

# HALF DAY SEMINAR ON CHARITABLE TRUSTS

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# INTRODUCTION

- Charity is a human instinct that drives man to think favourably of others and do them good. Charitable and Religious Trusts play a crucial role in terms of benevolence.
- *“The word ‘Charity’ connotes altruism in thought and action. It involves an idea of benefiting others rather than oneself” Supreme Court in the case Andhra Chamber of Commerce [1965] 55 ITR 722 (SC).*
- By tradition, private philanthropy in our country has been playing a very special and prominent role in enriching our cultural heritage and in catering to the educational, medical, socio economic and religious needs of the people. In turn the State has recognized it's contribution by giving generous tax treatments to them.
- Since the tax concessions involve a sacrifice of public revenues, it became imperative to ensure that tax privileges are not abused and are enjoyed only by those charitable and religious institutions, which deserve them.

# NGO (NON GOVERNMENT ORGANIZATION)

- Organizations that do not exist for profit motive, doing the work which ought to have been done by the government are known as Non Profit Organizations.
- The World Bank defines NPO's as "private organizations that pursue activities to relieve suffering, promote the interest of the poor, protect the environment, provide basic social services, or undertake community development."
- NGO's has charitable objects that is doing something good to others without expectations.

# TYPES OF NGO

- TRUST
- SOCIETY
- COMPANY UNDER SECTION 8

## MEANING OF TRUST:

As per section 3 of Indian Trust Act 1882 "A **Trust** is an obligation annexed to the ownership of the property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner."

## MEANING OF SOCIETY:

Society is an association of persons who come together by mutual consent to act jointly for common purpose. The compliance has to be made under the Societies registration act'1860.

## MEANING OF COMPANY U/S 8:

Company Act'2013 applies in case of a registration of Section 8 Companies. The main object of such company is to give benefit to public. It is a company formed for charitable objects

# POINTS OF DIFFERENTIATION BETWEEN TRUST, SOCIETY AND COMPANY U/S 8

BASIS	TRUST	SOCIETY	COMPANY U/S 8
REGISTERING AUTHORITY	Sub registrar of registration at district level.	Registrar of the societies of concerned state.	Registrar of companies of concerned state.
DOCUMENTS NEEDED FOR CREATION	Trust deed, Details of Trustees.	MOA, AOA, List of members of managing body	MOA, AOA, Details of Directors.

BASIS	TRUST	SOCIETY	COMPANY U/S 8
MEETINGS	No specific provisions. Rules are to be specified in trust deed.	Board and general meetings to be as specified in bye laws of society.	As specified in companies act. Hold 1 board meeting in every 6 calendar months.
MEMBERSHIP TRANSFER	Cannot be transferred.	Cannot be transferred.	Can be transferred.
ANNUAL COMPLIANCES	No annual compliances required.	List of managing body to be filed annually. Additional requirements differ from state to state.	Annual return and audited accounts to be filed annually.

# REQUIREMENTS AS TO CREATION OF TRUSTS

## INTENTION

- Intention on the part of the author of the trust to create trust.

## SUBJECT

- The trust property or the subject of the trust.

## PURPOSE

- Purpose or object of the trust.

## BENEFICIARY

- Beneficiary under the trust.

# TAXABILITY OF INCOME OF A CHARITABLE OR RELIGIOUS TRUST OR INSTITUTION

The legal framework which governs the taxability of income of charitable entities is contained in one or more of the following Sections of Act:-

- (i) Section 2(15);
- (ii) Section 2(24)(iia);
- (iii) Section 10;
- (iv) Sections 11, 12, 12A, 12AA and 13;
- (v) Sections 35(1)(ii) and 35(1)(iii);
- (vi) Section 115BBC.



# INCOME TAX REGISTRATION OF NGO U/S 12AA

- In order to claim exemption, an NGO should make an application to the Commissioner of Income Tax for registration of the NGO. Such application is to be made in Form 10A.
- The following documents are required to be submitted :
  - i) Form 10A
  - ii) The original instrument under which the NGO is established, or the Bye Laws & Memorandum of Association evidencing the creation of the NGO should be enclosed.
  - iii) Two copies of the Accounts of 3 previous years should be enclosed. Where the NGO was not in existence in any of three prior years, copies of the accounts of lesser no. of years may be submitted.

- Every order granting or refusing registration shall be passed **before the expiry of 6 months** from the end of the month in which registration is granted under section 12A.
- If no order is passed within the said 6 months it shall be **deemed** that the trust has been registered.
- No order of refusal to register the trust shall be passed unless applicant has been given a reasonable **opportunity of being heard**.
- Appeal against the order of refusal passed by CIT u/s 12AA and against the order of cancellation passed by CIT u/s 12AA, can be filed to ITAT, **within 60 days** of receipt of such order.
- Commissioner has power to cancel registration under following circumstances:
  1. The activities of the trust are not genuine.
  2. The activities are not being carried out in accordance with objects of the trust.
  3. Where the trust has been granted registration, and subsequently it is noticed that its activities are being carried out in a manner as in section 13(1) [forfeiture of exemption], then Commissioner may cancel the registration if such trust fails to prove that there was reasonable cause for carrying out activities in such manner.

# INCOME TAX REGISTRATION OF NGO U/S 10(23C)

- In order to claim exemption, an application in Form No. 56 is to be submitted through the Commissioner of Income Tax (Exemptions) having jurisdiction over the Trust or Institution in four copies along with the following documents :
  - a) copies of the Deed of Trust/Rules and Regulations/Memorandum and Articles of Association ;
  - b) a List of Members of the Governing Council/Body ;
  - c) photocopies of the latest certificate under Section 80G issued by the Commissioner of Income Tax, if applicable ;

d) photo-copies of the assessment orders passed for the last three year (or to the extent applicable).

e) photocopy of communication from the Commissioner of Income Tax with reference to the application of the Fund/Trust/Institution for registration.

Government of India notifies few NGO's in the official gazette each year. Such notified NGO's are totally exempted from tax even if they are not registered under section 11 of the Income Tax Act. All NGO's are open to apply for this recognition. Currently, the Central Government has exempted various organizations including universities, sport institutions, medical institutions, NGO's etc, under these provisions. An NGO can apply for such exemptions under section 10(23)(c)(iv).

# INCOME TAX ON CHARITABLE TRUST AT A GLANCE

Income tax on various categories of income of charitable trust are as follows:

Category of income	Income subject to tax	Taxability
<b>Donations/voluntary contributions (Sec 12)</b>	Voluntary contributions with a specific direction to form part of corpus of trust or institution	Exempt* <i>*Only Charitable/religious trust or institution registered under Section 12AA enjoys the exemption</i>
	Voluntary contribution without such specific direction	Forms part of income from property held under trust

Category of income	Income subject to tax	Taxability
<p><b>Anonymous donations i.e., donations where donee does not maintain record of identity/any particulars of the donor (Sec 13(7) read with Sec 115BBC)</b></p>	<p>Donation exceeding higher of:            i) 5% of total donations received by trust or            ii) Rs 1,00,000</p>	<p>Taxed at 30%</p>
	<p>Anonymous donation received by trust established wholly for religious and charitable purpose</p>	<p>Forms part of income from property held under trust</p>

Category of income	Income subject to tax	Taxability
<p><b>Income from property held under trust for charitable or religious purpose (Sec 11(1))</b></p>	<p>Income applied for charitable or religious purpose in India</p>	<p>Exempt*  <i>*Only Charitable/ religious trust or institution registered under Section 12AA enjoys the exemption</i></p>
	<p>Income accumulated or set aside for the application towards charitable or religious purpose in India</p>	<p>Exempt* to the extent of 15% of such income. This means at-least 85% of income from property to be applied for charitable and religious purpose in India as above and balance 15% can be accumulated or set aside. <i>*Only Charitable/ religious trust or institution registered under</i></p>

Category of income	Income subject to tax	Taxability
<b>Income from property held under trust created for charitable purpose which tends to promote international welfare in which India is interested</b>	CBDT either by general or special order has directed that such income shall not be included in the total income of trust	Exempt* <i>*Only Charitable/religious trust or institution registered under Section 12AA enjoys the exemption</i>



Category of income	Income subject to tax	Taxability
<p><b>Capital gain from asset held under trust in whole (Sec 11(1A))</b></p>	<p>Net consideration is utilised fully for acquiring another capital asset</p>	<p>Entire capital gain is deemed to have been applied for charitable and religious purpose and hence is exempt*</p> <p><i>*Only Charitable/ religious trust or institution registered under Section 12AA enjoys the exemption</i></p>
	<p>Net consideration is utilised partially for acquiring another capital asset</p>	<p>Capital gain utilised in excess of cost of old asset transferred is considered to have been applied for charitable and religious purpose and is exempt*</p> <p><i>*Only Charitable/ religious trust or institution registered under Section 12AA enjoys the exemption</i></p>

# WHEN IS INCOME APPLIED TAKEN TO BE EXEMPT

In order to be exempt, trust is required to apply at-least 85% of its income to charitable or religious purpose in India.

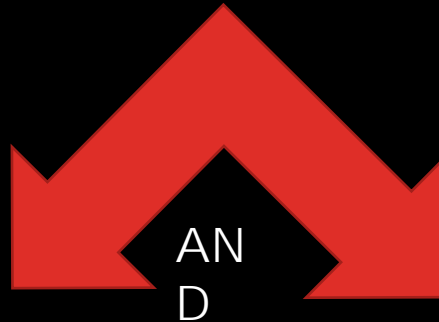
## Meaning of Charitable Purpose

**SECTION 2(15):** "Charitable purpose" includes-

1. Relief of the poor
2. Education
3. Yoga
4. Medical relief
5. Preservation of environment (including watersheds, forests and wild life)
6. Preservation of monuments or places or objects of artistic or historic interest
7. Advancement of any other object of general public utility.

Provided that "advancement of any other object of general public utility shall **NOT** be a charitable purpose, if it involves the carrying on the nature trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business for cess or fee or any other consideration irrespective of nature of use or retention

# WHEN IS COMMERCIAL ACTIVITY REGARDED AS CHARITABLE PURPOSE



- Such commercial activity is undertaken *in the course of* actual carrying out of such advance of any other object of general public utility;
- The aggregate receipts from such activity/ies during the P.Y., *do not exceed 20% of the total receipts* of the trust of that P.Y.

- In addition, income utilised for purchase of capital asset, repayment of loan for purchase of capital asset and revenue expenditure shall also be treated as applied for charitable purpose and be exempt from tax.
- Meaning of religious purpose: This has not been defined under the Act. Religious purposes are necessarily associated with religion. A religion is certainly a matter of faith with individuals or communities. 'Religious Purpose' includes the advancement, support or propagation of a religion and its tenets. The income of a religious trust or institution is entitled to exemption even though it may be for the benefit of a particular religious community or caste. The exemption u/s 11 available to public religious trusts only; and not available to trust for private religious purposes which does not enure for the benefit of the public.

# WHERE 85% OF INCOME IS NOT APPLIED

## SECTION 11

If trust or institution is unable to apply 85% of its income from property held under trust, *the income is still exempt if*

SECTION 11(1): The income is deemed to have been applied for charitable purposes in specified scenarios

OR

SECTION 11(2): Where 85% of income is neither applied nor deemed to have been applied, the trust is allowed to accumulate such unapplied portion of income under specified conditions to claim the exemption.

# CASE 1: INCOME DEEMED TO HAVE BEEN APPLIED (SECTION 11(1))

Where the income applied to charitable or religious purposes falls short of 85% of the income derived during the previous year because –

- i) the whole or any part of the income has not been received during the previous year; or
- ii) for any other reason;

then the assessee has an **option** to:

- apply such income referred to in clause (i) for such purposes **either** during the previous year in which it is received **or** during the previous year immediately following the said previous year;
- apply such income referred to in clause (ii) for such purposes during the previous year immediately following the previous year in which the income was derived.

Such option is to be exercised in **Form 9A** to be furnished electronically with or without digital signature by the trust **within the time allowed for filing return of income u/s 139(1)**.

# CASE 2: ACCUMULATION OF 85% OF INCOME OF TRUST (SECTION 11(2))

Where at-least 85% of income of trust or institution has not applied/ deemed to have been applied as above, it is allowed to accumulate or set aside the same and such income shall be exempt if following conditions are satisfied:

- Such trust or institution furnishes Form No. 10 – notice of accumulation of income by charitable trust or institution electronically **on or before due date for filing the return of income**;
- Purpose for which income is being accumulated or set aside shall be mentioned;
- Income shall not be accumulated for more than 5 years and years in which income accumulated or set aside due to order or injunction of any court to be excluded in computing 5 years; and
- Money so accumulated or set aside is invested or deposited in specified mode.

# WHERE SHOULD ACCUMULATED INCOME BE INVESTED?

- Income not exceeding 15% can be accumulated or set aside for its application in India. Further, even the 85% of income which is not applied for specified purpose can also be accumulated or set aside for its application in India. Such accumulation must be through following **modes of investment(SECTION 11(5))**:

Investment in government saving certificate/UTI

Deposit in post office savings bank/scheduled bank/co-operative bank

Investment in units of the unit trust of India

Investment in any security for money created and issued by the Central or State Government

Company debentures fully and unconditionally guaranteed by Central or State Government



Investment in bonds or deposit in specified public sector company

Investment in Gold Sovereign Bonds issued by RBI under the scheme of 2015

Investment in units issued under any scheme of mutual fund referred to in section 10(23D)

Investment by way of acquiring shares of a Depository as defined in the Depositories Act, 1996

Investment in shares of, or deposit in any public sector company

Investment in immovable property

# IMPORTANT POINTS TO BE CONSIDERED IN ACCUMULATION OF INCOME

(SECTION 11(9))

Category of violation	Year of taxation
If income is applied for purpose other than charitable or religious	Year of such application
Income ceases to be invested as specified	Year in which it ceases to be invested as specified
Not utilised for the purpose for which it was accumulated or set aside upto 6 years	6th year
Amount paid/credited <b>out of accumulated income</b> to any trust registered under Section 12AA or 10(23C) <i>** However, payment out of income in the year of receipt will continue to be treated as application of income.**</i>	Year in which amount is so paid/credited

# NON AVAILABILITY OF EXEMPTION U/S 11 AND 12 (SECTION 13(1))

No exemption is available to the following incomes of trust/institution:

- Entire income from property held under trust for **private religious purpose** which does not benefit the public
- Entire income of charitable Trust or institution established for the direct or indirect benefit of any **particular religious community or caste**

**Note:** Trust created for the benefit of ST, SC, backward classes or women and children shall **not** be deemed to be a trust created for the benefit of a religious community or caste

- Entire income, if income (wholly or partly) and property of the charitable or religious trust or institution is used for the benefit of **specified person#**

**Note:** In case of a trust running educational/medical institution/hospital, exemption u/s 11 or 12 shall **not** be denied in respect of any income, **other than income referred to in section 12(2)**, by reason that the trust has provided educational and medical facilities to specified persons referred to in section 13(3).

- Income of charitable / religious trust is **not invested in specified mode** u/s 11(5)

*#Specified person(Section 13(3)) for this purpose are as below:*

- Author or founder of trust or institution
- Any person who has made substantial contribution i.e., contribution of > Rs 50,000 upto the end of financial year
- In case author, founder or person is HUF, a members of such HUF
- Trustee/ manager of the trust / institution irrespective of their designation nomenclature;
- Any relative of any of such author, founder, person who has made substantial contribution, trustee or manager as specified above
- Any concern in which any of the above specified persons has substantial interest i.e. 20% of equity share capital/profits upto the end of financial year

# DENIAL OF EXEMPTION IF RETURN OF INCOME IS NOT FURNISHED WITHIN DUE DATE OF FILING OF RETURN (SECTION 13(9))

- Nothing in section 11(2) shall operate to exclude any income from total income of the PY, if –
  1. Statement is not filed u/s 11(2) to AO on or before the due date of filing of return of income, OR
  2. Return of income is not filed on or before the due date of filing of return of income.

# CAPITAL GAINS DEEMED TO BE APPLIED FOR CHARITABLE/RELIGIOUS PURPOSE (SECTION 11(1A))

Section 11(1A) of the Act deals with capital gains arising or accruing to a charitable trust or institution. The position of law is that in the case of a charitable trust or institution eligible for exemption under Section 11, capital gains, whether long term or short term, will be deemed to have been applied to charitable purposes and will be exempt from tax to the extent they are reinvested in a new capital asset.

The provision applies with necessary modifications to cases where the capital asset is held only partly (and not wholly) for religious or charitable purpose.

# PROPERTY HELD UNDER TRUST INCLUDES BUSINESS UNDERTAKING (SECTION 11(4))

- Section 11(4) states that a business undertaking can be held as property under trust and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the AO shall have the power to determine the income of such undertaking in accordance with provisions of this act relating to assessment; and where income so determined is in excess of the income as shown in the accounts, such excess shall be deemed to be applied to purpose *other than charitable and religious*.
- Section 11(4A) deals with income of a trust or institution by way of a business which is incidental to attainment of its objects. The income of such a business will be entitled to exemption under Section 11 if separate books of account are maintained, otherwise, the income will not be entitled to benefit of exemption under Sections 11 and 12.

BUSINESS IS  
INCIDENTAL



SEPARATE  
BOOKS ARE  
MAINTAINED



EXEMPT

## DEPRECIATION SHALL NOT BE ALLOWED IF PURCHASE OF ASSET WAS ALREADY CLAIMED AS APPLICATION OF INCOME (SECTION 11(6))

- In this section, where any income is required to be applied or accumulated or set apart for application, then for such purposes the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this section in the same or any other previous year.



# SECTION 12A: CONDITIONS FOR APPLICABILITY OF SECTION 11 AND 12

- Application for registration of trust has been made in the prescribed manner to the Commissioner and registration has been made u/s 12AA.

The provisions of section 11 and 12 shall be applicable in relation to income of trust from the year in which such application is made.

- Where TI of the trust without giving effect to section 11 and 12 exceeds Rs.250,000 in any PY, then accounts need to be audited by CA and report shall be furnished along with the return of income.
- Provided that where registration has been granted to the trust u/s 12AA then provisions of 11 and 12 shall apply in respect of any income derived from property held under trust of any AY preceding the aforesaid AY, for which assessment proceedings are pending before AO as on the date of such registration and objects of the trust remain the same for such preceding AY.
- Provided further that no action u/s 147 shall be taken by AO in case of trust for any AY preceding the aforesaid AY only for

# ANONYMOUS DONATIONS

“Anonymous donation” means any voluntary contribution, where a person receiving such contribution does not maintain a record of the identity of the person making such contribution and other particulars as may be prescribed.

(SECTION 13(7)) Section 11 or 12 not to apply in case of anonymous donation

- Nothing contained in section 11 and 12 shall apply so as to exclude from the total income of the previous year, any anonymous donation referred to in section 115BBC on which tax is payable in accordance with the provisions of that section.

# (SECTION 115BBC) ANONYMOUS DONATIONS TO BE TAXED IN CERTAIN CASES

- (1) Where the total income of any university or other institution referred to in section 10(23C) or any trust or institution referred to in section 11, includes any income by way of anonymous donation, then income tax payable shall be aggregate of

Income  
tax  
payable



i) The amount of income tax calculated @ 30% on anonymous donations **received in excess of the higher of the following** amounts, namely:  
A) 5% of the total donations received  
B) Rs. 100,000/-



ii) The amount of income tax with which the assessee would have been chargeable had his total income been reduced by the aggregate of anonymous donations received in excess of the amount referred to in sub clause (A) or sub

- (2) The provisions of subsection (1) shall not apply to any anonymous donation received by
  - a) Any trust or institution created wholly for religious purposes,
  - b) Any trust or institution created wholly for religious and charitable purposes other than any anonymous donation received otherwise than for religious purposes

### Religious trusts

- 115BBC is not applicable

### Charitable trusts

- 115BBC is applicable

### Religious and charitable trusts

- On donations towards charitable purpose: 115BBC is applicable
- On donations towards religious purpose: 115BBC is not applicable

# BRIJ VIKAS TRUST, MATHURA VS ASSESSEE

- This appeal has been filed by the assessee against the order of CIT-I, Agra dated 09.03.2010, whereby the application of assessee for renewal of approval u/s. 80G was rejected.
- A religion may not only lay down a code of ethical rules for its followers to accept, but it might prescribed rituals and observances, ceremonies and modes of worship which are regarded as integral parts of a religion, and these forms and observances might extend even to matters of food and dress. No material or evidence has been brought on record by the department which may prove that the tourists using the Brij Chaurasi Kos Parikrama path has to follow a particular code of ethical rules and has to carry out the prescribed rituals and observances, ceremonies and modes of worship.

# BRIJ VIKAS TRUST, MATHURA VS ASSESSEE

- Explanation 3 to section 80G(v) states that "in this section, "charitable purpose" does not include any purpose the whole or substantially the whole of which is of a religious nature." This explanation takes note of the fact that an institution or fund shall be for a charitable purpose and may have a number of objects. If any one of these objects is wholly or substantially wholly of a religious nature, the Institution or Funds falls outside the scope of section 80G and the donation to it will not make the donor entitled for the deduction u/s. 80G.
- Therefore, it cannot be said that Hindu is a separate community or a separate religion. Technically Hindu is neither a religion nor a community.

# TAXATION OF UNREGISTERED (SECTION 12AA) TRUST SECTION 164

- The tax is computed as per section 164(2) of the Income Tax Act determines the taxation of charitable trust. The provision is given below :
- In the case of relevant income which is derived from property held under trust wholly for charitable or religious purposes, or which is of the nature referred to in sub-clause (iia) of clause (24) of section 2, or which is of the nature referred to in sub-section (4A) of section 11, **tax shall be charged on so much of the relevant income as is not exempt under section 11 or section 12**, as if the relevant income not so exempt were the **income of an association of persons** :
- **Provided** that in a case where the whole or any part of the relevant income is not exempt under section 11 or section 12 by virtue of the provisions contained in clause (c) or clause (d) of sub-section (1) of section 13, tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate.
- Further section 164(3) also applicable when only part of income of charitable trust is for charitable purpose.
- **But, the exemption u/s 11 or 12 is only for trusts which are registered u/s 12A read with section 12AA. So, if trust is not registered** , exemption u/s 11 or 12 can not be claimed and the income will be taxed in terms of section 164(2) as AOP on the normal tax rate and maximum marginal tax rate if the income is of nature referred in clause (c) or clause (d) of sub-section (1) of section 13.

# IMPORTANT FORMS AT A GLANCE

<b>PARTICULARS</b>	<b>FORM NO.</b>
Application for registration of a charitable or religious trust or institution under Section 12A	<b>Form No.10A</b>
Audit report under section 12A(b)	<b>Form No. 10B</b>
Notice to the Assessing Officer/Prescribed III Authority under Section 11(2)	<b>Form No.10</b>
Application for grant or continuance of approval under Section 80G(5)(vi)	<b>Form No. 10G</b>
Application for grant or continuance of exemption under Section 10(23C)(iv) and (v) for the year	<b>Form No.56</b>



<b>PARTICULARS</b>	<b>FORM NO.</b>
Application for grant or continuance of exemption under section 10(23C)(vi) and (via) for the year	<b>FormNo.56D</b>
Application for approval under Section 35(1)(ii) or (iii) in the case of a research Association	<b>Form No.3CF-I</b>
Application for approval under Section35(1)(ii) or (iii) in the case of a University, College or other Institution	<b>Form No.3CF-II</b>



*Thank you*

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