

# Recent case laws applicable to NGOs

Compiled by

**CA. PRASANTH SRINIVAS**

S. S. AYYAR & CO., CHARTERED ACCOUNTANTS, KOTTAYAM

Phone: 9447125731 E-mail: [ssayyarandco@gmail.com](mailto:ssayyarandco@gmail.com)

**[2015] 55 taxmann.com 255 (SC)**

**SUPREME COURT OF INDIA**

**Queen's Educational Society v. Commissioner of Income-tax**

**\*In favour of assessee**

- Where a surplus was made by educational institution which was ploughed back for educational purposes, said institution was to be held to be existed solely for educational purpose and not for purpose of profit.
- Also refer circular 14/2015 dated 17.08.2015 which recognizes generation of surplus.

**[2015] 61 taxmann.com 262 (Delhi)**  
**HIGH COURT OF DELHI**  
**Hamdard Laboratories India v.**  
**Assistant Director of Income-tax (Exemption)\***  
**\*In favour of assessee**

- Granting scholarship to students is 'education', and not 'any other object of general public utility';
- Trust cannot be denied exemption by invoking the first proviso to section 2(15) where its activities in fact fall within the heads 'education', 'medical relief' and 'relief of the poor' even if its objects allow it to carry on any activity for 'advancement of any other object of general public utility'

**[2016] 67 taxmann.com 230 (Kerala)**  
**HIGH COURT OF KERALA**  
**Sree Anjaneya Medical Trust v.**  
**Commissioner of Income-tax, Kozhikode\***  
**\*In favour of assessee**

- While granting registration to a trust, authorities are empowered to examine only genuineness of trust and its activities;
- During assessment only, eligibility in terms of sections 10, 11 and 12 is to be verified as to whether or not what was practised was indeed in Deed of trust
- ***That is to say: Asking for activities' report at the time of granting registration is not warranted***

**[2015] 53 taxmann.com 311 (Punjab & Haryana)  
HIGH COURT OF PUNJAB & HARYANA  
Shishu Niketan Panchkula Educational Society v.  
Commissioner of Income-tax, Panchkula\*  
\*In favour of assessee**

- Application for registration under section 12A cannot be rejected on ground that assessee had not yet carried on any charitable activity

**[2015] 60 taxmann.com 126 (Kerala)**

**HIGH COURT OF KERALA**

**Dawn Educational Charitable Trust v. Commissioner of  
Income-tax\***

**\*In favour of revenue**

- Where assessee-trust was running posh school for children of non-resident Indians on commercial lines under guise of charitable purpose, it would not be entitled to claim exemption under section 12A

**[2015] 58 taxmann.com 288 (Bombay)**

**HIGH COURT OF BOMBAY**

**Director of Income-tax (Exemptions), Mumbai v. Shri Vile Parle  
Kelavani Mandal\***

**\*In favour of assessee. SLP of dept admitted by SC**

- Where assessee-trust generated income by giving hall and premises of its educational institution on rentals and said income was used for educational institution itself, such income could not be brought to tax

**[2016] 66 taxmann.com 362 (Kerala)**

**HIGH COURT OF KERALA**

**Travancore Education Society v. Commissioner of Income-tax\***

**\*In favour of revenue**

- Where assessee-trust collected capitation fees in addition to prescribed fees, object of assessee-trust could no more be said to be charitable in nature and, hence, registration granted to it was to be rejected



**[2015] 58 taxmann.com 218 (Bombay)**

**HIGH COURT OF BOMBAY**

**Director of Income-tax (Exemptions), Mumbai v. Jasubhai  
Foundation\***

**\*In favour of assessee – See amendment in Finance Act 2014**

- Income exempt under section 10 has to be excluded while computing income of charitable institutions exempt under section 11

**[2015] 54 taxmann.com 247 (Bombay)**

**HIGH COURT OF BOMBAY**

**Commissioner of Income-tax v.**

**Lilavati Kirtilal Mehta Medical Trust\***

**\*In favour of assessee**

- Where 85 per cent of gross income (and not net income) of assessee-trust was spent on charitable activities, assessee would be entitled to exemption under section 11
- This is settled law as per the decision of SC in CIT Vs. Programme for Community Organization 248 ITR 1 (SC)(2001) – **Charitable trust is entitled to accumulate 25% of its income derived from property held under the trust & not 25% of the income remaining after application of income for charitable purpose. Therefore, assessee trust was entitled to accumulate 25% of donations received by it & not merely 25% of unspent balance**

**[2015] 58 taxmann.com 184 (Karnataka)**

**HIGH COURT OF KARNATAKA**

**Director of Income-tax, Exemptions, Bangalore v. Envisions \***

**\*In favour of assessee**

- Where all purposes specified by assessee-trust in Form 10 are for achieving charitable objects of trust, merely because more than one purpose have been specified and details about plan of such expenditure has not been given, same would not be sufficient to deny benefit under section 11(2) to the assessee

**[2016] 67 taxmann.com 187 (Allahabad)**  
**HIGH COURT OF ALLAHABAD**  
**Commissioner of Income-tax v.**  
**Sisters of Our Lady of Providence Education Society\***  
**\*In favour of assessee**

- Criteria to grant exemption under section 10(23C)(vi) and grant of registration under section 12A are different and merely because exemption under section 10(23C)(vi) is declined, it does not amount refusal of registration under section 12AA
- Also see Circular 14/2015 dated 17.08.2015

**(2015] 55 taxmann.com 34 (Karnataka)**

**HIGH COURT OF KARNATAKA**

**Director of Income-tax (Exemption), Bangalore v.**

**Karnataka Industrial Area Development Board\***

**\*In favour of assessee**

- A registration granted earlier under section 12A can be cancelled under two circumstances: (a) If the activities of such trust or institution are not genuine, (b) the activities of trust or institution not being carried out in accordance with the object of the trust or institution. Therefore, registration already granted under section 12A could not be revoked for the reason that the charitable trust or institution pursuing of advancement of objects of general public utility carried on commercial activities
- Also refer to Circular 21/2016 dated 27.05.2016

**[2016] 70 taxmann.com 181 (Bombay)**

**HIGH COURT OF BOMBAY**

**Director of Income-tax (Exemptions) v. Khar Gymkhana**

**\*in favour of the assessee**

- **In view of CBDT's Circular No.21/2016 dated 27-5-2016, Registration of a trust cant be cancelled merely because receipts from commercial activities exceed Rs.25Lakhs unless there is change in the nature of its activities or its activities are not genuine**

**[2015] 55 taxmann.com 516 (Karnataka)**  
**HIGH COURT OF KARNATAKA**  
**Commissioner of Income-tax, Exemptions, Bangalore**  
**v. CMR Jnanadhara Trust**  
**\* in favour of the assessee**

- **When there was substantial growth in trust on account of services rendered by trustees, payment made to trustees for such services was not in violation of section 13 and benefit under section 11 was available**

**[2015] 57 taxmann.com 8 (Allahabad)**  
**HIGH COURT OF ALLAHABAD**  
**Commissioner of Income-tax v.**  
**Muzafar Nagar Development Authority\***  
**\*In favour of revenue**

- Non-disposal of an application for registration within 6 months as fixed by section 12AA(2) would not result in a deemed grant of registration
- Please see the next slide for the decision of the Supreme Court on this subject



**[2016] 67 taxmann.com 264 (SC)**  
**SUPREME COURT OF INDIA**  
**Commissioner of Income-tax, Kanpur**  
**v. Society for Promn. of Edn., Allahabad\***  
**\*in favour of the assessee**

- **Where assessee-society filed an application under section 12A for grant of registration and same was not responded to within stipulated period of six months, application for registration was to be deemed to have been allowed**

**[2015] 56 taxmann.com 393 (Karnataka)**  
**HIGH COURT OF KARNATAKA**  
**Maheshwari Foundation v.**  
**Director of Income-tax (Exemptions), Bangalore\***

- If an application for approval/renewal under section 80G is not disposed off within six months from date of application, Commissioner has no jurisdiction to pass an order either granting approval or rejecting it
- In the result assessee may have to make a fresh application

**[2015] 61 taxmann.com 68 (P & H)**

**HIGH COURT OF P & H**

**Commissioner of Income-tax v. Christian Medical College\***

**\*In favour of assessee**

- Where assessee-society, established by Christian community, had been running medical colleges and its main aims were to train professionals in field of medical and health care and also to provide medical facilities in its hospitals to all persons of any caste, activities carried out by assessee were charitable in nature and it was entitled to exemption under section 80G

**Dy CIT v. Society for Rural Improvement  
ITA No. 329/Coch/2014 dated 01.06.2016**

**ITAT Cochin**

**\* In favour of the assessee**

[http://www.itatonline.in:8080/itat/upload/-555816118608301964713\\$5%5E1REFNOSociety\\_for\\_Rural\\_Development-329-14\\_&\\_co36-14.pdf](http://www.itatonline.in:8080/itat/upload/-555816118608301964713$5%5E1REFNOSociety_for_Rural_Development-329-14_&_co36-14.pdf)

- A trust registered u/s 12AA doing micro finance activity is eligible for deduction u/s 11
- Microfinance activity is 'relief of the poor' and not 'general purpose utility'. So commercial receipts concept will not apply
- Decisions followed
  - Andhra Pradesh HC - CIT vs. Spandana I.T.A. No.304/2013 dated 10/07/2013.
  - Cochin ITAT – K.P. Paul Foundation vs. CIT (2014) 40 CCH 314
  - Chennai ITAT – Kurinji Welfare Society Vs. ACIT

**[2016] 70 taxmann.com 48 (Hyderabad - Trib.)**

**IN THE ITAT HYDERABAD BENCH 'A'**

**Deputy Commissioner of Income-tax, Circle- 1(1), Hyderabad**

**v. A.P. State Civil Supplies Corporation Ltd.**

**\* in favour of the assessee**

- **State Civil Supplies Corporation providing essential commodities to poor people at subsidized rates should be considered to be providing 'relief to poor' (and not object of general public utility) and, thus, eligible for exemption under section 11;**
- **The amendment of proviso to section 2(15) was not applicable**

**[2015] 55 taxmann.com 379 (Hyderabad - Trib.)  
Assistant Director of Income-tax, (Exemptions)-I, Hyderabad v.  
Hyderabad Study Circle\*  
\*In favour of assessee.**

- A coaching institute giving coaching to students for various competitive examinations is eligible for exemption under section 10(23C)(iiiad)

**[2015] 60 taxmann.com 188 (Patna - Trib.)  
International School of Human Resources & Social Welfare  
Society v. Commissioner of Income-tax-1, Patna**

**\*In favour of assessee.**

- Where merely because minority status was accorded to educational institutions run by assessee-society, it could not be regarded as being established for benefit of a particular religious community; registration could not be denied on this ground

**[2015] 57 taxmann.com 333 (Pune - Trib.)  
Income-tax Officer, Ward -3, Ahmednagar  
v. Noble Medical Foundation & Research Centre\***

**\*In favour of assessee.**

- Where assessee-hospital was providing medical relief to people at large, merely because surplus was generated from hospital activities could not be ground to deny exemption under section 11 to assessee



**[2015] 56 taxmann.com 118 (Mumbai - Trib.)**  
**Critical Art and Media Practices**  
**v. Director of Income-tax (Exemption), Mumbai\***

**\*In favour of assessee.**

- If activities of a trust are found to be charitable and property is held wholly and exclusively under trust for charitable and religious purposes, then such a trust cannot be denied registration merely because its activities are extended outside India. However, income which is applied towards charitable activities in India only will be eligible for exemption,

**[2015] 56 taxmann.com 172 (Cochin - Trib.)  
State Forum of Bankers Club (Kerala)  
v. Income-tax Officer (Tech), Kochi\*  
\*In favour of revenue.**

- Where assessee-trust was rendering service to banks by organizing lectures and seminars for benefit of bank employees, same was not charitable activity and assessee was not entitled for recognition under section 2(15)

**[2015] 59 taxmann.com 379 (Chennai - Trib.)**  
**Anjuman-E-Himayath-E-Islam**  
**v. Assistant Director of Income-tax (Exemption)-IV, Chennai\***  
**\*In favour of revenue**

- In case of assessee-trust registered under section 12A, carry forward of excess application of funds cannot be allowed as per provisions of Act because it would result in notional application of income in subsequent year

**[2015] 60 taxmann.com 165 (Bang - Trib.)**  
**Deputy Director of Income-tax (E), Circle 17 (1), Bangalore v.**  
**Jyothy Charitable Trust\***  
**\*In favour of assessee**

- In case of charitable trust whose income is exempt under section 11, excess of expenditure incurred on religious and charitable purposes in earlier years can be adjusted against income of subsequent years and such adjustment would be regarded as application of income for subsequent years

**[2015] 59 taxmann.com 467 (Cochin - Trib.)  
Dharmodayam Co.  
v. Income-tax Officer, Ward-1 (1), Thrissur\*  
\*In favour of assessee**

- In order to claim deduction under section 11(2) it is not necessary that deposits have to be made out of current year's income; earmarking of existing fixed deposits, which is free from any lien, towards income accumulated under section 11(2) during year under consideration would be sufficient compliance

**[2014] 52 taxmann.com 139 (Chennai - Trib.)  
Deputy Commissioner of Income-tax (Exemptions)-II v.  
Sri Vekkaliamman Educational & Charitable Trust\*  
\*In favour of revenue**

- Purchasing of gold by a trust on plea of distribution of gold medals to be given to meritorious students was an investment in gold bullion in violation of section 11(5)

**[2015] 58 taxmann.com 323 (Cochin - Trib.)  
Christian Women's Association v. Commissioner of Income-tax\*  
\*In favour of assessee**

**Also see**

**[2015] 56 taxmann.com 291 (Mumbai Trib.)  
(2015) 35 ITR (Trib) 267**

- Where Commissioner rejected assessee-trust's application of registration on ground that assessee had undertaken very limited charitable activities and funds available with assessee was also very scanty, in absence of any activity report filed by assessee, matter was to be readjudicated
- However, also see decision of Kerala HC in Anjaneya Medical Trust discussed earlier

**[2015] 58 taxmann.com 205 (Cochin - Trib.)  
Progressive Educational & Charitable Trust v.  
Commissioner of Income-tax\*  
\*In favour of revenue**

- Where assessee claimed registration under section 12A to administer educational institution but it was found that buildings for starting educational institution were under construction, assessee was not entitled for registration since no charitable activity was carried out during year
- However, also see decision of Kerala HC in Anjaneya Medical Trust discussed earlier



**2015] 61 taxmann.com 283 (Chandigarh - Trib.)  
Paramount Education Charitable Trust  
v. Commissioner of Income-tax, Panchkula\*  
\*In favour of assessee**

- Where activities of assessee-trust were found to be charitable in nature, merely because it was not registered under Societies Act, registration under section 12A could not be denied

**[2016] 70 taxmann.com 54 (Delhi - Trib.)**

**IN THE ITAT DELHI BENCH 'D'**

**Deputy Director of Income-tax (E), Trust Circle-IV, New Delhi  
v. Institute of Chartered Accountants of India**

**FACTS**

1. The assessee, Institute of Chartered Accountants of India (ICAI) was established by the Act of Parliament of ICAI Act of 1949 and was registered under section 12A . It claimed exemption under section 11.
2. The Assessing Officer denied exemption mainly on the ground that ICAI was involved in commercial activities as it received coaching fees from the students of CA while giving coaching to the CA students. He further held that assessee's case fell under the category of General Public Utility and proviso to section 2(15) was clearly applicable in this case. Accordingly, he computed income of the ICAI as any normal Association of Person (AOP).
3. On appeal, the CIT(A) allowed the appeal of the assessee.
4. On revenue's appeal to Tribunal:

**HELD**

- The issue in dispute is squarely covered by the various decisions of the ITAT, High Court and the Supreme Court of India in assessee's own cases in preceding assessment years wherein exemption to the assessee under section 11 has been allowed holding that the assessee is an educational institution. Thus, respectfully following the same it is to be held that ICAI is an educational institute and hence its income will be exempt under section 11 as education falls within meaning of charitable purpose under section 2(15)

For your valuable feed back

**THANK YOU...**