IFA / CTC – Charitable Trusts Programme

Points for discussion

1. A trust, whose objects are purely educational in nature and whose income is Rs 10 crore, donates Rs 1,00,000 to the PM CARES Fund for Covid Relief. Can its registration u/s 12AB be cancelled?

2. A society, set up in 1975 and registered u/s 12AB, is running schools and colleges for the public. However, as it is a minority run society, the schools and colleges are recognized as minority institutions by the State Government, and it has 50% of its seats reserved for Sindhi students. Can such reservation result in cancellation of registration u/s 12AB?

3. A school where students of all communities study, had received a donation from a donor in 2010 for endowment of a scholarship for 3 students from a particular community securing the highest marks in the ICSE examination each year. Such scholarships are being given every year, along with other scholarships that the school gives to its students. Can the registration of the school be cancelled?

4. The provisions of section 115BBI override the provisions of the proviso to section 164(2). Would the proviso to section 164(2) apply at all to any case?

5. Corpus Donation has to be invested in S. 11(5) modes. The list of S. 11(5) includes immovable property. But if the corpus donation is to be invested in an MRI machine or in an ambulance or if a school wants to invest in audio visual equipments, it seems, it is not permissible. Why not add movable assets to be used for charitable objects also as permissible modes in S. 11(5)? Besides, application from corpus is not to be treated as application any more. So, buying such equipment is neither application nor permitted form of investment! Are there any plans to resolve this issue?

6. Also, if a hospital receives an ambulance or an MRI machine as a Corpus donation (in kind), will the trust be denied S. 11(1)(d) exemption even though the ambulance and MRI machine is held and used exclusively for charitable objects?

7. Consequence of violation or even alleged violation of Rule 17AA could be denial of exemption. Thus, if a trust maintains cash account in the ledger and it does not maintain a "cash book", is it violating the requirement of the Rule and can the exemption be jeopardized.

8. Clause (vi) of R. 17AA(1) is subjective. It says:

    i. *vi) any other book that may be required to be maintained in order to give a true and fair view of the state of the affairs of the person and explain the transactions effected;*

b. If AO feels I ought to have maintained certain book and I have not maintained, my exemption can be denied.

9. The scheme of the regulations today is that – the law wants different silos to be created and maintained for:
    a. Regular income of the current year;
    b. Regular income of the past years;
    c. Corpus Donations; and
    d. Borrowings
    e. giving details of the receipts and corresponding spending from there. It is also provide that expenditure towards the objects will be treated as 'application' only on actual payment basis but income is to be recognized on accrual basis. So, if I have accrued interest on Bank FDs, and I use a portion of corpus towards the objects of the trust, it will now lead to taxing the accrued income if the application falls short of 85%. This is more damaging in 10(23C) cases because there is no parallel of 11(1)-Explanation 1, clause (2)(i) there. Is this a fair treatment for charities?

10. Notification for Rule 17AA has come into force from 10.08.2022. Can we expect the CBDT to clarify that the maintenance of books as per this new rule will not apply for FY 2022-23? This is desirable because Charities are generally not well staffed and they do not have the infrastructure and funds to modify their book keeping systems / programs immediately. Time of 3 to 6 months ought to be given to them.

11. Rule 17AA requires to maintain, inter alia, :

    a. *(d) other documents for maintaining,-*
    b. *(ii)* ***record of income*** *of the person during the previous year, in respect of,-*

        (I) voluntary contribution containing details of name of the donor, address, permanent account number (if available) and Aadhaar number (if available);

    c. This clause requires maintenance of details such as name, address, PAN etc of the donor by the institution which receives such voluntary contribution. This requirement applies to all institutions, including religious trusts which get donations in their donation box. Even section 115BBC of the Act, which deals with anonymous donation does not apply to a wholly religious trust. Do you see a contradiction here?

12. The trust or specified institutions are obliged to maintain books of account and other documents, if its total income exceeds Rs. 2.5 lacs. It is suggested that this limit should be aligned with s. 10(23C)(iiiad) and (iiiae), i.e. where receipts are less than Rs. 5 crores.

13. Books are required to be kept at "registered office". For trusts, there is no concept of registered office. Can it be broad based so as to avoid ambiguity? Include any address that is mentioned on the ROI.

14. Rule 17AA(1)(d)(ix) requires that the trust should maintain records of specified persons, as referred to in sub-section (3) of section 13 of the Act containing details of their name, address, permanent account number and Aadhaar number. Indeed, specified person includes a donor who has, during the life of the trust, donated amount in excess of Rs. 50,000. First of all, this limit is too small and deserves to be increased to at least Rs. 50 lakhs. Secondly, it is extremely difficult to build a database of people who have donated in the past till date. Going forward, of course, responsibility can be cast to maintain such data base.

15. Rule 17AA(1)(d)(iii) requires a trust to maintain records of the application of income containing details, inter alia, of the "objects for which such application is made". Now, such data can, at best, be maintained for direct expenses. But expenses of administrative nature cannot be allocated to any specific object. So, this requirement will have to be read down to apply only to direct project / object related expenses (like distribution of food grains or distribution of books or medicines etc.)

16. While filling up the income tax return for AY 2022-23, in Schedule J, the assessee is required to give details of corpus donations and investments – opening balance as on 1.4.2021, received/treated as corpus during the year, applied during the year, amount invested or deposited back (which was earlier applied and not claimed as application), and closing balance, invested in modes specified in s.11(5) and investments in modes other than specified in s.11(5). These figures automatically get picked up in Part A – BS – Balance Sheet.

    a. The following problems arise from the return:
    b. If there was a shortfall in corpus investments as against the corpus fund at the beginning of the year, which remains the same at the end of the year, the difference gets taxed as income of the year in item 3 of Part B – TI, though it is not income of the year (e.g. a case where there was an opening shortfall, and no corpus donations received during the year)
    c. The list of corpus investments in Part B of Schedule J automatically gets picked up in Part A – BS (Balance Sheet). This does not match with the actual balance sheet figures, as corpus investments made in depreciable fixed assets will be reflected at written down value in the actual Balance Sheet, and not at original cost.

17. Section 11(1)(*d*) has been amended to provide that voluntary contributions as corpus donations would be regarded as exempt under section 11(1)(*d*) only if they are invested or deposited in one or more of the forms or modes specified in section 11(5) maintained specifically for such corpus. Following issues are arising-

    - Charitable or religious institution is in need of funds for general purposes. Corpus donation received earlier is utilised for revenue expenses say after 2 years. Considering the language employed whether so utilised corpus donation is subject to tax which was exempt when corpus donation was received?

18. Hospital maintains a donation box at various location. On the donation box it is mentioned that such donation is for the purpose of corpus of the hospital. Amount so collected is invested as per section 11(5). Since corpus money is collected in donation box, identity of donor is not available.

    a. Whether such collection could be said as anonymous donation?
    b. Whether 15% basic exemption is available on such collection

19. It is provided that any sum payable by any trust or institution shall be considered as application of income in the previous year in which such sum is actually paid by it (irrespective of the previous year in which the liability to pay such sum was incurred by the trust or institution according to the method of accounting regularly employed by it)

    a. Expenditure so provided in books of accounts is actually paid after the end of financial year but before due date of filing return of income. Can trust or institution claim such application in the year in which it has provided?

20. Explanation 5 to section 11(1) provides that excess application would not be allowed to be adjusted against the income of subsequent year.

a. Whether to be applied prospectively or it would be applicable even in respect of the brought forward excess application of the earlier assessment years prior to assessment year 2022-23. For example, the excess application under the erstwhile provisions for the assessment year 2021-22 whether would be eligible for set off against income of the assessment year 2022-23 requires clarity.

21. Section 11(1) (d) is amended by the Finance Act, 2021 to provide that unless the donation received as corpus are not invested or deposited in one or more of forms or modes specified in section 11(5) maintained specifically for such corpus its shall not qualify as corpus and hence not exempt. Further, the explanation (4) inserted to section 11(1) to provide that any application for charitable or religious purposes out of corpus will not qualify as application of income under clause (a) or (b) of section 11(1). However, the amount so not qualified as application shall qualify as application in the year in which amount is invested or deposited back into one or more modes specified in section 11(5) of the Income Tax Act.

In the light of above amendments clarification required for following issues:

1. Section 11 (5) also permits investments in immovable property. Please clarify whether any payment made towards creation of immovable property out of such corpus would qualify as investment, and such immovable property remains under construction for a period of 3 years.
2. The amendment is effective from AY 2022-23, what will be the consequences in case of application out of the corpus held prior to the amendments (old corpus?)
3. In case Corpus received in AY 2022-23 is invested in FDRs and subsequently say in AY 2024-25 such FDS are matured and not invested but utilized for funding the purchase of equipment used for fulfilling the objects of the Trust. In this case acquisition of equipment will not qualify as an application in AY 2024-25. Now, as per amended provision corpus donation qualifies as deduction only when kept invested. Does this mean corpus will now be taxable to the extent not invested? If yes, in the year of receipt or in the year in which there is shot fall in investment?