

Taxability of AOP, BOI, Local Authority and Trust



- CA Anil Sathe

What constitutes an AOP?

- Association of persons' has not been defined in the Income-tax Act. Nevertheless, the Hon'ble Supreme Court in the case of **CIT v. Indira Balkrishna (1960) 39 ITR 546 (SC)** has defined it as:

*“Association of persons means an association in which **two or more persons** join in for a **common purpose or common action** to **produce income, profits or gains**”*

- An association of persons may consist of non-individuals (for e.g. companies, firms, etc.)
- In order to acquire the status of an AOP, the persons must join in for a **common purpose or action** and the **object of the association** must be to **produce income**.

Formation of an AOP

- For the formation of an AOP the association need **not necessarily** be on the **basis of a written contract**; consent and understanding may be presumed by way of conduct.
- However, co-owners, co-heirs or co-legatees do not constitute an AOP in respect of the income of the joint or common asset by reason only of their jural relationship. But if they associate themselves with the **objective of earning income**, they **constitute an AOP** for assessment purposes.
- In order to constitute as an AOP, there must be **joining together** in a **common purpose** or in a **common action**, the object of which is to produce income, profits and gains.

Example

- If 2 or more heirs succeed to the shares in a company / government / deposits, the dividend or interest arising therefrom would accrue to the heirs together.
- But in such a case there would have been **no act of management** done by heirs in receiving the dividend / interest.
- The **mere keeping of the shares or securities or deposits by the heirs in their joint names & receipt by them jointly do not constitute an AOP / BOI**, unless the association so called has done some act or performed some operations together, which has helped to produce the income in question.

AOP VS BOI

- An AOP **may consist of non-individuals**; but a BOI has to consist only of **human beings**.
- The word 'body' would require an association for some common purpose or for a common cause or there must be a unity under some common tie or occupation.
- A mere collection of individuals **without a common tie** or **common aid** cannot be taken to be a BOI falling under Section 2(31) of the Income-tax Act, 1961.

Tax liability of an AOP and a BOI

- Total income of the AOP/BOI is taxable either at the rates applicable to an individual, or at the Maximum Marginal Rate or at a Rate Higher Than Maximum Marginal Rate.
- **Interest paid by the AOP/BOI to a member** (on loan, capital, borrowing) will **not be allowed as a deduction** from the income of the AOP/BOI [Section 40(ba)].
- Salary or other remuneration paid to a member is not deductible even if it is a case of **actual services rendered** by him.

Explanations to Sec. 40(ba)

- **Explanation 1** - Where interest is paid by an AOP or BOI to any member thereof who has also paid interest to the AOP or BOI, the amount of interest to be disallowed under this clause shall be **limited to the amount** by which the **payment of interest by the AOP or BOI to the member exceeds the payment of interest by the member to the AOP or BOI**.
- *Example - if an AOP/BOI pays interest of Rs. 40,000 to a member A and receives Rs. 13,000 from the same member as interest on withdrawals, the amount which is to be disallowed as deduction u/s 40(ba) is Rs. 27,000. If, on the other hand, an AOP/BOI pays interest of Rs. 5,000 to a member and that member pays interest of Rs. 8,000 to the AOP/BOI in the same previous year, no disallowance of interest is required to be made under section 40(ba).*

Explanations to Sec. 40(ba)

- *There is, however no provision in the Act permitting an adjustment of **interest received from a member against interest paid to other members.***
- Where an AOP/BOI pays interest to three of its members and receives interest from the fourth member, the entire amount of interest paid to the three members will be disallowed under section 40(ba), while interest received from the fourth member is taxable as income in the hands of the AOP/BOI.

Explanations to Sec. 40(ba)

- **Explanation 2** - where an individual is a member in an AOP/BOI on behalf, or for the benefit of any other person, **interest paid by the AOP/BOI to such individual**, otherwise than as member in a representative capacity, is not taken into account, for the purpose of Section 40(ba).
- It is also provided that in such cases, interest paid by the AOP/BOI to such individual, as member in a representative capacity and interest paid by the AOP/BOI to the person, so represented, is taken into account for the purposes of Section 40(ba).

Explanations to Sec. 40(ba)

- **Explanation 3** - where an individual is a member in AOP/BOI (otherwise than in a representative capacity), **interest paid by the AOP/BOI to such individual** will not be taken into account for the purpose of Section 40(ba), if such interest is received by him, on behalf, or for the benefit, of any other person.
- *Example - X, a member, receives Rs. 10,000 from the AOP/BOI as interest on deposit made by his minor son; Rs. 10,000 will be allowed subject to the provisions of sections 36(1)(iii), 40(a)(i) and 40A(2) while computing income of the AOP/BOI. The interest will however be includible in the income of X in terms of Sec. 64(1A).*

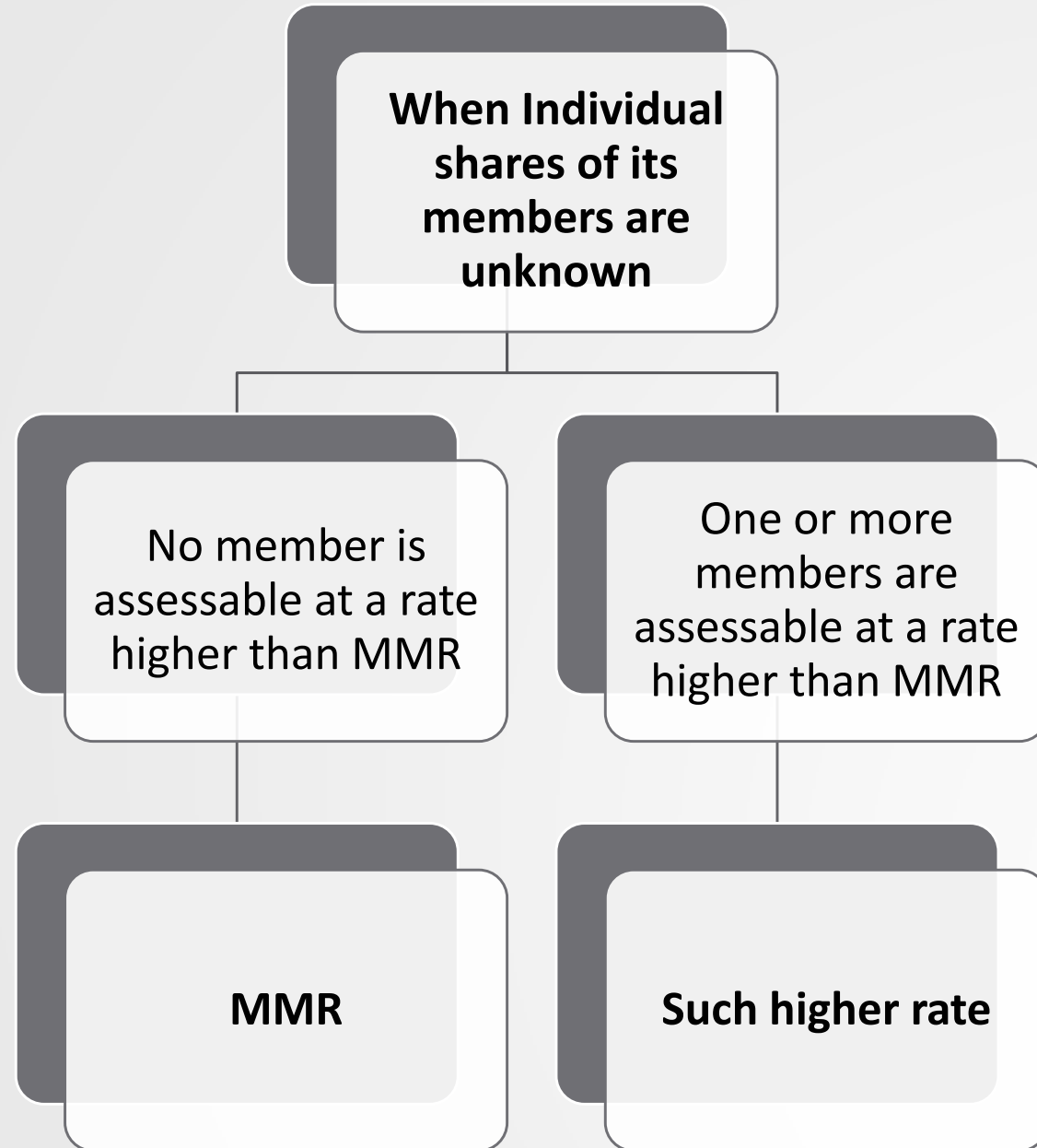
Sec. 167B

*“(1) Where the individual shares of the members of an association of persons or body of individuals in the whole or **any part** of the income of such association or body are **indeterminate** or **unknown**, tax shall be charged on the total income of the association or body at the **maximum marginal rate**;*

***Provided** that, where the total income of any member of such association or body is chargeable to tax at a rate which is **higher than the maximum marginal rate**, tax shall be charged on the total income of the association or body at **such higher rate**.”*

- The proviso will apply in a situation where a **foreign company** is a member of the AOP.

Tax Rates applicable for an AOP/BOI



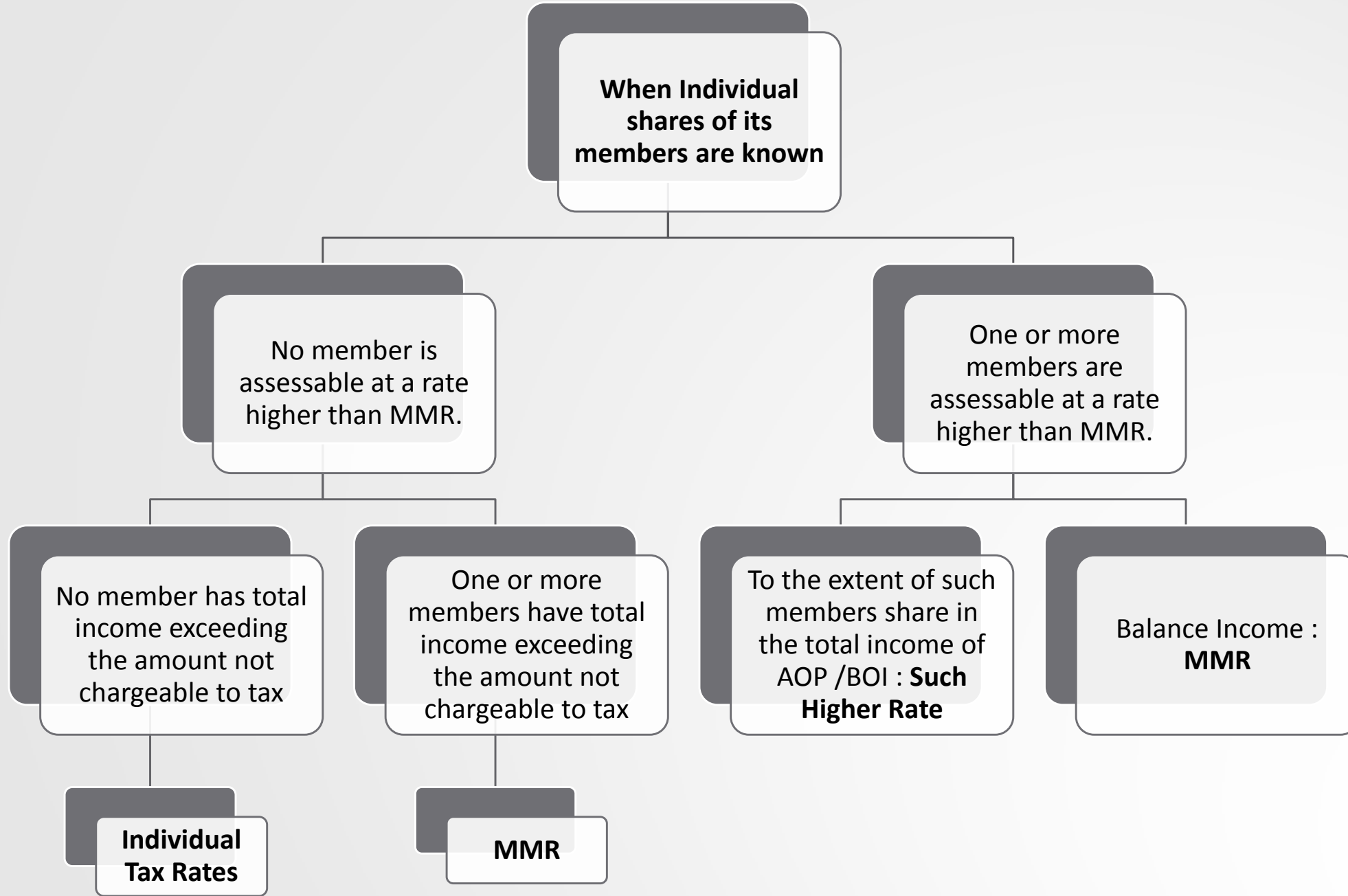
Sec. 167B

“(2) Where, in the case of an association of persons or body of individuals as aforesaid [not being a case falling under sub-section (1)]-

*(i) the total income of any member thereof for the previous year (excluding his share from such association or body) **exceeds the maximum amount which is not chargeable to tax** in the case of that member under the Finance Act of the relevant year, tax shall be charged on the total income of the association or body at the **maximum marginal rate**;*

*(ii) any member or members thereof is or are chargeable to tax at a rate or rates which is or are **higher than the maximum marginal rate**, tax shall be charged on **that portion** or portions of the total income of the association or body which is or are relatable to the share or shares of such member or members **at such higher rate** or rates, as the case may be, and the **balance of the total income** of the association or body shall be taxed at the **maximum marginal rate**”.*

Tax Rates applicable for an AOP/BOI



Important Points

- MMR: Maximum marginal rate = 30 + 15% + 4% = 35.88% (A.Y. 2019-20)
- Individual share of members in AOP/BOI shall be deemed to be unknown if such shares are unknown **at the time of formation** of AOP/BOI or at any other time thereafter.
- While taking total income of a member, in order to consider whether it exceeds the maximum amount not chargeable to tax for the above purposes, his **share in total income of such AOP/BOI shall be ignored.**

Method of Computing Share of a Member of an AOP/BOI

Section 67A : Method of Computing Share of a Member of AOP / BOI

Step 1

Total Income of AOP / BOI (before Chapter VI-A)
Less: Remuneration / interest to members
Distributable income

Step 2

Share of member in distributable income
Add: remuneration/interest from AOP/BOI
Less: Interest to AOP/BOI by member
Member's share

The share of the member in the income or loss of AOP/BOI shall be apportioned under the various heads of income in the same manner in which the income or loss of AOP/BOI has been determined under each head of income.

Taxation of Member's Share u/s 86

Taxation of Member's Share

If AOP / BOI is taxed at MMR / higher rate

Share of member shall not be included in his total income.

If AOP / BOI is taxed at rates applicable to an Individual (i.e. normal tax rates)

Share of members shall be included in his total income but subject to the provisions of Sec. 86

If no Income tax is chargeable on total income of AOP / BOI

Share of members shall be fully charged to tax .

Sec. 86:

Tax payable by member without Education Cess X Members share in AOP/BOI u/s 67A

Total income of member (including share from AOP/BOI)

Discretionary Trust

- When the shares of the beneficiaries are **indeterminate**, the income cannot be assessed in the hands of the beneficiaries.
- Tax shall be charged on relevant income at **maximum marginal rate** in the hands of Trustees.
- If the case falls into exceptions provided in **proviso to Sec. 164(1)**, then tax shall be charged on relevant income as if it were the total income of an AOP.

Taxability of a Private Discretionary Trust

- **Section 161(1A)** - business income taxable at MMR.
- The rationale behind this is explained in the **CBDT Circular No. 387** dated **06/07/1984**. It was stated that:

*“Trustees of a trust are ordinarily **not expected to carry on any business**, because implicit in the nature of business is the possibility of incurring loss and no prudent trustee would like to risk the trust’s property in business venture. However, increasingly it has been seen that taxpayers are **conducting business through the medium of trusts** and the arrangements are mainly entered for the **purpose of tax avoidance**, the main object being to avoid payment of the tax firm tax which would become payable if the business is carried on in partnership”*

Taxability of a Private Discretionary Trust

- **Section 164(1)** - any income which is not specifically receivable on behalf of or for the benefit of any person or where the individual shares of the person on whose behalf or for whose benefit such income or such part thereof is receivable are **indeterminate or unknown**, the tax shall be charged at **MMR**.

Exceptions:

- none of the beneficiaries have any other income chargeable under the Act exceeding the maximum amount not chargeable to tax in the case of an AOP or is a beneficiary under any other trust;
- where the trust is declared by a will and the trust is the only trust so declared;
- the relevant income is receivable by trustees on behalf of a provident fund, superannuation fund, gratuity fund, pension fund or any other fund created bonafide by a person carrying on a business or profession exclusively for the benefit of the persons employed in such business or profession.

In such cases, tax shall be charged as if the **same were the total income of AOP**.

Sec. 164A – Oral Trust

The provisions were introduced by the Finance Act, 1981 w.e.f. 1/4/1981 and the provisions as introduced has been explained in **CBDT Circular No. 308 dated 29/06/1981**. The effect of the provisions are:

- An oral trust, the terms of which are **not subsequently recorded in writing and intimated to the AO** in the specified manner, will be chargeable to tax at the **MMR** in all cases; and
- An oral trust, the terms whereof are subsequently recorded in writing and intimated to the AO in the specified manner, will be chargeable to income-tax at the MMR rate in cases where the shares of the beneficiaries are **indeterminate or unknown**. Where however the shares are determined, the tax would be recovered in the **same manner as the beneficiaries**.

Sec. 167B applicability to a Public Charitable Trust

- Take an instance where a charitable trust performs activities for the benefits of the general public at large (i.e. it is a public charitable trust), but is not registered u/s 12A of the Income Tax Act, 1961 and hence cannot claim the exemption u/s 11.
- The question for consideration is that:

Whether the trust would be taxable at the Maximum Marginal Rate as per the provisions laid down in Sec. 167B (since the share of the members is indeterminate) of the Income Tax Act, 1961?

Analysis

- Sec. 167B states that *“where the individual shares of the members of an association of persons or body of individuals in the whole or any part of the income of such association or body are indeterminate or unknown, tax shall be charged on the total income of the association or body at the maximum marginal rate”*.
- In my view, a public charitable trust is created for either the benefit of public at large or for benefit of a specific section of public. In both the aforesaid cases, the persons/individuals for whom the trust is created do not have any “vested share” in the income of the trust. Therefore, the question of the share being indeterminate or unknown does not arise.
- However, a contrary view has been held by the Bangalore Tribunal in the case of **Basil Mendes Memorial Educational & Charitable Trust VS ITO 173 ITD 390**, wherein the income of the public charitable trust was taxed at MMR.

Computation of Income of a Charitable Trust not registered u/s 12A

- If the charitable trust is not registered u/s 12A of the Income Tax Act, 1961, then the **provisions of Sec. 14** would apply for the purpose of computation of income of the trust.
- The income of the trust would normally fall under the residuary head of income i.e. **“Income from Other Sources”**.
- Therefore, the provisions of **Sec. 56** will trigger and hence, the trust would not be entitled to deductions of the expenses incurred unless it is *“laid out or expended wholly and exclusively for the purpose of **making or earning such income**”* as per Sec. 57.
- This would put the trusts into a great jeopardy as the **gross income would become chargeable to tax** rather than the net income.

Sec. 56(2)(x) issue qua Trust

Sec. 56(2)(x) was brought with an intent to prevent the practice of receiving the sum of money or the property without consideration or for inadequate consideration, and to provide that **receipt of the sum of money** or the **property** by **any person** without consideration or for inadequate consideration in excess of Rs. 50,000 shall be chargeable to tax in the hands of the recipient under the head "*Income from other sources*".

Now, **proviso to Sec. 56(2)(x)** of the Income Tax Act, 1961 specifically states that "*this clause shall not apply to any sum of money or any property received:*

...from an individual by a trust created or established solely for the benefit of relative of the individual"

Local Authority

As per Sec. 10(20) of the Income Tax Act, 1961, “*the income of a **local authority** which is chargeable under the head "**Income from house property**", "**Capital gains**" or "**Income from other sources**" or from a trade or business carried on by it which accrues or arises from the **supply of a commodity or service** (not being water or electricity) **within its own jurisdictional area** or from the **supply of water or electricity within or outside its own jurisdictional area**” is not chargeable to tax i.e. it is exempt.*

Local Authority Meaning

- The term “Local Authority” has not been defined in an inclusive manner but rather in an exhaustive manner.
- The term has been defined in the Explanation to Sec. 10(20) as:

“For the purposes of this clause, the expression "local authority" means—

(i) Panchayat as referred to in clause (d) of article 243 of the Constitution; or

*(ii) Municipality as referred to in clause (e) of article 243P of the Constitution;
or*

(iii) Municipal Committee and District Board, legally entitled to, or entrusted by the Government with, the control or management of a Municipal or local fund; or

(iv) Cantonment Board as defined in Section 3 of the Cantonments Act, 1924 (2 of 1924)”

Sec. 10(20A)

- Prior to its omission vide Finance Act, 2002, clause (20A), as inserted by the Finance Act, 1970, w.r.e.f. 1-4-1962, read as under:

*“(20A) any income of **an authority** constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for **housing accommodation** or for the purpose of **planning, development, or improvement of cities, towns and villages, or for both**” .*

- Thus, whether the local authorities engaged in the function of municipality (like NOIDA, Urban Improvement Trust) would be entitled to claim the exemption of Sec. 10(20) of the Income Tax Act, 1961?
- **New Okhla Industrial Development Authority (NOIDA) VS Chief Commissioner of Income-tax 406 ITR 178 SC and ITO VS Urban Improvement Trust 409 ITR 1 (SC)** - The Supreme Court has held in the aforesaid decisions that these are not local authorities in the context of Sec. 10(20).

Sec. 10(46)

- The government, by notification in official gazette, notify the specified income which would be exempt for a body or authority.
- Sec. 10(46) reads as under:

“any specified income arising to a body or authority or Board or Trust or Commission (by whatever name called), which—

(a) has been established or constituted by or under a Central, State or Provincial Act, or constituted by the Central Government or a State Government, with the object of regulating or administering any activity for the benefit of the general public;

(b) is not engaged in any commercial activity; and

(c) is notified by the Central Government in the Official Gazette for the purposes of this clause”

Sec. 10(46)

- There are several notifications which have been notified by the Government so far; out of which few are as follows:
 - **NOTIFICATION NO. SO 1538(E) [NO.34/2019]** – Telangana State Electricity Regulatory Commission
 - **NOTIFICATION NO. SO 552(E) [NO.6/2019]** – Joint Electricity Regulatory Commission
 - **NOTIFICATION NO. SO 1397(E) [NO.24/2019]** – Andhra Pradesh Electricity Regulatory Commission
 - **NOTIFICATION NO. SO 1537(E) [NO.33/2019]** – Mysore Palace Board
 - **NOTIFICATION NO. SO 1539(E) [NO.35/2019]** – Kerala Headload Workers Welfare Board

Sec. 196

- The term “Government” used in Sec. 196 has nowhere been specifically defined in the Income Tax Act, 1961.
- Sec. 196 of the Income Tax Act, 1961 reads as under:

“Notwithstanding anything contained in the foregoing provisions of this Chapter, no deduction of tax shall be made by any person from any sums payable to –

(i) the Government...”

- Entities completely owned by State or Central Government would not fall under the ambit of Sec. 196 since they won't be classified as Government as they are separate legal entities.
- As per **Sec. 3(23)** of the **General Clause Act, 1897**, *“Government shall include both the Central Government and any State Government”*.

Charitable Trust

- Some of the issues arising in the case of taxation of Public Charitable Trusts are as under:
 - Sec. 11(1)(a) – whether a standard deduction ?
 - Whether a trust can carry forward and set off the losses?
 - Consequences of delay in filing Form No. 9A and Form No. 10
 - Delay in filing the Income Tax Return
 - Sale of Capital Assets by a Charitable Trust – applicability of Sec. 50C?
 - Can a trust do charitable activities outside India?

Sec. 11(1)(a)

- At the outset, it must be emphasized that Sec. 11(1)(a) is **NOT** a standard deduction available to charitable trusts.
- A plain reading of Sec. 11(1)(a) is: *“the following income shall not be included in the total income of the previous year of the person in receipt of the income:*

*(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is **not in excess of fifteen per cent** of the income from such property”*

Carry Forward and Set Off Provisions

- Referring to the case of *CIT VS Shri Plot Swetamber Murti Pujak Jain Mandal 211 ITR 293 (Guj. HC)*, it was held therein that where expenses for charitable and religious purposes have been **incurred in earlier year** and said expenses are **adjusted against income of a subsequent year**, income of that year can be said to have been applied for charitable and religious purposes in year in which **expenses has been adjusted**.
- The word "**applied**" has been defined in the aforesaid judgment to mean "**to put to use**" or "**to turn to use**" or "**to make use**" or "**to put to practical use**".
- It must be remembered that the word "deficit" and the carry forward thereof is **not like** the one mentioned in **Sec. 72**.

Delay in filing Form No. 9A/10

- **Clause 2 of Explanation to Sec. 11(1)** states that *“if, in the previous year, the income applied to charitable or religious purposes in India **falls short of eighty-five per cent** of the income derived during that year from property held under trust, or, as the case may be, held under trust in part, by any amount—*

*(i) for the reason that the **whole or any part of the income has not been received during that year, or***

(ii) for any other reason...

*...option of the person in receipt of the income (such option to be exercised **before the expiry of the time allowed under sub-section (1) of section 139** for furnishing the return of income, in such **form and manner** as may be prescribed) be deemed to be income applied to such purposes during the previous year in which the income was derived...”*

Delay in filing Form No. 9A/10

- **Sec. 11(2)** also states that “where **eighty-five per cent** of the income referred to in clause (a) or clause (b) of sub-section (1) read with the Explanation to that sub-section is **not applied**, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income **so accumulated or set apart shall not be included** in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:—

(a) such person furnishes a statement in the **prescribed form** and in the prescribed manner to the Assessing Officer,...

...(c) statement referred to in clause (a) is furnished on or **before the due date** specified under **sub-section (1) of section 139** for furnishing the return of income for the previous year”

Delay in filing Form No. 9A/10

- As per **Rule 17** of Income Tax Rules, 1962:
 - *“option to be exercised in accordance with the provisions of the **Explanation to sub-section (1) of section 11** in respect of income of any previous year relevant to the assessment year beginning **on or after the 1st day of April, 2016** shall be in **Form No. 9A** and shall be furnished **before the expiry** of the time allowed under **sub-section (1) of section 139**.*
 - *Statement to be furnished to the Assessing Officer or the prescribed authority under **sub-section (2) of section 11** shall be in **Form No. 10** and shall be furnished **before the expiry** of the time allowed under **sub-section (1) of section 139**.*
 - *The option in Form No. 9A and Form No. 10 shall be furnished **electronically**”.*

Conditions to be complied with for eligibility of Exemption u/s 11

- From **Assessment Year 2018-19** onwards, the return of income in the prescribed Form i.e. ITR-7 has to be **e-filed** on before the due date mentioned under **section 139(1)** for claiming the exemption u/s 11(1) – **Sec. 12A(1)(ba)**
- Moreover, the Audit report in **Form No. 10B** has to be **e-filed** along with the return for **claiming the benefit** of deemed application under Section 11(1) – **Sec. 12A(1)(b)**
- **Form No. 9A/10** has to be e-filed before due date mentioned under Sec. 139(1) for **claiming the benefit of accumulation** under the **explanation to Sec. 11(1) and Sec. 11(2)** respectively.

Sale of Capital Assets

- A question arises whether in a case of a charitable trust which has sold any property during the year, whether the **provisions of Sec. 50C** are applicable?
- In this regard, it may be noted that Sec. 11(1A) of the Act specifically deals with the capital asset held by a charitable trust. Thus, the calculation has to be done as per **the provisions of Sec. 11(1A) and Sec. 50C cannot be invoked.**
- It is also to be noted that Section 50C **does not start with a non-obstante clause** and therefore these provisions are not applicable in a case where there are specific provisions dealing with the computation; as in case of charitable trust.

Does Expenditure/Application outside India qualify for Exemption?

- A bare reading of Sec. 11 would imply that a trust can do charitable activities for **the purposes in India**.

- Sec. 11 specifically says that:

*“...income derived from property held under trust wholly for **charitable or religious purposes**, to the extent to which such income is applied to such **purposes in India**; and, where any such income is accumulated or set apart for application to such **purposes in India**...”*

- Explanation 1 to Sec. 11(1) also mentions:

*“the income applied to charitable or religious **purposes in India** falls short of eighty-five per cent of the income derived during that year from property held under trust”*

Does Expenditure/Application outside India qualify for Exemption?

- In the case of **CIT VS State Bank of India 1987 (4) TMI 41 - BOMBAY HIGH COURT** it was held that simply a clause in the trust deed which permitted application outside India without there being actual spending outside India would not violate Section 11(1)(c) of the Income-tax Act.
- In **CIT VS Trustees of Nizam's religious endowment trust 1975 (4) TMI 11 - ANDHRA PRADESH HIGH COURT**, it was held that in case of a trust having activities outside India, the exemption will be denied to the extent of income applied outside India.

Various Precautions to be taken by Charitable Trusts

1. Explanation 2 to Sec. 11(1):

*“Any amount **credited or paid**, out of income referred to in clause (a) or clause (b) read with Explanation 1, to any other trust or institution registered under section 12AA, being **contribution** with a specific direction that they shall form part of the **corpus of the trust or institution**, shall **not be treated as application of income** for charitable or religious purposes”*

- Thus, a mere **contribution by a charitable trust to another charitable trust**, being contribution with a specific direction that they shall form part of the corpus would **not amount to application** of income.
- This was introduced because 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.

Various Precautions to be taken by Charitable Trusts

2. Explanation to Sec. 11(2):

*“Any amount credited or paid, out of income referred to in clause (a) or clause (b) of sub-section (1), read with the Explanation to that sub-section, which is **not applied, but is accumulated or set apart**, to any **trust** or institution **registered under section 12AA** or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, shall **not be treated as application of income** for charitable or religious purposes, either during the **period of accumulation or thereafter**”*

Various Precautions to be taken by Charitable Trusts

3. Explanation 3 to Sec. 11(1):

*“For the purposes of determining the amount of application under clause (a) or clause (b), the provisions of sub-clause (ia) of clause (a) of section 40 and sub-sections (3) and (3A) of section 40A, shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head **Profits and gains of business or profession**”*

- In order to encourage a **less cash economy** and to **reduce the generation and circulation of black money**, it was proposed to insert a new Explanation to the Sec. 11 vide **Finance Act, 2018**.
- Before this amendment, there were no restrictions on payments made in cash by charitable or religious trusts or institutions. There were also no checks on whether such trusts or institutions followed the provisions of TDS. This had led to lack of an audit trail for verification of application of income.

Various Precautions to be taken by Charitable Trusts

4. Sec. 12A(1)(ab):

*“the person in receipt of the income has made an application for registration of the trust or institution, in a case where a trust or an institution has been granted registration under section 12AA or has obtained registration at any time under section 12A and, subsequently, it has adopted or undertaken **modifications of the objects which do not conform to the conditions of registration**, in the prescribed form and manner, within a period of **thirty days from the date of said adoption or modification**, to the Principal Commissioner or Commissioner and such trust or institution is registered under section 12AA”*

- Therefore, a **fresh registration** shall be obtained after the objects of the trusts are modified.

Various Precautions to be taken by Charitable Trusts

5. Sec. 12A(1)(ba):

“the person in receipt of the income has furnished the return of income for the previous year in accordance with the provisions of sub-section (4A) of section 139, within the time allowed under that section”

- This clause was inserted vide **Finance Act, 2017** and was made in order to make it **mandatory for the trusts to file their return** within the due date prescribed to claim exemption u/s 11.
- Moreover, the time limit prescribed under Sec. 139(4A) gives a reference to Sec. 139(1); so the trust has to file a return within time limit prescribed u/s 139(1).
- So, if the total income of the trust (without giving effect to the provisions of Sec. 11 and 12) exceeds the maximum amount not chargeable to tax, the trust has to get **its books of accounts audited as well as file its return of income.**

THANK

YOU!