

ACCOUNT & AUDIT PENAL PROVISIONS

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CONSEQUENCES OF NOT OBTAINING AUDIT REPORT AND NON-MAINTENANCE OF BOOKS OF ACCOUNT



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OVERVIEW

- 1.01** The Finance Act, 2022 inserted sections 13(10) and 13(11) with effect from the assessment year 2023-24 to provide that if the accounts of the trust or institution have not been audited or books of accounts have not been maintained, the income chargeable to tax shall be computed after allowing a deduction for only those expenditure specified in these sections.
- 1.02** CBDT has issued circular for condonation of delay in filing Form 10B and Form 10BB, which may be referred to if there is a delay in the submission of the audit report.
- 1.03** Following the amendments made by the Finance Act of 2020, the audit report requirements have been specifically linked with section 44AB. Therefore, the audit report must now be obtained and filed at least one month prior to the due date for submitting the Return. Previously, the provision required that the audit report be filed along with the return.
- 1.04** The amended provision stipulates that the audit report should be furnished before the specified date referred to in section 44AB. As a result, it appears that from the assessment year 2020-21 onwards, the filing of the audit report has become a mandatory requirement.

WHETHER SUBMISSION OF THE AUDIT REPORT IS DIRECTORY OR MANDATORY?

- 2.01** The Finance Act 2020 has explicitly mandated that the audit report be obtained and furnished one month prior to the due date under section 139(1). There were numerous judicial precedents where it has been

determined that although submitting Form 10B along with the return is one of the conditions for claiming benefits under sections 11 and 12, it is a directory requirement rather than a mandatory one. In other words, it is a curable defect, and the Assessing Officer should accept the belated filing of the Audit Report in Form 10B. However, following the amendments made by the Finance Act 2020, the audit report must now be obtained and filed at least one month prior to the due date for submitting the Return. Previously, the provision required that the audit report be filed along with the return of income. The amended provision stipulates that the audit report should be furnished before the specified date referred to in section 44AB. As a result, it appears that from the assessment year 2020-21 onwards, the filing of the audit report has become a mandatory requirement.

- 2.02** Hence, in light of the amendments, the filing of audit reports seems to be a mandatory requirement, which used to be a directory in nature, i.e., prior to the assessment year 2020-21.

DELAY IN OBTAINING/SUBMISSION OF AUDIT REPORT W.E.F. AY 2023-24

- 3.01** If there is a delay in obtaining and furnishing the audit report at least one month prior to the due date, it will result in non-compliance with one of the conditions specified under section 12A. However, from AY 2023-24 this violation of condition will not result in withdrawal of benefit under sections 11 and 12, but income shall be computed under newly inserted provisions of Section 13(10) and Section 13(11).

COMPUTATION OF INCOME AS

PER SECTION 13(10) & 13(11)

- 4.01** The Finance Act 2022 inserted sections 13(10) and 13(11), with effect from the assessment year 2023-24. Similarly, the *twenty-second* proviso was inserted into section 10(23C). In the following cases, the benefit of exemption under Section 11/12 or Section 10(23C) shall not be available, if :
- (a) Trust or institution has not obtained the audit report
 - (b) Books of account and other documents have not been kept in the prescribed form/manner/place
 - (c) Trust or institution has not furnished the return of income within the time allowed under section 139(4A)
 - (d) If proviso to section 2(15) is applicable to trust or institution
- 4.02** Consequently, if a trust or institution has not obtained an audit report or has not maintained its books of account, the benefit of exemption will be denied to them in that assessment year.
- 4.03** In case of violation, the income for that specific year will be calculated according to the specific provisions outlined in the twenty-second proviso to Section 10(23C) and Section 13(10)/13(11). These provisions provide that in case specified conditions are violated, the income chargeable to tax shall be computed after allowing a deduction for expenditure incurred for the objects of the institution as specified in this section.
- 4.04** It provides that the income chargeable to tax shall be computed after allowing the deduction for the expenditure (other than capital expenditure) incurred in India for the objects of the trust or institution, subject to fulfilment of the following conditions, namely:

- (a) Such expenditure is not from the corpus standing to the credit of such trust or institution as on the last day of the financial year immediately preceding the previous year relevant to the assessment year for which the income is being computed;
- (b) Such expenditure is not from any loan or borrowing;
- (c) Claim of depreciation is not in respect of an asset, acquisition of which has been claimed as an application of income in the same or any other previous year; and
- (d) Such expenditure is not in the form of any contribution or donation to any person.

4.05 The provisions of Section 40(a)(ia), Section 40A(3) and Section 40A(3A) shall, *mutatis mutandis*, apply as they apply in computing the income chargeable under the head “Profits and gains of business or profession”. Therefore, the disallowances shall be made for the cash payment of expenditure and non-deduction or non-payment of TDS on the sum payable to a resident.

4.06 Further, no deduction of any expenditure or allowance or set-off of any loss shall be allowed to the assessee under any other provision of the Act.

CONDONATION OF DELAY IN FILING

AUDIT REPORT IN FORM 10B/10BB

5.01 CBDT has issued circular for condonation of delay in filing Form 10B and Form 10BB which may be referred to if there is a delay in the submission of the audit report.

- 5.02** *Delay in filing Form 10B/10BB:* The CBDT has authorised the Principal Commissioner/Commissioner to admit belated applications under Section 119(2)(b) for condonation of delay in filing of Form 10B/10BB. Such a belated application shall be admitted as per the provisions explained below.
- (a) *Up to 365 days delay in filing of Form 10B/10BB for assessment year 2018-19 & onwards [Circular No. 16/2024, dated 18-11-2024]*
- 5.03** In cases of delay of up to 365 days in filing of Form 10B/10BB, Pr. CsIT/ CsIT can admit applications for condonation and decide on merit. While entertaining such applications, Pr. CsIT/CsIT shall satisfy themselves that the assessee was prevented by reasonable cause from filing such application within the stipulated time.
- (b) *More than 365 days delay in filing of Form 10B/10BB for assessment year 2018-19 & onwards [Circular No. 16/2024, dated 18-11-2024]*
- 5.04** In cases of delay of more than 365 days and up to three years in the filing of Form 10B/10BB for AY 2018-19 or for any subsequent Assessment Years, the Pr. CCsIT/CCsIT/DGsIT are authorised to admit such applications of condonation of delay and decide on merits.
- 5.05** The Pr. CCsIT/CCsIT/CsIT/DGsIT, while entertaining such applications for condonation of delay in filing of Form 10B/10BB, shall satisfy themselves that the applicant was prevented by reasonable cause from filing such form within the stipulated time. Such application for condonation shall preferably be disposed of within six months from the end of the month of receipt of the application.

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