

Important Provisions Related to Charitable or Religious Organisations under Income Tax Act

For Seminar at WIRC of ICAI on 14-01-2017

Compiled by CA. Suhas K. Malankar

Applicable sections

Section 2(15) defines Charitable Purpose and sections 11, 12, 12A, 12AA and 13 of the Income -tax Act, are the main sections that deal with scheme of taxation-exemption in respect of income of charitable or religious trusts/institution. Besides, section 10(23C) also provide for exemption of income derived by trusts and institutions engaged in specified activities of charitable nature.

However, w.e.f A.Y.2015-16, trust/institutions registered u/s 12AA (or 12A) shall not be eligible for claiming exemption under any other clause of section 10(except u/s 10(1) and u/s 10(23C) -as per sec 11(7)

Trusts Claiming Exemption u/s 11

Section 11(1) lays down that any income, profits and gains derived from property held under trust wholly for religious and charitable purposes, (or held in part only for such purposes-in case of trust created before 1/4/1962) shall not be included in the total income of the trust or institution (including a society or any other legal obligation) to the extent such income is applied or accumulated for application to such purposes. The exemption is, allowable under specified circumstances, on fulfillment of certain conditions.

Income from Property Held under Trust - Sec 12

Income from property held under trust shall include -

- (i) Voluntary contributions received by a wholly charitable or religious trust (excluding corpus donations). [Sec. 12 (1)]
- (ii) Value of any medical or educational services , provided free of cost or at concessional rate, by a charitable or religious trust running a hospital or medical institution or an educational institution to person specified u/s 13(3).However, such value shall be treated as taxable income and it shall not be eligible for exemption u/s 11. [Sec. 12(2) and Sec. 13(6)]
- (iii) Amount of donations received by a trust or institution, set up for the purpose of providing relief to the earthquake victims in Gujarat , in respect of which the accounts of income and expenditure have not been rendered to the prescribed authority in the prescribed manner, or which is utilized for some other purpose or which remains unutilized and is not transferred to

the Prime Minister's National Relief Fund on or before 31.03.2004 , shall be deemed to be taxable income for the previous year. [Sec.12(3)]

Meaning of 'Property Held under Trust

The expression 'property' used in Section 11 has the widest amplitude. It includes a business undertaking. It certainly takes in movable and immovable property like money, shares, securities, lands, buildings and houses. It may comprise of an interest in a partnership firm.

However, if merely the income and not the property out of which the income arises, is held under a charitable or religious trust, no exemption shall be allowed u/s 11 in respect of such income. Such income will be taxed in the hands of the settlor, under provisions of Section 60.

Meaning of 'Charitable Purpose' [Sec 2(15)]

'Charitable purpose' includes relief of the poor, education, [yoga w.e.f.1.4.2016], medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility.

A purpose must in order to be charitable, be directed to the benefit of the community or a section of the community, as distinguished from an individual or a group of individuals as held in - CIT v Ahmadabad Rana Caste Association (1983) 140 ITR 1 (SC).Where the primary purpose of the settler is to benefit the members of his family and relations and only remotely and indirectly the general public, the trust is not a charitable trust.

- Not necessary to benefit whole of mankind
- Not necessary to provide free services
- Cross subsidization permissible

Meaning of 'Religious Purpose

The expression religious purpose has not been defined under the Act. Religious purposes are necessarily associated with religion. A religion is certainly a matter of faith with individuals or communities. A religion has its basic in a system of beliefs or doctrines.

'Religious Purpose' includes the advancement, support or propagation of a religion and its tenets. The income of a religious trust or institution is entitled to exemption even though it may be for the benefit of a particular religious community or

caste. The exemption u/s 11 available to public religious trusts only; and not available to trust for private religious purposes which does not enure for the benefit of the public.

Advancement of Object of general public utility

(a) A trust or institution for charitable purpose being advancement of any other object of general public utility shall not be entitled to exemption u/s 11 or 12, in the year in which its receipts from commercial activities exceed Rs.25 lakhs, and the trust/institution is regarded as of non-charitable nature by virtue of Section 2 (15) First and second provision.

Above limit is Rs. 10 lakhs for A.Y.2009-10 to 2011-12 and is Rs. 25 lakhs for A.Y.2012-13 to 2015-16

Now w.e.f. 1.4.2016 (i.e. w.e.f. A.Y.2016-17) provisions are substituted to the effect that advancement of any other object of general public utility shall not be treated as charitable purpose- if it has receipts from commercial activity

Unless-

- (i) Such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility.
- (ii) The aggregate receipts from such activity/activities during the previous year do not exceed 20% the total receipts of Trust/institution during previous year.

Charitable Trust Carrying on a Business [Sec 11(4) & 11(4A)]

There is no prohibition on a charitable trust carrying on a business. A charitable trust can be settled in relation to any property including a business undertaking. The income from such business shall also qualify for exemption provided the other conditions of sections 11 and 12 are fulfilled.

The income of such business shall be determined in accordance with the provisions of the Act. i.e Section 28 to 44 DB. Where the income from such business as determined by the Assessing Officer is found to be in excess of the income shown in the accounts, then such excess shall be deemed to have been applied to non-charitable or non-religious purposes and such excess income shall not qualify for exemption . **As per sec 11(4)** income of any business held in trust for charitable purpose shall be eligible for exemption .

Further, any income of a trust being profits and gains of business, shall not qualify for exemption unless the business is incidental to the attainment of the objects of the trust and separate books of account are maintained in respect of such business as per Sec 11(4A).

The Supreme Court in the case of Asst. CIT vs. **Thanthi Trust** (2001) 247 ITR 785 (SC) has held that all that is required for the business income of a trust or institution to be exempt from tax is that the business should be incidental to the attainment of objective of the trust or institution. A business whose income is utilised by the trust or the institution for the purposes of achieving the objectives of the trust or the institution is a business which is incidental to the attainment of the objectives of the trust or institution.

It has been held that where the assessee society was letting out the properties to the educational institutions and the rental income earned by the society was being utilized again for the purpose of imparting education by maintaining the buildings and constructing new building for same purpose, the society was eligible for exemption- (CIT v **Jyoti prabha Society** (2009) 310 ITR 162 (Uttarakhand).

Thus, in determining whether the trust is entitled to exemption u/s 11, the nature or type of the sources of income of the trust is not relevant. What is necessary to be considered is whether having regard to all the facts and circumstances of the case, the dominant object of the activity is profit-making or carrying out a charitable purpose. This involves, in each case an examination of not only the objects of the trust but also the manner in which the activities for advancing the charitable purpose are being carried on and the surrounding circumstances. Hon'ble Supreme Court in the case of DIT vs. **Bharat Diamond Bourse** (2003) 126 Taxman 365 (SC) has held that if the primary or dominant purpose of the institution is charitable and another which by itself, may not be charitable, but is merely ancillary or incidental to the primary or dominant object, it would not prevent the institution from validly being recognized as a charity. The test to be applied is, whether the object which is said to be non- charitable is the main or primary object of the trust or institution or it is ancillary or incidental to the dominant object which is charitable.

It may however, be noted that: -

A trust or institution for charitable purpose being advancement of any other object of general public utility , shall not be entitled to exemption u/s 11 or 12, in the year in which its receipts from commercial activities exceed Rs.25 lakhs, and the trust/ institution is regarded as of non-charitable nature by virtue of Section 2 (15) First and second provision.

Above limit is Rs. 10 lakhs for A.Y.2009-10 to 2011-12 and is Rs. 25 lakhs for A.Y.2012-13 to 2015-16

Now w.e.f. 1.4.2016 (i.e. w.e.f. A.Y.2016-17) provisions are substituted to the effect that advancement of any other object of general public utility shall not be treated as charitable purpose- if it has receipts from commercial activity

Unless-

- (i) Such activity is under taken in the course of actual carrying out of such advancement of any other object of general public utility.
- (ii) The aggregate receipt from such activity /activities during the previous year do not exceed 20% the total receipts of Trust/institution during previous year.

Also as per **Sec 13(8)** benefit of exemption of income as per sec 11 & 12 is not available in case 1st provision to sec 2(15)is attracted.

Trusts Partly for Charitable Purposes (applicable to trusts created before 1.4.1962) [Sec 11(1)(b)]

Income derived from property held under trust in part only for charitable or religious purposes, shall qualify for exemption u/s 11, to the extent such income is applied or finally set apart for application to such purposes, provided the trust was created before the commencement of the Income-tax Act, 1961, i.e. before 1.4.1962.

Trusts on Income without involving Transfer of Assets

As per **Section 60**, any income arising to any person by virtue of a transfer, without actual transfer of the assets from which such income arises, shall be included in the taxable income of the transferor.

Thus, where a person settles a charitable or religious trust in respect of the income arising from an asset of which he is the owner but retains the ownership of the asset, the income so transferred shall be deemed to be the income of the transferor and not that of the trust, and shall not qualify for exemption u/s 11.

Trusts by Revocable Transfer of Assets

Any income arising to a person by virtue of a revocable transfer of assets shall be clubbed in the hands of the transferor. **[Sec.61]**

A deed of trust that qualifies for exemption under section 11 cannot have any stipulation reserving any power to revoke or alter the terms of the trust deed, Thus, where an asset is transferred to a charitable or religious trust, under a revocable transfer, the income arising from such asset shall be deemed to be the income of the

transferor under section 61, read with section 63, and not that of the trust, and shall not qualify for exemption u/s11.

Where, however a trust is not revocable during the lifetime of the beneficiary and the transferor (settlor) derives no direct or indirect benefit from the income of the trust, the income of the trust shall not be taxable in the hands of the transferor, unless the power to revoke arises and when power to revoke arises such income shall be included in total income of transferor. [Sec.62]

For the purposes of Sec 60, 61, 62 & 63 a 'revocable transfer' is one which contains a provision for re-transfer of the income or assets to the transferor, or giving the transferor a right to reassume control, over the income or assets. [Sec.63]

Trust Eligible for Exemption u/s 11 and 12

Following charitable or religious trusts are entitled to exemption u/s11 and 12, on fulfillment of certain conditions:

- (i) Trusts created wholly for charitable or religious purposes and applying (or accumulating) their income to such purposes, in India ; [s 11(1)(a)]
- (ii) Trust created before 1.4.1962 in part only for charitable or religious purposes and applying (or accumulating) their income to such purposes, in India : [s 11(1)(b)]
- (iii) Trust created before 1.4.1952 for charitable or religious purposes, authorized by a general or special order of the Board , and applying its income to charitable or religious purposes outside India; [s 11(1)(c)]
- (iv) Trust crated on or after 1.4.1952 , for the charitable purpose of promoting international welfare in which India is interested, authorized by general or special order of the Board, and applying its income to such purpose outside India, and; [s 11(1)(c)]
- (v) Charitable trusts created for the benefit of scheduled castes, tribes, backward classes or women and children.

Corpus Donation fully Exempt [Sec 11(1)(d)]

Corpus donations refer to the donations made by a donor to a trust with a specific direction that they shall form part of the corpus of the recipient trust. The donor alone can give a specific direction that the donation made by him shall form part of the corpus of the trust. Trustees have no power to treat in their discretion any donation as

corpus donation. Such direction may preferably be given by the donor in writing by a letter addressed to the trust. If he has not done so, trustees may request him to give such directions in writing. If any contribution is made with a specific direction, that it shall be treated as the capital of the trust for carrying out a particular charitable activity, it satisfies the definition part of the corpus.

Corpus donations being capital receipt in the hands of the recipient trust are not income of the trust. Section 11(1)(d) expressly grants exemption to corpus donations to make the position clear beyond doubt. Contributions to corpus fund kept in fixed deposit cannot be taxed as income even if corpus fund is misused -CIT v Sri Durga Nimishambha Trust [2012] 205 Taxman 59 (Mag) (Kar).

The corpus would include funds of a capital nature, by whatever name called, such as Building Fund, as well as funds for capital expenditure of the trust. Any donation made for a capital purpose or with a direction that donation be kept intact and only the interest received on the investment of such donation be utilized for the objects of the trust, would be a donation towards the corpus of the trust.

Corpus donations may not be applied to charitable purposes and these may be retained as forming part of the corpus of the trust without attracting any tax liability in the matter. The trustees must however utilize the income accruing from the corpus for charitable purposes of the trust.

Note: Donations received by way of box collections and other anonymous donations, do not form part of the corpus of the trust, but are deemed to be income of the trust.

Income Applied to Charitable or Religious Purposes [Sec 11(1)]

In order to be eligible for claiming exemption, it is essential that the income of the trust is applied to such objects.

A charitable trust or institution will have to apply at least 85 % of the income to charitable or religious purposes. Voluntary contribution or donations (not being contributions made with a specific direction that they will form part of the the corpus) will be deemed to be a part of income derived from property held under trust. If the income spent on charitable or religious purposes, during the previous year, falls short of 85 % of the income derived during the year, such shortfall will be liable to tax.

The crux of the statutory exemption under Section **11(1)(a) and (b)** of the Act is not the income earned from property held under trust but the actual application of the said income for religious and charitable purposes.

In a trust deed, the donor gave effect to her desire to construct and provide a building for the benefit of the public to be used for religious, charitable, social and cultural purposes, and provided a capital sum for the purpose. The building was completed and was being rented out as a marriage mandapam to be used by the public,

and a substantial income was being earned therefrom. The Supreme Court⁴ observed that, after going through the full trust deed, it was not possible to cull out in clear terms a specific charitable/religious object to conclude that the trust was set up wholly for charitable or religious purposes. The founder of the trust intended to convey that the building be constructed out of the funds provided by her and be held for the benefit of the public for being used by them for charitable, religious, cultural or social purposes. But this was not the object of the trust, rather those were only the objects of those who wished to put the trust property to use. Nowhere in the trust-deed was it stated that the trust itself had been created for the purposes of carrying out any of such objectives.

The public used the building on payment of rent, for such purpose. What is to be done with the money collected by way of rent has not been provided in the trust deed. There is no mandate in the trust deed that the income derived from the trust property is to be spent on religious or charitable purposes. Therefore trust was not granted exemption u/s 11. *Gangabai Charities v CIT 30 (SC)/ 197 ITR 416(SC)*.

How to determine application of income

- i. Establishment expenses – For running a charitable activity, the establishment has to be maintained, which requires payment of salaries and other establishment expense. Application of income for the said purpose cannot be alien to the charitable objects which are to be advanced.
- ii. Repayment of loans – Repayment of loans taken to fulfill one of the objects of the trust is treated as an application of income for charitable purposes.
As regards the loans advanced for higher studies, if the only object of the trust is to give interest-bearing loans for higher studies, it will amount to carrying on of money-lending business. If, however the object of the trust is advancement of education and granting of scholarship loans as only one of the activities carried on for the fulfillment of the objectives of the trust, granting of loans, even if interest-bearing, will amount to the application of income for charitable purposes. As and when the loan is returned to the trust, it will be treated as income of the year.”
- iii. Revenue or capital purposes – Application of the amount can be for revenue or capital purpose. So long as the expenditure is incurred out of the income earned by the trust, and is incurred for promoting the object of the trust, even if such expenditure is of capital nature for the objects of the trust, the income would be exempt.
- iv. Payment of taxes – The expenditure incurred by way of payment of tax out of the current year’s income has to be considered as application for charitable purposes.
- v. Donation to other trusts – When a donor – trust, which is itself a charitable or religious trust, donates its income to another trust, the provisions of sections

11(1)(a) can be said to have been met by such donor- trust and the donor-trust can be said to have applied its income for religious and charitable purposes. However, any amount credited or paid, out of accumulated income, to another trust registered u/s 12AA or to any fund/institution/trust/university/educational institution/ hospital or medical institution referred u/s 10(23C)(iv), (v), (vi) or (via), shall not be treated as application of income to charitable or religious purposes. This is nothing but an additional condition attached to accumulation in excess of 15% permitted u/s 11(2) . It cannot be held as a condition on accumulation upto 15% as provided for in section 11(1)(a).

Exception- The Assessing Officer is, however, empowered to allow donation to another trust/institution, out of income accumulated u/s 11(2), as application in the year the donor trust is dissolved, provided the donor trust or institution, had invested or deposited its income in accordance with the provisions of Section 11(2)(b). The trust/institution which wishes to claim application of such donation should file an application to its Assessing Officer under Section 11(3A) in this regard.

- vi. Excess Application in previous year set off - The amount of excess application in the previous year can be set off against the deficiency of the subsequent year.
- vii. Acquisition of an Asset - Income of a trust used for acquisition of a capital asset is deemed as application of income.

[However, depreciation or any other allowance shall not be allowed in respect of a capital asset, the acquisition of which has been claimed as application of income in the same or any other previous year. w.e.f. 1.4.2015] [Sec. 11(6)]

Income Deemed to be Applied to Charitable Purposes [Expl. 2 to Sec 11(1)]

Where the income applied to charitable or religious purposes falls short of 85% of the income derived during the previous year because -

- i. the whole or any part of the income has not been received during the previous year; or
 - ii. for any other reason;
- the assessee has an option to:
- a. apply such income referred to in clause (i) for such purposes during the previous year in which it is received or during the previous year immediately following the said previous year; and

- b. apply such income referred to in clause (ii) for such purposes during the previous year immediately following the previous year in which the income was derived.

The option can be exercised with regard to income from capital gains, as well. The option is to be exercised (w.e.f. 1.4.2016) in Form 9A to be furnished electronically with or without digital signature by the trust within the time allowed for filing return of income u/s 139(1). Earlier it was to be exercised in writing by letter addressed to AO. However, it has been held that where a belated return is filed within the time specified u/s 139(4), i.e. within one year from the end of relevant assessment year, and the option is exercised along with such return, the option shall be deemed to have been exercised within the time allowed u/s 139(1) and the assessee will be entitled to exemption.

If the option is exercised by the assessee/trust, the income is regulated in the following manner.

- i. such income shall be deemed to have been applied to charitable or religious purposes in the previous year in which it is derived;
- ii. such income shall not be taken into account for computing the income applied to such purposes in the year it is actually applied;
- iii. if such income, or any part thereof, is not applied to such purpose within the prescribed period aforesaid, such income, or such part, shall be deemed to be income for the previous year immediately following the previous year in which the income was received or derived, as the case may be.

Accumulation of Income for Charitable or Religious Purposes Exemption for Income Accumulated or Set Apart up to 15%

As per Section 11(1)(a) and (b) a trust claiming exemption is allowed to accumulated upto 15 percent of its income, for application to charitable or religious purposes in India.

This exemption can be availed without any requirement as to intimation to the Assessing Officer, or application of accumulated income within the specified period. Thus, if a trust accumulates a larger amount than the specified limit, what would be chargeable to tax is the excess over the exemption limit, and not the entire accumulation including the exempted portion.

Note: (1) In computing the 15% of the trust's total income, any amount deemed as income u/s 11(3) i.e. any accumulated income which is not utilised as specified or which ceases to remain invested in specified modes or forms of deposit, shall also be considered.

- (2) As per clause (1) of Explanation to section 11(1), in computing the 15% of the income which may be accumulated or set apart, in case of a wholly charitable or religious trust, income shall include voluntary contributions (other than those received towards the corpus of the trust)

Exemption for Accumulation of Income in Excess of Specified Limit [Sec 11(2)]

Where 85% of income derived from trust property is not applied or is not deemed to have been applied to charitable or religious purposes, but is accumulated or set apart for application to such purposes in India, exemption can be claimed for the income so accumulated or set apart in excess of 15% limit, provided the following conditions are complied with:

- (a) a statement in form 10 to be uploaded electronically within the time allowed for furnishing the return u/s 139(1), notifying the amount being accumulated and the period of accumulation. In case form no. 10 is not uploaded before this date then the benefit of accumulation will not be available and such income will be taxable at appropriate rate.
- (b) the period of accumulation does not exceed 5 years and
- (c) the money so accumulated is invested or deposited in modes or forms specified u/s 11(5).
- (d) From A.Y.2016-17 benefit of accumulation is not available if return of income is not furnished before due date of filing return as per Sec 139(1).

Purpose of Accumulation must be specified

The provision of section 11(2) is a concession provision to enable a charitable trust to meet the contingency where the fulfillment of any project within its object or objects needs heavy outlay calling for accumulation to amass sufficient money to implement it. Section 11(2) requires specification of the purpose, which must be a concrete one, an itemized purpose or a purpose instrumental or ancillary to the implementation of the object or objects. Thus a trust cannot list all its objects as purposes for accumulation of income u/s 11(2)-DIT(E) v Trustee of Singhania Charitable Trust (1993) 199 ITR 819 (Cal)

Plurality of the purpose of accumulation is not precluded but it depends on the precise purpose for which the accumulation is intended. CIT v Hotel & Restaurant Association (2003) 132 Taxman 76 (Delhi)

The delay in filing application Form No. 10 can be condoned by the Commissioner in certain cases. The relevant instructions issued by the Board, vide Circular No. 273 [F. No. 180/ 57/80- IT (A-I)], dated 3.6.1980 are as follows,:

.....In exercise of the powers conferred under Section 119(2)(b) of the Income- tax Act,1961 the CBDT hereby authorize the Commissioners to admit applications under Section 11(2) read with rule 17 of the Income- tax Rules, 1962 from persons deriving income from property held under trust wholly for charitable or religious purposes for accumulation of such income to be applied for such purposes in India when the aforementioned applications are filed beyond the time stipulated. The Commissioner will, while entertaining such applications, satisfy themselves that the following conditions are fulfilled:

- (a) that the genuineness of the trust is not in doubt;
- (b) that the failure to give notice to the Income-tax Officer under Section 11(2) of the Act and investment of the money in the prescribed securities was due only to oversight²;
- (c) that the trustees or the settler have not been benefitted by such failure directly or indirectly;
- (d) that the trust agrees to deposit its funds in the prescribed securities prior to the issue of the Government sanction extending the time under Section 11(2); and
- (e) that the accumulation or setting apart of income was necessary for carrying out the objects of the trust.

Note:- In CIT vs. Nagpur Hotel Owner's Association,(2001) 114 taxman 255 (SC) the Hon'ble Supreme Court has held that the application in Form 10 can be filed before the completion of the assessment¹. In the opinion of the author, it is always advisable to file Form no. 10 within the time limit for filing the return of income. In case of delay for any reason, the Commissioner should be approached for condoning the delay.

Note: However, in view of amendment due to inserting of sub section (9) in section 13 w.e.f.1.4.2016. The possibility of condonation of delay to be tested afresh.

Withdrawal of Exemption granted to Income accumulated u/s 11(2)

The income which is accumulated or set apart in accordance with the provision of Section 11(2), shall become taxable if-

- (a) It is applied to purpose other than charitable or religious purposes;
- (b) It ceases to remain invested in the specified form or modes of deposit; or
- (c) It is not utilized for charitable or religious purposes within the specified accumulation period (which shall not exceed 10 years/5 years in respect of income accumulated on or after 1.4.2001); or

- (d) It is paid or credited to any trust/institution registered u/s12AA or to any fund/institution/trust/university/other educational institution/hospital/any other medical institution referred to in clauses (iv), (v), (vi), and (via) of Section 10(23C).

Under any of the aforesaid circumstances, the amount involved shall be deemed to be income of the previous year in which it is so misapplied or ceases to be so accumulated or ceases to remain invested or is credited or paid or the previous year immediately following the expiry of the specified accumulation period, as the case may be. **[Sec 11(3)].**

Sometimes failure to apply the income so accumulated or set apart in the specified manner may arise due to circumstances beyond the control of trustees. In such a case, the Assessing Officer may, on receipt of an application from the person in respect of the income, allow such income to be applied for such other charitable/religious purposes in India as are in conformity with the objects of the trust/institution. The Assessing Officer may also, on receipt of an application, allow donation to another trust/institution claiming exemption is wound up (but not otherwise) **[Sec 11(3A)].**

Income by way profits and gains of business

Income by way profits and gains of business, shall also be exempt in accordance with **Sec 11(4)/(4A)** subject to **provisions contained in Sec 2(15) and Sec 13(8)**

Exemption in relation to capital gains [Sec 11(1A)].

The amount of exemption in relation to capital gains arising on transfer of a capital asset, shall be as under:

- i. Where the capital asset is held under trust wholly for charitable or religious purposes :
 - a. If the whole of the net consideration-is utilised for acquisition of a new capital asset, the entire capital gain shall be exempt; and
 - b. if only a part of the net consideration is so utilized , the amount of capital gain exempt shall be equal to -

Cost of Acquisition	–	Cost of Capital
Of the New Capital Asset		Asset Transferred
- ii. Where the capital asset is held under trust in part only for charitable or religious purposes :

- a. if the whole of the net consideration is utilized for acquisition of new capital asset, the amount of capital gain exempt shall be equal to,

$$(A/B * \text{Total Capital Gain})$$
- b. if only a part of the net consideration is so utilized, the amount of capital gain exempt, shall be equal to,
- c.
$$[A/B * (\text{Cost of Acquisition Of New Capital Asset}) - A/B * (\text{Cost of Capital Asset Transferred})]$$

Where

A= Income derived from the capital asset transferred and applied to charitable or religious purpose, before its transfer,

B= Total income derived from the capital asset before its transfer.

Note: -

- (i) Cost of Capital Asset Transferred means the aggregate of cost of acquisition of the asset and cost of any improvement thereto. In case of long-term capital assets, the indexed cost of acquisition and indexed cost improvement shall be considered.
- (ii) Net consideration means= full value of consideration less expenses in connection with transfer.
- (iii) Capital Gains to be calculated as per applicable provisions of the Act.

New Capital Asset - Whether includes Fixed Deposit

While examining this question, the Board had clarified that investment of the net consideration in fixed deposit with a Bank for a period of 6 months or above would be regarded as utilization of the net consideration for acquisition of another capital asset within the meaning of section 11(1A) [Vide CBDT's Instruction No:883 dated 24.9.1975, See. Taxman's Direct Taxes Circular 1994 Ed. Vol. I, page 1.326].

However, in **CIT vs. Hindustan Welfare Trust**, the Calcutta High Court has held that a deposit in bank shall be a capital asset for the purpose of section 11(A) and no minimum duration of the deposit can be set forth as the determinative criterion. To quote, "The restrictive stipulation of a minimum period of six months for a deposit to qualify as an asset for the purpose of section 11(1A), imposed in the said instruction, has the effect of mutilating the concept of asset as obtaining under the Act and its cognate Act, viz., Wealth-tax Act. In fact, the said circular can be called an acknowledgment of a deposit in bank as a capital asset for the purpose of sub-section (1A) of Section 11."

Further, in **CIT vs. East India Charitable Trust** (1994) 2016 ITR 152, the Calcutta High Court has held that in view of section 11(5)(vii), deposits with public sector companies, shall qualify as 'new capital asset' within the meaning of section 11(1A).

It is not correct to say that section 11(1A) is meant for calculation of capital gains tax. In fact this section is to operate after capital gains are worked out in accordance with Sec 45 to 55- Akhara Ghamanda Dass Vs CIT [2000] 68 TTJ (Asr)244.

Investment of Trust Funds in Specified Modes or Forms of Deposit [Sec 11(5)]

A charitable trust or institution shall not be allowed exemption u/s 11 or 12, if any part of its funds are not invested or deposited in the modes or forms specified u/s 11(5), or any shares in a company (other than shares in a public sector company or shares prescribed u/s 11(5)(xii), that is in a depository company) are held by the trust/institution.

As per sec 11(5) only the following investments and deposits are permitted:

- i) Investment in saving certificates and other securities or certificates issued by Central Government under the small saving schemes of the Government
- ii) Deposit in any account with post office saving bank
- iii) Deposit in any account with a scheduled bank or co-operative bank
- iv) Investment in units of UTI
- v) Investment in any securities issued by Central or State Government
- vi) Investment in any Debentures issues by any Company or Corporation where both principle and interest are guaranteed by the Central or State Government
- vii) Investment or deposit in any public sector company
- viii) Deposit or investment in any bonds issued by a financial corporation engaged in providing long term finance for industrial development in India eligible for deduction u/s 36(1)(viii)
- ix) Deposits with or investment in bonds issued by a public co formed and registered in India with the main object of carrying on the business of providing long term finance for construction or purchase of houses in India for residential purpose eligible for deduction u/s 36(1)(viii)
- x) Deposits with or investment in bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long term finance for urban infrastructure projects in India
- xi) Investment in immovable property
- xii) Deposit with IDBI
- xiii) Any other form or mode of deposit. Under this clause, rule 17C prescribes investment in units issued under any scheme of a mutual fund referred to in sec 10(23D), deposits with authority constituted in India for satisfying

needs of housing accommodation or planning of cities towns or villages, investment in equity shares of depository etc are covered.

Exception :- This condition of investment in specified modes shall not apply in relation to following assets (as per provision to sec 13 (1)(d)):

- i) assets held by the trust as forming part of its corpus as on 1.6.1973;
- ii) bonus shares allotted on any shares forming part of the corpus as aforesaid;
- iii) debentures of a company or corporation, acquired by a trust before 1.3.1983;

Note: - (1) Where any such debentures had been acquired by a trust during the period 1.3.1983 to 24.7.1991 (both days inclusive), the exemption u/s 11 or 12, would be allowed in respect of income of the trust other than interest on, or capital gains from such debentures provided the debentures were disinvested by 31.3.1992.

(2) 'Debenture' includes 'bond' in terms of section 2(12) of the Companies Act, 1956 (sec 2(30) of 2013 Act.)

- iv) any assets, other than those specified u/s 11(5), converted into specified assets within one year from the end of the previous year in which such assets were acquired or 31.3.1993, whichever is later; and
- v) any funds representing the profits and gains of a business, of any previous year relevant to assessment year 1984-85 and onwards, provided separate books of accounts are maintained for such business.

Besides, donation in kind cannot be said to be funds of the trust as contemplated by Section 13(1)(d)(i), though they generally form part of the assets of the trust constituting its corpus. In order to claim exemption under Section 11, it is not incumbent on the part of the recipient trust to dispose of donations in kind, convert the same into cash and invest the proceeds thereof into permissible forms or modes, since that would amount to destroying trusts holdings properties, movable or immovable, as their corpus. -**Auditor Dasaradha Rami Reddy Charities v CIT (1989)177 ITR 249 (Mad)**

Where investments have been made in non-specified forms, it is only the income from such investments which loses exemption and is taxed at the maximum marginal rate.

Conditions for applicability of sec 11 and 12

In order to secure exemption u/s 11, the property must be held under trust, besides section 12A lays down that the exemption under section 11 and 12, shall not be available unless the following conditions are fulfilled:

- (a) Registration: The trust is required to obtain registration u/s 12AA with the Commissioner of Income-tax..
- (b) Compulsory Audit: Where the total income of the trust or institution, exceeds the basic exemption limit, that is, Rs.2, 50,000/- in any previous year, the accounts of the trust or institution is required to be audited by a qualified Chartered Accountant, and the audit report in Form No. 10B is required to be furnished electronically before filing the e-return of income.

Registration & Procedure of Registration u/s 12A /12AA

The requirement of filing an application for registration within one year from the date of creation of the trust/institution has been removed w.e.f. 1st June 2007.

Now, an application for registration may be made at any time by the trust/institution. However, exemption u/s 11 and 12 shall be available only from the assessment year immediately following the financial year in which such application is made. The application should be made to the Commissioner in Form, No.10A (in duplicate) along with the following documents:

- (a) Original or certified copy and an extra copy of the instrument under which the trust or institution was set up,

Or

In case the trust/institution was not set up under an instrument, the original or a certified copy and an extra copy of the document (s) evidencing the setting up of the institution,

Or

Memorandum of association and bye-laws of the society;

- (b) If the trust or institution was in existence for any completed number of years prior to making of the application, copies of the accounts for one, two or three years, as may be available.

The Commissioner shall call for documents and information and hold enquiries regarding the genuineness of the trust or institution.

After he is satisfied about the charitable or religious nature of the objects and genuineness of the activities of the trust or institution, he will pass an order granting registration and if he is not so satisfied he will pass an order refusing registration,

subject to the condition that an opportunity of being heard shall be provided to the applicant before an order of refusal to grant registration is passed by the Commissioner and the reasons for refusal of registration shall be mentioned in such order.

The order granting or refusing registration has to be passed within six months from the end of the month in which the application for registration is received and a copy of such order shall be sent to the applicant trust. An order either granting or refusing the registration must be passed, it is a statutory duty on the part of Commissioner/ DIT (Exemption). Rejection of application cannot be justified if the assessee is deprived of reasonable opportunity to produce all relevant documents due to time constraint. St. Paul's Anglo Indian Education Society (2003) 262 ITR 377 (Pat)

The Commissioner cannot direct an applicant-trust to incorporate a clause indicating that any amendment to the trust deed would be carried out after obtaining approval from the Commissioner, and furnish the amended trust deed, duly registered, along with notes on the activities of the trust with regard to various expenses; such a requisition has been held to be extra-statutory.-**CIT v RMS Trust** (2010)326ITR 310 (Mad)

It has been held that so long as the trust has an object which comes within the scope of charitable purpose as enumerated u/s 2(15) and the trust might qualify for claiming exemption in terms of sections 11 and 12, grant of registration, so long as the procedural requirements are complied with, is inevitable **DIT vs Garden City Educational Trust** (2010)_191 Taxman 238 (Kar) .

When an assessee fulfils all relevant conditions for registration u/s 12AA, no other condition can be imposed on it while granting registration. If a trust fulfills all the conditions mentioned in section 12A/12AA, registration cannot be denied on the ground that some conditions of sections 11 and 12 are not fulfilled. The manner of application by trusts and as to whether the trust could claim the benefit of exemption in terms of sections 11 and 12 are questions which have to be examined by the Assessing Officer at the stage when same are urged and not by the Commissioner while considering the application for registration. **DIT v Garden City Educational Trust** (2010) 191 Taxman 238(Kar).

Appeal against Refusal to grant Registration- An assessee has a right to appeal to the Appellate Tribunal against the order passed by the Commissioner u/s 12AA.

Delay in Filing of Application for Registration- Effect of: [Up to 31st May, 2007], where the application for registration was made after the period of one year from the date of formation of trust, the exemption would be granted from the first day of the financial year in which the application was made. If, however, the Commissioner was

satisfied that the trust was prevented from application in time, for sufficient reasons, he could grant the exemption from the date of creation/establishment.

However, w.e.f.1st June 2007, the power of Commissioner to grant registration for past years by condoning the delay in filing such application has been withdrawn. Accordingly, in respect of applications filed on or after the 1st June 2007, the provisions of section 11 and 12 shall apply from the assessment year relevant to financial year in which the application is made.

Registration of Trusts in Bombay, Delhi, Madras and Calcutta: Trusts/institutions assessed/assessable by an income-tax authority having headquarters at Delhi, Bombay, Madras and Calcutta, should file their application for registration before the Director of Income Tax (exemptions) at Delhi, Bombay, Madras and Calcutta, respectively. (CBDT's Circular No. 584 dated 13.11.1990)

Year from which Provisions of Sections 11 and 12 shall be Effective: As stated earlier w.e.f.1.6.2007, the registration shall be effective only prospectively; the power of condonation of delay in seeking registration is not available now. As per section 12A(2), the provisions of sections 11 and 12 shall apply in relation to income of a trust from the assessment year relevant to financial year in which the application for registration is made. The benefit cannot be claimed retrospectively, in respect of any earlier assessment year.

However, w.e.f.1.10.2014, the benefit of sections 11 and 12 shall be allowed also in respect of income of the trust for any preceding assessment year the assessment proceedings for which are pending as on the date of date of grant of registration provided the objects and activities of the trust remain same for such preceding assessment year. However, this benefit shall not be available in case the trust had at any time applied for registration and the same was refused u/s 12AA or a registration once granted was cancelled.

Reopening of Assessment for Previous Years: The grant of registration shall not have any adverse implications for the trust in respect of any earlier years. The Assessing Officer shall not initiate an action for reopening of an assessment u/s 147 in case of a trust in respect of its income for any assessment year preceding the first assessment year for which the registration applies, merely for the reason that such trust has not obtained the registration u/s 12AA for the said assessment year. However, this benefit shall not be available in case the trust had at any time applied for registration and the same was refused u/s 12AA or a registration once granted was cancelled.

Cancellation of Registration [Sec 12AA(3)]

The registration once granted to a trust shall remain in force till it is cancelled by the Commissioner. If the Commissioner of Income Tax satisfied that

- (i) the activities of any trust or institution are not genuine or
- (ii) the activities are not being carried out in accordance with the objects of the trust or institution,

he shall, after giving reasonable opportunity of being heard to the concerned trust or institution, pass an order in writing cancelling the registration granted under section 12AA or 12A.

A new provision has been inserted by way of **sub-section (4)** w.e.f. 1.10.2014. As per the new provision, the Commissioner has been empowered to cancel the registration of trust on an additional ground, namely when he is satisfied that the activities of the trust are being carried out in a manner that the benefit of exemption u/s 11 and 12 is denied in respect of any income of the trust due to operations of section 13(1). Accordingly, where a trust has been granted registration, and subsequently it is noticed that its activities are being carried out in such a manner that

- (i) its income does not enure for the benefit of general public - private religious trust
- (ii) it is for benefit of any particular religious community or caste (in case it is established after 1.4.1962),
- (iii) any income or property of the trust is applied for benefit of specified persons like author of trust, trustees, etc. or
- (iv) its funds are invested in prohibited modes,

then the commissioner may cancel the registration if such trust does not prove that there was a reasonable cause for the activities to be carried out in the above manner.

Trusts Not Eligible for Exemption [Sec 13]

Following trusts are not eligible for exemption under Section 11 and 12:

- (a) A trust for private religious purposes, which enures no public benefit: **[Sec 13(1)(a)]**
- (b) A charitable trust created or established on or after 1.4.1962 for the benefit of any particular religious community or caste **[Sec 13(1)(b)]** (other than scheduled castes/tribes, back-ward classes or women and children). (Explanation 2)

It is important to note that :

- (i) section 13(1)(b) applies only to trusts for charitable purposes,
- (ii) It may be inferred from this clause that a religious trust, or a composite trust for charitable and religious purposes whenever created, and a charitable trust created before 1.4.1962, for the benefit of any particular religious community or caste are entitled to the exemption-CIT v. Barkate Saifiya Society (1995) 78 Taxman 6 (Guj)

It has been held that a trust constituted for the purpose of propagation of Jainism could be considered to be a religious trust and not a charitable trust and therefore the bar contained in Section 13(1) (b) would not apply to such a trust **Shri Chandra Charitable Trust** v ITO (1995) 51 ITJ 87 (Ahd)

A community is a section of public and the trust created for giving medical aid, social welfare, uplifting of poor members of a particular community and giving financial help on the occasion of marriage of members of such community was for religious and charitable purposes and was entitled to exemption CIT v **Surji Devi Kunjilal Jaipuria Charitable Trust** (1990) 186 ITR 728 (All). The section of the community sought to be benefited must be sufficiently defined and identifiable by some common quality of a public or impersonal nature.

The Madras HC held in **Gujarathi Mandal** 240 ITR 293(Mad) that sec 13(1)(b) could have no application if what is sought to be done by the trust is to promote the interest of a linguistic group, as language cannot be equated to religion. The main object of the trust was to impart knowledge and education primarily in Gujarati language and to help promote religious social and moral standards of the members.

It has been held by Nagpur Bench Of ITAT in case of **Shiv Mandir Devastan Panch Committee Sanstan** that- it cannot be said that Hindu is a separate community or a separate religion. Technically Hindu is neither a religion nor a community. Therefore expenses incurred for worshiping of Lord Shiva, Hanuman, Goddess Durga and for maintenance of temple cannot be regarded to be for religious purpose- accordingly CIT was directed to grant approval u/s 80 G (5)(vi)

- (c) A trust or institution for charitable or religious purposes, if any part of its income or property is used or applied, or enure, directly or indirectly for the benefit of a person specified u/s 13(3) viz.(i) the author or founder of the trust ; (ii) a substantial contributor whose total contributions to the trust upto the end of the relevant previous year exceed Rs.50,000; (iii) where the author or contributor is an HUF, a member of the family; (iv) the trustee or manger of the trust; (v) any relative of such author, founder, contributor, member, trustee or manager; and (vi) any concern in which any of the persons aforesaid has a substantial interest. **[Sec 13(1)(c)]**

(exception trust created prior to 1.4.1962- and such application is as per mandatory terms or rules governing the trust/institution)

When Application of Funds deemed to have been made for the benefit of specified Persons- [Sec 13(2)]

Applications of the trust-income or the trust-property for the following purposes is deemed to have been made for the benefit of specified persons.

- (a) If a loan is given to a specified person for any period during the previous year without either adequate security or adequate interest or both;
- (b) If any land, building or other property of the trust, is allowed to be utilized by a specified person, without charging adequate rent or other compensation;
- (c) If payment is made by way of salary, allowance, etc. to a specified person for services rendered by him to the trust or institution, in excess of what may be reasonably paid for such services;
- (d) If the trust renders its services to a specified person without adequate remuneration or other compensation; (Exception Medical/Educational Institution)
- (e) If any share, security or other property is transferred to the trust from a specified person, for a consideration which is more than adequate;
- (f) If any share, security or other property is transferred by the trust to a specified person, for inadequate consideration;
- (g) If any income or property of the trust, exceeding Rs. 1000 in value, is diverted to a specified person; and
- (h) If the trust-funds are invested, or remain invested, for any period in any concern wherein any of the specified persons has a substantial interest.[Sec 13(2)]

Notes: - (1) It may be noted that where a trust receives as donations shares in a company in which any of the specified persons has a substantial interest, the trust cannot be said to have invested its funds in purchasing the said shares and this clause will have no application and the dividend income shall be entitled for exemption.- CIT vs Sahitya Trust (1993) 203 ITR 349 (Guj) Trustees of Mangaldas N. Varma Charitable Trust vs CIT (1994) 207 ITR 332 (Bom)

(2) Similarly where bonus shares are issued in respect of shares donated to the trust, of a company, in which the author of the trust has substantial interest, it does not amount to investment of trust funds falling within the mischief of this clause. CIT vs J.K.Charitable Trust(1992) 196 ITR31(All)

- (3) The expression 'invest' connotes a positive act on the part of the trust whereby the funds of the trust are laid out or committed in any particular property or business or transaction with the object of earning a profit or financial advantage or return. Investment thus, includes contribution to capital of a firm. However, the retention of profits of a trust in a firm in which the trust is a partner or delayed withdrawal of profits from the firm would not constitute investment.

Note:- For this purpose, 'relative' in relation to an individual means-

- (i) Spouse of the individual,
- (ii) Brother or sister of the individual,
- (iii) Brother or sister of the spouse of the individual,
- (iv) Any lineal ascendant or descendant of the individual,
- (v) Any lineal ascendant or descendant of the spouse of the individual,
- (vi) Spouse of a person referred to in clauses (ii) to (v) above,
- (vii) Any lineal descendant of a brother or sister of either the individual or the spouse [Expl.1]

Meaning of Substantial Interest:

A person is deemed to have a substantial interest in a concern in following circumstances:

- (i) where the concern is a company, if its equity shares carrying at least 20% of the voting power are owned by him or along with one or more of the persons specified u/s 13(3) in aggregate at any time during the year, or
- (ii) in case of any other concern, if he or alongwith one or more of the persons specified u/s 13(3) in aggregate is entitled to at least 20% of the profit of the concern.[Expl 3]

Exceptions

The condition of Section 13(1)(c), does not apply in following exceptional cases; and consequently the exemption shall be allowed:

- (1) where the use of application of any income or property of a charitable or religious trusts/institution for the benefit of any specified person, is by way of a mandatory term of the trust, or a mandatory rule governing the institution in case of trust created before 1.4.1962.
- (2) Where the income, or the value of the property or, as the case may be, the aggregate thereof, diverted during a year in favour of a specified person, does not exceed Rs. 1000.

(3) Where the aggregate of the funds of the trusts or institution, invested in a concern in which any of the specified persons has a substantial interest, does not exceed 5% of the capital of the concern, the exemption u/s 11 and 12 shall be allowed in relation to income arising to the trust/institution other than income from such investment.

Note: - 'Capital' of a company would not include its reserves; however, share premium amount may be included.

(4) Where a charitable or religious trust running an educational or a medical institution or a hospital, has provided educational or medical facilities to the specified persons.

(d) Any charitable or religious trust or institution, which has not invested or deposited its funds in the modes or forms specified u/s11(5),or which holds any shares in a company (other than shares in public sector company or shares prescribed u/s 11(5)(xii), that is, in a depository company), subject to certain exceptions.

[Sec 13(1)(d)]

Loan to other Charitable Trust/Institution

Loan by one charitable trust/institution to another charitable trust/institution having similar activities are considered not to be violative of section 13(1)(d).DIT vs Pariwar Seva Sansthan (2001) 118 taxman 587 (Delhi)

It has been held that advancing of an interest-free temporary loan by one society to another society having similar objects, whose president was brother of president of donor society, would not amount to an 'investment; or a 'deposit' attracting section 13(1)(d).DIT(Exemption) vs ACME Educational Society (2010) 326 ITR 146 (Del)

Tax at maximum marginal rate leviable in respect amt paid to specified persons as per sec 13(1)(c)and income from investment which is hit by sec 13(1)(d)

Restriction on Claiming Exemption under Other Provisions

A trust granted registration u/s 12AA (or 12A) shall not be eligible for claiming exemption under any other provision of section 10 except the following:

- (a) under section 10(1) in relation to agricultural income, and
- (b) under section 10(23C) in relation to income of university or educational institution, hospital or other medical institution, approved charitable trust or approved public religious or public religious and charitable trust. [Sec.11(7)]

Anonymous donations [Sec. 115BBC]

It is a voluntary contribution and person receiving such contribution does not maintain any record of identity indicating name and address of person making such contribution.

Voluntary contributions being anonymous donations are also eligible for exemption in case of –

- i) wholly religious trust,
- ii) partly religious and charitable trust (except when such anonymous donations are made specifically for an educational/medical institution run by the trust)

Voluntary contributions being anonymous donations are taxable in case of –

- i) wholly charitable trust,
- ii) partly religious and charitable trust (when such anonymous donations are made specifically for an educational/medical institution run by the trust).
[Sec. 13(7) read with Sec. 115BBC]

Anonymous Donation is taxable @30% +SC+EC .Further exemption is available upto 5% of the total donations or Rs. 1 Lakh whichever is higher..

Maintenance of Accounts and Audit

The trust should maintain regular and proper books of accounts, supported by receipts and vouchers. Under the Income-tax Law, accounts may be made on either cash or mercantile basis. Trusts should, however, preferably maintain their accounts on cash basis. The trust should prepare an 'Income and Expenditure Account' and Balance Sheet.

Further, a trust or institution, whose total income for a year exceeds the maximum amounts not chargeable to tax, i.e. Rs. 2,50,000 is required to get its accounts audited by a qualified Chartered Accountant and obtain the audit report in Form No.10B. The audit report is to be e-filed before e-filing return of income. This is a mandatory requirement for claiming exemption under section 11 and 12. However, in exceptional circumstances, exemption may be allowed even on a belated audit report.

Filing of Return [Sec 139(4A)]

Where the total income of the trust (before allowing exemption under sections 11 and 12) exceeds the maximum amounts which is not chargeable to tax (i.e. Rs.2,50,000 for A.Y.2015-16 and onwards), it is required to file its return in Form ITR-7, before the date specified in section 139. The due date specified under section 139 is 30th September every year where the trust is required to get its accounts audited under any provision of the Act and 31st July every year in other case.

In case return is not filed by prescribed date then benefit of accumulation u/s 11(2) will not be available. [sec 13(9)inserted w.e.f. 1.4.2016]

Levy of tax at the maximum marginal rate where a charitable trust ceases to exist or converts into a non-charitable entity (Secs.115 TD to 115 TF) inserted wef- 1.6.2016

Section 11 and 12 provide for exemption to trusts or institution in respect of income derived from property held under trust and voluntary contributions, subject to various conditions contained in the said sections. A charitable trust may voluntarily wind up its activities and dissolve or may also merge with any other non-charitable institution, or to may convert into a non - charitable organisation. Moreover, it is always possible for charitable institutions to transfer assets to a non-charitable institution. In such cases, the existing law does not provide for an clarity as to how the assets of such a charitable institution shall be charged to tax.

In order to ensure that the benefit conferred over the years to charitable trust is not misused, section 115 TD is inserted with effect from June 1, 2016. This section provides for levy of additional income -tax in case of conversion into, or merger with, any non- charitable form or on transfer of assets of a charitable organisation on its dissolution to a non-charitable institution. The elements of the regime are-

Time of accreted income – The accretion in income (accreted income) of the trust or institution shall be taxable on-

- a) Conversion of trust or institution into a from not eligible for registration under section 12 AA ; or
- b) Merger into an entity not having similar objects and which is not registered under section 12 AA; or
- c) non -distribution of assets on dissolution to any charitable institution registered under section 12AA or approved under section 10(23C) within a period of 12 months for dissolution.

- **Deemed conversion** – For the above purpose, a trust or institution shall be deemed to have been converted into any from (not eligible for registration under section 12 AA) in a previous year, if-
 - a) The registration granted to it under section 12AA has been cancelled ; or
 - b) It has modified its objects and not applied for fresh registration (or fresh registration application has been rejected).

Meaning of accreted income – Accreted income shall be amount of aggregate of fair market value of total assets as reduced by the liability as on the specified date (i.e., the date of conversion, merger or dissolution) .Mode of valuation to be notified.

What is excluded from accreted income – So much of the accreted income as is attributable to the following asset and liability, if any, related to such asset shall be ignored for the purpose of computation of accreted income –

1. Any asset which is established to have been directly acquired by the trust or institution out of agricultural income as is referred to in section 10 (1).
2. Any asset acquired by the trust/institution during the period beginning from the date of its creation and ending on the date from which the registration under section 12 AA became effective or deemed effective (however , this rule is valid only if the trust/ institution has not been allowed any benefit of sections 11 and 12 during the said period). “Deemed “ effective covers a case where due to first proviso to section 12 A (2) the benefit of section 11 and 12 have been allowed to the trust/ institution in respect of any previous year prior to the year of registration.

- Further, the asset and the liability of the charitable organisation, which have been transferred to another charitable organisation within specified time, will be excluded while calculation accreted income.

Tax liability – The taxation of accreted income shall be at the maximum marginal rate (i.e.35.535 per cent for the assessment year 2017-18). The following points should be noted-

1. This levy shall be in addition to any income chargeable to tax in the hands of the entity.
2. This tax shall be final tax for which no credit can be taken by the trust or institution or any other person, and like any other additional tax, it shall be leviable even if the trust or institution does not have any other income chargeable to tax in the relevant previous year.

Due date of payment of tax – The principal officer / trustee of trust / institution / trust is liable to pay tax on accreted income within 14 days. The time-limit of 14 days shall be determined as follows-

Different Situations	Time-limit of 14 days to be determined form-
<u>Registration</u> of trust is <u>cancelled</u> and trust does not file any appeal to Tribunal	The date on which the period for filling appeal to Tribunal expires
<u>Registration</u> of trust is cancelled , <u>cancellation</u> order is challenged I appeal before Tribunal and <u>Tribunal confirms</u> the cancellation of registration	The date on which order confirming cancellation of registration is received by trust
<u>Objects</u> of trust have been <u>modified</u> (Which do not conform to the conditions of registration) and trust has <u>not applied for fresh registration</u>	The end of previous year in which objects of trust have been modified
<u>Objects</u> of trust have been <u>modified</u> (Which do not conform to the conditions of registration),trust has <u>applied for fresh</u> registration but registration <u>application is rejected</u> and trust does <u>not file any appeal to tribunal</u>	The date on which the period for filling appeal to tribunal expires
In the above case , <u>appeal is filed</u> to Tribunal but <u>Tribunal confirms</u> cancellation of registration	The date on which order confirming cancellation of registration is received by trust
<u>Merger</u> of the trust into and entity not having similar objects and registered under section 12AA	The date of merger
<u>Non-distribution of assets on dissolution</u> to any charitable institution registered under section 12 AA or approved under section 10 (23C) within a period of 12 months form dissolution	The date on which 12 months period expires

Other points – In case of failure of payment of tax within the prescribed time, a simple interest @ 1 percent per month or part of it shall be applicable for the period of non - payment.

- For the purpose of recovery of tax and interest, the principal officer or the trustee and the trust or the institution shall be deemed to be and assessee-in-default and all provision related to the recovery of taxes shall apply. Further , the recipient of assets of the trust, which is not a charitable organisation , shall also be liable to be held as assessee

-in - default in case of non -payment of tax and interest. However, the recipient's liability shall be limited to the extent of the assets received.

Approval u/s 80G (5)

Section 80G applies to donations to institution or fund, only if it is established in India for a charitable purpose and if it fulfills the following conditions, namely : –

(i) Income not liable to be included in total income - where the institution or fund derives any income, such income of the fund or institution is not liable to be included in its total income under the provisions of sections 11 and 12 or 10(23AA) (i.e. Regimental fund) or 10 (23C) :

Exception: where an institution or fund derives any income, being profits and gains of business, the condition of non inclusion of business income in its total income under the provisions of section 11 shall not apply in relation to business income, if –

- a) the institution or fund maintains separate books of account in respect of such business;
- b) the donations made to the institution or fund are not used by it, directly or indirectly, for the purposes of such business; and
- c) the institution or fund issues to donor a certificate to the effect that it maintains separate books of account in respect of such business and that the donations received by it will not be used, directly or indirectly, for the purposes of such business;

(ii) Instrument/ governing rules do not permit application of income for non -charitable purpose - the instrument under which the institution or fund is constituted does not, or the rules governing the institution or fund do not, contain any provision for the transfer or application at any time of the whole or any part of the income or assets of the institution or fund for any purpose other than a charitable purpose;

(iii) the institution or fund is not for the benefit of any particular religious community or caste; – An the institution or fund is not expressed to be for the benefit of any particular religious community or caste; *However as per Explanation 1 exception is made out as follows.* – An institution or fund established for the benefit of Scheduled Castes, backward classes, Scheduled Tribes or of women and children shall not be deemed to be an institution or fund expressed to be for the benefit of a religious community or caste within the meaning of this clause.

(iv) maintains regular accounts: the institution or fund maintains regular accounts of its receipts and expenditure;

(v) Type of institution or fund: the institution or fund is either

1. constituted as a public charitable trust or
2. is registered under the Societies Registration Act, 1860 or under any law corresponding to that Act in force in any part of India or
3. Is registered under section 25(now sec 8) of the Companies Act, 1956,or
4. is a University established by law, or
5. is any other educational institution recognized by the Government or by a University established by law, or affiliated to any University established by law, or
6. is an institution financed wholly or in part by the Government or a local authority;

(vi) Institution or fund is approved by the Commissioner: in relation to donations made after the 31st day of March, 1992, the institution or fund is for the time being approved by the Commissioner in accordance with the rules made in this behalf.

(vii) this clause is applicable to A.Y.2008-09 - where any institution or fund had been approved under clause (vi) for the previous year beginning on the 1st day of April, 2007 and ending on the 31st day of March, 2008, such institution or fund shall, for the purposes of this section and notwithstanding anything contained in the proviso to clause (15) of section 2, be deemed to have been, –

(a) established for charitable purposes for the previous year beginning on the 1st April, 2008 and ending on the 31st March, 2009; and

(b) approved under the said clause (vi) for the previous year beginning on the 1st April, 2008 and ending on the 31st March, 2009.

Permissible spending for religious purposes: As per Sec 80G(5B) an institution or fund can incur expenditure, during any previous year, which is of a religious nature for an amount not exceeding i.e. upto 5% of its total income of that previous year .

Explanation 3. – In this section, “charitable purpose” does not include any purpose the whole or substantially the whole of which is of a religious nature.

Refer ITAT Nagpur Bench decision in case of **Shiv Mandir Devstan Panch Committee** where it is held There is no religion by the name of ‘Hindu’. Hinduism is a way of life. Hindu is neither a religion nor a community.

Explanation 4. – For the purposes of this section, an association or institution having as its object the control, supervision, regulation or encouragement in India of such games or sports as the Central Government may, by notification in the Official Gazette, specify in this behalf, shall be deemed to be an institution established in India for a charitable purpose.

Requirements for approval of an institution or fund under section 80G.

Rule 11AA as per sub rule(1) The application for approval of any institution or fund under section 80G(5)(vi) shall be in Form No. 10G and shall be made in triplicate.

As per sub rule (2) The application shall be accompanied by the following documents, namely : –

- i. Copy of registration granted u/s. 12A or copy of notification issued u/s. 10(23) or 10(23C) ;
- ii. Notes on activities of institution or fund since its inception or during the last three years, whichever is less ;
- iii. Copies of accounts of the institution or fund since its inception or during the last three years, whichever is less.

As per sub rule (3) The Commissioner may call for such further documents or information from the institution or fund or cause such inquiries to be made as he may deem necessary in order to satisfy himself about the genuineness of the activities of such institution or fund.

As per sub rule (4) Where the Commissioner is satisfied that all the conditions laid down in clauses (i) to (v) of sub-section (5) of section 80G are fulfilled by the institution or fund, he shall record such satisfaction in writing and grant approval to the institution or fund .

As per sub rule (5) Where the Commissioner is satisfied that one or more of the conditions laid down in clauses (i) to (v) of sub-section (5) of section 80G are not fulfilled, he shall reject the application for approval, after recording the reasons for such rejection in writing :

Provided that no order of rejection shall be passed without giving the institution or fund an opportunity of being heard.

As per sub rule (6) The **time limit** within which the Commissioner shall pass an order either granting the approval or rejecting the application shall not exceed six months from the end of the month in which such application was made:

Provided that in computing the period of six months, any time taken by the applicant in not complying with the directions of the Commissioner under sub-rule (3) shall be excluded.

One Time Approval:

Approval of the Commissioner under section 80G(5)(vi) has earlier effect for such assessment year or years, not exceeding five assessment years, as may be specified in the approval. The time-limit of 5 years has been omitted with effect from 1st October ,2009 by the Finance (No.2) Act, 2009. After this amendment, the approval once granted shall continue to be valid in perpetuity.

Accordingly, existing approvals expiring on or after October 1, 2009 shall be deemed to have been extended in perpetuity, unless specifically withdrawn. However, in case of approvals expiring before October 1, 2009, these will have to be renewed and once renewed these shall continue to be valid in perpetuity, unless specifically withdrawn.

Case Laws:

S. 80G(5) : At stage of registration, extent and nature of activities were not required to be examined, recognition under section 80G(5) was to be granted to assessee.

The assessee-Trust had made an application, in form No. 10G for approval u/s 80G(5). The main objects of the trust as per the trust deed are educational activities. In order to verify the application, the trust was asked to explain as to how its activities are in accordance with its objects. It was submitted that the main activity of the trust was Arthik Unnati Scheme. On going through the details produced, it was seen that the trust was providing unskilled manpower, specially security personals to some co-operative banks. The trust was asked to provide details of Arthik Unnati Scheme and to explain as to how that activity was a charitable activity. Thereafter, the trust had made written submissions on the issue. Thereafter, after considering the relevant material on record, the application made by the assessee trust seeking approval under section 80G(5), was rejected. Against the said order, the assessee trust had preferred an appeal before the Tribunal which was allowed. On appeal by revenue, dismissing the appeal the Court held that; since at stage of registration, extent and nature of activities were not required to be examined, recognition under section 80G(5) was to be granted to assessee.

CIT v.Arvinbhai Maniar Charitable Foundation (2015) 231 Taxman 908 (Guj.)(HC)

S. 80G(5) : At time of granting approval what is to be examined is object of trust-Order of Tribunal was affirmed.

Assessee-trust filed an application for recognition under section 80G(5). Revenue authorities rejected said application on ground that assessee failed to spend 85 per cent of amount received in earlier assessment years. Tribunal, however, allowed assessee's application On appeal the Court held that at time of granting approval under section 80G, what is to be examined is object of trust and so far as aspect of income is concerned, same can be very well examined by Assessing Officer at time of framing assessment, therefore, impugned order of Tribunal was to be confirmed .

CIT v. Pujya Shri Jalarambapa & Matushri Virbaima Charitable Trust (2015) 229 Taxman 534 (Guj.)(HC)

The Gujarat High Court has held, in the case of **N.N.Desai Charitable Trust vs. CIT (2000) 246 ITR 452**, that while processing the application for approval under section 80G, the **commissioner is not expected to act as an assessing authority**, but his enquiry should be confined to finding out whether the trust satisfies the prescribed conditions.

In **Kalyanam Karoti vs.CIT (2010) 123 ITD 317 (Lucknow)**, the Tribunal held that the Commissioner could not refuse renewal of approval on the ground that **Permanent Account Numbers of donors were not provided**.

- On refusal to grant registration / approval by Commissioner remedy available is appeal to Tribunal.

DOCUMENTARY REQUIREMENT FOR 12 AA & 80G(5)

For New Case -12AA Registration

1. Form No. 10A (in duplicate)
2. 1 copy of Trust deed /Memorandum of Association certified by Charity Commissioner.
3. Certified copy of Charity Commissioners certificate for registration of Trust/ Society
4. Name & Addresses of Trustees with their PAN
5. PAN Card copy of Trust / Society/ All Trustees
6. Notes on activities of Trust / Society for last 3 years with supporting
7. Last 3 years Balance Sheet, Income & Expenditure a/c and acknowledgement of return , Bank Statement copies
8. N.O.C in respect of address proof in support of ownership of premises
9. Address Proof
10. Change Report in respect of change in trustees/address

For New Case - 80G Approval

1. Form No. 10G (in Triplicate)
2. 1 copy of Trust deed certified by Charity Commissioner

3. 1 copy of Charity Commissioners certificate for registration of Trust/ Society
4. Name & Addresses of Trustees with their PAN
5. PAN Card copy of Trust / Society/ All Trustees
6. Notes on activities of Trust / Society for last 3 years with supporting
7. Last 3 years Balance Sheet, Income & Expenditure a/c and acknowledgement of return & Bank Statement.

----THANK YOU----