

# CHOOSING RIGHT ENTITY FOR NPO/NGO, DOCUMENTATION, REGISTRATION & OTHER REQUIREMENTS

CA Dr. N. Suresh, B. Com, F.C.A, PhD.

Mobile : +91-9845545265, Email id: nsuresh\_ca@yahoo.com

# Charity

- Historical Significance of Charitable Trusts or Institutions
- Concept of NGOs, NPOs
- Growth of NGOs, NPOs

# Charitable Purpose – Sec 2(15)

## Limbs

- a. Relief of the poor
- b. Education
- c. Medical Relief
- d. Advancement of any other general public utility
- e. Preservation of environment and preservation of monuments or places or objects of artistic or historic interest includible within the ambit of “charitable purpose” under Section 2(15)

# Basics on Formation

- Brief Introduction
- Forms of Constitutions
  - a. Trust
  - b. Society
  - c. Section 8 Company

# Governing Principles for selection of forms

- Size of the institution
- Legal requirement
- Initial cost
- Recurring cost
- Compliances required
- Corporate structure
- Number of persons required to constitute
- Trend
- Global appearance
- Activities

# Definition of Trust

- What is Trust? Meaning
- Definition of Trust
- Classification of Trust
  - (i) Private Trust
  - (ii) Public Trust
  - (iii) Charitable or Religious Trust

# Formation of a Trust

- Historical importance of Trust
- Meaning of Trust
- Definition of Author of Trust
- Governing enactments
  - a. Charitable Endowment Act, 1890
  - b. Indian Trust Act, 1882
  - c. Bombay Public Trust Act, 1950
  - d. Charitable and Religious Trust Act, 1920, etc

# Elements to constitute a valid trust

- a. Author or Settlor of the Trust
- b. Intention to create a Trust
- c. Trust Property
- d. Trustee
- e. Beneficiaries
- f. Objects of the Trust



# Divesting of Property

- Back Ground
- Meaning and Concept
- Conditions for divesting of property

# Agricultural Income

Agricultural property held by the Trust, the Income derived thereon whether constitutes income from property held under trust or agricultural income ?

- CIT vs Panchuiti Akhara Nirmal (1991) 192 ITR 186 (All)
- Muthukumar Swamy Tambaram vs Agri ITO (1978) 113 ITR (Madras)
- CIT vs Nabhinandan Digamber Jain (2002) 257 ITR 91 (MP)

# Types of Trust

---

- a. Oral Trust
- b. Trust by Deed of Declaration
- c. Trust by will
- d. Trust by *inter vivos*

# Types of Trust under Income Tax

- 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

# Creation of Trust

- Meaning
- Who can create a trust?
- Whether Minor can create a trust?  
*CIT vs. T.A.V Trust (1987) 166 ITR 848 (Kerala),*  
*Ajit Traders Vs.CIT (1990) 181 ITR 451 (Ker)*
- How to create a trust?  
*Hanmantram Ramnath v. CIT (1946) 14 ITR 716 (Bom)*  
*Court Receiver v. CIT (1964) 54 ITR 189 (Bom)*
- Can a Trust be created by book entries?

# Contents of the trust deed

- a. Intention of the Author
- b. Trust Property
- c. Objects of the Trust
- d. Beneficiaries
- e. Trustees
- f. Period of the Trust
- g. Winding up of the Trust
- h. Amendment to Trust Deed

# Declaration of Trust

- Whether formal deed of trust is required?

*All India Spinners Association V.CIT (1944) 12 ITR 482(PC)*

*Radhasoami Satsang Saomi Bagh v.CIT (1992) 193 ITR 321 (SC)*

# Classification of Trust

- a. Trust by an act of party and Operation of law.
- b. Simple and Special Trust
- c. Ministerial and discretionary Trust
- d. Expressed and implied trust
- e. Resulting and constructive trust
- f. Public and Private Trust
- g. Precatory Trust
- h. Charitable or Religious Trust



# Formation of a Society

- Meaning
- Governing enactments
  - a. Societies Registration Act, 1860
  - b. Religious Societies Act, 1880
  - c. Respective State Societies Registration Act
- Purposes for which society can be formed

# Formation of a Society

- Procedure for registration
  - a. Filing of documents for registration
  - b. Registration Fees
  - c. Certificate of registration
- Significance of registration
- Executive Board – Constitution
- Can a Foreign National become a member of a society?
- Are there any restrictions under Foreign Exchange Management Act, 1999 or Foreign Contribution (Regulation) Act, 2010 for a foreign national to become a member of a society?

# Formation of Sec 8 Company (Sec 25 of Companies Act, 1956)

- Meaning
- Purpose of constituting Sec 8 Company
- Conditions
- Procedure of incorporation of Sec 8 Company
  - a. Obtain DSC
  - b. Obtain DIN
  - c. Name Availability

# Application for license- Rule 19 of The Companies (Incorporation) Rules, 2014

- File application in Form INC-12 along with fees and
  - a. Draft MOA & AOA
  - b. Declaration in Form No.INC.14
  - c. Estimate of the future annual income and expenditure of the company for next three years, specifying the sources of the income and the objects of the expenditure
  - d. Declaration by each of the persons making the application in Form No. INC.15
- MOA in Form INC-13

# Registration

- Verification of registered office – Rule 25 of The Companies (Incorporation) Rules, 2014
- Declaration at the time of commencement of business – Form No. INC 21 - Rule 24 of The Companies (Incorporation) Rules, 2014
- Publication of name by company - Rule 26 of The Companies (Incorporation) Rules, 2014
- Effect of registration - Rule 9 of The Companies (Incorporation) Rules, 2014

# Revocation of License

- ❑ Delegation to Regional Director (RD) – yet to be notified by Official Gazette
- ❑ Circumstances for revocation – Sec 8(6)
- ❑ Opportunity of hearing
- ❑ Windup or amalgamate with another Sec 8 Company – Sec 8(7)
- ❑ Amalgamate to form single company – Sec 8(8)

# Registration of Trusts or Institutions u/s 12A(a), 12AA

- Mandatory Requirements
- Procedures

# Effect of Non Consideration of Application within time

- Can it be deemed Registration?



# Carrying activity is necessary for registration?

- At the stage of commencement carrying activity not relevant.  
(Dharmasans Thapak Sangh vs CIT(2008)118TTJ.

# Cancellation of Registration

- Cancellation of approval u/s 10(23C)(vi) can be a ground to cancel registration u/s 12AA(3)
- Prospective v/s Retrospective
- Incase of applicability of proviso to section 2(15)
- Others

# Applied

- Meaning
- Features of the expression 'applied'.

(Radhasoami Satsang Sabha (1954) 25 ITR 473 (All))

# “SUCH PURPOSES IN INDIA”

- Brief Introduction
- Meaning and requirements
- Application in India is must
- Position of Book Entries

# Voluntary Contribution

- Meaning and concepts
- Types of Voluntary Contribution
  - ❖ Voluntary Contribution with specific direction
  - ❖ Voluntary Contribution without specific direction

## Income computation—whether gross or net ?

- CIT vs Programme for Community Organisation (2001) 248 ITR, affirming decision of Kerala High Court.
- Krishi Utpadan Mandi Samiti & Anr. v. DCIT (2011) 131 ITD 335 (Luck 'A' – Trib) : (2011) 136 TTJ (Luck 'A'-Trib)635

# Filing Form No.10 – whether mandatory ?

- Brief Introduction
- Changes made by Finance Act of 2015

# Set off and carry forward of losses of earlier years

- Meaning of Deficit
- Position incase of charitable trust or institution



# Instances held as Application

- Establishment expenses
- Payment of Taxes
- Capital expenditure is an application
- Writing of loan advanced to weaker section
- Repayment of debt
- Loan scholarship given
- Expenses incurred for defending functionaries and members

# Breach of Trust

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

# Rectification of Trust Deed

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

# Accreted Income- Tax on Charitable Trust or Institution when it ceases to exist

- Accreted Income – Meaning and Scope
- When Accretion income is taxed
- Rate of tax on accreted income
- Accreted tax is a final tax
- Time limit for payment of tax
- Interest on non-payment of tax
- Assessee in default

# Circumstances when accreted income applies

- Conversion into any form which is not eligible for grant of registration under section 12AA
- Merged with any entity other than an entity which is a trust or institution having objects similar to it and registered under section 12AA
- Transfer of assets on dissolution

# Circumstances deemed to have been converted – Sec 115TD(3)

- a. Registration granted under 12 AA has been cancelled or
- b. Adopted or undertaken modification of its objects which do not confirm to conditions of registration

# Tax payable – Sec 115TD(1) & (4)

- Normal taxes
- Accreted income tax
- Time limit for payment of tax – Sec 115TD(5)
- Final payment of tax – Sec 115TD(6)
- No deduction under any other provision

# Meaning of date of conversion

- Explanation to section 115 TD
- Date of conversion means
  - ▣ The date of the order cancelling the registration under section 12AA in a case referred to in clause (i) of sub-section(3) or
  - ▣ The date of adoption or modification of any object in a case referred to in clause (ii) of sub section(3)
  - ▣ Meaning of specified date.



# Assessee in default – Sec 115TF

- Principal Officer
- Trustee of the Trust or Institution, and
- The Trust or Institution
- Person receiving any asset forming part of computation of accreted income



**-Thank You**

**SURESH NANDINI ASSOCIATES CHARTERED ACCOUNTANTS**