

Amendment proposed in Finance Bill 2007 affecting NGOs.

Section 12A

Section 12A of the Income Tax act provides that in order to claim exemption of income under section 11 and 12 of the act, a charitable or religious trust or institution is should make an application for registration of the trust/institution in the prescribed form and in the prescribed manner to the Commissioner of Income tax before the expiry of a period of one year from the date of creation of trust or the establishment of the institution.

Where such application is made after the expiry of the aforesaid period, the provisions of the sections 11 and 12 shall apply in relation to the income from the date of creation of trust if the Commissioner is, for reasons to be recorded in writing, satisfied that the person in receipt of the income was prevented from making the application before the expiry of the aforesaid for sufficient reasons.

Amendment

As per the amended section 12A of the finance bill 2007, in respect of applications filed on or after 1.06.2007, the provisions of section 11 and 12 shall apply from the assessment year relevant to the financial year in which application is made. Trust or Institution will no longer be required to file an application for registration within one year from the date of creation or establishment. Consequently, commissioner power to condone delay in filing of application within one year to grant registration for past years is also removed.

Condition for charitable or religious trusts or institutions to file for registration within one year of creation of trust has been proposed to be removed.

Analysis:-

This amendment in section 12A simplifies the procedural requirement for registration of trust and puts onus of availing exemption of Income from Income Tax department on charitable organisation and institution. If organisations are desirous of availing income tax exemption then they will necessarily have to file application of registration under section 11 and 12 from the year they will wish to avail exemption. They will not be entitled to avail retrospective exemption of income of income tax after satisfying Commissioner of Income tax. The discretionary power of Commissioner of Income Tax regarding condonation of delay in filing of application is also curtailed from giving arbitrary decisions.



10(23C)

Section 10(23C) (iv) provides for exemption of income of certain funds or institution established for charitable purposes from income tax if it is notified by the Central government in the official Gazette, likewise section 10(23C) (v) provides that income of trusts or institution wholly for public religious purposes or wholly for public religious and charitable purposes is exempt if notified by the Central Government in the official Gazette.

Amendment

The power of notification by the Central Government has been substituted by the power of approval by prescribed authority. Henceforth, the exemption will be available to the institution or funds if they are approved by the prescribed authority.

Analysis

Procedural benefit is expected as it may shorten the time period of making application to the authorities and obtaining subsequent grant of approval. Currently this procedure takes time as it has to be notified in the official gazette, whereas now approval by prescribed authority may satisfy the eligibility requirement for receiving exemption.

80(G)

Section 80G (5) (vi) provides for deduction in respect of donation to certain fund or institution from the taxable income of donors if the fund or institution is approved by the Commissioner of Income Tax. Currently there lies no procedure for appeal against the order of the Commissioner rejecting the approval of institution or fund for deduction purpose.

Amendment

Section 253 of the Income Tax Act has been amended to allow an appeal to be filed against such orders of Commissioner before the Appellate Tribunal.

Analysis

Relief to charitable organisations or institutions from any unjust order of the Commissioner of Income Tax rejecting approval of funds or institution for receiving donation for deduction purposes to donors.



CONCLUSION

Voluntary Action Network India (VANI) along with Financial Management Services Foundation (FMSF) had organised a workshop and based on the recommendations of the participants had submitted a pre-budget memorandum on 12th January 2007 to the government. We had requested the government to simplify sections 12A, 80G, and 10(23) (C) of the Income Tax Act for better compliance by NGOs. A copy of the memorandum submitted to the government was sent to all our members and other stakeholders of the voluntary sector. It may also be recalled that the pre-budget workshop was attended by leading voluntary sector organisations and leading chartered accountants and they had helped us in preparing the memorandum. It is also noteworthy that the Finance Bill 2007 has touched upon some of the aspects that we had requested for, making the above mentioned sections procedurally user- friendly and unambiguous.

It may also be noted that the government is planning to amend the Income Tax Act (likely to be introduced in the Parliament in early part of 2008, and to be effective from 1st April 2008). VANI has already begun working closely with all stakeholders to provide the government adequate reasons to simply the tax regime for voluntary sector.

