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**Taxation of Charitable Trusts – Issues  
& Recent Developments**

**Seminar on Charitable Trusts – Critical  
Aspects**

**Bombay Chartered Accountants' Society & Chamber  
of Tax Consultants**

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# Topics for Discussion

- Registration u/s 12AA
- Cancellation of Registration u/s 12AA
- Tax on Accreted Income
- Exemption for Application of Income for Charitable Purposes
  - Disallowance of cash payments/payments where TDS not deducted
  - Depreciation on Assets if capital expenditure allowed as application
  - Disallowance of donations to corpus of other trusts
- Option to Spend in Subsequent Year
- Accumulation u/s 11(2)
- Corpus Donations
- Loss of Exemption
  - Proviso to Section 2(15)
  - Section 13(1)(d)
- Draft format of new audit report u/s 12A

# Registration u/s 12AA

- To be made in Form 10A (amended w.e.f. 19.2.2018)
  - Also to be made in cases where change in objects, which do not conform to conditions of registration, within 30 days of change/ modification – s.12A(1)(ab) w.e.f. 1.4.2018 – else loss of exemption
  - From which year – whether procedural or substantive?
  - Whether applicable to past cases of modification of objects prior to April 2017? Position of such cases
  - Meaning of date of adoption/modification – vis-à-vis
    - Trust – date of trustee resolution, date of court order?
    - Society – date of managing committee resolution, date of AGM resolution, date of AGM confirmation resolution?
    - Company – date of BoD resolution, date of AGM resolution, date of filing resolution with RoC?

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# Registration u/s 12AA

- Time limit of 6 months for passing order u/s 12AA
  - If order not passed within time limit – deemed registration - *Society for the Promotion of Education, Adventure Sport & Conservation of Environment v. CIT 372 ITR 222 (All)*, overruled in *CIT v Muzafar Nagar Development Authority 372 ITR 209 (All)(FB)*
  - *CIT v Society For The Promotion Of Education, Adventure Sport & Conservation Of Environment (SC)* – registration to take effect on expiry of 6 months
  - Instruction 16/2015 dated 6.11.2015 - time limit of six months is to be strictly followed by the Commissioner of Income Tax (E) while passing order u/s 12AA. The CCIT (E) may monitor the adherence of prescribed time limit and initiate suitable administrative action in case any laxity in adhering to the same is noticed.

# Registration u/s 12AA

- Amendment wef 1.9.2019
- Earlier, satisfaction of CIT only about genuineness of activities of trust
- Now additional satisfaction of CIT about compliance of requirements of any other law as are material for achievement of its objects
- “Material for achievement of objects” –
  - Requirements have to be material – not entire law
  - What is material – question of fact
  - For achievement of objects – has to be related to charitable activity being carried on - may not include laws, such as FCRA, Mah Public Trusts Act, being not material for achievement of its objects
  - Where activity yet to commence – can registration be refused until such time as relevant approval received prior to commencement of activity? E.g. registration as school
- Whether CIT can on his own decide whether requirements of other law not complied with, without reference to relevant authority?

# Registration u/s 12AA

- While granting registration, whether s.2(15) proviso applicability to be seen
  - *CIT(E) v Water & Land Management Training & Research Institute (Hyd)* – at the stage of grant of exemption, the question of looking at the gross receipts does not arise. In simple terms, look at the provisions as providing 2 gate passes. 1st gate pass is in S. 12AA. 2nd is under various provisions which deal with exemptions/exclusion of income. Assessee is actually at the outer gate. The very 1st entry pass is denied to it, on a wrong application and understanding of scope of S. 2(15). It is only after an institution is granted registration under S. 12AA that the examination of the gross receipts year after year for the purpose of finding out the eligibility for exemption would arise.
  - *DIT(E) v North Indian Association 393 ITR 206 (Bom)*
  - Issue of trust not being genuine cannot be concluded by merely giving a finding in one year that income earned from activities of trade, business or commerce are in excess of the limit specified in the proviso to s. 2(15)

# Registration u/s 12AA

- S.13(8) – denial of exemption for the year
- Cir No. 21 of 2016 provides that mere receipts on account of business being in excess of limits specified in proviso to s. 2(15) would not result in cancellation of Registration granted under s. 12AA unless there is a change in nature of activities of institution

# Registration u/s 12AA

- Whether absence of winding up clause can be ground for rejection?
  - CAG Report 20 of 2013 – Manual of Office Procedures - in case a' dissolution of a Trust, its net assets after meeting all its liabilities, should not revert to its founder, members, directors, donors etc. but used for its objects. In the absence of dissolution clause, the corpus of Trust is susceptible to misuse at the time of dissolution
  - MoF Reply - in Mumbai & Gujarat, BPTrust Act, 1950 ensure that no amount can go back to any founder etc because properties are transferred with the permission of the Charity Commissioner only to other Trusts having similar objects. Thus inclusion of dissolution clause in the deed is neither necessary nor legal in States where specific legislation bars such reversion
  - CIT v. Tapagachha Sangh Mota, TS-251-HC-2015(Guj) - even in absence of any provision in the trust with respect to “dissolution clause” if on facts the trust is found to be genuine and/or genuineness of the trust is established, the trust may be entitled to registration under Section 12AA
  - DIT(E) v. Vanchhara Tirthadhipati- Chintamani Paraswaprwabhu, 59 taxmann.com 417 (Guj) - when trust deed specifically provides that if the trust is to be closed, property of the trust be handed over to other having similar objects by passing resolution by minimum 2/3rd majority of the trust and unanimous decision of the committee working trustees, Tribunal did not commit any error in granting registration

# Cancellation of Registration u/s 12AA

- S.12AA(4) – earlier, activities being carried out in a manner that s.11 and 12 do not apply due to operation of s.13(1)
- In case where operations result in continuous benefit to trustee, settlor, etc
- Whether applicable where almost entire corpus consists of non-permissible investments (e.g. shares) and majority of income from such investments?
- Wef 1.9.2019 – also where trust has not complied with requirement of any other law [referred to in sub-section (1)(a)(ii)], and order, direction or decree holding that such non-compliance has occurred, has become final
  - Order, direction or decree by authority or court under relevant law
  - When order becomes final after long time (e.g. 10 years), can cancellation be only prospective or can it be retrospective?
- Registration cannot be cancelled retrospectively – ACIT v Agra Development Authority 407 ITR 562 (All), Indian Medical Trust v Pr CIT 414 ITR 296 (Raj)
- Can be with effect from the date cause of action arose – Prathyusha Educational Trust v Pr CIT 416 ITR 129 (Mad)
- ~~Whether voluntary surrender of registration can result in cancellation?~~

# Tax on Accreted Income – s.115TD

- Tax payable at maximum marginal rate – now 42.74%
- On accreted income – difference between aggregate FMV of total assets of trust and liability of trust computed as prescribed – rule 17CB
- Applicable where:
  - Trust has converted into any form not eligible for registration u/s 12AA
  - Trust has merged with any entity other than trust/institution having similar objects and registered u/s 12AA
  - Trust has failed upon dissolution to transfer all its assets to any other trust/institution registered u/s 12AA or university/educational institution/hospital/medical institution referred to in s.10(23C)(iv)/(v)/(vi)/(via) within 12 months from end of month of dissolution
- Deemed conversion where:
  - Registration u/s 12AA cancelled
  - Modified its objects without making fresh application for registration u/s 12AA, or fresh application u/s 12AA has been rejected

# Tax on Accreted Income – s.115TD

- Specified date – date of conversion, merger, dissolution, cancellation of registration, modification of objects
- Tax payable within 14 days from –
  - In case of cancellation of registration, date of receipt of appellate order confirming cancellation, or date of expiry of period for filing appeal if no appeal is filed
  - In case of modification of objects where no application for fresh registration is made, end of previous year
  - In case of modification of objects where application for fresh registration is rejected, date of receipt of appellate order or date of expiry of period for filing appeal if no appeal filed
  - In case of merger, date of merger
  - In case of dissolution where assets not transferred within 12 months, date on which twelve month period expires

# Tax on Accreted Income – s.115TD

- Accreted income to exclude –
  - Asset directly acquired out of agricultural income
  - Asset acquired during period from date of creation till date from which s.12AA registration became effective
  - In cases of dissolution, assets and related liabilities transferred to other trust/institution registered u/s 12AA or section 10(23C)(iv), (v), (vi) or (via)
- Valuation – rule 17CB
- Assets – almost similar to rule 11UA – minor differences
  - Quoted shares – average of high and low, instead of lowest
  - Business – assets (with FMV of bullion, jewellery, precious stones, artistic works, shares, securities and immovable property) less liabilities
- Liabilities – similar to rule 11UA
- Balance sheet to be drawn up on specified date and audited by an accountant

# Disallowance for non-deduction of TDS by Trusts

- Explanation 3 to s.11(1) inserted wef AY 2019-20
- For determining application of income u/s 11(1), provisions of s.40(a)(ia), 40A(3) & 40A(3A) to be considered in the same manner as for business
- S.40(a)(ia) – disallowance of 30% of payments to residents on which TDS deductible but not deducted and paid before due date of filing of return of income – if TDS paid in subsequent year, 30% allowable in subsequent year
- Would also apply to capital expenditure on objects
- Not applicable to payments to non-residents
- Not applicable to utilisation of accumulation u/s 11(2)
- Not applicable to expenses incurred for earning income

# Disallowance for Spending in Cash by Trusts

- S.40A(3) – disallowance of expenditure where payment made to a person in cash exceeding Rs 10,000 in a day
- S.40A(3A) – where provision in earlier year, and payment in cash in subsequent year, expenditure allowed to be added to income of subsequent year
- Would apply to capital expenditure on objects also
- Exceptions provided in rule 6DD
- No exception for payments in natural disaster/calamity areas
- Addition to income of subsequent years – contrary to concept of commercial income
- Would not apply to spending of accumulation u/s 11(2)
- Not applicable to expenses incurred for earning income

# Depreciation on Assets

- Section 11(6) introduced wef AY 2015-16
- *Where any income is required to be applied or accumulated or set apart for application, then, for such purposes, the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this section in the same or any other previous year*
- Applicable if cost of acquisition claimed as an application of income u/s 11 – similar explanation added to section 10(23C)
- Only clauses where income required to be applied/accumulated – not applicable to s.10(23C)(iiiab), (iiiac),(iiiad),(iiiiae)
- Cases where earlier exempt u/c (iiiab)/(iiiac)/(iiiad)/(iiiiae) – now claiming u/c (vi)/(via)?
- Refers to deduction under the same section – exemption earlier claimed u/s 10(23C), now under section 11 or vice versa?

# Depreciation on Assets

- Claiming of cost of acquisition as application of income –
  - Cost may have been claimed in AY 2015-16 onwards or before
  - allowance of depreciation in earlier years is not claim as application of income
  - Applicable if claimed u/s 11(1)(a)
  - What if claimed as application of s.11(2) accumulation?
  - What if acquired as a corpus donation, or out of corpus donation?
  - What if acquired out of funds accumulated u/s 11(1)(a) – 15%?

# Depreciation on Assets

- Whether applicable retrospectively for earlier years
- Recent decision in case of *Rajasthan & Gujarati Charitable Foundation Poona [2018] 402 ITR 441 (SC)*
- Whether amounts to double deduction?
- Whether amendment applicable to Assessment Years prior to AY 2015-16?
- Reference to Bombay HC decision in *CIT v Institute of Banking Personnel Selection 264 ITR 110*:
- *The Tribunal, however, took the view that when the ITO stated that full expenditure had been allowed in the year of acquisition of the assets, what he really meant was that the amount spent on acquiring those assets had been treated as 'application of income' of the Trust in the year in which the income was spent in acquiring those assets. This did not mean that in computing income from those assets in subsequent years, depreciation in respect of those assets cannot be taken into account. This view of the Tribunal has been confirmed by the Bombay High Court in the above judgment [DIT(E) v. Framjee Cawasjee Institute [1993] 109 CTR 463].*

# Depreciation on Assets

- View taken by the Bombay HC correctly states the principles of law
- The legislature, realising that there was no specific provision in this behalf in the Income Tax Act, has made amendment in S. 11(6) of the Act vide Finance Act No. 2/2014 which became effective from the AY 2015-2016
- The Delhi HC has taken the view and rightly so, that the said amendment is prospective in nature
- It also follows that once the assessee is allowed depreciation, he shall be entitled to carry forward the depreciation as well

# Carry Forward of Losses

- Whether excess expenditure incurred in earlier assessment year can be set off against income of subsequent year
- *CIT(E) vs Subros Educational Society [2018] 11 ITR-OL 468 (SC)*

# Corpus Donation to Another Trust

- Insertion of Explanation 2 to s.11(1) by Finance Act 2017 w.e.f. AY 2018-19
- Any amount, credited or paid, out of income from property held under trust to corpus of another trust registered u/s 12AA – not to be treated as application of income
- Similar provision added as twelfth proviso to s.10(23C) – voluntary contribution to corpus of trust registered u/s 12AA
- Explanatory Memorandum to Finance Bill 2017 – Anti Abuse Measures
  - *However, donation given by these exempt entities to another exempt entity, with specific direction that it shall form part of corpus, is though considered application of income in the hands of donor trust but is not considered as income of the recipient trust. Trusts, thus, engage in giving corpus donations without actual applications.*

# Corpus Donation to Another Trust

- Income from property held under trust includes voluntary contributions – s.12(1)
- Both provisions not applicable to contributions made to corpus of s. 10(23C) institutions
  - *ACIT vs Shiksha Samiti [2015] 60 taxmann.com 428 (Delhi - Trib.)*
- Not treated as application – applicable both to application of income in current year as well as in subsequent year under explanation to s.11(1), besides accumulation u/s 11(2)
  - donations to other trusts do not qualify for utilisation of accumulation
- Effectively, corpus donations to be made now need to be funded either out of corpus donations received or out of 15% accumulation

# Option to Spend in Subsequent Year

- Option now to be exercised in prescribed form (Form 9A) w.e.f. AY 2016-17
- Form to be filed online
- Filing within the time allowed u/s 139(1) for filing return of income
- To be reduced from income applied in subsequent year/year of receipt of income

# Accumulation u/s 11(2)

- Accumulation in case of unspent income – for a period of 5 years
- Furnishing of Form No 10 – wef AY 2016-17, before due date specified u/s 139(1)
- Condonation of delay – earlier order delegating powers u/s 119 to CIT – after amendment, CBDT Cir 7 dated 20.12.2018
  - CITs can condone delay in filing of Form No 10 and 9A for AY 2016-17
  - Satisfaction on reasonable cause, and investment in specified modes
- *CIT v Nagpur Hotel Owners Association 247 ITR 201 (SC)* – form can be furnished anytime till the completion of assessment – whether still valid?

# Accumulation u/s 11(2)

- Whether purposes need to be specific or can be general?
- Purposes vs Objects
- DIT(E) v Trustees of Singhania Charitable Trust [1993] 199 ITR 819 (Cal)
  - *Obviously, such long-term accumulation should be for a definite and concrete purpose of purposes any determinate purpose or purposes but for the objects as enshrined in the trust deed in a blanket manner. Accumulation in such a global manner was definitely not in the contemplation of s.11(2) when it is construed in its setting. The assessee's contention that saving and accumulation of income for future application of the same is for the purposes of the trust in the widest terms so as to embrace the entirety of the objects clause of the trust deed would render the requirement of specification of the purpose for accumulation in that sub-section redundant.*
  - *The legislature could not have thought of the need of specification of the purpose if it did not have in mind the particularity of the purpose or purposes falling within the ambit of the objects clause of the trust deed. When s.11(2) requires specification of the purpose, it does so having in mind a statement of some specific purpose or purposes out of the multiple purposes for which the trust stands.*
  - *The very fact that the statute requires the purpose for accumulation to be specified implies such a purpose to be a concrete one, an itemised purpose or a purpose instrumental or ancillary to the implementation of its object or objects. The very requirement of specification of purpose predicates that the purpose must have an individuality.*

# Accumulation u/s 11(2)

- Bharat Kalyan Pratisthan v DIT(E) [2008] 299 ITR 406 (Del)
  - *The trust deed required the trust to utilize its funds for charitable purposes, which were medical relief, education and relief to the poor. In the application seeking exemption, the assessee had specified those three objects. It was not required for the assessee to be more specific with regard to the utilization of the funds.*
  - *It was true that the assessee had mentioned that it was accumulating funds for all the objects for which it was created but plurality of purposes is permitted and if it so happens that an assessee has only three objects or purposes, it may well utilize the funds for all the three objects and purposes.*
- DIT(E) v Envisions [2015] 378 ITR 483 (Kar)
  - *All the three purposes specified by the assessee in Form 10 are for achieving the objects of the trust, and the purposes as well as objects, are both charitable. Merely because more than one purpose have been specified and details about the plan of such expenditure has not been given, the same would not be sufficient to deny the benefit under section 11(2) to the assessee. As long as the objects of the trust are charitable in character and the purpose or purposes mentioned in Form 10 are for achieving the objects of the trust, merely because of non-furnishing of the details, as to how the said amount is proposed to be spent in future, the assessee could not be denied the exemption as is admissible under sub-section (2) of section 11.*

# Accumulation u/s 11(2)

- Followed in CIT v Gokula Education Foundation 394 ITR 236 (Kar) – affirmed in 402 ITR 441 (SC)
- CIT(E) v Bochasanwasi Shri Akshar Purshottam Public cable Trust, [2018] 409 ITR 591 (Gujarat)
  - *Undoubtedly therefore, the statement of purpose for which the income is being accumulated or set apart is one of the requirements which must be satisfied before the assessee can avail the benefit under sub-section (2) of section 11 of the Act. However, that by itself would not mean that any inaccuracy or lack of full declaration in the prescribed format by itself would be fatal to the claimant. The prime requirement of this clause is of stating of the purpose for which the income is being accumulated or set apart... during the course of assessment proceedings, the Assessing Officer called upon the assessee to explain the position in response to which, the assessee in detail pointed out background under which the board of trustees had met, considered the material and eventually passed a formal resolution setting apart the funds for the ongoing hospital projects of the trust and for modernization of the existing hospitals. There was thus a clear statement made by the assessee setting out the purpose for which the income was being set apart.*
- SLP rejected in CIT(E) v Bochasanwasi Shri Akshar Purshottam Public cable Trust, [2019] 105 taxmann.com 97 (SC)

# Accumulation u/s 11(2)

- Online form – requires specification of amount accumulated for each purpose separately – earlier combined accumulation for multiple purposes was permissible – can form override law?
- Modification of amount within purposes specified – whether requires approval of AO u/s 11(3A)
- Taxation u/s 11(3) if not spent within limit of 5 years – in 6<sup>th</sup> year, not 5<sup>th</sup> year

# Taxability of Corpus Donations

- Exempt u/s 11(1)(d) – income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust
- S.2(24)(iia) – Voluntary contributions received by a trust .....
- Till AY 1988-89 – Voluntary contributions received by a trust .... , not being contributions made with a specific direction that they shall form part of the corpus of the trust
- In event of loss of exemption, whether corpus donations taxable?
- *DIT v Basanti Devi and Chakhan Lal Garg Education Trust – ITA 927/2009 dated 23.9.2009 (Del HC) – SLP admitted by SC*
  - AY 2003-04 – Exemption granted later - Capital Receipt and not revenue receipt
  - AY 2002-03 – Similar view taken by ITAT in ITA No 5082/Del/2010 dated 19.1.2011
- *ITO v Gaudiya Granth Anuvad Trust 28 ITR (Trib) 161 (Agra) – capital receipt not taxable*
- *Shri Shankar Bhagawan Estate v ITO 61 ITD 196 (Cal) – AY 1991-92 - position after amendment is similar to position prior to 1973 – corpus donations are not income – reliance on CIT v Trustees of Kasturbai Scindia Commission Trust 189 ITR 5 (Bom)*

# Taxability of Corpus Donations

- *Sree Sree Ramkrishna Samity vs DCIT 64 taxmann.com 330 (Kol)* – a receipt which is by birth, capital in nature, cannot change its character merely for want of registration of society under section 12AA
- *Chandraprabhu Jain Swetamber Mandir vs ACIT 82 Taxmann.com 245 (Mum)* – The corpus donations received by the assessee-trust with specific directions by the donors to be applied towards the specific purpose for which the respective funds were created, would be treated as capital receipts being capital in nature and were not taxable despite fact that the trust was not registered under section 12A/12AA
- *ITO(E) vs Serum Institute of India Research Foundation 169 ITD 271 (Pune)* - Corpus specific voluntary contributions being in nature of 'capital receipt', are outside scope of income under sec. 2(24)(iia) - cannot be brought to tax even in case of trust not registered under section 12A/12AA

# Taxability of Corpus Donations

- ***DIT(E) v Sri Ramakrishna Sewa Ashrama 357 ITR 731 (Kar)***

- Amounts received towards Rural Project Fund
- The word 'Corpus' is used in the context of the Act. One has to understand the same in the context of a capital, as opposed to an expenditure. It is a capital of an assessee; a capital of an estate; capital of a trust; a capital of an institution. Therefore, if any voluntary contribution is made with a specific direction, it shall be treated as the capital of the trust for carrying on its charitable or religious activities, then, such an income falls under section 11(1)(d) and is not liable to tax. Therefore, it is not necessary that a voluntary contribution should be made with a specific direction to treat it as corpus. If the intention of the donor is to give that money to a trust which they will keep it in trust account in deposit and the income from the same is utilized for carrying on a particular activity, it satisfies the definition part of the corpus. The assessee would be entitled to the benefit of exemptions from payment of tax levied.

# Taxability of Corpus Donations

- ***DIT(E) v Sri Ramakrishna Sewa Ashrama 357 ITR 731 (Kar).....***

- What is relevant is (i) intention of the donor and (ii) how recipient-assessee treats the income. If intention of the donor is that the amount/donation given is to be treated as capital and income from that capital has to be utilized for charitable purposes, then the said voluntary contribution is towards part of corpus of the trust. Similarly, if the assessee after receiving the amount, keeps the amount in deposit and only utilises income from the deposit to carry out charitable activities, then also the amount would be a contribution to corpus of the trust and nomenclature in which amount is kept in deposit is of no relevance as long as contributions received are kept in deposit as capital and only income from capital is to be utilized for carrying on charitable and religious activities of the institute/corpus of the trust, for which s.11(1)(d) is attracted
- The law does not require that the direction should be in writing. In the instant case, those people who have paid amounts by way of donations that include the cheque with a letter with a specific direction, which is in compliance with s.11(1)(d). In case if the contributions are made without cheques, i.e., by cash, and oral direction has been issued to the trust to utilize the said fund for the purpose of treating the leprosy patients and if such amounts are credited to the account meant for it, even then the requirement of s.11(1)(d) is complied with.

# Loss of Exemption for late filing of return

- Insertion of clause (ba) in s.12A(1)
- Return to be filed within time specified in s.139(4A)
- Applicable for each year – late filing in one year will not impact subsequent year's exemption
- Before due date u/s 139(1)
  - Loss of accumulation u/s 11(2) if Form No 10 not filed
  - Loss of option to spend in subsequent year if Form No 9A not filed
  - Loss of exemption u/s 11 if income tax return not filed
- What if delay on account of reasonable cause?

# First Proviso to s.2(15)

- If the dominant activity of the institution was not business, trade or commerce, then any such incidental or ancillary activity would also not fall within the categories of trade, commerce or business. The dominant and the prime objective has to be seen – If the dominant and prime objective of the institution, which claims to have been established for charitable purposes, is profit making, whether its activities are directly in the nature of trade, commerce or business or indirectly in the rendering of any service in relation to any trade, commerce or business, then it would not be entitled to claim its object to be a 'charitable purpose'. On the flip side, where an institution is not driven primarily by a desire or motive to earn profits, but to do charity through the advancement of an object of general public utility, it cannot but be regarded as an institution established for charitable purposes - *India Trade Promotion Organisation vs DGIT (E)*, 371 ITR 333 (Del)

# First Proviso to s.2(15)

- The test, therefore, to be applied is whether the activity which is pursued is ancillary to a dominant object or is independent to the main object and forms a separate object in itself. The issue whether a professional institution is not hit by the proviso to section 2(15) will essentially depend upon the individual facts of the case of the institutions wherein, discussing the nature of the individual activities, it will have to be decided whether the same form incidental, ancillary and connected activities and whether the same were carried out predominantly with a profit motive - *Indian Chamber of Commerce vs ITO (E)* 52 taxmann.com 52 (Kol)

# First Proviso to s.2(15)

- The crux of the matter is to understand the object of carrying on the activity which resulted into income; if the object is to simply earn income de hors the promotion of objects for which it was set up, it will fall within the ambit of proviso to section 2(15) and if the object of the activity is to promote the objects for which it was set up, then it will not be caught within the sweep of the proviso notwithstanding the fact that there results some income from carrying out such activity. The core of the matter is to see whether the activity which resulted into some income or loss was carried on with the object of doing some trade, commerce or business, etc., or it was in furtherance of the objects (non-business), etc., for which the assessee was set up. In other words, the predominant object of the activities should be seen as to whether it is aimed at carrying on some business, trade or commerce or the furtherance of the object for which it was set up. If it falls in the first category, then, the case would be covered within the proviso to section 2(15) and, in the otherwise scenario, the assessee will be construed to have carried on its activities of general public utility - *Society of Indian Automobile Manufacturers vs ITO(E)*, 71 *taxmann.com 138 (Del ITAT)*

# First Proviso to s.2(15)

- *DIT(E) v Shree Nashik Panchvati Panjrapole (2017) 81 taxmann.com 375 (Bom)*
- Activity to be considered in the nature of trade, commerce or business would in most cases have to be carried out on a regular basis with a view to earn the profit
- Presence of the profit intent (even if it does not fructify) would normally be a sine qua non for the activity to be considered as trade, commerce or business
- Incidental activity of selling milk which may result in receipt of money, by itself would not make it trade, commerce or business nor an activity in the nature of trade, commerce or business to be hit by the proviso to section 2(15)
- There is no bar in law to a trust selling its produce at market price – this factor alone will not make it an activity of trade, commerce or business or even in its nature

# First Proviso to s.2(15)

- Letting of premises – used for objects, let out when vacant
  - *DIT(E) v Shri Vile Parle Kelavani Mandal* 378 ITR 593 (Bom)
  - *DIT(E) v Lala Lajpatrai Memorial Trust* 383 ITR 345 (Bom)
- Conducting extensive educational program, conducting coaching classes and campus placements, for fees
  - *Institute of Chartered Accountants of India v DGIT(E)* 358 ITR 91 (Del)
- Organizing seminars, conferences and Auto Expo and publications in relation to automobile industry, membership fees
  - *Society of Indian Automobile Manufacturers vs ITO(E)*, 71 taxmann.com 138 (Del ITAT)
- Organising of large exhibitions
  - *India Trade Promotion Organisation v DGIT(E)* 371 ITR 333 (Del) – space for rent for exhibitions
  - *Indian Machine Tools & Manufacturers Association v DIT(E)* 254 Taxman 243 (Bom) – pre proviso to s.2(15)
  - *Credai Bengal v CIT(E)* 52 ITR(T) 161 (Kol)

# First Proviso to s.2(15)

- Conducting Environment Management Centre, Meetings, Conferences and Seminars and issuance of Certificate of Origin
  - *Indian Chamber of Commerce v ITO (E) 52 taxmann.com 52 (Kol)*
- Entrance membership subscription, certification fee, bulletin revenue
  - *DDIT(E) v Council for Leather Exports 70 SOT 574 (Chennai)*
- Providing Banking Technology Services to Banks
  - *Institute for Development and Research In Banking Technology (IDRBT), Hyderabad v ADIT(E) 42 ITR(T) 219 (Hyd)*
- Conducting seminars and advertisement in souvenir
  - *Employers' Federation of Southern India v ADIT(E) 54 ITR(T) 568 (Chennai)*
- Subscriptions from members, sale of publications, Fafai Journal, holding of workshops & conferences, directory receipts and holding of seminar
  - *Fragrance & Flavours Association of India v DDIT(E) 170 ITD 312 (Mum)*

# Investments – s.11(5) rws 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 *Taxman*104 (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)

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## Additional Information

- Type of entity and details of registration
- Details of registration u/s 12AA
- Nature of Objects of the Trust
- Relevant information for applicability of proviso to s.2(15)
- Details of modification of objects
- Break up of voluntary contributions – corpus, cash, anonymous
- FCRA registration and details of foreign contributions received donor wise
- Details of s.80G certificates issued with details of each donor
- Corpus donations not allowable u/s 11(1)
- Details relating to change of purpose of accumulation
- Business undertakings held as property held under trust
- Profits and gains of business u/s 11(4A)
- Accounting Policies and ICDS impact
- Donations received in kind not converted into permissible investments
- Depreciation not allowable u/s 11(6)
- Deduction claimed u/s 10

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- Income for private religious purposes not enuring for benefit of public
- Whether established for benefit of any particular religious community or caste
- Details of specified persons
- Applicability of s.13(1)(c)
- Amount disallowable u/s 11 rws 40A(3)/(3A)
- Applicability of s.269SS, 269ST, 269T
- Details of TDS (similar to tax audit report)
- Details of TDS statements filed and whether all required transactions reported
- Whether liability to pay interest u/s 201(1A)/206C(7)

**THANK YOU**