ISSUES IN CORPUS DONATION TO CHARITABLE TRUST NOT REGISTERED U/S 12A/12AA/12AB - Part-2.

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In response to my previous article published on itatonline.org, there were queries raising doubts on taxability of corpus donations, in view of insertion of cl. (x) to Sec.56(2) of the Act and also for donations from one trust to the other. In the following article, I have tried to analyse the issues for corpus donations.

1. CORPUS DONATIONS AND SEC. 56(2)(x).

1.1 The relevant section

The Section 56 reads as under-

Income from other sources.

56. (1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely: —

(*x*) where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017, —

1.2 Explanatory Notes on Finance Bill 2017

Widening scope of Income from other sources

Under the existing provisions of section 56(2)(vii), any sum of money or any property which is received without consideration or for inadequate consideration (in excess of the specified limit of Rs. 50,000) by an individual or Hindu undivided family is chargeable to income-tax in the hands of the resident under the head "Income from other sources" subject to certain exceptions.

Further, receipt of certain shares by a firm or a company in which the public are not substantially interested is also chargeable to income-tax in case such receipt is in excess of Rs. 50,000 and is received without consideration or for inadequate consideration.

The existing definition of property for the purpose of this section includes immovable property, jewellery, shares, paintings, etc. These anti-abuse provisions are currently applicable only in case of individual or HUF and firm or company in certain cases. Therefore, receipt of sum of money or property without consideration or for

inadequate consideration does not attract these anti-abuse provisions in cases of other assessees.

In order to prevent the practice of receiving the sum of money or the property without consideration or for inadequate consideration, it is proposed to insert a new clause (x) in sub-section (2) of section 56 so as to provide that receipt of the sum of money or the property by any person without consideration or for inadequate consideration in excess of Rs. 50,000 shall be chargeable to tax in the hands of the recipient under the head "Income from other sources". It is also proposed to widen the scope of existing exceptions by including the receipt by certain trusts or institutions and receipt by way of certain transfers not regarded as transfer under section 47.

Consequential amendment is also proposed in section 49 for determination of cost of acquisition.

These amendments will take effect from 1st April, 2017 and the said receipt of sum of money or property on or after 1st April, 2017 shall be chargeable to tax in accordance with the provisions of proposed clause (x) of sub-section (2) of section 56. [Clauses 25 & 29]

The Circular 2/2018, [F.NO.370142/15/2017-TPL], DATED 15-2-2018, repeats the explanatory notes except the word "existing" appearing in the italicised para above.

Section 2(24) is also amended to include income referred to in Sec. 56(2)(x).

U/s 56(2)(x), an exception is carved out in the proviso and in particular in clause (VII) for the trusts registered u/s 12A/12AB and for institutions referred to in Sec.10(23C) from cl.(iv) to (via).

The italicised portion from the Explanatory notes clearly shows that these are anti abuse provisions inserted to prevent the practice of receiving the sum of money or the property without consideration or for inadequate consideration

1.3 It is a settled principle that, if the provisions are inserted as anti-abuse, the rigors of the same are applicable only to the transactions which abuse the provisions of law and not to the genuine transactions. Umpteen number of judgments on this principle are delivered by various courts including Hon. Apex Court. There is no reason to take a different view in the matter of corpus donations too.

3 It should be also kept in mind that provisions of Section 56(2)(viib) of the Act creates a deeming fiction and while giving effect to such legal fictions all facts and circumstances incidental thereto and inevitable corollaries thereof have to be assumed. At this juncture we are reminded of the decision of the Hon'ble Kolkata High Court in the case ***M.D. Jindal vs. CIT reported in 164 ITR 29****, wherein it was*

*held that "*legal fictions are created only for a definite purpose and they are limited to the purpose for which they are created and should not be extended beyond the legitimate field. But the legal fiction has to be carried to its logical conclusion within the framework of the purpose for which it is created*." Further it is apparent from the Finance Minister's speech that the provisions of Section 56(2)(viib) has been enacted to deter the generation and use of unaccounted money. At this juncture we are also reminded of the decision of the* ***Hon'ble Apex Court in the case Allied Motors Pvt. Ltd., vs. CIT reported in 224 ITR 677****, wherein it was held that the Finance Minister's Budget speech explaining the provisions are relevant in construing the provisions.* [**Vaani Estates Pvt. Ltd. vs. ITO, (2018) 172 ITD 0629 (Chennai-Trib.)**]

The Tribunal observed that the provisions of section 56(2)(vii) are anti-buse provisions and surrender of rights from relative is not covered u/s 56(2)(vii).

[**Sri Kumar Pappu Singh vs. DCIT, (2019) 198 TTJ 0310 (Visakha)**]

It may not be out of place to mention that section 56(2) clause (viia) was inserted by Finance Act 2010 and is now made ineffective by Finance Act 2017 w. e. f. 1-4-2017. A CBDT clarificatory circular was issued on 31-12-2018 to explain the intent but, was immediately withdrawn on 4-1-2019.

This circular, although withdrawn, shows that, if the provisions were inserted as anti-abuse provisions, the same will be implemented with the same spirit and intent. It would not be inconsistent to assume the same with the present provisions under discussion.

1.4 The issue

An issue is raised that, due to the insertion of Sec.56(2)(x), the corpus donations may now be taxable, at least for the trusts which are not registered u/s 12A/12AB.

Although from the apparent language of the section the newly inserted provisions raise the issue, but, in my humble opinion, the issue or doubt raised is not correct and is misplaced for the following reasons.

1.5 Scope of Section 56

We must read Section 56(1) and (2) carefully. The section does not bring to tax what is not taxable. The words in Section 56(1) read as follows-

> "Income of every kind <u>which is not to be excluded from the total income under this Act</u> shall be chargeable to income-tax under the head….

The opening words restrict the section to include anything which is out of its purview.

The underlined portion clearly states that only what is to be excluded in total income, shall be brought to tax under this section and that what is not includible in total income cannot be brought to tax under this head.

The exception is negatively worded. The language is not plain and hence creates little confusion. However, the exception is very clear and loud.

The opening words of Sec.56 refer to Total income which is defined in Sec.2(45) which reads as under-

> **The total income**
>
> (*45*) "total income" means the total amount of income referred to in section 5, computed in the manner laid down in this Act ;

Sec. 2(45) refers to Section 5 which is scope of total income and the opening words reads as under-

> **Scope of total income.**
>
> **5.** (1) Subject to the provisions of this Act, the total income of any previous year of a person, who is a resident includes all income from whatever source derived which—

Thus, the scope of total income is subjected to the provisions of this Act. Further Sec. 56(2)(x) does not override Sec.4, 5, or 11 or 12, to include what is not stated in those sections.

The next question arises that, Whether the voluntary contributions to corpus fund of a charitable trust travel to the residuary head of income u/s 56(2)(x) to be taxed?

We must again and gainfully refer to the opening words of sec. 56, at the cost of repetition, which read –

> **56.** (1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E.
>
> (2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely: —

The section read with the Explanatory Notes and budget speech, it is clear that, what is not to be included in total income cannot be brought to tax under residuary head. Further the amendment nowhere states to cover the donations to corpus fund of any charitable trust. Analysing sec. 2(24) (done in following para 2 of this article) clearly supports this view.

What can be included in the residuary head of income under the Act is not defined anywhere. Hence, we will have to refer to the judge-made-law on the issue.

Hon. Supreme court, although under the 1922 Act, but, has settled the principles about the residuary head of income in - **Nalinikant Ambalal Mody, 61 ITR 0428** – as follows

> *S. 4 does not say that whatever is included in total income must be brought to tax. It does not refer at all to chargeability to tax.*
>
> *This section does not, in our opinion, provide that the entire total income shall be chargeable to tax. It says that the chargeability of an income to tax has to be in accordance with and subject to the provisions of the Act. The income has therefore to be brought under one of the heads in s. 6 and can be charged to tax only if it is so chargeable under the computing section corresponding to that head. Income which comes under the fourth head, that is, professional income, can be brought to tax only if it can be so done under the rules of computation laid down in s. 10. If it cannot be so brought to tax, it will escape taxation even if it be included in total income under s. 4.*

Para 5 of majority decision delivered by Hon. Justice A.K. Sarkar C.J. (3 judges bench)

(Note - Sec. 4 of 1922 Act corresponds to Sec.5 of 1961 Act)

First test to apply to corpus donations is, it must first be includible in total income to be taxable. But the same being capital receipt, cannot by any stretch be included in total income and consequently in sec. 56(2)(x).

Thus, the corpus donations may be includible in the words as referred to in (2(24)(iia), but cannot be included in the total income being capital receipt, and cannot be brought to tax under the residuary head u/s Sec.56(2)(x).

1.6 In case of corpus donations, it is not the case that the receipt is an income and then claimed exempt under some provision of the Act. But, it is a receipt that does not fall within the purview of any provision. Hence, the onus to prove that the receipt is taxable will lie on the Dept.

This principle is borne out by Hon. Supreme Court in the following words-

But, the Act does not provide that whatever is received by a person must be regarded as income liable to tax. In all cases in which a receipt is sought to be taxed as income, the burden lies upon the Department to prove that it is within the taxing provision. Where however, a receipt is of the nature of the income,

the burden of providing that it is not taxable because it falls within an exemption provided by the Act lies upon the assessee.

The case of the appellant was that the receipts did not fall within the taxing provision: it was not her case that being income the receipts were exempt from taxation because of a statutory provision. It was therefore for the Department to establish that these receipts were chargeable to tax. [**Parimisetti Seetharamamma vs. CIT, (1965) 57 ITR 0532 (SC)**]

Although the case was under the 1922 Act, it is still relevant being with the corresponding sections in 1961 Act.

Thus, in case of corpus donations, it is not the case that the receipt is an income and then claimed exempt under some provision of the Act. But, it is a receipt that does not fall within the purview of any provision. Hence, the onus to prove that the receipt is taxable will lie on the Dept.

It is apt to refer to an answer to a question provided in the FAQs published by the Dept. on it portal *incometaxindia.gov.in*. The same reads as follows-

> Are all receipts, i.e. capital and revenue receipts, charged to tax?
>
> The general rule under the Income-tax Law is that all revenue receipts are taxable, unless they are specifically granted exemption from tax and all capital receipts are exempt from tax, unless there is a specific provision for taxing them.
>
> https://www.incometaxindia.gov.in/Pages/faqs.aspx?k=General+FAQs&c=4

Of course a disclaimer clause appears at the end which begins with the following –

> This is the official website of the Income Tax Department, Ministry of Finance, Government of India.
>
> The contents of this website are for information purposes only, to enable public to have a quick and an easy access to information, and do not purport to be legal documents. Income Tax Department does not warrant the accuracy or completeness of the information, text, graphics, links or other items contained in this website. Income Tax Department may make changes to the contents, or to the information described therein, at any time without any notice. In case of any variance between what has been stated and what is contained in the relevant Act, Rules, Regulations, Policy Statements, etc, the latter shall prevail.

As the information is for quick and easy access to information, there is no reason why it should not be used by public at large for interpreting their affairs.

1.7 Analysis of the Proviso to Sec. 56(2)(x)

The law provides exceptions in the proviso. But, the said exceptions speak about the status of the receiver or giver and not the nature of the amount etc. received as detailed in the table below.

It is clear that the proviso does not describe the nature of receipt. This will certainly lead to enormous litigations.

Cl.	Exception provided	Refers to
(I)	from any relative	Status of the person giving and receiving
(II)	on the occasion of the marriage of the individual	Occasion
(III)	under a will or by way of inheritance	Mode under which received
(IV)	in contemplation of death of the payer or donor, as the case may be;	Occasion or happening
(V)	from any local authority as defined in the Explanation to clause (20) of section 10	Status of the giver
(VI)	from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10	Status of the giver
(VII)	from or by any trust or institution registered under section 12A or section 12AA	Status of the person giving and receiving
(VIII)	by any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10	Status of the receiver
(IX)	by way of transaction not regarded as transfer under clause (i) or clause (iv) or clause (v) or clause (vi) or clause (via) or clause (viaa) or clause (vib) or clause (vic) or clause (vica) or clause (vicb) or clause (vid) or clause (vii) of section 47	Mode not regarded as transfer
(X)	from an individual by a trust created or established solely for the benefit of relative of the individual	Status of the giver
(XI)	from such class of persons and subject to such conditions, as may be prescribed	Status of the receiver - Resident of unauthorised colony in National Capital Territory of Delhi.

1.8 Scope of Cl. (VII) in the proviso to Sec.56(2)(x)

The foregoing discussion leads us to a further question that, has the insertion of clause (VII) in the proviso to Sec. 56(2)(x) made any difference for corpus donations?

The irresistible and inevitable answer is a clear no.

The detailed discussion in the previous article shows how the corpus donation is exempt due to the fact that it is a capital receipt read with other provisions in the law. The opening words of Sec.56 clears that what is not taxable cannot be included in it.

Thus, due to the amendments, there is no factual change in the status as far as corpus donations are concerned. Hence, the insertion of clause (VII) in the proviso to Sec. 56(2)(x) has not made any difference and even without the same, the corpus donations continue to be exempt, irrespective of the fact that the trust is registered u/s 12A/12AB or not.

A close reading of sec. 56(2)(x) read with sec. 2(24) clears that, voluntary contributions received by trusts for charitable purposes, are not the same as receipt of money, property etc. without consideration by other assessees and hence not covered by Sec.56(2)(x).

Further this is a deeming fiction and as explained in para 1.2 (supra) its scope has to be limited to the purpose for which it is created.

1.9 Going still further, whether the reference in the proviso to charitable trusts, indicates that the receipt referred to in the main section covers the corpus donations?

To interpret a proviso, the settled principle is that, the normal function of a proviso is to except something out of the enactment therein, which but for the proviso would be within the purview of the enactment. [**Kedarnath Jute 16 STC 607 (SC)**].

The explanatory notes refer the provision as "anti-abuse" and that the same is inserted to cover "other assessees". Naturally these will apply to assessees using the same to abuse the law.

Mudholkar, J. in Hindustan Ideal Insurance Co. Ltd. v. Life Insurance Corporation Limited, reported in AIR 1963 SC 1087, stated the rule thus – "there is no doubt that where the main provision is clear, its effect cannot be cut down by the proviso. But, where it is not clear, the proviso, which cannot be presumed to

be a surplusage, can properly be looked into to ascertain the meaning and scope of the main provision."

Since the natural presumption is that but for the proviso, the enacting part of the Section would have included the subject-matter of the proviso, the enacting pan should be generally given such a construction which would make the exceptions carved out by the proviso necessary and the construction which would make the exceptions unnecessary and redundant should be avoided (See : Principles of Statutory Interpretation by Justice G. P. Singh, Eighth Edition, 2001, pages 168, 169, 174, 175 and 176).

[**Indo-Nippon Chemicals Co. Ltd. vs. UoI & Ors. 2005 (185) ELT 19 Guj**]

Thus, the proviso cannot be interpreted to include something, which is not intended by the legislature to be included in the main provision.

Looking it from the other way, the proviso clearly indicates that, the registered trusts and institutions are excepted even for amounts other than corpus donations received by them without consideration.

1.10 Looking to the intention of the legislature as mentioned in the Explanatory notes, the wording of the section 56(2)(x) does not reflect the same anywhere. The draftsmen must have drafted it, as usual, in a hurry and without correlating the other provisions in the law. As a result, the insertion of the new clause (x) in Sec. 56(2) is bound to raise many issues and push many including the trusts, to unwarranted and wasteful litigations.

2. Amendments to Sec. 2(24)

Sec. 2(24) cl. (iia) reads as under –

> 2(24)(iia) Voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes or by an association or institution referred to in clause (*21*) or clause (*23*), or by a fund or trust or institution referred to in sub-clause (*iv*) or sub-clause (*v*) or by any university or other educational institution referred to in sub-clause (*iiiad*) or sub-clause (*vi*) or by any hospital or other institution referred to in sub-clause (*iiiae*) or sub-clause (*via*) of clause (*23C*) of section 10 or by an electoral trust.
>
> *Explanation* — For the purposes of this sub-clause, "trust" includes any other legal obligation.

Sec.2(24)(xviia) reads as under –

Any sum of money or value of property referred to in clause (x) of sub-section 2 of section 56

A simple question arises to ponder. There is already a provision covering voluntary contributions under clause (iia) on statute books, and there after a new clause (xviia) is inserted in sec.2(24).

This clearly means that, the two clauses convey two different types of incomes. Consequently, it also means that cl. (xviia) does not cover the voluntary contributions, as envisaged under cl. (iia).

This is particularly for the reason that the definition of income u/s 2(24) is an inclusive definition and the scope is wide enough to cover any income, whether specifically provided or not. Apart from being inclusive, when such section provides two different types of incomes to include, it certainly conveys that statutorily those are clearly different types of incomes.

This is fortified, if one looks at the insertions and/or amendments to this definition section. Many amendments are made, of course, to overcome or circumvent some court decision. But, the intention of the legislature is obviously to clarify the different types of incomes to include in the definition of income.

Thus, the logic to insert a separate clause is certainly and clearly to hold that the type of income in clause (xviia) is to include which was hitherto not included in clause (iia). Does this not mean that the settled position about voluntary contributions is not disturbed? The answer has to be yes.

Going further, there is no reference in cl.(xviia) to trust or institution as is specially mentioned in cl. (iia). This also further strengthens the fact that the voluntary contributions received by trusts or institutions is separately and specially considered in the definition of income. It is a settled principle of law that, the special provision governs the field over the general one.

This leads us naturally to check, whether the receipt as intended in sec.56(2)(x) is different than in cl. 2(24)(iia). The inevitable answer must be yes only.

The trust or institution may receive money or any property etc. without consideration under mainly two heads only, i.e. donations or grants. Any receipt of money, property etc. without consideration is normally received by a charitable trust or institution under these two heads only.

Thus, the amendment in sec. 2(24) by insertion of cl. (xviia) has not disturbed the positon settled for voluntary contributions as envisaged under cl.(iia) of sec.2(24) in general and corpus donations in particular. In fact, it has made it clear that, the corpus donations would be out of the purview of cl.(xviia) of Sec.2(24).

2.1 No amendments in Sec. 4, 5, 11 and 12 -

Ss. 4 and 5 are also not amended to include the corpus donations in total income.

Although there is amendment in Ss. 2 and 56, by the Finance Act 2017, there is no amendment to Sec. 11 (1)(d). Not only this but, section 11(1)(d) is not referred to in any amendment to exclude the same for the purpose of Sec.56(2)(x). Going ahead, section 12 is also not amended to exclude the corpus donations from exemption.

Thus, although Ss.2 and 56 are amended, Ss. 4, 5 and 11(1)(d) and 12 are not amended and continue to grant exemption to donations to corpus of a trust. Consequently, the old clarificatory Circular No. F. NO. 20/10/67-IT(AI) DT. 1st May, 1967, exempting corpus donations being capital receipts, still holds good and is binding on the Dept.

The legal precedents

2.2 Hon. Bombay High Court has interpreted the highlighted words "Subject to" in Sec. 5 as follows-

> *"The expression "subject to" used in the opening portion of both sub-sections (1) and (2) of Sec. 5 has to be read keeping in mind that Sec. 5 is intended to explain the scope of total income. Therefore, what the use of the said expression shows is that in considering what is total income under s. 5, one has to exclude such income as is excluded from the scope of total income by reason of any other provision of the IT Act and not that the other provisions of the IT Act override the provisions of s.5.*

Please see - **CIT Vs. F.Y. Khambaty (1986) 159 ITR 203 (Bom)**

2.3 Hon. Supreme Court had to analyse the scheme of taxation and scope of section 56 and it has observed that –

> *11. Sec. 14 of the IT Act, 1961, as it stood at the relevant time similarly provided that "all income shall for the purposes of charge of income-tax and computation of total income be classified under six heads of income," namely:*

(A) Salaries;

(B) Interest on securities;

(C) Income from house property;

D) Profits and gains and business or profession;

(E) Capital gains;

(F) Income from other sources unless otherwise, provided in the Act.

12. Sec. 56 provides for the chargeability of income of every kind which has not to be excluded from the total income under the Act, only if it is not chargeable to income-tax under any of the heads specified in s. 14 items A to E. Therefore, if the income is included under any one of the heads, it cannot be brought to tax under the residuary provisions of s. 56.

Please see - **CIT vs. D.P. Sandu Bros. Chembur (P) Ltd. (2005) 273 ITR 0001 (SC), 31-1-2005 – AY 1987-88**

2.4 Hon ITAT Delhi Bench had an occasion to decide the scope of Sec.5 and it observed that-

"The scheme of taxation of income under the IT Act, 1961 ("The Act") is summarised hereunder:

Sec. 1 provides that the provisions of the Act shall apply to the whole of India. Secs. 4 and 5 are the charging sections of the Act. Sec. 4 brings to charge total income of every person of the previous year at the rates provided in the relevant Finance Act. The scope of total income of any person, which could be subjected to tax under the provisions of the Act, is defined under s. 5 of the Act and is dependent upon the residential status of the person.

Sec. 5 separately defines the scope of total income of a person who is resident in India and a person who is a non-resident. Under sub-s. (2) of s. 5 of the Act, the total income of a non-resident person has been restricted to the following:

(a) all incomes which are received or are deemed to be received in India in any previous year by or on behalf of such person; and/or

(b) all incomes which accrue or arise or are deemed to accrue or arise to such person in India during the previous year.

It is trite law that no income can be brought to tax unless it falls within the scope of charging section. Their Lordships of the Supreme Court in the case of CIT vs. Ajax Products Ltd. (1965) 55 ITR 741 (SC) held that the subject is not to be taxed unless the charging provisions clearly impose an obligation.

The provisions of s. 5 of the Act start with the expression "Subject to other provisions of the Act". The legislative intent behind making the provisions of s. 5 subject to other provisions of the Act is that if any other section operates to exclude from the total income of any person any income, which otherwise falls

within the broad framework of his total income as laid down in s. 5 of the Act, such section may prevail. For example, although an income may fall within the four corners of the charging sections, namely, ss. 4 and 5, the provisions of s. 10 of the Act may, however, operate to exclude all or any part of such income from the total income. Thus, the benefit conferred by way of deduction/ allowance/ exemption under any of the provisions shall operate to confer such benefit to the assessee although such income falls within the scope of total income as defined in s. 5 of the Act.

The aforesaid view finds support from the commentary of the learned authors Kanga & Palkhiwala in their book "Law and Practice of Income-tax" (refer p. 38 of paper book) and the decision of the Bombay High Court in the case of CIT vs. E.Y. Khambaty (1986) 159 ITR 203 (Bom). (Para 15)

- **Saipem S.P.A. vs. DCIT, (2004) 88 ITD 0213 (TM), -24-12-2003-AY 1985-86**

In all the three decision above, an old judgment of Hon. Supreme Court in the case of **Nalinikant Ambalal Mody (1966) 61 ITR 0428 (SC)** is referred to and relied upon.

All the above decisions clearly point out that the scope of section 5 cannot be stretched to tax what is not taxable under the law.

Thus, the amendment to section 56 by way of insertion of clause (x) in subsection (2), by the Finance Act 2017, does not change the status of Corpus Donations and in my humble opinion they continue to be exempt, being capital receipt.

2.5 Kanga and Palkhivala's book – Eleventh edition

I find it worth quoting the entire passages from the book given under section 2(24)(iia), 12, and Section 56 which read as under –

Page 156,

Sec. 2(24)

Sub-clause (ii-a), under Voluntary contributions received by charity

The old sub-clause excluded from the definition of 'income', voluntary contributions made to a charitable trust 'with a specific direction that they shall form part of the corpus of the trust'. The Direct Tax Laws (Amendment)Act, 1987 deleted the above-quoted words; and at the same time it also deleted ss 11, 12, 12A and 13. Following a public uproar the Direct Tax Laws (Amendment) Act, 1989 reintroduced ss 11, 12, 12A and 13, but it did not re-amend s 2(24)(iia) to restore the original words expressly excluding contributions specifically made to the trust corpus. This, however, does not mean that such capital contributions are now taxable as income. Sometimes express exclusion is by way of abundant caution, due to the over-anxiety

of the draftsman to make the position clear beyond doubt. But in such a case the later omission of such express exclusion does not necessarily involve a change in the legal position. [*CIT vs. Shaw Wallace 6 TC 178 (PC)*]. Section 12 still provides that voluntary contributions specifically made to the corpus of a charitable trust are not deemed to be income. and the same exclusion must be read as implicit in s 2(24)(iia). It would be truly absurd to expect a charitable trust to disburse as income any amount in breach of the donor's specific direction to hold it as corpus; such breach in many cases would involve depriving charity of the benefit of acquiring a lasting asset intended by the donor. Under this sub-clause, only voluntary contributions received by such institutions as are specified therein are taxable as income. A voluntary contribution received by an institution not covered in this sub-clause is not taxable as income. [*CIT vs. SRMT Staff Association 221 ITR 234 (AP)*].

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Under section 12-

3. Voluntary Contributions towards Corpus of Recipient Trust —

The present s.12 is expressly made inapplicable to voluntary contributions which are made with a specific direction that they shall form part of the corpus of the trust. [*CIT vs Nagi Reddi Charity, 241 ITR 141, Mad*].

Therefore, such contributions on capital account do not have to be applied to charitable purposes but can be retained as the corpus of the recipient trust without attracting any tax liability. Although the italicised words have now been omitted from s 2(24)(ii-a), the exclusion of such capital donations from the definition of "income" is implicit in that section. The correct legal position is as under:

(i) All contributions made with a specific direction that they shall form part of the corpus of the trust are capital receipts in the hands of the trust. They are not income either under the general law or under s 2(24)(ii-a) rightly construed.

(ii) Section 2(24)(ii-a) deems revenue contributions to be income of the trust. It thereby prevents the trust from claiming exemption under general law on the ground that such contributions stand on the same footing as gifts and are therefore not taxable. [*R.B. Shreeram Religious & Charitable Trust vs. CIT, (1998) 233 ITR 0053 (SC)*]

(iii) Section 12 goes one step further and deems such revenue contributions to be income derived from property held under trust. It thereby makes applicable to such contributions all the conditions and restrictions under ss 11 and 13 for claiming exemption.

(iv) Section 1l (1)(d) specifically grants exemption to capital contributions to make the fact of non-taxability clear beyond doubt.

[*Rani Amrit Kunwar vs. CIT, (1946) 14 ITR 0561 (All. HC. FB), International Instruments (P) Ltd. vs. CIT, (1982) 133 ITR 0283 (Kar)*]

But it proceeds on the erroneous assumption that such contributions are of income nature - income in the form of voluntary contributions'. This assumption should be disregarded. [*IR vs. Dowdall 33 TC 259 (HL) Daries vs. Davies 44TC273(HL)]*

Pre—1973 —Voluntary contributions on capital account were unconditionally exempt from tax also under s 12 as it stood upto the assessment year 1972—73. Sub-section (2) of the old 5 12 applied only where the contribution constituted income of the receiving trust; it had no application where what was received by the trust formed part of its capital as in the case of an endowment or capital donation which was intended to beheld as an accretion to the corpus of the trust. This was clear from a reading of the two sub-sections. Sub-section (1) exempted the 'income.., derived from voluntary contributions'. Sub-section (2) only dealt with 'such contributions as are referred to in sub—s (1)', i.e. contributions which constituted income of the trust receiving them. In other words, sub-s (2) merely deemed certain income under s 12 to be income under s 11; it did not convert a capital receipt into an income receipt. This view has been affirmed by the Supreme Court [*R.B. Shreeram Religious & Charitable Trust vs. CIT, (1998) 233 ITR 0053 (SC)*] and various High Courts.

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Under section 56-

There are also no attempts at harmony between these provisions and other parts of the Act, which is important when notional income is sought to be taxed.

3. Corpus Donation from one trust to other trust

The foregoing discussion makes it clear that the corpus donation received by a trust continues to be exempt. The Proviso to Sec.56(2)(x) further supports the view.

The Explanation-2 to Sec. 11, is inserted by Finance Act 2017 and the same is amended by Finance Act 2020 and it needs to be verified.

3.1 Amendment by Finance Act 2017 and 2020

Explanation-2 to Sec.11, is inserted w. e. f. 1.4-2018 which reads as under-

Explanation 2 — Any amount credited or paid, out of income referred to in clause (*a*) or clause (*b*) read with *Explanation 1*, to any other trust or institution registered under section 12AA, being contribution with a specific direction that they shall form part of the corpus of the trust or institution, shall not be treated as application of income for charitable or religious purposes.

This is further amended by the Finance Act 2019 w. e. f. 1-4-2020 and the same now reads as under –

Explanation 2 — Any amount credited or paid, out of income referred to in clause (*a*) or clause (*b*) read with *Explanation 1*, *to any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (*iv*) or sub-clause (*v*) or sub-clause (*vi*) or sub-clause (*via*) of clause (*23C*) of section 10 or other trust or institution registered under section 12AA, being contribution with a specific direction that it shall form part of the corpus*, shall not be treated as application of income for charitable or religious purposes.

The underlined italicised portion is substituted by the Finance Act 2019.

3.2 A careful reading of the amendments shows that the exemption of corpus donation for the receiving trust continues to be exempt as before.

The position for the donor trust, however, has changed. But, that is not the purpose of this article and hence I do not wish to discuss the same here.

4. Conclusion

All over the world generally and in India particularly, charitable trusts and institutions are rendering exemplary services to the society at large. They are nothing but, actually carrying out the functions of the Govt. itself in serving to the society at large, especially where the Govt. is not able to reach and serve in its Constitution bound duty.

But, reading the cases discussed and the amendments carried out in relevant sections, leads me to a doubt about the habit of the revenue to tax everything and make the lives of charity difficult to render the yeoman services to the society, they are rendering.

A welfare country like India needs the section of society to work on charities as the Govt. is not able to reach out to every corner of this vast country and its poor and needy to make their lives better to some extent. The fact that less than 2% people only out of 130 crores population of the country are earning taxable income, throws a sharp light on the issue of needy in the society, and underlines the importance of charity as never before.

No society is perfect and there are some anti-social elements everywhere in the world. Consequently, there may be some persons abusing the exemption provisions. But, that should not be a reason for the avaricious revenue looking only ever to the glittering 2% world of money, to overlook this needy section of the society getting served by the charitable trusts.