

Charitable Trust or Institution

Amendments by Finance Act 2020

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**Charitable Trusts, Hospitals, Educational
Institutions, Religious Trusts or any other
Organisation**

Registered u/s 10(23C) / 12A/ 12AA/12AB**/35 /
80G**

of the Income Tax Act, 1961

Important Sections at a Glance


S.No	Section	Description	Remarks
1	2(15)	Definition of "Charitable Purpose"	No Change
2	10(23C)	Income which do not form part of Total Income	Amended vide Finance Act, 2020 w.r.t. clause (iv)/(v)/(vi)/(via)
3	11	Income from property held for charitable or religious purposes.	Amended vide Finance Act, 2020
4	12	Income of Trusts or Institutions from Contributions	No Change
5	12A	Conditions for applicability of Section 11 & 12	Amended vide Finance Act, 2020
6	12AA	Procedure for Registration	Repealed vide Finance Act, 2020 w.e.f. 1.06.2020
7	12AB	Procedure for Fresh Registration	Introduced w.e.f. 01.06.2020
8	13	Section 11 not to apply in certain cases	No Change
9	35	Expenditure on Scientific Research	Amended vide Finance Act, 2020
10	44AB	Audit of Accounts carrying on Business or Profession	Amended vide Finance Act, 2020
11	80G	Deduction in respect of donations to certain funds, charitable institutions etc.	Amended vide Finance Act, 2020 w.r.t. clause (v)

Important Sections at a Glance

S.No	Section	Description	Remarks
12	80GGA	Deduction in respect of certain donations for scientific research or rural development	Amended vide Finance Act, 2020
13	115TD	Special Provisions relating to tax on Accreted Income of certain Trusts and Institutions. -Tax on Accreted Income	Amended vide Finance Act, 2020
14	139	Return of Income	Amended vide Finance Act, 2020
15	234G	Fee for default relating to Statement or Certificate to be furnished by assessee registered under section 35	Introduced w.e.f . 01.06.2020
16	271K	Penalty for failure to furnish statements etc. by assessee registered under section 35	Introduced w.e.f . 01.06.2020

Crux of Amendments

- All Trusts or Institutions registered u/s 10(23C)/ 12A/ 12AA shall be **required to obtain fresh registration after 1st June 2020** for which **application** is required to be filed **within three months** i.e. upto 31st August 2020 (*or extended time limit due to COVID-19, if any*).
- All Trusts or Institutions registered u/s 80G(v) shall be **required to obtain fresh registration after 1st June 2020** for which **application** is required to be filed **within three months** i.e. upto 31st August 2020 (*or extended time limit due to COVID-19, if any*).
- All research association, university, college or other institution registered u/s 35 shall be **required to intimate to the prescribed Income Tax Authority in the prescribed manner after 1st June 2020 within three months** i.e. upto 31st August 2020 (*or extended time limit due to COVID-19, if any*).



Various Scenarios for Registration u/s 10(23C) / 12A/ 12AA/ 12AB

Case 1: Entities Already Registered u/s 10(23C) / 12A/ 12AA before 01.06.2020

S. No	Particulars	Amendment
1	Application	Compulsory to file a fresh application in case a Trust or Institution is already registered before 01.06.2020
2	Time Period for Filing Application	Within three months from 01.06.2020 i.e. before 31.08.2020. (Section 12A(1)(ac)(i)) (Section 10(23C)(Proviso 1)(Clause i))
3	Time Period for Passing of Order by Principal Commissioner or Commissioner	On filing of the Application the order shall be passed within 3 months from the end of the month in which the application is received. (Section 12AB(3)) (Section 10(23C)(Proviso 9))
4	Type of registration	Normal
5	Validity of Registration	The Principal Commissioner or the Commissioner shall <i>pass an</i> order in writing registering the trust or institution for a period of five years. (Section 12AB(1)(a)) (Section 10(23C)(Proviso 2)(Clause i))
6	Severity of Verification of Documents	Less

Case 2: Entities which have already filed application u/s 12AA or 10(23C) but order has not been passed before 01.06.2020

S. No	Particulars	Amendment
1	Application	No new application is required to be filed .
2	Time Period for Filing Application	The existing application shall be deemed to considered as an application filed for registration u/s 12AB / 10(23C) as on 01.06.2020 (Section 12AB(2)) (Section 10(23C)(Proviso 18))
3	Time Period for Passing of Order by Principal Commissioner or Commissioner	The Order shall be passed Upto 31st July 2020 i.e. one month from the end of the month in which the application is deemed to have been received. (Section 12AB(3)) (Section 10(23C)(Proviso 9))
4	Type of Registration	Provisional
5	Validity of Registration	The Principal Commissioner or the Commissioner shall <i>pass an</i> order in writing registering the trust or institution for a period of three years (Section 12AB(1)(c)) (Section 10(23C)(Proviso 2)(Clause iii))
6	Severity of Verification of Documents	Less

Case 3: For Newly Incorporated Entities / Entities seeking Fresh Registration after 01.06.2020

S. No	Particulars	Amendment
1	Application	To be filed after incorporation of entity
2	Time Period for Filing Application	Such Trust or Institution shall file an application one Month prior to the commencement of the Previous Year relevant to the Assessment Year from which registration/benefit is sought. (Section 12A(1)(ac)(vi)) (Section 10(23C)(Proviso 1)(Clause iv))
3	Time Period for Passing of Order by Principal Commissioner or Commissioner	Within 1 month from the end of the month in which the application was received. (Section 12AB(3)) (Section 10(23C)(Proviso 9))
4	Type of Registration	Provisional
5	Validity of Registration	The Principal Commissioner or the Commissioner shall pass an order in writing registering the trust or institution for a period of three years (Section 12AB(1)(c)) (Section 10(23C)(Proviso 2)(Clause iii))
6	Severity of Verification of Documents	Less

Remarks

1. It may not be possible for a Trust or an Institution to make an application one month before the commencement of Previous Year. For eg. If a Trust is **Incorporated in July 2020** and receives donation during the Financial Year (Previous Year) 2020-21, then it should have made an application in the month of February 2020 i.e. One month prior to the commencement of the Previous Year relevant to Assessment Year from which registration is sought which is not possible. It appears to be a **Drafting Error** and apparently it should have been one month prior to the commencement of the **Assessment Year**.
2. This shall mean technically that **no benefit can be sought for the First Year of Incorporation**.
3. The said **Registration can be obtained even before commencement of Activities of the Trust or Institution**.

Case 4: Trusts or Institutions which are Provisionally Registered u/s 10(23C)/12AB after 01.06.2020

S. No	Particulars	Amendment
1	Application	All Trusts or Institutions which receive Provisional Registration have to apply for normal registration.
2	Time Period for Filing Application	Six months prior to expiry of period of the provisional registration or within six months of commencement of its activities , whichever is earlier. (Section 12A(1)(ac)(iii)) (Section 10(23C)(Proviso 1)(Clause iii))
3	Time Period for Passing of Order by PCIT/CIT	Within 6 months from the end of the month in which the application is received. (Section 12AB(3)) (Section 10(23C)(Proviso 9))
4	Type of Registration	Normal
5	Validity of Registration	The Principal Commissioner or the Commissioner shall pass an order in writing registering the trust or institution for a period of five years ; (Section 12AB(1)(b)(ii)(A)) (Section 10(23C)(Proviso 2)(Clause ii))
6	Severity of Verification of Documents	More

Remarks

1. Such Registration shall be granted to the Trust or Institution after **calling for such documents** or information from the Trust or **Institution or make such Enquiries** as he thinks necessary in order to **satisfy** himself about the **genuineness of activities** of the trust or institution and the **compliance of such requirements of any other law** for the time being in force by the trust or institution as are material for the purpose of achieving its objects;
2. The clause
*“call for such documents or information from the trust or institution or make such inquiries as he thinks necessary in order to satisfy himself about the compliance of such requirements **of any other law for the time being in force** by the trust or institution as are material for the purpose of achieving its objects; “*
has given very wide powers to the Principal Commissioner / Commissioner. Now, they may verify any other law which shall be applicable on such Trust / Institution other than Income Tax Act, 1961 and the said Trust or Institution shall fulfil all its conditions. Any non-compliance of any condition of any other Act applicable on the Trust or Institution may lead to cancellation of its registration.
3. Principal Commissioner or Commissioner shall pass an Order only after satisfying himself about the **objects of the trust** or institution and the **genuineness of its activities**, and **compliance of the requirements**
4. If he is not so satisfied, he shall pass an order in writing **rejecting** such application and also cancelling its registration after affording a **reasonable opportunity** of being heard.

Case 5: Trusts or Institutions Registered (Normal) after 01.06.2020 and their Period of Registration is about to Expire

S. No.	Particulars	Amendment
1	Application	All Trusts or Institutions Registered u/s 12AB or 10(23C) after 01.06.2020 whose period of Registration of 5 years is about to expire.
2	Time Period for Filing Application	At least Six Months prior to expiry of the registration. (Section 12A(1)(ac)(ii)) (Section 10(23C)(Proviso 1)(Clause ii))
3	Time Period for Passing of Order by PCIT/CIT	within 6 months from the end of the month in which the application was received. (Section 12AB(3)) (Section 10(23C)(Proviso 9))
4	Type of Registration	Normal
5	Validity of Registration	The Principal Commissioner or the Commissioner shall pass an order in writing registering the trust or institution for a period of five years ; (Section 12AB(1)(b)(ii)(A)) (Section 10(23C)(Proviso 2)(Clause i))
6	Severity of Verification of Documents	More

Remarks

1. Such Registration shall be granted to the Trust or Institution after calling for such documents or information from the Trust or Institution or make such Enquiries as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects;
2. The clause
“call for such documents or information from the trust or institution or make such inquiries as he thinks necessary in order to satisfy himself about the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects; “
has given very wide powers to the Principal Commissioner / Commissioner. Now, they may verify any other law which shall be applicable on such Trust / Institution other than Income Tax Act, 1961 and the said Trust or Institution shall fulfil all its conditions. Any non-compliance of any condition of any other Act applicable on the Trust or Institution may lead to cancellation of its registration.
3. Principal Commissioner or Commissioner shall pass an Order only after satisfying himself about the objects of the trust or institution and the genuineness of its activities, *and compliance of the requirements*
4. if he is not so satisfied, he shall pass an order in writing **rejecting** such application and also cancelling its registration after affording a **reasonable opportunity** of being heard.

Case 6: Change in Object Clause of Trusts or Institutions already Registered

S. No	Particulars	Amendment
1	Application	All Trusts or Institutions registered u/s 12AB where there has been any Change in Objects on the basis of which Registration was granted Earlier.
2	Time Period for Filing Application	Within 30 Days of Adoption or Modification of such Objects. (Section 12A(1)(ac)(v))
3	Time Period for Passing of Order by PCIT/CIT	Within 6 month from the end of the month in which the application was received. (Section 12AB(3))
4	Type of Registration	Normal
5	Validity of Registration	The Principal Commissioner or the Commissioner shall pass an order in writing re-registering the trust or institution for a period of five years ; (Section 12AB(1)(b)(ii)(A))
6	Severity of Verification of Documents	More

Case-7 Appeal against order of rejection by CIT(E) is pending before ITAT/HC/SC before 01.06.2020 & Fresh Application is filed after 01.06.2020

S. No	Particulars	Amendment
1	Application	<p>Every Trust or Institution whose application had been rejected by CIT(E) before 01.06.2020 and appeal is pending before ITAT, High Court or Supreme Court.</p> <p>In this case, Assessee may file a fresh application in the new regime after 01.06.2020. However, in that case, benefit of exemption shall not be available for PY 20-21.</p>
2	Time Period for Filing Application	<p>Such Trust shall file an application at least 1 Month prior to the commencement of the Previous Year relevant to Assessment year from which the said registration is sought.</p> <p>(Section 12A(1)(ac)(vi)) (Section 10(23C)(Proviso 1)(Clause iv))</p>
3	Time Period for Passing of Order by Principal Commissioner or Commissioner	<p>The Order shall be passed by the Principal Commissioner or the Commissioner within 1 month from the end of the month in which the application was received.</p> <p>(Section 12AB(3)) (Section 10(23C)(Proviso 9))</p>
4	Type of Registration	Provisional
5	Validity of Registration	<p>The Principal Commissioner or the Commissioner shall <i>pass an</i> order in writing registering the trust or institution for a period of Three years;</p> <p>(Section 12AB(1)(c)) (Section 10(23C)(Proviso 2)(Clause iii))</p>
6	Severity of Verification of Documents	Less

Case-8 Appeal against order of rejection by CIT(E) is pending before ITAT/HC/SC before 01.06.2020 & Fresh Application is filed before 01.06.2020

S. No	Particulars	Amendment
1	Application	<p>Every Trust or Institution whose application had been rejected by CIT(E) before 01.06.2020 and appeal is pending before ITAT, High Court or Supreme Court.</p> <p>In this case, Assessee may file a fresh application in the before 01.06.2020 and obtain Provisional Registration. This way, benefit of exemption for PY 20-21 shall not be foregone.</p>
2	Time Period for Filing Application	<p>The application filed shall be deemed to be considered as an application filed for registration u/s 12AB / 10(23C) as on 01.06.2020 (Section 12AB(2)) (Section 10(23C)(Proviso 18))</p>
3	Time Period for Passing of Order by Principal Commissioner or Commissioner	<p>The Order shall be passed Upto 31st July 2020 i.e. one month from the end of the month in which the application is deemed to have been received. (Section 12AB(3)) (Section 10(23C)(Proviso 9))</p>
4	Type of Registration	Provisional
5	Validity of Registration	<p>The Principal Commissioner or the Commissioner shall <i>pass an</i> order in writing registering the trust or institution for a period of three years (Section 12AB(1)(c)) (Section 10(23C)(Proviso 2)(Clause iii))</p>
6	Severity of Verification of Documents	Less

Case-9 Appeal against order rejecting registration by CIT(E) is decided in favour before 01.06.2020 by ITAT/HC/SC.

S. No	Particulars	Amendment
1	Application	Every Trust or Institution whose application had been rejected by CIT(E) before 01.06.2020 and favourable order is received from ITAT, High Court or Supreme Court.
2	Time Period for Filing Application	Within three months from 01.06.2020 i.e. before 31.08.2020. (Section 12A(1)(ac)(i)) (Section 10(23C)(Proviso 1)(Clause i))
3	Time Period for Passing of Order by Principal Commissioner or Commissioner	On filing of the Application the order shall be passed within 3 months from the end of the month in which the application is received. (Section 12AB(3)) (Section 10(23C)(Proviso 9))
4	Type of Registration	Normal
5	Validity of Registration	The Principal Commissioner or the Commissioner shall <i>pass an order in writing</i> registering the trust or institution for a period of Five years; (Section 12AB(1)(a)) (Section 10(23C)(Proviso 2)(Clause i))
6	Severity of Verification of Documents	Less TAXBYMANISH.

Remarks

1. In this case, even after a favourable order has been received from the Tribunal / Court allowing the registration u/s 10(23C)/12AA/80G, it is possible that Principal Commissioner or Commissioner has not passed the order granting registration and the matter is pending before him for passing of order as on 01.06.2020.

Henceforth, the Principal Commissioner or Commissioner on perusal of the new application filed under the new regime shall take note of the order of the Tribunal / Court and grant the necessary registration accordingly.

Case 10a: Appeal against order of rejection by CIT(E) is rejected before 01.06.2020 by ITAT/HC/SC & Fresh Application is filed before 01.06.2020

S. No	Particulars	Amendment
1	Application	Every Trust or Institution whose application had been rejected by CIT(E) before 01.06.2020 and Unfavourable order is received from ITAT, High Court or Supreme Court.
2	Time Period for Filing Application	In this case, a fresh application can be made before 01.06.2020 and the same application shall be deemed to be considered as an application filed for registration u/s 12AB / 10(23C) as on 01.06.2020. (Section 12AB(1)(c)) (Section 10(23C)(Proviso 18))
3	Time Period for Passing of Order by Principal Commissioner or Commissioner	The Order shall be passed Upto 31st July 2020 i.e. one month from the end of the month in which the application is deemed to have been received. (Section 12AB(3)) (Section 10(23C)(Proviso 9))
4	Type of Registration	Provisional
5	Validity of Registration	The Principal Commissioner or the Commissioner shall <i>pass an</i> order in writing registering the trust or institution for a period of Three years ; (Section 12AB(1)(c)) (Section 10(23C)(Proviso 2)(Clause iii))
6	Severity of Verification of Documents	Less

Case 10b: Appeal against order of rejection by CIT(E) is rejected before 01.06.2020 by ITAT/HC/SC & Fresh Application is filed after 01.06.2020

S. No	Particulars	Amendment
1	Application	Every Trust or Institution whose application had been rejected by CIT(E) before 01.06.2020 and Unfavourable order is received from ITAT, High Court or Supreme Court. In this case, a fresh application can be made after 01.06.2020.
2	Time Period for Filing Application	Such Trust or Institution shall file an application one Month prior to the commencement of the Previous Year relevant to the Assessment Year from which registration/benefit is sought. Henceforth, the exemption shall be available for FY 2021-22 and no exemption shall be available for FY 2020-21. (Section 12A(1)(ac)(vi)) (Section 10(23C)(Proviso 1)(Clause iv))
3	Time Period for Passing of Order by Principal Commissioner or Commissioner	Within 1 month from the end of the month in which the application was received. (Section 12AB(3)) (Section 10(23C)(Proviso 9))
4	Type of Registration	Provisional
5	Validity of Registration	The Principal Commissioner or the Commissioner shall pass an order in writing registering the trust or institution for a period of three years (Section 12AB(1)(c)) (Section 10(23C)(Proviso 2)(Clause iii))
6	Severity of Verification of Documents	Less TAXBYMANISH.

Case 11: Where Trust Established in FY 19-20 but No Application was made in the said FY /Previous Year

S. No	Particulars	Amendment
1	Application	Trusts or Institution had been incorporated during FY 2019-20 and no application was filed during FY 2019-20 relevant for AY 2020-21. Henceforth, no exemption shall be available for AY 2020-21. However, if the Assessee wishes to avail benefit of exemption for AY 2021-22, it is advised to apply for registration before 30.06.2020. (Assuming no registration is granted upto 01.06.2020)
2	Time Period for Filing Application	It is recommended to file an application before 01.06.2020. (Section 12AB(1)(c)) (Section 10(23C)(Proviso 18))
3	Time Period for Passing of Order by Principal Commissioner or Commissioner	The Order shall be passed Upto 31st July 2020 i.e one month from the end of the month the application is deemed to have been received. (Section 12AB(3)) (Section 10(23C)(Proviso 9))
4	Type of Registration	Provisional
5	Validity of Registration	The Principal Commissioner or the Commissioner shall <i>pass an order in writing</i> registering the trust or institution for a period of three years (Section 12AB(1)(c)) (Section 10(23C)(Proviso 2)(Clause iii))
6	Severity of Verification of	Less ^{TAXBYMANISH.}

Case 12: Trusts or Institution incorporated during FY 2020-21 upto 30.06.2020 and has commenced its activities .

S. No	Particulars	Amendment
1	Application	Trusts or Institution which have been incorporated during FY 2020-21 upto 30.06.2020 and have commenced its activities .
2	Time Period for Filing Application	<p>In such a case, it is suggested to file application before 01.06.2020 and attain provisional registration after 01.06.2020. (Section 12AB(1)(c)) (Section 10(23C)(Proviso 18))</p> <p>Since the Assessee has commenced its activities, it shall file application for Normal Registration within 6months of commencement of its activities. (Section 12A(1)(ac)(iii)) (Section 10(23C)(Proviso 1)(Clause iii))</p>
3	Time Period for Passing of Order by Principal Commissioner or Commissioner	<p>Order for Provisional Registration shall be passed upto 31.07.2020.</p> <p>Thereafter, order for Normal Registration shall be passed within 6 Months from the end of the month of receipt of application</p> <p>(Section 12AB(3)) (Section 10(23C)(Proviso 9))</p>
4	Type of Registration	Provisional for the First Application & Normal for the Second Application.

Case 12: Trusts or Institution incorporated during FY 2020-21 upto 30.06.2020 and has commenced its activities .

S. No	Particulars	Amendment
5	Validity of Registration	Provisional Registration shall be valid upto 3 Years from the grant of Registration. (Section 12AB(1)(c)) (Section 10(23C)(Proviso 2)(Clause ii)) Normal Registration shall be granted for a period of 5years . (Section 12AB(1)(b)) (Section 10(23C)(Proviso 2)(Clause ii))
6	Severity of Verification of Documents	Less for Provisional Registration and More for Normal Registration

Case 13: Residual Clause for Registration after 01.06.2020

S. No	Particulars	Amendment
1	Application	To be filed in any other case not covered above (Residual Clause)
2	Time Period for Filing Application	Such Trust or Institution shall file an application one Month prior to the commencement of the Previous Year relevant to the Assessment Year from which registration/benefit is sought. (Section 12A(1)(ac)(vi)) (Section 10(23C)(Proviso 1)(Clause iv))
3	Time Period for Passing of Order by Principal Commissioner or Commissioner	Within 1 month from the end of the month in which the application was received. (Section 12AB(3)) (Section 10(23C)(Proviso 9))
4	Type of Registration	Provisional
5	Validity of Registration	The Principal Commissioner or the Commissioner shall pass an order in writing registering the trust or institution for a period of three years (Section 12AB(1)(c)) (Section 10(23C)(Proviso 2)(Clause iii))
6	Severity of Verification of Documents	Less

Amendments and Respective Time Limits at a Glance

S. No	Type of Case	Sections Invoked	Time Period for Application	Time Period for passing Order by Pr. CIT/CIT	Validity of Registration	Type of Registration	Severity of Verification of Documents
1	Already Registered Entities before 01.06.2020	10(23C) 12A/12AA 80G(5) 12AB	01.06.2020 to 31.08.2020	3 Months from end of the month of receipt of application	5 Years	Normal	Less
2	Entities which have already filed application but order has not been received before 01.06.2020	10(23C) 12A/12AA 80G(5) 12AB	No New Application to be Filed	Upto 31.07.2020. i.e. within one month from the end of the month in which application is filed.	3 Years	Provisional	Less
3	Newly Incorporated Entities / Entities seeking Registration on or after 01.06.2020	10(23C) 12AB 80G(5)	1 Month prior to commencement of Previous Year relevant to Assessment Year from which registration is sought.	One month from the end of the month of receipt of application	3 Years	Provisional	Less

Important Time Limits at a Glance..

S. No	Type of Case	Sections Invoked	Time Period for Application	Time Period for passing Order by Pr. CIT/CIT	Validity of Registration	Type of Registration	Severity of Verification of Documents
4	Trusts or Institution which were Provisionally Registered (S. No. 2 & 3 above)	10(23C) 12AB 80G(5)	6 Months before Expiry or within 6 months of Commencement of Activities	6 Months from the end of the month of receipt of application	5 Years	Normal	More
5	Trusts or Institutions Registered (Normal) after 01.06.2020 and their Period of Registration is about to Expire (S. No. 1 & 4 above)	10(23C) 12AB 80G(5)	6 Months before Expiry Period	6 Months from the end of the month of receipt of application	5 Years	Normal	More
6	Change in Objects (S. No. 1 to 5 above)	12AB	Within 30 Days of such change	6 Months from the end of the month of receipt of application	5 Years	Normal	More

Case Laws

Issue 1: Registration cannot be rejected on the basis of non-performance of activities & in case objects are charitable in nature

Landmark Judgement of Supreme Court

M/s. Ananda Social And Educational Trust Versus The Commissioner Of Income Tax & Another (2020 (2) Tmi 1293 - Supreme Court Civil Appeal No(s).5437-5438/2012 Civil Appeal No.4702/2014 Civil Appeal No.1727/2020 (Slp(c) No.25761/2015) Dated: - 19 February 2020

The purpose of section 12AA of the Act is to enable registration only of such trust or institution whose objects and activities are genuine. In other words, the Commissioner is bound to satisfy himself that the object of the Trust are genuine and that its activities are in furtherance of the objects of the Trust, that is equally genuine. Since section 12AA pertains to the registration of the Trust and not to assess of what a trust has actually done, we are of the view that the term **'activities'** in the provision **includes 'proposed activities'**. That is to say, a Commissioner is bound to consider whether the objects of the Trust are genuinely charitable in nature and whether the activities which the Trust proposed to carry on are genuine in the sense that they are in line with the objects of the Trust.

Other Judicial Pronouncements on Issue 1

- **COMMISSIONER OF INCOME, JAIPUR-II VERSUS VIJAY VARGIYA VANI CHARITABLE TRUST** (2015 (2) TMI 671 - **RAJASTHAN HIGH COURT** Other Citation: [2014] 369 ITR 360 (Raj) D.B. INCOME TAX APPEAL NO. 17/2014 Dated: - 18 August 2014)
- Commissioner Of Income Tax (Exemptions) Versus **J.S.B. Shikshan Sansthan** (2017 (11) TMI 1224 - **Rajasthan High Court** D. B. Income Tax Appeal No. 172 / 2017 Dated: - 07 November 2017)
- Principal Commissioner Of Income Tax (Exemption) Versus **Shri Nathji Goverdhan Nathji Charitable Trust** (2020 (3) TMI 54 - **Calcutta High Court** ITA 180 Of 2018 Dated: - 28 February 2020)
- Commissioner of Income Tax (Exemption), Lucknow Versus **M/s Shreedhar Sewa Trust Asharfi Bhawan, Ayodhya, Faizabad.** (Income Tax Appeal No. 33 Of 2017)
- **Gurudham Ashram Versus CIT (Exemption) Bhopal** (2020 (3) TMI 464 - **ITAT Indore** ITA Nos.470 And 471/IND/2018 Dated: - 23 January 2020)

Issue 2: Registration of Oral Trust

- Commissioner Of Income Tax (Exemptions) Versus **M/S Tej Karan Dandia Suraj Bai Dandia Memorial Trust (2018 (10) TMI 606 - Rajasthan High Court D.B. Income Tax Appeal No. 58/2018 Dated: - 20 February 2018)**

Registration u/s 12AA - CIT(E) refused the registration to the trust on the ground that it not a legal trust in the State of Rajasthan in view of section 17(1) of the Rajasthan Public Trust Act, 1959?” - ITAT allowed the registration - Held that:- the issue is squarely covered by the decision of this court in case of Commissioner of Income Tax (Exemptions) vs. M/s Arihanth Charitable Trust [2018 (7) TMI 1815 - RAJASTHAN HIGH COURT] **as per the provisions of the Indian Trust Act, the trust can be created even orally and if the assessee is able to give some evidence of creation of such Trust by a word of mouth, the same shall be eligible for registration u/s 12AA/12A of the Act, provided such evidence is filed and the other conditions under the statute are satisfied.**

Issue 2: Registration of Oral Trust

- Commissioner Of Income Tax (Exemptions) , Jaipur Versus **M/s Arihanth Charitable Trust** (2018 (7) Tmi 1815 - **Rajasthan High Court** D.B. Income Tax Appeal No. 279/2017 Dated: - 14 November 2017)

The applicable Rule 17A itself provides that it is not necessary that the Institution/Trust should be established under an instrument. The Rule 17A does not prescribe that in case the Institution/Trust is established otherwise than under an instrument, what type of document evidencing the creation of the Trust or the establishment of the Institution, has to be filed, meaning thereby that the document evidencing the creation of Trust or the establishment of Institution could be of any type. **As per the provisions of the Indian Trust Act, the trust can be created even orally and if the assessee is able to give some evidence of creation of such Trust by a word of mouth, the same shall be eligible for registration u/s 12AA/12A of the Act**, provided such evidence is filed and the other conditions under the statute are satisfied. Following the decision of HC [2016 (9) TMI 307 - Delhi High Court], decided against the Revenue.

Amendment in Section 10(23C)

In section 10 of the Income-tax Act,—

(l) in clause (23C),—

(A) for the first and second provisos, the following provisos shall be substituted with effect from the 1st day of June, 2020, namely:—

“Provided that the exemption to the fund or trust or institution or university or other educational institution or hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) under the respective sub-clauses shall not be available to it unless such fund or trust or institution or university or other educational institution or hospital or other medical institution makes an application in the prescribed form and manner to the Principal Commissioner or Commissioner, for grant of approval,—

(i) where such fund or trust or institution or university or other educational institution or hospital or other medical institution is approved under the second proviso [as it stood immediately before its amendment by the Finance Act, 2020], within three months from the date on which this clause has come into force;

(ii) where such fund or trust or institution or university or other educational institution or hospital or other medical institution is approved and the period of such approval is due to expire, at least six months prior to expiry of the said period;

(iii) where such fund or trust or institution or university or other educational institution or hospital or other medical institution has been provisionally approved, at least six months prior to expiry of the period of the provisional approval or within six months of commencement of its activities, whichever is earlier;

Amendment in Section 10(23C)

(iv) in any other case, at least one month prior to the commencement of the previous year relevant to the assessment year from which the said approval is sought, and the said fund or trust or institution or university or other educational institution or hospital or other medical institution is approved under the second proviso:

Provided further that the Principal Commissioner or Commissioner, on receipt of an application made under the first proviso, shall,—

(i) where the application is made under clause (i) of the said proviso, pass an order in writing granting approval to it for a period of five years;

(ii) where the application is made under clause (ii) or clause (iii) of the said proviso,—

(a) call for such documents or information from it or make such inquiries as he thinks necessary in order to satisfy himself about—

(A) the genuineness of activities of such fund or trust or institution or university or other educational institution or hospital or other medical institution; and

(B) the compliance of such requirements of any other law for the time being in force by it as are material for the purpose of achieving its objects; and

(b) after satisfying himself about the objects and the genuineness of its activities under item (A), and compliance of the requirements under item (B), of sub-clause (a),—

(A) pass an order in writing granting approval to it for a period of five years;

(B) if he is not so satisfied, pass an order in writing rejecting such application and also cancelling its approval after affording it a reasonable opportunity of being heard;

(iii) where the application is made under clause (iv) of the said proviso, pass an order in writing granting approval to it provisionally for a period of three years from the assessment year from which the registration is sought, and send a copy of such order to the fund or trust or institution or

Amendment in Section 10(23C)

(B) after the third proviso, the following Explanation shall be inserted, namely:—

"Explanation.—For the removal of doubts, it is hereby clarified that for the purposes of this proviso, the income of the funds or trust or institution or any university or other educational institution or any hospital or other medical institution, **shall not include income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of such fund or trust or institution or any university or other educational institution or any hospital or other medical institution;**"

(C) for the eighth and ninth provisos, the following provisos shall be substituted with effect from the 1st day of June, 2020 namely:—

“Provided also that any approval granted under the second proviso shall apply in relation to the income of the fund or trust or institution or university or other educational institution or hospital or other medical institution,—

(i) where the application is made under clause (i) of the first proviso, from the assessment year from which approval was earlier granted to it;

(ii) where the application is made under clause (iii) of the first proviso, from the first of the assessment years for which it was provisionally approved;

(iii) in any other case, from the assessment year immediately following the financial year in which such application is made:

Provided also that the order under clause (i), sub-clause (b) of clause (ii) and clause (iii) of the second proviso shall be passed, in such form and manner as may be prescribed, before expiry of the period of three months, six months and one month, respectively, calculated from the end of the month in which the application was received.”;

Amendment in Section 10(23C)

(D) in the tenth proviso, for the words and figures “section 288 and furnish along with the return of income for the relevant assessment year”, the words, figures and letters “section 288 before the specified date referred to in section 44AB and furnish by that date” shall be substituted;

(E) in the twelfth proviso, for the words, brackets, figures and letters “in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), to any trust or institution registered under section 12AA, being voluntary contribution made with a specific direction that they shall form part of the corpus of the trust or institution,” the words, brackets, figures and letters “in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), to any other fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) or trust or institution registered under section 12AA, being voluntary contribution made with a specific direction that they shall form part of the corpus,” shall be substituted;

(F) with effect from the 1st day of June, 2020,-

(a) the sixteenth proviso shall be omitted;

(b) for the eighteenth proviso, the following proviso shall be substituted, namely:—

*“Provided also that all applications made under the first proviso *as it stood before its amendment by the Finance Act, 2020] pending before the Principal Commissioner or Commissioner, on which no order has been passed before the date on which the first proviso has come into force, shall be deemed to be an application made under clause (iv) of the first proviso on that date:”;*

Amendment in Section 11

In section 11 of the Income-tax Act,-

- (I) in sub-section (1), in Explanation 2, for the words, figures and letters " to any other trust or institution registered under section 12AA, being contribution with a specific direction that they shall form part of the corpus of the trust or institution", the words, brackets, figures and letters "**to any fund** or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of **clause (23C) of section 10** or other trust or institution registered under **section 12AA**, being contribution with a specific direction that it shall form part of **the corpus**" shall be substituted;
- (II) in sub-section (7), with effect the 1st day of June, 2020—
 - (a) for the words, brackets, letters and figures "under clause (b) of sub-section (1) of section 12AA", the words, figures and letters "under section 12AA or section 12AB" shall be substituted;
 - (b) for the words, brackets, figures and letter "clause (1) and clause (23C)", the words, brackets, figures and letter "clause (1), clause (23C) and clause (46)" shall be substituted;
 - (c) the following provisos shall be inserted, namely:—

"Provided that such registration shall become inoperative from the date on which the trust or institution is approved under clause (23C) of section 10 or is notified under clause (46) of the said section, as the case may be, or the date on which this proviso has come into force, whichever is later:

Provided further that the trust or institution, whose registration has become inoperative under the first proviso, may apply to get its registration operative under section 12AB subject to the condition that on doing so, the approval under clause (23C) of section 10 or notification under clause (46) of the said section, as the case may be, to such trust or institution shall cease to have any effect from the date on which the said registration becomes operative and thereafter, it shall not be entitled to exemption under the respective clauses."

Amendment in Section 12A

In section 12A of the Income-tax Act,—

(I) in sub-section (1),—

(A) after clause (ab), the following clause shall be inserted with effect from the 1st day of June, 2020, namely:—

*(ac) notwithstanding anything contained in clauses (a) to (ab), the **person** in receipt of the income **has made an application** in the prescribed form and manner to the Principal Commissioner or Commissioner, for registration of the trust or institution,—*

*(i) where the trust or institution is registered under section 12A [as it stood immediately before its amendment by the Finance (No. 2) Act, 1996] or under section 12AA, [as it stood immediately before its amendment by the Finance Act, 2020] **within three months** from the date on which this clause has come into force;”*

(ii) where the trust or institution is registered under section 12AB and the period of the said registration is due to expire, at least six months prior to expiry of the said period;

(iii) where the trust or institution has been provisionally registered under section 12AB, at least six months prior to expiry of period of the provisional registration or within six months of commencement of its activities, whichever is earlier;

Amendment in Section 12A

(iv) where registration of the trust or institution has become inoperative due to the first proviso to sub-section (7) of section 11, at least six months prior to the commencement of the assessment year from which the said registration is sought to be made operative;

(v) where the trust or institution has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, within a period of thirty days from the date of the said adoption or modification;

(vi) in any other case, at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration is sought, and such trust or institution is registered under section 12AB;”;

(B) in clause (b), for the words “and the person in receipt of the income furnishes along with the return of income for the relevant assessment year”, the words, figures and letters “before the specified date referred to in section 44AB and the person in receipt of the income furnishes by that date” shall be substituted;

Amendment in Section 12A

(II) in sub-section (2), with effect from the 1st day of June, 2020,—

(A) in the first proviso, for the words “Provided that”, the following shall be substituted, namely:—

“Provided that the provisions of sections 11 and 12 shall apply to a trust or institution, where the application is made under—

(a) sub-clause (i) of clause (ac) of sub-section (1), from the assessment year from which such trust or institution was earlier granted registration;

(b) sub-clause (iii) of clause (ac) of sub-section (1), from the first of the assessment years for which it was provisionally registered

Provided further that”;

(B) in the second proviso, for the words “Provided further”, the words “Provided also” shall be substituted;

(C) in the first and third provisos, after the word, figures and letters “section 12AA”, the words, figures and letters “or section 12AB” shall be inserted.

Section 12AA : Repealed

In section 12AA of the Income-tax Act, after sub-section (4), *the following* sub-section shall be inserted with effect from the 1st day of June, 2020, namely-

“(5)Nothing contained in this section shall apply on or after the 1st day of June, 2020”

Insertion of Section 12AB

After section 12AA of the Income-tax Act, the following section shall be inserted with effect from the 1st day June, 2020, namely:—

“12AB. (1) The Principal Commissioner or Commissioner, on receipt of an application made under clause (ac) of sub-section (1) of section 12A, shall,—

(a) where the application is made under sub-clause (i) of the said clause, pass an order in writing registering the trust or institution for a period of five years;

(b) where the application is made under sub-clause (ii) or sub-clause (iii) or sub-clause (iv) or sub-clause (v) of the said clause,—

(i) call for such documents or information from the trust or institution or make such inquiries as he thinks necessary in order to satisfy himself about—

(A) the genuineness of activities of the trust or institution; and

(B) the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects;

(ii) after satisfying himself about the objects of the trust or institution and the genuineness of its activities under item (A), and compliance of the requirements under item (B), of sub-clause (i),—

(A) pass an order in writing registering the trust or institution for a period of five years; or

(B) if he is not so satisfied, pass an order in writing rejecting such application and also cancelling its registration after affording a reasonable opportunity of being heard;

Insertion of Section 12AB

(c) where the application is made under sub-clause (vi) of the said clause, pass an order in writing provisionally registering the trust or institution for a period of three years from the assessment year from which the registration is sought,

and send a copy of such order to the trust or institution.

(2) All applications, pending before the Principal Commissioner or Commissioner on which no order has been passed under clause (b) of sub-section (1) of section 12AA before the date on which this section has come into force, shall be deemed to be an application made under sub-clause (vi) of clause (ac) of sub-section (1) of section 12A on that date.

(3) The order under clause (a), sub-clause (ii) of clause (b) and clause (c), of sub-section (1) shall be passed, in such form and manner as may be prescribed, before expiry of the period of three months, six months and one month, respectively, calculated from the end of the month in which the application was received.

(4) Where registration of a trust or an institution has been granted under clause (a) or clause (b) of sub-section (1) and subsequently, the Principal Commissioner or Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution after affording a reasonable opportunity of being heard.

Insertion of Section 12AB

(5) Without prejudice to the provisions of sub-section (4), where registration of a trust or an institution has been granted under clause (a) or clause (b) of sub-section (1) and subsequently, it is noticed that—

(a) the activities of the trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13; or

(b) the trust or institution has not complied with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality,

then, the Principal Commissioner or the Commissioner may, by an order in writing, after affording a reasonable opportunity of being heard, cancel the registration of such trust or institution.”.

Discussion on Dual Registration u/s 10(23C) & 12AA

Dual Registration u/s 10(23C) & u/s 12AA

- **Section 11(7)**

Where a trust or an institution has been granted registration under section 12AA or section 12AB or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996] [33 of 1996] and the said registration is in force for any previous year, then, nothing contained in section 10 [other than [clause (1), clause (23C) and clause (46)] thereof] shall operate to exclude any income derived from the property held under trust from the total income of the person in receipt thereof for that previous year.]

Provided that **such registration** shall become **inoperative** from the date on which the trust or institution is **approved under clause (23C)** of section 10 or is notified under clause (46) of the said section, as the case may be, **or the date on which this proviso has come into force, whichever is later:**

Provided further that the **trust** or institution, **whose registration has become inoperative under the first proviso, may apply** to get its **registration operative** under **section 12AB** subject to the condition that on doing so, the **approval under clause (23C) of section 10** or notification under clause (46) of the said section, as the case may be, to such trust or institution **shall cease to have any effect from** the date on which the said **registration becomes operative** and thereafter, it shall not be entitled to exemption under the respective clauses.]

Case 14: Registration has become Inoperative due to Proviso to 11(7)

S. No	Particulars	Amendment
1	Application	Every Charitable Trust whose registration has become inoperative due to first proviso to Section 11(7).
2	Time Period for Filing Application	Such Trust shall file an application at least 6 Months prior to the commencement of the assessment year from which the said registration is sought to be made operative. (Section 12A(1)(ac)(iv)) (Section 10(23C): Not Attracted)
3	Time Period for Passing of Order by Principal Commissioner or Commissioner	The Order shall be passed by the Principal Commissioner or the Commissioner within 6 month from the end of the month in which the application was received. (Section 12AB(3)) (Section 10(23C): Not Attracted)
4	Type of Registration	Normal
5	Validity of Registration	The Principal Commissioner or the Commissioner shall <i>pass an order in writing</i> registering the trust or institution for a period of Five years ; (Section 12AB(1)(b)(ii)(A)) (Section 10(23C): Not Attracted)
6	Severity of Verification of Documents	More

Remarks

1. Such Registration shall be granted to the Trust after calling for such documents or information from the Trust or Institution or make such Enquiries as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects;
2. The clause
“call for such documents or information from the trust or institution or make such inquiries as he thinks necessary in order to satisfy himself about the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects; “
has given very wide powers to the Principal Commissioner / Commissioner. Now, they may verify any other law which shall be applicable on such Trust / Institution other than Income Tax Act, 1961 and the said Trust or Institution shall fulfil all its conditions. Any non-compliance of any condition of any other Act applicable on the Trust or Institution may lead to cancellation of its registration.
3. Principal Commissioner or Commissioner shall pass an Order only after satisfying himself about the objects of the trust or institution and the genuineness of its activities, *and compliance of the requirements.*
4. if he is not so satisfied, he shall pass an order in writing **rejecting** such application and also cancelling its registration after affording a **reasonable opportunity** of being heard.

Comments on Dual Registration

- In the current Regime, there were various Entities which had been registered both u/s 10(23C) and u/s 11. This had been leading to Duplicity and Redundancy. The Finance Act, 2020 aims to rationalise the same. Accordingly, **Only One Registration can now be sought by a Charitable Entity.**
- All such Entities which have been Registered both u/s 11 and 10(23C) will have to choose the section under which they shall now want to take the exemption and make the necessary application under that section for Registration.

Amendments u/s 80G

Registration u/s 80G- Important Timelines

	Type of Case	Time Period for Application	Time Period for Passing of Order	Validity of Registration	Type of Registration	Severity of Verification of Documents
1	Already Registered Entities u/s 80G(5)(vi) before 01.06.2020	01.06.20 to 31.08.2020 (Section 80G(5)(Proviso 1) (Clause i))	3 Months from end of the month of receipt of application (Section 80G(5)(Proviso 3))	5 Years (Section 80G(5)(Proviso 2) (Clause i))	Normal	Less
2	Entities which have already filed application but order has not been received before 01.06.20	No New Application to be Filed (Section 80G(5) (5E))	Upto 31.07.2020 (Section 80G(5)(Proviso 3))	3 Years (Section 80G(5)(Proviso 2) (Clause iii))	Provisional	Less
3	For Newly Incorporated Entities / Entities seeking Registration on or after 01.06.2020	1 Month prior to commencement of Previous Year relevant to Assessment Year from which registration is sought (Section 80G(5)(Proviso 1)(Clause	1 month from the end of the month of receipt of application (Section 80G(5)(Proviso 3))	3 Years (Section 80G(5)(Proviso 2) (Clause iii))	Provisional	Less

Registration u/s 80G- Important Timelines..

S.No.	Type of Case	Time Period for Application	Time Period for Passing of Order	Validity of Registration	Type of Registration	Severity of Verification of Documents
4	Trusts or Institution which were Provisionally Registered (S. No. 2 & 3 above)	6 Months before Expiry or within 6 months of Commencement of Activities (Section 80G(5)(Proviso 1) (Clause iii))	6 Months from the end of the month of receipt of application (Section 80G(5)(Proviso 3))	5 Years (Section 80G(5)(Proviso 2) (Clause (ii)(b)(A)))	Normal	More
5	Trusts or Institutions Registered (Normal) after 01.06.2020 and their Period of Registration is about to Expire (S. No. 1 & 4 above)	6 Months before Expiry Period (Section 80G(5)(Proviso 1) (Clause ii))	6 Months from the end of the month of receipt of application (Section 80G(5)(Proviso 3))	5 Years (Section 80G(5)(Proviso 2) (Clause (ii)(b)(A)))	Normal	More

Filing of Statement of Donations by Trusts or Institutions (Section 80G(5)(viii))

- **Applicability:** All Trusts registered u/s 80G(5)(vi) shall be **required to file a Statement of Donations** received by it in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed.
- In case of any rectification of any mistake, or to add, delete or update the information furnished in the above statement, a **correction statement** can be filed by the Trust or the Institution in such form and verified in such manner as may be prescribed
- **Claim of the Assessee for deduction on account of Donation shall be allowed on the basis of Statement furnished by the Trust**

Other Amendments in/related to section 80G

- **Issue of Certificate to Donor (Section 80G(5)(ix)).**

The **Trust** or Institution shall be required to **issue a certificate to the donor**, specifying the amount of donation in such manner, containing such particulars and within such time from the date of receipt of donation as may be prescribed.

- **Fee for Non – Filing of Statement of Donation by Trusts registered u/s 80G / 35 (Section 234G)**

The Trust or institution or fund which **fails to furnish such statement or Certificate within** the prescribed **time** shall be liable to pay, by way of **fee**, a sum of **Rs. 200 per day** (two hundred rupees) during which the failure continues. Such fees shall not exceed the amount in respect of which the failure referred to therein has occurred. The amount is required to be **paid before furnishing the statement / certificate.**

- **Penalty for Non – Filing of Statement of Donation by Trusts registered u/s 80G (Section 271K)**

Without prejudice to the provisions of this Act, the Assessing Officer may direct that a sum not less than **Rs. 10,000** (ten thousand rupees) but which may extend to **Rs. 1,00,000** (one lakh rupees) shall be paid by way of **penalty** by *the institution or fund, if it fails to deliver or cause to be delivered a statement or furnish a certificate within the time prescribed.*

Case Laws (80G)

Issue 1: Registration u/s 80G cannot be denied on the basis that no Significant Activity has been started by the Assessee.

- **Badri Narain Kanta Devi Katta Charitable Trust Versus Commissioner Of Income-tax (Exemptions) , Jaipur (2020 (1) TMI 116 - ITAT JAIPUR ITA No. 1212/JP/2018 Dated: - 30 July 2019)**

In the case in hand, the Id. CIT (E) has not found that the activities carried out by the assessee trust are not as per the objects but it was noticed that no significant activity has been started by the assessee trust. As regards the requirement of the order granting registration under section 12AA to be annexed with the application for approval under section 80G(5) when the assessee has applied on the same date and the registration was granted by the Id. CIT (E) under section 12AA at the time of refusal of the approval under section 80G, then the said condition as provided under rule 11AA stands satisfied as the order of granting approval under section 12AA was already with the Id. CIT (E) at the time of passing the impugned order. **Merely because the assessee could not undertake much activity within the short span of time, the Id. CIT (E) should not have refused the claim of approval under section 80G(5) of the Act.** Appeal of assessee allowed for statistical purposes.

Other Judicial Pronouncements on Issue 1

- Commissioner Of Income Tax-exemption, Jaipur, Jaipur Versus **Mata Padmawati Shyamdaya Charitable Trust** (2018 (12) TMI 699 - RAJASTHAN HIGH COURT D.B. Income Tax Appeal No. 165/2018 Dated: - 04 December 2018)
- **M/s Just Be Foundation Trust** Versus Commissioner Of Income Tax (Exemptions) , New Delhi (2019 (9) TMI 945 - ITAT DELHI ITA No. 3678/Del/2018 Dated: - 17 September 2019)

Amendment in Section 80G

In section 80G of the Income-tax Act, with effect from the 1st day of June, 2020,—

(i) in sub-section (5),—

(a) in clause (vi), for the words “approved by the Commissioner in accordance with the rules made in this behalf; and”, the words “approved by the Principal Commissioner or Commissioner;” shall be substituted;

(b) after sub-clause (vii), the following shall be inserted, namely:—

“(viii) the institution or fund prepares such statement for such period as may be prescribed and deliver or cause to be delivered to the prescribed income-tax authority or the person authorised by such authority such statement in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed:

Provided that the institution or fund may also deliver to the said prescribed authority a correction statement for rectification of any mistake or to add, delete or update the information furnished in the statement delivered under this sub-section in such form and verified in such manner as may be prescribed; and

Amendment in Section 80G

(ix) the institution or fund furnishes to the donor, a certificate specifying the amount of donation in such manner, containing such particulars and within such time from the date of receipt of donation, as may be prescribed:

Provided that the institution or fund referred to in clause (vi) shall make an application in the prescribed form and manner to the Principal Commissioner or Commissioner, for grant of approval,—

(i) where the institution or fund is approved under clause (vi) [as it stood immediately before its amendment by the Finance Act, 2020], within three months from the date on which this proviso has come into force;

(ii) where the institution or fund is approved and the period of such approval is due to expire, at least six months prior to expiry of the said period;

(iii) where the institution or fund has been provisionally approved, at least six months prior to expiry of the period of the provisional approval or within six months of commencement of its activities, whichever is earlier;

(iv) in any other case, at least one month prior to commencement of the previous year relevant to the assessment year from which the said approval is sought:

Provided further that the Principal Commissioner or Commissioner, on receipt of an application made under the first proviso, shall,—

(i) where the application is made under clause (i) of the said proviso, pass an order in writing granting it approval for a period of five years;

Amendment in Section 80G

(ii) where the application is made under clause (ii) or clause (iii) of the said proviso,-

(a) call for such documents or information from it or make such inquiries as he thinks necessary in order to satisfy himself about-

(A) the genuineness of activities of such institution or fund; and

(B) the fulfilment of all the conditions laid down in clauses (i) to (v);

(b) after satisfying himself about the genuineness of activities under item (A), and the fulfilment of all the conditions under item (B), of subclause (a),—

(A) pass an order in writing granting it approval for a period of five years;

or

(B) if he is not so satisfied, pass an order in writing rejecting such application and also cancelling its approval after affording it a reasonable opportunity of being heard;

(iii) where the application is made under clause (iv) of the said proviso, pass an order in writing granting it approval provisionally for a period of three years from the assessment year from which the registration is sought,

and send a copy of such order to the institution or fund.

Provided also that the order under clause (i), sub-clause (b) of clause (ii) and clause (iii) of the first proviso shall be passed in such form and manner as may be prescribed, before expiry of the period of three months, six months and one month, respectively, calculated from the end of the month in which the application was received:

Amendment in Section 80G

Provided also that the approval granted under the second proviso shall apply to an institution or fund, where the application is made under—

(a) clause (i) of the first proviso, from the assessment year from which approval was earlier granted to such institution or fund;

(b) clause (iii) of the first proviso, from the first of the assessment years for which such institution or fund was provisionally approved;

(c) in any other case, from the assessment year immediately following the financial year in which such application is made.”;

(ii) in sub-section (5D), after Explanation 2, the following Explanation shall be inserted, namely:—

“Explanation 2A.— For the removal of doubts, it is hereby declared that claim of the assessee for a deduction in respect of any donation made to an institution or fund to which the provisions of sub-section (5) applies, in the return of income for any assessment year filed by him, shall be allowed on the basis of information relating to said donation furnished by the institution or fund to the prescribed income-tax authority or the person authorised by such authority, subject to verification in accordance with the risk management strategy formulated by the Board from time to time.”;

Amendment in Section 80G

(iii) after sub-section (5D), the following sub-section shall be inserted, namely:—

“(5E) All applications, pending before the Commissioner on which no order has been passed under clause (vi) of sub-section (5) before the date on which this sub-section has come into force, shall be deemed to be applications made under clause (iv) of the first proviso to sub-section (5) on that date.”.

Insertion of Section 234G

After section 234F of the Income-tax Act, the following section shall be inserted with effect from the 1st day of June, 2020, namely:—

“234G. (1) *Without prejudice to the provisions of this Act, where,—*

(a) the research association, university, college or other institution referred to in clause (ii) or clause (iii) or the company referred to in clause (iia) of sub-section (1) of section 35 fails to deliver or cause to be delivered a statement within the time prescribed under clause (i), or furnish a certificate prescribed under clause (ii) of sub-section (1A) of that section; or

(b) the institution or fund fails to deliver or cause to be delivered a statement within the time prescribed under clause (viii) of sub-section (5) of section 80G, or furnish a certificate prescribed under clause (ix) of the said sub-section,

it shall be liable to pay, by way of fee, a sum of two hundred rupees for every day during which the failure continues.

(2) The amount of fee referred to in sub-section (1) shall,—

(a) not exceed the amount in respect of which the failure referred to therein has occurred;

(b) be paid before delivering or causing to be delivered the statement or before furnishing the certificate referred to in sub-section (1).”

Insertion of Section 271K

After section 271J of the Income-tax Act, the following section shall be inserted with effect from the 1st day of June, 2020, namely:—

“271K. Without prejudice to the provisions of this Act, the Assessing Officer may direct that a sum not less than ten thousand rupees but which may extend to one lakh rupees shall be paid by way of penalty by—

(i) the research association, university, college or other institution referred to in clause (ii) or clause (iii) or the company referred to in clause (iia), of sub-section (1) of section 35, if it fails to deliver or cause to be delivered a statement within the time prescribed under clause (i), or furnish a certificate prescribed under clause (ii) of sub-section (1A) of that section; or

(ii) the institution or fund, if it fails to deliver or cause to be delivered a statement within the time prescribed under clause (viii) of sub-section (5) of section 80G, or furnish a certificate prescribed under clause (ix) of the said sub-section.”.



Amendments in Section 35: Expenditure on Scientific Research

Amendment in Section 35: Expenditure on Scientific Research

- Finance Act 2020 has made a **similar amendment** in respect of Scientific Research Associations, Universities or Colleges approved for **accepting contribution u/s 35(1)** as in case of **Section 80G**.
- Such Associations shall now be **required to intimate** the prescribed Income Tax **Authority** in the prescribed manner **within a period of 3 months** from 01.06.2020 i.e. **Before 31.08.2020 otherwise the registration shall be deemed to have been withdrawn. Upon** such intimation the **approval** shall be **valid** for a period of **5 years** starting from Assessment Year 2021-22.
- After enactment of Finance Act 2020, **no approval** granted to any Scientific Research Associations, Universities or Colleges for accepting contribution u/s 35(1) shall be **valid** for a **period exceeding 5 years**.
- Such Associations shall also be required to file a **Statement of Contribution received** by it and **issue Certificates to Donors** in the prescribed manner similar to Trusts or Institutions registered u/s 80G. **(Section 35(1A)(i))**
- **No deduction** shall be **allowed to the donor** for any donation made to association registered u/s 35 **exceeding Rs. 2000/-** unless such amount is **paid by any mode other than Cash**. **(Section 80GGA)**

Other Amendments related to Section 35

- **Issue of Certificate to Doner (Section 35(1A)(ii))**

The Institution shall be required to issue a certificate to the doner, specifying the amount of donation in such manner, containing such particulars and within such time from the date of receipt of sum as may be prescribed.

- **Fee for Non – Filing of Statement of Donation by Trusts registered u/s 35 (Section 234G)**

The **institution** which **fails to furnish such statement or Certificate** within the prescribed time prescribed shall be liable to pay, by way of **fee**, a sum of **Rs. 200 per day** (two hundred rupees) during which the failure continues. Such fees shall not exceed the amount in respect of which the failure referred to therein has occurred. The amount is required **to be paid before furnishing the statement / certificate**.

- **Penalty for Non – Filing of Statement of Donation by Trusts registered u/s 35 (Section 271K)**

Without prejudice to the provisions of this Act, the Assessing Officer may direct that a sum not less than **Rs. 10,000** (ten thousand rupees) but which may extend to **Rs. 1,00,000** (one lakh rupees) shall be **paid** by way of **penalty** by *the institution or fund, if it fails to deliver or cause to be delivered a statement or furnish a certificate* within the time prescribed.

Amendment of Section 35

In section 35 of the Income-tax Act, with effect from the 1st day of June, 2020,—

(i) in sub-section (1),—

(a) after sub-clause (iii), in the Explanation, for the words, brackets and figures,—

(A) “to which clause (ii) or clause (iii)”, the words, brackets, figures and letter “to which clause (ii) or clause (iii) or to a company to which clause (iia)” shall be substituted;

(B) “clause (ii) or clause (iii)”, the words, brackets, figures and letter “clause (ii) or clause (iii) or to a company referred to in clause (iia)” shall be substituted;

(a) after the fourth proviso occurring after clause (iv), the following provisos shall be inserted, namely:—

“Provided also that every notification under clause (ii) or clause (iii) in respect of the research association, university, college or other institution or under clause (iia) in respect of the company issued on or before the date on which this sub-section has come into force, shall be deemed to have been withdrawn unless such research association, university, college or other institution referred to in clause (ii) or clause (iii) or the company referred to in clause (iia) makes an intimation in such form and manner, as may be prescribed, to the prescribed income-tax authority within three months from the date on which this proviso has come into force, and subject to such intimation the notification shall be valid for a period of five consecutive assessment years beginning with the assessment year commencing on or after the 1st day of April, 2021:

Provided also that any notification issued by the Central Government under clause (ii) or clause (iia) or clause (iii), after the date on which the Finance Bill, 2020 receives the assent of the President, shall, at any one time, have effect for such assessment year or years, not exceeding five assessment years as may be specified in the notification.”;

Amendment of Section 35

(ii) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) Notwithstanding anything contained in sub-section (1), the research association, university, college or other institution referred to in clause (ii) or clause (iii) or the company referred to in clause (iia) of sub-section (1) shall not be entitled to deduction under the respective clauses of the said sub-section, unless such research association, university, college or other institution or company—

(i) prepares such statement for such period as may be prescribed and deliver or cause to be delivered to the said prescribed income-tax authority or the person authorised by such authority such statement in such form, verified in such manner, setting forth such particulars and within such time, as may be prescribed:

Provided that such research association, university, college or other institution or the company may also deliver to the prescribed authority a correction statement for rectification of any mistake or to add, delete or update the information furnished in the statement delivered under this sub-section in such form and verified in such manner as may be prescribed; and

(ii) furnishes to the donor, a certificate specifying the amount of donation in such manner, containing such particulars and within such time from the date of receipt of sum, as may be prescribed.”.


Amendment in Section 80GGA

In section 80GGA of the Income-tax Act, with effect from the 1st day of June, 2020,—

(i) in sub-section (2A), for the words “ten thousand rupees”, the words “two thousand rupees” shall be substituted;

(ii) after sub-section (4), the following Explanation shall be inserted, namely:—

“Explanation.—For the removal of doubts, it is hereby declared that the claim of the assessee for a deduction in respect of any sum referred to in sub-section (2) in the return of income for any assessment year filed by him, shall be allowed on the basis of information relating to such sum furnished by the payee to the prescribed income-tax authority or the person authorised by such authority, subject to verification in accordance with the risk management strategy formulated by the Board from time to time.”.



**Discussion on Additional Tax Liability- Tax on
accreted Income (Section 115TD)
In case of cancellation of Registration**

Liability in Event of Cancellation of Reg. u/s 12AB

In case, registration of a Trust is cancelled, the Trust or Institution shall be liable to pay **Additional Income Tax at Maximum Marginal Rate** (30% + surcharge(12%)* + cess(4%)** = 34.94%) on the **accreted income** u/s 115TD of the Act.

The **accreted income** means the amount by which the **aggregate fair market value** of the **total assets** of the trust or the institution, **exceeds** the **total liability** of such trust or institution.

*Section 2(4) of the Finance Act, 2020

**Section 2(11) of the Finance Act, 2020

RELEVANT PORTION OF SECTION 12AB: CANCELLATION OF REGISTRATION

12AB(4): “Where **registration** of a trust or an institution has been **granted** under clause (a) or clause (b) of sub-section (1) and **subsequently**, the Principal Commissioner or **Commissioner** is **satisfied** that the **activities** of such trust or institution are **not genuine** or are **not being carried out** in **accordance** with the **objects** of the trust or institution, as the case may be, he shall pass an **order** in writing **cancelling** the registration of such trust or institution after affording a **reasonable opportunity of being heard**”

12AB(5): “Without prejudice to the provisions of sub-section (4), where **registration** of a trust or an institution has been **granted** under clause (a) or clause (b) of sub-section (1) and **subsequently**, it is noticed that—

(a) the **activities** of the trust or the institution are being **carried out** in a manner that the provisions of **sections 11 and 12 do not apply** to exclude either whole or any part of the income of such trust or institution due to **operation of sub-section (1) of section 13**; or

(b) the trust or institution has **not complied with the requirement of any other law**, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality,

then, the Principal Commissioner or the Commissioner may, by an **order** in writing, after affording a **reasonable opportunity of being heard**, **cancel the registration** of such trust or institution.”

Amendment in Section 115TD

In section 115TD of the Income-tax Act, for the words, figures and letters “under section 12AA” wherever they occur, the words, figures and letters “under section 12AA or **section 12AB**” shall be **substituted** with effect from the 1st day of June, 2020.

SPECIAL PROVISIONS RELATING TO TAX ON ACCRETED INCOME OF CERTAIN TRUSTS AND INSTITUTIONS-115TD

115TD Tax on accreted income

(1) Notwithstanding anything contained in this Act, where in any previous year, a trust or institution registered ¹[under section 12AA or section 12AB] has—

- (a) **converted into any form which is not eligible for grant of registration** ¹[under section 12AA or section 12AB]
- (b) merged with any entity other than an entity which is a trust or institution having objects similar to it and registered ¹[under section 12AA or section 12AB]; or
- (c) failed to transfer upon dissolution all its assets to any other trust or institution registered ¹[under section 12AA or section 12AB] or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of [section 10](#), within a period of twelve months from the end of the month in which the dissolution takes place,
- then, **in addition to the income-tax chargeable in respect of the total income of such trust or institution**, the **accreted income** of the trust or the institution **as on the specified date shall be charged to tax and** such trust or institution, as the case may be, shall be **liable to pay additional income-tax** (herein referred to as tax on accreted income) at the **maximum marginal rate** on the accreted income.

SPECIAL PROVISIONS RELATING TO TAX ON ACCRETED INCOME OF CERTAIN TRUSTS AND INSTITUTIONS-115TD

(2) The accreted income for the purposes of sub-section (1) means the amount by which the aggregate fair market value of the total assets of the trust or the institution, as on the specified date, exceeds the total liability of such trust or institution computed in accordance with the method of valuation as may be prescribed:

- Provided that so much of the accreted income as is attributable to the following asset and liability, if any, related to such asset shall be ignored for the purposes of sub-section (1), namely:—
- (i) any asset which is established to have been directly acquired by the trust or institution out of its income of the nature referred to in clause (1) of section 10;
- (ii) any asset acquired by the trust or institution during the period beginning from the date of its creation or establishment and ending on the date from which the registration ¹[under section 12AA or section 12AB] became effective, if the trust or institution has not been allowed any benefit of [sections 11](#) and [12](#) during the said period:
- Provided further that where due to the first proviso to sub-section (2) of [section 12A](#), the benefit of [sections 11](#) and [12](#) have been allowed to the trust or the institution in respect of any previous year or years beginning prior to the date from which the registration ¹[under section 12AA or section 12AB] is effective, then, for the purposes of clause (ii) of the first proviso, the registration shall be deemed to have become effective from the first day of the earliest previous year:

SPECIAL PROVISIONS RELATING TO TAX ON ACCRETED INCOME OF CERTAIN TRUSTS AND INSTITUTIONS-115TD

- Provided also that while computing the accreted income in respect of a case referred to in clause (c) of sub-section (1), assets and liabilities, if any, related to such asset, which have been transferred to any other trust or institution registered ¹[under section 12AA or section 12AB] or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of [section 10](#), within the period specified in the said clause, shall be ignored.

(3) For the purposes of sub-section (1), a trust or an institution shall be **deemed to have been converted into any form not eligible for registration** ¹[under section 12AA or section 12AB] in a previous year, if,—

- (i) the **registration granted to it** ¹[under section 12AA or section 12AB] **has been cancelled**; or
- (ii) it has adopted or undertaken **modification of its objects** which do not conform to the conditions of registration and it,—
 - (a) has not applied for fresh registration ¹[under section 12AA or section 12AB] in the said previous year; or
 - (b) has filed application for fresh registration ¹[under section 12AA or section 12AB] but the said application has been rejected.

SPECIAL PROVISIONS RELATING TO TAX ON ACCRETED INCOME OF CERTAIN TRUSTS AND INSTITUTIONS-115TD

(4) Notwithstanding that no income-tax is payable by a trust or the institution on its total income computed in accordance with the provisions of this Act, the tax on the accreted income under sub-section (1) shall be payable by such trust or the institution.

(5) The principal officer or the trustee of the trust or the institution, as the case may be, and the trust or the institution shall also be **liable to pay the tax on accreted income to the credit of the Central Government within fourteen days from,—**

- i) **the date on which,—**
- (a) the period for filing appeal under [section 253](#) against the order cancelling the registration expires and no appeal has been filed by the trust or the institution; or
- (b) the order in any appeal, confirming the cancellation of the registration, is received by the trust or institution,
in a case referred to in clause (i) of sub-section (3);
- **(ii) the end of the previous year in a case referred to in sub-clause (a) of clause (ii) of sub-section (3);**
- (iii) the date on which,—
- (a) the period for filing appeal under [section 253](#) against the order rejecting the application expires and no appeal has been filed by the trust or the institution; or

SPECIAL PROVISIONS RELATING TO TAX ON ACCRETED INCOME OF CERTAIN TRUSTS AND INSTITUTIONS-115TD

- (b) the order in any appeal, confirming the cancellation of the application, is received by the trust or institution,
- in a case referred to in sub-clause (b) of clause (ii) of sub-section (3);
- (iv) the date of merger in a case referred to in clause (b) of sub-section (1);
- (v) the date on which the period of twelve months referred to in clause (c) of sub-section (1) expires.

(6)The tax on the accreted income by the trust or the institution shall be treated as the final payment of tax in respect of the said income and no further credit therefor shall be claimed by the trust or the institution or by any other person in respect of the amount of tax so paid.

(7)No deduction under any other provision of this Act shall be allowed to the trust or the institution or any other person in respect of the income which has been charged to tax under sub-section (1) or the tax thereon.

SPECIAL PROVISIONS RELATING TO TAX ON ACCRETED INCOME OF CERTAIN TRUSTS AND INSTITUTIONS-115TD

- Explanation.—For the purposes of this section,—
- (i) “date of conversion” means,—
- (a) the date of the order cancelling the registration ¹[under section 12AA or section 12AB], in a case referred to in clause (i) of sub-section (3); or
- (b) the date of adoption or modification of any object, in a case referred to in clause (ii) of sub-section (3);
- (ii) “specified date” means,—
- (a) the date of conversion in a case falling under clause (a) of sub-section (1);
- (b) the date of merger in a case falling under clause (b) of sub-section (1); and
- (c) the date of dissolution in a case falling under clause (c) of sub-section (1).]
- (iii) registration ¹[under section 12AA or section 12AB] shall include any registration obtained under section 12A as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996).

RELEVANT PORTION OF SEC. 115TE & 115TF

- **Interest payable for non-payment of tax by trust or institution**

115TE: “Where the principal officer or the trustee of the trust or the institution and the trust or the institution fails to pay the whole or any part of the tax on the accreted income referred to in sub-section (1) of section 115TD, within the time allowed under sub-section (5) of that section, he or it shall be liable to pay simple interest at the rate of **one per cent** for every month or part thereof on the amount of such tax for the period beginning on the date immediately after the last date on which such tax was payable and ending with the date on which the tax is actually paid.”

- **When trust or institution is deemed to be assessee in default**

115TF(1): “If any principal officer or the trustee of the trust or the institution and the trust or the institution does not pay tax on accreted income in accordance with the provisions of section 115TD, then, he or it shall be deemed to be an assessee in default in respect of the amount of tax payable by him or it and all the provisions of this Act for the collection and recovery of income-tax shall apply.

(2) Notwithstanding anything contained in sub-section (1), in a case where the tax on accreted income is payable under the circumstances referred to in clause (c) of sub-section (1) of section 115TD, the person to whom any asset forming part of the computation of accreted income under sub-section (2) thereof has been transferred, shall be deemed to be an assessee in default in respect of such tax and interest thereon and all the provisions of this Act for the collection and recovery of income-tax shall apply:

Provided that the liability of the person referred to in this sub-section shall be limited to the extent to which the asset received by him is capable of meeting the liability.”



Filing of Income Tax Return & Audit Reports (Section 139 & 44AB)

Audit of Accounts

12A.(1)(b) where the **total income** of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 **exceeds the maximum amount which is not chargeable to income-tax in any previous year**, the **accounts** of the trust or institution for that year have been **audited by an accountant** as defined in the *Explanation* below sub-section (2) of section 288 **before the specified date referred to in section 44AB** and the person in receipt of the income **furnishes by that date the report** of such **audit** in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

Section 10(23C) Proviso:

Provided also that where the **total income**, of the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), **without giving effect to the provisions of the said sub-clauses, exceeds the maximum amount which is not chargeable to tax in any previous year, such trust or institution or any university or other educational institution or any hospital or other medical institution shall get its accounts audited** in respect of that year by an accountant as defined in the *Explanation* below sub-section (2) of ⁹⁹[section 288 before the specified date referred to in section 44AB and **furnish by that date**], the **report of such audit** in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed:]

Relevant amendment in Section 44AB

In section 44AB of the Income-tax Act,—

(A) in clause (a),—

(i) the word “or” occurring at the end shall be omitted;

(ii) the following proviso shall be inserted, namely:—

‘Provided that in the case of a person whose—

(a) aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, in cash, does not exceed five per cent. of the said amount; and

(b) aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed five per cent. of the said payment,

this clause shall have effect as if for the words “one crore rupees”, the words “five crore rupees” had been substituted; or’;

(B) in the Explanation, in clause (ii), after the word “means”, the words “date one month prior to” shall be inserted.

Relevant amendment in Section 139

In section 139 of the Income-tax Act, in sub-section (1), in Explanation 2, in clause (a),—

(a) in sub-clause (iii), the word “working” shall be omitted;

(b) in the long line, for the figures, letters and words “30th day of September”, the figures, letters and words “31st day of October” shall be substituted.



Miscellaneous Provisions

Date from which Exemption is Applicable:

Section 10(23C)(Proviso 8)

“Provided also that any approval granted under the second proviso shall apply in relation to the income of the fund or trust or institution or university or other educational institution or hospital or other medical institution,—

*(i) where the application is made under clause (i) of the first proviso, **from the assessment year from which approval was earlier granted to it;***

(In case of existing registered Institutions)

*(ii) where the application is made under clause (iii) of the first proviso, **from the first of the assessment years for which it was provisionally approved;***

(In case of renewal of Provisional Registration)

*(iii) in any other case, **from the assessment year immediately following the financial year in which such application is made:***

(Residual Clause)

Date from which Exemption is Applicable:

- **Section 12A(2)**

*Where an application has been made on or after the 1st day of June, 2007, the **provisions** of sections 11 and 12 **shall apply** in relation to the income of such trust or institution **from the assessment year immediately following the financial year in which such application is made.***

Provided that the provisions of sections 11 and 12 shall apply to a trust or institution, where the application is made under—

(a) sub-clause (i) of clause (ac) of sub-section (1), **from the assessment year from which such trust or institution was earlier granted registration;**

(In case of existing registered Trusts)

(b) sub-clause (iii) of clause (ac) of sub-section (1), **from the first of the assessment years for which it was provisionally registered.**

(In case of renewal of Provisional Registration)

Provided also that no action under section 147 shall be taken by the Assessing Officer in case of such trust or institution for any assessment year preceding the aforesaid assessment year only for non-registration of such trust or institution for the said assessment year:

Provided also that provisions contained in the first and second proviso shall not apply in case of any trust or institution which was refused registration or the registration granted to it was cancelled at any time under section 12AA or section 12AB.

Tax Rates under various sections:

- **Generally, Income of a Trust is taxed in the same manner as taxed in the hands of a resident Individual. However, in certain specific cases, taxes are applicable at different rates:**
- **Section 115TD : Tax on Accreted Income**
Tax on **accreted income** shall be charged at the **Maximum Marginal Rate**
- **Section 115BBC : Tax on Anonymous Donations**
Anonymous Donations in excess of:
 - (i) 5% of Total Donations or
 - (ii) Rs. 1,00,000/-whichever is higher,
shall be **taxed** at the rate of **30%**
- **Section 164A: Charge of Tax in case of Oral Trust**
Where a **Trustee receives** or is entitled to receive **any income on behalf** or for the benefit of any person under an **oral trust**, then, notwithstanding anything contained in any other provision of this Act, **tax** shall be charged **on such income** at the **Maximum Marginal Rate**.
For the purpose of this section Oral Trust shall have the meaning assigned to it in Explanation 2 below subsection (1) of section 160.

Tax Rates under various sections:

For meaning of Oral Trust, we need to refer Section 160.

Section 160(1) For the purposes of this Act, "representative assessee" means-

Clause(iv): in respect of income which a **trustee appointed** under a **trust** declared by a **duly executed instrument** in writing **whether testamentary** or otherwise [including any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913 (6 of 1913),] **receives** or is entitled to receive on behalf or for the **benefit** of any person, such trustee or trustees;

(v) in respect of income which a **trustee** appointed under an **oral trust receives** or is entitled to receive on behalf or for the **benefit** of any person, such trustee or trustees.

Explanation 1.—A **trust** which is **not declared** by a **duly executed instrument in writing** [including any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913 (6 of 1913),] shall be **deemed**, for the purposes of clause (iv), to be a **trust declared by a duly executed instrument in writing if a statement in writing, signed by the trustee or trustees, setting out the purpose or purposes of the trust, particulars as to the trustee or trustees, the beneficiary or beneficiaries and the trust property, is forwarded to the Assessing Officer, (i)** where the trust has been declared before the 1st day of June, 1981, within a period of three months from that day; and **(ii)** in any other case, within three months from the date of declaration of the trust.

Tax Rates under various sections:

Explanation 2.—For the purposes of clause (v), "oral trust" means a trust which is not declared by a duly executed instrument in writing [including any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913 (6 of 1913),] and which is not deemed under *Explanation 1* to be a trust declared by a duly executed instrument in writing.]

Tax Rates under various sections:

- **Section 164(2): Public Trust (If Income is not exempt u/s 11)**

In the case of relevant **income** which is **derived from property held under trust** wholly for **charitable or religious purposes**, or which is of the nature referred to in sub-clause (*ii*) of clause **(24) of section 2**, or which is of the nature referred to in sub-section (4A) of section 11, tax shall be charged on so much of the relevant income as is **not exempt under section 11 or section 12**, as if the relevant income not so exempt were the **income of an association of persons**

Provided that **in a case** where the whole or any part of the relevant **income is not exempt** under section 11 or section 12 **by virtue of the provisions contained** in clause (c) or clause (d) of sub-section (1) of **section 13**, **tax** shall be charged on the relevant income or part of relevant income **at the maximum marginal rate**.

- **Section 161(1A)**

Notwithstanding anything contained in sub-section (1), where any **income** in respect of which the person mentioned in **clause (iv) of sub-section (1) of section 160** is liable as representative assessee consists of, or **includes, profits and gains of business**, **tax** shall be charged on the whole of the income in respect of which such person is so liable **at the maximum marginal rate**:

Provided that the provisions of this sub-section **shall not apply** where **such profits and gains** are receivable under a trust declared by any person **by will exclusively for the benefit of any relative** dependent on him for support and maintenance, and such trust is the only trust so declared by him.

Amendment of Section 56

In section 56 of the Income-tax Act, in sub-section (2),—

(A) with effect from the 1st day of June, 2020,—

(i) in clause (v), in the proviso, in clause (g), for the word, figures and letters “section 12AA”, the words, figures and letters “section 12AA or section 12AB” shall be substituted

(ii) in clause (vi), in the proviso, in clause (g), for the word, figures and letters “section 12AA”, the words, figures and letters “section 12AA or section 12AB” shall be substituted;

(iii) in clause (vii), in the second proviso, in clause (g), for the word, figures and letters “section 12AA”, the words, figures and letters “section 12AA or section 12AB” shall be substituted;

(B) in clause (x),—

(i) in sub-clause (b), in item (B), in sub-item (ii), for the words “five per cent.”, the words “ten per cent.” shall be substituted with effect from the 1st day of April, 2021;

(ii) in the proviso, in clause (VII), for the words, figures and letters “section 12A or section 12AA”, the words, figures and letters “section 12A or section 12AA or section 12AB” shall be substituted with effect from the 1st day of June, 2020.

Amendment in Section 253

In section 253 of the Income-tax Act, in sub-section (1), *in clause (c), for the* words, figures and letters “under section 12AA”, the words, figures and letters “under section 12AA or section 12AB” shall be substituted with effect from the 1st day of June, 2020.

Procedure for Filing Application

- In the erstwhile regime, For registration u/s 12AA and 80G(5)(vi), Form 10A and Form 10G are required to be **filled online**.
- The following details are required for Form 10A:
 - i. Name of Entity
 - ii. PAN of Entity
 - iii. Address & Contact Details (Email, Phone)
 - iv. Type of Trust (Charitable / Religious / Religious-cum-Charitable)
 - v. Constitution of Trust (Trust/ Society/ Section 8(25) Company / Others)
 - vi. Date of Incorporation
 - vii. Details of Author / Founder of the Entity (Name, PAN, Aadhar, Address)
 - viii. Details of Trustees/Office Bearers/Directors of the Entity as on the date of Filing Application (Name, PAN, Aadhar, Address)

- ix. Objects of the Trust (Religious, Education / Relief of the Poor / Medical Relief / Yoga / Preservation of Monuments / Preservation of Environment / Advancement of other Object of General Public Utility)
- x. If Registration is pursuant to Change in Objects
- xi. Date of Modification of Objects
- xii. If Trust Deed contains Clause that the Trust is irrevocable (For Trusts)
- xiii. Whether any Application in the Past has been rejected
- xiv. Registration under FCRA, 2010
- xv. Document evidencing Creation of Trust
- xvi. Document evidencing Change in Object Clause
- xvii. Existing Registration u/s 12A
- xviii. Short Note on Activities
- xix. Copy of Financial Statement for a period of 3 years

THANK YOU