

Sections of IT act 1961 relating to Trusts

Sec 11

- (1)- includes income other than those specified in cl. (a) to (d),
- (2)- Circumstances when income not spent up to 85% can be set apart / accumulated,
- (3)- Income also includes business income run by the trust,
- (4)- Incidental business to keep separate books of accounts, (not relevant as now business is allowed to be carried out only for education, medical relief and relief to poor.
- (5)- Mode of investment of accumulated funds (Sec 11(2)

Application of income outside India if any shall make the income taxable.

Sec 12

Types of income taxable in the hands of trust:

- Voluntary contributions (except corpus donation),
- Value of medical / educational services provided to interested parties as mentioned in Sec 13(3),

Sec 12 A

- Conditions for taking benefits of Sec 11 and Sec 12 i.e. obtaining registration u/s 12A(Form 10A), filing audit report (Form 10B),
- Audit report must where the income of a trust (with out effect of Sec 11 exceeds the maximum amount which is exempt from Itax.

Sec 12AA

- Procedure for registration

Sec 13

Circumstances when benefit of Sec 11 shall be lost by the trust

Sec 2(15) – advancement of any other objects of general public utilities

- These activities are not allowed to carry out trade , commerce or business.
(Profession word is not covered specifically, but three words wider enough to cover professional services rendered by NGO s.)

Concepts of Income Of trusts

Sec 11. Income not included as taxable income –

1. That part of income which is applied in India for wholly religious charitable or religious purposes to the extent of 85%,
2. In case not spent up-to 85%, the trust may accumulate the difference between 85% and the %age applied,
3. Income should be applied in India (Sec11(1)© allows application outside India if CBDT permission is obtained)
4. Income in the nature of Corpus donation.
5. Income up to 15% not bound by any application purposes.

Corpus Donation

Corpus donations is mentioned at Sec 11(1)(d) and Sec 12 (1) of IT act

Corpus means towards the chest / treasure of trust. It gained relevance when the donor wished to arrange a continuous stream of revenue through investment of Corpus.

- Income Tax act exempts income by way of corpus donation only if it is with a specific direction from the donor,
- Corpus is different from Accumulated donation. Accumulated is an act by the trust u/s 11(2). Corpus is an act by the donor.
- Corpus may be in any form whether in moneys, shares , securities or in land , building etc.
- Unspent voluntary donations may be converted into Corpus donation by the donor by subsequent directions.
- In one decision, Sukhdeo Charity vs. CIT (19 Taxman 222)(Raj), the action of the donor to contribute for building a capital asset was held as towards Corpus.

Corpus Donation.....continued

- In case the trust loses tax exemption, corpus donations would become taxable income.
- No format prescribe for giving Specific directions by the Donor
- Logic of keeping corpus outside the tax net:

When a sum of money donated by the donor as corpus (with directions that this can not be spent), law of land can not compel a trust to apply the sum. Sec 12 can not treat capital receipts as revenue receipts.

Decisions:

Smt. Nirmala Keshavlal vs. CED (1982)(138 ITR 604(Bom), - a letter is must specifying intention of the donor,

N.A. Ramachandra Raju Charity Trust vs. First ITO (1985)(14ITD 230(Mad.)- Receipts were rubber stamped with "Towards Corpus Donation" and also certificates produced from donors.-Held to be sufficient to prove corpus donation

-No permission required from Revenue authorities

Grant vis-a-vis Donations

IT act imposes conditions on application of income (income covers donations from public/corporate),

In case of Trusts receiving Project grants, to what extent application as prescribed by Sec11 shall be valid.

Various rulings by Courts

Present line of thinking is that in case of project grants, the money so received by trusts is voluntary and hence not owned by trusts, therefore moneys lying unspent should be treated as liability and this amount not spent in a year can not be covered by Sec11 conditions.

Contradictory thinking by some courts:

Delhi High Court in the case of The Little Traditions (119)ITD 127 (Delhi)

Anonymous donations

Finance act 2009 has made anonymous donations as part of taxable income of a trust.(Sec115BBC).

The anonymous donations are taxed @30%(no deduction allowed for any application).

Religious trusts receiving anonymous donations outside Sec 115BBC (Constitution of India article 26 does not empower the Central Govt. to charge any tax on religious trusts/ institutions).

Anonymous donations- where particulars of donors are not available

Cash donations are not akin to anonymous donations (so far as the identity of the donors are available and donors can not retreat from such cash donations in the future),

Anonymous donations can attract the provisions of Money Laundering act 2002(all trusts whether religious and charitable)

Anonymous donations exempt to the extent of 5% of total income or Rs.1lacs.

TDS obligations of Trusts/ societies

Chapter XVII covers obligation of payers of income to deduct TDS:

- Part B – Sec192 to 206B,
- TAN no. should be applied- mandatory
- No exemption from the TDS provisions simply because payer is a trust/ society

TDS provisions contained :

- Sec 192 -Salary income- TDS as per computation of income,- where the salary paid exceeds Rs.1.8/ 2.25lacs,
- Sec194J-Payment of professional fees- 10%- in case payment in a year exceeds -30K,
- Sec 194C-Payment to contractors for works contract- 1% (in case of individuals and 2% in other cases),-applicable when a single payment exceeds Rs.30K and total in a year exceeds Rs.75K,
- Sec194I-Payment of rent for land and buildings- 10/15%-payment more than Rs.1.8lacs

In case of payment of rent for plant and m/c, -2%

PAN of the payee is must and in case of no PAN/wrong PAN, TDS rate shall be 20%.

Generation of income outside India by INGOs

- **Generally Reserve Bank of India allows an Indian entity to open its office abroad. Big INGO s are exploring the options under this route. Permission is granted to remit the moneys required for operating its foreign activities. Still, Not a clear route, possibilities may be explored.**
- **In particular, RBI has come out with a notification (refer Master Circular dated 1-07-2010) allowing educational and medical institutions to open office either by WOS/ JV route. However , how the provisions of FCRA shall impact such foreign workings of NGO s'/ Trusts is not clear.**
- **Though silver lining is operation through JV/ WOS, hence FCRA act may not be applicable.**
- **Micro Finance Institutions , both from commercial and NGO s are allowed to raise External commercial borrowings subject to conditions imposed by RBI.**
- **Presently, NGO s' depute some of its staff outside India and send their expenses by direct remittances (FormA-2 in FEMA) resorting to 195 of Income Tax act.**
- **Position under Income Tax act:
Sec 11(1) © prohibits application of income outside India.**
 - **However, in case of remittances of income for meeting expenses for running its offices abroad, it may not be covered by Sec11(1)©. The application for funds are directly for raising resources for INGO s' and hence not applied outside India.**
 - **Wherever a foreign consultant is hired for rendering technical / professional advice, it again shall not be covered by Sec11(1)(c).**

Generation of income outside India by INGOs.....contd.

- In case of INGO s, once registered u/s10(23C)(vi), the place of activity may be outside India, provided not all activities should be outside India. Refer decision by Supreme Court in case of American Hotel and Lodging association Educational Institute vs. CBDT (289ITR 46(Del)).
- In case, any income is found to be applied outside India, that much income shall be losing the benefit of tax exemption.
- Situs of property is not relevant but situs of income is relevant.