

**TAXATION OF
CHARITABLE TRUSTS
/ INSTITUTIONS WITH
RECENT
AMENDMENTS.**

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Charitable Purpose includes:

- Relief of the poor,
- Education,
- Yoga (Finance Bill 2015 wef 01/04/2016 that is AY 2016-17),
- Medical relief,
- Preservation of environment (including watersheds, forests and wildlife)
- Preservation of monuments or places or objects of artistic or historic interest, and
- The advancement of any other object of general public utility.

The definition of charitable purpose is inclusive. All the limbs of section 2(15) are not mutually exclusive, they may overlap.

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 {CIT V/s Ahmedabad Rana Caste Association (1983)}.

Not necessary to benefit whole of mankind.

Not necessary to provide Free Services.

Presence of an uncertain and fluctuating body of beneficiaries.

Proviso in the definition of Charitable Purpose

This proviso was first added by the FA 2008. “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 any service in relation to any trade, commerce or business for a cess or any other fee or any other consideration. **The restriction is however not applicable if the receipts from the above activity/s does not exceed 20% of the total receipts of relevant FY (from the AY 2016-17 onwards).**

The intention is to limit the benefit to entities which are engaged in charitable activities and, to deny it to purely commercial and business entities which wear the mask of a charity. (Reply of FM to the debate in LS on Finance Bill 2008)

Pharmacy in Hospital is integral and not incidental business activity {Principal CIT (Exm.) Mumbai Vs. National Health & Education Society (2020)}

Cancellation based on proviso to section 2(15) read with section 13(8) not justified. CIT V/s MMRDA (2020)(Bombay HC)

The above restriction does not apply in respect of the first six limbs of Sec 2(15) as mentioned above, their income from business is governed by sections 11(4) and 11(4A).

Section 10(23C)

As per section 10(23C) the income of certain funds, universities, educational institutions, hospitals etc **are not includible in the total income**. There are 15 sub clauses and about 24 provisos to section 10(23C). We will confine our discussion to educational institutions & hospitals.

Sub clause iiiab & iiiac talks about educational institution & hospitals resp; financed by the Government. Where government grant exceeds more than 50% of the total receipts [Provisions for anonymous donations (section 115BBC) are not applicable].

Sub clause iiiad & iiiae read with rule 2BC talks about educational institution & hospitals resp; if the annual receipts does not exceed Rs: 5 crore, the income is exempt (from AY 2022-23). Earlier the limit was Rs: 1 Crore. Not required to apply for approval. Not required to apply 85% of the income. No Audit required.

Till AY 2021-22, the 1 crore limit of turnover will be applicable to individual institution. {CIT v/s Children's Education Society (2013) Karnataka High Court}. {PKD Trust V/s ITO (2017) (Chennai Tribunal)}. {ACIT V/s Shiksha Samiti (2015) (Delhi Tribunal)}.

Contradictory Judgment: ITO V/s Vivekanand Society of Education & Research (Amritsar ITAT 2014).

From AY 2022-23

- **5 crore limit to be applied in aggregate and not per institution.**
- **If the person has receipts from educational institutions (iiiad) as well as medical institutions (iiiie) the exemptions under these clauses shall not apply if the aggregate of the annual receipts from educational as well as medical institutions exceed Rs: 5 crores.**

Meaning of annual receipts

No guidance is available under the Act

Judicial Pronouncements

Sales proceeds of land and bonds could not be equated to annual receipts [CIT V/s Madarasa E-Bakhiyath-Us-Salihath Arabic College (2014, Madras HC)]

Annual receipts is to be considered without excluding contribution towards corpus of the trust [Indian Medical Trust V/s ITO (2012) (Jaipur)]

Sub clause vi & via

Educational institutions not falling under iiiab or iiiad and hospitals not falling under iiiac and iiiie will enjoy exemption, if approved by the Chief Commissioner or Director General under clause vi or via resp.

The assessee can accumulate 15% of income for future activities. If the surplus is more than 15% it can be applied over a period of 5 years. On 15% there is no limitation on period of accumulation. Accumulated income has to be invested as per section 11(5).

Provisions relating to Filing of return / audit (Form 10BB) / withdrawal of exemption are similar to the trusts / institutions registered under section 12A.

Case Law

Ashwini Sahakari Rugnalaya and Research Centre V/s CCIT (SC) (2021), where apart from consultancy charges received in OPD, remuneration had been paid by assessee hospital from earnings of IPD to doctors who may not be working in that department and furthermore rates being charged by assessee from patients were at par with commercial hospitals, the exemption u/s 10(23C)(via) was denied. Review petition dismissed.

Amendments by the Finance Act 2020 in a nutshell.

Section 10 Sub Section (23C), Clause iv, v, vi & via are mostly concerned with, fund or trust or institution or university or other educational institution or hospital or other medical institution (trusts / institutions). The changes are effective from 1st April 2021.

1st & 2nd provisos are replaced, proviso 1 amends the conditions for applicability of section 10(23C) **similar to the new section 12A(1)(ac)** which is discussed later. Proviso 2 talks about the procedure for grant of fresh registration similar to new section 12AB which is discussed later.

For removal of doubts, Explanation to proviso 3 provides that, corpus donation shall not form part of the income in the hands of the institution or funds approved under section 10(23C).

8th & 9th provisos are replaced, the amended provisions talk about the effectiveness of registration as explained in 12A(2)

10th proviso has been amended to add the date of audit as specified in section 44AB. **After the amendment by the Finance Act 2020 this clause specifically provides that the audit report should be obtained and also furnished at least one month prior to the due date of submission of return u/s 139(1) which is 31st October. In other words the audit report has to be obtained and submitted by 30th September.**

16th proviso is deleted and 18th proviso has been amended to say that applications pending on or 1st April 2021 shall be deemed to be the application under the amended provisions. In such cases provisional registration has been granted wef FY 2021-22.

The revised timelines and new provisions related to approval u/s 10(23C) {Rule 2C} of charitable / religious trusts with effect from 01-04-2021 have summarized below:

Category	Time limit for application	Time limit for passing the order	Period of approval	Exemption available from which year	Forms
Institution already approved under section 10(23C) and its approval is continuing on 01-04-2021	1 st April, 2021 to 31 st Mar 2022.	3 months from end of the month in which application for approval was received	5 years	From the assessment year from which approval was earlier granted under the pre-amended section 10(23C)	<u>Appl.</u> Form 10A <u>Approval</u> Form 10AC
Institution which is approved under amended provision and such approval is due to expire	At least 6 months before the expiry of period of approval	6 months from end of the month in which application for approval was received.	5 years	From the assessment year immediately following the financial year in which application is made	<u>Appl.</u> Form 10AB <u>Approval</u> Form 10AD

Category	Time limit for application	Time limit for passing the order	Period of approval	Exemption available from which year	Forms
Institution which is provisionally approved	6 months before the expiry of the period of the provisional approval or within 6 months of commencement of its activities, whichever is earlier.	6 months from end of the month in which application for approval was received.	5 years	From the assessment year from which provisional approval was granted.	<u>Appl. Form 10AB</u> <u>Approval Form 10AD</u>
In any other case	1 month prior to the commencement of the previous year relevant to the assessment year from which the said approval is sought.	1 month from end of the month in which application for approval was received.	3 years	From the assessment year immediately following the financial year in which application is made.	<u>Appl. Form 10A</u> <u>Approval Form 10AC</u>

The application for approval u/s 10(23C) of the Act in Form 10AB for which the last date for filing falls on or before 29/09/2022 may be filed on or before 30/09/2022. (Circular No: 8/2022 Dated: 31/03/2022)

Amendments of Section 10(23C) by the Finance Bill 2022

Changes in the Third proviso

Introduction of Explanation 1A after Explanation 1 deemed to be inserted from 1/4/2021

Under clause v: If property held under trust includes any temple, mosque, gurudwara, church or other place notified under 80G(2)(b) . Any sum received as voluntary contribution for purpose of repairs or renovation may at the discretion of the trust be treated as forming part of the corpus subject to conditions:

- Corpus to be applied for the purpose for which it is received
- No donation to be made to any other person
- Corpus should be separately identifiable
- To be invested as per section 11(5)

Introduction of Explanation 1B

If any of the 4 conditions specified in 1A above are violated the amount becomes taxable in the year of violation.

Introduction of Explanation 3 from 1/4/2023.

Similar to section 11(2). Accumulation for a period of not more than 5 years

Introduction of Explanation 4 from 1/4/2023

Similar to section 11(3). Withdrawal of exemption u/s 11(2)

Introduction of Explanation 5 from 1/4/2023

Similar to section 11(3A). Modifications of objects specified in Form 10 read with section 11(2).

Tenth proviso to be substituted wef 1/4/2023

Added : Keep and maintain books of account and other document in such form and manner and at such place as may be prescribed

Fifteenth proviso substituted

Talks about the powers of the PCIT or CIT.

To take cognizance of specified violations (Suo motto, reference from the AO, selection by the board under the risk management strategy).

To call for documents and or information to satisfy himself about the occurrence of Specified violation

To pass an order in writing cancelling the approval if satisfied about the occurrence of specified violation

To pass an order in writing refusing to cancel the approval if not satisfied about the occurrence of specified violation.

Forward a copy of the order to AO and Trust / institution

Explanation 1:

Specified date for passing the order defined. Within 6 months from the end of the quarter in which the first notice was issued.

Changes in the Finance Bill 2022 as passed by the Lok Sabha.

Inserted the word “provisionally approved”. Thus PCIT / CIT has been empowered to cancel the final as well as provisional approval to the institutions referred u/s 10(23C)(iv)(v)(vi)(via)

Explanation 2: Specified violation defined

Income applied for objects other than the objects for which the trust / institution was formed.

Income from activities not incidental to the attainment of the objectives of the trust or separate books of accounts are not maintained for the activities which are incidental to the attainment of objectives of the trust

Not genuine activities. Activities not carried out in accordance with the conditions subject to which the trust / institution was notified or approved

Non compliance under any other law for the time being in force.

Explanation 3:

If no action is taken on the reference from the AO, under first proviso of 143(3) till 31/03/2022. Such reference shall be deemed to be received by the PCIT or CIT under the second proviso of 143(3) on 1/4/2022.

Nineteenth proviso

Prescribed authority and reference to notification replaced by PCIT or CIT.

Explanation inserted by Lok Sabha to the Finance Bill 2022.

Institution cannot take simultaneous benefit of exemption u/s 10(23C) & section 10(46). If the institution is approved u/s 10(23C) and is notified under section 10(46) the approval granted u/s 10(23C) shall become inoperative.

Provisos inserted after proviso nineteenth and before explanation 1, wef 1/4/2023

1. As per section 12A(1)(ba), to avail the benefits of section 11 & 12 the return has to be filed as per section 139(4A) within the time prescribed u/s 139(1). There was no such provision for trusts / institutions falling under 10(23C) (iv) (v) (vi) & (via). Vide this proviso the trusts / institutions falling u/s 10(23C) (iv) (v) (vi) & (via) have to submit their returns in accordance with the provisions of section 139(4C) read with section 139(1). (Twentieth Proviso).
2. Income applied for the direct or indirect benefit of the specified persons as defined u/s 13(3) to be taxed (Twenty First Proviso).

Changes in the Finance Bill 2022 made by the Lok Sabha

The Finance Bill inadvertently mentioned that such benefit should become income of the specified person. The Lok Sabha corrected the Finance Bill by providing that the income shall be deemed to be the income of the fund / institution in the income of the year in which it is so applied.

3. Surplus to be taxed after allowing expenditure (other than capital expenditure) Such expenditure is not from corpus fund / loan or borrowing / depreciation where the cost of the asset is claimed as application of income in the same of other previous year.

Explanation

The provisions of 40(a)(ia) and 40A(3) and (3A) shall apply mutatis mutandis (Addition of 30% of the expenses if TDS not deducted & addition of payments above Rs: 10000 made in cash)

4. No deduction on account of any expenditure or allowance or setoff of any loss shall be allowed

Inserted after Explanation 2

Explanation 3

Sum payable shall be considered as application of income during the previous year in which it is actually paid (irrespective of the previous year in which the liability was incurred according to the method of accounting followed)

Where any sum has been claimed as applied during a previous year such sum shall not be allowed as application in any subsequent year

Section 11(1)

Income from property held for charitable or religious purpose shall not be included in the income if:

- a. In the case of property held under trust **wholly** for charitable or religious purpose and the trust having been established **after the commencement of this Act**. 85% or more of the income derived (excluding corpus donation) is applied towards the objects of the trust and Income not in excess of 15% is accumulated or set apart (**Statutory Accumulation not subject to any condition of application, it is indefinite accumulation**). SC analysis in Addl CIT V/s ALN Rao Charitable Trust [1995].

Which also means that the trust created partly for charitable or religious purpose is no more recognized for section 11.

Budget 2021: Application from loans and borrowings shall not be considered as application for charitable or religious purpose. However when loans and borrowings are repaid from the income of the previous year such repayment shall be allowed as application in the previous year in which it is repaid.

Circular no: 100 dtd 24/01/73 provides that any loan or support provided to the beneficiary should be treated as application and should be treated as income if any repayment is received

- c. Income applied on activities outside India is not eligible for exemption unless the following conditions are met:
- The trust happens to be created before 1/4/1952 or it is engaged in promotion of international welfare in which India is interested.
 - CBDT by general or special order has granted the exemption for carrying out such activities.
- d. Income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust / institution.

Important Points

Area of operations is one of the important clauses in the constitutional document. All trusts should verify whether an enabling clause to work outside India is present in the constitutional document.

Tax will be charged on the income spent in contravention of section 11(1)(c). Total forfeiture of the income is not possible because applying funds outside India has not been envisaged as a reason for forfeiture under section 13.

Existence of a clause which provides for activities outside India will not disentitle the trust for exemptions. Provisions of section 11(1)(c) will be attracted only if actual expenditure is incurred outside India.

Corpus has not been defined in the Act. **Corpus is like capital of an organization.** Corpus donations are considered as a part of Income u/s 2(24)(ia). However corpus donation is exempt u/s 11(1)(d) and 12.

Trustees have no power to treat in their discretion, any donation as corpus donation. ACIT V/s Nagarjuna Education Society (2011)

No particular form or manner, in which the direction is to be given by the donor, is prescribed. It is not necessary that written direction should necessarily accompany with the donation. The written direction or confirmation may be furnished at the time of assessment. The specific direction can be on identical letters {Lala Kanshi Ram Goela Beriwalla Charitable Trust V/s ITO [1991]}

Income collected through donation boxes are not corpus donations even if the boxes are marked “Donation Towards Corpus”. Digamber Jain Naya Mandir V/s Asst DIT (1999).

Budget 2021: Corpus donations shall be deposited in one or more forms specified in section 11(5). Application out of corpus shall not be considered as application for charitable or religious purpose. When the amount spent from corpus is deposited back in modes specified by section 11(5) from the income of the previous year the said amount shall be allowed as application in the previous year of deposit.

Identity of the donor and voluntary nature of the donation to be established for corpus donation. ITO v/s Smt Vidyawanti Labharam Foundation [2012] (Jodhpur Tribunal)

The SC has held that even interest generated on corpus donation is excluded from income, if the donor provides specific directions in this regard. CIT V/s Mata Amrithanandamayi Math Amritapuri [2018].

Other Conditions to be met for claiming exemption.

Trust is registered with Commissioner of Income Tax u/s 12AB.
Books are audited as per section 12A(1)(b)

Explanations to section 11(1)(a)&(b):

Explanation 1

- (1) In computing the 15% of the income which may be accumulated or set apart, any voluntary contributions {(Section 12 (1))} shall be deemed to be part of the income;
- (2) If, in the previous year, the income applied to charitable or religious purposes in India falls short of 85% of the income derived during that year from property held under trust, by any amount-
 - (i) for the reason that the whole or any part of the income has not been received during that year,
 - (ii) for any other reason,
then,
 - (a) for **sub clause (i)** above, the amount may be utilized either during the previous year in which income is so received or during the previous year immediately following such previous year, by filing Form 9A online within the time specified under section 139(1) of the Act (Rule 17).

Note: The assessee is at liberty to wait for any number of years for the receipt of income. In case the income is not received in future AY's, then there is no obligation on the part of the assessee to spend such income .

- (b) for sub clause (ii) above the amount may be utilized during the previous year immediately following the previous year in which the income was derived, by filing Form 9A online within the time specified under section 139(1) of the Act.

Online filing of Form No 9A & 10 was made mandatory from the AY 16-17. The CBDT vide Circular No: 7/2018, dtd: 20/12/18, has given the power to CIT to condone the delay in filing form No: 9A for AY 16-17. The power to condone the delay was extended to AY 2017-18 & AY 2018-19 vide circular 30/2019, dtd: 17/12/19 & 6/2020 dtd 19/02/20 resp.

Explanation 2

- **Restrictive amendment by Finance Act 2017.** From FY 2017-18 onwards, any trust or NGO availing tax exemption benefit u/s section 11 or 10(23C) shall not be allowed to treat corpus donation given to another charitable organization, registered u/s 12A, as application of Income. No such restriction was proposed to be provided for making corpus donation by a 10(23C) registered entity to 10(23C) registered entities. This loophole has been plugged by the Amendments vide the Finance Act 2020. In other words corpus donation from a entity registered u/s section 10(23C) to another 10(23C) registered entities can no more be treated as application of funds. Therefore inter charity donations (other than towards corpus) shall be considered as application subject to restriction u/s 11(2).
- The amendment has no impact if the corpus donation is given out of accumulated funds.

Explanation 3

For the purposes of determining the amount of application under clause (a) or clause (b), the provisions of sub-clause (ia) of clause (a) of section 40 (Amounts not deductible) and sub-sections (3) and (3A) of section 40A (Disallowance of expenses in cash), shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head "Profits and gains of business or profession wef 1st day of April 2019 (AY 2019-20).

Analysis :

- 30% of the expenditure will be disallowed when charitable trust was supposed to deduct TDS & it has not deducted.
- No deduction shall be allowed in respect of expenditure if payment done by trust exceeds Rs 10000 & it is done in cash or otherwise than by an account payee cheque drawn on a bank or account payee bank draft or bank transfer.
- Also if expenditure is claimed in particular year & payment is made in subsequent year, & payment exceeding Rs 10000 is done otherwise than by an account payee cheque drawn on a bank or account payee bank draft or bank transfer, then the expenditure will be deemed as income in the year of payment.

Budget 2021: No set off or deduction or allowance of excess application, of any of the year preceding the previous year shall be allowed.

Note :

Section 11 will not apply where sections 60 to 63 are applicable. Which means income belonging to a charitable organization will be included in the total income of the transferor if such income is subject to sections 60 to 63. Transfer of income without transfer of asset (Sec 60), Revocable Transfer (Sec 61), Transfers deemed to be revocable / irrevocable (Sec 62) & Definition of the terms transfer and revocable (Sec 63).

Amendment of Section 11 by the Finance Bill 2022

Explanation 3A Inserted after explanation 3 to section 11(1) wef 1/4/2021

If property held under trust includes any temple, mosque, gurudwara, church or other place notified under 80G(2)(b) . Any sum received as voluntary contribution for purpose of repairs or renovation may at the discretion of the trust be treated as forming part of the corpus subject to conditions:

1. Corpus to be applied for the purpose for which it is received
2. No donation to be made to any other person
3. Corpus should be separately identifiable
4. To be invested as per section 11(5)

Explanation 3B to section 11(1)

If any of the 4 conditions specified in 1A above are violated the amount becomes taxable in the year of violation.

Some important points

The reference to the term property does not necessarily mean any moveable or immoveable property. Business undertaking as covered under section 11(4) is also property held under trust.

Any agreement or contract creates legal obligation. All legal obligations shall continue to remain legal obligations and only the surplus or deficit at the end of the legal obligation should go to the Income and expenditure account

ITO V/s Vokkaligara Sangha (2015) 44 CCH 509 (Bang. Trib). Chandraprabhu Jain Swetamber Mandir V/s ACIT. ITA No: 230/Mum/2016, held that corpus donation cannot be taxed even if the trust is not registered u/s 12A. Confirmed by Pune Tribunal in the case of ITO V/s Serum Institute of India Research Foundation (2018).

The SC in the case of CIT V/s Thanthi Trust held that when there was no doubt about the authenticity of the application then it could not be disallowed even if physical funds had not been parted with. The word 'applied', should not necessarily be understood to mean 'spent'. It has a wider connotation, so that, even a provision may be understood as applied – *CIT(E) vs. Ohio University Christ College (2018) 408 ITR 352 (Kar.)*. [Vide Explanation 3 to 10(23C) Explanation to section 11(7) by the Finance Bill 2022, the amount actually spent can only be treated as application of income irrespective of the accounting method followed by the assessee]

It is not necessary that receipt of income should precede its application Siddaramanna Charities Trust V.s CIT.

Application is more important than the source. The source need not be confined to the income of the previous year. Chhotanagpur Diocesan Trust V/s ITO

Scope of Income includes capital income and scope of application includes application of capital nature.

Even if 100% of income is donated to another valid trust, the entire donation shall be treated as application for charitable purposes. DIT (Ex) V/s Bagri Foundation [2010] Delhi HC. KPMG Foundation v/s ITO(E)[2018] ITAT Delhi D Bench.

CBDT Circular dated 5/1/1978 clarifies that the donor trust will not lose exemption even if the donee trust does not spend the donation during the year of receipt itself.

Deduction u/s 11 cannot be denied if permission to take loans not taken from the charity commissioner u/s 35A(3) of the BPT Act 1950 {DIT (Exemptions) V/s G K R Charities}. Deduction can be denied only if there is violation of section 13 or registration u/s 12A is withdrawn. However **in the present scenario, the provisions of section 12AB(5)(b) may kick in, by virtue of which the PCIT or CIT may cancel the registration for not complying with the requirement of any other law.**

Section 11(1A)

The amount of exemption in relation to capital gain 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 utilized 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 of New Capital Asset Minus Cost of Capital Asset transferred.

- II. Where the capital asset is held under trust in part only for charitable or religious purposes:

It may be noted that income from trust property partly held for religious or charitable purposes is eligible for exemption u/s 11(1)(b) provided such trust was created before the commencement of the Act . Hence this sub clause has got a very limited use.

The capital gains u/s 11(1A) are not distinguished as Short term or long term Capital Gains

An organization can utilize the capital gains for charitable purpose u/s 11(1)(a) without taking the benefit of section 11(1A)

If the purchase value of capital asset is treated as application of funds. The amount received on sale of the capital asset will be treated as income in the year of sale subject to capital gain tax as discussed above. Cost for the purpose of indexation becomes nil therefore indexation benefit has no real impact.

Explanation (ii) provides that the cost of the transferred asset should be ascertained as per section 48 & section 49. Section 48 provides for indexation of the cost of the asset. Indexation benefit should be claimed only when the sale proceeds from the sale of assets is partly applied / not applied for acquiring new assets that is when the benefits u/s 11(1A) are claimed. In the case of capital assets held in the nature of investments u/s 11(5) indexation is not relevant.

New Capital Asset whether includes Fixed Deposits

Sec 11(1A) does not provide for a specific definition of capital asset. The board has vide its instruction 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). {CBDT Instruction Number 883 dated 24/09/1975}

However in CIT V/s 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(1A) and no minimum duration can be set forth as the determinative criterion.

CIT V/s East India Charitable Trust (1994). Held that deposit with public sector companies in view of section 11(5)(vii) shall qualify as new capital asset within the meaning of section 11(1A).

Capital gains are allowed to be reinvested in purchase of another capital asset or otherwise they can also be applied for charitable purpose.

Section 11(1A) does not provide any time limit for reinvestment in new capital asset. Time limit for utilizing capital gains is within the same year subject to the options available under the explanation to section 11(1) & 11(2) as discussed above.

No time limit has been prescribed for holding the new capital asset. But in one of the cases it has been decided that, the new asset should at least appear in the balance sheet of the year of purchase

Section 50C not applicable to charitable organizations, because they are governed by sections 11 to 13 and normal provisions under various heads of income are not applicable. Though cost is computed as per section 48 & 49 determination of net consideration has no reference to section 48 & 49. It is computed as defined in explanation to this section.

Sri Guru Dattatreya Mattum V/s ITO(E) Guntur [2020].

DCIT V/s Saifee Jubilee High School (Ahmedabad ITAT)[2018].

Section 11(1B)

Consequences of non-application of Income after exercising options under clause 2 of the Explanation 1 to sub section 1, during the period mentioned in sub clause (a) or sub clause (b) of the said clause.

The income not so applied will be deemed to be the income of the person in receipt thereof

In the case referred to sub clause (i) of the said clause, of the previous year immediately following the previous year in which the income was received;

or

In the case referred to in sub clause (ii) of the said clause, of the previous year immediately following the previous year in which the income was derived

It may be noted that where the assessee fails to apply the income as per clause 2 of explanation 1, he cannot exercise the option of accumulation under section 11(2) of the Act.

Once the income is taxed u/s 11(1B) it would not be subject to the conditions of application for charitable purposes to the extent of 85%.

Exemption if income accumulated for specific purposes Section 11(2).

- a. Such person furnishes a statement in the prescribed form / manner to the Assessing Officer, stating the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed 5 years. In other words shortfall in excess of 15% (statutory accumulation) can be accumulated, to be used for religious or charitable purposes within the next five years.

Five year period shall commence from the year succeeding the previous year for which the accumulation is made.

- b. The money so accumulated or set apart is invested or deposited in the forms or modes specified in Section 11(5) of the Act.
- c. The statement referred to in clause (a) is furnished before the due date specified u/s 139(1) for furnishing the return of income. Read with Section 13(9) of the Act.

Though only Form 10 is required to be uploaded the following documents and details should be prepared for accumulation: Resolution has to be passed by the governing board for accumulation u/s 11(2). Accounts to be submitted to the AO within 6 months from the end of each relevant PY. Though plurality of purpose is not precluded, the purpose has to be specific, precise and concrete.

Lack of declaration in Form No: 10 regarding specific purpose would not be fatal:

CIT (E) V/s Bochasanwasi Shri Akshar Purshottam Public Cable Trust (SC) (2019). CIT V/s Gokula Education Foundation (SC)(2017).

The decisions in judicial pronouncements have in effect nullified the provisions of section 11(3A), discussed below, which provides for modifications of objects specified in form 10 in certain situations.

From the AY 2016-17 e-filing of Form 10 was made mandatory. Circular Nos: 7/2018 dtd: 20/12/18, Circular No: 30/2019 dtd 17/12/19 & Circular 6/2020 dtd 19/02/20 provide for the condonation of delay in filing Form 9A & 10, by CIT u/s 119(2)(b).

Point number 3 of circular 6/2020 dated 19/02/2020 provides that the delay in case of other years shall be condonable by respective authorities as per the extant rules and practice. Which means that the CIT's can accept delayed petition for subsequent years also.

Long term grants should be treated as income in the year of receipt and should be carried forward for a period of next five years u/s 11(2).

Section 11(3)

Exemption of Sec 11(2) withdrawn if specific conditions not satisfied

Any income referred to in section 11(2) which –

- a. Is applied to purposes other than the purpose for which it was accumulated or set apart.
- b. Ceases to remain invested in modes specified in section 11(5).
- c. Is not utilized for the purpose for which it is so accumulated or set apart during the 5 year period or in the year immediately following the expiry thereof. Thereby giving a grace period of one year for utilising the funds accumulated u/s 11(2)
- d. Is donated to any trust registered under section 12AA (Introduced by the Finance Act, 2002, to plug the practices of rotating funds within sister concerns).

shall be deemed to be the income of such person in the previous year in which it is so applied, or ceases to be so accumulated or set apart, or ceases to remain so invested or deposited as the case may be.

SC analysis in Addl CIT V/s ALN Rao Charitable Trust [1995]. Provisions of section 11(2) and 11(3) apply to accumulations made over and above 15% limit.

Under section 11 exemption is available only on the income within the meaning of section 11 and not on the deemed income. In other words accumulation u/s 11(1)(a) and 11(2) not allowed on deemed income.

Amendment of Section 11 by the Finance Bill 2022

Section 11(3)

Earlier section 11(2) provided a 5 years period for accumulation but by virtue of section 11(3) the penal proceedings were attracted only after the expiry of the sixth year. In other words a grace period of one year was provided by the Act for utilization of income accumulated u/s 11(2). This issue has been dealt with by the Finance Bill 2022. From now on the unutilized amount accumulated u/s 11(2) shall become taxable in the last previous year of the period for which the income is accumulated.

Section 11(3A): Modification of objects specified in Form 10

Relaxation provided by the Act to Charitable Organizations which are not able to apply the income accumulated or set apart and invested in the modes specified in section 11(5) in terms of section 11(2), due to circumstances beyond its control.

Conditions for availing the relaxation:

1. Request the AO to allow the application towards some other charitable purpose
2. Satisfaction of the AO that the non application was beyond the control of the organization
3. The unutilized amount will be applied for such other objects which are in conformity with the objects of the trust.
4. By virtue of amendment in Finance Act 2002, the powers of the AO are curtailed to the extent that, he cannot allow the organization to contribute such income to any other charitable organization. Please refer section 11(3)(d) above. It may be noted that the Finance Act 2003, has inserted new proviso to section 3A, which provides that inter charity donation will be permissible in case of dissolution of a charitable or religious organization in the year of its dissolution.

Section 11(4) & (4A)

Property held under trust includes business undertaking

All NGO's other than the 7th category NGO shall be eligible to undertake businesses under section 11(4) & 11(4A). The 7th category cannot undertake incidental business activity though can have primary charitable activity run on commercial principles with profit motive with restrictions up to 20% of the total receipts.

Income from business shall be treated as income derived from "property held under trust" and shall be eligible for exemption under section 11(1) & 11(2) provided the business is incidental to the attainment of the objectives of the trust and separate books of account are maintained by such trust in respect of such business.

The assessing officer will have the power to determine the income of such undertaking and where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes.

There is a strong judicial precedence, including the SC's ruling in ACIT V/s Thanthi Trust (2001) 247 ITR 785, where even unrelated businesses held as property of the trust, are treated as incidental provided, the entire income is applied for charitable purposes. In other words **use of the income will determine the incidentality of the business.**

Business or profit making activity per se is not excluded from overall scope of charitable purpose. But presence of “profit motive” as against “activity for profit” will endanger the exemptions available under Section 11.

There is nothing in the statute to suggest that, Tax Audit u/s 44AB shall apply to business undertaking u/s 11(4A), as long as registration u/s 12AB, is intact.

Important case laws in favour of the Assessee as regards incidental business:

The Bombay HC in the case of PCIT V/s National Health and Education Society held that the pharmacy store of the respondent was ancillary to the main object of running the hospital and the store cannot be treated as a separate business entity.

Divya Yog Mandir Trust V/s JCIT Hardwar (ITA No: 387/Del/2013). AY 2009-10.

In Shri Haridevji Gaushala Trust V/s CIT [2008] it was held that incidental activities such as sale of milk, Gobar, khattu and male calf are permissible for charitable organization maintaining Goushala.

Section 11(5) [Rule 17C]
Specified modes for investing funds of the trust

1. Investment in Government Savings Certificates; (Cannot invest in IVP & KVP)
2. Deposit in any account with the Post Office Savings Bank;
3. Deposit in any account (includes Current A/c) with a scheduled bank or a co-operative society;
4. Investment in any central government or state government securities
5. Investment in units of the Unit Trust of India;
6. Investment in debentures;
7. Investment or deposit in any public sector company.
8. Immoveable Property
9. Bonds issued by financial corporation engaged in providing long term funds for industrial development of India

10. Bonds issued by public company carrying on business of providing long term finance for construction or purchase of house in India for residential purposes.

11. Deposits with IDBI.

Any other prescribed form or mode

1. Units issued under any scheme of the mutual fund referred to in clause (23D) of section 10 of the Act. (Refer notifications issued from time to time)
2. Any transfer of deposits to the public Account of India.
3. Deposits made with an authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both.
4. Investment by way of acquiring equity shares of a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996).
5. Certain securities by a recognized stock exchange. 6. Equity shares of an incubator or incubatee.

6. Shares of National skill development
7. Debt instruments issued by any Infrastructure finance company
8. Investment / Deposit in any bonds issued by public company formed and registered in India with the main object of carrying on business of providing long term finance for urban infrastructure in India.
- 9. Stock certificate as defined by Sovereign Gold Bonds Scheme 2015**

Case Laws :

Only income from investment or deposit which has been made in violation of section 11(5) is liable to be taxed at MMR. Violation does not tantamount to denial of exemption u/s 11 on total income of the assessee. {CIT V/s Fr. Mullers Charitable Institutions [2014] 44 Taxmann(Kar)}.

SC in the case of DIT Chennai V/s Working Women's Forum [2015] held that only the income from investment violative of section 13(1)(d) can be brought to tax.

CIT V/s Orpat Charitable Trust [2015] 230 Taxmann 66 (Guj.). Renewal of 80G was granted even when the provisions of section 11(5) were contravened.

The ITAT Mumbai in the case of All India Rubber Industries Association [2018] held that investment in the shares of section 8 company shall not be treated as investment for the purposes of section 11(5) read with section 13(1)(d) as there was no possibility of income or return from such investment.

The ITAT Delhi in the case of ACIT(E) Circle 1(1) Delhi V/s Indian Broadcasting Foundation [2020] it was held that where a charitable institution deployed its funds in equity of a non profit company to meet wider objectives of public charitable nature on account of central govt policy, exemptions could not be denied. Also held that section 11(5) read with 13(1)(d) not applicable.

Section 11(6)

The Finance (No: 2) Act, 2014 lays down that depreciation will not be considered as application of income if the asset on which depreciation has been charged has already been considered as a part of application of income, earlier.

Depreciation shall be permissible on assets not created out of Income. Depreciation cannot be claimed if cost of acquisition is Nil.

The depreciation rates provided by the Income tax laws are not mandatory. Section 32 will have no application to charitable organization.

Section 11(7)

Before the Amendment vide Finance Act 2020, the trust could have claimed exemption under section 10(23C) and 10(46) along with exemption u/s 11 & 12.

After the Amendments vide Finance Act 2020, the registration u/s 12AA and 12AB shall become inoperative from the date the trust is approved u/s 10(23C) or is notified u/s 10(46) as the case may be, or the date on which this proviso has come into force whichever is later

It is to be noted that no similar provision of approval becoming inoperative is made u/s 10(23C)/10(46) of the Income Tax Act. Therefore holding two approvals at a time shall make the registration u/s 12AA and 12AB inoperative and not vice versa .

The trust whose registration has become inoperative may apply to get its registration operative u/s 12AB subject to the condition that the approval under section 10(23C) or notification u/s 10(46) shall cease to have effect from the date on which said registration becomes operative. Which in other words means you can either claim exemption u/s 11 / 12 vide approval u/s 12AB (erstwhile 12AA) or 10(23C) / 10(46).

Deduction u/s 10(1) being on account of agricultural income can be claimed in either situations. No deduction under any other sub clauses of section 10 can be claimed.

Amendment of Section 11 by the Finance Bill 2022

Explanation introduced after section 11(7)

Any sum payable by the trust shall be treated as application only in the previous year in which the payment is actually made irrespective of the method of accounting followed by the trust / institution.

Section 12

Income of Trusts or institutions from contributions

1. Income from voluntary contributions (not being contributions made with specific direction that it shall form part of the corpus) shall be deemed to be income derived from property held under trust for the purposes of section 11. Membership Fee or Subscription is income from property held under trust and not voluntary contribution.
2. Value of services provided to persons referred in section 13(3) (specified persons) shall be deemed to be the income of such trust or institution derived from property held under trust, during the previous year in which such services were provided. Please refer section 13(6) (exception to denial of exemption u/s 11).

Explanation: Value shall mean value of services provided free of cost or at a concessional Rate.

Section 12A

Conditions for applicability of section 11 and 12 of the Act.

Application for registration to be made in the prescribed form to obtain registration u/s 12AB. **Section 12A(1)(a)**

For applications made from 1st June 2007. The registration u/s 12AA was applicable from the AY immediately following the previous year in which application was made. The delay could not be condoned by the PCIT or CIT. **Section 12A(1)(aa).**

The Finance (No: 2) Act 2014 has amended section 12A wef October 1 2014. Under the amended provisions, the benefits of section 11 and 12 shall be available in respect of any income derived from property held under trust in any assessment proceedings for an earlier AY which is pending before the assessing officer as on the date of such registration, if the objects and activities of such trust or institution in the relevant earlier AY are the same as those on the basis of which such registration had been granted. The above amendment, restores the provisions back to 2007. Which in other words means that the registration u/s 12A will be effective, retrospectively.

(Please refer explanatory notes as given in CBDT Circular No: 01/2015 dated 21/01/2015).

Further no actions for reopening of an assessment under section 147 shall be taken by the AO in the case of such trust or institution for an AY preceding the first AY for which the registration applies merely for the reason that such trust or institution has not obtained the registration under section 12AA for the said AY. However the above benefits will not be available in case of any trust or institution which at any time had applied for registration and the same was refused under section 12AA or a registration once granted was cancelled.

Case laws where retrospective effect of registration u/s 12A was granted.

Sree Sree Ramkrishna Samity V/s DCIT (ITAT Kolkata) ITA Nos: 1680-1685/Kol/2012

Sahasra Educational Society V/s ADIT(E)-I Hyderabad ITA No: 772/Hyd/2016

Fresh applications for registration to be made, on adoption or modifications of the objects, which do not confirm with the conditions subject to which the registration was granted u/s 12AA, within 30 days of such adoption or modification. **Section 12A(1)(ab).**

Section 12A(1)(ac) (introduced by the Finance Act 2020).

- i. For existing trust registered u/s 12AA. Apply u/s 12AB from 01/04/2021 (from 01/04/2021 to 31/03/2022).

- ii. Apply for renewal of registration u/s 12AB at least 6 months prior to expiry of said period (5 Years)
- iii. Where the trust has been provisionally registered u/s 12AB apply for registration at least 6 months prior to the date of expiry or within 6 months from the commencement of its activities whichever is earlier.
- iv. Where the registration has become inoperative due to first proviso of subsection 7 of section 11 at least 6 months prior to the commencement of the AY from which the said registration is sought to be made operative
- v. Modification in objects which do not conform to the conditions of the registration then within period of 30 days from the date of said modification
- vi. In any other case at least one month prior to the commencement of the PY relevant to the AY from which the said registration is sought

As per Section 12A(1)(b) the Organization must get its accounts audited where its income exceeds the minimum exemption limit. Audit report in Form 10B is required to be filed online to the assessing officer. **After the amendment in Section 12A(1)(b) by the Finance Act 2020 this clause specifically provides that the audit report should be obtained and also furnished at least one month prior to the due date of submission of return u/s 139(1).**

Prior to this amendment, this section provided that the audit report should be submitted *along with* return but there was no time limit by which the audit report had to be obtained.

CBDT Circular No: 2/2020 Dated 3/1/2020, condoning the delay in filing form 10B for the AY 2018-19 and subsequent years provides that where there is a delay of upto 365 days in filing form 10B the Commissioners of Income Tax are authorised to condone the delay, on merits u/s 119(2).

Amendment in Section 12A by the Finance Bill 2022

Additions in section 12A(1)(b)

The books of accounts and other documents have been kept and maintained in such form and manner and at such places as may be prescribed.

Return to be filed as per the section 139(4A) within the time limit allowed under that section (wef 1/4/2018 that is AY 2018-19). In other words the condition to submit returns before the specified date as a condition to claim benefit u/s 11 shall have no applicability on years earlier than AY 2018-19. **Section 12A(1)(ba).**

The CPC misinterpreted the section 12A(1)(ba), it is proposing to disallow the entire application of Income made by the trust and add the same to the income of the trust. The words “under that section” should be construed as section 139(1) and not 139(4A). Because 139(4A) does not prescribe any due date / time limit for filing the return.

CBDT Clarification dated: 23rd April 2019 provides for rectification of demands raised due to the above amendments for AY 2018-19. **The Finance Act 2020 extended the date of filing return to 31st October for audit cases from the AY 2020-21, which earlier was 30th September.**

Section 12A(2): Application made on or after 1/6/2007 12(A)(1)(aa), Provisions of section 11 and 12 shall apply.

- a. In relation to 12A(1)(ac)(i) above, that is, existing trusts registered u/s 12AA, from AY from which such trust was earlier granted registration
- b. In relation to 12A(1)(ac)(iii) above, that is, provisionally registered trusts, from AY from which such trust was earlier granted provisional registration.

Important points / case laws to be discussed

- Mention of six clauses needed in the constitutional document namely, Irrevocability Clause, Beneficiary Clause, Dissolution Clause, a clause that the funds and property of the trust / institution will be used only for the objectives of the trust / institution (utilization clause), amendment / alteration & Investment as per sec 11(5) of the Income Tax Act.
- Case laws whereby the ITAT has decided that it is not mandatory to have Dissolution Clause in the trust deed. In other words the application for registration under section 12AA of the Income Tax Act cannot be rejected if there is no dissolution clause in the Trust Deed.

Rama Rashmi Chhaganlal Waghwala Charitable Trust V/s DIT (Exemptions), Mumbai, ITA/4509/Mum/2013 dtd: 22/04/2015.

Geeta Lalwani Foundation V/s DIT (Exem) Mum, ITA/3566/Mum/2013 Dtd: 02/01/2015.

Tara Education and Charitable Trust V/s DIT (Exemptions), Mumbai, ITA/1247/Mum/2013 Dtd: 18/07/2014.

Kamla Nevatia Charitable Trust V/s DIT (Exemption) Mumbai, ITA 3574/Mum/2013.

Section 12AB = Procedure for Fresh Registration

Application has to be made under the new section 12A(1)(ac) introduced by the Finance Act 2020

The PCIT or CIT on receipt of application shall:

In the case of existing 12A registered trusts / institutions pass an order in writing registering the trust or institution for a period of 5 years. **No enquiry is proposed to be made and registration to be granted within a period of 3 months from the end of the month in which the application is made. Sub Section(1)(a)**

In all other situations namely, Renewal of registration, provisional to regular registration, renewal of registration which has become inoperative due to operation of section 11(7) or any other case, call for such documents and or information to verify the genuineness of the activities and compliance under any other law as are material for achieving the objects of the trust institution. **Sub Section (1)(b)(i)(A) & (B).**

After satisfying himself pass an order registering the trust for a period of 5 years or rejecting / cancelling the application after affording a reasonable opportunity of being heard. **Sub Section (1)(b)(ii)(A) & (B).**

Where the application is made under 12A(1)(ac)(vi) pass an order provisionally registering the trust for a period of 3 years. **Sub Section (1)(c).**

All applications pending under section 12AA as on the date of this section coming into force (1st April 2021) shall be deemed to be application made under the residual clause 12A(1)(ac)(vi). **Sub section 2.**

The time limit for passing the order is:

3 months from the end of the month in which the application is made, in the case of existing 12A registered trusts.

6 months from the end of the month in which the application is made, in the case of renewal of registration granted u/s 12AB, conversion from provisional registration to regular registration, re-registration of the trust which has become inoperative due to the operation of section 11(7), application for fresh registration due to modification in the objects clause of the trusts.

1 month from the end of the month in which the application is made, in cases other than those covered above. **Sub section 3**

If PCIT or CIT is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution after affording a reasonable opportunity of being heard. **Sub Section 4.**

After granting registration if it is noticed that,

- (a) the activities of the trust or the institution are being carried out in a manner so as to attract the provision of section 13(1) or
- (b) the trust or institution has not complied with the requirement of any other law, then, the PCIT or CIT may, by an order in writing, after affording a reasonable opportunity of being heard, cancel the registration of such trust or institution. **Sub Section 5.**

There was no power to cancel provisional registration granted for 3 years as per the Finance Bill 2020. This loop hole has been plugged (Finance Bill 2022).

Case laws:

Order u/s 144 and cancellation justify, if activity not according to objects. Prathyusha Educational Trust v/s PCIT (2019) (Madras HC).

Capitation Fee cannot be reason for cancellation u/s 12AA(3). Maharashtra Academy of Engineering and Educational Research (MAEER) V/s CIT (2010)

Trust Registration cannot be cancelled for unexplained income / donations & expenditures. Shantidevi Educations trust v/s CIT (2010)(Delhi) & Maharishi Markandeshwar Education Trust V/s CIT(Central)(Chandigarh)(2008) resp.

The competent authority must be satisfied that the activities of trust are not genuine or not carried out as per the objects of the trust. Such satisfaction must be recorded. CIT(E) V/s MMRDA (2020) Bombay HC.

No cancellation, where there was no allegation that assessee was carrying sale of milk and milk products with sole motive of earning profit. Rajasthan Gau Sewa Sangh V CIT (2020)(Jaipur Tribunal).

Section 12AA registration could not be cancelled for bogus donation. CIT(E) V/s Jagannath Gupta Family Trust [2019][SC].

The revised timelines and new provisions related to registration process u/s 12AB {Rule 17A} of charitable / Religious trusts wef from 01-04-2021 have been summarized below:

Type of Entity	Timeline to make Application for Registration	Period of Registration	Time limit to grant registration	Forms
Trust/ institution registered under section 12A or under section 12AA before 01-04-2021.	Within 3 months from the date on which this section comes into force (Now, from 1 st April,2021 to 31 st March 2022.)	5 years	Within 3 months from the end of the month in which the application is received.	<u>Appl.</u> Form 10A <u>Approval</u> Form 10AC
Trust registered under section 12AB and the period of the said registration is due to expire.	At least 6 months prior to expiry of the said registration period.	5 Years	Within 6 months from the end of the month in which the application is received.	<u>Appl.</u> Form 10AB <u>Approval</u> Form 10AD
Trust provisionally registered under section 12AB.	At least 6 months before the expiry of period of the provisional registration or within 6 months of commencement of its activities, whichever is earlier.	5 Years	Within 6 months from the end of the month in which the application is received.	<u>Appl.</u> Form 10AB <u>Approval</u> Form 10AD

Type of Entity	Timeline to make application for Registration	Period of Registration	Time limit to grant registration	Forms
Registration of trust has become inoperative due to approval under section 10(23C)/(46).	At least 6 months before the commencement of the assessment year from which the said registration is sought to be made operative.	5 Years	Within 6 months from the end of the month in which the application is received.	<u>Appl.</u> Form 10AB <u>Approval</u> Form 10AD
Trust has adopted or undertaken modifications of the objects which do not conform to the conditions of registration.	Within 30 days from the date of the said adoption or modification.	5 Years	Within 6 months from the end of the month in which the application is received.	<u>Appl.</u> Form 10AB <u>Approval</u> Form 10AD
In any other case	At least one month before the commencement of the previous year relevant to the assessment year from which the said registration is sought.	3 Years	Within 1 months from the end of the month in which the application is received.	<u>Appl.</u> Form 10A <u>Approval</u> Form 10AC

The application for registration u/s 12A of the Act in Form 10AB for which the last date for filing falls on or before 29/09/22 may be filed on or before 30/09/22. (Circular No: 8/22 Dtd: 31/03/22)

Amendment in Section 12AB by the Finance Bill 2022

Subsection 4 & 5 of 12AB substituted

Talks about the powers of the Principal Commissioner or Commissioner:

To take cognizance of specified violations (Suo motto, reference from the AO, selection by the board under the risk management strategy).

To call for documents and or information to satisfy himself about the occurrence of Specified violation

To pass an order in writing cancelling the approval if satisfied about the occurrence of specified violation

To pass an order in writing refusing to cancel the approval if not satisfied about the occurrence of specified violation.

Forward a copy of the order to AO and Trust / institution

Specified date Defined (Sub section 5)

Specified date for passing the order defined. Within 6 months from the end of the quarter in which the first notice was issued.

Specified violation defined (Explanation to sub section 4)

Income applied for objects other than the objects for which the trust / institution was formed.

Income from activities not incidental to the attainment of the objectives of the trust or separate books of accounts are not maintained for the activities which are incidental to the attainment of objectives of the trust

Not genuine activities. Activities not carried out in accordance with the conditions subject to which the trust / institution was notified or approved

Non compliance under any other law for the time being in force.

Income of Charitable Organizations

Corpus u/s 11(1)(d)

Income u/s 11(1)(a), (b) & (c) and Voluntary Contribution u/s 12(1)

85% or more income is applied

Less than 85% income is applied

15% available for accumulation

Form 10 - Accumulation u/s 11(2)

Form 9A - Accumulation for 1 yr under explanation to Sec 11(1)

Accumulation for indefinite period

Accumulation for max. 5 years

Utilise within the subsequent year

Investment as specified u/s 11(5)

Applied for other purposes u/s 11(3)(a)

Cease to remain as investment u/s 11(5)

Not utilized within 5 years u/s 11(3)(c)

Donation to other trusts - u/s 11(3)(d)

Unable to utilise

Option to ask for permission u/s 11(3A) to apply for other purposes

Taxable u/s 11(3) as deemed Income

Taxable u/s 11(1B) as deemed Income

Section 13(1)
Denial / Withdrawal of Exemption

Section 13 has been enacted as an exception to section 11 and thereby the benefits which are otherwise available u/s 11 and 12, will not be available under the circumstances stated in section 13.

- a. Income applied for private religious purpose and not for the public at large.
Test : Presence of an uncertain and fluctuating population of beneficiaries.
- b. Income of charitable trust / institution applied for the benefit of particular religious community or caste, except trust or institution established for the benefit of Scheduled Castes, Scheduled Tribes, Backward Classes or women and children.

This clause would not be applicable to composite and religious trusts / institution. CIT v/s Dawoodi Bohra Jamat [2009] MP.

In the case of *CIT vs. Indian Society of the Church of Jesus Christ of Latter day Saints* (2017) 397 ITR 762 the Delhi High Court held that, the programmes conducted by assessee are open to public at large, the activities of assessee are not considered to be exclusively meant for one particular religious community and hence assessee is entitled to exemption u/s 11.

c. Income applied for the benefit of specified persons referred to in subsection 3.

Reasonable remuneration u/s 13(1)(c) read with section 13(2)(c) is allowed. A benefit implies payment of anything which is not legally due to a person.

d. Funds invested or deposited otherwise than in any one or more of the forms specified in subsection (5) of section 11.

In all above cases Trust shall be chargeable to tax at MMR except investment in violation of section 11(5) as discussed earlier.

The applicability of section 13 arises only when an organization is eligible for exemption u/s 11.

Voluntary contribution received in kind could not be applied, accumulated and invested therefore it cannot be treated as Income. ITO Ward 2(2) Jodhpur V/s Shri Sachyaya Mataji Trust V/s DIT (2013) date of order 9th May 2014.

Donation in kind cannot be said to be funds of the trust as contemplated by section **13(1)(d)**, though they generally form part of the assets of the trust constituting its corpus. In order to claim exemption u/s 11 it is not incumbent on the part of the trust to convert the asset into cash and invest proceeds in specified modes as per section 11(5). Auditor Dasaradha Rami Reddy Charities v/s CIT (1989).

Section 13(2).

The income or the property of the trust or institution or any part of such income or property shall be deemed to have been used or applied for the benefit of person referred to in sub- section 3 of section 13 (specified person) if:

- a. Any part of Income or property of trust or institution is lent without charging adequate rent or compensation.
- b. Land / Building / property of trust or institution is lent without charging adequate rent or other compensation.
- c. Unreasonable Amount paid by way of salary, allowance for the services rendered.
- d. Services of the trust made available without adequate remuneration or compensation.
- e. Share / Security / Property purchased on behalf of the trust or institution from specified persons for consideration which is more than adequate.
- f. Share / Security / Property sold on behalf of the trust or institution to specified persons for consideration which is less than adequate.

- g. Income or property diverted to specified persons.
- h. Funds of the trust or institution continue to remain invested in any concern in which the specified person has substantial interest

Attention is drawn to sub clause (c) which allows reasonable payment of salary, allowance or otherwise, out of the resources of the trust or institution, during the previous year, to specified persons referred to in clause 3 of section 13, for services rendered by such specified persons.

The SC in the case of CIT(E) V/s Bholaram Educational Society [2019] upheld that, the order of the Gujarat HC in the case of CIT(E) V/s Bolaram Education Society [2018] wherein it was held that annual rent of Rs: 1.98 crores was not excessive for a property valued around 36 crores therefore there is no violation of section 13(1)(c).

The SC in the case of CIT(E) V/s Ambala Public Education Society [2020] held that application u/s 12A could not be rejected merely on ground that secretary of the society was getting lease rent for land given to society for running school or his wife who had the requisite qualification was teaching in school and was being paid salary.

The Bombay HC in the case of CIT(E) Mumbai V/s Kalyani Charitable Trust [2020] held that rent paid to interested person towards use of property for educational purposes was not a violation u/s 13(1)(c). In this case the AO had concluded that funds to the extent of Rs: 6,68,00,000/= of the respondent assessee was diverted for the benefit of excluded person.

Section 13(3)

Meaning of specified persons (as referred to in clause (c) of sub section 1 and sub section 2)

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

Section 13(4)

Exemption shall not be denied if the investment of the trust or institution, in a concern, in which the specified person has a substantial interest, provided such investment is not more than 5% of the capital of that concern.

Section 13(6) read with section 12(2)

As per section 13(1)(c), income of a charitable trust will not be exempt if any part of such income or any property of the trust is used or applied directly or indirectly for the benefit of any person specified in section 13(3).

But, subsection (6) provides that, a charitable or religious trust running an educational institution or a medical institution or a hospital shall not be denied the benefit of exemption u/s 11 or 12, in relation to any income by reason only that, such trust has provided educational or medical facilities to specified person. The exemption will be lost only to the extent of the value of the services so provided.

Section 13(7)

Nothing contained in section 11 or 12 shall apply in case of anonymous donations referred to in section 115BBC.

Section 115BBC. (inserted wef 1/4/07 by Finance Act 2006, amended by the Finance Act 2009 and Finance (No: 2) Act 2014).

Anonymous donations to be taxed in certain cases

Sub Section 1

Tax payable will be aggregate of

- (i) 30% flat rate of tax on anonymous donation in excess of the higher of the following amounts:
 - a. 5% of the total donations received by the assessee; or
 - b. Rs. 1,00,000.
- (ii) The amount of income tax with which the assessee would have been chargeable had his total income being reduced by the amount of anonymous donation as calculated above or in other words after reducing the amount taxable at the rate of 30% (MMR).

Sub Section 2

Sub Section 1 shall not apply to:

- a. Trust or institution created wholly for religious purpose
- b. Anonymous Donations to any Trust or institution created for charitable and religious purpose, other than any anonymous donation made with specific direction that such donation is for university, educational institution or hospital.

It is not known how a specific direction can come anonymously and how can it be substantiated.

Sub Section 3

Anonymous Donations means any voluntary contribution referred to 2(24)(iia) where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed.

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.

The taxability of anonymous donation by virtue of section 115BBC shall affect Trust / Institutions / Organizations covered u/s 11, 10(23C) (iiiad) (iii ae) (iv) (v) (vi) and (via).

Exemptions available u/s 11 are not available to anonymous donations and they are to taxed as per the provisions of section 115BBC. Therefore in our opinion the condition relating to application and accumulation will also not apply to such donations. Which also means that, anonymous donations will not be subject to 85% application.

Anonymous donations once taxed u/s 115BBC will not be subject to double taxation even in case of violation u/s 13. Because anonymous donations have at the very outset been excluded from the purview of section 11 and 12.

Religious organizations not covered u/s 115BBC will be covered under PMLA 2002.

Some Case laws:

DCIT v/s All India Pingalwara Charitable Society [2016] ITAT, Amritsar, Gurudev Siddha Peeth V/s ITO Ward 1(1) Kalyan [2015], ITAT, Mumbai, held that the intent of Sec 115BBC was to tax unaccounted money, not small and petty collections through donation boxes.

The above judgements are supported by Explanation to Memorandum to Finance Bill 2006, Budget speech of the Finance Minister and CBDT's explanatory Circular No: 5/2010 Dated 3/6/2010 regarding section 115BBC.

The Delhi high court in DIT (E) V/s Keshav Social and Charitable Foundation [2005] held that anonymity of donors cannot lead to the inference that unaccounted money has been introduced. Which in other words means provisions of section 68 to 69D cannot be invoked. Anonymous donation is a valid income available for charitable purposes.

Only donations included in I&E A/c is out of the purview of section 68. Saikshnik Krishank Samaj V/s Addl CIT Range II Ghaziabad 2019 ITAT Delhi.

In the case of Bhagwan Shree Laxmi Narayan V/s ITO(E) [2014] the Delhi High Court held that tax authorities had proceeded on a very narrow and incorrect understanding in holding that the assessee trust was engaged in spreading spirituality and is not a religious trust, to qualify for sub clause 2a and 2b which are exceptions to sub clause 1 of section 115BBC.

Burden of proof is entirely on the assessee to establish identity of the donors for the purpose of section 115BBC. Madhavi Raksha Sankalp Nirmal Niketan V/s Dy CIT [2017] ITAT Mumbai.

In the case of Hans Raj Smarak Society V/s ADIT (E) [2011], the Delhi Tribunal. The AO had insisted for confirmation letters from the donors. Held that the receiver has to maintain the identity indicating the name and address of the donor and such other particulars as may be prescribed. No other particulars has been prescribed under this provision [115BBC(3)] or elsewhere in the Act or Rules.

Note:

Section 115BBC does not apply to institutions falling under section 10(23C)(iiab) & 10(23)(iiiac).

Section 13(8)

Nothing contained in section 11 and 12 shall operate so as to exclude any income from total income of the previous year of the person in receipt thereof if the provisions of the first proviso to section 2(15) becomes applicable in the case of such person in the said previous year.

It is important to note that the trust will lose the exemption for the year in which it is hit by the first proviso to section 2(15), the registration u/s 12A will not be cancelled. In other words even if the registration u/s 12A is effective the exemptions u/s 11 and 12 cannot be availed by the trust institution. If in the subsequent year, the aggregate receipts as prescribed in first proviso to section 2(15) is within the specified limits the exemptions u/s 11 & 12 will be available, unless such cancellation becomes necessary on other grounds.

This section is also important because if registration u/s 12A is cancelled the provisions of section 115TD will come into force, causing additional hardship to trust / institution. Please refer Circular 21/2016, dated 27/05/2016.

Cuttack District Tennis Association V/s CIT (ITAT Cuttack, 453/2013 date of judgement 12/04/2018). Field officers advised not to cancel the registration of the trust just because the proviso to section 2(15) comes into play. The process of cancellation of registration to be initiated strictly in accordance with section 12AA(3) of the Act.

Section 13(9) wef 1/4/2016 (AY 2016-17)

Nothing contained in subsection 2 of section 11 shall operate if:

- The statement referred to in clause (a) of section 11(2) in form No: 10, is not filed before the due date as per section 139(1) of the Act.
- The return of income is not filed before the due date for filing the return as prescribed by section 139(1) of the Act.

It may be noted that section 13(9) applies only in case of submission of Form 10 and does not apply in case of submission of Form 9A. Delayed filing of Form No: 10 no longer possible.

Explanation 1

Trust includes any other legal obligation (project grants) for the purposes of section 11, 12, 12A and 13. The term relative is defined. A legal obligation is generally not included in income. CIT(E) V/s Society for Indian Automobile Manufacturers Assn [2018] Delhi HC Contradiction to the extent that 115BBC(2)(b) intends to tax legal obligation.

Circular 6/2020 dtd: 19th Feb 2020 gives power to the CIT to condone the delay in filing the return of income as prescribed by section 139(1), for the AY's 2016-17, 2017-18 & 2018-19 provided, the return is filed on or before 31st March of the respective AY's. Condoning the delay of filing form 9A & 10 will not reduce the hardship of the assesses without condoning the delay in filing the return of Income as per section 139(1) of the Act.

Amendment in Section 13 by the Finance Bill 2022

Sub Section 10 after 9 and explanation 1

Where the provisions of sub section 8 are applicable or the trust / institution violates 12A(1)(b) (Audit) or 12A(1)(ba) (non submission of return within the prescribed time limit) its income chargeable to tax shall be calculated after allowing expenses (other than capital expenditure) subject to the following conditions:

Such expenditure is not

- From the corpus fund
- From any loan or borrowing
- Depreciation on the assets, the acquisition cost of which is claimed as application of income in the same or any other previous year.
- In the form of any contribution or donation to any person

Explanation: For determination of expense the provisions of section 40(a)(ia) and 40A(3)(3A) shall apply mutadis mutandis

Sub section 11.

For the purposes of computing income chargeable to tax under sub section 10 above, no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any other provisions of the Act.

New Section 115BBI by the Finance Bill 2022

New section 115BBI. Taxation of specified income at special rate.

It is proposed to tax the specified income at the rate of 30% in the hands of the trust / institution without allowing any deduction of expenditure.

Specified Income means

Income accumulated or set apart in excess of 15% where such accumulation is not allowed under specific provision of Act.

Accumulated amount is not invested in the specified mode of investment

Income accumulated and not applied for charitable purposes

Income applied for benefit of specified person

Income applied for charitable purpose outside India (course in violation of section 11(1)(c).

The Finance Bill 22 (Lok Sabha) clarified that 115BBI will have an overriding effect over anything contrary {Section164(2)} contained in the Act.

Amendment by the Finance Bill 2022 (Lok Sabha).

The Finance Bill (Lok Sabha) has inserted proviso to existing proviso of section 56(2)(x) to provide that clauses VI and VII of the existing proviso (deemed income, shall not arise u/s 56(2)(x) if money or property is received from 10(23C) institutions or trusts / institutions approved u/s 12A of the Act) shall not apply if any sum of money and or property has been received by any person referred to section 13(3) of the Act.

The legislature has plugged the loophole wherein the interested person enjoys tax exemption on receiving gifts from the trust.

Proposed new Section 271AAE by the Finance Bill 2022

Where the income of the trust / institution is applied for the direct or indirect benefit of the specified person as defined in section 13(3), a penalty equal to 100% of the amount so applied shall be levied, on the first violation. On subsequent violations a penalty equal to 200% of the amount so applied shall be levied.

Section 80G

Deduction in respect of donations to certain funds / institutions.

Subsection 1 read with subsection 2, defines the organizations to which donations will qualify for deduction in the computation of Income of the donor assessee and the quantum of deduction. It specifies two categories of donations one entitled for 100% donation and the other for 50%. Deduction can be claimed by any tax payer – Individuals / Company / Firm or any other person.

Section 80G(2)(a)(iihk): Swachh Bharat Kosh & 80G(2)(iihl) Clean Ganga Fund are specific exclusions which are categorized by legislature as part of CSR responsibility, not eligible for exemption u/s 80G.

Section 80G(2)(b): any sum paid by assessee as donations for renovation of Temple, Mosque, Gurudwara, Church or any other place notified by the Central Government in the official Gazette

Subsection 4 defines the gross qualifying amount of donation to 10% of the total income (as reduced by any portion thereof on which income tax is not payable and by any amount in respect of which the assessee is entitled for deduction) in respect of certain organizations mentioned in subsection 2.

Subsection 5 is about donations to trust institutions, subject to below mentioned conditions:

- (i) Whose income is not liable to inclusion in its total income under the provisions of section 11,12, 10(23C) or 10(23AA).

Provided that where an institution or fund derived any income from business as per section 139(4), the institution or fund should satisfy the following conditions:

- a. The institution or funds maintains separate books of accounts in respect of income derived from business.
 - b. The donations are not used for business.
 - c. A certificate is issued by the institution or fund to the donor that the above two conditions are met.
- (ii) The instrument under which the institution or fund is constituted does not contain any provision for the transfer or application of income for purpose other than charitable purpose.
- (iii) The institution or fund is not expressed to be for the benefit of any particular religious community or caste, except an institution or fund established for the benefit of Scheduled Castes, Scheduled Tribes or of women and children (Explanation 1)
- (iv) The institution or fund maintains regular accounts of its receipts and expenditure
- (v) The institution or fund is duly established or registered under the respective acts for eg. Societies Registration Act 1860, The Maharashtra Public /trust Act 1950, Section 8 of the Companies Act 2013.

- (vi) The institution or fund is for the time being approved by the PCIT OR CIT.
- (viii) **Inserted by the Finance Act 2020**, Prepares such statement or correction statement for such period as may be prescribed and deliver to the prescribed authority within the time specified.
- As per Rule 18AB, statement has to be filed annually in form 10BD beginning from the FY 2021-22 in form 10BD and a certificate to the donor to be provided in form 10BE on or before 31st May immediately following the FY in which the donation is received.
- (ix) **Inserted by the Finance Act 2020**, A certificate of donation in Form 10BE be furnished to the donor in the prescribed manner on or before 31st May.

1st Proviso talks about application to PCIT or CIT for grant of approval under this section similar to 12A(1)(ac) discussed earlier

2nd proviso talks about the procedure of registration under this section similar to 12AB discussed earlier

3rd proviso talks about the time limit within which the order has to be passed by the PCIT or CIT similar to the provisions of section 12A(1)(ac) discussed earlier. (3, 6, 1 month as the case may be)

4th proviso talks about the applicability of the registration in the case of existing 12A registered trusts and provisionally registered trust similar to section 12A(2) discussed earlier.

Subsection 5A

Deduction so allowed under this section shall not qualify for deduction under any other provision of this Act for the same or any other AY.

Subsection 5B

The provisions of this section shall apply only to institution or fund if expenditure on religious purpose does not exceed 5% of its income.

Subsection 5D

No deduction shall be allowed in respect of any donation exceeding Rs: 2000 unless such amount is paid by mode other than cash (wef AY 2018-19). There is no bar on trusts / institutions to receive cash donations in excess of Rs: 2000. The trusts / institutions should not issue receipts which are certifying that donations are eligible for exemptions u/s section 80G. However there is restriction on receipt of cash of amount of two lakh rupees or more by virtue of section 269ST (introduced vide Finance Act 2017)

Subsection 5E

Inserted by the Finance Act 2020, which says that all pending application as on the date on which this subsection has come into force, shall be deemed to be applications made under clause iv of the first proviso, read with clause iii of the second proviso, it means that the order has to be passed within one month from the date on which this subsection has come into force which is 1st April 2021.

Explanation 2: The deduction shall not be disallowed to the donor if :

The income of the institution or fund becomes taxable due to non-compliance of section 11,12 and 12A.

The exemption under section 11 and 12 is denied due to violation of section 13(1)(c) read with section 13(2)(h).

Explanation 2A (inserted by the Finance Act 2020): Deduction of donation is allowed only on the basis of information filed by the donee trust / institution.

Explanation 3: Charitable purpose does not include religious purpose.

Explanation 4: Association or institution for the promotion of games and sports as notified by the Government shall be deemed to be an institution established for charitable purpose.

Explanation 5: Section 80G not applicable to donations in kind.

Deduction u/s 80G can be claimed only against positive income and taxable income. It can neither be claimed against the losses nor can be carried forward.

Donation out of current years income, reserve fund or the previous year's income are eligible for deduction.

Can CSR expenditure be claimed as deduction u/s 80G?

The benefit accruing to the assessee under Chapter VIA for computing “Total Taxable Income” cannot be denied to assessee subject to fulfilment of conditions of necessary conditions therein. Allegis Services (India) Pvt Ltd (ITAT Bangalore)(2019) Dtd 29/4/2020.

Note:

All institutions / funds u/s 10(23C) can also be approved under section 80G of the Act.

The revised timelines and new provisions related to Approval u/s 80G {Rule 11AA} of Charitable / religious trusts with effect from 01-04-2021 have been summarized below:

Type of Entity	Date to make application for approval	Validity of registration	Time limit to pass order	Exemption available from which year	Forms
Institutions or fund approved before 01-04-2021.	From 1 st April 2021 to 31 st March 2022).	Approval shall be granted for a period of 5 years.	Before expiry of 3 months from the end of the month in which the application is made.	From the assessment year from which approval was granted earlier to such institution.	<u>Appl.</u> Form 10A <u>Approval</u> Form 10AC
Institution or fund is approved under the amended provision and the period of the said approval is due to expire.	At least 6 months prior to expiry of approval.	Approval shall be granted for a period of 5 years after satisfying about the genuineness of activities.	Before expiry of 6 months from the end of the month in which the application is made.	From the assessment year immediately following the financial year in which such application is made.	<u>Appl.</u> Form 10AB <u>Approval</u> Form 10AD

Type of Entity	Date to make application for approval	Validity of registration	Time limit to pass order	Exemption available from which year	Forms
Institutions granted provisional approval.	At least 6 months before expiry of the period of the provisional approval or within 6 month of commencement of its activities, which ever is earlier.	Approval shall be granted for a period of 5 years after satisfying about the genuineness of the activities	Before expiry of 6 months from the end of the month in which the application is made.	From the assessment year immediately following the financial year in which such application is made.	<u>Appl.</u> Form 10AB <u>Approval</u> Form 10AD
In any other case	At least 1 month before the commencement of the previous year relevant to the assessment year from which the approval is sought.	Approval shall be granted provisionally for a period of 3 years from the assessment year from which the registration is sought	Before expiry of 1 month from the end of the month in which the application is made.	From the first day of the assessment year on which such institution was provisionally approved.	<u>Appl.</u> Form 10A <u>Approval</u> Form 10AC

The application for approval u/s 80G of the Act in Form 10AB for which the last date for filing falls on or before 29/09/22 may be filed on or before 30/09/22. (Circular No: 8/22 Dtd: 31/03/22)

Section 234G (inserted by the Finance Act 2020).

Fee for default relating to statement or certificate.

Late fee of Rs: 200 per day for delay in providing the donation details to the prescribed authority in form 10BD and certificate to donor in form 10BE, as prescribed u/s 80G(5)(viii) and (ix) resp. The amount of fee shall not exceed the amount in respect of which the failure has occurred & the payment of the late fee has to be made before filing the statement of donation.

Section 271K (inserted by the Finance Act 2020).

Penalty for failure to furnish statements etc.

Penalty of a Sum not less than Rs: 10000 upto Rs: 100000 on violation of 80G(5)(viii) or 80G(5)(ix).

CHAPTER XII-EB ADDED BY FINANCE ACT 2016.
SPECIAL PROVISIONS RELATING TO TAX ON ACCRETED INCOME OF
CERTAIN TRUST AND INSTITUTIONS.

Section 115TD.

- (1). Where in any previous year a trust or institution registered u/s 12AA / 12AB has:
- a. Converted into any form not eligible for registration u/s 12AA / 12AB.
 - b. Merged with any trust or institution not having similar objects & is not registered u/s 12AA / 12AB.
 - c. On dissolution failed to transfer all its assets to any other trust or institution registered u/s 12AA / 12AB or institution registered u/s 10(23C) Sub section iv / v / vi / via, within a period of 12 months from the end of the month in which the dissolution takes place.

Then, income of the organization for that year and the accreted income shall be taxed at MMR. Once the tax is charged under this section no other section shall apply.

- (2) Accreted income means excess of FMV of the total assets less total liability as on the specified date.

Rule 17CB provides the mechanism for determining the market value. Corpus fund and other accumulated funds are not included in liability because unlike commercial organization they are in the nature of legal obligation.

Provided that so much of the accreted income attributable to the following shall be excluded:

- (i) Any asset acquired from agricultural income.
 - (ii) Any asset acquired after creation of the trust till the registration of the trust u/s 12AA / 12AB (said period), if the trust has not been allowed the benefit of section 11 and 12 during the said period.
 - (iii) Where 115TD applies due to failure to transfer of assets on dissolution then the assets and liabilities which have been transferred to any other trust or institution registered under section 12AA/12AB or 10(23C) within the specified period, shall also be excluded.
- (3) A trust or institution shall be deemed to have converted into any form not eligible for registration u/s 12AA / 12AB if
- (i) Registration granted u/s 12AA / 12AB has been cancelled.
 - (ii) modified the objects of the trust which do not confirm with the conditions of registration and it has
 - (i) Not applied for fresh registration u/s 12AA / 12AB.
 - (ii) Applied for fresh registration but the same has been rejected.
- (4) Even if no tax on regular income is payable tax on accreted income will be payable as per sub section 1 of this section.

- (5) The principal officer of the trust or trustee shall be liable to pay the tax within 14 days from
- (i) Cancellation of Registration u/s 12AA / 12AB. the date on which:
 - (a) the period for filing the appeal u/s 253, against the order cancelling the registration is passed, expires, and no appeal has been filed.
 - (b) the order confirming the cancellation is received by the trust or institution.
 - (ii) from the end of the FY in which the modification took place that is where the trust institution did not apply for fresh registration {3(ii)a}.
 - (iii) Rejection of Fresh application for Registration, on modification of the objects of the trust which do not confirm with the conditions of registration, the date on which:
 - (a) period for filing appeal u/s 253 expires.
 - (b) the order in any appeal confirming the cancellation of application received by the trust or institution {3(ii)b}
 - (iv) the date of merger as mentioned in 1(b)
 - (v) date on which the period of 12 months expires as mentioned in 1(c) above (transfer of assets after dissolution)

- (6) Tax on accreted income will be the final payment of tax and no further credit shall be claimed by the trust / institution.
- (7) No deduction under any other provision of the tax shall be claimed.

Section 115TE.

Interest payable by the principal officer or trustee @ 1% for every month or part thereof of the delay in paying tax as per subsection 5 of Section 115TD.

Section 115TF.

- (1) In the case of non payment of tax on accreted income the principal officer / trustee or the trust / institution shall be deemed to be an assessee in default and all the provisions for collection and recovery of this act shall apply.
- (2) In the case of dissolution of the trust or institution and transfer of assets to some other trust or institution, the tax on accreted income, if not paid, the person to whom the asset forming part of the computation of the accreted income is transferred, shall be deemed to be an assessee in default in respect of tax, interest thereon and all the provisions for collection and recovery shall apply. Provided that the liability of the person shall be restricted to the value of the asset received by him.

Few fundamental and Prima Facie issue arising out of accreted income, noticed.

The mandate of Income Tax Act is confined to taxing income only and not assets held as legal obligation

The provisions apply only to organizations registered u/s 12AA/12AB therefore all organizations registered u/s 10(23C) shall not be covered. Such provision is probably in violation of Article 14 of the Constitution of India because of the differential treatment, particularly in the light of the fact that the approval u/s 10(23C) and registration u/s 12AA / 12AB are simultaneously available & after the Finance Act 2020 an organization can opt for any one of them.

The entire corpus and capital assets will be taxed which is against the judicial precedence where it has been held that corpus donation will not be taxed even if the organizations are not registered u/s 12AA.

There is a presumption that an organization has not paid any taxes in the past. Contrary to this there are many provisions where the charitable organizations are required to pay tax, for example anonymous donation u/s 115BBC, Violation of sections 11(5) etc. Any asset created out of the above income will lead to double taxation.

This amendment will have retrospective implications in some cases. If an organization is created before independence having created all its assets prior to 1/4/73 out of voluntary contribution, should not be subject to these provisions as voluntary contribution was exempted income prior to 1/4/73.

Amendment in Section 115TD, 115TE & 115TF by the Finance Bill 2022

Additions in Section 115TD, 115TE & 115TF.

Earlier the sections were applicable to Trusts registered u/s 12A. The applicability of the sections is added to trusts / institutions falling under 10(23C) (iv)(v)(vi) and (via)

Proviso to section 143(3) by the Finance Bill 2022

Where the AO is satisfied that any trust or institution has committed any specified violation as defined above, he shall:

- a. Send a reference to the PCIT/ CIT to withdraw the registration or approval.
- b. No order making the assessment of total income or loss of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution shall be made by him without giving effect to the order passed by the PCIT/CIT.

In this case time limit to completing assessment shall be extended accordingly

Section 164(2)&(3) and Section 167B

There is a common misconception that if 12AA registration is withdrawn or not availed or the income becomes taxable, the trust will be assessed as AOP under section 167B at MMR of 30%. However the taxes should be determined on the basis of sec 164(2) and (3) and not 167B. As per section 164(2) and (3) the trust should be charged at normal rates applicable to individuals. The minimum tax slab exemption which is currently Rs: 2.5 lakhs is also available.

Definition of individual is inclusive. Besides being a single living human being, it can include body of individuals. Even though the assessment of income was in the hands of the trust, it has to be made in the same manner and to the same extent as it would have been made in the hands of the beneficiaries. {DIT(Exempt) V/s Shardaben Bhagubhai Mafatlal Public Charitable Trust [2001]247 ITR1(Bom)}.

In the case of CIT v/s Children's Education Society (2013)358 ITR 373/(2013) 92DTR158/(2014) 264 CTR (Kar.) 389 the High Court of Karnataka held that the assessment status of a society shall be AJP and not AOP or BOI.

Section 167B will not be applicable because of the following reasons:

Section 167B specifically excludes Companies and Societies registered under societies registration act and or any other similar legislation.

Rates as prescribed in section 167B are based upon knowledge and determination of share of individual members. In charitable or religious organizations there is no scope of share of income or surplus among members concerned. Moreover the beneficiaries are public at large and not individual private beneficiaries.

Proviso to section 164(2) makes it abundantly clear that a charitable trust can be taxed at MMR only if there is a violation of clause (c) or (d) of section 13(1).

M/s KMR Educational Society V/s ACIT Central Circle Hyderabad (ITA 1146 / Hyd / 2011) whereby it was decided that, the income has to be computed in a commercial manner even in the case where exemption is denied. The capital receipts cannot be taken as income of the assessee. Moreover the revenue expenditure has to be reduced against revenue receipts to arrive excess / deficit of Income over expenditure.

Please read circular number 308 Dated 29/06/1981 along with circular number 320 dated 11/01/1982.

THANK YOU

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