

Amendment in Income Tax in recent years relating to Religious and Charitable Trust

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SCOPE

- The presentation considers the amendments made vide The Finance Act, 2021 and The Finance Act, 2022
- The presentation also considers proposed amendments vide the Finance Bill 2023
- The amendment also considers the notification Dt 10-08-2022 about the maintenance of Books of Accounts

LIMITATIONS

- The presentation does not contain detailed slides on the new format of Audit Report in Form 10B, Form 10BB as also Form 10 and Form 9A
- So also the registration process is considered in brief
- Recent SC decisions are briefly touched upon



**Amendment during last 3 years including
Finance Bill 2023
Already passed by Lower House**

29 March 2023

The requirement of fresh registration – Clause 12A(1)(ac)

Clause No.	Application Type	Form
i	Already registered trust under old regime to reapply	10AB (earlier 10A)
ii	Renewal of registration under new regime to apply for renewal -6 Months prior to expiry	10AB
iii	Reapply within 3 years of provisional registration - Or Within 6 months of start of activity, whichever is earlier	10AB
iv	To make the registration u/s 11 to be operative – 6 months prior to the commencement of the Assessment Year	10AB
v	Application in case of modification of objects – 30 days from the change of object	10AB
vi	Any other case including new cases – One month prior to the commencement of the previous year relevant to Assessment Year - NOW AMENDED - SEE NEXT SLIDE	10A

Amendment in Finance Act 2023.

(vi) in any other case, where activities of the trust or institution have ... [for 10(23C), the amendment takes care of types of institution]

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

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

10(23C) Reapproval

Clause No.	Application Type	Form
i	Already approved trust under old regime to reapply	10AB (earlier 10A)
ii	Renewal of approval under new regime to apply for renewal -6 Months prior to expiry	10AB
iii	Reapply within 3 years of provisional approval - Or Within 6 months of start of activity, whichever is earlier	10AB
iv	Any other case including new cases – One month prior to the commencement of the previous year relevant to Assessment Year	10A

80G Reapproval

Clause No.	Application Type	Form
i	Already approved trust under old regime to reapply	10AB (earlier 10A)
ii	Renewal of approval under new regime to apply for renewal -6 Months prior to expiry	10AB
iii	Reapply within 3 years of provisional approval - Or Within 6 months of start of activity, whichever is earlier	10AB
iv	Any other case including new cases – One month prior to the commencement of the previous year relevant to Assessment Year	10A

Corpus Donations (2022-23)

- Corpus Donations need to be parked by way of earmarked investments
- Utilisation of Corpus Donation will not be treated as application of income
- Recoupment of Corpus Donation (utilised) will be regarded as application of income.
- 2023 proposal provides the time limit for recoupment – 5 years

Corpus Donation to include --

Contributions for repairs and renovations of religious places or other notified activity treated as Corpus subject to following conditions

- Applies such corpus only for the purpose for which the voluntary contribution was made;
- Does not apply such corpus for making contribution or donation to any persons;
- Maintain such corpus as separately identifiable ; and
- Invests or deposits such corpus in the forms and modes specified under sub-section (5) of section 11
- **Courts Already decided such donations are corpus donations – Prime case Chandraprabhu Jain Mandir Trust**
- **This will not apply for corpus utilized before 31-03-2021**
- ***This is effective from AY 2021-22 (retrospective)***

Loans (2022-23)

- Utilisation of Loan Funds will not be treated as application of income
- Repayment of Loan Funds (utilised) will be regarded as application of income (most cited decision is **CIT Vs Janmabhumi Trust 242 ITR 457** and Circular No. 100 Dt 24-01-1993).
- 2023 proposal provides the time limit for repayment – 5 years

Retro applicability of registration removed (2023 proposal)- Second proviso to 12A(2)

~~Provided further that where registration has been granted to the trust or institution under section 12AA or section 12AB) then, the provisions of sections 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which trust of any assessment proceedings are pending before the Assessing Officer as on the date of such registration and the objects and activities of such trust or institution remain the same for such preceding assessment year:~~

Elimination of differences between S. 11 and S. 10(23C)

- The following differences which existed earlier have now been eliminated
 - Accumulation procedure including Form 10 (2022-23)
 - Accumulation period which was 6 years u/s 11 now reduced to 5 years (2022-23)
 - Withdrawal of approval and registration is extended to S. 10(23C) by extending the scope of proviso 4 and 5 in S.143
 - S. 115TD (including 115TE and 115TF) applied to institution approved u/s 10(23C)

Period of accumulation effectively reduced from 6 years to 5 years

- There are 2 omissions which effectively reduced the period of accumulations from 6 years to 5 years

(c) is not utilised for the purpose for which it is so accumulated or set during the period referred to in clause (a) of that sub-section or ~~in the year immediately following the expiry thereof.....~~

.....

*shall be deemed to be the income of such person of the previous year
~~of the previous year immediately following the expiry of the period aforesaid].]~~*

Assessment and Power of withdrawal of Registration / Approval

- In case of 'specified violations', the AO to send reference to CIT/PCIT for withdrawal of Registration/ Approval.
- CIT(A) after granting opportunity may withdraw.
- The specified violation have been detailed in next slide

Specified violation meaning [S. 10(23C)]

- Application of income other than for the objects for which it is established.
- No separate books of accounts for business which has to be incidental business
- Any business carried which is not incidental to the object
- Activity is not genuine
- Conditions of approval violated
- Violation of any other law when such violation attains finality

Specified violation meaning S. 12A

- Application of income other than for the objects for which it is established.
- Religious trust as applied its income which does not enure benefit of the public or benefit only to particular religious community or caste.
- No separate books of accounts for business which has to be incidental business.
- Any business carried which is not incidental to the object
- Activity is not genuine
- Conditions of approval violated
- Violation of any other law when such violation attains finality

Effect of withdrawal of registration u/s 12A / 12AA and withdrawal of approval u/s 10(23C)(iv, v, vi, via)

- S. 115TD will become applicable if, such withdrawal attains finality
- In such case the assessee has to transfer its assets to another registered or approved trust within one year or otherwise pay tax at MMR on accreted income
- The liability is on the trust as well as trustees
- Accreted income means present fair value of assets less liabilities (reduced by the value of creations of assets not acquired by utilization of acquired income).

Penalty provisions for undue benefit to specified persons (S. 271AAE)

- 100% for 1st Violation
- 200% for subsequent Violation
- The above provisions are without prejudice to other provisions.
- Such excess benefit will not be regarded as application of income
- Such benefit will be taxable in the hands of specified person.

Application of income when actual payment made

- The provision is made to allow an expenditure as application of income only in the actual payment irrespective of the method of accounting employed by the entity

No setoff of c/f loss

- No excess application of income in earlier year (as compared to the gross income) will be allowed as set off against application of income of subsequent year

Denial of exemption

Denial of Exemption can happen in some circumstances such as

- Commercial receipts exceeding 20% - proviso to S. 2(15)
- Not getting books of accounts audited
- Non filing of Return in time

Computation of Income in case of Denial of exemption Codified

Deduction of expenses will be granted except for the following:

- Spent from opening corpus
- Spent from borrowing or loan
- Depreciation on capital expenditure already allowed as application of income
- Donation or contribution to other person (irrespective of whether such person is registered as exempt entity or not)

Disallowance of donations to others - 2023

- 85% of the donations to other trust will be treated as application of income (in other words, 15% of the donations given will not be considered as application of income)

To refresh as regard donation to other trust

- Should be for furtherance of objects of donor
- Not out of accumulated funds
- Not towards Corpus
- Not to specified persons
 - Specified persons include a trust which has given donations to the assessee trust (Kamala Trust Bombay HC)

Due date for filing statutory forms –Proposed in 2023

- Form 10 and Form 9A – 2 months before the due date of filing the Return –U/s 139(1)
- The old provision for Form 10B and 10BB continues to be one month before the due date of filing the return u/s 139(1)



Maintenance of specified Books of Accounts (Notification Dt 10-08-2022)

29 March 2023

List of Books of Accounts and documents to be maintained

- (a) books of account, including the following, namely: -
 - (i) cash book;
 - (ii) ledger;
 - (iii) journal;
 - (iv) copies of bills, whether machine numbered or otherwise serially numbered, wherever such bills are issued by the assessee, and copies or counterfoils of machine numbered or otherwise serially numbered receipts issued by the assessee;
 - (v) original bills wherever issued to the person and receipts in respect of payments made by the person;
 - (vi) any other book that may be required to be maintained in order to give a true and fair view of the state of the affairs of the person and explain the transactions effected;

List of Books of Accounts and documents to be maintained Contd..

- (b) books of account, as referred in clause (a), for business undertaking referred in sub-section (4) of section 11 of the Act;
- (c) books of account, as referred in clause (a), for business carried on by the assessee other than the business undertaking referred in sub-section (4) of section 11 of the Act;
- (d) other documents for maintaining,
 - (i) record of all the projects and institutions run by the person containing details of their name, address and objectives;
 - (ii) record of income of the person during the previous year, in respect of,
 - (i) voluntary contribution containing details of name of the donor, address, permanent account number (if available) and Aadhaar number (if available);
 - (ii) income from property held under trust referred to under section 11 of the Act along with list of such properties

List of Books of Accounts and documents to be maintained

Contd..

(III) income of fund or institution or trust or any university or other educational institution or any hospital or other medical institution other than the contribution referred in items (I) and (II);

(iii) record of the following, out of the income of the person during the previous year, namely: -

(I) application of income, in India, containing details of amount of application, name and address of the person to whom any credit or payment is made and the object for which such application is made;

(II) amount credited or paid to any fund or institution or trust 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) of clause (23C) of section 10 of the Act or other trust or institution registered under section 12AB of the Act, containing details of their name, address, permanent account number and the object for which such credit or payment is made;

List of Books of Accounts and documents to be maintained

Contd..

- (III) application of income outside India containing details of amount of application, name and address of the person to whom any credit or payment is made and the object for which such application is made;
- (IV) deemed application of income referred in clause (2) of Explanation 1 of sub-section (1) of section 11 of the Act containing details of the reason for availing such deemed application;
- (V) income accumulated or set apart as per the provisions of the Explanation 3 to the third proviso to clause (23C) of section 10 or sub-section (2) of section 11 of the Act which has not been applied or deemed to be applied containing details of the purpose for which such income has been accumulated;
- (VI) money invested or deposited in the forms and modes specified in sub-section (5) of section 11 of the Act;
- (VII) money invested or deposited in the forms and modes other than those specified in subsection (5) of section 11 of the Act;

List of Books of Accounts and documents to be maintained

Contd..

(iv) record of the following, out of the income of the person of any previous year preceding the current previous year, namely: -

(I) application out of the income accumulated or set apart containing details of year of accumulation, amount of application during the previous year out of such accumulation, name and address of the person to whom any credit or payment is made and the object for which such application is made;

(II) application out of the deemed application of income referred to in clause (2) of Explanation 1 of sub-section (1) of section 11 of the Act, for any preceding previous year, containing details of year of deemed application, amount of application during the previous year out of such deemed application, name and address of the person to whom any credit or payment is made and the object for which such application is made;

(III) application, other than the application referred in item (I) and item (II), out of income accumulated during any preceding previous year containing details of year of accumulation, amount of application during the previous year out of such accumulation, name and address of the person to whom any credit or payment is made and the object for which such application is made;

List of Books of Accounts and documents to be maintained

Contd..

- (IV) money invested or deposited in the forms and modes specified in sub-section (5) of section 11 of the Act;
- (V) money invested or deposited in the forms and modes other than those specified in subsection (5) of section 11 of the Act;
- (v) record of voluntary contribution made with a specific direction that they shall form part of the corpus, in respect of-
 - (I) the contribution received during the previous year containing details of name of the donor, address, permanent account number (if available) and Aadhaar number (if available);
 - (II) application out of such voluntary contribution referred to in item (I) containing details of amount of application, name and address of the person to whom any credit or payment is made and the object for which such application is made;

List of Books of Accounts and documents to be maintained

Contd..

- (III) amount credited or paid towards corpus to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in subclause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 of the Act or other trust or institution registered under section 12AB of the Act, out of such voluntary contribution received during the previous year containing details of their name, address, permanent account number and the object for which such credit or payment is made;
- (IV) the forms and modes specified in sub-section (5) of section 11 of the Act in which such voluntary contribution, received during the previous year, is invested or deposited;
- (V) money invested or deposited in the forms and modes other than those specified in subsection (5) of section 11 of the Act in which such voluntary contribution, received during the previous year, is invested or deposited;

List of Books of Accounts and documents to be maintained

Contd..

- (VI) application out of such voluntary contribution, received during any previous year preceding the previous year, containing details of the amount of application, name and address of the person to whom any credit or payment is made and the object for which such application is made;
- (VII) amount credited or paid towards corpus to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in subclause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 of the Act or other trust or institution registered under section 12AB of the Act, out of such voluntary contribution received during any year preceding the previous year, containing details of their name, address, permanent account number and the object for which such credit or payment is made;
- (VIII) the forms and modes specified in sub-section (5) of section 11 of the Act in which such voluntary contribution, received during any previous year preceding the previous year, is invested or deposited;

List of Books of Accounts and documents to be maintained Contd..

(IX) money invested or deposited in the forms and modes other than those specified in subsection (5) of section 11 of the Act in which such voluntary contribution, received during any previous year preceding the previous year, is invested or deposited;

(X) amount invested or deposited back in to such voluntary contribution (which was applied during any preceding previous year and not claimed as application) including details of the forms and modes specified in sub-section (5) of section 11 in which such voluntary contribution is invested or deposited;

List of Books of Accounts and documents to be maintained Contd..

- (vi) record of contribution received for the purpose of renovation or repair of temple, mosque, gurdwara, church or other place notified under clause (b) of sub-section (2) of section 80G which is being treated as corpus as referred in Explanation 1A to the third proviso to clause (23C) of section 10 or Explanation 3A to sub-section (1) of section 11, in respect of,-
- (I) the contribution received during the previous year containing details of name of the donor, address, permanent account number (if available) and Aadhaar number (if available);
 - (II) contribution received during any previous year preceding the previous year, treated as corpus during the previous year, containing details of name of the donor, address, permanent account number (if available) and Aadhaar number (if available);

List of Books of Accounts and documents to be maintained Contd..

- (III) application out of such voluntary contribution referred to in item (I) and item (II) containing details of amount of application, name and address of the person to whom any credit or payment is made and the object for which such application is made;
- (IV) amount credited or paid towards corpus to any fund or institution or trust 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) of clause (23C) of section 10 of the Act or other trust or institution registered under section 12AB of the Act, out of such voluntary contribution received during the previous year containing details of their name, address, permanent account number and the object for which such credit or payment is made;

List of Books of Accounts and documents to be maintained Contd..

- (V) the forms and modes specified in sub-section (5) of section 11 of the Act in which such corpus, received during the previous year, is invested or deposited;
- (VI) money invested or deposited in the forms and modes other than those specified in subsection (5) of section 11 of the Act in which such corpus, received during the previous year, is invested or deposited;
- (VII) application out of such corpus, received during any previous year preceding the previous year, containing details of amount of application, name and address of the person to whom any credit or payment is made and the object for which such application is made;
- (VIII) amount credited or paid to towards corpus any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in subclause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 of the Act or other trust or institution registered under section 12AB of the Act, out of such voluntary contribution received during any year preceding the previous year, containing details of their name, address, permanent account number and the object for which such credit or payment is made;

List of Books of Accounts and documents to be maintained Contd..

(IX) the forms and modes specified in sub-section (5) of section 11 of the Act in which such corpus, received during any previous year preceding the previous year, is invested or deposited; money invested or deposited in the forms and modes other than those specified in sub-section (5) of section 11 of the Act in which such corpus, received during any previous year preceding the previous year, is invested or deposited;

(vii) record of loans and borrowings,-

(I) containing information regarding amount and date of loan or borrowing, amount and date of repayment, name of the person from whom loan taken, address of lender, permanent account number and Aadhaar number(if available) of the lender; (II) application out of such loan or borrowing containing details of amount of application, name and address of the person to whom any credit or payment is made and the object for which such application is made;

List of Books of Accounts and documents to be maintained Contd..

(III) application out of such loan or borrowing, received during any previous year preceding the previous year, containing details of amount of application, name and address of the person to whom any credit or payment is made;

(IV) repayment of such loan or borrowing (which was applied during any preceding previous year and not claimed as application) during the previous year;

(viii) record of properties held by the assessee, with respect to the following, namely, - (I) immovable properties containing details of, (i) nature, address of the properties, cost of acquisition of the asset, registration documents of the asset;

(ii) transfer of such properties, the net consideration utilised in acquiring the new capital asset;

(II) movable properties including details of the nature and cost of acquisition of the asset

List of Books of Accounts and documents to be maintained Contd..

- (ix) record of specified persons, as referred to in sub-section (3) of section 13 of the Act,-
- (I) containing details of their name, address, permanent account number and Aadhaar number (if available);
 - (II) transactions undertaken by the fund or institution or trust or any university or other educational institution or any hospital or other medical institution with specified persons as referred to in sub-section (3) of section 13 of the Act containing details of date and amount of such transaction, nature of the transaction and documents to the effect that such transaction is, directly or indirectly, not for the benefit of such specified person;

List of Books of Accounts and documents to be maintained

Contd..

- (2) The books of accounts and other documents specified in sub-rule (1) may be kept in written form or in electronic form or in digital form or as print-outs of data stored in electronic form or in digital form or any other form of electromagnetic data storage device.
- (3) The books of account and other documents specified in sub-rule (1) shall be kept and maintained by the fund or institution or trust or any university or other educational institution or any hospital or other medical institution at its registered office:

List of Books of Accounts and documents to be maintained

Contd..

(Provided that all or any of the books of account and other documents as referred to in sub-rule (1) may be kept at such other place in India as the management may decide by way of a resolution and where such a resolution is passed, the fund or institution or trust or any university or other educational institution or any hospital or other medical institution shall, within seven days thereof, intimate the jurisdictional Assessing Officer in writing giving the full address of that other place and such intimation shall be duly signed and verified by the person who is authorised to verify the return of income under section 140 of the Act, as applicable to the assessee.

List of Books of Accounts and documents to be maintained Contd..

(4) The books of account and other documents specified in sub-rule (1) shall be kept and maintained for a period of ten years from the end of the relevant assessment year:

Provided that where the assessment in relation to any assessment year has been reopened under section 147 of the Act within the period specified in section 149 of the Act, the books of account and other documents which were kept and maintained at the time of reopening of the assessment shall continue to be so kept and maintained till the assessment so reopened has become final.”.

Amendment on account of the effect of two Supreme Court decisions

Ahmedabad Urban Development Authority -SC 115 CCH 131

**New Noble Educational Society Civil Appeal No. 3795 of 2014
(SC)**

S. 10(23C) New Noble Education

- Solely means solely and not predominantly
- Education means scholastic education
- Activity other than education now divided into (1) incidental to education and (2) other activities not incidental to education
- Incidental to education has to be related to own students
- Activities not relating to own students, even if educational, will fall in other activities affecting the exemption.
- Effective prospectively (whether from the date of Supreme Court judgment or from next financial year)

S. 11 Ahmedabad Urban

- The judgment applies to general public utility not falling in the first six categories given in S. 2(15)
- Proviso cannot alter the essence of the main provision
- If the incidental activities are carried at cost or marginal profit, it is not a business activity.
- If however, incidental business carried with the high profit motive, it will be considered as business attracting proviso 1 to S. 2(15), namely, 20% of the Gross Revenue affecting the exemption.
- Although 2 judgments are separate, the interpretation and observations given in one judgment may be used in other judgment and vis-a-vis

Changes in Form 10

- **Sectionwise code system introduced**

Current accumulation – details of specific year upto which the accumulation is proposed

Past accumulation –

- details of amount utilised,
- details of amount remaining to be utilised and
- details of Amount deemed to be income within the meaning of the Explanation 4 to the third proviso to clause (23C) of section 10/ sub-section (3) of section 11

Details of non utilisation because of court order.

Form 10

Sr. No	Section under which statement is being furnished	Purpose for which amount is being accumulated or set apart	Amount of accumulation (In Rs)	Period of accumulation/setting apart		
				Starting previous year yyyy- yyyyy	Ending previous year yyyy- yyyyy	Period in years
	Code					
Section						Code
Clause (a) of Explanation 3 to the third proviso to clause (23C) of section 10						1
Clause (a) of sub-section (2) of section 11						2
Clause (a) of sub-section (2) of section 11 read with clause (21) of section 10 (Research Association)						3

Form 10

Contd

Year of Accumulation	Date of filing form 10	Amount Accumulated	Period for which accumulated /set apart	Amount applied up to the end of the previous year	Amount remaining for application	<i>Amount deemed to be income within the meaning of the Explanation 4 to the third proviso to clause (23C) of section 10/ sub-section (3) of section 11</i>

Form 10

Contd

S. No	<i>Amount of income</i>	<i>Previous year in which accumulated or set apart</i>	<i>Period during which it could not be applied due to court order</i>	<i>Details of court order</i>

Form 10B Amendments

- A thorough detailed audit report
- Details and nature of activity
- Details of Business under s.s. 4 and s. s 4A
- Details of donation received including FCRA donations.
- Details of 80G receipt issued

Form 10B Amendments

Contd.

Relating to Computation of Application of Income..

- Option under clause 2 of explanation 1 of S. 11(1) including details of unutilised option.
- Corpus donation details.
- Details of accumulation under 11(2), its investment, violation and change of object of accumulation
- Full Details of specified person for S. 13(1)(c) clause-wise
- Details of situation and violations under various sub clauses of 13(2).

Form 10B Amendments

Contd.

Relating to business by trust..

- Details of audit including tax audit of such business.
- TDS details and violations
- Payment in cash violations
- Specific disclosure ICDS effect

Relating to other income tax compliances 269SS and 269T

10BB Amendments

- Similar to that of Form 10B
- Specifically asking whether permission for expenses on objects outside India is taken in accordance with S. 11. (Ref. Clause No. 22/23)
- It specifically reminds of taxable income –Ref. Clause 24

Form 10BD

Details of Donors and Donations are filled up

New Exemption introduced S. 10(46A) to overcome Ahmedabad Urban decision effect

With effect from the 1st day of April, 2024; (i) after clause (46), the following clause shall be inserted with effect from the 1st day of April, 2024, namely:---

(46A) any income arising to a body or authority or Board or Trust or Commission, not being a company, which-
has been established or constituted by or under a Central Act or State Act with one or more of the following purposes, namely:
(i) dealing with and satisfying the need for housing accommodation;
(ii) planning, development or improvement of cities, towns and villages;

New Exemption introduced S. 10(46A)

Contd..

(iii) regulating, or regulating and developing, any activity for the benefit of the general public;

(iv) regulating any matter, for the benefit of the general public, arising out of the object for which it has been created; and

(b) is notified by the Central Government in the Official Gazette for the purposes of this clause;

Thank You



29 March 2023