

**REPRESENTATION
TO THE
FINANCE MINISTER
REGARDING ANOMALY IN S.115BBC OF THE
INCOME TAX**

**TAX ON
ANONYMOUS DONATIONS**

*COMMITTEE FOR REDRESSAL OF
PUBLIC TRUSTS' GRIEVANCES*

1. Jainacharya Shreemad Vijay Ratna Surindersurisarwarjee Maharajsaheb
2. Archbishop Vincent M Concessao (Archbishop of Delhi)
3. Dr.Nitish Sengupta (IAS)
Chairman, Board for Reconstruction of Public Sector Enterprises,
Former Revenue Secretary- Government of India, Ex- M.P.
4. Shri Pratap Bhogilal,
Chairman Emeritus, World Jain Confederation.
5. Shri Yogendra P.Trivedi,
M.P.(Rajya Sabha).Sr.Advocate-Supreme Court.
6. Dr. John Dayal,
President, All India Christian Council.
7. Shri Dadi Mistry,
President, Delhi Parsee Anjuman, Vice President World Zoroastrian Organization.
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**REPRESENTATION
TO THE FINANCE MINISTER
REGARDING ANOMALY OF S.115BBC OF THE INCOME TAX
(TAX ON ANONYMOUS DONATION)**

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***COMMITTEE FOR REDRESSAL OF PUBLIC TRUSTS
GRIEVANCES***

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COMMITTEE FOR REDRESSAL OF PUBLIC TRUSTS' GRIEVANCES

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June 14, 2009

Shri Pranab Mukherjee
Honorable Finance Minister of India,
Ministry of Finance - North Block
New Delhi

Honourable Shri Mukherjee,

Tax on Anonymous Donations (Gupt Duan) Sec.115 BBC Income Tax Act.

A large number of public charitable trusts/institutions all over India are concerned about the subject matter and we most humbly submit before you the following with a request to amend the Act suitably.

- Summary of the representations already sent by large number of public charities to the finance ministry.
- Relevant extract from the 68th Report of the Standing Committee on Finance (DRPC-2007-2008) submitted to the Loksabha with their recommendation on S.115BBC.
- Copy of the 134th report of the "committee on petitions" on the subject matter taken on record by the Rajya Sabha on February 26, 2009

We sincerely request you to consider the above before the forthcoming budget to be placed in the Parliament in July this year.

We would welcome an opportunity to meet you at your convenience in the interest of large number of Public Charities who are engaged in laudable charitable work in the country.

Looking forward to hearing from you and to meeting you,

With best regards,

Yours sincerely,

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Jainacharya Shreemad
Vijay Ratna Surindersurisarjee
Maharaj Saheb

Dr. Nitish Sengupta

Dr. John Dayal

His Grace Vincent M Concessao
(Archbishop of Delhi)

Shri Pratap Bhogilal

Shri Dadi Mistry

Shri Yogendra P. Trivedi

Shri Sampal Somani

SUMMARY OF REPRESENTATIONS BY CHARITABLE TRUSTS

Regarding Tax on Anonymous Donations under S.115BBC –Income Tax Act.

1. Current Inequality between wholly charitable trusts and mixed trusts:

The introduction of S.115BBC (effective from the financial year 2006-2007) adversely affects wholly charitable trusts. These Trusts are mostly secular organizations working for the welfare of weaker and needy sections of society.

Charitable Trusts: The section provides levy of tax at the highest marginal rate of @ 30 % plus surcharge on *wholly charitable trust/institutions* which are otherwise exempt u/s.10 and/or u/s. 11 of the Act on their Gupt Daan.

Religious and Charitable (Mixed purpose) Trusts: There is no such taxability for trusts with mixed objects (both religious and charitable). In this case, anonymous donations are taxable only if these are received with specific directions from the donor to use the funds for any university or other educational institution or any hospital or other medical institution run by such trust or institution.

This creates lack of a level playing field for secular organizations and creates bias against Charitable Trusts. We request that there is equal application of the law and Charitable Trusts be exempt for taxation of Gupt Daan in the same way Religious cum Charity trusts (mixed purpose) are exempt.

2. Only donations to wholly charitable trusts/institutions are being targeted:

S.115 BBC is based on assumption that all anonymous donation (Gupt Daan) are from unaccounted money of the donors. This is not true as the donors regard charitable work as a spiritual duty.

3. Only religious trusts will flourish at the cost of wholly charitable trusts:

The provision will compel wholly charitable trusts to convert into religious cum charitable trust or formation of new charities for mixed purposes and abandon their Secular charitable nature.

4. The trusts/institutions doing laudable work are affected:

The provision also affects those trusts/institutions working with handicapped persons, widows, children, animal shelters, free medical facilities for the poor etc. who are engaged in preserving ancient Indian texts, yoga, Sanskrit, None of these activities have anything to do with capitation fees or running educational institutions.

5. **Bona fide Box donations etc. are taxed if the same is collected by secular trusts and not taxed if collected by religious trusts :**

- There are large number of genuine charitable trusts which receive donations through fund raising programmes or road processions to assist people affected by natural calamities, assist needy members of armed forces, box collections, charitable boxes at public places and shops, offerings in donation boxes in satangs, shrines of yogis and other personalities. It is impossible to maintain records of such donors by names and addresses. These are received in small amounts from large number of donors in donation boxes for which no 80 G relief is claimed by the donors and it is impossible for recipient organizations to maintain the record of the donors by name and address.
- To illustrate, even collections for cyclone relief work such as the recent cyclone in West Bengal, would be charged with 30% tax plus surcharge if the donors are not identified. Such donations are given by donors on the spot when they are convinced of the genuineness of the end use.

6. **The 68th Report of the Standing Committee on Finance (DRPSC-2007-2008)-**

In the 68th Report submitted to the 14th Loksabha, the Standing Committee on Finance (DRPSC) has amended its earlier report and expressed the view that the philanthropic activities, for instance, propagation of yoga, providing succor to the victims of natural disasters, running gaushalas, old age homes, orphanages, conservation of environment, wild animals etc. should not be equated and treated at par with activities like running educational institutions and medical facilities and that the appropriate guidelines be issued in this regard as to not to tax these entities.

7. **The 134th Report of the "Committee on Petitions" taken on record by the Rajya Sabha**

Upon a petition of Jainacharya Shreemad Vijay Ratnasurindarsurisarwarjee, the Rajya Sabha Committee on Petitions in its 134th report placed in Rajya Sabha on February 26, 2009 has recommended to the government to exempt "gupt daan (anonymous donation)" received by those who are engaged for purposes listed and ensure its end use.

8. **Gupt Daan for the benefit of the needy is religious practice**

Every religion preaches gupt daan for the benefit of the needy as a religious practice. This glorious tradition has been established as a Dharma so that the needy section of the society can be helped. In this context the steps government takes should strengthen these charities who render yeomen services and expand their reach so that the burden of the government of a welfare state is minimized.

PRAYER:

S.115BBC of the income tax Act be reviewed and suitably modified to remove the anomaly stated above.

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**STANDING COMMITTEE
ON FINANCE
(2007-08)**

FOURTEENTH LOK SABHA

**MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

**DEMANDS FOR GRANTS
(2008-09)**

SIXTY-EIGHTH REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

April, 2008 / Chaitra, 1930 (Saka)

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30	6	16	<i>After</i> 'beyond December, 2008'. <i>Add:—</i> The Committee are of the view had the computerization programme been completed as per the original schedule, the extent of problem of the fake PAN Cards would not have been to the extent that it is today. <i>Add after para 3.52 and renumber the subsequent paras accordingly:—</i> Anonymous donations The Committee in their 14th Report on the Widening of Tax Base and Evasion of Tax recommended <i>inter-alia</i> as follows: "These exemptions/concessions are being misused by unscrupulous elements to their advantage. Instances have been brought to the notice of the Committee that some of the private hospitals and nursing homes which earn crores of rupees, have misused the exemptions provided for research activities. Similarly many of the Charitable trusts which are otherwise exempt from the income tax, misuse the provisions to their advantage.... One way of plugging this loophole is by making the filing of income tax returns mandatory for even such institutions/trusts which enjoy such exemptions." The Finance Minister while presenting the Budget for the year 2006-07 on

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the issue of taxing on the anonymous donations, stated *inter-alia* as follows:—

"The Standing Committee on Finance has expressed concern that many charitable institutions misuse the provisions of the Income Tax Act. I propose to focus on one misuse, namely, receiving anonymous or pseudonymous donations. Accordingly, I propose that anonymous or pseudonymous donations to wholly charitable institutions will be taxed at the highest marginal rate. Such donations to partly religious and partly charitable institutions/trusts will be taxed only if the donation is specifically for an educational or medical purpose. However, I make it clear that such donations to wholly religious institutions and religious trusts will not be covered by the new provision."

With regard to the issue of bringing anonymous donations into the tax net representatives of Ministry of Finance, during the oral evidence held on 26 March, 2008 *inter-alia* stated as follows:—

"As far as anonymous donations to charitable trusts are concerned, when we brought that into the tax net in 2006 Budget, it was a very painful decision, I must say, there were a lot of complaints before that, and the Hon. Committee had also expressed apprehension about the misuse of exemptions granted to various educational and hospital institutions

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and the laundering of black money through these institutions. Therefore, there was an urgency to take some steps to ensure that there was no laundering. However, the problem was how to design the tax provision so that genuine charities were not affected. So, we proposed that we should bring anonymous donation under the tax net, but exempt two categories. One relates to trusts which are wholly engaged in religious activities. So, if somebody goes to a Mandir and makes a *gupt daan*, it will not be subject to tax. The second category relates to trusts which are established to undertake both charitable and religious activities. However, many times what happens is, people use such trusts (i.e. second category) as a route to give donation to educational institutions or hospitals. If an anonymous donation has been given to such trusts with a specific direction that it should be used for educational purposes or it should be used in the hospital run by it, then that donation becomes taxable. So, effectively any donation given with a religious sentiment has been kept out of the purview of taxation."

Add after para 8 in part II of the Report and renumber the subsequent paras accordingly:—

The Committee are of the view that the philanthropic activities for instance, propagation of yoga, providing succour to the victims of natural disasters, running *gaushalas*, old age homes, orphanages,

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conservation of environment, wild animals etc. are being equated with charitable institutions and the entity concerned taxed accordingly. The Committee are of the view that the aforementioned activities should not be treated on par with the charitable activities like providing education and medical facilities etc. They, therefore, recommend that the appropriate guidelines in this regard be issued as to not tax these entities.

32 9 11

For
'Without further delay'

Read:—

Within six months.

- | | | | |
|-----|---|----|----|
| (c) | Modifications/Amendments made in the draft report on the 69th Report on Demands for Grants (2008-09) of Ministry of Planning. | | |
| | ** | ** | ** |
| | ** | ** | ** |
| (d) | Modifications/Amendments made in the draft report on the 70th Report on Demands for Grants (2008-09) of Ministry of Statistics and Programme Implementation | | |
| | ** | ** | ** |
| | ** | ** | ** |
| (e) | Modifications/Amendments made in the draft report on the 71st Report on Demands for Grants (2008-09) of Ministry of Corporate Affairs. | | |
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C.S.H. -134

**RAJYA SABHA
COMMITTEE ON PETITIONS**

**HUNDRED AND THIRTY FOURTH REPORT
ON**

**PETITION PRAYING FOR GRANT OF EXEMPTION TO CERTAIN CATEGORIES
OF CHARITABLE ORGANIZATIONS FROM PAYMENT OF INCOME TAX ON
RECEIPT OF ANONYMOUS DONATIONS**

(Presented on 26th February, 2009)

**RAJYA SABHA SECRETARIAT
NEW DELHI**

February, 2009

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To be appended at printing stage.

COMPOSITION OF THE COMMITTEE ON PETITIONS (2008-09)

1. Shri M. Venkaiah Naidu - Chairman

MEMBERS

(11)

2. Shri Vijay J. Darda
3. Shri Dhram Pal Sabharwal
4. Shri Rama Chandra Khuntia
5. Smt. Maya Singh
6. Shri Virendra Bhatia
7. Shri Shyamal Chakraborty
8. Shri N.R. Govindarajar
9. Shri Subash Prasad Yadav
10. Shri Sabir Ali

SECRETARIAT

Shri Tapan Chatterjee, *Joint Secretary*
 Shri J. Sundriyal, *Joint Director*
 Shri Rakesh Naithani, *Deputy Director*
 Shri Ashok Kumar Sahoo, *Assistant Director*
 Shri Goutam Kumar, *Committee Officer*

(i)

H. VENKATARAMAIAH
 CHAIRMAN
 COMMITTEE ON PETITIONS

(12)

INTRODUCTION

I, the Chairman of the Committee on Petitions, having been authorised by the Committee to submit the Report on its behalf, do hereby present this Hundred and Thirty-fourth Report of the Committee on the petition (**Appendix-I**) signed by Jainacharya Vijay Ratnasundersuri, camping at 92, Gujarat Vihar, Vikas Marg, Delhi-110092.

2.0 The petition was admitted by Hon'ble Chairman, Rajya Sabha on 3rd April, 2008 under the provisions of Chapter X of Rules of Procedure and Conduct of Business in Council of States. In accordance with Rule 145 of the said Rules, the petition was reported to the Council on 16th April, 2008 by Secretary-General after which it stood referred to the Committee on Petitions for examination and report in terms of Rule 150 *ibid*.

2.1 In its sitting held on 11th June, 2008, the Committee heard Jainacharya Vijay Ratnasundersuri and others on the petition. Thereafter, the Committee decided to issue a Press Communiqué inviting suggestion from individuals/organizations/institutions on the subject matter of the petition. In response thereto, one lakh thirteen thousand five hundred forty memoranda were received by the Secretariat. The Secretariat scrutinized the memoranda and a gist has been suitably incorporated in the report.

2.2 Subsequently, the Committee heard the Secretary, Department of Revenue (Ministry of Finance) on 22nd January, 2009 on the issues connected with the petition. The Committee held internal discussion on the subject on 30th January, 2009. It considered the draft Report in its sitting held on 25th February, 2009 and adopted the same.

3. For facility of reference and convenience, observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

NEW DELHI
February 25, 2009
Phalguna, 1930 (Saka)

M. VENKAIAH NAIDU
Chairman
Committee on Petitions

(ii)

REPORT

(13)

A petition praying for grant of exemption to certain categories of charitable organizations from payment of income tax on receipt of anonymous donations was submitted by Jainacharya Vijay Ratnasundersuri, camping at 92, Gujarat Vihar, Vikas Marg, Delhi-110092.

2. The petitioner has drawn the attention of the Council of States to the fact that Government of India had imposed 30% Income Tax on receipt of anonymous donations (*Gupt Daan*) received by charitable organization/trusts in the Budget of 2006-07. From that Financial year, every charitable institution became liable to pay tax on anonymous donations. According to the petitioner, a large number of charitable institutions are devoted to serve the oppressed, neglected and destitute. Such institutions receive donations in very small denominations like Rs. 21, Rs.51, Rs.101 and Rs.251, etc, to support their activities. India's culture has established certain human values in which an anonymous donation is not only a persons' '*Sanskar*' (higher standard of behavior) but his/her right. The petitioner has therefore contended that in our society, the taxation on anonymous donation is unconstitutional and inappropriate.

2.1 It has been prayed that for the safety, well being and survival of the oppressed and destitute persons, for the treatment and care of terminally ill patients, and for the care and protection of cattle and livestock including infirm animals, especially draught cattle and to translate the ideas of the Constitution, the following charitable organizations may be exempted from payment of Income Tax on anonymous donation received by them:

- (a) Orphanage
- (b) Old age home
- (c) Neat house and cow pen (*panjarepoles & gaushala*)
- (d) School for handicapped and institutions related to them
- (e) Hospitals for birds and cattle
- (f) Institutions which provide free treatment for cancer and other deadly diseases
- (g) Institutions which provide free shelter to oppressed people
- (h) Institutions which serve meal free of cost
- (i) Institutions which are meant for providing humanitarian assistance in case of natural calamity
- (j) Institutions which are related to widow and boycotted women.

3. The Ministry of Finance (Department of Revenue), being the nodal Ministry for the subject-matter of the petition, in their initial comments, have observed that the intention of section 115BBC of the Income Tax Act, 1961 is to tax unaccounted money being contributed to charitable entities camouflaged in the form of anonymous donations. Under Section 115BBC of the Act, anonymous donations are taxed at the rate of 30%. For this purpose, religious and charitable entities have been divided into three categories, namely:-

- (a) Wholly religious entities
- (b) Partly religious and partly charitable entities
- (c) Wholly charitable entities

3.1 Wholly religious entities have been kept outside the purview of Section 115BBC in view of the religious practice of '*Gupt Daan*' and '*hundi*' contribution. Partly religious and partly charitable entities have also been exempted in the section except where the anonymous donation is made to an educational or medical institution run by such entity.

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12. The Ministry of Finance (Department of Revenue) further submitted that in the case of wholly charitable entities, Section 115BBC requires the donee institution to maintain a record of the names and addresses of the donor, otherwise the contribution is considered as anonymous. The Ministry further added that the requirement can easily be complied with by such institutions. Besides, the donors making contributions to notified charitable entities are entitled for deduction under section 80G of the Act from their total income. Hence, there is no reason why a donor would not like to disclose his identity and avail the deduction, unless his contribution is from unaccounted sources of income. The Ministry contended that even otherwise, anonymous donations would only form an insignificant portion of the total contribution received by a charitable organization.

13. The Ministry further added that as Section 115BBC seeks to introduce transparency in the system of donations made to charitable entities, exempting certain types of charitable institutions from its ambit will dilute the purpose of the provision besides creating avenues for its misuse.

4. The Committee issued a Press Release both in print and electronic media to elicit views of the organizations/individuals on the petition. As already stated elsewhere in the Report, more than one lakh thirteen thousand organizations/individuals submitted their memoranda to the Committee, all opposing levy of tax on the money received by the ten odd categories of wholly charitable organizations which were generally run by ordinary *Swamis, Fakirs, Mullahs and Sadhus*.

5. The Committee thereafter invited the petitioner and other witnesses viz., S/Shri Nitin Doshi, Vipul Modi, Rajendra Joshi, Bhupinder Yadav to hear their views. The points raised by the petitioner and others during their deposition before the Committee are summarized as follows:-

- (i) Unlike the developed countries, the Government of our country cannot provide social security to every citizen due to resource constraint. But our glorious tradition has established a system in which the prosperous and well-to-do persons give donations to charitable institutions so that the elderly, handicapped persons, orphans, sick and infirm cattle, get social and life security through those organizations. Such organizations also undertake relief and rehabilitation measures in times of natural calamities. If these entities have to pay 30&percent; tax to the Government, there would be negative impact on their performing humanistic and philanthropic activities.
- (ii) India is a Welfare State and the provisions of our Constitution viz. its Preamble, Fundamental Rights and the Directive Principles of the State Policy enjoin upon the State to secure social, economic and political justice; to initiate measures for the welfare of the people; to secure the right to work, education, public assistance in cases of unemployment, old age, sickness and disablement and in other cases of underserved want; to raise the level of nutrition, standard of living and to improve public health; and to organize agriculture, and animal husbandry. But due to resource crunch and inadequate infrastructure, State is unable to achieve the aforesaid objectives to the extent to which the Constitution framers would have desired of it. Charitable organizations always supplement the Government in performing these functions to some extent in our country.
- (iii) Both from religious and social angle, anonymous donations have been given extreme importance in Indian culture. What is described as *Gupt Daan* has several virtues and many donors wish to give donations without expecting any return. Provision of 30&percent; tax will have negative and decisive impact on the efficiency of those institutions.
- (iv) It is not always true that the anonymous donation is always donation of unaccounted or

(15)

so-called black money. Finance Minister has commented that such donations may not be publicized, but the donee should at least have information regarding the donor. However, once the name is disclosed, there may be temptation on the part of the donee to publicize such donation, may be with the intention to persuade or inspire other donors to give such donations. Disclosure of names leads to mouth to mouth publicity and defeats the nature of donations from being *Gupt Daan*.

- (v) Action needs to be taken at the point of generation of black money and the onus has to be on the person who generates such money rather than the recipient of such money and more so by the well intentioned NGO sector in the present case. In the present case, the onus of taxation is on the donee which is against natural justice and fair play.
- (vi) It is the donors who should be penalized for having unaccounted income from which they give donations to charitable trust. Instead, it is the charitable trusts, who supplement the efforts of the government in addressing social cause, is asked to pay tax of 30&percent;. Hence, the law should be modified to the extent that the amount applied for charitable purpose out of anonymous donation, deduction be allowed and the balance only may be liable to tax. Further, if the charitable trust discloses to the authorities the names and addresses of the donors, so as to identify them, such donations should not be liable to tax and the donors may be asked to pay the tax on such amounts.

6.0 The Committee thereafter heard the Secretary (Revenue), Ministry of Finance. The Committee, while noting the written replies of the Department of Revenue to the questionnaire prepared by the Secretariat, mentioned that it had a negative connotation and far from convincing. The Committee wanted to know from the Revenue Secretary, the rationale behind exempting the wholly religious, partly religious and partly charitable organizations from the payment of income tax on *Gupt Daan*, while wholly charitable organizations engaged in philanthropic activities like orphanages, old age-home, *Gaushala*, *Panjrapoles*, hospitals for birds & cattle, hospital providing free treatment to the cancer patients, leprosy affected persons and mentally retarded, are taxed at the highest rate of income tax on *Gupt Daan* received by them, under Section 115BBC of Income Tax Act, 1961. Even the Sixty-eighth Report of the Department-related Parliamentary Standing Committee on Finance on the Demand for Grants (2008-09) of the related Ministry mentioned that non-profit charitable organizations should not be equated with the charitable trusts involved in providing medical and technical education, and making huge profit out of that. Some of the latter category of charitable organizations had been misusing the special provision of the Act under the grab of anonymous or pseudonymous donations and in the name of charity.

6.1 The Revenue Secretary clarified that the rationale for taxing wholly charitable organizations is based on the presumption that anonymous donation is unaccounted money and the recipient is to be taxed in case the identity of the donor is not known. Owing to the strong religious tradition of our country, there had not been any occasion to record donations given in *hundi* in the temples or other places of worship as a result of which wholly religious or partly religious and partly charitable organizations has been kept completely out of taxation purview. Member (L&C), CBDT and Special Secretary, Department of Revenue while assisting the Revenue Secretary added that the earlier liberal provision in the taxation law was grossly misused by the charitable organizations and a lot of unaccounted money got channelized into investment in the name of charity which led to imposition of 30&percent; income tax on receipt of anonymous donations received by wholly charitable organizations.

6.2 According to the Committee, it is the primary duty of the State to provide welfare services and take care of the oppressed and deprived sections of the society which it had not been able to perform due to several reasons, particularly the resource constraints. To fill that gap, philanthropists/philanthropic institutions had been instrumental in supplementing the efforts of the Government. But the State has

taxing those charitable organizations which are engaged in genuine philanthropic activities without any profit motive simply because no religious tag is attached to those institutions.

53 The Chairman of the Committee observed that the explanation tendered by the Ministry was not convincing and acceptable in view of the resentment expressed by the public against the provision of Section 115BBC of Income Tax Act, 1961 inasmuch as 113540 memoranda were received by the Committee pleading for granting exemption from payment of income-tax on anonymous donations received by the specified category of charitable trusts. In that context, an argument was put forth that even if it was presumed that anonymous donation was black money, why the Government was bothered as long as that money was used for noble and philanthropic causes thereby supplementing and complementing Governmental efforts. Extending that line of argument it was suggested that instead of taxing such donation, Government should ensure the end-use of such money.

54 Some Members wanted to know detailed information relating to the quantum of black money unearthed during the last one and half years from the charitable organizations.

55 The Revenue Secretary while reiterating the official explanation behind the insertion of Section 115 BBC, added that as long as a religious organization or a partly religious and partly charitable organization performed philanthropic activities, the anonymous donation would qualify for exemption from Income Tax. He also added that the problem started when a wholly charitable organization performing such activities received anonymous donation. He explained that if a person wants to run an institute for any of those specific purposes, creation of a wholly religious or partly religious or partly charitable institution for that purpose would get over the tax problem because, then, it would be restricted to the activities of that institution. If an institution, for any of those purposes listed, is run by a religious institution or by a partly religious or a partly charitable institution, then also, they will be exempted. However, the Committee was not convinced with the line of argument and felt that simply because there was no *hundi* or religious tag, preventing a person from doing good things was unreasonable and irrational.

Observations/Recommendations of the Committee

61 The gravamen of the petition is that charitable institutions named in the petition, carry out activities aimed at providing care and shelter to the most neglected sections of the society, namely, old and infirm persons, orphans, widows, destitute women etc. Such institutions also provide free treatment to persons afflicted with deadly diseases like cancer; provide food and shelter to the homeless. Besides, rendering humanitarian services in natural calamities and disasters, these charitable organizations also take care of the sick and infirm animals, milch and draught cattle and sick birds. The Committee notes that these organizations perform the tasks which the Government had not been able to perform to the desired extent due to several reasons, particularly the resource constraints and lack of infrastructure. The activities of the charitable organizations are funded through small donations given by individuals, which, in keeping with our cultural traditions and ancient heritage, are mostly anonymous. If such donations are taxed at 20 percent, then the activities of those organizations would suffer a severe set back. The Government has been taxing those charitable organizations which are doing genuine philanthropic activities without any profit motive simply because no religious tag is attached to those institutions and also no *hundi* was available to collect small donations.

62 The Committee observed that as part of ancient Indian cultural heritage, many philanthropic activities are being carried on by charitable organizations. It is a common practice that every charitable organization keeps a donation box and the visitors drop some amount in that box depending upon one's capacity. Even in aircrafts and big retail stores, donation boxes are

kept to collect money for charitable and humanitarian causes. Placing of donation boxes is a common sight particularly in chemists' shops and pharmacies. It is in public knowledge that such donation boxes are opened following a well laid down procedure and the proceeds so collected is a very good source of income for the trust.

7.3 The Committee has noticed that people donate for noble causes without giving their names, irrespective of their source and it therefore cannot be concluded that every anonymous donation is from unaccounted source. It is also quite likely that people may donate from their regular income and yet not disclose their identity. There are several philanthropic organizations known to have done yeoman's service alongside governmental agencies during natural disasters, which have been acclaimed worldwide. As per Government's policy, these organizations are not granted subsidies. The Committee is of the view that it is primary duty of the Government to support such organizations, if not directly, at least indirectly. Taxing such proceeds as anonymous donation at the highest marginal rate is not justified.

7.4 The Committee noticed that instances of misuse of exemption provision as submitted by the Department of Revenue pertain mostly to educational institutions and other to real estate. Not a single case pertains to the categories of charitable organizations for which exemption has been sought. In the Ministry's own admission, it is premature to comment on the effectiveness of Section 115BBC, which vindicates the stand taken by the petitioner and endorsed by the Committee that bringing anonymous donation or *gupt daan* to charitable organizations within the tax net is not justified and such donations deserve exemption. In fact the information provided by the Ministry justify the provisions of Section 115BBC which does not grant exemption to a partly religious and partly charitable organization receiving anonymous donations for educational purposes, but does not support the provision for taxing all charitable organization for anonymous donations. The Ministry's explanation is only a solemn hope that taxation provisions under Section 115BBC will strengthen the hands of the IT Department.

7.5 The Committee observes that the justification offered by the Department of Revenue for taxing anonymous donation to wholly charitable organizations, is judgmental hypothesis based on assumption which is not backed by concrete evidence or data. In the face of the unprecedented number of representations received from the public opposing the imposition of tax on receipt of anonymous donations by charitable trusts and seeking exemption in favour of certain notified categories of trust, it is the duty of the executive arm of the Government in a Parliamentary democracy, to pay heed to the upsurge of public opinion and review its decision.

7.6 In this context this Committee would like to quote the following recommendations made by the DRPSC on Finance, in its Sixty-eight Report on the Demands for Grants (2008-09) of the related Ministry:

"...The Committee are of the view that the philanthropic activities, for instance, propagation of yoga, providing succour to the victims of natural disasters, running gaushalas, old age homes, orphanages, conservation of environment, wild animals etc. are being equated with charitable institutions and the entity concerned taxed accordingly. The Committee are of the view that the aforementioned activities should not be treated on par with the charitable activities like providing education and medical facilities etc. They, therefore, recommend that the appropriate guidelines in this regard be issued not to tax these entities...."

7.7 The Committee underscores that the objective of Section 115BBC of the IT Act, 1961 has not been questioned in the petition. In fact the petitioner has prayed for grant of exemption to ten

types of charitable institutions keeping in view of the humanitarian and welfare activities being undertaken by them. This would encourage the charitable entities to carry on their welfare activities which the State should undertake as per the objectives enshrined in the Constitution thereby supplementing and complementing Governmental efforts. Instead of taxing such donations, Government should ensure the end use of such money. The Committee, therefore, recommends that the relevant provision of the IT Act may be reviewed and suitable provisions made in the law to exempt to charitable organizations such as orphanage, old age home, neat house and cow pen (*panjarepoles & gaushala*), school for handicapped and institutions related to them, hospitals for birds and cattle, institutions which provide free treatment for cancer and other deadly disease, institution which provide free shelter to oppressed people, institutions which serve meal free of cost, institutions which are meant for providing humanitarian assistance in case of natural calamity, institutions which are related to widow and boycotted women and institutions looking after Leprosy Affected Persons (LAP) and mentally challenged, from payment of income tax on receipt of *gupt daan*. It further underlined the need for putting in place adequate safeguards so as to ensure that the end usage of funds takes place for the prescribed charitable activities and no diversion/misuse of such funds is resorted to.

*****. It might be possible that the latter category of charitable organization be misusing the special provision of the Act under the grab of anonymous or pseudonymous donations and in the name of charity. The Committee discourages receipt of black money by those charitable organizations for running medical & technical institutes and making huge profit

Suggested amendment in section 115BBC.

22. In Chapter XII of the Income-tax Act, after section 115BBB, the following section shall be inserted with effect from the 1st day of April, 2007, namely:—

‘115BBC. Anonymous donations to be taxed in certain cases.— (1) Where the total income of an assessee, being a person in receipt of income on behalf of any university or other educational institution referred to in sub-clause (iiiad) or sub-clause (vi) or any hospital or other institution referred to in sub-clause (iiiag) or sub-clause (via) or any fund or institution referred to in sub-clause (iv) or any trust or institution referred to in sub-clause (v) of clause (23C) of section 10 or any trust or institution referred to in section 11, includes any income by way of any anonymous donation, made with a specific direction that such donation is for any university or other educational institution or any hospital or other medical institution run by such trust or institution, the income-tax payable shall be the aggregate of—

- (i) the amount of income-tax calculated on the income by way of any anonymous donation, at the rate of thirty per cent; and
- (ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i).

(2) The provisions of sub-section (1) shall not apply to any anonymous donation received by—

- (a) any trust or institution created or established wholly for religious purposes;
- (b) any trust or institution created or established wholly for religious and charitable purposes other than any anonymous donation made with a specific direction that such donation is for any university or other educational institution or any hospital or other medical institution run by such trust or institution.

(3) For the purposes of this section, “anonymous donation” means any voluntary contribution referred to in sub-clause (iia) of clause (24) of section 2, where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed.’