

TAXATION OF CHARITABLE TRUSTS (AMENDMENTS IN MAKING)



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There was time in early sixties, when charitable trusts were promoted by Government to carry out human services particularly in the field of education, medical relief, and help to poor, help for natural calamities and so on. Due to these, some people who always think and work to find out the loopholes to save tax. Such people not in case of charitable trusts' taxation matters but almost in any field where they were able to find out some loopholes, they were making money to sale such loopholes. I would dare to say that some professionals were leaders in doing such work. In addition, the minority religions to increase their strength tried to make public trusts as their weapon to bring foreign funds by which cases of caste conversions were increasing which ultimately the Central Government, to plug the loopholes started curbing public charitable trust and particularly since 2014 started curbing hard the misuse of Charitable trusts. This has made it difficult for the genuine trust to run with a fear of tax liability. Some amendments made in past have unnecessarily increased the work of Department as well as of trustees without any benefit to anyone.

Apart from such harsh amendments, the two verdicts of the Supreme Court have added the most difficult situation for the major trusts particularly running hospitals and educational institutions Viz. are New Noble Education Society Vs. CCIT (2022) 143Taxman.com 276(SC) & ACIT (E) Vs. Ahmedabad Urban Development Authority & Others(2022)143 Taxman.com(SC).

Without going deep into the matter, our effort is to know what are the changes in Finance Bill 2023 in respect of taxation of Public Charitable trust by which the genuine trusts can comply with the provisions to save taxes and use the funds for the benefits of less fortunate people of the Nation.

Last year and earlier effective provisions are such that the corpus donations given by the trust to another trust are not eligible for deduction as application of income. The amount to be allied should be out of the total income of the same year. Even if the application of income is out of corpus donations received earlier to 31-3-21, the same are not be eligible again as application of income. It is always to be understand that no double deduction of the same amount is allowed. It means the amount if spent out of the funds of the trust or out of the corpus donations and /or loans or borrowings received either earlier or during the year shall not be eligible for the claim for deduction at 85 % of the amount of income. This means if the amount out of the current income excluding corpus donations if the amount at 85 % is not spent then either option u/s. 11 (1)(a)Exp.(ii) or u/s. 11 (2) should be exercised else the income of the trust will get taxed.

In addition to these, in current year's budget a provision has been made that if a trust pays donations to the other trust, then the amount of such donations shall not be fully allowable as application income but only 85 % shall be eligible for such deduction. This it seems that many foundations established by CSR companies do not carry on their own activities but just donating the funds to other trusts who do carry out the activities. Though the certificates of the auditors are sought by the CSR companies to support that the amounts are genuinely spent for the activities allowed under CSR objects by the recipient trusts. The other reason is that there was misbehavior by certain companies made multilayer trusts to get 15% benefit u/s. 11(1)(a) so to plug such loophole the new provision of limiting 85% of donation income of eligibility has come. This change of allowing 85 % of donations is effective from 2024-25 assessment year. This change will affect a most to the CSR companies who mainly spent the funds via voluntary contributions since on such contributions 15% accumulation benefit is indirectly lost. This will also curb of forming multilayer trusts by same group.

The law is that the corpus funds need to be either spent for the capital expenditure to create an asset or be deposited in the various modes of investments allowed u/s. 11(5) subject of course to provisions of Charity trust in the State. However, no time limit is fixed for such investment to be made u/s. 11 (5) items. It means there should be reasonable time by which such investments be made. It was also not included in the income if corpus donations applied for expenses in India (not out of India) and there after withdrawn to be invested u/s. 11 (5) items. However, in the current finance bill the provision is made effective from 2023-24 A.Y. as regards time limit that the corpus donations amounts should be invested or deposited in five years from the end of the year in which the said amount has been received by the trust. This provision is subject to certain terms the amount which is claimed to be applied should not be the amount given to other trusts and nor even persons covered by section 13(1) should have been given any benefit. Secondly TDS provisions should be correctly followed as well as Section 40A(3) provisions of Income tax also have to be adhered to properly i.e. payments of application of income to be made by account payee cheques or through bank transactions if the amount is more than Rs. 10,000/-

This finance bill also proposes that the corpus donations need to be deposited or invested in the entities allowed under section 11 (5) of the income tax Act, 1961 subject of course the provisions for investment by trusts in Charity laws of the states.

The trusts are under Section 11(1) (a)Exp. (ii) and u/s. 11(2) given option to spend the shortfall in the application of income for the year either in the next year or in five years subject to certain conditions. For this purpose, the trusts are supposed to file the applications with the department either in form 9A or inform 10 as the case may be, by the due date applicable to file the return of income. However, there was change in law since 2018-19 A.Y. to file these applications by one month earlier to due date of filing the return of income. Again, in this finance bill the provision to amend the due date for filing these forms 9A & 10 by two months earlier to due date of filing the return of income. These shall put the trusts in awkward position because unless the books are ready to get audited, the amount to be declared in the application would be difficult to decide.

In the finance Bill 2023, with effect from 1-4-23 a new clause to explanation to Section 12AB (4) is added by which registration under new Section 12AB could be cancelled if the applicant trust has given wrong particulars of information in the application filed by it. This is in addition to other violations viz. i) application of income on wrong objects, ii) income from business not incidental to objects, iii) spending of income on private religious purposes, iv) income spent for the benefit of particular religious community or caste, v) activities carried out are not genuine and are not carried out in accordance with the objects and vi) there is no default in any other law of the land by the trust.

With effect from 1-4-2021, the new trusts required to apply for provisional registration of the trust u/s. 12AB within one month of starting activities of the new Trust. Such Provisional registration was granted for three years subject to other conditions are fulfilled as required.

As per the same law, the trusts who have been granted provisional registration, have to apply for regular registration either within six months prior to completion of the period provisional registration or within six months of starting the activities by the said trust. Due to this ambiguity, the new trusts were finding it difficult to fulfill the conditions firstly because if the trust has started the activities then it has to file both the application i.e. for provisional as well as regular registration. Secondly, due to application for provisional registration was to be made one month earlier to beginning of previous year, the trusts were losing exemption u/s. 11 for the first year. Therefore, now it has been provided with effect from 1-4-2023 in the Finance Bill to overcome this difficulty that if the trust has started the activities then it has to apply only for regular registration. However, if no activity has been started then such trust will have to apply for provisional registration one month earlier to beginning of the previous year. The CIT then pass the order to accept or reject the application for registration within six months from the end of the month in which application is made for registration. Applications u/s. 10(23C) as well as for u/s 80-G shall also be treated as per above amendments.

There has been an amendment in section 115TD (3)(iii) as and from A.Y.2023-24 that if the trust which is provisionally registered but has not applied for regular registration then it will be presumed that the such trust is getting converted to non-eligible registration entity in which case it shall be liable to pay Exit tax under said section which shall have to be paid within fourteen days from the end of the year.

The trusts which are registered u/s. 12A or 12AA earlier to 1-4-2021 and which have not renewed their registration under amended provisions as per Section 12AB and voluntarily wind up their activities or merge with non-charitable institutions then such trust shall also be liable to tax at maximum marginal rate on their accreted income.

Government at one hand make provisions to promote charity by making CSR law in Corporate Sector so that with the support of the funds the charitable activities in India may increase. On the other hand the provisions like controlling accumulation etc. are brought in the law due to which people would not be interested in doing social work, which is normally done without any remuneration but is done on humanity ground by the trustees.

The law as made by parliament is rarely accepted in plain language by the intelligent people and they try to find out the loopholes and twist law for the selfish interest by which whole purpose of making the law is lost. But one must understand there are intelligent people in government to who shall always try to plug the loopholes by which the law goes on being complicated and difficult and ultimately law bound people only suffers and culprits somehow get out of clutches of law.

One would have to think twice before forming a charitable trust as not only it will be difficult to manage the trust but trustee would find it difficult to get the proper advice to run the trust without incurring tax liability and to face prosecutions too. May we hope that genuine trusts shall not be punished unnecessarily in amending the trust laws for mischievous minds.

