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POWER TO CONDONE DELAY IN APPLICATION FOR 12AB REGISTRATION

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INTRODUCTION

1.01 Under the provisions of Section 12AB, trusts or institutions seeking registration or renewal has to apply within the timelines specified in clause (ac) of Section 12A(1). However, there are instances where trusts or institutions fail to submit their applications within the stipulated period. Such delays can lead to significant consequences, primarily the taxation of accreted income under Chapter XII-EB of the Income-tax Act, resulting in a permanent loss of tax-exempt status. Before the proposed amendments in the Finance (No. 2) Bill 2024, the Principal Commissioner of Income Tax (PCIT) or Commissioner of Income Tax (CIT) did not have the power to condone delays. To handle such situations, the Central Board of Direct Taxes (CBDT) has been issuing circulars for condonation under Section 119.

PROPOSED AMENDMENT

2.01 The proposed amendment by the Finance (No. 2) Bill 2024 empowers the PCIT/CIT to condone delays in filing applications and treat such applications as timely filed, provided there is a reasonable cause for the delay. These amendments will come into effect on 01-10-2024.

2.02 The relevant proviso added to Section 12A(1)(ac) states: (c) after sub-clause (vi), the following proviso shall be inserted, namely:?

> "Provided that where the application is filed beyond the time allowed in sub-clauses (i) to (vi), the Principal Commissioner or Commissioner may, if he considers that there is a reasonable cause for delay in filing the application, condone such delay and such application shall be deemed to have been filed within time".

ISSUES AND IMPLICATIONS OF THE PROPOSED AMENDMENT

3.01 This amendment grants the PCIT/CIT extensive power to condone delays for filing applications under Section 12A(1) (ac). The condonation applies to delays beyond the time allowed in sub-clauses (i) to (vi), which include:

(i) where the trust or institution is registered under section 12A [as it stood immediately before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)] or under section 12AA [as it stood immediately before its amendment by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (38 of 2020)], within three months from the first day of April, 2021;

(ii) where the trust or institution is registered under section 12AB and the period of the said registration is due to expire, at least six months prior to expiry of the said period;

(iii) where the trust or institution has been provisionally registered under section 12AB, at least six months prior to expiry of period of the provisional registration or within six months of commencement of its activities, whichever is earlier;

(iv) where registration of the trust or institution has become inoperative due to the first proviso to sub-section (7) of section 11, at least six months prior to the commencement of the assessment year from which the said registration is sought to be made operative;

(v) where the trust or institution has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, within a period of thirty days from the date of the said adoption or modification;

(vi) in any other case, where activities of the trust or institution have-

(A) not commenced, at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration is sought;

(B) commenced and no income or part thereof of the said trust or institution has been excluded from the total income on account of applicability of sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, or section 11 or section 12, for any previous year ending on or before the date of such application, at any time after the commencement of such activities.

3.02 The key takeaway from this amendment is that organizations can now apply to regularize their old registrations, which expired on 31-03-2021 under clause (i) of Section 12A(1)(ac). Even if an organisation failed to apply for fresh registration under Section 12AB when the new registration scheme took effect from 01-04-2021, they can still submit a condonation application. If the condonation application is approved and the delay is justified, the organisation can then apply for fresh registration for a period of five years. This provision applies even though multiple circulars have extended the application timeline.

3.03 Further, the condonation application can be filed in cases where there has been a delay in converting provisional registration to regular registration under clause (iii) of Section 12A(1)(ac).

NO SIMILAR CONDONATION SCHEME PROPOSED FOR SECTION 80G APPROVAL

4.01 Notably, similar condonation provisions have not been proposed for approvals under Section 80G. Circular No. 6/2023 provided relief by extending the due date for filing Form 10A/10AB to September 30, 2023, but did not address delays in submitting Form 10AB for 80G approval. This omission led to increased litigation, as seen in the Madras High Court's judgment in the Sri Nrisimha Priya Charitable Trust case, which declared clause 5(ii) of Circular No. 6/2023 as arbitrary and ultra vires the Constitution.

4.02 The High Court of Madras in the case of Sri Nrisimha Priya Charitable Trust v. CBDT [2024] 161 taxmann.com 209 (Madras) held as under:

> *"6.6. In the instant case, the differential treatment is not based on any substantial distinction that is real and pertinent to the object of the circular. The discrimination is artificial. The respondents are evasive and could not provide any rationale for such a classification. Accordingly, we hold that the impugned clause (ii) of the Circular, dated 24.05.2023 is arbitrary and violative of Article 14 of the Constitution of India and accordingly, would be ultra vires the Constitution.*

6.7. Because we find that clause (ii) of the impugned circular is unconstitutional, we direct the first respondent to consider the applications of the petitioners as to the recognition/approval in respect of clause (i) of the first proviso to sub-section (5) of section 80G of the Act as within time and consider the same and pass orders thereon on merits as per law."

4.03 Subsequently, Circular No. 7/2024 was issued to address issues not covered in Circular No. 6/2023, specifically including the regularisation of 80G approvals and intimation under the fifth proviso of Section 35(1).

4.04 In the budget proposal, the approval-based exemption for charitable trusts under Section 10(23C) is set to be phased out and integrated into the exemption scheme under Sections 11 to 13. As a result, the condonation of delay scheme may no longer be necessary for Section 10(23C) approvals. However, considering that this proposed amendment aims to provide relief to assessees and reduce litigation, it would be prudent to extend similar powers of condonation to applications under Section 80G.

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