



# Registration and Taxation of Charitable Trusts / Institutions

*By*  
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## Definition of Income [Sec. 2(24) (iia)]

- ▷ “Income” includes Voluntary contribution received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly partly for such purposes or by an association or institution referred to in sub clause (iv) or (v).or by any universality or other educational institution referred to in sub clause ( iiiad) or (vi) or Hospital or other institution referred to in sub clause (iii ae) of clause (23C) of section 10 or by an electoral trust.
  
- ▷ EXPLANATION:  
For the purpose of this sub clause trust includes any other legal obligation.

## Different types of income those are applicable to Charitable Trust.

- i. Income derived from the property held under the trust ( includes activity Income )
- ii. Voluntary contribution in general
- iii. Voluntary contribution with specific direction
- iv. Interest income from Banks & Investments
- v. Income from property
- vi. Capital Gains
- vii. Income from business which are incidental to the attainment of the objectives of the trust.
- viii. Deemed income u/s. 12

- ▷ 1.1 Real Income Theory
  
- ▷ 1.2 Income in Commercial sense
  
- ▷ 1.3 Whether hypothetical income is considered as normal income ?
  
- ▷ 1.4 Can book Entries be considered as income?

- ▷ 1.5 Whether following the mercantile system of accounting will determined the income ?
- ▷ 1.6 Whether classification of income u/s. 14 applies to trust ?
- ▷ 1.7 Whether taxes paid can be consider application of income ?
- ▷ 1.8 Whether tax refund is income derived from the property held under trust ?

- ▷ 1.9 Whether Subscription received is income derived from property held under trust ?
  
- ▷ 1.10 Whether the Grants in Aid is considered Voluntary Contribution ?

## Can book entries be considered as income?

- ▶ The mere passing a book entry cannot be regarded as income. the same situation is uphold by Supreme court in the case of CIT v/s. Chamanlal Mangaldas Girdhardas Parekh Ltd.(1960) 39 ITR 8.
- ▶ Similar views held in the cases of CIT v/s. India Discount Co. Ltd. (1970) 75 ITR 191 (SC) and CIT v/s. N.D. RadhaKishan Co. (1983) 140 ITR 860 (P & H).
- ▶ In the cases of CIT v/s. Toshoku Ltd. (1980) 125 ITR 525 (SC),it was held that mere making entries did not amount to receipt of income.

## Charitable Purpose – Section 2 (15)

Section 2(15) defines ‘Charitable purpose’

Which includes:-

- i. Relief of the poor,
- ii. Education,
- iii. Yoga, (w.e.f. 01/04/2016)
- iv. Medical relief,
- v. Preservation of environments ( including water sheds, forest and wildlife) and preservation of monuments or places or objects of artistic or historic interest .
- vi. The advancement of any other object of general public utility.

The definition provide under the said provision is only inclusive and not exhaustive because of the expression ‘Charitable purpose includes’.



## FOLLOWING ARE THE FEW JUDGMENTS ON CHARITABLE PURPOSES

- 1) *Objects to establish schools for Muslim boys and girl to teach Urdu, Arabic, etc., is charitable in nature – Malik Hasmullah Islamic Educational and Welfare Society v/s CIT [ 2012 ] 138itd 519 ( Luck. ).*
- 2) *Where scholarship granted by trust to poor students is not restricted to a particular community, it is charitable purpose – Bhagwan Mahavir Purusharth Perna Nidhi Nyas v/s. CIT [2012] 23 taxman.com 311 (Jp.).*
- 3) *Where dominant objects of trust are charitable in nature, mere fact that some relatives of settler can also participate and has preference over general public In such charitable objects, will not make trust as non-charitable –Manockjee Cowasjee Petti Charities v/s. DIT [2012] 136 ITD 355 (Mum).*
- 4) *Where assessee-society charges huge fees from public in addition to prescribe fee of the Government, such society cannot be held as charitable in nature – Sukhmani Society for Citizen Services v/s CIT [2012] 139 ITD 307 (Amritsar).*

- 5) *Mere conducting of coaching for preparing students to attend examinations conducted by open university or by other university or distance education cannot be treated as charitable activity – DIT v/s. Kuttukaran Foundation [ 2012 ] 51 SOT 175 (Cochin).*
- 6) *Where assessee-trust is formed with object of taking care of sick animals, it is charitable activity – Snekalaya for animals v/s ITO [2012] 52 SOT 352 (Chennai).*
- 7) *Activity of maintenance and development of park, would certainly fall within words ‘preservation of environment’ u/s 2 (15) – New Saibaba Nagar Welfare Association v/s DIT [2012] 53 SOT 495 (Mum).*
- 8) *Object of setting up memorials to perpetuate memory of national war heroes and charitable in nature – Yodha Samarak Samiti v/s CIT [2012] 138 ITD 512(Chd.).*

- 9) *Where assessee is formed for production of television and radio programmed for purpose of telecasting and broadcasting, such activities cannot be held as charitable purpose – CIT v/s A.Y. Broadcast Foundation [2012] 21 taxmann.com 533 (Ker.).*
- 10) *Taxpayers conducting coaching institute cannot be treated as a charitable institution – M Star Charitable Society v/s CIT [2013] 142 ITD 153 (Cochin.).*

## Whether following the mercantile system of accounting will determined the income?

- ▶ Unless there is real accruing the Charitable Trust, mere following a mercantile system of accounting will not determine.
- ▶ The same has been decided by the Apex Court in the case of Godhara Electric Co.Ltd. V/s. CIT (1997) 91 ITR 351 (SC). Similar views were held in the case of CIT v/s. Kerala Finance Corporation Ltd. (1985) 155 ITR 246 (Ker). & Allahabad High Court in National Handloom Development Corpn. Ltd. v/s. Dy. CIT (2004) 266 ITR 647 (ALL) .

## Whether classification of income u/s. 14 applies to trust?

As the income from property held under trust has to be arrived at in normal commercial sense, there is no scope for computing the Income from property by applying the provisions of S.14 of the Act. This position was affirmed by the Madras High Court in the cases of CIT v/s. Rao Bahadur Calavala Cunnan Chetty Charities (1982) 135 ITR 485 (Mad) and CIT v/s. Estate of V.L. Ethiraj (1982) 136 ITR 12 (Mad).

## Whether the Grant in Aid is considered Voluntary Contribution?

- ▶ The Bombay High court has held in the case of CIT v/s. Gems & Jewelry Export promotion Council (1983) 143 ITR 579 that the grant in aid received by the organization even with certain condition were considered to be voluntary contribution.

▷ The Limbs of Charitable Purpose are not Mutually Exclusive

The limbs of s 2(15) of the Income Tax Act, 1961 are not mutually exclusive. Sometimes it may overlap with other limbs also.

▷ Charitable purpose

In the case of Sole Trustee, Loka Shikshana Trust v C.I.T , Mysore(1975) 101 ITR 234 SC.

In this case, the court observed that a statute of Elizabeth 1, which “*was not directed so much to the definition of charity of abuses which had grown up in the administration of trust of a charitable nature*”

Thus, a purpose was considered, in the eye of law, to be charitable only if it came within the letter or the spirit and intendment of the preamble of the statute of Elizabeth.

- ▷ Bar council of Maharashtra v/s commissioner of the Income Tax, Bombay City-II (1980) 126 ITR 27 (Bom).

In this case the court observed that –

The expression charitable purpose is defined in sec.2(15) of I.T. Act. It is an inclusive definition.

Having regard to the provisions of the Act, we have to consider whether the assessee is constituted with a purpose of advancement of the object of general public utility.



▷ *Principle of Benefit to Others*

The genesis of the definition of charitable purpose as defined in s 2(15) is based on the concept of the charity.

This principle recognize benefit to others, rather than to one self.

▷ *Benefit to Selected Individuals*

*D V Arur v CIT (1945) 13 ITR 465 (Bom)*

It was held that if the benefits were to be meant to be meant for selected individuals, then it distorts the very purpose of the charity and the public character.

▷ *CIT v Bel Employees Death Relief Fund and Service Benefit Fund Association (1997) 225 ITR 270 (Karn)*

In this case, an association of the employees was formed for death relief and service benefit. As it was meant for the selected individuals.

▷ *Benefit to Community or Section of Community*

*Hiralal Bhagwati v Commissioner of Income (2000) 246 ITR 188 (GUJ)*

Gujarat High Court held in this case that to secure as a Charitable it is not necessary that object must be to serve the whole mankind. It is not necessary that public at large must get the benefit. Thus, it was held that, in order to be charitable, the purpose must be direct to the benefit of the Community or Section of a Community.

▷ *Charity is an affirmative Action*

*Commissioner of Income Tax, Tamil Nadu-V v/s Workshop Trust (1983) 142 ITR 26 (Mad)*

In this case it was held that to constitute charity, the purpose must be clear and an element of affirmative action is very essential. There should be no ambiguity.

- ▷ *Benefit to Section of Public as distinguished from specified individuals.*

*CIT v Andhra Chamber of Commerce (1968) 55 ITR 722 (SC)*

To serve a charitable purpose, it is not necessary that the object should be to benefit the whole of mankind or even all persons living in a particular country or province. It is sufficient if the intention to benefit a section of the public as distinguish from specified individuals.

- ▷ *Chaturbhuj Vallabhdas v CIT (1946) 14 ITR 144 (Bom)*

It was held that the expression charity without any qualification or limitation signifies charitable purpose.

▷ *CIT v Trustees of Shri Cutchi Lohana Panchtade Mahajan Trust (1975) 98 ITR 448(Bom)*

It was held that while considering the objects, it has to be read in conjunction with all the objects as contained in the Trust Deed and not to be looked into an isolated manner

▷ *CIT v Kamla Town Trust (1996) 217 ITR 699 (SC)*

Real intention of the Settler Borne from Express Words Employed in Trust Deed.

▷ *Residuary Object*

The residuary object is an advancement of any other public utility which means to the people

▷ *Charitable and religious Purposes*

Section 2(15) defines charitable purpose. The benefit of exemption applies to charitable as well the religious trusts.

As far as the benefit of exemptions is concerned, no distinction has been drawn between charitable or religious purposes, except in case of s 80G.

▷ *CIT v Barkate Saifiyah Society (1995) 213 ITR 492 (Guj)*

In this case where the assessee society had the object of charitable and religious purposes, it was held as 'Charitable as well Religious Trust' was entitled for exemption.

▷ *CIT v Social Center (2001) 250 ITR 39(AP)*

In this case, the trust was registered under a 12A as a charitable trust. During the course of the year, they have made a donation for construction of a church. Such an application was held towards the general public utility. The observations of the Court are:

Continued...

“once an exemption is granted for charitable activities, the religious activities are also included.

The S.C. held that, if the primary or dominant purpose of an institution was charitable any other object which by itself might not be charitable but was merely ancillary or incidental to the primary or dominant purpose would not prevent the trust or institution from being a valid charity.

This principle had been laid down by the S.C. in CIT v Andhara Chambers of Commerce (1965) 55 ITR 722 (SC), then it was reiterated in CIT v Bar Council of Maharashtra (1981) 130 ITR 28 (SC)”

## **Proviso to section 2(15)**

The definition of Charitable purpose in section 2(15) is amended with effect from A.Y. 2009-10. The definition is modified by adding a proviso stating that the “Advancement of any other object of general public utility” shall not be a charitable purpose if it involves the carrying on of any activity in the nature of trade, commerce or business or any activity in the nature of trade, commerce or business or any activity of rendering of any service in relation to any trade, commerce or business for a fee or cess or any other consideration, irrespective of any nature of use or application of the income from such activity or the retention of such income from such activity unless – (w.e.f. 1/4/2016).

- i. Such activity is undertaken in the course of actual carrying out of such advancement of any other of general public utility.
- ii. The aggregate receipts from such activity or activities during the previous year do not exceeds 20% of the total receipts, of the trust or institution undertaking such activity or activities of that previous year.

▷ *Carrying on business or, Business undertaking permitted u/s 11 (4) & 11(4A)*

This amendment to Sec 2(15) covers only one limb that is “advancement of any other object of general public utility” but does not cover other limb such as Education, Medical, and Yoga etc. Therefore the business activities carried on by the trust under these areas are permitted subject to the provisions and conditions mentioned in section 11 (4) and 11(4A).



▷ *If one of the activities becomes non Charitable*

Any trust having mix charitable activities and if it falls under the said proviso to section 2(15) then that activity of the trust will be considered non-charitable purpose, in that case the whole trust will lose exemption u/s 11 & 12 in that particular year in which its receipts from commercial activities exceeds the threshold limit. And will be assessed as per the provisions of section 13(8).

▷ *CBDT Circular No 11/ 2008*

CBDT has clarified that “newly inserted proviso to section 2(15) will not apply to the trust/institution, where its purpose is relief of poor, education or medical relief, it will constitute “charitable purpose’ even if it incidentally involves the carrying on of commercial activities. However, if trust/institution whose purpose is “advancement of any other object of general public utility’, will not be eligible for exemptions u/s. 11 or 10(23C) if they carry on commercial activities.

The circular at the conclusion stated that the applicability of proviso to section 2(15) cannot be generalized it is to be decided on case to case basis.

▷ *Circular 21/2016*

CBDT has clarified that in case where the proviso to sec.2(15) applies , the exemption would be denied in that particular year and cancellation of registration wouldn't be mandatory as per Sec.13(8) unless such cancellation becomes necessary on other grounds

▷ Few Judgments with regard to Provision to see 2(15)

- a. Andhra Pradesh State Seed Certificate Agency v/s CCIT & Ors. (2013) 83 DTR (AP) 23..
- b. Punjab State Seed Certification Authority v/s Commissioner of Income-Tax

In both the cases

Certification of seeds, facilitates the business in the certified seeds of the client . Hence falls under business therefore *Proviso to section 2 (15) will apply.*

- c. ICAI v/s DGIT (E) 347 ITR 99 (Del)

It was said that ICAI cannot be regarded as educational institute and the main and dominant object of the ICAI is to regulate the Profession of and conduct of C.As enroll with it. The coaching classes, courses and examinations held by the ICAI satisfy the requirement of the term education. *Hence proviso to section 2(15) shall not apply.*

*d. Bureau of Indian Standard v/s DGIT (E) 358 ITR 78 (Del)*

Charging license fees granting/certification cannot be said to be done for the purpose of profit/revenue earned is purely incidental.

*Proviso not applicable.*

*e. ITAT Cochin Tribunal in the case of Greater Cochin Development Authority v/s JDIT (E) ITA no. 792793 / Cochin (2013)*

In this case held that activity conducted by authority are purely commercial in nature share profit motive is involved.

*Proviso to sec 2(15) applicable.*

*f. DIT (E) v/s Sabarmati Ashram Gaushala Trust 362 ITR 359 (GUJ)-*

Selling of Dung, Fodder, milk, semen- earned some profit. Surplus is not the sole consideration for judging whether any activity is trade, commerce or business which is wholly incidental to the principal charitable activity .

*Proviso to sec.2(15) not applicable.*

*g. DIT (E) v/s. Khar Gymkhana (Bombay High Court ) dated 06/06/2016  
S.2(15)/12AA(3):*

The registration cannot be cancelled on the ground that it is carrying on commercial activities since proviso to sec. 2(15) applied.

*h. DIT(E) v/s LalaLajpatrai Memorial Trust (Bombay High Court) dated  
12/04/2016.*

If the prominent object is charitable, the earning of profit from incidental activity like letting of property for education does not effect charitable status.

*Proviso to sec.2(15) not applicable.*

*i. DIT (E) v/s Ahmadabad Management Association 366 ITR 85 (Guj)*

The object of promoting and development of management & related subject through meeting, lectures seminars etc. and 80% of the revenue derived from continuing education diploma & certification program. Hold that the association is engaged in educational activities hence *proviso to sec-2(15) not applicable.*

*j. DIT (E) VS. Samudra Institute of Maritime Studies trust 369 ITR 645 (Bom)*

Providing education in pre sea & post sea training to sea -men so as to prepare them for duties . It is educational activity.

*Proviso to sec 2 (15) not applicable.*

*k. Loka Shiksana Trust (1975) – 101 ITR 234 (SC)*

The word education connotes the process training and developing knowledge, skill, mind & character of students by normal schooling.

*Proviso to sec.2 (15) applicable.*

*l. Indian Institute of Bankers v/s Dy. DIT (E) 74 TTJ (Mum) 523*

The assessee was publishing news paper and contention was that it was a charitable object being spread of education. The court negative the contention.

*Proviso to sec. 2(15) will apply.*

*m. CIT v/s Surat Art Silk Cloth Manuf Association 121 ITR 1(SC)*

It is held that if the primary and dominant object of the trust is charitable, the other objects, may not be charitable but since they were incidental or ancillary to the attainments of the primary or dominant purpose, wouldn't prevent the trust being charitable one.

*Proviso to sec. 2(15) not applicable*

*n. Society for Participatory research in Asia v/s ITO (E) Trust ward II (ITAT Delhi) ITA No – 1553 (Del) 2015 (AY 2010-11)*

It was held that the evocation of proviso to sec. 2(15) of the act to deny of exemption u/s 11 and 12 not justified. The court relied upon India Trade promotion Organization v/s. DGIT (2015) 371 ITR 333 wherein observed that as long as the prominent activity is not business or commerce and some income is derived from subsidiary or incidental activity exemption cannot be denied.

*Proviso to sec. 2(15) not applicable.*

(The aforesaid ITAT order has been conformed by Delhi High Court.)



## Section 10 (23C)

The income of any University and other educational institutions, Hospital and other institutions which are solely for education and medical purposes are established for not for profit, their income are excluded U/S 10(23C).

- 1) Any income received by any persons on behalf of Section 10(23C) sub-section.....
  - (i) The PM's National Relief Fund or The PM CARES Fund (inserted w.e.d. 1-4-2020)
  - (ii) The PM's Fund (Promotion of Folk Art); or
  - (iii) The PM' Aid to Students Fund; or
  - (iiia) National foundation for Communal Harmony; or
  - (iiiaa) Swachh Bharat Kosh, set up by the Central Government; or
  - (iiiaaa) The Clean Ganga Fund, set up by Central Government; or
  - (iiiaaaa) The Chief Minister's Relief fund or the Liuetenent Governor's Relief Fund in respect of any or Union territory,

&

  - (iiiab) to (iiiae) – Educational institution and Hospitals

## The sub sections (iiiab) to (via) can be divided in three categories of exemption

1. Wholly or substantially financed by the government covered U/S 10 (23C) (iiiab) – Universities or Other Educational Institutions existing solely for educational purposes and not for purposes of profit & (iiiac) – Hospital or other institutions or of persons requiring medical attentions or rehabilitation, existing solely for philanthropic purposes and not for the purpose of profit. (As per rule 2BBB the prescribed percentage for substantially financed by Government is more than 50%).

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- ii. The aggregate annual receipt does not exceed the amount as may be prescribed. Covered U/S-10 (23C) (iiiad – Educational) & (iiiie – Medical). (As per Rule 2BC the said amount Prescribe is Rs. 1 Crore).
- iii. The aggregate annual receipts exceeds the prescribed amount (Rs.1 Crore) are required to obtain approval from prescribe authority to avail exemption covered U/S 10 (23C)

▷ *Approval Required to avail exemption u/s 10 (23C)*

- Sub – (iv) – having regard to object of the fund or institution and its important throughout India and throughout any state or states,
- Sub section (v) – any trust (including legal obligation ) or institution wholly for public religious purposes or wholly for public religious and charitable purposes.
- Sub section (vi) – any university education institution existing solely for educational purposes and not for profit, other than those mentioned in sub clause (iiiab) (iiiad).
- Sub section (via) – any hospital or other institution other than those mentioned in sub clause (iiac) and (iiiiae).

▷ *Some of the important provisos not amended –*

▷ *Third proviso -*

- a. That the fund, trust or institution etc. applies its income, or accumulated it for application wholly and exclusively to the objects for which it is established and in case where more than 15% of its income is accumulated on or after the first day of April-2002, the period of the accumulation of the amount exceeding 15% of its income shall in no case exceed five years and
- b. Does not invest or deposit its funds for any period during the previous year, otherwise than in one or more moods specified in section. 11(5). ( There are certain exceptions for earlier investments are permitted.)

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▷ **Thirteenth Proviso –**

That for the purpose of determining the application under item (a) of third proviso the provisions of section 40(a)(ia) and section 40 A(3) and (3A) shall mutatis mutandis, apply as they apply in computing the income chargeable under the head profits and gains of business or professions.

▷ **Seventeenth Proviso –**

Any anonymous donation referred to in section 115BBC on which tax is payable in accordance with the provisions of the said section shall be included in total income of such organization

▷ **Nineteenth Proviso –**

The income of such organization referred to in sub clause (iv) or (v) shall be included in its total income if the provisions of the first proviso to section 2(15) becomes applicable, whether or not any approval granted or notification issued.

## Amendments by Finance Act, 2020 in section 10 (23C)

The new amended provisions were applicable from 1-6-2020, but now extended to 1-10-2020.

There are amendments to certain provisos –

First, Second, Eighth , Ninth and Eighteenth provisos are substituted.

Tenth and Twelfth proviso is amended.

And Sixteenth proviso omitted.

## First and Second provisos substituted

Exemption to the fund or trust or trust or institution or university or other educational institution or hospital or other medical institution

(such organizations) referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) under the respective sub-clauses of section 10(23) shall not be available to it unless they make an application in the prescribe form and manner to the Principal Commissioner or commissioner ,for grant of approval,-



Particulars	Time Period for Application
1. In case such organization is already registered –	Within 3 months from 1-10-2020(Earlier it was 1-06-2020)
2. In case of such organization is approved & period is due to expire – (Renewal)	At least 6 months prior to expiry of the said period.
3. In case of such organization is having provisional approval –	At least 6 months prior to the expiry of the period or within 6 months of commencement of its activities – which ever is earlier.
4. In any other case –	At least one month prior to commencement of the previous year relevant to assessment year from which such approval is sought

And the said such organization is approved under second proviso.

Provide further that the Principal Commissioner on receipt of an application made under the first proviso, shall -

1. If an application is made by such organization, is already registered then pass an order in writing granting approval to it for a period of five years.
2. Where the application is made under above point no 2 and 3 then,
  1. Call for such documents or information from it or make such inquiries as he thinks necessary in order to satisfy himself about –
    - i. The genuineness of activities of such organization.
    - ii. The compliance of such requirement of any other law for the time being in force by it as is material for the purpose of achieving its objects.

2. After satisfying himself about the objects and the genuineness of its activities specified under point 2.1.1 and compliance of the requirements under 2.1.2, of point 2.1.
  - i. Pass an order in writing granting approval to it for a period of five years .
  - ii. If he is not so satisfied, pass an order in writing rejecting such application and also cancelling its approval after affording it a reasonable opportunity of being heard.
  
3. Where the application is made under point 4 then order will be passed in writing granting approval to it provisionally for a period of three years from the assessment year from which the registration is sought.

For the Eight and Ninth provisos the following proviso shall be substituted-

Provided also that any approval granted under second proviso shall apply in relation to the income of such organization-

(Registration granted to such organization will be effective from)

Particulars	Effective from	Time limit for passing order
I. Where the application is made by the trust already registered	From the assessment year from which approval was earlier granted to it.	3 months *
➤ When the trust is provisionally approved	From the first A.Y. from which it is provisionally approved .	6 months*
➤ In other cases	From the assessment year immediately following the financial year in which such application is made.	1 month*

\* Calculated from the end of the month in which the application is received.

### Amendment in 10th proviso –

Where the total income of such organizations referred to in sub-clause (iv) or (v) or (vi) or (via) without giving effect to the provisions of said sub-clauses, exceeds maximum amount which is not chargeable to tax in any previous year, such organizations shall get its accounts audited in respect of that year before the specified date referred to in sec.44AB and furnished by that date report of such audit in the prescribe form, duly signed and verified.

As per sec.44AB the specified date is one month prior to the date specified u/s 139 (1) presently it is 31<sup>st</sup> October. Therefore the audit report is to be submitted electronically by 30<sup>th</sup> September

### Amendment in 12th proviso –

In sub-clause (iv) or sub-section (vi) or sub-clause (via), to any other fund or trust or institution or any university or other education 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.

## Sixteenth Proviso Omitted

Prior to its omission the sixteenth Proviso stated that such organization makes an application for the purpose of grant of exemption, such application shall be made on or before 30<sup>th</sup> September of the relevant A.Y. from which the exemption is sought.

## Eighteenth proviso substituted

### **Pending application**

As per the substituted eighteenth proviso says that all application made under first proviso is 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 amended provisions.

## Amendment in sec.11 (7)

- In section 11(7) reference of sec. 12AB and 10(46) is added after sec.12AA and (23C).

### Two Provisos are added after sec.11(7)

- According to the First Proviso registration, u/s. 12AA/ 12AB becomes inoperative when the trust or institution is claiming benefit under 10(23C) or 10(46) or the date on which this proviso is come in to force whichever is later.
- According to the Second Proviso trust whose registration has become inoperative under the first proviso can apply to get its registration operative u/s 12AB, subject to condition that approval under 10 (23C) or 10(46) cease to have any effect from the date on which registration became operative from the date on which registration u/s 12AB becomes operative and thereafter it shall not be entitled to exemption under the respective clauses.

## New clause (ac) is inserted in sub-section 1 of sec.12A

Application for registration needs to be given to Principal Commissioner or Commissioner of Income tax. Clause (ac) overrides the clauses (a), (aa), (ab) of section 12A.

The procedure of applying for registration/ re-registration is as follows:

Particulars	Time period
1. In case if the trust is already registered under 12A or 12AA .	Within 3 months from the day from which this clause has come into force. (now 1-10-2020)
2. If the trust or institution is registered under section 12AB and the period of the said registration is due expire.	At least 6 months prior to the expiry of the said period.
3. In case the trust or institution has been provisionally registered under section 12AB.	Six months prior to the expiry of the period of provisional registration or, Within six months of commencement of its activities, whichever is earlier.

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Particulars	Time period
<p>4. Where registration of the trust or institution has become inoperative due to the first proviso to section 11 (7). (No simultaneous exemption under 10(23C) and 12AB)</p>	<p>6 months prior to the commencements of the assessment year from which the said registration is sought to be made operative.</p>
<p>5. In case of the trust or institution has adopted or undertaken modification of the objects which do not conform to the conditions of registration.</p>	<p>Within a period of 30 days from the date of the said adoption or modification.</p>
<p>6. In any other case.</p>	<p>At least 1 month prior to the commencement of the pervious year relevant to the A.Y. from which the said registration is sought .</p>

## Sec.12AA

After sub-clause 4 the sub-clause 5 shall be inserted w.e.f. 1-10-2020

Sub-clause 5

Nothing contained in this section shall apply on or after 1-10-2020.

The procedure for fresh registration u/s. 12AA is replaced by new sec.12AB w.e.f. 1-10-2020.

## Sec.12AB (New section inserted w.e.f. 1-10-2020)

- 1) The principle commissioner or commissioner of income tax on receipt of an application made u/s. 12A (1) (ac) shall grant registration as follows
  - a. If the trust is already registered under section 12A or section 12AA then order for granting registration will be passed in writing for a period of five years .
  - b. When the application is made under any other clause then Principal Commissioner or commissioner shall:
    - 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
      - B. The compliance of such requirements of any other law for the time being in force by the trust or institution as is 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 2.1.1, and 2.1.2, of point 2, Principal Commissioner or Commissioner will either
  - 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.
  - C. Where the application is made in the residual case then the order will be passed in writing provisionally for a period of three years from the assessment year from which the registration is sought.

In all the above cases copy of the order of the order will be sent to trust or institution.

2. In all the cases on which order is not yet passed by the Principal Commissioner or Commissioner of Income Tax under earlier section 12AA before 1-10-2020, then shall be deemed to be an application made under sub-clause (vi) of section of 12A(1)(ac) on that date.
3. The time limit for passing the order is within the period as prescribed below from the end of the month in which application is received.-

<ul style="list-style-type: none"> <li>▪ Order for existing trust registered under 12A or sec 12AA</li> </ul>	Three Months
<ul style="list-style-type: none"> <li>▪ Order for Trust registered under 12AB and whose registration is due to expire               <ul style="list-style-type: none"> <li>• Order for provisional registration</li> <li>• Order for the trust who became inoperative</li> <li>• Order for the trust who had taken modification in the object</li> </ul> </li> </ul>	Six Months
<ul style="list-style-type: none"> <li>▪ Order for any other case</li> </ul>	One Month

## Cancellation of Registration [sec. 12AB (4) & (5) ]

4. If after granting the registration trust, the Principal Commissioner or Commissioner is satisfied that activities of such trust are not genuine or are not carried out in accordance with the objects of the trust/institution then he shall pass an order in writing cancelling the registration after affording a reasonable opportunity of being heard.
5. Without prejudice to the above where the registration granted under clause (a) or (b) and subsequently it is noticed that-
  - a. The activities of the trust are being carried out in the manner that the provisions of sec. 11 & 12 don't apply due to operation of sec.13(1) (i.e., for the benefit of the particular religion or community) or,
  - b. The trust has not complied with the requirements of any other law as referred in sub-sec. 1 (b)(i)(B) 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 by an order in writing, cancel the registration of such trust or institution after affording a reasonable opportunity of being heard.

## Amendment in section 35

After the forth proviso to clause (iv) following new proviso is added

Provided also that, every notification issued under clause (ii) or clause (iii) or under clause (iia) issued on or before the date on which this sub-section has come into force, shall be deemed to have been withdrawn unless such organization/company make an intimation in such prescribed form and manner to the prescribe I.T Authority within three months from the date on which this proviso ahs come into force and subject to that the notification shall be valid for the period of five consecutive assessment years beginning with the Assessment year commencing on or after 1-4-2021.

Provide also that any notification issued by Central Government under said clauses after the date on which it becomes the Act shall have effect for such assessment year or years not exceeding five assessment years.

After sub-section 1A shall be inserted w.e.f. 1-10-2020--

The organization/company referred above shall not be entitled to deduction under respective clauses unless such research association/company-

- i. Prepare such statement for such period prescribed and delivered to the prescribed I.T Authority such statement in such form verified in such manner, setting forth such particulars within such time as may be prescribe. Provided such association/ company may deliver a correction statement for rectification of any mistake or update information.
- ii. Furnishes to the donor a certificate specifying the amount of donation in such manner, particulars within such time as may be prescribe.



## Amendment to sec 80G

From 1<sup>st</sup> October 2020 institution or fund should be approved by Principal Commissioner or Commissioner instead of Commissioner as prescribed in the Act.

Now with latest technology it is possible for the department to have one-to-one check about the claim of donation made by the donor in his return of Income and what is actually received by the exempt entities.

The entities receiving donation have to furnish a statement in respect thereof and issue a certificate to the donor. The donor will get deduction on the basis of the statement filed by the donee.

a. In sub-section 5 after sub-clause (vii), following sub-clauses inserted.

Sub-clause (viii) –

The institution or fund prepare such statement for such period as may be prescribe and deliver or cause to be delivered to the prescribed income-tax authority or the person authorized by such authority such statement is such from and verified in such statement in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed.

Its is also provided that such a statement could be rectified or modified.

## Sub-clause (ix)

According to this sub-clause institution or fund will furnish to the donor a certificate specifying the amount of donation in the manner prescribed containing such details within such time from the date of receipt of donation as may be prescribed.

Provided that the institution or fund registered in this section shall make an application in the prescribed form and manner to the Principal Commissioner or Commissioner, for granted of approval .

All existing trust or institution who have obtained approval earlier are also required to apply for approval. The approval will be granted for not exceeding five assessment years.

Time Limit for application: Detail of the time limit within which approval approval is to be given is as follows-

Sr No.	Particulars		Time Limit
1	When the trust is already approved under this section	:	Three months
2	When a period of approval is due to expire	:	At least six months prior to the date of expiry
3	When institution or fund is provisionally approved	:	at least six months prior to the date of expiry or within six months from the commencements of activity whichever is earlier
4	In any other case	:	One month prior to the commencement of previous year relevant to assessment year for which approval is sought.

## ▷ Approval Order

Principal commissioner or Commissioner on receipt of an application, made as per the above table shall-

1. If the application is made by the registered trust then pass an order in writing granting approval to it for a period of five years
2. Where the application is made under above point no.2 or 3 then
  - i. Call for such documents or information from it or make such inquiries as he thinks necessary in order to satisfy himself about
    - i. The genuineness of activities of such fund or institution
    - ii. The fulfillment of all the conditions laid down.
  - ii. After satisfying himself about the genuineness of its activities under 2.1.1 the and fulfillment of all the condition under point 2.1.
    - i. Pass an order in writing granting approval to it for a period of five years
    - ii. If he is not so satisfied, pass an order in writing rejecting such application and also cancelling its approval after affording it a reasonable opportunity of being heard

3. Where the application is made under point 4 (any other case) then the order will be passed in writing granting approval to it provisionally for a period of three years from the assessment year from which the registration is sought.

Time Limit for passing order from the expiry of month in which application was received.

▪ Where the application is made by the trust already registered	Three months
▪ When the trust is provisionally approved	Six months
▪ In other cases	One month

continued

▷ **Approval to be granted from -**

Where the application is made by the institution or fund already approved.	From the assessment year from which approval was earlier granted to it.
When the institution or fund is provisionally approved	From the first A.Y. from which it is provisionally approved
In other cases	From the assessment year immediately following the financial year in which such application is a made..

## After Explanation 2 Explanation 2A is inserted in sub-section (5D)

Deduction u/s. 80G is allowed to the assessee in his return of Income for the donation made is on the basis of Information furnished by donee institution or fund or their authorized representative as per the statement furnished by them, subject to verification in accordance with the risk management strategy formulated by the board from time to time.

## Sub-section (5E) is inserted after sub-section (5D)

All the application that is pending before the Commissioner on which no order has been passed then it shall be deemed to be an application made under amended provisions



## Amendments in Section – 80GGA

(With effect from 1-10-2020)

- i. In subsection (2A) – No deduction shall be allowed for donation in cash exceeding Rs.2000/- (earlier it was Rs.10,000/-).
- ii. After sub-section (4) following explanation shall be inserted –  
For removal of doubt , it is hereby declared that the claim of the assessee for a deduction in respect of any sum referred for a deduction in respect of any sum referred to in sub-section (2) in the ITR for any A.Y. filed by him shall be allowed on the basis of information furnished by the limit in prescribed form.

## Penalty u/s 271 K (inserted w.e.f. 1-10-2020)

The assessing officer may direct that a sum of not less than Rs. 10,000 but May extend to 1 lakh rupees, shall be paid by way of penalty –

- i. The research organizations covered u/s 35, if it fails to deliver or cause to be delivered a statement within the prescribed time or,
- ii. The institute or fund if fails to deliver or caused to be delivered a statement within time prescribed u/s 80G (5) (viii) or, furnish a certificate prescribed to the donor under clause (ix) of said sub-section



# Thank you

You may send your queries at

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