ANONYMOUS DONATIONS & CASH CREDITS

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Standards & Norms

Resource support on NGO Governance, Accounting and Regulations

UNDERSTANDING APPLICABILITY OF SECTION 68 & 115BBC TO NGOs

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INTRODUCTION

1.01 Section 68 of the Income-tax Act deals with "cash credits". It provides that where any sum is found credited in the books of account maintained by the assessee for any previous year, and the assessee either offers no explanation about the nature and source thereof or the explanation offered is not satisfactory in the opinion of the Assessing Officer, such sum may be charged to income-tax as the income of the assessee of that previous year. The burden of proof lies squarely upon the assessee to establish the source and nature of such credits.

1.02 In the context of charitable organisations, the applicability of Section 68 has remained contentious. Various judicial forums have delivered divergent views on whether Section 68 of the Act applies to voluntary contributions and donations received by trusts and institutions registered under Section 12AB.

1.03 This issue aims to examine the structural inapplicability of Section 68 to charitable trusts and to delineate the supremacy of Section 115BBC, a special provision introduced to address anonymous donations.

SCOPE OF INCOME COMPUTATION UNDER THE INCOME-TAX ACT

2.01 The Income-tax Act prescribes the computation of income under five heads enumerated in Section 14. However, Sections 10 to 13 constitute a self-contained code applicable to charitable and religious institutions.

2.02 For organisations assessed under Sections 11 to 13, the income is computed in a commercial sense, i.e., based on gross receipts and application thereof. There is no concept of computation under the five heads. This has been affirmed by CBDT Circular No. 5-P (LXX-6), dated 19-6-1968, which clarifies:

> "*...for the purpose of Section 11, the income from trust property shall be computed in a commercial sense, and the five heads of income are not applicable.*"

2.03 This position is further substantiated by judicial pronouncements, including:

- *CIT* v. *Estate of V. L. Ethiraj*[1982] 136 ITR 12 (Mad.)
- *DIT (Exemption)* v. *Girdharilal Shewnarain Tantia Trust*[1993] 71 Taxman 150/ 199 ITR 215 (Cal.)

2.04 Both decisions assert that the application of Section 14 to charitable organisations is untenable, and income must be computed in a commercial manner.

2.05 Thus, before invoking any deeming provision such as Section 68, it is essential to ascertain whether such a provision operates within the computational framework applicable to the assessee. This becomes particularly relevant when dealing with charitable institutions, whose income is not computed under the heads specified in Section 14 but under a distinct regime provided by Sections 11 to 13.

SECTION 68 OPERATES WITHIN THE FRAMEWORK OF FIVE HEADS OF INCOME

3.01 Section 68 is part of Chapter VI, which pertains to the aggregation of income under the five heads specified in Section 14. Section 66 clarifies that total income shall include all income on which no income-tax is payable under Chapter VII, further cementing the principle that aggregation and computation are limited to the conventional heads of income.

3.02 Section 2(45) defines "total income" as the income referred to in Section 5, computed in accordance with the provisions of the Act. This points to the methodology under Chapters IV to VII, which do not apply to organisations governed by Sections 11 to 13 unless expressly stated.

3.03 Although Section 68 appears in Chapter VI (which deals with aggregation and set-off), it functionally operates at the *computation stage* under Chapter IV. Its application presupposes that the assessee's income is computed under one of the heads in Section 14. While Section 68 deems unexplained credits as income, it does not constitute an

independent head of income, and functions only within the broader computation mechanism of the Act.

3.04 However, wherever the legislature intended to import provisions applicable to general assessees into the domain of charitable institutions, it did so explicitly, as seen in:

(a) *Explanation 3 to Section 11(1):*

> "For the purposes of determining the amount of application under clause (a) or clause (b), the provisions of sub- clause (ia) of clause (a) of section 40 and sub-sections (3) and (3A) of section 40A, shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head 'Profits and gains of business or profession'."

(b) *Explanation (ii) to Section 11(1A):*

> "Cost of the transferred asset' means the aggregate of the cost of acquisition (as ascertained for the purposes of sections 48 and 49) of the capital asset which is the subject of the transfer and the cost of any improvement thereto within the meaning assigned to that expression in sub-clause (b) of clause (1) of section 55."

3.05 In the absence of such a specific reference, it is impermissible to apply Section 68 to trusts whose income is computed under a separate regime.

PRECEDENCE OF SECTION 115BBC OVER SECTION 68

4.01 The enactment of Section 115BBC, w.e.f. 1st April 2007, provides a specific framework for taxing anonymous donations received by charitable institutions. This provision operates independently and overrides general provisions, such as Section 68, in these contexts.

4.02 The Kerala High Court in *CIT* v. *Muslim Educational Society* [IT Appeal No. 1711 of 2009, dated 4-10-2010) indirectly recognised the legislative intent behind Section 115BBC as a self-contained provision for taxing anonymous donations.

4.03 The consistent judicial trend reiterates the principle of *Generalia Specialibus Non Derogant*: when a specific provision, such as Section 115BBC, governs anonymous donations, the general deeming provision of Section 68 must yield, and invoking it in such cases would bypass a legislatively intended special regime.

WHEN DONATIONS ARE ALREADY DISCLOSED AS INCOME

5.01 A consistent line of judicial decisions have held that Section 68 cannot be invoked when the donations or voluntary contributions have already been disclosed as income:

- *CIT* v. *Uttaranchal Welfare Society* [2014] 42 taxmann.com 361/222 Taxman 34/ 364 ITR 398 (Allahabad): Held that Section 68 has no application where the assessee had disclosed donations as its income. If there is full disclosure and valid registration under Section 12A, exemptions cannot be denied.
- *DIT(E)* v. *Keshav Social & Charitable Foundation* [2005] 146 Taxman 569/ 278 ITR 152 (Delhi): Affirmed by SC; reiterated that Section 68 cannot be invoked when donations are disclosed.
- *Income-tax Officer-II(3)* v. *Saraswati Educational Charitable Trust* [2016] 69 taxmann.com 64 (Lucknow - Trib.): Once a donation was included in income and applied to charitable purposes, Section 68 could not be invoked.

5.02 These cases consistently reinforce that disclosed donations, especially when applied for charitable purposes, fall outside the scope of Section 68. However, contrary views have emerged:

- *Mayor Foundation* v. *CIT*[2025] 170 taxmann.com 749 (Punj. & Har.), affirmed by SC in *Mayor Foundation* v. *CIT*[2025] 173 taxmann.com 584/304 Taxman 660/475 ITR 150 (SC): In this case, the Supreme Court upheld the addition under Section 68 where the assessee failed to prove the genuineness of donations received from non-existent companies.

5.03 The said ruling emphasised that disclosure in accounts is not sufficient unless identity,

creditworthiness, and genuineness are substantiated.

5.04 Certain judicial pronouncements have nonetheless treated Section 68 as a standalone deeming provision applicable wherever unexplained credits appear in the books. However, in the case of charitable institutions governed by Sections 11 to 13, such application is conceptually inconsistent with the self-contained computation framework applicable to them.

CORPUS DONATIONS AND ANONYMOUS DONATION COMPLIANCE

6.01 Corpus donations are also subject to the provisions of Section 115BBC if the donor details are not maintained. As per Section 2(24)(iia), such donations qualify as income unless exempted under Section 11(1)(d).

6.02 In *Radhakrishna Akshar Vikas Nyas* v. *ACIT*[2024] 161 taxmann.com 739 (Indore - Trib.), it was held that Section 115BBC(3) does not require PAN or bank statements of donors. Maintenance of the name and address suffices to avoid being classified as anonymous.

6.03 Even if donations are claimed as corpus, the trust must substantiate their nature. However, if donor identity is proven, Section 115BBC cannot be invoked, as reiterated in *Saraswati Educational Charitable Trust* (supra).

RELIGIOUS TRUSTS AND SECTION 68

7.01 In *Dy. CIT* v. *Jayananad Religious Trust*[2022] 143 taxmann.com 281/197 ITD 810 (Mumbai - Trib.), it was held that religious trusts are excluded from the purview of Section 115BBC under Section 115BBC(2)(b). Where the assessee disclosed donations and explained their use (e.g., temple construction), addition under Section 68 was unwarranted despite incomplete identity records. This underscores that Section 68 cannot override express exclusions under Section 115BBC.

CANCELLATION OF REGISTRATION AND SECTION 68

8.01 In *Fateh Chand Charitable Trust* v. *CIT (Exemptions)*[2017] 83 taxmann.com 33 (Lucknow - Trib.), the Tribunal held that even if donations were routed via circuitous means, they could not be added under Section 68 if applied for charitable purposes. The cancellation of Section 12AA registration was also quashed due to lack of evidence and denial of opportunity to cross-examine.

APPLICABILITY OF SECTION 115BBC IS LIMITED TO REGISTERED TRUSTS

9.01 Section 115BBC applies only to trusts registered under Section 12A/12AB. In *Dy. CIT* v. *Shree Saraswati Education Sansthan*[2023] 156 taxmann.com 182/203 ITD 668 (Ahd. Trib.), it was held that 115BBC could not be invoked against an unregistered trust, and computation in such cases must be under normal provisions of the Act.

9.02 Accordingly, in the case of unregistered entities whose income is assessed under normal provisions, Section 68 may validly apply to unexplained credits, since the computation framework under Sections 11 to 13 does not extend to them.

CONCLUSION

10.01 The application of Section 68 to charitable institutions is conceptually incompatible with the computation framework under Sections 11 to 13. The computation of income for such entities does not follow the framework under Section 14 and, therefore, cannot be subjected to provisions like Section 68.

10.02 The enactment of Section 115BBC through the Finance Act, 2006 created a specific and self-contained mechanism for taxing anonymous donations received by charitable institutions. Being a special provision, it necessarily prevails over the general deeming rule of Section 68. This legislative intervention effectively settled earlier controversies

where additions were made under Sections 68 or 69 in the absence of a dedicated provision.

10.03 Judicial precedents applying Section 68 to trusts may require reconsideration, as they often overlook the distinct computation framework under Sections 11 to 13.

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