

CASE LAWS FOR REFERENCE

SLIDE 3 - STATUS OF A TRUST

1. In *DIT (Ex.) v. Shardaben Bhagubhai Mafatlal Charitable Trust* 247 ITR 1 (Bom) - Trust lost exemption due to contravention of S. 11(5). The assessee Trust was taxed in the status of an individual and was entitled to deduction u/s 80L.

SLIDE 4 – CHARITABLE PURPOSE - S. 2(15)

1. *Thiagarajar Charities v. ACIT* 225 ITR 1010 (SC) and *ACIT v. Surat Art Silk Cloth Manufacturers' Association*, 121 ITR 1 (SC) - Exemption available even if some objects which are ancillary or subsidiary to the dominant charitable object are in themselves non-charitable. Predominant object should be charity and not to earn profit. Trust is not expected to carry out activity so that expenditure balances income.
2. *CIT v. Employees Death and Superannuation Relief Fund*, 234 ITR 308 (Karna) - Distinction between public and private charitable trust. Trust for benefit of employees of public company is not charitable.

CIT v. Bhartiya Khatri Sewa Trust 205 ITR 96 (All) - Trust for benefit of girls on the occasion of marriage, belonging to Khatri family held to be charitable.
3. *CIT v. Paramhans Ashram Trust* 203 ITR 771 (Raj) - Difference between public and private charitable trust brought out. In this case the trust was for maintenance of Dharamshala and for helping Agarwals and widows and children. These were held to be charitable purposes.

SLIDE 5 – CHARITABLE PURPOSE (Amendment by Finance Act 2008)

1. *CIT v. Gujarat Maritime Board* 295 ITR 561 - The proviso to S. 2(15) inserted to overcome ratio of Supreme Court.

SLIDE 10 – CHARITABLE PURPOSE (Amendment-Analysis)

1. *Sole Trustee, Lok Shikshana Trust v. CIT* 101 ITR 234 and *Indian Chamber of Commerce v. CIT* 101 ITR 796 - It was held that benefit of exemption would be denied if in accomplishing charitable purpose, the institution engages in activities of profit. These words imposed a new qualification to prevent abuse. An activity which yields a profit or gain in the ordinary course must be presumed to have been done for profit or gain. To be considered as "Charitable Purpose" under section 2(15), the onus is on the assessee to show that in the advancement of its objects of general public utility, there is no involvement in activities for profit.
2. *Addl. CIT v. Surat Art Silk Cloth Manufacturers Association* 121 ITR 1 overruled the above. It was held that if the activity resulting in profit was subsidiary or subservient to the dominant object than the trust would not lose exemption.

SLIDE 16-CHARITABLE PURPOSE (Amendment-Analysis)

1. *DIT (Ex.) vs Sahu Jain Trust 243 CTR 131* – It was held that Subletting is not to be considered as Business income.

SLIDE 21-REGISTRATION – S. 12AA

1. *Society for the Promotion of Education, Adventure Sport & Conservation of Environment v. CIT 216 CTR 167 (All), Bhagwad Swarup Shri Shri Devraha Baba Memorial Shri Hari Parmarth Dham Trust v. CIT 299 ITR (AT) 161 (Del)(SB)*- If application is not disposed off within 6 months, registration deemed to have been granted.
2. *ACIT v. Surat City Gymkhana, 300 ITR 214 (SC)* - Further probe into objects after registration was already granted was held to be not permissible.

SLIDE 22-VIEW OF TAX DEPT WHILE GRANTING REGN.

1. *Budha Vikas Samity vs. CIT (Patna) 242 CTR 324* -Registration of an organization as a charitable institution u/s 12A leads to exemption from payment of Income-tax and, therefore, such an organization will have to measure up to strict parameters laid down in Act to continue to enjoy benefit of exemption, failing which it may be deprived of its registration.

SLIDE 23-ACTIVITY TO BE CARRIED PRIOR TO REGN.

1. *Self Employer's Service Society v. CIT 247 ITR 18 (Ker)* – since society had not done any charitable work and activities it carried out were only for generating income for its members, the rejection of application u/s 12AA was justified. Opportunity was given to the trust to file fresh application when it started charitable work.
2. *Aryan Education Society v. CIT 281 ITR 72 (Delhi Trib.)* – Commissioner was empowered to inquire about the activities of the trust.
3. *Fifth Generation Education Society v. CIT 185 ITR 634 (All), Mormugaon Port trust v. CIT 301 ITR (AT) 380 (Panaji)* and *CIT v. B.K.K. Memorial trust, 256 CTR 424 (P & H)* – At the stage of Registration, Commissioner is not required to verify actual application of income. All he has to do is to verify whether application is properly made and objects as per trust deed are charitable or not.
4. *Sardari Lal Oberai Memorial Charitable Trust v. ITO 106 TTJ (Del Trib) 468* and *DIT v. Foundation of Ophthalmic and Optometry research Education, 254 CTR 133 (Del HC)* -Refusal of registration on ground that no activities carried out is not justified.
6. *Aggarwal Mitra Mandal Trust v. DIT(E) 106 ITD 531 (Del)* , *JITO Administrative Training Foundation v.DIT 42-A BCAJ 49 June 10 (Mum Trib)* - Application of S.13 falls within exclusive domain of AO and provisions thereof can be invoked by him while framing the assessment, and not by Commissioner while considering the application for registration u/s.12AA.

SLIDE 24 – CANCELLATION OF REGISTRATION

1. *Welham Boys School Society v. CBDT 285 ITR 74 (Uttaranchal), Sri Chaitanya Educational Committee v. CIT 106 ITD 256 (Hyd)* – Prior to 1.10.2004 Commissioner had no Inherent Power to Cancel Registration granted under Section 12A.
2. *Tamil Nadu Cricket Association v. DIT (Ex) 22 ITR (Trib) 673 (Chennai)* - The assessee was formed for promotion of cricket. It was carrying on activities of commercial nature and was generating huge revenues. It was held that cancellation of registration was justified as the actual activities were not in accordance with the objects of the trust.

SLIDE 25-ALTERATION IN OBJECTS OF THE TRUST

1. *Allahabad Agricultural Institute v. Union of India 291 ITR 116 (All)* - Where there is wholesale alteration in objects after grant of registration u/s 12A without intimating the CIT, registration would not survive. The objects of the trust or institution are the basis of grant of registration. If they are altered subsequent to registration, the very foundation of the registration is altered by the voluntary act of the assessee. In such a case registration would not survive.
2. *Krupanidhi Education Trust v. DIT(Ex.) 21 ITR (Trib) 373 (Bangalore)* - Educational trust altered its objects without consent of the tax Department. It was held that the charitable nature of the trust remained intact. A mere finding that the objects of the assessee had been altered without the consent of the tax Department, would not be sufficient to exercise the powers u/s 12AA(3) without giving a finding that the assessee's objects were no longer charitable.

SLIDE 26-REGISTRATION CANNOT BE CANCELLED ON THE FOLLOWING GROUNDS

1. *CIT v. Mahasabha Gurukul Vidyapeeth Haryana, 326 ITR 25 (P & H), Sunbeam English Schools Society v. CIT 129 ITD 299 (All Trib)) and Society of Advanced Management Studies, 352 ITR 269 (Allahabad)* – Registration u/s 12AA cannot be denied merely on the ground that application for exemption u/s 10(23C) has been rejected.
2. *Ahmedabad Urban Development Authority v. DDIT(Ex.) 335 ITR 575 (Guj)* - Effect of registration of trust under section 12AA-Trust entitled to exemption under section 11-Assessing Officer not entitled to go into whether trust fulfills conditions for applicability of sections 11 and 12.
3. *CIT v. Sarvodaya Ilakkiya Pannai 343 ITR 300 (Mad)* - Commissioner not entitled to revoke registration on the ground that the assessee did not deserve exemption under section 11(1)(a).
4. *Gujarat Cricket Association v. DIT (Ex.) 19 ITR (Tribunal) 520 (Ahmedabad)* - Trust engaged in commercial transactions - this can be examined in assessment but cannot be ground for cancellation of registration.
5. *M/s Kodava Samaja Vs DCIT 2013-TIOL-256-ITAT-Bang* - In 12AA(3) proceedings it is not open to re-examine the objects of the Trust to see if they were charitable.

6. *Rajasthan Housing Board v. CIT 19 ITR (Trib) 524 (Jaipur)* - Violation of S. 11 can be ground for denying exemption for that year, but not for withdrawing registration.
7. *Madras Motor Sports Club v. DIT(Ex.) 22 ITR (Tribunal) 175 (Chennai)* - Violation of proviso to S. 2(15) cannot be ground for cancellation of registration.
8. *G.K.R Charities v. DDIT 44-B BCAJ 298, Dec 2012 (Mum Trib)* - Receipt of loan in violation of Bombay Public Trust Act does not invite denial of exemption u/s 11.

SLIDE 29-INCOME IN COMMERCIAL SENSE

1. *CIT v. Trustees of H.E.H Nizam's Supplemental Religious Endowment Trust 127 ITR 378 (AP), CIT v. Baroda Industrial Development Corp 24 Taxman 36 (Guj)* and *CIT v. Ganga Charity Trust Fund, 162 ITR 612 (Guj)* - Income tax and wealth tax paid to be deducted in computing the income of the trust.
2. *DIT v. National Association of Software and Services Companies 345 ITR 362* - Taxes paid under VDIS to be deducted in arriving at commercial income.
3. *Trustees of Godrej Trust v. Fifth ITO 38 ITD 185 (Bom Trib)* – Refund of tax treated as income of the trust.
4. *CIT v. Hamdard Dawakhana (Wakf) 249 ITR 601 (Delhi HC)* took a view that income tax refund by no stretch of imagination can be considered as income derived from property held in trust and hence the same need not be accumulated under section 11(2).
5. *Circular No. 100 dt. 24.1.1973* states that scholarship loans given will be allowable as application of income and return of loan will be treated as income. However in *CIT v. Trustees of Kasturbai Scindia Commission Trust, 189 ITR 5, (Bom)* it was held that repayment cannot be treated as income even if it was allowed as deduction in the year of payment.

SLIDE 30 - CORPUS DONATION – S. 11(1)(d)

1. *DIT v. Sri Ramakrishna Seva Ashrama 18 taxmann.com 37 (Karn)* - It is not necessary that donation should be made with specific direction that it is towards corpus. Where intention is to keep the donation amount intact and utilise income thereof it would be treated as corpus donation.
2. *Prabodhan Prakashan v. ADIT 50 ITD 135 (Bom), Shri Digambar Jain Naya Mandir v. ADIT 70 ITD 121 (Cal)* - Donations in offertory boxes are not Corpus donations.
3. *Shreeram Religious Trust v. CIT 233 ITR 53 (SC)* – Discussion on taxability of corpus donation.

SLIDE 31 – APPLICATION OF INCOME (Capital Expenditure)

1. *M. Ct. M. Tiruppani Trust v. CIT 230 ITR 636 (SC)* – Capital Expenditure allowed as application of income so long as it is incurred for the objects of the Trust.

2. *CIT v. St. George Forana Church (1988) 170 ITR 62 (Ker)* – Capital Expenditure allowed as deduction even if it was not on objects but was by way of investment in property and rent whereof was to be applied on charity.
3. *CIT v. Kannika Parameswari Devasthanam and Charities (1982) 133 ITR 779 (Mad)* – Capital expenditure can be claimed as application on objects of the trust if it is spent for promotion of objects.
4. *CIT v. Janmabhoomi Press Trust 242 ITR 457, 242 ITR 703 (Kar)* – Amount spent for repayment of borrowing for construction of building. It was held that repayment of debt amounted to application of income.
5. *DIT (Ex.) v. Framjee Cawasjee Institute 109 CTR 463 (Bom), CIT v. Institute of Banking Personnel Selection 264 ITR 110 (Bom), G.K.R Charities v. DDIT 44-B BCAJ 298, Dec 2012 (Mum Trib), Shri Vile Parle Kelvani Mandal, 44-B BCAJ 166 (Nov 2012) Mum Trib, ACIT v. Shri Adichunchanagiri Shikshana Trust, 19 ITR (Trib) 828 (Bangalore)*-Depreciation can be claimed even when the cost of purchase of the asset was allowed as a deduction.

SLIDE 32 – APPLICATION OF INCOME (Others)

1. *CIT v. Birla Janahit Trust (1994) 208 ITR 372 (Cal)* and *CIT v. Programme for Community Organisation, 248 ITR 1 (SC)* - Expenses incurred on salaries and other administrative expenses are to be treated as application of income on objects of the trust.
2. Circular No. 100 of Central Board of Direct Taxes of 24.1.1973 stated that a scholarship loan given is application of income. *CIT v. Trustees of Kasturba Scindia Commission Trust (1991) 189 ITR 5 (Bom)* held that repayment of loan is not income even if allowed as deduction in the year of granting of loan.
3. *CIT v. Trustees of H.E.H. the Nizam's Charitable Trust (1981) 131 ITR 497 (AP)* – expenditure sanctioned is to be considered as applied. It is not necessary that expenditure should actually be spent.

CIT v. Thanthi Trust (1982) 137 ITR 735 (Mad) – Held that credit entries passed in the books of accounts of the trust in favour of the educational institution would be sufficient to treat it as application of income.

SLIDE 33- CARRY FORWARD OF DEFICIT

1. *CIT v. Maharana of Mewar Charitable Foundation 164 ITR 439 (Raj), CIT v. Shri Plot Swetambar Murti Pujak Jain, 211 ITR 293 (Guj), CIT v. Matriseva Trust, 242 ITR 20 (Mad), CIT v. Gujarati Samaj, 349 ITR 559 (MP)* - If deficit suffered in one year, the surplus made by the trust in another year to make up past deficit should be set off.

2. *CIT v. Institute of banking Personnel Selection, 264 ITR 110 (Bom)* – Income to be computed on commercial principles and accordingly adjustment of expenses incurred in earlier years against income earned in subsequent year is possible.
3. *DIT v. Raghuvanshi Charitable Trust [2011] 197 TAXMAN 170 (Delhi)* - Adjustment of deficit of current year against income of subsequent year would amount to application of income of trust for charitable purposes in subsequent year within meaning of section 11(1) (a).

SLIDE 36-Option to spend Accumulated Income under explanation to S. 11(1)

1. *Tulsidas Gopalji Charitable and Chaleshwar Temple Trust v. CIT 207 ITR 368 (Bom)* and *CIT v. Ziarat Mir Syed Ali Hamdani, 248 ITR 769 (J & K)* -Due date means due date as prescribed u/s 139(4) for belated return and not just due date u/s 139(1)

SLIDE 37-ACCUMULATION – S. 11(2)

1. *CIT v. Nagpur Hotel Owners' Association, 247 ITR 201 (SC), Association of Corporation & Apex Societies of Handlooms v. ADIT 351 ITR 287 (Delhi)* and *Stock Exchange Ahmedabad v. ACIT 25 taxmann.com 469 (Guj)* - Rule 17 providing time limit for filing form 10 is ultra virus as section does not lay down any time limit. The form can be filed during the course of the assessment proceedings.
2. Gujarat HC in *CIT v. Mayur Foundation 274 ITR 562* has held that assessment proceedings are completed only when appeal against the order of assessment is decided by the tribunal and not when assessment order is framed. So form 10 can be filed during pendency of appeal before Tribunal.
3. *M.P. Gandhi Trust v. ADIT 8 SOT 808 (Mum)* – application to be made separately for each year – general combined application for accumulation over a period of time not possible.

A contrary view was taken in *Cotton Textiles Export Promotion Council v. ITO 20 SOT 187 (Mum)* which held that notice for accumulation possible not only for current assessment year, but also for subsequent assessment years. The section does not prohibit common form seeking accumulation for more than one year.

SLIDE 38-ACCUMULATION – S. 11(2) cont...

1. *DIT (Ex.) v. Trustees of Singhania Charitable Trust 199 ITR 819 (Cal), Cotton Textiles Export Promotion Council v. First ITO 4 ITD 642 (Bom Trib)* - held that long term accumulation should be for definite and concrete purpose. Mere reproduction of main object not valid.
2. *Bharat Kalyan Pratisthan v. DIT (Ex.) 299 ITR 406 (Delhi), CIT v. Sobha Singh Public Charitable Trust 251 ITR 48 (Delhi Tri), Mitsui & Co. Environmental Trust, 211 CTR 352 (Delhi), CIT v. Hotel & Restaurant Association, 261 ITR 190 (Del)* - However, the preponderant view is that accumulation can be generally

for the purpose for which the trust was created. In the above decisions the accumulation was generally for some or all of the objects for which the trust was incorporated.

SLIDE 39-ACCUMULATION- S. 11(2) cont...

1. *DIT(Ex.) v. Bagri Foundation 192 TAXMAN 309 (DELHI)* - Restriction on donations to be made to other trusts out of accumulation of earlier year is applicable to accumulation in excess of 15% as envisaged u/s 11(2). There is no restriction on accumulation up to 15% as permitted u/s 11(1)(a) as the same is unconditional.
2. *CIT v. Natverlal Chowdhary Charity Trust 189 ITR 656 (Cal)* - Income taxable on account of violation of S. 11(3) is eligible for accumulation up to 15% in the year of taxability. Contrary view in case of *B.N. Gamadia Parsi Hunnarshala v. ADIT (E) 77 TTJ 274 (Bom)* where it was held that such deemed income u/s 11(3) is not income from property held under trust. Hence not eligible for accumulation up to 15% u/s 11(1)(a).

SLIDE 40-CAPITAL GAINS – S. 11(1A)

1. The Calcutta High Court in the case of *CIT v. East India Charitable Trust, 206 ITR 152* has held that in order to qualify for exemption, the sale proceeds of the capital asset sold should be reinvested in another eligible asset within the same year or within the immediately succeeding year. The Court held that the term income includes capital gains and therefore just as the trust can exercise its option of spending the income in the subsequent year; it can postpone the investment of the sale proceeds to the subsequent year as well.
2. As per the instructions of the Board, fixed deposits with banks for a period exceeding six months can be considered to be a permissible capital asset. Refer *Instruction No. 883 - F. No. 180/34/72-IT of 25-9-75. CIT v. Hindustan Welfare Trust, 206 ITR 138 (Cal)* referred to the above circular, but held that the time limit of six months had no legal sanctity. FD with bank for three months also entitled trust to exemption from capital gains. Also refer Delhi High Court in the case of *D.L.F. Quatab Enclave Complex Medical Charitable Trust, 248 ITR 41*.

SLIDE 42-BENEFIT TO PARTICULAR COMMUNITY OR CASTE- S.13 (1)(b)

1. *ITO v. Emmanuel Bible Institute Samiti, 11 ITR (Trib) 593 (Jaipur)* - Society engaged in activities which were not only religious but also charitable. It was held that the society was entitled to exemption u/s 11(1)(a).
2. *Addl. DIT v. Islamic research Foundation, 21 ITR (Trib) 588 (Mumbai), CIT v. Barkate Saifiyah Society, 213 ITR 492 (Guj)* - If the trust was a mixed trust with both charitable and religious objects then S. 13(1)(b) could not be applied. S. 13(1)(b) could be invoked only to deny benefit of exemption to a purely charitable trust carrying on activity for the benefit of any religious community or caste.

SLIDE 43-BENEFIT TO SPECIFIED PERSON – S. 13(1)(c)

1. *DIT v. Society for Development Alternatives, 205 Taxman 373 (Delhi HC)* -One charitable trust pledged its FD's to allow another charitable trust to take a loan. The two trusts had common trustees. Held there was no violation of S. 13(1)(c)(ii) read with S. 13(3) and explanation 3(ii). It was noted that persons in control of management did not at any point have 20% or more share in profits of the concerned trusts/ societies.

SLIDE 44-NATURE OF BENEFIT

1. *Vempati Chinna Satyam Kuchipudi Art v. DCIT 10 ITR (Tribunal) 201 (Chennai)* - Money paid by the Trust to meet medical emergency of Trustee. It was in the interest of the assessee trust and there was no violation u/s 13 (1)(c) and 13(3).
2. *DDIT v. Society for the Poor and Oppressed, 5 ITR (Trib) 388 (Hyderabad)* – Car was purchased in the name of President by utilizing funds of the society. Treated as violation of S. 13(1)(c) read with S. 13(3). The registration certificate was subsequently rectified and changed to the name of the Society. The rectification related back to the date of original registration. Hence, it was held that there was no violation of S. 13(1)(c).
3. *Young Scholars Educational Society v. ITO 12 ITR (Tribunal) 640 (Chandigarh)*-Salary paid was not unreasonable considering the qualification of the person employed. Exemption could not be denied u/s 13(1)(c).

SLIDE 47 – INVESTMENTS – S. 11(5) & 13(1) (d)

1. Income from prohibited investments taxed at maximum marginal rate while balance income taxed at normal rates - CBDT Circular No 387 Dt 6.7.1984.
2. *DIT v. Sheth Mafatlal Gagalbhai Foundation Trust, 249 ITR 533 (Bom)*, held that only income from prohibited investment loses exemption and is taxed at maximum marginal rate, while rest of the income is taxable at normal rate.

SLIDE 48 – APPROVED INVESTMENTS – S. 11(5)

1. *ADIT v. Murugappa Chettiar Trust 303 ITR 360 (Mad)* - Even current account with scheduled bank is considered as permissible investment u/s 11(5).
2. *DIT v. Visheshwar Nath Memorial Public Ch. Trust 194 TAXMAN 280 (DELHI)*- Debentures would also constitute Bonds for the purpose of investments u/s 11(5).