

AMENDING TRUST DEED

POWERS OF CIT

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CAN CIT REJECT REGISTRATION IF SOME CLAUSES ARE MISSING



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INTRODUCTION

- 1.01** Registration under Section 12AB of the Income-tax Act, 1961, is the gateway for charitable and religious institutions to claim exemption on income applied to charitable purposes. However, the registration process is often accompanied by technical objections raised by the authorities. One recurring objection relates to the absence of explicit Dissolution or Irrevocability Clauses in the trust deed. While these clauses are desirable, the core legal issue is whether their omission, *by itself*, can justify refusal of registration.
- 1.02** The statute requires the Commissioner to examine two factors: (i) the genuineness of activities, and (ii) compliance with other laws. It does not, however, mandate the incorporation of specific drafting clauses. This issue has repeatedly been addressed in appellate forums, where courts and tribunals have clarified that technical drafting deficiencies cannot override the substantive charitable nature of an institution.
- 1.03** The Commissioner's inquiry is limited to assessing whether the trust is genuinely constituted for charitable purposes, whether the trust property is irrevocably dedicated for those purposes, and whether the trustees have any power to divert property or income for non-charitable purposes. The inquiry also considers whether the deed contains any provisions that confer undue benefit to the trustees. The CIT does not have the mandate to suggest or insist upon new clauses; the role is confined to evaluating the legal validity of the trust deed, which may or may not explicitly contain all recommended clauses.

DISSOLUTION CLAUSE: SCOPE AND PURPOSE

- 2.01** A dissolution clause typically provides that, upon winding up and after discharge of liabilities, the trust's assets shall not be distributed among trustees, settlor, or private individuals. Instead, the residue must be transferred to another entity with similar charitable objects, duly registered under Section 12AB of the Income-tax Act. The

rationale is to:

- ensure continuity of charitable purpose,
- prevent private appropriation, and
- maintain compliance with the statutory regime.

IRREVOCABILITY CLAUSE: ENSURING PERPETUITY

3.01 The irrevocability clause affirms that once a trust is constituted, it is permanent and cannot be revoked by the settlor or trustees. It prohibits withdrawal or diversion of funds for non-charitable purposes. The clause protects the settlor's intent, provides comfort to donors, and assures authorities that the dedication to charitable purposes is perpetual.

THE LEGAL ISSUE UNDER SECTION 12AB

4.01 In practice, Commissioners have sometimes denied registration under Section 12AB on the ground that the deed lacks explicit Dissolution or Irrevocability Clauses. The pivotal issue is whether such omission, without more, is fatal to registration.

4.02 The correct legal approach is that the Commissioner must examine the *presence of any enabling clause* permitting revocation or diversion of property for non-charitable purposes. The Commissioner's role is not to reject an application merely because the deed is silent on protective clauses, but to test whether any provision undermines the permanent and irrevocable character of the dedication to charitable or religious purposes.

STATUTORY SAFEGUARDS

5.01 **Section 115TD (Exit Tax):** Inserted by the Finance Act 2016, Section 115TD imposes tax on accreted income where a charitable institution is converted, merged, or dissolved in a manner prejudicial to its charitable character. This creates a statutory lock, ensuring assets remain within the charitable framework.

5.02 Section 92 of the Code of Civil Procedure: Even in the absence of explicit protective clauses, statutory law ensures that charitable property cannot be misapplied. Section 92 of the Code of Civil Procedure, 1908, empowers civil courts to protect public trust property against mismanagement, diversion, or breach of trust. Similarly, provisions of the Indian Trusts Act and general equitable doctrines prevent trustees from applying trust assets to private ends. Thus, even where a trust deed is silent, statutory and civil remedies guarantee that charitable assets cannot be privately appropriated or diverted.

Accordingly, the Commissioner's scrutiny must remain confined to identifying whether the deed contains any enabling provision for diversion, and cannot be extended to insistence on protective clauses already secured by statute.

ORAL TRUSTS AND RULE 17A(2)(B): ANOMALY IN DRAFTING OBJECTIONS

6.01 It may also be noted that Indian law recognises oral trusts. Rule 17A(2)(b) of the Income-tax Rules permits registration even where no formal instrument exists, provided other evidence of creation is available. If registration can be granted to an oral trust that, by its very nature, lacks written clauses of dissolution or irrevocability, it would be inconsistent to insist that written trusts must contain such clauses. Hence, the Commissioner cannot impose a higher drafting standard for written deeds than the law itself requires for oral trusts.

JUDICIAL PRECEDENTS

7.01 Judicial forums have consistently stressed that the focus must remain on the charitable dedication of property and the genuineness of activities, rather than on technical drafting lapses. Courts and tribunals have applied the doctrine of substance over form, holding that the absence of clauses does not defeat charitable intent, unless the deed expressly authorises private benefit.

7.02 Tribunal Rulings: Several ITAT benches have consistently held that omission of a dissolution or irrevocability clause is not, by itself, a valid ground for refusal of registration:

- *Kamla Nevatia Charitable Trust v. DIT (Exemption)* [IT Appeal No. 3574 (Mum.) of 2013] : Absence of dissolution clause not fatal.
- *Radisson India Charitable Foundation v. ITO (Exemption)* [2025] 171 taxmann.com 845 (Delhi – Trib.): Omission of dissolution clause and fate of assets cannot justify denial.
- *Padmavati Foundation v. CIT (Exemption)* [IT Appeal No. 1837 (Kol.) of 2024] : Absence of clauses did not invalidate charitable character.
- *Tara Education & Charitable Trust v. DIT (Exemption)* [IT Appeal No. 1247 (Mum.) of 2013] : Refusal unsustainable when activities were genuine.
- *Shri Agarwal Panchayat v. ITO* [2017] 88 taxmann.com 370 (Jodh. - Trib.): Registration under Section 12A cannot be denied merely for absence of a dissolution clause.
- *Women & Child Welfare Foundation v. DIT (Exemption)* [IT Appeal No. 4747 (Mum.) of 2013] : Omission treated as curable; opportunity to amend should be granted.

7.03 High Court Ruling:

- *CIT (Exemptions) v. Shri Narshinghi Ka Mandir* [2020] 119 taxmann.com 476/274 Taxman 446 (Raj.): Absence of dissolution clause did not endanger charitable property; safeguards under CPC Sections 91–92 suffice.
- *DIT (Exemption) v. Rampurji Gaushala Sewa Trust* [2014] 45 taxmann.com 383/224 Taxman 30 (Guj.) (Mag.) : For Section 80G approval, no dissolution clause is mandated if charitable character is otherwise clear.

7.04 Supreme Court Guidance: While the Supreme Court has not directly ruled on the absence of such clauses, related jurisprudence is instructive:

- *CIT v. Palghat Shadi Mahal Trust* [2002] 120 Taxman 889/254 ITR 212 (SC): Charitable property dedicated by settlor cannot be altered beyond intent.

- *CIT (Exemptions) v. Paramount Charity Trust* [2019] 103 taxmann.com 419/262 Taxman 164 (SC): Clarificatory amendments aligned with original charitable intent are valid; technical omissions alone are not decisive.

PRINCIPLES EMERGING

8.01 From statutory provisions and case law, the following principles emerge:

- Substance over Form** : Absence of dissolution or irrevocability clause is not fatal if deed dedicates property exclusively to charitable purposes and contains no enabling provision for private diversion.
- Curable Defect Doctrine** : The omission of dissolution or irrevocability clauses is at best a curable defect. Commissioners may invite trustees to file supplementary declarations or affidavits clarifying the irrevocable nature of the trust. However, such annexures operate only to explain and cannot amend or override the original deed. The decisive question remains whether the deed contains any positive power enabling diversion of property for non-charitable ends.
- Statutory Backstops** : Section 115TD (exit tax) and Section 92 CPC (civil control) already safeguard against misuse, reducing the need for mandatory clauses.
- Grounds for Denial** : Refusal is justified only where the deed affirmatively authorises diversion of income/property for private or non-charitable purposes.

SUPPLEMENTARY DEEDS AND AFFIDAVITS

9.01 A recurring question is whether omission of such clauses can be cured through supplementary or clarificatory instruments, and if so, to what extent. The settled position in trust law is that a trust deed, once executed, cannot ordinarily be amended

to alter or delete its original objects, since the dedication of property to charity is permanent.

- 9.02** The Supreme Court in *CIT v. Kamla Town* [1996] 84 Taxman 248/217 ITR 699 (SC) observed that even a civil court does not have inherent power to amend a trust deed. However, an application may be made under Section 26 of the Specific Relief Act, 1963, where an amendment becomes necessary to give effect to the original intent of the settlor, in line with the doctrine of *cy pres*. Thus, while the original trust deed prevails, trustees may execute supplementary or clarificatory declarations, in the form of affidavits or supplementary deeds, to remove ambiguity, provided such clarifications do not go beyond the original scope and mandate of the trust.
- 9.03** Accordingly, if the deed is merely silent on dissolution or irrevocability, the trustees can be required to execute a supplementary deed clarifying these aspects. However, where the original deed empowers trustees to distribute assets for non-charitable purposes, no supplementary deed can cure the defect, as that would alter the foundational character of the trust.
- 9.04** Judicial authorities have recognised this principle. In *Laxmi Narain Lath Trust v. CIT* [1998] 99 Taxman 332/[2000] 244 ITR 272 (Raj.), the Rajasthan High Court held that a supplementary deed permitted by the civil court was legally valid and binding on the department. Similarly, in *Paramount Charity Trust (supra)*, the Supreme Court upheld a High Court ruling that registration could not be denied where the amended objects, clarifying the running of a diagnostic centre on a no-profit basis, remained within the broad charitable intent of the original deed.
- 9.05** At the same time, courts have cautioned against amendments that fundamentally alter or dilute the charitable purpose. In *Sakthi Charities v. CIT* [1984] 19 Taxman 100/149 ITR 624 (Mad.), the Madras High Court held that deletion of original objects through a rectification deed was invalid. Similarly, in the landmark decision of *Palghat Shadi Mahal Trust (supra)*, the Supreme Court invalidated a resolution extending the trust's scope from a particular community to all communities, since such alteration was not contemplated by the settlor.

- 9.06** Tribunal rulings have also reinforced this distinction. For instance, in *Satkrit Service Trust v. CIT* [2013] 40 taxmann.com 157/[2014] 61 SOT 46 (Chd. - Trib.) (URO)/*Vyapari Vyavasayi Ekopana Samithi Welfare Society v. CIT* [2013] 39 taxmann.com 147/[2014] 61 SOT 46 (Cochin - Trib.), it was held that execution of multiple deeds did not alter the charitable character of the trust, so long as the objects remained charitable.
- 9.07** In sum, supplementary deeds and affidavits are permissible to clarify ambiguities but cannot expand or rewrite the settlor's intent. This reinforces the principle that the charitable character of a trust flows from its original dedication, and technical omissions are curable, whereas substantive deviations are not.

CONCLUSION

- 10.01** The controversy surrounding the absence of Dissolution and Irrevocability Clauses in a trust deed has, over time, been addressed through a combination of statutory safeguards and judicial pronouncements. Section 12AB requires the Commissioner to ascertain the genuineness of activities and compliance with law; it does not mandate the presence of any particular drafting clause. Risks of misapplication or diversion of assets are already addressed by Section 115TD of the Act and Section 92 CPC, and the recognition of oral trusts under Rule 17A(2)(b) further demonstrates that insistence on express clauses is not a *sine qua non*.
- 1.02** Judicial authorities have consistently adopted the principle of substance over form, holding that omission of such clauses cannot, by itself, justify refusal of registration. The correct legal approach is therefore to determine whether the trust has been constituted solely and irrevocably for charitable or religious purposes and whether the deed contains any provision that affirmatively authorises diversion of property to private ends. Where the objects are charitable and the deed is silent on diversion, the absence of explicit clauses is a curable defect, for which supplementary clarifications may be sought. However, if the deed itself confers powers that undermine

charitable dedication, denial of registration is warranted, and no subsequent rectification can cure the defect.

10.03 Accordingly, the jurisprudence establishes a two-fold principle: (i) the absence of express Dissolution or Irrevocability Clauses does not vitiate the charitable character of a trust, and (ii) the decisive factor remains whether the property is effectively and exclusively vested for charitable purposes. Elevating technical omissions into substantive disqualifications is inconsistent with statutory intent, judicial authority, and the established principles of trust law.

10.04 Thus, the law recognises substance, safeguards against diversion, and permits clarificatory deeds. Registration under Section 12AB must therefore be guided by the charitable dedication of property, rather than by insistence on technical drafting formalities.

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