

TAXATION OF CHARITABLE TRUST AND AOP / BOI

A) **DEFINITIONS**

1) **Definition of income of the Trust Section 2 (24) (ia)**

- i) Section 2 (24) defines the Income under I.T. Act which says –“Income” includes - (ia) Voluntary contribution received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes or by an association or institution referred to in clause (21) or (23) or by a fund or trust or institution referred to in sub clause (iv) or (v).

(or by any university or other educational institutions referred to in sub clause (iiad) or (vi) or Hospital or other institution referred to in sub clause (iiiae) of clause (23C) of section 10 or by an electoral trust.)

Explanation- For the purpose of this sub clause trust includes any other legal obligation.

- ii) **Income in Commercial sense -**

For the purpose of determining the income of the Trust eligible for exemption under section 11, the income arising from property held under Trust constitutes the income of the Trust. It will mean income from property, business, dividends, interest on securities or other interest etc. It will also include donations (other than Corpus donations) received by the trust by virtue of the provisions of section-2(24) (ia). In other words, the income for the purpose of section 11 is the income as per the accounts of the trust.

This analogy is confirmed by many court pronouncements and by the CBDT in circular no. 5-P (LXX-6) dated 19-6-1968.

2) **Definitions of Charitable Purpose – Section 2 (15)**

Section 2(15) of the Income Tax Act, 1961, defines “charitable purpose”

Which includes:-

- i) Relief of the poor,
- ii) Education,
- iii) Yoga, (w.e.f. 01/04/2016)

- iv) Medical relief,
- v) Preservation of environments (including water sheds, forests and wild life) and preservation of monuments or places or objects of artistic or historic interest (Added w.e.f. 1.4.2009 i.e. from A.Y. 2009-10)
- vi) The advancement of any other object of general public utility.

FEW JUDGMENTS ON CHARITABLE PURPOSE

1. Objects to establish schools for Muslims boys and girls to teach urdu, Arabic, etc., is charitable in nature – Malik Hasmullah Islamic Educational and Welfare Society v/s CIT [2012] 138 ITD 519 (Luck.).
2. Where scholarship granted by trust to poor students is not restricted to a particular community, it is charitable purpose – Bhagwan Mahavir Purusharth Prerna Nidhi Nyas v/s. CIT [2012] 23 taxman.com 311 (Jp.).
3. Where dominant objects of trust are charitable in nature, mere fact that some relatives of settler can also participate and has preference over general public in such charitable objects, will not make trust as non-charitable – Manockjee Cowasjee Petti Charities v/s. DIT [2012] 136 ITD 355 (Mum.)
4. Where assessee-society charges huge fees from public in addition to prescribed fee of the Government, such society cannot be held as charitable in nature - Sukhamani Society For Citizen Services v/s CIT [2012] 139 ITD 307 (Asr.).
5. Mere conducting of coaching classes for preparing students to attend examinations conducted by open university or by other university or distance education cannot be treated as charitable activity – DIT v/s. Kuttukaran Foundation [2012] 51 SOT 175 (Cochin).
6. Where assessee-trust is formed with object of taking care of sick animals, it is charitable activity – Snekalaya for Animals v/s ITO [2012] 52 SOT 352 (Chennai).
7. Activity of maintenance and development of park, would certainly fall within words 'preservation of environment' u/s 2 (15) – New Saibaba Nagar Welfare Association v/s DIT [2012] 53 SOT 495 (Mum.).
8. Objects of setting up memorials to perpetuate memory of national war heroes are charitable in nature – Yodha Samarak Samiti v/s CIT [2012] 138 ITD 512 (Chd.).
9. Where assessee is formed for production of television and radio programmes for purpose of telecasting and broadcasting, such activities cannot be held as

charitable purpose – CIT v/s A.Y. Broadcast Foundation [2012] 21 taxmann.com 533 (Ker.).

10. Taxpayer conducting coaching institute cannot be treated as a charitable institutions – M Star Charitable Society v/s CIT [2013] 142 ITD 153 (Cochin).

The definition of Charitable purpose in section 2(15) is amended with effect from A.Y. 2009-10. The definition is modified by adding a proviso stating that the “Advancement of any other object of general public utility” shall not be a charitable purpose if it involves the carrying on of any activity in the nature of trade, commerce or business or any activity of rendering of any service in relation to any trade, commerce or business for a fee or cess or any other consideration, irrespective of any nature of use or application of the income from such activity or the retention of such income from such activity unless- (substituted for first and second proviso w.e.f. 1-4-2016)

- i) Such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility and
- ii) The aggregate receipts from such activity or activities during the previous year, do not exceeds 20% of the total receipts, of the trust or institution undertaking such activity or activities of that previous year.

With this amendment if a charitable trust caring on business activities and its activities are falling under advancement of any other object of general public utility and total receipts from such business activity exceeds the prescribed limit then in that case the activities of the trust will not be for charitable purpose and accordingly loses all the exemptions permitted under the act.

This amendment to Sec. 2(15) covers only one limb that is “advancement of any other object of general public utility” but does not cover other limbs such as Education, Medical, Yoga etc. Therefore the business activities carried on by the trust under these areas are permitted subject to the provisions and conditions mentioned in section 11(4) and 11(4A).

Any trust having mix charitable activities and if it falls under the said proviso to section 2(15) i.e. carry on activity in the nature of trade, commerce or business for advancement of any other general public utility along with other charitable activity then in that case, since one of the activity of the trust is to be considered for non charitable purpose, in that case whole trust will lose exemption u/s 11 & 12 and will be taxed accordingly as a unregistered trust in that particular year in which its receipts from commercial activities exceed the threshold limit as mentioned as per section 13 (8).

In view of monetary limit brought under the proviso to section 2(15), if the monetary limit is exceeded then exemption will not be available u/s 11 in case of advancement of any general public utility. This proviso puts an end to all controversy that may emanate from profits and gains being incidental to main object or not. In this regard CBDT has issued an explanatory circular vide no. 11/2008, dt. 19-12-2008, F.No. 134/34/2008-TPL.

Recently CBDT by circular No-21/2016 dated 27-05-2016 has clarified that if any trust does commercial activity with reference to proviso to section 2(15) exceeds the specified cut-off in particular year the tax exemption would be denied in that particular year and cancelation of registration would not be mandatory as per section 13(8) unless such cancelation becomes necessary on other ground (s). The field officers are advised not to cancel the registration of a charitable trust granted u/s 12AA just because the proviso to section 2(15) comes in to pay otherwise with the introduction of new chapter XII –EB the trust will become liable to tax on accreted income by getting hit by section 115TD(3). The process of cancelation of registration is to be initiated strictly in accordance with section 12AA (3) and 12AA (4) after carefully examining the applicability of these provisions.

Few Judgments with regard to Proviso to sec 2(15)

- a) Andhra Pradesh State Seed Certification Agency v/s CCIT & Ors. (2013) 83 DTR (AP) 23.
- b) Punjab State Seed Certification Authority v/s Commissioner of Income-Tax –I, Chandigarh [2013] 37 taxman.com 81 (Chandigarh –Tribunal).

In the above both the cases, it was held that certification of seeds by the petitioner facilitates trade, commerce or business in the certified seeds by the client of the petitioner. Hence, the proviso to the said section would come into operation.

c) ICAI v/s DGIT (E) 347 ITR 99 (Del)

Institute cannot regarded educational Institution. An activity would be considered business if it is undertaken with a profit motive but in some cases this may not be determinative. When the dominant objective was only to regulate profession of Chartered Accountancy and is a charitable Institution therefore mere receipts of fees for conducting coaching classes as well as placements cannot be a business activity u/s 2 (15).

d) Bureau of Indian Standards v/s DGIT (E) 358 ITR 78 (Del)

Taking license fee for granting marks / certification cannot be said to be done for the purpose of profit – any profit / revenue earned is purely incidental
Not involved in carrying on any activity in the nature of trade, commerce or business.

e) ITAT Cochin Tribunal in the case of Greater Cochin Development Authority v/s JDIT (E) ITA No. 792 & 793 / Cochin (2013).

Decided that the activities conducted by authority actually are purely commercial in nature where profit motive is involved. The services provided are commercial in nature and no charity is involved in it.

f) DIT (E) v/s Sabarmati Ashram Gaushala Trust 362 ITR 359 (Guj)

Sold semen, fodder and milk and earned some profit.

Surplus by itself would not be the sole consideration for judging whether any activity is trade, commerce or business particularly if generating 'surplus' is wholly incidental to the principal charitable activities of the trust.

g) DIT (E) vs. Khar Gymkhana (Bombay High Court) dated 06/06/2016

S. 2(15)/12AA(3):

The DIT has no jurisdiction to cancel registration of a charitable institution on the ground that it is carrying on commercial activities which are in breach of the amended definition of "charitable purpose" in s. 2(15). Registration can be

cancelled only if the activities of the trust are not genuine or are not being carried out in accordance with its objects. This is clarified by Circular No.21 of 2016

- h) DIT (E) vs. Lala Lajpatrai Memorial Trust (Bombay High Court) dated 13/04/2016.

S. 2(15)/ 11: If the predominant purpose is charitable, the earning of profit from an incidental activity like letting of property does not affect the charitable status. As the letting is a part of the educational activities, there is no obligation to maintain separate books u/s 11(4A). As per CBDT Circular No. 11 of 2008, the first proviso to s. 2(15) applies to the 'advancement of any other object of general public utility'

- i) DIT (E) vs. Ahmadabad Management Association 366 ITR 85 (Guj)

The object of promoting and development of management and related subjects through meetings discussions, lectures, seminars, conference etc. 80% revenue derived from continuing education diploma and certification program. Held that the association is engaged in activity of education hence proviso to 2(15) not applicable.

- j) DIT (E) vs. Samudra Institute of Maritime Studies trust 369 ITR 645 (Bom)

All the courses conducted may not be approved by DG of Shipping but that by itself is no ground to hold that purpose is not charitable. Held that this is not a case to run a coaching class or a centre. This is an institution which imparts education in the area of pre-sea and post-sea training to seamen so as to prepare them for all duties. It is educational activity hence the proviso to 2(15) not applicable.

- k) Loka Shikshana Trust (1975) – 101 ITR 234 (SC)

The word "Education" connotes the process of training and developing the knowledge, skill, mind and character of students by normal schooling and has not been used in the wide and extensive sense according to which every acquisition of further knowledge constitutes education.

l) Indian institute of Bankers vs. Dy. DIT (E) 74 TTJ (Mum) 523

The assessee was publishing news paper and contention was that it was a charitable object being the spread of education. The court negative the contention.

m) CIT vs. Surat Art Silk Cloth Merchant Association 121 ITR 1

The supreme court in its another land mark judgment in the case of Surat Art Silk Cloth Mfrs Asso (1980) 121 ITR 1 and Andhra Chamber of Commerce (1965) 55 ITR 722 held that if the primary and dominant object of the trust is charitable, the other objects, which by themselves may not be charitable but since they were incidental or ancillary to the attainment of the primary or dominant purpose, would not prevent the trust from being a charitable one.

B) **SECTION 10 & 10 (23) (C)**

Section 10 covers a number of categories (Now even Swaccha Bharat Kosh and Clean Ganga Fund set up by C. Govt. w.e.f. 1-4-2015) but the most important among them is section 10 (23C) which covers income of specified/approved funds, Hospital or institution/approved Hospital or institution and University or Educational institution / approved University or Educational institution, subject to certain Conditions.

The sub section can be divided in to three groups:-

- (i) Wholly or substantially financed by the government 10 (23C) (iiiab) & (iiiac)
Explanation is added w.e.f. 1-4-2015 that for the purpose of aforesaid sub section (i) the Govt. will prescribed the percentage of Govt. Grants for substantially financed, that the total receipts, including any voluntary contribution received by

such percentage. As per Rule – 2BBB the said prescribed percentage substantial Govt. grant is 51%. (CBDT Circular no-77 of 2014)

- (ii) The aggregate annual receipts do not exceed the amount prescribed (As per Rule 2BC it is prescribe Rs. 1crore) 10 (23C)(iiiad) & (iii ae)
- (iii) The aggregate annual receipts exceeds the prescribed amount (Rs. 1 Crore) are required to obtain approval from prescribe authority to avail exemption U/S 10(23C) (iv) to (via).

The approval is to be obtained from Chief Commissioner/Director General of Income Tax. The application for such approval is required to be sent to the

Chief Commissioner/Director General, (under rule 2C & 2CA vide from 56 & 56D) through the commissioner of Income Tax having jurisdiction over the Hospital, University or Educational Institution (Section 10(23C) (iv) to (via).

Two important points to be noted :-

- i) That the Fund, trust or institution etc. applies its income, or accumulates it for application wholly and exclusively to the objects for which it is established and in a case where more than 15% of its income is accumulated on or after the first day of April-2002, the period of the accumulation of the amount exceeding 15% of its income shall in no case exceed five years.(Section-10(23C) (via)
- ii) That the income of the trust or institution referred to in sub clause (iv) or (v) shall be included in its total income of the previous year if the provisions of first proviso to Sec 2(15) becomes applicable. (W e f. 1-4-2009)

c) **SECTION – 11 EXEMPTION**

1) **Meaning of ‘Property held under Trust’**

The expression 'property used in Section 11 has the widest amplitude. It includes a business undertaking (J.K. Trust vs. CIT (1957) 32ITR 535 (SC)). 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 (C.I.T. vs. Shivanai Jushal Trust (1980) 4 Taxman 418 (Delhi)

Before the benefit of section 11 (1) can be claimed the property must be held under trust, which implies that the trust in respect of the property must be complete.

In other words all the formalities which are required under the law of creation of a trust in respect of the property must be complied with (C.I.T. vs. Chhadani Lal Jain Trust (1977) 106 ITR 179 (All)). In case of a trust in relation to an immovable property, the instrument of trust should be duly registered. (C.I.T. vs. Trustees of Dr. Divekar Charity Trust (1977) 110 ITR 227 (Bom.)) Where no Immovable property is transferred to the trust, a deed of declaration and confirmation of the trust by which the trustees acknowledge the receipt of moneys, the acquisition of properties there from and the charitable purposes for which they are being held would also suffice (CIT vs. Ganpatrai Sagarmall (1980) 125 ITR 334 (Cal.)).

Further, 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 (Lall Choudhary vs. C.I.T. AIR 1956 Pat. 314; CIT vs. Thakur Das AIR 1960 SC 1219). Such income will be taxed in the hands of the settlor, under provisions of Section 60.

2) **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 and it is not necessarily theistic. A religion has its basic in a system of beliefs or doctrines, but it would not be correct to say that religion is nothing but a doctrine or belief.

'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 is, however, confined to public religious trusts only; any income from the property held under a trust for private religious purposes which does not ensure for the benefit of the public is not exempted.

Recently Nagpur Tribunal in the case of Shiv Mandir Devsthan Panch Committee Sansthan v/s CIT (ITA No.- 223 / Nagpur / 2009) dated 11/10/2012 has said that the worship of Lord Shiva, Hanumanji, Goddess Durga and maintenance of temple cannot be regarded for the advancement support are propagation of a particular religion and after detailed observation about the religion and traditions of community of Hinduism it is stated that the expenses incurred for worshipping Lord Shiva, Hanuman, Goddess Durga and for maintenance of temple cannot be regarded to be for religious purpose.

3) **Trust claiming general exemption (Sec. 11)**

Subject to the provision of section 60 to 63 the following income shall not be includable in the total income of the trust in receipt of such income.

A. Income derived from the property held under trust for charitable or religious purposes to the extent.

- i) It is applied for such purposes in India. (Even capital expenditure is also treated as application of income.)
- ii) It is accumulated and set apart for application up to 15% of such income. (11) (1) (a). The expression 'such income' only means income accruing or arising in favour of the trust – CIT v. P. Krishna Warriar (1964) 53 ITR 176 (SC).

B. If the trust is created before the commencement of this Act (1/4/62) and the trust is partially for such purpose.

- i) To the extent of application of income for such purpose in India.
- ii) It is finally set apart for application to such purposes to the extent of 15% of such income. Sec (11) (1) (b).

B.C) Income applied outside India (Section 11 (1) (c))

- i) The trust is created after 1/4/1952 in respect of income applied for charitable purposes, which tend to promote international welfare in which India is interested.
- ii) If the trust is created before 1/4/1952, then income applied outside India for charitable purposes.

Provide the board has by general or special order approved such exclusion.

D) Corpus Donations (Section 11 (1) (d))

Income in the form of voluntary contributions made with a specific direction that they should form part of the corpus of the trust or institution.

4) **Conditions are to be complied with to claim the exemptions U/S 11.**

- a. The property from which income is derived should be held under a trust or other legal obligation.
- b. The property should be held for charitable or religious purposes. In the case of charitable trust created on or after April 1, 1962, the further conditions are:
 - b.i.i. The trust should not be created for the benefit of any particular religious community or caste;
 - b.i.ii. No part of the income should ensure, directly or indirectly, for the benefit of the settler or other specified persons; and
 - b.i.iii. The property should be held wholly for charitable purposes.
- c. The conditions mentioned at (b) and (c) also apply to religious trusts created on or after April 1, 1962.
- d. The exemption is confined to the income which is applied to charitable or religious purposes or is accumulated for applying to such purposes within the limits of accumulation permitted under section 11(1) and (2)

- e. The exemption is restricted to such portion of the income as is applied to charitable or religious purposes in India except in the cases covered by section 11(1)(c).
 - f. The trust should be registered U/S 12A.
 - g. The accounts of the trust should be audited for such accounting year in which its income (without giving effect to the provisions of section 11 and 12) exceeds the exemption limit.
 - h. The funds of the trust should be invested or deposited in any one or more of modes or forms mentioned in section 11(5).
- 5) **Section 11(5) – The forms and modes of investing and depositing the money.**

Income Tax Act provides list of modes and forms permitted for the investments of the Charitable Trust. This section includes a sub clause where in it says that “any other form or mode of Investment or Deposit as may be prescribed”. Rule 17C specifies such prescribed other modes of investments. The list is available in the Act.

- 1) The exemption under section 11(1) (a) is available only if at least 85 per cent of the income is applied for charitable / religious purpose in India during the year and the remaining amount is invested in the forms / modes specified under section 11(5). Thus, both the requirement will have to be fulfilled before the trust can claim and avail of the exemption under section 11(1) (a). It is only then that the entire income of the trust will get exemption (Circular No. 335, dated April 13, 1982)
- 2) Any charitable or religious trust or institution will forfeit exemption from tax if any funds of the trust or institution are invested or deposited otherwise than in any one or more of the modes specified in section 11(5) read with section 13(1) (d). Such trusts and institutions will also forfeit exemption from tax if any part of their funds invested before March 1, 1983, otherwise than in any one or more of the forms or modes specified in section 11(5), continue to remain so invested or deposited after November 30, 1983.

- 3) Trusts or institutions which continue to hold any shares in a company [other than in public sector company or shares which are prescribed as mode of investment under section 11(5)(xii)] after 30th November, 1983 will also forfeit exemption from income-tax.

However there are certain exceptions provided in section 13 (1) (d) which provides forfeiture of exemption, will not apply in respect of investments made other than modes specified in section 11 (5).

I. Consequences for failure to invest as per section 11(5) :-

Failure to invest the income in circumstances as explained will amount to violation as per section 13(1) (d) of the act. Therefore, the exemptions that are available u/s. 11(1) (a) will not be available.

As per section 11(1A), the income from capital gain is recognized as income derived from property held under trust, as such the provision of accumulation of income applied to capital gains too as held in the case of Trustees of Dr. Sheths Charitable Trusts v/s Seventh Income Tax Officer (1982) 2 ITD 649 (Mum-Trib), and also clarified by Circular No 72, dated 06-01-1972. -

The Capital Gains arising u/s. 11(1A), if not utilized in acquiring an asset, have to be invested in a mode specified u/s. 11(5). Various High Courts have held that making fixed deposits in bank and investment in public sector companies amounts to capital asset and have held as investment specified u/s. 11(5) of the Act.

When such income is accumulated in accordance with S 11(2), then the investment has to be made in accordance with S 11(5). Income so accumulated u/s 11(2) which ceases to remain invested in any of the modes specified in section 11(5) than the income so accumulated will be deemed to be the income of the previous year and become chargeable to tax as income of that year.

II. **Whether entire exemption will be forfeited in case of violation of section 11(5)?**

Section 13(1)(d) provides that in case of charitable or religious trust or institution, where any income thereof is invested or deposited otherwise than in any one or more of the forms or modes specified in s 11(5), then section 11 or 12 will not apply.

But there are divergent views with regards to whether entire exemption will be forfeited or not.

In the case of Gurudayal Berila Charitable Trust v/s ITO, Fifth (1990) 34 ITD 489 (Mum), the issue on the amount of violation of investment came up whether the entire exemption has to be forfeited or to the extent of violation committed. It was held that amount to the extent violated be brought to tax.

In the case of Director of IT (Exemptions) v/s sheth Mafatlal Gagalbhai Foundation Trust (2001) 249 ITR 533 (Bom.), it was held that tax will be levied at maximum marginal rate only to the portion of violation u/s. 13(1) (d).

In the case of Director of IT (Exemptions) v/s Sheth Mafatlal Gagalbhai Foundation Trust (2002) 253 ITR 593 (Del), there was an innocent violation of section 11(5) of investing in a mode other than mode prescribed u/s. 11(5). As soon as the assessee came to know about such violation, he had withdrawn the said investment. Therefore, the Court held that this would not attract forfeiture of exemption.

In the case of Asst. CIT v/s Sri Ramchandra Educational & Health Trust (2010)128 TTJ 408, the investment made was in contravention of section 11(5). The said trust made an effort to recover the amount. However, amount could not be recovered from the earlier investment due to the pendency of garnishee proceedings. It was held that under the circumstances, as the reasons were beyond the control of the assessee, forfeiture will not raise.

6) **The finance (No. 2) Act, 2014 has inserted two new sub sections 6 and 7.**

(w.e.f. 01/04/2015 i.e. A.Y. 2015-16 and onwards)

- h.i.i. **Sub section 6** provides that where any income required to be applied or accumulated or set a part for application, then, for such purposes the income shall be determined without any deduction or allowable by way of depreciation or otherwise in respect of any assets, acquisition which has been claimed as an application of income U/s. 11 in the same or any other previous year.
- h.i.ii. **Sub section 7** provides that where the trust or institutions has been granted registration U/s. 12A or 12AA and the said the registration is in force during the previous year, then, nothing contained in section 10 (other than S. 10(1) & 10(23C) shall operate to exclude any income derived from the property held under the trust from the total income of the person in receipt thereof for that previous year.

7) **Application of Income-**

Application of income means utilization of income for the charitable or religious purposes as enumerated in the instrument of the trust.

Under the provisions of section 11(1) (a) income from property held under the trust for charitable or religious purposes is exempt to the extent it is applied for such purposes in India other way the amount spent on the object of the trust is allowed as deduction.

Following expenditure are considered as application of income:-

h.i.ii.D.1) Administrative Expenses - The expenditure incurred for the management and administration of the trust are also treated as application of income.

h.i.ii.D.2) Capital expenditure – All capital expenditure spent in furtherance of the objects and purposes of the trust will be treated as application of income. (M. Ct. M. Tirupani Trust v/s. CIT 230 ITR 636 – SC)

h.i.ii.D.3) Loans for education purpose – Loans granted for educational purpose will also be application of income but when the loan is returned in subsequent year it will be considered as part of income in that year (CBDT Circular – 100 dated 24/01/1973)

h.i.ii.D.4) Payment of taxes - The payment of taxes by the trust are considered as application of income and it should be treated as having been applied for charitable purposes (CIT v/s Jhanki Ammal Ayya Nadar Trust (1985) 23 Tax mann. 416 Madras.

h.i.ii.D.5) Donation to other trust – When the amount donated to other charitable trust for charitable purposes it is treated as application of income.

h.i.ii.D.6) Contrary to trust deed – Under Section 11 (1) (a) what is relevant is application of income for charitable purpose. Even though it is contrary to the terms of trust deed which does not empower to trustee to apply for that charitable purpose. (Trustees of H.E>H. the Nizam's Pilgrimage Money Trust v/s CIT (1987) 65 CTR 290 (AP)

h.i.ii.D.7) Expenditure in earlier year, Expenditure of defending criminal charges and Repayment of loan for construction of building are considered as application of income.

h.i.ii.D.8) The word 'applied' necessarily does not mean 'spent'. Even if the amount has been earmarked and allocated for the purposes of the institution, it will be deemed to have been applied for its purposes – CIT v. Radhaswami Satsang Sabha (1954) 25 ITR 472 (All.).

h.i.ii.D.9) Excess application of last year's (Deficit)

If a trust has incurred deficit due to excess spending on the object of the trust during a particular a year, the surplus made by in a subsequent year to make up for the past deficit should be set off against such deficit.

This is confirmed in many cases few are mentioned here in below:

- i) CIT v/s Maharana of Mewar Charitable Foundation (1987) 164 ITR 439 (RJ)
- ii) CIT v/s Shri Swetambar Murti Pujak Jain (1995) 211 ITR 293 (GJ)
- iii) CIT v/s Matriseva Trust (2000) 242 ITR 20 (Madras)
- iv) Gem and Jewellery export promotion council v/s ITO 68 ITD 95 (Bom Tribunal)
- v) Volkart Foundation ITA No. 4209 / Bom / 73-74
- vi) Balkan-ji-Bari ITA No. 3078 (Bom) / 77-78 (1979) 2 Taxman 377.

8) **Deemed application of income**

Accumulation for specific purpose Sec-11(2)

A charitable trust having registration u/s 12 or 12AA can accumulate its income for a specific purpose to be utilized in future will be allowed as deduction as deemed application of income during the previous year in which it is accumulated.

This deeming provision will be applicable (As per amended provisions w.e.f. A.Y. 2016-17) The substituted sub clauses are as under:

- (a) Furnishing a statement in prescribed form and prescribed manner to assessing officer stating the purpose and period for which the income is being accumulated. The period of accumulation in no case exceed 5 years.
- (b) Money so accumulated is to be invested in any of the modes as specified in section 11(5).
- (c) This statements is to be furnished on or before the due date of filling of return.

Provided that in computing the period of five years referred to in clause (a), the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded”.

The prescribed form under rule 17(2) is Form no 10. The contents of this form are changed from AY 2016-17.

In order to remove the ambiguity regarding the period within which the assessee is required to file Form 10, and to ensure due compliance of the above conditions within time, the Act is amended to provide that the said Form shall be filed before the due date of filing return of income specified under section 139 of the Act for the fund or institution.

In case the Form 10 is not submitted before the due date, then the benefit of accumulation would not be available and such income would be taxable at the applicable rate. Further, the benefit of accumulation would also not be available if return of income is not furnished before the due date of filing return of income. These amendments will take effect from assessment year 2016-17.

One of the conditions for accumulation of income U/s. 11(2) is that the money so accumulated or set apart is to be invested in the specified mode of section 11(5) but the period under which it is to be invested is not prescribed in the act. Earlier in previous form 10 at point number 2 it was mentioned that it has been / will be invested before the expiry of 6 months from the end of previous year. But in new form the said point number 2 now states that the amount so accumulated has been invested in specified mode it means now the option to invest later on is not available therefore the money so accumulated are to be invested before submitting form 10.

9) **Important points to be noted for accumulation u/s 11(2)**

Accumulation u/s 11(2) shall be deemed to be income of the previous year in which following situation occurs:-

- a) Income applied to purposes other than Charitable or Religious,
- b) Ceases to remain invested in any of the modes specified in section 11(5).
- c) Not utilized for the purpose for which it was accumulated within the period of 5 years.
- d) Credited or paid to any other trust registered u/s 12AA or having exemption u/s 10(23C)

If the purpose specified for accumulation cannot be achieved then the purpose can be amended by a specific application to A.O. (section 11 (3A)).

I) **Option to be exercise to spend the income in the next year**

As per clause 2 of explanation to Section 11(1) provides deemed application of income if the income is received in previous year but applied for religious or charitable purposes in subsequent year by any amount –

- (i) For the reason that the whole or any part of the income has not been received during that year, or
- (ii) For any other reason, then –
 - (a) In the case referred to in sub-clause (i) so much of the income applied to such purposes in India during the previous year in which the income is received or during the previous year immediately following as does not exceed the said amount, and
 - (b) In the case referred to in sub-clause (ii) so much of the income applied to such purposes in India during the previous year immediately following the previous year in which the income was derived as does not exceed the said amount.

May at the option of the trust to be exercised in writing to the assessing officer before the expiry of time allowed for filing of return U/S 139 (1) then in that case such income will be deemed to be income applied during the previous year.

Such option is to be exercised in a prescribed form for the said accumulation is **Form No. 9A** read with Rule 17(1). The said form is to be filled before the due date of filling of return U/s. 139 and it is to be furnished electronically either under Digital Signature or Electronic Verification Code. This application in Form No 9A is effective from AY 2016-17.

10) **Capital Gains**

When a capital asset, being property held under trust is transferred resulting in Capital gain, it may not be possible for the trust to use the entire capital gain during the year for charitable or religious purposes to fulfill the conditions of section 11 for exemption. Hence section 11(1)(a) provides that if such sale

proceeds are utilized for acquiring another capital asset, the capital gain shall be deemed to be applied for the objects of the Trust.

If only part of the sale proceeds is reinvested, the excess of the re-investment over the cost of the transferred asset is deemed to be applied and qualifies for exemption.

Though the sub-section does not mention any time limit for reinvestment it should be within the same year or the next year, as per the explanation of section 11(1). The reason for this time limit is that the capital gain is deemed to be applied for charitable purposes to the extent of cost of the capital asset

acquired. If so the time limit should be the same as the time limit for application of income under section 11(1). The Calcutta High Court, in the case of CIT vs. East India Charitable Trust (1996) 206 ITR 152 has confirmed this view.

As per the instruction of the board, fixed deposit with banks for a period exceeding six months can be considered to be capital asset. (Instruction no. 883 – F. No. 180/34/72 – IT (AI) of 25.9.1975) courts have had that even F.D. with banks less than 6 months are also capital asset but F.D. with company is not a capital asset.

D) **Section – 12** **Registration of a charitable trust**

i) Registration under Income Tax Act U/s. 12AA (Previously U/s. 12A)

If a trust or any institution whose objects are charitable as defined under section 2(15), it would be entitled to registration under section 12AA, even though, as per definition of 'person' under section 2(31), it is falling in other category like company or AOP or local authority

(Gujarat Maritime Board v. CIT (2005) 147 Taxman 31 (Ahd.)

Registration under section 12AA is condition precedence to avail exemption under sections 11 and 12. Unless and until an institution is registered under section 12A or 12AA, it cannot claim the benefit of section 11(1) (a).

(U.P. Forest Corporation v. CIT (2007) 165 Taxman 533 (SC).

Three Proviso Inserted in Section 12A (2) w.e.f. 01/10/2014 regarding registration of old trusts.

- a) 1st proviso provides that where registration has been granted to the trust U/s. 12AA then provisions of Sec. 11 & 12 shall apply in respect of any income derived from trust property of any assessment year for which assessment proceedings are pending as on the date of such registration and the object and activities of such trust remain the same for such proceedings assessment year
- b) 2nd proviso provides that the no action U/s. 147 shall be taken by A.O. in the case of such trust for any Assessment Year preceding the year in which registration is granted. Not to be denied exemption due to non-registration.
- c) 3rd proviso provide that the provisions of 1st and 2nd proviso shall not apply in case of any trust which was refused or the registration granted to it was cancelled at any time U/s. 12AA.

ii) Time Limit for registration

- a) Application for registration or rejection must be disposed of within 6 months from the end of the month in which application was field.

There are two divergent judgments in this regards.

- b) Non-consideration of application for registration within time limit, it was decided that in result there of it is to be treated as deemed grant of registration. Society for the promotion of Education Adventure sport & Conservation of Environment v CIT (2008) 171 Taxman 113 (All)
- c) Recently Madras High Court in the case of CIT v/s Sheela Christian Charitable Trust reported in 32 taxmann.com 242 (2013) decided that not passing an order within the prescribed time would not automatically result in granting registration to trust.

iii) Remedy against rejection of registration

The aggrieved trust in case of rejection of registration can file an appeal to the income tax appellate tribunal against the order of rejection or the trust can apply again for registration but it cannot be done in the same year.

iv) Some suggestions on drafting of trust deed and for registration

- 1) The object clauses in the trust deed should be properly drafted and it is advisable to be put in one place under the respective heads and unnecessary clauses should be avoided.
- 2) As far as possible there should not be clauses in the trust of in the nature of Business (To avoid the effect of the proviso to section 2(15)). If it is there it should be incidental to the main object and there should be a binding clause on the trustee that the income / fund of the trust is to be applied only for charitable purposes.
- 3) The clause pertaining to activities outside India should be in concurrence with section 11(4).
- 4) There should not be a clause giving authority to the trustees to open a bank a/c or make investments of the trust in the name of trustees.
- 5) Winding up clause should be there in the trust deed, stating that no assets of the trust to be distributed among the trustees at the time of winding up.

- 6) Some activities are to be done before registration under I.T. The activities are required to be proved as genuine and should be satisfactory to the DIT (Exp).
- 7) The trust should not have Mixed Objects of Charitable and Religious activities. The Registration is granted either for charitable purposes or for Religious purposes as enumerated in Section 11. There is no bar in doing religious activity but the substantial activity should be in the nature of charitable purposes. There is restriction in 80G for spending on religious activity only to the extent of 5% of the income of the trust. The present DIT (Exp) is rejecting registration on this ground therefore suitable care is to be taken about this aspect by drafting the trust deed carefully.

There is Madras High Court Judgment in case of CIT v/s Arulmingu Sri Kamatchi Amman Trust of 2012 reported in 20 Taxman.com (Mad) on the same issue and High Court uphold the judgment of ITAT and dismiss the appeal in favour of assessee. There is a judgment against the assessee in the case state of Kerala v/s M. P. Shanti Verma Jain (1998) 231 ITR 787.

In spite of the Madras High Court judgment the DIT (Exp) is rejecting the registration on this ground by saying that department is in Supreme Court on this issue.

v) Cancellation of Registration – Sec – 12 AA (3)

If the commissioner is satisfied that the activities of any trust or institution are not genuine or not carried out in accordance with the objects of the trust or institution, he shall pass an order in writing (after providing an opportunity of being heard to the concerned trust or institution), to cancel the registration granted under section 12AA or registration obtained u/s 12A (Added w.e.f. 1-6-2010) However, the commissioner cannot utilize its power to cancel registration on basis of a search and seizure proceeding, prior to completion of the search and seizure assessment -Kalinga Inst. of Ind. Techn.v.CIT(2008)23SOT74 (Cuttack).

vi) Insertion of new sub section 4 in section 12AA w.e.f. 01/10/2014

New sub section provides that where a trust has been granted registration U/s. 12A or 12AA and subsequently it is noticed that the activities of the trust are not carried out in a manner that the provision of section 11 & 12 do not apply to exclude either whole or any part of the income of the such trust due to operation of section 13 (1) then the Principal Commissioner or Commissioner may by order cancelle the registration of such trust. However, registration shall not be cancelled if the trust proves that there was a reasonable cause for the activities carried out in the said manner.

vii) Whether carrying on activity essential before Registration

- S. 12AA(1)(b) – after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he shall pass an order..
- Self employers Service Society v CIT 247 ITR 18 (Ker)
 - Not commenced any activity related to its objects – only given loans to members
 - Generation of income only for members – no vidence as to genuineness of activities.
- DIT v Fndtn of Ophthalmic & Optometry research Education Center 355 ITR 361 (Del)
 - Statute did not prescribe a waiting period for a trust to qualify itself for registration.
 - Provision did not prohibit or enjoin the CIT from registering a trust solely based on its objects, without any activity, in the case of a newly registered trust.
- DIT(E)vs. Meenakshi Amma Endowment Trust 354 ITR 219 (Ker)
 - When no activities are undertaken by the newly established trust / institution, then in such scenario, the objects of the trust have to been taken into consideration by the CIT for determination of question of registration.
 - CIT v R S Bajaj Society 222 Taxman 111(All), DIT(E) v RJBV Vasudevan Educational & Charitable Trust 50 taxmann. Com 43 (Mad), CIT v R K Deivendra Nadar Trust 52 taxmann.com 168 (Mad)

h.i.ii.E. Accounts and Audit

h.i.ii.E.1.i) Audit U/S 12A (1) (b) of the I.T. Act

Where the total income of the Trust as computed under the Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount not chargeable to tax in any year (The rate applicable is of Individual which is currently Rs. 2,50,000/-), the accounts of the Trust for the year must be audited by a Chartered Accountant and the Trust must file the auditor's report in the prescribed form No. 10B (Rule 17B), setting forth the prescribe particulars, with the Return of Income.

A trust is required to get its accounts audited under the act under which it is registered. Say for sec-8 (Previously Sec-25) company audit under company's Act with accounts are to be prepared in new schedule –VI and for the trust reg. with Charity Comm then under Maharashtra Public Trust Act with their prescribe forms.

The audited accounts are required to be filed with the concern authority within the prescribe time and I T return is to be filed along with audit report in prescribed form of 10B.

h.i.ii.F. **FORFEITURE OF EXEMPTION - SECTION – 13**

The following incomes of the charitable and/or religious trusts & institutions will be excluded from total income of the previous year and exemption u/s 11 will not apply. (Section 13)

- **Income for private religious purpose – (Section 13 (1) (a)** Any part of income from property held under a trust for private religious purpose which does not endure for the benefit of the public is not eligible for exemption under section 11 or 12.
- **Income for THE benefit of particular religious community (Sec. 13 (1) (b)**

Entire income of the charitable trust / institutions (established on or after April 1, 1962) created for the benefit of any particular religious community or caste is not eligible for exemption under section 11 or 12. But the Nagpur Tribunal has decided in the case of *Shiv Mandir Devsttan Panch Committee Sanstan v. CIT*

[2013] that, Worshiping of Lord Shiva, Hanumanji, Goddess Durga and maintaining of temple cannot be regarded as advancement, support or propagation of a particular religion.

There are certain exceptions. The following categories of the trusts and institutions exempted from the operation of section 13 (1) (b).

a) A trusts or institution created or established for religious purposes, as held in the case of ITO v/s Catholic Church (1982) 13 TTJ (Ahd) 200, Dawoodi Bohra Jamat v/s CIT (2010) 123 ITD 452, 467 (Indore) 317 ITR (AT) 133 (indore).

b) Trusts or institutions which is composite (both charitable and religious), as held in the case of CIT v/s Barkate Safiyaah Society (1995) 213 ITR 492 (Guj).

c) Trusts or institutions created or established prior to commencement of the Income Tax Act, 1961. For the trusts or the institutions that have been created or established before the commencement of this Act, which is April, 1, 1962, for religious purposes, the restriction as contained in S 13 (1) (b) will not apply. This was held in the following cases:

- Commissioner of Income Tax, M.P. v/s Shri MAheshwari Agrawal Marwari Panchayat (1982)136 ITR 556 (MP)
- CIT v/s Saraswath Poor Students Fund (1984) 150 ITR 142 (Kar)
- Trustees of Charity Fund v/s Commissioner of Income Tax, Bombay [1959] 36 ITR 513 (SC) and Rajklot Visha Shrimali Jain Samaj v/s ITO (2007) 109 TTJ 286 (Rajkt-Trib)
- Trustees of Charity Fund v/s CIT [1959] 36 ITR 513 (SC)

d) Whether Linguistic community is hit by Sec. 13 (1) (b) : The bar provided in S 13 (1) (b) pertains to particular religious community or caste. The linguistic group cannot per se be treated as a particular community. Therefore, S 13 (1) (b) will not apply as held in the case of Commissioner of Income Tax v/s Gujarathi Mandal (1999) 240 ITR 293.

e) Whether benefit to people of particular region be hit by Sec13(1) (b):

No. when the objective of the institution is charitable, even though it may be to a particular region or a state, it does not affect the charitable of public charity.

f) The following categories of trusts created for the benefit of certain castes or communities are outside the purview of S 13(1)(b) :-

- I. Scheduled castes
- II. Backward classes
- III. Scheduled tribes
- IV. Women and
- V. children

▪ **Forfeiture of exemption when investments or deposits are made in the modes other than specified in sec.11(5) - Section 13 (1) (d)**

The trust created for charitable or religious purposes or a charitable or religious institution will lose their exemptions u/s 11 if the investments made after the 28 day of February 1983 are not in any one or more modes specified under Sec. 11 (5) for any period during the previous year after the 28 day of February 1983.

The circumstances under which the income and / or funds have to be invested are already explained here in above under the sub heading "Investments".

However section 13(1)(d) provides certain exceptions

There are certain circumstances in which sec. 13 (1) (d) will not apply where investments are made other than modes specified in section 11 (5)

1. Any assets held by the trust or institution where such assets form part of the corpus of the trust as on June 1, 1973.
2. Any accretion to the shares of the company forming part of the corpus of the trust or institution as on June 1, 1973, where such accretion arise by way of allotment of bonus shares.
3. Debentures acquired by the trust of any Company or Corporation acquired before 1st day of March 1983.
4. Acceptance of donations in kind or acquired any asset which is not in conformity of the provisions of section 11(5). The trust will not lose tax exemption if the trust

disposes of or converts such assets into permissible investment within one year from the end of the financial year in which such assets are acquired or March 31, 1993, whichever is later.

5. Any funds representing the profits and gains of business, being profits and gains of any previous year relevant to the assessment year commencing on the 1st day of April 1984 or any subsequent assessment year if the trust maintains separate books of account in respect of such business.

In following circumstances the payments made will not fall under investments or deposits

- a) When an advance is paid to the supplier in the normal course, such advance cannot be treated as an investment for section 11(5). Supreme Court in the case CIT v/s Calcutta National Bank Ltd. (1959) 37 ITR 171 held that the fundamental purpose of the investment is earning a return.
- b) Kerala High Court in the case of CIT v/s Shri P Subramaniam Religious Trust (2009) 179 Taxman 144. The advance given to supplier was treated as application in the extreme case where amount held as an advance for more than five years and court held as an investment or deposit. Therefore, there was violation of Sec 13 (1) (d).
- c) Temporary loan to a society or charitable institution would not amount to an investment or deposit; thereby, S 13 (1) (d) read with S 11(5) will not apply. This position was held in the following cases:
 - i) Director of Income Tax v/s Acme Educational Society (2010) 326 ITR 146 (Del)
 - ii) Kanpur Subhash Shiksha Samiti v/s Deputy Commissioner of Income Tax 1, Kanpur [2011] 11ITR (T) 23 (Lucknow) (2011) 11 ITR (T) 23
 - iii) DIT (Exemption) v/s Alarippu (2000) 244ITR 358 (Del)

The relevant circulars issued by CBDT with regard to Sec. 13 (1) (d)

- i) Investment of funds in an interested person's concerns – Effect of amendment in S 13 (4) by Finance (No. 2) Act, 1971, Circular No. 72, dt. 6-1-1972
 - ii) Investment of the Trust Funds – Conditions prescribed under Sec. 11 (1) (b) and 13(1) (d), Circular No. 335, dt. 13-4-1982 (Clari.)
 - iii) Investment of Trust Funds – Amendment of proviso to cl (d) of sub-s (1) of S 13 by Finance Act, 1992, Circular No. 636, dt. 31-8-1992
 - iv) Investment of trust funds – Clarification regarding applicability of Sec. 13(1) (d) from assessment year 1983-84, Circular No. 596, dated 15-3-199.
- **Any income of the trust used or applied directly or indirectly for the benefit of persons referred in section 13 (3) - Section 13 (1) (c)**
- a. Section 13 (1) (c) puts an embargo on charitable or religious trusts or institutions when the income or the property of the said trust or institution is applied either directly or indirectly to the benefit of specified persons referred in S 13 (3) .In such circumstances, the benefit of exemption under Sec. 11 and 12 will not be available.
 - b. This provision will be hit only when a benefit goes to a specified person as defined under section 13 (3). Benefit means advantage or favour. Therefore, the scope and applicability of this provision depend on the advantage or favour provided by the trust or institution to the specified persons. If payment is made in normal circumstances without any favour, Sec. 13 (1) (c) will not apply.
 - c. Whether a trust comes under the purview of 'person' as referred to in Sec. 13 (1) (c)

This question came up in the case of Champa Charitable Trust v/s CIT (1995) 214 ITR 764 (Bom) and the court held that the expression 'person' used in the said provision would include a trust.
 - d. When the trustee provides his services and time for the trust and for the benefit of the trust, there is no bar under the law to pay salary for such services. This is recognized under the law. Sec. 13 (2) (c). What is contemplated in the law is that a reasonable salary has to be paid. This obviously for the reason that the trustee is holding fiduciary relationship with the trust and cannot misuse the

funds of the trust by overdrawing salary. If salary paid is unreasonable, then it amounts to doing favour, therefore, hit by S 13 (1) (c) and 13 (2) (c). Otherwise, there is no bar to pay salary to the trustees.

The payment of salary is well accepted under the following cases:

- I. ACIT v/s Indicula Trust Society (2012) 21 taxman.com 144 (Delhi Trib)
- II. DDIT (Exemption) – 2, Hyderabad v/s Society for the Poor and Oppressed (2010) 125 ITD 190 (Hyd)

e. The shares received as gift or corpus donation are not attracted by S 13 (1) (c) (ii). This was held in the following cases:

- a) Sarladevi Sarabhai Trust No. 13 v/s ITO (1991) 36 ITD 376
- b) CIT v/s Birla Charity Trust (1988) 170 ITR 150 (cal)

f. In the normal circumstances, the ownership of the asset acquired by the trust or institution should be in the name of the trust or institution. If the title of the asset is in the name of trustee and the control of ownership is with him, then it amounts to violation under S 13 (1) (c).

g. When property has not been made exclusively available for the specified person, then S 13 (1) will not apply. It was upheld in the case of George Educational Medical & Charitable Society v/s Asst. Director of Income Tax (exemption) (2002) 80 ITD 916 (Coch).

▪ **Income for the benefit of the interested persons – Sec 13 (2)**

Section 13(2) specifies following categories of transactions which would be deemed to be used or application of the income or property of the trust for the benefit of excluded persons referred to in section 13 (3).

- (a) Lending of the income or property of the trust or institutions to any of the specified persons without either adequate security or adequate interest o both – 13 (2) (a)

- (b) Making available land, building or other property of the trust or institution for the use of the any of the specified persons without charging adequate rent or other compensation – 13 (2) (b)
- (c) Payment of excessive remuneration to any of the specified persons for services rendered by him to the trust or institutions – 13 (2) (c)
- (d) Making the services of the trust or institution available to any of the specified persons without adequate remuneration or other compensation – 13 (2) (d)
- (e) Purchase of shares, securities or other properties for the trust or institutions from any of the specified persons for more than adequate consideration – 13 (2) (e)
- (f) Sale of shares, securities or other property of the trust or institution to any of the specified persons for less than adequate consideration – 13 (2) (f)
- (g) Diversion of substantial portion of the income or property of the trust or institution in favor of the specified persons – 13 (2) (g)
- (h) Investment of the trust funds in any concern in which any of the specified persons has a substantial interest – 13 (2) (h)

Conferment of Benefit, Amenity or Perquisite on an Interested Person –

The income of the property of the trust (or institution) shall be deemed to have been used (or applied) in a manner which results (directly or indirectly) in conferring any benefit, amenity or perquisite (whether convertible into money or not) on any interested person, in the following cases:

Where any part of the income or property of the trust (or institution) is (or continues to be) lent to any interested person for any period during the previous year without either adequate security or adequate interest or both [Sec. 13(2)(a)].

The following judicial ruling in this regard should be noted –

- Where secretary and executive secretary pledged FDRs of trust to raise loans for personal rules without any security or compensation to trust, exemption granted under section 11 – *CIT v. Ram Samarak Nidhi* [2004] 141 Taxman 297 (Delhi).

- Personal security given by the directors of a company to which assessee-trust had advanced loan can be considered to be adequate security for allowance of exemption under section 11 – *CIT v. Ram Smarak Nidhi* [2004] 141 Taxman (Delhi).
- Where any amount is paid by way of salary, allowances or otherwise during the previous year to any specified person out of the resources of the trust for service rendered by that person to such trust and the amount so paid is more than what may be reasonably paid for such services [Sec. 13(2)(c)]. There is no prohibition to remunerate specified person but such remuneration should be commensurate with services rendered by him – *DIT (Exemption) v. Manav Bharti Child Institute & Child Psychology* [2008] 20 SOT 517 (Delhi) and it should not be unreasonable or excessive – *ITO v. Human Resource Development & Management Trust (ASBM Trust)* [2011] 47 SOT 85 (Cuttack).
- Where any fund of the trust are (or continue to remain) invested for any period during the previous year in any concern in which any specified person has a substantial interest [Sec. 13(2) (h)]. Where, however, the aggregate of funds of the trust invested in concern in which any specified person has a substantial interest does not exceed Rs. 5 per cent of the capital of the concern, exemption under section 11 will not be denied in relation to the application of any income other than the income arising to the trust or institution from such investment [Sec. 13(4)].
 - It cannot be said that the concern contemplated by section 13(2)(h) is stranger concern and not a concern in which trust itself is a partner-*CIT v/s Sree Haryana Chandrika Trust* [1994] 77 Taxman 137 (Ker.).
 - Contribution of share capital to a firm in an 'investment' made by partner for the purpose of section 13(2)(h) – *CIT v/s Lallubhai Gordhandas Mehta Charitable Trust* [1993] 116 CTR (Guj.) 315.
- Exemption Loss to a Trust Should be Limited to undue Benefits Extended to Persons Specified in Section 13(3) – Restriction is applicable only to those amounts which have been applied directly or indirectly for the benefits of interested person referred to in section 13(3) and it will nowhere lead to any conclusion that the assessee would lose its charity status. In other words, if a small is to be disallowed that would not disqualify to enjoy the status of charity – *CIT v/s Idicula Trust Society* [2012] 21 taxman.com 144(Delhi-Trib.).

6. For the purpose of section 13 the following are specified persons - section 13 (3):

- a. The author of the trust or founder of the institution ;
- b. Any person who has made a total contribution (up to the end of the relevant previous year) of an amount exceeding Rs. 50,000 (substantial contributor) ;
- c. Any member of the HUF where such author or founder is an HUF ;
- d. Any trustee of the trust or manager (by whatever name called)of the institution ;
- e. Any relative of such author, founder, person, member, trustee or manager as aforesaid ; and
- f. Any concern in which any of the persons referred to above has a substantial interest.

h.i.ii.F.1.i.10.G) ANONYMOUS DONATIONS - SECTION – 115BBC

Finance Act 2006 has introduced a new charging provision namely Section 115 BBC with effect from 1st April, 2007. (Assessment Year 2007-08) This section provides that where total income of the assessee being a person in receipt of income on behalf of:-

- (a) Any education institution referred to in sub clause (iiiad) & (vi) of section 10 (23C)
- (b) Any hospital/institution referred to in sub-clause (iiiae) & (viA),
- (c) Any fund or trust or institution referred to in sub clause (iv) & (v) of section 10 (23C) or
- (d) Any trust or institution referred to in section 11.

The Income Tax is payable:

From A.Y. 2010-11

- (i) The amount of income- tax calculated at the rate of thirty per cent on the aggregate of anonymous donations received in excess of the higher of the following namely:-
 - (a) Five percent of the total donations received by the assessee; or
 - (b) One lakh rupees, and

h.i.ii.F.1.ii) **Sub Section (ii) is substituted by Finance Act, 2014 w.e.f. 01/04/2015. The substituted sub section (ii) is as under:-**

“The amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the aggregate of anonymous donations received in excess of the amount referred to in sub clause (A) or Sub Clause (B) of clause (i), as the case may be”.

The term “anonymous donation” means any voluntary contribution referred to in section 2(24)(iia), where the person receiving such contribution does not maintain the record of the identity indicating the name and address of person making such contribution and such other particulars as may be prescribed. Sub-Section (2) of section 115 BBC provides that the exclusion which are -

- (i) Any trust or institution created or established wholly for religious purposes
- (ii) Any trust or institutions created or established wholly for religious and charitable purposes other than any anonymous donation made with a specific direction that such donation is for any university or other educational institution or any Hospital or other medical institution run by such trust or institution.

Filing of Return-

The income tax return is to be filed in ITR-7 by 30th September since audit is required to be done under other acts as well as under I T Act. The return was required to be filed only in physical form up to A.Y. 2012-13.

From assessment year 2013-14 onwards in case an assessee who is required to furnish a report of audit under section 10(23C)(iv), 10(23C)(v), 10(23C)(vi), 10(23C)(via), 10A, 12A(1)(b), 44AB, 80-IA, 80-IB, 80-IC, 80-ID, 80JJAA, 80LA, 92E or 115JB he shall file the report electronically on or before the date of filing the return of income.

The fund or institution claiming exemptions U/s. 10 (23C) (iiiab) & (iiiad) where earlier not required to file the return but as per amended provisions in section 139 (4C) (e) they are required to file the return from AY 2016-17.

Principle of Mutuality

1. What are mutual association

A mutual association is an association of persons who agree to contribute funds for some common purpose benefiting mutually and received back the surplus left out of these funds in the same capacity in which they have made the contributions.

It is an association of individuals where each shall contribute on an agreed basis and profits, if any arising from it is to be shared or distributed by such persons. In the case of Commissioner of Income – Tax, Gujarat II v/s Shree Jari Merchants Association (1977) 106 ITR 542 (Guj), it was observed “that a mutual association is an association of person who agreed to contribute funds for some common

purpose mutually beneficial, and received back the surplus left out of these funds in the same capacity in which they have made the contributions.”

2. Whether income tax applies on mutual transactions

The significance of the concept and principle of mutuality plays a predominant role in taxation. There is a lot of importance attached to mutuality because income tax does not arise on the profits made by the mutual association. The principle of mutuality is also called as doctrine of mutuality which recognizes that a person cannot trade with himself.

The scope of the principle of mutuality does extend to different source of income. It may be applicable to business income or income from house property. It applies to different categories of persons such as individuals, AOP, Society, Partnership Firms, etc, subject to the transactions with the members only and not outsiders.

3. What are the conditions to be satisfied for claiming mutuality

To claim exemption under the provisions of mutuality under the Income Tax Act, 1961, the following conditions held in the case of Privy Council in the case of The English & Scottish Joint Co-operative Wholesale Society Ltd. v/s Commissioner of Agricultural Income Tax, Assam (1948) 16 ITR 270 (PC) have to be satisfied.

- “(1) The identity of the contributors to the fund and the recipients from the fund,
- (2) An instrument obedient to their mandate, and
- (3) The impossibility that contributors should derive profits from contributions made by them to a fund which could only be expended or returned to themselves.”

This was affirmed in the case of Indian Tea Planters Association v/s Commissioner of Income Tax, West Bengal I, Calcutta (1971) 82 ITR 322 (Cal).

These principles were confirmed in the following cases:

- i) Chelmsford Club v/s Commissioner of Income Tax (2000) 243 ITR 89 (SC)
- ii) Canara Bank Golden Jubilee Staff Welfare Fund v/s. Dy. CIT (2009) 308 ITR 202 (Kar)
- iii) Commissioner of Income Tax v/s. Bombay Oilseeds & Oil Exchange Ltd. (1993) 202 ITR 0198 (Bom)
- iv) Municipal Mutual Insurance Ltd. v/s. Hills (1932) 16 TC 430
- v) Commissioner of Income Tax, A.P. v/s Merchant Navy Club (1974) 96 ITR 261 (AP)
- vi) Govindraj Ganesh Enterprises v/s ITO (2009) 29 (I) ITCL 101 (Kar-HC)

4. Is there any circular issued by CBDT for exemption to mutual associations

The CBDT has issued a vide Circular No.11/2008 dt 19-12-2008, which clearly demonstrates that mutual associations are exempt from tax.

5. Whether the principle of mutuality applies to clubs

The club is a legal entity under the Income Tax Act, 1961. Many members join hands to form a club for their benefit. The very purpose of creating a club is the benefit of the members, who have contributed for themselves. Therefore, the principle of mutuality will apply.

This was upheld in the following cases:

- a) Commissioner of Income Tax v/s Ranchi club Ltd. (1992) 196 ITR 137 (Pat)
- b) CIT v/s Bankipur Club Ltd. (1997) 226 ITR 97 (SC)

Public Charitable / Religious Trust – How Chargeable to Tax

In the following cases income of a charitable / religious trust which is not exempt under section 11 or 12 is chargeable to tax as if it is the income of an association of persons:

- a) Income from property held under trust wholly for charitable or religious purposes;
- b) Voluntary contributions without any direction that they shall form part of corpus trust; or
- c) Income of trust or institution being profits and gains of business which is incidental to the attainment of the objectives of trust and separate books of account are maintained.

Levy of tax at maximum marginal rate in case of public charitable and religious trusts which forfeit tax exemption – charitable or religious trusts, which may otherwise be eligible for tax exemption, are liable to forfeit this exemption in the following circumstances, namely:

1. Where the trust is created after March 31, 1962, any part of the income of the trust ensures, under the terms of the trust deed, directly or indirectly, for the benefit of specified categories of persons such as, the author of the trust, trustee or manager of the trust, substantial contributor to the trust and any relative of such author, trustee, etc.
2. Any part of the income or any property of the trust (whenever created) is used or applied during the relevant year, directly or indirectly, for the benefit of specified categories of person
3. The trust funds (with certain exceptions) are invested in contravention of the investment pattern of such funds

Where a charitable or religious trust forfeits tax exemption in the circumstances mentioned at (1) to (3) above, the trust shall be charged to tax at the maximum marginal rate (i.e. 30.9 per cent and 33.99 per cent for the assessment years 2013-14 and 2014-15 respectively)

A trust will attract the maximum marginal rate of tax only on that part of income which has forfeited exemption under the above circumstances and not on the entire income of the trust-Director of Income Tax (Exemption) v/s Sheth Mafatlal Gagalbhai Foundation Trust [2001] 114 Taxman 19 (Bom.).

PROJECT GRANTS

Grants in the context of charity mean funds given gratuitously. The funds bestowed are mainly for public purpose. It also means aid given which is termed as grant-in-aid. Grants are a part of voluntary contribution received for implementation of projects of the charitable trusts or institutions.

A) **Sources of grants:**

1.i) Government Grants

“Government” refers to government, government agencies and similar bodies whether local, national or international.

From time to time, various ministries of the government of India have formulated different schemes. When funds are received from these ministries for such schemes, it is called Government grants.

1.ii) Private Grants

Private grants are the grants other than the Government grants.

It is not uncommon for charitable trust or institutions, NGOs, or NPOs to receive voluntary contributions. Sometimes voluntary contributions are also termed as the grants. Sometime the grants are received for specific purposes. Such grants may be received from private parties. These grants are characterized as voluntary in nature.

B) **Types of grants**

Grants can be classified into monetary and non monetary grants. These are further classified into the following:

- i) Unrestricted grants
- ii) Restricted grants
- iii) Temporarily restricted grants

c) **Position of tied up grants**

Tied up grants are the grants received from funding agencies for specific projects. Some conditions attached to such grants are as follows:

- i) The funds have to be used for the specific projects.
- ii) The donee has to render the accounts relating to the funds received and funds utilized for such projects.
- iii) There may be conditions that the unutilized funds have to be refunded back to the donor

Where funds are received for a project that is restricted to that project and there is no discretion of the management to apply for any other purpose, in such a case, it is referred as 'restrictive grants' which is specific in nature. Sometimes, it may fall under 'temporarily restricted grants'. It is necessary to analyse on case to case basis.

If it is treated as 'restrictive grants', capital approach of accounting treatment has to be given. If treated as 'temporarily restricted grants', then capital and income approaches will apply.

NEW CHAPTER XII EC (Section 115TD, 115TE and 115TF)
Accretion of Income

Section 115TD (1)

Is a charging provision and lays down "charge of additional income tax" on prescribed situations occurring which are as under:

- i) Conversion of the trust into other entity which is not eligible for grant of registration U/s. 12AA
- ii) Merger with any entity which does not have objects similar to that of the merging trust, and is not registered under section 12AA
- iii) Failure to transfer assets on dissolution of the trust / institution to an entity registered U/s. 12AA, 10(23C)(iv), 10(23C)(v), 10(23C)(vi) and 10(23C)(via), within a period of 12 months from the end of the month in which dissolution takes place.

On one of the above mentioned events occurring, the trust is liable to pay tax on "**Accreted Income**" at "**maximum marginal rate (MMR)**"

Section 115TD (2)

Defines the concept of accreted income which is "**fair market value**" of total asset on specified date as exceeding total liabilities. The meaning of specified date is given in

explanation and one must refer to the same for calculating accreted income on the said date.

Section 115TD (3)

Enunciates a concept of “**Deemed Conversion of a trust to an entity not registered U/s. 12AA**” and the specified events are as under:

- i) Registration granted U/s. 12AA to the trust has been cancelled.
- ii) Modification of objects is not in consonance with original registration conditions and an application for fresh registration has not been made or has been made but rejected

It is pertinent to note that if one of the events take place in the year then it is deemed that the trust is converted into an entity not registered U/s. 12AA and charging provision of Sec 115TD(1) will be attracted.

Section 115TD (4)

Is a clarification in nature which clearly lays down that additional income tax U/s. 115TD is to be paid notwithstanding the fact that income tax is not paid or payable under normal provisions of the act.

Section 115TD (5)

The principal officer or the trustee of the trust or the institution, as the case may be, and the trust or the institution shall also be liable to pay the tax on accreted income to the credit of the Central Government within fourteen days from

- i) The date on which,
 - a) The period for filing appeal under section 253 against the order cancelling the registration expires and no appeal has been filed by the trust or the institution; or
 - b) The order in any appeal, confirming the cancellation of the registration, is received by the trust or institution,In case referred to in clause (i) of sub section (3);
- ii) The end of the previous year in a case referred to in sub-clause (a) of clause (ii) of sub section (3);

- iii) The date on which,
 - a) The period for filing appeal under section 253 against the order rejecting the application expires and no appeal has been filed by the trust or the institution; or
 - b) The order in any appeal, confirming the cancellation of the application, is received by the trust or institution,
In a case referred to in sub clause (b) of clause (ii) of sub section (3);
- iv) The date of merger in a case referred to in clause (b) of sub section (1);
- v) The date on which the period of twelve months referred to in clause (c) of sub section (1) expires.

Section 115TD (6)

Provides that the tax on accreted income shall be treated as the final tax on income and no further credit shall be claimed in regard to the same.

Section 115TD (7)

Does not allow deduction of income tax paid U/s. 115TD to any person, trust or institution under any provisions of the income tax act, 1961.

Section 115TE

Charges simple interest @1% on delayed payment. The interest is to be calculated from expiry of 14 days in which payment to be made till actual date of payment.

Section 115TF

Provides that the trust is deemed to be “assesses in default” if the tax is not paid under Sec 115TD.

OTHER SUNDRY OTHER POINTS

TDS as Income - The amount deducted as tax at source cannot be considered as “income” for this purpose – CIT v. Jayshree Charity Trust 1985 Tax LR 247 (Cal.).

In other words, income to be applied under section 11(1) has to be ascertained after deducting income-tax liability – CIT v. Baroda Industrial Development Corpn. Ltd. (1986) 24 Taxman 36 (Guj.).

h.i.ii.F.1.iii) **Applicability of Section 14 A** – The provision of section 14 A are not applicable to the charitable trusts since the exemptions granted are under chapter III of the income tax act which is applicable to “incomes which do not form part of total income” and deals sections 10 to 13. The trust provisions fall under this sections. The section 14 A is under chapter IV of the income tax Act which is applicable to “computation of total income”. The section 14 A (I) starts with – for the purposes of computing the total income under this chapter, no deduction shall be allowed in respect of expenditure incurred by the assesses in relation to income which does not form part of total income under this Act.

h.i.ii.F.1.iv) **Applicability of Section 40 (a) (ia)** - The provisions of section 40 (a) (ia) is not applicable to charitable trust since this section is applicable to chapter IV of the income tax act which is applicable to “Computation of business income”. Therefore it is not applicable to charitable trust since trust is having income from other sources. This will apply to the trust which are having business income and only out of such income and if that business

income even after disallowance is applied for charitable purposes will have no effect.

- h.i.ii.F.1.v) **Depreciation** – Depreciation should be allowed while computing such income for this purpose – CIT v. Seth Manilal Ranchhodas Vishram Bhavan Trust (1992) 105 CTR 303 (GUJ.). A trust can claim depreciation on assets even if the cost of assets has been fully allowed as application of income under section 11 in past years. Likewise, one can claim depreciation on assets which is received on account of transfer from another trust and cost of acquiring of which is not incurred by the assessee. – CIT v. Institute of Banking Personnel Selection (IBPS) (2003) 131 Taxman 386 (Bom.). and recent judgment DIT (Exp) Mum v/s G K R Charities.

As per new inserted sub section 6 in section 11 w.e.f. 1-4-2015, (A.Y. 2015-16 onwards) the Depreciation is not allowed as a deduction on the asset which is claimed, any time, as application of income. Now can we can argue in appeal and pending cases that the depreciation was earlier allowable before the amendment.

- h.i.ii.F.1.vi) **Income Tax refund** – Refund of income tax can by no stretch of imagination be held as income derived from property held under the trust – CIT v. Hamadard Dawakhana (Wakf) (2002) 120 Taxman 186 (Delhi).

- h.i.ii.F.1.vii) **Exempt Income Now Taxable (Dividend & Income from Mutual Fund etc.)**

Subsection 7 in section 11 is inserted w.e.f. 01.04.2015, i.e. (A.Y. 2015-16) provides where a trust has been granted registration U/s. 12A / 12AA and the said registration is in force for any previous year, then, nothing contained in section 10 (Other than section 10 (1) and 10 (23C)) shall operate to exclude any income derived from property held under trust from the total income of the person in receipt thereof for that previous year.

- h.i.ii.F.1.viii) **Membership Fees as Corpus** – Where the assessee's memorandum of association clearly stipulates that one-time admission fee shall be used only for acquiring capital assets, one time subscription fee received by the assessee from members shall be treated as donation to corpus of the assessee – National Association of Software 7 Services Companies (NASSCOM) v. DIT (Exemptions) [2010] 130 TTJ (Delhi) 377.

- h.i.ii.F.1.ix) **Donation Collected in a Donation Box:** Donation collected by a society which manages a temple, in a donation box kept in the temple premises with appeal that amounts collected will be spent for building construction, can be termed as carrying a specific direction that donations would be utilized for construction of building and, therefore, the same shall be treated as forming part of Specific Fund of the society – Shree Mahadevi Tirath Sharda Ma Seva Sangh v. ITO [2010] 133 TTJ (Chd.) (UO) 57. Otherwise if the collection box having return corpus donations will not formed part of the corpus donations since the direction for corpus fund should be from the donor not the donee.
- h.i.ii.F.1.x) **ACCUMULATION ON GROSS V/S NET INCOME:** Accumulation of 15% of the income derived from the property has to be calculated on the income derived by the charitable trust and not on amount remained after expending money on charitable purposes i.e. on gross income – CIT v. Program for Community Organization (2001) 116 Taxman 60 (S.C.)
- h.i.ii.F.1.xi) **PAYMENT OF TAX:** 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. (CIT v. Janaki Ammal Ayya Nadar Trust (1985) 23 taxman 416 (Mad.). Even if entire income is utilized to pay taxes and no income is available for application u/s 11 (1) (a), entire income of the Trust shall be exempt and it cannot be taxed on ground that the trust has failed to apply its income to charitable or religious purposes. (CIT v. Apostolos Raptakos Trust (1995) 83 Taxman 422 (Bom.))
- h.i.ii.F.1.xii) **EXPENDITURE TO THE CONTRARY OF TRUST DEED:** u/s 11(1) (a) what is relevant is application of income for charitable purposes and exemption u/s 11 is available even if trustees have acted by spending money in contrary to terms of trust deed which does not empower them to apply trust income in India. Trustees of H.E.H. the Nizam's Pilgrimage Money Trust v. CIT (1987) 65 CTR (AP) 290.
- h.i.ii.F.1.xiii) **REPAYMENT OF LOAN IS APPLICABLE OF INCOME –** Repayment of loan originally taken to fulfill one of the objects of the trust will amount to an application of the income for charitable and religious purposes – Circular no. 100, dated 24-1-1973.

h.i.ii.F.1.xiv) **LOAN FOR HIGHER STUDIES** – As regards the loans advanced for higher studies, if the object of the trust is advancement of education and granting of scholarship loans is 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 – Circular No. 100, dated 24-1-1973.

ASSESSMENT OF AOP / BOI

1. What is the meaning of association of persons (AOP)

When two or more persons join for a common purpose with a view to earn an income, it is called an AOP, as upheld in the case of CIT v/s Indira Balkrishna (1960) 39 ITR 546 (SC) and G. Murugesan & Brothers v/s CIT [1973] 88 ITR 432 (SC).

2. **What is the meaning of body of individuals (BOI)**

When a group of individuals come together for a common purpose, it is normally termed as BOI.

BOI means a set of individuals who carry an activity with the object of earning an income as held in the cases of Deccan Wine & General Stores v/s Commissioner of Income Tax, A.P. (1977) 106 ITR 111 (AP) and Meera & Company, etc. v/s Commissioner of Income Tax (1997) 224 ITR 0635 (SC).

It comprises individuals only. As such, companies or firms cannot become a member of BOI.

3. **How is the income determined in case of AOP / BOI**

Section 167 B of the Income Tax Act, 1961 deals with the taxation of AOP / BOI. There are two situations under which income can be assessed, which are as follows:

- a) Where the individual share of the members of an AOP or BOI is indeterminate or unknown.
- b) Where the individual share of the members of an AOP or BOI is known.

4. **Briefly explain the taxability of the income of an AOP / BOI when the share of the members is unknown**

Section 167 B (1) provides that when the individual share of the members of an AOP / BOI is indeterminate or unknown, then tax will be charged on the total income of the AOP / BOI at the maximum marginal rate.

However, there is proviso to this section which provides that where the total income of any member of such AOP / BOI is chargeable to tax at a rate which is higher than the maximum marginal rate, then the tax charged on the total of the income of the AOP / BOI will be at the higher rate.

5. **Briefly explain the taxability of the income of an AOP / BOI when the share of members is known.**

Section 167 B (2) provides that where that the individual share of the members of an AOP / BOI is known or determinate, then two situations arise, which are as follows:

- i) Member income exceeds maximum amount not chargeable to tax.

Where the total income of any member exceeds the maximum amount which is not chargeable to tax, as per the Finance Act, of the relevant year, then the tax shall be charged on the total income of the AOP / BOI at the maximum marginal rate.

- ii) Member income is less than the maximum amount not chargeable to tax.

Where the total income of the member does not exceed the maximum amount not chargeable to tax as per Finance Act, of the relevant year, then in such cases the OP / BOI will be taxed at a rate as applicable to individuals.

- iii) Higher than the maximum marginal rate

Where the total income of any member of the AOP / BOI is chargeable to tax at a rate which is higher than the maximum marginal rate, then

- On that portion of the total income of the AOP / BOI, which is related to shares of such members, the tax will be charged at such higher rate.
- On the balance of the total income of AOP / BOI, it will be taxed at the maximum marginal rate.

6. **Whether remuneration and interest paid members is deductible while computing the income of AOP**

In respect of interest, salary, bonus, commission or remuneration paid to any member of the AOP / BOI, the same shall be disallowed while computing the income of AOP in accordance with S 40 (ba) of the Income Tax Act, 1961. __

it is to be noted that only the net interest as disallowable in view of the explanation provided in Explanations 1 and 2 to S 40 (ba).

7. Whether interest paid in a representative capacity is disallowed

When an interest is paid in representative capacity, then such interest shall not be allowed.

8. What is the meaning of maximum marginal rate (MMR)

The MMR is defined in S 2 (29C) of the Income Tax Act, 1961 which is as follows:

“maximum marginal rate’ means the rate of income-tax (including surcharge on income-tax, if any) applicable in relation to the highest slab of income in the case of an individual, Associations of Persons or, as the case may be, Body of Individuals as specified in the Finance Act of the relevant year.”

9. What is the treatment of the share of profits and income received from AOP / BOI in the hands of the members

The treatment of share of profits of the members in AOP / BOI is as follows:

1. Where share of profit is exempt in the hands of the member.

When the AOP / BOI has paid taxes at the maximum marginal rate or at a higher rate, then as per proviso to S 86 (a), the share of profits received by a member of AOP / BOI will not be included in the respective total income of the member of the AOP / BOI.

2. Where the share of profits is includable in member's hand.

When the AOP / BOI has paid the taxes on its income at the rate as applicable to the individual, the share of members is includable in the total income of the respective members.

In accordance with S 86, the share income of the member in AOP / BOI to be computed shall be chargeable to tax as part of his total income.

3. When in the income of AOP / BOI is less than the maximum exemption limit.

In a situation where the total income of AOP / BOI is less than the maximum exemption limit, then in such a case the share of profit will be included in the total income of each member. In such circumstances, no rebate will be allowed.

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