

BEFORE THE CENTRAL INFORMATION COMMISSION

EXTRA SUBMISSIONS IN RESPECT OF COMPLAINT NO. CIC/SM/C/2011/0838

FOLLOWING FULL-BENCH HEARING HELD ON 26.09.2012

Submitted by Mr. Ashok Aneja -Chief Commissioner of Income Tax(Retired)

Following the joint hearing of the above-mentioned complaint, also with Complaints No. **CIC/SM/C/2011/001385 and 001386** filed by Shri Subhash Chandra Agrawal, I, Ashok Aneja on behalf of the Association for Democratic Reforms (ADR), would like to submit the following **(Annexure 7.2)** in support of my complaint office to declare political parties as public authorities under the Right to Information Act, 2005.

**Tax exemption given to political parties: (Annexure 7.2)**

Section 13 A of the Income Tax Act deals with the exempt Income of the Political Parties in India. Section 13A has been inserted in the Income Tax Act 1961 by the Taxation Laws (Amendment) Act 1978 and has come into effect from 1.11.1979.

Political Party for the purpose Section 13A of the Income Tax Act means a political party registered under Section 29A of the Representation of the People's Act 1951 (43 of 1951).

Under Section 13A, any income of a political party chargeable under the heads 'interest on securities', 'income from property', 'income from other sources' or 'income by way of voluntary contributions' was exempted with effect from 1.04.1979. A copy of the Taxation Laws (Amendment) Act 1978 is enclosed as Annexure A.

Subsequently, head of income 'Interest on Securities' (Sections 18 to 21), was omitted by the Finance Act 1988 with effect from 1.04.1989. Therefore, exemption of income under the head 'interest on securities' was operative, upto Assessment Year 1988-89. Subsequently, income from capital gains was exempted in the hands of the political parties by the Finance Act 2003 with retrospective effect from 1.04.1979.

The following incomes derived by a political party are not included in computing its total income.

1. Income chargeable under the head 'Income from House Property' or
2. Income chargeable under the head 'Income from other sources'
3. Income by way of capital gains
4. Income by way of voluntary contribution from any person.

The exemption of the above income shall be available only on satisfaction of following conditions:

- a. The political party backs and maintains such books of Accounts and other documents as will enable the Assessing officer to properly deduce its income there from
- b. The accounts of the political party are audited by a Chartered Accountant where the voluntary contributions from a person exceeds Rs 20,000, it books and maintains a record of such contribution and the name and address of the person who has made such contribution
- c. The treasurer of such political party or any person authorised by the political party in this behalf must submit a report under Section 29(3) of the Representation of People's Act 1951 for the relevant financial year

An extract of Income Tax Act containing provisions of Section 13A is enclosed as per Annexure B.

Section 13B: Closely connect with Section 13A is exemption from Income Tax accorded to income of an electoral trust under Section 13B of the Income Tax Act.

An "electoral trust" means a trust so approved by the Central Board of Direct Tax in accordance with the scheme made in this regard by the Central Government.

Any voluntary contribution received by an electoral trust shall be treated as income of the Electoral Trust and treated as exempt if the following conditions are satisfied

- a. The Electoral Trust distributes to any political party registered under Section 29A of the RPA, 1951 during previous year 95% of the aggregate donations received by it during the said previous year along with surplus, if any, brought forward from any earlier previous year, and
- b. Such Electoral Trust functions in accordance with rules made in this regard by the Central Government

So, Electoral Trust also enjoys exemption from Income Tax in regard to distribution of donation to political parties.

Not only electoral trusts but Indian Companies also get Tax concession/ exemption in respect of contribution given to political parties under Section 80GGB of the Income Tax Act.

Any sum contributed by an Indian Company in the previous year to any political parties or an Electoral Trust is allowable as deduction while computing its total income.

Relevant extract of Income Tax Act 1961 dealing with Section 13B (Electoral Trust) and Section n 80GGB are enclosed as Annexure C & D.

Political parties are indirectly financed by the government by

1. Not charging income tax in respect of income of political parties (Section 13A)
2. Not charging income tax in respect of donations/ income of electoral trust distributing its income/ contribution / surplus to political parties (Section 13B)
3. Not charging income tax in respect of any sum contributed by Indian Company to any political party (Section 80GGB)

**Example:**

- a. An Indian Company with an income of Rs One crore decides to contribute Rs one lakh to 'X' political party. It saves Tax at the rate of 30%, Education Cess of 2% of Income Tax and Secondary and Higher Education of 1% on its net outflow of contribution (total contribution – Taxes + EC + HEC) and it comes out to be 33% of 1 lakh.
- b. When political party receives this Rs 1 lakh, it doesn't have to pay any penny in tax. So effectively the 20.1% (assuming tax rate is 30%) of 1 lac is financed by the government.
- c. The cumulative of the above two deduces to 53.1% of the initial Rs. 1 lakh, that never enters into the government's kitty

**Case Study:**

Exemption of income of political parties (Section 13A): vis-à-vis deduction of profits and gains by being an entrepreneur from the export of articles or things or providing any service from newly established units in special economic zone (SEZ) – Section 10AA. (Available to individual firms, companies who derive any profits or gains from an undertaking being a unit engaged in the export of articles or things or providing any service)

Section 10AA (Units in SEZ)			Section 13A (Political parties)
Deduction given to promote exports			Exemption given to provide indirect financial subsidy
Deduction is available subject to certain conditions			No such conditions are attached
Deduction is allowable as under for a total period of 15 relevant assessment years as under			Exemption is available within any time limit
1	For the first consecutive assessment year, relevant to the previous year in which the unit begins to manufacture such articles or things to provide services	100% of the profits and gains derived from the export of such articles or things or from services	
2	Next 5 consecutive assessment years	50% of such profits or gains	
3	Next 5 consecutive assessment years	So much of the amount not exceeding 50% of the profit as is debited to profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to special economic zone. Reinvestment reserve account to be credited and utilised for the purpose of business of the assessee in the manner laid down in sub section (2)	

**Conclusion:**

1. Vide Taxation Law (Amendment) Act 1978, indirect subsidy was given to political parties by not charging income tax on certain sources/ heads of income which was later on further extended vide Finance Act, 2003. This step was taken to give financial assistance to political parties indirectly.

While such incentive/ deductions are given to other entities only to promote certain socio-economic objectives and not to give financial subsidy as such.

2. Exemption to political parties is given without conditions while socio-economic incentives given in the income tax act are subject to fulfillment of certain conditions.
3. Exemption of income given under income tax act under Section 13A is not restricted to a particular year or years or sums involved.

Incentives given for socio-economic objectives are generally restricted to certain year or certain sums.

Submitted by :

Ashok Aneja -Chief Commissioner Income Tax(Retired)