



January 07, 2026

To,

The Revenue Secretary,
Ministry of Finance,
Government of India.

The Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
Government of India.

The Principal Chief Commissioner of Income Tax (Exemptions),
New Delhi.

Dear Sirs,

Re: Renewal of Registration u/s 12A of the Income Tax Act, 1961 – Insistence on Existence of Irrevocable Clause in Trust Deed

When a Public Charitable Trust applies under Section 12AA for renewal of registration, It is required to file Form 10AB online. Item 6 of the Form requires the trust to say “Yes” or “No” to the question “Whether the trust deed contains clause that the trust is irrevocable?”.

Most trusts, which were constituted long before this form was introduced, do not contain such a specific clause, but are nonetheless irrevocable, and the trust has no option but to answer the question as “Yes”, as the form cannot be filled up further if one answers “No”.

On scrutiny of the applications, the Office of the Commissioner of Income Tax (Exemptions) is directing that where the trust deed does not include such a clause, the trust deed should be amended to include such a clause.

In this context, the following may be noted:

1. It appears that this emanates from the wording of section 11, which is subject to the provisions of sections 61 to 63, which deal with revocable transfer. It is well settled that the provisions of section 11 come into play at the time of computation of the exemption under sections 11 and 12, and are not applicable for the purposes of registration under section 12A.
2. This position also seems to have arisen from the comments of the Comptroller & Auditor-General of India, in its report 20 of 2013 (Performance Audit) on Charitable Trusts, which commented as under:



Non inclusion of dissolution clause in the Trust Deed

2.7 Para 2.7 (viii) of the Manual of Office Procedure (Volume-II) of ITD, inter alia, provides that in case of dissolution of a Trust, its net assets after meeting all its liabilities, should not revert to its founder, members, directors, donors etc. but used for its objects. In the absence of dissolution clause, the corpus of Trust is susceptible to misuse at the time of dissolution.

2.8 We observed that ITD granted approvals/registrations/notifications in 457 cases in which there was no dissolution clause in the Trust Deed (see Box 2.2).

Box 2.2: Illustrative Case

In the case of **Mumbai Railway Vikas Corporation** during AY 10 in DIT-E, Mumbai, the Trust Deed was silent about the dissolution clause. Assets and surplus were distributable amongst the shareholders and not to be given to some other Trusts for objects similar to Trusts. Similarly, in another case of **Sterlite Foundation**, the Managing Trustee was nominated always from the settler's family.

2.9 *The Ministry stated (May 2013) that in Mumbai & Gujarat, Bombay Public Trust Act, 1980 ensure that no amount can go back to any founder etc because properties are transferred with the permission of the Charity Commissioner only to other Trusts having similar objects. Thus inclusion of dissolution clause in the deed is neither necessary nor legal in States where specific legislation bars such reversion.*

2.10 *Audit is of the view that clauses in local legislation applicable to particular States do not cover across the country. Further, procedures prescribed in other Acts cannot be enforced under Income Tax Act which does not specify the fate of assets and properties generated out of public monies by Trusts exempted from tax. The Ministry has not highlighted the number of cases where the Charity Commissioner has taken action to revert the assets to other Trusts having similar objects. Therefore, the Ministry should insist upon inclusion of 'Dissolution Clause' in the Trust deed in all the States whether local legislation exists or not.*

From the above, it is clear that the CAG objection was to the fact that the Department was not complying with the Manual of Office Procedure, and not on any legal basis.

It may also be noted that the Ministry of Finance that in Mumbai and Gujarat, the inclusion of dissolution clause is neither necessary nor legal, since specific legislation bars such reversion.

3. It may be noted that the legal position in this regard has been laid down by the Supreme Court in CIT vs. S. Raghbir Singh (1965) 57 ITR 408, where it has held that if there is no provision in the trust deed to revoke/and or retransfer or right to resume, than such a trust cannot be considered as revocable. Therefore, what needs to be examined is the existence of a revocable clause, and not the absence of an irrevocable clause.

Further, in Controller of Estate Duty, Vidharbha vs. Smt. Mangala (1983) 143 ITR 491 (Bom), it has been held that a public charitable trust cannot be revoked or dissolved



and is irrevocable even if the Trust Deed provides a power to revoke the Trust. The following extract from the judgement needs to be noted:

"There is unanimity in the view that in the case of a charitable endowment or trust once the dedication is completed there is no power of revocation left with the settlors. Even though in a given case the settlor has reserved the power to revoke the trust, in our view such a reservation would be wholly invalid and the power cannot be invoked so as to undo the settlement."

4. Various High Courts have held that inclusion of express dissolution clause in the trust deed is not essential for grant of registration, in the following cases:

Geeta Lalwani Foundation v. DIT, 2018 (7), TMI 2053 Bombay HC

CIT(E) vs. Setco Foundation, 2019(2) TMI 532- Bombay.

CIT v. Tapagachha Sangh Mota, TS-251-HC-2015 (Guj)

CIT v. Shree Durga Mata Mandir, 2020 (3) TMI 501 – Punjab & Haryana HC

CIT(E) v. Shri Narsinghji Ka Mandir, 2019-TIOL-2110-HC-RAJ-IT

5. Under section 55 of the Maharashtra Public Trust Act 1950, if the original objects of the Trust cannot be fulfilled for any reason, the Charity Commissioner may direct the property or income of the trust or any portion thereof to be applied cypres to any other charitable objects but the trust cannot be revoked or dissolved.

Even in other States, a trust can spend its income or assets only on its objects in accordance with the Trust Deed, and cannot distribute these to its settlor or beneficiaries.

6. Under section 78 of the Indian Trusts Act 1882, a trust created otherwise than by Will can be revoked only where the beneficiaries who are competent to contract give their consent. In the case of a charitable trust, the beneficiaries being the general public, it is impossible to obtain the consent of each and every beneficiary.
7. Besides, no such demands were made when the initial registration of the trusts were granted or when there were previous renewals of registration, even where there has been no change in the Trust Deed since then.

An insertion of a clause in the Trust Deed that the trust is irrevocable would amount to an amendment of the trust deed and cannot be done without an application to the Court. If such



applications have to be made throughout the country by all public charitable trusts, it would create a huge burden on the Courts throughout the country.

Having regard to the matters explained above, it will be seen that the insertion of an irrevocable clause in the trust deed of a public charitable trust is unnecessary, and that a requirement that such insertion should be made by all public charitable trusts throughout the country would create a huge burden on the judicial system.

Besides, rejection of registration renewal of such trusts would also create unnecessary litigation, and cause upheaval in the functioning of a large number of established and renowned charitable trusts.

It is therefore respectfully requested that directions be generally issued that a public charitable trust, applying for re-registration on expiry of the initial period for which registration was granted, need not have a clause in the trust deed to be considered as irrevocable, but that the concerned officer should examine the trust deed and other documents submitted to determine whether despite there being no such clause, the trust can be considered as irrevocable.

For Bombay Chartered Accountants' Society

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