

ONE INTRODUCTION AND RESEARCH DESIGN

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CHAPTER ONE
INTRODUCTION AND RESEARCH DESIGN

1.1 Brief History:

The Income-tax Act, 1961, has a history of about 125 years and right from its beginning, various provisions have been incorporated in the Act to levy the tax on different entities. The entire procedure relating to the assessment of the 'income' is covered under a scheme of various sections of the Act. The Act extensively defines the term '**Income**' as also splits various assessable entities under different heads.

The Act specifically provides for certain incomes, which 'do not form part of the total income' and consequently, not included in the total income. Hence, the provisions relating to such incomes also allow certain exemptions with regard to various objectives, such as social, economic and others. However, by virtue of specific provisions for the exemption of income derived from the property held for charitable or religious purposes, there are certain exemptions for religious or charitable purposes in the overall scheme of the Act.

1.2 Definitions:

As stated earlier, the income from the property held for charitable or religious purpose is not included in the total income while computing the income of an assessee. Neverthe-

less, it is advisable to examine such provisions which ultimately define the 'charitable purposes'. Specifically, section 2(15) of the Income-tax Act, 1961, defines the 'charitable purposes', which includes "relief of the poor, education, medical relief and the advancement of other objectives of general public utility". This definition assumes greater significance while examining the provisions relating to charitable institutions. The term 'charitable purposes' also requires to be defined precisely since, in the end, the income of a charitable institution is made exempt from payment of tax under the provisions of the law.

The Income-tax Act of 1922 also had defined the term 'charitable purpose' and the definition included the words "the advancement of any other object of general public utility". Subsequently, however, these words were deleted. Similarly, the words "not involving carrying on of any activity for profit" were also omitted by the Finance Act, 1983, with effect from 1.4.1984.

The word 'charity' expressly denotes 'public charity', if it is used without qualification or limitation. It connotes benefit of others rather than of one's self. Since the word indicates a sense of 'selflessness', the definition of the term 'charitable purpose' has to be understood meticulously. Under the Income-tax Act, 1961, such charitable purposes cover various activities, including the relief of the poor, education and medical relief. This is all the more significant while examining the provisions of sections 11, 11A,

12, 12A and 13 of the Income-tax Act, 1961.

It would not be out of place here to examine the provision relating to the definition of the 'trust'. The word 'trust' has been defined by various authors. It signifies the confidence reposed by one person into another person. The Concise Law Dictionary, at page 339, defines the word 'trust' as:

A relation of association between one person (or persons) on the one hand and another person (or persons) on the other, based on confidence, by which property is vested in or held by one person, on behalf of and for the benefit of another.

The word 'trust' is also defined under section 3 of the Indian Trust Act, 1882, according to which, a 'trust' is an obligation annexed to the ownership of 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 of another and the owner. The person who reposes the confidence is called 'the author' of the trust, the person who accepts the confidence is called 'the trustee' and the person for whose benefit the confidence is accepted is called 'the beneficiary', while the subject matter of the trust is called 'the trust property'. Normally, a trust comes into existence on the basis of a declaration, which is called 'the instrument of the trust'.

Halsbury's Definition : "Halsbury's Laws of England" defines the 'trust' as under:

A trust, in the modern and confined sense of the word, is a confidence reposed in a person with

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respect to property of which he has possession or over which he can exercise a power to the intent that he may hold the property or exercise the power for the benefit of some other person or object.

Numerous definitions have been provided by several other authors.

The Trusts are of different types and they may be Public-trusts, Private-trusts, Express-trusts, Special-trusts, Contingent-trusts, so on and so forth. However, the present study is concerned with Public Charitable Trusts, which cater to the needs of humanity at large and the community, as a whole, stands benefitted from such trusts. The definition of the term 'charitable purpose' and also the relevant provisions of the Act connected with the description of the Trust. It is proposed to go through the provisions of the Direct Taxes as applicable to the Public Charitable Trusts, in the subsequent Chapter.

1.3 Direct Taxes and Charitable/Religious Trusts:

The charitable and religious institutions are playing very significant and important role in the field of social service. The charitable and religious institutions are running educational institutions, hospitals, schools, libraries, etc. The charitable and religious trusts provide in the field of arts and culture by running various cultural institutions. Due to such kindly and public-welfare activities of the institutions,

the government is providing fiscal incentives to the taxpayers for their donations to such institutions. The Government exempts such charitable and religious institutions from the taxation of income in their hands.

The Income-tax provisions relating to the Charitable or religious institutions are mainly in sections 2(15), 10(22), 10(22A), 10(23B), 11, 12, 12A, 13, 80G of the Income-tax Act, 1961.

Section 11 of the Income-tax Act, 1961, says that the income derived from the property held only for religious purposes is entitled to exemption from income-tax. Certain conditions on that income should be actually applied for charitable and religious purposes. The expression 'religious purposes' is not defined under the Act but an indication as to what it means is found under section 13. The provision of section 13 indicates that 'religious purpose within the meaning of section 11 of the Act must be purposes which is restricted to a particular religious community or caste or for any private religious purposes.

Charitable institutions are defined in the separate clause in section 2(15) of the Income-tax Act, 1961. It provides that charitable purposes include relief to poor, education, medical relief and the advancement of any other object of the general public utility and the phrase 'not involving the carrying on of any activity for profit'. This phrase or ten words have been omitted by the Finance Act, 1983, with effect from 1.4.1984.

The law relating to the assessment of the charitable trusts and the religious institutions has peculiar characteristics so far as the Income-tax Act, 1961, is concerned. These provisions have been contained mainly under section 11 of the Income-tax Act, 1961, and by virtue of their being excluded from the title 'income', they assume a certain significance. An effort is being made in this Dissertation to conduct a critical study of this particular subject under research.

1.4 Scope of the Study:

The study is dependent upon the income tax provisions and the Public Trust Act. The charitable and religious trust income is exempted from tax.

The study worked to the following sections:

1. Section 10 (23B)
2. Section 10 (23BBA)
3. Section 10 (23C)
4. Section 11
5. Section 11A
6. Section 12
7. Section 12A
8. Section 13.

1.5 Objectives of the Study:

1. The present study attempts to analyse in detail the various characteristic features as regards charitable

trusts and religious institutions under the Income-tax Act, 1961;

2. Critical examination of assessment of charitable and religious trust and religious trusts under sections 11, 12 and 13 of the Income-tax Act, 1961;
3. The general provisions to such assessments are all together different from those of other assesseees;
4. To give advice to charitable and religious trusts regarding exemption. The exemption use more effective to the charitable purposes.

1.6 The Research Methodology:

This study standing up by the library literature. the provisions of the Income-tax Act, the provisions of Public Trust Act, the current report of tax, bare Act, Taxmann's Magazine and other relative law. The study supported by Chartered Accountant, legal person, judicial decision, Financial Act and also amendments, rules, notifications, simplification of Income-tax Act, 1961.

1.7 Limitation of the Study:

1. The present study's main limitation is that other income-tax sections/provisions are completely ignored.
2. This study wholly depends upon the statutory provisions relating to the Income-tax law.

3. The study relies solely on the secondary data collected through library research.

1.8 Chapter Scheme:

The **First Chapter** relates to the introduction of the income tax and also the introduction of the Charitable Trusts and Religious Institutions. The Chapter also describes the scope of the study, objectives of the study, methodology adopted and the limitations of the study. The **Second Chapter** records the statutory provisions regarding the charitable trusts and religious institutions and also defines the meaning of the term 'charitable purposes', which include relief to poor, education, medical relief, and any other object of general public utility. The **Third Chapter** deals with the assessment procedure for the charitable trusts and religious institutions as specified in the Income-tax Act, 1961, together with tax exemptions, essential conditions, computation of tax liability, absolute exemptions and changes in tax legislation since 1961. The **Fourth Chapter** records the conclusions and suggestions arrived at the end of the study. A comprehensive **Bibliography** concludes the Dissertation.