

Educational Institutions Under Trust and its Taxation: A Critical Analysis

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ABSTRACT

Education plays a vital role in a person's life. To get a quality education that ensures greater success and opportunity, India has enormous number of educational institutions. In India, imparting education is a charity to society and cannot be claimed as a profit-making business or entity. Thus, it is required that educational institution must be registered as a Trust under the Income Tax Act, 1961. They face a lot of problems in filing their return and in preparation for IT return. An educational institution purchases any item such as furniture's or other accessories related to an educational institution which invites GST on it and thus it is another burden on the educational institution as the educational institution does not get input credit on tax. Therefore it also affects the small educational institution.

Keywords: *Income tax; IT return; Annual receipt; GST; Educational institution; Registration; Trust; Society.*

1.0 Introduction

Education plays a vital role in the person's life. To get quality education that ensures greater success and opportunity our country has enormous numbers of educational institutions. In India, imparting education is a charity to society and cannot be claimed as a profit making business or entity¹. Thus, it is required that educational institution must be registered as a Trust under the Indian Trust Act, 1882². Our Constitution also states that "The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the state may, by law, determine"³ which supports the charitable nature of the educational institutions.

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Thus, Section 2(15) of the act⁴ also elaborates the charitable purpose. In case of “Sole Trustee, *Lok Shikshana Trust vs. CIT*”⁵ the extended meaning of charitable purpose in respect of education has explained as the word “Education means training and developing the knowledge, skill, mind and character of students by normal schooling. Travelling also enhances knowledge, but that would not amount to education in the context of Section 2(15) of the act.”⁶ In India, laws relating to trust are very complex as every state has their own laws which regulate the institutions established as trust. In the same way, establishment of education institution under trust in a very lengthy process and its tax compliance make it more complex.

Though majority of educational institution are established under trust but there are certain others modes also through which an educational institution can be set up such as a society, company or in the name of sole proprietorship. Therefore in each case the method of taxation also differ from that of in trust. As per the Income Tax Act, there are certain exemptions given to charitable and religious trust or society under Section 10⁷ or under Section 80G⁸ subject to the conditions applied. Thus, according to the nature of the trust exemptions can be made applicable. In spite having huge number of exemptions given to educational institutions still they have a mentality of tax evasion and the reason for the same is still not known. There are certain areas that need to be discussed in order to restrict the tax evasion by educational institutions.

2.0 Literature Review

Ghosh (2016)⁹ in her article has focused on the taxation of the educational institutions registered under different form of business such as Sole Proprietorship, Hindu Undivided Family, Partnership, Trust/Society, Company. She has also tried to explain the term education in details taking note of definition provided under the act.¹⁰ She has also taken into reference of a landmark judgment of “*M/s Children Education Society vs. Deputy Commissioner of Income Tax*”¹¹ in which the court has tried to define the Section 10(23c)¹² and has explain the phrase “Any income received by any person on behalf of...” where any person means any educational institution receiving any kind of income that shall be taken into consideration for calculation of “annual receipt”. She has also pointed out the major aspect of education that is its charitable nature and what all problems educational institutions are facing due to the charitable nature. She has tried to explain the most of the possible point but when it comes to the charitable nature of the educational institution she has failed to compare the situation if education is for profit and not charity. What all benefits can be given to education sector as profit making entity in comparison with education sector under charity?

Rawat (2020)¹³ has mentioned about all possible exemptions given to a school registered under trust. His article is basically based on the schools registered under trust. He has also differentiated between the schools that are aided or unaided by the government and the provision regulating such institution and exemptions that can be availed by the government aided schools and private unaided schools. His article also contain a detail analysis of the minimum criteria that required to be fulfilled by the educational institution in order to claim exemption that is 85% of the income must be spend to the object for which such educational institution has been established. He has failed to point out these 85% criteria as a major problem for the tax evasion by educational institution and also it is difficult for the small institution to comply these criteria. Therefore, this article will help to find the practical aspect of the schools registered under trust and problem face by small educational institutions.

Devgun (2013)¹⁴ has tried to show the current scenario of the education sector. She has pointed out the an ongoing issue that education provided by a normal or government educational institutions and by high end educational institution having huge infrastructure, better amenities, and smart method of teaching such as smart class, digital board etc. so are these high end educational institution should be considered as commercial or under charity only. She has tried to overcome this issue with the help of the provisions laid down in the different acts in reference with education but has fail to take in not of landmark judicial proceedings which is serving as bridge between the debates of commercial or charity. Therefore, I will take up this issue with the help of certain judicial proceedings.

Gandhi (2019)¹⁵ has confined her research to private schools only. She has mentioned about difficulty faced by the private educational institution and has connected educational institution, its taxation and the Labour and Industrial laws. She has raised an issue that if schools are considered more charitable purpose than how come labour and industrial laws are applicable to charitable trust/society. Then she has also mentioned about normal and high end educational institution as commercial or charitable. But I will be referring her first part of research that is connection between labour law and education is charitable purpose. I will be referring the cases that have pronounced educational institutions as industry and will also point out why schools and college should be kept away from labour laws that was missing in her article.

Shivam (2020)¹⁶ found the common errors made by the assessee while filing the return or doing audit of the trust. He has mentioned about the misconception regarding Business Income, registration of education institution having less than 1 Cr. income does not required to be registered under Section 12AA¹⁷, donation received in the name of trust, applicability of the GST on course books, exemption of capital gain, etc. but

somehow he has failed to discuss the much about misconception regarding tax rate applicable to trust and the same will be discussed in paper.

Sharma (2020)¹⁸ has mentioned about applicability of the GST in educational sector. He has specifically mentioned about the exemption provided to the education sector. He has also taken into reference of the landmark judgment of supreme court where the court has said that “Education is the process of training and developing knowledge, skills and character of the student by normal schooling”¹⁹ but he has failed to show his disregard on applicability of GST on purchase from third party such as furniture for school, uniform, equipments etc. which put extra burden on educational institution as these educational institutions don’t get exemption input credit on tax paid. Therefore this article is very useful for doing doctrinal research on applicability of GST in education sector.

3.0 Research Problem

Education being a charitable activity in India makes the educational institution as non-profit organisation and such institutions must register themselves as trust. Therefore, there are different methods for calculation of tax and filing there return. As per the Income Tax Act, 1961 trust rendering charitable purpose is exempt from tax upon fulfilling the rules prescribed by the law. Even though educational institution tries to evade tax or does not file proper return and audit report. It is so because of the lengthy and complex tax compliance. As per section 10(23C) (iiiad) of the act²⁰ states that “Any university or other educational institution existing solely for educational purposes and not for purpose of profit if its aggregate annual receipt of such university or educational institutions do not exceed the amount of annual receipt as may be prescribed is exempt from tax subject to other conditions as prescribed by law”²¹. Notwithstanding such conditions, even after filing the return the assessee has to face lots of complexity as in CPC (Centralized Processing Centre) it does not treat allow certain income as exemption and demand for additional amount and in such case when the return file is transferred to assessing officer, there also assessee has to undergo a lengthy procedure as he has to produce relevant documents again and again in front of assessing officer. In such instances the assessee decides not to disclose such incomes which CPC cannot assess. Another major aspect of the above mentioned provision is the word “Annual Receipt” is no where explained in the act and thus create confusion in calculating the annual receipt, though there are several judicial interpretations in respect of the “Annual receipt” still the act must clear the term because whether a trust is applicable of exemption depends on it.

Another problem face by educational institution in filing return is improper knowledge of the provisions which allows exemption. It is so because of vast number of provision that to in different acts which result in creating confusion in preparing the audit report. For example, if any person donating any amount to the educational institution trust as corpus donation then if such donor want to claim exemption over such donation then the trust must have registered under Section 80G of the act²². Thus, another major issue is registration process of trust. If the trust has to claim complete exemption of tax due to its charitable nature, then it has to take lots of approval from authorities. A trust being an educational institution completely depend on the fees received from students and maximum amount spend on the maintenance and salary and if institution purchase of any item such as furniture's or other accessories related to educational institution which invites GST on it and thus it is another burden on the educational institution as educational institution does not get Input Credit on Tax. Therefore it also affects the small educational institution.

4.0 Research Question

1. Whether 100% tax exemption is given only when educational institution registered under trust?
2. What will be the consequence of not spending 85% of the annual receipt in next 5 years? Will there any scope of extending this limitation?
3. On which products or services provided by educational institution invites GST. Will it be possible to exempt?
4. Whether Section 12 of Right of Free and Compulsory Education Act, 2009 violates the independency of the autonomy of the private educational institution?

5.0 Hypothesis

1. Due to lack of proper explanation of the provisions under section 10(23c) the educational institutions are facing problem in calculating the annual receipt.
2. Applicability of GST on purchase from third party leads to imply burden on the educational institutions.
3. Due to non-payment of reimbursement it becomes difficult for the schools to adhere the provision mentioned in RTE Act, 2009

6.0 Research Objective

1. The main motive to do research on this topic is to understand the taxability of the educational institution.
2. To understand the provisions in detail to find out the loopholes in the laws which lead to evasion of tax and to hide income from books of accounts.
3. To understand the charitable nature of the educational institution in relation with those high end school/colleges.
4. To understand the perspective of the management of school who are urging government to make school as profit making industry and impose tax on it.
5. To understand the problem faced by the schools/colleges due to applicability of GST on third party purchase.
6. To critically analyse the options available to educational institution to get registered in other form of business.

7.0 Research Methodology

7.1 Nature of research methodology

In this research work the doctrinal method and empirical research method is applied for analyzing the laws, doctrines, concepts, case laws, rules and regulations made by the parliament for the taxation of educational institution and problem faced by the educational institution in filing return and for the purpose of analyzing the laws in other countries comparative method will also be applied. For the purpose of understanding the taxation laws in relation with educational institution the primary and secondary source will be used for the research work. The research work will follow analytical, descriptive, reasoning along with analogy and critical evaluation are adopted.

7.2 Sampling

Taxation of educational institution is itself a very vast topic and therefore to collect some practical information on the topic I will be using the “non-probability sampling” and judgmental sampling method. The reason behind choosing this method is that to be very concise and straight forward toward my area of work.

For the purpose of understanding the Taxation laws in relation with educational institution the primary and secondary source will be used for the research work. The research work will follow analytical, descriptive, reasoning along with analogy and critical evaluation are adopted.

For the purpose of primary source the area of research will be limited to the local educational institutions that are around 20 schools from Katihar, Bihar and some CA (Chartered Accountant) in the local area for the better understanding of the practical aspect of the problem.

8.0 Scope of Study

The study is to understand the taxation of educational institution under trust and in case registered under any other form of business. The study basically comprises the analysis of different provisions lead to the taxation of educational institution. For the purpose of analysis of the provision, I will refer certain act related to the topic such as “Income Tax Act, 1961, Indian Trust Act, 1882, Right of Free and Compulsory Education Act, 2009, Central Goods and Service Tax Act, 2017 etc.” and also I will be comparing the pros and cons of registering in any other form of business. I will also be doing a survey which will be limited to the local area that is in Katihar District, Bihar which will include different school like government, private schools and will also engage with certain CA’s who specifically deals with the taxation of trust for the purpose of understanding the behaviour of the school/college management as to find out the reason behind evasion of tax and to also understand the urge of private educational institutions to make the education sector private.

9.0 Limitation of the Study

The study will be limited to the taxability of the educational institutions and their registration under trust/ other form of business and I will not touch any other aspect of the education like the pattern or way of teaching etc. This paper will also exclude PPP (Public-Private Partnership) mode of education. The another limitation of the paper is that it will have a point specified in Section 12 of the RTE Act, 2009 but only related to its impact on taxation of the institutions but will not go in the details of it because it again a another topic for research.

10.0 Trust and its Registration

10.1 Trust

“The whole world is running on faith, trust and pixie dust” is rightly said by the Sir James Matthew²³. In the same way there are many organisations running on trust

which means a kind of legal relationship is made between peoples working for the benefit of the others which basically create trust.

In the legal terms trust is “a legal arrangement, in which one person hold the property for the benefit of the others who are known as beneficiaries”.

Also, according to the Indian Trust Act, “ a trust means an obligations annexed to the ownership of the property and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him for the benefit of another or the owner.”²⁴

“The trustee no doubt holds the trust property for the benefit of the beneficiaries but he does not hold it on their behalf.”²⁵

Now, there are certain important terms²⁶ that required to be known before further discussion and they are as follow:

1. Obligation: means the acts enforceable by law.
2. Author of the Trust: means a person who declares the confidence.
3. Trustee: means a person who shows acceptance in the confidence declared by the author of trust.
4. Trust property: means “Subject matter of the Trust”.
5. In India, a trust is formed for various activities such as for charitable and religious purpose, claiming exemption or for receiving foreign exchange, welfare of the society etc.

10.2 Constitutional provisions supporting charitable nature of educational institutions

There are numerous organisations are running under trust and one of them is educational institution. In India education is considered as charitable activity and no person can earn from through imparting education. According to Article 21A²⁷ which states that “every state shall provide free and compulsory education to the children till they complete the age of fourteen years.”

Also after 42nd Amendment²⁸ made in Article 45²⁹ in the Directive Principle of State Policy that “the state shall endeavour to provide within a period of 10 years from the commencement of this constitution, for free and compulsory education for all children until they complete the age of fourteen years”. Herein the “state” implies the definition given in Article 12³⁰ and a conclusion can be drawn it that both the central and state government are responsible for providing education.

Also Article 29(1)³¹ provided that “No citizen shall be denied admission into any educational institution maintained by the state or receiving aid out of state funds, on grounds only of religion, race, caste, language or any of them”.

Thus, the same is pronounced in the Fundamental right of the Constitution that no person shall be denied from taking education. India being a democratic country, everyone has the right to have equal status, liberty, freedom of expression and justice. Our country follows the principle of Justice, Equity, Liberty, Fraternity and Secularism. This clearly shows that in the eyes of law providing education is a service to society or as charity. Therefore, after addition of Article 21A³² education has become a fundamental right to every children and thus no one has right to take back his right.

Also Kothari Commission³³ has recommended that “Central Government should undertake the responsibility in education for the equalization of educational opportunities with special reference to the reduction of Inter-state differences and the advancement of the weaker section of the community.”

The Secondary Education Commission³⁴ has focused on the use of regional language or mother tongue as a medium of education in primary classes.

Also Article 19(1)(c)³⁵ states that “All citizens of India can form associations or Union including a trust in lawful manner.

Thereafter analysing all the provisions and articles of the Constitution of India and the reports of the commission, it can be evidenced that education is a charitable activity and thus, educational institutions are established and registered under either a trust or society.

10.3 Registration of educational institution under trust

It is required to know brief about trust but before looking into the registration of the trust.

10.4 Whether trust is a separate legal entity?

“Trust is a legal arrangement where a person holds the property for the benefit of the one or more person i.e. beneficiaries”. Thus, it is not a separate legal entity because a trust is been created with a person unlike a corporation or boy corporate. Also in case of *Duli Chand vs Mahabir Prasad Trilok Chand Charitable Trust*,³⁶ the court has said that “A trust is not having its own existence and cannot appoint an agent. It is the trustee who is the legal entities. It is possible for some of the trustee to authorize the others to file a suit but this can only be done through execution of Power of Attorney.”

Also in another case it has been seen that if any case is filed against any trust then in such instance all the trustee shall be joint together in the suit.³⁷

Notwithstanding the fact, there is one single instance were trust is treated as separate legal entity under the act i.e. Income Tax Act. It is so because under IT Act, it treats trust as separate taxable person³⁸ and allows them to claim up to 100% of

exemption on the total income and also allows exemption to the donor under section 80G for their contribution in trust by way of donation.

Therefore in general sense trust is not a separate legal entity but when it comes to Income tax act, it is treated as separate legal entity.

10.5 Essentials for registration of educational institution under trust

1. **Party to Trust:** A trust is a legal obligation created a person known as “Author of Trust” and there are certain number of person who hold the property on behalf of the Author of the trust is known as “Trustee” for the benefit of the persons are know “Beneficiaries”.
2. **Trust Property:** The “subject matter of trust is called trust property”.
3. **Basic Conditions for creation of a valid trust:**
 - a. Transfer of a property which is subject matter by the author of the trust.
 - b. Author has to relinquish all his rights in the property transferred.
 - c. Objective of creation of trust must be clearly described.
 - d. The directions to the trustee must be given in imperative terms.
 - e. It is advice to have a written trust deed to avoid future disputes.
 - f. The trust property must be transferable to the beneficiaries.
4. **Lawful Object:** the most important condition for creation of the valid trust is that the objective for which a trust is created must be lawful³⁹ and such object must not be forbidden by law, disregarding any provisions of the laws, fraudulent or involves any injury to any person or property and must not be opposed to public policy.
5. **Benefit of Creation of Trust:** According to the Income Tax Act, 1961, a trust registered as charitable or religious trust can claim benefit of up to 100% of tax exemption but such trust must be only for either charitable or religious purpose and not for any commercial activities.
6. **Declaration of trust:** In the case of *Hirabai vs. Jan Mohammad Khalakdina*⁴⁰ the court has mentioned that for the purpose of creation of trust one of the most essential requisite is declaration of trust.
In another case of *Meerabai vs. Ferozebai*⁴¹ the court states that “The act and writing of the donor would be sufficient evidence of declaration of trust.”
7. **Drafting of Trust Deed:** It is advised that there must be proper explanation and declaration of the trust, otherwise in case of oral presentation of trust, the trust cannot claim exemption under the provisions of the Income Tax Act. Thus, it is required to register a trust by execution of the trust deed. The author of the trust must adhere the following essential clause while drafting the Trust Deed
 - a. Creation of trust

- b. Registered Office
 - c. Trustee of the trust
 - d. Objectives of the trust
 - e. Beneficiaries of the trust
 - f. Property transferred to the trust
 - g. Activities of the trust
 - h. Appointment of trustees
 - i. Power, role and responsibilities of the trust
 - j. Remuneration of the trustee
 - k. Cessation of trusteeship
 - l. Meetings
 - m. Account and Audits
 - n. Amendments to the Principal trust deed
 - o. Application of income of trust fund
 - p. Dissolution of trust
8. **Charitable Trust:** A charitable trust means establishment of any organization or institution for the benefit others and having charitable purpose. The main objective of the charitable trust is to benefit the society at large and work for the general public as non-profit organisation.
9. **Charitable Purpose:** As per the Section 2(15) of the act⁴² there are mainly seven broad category which explain the charitable activity/purposes are:
- a. Relief of the poor
 - b. Education
 - c. Yoga
 - d. Medical relief
 - e. Environmental prevention activity
 - f. Any other general public utility services.
10. **Education as Charitable Purpose:** It is decided in the case of *Sole Trustee, Lok Shikshana Trust vs. CIT*⁴³ in which the court has said that “the education means training and developing the skills and knowledge, mind and character of the student by normal schooling.” Also in case of *Bihar institute of Mining and Mine Surveying vs. CIT*⁴⁴ the court has said that “the running of private coaching or institution for the preparation of the particular examination will not amount to charitable purpose” under the definition of Section 2(15)⁴⁵.

10.6 Registration of trust

In general sense it is not necessary for a trust to be registered but if a trust is not registered then there are certain advantages that a trust cannot avail. Thus, it is preferred for declaration of the trust.

10.6.1 Advantages of registration of trust

1. If registered, can be produced as legal document and accepted as evidence in the eyes of law.
2. The conveyance of the trust property is not open to legal challenge in court of law.
3. The registration of trust deed is essential for claiming exemption under Income Tax Act, 1961.

10.6.2 Registration of Trust under different Acts

In India, the registration of trust is not an easy task, there are long lists of requirement a trust must fulfil before its registration. There are mainly three acts under which as trust have to register it and that are:

1. Indian Registration Act
2. Registration under the State Act
3. Registration under the Income tax Act

For establishment of the trust it is required to execute the trust deed and then such trust deed must be obtain it's registration within four month of the execution of the trust deed under Indian Registration Act⁴⁶. However, registration under Indian registration act is not required if that state has its own Public Trust Act such as Maharashtra has Bombay Public Trust Act, 1950. In such instance a trust must register them in state trust act.

Also, it is required by every trust to be registered under Section 10(23c)⁴⁷ for the purpose of claiming exemption under the act (Form No. 56D) without which no exemption shall be allowed. However if the trust is a private family trust than in such instance a private trust is not required to register it under the act because they are not allowed for any kind of exemption under the Income Tax Act.

In the case of *Green Acres Education Trust vs. DCIT*⁴⁸ in which the tribunal has struck down the decision of the DCIT stating that even if a trust is running a pre-school is eligible for claiming exemption under the Income tax Act. The registration of a trust shall not be denied on the ground of the size of the organization. Also, the reason stated by DCIT stands invalid that imparting knowledge and skills in pre-school does not amount to education and is not treated as charitable purpose. Thus, ITAT has allowed the registration of the pre-school and said that it is also eligible for claim exemption. The

ITAT has also stated that registration shall be denied only the ground of its nature of the work.

Also in certain case a special approval is required under Section 12A⁴⁹ for claiming exemption for the income earned from the trust property. In such case trustee has to apply for the registration with the commissioner of the Income Tax in Form No. 10A.

Now, registration under Section 80G⁵⁰ is required when a trust is accepting any donation from outside. This provision is basically for the donor donating certain amount to the trust. But a donor can claim their donation as deduction only if trust is registered under Section 80G. For the purpose of registration the trust, an application must be submitted to the Commissioner of Income Tax in Form No. 10G.

10.7 Problem in registration of trust

In the above paragraphs we have seen that in how many number of act and provisions a trust has to register itself in order to claim exemption. One of the major problems faced by the small educational institution is this lengthy process for registration. These small educational institutions although create trust for running a school/college but unable to register itself due to prolonged process and end up paying higher amount of tax.

The author has also conducted a survey in the local area limited to Katihar District, Bihar and was shocked with the results that most of the primary level schools are running under unregistered trust and is paying high amount of tax. It is also noticed that maximum people are not even aware of all the laws under which a trust must be registered.

11.0 Taxation of Educational Institution under Trust

“Trust not being a separate entity is a separate entity”. This phrase has two separate meaning under two different laws. According to the general laws that is Indian Trust Act, 1882, a trust is not a separate entity and treats both trust and trustee as same. Notwithstanding Income Tax Act, 1961 has a different view on this aspect, it says that trust is a separate legal entity but only for the purpose of taxation and thus a separate taxation method is being followed for trust and the income is not clubbed with the income of trustee.

Firstly, we need to understand the type of income received by the trust. There are mainly two broad categories under which income received by trust are divided that are restricted and unrestricted fund⁵¹.

“Restricted funds” are basically those funds which are received by the trust for some specific purpose such as corpus donation. Whereas “Unrestricted funds” are those funds which can be used without any restriction in any kind of legal activity or simply words it can be used for general purpose to meet daily expenses. Also there is an option available with the trustee to make these unrestricted funds as “Designated Funds” means a part of income is kept aside for some future requirement or has been designated for future meet. But these designated funds will still be treated as unrestricted funds because it is at the option of the trustee.

Also, while it comes to the accounting part of the trust there are mainly two methods that a trust can be follow for accounting are “Cash Basis Accounting” and “Accrual Basis Accounting”. Cash basis accounting is income will be recorded only when it is actually received but in accrual basis accounting in this income will be recorded as soon as it become due or accrued.

As this paper is mainly about taxation of educational institution then in such case it is better to have Accrual Basis Accounting Method because the income that is Tuition Fees of the students accrues as soon as month starts and receives after few days.

11.1 Income tax provisions

According to Section 10(23C)⁵² the income earned by the educational institution is exempted from the tax upon fulfilling the certain conditions as mentioned below.

Case-1: As per Section 10(23C)(iiiab)⁵³ states that “any university or other educational institution existing solely for educational purposes and not for the purpose of profit, and which is wholly or substantially financed by the Government.”

Case-2: According to Section 10(23C)(iiid) states that “any university or other educational institution existing solely for educational purposes and not for purpose of profit if the aggregate annual receipt of such university or educational Institution do not exceed the amount of annual receipt as may be prescribed.”

As per the Rule 2BC (1)⁵⁴, the prescribed limit is Rupees One Crore.

Case-3: According to Section 10(23C)(vi)⁵⁵ states that “any university or other educational institution existing solely for educational purpose and not for purposes of profit, other than those mentioned in Case 1 and Case 2 and which is to be approved by the prescribed authority.”

The prescribed authority for the purpose of above mentioned section is Principal Commissioner or Chief Commissioner⁵⁶ and is entitle to grant approval and his power cannot be delegated.⁵⁷

Also, In the Finance Bill, 2021⁵⁸ the government has increase the threshold limit of One Crore to Five Crore for the institution section 10(23C)⁵⁹. But this increment is as blanket limit which will include both educational and medical institution.

However if the income which is not chargeable to tax exceed Rs. 1,00,000/- then in such case the assessee has to file return of his Income.

Also, in case 3 the university or other educational institution has to apply with the Commissioner of the Income Tax for being eligible for claiming exemption this section 10(23C)(vi) in Form No. 56D⁶⁰. Though this approval is valid only for a period of 5 years and thereafter again renewal is required.

It is also mentioned in the proviso of the above mentioned sections that any university or educational institution claiming exemption under these sections cannot claim exemption under any other provisions of the Section 10.⁶¹

11.1.1 Problem in renewal of registration

There are certain instances that if there was delay in renewal of registration of the trust due to unavoidable circumstances, there are no such provisions specifically speaking about condonation for delay and such delay in application cannot be condoned.⁶²

Whereas in the case of “*Padmashree Krutarth Acharya Institute of Engineering and Technology vs. Chief CIT*”⁶³ the court has reversed the judgement of the earlier case stating that it is “*the commissioner who has to decide the application for condonation of delay on merits.*”

But still this does not solve the problem because condonation is nowhere mentioned in the provisions at the time of renewal the authority rejects the application in first instance on the mere ground of delay. This create a burden of the management of the trust because if the approval will not be granted then they will not be allowed to claim exemption under Section 10(23C)(vi)⁶⁴.

11.2 Expenditure criteria

Another important aspect for claiming exemption under the above mentioned provisions is 85% expenditure criteria. According to the third proviso of the Section 10(23C) means that getting approval of registration is not only the mere criteria for claiming exemption. The university or educational institution has to spend at least 85% of the total income earned/ total receipt in the previous year towards their objective in order to claim exemption and there will be no tax on remaining 15% of the income fulfilling the mentioned criteria of 85% of total receipt will be given⁶⁵.

Thus, for claiming complete exemption on the total receipt both approval and 85% expenditure limit must be fulfilled. Otherwise the Commissioner has right to refuse exemption.⁶⁶ However, this proviso does not exclude expense incurred in purchase of fixed assets of the trust⁶⁷.

However, if due to any circumstances University or Educational Institution is unable to meet the 85% expenditure criteria than in such case they have an alternative option of investment and deposit in certain schemes described in section 11(5)⁶⁸ and in such way they can accumulate the income. But such accumulation does not include any kind of donation either corpus or general. It is also mentioned that any such accumulation in no case can exceed 5 years⁶⁹. Thereafter such amount will be fully taxable.

The assessee has to file an application in Form No. 9A under Section 139(1)⁷⁰ for the approval of such accumulation of income. The court has also decided in the case of "*Pinegrove international charitable trust vs. Union of India*⁷¹" that "to decide entitlement of an institution for exemption such institution must pass the test of predominant object of its activity. First instance is that whether such institution exists solely for the purpose of education and not to earn profit. Second instance is that capital expenditure is wholly and exclusively for objects of education is entitled to exemption. And last instance is that whether it is registered and if yes, than will it be eligible for continuation."

Also in the case of *Child Welfare vs. DGIT*⁷² the Director General has refused to claim exemption on the mere ground that assessee has multiple objectives and might be in future he can divert from its objective. Thereafter ITAT has reversed the decision of the DGIT stating that right to claim exemption cannot be refused on the mere ground of having multiple objects. But the assessee has to submit an affidavit stating that he will not divert from the main object that is for education.

Another issue was raised before the ITAT that if any educational institution is receiving any income from other source and using such income for fulfilling the objective of the trust that is for education is eligible for exemption. The tribunal has decided that if such income from other source is used solely for the purpose of education and not for other purpose or profit, than such income will be allowed for exemption under the provision.⁷³

In the case of *Asst. Director of Income Tax vs. Rajasthani Shiksha Samithi, Nizamabad*,⁷⁴ the Court stated that "Income derived by a trust running an educational institution or by an educational institution per se is deemed to be the income derived by such trust or institution from property held under trust or institution and will be exempt from income s and will be exempt from income subject to the exceptions provide subject

to the exceptions provided in sec.13(3) of the Act, Merely because Sec.10 (23C) provides for exemption of the income of an educational institution, it does not follow that such institution cannot avail exemption u/s 11/12 subject to conditions being fulfilled.”

In another case decided by ITAT states that if a society is running more than one school under such society shall not be eligible for claiming exemption under Section 10(23C)(iiiad)⁷⁵. However such society can take approval from the Commissioner under Section 12A/12AA⁷⁶ and shall apply for claiming exemption under Section 10(23C)(vi)⁷⁷.

The Hon’ble Supreme Court in it landmark Judgment in *P.C. Raja Ratnam Institution vs. Municipal Corporation of Delhi*⁷⁸ states that “mere imparting of education is enough to claim exemption, that the test of charitable purpose is satisfied by the proof of any of the three conditions, namely, relief to the poor, education and medical relief. The fact that some fees was charged from the students was not decisive in as much as the proviso to section 115(4)(a)⁷⁹ indicated that expenditure incurred in running the society might be supported either wholly or in part by voluntary contributions.” Besides the explanation to section 115(4)(a) was in terms, inclusive and not exhaustive⁸⁰.

The Hon’ble Supreme Court has also stated that collection of any type of donation or capitation fees will constitute society for profit and no exemption under Section 10(23C) will be allowed.⁸¹

11.4 Calculation of total income and tax

For the purpose of calculation of income and preparation of financial statement there are certain point that need to be kept in mind are:

1. The financial statement of trust should be prepared on accrual basis.
2. Accounting standards must be applied consistently from one financial year to the next.
3. The “accounting treatment and presentation” in the balance sheet and the income and “expenditure account of transaction” and events should be governed by their substance and not merely by the legal form.
4. The corresponding amounts for immediately preceding financial year for all items shown in “the balance sheet and the income and expenditure account should be given in the balance sheet or income and expenditure”, as the case may be.
5. A “cash flow statement” should be annexed to the balance sheet, whenever applicable showing the cash flows during the period.

Now, by keeping these points the accounts of the trust can be made. However the taxation of trust attracts slab rate not the fixed rate on income. There are certain income where flat rates are applicable but not in all instances.

11.3 Problem faced by assessee or common errors made by assessee in calculation of Total Income and Tax

There are number of problems face by the assessee in calculation of the total income or tax. The very first error made by the assessee in calculation of the “Voluntary Contribution”. According to Section 2(24)(iia)⁸² which states that “Income includes Voluntary contribution received by a trust created wholly or partly for charitable or religious purposes or by an institution establishes wholly or partly for such purposes or by an association or institution referred to in clause (21) or (23), or by a fund or trust or institution referred to in sub clause (iv) or sub clause (v) or by any university or other educational institution referred to in sub clause (iiia) or sub clause (vi) or by any hospital or other institution referred to in sub clause (iiia) or sub clause (via) of clause (23C) of section 10 or by an electoral Trust”.

Therefore any income earned from voluntary contribution shall not be allowed as deduction from as Section 57⁸³ bars such income. It specifically says that any income which is earned under the head of Other Source, expense incurred in earning such income shall only be allowed as deduction and there also such expense shall not be in the nature of “Capital Expenditure”.

Therefore “these expenses are application of Income rather and can be shown as application of income as required by section 11& 12⁸⁴

Another major problem faced by assessee in calculation of the “annual receipt” as the word annual receipt is no where defined in the act. This is one of the major problems faced by the educational institution as they don’t aware of list of income need to be added in annual receipt. This is the major link where assessee add voluntary contribution in the “Income and Expenditure Account” and shows regular expenses against such income and due to which unable to claim exemption under the provision.

Also while at the time of filing the return, the file is first assessed by the “Central Processing Centre” (CPC) there only the processor shows default in filing return from the assessee side. Even after everything is perfectly complied, it is so because of lack of proper command to CPC as it is unable to identify the certain exempted income granted under Section 10(23C). Even after several complaints the problem is not resolved.

Another major problem faced by the assessee is in calculation of the tax. The author has conducted a survey in the local limits⁸⁵ and the population are 12 Chartered

Accountant. I came to know that from that survey is that out of 12, 9 Chartered Accountants are calculating tax on the basis of flat rate of 30% where as 3 Chartered Accountant are Calculating tax on the basis of slap rate. The reason behind such a huge difference is lack of knowledge in trust accounting as most of them were not even aware of applicability of slab rate and thus, result in putting extra burden on assessee as he has to pay higher amount of tax.

According to the Part I of the Annual Finance Act, tax rate which is applicable to AOP is also applicable on trust except on certain income. However assessment of AOP attracts Section 167B⁸⁶ but this section will not be specifically applicable to the assessment of the trust because it excludes Companies and registered societies. And also this section is applicable only when share of each member on surplus is known, but the question of share of surplus among the member of a charitable trust does not arise because the surplus amount is not distributed among the members. Thus, Slab Rate as individual is applicable on trust.

12.0 Recommendation and Conclusion

Taxation itself is a very complex subject and when it comes to taxation of the educational institutions nothing can be more than that. As we have seen in detail, provisions related to the taxation of the educational institutions. There are numbers of flaws in those provisions which makes the taxation more complex whether it is related to its registration to calculation of total income till filing the return. But it is the biggest drawback of our country that government is neither paying attention on the education policy nor on management of educational institutions as they think it's a secondary thing. But on a serious note lots of changes are required to make our education system stronger.

12.1 Recommendation

I have analyzed the provisions of the Income Tax Act, 1961 and Central Goods and Services Act, 2017 and thereafter would like to make certain important recommendations which can solve those problems. These are mentioned below:

- 1) As we have seen that in Section 10(23C)(iiiad)⁸⁷ the word annual receipt is used but the word is nowhere explained. Thus, it is very much required to codify the explanation of the word annual receipt and must have explanation including the heads of incomes to be included for the purpose calculation of annual receipt.
- 2) Another major issue that need to be resolved is working of "Central Processing Centre" (CPC) as discussed above it does not recognise certain exempted income and

even after the file is transferred to Assessing Officer, the assessee does not get any positive response from them. Therefore it is required to have grievance cell to address such issue in short period of time.

3) There must be clear information on which income flat rate will be applicable and on which income slab rate will be applicable because in most instances due to lack of knowledge the assesses end pay paying higher tax with flat rate than slab rate.

4) Another issue that need to be resolved is the lengthy registration process of the trust and such registration process must also have online application form to reduce the ground work and will fasten the registration process.

5) On the part of GST compliance, I hereby recommend that either there must be exemption on the GST paid on purchase from third party from the annual receipt or such services must include in GST as taxable services so that Input tax credit can be availed by the assess.

6) The provision stating the limit of Rs. 1,00,000/- for filing return should be increased to at least up to Rs. 5,00,000/- as this will reduce the burden of compliance for small educational institutions.

12.2 Conclusion

Education is the most important sector for any country. Education shows a right path towards overall development of the country. And there was a time when we have such a great educationalist such as Aryabhata, Sri Sarvepalli Radhakrishnan and many more. But today it's our hardship that we are losing our level of education. This is just not because of one reason but many reasons. One of the major reasons is the management of the educational institutions. It has become such a messy work due to number of rules and regulations. India is a country having about more than 1200 laws making working of nay sector more time consuming and the same is with management of the school due to its taxation policy. Thus, it is very much required to channelize the policies in right manner so that we don't end up losing our pride. In recent time taxation of educational institution has become hot topic amongst different educationalist because everything is getting modernise except our legal system.

I would to like conclude by stating a quote "Education is not only a fundamental right but it is an investment made on human resource for the country's development."⁸⁸

Endnotes

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22. § 80G, "Income Tax Act, 1961"
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24. § 3, "Indian Trust Act, 1882"
25. W.O. Holdsworth and Ors. vs. State of Uttar Pradesh, AIR 1957 SC 887 (891)
26. § 3, "Indian Trust Act, 1882"; § 2, "Specific Relief Act, 1963"
27. Article 21A, "Constitution of India, 1950"
28. 42nd Constitutional Amendment Act, 1976, "Constitution of India, 1950"
29. Article 45, "Constitution of India, 1950"
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37. H.N. bhiwandiwala vs. Zoroastrian Co-operative Bank, AIR 2001 Bom 267
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39. § 4, "Indian Trust Act, 1882"
40. AIR 7 Bom 229
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42. § 2(15), Income Tax Act, 1961
43. (1975) 101 ITR 234 (SC)
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