Taxation of Charitable & Religious Trusts - Basic scheme

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Word Trust or institution- word trust or institution used in this presentation shall mean and include public trusts, societies formed and registered under the Societies Registration Act 1860, Section 8 companies and other eligible funds and institutions.

Applicable sections

There are several sections/provisions in the Income –tax Act 1961 (hereinafter referred to as the Act) which grant exemption to income of such charitable and or religious organisations.

Main sections which are relevant in this case are Section 2 (15) sections 11, 12, 12A, **12AA (deleted w.e.f. 1-4-2021), 12AB (inserted w.e.f. 1-4-2021)** and section 13 of the Act. Besides, section 10(23C) sub clauses (iiiab) to (via) also provide for exemption of income derived by trusts, funds and institutions engaged in specified activities of charitable and or religious nature.

Other provisions of the Act which are mainly relevant:-

section 2(7) which defines term Assessee,

section 2(24) which defines 'Income',

section 2 (31) which defines term person,

section 40(a)(ia) and provision relating to TDS compliance,

section 40A(3) and (3A) in respect of payment exceeding Rs. 10,000 in cash,

section 80G relating to donations to eligible funds and institutions, section **234G prescribing late fee** for failure to furnish statements of donations received etc., and **section 271K which lays down penalty** for failure to furnish statement of donations or for non-issuance of certificate of donation to donor,

section 115BBC relating to taxability of Anonymous donations,

section 115BBI inserted by Finance Act, 2022 to provide for tax @30% on specified income of trusts under certain circumstances.

section 115TD, 115TE and 115TF relating to tax on accreted income,

section 139 relating to return of Income,

section 164(2) and (3) specifying tax rate applicable,

section 271AAE inserted by Finance Act 2022 providing Penalty for violation of section 13(1)(c) as well as 21st proviso to section 10(23C)

and provisions related to PAN, assessment, reassessments, search, survey, revision and appeals, as they are applicable to all assessees.

CHARITABLE PURPOSE AND RELIGIOUS PURPOSE

Since benefit of exemption to income of the trust under section 11, 12 or 10(23C) sub-clauses (iiiab) to (via) is available to only charitable or religious trusts it is absolutely essential to understand meaning of the terms 'charitable purpose' and 'religious purpose'

Meaning of 'Charitable Purpose' [Sec. 2(15)]
"Charitable purpose includes
relief of the poor,
education,
yoga w.e.f.1.4.2016,
medical relief,
preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest,
and the advancement of any other object of general public utility.'

Provided that 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 other activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless -

(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility, and

(ii) the aggregate receipts from such activity or activities during the previous year do not exceed twenty per cent of the total receipts of trust or institution undertaking such activity or activities of that previous year."

Proviso is substituted for first and second proviso by Finance Act 2015 w.e.f. A.Y. 2016-17

Crux is selflessness

A purpose must in order to be charitable, be directed to the benefit of the community or a section of the community as distinguished from an individual or a group of individuals as held in - **CIT v Ahmadabad Rana Caste Association** (1983) 140 ITR 1 (SC).

Where the primary purpose of the settler is to benefit the members of his family and relations and only remotely and indirectly the general public, the trust is not a charitable trust.

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

Ref. Recent imp judgments -

1. SC judgment in case of **Ahmedabad Urban Development Authority-** Judgement dt. 19.10.2022
2. Madras HC judgement on Capitation Fee CIT Chennai / DIT(E) IV, Chennai V M/s. **MAC Public Charitable Trust**, M/s. Sri Venkateswara Educational and Health Trust and others Tax Case Appeal Nos. 303 of 2021 batch Judgement dt. 31.10.2022.
3. **M/S. New Nobel Educational Society** (SC). Civil Appeal No.3793 of 2014 batch, in the context of Sec 10 (23C) interpretated term educational institution existing solely for educational purposes and not for profit and requirement of registration under State Law for Charitable Institution. Judgement dt. 19.10.2022

Advancement of Object of general public utility

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

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

W.e.f. A.Y.2016-17 first and second proviso are substituted to the effect that advancement of any other object of general public utility shall not be treated as charitable purpose - if it has receipts from commercial activity

unless -

(i) Such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility, and

(ii) The aggregate receipts from such activity/activities during the previous year do not exceed 20% the total receipts of Trust/institution during the previous year.

Commercial activity- meaning of- any activity in the nature of trade commerce or business or any other activity of rendering any service in relation to any trade commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity.

Sec. 13(8) says that benefit of exemption of income as per sec. 11 and 12 is not available in case 1st proviso to sec. 2(15) is attracted.

One should also consider and keep in mind provisions of sec. 11(4) and (4A) which talk about exemption to business income of the trust as specified in these sub-sections as explained below:-

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

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

The income of such business shall be determined in accordance with the provisions of the Act. i.e. Section 28 to 44 DB.

Where the income from such business as determined by the Assessing Officer is found to be in excess of the income shown in the accounts then such excess shall be deemed to have been applied to non-charitable or non-religious purposes and such excess income shall not qualify for exemption. **As per sec. 11(4) i**ncome of any business held in trust for charitable purpose shall be eligible for exemption as stated above**.**

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

The Supreme Court in the case of Asst. CIT vs. **Thanthi Trust** (2001) 247 ITR 785 (SC) has held that all that is required for the business income of a trust or institution to be exempt from tax is that the business should be incidental to the attainment of objective of the trust or institution. A business whose income is utilised by the trust or the institution for the purposes of achieving the objectives of the trust or the institution is a business which is incidental to the attainment of the objectives of the trust or institution. [decision under old law before insertion of proviso to sec 2(15) not a good law now in respect of GPU charities as per recent SC judgment]

It has been held by various HCs and by SC over past several years that- in determining whether the trust is entitled to exemption u/s 11, the nature or type of the sources of income of the trust is not relevant. What is necessary to be considered is whether having regard to all the facts and circumstances of the case, the **dominant object of the activity is profit-making or carrying out a charitable purpose.** This involves, in each case an examination of not only the objects of the trust but also the manner in which the activities for advancing the charitable purpose are being carried on and the surrounding circumstances. Hon'ble Supreme Court in the case of DIT vs. **Bharat Diamond Bourse** (2003) 126 Taxman 365 (SC) has held that if the primary or dominant purpose of the institution is charitable and another which by itself, may not be charitable, but is merely ancillary or incidental to the primary or dominant object, it would not prevent the institution from validly being recognized as a charity. The test to be applied is, whether the object which is said to be non - charitable is the main or primary object of the trust or institution or it is ancillary or incidental to the dominant object which is charitable. (Decision in Surat Art Silk Cloth Mfrs Association [1980] 2 SCC 31 followed)

However SC in case of Ahmedabad Urban Development Authority- has held that dominant purpose test cannot be applied now in view of proviso's/proviso inserted in sec 2(15) and when language of section is clear literal interpretation to be followed and not the liberal interpretation. Accordingly, GPU charities must satisfy the condition as stated by said proviso to sec 2(15)-
i.e., such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility, and
The aggregate receipts from such activity/activities during the previous year do not exceed 20% the total receipts of Trust/institution during the previous year so as to be eligible for claiming exemption u/s 11 and 12 (gist of Ruling) Participants are requested to refer to original judgment. In Assistant CIT (E.) v. Ahmedabad Urban Development Authority (SC) C.A. No. 21762 Of 2017

As per view of author income from Renting of hall , kalyanmandapam etc. shall be income from property held under trust hence cannot be considered as business income. Similarly income from charity shows or fund raising campaigns cannot be treated as income from business.

Word of caution- Due to proviso to sec. 2(15), provisions of sec 11(4) and (4A) and provisions of sec 13(8) wherever there is substantial business income derived by trust chances of litigation by Income Tax Department cannot be ruled out.

Meaning of 'Religious Purpose'

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

'Religious Purpose' includes the advancement, support or propagation of a religion and its tenets. The income of a religious trust or institution is entitled to exemption even though it may be for the benefit of a particular religious community or caste. The exemption u/s. 11 available to public religious trusts only; and not available to trust for private religious purposes which does not enure for the benefit of the public.
Proviso to cl.(15) of sec 2 relating to receipts from commercial activities carried out by trust does not apply to trusts carrying out religious activity- religious purpose.

Also refer to ITAT judgment of **Shiv Mandir Devasttan Panch Committee Nagpur-** It is held by ITAT that there is no religion by name of "Hindu". Hinduism is a way of life. Hindu is neither a religion nor a community. Therefore expenses incurred for worshiping of Lord Shiva, Hanuman, Godess Durga and for maintenance of temple cannot be regarded to be for religious purpose . decision in context of sec 80G(5)-ITA No 223/Nagpur/2009.

Exemption u/s. 11

Section 11(1) lays down that any income derived from property held under trust wholly for religious and charitable purposes, (or held in part only for such purposes in case of trust created before 1.4.1962) shall not be included in the total income of the trust or institution (including a society or any other legal obligation) to the extent such income is applied or accumulated for application to such purposes. The exemption is, allowable under specified circumstances, on fulfillment of certain conditions.

….subject to provisions of sec. 60 to 63…
Sec. 11(1) starts with words - subject to provisions of sec. 60 to 63

Trust on Income where there is no Transfer of Assets:
As per **Section 60**, any income arising from assets to any person by virtue of a transfer, without actual transfer of the assets from which such income arises, shall be included in the taxable income of the transferor.

Revocable Transfer of Assets:
Any income arising to a person by virtue of a revocable transfer of assets shall be shall be included in the taxable income of the transferor. **[Sec.61]**

A deed of trust that qualifies for exemption under section 11 cannot have any stipulation reserving any power to revoke the trust.

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

Transfer and revocable transfer defined:
For the purposes of Sec 60, 61, 62 & 63 a 'revocable transfer' is one which contains a provision for re-transfer (directly or indirectly) of the income or assets to the transferor, or giving the transferor a right to reassume control (directly or indirectly), over the income or assets……. **[Sec.63]**

Income deemed to be from Property Held under Trust – Sec. 12

Income from property held under trust shall include –

(i) Voluntary contributions received by a wholly charitable or religious trust (excluding corpus donations). [Sec. 12 (1)]

(ii) Value of any medical or educational services, provided free of cost or at concessional rate, by a charitable or religious trust running a hospital or medical institution or an educational institution to person specified u/s 13(3). However, such value shall be treated as taxable income and it shall not be eligible for exemption u/s 11. [Sec. 12(2) and Sec. 13(6)]

(iii) Amount of donations received by a trust or institution, set up for the purpose of providing relief to the earthquake victims in Gujarat , and the accounts of income and expenditure is not submitted to the prescribed authority , or which is utilized for some other purpose or which remains unutilized and is not transferred to the Prime Minister's National Relief Fund on or before 31.03.2004 , shall be deemed to be taxable income for the previous year. [Sec.12(3)]

Meaning of Property Held under Trust

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

Trust Eligible for Exemption u/s 11 and 12

Following charitable or religious trusts are entitled to exemption u/s.11 and 12, on fulfillment of certain conditions:

(i) Trusts created wholly for charitable or religious purposes and applying (or accumulating) their income to such purposes, in India; [s 11(1)(a)]

(ii) Trust created before 1.4.1962 in part only for charitable or religious purposes and applying (or accumulating) their income to such purposes, in India; [s 11(1)(b)]

(iii) Trust created before 1.4.1952 for charitable or religious purposes, authorized by a general or special order of the Board, and applying its income to charitable or religious purposes outside India; [s 11(1)(c)]

(iv) Trust created on or after 1.4.1952 , for charitable purpose of promoting international welfare in which India is interested, authorized by general or special order of the Board, and applying its income to such purpose outside India, and; [s 11(1)(c)]

(v) Charitable trusts created for the benefit of scheduled castes, scheduled tribes, backward classes or women and children. [Expl. 2 to Sec. 13]

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

Corpus donations refers to the donations made by a donor to a trust with a specific direction that they shall form part of the corpus of the recipient trust. The donor alone can give a specific direction that the donation made by him shall form part of the corpus of the trust. Trustees have no power to treat in their discretion any donation as corpus donation. Such direction may preferably be given by the donor in writing by a letter addressed to the trust. If he has not done so, trustees may request him to give such directions in writing. If any contribution is made with a specific direction, that it shall be treated as the capital of the trust for carrying out a particular charitable activity, satisfies the definition part of the corpus.

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

The corpus would include funds of a capital nature, by whatever name called, such as Building Fund, as well as funds for capital expenditure of the trust. Any donation made for a capital purpose or with a direction that donation be kept intact

and only the interest received on the investment of such donation be utilized for the objects of the trust, would be a donation towards the corpus of the trust.

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

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.

Amendments to provision related to Corpus Donation
by Finance Act 2021 w.e.f. A.Y. 2022-23

1.Corpus donation to be deposited/invested as per Sec.11(5)

In clause (d) i.e. sec.11(1) (d) which relates to non- taxability / exemption of corpus donation, condition is added to say that corpus donation will have to be invested/deposited in one or more forms or modes specified in sec. 11(5) maintained specifically for such corpus.

Therefore, amount of corpus donation will have to be invested/ deposited in earmarked investment/fund. No time limit is mentioned for making such investment/deposit. One has to presume that such investment should be made before end of Financial Year.

2. Amount spent out of corpus donation not to be treated as application:

For the purpose of determining amount of application as per Sec. 11(1) (a) /(b) -
Application for charitable / religious purpose out of corpus donation shall not be treated as application. However when amount is subsequently invested/ deposited back in one or more forms/modes specified in Sec 11(5) maintained specifically for such corpus it shall be treated as application to the extent of investment / deposit in the year of investment/deposit. [In Sec. 11(1) Expl. 4 is inserted to clarify this]

Amendments proposed in Budget 2023

Depositing back of corpus and repayment of loans or borrowings

- That application out of corpus or loans or borrowings before 01.04.2021 should not be allowed as application for charitable or religious purposes when such amount is deposited back or invested in to corpus or when the loan or borrowing is repaid.
- 5 years limitation introduced for reinvestment / repayment of loan- It is further proposed that if the trust or institution invests or deposits back the amount in to corpus or repays the loan within 5 years from the end of previous year in which such application was made then such investment/depositing back in to corpus or repayment of loan will be allowed as application for charitable or

religious purposes.

- Conditions that are required to be satisfied in the case of application for charitable or religious purposes must also be satisfied while making the application from the corpus or loan or borrowing. These conditions are as follows:
  - (i) Such application should not be in the form of corpus donation to another trust;
  - (ii) TDS, if applicable, should be deducted on such application;
  - (iii) Application whereby payment or aggregate of payments made to a person in a day exceeds Rs 10,000 in other than specified modes (such as cash) is not allowed;
  - (iv) Carry forward and set off of excess application is not allowed;
  - (v) Application is allowed in the year in which it is actually paid;
  - (vi) Application should not directly or indirectly benefit any person referred to in s.13(1) (c) and s.13(2) and the income of the trust or institution should not enure any benefit to such person;
  - (vii) Application should be in India. However application out of India will be permissible only with the approval of the Board in accordance with the provisions of s.11(1) (c) .
- wef .A. Y. 2023-24

Amendments by Finance Act 2022 w. r. e. f. 01-04-2021 A.Y. 2021-22

Option to treat voluntary contribution as corpus donation in certain cases: -

A new explanation 3A is inserted in sec 11 (1) -

as per this explanation - where the property held under a trust or institution includes any temple, mosque, gurdwara, church or other place notified under 80G (2) cl. (b) any sum received by such trust/institution as voluntary contribution for the purpose of renovation / repair of such temple, mosque, gurdwara or other place notified - may at the option of such trust or institution be treated as forming part of the corpus of such trust / institution,

subject to condition that such trust / institution: -

(a) applies such corpus only for purpose for which contribution is made;

(b) does not apply such corpus for making contribution / donation to any person;

(c) maintains such corpus as separately identifiable;

(d) invests or deposits such corpus in the forms and modes specified u/s. 11 (5).

When any of the condition as stated above is violated:

… as per new explanation 3B - inserted in sec 11 (1) -

where such voluntary contribution is treated as forming part of the corpus - and subsequently any of the condition specified in cl.(a) (b) (c) (d) of expl. 3A is violated such sum shall be deemed to be income of such trust / institution of the previous year during which violation takes place.

Applicable w. r. e. f. 01-04-2021 A.Y. 2021-22

cross ref. - "Sec.80G (2)(b) - any sum paid by the assessee in the previous year as donation for the renovation or repair of any such temple, mosque, gurdwara, church or other place as is notified by the Central Government in the Official Gazette to be of historic, archeological or artistic importance or to be a place of public worship of renown throughout any State or States; "

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

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

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

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

How to determine application of income

i. Establishment expenses – For running a charitable activity, the establishment has to be maintained, which requires payment of salaries and other establishment expense. Application of income for the said purpose cannot be alien to the charitable objects which are to be advanced.
ii. Repayment of loans – Repayment of loans taken to fulfill one of the objects of the trust is treated as an application of income for charitable purposes.

Amendment w.e.f A.Y. 2022-23
Any amount applied out of loan/ borrowing shall not be treated as application. However, when such loan/ borrowing is repaid, in the year of repayment it shall be treated as application to the extent of amount repaid.

Amendments proposed by Budget 2023 -

- That application out of loans or borrowings before 01.04.2021 should not be allowed as application for charitable or religious purposes when the loan or borrowing is repaid.

- 5 years limitation introduced for repayment of loan- It is further proposed that if the trust or institution invests repays the loan within 5 years from the end of previous year in which such application was made then such investment/depositing back in to corpus or repayment of loan will be allowed as application for charitable or religious purposes.
- Subject to fulfillment of certain conditions.
- wef .A. Y. 2023-24

iii. Granting of loans for studies- As regards the loans advanced for higher studies, if the only object of the trust is to give interest-bearing loans for higher studies, it will amount to carrying on of money-lending business. If, however the object of the trust is advancement of education and granting of scholarship loans as only one of the activities carried on for the fulfillment of the objectives of the trust, granting of loans, even if interest-bearing, will amount to the application of income for charitable purposes. As and when the loan is returned to the trust, it will be treated as income of the year."

iv. Revenue or capital purposes – Application of the amount can be for revenue or capital purpose. So long as the expenditure is incurred out of the income earned by the trust, and is incurred for promoting the object of the trust, even if such expenditure is of capital nature for the objects of the trust, the income would be exempt.

v. Payment of taxes – The expenditure incurred by way of payment of tax out of the current year's income has to be considered as application for charitable purposes.

vi. Donation to other trusts – When a donor trust, which is itself a charitable or religious trust, donates its income to another trust, the provisions of sections 11(1)(a) can be said to have been met by such donor trust and the donor-trust can be said to have applied its income for religious and charitable purposes. However,

(a) any amount credited or paid, out of income accumulated u/s.11(2), to another trust registered u/s. 12AA or to any fund/institution/trust/university/educational institution/ hospital or medical institution referred u/s. 10(23C) (iv), (v), (vi) or (via), shall not be treated as application of income to charitable or religious purposes.

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

claim application of such donation should file an application to its Assessing Officer under Section 11(3A) in this regard.

(b) As per Explanation 2 inserted in sec 11(1) wef. 1.4.2018 any corpus donation credited or paid, out of income referred to in sec. 11(1)(a)/(b) …. to any other trust or institution registered u/s 12AA shall not be treated as application of income (for donor trust)

(Similar amendment made in sec. 10(23C) by inserting 12th proviso)

Amendments proposed in Budget 2023

Treatment of donation to other trusts: only 85% of the eligible donations made by a trust or institution under the first or the second regime to another trust under the first or second regime shall be treated as application.

- W.e.f. A.Y. 2024-25.

Decision of **Madras HC in Mac Public Charitable Trust** TCA No 303 of 2021 etc. batch, might have triggered this amendment.

vii. Excess Application in previous year cannot be set off - w.e.f A.Y. 2022-23
Excess application of earlier years will not be allowed to be set off against income of subsequent Years. New Explanation: 5 inserted in sec. 11(1) to clarify this.

viii. Acquisition of an Asset – Income of a trust used for acquisition of a capital asset is deemed as application of income. [However, depreciation or any other allowance shall not be allowed in respect of a capital asset, the acquisition of which has been claimed as application of income in the same or any other previous year. w.e.f. 1.4.2015 –A.Y.2015-16] [Sec. 11(6)]

ix. Application of income will be allowed on actual payment basis only and not when provision is made :Explanation is inserted after sub-sec. (7) of sec. 11 to state that-For the purpose of sec. 11 any sum payable by any trust or institution shall be considered as application in the previous year in which sum is actually paid (irrespective of the previous year in which the liability to pay such sum was incurred by the trust according to the method of accounting regularly followed by the trust). Amendments by Finance Act 2022 w. e. f. 01-04-2022 A.Y. 2022-23

Applicability of TDS provisions and restriction on cash payments

Explanation 3 inserted to sec 11(1) by Finance Act 2018, w.e.f. 1.4.2019 as follows:
For the purpose of determining the amount of application under clause (a) or (b) of sec. 11(1) provisions of sec 40(a) (ia) and 40A (3) and (3A) shall mutatis mutandis apply

as they apply in computing the income chargeable under the head "Profits and Gains of business or profession"

Result is for TDS default as per 40(a) (ia) 30% disallowance
For cash payments exceeding Rs.10000/- entire expenditure will be disallowed.

Similar amendment made in sec. 10(23C) by inserting 13th proviso

Carry forward option I -
Income Deemed to be Applied to Charitable Purposes [Sec 11(1) Expl. 1 clause (2)]

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

i. the whole or any part of the income has not been received during the previous year; or
ii. for any other reason;

the assessee has an option to:

a. apply such income referred to in clause (i) for such purposes during the previous year in which it is received or during the previous year immediately following the said previous year; and
b. apply such income referred to in clause (ii) for such purposes during the previous year immediately following the previous year in which the income was derived.

The option can be exercised with regard to income from capital gains, as well. The option is to be exercised (w.e.f. 1.4.2016) in **Form 9A** to be furnished electronically with or without digital signature by the trust within the time allowed for filing return of income u/s 139(1). Earlier it was to be exercised in writing by letter addressed to AO. (**Time limit for furnishing of Form 9A is proposed to be reduced by 2 months by Budget 2023 w.e.f. A.Y.2023-24)**

However, it has been held by BHC that where a belated return is filed within the time specified u/s 139(4) i.e. within one year from the end of relevant assessment year, and the option is exercised along with such return, the option shall be deemed to have been exercised within the time allowed u/s 139(1) and the assessee will be entitled to exemption. (**Trustees of Tulsidas Gopalji Charitable & Chaleshwar Temple Trust** vs. CIT (1994) 207 ITR 368 (Bom)

Treatment of such income if option is exercised u/s 11(1) Expl 1 cl.(2)
If the option is exercised by the trust u/s 11(1) Expl 1 cl. (2) then treatment of income for which option is exercised shall be as follows:

(a) such income shall be deemed to have been applied to charitable or religious purposes in the previous year in which it is derived;
(b) such income shall not be taken into account for computing the income applied to such purposes in the year it is actually applied;

(c) if such income, or any part thereof, is not applied to such purpose within the prescribed period aforesaid, such income, or such part, shall be deemed to be income for the previous year immediately following the previous year in which the income was received or derived, as the case may be.
[sec 11(1B)]

Exemption for Income Accumulated or Set Apart up to 15%

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

There is no requirement as to intimation to the Assessing Officer or application of accumulated income within the specified period. Thus, if a trust accumulates a larger amount than the specified limit, what would be chargeable to tax is the excess over the exemption limit, and not the entire accumulation including the exempted portion.

Note: (1) As per section 11(1) Explanation 1 clause (1), in computing the 15% of the income which may be accumulated or set apart, in case of a wholly charitable or religious trust, income shall include voluntary contributions but shall not include corpus donations. (i.e., corpus donations should not be considered for calculating 15% amount)

Carry forward option II -
Exemption for Accumulation of Income in Excess of Specified Limit [Sec 11(2)]

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

(a) a statement **in form 10** to be uploaded electronically within the time allowed for furnishing the return u/s 139(1), notifying the amount being accumulated and the period of accumulation. In case Form no. 10 is not uploaded before this date then the benefit of accumulation will not be available and such income will be taxable at appropriate rate. (**Time limit for furnishing of Form 10 is proposed to be reduced by 2 months by Budget 2023 w.e.f. A.Y.2023-24)**

(b) the period of accumulation does not exceed 5 years and

(c) the money so accumulated is invested or deposited in modes or forms specified u/s 11(5).

(d) From A.Y.2016-17 benefit of accumulation is not available if return of income is not furnished before due date of filing return as per Sec 139(1). [as per sec13(9)]

Amendments by Finance Act 2022

Amount accumulated or set apart as per sec. 11(2) has to be utilized for purpose for which accumulated or set apart within 5 years / or period of accumulation:-

Sec. 11 (3) is amended to the effect -

a) Amount accumulated / set apart for period not exceeding 5 year has to be utilized in period specified
and cannot be utilized for purpose for which accumulated or set apart in 6th year / year immediately following expiry of the period of accumulation.

Applicable w. e. f. A.Y. 2023-24.

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

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

(a) It is applied to purpose other than charitable or religious purposes;
(b) It ceases to remain invested in the specified form or modes of deposit; or
(c) It is not utilized for the purpose/s for which accumulated within the specified accumulation period (which shall not exceed 5 years in respect of income accumulated on or after 1.4.2001) '~~or in the year immediately following the expiry thereof~~'; or
(d) It is paid or credited to any trust/institution registered u/s12AA or to any fund/institution/trust/university/other educational institution/hospital/any other medical institution referred to in clauses (iv), (v), (vi), and (via) of Section 10(23C).

Also sub - section is further amended - w. e.f. A.Y. 2023-24 .. to clarify **year in which amount accumulated or set apart shall be deemed as income** of such person-

This amendment says amount accumulated or set apart shall be deemed as income of such person of the previous year -

i. in which it is applied to charitable or religious purposes other than for which it was accumulated or,
ii. in which it ceases to be accumulated or set apart for such purposes or,
iii. in which it ceases to remain invested or deposited in forms or modes specified in sec. 11(5) or,
iv. in which it is credited or paid to any trust / institution registered u/s. 12AA or 12AB or to any fund or institution or trust or university or other

educational institution or hospital or any other medical institution referred to in sec. 10(23C) sub-clauses (iv) (v) (vi) (via) or

v. being the last previous year of period of accumulation for which it was accumulated but is not utilized.

[Sec 11(3)].

Purpose of Accumulation must be specified

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

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

Note: - In ***CIT* vs. *Nagpur Hotel Owner's Association, (2001) 114 taxman 255 (SC)*** the Hon'ble Supreme Court has held that the application in Form 10 can be filed before the completion of the assessment.

In the opinion of the author, it is always advisable to file Form no.9A &Form No. 10 within the time limit allowed.

[Refer CBDT circulars for condonation of delay in filing Form no 9A and 10]
[Refer CBDT Cir No. 17/2022 for A.Y. 2018-19 and subsequent years]

When failure to apply accumulated income is due to circumstances beyond the control: Sometimes failure to apply the income so accumulated as or set apart in the specified manner may be due to circumstances beyond the control of trustees. In such a case, the Assessing Officer on receipt of an application from the person in respect of the income, may

(a) allow such income to be applied for such other charitable/religious purposes in India as are in conformity with the objects of the trust/institution.

(b) also allow donation to another trust /institution where trust/ institution claiming exemption is dissolved (but not otherwise) **[Sec 11(3A)].**

Income by way profits and gains of business

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

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

Section 11(1A) provides for exemption of capital gains arising to trust. The amount of exemption in relation to capital gains arising on transfer of a capital asset, shall be as under:

i. Where the capital asset is held under trust wholly for charitable or religious purposes:

   a. If the whole of the net consideration is utilised for acquisition of a new capital asset, the entire capital gain shall be exempt; and

   b. if only a part of the net consideration is so utilized, the amount of capital gain exempt shall be equal to –

	Rs.
Cost of acquisition of the new capital asset	XXX
minus Cost of capital asset transferred (indexed cost if Long Term)	XXX
Capital Gain Exempt	XXX

   but, in case cost of acquisition of new asset is less than or equal to cost (or indexed cost, as the case may be) of capital asset transferred no exemption will be available.

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

   Then exemption will be calculated in proportion in which asset before transfer was used for charitable or religious purposes before its transfer.

   In this respect one should note that: -

   (i) Cost of capital asset transferred means the aggregate of cost of acquisition of the asset and cost of any improvement thereto. In case of long-term capital assets, the indexed cost of acquisition and indexed cost of improvement shall be considered.

   (ii) Net consideration means full value of consideration less expenses in connection with transfer.

   (iii) Capital Gains to be calculated as per applicable provisions of the Act.

   (iv) There is no minimum holding period for new asset.

New Capital Asset – Whether includes Fixed Deposit

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

However, **in CIT vs. Hindustan Welfare Trust** (1994) 206 ITR 138 (Cal), the Calcutta High Court has held that a deposit in bank shall be a capital asset for the purpose of section 11(A) and no minimum duration of the deposit can be set forth as the determinative criterion. To quote, "The restrictive stipulation of a minimum period of six months for a deposit to qualify as an asset for the purpose of section 11(1A), imposed in the said instruction, has the effect of mutilating the concept of asset as obtaining under the Act and its cognate Act, viz., Wealth-tax Act. In fact, the said circular can be called an acknowledgment of a deposit in bank as a capital asset for the purpose of sub-section (1A) of Section 11."

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

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

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

Since long it has been provided in section 11(2) that amount set aside for application in future by filing form 10 should be invested by the trust in any of the modes or forms prescribed in section 11(5).

However as per amendment made by Finance Act 2021 (w.e.f. A.Y. 2022-23) even amount received by way of corpus donation also has to be invested in any of the modes or forms prescribed in section 11(5) maintained specifically for such corpus.

Trusts should take precaution that all their funds are invested in specified modes only to avoid future dispute with the income –tax authorities.

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

i) Investment in saving certificates and other securities or certificates issued by Central Government under the small saving schemes of the Government

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

Exception :- This condition of investment in specified modes shall not apply in relation to following assets (as per proviso to sec 13 (1)(d)):
i) assets held by the trust as forming part of its corpus as on 1.6.1973;
ii) bonus shares allotted on any shares forming part of the corpus as aforesaid;
iii) any assets, other than those specified u/s 11(5), converted into specified assets within one year from the end of the previous year in which such assets were acquired; and
iv) any funds representing the profits and gains of a business, provided separate books of accounts are maintained for such business.

Besides, donation in kind cannot be said to be funds of the trust as contemplated by Section 13(1)(d)(i), though they generally form part of the assets of the trust constituting its corpus. Madras HC has held that.."In order to claim exemption

under Section 11, it is not incumbent on the part of the recipient trust to dispose of donations in kind, convert the same into cash and invest the proceeds thereof into permissible forms or modes, since that would amount to destroying trusts holdings properties, movable or immovable, as their corpus." – **Auditor Dasaradha Rami Reddy Charities v CIT** (1989)177 ITR 249 (Mad).

Consequences of investment in prohibited mode-

Income from such investments in modes not specified u/s. 11(5) shall be liable to tax @ 30% under newly inserted section 115BBI.

Therefore, to avoid future disputes with income-tax department it is suggested that funds of the trust are always invested in modes prescribed as per section 11(5).

Conditions for applicability of section 11 and 12

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

(a) Registration: w.e.f. 1-4-2021, trust should be registered/provisionally registered under sec. 12A(1)(ac) or approved or provisionally approved u/s. 10(23C) (iv)(v)(vi) (via)

w.e.f. 1-4-2021 requirement of making application for fresh or new registration is governed by section 12A(1)(ac) and registration/provisional registration will be granted as per new section 12AB.

(b) Maintain books of account and other documents- As per amendment made by Finance Act, 2022, w.e.f. A.Y. 2023-24, where total income of the trust or institution as computed under the act without giving effect to the provisions of section 11 and 12 exceeds the maximum amount not chargeable to income-tax in any previous year, trust or institution has to keep and maintain books of account and other documents in such form and manner and at such place as may be prescribed [section 12A(1)(b)]

See **Rule 17AA** inserted in Income-tax Rules by CBDT notification dt.10/08/2022.

(c) Compulsory Audit: Where the total income of the trust or institution, exceeds the basic exemption limit, that is, Rs. 2,50,000/- in any previous year, the accounts of the trust or institution are required to be audited by a qualified Chartered Accountant, and the audit report in prescribed form is required to

be furnished electronically before filing the e-return of income. Due date for furnishing audit report electronically is 30th September [12A(1)(b)]

As per CBDT notification dt. 21/2/2023 Rule 16CC &Rule 17B of Income -tax Rules substituted by which **new Audit Report Forms 10B & 10BB** are introduced which are applicable from A.Y.2023-24.

(d) Application for registration due to change of object: in case trust or institution undertakes modification of object which do not conform to conditions of registration application for registration to be made in 30 days of change of object. Also registration should be granted on such application. [12A(1)(ab)(From 1-4-2018 to 31-3-2021)]

w.e.f. 1-4-2021 requirement of making application for fresh or new registration is governed by section 12A(1)(ac) and registration/provisional registration will be granted as per new section 12AB.

(e) Filing return of income : the trust or institution furnishes return of income for the previous year in accordance with the provisions of section 139(4A) within the time allowed under that section . (Time allowed as per Section 139(1) and also as per Section 139(4)) [12A(1)(ba)]

Registration & Procedure of Registration u/s 12A / 12AB (covered by another speaker)

Income of Trust Not Eligible for Exemption [Sec 13]

Income of trusts as stated below is not eligible for exemption under Section 11 and 12:

(a) Income of a trust for private religious purposes which enures no public benefit: **[Sec 13(1)(a)]**

(b) Income of a charitable trust created or established on or after 1.4.1962 for the benefit of any particular religious community or caste **[Sec 13(1)(b)]** (this restriction does not apply to trust for scheduled castes/tribes, backward classes or women and children). (Explanation 2)

It is pertinent to note that :

(i) section 13(1)(b) applies only to trusts for charitable purposes,

(ii) It may be inferred from this clause that a religious trust, or a composite trust for charitable and religious purposes whenever created, and a charitable trust created before 1.4.1962, for the benefit of any particular

religious community or caste are entitled to the exemption-CIT v. **Barkate Saifiya Society** (1995) 78 Taxman 6 (Guj)

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

A community is a section of public and the trust created for giving medical aid, social welfare, uplifting of poor members of a particular community and giving financial help on the occasion of marriage of members of such community was for religious and charitable purposes and was entitled to exemption CIT v **Surji Devi Kunjilal Jaipuria Charitable Trust** (1990) 186 ITR 728 (All).

The section of the community sought to be benefited must be sufficiently defined and identifiable by some common quality of a public or impersonal nature.

The Madras HC held in **Gujarathi Mandal (1999)** 240 ITR 293(Mad) that sec 13(1)(b)could have no application if what is sought to be done by the trust is to promote the interest of a linguistic group, as language cannot be equated to religion. The main object of the trust was to impart knowledge and education primarily in Gujarati language and to help promote religious social and moral standards of the members.

It has been held by Nagpur Bench of ITAT in case **of Shiv Mandir Devastan Panch Committee Sanstan** Vs CIT [2013] 56 SOT 456 (Nagpur) that - it cannot be said that Hindu is a separate community or a separate religion. Technically Hindu is neither a religion nor a community. Therefore expenses incurred for worshiping of Lord Shiva, Hanumanji, Godess Durga and for maintenance of temple cannot be regarded to be for religious purpose.- accordingly CIT was directed to grant approval u/s 80 G (5)(vi).

Sec 13(1)(c).. Income of trust not eligible for exemption…

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

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

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

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

(a) If a loan is given to a specified person for any period during the previous year without either adequate security or adequate interest or both;

(b) If any land, building or other property of the trust, is allowed to be utilized by a specified person, without charging adequate rent or other compensation:

(c) If payment is made by way of salary, allowance, etc. to a specified person for services rendered by him to the trust or institution, in excess of what may be reasonably paid for such services;

(d) If the trust renders its services to a specified person without adequate remuneration or other compensation; (Exception Medical/Educational Institution)

(e) If any share, security or other property is transferred to the trust from a specified person, for a consideration which is more than adequate;

(f) If any share, security or other property is transferred by the trust to a specified person, for inadequate consideration;

(g) If any income or property of the trust, exceeding Rs. 1000 in value, is diverted to a specified person; and

(h) If the trust-funds are invested, or remain invested, for any period in any concern wherein any of the specified persons has a substantial interest.

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

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

(3) The expression 'invest' connotes a positive act on the part of the trust whereby the funds of the trust are laid out or committed in any particular property or business or transaction with the object of earning a profit or financial advantage or return. Investment thus, includes contribution to capital of a firm. However, the retention of

profits of a trust in a firm in which the trust is a partner or delayed withdrawal of profits from the firm would not constitute investment. CIT vs Chandrika Educational Trust (1994) 207ITR108 (ker)

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

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

Meaning of Substantial Interest:

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

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

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

(1) where the use of application of any income or property of a charitable or religious trusts/institution for the benefit of any specified person, is by way of a mandatory term of the trust, or a mandatory rule governing the institution in case of trust created before 1.4.1962.
(2) Where the income, or the value of the property or, as the case may be, the aggregate thereof, diverted during a year in favour of a specified person, does not exceed Rs. 1000.
(3) Where the aggregate of the funds of the trusts or institution, invested in a concern in which any of the specified persons has a substantial interest, does not exceed 5% of the capital of the concern (investee), the exemption u/s 11 and 12 shall be allowed in relation to income arising to the trust/institution other than income from such investment.

    Note: - 'Capital' of a company would not include its reserves; however, share premium amount may be included.
(4) Where a charitable or religious trust running an educational or a medical institution or a hospital, has provided educational or medical facilities to the specified persons.

Sec 13(1)(d) .. Income of Trust not eligible for exemption…

(d) Income of any charitable or religious trust or institution, which has not invested or deposited its funds in the modes or forms specified u/s11(5) (or which holds any shares in a public sector company or shares prescribed u/s 11(5)(xii), that is, equity shares in a depository company) subject to certain exceptions. [Sec 13(1)(d)]

Loan to other Charitable Trust/Institution

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

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

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

Refer **CIT v Fr. Mullers Charitable Institutions [2014] 363 ITR 230 (Kar)** SLP of department against HC judgment is dismissed by SC.

Restriction on Claiming Exemption under Other Provisions

W.e.f. 1.4.2021

Where registration of trust granted under sec. 12A,12AA or 12AB becomes inoperative due to proviso to sec. 11(7) i.e., when trust originally registered under 12A,12AA or 12AB is subsequently approved u/s. 10(23C) or notified u/s. 10(46) then from that date registration granted u/s. 12AB will become inoperative. Thereafter if trust wishes to seek registration u/s. 12AB then it has to make application for registration at least 6 months prior to commencement of Asst. Year from which registration is sought, in order to get registration u/s. 12AB for claiming benefit under sec.11 and 12 (therefore w.e.f. 1-4-2021 registration/approval will be available either u/s 10(23C) or under sec. 12AB but not under both the sections)

Thus w.e.f. 1-4-2021 trusts can claim benefit for particular assessment year either under sec. 10(23C) or under sec. 11 and 12, and for that purpose they must be having valid approval/ provisional approval u/s 10(23C) or registration /provisional registration under sec. 12AB. Only registration u/s 10(23C) will be valid or registration u/s. 12AB will be valid at any given point of time for a particular assessment year.

Anonymous donations [Sec. 115BBC]

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

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

i) wholly religious trust,

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

Voluntary contributions being anonymous donations are taxable in case of –

i) wholly charitable trust,

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

Further exemption is available upto 5% of the total donations or Rs. 1 Lakh whichever is higher.

Anonymous Donation is taxable @30% +SC+EC

Maintenance of Accounts and Audit

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

As per amendment made by Finance Act, 2022, w.e.f. A.Y. 2023-24, where total income of the trust or institution as computed under the act without giving effect to the provisions of section 11 and 12 exceeds the maximum amount not chargeable to income-tax in any previous year, trust or institution has to keep and maintain books of account and other documents in such form and manner and at such place as may be prescribed [section 12A (1)(b)]

See **Rule 17AA** inserted in Income-tax Rules by CBDT notification dt.10/08/2022 regarding Books of account and other documents to be kept and maintained.

Audit Report-Further, a trust or institution, whose total income for a year exceeds the maximum amounts not chargeable to tax, i.e. Rs. 2,50,000 is required to get its accounts audited by a qualified Chartered Accountant and obtain the audit report in prescribed form. The audit report is to be e-filed before e-filing return of income. WEF

Assessment Year 2020-21 original due date for filing of audit report is 30th September of the Assessment Year.

As per CBDT notification dt. 21/2/2023 Rule 16CC &Rule 17B of Income -tax Rules substituted by which **new Audit Report Forms 10B & 10BB** are introduced which are applicable from A.Y.2023-24.

Relevant extract of notification-

Substituted Rule 17B.Audit report in the case of charitable or religious trusts, etc.— The report of audit of the accounts of a trust or institution which is required to be furnished under sub-clause (ii) of clause (b) of sub-section (1) of section 12A, shall be in—

(a) Form No. 10B where—

i. the total income of such trust or institution, without giving effect to the provisions of sections 11 and12 of the Act, exceeds rupees five crores during the previous year; or

ii. such trust or institution has received any foreign contribution during the previous year; or

iii. such trust or institution has applied any part of its income outside India during the previous year;

(b) Form No.10BB in other cases –

Explanation.— For the purposes of sub-clause (II) of clause (a), the expression foreign contribution shall have the same meaning assigned to it in clause (h) of sub-section (1) of section 2 of the Foreign Contribution (Regulation) Act,2010 (42 of 2010)..

Substituted Rule 16CC.Form of report of audit prescribed under tenth proviso to section 10(23C). For Trust Institution approved provisionally approved u/s 10 (23C) (iv), (v), (vi) and (via) similar conditions.

New Computation Mechanism in Special Circumstances

Finance Act, 2022 w.e.f. 2023-24 has inserted sub-sections 10 and 11 to section 13 which specify the income chargeable to tax in specified circumstances mentioned therein.

It states that-

- Where provision of sub-section (8) of section 13 are applicable to any trust (i.e. proviso to section 2(15) is attracted and benefit of exemption u/s. 11 and 12 is denied) or

  It violates conditions specified under cl. (b) or cl. (ba) of section 12A (1) i.e.

when its income exceeds maximum amount not chargeable to tax without claiming exemption under section 11 and 12 and-

- it does not maintain books of account or
- does not get books audited/fails to furnish audit report as per section 12A (1) (b) or
- fails to furnish return of income in accordance with the provision of Section 139 (4A) within time allowed under Section 139.

The income of the Trust or Institution chargeable to tax shall be computed after allowing expenditure (only revenue expenditure and not capital expenditure) incurred in India for the objects of the trust/institution;

subject to conditions that-

a. Such expenditure is not from corpus standing to credit of trust/institution as on the last day of financial year immediately preceding the relevant previous year;

b. such expenditure is not from any loan/borrowing;

c. deprecation is not claimed where cost of acquisition of asset is claimed as application;

d. expenditure is not in the form of any contribution or donation to any person

Explanation- for determining expenditure under this sub section provisions of Section 40(a) (ia), 40A(3), 40A(3A) shall *mutatis mutandis* apply as they apply in computing business income.

New sub-section (11) states that for computing income under section 13(10) no deduction in respect of any expenditure or allowance or set-off of any loss under any other provision of the Act shall be allowed.

Tax will be charged at normal rate.

Further, Section 115BBI inserted to provide for tax @ 30% on specified income of trust/institution

In case of fund or institution, hospital or educational institution referred to in section 10(23C) sub-clause (iv),(v),(vi),(via) or trust or institution referred to in section 11 includes any income by way of any specified income, tax payable shall be aggregate of-

(i) 30% on specified income, and

(ii) normal tax on other income

No deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed to the assessee under any provision of the act in computing the specified income.

Explanation - for the purpose of this section "specified income" means -

a) **income accumulated or set apart in excess of 15% of the income where such accumulation is not allowed under any specific provision of the Act; or**

b) **deemed income referred to in Explanation 4 to the 3rd proviso to clause (23C) of section 10, or of the section 11 sub-section (1B) or sub-section (3); or**

c) any income which is not exempt on account of violation of the provisions of clause (b) of the 3rd proviso of section 10(23C), or not excluded from the total income under section 13(1)(d); or

d) any income which is deemed to be income under the 21st proviso to section 10 clause (23C) or which is not excluded from the total income under section 13(1)(c); or

e) **any income which is not excluded from the total income under section 11(1)(c)**.

Specified income will be liable to tax @30% (Plus SC and Cess as applicable)

Applicable w.e.f. 01-04-2023 A.Y. 2023-24.

Section 271AAE has been inserted by Finance Act, 2022 to provide for penalty where income is applied to benefit of specified persons:-

If during any proceedings under this Act, it is found that any fund or institution or any trust or any university or other educational institution or any hospital or other medical institution referred to in section 10(23C) sub-clauses (iv), (iv), (v), (via) has violated the provisions of the 21st proviso to section 10(23C), or any trust or institution referred to in section 11 has violated the provisions of section 13(1) clause (c) as the case may be, the Assessing Officer may direct that such person shall pay by way of penalty—

a) a sum equal to the 100% of the amount of income applied directly or indirectly, by such person, for the benefit of any person referred to in section 13 (3), where the violation is noticed for the first time during any previous year; and

b) a sum equal to 200% of the amount of income of such person applied, directly or indirectly, by such person, for the benefit of any person referred to in section 13 (3), where the violation is noticed again in any subsequent previous year..

This penalty is in addition to any other penalty, if any, leviable under the act

Applicable w.e.f. 01-04-2023.

Filing of Return [section 139(4A)]

Where the total income of the trust (before allowing exemption under sections 11 and 12) exceeds the maximum amount which is not chargeable to tax (i.e. Rs. 2,50,000 for A.Y. 2015-16 and onwards), it is required to file its return in Form ITR-7 (even for section 8 companies) before the date specified in section 139. The due date specified under section 139 is 31st October of the relevant Assessment Year (w.e.f. Assessment Year 2020-21) where the trust is required to get its accounts audited under provision of any Act.

In case return is not filed by prescribed date then benefit of accumulation u/s 11(2) will not be available. [section 13(9) inserted w.e.f. 1-4-2016]

In case return is not filed by prescribed date i.e time allowed u/s. 139 then benefit of exemption u/s. 11/12 will not be available. [section 12A(1)(ba) inserted w.e.f. 1-4-2018]

Amendment proposed in Budget 2023-w.e.f.- A.Y.2023-24- option of filing updated return will not be available to trusts who do not file return as per time available u/s 139(1) or 139 (4).

Applicable form is ITR 7

Tax Rate Applicable:

Normal rate of tax as applicable to Individuals with basic exemption benefit will apply to Charitable/Religious Trusts to its income not exempt u/s 11/12.

Maximum Marginal Rate applies to income falling under provisions of section 13(1)(c), 13(1)(d), 115BBC, 115TD only. (upto A.Y. 2022-23)

w.e.f. A.Y. 2023-24- Due to insertion of section 115BBI maximum marginal rate of 30% will apply to specified income covered under this section and for anonymous donations specified in section 115BBC and Accreted income as specified in section 115 TD.

Approval u/s 80G (5)

There is completely new procedure for approval of an institution or fund under section 80G (5) introduced w.e.f. 1-4-2021.

This is more or less on similar lines of process of granting registration/provisional registration u/s 12A (1) (ac) and sec 12AB or for granting approval or provisional approval u/s 10(23C) (iv) (v) (vi) (via).

Filing of statements by Trusts accepting donations u/s. 80G

[Sec 80G (5) cl. (viii) and (ix) and Rule 18AB]

- The trust or institution having approval u/s 80G(5) has to submit electronically to Pr. Director or Director General of Income –tax (Systems) statement containing details of donations received by it in respect of each financial year, beginning with the financial year 2021-22 in Form No 10BD.
- Form No 10BD shall be furnished electronically with digital signature (if return is required to be furnished electronically) and without digital signature through EVC in other cases.
- Form No 10BD shall be furnished on or before the 31st May immediately following the financial year in which donation is received
- In case of donations in joint names of donors trust should show it proportionately against name of each donor where proportion is specified by donors, otherwise it should be shown in equal proportion against names of joint donors.
- Donations need to be classified as Corpus , specific grants and other donations.
- Similarly donation are required to be categorized as in Cash, in kind, by electronic mode including a/c payee cheque/draft, other mode.
- Trust shall furnish certificate of donation in Form No 10BE specifying amount of donation received during financial year from such donor, beginning with the financial year 2021-22.
- Certificate in Form 10BE to be furnished to the donor on or before the 31st May immediately following the financial year in which donation is received. Certificate is required to be down loaded from web portal of the Income tax department
- Late fee for default- If statement in Form no.10BD is not delivered in time or certificate in form 10BE is not furnished in time then a late fee of Rs.200 per day is payable. Maximum amount restricted to the amount of donation. (sec **234G**)

Penalty for failure to furnish statements, etc.

As per section **271K** minimum penalty of Rs 10000 and maximum penalty of Rs 100000 is prescribed for non-submission of statements of donation in form no 10BD, and for non-furnishing of certificate in Form No 10BE in time.

(Will be covered in another session)

TAX ON ACCRETED INCOME-

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

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

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

- **Deemed conversion** (ss. 3)– For the above purpose, a trust or institution shall be deemed to have been converted into any form (not eligible for registration under section 12 AA) in a previous year, if-
  a) The registration granted to it under section 12AA has been cancelled ; or
  b) It has modified its objects and not applied for fresh registration (or fresh registration application has been rejected).

  Additional item in deemed conversion category w.e.f. A.Y. 2023-24 proposed by Budget 2023

  c) any trust or institution under the first or second regime fails to make an application in accordance with the provisions of s.10 (23C) first proviso cl. (i) / (ii) / (iii) or in accordance with provisions of s. 12A (1) cl.(ac) sub.cl.(i) / (ii) /(iii), within the period specified in the said clauses or sub-clauses it shall be deemed to have been converted into any form not eligible for registration or approval in the previous year in which such period expires. Tax will be payable within 14 days from end of the year.

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

For Method of valuation see Rule 17CB

Tax liability – The taxation of accreted income shall be at the maximum marginal rate (i.e.30%+SC+EC). The following points should be noted-

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

Due date of payment of tax – The principal officer / trustee of trust / institution /trust is liable to pay tax on accreted income within 14 days.

Amendment of section 115TD, 115TE and 115 TF
made by Finance Act 2022 with effect from 01-04-2023, ––

Provisions of these sections which were not applicable to funds or institutions referred to in sec. 10(23C) sub-clause (iv) or (v) or (vi) or (via) made applicable to these funds /institutions with effect from 01-04-2023.

***** THANK YOU *****