

Technical Guide on Audit of Charitable Institutions under Section 12A of the Income-tax Act, 1961



Direct Taxes Committee

The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

New Delhi

**Technical Guide on
Audit of Charitable Institutions under
Section 12A of the Income-tax Act, 1961**

[Based on the law as amended by the Finance Act, 2022]



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The Institute of Chartered Accountants of India
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Foreword

The Direct Taxes Committee (DTC) of the Institute of Chartered Accountants of India (ICAI) is one of the important Committees of the ICAI which is engaged in the matters related to direct taxes and makes representations to the Government, Central Board of Direct Taxes and at other appropriate forums from time to time on various legislative amendments and issues concerning direct taxes. One of the main activities of the Committee is to disseminate knowledge and honing skills of the membership in the area of direct taxation.

The law relating to audit of charitable trusts and institutions is complex and has been the subject matter of frequent amendments. I am happy to note that the DTC of ICAI has come out with this publication namely ***“Technical Guide on Audit of Charitable Institutions under Section 12A of the Income-tax Act, 1961”*** so as to assist the members in meeting their professional commitments.

I appreciate the efforts of CA. Chandrashekhar V. Chitale, Chairman, Direct Taxes Committee, CA. Raj Chawla, Vice-Chairman, Direct Taxes Committee and all other Members of the Committee who have worked sincerely for bringing out this publication in a timely manner.

I am confident that this publication will be a useful resource for the members and other concerned stakeholders.

Date: 20.09.2022

CA. (Dr.) Debashis Mitra

Place: New Delhi

President, ICAI

Preface

Dynamics of the income-tax law, compel sharpening of skill sets in the arena for effective performance. Addressing counselling and compliance responsibilities of clients and the other stakeholders, importance of updating professional knowledge, need not be overemphasized. ICAI publications afford professionals, worthwhile insight and guidance in this behalf.

As the members are well aware that the principal aim of the audit of Charitable Institutions is to enable the assessing officer to satisfy himself about the genuineness of the claim for exemption under section 11 of the Act and also whether the Institution has complied with all the requirements prescribed by the statute. This Technical Guide deals with the audit of institutions prescribed under section 12A(1)(b)(ii). Such audit has been prescribed essentially to ensure compliance with the provisions of sections 11 to 13 of the Act

Under the aforesaid circumstances, we at the Direct Taxes Committee thought it fit to bring out this brief publication namely “**Technical Guide on Audit of Charitable Institutions under Section 12A of the Income-tax Act, 1961**” to provide guidance to members on audit of Public Charitable Institutions under the Income-tax Act, 1961. Of course, members are expected to update themselves continuously.

We are sincerely thankful to CA. (Dr.) Debashis Mitra, President, ICAI and CA. Aniket Sunil Talati, Vice-President, ICAI for being guiding force behind all initiatives being taken by the Committee.

We are pleased to place on record my sincere gratitude for the involvements and contributions by all the Committee members and our dear Council Colleagues of ICAI. We are sure that this effort of DTC of ICAI would go a long way in assisting our members in making utmost compliance of the new provisions.

Last but not the least, we appreciate the dedicated efforts of the DTC team for their technical and administrative assistance in bringing out this handbook in a limited time.

CA. (Dr.) Raj Chawla
Vice-Chairman
Direct Taxes Committee, ICAI

CA. Chandrashekhar V. Chitale
Chairman
Direct Taxes Committee, ICAI

Date: 20.09.2022

Place: New Delhi

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Terms, Abbreviations used in this Technical Guide

In this Technical Guide the following terms and abbreviations often occur in the text. A brief explanation of such terms and abbreviations is given below. Further, reference to a section without reference to the relevant Act means that the section has reference to the Income-tax Act, 1961.

a) Act

The Income-tax Act, 1961.

b) Auditor

A Practicing Chartered Accountant within the meaning of the Chartered Accountant Act 1949 or any person appointed as Auditor by the Charitable institutions being charitable trust, society, etc

c) Accountant

Accountant means a chartered accountant within the meaning of the Chartered Accountants Act, 1949, as referred to in section 288.

d) AAS

Auditing and Assurance Standards issued, prescribed and made mandatory by the Institute of Chartered Accountants of India.

e) AS

Accounting Standards issued, prescribed and made mandatory by the Institute of Chartered Accountants of India.

f) Board/CBDT

The Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963.

g) Charitable Institution

Any institution constituted and functioning for the cause of public charity. It may be a trust registered under respective act or a company registered under section 8 of the Companies Act, 2013 (or section 25 of the Companies Act, 1956) or an obligation created under any other document, etc. for the aforesaid purpose or such other organisation,

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body or association constituted for furthering cause of social or public good or utility.

h) Circular

A circular or instruction issued by the Board under section 119(1) of the Income-tax Act, 1961.

i) ICAI

The Institute of Chartered Accountants of India.

j) Rules

The Income-tax Rules, 1962

Chapter 1

Preliminary

Introduction

Under section 11 of the Income-tax Act, 1961 certain incomes derived from property held under trust for charitable or religious purposes specified thereunder shall not be included in the total income of the previous year subject to the conditions prescribed by the Act

The person entitled to get exemption under section 11 of the Income-tax Act, 1961 may be a trust, society, company registered under section 8 of Companies Act, 2013 (earlier it was section 25 of the Companies Act, 1956) or any other legal obligation. For the purpose of brevity, in this Technical Guide such entities are referred to by the term "institution", without going into the fine distinctions that may exist between a "trust" and an "institution".

The Institution, in order to qualify for exemption under section 11 of the Income-tax Act, 1961 :-

- I. Property of such institution should be held wholly for charitable or religious purpose and,
- II. It should be registered with the Principal Commissioner of Income Tax (PCIT) or Commissioner of Income Tax (CIT)

Certain old institutions created before Commencement of Income-tax Act, 1961 even if they are partly for charitable or religious purposes, they also qualify for exemption.

The term Charitable purpose has been defined under section 2(15) of the Income-tax Act, 1961. The definition reads as under :-

Includes

- (i) relief of the poor,
- (ii) education,
- (iii) yoga,
- (iv) medical relief,
- (v) preservation of environment (including watersheds, forests and wildlife) and

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- (vi) preservation of monuments or places or objects of artistic or historic interest, and
- (vii) the advancement of any other object of general public utility.

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering 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 20% of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;

The exemption under section 11 is also available for institution created for the public religious purpose.

Religious purpose includes the advancement, support or propagation of a religion and its tenets. A trust made for any of these purposes is said to be a religious trust. The creation of Religious Trust is governed by the personal laws of the religion. But in general connotation, it can be deemed as the Trusts which are involved in the activities of promoting religion or particular belief.

Any income of a trust for private religious purposes is not eligible for exemption.

In order to decide as to whether religious purpose is "Public religious purpose" the Supreme Court has laid down the following principle.

"Answers to the questions viz. are the members of the public entitled to take part in offering service, taking darshan in the temple, are the members of the public entitled to take part in the festivals and ceremonies arranged in the temple, are their offerings accepted as a matter of right will establish the character of the temple. Therefore, the participation of members of the public in darshan in temple and in the daily acts of worship, in celebrations of festive occasions are important factors to determine character of temple"

As decided in SC Tilkayat Shri Govindlalji Maharaj etc. vs. State of Rajasthan & Ors. [AIR 1963 SC 1638].

One of the Conditions for Applicability of Exemption under section 11 and 12 is Audit of accounts. Sub clause (ii) of clause (b) sub-section (1) of Section 12A provides that

“the accounts of the trust or institution for that year have been audited by an accountant defined in the Explanation below sub-section (2) of section 288 before the specified date referred to in section 44AB and the person in receipt of the income furnishes by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars, as may be prescribed”

The scope of this Technical Guide is restricted to the audit of the institutions prescribed under section 12A(1)(b)(ii). Such audit has been prescribed essentially to ensure compliance with the provisions of sections 11 to 13. The nature of audit required under section 12A(1)(b)(ii) is similar to that of audit of general purpose financial statements. Hence, the auditor has to adopt the same procedures of audit as prescribed under Auditing and Assurance standards - AASs while certifying true and fair view shown by financial statements.

Section 10(23C) does not prescribe any stipulation which makes registration u/s 12AA a mandatory condition. Section 10(23C) of the Act is a specific exemption available to certain Government and non-government universities and educational institutions.

In order to avail exemption u/s 11, 12 and 13, the entity should be registered u/s 12AA. This Technical Guide relates with exemptions provided under Section 11 and 12 of the act.

Objective of this Technical Guide

One of the mandatory conditions for eligibility of exemption for charitable and religious institutions under Section 11 and 12, as prescribed under Section 12A(b) is that 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 which is not chargeable to income tax, the accounts of such trust or institution should have been audited and audit report is furnished.

The object of this Technical Guide is to provide guidance to the auditors for conduct of audit. This Technical Guide will also be useful for those in charge of governance of charitable institutions for discharging their respective responsibilities towards audit of accounts of charitable institutions under

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section 12A(1)(b)(ii) of the Act This Technical Guide intends to;

- (i) assist in understanding the respective responsibilities of the institution and the auditor.
- (ii) guide the auditor as to the nature and scope of information to be obtained by him from the institution to enable him to conduct the audit.
- (iii) provide guidance on the verification procedures to be adopted by the auditor for giving the audit report and the necessary information in the annexure thereto.
- (iv) to give an idea about the various aspects including issues relating to the law of taxation of public charitable institutions and
- (v) explain the circumstances where a disclosure or qualification or disclaimer may be required from the auditor while giving his audit report.
- (vi) to provide guidance in ensuring compliance with the Accounting Standards issued, prescribed and made mandatory by the Institute of Chartered Auditors of India.
- (vii) to facilitate compliance of Auditing and Assurance Standards issued, prescribed and made mandatory by the Institute of Chartered Auditors of India.

Responsibility of the institutions

Ensuring compliance of the provisions of sections 11 to 13 is primarily the responsibility of the institution. Therefore, those in charge of governance of institutions should ensure compliance of provisions of the Income-tax Act, 1961 as well as the other act governing the institutions. For the purpose of audit under section 12A(b)(1)(ii), the institution should prepare all the necessary information and particulars required under the relevant provisions to enable the auditor to verify and report in accordance with the requirements of the Act. Further, such information and particulars should be duly authenticated by the competent authority governing the affairs of the institution. It would be advisable for the institution to take into consideration the following principles while preparing the necessary information and particulars;

- (a) it can rely upon the judicial pronouncements while taking any particular view about inclusion or exclusion of any items .

- (b) if there is a conflict of judicial opinion on any particular issue it should refer to the view which has been followed while giving the relevant particulars.

The institution should also make available to the auditor all the books of account, records and other documents as may be deemed necessary by the auditor for carrying out the audit.

Definition of Entities

There are three basic legal forms of charitable entities under Indian law: trusts, societies, and section 8 companies (earlier it was Section 25 Companies). The legal framework governing the charitable institution will depend on the form of business organization the charitable institution takes.

If the charitable institution is formed as a Public Trust, it will be governed by the Public Trust Act applicable in the relevant State. However, if no Public Trust Act exists in that state, then the applicable legislation will be the Indian Trusts Act, 1882.

If the charitable institution is formed as a Society, it will be governed by the Societies Registration Act, 1860. The charitable institution can also be formed as a non-profit company under section 8 of the Companies Act, 2013 (earlier it was section 25 of the Companies Act, 1956).

Apart from the above legislations, the Income Tax Act 1961 will be applicable to charitable institutions. And in the case of foreign contributions to these charitable institutions, the Foreign Contribution (Regulation) Act, 2010 will be applicable.

Charity

The Income-tax Act does not define charity.

Charities can be formed in multiple ways and may be subject to various acts of legislation. It is the choice of the persons forming the charity to decide which form to take.

Section 2(15) of the act defines “charitable purpose”. Accordingly, “charitable purpose” includes relief of the poor, education, yoga, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, medical relief, and the advancement of any other object of general public utility.

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Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering 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 the trust or institution undertaking such activity or activities, of that previous year.

Registration under Section 12AA and 12AB

According to Section 12A of Income Tax Act, 1961, provisions of section 11 and section 12, regarding exemption of income, will not be applicable to an institution etc., unless an application for its registration is made as per section 12AA and 12AB of the act. The provisional registration so granted shall be valid for a period of 3 years and hence needs to be renewed at the end of the basis of mentioned timelines. The registration so renewed shall be valid only for 5 years and needs to be renewed at the end of each 5 years. For details regarding registration of trust refer handbook on Registration of Charitable & Religious Institutions for Income tax Exemption publish by Direct Taxes Committee.

Chapter 2

Accounts

Books of Accounts and Records to be maintained

Charitable and religious institution should maintain regular books of account. This will enable management to demonstrate due discharge of responsibilities they assume. The Auditor is required to report whether the Trust has maintained proper books of accounts.

- a. Earlier, Section 44AA of the Income tax Act 1961 did not specify any specific books of accounts to be maintained by a Charitable Trust.
- b. However, CBDT vide its notification no 622E dated 10.8.2022 has prescribed specific books of accounts and records to be maintained by a Charitable Trust claiming exemption u/s 11 and 12. These prescriptions are applicable from A.Y. 2023-24 i.e. for the financial year commencing from 1st April 2022 and onwards. However, necessary books of accounts, as per common understanding, are required to be maintained even before provision of section 12A)(1)(b)(i) or this notification becoming applicable.

The said books of accounts required to mentioned is as per Rule 17AA (Refer Appendix)

Financial Statements

Every year the trust has to prepare financial statements like the Balance sheet and Income and expenditure statements based on its books of accounts. The format for preparation and presentation of financial statements is prescribed under respective state laws. Charitable Organisations are governed by different laws as well as different forms of organisations also necessitate different accounting aspects to be complied.. If the charitable institution is formed as a Public Trust, it will be governed by the Public Trust Act applicable in the relevant State. However, if no Public Trust Act exists in that state, then the applicable legislation will be the Indian Trusts Act 1882. If the charitable institution is formed as a Society, it will be governed by the Societies Registration Act, 1860. The charitable institution can also be formed as a non-profit company under section (earlier it was section 25 of the Companies Act, 1956).

The Companies Act, 2013

According to Section 128(1) every company to prepare and keep the books of account and other relevant books and papers and financial statements at its registered office. However, all or any of the books of accounts may be kept at such other place in India as the Board of directors may decide.

The Maharashtra Public Trusts Act, 1950

It shall be the duty of every auditor auditing the accounts of a public trust under section 33 to prepare a balance sheet and income and expenditure account and to forward a copy of the same along with a copy of his report to the trustee, and to the Deputy or Assistant Charity Commissioner of the region or sub-region or to the Charity Commissioner, if the Charity Commissioner requires him to do so.

The Bombay Public Trusts Act, 1950

It shall be the duty of every auditor auditing the accounts of a public trust under section 33 to prepare a balance sheet and income and expenditure account and to forward a copy of the same along with a copy of his report to the trustee, and to the Deputy or Assistant Charity Commissioner of the region or subregion or to the Charity Commissioner, if the Charity Commissioner required him to do so.

The Rajasthan Public Trust Act, 1959

It shall be the duty of every auditor auditing the accounts of a public trust under section 33 to prepare a balance sheet and income and expenditure accounts and forward a copy of the same to the Assistant Commissioner within whose jurisdiction the public trust has been registered.

The Societies Registration Act, 1860

It shall be duty of every auditor auditing the accounts of a society under section 12D to prepare a balance sheet and income and expenditure account and to forward a copy of the same to the Registrar.

The Indian Trust Act, 1982

The Indian Trust Act, 1982 is silent about person responsible for maintenance of books of accounts and audit of accounts.

If the charitable institution is formed as a Public Trust, it will be governed by the Public Trust Act applicable in the relevant State.

Method of accounting

- 1 If the institution is carrying on business it has to keep in mind the provisions of section 145. Under section 145 only cash method and mercantile method of accounting are permitted. However, where the institution does not have income either under the head “profits and gains of business or profession” or “income from other sources”, the provisions of section 145 will not apply.
- 2 As the form requires the examination of the balance sheet and the income and expenditure account, it is necessary that these two statements should be drawn up in accordance with the generally accepted accounting principles including in particular, the time honoured distinction between capital and revenue. The balance sheet should, therefore, be a summary of assets and liabilities, and the profit and loss account should be a statement enumerating the various items of income and expenditure.
- 3 It is sometimes the practice with some trusts to charge certain capital expenditure also to the profit and loss account in terms of the requirements of certain authorities for the sanction of grants. However, as the balance sheet has to be prepared on the basis of the generally accepted accounting principles, all assets must find a place in the balance sheet. In other words, even though capital expenditure may be charged off in the profit and loss account in order to satisfy the requirements of certain authorities for sanction of grants, for the purpose of preparing the income and expenditure account and the balance sheet on which the accountant has to give his report, it is necessary that a clear distinction between revenue and capital should be maintained and all the assets should be properly reflected in the balance sheet.
4. The forms of the balance sheet and income and expenditure accounts (in some cases titled as the profit and loss account) are not expressly prescribed. It is, therefore suggested that the balance sheet and the profit and loss account should be prepared in the generally accepted form. As Form No.10B also requires the auditor to comment on the truth and fairness of the financial statements, it is necessary to ensure that the extent of disclosure in the financial statements is fair and adequate. It is not possible to give precise guidance in this respect, as each case will depend on its own facts.

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Auditors responsibility for above:

The auditor should obtain the list of the books and records maintained by the Charitable Trust.

The list should be matched with the above requirement for maintaining mandatory books and records as may be applicable in each case.

The Auditor should then verify the records for the purpose of its audit.

Attention is invited on Social Stock Exchange and the Importance of Audited Financial Statements. Please refer Appendix.

Chapter 3

Audit under Section 12A(1)(b)

1. In order to enjoy benefit of exemption under Section 11 and 12 of the Act, audit of accounts is mandatory for certain charitable and religious institutions under provisions of Section 12A.
2. The relevant extract of provisions of section 12A is as under:

12A(1) The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:

(b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year,-

 - (i) -----
 - (ii) the accounts of the trust or institution for that year have been audited by an accountant defined in the Explanation below sub-section (2) of Section 288 before the specified date referred to in Section 44AB and the person in receipt of the income furnishes by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.
3. From 1st April, 2023 (i.e. Financial year 2022-23), sub clause (i) of Section 12A(1)(b) prescribes maintenance of books of accounts by category to trusts or institutions mentioned in Section 12A(1)(b) (required herein above), it is provided that
 - (i) the books of account and other documents have been kept and maintained in such form and manner and at such place, as may be prescribed
4. Of course for the earlier period, as well, maintenance of books of accounts is necessary.
5. Clause (b) of sub-section (1) of section 12A of the Act requires audit if the “total income” of the institution for the relevant year exceeds the maximum amount which is not chargeable to income tax. This means

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if the total income of the institution in any previous year before giving effect to the provisions of the Act is less than the maximum amount which is not chargeable to income tax, then audit under the Act is not required. It is significant to note that contributions made with a specific direction that they shall form part of the corpus of the institution is included in the definition of income under section 2(24). However, by virtue of section 11(1)(d) they shall not be included in the total income of the previous year. The implications of the above provisions are that for determining the ceiling limit of the maximum amount which is not chargeable to income tax for the purpose of exigibility to audit under section 12A(1)(b), contributions towards the corpus of the institution are to be included. However, incomes exempt under section 10, e.g. dividends, are not to be included for ascertaining whether the income exceeds the maximum amount which is not chargeable to income tax.

6. It is sometimes likely that on a computation made by the institution, the total income does not appear to exceed the limit of the maximum amount which is not chargeable to income tax. However, subsequently it may so transpire that the total income exceeds the maximum amount which is not chargeable to income tax on account of circumstances which were not known originally [e.g. accidental misapplication of the earmarked investments under section 11(2)(b)]. The section does not provide for such contingencies; but it would appear that in such cases the report on audit could be submitted with a revised return.
7. The donations received by an institution whose income are exempt under sections 11 and 12 or clause (23) or clause (23AA) or clause (23C) of section 10 of the Act are eligible for deduction under section 80G(2)(a)(iv) of the Act provided the institution is approved by the Director General (exemptions)/ Commissioner of Income-tax under section 80G(5)(vi). Certain conditions are to be fulfilled in order to claim the donations made to such an institution eligible for deduction under section 80G. Further, there is a prescribed procedure for getting the approval from the Director General (Exemptions) Commissioner of Income-tax.
8. For the purposes of audit prescribed under section 12A(1)(b), the accountant has to give his report in Form No.10B. Further, he has to annex certain particulars mentioned in the Annexure to the above Form No.10B

Chapter 4

Audit under Other Law

Some of the Central or State legislations or relating to trusts and charitable institutions may provide for compulsory audit. For example section 8 of Companies Act, 2013 (old section 25 of the 1956 Act), the Indian Trusts Act, 1882, the Maharashtra Public Trusts Act, 1950, the Madhya Pradesh had an Act of 1951, etc. Such requirement of audit has to be construed purely in terms of the statutory provisions of the relevant State Acts.

Provisions for audit under certain other laws governing charitable institutions are hereunder discussed:

1. **The Companies Act, 2013**

Charitable Organisation are formed as company under section 8. Principles of Audit as normally applicable to any other limited company are equally applicable with certain exceptions. All the other provisions of Company Audit shall be applicable.

2. **The Maharashtra Public Trusts Act, 1950**

The accounts kept under section 32 shall be balanced each year on the thirty-first day of March or such other day, as may be fixed by the Charity Commissioner. (2) The accounts shall be audited annually by a person who is a chartered accountant within the meaning of the Chartered Accountants Act, 1949 or by such persons as the State Government may, subject to any conditions, authorize in this behalf: Provided that, no such person is in any way interested in, or connected with, the public trust. (3) Every auditor acting under sub-section (2) shall have access to the accounts and to all books, vouchers, other documents and records in the possession of or under the control of the trustee; and it shall be the duty of the trustee to make them available for the use of the auditor. (4) Notwithstanding anything contained in the preceding sub-sections— (a) the Charity Commissioner may direct a special audit of the accounts of any public trust whenever in his opinion such special audit is necessary..

3. **The Rajasthan Public Trust Act, 1959**

The accounts kept under Section 32 shall be balanced each year on the 31st day of March or on such other day as may be fixed by the

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Commissioner. 2. The accounts shall be audited annually in such manner as may be prescribed, and by a person who is a Chartered Accountant within the meaning of the Chartered Accounts Act, 1949 (Central Act XXXVIII of 1949) or by a firm of which all the partners are practicing in India as such chartered accountants or by such persons as may be authorized in this behalf by the State Government. 3. Every auditor acting under sub-section (2) shall have access to the accounts and to all books, vouchers, other documents and records in the possession of, or under the control of the working trustee or the manager. Such working trustee or manager shall provide to such auditor all facilities for such access. 4. Notwithstanding anything contained in sub-section (2) the Assistant Commissioner may direct a special audit of the accounts of any public trust whenever in his opinion such special audit is necessary and the provisions of sub-section (2) and (3) shall, so far as they may be applicable, apply to such special audit. 5. The Assistant Commissioner may direct the payment of such fee as may be prescribed for such special audit and working trustee or the manager shall be liable to pay the same from the trust properly.

Chapter 5

Auditor

Accountant

A Practicing Chartered Accountant within the meaning of the Chartered Accountant Act 1949 or any person appointed as Auditor by the Charitable institutions being charitable trust, society, etc. Under the provisions of clause b(ii) of section 12A(1), audit of accounts of trust or institution for this purpose can be carried out by 'an accountant' as defined:

"Accountant" shall have the same meaning as in the Explanation below sub-section (2) of section 288;".

The above-mentioned Explanation reads as under:

"In this section, "accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) who holds a valid certificate of practice under sub-section (1) of section 6 of that Act, but does not include [except for the purposes of representing the assessee under sub-section (1)]—

- (a) in case of an assessee, being a company, the person who is not eligible for appointment as an auditor of the said company in accordance with the provisions of sub-section (3) of section 141 of the Companies Act, 2013 (18 of 2013); or
- (b) in any other case,—
 - (i) the assessee himself or in case of the assessee, being a firm or association of persons or Hindu undivided family, any partner of the firm, or member of the association or the family;
 - (ii) in case of the assessee, being a trust or institution, any person referred to in clauses (a), (b), (c) and (cc) of sub-section (3) of section 13;
 - (iii) in case of any person other than persons referred to in sub-clauses (i) and (ii), the person who is competent to verify the return under section 139 in accordance with the provisions of section 140;
 - (iv) any relative of any of the persons referred to in sub-clauses (i), (ii) and (iii);

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- (v) an officer or employee of the assessee;
- (vi) an individual who is a partner, or who is in the employment, of an officer or employee of the assessee;
- (vii) an individual who, or his relative or partner—
 - (I) is holding any security of, or interest in, the assessee:
Provided that the relative may hold security or interest in the assessee of the face value not exceeding one hundred thousand rupees;
 - (II) is indebted to the assessee:
Provided that the relative may be indebted to the assessee for an amount not exceeding one hundred thousand rupees;
 - (III) has given a guarantee or provided any security in connection with the indebtedness of any third person to the assessee:
Provided that the relative may give guarantee or provide any security in connection with the indebtedness of any third person to the assessee for an amount not exceeding one hundred thousand rupees;
- (viii) a person who, whether directly or indirectly, has business relationship with the assessee of such nature as may be prescribed;
- (ix) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction.

For the purposes of aforesaid provisions, "relative" in relation to an individual, means—

- (a) spouse of the individual;
- (b) brother or sister of the individual;
- (c) brother or sister of the spouse of the individual;
- (d) any lineal ascendant or descendant of the individual;
- (e) any lineal ascendant or descendant of the spouse of the individual;
- (f) spouse of a person referred to in clause (b), clause (c), clause (d) or clause (e);

- (g) any lineal descendant of a brother or sister of either the individual or the spouse of the individual

Auditor has to comply with the Accounting Standards (AS) and Auditing and Assurance Standards (AAS) prescribed and made mandatory by the Institute of Chartered Accountants of India.

Chartered Accountant Act, 1949

Accounts shall be audited every year by a 'Chartered Accountant' within the meaning of Chartered Accountants Act, 1949 or any person appointed as Auditor by the Charitable institutions being charitable trust, society, etc.

Independence of Auditor

Self interest is described as 'Threat' under Code of Ethics for Professional Accountants.

Though the law has not elaborated the concept of independence, the same is evident from the language and in the absence of express provisions, one has to look for the regulatory provisions of the profession.

Examples would be –

- A financial interest in a client
- Undue dependence on total fees from a client
- Having a close business relationship with a client
- Concern about the possibility of losing a client
- Potential employment with a client
- A loan to or from an assurance client or any of its directors or officers.

In giving his report the accountant will have to use his professional skill and expertise and apply such audit tests as the circumstances of the case may require, considering the contents of the audit report. He will have to conduct the audit by applying the generally accepted auditing procedures, which are applicable for any other audit. He can apply the test checks depending on the evaluation of internal control procedures followed by the assessee. The accountant will also have to keep in mind the concept of materiality depending upon the circumstances of each case.

The audit report given under this section is to assist the income-tax department to verify whether the assessee has complied with the provisions of sections 11 to 13 of the Act. In order that the accountant may be in a position to explain any question which may arise later on, it is necessary that

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he should keep detailed notes about the evidence on which he has relied upon while conducting the audit and also maintain all his working papers. Such working papers should include his notes on the following, amongst other matters:

- (a) work done while conducting the audit and by whom;
- (b) explanation and information given to him during the course of the audit and by whom;
- (c) decision on the various points taken;
- (d) the judicial pronouncements relied upon by him while drafting the audit report; and
- (e) certificates issued by the client / management letters.

It is important that the audit working papers prepared and or obtained by the accountant provide evidence that:

- (i) the opinion expressed by the accountant in respect of the particulars furnished in the Annexure is based on the examination made by him;
- (ii) in arriving at his opinion, the accountant has given due cognizance to the information and explanations given by the assessee and that his opinion is not arbitrary;
- (iii) the information and explanations obtained were full and complete that is, the accountant has called for all the information and explanations which were necessary to be considered before arriving at his opinion; and
- (iv) the accountant did not merely rely upon the information or explanations given by the assessee but that he subjected such information and explanations to reasonable tests to verify their accuracy and completeness

The form of audit report requires the accountant to examine the balance sheet and the profit and loss account of the institution. Perhaps, the nomenclature "profit and loss account" may be less appropriate in relation to an institution where, on account of lack of profit motive the income statement is more commonly designated as "income and expenditure account". However, the auditor's report in form 10B specifies "profit and loss account" and as such it would only be appropriate in all cases to designate the same as profit and loss account. Apart from this, since section 11(4A) permits a trust or a charitable institution to carry on business, profit and loss account and balance sheet have to be prepared in respect of such business.

The accountant has to examine the balance sheet and the profit and loss account of the institution in the light of information and explanations and various branch returns and give an opinion whether they exhibit a true and fair view. In this respect the audit under section 12A(1)(b)(ii) can be equated to an audit of general purpose financial statements.

If the institution is constituted in the form of a company registered under section 8 of Companies Act, 2013 (earlier section 25 of the Companies Act, 1956), it is possible that prior to the audit under section 12A(1)(b)(ii), statutory audit under the Companies Act may have been completed. The accountant may rely on the above statutory audit report to such extent and in such manner as provided in AAS 10 – Using the work of another auditor.

Auditor's Responsibility

This paragraph deals with the Auditors' responsibility under the Income tax Act, 1961 and not under any other law, where under audit of the institution might be required.

The audit report under section 12A(1)(b)(ii) is required to be given in Form No.10B prescribed under rule 17B, which requires the 'accountant' defined in explanation to section 288 of the Act (herein referred to as; auditor') to give his opinion whether to the best of his information and according to the information given to him the accounts give a true and fair view. Further, he has to annex the prescribed particulars.

The principal aim of this audit is to enable the Assessing Officer to satisfy himself about the genuineness of the claim for exemption under section 11 and also whether the institution has complied with all the requirements prescribed by the statute. As such the auditor should take care to see that there is compliance with the provisions of the Act to enable the Assessing Officer to satisfy himself about the genuineness of the claim for exemption under section 11 made by the institution. The auditor should also satisfy himself regarding compliance with the provisions of the Act by the institution in respect of maintenance of proper books of accounts, information and returns from branches and other relevant records. The auditor has to examine the balance sheet and the profit and loss and give an opinion whether they exhibit a true and fair view.

As in the case of other professional assignments, the auditor should comply with the "Code of Ethics" issued by the ICAI in conducting the audit under section 12A(1)(b)(ii). The auditor is advised to conduct the audit under section 12A(1)(b)(ii) in accordance with this Technical Guide.

Qualified Opinion

Attention is invited to note no. 3 below Audit report in Form No 10B, where any of the matters stated in this report is answered in the negative, or with a qualification, the report shall state the reasons for the same.

Difference in Opinion

In Connection with Information to be filled in Annexure to Form 10B, it is possible that, there may be difference in view taken by the accountant, issuing the said Form and management of the institution.

In such case of any difference in the opinion of the accountant and that of the management of the institution in respect of any information furnished in Form 10B, the accountant should state both the view points and also the relevant information in order to enable the tax authority to take a decision in the matter.

Chapter 6

Scheme of Exemption

Exemption under section 11 to 13

In order to carry on audit and issue the report, it is necessary to clearly understand scheme for exemption for charitable and religious trusts or institutions in the Income tax Act, 1961 in sections 11 to 13. The Scheme is briefly discussed in this chapter.

- I. Income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property. Thus, out of the aggregate income at least 85% of the income should be used for application for charitable or religious purposes. Balance amount can be accumulated for such purposes.
- II. In view of Section 12(1) read with section 2(24)(iia), income in the form of voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes shall also be the income of the trust or institution.

Other exemption provisions

There are other provisions in the Act providing exemption benefit to the trusts and institutions like

- a) Any voluntary contributions received by an electoral trust shall not be included in its total income (subject to certain conditions).
- b) Income of an educational institute is subject to exemption under Sections 10(23C)(iiiab)/(iiiad)/(vi).
- c) Income of a hospital or other institution shall be eligible for exemption if it satisfies the conditions prescribed under Sections 10(23C)(iiiac)/(iii ae)/(via).

This Technical Guide does not address these provisions. This Technical Guide relates with exemptions provided under Section 11 and 12 of the Act.

Application and Accumulation

Conditions to be complied

Section 12A of the Act prescribes, compliance with certain conditions, compliance of each condition is mandatory for availing exemption under Section 11 to 13 of the Act. Briefly these conditions are as follows:-

- a) Registration with the Income tax Department as prescribed under section 12A(1)(ac) read with section 12AB of the Act. Please refer Publication on '**Registration of Charitable & Religious Institutions for Income Tax Exemption (June, 2021)**' published by the Direct tax Committee of the ICAI. The registration should be available for the previous year under consideration.
- b) Under Section 12A(1)(b)(i) The books of account and other documents have been kept and maintained in such form and manner and at such place, as may be prescribed. (This provision is mandatory from Financial year 2022-23)
- c) The accounts of the trust or institution for that year have been audited by an accountant defined in the Explanation below sub-section (2) of section 288 before the specified date referred to in section 44AB and the person in receipt of the income furnishes by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars, as may be prescribed as per the provisions of Section 12A(1)(b)(ii).
- d) The person in receipt of the income has furnished the return of income of the institution for the previous year in accordance with the provisions of sub-section (4A) of section 139, within the time allowed under that section. Accordingly, due date for furnishing of return of income is
 - For company or any other institution where accounts are required to be audited under the Income tax Act, 1961 or any other law for the time being in force is 31st day of October of the Assessment year, and,
 - In case of any other institutions, it is 31st day of July of the Assessment year. (Section 12A(1)(ba).
- e) Application/ Accumulation of income as per the provisions of Section 11 and 12 (discussed elsewhere in this technical guide).

In order to understand, provisions relating to exemption, it is necessary to understand the following:-

- (i) What is Income of Such an institution
- (ii) Provisions relating to Application of income
- (iii) Provisions relating to Accumulation of income

Income of the Institution

The following are various features of income of the charitable or religious trusts or institutions:

1. Voluntary Contributions:

Voluntary contributions have been considered as a part of the income of charitable organisations.

Section 2(24)(iia) provides that Income includes voluntary contributions received by a trust created wholly or partly for religious or charitable purpose.

Section 12(1) provides that any voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes (not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution) shall for the purposes of section 11 be deemed to be income derived from property held under trust wholly for charitable or religious purposes. Voluntary contributions have to be made solely for charitable or religious purposes and if it is made apart for charitable or religious purposes, then it will not be exempted.

2. Income from property held under trust for charitable or religious purpose. Property can include investments, Fixed deposits, securities, house property etc yielding interest, rent etc. income.

All the incomes of the trust arising from its own sources, from external sources and from properties, movable as well as immovable shall be considered as income from property of trust.

3. Capital gain from asset held under trust

These incomes are to be calculated on commercial principles and not as per the provision of chapter IV of the Act, thus, for example, in case of income from house property, deduction for 30% of annual value

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(Section 24(a)) shall not be available, or deduction of Indexation cost of acquisition (Section 48) etc will not be available for ascertaining income. In these cases, actual expenditure shall be deducted to arrive at amount of income. Similarly, deemed income under the head house property also cannot be considered.

4. As per Section 11(1)(b) Income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India; and, where any such income is finally set apart for application to such purposes in India.
5. Income derived from property held under trust- Section 11(1)(c) income derived from property held under trust—
 - (i) created on or after the 1st day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and
 - (ii) for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India:

Provided that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income;

Exemption is generally available for Application/ Accumulation of Income for such purposes in India. However, where income of the institution is applied for such purposes outside India the same will qualify for inclusion in exemption, if it is duly approved by the Central Board of Direct Taxes (CBDT) by general or Special order.

6. Corpus Donation :- Income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution is also income of the Institution. However, under Section 11(1)(d) of the Act, it does not form part of the total Income of the institution on complying with conditions therein prescribed.
7. Under Section 12(2) of the Act, value of any services, being medical or educational services, made available by any charitable or religious trust running a hospital or medical institution or an educational institution, to any person referred in section 13, shall be deemed to be income of such trust or institution derived from property held under

trust wholly for charitable or religious purposes during the previous year in which such services are so provided and shall be chargeable to income-tax.

8. Anonymous donations i.e., donations where donee does not maintain record of identity/any particulars of the donor. Section 115BBC provides special tax treatment for anonymous donations. Trusts or institutions created wholly for religious purposes have been spared from such special tax treatment.
9. As per Section 11(4) property held under trust" includes a business undertaking so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the Assessing Officer shall have power to determine the income of such undertaking in accordance with the provisions of this Act relating to assessment; 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.

Provisions relating to the Application of the Income

The trust makes payment/expenditure for charitable or religious purposes, so that such Expenses or payments in order to be considered as Application for the purpose of Section 11. Following further conditions should be considered.

1. Application for Charitable Purposes:
Any expenditure incurred or payment made by the institution for charitable purposes qualifies as application of income. Institutions incur such expenditure on objects or purpose included in the objects clause
2. Application for Public Religious Purposes:
Any institution, whether exclusively created for religious purposes or its objects include furtherance of religious cause, then expenditure incurred or payment made by the institution for religious purposes qualifies as application of income. Incurring expenditure on private religious objects or purpose does not qualify as application. Incurring expenditure on private religious objects or purpose without there being such purpose in the objects clause does not qualify as application.
3. Application need not be only for revenue expenditure
Further, in order to get the benefit of exemption from tax under section

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11 of the Act, it is not necessary that the application of the income should be such as to result in revenue expenditure. (Please refer provision of Section 11(6) in this regard.)

4. Expenditure on Property

Expenditure incurred by the trust in repairs, maintenance, etc of the property of the trust also qualifies for deduction. Administration expenses incurred by the trust also qualifies for the deduction while Ascertaining income of the trust.

5. Payment of taxes

Expenditure by way of payment of tax out of current year's income has to be considered as application for charitable purposes because the payment has been made to preserve the corpus, the existence whereof is essential for the trust itself. [CIT v. Janaki Ammal Ayya Nadar Trust (1985) 153 ITR 159 (Mad)].

6. Donation to other charitable or religious institutions covered by the objects of the donor institutions qualifies as an application. However as per Explanation 2 to section 11(1) Any amount credited or paid, out of the income being contribution with a specific direction that it shall form part of the corpus shall not be treated as application of income for charitable or religious purposes.

Provisions Applicable from 01.04.2022 (i.e A.Y. 2022-23)

Cash basis of accounting for consideration of any expenditure as application is mandatory under Explanation to section 11. It provides that for the purposes of this section, any sum payable by any trust or institution shall be considered as application of income in the previous year in which such sum is actually paid by it (irrespective of the previous year in which the liability to pay such sum was incurred by the trust or institution according to the method of accounting regularly employed by it)

However, where during any previous year, any sum has been claimed to have been applied by the trust or institution, such sum shall not be allowed as application in any subsequent previous year. Thus, double consideration of the same expenditure when accrued and when paid is not allowed.

This provision is similar to the provisions under section 43B, actual payments made upto the due date of furnishing return of income are

eligible for deduction whereas under Explanation to Section 11 payment made till last date of Previous year that is 31st March only can be considered.

Conditions for Application

1. The income applied for charitable purposes which tends to promote international welfare can also be claimed as exemption subject to the following:
 - Trust created on or after 1-04-1952: To the extent such income is applied to promote international welfare in which India is interested.
 - Trust created before 1-04-1952: To the extent income is applied for charitable or religious purposes outside India.
2. Section 11(1)(d) provides that income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution subject to the condition that such voluntary contributions are invested or deposited in one or more of the forms or modes specified in sub-section (5) maintained specifically for such corpus.
3. Under Explanation 2 to Section 11(1), any income credited or paid to any other trust or institution registered under section 12AA, being contribution with a specific direction that they shall form part of the corpus of the trust or institution, shall not be treated as application of income for charitable or religious purposes.
4. Under explanation 4 to Section 11(1), application for charitable or religious purposes from the corpus as referred to in Section 11(1)(d), it shall not be treated as application of income for charitable or religious purposes. However, the amount not so treated as application, or part thereof, shall be treated as application for charitable or religious purposes in the previous year in which the amount, or part thereof, is invested or deposited back, into one or more of the forms or modes specified in Section 11(5) maintained specifically for such corpus, from the income of that year and to the extent of such investment or deposit.
5. Also, Under explanation 4 to Section 11(1), application for charitable or religious purposes, from any loan or borrowing, shall not be treated as application of income for charitable or religious purposes, however,

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the amount not so treated as application, or part thereof, shall be treated as application for charitable or religious purposes in the previous year in which the loan or borrowing, or part thereof, is repaid from the income of that year and to the extent of such repayment.

6. Under explanation 5 to Section 11(1), the calculation of income required to be applied or accumulated during the previous year shall be made without any set off or deduction or allowance of any excess application of any of the year preceding the previous year.
7. As per Section 11(1A) where a capital asset, being property held under trust wholly for charitable or religious purposes, is transferred and the whole or any part of the net consideration is utilised for acquiring another capital asset to be so held, then, the capital gain arising from the transfer shall be deemed to have been applied to charitable or religious purposes to the extent specified hereunder, namely:—
 - where the whole of the net consideration is utilised in acquiring the new capital asset, the whole of such capital gain;
 - where only a part of the net consideration is utilised for acquiring the new capital asset, so much of such capital gain as is equal to the amount, if any, by which the amount so utilised exceeds the cost of the transferred asset.
8. As per Section 11(4A), in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business.
9. As per Explanation 3 to Section 11(1), For the purpose of determining application under section 11, provision of section 40(a) and 40 (ia), apply in case of Trust or Institution for ascertaining amount of application as the said provision applies for computation of income from business and profession. Thus, if any amount paid or credited to non-resident or resident, as the case may be, and there is default relating to TDS as mentioned in section 40(a) or 40(ia), respectively, then 30% of such expenditure or application shall not considered as application for trust.
10. As per Explanation 3 to Section 11(1) for the purpose of determining application under section 11, provision of 40A(3) and 40A(3A),any

expenditure paid in a single day to a single person more than 10,000 in any mode other than A/C payee cheque or demand draft or Electronic clearance system not treated as application in case of Trust or Institution for ascertaining amount of application as the said provision applies for computation of income from business and profession. If deduction allowed in earlier year on due basis and in current year if payment made more than 10,000 in cash then such amount will be treated as income of current Previous year.

11. As per Section 11(6) where any income is required to be applied or accumulated or set apart for application, then, for such purposes the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this section in the same or any other previous year.
12. Unspent Accumulation:- Where accumulation of income is made under Explanation 1 to section 11(1) or section 11(2) and conditions governing accumulation are not observed, then as per provisions of Section 11(1B) and 11(3), respectively, the amounts are considered as income. This has been discussed under the paragraph 'Accumulation of Income', herein after.

Provisions relating to the Accumulation of the Income

Where Income of a trust or institutions is accumulated or set apart for accumulation for charitable or religious purposes in India. The amount so accumulated or set apart also qualifies for exemption.

There are two provisions concerning accumulation, viz.

- (i) Explanation 1 to section 11(1)
- (ii) Section 11(2)

(i) Accumulation Under Explanation 1 to section 11(1)

If, in the previous year, the income applied to charitable or religious purposes in India falls short of eighty-five per cent of the income derived during that year from property held under trust, or, as the case may be, held under trust in part, by any amount—

- (i) for the reason that the whole or any part of the income has not been received during that year, or

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(ii) for any other reason,

then—

- (a) in the case referred to in sub-clause (i), so much of the income applied to such purposes in India during the previous year in which the income is received or during the previous year immediately following as does not exceed the said amount, and
- (b) in the case referred to in sub-clause (ii), so much of the income applied to such purposes in India during the previous year immediately following the previous year in which the income was derived as does not exceed the said amount,

may, at the option of the person in receipt of the income (such option to be exercised before the expiry of the time allowed under sub-section (1) of section 139 for furnishing the return of income, in such form and manner as may be prescribed be deemed to be income applied to such purposes during the previous year in which the income was derived; and the income so deemed to have been applied shall not be taken into account in calculating the amount of income applied to such purposes, in the case referred to in sub-clause (i), during the previous year in which the income is received or during the previous year immediately following, as the case may be, and, in the case referred to in sub-clause (ii), during the previous year immediately following the previous year in which the income was derived.

(ii) Accumulation Under Section 11(2)

As per the provisions of section 11(2) of the act, if the trust or institution has not applied 85% of its income during any previous year, it is allowed to accumulate such income for a period not exceeding 5 years subject to filing of Form 10 before due date of filing return of income u/s.139(1) and investing or depositing such money in forms or modes specified u/s. 11(5) of the Act. Moreover, as per Section 11(3) of the act, if the accumulated income is not utilized for the purpose for which it is accumulated or set apart, it shall be deemed to be the income of the previous year being the last previous year of the period of which it is accumulated. Hence, now if the accumulated income is not applied within 5 years, the same shall be taxed in the 5th year itself. Before the amendment in Finance Act 2022, it was taxed in the 6th year u/s.11(3) of the Act.

In other words, where eighty-five per cent of the income is not applied, or is not deemed to have been applied, to charitable or religious purposes in India

during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:—

- (a) such person furnishes a statement in the prescribed form and in the prescribed 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 five years;
- (b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5);
- (c) the statement referred to in clause (a) is furnished on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year.

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

Investments

Property of the trust or institutions can be invested as per provisions of section 11(5) of the Act.

As per Section 11(5) of the act, the forms and modes of investing or depositing the money referred to in section 11(2)(b) shall be the following, namely:

- (i) investment in savings certificates as defined in clause (c) of section 2 of the Government Savings Certificates Act, 1959 (46 of 1959*), and any other securities or certificates issued by the Central Government under the Small Savings Schemes of that Government;
- (ii) deposit in any account with the Post Office Savings Bank;
- (iii) deposit in any account with a scheduled bank or a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank).

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Explanation.—In this clause, "scheduled bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959*), a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), or any other bank being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934);

- (iv) investment in units of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963);
- (v) investment in any security for money created and issued by the Central Government or a State Government;
- (vi) investment in debentures issued by, or on behalf of, any company or corporation both the principal whereof and the interest whereon are fully and unconditionally guaranteed by the Central Government or by a State Government;
- (vii) investment or deposit in any public sector company:

Provided that where an investment or deposit in any public sector company has been made and such public sector company ceases to be a public sector company,—

- (A) such investment made in the shares of such company shall be deemed to be an investment made under this clause for a period of three years from the date on which such public sector company ceases to be a public sector company;
 - (B) such other investment or deposit shall be deemed to be an investment or deposit made under this clause for the period up to the date on which such investment or deposit becomes repayable by such company;
- (viii) deposits with or investment in any bonds issued by a financial corporation which is engaged in providing long-term finance for industrial development in India and which is eligible for deduction under clause (viii) of sub-section (1) of section 36;
 - (ix) deposits with or investment in any 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 construction or purchase of

Scheme of Exemption

houses in India for residential purposes and which is eligible for deduction under clause (viii) of sub-section (1) of section 36;

- (x) deposits with or investment in any 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 in India.

Explanation.—For the purposes of this clause,—

- (a) "long-term finance" means any loan or advance where the terms under which moneys are loaned or advanced provide for repayment along with interest thereof during a period of not less than five years;
- (b) "public company" shall have the meaning assigned to it in section 375 of the Companies Act, 1956 (1 of 1956);
- (c) "urban infrastructure" means a project for providing potable water supply, sanitation and sewerage, drainage, solid waste management, roads, bridges and flyovers or urban transport;

- (xi) investment in immovable property.

Explanation.—"Immovable property" does not include any machinery or plant (other than machinery or plant installed in a building for the convenient occupation of the building) even though attached to, or permanently fastened to, anything attached to the earth;

- (xii) deposits with the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964 (18 of 1964);
- (xiii) any other form or mode of investment or deposit as may be prescribed

As per Rule 17C prescribes certain further investments that qualify under Section 11(5)(xii). (Rule 17C is given in Appendix)

Forfeiture of exemption

Exemption available to charitable institutions under section 11 to 13 can be forfeited / withdrawn in the following circumstances.

- (i) Non-Compliance with the provisions of section 12A
- (ii) Circumstances specified under section 13

Provisions of Section 12A

Conditions as discussed above under the heading '**Application and Accumulation**'. If any of the mandatory condition is not observed, then exemption under section 11 to 13 is liable for withdrawal.

Provisions of Section 13

Section 13 of Income Tax Act, 1961 mentions the circumstances in which benefit of provisions of section 11 and section 12 shall not be available in respect of application of income or part thereof. These circumstances are listed as under:-

- (i) The income is for private religious purpose and not for the benefit of public.
- (ii) The income is for the benefit of any particular religious community or caste.
- (iii) The income is for the benefit of any interested person mentioned in section 13(3) or Explanation I to Section 13(6) respectively.(for List of such persons-refer Annexure)
- (iv) The income is invested or continues to be invested in forms other than the forms specified in section 11(5) of Income Tax Act, 1961

A special note may be made of the condition mentioned in sub-para (iii) above. The Act contains very stringent provisions barring the use of either the property or the income of a charitable or religious trust or institution in any manner whatsoever for the benefit of the author, founder, trustee, manager, a substantial contributor, or even a relative of any of these persons. The rigor of this provision needs to be well understood by assesseees seeking to claim exemption under Sections 11 and 12 of the Act. In one case, where a charitable trust had purchased a refrigerator and kept it at the disposal of the managing trustee while its own buildings were not ready, and no compensation was charged from the managing trustee, the Kerala High Court held that the trust was hit by Section 13 and was not entitled to claim exemption. *Agappa Child Centre* [1997] 226 ITR 211 (Ker.).

For an auditor, certifying Form 10B, it is necessary to read and understand provisions of Sections 11 to 13 for appreciating scheme of exemption for charitable and religious institutions prescribed under the law. This understanding shall facilitate proper discharge of responsibility under the Act.

Chapter 7

Audit Report under Section 12A(1)(b)

The audit report under section 12A(1)(b)(ii) is required to be given in Form No.10B prescribed under rule 17B

FORM NO. 10B

[See rule 17B]

Audit report under section 12A(b) of the Income-tax Act, 1961, in the case of charitable or religious trusts or institutions

*I/We have examined the balance sheet of[name of the trust or institution] as at and the Profit and loss account for the year ended on that date which are in agreement with the books of account maintained by the said Trust or institution * I/We have obtained all the information and explanations which to the best of * my/our knowledge and belief were necessary for the purposes of the audit. In * my/our opinion, proper books of account have been kept by the head office and the branches of the above named * trust/institution visited by * me/us so far as appears from * my/our examination of the books, and proper Returns adequate for the purposes of audit have been received from branches not visited by * me/us, subject to the comments given below: In * my/our opinion and to the best of * my/our information, and according to information given to * me/us, the said accounts give a true and fair view-

- (i) in the case of the balance sheet, of the state of affairs of the above named * trust/institution as at and
- (ii) in the case of the profit and loss account, of the profit or loss of its accounting year ending on.

The prescribed particulars are annexed hereto.

Place .

Date .

Signed Accountant †

Notes :

1. *Strike out whichever is not applicable.

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2. †This report has to be given by –
 - (i) a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949); or
 - (ii) any person who, in relation to any State, is, by virtue of the provisions of sub-section (2) of section 226 of the Companies Act, 1956 (1 of 1956), entitled to be appointed to act as an auditor of the companies registered in that State.
3. Where any of the matters stated in this report is answered in the negative, or with a qualification, the report shall state the reasons for the same.

**ANNEXURE
STATEMENT OF PARTICULARS**

I. APPLICATION OF INCOME FOR CHARITABLE OR RELIGIOUS PURPOSES

1. Amount of income of the previous year applied to charitable or religious purposes in India during that year
2. Whether the trust/institution * has exercised the option under clause (2) of the Explanation to section 11(1) ? If so, the details of the amount of income deemed to have been applied to charitable or religious purposes in India during the previous year
3. Amount of income accumulated or set apart* /finally set apart for application to charitable or religious purposes, to the extent it does not exceed 25 per cent of the income derived from property held under trust wholly * /in part only for such purposes.
4. Amount of income eligible for exemption under section 11(1)(c) (Give details)
5. Amount of income, in addition to the amount referred to in item 3 above, accumulated or set apart for specified purposes under section 11(2)
6. Whether the amount of income mentioned in item 5 above has been invested or deposited in the manner laid down in section 11(2)(b) ? If so, the details thereof
7. Whether any part of the income in respect of which an option was exercised under clause (2) of the Explanation to section 11(1) in any

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earlier year is deemed to be income of the previous year under section 11(1B) ? If so, the details thereof

8. Whether, during the previous year, any part of income accumulated or set apart for specified purposes under section 11(2) in any earlier year-
 - a) has been applied for purposes other than charitable or religious purposes or has ceased to be accumulated or set apart for application thereto, or
 - b) has ceased to remain invested in any security referred to in section 11(2)(b)(i) or deposited in any account referred to in section 11(2)(b)(ii) or section 11(2)(b)(iii), or
 - c) has not been utilised for purposes for which it was accumulated or set apart during the period for which it was to be accumulated or set apart, or in the year immediately following the expiry thereof? If so, the details thereof

II. APPLICATION OR USE OF INCOME OR PROPERTY FOR THE BENEFIT OF PERSONS REFERRED TO IN SECTION 13(3)

1. Whether any part of the income or property of the * trust/institution was lent, or continues to be lent, in the previous year to any person referred to in section 13(3) (hereinafter referred to in this Annexure as such person)? If so, give details of the amount, rate of interest charged and the nature of security, if any
2. Whether any land, building or other property of the * trust/institution was made, or continued to be made, available for the use of any such person during the previous year? If so, give details of the property and the amount of rent or compensation charged, if any
3. Whether any payment was made to any such person during the previous year by way of salary, allowance or otherwise? If so, give details
4. Whether the services of the * trust/institution were made available to any such person during the previous year? If so, give details thereof together with remuneration or compensation received, if any
5. Whether any share, security or other property was purchased by or on behalf of the * trust/institution during the previous year from any such person? If so, give details thereof together with the consideration paid

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6. Whether any share, security or other property was sold by or on behalf of the * trust/institution during the previous year to any such person? If so, give details thereof together with the consideration received
7. Whether any income or property of the * trust/institution was diverted during the previous year in favour of any such person? If so, give details thereof together with the amount of income or value of property so diverted
8. Whether the income or property of the * trust/institution was used or applied during the previous year for the benefit of any such person in any other manner? If so, give details

III. Investments held at any time during the previous year(s) in concerns in which persons referred to in section 13(3) have a substantial interest

S. No.	Name and address of the concern	Where the concern is a company, number and class of shares held	Nominal value of the investment	Income from the investment	Whether the amount in col.4 exceeds 5 per cent of the capital of the concern during the previous year-say, Yes/No
1	2	3	4	5	6
Total					

Place.....

Date.....

.....

Signed Accountant

Editorial Note: The Form No. 10B has not been amended since 1973 i.e. when it was first notified. Provisions of the relevant sections have been amended thereafter and have not been captured in the said Form. The title of the Form refers to Section 12A(b) although the current provisions empowering the filing of this Form are contained in section 12A(1)(b)(ii). Similarly, Percentage as stated in clause 3 of part I as '25' has been reduced to '15%' (Section 11(1)(a)).

Thus, the Form No. 10B has two components viz.:

- (a) Report on true and fair of the financial statements, and**
- (b) Annexure containing statement of particulars**

This technical guide explains both components of Form No. 10B, herein after.

Chapter 8

Audit Report

Opinion about True and Fair

The audit report consists of four paragraphs. The first paragraph contains the declaration about the examination of the balance sheet and the profit and loss account and also whether they are in agreement with the books of account maintained by the institution. The second paragraph requires the accountant to state whether he has obtained all the information and explanations necessary for the purposes of audit. It also requires a statement by the accountant regarding the maintenance of proper books of account by the head office and branches. The accountant has also to state whether he has received from branches proper returns adequate for the purpose of audit. The third paragraph requires the accountant to state whether in his opinion the accounts give a true and fair view, in the case of the balance sheet, of the state of affairs of the institution on the relevant date and in the case of the profit and loss account, of the profit or loss of its accounting year ending on the relevant date. The last paragraph requires the accountant to state that the prescribed particulars are annexed to the audit report.

AAS 28 – The Auditor's Report on Financial Statements states that the auditor's report should be appropriately addressed as required by the circumstances of the engagement and applicable laws and regulations. Ordinarily, the auditor's report is addressed to the authority appointing the auditor. In the present case the assessee has to furnish the audit report along with the return of income. The accountant has to address the audit report to the assessee.

Examination of balance sheet and the profit and loss account

I /We have examined the balance sheet of
(name of the trust or institution) as at and the profit and loss account for the year ended on that date which are in agreement with the books of account maintained by the said trust or institution.

The accountant should ensure agreement between the books of account and the financial statements. Since the balance sheet and the profit and loss account have to exhibit a true and fair view, it, therefore, follows that the books of account, which should agree with the balance sheet and the profit and loss account, must themselves be written up in a manner which would

lead to the extraction of the financial statements showing a true and fair view. The requirement as to maintenance of proper books of account, which is dealt with subsequently, should, therefore, be linked with this requirement.

Information and explanations

I/We have obtained all the information and explanations which to the best of my/our knowledge and belief were necessary for the purposes of the audit. In my/our opinion, proper books of account have been kept by the head office and the branches of the above-named trust/ institution visited by me/us so far as appears from my/our examination of the books, and proper returns adequate for the purposes of audit have been received from branches not visited by me/us, subject to the comments given below:

(iii) The audit report has to state that all information and explanations which, to the best of the accountant's knowledge and belief, were necessary for the purpose of audit have been obtained. This requirement is identical to the requirement in respect of the auditor's report under the Companies Act where a similar averment is required to be made in the audit report. The accountant should maintain proper documentation and working papers to demonstrate that the information and explanations obtained by him from the institution are adequate having regard to the requirements of the Act.

(iv) The form requires the accountant to report that proper books of account have been maintained and proper returns have been received from branches not visited by the accountant. It needs to be noted that neither the Act nor the Rules specify the nature of books of account to be maintained or the procedure concerning branch returns. Therefore, the word "proper", both in relation to the books of account and in relation to the returns from branches, has to be interpreted in the context as meaning the books of account and returns which are adequate for the purpose of the accountant's report including therein statements as to the truth and fairness of the financial statements. Therefore, by implication, the books of account have to be written up indicating the various items of income and expenditure and assets and liabilities, so that they can lead to the preparation of the financial statements showing a true and fair view. The same requirement would also relate to the branch returns, although it would appear that if the accountant expresses an opinion on the financial statements as a whole, he must subject the branch returns to such checks and scrutiny as may be deemed necessary by him to enable him to express such an opinion. In cases where the provisions of section 44AA are applicable, the word "proper" would also

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imply that the books of account conform to the requirements of section 44AA and the rules framed thereunder.

The expression "subject to the comments given below:" used in the sentence dealing with the accountant's report on the maintenance of proper books of account and proper branch returns indicates the qualifications which the accountant should specify immediately below the paragraph. A plain reading of the above requirement indicates that the comments of the accountant are required to be given just above the paragraph commencing with "In *my/our opinion....." However, a reference to foot-note 3 in the prescribed form would indicate that the accountant's negative report or qualifying report can relate to any part of the report. In other words, while the form of audit report is prescribed, it is not possible to adhere to it absolutely in the same form in which it is given. Under appropriate circumstances the accountant has to indicate the qualifications suitably. The accountant should comply with the requirements of the AAS 28 – The Auditor's Report on Financial Statements.

Opinion about the true and fair view

In my/our opinion and to the best of my/our information, and according to information given to me/us, the said accounts give a true and fair view -

- (i) in the case of the balance sheet, of the state of affairs of the above-named trust/institution as at, and
- (ii) in the case of the profit and loss account, of the profit or loss of its accounting year ending on

The prescribed form requires the auditor to report on the truth and fairness of the financial statements. While the auditors are familiar with the concept of truth and fairness they have to keep in mind the less organised state of affairs in the administration of institutions. The accounting systems as prevailing in trusts may widely differ; donations in kind may be received defying precise quantitative and monetary values; the commitments both as to donations or grants already offered, may be of doubtful or imprecise knowledge. In such circumstances, the accountant, apart from applying his usual checks and scrutiny, will have to rely on the management representations obtained from the competent authority managing the institutions as to the completeness of the entries in the books of account in respect of assets, liabilities, income and expenditure, valuation of various assets and accounting in respect of various liabilities both actual and contingent etc. As this report is an expression of opinion about the truth and

fairness of general purpose financial statement, the accountant is advised to follow all the AASs in conducting the audit.

UDIN

It may also be noted that a chartered accountant is required to generate and mention UDIN (Unique Documentation Identification Number) on each attestation/audit report issued by him. This requirement is mandatorily effective from 02.08.2019. Further, effective 27.04.2020, the CBDT has made quoting of UDIN mandatory for uploading any certification/audit report on income tax e-filing portal. The UDIN so mentioned for the audit reports/certificates by the Chartered Accountants in the e-filing portal is being validated online with the ICAI with system-level integration. This verification of UDIN will help in weeding out fake or incorrect audit reports not duly authenticated with the ICAI. The verification of UDIN is in line with the ongoing initiatives of the Income Tax Department (ITD) for integrating with other government agencies and bodies. If a Chartered Accountant is unable to generate UDIN before submission of audit report/certificate, the income tax e-filing portal permits such submission. However, the said Chartered Accountant has to generate and update the UDIN within 60 calendar days from the date of form submission in the income tax e-filing portal. If the UDIN for any audit report/certificate is not updated within the 60 days provided for the same, the department will treat such audit report/certificate as invalid submission.

Signature and Stamp/Seal of the signatory

Form 10B has to be signed by the person competent to sign i.e. an Accountant as defined in Explanation (2) to section 288 of the Income-tax Act, 1961. He has also to give his full name, place, and date. Where audit report is issued in soft copy, the accountant to affix his Digital Signature.

Accountant should issue such signed copy of report in Form No. 10B and along with particulars (Annexures) to the institution.

Chapter 9

Annexure to Form No. 10B

Statement of Particulars

Form no. 10 B at the end states that the prescribed particulars are annexed herewith

There is no specific requirement for the accountant to certify the correctness of the particulars in the annexure, However, he has to affix his signature at the end of the particulars. Therefore, The accountant should apply due diligence in filling the particulars given by the trust or institution in the annexure.

The annexure to the audit report contains a statement of particulars to be given under three parts.

Part I- the details regarding application of income for charitable or religious purposes,

Part II- the details of application or use of income or property for the benefit of persons referred to in section 13(3)

Part III- investments held at any time during the previous year(s) in concerns in which persons referred to in section 13(3) have a substantial interest have to be given.

The various particulars in the annexure to Form No.10B would be filled up after completion of audit, finalisation and certification of income and expenditure account and balance sheet. The audited financial statements would form the primary document from which the answers to the various questions asked for in the annexure shall be given.

The auditor may verify the following basic documents in order to enable him to give the various particulars required in the annexure.

1. income and expenditure account,
2. balance sheet,
3. receipts and payments account,
4. minutes book of the governing body,
5. past income-tax records,

6. income-tax statement computed for the current year,
7. profit and loss account for the business and income- tax computation statement for that business,
8. copy of the trust deed/bye-laws/memorandum of articles, as the case may be.

Annexure to the Audit Report

The annexure to the audit report contains a statement of particulars to be given under three parts. These three parts are as follows:

Part I the details regarding application of income for charitable or religious purposes,

Part II the details of application or use of income or property for the benefit of persons referred to in section 13(3) and

Part III investments held at any time during the previous year(s) in concerns in which persons referred to in section 13(3) have a substantial interest have to be given.

The various particulars in the annexure to Form No.10B would be filled up after completion of audit, finalisation and certification of income and expenditure account and balance sheet. The audited financial statements would form the primary document from which the answers to the various questions asked for in the annexure shall be given. The charitable institutions are responsible for compilation of data. However, considering the expertise not available, auditor can assist to compile the same.

The auditor may consider the following basic documents in order to enable him to advice, where solicited by the concerned institution in filling up various particulars required in the annexure:

- (a) Audited income and expenditure account,
- (b) Audited balance sheet,
- (c) receipts and payments account, if prepared
- (d) minutes book of the governing body, and of management, committee, etc.
- (e) past income-tax records,
- (f) income-tax statement computed for the current year,

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- (f) profit and loss account for the business and income- tax computation statement for that business,
- (g) copy of the trust deed/bye-laws/memorandum of articles, as the case may be.

The Accountant should obtain from the assessee, the statement of particulars in Annexure to Form No. 10B duly authenticated by him. It would be advisable for the institution to take into consideration the following general principles while preparing the statement of particulars:

- (a) He can rely upon the judicial pronouncements while taking any particular view about inclusion or exclusion of any items in the particulars to be furnished under any of the clauses specified in Annexure to Form No. 10B.
- (b) If there is a conflict of judicial opinion on any particular issue, he may refer to the view which has been followed while giving the particulars under any specified clause.

While furnishing the particulars in Annexure to Form No.10B, it would be advisable for the Accountant to consider the following:

- (a) If a particular item of income/expenditure/application is covered in more than one of the specified clauses in the statement of particulars, care should be taken to make a suitable cross reference to such items at the appropriate places.
- (b) If there is any difference in the opinion of the Accountant and that of the institution in respect of any information furnished in annexure to Form No. 10B by the institution, the Accountant may consider stating both the view points and also the relevant information related to matter in order to enable the tax authority to take a decision in the matter.
- (c) If any particular clause in annexure to Form No. 10B is not applicable, he should state that the same is not applicable.
- (d) In computing the amount of income, expenditure, application, benefit to person interested, interest etc., he should keep in view the law applicable in the relevant year, even though the annexure to Form 10B may not have been amended to bring it in conformity with the amended law.
- (e) In case the institution has furnished prescribed particulars in part or piecemeal or relevant form is incomplete or the institution does not give the information against all or any of the clauses, the auditor should not withhold Form No. 10B.

- (f) The information in Annexure to Form No. 10B should be based on the books of accounts, records, documents, information and explanations made available to the Accountant for his examination.
- (g) In case the Accountant relies on a judicial pronouncement, he may mention the fact as his observations at appropriate place or at the end of audit report.
- (h) Where in respect of any particular aspect, reporting is required at more than one clause, in that case, information may be furnished at any one of the clause and reference may be given at other clause.

Part I. Application of income for Charitable or Religious purposes

This part requires the accountant to set out eight different particulars relating to various aspects about application of income for charitable or religious purposes such as application of income, accumulation of income, exercise of option for accumulation and investment of accumulated income etc.

Part I - Clause 1

“Amount of income of the previous year applied to charitable or religious purposes in India during that year”

This amount is an application of the expenditure incurred by the trust. It includes Expenditure in respect of properties, Establishment expenses, Remuneration to trustees, Legal expenses, Audit fees, Miscellaneous expenses, Depreciation or Addition to Fixed assets and other Expenditure on the objects.

The scope of the word “income” has to be understood in the context of section 11. The words “income” and “total income” have altogether different connotations in the Act. The expression “income” here has to be understood in the commercial sense and not in the sense in which the income is arrived at for purposes of assessment to tax. In other words, from the total receipts the expenses necessary for earning that income have to be deducted. The net amount that remains would be available for application for charitable or religious purposes, as the case may be. For this purpose no distinction is made in expenditure or application of ‘income’ nature on revenue account or capital account. As such, in applying the income for charitable purposes, even capital expenditure may be incurred.

The expression ‘application to charitable purposes’ is one of wide import. To find out whether the ‘income’ of a charitable trust has been applied for charitable purposes, the auditor should have due regard to the objects of the

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trust and various judicial decisions in this regard. The following illustrative cases have been given to understand the scope of the expression. Similar considerations apply in respect of application for religious purposes.

- (a) Explanation to Section 11 provides as follows:

Any sum payable by any trust or institution shall be considered as application of income in the previous year in which such sum is actually paid by it (irrespective of the previous year in which the liability to pay such sum was incurred by the trust or institution according to the method of accounting regularly employed by it). Provided that where during any previous year, any sum has been claimed to have been applied by the trust or institution, such sum shall not be allowed as application in any subsequent previous year.

Therefore, application of income should be considered only if the same is actually paid. It may be noted that proviso to section 43B of the Act allows consideration of amount actually paid on or before due date of furnishing return of income under section 139(1). Such proviso is missing in Explanation to section 11, therefore, actual payments only till the end of the previous year can be considered.

- (b) Application need not be only for revenue expenditure

Further, in order to get the benefit of exemption from tax under section 11 of the Act, it is not necessary that the application of the income should be such as to result in revenue expenditure. Where the dominant object of the trust was to establish a "Dharamshala" for the use of the Hindu public, the Gujarat High Court held in *Satya Vijay Patel Hindu Dharamshala Trust v. CIT* (1972) 86 ITR 683 that the amounts spent by the trustee in the construction of the new Dharamshala was an application of income towards the charitable purposes of the trust.

However, section 11(6) provides that where in respect of any asset acquisition of which has been claimed as an application of income in the same or any other previous year, then depreciation cannot be considered as an application in any of the years. Thus, in respect of capital expenditure, the institution can consider either capital expenditure in respect of any asset as application or alternatively depreciation in respect of such an asset as application.

- (c) Explanation (5) to section 11(1) clarified that the calculation of income required to be applied or accumulated during the previous year shall

be made without any set off or deduction or allowance of any excess application of any of the year preceding the previous year.

(d) Payment of taxes

Expenditure by way of payment of tax out of current year's income has to be considered as application for charitable purposes because the payment has been made to preserve the corpus, the existence whereof is essential for the trust itself. [CIT v. Janaki Ammal Ayya Nadar Trust (1985) 153 ITR 159 (Mad)].

Attention is invited to various other provisions relating to application of income discussed under the caption 'Scheme of Exemption' for charitable institutions like application out of corpus donation, application out of loan funds, application outside India, application otherwise through banking channels or without making deduction of tax at source etc.

The accountant is required to :

- (a) verify the income as defined under section 11 and 12 of the Income-tax Act. Basically income can be classified into five broad categories viz.,
- (i) voluntary contributions made with a specific direction that they shall form part of corpus;
 - (ii) voluntary contributions made without a specific direction that they shall form part of corpus;
 - (iii) profits and gains of business which are incidental for attaining the objects;
 - (iv) income receipts of the institution like interest, rent, etc.
 - (v) other general receipts;
 - (vi) capital gains;
- (b) verify the amount actually applied during that year by culling out the figures from
- (i) income and expenditure account;
 - (ii) balance sheet and/or receipts and payments account.
- after applying provisions contained in section 11 to 13 of the Act.

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- (c) verify the donations made to another trust in terms of section 11(3)(d).
- (d) verify the valuation of services made available to specified category of persons in terms of section 12(2).
- (e) verify the anonymous donations. In this connection the particulars are yet to be prescribed by the Government Hence, it would be advisable for the accountant to get appropriate management representation.

Part I - Clause 2

Whether the *trust/institution has exercised the option under clause (2) of the Explanation to section 11(1)? If so, the details of the amount of income deemed to have been applied to charitable or religious purposes in India during the previous year

At times the income applied to charitable or religious purposes during the previous year may fall short of 85 per cent of the income derived during the year. This may be due to the fact that the income has not been received during the previous year or for any other reason. The institution can still get the exemption besides such short fall provided it satisfies the conditions regarding exercise of option. The procedure for exercising the said option is given in clause (2) of Explanation under section 11(1). This is referred to herein as 'deemed application'.

For the purpose of getting the benefit of deemed application of income the person in receipt of the income should exercise an option in Form No. 9A prescribed under Rule 17 before the expiry of the time allowed under section 139(1) for furnishing the return of income. Once the option is exercised, such income will be deemed to be income applied to charitable purposes during the previous year in which the income was derived.

This clause contains the amount of income which is not applied for charitable purposes due to non receipt of income or any other reason . Form 9 A is required to be filed for the same.

The accountant should indicate against item no.2 yes or no as an answer to the question asked in the first part. For the second part of the question he has to give the amount of income in respect of which option has been exercised by the person in receipt of the income.

The accountant may

- (a) check from the income-tax computation statement whether there is any short fall in the application of income;

- (b) check whether the short fall is for the reasons stated in clause (2) of the Explanation to section 11(1) viz.,
 - (i) amount not received,
 - (ii) any other reason;
- (c) check whether a resolution has been passed by the governing body for exercising the option under the section referred above;
- (d) check whether the Form No. 9A exercising the option has been filed with the Assessing Officer before the time allowed under section 139(1) for filing return of income;
- (e) obtain a copy of that Form No. 9A and the proof for date of filing the same;
- (f) report the amount for which the option has been exercised under this column and
- (g) In case Form No. 9A has not been furnished and due date for furnishing return of income has not expired, then the Accountant should take representation from the institution and also make appropriate remarks in the report.

Part I - Clause 3

Amount of income accumulated or set apart finally set apart for application to charitable or religious purposes, to the extent it does not exceed 25 per cent of the income derived from property held under trust wholly/ in part only for such purposes:

An institution is permitted to accumulate income to the extent of 15 per cent of its income under section 11(1). However, since Form No. 10B has not been amended, it states 25 per cent of income derived. In order to get the benefit of tax exemption, institution can accumulate or set apart not in excess of fifteen percent of its income.

In order to calculate income accumulated or set apart for application under this clause, the Accountant will have to ascertain the following:

- (a) Ascertain income of the trust or institution as discussed in 'Scheme of Exemption'
- (b) 15% of such income, and
- (c) Amount of income actually accumulated or set apart for application to the extent it does not exceed 15% of income.

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Thus, amount so accumulated is equal to or less than 15% of income, the actual amount of accumulation should be stated and if such accumulation exceeds 15% of income, amount equivalent to 15% should be stated.

The accountant may obtain a certificate from the governing body of the institution regarding the amount set apart for general accumulation and report under this clause and he may verify the exclusion of the amount received directly to the corpus of the trust fund for the purposes of this clause.

This clause contains the surplus of not spent by the trust which is equal to or less than 15 % of its income. Corpus donations are not considered while calculating this surplus.

Part I - Clause 4

Amount of income eligible for exemption under section 11(1)(c) (Give details).

Under section 11(1)(c), income derived from property held under trust - (i) created on or after the 1st day of April, 1952, for charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and (ii) for charitable or religious purposes created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India will be exempt. The amount so spent has to be indicated against this item.

The amount would be exempt if there is a Board's order and

- (i) if the trust is created before the first day of April, 1952, income may be applied for charitable or religious purposes, as the case may be, outside India.
- (ii) if the trust is created on or after the day of April 1952, income should be applied outside India for such purpose which tends to promote international welfare in which India is interested. The amount so spent should be reported under this clause.

The accountant may

- (a) ascertain the date of creation of the institution;
- (b) obtain a copy of Board's order exempting the relevant income ;
- (c) ascertain the purpose for which the amount has been applied and
- (d) examine specifically whether there are special exemptions by Board's Order of certain incomes which are not forming part of the income.

Part I - Clause 5

Amount of income, in addition to the amount referred to in item 3 above, accumulated or set apart for specified purposes under section 11(2).

Section 11(2) provides that where eighty five per cent of the income referred to in clause (a) or clause (b) of sub-section (1) read with Explanation to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income provided the following conditions are complied with namely:-

- (a) such person furnishes a statement in the prescribed form and in the prescribed 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 five years;
- (b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5);
- (c) the statement referred to in clause (a) is furnished on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year:

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

Sections 11(2)(a) and (b) prescribe the conditions to be observed for successful accumulation in excess of 15 per cent of the trust income. One of the conditions is that such excess percentage is to be kept invested in specified securities and/or deposits. The "manner" has been 'prescribed' in rule 17 which refers to Form No.10 as the form of notice. The time limit for filing Form No. 10 is the same time limit as for filing the return of income under section 139(1). This time limit is prescribed in Rule 17. Paragraph 2 of Form No.10 says that the relevant investments are to be made before the expiry of six months from the end of the previous year In M. CT. Muthia Chettair Family Trust v. ITO [1972] 86 ITR 282 (Mad), affirmed, ITO v. M.C.T. Trust, (1976) 102 ITR 138 (Mad)], and CIT v. Shree Padmanabhaswami

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Temple Trust [(1979) 120 ITR 42 (Ker)], it was held that the words “in the prescribed manner” in section 11(2)(a) do not confer power on the rule-making authority to prescribe a time-limit. That portion of Form No.10 has been declared ultra vires [Also see, S.T.O. v. K.I. Abraham, (1967), 20 STC 367 (SC); Solar Works v. E.S.I. Corporation (1964) 2 MLJ 223 (Mad); CIT v. Shri Krishen Chand Charitable Trust, (1975) 98 ITR 387 (J&K); CIT v. S.R.M.C.T.M. Tiruppani Trust (1984) 150 ITR 642 (Mad)]. This is so because a form cannot quantify a statutory provision or impose a time-limit which the statute does not provide [CIT v. Trustees of Shri Teckchand Chandiram Trust, (1990) 184 ITR 537, 540 (Bom)].

The accountant is advised to

- (a) check whether a resolution has been passed by the Governing Body for accumulation of income for a specific purpose;
- (b) obtain a copy of resolution
- (c) obtain a copy of statement in Form No.10 if filed before completion of audit and note the amount accumulated. The amount so specified shall be reported under this clause and
- (d) In case Form No. 10 has not been furnished and due date for furnishing return of income has not expired, Accountant should take representation from the institution and also make appropriate remarks in the report.

It has been held in Mermanjeet Trust v. CIT 148 ITR 214 (P & H) and Trustees of Tulsidas Gopalji Charitable Trust v. CIT

207 ITR 368 (Bom) that if Form No.10 is filed after time limit prescribed by section 139(1) but before completion of assessment, the assessee will be entitled for exemption. Similar inference may also be drawn from the judgement of Apex Court in CIT v. Nagpur Hotel Owners Association 247 ITR 201 (SC).

Further the Auditor has to verify whether the Trust has filed Form No.10 informing the Assessing Officer of such accumulation and purpose of such accumulation. Such accumulation is allowed only for the period of Five Years. However in case of Arhatic Yoga Ashram Management Trust Vs ITO (ITAT) Chennai Appeal No. I.T.A. No. 2920/2017 dated 20-01-2021 it was held that the Assessing Officer cannot deny the exemption merely for the reason that the fact was not mentioned in Form 10 provided such income is accumulated or set apart is for specified purpose and such purpose is specified in the main objects of the Trust Deed.

The same view is also taken by Hon'ble Gujrat High Court in case of CIT(Exemption) Vs Bochasanwasi Shri Akshar Purshottam Public Charitable Trust reported in 2019 102 Taxmann.com 122. The Hon'ble Supreme Court reported in 2019 263 Taxmann.com 247 (SC) has dismissed SLP filed by the Department in the above case and has upheld the findings of the Hon'ble Gujrat High Court that lack of declaration in Form 10 regarding the specific purpose for which the funds are accumulated by Trust would not be fatal to the exemption claimed u/s 11(2).

Part I - Clause 6

Investment or deposit in the prescribed manner Whether the amount of income mentioned in item 5 above has been invested or deposited in the manner laid down in section 11(2) (b)? If so, the details thereof

An institution can exercise an option under section 11(2) to accumulate specified incomes. Section 11(2)(b) requires the money accumulated or set apart as mentioned in item five above to be invested or deposited in the forms or modes specified in sub-section (5) of section 11.

The accountant has to state against clause no. 6 whether the amount of income mentioned in clause no. 5 has been invested or deposited in the prescribed manner. The institution might have complied with this requirement fully or partially. The institution should be requested to prepare a classified chart of its investments/deposits in accordance with the statutory requirements. Depending upon the extent to which compliance has been made by the institution in this regard the accountant has to give the necessary details. Those investments/ deposits which do not comply with the statutory requirements should be segregated and shown separately. Further, it is significant to note that the trustee/principal officer of the institution should undertake that before the expiry of six months commencing from the end of each previous year, the amount so accumulated or set apart has been/will be invested or deposited in any one or more of the forms or modes specified in sub-section (5) of section 11. This requirement is mentioned in Form No.10.

The accountant may

- (a) check whether the amount has been invested within six months from the end of the previous year;
- (b) obtain the details of investments made from the books of account and investment register;

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- (c) check whether the investment or deposit made are only in the forms and modes specified in section 11(5);
- (d) wherever he considers necessary, physically or electronically in demat account etc. verify the investments made by the institution as per section 11(5) and
- (e) report the details of investments

The deposits or investments in modes or forms mentioned in section 11(5) is mandatory and if the trust fails to do so then the Auditor has to highlight the fact in the Audit Report as such amount which was required to be invested or deposited u/s 11(5) will amount to violation u/s 13(1)(d) of the Act and therefore the exemption that is available u/s 11(1)(a) of the Act will not be available w.e.f 28-02-1983. Therefore the trust is liable to pay tax only on the amount which was required to be invested or deposited and not on the entire income of the Trust.

Part I - Clause 7

Whether any part of the income in respect of which an option was exercised under clause (2) of the Explanation to section 11(1) in any earlier year is deemed to be income of the previous year under section 11(1B)? If so, the details thereof.

Section 11(1B) provides that where any income in respect of which an option is exercised under clause (2) of the Explanation to sub-section (i) is not applied to charitable or religious purposes in India during the period referred to sub-clause (a) or, as the case may be, sub-clause (b), of the said clause then such income shall be deemed to be the income of the person as provided therein.

The accountant may

- (a) check whether any option under the relevant section had been exercised in any of the earlier years and also obtain management representation to this effect;
- (b) analyse whether the option, if exercised, is towards
 - (i) non-receipt of income or
 - (ii) any other reason;
- (c) if the option is for non-receipt of income, check the year of receipt. For the current year, he should check whether the same had been

received in the immediately preceding previous year and the amount, if any, applied for charitable purpose; or otherwise

- (d) if the option is for any other reason, check whether the same has been applied in the current year since the option should have been exercised in the immediately preceding previous year only and
- (e) where the amount or part thereof is not utilised during the current previous year as emerging from (c) or (d) above should be reported under this clause.

Thus, give the details of such deemed income clearly stating the particular year to which such deemed income relates.

In this clause the Auditor has to verify whether the Trust has either received or has paid out of the income of the trust or out of accumulated funds, towards Corpus to any Trust or institution registered u/s 10(23C) or 12AA or 12AB of the Act, then such contribution made, shall not be treated as application of Income and if any such contribution is received by the Trust shall be considered as income of the Trust u/s 11(1B) of the Act.

Part I - Clause 8

Whether, during the previous year, any part of income accumulated or set apart for specified purposes under section 11(2) in any earlier year-

- (a) **has been applied for purposes other than charitable or religious purposes or has ceased to be accumulated or set apart for application thereto, or**
- (b) **has ceased to remain invested in any security referred to in section 11(2)(b)(i) or deposited in any account referred to in section 11(2)(b)(ii) or section 11(2)(b)(iii), or**
- (c) **has not been utilised for purposes for which it was accumulated or set apart during the period for which it was to be accumulated or set apart, or in the year immediately following the expiry thereof?**

If so, details thereof

Editorial Note: In clause (b), reference to section 11(2)(b)(i), 11(2)(b)(ii) and 11(2)(b)(iii) appears to be a mistake and it appears reference should be made to sections 11(5)(i), 11(5)(ii) and 11(5)(iii) respectively.

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Section 11(3) provides that where any part of the income accumulated or set apart for specified purposes under section 11(2) in any earlier year has not been applied for charitable purposes or has ceased to remain invested in specified securities or has not been utilised for purposes for which it was accumulated, then it will be treated as income in the year in which such non-compliance occurs.

The accountant should scrutinise the financial statements and audit reports of earlier years for ascertaining accumulations made by the trust or institution in earlier years. This information shall also be available from Form No.10 furnished in the earlier years. Also ascertain, application of income in the current year out of the accumulations of earlier year(s).

Many a time the accountant may not be in a position to get all the particulars required by the above clause. Hence, he can obtain a management representation and thereafter verify the particulars as given by the management and give the same under this clause.

It is possible that the law governing the institution has a provision for maintaining investment Register. The same, if available, may be seen and after comparing with the accounts, be used to address answer to the clause.

The accountant may

- (a) check the amount spent out of accumulated income of the relevant earlier year/s or not so spent from the sources mentioned above and whether it was spent for the same object for which it was accumulated or not so spent. If not, he should specifically mention the deviation. He should ascertain whether the application/ permission for change of object was made/obtained or not;
- (b) if the amount accumulated has ceased to be so accumulated or was not spent for the object for which it was accumulated, verify the necessary resolution and should account for such income accordingly;
- (c) If permission is received, there is no violation. However, where permission is sought and not received, the fact should be appropriately mentioned in the report.
- (d) check whether the accumulated amount has ceased to remain invested as per section 11(5) and if any deviation is noted, report the same;
- (e) verify the investments at the end of every year;

Annexure to Form No. 10B

- (f) examine the accounting treatment and taxability of the accumulated surplus if the same has not been spent or period of accumulation has expired;
- (g) ascertain the present position of each such accumulation and investment to verify the following:
 - (i) whether the accumulated amount has been utilised for purposes other than charitable or religious purposes;
 - (ii) whether it has ceased to be accumulated or set apart for accumulation thereto;
 - (iii) whether the corresponding investment is in tact or has ceased to remain invested in any approved form;
 - (iv) whether the period for which it was accumulated has expired or not. If it has expired whether the accumulated portion has been used for the purpose for which it was accumulated within that period or in the year immediately following the expiry thereof and
- (h) prepare a detailed chart as given in Schedule I of return Form No. 7 in order to have effective control over such accumulations and investments.

SCHEDULE I

Details of amounts accumulated / set apart within the meaning of section 11(2) or in terms of third proviso to section 10(23C)/10(21) read with section 35(1):-

Year of accumulation (F.Y.)	Amount accumulated in the year of accumulation	Purpose of accumulation 11(5)	Amount applied for charitable/religious/scientific/social science or statistical research purposes upto the beginning	Balance to be applied (2-4)	Amounts applied for charitable or religious or scientific or social science or statistical	Amount applied for purposes other than the purpose for which such accumulation was made (if applicable)	Amount credited or paid to any trust or institution registered u/s 12AA/12AB or approved under subclauses
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			g of the previous year		research purpose during the previous year out of previous years' accumulation	le)	(iv)/(v)/(vi)/(via) of clause (23C) of section 10 (if applicable)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

Year of accumulation (F.Y.)	Balance amount available for application (9) = (5) – (6) – (7) – (8)	Amount invested or deposited in the modes specified in section 11(5) out of 9	Amount invested or deposited in the modes specified in section 11(5) out of 9	Amount which is not utilized during the period of accumulation (if applicable)	Amount deemed to be income within meaning of subsection (3) of section 11 (if applicable) 13=(7)+(8)+(11)+(12)
	(9)	(10)	(11)	(12)	(13)

Part II - Application or use of income or property for the benefit of persons referred to in section 13(3)

Section 13 prescribes various situations where exemption available to the charitable and religious institutions under section 11 or section 12 shall not apply. Section 13(1) provides that exemption under section 11 or section 12 shall not operate in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof—

- (i) if such trust or institution has been created or established after the commencement of this Act and under the terms of the trust or the rules governing the institution, any part of such income enures, or
- (ii) if any part of such income or any property of the trust or the institution (whenever created or established) is during the previous year used or applied,

directly or indirectly for the benefit of any person referred to in section 13(3), such part of income as referred to in sub-clauses (i) and (ii). Further, under the said sub-section, exemption is also not available where the institution invests its funds otherwise than the forms or modes specified under section 11(5) or the institution holds any shares in a company except in a public sector company or shares prescribed under section 11(5).

This part requires details of application or use of income or property for the benefit of persons referred to in section

13(3). These details are necessary because under section

13(1)(c), exemption is not available under section 11 or 12 in respect of any part of income or any property of the institution used or applied directly or indirectly for the benefit of any person referred to in sub-section (3) of section 13. However, as per proviso to section 13(2)(g) any application of income or property upto Rs.1000/- in favour of the specified persons would not disentitle the institutions from exemption.

The details required to be furnished by the accountant as mentioned from items 1 to 8 of Part II of the Annexure are in respect of transactions amounting to utilisation of the income or properties of the institution for the benefit of a specified category of persons. The accountant should obtain management representation which includes the list of the persons and also transaction with them during the year in respect of persons referred to in section 13(3) on which he can rely. The CBDT has accepted this view vide Circular No.143 [L.F.No.180/74/73- IT(A1)] dated 20.8.1974 vide Annexure - V.

Text of section 13 has been furnished in annexure. A list of persons referred to in sub-section (3) of section 13 can be seen from the said Annexure.

In this part, clauses have been employed to solicit information about possible denial of exemption under sub-section (1) or (2) of section 13. Denial of exemption in respect of use of income, movable property, land, building or other property is made, if there is inadequate security or compensation. Similarly, where any salary, allowance or other payment is made, the denial provisions will attract only if the same is not reasonable. Further, in case of sale or purchase of property or investment of trust fund is made for inadequate consideration or compensation. It should be noted that in clauses under part II, auditor is expected to give information about amount of consideration or compensation, security etc. as per books of account or other record of the institution. Auditor is not supposed to offer any view about consideration or compensation being adequate or otherwise.

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Also, an auditor may get a management representation in respect of information reported in various clauses in appropriate circumstances.

Part II - Clause 1

Whether any part of the income or property of the trust/institution was lent, or continues to be lent, in the previous year to any person referred to in section 13(3) (hereinafter referred to in this Annexure as such person)? If so, give details of the amount, rate of interest charged and the nature of security, if any

Clause (a) of section 13(2) provides that if any part of the income or property of the trust or institution is, or continues to be, lent to any person referred to in sub-section (3) for any period during the previous year without either adequate security or adequate interest or both, then it shall be deemed to have been used or applied for the benefit of a person referred to in section 13(3). Since particulars required in clause 2 are specifically concerning land, building or other property, the word property in this clause should be construed so as to exclude any immovable property.

In respect of the first part of question, the accountant should:

- (a) examine books of account to check whether any income has been lent in the previous year to the persons referred in section 13(3)
- (b) analyse the receivables and find out whether it includes the names of any such persons;
- (c) ascertain whether the given amount is a loan/deposit and
- (d) if it is a loan/deposit, verify the documents, securities offered and rate of interest.
- (e) To check from property register and record whether property of the institution is lent and continues to be lent to the persons referred to in section 13(3)

If answer to first part is in the affirmative, then the Accountant should:

- (a) examine the books of account to find out amount received in connection with the lending of any income or property used and rate of interest charged,
- (b) examine relevant agreement or documents to find out whether any security has been offered and nature of such security,
- (c) resolutions passed by the Governing body or general body of the institution approving such lending.
- (d) If it is not received, then it should be accordingly reported.

Part II - Clause 2

Whether any land, building or other property of the *trust/institution was made, or continued to be made, available for the use of any such person during the previous year? If so, give details of the property and the amount of rent or compensation charged, if any

Clause (b) of section 13(2) provides that if any land, building or other property of the trust or institution is, or continues to be, made available for the use of any person referred to in section 13(3), for any period during the previous year without charging adequate rent or other compensation, then it shall be deemed to have been used or applied for the benefit of a person referred to in section 13(3). In order to answer both parts of this clause, the auditor should follow procedure similar to the one stated under Part II – Clause 1 herein above with a difference that while clause 1 is applicable for lending of income or property, this clause i.e. clause 2 is in respect of making available land, building or other property. In this clause, meaning of 'other property' should be construed as immovable property, in view of the fact that clause 1 of Part II addresses any property other than immovable property.

The accountant may check Fixed asset register or take the list of assets owned by the institution;

- (a) Physical verification of property of the trust or institution and ascertain whether any property (land or building) is used and income is not accounted from such property
- (c) ascertain whether the assets have been made available for the use of specified persons and
- (d) report the details of rent or compensation charged.
- (e) If it is not received, then it should be accordingly reported.

Part II - Clause 3

Whether any payment was made to any such person during the previous year by way of salary, allowance or otherwise? If so, give details

Clause (c) of section 13(2) provides that if any amount is paid by way of salary, allowance or otherwise during the previous year to any person referred to in section 13(3) out of the resources of the trust or institution for services rendered by that person to such trust or institution and the amount so paid is in excess of what may be reasonably paid for such services, then it

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shall be deemed to have been used or applied for the benefit of a person referred to in section 13(3). In order to answer this clause, the auditor can

- (a) examine books of account to check whether any payment by way of salary, allowance or otherwise has been made in the previous year to the persons referred in section 13(3).
- (b) Check the details of payment of the salary, professional fees and allowance (from ledgers) whether name of specified person is included in it or not?
- (c) Payment to persons mentioned in section 13(3) should be stated in this clause.
- (d) It includes only payment and not the reimbursements.
- (c) It is also noted that the clause is silent about provision of any perquisite in kind.

Part II - Clause 4

Whether the services of the *trust/ institution were made available to any such person during the previous year? If so, give details thereof together with remuneration or compensation received, if any

Clause (d) of section 13(2) provides that if the services of the trust or institution are made available to any person referred to in section 13(3) during the previous year without adequate remuneration or other compensation, then it shall be deemed to have been used or applied for the benefit of a person referred to in section 13(3). It may be noted that sub-section (2) of section 12 provides that the value of any services, being medical or educational services, made available by any charitable or religious trust running a hospital or medical institution or an educational institution, to any person referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-section (3) of section 13, shall be deemed to be income of such trust or institution derived from property held under trust wholly for charitable or religious purposes during the previous year in which such services are so provided and shall be chargeable to income-tax notwithstanding the provisions of sub-section (1) of section 11.

The auditor should examine books of account, minutes of Management or General body meeting, other relevant records of the institution to ascertain whether any services of the institution were made available to any person/s referred to in section 13(3). The other relevant record can be say, patients register for hospital/medical institutions, students register for school/college,

members' register for library etc. Where the answer is in affirmative, it is necessary to ascertain amount of remuneration or compensation received and to report the same. If it is not received, then it should be accordingly reported.

Part II - Clause 5

Whether any share, security or other property was purchased by or on behalf of the trust/institution during the previous year from any such person? If so, give details thereof together with the consideration paid

Clause (e) of section 13(2) provides that if any share, security or other property is purchased by or on behalf of the trust or institution from any person referred to in section 13(3) during the previous year for consideration which is more than adequate, then it shall be deemed to have been used or applied for the benefit of a person referred to in section 13(3).

The auditor should examine books of account, minutes of Management or General body meeting, investment register/schedule, other relevant records of the institution and investment register to ascertain whether any share, security or other property was purchased by or on behalf of the trust/institution during the previous year from any person/s referred to in section 13(3). Where such purchase has been made, particulars of shares, security or other property purchased along with amount of consideration paid respectively to be reported. If it is not purchased, then it should be accordingly reported.

Part II - Clause 6

Whether any share, security or other property was sold by or on behalf of the *trust/institution during the previous year to any such person? If so, give details thereof together with the consideration received

Clause (f) of section 13(2) provides that if any share, security or other property is sold by or on behalf of the trust or institution to any person referred to in section 13(3) during the previous year for consideration which is less than adequate, then it shall be deemed to have been used or applied for the benefit of a person referred to in section 13(3).

The auditor should examine books of account, minutes of Management or General body meeting, investment register/schedule, other relevant records of the institution and investment register to ascertain whether any share, security or other property was sold by or on behalf of the trust/institution during the previous year from any person/s referred to in section 13(3). Where such sale has been made, particulars of shares, security or other

property sold along with amount of consideration paid respectively to be reported. If it is not sold, then it should be accordingly reported.

Part II - Clause 7

Whether any income or property of the *trust/institution was diverted during the previous year in favour of any such person? If so, give details thereof together with the amount of income or value of property so diverted

Clause (g) of section 13(2) provides that if any income or property of the trust or institution is diverted during the previous year in favour of any person referred to in section 13(3), then it shall be deemed to have been used or applied for the benefit of a person referred to in section 13(3). However, where the income, or the value of the property or, as the case may be, the aggregate of the income and the value of the property, so diverted does not exceed Rs 1,000; then the aforesaid deeming fiction shall not apply.

The auditor should examine books of account, minutes of Management or General body meeting, property register, other relevant records of the institution, investment register and property register to ascertain whether any income or property of the trust/institution was diverted during the previous year in favour of any person/s referred to in section 13(3). Where such income or property has been diverted, particulars of amount of income or value of property to be reported. If it is not made, then it should be accordingly reported.

Any decline in income of the institution without any prima facie reason as compared to the previous year may indicate the need to further examine the relevant documents to ascertain whether any diversion of income or property has taken place. The accountant should get a management representation in respect of any such diversion of income or property and verify such details and report the same under this clause.

Part II - Clause 8

Whether the income or property of the *trust/institution was used or applied during the previous year for the benefit of any such person in any other manner? If so, give details

Clause (h) of section 13(2) provides that if any funds of the trust or institution are, or continue to remain, invested for any period during the previous year, in any concern in which any person referred to in section 13(3) has a substantial interest, then it shall be deemed to have been used or applied for the benefit of a person referred to in section 13(3).

Annexure to Form No. 10B

The auditor should examine books of account, minutes of Management or General body meeting, other relevant records of the institution, investment register and property register to ascertain whether the income or property of the trust/institution was used or applied during the previous year for the benefit of any person/s referred to in section 13(3) in any other manner. It should also be checked whether any trust property has been offered as a security for borrowings by such persons or any guarantee is provided by the institution for benefit of such persons. Where such income or property has been applied or used in any other manner, particulars of amount of income or value of property to be reported. If it is not applied or used, then it should be accordingly reported.

III. Investments held at any time during the previous year(s) in concerns in which persons referred to in section 13(3) have a substantial interest

S. No.	Name and address of the concern	Where the concern is a company, number and class of shares held	Nominal value of the investment	Income from the investment	Whether the amount in col. 4 exceeds 5 per cent of the capital of the concern during the previous year-say, Yes/No
1	2	3	4	5	6
Total					

Sub-section (3) of section 13 gives details of persons for whose benefit the income or property of the institution should not be used. Text of section 13 has been furnished in annexure. A list of persons referred to in sub-section (3) of section 13 can be seen from the said Annexure.

The funds of the institution should be invested in such modes or investment as prescribed under section 11(5) of the Act. concern mentioned in (f) above. Part III of the annexure requires details of investments held by the institution in concerns in which persons referred to in sub-section (3) of section 13 have

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substantial investment during the previous year. Explanation 3 to section 13 provides that a person shall be deemed to have a substantial interest in a concern,—

- (i) in a case where the concern is a company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than twenty per cent of the voting power are, at any time during the previous year, owned beneficially by such person or partly by such person and partly by one or more of the other persons referred to in sub-section (3);
- (ii) in the case of any other concern, if such person is entitled, or such person and one or more of the other persons referred to in sub-section (3) are entitled in the aggregate, at any time during the previous year, to not less than twenty per cent of the profits of such concern.

The auditor should

- (a) examine books of account, minutes of Management or General body meeting, other relevant records of the institution, investment register and property register examine;
- (b) verify the investments of the institution and ascertain whether any investments have been made in the concerns referred to herein above;
- (c) verify the investments physically or from electronic record like demat account;
- (d) Check whether the concern is a company and if yes, number and class of shares;
- (c) verify the nominal value of investments;
- (d) verify the details of income from such investments and
- (e) get a certificate for the amount of capital of the concern and calculate the percentage of the institution's investment in that concern.

Representation Letter

The accountant should get a management representation in respect of application of any income or property for the benefit of specified persons in any other manner and verify such details and report the same under this clause. This is particularly necessary, as it is practically difficult for an auditor to find out benefit accorded to persons specified under section 13(3) in case of hospitals, educational institutions, sports associations, libraries etc where thousands of persons take benefit or advantage of facilities and assets of the trust or institution.

Medical or educational services

The accountant should get a management representation in respect of any medical or educational services made available to the prohibited category of persons in terms of section 12(2) and report the same under this clause.

Furnishing of audit report

A charitable trust is entitled to claim exemption from income-tax, even if the audit report is submitted before completion of assessment or in course of appellate proceedings as laid down in CIT v. Hardeodas Agarwala Trust (1992) 198 ITR 511 (Cal). Same view was reiterated in CIT v. Shahzedanand Charity Trust – (1997) 228 ITR 292 (PH), as well as in CIT v. Devradhan Madhavallal Genda Trust – (1998) 230 ITR 714 (MP). Further in view of the judgement of the Hon'ble Supreme Court in the case of CIT vs. Nagpur Hotel Owners' Association 247 ITR 201, it can be inferred that the audit report cannot be filed after the assessment is completed.

Normally, it should be possible for a charitable or religious trust or institution to file the auditor's report along with the return of total income where such trust or institution claims exemption under sections 11 and 12. However, in cases where for reasons beyond the control of the assessee some delay has occurred in filing the said report the exemption as available to such trust under sections 11 and 12 may not be denied merely on account of delay in furnishing the auditor's report and the Income-tax Officer should record reasons for accepting a belated audit report.

The requirement of furnishing an audit report 'along with the return', as contained in section 12A(b)(ii), is not a mandatory condition but is a directory one. In that view of the matter, a trust is entitled to exemption under section 11 even though the audit report is filed before the completion of the assessment for the relevant assessment year [CIT v. Rai Bahadur Bissesswarlal Motilal Halwasia Trust, (1992) 195

ITR 825, 832 (Cal)]. This is so because, if the audit report is not filed along with the return, the return becomes defective and the Assessing Officer should give an opportunity to the assessee to submit the audit report to rectify the defect before completion of the assessment. Where an assessee, in compliance with the provisions of the Act, cures the defect in the return by filing the audit report before the completion of the assessment, the Assessing Officer cannot ignore such audit report or the return in completing the assessment [CIT v. Rai Bahadur Bissesswarlal Motilal Halwasia Trust, (1992) 195 ITR 825, 832 (Cal)].

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The Board by issuing the circular dated 9-2-1978 "Charitable trust-Requirement of filing audit report in Form 10B--Section 12A(b)—Instructions regarding.--The Board have considered whether the requirement under Section 12A(b)(ii) of filing audit report 'along with the return of income' is mandatory so as to disentitle the trust from claiming exemption under Sections 11 and 12 in case of omission to furnish such report in the prescribed form along with the return.

Normally, it should be possible for a charitable or religious trust or institution to file the auditor's report along with the return of total income, where such trust or institution claims exemption under Sections 11 and 12. However, in cases where for reasons beyond the control of the assessee some delay has occurred in filing the said report the exemption as available to such trust under Sections 11 and 12 may not be denied merely on account of delay in furnishing the auditor's report and the Income-tax Officer should record reasons for accepting a belated audit report.

Issuing and Uploading Audit Report

A audit report should be issued by the auditor in Form No. 10B These should be in hard copy physically signed or soft copy digitally signed by the auditor. Form, at the end require signature and stamp/seal of the signatory.

Audit report is required to be submitted electronically on the income-tax e filing portal. It requires the auditor to upload Form 10B. Uploading is the process of furnishing report as per section 12(1)(b)(ii) The same are required to be digitally signed. UDIN is required to be updated. This is the prescribed procedure for filing of audit report.

Chapter 10

Appendix

Provisions of Income-tax Act, 1961

1. Definition of Charitable Purpose:-

As per section 2(15) "charitable purpose" includes relief of the poor, education, yoga, 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 the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering 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 the trust or institution undertaking such activity or activities, of that previous year;

2. Definition of Income:-

As per Section 2(24) "income" includes—

- (i) profits and gains ;
- (ii) dividend ;
- (iia) voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes or by an association or institution referred to in clause (21) or clause (23)15, or by a fund or trust or institution referred to in sub-clause (iv) or sub-clause (v) or by any university or other educational institution referred to in sub-clause (iiia) or sub-clause (vi) or by any hospital or other institution referred to in

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sub-clause (iiiiae) or sub-clause (via) of clause (23C) of section 10 or by an electoral trust.

Explanation.—For the purposes of this sub-clause, "trust" includes any other legal obligation ;

- (iii) the value of any perquisite or profit in lieu of salary taxable under clauses (2) and (3) of section 17 ;
 - (iiiia) any special allowance or benefit, other than perquisite included under sub-clause (iii), specifically granted to the assessee to meet expenses wholly, necessarily and exclusively for the performance of the duties of an office or employment of profit ;
 - (iiiib) any allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at a place where he ordinarily resides or to compensate him for the increased cost of living ;
- (iv) the value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company, or by a relative of the director or such person, and any sum paid by any such company in respect of any obligation which, but for such payment, would have been payable by the director or other person aforesaid ;
 - (iva) the value of any benefit or perquisite, whether convertible into money or not, obtained by any representative assessee mentioned in clause (iii) or clause (iv) of sub-section (1) of section 160 or by any person on whose behalf or for whose benefit any income is receivable by the representative assessee (such person being hereafter in this sub-clause referred to as the "beneficiary") and any sum paid by the representative assessee in respect of any obligation which, but for such payment, would have been payable by the beneficiary ;
- (v) any sum chargeable to income-tax under clauses (ii) and (iii) of section 28 or section 41 or section 59 ;
 - (va) any sum chargeable to income-tax under clause (iiiia) of section 28 ;
 - (vb) any sum chargeable to income-tax under clause (iiiib) of section 28;

- (vc) any sum chargeable to income-tax under clause (iiic) of section 28 ;
- (vd) the value of any benefit or perquisite taxable under clause (iv) of section 28 ;
- (ve) any sum chargeable to income-tax under clause (v) of section 28
- (vi) any capital gains chargeable under section 45
- (vii) the profits and gains of any business of insurance carried on by a mutual insurance company or by a co-operative society, computed in accordance with section 44 or any surplus taken to be such profits and gains by virtue of provisions contained in the First Schedule
 - (viiia) the profits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society with its members
- (viii) [Omitted by the Finance Act, 1988, w.e.f. 1-4-1988. Original sub-clause (viii) was inserted by the Finance Act, 1964, w.e.f. 1-4-1964;]
- (ix) any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever.

Explanation.-For the purposes of this sub-clause,—

 - (i) "lottery" includes winnings from prizes awarded to any person by draw of lots or by chance or in any other manner whatsoever, under any scheme or arrangement by whatever name called;
 - (ii) "card game and other game of any sort" includes any game show, an entertainment programme on television or electronic mode, in which people compete to win prizes or any other similar game;
- (x) any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or any fund set up under the provisions of the Employees' State Insurance Act, 1948 (34 of 1948), or any other fund for the welfare of such employees
- (xi) any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy.

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Explanation—For the purposes of this clause*, the expression "Keyman insurance policy" shall have the meaning assigned to it in the Explanation to clause (10D) of section 10

- (xii) any sum referred to in clause (va) of section 28
 - (xiiia) the fair market value of inventory referred to in clause (via) of section 28;
- (xiii) any sum referred to in clause (v) of sub-section (2) of section 56;
- (xiv) any sum referred to in clause (vi) of sub-section (2) of section 56;
- (xv) any sum of money or value of property referred to in clause (vii) or clause (viiia) of sub-section (2) of section 56;
- (xvi) any consideration received for issue of shares as exceeds the fair market value of the shares referred to in clause (viiib) of sub-section (2) of section 56;
- (xvii) any sum of money referred to in clause (ix) of sub-section (2) of section 56;
 - (xviiia) any sum of money or value of property referred to in clause (x) of sub-section (2) of section 56;
 - (xviiib) any compensation or other payment referred to in clause (xi) of sub-section (2) of section 56;
- (xviii) assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee other than,—
 - (a) the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provisions of Explanation 10 to clause (1) of section 43; or
 - (b) the subsidy or grant by the Central Government for the purpose of the corpus of a trust or institution established by the Central Government or a State Government, as the case may be;

3. Section 11: Income from property held for charitable or religious purposes

(1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income—

- (a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of [fifteen] per cent of the income from such property;
- (b) income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India; and, where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of [fifteen] per cent of the income from such property;
- (c) income [derived] from property held under trust—
 - (i) created on or after the 1st day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and
 - (ii) for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India:

Provided that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income;

- (d) income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution. [,subject to the condition that such voluntary contributions are invested or deposited in one or more of the forms or modes specified in sub-section (5) maintained specifically for such corpus].

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Explanation 1.—For the purposes of clauses (a) and (b),—

- (1) in computing the [fifteen] per cent of the income which may be accumulated or set apart, any such voluntary contributions as are referred to in section 12 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 [eighty-five] per cent of the income derived during that year from property held under trust, or, as the case may be, held under trust in part, by any amount—
 - (i) for the reason that the whole or any part of the income has not been received during that year, or
 - (ii) for any other reason, Then-
 - (a) in the case referred to in sub-clause (i), so much of the income applied to such purposes in India during the previous year in which the income is received or during the previous year immediately following as does not exceed the said amount, and
 - (b) in the case referred to in sub-clause (ii), so much of the income applied to such purposes in India during the previous year immediately following the previous year in which the income was derived as does not exceed the said amount,

may, at the option of the person in receipt of the income (such option to be exercised in writing before the expiry of the time allowed under sub-section (1) of section 139 for furnishing the return of income) be deemed to be income applied to such purposes during the previous year in which the income was derived; and the income so deemed to have been applied shall not be taken into account in calculating the amount of income applied to such purposes, in the case referred to in sub-clause (i), during the previous year in which the income is received or during the previous year immediately following, as the case may be, and, in the case referred to in sub-clause (ii), during the previous year immediately following the previous year in which the income was derived.

Explanation 2.—Any amount credited or paid, out of income referred to in clause (a) or clause (b) read with Explanation 1, [to any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 or other trust or institution registered under section 12AA or section 12AB, as the case may be], being contribution with a specific direction that it shall form part of

the corpus], shall not be treated as application of income for charitable or religious purposes.

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 and sub-sections (3) and (3A) of section 40A, shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head "Profits and gains of business or profession".

[Explanation 3A.—For the purposes of this sub-section, where the property held under a trust or institution includes any temple, mosque, gurdwara, church or other place notified under clause (b) of sub-section (2) of section 80G, any sum received by such trust or institution as voluntary contribution for the purpose of renovation or repair of such temple, mosque, gurdwara, church or other place, may, at its option, be treated by such trust or institution as forming part of the corpus of the trust or the institution, subject to the condition that the trust or the institution,—

- (a) applies such corpus only for the purpose for which the voluntary contribution was made;
- (b) does not apply such corpus for making contribution or donation to any person;
- (c) maintains such corpus as separately identifiable; and
- (d) invests or deposits such corpus in the forms and modes specified under sub-section (5) of section Explanation 3B.—For the purposes of Explanation 3A, where any trust or institution has treated any sum received by it as forming part of the corpus, and subsequently any of the conditions specified in clause (a) or clause (b) or clause (c) or clause (d) of the said Explanation is violated, such sum shall be deemed to be the income of such trust or institution of the previous year during which the violation takes place.]

[Explanation 4.—For the purposes of determining the amount of application under clause (a) or clause (b),—

- (i) application for charitable or religious purposes from the corpus as referred to in clause (d) of this sub-section, shall not be treated as application of income for charitable or religious purposes:

Provided that the amount not so treated as application, or part thereof, shall be treated as application for charitable or religious purposes in the previous year in which the amount, or part thereof, is invested or

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deposited back, into one or more of the forms or modes specified in sub-section (5) maintained specifically for such corpus, from the income of that year and to the extent of such investment or deposit; and

- (ii) application for charitable or religious purposes, from any loan or borrowing, shall not be treated as application of income for charitable or religious purposes:

Provided that the amount not so treated as application, or part thereof, shall be treated as application for charitable or religious purposes in the previous year in which the loan or borrowing, or part thereof, is repaid from the income of that year and to the extent of such repayment.

Explanation 5.—For the purposes of this sub-section, it is hereby clarified that the calculation of income required to be applied or accumulated during the previous year shall be made without any set off or deduction or allowance of any excess application of any of the year preceding the previous year.]

For the purposes of sub-section (1),—

- (a) where a capital asset, being property held under trust wholly for charitable or religious purposes, is transferred and the whole or any part of the net consideration is utilised for acquiring another capital asset to be so held, then, the capital gain arising from the transfer shall be deemed to have been applied to charitable or religious purposes to the extent specified hereunder, namely:—
 - (i) where the whole of the net consideration is utilised in acquiring the new capital asset, the whole of such capital gain ;
 - (ii) where only a part of the net consideration is utilised for acquiring the new capital asset, so much of such capital gain as is equal to the amount, if any, by which the amount so utilised exceeds the cost of the transferred asset;
- (b) where a capital asset, being property held under trust in part only for such purposes, is transferred and the whole or any part of the net consideration is utilised for acquiring another capital asset to be so held, then, the appropriate fraction of the capital gain arising from the transfer shall be deemed to have been applied to charitable or religious purposes to the extent specified hereunder, namely:—
 - (i) where the whole of the net consideration is utilised in acquiring

the new capital asset, the whole of the appropriate fraction of such capital gain;

- (ii) in any other case, so much of the appropriate fraction of the capital gain as is equal to the amount, if any, by which the appropriate fraction of the amount utilised for acquiring the new asset exceeds the appropriate fraction of the cost of the transferred asset.

Explanation.—In this sub-section,—

- (i) “appropriate fraction” means the fraction which represents the extent to which the income derived from the capital asset transferred was immediately before such transfer applicable to charitable or religious purposes;
- (ii) “cost of the transferred asset” means the aggregate of the cost of acquisition (as ascertained for the purposes of sections 48 and 49) of the capital asset which is the subject of the transfer and the cost of any improvement thereto within the meaning assigned to that expression in sub-clause (b) of clause (1) of section 55;
- (iii) “net consideration” means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

(1B) Where any income in respect of which an option is exercised under clause (2) of the Explanation to sub-section (1) is not applied to charitable or religious purposes in India during the period referred to in sub-clause (a) or, as the case may be, sub-clause (b), of the said clause, then, such income shall be deemed to be the income of the person in receipt thereof—

- (a) in the case referred to in sub-clause (i) of the said clause, of the previous year immediately following the previous year in which the income was received; or
- (b) 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.

(2) Where [eighty-five] per cent of the income referred to in clause (a) or clause (b) of sub-section (1) read with the Explanation to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious

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purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:—

- (a) such person specifies, by notice in writing given to the [Assessing] Officer in the prescribed manner, 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 ten years;
- (b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5).

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

Provided further that in respect of any income accumulated or set apart on or after the 1st day of April, 2001, the provisions of this sub-section shall have effect as if for the words “ten years” at both the places where they occur, the words “five years” had been substituted.

Explanation.—Any amount credited or paid, out of income referred to in clause (a) or clause (b) of sub-section (1), read with the Explanation to that sub-section, which is not applied, but is accumulated or set apart, to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, shall not be treated as application of income for charitable or religious purposes, either during the period of accumulation or thereafter.

- (3) Any income referred to in sub-section (2) which—
 - (a) is applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto, or
 - (b) ceases to remain invested or deposited in any of the forms or modes specified in sub-section (5), or

- (c) is not utilized for the purpose for which it is so accumulated or set apart during the period referred to in clause (a) of that sub-section or in the year immediately following the expiry thereof,
- (d) is credited or paid to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10,]

shall be deemed to be the income of such person of 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 or [credited or paid or], as the case may be, of the previous year immediately following the expiry of the period aforesaid.

(3A) Notwithstanding anything contained in sub-section (3), where due to circumstances beyond the control of the person in receipt of the income, any income invested or deposited in accordance with the provisions of clause (b) of sub-section (2) cannot be applied for the purpose for which it was accumulated or set apart, the Assessing Officer may, on an application made to him in this behalf, allow such person to apply such income for such other charitable or religious purpose in India as is specified in the application by such person and as is in conformity with the objects of the trust; and thereupon the provisions of sub-section (3) shall apply as if the purpose specified by such person in the application under this sub-section were a purpose specified in the notice given to the Assessing Officer under clause (a) of sub-section (2).

Provided that the Assessing Officer shall not allow application of such income by way of payment or credit made for the purposes referred to in clause (d) of sub-section (3) of section 11.

Provided further that in case the trust or institution, which has invested or deposited its income in accordance with the provisions of clause (b) of sub-section (2), is dissolved, the Assessing Officer may allow application of such income for the purposes referred to in clause (d) of sub-section (3) in the year in which such trust or institution was dissolved.

(4) For the purposes of this section “property held under trust” includes a business undertaking so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the Assessing Officer shall have power to determine the

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income of such undertaking in accordance with the provisions of this Act relating to assessment; 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.

Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business.

(5) The forms and modes of investing or depositing the money referred to in clause (b) of sub-section (2) shall be the following, namely :—

- (i) investment in savings certificates as defined in clause (c) of section 2 of the Government Savings Certificates Act, 1959 (46 of 1959), and any other securities or certificates issued by the Central Government under the Small Savings Schemes of that Government;
- (ii) deposit in any account with the Post Office Savings Bank;
- (iii) deposit in any account with a scheduled bank or a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank).

Explanation.—In this clause, “scheduled bank” means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), or any other bank being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934);

- (iv) investment in units of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963);
- (v) investment in any security for money created and issued by the Central Government or a State Government;

- (vi) investment in debentures issued by, or on behalf of, any company or corporation both the principal whereof and the interest whereon are fully and unconditionally guaranteed by the Central Government or by a State Government;
- (vii) investment or deposit in any public sector company:
Provided that where an investment or deposit in any public sector company has been made and such public sector company ceases to be a public sector company,—
 - (A) such investment made in the shares of such company shall be deemed to be an investment made under this clause for a period of three years from the date on which such public sector company ceases to be a public sector company;
 - (B) such other investment or deposit shall be deemed to be an investment or deposit made under this clause for the period up to the date on which such investment or deposit becomes repayable by such company;
- (viii) deposits with or investment in any bonds issued by a financial corporation which is engaged in providing long-term finance for industrial development in India and which is eligible for deduction under clause (viii) of sub-section (1) of section 36;
- (ix) deposits with or investment in any 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 construction or purchase of houses in India for residential purposes and which is eligible for deduction under clause (viii) of sub-section (1) of section 36;
- (ixa) deposits with or investment in any 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 in India.

Explanation.—For the purposes of this clause,—

- (a) “long-term finance” means any loan or advance where the terms under which moneys are loaned or advanced provide for repayment along with interest thereof during a period of not less than five years;
- (b) “public company” shall have the meaning assigned to it in section 3 of the Companies Act, 1956 (1 of 1956);

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(c) “urban infrastructure” means a project for providing potable water supply, sanitation and sewerage, drainage, solid waste management, roads, bridges and flyovers or urban transport;

(x) investment in immovable property.

Explanation.—“Immovable property” does not include any machinery or plant (other than machinery or plant installed in a building for the convenient occupation of the building) even though attached to, or permanently fastened to, anything attached to the earth;

(xi) deposits with the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964 (18 of 1964);

(xii) any other form or mode of investment or deposit as may be prescribed.

(6) In this section where any income is required to be applied or accumulated or set apart for application, then, for such purposes the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this section in the same or any other previous year.

(7) Where a trust or an institution has been granted registration [under section 12AA or section 12AB] or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)] and the said registration is in force for any previous year, then, nothing contained in section 10 [other than [clause (1), clause (23C) and clause (46)] thereof] shall operate to exclude any income derived from the property held under trust from the total income of the person in receipt thereof for that previous year:

[Provided that such registration shall become inoperative from the date on which the trust or institution is approved under clause (23C) of section 10 or is notified under clause (46) of the said section, as the case may be, or the date on which this proviso has come into force, whichever is later:

Provided further that the trust or institution, whose registration has become inoperative under the first proviso, may apply to get its registration operative [under section 12AA] [or section 12AB] subject to the condition that on doing so, the approval under clause (23C) of section 10 or notification under clause (46) of the said section, as the case may be, to such trust or institution shall cease to have any effect from the date on which the said registration becomes operative and thereafter, it shall not be entitled to exemption under the respective clauses.]

[Explanation.—For the purposes of this section, any sum payable by any trust or institution shall be considered as application of income in the previous year in which such sum is actually paid by it (irrespective of the previous year in which the liability to pay such sum was incurred by the trust or institution according to the method of accounting regularly employed by it)

4. Section 12 - Income of trusts or institutions from contributions

(1) Any voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes (not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution) shall for the purposes of section 11 be deemed to be income derived from property held under trust wholly for charitable or religious purposes and the provisions of that section and section 13 shall apply accordingly.

(2) The value of any services, being medical or educational services, made available by any charitable or religious trust running a hospital or medical institution or an educational institution, to any person referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-section (3) of section 13, shall be deemed to be income of such trust or institution derived from property held under trust wholly for charitable or religious purposes during the previous year in which such services are so provided and shall be chargeable to income-tax notwithstanding the provisions of sub-section (1) of section 11.

Explanation.—For the purposes of this sub-section, the expression “value” shall be the value of any benefit or facility granted or provided free of cost or at concessional rate to any person referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-section (3) of section 13.

(3) Notwithstanding anything contained in section 11, any amount of donation received by the trust or institution in terms of clause (d) of sub-section (2) of section 80G in respect of which accounts of income and expenditure have not been rendered to the authority prescribed under clause (v) of sub-section (5C) of that section, in the manner specified in that clause, or which has been utilised for purposes other than providing relief to the victims of earthquake in Gujarat or which remains unutilised in terms of sub-section (5C) of section 80G and not transferred to the Prime Minister's National Relief Fund on or before the 31st day of March, 2004 shall be deemed to be the income of the previous year and shall accordingly be charged to tax.

5. Section 12A - Conditions for applicability of sections 11 and 12

(1) The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:—

- (a) the person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and in the prescribed manner to the Commissioner before the 1st day of July, 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution, [whichever is later and such trust or institution is registered under section 12AA.

Provided that where an application for registration of the trust or institution is made after the expiry of the period aforesaid, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution,—

- (i) from the date of the creation of the trust or the establishment of the institution if the Commissioner is, for reasons to be recorded in writing, satisfied that the person in receipt of the income was prevented from making the application before the expiry of the period aforesaid for sufficient reasons;
- (ii) from the 1st day of the financial year in which the application is made, if the Commissioner is not so satisfied:

Provided further that the provisions of this clause shall not apply in relation to any application made on or after the 1st day of June, 2007;

- (aa) the person in receipt of the income has made an application for registration of the trust or institution on or after the 1st day of June, 2007 in the prescribed form and manner to the Commissioner and such trust or institution is registered under section 12AA;
- (ab) the person in receipt of the income has made an application for registration of the trust or institution, in a case where a trust or an institution has been granted registration under section 12AA or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)], and, subsequently, it has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, in the prescribed form and manner, within a period of thirty days from the date of said adoption or modification, to the Principal Commissioner or Commissioner and such trust or institution is registered under section 12AA;

- [(ac) notwithstanding anything contained in clauses (a) to (ab), the person in receipt of the income has made an application in the prescribed form and manner to the Principal Commissioner or Commissioner, for registration of the trust or institution,—
- (i) where the trust or institution is registered under section 12A [as it stood immediately before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)] or under section 12AA [as it stood immediately before its amendment by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (38 of 2020)], within three months from the first day of April, 2021;
 - (ii) where the trust or institution is registered under section 12AB and the period of the said registration is due to expire, at least six months prior to expiry of the said period;
 - (iii) where the trust or institution has been provisionally registered under section 12AB, at least six months prior to expiry of period of the provisional registration or within six months of commencement of its activities, whichever is earlier;
 - (iv) where registration of the trust or institution has become inoperative due to the first proviso to sub-section (7) of section 11, at least six months prior to the commencement of the assessment year from which the said registration is sought to be made operative;
 - (v) where the trust or institution has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, within a period of thirty days from the date of the said adoption or modification;
 - (vi) in any other case, at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration is sought, and such trust or institution is registered under section 12AB;]
- (b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year, the accounts of the trust or institution for that year have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and the person in

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receipt of the income furnishes along with the return of income for the relevant assessment year the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

Following clause (b) shall be substituted for the existing clause (b) of sub-section (1) of section 12A by the Finance Act, 2022, w.e.f. 1-4-2023:

- (b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year,—
 - (i) the books of account and other documents have been kept and maintained in such form and manner and at such place, as may be prescribed; and
 - (ii) the accounts of the trust or institution for that year have been audited by an accountant defined in the Explanation below sub-section (2) of section 288 before the specified date referred to in section 44AB and the person in receipt of the income furnishes by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars, as may be prescribed;
- (ba) the person in receipt of the income has furnished the return of income for the previous year in accordance with the provisions of sub-section (4A) of section 139, within the time allowed under that section.

Where an application has been made on or after the 1st day of June, 2007, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution from the assessment year immediately following the financial year in which such application is made. [Provided that the provisions of sections 11 and 12 shall apply to a trust or institution, where the application is made under—

- (a) sub-clause (i) of clause (ac) of sub-section (1), from the assessment year from which such trust or institution was earlier granted registration;
- (b) sub-clause (iii) of clause (ac) of sub-section (1), from the first of the assessment year for which it was provisionally registered:

Provided further that where registration has been granted to the trust or institution under section 12AA or section 12AB], then, the provisions

of sections 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on the date of such registration and the objects and activities of such trust or institution remain the same for such preceding assessment year:

[Provided also] that no action under section 147 shall be taken by the Assessing Officer in case of such trust or institution for any assessment year preceding the aforesaid assessment year only for non-registration of such trust or institution for the said assessment year:

Provided also that provisions contained in the first and second proviso shall not apply in case of any trust or institution which was refused registration or the registration granted to it was cancelled at any time under 90[section 12AA or section 12AB].

6. Section 12AA - Procedure for registration

(1) The Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) or clause (aa) or clause (ab) of sub-section (1) of section 12A, shall—

- (a) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and
- (b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he—
 - (i) shall pass an order in writing registering the trust or institution;
 - (ii) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution, and a copy of such order shall be sent to the applicant :

Provided that no order under sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

(1A) All applications, pending before the Chief Commissioner on which no order has been passed under clause (b) of sub- section (1) before the 1st day of June, 1999, shall stand transferred on that day to the Commissioner and the Commissioner may proceed with such applications under that sub-section from the stage at which they were on that day.

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(2) Every order granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (a) or clause (aa) of sub-section (1) of section 12A.

(3) Where a trust or an institution has been granted registration under clause (b) of sub-section (1) and subsequently the Commissioner 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:

Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.

(4) Without prejudice to the provisions of sub-section (3), where a trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)] and subsequently it is noticed that—

- (a) the activities of the trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13; or
- (b) the trust or institution has not complied with the requirement of any other law, as referred to in sub-clause (ii) of clause (a) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality, then, the Principal Commissioner or the Commissioner may, by an order in writing, cancel the registration of such trust or institution:

Provided that the registration shall not be cancelled under this sub-section, if the trust or institution proves that there was a reasonable cause for the activities to be carried out in the said manner.

[(5) Nothing contained in this section shall apply on or after the 1st day of April, 2021.]

7. 12AB. Procedure for fresh registration.

(1) The Principal Commissioner or Commissioner, on receipt of an application made under clause (ac) of sub-section (1) of section 12A, shall,—

- (a) where the application is made under sub-clause (i) of the said clause, pass an order in writing registering the trust or institution for a period of five years;
- (b) where the application is made under sub-clause (ii) or sub-clause (iii) or sub-clause (iv) or sub-clause (v) of the said clause,—
 - (i) call for such documents or information from the trust or institution or make such inquiries as he thinks necessary in order to satisfy himself about—
 - (A) the genuineness of activities of the trust or institution; and
 - (B) the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects;
 - (ii) after satisfying himself about the objects of the trust or institution and the genuineness of its activities under item (A) and compliance of the requirements under item (B), of sub-clause (i),—
 - (A) pass an order in writing registering the trust or institution for a period of five years; or
 - (B) if he is not so satisfied, pass an order in writing rejecting such application and also cancelling its registration after affording a reasonable opportunity of being heard;

where the application is made under sub-clause (vi) of the said clause, pass an order in writing provisionally registering the trust or institution for a period of three years from the assessment year from which the registration is sought and send a copy of such order to the trust or institution.

(2) All applications, pending before the Principal Commissioner or Commissioner on which no order has been passed under clause (b) of sub-section (1) of section 12AA before the date on which this section has come into force, shall be deemed to be applications made under sub-clause (vi) of clause (ac) of sub-section (1) of section 12A on that date.

(3) The order under clause (a), sub-clause (ii) of clause (b) and clause (c), of sub-section (1) shall be passed, in such form and manner as may be prescribed, before expiry of the period of three months, six months and one month, respectively, calculated from the end of the month in which the application was received.

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(4) Where registration or provisional registration of a trust or an institution has been granted under clause (a) or clause (b) or clause (c) of sub-section (1) or clause (b) of sub-section (1) of section 12AA, as the case may be, and subsequently,—

- (a) the Principal Commissioner or Commissioner has noticed occurrence of one or more specified violations during any previous year; or
- (b) the Principal Commissioner or Commissioner has received a reference from the Assessing Officer under the second proviso to sub-section (3) of section 143 for any previous year; or
- (c) such case has been selected in accordance with the risk management strategy, formulated by the Board from time to time, for any previous year, the Principal Commissioner or Commissioner shall—
 - (i) call for such documents or information from the trust or institution, or make such inquiry as he thinks necessary in order to satisfy himself about the occurrence or otherwise of any specified violation;
 - (ii) pass an order in writing, cancelling the registration of such trust or institution, after affording a reasonable opportunity of being heard, for such previous year and all subsequent previous years, if he is satisfied that one or more specified violations have taken place;
 - (iii) pass an order in writing, refusing to cancel the registration of such trust or institution, if he is not satisfied about the occurrence of one or more specified violations;
 - (iv) forward a copy of the order under clause (ii) or clause (iii), as the case may be, to the Assessing Officer and such trust or institution.

Explanation.—For the purposes of this sub-section, the following shall mean "specified violation",—

- (a) where any income derived from property held under trust, wholly or in part for charitable or religious purposes, has been applied, other than for the objects of the trust or institution; or
- (b) the trust or institution has income from profits and gains of business which is not incidental to the attainment of its objectives or separate books of account are not maintained by

- such trust or institution in respect of the business which is incidental to the attainment of its objectives; or
- (c) the trust or institution has applied any part of its income from the property held under a trust for private religious purposes, which does not enure for the benefit of the public; or
 - (d) the trust or institution established for charitable purpose created or established after the commencement of this Act, has applied any part of its income for the benefit of any particular religious community or caste; or
 - (e) any activity being carried out by the trust or institution—
 - (i) is not genuine; or
 - (ii) is not being carried out in accordance with all or any of the conditions subject to which it was registered; or
 - (f) the trust or institution has not complied with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality.

(5) The order under clause (ii) or clause (iii) of sub-section (4), as the case may be, shall be passed before the expiry of a period of six months, calculated from the end of the quarter in which the first notice is issued by the Principal Commissioner or Commissioner, on or after the 1st day of April, 2022, calling for any document or information, or for making any inquiry, under clause (i) of sub-section (4).]]

8. Section 13 – Section 11 not to apply in certain cases.

- (1) Nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof—
- (a) any part of the income from the property held under a trust for private religious purposes which does not ensure for the benefit of the public;
 - (b) in the case of a trust for charitable purposes or a charitable institution created or established after the commencement of this Act, any income thereof if the trust or institution is created or established for the benefit of any particular religious community or caste;

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- (c) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof—
- (i) if such trust or institution has been created or established after the commencement of this Act and under the terms of the trust or the rules governing the institution, any part of such income enures, or
 - (ii) if any part of such income or any property of the trust or the institution (whenever created or established) is during the previous year used or applied, directly or indirectly for the benefit of any person referred to in sub-section (3) :

Provided that in the case of a trust or institution created or established before the commencement of this Act, the provisions of sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-section (3), if such use or application is by way of compliance with a mandatory term of the trust or a mandatory rule governing the institution:

Provided further that in the case of a trust for religious purposes or a religious institution (whenever created or established) or a trust for charitable purposes or a charitable institution created or established before the commencement of this Act, the provisions of sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-section (3) in so far as such use or application relates to any period before the 1st day of June, 1970;

- (d) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof, if for any period during the previous year—
- (i) any funds of the trust or institution are invested or deposited after the 28th day of February, 1983 otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11; or
 - (ii) any funds of the trust or institution invested or deposited before the 1st day of March, 1983 otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11

continue to remain so invested or deposited after the 30th day of November, 1983; or

- (iii) any shares in a company, other than—
 - (A) shares in a public sector company ;
 - (B) shares prescribed as a form or mode of investment under clause (xii) of sub-section (5) of section 11, are held by the trust or institution after the 30th day of November, 1983:

Provided that nothing in this clause shall apply in relation

- (i) any assets held by the trust or institution where such assets form part of the corpus of the trust or institution as on the 1st day of June, 1973;
 - (ia) any accretion to the shares, forming part of the corpus mentioned in clause (i), by way of bonus shares allotted to the trust or institution;
- (ii) any assets (being debentures issued by, or on behalf of, any company or corporation) acquired by the trust or institution before the 1st day of March, 1983;
 - (ia) any asset, not being an investment or deposit in any of the forms or modes specified in sub-section (5) of section 11, where such asset is not held by the trust or institution, otherwise than in any of the forms or modes specified in sub-section (5) of section 11, after the expiry of one year from the end of the previous year in which such asset is acquired or the 31st day of March, 1993, whichever is later;
- (iii) any funds representing the profits and gains of business, being profits and gains of any previous year relevant to the assessment year commencing on the 1st day of April, 1984 or any subsequent assessment year.

Explanation.—Where the trust or institution has any other income in addition to profits and gains of business, the provisions of clause (iii) of this proviso shall not apply unless the trust or institution maintains separate books of account in respect of such business.

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Explanation.—For the purposes of sub-clause (ii) of clause (c), in determining whether any part of the income or any property of any trust or institution is during the previous year used or applied, directly or indirectly, for the benefit of any person referred to in sub-section (3), in so far as such use or application relates to any period before the 1st day of July, 1972, no regard shall be had to the amendments made to this section by section 7 other than sub-clause (ii) of clause (a) thereof of the Finance Act, 1972.

(2) Without prejudice to the generality of the provisions of clause (c) [and clause (d)] of sub-section (1), the income or the property of the trust or institution or any part of such income or property shall, for the purposes of that clause, be deemed to have been used or applied for the benefit of a person referred to in sub-section (3),—

- (a) If any part of the income or property of the trust or institution is, or continues to be, lent to any person referred to in sub-section (3) 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 or institution is, or continues to be, made available for the use of any person referred to in sub-section (3), for any period during the previous year without charging adequate rent or other compensation;
- (c) if any amount is paid by way of salary, allowance or otherwise during the previous year to any person referred to in sub-section (3) out of the resources of the trust or institution for services rendered by that person to such trust or institution and the amount so paid is in excess of what may be reasonably paid for such services;
- (d) if the services of the trust or institution are made available to any person referred to in sub-section (3) during the previous year without adequate remuneration or other compensation;
- (e) if any share, security or other property is purchased by or on behalf of the trust or institution from any person referred to in sub-section (3) during the previous year for consideration which is more than adequate;
- (f) if any share, security or other property is sold by or on behalf of the trust or institution to any person referred to in sub-section (3) during the previous year for consideration which is less than adequate;

- (g) if any income or property of the trust or institution is diverted during the previous year in favour of any person referred to in sub-section (3);
Provided that this clause shall not apply where the income, or the value of the property or, as the case may be, the aggregate of the income and the value of the property, so diverted does not exceed one thousand rupees;
- (h) if any funds of the trust or institution are, or continue to remain, invested for any period during the previous year (not being a period before the 1st day of January, 1971), in any concern in which any person referred to in sub-section (3) has a substantial interest.
- (3) The persons referred to in clause (c) of sub-section (1) and sub-section (2) are the following, namely :—
- (a) the author of the trust or the founder of the institution;
- (b) any person who has made a substantial contribution to the trust or institution, that is to say, any person whose total contribution up to the end of the relevant previous year exceeds fifty thousand rupees;
- (c) where such author, founder or person is a Hindu undivided family, a member of the family;
[(cc) any trustee of the trust or manager (by whatever name called) of the institution;]
- (d) any relative of any such author, founder, person, [member, trustee or manager] as aforesaid;
- (e) any concern in which any of the persons referred to in clauses (a), (b), (c), [(cc)] and (d) has a substantial interest.
- (4) Notwithstanding anything contained in clause (c) of sub-section (1) [but without prejudice to the provisions contained in clause (d) of that sub-section], in a case where the aggregate of the funds of the trust or institution invested in a concern in which any person referred to in sub-section (3) has a substantial interest, does not exceed five per cent of the capital of that concern, the exemption under section 11 [or section 12] shall not be denied in relation to any income other than the income arising to the trust or the institution from such investment, by reason only that the [funds] of the trust or the institution have been invested in a concern in which such person has a substantial interest.

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(5) Notwithstanding anything contained in clause (d) of sub-section (1), where any assets (being debentures issued by, or on behalf of, any company or corporation) are acquired by the trust or institution after the 28th day of February, 1983 but before the 25th day of July, 1991, the exemption under section 11 or section 12 shall not be denied in relation to any income other than the income arising to the trust or the institution from such assets, by reason only that the funds of the trust or the institution have been invested in such assets if such funds do not continue to remain so invested in such assets after the 31st day of March, 1992.

(6) Notwithstanding anything contained in sub-section (1) or sub-section (2), but without prejudice to the provisions contained in sub-section (2) of section 12, in the case of a charitable or religious trust running an educational institution or a medical institution or a hospital, the exemption under section 11 or section 12 shall not be denied in relation to any income, other than the income referred to in sub-section (2) of section 12, by reason only that such trust has provided educational or medical facilities to persons referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-section (3).

(7) Nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof, any anonymous donation referred to in section 115BBC on which tax is payable in accordance with the provisions of that section.

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

(9) Nothing contained in sub-section (2) of section 11 shall operate so as to exclude any income from the total income of the previous year of a person in receipt thereof, if—

- (i) the statement referred to in clause (a) of the said sub-section in respect of such income is not furnished on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year; or
- (ii) the return of income for the previous year is not furnished by such person on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the said previous year.

Following sub-sections (10) and (11) shall be inserted after sub-section (9) of section 13 by the Finance Act, 2022, w.e.f. 1-4-2023:

(10) Where the provisions of sub-section (8) are applicable to any trust or institution or it violates the conditions specified under clause (b) or clause (ba) of sub-section (1) of section 12A, its income chargeable to tax shall be computed after allowing deduction for the expenditure (other than capital expenditure) incurred in India, for the objects of the trust or institution, subject to fulfilment of the following conditions, namely:—

- (a) such expenditure is not from the corpus standing to the credit of the trust or institution as on the end of the financial year immediately preceding the previous year relevant to the assessment year for which income is being computed;
- (b) such expenditure is not from any loan or borrowing;
- (c) claim of depreciation is not in respect of an asset, acquisition of which has been claimed as application of income, in the same or any other previous year; and
- (d) such expenditure is not in the form of any contribution or donation to any person.

Explanation.—For the purposes of determining the amount of expenditure under this sub-section, the provisions of sub-clause (ia) of clause (a) of section 40 and sub-sections (3) and (3A) of section 40A, shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head "Profits and gains of business or profession".

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

Explanation 1. —For the purposes of sections 11, 12, 12A and this section, "trust" includes any other legal obligation and for the purposes of this section "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;

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- (vi) spouse of a person referred to in sub-clause (ii), sub-clause (iii), sub-clause (iv) or sub-clause (v);
- (vii) any lineal descendant of a brother or sister of either the individual or of the spouse of the individual.

Explanation 2.—A trust or institution created or established for the benefit of Scheduled Castes, backward classes, Scheduled Tribes or women and children shall not be deemed to be a trust or institution created or established for the benefit of a religious community or caste within the meaning of clause (b) of sub-section (1).

Explanation 3.—For the purposes of this section, a person shall be deemed to have a substantial interest in a concern,—

- (i) in a case where the concern is a company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than twenty per cent of the voting power are, at any time during the previous year, owned beneficially by such person or partly by such person and partly by one or more of the other persons referred to in sub-section (3);
- (ii) in the case of any other concern, if such person is entitled, or such person and one or more of the other persons referred to in sub-section (3) are entitled in the aggregate, at any time during the previous year, to not less than twenty per cent of the profits of such concern.

9. Section 115BBC - Anonymous donations to be taxed in certain cases

(1) Where the total income of an assessee, being a person in receipt of income on behalf of any university or other educational institution referred to in sub-clause (iiiad) or sub-clause (vi) or any hospital or other institution referred to in sub-clause (iiiiae) or sub-clause (via) or any fund or institution referred to in sub-clause (iv) or any trust or institution referred to in sub-clause (v) of clause (23C) of section 10 or any trust or institution referred to in section 11, includes any income by way of any anonymous donation, the income-tax payable shall be the aggregate of -

- (i) the amount of income-tax calculated at the rate of thirty per cent on the aggregate of anonymous donations received in excess of the higher of the following, namely:—
 - (A) five per cent of the total donations received by the assessee; or
 - (B) one lakh rupees, and

- (ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i).
- (2) The provisions of sub-section (1) shall not apply to any anonymous donations received by -
 - (a) any trust or institution created or established wholly for religious purposes;
 - (b) any trust or institution created or established wholly for religious and charitable purposes other than any anonymous donation made with a specific direction that such donation is for any university or other educational institution or any hospital or other medical institution run by such trust or institution.
- (3) For the purposes of this section, "anonymous donation" means any voluntary contribution referred to in sub-clause (iia) of clause (24) of section 2, 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.

2(15) "charitable purpose" includes relief of the poor, education, [yoga,] 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 the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering 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 the trust or institution undertaking such activity or activities, of that previous year.

Relevant Rules

1. Rule 17: Exercise of option etc. under Explanation 3 to the third proviso to clause (23C) of section 10 or section 11.

17. (1) The option to be exercised in accordance with the provisions of the Explanation to sub-section (1) of section 11 of the Act in respect of income of any previous year relevant to the assessment year beginning on or after the 1st day of April, 2016 shall be in Form No. 9A and shall be furnished before the expiry of the time allowed under sub-section (1) of section 139 of the Act for furnishing the return of income of the relevant assessment year.

(2) The statement to be furnished to the Assessing Officer or the prescribed authority under clause (a) of the Explanation 3 to the third proviso to clause (23C) of section 10 of the Act or under clause (a) of sub-section (2) of section 11 of the Act or under the said provision as applicable under clause (21) of section 10 of the Act shall be in Form No. 10 and shall be furnished before the expiry of the time allowed under sub-section (1) of section 139 of the Act, for furnishing the return of income.

(3) The option in Form No. 9A referred to in sub-rule (1) and the statement in Form No. 10 referred to in sub-rule (2) shall be furnished electronically either under digital signature or electronic verification code.

(4) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall—

- (i) specify the procedure for filing of Forms referred to in sub-rule (3);
- (ii) specify the data structure, standards and manner of generation of electronic verification code, referred to in sub-rule (3), for purpose of verification of the person furnishing the said Forms; and
- (iii) be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to Forms so furnished.]

2. Rule 17A: Application for registration of charitable or religious trusts etc.

17A. (1). An application under sub-clause (i) or sub-clause(ii) or sub-clause(iii) or sub-clause(iv) or sub-clause(v) or sub-clause(vi) of clause (ac)of sub-section (1) of section 12A for registration of a charitable or religious trust or institution (hereinafter referred to as 'the applicant') shall be made in the following Form, namely:-

Annexure to Form No. 10B

- (i) Form No. 10A in case of application under sub-clause (i) or (vi) of clause (ac) of sub-section (1) of section 12A to the Principal Commissioner or Commissioner authorised by the Board; or
 - (ii) Form No. 10AB in case of application under sub-clause (ii) or (iii) or (iv) or (v) of clause (ac) of sub-section (1) of section 12A to the Principal Commissioner or Commissioner under the said clause.
- (2) The application under sub-rule (1) shall be accompanied by the following documents, as required by Form Nos.10A or 10AB, as the case may be, namely:—
- (a) where the applicant is created, or established, under an instrument, self-certified copy of such instrument creating or establishing the applicant;
 - (b) where the applicant is created, or established, otherwise than under an instrument, self-certified copy of the document evidencing the creation or establishment of the applicant;
 - (c) self-certified copy of registration with Registrar of Companies or Registrar of Firms and Societies or Registrar of Public Trusts, as the case may be;
 - (d) self-certified copy of registration under Foreign Contribution (Regulation) Act, 2010(42 of 2010), if the applicant is registered under such Act;
 - (e) self-certified copy of existing order granting registration under section 12A or section 12AA or section 12AB, as the case may be;
 - (f) self-certified copy of order of rejection of application for grant of registration under section 12A or section 12AA or section 12AB, as the case may be, if any;
 - (g) where the applicant has been in existence during any year or years prior to the financial year in which the application for registration is made, self-certified copies of the annual accounts of the applicant relating to such prior year or years (not being more than three years immediately preceding the year in which the said application is made) for which such accounts have been made up;
 - (h) where a business undertaking is held by the applicant as per the provisions of sub-section (4) of section 11 and the applicant has been in existence during any year or years prior to the financial year in which the application for registration is made, self-certified copies of

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the annual accounts of such business undertaking relating to such prior year or years (not being more than three years immediately preceding the year in which the said application is made) for which such accounts have been made up and self-certified copy of the report of audit as per the provisions of section 44AB for such period;

- (i) where the income of the applicant includes profits and gains of business as per the provisions of sub-section (4A) of section 11 and the applicant has been in existence during any year or years prior to the financial year in which the application for registration is made, self-certified copies of the annual accounts of such business relating to such prior year or years (not being more than three years immediately preceding the year in which the said application is made) for which such accounts have been made up and self-certified copy of the report of audit as per the provisions of section 44AB for such period;
 - (j) self-certified copy of the documents evidencing adoption or modification of the objects;
 - (k) note on the activities of the applicant.
- (3) Form Nos. 10A or 10AB, as the case may be, shall be furnished electronically, —
- (i) under digital signature, if the return of income is required to be furnished under digital signature;
 - (ii) through electronic verification code in a case not covered under clause (i).
- (4) Form Nos. 10A or 10AB, as the case may be, shall be verified by the person who is authorised to verify the return of income under section 140, as applicable to the applicant.
- (5) On receipt of an application in Form No. 10A, the Principal Commissioner or Commissioner, authorised by the Board shall pass an order in writing granting registration under clause (a), or clause (c), of sub-section (1) of section 12AB read with sub-section (3) of the said section in FormNo.10AC and issue a sixteen digit alphanumeric Unique Registration Number (URN) to the applicants making application as per clause (i) of the sub-rule (1).
- (6) If, at any point of time, it is noticed that Form No. 10A has not been duly filled in by not providing, fully or partly, or by providing false or incorrect information or documents required to be provided under sub-rules (1) or (2)

or by not complying with the requirements of sub-rules (3) or (4), the Principal Commissioner or Commissioner, as referred to in sub-rule (5), after giving an opportunity of being heard, may cancel the registration in Form No. 10AC and Unique Registration Number(URN), issued under sub-rule (5), and such registration or such Unique Registration Number (URN) shall be deemed to have never been granted or issued.

(7) In case of an application made under sub-clause (vi) of clause (ac) of sub-section (1) of section 12A during previous year beginning on 1st day of April, 2021, the provisional registration shall be effective from the assessment year beginning on 1st day of April, 2022.

(8) In case of an application made in Form No. 10AB under clause (ii) of the sub-rule (1), the order of registration or rejection or cancellation of registration under sub-clause (ii) of clause (b) of subsection (1) of section 12AB shall be in Form No.10AD and in case if the registration is granted, sixteen digit alphanumeric number Unique Registration Number (URN) shall be issued by the Principal Commissioner or Commissioner referred to in of sub-section (1) of section 12AB.

(9) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall:

- (i) lay down the form, data structure, standards and procedure of , -
 - (a) furnishing and verification of Form Nos. 10A or 10AB ,as the case may be;
 - (b) passing the order under clause (a), sub-clause (ii) of clause (b) and clause (c) of sub-section (1) of section 12AB.
- (ii) be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to the said application made or order so passed as the case may be.

3. Rule 17B: Audit report in the case of charitable or religious trusts, etc.

17B. The report of audit of the accounts of a trust or institution which is required to be furnished under clause (b) of section 12A, shall be in Form No. 10B.

4. Rule 17C: Forms or modes of investment or deposits by a charitable or religious trust or institution.

17C . The forms and modes of investment or deposits under clause (xii) of sub-section (5) of section 11 shall be the following, namely :—

- (i) investment in the units issued under any scheme of the mutual fund referred to in clause (23D) of section 10 of the Income-tax Act, 1961;
- (ii) any transfer of deposits to the Public Account of India;
- (iii) 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;
- (iv) 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);
- (v) investment made by a recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) (hereafter referred to as investor) in the equity share capital of a company (hereafter referred to as investee)—
 - (A) which is engaged in dealing with securities or mainly associated with the securities market;
 - (B) whose main object is to acquire the membership of another recognised stock exchange for the sole purpose of facilitating the members of the investor to trade on the said stock exchange through the investee in accordance with the directions or guidelines issued under the Securities and Exchange Board of India Act, 1992 (15 of 1992) by the Securities and Exchange Board of India established under section 3 of that Act; and
 - (C) in which at least fifty-one per cent of equity shares are held by the investor and the balance equity shares are held by members of such investor;]
- (va) investment made by a person, authorised under section 4 of the Payment and Settlement Systems Act, 2007, in the equity share capital or bonds or debentures of a company —
 - (A) which is engaged in operations of retail payments system or digital payments settlement or similar activities in India and

abroad and is approved by the Reserve Bank of India for this purpose; and

- (B) in which at least fifty-one per cent of equity shares are held by National Payments Corporation of India.
- (vb) investment made by a person, authorised under section 4 of the Payment and Settlement Systems Act, 2007 (51 of 2007), in the equity share capital or bonds or debentures of Open Network for Digital Commerce Ltd, being a company incorporated under sub-section (2) of section 7 read with sub-section (1) of section 8 of the Companies Act, 2013 (18 of 2013), for participating in network based open protocol models which enable digital commerce and interoperable digital payments in India;
- (vi) investment by way of acquiring equity shares of an incubatee by an incubator.

Explanation.—For the purposes of this clause,—

- (a) "incubatee" shall mean such incubatee as may be notified by the Government of India in the Ministry of Science and Technology;
- (b) "incubator" shall mean such Technology Business Incubator or Science and Technology Entrepreneurship Park as may be notified by the Government of India in the Ministry of Science and Techno-logy;]
- (vii) investment by way of acquiring shares of National Skill Development Corporation;
- (viii) investment in debt instruments issued by any infrastructure Finance Company registered with the Reserve Bank of India;
- (ix) investment in "Stock Certificate" as defined in clause (c) of paragraph 2 of the Sovereign Gold Bonds Scheme, 2015, published in the Official Gazette vide notification number G.S.R. 827(E), dated the 30th October, 2015.

CBDT Notification no. 622E dated 10.08.2022 (Applicable from A.Y. 2023-24)

Rule 17AA: Books of Accounts and other documents to be kept and maintained.

17AA. (1) Every fund or institution or trust or any university or other educational institution or any hospital or other medical institution which is required to keep and maintain books of account and other documents under clause (a) of tenth proviso to clause (23C) of section 10 of the Act or sub-clause (i) of clause (b) of sub-section (1) of section 12A of the Act shall keep and maintain the following, namely:—

- (a) books of account, including the following, namely: -
 - (i) cash book;
 - (ii) ledger;
 - (iii) journal;
 - (iv) copies of bills, whether machine numbered or otherwise serially numbered, wherever such bills are issued by the assessee, and copies or counterfoils of machine numbered or otherwise serially numbered receipts issued by the assessee;
 - (v) original bills wherever issued to the person and receipts in respect of payments made by the person;
 - (vi) any other book that may be required to be maintained in order to give a true and fair view of the state of the affairs of the person and explain the transactions effected;
- (b) books of account, as referred in clause (a), for business undertaking referred in sub-section (4) of section 11 of the Act;
- (c) books of account, as referred in clause (a), for business carried on by the assessee other than the business undertaking referred in sub-section (4) of section 11 of the Act;
- (d) other documents for maintaining, -
 - (i) record of all the projects and institutions run by the person containing details of their name, address and objectives;
 - (ii) record of income of the person during the previous year, in respect of,—

Annexure to Form No. 10B

- (I) voluntary contribution containing details of name of the donor, address, permanent account number (if available) and Aadhaar number (if available);
 - (II) income from property held under trust referred to under section 11 of the Act along with list of such properties;
 - (III) income of fund or institution or trust or any university or other educational institution or any hospital or other medical institution other than the contribution referred in items (I) and (II);
- (iii) record of the following, out of the income of the person during the previous year, namely:-
- (I) application of income, in India, containing details of amount of application, name and address of the person to whom any credit or payment is made and the object for which such application is made;
 - (II) amount credited or paid to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 of the Act or other trust or institution registered under section 12AB of the Act, containing details of their name, address, permanent account number and the object for which such credit or payment is made;
 - (III) application of income outside India containing details of amount of application, name and address of the person to whom any credit or payment is made and the object for which such application is made;
 - (IV) deemed application of income referred in clause (2) of Explanation 1 of sub-section (1) of section 11 of the Act containing details of the reason for availing such deemed application;
 - (V) income accumulated or set apart as per the provisions of the Explanation 3 to the third proviso to clause (23C) of section 10 or sub-section (2) of section 11 of the Act which has not been applied or deemed to be applied

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- containing details of the purpose for which such income has been accumulated;
- (VI) money invested or deposited in the forms and modes specified in sub-section (5) of section 11 of the Act;
 - (VII) money invested or deposited in the forms and modes other than those specified in subsection (5) of section 11 of the Act;
- (iv) record of the following, out of the income of the person of any previous year preceding the current previous year, namely:—
- (I) the contribution received during the previous year containing details of name of the donor, address, permanent account number (if available) and Aadhaar number (if available);
 - (II) contribution received during any previous year preceding the previous year, treated as corpus during the previous year, containing details of name of the donor, address, permanent account number (if available) and Aadhaar number (if available);
 - (III) application out of such voluntary contribution referred to in item (I) and item (II) containing details of amount of application, name and address of the person to whom any credit or payment is made and the object for which such application is made;
 - (IV) amount credited or paid towards corpus to any fund or institution or trust or any university clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 of the Act or other trust or institution registered under section 12AB of the Act, out of such voluntary contribution received during the previous year containing details of their name, address, permanent account number and the object for which such credit or payment is made;
 - (V) the forms and modes specified in sub-section (5) of section 11 of the Act in which such corpus, received during the previous year, is invested or deposited;

- (VI) money invested or deposited in the forms and modes other than those specified in sub-section (5) of section 11 of the Act in which such corpus, received during the previous year, is invested or deposited;
 - (VII) application out of such corpus, received during any previous year preceding the previous year, containing details of amount of application, name and address of the person to whom any credit or payment is made and the object for which such application is made;
 - (VIII) amount credited or paid to towards corpus any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 of the Act or other trust or institution registered under section 12AB of the Act, out of such voluntary contribution received during any year preceding the previous year, containing details of their name, address, permanent account number and the object for which such credit or payment is made;
 - (IX) the forms and modes specified in sub-section (5) of section 11 of the Act in which such corpus, received during any previous year preceding the previous year, is invested or deposited; money invested or deposited in the forms and modes other than those specified in sub-section (5) of section 11 of the Act in which such corpus, received during any previous year preceding the previous year, is invested or deposited;
- (vii) record of loans and borrowings,—
- (I) containing information regarding amount and date of loan or borrowing, amount and date of repayment, name of the person from whom loan taken, address of lender, permanent account number and Aadhaar number (if available) of the lender;
 - (II) application out of such loan or borrowing containing details of amount of application, name and address of the

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- person to whom any credit or payment is made and the object for which such application is made;
- (III) application out of such loan or borrowing, received during any previous year preceding the previous year, containing details of amount of application, name and address of the person to whom any credit or payment is made;
 - (IV) repayment of such loan or borrowing (which was applied during any preceding previous year and not claimed as application) during the previous year;
- (viii) record of properties held by the assessee, with respect to the following, namely,—
- (I) immovable properties containing details of,
 - (i) nature, address of the properties, cost of acquisition of the asset, registration documents of the asset;
 - (ii) transfer of such properties, the net consideration utilised in acquiring the new capital asset;
 - (II) movable properties including details of the nature and cost of acquisition of the asset;
- (ix) record of specified persons, as referred to in sub-section (3) of section 13 of the Act,-
- (I) containing details of their name, address, permanent account number and Aadhaar number(if available);
 - (II) transactions undertaken by the fund or institution or trust or any university or other educational institution or any hospital or other medical institution with specified persons as referred to in sub-section (3) of section 13 of the Act containing details of date and amount of such transaction, nature of the transaction and documents to the effect that such transaction is, directly or indirectly, not for the benefit of such specified person;
- (x) any other documents containing any other relevant information.
- (2) The books of account and other documents specified in sub-rule (1) may be kept in written form or in electronic form or in digital form or as print-

outs of data stored in electronic form or in digital form or any other form of electromagnetic data storage device.

(3) The books of account and other documents specified in sub-rule (1) shall be kept and maintained by the fund or institution or trust or any university or other educational institution or any hospital or other medical institution at its registered office:

Provided that all or any of the books of account and other documents as referred to in sub-rule (1) may be kept at such other place in India as the management may decide by way of a resolution and where such a resolution is passed, the fund or institution or trust or any university or other educational institution or any hospital or other medical institution shall, within seven days thereof, intimate the jurisdictional Assessing Officer in writing giving the full address of that other place and such intimation shall be duly signed and verified by the person who is authorised to verify the return of income under section 140 of the Act, as applicable to the assessee.

(4) The books of account and other documents specified in sub-rule (1) shall be kept and maintained for a period of ten years from the end of the relevant assessment year:

Provided that where the assessment in relation to any assessment year has been reopened under section 147 of the Act within the period specified in section 149 of the Act, the books of account and other documents which were kept and maintained at the time of reopening of the assessment shall continue to be so kept and maintained till the assessment so reopened has become final.]

Circulars

1. Circular No.100 dated 24th January, 1973 (F.No.195/1/72-IT(A1) 44/S..

Repayment of debt incurred for purposes of trust/loans advanced by educational trusts to students for higher studies - Whether amounts to application of income

1. Section 11 requires 100 per cent of the income of a charitable and religious trust to be applied for religious and charitable purposes to be entitled to the exemption under the said section. Two questions have been considered regarding the application of income :

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1. Where a trust incurs a debt for the purposes of the trust, whether the repayment of the debt would amount to an application of the income for the purposes of the trust ; and

2. Whether loans advanced by an educational trust to students for higher studies would be treated as application of income for charitable purposes.

2. The Board has decided that repayment of the loan originally taken to fulfil one of the objects of the trust will amount to an application of the income for charitable and religious purposes. As regards the loans advanced for higher studies, if the only object of the trust is to give interest-bearing loans for higher studies, it will amount to carrying on of money-lending business. If, however, the object of the trust is advancement of education and granting of scholarship loans as only one of the activities carried on for the fulfilment 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 that year.

2. Circular No. 335 [F. No. 180/9/81-IT(A-I)], dated 13-4-1982.

Requirements in sections 11(1)(a) and 13(1)(d) to be complied with before exemption can be availed under section 11

Section 11(1)(a) provides for grant of exemption from income-tax to income derived from property held under trust for charitable or religious purposes to the extent the income is applied for such purposes in India. Where any such income is accumulated or set apart for application to such purposes in India the extent to which the income is permitted to be accumulated or set apart is 25 per cent of the income. Therefore, under section 11(1)(a) income derived from property held under trust enjoys exemption when at least 75 per cent of the income is applied for charitable or religious purposes.

2. Section 13(1)(d) was introduced by the Taxation Laws (Amendment) Act, 1975. It provides for denial of exemption under section 11 for any assessment year commencing from 1982-83 if any funds of the trust or institution are invested or deposited or continue to remain invested or deposited for any period during any previous year commencing on or after April 1, 1981 in any form or mode other than those specified in section 13(5). The Finance Bill, 1982 contains a provision to extend this period to one year so that the requirements will be applicable from the assessment year 1983-84 for the previous year commencing on or after April 1, 1982.

3. The effect of the insertion of section 13(1)(d) or section 11(1)(a) has been examined. The exemption under section 11(1)(a) will be available only

if at least 75 per cent of the income is applied for charitable or religious purposes in India during the year and the remaining amount is invested in the forms or modes specified under section 13(5). Thus, both the requirements will have to be fulfilled before the trust can claim and avail of the exemption under section 11(1)(a). An example to illustrate the position is given below :

A trust derives income from property held for charitable purposes to the extent of Rs. 40,000 in a year. Under section 11(1)(a) it has to spend at least Rs. 30,000 on charitable purpose. The balance of Rs. 10,000 will have to be invested in the forms or modes prescribed under section 13(5). It is only then that the entire income of the trust will get exemption under section 11(1)(a).

4. It may, however, be clarified that in regard to the accumulation of income permitted under section 11(2), the provisions of section 13(6) make it clear that the requirements of section 13(1)(d) read with section 13(5) will not apply. This is because the mode of investing moneys allowed to be accumulated under section 11(2) is specified in that section itself.

3. Circular No. 3/2020 [F. No. 197/55/2018-ita-i], dated 3-1-2020

Under the provisions of Section 11 of the Income-tax Act, 1961 (hereafter 'Act') the primary condition for grant of exemption to trust or institution in respect of income derived from property held under such trust or institution is that the income derived from property held under trust or institution should be applied during the previous year, and it has to be accumulated and applied for such purposes in accordance with various conditions provided in the section. 2. The Finance Act, 2015 amended section 11 and section 13 of the Act with effect from 1-4-2016 (Assessment Year 2016-17). Consequently, Income-tax Rules, 1962 (hereafter 'Rules') were also amended vide the Income-tax (1st Amendment) Rules, 2016. As per the amended provisions of the Act read with rule 17 of the Rules, while 15% of the income can be accumulated indefinitely by the trust or institution, 85% of income can only be accumulated for a period not exceeding 5 years subject to the conditions, inter alia, that such person submits the prescribed Form No. 10 electronically to the Assessment Officer within the due-date specified under section 139(1) of the Act. 3. Further, where the income from property held under trust or institution applied to charitable or religious purposes falls short of 85% of the income derived during the previous year for the reason that the income has not been received during that year or any other reason, then on the exercise of the option by submitting in Form. No. 9A electronically by the trust or institution on or before the due-date of furnishing the return of income, such income shall be deemed to have been applied for charitable or religious

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purpose. 4. Representations have been received by the Board/field authorities stating that Form No. 9A and Form No. 10 could not be filed along with the return of income starting from AY. 2016-17, which was the first year of e-filing of these forms, and for subsequent assessment years also. It has been requested that the delay in filing of Form No. 9A and Form No. 10 may be condoned under section 119(2)(b) of the Act. 5. Accordingly, in suppression of earlier Circulars/Instructions issued in this regard, with a view to expedite the disposal of application filed by the trust or institution for condoning the delay and in exercise of the powers conferred under section 119(2)(b) of the Act, the Central Board of Direct Taxes has already authorized the Commissioners of Income-tax to admit belated applications in Form No. 9A and Form No. 10 in respect of Assessment Year 2016-17 and Assessment Year 2017-18 where such Form No. 9A and Form No. 10 are filed after the expiry of the time allowed under the relevant provisions of the Act vide Circular No. 7/2018 dated 20-12-2018 and Circular No. 30/2019 dated 17-12-2019 both issued vide F.No. 197/55/2018-ITA-I. 6. In addition to the above, it has also been decided by the CBDT that where there is delay of up to 365 days in filing Form No. 9A and Form No. 10 for Assessment Year 2018-19 or for any subsequent Assessment Years, the Commissioners of Income-tax are hereby authorized to admit such belated applications of condonation of delay under section 13 9(2) of the IT Act and decide on merits. 7. The Commissioners of Income-tax shall, while entertaining such belated applications in Form No. 9A and Form No. 10, satisfy themselves that the assessee was prevented by reasonable cause from filing of applications in Form No.9A and Form No. 10 within the stipulated time. Further, in respect of Form No. 10, the Commissioners shall also satisfy themselves that the amount accumulated or set apart has been invested or deposited in any one or more of the forms or modes specified in sub-section (5) of Section 11 of the Act.

4. Circular no. 7/2018, dated 20-12-2018

Under the provisions of section 11 of the Income-tax Act, 1961 (hereafter Act') the primary condition for grant of exemption to trust or institution in respect of income derived from property held under such trust is that the income derived from property held under trust should be applied for the charitable purposes in India. Where such income cannot be applied during the previous year, it has to be accumulated and applied for such purposes in accordance with various conditions provided in the section. 2. The Finance Act, 2015 amended section 11 and section 13 of the Act with effect from 01.04.2016 (A.Y. 2016-17). Consequently, Income-tax Rules, 1962 (

hereafter 'Rules') were also amended vide the Income-tax (1st Amendment) Rules, 2016. As per the amended provisions of the Act read with rule 17 of the Rules, while 15% of the income can be accumulated indefinitely by the trust or institution, 85 % of income can only be accumulated for a period not exceeding 5 years subject to the conditions, inter alia, that such person submits the prescribed Form No. 10 electronically to the Assessing Officer within the due date specified under section 139(1) of the Act. 3. Further, where the income from the property held under trust and applied to charitable or religious purposes falls short of 85% of the income derived during the previous year for the reason that the income has not been received during that year or any other reason, then on exercise of the option by submitting in Form No.9A electronically by the trust/institution on or before the due date of furnishing the return of income, such income shall be deemed to have been applied for charitable or religious purpose .

5. Circular No. 30/2019 [F. No. 197/55/2018-ITA-I], dated 17-12-2019

In partial modification of this office Circular No.7 of 2018, dated 20th December, 2018 issued vide F. No. 197/155/2018-ITA-I on the abovementioned subject, it is decided to extend the applicability of this Circular to Assessment Year 2017-18.

6. Circular No. 6/2020, Dated 19th February 2020

Representations have been received seeking condonation of delay in filing Return of Income by the Charitable institutions for the Assessment Year 2016- 17 onwards on the grounds of hardship. The Board has issued Circulars authorizing the Commissioners of Income Tax to admit belated applications of Form 9A and Form 10 and to decide on merit the condonation of delay U/S 119(2)(b) of the Income-tax Act, 1961 (Act). However, in those cases where the Income Tax Returns have also been filed beyond the due date prescribed under section 139(1) of the Act, the condonation of delay in filing of Form 9A & Form 10 by the Commissioners is not of any help to the assessee, as section 13(9) of the Act, inserted w.e.f. 01.04.2016, stipulates twin conditions of filing of Form 9A/Form 10 and also of filing Return of Income before the due date.

Accordingly, in continuation of earlier Circulars issued in this regard, with the view to prevent hardship to the assessee and in exercise of powers conferred under section 119(2)(b) of the Act, the CBDT has decided that where the application for condonation of delay in filing Form 9A and Form 10 has been filed, and the Return of Income has been filed on or before 31 March of the respective assessment years i.e. Assessment Years 2016-

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17, 20 17- 18 and 2018- 19, the Commissioners of Income-tax (Exemptions) are authorised u/s 119(2)(b) of the Act, to admit such belated applications for condonation of delay in filing Return of Income and decide on merit.

For all other applications for condonation of delay not mentioned above, the power of condonation of delay u/s 119(2)(b) of the Act will continue with the respective authorities as per the extant Rules and Practice.

7. Circular : No. 52 [F. No. 152(55) 70-TPL], dated 30-12-1970.

Under section 11(1), as amended by the Finance Act, 1970, income derived from property held under trust for charitable or religious purposes is exempt from income-tax only to the extent such income is actually applied to such purposes during the previous year itself or within three months next following. As "income" includes "capital gains" a charitable or religious trust will forfeit exemption from income-tax in respect of its income by way of capital gains unless such income is also applied to the purposes of the trust during the period referred to above. In this connection, a question has been raised whether the capital gains arising to a charitable or religious trust from the sale of capital assets belonging to it would be regarded as having been applied to charitable or religious purposes, if the trust invests the amount received from the sale of the capital asset, including the capital gains realised, in acquiring another capital asset for the trust. This question was earlier examined by the Board in 1963 and instructions were issued vide Circular No. 2-P(LXX-5), dated 15-5-1963 [Annex] to the effect that where a charitable or religious trust transfers a capital asset forming part of the corpus of its property solely with a view to acquiring another capital asset for the use and benefit of the trust, and utilises the capital gains arising from the transaction in acquiring the new capital asset, the amount of capital gains so utilised would be regarded as having been applied to the charitable or religious purposes of the trust within the meaning of section 11(1). The Board have decided that the above instructions should continue to be operative notwithstanding the changes made in the scheme of tax exemption of charitable or religious trusts through the Finance Act, 1970.

8. Circular No.12-P (LXX-7) of 1968 dated 26-11-1968

Section 11 - Charitable Trust - Income required to be applied for charitable purposes. - Attention is invited to the Board's Circular No.5-P (LXX-6) of 1968 dated the 19th June, 1968, on the above-mentioned subject.

It has been brought to the Board's notice that para 5 of the above circular creates the impression that where a trust accumulates more than 15% of its

income, only the excess over 15% will be taxable under section 11(1) of the Income-tax Act, 1961. It is hereby clarified that the correct position in this regard is that if a trust desires to accumulate income in excess of the limits laid down in section 11(1), the conditions specified in section 11(2) of the Act have to be fulfilled in respect of the entire accumulation and not merely in respect of the accumulation in excess of 15% of the income. Further, if the trust does not comply with the conditions laid down in section 11(2), the amount which becomes liable to assessment under section 11(3) is the entire income accumulated and not merely the income accumulated in excess of the limits specified in section 11(1) of the Income-tax Act, 1961. In other words, such an assessee loses the benefit of the accumulation permitted under section 11(1).”

9. Circular: No. 5-P (LXX-6) of 1968, dated 19-6-1968

Section 11 - Charitable Trusts - Income required to be applied for charitable purposes- Instructions regarding- “In Board’s Circular No. 2-P (LXX-5) of 1963, dated 15th May, 1963, it was explained that a religious or charitable trust claiming exemption under section 11(1) of the Income-tax Act, 1961, must spend at least 85% (earlier 75%) of its total income for religious or charitable purposes. In other words, it was not permitted to accumulate more than 15% (earlier 25%) of its total income. The question has been reconsidered by the Board and the correct legal position is explained below.

Section 11(1) provides that subject to the provisions of sections 60 to 63 ‘the following income shall not be included in the total income of the previous year.....’. The reference in sub-section (a) is invariably to ‘income’ and not to ‘total income’. The expression ‘total income’ has been specifically defined in section 2(45) of the Act as ‘the total amount of income Computed in the manner laid down in this Act’. It would accordingly be incorrect to assign to the word ‘income’ used in section (11)(1)(a), the same meaning as has been specifically assigned to the expression ‘total income’ vide section 2(45).

In the case of a business undertaking held under trust, its ‘income’ will be the income as shown in the accounts of the undertaking. Under section 11(4), any income of the business undertaking determined by the I.T.O. in accordance with the provisions of the Act, which is in excess of the income as shown in its accounts, is to be deemed to have been applied to purposes other than charitable or religious, and hence it will be charged to tax under sub-section (3). As only the income disclosed by the account will be eligible for exemption under section 11(1), the permitted accumulation of 15% (earlier 25%) will also be calculated with reference to this income.

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Where the trust derives income from house property, interest on securities, capital gains, or other sources, the word 'income' should be understood in its commercial sense, i.e., book income, after adding back any appropriations or applications thereof towards the purposes of the trust or otherwise, and also after adding back any debits made for capital expenditure incurred for the purposes of the trust or otherwise. It should be noted, in this connection, that the amounts so added back will become chargeable to tax under section 11(3) to the extent that they represent outgoings for purposes other than those of the trust. The amounts spent or applied for the purposes of the trust from out of the income computed in the aforesaid manner, should be not less than 85% (earlier 75%) of the latter, if the trust is to get the full benefit of the exemption under section 11(1).

To sum up, the business income of the trust as disclosed by the accounts plus its other income computed as above, will be the 'income' of the trust for purposes of section 11(1). Further, the trust must spend at least 85% (earlier 75%) of this income and not accumulate more than 15% (earlier 25%) thereof. The excess accumulation, if any, will become taxable under section 11(1)."

Social Stock Exchange and the Importance of Audited Financial Statements

The Securities and Exchange Board of India (SEBI) notification dated 25 July 2022 on the Issue of Capital and Disclosure Requirements (Third Amendment) Regulations, has paved the way for the setting up of the Social Stock Exchange in India and thereby providing an alternative channel of fundraising for social enterprises, both For-Profit Social Enterprises (FPOs) as well as Non-Profit Organisations (NPOs).

Traditionally, FPOs/NPOs have been using their own money, known (friends/relatives) money, loan money, and/or don (donations/grants, etc.) money for funding social programs/projects. However, fundraising through the social stock exchange means using public money and hence FPOs/NPOs planning to raise funds need to follow the minimum disclosure requirements, to be specified by the SEBI, in the fundraising documents. The SEBI notification specifically states that the draft fundraising document and the final fundraising document shall contain all material disclosures which are true and adequate to enable the investors to take an informed decision.

The pertinent issue is whether the social enterprises planning to raise money for scaling up their social programs/projects/activities are ready for fundraising through the proposed social stock exchange.

One of the biggest challenges these organizations face is the want of financial prudence. They do not have access to or do not embrace modern financial reporting systems and practices. This can be attributed to a limitation in awareness, availability, and affordability to engage accounting and finance professionals and at times sheer over-confidence that they can manage financial affairs on their own. Consequently, investors/lenders find it difficult to access risk, given the unique nature of business resource issues faced by the FPOs/NPOs.

Corporate entities, under the Companies Act, 2013 have a mandate of maintaining accounts on accrual method of accounting. However for the other institutions, the distortion springs from the fact that good accounting recommend accounting on accrual basis, the income tax provisions consider application, exclusively, on actual payments basis. This influences such organizations to embrace cash basis of accounting and in a process, fair presentation of state of affairs becomes gets impaired.

Thus, in the new regime, it becomes imperative that the FPOs/NPOs give due focus on maintenance of proper records and audit of financial statements.

Audit professionals can play an important role in educating and creating awareness among decision-makers of FPOs/NPOs on the importance of audited financial statements, which assures the investors about the financial affairs of the respective social enterprise. In addition, the audit fraternity can take the lead in making fundraising pitches to attract a new class of impact investors. For this to happen, the audit community can actively engage with the key executives of FPOs/NPOs in developing a robust business model, particularly the financial aspects of operations, scaling strategies, detailing the impact points, and revenue-generating potential, wherever possible.

Non-corporate social institutions by adopting good accounting practices can facilitate long term well-being of the institution and the stakeholders.

Useful websites

S. No	Particulars	Webpage link
1.	Direct Taxes Committee of ICAI	https://www.icai.org/post/direct-taxes-committee
2.	Central Board of Direct Taxes	https://incometaxindia.gov.in/Pages/default.aspx
3.	Institute of Chartered Accountant of India	https://www.icai.org/
4.	Accounting Standards Board	https://www.icai.org/post/accounting-standards-board
5.	Auditing & Assurance Standards Board	https://www.icai.org/post/auditing-assurance-standards-board
6.	Ethical Standards Board	https://www.icai.org/post/ethical-standards-board
7.	Ministry of Corporate Affairs	https://www.mca.gov.in/content/mca/global/en/home.html

Reference Material/Publications

S. No	Particulars	Webpage link
1.	Income-tax Act, 1961	https://www.incometaxindia.gov.in/pages/acts/income-tax-act.aspx
2.	Information Technology Act, 2000	https://www.incometaxindia.gov.in/pages/acts/information-technology-act.aspx
3.	Income-tax Rules	https://www.incometaxindia.gov.in/pages/rules/income-tax-rules-1962.aspx
4.	Income-tax Forms	https://incometaxindia.gov.in/Pages/downloads/most-used-forms.aspx
5.	FAQs on Tax audit	https://www.incometaxindia.gov.in/Pages/faqs.aspx?k=FAQs+on+Tax+Audit
6.	Approach to Tax Audit under section 44AB of the Income tax Act, 1961 (Checklist)	https://resource.cdn.icai.org/61602dtc-taqrb50133a.pdf
7.	Study on Compliance in reporting Tax Audit Report	https://resource.cdn.icai.org/70872taqrb-scrtar.pdf
8.	Accounting Standards	https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/accounting-standards.html
9.	Guidance note Tax Audit under section 44AB of the Income Tax Act 1961 AY 2022-23	https://resource.cdn.icai.org/71267dtc200822-qn44ab.pdf

Some relevant judicial precedents

1. REVENUE OR CAPITAL PURPOSES- Application of the account can be for revenue or capital purpose. So long as the expenditure is incurred out of the income earned by the trust, even if such expenditure is for capital purpose, on the object of the trust, the income would be exempt - CIT vs Kanika Prameswari Devasathanam and Charties 1982 133 I.T.R 779 (Mad)
2. Investment in a fixed deposit with a public sector company or scheduled bank account is acquisition of new asset-CIT vs East India Charitable Trust (1994) 206 ITR 152/73 Taxman 380 (Cal), DIT (Exemp) in DLF Qutub Enclave Complex Medical Charitable Trust 2001 115 Taxmann 520 DEL

For the purpose of section 11 (1A) , so long as investments are actually made in units of UTI during accounting , issue of units after expiry of accounting year is immaterial-CIT vs East India Charitable Trust 1994 206 ITR 152/73, Taxmann 380 (Cal)

3. 15% of the income which automatically qualifies for exemption has to be worked out on the gross income before reducing the amounts applied for charitable purposes during the year - CBDT circular dated 19.06.1968; CIT v. Programme for Community Organisation 2001, 248 ITR 1 (SC).
4. In the case of an Educational Institution, the exemption is confined not only to the income generated from the running of the Institution but also to other income earned and applied for the objects subject to satisfaction of the other conditions - CIT vs. A.M.M. Arunachalam Educational Society, 243 ITR 229 (Mad).
5. Normally, it should be possible for a charitable or religious trust or institution to file the auditor's report along with the return of total income where such trust or institution claims exemption under sections 11 and 12. However, in cases where for reasons beyond the control of the assessee some delay has occurred in filing the said report the exemption as available to such trust under sections 11 and 12 may not be denied merely on account of delay in furnishing the auditor's report and the Income-tax Officer should record reasons for accepting a belated audit report. [Board's F. No.267/482/77-IT (Part), dated February 9, 1978 - CBDT Bulletin Tech XXIII/582 : (1992) 195 ITR 825, 833 (Cal).]

Where the audit report was filed along with a properly filed revised return, there is no contravention of section 12A(b) even though such audit report was not filed along with the original return [CIT v. Sri Baldeoji Maharaj Trust, (1983) 142 ITR 584 (All)].

The requirement of furnishing an audit report 'along with the return', as contained in section 12A(b), is not a mandatory condition but is a directory one. In that view of the matter, a trust is entitled to exemption under section 11 even though the audit report is filed before the completion of the assessment for the relevant assessment year [CIT v. Rai Bahadur Bissessaral Motilal Halwasia Trust, (1992) 195 ITR 825, 832 (Cal)]. This is so because, if the audit report is not filed along with the return, the return becomes defective and the Assessing Officer should give an opportunity to the assessee to submit the audit report to rectify the defect before completion of the assessment. Where an assessee, in compliance with the provisions of the Act, cures the defect in the return by filing the audit report before the completion of the assessment, the Assessing Officer cannot ignore such audit report or the return in completing the assessment [CIT v. Rai Bahadur Bissessaral Motilal Halwasia Trust, (1992) 195 ITR 825, 832 (Cal)]. In this view of the matter and in view of the fact that the scope of the power of the appellate authority is co-terminous and co-extensive with that of the Assessing Officer, the Tribunal was held justified in law in setting aside the orders of the first appellate authority and the Assessing Officer and in directing the Assessing Officer to accept the auditor's report in Form No.10B and to process the assessee's claim for exemption under section 11 afresh [CIT v. Hardeodas Agarwalla Trust, (1992) 198 ITR 511, 519, 520 (Cal)].

The Board by issuing the circular dated 9-2-1978 has treated the provisions regarding furnishing of the auditor's report along with the return to be procedural and, therefore, directory in nature. By showing sufficient cause, the auditor's report could be produced at any stage either before the Assessing Officer or before the appellate authority. In that view of the matter, the Tribunal has been held right in law in setting aside the order of the first appellate authority in regard to filing of the audit report in terms of the provisions of section 12A(b) and in directing that authority to allow the assessee to submit the said audit report to it at the appellate stage [CIT v. Shahzedanand Charity Trust, (1997) 228 ITR 292, 299 (Punj)].

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In CIT v. Devradhan Madhavlal Genda Trust [(1998) 230 ITR 714, 717 (MP)], the Tribunal was held justified in holding that the filing of the audit report in Form No.10B with the return of income was not mandatory and it was sufficient compliance of section 12A(b) if the same was filed during the course of the assessment proceedings.

6. Registered educational society was formed for the sole purpose of establishing, running or assisting schools and colleges. It was held that it would be unreal and hypertechnical to hold that the assessee society was only financing body and would not come within the scope of "Other educational institute". Merely because a surplus results incidentally from the activity lawfully carried out by the educational institution, it will not cease to be one existing solely for educational purposes, since the object is not to make profit - Aditanar Educational Institution v. Addl. CIT, 224 ITR 310 (SC).
7. Trust had taxable income and exempt income (subscription). Held that expenses on object of the trust and on investments cannot be apportioned pro rata between income from property and investment and from subscription income. Expenses to be deducted from taxable income - Silk and Art Silk Mills Association Ltd. 182 ITR 38 (Bom). The insertion of Sec.14A will have no implication on chapter III as it applies to computation of total income under chapter IV only.
8. Administrative expenses can be considered as expenses on the objects of the trust unless they can be directly attributable to earning such income. Miscellaneous expense for carrying on object must be considered as application for charitable purpose - Parsi Zorastrian Anjuman Trust v. CIT, 34 Taxman 82 (MP); CIT v. Birla Janahit Trust, 73 Taxman 465 (Cal); Gem and Jewellery Export Promotion Council v. ITO, 68 ITD 95 (Bom).
9. Amount spent on construction of building for the purpose of getting some rent, which income would be applied for charitable or religious purposes, amounted to application of income for charitable or religious purposes- CIT v. St.George Forana Church, 170 ITR 62 (Ker).
10. Purchase of assets for the purpose of carrying out the objects of the trust amounts to application of income within the meaning of the provisions Section 11(1)(a)- M.Ct.M. Tiruppani
11. Trust, 230 ITR 636 (SC); Kannika Parmeswari Devasthanam & Charities, 133 ITR 779, (Mad).

12. Repayment of loan scholarship can never constitute income of a trust, even if it has claimed deduction of such loan scholarships as an application for charitable purposes - CIT v. Trustees of Kasturbai Scindia Commission Trust, 189 ITR 5 (Bom).
13. Applying commercial principles, income tax and wealth tax paid are to be excluded in computing the income of a charitable or religious trust - CIT s. Nizam's Supplemental Religious Endowment Trust, 127 ITR 378 (AP); CIT v. Ganga Charity Trust Fund, 162 ITR 612 (Guj); CIT v. Janaki Ammal Ayya Nadar Trust, 153 ITR 159 (Mad); CIT v. Baroda Industrial Development Corporation, 198 ITR 716 (Guj).
14. At the time of registration, the Commissioner is not required to verify about the application of income on the objects of the trust. Commissioner only has only to see whether the objects of the trust are charitable or not - Fifth Generation Education Society v. CIT, 185 ITR 634 (All).
15. Commissioner cannot refuse registration on the ground that the bye-laws of the Society had not been changed so as to exclude religious aspect, At the stage of grant of certificate under section 12A, the only enquiry which could possibly be made would be whether the society has actually made an application in time and whether the accounts of the society are maintained in the manner as suggested by the said section .Beyond that the scope of enquiry would not go- New Life in Christ Evangelistic Association (NLC) v. CIT,(2000) 111 Taxman 16 (Mad)
16. **CIT v. Indian National Theatre Trust [2008] 305 ITR 149 (Delhi)**
As per section 11(2)(b), an investment made in the past cannot satisfy the requirement as specified in this section, the investment must necessarily come out of the current year's income.
17. **CIT v. Nabhinandan Digamber Jain [2002] 257 ITR 91 (MP).**
The agricultural income will not form part of total income for the purpose of computing the accumulation of income in excess of 25 per cent of the total income as laid down under section 11 of the Income-tax Act, 1961. In other words, income for purpose of computing accumulation of income in excess of prescribed percentage of total income as laid down under section 11, Agricultural income will not form part of total income for the said purpose.

18. ADIT (Exemption) v. Murugappa Chettiar Trust [2008] 303 ITR 360 (Madras).

Section 11(5)(iii) provides that "deposit in any account with a scheduled bank or a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank)." In the present case, the deposit was made in the current account with the Bank of India and hence the same will come within the meaning of the words "deposit in any account with a scheduled bank". "Any account" includes current account also.

19. Priyadarshini Educational Academy v. DGIT (Investigation) [2011] 199 Taxman 385

Investment/deposit in a chit fund is not one of modes of investment or deposit of money referred in section 11(5) of the Act.

20. CIT v. Kanpur Subhash Shiksha Samiti [2013] 217 Taxman 182 (Allahabad)

Where both the societies have similar objects and are registered under Section 12A and have approvals under Section 80G, interest free loan cannot be treated as deposit or investment so as to attract Section 11 (5) of the Act.

21. St. Xavier Educational Trust v. CIT (Exemption) [2021] 281 Taxman 193 (Madras)

Denial of exemption should only be to the extent of the income which is violative of section 13(1)(d) and not the total denial of exemption under section 11.

22. Chairman Andhra Pradesh Welfare Fund v. CIT [1983] 143 ITR 82 (Andhra Pradesh)

An institution cannot be regarded as branch of another registered institution in case the first institution is separately registered under the Societies Registration Act as a separate body. Contributions received with an oblique motive would not affect the character of the contributions, as voluntary contributions.

23. CIT v. Insaniyat Trust [1988] 173 ITR 248 (Gujarat)

Section 13(2)(h) will be attracted only in cases where 'funds', that is, actual or available money or cash resources of the trust itself are invested, or continued to remain invested for any period during the previous year in any concern in which any person referred to in sub-section (3) of section 13 has substantial interest. The condition precedent in section 13(2)(h) of the Income-tax Act, 1961 is not fulfilled in a case where shares of certain concerns in which admittedly persons specified in section 13(3) had substantial interest, were donated by someone to assessee-charitable trust, which earned dividend income because that condition requires positive act on the part of the trustees to invest the funds of the trust in certain concerns in which the persons referred to in section 13(3) have substantial interest and because such funds were not invested in purchasing the shares which were donated to the trust.

24. CIT v. Ambalal Sarabhai Charity Trust [2001] 252 ITR 610 (Gujarat)

The dividend which was received by the assessee on the shares which were donated to the assessee and the shares which were received by way of bonus by the assessee, would be exempted as per the provisions of the Act and the dividend which was received on the shares which were purchased by the assessee would be subject to the provisions of section 13(2)(h).

25. CIT v. Charat Ram Foundation [2001] 250 ITR 64 (Delhi)

The persons who subscribed their names to the memorandum of association of the assessee society will be regarded as 'founders' of an 'institution', viz., the assessee-society, for the purposes of section 13(3)(a) of the Income-tax Act, 1961

26. DIT v. Bharat Diamond Bourse [2003] 259 ITR 280 (SC)

The expression "founder of the institution" used in Section 13(1)(a) means that the person concerned should be the originator of the institution, or at least one of the persons responsible for the coming into existence of the institution. Contribution of money is not an inexorable test of a person being a "founder" though, it might happen often that person who originates an institution may often also fund it.

27. CIT v. Tata Steel Charitable Trust [1993] 203 ITR 764 (Patna)

Even if a trust has been created wholly for charitable purposes, when subsequently it is found that its income either enures or is used or applied directly or indirectly for the benefit of any person specified under sub section (3) of section 13, then such trust becomes disentitled to claim any exemption under section 11. But the list of such persons as contained under section 13(3) does not include the employees of the author of the trust. The employees of the author of the trust do not fall within the specified categories of persons referred to in section 13(3). Even section 13(3)(d), which includes any relative of the author, can have no application in the case of the employees of the author because 'relative' means a person connected by birth or marriage with another person. The person having any other relationship pursuant to a contract like that of employer and employee cannot be said to be a relative. Therefore, the application of part of the income of the trust for the benefit of the employees of Author and their relatives cannot disentitle the trust from claiming exemption under section 11(1)(a).

29. CIT v. Sarladevi Sarabhai Trust No. 2 [1988] 172 ITR 698 (Gujarat)

When a donor trust which is itself a charitable and religious trust donates its income to another trust, provisions of section 11(1)(a) can be said to have been met out by such donor trust and the donor trust can be said to have applied its income for religious and charitable purposes, notwithstanding the fact that donation is subjected to any conditions that donee-trust will treat the donation as to its corpus and can only utilise the accrued income from the donated corpus for religious and charitable purposes, and that the question whether gifted income is to be utilised by donee-trust fully for its religious and charitable purposes or whether donor trust had to keep intact the corpus of the donation and has to utilise only the income therefrom for its religious and charitable purposes, would not make the slightest difference, so far as entitlement of the donor trust for exemption under section 11(1) goes.

28. CIT v. P.S.G. & Sons Charities [1997] 223 ITR 831 (Madras)

Section 11 contemplates application of the income for charitable purposes. The charity can accumulate 25 per cent. of the income. Taking into account the purpose for which the conditions of section 11(1)(a) are imposed it would be clear that income to be considered will be that which is arrived at in the context of what is available in the hands of the assessee subject to an adjustment of any expenses extraneous to the trust. The application of income for charitable purposes will have to be excluded and it is only the balance that would require an, examination for finding out whether the assessee has complied with the rule of accumulation.

29. Director of Income-tax (Exmp.) v Girdharilal Shewnarain Tantia Trust [1993] 199 ITR 215 (Calcutta)

From a combined reading of sections 11(1)(a), 11(1)(b) and section 11(1A), it is clear that the income of a trust including capital gains is treated on a separate footing and the assessee-trust has to fulfil the conditions laid therein for the purpose of availing of exemptions from taxation. The income from property held for charitable or religious purposes cannot, therefore, be equated with the income which is computed under the general provisions of the Act in respect of other assessees who are not entitled to the benefit of the aforesaid provisions.

30. DIT (Exemption) v. Govindu Naicker Estate (2009)315 ITR 237 (Madras)

The repayment of loan taken from the Indian Bank for construction of commercial complex was application of income for charitable purposes and, therefore, the assessee-trust was eligible for exemption under section 11 of the Income-tax Act. The expenditure incurred are capital in nature, if the expenditure incurred is for the purpose of promoting the object of the trust, the expenditure incurred would definitely be considered as an application of the income for the purpose of the trust. In case, the application of the income resulted in the maintenance of the property held under trust for charitable purpose would not entitle the trust to exemption of such income under section 11 of the Income-tax Act has to be considered in the context in which it is stated. If the application of the income resulted in the maintenance of the property

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held under the trust for charitable purpose, is for the purpose of augmenting income in order to pursue the objects of the trust, that would amount to application of income for the purpose of the trust.

31. CIT v Kannika Parameswari Devasthanam and Charities [1982] 133 ITR 779 (Madras)

So long as the income derived from the property held under trust had been expended on the objects of the trust, the income would be exempt under s. 11 of the Act. If this was not done, then the income would not be exempt. So long as the expenditure had to be incurred out of the income earned by the trust, even if such expenditure is for capital purposes on the objects of the trust, the income would be exempt.

32. CIT v. Hindustan Charity Trust [1983] 139 ITR 913 (Calcutta)

Donation made by one Institution to another Charitable Institution in good faith would be held to be for charitable purpose.

33. DIT (Exemption) v. Trustees of Singhania Charitable Trust [1993] 199 ITR 819 (Calcutta)

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 to call for accumulation to amass sufficient money to implement it. Therefore, specification of purpose as required by section 11(2) admits of no amount of vagueness about such purpose.

34. CIT (Exemption) v. Gokula Education Foundation [2017] 394 ITR 236 (Karnataka)

The assessee is eligible to claim accumulation under section 11(2) when assessee has duly filed Form No. 10 stating charitable objects and purpose irrespective of the fact that details of object were not furnished.

35. DIT (Exemptions) v. Envisions [2015] 378 ITR 483 (Karnataka)

Purposes specified by the Assessee in Form 10 are for achieving the objects of the trust, and that the purposes as well as objects, are both charitable. Merely because more than one purpose has been specified and details about the plan of such expenditure has not been given, the same would not, be sufficient to deny the benefit u/s 11(2) of the Act to

the Assessee. As long as the objects of the trust are charitable in character and as long as the purpose or purposes mentioned in Form 10 are for achieving the objects of the trust, merely because of non-furnishing of the details, as how the said amount is proposed to be spent in future, the assessee cannot be denied the exemption as is admissible under 11(2).

36. Bharat Kalyan Pratisthan v. DIT (Exemption) [2008] 299 ITR 406 (Delhi)

Assessee was entitled to accumulate income for the objects of the Charitable Trust without specifying the purposes for which the income is accumulated especially wherein objects were clearly specified in exemption application and it was not required for the assessee to be more specific with regard to the utilization of the funds.

37. DIT v. Mitsui & Co. Environmental Trust [2008] 303 ITR 111 (Delhi)

The purpose or purposes to be specified cannot be beyond the objects of the trust. Plurality of purposes for accumulation is not precluded. In other words, it need not necessarily be specifically stated for which purpose the accumulation is sought.

List of allied legislations

A. Trust legislations

- (i) Indian Trusts Act, 1882
- (ii) The Societies Registration Act, 1860
- (iii) The Companies Act, 1956 (Section 25)
- (iv) Bombay Public Trusts Act, 1950
- (v) Rajasthan Public Trusts Act, 1959
- (vi) Madhya Pradesh Public Trusts Act, 1951

B. State Laws for registration of societies

- (i) Andhra Pradesh Societies Registration Act, 2001 (ii) Madhya Pradesh Societies Registration Act, 1973
- (iii) Tamil Nadu Societies Registration Act, 1975
- (iv) Karnataka Societies Registration Act, 1960
- (v) The West Bengal Societies Registration Act, 1961
- (vi) Manipur Societies Registration Act of 1989
- (vii) The Societies Registration (Nagaland) First Amendment Act, 1969
- (viii) The Travancore Cochin Literary Scientific and Charitable Societies Registration Act, 1955 (Kerala)
- (ix) The Societies Registration Act 1860, (Punjab Amendment Act, 1957)
- (x). Meghalaya Societies Registration Act, 1983
- (xi) Rajasthan Societies Registration Act of 1958
- (xii) Himachal Pradesh Societies Registration Act, 2006

C. Trusts under religious Acts

- (i) The Wakf Act, 1995
- (ii) The Delhi Sikh Gurudwara Act, 1971
- (iii) Madras Hindu Religious and Charitable Endowments Act, 1951
- (iv) Andhra Pradesh charitable and Hindu Religious Institution and Endowment Act, 1966

- (v) Travancore-Cochin Hindu Religious Institutions
- (vi) Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997

D. Other Acts

- (i) Charitable Endowments Act, 1890
- (ii) Charitable and Religious Trust Act, 1920
- (iii) The Foreign Contribution (Regulation) Act, 1976 (FCRA).



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