ICAI Kottayam Branch

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TAXATION OF CHARITABLE AND RELIGIOUS TRUSTS PRACTICAL ISSUES AND RECENT DEVELOPMENTS

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12AB registration / 80G approval

12AB / 80 G   Requirements post 01.10.2023

- Where activities of the trust are yet to commence
  - Apply for provisional registration (straight through process)
  - Regularize the provisional registration within the timeframe prescribed (Scrutiny process)
- Where activities of the trust have commenced
  - Apply for regular registration – Scrutiny process
- Regular registration / approval shall be renewed every 5 years
- Unintended anomaly in section 80G

  Trust – already commenced activity – has 12 A registration – already filed return and claimed exemption u/s 11 – Under which provision of section 80G it will apply for approval? ***– Proviso under section 80G(5) –*** reproduced in next slide

Unintended anomaly –Section 80G(5)

(*vi*) in relation to donations made after the 31st day of March, 1992, the institution or fund is for the time being approved by the Principal Commissioner or Commissioner;

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 Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020], within three months from the 1st day of April, 2021; **(Re-approval of entities approved under old provision)**

(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; **(Renewal of approval under the new provision)**

(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; **(regularization of provisional approval)**

(iv) in any other case, where activities of the institution or fund have— **(i.e. approval sought for the first time)**

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

(B) **commenced** and where no income or part thereof of the said institution or fund 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:]

Circular No. 07/2024 dated 25.04.2024

CBDT extends due date for filing Form 10A/10AB upto 30th June, 2024

The Central Board of Direct Taxes (CBDT), has issued Circular No. 07/2024 dated 25.04.2024 further extending the due date for filing Form 10A/ Form 10AB under the Income-tax Act, 1961 (the 'Act') upto 30th June, 2024.

CBDT had earlier extended the due date for filing Form 10A/ Form 10AB by trusts, institutions and funds multiple times to mitigate genuine hardships of the taxpayers. The last such extension was made by Circular No. 06/2023 extending the date to 30.09.2023.

Considering the representations received by CBDT requesting for further extension of due date for filing of such Forms beyond the last extended date of 30.09.2023, and with a view to avoid genuine hardships to taxpayers, CBDT has extended the due date of filing Form 10A/ Form 10AB upto 30th June, 2024, in respect of certain provisions of section 10(23C)/ section 12A/ section 80G/ and section 35 of the Act.

CBDT further clarifies that, if any such existing trust, institution or fund had failed to file Form 10A for AY 2022-23 within the extended due date, and subsequently, applied for provisional registration as a new entity and received Form 10AC, can also now avail this opportunity to surrender the said Form 10AC and apply for registration for AY 2022-23 as an existing trust, institution or fund, in Form 10A till 30th June 2024.

It is also clarified that those trusts, institutions or funds whose applications for re-registration were rejected solely on the grounds of late filing or filing under wrong section code, may also submit fresh application in Form 10AB within the aforesaid extended deadline of 30th June, 2024.

The applications as per Form 10A/ Form 10AB shall be filed electronically through the e-filing portal of Income Tax Department. The Circular No. 07/2024 is available on www.incometaxindia.gov.in

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NB/VM/KMN

Sri Nrisimha Priya Charitable Trust vs. Central Board of Direct Taxes
[2024] 161 taxmann.com 209 (Madras)

- ***Facts of the Case***
  - The petitioner, a charitable trust, was granted provisional approval under section 80G(5) by filing Form No. 10A. Subsequently, the petitioner applied for regular approval by filing Form No. 10AB. The application was filed beyond the due date as per the provisions of section 80G(5).
  - The Central Board of Direct Taxes (CBDT) issued a circular 6/2023 extending the due date for filing Form No. 10AB for re registration of existing approval under section 80G(5) only and not for regularizing provisional approval.
  - The petitioners filed a writ petition before the Madras High Court challenging the CBDT's circular.

High Court Held

- The High Court held that when the impugned circular was issued, the CBDT stated that the reason was to mitigate genuine hardship faced by the trusts in the digital filing of the respective forms. It was essential to note that the only reason shown for exercising the powers was that these trusts faced hardship since they could not apply on time.
- No discrimination or differentiation was made between the existing trusts and the new trusts at the first instance when the circular was issued. When the reason stated by the Board was to mitigate genuine hardship, no reason whatsoever is mentioned to omit “the clause (i) of the first proviso to sub-section (5) of Section 80G of the Act” in respect of the new trusts applying under Form No. 10AB alone.
- There is no reason whatsoever to leave out the new trusts with respect to approval under Section 80G alone. The differential treatment is not based on any substantial distinction that is real and pertinent to the object of the circular. The discrimination is artificial.
- The relevant paragraph only reiterated the eligibility of dedication and the amendments made to Section 115TD of the Finance Act, 2023. Thus, the impugned clause of the circular was declared illegitimate, arbitrary, and ultra vires the Constitution of India.

Application of Income

85% of current year's income must be applied

- Application from loan, corpus donation and income accumulated from earlier years are not allowed as deduction. Trust can neither claim loss nor any loss can be carried forward
- Application shall be subject to disallowances specified u/s 40(a)(ia) and 40A(3)
- Application shall be computed on cash basis. (i.e., opening balance of creditors can be added to application and closing balance of creditors shall be reduced from application)

What if 85% of current year income is not applied?

- Amount to the extent of 15% can be unconditionally accumulated
- The surplus beyond that shall become taxable at applicable rates.
- Surplus can be accumulated vide explanation to Section 11(1) – Form 9A – e-file – state reasons for accumulation – time limit as per the Act is 2 months prior to 139(1) due date – Circular 6/2023 restored it back to 139(1) due date
- Surplus can be accumulated up to 5 years u/s 11(2) – E-File Form 10 stating the purpose of accumulation - time limit as per the Act is 2 months prior to 139(1) due date – Circular 6/2023 restored it back to 139(1) due date – Accumulated funds shall be invested as specified in Section 11(5)
- For condonation of delay in filing Forms 10 or 9A – refer circular 17/2022

Application out of corpus donation / loan

- Amount applied using corpus donation or loan funds is not allowed as deduction
- If amount once applied from corpus donation is subsequently replenished using current year income, the amount replenished can be claimed as deduction.
- Similarly if loan taken is repaid using current year income, the repayment can be claimed as deduction
- Replenishment if corpus / repayment of loan are subject to restrictions:
  - If amount spent prior to 01.04.2021 is replenished or repaid, no deduction will be allowed, even when the amount spent was disallowed in the relevant year.
  - If replenishment or repayment is after a period of 5 years from the year of spending, no deduction will be allowed. (if loan period is 25 years, deduction will be allowable only for first 5 years)
- Un applied corpus donation shall be invested as specified u/s 11(5)

Deduction in respect of depreciation (Section 11(6))

- When cost of asset acquired is claimed as deduction, depreciation thereon cannot be claimed.
- In respect of asset acquired out of loan, cost cannot be claimed as deduction. Also there are restrictions regarding claiming deduction in respect of loan repaid. Therefore, why not claim depreciation on the asset.
- Depreciation is not on the block of assets at Section 32 rate. It shall be SLM as per the accounting principles.
- It may also be noted that depreciation is to be deducted from income and not added to application.

Donation by one trust to another

- Deduction available to the donor trust will be limited to 85% of the amount donated
- CBDT circular 3/2024

  Representations have been received by the Central Board of Direct Taxes (CBDT) raising concerns as to whether the balance 15% of donation to other trust / institution would be taxable or would be eligible for 15% accumulation, since the funds would not be available, having been already disbursed.

  CBDT has examined the matter with reference to the issues raised above. Vide Circular No. 3/2024 in F.No.370142/5/2024-TPL dated 06.03.2024, issued today, the matter has been clarified by illustrative examples, for lucid understanding. The said Circular is available on circular-3-2024.pdf (incometaxindia.gov.in).

CBDT circular 3/2024

4. The matter has been examined with reference to the issues raised in paragraph 3 and it is reiterated that eligible donations made by a trust / institution to another trust / institution under any of the two regimes referred to in para 2 shall be treated as application for charitable or religious purposes only to the extent of 85% of such donations. It means that when a trust / institution in either regime donates Rs. 100 to another trust / institution in either regime, it will be considered to have applied 85% (Rs. 85) for the purpose of charitable or religious activity. It is clarified that 15% (Rs. 15) of such donations by the donor trust / institution shall not be required to be invested in specified modes under section 11(5) of the Act as the entire amount of Rs. 100 has been donated to the other trust / institution and is accordingly eligible for exemption under the first or second regime.

CBDT circular 3/2024

This is illustrated by following example where Trust1, Trust2 and Trust3 are trusts or institutions under any of the two regimes. Further, Trust1 is making eligible donation to Trust2 and Trust2 is further making eligible donation to Trust3.

Sl. No.	Particulars	Trust1		Trust2		Trust3	
1.	Income (A)	300		100		100	
2.	Income which is required to be applied (B = 85% of A)		255		85		85
3.	**Application of income**						
4.	Donation to other trusts under the first or second regime (C)	100		100			Nil
5.	Amount to be considered as application of income against the donations at row no. 3 [as per clause (iii) of the Explanation 2 to third proviso to clause (23C) of section 10 or clause (iii) of the Explanation 4 to sub-section (1) of section 11 of the Act]. (D = 85% of C)		85		85		
6.	Balance income for application (E = A – C)	200		Nil		100	
7.	Application other than Sl. No. 4 (F = 85% of E)		170		Nil		85
8.	Remaining income which may be accumulated without Form No. 10 / 9A (G = 15% of E)		30		Nil		15
9.	Funds required to be invested in section 11(5) modes (H = G)		30		Nil		15
10.	Exemption of income (I = C + F + G)	300		100		100	

Filing of audit report, ITR and filing u/s 80G

Filing of audit report

- Form No. 10B
  - Gross receipts > Rs. 5 crores or
  - Receipt of FC or
  - Application of income outside India
- Form No. 10BB
  - In any other case where audit is warranted u/s 12A
- In the case of small trusts, not in receipt of foreign money and not having foreign spending, with gross receipts less than basic exemption, audit is not required and hence Form 10B / 10BB is also not required.
- Audit report has to be e-filed one month prior to 139(1) due date. Belated audit report can result in disallowance of income applied. Twice extended in AY 2023-24 (a) up to 31.10.2023 (Circular 16/2023) and (b) up to 31.03.2024 (Circular 2/2024).
- For condonation of delay in filing audit report – refer Circulars 15/2022 & 16/2022
- Books to be maintained as mentioned in Rule 17AA

Filing of ITR

- Exemption can be claimed in both the cases
  - Return u/s 139(1)
  - Belated return u/s 139(4)
- Exemption cannot be claimed in an updated return
- Order of uploading of forms shall be
  - Step 1 – Forms 10 / 9 A
  - Step 2 – Form 10B or 10BB
  - Step 3 – Forms 3CA/3CB and 3CD, if applicable
  - Step 4 – ITR 7

Filing u/s 80G

- Form 10 BD – List of donors – Due date May 31
- Form 10 BE – Donation receipt generated from the portal – Due date May 31
- Late fee – Rs. 200 per day – Section 234G
- Penalty – Rs. 10,000 to Rs. 1,00,000 – Section 271 K
- Form 10BD once filed on time can be revised subsequently without any late fee

Related party transactions

Related party transactions

- Beneficiaries are meant to be public. Hence, if benefits are conferred by the trust to specified related parties, penal consequences follow
- Reporting in audit report
- Tax u/s 115BBI
- Penalty u/s 271AAE – 100% first time 200% subsequently
- Can lead to cancellation of registration

Prebudget wish list

- Set right the anomaly in proviso to Section 80G(5) – i.e., how a 12AB registered trust, which has claimed exemption u/s 11 apply for 80G approval.
- Monetary limit u/s 13 is a paltry sum of Rs. 50,000. This may be enhanced at least to Rs. 5,00,000
- Loan repayment conditions may be made assessee friendly
  - If applications from loans taken prior to 01.04.2021 were not claimed in the respective years, repayment thereof should be allowed
  - The period of 5 years to claim repayment is too small. This may be enhanced to 25 or 30 years.
- Disallowance of 15% in respect of donation by one trust to another may be restricted only to Charitable trusts and religious trusts may be spared.

Conclusion

Creating a trust, ensuring compliance and closing down a trust, all require lots of our professional time, effort and stress. Don't forget that we are not charitable institutions. So bill adequately.

THANK YOU