

CBDT CIRCULAR ON FORM 10B & 10BB

◆ Legal Series Vol. XVI ◆ Issue 10

For private circulation only

RELIEF FOR FILING WRONG AUDIT REPORT UNDER FORM 10B OR 10BB



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INTRODUCTION:

- 1.01** The Central Board of Direct Taxes (CBDT) has recently issued Circular 2/2024 dt. 05/03/2024 under section 119 of the Income Tax Act. This circular provides relief to the organisations which have made mistake in uploading the audit report in Form 10B or Form 10BB for the AY 2023-24. In this issue an analysis of the implications of this circular has been made to understand how the exact nature and type of relief is provided by CBDT.

WHEN ARE CHARITABLE TRUSTS REQUIRED

TO GET THEIR ACCOUNTS AUDITED?

- 2.01** Trusts must meet certain conditions to be eligible for exemptions under Sections 11 and 12, including the audit of the books of accounts under Section 12A(1)(b). Similarly, the *tenth proviso* to Section 10(23C) requires institutions approved under that clause to have their accounts audited. The trust or institutions with income exceeding the maximum amount not chargeable to tax are required to get their accounts audited.
- 2.02** Therefore, the books of accounts are required to be audited where the total income of the trust or institution before exemption under Sections 11/12 or Section 10(23C) exceeds the maximum amount not chargeable to tax. The current exemption limit is Rs. 2,50,000. Thus, this requirement does not apply to institutions whose total income [before exemption under Sections 11/12 or Section 10(23C)] is less than or equal to Rs. 2,50,000.

IN WHICH FORM DOES THE TAX AUDIT

REPORT HAVE TO BE OBTAINED?

- 3.01** Upto the Assessment Year 2022-23, there were two types of audit reports - Form 10B for trusts or institutions registered under Section 12AB and Form 10BB for

trusts or institutions approved under Section 10(23C). From AY 2023-24 the same form shall be used by both categories of institutions based on the conditions specified in Rule 16CC and 17B.

- 3.02** The CBDT has notified new audit reports¹ in Form 10B and Form 10BB to be furnished by charitable or religious trusts and other institutions from AY 2023-24. The amended rules outline the conditions under which an audit report must be provided in either Form 10B or Form 10BB. These two forms differ in their applicability and purpose.

Form 10B and Form 10BB consist of two parts:

- (a) Audit Report; and
- (b) Annexure to Audit Report.

- 3.03** Form 10B is more comprehensive and detailed than Form 10BB. The annexure in Form 10B encompasses 49 clauses, whereas the annexure accompanying Form 10BB comprises 32 clauses that outline the required information to be included in the audit report.

WHO HAS TO FILE AN AUDIT REPORT IN FORM 10B?

- 4.01** The trusts or institutions registered under Section 12AB or approved under Section 10(23C) that satisfy **any of the following conditions** must file an audit report in Form 10B.

- (a) If the total income of the trust or institution, before exemption under Sections 11 and 12 or Section 10(23C) (iv), (v), (vi), (via) of the Act, exceeds Rs. 5 crores during the previous year;
- (b) If such trust or institution has received any foreign contribution during the previous year; or

- (c) If such trust or institution has applied any part of its income outside India during the previous year.

The expression “foreign contribution” shall have the same meaning assigned to it in Section 2(1)(h) of the Foreign Contribution (Regulation) Act, 2010.

WHO HAS TO FILE AN AUDIT REPORT IN FORM 10BB?

5.01 The trusts or institutions registered under Section 12AB or approved under Section 10(23C) satisfying **all of the following conditions** must file an audit report in Form 10BB:

- (a) If the total income of the trust or institution, before exemption under Sections 11 and 12 or Section 10(23C) (iv), (v), (vi), (via) of the Act, is Rs. 5 crores or less; and
- (b) If such trust or institution has not received any foreign contribution during the previous year; and
- (c) If such trust or institution has not applied any part of its income outside India during the previous year.

The expression “foreign contribution” shall have the same meaning assigned to it in clause (h) of Section 2(1) of the Foreign Contribution (Regulation) Act, 2010.

THE RELIEF PROVIDED BY THE CIRCULAR

6.01 The Circular 2/2024 dated 05.03.2024 has provided very limited relief, it has taken care of only those cases where Audit report has been uploaded on or before 31st October, 2023 but wrong form has been used i.e. Form 10B has been used in place of Form 10BB or vice-versa. In such cases, it is provided that such trust / institution can submit a fresh Form 10B/10BB as applicable to them latest by 31.03.2024 and such submission of fresh audit report in Form 10B/10BB shall be considered to be submitted in time.

The relevant portion of this circular has been reproduced herein below:

“6. Thus A.Y-2023-24 is the first year when changes described in paragraphs 3 and 4 take effect.

7. It has come to attention of the Board that in a number of case trusts/institutions have furnished audit report in Form No 10B, WHERE Form No .10BB was required to be furnished for the A.Y.2023-24. Similarly , in a number of cases trusts/institutions have furnished audit report in Form 10BB, WHERE Form No .10B was furnished for the A.Y .2023-24.

As noted above, non furnishing of audit report in the prescribed form would result in denial of exemption in such cases as it is one of the conditions which is required to be satisfied for claim of exemption.

*8. In view of the above , the Central Board of Direct Taxes, in exercise of its powers under section 119 of the Act hereby allows those trusts/ institutions **which have furnished audit report on or before 31st October 2023 in Form 10B where Form No .10BB was applicable and vice-versa**, to furnish the audit report under clause (b) of the tenth proviso to clause (23C) of section 10 and sub clause (ii) of clause (b) of sub section(1) of section 12A of the Income Tax Act, 1961 in the applicable Form No 10B/10BB for the assessment year 2023-24, on or before 31st March 2024.”*

It can be seen that the said circular has provided very limited relief only to those organisations who have uploaded the audit report in wrong Form i.e. have filed Form 10B in place of Form 10BB and vice-versa.

THE ISSUES NOT ADDRESSED BY THE CIRCULAR

6.01 Circular has also failed to bring any clarification or relief on the following key issues :

- Further the circular allows revision of only those audit report which were filed within the due date. The circular does not provide any relief for audit report uploaded in wrong form after 31.10.2023. The above circular applies only when, audit report is uploaded within the due date and therefore no relief in such cases.
- The circular does not provide any relief to those organisation who have not file the audit report so far.

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Annexure-1**Circular No. ;2../2024**

F. No.370142/6/2024-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
(TPL Division)

Dated 05th March, 2024**Sub: Order under section 119 of the Income-tax Act, 1961 - reg.**

Income of any fund or institution or trust 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 (hereinafter referred to as trust or institution under the first regime) of the Income-tax Act, 1961 (hereinafter referred to as the Act) or any trust or institution registered under section 12AA or section 12AB of the Act (hereinafter referred to as trust or institution under the second regime) is exempt subject to fulfilment of certain conditions specified under various sections of the Act.

2. One of the conditions required to be fulfilled by the trust or institution in order to be eligible to claim exemption under the first regime, is laid down in clause (b) of the tenth proviso to clause (23C) of section 10 of the Act. This states that in case the total income of the trust or institution, as computed under the Act without giving effect to the provisions of exemption under the first regime, exceeds the maximum amount which is not chargeable to income-tax in any previous year, the trust or institution is required to get its accounts audited and furnish the audit report in the **prescribed Form before the specified date.**

2.1 A similar condition is in place for trust or institution under the second regime in sub-clause (ii) of clause (b) of sub-section (1) of section 12A of the Act.

3. Rule 16CC and 17B of the Income-tax Rules, 1962 (hereinafter referred to as the Rules) prescribe the form of audit report for trust or institution under the first and second regime respectively. They provide that the report of audit of the accounts of a trust or institution, shall be furnished in -

(a) Form No. 10B where,

- (i) the total income of trust or institution, exceeds rupees five crores during the previous year; or
- (ii) such trust or institution has received any foreign contribution during the
- (iii) such trust or institution has applied any part of its income outside India during the previous year;

(b) Form No. 10BB in other cases.

4. The new forms, Form No. 10B I Form No. 10BB, were notified vide Notification No. 7 of 2023 dated 21st February, 2023. The above prescription was put in place w.e.f. 01.04.2023, vide the Income-tax (Third Amendment) Rules, 2023, and is therefore, effective for assessment year 2023-24 and subsequent assessment years. The due date for furnishing such audit reports for the A.Y. 2023-24 was 31st October, 2023.

5. Prior to the aforesaid amendment of the Rules, the earlier prescribed form for audit report was Form No. 10BB for trust I institution in the first regime and Form No. 10B for trust I institution in the second regime.

6. Thus, A.Y. 2023-24 is the first year when changes described in paragraphs 3 and 4 take effect.

7. It has come to the attention of the Board that in a number of cases trusts I institutions have furnished audit report in Form No. 10B, where Form No. 10BB was required to be furnished for the A.Y. 2023-24. Similarly, in a number of cases trusts I institutions have furnished audit report in Form No. 10BB, where Form No. 10B was required to be furnished for the A.Y. 2023-24.

As noted above, non-furnishing of audit report in the prescribed form would result in denial of exemption in such cases as it is one of the conditions which is required to be satisfied for claim of exemption.

8. In view of the above, the Central Board of Direct Taxes, in exercise of its powers under section 119 of the Act hereby allows those trusts I institutions which have furnished audit report on or before 31st October, 2023 in Form No. 10B where Form No. 10BB was applicable and vice-versa, to furnish the audit report under clause (b) of the tenth proviso to clause (23C) of section 10 and sub-clause (ii) of clause (b) of sub-section (1) of section 12A of the Income-tax Act, 1961, **in the applicable Form No. 10B I 10BB** for the assessment

year 2023-24, on or before 31st March, 2024.

Sourabh Jain

Under Secretary (TPL) - I, CBDT

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