

## **C I R C U L A R N O. 89**

Subject :- Assessment of contribution Dharmada Subh or Sara Marg Khatas of textile mills – Whether credits to these Kahtas constitute donations exempt from contribution under amended Rule 32 (3) (iii) of the Bombay Public Trusts Rules, 1951.

The Deputy Charity Commissioner, Ahmedabad, reports that Dharmada, Subh or Sara Marg Khatas maintained by certain textile mills have been registered as public trusts and the general practice of these mills is to set apart certain sums either (i) on a voluntary basis out of the profits of the company on the recommendations of the Board of Directors with the approval of the general meeting of the shareholders or (ii) on the basis of a percentage on the managing agency commission specified in the managing agency agreement entered into between the managing agents and the mill or (iii) both. He enquires whether sums so set apart should be considered donations within the meaning of the amended rule 32 (3) (iii) and exempted from the payment of contribution under that rule.

2. The sums set apart under category (i) have all the characteristics of a donation and they will have to be exempted from contribution under rule 32 (3) (iii). As regards the sums set apart under category (ii), the question will have to be determined by a reference to the actual terms of the agreement and not by the motives that let the parties to enter into it. The sums set apart under category (ii) cannot be considered as voluntary donations because if they are not set apart the public trust constituted by these Khatas will have a legal right to recover them from the

managing agents. The agreement, thus, in effect, creates an asset in favour of the public trust and the sums so set apart become the income of the public trust from that asset. Sums set apart under category (ii) will have, therefore, to be assessed for contribution and they will not be exempted from contribution as donations under amended rule 32(3)(iii). As regards category (iii) only those sums which are required to be set apart under the terms of the agreement should be treated as income chargeable to contribution and the rest exempted from contribution as donation under rule 32 (3)(iii) of the Bombay Public Trusts Rules, 1951.

D. R. Pradhan  
Charity Commissioner, Bombay.

Dated : 28<sup>th</sup> November, 1951.