

CONTENTS

- ❖ Taxation of Charitable Trusts
- ❖ Definitions of certain important words
- ❖ Applicable Sections covering exempt income
- ❖ Charitable Purpose
- ❖ Registration u/s. 12A
- ❖ Permission u/s. 80G
- ❖ Role of Professional



EXEMPTION PROVISIONS FOR A CHARITABLE TRUST

Trusts and Institutions established for Charitable and religious purposes are entitled for exemptions from income tax as specified in the act.

The Trust must be carrying on charitable activity covered under provisions of section 2(15) of Income Tax Act, 1961.

The eligible trust is required to make an application for grant of exemption u/s. 12A and 12AA of Income Tax Act, 1961.

The exemption is governed by section 11 and 12 r.w.s. 13 of Income Tax Act, 1961.

One needs to understand the intricacies of these sections to properly appreciate the requirements of the act.

CONDITIONS FOR AVAILING EXEMPTION

Exemption u/s. 11 is available only to trust/institution which holds the property in trust wholly for charitable purpose or religious purpose.

The trust must have been created wholly for charitable purpose or wholly for religious purposes. It should not have been created for the benefit of a particular religious community or caste.

It should not be carrying any business except subject to limits laid down in section 2(15).

The objects of the trust should be charitable covered within the meaning of section 2(15).

Exemption is available to **income** applied to charitable or religious purpose.

Income of the trust and the property is utilised for charitable purpose in India.

Income or the property of the trust does not enure for the benefit of the settlor (author) or trustees.
[Refer section 13]

INCOME — S. 2(24)

Income includes –

.

[(iia) **voluntary contributions** received by a **trust** created **wholly or partly for charitable or religious purposes** or by an institution established wholly or partly for such purposes or by an **association or institution** referred to in clause (21) or clause (23), or by a fund or trust or institution referred to in sub-clause (iv) or sub-clause (v) of clause (23C) of section 10] or by an electoral trust.

- Explanation.- For the purposes of this sub-clause, "trust" includes any other legal obligation]

CHARITABLE PURPOSE

Section 2(15) of the Income Tax Act, 1961, defines “charitable purpose” which includes:-

- i) Relief of the poor,
- ii) Education,
- iii) Yoga, (w.e.f. 01/04/2016)
- iv) Medical relief,
- v) Preservation of Environments (including water sheds, forests and wild life) and Preservation of Monuments or places or objects of artistic or historic interest

(Added w.e.f. 01.04.2009 i.e. from A.Y. 2009-10)

- vi) The advancement of any other object of general public utility.

CHARITABLE PURPOSE-PUBLIC CHARITY

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

What is 'public'?

To serve a charitable purpose, it is not necessary that the object should be to benefit the whole mankind or all persons in a particular country or state. It is sufficient, if the intention to benefit a section of public as distinguished from a specified individual is present.

The enquiry must be directed to what the common quality was which united the parties within the class and whether the quality was essentially impersonal or personal. If the former, the class would rank as a section of the community and if the latter, the answer would be in negative.

- **Ahmadabad Rana Caste Association v CIT (1971) 82 ITR 704 (SC).**

CHARITABLE PURPOSE — FEW JUDGMENTS

Where assessee institution was engaged in imparting higher and specialised education in the field of communication including advertising and its related subjects as well as training was being given to individuals and persons by companies to meet the needs of Indian industry and commerce, the activity was held to be related to education and not a service related to trade, commerce and industry. The exemption was granted treating the same as imparting education.

- **Mudra Foundation for Communications Research & Education v CCIT [2016] 237 taxman 139**

However, as against the above, a trust was conducting review and courses for helping aspiring members in preparing for CISA, CISSM organizing seminars and workshops on various topics in the field of 'Information Technology (IT)', AO denied exemption u/s. 11, CIT(A) confirmed the order and Hon'ble ITAT endorsed the same denying to accept the same as educational activity.

- **Information Systems Audit and Control Association v DDIT [2016] 157 ITD 815/179 TTJ 99 (Chennai Trib)**

Again where Society running an educational institution for courses of B.Tech, M. Tech and MBA maintained a textile unit for purpose of imparting practical training to students. ITAT held that proviso to S. 2(15) would not be attracted.

- **Technological Institute of Textile & Science v DIT(E) [2016] 158 ITD 808 (Kolkata Trib)**

CHARITABLE PURPOSE — FEW JUDGMENTS

Where assessee trust is formed with the object of taking care of sick animals, it is charitable activity.

- **Snehalaya for Animals v ITO [2012] 52 SOT 352 (Chennai Trib)**

Where Assessee incurred less than Rs. Ten Lakhs towards animal care such as food, medical etc. and High Court held that said activities would clearly be included under provisions of section 2(15), SLP filed against the decision of High Court was to be dismissed.

- **CIT v Animal Care Society [2018] 99 taxmann.com 233 (SC)**

Running veterinary hospital is covered under specific category of 'medical relief' eligible for exemption.

- **Amul Research & Development Association v ITO [2016] 160 ITD 454 (Ahd Trib.)**

Activity of maintenance and development of park, would certainly fall within words 'preservation of environment' u/s. 2(15).

- **New Saibaba Nagar Welfare Association v DIT [2012] 53 SOT 495 (Mumbai Trib)**

Objects of setting up memorials to perpetuate memory of national war heroes are charitable in nature.

- **Yodha Smarak Samiti v CIT [2012] 138 ITD 512 (Chd)**

CHARITABLE PURPOSE — FEW JUDGMENTS

Merely because assessee-trust was formed by a Company for complying Corporate Social Responsibility (CSR) requirement, it could not be denied registration u/s. 12AA, unless genuineness of activities of assessee-trust or its charitable objects were doubted.

- **Nanak Chand Jain Charitable Trust v CIT (E) [2018] 91 taxmann.com 197 (Delhi Trib)**

Where Assessee, a Charitable Institution, carried money lending (micro financing) activity and provided loan to general public and Self Help Group (SHG) and earned interest income, money lending business and earning interest thereon fell under advancement of any other object of general public utility and it would not be a charitable purpose on facts.

- **Sreema Mahila Samity v Dy.CIT (E) [2017] 86 taxmann.com 216 (Kolkata Trib.)**

Thus, every activity has to be properly analysed and presented for its appropriate classification to look for coverage u/s. 2(15).

DISTINCTION BETWEEN 'RELIGIOUS' AND 'CHARITABLE PURPOSE'

No where the word 'religion' has been defined under Hindu Law since all actions or acts of piety and benevolence are included under the practice of Hinduism irrespective of Hindu Religion.

The word 'religion' in its primary sense imports, as applied to moral questions, only a recognition of a conscious duty to obey restraining principles of conduct. In such a sense, we suppose there is no one, who will admit that he is without religion.

The word 'religion' has different shades and colours and its important shade is 'dharma(duty), that is to say, duty towards the society and the soul. [Aruna Roy v UOI 7 SCC 368, 393 para 36].

Even S. 8 of Companies Act, 2013 permits formation of a company having its object the promotion of 'religion' with no fetters attached to this activity.

The holding out of objects which are apparently 'religious' may not be wholly religious only to fall within the meaning of section 139(1)(a) of Income Tax Act, 1961, if looked into in detail. Thus, holding prayers regularly may be termed for peace of mind which could be attributed physical or mental health of an individual.

One more reference is made to judgment by Nagpur bench of Mumbai Tribunal in 'Shiv Mandir Devsttan Panch Committee Nagpur v CIT, Nagpur' ITA No:223/Nagpur/2009

RELIGIOUS PURPOSE

The expression religious purpose has not been defined under the Act.

Religious purposes are necessarily associated with religion. A religion is certainly a matter of faith with individuals or communities. A religion has its basis in a system of beliefs or doctrines.

Religious Purpose' includes the advancement, support or propagation of a religion and its tenets.

The income of a religious trust or institution is entitled to exemption even though it may be for the benefit of a particular religious community or caste.

The exemption u/s 11 is available to public religious trusts only; and not available to trust for private religious purposes which does not enure for the benefit of the public.

One needs to be careful in drafting and interpreting the objects of the proposed trust.

ADVANCEMENT OF OBJECT OF GENERAL PUBLIC UTILITY

A trust or institution for charitable purpose being advancement of any other object of general public utility shall not be entitled to exemption u/s 11 or 12, in the year in which its receipts from commercial activities exceed Rs.25 lakhs, and the trust/ institution is regarded as of non-charitable nature by virtue of Section 2 (15) First and second proviso.

Above limit was Rs. 10 lakhs for A.Y.2009-10 to 2011-12 and is Rs. 25 lakhs for A.Y.2012-13 to 2015-16

Now w.e.f. 01.04.2016 (i.e. w.e.f. A.Y.2016-17) provisions are substituted to the effect that advancement of any other object of general public utility shall not be treated as charitable purpose- if it has receipts from commercial activity unless-

- (i) Such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility.
- (ii) The **aggregate receipts** from such activity/activities during the previous year **do not exceed 20% the total receipts of Trust/institution during previous year.**
- (iii) Also as per section 13(8) benefit of exemption of income as per section 11 & 12 is not available in case of first proviso to section 2(15) is attracted.

ADVANCEMENT OF OBJECT OF GENERAL PUBLIC UTILITY

CBDT Circular No.11/2008 dated 19.12.2008 states:

The newly inserted proviso to section 2(15) will apply only to entities whose purpose is advancement of any other object of general public utility i.e. the fourth limb of the definition of the 'charitable purpose' contained in section 2(15).'

Thus, all charitable trusts for the last object, namely, **object of general public utility** will cease to be for charitable purpose, if the advancement of the object involves the carrying on of any activity in the nature of trade, commerce or business or rendering any service in relation to trade, commerce or business.

Reference to the cases:

CIT v Indian Chamber of Commerce – 81 ITR 147 (SC)

Addl.CIT v Surat Art Silk Cloth Manufacturers Association – 121 ITR 1 (SC)

Asst. CIT v Thanthi Trust [2001] 247 ITR 785 (SC)

Sole Trustee Lok Shikshana Trust v CIT [1975] 101 ITR 234 (SC)

DIT(Exem) v Sabarmati Ashram Gaushala Trust [2014] 362 ITR 539 (Guj)

ICAI v DGIT (Exem) [2013] 358 ITR 91 (Delhi)

OTHER IMPORTANT POINTS

Transfer of Income without involving Transfer of Assets [S.60]

where a person settles a charitable or religious trust in respect of the income arising from an asset of which he is the owner but retains the ownership of the asset, the income so transferred shall be deemed to be the income of the transferor and not that of the trust, and shall not qualify for exemption u/s 11.

Trusts by Revocable Transfer of Assets [S.61]

Any income arising to a person by virtue of a revocable transfer of assets shall be clubbed in the hands of the transferor.

Where, however a trust is not revocable during the lifetime of the beneficiary and the transferor (settlor) derives no direct or indirect benefit from the income of the trust, the income of the trust shall not be taxable in the hands of the transferor, unless the power to revoke arises and when power to revoke arises such income shall be included in total income of transferor. **[S. 62]**

For the purposes of Sec 60, 61, 62 & 63 a 'revocable transfer' is one which contains a provision for re-transfer of the income or assets to the transferor, or giving the transferor a right to reassume control, over the income or assets. **[Sec.63]**

CONDITIONS FOR APPLICABILITY OF SECTIONS 11 AND 12.

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

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

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

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

CORPUS DONATIONS-SECTION 11(1)(D)

Corpus donations refer to the donations made by a donor to a trust with a specific direction that they shall form part of the corpus of the recipient trust.

The donor alone can give a specific direction that the donation made by him shall form part of the corpus of the trust.

Trustees have no power to treat in their discretion any donation as corpus donation.

Corpus donations being capital receipt in the hands of the recipient trust are not income of the trust. Following judgments recognize that corpus donations are capital receipts even where the Assessee Trust is not registered u/s. 12AA.

ITO (E) v Serum Institute of India Research Foundation [2018] 90 taxmann.com 229 (Pune Trib.)

BOI Retired Empl. Medical Assistance Trust v ITO (E) [2018] 96 taxmann.com 277 (Mumbai Trib.)

This provision has undergone substantial change in as much as the **amendments made by Finance Act, 2017 has now treated 'corpus donations' as taxable in the hands of recipient trust** under certain circumstances.

Section 11(1)(d) expressly grants exemption to corpus donations to make the position clear beyond doubt. Contributions to corpus fund kept in fixed deposit cannot be taxed as income even if corpus fund is misused -CIT v Sri Durga Nimishambha Trust [2012] 205 Taxman 59 (Mag) (Kar).

Note: Donations received by way of box collections and other anonymous donations, do not form part of the corpus of the trust, but are deemed to be income of the trust.

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



REGISTRATION PROCEDURE U/S. 12A/12AA

The requirement of filing an application for registration within one year from the date of creation of the trust/institution has been removed w.e.f. 1st June 2007.

Now, an application for registration may be made at any time by the trust/institution. However, exemption u/s 11 and 12 shall be available only from the assessment year immediately following the financial year in which such application is made. The application should be made to the Commissioner in Form, No.10A (in duplicate) along with the following documents:

- Original or Certified Copy and an extra copy of the instrument under which the trust or institution was set up,
 - Or
- In case the trust/institution was not set up under an instrument, the original or a certified copy and an extra copy of the document (s) evidencing the setting up of the institution,
 - Or
- Memorandum of association and bye-laws of the society;

(b) If the trust or institution was in existence for any completed number of years prior to making of the application, copies of the accounts for one, two or three years, as may be available.

CONDITIONS FOR APPLICABILITY OF SECTIONS 11 AND 12.

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

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

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

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

CONDITIONS FOR APPLICABILITY OF SECTIONS 11 AND 12.

(2) Where an application has been made on or after the 1st day of June, 2007, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution from the assessment year immediately following the financial year in which such application is made:

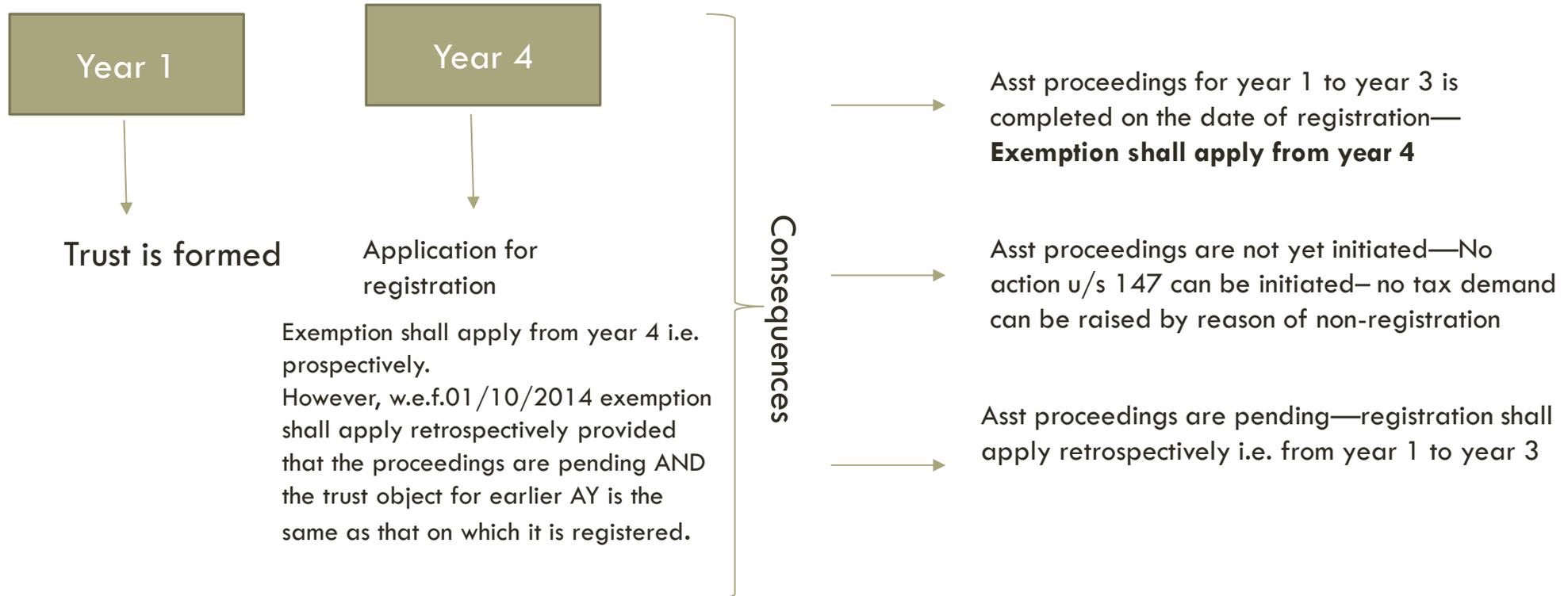
Provided that where registration has been granted to the trust or institution under section 12AA, then, the provisions of sections 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, **for which assessment proceedings are pending** before the Assessing Officer as on the date of such registration **and the objects and activities** of such trust or institution **remain the same** for such preceding assessment year:

Provided further that no action under section 147 shall be taken by the Assessing Officer in case of such trust or institution for any assessment year preceding the aforesaid assessment year only for non-registration of such trust or institution for the said assessment year:

Provided also that provisions contained in the first and second proviso shall not apply in case of any trust or institution which was refused registration or the registration granted to it was cancelled at any time under section 12AA.

CONDITIONS FOR APPLICABILITY OF SECTIONS 11 AND 12.

Year from which registration is granted



CONDITIONS FOR APPLICABILITY OF SECTIONS 11 AND 12.

Thus, effect of amendment made by Finance Act, 2014 w.e.f. 01.10.2014 has been to allow the exemption from the AY in which the registration has been so granted.

However, Tribunals have held that the insertion of proviso covers even the prior assessments as shown in earlier slides.

Reference can be made to –

- Sree Sree Ramkrishna Samity v DCIT [2015] 64 taxmann.com 330 (Kolkata Trib)
- Shree Bhanushali Mitra Mandal v ITO [2016] 68 taxmann.com 250 (Ahmedabad Trib)
- St. Jude's Convent School v ACIT [2017] 77 taxmann.com 173 (Amritsar Trib)
- SNDP Yogam v ADIT [2016] 161 ITD 1 (Cochin Trib)

However, the above judgments have been rendered on the limb 'proceedings are pending' and 'objects and activities are same' in the relevant assessment years.

CONDITIONS FOR APPLICABILITY OF SECTIONS 11 AND 12.

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

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

Where a charitable trust applied for issuance of registration u/s 12A within a short time span after its formation, can registration be denied on the ground that no charitable activity has been commenced?

(Meenakshi Amma Endowment Trust)[ITA No. 640 & 641 / Bangalore/2009]

(Meenakshi Amma Endowment Trust)[ITA No. 640 & 641 / Bangalore/2009]

can registration be denied on the ground that no charitable activity has been commenced?

CONDITIONS FOR APPLICABILITY OF SECTIONS 11 AND 12.

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

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

Madras HC Held that the time frame is directory in nature and non-registration within said time frame would not amount to deemed registration(Karimangalam Onriya Pengal Semipu Amaipu Ltd.)
T.C.(A) No. 1183 of 2010-Order dated 20.03.2013.

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

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

CONDITIONS FOR APPLICABILITY OF SECTIONS 11 AND 12.

However, recently, Supreme Court has clearly stated that where the society filed an application under section 12A for grant of registration on 24.02.2003 and the same was not responded to within six months, registration of application was to be deemed to have taken effect from 24.08.2003.

CIT, Kanpur v Society for Promotion of Education, adventure sport & conservation of environment [2016] 67 taxmann.com 264 (SC).

The above judgment has been followed by High Court of Kerala in '**CIT, Cochin v TBI Education Trust [2018] 96 taxmann.com 356 (Kerala)**'.

CONDITIONS FOR APPLICABILITY OF SECTIONS 11 AND 12.

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

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

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

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

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

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

CONDITIONS FOR APPLICABILITY OF SECTIONS 11 AND 12.

One of the condition for availing exemption of income is 'application of income in India'.

While section 11(1)(c) directly prohibits application of income outside India, it also provides for following concessions –

- For a charitable trust created after 01.04.1952, where the charitable purpose which tends to promote international welfare in which India is interested and income is applied outside India;
- For a charitable trust created prior to 01.04.1952, the income is applied to such purposes outside India; AND
- In both the above cases, CBDT, by a general or special order, has issued directions for exclusion of such income from out of total income.

Section 12AA refers to application of income for charitable purpose, not to activities whether in India or outside; institution carrying out charitable or religious activities outside India, would be registered under section 12AA.

Foundation for Indo-German Studies v DIT (Exe), Hyderabad [2016] 74 taxmann.com 66 (Hyderabad - Trib.)

Interestingly, Tribunals have interpreted this provision to permit application of income outside India under different circumstances.

APPLICABILITY OF SECTIONS 11 AND 12 – APPLICATION OF INCOME OUTSIDE INDIA

Education grant given to Indian students for studying abroad fulfils conditions of application of money in order to claim exemption under section 11

- **Jamsetji Tata Trust v Jt.DIT(E) [2014] 44 taxmann.com 447 (Mumbai - Trib.)**

Assessee brought on record, grant sanction letter of Ministry of Commerce and Industry, showing that said amount of grant had to be spent outside India for some specific purposes such as trade fairs.

- **Handloom Export Promotion Council v ADIT(E),Chennai [2015] 62 taxmann.com 288 (Chennai - Trib.)**

Amount spent outside India for participating in a fair held outside India cannot be treated as application of income of trust for purpose of section 11(1)(a), Here, there was no express approval by the Board or any Government department as was the case earlier.

- **India Brand Equity Foundation v ACIT(E),Delhi [2012] 23 taxmann.com 323 (Delhi)**

If activities of a trust are found to be charitable and property is held wholly and exclusively under trust for charitable and religious purposes, then such a trust cannot be denied registration merely because its activities are extended outside India. Here, the judgment was based on activities tend to promote international welfare in which India is interested and approval has been granted by CBDT for such application of income.

- **Critical Art and Media Practices v DIT(E),Mumbai [2015] 56 taxmann.com 118 (Mumbai - Trib.)**

REASONS FOR REJECTION OF APPLICATION U/S. 12A

- Trust has not carried out any activity before applying for registration.
- Trust Deed does not contain dissolution clause.
- Trust did not provide Registered Trust Deed though all evidential documents were available.
- Amendment in Trust Deed was carried out though such amendment related to future administration of trust.
- Trust has large surplus income from activities and surplus itself is a sign of non-genuine activities.
- Trust is not registered with Charity Commissioner of Maharashtra Public Trust Act, 1950.
- Trust is carrying out activity in the state other than the state in which it is registered.
- Trust owning and maintaining sanatorium for convalescent persons, the application was rejected on the ground that the sanatorium was a guest house since those admitted were not treated by the trust.
- ❖ Professional representing the applicant trust needs to be well equipped in these matters for rebutting frivolous reasons.

POINTS TO BE NOTED

Rejection of application cannot be justified if the assessee is deprived of reasonable opportunity to produce all relevant documents due to time constraint. *St. Paul's Anglo Indian Education Society* (2003) 262 ITR 377 (Pat)

The Commissioner cannot direct an applicant-trust to incorporate a clause indicating that any amendment to the trust deed would be carried out after obtaining approval from the Commissioner, and furnish the amended trust deed, duly registered, along with notes on the activities of the trust with regard to various expenses; such a requisition has been held to be extra-statutory.-**CIT v RMS Trust** (2010)326 ITR 310 (Mad)

When an assessee fulfils all relevant conditions for registration u/s 12AA, no other condition can be imposed on it while granting registration. If a trust fulfills all the conditions mentioned in section 12A/12AA, registration cannot be denied on the ground that some conditions of sections 11 and 12 are not fulfilled. The manner of application by trusts and as to whether the trust could claim the benefit of exemption in terms of sections 11 and 12 are questions which have to be examined by the Assessing Officer at the stage when same are urged and not by the Commissioner while considering the application for registration. **DIT v Garden City Educational Trust** (2010) 191 Taxman 238(Kar).

POINTS TO BE NOTED

Appeal against Refusal to grant Registration- An assessee has a right to appeal to the Appellate Tribunal against the order passed by the Commissioner u/s 12AA.

W.e.f.1st June 2007, the power of Commissioner to grant registration for past years by condoning the delay in filing such application has been withdrawn.

Accordingly, in respect of applications filed on or after the 1st June 2007, the provisions of section 11 and 12 shall apply from the assessment year relevant to financial year in which the application is made.

As per section 12A(2), the provisions of sections 11 and 12 shall apply in relation to income of a trust from the assessment year relevant to financial year in which the application for registration is made. The benefit cannot be claimed retrospectively, in respect of any earlier assessment year.

However, w.e.f. 01.10.2014, the benefit of sections 11 and 12 shall be allowed also in respect of income of the trust for any preceding assessment year, the assessment proceedings for which are pending as on the date of date of grant of registration, provided the objects and activities of the trust remain same for such preceding assessment year.

However, this benefit shall not be available in case the trust had at any time applied for registration and the same was refused u/s 12AA or a registration once granted was cancelled.

CASES

Registration u/s 12A is a condition precedent for availing benefit u/s 11 and 12. Unless and until an institution is registered u/s 12A, it cannot claim the benefit of section 11(1)(a)- U.P. Forest Corporation v. CIT[2007] 165 taxman 533 (SC).

While considering granting of registration u/s 12AA, the Commissioner should **satisfy himself only about genuineness of activities** of trust in accordance with its objects and **not about credential , capacity and qualification, etc.** of trust – PIMS Medical & Education Charitable Society v. CIT[2013] 56 SOT 522 (Chd.).

While considering an application for registration u/s 12AA **sufficiency or otherwise of initial contribution** made by founder of trust and dedication to object of trust, is **not a relevant factor** – Acharya Sewa Nyas Uttaranchal v. CIT[2007] 13 SOT 54 (Delhi).

CASES

Registration cannot be refused on the ground that trust is **running a school in a village without seeking necessary prior permission** from the appropriate authority to run the school. Even if school for some of classes is run without requisite permission , it is not fatal for grant of registration u/s 12AA- **Sri Elumalayan Education Trust v. CIT**[2010] 5 ITR (Trib.) 127 (Chennai).

Likewise, registration cannot be denied on the ground that the assessee-trust has **not submitted its return of income for last several years**- **CIT v. Shri Advait Ashram Society**[2012] 211 Taxman 311 (All).

A trust, which is in process of establishing educational institute, cannot be refused registration u/s 12AA on the ground that it has not yet commenced charitable or religious activity- **Hardayal Charitable & Educational Trust v. CIT**[2013] 214 Taxman 655 (All).

Moreover, in such a case, application cannot be rejected by the Commissioner on the ground that the trust failed to convince him about genuineness of activities – **CIT v. Kutchi Dasa Oswal Moto Pariwar Ambama Trust**[2013] 212 Taxman 435 (Guj).

Moreover, while granting registration the Commissioner cannot impose condition that trust should not charge any fee/amount from the beneficiaries – **DIT v. Commerce Teachers Association**[2011] 203 Taxman 171 (Delhi), **Shri Gian Ganga Vocational & Education Society v. CIT** [2013] 143 ITD 297 (Delhi).

CASES

Merely because **all trustee are family members**. It does not mean that trust is not public trust. Merely because the assessee –trust has not carried out any activities, that would be correct to state that the trust has totally stopped activity forever and withdrawal of registration will not be justified – Jupiter Medical Research Centre Trust v. DIT (2010) 128 TTJ (Ahd.) (UO) 118.

When **certain amount is not spent for aims and objects** of a charitable society, it cannot be a ground for cancellation of registration. In such a case, the benefits of exemption under section 11 maybe denied to the extent income is not applied for the objects of society- Institute of Science & Management v. CIT(2012) 53 SOT 167 (Ranchi).

Where Assessee religious trust **did not provide registered deed** but proved the factum of existence of trust through **all evidential documents, registration** under section 12AA was to be **granted**.-Pr.CIT (E) v Dawoodi Bohra Masjid [2018] 90 taxmann.com 312 (Gujarat HC)

Where amendment in trust deed does not amend object clause but amended clause relates to trust's management in future, cancelling registration under section 12AA is not justified.-CIT (E) v Sadguru Narendra Maharaj Sansthan [2018] 92 taxmann.com 405 (Bombay HC)

CASES

Where applicant trust was running pre-school which was stage prior to normal schooling and was charging fee for issue of prospectus, supply of kit, admission fee etc. rejection of application was held not to be justified holding that pre-schooling is very much integral part of term 'education' and thus rejection was not justified.

Green Acres Educational Trust v DCIT [2016] 49 ITR 533 (Mum)(Trib)

Registration cannot be refused on the ground that it has not yet commenced charitable or religious activity.

Ashutosh Charitable Trust of Educational & Medical Sciences v CIT [2017] 163 ITD 301 (Chd)(Trib)

Activities of Banquet Hall, Hiring, Hospitality (Restaurants) and permit room (Bar) are prima facie in the nature of carrying on trade, commerce and business. The DIT is required to conduct detailed enquiry and examination of as to the nexus between the activities and trade, commerce and business. The matter was remanded back.

MIG Cricket Club v DIT (E)(Mum)(Trib)



Approval u/s 80G (5)

CONDITIONS FOR APPLICABILITY OF SECTION 80G

Section 80G applies to donations to institution or fund, only if it is established in India for a charitable purpose and

if it fulfills the following conditions, namely :—

(i) Income not liable to be included in total income - where the institution or fund derives any income, such income of the fund or institution is not liable to be included in its total income under the provisions of sections 11 and 12 or 10(23AA) (i.e. Regimental fund) or 10 (23C) :

▪ Exception: where an institution or fund derives any income, being profits and gains of business, the condition of non inclusion of business income in its total income under the provisions of section 11 shall not apply in relation to business income, if—

- a) the institution or fund maintains separate books of account in respect of such business;
- b) the donations made to the institution or fund are not used by it, directly or indirectly, for the purposes of such business; and
- c) the institution or fund issues to donor a certificate to the effect that it maintains separate books of account in respect of such business and that the donations received by it will not be used, directly or indirectly, for the purposes of such business;

CONDITIONS FOR APPLICABILITY OF SECTION 80G

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

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

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

CONDITIONS FOR APPLICABILITY OF SECTION 80G

(v) Type of institution or fund: the institution or fund is either

1. constituted as a public charitable trust or
2. is registered under the Societies Registration Act, 1860 or under any law corresponding to that Act in force in any part of India or
3. Is registered under section 8 of the Companies Act, 2013,or
4. is a University established by law, or
5. is any other educational institution recognized by the Government or by a University established by law, or affiliated to any University established by law, or
6. is an institution financed wholly or in part by the Government or a local authority;

REQUIREMENTS FOR APPROVAL UNDER SECTION 80G-RULE 11AA

As per sub rule(1)

The application for approval of any institution or fund under section 80G(5)(vi) shall be in Form No. 10G and shall be made in triplicate.

As per sub rule (2)

The application shall be accompanied by the following documents, namely :—

- Copy of registration granted u/s. 12A or copy of notification issued u/s. 10(23) or 10(23C) ;
- Notes on activities of institution or fund since its inception or during the last three years, whichever is less ;
- Copies of accounts of the institution or fund since its inception or during the last three years, whichever is less.

As per sub rule (3)

The Commissioner may call for such further documents or information from the institution or fund or cause such inquiries to be made as he may deem necessary in order to satisfy himself about the genuineness of the activities of such institution or fund.

REQUIREMENTS FOR APPROVAL UNDER SECTION 80G

As per sub rule (4)

Where the Commissioner is satisfied that all the conditions laid down in clauses (i) to (v) of sub-section (5) of section 80G are fulfilled by the institution or fund, he shall record such satisfaction in writing and grant approval to the institution or fund .

As per sub rule (5)

Where the Commissioner is satisfied that one or more of the conditions laid down in clauses (i) to (v) of sub-section (5) of section 80G are not fulfilled, he shall reject the application for approval, after recording the reasons for such rejection in writing :

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

As per sub rule (6)

The time limit within which the Commissioner shall pass an order either granting the approval or rejecting the application shall not exceed six months from the end of the month in which such application was made:

- **Provided** that in computing the period of six months, any time taken by the applicant in not complying with the directions of the Commissioner under sub-rule (3) shall be excluded.

APPROVAL UNDER SECTION 80G

One Time Approval:

Approval of the Commissioner under section 80G(5)(vi) has earlier effect for such assessment year or years, not exceeding five assessment years, as may be specified in the approval. The time-limit of 5 years has been omitted with effect from 1st October ,2009 by the Finance (No.2) Act, 2009. After this amendment, the approval once granted shall continue to be valid in perpetuity.

Accordingly, existing approvals expiring on or after October 1, 2009 shall be deemed to have been extended in perpetuity, unless specifically withdrawn. However, in case of approvals expiring before October 1, 2009, these will have to be renewed and once renewed these shall continue to be valid in perpetuity, unless specifically withdrawn.

80G(5)

Total income under the provisions of section 11 shall not apply in relation to such income, if—

the institution or fund maintains separate books of account in respect of such business;

the donations made to the institution or fund are not used by it, directly or indirectly, for the purposes of such business; and

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

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

(iii) the institution or fund is not expressed to be for the benefit of any particular religious community or caste;

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

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

80G(5)

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

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

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

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

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

80G(5)

(Permissible spending for religious purposes: As per Sec 80G(5B) an institution or fund which incurs expenditure, during any previous year, which is of a religious nature for an amount not exceeding 5% of its total income in that previous year .

Deduction to which the assessee is entitled in respect of any donation made to an institution or fund to which sub-section (5) applies shall not be denied merely on either or both of the following grounds, namely :—

-that, subsequent to the donation, any part of the income of the institution or fund has become chargeable to tax due to non-compliance with any of the provisions of section 11, section 12 or section 12A

-that, under clause (c) of sub-section (1) of section 13, the exemption under section 11 or section 12 is denied to the institution or fund in relation to any income arising to it from any investment referred to in clause (h) of sub-section (2) of section 13 where the aggregate of the funds invested by it in a concern does not exceed five per cent of the capital of that concern.

80G(5)

Explanation 3.—In this section, “charitable purpose” does not include any purpose the whole or substantially the whole of which is of a religious nature.

Explanation 4.—For the purposes of this section, an association or institution having as its object the control, supervision, regulation or encouragement in India of such games or sports as the Central Government may, by notification in the Official Gazette, specify in this behalf, shall be deemed to be an institution established in India for a charitable purpose.

CASES

The Delhi High Court in the case of M.K. Nambyar Saarc Law Charitable Trust vs. Union of India 269 ITR 556 held that **application of Income outside India** could not be taken as a ground for refusing recognition u/s.80G.

The Gujarat High Court has held, in the case of N.N.Desai Charitable Trust vs. CIT (2000) 246 ITR 452, that while processing the application for approval under section 80G, the **commissioner is not expected to act as an assessing authority**, but his enquiry should be confined to finding out whether the trust satisfies the prescribed conditions.

In Kalyanam Karoti vs.CIT (2010) 123 ITD 317 (Lucknow), the Tribunal held that the Commissioner could not refuse renewal of approval on the ground that **Permanent Account Numbers of donors were not provided**.

CASES

S. 80G(5) : At the stage of registration, extent and nature of activities were not required to be examined, recognition under section 80G(5) was to be granted to assessee.

- [CIT v.Arvinbhai Maniar Charitable Foundation \(2015\) 231 Taxman 908 \(Guj.\)\(HC\)](#)

At time of granting approval what is to be examined is object of trust- Order of Tribunal was affirmed.

- [CIT v. Pujya Shri Jalarambapa & Matushri Virbaima Charitable Trust \(2015\) 229 Taxman 534 \(Guj.\)\(HC\)](#)

There is no clause in section 80G which says that section 80G approval be rejected if any institution or fund accepts anonymous donation.

- [Shri Krishna Kirpa Gaushala Samiti v CIT \(Exem\) 64 taxmann.com 420 \(Chandigadh\)\(Trib\)](#)

Where assessee trust object of propagating and inculcating religious feelings, brotherhood and nationalism among Aggarwal community, only aimed at bringing together members of Aggarwal community and developing feeling of nationalism amongst them which benefited society at large, same could not be said to be either benefiting Aggarwal community only nor being in nature of religious purpose, assessee could not be denied approval under section 80G

- [Maharaja Aggarsen Charitable Trust v CIT \(Exem\) 87 taxmann.com 153 \(Chandigarh - Trib.\)](#)

REMEDY FOR REJECTION ORDER

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

CASES

It has been held by Nagpur Bench Of ITAT in case of **Shiv Mandir Devasthan Panch Committee Sansthan** that- it cannot be said that Hindu is a separate community or a separate religion. Technically Hindu is neither a religion nor a community. Therefore expenses incurred for worshiping of Lord Shiva, Hanuman, Goddess Durga and for maintenance of temple cannot be regarded to be for religious purpose- accordingly CIT was directed to grant approval u/s 80 G (5)(vi).

It may be noted that where a trust receives as donations shares in a company in which any of the specified persons has a substantial interest, the trust cannot be said to have invested its funds in purchasing the said shares and this clause will have no application and the dividend income shall be entitled for exemption.- CIT vs Sahitya Trust (1993) 203 ITR 349 (Guj) and Trustees of Mangaldas N. Varma Charitable Trust vs CIT (1994) 207 ITR 332 (Bom)

Similarly where bonus shares are issued in respect of shares donated to the trust, of a company, in which the author of the trust has substantial interest, it does not amount to investment of trust funds falling within the mischief of this clause. CIT vs J.K.Charitable Trust(1992) 196 ITR31(All)

CASES

Where Assessee was granted and renewed certificate of exemption u/s. 80G every year since its registration as charitable organization, Commissioner was not justified in denying renewal application during relevant assessment year without there being any new circumstances.-CIT v Khairabad Eye Hospital [2018] 98 taxmann.com 266 (SC)

Where on examination of special audit report, filed after passing of original assessment order, it was found that claims made by Assessee towards placement fees paid to its subsidiaries, advertisement expenses and donations paid to charitable trust u/s. 80G were prima facie bogus as Assessee could not substantiate their genuineness by providing relevant documents and evidence, reassessment notice on basis of said report was justified.-Multi Commodity Exchange of India Ltd v DCIT [2019] 101 taxmann.com 13 (SC)

Where Assessee-trust had claimed approval u/s. 80G(5)(vi), since neither CIT(E) had recorded any finding nor revenue had brought to fore any breach of conditions enumerated in clauses (i) to (iv) of section 80G(5) by Assessee, approval u/s. 80G(5)(vi) could not be denied merely because donations made by Assessee-trust were of insignificant amount.-CIT(E),Jaipur v Mata Padmavati Shyamada Charitable Trust [2019] 101 taxmann.com 82 (Raj.HC)

Where Assessee-trust set apart a certain sum for earthquake relief victims before 31.03.2004 but had applied part of fund for school construction and balance was transferred to PM Relief Fund on 31.12.2004, Assessee-trust had fulfilled terms of section 80G(5C)(iv) and therefore, said sum was not taxable.-Amul Relief Trust v ADIT (E) [2018] 95 taxmann.com 111 (Guj.HC)

ISSUES FOR DISCUSSION

Can a Charitable Trust be denied registration u/s. 12A, if its objects contain carrying on activities abroad?

- Will following activities be considered as activities carried in foreign countries?
 - Providing financial help to student going abroad
 - Sending students abroad under students exchange programmes
 - Arranging educational tours under students and/or providing financial assistance to students for such foreign educational tours.

A trust established some five years ago got itself registered u/s. 12A in FY 2016-17 and there tax dues as per intimation u/s. 143(1) for AY 2014-15 and AY 2015-16. can this trust have benefit of amendment to Section 12(2)? If yes, what procedure should it follow? How to claim deductions u/s. 11 in earlier years?

Whether Trust can claim depreciation despite claiming Capital Expenditure as Application of Income?

ISSUES FOR DISCUSSION

A society applied for registration u/s. 12AA and filed all the necessary documents. However, it did not comply with the requirements during in as much as it did not file vouchers, books of accounts establishing its activities carried out in the past years. The CIT(Exemption) proceeded to reject the claim for registration u/s. 12A. Whether this action of CIT(Exemption) is justified?

[Vidyadayni Shiksha Samiti v CIT(Exem),Lucknow ITAT Delhi Bench ITA No.309/Del/2016]

A trust registered in 1946 applied for registration u/s. 12A on 30.03.2016 and received the same on 29.09.2016 from AY 2016-17. The income tax returns were filed from AY 2015-16 onwards. However, since the past returns were not filed for AY 2012-13, 2013-14 and 2014-15, the AO issued notice u/s. 148. Whether the trust can claim exemption benefit for these past years as well while filing returns in response to notice u/s. 148?

ISSUES FOR DISCUSSION

The XYZ Trust had been carrying charitable activity with 'advancement of any other object of general public utility' and had earned receipts from incidental business activity exceeding the limits laid down amended proviso to S.2(15) only in AY. 2014-15 in a span of last 5 years. There was no change in nature of activities otherwise being pursued by the said trust. The AO sought to cancel its registration u/s. 12AA on the ground of violation of limits as above. Whether the action of the AO is justified?

Reference to Circular No. 21 of 2016 of CBDT specifically provides that in such cases, the cancellation of registration should not be resorted to but the income only shall become taxable.

ROLE OF PROFESSIONAL

It is seen that there are very few professionals in the area of charitable trusts.

Though there are very few sections governing taxation of charitable trusts, this area has seen more litigations and disputes.

Every professional also needs to look at this area as matter of social obligation and guide trustees in the matter of compliance as also represent before income tax authorities for proper application of income tax provisions.

This is not to suggest that this area of practice is not attractive. In fact, at times, it is better practice area than conventional area of practice under income tax.

Better understanding of applicable provisions and various judgments only shall pave the way for being a better professional.

New enactment of GST shall keep Professionals busy BUT one should not overlook overall impact and compliances.

DISCLAIMER

This presentation has been prepared for internal use of ICAI, its Branches and its members. The contents of this document are solely for informational purpose. It does not constitute professional advice or a formal recommendation. The presentation is made with utmost professional caution but in no manner guarantees the content for use by any person. It is suggested to go through original statute / notification / circular / pronouncements before relying on the matter given. The presentation is meant for general guidance and no responsibility for loss arising to any person acting or refraining from acting as a result of any material contained in this presentation will be accepted by us. Professional advice recommended to be sought before any action or refrainment.

Thank You



All ownership and credits for pictures, logos copyright and trademarks rests with the owners.

We thank all of them for the use of their material in this presentation to educate users.