

**ISSUES OF CHARITABLE
INSTITUTIONS FROM INCOME
TAX POINT OF VIEW**

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ISSUES RELATING TO CARRY FORWARD OF DEFICIT AND DEPRECIATION ARISING FROM RECENT SUPREME COURT JUDGEMENTS

- The Hon'ble Supreme Court's decision in the case of **Rajasthan and Gujarathi Charitable Foundation, Poona** dated 13.12.2017 (*402 ITR 441*)
- The Hon'ble Supreme Court's decision in the case of **Subros Educational Society** in Miscellaneous Application No. 941/2018 in Civil appeal No. 5171/2016.

The modalities of computing such deficit and its allowability have however not been discussed in the judgement.

There is no clarity as to whether such conditions are to be applied in allowing the carry forward of deficit in the cases of Trusts also.

EXAMPLE 1 :

Trust Income = Rs.100

Trust Expenditure= Rs.105

Particulars	<u>Deficit claimed</u>	<u>Deficit as per commercial principles</u>
Income	100	100
Less: Ded. u/s.11(1)(a) @15	15	Not allowable
	85	100
Less: Expenditure	105	105
Carry forward deficit :	20	5

EXAMPLE 2 :

Trust Income = Rs.100

Trust Expenditure= Rs. 90

Deduction U/s. 10(34) : Rs.40

Particulars	Deficit claimed		<u>Deficit as per commercial principles</u>
	Example 1	Example 2	
Income	100	100	100
Less: Ded.u/s.11(1)(a) @15%	15	Not claimed	Not allowable
	85		
Less: Income exempt u/s. 10	40	40	Not allowable
	45	60	
(-) Expenditure	90	90	90
Carry forward deficit :	45	30	No deficit as there is surplus

GIVING EFFECT TO THE ABOVE JUDGEMENTS OF HON'BLE SUPREME COURT

- Based on theory of commercial principles, it clearly comes out that as long as the aggregate income [including any income derived from property even if it is exempt under any other section such as section 10(34)] of the Trust is more than the expenditure, it cannot be said that expenditure towards objects is incurred against the income of subsequent years and thus there cannot be any deficit which is allowable as per the above judgement.

ACTIVITIES ARE NECESSARY FOR REGISTRATION U/S 12AA

Procedure for registration.

12AA. 19(1) The 20[***] 21[Principal Commissioner or] Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) 22[or clause (aa) 23[or clause (ab)]] of sub-section (1)] of section 12A, shall—

23a [(a)call for such documents or information from the trust or institution as he thinks necessary **in order to satisfy himself about,—**

(i)the genuineness of activities of the trust or institution; and

(i)the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects,

and may also make such inquiries as he may deem necessary in this behalf;
and]

REGISTRATION U/S 12AA

- Not allowed eventhough the activities are charitable in nature but not as per objects.

REGISTRATION U/S 12AA

- Out of many objects, even if 1-2 objects are in the nature of commerce, trade or business, registration cannot be allowed.

ALLOWABILITY OF EXPENDITURES ON APPLICABILITY OF PROVISIO TO S 2(15)

- Whole exemption will be denied. Only those expenses which are incurred to earn the income can be allowed.

RELIGIOUS TRUST : S 80G VS 115BBC

- Registration u/s 80G not allowable for religious trusts.
- Anonymous donations are taxable at the Max. marginal Rate u/s 115BBC for all trusts except Religious.