

**Taxation**  
**on**  
**Charitable Trusts**

**By: CA Agarwal Sanjay 'Voice of CA'**

**Email id: agarwal.s.ca@gmail.com**

**Mb: 9811080342**

## Sections

## Brief Description

➤ Sec.2(15):

Meaning of Charitable Purpose

➤ Sec.11

Income from Property held for Charitable or Religious Purpose

➤ Sec.11(1A)

Capital Gains deemed to be Applied for Charitable /Religious Purpose

➤ Sec.11(1B)

Consequences if Income not applied for Specific Purpose

➤ Sec.11(2)

Exemption if Income accumulated for Specific Purpose

# Section 2(15)- Meaning of Charitable Purpose

*"Charitable purpose includes relief of poor, education, 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". [F.A. 2008}*

## Amendment by Finance bill, 2012 as passed by Lok Sabha

### Charitable organization in case commercial receipts exceed the specified threshold limit.....

- A charitable trust or Institution does not get the benefit of tax exemption i.e. the benefit of Tax Exemption shall automatically forfeit in the year in which its receipts from commercial activities exceeds the threshold limit, whether or not the registration or approval granted is cancelled, withdrawn or rescinded.

## Memorandum Explaining Finance Bill 2012.....

- There is a need to expressly provide in law that No exemption would be available for a previous year, to a trust or institution to which first proviso of sub-section 2(15) become applicable for that particular previous year. However, this temporary excess in one year may not be treated as altering the very nature of the trust or institution so as to lead to cancellation of registration or withdrawal of approval or rescinding of notification issued in respect of trust or institution.
- Such denial of exemption shall be mandatory by operation of law and would not be dependent on any withdrawal of approval or cancellation of registration or a notification being rescinded.
- It is, therefore, proposed to amend section 10(23C), section 13 and section 143 of the Act. This amendment will take effect retrospectively from 1st April, 2009.

*New proviso to Section 10 (23C) shall be inserted.*  
*[w.e.f. 1st April, 2009]*

- *After the sixteenth proviso, the following proviso shall be inserted.....*
- *"Provided also that the income of a trust or institution referred to in sub-clause (iv) or sub-clause (v) shall be included in its total income of the previous year if the provisions of the first proviso to clause (15) of section 2 become applicable to such trust or institution in the said previous year, whether or not any approval granted or notification issued in respect of such trust or institution has been withdrawn or rescinded."*

*New sub-section (8) of Section 13 shall be inserted.*  
[w.e.f. 1st April, 2009]

### Section 13(8)

- *"Nothing contained in section 11 or section 12 shall operate so as to exclude any income from the total income of the previous year of the person in receipt thereof if the provisions of the first proviso to clause (15) of section 2 become applicable in the case of such person in the said previous year."*

After second proviso to Section 143(3), the following proviso shall be inserted.... [w.e.f 1st April, 2009]

### Section 143(3)

- “Provided also that notwithstanding anything contained in the first and the second proviso, no effect shall be given by the Assessing Officer to the provisions of clause (23C) of section 10 in the case of a trust or institution for a previous year, if the provisions of the first proviso to clause (15) of section 2 become applicable in the case of such person in such previous year, whether or not the approval granted to such trust or institution or notification issued in respect of such trust or institution has been withdrawn or rescinded.”



## Section 2(15).....

- *Provided further that*

*the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein, in the previous year, is*

*Twenty Five lakh rupees or less*

*[ Finance Act, 2011 w.e.f 1-4-2012 (i.e A.Y 2012-2013)]*

Limit of Rs. 25 lakh is raised from the limit of Rs. 10 Lakhs which was inserted by Finance Act, 2010.

# CIRCULAR NO.11/2008, DATED 19-12-2008

## Some Important Observations

1. Sec. 2(15) of the IT Act, 1961 – Charitable purpose – Where industry or trade associations claim both to be charitable institutions as well as mutual organizations and their activities are restricted to contributions from the participation of only their members, these would not fall under the purview of the proviso to sec 2(15) owing to the principle of mutuality.
2. The newly inserted proviso to sec. 2(15) will not apply in respect of the first three limbs of sec. 2(15), i.e. relief of the poor, education or medical relief. **Consequently**, *where the purpose of a trust or institution is relief of the poor, education or medical relief, it will constitute `charitable purpose' even if it incidentally involves the carrying on a commercial activities.* Harnam Singh Harbans Kaur v. Director of Income-tax (Exemption), Delhi [2012] 17 taxmann.com 103 (Delhi - Trib.)

3. 'Relief of the poor' encompasses a wide range of objects for the welfare of the economically and socially disadvantaged or needy. It will, therefore, include within its ambit purposes such as relief to destitute, orphans or the handicapped, disadvantaged women or children, small and marginal farmers, indigent artisans or senior citizens in need of aid. Entities who have these objects will continue to be eligible for exemption even if they incidentally carry on a commercial activity, subject, however, to the conditions stipulated u/s 11(4A) or the 7<sup>th</sup> proviso to section 10(23C) which are that:-

- i) the business should be incidental to the attainment of the objectives of the entity, and
- ii) separate books of account should be maintained in respect of such business.

4. **In the final analysis**, however, *whether the assessee has for its object 'the advancement of any other object of general public utility' is a question of fact. If such assessee is engaged in any activity in the nature of trade, commerce or business or renders any service in relation to trade, commerce or business, it would not be entitled to claim that its object is charitable purpose.*

# ISSUE- Meaning of business and how it is different from Charity ....

DIT (E) v. ICAI, ITA No. 869/2011 & W.P (Civil) No. 1927 of 2010, Delhi High Court (Date of decision 19-09-2011) :

- Even if the profits earned are used for charitable purposes, but fee, cess or consideration is charged by a person for carrying on any activity in the nature of trade, commerce or business or any activity of rendering of any service in addition to any trade, commerce or business, an institution will not be regarded as established for charitable purpose/activity (it would be covered under the proviso and the bar/prohibition will apply).
- **The courses of the institute, per se, it does appear cannot be equated to a private coaching institute. There is a clear distinction between coaching classes conducted by private coaching institutions and the courses and examinations which are held by the petitioner institute**

WRIT PETITION (CIVIL) NO. 1927 OF 2010 19/9/2011

# contd..

- In I.T.A. NO. 869/2011 : 19th September, 2011

whether the same amounts to business and whether separate books of accounts were required to be maintained by the institute

The purpose and object to do business is normally to earn and is carried out with a profit motive; in some cases the absence of profit motive may not be determinative. The appellant has given no such finding as far as the activities of the institute are concerned. The CIT-appellant without examining the concept of business has held that the institute was carrying on business as coaching and programmes were held by them and a fee is being charged for the same. On the basis of the findings recorded in the order dated 29th March 2010, under section 263 of the Act, it is not sufficient to hold that the institute is carrying on business.

# ISSUE- where activities are not mentioned in objectives of Trust

[2011] 11 taxmann.com 167 (Patna)

DCIT Circle-1, Patna v. Sulabh International Social Service Organisation

Where though maintenance of toilets **did not specifically find mention in aims and objective of society** but it was an **essential and inseparable incidental activity** for attainment of objectives of assessee, held that activities of assessee were charitable in nature and it would be entitled to exempted from tax

Other ref: M/s PAVE v. DIT (E) ITA No.6057/Del./2010 (order dated 16-09-2011)

# ISSUE- s.2(15)

[2011] 11 taxmann.com 240 (Ker.)

CIT\*, Kottayam v.A.Y. Broadcast Foundation

Production of television and radio programmes for purpose of telecasting and broadcasting through assessee's own network or through network hired by it did not constitute advancement of any object of general public utility within meaning of section 2(15)



# ISSUE- s. 2(15)

## Himachal Pradesh Environment vs. CIT (ITAT Chandigarh), ITA No. 74/ Chd/ 2009

### Held:

- The proviso to s. 2(15) inserted by F.A 2008 can apply only to entities whose purpose is “**advancement of any other object of general public utility**”.
- A profit motive was the essence of trade, commerce or business, and where the services were rendered without a profit motive, such services will not have anything in common with trade, business or commerce. Accordingly, to fall within the second limb of the Proviso to s. 2(15), ‘**rendering of service to trade, commerce or business**’ must be such that it has a profit motive;

# ISSUE- s. 2(15)

When the assessee collects money over and above the fees prescribed by the Government, whether it constitutes a charitable institution

- In the case of Islamic Academy of Education v. State of Karnataka (2003) 6 SCC 697, the Apex Court after considering the judgment in the case of ***T.M.A. Pai Foundation v. State of Karnataka [2002] 8 SCC 481***\_ Held that.....Every institution is free to devise its own fee structure subject to the limitation that there as can be no profiteering and *no capitation fee can be charged directly or indirectly, or in any form.*

- In view of the observation of the Apex Court, it is obvious that a private aided or unaided professional institution or any other institution has to collect the fees fixed by the committee, as directed by the Apex Court.
- Therefore, **any amount received by the educational institution over & above fee fixed by the committees has to be classified as capitation fees and the institution shall face the legal consequences. In other words, the assessee exists for profit and not solely for educational purpose.**

**[Further referred - P.A. Inamdar v. State of Maharashtra [2005] 6 SCC 537 and Vodithala Education society v. ADIT (EXEMPTIONS - II), ITAT – Hyd. 2008-TIOL-139]**

# ISSUE- S. 2(15)

Whether charging fees for education deprives assessee of exemptions? - Held No.

- The Institute of Chartered Accountants of India Vs. Director of Income Tax (Exemption),- Delhi ITAT dated 18/10/2010, ITA No. 1853/Del/2010
- P.C. Raja Ratnam Institution V. Municipal Corporation of Delhi (1990) 181 ITR 354 (SC)

held that mere imparting of Education is enough to claim exemption. That the test of charitable purpose is satisfied by the proof of any of the three conditions, namely, relief of the poor, education or medical relief. **The fact that some fee was charged from the students was not decisive** inasmuch as the proviso to section 115(4)(a) of the Delhi Municipal Corporation Act, 1957, indicated that the expenditure incurred in running the society might be supported either wholly or in part by voluntary contributions. Besides, the Explanation to section 115(4)(a) was, in terms, inclusive and not exhaustive.

Others: Shanti Devi Progressive Education Society Vs. Asst. DIT(Exemption) [1999] 236 ITR (A.T.) 0040 (ITAT – Del)

Similar finding in [2011] 12 taxmann.com 272 (Chennai) Dy. CIT v. Vellore Institute of Technology\*-

## ISSUE- S. 2(15)

- Merely because object of a society was also to serve Church and Nation would not mean that educational institution was not existing solely for educational purpose. [*Ewing Christian College Society v. CCIT 2 DTLONLINE 285 (2010) (All.)*]
- If a university, imparting formal education by a systematic instruction, introduces courses with objective of 'greater interface with society through extra mural extension and field action related programmes', these are not objectives independent of education but are an aid to education. [*Jaypee Institute of Information Technology Society vs. DGIT(E) 185 TAXMAN 110 (2009) (DELHI)*]-Held that on facts, assessee- institute fulfilled all requirement of section 10(23C)(vi) and was, thus, entitled to grant of registration and, consequently, exemption under aforesaid provision.

# Issues- S. 2(15)

Education is not only to impart education through book reading, it also includes sports and other recreational activities

Little Angels Shiksha Samiti v. Union of India, [2011] 11 taxmann.com 37 (MP)

If an educational society introduces object to manage and maintain a library, reading room and conduct classes of stitching embroidery, weaving and schooling, adult education and education in the field of entertainment arts, it cannot be said that the object of the society was not for educational purpose

➤ [ICAI Accounting Research Foundation v. DGIT (Exemptions) 183 TAXMAN 462 (2009) (DELHI)]- **merely on undertaking research projects** at instance of Government/local bodies **and taking remuneration** for such projects, essential character of assessee-foundation **could not be said** to have been converted into one which **carried on commerce.**

# ISSUES- Donation recd.by educational institution

[2011] 12 taxmann.com 272 (Chennai) Dy. CIT v. Vellore Institute of Technology\*

- **charging of higher fees from affluent students** or raising funds for laudable object of education, which is **traditionally a State function, through donations**, by an unaided self financing educational institutions cannot deter 'charitable' nature of activity and in any view make such activity 'commercial' in nature.
- Whether **incidence of surplus during course of activity of running educational institution** would not be a ground to state that said institution is carrying on a business activity so as to forfeit exemption under section 11 - **Held, yes**

contd...

- Whether if a student or his parents are so particular to gain admission into an institution and for that purpose are willing to donate money for improvement of institution, then it is a 'voluntary' act and, therefore, **even if donations were paid at time of or to secure admission into institution, it will not cease to be 'voluntary' so as to fall outside ambit of section 11(1)(d) or 12(1) - Held, yes**
- Whether **such voluntary contribution** would not form part of income of trust but **would only be a capital receipt - Held, yes**
- Whether **donations** collected from students/parents **after admission**, could be said as **not 'voluntary', but under compulsion, - Held, yes**
- Whether **corpus donations** received at time of admission, by an institution **for capital purposes** of trust **could not be treated as capitation fee receipt - Held, yes -**

surplus from educational activities and corpus donations received by assessee-trust which was running an engineering college would be exempt u/s 11



# Issues

## Disha India Micro Credit vs. CIT [2011]-TIOL-119-ITAT-DEL

- Activity of giving micro-finance & earning interest is “charitable purpose”

### Facts:

- The assessee, a micro-finance company, applied for registration u/s 12A for exemption u/s 11. The CIT rejected the application on the ground that
  - (a) the objects showed a profit motive,
  - (b) the assessee was charging an interest rate which was higher than that charged by banks &
  - (c) the activity of giving loans was a business activity and not a “charitable purpose” u/s 2(15).

On appeal by the assessee, HELD allowing the appeal:

- i. On the issue whether the assessee has a “profit motive” in pursuing its objects, **the fact that the assessee is registered u/s 25 of the Companies Act prima facie shows that the assessee is set up to promote “charity or any other useful object” and intends to apply its profits in promoting those objects**. The assessee is prohibited from making payment of any dividend to its members. **The Objects provide that the assessee has to promote micro finance services to poor persons and to help them rise out of poverty without the motive of profit.**

## Contd...

- II. On the issue whether the activity of promoting micro finance services is a “charitable purpose” u/s 2(15), as per CBDT Circular No.11 of 2008 dated 19.12.2008, **a wide range of objects for the welfare of economically and socially disadvantaged people are covered and entities which pursue these objects will be eligible for exemption even if they incidentally carry on a commercial activity**, subject, however, to the conditions stipulated in s. 11(4A) or the seventh proviso to s.10(23C) (**Bharatha Swamukhi Samsthe** 28 DTR (Bang)(Trib) 113 followed);
- III. The fact that there is a surplus from the activity of micro financing cannot by itself be a ground to say that the assessee does **not exist for charitable purpose** particularly when the MOA & AOA provide that the profit shall not be distributed amongst the members but shall be utilized towards the objects (**Thanthi Trust** 247 ITR 785 (SC) &**Agricultural Produce and Market Committee** 291 ITR 419 (Bom) followed)

**S. 11, Income from**  
**property held for charitable**  
**or religious purposes**

## S.11 vis a vis S. 10(23C)

<b>Section 11-</b> exempted income of trust i.e not forming the part of total income	<b>Section 10(23C)</b> In case of institutions covered u/s 10(23C)(iiiab)/(iiiad)- 100% exemption without any condition. 10(23C)(vi)- 100% exemption subject to conditions laid down in provisos	
<b>Sec. 11(1)</b>	(i) Income derived to the extent applied for purposes of the trust	Clause (a) of 3rd proviso to s. 10(23C)
	(ii) accumulations ( <b>not in excess of 15% of income from such property</b> ) NOTE: INCOME INCLUSIVE OF VOLUNTARY CONTR. [CL. (1) OF EXPL.TO S.11(1)]	Clause (a) of 3rd proviso to s. 10(23C)
	(iii) corpus donation	Distinction as between corpus and other funds, registration u/s 12A is inapplicable for sec. 10(23C) institution.
<b>Sec. 11(1A)</b>	Capital gain [ <b>PROPORTIONATELY</b> ]	<b>No such clause</b>

## s.11 vis a vis s. 10(23C)

Sec.11(2)/ 11(1B)	Income deemed to be applied [ as referred in CL.(2) TO EXPL. TO S.11(1)] However the same to be included in the income of the subsequent year as per s.s (1B) Further such income to be invested in the modes prescribed in s.11(5)	3rd proviso to s. 10(23C) rw clause(b)
Explanation to sec.11(2)	Out of income accumulated, donation to other trusts/institutions ref. in s.10(23C), not allowed	13th proviso to s. 10(23C)
sec.11(3)	Income referred in s.s(2) to be included in income on non fulfillment of certain conditions.	14th proviso to s. 10(23C)
sec.11(4) /(4A)	Business income of trust on fulfillment of certain conditions- separate books of account	7th proviso to s. 10(23C)
Sec.11(5)	Forms & modes of investment/ deposit	Cl.(b) to 3rd proviso to s. 10(23C)

**Note: In view of s.11(1)(a), income to be applied to purposes of trust in India while there is o such condition in s.10(23C)**

ISSUE Whether if the requirements of sec. 10(23C) are not complied with, exemption can be denied u/s 11.....`

NO

CIT vs. Mahasabha Gurukul Vidyapeeth Haryana[2010] 2 DTLONLINE 283 (P & H)

Held that once all requisite conditions for exemption u/s 11 had been met by assessee, an educational society, then there would be no bar for assessee to seek exemption u/s11 even if conditions under section 10(23C)(vi) had not been complied with.

# **SECTION 11**

## **Meaning of word 'income'**

## Circular No. 5P dated 19<sup>th</sup> June 1968

1. “The expression ‘total income’ has been specifically defined in S. 2(45) of the Act as **“total amount of income referred to in S. 5, computed in the manner laid down in this Act”**. And therefore the word ‘income’ used u/s 11(1)(a) could not be assigned the same meaning as specifically assigned to the expression ‘total income’ u/s 2(45).
2. In case of business undertaking ‘income’ will be the income as shown in the accounts of the undertaking u/s 11(4), any income of the business undertaking determined by the AO in excess of income shown in accounts will be deemed to have been applied for purposes other than charitable or religious and will be chargeable to tax u/s 11(3). **Only income disclosed by accounts shall be eligible for exemption u/s 11(1), and permitted accumulation of 15% shall be calculated with reference to this income.**



**contd....**

3. Where the trust derives income from house property, capital gains, or other sources, the word 'income' should be understood in its commercial sense i.e book income, after adding back any appropriations or applications thereof towards the purpose of the trusts or otherwise, and also after adding back any debits made for any capital expenditure, any amount added back shall become chargeable to tax u/s 11(3) to the extent they represent outgoings for purpose other than those of the trust.

**Note: Income- Gross or net**

**The Supreme Court in CIT v. Programme for Community Organisation [2001] 248 ITR 1**, has held that the assessee-trust was entitled to exemption under section 11 at 25 per cent (now 15%) of its total income derived, not on amount remained after expending money on charitable purposes out of its total income

*Followed by the Hon'ble ITAT Lucknow Bench, in the case of Krishi Utpadan mandi samiti & Anr. V. DCIT, 136 TTJ 635*

# Judiciary on Meaning of 'Income'

## CIT v. Trustees of H.E.H. Nizam's Supplemental Religious Endowment Trust (1981) 127 ITR 378 (AP). Held:

- Only Books of accounts have to be taken into consideration for determining the income and expenditure of the trust for the purpose of section 11(1)(a).
- Section 2(45) specifically defines "Total income" where as the expression used in the section 11 is only "income".
- Income which is left after the expenditure is required to be set apart or such of the money, which is left with the trust after meeting all the expenditure, that can be invested in securities
- Therefore for the purpose of assessing total income the AO may, as per the provision of the Act, include many items on notional basis, But they do not really constitute the surplus amount or the amount that would be left for the purposes of investment.
- Total income is not relevant for the purpose of investing the funds of the trust or for the purposes of assessing the income of the trust.

# Exempt vis a vis Taxable Income.

## ■ Exempt Income.

- Income which is applied/accumulated to/for the purposes of the trust in India during the previous year to which the income relates is exempt. Further such application/accumulation should not be less than 85% of the income derived during the P.Y.

## ■ Taxable Income.

- Income which is not applied to the purposes of the trust in India during the P.Y. to which the income relates is taxable.
- Income received by Private religious trust.
- Income received by a trust for charitable purposes or a charitable institution created or established after March 31, 1962, is the trust or the institution is created or established for the benefit of any particular religious community or caste or is applied for the benefit of the persons specified in section 13(3).

# Applicability of Section 14

- DIT [Exemption] v. Girdharilal Shewnarain Tantia Trust (1993) 199 ITR 215 (cal.) held that the income from property held for charitable or religious purposes cannot be equated with the income which is computed under the general provisions of the Act in respect of other assesseees who are not entitled to the benefit of the provisions of sections 11(1)(a), 11(1)(b), and 11(1)(A).
- The High Court also ruled that :
  - When the trust loses the benefit of accumulation, and as a result, when the trust income is brought to tax, the question of allowing any statutory deductions as contemplated by different provisions of the Act dealing with different heads of income does not arise. Therefore if a trust has property income among other receipts, it will not be entitled to a deduction of 25% for repairs and collection charges, but will be entitled to deduction of actual repairs and collection charges. **CIT v. Estate of V.L. Ethiraj [1982] 136 ITR 12 (Mad.)**

# Example

## Business Separate Books

To purchases	60000.00	By Sales	200000.00
To Other Exp.	25000.00		
To Net Profit – (A)	115000.00		

**(B). Income from house property Rs. 40000.0, Municipal taxes paid Rs. 2000,**

**(C). Income from other sources – Rs. 5000.00**

85 % shall be calculated of – Rs. 160000 (115000+40000+5000) i.e. Rs. 136000/- should be used for application during the year & not 85%of Rs. 2,45,000 (Rs. 200000 + Rs. 40000 + Rs.5000).

# *Treatment of Unrecorded Income.*

## CIT v. PSG and Sons Charities [1997] 223 ITR 831 (Mad.).

In case the property held under trust is a “Business Undertaking”, the AO shall have power to determine the income of such under taking in accordance with the provisions of the Act, in case the 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 the Charitable or religious purposes.

## Whether reflection of income in the profit & loss account is determinative

- CIT v. M/s State Urban Development Society Date of Decision: 19.10.2011, ITA No. 210 of 2011 [P&H High Court ]

grants received by assessee society cannot be treated as its income where the same have been received by the assessee for disbursement and cannot be utilized for any other purpose, even if the same is credited to the profit & loss account. **The entries in the books of account do not decide the nature of receipts.**

# Issue- INCOME

Income derived from property held under trust wholly for charitable or religious purposes – What the word Wholly represents here ?

- The word 'wholly' referred in the section refers to the object and not to the property held under trust, further the word wholly cannot be treated equivalent to the word mainly, further it would not be sufficient if some of the objects are charitable or religious in nature.

*Dwarkadas Bhimji v CIT [1948] 16 ITR 160 (Bom.), East India Industries (Madras) Private Ltd V. CIT [1967] 65 ITR 611 (SC).*



# Issue- INCOME

## Real Income v. Notional Income

- The exemption and the conditions thereof u/s 11 should be confined to the real income of the organization, Notional income cannot be considered for the purpose of accumulation and application.

CIT v. Jayashree Charity Trust [1986] 159 ITR 280 (Cal.)

Hindustan Welfare Trust v. DIT (Exemption) [1993] 201 ITR 564 (Cal.).

Interest on deposits – where deposits were the property of the assessee- **exempt**

CIT Vs. Haryana C. M. Relief Fund [2009] 309 ITR 0275 (P&H)

# Issues

- **Recovery of loans whether treated as Receipt of Income?**  
Yes, should be considered as a part of income in the year of receipt. *CIT v. Cutchi Memon Union [1985] 155 ITR 51 (Kar.)*, however the same is found unacceptable in *CIT v. Trustees of Kasturbai Scindia Commission Trust [1991] 189 ITR 5 (Bom.)*
- **Treatment of subscription and amounts taken to suspense account?**  
Donations received kept in suspense account, such amount should also be treated as amount of voluntary contributions, so as to require either application or accumulation with permission. *CIT v. Divine Light Mission (2005) 278 ITR 659 (Del.)*

## **Issue- Adjustments of past funds / carry forward of losses**

- It is open to the assessee to explain the shortfall in distribution with reference to excess distribution of an earlier year, so that to avail such excess for set off against current shortfall.

**CIT v. Matriseva Trust (2000) 242 ITR 20 (Mad.), CIT v. Maharana of Mewar Charitable Foundation (1987) 164 ITR 439 (Raj.) and CIT v. Shri Plot Swetamber Murti Pujak Jain Mandal (1985) 211 ITR 293 (Guj.).**

**Judgement in against : Pushpawati Singhania Research Institute for Liver, Renal and Digestive Diseases vs DDIT [2009] 29 SOT 316 ITAT (Delhi).**

# contd...

➤ DIT vs. Raghuvanshi Charitable Trust [2011] 197 TAXMAN 170 (Delhi), Management Development Institute, National Institute Of Urban affairs and; others, ITA No. 1075 of 2008, 930 of 2009, 30 of 2010 and others,

Whether a trust can be allowed to carry forward deficit of current year and to set off same against income of subsequent years – **Held, yes**

Whether adjustment of deficit of current year against income of subsequent year **would amount to application of income** of trust for charitable purposes in subsequent year within meaning of section 11(1)(a) – **Held, yes**

**Other references:** *CIT vs. Maharana of Mewar Charitable Foundation* [164 ITR 439 (Raj.)] , *CIT vs. Institute of Banking* [264 ITR 110 (Bom.)]; *CIT vs. Siddaramanna Charities Trust* [96 ITR 275 (Mys)]; and *CIT vs. Matriseva Trust* [242 ITR 20 (Mad.)]. Gujarat High Court in *Shri Plot Swetamber Murti Pujak Jain Mandal ,Commissioner of Income Tax vs. Shri Plot Swetamber Murti Pujak Jain Mandal* [211 ITR 293].

# Issue- Is Earmarking of funds possible ?

**No**

CIT v. Thanthi Trust [1999] 239 ITR 502 (SC).

Nachimuthu Industrial Association v. CIT (1999) 235 ITR 190 (SC).

Merely making an entry in the accounts cannot be taken as any application of the income for any charitable purpose. Such entries could have been reversed if and when the trust choose to do so.

# Issues- Application of income

- Should Receipt of Income precede Application of Income ? – not necessary, the emphasize is on the spending of the income and not on confining the source of the amount spent to the income earned during the previous year. Chotanagpur Diocesan Trust v. ITO [1986] 19 ITD 175 (Patna – Trib)
- Is it necessary that the money should be actually spent?- No, if a liability for an expenditure has been incurred, the same is enough. CIT v. Trustees of H.E.H the Nizam's Charitable Trust [1981] 131 ITR 497 (AP).

## Issues – Whether Application of Income

### A. Payment of Taxes ?

Yes, CIT v. Trustees of H.E.H the Nizam's Supplemental Religious Endowment Trust [1981] 127 ITR 378 (AP), CIT v. Janaki Ammal Ayya Nadar Trust [1985] 153 ITR 159 (Mad.).

### B. Repayment of Loans ?

Yes, if loan is for purposes of trust. CIT v. Maharana of Mewar Charitable Foundation [1987] 164 ITR 439 (Raj.), [2009]315 ITR 237(Mad) Director of Income-tax (Exemption) v. Govindu Naicker Estate

### C. Grant of Loans?

yes, CIT Vs. Saraswath Poor Students Fund [1984] 150 ITR 0142 (Kar)

## Issues – Whether Application of Income

### D. Expenditure for Revenue or Capital purpose?

- Application of the amount can be for revenue or capital purpose towards object of the trust. S.R.M. M.C.T.M Tirupanni Trust v. CIT [1998] 230 ITR 636 (SC)

### E. Donation to other Trusts ?- Yes if such donation should be utilized for charitable purpose only.

CBDT Instruction No. 1582 dated 19/10/1984.

CIT v. J.K. Charitable Trust [1992] 196 ITR 31 (All.), CIT Vs. Indian National Theatre Trust [2008] 305 ITR 0149 (Del), ACIT vs. U.P. Cricket Association, [2011] 9 taxmann.com 102 (LUCK. - ITAT), CIT v. Market Committee Narwana [2011] 10 taxmann.com 211 (Punj. & Har.)



## Issues – Whether Application of Income

F. **Book Entries ?**

Yes, *CIT v. thanthi Trust [1999] 239 ITR 502 (SC).*

G. **Legal Expenses for defending specified persons ?**

Yes, *Ananda Margā Pracharaka Sangha V. CIT [1994] 76 Taxmann 88 (Cal.)*

H. **Remuneration to specified persons?**

Yes, if reasonable, *Director of Wealth tax v. R.P. Kayan Trust [2002] 253 ITR 30 (Cal.)*.

I. **Advancement of loans by an educational institution to its employees, cannot be regarded as mis-application of funds for purpose of section 10(23c)(vi) of I. T. Act. Facilities like housing, loan, car loan etc., given by an educational institution would be regarded as expenditure spent on the object of education and not to any other purpose.** *[Kashatriya Sabha v. UOI 194 Taxman 442 (2010) (Punj. & Har.)]*

## Issues – Whether Application of Income

### I. Depreciation ?

- When a depreciable asset is created out of the corpus or the capital of the organization, and where the cost of the asset is not shown as an application of funds then depreciation can be shown on the normal basis as an application for charitable or religious purposes.

*DIT (Exemp.) V. Framjee Cawasjee Institute [1993] 109 CTR 463 (Bom.), CIT v. Society of the Sisters of St. Anne [1984] 146 ITR 28 (Ker.), Institute of Banking [2003] 264 ITR 110*

contd..

- *DDIT (Exemption) v. Lissie Medical Institutions [2010] 8 TAXMANN.COM 82 (Coch. - ITAT)*

A charitable institution u/s 12A is **not eligible to claim depreciation in respect of capital assets, cost of which stands already allowed** by way of application of income u/s 11 on account of incurring capital expenditure towards and in furtherance of its objects

**Different view adopted by the Hon'ble Punjab & Haryana High Court in the following case of**

**[2011] 330 ITR 0021 CIT v. Tiny Tots Education Society (P & H)**

Application of income is not computation of income of the charitable institution. Therefore, the question whether depreciation is to be allowed or not has nothing to do with the application of income. Income is always to be computed on commercial principles and as per the system of accounting followed by the assessee, subject always to the statutory provisions.

Also followed in **CIT v. Market Committee Narwana, [2011] 10 taxmann.com 211 (P & H)**

## Issues – Whether Application of Income

### J. Establishment or administrative expenses

These are considered as a charge to the income of the organization and therefore, only the net income after such expenses is available for charitable purposes. Board Circular No. 5-P(LXX-6) of 1968 dated 19/06/1968, however where certain elements of expenses could be directly attributed to the earning of income of a charitable trust, such expenses should be treated as application of income. CIT v. Birla Janahit Trust [1994] 208 ITR 372 (Cal.).

- Accumulation of income u/s 11(1)(a) to be calculated on the basis of total income of trust & not its income as determined for the purpose of assessment of income tax after deducting administrative expenses. As held in *Krishi Utpadan mandi samiti & Anr. V. DCIT, 136 TTJ 635*

*Whether Investment in specified assets u/s 11(5) could be treated as application ?*

Section 11(1) requires application of income of the year for the objects of the trust or institution, while section 11(5) deals with investment of the available funds with it. **Investment therefore, need not be out of income, even if such investment is made out of income, it cannot be construed as application.**

## Issues – Whether Application of Income

- Whether expenses incurred outside India be considered as application for the purposes of trust.

Yes- The Institute of Chartered Accountants of India Vs. Director of Income Tax (Exemption),- Delhi ITAT dated 18/10/2010, ITA No. 1853/Del/2010

There is no such requirement u/s 10(23C)(iv) of obtaining a prior permission of the CBDT as required u/s 11(1)(c) and as such the objection that overseas expenses could not have been incurred by the assessee without permission of the CBDT is not sustainable. **The expenditure has been incurred on overseas travel, etc. and is for the purposes of its object** Further, the mere fact that expenditure has been incurred on foreign travel does not mean that the assessee has incurred expenses for purposes which are not for India . Instead, the assessee has to maintain status and standard of professional qualification of chartered accountancy and observe developments taking place in the world.

# Application of income outside India

- Application of Income outside India does not disentitle educational institution exemption u/s 10(23C)(vi), however the prescribed authority is always empowered to grant registration subject to certain conditions.
- The third proviso does not use the words in India in the matter of application or accumulation of income though in several other sections like Sections 10(20A), 10(22B) and 11(1)(a) etc., Parliament has used the words in India. Therefore, the words in India cannot be read into the third proviso to s.10(23C).  
Case law: American Hotel Lodging Association Education Institute Vs CBDT 2008-TIOL-115-SC-IT

**Section - 11(1A)**  
**Treatment**  
**of**  
**Capital gains**



# S. 11(1A). Treatment of Capital Gains

The capital gains will be deemed to have been utilized for the purpose of section 11(1)(a), if the net consideration received is reinvested in another capital asset.

➤ **S. 11(1A) first caters to main situations, viz,**

- (i) Where the capital asset is property held under trust wholly for charitable or religious purposes;
- (ii) Where the capital asset is held under trust in part only for such purposes.

➤ **Within these main situations, the provision also caters to the following sub-situations:**

- (i) Where the whole of the net consideration is utilized in acquiring the new capital asset.
- (ii) Where only a part of the net consideration is utilized for acquiring the new capital asset.

# Issues- s.11(1A)

- Is Benefit of Indexation available ?
- When the indexation could be done ?
- the indexation benefit will not be available if the entire sales proceeds is used for purchase of another capital Asset, Indexation Benefit should be claimed only when the capital gain is offered for taxation under normal provisions.

# Issues- s.11(1A)

- Is Capital Gains, income from property held under trust ?-  
**Yes**, as per definition of income u/s 2(24)
- Is Benefit u/s 11(1A) optional ?- **Yes**, if assessee doesn't exercise option available u/s 11(1A) then it can't utilize the capital gains for charitable purposes under section 11(1)(a)
- Time limit for reinvestment ?- No time limit, thus to be invested within the same year unless the option is exercised as per Explanation of S.11(1).
- Is Sec 11(1A) distinguish between long term and short term capital gains asset ?- NO

# Issues- s.11(1A)

- Is fixed deposit a capital asset ?
- Time limit for retention of Asset ?
- CBDT vide Instruction No. 883, dated 24/09/1975, has clarified that investment in FD with a tenure of more than 6 months are considered as capital assets for the purposes of S. 11(1A), However in CIT v. Hindustan Welfare Trust [1994] 206 ITR 138 (Cal.) it was opined that the term of the deposit could not be the test of its being an asset, whereas in DIT (Exemp) v. DLF Qutab Enclave Complex Medical Charitable Trust [2001] 167 CTR (Delhi) 120 it was opined that the investment for a fixed term in Scheduled bank is enough.
- No time limit has been provided u/s 11(1A), for retention of the new asset.

## Explanation 2 to S. 11(1) - Treatment of Income not received or applied during the P.Y. – issues involved

- Treatment of income Accrued but not received ?
- Treatment of income Received but not Applied due to any other reason ?
- Procedure to apply in succeeding year ?
- If income not applied on receipt in succeeding years ?

The assessee is at liberty to wait for any number of years for the receipt of income. In case the income is not received in future assessment years then there is no obligation on the part of the assessee to spend such income.

*CIT v. Jayashree Charity Trust [1986] 159 ITR 280 (Cal.)*

## Section-11(2) - Exemption if income accumulated for specific purposes

### ➤ **If Accumulation over and above 15 % is possible ?**

A charitable organisation is unconditionally allowed to accumulate 15% of its income annually and the provisions of S.11(2) and 11(3) would apply only to accumulations made over and above this 15% limit.

**[Addl. CIT v. A.L.N. Rao Charitable Trust[1995] 216 ITR 697 (SC)]**

- The Assessing Officer rejected the claim of the assessee for exemption under section 11 on the ground that the assessee accumulated profits without providing an explanation. The Commissioner (Appeals) held that the utilization of accumulation was on the agenda of the governing body, the purpose of expenditure for accumulation was for building fund and equipment fund and the period was less than ten years. The Tribunal upheld the order of the Commissioner (Appeals). Held, dismissing the appeal, **that when the assessee had specified the purpose and there was no fault in utilisation of the amount, the assessee was entitled to accumulation of income.**

**[CIT v. National Institute and Financial Management [2010] 322 ITR 694 P&H]**

- Whether condition for excluding accumulated income of a charitable institution from total income is specification of purpose for which income was accumulated and deposited in specified mode - Held, yes

**[CIT v. Market Committee, Tohana [2011] 12 taxmann.com 252 (P & H)]**

## Issue – Sec. 11(2)

### ➤ Is Form No. 10 is mandatory ?

Yes, however CIT has power to condone delay. *CBDT circular No. 273, dated 03/06/1980, however in CIT Vs. G.R. Govindarajulu and Sons Charities [2004] 271 ITR 0145 [Mad]*, hon'ble High Court has held that it is enough for the assessee to submit a statement along with the return to exercise such option.

### Modification in purposes if possible ?

Yes, Section 11(3A) permits the modification of the purposes specified in Form 10, under various circumstances.

### ➤ Effect of order of court or Injunction ?

Period of 5 years will exclude any period during which the income could not be applied due to an order or injunction of any court. *CBDT Circular No. 657 dated 30/08/1993.*

# Issue -11(2)

## If Notice in form No. 10 to be given only in first year of accumulation or all in subsequent years also?

The assessee could file notice in Form No. 10 in respect of each year along with the return of income whenever the assessee was unable to apply its income to the extent of 75 per cent. to the charitable or religious purposes. But there was nothing in the provisions which prohibited the assessee from filing the notice in Form No. 10 for more than one year. It has been provided in Form No. 10 itself that an assessee can give notice in writing not only for the current year but also for subsequent previous years. The claim of the assessee could not be denied merely on the ground that in the subsequent year no further notice was given by the assessee. If notice is given in respect of all previous years commencing from the first assessment year, the authorities are not justified in denying the benefit of accumulation for the year under consideration. However, the AO would be at liberty to examine whether the provisions of section 11(5) had been complied with by the assessee or not.

Cotton Textiles Export Promotion Council Vs. Income-tax Officer (Exemptions)  
[2009] 308 ITR (A.T.) 0182 ITAT (Mum.)



# Issues- s.11(2)

- Is benefit of Accumulation is available for more than one purpose ?

Yes.

DIT (Exemption) Vs. Eternal Science of Man's Society [2007] 290 ITR 535 (Del.), Director of Income-tax (Exemption) Vs. Daulat Ram Education Society [2005] 278 ITR 0260 (Del)

- **If income is accumulated for more than one purpose, than is it necessary to specify all of those purposes particularly ?**

**No,** It is enough if the assessee seeks accumulation for the objects of the trust. That the assessee had sought to accumulate the sum for purposes of the trust and had specified such objects.

Bharat Krishak Samaj Vs. Deputy Director of Income-tax (Exemption) [2008] 306 ITR 153 (Del), Director of Income-tax Vs. Mitsui and Co. Environmental Trust [2008] 303 ITR 0111 (Del), Bharat Kalyan Pratisthan Vs. Director of Income-tax (Exemption) [2008] 299 ITR 0406 (Del).

# ISSUES- non-specification of purpose of accumulation in Form 10

## [2011] 45 SOT 57 (Bang.)(URO) DDIT (Exemptions) v. Envisions

Assessee's claim for accumulation under section 11(2) can't be denied merely on ground that Form No. 10 filed by assessee did not specify purpose for accumulation of unspent money where Commissioner (Appeals) had gone through issue in depth, analyzed objects of trust and also Form No. 10 furnished by assessee-trust

## Issues- s.11(2)

- Merely because an educational institution accumulates income, it does not go out of consideration of section 10(23C)(vi).

It goes out only if application of income is for purposes other than education. If accumulation of surplus by assessee, an educational trust, is within parameters of section, it will be entitled to benefit of section 10(23C)(vi).

[Case law: Maa Saraswati Educational Trust v. Union of India 194 TAXMAN 84 (2010) (HP)]

# Section – 11(1)(d) Voluntary Contribution

Voluntary Contribution with the specific direction that it will form part of the Corpus of the trust.

## Issues -voluntary contributions....

- **Whether Voluntary contributions shall be treated as income u/s 2(24)?**

Section 12 was inserted by the Finance Act 1972, w.e.f. 1/04/1973 and the insertion of this section was supported by insertion of clause (ia) to section 2(24) i.e. definition of income, where in voluntary contribution received by trust has been held as income.

***CBDT Circular No. 108, dated 20/03/1973***

- **If Voluntary contribution has to be considered on receipt basis or accrual basis ?**

S. 12 uses the word “received” as against S. 11(1), which uses the word “derived” and therefore S. 12 provides a separate treatment to voluntary contribution i.e. on receipt basis only

## Issues - voluntary contributions....

- **Whether Government Grants are voluntary in nature and whether such grants qualify for exemption?**

**Held yes.** if same has been granted for a particular purpose of public utility or public importance, or to alleviate a situation affecting general public, and cannot be used for any other purpose.

*Bihar State Text Book Publishing Corpn. V. CIT, Misc. Appeal No. 425 OF 2010*

**contd..**

- It is well known that the grants in aid are made by the Government to provide certain institutions with sufficient funds to carry on their charitable activities. On reading the conditions on which those grants in aid were given, it was obvious that the institutions or associations to which the grant was made had no right to ask for the grant and it was solely within the discretion of the governments to make grants to institutions of charitable nature. Again, the Government did not expect any return for the grants given by it to such institutions and there was nothing which was required to be done by these institutions for the Government, which could be considered as consideration for the grant. Therefore, none of the conditions attached to the grant affected the voluntary nature of the contribution. Hence, the impugned grant was exempt under section 12.

**Case law : CIT vs. Gem & Jewellery Export Promotion Council [1983] 13 Taxmann 13 (Bom.)**

## Issues - voluntary contributions....

### Difference between voluntary contributions and subscription.

There is a distinction between voluntary contributions and subscription. When the sum is paid in the nature of gifts or a gratuitous payment to the trust without any consideration, it would be considered as voluntary contribution. Subscription is not to be treated as voluntary Contribution.

Case law : CIT v. Divine Light Mission [2005] 146 Taxmann 653 (Delhi.),  
Trustees of Shri Kot Hindu Steel Mandal v. CIT [1994] 73 Taxmann  
648 (Bom.)



# ISSUE- Corpus-Nature

Asst. CIT v. Nagarjuna Educational Society [2011] 12 taxmann.com 375(Visakhapatnam)

- Whether it is only prerogative and privilege of concerned donor to specify purpose for which voluntary contributions are given and, hence, **neither assessee nor Assessing Officer is authorized to change character of voluntary contribution from 'Corpus' to 'ordinary contribution' or vice versa - Held, yes**
- Whether where assessee-society was running educational institutions and impugned donations received by it had been given with a specific direction that they would form part of 'Corpus' of institution, said voluntary contributions would remain as 'Corpus donations' exempt under section 11(1)(d) and **Assessing Officer was not correct in changing character of corpus donations as ordinary receipts - Held, yes**

# ISSUE- corpus

➤ Any Contribution, which is for specific purpose and not for general purpose should be treated as corpus.

*CIT v. Sri Plot Swetamber Murti Pujak Jain Mandal [1995] 211 ITR 293 (Guj).*

➤ Donation received towards the corpus of the trust could not be taxed as deemed income of the trust under section 12(2).

*CIT v. Amar Charitable Trust [1989] 42 Taxmann 101 (Bom), CIT Vs. Sthanakvasi Vardhman vanik Jain Sangh [2003] 260 ITR 366 (Guj).*

# Inter charity donations

Inter charity donations even could be towards corpus.

*CIT v. Sarladevi Sarabhai Trust [1988] 172 ITR 698 (Guj.)*

*CBDT Instruction No. 1132 (1978)*, has clarified that if the donee organization does not utilize in the year of receipt, then the exemption to donor will not be effected.

- The Finance Act, 2002 has inserted an Explanation to S. 11(2), that prohibits the donations to other charitable trusts out of accumulated funds.
- The Finance Act, 2003 has inserted another proviso to sub section (3A) to section 11 which provides that inter charity donations out of accumulated funds will be permissible in case of dissolution of charitable organization.

# Inter charity donations

## [2011] 10 taxmann.com 156 (Agra), Gagan Education Society v. Addl CIT

- *The amendment by Finance Act, 2002 is applicable only to the payment made to other trusts/institutions out of amount accumulated u/s 11(2) and not to payment out of current year's income, which will continue to be treated as application of income.*
- Whether application of income for charitable purposes should not be distinguished as one for revenue purposes and other for capital purposes - **Held, yes** - Whether, **even if expenditure has been incurred for acquiring capital asset**, assessee will be entitled for exemption as **this will tantamount to application of income for charitable purposes - Held, yes**
- Ref: Aryan Educational Society v. CIT 281 ITR (A.T.) 0072 (2006) [ITAT-Delhi].

# Issue- Foreign Trust & application on activities outside India

## ➤ **Whether foreign trust can claim exemption?**

**Yes**, Sec. 11 does not require the trust should be established or registered in India.

## ➤ **Income applied on activities outside India?**

The Provisions of S. 11(1)(c.) are attracted only if actual expenditure is incurred outside India. Section 11(1)(c.) cannot be invoked only on the ground that the trust deed provides for activities outside India. **CIT v. State bank of India [1988] 169 ITR 298 (Bom.)**

If an organization incurs expenditure outside India in contravention of section 11(1)(c) then the entire exemption will not be lost. Income to the extent not applied in India will not be eligible for exemption. **CWT v. Trustees of the Nizam's Religious Endowment Trust [1977] 108 ITR 229 (AP)**

# *Other issues*

**Establishment of educational activities taking place in India is required- Oxford University Press v. CIT 247 ITR 0658 (2001)**  
**[Supreme Court of India]**

- i. that for the purpose of exemption under sec. 10(22) of the I.T. Act, 1961, the University or other educational institution need not exist in India,
- ii. that, however, the university or other educational institution has to engage in educational activity in India not for profit. It is not beyond the bounds of possibility that Parliament should be willing to forgo a very small percentage of its revenue for the purposes of education, even though it might mean the education of people outside India, if that education was being provided by a university or other educational institution whose sole purpose was to provide education and not at all to make a profit.
- iii. Even a university or other educational institution established or incorporated outside India can be eligible for the exemption under section 10(22) provided that it exists solely for educational purposes and not for purposes of profit.

*Contd....*

- iv. Interpretation of a statutory provision granting exemption which does not stand the test of rationality and will lead to absurd results cannot be accepted.
- v. Each one of the exemptions in section 10 is intended to serve a definite public purpose and is meant to achieve a special object.
- vi. The expression "existing solely for educational purposes and not for purposes of profit" qualifies "a university or other educational institution".
- vii. Giving a purposeful interpretation of section 10(22), it will be reasonable to hold that in order to be eligible to claim exemption there under the assessee has to establish that it is engaged in some educational activity in India and its existence in this country is not for profit only.



- ix. In a case where a dispute is raised whether the claim for exemption from tax by the assessee is admissible or not, it is necessary for the assessee to establish that it is a part of a university which is engaged solely or at least primarily for educational purposes and not for purposes of profit and the income in respect of which exemption is claimed is part of the income of the university. The label "university press" is not sufficient to establish that the assessee is engaged in any educational activity. The imparting of education is service to the society. From the language of section 10(22), it does not appear that without any such service in India, the Legislature intended to exempt the total income of the assessee. The requirement of imparting education or some other educational activity in this country can be read into section 10(22). That is the basic assumption of section 10(22). A university established in a foreign country is not excluded from the ambit of section 10(22) in case it is imparting education in India or has some educational activity in India. It is evident that for the purposes of granting exemption under section 10(22) the Legislature assumed the existence of educational activity in India by a university or other educational institution. The basic requirement of the section is the existence of "educational purpose" which, in other words, means the imparting of education which has to be in India. The absence of the words "India" in this provision is inconsequential. It has to be read into section 10(22).

**Case law: Oxford University Press v. CIT 247 ITR 0658 (2001) [Supreme Court of India]**

**Section-11(4) & Section-11(4A)**  
**Income**  
**from**  
**Business Activities.**

# Issues- income from Business activities

- Sub-section (1) or sub-section (2) or sub-section (3) shall not apply in relation to any income of a trust or an institution, being profits and gains of business, **unless the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained** by such trust or institution in respect of such business. *CIT Vs. Seethakathi Trust [2007] 295 ITR 520 [Mad.]*
- To judge the incidentality of business activity it is necessary to see the primary purpose of the organization and not the source of the income. *Asstt CIT v. thanthi Trust [2001] 247 ITR 785 (SC).*
- once exclusion contemplated under section 11(4A) is not applicable, exemption has to be allowed as sub-sections (1), (2) and (3) of section 11 become applicable even in respect of profits and gains *[2009] 184 TAXMAN 502 (P&H.) CIT vs Manav Mangal Society*

# issues

- Whether section 11(4A) and section 11(4) are complementary to each other and section 11(4A) does not restrict power under section 11(4)
- Held, yes - Whether when a business income is used towards achievement of an object of a trust, it would amount to being incidental to achievement of object of trust, notwithstanding profit and gain involved therein and would be eligible for exemption under section 11(4A) - **Held, yes**  
*DIT(Exemptions) v. Willington Charitable Trust, [2010] 195 TAXMAN 232 (MAD.)*

## *CIT Vs. P. Iyya Nadar Charitable Trust [2006] 284 ITR 0404 (Mad.)*

That the exemption under section 11 will not be available to a trust that carries on any business unless the business is carried on “in the course of the actual carrying out of the primary purpose of the trust”, that is to say, unless the business is carried on in the course of actually accomplishing a primary purpose of the trust ; the business must, therefore, be carried on in the course of the actual accomplishment of relief of the poor, education or medical relief. That where the business was held by the trust as a part of the corpus and, hence, the trust did not directly accomplish any object or carry on the business in the course of the actual accomplishment of its objects. The assessee was not entitled to exemption under section 11.

# issue

## Is letting of property is a business activity ?

That the object of the assessee was education and the activities of the assessee in letting out properties and receiving lease rental was an activity carried on only to fulfil the object of the assessee. Hence, the income derived by letting out the properties could not be treated as business income of the assessee.

*CIT Vs. Sri Rao Baghadur Adk Dharmaraja Educational Charity Trust [2008] 300 ITR 365 (Mad ), CIT vs. Jyoti Prabha Society [2009] 177 Taxmann 429 (Uttarakhand)*

*2011] 12 taxmann.com 161 (Delhi) D.D.I.T.(E), v. PHD Chamber of Commerce & Industry\** Whether as admittedly assessee was carrying on business activities, only thing which could be done on facts of case was to ascertain business income, whether such income was incidental to objects, whether books were maintained for business and quantum thereof - Held, yes

**Circumstances of forfeiture**  
**of**  
**Exemption u/s 13**

# Analysis of provisions.....

## Sec.13(1)(a), Income not applied for public benefit.

- For the purpose of S.13(1)(a), is that the element of public benefit has to be satisfied. **It does not matter where the control lies, if the benefit accrues to public at large but the control is with specific group of persons then S. 13(1)(a), will not be attracted.** Smt. Ganesh Devi Rami Devi Charity Trust v. CIT [1969] 71 ITR 696 (Cal.)

- S. 13(1)(b), Income applied for particular religious community or caste.

Denial of exemption will not be applicable to organizations created for the benefit of scheduled castes, backward classes, and schedule tribes, or woman and children. **(As per explanation 2 to section 13.)**



# contd...

- S. 13(1)(b) is applicable only to those organizations which have been established for charitable purposes and is not applicable to organisations which are established specifically for religious purposes. *CIT v. Barkate Saifiyah Society [1995] 213 ITR 492 (Guj.), CIT v. Shri Maheshwari Agarwal Marwari Panchayat [1982] 136 ITR 556 (MP), Commissioner of Income-tax Vs. Chandra Charitable Trust [2007] 294 ITR 0086 (Guj).*
  - *S.13(1)(c), Benefit to Interested persons.*
    - In case donation of shares by the concern, in which the founder had substantial interest received by the trust as donation did not amount to investment u/s 13(2)(h) and therefore exemption could not be denied. *CIT v. J.K. Charitable Trust [1992] 196 ITR 31 (All.), Commissioner of Income-tax Vs. Shreyas Nidhi, Swasti Hidhi, Venu Nidhi and Swasthya Nidhi [2002] 258 ITR 0712 (Guj).*
- Where huge sums of money advanced to company having substantial interest in trust without charging any interest charged nor adequate security taken, exemption was properly denied. *Kanahya Lal Punj Charitable Trust Vs. Director of Income-tax (Exemption) [2008] 297 ITR 0066 (Del)*

contd...

**Sec. 13(1)(d), Investment other than Specified manner.**

Violation related with s. 11(5) i.e. investment in non – specified securities, should always be read with S.13(1)(d) because for violation of S.11(2) only the contravened portion of the income will be taxed but for violation u/s 13(1)(d), the entire exemptions may be lost. Therefore in case of withdrawal of exemption u/s 11(3) only contravened portion of income shall be taxable, however u/s 13 whole of the exemption available u/s 11 & 12 shall be forfeited.

## ITO v. Human Resource Development & Management Trust (ASBM Trust) [2011] 12 taxmann.com 478 (Cuttack - ITAT)

- Whether once it is held that trust exists for purpose for which it received registration under section 12AA and there is no violation under section 13, capital expenditure incurred by trust has to be allowed as application of funds - **Held, yes**
- Whether provisions contained in section 13(1)(c) do not bar payment of reasonable salary for services rendered by an interested person and, it is only when such payment is found unreasonable or excessive that stipulation of clause (c) of section 13(2) would be attracted - **Held, yes**

**Further held:** in view of guidelines issued by Ministry of Human Resources, IGNOU and AICTE, finishing school run by assessee-educational trust was not an incidental activity rather it was a part of activity of imparting management education by trust and, thus, provisions contained in section 11(4A) would not apply in respect of finishing school run by it

**Donation by a charitable trust to other charitable institution cannot result in same becoming income of donor-trust**

- If the assessee-trust either itself uses any part of its income for charitable purposes or donates the same to any other charitable trust, such income is exempt from inclusion in the total income of the assessee trust for the relevant year .

**D.D. Foundation Trust Society v. ITO, [2011] 10 taxmann.com 128 (Delhi - ITAT), CIT v. Shamnur Savithramma, [2011] 11 taxmann.com 59 (Kar.)**

# issue

*Funds Diverted to business organizations where trustees were having substantial interest, since interest @ of 18% was charged, the educational institution shall not be disentitled from exemption u/s 10(23C)*

**A. R. R. Trust vs. Assistant Commissioner of Income-tax (Income-tax Appellate Tribunal--Chennai) [2006] 280 ITR (A.T.) 0152**

# Insertion by Finance(No.2)Act ,2009,w.e.f. 1-4-2010

## Section 13B: special provision relating to voluntary contributions received by electoral trust.

- Any voluntary contributions received by an electoral trust shall not be included the total income of the previous year of such electoral trust, if-
  - a) Such electoral trust distributes to any political party, registered u.s 29A of the Representation of the People Act, 1951, during the previous year , 95% of the aggregate donations received by it during the previous year along with the surplus, if any, brought forward from any earlier previous year; and
  - b) Such electoral trust functions in accordance with the rules made by the Central Government.

# *Anonymous donations*

## **Sec. 115BBC**

*Inserted vide Finance Act, 2006 w.e.f 01/04/2007.*

# Section 115BBC

(1) Where the total income of assessee, being a person in receipt of income on behalf of any university or other educational institution referred to in sub-clause (iiiad) or sub-clause (vi) or any hospital or other institution referred to in sub-clause (iii ae) or sub-clause (via) or any fund or institution referred to in sub-clause in (iv) or any trust or institution referred to in sub-clause (v) of clause (23C) of S. 10 or any trust or institution referred to in S. 11, includes any income by way of any anonymous donation, the income tax payable shall be the aggregate of –



- (i) The amount of income-tax calculated at the rate of 30% of the aggregate of anonymous donation received *in excess of the higher of the following, namely:- (w.e.f 1-4-2010)*
- (A) five percent of the total income of the assessee or*
- (B) Rs. 1,00,000/-; and*
- (ii) The amount of income tax with which the assessee would have been chargeable had his total income been reduced by the aggregate of anonymous donations received.

Prior to Finance (No.2)Act, 2009, whole of the anonymous donation were taxable @30%

(2) The provision of sub section (1) shall not apply to any anonymous donation received by –

(a) Any trust or institution created or established wholly for religious purposes;

(b) Any trust or institution created or established wholly for religious and charitable purposes other than any anonymous donation made with a specific direction that such donation is for any university or other educational institution or any hospital or other medical institution run by such trust or institution.

(3) For the purposes of this section, **“ anonymous donation”** **means** any voluntary contribution referred to in sub clause (ia) of clause (24) of Sec. 2, 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.

# Analysis of Provisions

- Provisions applicable to institutions referred u/s 10(23C)(iiiad), (iii ae), (vi), (via), (v), (iv) and u/s. 11.
- Anonymous donations includible on total income.
- **Taxability:** income tax payable shall be aggregate of :
  - i) income tax calculated @ 30%.on excess of anonymous donation over 5% of total donations received by the assessee or Rs. 1,00,000/-, ***whichever is higher***
  - ii) The amount of Income tax on income other than anonymous donation. [***as amended by Fin.(No.2) Act, 2009***]
- Provisions of S. 115BC shall not apply to Trust or Institutions created or established wholly for religious purpose.

## Issues....

- A. Whether anonymous donation is subject to condition of accumulation?
- B. If violation given u/s 13, in respect of anonymous donation, would it be subjects to double taxation.
- C. Can provisions of Sec 68,69A to 69C be applicable in case of anonymous donation?
- D. Can project donations may be anonymous donation?

## View on Issue A & B

- As per sec 13(7) nothing contained in Sec 11 or 12 shall operate to exclude anonymous donation from total income and provisions of Sec 11/12 are for claiming exemptions, since in case of Anonymous Donation NPO have to pay tax at a specified rate. there will be no limit of accumulation as given in Sec 11.
- As per sec 13(7) provisions of sec 11 & 12 not applicable and it will be subject to tax at specified rate. **SC in Laxmipat Singhania VS CIT (1969) 72 ITR** held that income can't be taxed twice unless there is express provision for double taxation in the tax Law itself . Since there is no express provision for double taxation therefore AD shall be subject to single taxation u/s 115 BBC.

## View on Issue C & d

- Sections 68 and S. 69A to 69C will be applicable only if assessee does not treat particular receipts as income in the books of account. Therefore the assessee NPO must account for the receipt as income in order to avoid provisions to sec 68 & 69C.
- In case of project grant / donation there is specifies donor and conditions of donor therefore such grant / donation can't be within meaning of Anonymous donation.

## Issues- Anonymous donations to be taxed in certain cases

### Hans Raj Samarak Society v. ACIT [2011] 16 taxmann.com 103 (ITAT-Delhi)

- Where a person receiving contribution does not maintain name and address of contributor and other particulars, such contribution would fall within ambit of 'anonymous donation'
- Benefit of accumulation of income u/s 11(2) cannot be availed in absence of filing of form No. 10 before completion of assessment

### Facts:

- Assessee-society was running a middle school. It had received donations of Rs. 20,39,547. Out of it amount of Rs. 19,25,047 was considered as anonymous donation by AO liable to be taxed u/s 115BBC.
- Since assessee had filed donation receipts containing details in respect of name and address of contributor and same were in possession of AO amount-in-question could not be taxed u/s 115BBC .



# *Taxability of a Trust*

# **Taxability of a Public Trust at a glance**

Sources of Income	U/S	Tax Rates
Voluntary Contributions (being corpus donations)	11(1)(d)	Exempt
Income not applied / accumulated to the extent > 15%	11(1)(a)	AOP Rate
Income received on 31 <sup>st</sup> March carried forward to next year for utilization but not utilized in that next year [Explanation 2(b) to Section 11(1)(d)]	11(1B)	AOP Rate
Income accumulated u/s 11(2) is not invested / utilized / donated to another trust	11(3)	AOP Rate
Excess Business Income as assessed by the AO	11(4)	AOP Rate
Income derived u/s 13(1)(a) & 13(1)(b)		AOP Rate
Income derived u/s 13(1)(c) & 13(1)(d)		MMR
Anonymous Donations u/s 115BBC		30%

**Applicability**  
**of**  
**Section 60 to 63**

# ISSUES

## lawful ownership of the property held in the trust ?

The Trust should be the lawful owner of the property from which the income is derived. If the property belongs to the settler and only income from such property is assigned for charitable purposes then the exemptions u/s 11 would not be available in terms of S.60.

*CIT v. Maharajadhiraj Sir Kameshwar Singh [1953] 23 ITR 190 (Patna), Ganpatri Sagarmall (Trustees) for Charity Fund v. CIT [1963] 47 ITR 625 (Cal.).*

# ISSUES

## In case of, Revocation of Property ?

- If any clause of the trust deed empowered the author to revoke the properties vested in the trust then the income from such properties will be taxable at the hands of transferor. *CIT v G.D. Naidu Industrial Educational Trust [1942] 10 ITR 358 (Mad.)*
- The Trust deed provided that the property would be revocable at the discretion of a central council. Further, the deed provided that the properties could go only to religious and charitable trust bodies. The Supreme Court held that even if the trust was revocable the properties were not going back to the Central Council on revocation and therefore provision of section 61 could not be applied. *Radhasoami Satsang V. CIT [1992] 193 ITR 321 (SC)*.

# ISSUES

## ➤ How trust deed could be treated as revocable or irrevocable ?

Supreme Court in CIT v. Jayantilal Amratlal [1968] 67 ITR 1, laid down the principles, based on which trust deed could be treated as revocable or irrevocable.

- The presence of term 'reassumes power directly or indirectly' – Trust deed shall become revocable
- A discretion to the settler to choose the charitable activities would not vitiate the concept of an absolute transfer for charitable purposes – Trust deed shall not become irrevocable.
- Veto power of the settler in the Management and administration of the trust in a particular manner cannot be construed as a provision for retransfer or revocation of property. The same would be true for any special power with regard to investment of funds in any particular manner. - Trust deed shall not become irrevocable.

**Other**  
**Miscellaneous Issues**

# ISSUE- sale & purchase of mutual funds- whether a business activity

**NO**

**[2011] 12 taxmann.com 297 (Delhi)- ITAT, ITO v. Jesuit Conference of India**

- assessee had invested surplus money in mutual fund units and had been entering into frequent transactions related to purchase/switchover from one such mutual fund scheme to another .
- **Held that sale and purchase of mutual fund are not treated as business activity and, accordingly, benefit of sections 11 and 12 not denied.**
- **Whether since investments were made with intention of getting a better yield upon appreciation/dividends from such mutual funds, in order to augment resources of trust and proceeds of mutual funds were applied by assessee for charitable purposes, in compliance of provisions of sections 11 and 12 , it could not be said that assessee had been carrying on business activity which was not incidental to its charitable activities and that such activity was carried on with sole objective of earning profits - Held, yes**



# ISSUES

- If donations received were applied for charitable purposes as per law, the exemption under s.11 could not be denied if identity of donors was not proved. **The assessee had produced PAN and confirmations from donors.** The AO relied on statement of some donors. However, no cross examination was allowed to the assessee. Some donors had admitted making donations. The exemption from tax could not be denied.

## **CIT vs. Geetanjali Education Society [2008] 174 Taxmann 440 (Raj.)**

- The CIT had rejected the assessee's application for registration under s.12A. The appeal against CIT's order was pending before the Tribunal. It was not entitled to claim exemption from tax under s.11. The assessee would be at liberty to get the appeals revived in case the matter was decided in its favour by the Tribunal.

## **U.P. Forest Corpn. vs DCIT 295 ITR 1 (SC)**

# ISSUES

- Delay in presenting application for approval to avail exemption u/s 10(23C)(vi) cannot be condoned as there is **no provision for condonation of delay** in the Act.

*[Roland Educational and Charitable trust v. CCIT & 221 CTR 88 (2009) (Ori)]*

## Distinguished from

*Padmashree Krutarth Acharya Institute of Engineering and Technology v. Chief CIT 309 ITR 13 (2009) (Orissa)* Wherein it was held, that the Commissioner was to decide the application for condonation of delay on the merits.

# Issues

- There cannot be any limit on the fees charged in order to fulfill such object of setting up an educational institution. *Sikkim Manipal University of Health, Medical & Technological Sciences v. CIT, Siliguri [2010] 8 TAXMANN.COM 279 (KOL. - ITAT).*
- Only authority empowered to grant approval can do so. Power cannot be delegated.

*[Maharashtra Academy of Engineering and Educational Research v. DGIT (Invest) 319 ITR 399 (2009) (Bom.)]*

# Issues

- Lease rent to the sons and wife of the school principal- whether a ground for denying exemption.

*Shree Saket Mahavidyalaya Samiti v Dy. CIT (2010) 132 TTJ (Lucknow) (UO) 39.*

Exemption under section 10 (23C) (iiiad) could not be denied the assessee society established for educational purposes on the ground that the society had paid lease rent to the sons and wife of the principal of the school who were owners of the land on which school building was constructed where such lease rent was reasonable .Salary to the principal also cannot be a ground for refusing the exemption.

# Issues

*Whether non availability of evidence can be a reason of denying the exemption u/s 10.....*

*Ajay Jadeja v Dy CIT (2010) 5 ITR (Trib) 233 (Del)*

Where the objects and activities of the assessee institution are educational in nature and the revenue has not brought any material on record to show that the college account was having surplus or profit, year after year and the revenue has not disputed that surplus was only because of salary grant from the State Government and another grant from UGC , revenue 's plea that the college run by assessee was for profit motive cannot be accepted .Expenditure on conducting entrance examination being application of income, **non availability of evidence cannot be reason of denying the exemption under section 10 (23C)(iiiab).**

# ISSUES

- **Whether claim for exemption u/s 10(23C)(iiiad) can be considered at appellate stage**

***Al-Farook Educational Centre v. ITO [2009] 124 TTJ 286(Coch. Trib.)***

Where assessee had in fact filed its return on ground that assessee was claiming exemption under section 11 but assessee's claim under section 11 was rejected, as assessee was otherwise coming within ambit of section 10(23C)(iiiad), it was permissible in law that claim of assessee under section 10(23C) being backed by provisions of law, could be considered even at appellate stage.

# Issues

- *Does Educational activity necessarily to be taken place for claiming exemption u/s 10(23C)?.....*

**Held no**, where assessee-trust was existing solely for educational purposes and not for purposes of profit and, thus, it was entitled to exemption u/s 10(23C)(iiiad). **ITO v. Baba Dhall Educational Society of India [2009] 27 SOT 391 (DELHI - ITAT)**

- *Whether exemption can be denied on disallowance of certain expenses.....*

**Held No.**

**ITO v. Virendra Singh Memorial Shiksha Samiti 121 TTJ (Luck.) 829 (2009)/ [2009]18 DTR 502.**

**Other rulings .[2010]001 ITR(Trib.)0527(ITAT Coch.) DIT (Exemption) v. Raunaq Education Foundation [2004] 294 ITR 76 (Delhi)**

# Issues

## City Montessori School (Regd.) v. Union of India[2009] 315 ITR 048(All)

Society providing not only traditional education but also preparing students by providing guidelines to get admissions in professional institutions to pursue their higher studies--Society engaged in educational activities falling under "charitable purpose"--Society satisfying all statutory requirements for getting exemption under section 10(23C)(vi)--No material to prove surplus earned by society utilised for personal profit or gain of anyone including founder-manager/director--Chief Commissioner directed to grant approval under section 10(23C)(vi) .

exemption u/s 10(23C)(vi) cannot be denied solely on the foundation that there has been some surplus profit? [\[2011\]9Taxmann.com233\(Delhi\)St.Lawrence Educational Society \(Regd.\) v. CIT](#)



# Issues

## *Society running educational institution is also entitled to exemption*

Section 10(22) of the Income-tax Act, 1961, exempts income of a "University or other educational institution existing solely for educational purposes" from income-tax. The word "institution" has not been defined in the Act. There is no reason why an educational society cannot be regarded as an educational institution if that educational society is running educational institutions.

[The High Court directed the Income-tax Officer to consider afresh whether the assessee, a society running educational institutions, came within the ambit of section 10(22)]

*Case Law : Katra Education Society v. ITO [1978] 111 ITR 0420 [All.] further approved in (1997) 90 Taxman 528 (SC) Aditanar educational Institution vs. Additional CIT*

**A society with a main object of spreading education has opened 3 schools, where in the turnover from the schools individually do not exceed Rs. 1 crore, however on aggregate basis it exceeds Rs. 1 crore. Application of S. 10(23C)(iiiad) or S. 10(23C)(vi) ?**

The limit of one crore shall be considered with regard to any university or other educational institution. In the instant case education society is itself an educational institution. **Aditanar Educational Institution v. Addl. CIT [1997] 224 ITR 310 (SC).**

➤ **A trust or a society which runs, maintains or assists such institution may well be eligible for exemption, even if it does not own the institution, **if its sole object is education.****

**Ref:** *Secondary Board Of education v. ITO (1972) 86 ITR 408 (Ori.), Katra Educational Society v. ITO [1978] 111 ITR 420 (All.), CIT v. Sindhu Vidhya Mandal Trust [1983] 142 ITR 633 (Guj), Director of Income-tax Vs. Sir Shri Ram Education Foundation [2003] 262 ITR 0164, DCIT vs Mahathama Educational Society 2007 15 SOT 44 ITAT - Hyderabad.*

# Issues

*Where the institution is in process of starting educational activity but not yet commenced any such activity.*

*Shavak Shiksha Samiti vs CIT 104 TTJ 127 (ITAT – Delhi)*

The applicant trust was a society registered under the Societies Registration Act 1860 and was in the process of setting up a school on a plot allotted to it. The trust's main object of imparting education came within the purview of charitable purpose and it did not exist for profits, since the surplus, if any, were not to be distributed among its members. Therefore, the trust was entitled to registration under s.12A.

- Petitioner-board was set up by Government of India as an autonomous society under Societies Registration Act, 1860, to promote integrated development in Horticulture - Petitioner further submitted that it was exempt under section 10(23C)(iv) in years from 1987-88 to 2007-08 and was also registered as a trust under section 12A - However, after amendment of section 10(23)(iv) on 30-3-2007, authority to grant exemption was vested in Chief Commissioner instead of Central Government and petitioner made an application to said authority.

**[National Horticulture Board v. CCIT 176 TAXMAN 167 (2009) (P & H)]**

**Chief Commissioner dismissed application on ground that audit reports in Form No. 10BB were not filed with returns and same were filed later, but were not dated as required under 10th proviso to said provision. Whether provision having been substantially complied with, audit report should have been taken into account even if, strictly speaking, it was not filed with return and not in Form No. 10BB but in Form No. 10B as stated in impugned order .Held, yes.**

# Issues

## [Pinegrove International Charitable Trust vs unionof India 188 TAXMAN 402 (2010) (P & H) ]

- To decide entitlement of an institution for exemption u/s 10(23C)(vi), **test of predominant object of its activity** has to be applied by posing question whether it exists solely for education and not to earn profit and merely because profits have resulted from activity of imparting education would not result in change of character of an institution that it exists solely for educational purpose .

## Contd....

- And that capital expenditure incurred wholly and exclusively for objects of education is entitled to exemption and would not constitute part of total income.
- Educational institutions, which are registered as societies, would continue to retain their character as such and would be eligible to apply for exemption under section 10(23C)(vi).

**Ruling followed in: Vanita Vishram Trust v. CCIT (Bombay High Court)**

# Issues

- Assessee-society was established in year 1969 and was duly registered under Societies Registration Act, 1860 - Since its inception, assessee was imparting education to public at large by running schools in various cities – For relevant assessment years, assessee-society filed application seeking continuation of exemption of its income under section 10(23C)(vi) –  
[Case law: Digember Jain Society for Child Welfare v. DGIT (Exemption 185 TAXMAN 255 (2009)) (DELHI)]
- DGIT(Exemptions) refused to grant exemption mainly on ground that assessee-society was having multiple objects, of which education was one of them; it would mean that assessee could pursue even non-educational objects in coming years, if it deemed fit - It was seen from record that assessee-society had mainly been formed with objective of carrying out educational activity and there was no profit motive

## Contd....

- It was also noted that respondent had denied exemption to assessee-society merely on suspicion that it might deviate from its objective of education in future – Held that in aforesaid circumstances, **assessee could be given benefit of exemption under section 10(23C)(vi) subject to an affidavit of undertaking given by assessee-society that it would not breach any of conditions or stipulations imposed by respondent in terms of third proviso to section 10(23C)(vi)** and further, that surplus funds would be utilized only for educational purposes and would not be diverted to other non-educational objectives.



# Issues

## ITO vs. Sir Kikabhai Premchand Trust [2010] 8 TAXMANN.COM 70 (MUM. - ITAT), ITA NO. 5308 (MUM.) OF 2009

Where assessee did not file audit report in Form No. 10B along with return of income due to oversight rather, it filed report of auditor required to be given under Bombay Public Trust Act, 1950, in view of fact that report in Form No. 10B was similar to report under Bombay Public Trust Act, 1950, it was to be held that assessee had complied with provisions of sec. 12A(1)(b), and, therefore, it was entitled to exemption u/s 11.

# Issues

## Assam State Text Book Production and Publication Corporation Ltd. v. CIT 319 ITR 317 (2009) (SC)

Held, reversing the decision of the Gauhati High Court in CIT v. Assam State Book Production and Publication Corporation Ltd. [2007] 288 ITR 352 , that the assessee was entitled to the exemption under section 10(22). The assessee was a Govt. company and it was controlled by the State of Assam ; the Central Board of Direct Taxes had granted similar exemption by letter dated August 19, 1975 to the Tamil Nadu Text Books Society which performed activities similar to those of the assessee ; and the Central Government had by letter dated July 9, 1973, stated that all State-controlled Educational Committees/Boards had been constituted to implement the educational policy of the States and consequently they should be treated as educational institutions. [Matter remanded.]

CIT v. Rajasthan State Text Book Board [2000] 244 ITR 667 (Raj) and Secondary Board of Education v. ITO [1972] 86 ITR 408 (Orissa) followed.

*For purpose section 10(23C), annual receipt is to be considered without excluding contribution towards corpus of trust....*

- *Indian Medical Trust v. ITO [2012] 18 taxmann.com 223 (Jaipur - Trib.)*
- Assessee-trust was running hospital and medical college. It claimed exemption u/s 10(23C) as gross receipt of assessee were below 1 crore. AO rejected same. Assessee contended that donation received could not be included in gross receipt because said donations were received towards corpus of trust.
- **Whether for purpose sec. 10(23C), annual receipt is to be considered without excluding contribution towards corpus of trust - Held, yes**
- Whether since receipt were more than 1 crore, exemption could not be granted to assessee-trust - Held, yes
- **Whether, even if assessee-trust was not entitled to exemption u/s 10(23C) still it will be entitled to claim benefit given u/s 11 to 13 - Held, yes**

# Issues

*Institution availing exemption u/s 10(23C)(vi) can validly apply for registration u/s 12A to avail exemption u/s 11 & 12.*

Income derived by a trust running an educational institution or by an educational institution per se is deemed to be the income derived by such trust or institution from property held under trust and will be exempt from income subject to the exceptions provided in sec.13(3) of the Act - Merely because Sec.10 (23C) provides for exemption of the income of an educational institution, it does not follow that such institution cannot avail exemption u/s 11/12 subject to conditions being fulfilled – Appeal of the Department dismissed by the Tribunal by following the Supreme Court's decision in CIT Vs Bar Council of Maharashtra (130 ITR 28) *Asstt. DIT (Exemptions) v. rajasthani Shiksha Samithi, Nizamabad in the ITAT – HYDERABAD, ITA Nos. 80 &81/Hyd/08*

# Issues

Rejection of application for grant of exemption under section 10(23C)(vi) cannot be a basis for cancelling registration under section 12A. –

[2011] 9 taxmann.com 228 (All. - ITAT)- The Sunbeam English School Society v. CIT

Order rejecting application for exemption under section 10(23C)(vi) must be a reasoned order.

Sahitya Sadawart Samiti v. CCIT, 2011] 12 taxmann.com 248 (Raj.)

## **Issues- order denying exemption to state reasons**

- There must be some reasons recorded in order passed by Commissioner while withholding exemption under section 10(23C)(vi) .
- When no reasons had been assigned for declining exemption for A.Y. 2007-08 and % of surplus income of assessee, after deducting all expenses including depreciation was less than previous A.Y., i.e., 2006-07 for which exemption had been granted, action of Commissioner denying exemption for A.Y. 2007-08 was arbitrary and illegal and not sustainable.

***Dalhousie Public School Educational Society v. CCIT [2011] 9 taxmann.com 15 (PUNJ. & HAR.)***

# Issues

- Assessee-trust, formed for propagation of Vedas, is entitled to registration under section 12A in status of a religious and charitable trust.

[Kasyapa Veda Research Foundation v. CIT [2011] 12 taxmann.com 286 (Cochin - ITAT)- 139 TTJ 641]

- Whether once a trust is duly registered under section 12AA, unless and until, it violates terms and conditions stipulated in section 12 or 13, exemption cannot be denied - **Held, yes**

[Gagan Education Society v. Addl. CIT [2011] 10 taxmann.com 156 (Agra)]

*For purpose of granting registration u/s 12AA, a single non-operative clause of commercial nature could not obliterate whole range of charitable activities undertaken by assessee-society*

*Baba Amarnath Educational Society v. CIT [2012] 18 taxmann.com 222 (Chandigarh - Trib.)*

- Assessee-society was formed with object of imparting education including technical and vocational education.
- Assessee filed an application seeking registration u/s 12AA - Commissioner finding that a particular clause in object clauses mentioned to promote exports of computers hardware/software, telecommunication, internet, e-commerce and allied services, took a view that objects of assessee were not charitable in nature within meaning of section 2(15). He thus rejected assessee's application for registration. It was apparent from records that assessee had carried out concrete activities to achieve charitable purpose of imparting education. Moreover, impugned object clause had been deleted in accordance with sec. 12 & 12A of the Societies Registration Act, 1860, as was applicable to State of Punjab.
- Whether on facts, single non-operative and deleted object clause could not obliterate whole range of charitable activities undertaken by assessee-society - Held, yes
- Whether, therefore, impugned order passed by Commissioner was to be set aside and, registration applied for by assessee was to be granted - Held, yes



# Issues

## CIT v. Spring Dale Educational Society [2012] 204 Taxman 11 (P. & H.) (Mag.)

- While examining application seeking registration under section 12AA, **manner of application of funds of trust do not fall within purview of Commissioner.** Commissioner should only satisfy himself about genuineness of aims and objects of trust/institution and genuineness of its activities as enumerated in clause (b) of sub-sec.(1) of sec. 12AA.

# Issues

## Institute of Self Management Vs. CIT [2011] 16 taxmann.com 331(ITAT-Chennai)

- Where assessee society, managed by highly qualified persons, filed an application for registration under section 12AA after 21 years of its formation, assessee's plea of ignorance of law could not be accepted and, thus, registration could not be granted to it with retrospective effect.

### **Fact:**

Assessee-society was registered under Tamil Nadu Societies Registration Act, 1975 on 24-1-1983 - Declared objects of assessee were providing adult education, community development especially in rural areas and also providing education and healthcare and self employment to rural women. It applied for registration u/s 12AA after a delay of 21 years. According to Commissioner, delay was not properly explained by assessee. Thus, Commissioner held that registration could not be granted to assessee since its inception and registration could be granted only with effect from assessment year 2006-07. Assessee filed instant appeal contending that it could not file application earlier because it was not aware of an independent procedure necessary for registration under Act.

# Issues

## Nooral Islam Trust v. CIT [2012] 18 taxmann.com 110 (Ker.)

- While disposing of assessee's application for registration under section 12AA, an opportunity was to be granted to it to get amendment in trust deed declared valid by a competent civil court.

### Facts:

Assessee, a public charitable trust, was running educational institutions. Assessee having applied for registration u/s 12AA, withdrew its registration application. Thereafter trust deed was amended elaborating object clause specifically including its main object as running a dental college. When amended deed was presented for registration, Commissioner rejected it for reason that original deed did not contain any provision for amendment of deed. On appeal, Tribunal upheld order of Commissioner (Appeals). On instant appeal, assessee pointed out that u/s 92 of Code of Civil Procedure, 1908, read with sec. 26 of Specific Relief Act, 1963, it was entitled to file scheme suit and get amendment declared valid by a competent civil court.

# Issues

## *Nellai Tuticorin Nadar v. DIT(Exem.) [2011] 13 taxmann.com 23 (Chennai-ITAT)*

- Whether a charitable trust cannot totally rely on donations and there has to be a perennial source of income for a charitable trust to carry out its objects - **Held, yes**
- Whether since assessee-society ran activity of general public utility surplus from which was used for charitable purpose, approval under section 80G in respect of donations to be received, could not be denied - **Held, yes**

Circular No. 7/2010 [F.No.197/21/2010-ITA-I], Dated 27-10-2010.....

Clarification regarding period of validity of approvals issued under section 10(23C)(iv), (v), (vi) or (via) and section 80G(5) of the Income-tax Act

It appears that some doubts still prevail about the period of validity of approval under Section 80G subsequent to 1.10.2009, especially in view of the fact that no corresponding change has been made in Rule 11A (4). To remove any doubts in this regard, it is reiterated that any approval under Section 80G (5) on or after 1.10.2009 would be a one time approval which would be valid till it is withdrawn.

# Issues.....

- Where assessee carrying on charitable work received grants for specific purposes from certain agencies, these grants could not be considered voluntary contribution as per section 12.

## *DIT v. Society for Development Alternatives [2012] 18 taxmann.com 364 (Delhi)*

- Assessee-society was registered under sections 12A and 80G. It was carrying on charitable work. It received grants from certain agencies and maximum amount of grants remained unspent at end of year. AO invoked provision of sec. 12 and added said amount to income of assessee.
- Whether since (i) assessee had received grants for specific purposes, (ii) these grants were to be spent as per terms and conditions of grants, and (iii) amount, which remained unspent at end of year, got spilled over to next year and was treated as unspent grant, these grants were not voluntary contributions as per section 12 - Held, yes

# Issues

- Mere publishing newspapers or amending original content of trust deed cannot by themselves be a ground to deny registration to charitable trust.

## *DIT (Exemptions) v. Vallal MD Seshadri Trust [2012] 19 taxmann.com 114 (Mad.)*

- Assessee-trust moved an application under section 12AA for registration. Application was rejected on ground that one of object clause of assessee-trust spoke about publishing newspapers which was in nature of commercial activity; and that original contents of trust deed were amended which is not permissible in law. However, Tribunal found that the trust deed could be amended. That apart, Tribunal, found that publishing of newspapers and periodicals does not ipso facto become commercial activity. Whether since authorities below could not find any fault with genuineness of trust, rejection of application under section 12AA was not justified - Held, yes

# Legal Compliances.....

<u>Basis of Differences</u>	<u>Section 10(23C)</u>	<u>Section 12 AA</u>	<u>Section 80G</u>
When is Application required to be made?	Required to be made by educational institutions where: Gross annual receipt exceeds Rs. 1 crore; or Is not substantially financed by the Government.	Required to be made by all NGOs in order to claim exemption u/s 11	Required to be made by all NGOs which wishes to take the benefit under this section
Form for the above Application	Form 56 D	Form 10 A	Form 10 G
Rules applicable	2CA	17A	11AA
Time limit for filing of application	On/ before 30 <sup>th</sup> sep. of the relevant A.Y (i.r.o appl. On or after 1-06-2007)	No time limit. However, in view of s.12AA(2), exemption be available from the immediately following A.Y to F.Y in which appl. Is made	NA.
Time limit for approval	Within 12 months from the end of the month in which application is received [9 <sup>th</sup> proviso]	Within 6 months from from the end of the month in which application is received [s.12AA(2)]	Within 6 months from date of application
Time period for exemption	Lifetime <i>Circular No. 7/2010 [F.No.197/21/2010-ITA-I], Dated 27-10-2010</i>	Lifetime	Lifetime <i>Time limit of Upto 5 Years is omitted by Finance (No.) 2 Act,2009</i>
Withdrawal of approval	By CCIT	By CIT	By CIT/CCIT



## ***Legal Compliances.....***

<b><u>Basis of differences</u></b>	<b><u>Section 10(23C)</u></b>	<b><u>Section 12</u></b>	<b><u>Section 80G</u></b>
<b>Exemption w.e.f.</b>	The year in which it is granted and thereafter	The year in which it is granted and thereafter	
<b>Appeal on rejection</b>	Not provided. However writ can be filed in the High Court	Lies to Appellate Tribunal	Lies to Appellate Tribunal
<b>Form of Audit Report</b>	Form 10BB (Rule 16CC) [10 <sup>TH</sup> PROVISIO TO S. 10(23)(C)]	Form 10B (Rule 17B) [s.12A(1)(B)]	
<b>Form of Application for accumulation</b>	Not prescribed	Form 10	
<b>Last date of filing of form for accumulation</b>	Before the due date of filing of return u/s 139 [ref: s. 139(4C)/(4D)]	Before the due date of filing of return u/s 139 [s.139(4A)]	
<b>Power to condone belated application</b>	No	No	
<b>Form for filing of return</b>	ITR 7	ITR 7	

**Note: In case of Private Trusts the Return has to be filed in ITR 5**

***THANK YOU!!!***

**By: CA Agarwal Sanjay 'Voice of CA'**