

CIRCULAR No.62

- SUBJECT : i) Refund of income tax whether chargeable to contribution.
ii) Percentage of depreciation allowance referred to in Rule 32(3) (vii) and (viii).
iii) Interpretation of the word, "etc" at item (ix) in Schedule IX-C.
iv) Exemption of Vyayamshalas, Vyayam Mahavidyalaya, etc. from payment of contribution under rule 32(1) or 32(3)(i).
v) Donations or offerings made to Jirnodhar Fund of temples.

The Deputy Charity Commissioner, Ahmedabad Region, Ahmedabad, has raised the following five questions :

i) Whether income on account of refund of income tax actually realized in subsequent year is liable to contribution in the year in which it is actually received in the case of public trusts registered under Section 28, if the income by way of refund of income tax is received after 21st January, 1952, whether that income should be assessed on the rate of contribution of the repealed enactments or on the rates applicable under the Bombay Public Trusts Act, 1950?

ii) What rate of interest on the depreciation fund for the replacement of buildings or on the sinking fund for the repayment of loans should be allowed as deduction while determining the gross annual income chargeable to contribution?

iii) Is the presumption that the scope of the word "etc." used at item (ix) in Schedule IX-C can not be expanded and deduction for cost to collection at one per cent of the income earned by way of interest on fixed deposits and bank accounts etc., can not be allowed is correct ?

iv) Whether institutions like Vyayamshala, Vyayam Mahavidyalaya etc. recognized by the Education Department for the purpose of physical education and imparting physical education irrespective of caste, colour or creed, should be given the benefit of rule 32(i) or rule 32(3)(i) as the case may be ?

v) Whether donations or offerings made to "Jirnodhar" fund of temples should be considered as donations to corpus within the meaning of Explanation below Section 58?

Regarding the first question :

Ordinarily the contribution is charged on the gross annual income as worked out on its accrual basis. Where, however, the accounts are maintained on cash basis and the income accrued but not received is not adjusted, such receipts should be assessed in the year in which they are realized. Where the accounts are maintained on mercantile or commercial basis (i.e. accrual basis) and the income accrued has been provided in the accounts, such income should be assessed for

contribution in the year in which it accrued. Even under this system, instances occur when the income accrued can not exactly be ascertained and provided for in the books of accounts. The instances of such income are (i) half yearly interest credited by banks on savings and current deposit accounts, (ii) income tax refund claims receivable on dividends from shares of joint stock companies etc. In such cases, contribution should be assessed in the year in which such income is realized.

Regarding the second question –

There are two principal methods of providing depreciation against assets. One is to start writing off depreciation at fixed percentage and carry over the written down value of the assets from year to year. In such cases, the question of allowing depreciation amount as deduction under rule 32(3) does not arise. The second method provides for the creation of a depreciation fund at fixed percentage out of the surplus every year and crediting the same to a separate account named either depreciation or sinking fund account. Where the amounts to the credit of these funds are separately invested in securities or otherwise the actual interest accrued from these investments is allowed as deduction before determining the gross annual income chargeable to contribution under rule 32(3). Therefore, the fixation of a certain percentage of depreciation allowance as deduction under rule 32(3) (vii) and (viii) is not practicable.

It should however be noted that only the interest on depreciation fund for the replacement of building or on sinking fund for the repayment of loans is a permissible deduction. Interest on depreciation fund created for replacement of Dead Stock etc. or interest on sinking fund for wasting assets or for heavy repairs should not be allowed as a deduction while determining the gross annual income chargeable to contribution.

Regarding the third question :

The presumption that the scope of the word “etc” used a item (ix) in Schedule IX-C can not be expanded and deduction for cost of collection of interest at 1 per cent on the income earned by way of interest on fixed deposit and bank account etc. can not be allowed is confirmed.

This item must be read with item (xi) of rule 32(3) which will show that “etc” can only mean shares and debentures.

Regarding the fourth question :

The question whether imparting of training in physical culture(which is one of the compulsory subjects in educational institutions) by institutions can be considered as imparting of secular education has already been referred to Government and Government orders are awaited. Pending decision of government, the Regional Officers may not give the benefit of rule 32(I) or rule 32(3) to the institutions referred to in the said question.

Regarding the fifth question :

Whether donations to a "Jirnodhar" fund will amount to donations towards corpus within the meaning of Section 58 will depend upon the true purpose for which the fund is maintained. If the fund is meant for minor or current repairs or heavy repairs not amounting to renovation, the donations will not be allowed as deductions as they will not be donations towards corpus. Donations will be allowed as deductions only if the purpose of the fund is renovation or if donations are given for the specific purpose of renovation. The rule is being amended and the amendment may be watched. This interpretation will, however, apply to cases arisen before the amendment.

Dated : 17th November, 1953

D.R.PRADHAN
Charity Commissioner, Bombay