

The Chamber of Tax Consultants



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Drafting of Trust Deed



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Issues in registration of trust under various laws



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Post Registration Compliances



Background

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- Ancient scriptures bears reference of collective social entrepreneurship
- Charity plays very important part in the life of Indian, irrespective of the faith he follows
- Corporate Social Responsibility has now been made part of the Corporate India under new Companies Act 2013
- NGO/VO/NPO/Charitable Organisations has been given legal recognition with the enactment of Societies Registration Act 1860

Regulatory framework

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- Regulatory structure of the these organisation has been complicated and is regulated by multiple regulations
- The right of all citizens to form associations or unions is guaranteed by the Constitution of India, Article 19(1)(c)
 - ▣ Charities and charitable institutions, charitable and religious endowments and religious institutions
- Both Central as well as State Governments empowered to Legislate laws under Seventh Schedule to the Constitution
 - ▣ The State list (List II)
 - Entry 32 – Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies
 - ▣ The Concurrent List (List III)
 - Entry 10 - Trust and Trustees
 - Entry 28 - Charities & Charitable Institutions, Charitable and religious endowments and religious institutions

Major Laws

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- Major laws governing Charitable organisations
 - ▣ State Laws - Public Trusts Acts of various states in India.
 - ▣ Central Laws - The Societies Registration Act, 1860, The Companies Act, 2013

Laws Governing NPOs

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- Religious Societies Act, 1880
- Religious Institutions (Prevention of Misuse) Act 1988
- The Rajasthan Societies Registration Act, 1958
- The Karnataka Societies Registration Act, 1960
- The West Bengal Societies Registration Act, 1961
- The Madhya Pradesh Registration Adhiniyam, 1961
- The Tamil Nadu Societies Registration Act, 1975
- Manipur Societies Registration Act, 1989
- The Jammu – Kashmir Societies Registration Act, 1998
- Societies Registration (Uttar Pradesh Amendment) Act, 2000

Laws Governing NPOs

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- ❑ Charitable and Religious Trusts Act, 1920
- ❑ Religious Endowments Act, 1863
- ❑ Charitable Endowments Act 1890
- ❑ Hindu Religious and Charitable Endowments Act 1951
- ❑ Official Trustees Act, 1913
- ❑ Civil Procedure Code, 1908
- ❑ Registration Act, 1908
- ❑ Mussalman Wakf Act, 1923
- ❑ Mussalman Wakf Validating Act, 1913
- ❑ Mussalman Wakf Validating Act, 1930
- ❑ Wakf Act, 1995

Laws Governing NPOs

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- Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
- Bihar Hindu Religious Trusts Act, 1950
- Maharashtra Public Trusts Act, 1950
- Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997
- Kerala Travancore-Cochin Hindu Religious Institutions Act, 1950
- Orissa Hindu Religious Endowments Act, 1951
- Rajasthan Public Trust Act, 1959
- Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959

Laws Governing NPOs

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- The Madras Hindu Religious And Charitable Endowments Act, 1951
- Uttar Pradesh Charitable Endowments (Extension of Powers) Act, 1950
- Charitable Endowments (U.P. Amendment) Act, 1952
- United Provinces Charitable Endowments Rules, 1943
- Religious Endowments (Uttar Pradesh Amendment) Act, 1951
- Uttar Pradesh Hindu Religious Institutions (Prevention of Dissipation of Properties) (Repeal) Act, 2000
- The Madhya Pradesh Public Trusts Act, 1951 has been repealed by the Bombay Public Trusts (Unification and Amendment) Act, 1959-(Bombay Act No. VI of 1960)

Legislative history in Maharashtra

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- Bombay Province / State was governed by various Act
 - ▣ The Bombay Public Trust Registration Act 1935
 - Earlier Applicable to Hindus & Jain, latter made applicable to other communities and cosmopolitan trusts
 - ▣ Mussalman Wakf (Bombay Amendment) Act 1935
 - ▣ Parsi Trust Registration Act 1936
 - ▣ The Baroda Public Institution Act (Baroda Act No. VI of Samvat 1961)
 - ▣ Jamkandi Act No. 1 of 1948
- Under Chairmanship of Justice S R Tendulkar Committee was formed to investigate into question of administration and management of trust and endowments in the Province of Bombay
- Considering various suggestions The Bombay Public Trust Act 1950 was passed

Broad categorizations of NPO

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- Trusts
 - ▣ Formed or Registered under Indian Trust Act or State Trust laws or Indian Registration Act
- Societies
 - ▣ Formed and Registered under Indian Societies Act with / without State Amendments
- Companies
 - ▣ Formed and Registered under Companies Act 1956 or Companies Act 2013

Maharashtra Public Trusts Act, 1950

Regulatory framework

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- S. 18
- S. 19
- Rule 6
- Rule 7
- Rule 7A
- Rule 8
- Rule 8A
- Schedule II
- Schedule II-A

Registration – Duty & Responsibility

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- Duty of the trustee of a public trust to make an application for the registration of the public trust
- Registration of the trust is mandatory
 - ▣ Irrespective of size, income, any scheme framed by the Court
- Trust is not defined
 - ▣ the Indian Trusts Act defines a trust as “an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by him for the benefit of another”
- MPT Act S. 2(13) - Public Trust means an express or constructive trust for either a public, religious or charitable purpose or both and includes a temple, a math, a wakf, church, synagogue, agiary or other place of public religious worship, a dharmada or any other religious or charitable endowment and a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860

Means & Includes

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- The words “means” & “includes”
 - ▣ Definition is exhaustive as well as inclusive
 - ▣ The word ‘means’ restricts the meaning of the words “public trust to express or constructive trust for either public, religious or charitable purpose.
 - ▣ The word ‘includes’ is a word of extension and, therefore a temple, a math etc. are specified in the definition of public trust with the specific object of including them within the definition
 - Rev. Fr. Farcisus Mascarenhas v. State of Bombay 62 Bom LR 790
 - ▣ Expression ‘means and includes’ indicates exhaustive nature of the definition
 - Mahalakshmi Mills v State of A.P. AIR 1989 SC 335

Express and Constructive Trust

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- Trust which are
 - ▣ Expressly created by the actual terms of some instrument or declaration. It is either executed or executory
 - Rangacharya v Guru Revati Raman, AIR 1928 All. 689
 - ▣ Constructive or implied – arise when property to which no express trust is for the time being attached, is acquired or held by a person in circumstances which render him bound in equity to hold it in trust for the benefit of some other person or object as cestui qua trust or beneficiary. It arises by operation of law
 - Munshi Abdul Rahim Khan v. Fakir Mohammad Shah AIR 1946 Nag. 401
 - Shripadprasad Beharilalji Acharyashri v. Lakhmidas Dungarbhai Barot AIR 1924 Bom. 193

Public Purpose (1 / 3)

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- The word 'Public' is followed by the words 'religious or charitable purpose or both'
- Trust need to be public religious or public charitable purpose or both
- Facts of the case and circumstances will require to be closely examined to determine whether public purpose has been established or not
 - ▣ State of Bombay v. S. R. Nanji AIR 1956 SC 294
- A broad test has been formulated by judicial decisions i.e. whatever furthers the general interest of the community as opposed to the particular interest of the individual must be regarded as public purposes
 - ▣ Somawanti v State of Punjab AIR 1963 SC 151
 - ▣ Musamiyan Imam Haidarbax Razvi v. State of Gujarat AIR 1971 Guj. 158

Public Purpose (2/3)

17

- Public purpose is not a constant. The scope of an expression which conjugates general interest of the public must necessarily depend inter alia on social and economic needs and broad interpretation of the democratic ideal. It must alter as social and economic conditions alter. The social and economic theorist may contend for an extremely wide application of this concept of public purpose and over-emphasise the element of the general interest of the public. The reactionary on the other hand may strive for stringent restraints on its shifting boundaries and oppose any shift in emphasis. The true rule of the matter would seem to lie midway.
 - ▣ *Motilal Vithalbhai v. State of Gujarat* AIR 1961 Guj. 93
- It is not necessary that object should benefit the whole of mankind or all the persons living in a particular country or province. It is sufficient if the intention is to benefit a sufficiently large section of public as distinguished from specified individuals

Public Purpose (3/3)

18

- Trust must be substantially for public purposes. Setting small or negligible amount for the purposes of the public is not suffice
 - ▣ Thakur Pratap Singh v Brijnath Dass AIR 1937 All. 786
- The substance of the trust & real intention of the author of the trust need to be looked into, to understand whether trust is purely for public purposes or not
 - ▣ Shabbir Husain v Ashiq Husain AIR 1929 Oudh 225 (F.B.)
- A trust is not charitable unless it is directed to the public benefit
 - ▣ Oppenheim v. Tobacco Securities Trust Co. Ltd (1951) 1 All R. R. 31

Refusal to register by Trustee

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- In case trustee refuse to get trust register, Deputy Charity Commissioner or Assistant Charity Commissioner
 - ▣ Suo Motu inquiry under section 19, it is neither necessary nor desirable to record a finding in the first instance on the preliminary issue
 - ▣ Need to depute inspector to collect relevant information
 - ▣ Issue summon and enforce the attendance of any person, including the trustee, and examine him on oath
 - Non responding to the summons, or refusal to furnish particulars, trustees would be liable for penalties
 - If it is concluded that a trust exists and such trust is a public trust, the trustee concerned will also be liable to prosecution u/s 66
 - Circular No. 65 of February 1954

Creating A Trust



Draft The
Deed

Print On
Stamp Paper

Signing &
Validate

Drafting of



Broad contents of Trust deed

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- ❑ Preamble
- ❑ Author or settlor of the trust
- ❑ Names and Address of the Trustees
- ❑ Name and registered office of the trust
- ❑ Trust Fund
- ❑ An express intention from the trustees to carry out the objects of the trust
- ❑ The objects of the Trust
- ❑ Details of management of the trust including details of minimum and maximum number of Trustees
- ❑ Administration of trust
- ❑ The procedure for appointment, cessation, removal, resignation of trustees



Broad contents of Trust deed

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- ❑ Trustee's rights, duties and powers such as
- ❑ Meetings of the trust, voting rights, annual general meeting
- ❑ Provision for maintenance of accounts, audit and finance
- ❑ Details of membership and membership fee
- ❑ Miscellaneous clauses such as for making amendments in trust deed, Dissolution of Trust, amalgamation of Trust etc.



Object clause – critical points

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- ❑ All the object clause should be Charitable in nature and wherever it is possible that the meaning of a particular clause can be construed of the nature of commercial so in that case that clause should be elaborated so that its meaning reflects the charitable nature.
- ❑ While drafting the object clauses the cut and paste method from any old deed should be avoided. Every trust deed is for a separate independent trust with a particular object and intention therefore every clause is to be drafted carefully.
- ❑ It is advisable that the object clauses are to be covered under the specific heading for example Education, Medical, Relief to poor etc and under each heading whatever you want to cover you can covered.
- ❑ Religious object also need to include other charitable objects

Object clause – critical points

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- ❑ Only the concern clauses should be added and unnecessary clauses should be avoided
- ❑ There can be a general clause at the end that the trustees can do any activity which are in the nature of charitable purpose
- ❑ No activity should be done out side India as mentioned in Section 11(1)(c) of Income Tax Act
- ❑ If these care in drafting of trust deed are not taken then now a days it is become very difficult to get primary registration as well as registration under Income Tax Act and to obtain exemption certificate U/s. 80G.

Registration Application - requirements

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- Covering Letter
- Duly filled application form in Schedule II
- Court fee stamp of Rs. 2/- to be affixed on application form
- Certified copy of the Trust Deed
- Affidavit which must be sworn (by the trustees making the application) before a notary and executed on non-judicial stamp paper of Rs 10/-
- Consent letter of Trustees
 - **Consent letter**, which may be prepared on an ordinary sheet of paper and signed by the trustee/s other than the trustee making the application
 - In the absence of a consent letter from the remaining trustees, the deputy/assistant charity commissioner can insist on the presence of all the remaining trustees for the hearing
- Along with filing fees

Registration fees

27

- The fee shall be in cash as under :

Particulars	Amount
When the value of property of a public trust does not exceed Rs. 2,000	Rs. 3
When the value of property of a public trust exceeds Rs. 2,000 but does not exceed Rs. 5,000	Rs. 5
When the value of property of a public trust exceeds Rs. 5,000 but does not exceed Rs. 10,000	Rs. 10
When the value of property of a public trust exceeds Rs. 10,000 but does not exceed Rs. 25,000	Rs. 20
When the value of property of a public trust exceeds Rs. 25,000	Rs. 25

Time limit for Application

28

- Application for registration shall made-
 - a public trust created before enactment of MPT Act
 - within three months' from the date of the application of this Act
 - a public trust created after MPT Act comes into force
 - within three months' of its creation
 - a public trust created or arises out of will
 - Within one month from the date of grant of probate or
 - Within Six months from the date of death of the testatorwhich ever is earlier. For sufficient reasons date can be extended by Asst. Dy. Charity Commissioner
 - Society registered under Societies Registration Act 1860
 - Within three months from the date of registration of Society

Application (1 / 2)

29

- Application to be made before the Deputy or Assistant Charity Commissioner of the region or sub-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.
- Application cannot be made at both places
- Substantial portion can be decided on either two basis i.e. value or quantum. No guidance in Act or Rules. Its question of fact & evidence. Onus lies on applicant.
- The main or substantial property is situated out of the State but a portion of it is within the State, MPT Act will not apply
 - ▣ Administrator v. C.C. 1963 Mah. L. J. 704

Application (2/2)

30

- Whether trust is situated in a particular State, the law of that State will apply to the Trust, even though any part of the trust property, whether large or small, is situated outside the State where the trust is situate
 - ▣ Anand Prasad v State of A. P. AIR 1963 SC 853
- Primary and main institution is situated in Mysore territory and part of the property is situated in the State of Maharashtra, it was held that trust is not required to be registered under MPT Act
 - ▣ Abhinava Vidya tirth v. Charity Commissioner, AIR 1967 Bom. 194
- Where property is situated in more than one State it would be incorrect to state that Trust would be governed partly by laws of one State and partly by the laws of another State
 - ▣ Mahant Ramswarup v Motiram Khandu AIR 1968 SC 422

Application details (1 / 4)

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- Designation by which the public trust is or shall be known i.e. the name of the public trust
- Full names and addresses of the trustees and the manager
- Mode of succession to the office of the trustee or manger
- Objects of Trust
- Information about documents creating trust
- Particulars of Scheme
 - ▣ Copy of trust deed or scheme to be attached along with application

Application details (2/4)

32

- Details of movable value along with estimated value
 - ▣ Assets may be broadly classified
- Details of immovable assets along with estimated value
 - ▣ Place of location, property card etc.
 - ▣ Rules may provide that in the case of any or all public trusts it shall not be necessary to give the particulars of the trust property of such value and such kind as may be specified therein
- Facts pertaining to the history of title to the trust property to not find a place in these provisions, because they do not constitute particulars in the sense in which that word is used in Section 18(5) and Rule 6
 - ▣ Keki Pestonji Jamadar and Anr. vs Kohodadad Merwan Irani And Ors. AIR 1973 Bom 130

Application details (3/4)

33

- Estimated value movable and immovable property should be the present market value
 - ▣ Circular No. 1 – dated 28th January, 1952
- Under the Bombay Public Trusts Act, 1950, as under the Court-fees Act and the Land Acquisition Act, there can be no market value of idols & temple.
- Lands and other immovable property attached to the temple, and the other movable property belonging to the temple, will have to be valued at the present or current market value.
 - ▣ Circular No. 25 – dated 16th September, 1952

Application details (4/4)

34

- Sources of income of the trust
- Average gross annual income
- Average annual expenditure
 - ▣ Estimated on the income / expenditure of three years immediately preceding the date on which the application is made or of the period which has elapsed since the creation of the trust, whichever period is shorter
- Amount of average annual expenditure on
 - ▣ Remuneration to Trustee / Manager
 - ▣ Establishment and staff
 - ▣ Religious / Charitable Objects
 - ▣ Miscellaneous items

Signature on application (1 / 2)

35

- Application shall be signed and verified in the prescribed manner by the trustee or his agent specially authorized by him in this behalf
- That the facts mentioned in the said application are true to the best of his information and belief
- Application to be signed before
 - ▣ Asstt. Or Dy. Charity Commissioner or
 - ▣ Justice of Peace, an Executive Magistrate or Court Officer empowered to administer oath u/s 139 of Civil Procedure Code or
 - ▣ Notary appointed under Notaries Act 1952 for the State of Maharashtra

Signature on application (2/2)

36

- In case the original applicant dies, the inquiry may be made with the help of the remaining trustee(s), which term will include the manager, that is, the person who for the time being either alone or in association with some other person or persons administers the trust property.
- In case, there is neither a trustee nor a manager surviving the original applicant, the inquiry may be made with the help of, and after giving Notice to the legal representatives of the deceased applicant.
 - Circular No. 37 – dated 19th November, 1952

Incomplete Application (1 / 2)

37

- It is noticed that the application is incomplete in any particulars, or does not disclose full particulars of the public trust, the Deputy or Assistant Charity Commissioner may return the application to the trustee, and direct the trustee to complete the application in all particulars or disclose therein the full particulars of the trust, and resubmit it within the period specified in such direction; and it shall be the duty of the trustee to comply with the direction

Incomplete Application (2/2)

38

- Applications for registration should be rejected
 - ▣ where particulars required to be furnished in any of the paragraphs of the application for registration are omitted to be furnished or where the particulars furnished are found wrong.
 - ▣ Copies of original documents required to be annexed to the application must be invariably certified to be true; where the originals consist of public documents their copies must be so certified by or under the authority of the Officer empowered to furnish such certified copies. In other cases, the copies may be certified as true by the trustee in possession of them.
 - ▣ If certified copies of documents required to be annexed to the application are not so annexed, the application should be rejected.
 - Circular No. 9 – dated 24th March, 1952

Inquiry for Registration (1 / 4)

39

- On the receipt of an application
 - ▣ under section 18, or
 - ▣ upon on application made by any person having interest in a public trust or
 - ▣ on his own motion,
- the Deputy or Assistant Charity Commissioner shall make an inquiry to ascertain
- ▣ whether a trust exists and whether such trust is a public trust,
 - ▣ whether any property is the property of such trust,
 - ▣ whether the whole or any substantial portion of the subject matter of the trust is situate within his jurisdiction

Inquiry for Registration (2/4)

40

- the names and addresses of the trustees and manager of such trust
 - Enquiry not to appoint any trustee.
 - Merely to give finding who are trustee as on date of registration
 - The death of a trustee does not affect the liability of a public trust to get itself registered.
 - Ref Shripad Prasad Beharilalji v Laxmidas Dungarshibhai Barot AIR 1924 Bom. 193
- the mode of succession to the office of the trustee of such trust
 - Every instrument need to provide mode of succession
 - Findings are required to be entered in the register and such entries are final and conclusive u/s 21(2)
 - Succession can be by way of election, co-option, nomination, succession or customs

Inquiry for Registration (3/4)

41

- the origin, nature and object of such trust
 - Objects to valid and legal. In case objects conflicts with existing law, law would prevail.
 - In case the Deputy/Assistant Charity Commissioner, after having recorded their findings, finds that the 'objects of the trust' mentioned by the trustees in their application are described 'vaguely' e.g. object of the trust is mentioned as "Religious and Charitable". This does not specify the particulars of religious or charitable objects.
 - He may start suo motu inquiry under Section 22-A of the Bombay Public Trusts Act, 1950, for particulars specifying distinctly as to what the objects are.
 - Circular No. 124 – dated 30th September, 1965.

Inquiry for Registration (4/4)

42

▣ Remuneration to Trustee

- The trustee has shown in registration application certain amount of expenditure towards remuneration unwarrantedly and /or unreasonably and the Dy./Asstt.Charity Commissioner has either accepted this fact without any scrutiny or inquiry into or has overlooked the matter with the result that the expenditure has got a sort of sanctity in the accounts of the trust which may be detrimental to the trust.
- The Regional officers are, therefore, directed to be more careful about this matter in future. They may either consider this matter fully and give a clear decision on the point while dealing with the statutory issue No.7 or they may reserve if necessary, the issue (as to the legality and propriety of the trustee's claim to remuneration) for future inquiry.
 - Circular No. 120 Dt 21-Sep-1962
- ▣ the amount of gross average annual income and expenditure of such trust, and
- ▣ any other particulars as may be prescribed under subsection 5 of section 18.

Public Notice

43

- When on application enquiry is initiated as to whether public trust exists or whether property belongs to a public trust, the Asst. or Dy. Charity Commissioner shall give public notice of such enquiry
- Public notice can be given by
 - ▣ Advertisement in one or more local news paper having wide circulation in the region or
 - ▣ Beat of drums or
 - ▣ Any other method

To be considered adequate having regards to the value of the property and capacity of trust to bear cost of advertisement in news paper

 - ▣ By affixing copy of such notice on notice board of his office and also on some conspicuous part of property and
 - ▣ Issue of notice to the person in occupation of possession of such property
- No objection can be raised beyond the period of 30 days as specified in public notice

Information - immovable property

44

- The trustee of the public trust is required to send a memorandum in the form – Schedule IIA, containing the information
 - ▣ name and description of the public trust,
 - ▣ relating to the immovable property trust, to the Sub-Registrar of the sub-district appointed under the Indian Registration Act, 1908, in which such immovable property is situate for the purpose of filing in Book No. 1 under section 89 of Registration Act.
- Memorandum shall be sent within three months from the date of creation of the public trust
- Shall be signed and verified by the trustee or his agents specially authorized by him in this behalf in the manner as required for the purpose of filing registration application

Documents received during Registration

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- Any copies documents copies of trust deed, scheme or certified copies of record of rights, produced along with the application shall be retained.
- Original trust deeds or wills are produced with the application for registration they should be returned and only copies would be held placed on record.
 - Circular No. 78 – dated 18th December, 1954.

Certificate of Registration

46

- When a public trust is enrolled in the Register of Public Trusts a certificate in the following form shall be issued to the trustee in token of the registration. Such certificate shall be signed by the Deputy or Assistant Charity Commissioner in charge of the Public Trusts Registration Office and shall bear the official seal.
- If any certificate of registration is lost, destroyed or defaced, the Deputy or Assistant Charity Commissioner may, on an application for the purpose, issue a duplicate thereof (the word “Duplicate” being clearly stamped in red ink) on payment of such charge therefore not exceeding ‘two rupees’ as the Deputy or Assistant Charity Commissioner may deem fit.

Date of Registration

47

- Date of application shall not be deemed date of registration
- Date of passing order is the date of Registration

Stamp Duty on Trust Instrument

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Description of the Instrument	Stamp Duty
(a) Where there is disposition of property -	
(i) Where the Trust is made for a religious or charitable purpose	Two percent of a sum equal to the amount settled or market value of the property settled
(ii) In any other case	It will be payable as per Article 25 – clause (a), (b) & (c) of Conveyance
(b) Where there is no disposition of property -	
(i) Where the trust is made for a religious or charitable purpose	Five Hundred rupees
(ii) In any other case	Five Hundred rupees

Effect of non-registration

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- Trustee failing to apply for registration is liable for prosecution u/s 66
- No Suit to enforce a right on behalf of a Public Trust which is not registered shall be heard or decided in any Court – S. 31

Certain implications

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- ❑ Registration not done within the stipulated time frame from date of creation.
- ❑ Certain details not provided at the time of application to Charity Commissioner as mentioned in section 18(5) of the Maharashtra Public trust Act such as details of annual income and expenditure, list of movable and immovable property etc
- ❑ Non submission of memorandum in prescribed form containing details of immovable property to the sub-registrar appointed under Indian Registration Act, 1908
- ❑ Substantial portion of properties of trust are situated in other state as a result of which MPTA does not come into play and the Deputy/ Assistant Charity Commissioner will have no jurisdiction over the case.
- ❑ Adverse findings during inquiry for registration, conducted as per section 19 of MPTA .

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Societies Registration Act, 1860

Background

52

- The concept of societies is not new to India.
- Like other social systems in India before the coming of the British, most of these societies were unorganized and operated in a haphazard manner. The Societies Registration Act, 1860 brought changes in the same and tried to consolidate the activities of a society in an organized manner.
- Until 1947, the Act did not undergo any major changes; registration remained largely a voluntary effort.

Regulatory framework

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- S. 2
- S. 3
- S. 3A
- S. 20
- Rule 4
- Rule 5
- Rule 6

Registration background (1 / 2)

54

- Section 2(13) of the Maharashtra Public Trust Act 1950 includes Societies registered under Societies Registration Act 1860 within the meaning of word 'Public Trust'
- S. 18 r.w.s. 2(13) mandates Societies registered under Societies Registration Act 1860 also to be registered, under the Maharashtra Public Trusts Act 1950, within three months from the date of registration
- Registration authority for the registration of Trust and Societies are same in the State of Maharashtra.
- There would be two registration numbers: one under the Maharashtra Public Trust Act and another under the Societies Registration Act.

Registration background (2/2)

55

- Without CC office is not in a position to know how their affairs and no supervision over these societies can be exercised. Further not contribution is also received.
- Regional Offices are required are entrusted to ensure that Societies are registered.
- Wherever the trustees, after two notices, fail to get the societies so registered, the Regional Officers should start suo motu inquiry for registration and proposal should be put up for the prosecution of such trustees.
- The notice to the trustees may be sent in the form of a letter. The date to be fixed in the letter should be within a month from the date of the letter.
 - ▣ Circular No 110 dt. 26-06-1959

Societies to be registered - Activities

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The following societies may be registered under this Act:

- charitable societies,
- military orphan funds or
- societies established at the several presidencies of India,
- societies established for the promotion of science, literature, or the fine arts, for instruction,
- the diffusion of useful knowledge,
- the diffusion of political education,
- the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public,
- public museums and galleries of paintings and other works of art, collection of natural history, mechanical and philosophical inventions, instruments or designs.

Registration – Documentation

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- Letter requesting for registration stating in the body of the letter various documents annexed to it. The letter is to be signed by all the subscribers to the Memorandum or by a person duly authorised by all of them to sign on their behalf.
- Memorandum of Association, in duplicate, neatly typed and pages serially numbered.
 - ▣ It need not be executed on stamp paper
- Rules and Regulations in duplicate.
- Where there is a reference to any particular existing places of worship like temple, mosque, church, etc., sufficient documentary proof establishing legal competence and control of applicant society over such places should be filed.

Registration – Documentation

58

- An affidavit of the President or Secretary of the society, on a non-judicial stamp paper of prescribed value, stating the relationship between the subscribers, duly attested by an Oath Commissioner, Notary Public or First Class Magistrate.
- Proof of registered office, rent receipt or no objection from the 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 the purpose of furthering the aims and objects of the society.

Memorandum of Association– Section 2

59

- The memorandum of association shall contain the following things:
 - ▣ The name of the society
 - ▣ Registered Office
 - ▣ The Aims and object of the society
 - ▣ The names, addresses and occupations of the governors, council, directors, committee, or other governing body to whom, by the rules of the society, the management of its affairs is entrusted
 - ▣ Declaration –

“We, the following persons, being desirous of forming ourselves into a society under the Societies Registration Act, 1860, have subscribed our names of this memorandum”.

Memorandum of Association – Rule 4

60

- Such declaration shall be signed by any seven or more persons associated with the society.
- It shall also be dated.

Rules & Regulations

61

- A copy of the rules and regulations of the society, certified to be a correct copy by not less than three of the members of the governing body, shall be filed with the memorandum of association.
- Broad Contents of Rules & Regulations
 - ▣ Name of Society
 - ▣ Address
 - ▣ Membership
 - ▣ Meeting Members & Executive / Governing Committee
 - ▣ Accounts
 - ▣ Executive / Governing Committee, Officer bearers and their election
 - ▣ Dissolution
 - ▣ Various procedures concerning objects

Fees and Impact of Registration

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- Fees for registration shall be Rupees Fifty payable in cash
- Upon such memorandum and certified copy being filed, the Registrar shall certify under his hand that the society is registered under this Act.
- A society so registered is a legal person just as an individual but with no physical existence. As such it can acquire and hold property
- Society can sue and be sued in the name of President, Chairman etc. The suit may be regarded as being on behalf of the members who constitute society
 - ▣ *Styavrat Sidhantalanakar v Arya Samaj* AIR 1946 Bom. 516

Registration Societies Categorisation

63

- Societies formed for a religious or charitable purpose or for both and registered under the Societies Registration Act are required to be entered in Section (F) of the Public Trusts Register.
- Branches of such societies when registered as independent public trusts should also be entered in Section (F) of the Public Trusts Register.
 - Circular No. 39 – dated 9th December, 1952.

Registration with undesirable names

64

- No society shall be registered by a name which, in the opinion of the Registrar, which is undesirable,
 - ▣ identical with, or so nearly resembles the name by which any other existing society has been previously registered, or
 - ▣ likely to deceive the public or members of either society,
 - ▣ without the previous permission of the Government concerned, suggests or is calculated to suggest the patronage of the Government or connection with any body constituted by the Government or any local authority,
 - ▣ or which may, subject to any rules made in this behalf, be deemed to be undesirable by the Registrar.

65

Section 8 Company - Companies Act, 2013

Introduction

66

- Main Instrument : For a section 8 company, the main instrument is a Memorandum and Articles of Association (no stamp paper required).
- Previously governed by Section 25 of Companies Act, 1956
- Section 8 company will enjoy all the privileges and be subject to all the obligations of Limited Company
- As per Section 2 (85) Proviso (B) – Section - 8 Company will not treated as Small Company.
- Section 8 Companies are exempted from adding the suffix ‘Limited’ or ‘Private Limited’ at the end of their name.
- Without Share Capital: These companies can be formed with or without share capital. In case they are formed without capital, the necessary funds for carrying the business are brought in form of donations , subscriptions from members and general public.

Regulatory framework

67

- S. 8
- Rule 8(7)
- Rule 19
- Rule 20
- Relevant Forms
 - ▣ *RUN Service: Reservation of Name
 - ▣ Spice Form: INC 32
 - ▣ Spice Form INC 33- Memorandum of Association
 - ▣ Spice Form INC 34- Articles of Association

*As per notification dated 22.03.2018, Ministry decide to permit two proposed name and one resubmission while reserving name for companies through RUN web services.

Conditions – Section 8(1)

68

The company –

- has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
- intends to apply its profits, if any, or other income in promoting its objects; and
- intends to prohibit the payment of any dividend to its members

Registration – Procedure

69

□ Obtain Digital Signatures

It is compulsorily required to Obtain a Class II Digital Signature Certificate from authorized DSC issuing Company for at least one director to sign the E-forms.

□ Obtain Director Identification Number

As per 153 of the Companies Act, 2013, every individual intending to be appointed as director of a Company shall make an application for allotment of Director Identification Number in Form DIR 3 along with fees as may be prescribed. As per the Ministry circular dated 26.01.2018, every individual intending to be appointed as a Director in new Company, shall make an application in Spice Form INC 32 for allotment of DIN number together with other incorporation documents along with fees as may be prescribed.

□ Name availability for proposed company

As per the circular dated 26.01.2018, for reserving name of proposed Company shall be made through RUN (Reserve Unique Name) web services.

Registration – Procedure

70

- Preparation of the Memorandum of Association (MOA) and Articles of Association (AOA)

It should be noted that the main objects should match with the objects shown in RUN Form. These two documents are basically the charter and internal rules and regulations of the company.

- License under section 8 for new companies with charitable objects

A person or an association of persons desirous of incorporating a company with limited liability under sub-section (1) of section 8 shall make an application in Form RD-1. Form No. INC.12 is attached as an attachment in Form RD-1.

- Application for Incorporation of Company

After obtaining the approval of name and license, the company can proceed with application for Incorporation of company in Spice Form INC 32 together with Form INC 33 (MOA) and Form INC 34 (AOA) along with prescribed fees.

Registration – Procedure

71

- *Notice of situation of registered office of the company

As per Section 12(2) & (4) of The Companies Act, 2013 the Company is required to file Form INC-22 for notice of situation or change in situation of registered office of the Company.

- *Appointment of Directors of the company

Details of appointment of directors is required to be filed in Form DIR 12 alongwith prescribed fees.

* After introduction of Spice Form INC 32, the proposed company is not required to file Form INC 22 and Form DIR 12 differently for Notice of situation of Registered Office and Appointment of First Directors. The same is being covered in Spice Form INC 32.

Application for Name with ROC

72

Application for Name with ROC – Rule 8(7)

- Every Section 8 Company applying for name shall include the words:
 - Foundation
 - Forum
 - Association
 - Federation
 - Chambers
 - Confederation
 - Council
 - Electoral Trust and the like etc.

Contents of Memorandum of Association

73

- Clauses of Memorandum of Association:
 - Name Clause
 - Registered office Clause
 - Objects Clause
 - Association Clause
 - Liability Clause
 - Capital Clause

Contents of Articles of Association

74

- Broad contents of Articles of Association:
 - Capital, in case company has share capital
 - Transfer and Transmission of Shares
 - General Meeting
 - Proceedings at a General Meeting
 - Board of Directors
 - Proceeding of Board
 - Chief Executive Officer, Manager, Company Secretary or Chief Financial Officer
 - Adjournment of Meeting
 - Voting Rights
 - Indemnity
 - The Seal
 - Winding up

Main attachments / requirements in Spice Form INC 32

75

- Declaration in Form INC 14 by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice, that the draft MoA and AoA have been drawn up –
 - ▣ in conformity with the provisions of section 8 and rules made thereunder and
 - ▣ that all the requirements of the Act and the rules made thereunder relating to registration of the company under section 8 and matters incidental or supplemental thereto have been complied with.
- The declaration pursuant to Rule 19(3)(a) of the Companies Incorporation Rules 2014, by each of the persons making the application in Form No. INC 15.

Main requirements in Spice Form INC

32

76

- Main division of industrial activity of the proposed company
- Brief description of the work, if any already done or proposed to be done in pursuance of Section 8
- Grounds on which application is made.
- Number of proposed promoters and directors

Other Attachments

77

- Spice Form INC 32: Incorporation of a company
 - Affidavit from Subscribers in INC 9
 - Specimen signature in INC 10 *
 - Copy of PAN Card
 - Copy of ID proofs other than Pan Card
 - Copy of Address Proofs
 - Form DIR 2- Consent to act as a Director of the Company

*Omitted w.e.f May 1, 2015

License for existing companies(Rule 20)

78

Same procedure to be followed alongwith the following additional attachments:

- Financial Statements, Board's Report and Auditor's Report for each of the last two financial years.
- A statement showing in detail the assets (with the values thereof), and the liabilities of the Company as on date of application or within 30 days preceding that date
- An estimate of the future annual income and expenditure of the company for next three years, specifying the sources of the income and the objects of the expenditure.
- Certified true copy of resolutions passed in general / board meetings approving registration of the company under section 8; and

License for existing companies(Rule 20)

79

- Publish a Notice in Form INC 26 within a week from the date of making the application to the Registrar -
 - In vernacular newspaper and in English Newspaper circulating in the district in which the Registered Office of the proposed Company is to be situated or is situated
 - On the websites as may be notified by the Central Government
- The Registrar may require the approval or concurrence of any of the following:
 - Appropriate authority
 - Regulatory body
 - Department or Ministry of the Central / State Government

Grant of License

80

- The Registrar, in its discretion, shall decide whether or not license should be granted after -
 - considering the objections received from the 30 days of publication of notice, and
 - consulting with any authority, regulatory body, Department or Ministry of Central or State Government

Grant of License

81

- The License shall be granted in –
 - ▣ Form INC 16 – For new companies
 - ▣ Form INC 17 – For existing companies
- The Registrar shall have the power to include in the license such other conditions as may be deemed necessary by him and Registrar may direct the company to insert such other conditions in Memorandum and Articles of Association either fully or partly in one and partly in other as specified by the Registrar in this behalf.

Other Statutory Provisions

82

- Firm as a member of Non-Profit making Company:

As per section 8(3) a partnership firm may become a member of the non-profit making company registered under section 8. Membership of such firm shall cease upon dissolution of the firm. However, partners of the dissolved firm may continue to be the members of such company in their individual capacity.

- License for existing companies under Section 8:

There is also a provision for conversion of existing Companies into a Non-profit making company under section 8 read with Rule 20 of Companies (Incorporation) Rules, 2014. Likewise a Non-profit making company can also be converted into any other Company by following the procedure given in Rule 21 and 22 of Companies (Incorporation) Rules, 2014.

Other Statutory Provisions

83

- No Change in AOA and MOA:

A company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government.

- Winding up of company:

As per section 8(7), where a licence is revoked under sub-section (6), the Central Government may, by order, after giving the company a reasonable opportunity of being heard, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section.

Other Statutory Provisions

84

□ Revocation of License by Central Government:

As per section 8(6), the Central Government may, by order, after giving the company a reasonable opportunity of being heard, revoke the licence granted to a company registered under this section if –

- the company contravenes any of the requirements of this section or
- any of the conditions subject to which a licence is issued or
- the affairs of the company are conducted fraudulently or
- in a manner violative of the objects of the company or prejudicial to public interest, and

direct the company to convert its status and change its name to add the word “Limited” or the words “Private Limited”, as the case may be, to its name and thereupon the Registrar shall, without prejudice to any action that may be taken under sub-section (7), on application, in the prescribed form, register accordingly.

Other Statutory Provisions

85

□ Penalty for violation of Section 8:

If a company makes any default in complying with any of the requirements laid down in section 8,

- the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine –
 - which shall not be less than Rs. 10,00,000 but
 - which may extend to Rs. 1,00,00,000 and
- the directors and every officer of the company who is in default shall be punishable with –
 - imprisonment for a term which may extend to three years or
 - with fine which shall not be less than Rs. 25,000
 - but which may extend to Rs. 25,00,000, or
 - with both.

Comparison between Trust, Society & Section 8 company

86

Points of Differences	Trust	Society	Section 8 Company
Governed by	Maharashtra Public Trust Act, 1950	Societies Registration Act, 1860	Companies Act, 2013
Authority	Deputy Registrar/ Charity commissioner	Registrar of societies (Charity Commissioner in Maharashtra).	Registrar of Companies
Registration	As trust	As Society; In Maharashtra, both as a society and as a trust	As a company u/s 8 of the Companies Act.
Registration Document	Trust deed	Memorandum of Association and Rules and Regulations	Memorandum and articles of association. and regulations
Stamp Duty	Trust deed is to be executed on non-judicial stamp paper, varies from state to state	No stamp paper required for memorandum of association and rules and regulations.	No stamp paper required for memorandum and articles of association.
Members Required	Minimum – two trustees. No upper limit.	Minimum – seven managing committee members. No upper limit.	Minimum two for Private Ltd. Co. and 7 for Public Ltd. Co. No upper limit.
Board of Management	Trustees / Board of Trustees	Governing body or council / managing or executive committee	Board of Directors / Managing committee

Comparison between Trust, Society & Section 8 company

87

Points of Differences	Trust	Society	Section 8 Company
Legal Title	Legal title of the property of a trust vests in the hands of trustees.	In a society, all properties are held in the name of the society	In section 8 Company, all properties are held in the name of Company.
Revocable/ Irrevocable	Indian public charitable trusts are generally irrevocable.	Societies may be dissolved. Dissolution must be approved by at least three-fifths of the society's members.	A section 8 Company may be dissolved.
Annual Compliance	There is no requirement of annual return filing.	Societies must file annually, with the Registrar of Societies, a list of the names, addresses and occupations of their managing committee members	Need to file annual accounts and annual return of company with the RoC.
Online filing facility	Online filing facility is not available.	Online filing facility is not available. Everything has to be submitted in the office of Registrar of Societies in hard copy.	Online facility is available. The Compliances, like annual filing, appointment & removal of directors, shifting of registered office, & others can be done online at MCA portal.

Comparison between Trust, Society & Section 8 company

88

Points of Differences	Trust	Society	Section 8 Company
Normal Time Period involved in registration / formation	10-15 days	30-45 days	10-30 days
Transparency	Low	Moderate	High
Name	Easy to choose	Easy to choose	Prior approval from Registrar of Companies and Central Government
Foreign Contribution Regulation Act	Eligible	Eligible	Eligible
Repatriation of funds	Profits to be utilised for enhancement of trust objectives. Requires RBI approval	Repatriation not possible	Prohibition on distribution of dividend. Repatriation not possible.

89

Registration u/s 12AA of Income-tax Act, 1961

Regulatory framework - 12AA

90

- S. 12A (upto 30-6-2007)
- S. 12AA
- Rule 17A
- Form 10A

Registration

91

- Why registration under Income-tax Act 1961
 - ▣ To claim exemption u/s 11/12
- No single window clearances
- Separation & independent registration prescribed under Income-tax Act 1961 to claim benefit u/s 11 & 12 & to obtain registration u/s 80G(5)
- Applicability of Multiple laws, Multiple compliances

Registration

92

- When to apply for registration
 - ▣ No statutorily time limit has been prescribed
 - ▣ Application made post 1-6-07, provisions of S. 11 & 12 shall apply in relation to income from assessment year following the previous year in which application made.
 - ▣ Lets examine under mentioned situation
 - Trust deed executed on 30-9-2014
 - Registered before Charity Commissioner on 15-1-2015
 - Application filed on 31-3-2015
 - Registration granted on 15-8-2015
 - Impact on income for AY 2015-16
 - What if application is filed on 1-4-2015

Jurisdiction

93

- Whom to apply
 - ▣ Commissioner of Income-tax
 - ▣ Director of Income-tax (Exemption)
 - If applicant assessed in four metropolitan cities, Delhi, Mumbai, Kolkata & Chennai
 - Circular No. 585 dated 13-11-1990

Registration requisite

94

- Trust/Society/Company's instrument is in compliance with
 - ▣ Societies Registration Act 1860
 - ▣ Transfer of Properties Act 1882
 - ▣ Maharashtra Public Trust Act 1950
 - ▣ Companies Act 1956 / 2013
 - ▣ Income-tax Act 1961

Institution registered under laws?

95

- Income-tax Act does not mandates that institution should be registered under Trust / Societies Act
 - ▣ Malli Ram Charitable Trust v. Commissioner of Income-tax [2003] 132 Taxman 221 (ASR.)
 - ▣ CIT v. APMC [2007] 163 Taxman 359 (Bom)
- Registration cannot be denied if institution is registered
 - ▣ u/s 25 of Companies Act – Sri Venkateswara Bhakti Channel v. ACIT [2011] taxman.com 394 (Hyd-ITAT)
 - ▣ University - body corporate established for the cause of education – CIT v. O P Jindal Global University [2013] 38 taxmann.com 366 (Punjab & Haryana)

Registration procedure

96

- Application for registration u/s 12AA(1)(a) in form 10A in duplicate
- Simple application form, information to be provided
 - ▣ Name of applicant,
 - ▣ Name and address of Trust, author/founder
 - ▣ Date of creation of trust
 - ▣ Name & address of trustee manager
 - ▣ Details of mandatory enclosures
- Undertaking to communicate any future alteration in the terms of the trust, or in the rules governing the institution

Mandatory documents

97

- Original instrument about constitution of institution / trust along with one copy
 - ▣ Where original instrument cannot be conveniently produced, Commissioner may accept certified copy
 - Reasons if could not be produced
 - Certified copy means?
 - ▣ In case Original trust deed / instrument / Memorandum of Association is not in English / Hindi translation of it in English / Hindi need to be submitted

Mandatory documents (Contd.)

98

- In case trust is created other than under an instrument, the document evidencing the creation / establishment of trust.
- Established by producing constitutive and evidential documents. The evidential documents cannot be limited to documents which directly prove the creation of the trust, they will embrace all documents which afford a logical basis of inferring creation of the trust and till such documents can be described to be "documents evidencing the creation of the trust" within the meaning of r. 17A(a).
 - ▣ Laxminarayan Maharaj And Another. v. CIT 150 ITR 465 (M.P.)

Mandatory documents (Contd.)

99

- Copy of Accounts in case such charitable organisation in existence in prior financial years (upto 3 years)
 - ▣ Trust established on 1-2-2017
 - ▣ Application made on 10-4-2018
 - ▣ Accounts for FY 2017-18 need to be submitted at the time of application
 - ▣ What if application submitted on 25-3-2017?
 - Whether to submit provisional accounts?
- The requirement of obtaining the details of the past accounts cannot be said to be a ceremonial one.
 - ▣ Ananda Marga Pracharaka Sangha v. CIT 218 ITR 254 (Cal.)

Registration Process

100

- On receipt of application Commissioner / Director may –
 - ▣ Call for such documents / information to satisfy himself about genuineness of activities of the charitable organisation
 - ▣ Make such enquiry, deem necessary
 - ▣ Pass necessary speaking order registering such institution or rejecting registration

CIT's Satisfaction

101

- Enquiry is restricted to satisfy himself about genuineness of the activities of the trust or institution
 - ▣ Polytechnic Association v. CIT [2010] 48 DTR 1 (Lucknow) (Trib)
- Constitution documents bringing trust / society into existence of the is legal
- Legal and not causing nuisance against interest of public
 - ▣ Maharashtra Academy Of Engineering & Educational Research (Maeer) v. CIT [2010] 36 DTR 321 (Pune)

CIT's Satisfaction (Contd.)

102

- Objects are charitable or religious
 - ▣ PIMS Medical & Education Charitable Society v. CIT [2013] 31 taxman.com 371 (Chd Trib)
- Income and the assets of the trust are applied for the object of the trust in accordance with the constitution deed
- In case newly established institution the objects of the trust for which it was formed will have to be examined to be satisfied about its genuineness and the activities of the trust cannot be the criterion
 - ▣ DIT v. Meenakshi Amma Endowment Trust 40 taxmann.com 30 (Kar)
- No part of the assets / income is distributed to the founders / trustees etc.
- In case of dissolution, net assets are not distributed to the founders/ trustees etc.

Details generally called (1 / 3)

103

- Details actual charitable / religious activities carried on by trust
- Explanation as to how object and activities are within the meaning of S.2(15)
- NOC from the owner of premises along with proof of ownership, which is used by Trust.
- Personal presence of Trustee at least once and POA in case represented through authorised representative
- Copies of bank accounts, along with details of withdrawals and deposits
- Whether necessary approvals obtained from charity commissioner such as for obtaining loans from trustees.

Details generally called (2/3)

104

- Copies of PAN card of all Trustees and Trust and original for verification
- Details of ordinary / corpus donation, earmark funds, received during last 3 years along with name, address, PAN of donor
- If trust is old copies of ITR and audit report in form 10B.
- Copies of change report submitted to charity commissioner in case of change in trustees
- Instrument of creation of trust. If it is in language other than English, then translation thereof in English.
- Latest provisional income and expenditure account and balance sheet.

Details generally called (3/3)

105

- In case trust / institution is old, reasons why registration is being sought now along with copy of resolution / minutes book.
- In case this is not the first application for registration u/s 12AA, then details of previous applications and copies of orders.
- In case of schools/ colleges / institutions copy of approval / permission from concerned authorities.

Enquiry - Scope

106

- At registration stage, it is not proper to examine the application of income.
 - ▣ Fifth Generation Education Society v. Commissioner of Income Tax. 185 ITR 634 (All.)
- Whether trust would be in position to claim exemption u/s 11/12 are the question which is required to be examined at the time of assessment and not at the time of grant of registration.
 - ▣ DIT v. Garden City Education Trust [2010] 191 Taxman 238 (Kar.)
 - ▣ PIMS Medical & Education Charitable Society v. CIT [2013] 31 taxman.com371 (Chd. ITAT)

Enquiry - Scope (Contd.)

107

- There is nothing in the language to suggest that an institution of a religious nature is precluded from getting registration under section 12A. Whether the said society would be entitled to the benefits under sections 11 and 12 or, as the case may be, under section 80G, would be pre-judging the issues before the grant of certificate. In insisting upon the society in changing or amending its bye-laws and in refusing to consider the application on the ground that those bye-laws had not been changed so as to exclude the religious aspect from those bye-laws, the Commissioner had clearly over-stepped his limits.
 - ▣ *New Life in Christ Evangelistic Association (NLC) v. CIT* [2000] 111 Taxman 16 (Mad.)

Enquiry - Scope (Contd.)

108

- CIT not required to satisfy whether sums spend in violation of S. 13, at the time of registration
 - ▣ Manojkee Cowasjee Petit Charities v. DIT [2012] 21 taxman.com 456 (Mum-ITAT) (TM)
 - ▣ Malik Hasmullah Islamic Educational and welfare Society [2012] 24 taxmann.com 93 (Luck)
- S. 12AA does not refers activities in India or outside India. Registration cannot be denied for income applied outside India.
 - ▣ M. K Nambyar Saarc Charitable Trust v. UOI 249 ITR 556 (Del.)

Enquiry - Scope (Contd.)

109

- Language in S. 12A does not bare, not even remotely, religious institution to get itself registered u/s 12A
 - CIT v. Shri Digamber Jain Mandir 2008 Tax LR 400 (Raj)
 - CIT v. Dawoodi Bohra Jamat CIVIL APPEAL NO. 2492 OF 2014 order dt 20-2-2014 (SC)
 - New Life in Christ Evangelistic Association (NLC) v. CIT, (2000) 246 ITR 532 (Mad)
 - Jainism is not religion at all. Further If Jainism was regarded as a religion, then the trust was not for a particular religious community or caste.
 - Shri Chandra Charitable Trust v ITO [1995] 80 Taxman 300 (AHD.)(MAG.)
 - The Hindu society is neither a religious community nor a caste within the meaning of section 13(1)(b)
 - Bharatiya Utkarsha Mandal v. Inspecting Assistant Commissioner 12 Taxman 95 (NAG. - TRIB.)

Registration not to be denied

110

- Clause in the trust deed authorising family member of the outgoing trustee to appointed as trustee
 - ▣ Smt. Mansukhi Devi Bihani Jan Hitkari Trust v. Commissioner of Income-tax [2005] 94 ITD 1 (JODH.)
- Misapplication of the property of trust
 - ▣ CIT v. A.S. Kupparaju Brothers Charitable Foundation Trust [2012] 205 Taxman 9 (Kar)
- Amounts advance to another trust
 - ▣ CIT v. Red Rose School [2007] 163 Taxman 19 (All.)
- Activities carried through another institution
 - ▣ Shriram Education Foundation v. DIT, (2014) 41 taxmann.com117 (Del)(Trib)

Registration not to be denied – (contd.)

111

- One cannot expect institution to do activity of charity immediately on formation and because of that situation the authority cannot come to a conclusion that the trust was not intending to do any activity of charity
 - ▣ DIT v. Meenakshi Amma Endowment Trust 40 taxmann.com 30 (Kar)
 - ▣ Shishu Niketan Panchkula Educational Society vs. CIT, Panchkula [2015] 53 taxmann.com 311 (Punjab & Haryana)
- The Trust has not commenced the activities, the Commissioner would have no authority to *ipso facto* reject the application for registration on that count alone.
 - ▣ DIT (E) v. Panna Lalbhai Foundation [2013] 35 taxmann.com 104 (Gujarat)

Registration not to be denied – (contd.)

112

- Construction of buildings and purchase of property, cannot be ground to deny registration under section 12AA to assessee
 - ▣ Anjuman-e-Khyrkah-e-Aam v. DIT(E) [2011] 16 taxmann.com 270 (Chennai - Trib.)
- An institution which is otherwise engaged in charitable activities duly proved from the evidence on record which has remained unrebutted, deserves to get benefits of registration under sec.12A and 80G. The same cannot be declined merely because once upon a time, its founder trustee etc. had been accused of heinous crimes and that too, not related to the school in question
 - ▣ Sri Premananda Trust v. ACIT [2013] 40 taxmann.com 514 (Chennai - Trib.)

Registration not to be denied – (contd.)

113

- Institution generating surplus
 - ▣ CIT v. Red Rose School [2007] 163 Taxman 19 (All.)
 - ▣ Institute & Electronics Engineers Inc. v. DIT [2013] 38 taxmann.com 211, (Hyd)
 - ▣ Tishir Shiksha Prasar Samiti v. CIT [2012] 52 SOT 146 (Agra)(URO)
- Institution charging fees / higher fees
 - ▣ Life Shines Educational & Charitable Trust vs. ACIT [2015] 60 taxmann.com 155 (Chennai - Trib.)
 - ▣ DIT v. Garden City Educational Trust [2010] 191 TAXMAN 238 (KAR.)
 - ▣ Shri Gian Ganga Vocational & Educational Society v. CIT, (2013) 35 taxmann.com 17 (Del)(Trib.)

Registration not to be denied – (contd.)

114

- No provision which states that in order to claim exemption, the income of the trust / institution imparting education should be financed either by any subsidy / grant from the Government or voluntary contribution from the public
- The words 'not involving the carrying on of any activity for profit' have been omitted from this definition by the Legislature by the Finance Act, 1983 with effect from 1-4-1983.
- Element of profit is not excluded from the definition of 'charitable purpose' in section 2(15)
 - ▣ Aryan Educational Society v. Commissioner of Income-tax [2005] 93 ITD 546 (DELHI)

Registration not to be denied – (contd.)

115

- Trust could have both charitable and religious objects
 - ▣ Gilgal Mission India vs. Income-tax Officer [2015] 61 taxmann.com 338 (Chennai - Trib.)
- Trust deed did not have dissolution clause
 - ▣ DIT (E) vs. Vanchhara Tirthadhipati- Chintamani Paraswaprwabhu [2015] 59 taxmann.com 417 (Gujarat)
- Trust was never doubted in earlier years, registration of same cannot be refused on mere ground that trust deed did not consist of 'dissolution clause'
 - ▣ CIT vs. Tapagachha Sangh Mota [2015] 59 taxmann.com 204 (Gujarat)

Registration not to be denied – (contd.)

116

- No activity has been carried out by trust subsequent to its creation and even up to time of disposal of its application
 - ▣ Matru Vandana Trust vs. DIT (E), Mumbai [2015] 56 taxmann.com 291 (Mumbai - Trib.)
- Trust had spent low quantum towards charitable activity
 - ▣ DIT (E), Chennai vs. R.J.B.V. Vasudevan Educational & Charitable Trust [2014] 50 taxmann.com 43 (Madras)
- Religious Trust did not provide registered trust deed but proved factum of existence of trust through all evidential documents.
 - ▣ Principal Commissioner of Income Tax (Exemptions) vs. Dawoodi Bohra Masjid [2018] 90 taxmann.com 312 (Gujarat)

Cancellation of Registration

117

- CIT can cancel registration granted u/s 12 / 12AA only if he is satisfied that
 - ▣ the activities of such trust or institution are not genuine or
 - ▣ are not being carried out in accordance with the objects of the trust or institution
- Pass an order in writing cancelling the registration after providing opportunity to be heard.
- The power of the CIT to cancel the registration is not unfettered. It is circumscribed by the conditions prescribed in section 12AA(3) of the Act
 - ▣ H.P. Government Energy Development Agency v. CIT [2010] 134 TTJ 33 (Chd)(UO)
 - ▣ CIT v. Sarvodaya Ilakkiya Pannai [2012] 20 taxmann.com 546 (Madras)

Cancellation of Registration (Contd)

118

- Once such a satisfaction is arrived at by the Commissioner to grant registration, such registration cannot be cancelled by following the very same provision of section 12AA(b)(i) of the Act to go into the genuineness of the activities of the trust.
 - ▣ CIT v. Sarvodaya Ilakkiya Pannai [2012] 20 taxmann.com 546 (Madras)
- Cancellation cannot operate retrospective
 - ▣ Oxford Academy for Career Development v. CCIT [2009] 315 ITR 382 (All)

Registration could not be cancelled

119

- Surplus funds invested in the commercial property and trust is earning rent cannot be the ground for cancellation of registration
 - ▣ DIT(E) v. Abul Kalam Azad Islamic Awakening [2013] 33 taxmann.com 364 (Delhi)
- The activities to provide a platform to exchange knowledge, information and expertise and bringing together the industrial practices and to promote and professionalise the project management through conducting seminars, workshops, etc. could not be said to be inconsistent with the objects of the trust and therefore, registration granted to the assessee could not be withdrawn under S. 12AA(3)
 - ▣ Project Management Institute v. DIT(E) [2013] 32 taxmann.com 368 (Hyderabad - Trib.)

Registration could not be cancelled

120

- Where original trust deed provided that trustees were empowered to make amendment to trust deed, there was no need for assessee to approach civil court for amending trust deed
 - ▣ Heal A Child Foundation vs. DIT (E) [2015] 61 taxmann.com 184 (Hyderabad - Trib.)
- Non-filing of a return does not find a mention as a cause for cancellation of section 12AA registration
 - ▣ Shine Educational & Social Welfare Trust v. CIT [2015] 60 taxmann.com 183 (Chennai - Trib.)
- Merely because receipts from commercial activities of assessee-trust were more when compared to overall receipts from charitable activities, registration of assessee could not be cancelled
 - ▣ DIT (E), Bangalore v. Sri Kuthethur Gururajachar Charities [2015] 58 taxmann.com 75 (Karnataka)

Registration could not be cancelled

121

- Providing hostel to students/staff working for society was incidental to object of assessee-society in providing education
- Where voluntary donations received by assessee-society were genuine and it was providing hostel to staff/students which was incidental to main object of providing education
 - CIT, Belgaum vs. Karnataka Lingayat Education Society (KLE Society) [2015] 59 taxmann.com 87 (Karnataka)
- Where registration certificate was granted to the assessee u/s 12A before 01.10.2004 as express power was conferred upon the commissioner to cancel registration through section 12AA(3) by Finance (No.2) Act 2004
 - Industrial Infrastructure Development Corporation (Gwalior) M.P.Ltd vs. Commissioner of Income Tax, Gwalior [2018] 90 Taxmann.com 281 (SC)

Time limit

122

- Application for registration must be disposed of within 6 months from the end of the month in which application was filed.
- Non-consideration of application for registration within time fixed, would result in deemed grant of registration.
 - Society for the promotion of Education Adventure sport & Conservation of Environment v CIT [2008] 171 Taxman 113 (All.) <<Over ruled>>
- Contrary view taken in:
 - CIT v. Muzafar Nagar Development Authority [2015] 57 taxmann.com 8 (Allahabad)
- Wherever application is made, the authorities must act within the time-frame. Failure on the part of the authority concerned to pass order within the statutorily laid down period of limitation will give rise to a presumption that registration, as applied for by the assessee, has been granted. This is the natural and legal consequence of an action on the part of the department not to have acted within the prescribed time-frame. The laches and the lapse on the part of the department could not be to its advantage.
 - Karnataka Golf Association v. Director of Income-tax [2004] 91 ITD 1 (BANG.)

Time Limit (Contd.)

123

- Also refer
 - ▣ Bhagwad Swarup Shri Shri Devraha Baba Memorial Shri Hari Parmarth Dham Trust v. CIT, (2008) 111 ITD 175 (Delhi) (SB)
 - ▣ CIT v. Karimangalam Onriya Pengal Semipu Amaipu Ltd, (2013) 32 taxmann.com 292 (Madras) – contra
- In the context of approval of a charitable institution under section 80G(5), rule 11AA(1) of the Income-tax Rules 1962 provides that the approval shall be granted by the CIT in 6 months from the date on which application was made and in computing the period of 6 months, the time taken by the applicant in complying with the directions of the CIT under rule 11AA(3) shall be ignored. No similar provision is made in section 12AA(2)

Rejection of registration – options

124

- Make re-application, removing the objections
- Appeal before ITAT
- Consider Writ petition before Jurisdictional High Court

Effect of Registration

125

- Registration is precondition for exemption. Registration did not ipso facto mean that the assessee would be entitled to exemption u/s 11. However the assessee has a strong case for claiming exemption when registered. But, eligibility of exemption is required to be seen by the AO at the time of making the assessment for a particular assessment year.
 - *M. Visvesvaraya Industrial Research and Development Centre v. ITAT 251 ITR 852 (Bom.)*
- Registration under section 12A is a fait accompli to hold Assessing Officer back from further probe into objects of trust.
 - *ACIT v. Surat City Gymkhana [2008] 170 Taxman 612 (SC)*
- Registration of an institution is sufficient proof of it being established for charitable purpose.
 - *Sonepat Hindu Educational and Charitable Society v. CIT [2005] 278 ITR 262 (P&H)*

Effect of Registration

126

- Once the organisation had been registered with the Commissioner u/s 12A as charitable institution, the Assessing Officer could not treat the organisation as non-charitable institution. The order of the AO refusing to treat the assessee as charitable was beyond his jurisdiction and also against section 118.
 - ▣ Surat City Gymkhana v. Assistant Commissioner of Income-tax 106 Taxman 114 (AHD.) (MAG.)
- Scope of registration proceed and its cancellation are different from the assessment proceedings. Assessing officer is prima facie bound by such registration.
 - ▣ Madhya Pradesh Madhyam v CIT [2002] 125 Taxman 382

Summary of Issues under section 12AA

127

- ❑ Objects are vague
- ❑ Activity does not constitute a charitable activity
- ❑ Non carrying out the activities as mentioned in the objects of the trust
- ❑ Mixed charitable and commercial objects
- ❑ Trust formed for the sole benefit of a person
- ❑ Non provision of various details such as source of corpus fund
- ❑ Non consideration of specific clauses in the trust deed such as activities to be carried out within India, undue benefits to founders etc.
- ❑ Too many objects portraying that there is no clarity for activities to be conducted by the organization
- ❑ Trust formed for relief of poverty of poor relatives of the settlor

128

Registration u/s 80G(5)

Regulatory framework

129

- S. 80G(2)(iv)
- S. S. 80G(5)
- Rule 11AA
- Form 10G

Conditions for registration

130

- S.80G(2)(iv) allows any fund or institution for the registration u/s 80G(5). On registration donor is entitled for deduction on account of donation.

Conditions for registration

131

- Registration is granted to the institution/ Trust established in India for Charitable purpose and fulfilling various conditions
 - ▣ “Charitable purpose” does not include, any whole or substantially the whole of a religious purpose.
 - Exceptions - Application upto 5% of the total income is allowed for the religious purposes.
 - Charitable purpose is not confined only to the contents of the constitution document, real purpose of the trust is to be formed not just ostensible purpose
 - Kirit Chand v DIT 232 ITR 11

Conditions for registration (Contd.)

132

- Institution is set up either as a
 - ▣ Public Charitable Trust or
 - ▣ Registered under Societies Registration Act or
 - ▣ Company u/s 25 of C. A. 1956 / u/s 8 of C. A. 2013 or
 - ▣ University established by law or
 - ▣ Education institution recognised by Government or University established by law or affiliated to University established by law
 - ▣ Institution financed wholly or in part by the Government or local Authority

Conditions for registration (Contd)

133

- The conditions contemplated by section 80G(5)(i) to (v) are the conditions which the institution or the fund must additionally fulfil so as to be entitled to the approval of the CIT
 - ▣ Sonapat Hindu Educational v. CIT, (2005) 147 Taxman 1 (P&H) [2005] 278 ITR 262 (P&H)
- The conditions laid down in section 80G(5) are cumulative
 - ▣ NSHM Academy v. CIT [2012] 17 taxmann.com 2 (Kol)

Conditions for registration (Contd)

134

- Income not liable to be included in total income of the trust u/s 10(23AA)/ (23C), 11, 12.
 - ▣ Income trust/institution derives income from business condition about non-inclusion of income u/s 11 would not apply
 - Separate books of accounts for such business is maintained
 - Donation received not directly or indirectly used for the purposes of business
 - Institution issues certificate to donor confirm above 2 condition.
 - ▣ Once registration under section 12A was granted, benefit to assessee under section 80G could not be denied
 - Hiralal Bhagwati v. CIT [2000] 246 ITR 188 (GUJ.) [This case has been approved in 2008 \[170 Taxman 612 \(SC\)\]](#)

Conditions for registration (Contd)

135

- Constitution documents any time does not allows for transfer of income or assets for any purposes other than charitable purposes.
 - ▣ Income of trust is given to the authors family members with a condition that such part would be spent on a particular charitable object of the trust is not in violation this condition.
 - Geep Flashlight Industries Ltd. v. CIT [1978] Tax LR 490 (All.)
 - ▣ Post grant of donation to hospital if some are reserved for the donors employees is not violative of provision.
 - CIT v. Maharaja Shri Umed Mills [1984] 148 ITR 72 (Raj.)

Conditions for registration (Contd)

136

- The satisfaction of this condition can be ascertained by examining the provisions in instruments and rules of the institution
 - ▣ Education Park Society v. CIT, (2011) 10 taxmann.com 281 (Indore - ITAT)
- A trust deed cannot be read in isolation
 - ▣ NSHM Academy v. CIT (2012) 17 taxmann.com 2 (Kol-ITAT)

Conditions for registration (Contd)

137

- Notwithstanding one or more clauses of the trust deed being wholly or substantially religious, if the income-expenditure ratio in respect of the expenses incurred on such purposes falls within the limit specified in section 80G(5B), it shall still be treated to be an institution to which the provisions of section 80G would apply and the donations to which would qualify for deduction
 - ▣ Sri Marudhar Kesari Sthanakwasi Jain Yadgar Samiti Trust v. UOI, (2005) 273 ITR 475 (Raj)

Conditions for registration (Contd)

138

- Institution / trust is not expressed for the benefit of particular religious community or caste
 - ▣ Not applicable for institution created Scheduled Castes, backward classes, Scheduled Tribes or of women and children
 - ▣ The word 'expressed' is to make known the opinion or the feelings of a particular person in writing or orally
 - National Association of Muslims Foundation v. DIT, (2012) 20 taxmann.com 94 (Hyd)
 - ▣ It is not the actual user but the likelihood of it being used for any particular community/caste and the capacity of the charitable institution to do so, which is important
 - Reliance Motor Co. (P.) Ltd. v. CIT, (1995) 213 ITR 733 (Mad)

Conditions for registration (Contd)

139

- Institution / trust maintains regular accounts of its receipts and expenditure.
 - ▣ Additions or disallowances in the course of assessment under section 143(3) do not ipso facto lead to a statutory presumption that the books of account have not been maintained. A finding in an assessment would be relevant for section 80G(5)(iv) only when the books of account are rejected by the assessing authority for valid and substantial reasons
 - N. U. Trust v. DIT, (2010) 3 ITR(Trib) 290 (Bang)
 - ▣ The correctness in accounting treatment is not covered
 - Shikshan Prasarak Mandali v. CITc(2009) 28 SOT 50 (Pune)(URO)

Conditions for registration (Contd)

140

- Registration w.e.f. 1-10-2009 is valid till it is cancelled.
- Registration if granted earlier and valid as on 1-10-2009 shall become perpetual and valid until cancelled.
 - ▣ This amendment has been made applicable with effect from 1st October 2009. Accordingly, existing approvals expiring on or after 1st October, 2009 will be deemed to have been extended in perpetuity unless specifically withdrawn. However, in case of approvals expiring before 1st October, 2009, these will have to be renewed and once renewed these shall continue to be valid in perpetuity, unless specifically withdrawn.
 - ▣ para 29.7 : Circular No. 5- Explanatory Circular for Finance (No. 2) Act, 2009" (201) 324 ITR 325 (St)

Registration Process

141

- The application for approval of any institution or fund u/s 80G(5)(vi) shall be made
 - ▣ In Form No. 10G in triplicate.
 - ▣ The application shall be accompanied by
 - Copy of registration granted under section 12A (12AA) or copy of notification issued under section 10(23) or 10(23C) ;
 - Notes on activities of institution or fund since its inception or during the last three years, whichever is less ;
 - Copies of accounts of the institution or fund since its inception or during the last three years, whichever is less.

Registration Process

142

- Upon Application the Commissioner may call for such further documents or information from the institution or fund or cause such inquiries to be made as he may deem necessary in order to satisfy himself about the genuineness of the activities of such institution or fund.
- Usually following additional information is called :
 - Declaration
 - About non-violation of provisions of section 11, 12 and 13.
 - Condition of section 80G(5) have been satisfied.
 - Name & Address of Trustee.
 - Copy of PAN of trust & all trustees.
 - List of Donors of Rs. Rs.10,000/- & above.
 - Declaration of no change in constitution & object of trust.
 - Copy of certificate of registration of trust.
 - Certified Copy of Trust deed duly registered under Bombay Public Trust Act, 1950.
 - Copy of acknowledgement for filing returns of last three years.
 - Copy of financial statement along with the form 10B of last three years.

Details generally called (1 / 2)

143

- Copy of 12AA/10(23)(iv)/(v)/(vi)/35AC registration certificate
- Declaration that provision of section 11,12 and 13 of the Income tax Act have not been violated.
- Certificate regarding condition u/s 80G(5) have been satisfied
- If trust is old, copy of ITR
- Latest provisional Income & Expenditure Account & Balance Sheet
- Copies of PAN card of all Trustees and Trust and original for verification
- Copies of change report submitted to charity commissioner in case of change in trustees

Details generally called (2/2)

144

- Details of donations received during last 3 years along with name, address, PAN of donor
- Details actual charitable / religious activities carried on by trust
- Copies of bank accounts, along with details of withdrawals and deposits
- In case of foreign donations, copy of the certificate issued by Home Ministry for foreign donations
- Details of addition to immovable properties exceeding Rs 5 Lacs
- In case of accumulation of income as per section 11 of the Income Tax Act, copy of form 10 filed with the Assessing officer.

Enquiry during registration

145

- The Commissioner is satisfied that all the conditions laid down in clauses (i) to (v) of sub-section (5) of section 80G are fulfilled by the institution or fund, he shall record such satisfaction in writing and grant approval to the institution or fund specifying the assessment year or years for which the approval is valid.
 - However post amendment words specifying validity period has not been deleted under rules.
 - The authority granting approval cannot act as an AO. The inquiry of the authority should be confined to finding out if institution satisfies prescribed condition. Actual assessment of institution would not affect claim for special deduction u/s 80G. CIT not justified in refusing renewal of approval on the ground that the income of the applicant trust was likely to be included in the taxable income for not complying with the requirements of s. 11.
 - N.N. Desai Charitable Trust v. CIT 246 ITR 452 (Guj)
 - Making investment in violation of S.11(5) cannot be sole determinative factor for rejection of certificate u/s 80(5)
 - Orpat Charitable Trust v CIT [2002] 256 ITR 690 (Guj)

Enquiry during registration (Contd)

146

- Neither S. 80G(5) nor R. 11AA empowers the registration authorities to refuse registration only on the ground that the particulars of donors are not provided. Non providing the details of donors, AO during assessment proceeding may evoke S. 115BBC & S. 13(7). But this is not relevant for deciding grant of registration unless there is other material to justify that the assessee is engaged in the activities which are not charitable and are only a camouflage and such anonymous donations are a consequence of such uncharitable activities / activities which are not genuine
 - Kalyanam Karoti v CIT [2009] 314 ITR (AT) 295 (Luck.-Trib.)

Grant of registration

147

- In case the Commissioner is satisfied that one or more of the conditions laid down in clauses (i) to (v) of sub-section (5) of section 80G are not fulfilled, he shall reject the application for approval, after recording the reasons for such rejection in writing and after providing to trust an opportunity of being heard.
- The Commissioner shall pass an order either granting the approval or rejecting the application within six months from the date of application.
 - Any time taken by the applicant in not complying with the directions of the Commissioner shall be excluded.
 - Application filed on 8-3-2001
 - Since detailed information not produced, enquiry was conducted providing opportunity to petitioner on 16-7-2003
 - On appreciation facts application was rejected on 4-8-2003
 - In view of R 11AA(3) order passed is not beyond 6 months.
 - Ref Bangalore Education Trust v DIT [2004] 136 Taxman 423 (Kar.)

Registration of Religious etc Trusts

- Any sum paid for the renovation or repair of temple, church, mosque, gurdwara or any other place notified by the Central Government in the Official Gazette to be a place of historic, archaeological or artistic importance or a place of public worship of renown throughout any State or States, will qualify for deduction from the total income of the donor to the extent of 50 per cent of the donations – S. 80G(2)(b)
 - Donations made to ordinary religious entities are not eligible for any deduction under section 80G of the Act.
- Registration for grant of deduction u/s 80G(2)(b) in the hands of donor is required to be made before DGIT(E)/CIT and he will recommend the applicant's case with his comments to the CBDT for such notification.
- Applications on plain paper, in quadruplicate, stating name of the temple, mosque, gurdwara, church, or other place (as distinct from the name of the institution / trust undertaking renovation / repair work) with precise particulars to identify the name.
- Copy of the trust deed or evidence of the instrument of creation of the trust, if any.

Registration of Religious etc Trusts

149

- The composition of the Managing Committee of the organisation undertaking renovation / repair work.
- Whether the permission of the State Government authorities has been obtained to carry out the renovation / repair work.
- The category in which the notification is to be recommended whether of historical importance or archaeological importance or artistic importance or a place of public worship of renown throughout a State or States. In case it falls in more than one category, the same should specifically be mentioned.
- In case recommendation is for the notification as building of historical, archaeological or artistic importance, the supporting material preferably with some expert opinion should be furnished.
- In case the recommendation is for notification as a place of public worship renowned throughout a State or States, the particular State or States must be specified and the material in support of the contention of importance should be furnished.

Post registration compliances



- A trustee of a Public Trust which has an annual income exceeding Rs.5000 in case of a Trust for Public Religious purpose or Rs.10000 in other cases has to compulsorily submit a budget showing the probable receipts and disbursement of the trust during the following year to the Charity Commissioner. This budget has to be submitted at least one month before the commencement of each accounting year.
- Every trustee of a Public Trust has to maintain and keep regular accounts of all receipts and movable and immovable property and of all payments and alienation made on behalf of the Public Trust.

- Such accounts have to be balanced and audited by a Chartered Accountant annually. For the purposes of appointment of a Chartered Accountant, the Trustees have to call for a meeting for this purpose and unanimously agree on a name of a Chartered Accountant and this decision shall have to be made in writing. The powers are vested in State Government to exempt any trust or class of trust from observing this requirement.
- A trustee has to file audited balance sheet and income and expenditure, prepared by the Auditor, online on the website of Charity Commissioner [charity.maharashtra.gov.in]
- In case the total income of the trust before claiming exemption under the Income Tax Act exceeds the basic exemption limit, it is mandatory to conduct audit and file ITR-7 within due date of filing of return. Else no exemption shall be granted (w.e.f. AY 2018-19)

- Where the trust property consists of money and it cannot be used immediately or at any early date for the purposes of the objects of the trust, the Trustee shall be bound to deposit the money in any Schedule bank or in the Postal Savings Bank or in a Co-operative bank approved by the State Government or to invest it in Public Securities. However, powers are vested in Charity Commissioner to allow any trustee to invest trust money in any other manner.
- In order to dispose of the trust property by way of Sale or Exchange or Gift, the Trustee is required to obtain prior permission of the Charity Commissioner.



- Similarly no trustee can borrow money by way of mortgage or otherwise on behalf of the Trust without the prior permission of the Charity Commissioner. Such a permission has to be given by the Charity Commissioner or the Joint Charity Commissioner forthwith or within a period of 15 days if the bank or financial institution has provisionally sanctioned the loan.
- Every Public Trust has to prepare and keep a register of all movable and immovable properties of the trust. This register has to be signed by all the trustees and shall be made available to the auditor for the purposes of auditing the accounts of the trust.

Alienation of Immovable Property

155

- S.36. Alienation of Immovable Property of Public Trust.
- The procedure for sanction of alienation is as under
 - ▣ Identify nature of alienation of immovable property is being requested for (i.e. whether sale, gift, transfer or lease?)
 - ▣ The Necessity of alienation is required as an affidavit.
 - ▣ Particulars of concrete proposal, if any on hand, such as the name of the purchaser / lessees / transferee, etc. and consideration he has offered
 - ▣ Clarification of how the proposal is in the interest of the Trust.
 - ▣ Trustee's resolution in favour of alienation passed unanimously or by required majority under the trust deed.
 - ▣ How the property to be alienated was acquired by the trust. Clarification along with the document of transfer will need to be seen.

Alienation of Immovable Property

156

- ❑ A copy of the document creating the trust to check what provisions with regards to alienation of immovable property have been mention and whether trust deed contains any prohibition of alienation.
- ❑ Certified copy of the Schedule – 1 to check out that whether the property in question is on the record of the Charity Commissioner or not.
- ❑ The offers of lease or sale should be invited by way of advertisements in two prominent news papers – the offers should be received in sealed envelopes to be opened in the presence to the bidders who should be then be given a chance to enhance their offers.
- ❑ Valuation report of experts such as Architects, Engineers, etc., showing detailed - working out of the current market value of the property in question. In case of agricultural lands valuation report of talathi, patwari or Gram – Panchayat, etc.
- ❑ A copy of draft lease in case of Lease, draft Sale deed in case of Sale.
- ❑ Whether the property in question is involved any litigation or in subject-matter of any suit or whether any person has professed any claim on the property.
- ❑ In case of the agricultural land to obtain an exemption certificate under section 88B of the Bombay Tenancy and Agricultural Lands Act, 1948.

Borrowing (1 / 2)

157

- A trust can borrow money after following the provisions mentioned u/s.36A of the BPT Act, 1950. The following details/clarifications are required to the Office of the Charity Commissioner for obtaining sanction for borrowing money for a trust
 - ▣ Whether the instrument of trust contains any directions with respect to borrowing of money (whether by way of mortgage or otherwise)
 - ▣ What is the necessity of the proposed borrowing?
 - ▣ Whether all the trustees are unanimously in favour of the proposed borrowing?
 - ▣ The name of the person / institutions from whom monies are to be borrowed and their relation with trust or trustees, if any.

Borrowing (1 / 2)

158

- ❑ Loan amount
- ❑ Banks approval letter to advance of loan containing terms and conditions of the loan etc.
- ❑ File an affidavit in support of the application along with the undertaking that the loan will be used only for the purpose it is being raised
- ❑ What is rate of interest?
- ❑ State whether accounting reports are filled up-to date or not?
- ❑ How the loan is proposed to be repaid?
- ❑ If the loan is being raised for the construction of the building then the estimation cost of the construction
- ❑ Whether copy of the budget scheme is submitted in the office of the charity commissioner or not?
- ❑ What is the cadastral Survey Number along with the full schedule of the property address I any immovable property has to be mortgaged
- ❑ What is the present net annual income from the property?

**Any Questions...
Just Ask!**



