

BUDGET 2022

◆ Legal Series Vol. XIV ◆ Issue 5

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ISSUE 1 - SUMMARY OF KEY AMENDMENTS



Standards & Norms

Resource support on NGO Governance, Accounting and Regulations



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INTRODUCTION

- 1.01** The Finance Bill 2022 has brought in many path breaking changes for charitable and religious organisations. In this issue we are discussing in brief the various changes suggested through key amendments in the Income Tax Act.

EXTENSIVE POWERS OF CANCELLATION OF REGISTRATION TO AO AND CIT

- 2.01** There have been important changes pertaining to extensive powers of Cancellation of Registration under section 12AB and Approval under section 10(23C). Earlier the Commissioner of Income Tax had relatively limited powers of cancellation under section 12AB(4) & (5), however, the Finance Bill 2022 proposes various specific violation and circumstances which may result in cancellation of registration.

The Commissioner of Income Tax shall have extensive power to cancel registration against various specified violation. The specified violations are as under:

- Income applied for purpose other than objects.
- Income from Non-Incidental Business
- Separate books of Accounts not maintained for Incidental Business
- Applied income for benefit of any particular religious community or caste
- Activities carried on are not genuine
- Activities are not according to the registration conditions
- Non-compliance with other laws

The circumstances under which a cancellation proceeding can be initiated are as under:

- PCIT/PC noticed occurrence of one or more '*Specified Violations*' during any previous year.
- Reference from the Assessing Officer under the *second proviso* to Section 143(3).

- Case has been selected in accordance with the risk management strategy of CBDT.

The above amendments are highly arbitrary and debatable particularly with regard to

- (i) the power of the Assessing Officer to refer an organisation to the CIT even before completion of assessment. In other words the CIT can initiate proceeding and cancel the registration even before the AO has completed assessment under section 143(3) only based on the pre-assessment information provided by the AO. An extreme step of cancellation being initiated without any evidence or conclusive reason is highly arbitrary and needs reconsideration.
- (ii) The power of the CBDT to initiate cancellation proceeding based on its strategy for risk mitigation. In other words CBDT can be based on artificial intelligence or any other model of selection may initiate cancellation proceedings. An extreme step of cancellation being initiated through sampling or artificial tool without any evidence or conclusive reason would tantamount to a '*roving inquiry based cancellation proceeding*' and therefore is highly arbitrary and needs reconsideration.

ADDITIONAL CONDITION UNDER SECTION 10(23C) BRINGING IT CLOSER TO SECTION 12AB REGISTRATION

3.01 The Finance Bill 2022 has added various new conditions to organisations having approval under section 10(23C)(iv), (v), (vi) & (via) which effectively takes away all the advantages enjoyed by such organisations over organisations registered under section 12AB. The new conditions applicable to such organisations are briefly provided as under:

- Requirement of furnishing Income Tax Return as a condition.
- Requirement of uploading of Audit Report
- Restrictions on payment to specified persons
- 5 years Accumulation provisions in line with Section 11(2)
- Accreted tax under Section 115TD

The above additional conditions virtually leave approvals under section 10(23C)(iv), (v), (vi) & (via) with no edge or advantage over organisations registered under section 12AB. However, there are few differences between these two category of institutions which still remain and are as under:

- Organisations registered under section 12AB cannot make any application of income outside India under section 11(1)(c), there is no such condition for organisations approved under section 10(23C)(iv), (v), (vi) & (via). It may be noted that even in the absence of any such condition, organisations approved under section 10(23C)(iv), (v), (vi) & (via) are required to predominantly work in India only.
- Organisations registered under section 12AB have the option under Form 9A to spend in subsequent year if the income is not received during the year or is received towards the end of the year under Explanation to section 11(1). However, no such option is available to organisations approved under section 10(23C)(iv), (v), (vi) & (via).
- The most important benefit which a 12AA registered organisation enjoys is retrospective exemption under second proviso to Section 12A(2).

Barring the above conditions and benefits there are no other differences between an organisation registered under section 12AB and organisation approved under section 10(23C)(iv), (v), (vi) & (via). In our opinion the retrospective tax benefit under second proviso to Section 12A(2) would make organisations registered under section 12AA a more preferred option, now onwards.

SECTION 115BBI INSERTED TO TAX INCOME OF NGOs AT MAXIMUM MARGINAL RATE

- 4.01** The Finance Bill 2022 as inserted a new section 115BBI to tax the following income of charitable organisations at 30% tax rate:
- If accumulation is made in excess of 15% of total income without filing Form 9A or Form 10 then such excess accumulation.

- If any income accumulated to subsequent year or five years by filing Form 9A or Form 10 is not applied within the prescribed time frame.
- Any income which is subject to tax as a violation under section 13(1)(c) which is for providing unreasonable benefit to specified person.
- Any income which is subject to tax as a violation under section 13(1)(d).
- Any income which is subject to tax as a violation under section 11(1)(c).

The above amendments raise the following issues/questions:

- (i) Under section 13(9) if an organisation fails to file Income Tax returns and Form 10 in the prescribed time then the income so accumulated become taxable, any income determined under section 13(9) will be taxable under section 115BBI.
- (ii) Section 115BBI does not mention income subject to tax due to application of section 11(4A) i.e. violation of conditions for incidental business.
- (iii) Section 115BBI does not mention income subject to tax due to application of proviso to section 2(15) read with section 13(8) i.e. violation of conditions for incidental business.
- (iv) Section 115BBI does not mention income subject to tax due to application of proviso to section 13(1)(b) i.e. forfeiture of exemption for applying income for the benefit of a particular religious community.

NEW SECTION TO TAX THE INCOME FOR VIOLATIONS

UNDER SECTION 12A AND SECTION 13(8)

- 5.01** The Finance Bill 2022 has inserted a new section 13(10) to tax the income of an organisation for violations of section 13(8) and certain provisions section 12A. It may be noted that under this section the normal tax rates shall apply, further this taxation pertains to basically to those institutions where the benefit of section 11 is totally denied but the 12AB registration is not yet cancelled. This newly inserted section shall be applicable for following violations:

- Having commercial receipts in excess of 20% of the annual receipts in violation of the provisions of proviso to section 2(15).
- Not maintaining the books of accounts and records as prescribed
- Not getting the books of account audited.
- Not filing the return of income .

The income chargeable to tax shall be computed after allowing the deduction for the expenditure (other than capital expenditure) incurred in India for the objects.

Subject to fulfilment of the following conditions:

- Expenditure is not from the corpus
- Expenditure is not from any loan or borrowing
- Claim of depreciation is not in respect of an asset which has been claimed as an application of income
- Expenditure is not in the form of any contribution or donation to any person.
- Disallowances for cash payment and Non TDS shall apply
- No set off of earlier year loss.

MAINTENANCE OF BOOKS OF ACCOUNTS AS AN

ADDITIONAL CONDITION OF REGISTRATION

6.01 The Finance Bill 2022 has inserted a new clause/condition under section 12A(1) which makes it mandatory to maintain books of account in such form and manner as may be prescribed. It may be noted that maintenance of books of accounts was an implicit condition because of the Audit requirements but the proposed amendment has made it explicit.

We need to wait for the Rules providing for form, manner & the place.

Section 13(10) has been inserted for computing income chargeable to tax if books of accounts as provided are not maintained.

Similar amendment are proposed under section 10(23C).

CASH BASIS OF ACCOUNTING COMPULSORY FOR APPLICATION OF INCOME

7.01 The Finance Bill 2022 has inserted a new explanation to section 11 just after sub section 7 which provides that all expenditure under section 11(1a) should be admissible on cash basis. In other words accrual basis of accounting will no longer be permissible for application of income.

It is proposed that the amount of application shall be considered only if it is actually paid –

- i) Irrespective of the year in which liability arises and
- ii) Irrespective of the method of accounting regularly employed

The proposed change has settled the controversy as how the amount applied for shall be determined but:

- There will be an accounting challenge to determine the application amount on cash basis where accounts are maintained on accrual basis (Section 8 company)
- In certain cases it will go against the TDS provisions which are also applicable to NGO. Similar amendments are proposed under section 10(23C).

VOLUNTARY CONTRIBUTIONS TO NOTIFIED RELIGIOUS INSTITUTIONS

8.01 The Finance Bill 2022 has provided that voluntary Contributions for the renovation and repair of Religious places notified under clause (b) of sub-section (2) of section 80G can be treated as corpus donation even without in a specific direction from the donor. The key issues in this regard are as under:

- Normally the benefit of Section 80G are not available to religious trust
- In case of Religious cum charitable trust 80G approvals are given only if the expenditure on religious purpose does not exceed 5% of income
- Section 80G(2)(b) is a separate section enabling religious trust being a place of public worship throughout any State or States” and notified as such by the Central Govt. can also apply & avail 80G benefit.

- The proposed amendment is to bring certainty on the treatment of the voluntary receipt under this approval of 80G & it provides – that the amount of voluntary contribution received can be treated as received towards corpus at the option of recipient NGO.

Conditions to be fulfilled

- Corpus to be applied only for the purpose for which the voluntary contribution was made;
- Corpus shall not be applied for making a contribution or donation to any person;
- Corpus to be maintained as separately identifiable;
- Corpus to be invested in Section 11(5) modes.

Standards & Norms aims to provide relevant informations and guidance on NGO governance, Financial Management and Legal Regulations. The informations provided are correct and relevant to the best of the knowledge of the author and contributor. It is suggested that the reader should cross check all the facts, law and contents before using them. The author or the publisher will not be responsible for any loss or damage to any one, in any manner.



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EXTRACT OF FINANCE BILL 2022 PERTAINING TO NGOs**AMENDMENT OF SECTION 10(23C)**

(b) in clause (23C),—

(i) in sub-clauses (iv), (v), (vi) and (via), for the words “prescribed authority”, the words “Principal Commissioner or Commissioner” shall be substituted;

(ii) in the third proviso,—

(l) after Explanation 1, the following Explanations shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 2021, namely:—

“Explanation 1A.—For the purposes of this proviso, where the property held under a trust or institution referred to in clause (v) includes any temple, mosque, gurdwara, church or other place notified under clause (b) of sub-section (2) of section 80G, any sum received by such trust or institution as a voluntary contribution for the purpose of renovation or repair of such temple, mosque, gurdwara, church or other place, may, at its option, be treated by such trust or institution as forming part of the corpus of that trust or institution, subject to the condition that the trust or institution,—

(a) applies such corpus only for the purpose for which the voluntary contribution was made;

(b) does not apply such corpus for making contribution or donation to any person;

(c) maintains such corpus as separately identifiable; and

(d) invests or deposits such corpus in the forms and modes specified under sub-section (5) of section 11.

Explanation 1B.—For the purposes of Explanation 1A, where any trust or institution referred to in sub-clause (v) has treated any sum received by it as forming part of the corpus, and subsequently any of the conditions specified in clause (a) or clause (b) or clause (c) or clause (d) of the said Explanation is violated, such sum

shall be deemed to be the income of such trust or institution of the previous year during which the violation takes place.”;

(II) after Explanation 2, the following Explanations shall be inserted with effect from the 1st day of April, 2023, namely:—

“Explanation 3.—For the purposes of determining the amount of application under this proviso, where eighty-five per cent. of the income referred to in clause (a) of this proviso is not applied wholly and exclusively to the objects for which the 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) is established, during the previous year but is accumulated or set apart, either in whole or in part, for application to such objects, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, if the following conditions are complied with, namely:—

(a) such person furnishes a statement in such form and manner, as may be prescribed, to the Assessing Officer stating the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed five years;

(b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5) of section 111; and

(c) the statement referred to in clause (a) is furnished on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year:

Provided that in computing the period of five years referred to in clause (a), the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded.

Explanation 4.—Any income referred to in Explanation 3, which—

(a) is applied for purposes other than wholly and exclusively to the objects for which the 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) is established or ceases to be accumulated or set apart for application thereto;
or

(b) ceases to remain invested or deposited in any of the forms or modes specified in subsection (5) of section 11; or

(c) is not utilised for the purpose for which it is so accumulated or set apart during the period referred to in clause (a) of Explanation 3; or

(d) is credited or paid to any trust or institution registered under section 12AA or section 12AB or 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 subclause (v) or sub-clause (vi) or sub-clause (via),

shall be deemed to be the income of such person of the previous year—

(i) in which it is so applied or ceases to be so accumulated or set apart under clause (a); or

(ii) in which it ceases to remain so invested or deposited under clause (b);
or

(iii) being the last previous year of the period, for which the income is accumulated or set apart under clause (a) of Explanation 3, but not utilised for the purpose for which it is so accumulated or set apart under clause (c); or

(iv) in which it is credited or paid to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution under clause (d).

Explanation 5.—Notwithstanding anything contained in Explanation 4, where due to circumstances beyond the control of the person in receipt of the income, any income invested or deposited in accordance with the provisions of clause (b) of Explanation 3 cannot be applied for the purpose for which it was accumulated or set apart, the Assessing Officer may, on an application made to him in this behalf, allow such person to apply such income for such other purpose in India as is specified in the application by that person and as is in

conformity with the objects for which the 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 subclause (vi) or sub-clause (via) is established; and thereupon the provisions of Explanation 4 shall apply as if the purpose specified by that person in the application under this Explanation were a purpose specified in the notice given to the Assessing Officer under clause (a) of Explanation 3:

Provided that the Assessing Officer shall not allow application of such income by way of payment or credit made for the purposes referred to in clause (d) of Explanation 4.”;

(iii) for the tenth proviso, the following proviso shall be substituted with effect from the 1st day of April, 2023, namely:—

“Provided also that where the total income of the 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), without giving effect to the provisions of the said subclauses, exceeds the maximum amount which is not chargeable to tax in any previous year, such fund or institution or trust or any university or other educational institution or any hospital or other medical institution shall—

(a) keep and maintain books of account and other documents in such form and manner and at such place, as may be prescribed; and

(b) get its accounts audited in respect of that year by an accountant as defined in the Explanation below sub-section (2) of section 288 before the specified date referred to in section 44AB and furnish by that date, the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed:”;

(iv) for the fifteenth proviso, the following proviso shall be substituted, namely:-

‘Provided also that where the fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via) is approved under the said

clause and subsequently—

(a) the Principal Commissioner or Commissioner has noticed occurrence of one or more specified violations during any previous year; or

(b) the Principal Commissioner or Commissioner has received a reference from the Assessing Officer under the second proviso to subsection (3) of section 143 for any previous year; or

(c) such case has been selected in accordance with the risk management strategy, formulated by the Board from time to time, for any previous year,

the Principal Commissioner or Commissioner shall—

(i) call for such documents or information from the fund or institution or trust or any university or other educational institution or any hospital or other medical institution, or make such inquiry as he thinks necessary in order to satisfy himself about the occurrence of any specified violation;

(ii) pass an order in writing cancelling the approval of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution, on or before the specified date, after affording a reasonable opportunity of being heard, for such previous year and all subsequent previous years, if he is satisfied that one or more specified violation has taken place;

(iii) pass an order in writing refusing to cancel the approval of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution, on or before the specified date, if he is not satisfied about the occurrence of one or more specified violations;

(iv) forward a copy of the order under clause (ii) or clause (iii), as the case may be, to the Assessing Officer and such fund or institution or trust or any university or other educational institution or any hospital or other medical institution.

Explanation 1.—For the purposes of this proviso, “specified date” shall mean the day on which the period of six months, calculated from the end of the quarter

in which the first notice is issued by the Principal Commissioner or Commissioner, on or after the 1st day of April, 2022, calling for any document or information, or for making any inquiry, under clause (i) expires.

Explanation 2.—For the purposes of this proviso, the following shall mean “specified violation”,—

(a) where any income of the fund or institution or trust or any university or other educational institution or any hospital or other medical institution has been applied other than for the objects for which it is established; or

(b) the fund or institution or trust or any university or other educational institution or any hospital or other medical institution has income from profits and gains of business, which is not incidental to the attainment of its objectives or separate books of account are not maintained by it in respect of the business which is incidental to the attainment of its objectives; or

(c) any activity of the fund or institution or trust or any university or other educational institution or any hospital or other medical institution—

(A) is not genuine; or

(B) is not being carried out in accordance with all or any of the conditions subject to which it was notified or approved; or

(d) the fund or institution or trust or any university or other educational institution or any hospital or other medical institution has not complied with the requirement of any other law for the time being in force, 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.

Explanation 3.—For the purposes of clause (b) of this proviso, where the Assessing Officer has intimated the Central Government or the prescribed authority under the first proviso of sub-section (3) of section 143 about the contravention of the provisions of sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of this clause by any fund or institution or trust or university or other educational institution or any hospital or other medical institution in respect of an assessment year, and the approval granted to such fund or institution

or trust or university or other educational institution or any hospital or other medical institution has not been withdrawn, or the notification issued in its case has not been rescinded, on or before the 31st day of March, 2022, such intimation shall be deemed to be a reference received by the Principal Commissioner or Commissioner as on the 1st day of April, 2022, and the provisions of clause (b) of the second proviso to sub-section (3) of section 143 shall apply accordingly for such assessment year:’;

(v) for the nineteenth proviso, the following proviso shall be substituted, namely:—

“Provided also that where the fund or institution referred to in sub-clause (iv) or the trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via) has been approved by the Principal Commissioner or Commissioner, and the approval is in force for any previous year, then, nothing contained in any other provision of this section, other than clause (1) thereof, shall operate to exclude any income received on behalf of such fund or institution or trust or university or other educational institution or hospital or other medical institution, as the case may be, from the total income of the person in receipt thereof for that previous year:”;

(vi) after the nineteenth proviso and before Explanation 1, the following provisos shall be inserted with effect from the 1st day of April, 2023, namely:—

‘Provided also that the 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) shall furnish the return of income for the previous year in accordance with the provisions of sub-section (4C) of section 139, within the time allowed under that section:

Provided also that where the income or part of income or property of 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), has been applied directly

or indirectly for the benefit of any person referred to in sub-section (3) of section 13, such income or part of income or property shall, after taking into account the provisions of sub-sections (2), (4) and (6) of the said section, be deemed to be the income of such person of the previous year in which it is so applied:

Provided also that where 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) violates the conditions of the tenth proviso or twentieth proviso, or where the provisions of the eighteenth proviso are applicable, its income chargeable to tax shall be computed after allowing deduction for the expenditure (other than capital expenditure) incurred in India, for the objects of the fund or institution or trust or the university or other educational institution or the hospital or other medical institution, subject to fulfilment of the following conditions, namely:—

(a) such expenditure is not from the corpus standing to the credit of the fund or institution or trust or the university or other educational institution or the hospital or other medical institution as on the end of the financial year immediately preceding the previous year relevant to the assessment year for which the income is being computed;

(b) such expenditure is not from any loan or borrowing;

(c) claim of depreciation is not in respect of an asset, acquisition of which has been claimed as application of income in the same or any other previous year; and

(d) such expenditure is not in the form of any contribution or donation to any person.

Explanation.—For the purposes of determining the amount of expenditure under this proviso, the provisions of sub-clause (ia) of clause (a) of section 40 and subsections (3) and (3A) of section 40A shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head “Profits and gains of business or profession”:

Provided also that for the purposes of computing income chargeable to tax under the twenty-second proviso, no deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed to the assessee under any other provision of this Act.’

(vii) after Explanation 2, the following shall be inserted, namely:—

“Explanation 3.—For the purposes of this clause, any sum payable by 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 subclause (v) or sub-clause (vi) or subclause (via) shall be considered as application of income during the previous year in which such sum is actually paid by it (irrespective of the previous year in which the liability to pay such sum was incurred by the fund or institution or trust or any university or other educational institution or any hospital or other medical institution according to the method of accounting regularly employed by it):

Provided that where during any previous year any sum has been claimed to have been applied by the fund or institution or trust or any university or other educational institution or any hospital or other medical institution, such sum shall not be allowed as application in any subsequent previous year;”.

AMENDMENT OF SECTION 11

In section 11 of the Income-tax Act,—

(a) in sub-section (1), after Explanation 3, the following Explanations shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 2021, namely:—

“Explanation 3A.—For the purposes of this subsection, where the property held under a trust or institution includes any temple, mosque, gurdwara, church or other place notified under clause (b) of subsection (2) of section 80G, any sum received by such trust or institution as voluntary contribution for the purpose of renovation or repair of such temple, mosque, gurdwara, church or other place, may, at its option, be treated by such trust or institution as forming part of the corpus of

the trust or the institution, subject to the condition that the trust or the institution—

- (a) applies such corpus only for the purpose for which the voluntary contribution was made;
- (b) does not apply such corpus for making contribution or donation to any person;
- (c) maintains such corpus as separately identifiable; and
- (d) invests or deposits such corpus in the forms and modes specified under sub-section (5) of section 11.

Explanation 3B.—For the purposes of Explanation 3A, where any trust or institution has treated any sum received by it as forming part of the corpus, and subsequently any of the conditions specified in clause (a) or clause (b) or clause (c) or clause (d) of the said Explanation is violated, such sum shall be deemed to be the income of such trust or institution of the previous year during which the violation takes place.”;

(b) in sub-section (3), with effect from the 1st day of April, 2023,—

(a) in clause (c), the words “or in the year immediately following the expiry thereof” shall be omitted;

(b) for the long line, the following long line shall be substituted, namely:—

“shall be deemed to be the income of such person of the previous year—

(i) in which it is so applied or ceases to be so accumulated or set apart under clause (a); or

(ii) in which it ceases to remain so invested or deposited under clause (b);

or

(iii) being the last previous year of the period, for which the income is accumulated or set apart but not utilised for the purpose for which it is so accumulated or set apart under clause (c); or (iv) in which it is credited or paid to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution under clause (d).”;

(c) after sub-section (7), the following shall be inserted, namely:—

“Explanation.—For the purposes of this section, any sum payable by any trust or institution shall be considered as application of income in the

previous year in which such sum is actually paid by it (irrespective of the previous year in which the liability to pay such sum was incurred by the trust or institution according to the method of accounting regularly employed by it):

Provided that where during any previous year, any sum has been claimed to have been applied by the trust or institution, such sum shall not be allowed as application in any subsequent previous year.”.

AMENDMENT OF SECTION 12A

In section 12A of the Income Tax Act, in sub-section (1), for clause (b), the following clause shall be substituted with effect from the 1st day of April, 2023, namely:—

“(b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year,—

(i) the books of account and other documents have been kept and maintained in such form and manner and at such place, as may be prescribed; and

(ii) the accounts of the trust or institution for that year have been audited by an accountant defined in the Explanation below sub-section (2) of section 288 before the specified date referred to in section 44AB and the person in receipt of the income furnishes by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars, as may be prescribed; ”.

AMENDMENT OF SECTION 12AB

In section 12AB of the Income-tax Act, for sub-sections (4) and (5), the following the sub-sections shall be substituted, namely:—

‘(4) Where registration or provisional registration of a trust or an institution has been granted under clause (a) or clause (b) or clause (c) of sub-section (1) or clause (b) of subsection (1) of section 12AA, as the case may be, and subsequently,—

(a) the Principal Commissioner or Commissioner has noticed occurrence of one or more specified violations during any previous year; or

(b) the Principal Commissioner or Commissioner has received a reference from the Assessing Officer under the second proviso to sub-section (3) of section 143 for any previous year; or

(c) such case has been selected in accordance with the risk management strategy, formulated by the Board from time to time, for any previous year, the Principal Commissioner or Commissioner shall—

(i) call for such documents or information from the trust or institution, or make such inquiry as he thinks necessary in order to satisfy himself about the occurrence or otherwise of any specified violation;

(ii) pass an order in writing, cancelling the registration of such trust or institution, after affording a reasonable opportunity of being heard, for such previous year and all subsequent previous years, if he is satisfied that one or more specified violations have taken place;

(iii) pass an order in writing, refusing to cancel the registration of such trust or institution, if he is not satisfied about the occurrence of one or more specified violations;

(iv) forward a copy of the order under clause (ii) or clause (iii), as the case may be, to the Assessing Officer and such trust or institution.

Explanation.—For the purposes of this sub-section, the following shall mean “specified violation”,—

(a) where any income derived from property held under trust, wholly or in part for charitable or religious purposes, has been applied, other than for the objects of the trust or institution; or

(b) the trust or institution has income from profits and gains of business which is not incidental to the attainment of its objectives or separate books of account are not maintained by such trust or institution in respect of the business which is incidental to the attainment of its objectives; or

(c) the trust or institution has applied any part of its income from the property held under a trust for private religious purposes, which does not enure for the

benefit of the public; or

(d) the trust or institution established for charitable purpose created or established after the commencement of this Act, has applied any part of its income for the benefit of any particular religious community or caste; or

(e) any activity being carried out by the trust or institution—

(i) is not genuine; or

(ii) is not being carried out in accordance with all or any of the conditions subject to which it was registered; or

(f) the trust or institution has not complied with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality.

(5) The order under clause (ii) or clause (iii) of subsection (4), as the case may be, shall be passed before the expiry of a period of six months, calculated from the end of the quarter in which the first notice is issued by the Principal Commissioner or Commissioner, on or after the 1st day of April, 2022, calling for any document or information, or for making any inquiry, under clause (i) of sub-section (4).’

AMENDMENT OF SECTION 13

In section 13 of the Income-tax Act, with effect from the 1st day of April, 2023,—

(a) in sub-section (1),—

(i) in clause (c), in the long line, for the word, brackets and figure “sub-section (3)”, the words, brackets and figures “sub-section (3), such part of income as referred to in sub-clauses (i) and (ii)” shall be substituted;

(ii) in clause (d), in the long line, for the word and figures “November, 1983”, the words, figures and brackets “November, 1983, to the extent of such deposits or investments referred to in sub-clauses (i), (ii) and (iii)” shall be substituted;

(b) after sub-section (9) and before Explanation 1, the following sub-sections shall

be inserted, namely:—

‘(10) Where the provisions of sub-section (8) are applicable to any trust or institution or it violates the conditions specified under clause (b) or clause (ba) of subsection (1) of section 12A, its income chargeable to tax shall be computed after allowing deduction for the expenditure (other than capital expenditure) incurred in India, for the objects of the trust or institution, subject to fulfilment of the following conditions, namely:—

(a) such expenditure is not from the corpus standing to the credit of the trust or institution as on the end of the financial year immediately preceding the previous year relevant to the assessment year for which income is being computed;

(b) such expenditure is not from any loan or borrowing;

(c) claim of depreciation is not in respect of an asset, acquisition of which has been claimed as application of income, in the same or any other previous year; and

(d) such expenditure is not in the form of any contribution or donation to any person.

Explanation.—For the purposes of determining the amount of expenditure under this sub-section, the provisions of sub-clause (ia) of clause (a) of section 40 and sub-sections (3) and (3A) of section 40A, shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head “Profits and gains of business or profession”.

(11) For the purposes of computing income chargeable to tax under subsection (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 provision of this Act.’.

INSERTION OF NEW SECTIONS 115BBH AND 115BBI

After section 115BBG of the Income-tax Act, the following sections shall be inserted

with effect from the 1st day of April, 2023, namely:—

Tax on income from virtual digital assets

‘115BBH. (1) Where the total income of an assessee includes any income from the transfer of any virtual digital asset, the income-tax payable shall be the aggregate of—

(a) the amount of income-tax calculated on the income from transfer of such virtual digital asset at the rate of thirty per cent.; and

(b) the amount of income-tax with which the assessee would have been chargeable, had the total income of the assessee been reduced by the income referred to in clause (a).

(2) Notwithstanding anything contained in any other provision of this Act,—

(a) no deduction in respect of any expenditure (other than cost of acquisition) or allowance or set off of any loss shall be allowed to the assessee under any provision of this Act in computing the income referred to in clause (a) of sub-section (1); and

(b) no set off of loss from transfer of the virtual digital asset computed under clause (a) of sub-section (1) shall be allowed against income computed under any other provision of this Act to the assessee and such loss shall not be allowed to be carried forward to succeeding assessment years.

Specified income of certain institutions

115BBI. (1) Where the total income of an assessee, being a person in receipt of income on behalf of any fund or institution referred to in sub-clause (iv) or any trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in subclause (via), of clause (23C) of section 10 or any trust or institution referred to in section 11, includes any income by way of any specified income, the income-tax payable shall be the aggregate of—

(i) the amount of income-tax calculated at the rate of thirty per cent. on the aggregate of such specified income; and

(ii) the amount of income-tax with which the assessee would have been

chargeable had the total income of the assessee been reduced by the aggregate of specified income referred to in clause (i).

(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provision of this Act in computing the specified income referred to in clause (i) of sub-section (1).

Explanation.—For the purposes of this section, “specified income” means—

(a) income accumulated or set apart in excess of fifteen per cent. of the income where such accumulation is not allowed under any specific provision of this Act; or

(b) deemed income referred to in Explanation 4 to the third proviso to clause (23C) of section 10, or sub-section (1B) or sub-section (3) of section 11; or

(c) any income, which is not exempt under clause (23C) of section 10 on account of violation of the provisions of clause (b) of the third proviso of clause (23C) of section 10, or not to be excluded from the total income under the provisions of clause (d) of sub-section (1) of section 13; or

(d) any income which is deemed to be income under the twenty-first proviso to clause (23C) of section 10 or which is not excluded from the total income under clause (c) of sub-section (1) of section 13; or

(e) any income which is not excluded from the total income under clause (c) of sub-section (1) of section 11.

INSERTION OF NEW SECTION 271AAE

After section 271AAD of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2023, namely:—

Benefits to related persons

“271AAE. Without prejudice to any other provision of this Chapter, if during any proceedings under this Act, it is found that a person, being any fund or institution referred to in sub-clause (iv) or any trust or institution referred to in subclause (v) or any university or

other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via) of clause (23C) of section 10, or any trust or institution referred to in section 11 has violated the provisions of the twenty-first proviso to clause (23C) of section 10, or clause (c) of sub-section (1) of section 13, as the case may be, the Assessing Officer may direct that such person shall pay by way of penalty—

(a) a sum equal to the aggregate amount of income applied, directly or indirectly, by such person, for the benefit of any person referred to in sub-section (3) of section 13, where the violation is noticed for the first time during any previous year; and

(b) a sum equal to two hundred per cent. of the aggregate amount of income of such person applied, directly or indirectly, by that person, for the benefit of any person referred to in sub-section (3) of section 13, where violation is noticed again in any subsequent previous year.”.

