



TAXATION FOR NON-GOVERNMENT AND NON PROFITABLE ORGANIZATIONS

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Since years together, Government is trying its level best through various legislations to regulate the NGO/NPO sectors. However, due to some legal glitches and interpretation of the laws in a different ways by different quarters, some of the organizations coming under this sector are enjoying absolute privileges taking shelter of the exemption either U/s 10 or 11 or combination of both. In past the definition of Charitable and religious has been viewed in such a manner that not only Government is losing the revenue but also some honest organizations are facing harassment due to interpretation of law. Despite of initiatives and sincere efforts from the Government to regulate these sectors through legislative changes but no way it was helpful to Government by bringing revenue but also accumulation of cases in different forum increased. Thus harassment created to the real players in these filed.

Some of the judicial pronouncements in interpreting the laws are enumerated below.

- 1. The Commissioner (Exemption), Patna, in IT /Appeal/Memo No. CIT E/Pat/12AA/04(167)/2018-19/358-62, dated 14-5-2018. IN THE ITAT, RANCHI BENCH, ITA No. 269/Ran/18 dated 5th April, 2019**
The Court 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.
- 2. [2016] 70 taxmann.com 181 (Bombay), HIGH COURT OF BOMBAY Director of Income-tax (Exemptions) v. Khar Gymkhana**
In view of CBDT's Circular No.21/2016 dated 27-5-2016, Registration of a trust can't be cancelled merely because receipts from commercial activities exceed Rs.25 Lakh unless there is change in the nature of its activities or its activities are not genuine
- 3. Visvesvaraya Technological University v. Assistant Commissioner of Income Tax [2016]68 taxmann.com 287 (SC).**
The Institution accumulating 500 crore in deposits and Infrastructure by charging to the students over past 10 years was held Charitable by the Supreme Court.
- 4. [2015] 61 taxmann.com 68 (P & H), HIGH COURT OF P & H Commissioner of Income-tax v. Christian Medical College***
Where assessee-society, established by Christian community, had been running medical colleges and its main aims were to train professionals in field of medical and health care and also to provide medical facilities in its hospitals to all persons of any caste, activities carried out by assessee were charitable in nature and it was entitled to exemption under section 80G.
- 5. India Trade Promotion organization v. DGIT (E) W.P (C) No. 1872/2013 –Delhi High Court.**
The Court held that the proviso to clause 15 of Section 2 of the Income Tax would violate Article 14 of the Indian Constitution, if it is interpreted to deny incidental business activities of Charitable Organizations. The proviso shall remain valid only if it is used to deny exemption to “purely” commercial and business entities which wear mask of a charity, the court opined.

6. **Dy CIT v. Society for Rural Improvement, ITA No. 329/Coch/2014 dated 1st June 2016, ITAT Cochin**
A trust registered u/s 12AA doing micro finance activity is eligible for deduction u/s 11. Microfinance activity is 'relief of the poor' and not 'general purpose utility'. So commercial receipts concept will not apply.
7. **CIT v. Tallygunge Club Ltd. [1977]107 ITR 776 & CIT v. Bijlee Cotton Mills (P) Ltd; [1979] 116 ITR 60**
The court held that grant with specific direction from the Donor is a legal obligation and cannot be treated as Income. However the explanation to sec. 2(24)(iia) states that a trust includes a legal obligation.
8. **[2016] 70 taxmann.com 48 (Hyderabad – Trib.) IN THE ITAT HYDERABAD BENCH 'A', Deputy Commissioner of Income-tax, Circle- 1(1), Hyderabad v. A.P. State Civil Supplies Corporation Ltd.**
State Civil Supplies Corporation providing essential commodities to poor people at subsidized rates should be considered to be providing 'relief to poor' (and not object of general public utility) and, thus, eligible for exemption under section 11; The amendment of proviso to section 2(15) was not applicable.
9. **[CIT, Central v. Ramma Educational Society [2018]99 taxmann.com 282 (SC)**
The Court held that in absence of any cogent material or evidence to establish any violation of provision of Section 12AA(3), cancellation of registration of assessee-society retrospectively was not justified.
10. **[2015]55taxmann.com 516 (Karnataka), HIGH COURT OF KARNATAKA Commissioner of Income-tax, Exemptions, Bangalore v. CMR Jnanadhara Trust**
When there was substantial growth in trust on account of services rendered by trustees, payment made to trustees for such services was not in violation of section 13 and benefit under section 11 was available.
11. **2015] 55 taxmann.com 379 (Hyderabad – Trib.) Assistant Director of Income-tax, (Exemptions)-I, Hyderabad v. Hyderabad Study Circle***
A coaching institute giving coaching to students for various competitive examinations is eligible for exemption under section 10(23C)(iiiad).
12. **M/s Ananda Social And Educational Trust vs. CIT (Supreme Court), dated 7th March 2020**
*S. 12AA: Registration can be applied for by a newly registered trust. There is no stipulation that the trust should have already been in existence and should have undertaken any activities before making the application for registration. The term 'activities' in s. 12AA includes 'proposed activities'. The CIT must consider whether the objects of the Trust are genuinely charitable in nature and whether the activities which the Trust proposed to carry on are genuine in the sense that they are in line with the objects of the Trust. However, he cannot refuse registration on the ground that no activities are carried out
Since section 12AA pertains to the registration of the Trust and not to assess of what a trust has actually done, we are of the view that the term 'activities' in the provision includes 'proposed activities'. That is to say, a Commissioner is bound to consider whether the objects of the Trust are genuinely charitable in nature and whether the activities which the Trust proposed to carry on are genuine in the sense that they are in line with the objects of the Trust. In contrast, the position would be different where the Commissioner proposes to cancel the registration of a Trust under sub-section (3) of section 12AA of the Act. There the Commissioner would be bound to record the finding that an activity or activities actually carried on by the Trust are not genuine being not in accordance with the objects of the Trust. Similarly, the situation would be different where the trust has before applying for registration found to have undertaken activities contrary to the objects of the Trust.*
13. **[2016] 70 taxmann.com 54 (Delhi – Trib.), IN THE ITAT DELHI BENCH 'D' Deputy Director of Income-tax (E), Trust Circle-IV, New Delhi v. Institute of Chartered Accountants of India.**

The assessee, Institute of Chartered Accountants of India (ICAI) was established by the Act of Parliament of ICAI Act of 1949 and was registered under section 12A. It claimed exemption under section 11.

The Assessing Officer denied exemption mainly on the ground that ICAI was involved in commercial activities as it received coaching fees from the students of CA while giving coaching to the CA students. He further held that assessee's case fell under the category of General Public Utility and proviso to section 2(15) was clearly applicable in this case. Accordingly, he computed income of the ICAI as any normal Association of Person (AOP). On appeal, the CIT(A) allowed the appeal of the assessee.

On revenue's appeal to Tribunal, it was held that, The issue in dispute is squarely covered by the various decisions of the ITAT, High Court and the Supreme Court of India in assessee's own cases in preceding assessment years wherein exemption to the assessee under section 11 has been allowed holding that the assessee is an educational institution. Thus, respectfully following the same it is to be held that ICAI is an educational institute and hence its income will be exempt under section 11 as education falls within meaning of charitable purpose under section 2(15).

14. [2015] 56 taxmann.com 118 (Mumbai – Trib.), Critical Art and Media Practices v. Director of Income-tax (Exemption), Mumbai

If activities of a trust are found to be charitable and property is held wholly and exclusively under trust for charitable and religious purposes, then such a trust cannot be denied registration merely because its activities are extended outside India. However, income which is applied towards charitable activities in India only will be eligible for exemption.

15. [2015] 60 taxmann.com 188 (Patna – Trib.), International School of Human Resources & Social Welfare Society v. Commissioner of Income-tax-1, Patna

Where merely because minority status was accorded to educational institutions run by assessee-society, it could not be regarded as being established for benefit of a particular religious community; registration could not be denied on this ground.

16. [2015] 55 taxmann.com 255 (SC), SUPREME COURT OF INDIA Queen's Educational Society v. Commissioner of Income-tax

Where a surplus was made by educational institution which was ploughed back for educational purposes, said institution was to be held to be existed solely for educational purpose and not for purpose of profit.

17. (2015) 55 taxmann.com 34 (Karnataka), HIGH COURT OF KARNATAKA Director of Income-tax (Exemption), Bangalore v. Karnataka Industrial Area Development Board.

A registration granted earlier under section 12A can be cancelled under two circumstances: (a) If the activities of such trust or institution are not genuine, (b) the activities of trust or institution not being carried out in accordance with the object of the trust or institution. Therefore, registration already granted under section 12A could not be revoked for the reason that the charitable trust or institution pursuing of advancement of objects of general public utility carried on commercial activities.

The Finance Bill 2020 proposed some regulating mechanism for Non-Government and Non profitable Organizations for transparent monitoring of the activities and to control the misuse of funds. As per some school of thought, there will be difficulties in compliance by small/medium organisations while going for revalidation of the registration in each 5 years. Unless the registration/revalidation process is streamlined, it will lead to harassment and most of the NGOs' will close down their activities. However, this is a welcome step by the Government to bring transparency and centralized control on the activities of the Non-Government and Non profitable Organizations.