall be deemed to apply for Non-charitable / Non-Religious activities.

Cancellation of Registration

Registration under section 12AA is lifetime subject to the satisfaction of conditions mentioned above. If any of the conditions attached to it is violated then such registration may be cancelled. Section 12AA (3) empowers such post cancellation. However, post cancellation contains repercussion effects so its thorough reading and harmonious interpretation is necessary. Section 12AA (3) reads as follows:

“Where a trust or an institution has been granted registration under this section and subsequently the commissioner is satisfied that the activities of trust or institution are not genuine or are not being carried out in accordance with the objects of trust or institution, then he shall pass an order in writing cancelling the registration of such trust or institution”

Now, the most amicable reading of section 12AA(3) is that the cancellation can only be done if trust is not carrying out the activities as per the objects of the trust deed. It simply implies that if there is any activity which is business activity in nature and which is incidental to attainment of the objects of the trust, then merely on the fact that the trust carries out activity in nature of business or trade, registration can't be cancelled.

In the similar line, if there is any amendment in the Definition of Charitable object and part of the activities of trust falls under trade or business nature, then also registration can't be cancelled. [The Tamilnadu Cricket Association Vs. The Director of Income Tax (Exem.) Tax Case (Appeal.)No.450 of 2013 in the High court of Madras.]

Registration u/s 80G(5):

Section 12AA gives exemption to the Income received by the trust. However section 80G(5) gives the deduction to the person in respect to the donation made by him to the registered Charitable trust. It must be noted that the deduction is available only in respect of donation made to the charitable trusts. No such deduction is available for donation made to the Religious trusts. The procedure for registration is same as that in Section 12AA. However, the application shall be made in Form No.10G.

If Consequently the registration u/s 80G(5) is withdrawn then also the assessee can claim the deduction of the amount donated.

Part- II Taxation of Charitable & Religious Institutions

The Provision of Section 11 & 12 is subject to provisions of Section 60 to 63.Hence, if the relevant income is clubbable under those sections with the income of any other persons, effect shall be first given of clubbing. E.g. An Institution is holding an asset and transferred to it by Mr. A under a revocable agreement. Income of this asset shall be clubbed in the hands of Mr. A under section 61.
Benefit available to all entities:

The provision of exemption u/s 11 & 12 are applicable to all charitable or religious institutions, be it in form of trust, society, club, company, Bar council, Chamber of commerce, math, temple, muslim wakf or otherwise. For simplicity the term “Trust” is used.

Charitable/ religious obligation must be annexed to the property itself:

Exemption u/s 11 is allowed only if there is a valid legal obligation of charitable/religious purpose annexed to the property itself. In other words, mere application of the income for charitable/religious purpose shall not be sufficient for claiming exemption unless the property itself is held under a legal obligation for charitable/religious use.

Section 11/12 – An insight

Section 11(1)(a):

This section grants exemption to a trust existing wholly for charitable/religious purpose. The exemption is to the extent of

i. Income of the trust actually applied to charitable/religious purpose in India (Actual Application) +

ii. Income of the trust accumulated or set apart for application to charitable/religious purpose.

Section 11(1)(c):

This section grants exemption to an institution existing for international welfare. The exemption is to the extent of:

i. If the institution is created upto 31-3-1952

Income of the trust actually applied to charitable/religious purpose outside India.

ii. If the institution is created after 31-3-1952

Income of the Trust actually applied to charitable/religious purpose outside India. The exemption is allowed only and only if the charitable/religious purpose tends to promote international welfare in which India is interested.

The exemption in this section is allowed only when:

- CBDT has issued a special / general order for granting exemption.

- The exemption is allowed only to the actual application it means, exemption is not allowed in respect of any accumulation.

Section 11(1)(d)
This section grants 100% exemption to corpus donation.

**Deemed Application [Explanation 2 to section 11(1)(a)/(b)]**

It may be noted that an institution covered u/s 11(1)(a)/(b) needs to apply only 85% of its income. If the application is 85% of Income, the institution becomes fully exempt from tax (because of standard accumulation upto 15%). In practical life it may not be possible for the institution to apply 85% of its income. In such a situation, the institution becomes taxable for the shortage of application. In order to provide a further support to institutions, the parliament has prescribed in Explanation 2 to section 11(1) that the institution can submit an application to income tax department seeking extension of time for application of Income.

The application for extension can be filed in any of the two situations:

a. Due to non-receipt of income i.e on the ground that the whole or part of the income has not been received during the previous year. Or
b. For Any other reason.

**Following points shall be noted in this respect:**

a. Once the institution files application for extension, it is deemed that the amount of income has been applied.

b. It shall be utilized for the said purpose within said time.

**Utilization & Retaxability of deemed application – Section 11(1B)**

Subsequently, the assessee must apply the amount of deemed application for charitable/religious purpose. In case of default, the retaxability provisions of section 11(1B) shall be attracted.

**Extra Accumulation- Section 11(2)**

An institution can claim exemption to the extent of following:

- Actual Application for charitable/religious Purpose +
- Standard Application for charitable/religious Purpose [15%] +
- Deemed Application for charitable/religious purpose

However, in practical life, the institution wants to set apart their income for achievement of some specific purpose in future, for example- construction of building, acquisition of fixed assets etc. In order to provide a further support to the institutions the parliaments has prescribed in section 11(2) that an institution can make extra accumulation out of its income. For this purpose following condition are required to be satisfied
a. The Institution should give a notice to the Assessing officer in form No.10 before the due date u/s 139(1) for submission of return of income.

b. In Form No.10, the institution can specify the purpose and the period for which the income is accumulated. This period can't exceed 5 years.

c. The accumulated money must be invested in permissible modes only.

**Utilization and retaxability of extra accumulation – Section 11(3):**

Subsequently, the assessee must apply the amount of extra accumulation within the period for which extra accumulation is claimed and the year immediately succeeding year in case of default, the retaxability provisions of section 11(3) shall be attracted. The provisions in this respect are as under:

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<tr>
<th>Situation</th>
<th>Retaxability Year</th>
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<td>Accumulated income is Mis-utilized</td>
<td>Year of misutilization</td>
</tr>
<tr>
<td>Accumulated income ceases to be accumulated for charitable/religious purpose</td>
<td>Year in which the income ceases to be accumulated</td>
</tr>
<tr>
<td>Accumulated income ceases to remain invested in permissible modes</td>
<td>Year in which the income ceases to remain invested</td>
</tr>
<tr>
<td>Accumulated income is not utilized within the period for which it was accumulated</td>
<td>The year immediately succeeding the year up to which the accumulation was claimed</td>
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**Substitution of purpose [Section 11(3A)]**

Where due to the circumstances beyond the control of the institution, the accumulated income cannot be applied for the purposes for which it is accumulated; the institutions can submit an application to the assessing officer. Thereafter, the assessing officer can allow the institutions to apply accumulated income to any other charitable/religious purpose in conformity with the objects of the institutions. In such a case, the retaxability provisions shall be applied as if the purpose substituted by the Assessing Officer were the purposes for which income was originally accumulated. It is further provided that the Assessing officer shall not allow the institutions to pay or credit the accumulated income to any institution registered u/s 12AA or 10(23C) except in the event of dissolution of the institution.

**Treatment of Donation receipts – Section 2(24)(iia), 11(1) (d) and 12(1)**

Receipt of voluntary contribution (Donation) is a major source of income for the institutions. Hence the parliament has made significant provisions:
Section 2(24)(iia) provides that the donation received by following persons shall be treated as income:

a. A trust or any other institutions created wholly/ partly for charitable/religious purpose.

b. An association or institution referred to in section 10(21), 10(23) or 10(23C)

The donations received by an institution are classified under two categories. Viz (i) Corpus/Conditional donation [Discuss in depth earlier], (ii)non-corpus

Section 2(24)(iia) doesn't make any difference between corpus and non-corpus donation. So as per supra [Section 2(24) (iia)] both the donation are taxable. However section 11(1)(d) specifically grants 100% exemptions to corpus donation.

**Rotary charitable trust received total income of Rs.10lacs in a year. They applied Rs.860000/- for the charitable purpose. The A.O is of the view that only 15% of the balance surplus i.e Rs. 1,40,000 [Rs.21000/-] will be allowed to be accumulated. Is the contention of A.O is correct?**

**Ans:** Apparently case squarely falls with the purview of section 11(1)(a). Section 11(1)(a) reads as under:

Income derived from the property held under trust wholly for charitable or religious purpose to the to which such income is applied to such purpose in India; and where any such income is accumulated or set apart for application to such purpose in India, to the extent to which the income so accumulated or set apart is not in excess of [fifteen] percent of the income from such property.

This section is written in negative connotation mean by it restricts the maximum amount of accumulation, by using words not exceeding 15% of income. Here the question of substantial interpretation comes as to what constitutes the term “Income”.

So far as the Income tax Act 1961 is concerned, the term income has been defined in an inclusive manner vide Section 2(24)(iia) which specifically deals with the income in case of trust and in case of voluntary contribution. Section 2(24)(iia) reads as under:

**Income Includes:**

Voluntary contribution received by a trust created wholly or partly for charitable or religious purpose or by an institution established wholly or partly for such purposes.

The wording of section itself leaves no ambiguity regarding what constitute the income. It clearly implies that the gross [total] donation received by the trust will be its income and not the net amount.

Hon’ble supreme court, In the case of **Commissioner of Income Tax Vs. Programme for community organization [248 ITR 1]** has held that the 15% shall be taken that of gross income and not of net income.
Navkar charitable Trust under erroneous belief, had given a loan of Rs.50 lakhs to another charitable trust having same objects, whose trustee was the brother of president of Navkar Charitable Trust. Assessing officer is of the view that Section 13(1)(d) states violation of the terms section 11(5) and denied the benefit of section 11.

**Is the View of A.O is correct?**

**Ans:** Section 11(5) lists the forms and modes of investments and depositing the money of trust.

Section 13(1) (d) prohibits the exemption of any sum invested or deposited otherwise than any mode specified u/s 11(5).

In this question, Navkar trust has given Loan of Rs.50 lakhs to other trust. So they neither invested nor deposited the fund otherwise than the mode and forms suggested u/s 11(5), and that is what the view of A.O. is not correct.

**Director of Income tax (Exemption) vs. Acme Educational Society 326 ITR 146(2010) DELHI HIGH COURT** pointed out that the words “investments”, “deposit” and “loan” have different meaning.

**Other cases:**

**Baidya Nath Plastic Industries (P) Ltd. & others Vs. K.L.Anand, ITO (1998) 146 CTR (Del) 421/230 ITR 522**

Director of IT Vs. Parivar Sewa Sansthan 254 ITR 268 (DEL)(2002) there was no violation of provisions of section 13(1)(d).

**Ramdev charitable trust accumulated Rs. 50,00,000 for the objects of the trust. They file form No.10 after the time specified under section 139(1). A.O disallowed the same and added to the income? Can A.O do so?**

**Ans:** Rule 17 provides that the Notice to the assessing officer in form no.10 shall be submitted within the time prescribed u/s 139(1).

However this legal requirement is procedural in nature and it is now settled position of law that the Form No.10 can be submitted any time before completion of assessment.

**Trustees of Tulsidas Gopalji Charitable Trust & chaleshwar Temple trust Vs. Commissioner of Income Tax**

**Satguru Trust was in the receipt of certain donation which were meant for corpus fund. Or for the sole purpose that interest thereon shall be utilized. The donors have donated the money without any apparent instructions to that effect. The trust claimed that donation exempt. Later on, at the time of assessment A.O denied the claim of trust and added back to the Income of the trust? Is the contention of A.O is tenable?**

**Ans:** Receipt of voluntary contribution (Donation) is a major source of income for the institutions. Hence the parliament has made significant provisions:

Section 2(24)(iia) provides that the donation received by following persons shall be treated as income:
a. A trust or any other institutions created wholly/ partly for charitable/religious purpose.

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The donations received by an institution are classified under two categories. Viz (i) Corpus/Conditional donation [Discuss in depth earlier]. (ii)non-corpus

Section 2(24)(iia) doesn't make any difference between corpus and non-corpus donation. So as per supra [Section 2(24) (iia)] both the donation are taxable. However section 11(1)(d) specifically grants 100% exemptions to corpus donation.

Recently “C” Bench of Income Tax Appellate Tribunal, Chennai Rejected the contention of A.O and held that the instruction shall not be written. The test of the Corpus shall be inferred out from the nature of fund.

**Arihant education trust have applied for registration u/s 12AA of the Income Tax Act 1961. The D.I.T[Exem.] rejected the application after prescribed time. Which remedy is available?**

As per **Section 12AA(2)** any order granting or refusing registration shall be passed within the period of six months commencing from the last day of the month in which the application was received. Section 12AA(2) read as under:

“Every order granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application was received.

The Situation of law is crystal clear that any order shall be passed within six months, If the order is not passed within six months then It will amount to the Deemed registration.

Once the officer has not complied with the legal texts, it has become “**Functus officio**” and cannot pass the order.

Income Tax Appellate Tribunal Delhi ‘B’ special branch, in the case of **Bhagwad Swarup Shri Shri Devraha Baba Memorial Shri Hari Parmarth Dham trust Vs. Commissioner Of Income Tax 111 ITD 175** held that No order can be passed beyond the stipulated time limit.

**J.K.Charitable Trust have Gross Income of Rs.1 Crore and in the same year there are expenses of Rs.1.10 Crore, hence there is a deficit of Rs.10 lakhs. Trust adjusted same in the income of subsequent year. Is the action of trust is within the boundaries of law?**

**Ans:** The question is adjustment of deficit of current year against the Income of subsequent year would amount to application of income of trust for charitable trust for charitable purpose in the subsequent year within the meaning of sec. 11(1) (a) of the Act.

According to CBDT Circular No F No 195/1/72-IT(A.I) dt. 24th Jan.1973, if a trust wants to spend more money for charitable or religious purpose in a particular year, it can take a loan and said loan can be repaid out of the income of subsequent year and the payment of the same loan out of the income of the subsequent year and the payment of the
same loan out of the income of the subsequent year would amount to application of income for charitable purpose u/s 11(1)(a).

- Commissioner of Income Tax Vs. Shri Plot Swetamber Murtipujak Jain Mandal 119 CTR 144 GUJ/211 ITR 293

- Director of Income Tax Vs. Raghuvanshi Charitable Trust & Others (2010) 44 DTR 223 (Del. High Court) /2011 197 Taxman 170

- CIT Vs. Institute of Banking Personnel Selection (2003) 185 CTR 493/264 ITR 110 (Bom.)

Can Trust Claim Depreciation on the asset for which trust have not spent any amount?

Ans: When trust have claimed full cost of asset in full as application of income u/s 11 in the past years. How it can claim depreciation on the said assets? Section 32(1) of the Act provides for depreciation in respect of assets owned by assessee used in business purpose.

Bombay high court held in the case of commissioner of Income Tax Vs. Institute of Banking Personnel Selection (2003) 185 CTR 492 / 264 ITR 110 (Bom.)

Income of a charitable trust is derived from building, plant and machinery, furniture was liable to be computed in normal commercial manner although the trust may not be carrying any business and the asset in respect whereof depreciation is claimed may not be business assets.

However the income of the trust is required to be computed u/s 11 on commercial principles after providing for normal depreciation and deduction there from gross income of the trust.

CIT Vs. Munisuvrat Jain (199) Tax Lr 1084

CIT Vs. Sheth Manilal Ranchoddas Vishram Bhavan Trust 105 CTR 303

CIT Vs. Shri Gujarati Samaj 349 ITR 559

Thank You

Recommended Read

- Presumptive Taxation - Likely to get tedious due to TDS
- Presumptive taxation - An analysis under different scenario
Dear sir,

I have received a stipend from KEM HOSPITAL. KEM Hospital is registered under Bombay Public Trusts Act 1950. My stipend is 50,000/- per month in 2016-17. This income is chargeable under the Income Tax Act. If yes, what is the slab, and if not, how is it tax-free? Please tell me as earlier as possible.

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Dear Sir,

I registered my Trust in the Trust Act but not yet registered it in the Income Tax Act. How should I show my income and expenses? Are there any exemptions or limits for audit?

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A very good article on the subject. Any such article on audit of trust?

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Sir,

My client has 23.52 lacs gross total income, and the actual amount spent was 17 lacs. As 85% is Rs. 20 lacs, so the shortfall is Rs. 3 lacs. The trust had filed Form 10 for accumulation with the right reasons and deposited Rs. 10 lacs in the bank account. Now the Department sent intimation under Section 143(1) that the trust can only accumulate 15%. Please give an answer.

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very good and impressive article...thank you for sharing.

Reply
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Dear Sir, Please solve my query. Trust is registered under Sec. 12A w.e.f. 01/04/2007. Trust is running primary and secondary schools. Trust’s receipts are from grants and student fees. Trust has incurred a deficit during the year. Query: 1) Whether it is mandatory to file the return of income? 2) Whether the deficit to be shown in income from other sources? 3) Whether student fees to be treated as voluntary contribution from other sources? Please reply asap.

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URVIK KHANDHEDIYA

Nice bro :)

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VIPUL CHAUHAN

Good

Reply  Like

PARTH S. PUROHIT

Superb

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