

Legal Compliance for NGOs

Session – IV : Income Tax

S.2(15) and LATEST DEVELOPMENTS

by

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NEW DEFINITION OF SEC 2(15) – wef AY 2009-10

- Charitable purposes – restricted to five limbs like relief to poor, yoga, medical relief, education, preservation of environment, preservation of historical monuments and sixth limb being advancement of other objects of general public utility.
- Business / professional activities or any activity in the nature of trade / business allowed in five limbs.
- In case of sixth limb, business allowed subject to receipts not exceeding 20% of total receipts (AY 16-17).
- Nature of usage of business receipts not materials at all.
- Circular no 11/2008 Dated 19-12-2008 – relevant for understanding the new concept.

Sec2(15)

- activities in consonance with objects of the NGO,
- Receipts should not exceed 20% of total receipts

NEW DEFINITION OF SEC 2(15) – wef AY 2009-10 Continued

- Important to determine under which limb a NGO falls into. This is also necessary in view that ITR-7 requires under which limb NGO falls into.
- In cases of NGO s involved in advancement of other objects – more disputes from IT department ,
- Instances of advancement of objects of general public utility, **Promoting rural and cottage industries, Promoting arts and handicrafts in general, (when through arts and handicrafts – rural poor women are benefitted, it can be classified as relief to poor), communal harmony and brotherhood, Dharam shala , driving school (refer 127ITR 730),**
- Regarding relief to poor, education and medical relief- these are comparably exact activities.

Sec 13(8)

Nothing contained in section 11 or section 12 shall operate so as to exclude any income from the total income of the previous year of the person in receipt thereof if the provisions of the first proviso to clause (15) of section 2 become applicable in the case of such person in the said previous year.

Once any violation happens on account of Sec 2(15) proviso, the exemption available to income of the trust shall no longer be available. However, this exemption shall be withdrawn only for the relevant AY when such contravention happens. Cases decided only at Tribunal (see reading materials).

Saving Grace

Recently, in some cases, it was held that once the activities yielding surplus/ profits are proved that such activities are incidental to main objects – taxability of income may be challenged.

Section 2(15), read with sections 11 and 12 of the Income-tax Act, 1961 - Charitable purpose (Objects of general public utility) - Assessment years 2008-09 and 2009-10 - Assessee-society was a charitable institution registered under section 12AA - Main objects of society were to provide education, medical relief to poor and objects of general public utility - Society would also let out auditoriums, ground and rooms, for which society would charge rent as well as provide food and beverages to persons, who were occupying such rooms - Assessing Officer held that assessee was carrying on business activities and, hence, would be ineligible for exemption under sections 11 and 12 - Assessee contended that income from these activities was not business income but income from property - Commissioner (Appeals), agreed with assessee that receipts from letting off of rooms and auditorium constituted income from a house property and, thus, directed Assessing Officer to grant benefit under section 11 - Tribunal however held that question as to whether assessee was earning income as incidental to activities of society or whether assessee was really engaged in business activity was required to be examined by Assessing Officer and for this matter deserved to be remitted back to Assessing Officer to examine afresh in all these aspects - Whether order of Tribunal remanding matter back to Assessing Officer to examine issue afresh was to be confirmed - Held, yes - Whether thus, Assessing Officer shall consider case of assessee in context of nature of activity vis-a-vis objects of trust/association to decide on nature of receipt for purpose of considering assessee's claim under provisions of Act - Held, yes [Paras 7 & 8] [Matter remanded]

Recent Important amendments

- Depreciation is not to be treated as application of income (wef 1-10-2014)
- Benefit of Sec 10 are not available in a trust claims benefit of Sec 11.
- No benefit of accumulation of income (Sec 11(2) , in case ITR is not filed with time as per sec 139(1).
- If accumulation could not happen , due to certain Court injunctions, such period not counted for 5 years