

I-T waiver for educational societies, trusts

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Most educational societies and charitable trusts are confounded by the complexities in the interpretation of income tax exemptions. To provide, a clear picture on the subject, an attempt has been made to aggregate the solutions under most frequently asked questions. Please read out :

Q. Whether exemption is automatic under Section 10 (23C) (iiiad) or some approval or registration is required ?

A. As per Section 10(23C)(iiiad) of the Income Tax Act , any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed[one crore rupees under rule 2BC(1)],such income shall not be included in the total income of the institution.

But in cases where the annual receipts are more than Rs.1 crore the institution will have to seek approval for exemption u/s 10(23C)(vi) as per guidelines for approval in Rule 2CA

The procedure: an application to be made to the Chief Commissioner in Form no.56D; the approval, if granted, shall at any one time have effect for a period not exceeding three assessment years.

Q. Whether registration under section 12A is required where section 10(23C) is applicable.? Are section 10(23C) and section 11 mutually exclusive ? If a trust running an educational institution is qualified under section 10(23C) does it still have to comply with the requirements of section 11 , 12 & 13 ?

A. If a society is eligible for exemption under section 10 (23C) then the provisions of section 11,12and 13 do not apply. This will mean registration with the Commissioner U/s 12A is not necessary, as is required in the case of a public trust claiming exemption under section 11 . There is also a CBDT instruction no.1112 dated 29.10.1977 and a CBDTcircular no.712 dated 25.7.1995 which categorically mention that if an institution is exempt u/s 10(22) the Section 11,12 don't apply

The High Courts had consistently taken the view that a trust which runs an educational institution can itself be treated as an educational institution within the meaning of section 10(22) (*section 10(22) has been omitted and now one claim exemption u/s 10(23C)*) with the result that it had immunity from taxation without being bound by the requirements of provisions of sections 11 to 13. In spite of the unanimous view of the High Courts, the Income-tax Department had still some misgivings and, therefore, the matter was taken to the Supreme Court, which has now resolved the issue consistent with the findings of the High Courts in *Aditanar Educational Institution v. Addl. CIT [1997] 224 ITR 310*.

Q. How an assessing officer(AO) shall determine, whether an institution exists solely for educational purposes and not for profit? Is it his discretion to accept an institution under Section 10 (23C) (iiiad) or are there any norms for the same?

A. An AO, while determining whether an institution exists solely for educational purposes and not for profit and hence eligible for exemption u/s 10(23C) , will have to keep the following in mind :

(i) It is not the AO's discretion to accept/reject an institution rather it is his duty to take a decision on the matter based on SC cases and ruling. *In Aditanar Educational Institution v. Addl. CIT [1997] 224 ITR 310(SC)* it is specifically asked of the Revenue to have a positive approach to give effect to exemption granted by parliament for voluntary agencies engaged in charitable activities.

(ii) An Institution in order to be entitled to have exemption under the income tax law should have public character. Where the benefit is confined to a particular section of the people, the exemption may not be available.

(iii) Application of income should be solely for educational purpose [charitable purpose] Educational purposes means.

The word education normally will have a very wide connotation however in the context of sec.2(15), the supreme court has held that this word shall be narrowly construed and its meaning be restricted to what goes as normal schooling.

The word education has been assigned the meaning of imparting systematic instructions, schooling or training and not in the extended sense of acquiring of further knowledge. Therefore publishing newspapers and magazines is not education. *[Sole Trustee Lok Shikshana Trust v. VIT (1975) 101 ITR 234 (SC)*

(iv) Source of income may be many but the application of income should be only for educational purpose.

What the exemption contemplates is the application of the income and not the source thereof, hence dividend income etc are also exempt vide *Aditanar Educational Institution v. Addl. CIT [1997] 224 ITR 310 (SC)*.

(v) The main objects of the institution should be education and it should *be engaged in* education, continuously carrying on even on the date of application and on the date of consideration. The word 'existing' appearing in section 10(22)/10(23C) evidently shows that the existence of the institution will have to be investigated each year so as to find the institution did exist for educational purpose in the relevant year. *[Addl CIT v Additional Educational Institution (1979) 118 ITR 235 (Mad)*

(vi) *Private profit is prohibited*. If the profit of the educational institution can be diverted for the personal use of the proprietor thereof, then the income of the educational institution will be subject to tax.

(vii) *Merely because certain surplus arises* from its operations, it cannot be held that the institution is being run for the purpose of profit so long as no person or individual is entitled to any portion of the said profit and the said profit is used for the purposes and for the promotion of the objects of the institution. The Andhra Pradesh High Court, in *Governing Body of Rangaraya Medical College v. ITO [1979] 117 ITR 284 (AP)*, ,

(viii) Neither collection of fees from students nor sale of text books would vitiate the claim for exemption. Supreme Court in *Aditanar Educational Trust [1997] 224 ITR 310*

(ix) Incorporation is no bar to exemption under section 11/10(23C) .A company registered under section 25 of the Companies Act barring distribution of profits to the members should be eligible, if it satisfies other requirements for exemption. CIT v. Leign Bazar Merchants Association Ltd., [1999] 235 ITR 367 (Mad).

(x) For the purpose of exemption under section 10(22)/10(23C) of the Income-tax Act,1961, the University or other educational institution need not exist in India. However, the university or other educational institution has to engage in educational activity in India not for profit.[*Oxford University Press v CIT (2001) 247 ITR 659 (SC)*]

(xi) Trust without establishing college or school, giving scholarships to students cannot claim exemption under section 10(22)/10(23C). [*CIT v Sheth Sorabji Nasarwanji Parekh (1995) 211 ITR 633 (Guj)*]

(xii) In order to claim exemption under section 10(22)/10(23C), the assessee need not itself impart education to students. [*CIT v Saraswath Poor Students Fund (1984) 150 ITR 142(Kar)*]

(xiii) Existence of the educational institution is, in fact, a pre-requisite for the application of section 10(22)/10(23C) and mere efforts for establishing institution cannot qualify for exemption. [*CIT v Devi Educational Institution (1985) 153 ITR 571 (Mad)*]

(xiv) Section 10(22)/10(23C) does not impose any restriction as to the compulsory affiliation of the institution with any university or board. [*CIT v Doon Foundtaion (1985) 154 ITR 208 (Cal)*]

(xv)Income from school held not includible in total income of assessee. Deficit under school section cannot be set off against other income of the trust. [*CIT v Lallubhai Gordhandas Mehta Charitable Trust (1994) 207 ITR 104 (Guj)(C)*]

(xvi) Business need not be a bar.What is incidental to the carrying on the objects of the trust is not barred: *Dasa Balinjika Seva Sangam v. CIT (No.1)[1999] 240 ITR 854 (Mad)*.

(xvii).If there is any misutilisation or mis-management, action would lie against such persons and that exemption available to the trust under section 10(22)/10(23C) of the Income-tax Act need not be denied on that score..

(xviii) It is not necessary to spend the money in order to treat the same as having been applied for a charitable purpose. A provision for expenses may be treated as application of funds.

CIT v. Trustees of H.E.H. the Nizam's Charitable Trust [1981] 131 ITR 497 (AP.)

Q .What happens when one charitable trust donates to another charitable trust.?

A. When a doner trust which is itself a charitable and religious trust donates its income to another trust, the provisions of section 11(1)(a) can be said to have been met by such donor trust and the donor trust can be said to have applied its income for religious and charitable purposes. Utilisation by the donee trust in any year would not be relevant for the purpose of deciding whether the donor trust can get exemption under section 11 or not. CIT v. Sarladevi Sarabhai Trust (No.2)[1988] 172 ITR 698 (Guj.), CIT v. Thanthi Trust [1999] 239 ITR 502 (SC).