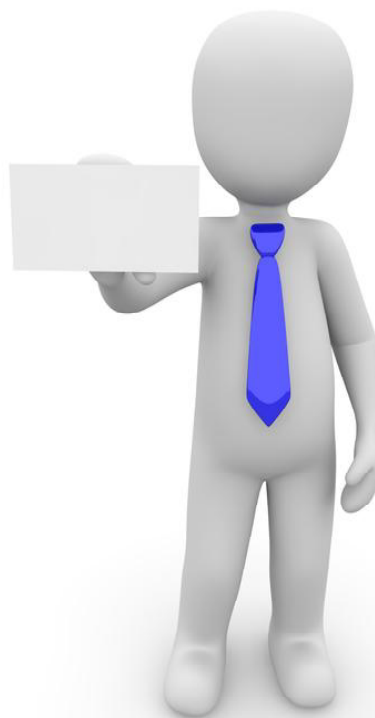


CANCELLATION OF 12AB REGISTRATION

♦ Legal Series Vol. XVI ♦ Issue 8

For private circulation only

CANCELLATION POWERS OF CIT UNDER INCOME TAX ACT



Standards & Norms

Resource support on NGO Governance, Accounting and Regulations



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OVERVIEW

- 1.01** The registration, once granted shall remain in force till its validity period or it is cancelled by the Commissioner of Income Tax.
- 1.02** The Finance (No. 2) Act, 2004 had inserted the sub-section to Section 12AA. By virtue of this sub-section (3), the Commissioner, with effect from 1st day of October, 2004 had the power to cancel the registration, if s/he is satisfied that the activities of such trust/institution are not genuine or are not being carried out in accordance with the objects of the trust or institution.
- 1.03** The Finance Act, 2014 provided additional powers for cancellation under Section 12AA(4)(a), which provides cancellation due to the applicability of forfeiture of income under Section 13(1). It may be noted, under Section 13(1) various violations pertaining to investment, benefit to interested person etc are regulated.
- 1.04** With effect from 1st September, 2019 again, additional powers have been provided for cancellation under Section 12AA(4)(b), wherein registration can be cancelled if the trust has not complied with the requirement of any other law which are material for the purpose of achieving its object and the order/decreed by whatever name called, holding such non-compliance has occurred and has either not been disputed or attained finality.
- 1.05** Finance Act, 2020 had inserted a new Section 12AB. The existing Section 12AA providing for cancellation shall remain effective upto 31-03-2021. The new Section 12AB is applicable from 01-04-2021. It has the enabling provision on the same line as in the existing Section 12AA, empowering the Principal Commissioner or Commissioner to cancel the registration in specified cases, Section 12AB(5) corresponds to Section 12AA(4) and the cancellation powers continue to remain similar except the fact that under Section 12AB(1)(b)(ii), the CIT may deny renewal

of registration and also initiate cancellation proceedings at the time of renewal proceedings.

- 1.06** The new provision has provided yet another power of cancellation under Section 12AB(1)(b)(ii)(B) which can be exercised during the process of renewal under Section 12AB. The new provisions also provide powers of cancellation under Section 12AB(4) and (5), which are analogous powers prior to enactment of Finance Act, 2020.
- 1.07** The additional power of cancellation during the renewal process empowers the CIT to invoke the powers available under Section 12AB(4) and (5) at the time of renewal also. In other words, there is no power for any arbitrary or ex parte order at the time of renewal. However, the CIT may additionally initiate cancellation proceedings.
- 1.08** The Finance Act, 2022 substituted sub-sections (4) and (5) of the Section 12AB w.e.f. 1st April, 2022. This provides provisions regarding cancellation of the registration granted to a trust or institution on specified violations.
- 1.09** Section 12AB(4)/(5) prior to amendment by the Finance Act, 2022 did not cover cases of provisional registration under Section 12AB(1)(c). Now, the substituted Section 12AB(4) covers cases of provisional registration as well and hence, registration granted for the first time can also be cancelled.
- 1.10** Before the amendment by the Finance Act, 2022, Section 12AB(4) provided for cancellation of registration in case of any violation under Section 13. The amended Section 12AB(4) does not consider a violation of Section 13(1)(c) and Section 13(1)(d) as specified violations. Consequently, the registration cannot be cancelled on the ground that the assessee has violated Section 13(1)(c) or Section 13(1)(d).
- 1.11** The Finance Act 2023 has inserted clause (g) in Explanation to Section 12AB(4) to provide that giving incomplete, false, or inaccurate information in a registration application under Section 12A(1)(ac) will be deemed as a “specified violation” that can lead to the cancellation of registration.

1.12 An assessee aggrieved by the order of cancellation passed by the Commissioner may prefer an appeal against such order with the Income-tax Appellate Tribunal.

1.13 Consequences on Cancellation of Registration:

- (i) Once the trust or institution's registration stands cancelled, its income shall be computed as per the normal provisions of the Income-tax Act and that too without giving the benefit of sections 11 and 12. Hence, the income in such cases shall be computed as per the five heads of income.
- (ii) Approval under Section 80G will be liable for cancellation as after cancellation of registration under Section 12AA or 12AB, the exemption under sections 11 and 12 will not be available to the institution.
- (iii) If registration granted to trust or institution under Section 12A or 12AA or 12AB has been cancelled, it shall be deemed to have been converted into any form not eligible for registration as per Section 115TD. In such a case, the accreted income of the trust or institution is liable to be taxed at the Maximum Marginal Rate i.e., MMR.

OVERVIEW OF THE POWERS OF CIT FOR CANCELLATION OF REGISTRATION

2.01 Through various amendments, the power of the Commissioner for cancellation has increased substantially as is evident from the following summarisation:

- (a) With effect from the 1st day of October, 2004, the Commissioner could cancel registration if the activities of trust or institution are not genuine, or the activities are not being carried out in accordance with the objects of the trust or institution. Hence, the power of cancellation was very limited.
- (b) The Finance Act, 2014 provided additional conditions for cancellation for violation under Section 13(1). It may be noted under Section 13(1) the income is subjected to tax either partially or totally if the activity of the trust is being carried out in such manner that:

- (i) Its income does not provide benefit of general public; private purpose trust;
 - (ii) It is for benefit of any particular religious community or caste;
 - (iii) Any income or property of the trust is applied for the benefit of specified persons like author of trust, trustees, etc.; or
 - (iv) Its funds are invested in prohibited modes.
- (c) The CIT is empowered to initiate cancellation for violation of Section 13(1).
- (d) With effect from 1st September, 2019 further additional powers for cancellation have been given wherein registration can be cancelled if the trust has not complied with the requirement of any other law which are material for the purpose of achieving its object and the order/decreed by whatever name called, holding such non-compliance has occurred and has either not been disputed or attained finality.
- (e) On cancellation, in addition to income chargeable in respect of the total income of such trust or institution, the accreted income of trust or institution as on the specified date will be charged to tax at the maximum marginal rate.
- (f) The new Section 12AB, with effect from 01-04-2021, has provided additional power for cancellation wherein the registration can be cancelled at the time of renewal at the end of a five-year period. It may be noted that the registration under Section 12AB is no longer permanent and has to be renewed every five years.

CANCELLATION OF REGISTRATION AFTER AMENDMENT BY FINANCE ACT 2022 (APPLICABLE FROM 01-04-2022)

3.01 Section 12AB(4)/(5) has been substituted with effect from 1st April, 2022 to provide new provisions for the cancellation of registration granted to charitable institutions. The cancellation of registration on or after 1st April, 2022 can be completed only

under the said provisions after satisfying the stipulated conditions under the new provisions. The scope of situations under which registration can be cancelled is found in Section 12AB(4) and (5) the text of which is provided in **Annexure 1**.

WHO CAN CANCEL THE REGISTRATION

- 4.01** The registration can be cancelled by the Principal Commissioner (PCIT) or Commissioner (CIT).

WHICH REGISTRATION CAN BE CANCELLED

- 5.01** The PCIT/CIT can cancel the following registrations granted to a trust or institution:

- (a) Final registration or provisional registration granted under Section 12AB(1)(a)/(b)/(c);
- (b) Final registration granted under Section 12AA(1).

The erstwhile provision did not cover cases of provisional registration granted under Section 12AB(1)(c). Now, the provisional registration granted for the first time can also be cancelled by the authorities.

UNDER WHAT CIRCUMSTANCES REGISTRATION CAN BE CANCELLED

- 6.01** The registration can be cancelled under the following circumstances:
- (a) The Principal Commissioner or Commissioner has noticed occurrence of one or more 'Specified Violations' during any previous year.
 - (b) The Principal Commissioner or Commissioner has received a reference from the Assessing Officer under the second proviso to Section 143(3) for any previous year.

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

MEANING OF 'SPECIFIED VIOLATION'

7.01 The following events shall be considered as specified violations as per clauses (a) to (g) of Explanation to Section 12AB(4):

- (a) Any income from the property held under trust is applied other than for the objects for which it is established [Clause (a)];
- (b) Trust has earned profits and gains from business, which is not incidental to the attainment of its objectives or Trust does not maintain separate books of account in respect of the business, which is incidental to the attainment of its objectives [Clause (b)];
- (c) Trust has applied any part of its income from the property held under trust for private religious purposes, which does not enure for the benefit of the public [Clause (c)];
- (d) Trust established for charitable purposes has applied any part of its income for the benefit of any particular religious community or caste [Clause (d)];
- (e) Any activity carried out by the trust is not genuine or is not being carried out in accordance with the conditions subject to which it was registered [Clause (e)];
- (f) Trust has not complied with the requirement of any other law for the time being in force as is material to achieve its objects, 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 [Clause (f)].
- (g) The application for registration under Section 12A(1)(ac) is not complete or it contains false or incorrect information [Clause (g)].

- 7.02** It is important to note that before the amendment by the Finance Act, 2022, Section 12AB(4) provided for cancellation of registration in case of any violation under Section 13. The amended Section 12AB(4) does not consider a violation of Section 13(1)(c) and Section 13(1)(d) as specified violations. Consequently, the registration cannot be cancelled on the ground that the assessee has violated Section 13(1)(c) or Section 13(1)(d). It may be noted that under Section 13(1)(c) any benefit given to interested person is disallowed and under Section 13(1)(d) investment in violation of Section 11(5) are disallowed.
- 7.03** Further, the Finance Act 2023 has inserted the following clause (g) in Explanation to Section 12AB(4) with effect from 01-04-2023. The insertion of clause (g) in the Explanation has now extended the scope of specified violations. Now, after this amendment, “specified violation” shall also include the case where the application referred to in Section 12A(1)(ac) is not complete or it contains false or incorrect information.

PROCEDURE TO BE FOLLOWED BY PCIT/CIT

- 8.01** The PCIT or CIT shall call for such documents or information from the trust or institution or make such inquiry as s/he thinks necessary to satisfy himself/herself about the occurrence or otherwise of any specified violation. He shall 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 s/he is satisfied that one or more specified violations have taken place.

Suppose s/he is not satisfied about the occurrence of one or more specified violations. In that case, s/he shall pass an order in writing, refusing to cancel the registration of such trust or institution.

PCIT/CIT shall forward a copy of the cancellation order or order refusing to cancel the registration, as the case may be, to the Assessing Officer and such trust or institution.

TIME LIMIT TO PASS CANCELLATION ORDER

- 9.01** The cancellation order or order refusing to cancel the registration, as the case may be, shall be passed before the expiry of 6 months, calculated from the end of the quarter in which the first notice is issued by the PCIT or CIT, on or after the 01-04-2022, calling for any document or information, or for making any inquiry.

NO CANCELLATION OF REGISTRATION ON THE ATTRACTION OF PROVISO TO SECTION 2(15)

- 10.01** CBDT has issued Circular No. 21/2016 [F. No. 197/17/2016-ITA-I], dated 27-5-2016, regarding the cancellation of registration under section 12AA. In this circular, it has been clarified that if proviso to section 2(15) is attracted in any particular assessment year, then the charitable status of the organisation will not be lost. The circular has further emphasised that any such cancellation under proviso to section 2(15) read with section 13(8) will cause undue hardship to the assessee particularly after the enactment of section 115TD where the net worth of the assessee will be subjected to tax in case of cancellation. The relevant extract is as under:

“4. In view of the aforesaid position, it is clarified that it shall not be mandatory to cancel the registration already granted u/s 12AA to a charitable institution merely on the ground that the cut-off specified in the proviso to Section 2(15) of the Act is exceeded in a particular year without there being any change in the nature of activities of the institution. If in any particular year, the specified cut-off is exceeded, the tax exemption would be denied to the institution in that year and cancellation of registration would not be mandatory unless such cancellation becomes necessary on the ground(s) prescribed under the Act.

5. With the introduction of Chapter XII-EB in the Act vide Finance Act, 2016, prescribing special provisions relating to tax on accreted income of certain trusts and institutions, cancellation of registration granted u/s 12AA

may lead to a charitable institution getting hit by sub-section (3) of Section 115TD and becoming liable to tax on accreted income. The cancellation of registration without justifiable reasons may, therefore, cause additional hardship to an assessee institution due to attraction of tax-liability on accreted income. The field authorities are, therefore, advised not to cancel the registration of a charitable institution granted u/s 12AA just because the proviso to Section 2(15) comes into play. The process for cancellation of registration is to be initiated strictly in accordance with Section 12AA(3) and 12AA(4) after carefully examining the applicability of these provisions.

6. The above may be brought to the notice of all concerned."

CONSEQUENCES ON CANCELLATION OF REGISTRATION

11.01 The following consequences may arise on the cancellation of the registration of a trust:

11.02 ***Income to be taxed as per normal provisions:*** Sections 11 to 13 are special provisions governing the taxation of charitable or religious institutions. Section 11 of the Act provides for grant of exemption in respect of income derived from property held under trust for charitable or religious purposes to the extent to which such income is applied or accumulated during the previous year for such purposes in accordance with the provisions contained in sections 11 to 13 of the Act.

Once the registration of the trust or institution stands cancelled, its income shall be computed as per the normal provisions of the Income-tax Act i.e., without giving benefit of provisions of sections 11 and 12. The income in such cases has to be computed under five heads of income i.e., salary, house property, capital gains, PGBP and other sources. It may be noted in case of forfeiture of income, the income is calculated under Section 11 but in case of cancellation of registration, the income will be calculated under five heads of income.

Further, any specific exemption provided under any other provisions to the registered entity shall not be available to such trust or institution after the cancellation of registration.

- 11.03 Cancellation of approval under Section 80G:** Section 80G of the Income-tax Act provides deduction while computing the total income in the hands of donor. It provides deduction in respect of donations to certain funds, charitable institutions, etc. Section 80G(5) prescribes certain conditions to be satisfied to get the approval under Section 80G. One of the conditions provided under Section 80G is that an institution is eligible for approval under Section 80G if its income is not liable to inclusion in its total income under the provisions of sections 11 and 12.

Now, if the registration is cancelled, the exemption under Sections 11 and 12 would not be available to the institution and the income would be liable to inclusion in total income. In such circumstances, the existing approval of the institution would be liable for cancellation.

- 11.04 Exemption under Section 10:** Where an institution has been granted registration under Section 12AB and the said registration is in force for any previous year, then the assessee is not eligible for exemption under Section 10 except exemption in respect of clauses (1), (23C), (23EC), (46) and (46A) of Section 10. By implication, once the registration is cancelled, the assessee would be entitled to claim an exemption under Section 10. Hence, if the registration of trust or institution is cancelled then it may avail the benefit of other exemptions provided under Section 10 which were erstwhile, not available.

- 11.05 Tax on accreted income:** The cancellation of registration can trigger the provisions of exit tax under Section 115TD. Section 115TD was inserted with effect from June 1, 2016, providing for levy of additional income-tax in case of conversion of a trust into a non-charitable form or on the transfer of assets of a charitable trust on its dissolution to a non-charitable institution.

Section 115TD prescribes circumstances under which exit tax is leviable. If registration granted to trust or institution under Section 12A or 12AA or 12AB has been cancelled, it shall be deemed to have been converted into any form not eligible for registration as per Section 115TD. In such a case, the accreted income of the trust or institution is liable to be taxed at Maximum Marginal Rate i.e., MMR.

APPEAL AGAINST THE ORDER OF CANCELLATION

- 12.01** An assessee aggrieved by the cancellation order passed by PCIT/CIT, may appeal to the Income Tax Appellate Tribunal against such order [Section 253(1)(c)].

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Annexure 1**TEXT OF SECTION 12AB(4) AND 12AB(5)**

(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 sub-section (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.
 - (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.
- (5) The order under clause (ii) or clause (iii) of sub-section (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).

