


INTRODUCTION

- ▶ Registration Under Section 12AA
- ▶ 80G Certificate

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Registration Under Section 12AA

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:

Conditions for applicability of sections 11 and 12.

Instrument in original with a copy of it—where trust is created under an instrument

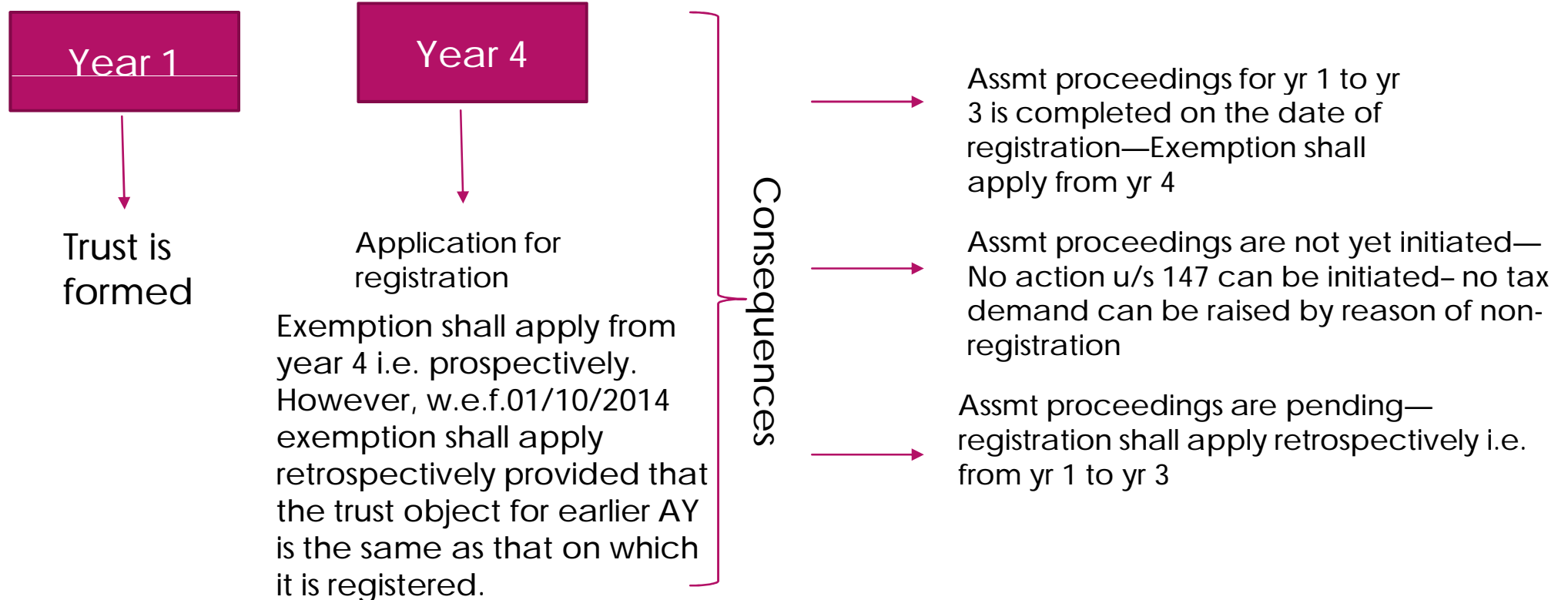
Document evidencing creation of trust—where trust is created otherwise than by instrument

Two copies of accounts of trust (3 years prior) – if application is made for financial year other than the year in which trust is created.

Where the total income without taking into account exemption u/s 11/ 12 exceeds the maximum amount not chargeable to tax – audit report in form 10B is to be filed electronically.

Conditions for applicability of sections 11 and 12.

Year from which registration is granted



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)

Amma Endowment Trust)
ground that no charitable activity has been commenced?(Meenakshi

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 mon 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.)

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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.r.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.

Section 13

Section 11 or 12 shall not apply to:

- ▶ Income from property held under a trust for private religious purposes which does not enure for the benefit of the public.
- ▶ any income thereof if the trust or institution is created or established for the benefit of any particular religious community or caste

Exception: Which says a trust or institution created or established for the benefit of Scheduled Castes, backward classes, Scheduled Tribes or women and children shall not be deemed to be a trust or institution created or established for the benefit of a religious community or caste .

Section 13

in the case of a trust for charitable or religious purposes or a charitable or religious institution the income thereof—

if such trust or institution has been created or established after the commencement of this Act and under the terms of the trust or the rules governing the institution, any part of such income accrues, or

if any part of such income or any property of the trust or the institution (whenever created or established) is during the previous year used or applied, directly or indirectly for the benefit of specified persons

Exception: a trust or institution created or established before the commencement of this Act, the application is by way of compliance with a mandatory term of the trust or a mandatory rule governing the institution:

Section 13

- ▶ in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof, if for any period during the previous year—
 - (i) any funds of the trust or institution are invested or deposited on or after 1st March 1983 otherwise than in any one or more of the forms or modes specified in Section 11(5)
 - (ii) any funds of the trust or institution invested or deposited before the 1st day of March, 1983 otherwise than in any one or more of the forms or modes specified in section 11(5) continue to remain so invested or deposited after the 30th day of November, 1983; or
 - (iii) Trust/ institution holds any shares in a company, other than—
 - (A) shares in a public sector company ;
 - (B) shares prescribed as a form or mode of investment under clause (xii) of section 11(5) i.e. units of MF as per 10 (23D), equity shares of depository, etc.)
- after the 30th day of November, 1983:

Section 13

Exceptions:

(i) any assets forming part of the corpus as on the 1st day of June, 1973

(ia) any accretion to the shares, forming part of the corpus by way of bonus shares allotted to the trust or institution;

(ii) debentures issued by, or on behalf of, any company or corporation acquired by the trust or institution before the 1st day of March, 1983;

(iia) any asset, which is not an investment or deposit in any of the forms or modes specified in section 11 (5) and, such asset is not held by the trust or institution, in form or modes specified in section 11(5), after the expiry of one year from the end of the previous year in which such asset is acquired (i.e. one year is available for converting such asset into investment in specified mode)

(iii) any funds representing the profits and gains of business, being profits and gains of any previous year relevant to the assessment year provided- separate books of accounts are maintained by such trusts / institutions

Section 13

- ▶ As per Sec 13(2), the income or the property of the trust or institution or any part of such income or property shall, be deemed to have been used or applied for the benefit of a person referred to in subsection (3),—
- ▶ cl.(a) if any part of the income or property of the trust or institution is, or continues to be, lent to specified person for any period during the previous year without either adequate security or adequate interest or both;
- ▶ cl.(b) if any land, building or other property of the trust or institution is, made available for the use of specified person for any period during the previous year without charging adequate rent or other compensation;
- ▶ cl.(c) if any amount is paid by way of salary, allowance or otherwise during the previous year to specified person out of the resources of the trust or institution for services rendered by that person to such trust or institution and the amount so paid is in excess of what may be reasonably paid for such services;
- ▶ cl.(d) if the services of the trust or institution are made available to specified person during the previous year without adequate remuneration or other compensation;
- ▶ Exception:- Medical / Educational institution (See Sec 13(6))

Section 13

- ▶ cl.(e) if any share, security or other property is purchased by or on behalf of the trust or institution from specified person during the previous year for consideration which is more than adequate;
- ▶ cl.(f) if any share, security or other property is sold by or on behalf of the trust or institution to specified person during the previous year for consideration which is less than adequate;
- ▶ cl.(g) if any income or property of the trust or institution is diverted during the previous year in favour of specified person : Except - where the income, or the value of the property or, as the case may be, the aggregate of the income and the value of the property, so diverted does not exceed Rs.1000/-;
- ▶ cl.(h) if any funds of the trust or institution are, or continue to remain, invested for any period during the previous year in any concern in which any specified person has a substantial interest.

Section 13

- ▶ Who are treated as specified persons:
- ▶ Sec 13(3) describes specified persons as follows :—
 - the author of the trust or the founder of the institution;
 - any person who has made a substantial contribution to the trust or institution, that is to say, any person whose total contribution up to the end of the relevant previous year exceeds 50000/- rupees
 - where such author, founder or person is a HUF, a member of the family;
 - any trustee of the trust or manager (by whatever name called) of the institution;
 - any relative of any such author, founder, person, member, trustee or manager as aforesaid; (meaning of term relative is given in Explanation 1 to sec 13)
 - any concern in which any of the persons referred above has a substantial interest.

Section 13

- ▶ Sec.13 (4) provides for exception in a case where the aggregate of the funds of the trust or institution invested in a concern in which any specified person has a substantial interest, does not exceed 5% of the capital of that concern, the exemption under section 11 or section 12 shall not be denied in relation to any income other than the income arising to the trust or the institution from such investment, (i.e . only relevant interest income will lose exemption benefit)
- ▶ Proviso to Section 2(15)-

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;*

13(9) -Nothing contained in sub-section (2) of section 11 shall operate so as to exclude any income from the total income of the previous year of a person in receipt thereof, if—

- (i) the statement referred to in clause (a) of the said sub-section in respect of such income is not furnished on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year; or*
- (ii) the return of income for the previous year is not furnished by such person on or before the due date specified under section 139(1) for furnishing the return of income for the said previous year.*

Section 13

- ▶ for the purposes of section 13 “relative”, in relation to an individual, means—
- ▶ spouse of the individual;
- ▶ brother or sister of the individual; (and their spouse)
- ▶ brother or sister of the spouse of the individual; (and their spouse)
- ▶ any lineal ascendant or descendant of the individual; (and their spouse)
- ▶ any lineal ascendant or descendant of the spouse of the individual; (and their spouse)
- ▶ any lineal descendant of a brother or sister of either the individual or of the spouse of the individual

Section 13

- ▶ Explanation 3.—For the purposes of this section, a person shall be deemed to have a substantial interest in a concern,—
- ▶ in a case where the concern is a company, if its shares (not being shares entitled to a fixed rate of dividend...) carrying not less than 20% of the voting power are, at any time during the previous year, owned beneficially by such person or partly by such person and partly by one or more of the specified person;
- ▶ in the case of any other concern, if such person is entitled, or such person and one or more of the other specified persons are entitled in the aggregate, at any time during the previous year, to not less than 20% of the profits of such concern.

Cases

- ▶ Is Registration u/s 12A a condition precedent for availing benefit u/s 11 and 12?

Yes, Registration u/s 12A 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).

Cases

- ▶ Does the commissioner is entitled to satisfy himself about the credential of the Society?

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.)

Cases

- ▶ Sufficiency of initial contribution made by founder of trust and dedication to object of trust, is a relevant factor or not?

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

Can Registration be denied on the ground that prior approval from appropriate authority is not obtained?

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).

Cases

- ▶ What if the ROI has not submitted for last years?

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).

Cases

- ▶ What if Charitable or Religious activity is not yet commenced?

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.).

Cases

- ▶ Can trust charge any fee/amount from the beneficiaries?

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

- ▶ Can all a family members form a Public Trust?

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 incorrect 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.

Cases

- ▶ What if amount is not spent for aims & objects of the trust?

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).

80G Certificate

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.

(iv) the institution or fund maintains regular accounts of its receipts and expenditure;

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.

80G(5)

- ▶ Requirements for approval of an institution or fund under section 80G.
- Rule 11AA . sub rule(1) The application for approval of any institution or fund under clause (vi) of sub-section (5) of section 80G shall be in Form No. 10G and shall be made in triplicate.
- Sub rule (2) The application shall be accompanied by the following documents, namely :—
 - Copy of registration granted under section 12A or copy of notification issued under section 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.

80G(5)

- ▶ 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 specifying the assessment year or years for which the approval is valid.
- ▶ 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 :

80G(5)

- ▶ Provided that no order of rejection of an application shall be passed without giving the institution or fund an opportunity of being heard.
- ▶ 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.

Cases

- ▶ Can application of Income outside India could be taken as a ground for refusing recognition u/s.80G?

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.

Cases

- ▶ Is commissioner expected to act as an assessing authority?

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.

N.N.Desai Charitable Trust vs. CIT (2000) 246 ITR 452(Gujarat)

Cases

- ▶ Non Availability of Permanent Account Numbers of donors?

The Tribunal held that the Commissioner could not refuse renewal of approval on the ground that Permanent Account Numbers of donors were not provided

Kalyanam Karoti vs.CIT (2010) 123 ITD 317 (Lucknow)

Remedy for rejection order

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



THANK YOU