



26th September, 2022

28167

Shri Nitin Gupta, IRS

Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
Government of India,
North Block, New Delhi -110001

Sub: Representation for extension of date of filing Audit Report in Form No.10B (due to defect in the form itself) and ITR - 7 by Public Charitable or Religious Trusts or Institutions for F.Y. 2021-22 of A.Y. 2022-23

Respected Sir,

Greetings from Gujarat Chamber of Commerce and Industry

The public charitable or religious trusts or institutions are required to get filed Audit Report in Form No.10B on or before 30/09/2022 as per Section 12A(1)(b) of the Income Tax Act which reads as under:

Section 12A(1)(b) : “where the total income of the trust or institution as computed under this Act without giving effect to [the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income tax in any previous year], the accounts of the trust or institution for that year have been audited by an accountant as defined in the explanation below sub-section (2) of section 288 [before the specified date referred to in section 44AB and the person in receipt of the income furnishes by that date] the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed].”

The specified date u/s.44AB is defined in the Explanation thereto which reads as under:

(ii) “specified date”, in relation to the accounts of the assessee of the previous year relevant to an assessment year, means [date one month prior to] [the due date for furnishing the return of income under sub-section (1) of section 139].”



ગુજરાત વેપારી મહામંડળ

Gujarat Chamber of Commerce & Industry



Pathik Patwari

President

Ajay Patel

Sr. Vice President

Yogesh Parikh

Vice President

Anil Jain

Hon. Secretary

Dilip Padhya

Hon. Secretary (R)

Apurva Shah

Hon. Treasurer

2. An option in Form 9A under clause 2 of the Explanation-1 to section 11(1) of the Income tax Act has to be exercised before the expiry of time allowed under sub-section (1) of Section 139 for furnishing the return of income. Section 139(1) requires to furnish the return of income **before the due date i.e. 31st October, 2022, whereas para 2 of the annexure to Form No.10B (copy annexed as Annexure-A)** requires to answer **“whether the trust has exercised the option under clause 2 of the Explanation to section 11(1)? If so, the details of the amount of income deemed to have been applied to charitable or religious purposes in India within previous year.** Here, there is a glaring contradiction inasmuch as an option is required to be exercised before 31st October, 2022, how the answer about exercising the option in Form No.10B on or before 30/09/2022 is contemplated before the due date of 31/10/2022. If no details are provided in para 2 (supra) for the option exercised under clause 2 of the Explanation to Section 11(1) of the Income tax Act, the claim for the said option would not only be vitiated but may be negated in the assessment proceedings for its non-disclosure in Form 10B. **“Has exercised the option” (supra)** means the act of filling form 9A has been completed by the time of filing the form 9A. Under these circumstances, the date for filing Form No.10B should be in harmony with the due date therefore, this is a fit case for granting extension of time of filing Form no. 10B up to the due date.
3. The due date of 31/10/2022 is also required to be extended at least by two months. i.e. from 31/10/2022 to 31/12/2022 in view of so many changes made in the ITR-7 running in to 43 pages. The instructions for filing ITR-7 have been issued by the department only on 11/09/2022 i.e. is before 14 days only. It runs in to 200 pages. How can one file return of income without making a thorough study of instructions vis-à-vis the return of income & provisions of the law. The changes in the ITR-7 keep on changing which make it difficult for assessee and tax



consultants to keep pace with it. Such changes have been made on 06/07/2022, 18/08/2022, 27/08/2022, and 22/09/2022.

The Major changes among other in the return of Income (ITR-7) are as under.

3.1 There is a change in Section 13(1)(d). It reads as under:

Section 11(1) : Subject to provisions of section 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income –

“(d) income in the form of voluntary contributions made with a specific direction that they shall form part of corpus of the trust or the institution (subject to the condition that such voluntary contribution are invested or deposited in one or more of the forms or modes specified in sub-section (5) maintained specifically for such corpus).”

This amendment is applicable from the financial year 2021-22 of asst. year 2022-23, meaning thereby, any corpus donation received during the financial year 2021-22 is required to be invested or deposited in one or more forms or modes specified in sub-section (5) of section 11. **Instead of asking details as to whether the amount of corpus donation received during the F.Y. 2021-22 has been invested or deposited in specified modes u/s 11(5) or not, so many details about the corpus donations have been asked for in Schedule-J.** To fill up Schedule-J (introduced for the first time) with so many details asked for the first time, it is a herculean task to fill up the details for which sufficient time is badly required to file ITR-7.

4. There are so many issues remaining unanswered say gold ornaments are received by the trust by way of corpus donation with a specific direction from donor to treat it as corpus donation. The gold ornaments received as corpus donation by the temple or furniture received as corpus donation by the school do not satisfy the mode of investment u/s 11(5). In this situation, whether the donation which is



really of corpus nature should be changed as current donation to satisfy the requirement of Section 11(5).

5. There are so many other issues arising out of so many changes effective from A.Y. 2022-23 remaining unanswered due to complexities of the provision, lack of clarity by the department and frequent changes in ITR-7. Under the confused state of the situation and severe ramifications for wrong disclosure in Form No.10B/ITR-7/9A/10, the chances of giving rise to the huge demand in so many cases and unwanted litigation will get escalated beyond limit. To obviate such difficulties, at least time up to 31/12/2022 is badly required. The clarifications by the department by FAQs will go a long way by which the trustees / tax consultants of the trust will come know about the correct provisions and procedures of the law.

6. There are other practical difficulties in filing ITR-7. The same are as under.

6.1 The e-filing utility is not allowing negative balance of income & expenditure account to be reflected in Reserves & Surplus or in any other filed in the Balance sheet.

6.2 If there is a shortfall in corpus investments as against the corpus fund at the beginning of the year, which remains the same at the end of the year, the difference gets taxed as income of the year in item 3 of Part B – TI (Statement of Income for the period ended on 31.03.2022), though it may not be the income of the year (e.g. consider a case where there is an opening shortfall, and no corpus donations received during the year).

6.3 The list of corpus investments in Part B of Schedule J automatically gets picked up in Part A – BS (Balance Sheet). This does not match with the actual balance sheet figures, as corpus investments made in depreciable fixed assets will be reflected at written down value in the actual Balance Sheet, and not at original cost.

6.4 While filling up Schedule D in the ITR Form 7, the assessee is required to give details of deemed application of income under clause (2) of Explanation 1 to section 11(1) and furnish particulars of (a) year in which income is deemed to be applied (financial year), (b) amount deemed to be applied during the previous year of deeming,



ગુજરાત વેપારી મહામંડળ

Gujarat Chamber of Commerce & Industry



Pathik Patwari
President

Ajay Patel
Sr. Vice President

Yogesh Parikh
Vice President

Anil Jain
Hon. Secretary

Dilip Padhya
Hon. Secretary (R)

Apurva Shah
Hon. Treasurer

(c) reason of deeming application, (d) out of the deemed application claimed, amount required to be applied during the financial year pertaining to current assessment year, (e) amount of deemed application claimed in earlier years and applied during the financial year pertaining to current asst. year, (f) Amount which could not be applied and deemed to be income u/s 11(1B) during the previous year and balance Amount of deemed Income being exemption claimed in earlier years on account of deemed application and required to be applied in FY 2022-23 onwards. The following issue is being faced while filing return:

The (b) amount deemed to be applied in the previous year of deeming' gets automatically picked up in Part A – BS – Balance Sheet under Own funds. However, this does not match with the actual balance sheet, as no liability is created in accounts. This creates a problem, if there is no credit balance in Income & Expenditure Account, but a debit balance.

We hope your good self will consider the above representation and grant the extension of time of filing Form no.10B and ITR-7 up to 31-12-2022.

Thanking You,
With Warm Regards,

Pathik Patwari
President.

CA Dr. Jainik Vakil
Chairman, Direct Tax Committee