AUDIT OF TRUSTS AND NPOS

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Introduction

- *Section 2(13)* of Maharashtra Public Trust Act 1950 " public trust " means an express or constructive trust for either a public religious or charitable purpose or both and includes a temple, a math, a wakf, church, synagogue, agiary or other place of public religious worship a *dharmada* or any other religious or charitable endowment and a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860 ;
- In case of commercial accounting the emphasis is on proper ascertainment of profits and that for Charitable Institutions is more generally concerned with exercising control over expenditure so as to conform to the stipulated norms and to the objectives of the said institution to which it relates.
- Public money is involved in the Public Trusts in two ways –
  - Direct contributions from the people at large.
  - Tax revenue foregone by the government in view of the exemptions

Applicability of

- Laws and regulations
- Maharashtra Public Trust Act 1950
- Income Tax Act 1961
- Foreign Contribution Regulation Act
- Accounting Standards
- Standards on Auditing

PROVISIONS OF THE MAHARASHTRA PUBLIC TRUSTS ACT, 1950

- **Trustees of certain trusts to submit budget to Charity Commissioner**
- **31A.** A trustee of a public trust which has an annual income exceeding the prescribed amount shall, at least one month before the commencement of each accounting year, prepare and submit in such form or forms as may be prescribed, a budget showing the probable receipts and disbursements of the trust during the following year to the Charity Commissioner.
- Every such budget shall make adequate provision for carrying out the objects of the trust, and for the maintenance and preservation of the trust property
- **32. Maintenance of accounts**.
- *(1)* Every trustee of a public trust shall keep regular accounts.
- (*2*) Such account shall be kept in such form as may be approved by the Charity Commissioner and shall contain such particulars as may be prescribed.

PROVISIONS OF THE MAHARASHTRA PUBLIC TRUSTS ACT, 1950

- 33**. Maintenance of accounts. Balancing and auditing of accounts**.
- *(1)* The accounts kept under section 32 shall be balanced each year on the thirty-first day of March or such other day, as may be fixed by the Charity Commissioner.
- (*2*) The accounts shall be audited annually by a person who is a chartered accountant within the meaning of the Chartered Accountants Act, 1949 or by such persons as the State Government may, subject to any conditions, authorize in this behalf :
- Provided that, no such person is in any way interested in, or connected with, the public trust.
- (*3*) Every auditor acting under sub-section (*2*) shall have access to the accounts and to all books, vouchers, other documents and records in the possession of or under the control of the trustee; and it shall be the duty of the trustee to make them available for the use of the auditor.
- *(4)* Notwithstanding anything contained in the preceding sub-sections—
- *(a)* the Charity Commissioner may direct a special audit of the accounts of any public trust whenever in his opinion such special audit is necessary.
- The provisions of sub-sections (*2*) and (*3*) shall, so far as may be applicable, apply to such special audit. The Charity Commissioner may direct the payment of such fee as may be prescribed for such special audit; and
- (*b*) State Government may, by general or special order, exempt any public trust or class of public trusts from the provisions of sub-section (*2*), subject to such conditions as may be specified in the order.

PROVISIONS OF THE MAHARASHTRA PUBLIC TRUSTS ACT, 1950

- **34. Auditor's duty to Prepare balance sheet and to report irregularities, etc**
- (*1*) It shall be the duty of every auditor auditing the accounts of a public trust under section 33 to prepare a balance sheet and income and expenditure account and to forward a copy of the same along with a copy of his report to the trustee, and to the Deputy or Assistant Charity Commissioner of the region or sub-region or to the Charity Commissioner, if the Charity Commissioner requires him to do so.
- *(1A)* It shall be the duty of the trustee of a public trust to file a copy of the balance sheet and income and expenditure account forwarded by the auditor before the Deputy or Assistant Charity Commissioner of the region or sub-region or to the Charity Commissioner, if the Charity Commissioner requires him to do so.
- (*2*) The auditor shall in his report specify all cases of irregular, illegal or improper expenditure, or failure or omission to recover moneys or other property belonging to the public trust or of loss or waste of money or other property thereof and state whether such expenditure, failure, omission, loss or waste was caused in consequence of breach of trust, or misapplication or any other misconduct on the part of the trustees, or any other person.

Audit Reporting

Final Deleverables

- Schedule VIII - Balance Sheet
- Schedule IX - Income & Expenditure Account
- Schedule IX-C Contribution
- Audit Report Form 10B
- Reports under Income Tax Act
  - Form 9A- Accrued income
  - Form 10

Questionnaire for Auditor

- Whether accounts are maintained regularly and in accordance with the provisions of the Act and the rules;
- Whether receipts and disbursements are properly and correctly shown in the accounts;
- Whether the cash balance and vouchers in the custody of the manager or trustee on the date of audit were in agreement with the accounts;
- Whether all books, deeds, accounts, vouchers or other documents or records required by the auditor were produced before him;
- Whether a register of movable and immovable properties is maintained, the changes therein are communicated from time to time to the regional office, and the defects and inaccuracies mentioned in the previous audit report have been duly complied with

Questionnaire for Auditor...

- Whether the manager or trustee or any other person required by the auditor to appear before him did so and furnished the necessary information required by him;
- Whether any property or funds of the Trust were applied for any object or purpose other than the object or purpose of the Trust;
- The amounts of outstanding for more than one year and the amounts written off, if any ;
- Whether tenders were invited for repairs or construction involving expenditure exceeding Rs. 5000/-
- Whether any money of the public trust has been invested contrary to the provisions of Section 36 which have come to the notice of the Auditor
- Alienations, if any, of the immovable property contrary to the provisions of Section 36 which have come to the notice of the auditor ;

Questionnaire for Auditor

- All cases of irregular, illegal or improper expenditure, or failure or omission to recover monies or other property belonging to the public trust or of loss or waste of money or other property thereof, and whether such expenditure, failure, omission, loss or waste was caused in consequence of breach of trust or misapplication or any other misconduct on the part of the trustees or any other person while in the management of the trust
- Whether the budget has been filed in the form provided by rule 16A ;
- Whether the maximum and minimum number of the trustees is maintained ;
- Whether the meeting are held regularly as provided in such instrument
- Whether the minute books of the proceedings of the meeting is maintained
- Whether any of the trustees has any interest in the investment of the trust
- Whether any of the trustees is a debtor or creditor of the trust

Questionnaire for Auditor

- Whether the irregularities pointed out by the auditors in the accounts of the previous year have been duly complied with by the trustees during the period of audit
- Any special matter which the auditor may think fit or necessary to bring to the notice of the Deputy or Assistant Charity Commissioner.

Other Issues

- Applicability of Accounting Standards
- Applicability of Standards on Auditing
- Utilization of funds
- Borrowings – borrowing against own fixed deposits
- CSR funds
- Earmarked fund – excess to be taken to I & E A/c
- Donation from abroad

FOREIGN CONTRIBUTION REGULATION ACT, 1976 (FCRA)

- **Provisions of Foreign Contribution Regulation Act, 1976 and Rules relating to Trusts–**
- Receipt & Payment A/c needs to be prepared and filed along with FC-3 and Balance Sheet with FCRA Division, Ministry of Home Affairs, Government of India, Lok Nayak Bhavan, New Delhi – 110 003.
- Financial Year of the trust, for the purpose of FCRA records should be 1st April to 31st March.
- Time limit for filing FC-3 is 31st July.
- Double Entry Bookkeeping is a must even though otherwise Trust maintains account on Single Entry Bookkeeping system.
- For Accounting of donations in kind such as articles, vehicles, medicines etc. the accounts must be maintained in form FC-6 as prescribed in Rule 8.
- In respect of foreign securities the accounts shall be maintained in Form FC-7.

FOREIGN CONTRIBUTION REGULATION ACT, 1976 (FCRA)

- Since prior permission is obtained in Form FC-1(A) or in FC-8 for accepting foreign donations and bank account is specified therein, if organization wants to change the designated bank account then prior permission should be obtained by making a fresh application in from FC-8, justifying the reasons necessitating such a change
- Even though accounts of a Trust need not be audited for incomes received below Rs. 5,000/-, FCRA does not give such an exemption and therefore even a small amount received would need Auditor's Certification in form FC-3.
- Change in name, address, registration, nature or objects of the trust need to be informed to Ministry of Home Affairs within 30 days of change. No form is prescribed.
- Change of 50% or more of the office bearers need to be informed and association should not accept foreign contribution till the permission is granted by the Ministry for the change.
- Filing false or delayed return can result into Central Government requiring the trust to obtain prior permission for each subsequent foreign donation. Similar action can be taken if the foreign contribution is received in a bank account other than one authorized by Central Government. Imprisonment up to 1 year or a fine up to Rs. 1,000/- can be imposed.

FOREIGN CONTRIBUTION REGULATION ACT, 1976 (FCRA)

- If any association assists another association which is not registered in accepting foreign contribution, then donor and donee can be prosecuted with maximum penalty of imprisonment up to 5 years
- If an association is registered under FCRA starts printing or publishing or editing etc. a registered newspaper or magazine, then it automatically comes under prohibited category.
- Central Government has a powers to get the accounts audited, can seize currency, articles etc. by confiscation.
- The Act has not prescribed any time limit for granting or rejecting the registration application.
- More than one bank account is not generally permitted to be opened.
- The money should be spent from the designated bank account and it can not be transferred to other account for expenditure.
- Interest earned on FCRA designated bank account or FD made should be shown in foreign contribution account only
- Sale proceeds of the assets acquired out of foreign contribution should be credited to the designated bank account only and not to any other account.

THANK YOU

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