

BHUJ BRANCH OF WIRC OF ICAI

E-NEWSLETTER FOR THE MONTH OF MAY-2021

(FOR PRIVATE CIRCULATION ONLY)

CA. Ramesh Pindolia

Chairman & Treasurer

9825662808

CA. Purvi Mehta

Vice Chairman, Secretary &

WICASA Chairman

9374338587

CA. Jitendra Thacker

Imm.Past Chairman

9825537937

CA. Hardik P.Thacker

Member

9825858580

CA. Ashish Gadhavi

Member

9925738543

CA. Priti Savla

Branch Nominee (WIRC)

CA Jagrut Anjaria

Newsletter Advisor

9426788728

Address:-
Hall No. 2,
Katira Complex-2
Sanskar Nagar
Bhuj-Kachchh
Phone:-258580;
9925738543
E-mail:-
bhujbranch.wirc@gmail.com

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CA Ramesh H.Pindolia

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CA Jagrutkumar A Anjaria

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CHAIRMAN'S COMMUNICATION

Respected Members,

India is registering a steady increase in reporting fresh Covid-19 cases for almost last 5-6 weeks, the active cases have increased while the recovery rate has further dropped. Kutch is also witnessing a surge in new corona virus cases in a span of last 5-6 Week. We all need to be cautious and follow appropriate behaviour such as wearing of mask and maintaining social distancing.

During the Month of April, Bhuj Branch has created a Help Desk for Bank Branch Audit with Learned Chartered Accountants from our own branch who helped members in resolving their queries at the time of Bank Audits. A big thanks to CA Pravin Doshi and CA Bhavee Thacker who have provided their expert services to members and resolved the queries related to Bank Branch Audit. We have jointly organised CPE Seminar on very very relevant topic “Re-registration of Charitable entities” with Anand and Gandhidham Branch. Expert Faculty CA Brijesh Shah from Anand has shared their views and expertise with members and cleared the doubts relating to new procedure of Re-registration of charitable entities.

This is a difficult time for all of us when our country is suffering adversely from a worldwide pandemic Corona; but CORONA is just a phase which would eventually pass but learning should never stop. Chartered Accountancy profession promises a challenging and highly rewarding professional life. It requires constant learning and practice to effectively evolve and excel in professional arena and that's the reason we at Bhuj Branch would continuously organize programs for benefit of members.

I do believe that together with the support and guidance of the members, we would accomplish higher goals and emerge stronger by negating the effect of COVID pandemic.

Best Regards,

CA Ramesh Pindolia

Chairman, Bhuj Branch of WIRC of ICAI

Re-registration & Certain Compliances post 1 April 2021 of Charitable Entities

CA Ramesh H. Pindolia

B.Com., LLB (Spl) FCA,
DISA(ICAI),DIRM(ICAI)

1.1 Requirement for approval of institution or fund under section 80G(5)(vi) of the IT Act

Form in which application to be made	Type of Application	Applicable to –
Form 10A	in case of application under clause (i) or clause (iv) of section 80G(5) of the IT Act to the Principal Commissioner or Commissioner authorised by the Board; or	√ Existing charities having registration u/s 80G(5)(vi) of the IT Act or residual entities to which clause (i) to (iii) of first proviso is not applicable
Form 10AB	in case of application under clause (ii) or clause (iii) of section 80G(5) of the IT Act to the Principal Commissioner or Commissioner	√ Charities whose period of approval is due to expire (application to be made at least 6 months prior to expiry) – Sec 80G(5)(ii) or √ Charity which has

	authorised under the said proviso	been granted provisional approval (application to be made at least 6 months prior to expiry or provisional approval or commencement of activities, whichever is earlier)– Sec 80G(5)(iii)
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1.2 Documents to be accompanied with the application in Form 10A or Form 10AB, as required by respective Forms

Details of Documents	Comments
1. where the applicant is created, or established, under an instrument, self-certified copy of the instrument;	<p>√ For section 8 / section 25 Companies – Memorandum of Association (MoA) and Articles of Association (AoA)</p> <p>√ For Trusts – Trust Deed</p> <p>√ For Societies – Memorandum of Association (MoA)</p>
2. where the applicant is created, or established, otherwise than under an instrument, self-certified copy of the document evidencing the creation or establishment of the applicant;	Self Certified Copy of Extract of P.T. entry can be submitted.

<p>3. self-certified copy of registration with Registrar of Companies or Registrar of Firms and Societies or Registrar of Public Trusts, as the case may be;</p>	<p>√ For section 8 / section 25 Companies – Certification of Incorporation issued by Registrar of Companies (RoC)</p> <p>√ For Trusts – Certificate of Registration issued by Charity Commissioner</p> <p>√ For Societies – Societies registration certificate issued by prescribed authority</p>
<p>4. self-certified copy of registration under Foreign Contribution (Regulation) Act, if the applicant is registered under such Act;</p>	<p>√ Foreign Contribution (Regulation) Act, 2010 (FCRA) registration copy, if any.</p>
<p>5. self-certified copy of existing order granting registration under clause (vi) of sub section (5) of section 80G;</p>	<p>√ Copy of existing section 80G(5)(vi) registration certificate</p>
<p>6. self-certified copy of order of rejection of application for grant of approval under clause (vi) of sub-section (5) of section 80G, if any;</p>	<p>√ Copy of section 80G(5)(vi) registration rejection order passed, if applicable</p>
<p>7. where the applicant has been in existence during any year or years prior to the financial year in which the application for registration is made, self-certified</p>	<p>√ Audited financial statements of the Charity for FY 2017-18, 2018-19 and FY 2019-20 (if audited statement of F. Y. 2020-</p>

copies of the annual accounts of the applicant relating to such prior year or years (not being more than three years immediately preceding the year in which the said application is made) for which such accounts have been made up;	21 is available than F.Y. 18-19, 19-20 & 20-21) duly self-certified <input checked="" type="checkbox"/> Provisional financial statements for FY 2020-21 (management certified) if audited is not available for F.Y. 20-21
8. note on the activities of the applicant	<input checked="" type="checkbox"/> Short note on activities of the Charity on the letterhead

1.3 Manner of Signature of Form 10A and Form 10AB

Using digital signature, if the return of income is required to be furnished under digital signature	<input checked="" type="checkbox"/> For section 8 / section 25 companies
through electronic verification code in a case not covered under clause (i)	<input checked="" type="checkbox"/> For charities other than For section 8 / section 25 companies

1.4 Process post receipt of Form 10A and Form 10AB

Form in which application made	Process at IT Department Level	Output for Charities
Form 10A Application	On receipt of an application in Form	<input checked="" type="checkbox"/> Principal Commissioner or

	<p>No.10A, the Principal Commissioner or Commissioner, authorised by the Board shall pass an order in writing granting approval under clause (i) or (iii) of the second proviso read with third proviso to section 80(5) of the IT Act in Form 10AC and issue a sixteen digit alphanumeric Unique Registration Number (URN) to the applicants making application as per clause (a) of the sub-rule (1).</p>	<p>Commissioner shall pass an order 80G(5)(vi) of the IT Act</p> <p>√ The order shall be in Form 10AC</p> <p>√ 16 digit URN to be granted to the applicant</p> <p>√ This will be applicable for existing charities</p>
<p>Form 10AB Application</p>	<p>In case of an application made in Form No. 10AB under clause (ii) of the sub-rule (1), the order of approval or rejection or cancellation under second proviso to section 80G(5) of the IT</p>	<p>√ Principal Commissioner or Commissioner shall pass an order of approval or rejection or cancellation u/s 80G(5)(vi) of the IT Act</p> <p>√ The order shall be in</p>

	<p>Act shall be in Form No. 10AD and in case if the approval is granted, sixteen digit alphanumeric number Unique Registration Number (URN) shall be issued, by the Principal Commissioner or Commissioner referred to in second proviso to sub-section (5) of section 80G.</p>	<p>Form 10AD</p> <p>√ In case approval is granted, 16 digit URN to be granted to the applicant</p> <p>√ This will be applicable for new charities whose period of approval is to expire / whose provisional approval is to expire</p>
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2.0 Charity registration granting charitable deduction u/s 11 of the IT act to the charity

2.1 Requirement for approval of institution or fund under section 12AB of the IT Act i.e. for eligibility of charity to claim charitable deduction

Form in which application to be made	Type of Application	Applicable to –
Form 10A	in case of application under clause (i) or clause (vi) of section 12A(1)(ac) of the IT Act for registration of a	√ Existing charities having registration u/s 12A or u/s 12AA of the IT Act or residual entities to which of

	charitable or religious trust or institution to the Principal Commissioner or Commissioner authorised by the Board; or	clause (ac) of sub-section (1) of section 12A
Form 10AB	in case of application under clause (ii) or clause (iii) or clause (iv) or clause (v) of section 12A(1)(ac) of the IT Act for registration of a charitable or religious trust or institution to the Principal Commissioner or Commissioner authorised by the Board; or	<p>√ Charities granted registration u/s 12AB and whose period of approval is due to expire (application to be made at least 6 months prior to expiry) – Section 12A(1)(ac)(i) of IT Act or</p> <p>√ Charity which has been granted provisional registered u/s 12AB (application to be made at least 6 months prior to expiry or provisional approval or commencement of activities, whichever is earlier)– Section 12A(1)(ac)(iii) of IT Act</p>

√ Where registration of the trust or institution has become inoperative due to the first proviso to sub-section (7) of section 11 (application to be made at least six months prior to the commencement of the assessment year from which the said registration is sought to be made operative) – Section 12A(1)(ac)(iv) of IT Act

√ Where the trust or institution has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, (application to be made within a period of thirty days from the date of the

		said adoption or modification) – Section 12A(1)(ac)(v) of IT Act
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2.2 Documents to be accompanied with the application in Form 10A or Form 10AB, as required by respective Forms:

Details of Documents	Comments
1. where the applicant is created, or established, under an instrument, self-certified copy of the instrument;	<p>√ For section 8 / section 25 Companies – Memorandum of Association (MoA) or Articles of Association (AoA)</p> <p>√ For Trusts – Trust Deed</p> <p>√ For Societies – Memorandum of Association (MoA)</p>
2. where the applicant is created, or established, otherwise than under an instrument, self-certified copy of the document evidencing the creation or establishment of the applicant;	Self Certified Copy of Extract of P.T. entry can be submitted.
3. self-certified copy of registration with Registrar of Companies or Registrar of Firms and Societies or Registrar of Public Trusts, as the case may be;	<p>√ For section 8 / section 25 Companies – Certification of Incorporation issued by Registrar of Companies (RoC)</p> <p>√ For Trusts – Certificate of Registration issued by Charity Commissioner</p> <p>√ For Societies – Societies registration</p>

	certificate issued by prescribed authority
4. self-certified copy of registration under Foreign Contribution (Regulation) Act, if the applicant is registered under such Act;	√ Foreign Contribution (Regulation) Act, 2010 (FCRA) registration copy, if any.
5. self-certified copy of existing registration under section 12A or 12AA as the case may be;	√ Copy of existing section 12A or 12AA registration certificate
6. self-certified copy of order of rejection of application for grant of approval under section 12A or 12AA as the case may be;	√ Copy of section 12A or 12AA or 12AB registration rejection order passed, if applicable
7. where the applicant has been in existence during any year or years prior to the financial year in which the application for registration is made, self-certified copies of the annual accounts of the applicant relating to such prior year or years (not being more than three years immediately preceding the year in which the said application is made) for which such accounts have been made up;	√ Audited financial statements of the Charity for FY 2017-18, 2018-19 and FY 2019-20 (if audited statement of F. Y. 2020-21 is available than F.Y. 18-19, 19-20 & 20-21) duly self-certified √ Provisional financial statements for FY 2020-21 (management certified) if audited is not available for F.Y. 20-21

<p>8. where a business undertaking is held by the applicant as per the provisions of sub-section (4) of section 11 and the applicant has been in existence during any year or years prior to the financial year in which the application for registration is made, self-certified copies of the annual accounts of such business undertaking relating to such prior year or years (not being more than three years immediately preceding the year in which the said application is made) for which such accounts have been made up and self-certified copy of the report of audit as per the provisions of section 44AB for such period;</p>	—
<p>9. where the income of the applicant includes profits and gains of business as per the provisions of sub-section (4A) of section 11 and the applicant has been in existence during any year or years prior to the financial year in which the application for registration is made, self-certified copies of the</p>	—

<p>annual accounts of such business relating to such prior year or years (not being more than three years immediately preceding the year in which the said application is made) for which such accounts have been made up and self-certified copy of the report of audit as per the provisions of section 44AB for such period;</p>	
<p>10. self-certified copy of the documents evidencing adoption or modification of the objects;</p>	<p>✓ This will be applicable if there is any change in the objects of the Charity</p>
<p>11. note on the activities of the applicant</p>	<p>✓ Short note on activities of the Charity on the letterhead</p>

2.3 Manner of Signature of Form 10A and Form 10AB

Mode of Application	Applicable to
<p>Using digital signature, if the return of income is required to be furnished under digital signature</p>	<p>✓ For section 8 / section 25 companies</p>
<p>through electronic verification code in a case not covered under clause (i)</p>	<p>✓ For charities other than For section 8 / section 25 companies</p>

2.4 Process post receipt of Form 10A and Form 10AB

Form in which application made	Process at IT Department Level	Output for Charities
Form 10A Application	On receipt of an application in Form No.10A, the Principal Commissioner or Commissioner, authorised by the Board shall pass an order in writing granting approval under section 12AB(1)(a) of the IT Act or 12AB(1)(c) of the IT Act read with section 12AB(3) of the IT Act in Form 10AC and issue a sixteen digit alphanumeric Unique Registration Number (URN) to the applicants making application as per clause (i) of the sub-rule (1).	<p>√ Principal Commissioner or Commissioner shall pass an order u/s 12AB(1) of the IT Act</p> <p>√ The order shall be in Form 10AC</p> <p>√ 16 digit URN to be granted to the applicant</p> <p>√ This will be applicable for existing charities</p>
Form 10AB Application	In case of an application made in Form No. 10AB	√ Principal Commissioner or

	<p>under clause (ii) of the sub-rule (1), the order of approval or rejection or cancellation under section 12AB(1)(b)(ii) of the IT Act shall be in Form No.10AD and in case if the registration is granted, sixteen digit alphanumeric number Unique Registration Number (URN) shall be issued by the Principal Commissioner or Commissioner referred to in of sub-section (1) of section 12AB.</p>	<p>Commissioner shall pass an order of approval or rejection or cancellation u/s 80G(5)(vi) of the IT Act</p> <p>✓ The order shall be in Form 10AD</p> <p>✓ In case approval is granted, 16 digit URN to be granted to the applicant</p> <p>✓ This will be applicable for new charities whose period of approval is to expire / whose provisional registration is to expire / whose objects have been amended and a fresh application was made / whose registration has become inoperative</p>
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3.0 Furnishing of Statement of particulars and certificate under clause section 80G(5)(viii) of the IT Act

Statement of particulars required to be furnished by a charity under section 80G(5)(viii) of the IT Act shall be furnished in respect of each financial year, beginning with the financial year 2021-2022, in **Form No. 10BD** and shall be verified in the manner indicated therein.

4.0 Furnishing of Donation Certificate under section 80G(5)(ix) of the IT Act

The charity shall furnish the certificate as referred to in section 80G(5)(ix) of the IT Act to the donor in **Form No. 10 BE** specifying the amount of donation received during financial year from such donor, beginning with the financial year 2021-2022.

Limited Scrutiny: Rights of Assessing Officer and Commissioner Appeals to make addition.

(Shri Amit Kumar Dey Vs. DCIT Delhi Tribunal)

CA Jagrutkumar Avinash Anjaria

B.Com., FCA, DISA(ICAI)

The case selected for discussion today is the judgment of the Hon'ble Delhi Tribunal. We are going to focus on that part of the judgment that deals with three concepts;

1. The concept of limited scrutiny
2. The extent to which the Assessing Officer does have power to make additions in a case that is selected for limited scrutiny
3. The powers of the Commissioner Appeals with reference to making additions at the stage of first appeal when the case is selected for limited scrutiny.

The concept of limited scrutiny is well known to all of us and we do not need a judgment to understand its subtleties. However, when a tribunal judgment reiterates the need for following proper procedure with reference to converting a limited scrutiny into complete scrutiny, it does help the assesses at large. In this judgment the Hon'ble Tribunal has found fault with the proceeding on the ground of moving beyond the scope of the issue stated in the notice on which examination was sought. As there was no record of procedure that could have converted the limited scrutiny into complete scrutiny, the learned bench held the addition as falling outside the scope of the powers vested with the Assessing Officer and deleted the addition made to the income of the assessee.

It is interesting to note how strictly the bench viewed the powers of examination in a limited scrutiny. In this case the notice of limited scrutiny had categorically identified the issue of deduction under the head capital gain for examination. Now the AO, while passing the order did not make any addition with reference to deduction claimed under the head capital gain but recomputed the cost of acquisition of the assets concerned and that resulted

into enhancement of income under the head capital gain. The Hon'ble Bench appears to be conveying two things in its judgment;

1. One, that as the AO did not make any change in the deduction under capital gain claimed in the return, he must have found the claim of deduction to be in order. Thus, as far as the subject matter of limited scrutiny notice was concerned, the AO did not make any change or addition.
2. What the AO added to the income, or where the AO made a change in the income of the assessee was an issue that the limited scrutiny notice did not cover.

For these reasons, the Hon'ble Bench went on to delete the addition made by the Assessing Officer.

When the case travelled to the level of Commissioner Appeals one more interesting thing turned up. The learned CIT Appeals changed the head of income from capital gain to business income in respect of income assessed for a particular transaction (where the AO has made an addition to the income)

Now we all know that the powers vested in the office of the commissioner of appeals include the power to enhance the assessment. It is also known and settled that such powers extend only to such matters as are subject matter of the original order appealed against. In other words, such enhancement can be made only with respect to anything that is there in the original order.

In the case under consideration, the AO had made a particular enhancement to the income computed under the head capital gain. Now, the CIT Appeals tried to exercise his powers and changed the head under which that income was charged to tax from capital gain to business and profession.

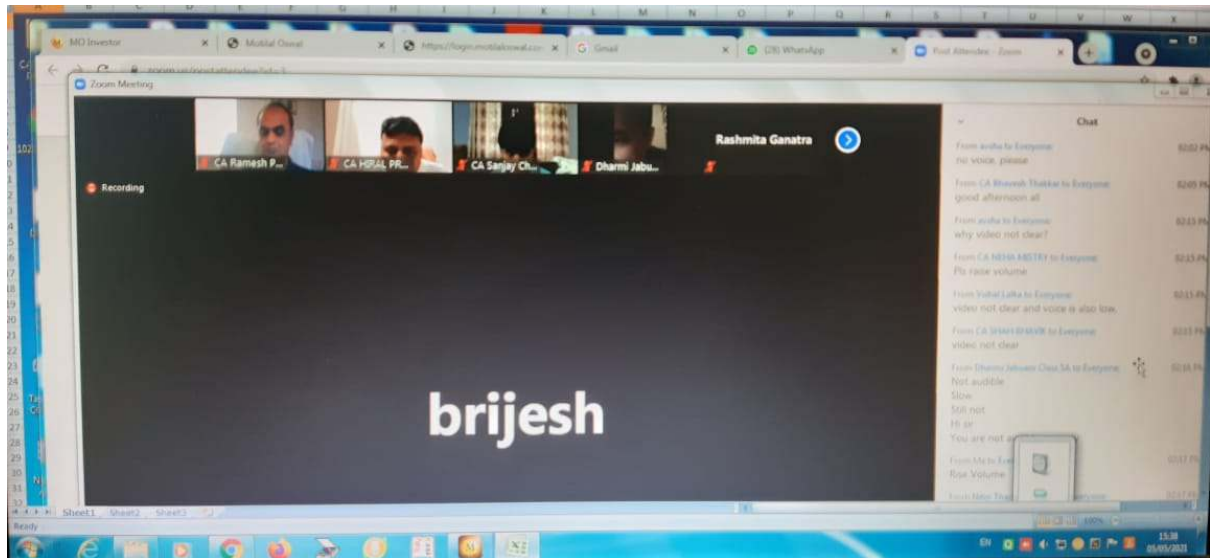
The learned Bench stepped in and disagreed to such an action on the part of the CIT Appeals. The Bench held that even powers of CIT Appeals to make addition do not travel beyond the scope of the issue narrated in the notice in case of a limited scrutiny. The bench also noted that if AO is restricted from going beyond the scope of the limited scrutiny but CIT Appeal is not restrained as such, this may lead to a situation where CBDT instruction regarding

restricted nature of limited scrutiny getting bypassed. The Bench observed that if the powers of the CIT Appeals are not restrained, it may give rise to an eventuality where AO passes an order confined to the area under limited scrutiny and the CIT Appeals keeps on making additions on other areas overlooking the procedure laid down to convert a limited scrutiny into complete scrutiny.

The final take away may be:

1. In a limited scrutiny, the AO can not examine any issue that is not explicitly covered by the notice issued
2. The issue covered by the notice is to be construed strictly
3. That addition made by AO on issue that is not specifically covered is not tenable unless;
 - a. Proper procedure to convert the limited scrutiny to complete scrutiny is followed
 - b. Evidence of following of the procedure is on record
 - c. Assessee has to be intimated about such conversion
4. In case of limited scrutiny, even CIT Appeals also does not have the power to enhance the assessment on issue that is not specifically mentioned in the notice.

CPE ON Re-Registration and recent amendments for charitable entities



BANK BRANCH AUDIT HELPLINE BY BHUJ BRANCH



BHUJ BRANCH OF WIRC OF ICAI

Helpline for Bank Branch Statutory Audit for Bhuj Branch Members

Happy to inform you all that our own members having expertise in field of Bank Branch Audit are ready to serve the members for their queries.

Members can send queries through Text Message or WhatsApp Message during Bank Audit Period.



CA Pravin Doshi

Past Chairman
of Bhuj Branch

Mob : 98252 89219



CA Bhavee Thacker

Past Chairperson
of Bhuj Branch

Mob : 98252 27449