

NGOs RECEIVING MORE THAN ONE CRORE RUPEES FROM GOVERNMENT FALL UNDER RTI

In a landmark judgement, recently, the State Information Commission (SIC) ruled that all "substantially" financed NGOs (receiving over Rs 1 crore from State or Central Government grants) are public authority under the Right to Information (RTI) Act 2005 and must make their annual 'income and expenditures' public.

It may be noted that, RTI is applicable to all "Public Authority" as defined under section 2(h)(d)(ii) of the RTI Act. NGOs are also included provided they are substantially funded by the Government. The definition of "Public Authority" is as under :

"public authority" means any authority or body or institution of self- government established or constituted—

- (a) by or under the Constitution;
- (b) by any other law made by Parliament;
- (c) by any other law made by State Legislature;
- (d) by notification issued or order made by the appropriate Government, and includes any—
 - (i) body owned, controlled or substantially financed;
 - (ii) non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government;

However, the Act did not define the phrase 'substantially financed'. This significant order of the SIC clarifies the financial limit of falling in the category of a "Public Authority". The order also states that in cases where the state gives not so substantial grants (Rs 25 lakh or less) to NGOs, the state or a government agency will be appointed as public authority, which will be required to provide information.

It also added that NGOs that have been raising funds from public contributions should voluntarily place maximum information regarding their activities on the web, which should include Constitution, bylaws, rules and regulations, annual income and expenditure and nature of works undertaken or completed.

"If an NGO is not substantially financed by the government and also raises funds by collections from public contributions and it performs functions of a public nature that are ordinarily performed by the government or its agency, it is desirable that the NGO voluntarily place maximum information regarding its activities on its website," the order said.

Source : The Indian Express, dt. 08.12.2012

NGOs CANNOT RECEIVE MORE THAN ₹ 10,000 IN CASH AS DONATION UNDER SECTION 80G

It may be noted that w.e.f. 1st April, 2012 (Assessment year 2013-14) an NGO cannot receive donation of any sum exceeding ten thousand rupees in cash for the purposes of section 80G of the Income Tax, 1961. It is noteworthy to mention that section 80G provides tax benefits to the donors making donation in India. The donors will not get any tax benefit for donation in excess of ₹ 10,000 unless such sum is paid by any mode other than cash.

A new clause has been added to sub-section (5C) of Section 80G of the Income Tax, 1961. As per the new sub-section (5D) to Section 80G, any payment exceeding a sum of ten thousand rupees shall only be allowed as a deduction if such sum is paid by any mode other than cash.

These amendments will take effect from 1st April, 2013 and will, accordingly, apply in relation to assessment year 2013-14 and subsequent assessment years.

Amendment of section 80G vide finance Bill 2012 dated 16.03.2012

27. In section 80G of the Income-tax Act, after sub-section (5C), the following sub-section shall be inserted with effect from the 1st day of April, 2013, namely:—

“(5D) No deduction shall be allowed under this section in respect of donation of any sum exceeding ten thousand rupees unless such sum is paid by any mode other than cash.”

It may be noted that the ₹ 10,000 limit application shall be per year per donor. In other words, a single donor cannot give more than ₹ 10,000 in cash in the entire year.

BEWARE OF FCRA EVEN WHEN YOU RECEIVE FUNDS FROM INDIAN COMPANIES

It may be noted that as per the Foreign Contribution Regulation Act, 2010 (FCRA) even Indian companies will be treated as a foreign source as per section 2(j)(vi) if more than 50% of the share capital of the company is held by foreign citizens or foreign institutions.

NGOs should be careful in receiving grant from Indian companies. In recent times many Indian Companies provide grant to NGOs under their Corporate Social Responsibility (CSR) initiatives. An Indian company (registered in India) can be treated as a foreign source if more than 50% of the share capital of the company is held by foreign citizens or foreign institutions.

Therefore, whenever grants are received from Indian companies, it is advisable that a declaration should be taken regarding the share holding pattern and it should be ensured that the majority share holding is with Indian share holders. NGOs may also check the website of Bombay Stock Exchange or National Stock Exchange for the share holding pattern of the listed companies.

If grants are received from companies where more than 50% of the share capital is held by foreign citizens or foreign institutions, then such grant should be received in the FC designated bank account.