



INCOME TAX ON NON-GOVERNMENT AND NON PROFITABLE ORGANIZATIONS

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Introduction

Certain organizations, which are set up by the group of individuals or the association of persons to serve the society in the area of education, health, human rights, agriculture, environment protection, awareness on Government programs and also extending their arms for the disaster victims in terms of relief. These organizations can be termed as Non-Government organizations (NGO) or Non Profit Organizations (NPO).

These NGOs or NPOs can be registered as a Trust under Public Trust Act, or as a Society under the Societies Registration Act, 1860 or as a non-profit company under the Companies Act, 1956, amended 2014.

These NGOs/NPOs are autonomous in nature to perform a broad spectrum of services and humanitarian functions. It operates at local, regional, national or international level depending on its reach, connectivity and obviously with the approval/permission from the concerned authority and governed by the respective laws of the land. These organisations to discharge their social obligations and fulfilment of their objectives raise funds from government, foundations, various funding agencies functioning nationally and internationally, agencies of United Nations Organizations and also from corporate houses out of their CSR funds.

Income of Trust

Section 2 (24) "Income" includes— (iii) Voluntary contribution received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes or by an association or institution referred to in clause (21) or (23) or by a fund or trust or institution referred to in sub clause (iv) or (v) or by any university or other educational institutions referred to in sub clause (iii) or (vi) or Hospital or other institution referred to in sub clause (iii) or sub clause (vi) of clause (23C) of section 10 or by an electoral trust.

Explanation- For the purpose of this sub clause, trust includes any other legal obligation.

Income Exempt from Tax

Voluntary contributions with a specific direction to form part of corpus of trust or institution and exemption available to only Charitable/ religious trust or institution registered under Section 12AA (prior to Finance Act 2020) substituted by 12AB in the finance Act, 2020) of the Income Tax Act, 1961.

Charitable purpose— Includes relief of the poor, Education, Yoga (w.e 1st April 2016, Medical relief, preservation of Environment (including watershed, forests and wild life) and preservation of monuments or places or objects of artistic or historic interest) and the advancement of any other objects of general public utility. " Section 2(15) amended with effect from A.Y. 2009-10. Adding a proviso stating that the "Advancement of any other object of general public utility" 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 of any service in relation to any trade, commerce or business for a fee or cess or any other consideration, irrespective of any nature of use or application or retention of the Income from such activity,

Unless (i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility and (ii). The aggregate receipts from such activity or activities during the

previous year, do not exceeds 20% of the total receipts, of the trust or institution undertaking such activity or activities of that previous year.

Maintenance of separate books of accounts

To avail the exemption from Income Tax by charitable trusts/society carrying on both types of activity i.e. charitable and commercial, has to maintain separate sets of books of account in order to identify the Income and expenditure of the activity of commercial in nature and so as to find out the Profit on which Income tax has to be paid.

As per explanation to Sec 13 clause d of sub clause iii, Where the trust or institution has any other Income in addition to profit and gains of business, the proviso shall not apply unless the trust or Institution maintains separate books of accounts in respect of such business.

However, there are certain exceptions, where separate books of account need not to be maintained by virtue of the following judicial pronouncement.

Short Overview : Merely because assessee-hospital was not maintaining separate books of account for the medical shop, it did not mean that the assessee was not entitled for obtaining registration under section 12AA, more over when the objects of the Society were not doubted, rather accepted.

Assessee contended that CIT(E) was unjustified in rejecting the registration application under section 12AA of the Society on the ground that he was not satisfied about genuineness of the charitable activities, only on one ground that separate books of account were not maintained for Pharmacy inside the hospital. Case of assessee was that it was conducting in-house consumption of medicines and treatment packages and for the urgent need of medicines to in-house patients. The objects of the Society were not doubted, rather accepted.

it is held that : Assessee society was also providing medical relief and facilities to every person, conducting blood donation, eye operation, tikakaran, family planning, mother child safety, and awareness to general public by way of awareness of medical camps. Therefore, to run the medical shop inside the hospital is fully charitable purpose and not for commercial purpose. The assessee was not maintaining separate books of account for the said medical shop did not mean that the assessee is not entitled for obtaining registration under section 12AA.

And the Decision was in favour of the Assessee

IN THE ITAT, RANCHI BENCH
ITA No. 269/Ran/18 dated 5th April, 2019

ORDER

The captioned appeal filed by the assessee, pertaining to assessment year 2018-19, is directed against the order passed by the Commissioner (Exemption), Patna, in *IT /Appeal/Memo No. CIT E/Pat/12AA/04(167)/2018- 19/358-62, dated 14-5-2018.*

It is held that, The society trust was maintaining Pharmacy medical shop inside the hospital, which was for in-house consumption of medicines and treatment packages and for the urgent need of medicines to in-house patients. It is also noted by the bench that, the objects of the society were not doubted by the learned Commissioner (Exemption). Therefore, it is also noted that in order to obtain registration under section 12AA only objects of the assessee trust is to be examined. Bench noted that the assessee society's main object of running a hospital, which is covered under section 2(15) of the Act as charitable purposes being 'medical relief'. Therefore, simply non-maintenance of separate books cannot be a ground for rejection of registration under section 12AA of the Act. The bench further noted that the assessee society is also providing medical relief and facilities to every person, conducting blood donation, eye operation, tikakaran, family planning, mother child safety, AIDS, malaria, T.B, Kustorog and awareness to general public by way of awareness of medical camps. Therefore, to run the medical shop inside the hospital is fully charitable purpose and not for commercial purpose. The bench also noted that, if the assessee is not maintaining separate books of account for the said medical shop does not mean that the assessee is not entitled for obtaining registration under

section 12AA of the Act. Further bench noted that, in order to grant registration the objects of the assessee society is to be examined. Therefore, the learned Commissioner (Exemption) should not deny the grant of registration under section 12AA merely because assessee is running medical shop inside the hospital. Therefore, the bench has directed the learned Commissioner (Exemption) to grant the registration under section 12AA of the Act, in accordance with law.

Anonymous Donation

The term “anonymous donation” means any voluntary contribution referred to in section 2(24)(ia), where the person receiving such contribution does not maintain the record of the identity indicating the name and address of person making such contribution and such other particulars as may be prescribed. (Finance Act, 2014 w.e 1st April 2015)

Finance Act 2006 has introduced a new charging provision namely Section 115 BBC applicable with effect from 1st April, 2007. This section provides that where total income of the assessee being a person in receipt of income on behalf of any:

- a. Education institution referred to in sub clause (iiiad) & (vi) of section 10 (23C)
- b. Hospital/institution referred to in sub clause (iii ae) & (vi a),
- c. Fund or trust or institution referred to in sub clause (iv) & (v) of section 10 (23C) or
- d. Trust or institution referred to in section 11.

The Income Tax payable shall be the aggregate of:

- a. 30% of Anonymous donations received in excess of the higher of the following namely.

Exclude – Higher of (i) 5% of total donations and Rs. 1.00 lakh. Plus, normal income tax, if any

- A. 5% of the total donations received by the assessee or
- B. One lakh rupees,

And

ii) The amount of Income Tax with which the assessee would have been chargeable had his total income been reduced by the aggregate of anonymous donations received in excess of the amount referred in foregoing sub clauses of clause 9i).

However, S. 115BBC not applicable for:

- a. any trust or institution created or established wholly for religious purposes
- b. Any trust or institutions created or established wholly for religious and charitable purposes other than any anonymous donation made with a specific direction that such donation is for any university or other educational institution or
- c. any Hospital or other medical institution run by such trust or institution.

Laws relating to registration for exemption, renewal, cancellation etc. (Prior to Finance Act, 2020)

1	11	Law on Exemption
2	12	Income of Trust
3	12A	Conditions for Exemption
4	12AA	Registration
5	13	Conditions for Disqualification
6	10(23C)	Exemption for Certain Trusts

Amendment of laws relating to registration for exemption, renewal, cancellation, validation, renewal etc.

(Finance Act, 2020)

1. Cessation of registration under section 12AA.
2. Cessation of approvals under section 10(23C).
3. Cessation of registration under section 80G.
4. Revalidation of existing registrations under section 12AA/10(23C)/80G.
 - Existing registrations to be revalidated within 3 months from 1st June 2020.

- Revalidation is valid for 5 years.
 - Further renewal of registration after each 5 years.
 - Application to be submitted 6 months prior to completion of 5 years.
5. Provisional registrations/approval for all new organisations under section 12AA/10(23C)/ 80G. (Applicable to new organisations applying for exemptions under various sections).
 - For period of 3 years.
 - Renewal at the end of 3 years
 - Application to be submitted at least 6 months prior to expiry of 3 years or within 6 months from commencement of activities, whichever is earlier.
 - Renewal is for 5 years.
 6. No simultaneous benefit under section 12AB and 10(23C).
 - ✓ Earlier an organisation registered under section 12AA could have also availed exemption under section 10(23C).
 - ✓ Now, if approval u/s.12A is opted for, then the other approval if any i.e. under section 10(23C), 10(46) shall become inoperative and vice-versa.
 - ✓ Organisation can apply for revalidation either for 12A or 10(23C) or 10(46).
 7. Filing of periodic statements by done organisations to avail benefit of 80G and penal provisions.
 - ✓ Donee is required to furnish certificate of amount received to every donor.
 - ✓ Donee is required to file statement of donation received to Income tax department.
 - ✓ On non compliance of above assessee will become assessee in default and liable to penalty u/s 271K.
 - ✓ Quantum of Penalty
 - Minimum: Rs 10,000
 - Maximum: Rs.1,00,000 Along with this a penalty of Rs. 200 per day can be imposed, till the time default continues (234G).

Note: Same procedure and steps to be followed for grant of exemption U/s 80 G, fresh registrations, approvals, validations etc. as in the case of 12AA/12 AB.

Audit and filing of Returns

Audit report (in form 10B) has to be obtained and uploaded, one month prior to due date of return filing i.e. before 30th September every year. Now, Income Tax return can be filed on or before 31st October of the Assessment Year.

Consequence/implications of amendments

- Creation of national database of all charitable and religious institutions
- Issuance of Unique Identification Number to all institutions.
- Identification of inactive and defunct charitable institutions due to revalidation process.
- Opportunity to withdraw exemptions at the time of renewals without going through complicated cancellation process.
- Unearthing of black money
- Identifying organizations not functioning as per the laws of the land.
- Proper and efficient utilization of fund.