

F.No.197/17/2016-ITA-I
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, the 27th May, 2016

Subject – Clarification regarding cancellation of registration u/s 12AA of the Income-tax Act, 1961 in certain circumstances - regarding

Sections 11 and 12 of the Income-tax Act, 1961 ('Act') exempt income of charitable trusts or institutions, if such income is applied for charitable purpose and such institution is registered under section 12AA of the Act.

2. Section 2(15) of the Act provides definition of "charitable purpose". It includes "advancement of any other object of general public utility" provided it does not involve carrying on of any activity in the nature of trade, commerce or business etc. for financial consideration. The 2nd proviso to said section, introduced w.e.f. 01-04-2009 vide Finance Act 2010, provides that in case where the activities of any trust or institution is of the nature of advancement of any other object of general public utility and it involves carrying on of any activity in the nature of trade, commerce or business; but the aggregate value of receipts from such commercial activities does not exceed Rs. 25,00,000/- in the previous year, the purpose of such trust/institution shall be deemed as "charitable" despite it deriving consideration from such activities. However, if the aggregate value of these receipts exceeds the specified cut-off, the activity would no longer be considered as charitable and the income of the trust/institution would not be eligible for tax exemption in that year. Thus an entity, pursuing advancement of object of general public utility, could be treated as a charitable institution in one year and not a charitable institution in the other year depending on the aggregate value of receipts from commercial activities. The position remains similar when the first and second provisos of section 2(15) get substituted by the new proviso introduced w.e.f. 01-04-2016 vide Finance Act, 2015, changing the cut-off benchmark as 20% of the total receipts instead of the fixed limit of Rs.25,00,000/- as it existed earlier.

3. The temporary excess of receipts beyond the specified cut-off in one year may not necessarily be the outcome of alteration in the very nature of the activities of the trust or institution requiring cancellation of registration already granted to the trust or institution. Hence, section 13 of the Act has been amended vide Finance Act, 2012 by inserting a new sub-section (8) therein to provide that such organization would not get benefit of tax exemption in the particular year in which its receipts from commercial activities exceed the threshold whether or not the registration granted is cancelled. This amendment has taken effect retrospectively from 1st April, 2009 and accordingly applies in relation to the assessment year 2009-10 onwards.

4. In view of the aforesaid position, it is clarified that it shall not be mandatory to cancel the registration already granted u/s 12AA to a charitable institution merely on the ground that the cut-off specified in the proviso to section 2(15) of the Act is exceeded in a particular year without there being any change in the nature of activities of the institution. If in any particular year, the specified cut-off is exceeded, the tax exemption would be denied to the institution in that year and cancellation of registration would not be mandatory unless such cancellation becomes necessary on the ground(s) prescribed under the Act.

5. With the introduction of Chapter XII-EB in the Act vide Finance Act, 2016, prescribing special provisions relating to tax on accreted income of certain trusts and institutions, cancellation of registration granted u/s 12AA may lead to a charitable institution getting hit by sub-section (3) of section 115TD and becoming liable to tax on accreted income. The cancellation of registration without justifiable reasons may, therefore, cause additional hardship to an assessee institution due to attraction of tax-liability on accreted income. The field authorities are, therefore, advised not to cancel the registration of a charitable institution granted u/s 12AA just because the proviso to section 2(15) comes into play. The process for cancellation of registration is to be initiated strictly in accordance with section 12AA(3) and 12AA(4) after carefully examining the applicability of these provisions.

6. The above may be brought to the notice of all concerned.

Sd/-

Deepshikha Sharma
Director to the Government of India

- ✓ 1. The Chairperson and Members, CBDT.
2. All Joint Secretaries/CsIT, CBDT.
3. OSD to Revenue Secretary
4. All Principal Chief Commissioners of Income-tax & all Directors General of Income-tax with the request to bring to notice of all officers.
5. The Pr. DGIT (Training), NADT, Nagpur
6. The Pr. DGIT (Systems), ARA Centre, Jhandewalan Extension, New Delhi.
7. The Pr. DGIT (Vigilance), New Delhi.
8. The ADG (PR, PP & OL), Mayur Bhawan, New Delhi for printing in the quarterly tax bulletin and for circulation as per mailing list.
9. Comptroller and Auditor General of India.
10. ADG-4 (Systems) for uploading on ITD website.
11. Data Base Cell for uploading on [www. irsofficeronline.gov.in](http://www.irsofficeronline.gov.in)
12. The Guard File.

Deepshikha Sharma
Director to the Government of India