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# Wages of philanthropy

*The budget confirms the fears of NGOs that they are being targeted by the government in what looks like a cold war, says K Shivakumar*



The standing committee on finance expressed concern that many charitable institutions misuse the provisions of the income-tax Act

Governments have great power over NGOs through the laws they enact or administer. They can either help or hinder them." This is how a discussion draft for the World Bank on NGOs puts it.

This viewpoint is appropriate especially in the context of the recent Union Budget which has proposals affecting charitable organisations. The NGOs feel they have been left out in mere reforms and they do not have a level playing field compared to other sections which have been handed simplification and other benefits.

A cold war is going on between the charities and the Government. The Finance Minister has indicated in the budget that "the standing committee on finance expressed concern that many charitable institutions misuse the provisions of the income-tax". The Shome committee report and the Kelkar task force reports were not positive for the charitable organisations. The result of the reports and many judicial pronouncements has led the Government to present the current proposal.

The World Bank Report dis-

cusses two important tests which should be taken into consideration for exempting lawful, economic, business or commercial activities. The first is the test of "principal purposes" which looks at whether the principal activities and the expenditure of the organisation are for non-commercial purposes. They may be permitted provided (i) no profit or earnings distributed to founders, members and so on and (ii) the NGO is organised and operated principally for the purpose of con-

The report further adds that "Although the 'destination of income' test is adopted in many countries, it can cause the public to conclude that many NGOs are just commercial enterprises set up as tax-dodgers. This image once created by a handful of NGOs affects the entire sector and gives it a bad reputation".

Taking all these into consideration, the department may allow genuine organisations undertaking business activities and apply the test of the principal purpose and destination of in-

Though there are very few interpretations and definitions between the charities and the income tax department on the first three points, the fourth very controversial point has continued as a conflict since long. In a developing market economy, it is essential to favour tax exemptions to charitable organisations so that they can stand on their own. These views were confirmed by Justice Bhagwati in the Surat Art Mills case 121 ITR 1980. In the case, it was observed that as an example, the Gandhi Peace Foundation published a journal to propagate Gandhian philosophy was necessary and pricing of the journal was also necessary and it would be undoubtedly made in such a manner that it leaves a profit for the foundation. But, that cannot have the effect of polluting the charitable character of the purpose because the predominant character of the activity of the publication would be carrying out the charitable purposes by propagating Gandhian thought and philosophy and not to make profit. There are number of similar cases as *CIT vs Samyiktha Gowda*

## **If the surplus earned from the activity of trade/business is committed for and actually utilised for the activities of a non-profit organisation, it should be entitled to the advantages of income tax exemption**

ducting appropriate (not for profit) activities. The other is the test for "destination of incomes". Here if the surplus earned from the activity of trade/business is committed for and actually utilised for the activities of non-profit organisation, it should be entitled to the advantages of tax exemption.

come as suggested by the World Bank report and if the results are positive, the exemption may be given to them.

Section 2(15) defines charitable purpose inclusive of the following: Relief for the poor, education, medical relief and advancement of object of general public utility.

*Saraswatha Sabha (2000) 245 ITR and CIT vs Sengunthur Thirumana Mandapam (2007) 164 Taxman 435 (Mad), where it has been held that the income letting out of a kalyana mandapam need not be treated as business. The primary object of the Trust was for the benefit of the public and that the right to exemption under Sec. 11 of the Act would not be defeated merely on account of the fact that the accumulated funds had not been spent for other charitable activities.*

The Government has to work out the cost benefit ratio and the time spend by the officers and tax collected and control effected in this area and if the officers are allowed to concentrate more on the sectors where there are possibility of evasion and collection avenue is more, it will be beneficial to the Government. The policy makers should take cognisance of the views of the charitable organisations, the trends in other countries, and also judicial pronouncements.

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