

# DISALLOWANCES OF APPLICATION AFTER FINANCE ACT 2023

♦ Legal Series Vol. XVI ♦ Issue 6

For private circulation only

## SPECIFIC DISALLOWANCES OF APPLICATION UNDERSECTION 11(1)



Authors\* :

**Adv. (Dr.) Manoj Fogla**, Founder, SAGA LAW LLP

**Dr. Sanjay Patra**, Managing Director, CPA Services

**Suresh Kejriwal**, Consultant

**Sandeep Sharma**, Executive Director, FMSF

\* The Authors can be contacted at [mfogla@yahoo.com](mailto:mfogla@yahoo.com)

**Standards & Norms**

Resource support on NGO Governance, Accounting and Regulations



# DISALLOWANCES OF APPLICATION AFTER FINANCE ACT 2023

♦ Legal Series Vol. XVI ♦ Issue 6

For private circulation only

## SPECIFIC DISALLOWANCES OF APPLICATION UNDERSECTION 11(1)

### CONTENTS

1.	SPECIFIC DISALLOWANCES OF APPLICATION INSERTED SINCE FINANCE ACT, 2018	01
2.	DISALLOWANCES FOR INTER CHARITY DONATION TOWARDS CORPUS	01
3.	DISALLOWANCE DUE TO TDS VIOLATION & CASH PAYMENTS	02
4.	DISALLOWANCE REGARDING INTER CHARITY INSERTED BY FINANCE ACT, 2023	03
5.	TAX IMPLICATION ON DISALLOWANCE OF 15% OF INTER CHARITY GRANT	04

## **SPECIFIC DISALLOWANCES OF APPLICATION**

### **INSERTED SINCE FINANCE ACT, 2018**

**1.01** Prior to Finance Act, 2018, all the incomes applied towards charitable & religious purposes were eligible to be claimed as application against the income of the year. However, since Finance Act, 2018, amendments have been made by virtue of which various specific applications were treated as ineligible even though the amount is applied towards charitable & religious purposes. In other words the following type of applications were treated as valid and legitimate prior to Finance Act, 2018:

- Corpus donation to another charitable organisation
- Any application of fund without deduction of TDS (Tax Deduction at Source) at appropriate rate
- Any application of fund made in cash above Rs. 10,000/-
- Donation to another charitable organisation was allowed 100% now the amount is restricted to 85%.

## **DISALLOWANCES FOR INTER CHARITY**

### **DONATION TOWARDS CORPUS:**

**2.01** As per Explanation 2 to Section 11(1) of the Income Tax Act, 1961 any inter charity grant towards corpus is no longer permissible as application, the statutory text is reproduced as under:

*“Any amount credited or paid, out of income referred to in clause (a) or clause (b) read with Explanation 1, to any fund or trust or institution 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) of clause (23C) of section 10 or other trust or institution registered under section 12AA or section 12AB, as the*

*case may be, being contribution with a specific direction that it shall form part of the corpus, shall not be treated as application of income for charitable or religious purposes.”*

- 2.02** Therefore, any inter-charity donation towards corpus is not considered as application for the purpose of section 11. For example, if an organisation out of Income of Rs 100/- has applied the entire amount of Rs.100 as application towards charitable purpose including Rs. 30 as donation towards **corpus**. In this case even though the total amount of Rs.100 is applied towards charitable purpose but the eligible application for the purpose of Income Tax Act shall be Rs. 70/- as inter-charity donations towards corpus are not considered as application. In this case it may be noted that though Rs. 30 was disallowed but only Rs. 15 can be subjected to tax. In other words, an organisation can make inter charity grant towards corpus out of the 15% available after applying 85%.

## **DISALLOWANCE DUE TO TDS VIOLATION & CASH PAYMENTS :**

- 3.01** With effect from 01.04.2019 any cash payment above Rs. 10,000/- or any payment made in violation of TDS provisions is subject to disallowance. The Explanation 3 to Section 11(1) of Income Tax Act provides the quantum of disallowances in case of TDS violations and cash payment in excess of Rs. 10,000/-, the statutory text is reproduced as under:

*“Explanation 3 to Section 11(1) of Income Tax Act [w.e.f. 01-04-2019] : For the purposes of determining the amount of application under clause (a) or clause (b), 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”.*

**3.02** In the light of the above explanation the following applications shall be disallowed in the following manner:

- The amount of application shall be reduced by 30% of the corresponding amount applied for because of non-compliance of TDS provisions or
- The amount of application shall be reduced by the full amount if the corresponding payment in excess of Rs.10,000 is made in cash.

## **DISALLOWANCE REGARDING INTER CHARITY**

### **INSERTED BY FINANCE ACT, 2023:**

**4.01** The Finance Act, 2023, has inserted a new Clause (iii) in Explanation 4 to section 11(1) by virtue of which inter-charity donations are to be considered as application only to the extent of 85% of the donation. The relevant clause is reproduced as under:

*“(iii) any amount credited or paid, other than the amount referred to in Explanation 2, to any fund or trust or institution 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) of clause (23C) of section 10, as the case may be, or other trust or institution registered under section 12AB, as the case may be, shall be treated as application for charitable or religious purposes only to the extent of eighty-five percent of such amount credited or paid.”;*

**4.02** Hence, inter-charity donation (other than towards corpus) shall be considered as application only to extent of 85% for the purpose of section 11. For example, if an organisation out of Income of Rs 200/- has applied a sum of Rs.100/- as inter charity donation and Rs. 70/- as direct application towards charitable purposes.

In this case prior to 01.04.2023 the organisation would have got the benefit of 85% application as its income was Rs. 200/- and its consolidated application was Rs. 170/- which is 85% of income of Rs 200/-. However post amendment in this case the total application shall be Rs.155 (i.e. 85% of Rs. 100 and Rs 70/) instead of Rs.170/- .

## **TAX IMPLICATION ON DISALLOWANCE OF 15% OF INTER CHARITY GRANT:**

**5.01** The question of law is whether the disallowance of 15% accumulation under the new Clause (iii) in Explanation 4 to section 11(1) will result in tax liability in the light of the fact no amount is actually available to be accumulated. In our opinion there will be no tax implication if the inter charity grant is allowed as application only to the extent of 85% of the grant made.

For example, if an organisation out of Income of Rs 100/- has applied a sum of Rs.100/- as inter charity donation and therefore under the amended law its application of income will be restricted to Rs. 85/-. In this case even though the organisation has applied 85% of its total income but it does not have any actual fund available to accumulate the remaining 15% as the actual cash flow was 100%. In this case the 15% accumulation shall be deemed to have been used for inter charity grant out of accumulated funds. It may be noted there is no bar in using the 15% indefinite accumulation in the year itself, for instance if an organisation has an income of Rs. 100/- and makes direct utilisation of Rs. 85/- and gives Rs. 15/- as corpus donation, even in this case the organisation will not be subjected to tax only because it did not accumulate 15% and instead donated it as corpus donation out of eligible statutory accumulation of 15%.

- 5.02** It is to be noted that as statutory accumulation upto 15% is available unconditionally and **therefore one can take this benefit of statutory accumulation upto 15% of the income on the argument that this set apart fund has been used to fund the disallowance portion of application amount.** However, at the same time one cannot exercise the benefit of five years accumulation, as this requires the amount to be set apart and invested in Section 11(5) mode, whereas there is no fund available out of the income of the current year to allow such investment.

---

**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.



**fmsf**

Published by **Sandeep Sharma** on behalf of  
**FINANCIAL MANAGEMENT SERVICE FOUNDATION**  
 'ACCOUNTABILITY HOUSE', A-5, Sector 26, Noida-201 301  
 Tel. : 91-120-4773200, website : [www.fmsfindia.org](http://www.fmsfindia.org)  
 e-mail : [fmsf@fmsfindia.org](mailto:fmsf@fmsfindia.org)