

A Focus on Section 35AC

Section 35AC of the Income Tax Act, 1961 is one of the key provisions which is relevant for raising resources for NGOs if understood and used effectively. The following article will deal briefly on the salient features of section 35AC to familiarise the people involved in the socially relevant and eligible projects.

The objective of above provision is to encourage business organisations to contribute more in social and economic welfare and upliftment of general public. With the increased emphasis on the corporate social responsibility in the corporate sector and ostentatious display of charity by people like Bill Gates and Warren Buffet, the contribution in monetary term by the corporate sector in India towards socially relevant project cannot be undermined.

NGOs involved in eligible projects notified by the Central Government for promoting the social and economic welfare can raise resources for eligible project from corporate sector and fulfil their objective of development.

Corporates simultaneously can fulfil their corporate social responsibility aspect of the business by contributing

towards the eligible projects and gain by availing deduction under Section 35AC.

Thus, Section 35AC can be used as an effective tool of fund raising by the NGOs. It can also lead to a mutually beneficial relationship between NGOs and the corporate sector.

Section 35AC

Section 35AC provides that where a person or a company incurs any expenditure by way of payments of any sum to:

- a public sector company or;
- a local authority or;
- to an association or institution approved by the National Committee.

for carrying out any eligible project or scheme for promoting the social

and economic welfare or upliftment of the public as the Central Government may specify, then the amount so paid shall be allowed as deduction from the business income of the assessee/ contributor of such amount.

Eligible persons to make contributions

Persons eligible to make contributions include:

- an individual;
- a Hindu Undivided family;
- a Company;
- a firm;
- an Association of persons or a Body of Individuals, whether incorporated or not;
- a local authority;
- every artificial juridical person not falling within any of the preceding sub-clauses.

The Section 35AC of the Income Tax Act, 1961 allows deduction from the business income of the assessee on payments made to eligible organisations. Therefore, the above mentioned assessee having a source of business income will only get this benefit. To avail deduction under this section, all assessee other than companies should make payment to outside agencies only, whereas companies have the option of either making payment to outside agencies or they can incur expenditure themselves.

Eligible persons to receive contributions

The following organisations can receive contributions:

- a public sector company or;
- a local authority or;
- an association or institution approved by the National Committee.

In view of NGOs, the third clause, an approved association or institution by National Committee is of importance as NGOs generally will fall in the purview of this clause and in order to receive funding or contribution has to follow the guidelines prescribed under rule 11J of The Income Tax Rules to carry out any eligible project or scheme.

National Committee and its functions

National Committee is a committee constituted by the Central Government, from amongst persons of eminence in public life. It is a committee of fourteen members. There are two functions of National

Committee, one is to approve associations and institutions to carry out any eligible project or scheme and other is to recommend to the Central Government to notify projects or schemes of any company including a public sector company, a local authority or an approved association or institution, as eligible projects or schemes for the purposes of Section 35AC. (Rule 11I).

Guidelines for approval of associations and institutions by the National Committee

The guidelines as prescribed under rule 11J of The Income Tax Rules which the National Committee has to satisfy in order to accord approval are as follows:

- the association or institution is a Public Charitable Trust or a Society registered under the Societies Registration Act, 1860 or any other corresponding Act that prevails in any part of India or a Company registered under Section 25 of the Companies Act, 1956;
- persons managing the affairs of the association or institution are persons of proven integrity. The activities of the association or institution are open to citizens of India without any distinction of religion, race, caste, sex, place of birth or any of them and are not expressed to be for the benefit of any individual or community;
- the associations or institution maintains regular accounts of

its receipts and expenditure and;

- the instrument or the rules and regulations governing the association or institution do not contain any provision for the transfer or application, at any time, of the whole or any part of the income or assets of the associations or institutions for any purpose other than a charitable purpose.

Activities which the National Committee recommends to the Central Government to be included as eligible project or scheme

The Committee should satisfy that the project or scheme falls in the purview of following activities in order to be notified as 'Eligible Project or Scheme':

- construction and maintenance of drinking water projects in rural areas and in urban slums including installation of pump sets, digging of wells, tube-wells and laying of pipes for supply of drinking water;
- construction of dwelling units for the economically weaker sections;
- construction of school buildings primarily for children belonging to the economically weaker sections of the society;
- establishment and running of non-conventional and renewable source of energy systems;
- construction and maintenance of bridges, public highways and other roads;
- any other programme for uplift of the rural poor or the urban

slum dwellers, as the National Committee may consider fit for support;

- promotion of sports;
- pollution control;
- establishment and running of educational institutions in rural areas, exclusively for women and children up to 12 years of age;
- establishment and running of hospitals and medical facilities in rural areas exclusively for women and children up to 12 years of age.

Procedures for making an application for approval of an association or institution by the National Committee under Section 35AC

- a) An application should be made to The Secretary of the National Committee for Promotion of Social and Economic Welfare, Department of Revenue, Government of India, North Block, New Delhi-110001;
- b) The application should be submitted in 2 sets. It shall either be in Hindi or in English. Following should also be attached:
 - i. Details of the applicant.
 - ii. Audited Balance Sheet and Profit and Loss Account or Income and Expenditure Account for three years one for latest year for which these are available and for two preceding years.

Details of the applicant should contain the following particulars along with relevant documents:

- name and address of the association;
- details of instrument of constitution, rules and regulations, bye laws etc;
- name and address of the persons managing the affairs of the organisation including any one who had any time during the previous three years managed the affairs of the association or institution;
- particulars of approval under section 10(23C) or 80G if granted;
- brief activities of the organisation during three years preceding the date of application or less if existed for lesser period;
- such other information as the association or institution may wish to place before the National Committee.

Procedures for making an application for approval of a project or scheme by the National Committee under Section 35AC

In case an applicant wishes to include a project or scheme for promoting the social and economic welfare of public or uplift of the public as 'Eligible Project or Scheme', then an application has to be made to the National Committee, which in turn, recommends to Central Government for notification. The application for recommendation of a project or scheme should contain the following particulars and be accompanied with relevant documents:

- title of project or scheme, date of commencement, duration and likely date of completion;

- estimated cost of project or scheme duly supported by a copy of the resolution of the Managing Committee of the association, institution or the local authority or in case of the company, by the Board of Directors of the company;
- classes of persons who are likely to be benefited from the project or scheme;
- affirmation that no benefit from the project or scheme, other than remuneration or honorarium for whole time or part-time work done or for reimbursement of actual expenses related to the project will accrue to the persons managing the affairs of the association or institution or to individuals not belonging to the economically weaker sections of the society;
- where the project or scheme is to be executed by a company, information about whether the project or scheme is such which the company is required to execute under any law for the time being in force or under agreement with employees or otherwise;
- such other particulars as the applicant may like to place before the National Committee.

Procedure adopted by the National Committee for approval of association or institution or recommendation

On receipt of the application for approval or recommendation, The Secretary of National Committee circulates the application among all the members of the Committee. The

application for approval/recommendation is considered by the National Committee at its sitting held at least seven days after the date on which the application is circulated. Further inquiry by the National Committee as it deems necessary can also be made at this stage on any matter relating to the application.

Approval shall be granted for the period of three years only. Further approvals, if required, for further period, can also be granted if the National Committee is satisfied about the activities of the association during the preceding period of approval.

In case approved scheme or project is not being carried out in accordance with all or any of the conditions subject to which approval was granted or such project or scheme was notified, such notification may be withdrawn in the same manner in which it was issued.

Procedure for availing deduction

All approved organisations are required to issue a certificate to the donor for all contributions and receipts under section 35AC. The certificate is to be issued in Form 58A.

The donors shall obtain a certificate from the receiver of contribution in Form 58A in respect of contribution made and submit it to the Income Tax authorities along with the return of

income in order to avail deduction in respect of contribution made.

In case if a direct expenditure is made by a company then it should obtain certificate from a Chartered Accountant in Form 58B.

Where a deduction under section 35AC is claimed and allowed for any assessment year in respect of any expenditure, deduction shall not be allowed in respect of such expenditure under any other provision of this Act for the same or any other assessment year.

Information to be submitted the National Committee annually

Every approved contributee having received funding from the contributor, issuing certificate in Form no 58A or 58B in respect of contribution received as of 31st March in each financial year, shall deliver an annual report indicating the progress of work relating to the project/scheme during the year to The Secretary of National Committee (Rule-11O). Along with the progress report the organisation should also provide the following information:

- names of the contributors and their addresses;
- permanent Account Number;
- amount of contribution;
- the project/scheme for which contribution was made;

- total amount of contribution received during the previous year
- total cost of the project approved by the National Committee;
- reimbursement of any other expenditure with the approval of Secretary (Revenue) and the Financial Advisor, Department of Revenue, Ministry of Finance.

Such annual statement of donation received and the details of the project should be submitted to the National Committee and to each contributor by 30th June, following the financial year in which the amounts are received.

Conclusion

Section 35AC though infrequently used as compared to Section 80G of the Income Tax Act, can become a potent tool in the hands of the NGOs for mobilisation of financial resources if used effectively. Section 35AC can build a linkage between corporate sector and the NGO sector in terms of raising of resources and its utilisation in socially relevant projects. Procedurally also it seems less cluttered than the other provisions like 80G, hence it is advisable to use this section by persuading Companies to contribute towards socially relevant project through section 35AC.

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