

# AuditAble

8. NPO Taxation under the proposed Tax Code - 2  
Apr-Jun'09 (released: Sep '09)

## In this Issue

Permitted Welfare Activities (Contd.)	1
i. Involving the Relief of the Poor	1
ii. Advancement of Education	1
iii. Provision of Medical Relief	2
iv. Preservation of Environment	2
v. Preservation of Monuments	3
vi. Advancement of any other object of general public utility	3
Bibliography:	4

...Continued from AuditAble 7

### Permitted Welfare Activities (Contd.)

#### i. Involving the Relief of the Poor

What are the activities that involve the relief of the poor? There are two key words here, neither of them having been defined in the Code itself.

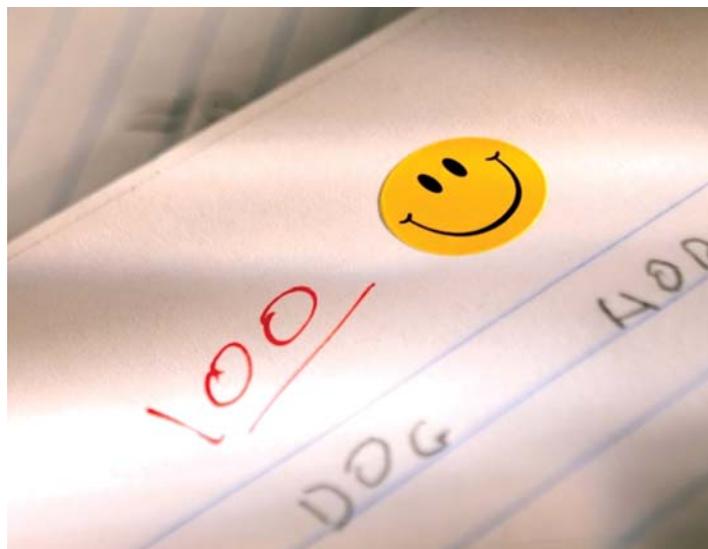
The word *relief* can be defined as alleviation of or deliverance from pain, distress, anxiety, monotony etc. It could also refer to assistance given to a person or persons in circumstances of need, danger, war, famine or other difficulty. It also refers to aid, help, succour, specifically financial or other assistance given to the poor from state or local community funds (Oxford, 2007).

The word *poor*, when used as a noun, refers to needy or destitute people, specifically those in financially difficult or humble circumstances (Oxford, 2007).

The third condition is that the activities should involve relief of the poor. The choice of the word *involve* is critically important here. For instance, activities aimed at relief of the poor will not be sufficient. Any economic activity, no matter how distant from the poor, can arguably be presented as aimed at relief of the poor. Therefore, the Code tries to bring the activities in direct contact with the poor, by using the word *involve*.

#### ii. Advancement of Education

The next item is advancement of education. What activities would be covered by this? *Education* is taken to mean the systematic instruction, schooling, or training of children and young people, or by extension, instruction obtained in adult life. It might even be taken to mean the development of mental or physical powers or moulding of some aspect of charac-



ter (Oxford, 2007).

Education can include maintenance of conference centres, libraries, reading rooms, publication of journals and books [Ecumenical Christian Centre v. CIT, (1983) 139 ITR 226 (Karnataka)]. Similarly, giving scholarship and educational loans to students would be covered under education [CIT v. Saraswath Poor Students Fund, (1984) 150 ITR 142, 147 (Karn)]. However, the publication of a newspaper is not treated as education [Sole Trustee, Lok Shikshana Trust v. CIT (1975 101 ITR 234, 241 (SC))].

*Advancement* refers to the action of promoting a cause or endeavour. It also means furtherance, development or improvement (Oxford, 2007).

The word advancement has been added newly to the Code. If the word education is used alone, it could be interpreted only as imparting of education, and possibly only formal edu-



cation. By adding the word advancement, the law could enlarge the scope of this purpose, to include NPOs working to promote the cause of education. Specifically, NPOs providing NFE<sup>1</sup>, working on the right to education, doing research on educational methodologies, or even offering supplementary tuition could be covered. In some cases, centres offering private tuition or computer courses

could also try and claim NPO status, though in the past this has been disallowed [Bihar Institute of Mining and Mine Surveying v. CIT, (1994) 208 ITR 608, 615 (Pat)]. Similarly, publishers of school and college text books might also try to claim exemption, though it is unlikely that the Courts would accept this.

The second aspect is whether this education is to be secular or religious. This distinction has been made under the rule 32(3)(i) of Bombay Public Trust Rules, 1951, but secular education has not been defined.

Further, the distinction between religious and charitable/secular has been dropped in Chapter IV of the Income Tax Code. This may indicate that education could conceivably cover both secular and religious. This could also mean that publication and sale of religious literature would not lead to loss of exemption.



could also mean that publication and sale of religious literature would not lead to loss of exemption.

### iii. Provision of Medical Relief

What activities would be covered by provision of medical

relief? Strictly speaking, *medical* means of or pertaining to conditions requiring medical (especially as opposed to surgical) treatment or diagnosis (Oxford, 2007). However, in practice, medical relief has always covered all healing services pro-

vided by hospitals and doctors. The meaning of relief has already been discussed under relief of poverty.

*Provision* here would mean the action or an act of providing something (Oxford, 2007). That something is *medical relief* in this case.

*Medical relief* would thus mean any activity that provides relief from pain or distress to living beings, whether human or otherwise.

Thus, hospitals for birds and animals would also be covered by this clause. This would allow them to continue charging fees for sustaining their activities.

What about dispensaries which only provide medicines



against a prescription? It is not clear that these would be excluded from the definition, if they otherwise meet the requirements of being an NPO.

### iv. Preservation of Environment

Let us now turn to activities covered by preservation of environment. *Environment* means the set of circumstances or conditions, especially physical conditions, in which a person or community lives, works, develops, etc., or where a thing exists or operates. It also refers to the external conditions affecting the life of a plant or animal (Oxford, 2007).

*Preservation* refers to the action or an act of preserving or protecting something, to keep something safe from harm or injury (Oxford, 2007).

The distinction between religious and charitable/secular has been dropped in Chapter IV of the Income Tax Code. This may indicate that education could conceivably cover both secular and religious. This could also mean that publication and sale of religious literature would not lead to loss of exemption.

Thus any activity which helps protect the environment would be covered by this clause. This could include work done by NPOs on promoting public awareness about the environment, or those doing research on the environment, as also those engaged in plantation activities. Activities to retard global warming, reducing greenhouse emissions, recycling, etc. are clearly included.

Three elements have been specifically included, apart from environment as a general concept. These are:

- *Watersheds*, which include (Oxford, 2007)
  - The line separating waters flowing into different rivers, basins, or seas;
  - a narrow ridge between two drainage areas;
  - The slope down which the water flows from a watershed;
  - The whole gathering ground of a river system;
  - A structure for throwing off water.
- *Forests*, meaning large tracts of land covered with trees and undergrowth sometimes mixed with pasture; the trees growing in such a tract (Oxford, 2007).
- *Wildlife*, meaning the native fauna and flora of a region, often specifically the fauna only (Oxford, 2007).

#### v. Preservation of Monuments

What would preservation of monuments etc. mean? *Monuments* include written documents, records, and structures or edifices intended to commemorate a notable person, action, or event (Oxford, 2007). These could be places or objects. However, all these must be of artistic or historic interest. This interest does not have to be international or



national in nature. It could well be local or at community level. On the other hand, monuments located outside India may also be covered by this clause.

Activities for preservation of these could range from locating these, to those for setting up museums or archival facilities for safe-keeping. Digitizing or documentation and publicizing of these objects or places could be another example of such activities. Folk art exhibitions would also be covered.

**vi. Advancement of any other object of general public utility**  
 This is the catch-call clause, like a cornucopia of public good. Any religious or charitable purpose would be covered under this, provided it is perceived as having utility for the general public.

The term general public has been defined as the body of unascertained persons sufficiently defined by some common quality of public or impersonal nature<sup>2</sup>. Utility refers to the



condition, quality, or fact of being useful or beneficial (Oxford, 2007).

This clause has also led to a fair amount of litigation, over interpretation of public good. This has happened because 'public good' is a very amorphous concept. An industrialist setting up a factory in a rural area might see himself or herself as doing good for the public of that region. Others might argue that the factory is really for personal benefit of the industrialist. And both would be right!

This can therefore create a difficult situation for the tax officers, who want to ensure that only genuine charities are able to claim tax exemption.

### Bibliography:

Oxford. (2007). Shorter Oxford English Dictionary. (S. Angus, Ed.) New York: Oxford University Press.

...Continued in AuditAble 9

<sup>1</sup> Non-formal education

<sup>2</sup> Sec. 96(e), Direct Taxes Code Bill, 2009

### What is AuditAble:

Each issue of 'AuditAble' covers a different topic related to NGO auditing and is mailed to about 500 NGO auditors in India. AccountAid encourages reproduction or re-distribution of 'AuditAble' in professional circles for non-commercial use, provided the source is acknowledged.

**AuditAble on the Web:** Copies of past issues of AuditAble are available at [www.Accountaid.net](http://www.Accountaid.net).

**Questions?:** Your questions, comments and suggestions can be sent to AccountAid India, 55-B, Pocket C, Siddharth Extension, New Delhi-110014; Phone: 011-2634 3128; Phone/Fax: 011-2634 6041; e-mail: [info@accountaid.net](mailto:info@accountaid.net)

© AccountAid™ India विक्रम संवत् २०६६ आश्विन, September 2009 CE

**Printed and published** by Ms. Sanchita Chakraborty for AccountAid India, New Delhi. Ph. 26343128, at PRINTWORKS, F-25, Okhla Industrial Area, Phase 1, New Delhi. Ph:9810653101

**Content:** Shri Sanjay Agarwal, with inputs from CAS Hafez Dalal (Ahmedabad), Suresh Kejriwal (Kolkata), and Atul Trivedi (Ahmedabad)

**Editing and Graphics:** Ms. Sanchita Chakraborty  
**Designed by** Ms. Moushumi De

(For private circulation only.)