


26th May 2021



PRESENTATION ON TAXATION OF TRUSTS

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- The Acts under which the Charitable activities can be carried out
 1. 1. Bombay Public Trust Act (Now Maharashtra Public Trust Act)
 2. 2. Societies Registration Act
 3. 3. Indian Trust Act
 4. 4. Companies Act 2013 (Earlier Section 25 -Now Section 8 Companies)
 5. 5. Bombay Non Trading Corporations Act.

SECTIONS APPLICABLE TO CHARITABLE TRUSTS

The following sections of the Income Tax Act deal with the subject of exemption of income from property held for charitable or religious purposes:

- Section 2(15) Meaning of Charitable Purpose
- Section 10(23C) Income which do not form a part of total income.
- Section 11 Exemption of Income from property held in trust or other legal obligation, for religious or charitable purposes.

- Section 12 Exemption of Income derived by such a trust from voluntary contributions not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution.
- Section 12A Prescribes the conditions for registration of a trust etc.
- Section 12AA Prescribes the procedure for registration.
- Section 12AB Procedure for Re-Registration/ Fresh Registration
- Section 13 Enumerates the circumstances under which exemption available under sections 11 and 12 can be withdrawn or denied

MEANING OF CHARITABLE PURPOSE:

It has been defined in section **2(15)** of the Act as under:

"Charitable purpose" includes relief of the poor, education, yoga (inserted by Finance Act 2015, w.e.f. 1-4-2016), medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to 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

(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.

The newly inserted provision has no application to educational ,medical institutions, any institutions working for relief of poverty even if it incidentally involves carrying out of commercial activities including leasing of premises.

- S. 2(15) : Charitable purpose –
- If the definition of “charitable purpose” is construed literally, it is violative of the principles of equality & it will be unconstitutional. Merely charging of fee does not destroy the character of a charitable institution. [S.10(23C)(iv), Constitution of India, Art 14]
- The courts should always endeavour to uphold the Constitutional validity of a provision and, in doing so, the provision in question may have to be read down;
- Section 2(15) is only a definition clause. The expression “charitable purpose’ appearing in Section 2(15) of the said Act, is read in the context of Section 10(23C)(iv) of the said Act, we would have to give up the strict and literal interpretation sought to be given to the expression “charitable purpose” by the revenue;

- Where an institution is not driven by a desire or motive to earn profits, but to do charity through the advancement of an object of general public utility, it cannot but be regarded as an institution established for charitable purpose. – Refer Following Judgements:

- I. India Trade Promotion Organisation v. DGIT(E) (2015) 371 ITR 333/229 Taxman 347/274 CTR 305/114DTR 329 (Delhi)(HC).

- II. Institute of Chartered Accountants of India Vs DGIT 348 ITR 91 2013- Delhi High Court.

- S.2(15): Charitable purpose – Activities carried out by a trust for providing employment to rural poor cannot be held as commercial activities.[S.11] – Activities of Trust is eligible for exemption comes under relief of poverty. Refer Following Judgements:

- I. Thamizh Thai Seva Trust v. DIT (2015) 67 SOT 166 (URO)/ 53 taxmann.com 215 (Chennai)(Trib.)

S. 2(15): Charitable purpose –

- Advancement and development of trade, commerce and industry in India, income earned from incidental activities is eligible for exemption u/s 11.[S.11,12A]
- Thus the incidental activities were well covered by the section 2(15) and were thus ‘charitable ‘ in nature. In such an eventuality, the application of the section 11(4A) which applies only to business activities stands absolutely negated. Thus the income of the assessee is exempt from tax u/s 11.(ITA No. 1284 & 1491 dt. 2-12-2014)(A.Y. 2008-09).
- The onus is on the trust to prove that its objects are of Charitable nature Refer Following Judgements:
 - i. *Indian Chamber of Commerce v. ITO(E) (2014) 52 taxmann.com 52/(2015) 67 SOT 176(URO)/67 TTJ 1/37 ITR 688 (Kol.)(Trib.)*
 - ii. *Indian Chamber of Commerce v. CIT 101 ITR 796 SC (1975)*
 - iii. *CIT v . Kochin Chamber of Commerce and Industry 4 CTR 271 SC (1975)*

S. 2(15) Charitable purpose -

- Receiving fees simplicitor is not reason enough to hold that the activity is not a charitable activity. The fundamental essence of the activity has to be seen.
- The true test for deciding whether an activity is business activity is (i) whether the said activity is undertaken with a profit motive, or (ii) whether the said activity has continued on sound and recognised business principles. Clearly, therefore, in a situation in which an activity is not undertaken with a profit motive or on sound and recognised business principles, such an activity cannot be considered to be a business activity. (ITA no. 2996/Del/2011, dt. 22/1/2015).
- ***Army Welfare Placement Organisation v. DIT(E) (Delhi)(Trib.)***

S. 2(15) Charitable purpose -

- ***Gujarat High Court in CIT v. Gujarat industrial Development Corporation [2017] 83 taxmann.com 366 (Gujarat)***- It was held by Gujarat High Court that - where assessee-corporation was constituted under Gujarat Industrial Development Act, 1962, for the purpose of securing and assisting rapid and orderly establishment and organization of industrial areas and industrial estates in State of Gujarat, and for purpose of establishing commercial centers in connection with establishment and organization of such industries- it could not be said that activities carried out by assessee were either in nature of trade, commerce or business, for a cess or fee or any other consideration so as to attract proviso to section 2(15) and same could be said to be for charitable purpose and, consequently, assessee was entitled to exemption under section 11.

S. 2(15) Charitable purpose -

- Where motive of assessee is not generation of profit but to provide training to needy women/ men in order to equip or train them and make them self-confident and self-reliant and occasional sales or trusts own fund generation was for furthering the objects of the trust, proviso to sec 2(15) would not apply- ***DIT v. Women's India Trust [2015] 233 Taxman 196 (Bom.)***.
- **Spending money on the marriages of girls belonging to a particular community. Refer Following Judgement :**
 1. ***CIT v. Bhartiya Khatri Seva Trust[1992] 65 Taxman 531 (All.)*** .
 2. ***CIT v. Anand Swaroop Brijendra Swaroop Charitable Trust 187 ITR 656 Allahabad HC 1991***.

These Decisions would need review in light of Section 13(1)(b).

INCOME WHICH DO NOT FORM PART OF THE TOTAL INCOME -SECTION 10

There are certain incomes of certain public Charitable/ Religious institutions which are covered under this section which are exempt. I will deal here only with the income covering charitable trust.

- Section 10(23) (A) Any Income of Associations/ Institutions established for the Profession of engineering/ law/ medicine/Accounts/Architect. This covers our Institute the ICAI also.
Here the Income is exempt subject to certain conditions.
- Section 10(23) (B) Covers the Khadi and Village Industries.

Section 10(23) (BBA) Covers anybody constituted under Central and State Act for administration of public endowment which includes temples, gurudwara, wakf or any place of public religious worship.

The contradiction however is in the proviso of the section by which the income of such trust, endowment or society is not exempt but the body conducting the same enjoys the blanket exemption(which has been mentioned by proviso I)

- Section 10(23C)(iiiab): University / Education Institutions solely for educational purpose which is wholly or substantially financed by the government (This envisages aided school and collages).

Words 'wholly or substantially financed by government' cannot be confined only to annual grants as apart from providing annual grant, if govt. grants land, invests money in building and infrastructure and also runs educational institutions all these factors have to be taken into consideration to decide whether institution is wholly or substantially financed by govt. on order to become eligible to claim exemption u/s 10(23C)(iiiab).

CIT Vs. Indian Institute of Management (2014) 226 Taxman 301 (Kar.)

Section 10(23C)(iiiab)- Judgement

- Where State Government was extending cash subsidy to assessee for print and sale of text books at low rates to reach children of deprived sections of society, considering fact that assessee was carrying on the activity which squarely fell within the definition of section 10(15) (charitable purpose) and was dependent upon finance of the State, assessee was eligible for deduction under section 10(23C)(iiiab).
- **2020 TaxPub(DT) 3725 (Pat-HC) Bihar State Text Book Publishing Corporation v. CIT In favour of Assessee,**

- Section 10(23C)(iii): Hospitals or other institution wholly or substantially funded by the government.
- Section 10(23C)(iiiiaa): Swachh Bharat Kosh, set up Central Government **w.e.f. 01.04.2015**
- Section 10(23C)(iiiiaaa): The Clean Ganga Fund set up the Central Government **w.e.f.**

01.04.2015

- **Section 10(23)(c)(iiia):**

Any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, and which is wholly or substantially financed by Govt .

District Health & Family Welfare Society v. Deputy CIT

The assessee-society has since been recognised as a Govt established/sponsored entity. In essence, the assessee is entitled for exemption under section 10(23C)(iiia) of the Act.

As affirmed by the Finance Secretary, Govt of India, exemption under section 10(23C)(iiia) of the Act is automatic for entities which were wholly or substantially funded by the Govt of India or a State Govt as the case may be.

The Govt of India vide Circular dated S.O. No 3168(E) dated 12th Dec 2014 has stipulated 50% of the total receipts including voluntary contribution to be substantial

- Section 10(23C)(iiiad): University or educational Institution whose annual receipts do not exceed Rs. 1 Crore (Which means any Institutions having gross receipts beyond Rs. 1 Crore will not enjoy the blanket exemptions raised to 5 crores w.e.f 1/4/2022 by finance act 2021.

Queens Educational Society Vs. CIT (SC) : (2015) 372 ITR 699 : (2015)275 CTR 449 :(2015) 231 TAXMAN 286 : (2015) 117 DTR 1

- Section 10(23C)(iii ae): Hospital or Medical institution whose annual receipts do not exceed Rs. 1 CR (Which means any institutions having gross receipts beyond Rs. 1 CR will not enjoy the blanket exemptions raised to 5 crores w.e.f 1/4/2022 by finance act 2021.

Nehru Prasutika Asptal Samiti Vs. CIT (2014)

- Section 10(23C)(iv): Any charitable trust approved by the prescribed authority which is Chief Commissioner / Director General having regards to the object of the Trust and importance throughout India or throughout the state or states.

(DEL-ITAT) 2021 ITL 59 ASSISTANT COMMISSIONER OF INCOME TAX v. INDIA INTERNATIONAL CENTRE

- Section 10(23C)(v): Institution for wholly for public religious purpose or charitable purpose as approved by the prescribed authority earlier it had to be notified by the central government in the official gazette, but the same authority is now vested with Chief Commissioner /Director General with effect from 01.07.2007.

- **Institute of CA of India & Anr. v. DGIT (E) -(Del-HC) : (2013) 260 CTR 0001 : (2013) 217 TAXMAN 152 : (2013) 90 DTR 161**
- The revenue has not found any violation of section 13 of the Act. We also notice that DGIT(E) has not found any violation of section 13 of the Act in the impugned orders. Further, it has also not been contended before us that the petitioner has violated section 13 of the Act. Thus, this dispute also stands concluded in favour of the petitioner.
- In view of the above, we allow these writ petitions and set aside the two impugned orders dated 13-04-2012 and 28-09-12 passed by the respondent DGIT(E) and further direct DGIT(E) respondent to recognise the petitioner as eligible under section 10(23C)(iv) of the Act as an institution established for charitable purposes having regard to its object and importance for the assessment years 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011 and 2011-2012, subject to the petitioner complying with the other provisions of the Act.

Section 10(23C)(vi):

Any university or the educational institution solely for the education purposes which are not financed by the government but which are approved by the prescribed authority.

In Favour of Assessee

- Profit is not just to be utilised for public charitable objects and In case of an educational institution, capital expenditure incurred wholly and exclusively for achieving its objects is entitled to exemption and would not constitute part of total income – ***Pinegrove International Charitable Trust Vs. Union of India (2010) 188 Taxman 402 (Punj& Har)***
- Application of the income is required to be applied in India - ***American Hotel & Lodging Association Education Institute v/s CBDT (2008) 301 ITR 86***
- ***VENUE CHARITABLE SOCIETY v/s DGIT 395 ITR 68(delhi high court) 2018***
- ***Reported on 18th june, 2018.***
- ***Just because fees are being charged and society has categorization of patients – denial u/s 12(23C) was not justified.***

Against Assessee

Money advanced to another educational institution cannot be treated as application of income to objects for which the assessee-society was established; such a transaction would only mean that the funds of the assessee-society had not been utilized solely for the purpose of education and society would, therefore be disentitled from being granted approval u/s 10(23C)(vi).

New Noble Educational Society Vs. Chief CIT (2011) 201 Taxman 33

This section requires that the institution should exclusively exist for education and it is advised that the trust should not have objects of General public utility. While calculating the limits of the gross receipts of Rs. 1 Crore raised to 5 crores w.e.f 1/4/2022 by finance act 2021.

all fees, grants, donations should be included. For the purpose of exemption u/s 10(23C) any university or other educational institution, hospital or other institution referred therein, shall be exempt if it is wholly or substantially financed by the Government. For any previous year, if the Government grant to such university or other educational institution, hospital or other institution exceeds fifty per cent of the total receipts including any voluntary contributions, of such university or other educational institution, hospital or other institution, as the case may be, during the relevant previous year(**Rule 2BBB**)

Registration u/s 12A is not conclusive of his right to exemption or approval u/s 10(23C)

ALL INDIA JD EDUCATION SOCIETY 338 ITR 218 Delhi HC 2011

- Section 10(23)(c)(via): Any hospital or other medical institutions which is not financed by the government and existing solely for philanthropic purpose and approved by the prescribed authority.

Application for approval under section 10(23C)(via) cannot be rejected merely on ground that a chemist shop was being run in hospital premises – ***Baun Foundation Trust Vs. Chief CIT (2012) 251 CTR (Bom.) 237***

What is relevant is activities- in the decision Birla Vidya Vihar Trust 136 ITR 445 (1982) Calcutta HC.

The judgement points out that even if there has been actual use for non-educational but philanthropic purposes covered u/s 11. the exemption u/s 10(22) now section 10(23) could be considered and other income used for philanthropic purposes can be considered for relief u/s 11. This Circular was followed in following cases

Appejay Medical 45ITD 1 (1993) Calcutta

Bombay Keraliya Samaj 56 ITD 26 (1996) Bombay

Also refer Circular No 194/16-17

In all the above cases in (v) to (via) are also covered by Rule 2(C), 2(CA), and Form No. 56 and 56D.

Latest Amendment by Finance Act 2017

Nineteenth Proviso to section 10(23C) –

Provided also that where the fund or institution referred to in sub-clause (iv) or the trust or institution referred to in sub-clause (v) has been notified by the Central Government or approved by the prescribed authority, as the case may be, or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via), has been approved by the prescribed authority, and the notification or the approval is in force for any previous year, then, nothing contained in any other provision of this section [other than clause (1) thereof] shall operate to exclude any income received on behalf of such fund or trust or institution or university or other educational institution or hospital or other medical institution, as the case may be, from the total income of the person in receipt thereof for that previous year. Despite this amendment w.e.r from 1.4.2015 there have been no cases of such denial to my knowledge so far. There have been a lot of amendments through various proviso by Finance Act 2021 wef 1.4.2022. There have been a lot of debate as to the registration u/s 12AB and Section 10(23C) simultaneously. However these being concerning new section. I leave this matter to the other faculty whose going to address after my presentation.

Identical Amendment was made by way of Explanation 2 to Section 11

Any amount credited or paid, out of income referred to in clause (a) or clause (b) read with Explanation 1, to any other trust or institution registered under section 12AA, being contribution with a specific direction that they shall form part of the corpus of the trust or institution, shall not be treated as application of income for charitable or religious purposes.

Any donation by an entity registered under section 12A or approved under section 10(23C), to other entity, registered under section 12A, with the direction that such donation shall form part of the corpus, shall not be treated as application of income for charitable purposes.

EDUCATION ACTIVITIES

Education in order to be charitable must be for the benefit of public. Section 2(15) considers process of training and developing the knowledge, common skill, mind and character of students by normal schooling.

Against the Assessee

This was enunciated by Apex Court in the case of Sole Trustee, ***Lokshikshan Trust V/s CIT 101 (ITR) 234 (1975)***.

However there was reason for this because the said trust was running a newspaper and in the view of Apex Court, though the newspapers have educative value, advancement of education results only indirectly and which does not come under the head of education. The above observations are there due to indirect activity

In Favour of Assessee

Continuing Education Diploma and Certificate Programme; Management Development Programme ; Public Talks and Seminars and Workshops and Conferences etc. constitute education so as to qualify as a charitable purpose u/s 2(15).

The mere existence of profit will not disqualify an institution for exemption u/s 10(23) if the sole purpose of its existence is not profit making but is educational activities;

On the issue of the Proviso to S. 2(15), the same has been explained in Circular No. 11/2008 dated 19-12-2008. From the said Circular it appears that the newly inserted proviso to Sec. 2(15) of the Act will apply to entities whose purpose is advancement of any other object of general public utility. ***CIT v. Jodhpur Chartered Accountants Society[2002] 258 ITR 548 (Raj.)***

DIT(E) Vs. Ahmedabad Management Association (2014) 366 ITR 85/225 Taxaman 223 (Guj) (HC)

Saurashtra Education Foundation v. CIT (2005) 273 ITR 139 (Guj)
the court has explained

“ Though educational institution and institutional activities are closely inter-connected in section 11(1)(a) r.w. section 2(15), it is the activities which are relevant, whereas in section 10(22) both the institution, and the activities are in focus. An educational institution is therefore, more than a body carrying on charitable activities in the field of education as contemplated by section 2(15).”

Exemption u/s 10(23C)(iv)- Educational Institution

- Provision of accommodation, food and beverages, etc., against payment of charges- Applicability of proviso to section 2(15)

India International Centre v. CIT (2019) 168 TR (A) 780 (Del-Trib): 2019 TaxPub (DT) 836 (Del-Trib)

Held: To achieve its objectives assessee conducted large number of programmes including exhibitions and discussions , etc., and since there was no funding from government or any outside body, assessee could not be said to be engaged in any activities in the nature of trade or commerce and therefore, denial of exemption u/s 10(23C)(vi) was not justified.

Exemption u/s 10(23C)(vi)- Educational Institution

- Eligibility of assessee for exemption

Bhartiya Gram Sewa Niketan Udyog Mandal, C/o M/s. RRA Tax India v. CCIT (2019) 168 TR (A) 780 (Del-Trib): 2018 TaxPub(DT) 918 (ITAT-Del)

Held: The main objects of the assessee-trust were to encourage backward and dicarded people towards education and livelihood to them,etc. The same was at no point amended by assessee. Also the trust ran a college that helped in enhancing the future of students by providing the education and making available the diploma courses in polytechnic and engineering which are duly approved by AICTE. Thus, all objects were in consideration for granting the approval u/s 10(23C)(vi).

Exemption u/s 10(23C)(vi)- Educational Institution

- Rejection of application for exemption

Ram Lal Bhasin Public School v. CIT (Exemptions)(2019) 168 TR (A) 781 (trib-Amri):2019 TaxPub(DT) 995 (Del 'D'-Trib): (2019) 69 ITR (trib) 560 (Del 'D'-Trib: (2019) 198 TTJ (Del 'D'-Trib) 20

Held: For claiming exemption u/s 10(23C)(iiiad), entity must be registered as an university or other Educational Institute existing solely for educational purposes and not for the purposes of profit. Thus, as it was not in dispute that assessee-school was affiliated to the 'Council for the India School Certificate of Examination', copy of which was placed on record and it was existing not for the purpose of profit, following the decision in CIT & Anr. v. Children Educational Society' (2013) 358 ITR 373 (Karn-HC), assessee was entitled to claim exemption u/s 10(23C)(vi).

Exemption u/s 10(23C)(vi)- Educational Institution- Sun Swan Education Society v. CIT Matter Remanded, Ind-Trib, ITA No. 852/Ind/2018, 18-Mar-2020

- Assessee-society was having objects both in nature of performing charitable activities and also running for educational purpose without any purpose of earning profits. Further, claiming exemption for the profits earned from performing educational activities is provided in section 10(23C)(vi) and the benefit of claim of exemption for receipts/income from charitable activities is provided under section 11. For getting both the exemptions, assessee needs to be separately registered under section 10(23C)(vi) and under section 12AA. Both the provisions work independently and there is no provision of law which shows that if assessee is registered under section 12AA, it cannot be granted claim under section 10(23C)(vi) or vice versa. Thus, in instant case, the CIT should have focused on examining the activities undertaken by the assessee and the registration under section 10(23C)(vi) should not have been denied merely because the assessee enjoyed the registration under section 12AA. Hence, the issue of approval under section 10(23C)(vi) was remanded to the CIT for afresh examination.

MEDICAL RELIEF

The object of medical relief does not mean that it is necessary to provide free treatment or treatment on concessional basis to all. It is acceptable if the medical institution charges a higher price for the patients who can afford that price and utilizes as revenue to give free or subsidized medical relief to the poor and needy.

In Favour of Assessee

In *DIT Vs. A.M.M. Hospitals and Medical Benefits Society's* case it was held that even if the society was earning some income from sources other than the patients, it would still remain charitable since it existed only for philanthropic purpose.

Against the Assessee

Hospitals run on profit motive basis will not be called for the purpose of Medical Relief- *Breach Candy Hospital Trust Vs. Chief CIT (2010) 228 CTR Bom. 381*

Continuation...

CIT v. Artificial Limbs Manufacturing Corpn. Of India (2019) 167 TR (A) 129 (All-HC): 2018 TaxPub(DT) 6709 (All-HC)

- Held:

Since assessee carried out activity of making available artificial limbs to needed persons without earning profit and no contrary material was brought on record by revenue, benefit of exemption u/s 11 could not be denied to assessee.

Continuation...

- Giving Medical aid, social welfare and uplift of poor members of a particular community and giving financial help to on the occasion of marriage of the members of that community.- ***CIT v. Surji Devi Kunji Lal Jaipuria [1990] 53 Taxman 112 (All.)***.

RELIEF OF POOR

Relief of Poor under this section envisages public character of the relief and not to a body of private individuals. The scope of the term “relief of poor “ is wide enough to include any kind of activity which provides support or benefit to poor. ***CIT Vs. Thanthi Trust (2001) 247 ITR 785***. In this process, even business activity shall not be considered as business provided it satisfied the condition of being only a medium to achieve the objects of “relief of poor”, then the business income shall be treated as income from property of trust like any other income.

RELIGIOUS PURPOSE

There is no definition of the term religious purpose in the Income Tax Act.

ADVANCEMENT OF ANY OTHER OBJECT OF GENERAL PUBLIC UTILITY

The expression 'advancement of any other object of general public utility includes any object, which will be beneficial even to a segment of the society and not necessarily to the whole mankind. However, the object should not be for the benefit of specified individuals. When the principal object of a chamber of commerce is to promote and protect trade, commerce and industry in India or in any part of India, the said object can be treated to be for general public utility.—***CIT vs. Andhra Chamber of Commerce, (1965) 55 ITR 722 (SC) : CIT Vs. Bar Council of Maharashtra (1981) 130 ITR 28 (SC).*** Contrary observations were made by the by Chief Justice of Bombay High Court in the case Grain Merchants Association of Bombay ***6 ITR 427 (1938)***

In ***CIT Vs. Gujarat Maritime Board (2007) 295 ITR 561***, the Supreme Court observed that the Gujarat Maritime Board was established for predominant purpose of development of minor ports within the state of Gujarat, the management and control of the board was essentially with the state government and there was no profit motive. The assessee, Gujarat Maritime Board was under legal obligation to apply its income which was directly and substantially from the business held under trust for the development of minor ports in Gujarat. Therefore Supreme Court held that the assessee was entitled to registered as a Charitable Trust u/s. 12A

FIROZABAD SHIKOHABAD DEVELOPMENT AUTHORITY v/s CIT 161 tr (A) 155 AGRA ITAT(2018) REPORTS IN MAY 2018 IN FAVOUR OF ASSESSEE – 'A' is body formed under up urban planning and development act 1973 – they were doing acquisition, development of land and earn profit in the process , 2(15) is not attracted and therefore registration u/s 12A was restored.

Relied – CIT v/s Lucknow development authority 219 taxmann 162 (Allahabad) 2013

APPAREL EXPORT PROMOTION COUNCIL AY 2011-12

Its an NPO – with approval of central government, for promotion of experts of governments was registered u/s 12AA. Assessing officer considered activities in the hands of trade and brought it under amendment of 2 (15) and assessed as normal income.

ORDER DATED 31/8/2017 REPORTED IN MARCH 2018.

Delhi tribunal opined that their object of trust are charitable in nature and A had not carried out any activity with an object to earn profit and since there is no profit motive, the question of attracting residuary clause of sec 2(15) does not arise.

Dy.CIT(EXE) v/s apparel exp print count 60 ITR (Trib) 321, delhi(2018).

In case IAC (Assessment) v. Saurashtra Trust (2007) 290 ITR (AT) 251 (Mum)(SB) the tribunal held that a Trust for running a newspaper was eligible, if it satisfies the conditions relating to business. But even where it did not satisfy the amended provisions with effect from 1.4.1984, its income other than the newspaper business was held to be exempt by the Tribunal .

- ***DCIT V. Divya Yog Mandir Trust (2019) 168 TR (A) 48 (Del-Trib): 2019 TaxPub (DT) 3167 (Del-Trib)***

Held : Objects of the Assessee Trust fell within the purview of providing medical relief, imparting education and relief to the poor and not in the nature of any other object of general public utility, therefore proviso to section 2(15) did not get attracted in case of assessee trust and, therefore, denial of exemption under section 11 was not justified.

EXEMPTION OF INCOME FROM PROPERTY HELD FOR CHARITABLE OR RELIGIOUS PURPOSES- SECTION II

Sub-Section I

- 1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income—
 - a) Income derived from property held under trust wholly for charitable or religious purposes to the extent to which the income to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property;

- b) income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India; and, where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of 15% of the income from such property;
- c) Income derived from property held under trust—
 - i) Created on or after the 1st day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and

ii) For charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India:

Provided that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income;

d) Income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution

Exercise of Option- Disallowances cannot be made on the ground that declaration was not made in a prescribed manner- a charitable trust, if unable to utilize income from property to extent of 85% , there was no requirement of making declaration about how balance income is going to be applied - **CIT vs. Industrial Extension Bureau (2014) 225 Taxman 160 Guj HC .**

Exercising the option u/s 11

Such option to be exercised before the expiry of the time allowed u/s 139(1) for furnishing the return of income in such form and manner as may be prescribed.

(Finance Act 2015 w.e.f 1.4.2016)

The statement is to be furnished on or before the due date as per sec 139(1). It can be seen from the language from Section 11(1)(B) where the Income has been applied in immediately succeeding yaers it may not be even necessary to apply for accumulation.

Section 11(1)(B) r.w. explanation 2 to section 11(1) statement annexed to the return satisfying the condition relating to option without any further formality serves the purpose iof section 11(2). The Tribunal pointed out that both the sections 11(1)(a) and 11(2) are to be read together.

*CIT VS CM KOTHARI CHARITABLE TRUST 149 ITR 573 1984 MADRAS
CIT VS TRUSTEES OF BHATT FAMILY RESEARCH FOUNDATION 185 ITR
532 1990 BOMBAY*

Amendment in Section 11(6)

Even if entire expenditure incurred for acquisition of a capital asset is treated as application of income, assessee is also entitled to claim depreciation;
Amendment is prospective

CIT V. Institute of Banking Personal Selection (IBPS) (2003) 264 ITR 110 (Bom)

Choice Foundation v. Dy. CIT (2019) 167 TR (A) 130 (Ker-HC): 2018 TaxPub(DT) 7562 (Ker-HC)

Sub-Section 2

2) Where 85% of the income not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided prescribed conditions are complied with

The explanation to this sec. doesn't restrict the application of income beyond 85%. What cannot be treated as application is only the donation made out of accumulated income. The AO desires that there should clause in the trust permitting donation to other charity

CIT vs. Shri Ram Memorial Foundation (2004) 269 ITR 35 (Delhi); Addl. CIT vs. A.L.N. Rao Charitable Trust (1995) 216 ITR697 (SC).

Sub-Section 3

- 3) Any income referred to in sub-section (2) which—
 - a) is applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto, or
 - b) ceases to remain invested or deposited in any of the forms or modes specified in sub-section (5), or
 - c) is not utilized for the purpose for which it is so accumulated or set apart during the period referred to in clause (a) of that sub-section or in the year immediately following the expiry thereof,

d) is credited or paid to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred in section 10(23C) shall be deemed to be the income of such person of the previous year in which it is so applied or ceases to be so accumulated or set apart or ceases to remain so invested or deposited or credited or paid or, as the case may be, of the previous year immediately following the expiry of the period aforesaid.

Sub-Section 4

For the purposes of this section “property held under trust” includes a business undertaking so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the Assessing Officer shall have power to determine the income of such undertaking in accordance with the provisions of this Act relating to assessment; and where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes

Gujarat Industrial Development Corpn. v. Asstt. CIT (Ahd-Trib) : (2011) 129 ITD 0073 :(2011) 138 TTJ 0714 :(2011) 054 DTR 0217

Sub-Section 5

The forms and modes of investing or depositing the money

- i. Investment in savings certificates and any other securities or certificates issued by the Central Government under the Small Savings Schemes of that Government;
- ii. Deposit in any account with the Post Office Savings Bank;
- iii. Deposit in any account with a scheduled bank or a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank).
- iv. Investment in units of the Unit Trust of India established under the Unit Trust of India Act, 1963
- v. Investment in any security for money created and issued by the Central Government or a State Government;

- vi. Investment in debentures issued by, or on behalf of, any company or corporation both the principle whereof and the interest whereon are fully and unconditionally guaranteed by the Central Government or by a State Government;
- vii. Investment or deposit in any public sector company;
- viii. Deposits with or investment in any bonds issued by a financial corporation which is engaged in providing long- term finance for industrial development in India and which is approved by Central Government
- ix. Deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long- term finance for construction or purchase of houses in India for residential purposes and which is approved by the Central Government for the purposes of clause (viii) of sub- section (I) of section 36;

- x. Investment in immovable property.
- xi. Deposits with the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964
- xii. Any other form or mode of investment or deposit as may be prescribed in Rule 17C of IT Rules.

Shares held in Cooperative Bank for the purpose of the loan cannot be treated as a violation of the Provisions of Sec. 11(5)-***CIT Vs. Dr Vikhe Patil Foundation 222 Taxman 104 (2014) Bom. HC.***The HC confirmed the judgment of Pune Trib.

Interesting- CBDT circular No 712 dated 25th July 1995 clarifies that restriction relating to Investment u/s 11(5) has no application to institutions covered u/s 10(22) now section 10(23C). Kindly pay attention to the amended provisions with regard to Re-Registration or Fresh registration u/s 12AB

Exemption under section 11 - Allowability of set-off of excess expenditure against income of future assessment year -

- Income derived from trust property had to be computed on commercial principles and if commercial principles were applied, then adjustment of expenses incurred by trust for charitable and religious purposes in earlier years against income earned by trust in subsequent year would to be regarded as application of income of trust for charitable and religious purposes in subsequent year.

2020 TaxPub(DT) 3678 (Karn-HC) : (2020) 426 ITR 0364 Pr. CIT (E) & Anr. v. Green Wood High School Karn-HC, 2012-13, ITA No. 231 of 2018, 14-Aug-2018

Exemption under section 11 - Applicability of proviso to section 2(15) - Selling of plots and premises by Town Improvement Trust

- Selling of plots and premises by assessee, town improvement trust was only incidental and ancillary to its main purpose driven by public requirements and not as a commercial venture *per se* and, therefore, mere profit making on account of certain incidental or ancillary activities of the trust did not disentitle assessee to exemption under section 11.

2020 TaxPub(DT) 4525 (Chd-Trib) JCIT v. Patiala Improvement Trust In favour of Assessee, Chd-Trib, ITA No. 468/Chd/2018, ITA Nos. 847 & 164/Chd/2019, 07-Oct-2020

Exemption under section 11 - *Charitable activity under section 2(15)*

- **The income of assessee is from membership fees from its members, specialized services, services and facilities, meetings, seminars and training programmes, sale of publication, etc. It was also noted that the income of the assessee from other nonmembers of the institution are more and as such the principle of mutuality was apparently not applicable in the case of the assessee. CIT(A) has rightly observed that there was no sufficient reason to deviate from the appellate orders of CIT(A) of the earlier years allowing the exemption under section 11(1). As decided in assessee's own case [[2020 TaxPub\(DT\) 2932 \(Del-Trib\)](#)], there was no infirmity in the order of the CIT(A) in holding that the activities of the assessee were charitable in nature and assessee was entitled to the claim of exemption under section 11.**

Exemption under section 11 - Applicability of proviso to section 2(15) - Assessee earned income on incidental activities

- Since activities from which assessee trust derived income from fees/ penalty/fine etc were inherent part of main object of assessee being charitable in nature proviso to section 2(15) was therefore not applicable to the case of assessee and assessee was entitled to the benefits of section 11.

2020 TaxPub(DT) 2726 (Bang-Trib) Asstt. CIT v. Karnataka Industrial Areas Development Board In favour of Assessee, Bang-Trib, ITA No. 951/BANG/2017 & ITA No. 903/BANG/2017, 03-Jul-2020

Exemption under section 11 - *Disallowance of investment in gold bullion by assessee and treating the same as a violation of section 11(5) -*

- Where Tribunal came to the conclusion that purchase of gold by assessee was not application of funds, but an investment in gold bullion and this investment was in violation of section 11(5) and there was nothing on record to indicate that this opinion was formed by Tribunal and recorded in its order after the assessee had an opportunity to put forth their contention, therefore, matter was remanded back to Tribunal to consider the said issue afresh.

2020 TaxPub(DT) 4125 (Mad-HC) Sri Venkkaliamman Educational & Charitable Trust v. Dy. CIT Matter Remanded, Mad-HC, Tax Case Appeal No. 890 of 2019, 24-Sep-2020

Exemption u/s 11: Investment in Immovable Property

Dy. CIT v. Om Charitable Trust & Vice Versa (2019) 168 TR (A) 448 (Del-Trib):2019 TaxPub(DT) 2450 (Del-Trib)

Held: Section 11(5) provides that accumulated amount under section 11(2) has to be kept in specified modes of investment and since investment in immovable property was permitted as per section 11(5)(x) there was no necessity for assessee to prove that it was done so for charitable purposes and there was nothing wrong committed by assessee so as to violate any provisions of law accordingly denial of exemption was not justified.

Exemption u/s 11: Inter-Trust Donations

Dy. CIT v. Divya Yog Mandir Trust (2019) 168 TR (A) 49 (Del-Trib): 2019 TaxPub(DT) 3167 (Del-Trib)

Held: In view of CBDT Instruction No 1132 dt. 5th Jan, 1978. inter trust donations by one charitable trust to another for utilization by the donee trust towards charitable objects was proper application of income for charitable purpose in the hands of donee trust and it would not affect exemption u/s 11 especially in view of the fact that it was not the case of AO that donee had not applied such sums for charitable purpose.

Section 11-2(15)-CIT v. Praxis Institute for Participatory Practices In favour of Assessee, Del-HC, ITA No. 1441 of 2018, 12-Dec-2018

- Tribunal held that activities of assessee in no way could be termed as trade and commerce, etc., as it was not charging any fee from beneficiaries, who belonged to poor communities. Tribunal also noted that NGOs like WHO, UNICEF, etc. which engaged assessee, were themselves charitable institutions. They ensured that grants given to assessee were utilized for purpose of charitable activities and not for any business and hence they directed to grant exemption u/s 11 & 12. High Court Confirmed the judgement of ITAT of 2015- ***Praxis Institute of Participatory Practices v. DIT (Exemption) (2015) 154 ITD 10 (Delhi-Trib) : 2015 TaxPub(DT) 0988 (Del-Trib)***

Section 11-2(15)-Punjab Cricket Association v. ITO Partly in favour of Assessee, Chd-Trib, ITA Nos. 760 to 763/CHD/2017, 09-Jul-2020

- Assessee-cricket association registered under section 12A, claimed exemption under section 11. AO took the view that activities of assessee, i.e., holding of matches, sale of match tickets, receipt from booking of corporate boxes by companies, receipt of IPL subvention from B, income from club facilities, receipt from sponsors, etc., were of commercial nature and hence assessee was not eligible for exemption under section 11 as it is hit by proviso to section 2(15). Ince BCCI was being treated by tax authorities as an 'AOP' only and payments made to State Associations as distribution of profits, hence, under the circumstances, these payments by BCCI to State Associations including assessee, having already been taxed at the hands of BCCI could not be taxed again in the hands of member of AOP, i.e., assessee State Association as it would amount to double taxation of the same amount. However, income received by assessee otherwise, except the club income, which had not been taxed at the hands of BCCI, would be assessed as per normal provisions of the Act after thorough examination.

Exemption under section 11 - Applicability of proviso to section 2(15) - Receipt of revenue from test laboratory and consultancy charges against activities of providing laboratory test services and consultancy to State Road Transport Undertakings

- Even if some fees were being charged by assessee association for providing laboratory test services and consultancy services in accordance with its charitable objects, the activities could not be held to be rendered in relation to any 'trade', 'commerce' or 'business' as such activities were undertaken by assessee association in furtherance of its main objects which were undisputedly of charitable nature and not an activity of 'trade', 'commerce' or 'business' with main object of earning profit. Accordingly, no exemption could be disallowed by invoking proviso to section 2(15).

CNN Educational Trust v. ITO Matter Remanded, Mad-HC, T.C.A. Nos. 268 and 269 of 2016 & C.M.P. No. 5840 of 2016, 12-Mar-2020

- As a matter of fact, the assessee could have approached the Tribunal by way of a miscellaneous application if a document like Form No. 10 along with the resolution filed before the Tribunal contained all the details and evidence of such accumulation set apart by the assessee for the purpose of construction of building etc., in terms of the provisions of section 11 permitted by law. Further, on perusal of Tribunal's order, it was found that that though the Tribunal referred to the resolution passed by the assessee, without finding it to be defective, but it did not give any benefit of the same to the assessee. Therefore, the matter was remanded to the Tribunal for re-examining the Form No. 10 and the said resolution along with evidence of surplus amount having been spent for the purposes of the trust.

Exemption u/s 11:

- Promotion of Sport Activities

- Promotion of sports and games is a charitable purpose – CBDT Circular No 395 dated 24-9-1984. Providing sports facilities to general public without restriction of any caste, creed, religion or profession is eligible for exemption u/s 11- ***DIT (E) v. Goregaon Sports Club [2012] 347 ITR 338 (Bom.)***

- Supplying of mid-day meals- ***CIT v. Shri Balaji Samaj Vikas Samiti. [2018] 254 Taxman 93 (All.)***

Denial of exemption u/s-11

- Appeal of revenue challenging the restoration of assessee's registration pending before court

Pr. CIT v. JIS Foundation (2019) 167 TR (A) 128 (Cal-HC): 2018 TaxPub(DT) 5704 (Cal-HC)

Held:

The sole reason as to why AO chose not to follow Tribunal's decision and disallowed claim of the assessee for exemption was that revenue's appeal against the order of the Tribunal was pending before Court. However, the Court had already dismissed the appeal, the foundation of the order of the AO collapsed automatically.

Denial Of Exemption- Against The Assessee

- ***Creative Museum Designers v. ITO Against Assessee, Kol-Trib, ITA Nos. 1147 & 1148/Kol/2018, ITA No. 1608/Kol/2019, 14-Aug-2020***
- Though assessee was a registered concern under section 12A as charitable institution, actual work done by assessee in the year under consideration was not charitable in nature, particularly when no formal and systematic educational function was discharged by it, rather commercial, in view of receipt on turnkey project basis, from RBI in lieu of service rendered by assessee. Accordingly, proviso to section 2(15) got attracted and denial of exemption under section 11 was justified.

IS DEPRECIATION ALLOWABLE EXPENDITURE FOR COMPUTING THE TOTAL INCOME?

Prior to amendment by Finance Act (No.2) 2014, the depreciation was allowable as there was no specific provision disallowing the same. The department was of the opinion that since the entire cost of the asset is being given deduction, there is no question of depreciation again on that property (SC Judgement In case of Escorts Ltd.)

However, the various courts & tribunals including Supreme Court had deliberated this issue and given the benefit of depreciation to the trust.

It has been opined that income as computed by Section 11(1)(a) is required to be computed in accordance with the normal rules of the accountancy which covers the depreciation. The same has been enunciated by the apex court in the case of ***Mysore Minerals Limited v/s CIT 239 ITR 279 (1999)***

CIT Vs. Siliguri Regulated Market Committee 366 ITR 51 Cal HC (2015)

Against the Assessee

DIT(E) Vs. Charanjiv Charitable Trust 223 Taxman 71 (2014) Delhi HC., However the SLP of the trust against this judgment has been admitted by the Supreme Court 228 Taxman 58 (2015).

Earlier the Benefit was given to the assessee but for later cy years AO passed order against the Assessee. SC directed the AO to consider earlier order. However there has been no addition because of denial of one of the sections. However under new section 12AB now the Assessee has to apply for any one section only. There seems to be some controversy about this and it is likely that there will be representations on this provision.

The following sub-sections (6) and (7) shall be inserted after sub-section (5) of section 11 by the Finance (No. 2) Act, 2014, w.e.f. 1-4-2015:

Sub-Section 6

In this section where any income is required to be applied or accumulated or set apart for application, then, for such purposes the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this section in the same or any other previous year.

Sub-Section 7

Where a trust or an institution has been granted registration under section 12AA or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance Act, 1996] and the said registration is in force for any previous year, then such entity shall not be entitled to claim any exemption under any provisions of sec. 10 other than u/s. 10(1) in respect of agricultural income and sec. 10(23C) .

Section 11

Denial of exemption

ITAT held that when institution is not driven privately to earn profits but do charity. Activities remained same over period of time. Granted exemption.

- Lata mangeshkar medical foundation – (2008-09 & 2009-10)
- Alleged violation of sec 13(1)(c) – Remuneration paid to trustee and mother of trustee for looking after house-keeping department and general administration department of Rs. 7500/- and Rs. 50000/- per month respectively. This was less than market rates. AO denied exemption considering it as violation of sec 13(1)(c). The comparable case which was brought to review by AO had more remuneration than assessee. CIT appeal ruled that there is no violation and granted exemption. ITAT followed CIT (A) order.

Alleged receipts of donation from patients in lieu of medical services

donation taken from patients in lieu of medical services. AO denied exemption. The donation was much less than medical services. But it was proved conclusively. CIT(A) and ITAT granted exemption.

CIT v. Improvement Trust (2019) 167 TR (A) 129 (P&H-HC): 2018 TaxPub(DT) 5737 (P&H-HC). Exemption was available in respect of the income only if the business carried on by the assessee trust was incidental to the attainment of the objects of the trust. Admittedly, assessee had not utilised or set apart any part of the income for any of charitable purposes referred to in objects clause viz. education, medical relief or relief of the poor and was only engaged only in publication of the newspaper which was run on commercial lines, including charging of commercial tariff for advertisements and charging of price for newspaper at rates comparable to other newspapers. Since business was not carried on as an incidental activity and was carried on as main object, therefore, benefit of exemption was not available to trust.

CONDITIONS FOR CLAIMING EXEMPTION U/S 11 & 12: (SECTION 12A)

The income derived from property held under trust wholly for charitable or religious purpose is exempt from tax u/s 11 subject to fulfillment of the following conditions:

- 1) The Trust should be registered u/s. 12AA of Income Tax Act
- 2) The income shall be applied or accumulated for being applied for the object of the Trust in India
- 3) At least 85% of the income is required to be applied for the approval purposes. (For this purpose, both revenue expenditure and capital expenditure relating to the objects shall be treated as application. No deduction or allowance by way of depreciation or otherwise, in respect of any asset which has been claimed as an application of income in any year shall be allowed in determination of the income of such trust or institution.

- 4) The unapplied income and money accumulated or set apart should be invested or deposited in the specified forms or modes referred to in Sec. 11(5)
- 5) The accounts of the trust for the previous year should be audited if the total income excess the basic exemption limit without giving effect to the exemption u/s. 11 and 12.
- 6) In the case of the public trust, return of income has to be furnished as required u/s. 139(4A) of the Income tax act if the trust has income chargeable to tax before claiming exemption u/s 11

Non Registration u/s 12A only net income is to be taxed

***DDIT(E) Vs. Petroleum Sports Promotion Board 362 ITR
235***

Delhi (2014)

Exemption u/s 11 Loss arising due to surplus application of income.

Dy. CIT V. Om Charitable Trust & Vice-Versa (2019) 168 TR (A) 449 (Del-Trib) : 2019 TaxPub (DT) 2450 (Del-Trib)

- Relied :

CIT (Exemption) V. Subros Educational Society (2018) 303 CTR (SC) 1: 2018 TaxPub (DTC) 3810(SC).

- Held:

AO failed to appreciate that income has to be computed commercially even in cases covered under section 11 to 13 and resultant loss, if any arising due to surplus application of income has to be computed and carry forward to next year to be set off therein accordingly, hence matter was remanded back to AO with direction to allow the claim of assessee after verifying facts on records

CANCELLATION OF REGISTRATION OF THE TRUST OR INSTITUTION IN CERTAIN CASES

The registration once granted to a trust or institution shall remain in force until it is cancelled by the Commissioner. The Commissioner could cancel the registration under following circumstances:

- the activities of a trust or institution are not genuine, or;
- the activities are not being carried out in accordance with the objects of the trust or institution; or
- its income does not enure for the benefit of the public;
- it is for benefit of any particular religious community or caste (in case it is established after commencement of the Income-tax Act, 1961); or

- any income or property of the trust is used or applied directly or indirectly for the benefit of specified persons like author of trust, trustees etc.; or
- its funds are not invested in specified modes,
- then the Principal Commissioner or the Commissioner may cancel the registration, if such trust or institution does not prove that there was a reasonable cause for the activities to be carried out in the aforesaid manner. When such cancellation takes place, the entire income of the trust or institution shall be taxable as the trust or institution will lose its exemption.
- To illustrate, where a trust derives income of Rs. 100 lakhs which includes Rs. 10 lakhs of income from impermissible investments, the trust would lose exemption in respect of entire Rs. 100 lakhs. However, the registration shall not be cancelled if the trust proves that there was a reasonable cause for the activities to be carried out in the above manner.

Charitable purpose- main object of the assessee was to protect investors- object being of general public utility- entitled to get registration.

Interconnected Stock Exchange Investor Protection Fund 162 TTJ 218 (2014) Mum Trib.

Cancellation of registration by treating the trust as non genuine was held to be not justifiable. In this case their Gross receipts exceeded 10 lakhs limit prescribed u/s 2(15) and hence the commissioner cancelled the registration. The tribunal restored registration but allowed the AO to recover the taxes .

-Ghatkopar Jolly Gymkhana Vs. DIT(E) (2014) 147 ITD 112

-Tamilnadu Cricket Asso. Vs. DIT 360 ITR 633 Madras HC (2014)

-CIT Vs. Krishnachandra Gandhi Janashika Nyas 222 taxman 108 (2014) Jharkhand HC.

*Circular No. 21/2016 [F.No. 197/17/2016-ITA-I] dated 27th May 2016
(This circular is applicable for a charitable institution having the advancement of any other object of general public utility and having commercial activity with a turnover or receipts exceeding 20% of the total receipts)*

An entity pursuing advancement of any other object of general public utility it could be treated as a charitable institution in one year and not a charitable institution in another year depending on the aggregate value of receipts from the commercial activity. Suffice to say that if the turnover or receipts exceeds 20% of the total receipts for a particular year, then only that particular year the trust will be paying tax but that will not result into cancellation of registration u/s 12A.

Circular Continued

The temporary excess of receipts beyond the specified cut off in one year may not necessarily be the outcome of alteration in the very nature of activities of the trust requiring cancellation of registration already granted.

Hence prior to the circular section 13 was amended by Finance Act 2012 with insertion of sub section 8 which provided that such institution which has exceeded the specified threshold limit of 20% of aggregate receipts such organization will not get exemption benefit for that particular year. This amendment has taken effect from 01.04.2009.

Denial of registration

Registration u/s 12A- restriction thereof

- Chokhraj tulsian saraswati vidya mandir inter college v/s CIT 161TR (A) 159 lucknow tribunal 2018 (may 2018 report) (dated 22/2/2018)

‘A’ was runnig college . It cannot be denied that activities of trust were not genuine. CIT was directed to grant registration.

- CIT v/s National internet exchange of india 161TR (A) 158 delhi high court (2018) ,may 2018 (dated 9/1/2018)

A sec 25 company granted registration u/s 12A. A provided basic services by way of domain name of reg for which it charged subscription/fees annually and also collected connecting charges. AO treated them as commercial activity and therefore brought to tax all receipts for AY 2004-05. CIT(A) and ITAT granted relief. Department went up in appeal and HC dismissed the Departmental Appeal.

CIT v/s Choudhary Son Palsingh Educational Institution - 16 ITR (A) 159 Allahabad 2018 (May 2018)- Denied the registration on the ground that lent cash credit entries found in the books of accounts without interest were not genuine ITAT directed for registration u/s 12A- HC remanded the matter to CIT for fresh consideration.

CIT v. St. Stephen's Hospital (2019) 167 TR (A) 131 (Del-HC): 2019 TaxPub(DT) 22 (Del-HC)

Held: Revenue failed to notice that primary function of assessee was to operate and run a hospital and provide medical facilities to public at large. In cases of illness, etc., patient and attendants do like to read religious books and pray. To attract and fall foul of section 13(1) (b) trust or institution should be created or established for the benefit of a particular religion or group. Display and distribution of religious books free of cost in a small book shop without charging any rent or electricity charges would not change the core and primary nature of charitable activity carried out by assessee so as to attract disqualification u/s 13(1)(b)

Additional Judgement

- Opportunity of being heard not provided before denial of Registration u/s 12AA

Krishiv Rama Foundation Vs CIT

177 TR 154 Amritsar ITAT (2021)

- Non filing of Return cannot be ground to deny registration- Activities not disputed.

Kai Shri Mahadeo Naikude V/s CIT 177 TR 35

Poona ITAT 21st Sept, 2020

Additional Judgement contd...

- CIT (E) had not recorded any adverse finding that objects were not charitable or were not charitable or were not genuine. Just because no activities were carried out, Cannot be grounds for rejection

M/s Ananda Social And Educational Trust vs. CIT (Supreme Court) 114 Taxmann.Com(2020)

Additional Judgement contd...

- ACIT Vs. PHD Chamber & Commerce & Ind 177 ITR 288 Delhi ITAT 25th August 2020. Section 2(15)
- Self Certified copies are enough no need to R/e original deed as per Rule 17

**Shrimad Dayanand Shiksha Samiti-
Bhilwada 177 TR 289 Jaipur ITAT 3rd
September, 2020.**

Additional Judgement contd...

- **(ITAT-DELHI) 2020 ITL 1943 : (2020) 183 ITD 852 : (2020) 84 ITR(Trib.) 181 BAR COUNCIL OF DELHI V. CIT (EXEMPTION) , NEW DELHI**

The CIT (E) rejected the application u/s 12AA as well as 80G considering genuineness of activity could not be established due to non submission of balance sheet & trust was notified institution

Contention- Assessee trust was duly approved for the purpose of 10(23C) as per dated 9th August 1966. genuineness of the activities is to be decided with the object clause of institution. A trust being afeeguarding the rights, privileges and interest of the advocates, its dominating purpose is the advancement of general public utility within the meaning of section 2(15) of the Act, as such, genuineness of its activities and object of charitable purpose is proved, thus entitled for registration u/s 12AA and consequent exemption u/s 80G

Registration under section 12AA - Distinction whether present in Income Tax Act, 1961 as regards trusts having both charitable and religious purpose as their objectives -

Followed The Judgement in Following cases:

1. *State of Kerala v. M.P. Shanti Verma Jain* (1998) 231 ITR 787 (SC)
: [1998 TaxPub\(DT\) 1323](#) (SC);
2. *Upper Ganges Sugar Mills Ltd. v. CIT* (1997) 227 ITR 578 (SC)
: [1997 TaxPub\(DT\) 1328](#) (SC);
3. *Director of Income Tax Exemptions v. M/s. Seervi Samaj Tambaram Trust* [2014 TaxPub\(DT\) 1817](#) (Mad-HC)

Held: Supreme Court had held that Income Tax Act, 1961 does not make any distinction with regard to the objectives of the Charitable and Religious purposes and Trusts having both these objectives can also be registered under section 11 or 12AA.

Effect of cancellation of registration u/s 12AA on future date

- ***Auro Lab. V. ITO (2019) 168 TR (A) 783 (Mad-HC): 2019 TaxPub(DT) 1007 (Mad-HC): (2019) 411 ITR 308 (Mad): (2019) 261 Taxman 364 (Mad): (2019) 307 CTR (Mad) 6***

Held: Since the act of cancellation of registration has serious civil consequences, therefore, cancellation of registration under section 12AA would take effect only from the date of order/notice of cancellation of registration ie 30th Dec,2019 and, therefore, exemption u/s 11 could not be denied to the assessee for and up to AY 2010-11 on the ground of cancellation of certificate of registration.

Relevance of Application of Income- Scope of inquiry at time of granting registration

- ***Cricket for Rajkot District v. CIT (2019) 168 TR (A) 783 (Rkt-Trib): 2018 TaxPub(DT) 7260 (Rkt-Trib)***

Held: At the stage of grant of registration u/s 12A, CIT was supposed to examine only objects of trust and it was not appropriate on his part to examine the aspect of income the duty whereof vests upon AO on a year-to-year basis at the time of considering the claim of assessee for exemption u/s 11. Therefore, CIT was directed to allow registration u/s 12AA

Continued...

- ***Fateh Chand Trust & College Committee v. CIT (2019) 168 TR (A) 784 (Agra-Trib): 2018 TaxPub(DT) 6380 (Agra-Trib): (2018) 67 ITR (Trib) 564 (Agra-Trib)***

Held: Under section 12AA of the Act, the Commissioner is entitled to see that whether the objects are charitable in nature, which term has been well defined in the Act and also to see whether the activities are genuine or not. The genuineness of activities would mean to see that activities are not camouflage, bogus, artificial and whether these are in accordance with the objects of the institution. The scope of enquiry does not extend beyond that point.

CASES WHEN INCOME SHALL NOT BE EXEMPT U/S 11 SEC. 13

- a) Any part of the income from the property held under a trust for private religious purposes which does not enure for the benefit of the public;
- b) In the case of a trust for charitable purposes or a charitable institution created or established after the commencement of this Act, any income thereof if the trust or institution is created or established for the benefit of any particular religious community or caste;
- c) Registration denied on the ground that the intention of the trust was to benefit particular religious minority which was in violation of Provisions of Sec 13(1)(b) of the Act.
 - ***Tellicherry Minority Welfare Trust Vs. CIT 364 ITR 472 (2014) Kerla HC***

- c) Any income of a trust used directly or indirectly for the benefit of the author, founder, trustee, manager or any person who has made a substantial contribution to the trust (total contribution exceeding Rs. 50,000 up to the end of relevant previous year) and relative of any such person. If a charitable or religious trust is running an educational institution or hospital, exemption shall not be denied by reason only that such trust has provided educational or medical facilities to any of these specified persons. However, the value of such education or medical facility shall be deemed to be income of such trust or institution and shall be chargeable to income tax.
- ***CIT v. Audh Educational Society 203 Taxman 166 (Allahbad) (2011)***
- d) Any shares in a company, other than shares in a public sector company and shares prescribed u/s. 11(5) held by the trust or institution and any investments other than those specified u/s. 11(5)

- e) Income from business which is not incidental to the attainment of the objectives of the trust, and/ or separate books of accounts has not been maintained in respect of such business
- f) Any voluntary contribution received by the trust/institution in respect of which such trust/institution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed. Such receipts are considered as anonymous donation u/s. 115BBC, which shall be taxable at 30%
- g) Any trust or institutions which exists for the advancement of any other general public utility, if it carries on any commercial activity in respect of which the aggregate value of receipts exceeds Rs. 25 lakhs for that previous year

Interest free loan was given by a charitable institution to another with similar objects which was later returned. Assessing Officer denied the exemption on the ground that interest free loan is neither an investment approved u/s. 11(5) and that such loan is in violation of Sec 13(1)(d). However, it has been held that a loan is neither an investment/ deposit nor it is inconsistent with the object of the assessee so as to attract Sec. 13(1)(d). Further both the institutions were registered u/s. 12A and approved u/s. 80G. Therefore, exemption cannot be denied to the society

Director of Income tax (E) vs. Acme Educational Society (2010) 326 ITR 146 (Del).

Exemption u/s 11 Interest free loan to certain concern

***Dy. CIT V. Shiva Educational trust and Vice –
Versa (2019) 168 TR (A) 449 (Chd-Trib): 2019
TaxPub(DT) 2595 (Chd-Trib)***

Held: Section 13(1)(c) did not get attracted as AO failed to point out how it was a specified person in section 13(3). Further loan given did not qualify as deposit/ investment for the purpose of section 11(5) and assessee could not be said to have violated section 11(5) so as to be denied exemption under section 11. Accordingly denial of exemption u/s 11 was not justified.

Investment Restrictions –

Benefit to prohibited persons- Advance of Loan- of exemption held to be justified. ***DIT(E) Vs. Charanjiv Charitable Trust 267 CTR 305 2014 Delhi HC.*** SLP preferred by trust admitted by SC 228 Taxman 58 (2015)

More than 5% 'capital'- capital includes share capital as well as borrowed capital entitled to exemption u/s 11. ***CIT Vs. Islamic Academy of education 369 ITR 76 (2015) Kar. HC.***

Salary for teaching and no extra salary for managing the work of the trust- denial of exemption was not justified. ***CIT Vs. Idicula Trust Society Faridabad 223 taxman 66 (2014)(Punj. & Har.) HC***

Loans given in violation of sec. 13 not entitled to exemption u/s 11- entire income cannot be denied exemption

The income from interest on investment in violation of 11(5) only to be taxed and there cannot be denial of exemption on total income of the assessee trust. **CIT Vs. Fr. Mullers Charitable Institution 363 ITR 230 (2014) kar. HC.**

Remuneration to trustees- Remuneration paid to trustee who are rendering services as a full time secretary of the trust was about 1% of the total value of the activities of the trust, it cannot be said to be excessive or unreasonable and therefore, there cannot be denial of exemption. **PNR society for relief and rehabilitation of the disabled trust Vs. deputy DIT 34 ITR 465 (2015) Ahem. Trib.**

DIT Vs. Parivaar Seva Sanstha 254 ITR 268 Delhi Trib- Salary paid was abnormal and hence the Section 13 was invoked and exemption was denied.

A charitable religious trust which does not benefit any specific religious community is not hit by Sec 13(1)(b) and therefore eligible to claim exemption u/s 11. **CIT Vs. Dawoodi Bohra jamat 364 ITR 31 SC (2014)**

Sub section 9 to section 13 was introduced w.e.f 1.4.2016 by Finance Act 2015

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 sub-section (1) of section 139 for furnishing the return of income for the said previous year.

COMPARISON BETWEEN SECTION 11 & SECTION 80G

The provisions of section 11 are intended to grant exemption to the income of charitable or religious trust for the benefit of the [public so long as the income of the religious trust is not meant for the private religious purposes but to ensure the benefit of the public which is achieved by the establishment and maintenance of public places of worship and prayer halls open to all communities, the entire income of such religious trust shall qualify for exemption u/s 11

On the contrary, section 80G does not recognize contributions to religious trusts except in respect of donations for the renovation of any temple, Gurudwara, mosque, church or other places of public worship as may be notified by the central government. Contribution to charitable trust is recognized as eligible for sec 80G deduction in respect of contributions to charitable trusts. The eligibility of deduction to the donor will not be lost merely because the charitable trust incurs expenditure towards religious purposes so long as the amount spent in this regard does not exceed 5% of the total income.

The Supreme court in ***Upper ganges sugar mills limited Vs. CIT (1997) 227 ITR 578***, on similar lines has held that the relevant provision of sec 11 and sec 80G have different objectives and apply with reference to computation of income of different persons and therefore, there will be no contradictions in the case of the assessing officer allowing exemption in respect of the income of the religious trust u/s 11 and denying the benefit of deduction u/s 80G in the hands of the donors in respect of donations made to the religious trust

Donation- Community Hall possibility of using for commercial purposes- refusal of application was held to be not valid. ***Mahor Vaish (Mahajan) Sewa Sansthan Vs. CIT (2015) 67 SOT 57 Agra Trib.***

Foreign National- Application for renewal cannot be rejected on the ground that Director of a company is a foreign national who has signed the application and without giving an opportunity to rectify curable defects. - No objection was raised at the time of registration and renewal in past 4 occasions – 80G (5) does not contained any such condition of foreign national. Objection of DIT (E) are not sustainable .

GIA India Vs. DIT(E) 160(1) TTJ 391 (2014) Mum. Trib.

Donation- Granting Exemption only object of Trust is required to be examined- approval cannot be rejected on the ground that it failed to incur expenditure to the extent of 85% of income during the relevant year.

CIT Vs. Shri Govinbhai Jhethalal Nathwani Charitable Trust 373 ITR 6195 (2015) Gujarat HC.

BUSINESS INCOME SEC.11(4) & (4A)

A business undertaking held by a trust will be treated as a property held under a trust. Where a claim is made that the income of any business shall not be included in the total income, the Assessing Officer shall have power to determine the income of such undertaking in accordance with the provisions of the Act relating to assessment. Where any income so determined is in excess of income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes.

In the case of a trust or institution, income from business would be eligible for exemption if the following three conditions are fulfilled:

- a) The trust carries activities for advancement of any other object of general public utility.
- b) The business carried on should be incidental to the attainment of the objects of the trust/institution; and
- c) Separate books of account should be maintained in respect of such business.

The benefit of exemption to a trust, having the object of advancement of general public utility, would be lost if any business is carried on with gross receipt in excess of 20% of total receipts. This restriction does not apply to a trust having object other than that of advancement of general public utility. For example, a trust for the promotion of education or medical relief can carry on a business and still qualify for exemption subject to fulfillment of the above mentioned conditions. Judgement in Favour of Business carried should be incidental to the objects of the trust- ***Asst. CIT v. Thanthi Trust (2001) 247 ITR 785 (SC)***

Sec. 11(4) & (4A) exempt the income from the business carried on by the trust provided the business is incidental for achieving the objects of the trust and separate books of accounts in respect to the same are maintained. In case the letting out of halls for functions is incidental for achieving the objects of the trust, the same shall not be regarded as commercial activity rendering the trust losing its exemption. The surplus from carrying on the business has to be used for the objects of the trust- ***CIT vs. Thanthi Trust (2007) 247 ITR 785 (SC)***.

However, with the amendment to the Sec 2(15) the matter will have to be visited with reference to that.

VOLUNTARY CONTRIBUTIONS

These contributions which are made with specific direction that they should form corpus do not constitute income chargeable to the tax (Section 11(d)). This exemption is subject to the provisions as Section 12A and 13.

The Voluntary Contributions which are not towards corpus are taxable and they have to satisfy the conditions as specified in the Section 11 regarding application of the definition of income. This definition has to be read with Section 11(1) and 12(1) which requires application of the income up to 85% of such income and the meaning of income has been mentioned in the section 12(1) which again refers to Section 11(1) but excludes corpus donations. The Voluntary Contributions other than corpus donations are treated as income only for the purpose of determination of income applied for charitable purposes 11(1). The shortfall is taxable unless saved by provision of section 11(2) by the permission of accumulations.

The point pertinent here donations being gifts and otherwise are not taxable since even section 56(2) (v) and (vi) would foist a tax liability only on gifts received by individual and HUF. Therefore apart from the corpus donations by itself would not be taxable even if the trust has been denied the exemption.

CORPUS DONATION

There are certain donations which are not the income. Such as if the trust receives the Corpus donation then it is not treated as the income and thus criteria of 85% don't apply to the corpus receipt.

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

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

Corpus donation is not routed through income & expenditure account, it is generally credited to respective fund account.

Specific Fund donations could not be treated as voluntary contribution in the nature of income. ***Indian Society of Anesthesiologists Vs. ITO 32 ITR 152 Chennai Trib. (2014)***

Section 11 and 12- Corpus Donation- Latest Case Judgement
SOCIETY FOR INDIA AUTOMOBILE MANUFACTURERS 176 TR 489 (2020) DELHI TRIBUNAL (30th April,2020) 176 TR 490

TAXABILITY OF INCOME OF CHARITABLE OR RELIGIOUS TRUST- SEC. 164(2)

Following shall be included in the income of the trust:

- a) Income from the property held under trust;
- b) Voluntary Contributions; and
- c) Income referred u/s. 11(4A)

The income of the trusts shall suffer tax at slab rates. However, in the following situations they shall suffer a tax at maximum marginal rate:

- a) If any part of the income of the charitable trust enures directly or indirectly for the benefit of persons specified in sec. 13(3).
- b) If funds of the trust are invested in modes other than those specified in Sec 11(5)

Maximum Marginal Rate shall apply to only that part of income which has attracted the provisions of Sec. 13(1)(c) and 13(1)(d) and the balance income shall be taxed at normal slab rates.

TAXABILITY OF ANONYMOUS DONATIONS - SEC. 115BBC

According to Sec. 115BBC, “Anonymous Donation” means any voluntary contribution where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed.

According to Sec. 115BBC(2), the following are exempt from taxability of anonymous donation :

- 1) Anonymous donation received by wholly religious institution or trust shall be exempt from tax u/s. 115BBC
- 2) Anonymous donation received by educational institutions and hospital wholly or substantially financed by the government shall be exempt from tax u/s. 115BBC.

Taxability of Anonymous Donation received by other institutions:

- 1) In the case of wholly charitable institutions, anonymous donation shall be subject to tax @30% on the aggregate of anonymous donations received in excess of the higher of the following:
 - i) Rs. 1,00,000 or
 - ii) 5% of the total donations received by such institution.

- 2) In the case of partly charitable and partly religious institutions, any anonymous donations directed towards a medical or educational institutions run by such institutions shall be subject to tax @30% on the aggregate of anonymous donations received in excess of the higher of the following:
 - i) Rs. 1,00,000 or
 - ii) 5% of the total donations received by such institution.

Whether it attracts Provision of Sec 68 to 69D?

No. Anonymity of the donors cannot lead to the inference that unaccounted money has been introduced. Sec 68 will have no application if the assessee has disclosed the donation as a part of income. Whether offered as corpus donation or other voluntary contribution.

***Keshav Social and Charitable Foundation Vs. DIT (E)
278 ITR 152 (2005) Delhi.***

It is observed even if the donors are not introduced or the lists of the donors are not filed the AO cannot infer that the assessee was trying to introduce unaccounted money.

CAPITAL GAINS-SEC 11(IA)

Where a capital asset held under trust, is transferred and the whole of the net consideration is utilized for acquiring another capital asset, then the entire capital gain is deemed to have been applied for the object of the trust. If only part of the net consideration is utilized for acquiring the new capital asset, so much of such capital gain as is equal to amount, if any, by which the amount so utilized exceeds the cost of the transferred asset shall be considered to have been so utilized and exemption shall be restricted to such amount. For availing such exemption by reinvestment, the period of holding of the asset is not relevant.

Net consideration invested in fixed deposit of bank is considered as acquisition of capital asset and capital gains is therefore exempt ***Hindustan Welfare Trust(Cal)(1994) 206 ITR 138***. Similarly, capital gains invested in current account is also eligible for tax relief- ***Asst. DIT vs. Murugappa Chettiar Trust(2008)303 ITR 360 (Mad)***. [*CBDT instruction no. 883 dated 24.09.1975 clarified that investment in FDs with the tenure of more than 6months was considered as a capital asset.*]

Acquiring of English mortgage (where the mortgager transfers the ownership of the mortgaged property to the mortgagee and the same is retransferred upon the payment of mortgage money) by a trust is treated as reinvestment of the proceeds arising on transfer of capital asset in another capital asset – ***Bafna Charitable Trust vs. CIT (1997) 230 ITR 864(Born)***.

Time limit for the purpose of investment

- Sec 11(1A) does not provide any time limit for re-investment in new capital asset
- The capital gains are to be considered as income under 11(1)(a), they have to be utilized in the year of receipt.
- However, the assessee trust is also entitled to exercise option u/s 11(1) and utilized the same in the subsequent year.
- And capital gain therefore, will not be taxable
- If the entire consideration invested then no capital gains and if the part of the consideration is invested the capital gain will be worked out proportionately

- Indexation benefit will not be available if the trust chooses the option u/s 11(I) of accumulation
CIT Vs. East India Charitable Trust 206 ITR 152 (1994) Cal. HC.
Dalmia Charitable Trust Vs. ITO 27 Taxman 46 (1986) Delhi Trib.
- No minimum holding period has been prescribed for new asset
CIT Vs. Hindustan Welfare Trust 1994 206 ITR 138 Cal
DIT(E) Vs. D.L.F. Qutab Enclave Complex Medichal Charitable Trust (2011) 167 CTR Delhi

Trust and TDS Provisions

All the provisions relating to tax deduction at source generally applicable to assesseees other than Charitable trusts and Institutions are very much applicable to Charitable trusts and Institutions . This includes interest and penalties payable on non deduction/ short deduction of TDS and penalty for non filing of TDS returns.

Trust and Maximum Marginal Rate (MMR)

What about taxability of income which is not exempt in the hands of Trust?

Income taxable in the hands trust



**Taxable in the capacity
of Individual Assessee**

**Taxable in the capacity
of AOP u/s 167B at MMR**

AOP to be taxed as same as on the basis of individual -
Clause (I) of Part I of First schedule to the Annual Finance Act

So if Trust or institutions are liable to assessed as AOP then obviously section 167B **does also have applicability** in case of charitable trust or institutions.

Section 167B will **not be applicable** in case of charitable trust or institutions because of following two reasons;

(a) Sec-167B of income Tax Act, 1961 specifically excludes Companies and societies registered under societies registration Act, 1980 or any other similar legislation.

(b) The different rates as prescribed in section 167B are based upon knowledge and determination of share of individual members. But as far as charitable or religious organizations are concerned there is no scope of share of income or surplus among members concerned.

It can be said now that charitable or religious trust or institutions are subject to tax (if income is not exempt) at the rate applicable to individual assessee

Exceptions in which case income is subject to maximum marginal rate;

- (i) Income for private religious purpose {sec-13(1)(a)}
- (ii) Income for the benefit of particular religious community {sec-13(1)(b)}
- (iii) Income for the benefit of persons specified in section 13(3) {sec-13(1)(c)}
- (iv) Funds not invested in accordance with provisions of sec-11(5) {sec 13(1)(d)}
- (v) Anonymous donation {sec-115}

Where the above conditions are not fulfilled but income is taxable in the hands of trust, such income is subject to income tax at the rate applicable to individual assessee.

Charity and Business

- **Leasing of Property need not be Business**

The predominant objective is to be seen whether it is to sub serve the charitable purpose or to earn profit. If the predominant object is carrying out charitable activities then it would not lose the character of charitable purpose merely because some profit has aroused from the activity.

The exclusionary clause “not involving the carrying on of any activity of profit does not require that the activity must be carried on in such a manner that it does not result in any profit”

In the case of *Samudra Institute of Maritime v. DDIT Mumbai* Bench of the Tribunal held that even if the courses are not approved but if the intention of the assessee was to give technical training, exemption u/s 11 cannot be denied.

- **Imparting training in arts and handicrafts to unemployed men and women, even if it involved payment to them for work done- *CIT v. J.K.Charitable Trust*[1991] 59 Taxman 602 (All.).**

- **Charity Shows need not be business**

In the case of *CIT v. Trustees of Visha Nima Charity Trust* 138 ITR 564, the Bombay High Court held that income of charitable institution by sale of tickets for charitable show, advertisement in souvenirs published by institutions and conduct of entertainments would not be treated as business income since there is no element of *quid pro quo* (something for something) on these transactions, which are purely of voluntary in nature.

In CIT v. Hyderabad Race Club Charitable Trust (2003) 262 ITR 194 (AP), it was found that stray activities like conducting races on some occasions inter-venue for the purpose of achieving primary objects of trust, could not come in the way of exemption with reference to section 13(1)(bb) of the Act.

- **Raising funds through a single lottery is not business**

The High court in the case of CIT v. Indore Table Tennis Trust (1997) 227 ITR 836 (MP) confirmed the views of ITAT by upholding that organizing a lottery could not be held as business of the trust, since there was no continuous and systematic exercise of such an occupation or profession.

- **Rent from Choultries and Dharmashalas**

In the case of public charitable trust, where the sole purpose of the trust is to run a Dharmashala, the rents received from letting out of rooms is exempt from tax – ***Raghunath Das Parihar Dharmashala v. CIT (1986) 158 ITR 432 (Raj.)***

- **Professional Education**

Activity of coaching is educational in nature – ***Saurashtra Education Foundation v. CIT (2005) 273 ITR 139 (Guj)***

Extending financial assistance /scholarship etc. to students for their educational purpose would fall within connotation 'education'.
Therefore assessee was engaged in 'educational activities' - ***Oxford Academy for Career Development v. Chief CIT [2009] 315 ITR (All.)***, ***Hamdard Laboratories India v Asstt.DIT (Exemption) [2015] 61 taxmann.com 262(Delhi)***.

Accretion of Income and Taxability (Exit Taxation for Trust)

- What is Accretion?

In general parlance **Accretion** is growth in the value of asset and earnings due to business expansion, and it can occur through a company's internal growth or by way of merges and acquisition.

Background for Introduction of Chapter XII-EB

- A Society/ trust/company/institution carrying on charitable activity may voluntarily wind up its activities and dissolve or may also merge with any other charitable or non charitable institution, or it may convert into a non charitable organization.
- No provision in the Act which ensure that the corpus and asset base of the trust accreted over period of time, with promise of it being used for charitable purpose, continues to be utilised for charitable purposes and is not used for any other purpose
- Possibility of charitable institutions to transfer assets to a non-charitable institution
- Need to ensure that the benefit conferred over the years by way of exemption is not misused and to plug the gap in law that allows the charitable trusts having built up corpus/wealth through exemptions being converted into non-charitable organisation with no tax consequences.

Provisions applicable:-

Chapter XII-EB

- ***115TD - Tax on accreted income***

(1) Notwithstanding anything contained in this Act, where in any previous year, a trust or institution registered under section 12AA has—

(a) converted into any form which is not eligible for grant of registration under section 12AA;

(b) merged with any entity other than an entity which is a trust or institution having objects similar to it and registered under section 12AA; or

(c) failed to transfer upon dissolution all its assets to any other trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, within a period of twelve months from the end of the month in which the dissolution takes

then, in addition to the income-tax chargeable in respect of the total income of such trust or institution, the accreted income of the trust or the institution as on the specified date shall be charged to tax and such trust or institution, as the case may be, shall be liable to pay additional income-tax (herein referred to as tax on accreted income) at the maximum marginal rate on the accreted income.

(2) The accreted income for the purposes of sub-section (1) means the amount by which the aggregate fair market value of the total assets of the trust or the institution, as on the specified date, exceeds the total liability of such trust or institution computed in accordance with the method of valuation as may be prescribed:

Provided that so much of the accreted income as is attributable to the following asset and liability, if any, related to such asset shall be ignored for the purposes of sub-section (1), namely:—

- (i) any asset which is established to have been directly acquired by the trust or institution out of its income of the nature referred to in clause (1) of section 10;
- (ii) any asset acquired by the trust or institution during the period beginning from the date of its creation or establishment and ending on the date from which the registration under section 12AA became effective, if the trust or institution has not been allowed any benefit of sections 11 and 12 during the said period:

Provided further that where due to the first proviso to sub-section (2) of section 12A, the benefit of sections 11 and 12 have been allowed to the trust or the institution in respect of any previous year or years beginning prior to the date from which the registration under section 12AA is effective, then, for the purposes of clause (ii) of the first proviso, the registration shall be deemed to have become effective from the first day of the earliest previous year:

Provided also that while computing the accreted income in respect of a case referred to in clause (c) of sub-section (1), assets and liabilities, if any, related to such asset, which have been transferred to any other trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, within the period specified in the said clause, shall be ignored.

(3) For the purposes of sub-section (1), a trust or an institution shall be deemed to have been converted into any form not eligible for registration under section 12AA in a previous year, if,—

(i) the registration granted to it under section 12AA has been cancelled; or(ii) it has adopted or undertaken modification of its objects which do not conform to the conditions of registration and it,—(a) has not applied for fresh registration under section 12AA in the said previous year; or(b) has filed application for fresh registration under section 12AA but the said application has been rejected.(4) Notwithstanding that no income-tax is payable by a trust or the institution on its total income computed in accordance with the provisions of this Act, the tax on the accreted income under sub-section (1) shall be payable by such trust or the institution.

(5) The principal officer or the trustee of the trust or the institution, as the case may be, and the trust or the institution shall also be liable to pay the tax on accreted income to the credit of the Central Government within fourteen days from,—

(i) the date on which,—(a) the period for filing appeal under section 253 against the order cancelling the registration expires and no appeal has been filed by the trust or the institution; or(b) the order in any appeal, confirming the cancellation of the registration, is received by the trust or institution, in a case referred to in clause (i) of sub-section (3);
(ii) the end of the previous year in a case referred to in sub-clause (a) of clause (ii) of sub-section (3);

(iii) the date on which,—(a) the period for filing appeal under section 253 against the order rejecting the application expires and no appeal has been filed by the trust or the institution; or (b) the order in any appeal, confirming the cancellation of the application, is received by the trust or institution, in a case referred to in sub-clause (b) of clause (ii) of sub-section (3);

(iv) the date of merger in a case referred to in clause (b) of sub-section (1); (v) the date on which the period of twelve months referred to in clause (c) of sub-section (1) expires.

(6) The tax on the accreted income by the trust or the institution shall be treated as the final payment of tax in respect of the said income and no further credit therefor shall be claimed by the trust or the institution or by any other person in respect of the amount of tax so paid.

(7) No deduction under any other provision of this Act shall be allowed to the trust or the institution or any other person in respect of the income which has been charged to tax under sub-section (1) or the tax thereon.

Explanation.—For the purposes of this section,—

- (i) "date of conversion" means,—(a) the date of the order cancelling the registration under section 12AA, in a case referred to in clause (i) of sub-section (3); or (b) the date of adoption or modification of any object, in a case referred to in clause (ii) of sub-section (3);
- (ii) "specified date" means,—(a) the date of conversion in a case falling under clause (a) of sub-section (1); (b) the date of merger in a case falling under clause (b) of sub-section (1); and (c) the date of dissolution in a case falling under clause (c) of sub-section (1).
- (iii) registration under section 12AA shall include any registration obtained under section 12A as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996).

115TE. Interest payable for non-payment of tax by trust or institution.—

Where the principal officer or the trustee of the trust or the institution and the trust or the institution fails to pay the whole or any part of the tax on the accreted income referred to in sub-section (1) of section 115TD, within the time allowed under sub-section (5) of that section, he or it shall be liable to pay simple interest at the rate of one per cent for every month or part thereof on the amount of such tax for the period beginning on the date immediately after the last date on which such tax was payable and ending with the date on which the tax is actually paid.

115TF. When trust or institution is deemed to be assessee in default.—

(1) If any principal officer or the trustee of the trust or the institution and the trust or the institution does not pay tax on accreted income in accordance with the provisions of section 115TD, then, he or it shall be deemed to be an assessee in default in respect of the amount of tax payable by him or it and all the provisions of this Act for the collection and recovery of income-tax shall apply.

(2) Notwithstanding anything contained in sub-section (1), in a case where the tax on accreted income is payable under the circumstances referred to in clause (c) of sub-section (1) of section 115TD, the person to whom any asset forming part of the computation of accreted income under sub-section (2) thereof has been transferred, shall be deemed to be an assessee in default in respect of such tax and interest thereon and all the provisions of this Act for the collection and recovery of income-tax shall apply:

Provided that the liability of the person referred to in this sub-section shall be limited to the extent to which the asset received by him is capable of meeting the liability.'

FAQs

WHETHER THE DIRECTIONS ARE REQUIRED TO BE IN WRITING?

Though the Act has not specified the direction should be in writing, going by common parlance such direction should be in writing.

DIT Bangalore Vs. Shri Ramkrishna Sewa Ashram 205 Taxman 26 (2012) Kar. HC

WHETHER HEADWISE COMPUTATION IS NECESSARY?

Section 14 provides for the purpose of computation of total income under various heads of income as mentioned therein. No head wise computation is necessary since as far as the trust is concerned, the entire income is classified as income from the property held under the trust. The income of trust cannot be equated with that of computed under general provisions of the Act in respect of the other Assessee who are not entitled to the benefit from the section 11(1) (a), 11(1) (b).

This particular view was pronounced by Calcutta HC in the case of *DIT (Exemption) v/s Girdharilal Tantiya Trust (1993) 199 ITR 215 (Cal)*. However as regards deficit of earlier years to be adjusted against the current year's income, the Courts have observed that income should

WHETHER LOSS ON SALE OF INVESTMENT IS DEDUCTIBLE ?

No, head wise computation is to be done. The income is to be computed in the commercial sense. Therefore loss on sale of investment cannot be considered and it must be excluded i.e. such loss is not allowable. –

Hindustan Welfare Trust v/s DIT exemption 201 (ITR) 564 (1993), Calcutta.

WHETHER THE INCOME IS BEFORE OR AFTER TDS ?

The accumulation or application of the income under section 11(1)(a) must be of real income. The income which is taken away by the deduction at the sources is not available to the trust for charitable purposes and hence it is not to be taken into account for determining the application of income thereof. This view was expressed by *Calcutta High Court in CIT v/s Jayashree Charitable Trust (1986) 159 ITR 280*. The same view was adopted by CBDT in its circular no. 5-p (LXX-6) dated 19-6-1968.

IS DEPRECIATION ALLOWABLE EXPENDITURE FOR COMPUTING THE TOTAL INCOME ?

As per Sub-Section **6** of Section **11** inserted by the Finance Act, 2014, **w.e.f. 1-4-2015** where any income is required to be applied or accumulated or set apart for application, then, for such purposes the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this section in the same or any other previous year.

WHETHER HUNDI COLLECTIONS COULD BE TREATED AS CORPUS DONATION IF THE BOX CONTAINS THE NECESSARY INSCRIPTION OF CORPUS ON THE HUNDI?

The Bombay Tribunal in the case of *Prabodhan Prakashan v/s ADIT 150 ITD 135 (1994)* has clearly pointed out in such cases that these directions are made by the Donee and not by the Donor which is the pre-requisite for treatment of corpus donation. Same view has been taken by Culcatta HC in case of *Shri Digambar Jain Naya Mandir Vs. ADIT 70 ITD 121 (1999)*

Judgment in favour of the assessee-

- *Shri Mahadevi Sharada Tirth Ma Sewa Sangh Vs. ITO 133 TTJ 57 (2010) Chandigarh*
- *Boyakonda Gangamma Devasthanam Vs ITO (ITAT Hyderabad)- I.T.A. No.1983/HYD/2018- Date of Judgement/Order : 29/01/2021*

WHETHER ACCUMULATION NOTICE CAN BE FILED ALONG WITH BELATED RETURN U/S.139(4) & STILL CAN ENJOY THE EXEMPTION?

In view of the High Court of J & K in the case *CIT v/s. Ziarat Mmif Sayyad Ali Hamdani 248 ITR 769 (2001)* the return filed u/s. 139 (4) doesn't lose the character of return u/s. 139 (1) and hence the option contemplated by explanation to section 11(1) is exercised in writing them the requirement stand fulfilled. The J & K High Court had followed the decision of Bombay High Court in the case of *Tulsidas Charitable Trust and Chaleswar Temple Trust v/s. CIT 207 ITR 368 (1994)*.

With the amendment Act of 2017 the notice for accumulation has to go along with return of income and the same has to be filed in time as per due date as per sec 139(1)

WHETHER INTIMATION GIVEN AFTER THE DATE CAN BE CONSIDERED?

The Bombay High Court has held that even if the return of income is filed after the due date as given in sec 139(1), if the same is filed within the time specified in sec 139(4) and the option contemplated by Explanation (2) to sec 11(1) is exercised in writing along with such return, the requirements of the Explanation would stand satisfied. [Trustees of **Tulsidas Gopalji Charitable and Chaleswar temple Trust v/s CIT (1994) 207 ITR 368 (Bom.)**

Association Of Corporation & Apex Soc. of Handloom Vs. ADIT 30 Taxman 22 (2013) Delhi HC – wherein the court directed to entertain the form 10 filed during the re-assessment proceedings , going against the judgment of SC in the case of Nagpur Hotel Owners Association 247 ITR 201 (2001)

Contrary Judgment – National Council for Teacher Education Vs. DIT 17 Taxman 48 (2012) Delhi – Form 10 not filed at all

CAN THE ASSESSES CLAIM APPLICATION OF THE INCOME IN SUBSEQUENT YEAR?

No. The application for charitable purpose must be during the relevant previous year. If not applied one has to resort to the provisions for accumulation. This view has been opined and confirmed by Hon'ble Supreme Court *in Nachhi Muthu Industrial Association v/s. CIT 234 ITR 190 (1999)*.

WHETHER LOAN ADVANCED CAN BE TREATED AS APPLICATION ?

If the object of the trust is to give interest bearing loans, it amount to money lending. But if the object is of granting of scholarship loans for the purpose of advancement of education will amount to application of income. In such a situation, the return of loan amount will be treated as income of that year Basic circular no. 100 dated 24.1.03 88 ITR 66 st. of CBDT.

CAN THE EXCESS UTILIZATION OF LAST YEAR BE TREATED AS AGAINST PROFIT IN THE CURRENT YEAR ?

Yes, the onus is cast on the Assesses to explain the short fall the excess distribution in the earlier year to have a set off against current income 3 high courts of the country had approved view .

- a) Madras High Court in the case of **Matrisena Trust v/s. CIT 242 ITR 20(2000)**.
- b) Rajasthan High Court in the case of **CIT v/s. Maharana of Mevad Charitable Trust 164 ITR 439 (1987)**.
- c) Gujarat High Court in the case of **CIT v/s. Shwetamber Murthi Pujak Seva Mandal 211 ITR 293(1995)**.
- d) Madhya Pradesh High Court in the case of **CIT v. Shri Gujarati Samaj 64 DTR 76 (2011)**.
- e) **Dy.CIT v. Shree Bhartimaiya Memorial Foundation (2019) 168 TR (A) 49 (Ahem-Trib): 2019 TaxPub(DT) 4147 (Ahd-Tribl)**

However, Delhi Trib had taken a contrary view in the case of **Pushpawati Singhanian Research Institute V/S DDIT Exemption 29 (Sot) 316 2009.**

Which was later on heard by the Delhi HC in 2016- stating- *“the court is of the view that the view taken by the Income-tax Appellate Tribunal on the basis of the record is a plausible one and does not give rise to any substantial questions of law. The appeal is accordingly dismissed”*

CIT v. Pushpawati Singhanian Research Institute For Liver, Renal And Digestive Diseases In favour of Assessee, Del-HC, 2008-09, ITA No. 211 of 2016, 29-Mar-2016

Assessee claimed benefit of adjustment of carried forward deficit of earlier year -

- Where assessee had claimed the benefit of adjustment of the carried forward deficit of the earlier year while determining the assessable income then the same was allowable in view of the fact that the assessee brought to the notice that Supreme Court in the case of *CIT(E) v. Subros Educational Society* [(2018) 303 CTR (SC) 1 : [2018 TaxPub\(DT\) 3810](#) (SC)] had impliedly affirmed the position of law enumerated by High Court while considering a similar question raised by revenue before it, as Supreme Court did not find any merit in the same, therefore, appeal of Revenue was dismissed.

REPAYMENT OF DEBT WHETHER AMOUNTS TO APPLICATION OF INCOME?

The Repayment of loan originally taken to full fill the object of trust will amount to application of income. Refer circular no.100 dated 24.01.09, 88 ITR 66.

So however if the loan originally taken was utilized for purpose other than objects of trust, then repayment of such loan doesn't amount to application.

WHETHER EXPENDITURE ON CONSTRUCTION BY WAY OF ADDITION TO EXISTING BUILDING IS APPLICATION OF INCOME?

Yes the word applied is of wider import than the word expenditure as has been referred by Kerala High Court in the case of ***CIT v/s. Forana Church 170 ITR 62 (1988)*** ***CIT v. Social Service Centre [2001] 250 ITR 39 (AP)***

In my considered opinion, any capital expenditure is an application of Income and deduction is to be claimed for entire expenditure.

DONATION TO ANOTHER TRUST WHETHER IS AN APPLICATION?

Till Finance Act 2002, prior to insertion of explanation donation to other Charitable Trust was considered as application duly backed up by instruction no.32 dated 05.1.78 of CBDT. The said principal was also approved by the hon'ble Apex Court in the case of **CIT v/s.Thanthi Trust 239 ITR 502(1999)**.

However after the insertion of explanation w. e. f. 01.04.2003, the application by way of donation to other charities is possible and permissible only out of current income and not out of permitted accumulated income. Such Donation should not be towards the corpus of other trust.

WHETHER REINVESTMENT OF SALE PROCEEDS IN OTHER CAPITAL ASSET AMOUNT TO APPLICATION?

Yes. This has been clarified by CBDT in circular no.32 dated 30.12.70. The reinvestment of sale proceeds in fixed deposits with bank for more than 6 months tantamount to application.

Yes. The investment in banks FD's for more than 6 months has been considered within meaning of sec. 11 (A) of the Act based on instruction no.833 dated 24.09.75 duly quoted in **CIT v /s Hindustan Welfare Trust 206 ITR 138 (Calcutta)**. The Calcutta High Court even has opined in the case of Hindustan Welfare Trust that as against the period of 6 months even if the FD's for 60 days it tantamount to application.

WHETHER INCOME EARNED IN THE ACCOUNTING YEAR NEEDS TO BE APPLIED IN THE SAME ACCOUNTING YEAR?

No it is not necessary, since there are no words of limitation u/s 11-1(A). This view has been upheld by Rajasthan High Court. In this case of **CIT v/s Maharana of Mewad Charitable Foundation 164 ITR 439 (1987)**

CAN BOOK ENTRIES CONSTITUTE APPLICATION?

The Supreme Court was in agreement with Madras High Court in the case of **CIT v/s Thanthi Trust 239 ITR 502 (1999)**.

Madras High Court had held that entries in the books of donor and donee institutions created a legal obligation which amounted to application. It further stated that as long as the credit entries are not disputed and genuineness of these has not been doubted, there can't be rejection of such book entries.

WHETHER INCOME TAX PAID CAN BE APPLICATION?

Income derived for trust property must be determined on commercial principles and in doing so all outgoings including outgoing by way of Income-Tax paid by the Assessee-Trust must be deducted and, it is only from the surplus income in the hands of the trustees that the question of application or accumulation or setting apart of income can arise. [**CIT v/s Ganga Charity Trust Fund (1986) 162 ITR 612 (GUJ)**].

CAN THE AMOUNTS WRITTEN OFF AS NOT REALISABLE IS AN APPLICATION?

One has to consider on case to case basis. If the objective of the society is to help weaker section of society by advancing loans to them and Trust is not able to realize them and therefore written off, the amount so written off can be considered as application. This may perhaps be applicable in case of write off of loan scholarship in case not reliable.

CAN THE TRUST PAY REMUNERATIONS TO TRUSTEES WITHOUT COMING TO THE AMBIT OF SEC 13?

Yes, The Trust can pay remuneration had the said should be reasonable

WHETHER REINVESTMENT IS WITH REFERENCE TO DATE OR DATE OF TRANSFER OF RECEIPTS ?

The Capital gains arise on Transfer of Asset and reinvestment should follow from the date of transfer. This is the view taken for section 54 but section 11- 1(A) doesn't specify time limit and as per view expressed by Andhra Pradesh High Court in case of **S. Gopal Reddy v /s CIT 181 ITR 378 (1989)**, unless the amount is received or it is not possible to reinvestment the same.

By the same logic in case, of receipt of advance, the reinvestment even prior to the date of transfer would qualify for exemption, this view was held by Bombay Tribunal in case of **Shri. Ram Trust (I) v/s ITO 13th ITD 426 (1985)**.

IS PAYMENT OF ADVANCE FOR PURCHASE OF CAPITAL ASSET IS SUFFICIENT COMPLIANCE?

Yes. Because the utilization is important even though the actual documentation as taken place in subsequent year.

WHETHER TRUST FOR PROPOGATION OF VEDAS IS PURELY RELIGIOUS ACTIVITY OR CHARITABLE ACTIVITY?

Yes. It's a Charitable Activity, Coachin Tribunal held in Die Cast of **'Kasyapa Veda Research Foundation Vs. CIT II ITR 468 (2011)**

Following More Examples of Activities Held religious activity

Maintaining gaushalas and attending to other animals and birds

It was held that the assessee's Trust fulfills the characteristics of a charitable and religious trust. –

[Director of Income Tax (Exemption) v. Bombay Pangrapole Trust (2015) 126 DTR 149 (Bom)]

Care of Sick and disabled cows/Live stock development

Principal CIT (E) v Animal Breeding Research Organisation , (India) [2018] 95 taxman.com 226(Guj.) , J.K.Trust Bombay v. Dy. CIT (Exemptions) [2018] 91taxman.com269(Bom.), Nashik Panchvati Panjarapole [2017] 248 Taxman 67(Bom.).

Feeding of Brahmins on specified religious occasions

Feeding of Brahmins on specified religious occasions was held to be religious activity in *CIT v. Ahmedabad Rana Caste Association 140 ITR 1 (SC)*. However, one needs to distinguish between a religious activity and an act of charity on a particular religious day. If the act in itself is a charitable one, then it would not become religious merely because it was performed on a particular religious occasion, as held in the decisions. – *[CIT v. Girdharram Hariram Bhagat (1985) 154 ITR 10 (Guj)]*

Continued....

Supply of fodder to animals and cattle

Supply of fodder to animals and cattle would amount to charitable or religious purpose. –

[Vallabhdas Karsondas Natha v. CIT (1947) 15 ITR 32 (Bom), CIT v. Swastik Textile Trading Co. (P) Ltd. (1977) CTR 618 (1978) 113 ITR 852 (Guj)]

Providing refuge for domesticated animals and birds- ***CIT v. Shri Shaila Industrial & Spiritual Colony Charities [1973] 87ITR 175 (Ker.)*** .

Provision of dinner to Brahmins on specified occasions is religious purpose. – ***[CIT v. Ahmedabad Rana Caste Association [1973] 88 ITR 354 (Guj.), CIT v. Ahmedabad Rana Caste Association (1983) 140 ITR 1 (SC)]***

The Gujarat High Court in CIT v. Barkate Safiyah Society (1995) 213 ITR 492 observed that in some cases religious activity could also be charitable. For example, donation or Khairat on religious occasions or even supply of fodder to animal and cattle may have both elements of charity and religion.

Objects held to be charitable

Protecting, safeguarding, guiding and furthering interest of bullion merchants - **Addl.CIT v. Madras Jewellers&Diamond Merchants Association [1981] 129 ITR 214 (Mad)**

Repairing and maintaining samadhi of the ancestors of the family guru and holding annual melas in commemoration of family guru.- **CIT v.Guryani Brij Balabh Kaur Trust[1980] 125 ITR 381 (Punj. & Har.)**

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Providing monetary help for marriages or sacred thread ceremonies- **CIT v. Anand Swaroop Bijendra Swarup Charitable Trust [1991] 187 ITR 656 (All.).**

Installation of inexpensive water seal flush latrines for the poor people as a common and general facility. **Dy. CIT v.Sulabh International Social Service organization [2011] 200 Taxman 119 (Pat.).**

Objects held to be charitable- Contd

Printing and publication of text books- Assessee society was engaged in printing publication and distribution of school text books at subsidized rates or even free, it could not be concluded that assessee ceased to carry on charitable activities of education - ***Delhi Bureau of Text Books v. DIT [2017] 248 Taxman 272 (Delhi) [SLP dismissed in CIT (Exemption) Delhi Bureau of Text Books[2020] 269 Taxman 559 (SC).]***

Sankirtan and Bhandara- Unless it is proved that 'Akhand Naam Sankirtan' Which is one type of meditation and activity like Bhandara which is for providing food to persons is for any particular community or group of persons registration u/s 12AA cannot be denied to trust – ***CIT v. Sri Radha Raman Niwas Trust [2014] 221 Taxman 65(Mag) (All.).***

Erection of memorial hall – ***Mahakoshal Shaheed Smarak Trust v CIT [1983] 140 ITR 795 (MP).***

WILL CHARGING FEES FOR EDUCATION LOSE EXEMPTION?

Mere imparting of education is enough to claim exemption. Education need not be free for claiming exemption.

- *Supreme Court Decision in P.C. Raja Ratnam Institution v. Municipal Corporation of Delhi (1990) 181 ITR 354*
- *(Delhi - Trib.) 2018 ITL 305 : (2018) 169 ITD 255 Adarsh Public School v. Joint Commissioner of Income-tax, Range-I, Noida*

Latest Amendment as per Finance Act 2020

- Registration under 12AB

- i. Existing trusts registered under 12A/12AA- Needs to be re-registered
- ii. Provisional registration and conversion of into normal registration
- iii. Renewal of registration granted under 12AB:
 - ❖ Registration granted under 12AB (Other than provisional regn.)
 - ❖ Re-registration for confirming the modification of object clause
 - ❖ Registration to be made operative if it become inoperative due to approval under section 10(23C)/10(46)

Registration U/s 12AB- Just a Jist

- ❑ Needs to apply for re-registration within 3 months from 01-04-2021 ie. On or Before 30-06-2021
- ❑ Registration valid for 5 years
- ❑ Provisional registration shall be granted for 3 years – Needs to apply for normal registration at least 6 months before the expiry of the period of provisional registration or within 6 months of commencement of its activities whichever is earlier
- ❑ All pending applications for registration will be considered as applications under 12AB and provisional registration shall be granted
- ❑ Application for Provisional registration has to be made 1 month prior to the end of the financial year preceding the year for which exemptions are sought. A trust applying for registration before 28th February 2021 will be eligible for exemption for financial year 2021-22 onwards.

Registration U/s 12AB- Just a Jist

- ❑ Section 12A(1) specifies conditions for claiming deduction under section 11 and 12. One of the condition is that it should be registered under section 12AB
- ❑ Unique registration number (URN) will be allocated on registration under section 12AB
- ❑ Registration can be divided into following categories:
 - Existing trusts registered under 12A/12AA – Needs to be re-registered
 - Provisional registration and conversion of into normal registration
 - Renewal of registration granted under 12AB:
 - Registration granted under 12AB (Other than provisional regn.)
 - Re-registration for confirming the modification of object clause
 - Registration to be made operative if it become inoperative due to approval under section 10(23C)/10(46)



Thank You !