

J. B. Nagar CPE Study Circle
Of WIRC

Meeting on 19th May, 2024

RECENT AMENDMENTS AND ISSUES
PERTAINING TO CHARITABLE TRUSTS

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★ Purpose of Registration under Income-tax Act, 1961 –

The primary purpose of Section 12A/12AA/12AB and 10(23C) is to provide tax benefits to trusts and institutions engaged in charitable or religious activities.

★ Why registration under IT Act is needed –

- a) To obtain tax benefit i.e. exemption granted u/s. 11 and 10(23C), there is pre condition that a charitable or religious trust must obtain registration under IT Act.
- b) To obtain the benefit of provision of Sec. 13(10) w.e.f. 01-04-2023
- c) There are many other benefits

Highlights of New Registration / approval Procedure including 80G

- 1) Process of registration – Completely electronic
- 2) Unique Registration No. (URN)
- 3) Registration will now be governed by Sec. 12AB instead of 12AA and Proviso I & II of Sec. 10(23C)
- 4) No more registration in perpetuity
- 5) Registration only for a period of 5 years
- 6) All existing trust also needed to apply for re-registration
- 7) New concept for provisional registration for 3 years is introduced
- 8) Old registrations were valid up to AY 2021 – 22
- 9) Strict timeline

Old Provision – Sec. 12AA

Sec. 12AA –

Procedure for registration was inserted by Finance Act (No. 2) Act, 1996 w.e.f. 01-04-1997 (This section will not apply on or after 01-04-2021.)

New Provision – Sec. 12AB & Proviso I & II of Sec. 10(23C)

A) The Sec. 12AA is substituted by Sec. 12AB –

Procedure for fresh registration has been inserted by Taxation and other laws Act, 2020 w.e.f. 01-04-2021.

The PCIT or CIT on receipt of an application made under Sec. 12A(1)(ac)

B) There are similar provisions in proviso I & II of Sec. 10(23C).

Sec. 12A(1)(ac) and proviso I & II of Sec. 10(23C) –
(Inserted by Taxation and other laws Act, 2020 w.e.f. 01-04-2021)

The timeline for registration of Trust / Institution
(Application is to be done in new prescribed form 10A & 10AB)

- (i) **Re-registration / Approval (Form 10A)** – A Trust or institution has to applied in the prescribed form and manner for registration / approval of the trust or institution, who were already registered u/s. 12A or u/s. 12AA or 10(23C) within three months from the first day of April, 2021.
This date was extended time and again. A full chart is given separately (Recently CBDT circular 7/2024 again open the window for all registration up to 30-06-2024).
- (ii) **Renewal (For 5 years registration) (Form 10AB)** - The trust or institution is registered under section 12AB & proviso I & II of Sec. 10(23C) and the period of the said registration is due to expire, at least six months prior to expiry of the said period.
- (iii) **Provisional to Regular (Form 10AB)** - The trust or institution has been provisionally registered under section 12AB and proviso I & II of Sec. 10(23C), 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;

(iv) **Inoperative (Form 10AB)** – Where registration of trust / institution has become inoperative due to first proviso to Sec. 11(7), at least six months prior to commencement of the assessment year from which the said registration is sought to be made operative.

(v) **Modifications of the objects (Form 10AB)** - 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, where activities of the trust or institution have—**

(A) **not commenced, (Form 10A)** at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration is sought;

(B) **commenced (Form 10AB)** and no income or part thereof of the said trust or institution has been excluded from the total income on account of applicability of sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, or section 11 or section 12, for any previous year ending on or before the date of such application, at any time after the commencement of such activities, and such trust or institution is registered under section 12AB;

Sec. 80G(5)

The institution or fund who are having 80G approval shall make an application in prescribed form 10A or 10AB as the case may be for grant of approval / re-approval

(i) Re-Approval (Form 10A) – Old trust having perpetual 80G approval have to obtain re-approval as per the provision same as 12A(1)(ac)(i).

(ii) Renewal of Approval (Form 10AB) - The renewal is to be done where the approval is granted for 5 years as per the provisions same as 12A(1)(ac)(ii).

(iii) Provisional to regular (Form 10AB) – Where the trust is having provisional approval as per the provisions same as 12A(1)(ac)(iii).

(iv) Any other case – Where activities have -

- | | |
|-------------------------------|---|
| A) – Not Commenced (Form 10A) | } As per provisions of same as 12A(1)(ac)(vi) |
| B) – Commenced (Form 10AB) | |

Amendments / CBDT Circulars & Extension of dates

Sr. No.	Act / Circular	Act / Extension	Up to
1	As per Finance Act, 2021	Registration / Approval u/s. 10(23C), 12AB, 35(1)(ii)/(iia)/(iii) and 80G in Form 10A / Form 10AB for registration / provisional registration / intimation / approval / provisional approval	30-06-2021
2	Circular No. 12/2021 dated 25-06-2021	Extension of time limits of u/s. 10(23C), 12AB, 35(1)(ii) (iia)(iii) and 80G in Form 10A / Form 10AB	31-08-2021
3	Circular No. 16/2021 dated 29-08-2021	Extension of time limits for registration or approval u/s. 10(23C), 12A, 35(1)(ii)/(iia)/(iii) or 80G in Form no. 10A / Form 10AB	31-03-2022
4	Circular No. 8/2022 dated 31-03-2022	Extension of time line for filing form no. 10AB for seeking registration or approval u/s. 10(23C), 12A or 80G (Conversion from provisional to regular registration)	30-09-2022
5	Circular No 22/2022 dated 1-11-2022	Condonation of delay u/s. 119(2)(b) in filing form No. 10A up to 25.11.2022 (Indirectly re-registration and provisional was opened)	25-11-2022
6	Circular No. 6/2023 dated 24-05-2023	Clarification regarding provisions relating to Charitable Trust & fresh opening of window for all – Form 10A & Form 10AB	30-09-2023
7	Circular No. 7/2024 dated 25-04-2024	Extension of due date for filing of form No. 10A / 10AB under Income-tax Act, 1961 (For all)	30-06-2024

CBDT Circular No – 7 / 2024

Dated 25-04-2024

Extension of due date of making an application / intimation electronically in form no. 10A / 10AB under the Income-tax Act, 1961 till 30-06-2024.

(The last extended date was 30-09-2023)

1) Form no. 10A (Re-registration) –

In case of an application under Sec. 10(23C)(i) or under Sec. 12A(1)(ac)(i) or under Sec. 80G(5)(i) or in case intimation under fifth proviso of Sec. 35(1) of the Act can be filed up to 30-06-2024.

Issue – In case where the case for AY 2022-23 is pending before CIT (A) or ITAT then in that case what is to be done.

2) Form no. 10AB (Provisional to Regular registration) –

In case of an application under Sec. 10(23C)(iii) or Sec. 12A(1)(ac)(iii) or Sec. 80G(5)(iii) of the Act can be filed up to 30-06-2024.

Issue - If the matter is pending before ITAT for rejection of registration. Then in that case after getting registration appeal is to be withdrawn.

3) It may be also noted that extension of due date shall apply in case of all pending applications under Sec. 10(23C)(iii) or Sec. 12A(1)(ac)(iii) or Sec. 80G(5)(iii) of the Act as the case may be. Hence in cases where any trust, institution or fund has already made an application in form 10AB under the said provisions on or before the issuance of this circular, and where the PCIT / CIT has not passed an order before the issuance of this Circular, the pending application in Form No. 10AB may be treated as a valid application.

Issue – What about if the application is done in clause (vi-B) ?

4) In cases where any trust, institution or fund has already made an application in form No. 10AB, and where the PCIT / CIT has passed an order rejecting such application, on or before the issuance of this circular, ***solely on account of the fact that the application was furnished after the due date or that the application has been furnished under the wrong section code***, it may furnish a fresh application in form no. 10AB within the extended time provided i.e. 30-06-2024.

Issue – What about if the application is rejected for non-compliance ?

5) It is also clarified that if any existing trust, institution or fund who has failed to file form no. 10A for AY 2022-23 within the due date as extended by the CBDT circular no. 6/2023 dated 24-05-2023 and subsequently, applied for provisional registration as a new trust, institution or fund and has received form no. 10AC, it can avail the option to surrender the said form no. 10AC and apply for registration for AY 2022-23 as an existing trust, institution or fund in form no. 10A within the extended time provided i.e. 30-06-2024.

Form 10A & 10AB

Form	Category	Application to be made	Action to be taken by PCIT / CIT	Order granting or rejecting approval shall be passed
10A	Trust already registered / Approval existing provision, under 10(23C) or 12A/12AA or 80G (Re-registration / Re-approval & provisional)	Up to 30-06-2024 (Circular No. 7 of 2024 dated 25-04-2024)	Order granting for a period of 5 years & for new provisional registration for 3 years (In form 10AC)	Accept within 3 months from the end of the month in which application is made And One month for provisional
10AB	Trust registered / approved for 5 years (Renewal)	At least 6 months before the expiry of period	a) Calling for documents conducting inquiry genuineness of activities compliances of any other law as are material for achieving objects. b) Order granting for another 5 years or rejecting in form 10AD	Accept within 6 months from the end of the month in which application is made
10AB	Trust provisionally registered / approved u/s. 10(23C), 80G, 12AB (Provisional to regular)	a) At least 6 months before the expiry of provisional registration or b) Within 6 months of commencement of its activities whichever is earlier. As per circular 7 it can be file up to 30-06-2024 (As applicable)	a) Calling for documents conducting inquiry genuineness of activities compliances of any other law as are material for achieving objects b) Either grant the period of 5 years or rejection in form 10AD	Accept within 6 months from the end of the month in which application is made

Form	Category	Application to be made	Action to be taken by PCIT / CIT	Order granting or rejecting approval shall be passed
10AB	Trust modifying the objects	Within 30 days of date of adoption of modification	To verify the objects which do not confirm to the conditions of registration	Accept within 6 months from the end of the month in which application is made
10AB	Fresh application for registration u/s. 12A/AA/AB has inoperative due to proviso to for U/s. 10(23C) (Sec. 11(7))	Application shall be made at least 6 months prior to commencement of the assessment year from which registration is sought	<ul style="list-style-type: none"> a) Calling for documents conducting inquiry genuineness of activities compliances of any other law as are material for achieving objects b) Either grant the period of 5 years or rejection in form 10AD 	Accept within 6 months from the end of the month in which application is made
10AB	Fresh application for registration under clause (vi-B) after commencement of activities (w.e.f. 01-10-2023)	Application shall be made in the year for which the registration is sought	<ul style="list-style-type: none"> a) Calling for documents conducting inquiry genuineness of activities compliances of any other law as are material for achieving objects b) Either grant the period of 5 years or rejection in form 10AD 	Accept within 6 months from the end of the month in which application is made

CANCELLATION OF REGISTRATION/APPROVAL IN CERTAIN CIRCUMSTANCES

Substituted sub sec. (4) and (5) to Sec. 12AB by Finance Act, 2022 (w.e.f. 01.04.2022)

As per the substituted Section 12AB (4) & (5) and Section 10(23C) and where the registration or provisional registration has been granted to the trust or institution and subsequently it is noticed by PCIT/CIT –

- i) Occurrence of one or more specified violations or**
- ii) Has received a reference for cancellation from the Assessing Officer U/s. 143(3) or**
- iii) Such case has been selected in accordance with the risk management strategy formulated by the Board from time to time for any previous year,**

Specified Violations (Explanation to Sec. 12AB(4))

- a) Income has been applied other than for the objects of the trust.
- b) Trust or institution has income from profits and gains of business –
Incidental to the attainment of its objectives or
Separate books of account are not maintained
- c) Income applied for private religious purposes which does not ensure for the benefit of public
- d) Income applied for the benefit of any particular religious community or caste (As per explanation 2 trust created for the benefit of SC, BC, ST or women and children will not be covered);
- e) Any activity being carried out by the trust or the institution
 - (a) is not genuine; or
 - (b) is not being carried out in accordance with all or any of the conditions subject to which it was registered; or

f) Not complied with the requirements of any other law, which are material for the purpose of achieving its objects 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.

g) The application referred to in clause (ac) of sub-section (1) of section 12A is not complete or it contains false or incorrect information. **(Inserted by Finance Act, 2023 w.e.f. 01.04.2023)**

AO shall send reference for cancellation

Moreover, as per the amendment in.143(3), where the Assessing Officer is satisfied that any trust or institution under both regime has committed any specific violations

Consequences of cancellation of registration / Approval

Provisions of accreted income u/s. 115TD will apply wherein additional tax over and above normal tax will be levied on accreted income calculated as per sub sec. 2 of Sec. 115TD at the rate of MMR.

Specific issues –

1) Circular – 7/2024 –

The major issues for the trust which missed the dates for re-registration and rejection of provisional registration due to time barred application is resolved by the CBDT by circular 7/2024. Giving one more opportunity to obtain the registration from AY 2022-23. Certain issues out of circular 7/2024 is already covered in earlier slide.

2) Circular – 7 / 2024 –

There is an issue still continue in cases were the application for conversion of provisional to regular registration due to non-compliances. This situation is not covered in the circular.

3) Practical difficulty for pending application made under wrong clause –

There is issue where the application for conversion of provisional to regular registration is filed under wrong clause. In this situation the system will not accept the fresh application until the earlier application is rejected. However the time limit is provided up to 30-06-2024.

- 4) There are certain cases where the applications were rejected due to specified violation in such cases are also not covered under Circular 7/2024.
- 5) Suppose the trust still miss the deadline of circular 7/2024 in that situation there is no any sub clause provided in 12A(1)(ac) for fresh registration from the current year as well. The same situation is also for 80G.
- 6) If a trust is having 12A/12AB registration for 5 years and has claimed exemption u/s. 11 or 10(23C). Now if they apply for 80G approval that will not be granted since as per the condition of 80G(5)(iv-B) does not fulfill. Therefore the 80G cannot be granted to that trust. Therefore it is suggested both the application for 12A/12AB registration and 80G should be file simultaneously.
- 7) There are certain cases where the applications for registration were pending as on 31-03-2021 were granted provisional registration for AY 2021-22 to AY 2023-24 in the month of May, 2021 and the period for application is lapsed. Now in such a situation as per circular 7/2024 the trust has to filed application under clause 12A(1)(ac)(i) or (iii)

8) In cases where the assessment for AY 2022-23 assessed u/s. 143(3) and additions were made due to either not having registration or rejection of conversion of provisional to regular registration and such cases are pending before CIT (A). In such cases application is made under Circular 7/2024 and obtain the registration. In this situation it is advisable not to withdraw the appeal since application for rectification u/s. 154 cannot be done since this is not a mistake apparent from record. Moreover the effect to CIT (E) order in my opinion will also not be possible for AO to amend the assessment order passed u/s. 143(3).

CORPUS DONATIONS

a) **Meaning of Corpus / corpus fund**

The term 'corpus' is not defined in the Act, but it generally refers to an organization's capital.

Corpus / Corpus Fund - The dictionary meaning of the word "Corpus" is a pool of money set aside for a specific purpose or organization. It represents the principal amount or the initial investment capital, which is typically kept intact, with only the returns or earnings being utilized for designated activities.

A Corpus Fund is define a consolidated pool of money or investment managed for a specific purpose or organization, dedicated to long term sustainability or funding.

Therefore, any receipts related to corpus should be directly added to the corpus / capital. Contributions made for capital purposes are considered as corpus donations, as established in various legal cases.

b) **Written Document for direction is Necessary**

To claim a donation as a corpus donation, a written document with specific directions from the donor is required. It is the wishes of the donor is material. However, it is not necessary that such written direction should necessarily be accompanied with the donation. A subsequent confirmation by the donor should be considered as requisite specific direction.

c) **Discretion with the donor**

The recipient organization has no right to treat a donation as a corpus donation unless it is with the direction from the donor.

However there is one exception that any temple, church, gurudwara, mosque or notified temples can treat any donations received for the purpose of repairs and renovation can be treated as corpus by the receiving entity.

d) **No specific Format of direction**

The Income-tax Act or Rules do not prescribe a specific form or manner in which a specific direction must be given for a corpus donation. However, **a simple letter can suffice as a specific direction** if it contains a clear and unambiguous statement that the donation is intended for the corpus and is signed by the donor or an authorized representative.

e) **Printed coupons accepted as written direction**

In the case of *ITO v. Diamond Jubilee Trust [2002] 120 Taxman 86 (Mum.) (Mag.)*, the assessee had received donations by way of sale of coupons for specific purposes which it claimed to be donations towards corpus fund. It was held that the fact that donation coupons clearly expressed purpose for which money was being donated, clarifying that money was towards corpus fund and was to be earmarked for specific purpose for which it was being given, showed that donors had applied their mind and had chosen to give donations for specific purpose. It was further held that it could be reasonably inferred that donors had purchased specific coupons as per their willingness to give donations to corpus fund to be earmarked for specific purpose, and these donations were rightly treated as donations towards corpus fund.

f) Corpus Donation is not a part of income even under amended Section 2(24)(ia) by Direct Tax Laws (Amendment) Act, 1987

i) Corpus donations received by trusts not registered under section 12A cannot be put to tax.

The Mumbai Bench of the ITAT in the case of *Chandraprabhu Jain Swetamber Mandir v. Asstt. CIT [2017] 82 taxmann.com 245 (Mumbai-Trib.)* held that the Corpus Donations are not to be taxed even if the Trust is not registered under section 12A/12AA of the Act. In this case trust was not registered u/s 12A/12AA of the Act. The question before the Tribunal was allowability of exemption to the Corpus Trust when the Trust is not registered under the income-tax provisions. It was held that even after considering the definition of section 2(24)(ia) read with section 12, the voluntary contribution in the nature of corpus donation raised by the appellant cannot be brought to tax.

In the case of ***ITO (Exemptions) v. Serum Institute of India Research Foundation (ITAT Pune) [ITA No. 621/PUN/2016 dated 29.01.2018]***, it was held that Corpus donations received by the Trusts, which is not registered u/s.12A/12AA of the Act, are not taxable as they assume the nature of 'Capital receipt' the moment the donations are given to the "Corpus of the Trust".

In the case of *Financial Inclusion Trust [2023] 156 taxmann.com 415 (Delhi – Trib.)*, it was held that corpus specific voluntary contribution being in nature of capital receipt, was outside scope of income u/s 2(24)(ia) and hence could not be brought to tax in case of trust not registered u/s 2A/12AA.

ii) **Receipt can only be taxed if it can be characterized as ‘income’**

A reference can also be drawn to the decision of the **Supreme Court in the case *CIT v. Groz Beckert Saboo Ltd. 116 ITR 125/(1979) 8 CTR (SC) 155***, where it was held that a gift even of raw material subsequently used in the business of the assessee is not a revenue receipt, when it is received but it is only a capital receipt as it is a gift. The Apex court relied on the Circular No.158 [F.No.173/2/73-IT(A)(A-I)], dated 27-12-1974 issued by CBDT wherein the CBDT has clarified that a gift does not constitute income receipt at all, **but a capital receipt wherein it is held that “Receipts which are of a casual and non-recurring nature will be liable to income-tax only if they can properly be characterized as ‘income’ either in its general connotation or within the extended meaning given to the term by the Income-tax Act”**.

iii) **Can corpus donation be treated as a part of income under section 2(24)(ia)**

A question arises under the scheme of taxation of charitable trust corpus donations is first treated as income under section 2(24)(ia) and then exempted under section 11(1)(d) with certain conditions.

However Sec. 12(1) says any voluntary contribution received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes (not being contribution made with a specific direction that they shall form part of the corpus of the trust or institution) shall for the purposes of the Sec. 11 be deemed to be income derived from the property held under the trust.

This flaw in the provision is yet to be resolved.

g) Treatment of Corpus Donations received by section 10(23C) approved institutions

There was no such specific exemption was available for corpus donations to the entities approved under section 10(23C)(iv to via). Hence, it was always a matter of litigation, compelling the institutions coming within the scope of section 10(23C) to apply even their corpus donations for getting the benefit of exemption.

New form – 10 – For Accumulation –

As per sub-clause (a) of third proviso such institutions were required to spent its income and in a case more than 15% of its income is accumulated on or after April, 2002 the period of such accumulation shall in no case exceed 5 years. There was no any form was prescribed for such accumulation however now w.e.f. AY 2023-24 new Form 10 is prescribed for such accumulation at par with the accumulation u/s. 11(2). The same new form 10 is applicable to trust claiming exemption u/s. 10(23C) or u/s. 11.

However the Finance Act, 2020 inserted an *Explanation 1 to the Third Proviso to section 10(23C)*

Where the corpus donation is now exempted subject to the condition that such voluntary contribution or invested in 11(5) modes and maintained specifically for such corpus. (w.e.f. 01-04-2022)

h) Applicability of requirement to invest the corpus in section 11(5) investment modes – Sec. 11(1)(d)

The condition of investing the corpus fund in section 11(5) investment shall apply only to that part of corpus fund which has been created from corpus donations exempted under section 11(1)(d), because organizations may have corpus funds invested in business assets under section 11(4) or (4A) which do not conform to the requirements of section 11(5).

For the sake of greater clarity it may be noted after the amendment only the corpus fund to the extent created out of corpus donation received under section 11(1)(d) has to remain invested as per section 11(5), for example such fund cannot be used for incidental business activity which is possible with old corpus fund.

There is no specific amendment regarding the consequences, if investment made out of corpus donation is liquidated in subsequent year and not reinvested. In our opinion, in such situation the amount realized should not be allowed as application of income in that year however if it is reinvested in 11(5) modes it will be allowed as application in that year subject to within a period of 5 years. This analogy should apply as it is applicable in the year of receipts of corpus.

i) Application out of corpus before 01-04-2021 should not be allowed as an application under new amended provision

The Finance Act of 2021 introduced a restriction on applications made out of corpus. If an application made before 01-04-2021 is claimed as an application, then the same amount is applied again as an investment or deposited back into the corpus, it would result in a double deduction. To address this issue, the Finance Act, 2023 inserted a *fourth proviso to Explanation 4(i)* to section 11(1), which states that if the application from the corpus is made on or before 31-03-2021, then the same shall not be considered as an application in the current year at the time of restoration of the corpus.

j) Donations through Charity Boxes –

i) Favourable - in the case of –

Shree Mahadevi Tirath Sharda Ma Seva Sangh v. ITO [2010] 133 TTJ (Chd.) (UO) 57. The Chandigarh ITAT allowed the collection of corpus donations through charity box inspite of not having names and address of the donors.

ii) Contrary Judgment –

a) The court held that donations received through a charity box cannot be considered as corpus donations, even if the box is marked with the word ‘corpus’. In the case of *Shri Digambar Jain Naya Mandir v. Asstt. DIT [1999] 70 ITD 121 (Cal.)*,

b) The same issue was debated in *Prabodhan Prakashan v. Asstt. DIT [1994] 50 ITD 135 (Bom.-Trib.)*, and the plea of the assessee was rejected.

k) Corpus donations with specific directions received by the unregistered trust

i) The ITAT Mumbai Bench B in the case of *Bank of India Retired Employees Medical Assistance Trust v. Income-tax Officer, (E)- 1(1), Mumbai [2018] 96 taxmann.com 277/172 ITD 78 (Mumbai)* held that corpus donations received by assessee-trust with specific directions by donors to be applied towards specific purpose for which respective fund was created would be treated as capital receipts; therefore, same could not be brought to tax.

ii) The ITAT Mumbai Bench D in the case of *Chandraprabhu Jain Swetamber Mandir v. Assistant Commissioner of Income Tax [2017] 82 taxmann.com 245/[2016] 50 ITR(T) 355 (Mumbai)* held that corpus donations received by assessee-trust with specific directions by donors to be applied towards specific purpose for which respective funds were created would be treated as capital receipts being capital in nature and were not taxable.

Contradictory

The ITAT Patna Bench in the case of *Akshay Educational & Social Welfare Charitable Trust v. Deputy Commissioner of Income-tax, Circle-3 [2023] 146 taxmann.com 529 (Patna - Trib.)*

l) Interest on Corpus donations will also be a part of corpus

The Supreme Court of India in the case of *CIT v. Mata Amrithanandamayi Math Amritapuri* [2018] 94 taxmann.com 82/256 Taxman 62

m) Specific direction can be on identical letters

The specific direction received from the donors may be similar for a large number of donors. In the case of *Lala Kanshi Ram Goela Beriwalla Charitable Trust v. ITO* [1991] 58 Taxman 258 (Delhi)(Mag.),

Inter-Charity Donations

Finance Act, 2023 w.e.f. 01.04.2024 from AY 2024 - 25 onwards

The Finance Act , 2023 inserted clause (iii) in explanation 2 to third proviso of Sec. 10(23C) and inserted clause (iii) in explanation 4 to Sec 11(1) w.e.f. 01.4.2024 as under –

“(iii) Any amount credited or paid other than the amount referred to in explanation 2, to any registered fund / trust or institution as the case may be shall be treated as application for charitable or religious purposes only to the extent of 85% of such amount credited or paid.”

CBDT has issued clarification in this regard by issuing circular 3/2024 dated 06-03-2024.

The CBDT has solved this problem by this circular and explained by giving example of 3 trust in three situation.

- 1) The first situation where the income is 300, donation to other trust 100 amount spent 170 in this case also as per circular there will be NIL Income. (Refer example Trust – 1)
- 2) The second situation where the income is 100, donation to other trust 100. In this case as per this circular you were required to spent 85% i.e. Rs. 85/- for which you get 85% application out of the donation to other trust hence the income will be NIL. (Refer example Trust – 2).
- 3) The third situation where the income is 100, applied 85 and income Nil after deduction of 15% u/s. 11(1)(a). (refer example Trust – 3)

Examples for inter-charity donation after circular

Sr. No.	Income	Donated to another Trust	Amount spent	Total Application of Income	15% Accumulation	Accumulation (Form 9A or 10)	Balance Income (Tax Rate ?) (Refer notes)
1	1.00 Cr.	1.00 Cr. (@85%)	NIL	85 Lakh	15 Lakh	NIL	NIL
2	1.00 Cr.	50 Lakh @85%= (42.5 Lakh)	50 Lakh	92.50 Lakh	15 Lakh (Restricted to 7.50 Lakh)	NIL	NIL
3 A	1.00 Cr.	50 Lakh @85%= (42.5 Lakh)	25 Lakh	67.50 Lakh	15 Lakh	17.5 Lakh	NIL
3 B	1.00 Cr.	50 Lakh @85%= (42.5 Lakh)	25 Lakh	67.50 Lakh	15 Lakh	16 Lakh	1.50 Lakh

Note – In situation at 3B the remaining income of Rs. 1.5 Lakh will be tax free since it is below 2.5 Lakhs as per CBDT notification dated 31/10/2023 (GSR 813 (E) rules are amended Income-tax (Twenty-Seventh amendment) Rule 2023 w.e.f. 1-4-2023. In short the provisions of 115BBI (i) will not apply.

Section 115BBI is inserted to define specified income of certain institution
(w.e.f. AY 2023-24)

- 1) Where the total income of any trust or institution includes any income by way of any specified income, notwithstanding anything contained in any other provision of this Act.
The income-tax payable shall be aggregate of -
- i) the amount of Income-tax calculated @30% on the aggregate of such specified income and
 - ii) the balance other income other than specified income will be taxed at normal provisions.
- 2) No deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provision of the Act in computing specified income

Explanation defines specified income.

- (a) Income accumulated or set apart in excess of fifteen percent of the income where such accumulation is not allowed under any specific provisions of the Act or
- (b) Violation of accumulation with reference to form **9A & 10** or
- (c) Investment of funds in impermissible modes u/s. 11(5) or
- (d) Benefit to interested person directly or indirectly Sec. 12(2) or
- (e) Income applied **outside in India** not permitted u/s. 11(1)(c)

SUMMARY OF PENAL TAX RATES

The Penal tax rates as applicable on different violations have been summarized in the below table:

Section Providing for the rate of tax	Income Subject to tax	Rate Of Tax
Taxation u/s.115BBI for specified violation	1. Income u/s 11(B)-for default of not spending the amount opted to be spent in the subsequent year or in the year of receipt	30%
	2. Income u/s 11(3)-Violation of condition of accumulation u/s 11(2)	30%
	3. Amount of income applied outside India in contravention of section 11(1)(c)	30%
	4. Income u/s 13(1)(c) Benefit to Interested person	30%
	5. Income u/s 13(1)(d) Investment of fund in impermissible modes	30%
Anonymous Donation u/s 115BBC	Taxable Portion of Anonymous Donation	30%
Taxability u/s 164(2)	1. Income Computed u/s 13(10)&13(11) for specified situation	As An AOP
	2. Section 12(2)-value of service (being medical & education)to A Specified Person	As An AOP
	3. Violation of condition in terms of Explanation 3A to Section 11(1)for treating the donation u/s 80G(2)(b) as corpus donation [Explanation 3B to Section 11(1)]	As An AOP
	4. Income Chargeable under Section 11(4)	As An AOP
Accreted Income u/s 115TD	Accreted Income	Maximum Marginal Rate

- THANK YOU -

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