

Taxation of Charitable Trust and Computation of Income

Pune Branch of WIRC of ICAI- 26th March, 2023

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Points For Discussion

- Charitable Purpose
- Taxation w.r.t to receipts from Advancement of other objects of general public utility
- Relevant provisions for claiming exemptions [11, 10(23C)]
- Basic taxation structure (85% application, accumulation, etc)
- Detail discussion on 10(23C) related provisions
- Provisions related to Accumulation
- Deemed Application (difference between deemed application and Accumulation)

Points For Discussion

- Gross Receipts Vs. Net Receipts
- Depreciation on capital assets
- Set-off and carry forward of excess application/ deficit
- Disallowances- TDS, 40A(3)
- Taxation on sale of capital Asset
- Taxation of Anonymous Donation
- Taxation of Corpus Funds.

Points For Discussion

- Taxation of unregistered charitable trusts- Tax Rates, ITR form, Corpus Donation
- Transaction with Related Persons
- Taxation u/s 115TD
- Retrospective applicability of registration (omitted from 01.04.2023)
- Limit for cash donation (from donor and done perspective)

Charitable Purpose

Section 2(15)- "charitable purpose" includes

- relief of the poor,
- education (*has wide meaning- but restricted to formal education-SC*)
- yoga,
- medical relief,
- preservation of environment (including watersheds, forests and wildlife) and
- preservation of monuments or places or objects of artistic or historic interest, and
- the advancement of any other object of general public utility

The advancement of any other object of general public utility

Such Object shall not be a charitable purpose, if it involves the carrying
-on of any activity in the nature of trade, commerce or business, or
-any activity of rendering any service in relation to any trade, commerce
or business

for a Cess or fee or any other consideration,

irrespective of the nature of use or application, or retention, of the
income from such activity

The advancement of any other object of general public utility

Exception

-such activity is undertaken in the course of actual carrying out of such object AND

-the aggregate receipts from such activity or activities during the previous year, do not exceed 20% of the total receipts

As per section 13(8)- in the year in which such receipts are more than 20%-No Exemptions- One year Exemption- Another year No Exemption

However, FA 2022- Net Receipts be taxed (Clarificatory- Memorandum)

Relevant provisions for claiming exemptions

Any person deriving income from property held wholly under trust for charitable or religious purpose- Section 11 (12,12A,12AB,13)

-Exempt to the extent Applied to purposes In India & Accumulated (upto 15%)

University or other educational institution -solely for education & Not for profit

-Substantially Financed (above 50%) by Gov- 10(23C)(iiiab)

-Aggregate annual receipts of PERSON below 5 Crore - 10(23C)(iiid) [5cr to be computed all institutions put together -01.04.2022- Earlier per institution 1 Cr]

-other (not covered above)- 10(23C)(vi)

Relevant provisions for claiming exemptions

Hospital or other medical institution -solely for philanthropic purpose & Not for profit

-Substantially Financed by Gov- 10(23C)(iii ac)

-Aggregate annual receipts of PERSON below 5 Crore - 10(23C)(iii ae)

-other (not covered above)- 10(23C)(via)- Approval required

Any other fund or institution-charitable purpose-national/state importance-10(23C)(iv)- Approval required

Any trust or institution-Wholly public religious Or Wholly public religious & charitable purpose- 10(23C)(v)- Approval Required

Taxation Mechanism

For claiming exemption u/s 11, 10(23C)(iv)(v)(vi)(via)

- Minimum 85% of income is to be applied towards purpose in India (Either revenue or capex) **i.e., income upto 15% can be Freely Accumulated or set apart** for application for such purpose in India

(Addl. CIT Vs. ALN Rao Charitable Trust 1996 AIR 344- 15% is exempt without any condition)

- **Extra Accumulation - File Form No 10**
- **Deemed to be applied [not in 10(23C)]- File Form No 9A**

Accumulation of Income

Accumulation (over and above 15%) is allowed if

- Accumulated funds are invested as per 11(5)- various modes are provided-5 years
- Form 10 is filled - before 139(1) -(specifying the purpose- Specific Vs. General)
- Against- for a definite and concrete purpose & mere reproduction of objects of the trust not sufficient. DIT(E) v Trustees of Singhania Charitable Trust [1993] 199 ITR 819 (Cal) & Cotton Textiles Export Promotion Council v. First ITO [1983] 4 ITD 642 (Mum Trib)
- Favour- Plurality of purposes is permitted & an assessee may utilize the funds for some or all of the objects of the trust. Sufficient to state that amount would be utilized for objects of the trust in general DIT(E) v Envisions [2015] 378 ITR 483 (Kar) & Bharat Kalyan Pratisthan v DIT(E) [2008] 299 ITR 406 (Del) & Mitsui & Co. Environmental Trust, 211 CTR 352 (Del)

Accumulation of Income

Accumulated income will be taxed if Accumulated income is

- credited/paid to other registered trusts
- applied to other purpose
- not invested or ceases to be invested as per 11(5)
- Not utilized for the purpose for which it was accumulated or set apart during the period

Then it will be treated as income in the year of default or 6th year as applicable.

However, in case beyond control-Application can be made to AO seeking permission to apply accumulated income for purpose other than for which it was accumulated. But in no case AO can allow paying the accumulated money to another registered trust, except during dissolution.

Deemed Application

Only Allowed for claiming exemption u/s 11 and not u/s 10(23C)

-Income was derived but not received- Deemed Application, if said income is applied in the year of receipt or immediate next year- otherwise treat it as income in year following the year of receipt

-Any other reason- Deemed Application- if said income is applied in year following the year of receipt -otherwise treat it as income in the year following the year of receipt

Then, upon filing form 9A- income to that extent will be deemed to be applied in the year in which it is derived and same income will not be considered as application of income in the year in which it is applied.

Restriction on certain Applications

- If Income received is contributed as corpus of any other registered trust etc. then this wont be considered as application. *Donation can be given for application towards objects. (So, corpus fund be used to contribute Corpus of another trust.- This is one of the reasons why corpus fund is to be invested separately.)*
- Section 40(a)(ia) and 40A(3) & (3A) applies- i.e., amount disallowed as per these sections not to be considered for determining the amount of application (i.e. while computing 85%)
- Any **excess application or preceeding previous year not be considered** in the year under consideration (no set-off of earlier deficit/excess application)
[applicable from 01.04.2023]

Restriction on certain Applications

- Depreciation cannot be claimed on that Capital Asset the acquisition of which was considered as Application of income (FA 2015) (what if Asset purchased from corpus?)
- Exp. allowed as application on Actual Payment basis & not on accrual basis (FA 2022, 01.04.2023)
- Use of corpus & Loan fund for Application towards objects Not allowed (FA 2021, 2023)

Income from PGBP

- PGBP earned by trust shall not be considered for exemption.

Unless such activity is incidental to attainment of the objectives of the trust - and separate books of accounts are maintained in respect of such business.

Taxation of Gross Receipts Vs Net Receipts

In Existing Scenario- In cases where

- Receipts from commercial activities (advancement of any other object of GPU) exceeds 20%
- Audit report or ITR is not furnished in time

Entire receipts were taxed.

FA 2023 has brought amendment- Clarificatory in Nature- [Sec 13(10) and 23rd proviso to 10(23C)] - owing to which tax to be computed after allowing deduction of expenditure (exp from corpus, loan, depreciation on cap. Asset claimed as application, donation to any other person not to be considered)- 40(a)(ia), 40A(3) and (3A) shall also apply.

Multiple claims of exemption

- Can a trust claim exemption u/s 10(23C) and 11 simultaneously ? [Where registration is not required i.e., u/s 10(23C)(iiiab)(iiiac)(iiiad)(iiiiae)]
- Exemption u/s 10(23C)(iv)(v)(vi)(via) and 11 cannot be claimed simultaneously owing to section 11 (7) - Since, the moment registration is sought in another regime, earlier registration will become inoperative.
- A registered trust cannot claim exemption under any clause of section except clause (1), 10(23C) and (46).

Taxation of Anonymous Donation (115BBC)

Anonymous Donation means any voluntary contribution [as per 2(24)(iia)] where Person receiving donation **does not maintain the Record of identity** indicating the **name and address** of the person giving such contribution

-taxed @ 30% of the Aggregate anonymous donation received in excess of the higher of the following

- i) Rs.1,00,000/-
- ii) 5% of the total donations received

Section not applicable to

- i) Wholly Religious trust or institution
- ii) Wholly Religious and charitable trust or institution (other than specific donation for university/hospital/educational or medical institution)
- iii) Anonymous donation received by educational institutions and hospital wholly or substantially financed by the government

Taxation of Anonymous Donation (115BBC)

- Whether section 69/ 69A can be invoked?

Keshav Social and Charitable Foundation Vs. DIT (E) 278 ITR 152 (2005) Delhi.

It is observed even if the donors are not introduced or the lists of the donors are not filed the AO cannot infer that the assessee was trying to introduce unaccounted money

Taxation on transfer of Capital Asset - section 11(1A)

Capital Asset, being Property held under trust wholly for charitable or religious purpose- transferred

- If cost of new asset $>$ Net Consideration from Asset transferred- **Whole of capital gain will be deemed as Application**
- If cost of new Asset $<$ Net consideration from Asset transferred- **(Cost of new Asset - cost of asset transferred)- will be deemed as Application.**

Cost of Asset transferred = cost as per sec 48 and 49

Net Consideration= full value of consideration accrued/recd less exp. Incurred for transfer.

Taxation on transfer of Capital Asset - section 11(1A)

Whether Cost of Asset means Indexed cost of acquisition?

Exp ii to section 11(1A) provides that cost means aggregate of the cost of acquisition as ascertained for the purpose of section 48 and 49

Whether 50C applicable? (exp iii to section 11(1A) provides meaning of Net Consideration)?

ITAT, Lucknow, following and referring the decisions of various courts, in the case of ACIT, Kanpur vs. M/s. The Upper India Chamber of Commerce, in ITA/601/Lkw/2011 (AY2 008-19, dated 5.11.2014) has held that “section 11(1A) has specifically defined the meaning of “net consideration” for the purposes of capital gains and so the same shall prevail over the deemed sale consideration as provided u/s 50C.

Taxation on transfer of Capital Asset - section 11(1A)

Whether other provision of capital gains be applicable?

Sec 11- Income not to be included in Total Income- section 14 heads of income is for computing Total income- so when determination is of income which is not to be included in Total Income then income need not be categorized u/s 14. (Phrase used in Sec 11 is Income and not Total income)

Whether investment in FD for acquiring another capital asset is allowed?- [CBDT instruction no. 883 dated 24.09.1975 clarified that investment in FDs for acquiring 'another capital asset', with the tenure of more than 6 months, would be regarded as utilization of net consideration]-However- few HC's have held that 6month condition is incorrect.

Taxation on transfer of Capital Asset - section 11(1A)

Time Limit of investing in New Asset?

- Section 11(1A) doesn't provide any time limit
- Basically sale proceeds are considered as income from property u/s 11(1)(a)- so application be done in same year
- So automatically provisions of deemed application and Accumulation will be applicable.

Any holding period is prescribed for transferred cap. asset or new cap. asset??

- No such minimum holding period is prescribed.

Benefit to specified persons

If any specified person is benefited- Such part of income being taxed at MMR [proviso to 164(2)]- ['Such Part'- FA 2022-01.4.2023]

Specified persons [11(3)]:

- Author/Founder - Settlor
- Substantial Contributor - Cumulative Donations > Rs.50,000
- Member of HUF (Settlor/substantial contributor)
- Trustee/Manager
- Relative
- Concern in which substantial interest

Benefit to specified persons

Nature of Benefit

- Income/property lent without adequate security/ interest
- Land/Building/Other Property made available without adequate rent/ compensation
- Salary/Allowance/other paid in excess of reasonable amount
- Services made available without adequate remuneration/compensation

Taxation of Corpus Fund

- Voluntary contribution is income as per section 2(24)(ia)
- While voluntary contribution with **specific direction** to form part of corpus-
Exempt - Section 11(1)(d) / 3rd Proviso to 10(23C)- in case of registered trust.
- **Such corpus fund is to be invested separately as per 11(5)**

Interest received on Corpus fund?

-Commissioner of Income-Tax. (Exemption), Kochi vs. Mata Amrithanandamayi Math Amritapuri [2018] 94 taxmann.com 82 (SC)- if it is specifically mentioned by the donor that interest shall also form part of corpus

Taxability as per section 164(2)

- The income of the trusts shall be taxed at slab rates.
- However, in the following situations they shall be taxed at maximum marginal rate:
 - a) If any part of the income of the charitable trust enures directly or indirectly for the benefit of persons specified in sec. 13(3). [13(1)(c)]
 - b) If funds of the trust are invested in modes other than those specified in Sec 11(5)- [13(1)(d)]
- Maximum Marginal Rate shall apply to only that part of income where provisions of Sec. 13(1)(c) and 13(1)(d) are attracted and the balance income shall be taxed at normal slab rates.

Taxation on Unregistered Public Charitable Trust

Which ITR to be filed? – ITR 7 or ITR 5 ?

*“Every **person in receipt of income derived from property held under trust** or other legal obligation wholly for charitable or religious purposes or in part only for such purposes, **or of income being voluntary contributions referred to in sub-clause (iia) of clause (24) of section 2,** shall, if the total income in respect of which he is assessable as a representative assessee (the total income for this purpose being computed under this Act without giving effect to the provisions of **sections 11 and 12**) exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1).”*

‘Requirement of having registration is not mentioned in 139(4A)- while as per rule 12, ITR 7 is to be filed where 139(4A) is applicable.

What about CPC?

Taxation on Unregistered Public Charitable Trust

At What rate Should the unregistered Charitable Trust be taxed?

Whether Accumulation, deemed Application, Capital Application allowed to unregistered trust?

Taxation of Corpus Fund received by unregistered trust? (sec 11(1)(d) is only for reg. trusts!)

a. *Chandraprabhu Jain vs. Assistant Commissioner of Income Tax I.T.A. No. 230/Mum/2016, order dated 12 -08-2016*

b. *ITO v. Gaudiya Granth Anuvad Trust reported in (2014) 48 taxmann.com 348(Agra-Trib)*

Taxation u/s 115TD

A registered trust which

- *gets converted into any form which is not eligible for registration under clause (iv), (v), (vi), (via) of section 10(23C) or section 12AA or 12AB. Or*
- *gets merged with other entity which is not a registered trust having similar objects Or*
- *Fails to transfer its assets upon dissolution to other registered trust within 12 Months from the end of the month in which dissolution took place.*
- *Certain additional conditions are inserted vide FA 2023, wherein registration is not renewed or regular registration is not applied (in case of prov. Reg)*

Then such trust is required to pay income-tax at Maximum Marginal Rate on its accreted income in addition to income-tax on its total income. Accreted income is difference between fair market value of assets and liabilities.

Retrospective applicability of registration (Roll back)

As per provisos to section 12A(2)-

-where registration is given during pendency of assessment then exemption can be claimed even for that Assessment year for which Assessment is pending.

-If registration is granted to a trust, then the Assessing Officer shall not re-open earlier assessment years merely for the reason that trust was not registered.

These provisions are omitted vide FA 2023- considering the new scheme of registration, where a trust is required to get registered before commencement of its activities, these provisos will become redundant. (Applicable from 01.04.2023)

Comment: Apparently, it can be seen that, CBDT has missed on a fact that, there are still many trusts which have lot of activities but are not yet registered u/s 12A or 10(23C) of the Act. In those all cases, these amendments may create problem.

Limit of accepting cash as Donation

As per section 8G(5D)- No Deduction- if donation of sum exceeding Rs.2000 is made in cash.- this is from Donor's perspective.

What about the Trust or Institution?

- Section 80G(5D) does not disqualify the trust.
- Section 269ST (No Person-shall receive- Rs.2 Lac or more..)

Questions



Thank You

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