



NON-GOVERNMENTAL ORGANISATION: A STUDY UNDER INCOME TAX ACT, 1961

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ABSTRACT

This paper offers with charitable trusts and the primary purpose to serve a reason it's no longer vital that the object be to gain the entire of mankind or all humans in a particular country or state. It is sufficient if the intention to advantage a section of the public, as distinctive from a exact individual, is present. However, the section of the community sought to be benefited need to be sufficiently described and identifiable by way of some common satisfactory of a public or impersonal nature. An institution set up with the object of promotion exchange or commerce is a charitable group as it promotes common proper via enhancement of business. However, an organization which simply regulates or enhances the business of its members is no longer a charitable institution. Thus, the place the vendors of resorts fashioned an affiliation for acquiring articles on the permit for providing them to individuals and protecting their commercial enterprise interest, the association was once held no longer to be a charitable one for the purpose of the Act. And this has to be regulated and seemed after for the betterment of society.

Keywords: NGO, Non Profit, Charitable, Income Tax

INTRODUCTION

Charitable purpose' consists of relief of the poor, education, clinical relief, and additionally the development of any object of regular public-service corporation. However, if it involves carrying on of any activity within the nature of trade, commerce or commercial enterprise or any endeavor of rendering any carrier in relevance with trade, commerce or enterprise for a cess or fee or the other thought, regardless of the persona of use or utility or retention, of the economic reap from the same activity, an equal won't be considered as an advancement of any object of normal public-service corporation. However, if the whole receipts from such activities don't exceed Rs.10,00,000/, such activities of the have faith can still be viewed as activities for a charitable purpose. Preservation of environment (including watersheds, forests, and wildlife) and renovation of monuments or locations or objects of imaginative or ancient pastime would be thought-about as "charitable purpose" aside from "advancement of any object of familiar public utility". According to one survey in India, there's one N.G.O per 800 Indian subjects. We have a tendency to can't understand even one village in India anyplace there's no non-secular place. We would not recognise college, Hospital or Common Pay and use toilets then again we have a tendency to genuinely have non secular places in each and every and each nook of India, howsoever remote village it need to no longer be. There's AN intricate and multi-layer Exemption theme reachable for all this non secular and charitable have faith 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.

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 occasionally referred as the Statute of Elizabeth.¹ Whereas lands, chattels, money are given by means of sundry well-disposed persons, some for the relief of aged, impotent and negative individuals, the protection of ill and maimed troopers and mariners, colleges of learning, free colleges and college students in universities, the restore of bridges, port, haven, causeway, churches, ocean banks and highways, the education and preferment of orphans; the relief, inventory protection for homes. Lord McNaughton summarized the scope of charity. "Charity in its criminal sense includes 4 essential divisions, trusts for the relief of poverty, have confidence for the advancement of education; believe for the development of religion; and have faith for different purposes recommended to the community, now not falling under any of the previous heads."² *Oppenheim v Tobacco Securities Trust Co Ltd*, [1951] AC 297:3 positive believe for the schooling of teens of personnel 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 prison experience includes 4 most important divisions; trusts for the alleviation of poverty, have faith for the development of education; have faith for the advancement of religion; and have faith for other purposes really helpful to the community, no longer falling underneath any of the preceding heads." No definition of poverty. It does now not suggest destitution. It capacity that there is a want, that a character has 'to go short' of something. The have faith ought to be inside the spirit and intendment of the Preamble. It have to be for the alleviation of such humans and no longer in basic terms their benefit.

Dingle v Turner (1972) AC 601:5

Trust to follow income in paying pensions to negative personnel of a company. HOL reaffirmed the Court of Appeal's choice that it was charitable. If the trustees' one to relieve poverty amongst named individuals it is no longer charitable

Re Scowcroft (1898) Ch 638:6

The present of income to be utilized for the furtherance of conservative standards and non-secular and intellectual improvement. Held: Charitable Trust *Re Koehler's Will Trust* (1986) Ch 423 A gift to further the work of the academic task used to be held charitable even though the testators categorical aspiration had been not viewed as charitable. The challenge worried conferences with political flavour but it did no longer in addition the hobby of a specific political party. *CIT Vs. Andhra Chamber of Commerce* (1965)(SC)⁷ Definition of time period "Charitable purpose" is inclusive and now not exhaustive. The expression is no longer restricted to the objects advisable to the whole of mankind. An object which is recommended to a part of the public is additionally a charitable object. *CIT Vs. Bar Council Of Maharashtra* (1981) (SC)⁸ The expression "advancement of widely wide-spread public utility" consists of any object beneficial to the public or a part of the public as individual from an person or a team of individual.

IN VIEW OF INCOME TAX ACT, 1961

Non-Governmental Organizations (NGOs), whether or now not public trusts, associations, or special non-profit entities (including non-profit companies), function an necessary position in supplementing

governmental efforts in advertising financial improvement and monetary aid. There's a requirement for such corporations no longer solely as a end result of the sources at the command of the authorities are insufficient relative to want, however additionally as a result of their attain and also the wealth of native statistics they possess, all of which may profitably be used for the gain of society. NGOs exist all informed countries, whether or not or not developed or developing. Tax administrations over the globe well known the voluntary effort and provide incentives to real charitable organizations.

Most often, this is done by either partly or fully exempting their incomes from tax, and also by using offering tax incentives to donors in order to inspire them to contribute assets to such organizations. The Indian Income Tax Act, 1961 to comprises various provisions to prolong tax breaks and incentives to such corporations as nicely as to their donors. Recognizing the need to inform assesses as properly as the standard public about taxation provisions concerning to religious and charitable trusts and institutions, which are substantially one-of-a-kind from the prison provisions dealing with other taxable entities such as business concerns, the then Directorate of Income Tax (RSP&PR), posted a booklet on the difficulty entitled "Assessment of Charitable Trusts & Institutions" in the yr. 2002 underneath its 'Taxpayer Information Series'.⁹

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

1. Relief of the poor,
2. Education,
3. Medical relief, and
- 4 Advancement of any different object of typical public utility.

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

It entails an idea of benefiting others instead than oneself. A industrial problem is now not an object of comfort of the terrible on the ground that it provides employment. The object should furnish alleviation at once and not indirectly. For a trust to be normal as a charitable believe for the purposes of the exemption, it is imperative that the objects have to be specific so as to conform to the requirement of earnings tax regulation in this regard. Where they are too wide, the have confidence may additionally now not qualify for the exemption. The onus to show 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 a 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 the 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, the 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. 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 long as the prescribed files are worried there is no such listing in Income Tax Act or in Income Tax rules [Except supplying for Indenture of Trust & important points of Trustees]. CBDT is purporting to make a fashionable Code of Procedure in this regard. We can assume it to come in a very short time. However, from the realistic journey we can list out following positive documents:

- i. Duly filed Form No.10A
- ii. Copy of Registration certificates underneath Public Trusts Act
- iii. Certified Copy of Trust Deed [In English, if now not in English]
- iv. Certified Copy of Object Clause of have faith 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]
- vii. Undertaking under part 11(5) and 13(1)(c)
- viii. Affidavit of the Managing Trustee for Utilization of Income for Objects Only All this is the prima facie circumstantial proof to fulfill the C.I.T that the believe is genuine. After presenting necessary archives Commissioner might also omit an order both granting and rejecting the registration.

However, any order giving rejection to the registration can't be handed without giving the possibility of being heard. Opportunity of being heard is given solely by way of imply on written show-cause word to that regard. However, the Communication of Acceptance or rejection of any utility shall be made within the six months from the give up of the month in which the software was received. If no communication is received inside 6 months then the trust will be deemed to be registered under section 12AA. The number of criminal pronouncements of Tribunal & excessive courts have settled the role to a higher extent. Ld. ITAT, Delhi 'B' Special Bench, has held that the officers are bound to bypass the verdict to the utility in the stipulated time that is six months.14 now not passing the order inside 6 months and asking assessee to file application once more ability to put the assessee to the grind all over again for no fault of his. The intention of the legislature can by no means be as such. Moreover, the time body of six months is mandatory for the C.I.T to dispose of the software for registration. Once CIT doesn't pass an order within the given time it will become "Functus Officio", consequently it can't make the assessee file the software again.

COMMON GROUNDS OF REJECTION OF REGISTRATION U/S 12AA

Actual Activity has not been carried out by using the Trust: There used to be the objection of Income Tax Authorities that Registration u/s 12AA may additionally no longer be granted if Trust has now not undertaken the Actual Activities as per its objects. However, Gujarat high court docket 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 realized court has held that registration can't be denied only on the ground that believe has not undertaken any activities in the preceding year. Inconsistencies in the Object clauses: If there are any objects of the have faith deed which offers the Commissioner motives to believe that the Beneficiaries of the Trust things to do will be based on the specific caste, creed or sex. Then he might also refuse the registration. Inconsistencies in Revocation clause of Trust deed.

As per Bombay Public Trust Act 1950 the trusts are continually irrevocable. Generally, the believe can't be revoked. However, if the Circumstances occur than believe can be revoked through passing a unanimous resolution with the aid of all the trustees to that impact and with the prior approval of the Charity Commissioner. And in that state of affairs none of the belongings will go in hands of any of the trustees/settler or to the participants of the trust, on the contrary, it will be surpassed over to the have confidence having identical objects. Nowadays, Income tax officer needs such clear mention of all these formalities in the 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 additionally refuse the registration.

However, when we have such elaborate provisions under Trusts act and when Charity Commissioner himself has granted the registration, then I personally consider that it is out of the 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 functions as described u/s 2(15) and on the contrary, the things to do are such which is in the nature of alternate and Commerce. The commissioner might also reject such an application. A rejection beneath any different section for exemption: This floor for rejection/cancellation used to be taken in particular for the trusts which are rejected registration below any other part 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 utility u/s 12AA, on the floor that believe has been refused registration below any different section. All the above grounds of rejection have been stated neither in Income-tax Act nor in Income Tax rules, these are the frequent practical grounds which assessing officer extracts out of the verification and investigation of the data and its correspondent legality and validity.

CANCELLATION OF REGISTRATION

Registration under part 12AA is lifetime challenge to the satisfaction of prerequisites cited above. If any of the stipulations attached to it is violated then such registration might also be cancelled. Section 12AA (3) empowers such post-cancellation. However, post-cancellation incorporates repercussion effects so its thorough analysing and harmonious interpretation are necessary. Section 12AA (3) reads as follows: "Where a trust or an institution has been granted registration underneath this section and in consequence the commissioner is comfortable that the things to do of believe or organization are no longer authentic or are no longer being carried out in accordance with the objects of have faith or group, then he shall pass by an order in writing cancelling the registration of such trust or institution" Now, the most amicable studying of area 12AA(3) is that the cancellation can only be carried out if have confidence is no longer carrying out the activities as per the objects of the have confidence deed. Sixteen It actually implies that if there is any pastime which is business recreation in nature and which is incidental to the attainment of the objects of the trust, then basically on the fact that the trust contains out pastime in nature of enterprise or trade, registration can't be cancelled. In a comparable line, if there is any amendment in the Definition of Charitable object and section of the activities of believe falls below a change or business nature, then additionally registration can't be cancelled.

CONCLUSION

It is nicely installed plain fact that any lawmakers opposite to the Constitution of India can't survive. We, the persons of India by way of advantage of Preamble of Constitution of India have set to unite inlay, socialistic, republic union of India. One could argue that if we've ingrained in lay India then again a law-maker will inspire the non-secular recreation with the aid of rendering exemption from taxation laws. However, as per the constitution of Bharat, the kingdom is indifferent from the religions and can't be trust bias. But India has a affluent heritage of all the religions inside the world and India is that the birthplace of 4 main religions within the world in particular Hinduism, Sikhism, Buddhism, and Jainism. So, it's the responsibility of the State to preserve this heritage and unfold them as a count of heritage. So it stands constitutionally valid. Moreover, each Indian country wide has the right to watch faith of his/her faith. So, if country taxes the non-secular activities then it'll be equivalent to garbing down the rights of Indian citizens.

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