

AN ANALYSIS ABOUT AMENDMENTS FOR CHARITABLE TRUSTS AND INSTITUTIONS



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By tradition, private philanthropy in our country has been playing a very special and prominent role in enriching our cultural heritage and in catering to the education, medical, socio-economic, and religious needs of our people. In so doing, it has supplemented the work of a Welfare State, and the State, in turn, has recognized its contribution by giving generous tax exemptions to the donations given to philanthropic institutions and also to the income thereof applied for public, religious or charitable purposes. Due to their distinct organisation and objective entire income of such charitable or religious trusts are taxed as per the provisions of section 11-13 of the Income Tax Act, 1961, which provides for various tax benefits. In the name of charity, there has been misuse of tax concessions by some of the Charitable Organizations which go undetected. To curb these practices, significant amendments were proposed in the previous budgets and now the Finance Act, 2022 has made further proposals to rationalize the provisions related to the Charitable Organizations to bring uniformity, clarity on taxation in the specified circumstances, and ensure their effective monitoring and implementation.

There are a plethora of amendments regarding the provisions for charitable trusts in recent budgets and this year's is also not an exemption to this. The cardinal error of our times is to mistake amendment for improvement and change for progress.

1. Rationalisation in provisions relating to entities registered under 12 AB and Specified Institutions under 10(23)C.

- a. To bring consistency in both regimes, the conditions

subject to fulfillment of which accumulation shall be allowed and the specific previous years of taxability of accumulated income in case of the different violations are now aligned.

- b. Erstwhile trusts registered under 12AB are required not to pass on any unreasonable benefit to the trustee or any other specified person. Similar restrictions are now being provided to specified institutions also to bring in parity.
- c. In order to ensure that the intended purpose of exemption availed by trust or institution is achieved, specific provisions in the Act, *vide* Section Chapter XII-EB, were brought about for imposing a levy in the nature of an exit tax when the trusts or institutions cease to be charitable. The provisions are now equally applicable for both regimes.
- d. Exemption is not available if the organization does not furnish its return of income within the prescribed time is been made applicable to specified institutions also.

2. Application of Income.

Any sum payable by any trust or specified institutions as application of income shall be considered as an application of income in the year in which such sum is actually paid by it irrespective of the method of accounting regularly employed by it. Thereby incomes may be recognized on an accrual basis whereas the application shall be on a cash basis. And in short, the trusts/institutions may ensure that expenses pertaining to/accrued in the current year be paid latest by 31 March of the relevant year for such expense to be treated as application of income in the current year.

3. Admissibility of certain expenditure in case of specified violations.

In case of such specified violations due to which exemption becomes unavailable, income chargeable to tax will be computed after allowing the deduction for expenditure incurred by the trust/institution for its objects, subject to certain conditions. Further, the restrictive conditions applicable while computing business income as regards disallowance of expenses on account of non-deduction of taxes and payment of expenditure in cash have also been made applicable in the above scenario. It is also clarified that for the purposes of computing income chargeable to tax no deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed to the assessee under any other provision.

4. Renovation and repair of notified places of worship

In order to provide clarity on the treatment of donations for the renovation and repair of notified places of worship (viz Temples, Mosques, Gurudwaras, Churches, etc.), an option has been provided to a trust or institution wherein the property held by them includes any notified place of worship, to treat any sum received as a voluntary contribution for the purpose of renovation or repair of such place, as a part of the corpus, subject to the fulfillment of the specified conditions. Provisions for taxability of such sum in case of violation of the conditions are also specified.

5. Mandate for books of account to be maintained by the trusts or institutions

If the income of the trust or institution without giving effect to provisions of section 11 and 12 exceeds the maximum amount which is not chargeable to tax in any previous year, it is required to get its books of accounts audited. However, there was no specific reference for the maintenance of books of accounts by such a trust or institution. The provisions of section 12A(1)(b), tenth proviso to section 13(1)(c) and 10(23)C provides for w. e. f. A.Y. 2023-24 for maintenance of books of accounts and other documents in the prescribed form and prescribed manner.

6. Penalty for passing on unreasonable benefits to trustee or specified persons

Any unreasonable benefit passed to any trustee or any other specified person, a penalty on trusts or institution under both the regimes which is equal to the 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 has been introduced under section 271 AAE. In addition to the proposed penalty, other penal provisions of the act shall also be applicable.

7. Cancellation of Registration / Approval.

The Principal Commissioner or the Commissioner has noticed the occurrence of one or more specified violations during any previous year or by reference from the Assessing Officer or case been selected in accordance with the risk management strategy formulated by the board from time to time for any previous year, call for such documents or information from the trust or institution or make such inquiry as he thinks necessary in order to satisfy



himself about the occurrence or otherwise of any specified violation may :

- pass an order in writing canceling the registration of such trust or institution, after affording a reasonable opportunity of being heard, for such previous year and all subsequent previous years, if he is satisfied that one or more specified violations have taken place;
- pass an order in writing refusing to cancel the registration of such trust or institution, if he is not satisfied with the occurrence of one or more specified violations;

And forward a copy of the order to the Assessing Officer and such trust or institution.

Specified violations in this regard are :

- a. The income is applied towards objects other than for which it is established;
- b. It has earned profits from a business that is not

incidental to the attainment of its objects;

- c. It has not maintained separate books of account for a business activity that is incidental to the attainment of its objects;
- d. It has applied any part of its income for the benefit of any particular religious community or caste;
- e. It has undertaken any activity that is not genuine or has not adhered to the conditions subject to which it was registered.

Conclusion

The proposed amendment may check the evasion of taxes and malpractices by mis utilizing the provisions. Since the tax concessions afforded to these institutions involve a sacrifice of public revenues, it became imperative to ensure that tax privileges are not abused and they are enjoyed only by those charitable and religious institutions, which deserve them.

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