

Compliances Under Charity Commissioner

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Introduction

- Charity is an essential ingredient of Indian to promote the objectives of various person for giving back to the society a part of their monetary success. The Government of India has extended tax exemption to charitable trusts, commonly known as NGOs [Non-Government Organizations].
- India has well recognised the contribution of Charitable Trust in shaping the society and has allowed many exemption and concessions under law.
- This is a complete misconception, as the taxation of charitable trusts under the Income Tax Act,1961, which has evolved over the number of years, is one of the most complex subjects under the tax laws.
- Income Tax Acts treats charitable trusts as separate entity laying down unique and separate registration and recognition.*Charitable Purpose*.
- GST Provisions on the other hand haven't given a separate registration status to charitable trusts. Person under the GST law includes "Charitable Trusts" and the activities of the charity are within the scope of definition of "Business".

Charitable Purpose

- Section 2(15) of the Income Tax Act defines charitable purpose.
- Charitable purpose includes relief of the poor, education, yoga, preservation of environment (including water sheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, medical relief and advancement of any other object of general public utility.
- Provided that the advancement of any other object of general public utility shall not be charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce, or business or activity of rendering any service in relation to trade, commerce, business for a cess or fee or any other consideration irrespective of the nature of use or application or retention of the income, except

Charitable Purpose

- Unless
 - Such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility and
 - The aggregate receipts from such activity or activities during the previous years do not exceed 20% of the total receipts of the trust or institutions undertaking such activity of that previous year.

Charitable Institutions

Charitable Institutions are institutions involved in charity.

The word charity connotes altruism in thought and action. It involves an idea of benefitting others rather than oneself.

Supreme Court in the case of Andhra Chamber of Commerce (1965) 55 ITR 722.

Forms in which Charitable Institutions can be incorporated

- Charitable Institutions can be incorporated in the form of :
 - 1) A public trust, under charitable Endowments Act, 1890 or the Bombay Public Trust Act, 1950 or under the specific Public Trust Act of the relevant State and if no Act is in the State, then as per the common prevailing practices read with the Indian Public Trust Act, 1882.
 - 2) As a Society registered under the Society Registration Act, 1860 of the relevant State.
 - 3) As a Company u/s.8 of the Companies Act, 2013 as Non Profit Company.

Who can form a Charitable or Religious Trust

- As per Section 7 of the Indian Trust Act, a Trust can be formed :
 - 1) By every person competent to contract, and
 - 2) By or on behalf of a minor, with the permission of a principal civil court or original jurisdiction.

A person competent to contract is defined in Section 11 of the Indian Contract Act as :

- 1) As a person who is of the age of majority
- 2) Who is of sound mind

Person competent to contract

- 3) Who is not disqualified from contracting by any law to which he is the subject.

Generally speaking, any person competent to contract and competent to deal with property can form a trust.

Besides individual, a body of individual or an artificial person such as association of persons, an institution, a limited company, a Hindu Undivided Family through its Karta, can also form a trust.

Steps for registration of a charitable trust

The application for registration of a public charitable trust should be submitted (u/s.18 of the Bombay Public Trust Act, 1950) to the Dy./Asstt. Charity Commissioner having the jurisdiction over the region within the limits of which the trustee has an office for the administration of the trust or the trust property or substantial portion of the trust property is situated, as the case may be.

The application should be made in the prescribed form i.e. Schedule II of Bombay Public Trust Rules, which is available from the Office of the Charity Commissioner on the payment of the prescribed fees.

Steps for registration of a charitable trust

- Every application made shall be signed and verified in the prescribed manner by the trustee or his agent authorized by him in this behalf.
- Processing the application usually takes about 6 to 8 weeks.
- A notice informing the applicant about the day and time fixed for formal hearing is despatched usually 10 to 15 days in advance.
- After making enquiries on the aforesaid issues, if satisfied, the Dy./Asstt. Charity Commissioner makes entries in the register and issues a certificate of registration which bears the official seal and registration number of the trust.

Lost or Damaged Certificate

- If the certificate of registration is lost or damaged over the years, a duplicate certificate can be obtained from the Department, on application and on payment of prescribed nominal fees.

Note: Please take care that in other States, the title of Charity Commissioner is known as Register Public Trust or Registrar – Firms and Societies, procedure of registration may also differ slightly.

If a trust is to be formed as charitable company, the procedure as prescribed in the Companies Act, 2013 is to be followed.

Changes under the Budget

- There were changes in the recent Union Budget.
- The relevant provision in Section 12AB of the Income Tax Act, 1961.
- This is with regards to Registration of the Trust.
- Only existing Charitable Trusts are required to be re-registered u/s.12AB of the Income Tax Act.
- A Trust is required to apply for re-registration in Form 10A.

Public Trust

- Section 2(13) of the Bombay Public Trust Act, 1950 defines Public Trust.
- It means an express or constructive trust for either Public or Charitable purpose or both and includes a temple, a math, a wakf, church, synagogue, agiary, or any other religious or charitable endowment and a society formed either for religious or charitable purpose or both and registered under the Societies Registration Act, 1860.
- The Income Tax Act does not define what is a Public Trust.

Charitable Purpose

- Section 9(1) of Bombay Public Trust Act, 1950 defines charitable purpose.
- A charitable purpose includes:
 - a) Relief of poverty or distress
 - b) Education
 - c) Medical relief
 - d) Provision for facilities for recreation or other leisure time occupation (including assistance for such provision), if the facilities are provided in the interest of social welfare and public benefit.

Charitable Purpose

e) The advancement of any other object of general public utility, but does not include the purpose which relates exclusively to religious teaching or worship.

Scope of Public Trust

- In order to be a Public Trust, it is not essential that the trust should benefit the whole of mankind or all the persons living in a particular State or a City.
- It is said to be a Public Trust if it benefits a sufficiently large section of public as distinguished from specific individuals.
- Also if the beneficiaries of the trust are uncertain or fluctuating, then the fact that the beneficiaries belong to a particular religion/caste does not make any difference.

Conditions for creating a trust

- The existence of the author / settlor of the trust or someone at whose instance the trust comes into existence. The Founder or Settlor should be capable of creating a trust and dedicating his property to that trust. Clear intention of the author / settlor must be there to create a trust.
- The object or purpose of the trust must be valid religious or charitable purpose according to law. The trust or its object must not be opposed to the provisions of any law for the time being in force.
- The trust property should be dedicated to the trust and the owner must divest himself from the ownership of that property.

Conditions for creating a trust

- There must be divesting of the ownership by the author / settlor of the trust in favour of the beneficiary or the trustee of the trust.
- The main instrument of any public charitable trust is the Trust Deed, which should contain all the aims and objects, and rules & regulations with regards to the management of the trust.

Public Charitable Trust v/s. Private Charitable Trust

- Public Charitable Trust, as distinguished from Private Trust, is designed to benefit members of an uncertain and fluctuating class. In determining whether a trust is public or private, the key question is whether the class to be benefitted constitutes a substantial segment of the public.
- The beneficiary group must be substantially public and if the trust is formed to benefit a select group, then it cannot be classified as a public charitable trust.
- Similarly, in the case of a trust formed for educational purposes, it should also satisfy the public element.

Public Charitable Trust v/s. Private Charitable Trust

- While a College or University will fall under the definition of public charitable trust, trust formed for education of own family members will not be considered as public charitable trust.

Accounts

- Every Trustee of a public trust shall keep regular books of accounts.
- Such accounts shall be kept in such form as may be approved by the Charity Commissioner and shall contain such particulars as may be prescribed.

Trust Accounting

- Trust accounting has some every specific record keeping requirements, which are used to maintain accurate information for both the trust and the client.
- Trust accounting requires:
 - 1) Tracking of all deposits and disbursements made through the account.
 - 2) A detailed ledger that notes every monetary transaction for each particular client.
 - 3) An account journal for each account, tracking each transaction through the account.
 - 4) Monthly reconciliation of the account.

Audit

- The accounts kept u/s.32 shall be balanced every year on 31st of March or any other date as fixed by the Charity Commissioner.
- The accounts shall be audited annually in such manner as prescribed by a person who is a Chartered Accountant
- Every auditor acting under sub section (2) shall have access to the accounts and to all the books, vouchers, other documents and records in possession of or under the control of the trustees.

Special Audit

- The Charity Commissioner may direct a special audit of the accounts of any public trust whenever in his opinion such special audit is required.
- The provisions of sub section (2) and sub section (3), shall so far as applicable also apply to such special audit.
- The Charity Commissioner may direct the payment of such fees as may be prescribed for such audit.
- The State government may by special or general order, exempt any public trust or class of public trust from the provisions of sub section (2) subject to such condition as may be specified in the order.

Duty to prepare Balance Sheet

- It shall be the duty of every auditor, auditing the books of accounts of a public charitable trust to prepare a balance sheet and income expenditure account and to forward a copy of the same to the Dy. Or Asstt. Charity Commissioner of the region or sub region or the Charity Commissioner, if the Charity Commissioner requires him to do so.
- The auditor shall in his report specify all the cases of irregularities, illegal or improper expenditure or failure or omission to recover money or other property belonging to the public trust or of any loss or waste of money or other property thereof and state whether such expenditure, failure, omission, loss or waste was caused in consequence of breach of trust, or misapplication or any other misconduct on the part of the trustees or any other person.

Explanation on report of auditing

- On receipt of a report of the auditor u/s.34, the Dy. Or Asstt. Charity Commissioner to whom the report was submitted shall require the trustee or any other person concerned to submit an explanation thereon within such period as he deems fit.

Public Trust Administration Fund

- There shall be established a fund to be called Public Trust Administration Fund. The fund shall vest in the Charity Commissioner.
- The following sum shall be credited, to the fund namely:
 - a) Fees and administrative charges leviable u/s.18 and 48.
 - b) Contributions made u/s.58
 - c) The amount from the fund or the portion thereof credited u/s.61
 - d) Any sum received from private persons
 - e) Any sum allocated by State Government or any local authority
 - f) Any other sum which may be directed to be credited

Public Charitable Trust

- There is no Central law governing Public Charitable Trust.
- In the absence of trust act, in any particular state the general principles of the Indian Trust Act, 1882 are applied.
- A public charitable trust must register with the Office of the Charity Commissioner having jurisdiction of the trust in order to be eligible to apply for tax exemption.

Requirements for creating a Public Charitable Trust

- Although the Indian Trust Act, 1882 does not specifically apply to Public Charitable Trust, there are 3 certainties required to create a charitable trust. They are:
 - 1) A declaration of trust which is binding on the settlor.
 - 2) Setting apart definite property and the settlor depriving himself of the ownership thereof, and
 - 3) A statement of the objects for which the property is thereafter to be held, i.e. the beneficiary.

The Purpose of Trust

- In general, trust may be registered for one or more of the following purpose:
 - 1) Relief of poverty or distress
 - 2) Education
 - 3) Medical relief, provision for facilities for recreation or other leisure time occupation (including assistance for such provision), if the facilities are provided in the interest of social welfare and public benefit and
 - 4) The advancement of any other object of general public utility, excluding purposes which relate exclusively for religious teaching or worship.

Revocation

- Once a valid trust is created and the property is transferred to the trust, it cannot be revoked.
- If the Trust Deed contains any provisions for revocation of the trust, provisions of Section 60 to 63 of the Income Tax Act, 1961 shall come into play and the income of the trust will be taxed in the hands of the settlor as his personal income.

Number of Trustees

- The minimum number of trustees generally required is to:
- There is no upper limit on the number of trustees that can be appointed
- No trust is defeated for want of a trustee.
- Where there is no trustee in existence, an official trustee may be appointed by the Court and the trust may be administered.
- An executor of will may become a trustee by his dealing with the assets under the provisions of the will.
- When an executor is functus officio to any of the assets and retains them, he becomes a trustee in respect of those assets.

Settlor, can he be trustee?

- A Settlor is an individual or institution, who creates or settles the trust and entrusts the trust and the trust property to the trustee or trustees.
- Yes, the settlor can be a trustee if his name is added in the preamble as a trustee.

Is Trusteeship for life?

- Yes, unless a term of office is specified in the trustee or trustee decides to voluntarily resign, or the Charity Commissioner or a Court frames a scheme in this regard.

Additional Trustees

- The surviving trustees may appoint new trustees upto the limit prescribed in the by resolutions and by filling the change report with the charity commissioner.
- A new or additional trustee can be appointed by the surviving trustee as per the provisions mentioned in the Trust Deed.

Can a foreigner or NRI be a trustee?

- Foreigners or persons who are not citizens of India or NRI, are not specifically debarred under the provisions of the Bombay Public Trust Act or the Indian Trust Act from taking up office a trustee.

Can trustee delegate his powers?

- No
- A trustee cannot delegate any of his duties, functions and powers to a co-trustee or any other persons, as a general rule, executive acts can be delegated
- Where a trustee has to exercise discretion, he must exercise the discretion personally and he cannot delegate it.

Section 8 Companies

- Section 8 Company can be established having in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religious, charity, protection of environment or any other such object.
- At least 3 individuals are required to form Section 8 Company.
- It generally has members and is governed by Board of Directors or a Managing Committee or a governing council which is elected by the members.

Exemptions provided to Section 8 Companies

- Section 8 companies are exempted from the requirement of minimum share capital
- They can be registered even if they have share capital which is below the statutory minimum limit
- They are exempted from provision as provision regarding time, place and date of AGM provided that the time place and date has been decided before hand by the Board of Directors
- They can vote AGM after giving notice of 14 days instead of 21 days as required by Companies Act, 2013
- They are exempted from applicability of Company's Auditors Report Order. (CARO)

The Society that can be registered

- According to Section 20 of the Societies Registration Act, 1860, the following societies can be registered under the act:
- Charitable Societies, Military Orphan Funds, Societies established at the several presidencies of India. Societies established for the promotion of science, literature or, fine arts, for institutions, the diffusion of useful knowledge, diffusion of political education, the foundation or maintenance of libraries, or reading rooms for general use among the members are open to public, or public museum and galleries of paintings, works of art, collection of natural history, mechanical and philosophical inventions, instruments or designs.

Requirements for formation of society

- According to the provisions of Society Registration Act, 1860 minimum 7 or more adult persons can form a society.
- For a national level society, 8 persons from 7 different states are required as promoters.
- An authorized person from among the promoters must apply to the concerned registrar preferably with 3 alternate names of the proposed society so as to avoid any inconvenience.
- Individuals, partnerships, firms, companies, registered societies are also eligible to form a society.

Documents needed to be submitted

- The procedure varies from state to state. However, the application should be submitted along with:
 - 1) Covering letter requesting for registration stating in the body of the letter the various documents annexed to it.
 - 2) Memorandum of Association
 - 3) Rules & Regulations / Byelaws
 - 4) An Affidavit of the President / Secretary on a non judicial stamp paper of prescribed value, stating the relationship between the subscribers promoters, duly attested by an oath commissioner/notary public or first class magistrate

Documents needed to be submitted

- Proof of registered address, rent receipt or no objection from landlord.
- Authority letter duly signed by all the members of the Managing Committee
- A declaration by the members of the Managing Committee that the funds of the society will be used only for purpose of furthering the main objects of the society.

Report of an Auditor relating to Accounts Audited u/s.33 & 34(2) & Rule 17(1) of BPT

- Whether accounts are maintained regularly and in accordance with the provisions of the act?
- Whether receipts and disbursements are properly and correctly shown in accounts?
- Whether cash balance and vouchers in custody of the Manager or Trustee are in agreement with accounts?
- Whether all books, deeds, accounts, voucher or other documents required by the auditor are produced before him

Report of an Auditor relating to Accounts Audited u/s.33 & 34(2) & Rule 17(1) of BPT

- Whether a register of movable and immovable properties is properly maintained?
- Whether the trustee as required by the auditor to appear before him did so and furnish the information?
- Whether any property or funds of the trust were applied for any object or purpose other than the objects of the trust?
- The amounts of outstandings more than one year and amounts written off

Report of an Auditor relating to Accounts Audited u/s.33 & 34(2) & Rule 17(1) of BPT

- Whether tenders were invited for repairs or construction involving expenditure exceeding Rs.5000/-
- Whether any money of the trust has been invested contrary to the provisions of Section 35
- Alienation if any of immovable property contrary to the provisions of Section 36
- All cases of irregular, illegal, improper expenditure for failure or omission to recover money or other properties belonging to the trust

Report of an Auditor relating to Accounts Audited u/s.33 & 34(2) & Rule 17(1) of BPT

- Whether the budget has been filed in form provided by Rule 16A
- Whether the maximum and minimum number of trustees is maintained
- Whether the meetings are held regularly as provided
- Whether the minutes books of the proceedings of the meeting is maintained
- Whether any of the trustee has any interest in the investment of the trust
- Whether any of the trustee is a creditor or debtor of the trust

Report of an Auditor relating to Accounts Audited u/s.33 & 34(2) & Rule 17(1) of BPT

- Whether the irregularities pointed out by the auditors in the accounts of the previous year have been duly complied by the trustees during the period of the audit
- Any special matter which the auditor may think fit or necessary to bring to the notice of the Assistant of Dy. Charity Commissioner

Schedule IX-D (Vide Rule 19(2A))

- Information to be submitted by the Auditor along with Audit Report under sub section 1 of section 34 of the Maharashtra Public Trust Act
- PAN of the trust
- Registration Number with date of registration u/s.12AA of the Income Tax Act, 1961
- Acknowledgement Number along with the date of filing of ITR for earlier 3 years
- PAN of all the trustees

The Bombay Public Trust Act, 1950, Schedule IX(C) vide rule 32

- Statement of income liable to contribution
- Gross annual income
- Details of income not chargeable to contribution u/s.58 and rule 32
 - Donation to corpus
 - Donation from public and trust
 - Grants by government and local authorities
 - Interest on sinking or depreciation fund
 - Amount spent for the purpose of education
 - Amount spent for the medical aid

The Bombay Public Trust Act, 1950, Schedule IX(C) vide rule 32

- Details of income not chargeable to contribution u/s.58 and rule 32
 - Deductions out of income from land used for agriculture purpose
 - Deductions out of income from land used for non agriculture purpose
 - Cost of collection of income for receipt from securities, stocks @ 1% of such income
 - Deduction on account of repairs in respect of buildings not rented and yielding an income @ 8.33% of the estimated gross annual rent

Schedule IX, vide rule 17(1), BPT Act, 1950

- Balance Sheet – Assets
- Immovable properties and other Fixed Assets
- Investments (at cost)
- Furniture & Fixtures
- Loans (secured or unsecured)
- Advances
- Cash and bank balances

Schedule IX, vide rule 17(1), BPT Act, 1950

- Funds and Liabilities
- Trust Fund or Corpus
- Other year marked funds
 - Depreciation sinking fund
 - Reserve fund
 - Other funds
- Loans (secured or unsecured)
 - From Trustees (without interest)
 - Others
- Liabilities
- Income & Expenditure Account

Schedule IX, vide rule 17(1), BPT Act, 1950

- Income & Expenditure Account
- Income
- Rent
- Agricultural income
- Interest
 - Securities
 - Loan
 - Bank accounts
- Donations in cash or kind
- Grants
- Transfer from reserves

Schedule IX, vide rule 17(1), BPT Act, 1950

- Expenditure
- Expenses in respect of properties
- Establishment expenses
- Remuneration to trustees
- Legal expenses
- Audit fees
- Contribution and fees
- Depreciation
- Expenditure on the objects of the trust

Trustee

- As section 36A(1) a trustee of every public trust shall administer the affairs of the trust and apply the funds and properties thereof for the purpose and objects of the trust in accordance with the trust deed and lawful directions issued by the Charity Commissioner (C.C.) or a court may issue in this respect.
- The trustees exercise the same care as a man of ordinary prudence does when dealing with such affairs, funds or property if they were his own.

Trustee

- As per section 36A(2) the trustees shall, subject to provisions of the MPT Act and the instrument of the trust, be entitled to exercise all the powers incidental to the prudent and beneficial management of the trust and to do all things necessary for the due performance of the duties imposed on him.
- He is further expected to be vigilant about the spending of the public money.

Contribution payable to Public Trust Administration Fund

- Contribution payable to Public Trust Administration Fund
- Every public trust has to pay to the PTAF annually such contribution at the rate notified by the State Govt. Not exceeding 5% of the amount calculated in form Schedule IXC vide rule -32 signed by the auditor. It is calculated on Income shown in the income & expenditure A/C (Corpus donations are not to be added) minus items not chargeable to contribution u/s 58 and Rule-32.
- The present rate for the contribution notified is 2%.
- The Bombay High Court has presently stayed this contribution by its interim order passed on 25-09-2009 vide PIL – 40/2007.
- The contribution amount is automatically calculated while uploading the accounts. However it is presently not recovered.

Change Report

- Change reports (C/R) (Section -22 vide rule 13(1))
- As per section 17 vide Rule – 5, the public trust registration office shall maintain a register of public trusts in the form of Schedule - I in respect of public trusts registered or deemed to be registered.
- This register mainly contains- Registration number, Trust and trustees name and address, mode of succession of trusteeship and managership, objects, particulars of documents creating the trust, movable property, immovable property, average annual income and expenditure (At the time of registration), particulars of any scheme framed, particulars of encumbrances on trust property, particulars of title deeds and name of the trustee in possession and remarks.

Change Report

- Where any change occurs in any entry recorded in schedule –I, the trustees shall file C/R, within 90 days and report such change in the prescribed form alongwith the required documents with the office of Charity Commissioner. The delay in filing C/R may extend/condone by authority on the ground of sufficient cause subject to payment of cost.
- The Dy / ACC may make any inquiry in this regard and pass an order either to accept or reject the change. The said authority has also power in certain cases where no one appears on hearing dates or not providing further required details instead of passing an order he can file the case and send it to record room without any decision .
- However the said C/R can be brought back for hearing with the approval of concern officer.

De- registration of the trust. Sec. 22(3A) (w.e.f. 23-02- 2016)

- The Dy/Asst CC may after such detailed and impartial enquiry and following such procedure de-register the trust in following grounds – a) when its purpose is completely fulfilled, or b) when purpose becomes unlawful, or c) when its purpose becomes impossible, or d) when the trust being revocable, is expressly revoked, or e) when trustees are found not doing any act for fulfilling object of the trust, or Provided that, no trust shall be de-registered under clause (e) unless its trustees have committed default in reporting the change in sch.-I, in submission of audited accounts or in making other compliance prescribed under this act, for a period of 5 years, from the last date of reporting the change

Prior permission for alienation of immovable property (Sec.36)

- Any sale, exchange or gift of any immovable property and lease for a period exceeding 10 years for agriculture land and a period exceeding 3 Years nonagricultural land or a building belonging to the trust shall be not be valid without the previous sanction of the Charity Comm.
- The Charity Comm. shall not sanction any lease for a period exceeding thirty years under this act. (w.e.f.10-10-2017)
- There is a set prescribed procedure for the application to obtain the sanction.
- The sanction may be subject to such conditions as may be imposed by C.C.

Prior permission for alienation of immovable property (Sec.36)

- The Charity Comm. may modify any condition including extension of time condition, if any.
- The Charity Comm. may revoke the sanction on the ground that such sanction was obtain by fraud or misrepresentation made to him or by concealing facts material for the purpose of giving sanction.
- Provided, no sanction shall be revoked after the execution of the conveyance except on the ground that such sanction was obtained by fraud and a reasonable opportunity to be given to the person to whom the sanction was granted.

Prior permission to borrow money - Sec.36A(3)

- No trustee shall borrow money without prior sanction from Charity Comm. whether by way of mortgage or otherwise and the said sanction will be subject to conditions and limitations as may be imposed.
- No trustee shall borrow money for his own use from any property of the public trust of he is a trustee.
- Provided in the case of borrowing from the Bank or financial institution the C.C. shall decide preferably within a period of 15 days if bank or F.I. has provisionally sanctioned the loan.
- The C. C. may grant ex-post facto sanction to borrow the moneys from any nationalized or scheduled bank in exceptional and extraordinary situation where the absence of previous sanction results in hardship to the trust, or beneficiary or bona fide third party.

Prior permission to borrow money - Sec.36A(3)

- Purchase of property
- The purchase of property for the furtherance of the objects of the trust there is no need to take any prior permission but if the purpose of the purchase of the property is an investment then prior permission is required.
- Insurance of the trust building (Rule-65)
- As per rule 65 all the buildings constructed , purchased or otherwise acquired shall be insured with an insurance concern approved by the state Government.
- Maintenance of register by medical Centre (Sec 41AA) Every Medical Centre shall maintain a register for recoding the category of a patient in the prescribed form in schedule-XAAA.

Endowment Trust

- The main aim behind endowment foundation could be estate planning, with the proceeds of the corpus likely to go into charities.
- Trust and Foundations are typically set up for estate planning, not investments.
- The benefit of constituting an endowment trust is to secure tax efficiency by registering the corpus and availing the applicable exemption under the law.
- Unlike a typical investment fund, the beneficiaries of endowment fund is non profit.
- Multiple trust and foundations are set up to essentially maintain that such endowments retain their private character and avoid their administration being governed by a public trust.

Endowment Trust

- From an administration point of view, having a separate trust or fund supporting a different cause allows for specific schemes to be prepared for the functioning of each of such trust / fund depending upon their purpose, providing a much higher level of operation efficiency.
- Industrialists and industry meters are now diverting their wealth into philanthropic efforts and enterprises.
- The creation of separate fund allows them to focus on charitable activities.

Supreme Court (Asstt. Commissioner Income Tax v/s. Ahmedabad Urban Development Authority & Connected Cases

- The significant judgement, the Supreme Court has held that entities created with the object of advancing general public utility cannot seek exemption under the Income Tax Act under the head “Charitable Purpose” if they are engaging in any trade, business, commerce or providing any service for any consideration.
- However, in the course of carrying out general public utility, the assessee can engage in incidental trade or business or provide service for consideration and can generate profits.
- If the receipt generated out of such incidental activities are within the quantified limits (maximum 20% of the overall receipt from 1st April 2016), the trust are entitled to seek exemptions.

Supreme Court (Asstt. Commissioner Income Tax v/s. Ahmedabad Urban Development Authority & Connected Cases

- A Bench comprising of previous Chief Justice of India Justice Lalit, Justice S. Ravindra Bhat and Justice P.S. Narshima interpreted the ambit of section (15) of the Income Tax Act, which defines “charitable purpose”
- The charging of any amount towards consideration for advancing general public utility, which is on cost to cost basis or nominally above cost, cannot be considered to be trade, commerce, or business or any other services in relation thereto.
- It is only when the charges are marked significantly above the cost incurred by the person, that they would fall within the mischief of cess, fee, or any other consideration towards trade, commerce or business.

Supreme Court (Asstt. Commissioner Income Tax v/s. Ahmedabad Urban Development Authority & Connected Cases

- The court provided some examples in para 173 to explain this point.
- The e.g. Gandhiji's foundation disseminating Mahatma Gandhi's philosophy (in Surat Art Silk) through Museum's and exhibitions and publishing his works, for nominal cost is not business.
- Providing access to low cost hostel to weaker segments of society, where the fee or charges recovered cover the cost plus a nominal mark up, or renting marriage halls for low amounts, again with a fee to cover cost, or blood bank services, again with a fee to cover costs are not activities in the nature of business.

Venkateshwara Engineering College

- When the contributions cannot be treated as voluntary, the further question of their application to charitable purposes or otherwise need not be gone into, meaning thereby that the assesses are not entitled to the benefits of Sections 11 and 12 of the I-T Act
- The case of the I-T department was that a capitation fee was forcibly collected from parents, in the guise of donations made through their friends and relatives, for admission
- Indirect route adopted for capitation fee to reach the institution cannot change the character of the payment

Jayshankar Gramin Va Adivasi Vikas Sanstha Sangamner

- Charitable trusts are liable to pay 18 per cent GST on grants and non-philanthropic donations received by them, the Maharashtra AAR has ruled
- In the case of donations, the AAR said if the purpose of the donation is philanthropic and leads to no commercial gains and is not an advertisement, then it would not attract GST.
- This ruling is expected to send jitters to all the charitable organisations, enjoying tax-neutral status under indirect tax laws since the very beginning, mandating them to get registered under GST. Tax demands computed since 2017 would be loaded with additional interest @18 per cent and penalty.

THANK YOU