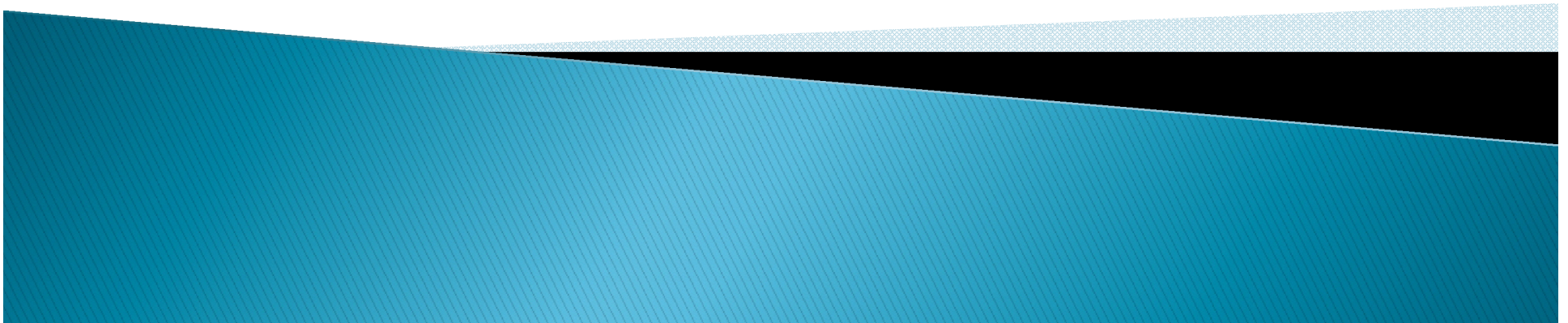


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PRESENTATION ON TAXATION OF TRUSTS

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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- Section 13 Enumerates the circumstances under which exemption available under sections 11 and 12 can be withdrawn or denied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:

Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is 25 lakh rupees or less in the previous year;

Following proviso shall be substituted for the existing first and second provisos to clause (15) of section 2 by the Finance Act, 2015, w.e.f. 1-4-2016 :

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

- i. Such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and
- ii. The aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year

Section 2(15) Business Activity

ICAI vs. DGIT (Exemptions) 202 Taxman 1 (Del.) (HC) (2011)

- As per section 2(13) 'business is not intended for the purpose of interpreting and applying the first proviso to S.2(15) to include any transaction for a fee or money. An activity would be considered "business" if it is undertaken with a profit motive, but in some cases this may not be determinative; in such cases, there should be evidence and material to show that activity has continued on sound and recognised business principles and pursued with reasonable continuity.
- The main predominant object of the Assessee institute isto regulate the profession of and conduct of Chartered Accountants enrolled with it.

- However, since holding of classes and giving diploma/degrees by ICAI to its members is only an ancillary part of activities or functions performed by it, it is not an educational institute but is covered by the last limb of s.2(15) i.e. advancement of any other object of general public utility.
- The narrow and myopic view taken by DGIT by holding that the assessee institute is holding coaching classes and that this amounts to business is without examining and considering the legal concept of the term "business" & therefore he was directed to consider the application of the assessee institute u/s 10(23C)(iv).

Director of IT v. Bharat Diamond House 259 ITR 280 **(SC) (2003)**

- The expression 'founder of the institution' in section 13(3) means that the person concerned should be the originator of the institution or at least one of the persons responsible for the coming into existence of the institution.
- Contribution of money is not an inexorable test of a person being 'founder', though it might happen often that the person who originates an institution may often also fund it.

- S. 2(15) : Charitable purpose –
- If the definition of “charitable purpose” is construed literally, it is violative of the principles of equality & uncostitutional. 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.
- India Trade Promotion Organisation v. DGIT(E) (2015) 371 ITR 333/229 Taxman 347/274 CTR 305/114DTR 329 (Delhi)(HC)
- 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.
- 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).
- 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.)

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 continuity. 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.)***

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(22) 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.

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

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***

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).*

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

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.

- 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)(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)(iii)(ac): 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)(iii)(ac) of the Act.

As affirmed by the Finance Secretary, Govt of India, exemption under section 10(23C)(iii)(ac) 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.

- 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.)

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)(iiiiae): 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)

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.
- 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

- 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***

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 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)**

- 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***

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

EXEMPTION OF INCOME FROM PROPERTY HELD FOR CHARITABLE OR RELIGIOUS PURPOSES-SECTION 11

Sub-Section 1

- 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 so accumulated or set apart is not in excess of 15% of the income from such property in India;----

- 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:
- 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***

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. ***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 (1) 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.

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.

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)

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) .

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)*

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.

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)***.

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.***

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)***

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 two conditions are fulfilled:

- a) The business carried on should be incidental to the attainment of the objects of the trust/institution; and
- b) 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 Rs. 25 lakhs. This restriction does not apply to a trust having object 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.

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)***

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(1A)

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(1) 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***

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)*.

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 Calcutta 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*

**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)*.

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 Chaleshwar 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 application. 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)**.

However, delhi high court has taken a contrary view in the case of **Pushpawati Singhanian Research Institute V/S DDIT Exemption 29 (Sot) 316 2009**.

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)***.

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.

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 (1) 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 11 ITR 468 (2011)**'

Thank You !

