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[2022] 145 taxmann.com 64 (Article)Date of Publishing: **November 19, 2022****After the Emergency in 1976, Foreign Philanthropic Payments again under Regulator' lens****CA MUKUL GUPTA**

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The *Foreign Contribution (Regulation) Act, 1976*, which was passed during the emergency to curb foreign interference in domestic politics proved to be a worthy watchdog for Indian regulators. The law was aimed to regulate foreign donations aimed at disturbing the values of sovereign democratic republic.

The law was amended in 2010 amid the surging economic crisis and thereafter in 2020 amid global pandemic and larger in-flux of philanthropic receipts in order to regulate the same and filter out the politically motivated funds targeting India' political sovereignty and its identity in global scenario.

Its critical for a nation to save its interests against foreign invasive tendencies. Politically motivated foreign contributions can severely have crippling impact on integrity of national interests. The modern global warfare is focussed largely on influencing, coercing, intimidating or undermining national interests of target country. Recent political turmoil in Sri Lanka and Pakistan are live examples of how foreign contributions can tarnish an economy if not tackled on time.

Indian government has responded well to such political crisis in neighbouring countries by pro-actively revisiting its foreign policy from time to time. One such regulation worth mentioning is *Foreign Contribution Regulation Act* ('FCRA') which has acted as India' watchdog on foreign incoming grants since time immemorial.

FCRA regulates foreign contribution or hospitality by certain individuals or associations or companies. It prohibits acceptance and utilisation of foreign contribution or hospitality for any activities detrimental to the national interest and for matters connected therewith or incidental thereto. The Act extends to the whole of India and also applies to citizens of India who are outside India. It also applies to branches and subsidiaries, outside India of companies registered/incorporated in India.

India witnessed a sudden surge in the foreign incoming contributions around the COVID-19 pandemic which made the regulators apprehensive of the politically motivated funds. Indian regulatory authorities have also been conducting raids and scrutiny of such institutions receiving funds from overseas.

Off late, FCRA licenses of many organisations have also been cancelled on account of alleged violation of FCRA, income tax and allied provisions. In one of the instances, a New Delhi headquartered NGO had been issued notice for suspension of its FCRA license under Section [13](#) of the FCRA pursuant to a regulatory audit of its books of accounts. It was alleged that the NGO violated reporting norms with respect to the utilisation of foreign contributions while filing its annual returns and also there were allegation regarding mixing of foreign and domestic funds which is in contravention of the extant FCRA provisions. In another instance, while conducting enquiry against few NGOs, regulators found grave violations pertaining to misuse of foreign funds for promotion of barred activities under Section [12](#) of FCRA.

During May 2022, as many as 40 raids have been reported to have been conducted by CBI in which hawala transactions were unearthed by regulatory. More than 20 individuals were detained including government officials for neglecting FCRA protocols and guidelines while receiving foreign funds and involvement of alleged middlemen and representatives of certain NGOs.

Violations pertaining to FCRA provisions not only highlight potential politically motivated fund movements but also potential tax evasion. Both of the two are against national interests and values. Therefore, foreign fund movements are high on political agenda for Indian regulators and such contributions have been under regulator's lens in the recent past.

Conclusion:

It is imperative for Indian institutions to be aware of the provisions of FCRA and ensure its compliance before accepting any foreign contribution. Also, any utilisation or transfer of such funds shall also be analysed and properly planned. FCRA registered organisations engaged in philanthropic endeavours must ensure that they are compliant with the regulations and are maintaining the underlying documentation all throughout. Further, all inbound contributions and their motives must be thoroughly analysed against the FCRA before acceptance by the registered institutes.

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