

Taxation of Charitable Trust and NPOs

Recent Amendments and Discussion on newly notified audit report in Form 10 B and Form 10 BB under Income Tax.

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Brief Statistics and Data of NPOs in India

- ▶ Estimated 33 Lakh NPOs are registered in India
 - * Societies Registered under Societies Registration Act 1860.
 - * Trust.
 - * Section 8 Companies.

Total Population of India : 144 crores

means thereby average 1 NPO after 450 persons.

Total Application of Fund : 244,25,00,000/-

Rs. 55,449/- crore Foreign Contribution received by NPOs in last three years.

(Hindustan Times Report dated 16/03/2023)

Total Assets held by Trusts : Not Known

Major Amendments at a glance :

The exemption to trusts or institutions is available under the two regimes

- ▶ Regime First for Section 10 (23C) approvals and
- ▶ Regime Second for the trusts registered under section 12AA/12AB.
- ▶ MAJOR AMENDMENT:
 1. **Books of account to be maintained by the trusts or institutions under both the regimes:** These amendments will take effect from 1st April, 2023 and will accordingly apply to the assessment year 2023-24 and subsequent assessment years.

2. New Section 271AAE inserted- Penalty is equal to amount of income applied by such trust or institution for the benefit of specified person where the violation is noticed for the first time during any previous year.

and twice the amount of such income where the violation is notice again in any subsequent year.

Applicable from assessment year 2023-24 and subsequent assessment years.

3. Reference to the Principal Commissioner or Commissioner (PCIT/CIT) for the cancellation of registration/approval in case of Specified violation:

Time limit fixed for passing order and now PCIT or Commissioner shall pass the order before expiry of the period of six months, calculated from the end of the quarter in which the first notice is issued by the Principal Commissioner or Commissioner.

4. **Accumulation provisions u/s 11(2) subject to the fulfilment of certain conditions - Now conditions are applicable for First Regime also. i.e. section 10(23C) approvals**

5. **Trusts or institutions under the second regime are required not to pass on any unreasonable benefit to the trustee or any other specified person-:**

Now inserted twenty first proviso in clause (23C) of section 10 of the Act and hence applicable to **First Regime also.**

6. **Provisions of section 115TD accreted income : Extended to First Regime also. i.e. section 10(23C) approvals.**

7. **Furnishing return of income in accordance with the provisions of sub-section (4A) of section 139, within the time allowed to claim exemption: Extended to First Regime also. i.e. section 10(23C) approvals.**

8. Allowing certain expenditure in case of denial of exemption

Different provisions mandate denial of exemption to the trusts or institutions under both the regimes.

- ▶ If trust or institution violates the conditions prescribed then its income chargeable to tax shall be computed after allowing deduction for the expenditure (other than capital expenditure) incurred in India, for the objects of the trust or institution, subject to fulfilment of the following conditions, namely :-
 - ▶ such expenditure is not from the corpus standing to the credit of such trust or institution.
 - ▶ such expenditure is not from any loan or borrowing;
 - ▶ claim of depreciation is not in respect of an asset, acquisition of which has been claimed as application of income in the same or any other previous year; and
 - ▶ such expenditure is not in the form of any contribution or donation to any person.

9. New section 115BBI inserted : providing that where the total income of any assessee being a trust under the first or second regime, includes any income by way of any specified income, the income-tax payable shall be the aggregate of at the rate of thirty per cent on the aggregate of specified income.

10. Voluntary Contributions for the renovation and repair of temples, mosques, gurudwaras, churches etc

It may be treated by such trust or institution as forming part of the corpus of the trust or the institution. Conditions:

- ▶ applies such corpus only for the purpose for which the voluntary contribution was made;
- ▶ does not apply such corpus for making contribution or donation to any person; and
- ▶ maintains such corpus as separately identifiable;
- ▶ invests or deposits such corpus in the forms and modes specified under sub-section (5) of section 11.

Treatment of Donation to other trusts having similar objectives:

- ▶ Certain trusts or institutions are trying to defeat the intention of the legislature by forming multiple trusts and accumulating 15% at each layer. By forming multiple trusts and accumulating 15% at each stage, the effective application towards the charitable or religious activities is reduced significantly to a lesser percentage compared to the mandatory requirement of 85%.
- ▶ In order to ensure intended application toward charitable or religious purpose, Henceforth only 85% of the eligible donations made by a trust or institution to another trust shall be treated as application of Income.
- ▶ These amendments will take effect from 1st April, 2024 and will accordingly apply in relation to the assessment year 2024-25 and subsequent assessment years.

Combining Provisional and Regular Registration in some cases

Brief History :

- ▶ New trusts or institutions need to apply for the provisional registration/approval at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration/approval is sought. Such provisional registration/ approval was valid for a period of 3 years.
- ▶ Provisionally registered/approved trusts or institutions regime will again need to apply for regular registration/approval at least six months prior to expiry of period of the provisional registration/ approval or within six months of the commencement of activities, whichever is earlier. Regular registration/approval is valid for a period of 5 years.
- ▶ It is noticed that where activities have already commenced, Trust or Institution are required to apply for two registrations. (provisional and regular) simultaneously.

Amended Provisions:

- ▶ The trusts and institutions under both the regime , which have already commenced their activities, shall make application for a regular registration or approval or 80 G approval.
- ▶ The Principal Commissioner or the Commissioner shall pass an order for granting or rejecting such applications within 6 months calculated from the end of the month in which such application was received. The registration or approval in such cases shall be granted for 5 years.
- ▶ AND Trusts and institutions under both the regime shall make application for the provisional registration or approval or 80 G approval. only before the commencement of activities.

Alignment of the time limit for furnishing the form for accumulation of income and tax audit report

- ▶ The trusts and institutions are required to get their accounts audited. The audit report under both the regimes is required to be furnished at least one month before the due date for furnishing the return of income.
- ▶ Where the trust or institution deems certain income to be applied, such trust or institution is required to furnish a statement in the prescribed Form 10 or Form 9A as applicable on or before the due for furnishing the return of income.
- ▶ The due date for furnishing form 9A and form 10 is same as the due date of furnishing the return of income.
- ▶ Now filing of Form No. 10 /9A at least two months prior to the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year.

Denial of exemption where return of income is not furnished within time.(updated return)

- ▶ As per the provisions, if the return of income is not furnished by a trust or institution within the time under section 139 of the Act, exemption shall not be available to such trust or institution.

And Section 139 of the Act was amended by the Finance Act, 2022 providing for an option to the taxpayers to furnish updated return of income up to 2 years from the end of assessment year.

- ▶ It is clarified that the exemption under section 11, 12 and sub-clause (iv)/(v)/(vi)/(via) of clause (23C) of section 10 of the Act will be available only if the return of income has been furnished within the time allowed under subsection (1) or subsection (4) of section 139 of the Act.

Removal of certain funds from section 80G

There are only three funds based on names of the persons in the said section. In order to remove such funds, sub-clauses (ii), (iiic) and (iiid) of clause (a) of sub-section (2) of section 80G of the Act is Omitted.

1. The Jawaharlal Nehru Memorial Fund
2. The Indra Gandhi Memorial Trust.
3. The Rajiv Gandhi Foundation.

- ▶ This amendment will take effect from the 1st day of April, 2024 and shall accordingly, apply in relation to the assessment year 2024-25 and subsequent assessment years.

Circular Number 6 of 2023 Dated 24/05/2023

Finance Act, 2023 has, *inter-alia*, amended section 115TD of the Act, so as to provide that the accreted income of the trusts not applying for registration/ approval, within the specified time, shall be made liable to tax in accordance with the provisions of section 115 TD of the Act. This amendment has come into effect from 01.04.2023 and therefore applies to assessment year 2023-24 and subsequent assessment years.

Section 115TD(1)

- ▶ Accreted income of Trust or Institution to be Taxed at the Maximum Marginal Rate (MMR) in certain cases :
- ▶ -converted into any form which is not eligible for grant of registration under section 12AA;
- ▶ -merged with any entity other than an entity which is not a trust or institution having objects similar to it and registered under section 12AA; or
- ▶ -failed to transfer upon dissolution all its assets to any other trust or institution within a period of 12 months from the end of the month in which the dissolution takes place,

Meaning of 'Accreted Income' of Charitable Trust or Institutions [Section 115TD(2)]:

Accreted income means the amount by which the aggregate fair market value of the total assets of the trust 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.

- ▶ Certain Assets and Liabilities to be ignored for the purpose of computing the Accreted Income of Charitable Trust or Institutions :
 - A. any asset acquired out of income of the nature referred to in section 10(1) (i.e. agricultural income);
 - B. any asset acquired out of income on which benefit of sections 11 and 12 has not been allowed.

Section 115TD(3) : When the Trust or an Institution shall be deemed to have been Converted into any Form not eligible for Registration under Section 12AA

- the registration granted to it under section 12AA has been cancelled; or
- it has adopted or undertaken modification of its objects which do not conform to the conditions of registration and it,—
- has not applied for fresh registration under section 12AA in the said previous year; or
- has filed application for fresh registration under section 12AA but the said application has been rejected.

Trusts may now apply for registration/approval under both regime by 30.09.2023

and where such application is made by the said date and registration/approval is granted, the provisions of section 115 TD of the Act shall not apply on account of delay in making application.

- shall also apply in case of all pending applications,

- shall also apply in cases where the trust made an application in Form No. 10 AB and an order rejecting such application is passed , on or before the issuance of this Circular, solely on account of the fact that the application was furnished after the due date.

Major Changes in Audit Report Notification No. 7 of 2023

- ▶ Before this amendment Form 10B was applicable to the trusts or institutions registered under [section 12A](#) and Form 10BB was applicable to trusts or institutions approved under section 10BB.
- ▶ As per income tax (3rd amendment) rules 2023, the focus is shifted from type of registration to amount of total income of the trust.
- ▶ Form 10 B :
- ▶ If the total income of the trust or institution exceeds Rs.5 crore during the previous fiscal year.
- ▶ In case a trust or institution receives any amount of foreign contribution.
- ▶ In case any institution or trust has used any amount of its income outside India in the previous year.
- ▶ Form 10 BB
In all other cases.

► **The Annexure to New Audit Report in Form No. 10B** and common audit report forms for trusts or institutions registered u/s 12AB or approved u/s 10(23C).

1. The auditor has to mention details of the observations and or disqualifications in the new Audit Report form.

2. Details of registration/approval or provisional registration/provisional approval are required.

3. Details of all Authors, founders, members, trustees, directors holding 5 % or more shareholding at any time during the previous year are required to be given. (Including Artificial Judicial persons)

4. The objects of the trust or institution are required to be stated with modifications, if any, carried out during the year. In case of modification, Date of modification, whether the application for fresh registration is made and the status of the said application (pending, accepted, rejected) is required to be reported.

- ▶ 5. In case, provisional registration/approval is granted, whether activities have been commenced or not and if commenced, whether the application for regular registration is filed or not and if filed, the application status needs to be reported.
- ▶ 6. Details regarding the maintenance of books of accounts and other records need to be reported as per Rule 17AA. **If Books of accounts maintained at any place other than the registered office, details of address, detail of decision of managing committee and detail of date of intimation to assessing authority under proviso to sub rule (3) of Rule 17AA.**
- ▶ 7. Details regarding the object of advancement of general public utility as per section 2(15) have to be given. If any activity thereof is in the nature of trade, commerce or business has to be separately reported with the percentage of receipts from such activity vis-à-vis total receipts.

- ▶ 8. Details of the business undertaking of the trust or institution need to be separately disclosed.

Section 11(4) provides that for the purpose of section 11, property held under trust shall include a business undertaking.

Section 11(4A) provides that profits and gains from incidental business.

- ▶ 9. Details of receipt on which tax has been deducted. Name/TAN/Amount/Section/ Category of Income-Trade-Services-other/ Is the Income /receipt form business incidental to attainment of the objects of the Auditee/Whether Separate books of accounts maintained.
- ▶ 10. Whether auditee has filed Form No10 BD (Detailed report)
- ▶ 11. Foreign Contribution received.

- ▶ 12. Details of income applied outside India.
- ▶ 13. Details of application resulting in payment in excess of Rs. 50 lakh to any person during the previous year. Name, PAN, Nature of payment, TDS and Mode of payment
- ▶ Total Application of Income- To be bifurcated in Objects wise -Electronic/other than Electronic/Revenue/ Capital nature.
 - 1. Contribution or donation to any other person during the previous year
 - 2. Object wise application other than the application provided in 1.
 - 1. Religious 2. Relief of poor 3. Education 4. Medical relief 5. Yoga 6. Preservation of environment (including watersheds, forests and wildlife) 7. Preservation of monuments or places or objects of artistic or historic interest 8. Advancement of any other objects of general public utility 9. Application which cannot be specifically categorised under (I) to (VIII)
- ▶ 14. Details of the amount required to be disallowed from the application.
- ▶ 15. Income Taxable u/s 115 BBI : Details of specified violations need to be reported.

- ▶ 16. Details of Capital Gain on Capital assets transferred. Section 11(1A)
- ▶ 17. Application of Income out of Different Sources.
- ▶ 18. Expenditure Incurred for religious purposes- Total Amount/
percentage of Expenditure.
- ▶ 19. Detail of Specified persons - Section 13(3)
- ▶ 20. Detail of Transaction referred in Section 13(2)- Rent/Salary/ Shares/
Loan/ Sales/Purchase/ Services / Sale of Property/Investment.

- ▶ 269SS- Taken loan or deposited exceeding Rs.20,000/-
- ▶ 269ST : Auditee has received an amount exceeding the limit Specified u/s 269 ST

No person shall receive an amount of two lakh rupees or more—

(a) in aggregate from a person in a day; or

(b) in respect of a single transaction; or

(c) in respect of transactions relating to one event or occasion from a person other than electronic mode.

- ▶ 269T : Repaid loan or deposited exceeding Rs. 20,000/-Reporting of provisions of TDS deduction and deposit.
- ▶ End of Audit report Total Points 1- 49 and its Total Schedule are 1-28

Treatment of Interest on Corpus Fund

Whether exempt?

CIT (E) Kochi vs. Mata Amrithanandamayi Math Amritapuri Kerla (2017) 85 Taxmann.com 26 (Ker) (HC)

Assessee claim for exemption on interest earned on corpus donation was rejected by AA. On appeal Tribunal allowed the claim. Revenue filed appeal and the same was dismissed by Kerla High Court.

- ▶ **CIT (E) Kochi vs. Mata Amrithanandamayi Math Amritapuri Kerla . (2018) 256 Taxman 62 (SC)- SLP of revenue is dismissed**
- ▶ S. 11 : Property held for charitable purposes - Corpus donation- Corpus donation on which it earned interest, in view of specific direction of donors that said interest would also form part of corpus and entitle to exemption .[S.11(1)(d),

New Noble Educational Society vs The Chief Commissioner Of Income Tax -The Andhra Pradesh High Court

- ▶ “held that the appellant trusts which claimed benefit of exemption under Section 10 (23C) of the IT Act were not created ‘solely’ for the purpose of education, and that to determine that issue, the court had to consider the memorandum of association or the rules or the constitution of the concerned trust”.
- ▶ “Additionally, the appellants were denied registration on the ground that they were not registered under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (hereinafter, “A.P. Charities Act”) as condition precedent for grant of approval.”

M/S New Noble Educational Society vs The Chief Commissioner Of Income-SC

- ▶ on 19 October, 2022 Hon'ble The Justice, S. Ravindra Bhat, Pamidighantam Sri Narasimha
- ▶ Para 78. In the light of the foregoing discussion, the assessee's appeals fail. It is however clarified that their claim for approval or registration would have to be considered in the light of subsequent events, if any, disclosed in fresh applications made in that regard. This court is further of the opinion that since the present judgment has departed from the previous rulings regarding the meaning of the term 'solely', in order to avoid disruption, and to give time to institutions likely to be affected to make appropriate changes and adjustments, it would be in the larger interests of society that the present judgment operates hereafter. As a result, it is hereby directed that the law declared in the present judgment shall operate prospectively. The appeals are hereby dismissed, without order on costs.

Secundrabad Club etc. Vs CIT V etc. Dated 17/08/2023 - Supreme Court

- ▶ SC holds that the interest income earned on fixed deposits made in the banks by the appellant Clubs has to be treated like any other income from other sources within the meaning of Section 2(24) of Income Tax Act, 1961.
- ▶ In view of the above conclusions and having found that Bangalore Club vs. Commissioner of Income Tax, (2013) 5 SCC 509 (“Bangalore Club”) does not call for reconsideration, we hold that the said judgment which holds the field would squarely apply to these appeals also.
- ▶ Consequently, all the appeals are dismissed.

Emergence of Social Stock Exchange Concept in India

- ▶ Hon'ble Finance Minister Smt. Nirmala Sitharaman as part of the Budget Speech for FY 2019-20 proposed the idea of an electronic fund-raising platform “Social Stock Exchange”, under the regulatory ambit of SEBI for listing social enterprises and voluntary organizations working for the realization of a social welfare objective so that they can raise capital as equity, debt or as units like a mutual fund.
- ▶ **NSE Social Stock Exchange Segment**
 - Objectives of the Social Stock Exchange:
 - ▶ Regulated platform that brings together social enterprises and donors
 - ▶ Facilitate funding and growth of social enterprises
 - ▶ Enabling mechanism to ensure robust standards of social impact and financial reporting.

Zero Coupons, Zero Principal Instruments (ZCZP)

- ▶ Recently, the Ministry of Finance has declared ZCZP as securities, For the purpose of the Securities Contracts (Regulation) Act, 1956.

Key Points:

- ▶ Presently, this list includes shares, scrips, stocks, bonds, debentures, etc.
 - ▶ This instrument will be governed by rules made by the Securities and Exchange Board of India (SEBI).
- ▶ ZCZP bonds are the funding instrument for the NGOs projects, on which the NGOs are not required to pay principal or pay interest after completion of the project.
- ▶ **Significance:** It will help organizations/corporates utilize their social responsibility funds and support non-profit organizations more transparently.

THANK YOU

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