



## Hyderabad Branch of SIRC

June, 2020 E-Newsletter

[www.hydicai.org](http://www.hydicai.org)

[hyderabad@icai.org](mailto:hyderabad@icai.org)

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**June 21**  
International  
**YOGA**  
**DAY**





Dear Professional Colleagues,

Greetings.

Hope each one of you and your family members are safe.

Most of us would have started the routine activities after the relaxations were announced in the Lockdown. I would only like to share with you that Hyderabad is not Corona Free and the cases are increasing every day in Hyderabad. The movement of migrants across states has only added to the problem. While we all understand the importance of completing the pending official works on hand, I urge each one of you to be extra careful in your daily routines, at-least till we have some confirmed news about the vaccine.

The period of Lockdown has shown us that we do not have to be in office all the time to attend to our work. Technology can be a great friend of ours in completing our works. I urge each one of you to leverage Technology to the maximum, wherever possible, and avoid physical meetings. With majority of the works of Statutory Bodies happening online, it is time for us to pause and think if we really need such big offices wherein we spend huge amount on Infrastructure. Lots of time is being spent on commuting from residence to office and then to clients place & government departments can be saved and utilised to be with Families.

### **Virtual CPE Meetings:**

Hyderabad Branch of SIRC of ICAI has lined up several Virtual CPE meetings in the month of June, the details of which are given elsewhere in the newsletter. The details of programme are also uploaded on [www.hydicai.org](http://www.hydicai.org). You can avail structured CPE credits by attending the webinar. I request members attending the meeting to be logged in with your Real name throughout the Webinar as the CPE credits will be provided only to members who are Present throughout the duration. CPE credits will be provided only to the members of Hyderabad for up to 300 members on First Come First Served basis.

### **Classes for Students:**

Hyderabad Branch of SIRC of ICAI along with SICASA Hyderabad continues to conduct Classes for Foundation students and IPCC students in Virtual mode.

### **Covid-19 Donations**

The Managing Committee of Hyderabad Branch of SIRC of ICAI thanks each and every member who has contributed to PM Cares Fund, either through ICAI or through direct contribution. We also thank members who have provided relief to the needy persons in whatever way they can. ICAI has requested Branch to collect details of Donations, Relief and Help provided to members, along with Photographs, so that it can be placed in CSR website of ICAI which can showcase the philanthropic activities being done by Chartered Accountants during the calamity. The details of the same are also provided elsewhere in the newsletter.

### **Signing off with a quote:**

“The greatest discovery of all time is that a person can change his future by merely changing his attitude.”

Yours Sincerely,

**CA .Pankaj Kumar Trivedi**

Chairman

[chairman.hyd@icai.in](mailto:chairman.hyd@icai.in)



### Webinars for the month of June-2020

Date	Day	Timing	Topic	Speaker
10-06-2020	Wednesday	06 PM to 08 PM	Fundamental and Complex Issues arising under Benami Law and Its Interplay with Income Tax Law and other Economic Laws	CA. Ashwani Taneja
11-06-2020	Thursday	06 PM to 08 PM	Anti Money Laundering Law in India and its interplay with Black Money Act, benami Law, Companies Act & Income Tax act covering Role of CA's	Dr. R N Dash
12-06-2020	Friday	06 PM to 08 PM	Nuances of New Penalty Provisions Under Income Tax Act with Special emphasis on Penalty U/s270A and 271AAD	Dr CA. Rakesh Gupta
13-06-2020	Saturday	06 PM to 08 PM	Handling of Offences and Prosecution under FEMA, PMLA, Income Tax, benami Law, Black Money Act and Companies Act (SFIO)	Shri. Amit Khemka
17-06-2020	Wednesday	06 PM to 08 PM	Primer on Valuation	CA. Rajesh Khairajani
19-06-2020	Friday	06 PM to 08 PM	Importance of Peer Review	CA. Dayaniwas Sharma
20-06-2020	Saturday	06 PM to 08 PM	Awareness on Cyber Security	CA. Sachin Dedhia
21-06-2020	Sunday	6 <sup>th</sup> International Day of Yoga Details will be hosted in Branch website		
24-06-2020	Wednesday	06 PM to 08 PM	Foreign Direct Investments in India-FEMA	CA. Paresh Shah



## MEMBERS ANNOUNCEMENT

June- 2020

**Members may view the Webinars conducted by Hyderabad Branch of SIRC in the following link: <https://bit.ly/3ePmI8T>.**

### **Grievances- Members & Students**

<b>Members</b>	<b>Students</b>
Cell no : +91 6302784277	Cell no :+91 6302783477
Email Id: <a href="mailto:hydbbranchmemberqueries@gmail.com">hydbbranchmemberqueries@gmail.com</a>	Email Id: <a href="mailto:hydbbranchstudentqueries@gmail.com">hydbbranchstudentqueries@gmail.com</a>

### **Digitisation of Disciplinary Function**

ICAI, after successful implementation of E-hearing during this Council year, have taken another step in the direction of digitisation by developing a separate portal (<https://disc.icai.org>) specifically for disciplinary mechanism wherein all pertinent information is readily available like procedure to file complaint (physically or through e-filing), Cause List, Orders passed by the Disciplinary Committee, Committee compositions and Details of meeting(s).

### **Membership /COP FEE**

The ICAI Council has decided to give an option to pay advance Membership/COP fee in exact amount for 10 years along with GST as a final payment and in case of any shortfall owing to revision of fee in future; their Name/COP will not be removed from the register of members on account of such revision.

Further, Members may also note that in case the advance fees has been paid in the past, the balance fees/difference of the fee becomes payable in the current financial year. In other words payment of balance fee /difference in fee is a must for renewal of membership/certificate of practice, as the case may be.

It may be noted that an ACA who has paid advance membership fee for a period not exceeding 10 years and at a later stage opt for FCA status then the member is required to pay difference fee (the difference of fee in conversion from ACA to FCA and Fellow Member Admission Fee) for the remaining period.

This facility will be applicable w.e.f. 1st April, 2020.



### **Contribution for Covid 19 Relief Fund**

ICAI under the auspices of its CSR Committee has ventured to showcase the work done by its members during Covid-19 and for collecting necessary details, the branches have been authorised to collect necessary information from members falling under its jurisdiction. In this connection members who have contributed in cash/kind directly to the needy may fill in the relevant excel files hosted in **www.hydicai.org** and may send the same by e-mail to [hydbranchmail@gmail.com](mailto:hydbranchmail@gmail.com). It may be noted that only contributions made directly to the following funds till May 3, 2020 may only be mentioned along with proof of receipt:-

1. PM's National Relief Fund
2. PM's CARES Fund
3. CM's National Relief Fund

In case of contributions made in kind, the following contributions made to public till May 17, 2020 may be provided:-

1. Food / Eatables
2. Medical help (kits, medicine, equipment's, etc)

Members may kindly keep the following points in mind while giving the details:

- Only the contribution made directly is to be submitted. For example, food, etc. distributed through a third party like Rotary, Trust, Society, etc. should NOT be submitted.
- Where live kitchen is being run to distribute food then the no. of beneficiaries should be calculated accordingly. For example:
  - 100 packets are distributed for 10 days – then no. of beneficiaries – 1000 (100x10)
  - 3 CAs joined, contributed equally to feed in aggregate 150 persons – then no. of beneficiaries – 50 by each CA (150/3).

### **STUDENTS ANNOUNCEMENT**

#### **POSTPONEMENT OF RE - OPENING OF ON-LINE FACILITY (CORRECTION WINDOW) FOR SEEKING CHANGE OF EXAMINATION CENTRE FOR APPEARING IN JULY 2020 CA EXAMINATIONS.**

The Institute had announced re-opening of correction window for seeking change of centre between 7th June 2020 to 9th June 2020 vide announcement dated 29th May 2020.

As the lockdown position will become clear in the next couple of days, it has been decided that this window be opened after the fresh guidelines are received so that the students can make up their mind and apply for the centre change accordingly.

Candidates are advised to take note of the above and stay in touch with the website of the Institute, **www.icaai.org** for the latest announcements/updates.

**Additional Secretary (Exams)**



## ARTICLE

June- 2020

### GST UPDATE

-Compiled by CA. Satish Saraf

S. No	Notification No	Issued under	Date of Issue	Brief particulars
01	37/2020	Central Tax	28/04/2020	Notifying the effective date as 21-04-2020 give effect to the provisions of rule 87 (13) and FORM GST PMT-09 of the CGST Rules, 2017.
02	38/2020	Central Tax	05-05-2020	Notifying fifth amendment (2020) to CGST Rules, 2017. Enabling corporates to file GSTR-3B returns with EVC from 21-04-2020 to 30-06-2020. Enabling filing of NIL GSTR-3B returns through SMS.
03	39/2020	Central Tax	05-05-2020	Notifying amendments to special procedure for corporate debtors undergoing the corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016.
04	40/2020	Central Tax	05-05-2020	Notifying to extend the validity of e-way bills till 31.05.2020 for those e-way bills which expire during the period from 20.03.2020 to 15.04.2020 and generated till 24.03.2020.
05	41/2020	Central Tax	05-05-2020	Notifying the extension of due date for furnishing of FORM GSTR 9 & GSTR 9C (Annual Returns) for FY 2018-19 to 30th September, 2020 from 30 <sup>th</sup> June, 2020.
06	42/2020	Central Tax	05-05-2020	Notifying the extend the due date for furnishing FORM GSTR-3B, Jan-March, 2020 returns for the taxpayers registered in Ladakh
07	43/2020	Central Tax	16-05-2020	Notifying to bring into force Section 128 of Finance Act, 2020 in order to bring amendment in Section 140 of CGST Act w.e.f. 01.07.2017. Section 140 of the CGST Act, 2017 deals with Transitional arrangement for Input Tax Credit.
08	136/20/2020	CGST Circular	03-04-2020	Clarification in respect of various measures announced by the Government for providing relief to the taxpayers in view of spread of Novel Corona Virus (COVID-19)
09	137/07/2020	CGST Circular	13-04-2020	Clarification in respect of certain challenges faced by the registered persons in implementation of provisions of GST Laws
10	138/08/2020	CGST Circular	06-05-2020	Clarification in respect of certain challenges faced by the registered persons in implementation of provisions of GST Laws



**Survey, Search and Seizure Update****-Compiled by: CA. Hari Agarwal****1. Agson Global (P.) Ltd. v. ACIT, Central Circle-28, New Delhi****[2020] 115 taxmann.com 342 (Delhi - Trib.)**

**(a). Section 69C of the Income-tax Act, 1961 - Unexplained expenditure (Bogus sales/purchases)** - Assessment years 2012-13 to 2014-15 - Assessee-company, was engaged in purchase and sale of dry fruits and other grocery items from and to parties on regular basis - Assessing Officer on basis of statement of director of assessee-company held that assessee had booked bogus purchases in its books of account to inflate expenses and to reduce its taxable profits, and made an addition at rate of 25 per cent of such purchases as suggested in appraisal report - It was found that Assessing Officer made said addition without conducting any enquiry - Further, in deviation proceedings, Assessing Officer after scrutiny of books of account, appraisal report and statement of managing director of company, which was later on retracted, held that no such addition could be made - It was also noted that entire purchase and sale transactions were duly recorded in regular books of account of all parties concerned and were routed through regular banking channels - Copies of bank accounts of all parties showing receipts and payments against sales and purchases from impugned parties were filed before Assessing Officer - Further, in original assessments, all these details were verified and assessments were framed under section 143 (3) - Whether, in view of above facts, since no incriminating evidences were found, impugned addition was to be deleted - Held, yes [Paras 91, 92, 93 and 94] [In favour of assessee]

**(b). Section 69C of the Income-tax Act, 1961 - Unexplained expenditure (Bogus purchases)** - Assessment years 2015-16 to 2017-18 - Assessee-company was engaged in purchase and sale of dry fruits and other grocery items from and to parties on regular basis - Assessing Officer made an addition on account of bogus purchases at rate of 25 per cent of purchases only from certain parties as recommended in appraisal report - It was noted that only purchases from alleged bogus parties were considered and sales made to these parties were altogether ignored - However, in deviation report, Assessing Officer had categorically held that if purchases were to be removed from books of account from said parties, then necessarily on same allegation sales were also required to be removed from regular books of account, which would lead to assessing assessee at less than income returned by it - Further, it was found that purchases and sales with alleged bogus parties were supported by bills and vouchers as well as stock register was maintained in Tally accounting software by assessee - Also, payment of purchase consideration and receipt of sale consideration from these parties were also made through account payee cheque - Whether, in view of aforesaid, impugned addition



made on account of bogus purchases was to be deleted - Held, yes [Paras 95, 104 and 107] [In favour of assessee]

**(c). Section 145 of the Income-tax Act, 1961 - Method of accounting - Rejection of accounts** - Assessment years 2015-16 to 2017-18 - Assessee-company was engaged in purchase and sale of dry fruits and other grocery items from and to parties on regular basis - Assessing Officer made an addition on

account of bogus purchases - However, Commissioner (Appeals) invoked provisions of section 145(3) - It was found that Commissioner (Appeals) had not even produced even single piece of evidence to show that books of account were not correct or incomplete - However, assessee had supported his books of account with adequate evidences of his own business as well as also supported it with balance sheet and profit and loss account of comparable third parties - Whether since revenue authorities did not find patent, latent and glaring defects in books of account but simply relied on statement of managing director, which was later on retracted, rejection of books of account by Commissioner (Appeals) was not in accordance with law - Held, yes [Paras 104, 105 and 107] [In favour of assessee]

**(d). Section 68 of the Income-tax Act, 1961 - Cash credit (Bank deposits)** - Assessment year 2017-18 - Assessee-company was engaged in purchase and sale of dry fruits and other grocery items - It deposited Rs. 180.53 crore post-demonetization in its Bank accounts - Assessing Officer made an addition of Rs. 150.53 crore as income of assessee under section 68 - Commissioner (Appeals) on analysis of details of cash sales vis-a-vis cash deposit into bank account for different years, considered cash deposits in banks as unaccounted income and, further, being of view that new currency represented cash sales, restricted addition to Rs. 73.13 crore - It was found that in year of demonetization percentage increase in sales was less than earlier year; growth in sales compared to earlier two years showed similar trend, thus, it could not be said that assessee had booked non-existing sales in its books post-demonetization - Further, there was growth in business of assessee pre-demonetization and as well as post-demonetization - Assessee submitted details of closing stock, list of debtors, details of purchases and sales party-wise for year, list of creditors, bank statement copies as well as books of account and copy of sales invoices as well as purchase invoices, therefore, it could not be said that assessee had purchased goods or sold goods to unidentified parties - Further, assessee had also filed its VAT returns, which were not found to be in variance with accounting and tax records, therefore, it could not be substantiated that assessee had backdated transactions of sale - Whether, in view of aforesaid facts, impugned addition made by Commissioner (Appeals) was to be deleted - Held, yes [Paras 125, 126 and 127] [In favour of assessee]





**(e).Section 68, read with section 69C, of the Income-tax Act, 1961 - Cash credits (Share capital money)** - Assessment years 2012-13 to 2017-18 - Assessee-company received share capital and share premium - Assessing Officer made an addition in respect of same on account of unaccounted income under section 68 - Further, Assessing Officer also made an addition of 2 per cent of amount of share capital as commission paid for arranging said share capital under section 69C - Commissioner(Appeals) confirmed addition made by Assessing Officer as regards share capital money - It was found that assessee had produced confirmations from investor companies bearing stamp of Revenue Department along with bank statements of assessee and all investor companies etc., wherein investors had confirmed that impugned amount was transmitted in their bank accounts from assessee's bank account and same was transferred back to account of assessee-company in form of share application money - Whether since assessee was able to prove genuineness of transaction that it was amount of assessee itself which was ultimately introduced as share capital/premium routed through various companies, there was no justification to make any addition under section 68 - Held, yes - Whether since all parties were related to assessee and said transaction being genuine, there was no justification to make addition under section 69C - Held, yes [Paras 76, 77 and 86] [In favour of assessee]

**2. Ajanta Pharma Ltd. v. Dy. CIT ITA No. 6883/Mum/2016**

**Penalty under section 271AAB---Viability---Undisclosed income---Expenses offered for disallowance during search not found to be a false claim---Admission by assessee to avoid litigation**

**Conclusion:** The simplicitor case that assessee during course of search in the statement recorded under section 132(4) admitted this to be the income to avoid litigation and to buy peace of mind. It was good piece of evidence for making assessment but not for levy of penalty under section 271AAB because for levy of penalty falsity of the expense was a pre-requisite. Hence, penalty was deleted.

Assessee during course of search in the statement recorded under section 132(4) offered certain expenses for disallowance, AO framed assessment under section 153A and made disallowance. Also, AO levied penalty under section 271AAB. Assessee's case was that disallowance had been offered voluntarily to buy peace of mind and no penalty was leviable as claim of expenditure was not false. **Held:** Definition of undisclosed income provided in section 271AAB under Expln. (c) of sub-clause (ii) clarifies that any income of specified previous year represented either wholly or partly by any entry represented in respect of expense recorded in books of account maintained in normal course of business should be found to be false. In assessee's case, expenses in question had not been found to be false or it was not a case of revenue that such expenses were not allowable under



provisions of the Act. The simplicitor case that assessee during course of search in the statement recorded under section 132(4) admitted this to be the income to avoid litigation and to buy peace of mind. It was good piece of evidence for making assessment but not for levy of penalty under section 271AAB because for levy of penalty falsity of the expense was a pre-requisite. Hence, penalty was deleted.

*Decision:* In assessee's favour.

**3. Shankarlal Jain V. Chief Commissioner of Income Tax, Bengaluru [2020] 116 taxmann.com 607 (Karnataka)**

**Section 234A, read with sections 234B and 234C, of the Income-tax Act, 1961 - Interest, chargeable as (Waiver of)** - Assessment years 2009-10 and 2010-11 - A survey under section 133A was conducted upon assessee company during which assessee had admitted certain amount as unaccounted - Assessment was concluded under section 143(3) levying interest under sections 234A, 234B and 234C - Assessee contended that books and documents were impounded during survey and same was not available to assessee despite several requests which caused delay in filing return of income and, further, return of income was filed voluntarily by assessee without any detection by Assessing Officer, thus, impugned interest levied upon assessee was to be deleted - It was noted that indeed, on detection made at time of survey, assessee had admitted tax liability and filed return of income - However, no advance tax was paid on admitted income - Whether in these circumstances, utmost, delay caused in filing return if to be attributed to impounding of documents during survey proceedings, interest under section 234A for default committed in filing return of income would be waived of, but not interest leviable under sections 234B and 234C for default in payment of advance tax and for deferment of advance tax - Held, yes [Para 12][Partly in favour of assessee]

**4. Principal Commissioner of Income-tax – 1 v. Amantha Healthcare Ltd. [2020] 116 taxmann.com 477 (SC)**

**Section 143, read with section 292BB, of the Income-tax Act, 1961 - Assessment (Notice under section 143(2))** - Assessment year 2005-06 - High Court by impugned order held that non-issuance of notice under section 143(2) is not a procedural irregularity and same cannot be cured under section 292BB; therefore, an assessment order passed without issuance of valid notice under section 143(2) would be rendered invalid - It further held that, in view of aforesaid legal position, where notice under section 143(2) was issued to assessee prior to filing of return of income, said notice being invalid, assessment order passed in pursuance of same deserved to be set aside - Whether special leave petition filed against impugned order was to be dismissed on ground of low tax effect - Held, yes [Para 24] [In favour of assessee]

**Compliance requirements of Trusts / Funds' post amendment made by the Finance Act, 2020**

-Complied by : CA. Rajendra Prasad Talluri

**Whether the charitable trusts cannot claim exemption in the previous year of formation after the amendment made by the Finance Act, 2020?****Introduction:**

The Finance Act, 2020 made lot of amendments to the provisions relating to charitable trusts and the institutions approved U/S 10(23C). It introduced renewal of the registration / approval for the existing trusts. Where the institutions are approved U/S 10(23C) as well as registered U/S 12AA or U/S 12A, then they need to make a choice of being either governed U/S 10(23C) or Sec 12AA/12A. Similar choice is to be made w.r.t notification U/S 10(46) vis-à-vis Sec 12AA/12A. Thus, the benefits of Sec 12AA, 10(23C) and 10(46) are made mutually exclusive. Due to the outbreak of pandemic COVID-19, certain relaxations are made with regard to the timelines by which various compliance requirements are to be fulfilled by the existing trusts.

In this Article, an attempt had been made to summarize the action points of the existing trusts / institutions and also the compliance requirements for the new trusts.

**Sec 7, Sec 9 to Sec 12 of the Finance Act, 2020 deals with amendments relating to 'Charitable Trusts' and 'Institutions'.**

**Part # 1 of this Article deals with amendments relating to Sec 10(23C) whereas part # 2 deals with amendments relating to trusts covered U/S 11 to 13.**

**Part # 1: Amendments to Sec 10(23C) by the Fin Act, 2020:**

**As per the provisions of Sec 10(23C), any income falling within any of the clauses of Sec 10(23C) shall not be included in computing the income of a previous year of any person.**

**There are certain other conditions which need to be satisfied for the institutions covered under Sec 10(23C) (iv) / (v) / (vi) / (via).**

Vide the 1<sup>st</sup> proviso to Sec 10(23C), it is provided that the income received by a person '*on behalf of the university / other educational institution or any hospital / other medical institution referred to in Sec 10(23C)(iv)/(v)/(vi)/(via)*' shall not be included in the total income if the university, hospital etc, makes application for exemption, or continuance thereof, in the prescribed form to the prescribed authority.

Vide the 2<sup>nd</sup> proviso to Sec 10(23C), it is further provided that prescribed authority may, inter alia, call for certain documents (including audited annual accounts) or information from the aforesaid institutions for verifying the genuineness of the activities while granting approval / renewal thereof.

**These 1<sup>st</sup> and 2<sup>nd</sup> provisos are substituted w.e.f 1<sup>st</sup> June 2020 by the Finance Act, 2020. Hence, the compliance requirements have been modified w.r.t the institutions covered under Sec 10(23C)(iv) /**



(v) / (vi) / (via). Further, through press release dated 9<sup>th</sup> May 2020, it is clarified that the new scheme shall be operative w.e.f 1<sup>st</sup> Oct 2020 and that necessary legislative amendments shall be made in due course.

**Note: Sec 10(23C)(iv) deals with** 'Any other fund or institution **established for charitable purposes** which may be approved by the prescribed authority, having regard to the objects of the fund or institution and its importance throughout India or throughout any State or States'.

**Sec 10(23C)(v) deals with** 'Any trust (including any other legal obligation) **or institution wholly for public religious purposes or wholly for public religious and charitable purposes**, which may be approved by the prescribed authority, having regard to the manner in which the affairs of the trust or institution are administered and supervised for ensuring that the income accruing thereto is properly applied for the objects thereof'.

**Sec 10(23C)(vi) deals with** 'Any university or other educational institution **existing solely for educational purposes and not for purposes of profit**, other than those mentioned in sub-clause (iiiab) or sub-clause (iiid) and which may be approved by the prescribed authority'.

{Clause (iiiab) covers any university or other educational institution existing solely for educational purposes and not for purposes of profit, and which is wholly or substantially financed by the Government; Vide Rule 2BBB it is provided that for the purposes of sub-clauses (iiiab) and (iiiac) of clause (23C) of section 10, any university or other educational institution, hospital or other institution referred therein, shall be considered as being substantially financed by the Government for any previous year, if the Government grant to such university or other educational institution, hospital or other institution exceeds fifty per cent of the total receipts including any voluntary contributions, of such university or other educational institution, hospital or other institution, as the case may be, during the relevant previous year.

Clause (iiid) covers any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed. As of today, this limit is Rs 1 Crore.]

**Sec 10(23C)(via) deals with** 'any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, **existing solely for philanthropic purposes and not for purposes of profit**, other than those mentioned in sub-clause (iiiac) or sub-clause (iiiae) and which may be approved by the prescribed authority'. {Clause (iiiac) covers any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, and which is wholly or substantially financed by the Government; Clause (iiiae) covers any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, if the aggregate annual receipts of such hospital or institution do not exceed the amount of annual receipts as may be prescribed.}

**Time limits for making applications for 'approval / renewal': [Dealt with by the 1<sup>st</sup> proviso to Sec 10(23C)]:**

The funds or trusts / institutions or universities / other educational institutions or hospitals / other medical institutions referred to in Sec 10(23C)(iv)/(v)/(vi)/(via) need to make applications for 'Approval / Renewal' within the following time limits. The time limits for application are specified in clause (i) to (iv) of the 1<sup>st</sup> proviso to Sec 10(23C).

**Category # 1: [Clause (i) of 1<sup>st</sup> proviso to Sec 10(23C)]: The funds / trusts, etc., which are approved under the pre-amended provisions:** They need to make application for approval within **three months from the date on which this clause has come into force**. As this clause comes into force w.e.f 1<sup>st</sup> June 2020, they need to make an application by 31<sup>st</sup> Aug 2020. However, based on the press release, the operation of this section is deferred to 1<sup>st</sup> Oct 2020 and hence the application for approval needs to be made by 31<sup>st</sup> Dec 2020.

**Category # 2: [Clause (ii) of 1<sup>st</sup> proviso to Sec 10(23C)]: The funds / trusts, etc., which are approved under the amended provisions:** They need to make application for approval (i.e Renewal of their approval) at least 6 months prior to the expiry of their approval.

**Category # 3: [Clause (iii) of the 1<sup>st</sup> proviso to Sec 10(23C)]: The funds / trusts, etc., which are provisionally approved under the amended provisions:** They need to make an application for approval (i.e Regular approval) at the earliest of (a) 6 months prior to the expiry of the provisional approval, and (b) within 6 months of commencement of their activities.

**Category # 4: [Clause (iv) of the 1<sup>st</sup> proviso to Sec 10(23C)]: Any other case:** They need to make an application for approval **at least one month prior to the commencement of the previous year** relevant to the assessment year from which the said approval is sought.

*This covers the cases of application for approval for the first time. For example, a trust is making an application on 15<sup>th</sup> Oct 2020, then they cannot be granted approval for PY 2020-21 or AY 2021-22. It is so because, they need to make an application at least one month prior to the commencement of the P.Y. Thus, they will be granted the provisional approval, if any, from PY 2021-22 in this case.*

**Note:** The application for the 'approval / renewal' is to be made in the prescribed form to the Principal CIT / CIT under the amended version in all these cases. It may be noted that as per the pre-amended provisions, the application for 'approval / renewal' is to be made to the prescribed authority in Form No 56. Vide Rule 2C, it is provided that the prescribed authority is 'Principal CIT / CIT'.

**Time limits up to which the approval is valid if approved by the Principal CIT / CIT: [Dealt with by the 2<sup>nd</sup> proviso to Sec 10(23C)]:**

**Category # 1: {Application is made under clause (i) of the 1<sup>st</sup> proviso to Sec 10(23C)}: The funds / trusts, etc., which are approved under the pre-amended provisions made applications for 'fresh approval' under the amended version:** The Principal CIT / CIT passes orders in writing granting approval to them *for a period of five years*. [Dealt with by clause (i) of 2<sup>nd</sup> proviso to Sec 10(23C)]



**Category # 2: {Application is made under clause (ii) / (iii) of the 1<sup>st</sup> proviso to Sec 10(23C)}:** The funds or trusts, etc., 'approved' under the amended provisions are coming for 'renewal' / the funds or trusts, etc., 'provisionally approved' under the amended provisions are coming for 'regular approval': The Principal CIT / CIT passes orders in writing granting *approval to them for a period of five years after satisfying himself* about the objects and genuineness of the activities and compliance of such requirements of any other law for the time being in force by the trusts / funds, etc., as are material for the purpose of achieving its objects. {It is noteworthy that where the trusts are not complying with any other law w.r.t material aspects, then approval may be denied under the IT Act.}

Where the principal CIT / CIT is not so satisfied about the objects and genuineness of the activities and compliance requirements with any other law which are material for the purpose of achieving the trusts' / funds' objects, then he passes an order in writing rejecting such application and also cancelling its approval after affording it a reasonable opportunity of being heard. **[Dealt with by clause (ii) of 2<sup>nd</sup> proviso to Sec 10(23C)]**

**Category # 3: {Application is made under clause (iv) of the 1<sup>st</sup> proviso to Sec 10(23C)}:** Where the trusts / funds are making applications under clause (iv) of the 1<sup>st</sup> proviso to Sec 10(23C), then the principal CIT / CIT grants 'provisional approval' for a period of 3 years. Thus, where the application **for approval is made for the first time**, then the trust / fund shall be granted provisional approval for a period of 3 years. **[Dealt with by clause (iii) of 2<sup>nd</sup> proviso to Sec 10(23C)]**

**Other amendments: Explanation is added to the 3<sup>rd</sup> proviso to Sec 10(23C):** The 3<sup>rd</sup> proviso provides, inter alia, that the trusts / funds covered U/S 10(23C)(iv)/(v)/(vi)/(via) shall apply their income wholly and exclusively to the objects for which they were established. An explanation is inserted to clarify that income shall not include corpus donations. In the opinion of the author, this clarification is inserted to make the provisions of Sec 12 and Sec 10(23C) on par as these sections shall be mutually exclusive under the new scheme.

**Time limits from which the approval is valid if approved by the Principal CIT / CIT: [Dealt with by the 8<sup>th</sup> proviso to Sec 10(23C)]:**

**Category # 1: {Application is made under clause (i) of the 1<sup>st</sup> proviso to Sec 10(23C)}:** [i.e It covers the cases where the application is made by those approved institutions under the erstwhile provisions of Sec 10(23C)]: In such cases, the approval is valid from the assessment year from which approval was earlier granted to it. **[Dealt with by clause (i) of 8<sup>th</sup> proviso to Sec 10(23C)]**

**Category # 2: {Application is made under clause (iii) of the 1<sup>st</sup> proviso to Sec 10(23C)}:** [i.e It covers the cases where the trusts are 'provisionally approved' and they are making applications for 'regular approval']: In such cases, the approval is valid from the first of the assessment years for which it was provisionally approved; Thus, where the provisional approval is given for 3 years and it is granted regular approval for a period of 5 years, then the regular approval is applicable for the overall period of 5 years (i.e Provisional approval of 3 years + 2 incremental years). **[Dealt with by clause (ii) of 8<sup>th</sup> proviso to Sec 10(23C)]**





**Category # 3: {Any other case}:** This covers all other cases including the cases where the approval is sought for the first time under the amended provisions. In such cases, the approval is granted from the assessment year immediately following the financial year in which such application is made. [Dealt with by clause (iii) of 8<sup>th</sup> proviso to Sec 10(23C)]

**Author's view:** There seems to be a drafting error in the residuary case. As per clause (iv) of the 1<sup>st</sup> proviso, the trusts / funds need to make an application for approval **at least one month prior to the commencement of the previous year** relevant to the assessment year from which the said approval is sought whereas **the approval is granted from the AY immediately following the FY in which the application is made** as per the clause (iii) of 8<sup>th</sup> proviso.

**Let us understand this with one example.**

An educational institution whose gross receipts exceeded Rs 1 Crore wants approval U/S 10(23C) for the FY 2021-22. In terms of the amended provisions, it needs to make an application for approval at least one month prior to the commencement of the previous year. i.e It needs to make an application for approval on or before 28<sup>th</sup> Feb 2021.

As the institution is making application for the approval for the first time, it shall be granted a provisional approval which is granted from the AY following the FY in which application is made. As the application is made on 28<sup>th</sup> Feb 2021 (i.e FY2020-21), the provisional approval is granted from the AY 2021-22. The intention of the institution is to obtain approval for the FY 2021-22 whereas it shall be approved w.e.f AY 2021-22 which is arising on account of the drafting error.

In the opinion of the author, had the language employed in clause (iv) of the 1<sup>st</sup> proviso been 'the trusts / funds need to make an application for approval **at least one month prior to the commencement of the previous year** relevant to the assessment year from which the said approval is sought', then this anomaly does not arise.

It may further be noted that the present language suggests that the institution shall not get the approval in the previous year of formation unless it made an application for approval even prior to formation of the institution.

Assume that a fund / institution is formed on 15<sup>th</sup> Nov 2020. Further, assume that it made an application for approval on 18<sup>th</sup> Nov 2020. The institution is desiring to have approval from FY 2020-21 onwards since the year of formation. In such cases, it should have made an application for approval at least one month prior to the commencement of the relevant previous year. i.e It should have made an application for approval at least by 29<sup>th</sup> Feb 2020. As it had not made the application for approval on or before 29<sup>th</sup> Feb 2020, it shall not be granted approval for FY 2020-21. **[Clause (iv) of the 1<sup>st</sup> proviso to Sec 10(23C)]**

However, alternative argument is possible that as clause (iii) of 8<sup>th</sup> proviso provides that the approval shall be valid from the assessment year immediately following the financial year in which such application is made, the approval is valid from the AY 2021-22. [This anomaly is arising on account of



the conflicting language employed in clause (iv) of the 1<sup>st</sup> proviso to Sec 10(23C) and clause (iii) of 8<sup>th</sup> proviso to Sec 10(23C)].

**Time limits by which the approval order / rejection order is to be passed by the Principal CIT / CIT: [Dealt with by the 9<sup>th</sup> proviso to Sec 10(23C)]:**

**Case # 1: Cases covered under clause (i) of 2<sup>nd</sup> proviso:** *This covers the cases where the funds / trusts approved under the erstwhile scheme are making application for approval under the new scheme. Note that they make an application for approval within a period of 3 months of the 1<sup>st</sup> clause of Sec 10(23C) coming into force.*

In such cases, the order is to be passed before expiry of the period of three months, from the end of the month in which the application was received.

**Case # 2: Cases covered under clause (ii)(b) of 2<sup>nd</sup> proviso:** *This deals with 2 cases. (a) Where the trusts are **approved** under the new scheme for a period of 5 years and they came for renewal of their approval; (b) Where the trusts are **provisionally approved** under the new scheme for a period of 3 years and they came for regular approval.*

In such cases, the order is to be passed before expiry of the period of six months, from the end of the month in which the application was received.

**Case # 3: Cases covered under clause (iii) of 2<sup>nd</sup> proviso:** *This clause covers the residuary cases including the cases where an application for approval is made for the first time. [i.e They made application for provisional approval.]*

In such cases, the order is to be passed before expiry of One month, from the end of the month in which the application was received.

**Other amendments to Sec 10(23C):**

**Amendment in the 10<sup>th</sup> Proviso to Sec 10(23C):** Post amendment, it looks as under.

Provided also that where the total income, of the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), without giving effect to the provisions of the said sub-clauses, exceeds the maximum amount which is not chargeable to tax in any previous year, such trust or institution or any university or other educational institution or any hospital or other medical institution shall get its accounts audited in respect of that year by an accountant as defined in the Explanation below sub-section (2) of ~~section 288 and furnish along with the return of income for the relevant assessment year,~~ **section 288 before the specified date referred to in section 44AB and furnish by that date [Fin Act, 2020 w.e.f 1<sup>st</sup> April 2020]** the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed:



[The words 'along with return' were read as being directory in nature by various high courts. To nullify those types of judgements, an amendment is introduced whereby the audit report is to be filed 'before the specified date referred to Sec 44AB'.]

**Amendment in the 12<sup>th</sup> Proviso to Sec 10(23C): Post amendment, it looks as under.**

**12<sup>th</sup> Proviso:** Provided also that any amount credited or paid out of income of any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), to any trust or institution registered under section 12AA, being voluntary contribution made with a specific direction that they shall form part of the corpus of the trust or institution, in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), to any other fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) or trust or institution registered under section 12AA, being voluntary contribution made with a specific direction that they shall form part of the corpus, [Fin Act, 2020 w.e.f 1<sup>st</sup> April 2020] shall not be treated as application of income to the objects for which such fund or trust or institution or university or educational institution or hospital or other medical institution, as the case may be, is established:

**Analysis:**

As per the extant provisions of 12<sup>th</sup> proviso to Sec 10(23C), where a trust / institution approved U/S 10(23C)(iv)/(v)/(vi)/(via) gives donation to any trust registered U/S 12AA, then it shall not be treated as application of income in the hands of the donor trust. The list of the donees had been widened by the Fin Act, 2020 w.e.f 1<sup>st</sup> April 2020. The new list of donees are as follows.

1. Any fund / Trust / Institution [Sec 10(23C)(iv)/(v)] [New category]
2. Any University / Other Educational Institution [Sec 10(23C)(vi)] [New Category]
3. Any Hospital / Other Medical Institution [Sec 10(23C)(via)] [New Category]
4. Other trust or institution registered under section 12AA. [Old category]

The existing 16<sup>th</sup> proviso had been omitted by the Fin Act, 2020 w.e.f 1<sup>st</sup> June 2020 as the new time limits had been proposed for making applications for approvals. As 16<sup>th</sup> proviso had been omitted, the 17<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> provisos became 16<sup>th</sup> and 17<sup>th</sup>, 18<sup>th</sup> and 19<sup>th</sup> provisos. Further the existing 18<sup>th</sup> proviso (new 17<sup>th</sup> proviso) had been substituted which deals with transitional cases which reads as under.

**[Existing 18<sup>th</sup> proviso had been substituted with a new proviso which became new 17<sup>th</sup> proviso]**

Provided also that all applications made under the first proviso [as it stood before its amendment by the Finance Act, 2020] pending before the Principal Commissioner or Commissioner, on which no order has been passed before the date on which the first proviso has come into force, shall be deemed to be an application made under clause (iv) of the first proviso on that date.



[Hence, all the applications which have been made prior to 1<sup>st</sup> June 2020 shall be deemed to be applications made under clause (iv) of the 1<sup>st</sup> proviso as on 1<sup>st</sup> June 2020. Hence, it shall be deemed that an application is made for provisional approval. As the new scheme is proposed to be operative w.e.f 1<sup>st</sup> Oct 2020 onwards, all the applications made prior to 1<sup>st</sup> Oct 2020 shall be dealt with as if they are made for the purposes of provisional approval.]

**Example summarizing various time limits relating to the funds / trusts / institutions covered U/S 10(23C)(iv)/(v)/(vi)/(via):**

Funds / Institutions	Time limits by which they need to make application for approval under the new scheme	Time limits by which the Principal CIT / CIT needs to take a decision	Type of approval granted [Provisional / Regular]	Validity period of the approval [Start period and end period]	When they need to make an application for renewal?
Existing Funds / institutions i.e which are approved prior to 1 <sup>st</sup> Oct 2020.	<b>Within 3 months from the date of the scheme</b> coming into force. The new procedure is planned to be effective from 1 <sup>st</sup> June 2020. However, through press release, it is clarified that it will be effective from 1 <sup>st</sup> Oct 2020 and hence, the applications are to be made by 31 <sup>st</sup> Dec 2020.	The order is to be passed before expiry of the period of <b>three months, from the end of the month</b> in which the application was received by the principal CIT / CIT.	Regular	The approval is valid (retrospectively) from the assessment year from which approval was earlier granted to it. The approval is valid for a period of 5 years.	They need to make application for 'Renewal' of their approval at least 6 months prior to the expiry of their approval.
Applied for approval on or before 1 <sup>st</sup> Oct 2020 but were not approved by 1 <sup>st</sup> Oct 2020.	Not relevant	It shall be deemed that the application is made on 1 <sup>st</sup> Oct 2020 for provisional approval and the order is to be passed before expiry of <b>one month, from the end of</b>	Provisional	The approval is granted from the assessment year immediately following the financial year in which such application is made. i.e Effective from AY 2021-22. The provisional approval is valid	They need to make an application for approval (i.e Regular approval) at the earliest of (a) 6 months prior to the expiry of the provisional approval, and (b) within 6 months of commencement



Funds / Institutions	Time limits by which they need to make application for approval under the new scheme	Time limits by which the Principal CIT / CIT needs to take a decision	Type of approval granted [Provisional / Regular]	Validity period of the approval [Start period and end period]	When they need to make an application for renewal?
		<b>the month</b> in which the application is received. i.e order is to be passed by 30 <sup>th</sup> Nov 2020.		for a period of 3 years.	of their activities.
Applied for approval after 1 <sup>st</sup> Oct 2020 for the first time under the new scheme	They need to make an application for approval at least one month prior to the commencement of the previous year relevant to the assessment year from which the said approval is sought.	The order is to be passed before expiry of one month, from the end of the month in which the application was received.	Provisional	The approval is granted from the assessment year immediately following the financial year in which such application is made.  The provisional approval is valid for a period of 3 years.	They need to make an application for approval (i.e Regular approval) at the earliest of (a) 6 months prior to the expiry of the provisional approval, and (b) within 6 months of commencement of their activities.
Approved under the new scheme and the funds / institutions applied for renewal under the new scheme.	They need to make application for approval at least 6 months prior to the expiry of their approval.	The order is to be passed before expiry of the period of six months, from the end of the month in which the application was received.	Regular	The approval is granted from the assessment year immediately following the financial year in which such application is made.  The Principal CIT / CIT passes orders in writing granting approval to them for a period of five years.	They need to make application for approval (i.e Renewal of their approval) at least 6 months prior to the expiry of their approval.



## Part # 2: Amendments relating to Sec 11 to 13

### **Time limits for making applications for ‘registration’ of the trust: [Dealt with by Sec 12A(1)(ac):]**

**Category # 1: [Clause (i) of Sec 12AC(1)(ac)]: The Trusts / institutions which are already registered under the pre-amended provisions:** They need to make application for registration within three months from the date on which this clause has come into force. As this clause comes into force w.e.f 1<sup>st</sup> June 2020, they need to make an application by 31<sup>st</sup> Aug 2020. However, based on the press release, the operation of this section is deferred to 1<sup>st</sup> Oct 2020 and hence the application for approval needs to be made by 31<sup>st</sup> Dec 2020.

**Category # 2: [Clause (ii) of Sec 12AC(1)(ac)]: The Trusts / institutions which are registered under the amended provisions:** They need to make application for registration (i.e Renewal of their registration) at least 6 months prior to the expiry of their registration.

**Category # 3: [Clause (iii) of Sec 12AC(1)(ac)]: The Trusts / institutions which are provisionally registered under the amended provisions:** They need to make an application for registration (i.e Regular registration) at the earliest of (a) 6 months prior to the expiry of the provisional registration, and (b) within 6 months of commencement of their activities.

**Category # 4: [Clause (iv) of Sec 12AC(1)(ac)]: The registration of the Trusts / Institutions became in-operative due to the operation of 1<sup>st</sup> proviso to Sec 11(7):** This is relevant in the cases where an institution is approved U/S 10(23C) or notified U/S 10(46) and also it is registered U/S 12AA/12AB of the Act. Now as per the amended provisions, the registration U/S 12AA or 12AB shall be in-operative from the date of approval U/S 10(23C) or notification U/S 10(46). Again, the trust may so choose to opt for Sec 11 benefits instead of Sec 10(23C) / 10(46). In such cases, it needs to make application at least 6 months prior to the commencement of the AY from which registration is sought to be made operative.

**Category # 5: [Clause (v) of Sec 12AC(1)(ac)]: ‘The trusts or institutions had adopted or undertaken modifications of the objects which do not conform to the conditions of registration’ and they are applying for fresh registration pursuant to change in the objects:** As per the provisions of Sec 12A(1)(ab), where a trust had amended its objects, then it needs to make an application for registration within 30 days from the date of said adoption or modification and the registration shall be granted U/S 12AA. As the registration will be governed by the new provisions of Sec 12AB but no longer as per Sec 12AA, this provision had been introduced.

**Category # 6: [Clause (vi) of Sec 12AC(1)(ac)]: Any other case:** [The last sub clause deals with residuary cases including the cases where the trusts are applying for registration for the first time under the new scheme. In those cases, they need to make application at least one month prior to the commencement of the previous year.]

### **Time limits from which ‘registration’ of the trust is effective: [Dealt with by Sec 12A(2)]:**





**Amendment of Sec 12A(2) w.e.f 1<sup>st</sup> June 2020 by the Fin Act, 2020: [Based on the press release dated 9<sup>th</sup> May 2020, the date of 1<sup>st</sup> June 2020 shall be read as 1<sup>st</sup> Oct 2020.]**

As per the extant provisions of Sec 12A(2), the provisions of Sec 11 and 12 shall be applicable from the assessment year immediately following the financial year in which such application is made. A new proviso had been inserted and hence the existing 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Provisos were made 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> provisos. Further, a consequential amendment had been made to give a reference to Sec 12AB.

Post amendment, the benefits of trust provisions (i.e Sec 11 and 12) shall be effective w.e.f from the following AYs.

**Case # 1: Where the application for registration had been made U/S 12A(1)(ac)(i):** It talks about the existing registrations. They will make an application for registration within a period of 3 months from the date of this clause coming into force. i.e They will make an application within 3 months from 1<sup>st</sup> Oct 2020. Where registration had been granted under the new provisions of Sec 12AB to them, then such registration shall be effective from the assessment year from which such trust or institution **was earlier granted registration.**

**Case # 2: Where the application for registration had been made U/S 12A(1)(ac)(iii):** It talks about the cases where provisional registration is granted. Generally it is granted for a period of 3 AYs. In such cases, the registration shall be effective from the first of the assessment years for which it was provisionally registered.

**Case # 3: Where an application has been made on or after the 1st day of June, 2007 [i.e in any other case]:** It talks about all other cases. In these cases, the registration is effective from the assessment year immediately following the financial year in which such application is made. For example, a trust made application for registration on 14<sup>th</sup> Oct 2020 under the new provisions of Sec 12AB. If it were granted registration the same shall be effective from AY 2021-22. [i.e It enjoys the benefit of the provisions of trust for the FY 2020-21 also which will be effective 14<sup>th</sup> Oct 2020 in this case.]

### **Procedure for fresh registration: [Dealt with by Sec 12AB:]**

**Insertion of new section 12AB w.e.f 1<sup>st</sup> June 2020 by the Fin Act, 2020:** This section deals with the procedure for registration of a trust. Based on the press release dated 9<sup>th</sup> May 2020, this new scheme shall be effective from 1<sup>st</sup> Oct 2020 and hence the date of 1<sup>st</sup> June 2020 shall be read as 1<sup>st</sup> Oct 2020.

**Sec 12AB(1):** The Principal Commissioner or Commissioner, on receipt of an application made under clause (ac) of sub-section (1) of section 12A, shall,—

- (a) where the application is made under sub-clause (i) of the said clause, pass an order in writing registering the trust or institution for a period of five years;

[Sec 12A(1)(ac)(i) deals with the cases where the trusts are already registered under the erstwhile provisions and which made application for fresh registration pursuant to the requirements of the newly introduced Sec 12A(1)(ac). In such cases, the registration is granted for a period of 5 years.]



**(b) where the application is made under sub-clause (ii) or sub-clause (iii) or sub-clause (iv) or sub-clause (v) of the said clause,—**

- (i) call for such documents or information from the trust or institution or make such inquiries as he thinks necessary in order to satisfy himself about—**
  - A. the genuineness of activities of the trust or institution; and**
  - B. the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects;**
- (ii) after satisfying himself about the objects of the trust or institution and the genuineness of its activities under item (A), and compliance of the requirements under item (B), of sub-clause (i),—**
  - A. pass an order in writing registering the trust or institution for a period of five years; or**
  - B. if he is not so satisfied, pass an order in writing rejecting such application and also cancelling its registration after affording a reasonable opportunity of being heard;**

[Thus, the principal CIT / CIT can call for the documents to satisfy himself about the genuineness of the activities, compliance of some other laws which are material for the purpose of achieving its objects. Based on the same, he may pass an order registering the trust [for a period of 5 years] or he may pass an order rejecting the application after giving an opportunity of being heard.] [This procedure is followed in the cases where applications are made U/S 12A(1)(ac)(ii) to (v): i.e the cases of (i) Renewal of Registration already obtained under the new provisions; (ii) Application for Regular registration from Provisional registration; (iii) Opting for Sec 12AA/12AB and lapsing of Sec 10(23C)/10(46) cases; (iv) Cases where the trust amended its objects.]

**(c) where the application is made under sub-clause (vi) of the said clause, pass an order in writing provisionally registering the trust or institution for a period of three years from the assessment year from which the registration is sought,**

**and send a copy of such order to the trust or institution.**

[This deals with the residuary cases including the cases where the trust made an application for the first time for registration. It does not cover the cases where applications are made U/S 12A(1)(ac)(i) to (v).]

The cumulative impact is that as per the amended version, the trust shall be granted a provisional registration for a period of 3 years {assuming it satisfied all other conditions} where it made an application for the first time. After it were granted a provisional registration, it needs to make an application at least 6 months prior to the expiry of the time limit of the provisional registration. Upon such application, where it is otherwise eligible, it shall be granted a fresh registration which shall be granted for a period of 5 years. i.e The registration shall be granted for an overall period of 5 years including the 3 years for which the registration was provisionally granted.]



**Sec 12AB(2):** All applications, pending before the Principal Commissioner or Commissioner on which no order has been passed under clause (b) of sub-section (I) of section 12AA before the date on which this section has come into force, shall be deemed to be an application made under sub-clause (vi) of clause (ac) of sub-section (I) of section 12A on that date.

[As per this sub section, all the pending applications as on 1<sup>st</sup> June 2020 shall be deemed as if the applications were made U/S 12A(1)(ac)(vi). Hence, a provisional registration shall be granted in those cases {assuming it satisfied all other conditions.}] {Based on the press release dated 9<sup>th</sup> May 2020, the new scheme shall be operative from 1<sup>st</sup> Oct 2020 and hence the date of 1<sup>st</sup> June 2020 shall be read as 1<sup>st</sup> Oct 2020.}

**Sec 12AB(3):** The order under clause (a), sub-clause (ii) of clause (b) and clause (c), of sub-section (I) shall be passed, in such form and manner as may be prescribed, before expiry of the period of three months, six months and one month, respectively, calculated from the end of the month in which the application was received.

[This sub section talks about the time limits for disposing of the applications received. The applications need to be disposed of as follows.

**Applications received U/S 12AB(1)(a):** i.e The trusts registered under the erstwhile provisions need to make applications for re-registration under the amended provisions within a period of 3 months from 1<sup>st</sup> June 2020 which is extended to 1<sup>st</sup> Oct 2020 vide the press release dated 9<sup>th</sup> May 2020. In such cases, the application is to be disposed of within a period of **3 months from the end of the month** in which the application is received by the CIT / Principal CIT.

**Applications received U/S 12AB(1)(b)(ii):** It deals with various situations like (i) Renewal of Registration already obtained under the new provisions; (ii) Application for Regular registration from Provisional registration; (iii) Opting for Sec 12AA/12AB and lapsing of Sec 10(23C)/10(46) cases; (iv) Cases where the trust amended its objects.

In all these cases, the application needs to be disposed of **within a period of 6 months** from the end of the month in which the application is received by the CIT / Principal CIT.

**Applications received U/S 12AB(1)(c):** It deals with applications for fresh registrations directly made U/S 12AB. In such cases, the application needs to be disposed of **within a period of 1 month** from the end of the month in which the application is received by the CIT / Principal CIT.][At this stage, if all the conditions are satisfied, it shall be granted a provisional registration.]

**Sec 12AB(4):** Where registration of a trust or an institution has been granted under clause (a) or clause (b) of sub-section (I) and subsequently, the Principal Commissioner or Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution after affording a reasonable opportunity of being heard.

**Sec 12AB(5):** Without prejudice to the provisions of sub-section (4), where registration of a trust or an institution has been granted under clause (a) or clause (b) of sub-section (I) and subsequently, it is noticed that—



- (a) the activities of the trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13; or
- (b) the trust or institution has not complied with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1), 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,

then, the Principal Commissioner or the Commissioner may, by an order in writing, after affording a reasonable opportunity of being heard, cancel the registration of such trust or institution.”.

**Analysis:** As per the provisions of Sec 12AB(4) and (5), the regular registration of a trust can be cancelled in the following cases after affording a reasonable opportunity of being heard.

**Case # 1:** Where the activities of the trust / institution are not genuine;

**Case # 2:** Where the activities are not being carried out in accordance with the objects of the trust or institution;

**Case # 3:** Due to the operation of the provisions of Sec 13(1) [Say, income of the trust does not enure to the general public / investments in modes other than those given U/S 11(5), etc.,]

**Case # 4:** Trust / institution had not complied with other laws and that order of non-compliance attained finality.

### **Other amendments relating to trusts covered U/S 11 to Sec 13 of the IT Act:**

**Amendment to Sec 12AA: [Insertion of new sub section (5) in Sec 12AA w.e.f 1<sup>st</sup> June 2020 by the Fin Act, 2020]:**

“Sec 12AA(5): Nothing contained in this section shall apply on or after the 1st day of June, 2020”.

**Analysis:** This is a consequential amendment on account of introduction of new procedure for registration vide Sec 12AB. Based on the press release dated 9<sup>th</sup> May 2020, this new scheme shall be effective from 1<sup>st</sup> Oct 2020 and hence the date of 1<sup>st</sup> June 2020 shall be read as 1<sup>st</sup> Oct 2020.

**Amendment of Sec 12A(1)(b) w.e.f 1<sup>st</sup> April 2020:**

**Sec 12A(1)(b):** Where the total income of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year, the accounts of the trust or institution for that year have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and



the person in receipt of the income furnishes along with the return of income for the relevant assessment year before the specified date referred to in section 44AB and the person in receipt of the income furnishes by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed;

**Analysis:** As per the extant provisions of Sec 12A(1)(b), a trust is required to get its accounts audited once the total income of the trust exceeds the first slab and the audit report needs to be furnished along with the return of income for the Relevant Asst Year.

The Gujarat High Court in the case of “**CIT v. Gujarat Oil & Allied Industries [1993] 201 ITR 325 (Guj.)**” held that the provision of furnishing of the auditor's report along with the return has to be treated as procedural and, therefore, directory in nature.

Earlier, similar view was expressed by the Calcutta High Court in the case of “**CIT v. Rai Bahadur Bissesswarlal Motilal Malwarie Trust**” [[1992] 65 Taxman 273/195 ITR 825 (Cal.)].

In that case, the return was filed in the year 1984 but the audit report was filed in March 1989, before the completion of the assessment. The Calcutta High Court held that the assessee had complied with the provisions of Act in the course of assessment by curing the defect in the return by filing an audit report. The ITO cannot ignore such audit report or the return in completing the assessment. The delay in getting the account audited and in filing the return (sic-report) in Form No. 10B would not defeat any object of the Act and, therefore, the provision was directory in nature.

Thus, the words ‘along with return’ were read as being directory in nature. To nullify these types of judgements, an amendment was introduced whereby the audit report is to be filed ‘before the specified date referred to in Sec 44AB’.

**Amendment to Sec 12A inserting new subsection (ac) in Sec 12A(1) by the Fin Act, 2020 w.e.f 1<sup>st</sup> June 2020:** This is a consequential amendment on account of introduction of new scheme of registration of a trust.

[Based on the press release dated 9<sup>th</sup> May 2020, the original time limit of 1<sup>st</sup> June 2020 is extended to 1<sup>st</sup> Oct 2020.]

**Amendment to Explanation 2 to Sec 11(1):**

As per the extant provisions of Explanation 2 to Sec 11(1), where a trust / institution claiming exemption under the provisions of Sec 11 gives a corpus donation to another trust / institution registered U/S 12AA, then it shall not be treated as application of income in the hands of the donor trust. The list of the donees had been widened by the Fin Act, 2020 w.e.f 1<sup>st</sup> April 2020. The new list of donees are as follows.

1. Any fund / Trust / Institution [Sec 10(23C)(iv)/(v)] [New category]
2. Any University / Other Educational Institution [Sec 10(23C)(vi)] [New Category]
3. Any Hospital / Other Medical Institution [Sec 10(23C)(via)] [New Category]
4. Other trust or institution registered under section 12AA. [Old category]



**Amendment to Sec 11(7) 'allowing the benefits of Sec 10(46) to the trusts apart from the exemption of Sec 10(1) and Sec 10(23C)' and making the benefits of Sec 11, 10(23C) and Sec 10(46) mutually exclusive.**

As per the extant provisions of Sec 11(7), the exemptions specified U/S 10 shall not be available to a charitable trust except 'the exemptions specified in Sec 10(1) [i.e The Agricultural Income] and as specified in Sec 10(23C)'. The pre-amended version of sec 11(7) applies to

- Trusts / institutions registered U/S 12AA(1)(b);
- Trusts / institutions registered U/S 12A;

As a new procedure had been specified w.r.t the registrations vide the newly inserted Sec 12AB, a reference had been given to that section also in Sec 11(7). Further the existing Sec 12AA(1)(b) had been replaced with Sec 12AA.

Thus, the amended version of Sec 11(7) applies to

- Trusts / institutions registered U/S 12AA;
- Trusts / institutions registered U/S 12A;
- Trusts / institutions registered U/S 12AB;

Further, the provisions of sec 11(7) are so amended to allow the benefits of not only Sec 10(1), 10(23C) but also the benefits of Sec 10(46) to the trusts claiming the exemption U/S 11. This amendment is relevant till the new scheme comes into force. i.e up to 1<sup>st</sup> Oct 2020. It is so because, post the new scheme, the assessee needs to choose one among Sec 11, Sec 10(23C) and Sec 10(46).

Readers may note that Sec 10(46) deals with exemption in the cases of 'Bodies / authorities or Boards or Trusts or Commissions' established / constituted under the Central Act / Provincial Act / State Act, etc,. Eg: Hyderabad Metro Water Supplies and Sewerage Board can claim exemption U/S 10(46).

Further, the new provisos inserted provided that once the trust / institution is approved U/S 10(23C) or it is notified U/S 10(46), then the registration U/S 12AA or 12AB shall be in-operative.

The registration U/S 12AA or Sec 12AB shall be in-operative **at the later of**

- ♠ Date of approval U/S 10(23C);
- ♠ Date of notification U/S 10(46);
- ♠ And the date of the coming into force of the proviso [i.e 1<sup>st</sup> Oct 2020] [Based on the press release dated 9<sup>th</sup> May 2020, the original time limit of 1<sup>st</sup> June 2020 is extended to 1<sup>st</sup> Oct 2020.]

It is further provided that upon in-operation of the registration U/S 12AA or Sec 12AB, the trust / institution can again opt for registration U/S 12AB. Once it is registered U/S 12AB, then the approval / notification U/S 10(23C) or Sec 10(46) shall cease to have any effect and the trust / institution cannot claim any exemption U/S 10(23C) or Sec 10(46) any more.





Thus, the approval U/S 10(23C); notification U/S 10(46) and Registration U/S 12AB had been made mutually exclusive.

**Conclusion:** Thus, all the trusts / funds need to make a choice between Sec 10(23C) and Sec 11 to 13 or Sec 10(46) as they shall be mutually exclusive post amendment. Further, it is imperative to file the return within the due date specified U/S 139(1) and to file the audit report within the due date specified U/S 44AB for claiming the relevant benefit. One needs to remember that non-compliance under some other law may also result in withdrawal of the benefits under the IT Act, 1961 post amendment.

**Disclaimer:** The views expressed in this Article are the personal views of the author.

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