

Memorandum of Representation before Union Government

Review of Tax Exemptions/ Deductions proposed by CBDT Vide Circular No. F.No.149/124/2006-TPL (Pt.)

Introduction

The Government of India has been taking steps to simplify the tax system in India. In order to simplify the laws and minimize distortion with the tax structure, The Union Government plans to review the exemptions that exist in the Income Tax Act, 1961. To avoid any radical change in the Act, The Central Board of Direct Tax (CBDT) on behalf of the Department of Revenue, Government of India has taken the initiative to involve the stake-holder in the process. Some of the provisions of exemptions are relevant to the Voluntary sector or the Development Sector. In India, voluntary organizations play a significant role in the socio-economic development of the country. Voluntary Action Network India (VANI) in association with Financial Management Service Foundation (FMSF) has prepared this memorandum of representation which is presented before the Department of Revenue, Central Board of Direct Taxes, Tax Policy & Legislation Division, Government of India, to protect voluntary organizations from the negative effects of any changes in provisions relating to exemption in the Income Tax Act, 1961 which are related to NGOs.

An overview of the exemptions and their implication on voluntary organization:

Before 1961, when the Income Tax Act was not in existence, the income for Non Profit organisations was totally exempted from tax. When Income Tax Act came into existence in 1961, even at that time the voluntary contributions and contribution to corpus were not considered as part of the income of a non profit organisation u/s 2(24) of Income tax Act, 1961. Only receipts like Membership Fees, income from investment of General Funds, income from investments from Corpus Funds were treated as income. However, in 1972 when Section 12 which was inserted by Finance Act 1972 and also the insertions of clause (iiia) to Section 2(24) implied that the voluntary contributions were included in the definition of income.

Again in Direct tax laws (Amendment Act 1989), Section 2(24) (ii a) was further amended to include even corpus donation as part of total income. Section 11(1) (d) was simultaneously introduced to provide exemptions to the contribution towards Corpus.

In the Finance Act 2001, the time period for the accumulation of income by the non profit organisations, which was earlier allowed to be accumulated or set apart for the period of 10 years was reduced to 5 years u/s 11(2).

Further in the Finance Act 2002, two very significant changes were brought in which adversely affected the functioning of the voluntary sector. Firstly the accumulation of income which was earlier allowed to be accumulated or set apart not in excess of 25 % was reduced to 15% and secondly inter charity donations out of the accumulated funds was not allowed from 1.04.2003.

In Finance Act 2006, Section 115BBC was inserted, according to which any charitable organisation receiving anonymous donations would be charged tax at maximum marginal rate. Under this section, donations to partly religious and partly charitable institutions /trusts would be taxed only if the donation is specifically for an educational or medical purpose. However donations to wholly religious institutions and trusts will not be covered by this section.

In the above explanations we can see that many of the privileges which were existing for non profit sector prior to the enactment of the Income tax Act in 1961 have been systematically withdrawn over a period of last 45 years. With the various amendments, the non profit sector has only lost its edge to be effective instruments of social change.

Observations and Recommendations:

As of now, the provisions of Income Tax Act, 1961 as amended from time to time, treat all organizations, trust etc., in the same footing which have been found to be somewhat detrimental to the growth of organizations especially in the field of socio-economic development, eradication of social injustice and alleviation of poverty.

It is therefore, suggested that some provisions be made in the structure of the Act to help such NGOs to grow in the following manner:

Income which does not form part of Total Income:

- **Section 10(23)(i) to (vi a)**

Observation:

Section 10(23C) (i) to (vi a) of Income Tax Act, 1961, provides that certain income of the institution or organizations by specific activities shall not form the part of Total Income of the institution/ organization.

Recommendation:

- The provisions under Section 10(23C) (i) to (vi a) should not be altered,
- However the procedure for getting these exemptions should be simplified and also should be made time bound for the Income tax department for granting these exemptions.
- The approval for the institutions or organization should be in perpetuity unlike it is now being restricted for specific period of time since it is a time consuming process and also instead of being time bound it should be made more compliance oriented.

Further a clear time frame of six months to dispose off the applications under Section 10(23C) (i) to (vi a) by the income tax department need to be inserted.

Specific exemptions granted to Charitable Organizations:

- **Section 11 to 13**

Observations:

Section 11 to 13 of the Income Tax Act, 1961 deals with the exemptions that are available to charitable organization/ trusts from the income of property held by such charitable organization, contribution, etc.

Recommendation:

- In principle, status quo should be maintained in the provisions under Section- 11, 12 and 13.
- The provisions under these Sections should not be altered as the organizations are already under stringent restrictions like utilization of receipts (85% of receipts has to be utilized to get tax exemption), time limit for the utilization of funds (Time limit of 5 years for utilizing fund accumulated), etc. Therefore it is not necessary to put further restriction.
- Further, earlier under Section 11, 75% of the receipts were required to be utilized during the year and the time limit for accumulation of unutilized receipts under Section 11(2) was 10 years. We recommend to revert to this earlier provision which were withdrawn in Finance Act, 2001 and 2002.
- Under Section 11(2), we also recommend that inter-charity donations out of accumulated funds be allowed for greater synergy and facilitating long-term programmes.

Deduction available on the basis of Expenditure:

- **Section- 35(1) (ii), 35 (1) (iii), 35 (1) (iv), 35 (2AA), 35 (2AB), 35 ABB, 35AC, 35CCA, Section- 80GGA,**

Observations:

Section- 35(1) (ii), 35 (1) (iii), 35 (1) (iv), 35 (2AA), 35 (2AB), 35 ABB, 35AC, 35CCA, Section- 80GGA, are some of the provisions of Income Tax Act, 1961 under which specified expenditures mentioned in the respective provision which are allowed for deduction/ weighted deduction while computing the Income of the organization. These are mainly concerned with developmental works.

Recommendation:

- The expenditures under these Sections should be allowed as it is there in the Act at present.
- The removal of privileges under this would lead to discourage the organizations, especially business organizations which now take it as their corporate social responsibility to spend more in the development activities.

- It is also proposed that the time limit for disposal of the application under Section 35AC be fixed as 6 months and provision for appeal against rejection of the application and disposal of the same in a time bound manner should be incorporated.

Deduction to be made in computing Total Income in respect of certain donations:

- **Section 80 G and Section 12A**

Observation:

Under Section 80G of the Income Tax Act, 1961, donations for charitable purpose by Individuals shall be allowed as deduction while computing the Total Income of the person subject to the fulfillment of certain conditions.

Recommendation:

- The provisions under this Section should not be altered as it encourages individuals to contribute more for social activities.
- Further the provisions of the Act should be considered for simplification as presently Non Profit Organisations have to get separate registration under Section 12A and Section 80G of the Income Tax, 1961. Since both the exemptions are required by a charitable organisation and the same authority is granting the exemptions with same details required at the time of registration it should be considered to allow the registration for both Section 12 A and 80 G at the same time i.e one time registration on the basis of the Aims and Objects of the organization.
- The registration should be in perpetuity without any time restriction and should be made more compliance oriented rather than time oriented.
- There are many grassroot organizations operating in the rural and inaccessible regions of the country not having access to adequate legal expertise which has led to not being registered under Section 12A of the Income Tax Act, 1961 within the stipulated time frame. Therefore, we recommend an Amnesty Scheme be formulated and announced for all NGOs which are not registered under this Section so far.
- Under Section 80G, 100% deduction to the donor may be considered.

Anonymous Donation

- **Section 115BBC**

Observation:

With the inception of Finance Act, 2006, the anonymous donation received by any organization for charitable purpose other than religious cause shall be taxable at Maximum Marginal Rate u/s 115BBC.

Recommendations:

- The anonymous donations should not be made taxable as there are a lot of individuals and organisations who would like to remain anonymous while giving for charity work.
- Also lot of charitable organisations collect donations through charity boxes at public places where it is not possible to trace every individual donors which would also affect the spirit of voluntarism and rising sources.

Appeal to Government:

On the basis of the rationale discussed, it the sincere appeal to government to continue with the existing exemptions and sympathetically consider the simplification of the above mentioned suggestions to allow the voluntary organizations to work towards the betterment of the civil society.