



Finance Bill 2022: Proposals relating to Charitable Trust & Institutions

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Finance Bill 2022 presented by Hon. Union Finance Minister, seeks to lay the foundation and give a blue print to steer the economy over the Amrit Kal of the next 25 years- from India at 75 to India at 100. It has continued the fundamental tenets which include transparency of financial statement and fiscal position, reflect the government's intent, strengths and challenges. The Hon. Finance Minister has done a fair job by presenting a progressive and expansionary budget with a little room for disappointment and focus on agriculture, health sector, infrastructure and startup (including digital advancement).

1.1 So far as the Direct Tax Proposals of the Bill are concerned, the same can be divided into 4 broad divisions namely Voluntary Compliance, Socio-Economic Welfare Measures, Widening-Deepening Tax Base and Phasing out exemptions-Rationalization. The proposals relating to the public charitable trust and institution, fall under the last category. The focus has been to provide clarification to the existing provisions and rationalize the procedural provisions, removing intra-regime anomalies and ensuing effective monitoring. The Proposals relating to the provisions pertaining to the charitable trust and institution may be divided in two regimes viz. amendments relating to the provisions concerning public charitable trust which are hitherto govern under section 11 to 13 of the Act (fort short "the first regime") and the

institutions governed under clause-(23C) of section 10 of the Act (for short "the second regime"). The proposals are in continuation of the amendments made a few years back.

2.0 Effective Monitoring and Implementation

2.1 At present, there is no specific provision under the Act providing for the books of account to be maintained by such trust or institutions. Therefore, in order to ensure proper implementation and monitoring both the exemption regimes, it is proposed to amend clause – (b) of sub-section (1) of section 12A of the Act and 10th Proviso to section 10(23C). It is proposed that where the total income of any trust or institution under the both regimes as computed under the Act without giving effect to the provisions of section 10(23C) or section 11 & 12, exceeds the maximum amount which is not chargeable to tax, such trust or institution shall keep and maintain books of accounts and other documents in such form and manner and at such place as may be prescribed. This amendment will take effect from 1st April 2023 and will accordingly apply to A.Y. 2023-24 and subsequent AYs.

2.2 In view of the above said proposal, the trust or institution under both the regimes would be required to maintain books of accounts for the period commencing

from 1st April 2022 in the prescribed form and manner. Since, the charitable trust registered under local public charitable act are also required to maintain their books of accounts as prescribed therein, this proposal may result into maintaining either two sets of books of accounts or make necessary changes in the set up followed hitherto.

2.3 Moreover, this proposal directs the books of accounts and other documents to be kept and maintain where the total income in any previous year exceed the exemption limit, without giving effect to section 11 & 12. But, in case when such total income exceed the exemption limit during the course of any previous year, whether such trust or institution would be required to keep and maintain books of accounts from that day onwards. It is suggested that the compliance to this proposal may be difficult in such cases so that the compulsory books of accounts may be provided only in a case where such total income has exceeded the exemption limit in the immediately preceding year. We find, similar provision u/s. 44A(2) of the Act.

2.4 This proposal will streamline the format of books of accounts and relieve the trust from filing audit report in form-10B. However, it appears that there is no corresponding proposal to levy penalty in case of failure to keep and maintain the prescribed books of accounts under this clause.

3.0 Changes in accumulation provisions

3.1 Under the existing provisions, a trust or institution is required to apply 85% of its income during the previous year and in case it is unable to so apply, it is allowed to accumulate such income

for a period not exceeding 5 years subject to fulfillment of the conditions. The section-11(3) also provides for the specific year in which the accumulated income will be subjected to tax in case of different types of violations which inter alia provides that if the accumulated income is not applied within 5 years, it shall be taxed in the 6th year. There are no corresponding such specific provisions in the second regime.

3.2 Therefore, in order to bring consistency in the provisions of two exemption regimes, it is proposed to amend section-11(3) to provide that any income as referred to in sub-section-(2) which is not utilized for the purposes for which it is so accumulated or set apart shall be deemed to be the income of such person of the previous year being the last previous year of the period for which the income is accumulated or set apart but not utilized for the purposes specified. Similar provision relating to accumulation and failure to apply such accumulated income is proposed to be inserted by way of Explanation-(3) and Explanation-(4) to Third Proviso to section 10(23C).

3.3 It is further proposed to insert Explanation-(5) to the Third Proviso of section-10(23C) to enable the AO to allow trust or institution under the second regime in circumstances beyond their control to apply such accumulated income for such other purpose in India as is specified in the application by such person subsequent to fulfillment of specified condition. These other purposes, are required to be in conformity with the objects for which the trust or institution is established

3.4 In case of second regime institutions, it is proposed that the any accumulated income shall not be deemed to be the

income of the previous year in which the following event takes place:

- Income is applied for purposes other than the objects of the trust or the income ceases to remain accumulated/set apart.
- Income ceases to remain invested/ deposited in any specified modes.
- Income is transferred to any other trust under the first or second regime.
- Income is not utilized for the purpose for which it is accumulated/set apart within the specified period.

3.5 These amendments will take effect from 01st April 2023 and will apply in relation to AY 2023-24 and onwards.

4.0 Proposals relating to payments to specified persons

4.1 Under section 13(3) of the Act, where the income or any part thereof or property or any trust under the has been applied directly or indirectly for the benefit of specified person, such income or part of income or property shall be deemed to be the income of such person of the previous year in which it is applied. Similar provision is now proposed by inserting 21st Proviso in clause-10(23C) to the effect that where income or part of income or property has been applied directly or indirectly, such income shall be deemed to be the income of such person of the previous year in which it is so applied.

5.0 Proposals relating to accreted income on winding up or dissolution

5.1 Chapter-XII-EB provides for accreted income of the trust in certain cases. At

present, it applies to the trust of the First regime. Accordingly, when a trust is voluntarily wound up or dissolved or converted into or merged with a non-charitable organization, a specified levy in the nature of exit tax is chargeable on the amount accreted at the time of such event. However, such provisions do not apply to the institution under the second regime.

5.2 Accordingly, it is now proposed to amend the provisions of section-115TD, 115TE and 115TF to make them applicable to any trust or institution under the second regime as well.

6.0 Filing of return of income by institution under section 10(23C)

6.1 Under the existing provisions, in case of the trust under the first regime, failed to furnish return of income u/s. 139(4A) within the time allowed, then provisions of section 11 & 12 are not applicable. However, there is no similar provision in the second regime.

6.2 Hence, it is now proposed to insert 20th proviso to section 10(23C) to the effect that for the purpose of exemption under this clause, the institution under the second regime shall furnish return of income for the previous year as per section 139(4C) within the prescribed time. This provision will apply in relation to AY 2023-24 and onwards.

7.0 Allowing certain expenditure in case of denial of exemption

7.1 In order to avail exemption of income by the trust or institution under the Act, various conditions have been prescribed so that there is a need for clear provisions for computing income in case of non-compliance. There is also lack clarity on computation of taxable income for such non-compliance. Hence, it is proposed

to provide for the same so as to achieve consistency and avoid disputes. Some of the provisions under which exemption is not available are, say, failure to get books of accounts audited or non-filing of return by trust under first regime or having commercial receipts in excess of 20% of the annual receipts in violation of proviso to section 2(15).

7.2 It is proposed to insert sub-section (10) in section 13 to provide that where the provisions of sub-section (8) are applicable to any trust under first regime or such trust violates the conditions prescribed in section 12A(1)(b)/(ba), its income to be chargeable to tax shall be computed after allowing deduction for non-capex incurred in India for objects of the trust subject to fulfillment of conditions. The specified violation is proposed to be defined in case of the first regime say

- Income of the trust is applied for purposes other than objects of the trust
- Trust has applied its income for private religious purposes and not for the benefit of general public.
- Activity carried out by the trust is non-genuine or not in accordance with the conditions of registration.
- Trust has not complied with requirements of any other law.

7.3 So far as the trust under second regime are concerned, it is proposed to insert 22nd proviso to section 10(23C) which provides that where there is violation of the conditions prescribed under 10th or 28th proviso, its income shall be chargeable to tax after allowing deduction for the expenditure other than capex incurred in India for the objects of the trust subject to the conditions.

8.0 Taxation of certain income at special rate

8.1 The Bill proposes to make a benevolent provision in respect of the taxation of the trust in certain cases. These proposals requires such income resulting on account of violations to be taxed at a special rate at 30% under the proposed new section 115BBI. The intention of the legislature appears that denial of exemption to the trust on account of small violation of income results into hardship and there is also ambiguity about the taxation of such income.

- The trust or institution under the second regime are not required to pass on any unreasonable benefit to the specified persons as per the present section 13(1)(c) in which case, the entire exemption is being denied irrespective of the benefit passed on. Therefore, it is proposed that only that part of the income which has been applied in contravention of the provisions of section 13(1)(c) shall be liable to be included in the total income.
- Similarly, in case of violation under section 13(1)(d) relating to the investment in specified modes, it results into denial of the entire exemption to the trust irrespective of the amount of investment in non-specified modes. Therefore, it is proposed to amend this clause to provide that only that part of the income which has been invested in violation shall be liable to be included in the total income.
- Under the present provisions, where the trust is not able to comply with the provisions relating to accumulation for a period of 5 years, such accumulated income

which could not be so applied shall be deemed to be the income of the trust.

9.0 Taxation of voluntary contribution for renovation and repairs of religious places

9.1 This Bill provides one more beneficial proposal in relation to the donations for renovation and repairs of temples, mosques, gurudwaras, churches etc. notified under 80G(2)(b). The proposed Explanation- 3A to section 11(1) brings about clarity in respect of such donation as to be treated as corpus donation or like any other voluntary contribution to be applied and or accumulated for 5 years.

- The proposed Explanation -3A provide that in case of the aforesaid trust or institution, any sum received as a voluntary contribution for the purpose of renovation or repair of such religious place may at the option of the trust form part of the corpus subject to the condition such as it shall apply such corpus only for the purpose it is received, it shall not apply such corpus for making contribution or donation to any person and maintain such corpus as separately identifiable and invest in the specified notes as per section-11(5).
- The proposed Explanation-3B to section 11(1) makes provision in respect of violation of the conditions specified in the proposed Explanation-3A by way of amount of such contribution shall be

deemed to be its income of the previous year during which the violation takes place.

- Similar provision is proposed to be inserted by way of Explanation-1A to the third proviso of section -10(23C).
- It also seeks to insert Explanation-1B in respect of violation of the conditions stated in the proposed Explanation-1A.

9.2 It may be noted that the above said amendments are proposed to take effect retrospectively from A.Y. 2021-22 and subsequent years. Therefore, in case the trust or institution has received donations for repairs and renovation of religious places during the previous year relevant to A.Y .2021-22, it will have to examine whether the conditions prescribed under the newly inserted Explanations are fulfilled so as to claim the benefit. It appears that there could be difficulty to comply with the condition of maintaining such corpus separately identifiable.

10.0 Conclusion

After examining the proposed amendment of Finance Bill 2022 relating to the public charitable trust or institutions, it appears that the object of bringing consistency, ensuing effective implementation and rationalization, have been achieved to a large extent and the beneficial provisions to tax the income arising on account of violations, would go a long way in giving impetus to the activities of the trust. The thrust to penalize the non-genuine trust is also a welcome step.

