

# Taxation of TRUSTS-recent Issues

By

**Dr. CA. PHALGUNA KUMAR. E.**

M.A., M.Com., M.B.A., B.L., F.C.A., F.C.S., D.I.S.A., Ph.D.,

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# Exemption U/sec.10 Vs Sec.11

- All NPOS are not Public Trusts
- But all Public trust must be NPOs
- Eg:-.Trade Unions, Tobacco, Coffee, Tea Dev.Boards,
- Principle of Mutuality
- Eg:- Consumer Cooperative Stores, Apartment Res.Assons
- Even Govt promoted Public Trusts have to avail specific exemption only
- Eg:- Port/City Urban Dev.Authorities
- Trade,Prof.Assns.Sec.44A,28(1)(iii),10(23A)

# Exemption U/sec.10 Vs.Sec.11

- U/sec.10 for some Unconditional Exmptn is given..ie. Without any Regn.
- Eg:-Local Authorities, Less than Rs.1.0 cr Edctnl Institutions.,Govt Financed Universities
- For some Prior Regn is necessary
- Eg:- Educational,Medical Assotns with more than Rs.1.0 cr annual receipts
- Un-regd AOPs also are liable for Tax
- Capital Receipts are also Income U/sec.56(2)(x)

# Exemption U/ sec 10 not available [section 11(7)]

- A trust or institution which is registered or approved U/s 12AA or 10(23C) cannot claim exemption under any general provisions of section 10.

However, income which would have got exempted u/s 10 can now claim under section 10(23C) or section 11.

## Exceptions :

- a) Such entities can continue to claim Exemption of Agricultural Income u/s 10(1)
- b) Entities claiming exemption u/s 11 will not be barred from claiming exemption u/s 10(23C).

# Registration U/sec.12AA

- Modified Form No 10A & Rule 17A notified w.e.f. 19.2.2018
- Form 10A to be furnished electronically
  - Under digital signature, if return furnished under digital signature
  - Through EVC in other cases
- Type of trust – whether charitable, religious or partly religious or partly charitable
- If charitable, category of charitable purpose – education, relief of the poor, medical relief, yoga, preservation of monuments or places or objects of artistic or historic interest, preservation of environment or advancement of any other object of general public utility

# No need to file last 3 years ROI

- Sec.12A(2) added with 3 Provisos wef 1.10.2014
- Merely file the Audited Financial statements with Audit reports in Form 10B/BB
- All the normal conditions should have been complied for earlier years also.
- Sri Shirdi Sai Darbar Charitable Trust Vs.CIT  
395 ITR 567(2017) (P &H HC)
- Sahid Munshi Ram Memorial Educational Society Vs.CIT. ITA NO.675/DELHI/2009 dt 16.08.2017

# Religion includes charity

- Dawoodi Bohra Jamat (S.C.) 364 ITR 31 dt .20.2.2014 confirming (2009) 317 ITR 342 (M.P).
- “ If the objects are both Charitable and Religious, as per scriptures, it cannot be held that Sec. 13(1) (b) of the Act is attracted .Both religious and Charitable can subsist.”
- Mere interest free money lending and poor feeding will not make it a purely charitable one. They are part of religious activity.
- CIT Vs. Dawoodi Bohra Jamat Trust (2017) Taxpub(DT) 0359 (Mad-HC) dt 14.12.2016

# Meaning of Trade ,Commerce, Business

- ICAI Vs . DGIT(Exmp ) 347 ITR 099 (De l ) ( 2012)
- ICAI Vs. DGIT ( E ) 358 ITR 91 (Del)(2013)
- ICAI Accounting and Research Foundation Vs. DGIT(E) 321 ITR 73(Del). Mere Students Coaching fees, Campus Selection fees is not commercial activity.
- Sabarmati Ashram GaushalaTrust v ADIT 25 ITR (Trib) 701 (Ahd). Selling milk by Gaushala is not a commercial activity.

Dominant purpose has to be looked into not the accounts alone.

# Incomes to be examined

- 1. Sec. 2(15) –Advancement of any other object of Public Utility-Provisos  
Eg:- Cricket/Music/Dance Assn Selling tickets  
Trade, Business, Commerce nature  
Exceeding 20% of the Total Gross Receipts
- 2. Sale of Assets and Corpus fund Donations
- 3. Hundi collections/Anonymous Donations
- 4. Incidental Business Receipts-separate Books

# Expenditure to be Examined

1. Segregate Revenue Expenditure and Capital
  - Expenditure- for Objects and other than objects
  - 2. Payments to the Related Parties
  - 3. Donations to other trusts-Corpus- not to be allowed as Application (Effectively, corpus donations to be made would now need to be funded either out of corpus donations received or out of 15% accumulation)
  - 4. Sec.40A(3) and Sec.40(a) (ia) nature
  - 5. Earlier years Loans repaid in the current year
  - 6. Exp to specific caste, community is prohibited

# Objects Clause Adoption or Modification - from 18-19

- **Before Amendment:**
- Mere non-intimation of amendment in trust deed to department cannot Ipso facto lead to  
cancellation of registration.
- ITO V/s Bhansali Trust (2015) 155 ITD 736/ (2016) 176 TTJ 193
  
- **After Amendment wef. 1.4.2017**
- During the previous year , when there is adoption or modification with in 30 days if fresh Application is not made, already given Sec. 12AA Regn is deemed to have been cancelled.
- What if the Court permits? Is it applicable for earlier years?
- What is meant by “Adoption”.

# Tax on Accreted Income [ section 115 TD]

- Accreted income is subjected to tax @ Maximum Marginal Rate.
- **It arises on account of:**
  - a. Conversion into any form which is not eligible for registration U/s 12AA or
  - b. Merged with an entity other than entity having similar objects and registered U/s 12AA or
  - c. Failure to transfer all of its assets upon its dissolution to any other Trust or Institution registered U/s 12AA or to any fund or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or (v) or (vi) or (via) of clause (23C) of Section 10, within a period of 12 months from the end of the month in which dissolution takes place

# Tax on Accreted Income [ section 115 TD] (cont)

- Tax payment is to be made within 14 days from conversion
  - A. When 12AA Registration Cancelled
    - i. **When no appeal filed-** the date on which appeal filing period expires
    - ii. **When appeal is filed-** the date on which Negative Result Appeal Order is received
  - B. By Way of Modification in objects
    - i. **When application for Fresh Registration U/s 12AA is not filed in the previous year-** the date on which previous year ends
    - ii. **When filed application for Fresh Registration is rejected**
      - a. **When no appeal filed-** the date on which appeal filing period expires
      - b. **When appeal is filed-** the date on which Negative Result Appeal Order is received

# Tax on Accreted Income [ section 115 TD] (cont)

- Accreted Income

Particulars	Amount
Fair Market Value of Assets on the Specified date	xxxx
Less: Liabilities	(xxxx)
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Accreted Income	xxxx

## Exclusions:

- Assets acquired out of Agriculture Income.
- Already tax paid i.e., Assets acquired before 12AA Registration.
- Assets and liabilities transferred to Trusts or Institutions registered U/s 12AA or Referred in section 10(23C).

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# Tax on Accreted Income [section 115 TD] (cont)

2. Merger – the date on merger
3. Dissolution- the date on which period of 12 months from dissolution date expires
4. Interest payable for non-payment of tax by trust or institution [section 115 TE]
  - Simple interest @ 1% per month for every month or part thereof

# When Trust or Institution deemed to be Assessee in default [115 TF]

1. If any principal officer or trustee of the trust or the institution or the trust or the institution does not pay tax on accreted income within the time prescribed then, **the principal officer or the trustee or the institution is deemed to be assessee in default** for the tax payable and **all the provisions of the Act shall apply for collection and recovery of income-tax.**
2. The above provision is also applicable to **the person to whom any asset(s) forming part of Accreted Income has been transferred.** But , the liability of the person is limited to the extent to which the asset(s) received by him is capable of meeting the liability.

## What is “Income” and “Application”...Contd

- Interest on Corpus Fund Deposits received
- CIT Vs. Mata Amrithanandamayi Trust
- (2017) 85 Taxman.Com 261 (Ker)
- Revenue Expenditure – for the Objects
- Genl Admin Expenses
- Capital Expenditure– for the Objects
- Sec. 11(4) and Sec.11( 4A)—Business
- Business Incidental—Edctn Instt—Buildings Letout
- DIT (E) Vs. Lala Lajpatrai Memeorial Trust
- (2016) 383 ITR 345 (Bom)
- DIT Vs. Shree Nashik Panchvati Pinjrapole
- (2017) 81 Taxman.Com 375(Bom)

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## Double deduction of depreciation and cost of acquisition not available [sec 11(6)]

### **Law prior to amendment (up to assessment year 2014-15):**

Predominant view of Courts that charitable institution is eligible for

- deduction of full cost of acquisition of asset as application of income.
- depreciation on the same asset in subsequent years.

### **Amendment (w.e.f. assessment year 2015-16):**

Where cost of acquisition claimed as application of income, no deduction by way of depreciation in computing income [section 11(6)].

Rajasthan & Gujarati Charitable Foundation Poona  
[2018] 402 ITR 441 (SC)

# Double deduction of depreciation and cost of acquisition not available [sec. 11(6)] (cont.)

## Consequences of depreciation not being allowed as a deduction

- (a) The 'income' of the charitable institution for tax purposes will increase to this extent.
- (b) Language suggests embargo on deduction while computing income. Not clear whether depreciation can be considered as application of income.
- (c) The income could be applied for charitable purposes under section 11(1) (a).
- (d) The income would be eligible for basic exemption of 15% under section 11(1)(a).
- (e) The income could be applied in next year under Explanation 2 to section 11(1).
- (f) The income could be accumulated for secondary application under section 11(2).
- (g) What if , if a Building is donated ? Can the Depn is claimed ?

# Sec.11(5) Vs 13(1)(d)

- Acquisition of shares of Cooperative Bank for obtaining loan
  - Not investments, no violation of s.11(5) – CIT v Dr Vikhe Patil Foundation 222 Taxman104 (Bom)
- Loan advanced to another trust without security or interest not violation of s.13(1)(d) – money advanced not investment, but loan
  - Puran Chand Dharmarth Trust vs ITO 93 Taxmann.com 367 (Del)
- Consequences of violation of s.11(5) pattern – s.13(1)(d)
  - DIT(E) v Sheth Mafatlal Gagalbhai Foundation Trust 249 ITR 533 (Bom) - maximum marginal rate of tax only on that part of income which has forfeited exemption under said provisions and not on entire income of trust – balance income taxable at normal rate of tax
  - CIT v Working Women's Forum 365 ITR 353 (Mad) - only such part of income which is violative of section 13(1)(d) can be brought to tax at maximum marginal rate;- however entirety of income cannot be denied exemption under section 11
  - CIT v Fr Mullers Charitable Institutions 363 ITR 230 (Kar) - only income from investment or deposit which has been made in violation of section 11(5) is liable to be taxed and violation under section 13(1)(d) does not tantamount to denial of exemption under section 11 on total income of assessee-trust
  - SLP dismissed 227 Taxman 369 (SC)

# Exercising of option for deemed application of income in prescribed form [Expl. (2) of section 11(1)]

## **1. Law prior to amendment [up to assessment year 2015-16]**

- (a) If income applied in a previous year to charitable or religious purposes in India <`85% of the income of the trust, the trustees may exercise an option to regard the amount of income applied in a subsequent year as application in the previous year.
- (b) Option to be exercised by intimating the AO in writing before expiry of the time allowed under section 139(1) for furnishing the return of income [Explanation (2) to section 11(1)].

## **2. Amendment in Explanation to section 11(1) (with effect from assessment year 2016-17)**

Option to be exercised in Form 9A as per Rule 17.

# Period within which Form 10 relating to secondary accumulation is required to be filed [section 11(2)]

## 1. Law prior to amendment [up to assessment year 2015-16]

- (a) a charitable institution can accumulate income not applied during the previous year for a period not exceeding 5 years provided it gives notice to the AO in prescribed form (Form 10);
- (b) rule 17 provides that the Form 10 has to be filed before the expiry of time allowed under section 139(1) for furnishing the return of income;
- (c) section 11(2) was silent on the time limit.

## 2. Amendment in section 11(2) (with effect from assessment year 2016-17)

The prescribed form (Form 10) should be filed by the charitable institution on or before the due date of filing return of income under section 139 (1).

## No benefit of secondary accumulation if return of income / Form 10 is not submitted within due date of filing of return [ section 13(9)]

### **1. Provision prior to amendment**

None. Hence In **M.Ct.Muthia Chettiar Family Trust Vs. ITO. 86 ITR 282(Mad.H.C.)** held that as the section is not specifying the time limit , the rule specifying the time limit is ultra vires.

High court of A.P. in **CIT vs Mumtaz Yarud Dowla Waqf (1999)153 CTR AP 149** gave the judgement in favour of the assessee.

In **CIT Vs. Mayur Foundation 274 ITR 562(2005)** the Gujarat H.C. held that even when the matter is pending in Tribunal Form 10 can be filed.

### **2. Amendment in section 13 (with effect from assessment year 2016-17) :**

Exemption under section 11(2) will not be available to a charitable institution if-

- (a) it does not file Form 10 before the due date of filing of return of income under section 139(1); or
- (b) it does not file the return of income before the due date of filing of return of income under section 139(1). [section 13(9)]
- (c) As per CBDT Circular No.7/2018 dt 20.12.2018 the Delay can be condoned in filing Form10 or Form 9A

# Carry Forward of Excess Expenditure to subsequent years

- In case in a particular year the Trust is incurring more revenue expenditure , then, can the Excess Application be carry forward to subsequent year for set off against that year Income? Yes.
- ACIT Vs. K.J. SomaiyaTrust (2016) 158 ITD 57 (Mumbai Tribunal)
- DIT(E) Vs. Medical Trust of the Seventh Day Adventists & Others (2017) 156 DTR 113 (Madras H C)
- DIT(E) Vs. Karnataka Fransalain Society (2017) 59 ITR (SN) (Bglr Tribunal)
- CIT(E) vs Subros Educational Society (2018) 11 ITR-OL 468 (SC)
- CIT (E) Vs.Ohio University Chirst College (2018) 408 ITR 352 (Karnataka HC)
- Pr.CIT (E) &Anotr Vs. Manipal Academy of Higher Education(2019)415 ITR 361

# Sec. 115BBC clarification

- **Law prior to amendment [up to assessment year 2014-15]**
- Income Tax Payable shall be aggregate of
- (i) the amount of income-tax calculated at the rate of thirty per cent on the aggregate of anonymous donations received in excess of the higher of the following, namely:—
  - a) five per cent of the total donations received by the assessee; or
  - b) one lakh rupees, 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.**

## **Amendment [with effect from assessment year 2015-16]**

The following clause (ii) is substituted for the existing clause (ii) of sub-section (1) of section 115BBC by the Finance (No. 2) Act, 2014, w.e.f. 1-4-2015:

(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 in excess of the amount referred to in sub-clause (A) or sub-clause (B) of clause (i), as the case may be.**

# Filing ROI with in the due date mandatory along with Audit report

- **Sec. 11 exemption is totally denied. From Asst Year 18-19.** Though the trust is satisfying all the other conditions like application of income in the same year , investments are as per schedule 11(5) and there is no violation of even Sec. 13(1) , but merely for not filing the return of income before the due date, . Once it is not there, then all (1.) corpus fund donations (2.) Ordinary donations, without deducting any expenditure are fully taxable at 30 %.
- The Due Audit Report Form 10-BB or 10-B or Form 10 has to be filed with in the due date electronically.

## **Substantially Financed Educational & Medical Institutions to File ROI {Sec.139(4c)(e)}**

- **Provision prior to amendment**
- Entities referred to in clauses (iiiab) and (iiiac) of section 10(23C) are not required to file their Return of Income

### **Amendment (with effect from assessment year 2016-17) :**

The entities covered under clauses (iiiab) and (iiiac) of clause (23C) of section 10 are **mandatorily required to file their return of income.** [Sec. 139(4C) (e)]

Eg:- Universities, Tobacco Board etc  
Institutions

# Other Amendments for Asst.Year 2018-19

1. If the Trust Adopts or undertakes any modification of its objects during the year, with in 30 days if fresh application is not made U/sec. 12AA, the Regn is deemed to have been withdrawn.

Thus Original Objects are only Eligible for Application of Income.

2. Sec. 80-G limit is reduced to Rs.2,000/- from Rs.10,000/-
3. Sec.56(2)(x). All trusts –Not having Sec. 12A A or 10(23C), if they receive any money as Donation- Revenue or capital Nature---in aggregate in excess of Rs. 50,000/- is taxable.

In the case of Immovable property, per property Rs.50,000/- is the limit.

4. Exception is to those who receive from Any Trust having Sec. 12A A or 10(23C) Regn is not taxable in such persons hands.
5. Sec. 269ST- Any trust receiving cash Rs.2.0 lakhs and above-  
Penalty

There is no distinction between Capital receipts and revenue receipts, Eg:- Agrl Income and Donations, Taxable revenue.

# 2018 Finance Act, Applicable from 2019-20 Asst.Year

1. Sec. 40(a)(ia) mutatis mutandis applicable- in Application of income  
In other words, to the extent of No TDS is made 30% of such Expenditure shall not be treated as Application of Income.
  - a) Before the Due date if TDS is made , still it can be treated as Application of income.
  - b) If in a subsequent year if such TDS is made, then in that year it will be considered as Application of Income.
2. Sec. 40A(3) and (3A) mutatis mutandis applicable- in arriving Application of income.  
Thus All expenditure from 1.4.2018 in excess of Rs.10,000/- per day per person shall be by Bank Channel. Violation will get attracted and 100% .  
The question is whether the Capital expenditure is also covered or not?
3. As this is an Amendment of Sec.11(1) as Explanation 3 , will this Apply to Sec. 11(2) Application?  
Most probably ..Yes.

# 2019 Finance Act Amendment

- Violation of any other Law , having a bearing on the main objects, **wef 1.9.2019**
  - a) At the time of Regn U/sec. 12AA
  - b) At the time of assessment, to cancel the Regn.
  - c) If such violation order is not disputed or has attained its finality
  - d) Commissioner can call for such other information to satisfy himself

# Finance Act, 2020 Amendments

- Sec.11(7)-New proviso- within 3 months from the effective amendment- all existing Regns both U/sec.10(23C) and 12A and 12AA shall be deemed to have been cancelled.
- Now wef 01. 10. 2020
- To opt either for Sec. 12AB or Sec10(23C) or for Sec.(46)
- Sec.12A(ac)-To apply within three months for fresh online Regn. Renewal also valid for 5 years only.
- Sec.12AB-Fresh Regns – to have provisional Regn valid for max 3 years. To apply for Regular Regn.
- For Objects change- within 30 days to apply afresh.
- Sec.80-G amended on similar lines/To Upload Donations
- Regn. cancellation.Sec.12AB(4)&(5).replacing 12AA(3)&(4)

# Condoning Delay—Form 10-B/BB

- For earlier years , i.e. 2016-17 ,17-18 and 18-19 delay :  
As per CBDT Circular No. 10/2019 dt. 22.5.2019 the delay can be condoned by CIT(Exemptions) .An application has to be made U/sec. 119(2)(b) , on or before 31.3.2020. (as per CBDT Circular No. 28/2019 dt 27.9.2019)
- For 2019-20 and subsequent years :  
As per CBDT Circular No. 2 dt 3.1.2020, if the delay is not more than 365 days the delay can be condoned by CIT(Exemptions)

# Return filing Delayed

- From Asst. Year 2018-19 only filing of ROI within the due date made mandatory by amending Sec.12A(1)(ba)
- CBDT Clarified that the Return can be filed within the time given U/sec.139 not necessarily U/sec. 139(1).
- CBDT Clarification vide F.No. 173/193/2019-ITA-I dt. 23.4.2019. In other words on or before the last date of Asst. Year those who have filed need not consider it as delayed return.
- *M/s. Kunhitharuvai Memorial Vs. DCIT, Calicut*
- Cochin Trib. ITA No. 255/2018 order dt. 27.05.2019
- Held for earlier this amendment cannot be applied

# Form 9A or Form 10 delayed

- From Asst. Year 2016-17 Electronically they are to be filed along with the Return of Income.
- Considering the difficulties the CBDT has given the power to Jurisdictional CIT(Exemptions) to condone the delay U/sec.119(2)(b) on application by Trust.
- CBDT Circular No. 7 of 2018 dt. 20.12.2018
- Circular no. 30 of 2019 dt 17th December 2019
- Circular no. 3 of 2020 dt 3rd January 2020.
- Circular No.6 of 2020 dt 19<sup>th</sup> Feb,2020



**Dr. CA. Phalguna Kumar.E**  
**Email : [ephalguna@gmail.com](mailto:ephalguna@gmail.com)**