

Registration u/s. 12A and Approval u/s. 80G of the Income Tax Act, 1961

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"Whatever a man has in superabundance is owed, of natural right, to the poor for their sustenance."

GIVING
what we can

St Thomas Aquinas
Summa Theologica, 1274 CE

INTRODUCTION

- ▶ Non Governmental Organisations (NGOs) , whether Public Trusts, Associations or Companies perform a vital role in supplementing governmental efforts in promoting economic development and social welfare.
- ▶ Tax administrations all over the world recognize voluntary effort and provide incentives to genuine charitable organisations.
- ▶ Indian Income Tax Act, 1961 also incorporates several provisions to extend tax breaks and incentives to such organisations as well as to its donors.
- ▶ However, there is need to understand the fine points applicable to availing such exemptions both by management of such organisations as well as their consultants.
- ▶ Ever changing nature of tax provisions and their interpretations make it incumbent to study into such applicable provisions.
- ▶ The presentation covers 'Registration u/s. 12A and Approval u/s. 80G of Income Tax Act, 1961'.

Exemption provisions for a Charitable Trust

- ▶ Trusts and Institutions established for Charitable and religious purposes are entitled for exemptions from taxation.
- ▶ The Trust must be carrying on charitable activity covered under provisions of section 2(15) of Income Tax Act, 1961.
- ▶ The eligible trust is required to make an application for grant of exemption u/s. 12A and 12AA of Income Tax Act, 1961.
- ▶ The exemption is governed by section 11 and 12 r.w.s. 13 of Income Tax Act, 1961.
- ▶ One needs to understand the intricacies of these sections to properly appreciate the requirements of the act.

Section 12A

- ▶ The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:
 - ▶ the person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and in the prescribed manner to the Principal Commissioner or Commissioner before the 1st day of July, 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution, [whichever is later and such trust or institution is registered under section 12AA]
- ▶ Thus, primary condition for application of section 11 and section 12 is to obtain registration u/s. 12AA.

Section 12AA

- ▶ The Principal Commissioner or Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) [or clause (aa) of sub-section (1)] of section 12A, shall-
- ▶ call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and
- ▶ after satisfying himself about the **objects of the trust or institution** and the **genuineness of its activities**, he—
 - ▶ shall pass an order in writing registering the trust or institution;
 - ▶ shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution.
- ▶ Order rejecting the registration shall not be made unless an opportunity of being heard has been given to applicant.

Conditions under section 12A

- ▶ Section 12A provides that the benefits u/s. 11 and 12, will not be available unless the conditions specified in clauses (a) and (b) of section 12A are satisfied.
- ▶ Clause (a) requires the organisation to get itself registered; and
- ▶ Clause (b) requires the organisation to obtain audit report where the income of the organisation exceeds the maximum which is not chargeable to income tax in any pervious year.
- ▶ Further the Finance Act, 2007 w.e.f. 01.06.2007 has withdrawn the power of Commissioner to grant registration for past years by condoning delay in filing of such application.

Conditions for availing exemption

- ▶ Exemption u/s. 11 is available only to trust/institution which holds the property in trust wholly for charitable or religious purposes.
- ▶ The trust must have been created wholly for charitable purpose or wholly for religious purposes. It should not have been created for the benefit of a particular religious community or caste.
- ▶ It should not be carrying any business subject to limits laid down in section 2(15).
- ▶ The objects of the trust should be charitable covered within the meaning of section 2(15).
- ▶ Exemption is available to income applied to charitable or religious purpose.
- ▶ Income of the trust and the property is utilised for charitable purpose in India.
- ▶ Income or the property of the trust does not ensure for the benefit of the settlor (author) or trustees. [Refer section 13]

Registration is mandatory

- ▶ Registration u/s. 12A is a mandatory pre-condition to avail of income tax exemptions. The income of a trust would not be exempt unless it has obtained registration u/s. 12A. [New Life Evangelistic Association v CIT [2000] 246 ITR 532 (Mad)].
- ▶ It has to be understood that registration is mandatory for availing exemptions but mere registration does not entitle the organisation to claim exemption. These are available subject to various other conditions as are specified in the Act. [CIT v Red Rose School [2007] 163 Taxman 19 (All)].
- ▶ Similar views have been expressed in CIT v U.P.Forest Corporation [1998] 230 ITR 945 SC AND M. Visvesvaraya Industrial Research & Development Centre v ITAT [2001] 251 ITR 852 (Bom).
- ▶ An organisation duly registered can still be denied exemption if provisions of section 11 are not followed.

Registration of an organisation formed without an instrument?

- ▶ A Voluntary Organisation which is created without an instrument can be registered under the Income Tax Act, 1961.
- ▶ However, a document evidencing the creation of the voluntary organisation must be filed along with the application form for its registration.
- ▶ **“Application for registration of charitable or religious trusts, etc.**
- ▶ **17A.** An application under [clause (aa) of sub-section (1)] of section 12A for registration of a charitable or religious trust or institution shall be made in duplicate in Form No. 10A and shall be accompanied by the following documents, namely :
 - ▶ (a) where the trust is created, or the institution is established, under an instrument, the instrument in original, together with one copy thereof; and where the trust is created, or the institution is established, otherwise than under an instrument, the document evidencing the creation of the trust or the establishment of the institution, together with one copy thereof :
 - ▶ **Provided** that if the instrument or document in original cannot conveniently be produced, it shall be open to the Commissioner] to accept a certified copy in lieu of the original;

“Document evidencing creation of trust. . .” meaning-

- ▶ The evidential documents could not be limited to documents which directly proved the creation of the trust but they would include all documents which provided a logical basis of inferring creation of the trust.
- ▶ In ‘Laxminarayan Maharaj v CIT [1984] 150 ITR 465 MP, it was opined that
- ▶ If the words “documents evidencing the creation of the trust” were narrowly interpreted being limited to documents directly evidencing the creation of the trust, then it would be nearly impossible to have a trust registered which was not created under an instrument.”
- ▶ One needs to look at the available documents and their coverage to allow sufficient evidence about creation and existence of the trust carrying on charitable activity.

Activity outside India is not relevant at Registration Stage

- ▶ In **DIT(Exemption) v Japan Chamber of Commerce & Industry in India [2009] 308 ITR 76 (Delhi)**, the point of place of activity was tested.
- ▶ Here, the assessee was registered under Societies Registration Act, 1860 and as per clause 3.1 of the Memorandum of the said society, the membership was open to Japanese companies and Japanese Government Institutions in India.
- ▶ It was held that at registration level, the issue of activity outside India is not relevant. It was observed that the question of exemption under section 11/12 was to be dealt with separately by the Assessing Officer at the time of assessment for each year.
- ▶ In case any of the income is applied outside India, it goes without saying that the provisions of section 11 would apply and the Assessing Officer would deal with the situation accordingly.

Private Management is no bar for section 12A registration

- ▶ In yet another case, 'Reliable Educational Alliance Society v CIT [2009] 126 TTJ (Delhi) 407, the question came up whether activities of the assessee can be charitable in the circumstances where all its rights and procedures including appointment of the new members are vested in the hands of promoter-members who are close relatives.
- ▶ The objects of the assessee-society were otherwise found to be charitable within the meaning of section 2(15) of the Income Tax Act, 1961.
- ▶ It was held that the CIT had erred in law and in facts in refusing to grant registration to the applicant u/s. 12A.
- ▶ Similar views have been found in following cases as well:
 - ▶ People Education & Economic Development Society (PEEDS) v ITO [2006] 104 TTJ (Chennai)TM 467
 - ▶ Jyoti Prabha Society v CIT [2003] 81 TTJ (Delhi) 942
 - ▶ Sanjeevamma Hanumanthe Gowda Charitable Trust v DIT(Exemption) [2006] 285 ITR 327 (Kar)

CIT to see objects and genuineness only. . .

- ▶ Thus, it is well established that the DIT(Exem) or CIT should objects and genuineness of activities only.
- ▶ In 'Medical Accident Invention Society v CIT' [2005] 278 ITR 165 (Kar) it has been held that the relevant consideration while considering the application under section 12A of the Act is that the trust or the institution has to be a charitable one having charitable purpose.
- ▶ In 'Acharya Sewa Niwas Uttaranchal v CIT [2006] 105 TTJ (Delhi) 761, it has been held that while dealing with an application for registration under section 12AA of the Act, the jurisdiction of the CIT is confined to examination of the objects of the applicant-trust and genuineness of its activities.

A regulatory body can also avail registration

- ▶ It is not necessary that a regulatory body should only have commercial angle.
- ▶ If a regulatory body is pursuing an 'object of general public utility' which qualifies to be a charitable activity under section 2(15) of the Act, it is eligible for registration under section 12A.
- ▶ The scope of expression 'any other object of general public utility' is indeed wide, though it would indeed exclude the object of private gain such as an undertaking for commercial profit.
- ▶ This was the view expressed in *Himachal Pradesh Environment Protection & Pollution Control Board v CIT* [2009] 125 TTJ (Chd) 98.
- ▶ Similarly in the case of *CIT, Lucknow v. Krishi Utpadan Mandi Samiti* [2010] 186 Taxman 460 (All), it was held that a society engaged in promotion of trade of its members including procurement and marketing the product shall be considered as engaged in "advancement of any object of general public utility".
- ▶ However, the proper care needs to be taken even while pursuing these objects particularly in view of restriction on commercial activity through amendment to section 2(15) w.e.f. 01.04.2016.

AO cannot go into the objects after registration

- ▶ In the case of *Asst.CIT v. Surat City Gumkhana* [2008] 300 ITR 214 SC, it was observed that after registration, further probe into objects is not permissible.
- ▶ The Apex court referred to and upheld the decision in *Hiralal Bhagwati v Cit* [2000] 246 ITR 188 (Guj) where it was held that once the registration under section 12A(a) was granted the exemption and other benefit could not be denied.
- ▶ “The registration of a charitable trust under section 12A is not an idle or empty formalities. This is apparent from the tenor of the provisions of section 12A. It requires that not only an application should be filed in the prescribed form setting out details of the origin of the trust, but also the names and addresses of the trustees and/or managers should be furnished. The Commissioner has to examine the objects of creation as well as an empirical study of the past activities of the applicant. The Commissioner has to examine that it is really a charitable trust or institution eligible for registration.”

Absence of activity cannot result in rejection if purposes are charitable.

- ▶ On the other hand, where a trust or institution purported to be registered is newly formed and does not have past activities, it has been held that CIT cannot reject the section 12A application if the purposes are found to be charitable but no activity is conducted.
- ▶ *Sardari Lal Oberai Memorial Charitable Trust v ITO* [2005] 3 SOT 229 Delhi Trib.

Section 12A does not prohibit religious as well as charitable trust

- ▶ In *New Life in Christ Evangelistic Association v CIT* [2000] 246 ITR 532, Madras High Court held that section 12A does not prohibit registration of the trust whose objects are religious as well as charitable. Even if the exemptions would not be available under section 11, the CIT cannot question it at the time of granting registration under section 12AA.
- ▶ In yet another case, *CIT v Shri Digamber Jain Mandir* [2010] 189 Taxman 106 (Raj), it was observed that the language of section 12A does not indicate, not even remotely, that an institution of religious nature cannot get itself registered under section 12A.

Time limit for making an application and condonation of delay

- ▶ The application for registration should be made before expiry of one year from the date of creation of the trust or the establishment of the institution, whichever is later.
- ▶ Charitable organisations which make a delayed application are allowed exemption with effect from the 1st day of the financial year in which an application is made.
- ▶ The power for condonation of delay earlier granted to Chief Commissioner or Commissioner has been withdrawn w.e.f. 01.06.2007 by Finance Act, 2007.

Time limit for processing application

- ▶ By virtue of section 12AA, the procedure and the time limit for processing an application has been provided.
- ▶ Now an application has to be processed within six months from the end of the month in which the application is made.
- ▶ However, the act is not explicit about the consequences/remedies available in case an application is not processed within six months.
- ▶ There are two divergent judgments in this regard.
- ▶ Non consideration of application for registration within time limit, it was decided that in result there of it is to be treated as deemed grant of registration.
- ▶ Society for the Promotion of Education Adventure Sport & Conservation of Environment v CIT [2008] 171 Taxman 113 (All)
- ▶ Recently Madras High Court in the case of CIT v Sheela Christian Charitable Trust reported in 32 taxmann.com 242 (2013) decided that not passing an order within the prescribed time would not automatically result in granting registration to trust.

Charitable Purpose

- ▶ “charitable purpose” includes relief of the poor, education, yoga, 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;
- ▶ **Following proviso shall be substituted for the existing first and second provisos to S.2(15) by the Finance Act, 2015, w.e.f. 1-4-2016 :**
- ▶ 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 any 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, unless-
 - ▶ (i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and
 - ▶ (ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year.

Charitable Purpose

- ▶ **'Charitable Purpose'** includes
- ▶ relief of poor,
- ▶ education,
- ▶ yoga,
- ▶ medical relief,
- ▶ preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places of artistic or historic interest and
- ▶ the advancement of any other object of general public utility.

Charitable Purpose

- ▶ A purpose must in order to be charitable, be directed to the benefit of the community or a section of the community, as distinguished from an individual or a group of individuals as held in - **CIT v Ahmadabad Rana Caste Association (1983) 140 ITR 1 (SC)**.
- ▶ Where the primary purpose of the settler is to benefit the members of his family and relations and only remotely and indirectly the general public, the trust is not a charitable trust.
 - ▶ Not necessary to benefit whole of mankind
 - ▶ Not necessary to provide free services
 - ▶ Cross subsidization permissible

Charitable Purpose

- ▶ The word 'education' connotes the process of training and developing the knowledge, skill, mind and character of students and has not been used in the wide and extensive sense according to which every acquisition of further knowledge constitutes education.
- ▶ Lok Shikshana Trust (1975) – 101 ITR 234 (SC)
- ▶ The object of promoting an ddevelopment of management and related subjects through discussions, lectures, seminars, conferences etc. 80% revenue derived from continuing education diploma and certification program. Held that the association is engaged in activity of education hence proviso to section 2(15) was not applicable.
- ▶ DIT(E) v Ahmedabad Management Association 366 ITR 85 (Guj)
- ▶ Taking licence fee for granting marks/certification cannot be said to be done for the purpose of profit-any profit/revenue earned is purely incidental.
- ▶ Bureau of Indian Standards v DGIT(E) 358 ITR 78 (Del)

Religious Purpose

- ▶ The expression religious purpose has not been defined under the Act.
- ▶ Religious purposes are necessarily associated with religion. A religion is certainly a matter of faith with individuals or communities. A religion has its basic in a system of beliefs or doctrines.
- ▶ Aruna Roy and Others v Union of India WP 98 of 2002 (SC), has deliberated upon what is religion in detail.
- ▶ Religious Purpose' includes the advancement, support or propagation of a religion and its tenets.
- ▶ The income of a religious trust or institution is entitled to exemption even though it may be for the benefit of a particular religious community or caste.
- ▶ The exemption u/s 11 available to public religious trusts only; and not available to trust for private religious purposes which does not enure for the benefit of the public.

Advancement of Object of General Public Utility

- ▶ A trust or institution for charitable purpose being advancement of any other object of general public utility shall not be entitled to exemption u/s 11 or 12, in the year in which its receipts from commercial activities exceed Rs.25 lakhs, and the trust/ institution is regarded as of non-charitable nature by virtue of Section 2 (15) First and second proviso.
- ▶ Above limit was Rs. 10 lakhs for A.Y.2009-10 to 2011-12 and is Rs. 25 lakhs for A.Y.2012-13 to 2015-16
- ▶ Now w.e.f. 1.4.2016 (i.e. w.e.f. A.Y.2016-17) provisions are substituted to the effect that advancement of any other object of general public utility shall not be treated as charitable purpose- if it has receipts from commercial activity unless-
 - ▶ (i) Such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility.
 - ▶ (ii) The **aggregate receipts** from such activity/activities during the previous year **do not exceed 20% the total receipts of Trust/institution during previous year.**
 - ▶ (iii) Also as per section 13(8) benefit of exemption of income as per section 11 & 12 is not available in case of first proviso to section 2(15) is attracted.

Other important points

- ▶ **Transfer of Income without involving Transfer of Assets [S.60]**
- ▶ where a person settles a charitable or religious trust in respect of the income arising from an asset of which he is the owner but retains the ownership of the asset, the income so transferred shall be deemed to be the income of the transferor and not that of the trust, and shall not qualify for exemption u/s 11.
- ▶ **Trusts by Revocable Transfer of Assets [S.61]**
- ▶ Any income arising to a person by virtue of a revocable transfer of assets shall be clubbed in the hands of the transferor.
- ▶ Where, however a trust is not revocable during the lifetime of the beneficiary and the transferor (settlor) derives no direct or indirect benefit from the income of the trust, the income of the trust shall not be taxable in the hands of the transferor, unless the power to revoke arises and when power to revoke arises such income shall be included in total income of transferor.
- ▶ For the purposes of Sec 60, 61, 62 & 63 a 'revocable transfer' is one which contains a provision for re-transfer of the income or assets to the transferor, or giving the transferor a right to reassume control, over the income or assets. [Sec.63]

Conditions for applicability of sections 11 and 12.

- ▶ **Section 12A specifies the conditions for applicability of section 11 and 12.**

-Clause (a) is made applicable for applications made prior to 1st June 2007-Grant of registration from the date of establishment of trust if the application was not submitted within one year from establishment of trust.

-Clause (aa) is made applicable for applications made after 1st June 2007.

Application for registration of the trust to be made in **duplicate in Form No.10A** along with the following documents:

Corpus Donations-Section 11(1)(d)

- ▶ Corpus donations refer to the donations made by a donor to a trust with a specific direction that they shall form part of the corpus of the recipient trust.
- ▶ The donor alone can give a specific direction that the donation made by him shall form part of the corpus of the trust.
- ▶ Trustees have no power to treat in their discretion any donation as corpus donation.
- ▶ Corpus donations being capital receipt in the hands of the recipient trust are not income of the trust.
- ▶ Section 11(1)(d) expressly grants exemption to corpus donations to make the position clear beyond doubt. Contributions to corpus fund kept in fixed deposit cannot be taxed as income even if corpus fund is misused -CIT v Sri Durga Nimishambha Trust [2012] 205 Taxman 59 (Mag) (Kar).
- ▶ Note: Donations received by way of box collections and other anonymous donations, do not form part of the corpus of the trust, but are deemed to be income of the trust.
- ▶ Anonymous Donations and Accreted Income Provisions are discussed separately in this presentation in Assessment Section.

Registration of Trust u/s. 12A and 12AA

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Registration Procedure u/s. 12A/12AA

- ▶ The requirement of filing an application for registration within one year from the date of creation of the trust/institution has been removed w.e.f. 1st June 2007.
- ▶ Now, an application for registration may be made at any time by the trust/institution. However, exemption u/s 11 and 12 shall be available only from the assessment year immediately following the financial year in which such application is made. The application should be made to the Commissioner in Form, No.10A (in duplicate) along with the following documents:
 - ▶ Original or certified copy and an extra copy of the instrument under which the trust or institution was set up,
 - ▶ Or
 - ▶ In case the trust/institution was not set up under an instrument, the original or a certified copy and an extra copy of the document (s) evidencing the setting up of the institution,
 - ▶ Or
 - ▶ Memorandum of association and bye-laws of the society;
- ▶ (b) If the trust or institution was in existence for any completed number of years prior to making of the application, copies of the accounts for one, two or three years, as may be available.



Conditions for applicability of sections 11 and 12.

Conditions for applicability of sections 11 and 12.

Year from which registration is granted

Year 1

Trust is formed

Year 4

Application for registration

Exemption shall apply from year 4 i.e. prospectively. However, w.e.f.01/10/2014 exemption shall apply retrospectively provided that the trust object for earlier AY is the same as that on which it is registered.

Consequences

Assmt proceedings for yr 1 to yr 3 is completed on the date of registration—**Exemption shall apply from yr 4**

Assmt proceedings are not yet initiated—No action u/s 147 can be initiated— no tax demand can be raised by reason of non-registration

Assmt proceedings are pending—registration shall apply retrospectively i.e. from yr 1 to yr 3

Conditions for applicability of sections 11 and 12.

The Principal Commissioner/ Commissioner on receipt of application in form 10A shall call for such documents or information as he deem fit to satisfy himself about the genuineness of the activities of trust and accordingly shall pass an order in writing granting/ refusing to grant the registration of trust.

The order shall be passed only after giving reasonable opportunity of being heard to assessee.

Where a charitable trust applied for issuance of registration u/s 12A within a short time span after its formation, can registration be denied on the ground that no charitable activity has been commenced?
(Meenakshi Amma Endowment Trust)[ITA No. 640 & 641/ Bangalore/2009]

Conditions for applicability of sections 11 and 12.

The order shall be passed within the 6 months from the end of month in which application for registration is received.

In a case where the application for registration of charitable trust is not disposed of within period of 6 months as required, can the trust be deemed to have been registered?—

Madras HC Held that the time frame is directory in nature and non-registration within said time frame would not amount to deemed registration(Karimangalam Onriya Pengal Semipu Amaipu Ltd.)

T.C.(A) No. 1183 of 2010-Order dated 20.03.2013.

Conditions for applicability of sections 11 and 12.

The Principal Commissioner/ Commissioner may pass an order for cancelling the registration granted to the trust if he is satisfied that the activities carried on by trust are not genuine or are not being carried out in accordance with the objects with which the trust was created.

The order shall be passed only after giving reasonable opportunity of being heard.

Amendment vide FA 2014 w.e.f. 01/06/2013

Where trust or institution has been granted registration u/s 12A (old) or u/s 12AA and subsequently it is noticed that the activities of the trust or the institution are being carried out in a manner that—

- income does not enure for the benefit of public
- Income applied for specified person
- Funds are invested in prohibited modes

then, the Principal Commissioner or the Commissioner may by an order in writing cancel the registration of such trust or institution. However, opportunity of being heard shall be given.

Points to be noted

- ▶ Rejection of application cannot be justified if the assessee is deprived of reasonable opportunity to produce all relevant documents due to time constraint. *St. Paul's Anglo Indian Education Society* (2003) 262 ITR 377 (Pat)
- ▶ The Commissioner cannot direct an applicant-trust to incorporate a clause indicating that any amendment to the trust deed would be carried out after obtaining approval from the Commissioner, and furnish the amended trust deed, duly registered, along with notes on the activities of the trust with regard to various expenses; such a requisition has been held to be extra-statutory.-**CIT v RMS Trust** (2010)326 ITR 310 (Mad)
- ▶ When an assessee fulfils all relevant conditions for registration u/s 12AA, no other condition can be imposed on it while granting registration. If a trust fulfils all the conditions mentioned in section 12A/12AA, registration cannot be denied on the ground that some conditions of sections 11 and 12 are not fulfilled. The manner of application by trusts and as to whether the trust could claim the benefit of exemption in terms of sections 11 and 12 are questions which have to be examined by the Assessing Officer at the stage when same are urged and not by the Commissioner while considering the application for registration. **DIT v Garden City Educational Trust** (2010) 191 Taxman 238(Kar).

Points to be noted

- ▶ **Appeal against Refusal to grant Registration-** An assessee has a right to appeal to the Appellate Tribunal against the order passed by the Commissioner u/s 12AA.
- ▶ W.e.f.1st June 2007, the power of Commissioner to grant registration for past years by condoning the delay in filing such application has been withdrawn.
- ▶ Accordingly, in respect of applications filed on or after the 1st June 2007, the provisions of section 11 and 12 shall apply from the assessment year relevant to financial year in which the application is made.
- ▶ As per section 12A(2), the provisions of sections 11 and 12 shall apply in relation to income of a trust from the assessment year relevant to financial year in which the application for registration is made. The benefit cannot be claimed retrospectively, in respect of any earlier assessment year.
- ▶ However, w.e.f.1.10.2014, the benefit of sections 11 and 12 shall be allowed also in respect of income of the trust for any preceding assessment year the assessment proceedings for which are pending as on the date of date of grant of registration provided the objects and activities of the trust remain same for such preceding assessment year. However, this benefit shall not be available in case the trust had at any time applied for registration and the same was refused u/s 12AA or a registration once granted was cancelled.

Cases

- ▶ **Registration** u/s 12A is a **condition precedent** for availing benefit u/s 11 and 12. Unless and until an institution is registered u/s 12A, it cannot claim the benefit of section 11(1)(a)- U.P. forest Corporation v. CIT[2007] 165 taxman 533 (SC).
- ▶ While considering granting of registration u/s 12AA, the Commissioner should **satisfy himself only about genuineness of activities** of trust in accordance with its objects and **not about credential , capacity and qualification, etc.** of trust – PIMS Medical & Education Charitable Society v. CIT[2013] 56 SOT 522 (Chd.).
- ▶ While considering an application for registration u/s 12AA **sufficiency or otherwise of initial contribution** made by founder of trust and dedication to object of trust, is **not a relevant factor** – Acharya Sewa Niyas Uttaranchal v. CIT[2007] 13 SOT 54 (Delhi).

Cases

- ▶ Registration cannot be refused on the ground that trust is **running a school in a village without seeking necessary prior permission** from the appropriate authority to run the school. Even if school for some of classes is run without requisite permission , it is not fatal for grant of registration u/s 12AA- Sri Elumalayan Education Trust v.CIT[2010] 5 ITR (Trib.) 127 (Chennai).
- ▶ Likewise, registration cannot be denied on the ground that the assessee- trust has **not submitted its return of income for last several years**- CIT v. Shri Advait Ashram Society[2012] 211 Taxman 311 (All).
- ▶ **A trust, which is in process of establishing educational institute**, cannot be refused registration u/s 12AA on the ground that it has not yet commenced charitable or religious activity- **Hardayal Charitable & Educational Trust v. CIT[2013] 214 Taxman 655 (All)**.
- ▶ Moreover, in such a case, application cannot be rejected by the Commissioner on the ground that the trust failed to convince him about genuineness of activities – CIT v. Kutchi Dasa Oswal Moto Pariwar Ambama Trust[2013] 212 Taxman 435 (Guj.).
- ▶ Moreover, while granting registration the Commissioner cannot impose condition that trust should not charge any fee/amount from the beneficiaries – DIT v. Commerce Teachers Association[2011] 203 Taxman 171 (Delhi), Shri Gian Ganga Vocational & Education Society v. CIT [2013] 143 ITD 297 (Delhi)

Cases

- ▶ Merely because **all trustee are family members**. It does not mean that trust is not public trust. Merely because the assessee –trust has not carried out any activities, that would be correct to state that the trust has totally stopped activity forever and withdrawal of registration will not be justified – Jupiter Medical Research Centre Trust v. DIT (2010) 128 TTJ (Ahd.) (UO) 118.
- ▶ When **certain amount is not spent for aims and objects** of a charitable society, it cannot be a ground for cancellation of registration. In such a case, the benefits of exemption under section 11 maybe denied to the extent income is not applied for the objects of society- Institute of Science & Management v. CIT(2012) 53 SOT 167 (Ranchi).

Approval u/s 80G (5)

Conditions for Applicability of section 80G

- ▶ Section 80G applies to donations to institution or fund, only if it is established in India for a charitable purpose and
- ▶ if it fulfills the following conditions, namely :—
- ▶ (i) Income not liable to be included in total income - where the institution or fund derives any income, such income of the fund or institution is not liable to be included in its total income under the provisions of sections 11 and 12 or 10(23AA) (i.e. Regimental fund) or 10 (23C) :
 - ▶ Exception: where an institution or fund derives any income, being profits and gains of business, the condition of non inclusion of business income in its total income under the provisions of section 11 shall not apply in relation to business income, if—
- ▶ a) the institution or fund maintains separate books of account in respect of such business;
- ▶ b) the donations made to the institution or fund are not used by it, directly or indirectly, for the purposes of such business; and
- ▶ c) the institution or fund issues to donor a certificate to the effect that it maintains separate books of account in respect of such business and that the donations received by it will not be used, directly or

Conditions for Applicability of section 80G

- ▶ **(ii)** Instrument/governing rules do not permit application of income for non –charitable purpose - the instrument under which the institution or fund is constituted does not, or the rules governing the institution or fund do not, contain any provision for the transfer or application_ at any time of the whole or any part of the income or assets of the institution or fund for any purpose other than a charitable purpose;
- ▶ **(iii)** the institution or fund is not for the benefit of any particular religious community or caste;—An the institution or fund is not expressed to be for the benefit of any particular religious community or caste; *However as per Explanation 1 exception is made out as follows.* — An institution or fund established for the benefit of Scheduled Castes, backward classes, Scheduled Tribes or of women and children shall not be deemed to be an institution or fund expressed to be for the benefit of a religious community or caste within the meaning of this clause.
- ▶ **(iv)** maintains regular accounts: the institution or fund maintains regular accounts of its receipts and expenditure;

Conditions for Applicability of section 80G

- ▶ (v) Type of institution or fund: the institution or fund is either
 - ▶ 1. constituted as a public charitable trust or
 - ▶ 2. is registered under the Societies Registration Act, 1860 or under any law corresponding to that Act in force in any part of India or
 - ▶ 3. Is registered under section 25(now sec 8) of the Companies Act, 1956,or
 - ▶ 4. is a University established by law, or
 - ▶ 5. is any other educational institution recognized by the Government or by a University established by law, or affiliated to any University established by law, or
 - ▶ 6. is an institution financed wholly or in part by the Government or a local authority;

Requirements for approval under section 80G-Rule 11AA

- ▶ **As per sub rule(1)**
- ▶ The application for approval of any institution or fund under section 80G(5)(vi) shall be in Form No. 10G and shall be made in triplicate.
- ▶ **As per sub rule (2)**
- ▶ The application shall be accompanied by the following documents, namely :—
 - ▶ Copy of registration granted u/s. 12A or copy of notification issued u/s. 10(23) or 10(23C) ;
 - ▶ Notes on activities of institution or fund since its inception or during the last three years, whichever is less ;
 - ▶ Copies of accounts of the institution or fund since its inception or during the last three years, whichever is less.
- ▶ **As per sub rule (3)**
- ▶ The Commissioner may call for such further documents or information from the institution or fund or cause such inquiries to be made as he may deem necessary in order to satisfy himself about the genuineness of the activities of such institution or fund.

Requirements for approval under section 80G

- ▶ **As per sub rule (4)**
- ▶ Where the Commissioner is satisfied that all the conditions laid down in clauses (i) to (v) of sub-section (5) of section 80G are fulfilled by the institution or fund, he shall record such satisfaction in writing and grant approval to the institution or fund .
- ▶ **As per sub rule (5)**
- ▶ Where the Commissioner is satisfied that one or more of the conditions laid down in clauses (i) to (v) of sub-section (5) of section 80G are not fulfilled, he shall reject the application for approval, after recording the reasons for such rejection in writing :
 - ▶ **Provided** that no order of rejection shall be passed without giving the institution or fund an opportunity of being heard.
- ▶ **As per sub rule (6)**
- ▶ The time limit within which the Commissioner shall pass an order either granting the approval or rejecting the application shall not exceed six months from the end of the month in which such application was made:
 - ▶ **Provided** that in computing the period of six months, any time taken by the applicant in not complying with the directions of the Commissioner under sub rule (3) shall be excluded.

Approval under section 80G

▶ One Time Approval:

- ▶ Approval of the Commissioner under section 80G(5)(vi) has earlier effect for such assessment year or years, not exceeding five assessment years, as may be specified in the approval. The time-limit of 5 years has been omitted with effect from 1st October, 2009 by the Finance (No.2) Act, 2009. After this amendment, the approval once granted shall continue to be valid in perpetuity.
- ▶ Accordingly, existing approvals expiring on or after October 1, 2009 shall be deemed to have been extended in perpetuity, unless specifically withdrawn. However, in case of approvals expiring before October 1, 2009, these will have to be renewed and once renewed these shall continue to be valid in perpetuity, unless specifically withdrawn.

80G(5)

- ▶ Total income under the provisions of section 11 shall not apply in relation to such income, if—
the institution or fund maintains separate books of account in respect of such business;
- ▶ the donations made to the institution or fund are not used by it, directly or indirectly, for the purposes of such business; and

the institution or fund issues to a person making the donation a certificate to the effect that it maintains separate books of account in respect of such business and that the donations received by it will not be used, directly or indirectly, for the purposes of such business;

(ii) the instrument under which the institution or fund is constituted does not, or the rules governing the institution or fund do not, contain any provision for the transfer or application at any time of the whole or any part of the income or assets of the institution or fund for any purpose other than a charitable purpose;

(iii) the institution or fund is not expressed to be for the benefit of any particular religious community or caste;
However as per Explanation 1.—An institution or fund established for the benefit of Scheduled Castes, backward classes, Scheduled Tribes or of women and children shall not be deemed to be an institution or fund expressed to be for the benefit of a religious community or caste within the meaning of this clause.

80G(5)

(v) the institution or fund is either constituted as a public charitable trust or is registered under the Societies Registration Act, 1860 or under any law corresponding to that Act in force in any part of India or under section 25 of the Companies Act, 1956, or is a University established by law, or is any other educational institution recognized by the Government or by a University established by law, or affiliated to any University established by law, or is an institution financed wholly or in part by the Government or a local authority;

(vi) in relation to donations made after the 31st day of March, 1992, the institution or fund is for the time being approved by the Commissioner in accordance with the rules made in this behalf

(vii) where any institution or fund had been approved under clause (vi) for the previous year beginning on the 1st day of April, 2007 and ending on the 31st day of March, 2008, such institution or fund shall, for the purposes of this section and notwithstanding anything contained in the proviso to clause (15) of section 2, be deemed to have been,—

(a) established for charitable purposes for the previous year beginning on the 1st day of April, 2008 and ending on the 31st day of March, 2009; and

(b) approved under the said clause (vi) for the previous year beginning on the 1st day of April, 2008 and ending on the 31st day of March, 2009.]

80G(5)

- ▶ **(Permissible spending for religious purposes:** As per Sec 80G(5B) an institution or fund which incurs expenditure, during any previous year, which is of a religious nature for an amount not exceeding 5% of its total income in that previous year .
- ▶ Deduction to which the assessee is entitled in respect of any donation made to an institution or fund to which sub-section (5) applies shall not be denied merely on either or both of the following grounds, namely :—
 - that, subsequent to the donation, any part of the income of the institution or fund has become chargeable to tax due to non-compliance with any of the provisions of section 11, section 12 or section 12A
 - that, under clause (c) of sub-section (1) of section 13, the exemption under section 11 or section 12 is denied to the institution or fund in relation to any income arising to it from any investment referred to in clause (h) of sub-section (2) of section 13 where the aggregate of the funds invested by it in a concern does not exceed five per cent of the capital of that concern.

80G(5)

- ▶ *Explanation 3.*—In this section, “charitable purpose” does not include any purpose the whole or substantially the whole of which is of a religious nature.
- ▶ *Explanation 4.*—For the purposes of this section, an association or institution having as its object the control, supervision, regulation or encouragement in India of such games or sports as the Central Government may, by notification in the Official Gazette, specify in this behalf, shall be deemed to be an institution established in India for a charitable purpose.

Cases

- ▶ The Delhi High Court in the case of M.K. Nambyar Saarc Law Charitable Trust vs. Union of India 269 ITR 556 held that **application of Income outside India** could not be taken as a ground for refusing recognition u/s.80G.
- ▶ The Gujarat High Court has held, in the case of N.N.Desai Charitable Trust vs. CIT (2000) 246 ITR 452, that while processing the application for approval under section 80G, the **commissioner is not expected to act as an assessing authority**, but his enquiry should be confined to finding out whether the trust satisfies the prescribed conditions.
- ▶ In Kalyanam Karoti vs.CIT (2010) 123 ITD 317 (Lucknow), the Tribunal held that the Commissioner could not refuse renewal of approval on the ground that **Permanent Account Numbers of donors were not provided**.

Cases

- ▶ It has been held by Nagpur Bench Of ITAT in case of **Shiv Mandir Devasthan Panch Committee Sansthan** that- it cannot be said that Hindu is a separate community or a separate religion. Technically Hindu is neither a religion nor a community. Therefore expenses incurred for worshiping of Lord Shiva, Hanuman, Goddess Durga and for maintenance of temple cannot be regarded to be for religious purpose- accordingly CIT was directed to grant approval u/s 80 G (5)(vi).
- ▶ The important point to be noted that the religion has been viewed in different perspective and taking the point forward, in the secular fabric of society of this country, every activity supposedly treated as 'religious' can be conveniently covered as the one being charitable.
- ▶ The case assumes importance as the Hon'ble Tribunal was considering the applicability of provisions of section 80G and not section 12A or 12AA.

Cases

- ▶ S. 80G(5) : At stage of registration, extent and nature of activities were not required to be examined, recognition under section 80G(5) was to be granted to assessee.
 - ▶ CIT v.Arvinbhai Maniar Charitable Foundation (2015) 231 Taxman 908 (Guj.)(HC)
- ▶ At time of granting approval what is to be examined is object of trust- Order of Tribunal was affirmed.
 - ▶ CIT v. Pujya Shri Jalarambapa & Matushri Virbaima Charitable Trust (2015) 229 Taxman 534 (Guj.)(HC)

Remedy for rejection order

- ▶ On refusal to grant registration / approval by Commissioner remedy available is appeal to Tribunal.

Role of Professional

- ▶ It is seen that there are very few professionals in the area of charitable trusts.
- ▶ Though there are very few sections governing taxation of charitable trusts, this area has seen more litigations and disputes.
- ▶ Every professional also needs to look at this area as matter of social obligation and guide trustees in the matter of compliance as also represent before income tax authorities for proper application of income tax provisions.
- ▶ This is not suggest that this rea of practice is not attractive. In fact, at times, it is better practice area than conventional area of practice under income tax.
- ▶ Better understanding of applicable provisions and various judgments only shall pave the way for being a better professional.

“ If you’re in the luckiest 1pc of humanity,
you owe it to the rest of humanity to
think about the other 99pc.

”

▶ Warren Buffett

