

CHARITABLE TRUSTS-AN OVERVIEW

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TRUST-DEFINITION AND MEANING

- ◉ Definition of Trust
- ◉ What is Trust? Meaning-No definition in Income Tax Act
- ◉ Common Parlance-Confidence reposed in
- ◉ Definition of Trust-Section 3 of Indian Trusts Act, 1882-
Obligation annexed to the ownership of the property for the confidence reposed in by the declarant for the benefit of others-Selflessness
- ◉ Classification of Trust
 - (i) Private Trust-Beneficiaries are identifiable-determinate
 - (ii) Public Trust-Beneficiaries are indeterminate
- ◉ What constitutes valid trust?
- ◉ 1.Author
- ◉ 2.Transfer of the property in favour of the trust-Divestiture of property in favour of the trust
- ◉ 3.Certainty of the object
- ◉ 4.Beneficiaries are defined

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Charitable Purpose - Sec 2(15)

- ◉ Concept of Charity-No definition in Income Tax
- ◉ Pious Obligation-Gratuitous-Altruistic thought and action-benefit of others-selflessness
- ◉ Charitable Purpose - under Section 2(15)-Inclusive definition-6Limbs
- ◉ Relief of the poor
- ◉ Education
- ◉ Medical Relief
- ◉ Advancement of any other general public utility
- ◉ Preservation of environment and preservation of monuments or places or objects of artistic or historic interest includible within the ambit of “charitable purpose”
- ◉ Yoga

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Formation of Charitable Institution- Various Factors

- Cost
- Purpose
- Time
- Annual Expenses

- ◉ As a Trust
- ◉ As a Society
- ◉ As a Section 8 Company-need not mention Pvt Ltd or public Ltd.

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- Section 2(15) "charitable purpose" includes relief of the poor, education, Yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest,] and the advancement of any other object of general public utility:
- Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless—

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- ◉ (i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and
- ◉ (ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent. of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;



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Governing Enactments

- ◉ Income Tax Act, 1961
- ◉ Societies Registration Act, 1880
- ◉ Companies Act, 1956
- ◉ Charitable and Religious Trust Act, 1920
- ◉ Charitable Endowment Act, 1890
- ◉ Indian Trust Act, 1882
- ◉ Charitable and Religious (Development) Act

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Types of Trust

- ◉ Income derived from property held under trust wholly for charitable or religious purposes.
- ◉ Income derived from property held under trust in part only for such purposes.
- ◉ Income derived from property held under trust created for a charitable purpose which tends to promote international welfare.

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Income from property held for Charitable or Religious Purposes

- ◉ What is “Exempt”?
- ◉ Limbs of Sec 11 -
 - a. **Income derived from the property held under Trust-**
 - Property used in broadest sense-Movable say cash is a property-Immovable-No limitation
 - Divestiture of property
 - Income must emanate from such property. Suppose you derive income other than property, then not covered
 - b. **Wholly for charitable or religious purposes.**
 - Wholly means solely
 - Charitable and religious-mixed
 - c. **to the extent such income is applied.**
 - Applied-Capital or Revenue
 - d. **to such purposes in India.**
 - e. **income so accumulated or set apart**

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Agricultural property held by the Trust, the Income derived thereon whether constitutes

- income from property held under trust -Central Govt. Jurisdiction or
- agricultural income?-State Govt. jurisdiction

- **CIT vs Panchuiti Akhara Nirmal (1991) 192 ITR 186 (All)-Dissented with the views of Madras High Court**
- **Muthukumar Swamy Tambaram vs Agri ITO (1978) 113 ITR (Madras)-Character of the Income remains agricultural Income-involves sowing-tilling**
- **CIT vs Nabhinandan Digamber Jain (2002) 257 ITR 91 (MP)-Agreed with Madras High Court**

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Depreciation - Whether allowable?

Governing provisions-Section 32-Twin Considerations of Ownership and use

Owner-Condition satisfied

Put to use for the purpose of Business-Condition Not satisfied

Capital and Revenue both admissible as application

- ◉ CIT vs Society of the Sisters of St. Anne (1984) 146 ITR 28 (Kar)-Entitled for Depreciation
- ◉ CIT vs Bhoruka Public Welfare Trust (1999) 240 ITR 513
- ◉ CIT vs Indian Institute of Bankers (2003) 264 ITR 110
- ◉ Circular No. 5-P(LLX-6) OF 1968, Dated 19-06-1968 (CLARIFICATION.)-Income to be computed based on Commercial Sense
- ◉ Dy. CIT & Ors vs Market Committee, Adamar (2008) 13 DTR (Del) 157. (Normal manner)

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- ◉ Charitable institutions who avail exemption u.s. 11 are required to apply their income to certain minimum extent and only a part can be accumulated or kept apart for application in future for its objects.
- ◉ Purchase of fixed assets for the purpose of objects of institution is also considered as application of income of charitable institution.
- ◉ Question arose is whether a fixed asset which has been considered as application of income is still eligible for depreciation allowance while computing income.
- ◉ The Supreme Court has confirmed views expressed by Bombay High court and various other High Courts that , yes such assets are eligible for depreciation allowance as per general rule of accounting, as well as as per provisions of Income-tax Act when assets are used in business. This has also been confirmed that depreciation not allowed due to inadequate chargeable income shall also be carried forwarded as per S.32(2) and can be set off in future when there is chargeable income.

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- ◉ The matter was related to period prior to amendment, by insertion of sub-section (6) in section 11 w.e.f. 01.04.2015. The said amendment has been held to be prospective..
- ◉ Analysis and summary from judgments of High Courts as noticed, referred in the judgment of the honourable Supreme Court:
- ◉ 1. *The first question considered was whether, depreciation was allowable on the assets, the cost of which has been fully allowed as application of income under section 11 in the past years?*
- ◉ *In the case of CIT v. Munisuvrat Jain 1994 Tax Law Reporter, 1084 it was held by the Bombay High Court that:*
- ◉ Section 11 of the Income Tax Act makes provision in respect of computation of income of the Trust from the property held for charitable or religious purposes and it also provides for application and accumulation of income.
- ◉ section 28 of the Income Tax Act deals with chargeability of income from profits and gains of business and section 29 provides that income from profits and gains of business shall be computed in accordance with section 30 to section 43C.
- ◉ That, section 32(1) of the Act provides for depreciation in respect of building, plant and machinery owned by the assessee and used for business purposes.
- ◉ an argument that depreciation can be allowed as deduction only under section 32 of the Income Tax Act and not under general principles was advanced by revenue.
- ◉ The Court rejected this argument and held that normal depreciation can be considered as a legitimate deduction in computing the real income of the assessee on general principles or under section 11(1)(a) of the Income Tax Act.

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- ◉ That income of a Charitable Trust derived from building, plant and machinery and furniture was liable to be computed in normal commercial manner although the Trust may not be carrying on any business and the assets in respect whereof depreciation is claimed may not be business assets. In all such cases, section 32 of the Income Tax Act providing for depreciation for computation of income derived from business or profession is not applicable. However, the income of the Trust is required to be computed under section 11 on commercial principles after providing for allowance for normal depreciation and deduction thereof from gross income of the Trust.
- ◉ Bombay High Court in the case of Director of Income-tax (Exemption) v. Framjee Cawasjee Institute considered the facts that the assessee a trust derived its income from depreciable assets. The assessee took into account depreciation on those assets in computing the income of the Trust. The ITO held that depreciation could not be taken into account because, full capital expenditure had been allowed in the year of acquisition of the assets. On further appeal, the Tribunal, however, took the view that when the ITO stated that full expenditure had been allowed in the year of acquisition of the assets, what he really meant was that the amount spent on acquiring those assets had been treated as 'application of income' of the Trust in the year in which the income was spent in acquiring those assets. This did not mean that in computing income from those assets in subsequent years, depreciation in respect of those assets cannot be taken into account. This view of the Tribunal has been confirmed by the Bombay High Court in the earlier judgment. Therefore Question No. 2 was considered covered by the decision of the Bombay High Court consequently, Question No. 2 was answered in the Affirmative i.e., in favour of the assessee and against the Department.

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- ◉ Supreme Court confirmed above views:
- ◉ The honourable Supreme Court observed as follows:
- ◉ It may be mentioned that most of the High Courts have taken the aforesaid view with only exception thereto by the High Court of Kerala which has taken a contrary view in 'Lissie Medical Institutions v. Commissioner of Income Tax'.
- ◉ After hearing learned counsel for the parties, we are of the opinion that the aforesaid view taken by the Bombay High Court correctly states the principles of law and there is no need to interfere with the same.
- ◉ It may also be mentioned at this stage that the legislature, realising that there was no specific provision in this behalf in the Income Tax Act, has made amendment in [Section 11\(6\)](#) of the Act vide [Finance Act No. 2/2014](#) which became effective from the Assessment Year 2015-2016.
- ◉ The Delhi High Court has taken the view and rightly so, that the said amendment is prospective in nature.
- ◉ It also follows that once assessee is allowed depreciation, he shall be entitled to carry forward the depreciation as well.
- ◉ For the aforesaid reasons, we affirm the view taken by the High Courts in these cases and dismiss these matters.
- ◉ **Conclusions:**
- ◉ Depreciation is allowable as per general rules when income is to be computed [u.s.11](#). As per author this can be applied in other situations also.
- ◉ In case of business income, depreciation on assets used for business is allowable as per [S.32](#).
- ◉ Depreciation so allowed can be carried forwarded if there is no chargeable income or chargeable income is inadequate.
- ◉ Amendment in [S.11](#) by insertion of sub-section (6) is prospective and not retrospective. - [Commissioner of Income Tax \(Exemption\) Versus Raguvanshi Charitable Trust 2017 \(12\) TMI 135 - DELHI HIGH COURT](#)

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- ◉ DDIT (Exemption) v. Lissie Medical Institutions ITA No. 1010 (Coch) of 2008 (Coch - Trib)
- ◉ CIT v. Market Committee, Pipli (2011) 330 ITR 16 (P&H) followed: CIT v. Tiny Tots Education Society (2011) 330 ITR 21 (P&H)
- ◉ ED Trust purchased computers for the objects of the Trust amounting to Rs. 10 lakhs. While filing the Return of Income, the said trust claimed depreciation at 60% amounting to Rs. 6 lakhs as application in addition to Rs. 10 lakhs. Totally Rs. 16 lakhs. In the course of the scrutiny, AO has not allowed Depreciation. Is it justified?

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- ◉ REGISTRATION OF TRUST OR INSTITUTIONS-U/S 12A(a), 12AA
- ◉
- ◉ Beth Trust filed an application for seeking registration u/s 12A(a) of the IT Act, before CIT along with proof of having bank transactions which they have created 2 years ago. The CIT has rejected the application on the grounds that Beth Trust did not produce Trust Deed for seeking registration. Is it justified?
 - (All India Spinners Assoc. CIT (1944) 12 ITR 482 (SC))
 - (Radhasoami Satsang vs CIT (1992) 193 ITR 321 (SC))
 - Justification for Refusal lies with the Dept.
 - (Guru Gobind Singh Educational Society Vs CIT(2009) 313 ITR 32 (Asr - Trib))

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“SUCH PURPOSES IN INDIA”

Beth Trust is a National Sports club Reg u/s 12 A. The dominant object is to generate talented sports persons in India. For the F.Y 07-08, it has sponsored many sports persons to visit different countries to learn the technique and practice. In the course of the assessment the A.O. held the amount incurred out side India is not an application for purposes in India.

Discuss.

(HEH Nizam 17 ITR 23 AP)

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Voluntary Contribution / Voluntary Contribution with specific direction or Corpus Donation

- ◉ **Meaning**
- ◉ **Kinds of Corpus Donation**
- ◉ **Features of Corpus Donation**
- ◉ **Receipt stating “Towards Corpus Donation is sufficient”**
- ◉ **Project Advances with instructions - Case Studies**
- ◉ **Corpus Funds can be diverted?**
- ◉ **From Corpus Donations, can trust give donations to other trust?**
- ◉ **Genuineness of Donation, could not be held bogus without examining donors (CIT vs Geetanjali Edu Soc(2008) 174 Tax (Raj)**

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- ◉ An institution has kept two hundi boxes, called Hundi A and Hundi B. On Hundi A, a placard was pasted saying “Towards Corpus Donation”. On Hundi B, it was mentioned “Donation”, it was the practice for the Banker to open the Hundis and credit to the respective designated bank accounts. The assessee has claimed that the funds collected in Hundi A as Corpus Donation. The assessing officer had denied the claim.
- ◉ Ab Trust registered u/s 12A engaged in Charitable Activities received a Corpus Donation of Rs. 5 lakhs. In the course of the proceedings, the AO insisted to produce documentary evidence. The Trust could produce documentary evidence of the direction of the owner only to the extent of Rs. 4 lakhs. On the balance of Rs. 1 lakh, the AO has levied the taxes. Is it justified?

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Treatment of Establishment Expenses

Would establishment expenses be treated as application of income?

- ◉ **Nirmans Supplemental Religious Endowment Trust 91981) 127 ITR 378 (AP)**
- ◉ **CIT vs Janaki Ammal Ayya Nadar Trust (1985) 153 ITR 159 (Mad)**

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Breach of Trust

- ⦿ Breach of Trust - Meaning and Concept
- ⦿ Circumstances that causes for breach of Trust

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Surplus is a bar to claim exemption?

- ◉ CIT vs Andhra Pradesh Road Transport Corporation (1986) 159 ITR 1 (SC)
- ◉ Addl. CIT vs Surat Arts Silks Cloth Mfg. Assoc. (1980) 121 ITR 1 (SC)
- ◉ ITO vs Dharamshila Cancer Foundation & Research Centre (2010) 128 ITD 1 (Del 'H'- Trib) : (2010) 134 TTJ (Del 'H'- Trib) 573

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Rectification of Trust Deed

- ◉ Whether objects can be rectified?
- ◉ Procedure for seeking rectification
- ◉ The effect of Court Order

Thank You

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