

Chapter 4: Accumulations and Foreign Contributions

ITD allowed irregularly exemptions u/s 11(2) to 120 Trusts involving tax effect of ₹ 106.10 crore for the surpluses accumulated without submitting Form 10 /details of investments made in specified modes to the AO.

Non-monitoring of accumulations of income of Trusts

4.1 Audit manual of ITD prescribes²¹ that separate registers have to be maintained in respect of accumulation of income, forms of investment and subsequent application of accumulation of income by Trusts. Besides, CBDT²² has also prescribed that such register be maintained by AO for keeping a record of such accumulations of income and for monitoring utilization of such funds.

4.2 We noticed 120 cases involving tax effect of ₹ 106.10 crore where Trusts were availing exemptions u/s 11(2) even in scrutiny cases for accumulated amounts without filing Form 10 or filing it belatedly. Details of investments and amounts accumulated in the last 11 years were not in the Schedules I and K specified in the returns. ITD did not monitor accumulation of income, forms of investment in specified mode and subsequent application of accumulation after specified period as the registers were not maintained properly and updated (see Box 4.1).

Box 4.1: Illustrative Case

In Kerala, CIT Trissur, **Guruvayur Devasom Board**, during AY 09 and AY 10, received hundi collections and donations as demand draft amounting to ₹ 24.64 crore and ₹ 29.21 crore respectively which were credited to the capital fund instead of considering the same as 'income from property held under the trust'. As Form No 10 required to be filed u/s 11(2)(a), was not filed for accumulation of income, it has to be assessed, which involved tax effect of ₹ 21.46 crore.

The Ministry stated (May 2013) that the case is under examination.

4.3 *The Ministry stated (May 2013) that the Audit has pointed out lapses in implementation by AOs. These will be looked into. However, e-filing of ITR-7 will strengthen the monitoring mechanism for accumulations. The Ministry also stated (May 2013) that the mechanism in the form of appropriate column in ITR-7 and prescription for maintenance of register by AOs to monitor accumulation as per page 61 of Office Manual already exists. In scrutiny assessments, the AOs are examining this aspect. However, the mechanism can be strengthened by introducing e-filing of ITR-7 which will enable online maintenance of register. The ITD is in the process of making the e-filing of Returns by all assesseees mandatory. Once this is achieved, the necessary data base will be created in the system to address such issues.*

²¹ Para 8.3 of Chapter 5 of the Manual of Procedure Volume II

²² Circular No.273 dated 03/06/1980

4.4 *Audit is of the view that according to the scheme of Act, filing of Form 10 is to be made before completion of assessment (summary/scrutiny) and is mandatory in nature. AO should scrutinize all the Forms 10 and mistakes like ITR-7 filed without Form 10, incomplete Form 10 without necessary schedule 'I' & 'K', purpose of accumulation and investment made in non-specified mode etc may easily be tracked down prima facie. It would also ensure that only those assessee's claims are accepted (either summary or scrutiny assessment) who have fulfilled all the requirements of the Form 10. The Ministry may issue necessary instructions in this regard.*

ITD did not tax accumulations of 23 Trusts after specified period involving tax effect of ₹ 100.07 crore.

Non taxation of short application of income/accumulations after specified period

4.5 Section 11(1) and (2) of Act provides that if the Trust is unable to apply at least 85 per cent of its income or does not opt for accumulation the portion of the income which could not be applied, it will become chargeable to tax. Section 11(3)(c) of Act provides that, if any income accumulated for specific purpose(s) of Trust is not applied for purposes for which it is so accumulated or set apart during the period of five years, it will become chargeable to tax in the following year at the expiry of five years.

4.6 We noticed that in 23 cases involving tax effect of ₹ 100.07 crore, AOs did not monitor accumulated income to be taxed after specified period (see Box 4.2).

Box 4.2: Illustrative Case

In DIT-E, Mumbai, **Chief Minister's Relief Fund** approved u/s 10 (23C) (iv), was allowed surplus of ₹ 21.90 crore as exempt for AY 10 without following the procedures of accumulation under provisos in Act. The assessee had accumulations of ₹ 247.28 crore as on 31 March 2009 which were not utilized and as such were to be taxed. However, AO did not monitor period of accumulations and the accumulations due to be taxed after five years were not taxed. Therefore, non-taxing of accumulations of ₹ 269.18 crore resulted in under-assessment with a tax effect of ₹ 91.49 crore.

The Ministry accepted (May 2013) audit observation and initiated remedial action.

4.7 *The Ministry stated (May 2013) that the Audit pointed out lapses in implementation by AOs and agreed to look into the matter.*

4.8 *Audit is of the view that the Ministry needs to evolve effective monitoring system to check escapement of tax on accumulations remained unutilized after prescribed time limit of five years.*

ITD allowed irregularly exemptions to 5 Trusts involving tax effect of ₹ 43.35 crore for accumulations invested in non specified modes.

Irregular exemption for investment not made in specified mode

4.9 Exemption under section 11 and 12 is not allowed for accumulated funds if not invested in specified modes prescribed under section 11(5) of Act.

4.10 We noticed that ITD allowed exemption in five cases involving tax effect of ₹ 43.35 crore where investments were not made in specified mode (see Box 4.3).

Box 4.3: Illustrative Case

In Tamil Nadu, DIT-E, Chennai, AO allowed exemption of ₹ 247.95 crore to **National Institute of Ocean Technology** in AY 08. The assessee deposited ₹ 186.85 crore in bank and claimed it as expenditure in Receipt & Payment Account. Moreover, assessee did not submit notice in Form 10. AO should not have allowed it as investment in specified mode. It resulted in irregular exemption involving tax effect of ₹ 42.68 crore.

4.11 *The Ministry stated (May 2013) that all cases will be examined for applicability on facts.*

4.12 *Audit is of the view that the Ministry, besides examination of the cases, needs to evolve effective monitoring system to check escapement of tax on investments made in unspecified mode.*

As per MHA web site, NGOs/Trusts received Foreign Contributions (FCs) ₹ 10,338 crore during FY 10 and MHA monitors it under FCRA, 1976. CBDT has not issued any guidelines/circulars to watch FCs received with specific directions and utilized for the purpose for which it was received.

Non Monitoring of FCs received by Trusts and NGOs

4.13 Non Government Organizations (NGOs)/Trusts receive FCs from time to time governed by Foreign Contributions Regulations Act (FCRA) 1976, amended by FCRA, 2010. The Ministry of Home Affairs (MHA) monitors receipt of FC and publishes it on its official website²³ showing year-wise/state-wise details of Associations/Trusts that received FC above ₹ 1 crore. FCRA envisages registration of recipient of FCs with MHA. FCRA also stipulates maintenance of separate account in a designated bank for the FCs received and the purpose of its receipt in the accounts. The returns have to be submitted annually to MHA.

4.14 As per MHA website, 21,508 Associations reported receipts of FCs amounting to ₹ 10,338 crore during the FY 10 for which CBDT has not issued any circular/guidelines. ITD has not ascertained the details viz. whether the voluntary donations/contributions received with any specific direction or whether it will form part of corpus fund and the same has been utilized for the purpose for which it was received and not used for any activities which are detrimental to national interest.

ITD has not prescribed any column in the ITR form (ITR-7) for FCs to enable AOs in proper assessment.

Inconsistency in form of return

4.15 We noticed that there is no column available in form of IT return (ITR-7) to capture the figure relating to FCs/donations received by Trusts. This would enable AOs in proper assessment (see Box 4.4).

²³ <http://mha.nic.in/fcra.htm>

Box 4.4: Illustrative Cases

In Gujarat, DIT-E, Ahmadabad, ITD did not select for scrutiny of 73 assessee Trusts who received FCs amounting to ₹ 272.35 crore during AY 08 to AY 10.

4.16 *The Ministry stated (May 2013) that in ITR-7 prescribed for AY 13 a separate column has been introduced for mentioning FCRA registration details and amount of FC received. Trusts which had received FCs during AY 08 to AY 10, were not selected for scrutiny since there were no CBDT guidelines for selection of the same in those relevant years. However, for AY 12 the cases which have received FCs above ₹ 1 crore have been selected for scrutiny.*

FCs not utilized for the purpose

4.17 In DIT-E, Mumbai, we noticed diversion of funds by two Trusts²⁴ and institutions, who received FCs to the extent of ₹ 97.14 crore during AY 09 & AY 10 found to be differing in purpose of donation and its utilization. In DIT-E, Chennai, in 4 cases, FCs was utilized for other purposes resulting in the tax effect ₹ 6.18 crore. In one case in CIT Trichy and in one case in CIT Madurai, the amount received as FC was not utilized for the purpose.

4.18 *The Ministry stated (May 2013) that eight cases mentioned in this para are being examined.*

4.19 *Audit is of view that the Ministry, besides examining the cases, may ensure that FC have been spent for the purpose for which these had been received and unspent amount is taxed as per Law.*

4.20 *The Ministry further stated (July 2013) that ITD can only verify whether the funds received have been used for the purpose of Trust and only in those cases which are selected for scrutiny.*

4.21 *Audit is of the view that CBDT in March 2012 had itself recommended on the issue of Black Money to the Ministry of Finance that there should be sharing of real-time data under FCRA Act and DGIT (Exemption) and coordination amongst various enforcement agencies. As bulk of the returns of Trusts are processed in summary only, therefore, ITD should devise a mechanism to facilitate effective monitoring including summary cases also.*

FCs mingled with the local funds

4.22 As per the provision of FCRA, the amount received from foreign donors should be kept in a designated bank account separately and should not be mingled with local funds. However, in following two cases, no separate accounts were maintained for FCs received in Chennai.

- a. In Chennai, Exemption Circle II, the **Diocese of Chengalput Educational Society** had closing balance ₹ 59.03 lakh as at the end of FY 06, which was deposited in 8% Bond along with the local contributions of ₹ 34.09 crore.

²⁴ "Pratham – Mumbai Education Initiative (AY 10) and World Renewal Spiritual Trust (AY 09 & AY 10)

- b. In Chennai, Exemption Circle I V, **Aide-et-action**, an NGO, approved u/s 12AA, was in receipt of ₹ 15.28 crore and ₹ 11.71 crore as FC for AY 08 and AY 09. The assessee was also in receipt of ₹ 76.19 lakh and ₹ 1.81 crore as local donation. Assessee did not maintain separate books of accounts as stipulated in Act.

4.23 *The Ministry stated (May 2013) that as far as Act is concerned, it is irrelevant whether the FCs and local funds are mixed by the assessee in same bank account. The only important issue is whether the funds received are towards corpus or otherwise and whether the funds are applied or accumulated as per the provisions of Act. Any violation of provisions of FCRA would be looked into by MHA where the assessee is required to file annual return.*

4.24 *Ministry's stand is not acceptable. This provision of FCRA does not contradict the Act. As per section 17 (1) of FCRA Act (2010), every person who has been granted a certificate or given prior permission u/s 12 shall receive FC in a single account only through such one of the branches of a bank as he may specify in his application for grant of certificate. Furthermore, its 2nd proviso says that no funds other than FC shall be received or deposited in such account. It is clear from the above that an assessee receiving FCs is bound to maintain separate account for FCs and cannot mingle it with locally received funds. Further, in the absence of separate account, the Ministry would not be able to ensure that FCs (Corpus Fund) have been utilized for the purpose for which it was received.*

4.25 *The Ministry stated (July 2013) that there is no provision under Act that Trust can be denied exemption on FCs if mixed with the local funds. Violation of the provisions of FCRA may attract penalty under FCRA but not under Act as per the existing provisions.*

4.26 *Audit is of the view that the Ministry may bring suitable amendment in Act or issue instructions regarding maintenance of separate accounts for FCs and local funds as provided in the FCRA Act for proper monitoring of FCs and local funds.*

Recommendations

4.27 We recommend that

- a. ITD should monitor accumulations of income by Trusts that are used in specified mode, specified time and for specific purposes. Prescribed registers should be maintained and updated strictly to watch accumulations and this database should also be computerized and available to the AOs while finalizing assessments.

The Ministry stated (May 2013 and July 2013) that introduction of e-filing of ITR-7 will enable online maintenance of the register by AOs, process of which is going on. The Ministry also stated that the mechanism in the form of appropriate column in ITR-7 and prescription for maintenance of register by AOs to monitor accumulation as per page 61 of Office Manual already exists. In scrutiny assessments, the AOs are examining this aspect.

Audit is of the view that according to the scheme of Act, filing of Form 10 is to be made before completion of assessment and is mandatory in nature. So it has nothing to do with summary or scrutiny assessment. AOs should scrutinize all the Forms 10.

- b.** ITD may ensure that all the stipulated conditions are fulfilled before granting exemptions u/s 11(2) on the basis of Form 10 required to be filed by assessee before filing of returns.

The Ministry stated (May 2013) that AOs examine this aspect during scrutiny. The Ministry further stated (July 2013) that the declaration in Form 10 is considered at the time of scrutiny of the case. AOs examine whether or not the stipulated conditions are fulfilled for granting exemption u/s 11(2) during the course of scrutiny proceedings.

Audit is of the view that the Ministry should introduce e-filing and auto processing of Form 10 in respect of all the Trust cases whether under scrutiny or summary. It will ensure proper monitoring of accumulations made by Trusts, whether covered under summary or scrutiny.

- c.** ITD may ensure that FC cases are selected for scrutiny as per guidelines issued by CBDT.

The Ministry agreed (May 2013) to select FC cases in scrutiny as per guidelines. The Ministry further stated (July 2013) that guidelines for compulsory selection for scrutiny for last year laid down that the returns of organizations receiving donations in foreign currency in excess of ₹1 crore would be taken up for scrutiny. Placing such parameters may be examined this year also while finalizing the scrutiny guidelines for the current year.