



CHARITABLE TRUST: A STUDY UNDER INCOME TAX ACT, 1961

'A tax is a loophole that benefits the other person. If it benefits you, it is tax reform'

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ABSTRACT

This paper deals with charitable trusts and the main purpose to serve a cause its not necessary that the object should be to benefit the whole of mankind or all persons in particular country or state. It is sufficient if the intention to benefit a section of the public, as distinguished from a specified individual, is present. However, the section of the community sought to be benefited must be sufficiently defined and identifiable by some common quality of a public or impersonal nature. An institution set up with the object of promoting trade or commerce is a charitable institution as it promotes common good through enhancement of business. However, an institution which merely regulates or enhances the business of its members, is not a charitable institution. Thus, where the proprietors of hotels formed an association for obtaining articles on permit for supplying them to members and protecting their business interest, the association was held not to be a charitable one for them purpose of the Act. And thus has to be regulated and looked after for the betterment of the society.

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INTRODUCTION

'Charitable purpose' includes relief of the poor, education, medical relief, and also the advancement of any object of general public-service corporation. However, if it involves carrying on of any activity within the nature of trade, commerce or business or any activity of rendering any service in relevance with trade, commerce or business for a cess or fee or the other thought, regardless of the character of use or application or retention, of the financial gain from the same activity, an equivalent won't be considered as an advancement of any object of general public-service corporation. However, if the entire receipts from such activities don't exceed Rs. 10,00,000/-, such activities of the trust can still be considered as activities for charitable purpose. Preservation of surroundings (including watersheds, forests and wildlife) and preservation of monuments or places or objects of inventive or historic interest would be thought-about as "charitable purpose" aside from "advancement of any object of general public utility".

According to one survey in India there's one N.G.O per 800 Indian subjects. We tend to can't realize even one village in India wherever there's no non-secular place.

We would not realize college, Hospital or Common Pay and use bathrooms however we tend to definitely have non secular places in every and each corner of the India, howsoever remote village it should not be. There's AN elaborate and multi layer Exemption theme accessible for all this non secular and charitable trust in Income Tax Act, 1961.

OBJECTIVE

- To know about history and relevance of charitable trust under the income tax act, 1961
- To analyze the various procedures in regard with the charitable trust, NGO's etc.

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- To study the relevant case laws in accordance with charitable trusts.

JUDICIAL TRENDS

Since there is no statutory definition of charity, courts used the Preamble to the Statute of Charitable Uses 1601 or sometimes referred as the Statute of Elizabeth.¹ Whereas lands, chattels, cash are given by sundry well disposed persons, some for the relief of aged, impotent and poor individuals, the upkeep of sick and maimed troopers and mariners, faculties of learning, free faculties and students in universities, the repair of bridges, port, haven, causeway, churches, ocean banks and highways, the education and preferment of orphans; the relief, stock maintenance for homes.

Lord McNaughton summarized the scope of charity. "Charity in its legal sense comprises four principal divisions, trusts for the relief of poverty, trust for the advancement of education; trust for the advancement of religion; and trust for other purposes beneficial to the community, not falling under any of the preceding heads."² *Oppenheim v Tobacco Securities Trust Co Ltd, [1951] AC 297*:³ certain trust for the education of children of employees of former employees of British American Tobacco Co Ltd or any of its subsidiary or allied companies.

Charitable Trust

In *Commissioner of income Tax v Pemsel*,⁴ Lord McNaughton summarized the scope of charity. "Charity in its legal sense comprises four principal divisions; trusts for the relief of poverty, trust for the advancement of education; trust for the advancement of religion; and trust for other purposes beneficial to the community, not falling under any of the preceding heads." No definition of poverty. It does not mean destitution. It means that there is a want, that a person has 'to go short' of something. The trust must be within the spirit and intendment of the Preamble. It must be for the relief of such persons and not merely their benefit.

Dingle v Turner (1972) AC 601:⁵

Trust to apply income in paying pensions to poor employees of a company. HOL reaffirmed the Court of Appeal's decision that it was charitable. If the trust is one to relieve poverty among named persons it is not charitable

Re Scowcroft (1898) Ch 638:⁶

The gift of income to be applied for the furtherance of conservative principles and religious and mental improvement. Held: Charitable Trust *Re Koeppler's Will Trust* (1986) Ch 423 A gift to further the work of educational project was held charitable even though the testators express aspiration were

1 Defining "Charity" and "Charitable Purposes", last visited September 11, 2017; http://www.icnl.org/research/journal/vol11iss1/special_2.htm

2 Charitable trusts, last visited September 11, 2017; <http://www.duhaime.org/LegalResources/elderlawwilltrustsstates/lawarticle-340/charitable-trusts.aspx>

3 [1951] AC 297

4 [1891] A.C. 531

5 (1972) AC 601

6 (1898) Ch 638

not regarded as charitable. The project involved conferences with political flavour but it did not further the interest of a particular political party.

*CIT Vs. Andhra Chamber of Commerce (1965)(SC)*⁷ Definition of term "Charitable purpose" is inclusive and not exhaustive. The expression is not restricted to the objects beneficial to whole mankind. An object which is beneficial to a section of the public is also a charitable object.

*CIT Vs. Bar Council Of Maharashtra (1981) (SC)*⁸ The expression "advancement of general public utility" includes any object beneficial to public or a section of the public as distinguished from an individual or a group of individual.

IN VIEW OF INCOME TAX ACT, 1961

Non-Governmental Organizations (NGOs), whether or not public trusts, associations, or different non-profit entities (including non-profit companies), perform an important role in supplementing governmental efforts in promoting economic development and financial aid. There's a requirement for such organizations not solely as a result of the resources at the command of the government are inadequate relative to want, however additionally as a result of their reach and also the wealth of native data they possess, all of which might profitably be used for the advantage of society. NGOs exist all told countries, whether or not developed or developing. Tax administrations over the globe acknowledge voluntary effort and supply incentives to real charitable organizations.

Most often, this is done by either partially or fully exempting their incomes from tax, and also by providing tax incentives to donors in order to encourage them to contribute resources to such organizations. The Indian Income Tax Act, 1961 too incorporates several provisions to extend tax breaks and incentives to such organizations as well as to their donors. Recognizing the need to inform assesseees as well as the general public about taxation provisions relating to religious and charitable trusts and institutions, which are considerably different from the legal provisions dealing with other taxable entities such as business concerns, the then Directorate of Income Tax (RSP&PR), published a booklet on the subject entitled "Assessment of Charitable Trusts & Institutions" in the year 2002 under its 'Taxpayer Information Series'.⁹

The expression "charitable purpose" has been defined under Section 2(15) of the Act to include:

1. Relief of the poor,
2. Education,
3. Medical relief, and
4. Advancement of any other object of general public utility¹⁰

The word 'Charity' connotes altruism in thought and action.

7 (1965) 55 ITR 722

8 [1981] 130 ITR 28

9 Assessment of Charitable Trusts and Institutions, last visited September 13, 2017; <http://www.incometaxindia.gov.in/booklets%20%20pamphlets/assessment-of-charitable-trust-and-institution.pdf>

10 last visited September 13, 2017; <https://taxguru.in/income-tax/charitable-purpose-215-income-tax-act-1961.html>

It involves an idea of benefiting others rather than oneself. A commercial concern is not an object of relief of the poor on the ground that it provides employment. The object should provide relief directly and not indirectly. For a trust to be accepted as a charitable trust for the purposes of exemption, it is necessary that the objects should be specific so as to confirm to the requirement of income tax law in this regard. Where they are too wide, the trust may not qualify for exemption. The onus to prove that objects are of charitable nature is on the assessee.

Relief of the Poor

The establishment of an industrial or commercial concern ordinarily envisages a profit making activity and cannot be said to be a charitable purpose on the ground that it will provide employment to some poor persons.

Education

The word 'Education' means training and developing the knowledge, skill, mind and character of students by normal schooling. Travelling also enhances knowledge, but that would not amount to 'education' in the context of Section 2(15).¹¹ The running of a private coaching institute for the purpose of training the students to appear at certain specified examinations upon taking specified sum from the trainees is not a charitable purpose.

Advancement of any other object of general public utility:

To serve a charitable purpose, it is not necessary that the object should be to benefit the whole of mankind or all persons in particular country or state. It is sufficient if the intention to benefit a section of the public, as distinguished from a specified individual, is present.¹² However, the section of the community sought to be benefited must be sufficiently defined and identifiable by some common quality of a public or impersonal nature. An institution set up with the object of promoting trade or commerce is a charitable institution as it promotes common good through enhancement of business. However, an institution which merely regulates or enhances the business of its members, is not a charitable institution. Thus, where the proprietors of hotels formed an association for obtaining articles on permit for supplying them to members and protecting their business interest, the association was held not to be a charitable one for the purpose of the Act

REGISTRATION OF CHARITABLE TRUSTS AND INSTITUTIONS

One of the key preconditions for charitable trusts and institutions seeking to claim exemption under Sections 11 and 12 of the Income Tax Act is registration under the Act. Section 12A enacts that the provisions of Section 11 and Section 12 which provide for exemption of income to such trusts and institutions, will not be applicable unless such trust or institution has made an application in the prescribed form for

registration to the Commissioner or Director, and it has been registered by the Commissioner or Director.

Under the amended provisions of this Section which have come into effect from 01.06.2007, the earlier requirement of filing such an application within one year of creation of the trust (or establishment of the institution) has been removed. Similarly, the power of the Commissioner or Director to condone the delay in filing such application and to grant the benefit of exemption retrospectively from the date of creation of trust or establishment of the institution has also been done away with. Under the amended provisions, where an application is filed on or after the 1st day of June, 2007, exemption under Sections 11 and 12 shall be available only on a prospective basis from the assessment year which immediately follows the financial year in which the application is made.¹³

The legal framework which governs the taxability of income of public charitable entities (including a trust, a company registered under Section 25 of the Companies Act, 1956.

Prescribed Documents

So far as the prescribed documents are concerned there is no such list in Income Tax Act or in Income Tax rules [Except providing for Indenture of Trust & details of Trustees]. CBDT is purporting to make a standard Code of Procedure in this regard. We can expect it to come in very short time. However, from the practical experience we can list out following certain documents:

- i. Duly filed Form No.10A
- ii. Copy of Registration certificate under Public Trusts Act
- iii. Certified Copy of Trust Deed [In English, if not in English]
- iv. Certified Copy of Object Clause of trust Deed
- v. List of Names & Addresses of all the trustees
- vi. Copies of Pan Card of all the Trustees
- vii. Audit Reports [Maximum to the Last three years]
- viii. Undertaking under section 11(5) and 13(1)(c)
- ix. Affidavit of the Managing Trustee for Utilization of Income for Objects Only All this is the prima facie circumstantial evidences to satisfy the C.I.T that the trust is genuine. After providing necessary documents Commissioner may pass an order either granting or rejecting the registration.

However any order giving rejection to the registration can't be passed without giving opportunity of being heard. Opportunity of being heard is given only by mean on written show-cause notice to that regard. However, the Communication of Acceptance or rejection of any application shall be made within the six months from the end of the month in which the application was received. If no communication is received within 6 months then trust will be deemed to be registered under section 12AA.

The various legal pronouncements of Tribunal & high courts have settled the position to the greater extent.

¹³ last visited September 14,2017; http://www.itatonline.org/info/?dl_id=1218

¹¹ last visited September 14,2017; <https://taxguru.in/income-tax/charitable-purpose-215-income-tax-act-1961.html>

¹² last visited September 14,2017; <https://taxguru.in/income-tax/welfare-of-a-particular-community-can-also-be-a-charitable-purpose-for-registration-us-12aa.html>

Ld. ITAT, Delhi 'B' Special Bench, has held that the officers are bound to pass the verdict to the application in the stipulated time that is six months.¹⁴ Not passing the order within 6 months and asking assessee to file application again means to put the assessee to the grind all over again for no fault of his. The intention of legislature can never be as such. Moreover, time frame of Six months is mandatory for the C.I.T to dispose of the application for registration. Once CIT doesn't pass order within given time it becomes "Functus Officio", hence it can't make the assessee to file the application again.

COMMON GROUNDS OF REJECTION OF REGISTRATION U/S 12AA

Actual Activity has not been carried out by the Trust: There used to be the objection of Income Tax Authorities that Registration u/s 12AA may not be granted if Trust has not undertaken the Actual Activities as per its objects. However Gujarat high court has settled this disputed position of law in its verdict in the case of *CIT vs Kutchi Dasa Oswal Moto Pariwar Ambama Trust*.¹⁵ The learned court has held that registration can't be denied merely on the ground that trust has not undertaken any activities in the previous year.

Inconsistencies in the Object clauses: If there are any objects of the trust deed which gives the Commissioner reasons to believe that the Beneficiaries of the Trust activities will be based on the particular cast, creed or sex. Then he may refuse the registration.

Inconsistencies in Revocation clause of Trust deed: As per Bombay Public Trust Act 1950 the trusts are always irrevocable. Generally the trust can't be revoked. However if the Circumstances arise than trust can be revoked by passing an unanimous resolution by all the trustees to that effect and with the prior approval of the Charity Commissioner. And in that scenario none of the asset will go in hands of any of the trustees/settler or to the members of the trust, on the contrary it will be handed over to the trust having same objects. Now days, Income tax officer demands such clear mention of all this formalities in revocation clause of the trust deed. In many cases the trusts do not have revocation clause altogether and if they have the resolution clause then it is not proper. In such cases, Authorities may refuse the registration.

However, when we have such a elaborate provisions under Trusts act and when Charity Commissioner himself has granted the registration, then I personally believe that it is out of jurisdiction of tax authorities to reject the Application. Business Purpose in Objects: If the commissioner is of the view that the objects of the trusts are not the charitable purposes as defined u/s 2(15) and on the contrary the activities are such which is in the nature of trade and Commerce. The commissioner may reject such application.

Rejection under any other section for exemption: This ground for rejection/cancellation was taken especially for the trusts which are rejected registration under any other

section for exemption. In *Sunbeam English School Society Vs. Commissioner Of Income Tax ITAT*, Allahabad Bench has held that it is not justifiable to reject the application u/s 12AA, on the ground that trust has been refused registration under any other section. All the above grounds of rejection have not been mentioned neither in Income tax Act nor in Income Tax rules, these are the common practical grounds which assessing officer extracts out of the verification and investigation of the records and its correspondent legality and validity

CANCELLATION OF REGISTRATION

Registration under section 12AA is lifetime subject to the satisfaction of conditions mentioned above. If any of the conditions attached to it is violated then such registration may be cancelled. Section 12AA (3) empowers such post cancellation. However, post cancellation contains repercussion effects so its thorough reading and harmonious interpretation is necessary.

Section 12AA (3) reads as follows: "Where a trust or an institution has been granted registration under this section and subsequently the commissioner is satisfied that the activities of trust or institution are not genuine or are not being carried out in accordance with the objects of trust or institution, then he shall pass an order in writing cancelling the registration of such trust or institution" Now, the most amicable reading of section 12AA(3) is that the cancellation can only be done if trust is not carrying out the activities as per the objects of the trust deed.¹⁶ It simply implies that if there is any activity which is business activity in nature and which is incidental to attainment of the objects of the trust, then merely on the fact that the trust carries out activity in nature of business or trade, registration can't be cancelled. In the similar line, if there is any amendment in the Definition of Charitable object and part of the activities of trust falls under trade or business nature, then also registration can't be cancelled.

CONCLUSION

It is well established undeniable fact that any law-makers contrary to the Constitution of India can't survive. We, the individuals of India by virtue of Preamble of Constitution of India have set to unite in lay, socialistic, republic union of India. One could argue that if we've ingrained in lay India however a law-maker will encourage the non secular activity by rendering exemption from taxation laws. However, as per constitution of Bharat, state is indifferent from the religions and can't be faith bias. But India has prosperous heritage of all the religions within the world and India is that the birth place of 4 major religions within the world particularly Hinduism, Sikhism, Buddhism and Jainism. So, it's the duty of the State to preserve this heritage and unfold them as a matter of heritage. So it stands constitutionally valid. Moreover, each Indian national has right to watch religion of his/her faith. So, if state taxes the non secular activities then it'll be equivalent to garbing down the rights of Indian citizens.

¹⁴ last visited September 15,2017; https://studentsofcaacs.files.wordpress.com/2F2014%2F08%2Ftaxation-of-charitable-trust.docx&usg=AFQjCN-HSusp60zow_0u2aYB2mngP-0xP-Q
15 (2008) 302 ITR 321

¹⁶ last visited September 15,2017; <https://www.caclubindia.com/articles/taxation-of-charitable-trust-20952.asp>

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