

Charitable Trusts - recent changes in Taxation

by

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Nature of Trusts

from Taxation Point of view

I. Claiming exemption without Regn

- a) Educational 10(23C)(iiiab) > 50% Govt
- b) Medical Relief 10(23C)(iiiac) > 50% Govt
- c) Educational 10(23C)(iiid) < 5.0cr
- b) Medical Relief 10(23C)(iiiae) < 5.0cr

II. With Approval/Regn getting exempted income

- a) Charitable Sec.10(23C)(iv)
- b) Religious Sec.10(23C)(v)
- c) Educational Sec.10(23C)(vi)
- d) Medical Relief Sec.10(23C)(via)
- e) Sec.12AB Regn – Renewals/Fresh

Sec.10(23C) Amendments

- Longest in any law i.e. 23 proviso's & 16 explanations.
- Simultaneously one cannot claim sec.10(23C) & Sec.10(46)
- Even now in Sec.10(23C) similar to Sec.12A(2)—benefit for earlier years, is not there, if once Approval is obtained
- Similar to Form 9A accumulation is not there in 10(23C)

Objectwise Identification

- Sec.2(15)
- 1.Relief to poor
- 2.Education
- 3.Yoga
- 4.Medical relief
- 5.Preservation of environment
- 6.Preservation of monuments/Artistic/Historic
- 7.Advancement of any other object of Public Utility

Advancement of any other object of Public Utility

- If it is having any activity in the nature of Trade, commerce or Business or rendering any service
- And it's receipts by way of fees, cess, or any other consideration
- Which are more than 20% of overall receipts
- Then it is no longer a "Charitable Purpose".
- But next year it can bring down it's receipts and can claim Sec.11 exemption.

Anonymous Donations

- This Sec.115BBC Applies only to charitable institutions. **Not to Religious Trusts** .
- Tax is @ 30% on such donations exceeding 5% of Total donations or Rs.1.0 lakh whichever is higher.
- Thus Name and address of the Donor has to be preserved.
- Corpus donations shall be separated from normal Donations.

For Education and Medical Relief 10(23C)(iiiad)/(iii ae) < 5.0cr

- Aggregate of annual receipts of institutions
- Implication: All institutions together-not per Unit.
- Mana Seva Samiti Vs. Addl CIT. 439 ITR 79 (Allahabad HC) dt 5.10.2021 held that Gross receipts means other than interest, donations.

Accounts and Audit

- Following the Normal Accounting principles is a must.
- Format of financial statements as prescribed by ICAI- Technical Guide 2022
- Disclosure of accounting policies in the Notes on accounts is important

Audit of Trust & form 10-B&10-BB requirements

- I. True & Fair –financial statements-I & E,Bal.St
- a) Format-ICAI Technical Guide –June 2022
- b) Accounting Principles-cash/mercantile
- c) Accounting Standards
- d) Notes on accounts –disclosures
- Form 10-B
- Form 10-B Part II Statement of Particulars
- Form 10-BB. Part A,B,C –Statement of Particulars
- Trusts R & P

Audit Objective-I.Tax Act perspective

- Statement of Particulars-Positive compliances
- A. a) Income of the year – components
- b) Applied during the year- components
- c) Deemed to have Applied-F.9A & F.10
- B. Negative –Violations
- a) applied for other than objectives
- b) Other than Sec.11(5) mode investments
- c) Payments to sec13(3) related persons

For Sec.11 Exemption -Conditions to be complied

S.No	Sections	Conditions for Exemptions
1	12A(1)(a)	Registration u/s .12AB
2	12A(1)(ab)	Modification of objects, apply for registration within 30 days
3	12A(1)(b)	Audit and Submission of audit Report 30days prior to ROI due date-10-B {10-BB for 10(23C) }
4	12A(1)(ba)	Filing of Return of Income-ITR -7 within ROI due date
5		Implied Conditions-bifurcation of income and expenditure
6	11(1)(a)	Application of income 85% in the same year
7	11(1) & (2)	Accumulation of Income Form 9A or Form 10
8	11(5)	Deposits & Investments- in Prescribed Modes
9	13(1) to (9)	Negative conditions shall not get attracted
10	40A(3)40(a)(ia)	For the amount Applied these conditions are to be fulfilled

Recent Amendments

- Capital Exp-Depreciation-Sec.11(6)--wef 15-16 Asst year.
CIT vs.Kongunadu Arts &Science College Council
282 Taxman 158 (Mad HC) (2021)
CIT vs. Rajasthan and Gujarati Charitable Foundation
402 ITR 441 (S.C) (2018)
- Applied- Sec.40A(3) and Sec.40(a)(ia)-wef AY.2019-20
Sec 11(1)(explanation- 3) mutatis mutandis applicable
- Sec.12AA(1)(a)(ii) compliance of the requirements of any other law as are material for the purpose of achieving its objects.-order, direction or decree. wef 01.09.2019.

Charitable Trusts-C.G. Exempt

- Sec.11(1A) specifically states that if the sale proceeds of Capital Assets are invested in acquiring another asset in the same year then to that extent capital gain is exempt.
- If part of the sale proceeds are used for acquiring the New asset, part of the Capital Gains only are exempt.
- Time limit for holding the New asset is not given.
- Even a Bank FD shall be treated as an Investment in Capital Asset. CBDT Instruction. No.883dt 24.9.1975.

Corpus Fund Donations-wef AY.

2022-23

- Sec. 11(1) Explanation 2. Only Normal Income going for capital expenditure shall be allowed as Application
- Explanation 4. Corpus fund money or Specific Donations or Loans-related (source) application ---- is not going to be taken into account.
- Corpus donations shall be exempt 11(1)(d)subject to the condition that such voluntary contributions **are invested or deposited in forms or modes specified in section 11(5) ('Permissible Mode')** **maintained specifically** for such corpus. Upto what time ?

Sec.11(1) Expln 4 & 5 wef 22-23 Asst.Year

- 4). (i) If 11(1)(d) denied amount is invested or deposited back, as per 11(5) , then it shall be treated as Application as per 11(1)(a)
 - (ii) Application from Loan or borrowal shall not be considered. But in the year of Loan repayment it shall be treated as Application
- 5). No setoff or deduction or Allowance of any excess Application of earlier years is allowed

Sec. 11(3) Amendments

- 11(2) Accumulated amount shall be
 - applied within 5 years only. Not 6th year.
 - Shall not be used for any other **purpose**
 - Shall not be paid or credited to another trust having sec.12AB or 10(23)(C) .
- CIT Vs. Hotel & Restaurant Assn 261 ITR 190(Del)
DIT (E) Vs. Gokula Education Foundation
394 ITR 236 (Karnataka HC)- **Broad objects**

“Appltn of Income” limited to Actual Payment Expl to sec.11(7) wef 23-24 Asst year

- Virtually Sec.43B applies - but all types of expenses. i.e., cash paid
- Advances for both Revenue & Capital Exp shall be taken as **APPLICATION**.
- Accrual can be still be followed-- but allowable is only **Cash Paid Expenses**.
- CIT vs Ganga Charity Trust Fund - 115 CTR 325 (Guj HC) (1993) held that ---Trust can change from Mercantile to Cash basis
- Cheque dealing in----- date of payment is treated as **PAID**.
- CIT Vs Ogale Glass Works Ltd. (1954) 25 ITR 529 (SC)
- For shortage ---Form 9A can solve the difficulty for **Accrued Expenses**.

What about the income side

- Conditional Grants are they income on the day of receipt. ?
For eg. FCRA grants, Govt Grants.
- CIT vs. Karnataka Urban Infra Dev.& Fin Corpn
284 ITR 582 (Kar HC)
Karnataka Municipal Data Society Vs. ITO
76 taxmann.com 167(Kar HC)
- DIT (E) Vs. Gujarat State Council for Blood Transfusion.
221 Taxman 126 (Guj HC)
Held that the Govt grants too cannot be taken as
income , merely on receipt, for the purpose of Sec.11
ICDS effect – Sec.2(24)(ia)+(xviii).

Maintenance of Books of Accounts & Other documents

- Sec.12A(1)(b) w.e.f. AY.2023-24 –

shall keep and maintain **Books of Account and Other documents** (referred in sec.2(12A)) in such form and manner and at such place, as may be prescribed .

- Failure to maintain books of accounts & other documents the consequences will be ---Income has to be computed as per Sec.13(10).” Specified Situation”
 - a) No Sec.11 & 12 Benefit
 - b) No benefit of Sec.11(1A) – Capital gain
 - c) No exemption of sec.11(1)(d) capital receipts.
 - d) No Accumulation for 5 years. 11(2)

In other words only revenue expenditure is allowed as deduction

Separate set of books of accounts

- When

A business is carried on as per sec.2(15)-
Advancement of any other object of public
Utility—20% >of gross receipts

- Business incidental to the main objects 11(4A)
- “Business”- Sec.2(13)– includes Trade, commerce or mfg or any adventure in the nature of trade, commerce, or mfg.

Benefit to Interested Persons – Sec.13(1)(c)

- Pre-Amended Law :- Only the income applied for the benefit of interested person is **Denied**. **But not entire income will lose the benefit of Sec 11.**
- **Confirming the FR Mullers Charitable Insttns 363 ITR 230 (Karnataka HC) decision in the matter of Sec.13(1)(d)**
- Now w.e.f. from 2023-24, Applicable Sec.13(2), Sec.13(4), Sec.13(6) says
 - a) That the income applied for the benefit of interested person is taxable even if it is less than 15% and that income is not entitled to sec.11(1)(a) &11(2) deemed application.
 - b) All the above income is also required to be taxed at special rate i.e.30%U/sec.115BBI & liable for penalty u/sec.271AAE.
 - c) above income is liable for tax in the hands of receiptent hands also.
 - d) No exception in Sec.56(2)(x) Proviso (vi)(vii) applicable.

Impermissible Investment – Sec.13(1)(d)

- **Before Amendment** – It is only the income from such investment or deposit, which has been made in violation of section 11(5) of the Act, that is liable to be taxed and violation of section 13(1)(d) does not result in denial of Total exemption under section 11 to the total income of the assessee trust.
- **After Amendment** – Now only that violated investment is liable for 30% tax u/sec.115BBI.
- But not liable for sec.271AAE penalty even if the investment is from current year income, or from accumulated funds.

Impermissible Assets – Sec.13(1)(d) sub clause (i),(ii)&(iii)

a) If got as Donation other than shares :-

i) CBDT circular No.580 dated 14-09-1990 if received as donation i.e. Jewellery, furniture or other article. No violation.

If got as donation the Shares, whether corpus or non corpus from the Author of trust etc., not a violation of Sec. 13(2)(h)

- CIT vs Sir Shri Ram Foundation, (2001)116 Taxman 113 (Del HC)
- CIT vs Birla Charity Trust. (1988) 34 Taxman 504 (Cal HC)

b) If purchase of shares :- then taxable –in year one even the investment is not allowed as application. Income from it is taxable.

Computation of income in certain situations

• Sec.13(10) & Sec.13(11) - **Specified situation**

a) Sec.13(8) along with sec.2(15)

Maintenance of separate books of accounts.

b) Audit Report u/sec.12(A)(1)(b)(ii)

c) Return of Income before due date u/sec.139(4A)

Not allowable :-

a) expenditure is not from loan or borrowing & Corpus fund

b) claim of depreciation is not in respect of an asset, acquisition of which has been claimed as application of income in the same or any other previous year;

c) such expenditure is not in the form of any contribution or donation to any person **and**

d) for the purposes of determining the amount of expenditure under this sub-section, the provisions of section 40(a)(ia) and section 40A(3)(3a), shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head "Profits and gains of business or profession".

Sec.115BBI- Tax on “Specified Income”

- Rate of tax :- at the rate of 30% on the aggregate of specified income.
- No deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed to the assessee under any provisions of the act in computing the specified income.
- “Specified Income” means :-
 - a) more than 15% accumulation– Applied less than 85%.
 - b) deemed income referred in sec.11(1B)-Form 9A –Form 10 -not satisfied
 - c) Sec.13(1)(c) violated income
 - d) Sec.13(1)(d) violated income
 - e) Sec.11(1)(c) violated income– income applied outside India
- In the hands of recipient – sec.164(2)

Penalty U/sec.271AAE

- **Penalty** for passing on unreasonable benefits to trustee or specified persons (Newly Introduced)(w.e.f.A.Y.2023-24).
- **Occurrence:-** On passing any unreasonable benefits to trustee or specified person under section-13(3) of the Act by Trust registered under section-10(23C) or 11/12A/12AB of the Act.
- **Penalty Amount:-** a sum equal to the **100%** of **aggregate** income applied, directly or indirectly, by such person,
(IF VIOLATION COMMITTED FIRST TIME DURING ANY PREVIOUS YEAR).
a sum equal to **200%** of the **aggregate** amount of income of such person applied, directly or indirectly, by such person
(WHERE VIOLATION IS NOTICED AGAIN IN ANY SUBSEQUENT PREVIOUS YEAR).

“Specified Violation” – Sec.12AB(4)

1. where any income of the trust or institution under the second regime has been applied other than for the objects for which it is established
 - Loan given or receivable is not application, but for objects is to give loan.
 - Case Law :- Indian National Theatre Trust vs ITO,1985 13 ITD 588 Delhi.
 - CBDT circular No.100 dt.24-01-1973
 - Contribution or donation to any person, payment to chartible institution is not allowable.
 - Case law:- P.V.G. Raju, Raja Of Vizianagaram vs Commissioner Of Expenditure-Tax, 1972 86 ITR 267 AP.
 - Corpus donation to the institutions :- Vidyananda Educational Society vs Assessee, ITA 989/HYD/2010 (2014) 25NYP TTJ 4830(HYD).shall be assessed as Business Income

“Specified Violation” – Sec.12AB(4)..contd

- 2. If Books of accounts are not maintained
- 3. If for private religious purposes applied
- 4. If a Charitable Trust applied income for particular Religious community or caste
- 5. Any activity carried out is not Genuine or Not in accordance to the Regn Conditions
- 6. Not complied with “ Any other Law”

Cancellation of Registration U/sec.12AB

1. “ Specified violation “ u/sec.12AB(4)(a)&(b)
2. Sec 143(3) reference by A.O. that violation is found
3. Risk management strategy selection
4. Consequence of cancellation w.e.f 01-04-2022
 - a) No sec.11 exemption
 - b) sec.56(2)(x) applicable – i) corpus is taxable.
ii) Donee loses exemption
 - c) No 80G
 - d) Exit tax u/sec.115TD at MMR on FMV of assets over liabilities

Decisions u/sec.12AA(3)

- Last Home Ministry – (2022)(4)TMI-92-ITAT Cochin.
- Kalinga Institute of Industrial Technology vs CIT, 20 taxman 829.
- It was submitted that u/s 12AA(3) of the Act, registration can be cancelled only when the Principal Commissioner is satisfied that activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution.

Procedure for Cancellation of Registration

- After finding the violation the Principal Commissioner shall
- (a) Call for such documents or information from trust or make inquiry as he thinks necessary in order to satisfy himself about the occurrence of any specified violation.
- (b) Pass an order in writing within **six months, cancelling the registration** of such trust, after affording a **reasonable opportunity of being heard**, for such previous year w.e.f from previous it is for all subsequent years, if he is **satisfied** that one or more specified violations has been taken place.
- (c) Pass an **order** in writing within **six months, refusing to cancel** the registration of such trust, if he is **not satisfied** about the occurrence of one or more violations.
- (d) **Forward a copy** of order to AO & such trust or institution
- (e) St. Wilfred Educational Society, ... vs PCIT

Specified Violations u/sec.12AB(4)

- ❖ Any income derived from property held under trust, wholly or partly applied for other than the objects of the trust
- ❖ Donation to other trust or institution, for Education, Not Medical relief.
- ❖ **Nazareth Hospital Society vs Deputy Comm. Of I T (Exemption) (2021). 212 TTJ (All) 951 ITAT Allahabad. Held Taxable**

Specified Violations u/sec.12AB(4) contd

- ❖ The trust or Institution has income from profits and gains of business which is **incidental** to the attainment of its objectives or separate books of accounts are not maintained

Explanation:- It is incidental – but no separate books of accounts are maintained u/sec.11(4A).

Look at “Advancement of any object” u/sec.2(15) defines Charitable Institution means.

‘Business’ in charitable institution means Litigation.

Eg:- Hospital - Canteen, Pharmacy, Educational Institution – Letting out buildings

If a cost centre in its accounts of trust, the separate set of books to be maintained.

- ❖ The trust has applied any part of its income from the property held under a trust for **private religious purpose**, which does not ensure the benefit of the public.

- ❖ **Muslim Educational Society Vs. CIT [2011] 12 taxmann.com 127 (Cochin) [29-04-2011] 2 to 5% students are of particular religion—No violation**

Specified Violations u/sec.12AB(4) contd

- ❖ The trust has applied any part of its income for the benefit of any particular religious community or caste. Urdu Advt- Scholarship to Muslims-No violation
C.I. T vs Hamdrd National Foundation (2022) 6 NYP CTR 400 (Del HC)
- ❖ any activity being carried out by the trust or the institution under the second regime, (i) is not genuine; or (ii) is not being carried out in accordance with all or any of the conditions subject to which it was registered;
- ❖ **Commissioner Of Income Tax ... Vs Bata nagar Education And Research (2021) 436 ITR 501 (SC)**. Calcutta HC decision up Held by SC. Donations Bogus- Not genuine. U/sec.12AA(3) Dt 2. 8. 2021.
- ❖ **Meenakshi Ammal Trust Vs. ACIT ... (2020) 203 TTJ (Chennai) 785**
- ❖ **Anonymous Donations – Sec. 271 (1) (c) – penalty cannot be levied.**

Sec.12AB(4)

- Sec.12AB(4) is a penal provision.
- It should be interpreted that additional evidence can be given in the proceedings
- **In CIT Vs. Babu Ram Chander Bhan 90 ITR 230 (Allahabad HC) held that u/sec. 271(1)(c) –for penalty Additional evidence can be brought in**
- **CIT vs. Sanskriti Sagar (2022) 6 NYPCTR 492 (Cal HC) dt 26.4.2022**
Held on mere suspicion of Money laundering Sec.12AA(3) cannot be applied
- Only Assessment proceedings cannot be the basis.

After Cancellation

- ❖ Fresh Application can be filed.
- ❖ Writ in HC can be filed.
- ❖ Appeal to ITAT
- ❖ Sec.143(3) – Second proviso – if specified violation is noticed shall wait till CIT passes a cancellation order.
- ❖ Provisions of Sec.115TD- Accreted Income are to be taken care of .
- ❖ It proposes a tax @30% on the Market value of Assets minus Liabilities

Form 10AC

- Form 10AC has 18 New Conditions. Mainly
 - a) no asset shall be transferred without the knowledge of Jurisdictional Commissioner of Income Tax to anyone, including to any Trust/ Society/ Non Profit Company etc. **Eg: Sale of old Furniture ?**
 - b) all the Public Money so received including for Corpus or any contribution shall be routed through a Bank Account whose number shall be communicated to Office of the Jurisdictional Commissioner of Income Tax.
 - c) The applicant shall comply with the provisions of the Income Tax Act, 1961 read with the Income Tax Rules. 1962. **Eg:-TDS delay ?**

For 80-G Trusts

- Filing Form 10-BD on or before 31st May of the ensuing financial year is compulsory.
- Issuing Certificate to Donor in Form 10-BE is made mandatory.
- CSR expenditure is eligible for Sec.80-G deduction. If it is given as Donation no TDS.
- PM cares Fund eligible for 100% deduction.



Thank you !!

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