

REVAMPING OF SECTIONS 10(23C) & SECTIONS 11 TO 13 OF INCOME-TAX ACT, 1961

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STATUTES

- The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA for short)
- Finance Act 2021 and
- Finance bill 2022.
 - Have amended S. 10(23C), 11, 12A, 12AB and S. 13 in a major way.
 - In this presentation we shall discuss a few important amendments.

AMENDMENTS BY TOLA 2020

- S. 12A AND 12AA dealing with the registration of charitable trusts and the first and second proviso below S. 10(23C) dealing with approval have been amended.
- The amendments are paraphrased below:
- All existing trusts and institutions which are registered / approved have to make a fresh application for registration on or before 31st March 2022.

AMENDMENTS BY TOLA 2020

- A trust or institution which has been granted registration u/s 12AB as per the new procedure has to file an application for renewal 6 months prior to the date of expiry of period for which the registration/approval was granted.
- Any trust or institution which has been provisionally registered as per the new procedure must file the application 6 months prior to the expiry of provisional registration or within 6 months after commencement of its activities whichever is earlier.

AMENDMENTS BY TOLA 2020

- Where an institution or trust approved u/s 10(46) wants to claim the benefit of S. 11 it can make an application for registration 6 months prior to the commencement of the assessment year for which the said registration is sought. *
- If a trust which is already approved undertakes modification of the objects which are not in accordance with the condition of registration, an application should be filed within 30 days from the date of adoption or modification. *

AMENDMENTS BY TOLA 2020

Note – (*)

- These two sub-clauses do not apply to S. 10(23C) institutions.
- In any other case at least one month prior to the commencement of the previous year relevant to the assessment year for which the said registration is sought.

PROCEDURE TO BE FOLLOWED BY COMMISSIONER/PRINCIPAL COMMISSIONER FOR REGISTRATION/APPROVAL

- S. 12AA(5) has been introduced to provide that the provisions of 12AA shall not apply on or after 1.4.2021.
- A new section, 12AB has been introduced dealing with the registration. Similarly, second proviso to S. 10(23C) deal with the approval to be granted u/s 10(23C).
- An automatic registration/approval has to be granted for a period of 5 years in the case of trust/institution already registered/approved.

PROCEDURES TO BE FOLLOWED BY COMMISSIONER/PRINCIPAL COMMISSIONER FOR REGISTRATION/APPROVAL

- Where the registration/approval granted under the new procedure is to be renewed and in case where a provisional registration is to be converted into final registration, the Commissioner can call for such documents or information or make such enquiries as he deems necessary.
 - To satisfy himself regarding genuineness.
 - To satisfy himself that requirement of any other law for the time being in force which is material for the purpose of achieving its objects has been met by trusts/institution.

PROCEDURE TO BE FOLLOWED BY COMMISSIONER/PRINCIPAL COMMISSIONER FOR REGISTRATION/APPROVAL

- If based on enquiries and on examination of various documents, Commissioner is satisfied that a registration is to be renewed or a provisional registration is to be converted into a final registration/approval he shall pass an order in writing registering the trust for a period of 5 years.
- If he is not so satisfied, he shall pass an order in writing rejecting such application and cancelling its registration after affording a reasonable opportunity.

PROCEDURE TO BE FOLLOWED BY COMMISSIONER/PRINCIPAL COMMISSIONER FOR REGISTRATION/APPROVAL

- The above procedure should be followed in a case where the institution approved u/s 10(46) wants to register itself u/s 12A or where a trust makes an application after modification of its objects.
- In any other case the Commissioner shall grant a provisional registration for a period of 3 years from the assessment year from which the registration is sought.
- This will normally apply to a fresh registration either by an unregistered existing trust or an unapproved institution or a newly formed trust or institution.

PROCEDURE TO BE FOLLOWED BY COMMISSIONER/PRINCIPAL COMMISSIONER FOR REGISTRATION/APPROVAL

- All applications pending before the Commissioner on which no order has been based u/s 12AA should be deemed to be application made in any other case (S. 12A(1)(ac)(vi))
- The time limit for passing the orders under various clauses of S. 12AB is as under:
 - Application by existing registered trusts/institutions – 3 months from the date of receipt of application.

PROCEDURE TO BE FOLLOWED BY COMMISSIONER/PRINCIPAL COMMISSIONER FOR REGISTRATION/APPROVAL

- Order after enquiry granting renewal of registration or converting a provisional registration into a final registration – 6 months from the date of receipt of application.
- In any other case – 1 month from the date of receipt of application.
- S. 12 AB(4) & (5) deal with cancelling registration under certain circumstances.
- It may be noted that S. 12AB(4) & (5) are proposed to be amended by the Finance Bill, 2022.

ISSUES ON REGISTRATION PROCEDURE

- S. 12A (1)(ac)(iii)] deal with conversion of a provisional registration into a final registration.
- The application is to be made 6 months prior to the expiry of period of provisional registration or within 6 months of commencement of activities whichever is earlier.
- There is no bar for a trust or institution whose registration/approval has been cancelled to file a fresh application.
- When it makes such an application the Commissioner is bound to give a provisional registration for 3 years.

ISSUES ON REGISTRATION PROCEDURE

- The question is whether such a trust should make an application for conversion of provisional registration to a final registration 6 months prior to the expiry of the provisional registration or within 6 months of commencement of its activities?
- Obviously, the time limit of 6 months from the commencement of activities cannot apply because trust/institution would have commenced its activities much earlier.
- Therefore, it is reasonable to state that the application must be made 6 months prior to the expiry of provisional registration where an existing unregistered trust has been granted a provisional registration.

ISSUES ON REGISTRATION PROCEDURE

- The way S. 12A(1)(vi) is worded, the new trusts formed in a financial year cannot claim registration for that financial year. S. 12A (1)(ac)(vi) requires the application to be filed before the commencement of the previous year relevant to assessment year which the registration is sought.
- Example – Trust formed in June 2022
- The trust wants to claim registration for AY 2023-24 onwards.
- The relevant previous year for AY 2023-24 is April 2022 to 31st March 2023

ISSUES ON REGISTRATION PROCEDURES

- Application under 12A(1)(ac)(vi) should be made on or before 29.2.2022 which is one month prior to commencement of the previous year April 2022 to March 2023.
- In February 2022, the trust was not even in existence.
- Similar issues arise also in case of application for approval u/s 10(23C).
- The Act needs to be amended to enable such trust/institution to claim registration for the assessment year in which they were formed.

ISSUES ON REGISTRATION PROCEDURE

- When a provisional registration/approval is converted into a final registration/approval, the Commissioner should grant approval for a period of 5 years.
- It is not clear whether the period of 5 years is to be counted from the end of the year in which the provisional registration/approval would expire or 5 years from the date of receipt of the application.
- In my view it should be 5 years from the expiry of the provisional registration.

AMENDMENTS MADE BY FINANCE ACT 2021

AMENDMENTS MADE BY FINANCE ACT 2021

- S. 10(23C) (iiia) & (iiib) were amended to provide that the aggregate of receipts by a trust in receipt of income shall not exceed Rs. 5 crore in a year.
- This amendment has been made to get over the decision of the courts including the decision of Karnataka High court in CIT Vs Children's Educational Society 358 ITR 373.

ISSUES – AGGREGATE RECEIPTS

- As noted earlier, the amendment has been made to get over the decision of the courts which held that the limit of receipt of Rs. 1 crore should be applied with reference to each educational institution or hospital and not in aggregate.
- But still the question remains whether the receipt of Rs. 5 crore should be integrally connected with the educational institutions or hospital or all the receipts of the person who is in receipt of income specified in s. 10(23C)(iiiad) and (iiiiae) should be taken into account.

ISSUES – AGGREGATE RECEIPTS

- The Allahabad High court in Mana Sewa Samiti Vs Additional Commissioner of Income Tax 439 ITR 79 held that the limit of Rs. 1 corer has to be seen only with reference to fee and other receipts of eligible activity.
- It will not include any other receipts like interest, donations.
- This decision continues to hold the field and by relying on it one can contend that Rs. 5 crore cannot include any interest, donation.

AMENDMENTS MADE BY FINANCE ACT 2021

- Explanation 2 was added covering all other clauses of S. 12(23C). According to this explanation, the calculation of income which is required to be applied or accumulated during the previous year shall be made without any set-off or deduction for any excess application in any of the earlier years. Similar explanation was added as Explanation 5 below S. 11.
- Explanation 4 was added below S. 11 to provide that :
 - The application will not include the amount spent from corpus.

AMENDMENTS MADE BY FINANCE ACT 2021

- But, if in the subsequent years such corpus replenished, the amount of replenishment would be allowed as application.
- The amount which has been spent out of loan or borrowing shall not be treated as application of income.
- But the repayment of such loan or borrowing shall be allowed as application.

ISSUES ON EXPLANATION 4 & 5 BELOW S. 11

- It is to be noted that Explanation 5 restricts set-off or allowance of any excess application in the earlier years.
- It does not prohibit carry forward of deficit incurred in the earlier year.
- The Courts and Tribunals have held that the deficit of the earlier years can be set off against the current year income of a charitable trust. The balance only needs to be spent for the purpose of objects of the trust.

AMENDMENTS IN FINANCE BILL, 2022

PROPOSED AMENDMENTS- FINANCE BILL 2022

- Finance bill 2022 has proposed a number of amendments to S. 10(23C) and S. 11 to 13.
- As per the Memorandum explaining the provisions of Finance Bill, the amendments have been made to align S. 10(23C) and S.11 exemption regime, to have better management and control of such institutions and to provide clarity.
- Certain amendments have been made simultaneously to S. 10(23C) and S. 11
- There are amendments which are specific to S. 10(23C) in order to align to S. 10(23C) and S. 11 exemption regime.

SIMULTANEOUS AMENDMENTS TO S. 10(23C) AND SECTIONS 11, 12A, 13

- S. 11(3) which deals with the effect of not applying the income which has been accumulated u/s 11(2) has been completely revamped.
- If the amount accumulated is not spent as per the provisions of S.11(2) :
 - If the income is applied to purposes other than charitable or religious purposes for which they were accumulated, the amount so mis-applied or ceases to be so accumulated will be deemed as income of the previous year in which such mis-application or cessation occurs.

SIMULTANEOUS AMENDMENTS TO S. 10(23C) AND SECTIONS 11, 12A, 13

- If the accumulated income does not remain invested in any of the modes specified in s. 11(5), it shall be deemed to be income of the year in which it ceases to remain so invested.
- If the accumulated income is not spent within the period of 5 years from the stated purposes, it shall be deemed to be an income at the end of the 5th year.
- If the accumulated income is created or paid as donation to another charitable trust or S. 10(23C) institution, it shall be deemed to be income of previous year in which such donation is credited or paid.

SIMULTANEOUS AMENDMENTS TO S. 10(23C) AND SECTIONS 11, 12A, 13

- Similar amendments have been carried out to S. 10(23C) by inserting Explanation 4 below the third proviso.
- In the third proviso to S. 10(23C) Explanation 3 has been added. This Explanation is similar to S. 11(2).
- As per Explanation 3, if 85% of income is not applied to objects of the institution but is accumulated either in whole or in part for application to such objects.

SIMULTANEOUS AMENDMENTS TO S. 10(23C) AND SECTIONS 11, 12A, 13

- The income so accumulated will not be included in the total income subject to following conditions:
 - The institution furnished a statement in such form and manner as may be prescribed stating the purpose for which the income is being accumulated.
 - The money so accumulated is invested in any of the modes specified in S. 11(5).
 - The prescribed statement should be filed on or before the due date specified u/s 139(1)

ISSUES ON PROPOSED AMENDMENT TO S. 11(3) AND EXPLANATION 4

- Though Explanation 3 and Explanation 4 are similar to S. 11(2) and 11(3) there are some differences in language which create problems.
- S. 11(2) uses the expression “but is accumulated or set apart, either in whole or in part, for application of such purposes in India”.
- Explanation 3 uses the expression “but is accumulated or set part, either in whole or in part, for application to such objects”.
- One can notice the difference in language in Explanation 3 and S. 11(2).

ISSUES ON PROPOSED AMENDMENT TO S. 11(3) AND EXPLANATION 4

- S. 11 (2) uses for “such purposes” and Explanation 3 uses “such objects”.
There is a difference between the two.
- Prima facie, Explanation 3 permits accumulation for the whole gamut of objects without specifically stating the purpose.
- S. 11(2) uses the word for “such purposes” and the department is of the view that “such purposes” means a specific purpose for which the accumulation is made and not merely stating the objects of the trust.

ISSUES ON PROPOSED AMENDMENT TO S. 11(3) AND EXPLANATION 4

- Of course, such a view of the department has not been accepted in many decisions. A few of them are cited below:
 - CIT Vs Hotel and Restaurant Association 261 ITR 190 (Del)
 - DIT(Exemptions) Vs Gokula Education Foundation 394 ITR 236 (Kar)
- Of course, there are contrary decisions . Eg,
 - Director of Income Tax (Exemptions) Vs Trustees of Singhanian Charitable Trust (Cal) 199 ITR 819

ISSUES ON PROPOSED AMENDMENT TO S. 11(3) AND EXPLANATION 4

- Condition (a) specified in Explanation 3 below 3rd proviso to S. 10(23C) states that in the prescribed statement the institution should mention the purpose for which the income is being accumulated.
- Explanation 4 below 3rd provision to S. 10(23C) uses the expression “ is applied for purposes other than wholly and exclusively to the objects for which”.
- But in clause (c) of the Explanation 4 expression used “ is not utilized for the purpose for which it is so accumulated or set apart”.

ISSUES ON PROPOSED AMENDMENT TO S. 11(3) AND EXPLANATION 4

- The use of different expressions in various parts of Explanation 3 and Explanation 4 creates a confusion.
- The problem is further confounded by the fact that Explanation 5 empowers the assessing officer to allow the institution to apply such income for purpose other than the ones specified in the application.
- The question is whether institution should specifically mention the purpose for which the income is accumulated, or would it be sufficient if it merely repeats the objects of the institution.

ISSUES ON PROPOSED AMENDMENT TO S. 11(3) AND EXPLANATION 4

- If it is sufficient to broadly state the objects of the institution as purpose of accumulation, the need for the institution to make an application under Explanation 5 for change of purpose will not be there.
- But S. 11(3A) is similar to Explanation 4 below 3rd proviso to S. 10(23C).
- Despite the presence of S. 11(3A), many Courts have held that it is sufficient if the broad objects are stated as purpose of accumulation.
- Though one can use the decisions as a defense, it would be better if the purpose is specifically stated in the application for accumulation.

SIMULTANEOUS AMENDMENTS TO S. 10(23C) AND SECTIONS 11, 12A, 13

- An Explanation is proposed to be added below S. 11 to state that the application of income is to be on cash basis.
- Similar amendment is proposed by adding the Explanation below S. 10(23C).
- It is to be noted that the proposed amendment applies only to application of income and not for the general method of accounting followed by a trust or an institution.

SIMULTANEOUS AMENDMENTS TO S. 10(23C) AND SECTIONS 11, 12A, 13

- A trust or institution is free to follow either mercantile system of accounting or cash system of accounting for determination of its commercial income which is required to be applied u/s 11(1) or S. 10(23C).
- Out of the income so determined, only the amount actually spent will be allowed as an application and not a provision.

SIMULTANEOUS AMENDMENTS TO S. 10(23C) AND SECTIONS 11, 12A, 13

- The conditions for getting the exemption u/s 11 as specified in S. 12A have been amended. As per the unamended S. 12A(1)(b) the accounts of the trust should be audited by an accountant as defined in S. 288 and the audit report should be furnished to the department.
- The bill proposes to make it clear that the trust should maintain books and get such books of account audited.
- This is perhaps to get over the ingenious defense set up by some assesseees that since they are not maintaining books of account there is no requirement to get the accounts audited as per the present provision.

SIMULTANEOUS AMENDMENTS TO S. 10(23C) AND SECTIONS 11, 12A, 13

- S.12AB (4) and (5) introduced by TOLA, 2020 have very short life.
- Finance Bill 2022 proposes to cancel the registration of a charitable trust or institution under following circumstances.
 - If there is a specified violation
 - Specified violation is defined to mean
 - Income is applied for purposes other than objects of trust or institution;
or
 - Trust or institution has profits from of business which is not incidental to attainment of objects or separate books are not maintained in respect of such business; or

SIMULTANEOUS AMENDMENTS TO S. 10(23C) AND SECTIONS 11, 12A, 13

- Income or property has been applied for purpose of private religious purpose;
or
- Application of income for benefit of any particular religious community; or
- Activities being carried out are not genuine or not being carried out in accordance with all or any conditions subject to which it was registered; or
- Violation of any other law and the authority under that statute has held so and such order direction etc are not disputed or has attained finality.

SIMULTANEOUS AMENDMENTS TO S. 10(23C) AND SECTIONS 11, 12A, 13

The Commissioner :-

- On suo-motu notice of any specified violation ; or
 - On a reference made by the assessing officer under 2nd proviso to S. 143(3) ; or
 - Where the case has been selected in accordance with the risk management strategy formulated by CBDT
- Can initiate action for cancellation of registration.

SIMULTANEOUS AMENDMENTS TO S. 10(23C) AND SECTIONS 11, 12A, 13

- Procedure to be followed by Commissioner.
 - Call for documents or information from trust or make such inquiry as he thinks necessary
 - To satisfy himself about the occurrence of specified violation.
 - Inquiry can be with reference to a third party and not necessarily only with the trust.

SIMULTANEOUS AMENDMENTS TO S. 10(23C) AND SECTIONS 11, 12A, 13

- Pass an order cancelling registration if he is satisfied about the occurrence of specified violation.
- Pass an order refusing to cancel the registration if he is satisfied that the specified violation has not occurred.
- Forward a copy of the order to assessing officer.
- Commissioner has to give an opportunity of being heard to the trust before passing an order cancelling the registration.

SIMULTANEOUS AMENDMENTS TO S. 10(23C) AND SECTIONS 11, 12A, 13

- Order has to be passed before expiry of a period of 6 months from the end of the quarter in which first notice is issued calling for any document or information or for making an inquiry.
- Quarter would be Jan-March, April-June, July-September and Oct-Dec .
- Similar provisions have been made in s.10(23C) by amending 15th proviso to 10(23C)

ISSUES ON CANCELLATION

- There is a difference between 15th proviso to 10(23C) and S.12AB(4).
- S. 12AB(4) permits cancellation of a provisional registration whereas S.10(23C) does not refer to cancellation of provisional approval.
- So, a provisional approval u/s 10(23C) cannot be cancelled. This seems to be a slip-up in drafting. Very likely to be corrected.
- There is no requirement that a formal show cause notice proposing to cancel registration should be issued. It is enough if an opportunity of being heard is given.

ISSUES ON CANCELLATION

- Reference may be made to Supreme Court decision in Amitabh Bachhan 384 ITR 200.
- Cancellation is effective from the year in which the specified violation is noticed and subsequent years.

ISSUES ON CANCELLATION

- If an assessment had already been made for any of the years where cancellation is effective, there is no specific provision permitting assessing officer to amend the assessment order of that year.
- Possibly S.263 can be invoked subject to limitation.
- As sections stand today, S.148, 154, 155 may not apply.
- There is a time limit only for passing the order. There is no time limit for issue of notice calling for documents information or making inquiry.

ISSUES ON CANCELLATION

- Reference to first notice in the provisions relating to limitation indicates that Commissioner can issue any number of notices for inquiry, calling for information.
- If limitation had expired and the order had not been passed, can he start a fresh inquiry on the very same material.
- Answer is No. Permitting such a course of action would amount to abuse of law.
- Can a trust make an application for fresh registration as per 12A(1)(ac)(vi) after the order cancelling the registration is passed?
- There is nothing in the Act prohibiting such a course of action.

ISSUES ON CANCELLATION

- But in the intervening years there will not be registration and hence, exemption cannot be claimed.
- Eg. - Violation noticed in F.Y 2022-23
- Commissioner passes cancellation order in F.Y 2024-25.
- Trust can file application for fresh registration in F. Y 2024-25 and registration will be effective only from F.Y 2025-26. (see 12A(1)(ac)(vi).
- Trust will not be eligible for exemptions for A.Y 2023-24 to A.Y 2025-26.

SIMULTANEOUS AMENDMENTS TO S. 10(23C) AND SECTIONS 11, 12A, 13

Sections 13(1)(c) and 13(1)(d) have been amended:

- The pre amended section was silent as to whether the entire exemption u/s 11 would be denied or only that portion of income which is relatable to violation would be denied exemption.
- The Karnataka High Court in Father Mueller's case 363 ITR 230 held that the exemption can be denied only to the relevant portion and not to the entire income.
- The proposed amendment in the bill now makes it clear that the proportionate income which is relatable to the violation alone would be denied exemption by adding the words "such part of income as referred to in sub-clauses (i) and (ii) at the end of S. 13(1)(c) and 13(1)(d)".

SIMULTANEOUS AMENDMENTS TO S. 10(23C) AND SECTIONS 11, 12A, 13

- The principle laid down in Father Mueller's case is legislatively recognised.
- Similar amendments are proposed in S. 10(23C) by adding 21st proviso to the same effect.
- Of course, the earlier issue regarding determination of the income that is relatable to application of the property for the benefit of prohibited persons continues.
- This issue has not been addressed in the proposed amendment.

SIMULTANEOUS AMENDMENTS TO S. 10(23C) AND SECTIONS 11, 12A, 13

- The Finance Bill proposes to introduce sections 13(10) and 13(11).
- 22nd proviso to S. 10(23C) is also proposed to be added.
- As per the proposal :
 - If a trust carries on any business and is hit by the proviso to S. 2(15) thereby attracting the disallowance of exemption u/s 13(8) ; or
 - It violates the condition of not maintaining books of account of account and getting such books audited ; or

SIMULTANEOUS AMENDMENTS TO S. 10(23C) AND SECTIONS 11, 12A, 13

- Does not file the return within the time allowed u/s 139(4A)
- The income of the trust would be computed in the manner provided in s. 13(10) and 13(11)

SIMULTANEOUS AMENDMENTS TO S. 10(23C) AND SECTIONS 11, 12A, 13

- Income chargeable to tax shall be determined or shall be computed after allowing the following deductions:
 - Expenditure (other than capital expenditure) incurred in India for the objects of the trust or institution.
 - In order to claim the revenue expenditure as stated above the following conditions should be fulfilled :
 - The expenditure should not have been incurred out of the corpus amount standing to its credit as on the end of the immediate previous year relevant to the assessment year for which the income is computed.

SIMULTANEOUS AMENDMENTS TO S. 10(23C) AND SECTIONS 11, 12A, 13

- Such expenditure is not from any loan or borrowings.
- Depreciation in respect of assets which has been claimed as application of income in the same or any other previous year cannot be allowed.
- Such expenditure should not be in the form of any contribution or donation to any person.
- The provisions of S. 40(a)(ia) and 40A(3) and 40A(3A) will be applicable in computing the income.
- Similar amendments have been made to S. 10(23C) by adding the 22nd proviso.

ISSUES- TAXATION OF SPECIFIED INCOME

- It is not clear from the the wordings of S. 13(10) as to what is the starting point .
- Is it net income or gross revenue?
- Whether the income will be computed under normal provisions of the Act and from such income the revenue expenditure which is in the nature of application of income would be allowed; or
- Whether from the gross revenue, only the revenue expenditure which is in the nature of application is to be allowed
- is not clear.

ISSUES- TAXATION OF SPECIFIED INCOME

- The first view can be supported on the general principle that the word “income” always refers to the net income and not gross income.
- If the “income” refers to gross revenue, an absurd situation may arise that the gross sale proceeds or revenue receipts in the case of business carried on by the trust would be subject to tax and all expenses incurred for the purpose of carrying on such business will not be allowed.

ISSUES- TAXATION OF SPECIFIED INCOME

- The only expenditure that would be allowed is the revenue expenditure which is in the nature of application of income.
- Many of the expenses incurred for carrying on the business will not be in the nature of application of income and therefore, those expenses will not be allowed.
- One possible view can be that all expenses which are necessary for carrying on the business or incurred for the purpose of earning the income (which are not in the nature of application of income) would be allowed and from such income the revenue expenditure mentioned in s. 13(10) would be allowed.

ISSUES- TAXATION OF SPECIFIED INCOME

- The second view is supported by the wordings of S. 13(11).
- S. 13(11) states that for the purpose of computing income u/s 13(10) no deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed to the assessee under any other provisions of this Act.
- One of the conditions for allowance is that the expenditure should not have been incurred out of the corpus funds.

ISSUES- TAXATION OF SPECIFIED INCOME

- The section does not prescribe as to how to determine whether the amount is spent out of the corpus fund or not.
- The presumption can be raised that the expenditure has been incurred out of income and not out of corpus funds.
- Such a presumption can be supported by cash flow statement showing that corpus fund has not been utilized for expenditure to be allowed u/s 13(10).

AMENDMENTS APPLICABLE ONLY TO S.10(23C)

- In the Finance bill 2022 there are proposals to amend S. 10(23C) to align it with Sections 11 to 13.
- This amendment seems to be an ongoing process and with the proposed amendments it can be said that there is hardly any difference between the exemption regime u/s 10(23C) and S. 11.
- The only difference is that the benefit available under the proviso to S. 12A(2) is not available to S. 10(23C) institution.

AMENDMENTS APPLICABLE ONLY TO S.10(23C)

- This proviso states that the benefit of exemption u/s 11 will not be denied only on the ground that the trust is not registered u/s 12A if such a trust had obtained registration in subsequent years.
- Of course, it goes without saying that the trust has to satisfy the provisions of S. 11 to 13.
- The 3rd proviso to S. 10(23C) is proposed to be amended to be in line with S. 11(2) of the Act.

AMENDMENTS APPLICABLE ONLY TO S.10(23C)

- Explanation 3 below the 3rd proviso states that the amount accumulated in excess of 15% of the income can be set apart or accumulated and the income so accumulated will not be included in the total income of the institution.
- The following conditions are to be satisfied:
 - That the institution furnishes the prescribed form stating the purpose for which the income is being accumulated or set apart and the period.
 - The period of accumulation shall not exceed 5 years.
 - The accumulated amount is to be invested only in the mode prescribed u/s 11(5).

AMENDMENTS APPLICABLE ONLY TO S.10(23C)

- The prescribed form has to be filed within the time specified in S. 139(1).
- The amendment also proposes to introduce Explanation 4 below 3rd proviso which deals with the consequences of not stating the accumulated income for the purpose for which it was so accumulated.
- Explanation 4 is similar to S. 11(3) and the issues discussed with reference to the amendment to S. 11(3) are relevant after Explanation 4.
- Explanation 5 below 3rd proviso to S. 10(23C) clothes the assessing officer with powers to allow change of purpose of accumulation on an application made by the institution.

AMENDMENTS APPLICABLE ONLY TO S.10(23C)

- 19th proviso which dealt with denial of exemption under any other clause of S. 10 except S. 10(1) is amended.
- The amendment is that for the words “ prescribed authority” , the words The Principal Commissioner of Commissioner” is used. This amendment is only consequential and does not have any practical impact.
- The 20th proviso is proposed to be added to provide that the institution should file the return of income within the time prescribed u/s 139(4C) of the Act.

PROPOSED AMENDMENT IN FINANCE BILL 2022

The second proviso to S. 143(3) is proposed to be amended to state that if :

- If the assessing officer is satisfied that any S. 10(23C) institution or trust registered u/s 11 has committed specified violation, he shall
 - Send reference to the Principal Commissioner to withdraw the approval or registration as the case may be
 - No order making an assessment of total income or loss such institution or trust shall be made without giving effect to the order passed by the Commissioner regarding cancellation of registration/approval.

PROPOSED AMENDMENT IN FINANCE BILL 2022

- S. 153 is proposed to be amended to provide for exclusion of time for limitation for completion of assessment where a reference is made under 2nd provision to S. 143(3).
- The period starting from the date of reference under 2nd proviso to S. 143(3) and the date on which the copy of order cancelling or refusing to cancel the registration/approval passed by the Commissioner is received by the assessing officer shall be excluded.

PROPOSED AMENDMENT IN FINANCE BILL 2022

There is a proposal to amend S. 115TD to state that:

- S. 115TD will apply to 10(23C) institutions also.
- The entire sub-sections 1,2,3 of S. 115TD have been substituted.
- But for all practical purposes except for the inclusion of S. 10(23C) there are no other major changes.
- Consequential amendments have been made to S. 115TE and 115 TF also.

PROPOSED AMENDMENT IN FINANCE BILL 2022

Finance bill 2022 proposes to introduce a new section 115BBI to tax certain specified income of charitable trust/institution at 30%.

- While calculating the specified income no deduction in respect in expenditure or allowance or set-off of any losses shall be allowed under any provision of the Act (115BBI)(2).
- Specified income is defined to mean “
 - Accumulated income in excess of 15% of income of the trust/institution where such accumulation is not allowed under any provision of the Act.

PROPOSED AMENDMENT IN FINANCE BILL 2022

- The amount which is treated as income u/s 11(3) or Explanation 4 below the 3rd proviso to S. 10(23C)
- Income from investments which are not in the modes specified u/s 11(5) when S. 13(1)(d) is applicable.
- Income becoming chargeable to tax because S. 13(1)(c) becomes applicable.
- Income which is not exempt u/s 11(1)(c) – when the income is applied outside India for charitable purposes except when the conditions specified in s. 11(1)(c) are satisfied.

ISSUES ON S. 115 BBI

In order to attract S. 115BBI whether it is necessary that the institution or trust should be approved or registered.

- S. 115BBI does not refer to any institution approved u/s 10(23C) or registered u/s 12A specifically.
- S. 115BBI refers to institution mentioned in S. 10(23C)(iv)(v)(vi)(via).
- These sections themselves state that the institution should be approved by the Commissioner or Principal Commissioner.

ISSUES ON S. 115 BBI

- Therefore, to maintain the parity between S. 10(23C) regime and S. 11 regime it can be stated that even a charitable trust should be registered u/s 12AB.
- An unregistered charitable trust or an unapproved institution will not get exemption u/s 11 or 10(23C) as the case may be. Their income will be computed in accordance with the normal provisions of the Act. Hence, taxing a portion at 30% and exempting the balance of income does not arise.

ISSUES ON S. 115 BBI

- What is the inter-play between S. 115BBI and S. 164(2) ?
- U/s. 164(2) the relevant portion of the income of a charitable trust which is not exempt can be charged to tax at maximum marginal rate.
- There is an overlap between the relevant income as per S. 164(2) and clauses (c) and (d) of the Explanation below S. 115BBI.
- As on date this issue is academic because the maximum marginal rate is also 30%.

ISSUES ON S. 115 BBI

- But problems may arise if the maximum marginal rate is varied later.
- In my opinion the rate specified in S. 115BBI or the maximum marginal rate which ever is more beneficial to the assessee should be adopted.

PROPOSED AMENDMENT IN FINANCE BILL 2022

Finance Bill 2022 proposes to introduce S. 271 AAE.

- Under the proposed S. 271 AAE a penalty equal to 100% of the amount of income applied for the benefit of any person referred to in S. 13(3) and if such violation is noticed for the first time during any previous year.
- A sum equal to 200% of the amount will be levied as penalty if the violation is noticed again in any subsequent previous years.

ISSUES 271 AAE PENALTY

What is the meaning of “where the violation is noticed for the first time during any previous year”.

- Does it refer to the previous year in which the violation actually took place ; or
- The previous year in which it is noticed by the assessing officer during any proceedings under the Act –
- E.g., the violation has taken place in the previous year ended 2022-23.
- During the assessment proceedings for the assessment year 2024-25 taken up during the previous year 2025-26, the assessing officer notices that there is a violation in the previous year 2022-23.

ISSUES

- Can the assessing officer levy penalty for the violation in 2022-23.
- Would it be a violation noticed for the first time during any pervious year ; or
- Since the proceedings were conducted in previous year 2025-26 and there is no violation in that previous year, the assessing officer cannot levy penalty for violation in 2022-23.
- This is a highly vexatious issue.
- Possibly, the reasonable view is that in the above example penalty can be initiated for the previous year 2022-23.

THANK YOU