

**RECENT AMENDMENTS RELATING TO  
CHARITABLE INSTITUTIONS UNDER THE  
MPT ACT, 1950 AND IT ACT, 1961**

**J.B.Nagar CPE Study Circle of WIRC**

**On**

**21<sup>st</sup> November, 2020**

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# SECTION-WISE AMENDMENTS UNDER MPT ACT, 1950

- The following sections are amended recently,
- Section 22 (2017)
- Section 22(3A) (2016)
- Section 35 (2017)
- Section 36(1A) (2017)
- Section 36(5) (2017)
- Section 36A(3) (2016)
- Section 36A(3A)(2017)
- Section 41A (2017)
- Section 41C (2018)
- Section 41D (2017)

# SECTION 22 : CHANGE (MPT ACT, 1950)

- CHANGE Sec. 22

Where any change occurs in any of the entries recorded in the register kept u/s.17, the trustee shall, within 90 days from the date of the occurrence of such change file a change report.

Amended in 2017.

1. The 90 days period can be extended by the Deputy or Assistant Charity Commissioner with valid reason.
2. If there is change in the names and addresses of the Trustees or the mode of succession, acceptance of CR by passing order provisionally within 15 and if there is no objections received within 30 days of issue of notice inviting objections, the provisional order passed shall be final.

## SECTION 22(3A) : CHANGE (MPT ACT, 1950)

- Change Sec. 22(3A) –De-registration of Trust.
- Grounds for de-registration :
  - (a) when its purpose is completely fulfilled ; or
  - (b) when its purpose becomes unlawful ; or
  - (c) when the fulfilment of its purpose becomes impossible by destruction of the trust-property or otherwise ; or
  - (d) when the trust, being revocable, is expressly revoked ; or
  - (e) when the trustees are found not doing any act for fulfilling object of the trust.

# SECTION 35 (MPT ACT, 1950)

- **SECTION 35 : INVESTMENT OF PUBLIC TRUST MONEY.**
- If any public trust has made the application to the Charity Commissioner for seeking the order granting the permission for investing the money in any other manner under the second proviso, the Charity Commissioner shall decide such application within three months from the date of receipt of such application and where it is not practicable so to do, the Charity Commissioner shall record the reasons for the same.

# SECTION 36(1A) (MPT ACT, 1950)

- LEASE OF TRUST PROPERTY :
- The Charity Commissioner shall not sanction any lease for a period exceeding **thirty years** under this Act

# SECTION 36(5) (MPT ACT, 1950)

- **EX-POST FACTO PERMISSION FOR SALE OF PROPERTY :**
- Notwithstanding anything contained in sub-section (1), in exceptional and extraordinary situations where the absence of previous sanction contemplated under sub-section (1) results in hardship to the trust, a large body of persons or a *bona fide* purchaser for value, the Charity Commissioner may grant *ex-post-facto* sanction to the transfer of the trust property, effected by the trustees prior to the date of commencement of the Maharashtra Public Trusts (Second Amendment) Act, 2017, if he is satisfied that,—
- (a) there was an emergent situation which warranted such transfer,
- (b) there was compelling necessity for the said transfer,
- (c) the transfer was necessary in the interest of trust,
- (d) the property was transferred for consideration which was not less than prevalent market value of the property so transferred, to be certified by the expert,
- (e) there was reasonable effort on the part of trustees to secure the best price,
- (f) the trustees actions, during the course of the entire transaction, were *bonafide* and they have not derived any benefit, either pecuniary or otherwise, out of the said transaction, and
- (g) the transfer was effected by executing a registered instrument, if a document is required to be registered under the law for the time being force

# SECTION 36A(3) (MPT ACT, 1961)

- **TIME LIMIT FOR PRIOR PERMISSION IN CASE OF BORROWING FROM BANK OR FINANCIAL INSTITUTION :**
- Provided that, the Charity Commissioner or the Joint Charity Commissioner, as the case may be, shall decide the application for borrowing money from the Bank or Financial Institution forthwith and preferably within a period of **fifteen days**, if the Bank or the Financial Institution has provisionally sanctioned the loan



# SECTION 36A(3A) (MPT ACT, 1950)

- **EX-POST FACTO SANCTION TO BORROW MONEY FROM ANY NATIONALISED BANK OR THE SCHEDULED BANK.**
- Notwithstanding anything contained in sub-section (3), in exceptional and extraordinary situations where the absence of previous sanction contemplated under sub-section (3) results in hardship to the trust, beneficiary or *bona fide* third party, the Charity Commissioner may grant **ex-post-facto** sanction to borrow moneys from any nationalized bank or the Scheduled Bank, by the trustees. No trustee shall borrow money for his own use from any property of the

# SECTION 41A : (MPT ACT, 1950)

- **POWER OF COMMISSIONER TO ISSUE DIRECTIONS FOR PROPER ADMINISTRATION OF THE TRUST**
- **TIME LIMIT :**
- Provided that, if any application is made by the trustee of any trust for seeking directions under sub-section (1), the Charity Commissioner shall decide such application **within three months** from the date of its receipt and if it is not practicable so to do, the Charity Commissioner shall record the reasons for the same.

# SECTION 41C (MPT ACT, 1950)

- **PERSONS (OTHER THAN PUBLIC TRUST) COLLECTING MONEY, SUBSCRIPTIONS OR DONATION, ETC. :**
- No person (other than public trust) shall collect or cause to be collected any money, contribution, subscription or donation, in cash or kind, for religious or charitable purposes, without seeking prior permission.
- The ACC or DYCC after making an enquiry as deemed fit, decide the application and may issue a Certificate, with such terms and conditions, within 7 (seven) days from the date of receipt of application or if the permission is not granted within the stipulated period, the permission shall be deemed to have been granted.
- The certificate issued will be valid for a period of six months from the date of issue and shall not be renewable.
- Audited accounts have to be submitted within a period of two months next after the expiry of the said period.

# SECTION 41D (MPT ACT, 1950)

- **SUSPENSION, REMOVAL AND DISMISSAL OF TRUSTEE :**
- CC can take suo moto action and give notice if they find *prima facie* case.
- The notice issued to be replied **within 15 days**.
- If the trustee fails give reply or the reply is not satisfactory, the order of suspension, removal or dismissal shall be framed against trustee **within 15 days** and give the said trustee an opportunity of meeting the charges.
- Thereafter the CC may pass order within **three months** from the date of framing of charges.

# INCOME TAX ACT, 1961

Following Provisions will be discussed in detail:

- a) Section 10(23C)
- b) Section 12A (prior to 1996) now Section 12AB
- c) Section 12AA (registered after 1996) now Section 12AB
- d) Section 80G
- e) Section 2(15)
- f) Section 115BBC
- g) Section 115TD

# **New Provisions u/s. 12AB of the Income Tax Act, 1961**

# New Scheme for Registration u/s. 12AB

- Application to be made by Trust (including the existing registered Trusts) in prescribed form and manner within specified time to PCIT/CIT. (**New Form 10A has been introduced**).
- The PCIT/CIT will pass an order by granting a Unique Registration Number (URN).
- The reason behind introduction of this new Scheme is :
  - a.To provide an electronic database.
  - b.New Trust facing difficulties due to non commencement of any activities.

Situation	When Application has to be made? -Section 12A(1)(ac) [newly added]	The period for which the registration is applicable and receipt of final order
(i) Trusts already Registered under 12AA or 12A	Within 3 months from 01.04.2021	a. <b>Pass an Order</b> for 5 years b. <b>Final Order</b> received within 3 months from the end of the month in which application is made.
(ii) Trusts already registered under 12AB	At least 6 months prior to the expiry of the period for which registration was originally granted.	a. <b>Pass an Order</b> for 5 years (After meeting Terms & Conditions specified later) b. <b>Final Order</b> received within 6 months from the end of the month in which application is made.
(iii) New Trusts provisionally registered under 12AB	At least 6 months prior to the expiry of the provisional period for which registration was originally granted or within 6 months of commencement of its activities, whichever is earlier.	a. <b>Pass an Order</b> for 5 years (After meeting Terms & Conditions specified later) b. <b>Final Order</b> received within 6 months from the end of the month in which application is made or 6 months of commencement of its activities, whichever is earlier.



Situation	When Application has to be made? -Section 12A(1)(ac) [newly added]	The period for which the registration is applicable and receipt of final order
(iv) Trusts registration becoming inoperative due to first proviso of section 11(7). (12A or 12AA)	At least 6 months prior to the commencement of the A.Y. for which registration is sought	<p>a. <b>Pass an Order</b> for 5 years (After meeting Terms &amp; Conditions specified later)</p> <p>b. <b>Final Order</b> received within 6 months from the end of the month in which application is made.</p>
(v) Trust adopted or undertaken modifications of its objects which do not conform to the conditions of registration	Within 30 days from the date of said adoption or modification.	<p>a. <b>Pass an Order</b> for 5 years (After meeting Terms &amp; Conditions specified later)</p> <p>b. <b>Final Order</b> received within 6 months from the end of the month in which application is made.</p>
(vi) In any other case (Includes New Registrations and pending registrations under old provision of 12AA for final order )	One month PRIOR to the commencement of the P.Y. (relevant to the A.Y.) from which such said registration is sought	<p>a. <b>Pass an Order</b> provisionally registering for 3 years <b>from the A.Y. from which the registration is sought</b></p> <p>b. <b>Final Order</b> received within 1 month from the end of the month in which application is made.</p>

## **Simultaneous Benefits under two sections will not be allowed [Section 11(7)]**

- If a Trust is registered u/s. 12A(1) or 12AA and u/s. 10(23C) and makes an application u/s. 10(23C) then the registration u/s. 12AB will become inoperative.
- Thereafter if a Trust makes an application u/s. 12AB then the approval u/s. 10(23C) shall cease to have any effect from the date on which the said registration becomes operative.
- In short henceforth the Trust will be able to enjoy exemptions either u/s. 10(23C) or u/s. 12AB.
- The word used is **“inoperative”**.

# **SECTION 10(23C) AND 80G OF THE INCOME TAX ACT, 1961**

21st November, 2020

Situation	When the application has to be made?	The period for which the approval is applicable and receipt of final order
(i) Existing 10(23C) or 80G approved Trusts	Within 3 months from 01.04.2021	a. <b>Pass an Order</b> for 5 years b. <b>Final Order</b> received within 3 months from the end of the month in which application is made.
(ii) Trusts already approved under new provisions of 10(23C) or 80G and	At least 6 months prior to the expiry of the period for which approval was originally granted.	a. <b>Pass an Order</b> for 5 years (After meeting Terms & Conditions specified later) b. <b>Final Order</b> received within 6 months from the end of the month in which application is made.

Situation	When the application has to be made?	The period for which the approval is applicable and receipt of final order
(iii) New Trusts provisionally approved under 10(23C) or 80G	At least 6 months prior to the expiry of the provisional period for which approval was originally granted or within 6 months of commencement of its activities, whichever is earlier.	<p>a. <b>Pass an Order</b> for 5 years (After meeting Terms &amp; Conditions specified later)</p> <p>b. <b>Final Order</b> received within 6 months from the end of the month in which application is made or 6 months of commencement of its activities, whichever is earlier.</p>
(iv) In any other case (Includes New Approvals and pending approvals under the old provisions for final order ) for 10(23C) or 80G	One month PRIOR to the commencement of the P.Y. (relevant to the A.Y.) from which such said approval is sought	<p>a. <b>Pass an Order</b> provisionally approved for 3 years <b>from the A.Y. from which the approval is sought</b></p> <p>b. <b>Final Order</b> received within 1 month from the end of the month in which application is made.</p>

## **Other Terms and Conditions applicable for approval u/s. 10(23C), registration u/s. 12AB and approval u/s. 80G**

- Call for such documents or information or make such inquiries as the Officer thinks necessary in order to satisfy himself about,
  - the genuineness of activities
  - the compliance of such requirements of any other law for the time being in force as which are material for the purpose of achieving its objects.

# **Date of Filing Audit Report in Form 10B or Form 10BB and ITR**

- The date of filing the Form 10B or Form 10BB for A.Y. 2020-21 will be on or before 31<sup>st</sup> December, 2020.
- The date of filing the ITR for A.Y. 2020-21 will be on or before 31<sup>st</sup> January, 2021.

# **New Explanation inserted for Corpus Donation u/s. 10(23C)**

- For Charitable Trust availing 10(23C) exemption, Total income includes Corpus Donation. As per the new explanation Corpus Donation will henceforth not be included in the Total Income.
- Now this clause is akin to section 12A/12AA.
- This was not there in the Finance Bill 2020, but has been inserted in the Finance Act, 2020.



# **Circular issued for availing deduction u/s. Section 80G**

- The date for making various donation for claiming deduction under section 80G has been extended to 31<sup>st</sup> July, 2020. Hence the donation can be made up to 31.07.2020 for claiming the deduction for F.Y. 2019-20.
- This clearly shows that the donor can claim exemption under section 80G in F.Y. 2019-20 even if the donation is given up to 31.07.2020.
- The Trust will treat this as income in the year in which it is received.

# Annual Statement of Donation (80G)

- The Trust or institution (donee) who have 80G registration has to submit an Annual Statement of Donation (ASD) for such a period as maybe prescribed and delivered or cause to be delivered to the prescribed Income Tax Authority or the person authorized by such authority within such time as maybe prescribed.
- If the ASD contains any mistakes or there is a need for any addition/deletion/updation of information in the same then a correction statement maybe delivered in the prescribed form and verified in prescribed manner.
- The information in the ASD should generally contain the donor details such as the Name, Address, PAN Number, Aadhar Number and Amount donated.
- Donors will get deduction only based on ASD filed by the Trust. It is akin to 26AS TDS Credit.

# Annual Statement of Donation (80G) contd.....

- The charitable institution shall furnish to the donor, a certificate which shall specify the amount of donation in a prescribed manner containing prescribed particulars and within prescribed time.
- The donor shall be allowed the deduction under section 80G directly in the return of income on the basis of the prescribed statements (ASD).
- In case there is a delay in filing ASD, a late fee of Rs. 200/- per day shall be applicable u/s. 234G , which is mandatory. Fees are to be paid before delivering the ASD or before furnishing the certificate.
- A penalty of Rs. 10,000/- which may go up to Rs. 10,00,000/- u/s. 271K.

# SECTION 2(15)

## How to understand Section 2(15)?

Last limb is very crucial, which is as under,

“Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless-

- (i) Such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility ; and
- (ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty percent (20%) of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;

# SECTION 115BBC-Anonymous Donation

**ANONYMOUS DONATION** as defined under section 115BBC

Any Voluntary contribution (section 2(24)(iia))

Person receiving does not maintain a record of the identity (Name, address, PAN, Aadhar)

**Income Tax payable** on Anonymous Donation is to be

- (i) **calculated at the rate of 30%** on the aggregate of anonymous donations received in excess of the higher of the following, namely,
  - (A) 5% of the total donations received by the assessee; or
  - (B) Rs.1,00,000; and
- (ii) The amount of income tax with which the assessee would have been chargeable had his total income been reduced by the aggregate of anonymous donations received.

## **When anonymous donations will not be taxable ?**

As per section 115BBC(2) anonymous donations received by,

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

# Section 115TD-Tax on accreted income

- Only applicable if the Trust is registered u/s.12A or u/s.12AA.
- If Converted or
- If Merged or
- If fails to transfer upon dissolution

Income Tax on Total Income

PLUS

Maximum Marginal rate on the accreted income.



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21st November, 2020