

NPO TAXATION

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REGISTRATION OF ORAL TRUST FORMED WITHOUT DEED



Standards & Norms

Resource support on NGO Governance, Accounting and Regulations



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INTRODUCTION

- 1.01** There are many old religious and charitable trust which do not have a formally registered trust deed. Such institutions find it difficult to get registration under section 12AB of the Income Tax Act, 1961 for availing tax exemptions. In this issue the procedure for obtaining registration under section 12AB for such trust has been discussed.
- 1.02** Article 19 of the Constitution of India guarantees the right to form associations, including establishing trusts for charitable and religious purposes. As a result, even an oral trust is eligible for registration under Section 12AB. However, the trust must provide supporting evidence and documents to demonstrate its authenticity.

DOCUMENTS TO BE SUBMITTED

- 2.01** Pursuant to Rule 17A of the Income-tax Rules, 1962, in cases where the applicant is created or established in a manner other than through an instrument, a self-certified copy of the document evidencing the creation or establishment of the applicant must be submitted along with the application in Form 10A or 10AB.

In cases where a trust has not been formally registered under any Act, the following documents may be submitted at the time of registration under section 12AB:

- (i) An affidavit executed before a magistrate declaring the facts and history of the trust;
- (ii) Revenue records relating to lands held by the trust;
- (iii) Orders relating to the assessment of property tax;
- (iv) Affidavits and declarations of citizens in support of the existence of the trust;
- (v) An activity report; and
- (vi) Financial statements, among other relevant documents.

REGISTRATION UNDER SECTION 12AB

- 3.01** A charitable trust created without any instrument can be registered under Section 12AB of the Income-tax Act. However, in order to apply for registration, a document

that verifies the creation of the trust must be submitted alongside the application form.

On March 26th, 2021, the Central Board of Direct Taxes (CBDT) announced the Income-tax (6th Amendment) Rules, 2021. These rules are effective from April 1st, 2021. The revised Rule 17A (Application for registration of charitable or religious trusts etc.) is that specific documents must accompany an application in Form No. 10A or 10AB.

where the applicant is created, or established, otherwise than under an instrument, self-certified copy of the document evidencing the creation or establishment of the applicant;

To summarise, although a trust formed without a formal instrument can be registered under the Income-tax Act. Still, certain documents must be submitted alongside the application form to verify the organisation's existence and purpose.

MEANING OF DOCUMENT EVIDENCING CREATION OF TRUST

4.01 The matter concerning the document that provides evidence of the establishment of the trust was raised in the case of *Laxminarayan Maharaj v. CIT [1984] 17 Taxman 80/150 ITR 465 (MP)*.

4.02 Facts: The petitioner, a public religious trust, which was created more than a hundred years back but not under any instrument or document, made an application under section 12A for registration of the trust and along with the application filed:

- (i) revenue records relating to lands held by the trust,
- (ii) orders relating to the assessment of property tax, and
- (iii) affidavits and declaration of citizens in support of the existence of the trust

The Commissioner rejected the petitioner's application on the ground that all these documents, though evidencing the existence of the trust, were not documents evidencing the creation of the trust so that the requirement of rule 17A was not satisfied.

4.03 Held: An analysis of section 12A(a) and rule 17A(a) shows that the fact to be established is the creation of trust and this fact is required to be established by producing constitutive and evidential documents. When the trust is created under an instrument, the rule requires the production of the constitutive document itself. When the trust is not created under an instrument, it is impossible to produce any constitutive document and, hence, the rule requires production of evidential documents. The evidential documents cannot be limited to documents which directly prove the creation of the trust; they will embrace all documents which afford a logical basis of inferring creation of the trust and all such documents can be described to be 'documents evidencing the creation of the trust' within the meaning of rule 17A(a).

In the instant case, it was apparent that the documents produced by the petitioner, though not directly evidencing the creation of the trust, afforded a logical basis for inferring the creation of the trust and could be described as documents evidencing the creation of the trust for the purposes of rule 17A.

The order of the Commissioner was, accordingly, quashed and he was directed to reconsider the petitioner's application in the light of the observations made above.

4.04 Therefore, in the aforementioned case, the Court opined that producing constitutive documents would be impossible if a trust was not established through an instrument. Therefore, Rule 17A required the production of evidential documents to establish the fact of the trust's creation. The Court held that the scope of evidential documents should not be limited to those that directly prove the creation of the trust but should include all documents that provide a logical basis for inferring the creation of the trust. Narrowly interpreting the phrase "documents evidencing the creation of the trust" would make it exceedingly challenging to register a trust that was not created under an instrument, which could not have been the intention of the rule.

ORAL TRUST WITHOUT EVIDENCE OF CREATION

5.01 The ITAT Delhi in the case of *Tsurphu Labrang v. DIT (Exemptions)* ITA Nos. 4941 of 2011 and 3061 of 2013, judgment dated 08-09-2015 held that Rule 17A itself

provides that the Institution/Trust doesn't need to be established under an instrument. Rule 17A does not prescribe that in case the Institution/Trust is established otherwise than under an instrument, what type of document evidencing the creation of the Trust or the establishment of the Institution, has to be filed, meaning thereby that the document evidencing the creation of Trust or the establishment of Institution could be of any type. As per the provisions of the Indian Trust Act, the Trust can be created even orally and if the assessee is able to give some evidence of the creation of such Trust by a word of mouth, the same shall be eligible for registration u/s 12AA/12A, provided such evidence is filed and the other conditions under the statute are satisfied.

The ITAT relied on the case *Laxminarayan Maharaj v. CIT* [1984] 17 Taxman 80/150 ITR 465 (MP), where the trust was created 100 years ago without any instrument of document. However, the revenue records relating to land held by the trust, orders relating to property tax and affidavits and declaration of citizens were in support of the existence of trust and were filed along with application for registration u/s 12A of the Act. The Commissioner of Income Tax rejected the application on the ground that though documents evidenced existence of trust but did not evidence the creation of the trust. Hon'ble Madhya Pradesh High Court held that the document accorded a logical basis for inferring the creation of the trust and the matter was remanded back to the Commissioner to reconsider the application of the trust in the light of the observations made by the Hon'ble High Court. The SLP against this decision of Hon'ble Madhya Pradesh High Court in *CIT v. Laxminarayan Maharaj* was dismissed by the Hon'ble Apex Court in 186 ITR 32 (St.)(SC).

- 5.02** The High Court of Gujarat in the case of *Principal CIT (Exemptions) v. Dawoodi Bohra Masjid* [2018] 90 taxmann.com 312 held that where assessee religious trust did not provide registered trust deed but proved factum of the existence of trust through all evidential documents, registration under section 12AA was to be granted. The Court relied on the precedent set by *Laxminarayan Maharaj v. CIT* [1984] 150 ITR 465/17 Taxman 80 (MP). The relevant extracts of the case are as under:

“From the materials on record, it can be seen that the Tribunal had gone through the registration details of the assessee-trust contained in the order of Wakf Board and was satisfied that full details of the functions of the trust were available which would establish the existence of the trust, its registration by the Gujarat State Wakf Board which also contained details of the objects of the trust, manner of appointment of Mutawalli etc. [Para 6]

Clause (a) of rule 17A requires that the application of registration under section 12A of a charitable or religious trust or institution would be accompanied by the following documents namely, where the trust is created or the institution is established, under an instrument, the instrument in original and where the trust is created or the institution is established, otherwise than under an instrument, the document evidencing the creation of the trust or the establishment of the institution. Rule 17A nowhere envisages the existence of a trust deed or its registration. The factum of existence of trust could also be established by producing documents evidencing the creation of the trust. This is precisely what has been done in the present case. The order passed by Wakf Board recognises various Daudi Vora trust and in case of present assessee also enlisted the objects of the trust, who would be the managers of the trust and how such managers would be appointed or removed. [Para 7]

If the trust is created under an instrument, rules require production of documents. However, when the trust is not created, it is impossible to produce any such documents. Hence, the rule requires production of evidential documents. [Para 8]”

- 5.03** The ITAT Chandigarh Bench ‘B’ in the case of *Temple Trust vs. Commissioner of Income-tax (Exemptions)* [2022] 142 taxmann.com 12 (Chandigarh - Trib.)/[2022] 196 IT...held that where assessee, an ancient temple, was acquired by State government under Himachal Pradesh Hindu Public Religious Institution and Charitable Endowment Act, 1984 and objects of assessee-temple and bye laws were directly

addressed in terms of provisions of Endowment Act, 1984, Commissioner (Exemption) could not deny registration under section 12AA merely on ground that there was no original trust deed available, as assessee was taken over to fulfil charitable activities in terms of preamble of Endowment Act, 1984.

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