

Assessment of Charitable Institution- A Comprehensive Case study

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Assessment of Charitable Institution

- If income of a AOP/BOI/Any Artificial Judicial Person does not exceed maximum taxable exemption limit i.e., Rs. 250000/- no income tax is payable. Also in this case filing of income tax return is optional.
- Any charitable Trust or Institution may be AOP/BOI/Artificial Judicial person/Company(in some cases), whether registered u/s 12A or not, if income does not exceed maximum exemption limit, filing of income tax return is not mandatory and tax liability shall be Nil.

Assessment of Charitable Institution

- When income of Trust or Institution exceeds the maximum exemption limit, then filing of income tax return is compulsory and there shall be tax liability.
- Section 11 and 12 shall be applicable to a trust or institution, which are formed by any law for charitable or religious purpose and is registered u/s 12A of IT Act, 1961.

Assessment of Charitable Institution

- Trust may be a
- Trust registered under the Indian Trusts Act, 1882
- Society registered under the Societies Registration Act, 1860
- A company registered u/s 8, of Companies Act, 2013[u/s 25, of repealed Companies Act, 1956]
- Any other institution formed under any other law, like sports association, stock exchange, etc.,

Assessment of Charitable Institution

- Section 2(15) define that when a trust or institution shall be called as formed for charitable purpose, if object of trust or institution is
- Relief of poor;
- Education;
- Yoga;
- Medical Relief;
- Preservation of environment (including water sheds, forests and wildlife);

Assessment of Charitable Institution

- Preservation of monuments or places or objects of artistic or historic interest;
- The advancement of any other object of public utility; provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the 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 exceed 25% of the total receipts, of the trust or institution undertaking such activity or activities of that previous year.

Assessment of Charitable Institution

- **Section 11, Income from property held for charitable or religious purpose:-** The following income shall not be included in the total income of the previous year of the person in receipt of the income
- i) 85% of income derived from the property held under trust wholly for charitable or religious purpose is applied in India in conformity to the object of that trust and remaining 15% accumulated or set apart.
- ii) 85% of income derived from the property held under trust, having been created before the commencement of IT Act, 1961, wholly for charitable or religious purpose is applied in India to the object of that trust and remaining 15% accumulated or set apart.

Assessment of Charitable Institution

- Income from property held under trust created on or after 01-04-1952 for a charitable purpose to promote international welfare in which India is interested to the extent applied such purposes outside of India, and created before 01-04-1952 to the extent applied such purposes outside of India
- Income in the form of voluntary contributions made with specific direction that they shall form part of the corpus of the trust or institution.

Assessment of Charitable Institution

- Section-12:- Income of trusts or institutions from contributions, shall for the purpose of section 11 be deemed to be income derived from property held under trust.
- Income in the form of voluntary contributions, without any specification direction to be part of corpus
- The value of any services, being medical or educational services , made available by any charitable or religious trust.
- Any amount of donation received.

Assessment of Charitable Institution

- In case where charitable institution or trust **could not** applied 85% of income during the p.y **due to income wholly or partly not received or due to any other reason**, may apply in form 9A, electronically to the AO, before the expiry of filing of Income tax return due date as per section 139(1) and it is deemed to be income applied to such purposes during the p.y.
- **For example for the A.Y. 2020-21, up to 31st July or 30th September, 2020 as the case may be. And suppose total income credited to Income & Expenditure account is Rs. 1 Lakhs. Applied Rs. 0.50 lakhs, then shortfall is Rs. 0.35 lakhs. If not file application in form 9A, then Rs.0.35 lakhs shall be taxable income, in other hand if application made in form 9A, Rs 0.35 lakhs shall be deemed to be applied for charitable purposes during the previous year.**

Assessment of Charitable Institution

- In case, where 85% of the income could not be applied to such charitable purposes and option for deemed to be applied in the same P.Y. is not available but is accumulated or set apart for the purpose of application in India, then in this case, i) an application shall be made in form 10 electronically before the expiry of due date to file income tax return under section 139(1), to the AO, that accumulated or set apart income shall be applied for charitable purpose within 5 years, ii) money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section 5, i.e. in Post office saving banks, scheduled bank, UTI etc.,

Assessment of Charitable Institution

- “ **Property held under trust**” includes a business undertaking, book debt, exploitation rights of space on either side of an overbridge for advertisement etc;
- Separate books of accounts have to maintain of each commercial activities

Case Laws: 1, A charitable Company, Pleaded by me

- **X club Ltd.** was formed u/s 25 of Companies Act, 1956, in the year 1967, by the members of a PSU.
- Objects are to provide recreation facility, sports facility, and others for the entertainment of members.
- Source of income is subscription fee, sale of wine, income from hall booking, rental income from shops and miscellaneous income.
- Club gets Financial audit report every year.
- Since, its registration Club has not furnished income tax return. Club is not registered u/s 12A of Income Tax Act, 1961.
- Got notice from Income tax department u/s 142(1), for scrutiny for the A,Y, 2009-10, 2010-11 and 2011-12.
- **Basic question arise in which form Income tax return has to filed ?**
- **Whether audit report in form 10B is required or not?**

Case Laws: 1, A charitable Company

- Club has filed return in ITR Form 7. This was not accepted by the AO on the ground that since it is a company so income tax return shall be filed in ITR form 6. And passed best judgment order u/s 144 and demanded Rs. 15 lakhs as income tax.
- **Logic behind filing ITR 7.**
- **i) Main source of income is voluntary contribution from the members of club in the form of subscription fee.**
- **ii) As per Section 139(4A), every person in receipt of income derived from property held under trust, wholly for charitable or religious purposes or of income being voluntary contributions referred to section 2(24)(ia), exceeds the maximum amount which is not chargeable to tax without giving effect to section 11 and 12, shall file income tax return in ITR 7.**
- **iii) Read rule 12(1)(g), in the case of a person including company whether or not registered under section 25 of Co. Act, 1956 or section 8 of Co. Act, 2013, required to file a return under sub-section 4A, 4B, 4C, 4D of section 139, be in form ITR 7.**

Case Laws: 1, A charitable Company

- Whether audit report in Form 10B is required or not?
- **Answer: No, because audit report shall be required in case where a trust or institution is registered under section 12A of IT Act, 1961.**
- An appeal was filed before the commissioner (appeal) and CIT(appeal) after going through the argument placed before him by Club, passed an order in favor of club and directed the AO to accept the income tax return in ITR form 7 and pass a fresh order.

Case Laws: 2, A Society registered under the Society Act, 1860

- A Samiti was formed by the house wives and registered under the Society Act, 1860 in the year 1977.
- Samiti is also registered under section 12A of IT Act, 1860.
- Samiti, every year get its accounts audited and get audit report in form 10B.
- Samiti apart from charitable activities also have commercial activities, through which earn huge income.
- AO, treated those commercial activities as advancement of general public utility and raised demand of income tax .

Case Laws: 2, A Society registered under the Society Act, 1860

- On aggrieved, Samiti file an appeal before the CIT(appeal).
- CIT(appeal), disallow the appeal of Samiti.
- Then, Samiti has filed an appeal before the Income Tax Appellate Tribunal.
- After heard the argument on behalf of Samiti, ITAT allow the appeal.

Case Laws: 2, A Society registered under the Society Act, 1860

- **Object of the society are:**
- To promote the welfare of needy, poor, disabled and such other persons;
- To work among women and children of Bokaro Steel City as well as woman and children of local people in order to promote sports, games, cultural and artistic talents;
- To promote educational facilitation and to provide merit scholarships to needy students residing within the area of operation of the samiti;
- To arrange help for the victims of natural calamities;
- To promote social and cultural integration;
- To co-operate with appropriate authorities and other organizations interested in any of the objects of the society and to affiliate to any other similar organization with a view to promote the objects of the society;
- To do all such other lawful things as are incidental or conducive to the attainment of the above objects.

Case Laws: 2, A Society registered under the Society Act, 1860

- Question of Law: whether any commercial activity of a charitable trust or institution is exempt from tax and benefit of section 11 and section 12A is available or not.
- **GROUND OF APPEAL**
- 1. The activities carried out in the constituent units Surabhi, Udyog kendra and Soap factory are incidental to the objects of the society i.e. promote the welfare of needy, poor, disabled and such other person, to work among women and children to promote social and cultural integration, to co-operate with appropriate authorised and any other organisation interested in any of the object of the society, to do all such other law full things as are incidental or conducive to the object of the society.

Case Laws: 2, A Society registered under the Society Act, 1860

- 2. The above activities are fall under the category relief to the poor of sec.2(15) of IT Act, 1961.
- 3 .These activities are not for a certain class or section of general public. So this is not a advancement of general public utility.
- 4 .Sub-section (4) and (4A) of section 11 of IT Act, 1961 allow business undertaking if separate books of accounts are maintained and are incidental to the attainment of the objectives of the trust or institution.
- 5. Income of units under question i.e. Surabhi, Udyog kendra and Soap factory are incidental to the objects i.e. to promote the welfare of needy, poor, disabled and such other person and also separate books of accounts of these units are maintained.
- 6 .As per sec 11(4), the AO is not dis-agree with the income of these units as shown in its books of accounts.
- 7. Samiti fulfill all the conditions as mentioned in sub- sec (1), (2), (3), (3A),(4),(4A), (5),(6), (7) of section 11 and AO has virtually accepted this.
- 8. Thus, order passed based on the only definition of charitable purpose u/s 2(15) is erred and bad in practice.
- 9 .Any other ground may be placed on or before the hearing.

Case Laws: 2, A Society registered under the Society Act, 1860

- Director of Income Tax(Exemption), Vs. Sabarmiti Ashram Gaushala Trust. Gujrat High Court, 15-01-2014
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Thanks to all participants, team of Tax research department, IT team of the Institute. Please give your feedback. You can raise your query through help desk of Taxation in institute website, www.icmai.in.

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