

DONATION TO CHARITIES — DOUBTS OVER APPROVAL

QUESTION: I invite your reference to Sec. 80G(5)(vi) of the Income-tax Act which now reads as follows:

“(vi) in relation to donations made after March 31, 1992, the institution or fund is for the time being approved by the Commissioner in accordance with the rules made in this behalf”.

Prior to the amendment by Finance (No.2) Act, 2009, proviso reading as under was in existence.

“Provided that any approval shall have effect for such assessment year or years, not exceeding five assessment years, as may be specified in the approval.”

The omission of the proviso was understood by every one to mean that if the date up to which the approval had been granted was a date beyond October 1, 2009, then such institutions need not apply for renewal of the approval and the approval will be valid till it is withdrawn.

While so the Circular No.7 of 2010 — CBDT clarifications dated October 3, 2010, has come as a surprise. The circular is reproduced below:

“The Central Board of Direct Taxes (CBDT) clarified vide Circular No.7 of 2010 that the approvals under sub-clauses (vi) and (via) of Sec. 10(23C) granted on or after December 1, 2006, shall be valid until withdrawn.

The CBDT has further clarified that the approvals under clause (vi) of sub-section (5) of Sec. 80G granted on or after October 1, 2009, shall be valid until withdrawn.

These will be one-time approvals unless withdrawn by the income tax authority empowered to grant them. (Central Board of Direct Taxes, New Delhi, dated October 3, 2010).

This has naturally led to confusion in the minds of the public.

Kindly clarify the doubt for the benefit of charitable institutions.

ANSWER: The above analysis, connected with many charitable institutions correctly explains the law that all those trusts and institutions, which have recognition under Sec. 80G as on October 1, 2010, would be entitled to approval in perpetuity, irrespective of the expiry date in the existing order of approval by virtue of amendment to law by the Finance (No.2) Act, 2009, with effect from October 1, 2009, unless and until such approval is withdrawn. In fact, this was the view in Paragraph 29.3 to 29.7 in Board Circular No.5 dated June 3, 2010 (2010) 324 ITR (St.) 293 at 325. The present Board Circular

referred by the reader restricting the meaning only to fresh approvals given on or after October 1, 2009, is not warranted by law.

On this view, a fresh application would be required in every case to continue to be eligible under Sec. 80G after the expiry date of the order of approval in force.

The reasoning in respect of those trusts and institutions eligible for exemption under Sec. 10(23C) is equally unjustified. The Board can interpret, but not legislate.

Salary sector not better off

QUESTION: What are the changes proposed in the Direct Taxes Code Bill in respect of salary sector?

ANSWER: Transport allowance, place allowance, contributions to approved provident fund, pension fund and superannuation fund with interest credited to such accounts, besides house rent allowance would continue under the Code, subject to the prescribed limits for such deductions. So are the exemptions for commuted pension, leave encashment, gratuity and VRS payments again subject to limits. Salaried employees would no doubt be entitled to deductions for savings hitherto enjoyed under Sec. 80C and other deductions under Chapter VI-A.

What do not find a place are the exemption for leave travel benefits and the deduction of medical reimbursements. Probably medical reimbursements have been considered unnecessary because of the deduction of Rs.40,000 (Rs.60,000 for senior citizens) under Sec. 76 of the Code Bill available for all taxpayers. But that would be available only for illnesses, which will be prescribed.

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