

## Audit of accounts, I-T and educational bodies

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In most cases where educational institutions and public trusts are seeking income-tax exemptions. It is a pre-condition for them to carry out an audit of their accounts. It would be in the fitness of things to get to the deep recesses of the Income Tax Act, 1962 and establish the essential linkages between audit of accounts and income-tax exemption for the bodies.

### Q. Whether audit of accounts is required in case of ;

- (i) Section 10(23C) (iiiad) where aggregate annual receipts are upto Rs. 1 crore
- (ii) Section 10(23C) (iv) where aggregate annual receipts are more than Rs 1 crore
- (iii) Trust/Institution seeking registration u/s 12A

A. Section 12A of the Income Tax act 1961 provides that the provision of section 11 and section 12 shall not apply in relation to income of any trust or institution unless the following conditions are fulfilled namely:

- (i) The person in receipt of the income has made an application for the registration of the trust or institution in the prescribed form and in the prescribed manner to the commissioner within prescribed time
- (ii) Where the total income of the trust or institution as computed under this act without giving effect to the provision of section 11 and section 12 exceeds 50000 rupees in any previous year, the accounts for that year have been audited by a chartered accountant (audit report in form 10B).

Hence where 12A is applicable; apart from requiring registration with the Commissioner it also requires the accounts of a public trust or the institution to be audited every year. Thus audit is one of the conditions before allowance of exemption under section 11 and 12 where total income exceeds Rs 50,000.00 per annum.

In case an Institution exempt u/s 10(23C(iiiad) where Section 12A is not applicable, there would be no requirement for any audit. Whereas in cases covered under *Section 10(23C)(vi)* on making an application seeking approval of the prescribed authority it is provided in the section 10(23C) that the Central Government/prescribed authority before notifying the fund or trust or institution, may call for such documents (*including audited annual accounts*) or information from the fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, as it thinks necessary in order to satisfy itself about the genuineness of the activities of the fund or trust or institution or any university or other educational institution, as the case may be, and the Central Government or the prescribed authority, as the case may be, may also make such inquiries as it deems necessary in this behalf. Therefore it is clear that the Accounts have to be got audited from a Chartered Accountant.

### Q. What happens if audited report is not submitted along with the return of income u/s Section 12A?

A. Section 12A requires the report on such audit to be furnished “along with the return of income for the relevant assessment year”. The section therefore, envisages the audit report as an accompaniment to the return of income. However, if such report does not accompany the return of income, the return will not be

invalid , as the only consequence of such report not accompanying the return is the non-admissibility of exemption under section 11 and 12.

conceivably, the report on such audit may accompany not the first return filed under section 139(4A) , but a revised or a subsequent return.

That some thing which should have accompanied the return of income originally can be submitted along with a supplemental or revised return if it was not submitted with the original return is settled by the decision of the Patna High Court in CIT v. Sitaram Bhagwandas (102 ITR 560) and of the Calcutta High Court in CIT v universal Trading Company (114 ITR 412).

There are some conflicting decisions of various High Courts on this issue.

Therefore it is advisable that to avoid any unnecessary difficulty the audit report should accompany the return itself..

**Q. Whether tax audit is required in case of;**

- (i) **Section 10(23C) (iiiad)**
- (ii) **Section 10(23C) (vi)**
- (iii) **Trust/Institution seeking registration u/s 12A**
- (iv) **Trust/Institution carrying on business also**

*A The following persons are required to get their accounts compulsorily audited by a chartered accountant u/s 44AB on compulsory basis:*

(i) For a person carrying on business, if the total sales, turnover or gross receipt in business for the accounting year or years relevant to the assessment year exceed or exceeds Rs. 40 lakhs.

(ii) A person carrying on profession, if his gross receipt in profession for an accounting year or years relevant to any of the assessment year exceeds Rs. 10 lakh.

(iii) An assessee (covered under section 44AD, 44AE or 44AF) who claims that the profits and gains from the business are lower than the profits and gains computed in accordance with sub-section (1) of section 44AD or sub-section (2) of section 44AE or sub-section (1) of section 44AF, as the case may be (irrespective of his turnover).

Audit under these Sections is required only in case of business or profession. And mostly one engages in

business or profession for profits not for charity. So an institution existing for the sole purposes of

education/(charity) and not for profits will not fall under the ambit of these sections.

However in case of an institution or trust existing for charitable purpose but also doing some business for which separate accounts are being maintained and the turnover in such business is more than 40 lakhs then the tax audit would be required to be conducted.

**Q. Whether maintenance of accounts is compulsory in case of;**

- **Section 10(23C) (iiiad)**

- **Section 10(23C) (iv)**
- **Trust/Institution seeking registration u/s 12A**
- **Trust/Institution carrying on business also**

A. Section 12A requires audit of “ACCOUNTS OF THE TRUST” curiously however, there are at present no effective provision in the act requiring compulsory maintenance of accounts by trusts. Section 44AA(2) of the act does require a person carrying on business or profession to maintain certain accounts and records. but, obviously, this provision will apply only to a trust which is carrying on a business. Even the rules issued under section 44AA(3) are applicable only to persons engaged in specified profession. In this connection a comparison may be made with the provisions of section 80G(5) (iv) which requires maintenance of “regular accounts... receipts and expenditure...”. apart from the aforesaid compulsory maintenance of accounts. even the requirement under section 80G(5) (iv) relates only to receipts and expenditure, whereas the audit under section 12A extends even to assets and liabilities.

However in view of the clear requirement to section 12A read with the prescribed rule and form, it is necessary for every trust or institution claiming exemption under section 11 and 12 to maintain accounts so as to enable the submission of an audit report. It is quite conceivable that a company formed under section 25 of the Companies Act, 1956 may be claiming exemption under section 11 and 12. In such a case, the company will be required to maintain proper books of account under the Companies Act. The audit under section 12A will be in addition to the statutory audit under the Companies Act. The books of account as required under the Companies Act should ordinarily be adequate for the purposes of audit under section 12A. In other cases there can be no hard-and-fast rule as to the nature and mode of keeping accounts; but it can be stated as a broad proposition that the accounts should be such as to enable an audit report to be made thereon in terms of the prescribed form.

Sub-section (4A) of section 11, introduced by the Finance Act, 1963, effective from April 1, 1984, provides that the profits and gains of a business carried on by a trust claiming exemption under section 11 will not be so exempt unless, inter alia, separate books of account are maintained in respect of such business. therefore , in relation to such trust, “proper books of account” would also signify such separate book of account.

***Q. Are charitable institutions liable to pay wealth tax?***

A. Under Section 5(i), any property held by an assessee under a trust or other legal obligations for any public purpose of charitable or religious nature in India is totally exempt

***Q. Is the consideration for exempting an institution from Wealth Tax the same as that of consideration under Income Tax Act, 1961?***

A. Unlike the provisions of the Income-tax Act, the application of the money held under a trust or under legal obligation is not a relevant consideration for exemption under section 5(i). If the trustees hold the property for public purpose of a charitable or religious nature, even if they misapply or commit breach of trust, they will continue to enjoy exemption under the Act.