

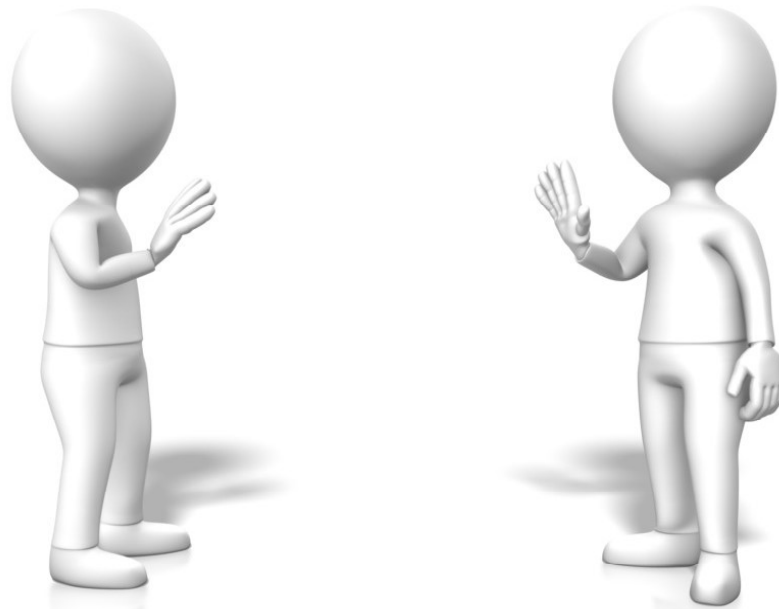
# BUDGET 2025

## ISSUE 3

◆ Legal Series Vol. XVIII ◆ Issue 1

*For private circulation only*

### CANCELLATION NOT PERMISSIBLE FOR MISTAKES



**Standards & Norms**

Resource support on NGO Governance, Accounting and Regulations



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## INTRODUCTION

- 1.01** Section 12AB(4) of the Income-tax Act provides that when the registration or provisional registration of a trust or institution has been granted, the Principal Commissioner of Income Tax (PCIT) or Commissioner of Income Tax (CIT) can cancel the registration if they notice specified violations occurring during any previous year. According to the Explanation to Section 12AB(4), “specified violation” includes, among other things, cases where the application referred to in Section 12A(1)(ac) is incomplete or contains false or incorrect information.
- 1.02** Currently, under Section 12AB(4), the PCIT or CIT are empowered to initiate proceedings and cancel the registration of a trust or institution even in cases of minor non-compliance, such as providing incomplete or missing information on the application form. These broad and arbitrary powers for small errors were often considered unnecessary and excessive.
- 1.03** The Finance Bill 2025 proposes to delete this provision, ensuring that cancellation proceedings can no longer be initiated for minor mistakes related to incomplete information.

## CURRENT PROVISIONS

- 2.01** The Explanation to Section 12AB(4) defines “specified violation” to include cases where the application referred to in Section 12A(1)(ac) is incomplete or contains false or incorrect information.
- 2.02** Under the current framework, even minor defaults, such as the failure to provide complete information in the application, can lead to the cancellation of registration, causing the trust or institution to become liable for tax on its accreted income under Chapter XII-EB of the Income-tax Act.

## PROPOSED AMENDMENT

**3.01** The proposed amendment suggests the deletion of the phrase “is not complete or it” from clause (g) of the Explanation to Section 12AB(4). This change means that cancellation proceedings can no longer be initiated solely because the application is incomplete or contains incorrect information.

**3.02** For clarity, here are the specified violations:

*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 [; or]

- (g) the application referred to in clause (ac) of sub-section (1) of section 12A ~~is not complete or it~~ contains false or incorrect information.

With this proposed change, starting from 01-04-2025, cancellation proceedings cannot be initiated solely due to minor deficiencies in the application form.

## LARGER IMPLICATIONS OF THE AMENDMENT

- 4.01** Although this proposed amendment may seem like a small technical correction, its impact is significant due to the severe consequences of a registration cancellation under Section 115TD of the Income-tax Act. Once a charity's registration is cancelled, Section 115TD imposes an accreted tax on the charity's entire net worth based on the market value of its assets. This provision is particularly harsh for charitable organisations, as it can result in substantial tax liabilities.
- 4.02** In light of Section 115TD, the proposed amendment to protect organisations from cancellation proceedings for minor mistakes in their registration applications is a welcome relief. This change ensures that NPOs and charitable institutions are not unduly penalised for minor, inadvertent errors in the registration process.

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