



DONATIONS RECEIVED BY BODY CORPORATE: TAXABLE OR NOT?

Introduction

While there are many resources available to define the treatment of donations received by Charitable Trusts and NGOs, there is still ambiguity over the treatment of donations received by a body corporate.

Let us assume that a company is engaged in the business of media, earning its revenue from readers of news published in blogs, news-letters, magazines etc.

Though the primary source of income is subscription money, at times readers provide support to the media house by making voluntary monetary donations. Such monetary donations in itself are revenue receipts.

This paper aims to understand as to whether the amounts so received as voluntary contributions are taxable under Income Tax Act or Goods & Services Tax or both. This paper will further bring out the detailed reasoning and rationale for the conclusions drawn for the aforementioned question.

Sum of money received by the company can be considered as Donation or Voluntary Contribution or Gift since it is only received by the company in a voluntary motion, neither forcibly nor in exchange of any consideration.

What is Donation?

As defined under case of *COMMISSIONER OF EXPENDITURE TAX, ANDHRA PRADESH Vs. SHRI PVG RAJU, RAJAH OF VIZIANAGARAM*, an act by which the owner of a thing voluntarily transfers the title and possession of the same from himself to another, without any consideration, is a donation.

What is Voluntary Contribution?

Voluntary contribution covered by section 12 of Income Tax Act, 1961 are those contribution which are freely available to the assessee without any stipulation, which the assessee can utilise towards its objectives according to its own discretion and judgement.

What is Gift?

As per section 56 of Income Tax Act, 1961, gift is any sum of money, movable property or immovable property which is received without consideration or inadequate consideration.

Section 2(xii) of the Gift Tax Act also defines gift as the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth.

The taxability of money received by a company in voluntary motion has different taxability under Income Tax Act and GST Act.

Under Income Tax Act:

Section 56(2)(x) specifies that any person receiving any sum of money, without consideration, the aggregate value of which exceeds Fifty Thousand rupees, the whole of the aggregate value of such sum shall be treated as 'Income from Other Sources'.

Though the amount received in cash or kind, without consideration, up to Fifty Thousand rupees in aggregate does not attract taxability under section 56, any income generated from investing such moneys shall be taxable under relevant heads under Income Tax Act, 1961.

Under GST Act:

The taxability of a transaction under GST is attracted when it falls within the provisions of charging sections of GST i.e. Section 9 of CGST Act or Section 5 of IGST Act.

Section 9 of CGST Act defines that a tax called central goods and services tax (CGST) shall attract on all **Intra-State supplies** of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

Section 5 of IGST Act defines that there shall be levied a tax called Integrated goods and services tax (IGST) on all **Inter-State supplies** of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

The charging section under both CGST and IGST Acts emphasise on existence of three pre-requisites to attract taxability under GST:

1. There should be Supply.
2. There should exist Goods; &/or
3. There should exist Services.

What is Supply under GST?

As per **section 7(1)(a)** of the CGST Act, 2017; supply includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made **for a consideration** by a person in the course or furtherance of business.

What are Goods under GST?

Section 2(52) of the CGST Act, 2017; defines “**goods**” as every kind of movable property **other than money** and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

What are Services under GST?

Section 2(102) of the CGST Act, 2017; defines “**services**” as anything **other than goods, money** and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Do voluntary contributions satisfy the requirements of Charging Section?

The definition of Goods and Services specifically strike out money, implying that such voluntary monetary contributions are neither goods nor services.

Since such voluntary contributions neither satisfy the definition of goods or services nor are received for a consideration, it fails to comply with the definition of Supply.

For the reason that such transaction does not fall under definition of Goods, Services or Supply, it fails to satisfy any of the pre-requisites of Charging Section.

Do voluntary donations received by a body corporate fall under the ambit of GST?

A close interpretation of GST Laws specify that monetary donations made voluntarily or gratuitously, cannot be construed as supply under GST as it is an activity without any quid pro quo or reciprocity, making it ineligible to fall under the purview of Supply.

Conclusion

Income Tax Act contains specific provisions to define the taxability of money received voluntarily by a person; hence the chargeability of Income tax over such transaction is certain.

However for Goods & Services Tax, any money received which was neither demanded, nor for which there is any obligation to deliver any goods or services in return is neither covered under definition of supply nor any such provision under law exists which specifically define its taxability. Concluded that it is a non-GST Receipt & hence GST shall not be levied on such transaction.

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Others

OUR OFFICES

New Delhi

505, Chiranjiv Tower,
43, Nehru Place
New Delhi 110019, India
+91-11-2622-3712,
+91-11-2643-0349

Gurgaon

101, Global Business Square
Building No. 32, Sector 44,
Institutional Area Gurgaon,
122003, India
Tel : +91-124-4786-200

Mumbai

01-103, WeWork Vijay
Diamond, No. A3 & B2,
B Cross Road Marol Inst.
Area, MIDC, Andheri (East)
Mumbai - 400093

Since 1963
MEHRA GOEL
& CO. Chartered Accountants

For further information on this,

Please contact: CA Vaibhav Jain | +91 97113 10004 | vaibhavjain@mehragoelco.com