

Necessity of Registration of Trust

*Registration of Trust is required to avail exemption provided under **section 11** of the Income Tax Act, 1961.*

Section-11

- Income from property held for charitable or religious Purposes

Analysis

- Registration u/s 12A is precedent condition to claim exemption u/s 11. **Dr. C.T. Eapen Trust v. ITO** [2014] 49 taxmann.com 96 (Cochin - Trib.)
- Exemption under section 11 is not allowed if trust is not registered under section 12AA- **Manas Sewa Samiti v Add. CIT** [2012] 28 taxmann.com 265 (Agra)

Section 12A - Conditions
For application of sections
11 and 12

Section 12A(1)(a)

As per Section 12A (1)(a)

- Provisions of Sec 11 & 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled .

Sec 12(1)(a) Procedure for Registration as applicable up to 31-05-07

Application of registration in Form 10A in prescribed Manner

To the Principal Commissioner or Commissioner

Before 1st July 1973 or before expiry of 1 year of creation of Trust/institution whichever is later.
(Such trust/institution is registered u/s 12AA)

Provided That-

The provisions of Section 11 and 12 are applicable even if an application for registration of trust /institution is made after the expiry of aforesaid period-

- From the date of creation of trust or establishment of institution, if Principal Commissioner for the reasons recorded in writing, **is satisfied** that there were sufficient reasons due to which person in receipt of income was prevented from making application before expiry of aforesaid period.
- From the 1st day of financial year in which application is made, if Principal Commissioner is **not satisfied** with the reasons.

Note: Provisions of this clause shall not apply in relation to any application made on or after 1st June, 2007.

Section 12A (1)(aa) - Amendment by Finance Act, 2007

Procedure for Registration as applicable from 01-06-07

Section - 12A(1)(aa) reads as follows:-

The person in receipt of the income has made an application for registration of the trust or institution on or after the 1st day of June, 2007 in the prescribed form and manner to the [Principal Commissioner or] Commissioner and such trust or institution is registered under section 12AA

Section 12A (1)(b)

Where the total income of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year

The accounts of the trust or institution for that year have been audited by an accountant as defined in the *Explanation* in sub-section (2) of section 288

The person in receipt of the income furnishes along with the return of income for the relevant assessment year the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.



Section 12A(2) – Applicability to earlier years of the registration granted to a trust or institution

Amendment by Finance Act (No. 2), 2014

[w.e.f. 01.10.2014]

Provisos to sub-section (2):

***“Provided** that where registration has been granted to the trust or institutions u/s 12AA then the provision of sec 11 and 12 shall apply in respect of any income derived from property held under trust of any Assessment Year preceding the aforesaid Assessment Year for which Assessment Year are pending before the AO as on the date of Such registration and the objects and activities of such trust or institution remain the same for such preceding Assessment Year*

***Provided further** that no action u/s 147 shall be taken by the AO in case of such trust or institutions for any AY preceding the aforesaid Assessment year only for non – registration of such trust or institutions for the said Assessment year.*

***Provided also that provision** contained in the first and second proviso shall not apply in case of any trust or institutions which was refused registration or the registration granted to it was cancelled at any time u/s 12AA.”*

Section 12A(2) – Applicability to earlier years of the registration granted to a trust or institution

Contd..

Section 12A of the Act to provide that in case where a trust or institution has been granted registration u/s 12AA, the benefit of sections 11 & 12 shall be available in respect of any income derived from property held under trust in any assessment proceeding for an earlier A.Y. which is pending before the AO as on the date of such registration subject to the condition that there is no change in objects & activities in earlier years, on the basis of which such registration has been granted.

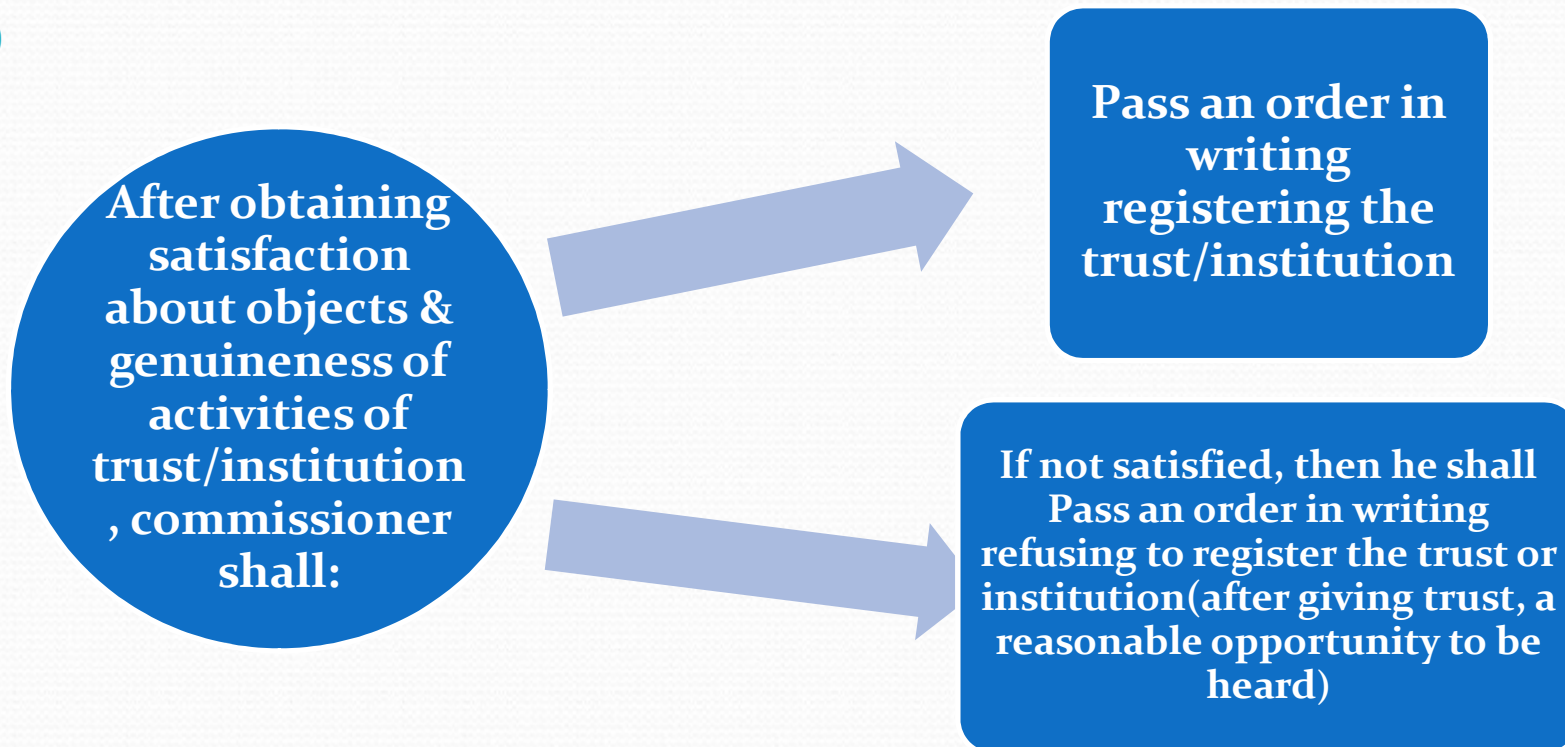
The AO shall not reopen the assessment u/s 147, merely due to the reason that registration could not be obtained by such trust or institution for earlier years. *(except where trust or institution at any time had applied for registration and the same was refused u/s 12AA or a registration once granted was cancelled.)*

Section 12AA - Procedure for Registration

According to **section 12AA(1)**, the Commissioner on receipts of an application for registration of a trust or institution made u/s 12A, shall-

- a) Call for such documents or information as he thinks necessary to satisfy himself, about the **genuineness of activities** of the trust/institution, & may also make such inquiries as he may deem necessary in this behalf; &

b)



Section 12AA - Procedure for Registration

(b) (contd..)

after obtaining satisfaction about the objects of trust/
institution & genuineness of its activities, then

- He shall pass an order in writing registering the trust.
- If he is not so satisfied, then he shall pass an order in writing refusing to register the trust or institution,

(A copy of such order shall be sent to the applicant.

provided that no order refusing to register the trust shall be passed unless the applicant has been given a reasonable opportunity of being heard.)

Section 12AA - Procedure for Registration

Contd..

As per section 12AA (1A)-

All applications, pending before the principal commissioner on which no order has been passed under section 12AA(1)(b) before 1st June, 1999. shall stand transferred on that day to the principal commissioner, & the principal commissioner may proceed with such applications from the stage at which they were on that day.

As per section 12AA(2) –

Every order granting or refusing registration shall be passed before the expiry of 6 months from the end of the month in which the application was received u/s 12A.

Issues: Cancellation of registration if commissioner not satisfied

If a commissioner is not satisfied that activities carried out by a trust or institution are genuine. Then he can cancel the registration of the Trust/institution after placing the reasons for the same on records with supporting evidences. It was held so in the following cases:

- **Parkar Medical Foundation v DCIT [2014] 52 taxmann.com 101 (Pune - Trib.)-**
- **Sri Balaji Educational & Charitable Public Trust v. CIT [2015] 57 taxmann.com 145 (Chennai - Trib.)**

Issue: Grant/reject application within 6 months

CIT v Society for Promn. of Edn., Allahabad [2016] 382 ITR 6 (SC)


Where assessee-society filed an application u/s 12A for grant of registration and same was not responded to within stipulated period of 6 months, application for registration was to be **deemed to have been allowed** from the date of application.

The judgements overruled after this judicial pronouncements:


- **CIT v Karimangalam Onriya Pengal Semipu Amaipu Ltd, [2013] 32 taxmann.com 292 (Madras)**
- **CIT v Sheela Christian Charitable Trust [(2013) 32 Taxmann.com 242 (Mad)]**
- ***CIT v Muzafar Nagar Development Authority (2015) 57 Taxmann.com 8(All.)***

Cancellation of Registration u/s 12AA(3)

According to the aforesaid section if a trust/ institution has been granted registration under section 12AA or 12A can be cancelled by an order by commissioner. (After providing trust/institution an opportunity of being heard) If:



1) Activities of the Trust are not genuine



2) Activities of the Trust are not according to the objectives of Trust

Section 12AA(4) – Cancellation of registration of the trust or institution in certain cases

Inserted by the Finance Act, 2014 w.e.f. 1-10-14 [w.e.f. 01.10.2014]

- Under the existing provisions, the powers of Commissioner to cancel registration are restricted. He may cancel the registration under two circumstances:
 - the activities of a trust or institution are not genuine, or;
 - the activities are not being carried out in accordance with the objects of the trust or institution.
- No such power of cancellation in cases where such entity has not applied income or made investment in accordance with specified manner. Whereas, section 10(23C) vested the power of withdrawal of approval with the prescribed authority.

Section 12AA(4) – Cancellation of registration of the trust or institution in certain cases

Contd..

- In order to rationalize the provisions it is provided that where a trust or an institution has been granted registration, and subsequently it is noticed that its activities are being carried out in such a manner that,—
 - **its income not applied for the benefit of general public;**
 - **it is for benefit of any particular religious community or caste (in case it is established after commencement of the Act);**
 - **any income or property of the trust is applied for benefit of specified persons;**
 - **its funds are invested in prohibited modes.**
 - **then the Principal Commissioner/ Commissioner may cancel the registration if there was no reasonable cause proved by the trust.**

Thus, 4 additional conditions are added in respect of granting the power of cancellation.

For purpose of granting registration u/s 12AA, a single non-operative clause of commercial nature could not obliterate whole range of charitable activities undertaken by assessee-society

Baba Amarnath Educational Society v. CIT [2012] 18 taxmann.com 222 (Chandigarh - Trib.)

- Assessee-society was formed with object of imparting education including technical and vocational education.
- Assessee filed an application seeking registration u/s 12AA - Commissioner finding that a particular clause in object clauses mentioned to promote exports of computers hardware/software, telecommunication, internet, e-commerce and allied services, took a view that objects of assessee were not charitable in nature within meaning of section 2(15). He thus rejected assessee's application for registration. It was apparent from records that assessee had carried out concrete activities to achieve charitable purpose of imparting education. Moreover, impugned object clause had been deleted in accordance with sec. 12 & 12A of the Societies Registration Act, 1860, as was applicable to State of Punjab.
- Whether on facts, single non-operative and deleted object clause could not obliterate whole range of charitable activities undertaken by assessee-society - Held, yes
- Whether, therefore, impugned order passed by Commissioner was to be set aside and, registration applied for by assessee was to be granted - Held, yes

Issues...

Where the institution is in process of starting educational activity but not yet commenced any such activity.

Shavak Shiksha Samiti vs CIT [2007] 104 TTJ 127 (ITAT – Delhi)

The applicant trust was a society registered under the Societies Registration Act 1860 and was in the process of setting up a school on a plot allotted to it. The trust's main object of imparting education came within the purview of charitable purpose and it did not exist for profits, since the surplus, if any, were not to be distributed among its members. Therefore, the trust was entitled to registration under Section 12A.

Issues: Rejection of application of community-specific trust

CIT V. Leuva Patel Seva Samaj Trust [2014] 42 taxmann.com 181 (Gujarat)

In this case, the trust is being created or established for the benefit of a particular religious community or caste, this information will not be relevant for granting of registration instead it will be relevant when income of trust will be assessed in terms of section 11. Thus, as far as section 12AA is concerned, Commissioner has to merely decide if trust has fulfilled necessary requirements of registration as provided under section 12A or not. Thus, he cannot reject registration application on the grounds that the trust was for the benefit of a particular community and would be covered under section 13(1)(b).

Issues: Cancellation of registration of community-specific trust

If a trust/ institution is made and is carrying out activities in favor of any particular cast or religious purpose, then registration of such trust or institution may be cancelled as held in the following cases:

- **CIT v. Dawoodi Bohara Jamat [2014] 43 taxmann.com 243 (SC)**
- **Agrawal Sabha v. CIT [2014] 45 taxmann.com 273 (Allahabad)**

Issues – Irregularities Cannot Be The Ground For Denial Of Registration

- ***DIT (E) v. Venkatesha Education Society (2012) 75 DTR 51 (Karn.)(High Court)***

The assessee society having undertaken only charitable activities cannot be denied registration simply in view of one non-charitable object which remained only on paper and was not at all implemented and has been already deleted.

Issues: Denial of registration

- *CIT v. R.K. Deivendra Nadar Trust [2014] 52 taxmann.com 168 (Madras)*

Section 12A of the Income-tax Act, 1961- Assessee-trust filed an application for registration under section 12A which was rejected by Commissioner on ground that trust had not done any charitable act although law provides for the same to rectify any such error to cancel registration of trust if there is breach of objects of trust in discharge of its charitable object as propounded in trust deed but whether objects and intentions of trust are genuine or doubtful cannot be decided at threshold. Thus, the decision was taken in favor of the assessee.

- *CIT v. Annapoorneswari Trust [2015] 53 taxmann.com 527 (Karnataka)*

In the case the Assessee-trust was constituted with an intention to carry out charitable activity of imparting education. Entire objects of trust were clearly set out including the number of classes, details of teaching and non teaching staff. But the registration was denied merely because of some amendments in trust deed. Thus, it was held that this could not be a ground to deny registration as charitable institution particularly when objects of trust were fulfilled.

Issues: Denial of registration

Mere publishing newspapers or amending original content of trust deed cannot by themselves be a ground to deny registration to charitable trust.

DIT (Exemptions) v. Vallal MD Seshadri Trust [2012] 19 taxmann.com 114 (Mad.)

Assessee-trust moved an application under section 12AA for registration. Application was rejected on ground that one of object clause of assessee-trust spoke about publishing newspapers which was in nature of commercial activity; and that original contents of trust deed were amended which is not permissible in law. However, Tribunal found that the trust deed could be amended. That apart, Tribunal, found that publishing of newspapers and periodicals does not ipso facto become commercial activity. Whether since authorities below could not find any fault with genuineness of trust, rejection of application under section 12AA was not justified - Held, yes

Issues....

Nooral Islam Trust v. CIT [2012] 18 taxmann.com 110 (Ker.)

- While disposing of assessee's application for registration u/s 12AA, an opportunity was to be granted to it to get amendment in trust deed declared valid by a competent civil court.

Facts:

Assessee, a public charitable trust, was running educational institutions. Assessee having applied for registration u/s 12AA, withdrew its registration application. Thereafter trust deed was amended elaborating object clause specifically including its main object as running a dental college. When amended deed was presented for registration, Commissioner rejected it for reason that original deed did not contain any provision for amendment of deed. On appeal, Tribunal upheld order of Commissioner (Appeals). On instant appeal, assessee pointed out that u/s 92 of Code of Civil Procedure, 1908, read with sec. 26 of Specific Relief Act, 1963, it was entitled to file scheme suit and get amendment declared valid by a competent civil court.



OTHER ISSUES

Other Issues

- **CIT v. B.K.K. Memorial Trust [2013] 29 taxmann.com 286 (P & H)**

At stage of granting registration, objects of trust & not purported utilization of its income for charitable purposes, has to be considered by Commissioner.

- **DIT v. Foundation of Ophthalmic and Optometry Research Education Centre [2012] 25 taxmann.com 376 (Delhi)/ (2012) 254 CTR 133 (Delhi)**

Held that statute does not prohibit or enjoin the CIT from registering trust solely based on its objects, without any activity, in the case of a newly registered trust. Hence, while examining the application u/s. 12AA(1)(b) r/w/s 12A, the CIT/Director is not required to examine the question whether the trust has actually commenced and has, in fact, carried on charitable activities.

- **A.V.S. Educational Trust v. ITO [2013] 30 taxmann.com 168 (Chennai - Trib.)**

For registration of a newly registered trust u/s 12AA, objects for which it was formed should be examined and not its activities, which is yet to be commenced.

- **CIT v. Jeevan Deep Charitable Trust [2012] 28 taxmann.com 242 (All.)**

In case withdrawal of section 10(23C)(vi) registration doesn't mean withdrawal of section 12 registration as well.

Other Issues

- **Nimmagadda Foundation v DIT(e) [2015] 57 taxmann.com 226 (Hyderabad - Trib.):**

Here it was held that if at the time of registration or claim of exemption, any issues relating to exemption have been examined & exemption has been granted then, such registration cannot be cancelled on these grounds later.

- **Virudhunagar S. Vellaichamy Nadar Polytechnic College v. ITO [2014] 44 taxmann.com 334 (Chennai - Trib.):**

Here it was held that, if a trust/ institution is carrying out any activities according to its object and deriving any surplus from those activities, it cannot be taken automatically that the activities of the trust are not charitable.

- **Kasyapa Veda Research Foundation v. CIT [2011] 12 taxmann.com 286 (Cochin - ITAT)- 139 TTJ 641**

Assessee-trust, formed for propagation of Vedas, is entitled to registration under section 12A in status of a religious and charitable trust.

Other Issues

- **Bhai Mansa Singh Ji Welfare Society (Regd.) v CIT [2015] 62 taxmann.com 299 (Chandigarh - Trib.)**

At the time of granting registration, the Commissioner has to confine himself to the twin conditions for registration only *i.e.* the objects of the trust being charitable and the activities being genuine. The provisions of section 13(1)(b) can be invoked only at the time of making assessment of the entity registered u/s 12AA. At the stage of granting registration u/s 12AA, the Commissioner should not get carried away by the provisions of this section.

- **Kadakkal Educational Trust v. CIT [2013] 30 taxmann.com 38 (Kerala)**

If an application submitted for registration u/s 12A once rejected, it cannot be restored.

- **Institute of Self Management Vs. CIT [2011] 16 taxmann.com 331(ITAT-Chennai)**

Where assessee society, managed by highly qualified persons, filed an application for registration under section 12AA after 21 years of its formation, assessee's plea of ignorance of law could not be accepted and, thus, registration could not be granted to it with retrospective effect.

Other Issues

- **The Sunbeam English School Society v. CIT [2011] 9 taxmann.com 228 (All. - ITAT)**

Rejection of application for grant of exemption under section 10(23C)(vi) cannot be a basis for cancelling registration under section 12A.

- **CIT v. Shri Advait Ashram Society [2012] 28 taxmann.com 18 (All.)**

Non-filing of returns by assessee-trust for last 7 years cannot be a ground for declining to grant registration u/s 12AA to it.

- **Krupanidhi Educational Trust v. DIT(IT) (2012) 139 ITD 228 (Bang)(Trib.)**

Mere finding that objects of trust has been altered without consent of department would not be sufficient to exercise power u/s 12AA(3) without giving a finding that objects of trust are no longer charitable. Therefore, registration u/s 12AA(3) cannot be cancelled.

Other Issues

- **Inter-connected Stock Exchange Investors Protection Fund (ISE IPF) v. DIT (Exemption) [2013] 38 taxmann.com 329 (Mumbai - Trib.)**

Where main object of assessee-trust was to protect investors by way of creating a fund and fund created by assessee was a public charitable fund having been set up to advance an object of general public utility, assessee was entitled to get registration.

- **CIT v. Spring Dale Educational Society [2012] 204 Taxman11 (P. & H.) (Mag.)**

While examining application seeking registration under section 12AA, **manner of application of funds of trust do not fall within purview of Commissioner.** Commissioner should only satisfy himself about genuineness of aims and objects of trust/institution and genuineness of its activities as enumerated in clause (b) of sub-sec.(1) of sec. 12AA.

- **Punjab Cricket Association v CIT [2016] 65 taxmann.com 239 (Chd. - Trib.)**

Restriction imposed under first proviso to section 2(15) is not relevant for cancellation of registration under section 12AA(3)



RULE 17A

Documents need to be Submitted in the Prescribed Form [Rule17A]

1) Form 10A (in Duplicate)

2) (a) If trust/ institution is created under an instrument then the instrument in original, together with one copy thereof.

If a trust or institution is created/ established, otherwise than under an instrument, The documents evidencing the creation of the trust together with one copy thereof.

(b) Where the trust or institution has been in existence during any year or years, prior to the financial year in which the application for registration is made, two copies of the accounts of the trust or institution relating to such prior year or years (not being more than three years immediately preceding the year in which the said application is made) for which such accounts have been made up.

Form No.10A

FORM NO. 10A

[See rule 17A]

Application for registration of charitable or religious trust or institution under clause (aa) of sub-section (1) of section 12A of the Income-tax Act, 1961

To

The Commissioner of Income-tax,

Sir,

I, _____ on behalf of _____ [name
of the trust or institution] hereby apply for the registration of the said trust/institution under section 12A of the
Income-tax Act, 1961. The following particulars are furnished herewith:

- 1. Name of the *trust/institution in full (in block letters)*
- 2. Permanent Account Number*
- 3. Address*
- 4. Name(s) and address(es) of author(s)/founder(s)*
- 5. Date of creation of the trust or establishment of the institution*
- 6. Name(s) and address(es) of trustee(s)/manager(s)*

I also enclose the following documents:

1. (a) * Original/Certified copy of the instrument under which the trust/institution was created/established, together with a copy thereof.
(b) * Original/Certified copy of document evidencing the creation of the trust or the establishment of the institution, together with a copy thereof. [The originals, if enclosed, will be returned].
2. Two copies of the accounts of the * trust/institution for the latest * one/two/three years.

I undertake to communicate forthwith any alteration in the terms of the trust, or in the rules governing the institution, made at any time hereafter.

Date

Signature

Designation

Address

*Strike out whichever is not applicable.

Suggestions in respect of Filing Form No. 10A

With Form no. 10A , resolution passed in Board Meeting may also be submitted containing following conditions-

- Surplus of the fund will be invested in the securities and other manner as permitted by Income Tax Act.
- If trust deed is silent about the utilization of fund after the dissolution of trust, then that fund will be donated to the other trust having similar objectives.
- Any alteration in the trust deed must be communicate to the commissioner immediately.

Other Instructions regarding Form No. 10A

1. Form No. 10A is to be filed in duplicate.
2. List of enclosures in the form of covering letter, should be given along with Form No. 10A.
3. The PAN of the trust, if any, should be quoted in Form No. 10A.
4. When 2 copies of the letter are given, the receiving person in commissioner office will sign and affix date and seal in the one copy of the letter, for the proof of having submitted the application for registration.