

## NEW CIRCULAR CONDONING BELATED SUBMISSION OF AUDIT REPORT IN FORM 10B



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## OVERVIEW

- 1.1.1** Organisations registered under section 12AA of the Income Tax Act are required to follow various conditions to avail the exemptions under section 11. One of the condition is to get the accounts audited in Form 10B and such form is required to be furnished along with the Income Tax return.
- 1.1.2** During the last two years many organisations failed to file the audit report in Form 10B along with the Income Tax return. In a large number of cases Income Tax demands were raised by denying the exemptions under section 11. Recently Central Board of Direct Taxes (CBDT) has released a circular condoning the delay in filing of the audit report in Form 10B, particularly, for assessment years 2016-17 and 2017-18. The circular will provide great relief to all the organisations who were subjected to tax demand for delay in filing of the audit report in Form 10B for assessment years 2016-17 and 2017-18. The copy of the Circular is provided in **Annexure 1**.
- 1.1.3** The content of the circular can be divided into three parts
- (i) All delay in filing of the audit report in Form 10B for assessment years 2016-17 and 2017-18, has been condoned. Therefore no condonation petition is required to be filed before the Commissioner of Income Tax (Exemptions), only a petition needs to be filed before the AO with a request to rectify the assessment orders by giving effect of the said circular.
  - (ii) All delay in filing of the audit report in Form 10B for assessment year prior to 2018-19, a condonation petition under section 119(2)(b) is required to be filed before the Commissioner of Income Tax (Exemptions). The language of the circular implies the following:
    - (a) For the assessment year 2016-17 and 2017-18 if the Audit Report was not obtained before the filing of Income Tax return then a petition under section 119(2)(b) is required to be filed before the Commissioner of Income Tax (Exemptions).
    - (b) Further any case regarding delay in filing of audit report for older assessment years i.e. for assessment year 2015-16 or earlier are eligible for condonation petition before the CIT(E).

- (iii) All delay in filing of the audit report in Form 10B for assessment year 2018-19 onwards, the circular is silent therefore it is not known whether a condonation petition under section 119(2)(b) can be filed before the Commissioner of Income Tax (Exemptions). There is no clarity whether delayed filing of audit report for the assessment year 2018-19 onward shall be condonable or not. However, in our opinion based on the statute as well as judicial precedence filing of audit report is a directory provision and the AO has a right to allow any delay in filing of the audit report in Form 10B provided it is filed before 31st March of the respective assessment year i.e. the time limit under section 139 for filing of belated return.

## THE CONDITIONS FOR AVAILING BENEFIT UNDER SECTION 11 AND 12

- 2.1.1** Section 12A states various conditions for availing the exemption under the Act - the first condition is regarding application for registration under section 12AA and among the other conditions there is the requirement of audit by an Chartered Accountant as defined in the Explanation to sub-section (2) of section 288. The Audit Report is required to be prepared in Form 10B. It may be noted that prior to 2013-14 the Audit Report was submitted in hard copies. However, with effect from Assessment year 2013-14, it has become mandatory to upload online audit report in Form 10B.
- 2.1.2** As Online Filing of Audit Report in Form 10B has become mandatory along with the Income Tax Return, there have been litigations where the Assessing Officer has denied the benefit of tax exemptions under section 11 for delayed filing of Audit Report.
- 2.1.3** Section 12AA of the Income Tax Act provides conditions for applicability for Sec. 11 & 12 of the Income Tax Act, 1961. The conditions are :
1. The organisation/institution has to be registered u/s. 12AA of the Income Tax Act, 1961.
  2. If the organisation has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, then within a period of thirty days from the date of said adoption or modification, application for

approval of such modification to be submitted to the Principal Commissioner or Commissioner. (w.e.f. Asst Year 2018-19).

3. The Trust or institution should get the accounts audited as required under the Act and shall submit the Audit Report in form no 10B along with the Return of income for the relevant Assessment Year.
4. The organisation has to furnish the return of income in ITR-7 for the previous year under sub-section (4A) of sec 139, within the time allowed under that section (w.e.f. Asst Year 2018-19). In other words, delay in filing of return is also not permissible.

**2.1.4** In the light of the above conditions it is mandatory to furnish Form 10B along with return of income as it is one of the conditions to claim the benefit u/s. 11 & 12.

## **FILING OF AUDIT REPORT ALONG WITH RETURN IS DIRECTORY AND NOT MANDATORY**

**3.1.1** In our opinion the requirement of submission of Form 10B along with the return though is one of the conditions for claiming the benefit of Sec. 11 & 12, it is directory in nature and not mandatory. In other words, it is a curable defect and the AO should accept belated filing of Audit Report in Form 10B.

**3.1.2** If the Audit Report is not submitted with the Income Tax Return, then such return should be treated as defective and a notice u/s. 139(9) should be given to rectify the defect/ deficiency in the return being submitted. The Audit report in Form 10B can also be submitted along with the revised return.

## **OLD CIRCULAR CBDT CIRCULAR REGARDING DELAYED FILING OF AUDIT REPORT**

**4.1.1** The recent circular has superceded the old CBDT Circular in this regard. The Central Board of Direct Taxes(CBDT) had issued the following circular clarifying the above issue, which is as follows:

**(1/1148-CBDT F. No. 267/482/77-IT (Part) dated February 9, 1978--CBDT Bulletin Tech. XXIII/582.) :**

*"Charitable trust-Requirement of filing audit report in Form 10B--Section 12A(b)--Instructions regarding.--The Board have considered whether the requirement under Section 12A(b) of filing audit report 'along with the return of income' is mandatory so as to disentitle the trust from claiming exemption under Sections 11 and 12 in case of omission to furnish such report in the prescribed form along with the return.*

*Normally, it should be possible for a charitable or religious trust or institution to file the auditor's report along with the return of total income, where such trust or institution claims exemption under Sections 11 and 12. However, in cases where for reasons beyond the control of the assessee some delay has occurred in filing the said report the exemption as available to such trust under Sections 11 and 12 may not be denied merely on account of delay in furnishing the auditor's report and the Income-tax Officer should record reasons for accepting a belated audit report."*

## **RECENT CIRCULAR CONDONING THE DELAY IN FILING OF FORM 10B**

**5.1.1** Recently Central Board of Direct Taxes (CBDT) has released a Circular No.10/2019 dt. 22/05/2019 condoning the delay in filing of the audit report in Form 10B, particularly, for assessment years 2016-17 and 2017-18. The circular will provide great relief to all the organisations who were subjected to tax demand for delay in filing of the audit report in Form 10B for assessment years 2016-17 and 2017-18. The copy of the Circular is provided in **Annexure 1**.

**5.1.2** The relevant extract of circular is as under:

*"4. in supersession of earlier Circular/Instruction issued in this regard, and with a view to expedite the disposal of applications filed by such trusts or institutions for condoning the delay in filing Form No.10B and in exercise of the powers conferred under section 119(2) of the Act, the Central Board of Direct Taxes hereby directs that:*

- (i) The delay in filing of Form no. 10B for AY 2016-17 and AY 2017-18, in all such cases where the Audit Report for the previous year has been

obtained before the filing of return of income and has been furnished subsequent to the filing of the return of income but before the date specified under section 139 of the Act is **condoned**.

- (ii) ***In all other cases of belated applications*** in filing Form no. 10B for years **prior to AY 2018-19**, the Commissioners of Income Tax are authorized to admit such applications for condonation of delay u/s. 119(2)(b) of the Act. The Commissioners will while entering such belated applications in filing Form no.10B shall satisfy themselves that the assessee was prevented by reasonable cause from filing such application within the stipulated time. Further, all such applications shall be disposed off by 30.09.2019.”

## IMPLICATIONS OF RECENT CIRCULAR CONDONING THE DELAY IN FILING OF FORM 10B

### 6.1.1 The content of the circular can be divided into three parts

- (i) All delay in filing of the audit report in Form 10B for assessment years 2016-17 and 2017-18, has been condoned. Therefore no condonation petition is required to be filed before the Commissioner of Income Tax (Exemptions), only a petition needs to be filed before the AO with a request to rectify the assessment orders by giving effect of the said circular. It may be noted that the assessee has obtained audit report for the previous year before the filing of return though furnished subsequent to the filing of return but before the date specified u/s. 139 of the Tax act,1961.
- (ii) All delay in filing of the audit report in Form 10B for assessment year prior to 2018-19, a condonation petition under section 119(2)(b) is required to be filed before the Commissioner of Income Tax (Exemptions). The language of the circular implies the following:
- (a) For the assessment year 2016-17 and 2017-18 if the Audit Report was not obtained before the filing of Income Tax return then a petition under section 119(2)(b) is required to be filed before the Commissioner of Income Tax (Exemptions).

- (b) Further any case regarding delay in filing of audit report for older assessment years i.e. for assessment year 2015-16 or earlier are eligible for condonation petition before the CIT(E).

All such applications shall be disposed off by 30/09/2019.

- (iii) All delay in filing of the audit report in Form 10B for assessment year 2018-19 onwards, the circular is silent therefore it is not known whether a condonation petition under section 119(2)(b) can be filed before the Commissioner of Income Tax (Exemptions). There is no clarity whether delayed filing of audit report for the assessment year 2018-19 onward shall be condonable or not. However, in our opinion based on the statute as well as judicial precedence filing of audit report is a directory provision and the AO has a right to allow any delay in filing of the audit report in Form 10B provided it is filed before 31st March of the respective assessment year i.e. the time limit under section 139 for filing of belated return.

- 6.1.2** It may be noted that despite the CBDT circular indicating that the provisions related with the requirement of audit are directory and not mandatory, the assessee does not have any implied right to file belated audit reports. Audit reports are required and should be filed alongwith the return only. However, any delay in filing of Form 10B would not necessarily result in denial of exemptions under section 11.

## CASE LAWS REGARDING DELAYED

### FILING OF AUDIT REPORT

- 7.1.1** In the case of *CIT vs. Rai Bahadur Bissesswarlal Motilal Malwasie Trust* (1992) 195 ITR 825, the Calcutta High Court has affirmed that that the requirement of filing the audit report with the return is merely a procedural requirement, and that exemption cannot be denied so long as the report is available to the assessing officer before the completion of assessment.
- 7.1.2** In the case of *Calcutta Management Association vs. ITO* (1992) 42 ITD 62, the Calcutta bench of the Tribunal held that the Audit Report can even be filed at the time of appeal before the Commissioner (Appeals).



- 7.1.3** A similar view has been taken by the Tribunal, in the case of *Swajan Pariwar Trust vs. ADIT(E)* (1997) 57 TTJ (Mum)(SMC) 77, that, where the trust filed the audit report along with a rectification application under section 154, it was entitled to the exemption, as the defect had been removed.
- 7.1.4** The *Gujarat High Court in CIT v. Gujarat Oil & Allied Industries* [1993] 201 ITR 325 (Guj.) held that the provision about furnishing of the auditor's report along with the return has to be treated as procedural provision and, therefore, directory in nature.
- 7.1.5** In the case *National Horticulture Board v. CCIT* [2009] 176 TAXMAN 167 (PUNJ. & HAR.) the Chief Commissioner dismissed application for approval under section 10(23C)(iv) on ground that audit reports in Form No. 10BB were not filed with returns and same were filed later, but were not dated as required under 10th proviso to said provision. The High Court held that provisions of the law having been substantially complied with, audit report should have been taken into account even if, strictly speaking, it was not filed with return and not in Form No. 10BB but in Form No. 10B as stated in impugned order.
- 7.1.6** The *High Court of Calcutta CIT vs. Hardeodas Agarwala Trust* (1992) 198 ITR 511 (Cal). held that whether a provision is directory or mandatory has to be considered in the context in which the conditions are imposed. Whether a statute is mandatory or directory depends on the intent of legislature and upon the language in which the intent is clothed. The meaning and intention of Legislature must govern and these are to be ascertained not only from the phraseology of the provision but also by considering its nature, its design, and the consequences which would follow from construing it one way or the other.
- 7.1.7** The High Court of Punjab and Haryana in the case of *Commissioner of Income Tax vs. Sankalp Welfare Society* [2008] 303 ITR 64 (Punjab & Haryana) held that Provisions of section 32AB(5) are not mandatory and the Assessing Officer has discretion to entertain the audit report, even though the same was not filed along with the return, for grant of benefit of deduction to the assessee in terms of section 32AB(1). It may be noted that the provisions of section 32AB(5) are exactly similar to the provisions of section 12A(1)(b) but there is requirement of filing the Audit Report along with the return of income. In this case the Punjab High Court relied on the cases *CIT v. Punjab Financial Corpn.* [2002] 254 ITR 6 (Punj. & Har.) and *CIT v. Print Systems & Products* [2006] 285 ITR 260 (Mad.).

## THE AUDIT REPORT CAN EVEN BE SUBMITTED AT THE APPELLATE STAGE

- 8.1.1** In the case *CIT vs. Shahzedanand Charity Trust – (1997) 228 ITR 292 (PH)*, it has been clarified that the exemption available to the trust under section 11 may not be denied merely on account of delay in furnishing the auditor's report. The word 'shall' occurring in section 12A cannot, under the circumstances, be read as a 'must' making it mandatory for the trust to furnish the auditor's report along with the return. If for certain unavoidable circumstances, the assessee is unable to furnish the auditor's report along with the return, then the same can be furnished at a later date with the permission of the Assessing Officer, who may permit the assessee to do so after recording the reasons for so doing.
- 8.1.2** There was no merit in the submission of the revenue that, as per that circular, the auditor's report could only be furnished up to the stage of framing of the assessment as the power to condone the delay for accepting the auditor's report at a later date has only been given to the ITO and not thereafter, i.e., at the appellate stage. The CBDT, by issuing the above circular, has treated the provisions regarding furnishing of auditor's report along with the return to be procedural and, therefore, directory in nature. By showing sufficient cause, the auditor's report can be produced at any later stage either before the ITO or before the appellate authority.

## CONCLUDING REMARK

- 9.1.1** To sum up, in our opinion if the Form 10B is not uploaded along with the return, such defect itself cannot result in denial of exemptions under section 11. Therefore, where return has been processed u/s. 143(1) denying the exemption u/s. 11 mainly on the ground that Form 10B was not uploaded with the return but filed subsequently, the concerned NGO should submit application to the assessing officer for condonation of delay for late submission of Form 10B along with the return of income and also the petition u/s 154 of the Income Tax Act, 1961 for revising the intimation by allowing the benefit of section 11 of the Income Tax Act, 1961.

**CBDT CIRCULAR CONDONATION OF DELAY FOR  
FORM NO. 10 AND FORM NO. 9A UNDER SECTION 119(2)(B)**

*Circular No. 10 / 2019*

**F.No.197/55/2018-ITA-I  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes**

North Block, New Delhi  
22nd May, 2019

**Sub: Condonation of delay in filing of Form No. 10B for years prior to AY 2018-19-reg.**

1. Under the provisions of section 12A of Income Tax Act, 1961 (hereinafter 'Act') where the total income of a trust or institution as computed under the Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to Income Tax in any previous year, the accounts of the trust or institution for that year have to be audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and the person in receipt of the income is required to furnish along with the return of income for the relevant assessment year 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.
2. As per Rule 17B of the Income Tax Rules, 1962 (hereafter 'Rules') the audit report of the accounts of such a trust or institution is to be furnished in Form No. 10B. As per Rule 12(2) of the Rules, such audit report is to be furnished electronically. The failure to furnish such report in the prescribed form along with the return of income results in disentitlement of the trust from claiming exemptions under sections 11 and 12 of the Act.
3. Representations have been received by the Board/field authorities stating that Form No. 10B could not be filed along with the return of income for AY 2016-17 and AY 2017-18. It has been requested that the delay in filing of Form No. 10B may be

condoned. Previously vide instruction in F. No. 267/482/77-IT(part) dated 09.02.1978, the CBDT had authorized the ITO to accept a belated audit report after recording reasons in cases where some delay has occurred for reasons beyond the control of the assessee.

4. Accordingly, in supersession of earlier Circular/Instruction issued in this regard, and with a view to expedite the disposal of applications filed by such trusts or institutions for condoning of the delay in filing Form 10B and in exercise of the powers conferred under section 119(2) of the Act, the Central Board of Direct Taxes hereby directs that:
- (i) The delay in filing of Form no. 10B for AY 2016-17 and AY 2017-18, in all such cases where the Audit Report for the previous years has been obtained before the filing of return of income and has been furnished subsequent to the filing of the return of income but before the date specified under section 139 of the Act is condoned.
  - (ii) In all other cases of belated applications in filing Form No. 10B years prior to AY 2018-19, the Commissioner of Income Tax are authorized to admitted such applications for condonation of delay u/s 119(2)(b) of the Act. The Commissioner will while entertaining such belated applications in filing Form No. 10B shall satisfy themselves that the assessee was prevented by reasonable cause from filing such application within the stipulated time. Further, all such applications shall be disposed off by 30.09.2019.

**(Rajeswari R.)**

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