



**CHATRIABLE AND PHILANTHROPIC TRUST**  
**(Study with Reference to Section 11, 12, 13, 13A, and 13AA of Income Tax Act 1961)**

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**Introduction**

There is always a need to supplement the Governmental efforts in various areas of welfare measure. Such a need arises not only because of lack of resources at the command of the Government, but also because of wealth of local knowledge available with localized institutions in which it can be fruitfully utilized for the benefit of the society. Thus, like N.G.Os exist not only in developing countries, but also in developed countries.

These localized institutions may exist as non-profit companies, or associations or trusts. In fact, structure or management is not the essence of the N.G.Os. It is the objectives, which distinguish an NGO from a business organization. Tax laws of almost all countries provide tax breaks to religious or charitable N.G.Os in the form of exempting their incomes from tax and also by way of granting tax incentives to the donors, who donate moneys to such trust or association. Such tax breaks and incentives are also embedded in various provisions of the Income tax Act, 1961.

The Indian Trusts Act, 1882 which provides the provisions relating to various Trusts and. their administration .Trusts in the wider sense formation and creation of the word, that is to refers, obligations annexed to the ownership of property which arise out of a confidence reposed in and accepted by the owner, for the benefit of another. The Indian Trusts Act, 1882 codifies the law relating to private trusts and private trustees under different administration process which include

1. Creation of trusts.
2. Duties and liabilities of trustees.
3. Rights and powers trustees.
4. Disabilities trustees.
5. The rights and liabilities of the beneficiary;
6. Vacating the office of trustee;
7. The extinction of trusts
8. Certain obligations in the nature of trusts.
9. Ratification for misfeasance of trustees.

**Meaning of Charitable Trust**

The word “charitable” can be referred as Beneficent, benevolent, bountiful,, generous, kind, lavish, liberal, philanthropic. A trust can be formed and created for achieving, performing or executing the common mission and with benefits for the needy and deserving person or persons.

**a. Who can form a Charitable Trust?**

As per section 7 of the Indian Trusts Act, a trust can be formed –

By every person competent to contract, and

By or on behalf of a minor, with the permission of a principal civil court of original jurisdiction

**b. Subject matter of Trust**

Any property capable of being transferred can be a subject matter of a trust.

Section 8 of the Indian Trust Act, however, provides that mere beneficial interest under a subsisting, trust cannot be made the subject matter of another trust.

In the case of J.K. Trust vs. CIT (1957) 32 ITR 535 (S.C.), the Supreme Court had held that the word " property" under the Trusts Act is of the widest import and a business undertaking will undoubtedly be a property so that a running business can be made a subject matter of trust. This view has been followed in the case of in CIT vs. P. Krishna Warriar (1964) 53 ITR 176(SC)

Business may be a taboo for charitable institution from the point of view of exemption for income tax purposes. From time to time, the law has undergone a change as to what business is permitted and under what circumstances. The present law permits only such business which is incidental to attainment of the objects of the trust or the institution, subject to the condition that separate account books are maintained for such business as prescribed under sub-section 4A of section 11 of I.T. Act



### **Non Profit Organization**

Non Government Organizations (NGO) is non-profit voluntary groups established at local, national or international level, dealing with social issues. Currently, around 1.5 million NGO's work in India, with most of them being small and dependent on volunteers. However, the sector is becoming more organized with various multi nationals and Indian business houses embracing the culture of giving.

There are different types of NGO in India - volunteer sector, grass root organizations, civic society, private voluntary organizations, transitional social movement organizations and self-help groups (SSG). The central government's share of social expenditure is only about 20% of the total expenditure, the rest being the responsibility of the states. However, the sector is recently being given more importance by the centre as well. The proposed allocation of INR 1, 60,887 crore for social sector in 2011-12 is an increase of 17% over current year. It amounts to 36.4% of the total plan allocation.

The NGO sector is not an obvious choice for mid career professionals who do not have a background in terms of education or personal orientation in this sector. Primary reasons for private sector professionals looking at working in the private sector include an inherent desire to contribute to the society. The sector is gradually becoming a more viable career option, fraught with new challenges and opportunities to make a real difference.

The not-for-profit sector is generally said to comprise non-governmental organizations (NGOs), the third sector, and the voluntary or charitable sector. There is no clear definition as to what precisely constitutes a not-for-profit organization. However, it is important for the purpose of setting internal government policy that at least within a country a workable definition is adhered to. In India, one of the criteria for a not-for-profit organization/NGO given in the Seventh Plan document is that the organization should have a legal entity<sup>5</sup>.

### **1. Statement of Problem**

In the present scenario public trusts in India is completely deviating from their established objectives for which the trust or association or intuition formed. To be more specific, educational trusts or medical welfare trust are extracting the pecuniary benefits from the eligible and needy persons. The exemption of the income will be given only when the income is expended for established objectives of association or intuition or any trust. "The charities" always implies that managerial hierarchy of trust expected to spend the income from the corpus or corpus amount, for the well being of the needy and deserving group. Public trusts in India is completely deviating their established mission for which the trust or association or intuition formed. It's true that India's economy is spoiled by Black Money, Black money can be converted into White by donations to PM funds, National emergency fund, Forming educational institutions and Trusts. The report says that while it is not proper to make sweeping generalizations, it is necessary to note that the NGO sector in India is vulnerable to the risks of money laundering and terrorist financing. "Therefore, necessary steps for rigorous enforcement as well as coordination with foreign countries for law enforcement will continue. Our efforts for coordination with State police organizations and other specialized organizations will also continue towards this direction," the report said. The report, approved by Union Home Secretary RK Singh in January 2012, revealed that major donors from abroad and receivers in India are Christian Missionaries and Church-sponsored NGOs.

### **2. Significance of Study**

When any association or intuition or any trust formed for any charitable purpose the income derived from corpus is exempted under income tax 1961. The exemption of the income will be given only when the income is expended for established objectives of association or intuition or any trust. "The charities" always implies that managerial hierarchy of trust expected to spend the income from the corpus or corpus amount, for the well being of the needy and deserving group. In the present scenario public trusts in India is completely deviating forming their established objectives for which the trust or association or intuition formed. To be more specific, educational trusts or medical welfare trust are extracting the pecuniary benefits from the eligible and needy persons. Now there is a greater urgency to re look or revisit the contents of the provision section 11.12 and 13 of the income tax for effective implementation in governance of trust in true legal sprit. This study mainly focused on restoring the legal and beneficial governance in consonance with the mission of the trust, by which the public and philanthropic mission is set in complete motion by complying these provisions (section 11, section 12, and section 13) in true intention of the Tax legislation.

### **3. Objectives of the Study**

1. To study the Administration of legal mechanism of Trust.
2. To identify the factors for Exemption of the trust Income.
3. To analyze the relevant judicial pronouncements.



4. To offer suggestions to the Policy Makers.

#### 4. Methodology

The data for the study have been collected from the various Secondary sources, like, Bare Act, judicial decision of various Supreme Court various High Courts and Tribunals Notification and Circulars Home Ministry and Finance Ministry of the union Government of India, Ministry of social juristic and woman empowerment, Business Law Time Journals and Notifications of CBDT, it also includes the followings.

1. Books Journal and other Articles in the Tax magazines
2. Circulars and Notifications of CBDT
3. Judicial decisions of Tribunal High courts and Supreme Court.
4. Income tax Reports.
5. Current tax reports.
6. Indian Trust Act.1882
7. Income Tax Act 1961.
8. Foreign Contribution (Regulation) Act 1976.
9. Information the web.

#### Indian Trusts Act, 1882

The Indian Trusts Act, 1882, is applicable for the registration of a private trust. The act extends to the whole of India, except the State of Jammu and Kashmir and the Andaman and Nicobar Islands. The Central Government, from time to time, by notification in the Official Gazette, can extend it to the Andaman and Nicobar Islands or to any part thereof. The Indian trust Act applies only to private trusts.

Section -3 A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another or of another and the owner "author of the trust": "beneficiary": "trust property interest" of trust the person who reposes or declares the confidence is called the "author of the trust": the person who accepts the confidence is called the "trustee": the person for whose benefit the confidence is accepted is called the "beneficiary": the subject-matter of the trust is called "trust-property" or "trust-money": the "beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust-property; and the instrument, If any, by which the trust is declared is called the "entrustment of trust" breach of trust": a breach of any duty imposed on a trustee, as such, by any law for the time being in force, is called a "breach of trust".

The trust has primarily three parties: the donor/s, the trustees and the beneficiaries. It is usually created through a trust deed. A trust may be private or public, fixed or discretionary (among others).

The management of a public trust remains with the Board of Trustees who remains so for life and need not stand for election. Changes in the board are usually by invitation and not election. This ensures that the trust is managed by those approved by the original donor / trustees who cannot be removed by election. There are no legal requirements for meetings. There is thus minimum danger of takeover by persons not approved by the trustees.

The provisions as existing in the various statutes for a trust make it very difficult to modify the objects as laid in the trust deed and these can be changed only by the settlor. In many cases if the original settlor is unwilling the trust may very well become redundant. Further, the possibility of mismanagement of trusts is higher due to an undemocratic governance style. The government and offices of the Charity Commission have more power to intervene in the affairs of the trust as compared to societies.

#### Charitable and Religious Trust Act 1920

This law was enacted to provide more effectual control over the administration of Charitable and Religious Trusts. It extends to the whole of India except the State of Jammu and Kashmir. The Central Government, from time to time, by notification in the Official Gazette, can extend its coverage to Jammu and Kashmir Provided that the Government at any State may be notification in the Official Gazette, direct that this Act, or any specified part thereof, shall not extend to that State or any specified area therein, or to any specified trust or class of trusts. In this Act, unless there is anything repugnant in the subject or context, the Court means the Court of the District Judge or any other Court empowered in that behalf by the State Government and includes the High Court in the exercise of its ordinary original civil jurisdiction



Save as hereinafter provided in this Act, any person having an interest in any express or constructive trust created or existing for a public purpose of a charitable or religious nature may apply by petition to the Court within the local limits of whose jurisdiction any substantial part of the subject-matter of the trust is situate to obtain an order embodying all or any of the following directions, namely. directing the trustee to furnish the petitioner through the Court with particulars as to the nature and objects of the trust, and of the value condition, management and application of the subject-matter of the trust, and of the income belonging thereto, or as any of these matters, and directing that the accounts of the trusts shall be examined and audited that no person shall apply for any such direction in respect of accounts relating to a period more than three years prior to the date of the petition.

Public charitable trusts can be established for a number of purposes, including the relief of poverty, education, medical relief, provision of facilities for recreation, and any other object of general public utility. Indian public trusts are generally irrevocable. No national law (except the broad principles of the India Trusts Act 1882, which governs private trusts) governs public charitable trusts in India, although many states (particularly Maharashtra, Gujarat, Rajasthan, and Madhya Pradesh) have Public Trusts Acts.

Public charitable trusts, as distinguished from private trusts, are designed to benefit members of an uncertain and fluctuating class. In determining whether a trust is public or private, the key question is whether the class to be benefited constitutes a substantial segment of the public. There is no central law governing public charitable trusts, although most states have "Public Trusts Acts." Typically, a public charitable trust must register with the office of the Charity Commissioner having jurisdiction over the trust (generally the Charity Commissioner of the state in which the trustees register the trust) in order to be eligible to apply for tax-exemption. In general, trusts may register for one or more of the following purposes:

- Relief of poverty or distress;
- Education;
- Medical relief;
- Provision of facilities for recreation or other leisure-time occupation (including assistance for such provision), if the facilities are provided in the interest of social welfare and public benefit; and
- The advancement of any other object of general public utility, excluding purposes which relate exclusively to religious teaching or worship.

At least two trustees are required to register a public charitable trust though a trust may also have a single or sole trustee. In general, Indian citizens serve as trustees, although there is no specific prohibition against non-natural legal persons or foreigners serving in this capacity.

Legal title of the property of a public charitable trust vests in the trustees. Trustees of a public charitable trust may not, however, in any way use trust property or their position for their own interest or private advantage. Trustees may not enter into agreements in which they may have a personal interest that conflicts or may possibly conflict with the interests of the beneficiaries of the trust (whose interests the trustees are bound to protect). Trustees may not delegate any of their duties, functions or powers to a co-trustee or any other person, except that trustees may delegate ministerial acts. In essence, trustees may not delegate authority with respect to duties requiring the exercise of discretion. Trustees of religious or charitable trusts are charged with discharging their duties with the degree of care that an ordinarily prudent person would exercise with respect to his personal property. Public charitable trusts are highly regulated. For instance, in many states, purchases or sales of immovable property by a trust or taking a loan must be approved in advance by the Charity Commissioner.

### **Societies Registration Act 1860**

Societies are governed by the Societies Registration Act, 1860, which is an all-India Act. Many states, however, have variants on the Act. Societies are similar in character to trusts, although there are a few essential differences, including that a minimum of seven 'members' are required to form a society. While only two individuals are required to form a trust, a minimum of seven individuals are required to form a society. The applicants must register the society with the relevant state Registrar of Societies in order to be eligible for tax-exempt status. A registration application includes the society's memorandum of association and rules and regulations. In general, Indian citizens serve as members of the managing committee or governing council of societies, although there is no prohibition in the Societies Registration Act against non-natural legal persons or foreigners serving in this capacity.

According to section 20 of the Act, the types of societies that may be registered under the Act include, but are not limited to, the following:

- Charitable societies;



- Societies established for the promotion of science, literature, education, or the fine arts; and
- Public art museums and galleries, and certain other types of museums.

The governance of societies also differs from that of trusts; societies are usually managed by a governing council or managing committee, whereas trusts are governed by their trustees.<sup>5</sup>

## **Companies Act 1956**

### **a. Section 25. Company**

The Indian Companies Act, 1956 is a central legislation. The Registrar of Companies, which is the regulatory authority for Section 25 companies, has offices in all states and a Section 25 company is accountable to the office of the Registrar of Companies in the state in which it is registered.

### **b. Registration of documents**

The organization must apply for the availability of name to the Registrar of Companies. The application for availability of name must be made in the prescribed form No. 1A, together with a fee of Rs 500. It is advisable to suggest a choice of three other names by which the company will be called, in case the first name, which is proposed, is not found acceptable by the registrar. According to section 25 of the Indian Companies Act, "where it is proved to the satisfaction of the Central Government that an association is to be formed as a limited company for promoting, Commerce, Art, Science, Religion, Charity or any other useful purpose,

And it intends to apply its profits, if any, or other income in promoting its objects and prohibits the payment of any dividend to its members, then the government may, by a license, direct that the association be registered as a Company with limited liability without the addition to its name, of the word, "Limited" or call it "Private Limited". The process of availability of name takes two weeks.

Application for Registration – License under Section 25, Once the availability of name is confirmed, an application should be made in writing to the Regional Director, Department of Company Affairs. There are four Regional Directors at Mumbai, Calcutta, Chennai and Kanpur for West, East, south and North respectively. Three printed or type written copies of the memorandum and articles of association of the proposed company duly signed by all the promoters with full name, address and occupation. A declaration by an advocate or a chartered accountant that the memorandum and articles of association have been drawn up in conformity with the provisions of the Act and that all the requirements of the Act and the rules made there under have been duly complied with, in respect of registration or matters incidental or supplementary thereto.

Three copies of a list of the names, addresses and occupations of the promoters (and where a firm is a promoter, of each partner in the firm), as well as of the members of the proposed board of directors, together with the names of companies, associations and other institutions in which such promoters, partners and members of the proposed board of directors are directors or hold responsible positions, if any, with description of the positions so held. A statement showing in detail the assets (with the estimated values thereof) and the liabilities of the association, as on the date of the application or within seven days of that date. An estimate of the future annual income and expenditure of the proposed company, specifying the sources of the income and the objects of the expenditure. A statement giving a brief description of the work, if any, already done by the association and of the work proposed to be done by it after registration, in pursuance of section 25. A statement specifying briefly the grounds on which the application is made. The regional director may also direct the company to insert in its memorandum, or in its articles, or in both, such conditions of the license as may be specified by him in this behalf. It generally takes about 8 to 12 weeks after application to receive the license under section 25 of the Companies Act, 1956. Registration with ROC After making corrections, if any, suggested by the Regional Director in the Memorandum and Articles of Association, these are filed along with the Section 25 license at the ROC office in The state. In all states there are offices of the Registrar of Charity. The registration Certificate is normally granted within one month after filling the Section 25 license.

## **Income Tax Act 1961**

The Income Tax Act, 1961 is a federal and central piece of legislation, which affects all nonprofit organizations (trust, society or company) uniformly throughout India. Any nonprofit organization engaged in charitable purposes, defined as relief for the poor, education, medical relief, and the advancement of any objects of general public utility not involving any activity for profit, can claim exemptions of its income from tax provided that it fulfills the conditions laid down in Sections 11, 12 A and 13 of the Income tax act. An important principle under the Income Tax Act is that non-profit organizations in India are not

liable to any income tax provided certain conditions required under law are fulfilled. Some of these conditions include the following:

- The non-profit organization must utilize 85 % of its income in any financial year (1 April to 31 March) on the objects of the organization. In case the organization is unable to spend 85 % of its income in the previous financial year due to late receipt of income or any other reason, the trustees may exercise the option to spend the surplus during the immediately following 12 months. Surplus income can also be accumulated for a period ranging from 1 to 5 years, for specific projects.<sup>7</sup>
- The funds of the organization are invested and deposited only in approved securities specified under section 11(5) of the Income Tax Act.

No part of the income or property of the organization is used or applied directly or indirectly for the benefit of the founder, trustee, relative of the founder or trustee, or a person who has contributed in excess of Rs.50,000/- to the organization in a financial year. The organization files its return of income annually within the prescribed time limit.

### **Foreign Contribution (Regulation) Act, 1976**

In India, the Foreign Contribution (Regulation) Act, 1976 was envisaged to prevent the flow of foreign funds to political parties in India. It was brought in after a big controversy erupted in 1967 over the possible use of foreign funds in parliamentary elections. The Foreign Contribution (Regulation) Act, 1976 is internal security legislation and is not regulated by RBI. It is regulated by the Ministry of Home Affairs, Government of India. In 1985, FCRA was amended [vide the Foreign Contribution (Regulation) Amendment Act, 1985 which was later repealed by Repealing and Amending Act, 2001] to regulate the flow of funds to charitable organizations., more closely, based on the findings of the Kudal Commission, and certain important changes were made

- Funds received by subsequent recipient were brought within under the purview of the Act.
- Definition of political parties was enlarged.
- Section 6(1) was amended to ensure that foreign funds were received only after registration, and only through designated bank accounts.
- Section 15A was inserted to empower Central Government to inspect and audit books of accounts of organizations.
- Section 25A was inserted to ensure that acceptance of

### **Income From Property Held for Charitable or Religious Purpose [Section 11]**

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 and religious purposes to the extent such income is applied in India for such purpose.
- b) Income derived from property held under trust in part only for such purpose, to the extent such income is applied in India for such purposes, However, the trust in question must have been created before the commencement of I.T. Act, 1961.
- c) Income derived from property held under trust, created on after 1-4-1952 for charitable purpose which tends to promote international welfare in which India is interested to the extent to which such income is applied to such purpose outside India.
- d) Income derived from property held under a trust for charitable or religious purposes, created before 1-4-1952 to the extent to which such income is applied for such purposes outside India.
- e) Income is the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution.

Thus it can be noted that only such income derived from property held under trust wholly for charitable or religious purposes is exempt. If the property is held in part only for such purposes, it is necessary that such a trust must have been created before the commencement of the I.T. Act, 1961. In both the cases, the exemption is limited to the extent such income is applied in India for such specified purposes.

To get exemption in respect of income applied outside India, the trusts are divided into two types:

- (a) If the object of the trust is to promote international welfare in which India is interested, such trust may have created on or after 1-4-1952.
- (b) If the trust is for any other charitable purpose it must have been created before 1-4-1952.



Here also the exemption is limited to the extent to which such income is applied outside India for such specified purposes. It is to be noted however that a direction from CBDT by a general or special order is necessary before such exemption can be claimed.

### CASE LAWS

The Supreme court in the case of **CIT vs Andra Chamber of commerce** (1965) 55 ITR 722(SC) held that the advancement or promotion of trade, commerce and industry leading to economic prosperity ensured for the benefit of the entire community. That prosperity would be shared also by those who were engaged in a trade, commerce and industry. But on that account the property was not rendered anything less than an object of general public utility. So, when the principal object of a chamber of commerce was to promote and protect trade, commerce and industry in India or any part thereof, the Supreme Court held that the said object was of general public utility. In the above noted case the Supreme Court, while discussing meaning of the expression “charitable purpose” observed as follows:

“Charitable purpose” includes not only relief of the poor, education and medical relief alone, but advancement of other objects of general public utility as well. Section 2(15) is intended to serve as a special definition of the expression “charitable purpose” for the Act. It is again inclusive and not exhaustive. Even if the object or purpose may not be regarded as charitable in its popular signification as not intended to give relief to the poor or for the advancement of education or medical relief, it should still be included in the expression “charitable purpose”, if it advances an object of general public utility. The expression “objects of general public utility”, however, is not restricted to objects beneficial to the whole of mankind. And object beneficial to a section of the public could also be treated as an object should be to benefit the whole of mankind or even all persons living in a particular country or province. It is sufficient if the intention is to benefit a section of the public as distinguished from specified individuals. The section of the community sought to be benefited must be undoubtedly defined and identifiable by a some common quality of a public or impersonal nature; where there is no common quality uniting potential beneficiaries into a class, it may not be regarded as charitable.

The Bombay High Court held in **Bar Council of Maharashtra v.CIT** (1980) 126 ITR 27 (Bom.) that the word “general” in Section 2 (15) means pertaining to a whole class, the word ‘public’ means the body of people at large and the word “utility” means usefulness. Thus the advancement of any object beneficial to the public or section of the public as distinguished from an individual or group of individuals would be a charitable purpose. The State Bar Council was held to be a body constituted for general public utility and its income would be entitled to exemption under Section 11. The Supreme Court affirmed the decision of the High Court when the case came up in appeal in **CIT v. Bar Council of Maharashtra** (1981) 131 ITR 28 (SC).

A trust will be treated as a charitable trust under Section 2 (15) even if its object involves the carrying on of an activity for profit. Such a trust will not be denied exemption under Section 11 on the ground that its objects are non-charitable.<sup>2</sup>

### Voluntary Contributions [Section 12]

Any voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes (not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution) shall for the purposes of section 11 be deemed to be income derived from property held under trust wholly for charitable or religious purposes and the provisions of that section and section 13 shall apply accordingly.<sup>6</sup>

inside: A hundi kept in a temple to enable devotees to offer their voluntary contributions contains the following inscription “ contributions in this hundi will form part of the corpus of **Shri Swaminathaswami temple trust**” now the voluntary contribution will not be treated as income derived from property since they are receipts on capital account. Regarding their application, they can be utilized to create another property which would also be held in trust. For example, the above voluntary contribution can be utilized for building a mandap or conduction special pujas for deity.

Sub –section (2) has been inserted so as to provide that, the value of any medical or educational services made available by any charitable or religious trust running a hospital or medical institution or educational institution to any person referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub section (3) of section 13 shall be deemed to be the income of such trust or institution derived from property held under trust wholly for charitable or religious purposes during the previous year in which such service are so provide and shall be chargeable to income –tax notwithstanding the provisions of sub section (1) of section 11.



The expression 'value' has been defined as the value of any benefit or facility granted or provided free of cost at concessional rate to any person referred to in clauses (a),(b),(c),(cc) or (d) of section 13.

However, it may be noted that it has been provided in sub-section (3) (introduced w.e.f 3.2.2001) that any amount of donation received by the trust or institution for the purposes of providing relief to Gujarat victims, and which remains unutilized but is not transferred to the prime minister's National Relief Fund on or before 31 march,2004, shall be chargeable to tax as income of the previous year.

### **Registration of Trust [Section 12a]**

The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely The person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and in the prescribed manner to the Commissioner before the 1st day of July, 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution, Whichever is later and such trust or institution is registered under section 12AA the grant of registration shall be one of the condition for grant of income –tax exemption. The commissioner may admit an application for the registration of any trust after the expiry of aforesaid period.<sup>7</sup>

### **Procedure For Registration (Section12aa)**

The Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) of section 12A, shall - (a) Call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such a inquiries as he may deem necessary in this behalf; and

- After satisfying himself about the objects of the trust or institution genuineness of its activities, he - (i) shall pass an order in writing registering the trust or institution;
- Shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution, and a copy of such order shall be sent to the applicant :
- Provided that no order under sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.
- All applications, pending before the Chief Commissioner on which no order has been passed under clause (b) of sub-section (1) before the 1st day of June, 1999, shall stand transferred on that day to the Commissioner and the Commissioner may proceed with such applications under that sub-section from the stage at which they were on that day.
- Every order granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (a) of section 12A.

### **Denial of Exemption [Section13]**

#### **a. Sections 11 and 12 not to apply in certain cases (Section 13)**

The exemption in respect of income from property, as enumerated above, will be forfeited in the

Following cases:

- 1) Where the property is held under a trust for private religious purposes, no part of the income will be exempt if it does to ensure for the benefit of the public
- 2) Where a trust has been established for the benefit of any particular religious community or caste, the income thereof will not be eligible for exemption. Explanation 2 to Section 13 provides, however that a trust or institution created or established for the benefit of scheduled caste, backward classes, scheduled tribes or women and children shall not be treated as a trust or institution created or established of\\for the benefit of a religious community or caste within the meaning of Section 13(1) (b).
- 3) Where the trust or the institution has been created or established after 31-3-1962, if any part of its income ensures directly or indirectly for the benefit of any person referred to in Section 13(3)
- 4) Irrespective of the date of the creation of the trust or the establishment of the institution, if any part of its income or any property belonging to it during the relevant previous year is used or applied directly or indirectly for the benefit of any person referred to in Section13(3).
- 5) Where a trust or institution created prior to 1-4-62 applies any part of such income or any property of the trust for the benefit of any person referred to in section 13(3) and such application is by way of compliance with a mandatory term of the trust that the exemption will not be denied.



- 6) Where a religious trust (created before the commencement of the Act) applies any part of such income or any property of trust for the benefit of any person referred to in section 13 (3) before 1.6.70 then also exemption will not be denied.

**HIGH COURT OF MADRAS**  
**Commissioner of Income Tax<sup>1</sup>**

vs.

**Sarvodaya Ilakkiya Pannai, Madurai.**

Section s, 12AA, 12A (3).

JANUARY 25, 2012

**FACTS**

The respondent Sarvodaya Ilakkiya Pannai is a Society and was granted registration by the Commissioner of Income Tax, Madurai vide his order dated 06.11.1989 under section 12A(a) of the Income Tax Act. The object for which the societies was registered was to effect publication and sale of Sarvodaya Literature and also the Gandhian and Sarvodaya ideologies. When the returns filed for the assessment years 2008-09, 2009-10 and 2010-11 were scrutinised, it was found that the Society was engaged in purchase and sale of books. on the ground that the above activities of the trust cannot be considered to be charitable activities, a show cause notice was issued by the Commissioner of Income Tax under section 12AA(3) of the Act, before an order of rejection was made. Thereafter, the Commissioner of Income Tax revoked the registration on the ground that the Society did not deserve exemption under section 11(1)(a) of the Act and accordingly, the registration granted under section 12A(a) was cancelled. On a challenge to the said order, the Appellate Tribunal has found that the order of the Commissioner was not justified as the power to cancel could be only traced out to section 12AA(3) and in the absence of any activity carried on by the trust contrary to the objects, the registration cannot be revoked. With that finding, the Tribunal has allowed the appeal filed by the Society. Challenging the said order, the present appeal has been filed.

**Decision**

The present appeal made by the department raised vital question of facts before the high court, Commissioner of Income Tax, Madurai before granting the registration, had gone into the above objects and satisfied himself for grant of registration. Subsequently, by the order dated 31.06.2011, the very same objects were considered and were found not to be the activities which are charitable in nature. While carrying on the activities of publication and sale of Sarvodaya Literature and Gandhian Ideologies as charitable activities, referring the same objects as not charity, it cannot be brought under the provisions of section 12AA(3) of the Act. The cancellation was made not on the ground that the activities of the trust were not genuine but the activities of the trust were not in accordance with the objects of the trust. When the trust was registered with definite objects, carrying on such activities would be in terms of the objects for which the registration was made. In fact, if those activities are not carried on, the trust may violate the objects for which the registration was granted. Under section 12AA, the Commissioner is empowered to grant or refuse the registration and after granting registration, would be empowered to cancel and that too, only on two conditions laid down under section 12AA(3) of the Act. Whether the income derived from such transaction would be assessed for tax and also whether the trust would be entitled to exemption under section 11 are entirely the matters left to the assessing officer to decide as to whether it should be assessed or exempted. The Tribunal had allowed the case of the assessee with the finding that none of the conditions under section 12AA (3) were violated and therefore, the satisfaction which was arrived at by the Commissioner of Income Tax was not justified. In that view of the matter, High court finds no reason to interfere with the order of the Tribunal and accordingly, both the questions require no further consideration by the court. The tax case appeal is dismissed as devoid of merits.

**HIGH COURT OF KERALA**  
**Lissie Medical Institutions<sup>2</sup>**

vs.

**Commissioner of Income-tax, Kochi**

Sections 11(1), 11(1) A.

17 February , 2012

**Facts**

The appellant is a charitable institution registered under Section 12A of the Income Tax Act (hereinafter referred to as the Act for short), and is running a hospital. In the course of running the hospital, the appellant acquires medical equipments such as x-ray units, scanning machines etc., which were purchased with the surplus funds available. The entire expenditure incurred for acquisition of capital assets is treated as application of income for charitable purposes under Section 11(1) (a) of the Act. When capital expenditure is treated as application of income for charitable purposes, the appellant virtually enjoys a 100% write off of the cost of assets. However, since medical service is a business activity held in Trust, the appellant claimed all the benefits under the Act including depreciation in the computation of net income. In the course of assessment for the year 2005-06, the Assessing Officer noticed that the appellant has claimed depreciation for Rs. 2,16,27,776/-, out of which

Rs. 18,38,645/- represents depreciation on assets acquired during the relevant previous year and balance towards depreciation on assets held as on the first date of the previous year. According to the Assessing Officer, when the assessee claims expenditure for acquisition of assets as application of income of the charitable trust for charitable purposes, then the assessee is not entitled to claim depreciation in the computation of income. In other words, according to the Assessing Officer, when acquisition of assets is treated as application of income for charitable purposes, the value of assets stands fully written off, and over and above, if depreciation is allowed, the same will result in double deduction of capital expenditure leading to violation of the provisions of Section 11(1) which requires availability of actual income for charitable purposes. Even though the appeal filed against the assessment was allowed by the CIT (Appeals), the Tribunal by following the judgment of the Supreme Court in the case of Escorts Ltd. v. Union of India [1993] 199 ITR 43/[1992] 65 Taxman 420, allowed the departmental appeal and restored the assessment with the disallowance. After hearing both sides what was noticed that if the assessee treats expenditure on acquisition of assets as application of income for charitable purposes under Section 11(1)(a) and if the assessee claims depreciation on the value of such assets, then in order to reflect the true income to be available for application for charitable purposes, the assessee should write back in the accounts the depreciation amount to form part of the income to be accounted for application for charitable purposes. This is obviously not done by the assessee and so much so, the income which should be available for application for charitable purposes gets reduced by the depreciation amount, which is not permissible under Section 11(1)(a) of the Act. In fact the net effect is that after writing off full value of the capital expenditure on acquisition of assets as application of income for charitable purposes and when the assessee again claims the same amount in the form of depreciation, such notional claim becomes cash surplus available with the assessee, which goes outside the books of accounts of the Trust unless it is written back which is not done. It is not permissible for a charitable institution to generate income outside the books in this fashion.

### Decision

The appeal has been disposed by confirming the order of the Tribunal. However, it is pertinent to maintain that high court granted that. We feel assessee be allowed to write back the depreciation for this year and even for previous and then allow the same to be carried forward for application for subsequent years. It is for the assessee to write back depreciation and if done the assessing officer will modify the assessment determining higher income and allow recomputed income with the depreciation written back by the assessee to be carried forward for subsequent years for application for charitable purposes. The appeal is disposed of as above by answering the question in favour of Revenue but by granting the relief to the assessee as above.

- There are multiplicities of laws governing charity for different religions, for different types of Organizations, and for different states, with no uniformity in the laws across states, and no Consistency analysis provisions of the law.
- The Companies Act on the other hand monitors and regulates charities more strictly. The point being made is that due to multiplicity of laws and different yardstick in monitoring and regulation of charities there is no common standard of good governance to be complied with.
- The Income Tax Department is under the Finance Ministry, the Registrar of Companies is under the Department of Corporate Affairs and Company Law; the Charities Commissioners in Gujarat and Maharashtra are under the control of the Legal Department, and the Registrar of Societies under whom the societies are manned are under the Co-operatives Department of various states or under the Home Department.
- Income from property held for charitable or religious purpose, application of income and Conditional accumulation of income. Another essential application for exemption o income. Business income may also exempt when the income from business is expended towards for the attainment of objectives of the trust.
- The disclosure about assessment of the trust in taxation is highly non transparent like after business related assessment. The ensures with the public domain is distant possibility.
- The up keeping and maintains of book of accounts and other evidencing banking document and registers of the trust are art incomplete commercial enterprises.

### 5. Suggestions and Conclusion

It is relevance to note that some of the problems mentioned in the above can be overcome; it would like to take a look at what the role and functions of an ideal Regulator (i.e. the agency created under the laws to see to their compliance) should be, and the criteria for its effective operation.

- The Indian trust Act 1882 should amendment in line with expected transparence in administration of trust now more number of trusts with high corpus coming to existence.
- It also relevant to point out that the Foreign Regulation Contribution Act 1976 should have more effective provision on vigilance, surveillance on the remission of foreign money in to India .
- Large scale misappropriation of trust money rampant among India trusts. There is a total absence of regulatory body in overseeing the trust administration India hence surveillance body should be setup at earliest.



- The exemption trust income should be withdrawn from the taxation statute income from trust corpus and receipt of are to be taxed like any other any other income.
- The government should revisit the creation of electoral trust as enshrine income tax Act and more clarity and scope are immediate need in urgently warranted from the perception of CBDT and Ministry of From Union Ministry of finance.

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