

ASSESSMENT OF TRUSTS AND INSTITUTIONS, POLITICAL PARTIES AND OTHER SPECIAL ENTITIES

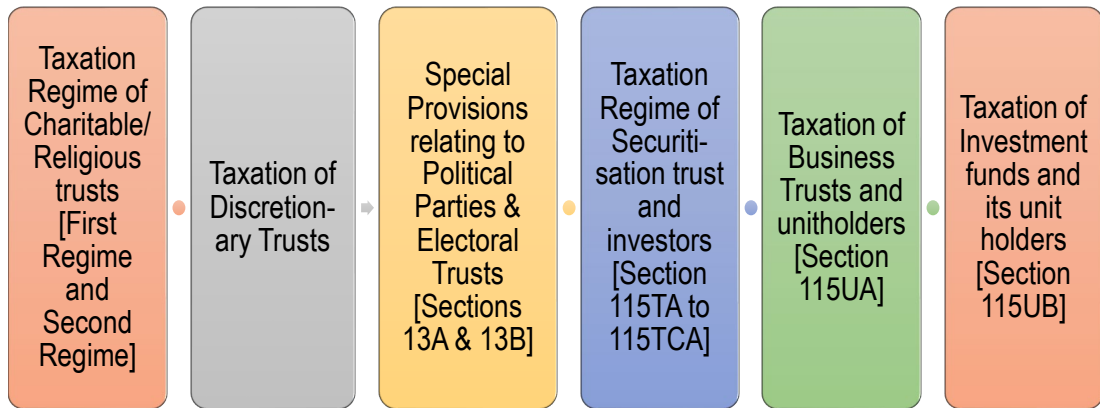


LEARNING OUTCOMES

After studying this chapter, you would be able to -

- identify** the inclusions in the definition of “charitable purpose”, to appreciate whether a trust or institution would qualify for the benefit of exemption under sections 11 and 12;
- appreciate** the conditions to be fulfilled by a trust or institution to claim benefit of exemption under section 11 or under section 10(23C);
- appreciate** the procedure to be followed for approval/registration of a trust or institution;
- analyse** the special provision under section 13, which specifies scenarios when a trust or institution shall not be eligible to claim exemption under section 11 or section 12
- examine** the special provisions relating to taxability of anonymous donations received by a trust or institution;
- examine** the special provision relating to taxability of certain specified income of a trust or institution under section 115BBI
- appreciate** the special provisions for taxability of accreted income of certain trusts and institutions;
- identify** the income of political parties which are exempt from tax and the conditions to be satisfied to avail the exemption;
- examine** the conditions to be satisfied by an electoral trust to avail exemption in respect of voluntary contributions received by it;
- examine** the special provisions relating to taxation of business trusts, securitisation trusts and investment fund and **compute** the tax liability in the hands of such trusts/fund and the unit holders/investors.

CHAPTER OVERVIEW



10.1 INTRODUCTION

Non-profit organisations in India cater to socio-economic and other needs of common people in the country. Hence, the Government encourages such organisations with philanthropic objective by providing tax exemptions subject to compliance of certain conditions. In this chapter, we will be discussing the income tax exemptions and related aspects of trusts and institutions engaged in charitable activities, political parties, electoral trusts and other special entities such as securitization trusts, business trusts and investment funds.

Chapter III of the Income-tax Act, 1961, which covers incomes that are exempt from tax, also contains the provisions pertaining to exemption in respect of charitable trusts and institutions, political parties, electoral trusts and exemptions in respect of income of special entities like securitization trusts, business trusts and investment fund.

- A) Charitable or religious trusts/institutions can avail income-tax exemption under two different independent regimes.
- The first regime pertains to the exemption available under section 10(23C), which *inter alia* exempts income received by any person on behalf of university, or other educational institution or any hospital.
 - The second regime pertains to the exemption under section 11 that provides for exemption in respect of income derived from property held under trust wholly for charitable or religious purposes.

Therefore, a trust or institution can choose to opt for an exemption either under the first regime i.e., under section 10(23C) or the second regime i.e., under section 11, as it deems appropriate depending on its objects and activity.

It is noteworthy that the broad features and conditions for availing exemption under both regimes are largely similar. The Finance Act, 2022 made significant amendments to ensure harmonization and consistency in the exemption provisions under both the regimes. Prior to these amendments, there were inconsistencies and gaps in both regimes, wherein certain conditions stipulated for availing exemption under section 11 were absent in section 10(23C). Therefore, the Finance Act 2022 has rationalised the same by ensuring that there is a level playing field between the two alternate regimes.

Exemption provisions in respect of charitable or religious trusts	
University or other educational institution, hospital or other medical institution, other fund or institution for charitable purposes, any trust or institution wholly for public religious purposes or wholly for religious and charitable purposes [Section 10(23C) – First Regime]	Trust for charitable or religious purposes [Sections 11 to 13 – Second Regime]

Note: *Since both the regimes offer almost similar benefits and the procedural aspects or conditions for availing benefits are largely aligned, amendments have been made by the Finance (No.2) Act, 2024 for discontinuation of approval under the First Regime [i.e. under sub-clauses (iv), (v), (vi) and (via) of section 10(23C)]. Accordingly, application for approval or renewal of approval under First Regime cannot be made on or after 1st October 2024. However, the trust which were approved or made application for approval before 1st October 2024 and got approval, thereafter, are eligible to claim exemption under first regime till the validity of such approval.*

Simultaneously, corresponding amendments have been made by the Finance (No.2) Act, 2024 in the provisions under the Second Regime whereby, with effect from 1st October 2024, trusts or institutions desirous of availing exemption shall make an application for registration under the Second Regime only.

B) Political Party and Electoral Trust

Section 13A exempts certain categories of income derived by a political party and section 13B exempts voluntary contributions received by electoral trusts.

C) Securitisation Trust, Business Trust and Investment Fund

The Income-tax Act, 1961 provides pass-through status to certain entities such as Securitisation Trusts, Business Trusts and Investment Fund in respect of certain incomes.

Such incomes are taxable in the hands of unitholders/investors. Exemption provisions in respect of certain incomes in the hands of these entities and unitholders are contained in Chapter III of the Income-tax Act, 1961. Further, the Income-tax Act, 1961 also contains special provisions relating to Securitization trust, Business Trusts and Investment Fund under Chapter XII-EA, XII-FA and XII-FB, respectively.

General Discussion on Trusts

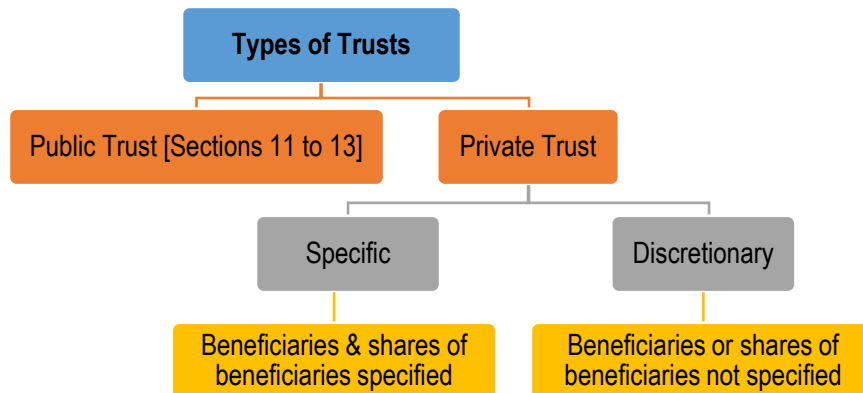
Non-Profit Organisations intending to carry on charitable or religious activities are normally set up either as a trust or a society or a company registered under section 8.

Trust is the most common and preferred legal form. Therefore, before considering the income-tax exemption provisions governed under section 10(23C) or section 11 to 13, let us see briefly what exactly the term trust signifies, the types of trusts and the manner of their creation. Though this aspect of the topic does not strictly fall within the purview of income-tax, such a general knowledge would be useful in understanding the provisions of tax laws relating to charitable trusts.

Meaning of certain terms

Trust	• is an obligation annexed to the ownership and arising out of a confidence reposed in and accepted by the owner if declared and accepted by him for the benefit of another or of another and the owner.
Author of the trust	• the person who reposes or declares the confidence
Trustee	• the person who accepts the confidence
Beneficiary	• the person for whose benefit the confidence is accepted
Trust property	• the subject matter of the trust
Beneficial interest or interest of the beneficiary	• is his right against the trustees or owner of the trust property
Instrument of trust	• the instrument, if any, by which trust is declared

Trusts can be broadly classified into two groups - Public and Private.



Distinction between a public and private trust

The distinction between a public and private trust is that, whereas in the former, the beneficiaries are the general public or a class thereof, in the latter they are specific persons. While in the former, the beneficiaries constitute a body which is incapable of ascertainment, in the latter they are persons who are ascertained or capable of being ascertained. Generally private trusts are formed for the convenience of individuals and families. The private trust does not enjoy any tax exemption.

Private trusts are governed by the Indian Trust Act, 1882. This Act does not apply to the following:

- (i) The rules of Mohammedan law as to waqf;
- (ii) The mutual relations of the members of undivided family as determined by any customary or personal law;
- (iii) Public or private religious or charitable endowments; and
- (iv) Trust to distribute prizes taken in war among the captors.

On the other hand, Public trusts are constituted mainly for the benefit of the public at large. There are three requirements for creation of a public trust.

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- (i) a declaration of trust which is binding on the settlor,
- (ii) setting apart definite property and depriving himself of the ownership, and
- (iii) a statement of objects for which the property is thereafter to be held. In the case of a private trust also, more or less similar requirements exist.

Public trust enjoys tax exemption under the Income-tax Act subject to compliance of certain conditions, that are discussed in detail in this chapter.



10.2 CHARITABLE OR RELIGIOUS TRUSTS AND INSTITUTIONS

1. Exemption in respect of income of universities, hospitals, educational institutions, medical institutions etc. [Section 10(23C)] – First Regime

Exemption is available under section 10(23C) in respect of any income received by any person on behalf of the certain funds and institutions. In particular, the exemption available under first regime is with regard to income of universities, educational institutions, hospitals and other medical institutions covered under sub-clauses (iiiab), (iiiac), (iiiad), (iii ae), (iv), (v), (vi) and (via) of section 10(23C). The brief summary of the exemptions available is encapsulated in the following table:

Section	Activity Scope	Exemption Conditions
10(23C)(iiiab)	Education	Wholly or substantially financed by the Government.
10(23C)(iiiac)	Medical	Wholly or substantially financed by the Government
10(23C)(iiiad)	Education	Aggregate annual receipts do not exceed five crore rupees
10(23C)(iii ae)	Medical	Aggregate annual receipts do not exceed five crore rupees
10(23C)(iv)	Charitable purpose, which is important for India & its states	Trust or institution approved on or before 1 st October 2024 and application for approval was filed before the said date and got approval thereafter.
10(23C)(v)	Wholly for public religious purposes or wholly for public religious & charitable purposes	
10(23C)(vi)	Education, whose aggregate annual receipts exceed five crore rupees	Trust or institution approved on or before 1 st October 2024 and application for approval was filed before the said date and got approval thereafter.
10(23C)(via)	Medical, whose aggregate annual receipts exceed five crore rupees	

Broadly, exemption of any income received by any person on behalf of universities, educational institutions, hospitals and other medical institutions under section 10(23C) is available in the following manner:

(1) Universities or Educational Institutions or Hospitals or Medical Institutions substantially financed by the Government:

- any university or other educational institution **wholly or substantially financed by the Government** which exists solely for educational purposes and not for profit [Sub-clause (iiiab)].

- any hospital or other institution **wholly or substantially financed by the Government**, which exists solely for philanthropic purposes and not for profit and which exists for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of convalescing persons or persons requiring medical attention or rehabilitation [Sub-clause (iiiac)].

If the government grant to a university or other educational institution, hospital or other institution during the relevant previous year **exceeds 50% of the total receipts** (including any voluntary contributions), of such university or other educational institution, hospital or other institution, as the case may be, then, such university or other educational institution, hospital or other institution shall be considered as being **substantially financed by the Government** for that previous year [Rule 2BBB].

(2) **Universities or Educational Institutions or Hospitals or Medical Institutions whose annual receipts not exceed ₹ 5 crore:**

- any university or other educational institution existing solely for educational purposes and not for profit and its **aggregate annual receipts do not exceed ₹ 5 crore** [Sub-clause (iiiad)].
- any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of convalescing persons or persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for profit, if its aggregate annual receipts **do not exceed the prescribed limit of ₹ 5 crore** [Sub-clause (iiiae)].
- Where a person has receipts from an institution specified in sub-clause (iiiad) as well as from an institution specified in sub-clause (iiiae), **whose combined receipts exceeds ₹ 5 crores, then, the said person shall not be eligible for exemption** under the respective sub-clauses (iiiad) & (iiiae).

(3) **Universities or Educational Institutions or Hospitals or Medical Institutions or Specified Charitable Institutions exempted subject to certain conditions:**

- **any other fund or institution for charitable purposes approved by the Principal Commissioner or Commissioner** having regard to the objects of the fund or institution and its importance throughout India or throughout any State or States [Sub-clause (iv)];
- **any trust (including any other legal obligation) or institution wholly for public religious or wholly for public religious and charitable purposes approved by the Principal Commissioner or Commissioner** having regard to ensure the income applies for the objects of the fund or institution [Sub-clause (v)];

- any other university or educational institution existing solely for educational purposes and not for purposes of profit and which may be approved by the Principal Commissioner or Commissioner other than referred in (1) and (2) above [Sub-clause (vi)];
- any other hospital, or other medical institution other than referred in (1) and (2) above approved by the Principal Commissioner or Commissioner [Sub-clause (via)].

However, no approval would be granted for an application made on or after 1.10.2024.

Note - The conditions and norms for availing the exemption under section 10(23C)(iv), (v), (vi) & (via) [First regime] are largely similar as those for availing exemption under section 11 to 13 [Second Regime]. Henceforth, in this chapter, reference to First regime would refer to section 10(23)(iv)/(v)/(vi)/(via). The comparative table of the corresponding provisions under the First and Second regime are given under para 10.3, which will help students co-relate the relevant provisions under the First regime with the provisions of sections 11 to 13 under the Second Regime discussed later on in this Chapter.

ILLUSTRATION 1

An educational institution having annual receipts of ₹ 3.80 crore during the P.Y. 2024-25, has availed exemption under section 10(23C)(iiiad). The Assessing Officer has denied the exemption on the grounds that the educational institution has not made any application to the prescribed authority for approval under the said section 10(23C)(iiiad). Examine the action of the Assessing Officer in denying the exemption.

SOLUTION

As per section 10(23C)(iiiad), income of any university or other educational institution existing solely for educational purposes and not for purposes of profit would be exempt if the aggregate annual receipts of such university or educational institution do not exceed ₹ 5 crore. Therefore, the exemption available under this section can be availed without making any application to the prescribed authority.

Therefore, the action of the Assessing Officer in denying the exemption to the educational institution is not correct.

ILLUSTRATION 2

A not for profit trust undertakes philanthropic activities through an educational institution and a hospital. During the P.Y. 2024-25, the trust had annual receipts of ₹ 3 crore from its educational institution and ₹ 4 crore from the hospital. During the P.Y. 2024-25, it desires to avail exemption under section 10(23C)(iiiad) and 10(23C)(iiiiae), as the individual threshold under each of the sub-clauses, is less than ₹ 5 crore. Can it do so? Examine.

SOLUTION

As per *Explanation* to section 10(23C)(iii~~ae~~), it has been clarified that the limit of annual receipts of ₹ 5 crore is qua 'taxpayer' and not qua 'activity'. Therefore, if the aggregate annual receipts from educational activity and medical activity exceeds ₹ 5 crores, then, exemption under sub-clause (iii~~ad~~) and (iii~~ae~~) cannot be availed by the trust.

Since, in the present case, the aggregate annual receipt of ₹ 7 crores (₹ 3 crores of educational institution and ₹ 4 crores from hospital) exceeds the threshold of ₹ 5 crores, exemption under section 10(23C)(iii~~ad~~) and (iii~~ae~~) cannot be availed, even though the individual receipts from educational institution and hospital have not exceeded ₹ 5 crores.

2. Charitable or Religious Trusts and Institutions [Sections 11 to 13] - Second Regime

The second regime of exemption is available under the Section 11. The second regime is more exhaustive in scope as it is available for any philanthropic organisation involved in charitable or religious purposes. The second regime is more popular and widely adopted by non-profit organisations. It is imperative to note that an assessee can opt to avail exemption only under one of the regime depending upon its objects and purpose. An overview and specifics pertaining to the second exemption regime is provided below.

Overview

Section 11	}	<ul style="list-style-type: none"> • Exclusion of the following income from total income of the trust: • Income derived from property held under trust wholly or partly for charitable and religious purposes, applied for such purposes; and • Income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust
Section 12	}	<ul style="list-style-type: none"> • Income derived by a trust from voluntary contributions (other than corpus donations) deemed to be income derived from property held under trust for the purposes of section 11; • Value of medical and educational services made available to specified persons deemed to be income of the trust running a hospital or medical or educational institution notwithstanding the provisions of section 11(1).
Section 12A	}	<ul style="list-style-type: none"> • prescribes the conditions for availing the benefits u/s 11 and 12.
Section 12AB	}	<ul style="list-style-type: none"> • prescribes the procedure framework for registration with the income-tax authorities to avail the exemption u/s 11 & 12 .
Section 13	}	<ul style="list-style-type: none"> • enumerates the circumstances under which the exemption available u/s 11 and 12 will be denied

3. First and Second Regime – A Comparison

In the following table, Column (2) mentions the relevant provisos in section 10(23C) [under the first regime under sections 10(23C)(iv)/(v)/(vi)/(via)] and Column (3) mentions the corresponding provisions under the second regime under sections 11 to 13. Column (4) contains the subject matter of the relevant provision pertaining to both regimes.

(1)	(2)	(3)	(4)
Sl. No.	First Regime [Section 10(23C)(v)/(v)/(vi)/(via)]	Second Regime [Sections 11 to 13]	Subject matter (in brief)
	Relevant proviso to section 10(23C) and the Explanations thereto	Corresponding provision in the Second regime [Sections 11 to 13]	
(1)	1 st proviso	12A(1)(ac)	Application to PC or Commissioner for approval before 1st October 2024/ registration of trust/institution and the time limits for making such application
(2)	2 nd proviso	12AB(1)	Grant of approval on receipt of application before 1st October 2024/ passing an order of registration of trust/ institution or rejection of the application by PC or Commissioner and period of validity of approval/registration
(3)	3 rd proviso		
	(i) Explanation 1	11(1)(d)	Corpus donations not to be included in income subject to investment in forms and modes specified in section 11(5)
	(ii) Explanation 1A [Applies only in case of section 10(23C)(v)]	Explanation 3A to section 11	Conditions for treatment of voluntary contribution received for renovation or repair of temple/ church/mosque etc. (where they form part of property held under trust) as corpus donation, at the option of the trust
	(iii) Explanation 1B [Applies only in case of section 10(23C)(v)]	Explanation 3B to section 11	Deemed income in the year of violation of conditions mentioned in Sl. No. (3)(ii) above.

(iv)	Explanation 2 and its clauses (i), (ii) and (iii)	Explanation 4 to section 11 and its clauses (i), (ii) and (iii)	Amount spent out of – – corpus donations excluded from total income or – loan or borrowing not to be treated as application for charitable purposes [Clause (i) and (ii)] Amount credited or paid out of current year income of the trust to fund/trust/institution by way of donation other than corpus donation would be allowed as application to the extent of 85% of such amount paid or credited.
(v)	Explanation 3 and its first proviso	11(2) and its first proviso	Conditions stipulated for treating the amount accumulated or set apart beyond 15% as deemed application
(vi)	Explanation 4	11(3)	Deemed income in case of non-fulfilment of conditions in Sl. No. (3)(v) above and the previous year in which taxable
(vii)	Explanation 5	11(3A)	Application to A.O. to permit application of accumulated income for other purposes in line with the objects of the trust or institution
	Proviso	Proviso	A.O. cannot allow application of such accumulated income by way of amount credited or paid to another trust or institution
(4)	7 th proviso	11(4A)	Maintenance of separate books of accounts in case of carrying on of business incidental to the objects of the trust or institution for claiming exemption of income from such business
(5)	8 th proviso	1st proviso to section 12A(2)	Where an application is made under Sl. No. (1) above, the relevant A.Y. from which the exemption provisions would apply
(6)	9 th proviso	12AB(3)	Time limit for passing order granting approval/registration under Sl. No. (2) above.

(7)		10 th proviso	12A(1)(b)	Requirement to maintain prescribed books of account and get the same audited and furnish audit report on or before the specified date.
(8)		12 th proviso	Explanation 2 to section 11(1)	Contribution towards the corpus of another trust or institution out of current year income not to be treated as application of income
(9)		13 th proviso	Explanation 3 to section 11(1)	Disallowances under sections 40(a)(ia) and 40A(3) and (3A) to apply in determining the amount of application
(10)		14 th proviso	Explanation to section 11(2)	Contribution to any trust or institution out of accumulated income not to be treated as application of income
(11)		15 th proviso	12AB(4)	PC/Commissioner to call for documents or information in case he notices specified violations or on receipt of reference from A.O. or selection of case as per risk management strategy of CBDT; and pass an order cancelling or refusing to cancel approval/registration of trust on or before the specified date/time limit.
	(i)	Explanation 1	12AB(5)	Meaning of "specified date"/time limit
	(ii)	Explanation 2	Explanation to section 12AB(4)	Meaning of "specified violation"
(12)		16 th proviso	13(7)	Anonymous donation referred to in section 115BBC to be included in total income.
(13)		18 th proviso [Relevant only for section 10(23C)(iv) and (v)]	13(8)	Inclusion of income of trust or institution having object of advancement of any object of general public utility in total income, if it carries on activity in the nature of trade commerce or business for consideration and the aggregate receipts from such activity exceeds 20% of total receipts.

(14)	19 th proviso	11(7)	Exemptions under section 10 [except section 10(1)] not to apply to trust or institution approved u/s 10(23C) or registered under section 12AA/12AB
	Explanation	First Proviso to section 11(7)	If trust or institution approved u/s 10(23C) or registered u/s 12AA/12AB is notified u/s 10(23EA) or u/s 10(23EC) or 10(23ED) or u/s 10(46) or u/s 10(46A), the approval u/s 10(23C) or registration u/s 12AA/12AB, as the case may be, would become inoperative from the date of notification u/s 10(23EA) or u/s 10(23EC) or 10(23ED) or u/s 10(46) u/s 10(46A) or from 1st April of the P. Y. for which exemption is claimed under section 10(46B).
(15)	20 th proviso	12A(1)(ba)	Return of income to be furnished in accordance with section 139(4C)/(4A) within the time allowed u/s 139(1) or 139(4).
(16)	21 st proviso	13(1)(c)	Income applied for benefit of person referred to in section 13(3) to be deemed income of the trust or institution in the previous year of application [after taking into account the provisions of sections 13(2)/(4)/(6)].
(17)	22 nd proviso	13(10)	In case of non-maintenance of books of account or failure to get them audited or failure to file return of income or inclusion of income in total income due to carrying on of activities in the nature of trade, commerce, business (refer point 13 above), income to be computed as per normal provisions after allowing deduction of revenue expenditure subject to certain conditions stipulated thereunder.

		Explanation	Explanation	Disallowances under sections 40(a)(ia) and 40A(3) and (3A) to apply in determining the amount of revenue expenditure deductible
(18)		23 rd proviso	13(11)	In computing income under regular provisions as per Sl. No. 17 above, no deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed to the assessee under any provision of the Act.
(19)		Explanation 1 to section 10(23C)	11(6)	If acquisition of asset has been claimed as application, then, no deduction for depreciation is allowable.
(20)		Explanation 2 to section 10(23C)	Explanation 5 to section 11(1)	Excess application of an earlier previous year not allowed to be set-off or claimed as deduction or allowance while calculation of income required to be applied or accumulated in the relevant previous year.
(21)		Explanation 3 to section 10(23C)	Explanation to section 11	Sum payable by a trust or institution to be considered as application of income during the P.Y. in which such sum is actually paid by it, irrespective of the method of accounting regularly employed by it.
		Proviso	Proviso	If such sum is already claimed as application in any earlier previous year, it will not be allowed as application again in any subsequent P.Y. on payment basis.

Note – The provisions indicated in bold and italics in columns (2) and (3) in the table above represent the provisions amended by the Finance (No.2) Act, 2024. It may be noted that in certain provisions mentioned in the table above, there may be some differences between the corresponding provisions in the first and second regime. The same have been brought out at the relevant places in the course of discussions in the ensuing paragraphs in this chapter relating to the provisions in the second regime [i.e., sections 11 to 13]. The above table will help you co-relate the corresponding provisions in the first regime [Section 10(23C)(iv)/(v)/ (vi)/(via)].

4. Income of Charitable Trusts and Institutions

I. Income from property held under trust

Subject to the provisions of sections 60 to 63, the income of a religious or charitable trust or institution, to the extent specified in the Act, is exempt from tax when certain prescribed conditions are fulfilled. The relevant income does not even form part of the total income of the trust or institution.

Income from property held for charitable or religious purposes in India [Section 11(1)]-

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 such income is applied in India for such purpose. Further, a minimum 85% of the income derived to be applied for charitable or religious purpose.
- (b) Income derived from property held under trust in part only for such purpose, to the extent such income is applied in India for such purposes.
- (c) Income derived from property held under trust,
 - created on or after 1.4.1952 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 purpose outside India. This does not cover religious trusts.
 - trust for charitable or religious purposes, created before 1.4.1952, to the extent to which such income is applied for such purposes outside India.

In both the cases, the CBDT should have, by general or special order, directed that such income 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.

Such voluntary contributions received as corpus must be invested or deposited in one or more of the forms or modes specified in section 11(5) maintained specifically for such corpus, for claim of exemption.

- II. Voluntary Contributions [Section 12]-** Any voluntary contribution received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes shall, for the purposes of section 11, be deemed to be income derived from property held under trust wholly for charitable or religious purposes. However, corpus donations (i.e., contributions made with a specific direction that they shall from part of the corpus of the trust or institution) shall not be treated as income, provided they are invested in the modes specified under section 11(5) [Section 12(1)].

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 under section 13(3), would 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.

- III. Income should be applied for charitable or religious purposes -** One of the primary objectives of providing exemption under section 11 is that the income of the NPO should be applied wholly towards charitable or religious purpose. The income-tax act has not defined the term religious purpose. The shorter Oxford English Dictionary defines the term as follows:

“Devoted to religion; exhibiting the spiritual or practical effects of religion, following the requirements of religion; pious, godly, devout”.

However, with regards to the definition of the term ‘Charitable Purpose’, section 2(15) states that ‘charitable purpose’ includes-

- relief of the poor,
- education,
- yoga,
- medical relief,
- preservation of environment (including watersheds, forests and wildlife) & preservation of monuments or places or objects of artistic or historic interest and
- the advancement of any other object of general public utility.

Advancement of any other object of general public utility: The definition of “charitable purpose” includes “any other object of general public utility” The question arises as to what is an object of “general public utility”. This expression has not been defined anywhere in the Act.

In *CIT v. Gujarat Maritime Board (2007) 295 ITR 561*, the Supreme Court observed that the Gujarat Maritime Board was established for the predominant purpose of development of minor ports within the State of Gujarat, the management and control of the Board was essentially with the State Government and there was no profit motive. The assessee, Gujarat Maritime Board, was under a legal obligation to apply its income which was directly and substantially from the business held under trust for the development of minor ports in Gujarat. Therefore, the Supreme Court held that the assessee was entitled to be registered as “charitable trust” under section 12A.

A number of entities functioning on commercial basis claim exemption of their income either under section 10(23C) or section 11 on the foundation that they are charitable institutions. This is based on the contention that they are engaged in the “advancement of an object of general public utility” as is included in the fourth part of the present definition of “charitable purpose”. There were many decisions rendered in the past supporting the view that if unconnected business is held under a trust for promoting the object of general public utility and if profits are used for promoting such objects, income thereof shall be exempt, for example, the decision of the Supreme Court in *CIT v. Madras Stock Exchange Ltd. (1981) 130 ITR 184*. However, such a claim in respect of an activity carried out on commercial basis, goes against the basic intention of the provision.

“Advancement of any other object of general public utility” would not be a charitable purpose: In order to limit the ambit of the phrase “advancement of any other object of general public utility”, section 2(15) provides that “the advancement of any other object of general public utility” would not be a charitable purpose if it involves the carrying on of –

- (a) any activity in the nature of trade, commerce or business or,
- (b) any activity of rendering of any service in relation to any trade, commerce or business, for a fee or cess or any other consideration, irrespective of the nature of use or application of the income from such activity, or the retention of such income, by the concerned entity.

Thus, 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,-

- (1) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; **and**

- (2) the aggregate receipts from such activity or activities, during the previous year, **does not exceed 20% of the total receipts**, of the trust or institution undertaking such activity or activities, for the previous year.

Therefore, in effect, “advancement of any other object of general public utility” would continue to be a “charitable purpose”, if the activity in the nature of trade, commerce or business is undertaken in the course of actual carrying out of such advancement of any other object of general public utility **and** the aggregate receipts from 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 does not exceed 20% of the total receipts of the trust or institution undertaking such activity or activities, for the previous year.

ILLUSTRATION 3

An institution having its main object as “advancement of general public utility” received ₹ 30 lakhs in aggregate during the P.Y.2024-25 from an activity in the nature of trade. The total receipts of the institution, including donations, was ₹ 140 lakhs. It applied 85% of its total receipts from such activity during the same year for its main object i.e., advancement of object of general public utility.

- (i) *What would be the tax consequence of such receipt and application thereof by the institution?*
- (ii) *Would your answer be different if the institution’s total receipts had been ₹ 150 lakhs (instead of ₹ 140 lakhs) in aggregate during the P.Y.2024-25?*
- (iii) *What would be your answer if the main object of the institution is “relief of the poor” and the institution receives ₹ 30 lakhs from a trading activity, when its total receipts are ₹ 140 lakhs and applies 85% of the said receipts for its main object?*

SOLUTION

- (i) As the main object of the institution is “advancement of object of general public utility”, the institution will lose its “charitable” status for the P.Y.2024-25, since it has received ₹ 30 lakhs from an activity in the nature of trade, which exceeds ₹ 28 lakhs, being 20% of the total receipts of the institution undertaking that activity for the previous year. The application of 85% of such receipt for its main object during the year would not help in retaining its “charitable” status for that year. The institution will lose its charitable status and consequently, the benefit of exemption of income for the P.Y.2024-25, irrespective of the fact that its approval is not withdrawn or its registration is not cancelled.

- (ii) If the total receipt of the institution is ₹ 150 lakhs, and the institution receives ₹ 30 lakhs in aggregate from an activity in the nature of trade during the P.Y.2024-25, then it will not lose its “charitable” status since receipt of upto 20% of the total receipts of the institution in a year from such activity is permissible. The institution can claim exemption subject to fulfilment of other conditions under sections 11 to 13. Further, such activity should also be undertaken in the course of actual carrying out of such advancement of any other object of general public utility.
- (iii) The restriction regarding carrying on a trading activity for a cess, fee or other consideration will not apply if the main object of the institution is “relief of the poor”. Therefore, receipt of ₹ 30 lakhs from a trading activity by such an institution will not affect its “charitable” status, even if it exceeds 20% of the total receipts of the institution. The institution can claim exemption subject to fulfilment of other conditions under sections 11 to 13.

ILLUSTRATION 4

“Save Wild Life” an institution having its main object as ‘preservation of wildlife’, used the entire income derived from an activity in the nature of trade for its main object during the previous year ended on 31.03.2025. Would such utilization of its income be treated as utilisation for “charitable purpose”? Examine. Would your answer be different, if the main object of the institution is “advancement of object of general public utility”?

SOLUTION

Section 2(15) defines “charitable purpose” to include 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. However, the “advancement of any other object of general public utility” shall not be a charitable purpose, if the institution is carrying on 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 derived from such activity.

Therefore, preservation of wildlife is included in the definition of “charitable purpose” under section 2(15). Further, an institution having the preservation of wildlife as its main object would not be subject to the restrictions which are applicable to the “advancement of any other

object of general public utility". Such institution would continue to retain its "charitable" status, even if it derives income from an activity in the nature of trade.

However, if an institution having its main object as "advancement of any other object of general public utility", derives income from an activity in the nature of trade during a financial year, it would lose its "charitable" status for that year, even if it applies such income for its main objects.

It may be noted that if the receipts from such activity does not exceed 20% of the total receipts in that year, then, the institution would not lose its "charitable" status, even if its main object is "advancement of any other object of general public utility", if such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility.

Circular No.11/2008 dated 19.12.2008

Exemption under section 11 in case of an assessee claiming both to be a charitable institution as well as a mutual organisation

The proviso to section 2(15) will apply only to entities whose purpose is advancement of any other object of general public utility i.e., the last limb of the definition of charitable purpose contained in section 2(15). Hence, such entities will not be eligible for exemption under section 11 or under section 10(23C), if they carry on commercial activities. Whether such an entity is carrying on an activity in the nature of trade, commerce or business is a question of fact which will be decided based on the nature, scope, extent and frequency of the activity.

There are industry and trade associations who claim exemption from tax under section 11 on the ground that their objects are for charitable purpose as these are covered under any other object of general public utility. Under the principle of mutuality, if trading takes place between persons who are associated together and contribute to a common fund for the financing of some venture or object and in this respect have no dealings or relations with any outside body, then any surplus returned to the persons forming such association is not chargeable to tax. In such cases, there must be complete identity between the contributors and the participants.

Therefore, where industry or trade associations claim to be both charitable institutions as well as mutual organizations and their activities are restricted to contributions from and participation of only their members, these would not fall within the purview of the proviso to section 2(15) owing to the principle of mutuality. However, if such organizations have dealings

with non-members, their claim to be charitable organizations would be governed by the additional conditions stipulated in the proviso to section 2(15).

In the final analysis, however, whether the assessee has, for its object, the advancement of any other object of general public utility is a question of fact. If such assessee is engaged in any activity in the nature of trade, commerce or business or renders any service in relation to trade, commerce or business, it would not be entitled to claim that its object is charitable purpose. In such a case, the object of general public utility will be only a mask or a device to hide the true purpose which is trade, commerce or business or the rendering of any service in relation to trade, commerce or business. Each case would, therefore, be decided on its own facts and no generalization is possible.

Circular No.395, dated 24.9.1984– Promotion of sports and games is considered to be a charitable purpose within the meaning of section 2(15). Therefore, an association or institution engaged in the promotion of games and sports can claim exemption under section 11.

A trust will be treated as a charitable trust under section 2(15) even if its object involves the carrying on of an activity for profit. Such a trust will not be denied exemption under section 11 on the ground that its objects are non-charitable.

IV. Charitable trust engaged in business activity- Section 11(4A) provides that the exemption under the respective regime, would be available in respect of income, being profits and gains from business activity if —

- (a) such business is incidental to the attainment of the objects of the trust/institution; and
- (b) separate books of account are maintained by such trust/institution in respect of such business.

Cases where trust property consists of a business undertaking -Section 11(4) clarifies that for the purposes of section 11, property held under trust may consist of a business undertaking so held. If that be so, the trustees may claim that the income of such undertaking enjoys exemption under section 11. Section 11(4) provides that -

- (a) The Assessing Officer shall have the power to determine the income of the undertaking in accordance with the provisions of the Act relating to assessment, and
- (b) Where the income determined by the Assessing Officer is in excess of that shown in the books of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes.

ILLUSTRATION 5

NSN, a charitable educational trust approved under section 10(23C)(vi), is running a school. It operates a stationery shop outside the school campus. A sum of ₹ 75 lakhs has been derived as net income from such business activity, which has been applied towards the objectives of the trust in providing education. The trust maintains separate books of accounts for the business activity. Examine the taxability of application of the income, if the income so derived relates to the previous year 2024-25.

SOLUTION

The trust objective of providing education is a charitable purpose as per section 2(15). The trust in the given case runs a stationery shop business, whose income is applied towards the objectives of the trust. In this case, the business income from the stationery shop will be eligible to avail exemption in respect of profits and gains of business, if such business is incidental to the attainment of the objectives of the trust and separate books of account are maintained in respect of such business.

Therefore, in the given case, the profit from the business shall be eligible for exemption under section 11, assuming that the said business is incidental to the attainment of the objects of the trust (i.e., education) and books of account for such business activity is maintained separately.

5. Conditions for availing exemption under First Regime and Second Regime

Conditions for availing exemption under both the regimes i.e., section 10(23C)(iv)/(v)/(vi)/(via) are largely similar. It is essential to satisfy the following conditions for availing exemption under these regimes:

(I) Approval/Registration for claiming exemption

The primary condition for a trust or institution or fund to avail exemption in both the regimes, is that the trust or institution must be approved under section 10(23C) or registered under section 12AB, as the case may be. Failure to register will deprive tax exemption for such trust or institution.

The procedure for obtaining approval/registration for exemption to a trust or fund or institution had undergone a significant change from April 1st, 2021. Prior to the change in the approval/registration procedure, a taxpayer desirous of availing exemption under this section must submit an application to the Commissioner of Income-tax, within a specified time limit. The

Commissioner, on detailed verification and enquiry, will grant approval/registration or refusal of the exemption application. This process was time consuming and also paved way for prolonged litigation.

The primary objective for overhauling of the registration process is to align with the tax administration's digitalization initiatives and providing certainty to the taxpayers. Therefore, to streamline and simplify the approval/registration process through the use of technology, the approval/registration process has undergone an overhauling with effect from 1st April 2021, which is applicable for incumbent organisations that are already registered and also for organisations desiring to avail the exemption u/s 10(23C) or under section 12AB for the first time.

The salient features of the new process are filing of applications in online mode, allotment of a unique registration number for a trust or fund or institution, validity of approval/registration for a certain prescribed time limit, introduction of provisional registration, lesser time limit for the income-tax authority to grant their approval for the exemption, registration etc.

Some of the key aspects of the change in the approval/registration procedure is that the approval/registration process is made online and the approvals are valid only for a certain time period. Closure to the expiry of the approval time limit, the taxpayer must apply for renewing the exemption approval/registration. Failure to renew the exemption approval will not entitle the taxpayer to avail the exemption any further.

The manner for grant of approval along with the relevant timelines under the first regime i.e., section 10(23C) are encapsulated below in Table A and procedure for registration under the second regime i.e. under section 12AB in Table B:

Table A: Procedure & Timelines for seeking approval under section 10(23C)(iv)/(v)/(vi)/(via)¹ applicable for applications made before 1st October 2024

First proviso to section 10(23C) (1)	Case (2)	Time limit for making the application (3)	Time limit for passing order by the Principal Commissioner or Commissioner [Second proviso to section 10(23C)] (4)	Validity Period (5)	Approval granted is applicable from (6)
Clause (i)	Reapproval of the	Within three months from	within 3 months from the end of	Five years	the A.Y. from which

¹ For detailed study of procedure, manner and form applicable for making application for approval or provisional approval, students are advised to refer Rule 2C of the Income-tax Rules, 1962 available at <https://incometaxindia.gov.in/Pages/rules/income-tax-rules-1962.aspx>

	institutions or funds which were already approved prior to 1.4.2021	April 1, 2021 ² in Form No. 10A	the month in which application was received [Clause (i)]		approval was earlier granted to it
Clause (ii)	Renewal of approval whose period of 5 years is set to expire	at least six months prior to expiry of the period of 5 years, in Form No. 10AB	within 6 months from the end of the month in which application was received after satisfying himself about the genuineness of activities and compliance of requirements under other laws, as are material for the purpose of achieving its objects. For this purpose, the PC or C shall call for such documents or information and make inquiries as he thinks necessary. If not satisfied, pass an order in writing rejecting such application and also cancelling its approval after giving opportunity of being heard. [Clause (ii)]	Five years	the A.Y. immediately following the F.Y year in which such application is made
Clause (iii)	Provisionally approved fund/trusts etc. for final approval.	(i) at least six months prior to expiry of the period of the provisional approval or (ii) within six months of commencement of its activities whichever is earlier, in Form No. 10AB			the first of the A.Y. for which fund/trust etc. was provisionally approved

² As per the provision, the effective date for making application is 30.06.2021. However, this date is extended upto 30.06.2024 vide Circular No. 7/2024, dated 25.04.2024.

Clause (iv)	In any other case [See Note 1 below]	At least one month prior to the commencement of the P.Y. relevant to the A.Y. from which the approval is sought in Form No. 10A.	Approval within one month from the end of the month in which the application is made. The approval shall be provisional. [Clause (iii)]	Three years	the A.Y. for which approval is sought in Form 10A, where the application is filed within the stipulated time limit ³
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Note 1 : With effect from 1.10.2023, a trust which has already commenced its activities and has not availed any exemption under first regime or second regime so far need not first apply for provisional approval in Form 10A. It can at any time after the commencement of such activities directly apply for final approval in Form 10AB for any P.Y. ending on or before the date of such application. The PC or C after following the compliances stipulated in Column (4) [Corresponding to clause (iii) of the first proviso], can grant approval within 6 months from the end of the month in which application is received. If not satisfied, he can pass an order in writing rejecting such application after affording it a reasonable opportunity of being heard. For such trust/fund/ institution, approval would be valid for 5 years. This will fall within the scope of clause (ii) of Second proviso to section 10(23C). Exemption under first regime is applicable from the A.Y. immediately following the F.Y year in which such application is made. Thus, w.e.f. 1.10.2023, only the trusts/funds/institutions which have not commenced activities are required to get provisional approval and will fall within the scope of clause (iii) of the second proviso to section 10(23C).

Note 2 : Pursuant to the amendments made by the Finance (No.2) Act, 2024, no application for approval or application for renewal of approval under First Regime, [i.e. under sub-clauses (iv), (v), (vi) and (via) of section 10(23C)] can be made on or after 1st October 2024. In other words, no approval shall be granted under the First Regime for application made on or after 1st October 2024.

³ The CBDT Circular 6/2023 dated 24.5.2023 clarifies that the provisional approval shall be effective from the assessment year relevant to the previous year in which the application is made. However, it appears that the intent is to make the same applicable from the assessment year for which the approval is sought, provided the application is filed within the time limit mentioned in Column (3).

Simultaneously, corresponding amendments have been made by the Finance (No.2) Act, 2024 in the provisions under the Second Regime whereby, with effect from 1st October 2024, trusts or institutions desirous of availing exemption shall make an application for registration under the Second Regime only.

Table B: Procedure & Timelines for availing exemption under section 12AB read with section 12A(1)(ac)⁴

Section 12A(1)(ac) (1)	Case (2)	Time limit for making the application (3)	Time limit for passing order by the PC/ Commissioner [Section 12AB(3)] (4)	Validity Period (5)	Registration granted is applicable from (6)
Clause (i)	Re-registration of the institutions or funds which were already registered under section 12A/section 12AA. prior to 1.4.2021	Within three months from April 1, 2021 ⁵ in Form No. 10A	Order to be passed within 3 months from end of the month when application was made.	Five years [Section 12AB(1)(a)]	A.Y. from which registration was earlier granted [Proviso to section 12A(2)]
Clause (ii)	Renewal of registration/ w.e.f. 1.10.2024, approval for trust/ institution already registered under section 12AB or approved u/s	at least six months prior to the expiry of the five-year validity in Form No. 10AB.	within 6 months from the end of the month (w.e.f. 1.10.2024, quarter) in which application was received after satisfying himself about the genuineness	Five years (if approved) [Section 12AB(1)(b)]	A.Y. immediately following the F.Y. in which application is made [Section 12A(2)]

⁴ For detailed study of procedure, manner and form applicable for making application for registration or provisional registration, students are advised to refer Rule 17A of the Income-tax Rules, 1962 available at <https://incometaxindia.gov.in/Pages/rules/income-tax-rules-1962.aspx>

⁵ As per the provision, the effective date for making application is 30.06.2021. However, this date is extended upto 30.06.2024 vide Circular No. 7/2024, dated 25.04.2024.

	10(23C)(iv)/(v)/(vi)/(via) and whose period of 5 years is due to expire.		of activities and compliance of other laws, as are material for the purpose of achieving its objects. For this purpose, the PC or C shall call for such documents or information and make inquiries as he thinks necessary.		
Clause (iii)	Final registration where a trust/ institution is provisionally registered u/s 12AB or provisionally approved u/s 10(23C) (iv) / (v) / (vi) / (via) as the case may be	At least six months prior to the expiry of the provisional registration or approval or within six months of commencement of activities, which is earlier, in Form No. 10AB.	If not satisfied, pass an order in writing rejecting such application and also cancelling its registration after giving opportunity of being heard.		First of the A.Y. for which it was provisionally registered [Proviso to section 12A(2)]
Clause (iv)	To revive inoperative registration of trust/ institution on account of grant of approval as provided in first proviso to section 11(7)	At least six months prior to the commencement of the AY from which the said registration is sought to be made operative in Form No. 10AB.			A.Y. immediately following the F.Y. in which application is made [Section 12A(2)]
Clause (v)	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, in Form No. 10AB			A.Y. immediately following the F.Y. in which application is made [Section 12A(2)]

Clause (vi)	In any other case (for e.g., first time applications) [See Note below]	At least one month prior to the commencement of the previous year relevant to the assessment year in which the registration is sought in Form No. 10A.	Within one month from the end of the month in which the application is made order to be passed for provisional registration without detailed enquiry.	Three years [Section 12AB(1)(c)]	the A.Y. for which registration is sought in Form 10A, where the application is filed within the stipulated time limit ⁶
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Note – With effect from 1.10.2023, a trust which has already commenced its activities and has not availed exemption under first regime or second regime for any P.Y. ending on or before the date of such application, need not first apply for provisional registration in Form 10A. It can at any time after the commencement of such activities directly apply for final registration in Form 10AB. The PC or C after following the compliances stipulated in Column (4) [corresponding to clause (iii) of Section 12A(1)(ac)], can grant approval within 6 months from the end of the month in which application is received. If not satisfied, he can pass an order in writing rejecting such application after affording it a reasonable opportunity of being heard. For such trust/fund/institution, registration would be valid for 5 years [Section 12AB(1)(b)]. Exemption under section 11 and 12 is applicable from the A.Y. immediately following the F.Y. in which such application is made.

Thus, w.e.f. 1.10.2023 only the trusts/funds/institutions which have not commenced activities are required to get provisional registration and will fall within the scope of section 12AB(1)(c).

Condonation of delay in making application for registration / renewal of registration u/s 12A

A trust or an institution is entitled to claim exemption under second regime if it makes an application for registration/renewal, as the case may be, to the PC or C within prescribed time. Non filing of application within the time specified in section 12A(1)(ac) renders the applicant ineligible to claim the exemption.

In such cases, in order to avoid difficulty and potential adverse consequences, with effect from 1st October 2024, where an application is filed beyond the time limit specified in section 12A(1)(ac), the PC or C, may, if he considers that there is a reasonable cause for delay in filing the application, condone such delay and such application shall be deemed to have been filed within time.

⁶ The CBDT Circular 6/2023 dated 24.5.2023 clarifies that the provisional registration shall be effective from the assessment year relevant to the previous year in which the application is made. However, it appears that the intent is to make the same applicable from the assessment year for which the registration is sought, provided the application is filed within the time limit mentioned in Column (3).

ILLUSTRATION 6

A public trust has commenced its activities of providing “relief to poor” in the year 2023-24. The trust intends to claim benefits of sections 11 and 12 from A.Y. 2025-26. It approaches you in October, 2024. Advise the trust as to the time limit for making an application for registration, time limit for granting approval by the Principal Commissioner or Commissioner and the period for which the approval is valid.

SOLUTION

In order to avail the exemption under section 11, the trust has to obtain registration under section 12AB read with section 12A(1)(ac). From 1.10.2023, the trust which has already commenced its activities can directly apply for final registration. In the present case, the trust has to apply for registration after commencing its activities but on or before 31.3.2025 to avail the exemption for A.Y. 2025-26. Accordingly, the time limit for making application, time limit for granting registration and period of validity would be as follows:

S. No	Particulars	Time Limit
1	Registration application to be filed online as prescribed under Rule 17A	Application for final registration to be made in Form 10AB at any time after the commencement of such activities.
2	Grant of registration by the Principal Commissioner or Commissioner	Grant registration within 6 months from the end of the quarter in which application was received after satisfying himself about the genuineness of activities and compliance of other laws, as are material for the purpose of achieving its objects. For this purpose, the PC or C shall call for such documents or information and make inquiries as he thinks necessary. If not satisfied, pass an order in writing rejecting such application after giving opportunity of being heard.
3	Validity period of the approval	Registration is valid for five years effective from the A.Y. immediately following the F.Y. in which application is made.

ILLUSTRATION 7

Help All, a trust created on 1st April 2023 for providing relief to the poor, applied for registration under section 12AB on 28th February 2024. The Commissioner denied registration on the ground that the trust had not commenced any charitable activity, due to which he could not satisfy himself about the genuineness of the trust. Is the ground for denial of registration by the Commissioner justified in this case? Discuss.

SOLUTION

Section 12AB read with section 12A(1)(ac)(vi) provides that in case of a trust seeking registration for first time, provisional registration will be provided for a period of three years without detailed enquiry by the prescribed income-tax authority even in cases where activities of the entity are yet to begin. This is one of the key feature of the new registration process that benefits the taxpayer, wherein provisional registration is accorded.

Hence, in the new registration regime, the Commissioner cannot deny registration on the ground that activities have not commenced. The Commissioner can make detailed enquires and call for information when the trust applies to convert its provisional registration into a final registration as stipulated under section 12A(1)(ac)(iii) read with section 12AB.

(II) Cancellation of Registration/approval [Section 12AB(4) & (5)]

The Principal Commissioner of Income-tax (PCIT) or Commissioner Income-tax (CIT) can cancel registration or provisional registration or approval or provisional approval of a trust or an institution granted under either the first regime i.e., section 10(23C) or under the second regime i.e., section 11 read with section 12AB.

Situations in which registration/approval can be cancelled

The registration can be cancelled in the following situations:

- The PCIT or CIT has **noticed the occurrence of one or more specified violations** during any previous year; or
- The PCIT or CIT **has received a reference from an Assessing Officer** under the second proviso to section 143(3) for any previous year **to withdraw the approval or registration due to occurrence of a specific violation**; or
- The case of the institution has been selected in accordance **with risk management strategy**, formulated by the CBDT from time to time for any previous year.

Procedure for cancellation

The PCIT or CIT in this regard shall

- **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;
- **pass an order in writing, cancelling the registration or approval 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;

- **pass an order in writing, refusing to cancel the registration** or approval of such trust or institution, if he is not satisfied with the occurrence of one or more specified violations;
- **forward a copy of the order** cancelling the registration or refusing to cancel the registration **to the Assessing Officer and to such trust or institution.**

Time limit for passing the order

The order cancelling or refusing to cancel registration has to be passed **before the expiry of a period of six months, from the end of the quarter in which the first notice is issued by the PCIT or CIT**, calling for any document or information, or for making any inquiry.

Meaning of Specified Violation: 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**, 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.

- (g) the application for approval under first regime or registration under second regime is not complete or it contains false or incorrect information.

Note – Cancellation procedure for approval granted under first regime is similar as prescribed above for second regime. However, the situations mentioned in (c) and (d) are mentioned only in the case of a trust or institution registered under section 11.

(III) Mandatory filing of return [Section 12A(1)(ba)]:

In order to avail of exemption under any of these regimes, the entities approved under first regime and entities registered under second regime are required to file the return of income under section 139(4C) or under 139(4A), respectively within the time allowed under section 139(1) [i.e., on or before the due date of filing return of income] or section 139(4) [upto 31st December of the relevant assessment year], if the total income without giving effect to the provisions of

- section 10, in case of first regime approved entities or
- section 11 and 12 in case of second regime approved entities,

exceeds the maximum amount which is not chargeable to income-tax.

(IV) Maintenance of Books of account & Other Documents and Audit of accounts [Section 12A(1)(b)]:

With effect from A.Y. 2023-24, where the total income of the trust or institution or fund referred under these two regimes without giving effect to the provisions of section 10(23C)(iv)/(v)(vi)(via) or section 11 and 12, as the case may be exceeds the maximum amount which is not chargeable to income-tax in any previous year, such entities shall

- keep and maintain books of account and other documents in such form and manner and at such place,
- get the accounts audited by a chartered accountant and the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such prescribed particulars, should be furnished on or before the specified date i.e., one month prior to the due date for filing return of income.

Rule 16CC and Rule 17B prescribe that the report of audit of the accounts of a trust or institution is required to be furnished in

- (a) Form No. 10B where -
 - (i) the total income of such trust or institution, without giving effect to the

- provisions of 10(23C)(iv)/(v)(vi)(via) or sections 11 and 12, exceeds ₹ 5 crores during the previous year; or
- (II) such trust or institution has received any foreign contribution during the previous year; or
- (III) such trust or institution has applied any part of its income outside India during the previous year;
- (b) Form No. 10BB in other cases.

The term “books or books of account” as defined under section 2(12A) includes ledgers, day-books, cash books, account-books and other books, **whether kept in the written form or in electronic form or in digital form or as print-outs of data stored in such electronic form or in digital form** or in a floppy, disc, tape or any other form of electro-magnetic data storage device.

Prescribed books of account and documents

Rule 17AA prescribes the following books of account and other documents to be maintained by the entities under both the regimes:

- (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 section 11(4);

- (c) books of account, as referred in clause (a), for business carried on by the assessee other than the business undertaking referred in section 11(4);
- (d) other documents for maintaining,
 - (i) record of all the projects and institutions run by the person
 - (ii) record of income of the person during the previous year, in respect of-
 - (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 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,
 - (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 first and second regime;
 - (III) application of income outside India;
 - (IV) deemed application of income;
 - (V) income accumulated or set apart which has not been applied or deemed to be applied containing details of the purpose for which such income has been accumulated;
 - (VI) money invested or deposited in the forms and modes specified in section 11(5);
 - (VII) money invested or deposited in the forms and modes other than those specified in section 11(5);

- (iv) record of the following, out of the income of the person of any previous year preceding the current previous year, namely -
 - (I) application out of the income accumulated or set apart containing details of year of accumulation, amount of application during the previous year out of such accumulation, name and address of the person to whom any credit or payment is made and the object for which such application is made;
 - (II) application out of the deemed application of income;
 - (III) application, other than the application referred in item (I) and item (II), out of income accumulated during any preceding previous year containing details of year of accumulation, amount of application during the previous year out of such accumulation, name and address of the person to whom any credit or payment is made and the object for which such application is made;
 - (IV) money invested or deposited in the forms and modes specified in section 11(5);
 - (V) money invested or deposited in the forms and modes other than those specified in section 11(5);
- (v) record of voluntary contribution made with a specific direction that they shall form part of the corpus.
- (vi) record of contribution received for the purpose of renovation or repair of temple, mosque, gurdwara, church or other place notified under section 80G(2)(b) which is being treated as corpus as referred section 10(23C) or in section 11(1).
- (vii) record of loan or borrowings
- (viii) record of properties held by the assessee
- (ix) record of specified persons, as referred to in section 13(3) and transactions undertaken by the fund or institution or trust with such specified persons.

Place of maintenance of books of account and other documents

The books of account and other documents shall be kept and maintained by the trust/ institution at its registered office.

Such books of accounts 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, these entities should, 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 authorized to verify the return of income under section 140.

Time period

These books of account and other documents shall be kept and maintained for a period of ten years from the end of the relevant assessment year.

However, where the assessment in relation to any assessment year has been reopened under section 147, 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.

- V. Application of Income – Key Considerations under both regime:** We have seen that the exemption is limited to the extent to which such income is applied. Is it necessary that the entire income should be so applied? The Act gives a concession here. It is possible to claim the exemption even if the trust or institution applies only 85% of the income derived from the trust property for the purpose of the trust, during the relevant previous year.

An accumulation not exceeding 15% of the income from such property is permissible. For computing this 15%, voluntary contributions referred to in section 12 shall be deemed to be part of the income. Therefore, in order to avail exemption under both regimes minimum 85% of the income has to be applied towards the object of the NPO. In other words, 85% of income must be applied during the previous year for the purposes for which the trust has been created. The balance of 15% can be freely accumulated or set apart for application to charitable or religious purposes in India. Some relevant considerations for determining application of income are discussed below:

- (A) Inability to apply in full 85% of the income** - It is clear from the above discussion that free accumulation not exceeding 15% of income⁷ from property is permissible. Hence, the balance 85% must be applied during the previous year for the purposes for which the trust has been created.

⁷As per the Supreme Court ruling in *CIT v. Programme for Community Organisation (2001) 116 Taxman 608*, 15% of gross receipts would be eligible for accumulation under section 11(1)(a).

However, it is possible that the trust is unable to apply the minimum of 85% of its income during the previous year due to either of the following reasons.

- (1) The whole or any part of the income has not been received during that year. (For e.g., if the assessee follows accrual basis of accounting wherein the income has been recognised but not received)
- (2) Any other reason (For e.g., late receipt of the income making it impossible to spend it before the end of the year)
 - In the first situation, wherein the whole or any part of the income has not been received during that year, the period of application is extended to cover the previous year in which the income is actually received and the previous year immediately following the year. However, the amount which may be so claimed to have been so applied during the subsequent previous year cannot exceed the amount of the income which had not been received earlier but received during a subsequent previous year.
 - In the second case, the period of application is extended to the previous year immediately following the previous year in which the income was derived.

Example 1

During the previous year ending 31st March, 2025, a charitable trust earned an income of ₹ 1,00,000 but it received only ₹ 60,000 in that year. The balance of ₹ 40,000 is received during the previous year 2025-26.

	₹
<i>Total income earned during the P.Y.2024-25</i>	<i>1,00,000</i>
<i>Less: Permissible accumulation @15% of ₹ 1,00,000</i>	<i><u>15,000</u></i>
<i>Balance 85% of income to be applied during the P.Y.2024-25</i>	<i>85,000</i>
<i>Less: Amount deemed to be applied would be the amount not received during the P.Y. 2024-25</i>	<i><u>40,000</u></i>
<i>Amount to be applied in the P.Y. 2024-25</i>	<i><u>45,000</u></i>
<i>Balance amount received in P.Y.2025-26 to be applied in the P.Y.2025-26 or P.Y.2026-27.</i>	<i>40,000</i>
Note - <i>Since this amount of ₹ 40,000 is received during the P.Y. 2025-26, this can be applied in the P.Y.2025-26 or in the P.Y.2026-27.</i>	

Example 2

A trust receives a sum of ₹ 50,000 on 30th March, 2025. Its previous year ends on 31-3-2025.

It is obvious that it is impossible to apply the requisite sum within one day. Therefore, it has been provided that such sum can be applied at any time during the immediately following previous year i.e., up to 31-3-2026

- (B) **Procedural Formalities:** For exercising an option for availing the extended period for application in the above two situations [Clause (2) of *Explanation 1* to section 11(1)], the trust has to exercise an option in writing that the income applied later as **prescribed may be deemed to be income applied to the relevant charitable purposes during the previous year in which the income was derived.** Such option has to be exercised at least 2 months before the due date for filing return of income specified under section 139(1).

The income so deemed to have been applied shall, however, not be taken into account in calculating the amount of income applied to such purposes, during the previous year in which the income is actually received or during the immediately following previous year, as the case may be.

Thus, in **Example 1** given above, the amount of ₹ 40,000 received subsequently in the previous year 2025-26 and applied to charitable purposes in the previous year 2025-26, will, by virtue of the option exercised by the trust, be deemed to be applied for charitable purposes in the previous year 2024-25 itself. **Therefore, such an amount will not be taken into consideration in determining the amount of income applied for charitable purposes in the previous year 2025-26.**

Section 11(1B) also provides that where the income for which an option has been exercised as discussed above, is not actually applied, it is to be treated as the income of-

- the previous year immediately following the previous year in which the income was received in case of first situation or
- the previous year immediately following the previous year in which it was derived, in case of second situation.

Note: The option for availing the benefit for extended period for application of income in the two situations mentioned above is not available to trust or institution availing exemption under the first regime i.e., section 10(23C).

- (C) **Amounts not treated as application of income or not allowable as deduction**
- (i) **Amount credited or paid out of income of any trust by way of corpus donation not to be considered as application [Explanation 2 to section 11(1)]-** Any amount credited or paid, out of income derived from property held under trust, to any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in section 10(23C)(iv)/(v)/(vi)/(via) or other trust or institution registered under section 12AA or 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 purpose [Explanation 2 to section 11(1)].
- (ii) **Only 85% of the amount credited or paid by way of donation (other than corpus donations) to another trust or institution out of current year income would be considered as application [Explanation 4(iii) to section 11(1)]:** Any amount credited or paid by way of donation, other than corpus donations, to any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in 10(23C)(iv)/(v)/(vi)/(via) or other trust or institution registered under section 12AB, as the case may be, out of current year income shall be treated as application for charitable or religious purposes only to the extent of **85% of such amount credited or paid.**

Accordingly, CBDT has, *vide* Circular No. 3/2024 dated 06.03.2024, reiterated that eligible donations made by a trust/institution to another trust/institution under any of the two regimes shall be treated as application for charitable or religious purposes only to the extent of 85% of such donations. It means that when a trust/institution in either regime donates ₹ 100 to another trust/institution in either regime, it will be considered to have applied 85% (₹ 85) for the purpose of charitable or religious activity.

It is clarified that 15% (₹ 15) of such donations by the donor trust/institution shall not be required to be invested in specified modes under section 11(5) as the entire amount of ₹ 100 has been donated to the other trust/institution and is accordingly eligible for exemption under the first or second regime.

This is illustrated by the following example where Trust 1, Trust 2 and Trust 3 are trusts or institutions under any of the two regimes. Further, Trust 1 is making eligible donation to Trust 2 and Trust 2 is further making eligible donation to Trust 3.

S. No	Particulars	Trust 1		Trust 2		Trust 3	
1.	Income (A)	300		100		100	
2.	Income which is required to be applied (B = 85% of A)		255		85		85
3.	Application of income						
4.	Donation to other trusts under the first or second regime (C)	100		100			Nil
5.	Amount to be considered as application of income against the donations at row no. 3 [as per clause (iii) of the <i>Explanation 2</i> to third proviso to section 10(23C) or clause (iii) of the <i>Explanation 4</i> to section 11(1) (D = 85% of C)		85		85		
6.	Balance income for application (E = A - C)	200		Nil		100	
7.	Application other than Sl. No. 4 (F = 85% of E)		170		Nil		85
8.	Remaining income which may be accumulated without Form No. 10/ 9A (G = 15% of E)		30		Nil		15
9.	Funds required to be invested in section 11(5) modes (H = G)		30		Nil		15
10.	Exemption of income (I = C + F + G)	300		100		100	

- (iii) **Amount credited or paid, out of accumulated income of any trust, to any trust or institution registered under section 12AA/12AB or referred to in section 10(23C)(iv)/(v)/(vi)/ (via), not considered as application of income [Explanation to section 11(2)]**

Any amount credited or paid, out of income derived from property held under trust, which is not applied, but is accumulated or set apart, to any trust or institution registered under section 12AA/12AB, 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)/(v)/(vi)/(via) of section 10(23C), shall **not** be treated as application of income for charitable or religious purpose, either during the period of accumulation or thereafter.

Note – Any contribution to another trust or institution out of accumulated income will not be treated as application. Contribution to another trust or institution towards corpus will not be deemed as application even if it is out of current year income.

- (iv) **Provisions of sections 40(a)(ia), 40A(3) and 40A(3A) apply in case of application of income by trust [Explanation 3 to section 11(1)]** – In case where an expenditure is incurred on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or after deduction, has not been paid on or before the due date under section 139(1), 30% of sum paid would not be treated as application of income in that year. The same would be, however, be treated as application in the year in which tax is deducted and paid.

Likewise, where the trust incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque/ bank draft/ ECS or through such other prescribed electronic mode [Credit card, debit card, net banking, IMPS (Immediate Payment Services), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Fund Transfer), BHIM (Bharat Interface for Money) Aadhar Pay], exceeds ₹ 10,000, the same would not be considered as application of income.

- (v) **Income received for repairs and renovation of temples, mosques etc. [Explanation 3A to section 11(1)]** - This provision would apply where the property held under a trust or institution includes any temple, mosque, gurdwara, church or other place notified under section 80G(2)(b).

In such a case, any sum received as a voluntary contribution by such trust or institution for the purpose of renovation or repair of such temple, mosque, gurdwara, church or other place, may, at its option, be treated as forming part of the corpus of the trust or the institution, provided such corpus is:

- (a) applied by the trust or institution only for the purpose for which contribution was made;
- (b) not utilised for making contribution or donation to any person;
- (c) separately identifiable; and
- (d) invested or deposited in the forms and modes specified in section 11(5).

However, in case such trust or institution has violated any of the above conditions, such sum treated as corpus will be deemed as income of the previous year during which violation takes place.

- (vi) **Corpus donations utilised by fund/trust/institution towards its objects shall not be treated as application of income** – Under both the exemption regimes, corpus donations received by a fund/trust/institution etc. are exempt from income, if the corpus donations are received with a specific direction that they shall form part of the corpus and the said corpus contribution is invested in any of the modes specified under section 11(5) [Section 11(1)(d)].

Therefore, corpus donations being exempt income, any application made from corpus donation shall **not** be treated as application of income [*Explanation 4(i) to section 11(1)*].

However, the amount not so treated as application thereof, shall be treated as application for charitable or religious purposes in the previous year in which the amount 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, subject to the satisfaction of conditions which are required to be satisfied in case of application for charitable or religious purposes. These conditions are as follows:

- (1) Application should be in India except with the approval of the Board in accordance with the provisions of section 11(1)(c).
- (2) Application should not be by way of donation to the corpus of another trust or institution.

- (3) TDS, if applicable, should be deducted on such application.
- (4) Application whereby payment or aggregate of payments made to a person in a day does not exceed ₹ 10,000 otherwise than by way otherwise than by an account payee cheque/ bank draft/ ECS or through such other prescribed electronic mode [Credit card, debit card, net banking, IMPS (Immediate Payment Services), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Fund Transfer), BHIM (Bharat Interface for Money) Aadhar Pay].
- (5) Carry forward and set off of excess application is not allowed.
- (6) Application is allowed in the year in which it is actually paid.
- (7) Application should not directly or indirectly benefit any person referred to in section 13(3) and the income of the trust or institution should not enure any benefit to such person.
- (8) If the trust or institution invests or deposits back the amount into corpus within 5 years of application from the corpus, only then such investment/ depositing back into corpus will be allowed as application for charitable or religious purposes.

Note - No application would be allowed for amount invested or deposited back in modes specified under section 11(5), where application was made out of corpus on or before 31.3.2021.

ILLUSTRATION 8

XYZ Charitable Trust is an educational institution registered under section 12AB of the Income-tax Act. During the Financial Year 2024-25, the trust receives a corpus donation of ₹ 25 lakhs with a specific direction that the corpus fund should be utilised for setting up a science laboratory. The trust intends to set up the lab only during P.Y. 2026-27 and will utilize the funds only during that financial year. In this regard, the trust wants to understand whether the corpus donations are exempt u/s 11(1)(d) of the Income-tax Act, 1961

SOLUTION

As per section 11(1)(d), voluntary contributions made with a specific direction that they shall form part of the corpus of the trust is an exempted income. However, in order to avail the exemption by the trust, such corpus donations must be invested or deposited in one or more of the forms or modes specified

in section 11(5). Failure to deposit the same in the prescribed modes, will result in inclusion of corpus donation as an income of the XYZ Charitable trust.

- (vii) Application out of loan/borrowings not to be treated as application of income** - Application for charitable or religious purposes, from any loan or borrowing, shall not be treated as application of income for charitable or religious purposes [*Explanation 4(ii)* to section 11(1)].

However, the amount not so treated as application or part thereof, shall be treated as application in the previous year in which the loan or borrowing or part thereof is repaid from the income of that year to the extent of such repayment subject to satisfaction of conditions which are required to be satisfied in case of application for charitable or religious purposes. These conditions are as follows:

1. Application should be in India except with the approval of the Board in accordance with the provisions of section 11(1)(c).
2. Such application should not be in the form of corpus donation to another trust.
3. TDS, if applicable, should be deducted on such application.
4. Application whereby payment or aggregate of payments made to a person in a day does not exceed ₹ 10,000 otherwise than by way of an account payee cheque/ bank draft/ ECS or through such other prescribed electronic mode [Credit card, debit card, net banking, IMPS (Immediate Payment Services), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Fund Transfer), BHIM (Bharat Interface for Money) Aadhar Pay].
5. Carry forward and set off of excess application is not allowed.
6. Application is allowed in the year in which it is actually paid.
7. Application should not directly or indirectly for the benefit of any person referred to in section 13(3) and the income of the trust or institution should not enure any benefit to such person.
8. Repayment of loan is made within a period of 5 years from the end of the previous year in which such application was made from loan or borrowing.

Note - Application from any loan or borrowing made on or before 31.3.2021 will not be treated as application. This is because upto 31.3.2021, the amount applied out of loan or borrowing was allowed as application. Hence, at the time of repayment, it cannot be claimed as application once again.

- (viii) **No set off or deduction allowable of any excess application of earlier previous year [Explanation 5 to section 11(1)]** – No set off or deduction or allowance of any excess application of any of the year preceding the previous year shall be made for computation of income required to be applied or accumulated during the previous year. For example, excess application in A.Y. 2024-25 cannot be reduced to determine the income to be applied or accumulated during the P.Y. 2024-25 (A.Y. 2025-26).
- (ix) **No deduction for depreciation where cost of asset has been claimed as application of income** – Income for the purposes of application under section 11 shall be determined without allowing any deduction or allowance for depreciation or otherwise, in respect of any asset, the cost of acquisition of which has been claimed as an application of income under this section in the same or any other previous year [Section 11(6)].

ILLUSTRATION 9

MSO Foundation, a registered charitable institution set up on 1st April, 2023 is engaged in providing education in hotel management. The organization acquires a building in July 2024 for using the same for holding classes and office activities. It has approached you for your opinion on its eligibility to claim the cost of the building and also depreciation thereon in the current year and the subsequent year. Advise the institution indicating the reasons.

Would your advise change, if building has been acquired out of loan taken in July 2024 from bank, to be repaid in installments over a period of 7 years?

SOLUTION

15% of income from property held for charitable purposes is exempt from tax under section 11. The remaining 85% of such “income” would be exempt if it is “applied” for charitable purposes in India.

Application of the amount can be for revenue or capital purposes. As long as the expenditure is incurred out of income earned by the trust and for the

purposes of carrying on the objects of the trust, it would be treated as application of income even if such expenditure is for capital purposes. Therefore, since the building is acquired by the organization for holding classes and office activities, which is for the purposes of carrying on the objects of the charitable institution i.e., for providing education in hotel management, the cost of the building would be treated as application of income.

However, section 11(6) provides that where the cost of building is claimed as application, no other deduction for depreciation or otherwise would be allowed as an application of income in respect of such asset for the same or any other previous year.

If building has been acquired out of loan taken from bank, then, cost of building cannot be claimed as application. Repayment of loan would be treated as application in the year of repayment to the extent of amount repaid for a period of 5 years from the end of the previous year in which building was acquired. The repayment made upto 31.3.2030 would be eligible to be treated as application in the respective year of repayment. Repayment made thereafter i.e. from 1.4.2030 cannot be treated as application.

Alternatively, since cost of building is not claimed as application, depreciation on such building can be claimed as deduction. However, if deduction in respect of depreciation is claimed, then, it is possible to take a view that repayment of loan may not be eligible to be treated as application.

- (x) **Expenditure allowed only on actual payment basis** – Previously, the term “application” included expenses that accrued during the year, even if they are not actually paid. However, with effect from A.Y. 2022-23, any sum payable by any trust or institution shall be treated as application of income only in the previous year when such sum is actually paid by it. This is irrespective of the previous year in which the liability to pay such sum was incurred or method of accounting regularly employed by it. Thus, expenditure is allowed as application only when the payment is actually made and not when the liability is incurred [Explanation to section 11].

However, where during any previous year, any sum has already been claimed to have been applied by the trust or institution, such sum would not be allowed as application in any subsequent previous year based on actual payment.

For example, if a trust has incurred ₹ 2,00,000 in the P.Y. 2020-21 and claimed the same as application of income in that year and subsequently, the actual payment is made in the P.Y. 2024-25. Since such sum was already claimed as application in the P.Y. 2020-21, the same would not be allowed as application in the P.Y. 2024-25, on the basis of actual payment.

ILLUSTRATION 10

VPS Foundation, a charitable institution registered under section 12AB set up on 1st August 2023 is engaged in providing education in sports management. The Foundation follows accrual basis of accounting and during the previous year 2024-25, has accrued staff's salary expenses pertaining to the month of March 2025 amounting to ₹ 5 lakhs. The salary was paid during the first week of April 2025. KS, the tax advisor of the foundation has advised them that the salary expenses provided for in the accounts will not be treated as an application of income for the previous year 2024-25. Examine.

SOLUTION

Upto Assessment Year 2021-22, an expenditure could be regarded as an application of income even if it was not actually paid. However, effective from assessment year 2022-23, *Explanation* to section 11 provides that any sum payable by an institution shall be considered as an application of income only in the previous year in which such sum is actually paid by it. This is irrespective of the previous year in which the liability to pay such sum is incurred by the institution according to the method of accounting regularly employed by it. Therefore, the tax advisor's statement is correct.

- (D) **Instances where capital gains would be deemed to have been applied for charitable purposes [Section 11(1A)]**
- (a) **Transfer of a capital asset held under trust wholly for charitable or religious purposes [Section 11(1A)(a)]-** Where the whole of the net consideration from the transfer of the capital asset is utilised for acquiring a new capital asset which is held under trust wholly for charitable or religious purposes, the entire amount of capital gains arising from the transfer would be deemed to have been applied for charitable or religious purposes. If, however, only a part of the net consideration is utilised in acquiring the new capital asset, the amount of capital gains deemed to have been utilised for charitable or

religious purposes shall be equal to the excess of the proceeds utilised over the cost of the asset transferred.

Example 3

Original cost of capital asset transferred ₹ 1,00,000

Consideration for which it is transferred ₹ 1,50,000

Situation 1 Cost of new capital asset acquired ₹ 1,50,000

Situation 2 Cost of new capital asset acquired ₹ 1,20,000

Amount that will be deemed to have been applied for charitable purposes.

Situation 1 ₹ 50,000

Situation 2 ₹ 20,000

- (b) **Transfer of a capital asset held under trust in part only for charitable and religious purposes [Section 11(1A)(b)]** - Where only a part of a capital asset has been transferred, only the “appropriate fraction” of the capital gain arising from the transfer shall be deemed to have been applied to charitable or religious purposes. 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 will be deemed to have been so applied. In any other case, the exemption will be limited to so much of the appropriate fraction of the amount utilised for acquiring the new asset as exceeds the appropriate fraction of the cost of the transferred asset.

“Appropriate fraction” means the fraction which represents the extent to which the income derived from the capital asset transferred was applicable to charitable or religious purposes before such transfer.

Example 4

A capital asset is being held under trust. Two-thirds of the income derived from such capital asset are being utilised for the charitable purposes of the trust. The asset is being transferred.

Cost of transferred asset ₹ 1,20,000

Net consideration ₹ 1,80,000

Cost of new asset acquired ₹ 1,50,000

Capital gains ₹ 60,000 [₹ 1,80,000 – ₹ 1,20,000]

Appropriate fraction 2/3rd

Income represented by 'appropriate fraction' = $2/3^{\text{rd}}$ of ₹ 60,000 = ₹ 40,000

Since the entire net consideration has not been utilised in acquiring the new asset, the amount deemed to have been utilised for charitable purpose will be ($2/3^{\text{rd}}$ of ₹ 30,000, being the difference between cost of new asset and cost of transferred asset) = ₹ 20,000.

Note – There is no provision akin to section 11(1A) in the first regime under section 10(23C).

VI. Accumulation of Income:

Conditional accumulation - Under both regimes, application of income derived from property held under trust for charitable purposes in India is the main condition for grant of exemption to trust or institution in respect of income derived from property held under such trust. In case such income cannot be applied during the previous year, the same can be accumulated and applied for such purposes, subject to satisfaction of the conditions provided therein.

Both regimes permit accumulation of 15% of the income indefinitely by the trust or institution. However, 85% of income can only be accumulated for a period not exceeding 5 years subject to the conditions that such person submits the prescribed form i.e., Form 10 to the Assessing Officer and the money so accumulated or set apart is invested or deposited in the specified forms or modes.

As per section 11(2), the conditions for accumulation are as follows:

- (1) such person should furnish a statement in the prescribed form (Form 10) 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 being accumulated or set apart, which shall, in no case, exceed five years.

In computing the period of five years, 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.

- (2) the money so accumulated or set apart should be invested or deposited in the modes specified in section 11(5).
- (3) the statement in Form 10 should be filed at least 2 months prior to the due date of filing return of income specified under section 139(1).

As per section 13(9), in case the statement in Form 10 is not submitted on or before the due date under section 139(1), then, the benefit of accumulation would not be available and such income would be taxable at the applicable rate. Further, the benefit of accumulation would

also not be available if return of income is not furnished on or before the due date of filing return of income specified in section 139(1).

Note – Section 11(2) stipulates the conditions for accumulation, on fulfillment of which the income so accumulated or set apart would not be included in the total income of the previous year of the trust. The condition stipulated in clause (c) of Section 11(2) is that the statement in Form 10 has to be furnished at least 2 months prior to the due date of filing of return of income u/s 139(1). However, as per section 13(9), the income accumulated would not be excluded from total income if Form 10 is not submitted on or before the due date under section 139(1). Section 13(9) permits exclusion of accumulated income from total income of the previous year, if Form 10 is filed on or before the due date under section 139(1). CBDT Circular No.6/2023 dated 24.5.2023 clarifies that the statement of accumulation in Form No. 10 is required to be furnished at least two months prior to the due date of furnishing return of income so that it may be taken into account while auditing the books of account. However, the accumulation/deemed application shall not be denied to a trust as long as the statement of accumulation/deemed application is furnished on or before the due date of furnishing the return as provided in section 139(1).

Consequences on failure to satisfy the conditions of accumulation [Section 11(3)]

Where the accumulated income of the trust -

- (a) is applied to purposes other than charitable or religious purposes or to the objects for which first regime entities are established; then such income shall be deemed to be the income of such person in the concerned previous year in which it is so applied.
- (b) ceases to be accumulated or set apart for application; then such income shall be deemed to be the income of such person in the previous year in which the income ceases to be so accumulated or set apart.
- (c) ceases to remain invested or deposited in any of the forms or modes specified in section 11(5); then such income shall be deemed to be the income of such person in the previous year, in which the income ceases to remain invested or deposited as per modes in section 11(5).
- (d) is not utilised for the purpose for which it is accumulated or set apart during the period specified under the statement for accumulation; such income shall be deemed to be income of such person of the previous year being the last previous year of the period for which the income is so accumulated or set apart.

- (e) is credited/paid to any trust or fund or institution registered under section 12AA/12AB/section 10(23C)(iv)/(v)/(vi)/(via); such income shall be deemed to be income in the previous year when it is so credited or paid.

As per section 11(3A), where due to circumstances beyond the control of the person in receipt of the income, any income invested or deposited 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 purpose in India as is specified in the application by such person and as is in conformity with the objects of the trust.

However, the Assessing Officer shall not allow application of such income by way of payment or credit to any trust or fund or institution registered under section 12AA/12AB/section 10(23C)(iv)/(v)/(vi)/(via).

In case of a trust or institution which has deposited its income in forms or modes specified under section 11(5) is dissolved, the Assessing Officer may allow application of such income by way of payment or credit to a trust or institution registered under section 12AA/12AB or fund or trust or institution referred to section 10(23C)(iv)/(v)/(vi)/(via) [This provision is mentioned only with reference to the second regime].

ILLUSTRATION 11

A charitable institution registered under section 12AB of the Income-tax Act, 1961 filled in Form No.10 for seeking permission to accumulate unapplied income under section 11(2) of the Act for the objects of the institution and submitted it to the Assessing Officer along with the resolution for accumulation. The Assessing Officer found that the objects for which accumulation was sought were not particularised in as much as they covered the entire range of objects of the institution. Can the Assessing Officer deny the benefit of accumulation in such a case?

SOLUTION

Section 11(2) permits a charitable trust or institution to accumulate its unspent income where 85% 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. The institution or trust has to specify, in the statement furnished to the Assessing Officer, the purpose for which the income is being accumulated or set apart and the period for which such income is to be accumulated or set apart.

In the given case, the assessee institution sought the permission of the Assessing Officer to accumulate unapplied income for the objects of the institution. The institution had not stated any objects in particular for which the unspent income was sought to be accumulated or set apart. In *Bharat Krishak Samaj vs. Deputy Director of Income-tax (Exemption)* (2008) 306 ITR 153 (Del.), it was held that it is not necessary for a charitable trust to particularize each and every object for which accumulation is sought. It is enough if the assessee seeks permission for accumulation for the objects of the trust. Therefore, the Assessing Officer cannot deny the benefit of accumulation in such a case.

ILLUSTRATION 12

A charitable institution registered under section 12AB of the Income-tax Act, 1961 for the previous year ended 31 March 2025, filled in Form No.10 for seeking permission to accumulate unapplied income for a period of five years under section 11(2) of the Act for the objects of the institution and submitted it to the Assessing Officer along with the resolution for accumulation. The charitable institution could not utilise the accumulated income within the period of five years. Examine the consequences of the same for the charitable institution with regards to the accumulated income.

SOLUTION

Section 11(3) provides for consequences when an assessee registered under section 12AB fails to satisfy the conditions of 11(2) accumulation. In this regard, the charitable institution has not utilised the accumulated income of P.Y. 2024-25 within a period of five years as specified in Form 10. Hence, by virtue of section 11(3), the said income will be deemed to be the income of the charitable institution of the previous year, being the last previous year of the period for which the income accumulated is not utilised. Hence, the said income will be taxable in the 5th year as it is the last previous year of the period of accumulation.

Modes specified in section 11(5):

- (1) Investment in Government Saving Certificates.
- (2) Deposits with Post Office Savings Banks.
- (3) Deposit with Scheduled banks or Co-operative Banks.
- (4) Investment in units of the Unit Trust of India.
- (5) Investment in Central or State Government Securities.
- (6) Investments in debentures issued by or on behalf of any company or corporation.

However, both the principal and interest thereon must have been guaranteed by the Central or the State Government.

- (7) Investment or deposits in any public sector company.

Where an investment is made in the shares of any public sector company and such public sector company ceases to be a public sector company, the investment so made shall be deemed to be an investment made for a period of three years from the date of such cessation and in the case of any other investment or deposit, till the date of its maturity.

- (8) Investment in bonds of approved financial corporation providing long term finance for industrial development in India and eligible for deduction under section 36(1)(viii).
- (9) Investment in bonds of approved public companies whose principal object is to provide long-term finance for construction or purchase of houses in India for residential purposes and eligible for deduction under section 36(1)(viii).
- (10) 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.

"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.

"Urban infrastructure" means a project for providing potable water supply, sanitation and sewerage, drainage, solid waste management, road, bridges and flyovers or urban transport.

- (11) Investment in immovable property excluding plant and machinery, not being plant and machinery installed in a building for the convenient occupation thereof.
- (12) Deposits with Industrial Development Bank of India.
- (13) **Any other mode of investment or deposit as may be prescribed. Rule 17C specifies the following other modes:**
- (i) Investments in units issued under any scheme of mutual fund referred to in section 10(23D);
 - (ii) Any transfer of deposits to Public Account of India;

- (iii) Deposits made with an authority constituted in India 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';
- (v) investment by a recognized Stock Exchange, in the equity shares of a company promoted by it to acquire the membership rights of other stock exchanges, where at least 51% of the paid-up share capital is held by the Stock Exchange and the balance is held by its members;
- (vi) 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 51% of equity shares are held by National Payments Corporation of India.
- (vii) 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 Open Network for Digital Commerce Ltd, being a company incorporated under section 7(2) read with section 8(1) of the Companies Act, 2013, for participating in network based open protocol models which enable digital commerce and interoperable digital payments in India;
- (viii) investment by way of acquiring equity shares of an incubatee by an incubator;
- (ix) investment by way of acquiring shares of National Skill Development Corporation;
- (x) investment in debt instruments issued by any infrastructure finance company registered with RBI;
- (xi) investment in Stock Certificate as defined in of Sovereign Gold Bonds Scheme, 2015.
- (xii) ***investment by way of acquiring units of POWERGRID Infrastructure Investment Trust.***

ILLUSTRATION 13

A charitable trust derives its income from the business of providing mineral water to various companies situated in Software Technology Park in Hyderabad. A sum of ₹ 30 lakhs has been derived as net income from such business activity, which has been applied for the object of general public utility. The total receipts of the trust during the P.Y. 2024-25 was ₹ 140 lakhs.

Examine the taxability of application of the income, if the income so derived relates to the previous year 2024-25. Would your answer be different, if the trust runs a school in a backward district and applies the profits from the business for such school's activity?

SOLUTION

In the first case, net income from the business of supplying mineral water to various companies i.e., ₹ 30 lakhs is not eligible for exemption under section 11, since the receipt from such activity exceeds 20% of total receipts (i.e., 20% of ₹ 140 lakhs) during the year. This is because “advancement of any object of general public utility” would not be a charitable purpose if it involves carrying on of any activity in the nature of trade, commerce or business, for example, supply of mineral water for a consideration, as in this case. It is immaterial that the net income from such business is applied for the object of general public utility. On the other hand, where the trust runs a school in a backward district, this restriction is not applicable. The reason is that the restriction contained in section 2(15) is applicable only to the last limb of the definition of “charitable purpose” i.e. advancement of object of general public utility. It does not affect the other limbs of the definition viz. “relief of the poor”, “education”, “medical relief” etc.

Section 11(4) clarifies that “property held under trust” includes a business undertaking so held. As per section 11(4A), exemption can be availed in respect of profits and gains of business, if such business is incidental to the attainment of the objectives of the trust and separate books of account are maintained in respect of such business. Therefore, in the second case, the profit from the business shall be eligible for exemption under section 11, assuming that the said business is incidental to the attainment of the objects of the trust (i.e., education) and books of account for such business activity is maintained separately.

VII. No claim for exemption under section 10 permissible where trust has been granted registration/approval for availing exemption under section 11 or under section 10(23C)

Where a trust or an institution or fund has been granted registration/approval for purposes of availing exemption under second regime, and the registration is in force for a previous year, then, such trust or institution cannot claim any exemption under any provision of section 10 [other than exemption of agricultural income under section 10(1)].

Prior to 1st June 2020, the organisation registered u/s 12AA could also avail approval u/s 10(23C) or 10(46) and thus, could avail tax exemption under either of the two sections. However, with effect from 1 June 2020, the registration granted for availing exemption under section 11 would become inoperative from the date on which the trust or institution is approved under section 10(23C) or is notified under section 10(23EC) or under section 10(46) or under section 10(46A).

Accordingly, the registration granted for availing exemption under section 11 would become inoperative from the date on which the trust or institution is approved under section 10(23C) or is notified under **section 10(23EA)** or section 10(23EC) or **section 10(23ED)** or section 10(46) or section 10(46A) or **from 1st April of the P.Y. for which exemption is claimed under section 10(46B)** [First proviso to section 11(7)].

The trust or institution, whose registration/approval has become inoperative, may apply to get its registration operative under section 12AB/ 10(23C)(iv)/(v)/(vi)/(via) subject to the condition that on doing so, the approval under section 10(23C) or notification under section **10(23EA)/(23EC)/(23ED)/10(46)** or 10(46A), as the case may be, to such trust or institution shall cease to have any effect from the date on which the said registration/approval becomes operative and thereafter, it shall not be entitled to exemption under section 10(23C) **or under section 10(23EA)/(23EC)/(23ED)** or section 10(46) or section 10(46A), as the case may be [Second proviso to section 11(7)].

6. Denial of Exemption [Section 13]

(A) Income not eligible for exemption under sections 11 and 12

In the following situations, income of a trust, fund or institution will not be eligible for availing exemption under section 10(23C)(iv)/(v)/(vi)/(via) or Section 11 as the case may be.

- (a) **Income from property held under a trust for private religious purposes** - Where the property is held under a trust for private religious purposes, no part of the income will be exempt under section 11, if it does not ensure for the benefit of the public [Section 13(1)(a)].
- (b) **Income from trust established for benefit of any particular religious community or caste** -Where a trust set up for charitable purposes or a charitable institution has been established for the benefit of any particular religious community or caste, the income thereof will not be eligible for exemption under section 11. However, a trust or institution created or established for the benefit of scheduled caste, backward classes,

scheduled tribes or women and children shall not be treated as a trust or institution created or established for the benefit of a religious community or caste within the meaning of section 13(1)(b).

Note: The situations referred to in (a) & (b) on non-availability of exemption are with reference to only income under the second regime.

(c) Income of trust enuring for the benefit of any person referred to in section 13(3)

[Section 13(1)(c)]: Where any part of the income or property of trust or the institution enures directly or indirectly for the benefit of any person referred to in section 13(3), then such part of the income shall not be eligible for exemption and the said income will be taxed at 30% under Section 115BBI.

Such part of income or property would not be eligible for exemption and would be taxed under section 115BBI at 30%. Further, to avoid income of the trusts or institutions to be used for the benefit of specified persons under section 13(3), penalty is leviable under 271AAE on the amount of income provided as a benefit.

Penalty for providing benefit to person referred in section 13(3) [Section 271AAE]

If during any proceeding under this Act, it is found that any person, being any fund or institution or trust referred under section 10(23C)(iv)/(v)/(vi)/(via) or any trust or institution referred to in section 11 applied income of the trust or institution, directly or indirectly, for the benefit of any person referred to in section 13(3), the Assessing Officer may direct such fund or trust or institution to pay penalty equal to -

- (i) 100% of the aggregate amount of income so applied, where the violation is noticed for the first time during any previous year; and
- (ii) 200% of the aggregate amount of income so applied, where violation is noticed again in any subsequent previous year.

Non-applicability of relaxation u/s 56(2)(x)

The provisions of section 56(2)(x) are not attracted in the hands of the recipient who receives any sum of money or property from a trust or institution approved u/s 10(23C) or registered u/s 12AA or 12AB.

However, this relaxation is not available where sum of money or property has been received by specified persons under section 13(3).

(d) **Deposit or investment of funds in impermissible modes [Section 13(1)(d)] -Any income of a trust or institution, if –**

- (1) its funds are invested or deposited otherwise than in the forms or modes specified in section 11(5);
- (2) it holds shares in a company other than -
 - (i) a public sector company; or
 - (ii) shares prescribed as a form or mode of investment under section 11(5)(xii).

However, these restrictions do not apply in respect of :

- (a) any assets forming part of corpus of the trust as on 1-6-1973.
- (b) any accretion to the corpus shares mentioned in (a) above by way of bonus shares allotted to the trust.
- (c) debentures issued by or on behalf of any company or corporation and acquired by the trust before March 1, 1983.
- (d) any asset not covered under section 11(5), where such asset is held for not more than one year from the end of the previous year in which such asset is acquired.
- (e) any funds representing the profits and gains of business. However, where a trust has any other income in addition to profits and gains of business, such relaxation of the restriction will be denied unless the trust keeps separate accounts for the business. [This is applicable only for the second regime].

Note – Under the first regime, the 3rd proviso to section 10(23C), requiring investment or deposit of funds in forms or modes specified under section 11(5), contains similar exclusions [mentioned in (a), (b), (c) and (d) above]. In addition, voluntary contributions received and maintained in the form of jewellery, furniture or any other article as the Board may specify, are also excluded from the applicability of this requirement under the first regime.

W.e.f. 1st October 2024, no application for approval can be made under the first regime, resultantly, certain trusts or institutions need to shift from first regime to second regime. In order to provide protection to these trusts or institutions the assets permissible for investment in first regime i.e., mentioned in (a), (b), (c) and (d) above and voluntary contributions received and maintained in the

form of jewellery, furniture or any other article as the Board may specify are also included under section 13(1)d).

- (B) **Prohibited use or application** -We have noted above that when any part of the income or any property of the trust whenever created, is, during the previous year, used or applied directly, for the benefit of any person referred to in section 13(3), the denial of exemption operates. Section 13(2) specifies a few particular instances where the income or the property is to be deemed to have been used for the benefit of a person referred to in section 13(3). It should be noted that those particular instances do not in any way restrict the general meaning of the expression “used or applied for the benefit of a person”. The provisions of section 13(2) are as follows:

The income or the property of the trust or institution or any part of such income or property is to be deemed to have been used or applied for the benefit of a person referred to in section 13(3) in the following cases:

- (a) **Loan without adequate interest or adequate security** - If any part of the income or the property of the trust or institution is or continues to be lent to any person referred to in section 13(3) for any period during the previous year without either adequate security or adequate interest or both.
- (b) **Allowing use of property without adequate rent** -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.
- (c) **Excess payment for services** - If any amount is paid out of the resources of the trust or institution to any of the persons referred to in section 13(3) for services rendered to the trust or institution but such amount is in excess of a reasonable sum payable for such services.
- (d) **Inadequate remuneration for services rendered** - If the services of the trust or institution are made available to any person referred to section 13(3) without adequate remuneration or other compensation.
- (e) **Excess payment for purchase of property** - 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 a consideration which is more than adequate.

- (f) **Inadequate consideration for property sold** - 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 a consideration which is less than adequate.
- (g) **Diversion of income or property exceeding ₹ 1,000** - 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) provided the aggregate value of such income and property diverted exceeds ₹ 1,000.
- (h) **Investment in substantial interest concerns** - 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.

Section 13(4) provides some respite where the aggregate of the funds invested in the said concern does not exceed five per cent of the capital of that concern. In such a case, the exemption under section 11 or 12 will be denied only in relation to such income as arises out of the said investment. Exemption will not be denied to the remaining income only due to this reason.

(C) Prohibited category of persons - Section 13(3) gives the list of persons, use or application of the income or property of a trust for whose direct or indirect benefit results in a denial of the exemption contemplated in section 11 for a charitable or religious trust or institution. The said persons are:

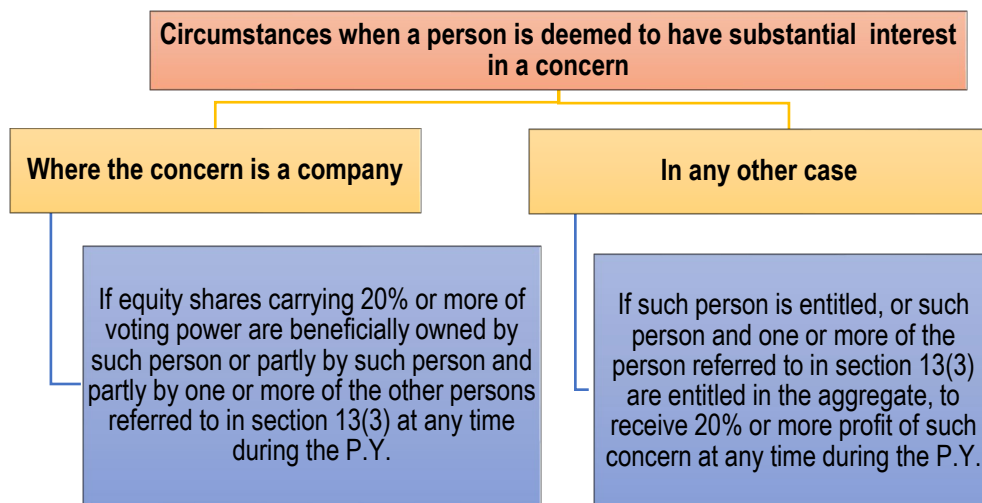
- (1) The author of the trust or the founder of the institution.
- (2) Any person who has made a substantial contribution to the trust or institution, that is, any person whose total contribution up to the end of the relevant previous year exceeds ₹ 50,000.
- (3) Where the author, founder or the person is a HUF, any member of the family.
- (4) Any trustee of the trust or manager (by whatever name called) of the institution.
- (5) Any relative of any such author, founder, person, member, trustee or manager as referred to above.
- (6) Any concern in which any of the persons referred to in clauses (1) to (5) above has a substantial interest.

Relative - The expression "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 (b), (c), (d) or (e) above;
- (g) any lineal descendant of a brother or sister of either the individual or the spouse of the individual;

Substantial interest in a concern - Section 13(2)(h), section 13(3) and section 13(4) refers to cases where a person has a substantial interest in a concern. These references occur where the “Prohibited use or application” and “Prohibited category of persons” have been described. The circumstances in which a person shall be deemed to have a substantial interest in a concern, have been laid down in *Explanation 3* to section 13.



- (D) **Exemption not to be denied to charitable trusts providing educational or medical facilities to specified persons [Section 13(6)]**- A charitable or religious trust running an educational institution or a medical institution or a hospital shall not be denied the benefit of exemption under section 11 merely due to the reason that the benefit of educational or medical facilities have been provided to the specified persons referred to in section 13(3). However, the value of such facilities provided to such specified persons either free of cost or at a concessional rate would be deemed to be the income of the trust. Such income would not be eligible for exemption under section 11.

(E) **Anonymous donations [Section 13(7)]**-The exemption provisions contained in both regimes shall not be applicable in respect of any anonymous donation referred to in section 115BBC on which tax is payable in accordance with the provisions of that section. For example, section 11(1)(d) provides that any 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 shall not be included in the total income of such trust/institution for the relevant previous year.

However, if a trust or institution established wholly for charitable purposes receives an anonymous donation with a specific direction that the donation shall form part of the corpus of the trust or institution, such anonymous donation would not be exempt by virtue of section 11(1)(d). It would be taxable at 30% as provided in section 115BBC.

(F) **Exemption to be denied to a charitable trust having its main object as “advancement of any other object of general public utility” if its trading receipts exceed the specified threshold irrespective of withdrawal of approval or cancellation of registration or rescindment of notification [Section 13(8)]**

(a) Under both regimes, income of any charitable trust or institution is exempt if such income is applied for charitable purposes in India and such institution is registered under second regime or approved under first regime.

(b) The definition of “charitable purpose” under section 2(15) provides 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,-

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

(2) the aggregate receipts from such activity or activities, during the previous year, does not exceed 20% of the total receipts, of the trust or institution undertaking such activity or activities, for the previous year .

(c) Thus, a charitable trust or institution pursuing “advancement of object of general public utility” may be a charitable trust in one year and not a charitable trust in another year depending on the percentage of receipts from commercial activities *vis-à-vis* its total receipts.

- (d) Therefore, no exemption would be available to a trust or institution for the previous year in which the receipts from commercial activities exceed 20% of the total receipts of that year. However, this temporary excess in one year may not be treated as altering the very nature of the trust or institution so as to lead to cancellation of registration or withdrawal of approval or rescinding of notification issued in respect of trust or institution.
- (e) Therefore, there is need to ensure that if the purpose of a trust or institution does not remain charitable in a previous year on account of the commercial receipts exceeding the specified percentage of total receipts, then, such trust or institution would not be entitled to get benefit of exemption in respect of its income for that previous year in which the commercial receipts exceed the specified percentage of total receipts. The denial of exemption would be compulsory by operation of law and would not be dependent on any approval being withdrawn or registration being cancelled or a notification being rescinded.
- (f) Accordingly, section 13(8) ensures that such trust and institution does not get benefit of tax exemption under section 11 or 12 in the year in which its receipts from commercial activities exceed the specified percentage of total receipts, whether or not the registration or approval granted or notification issued is cancelled, withdrawn or rescinded in respect of such trust or institution.

- (G) Non-submission of statement in prescribed form and non furnishing of return of income on or before the due date of filing return of income under section 139(1) [Section 13(9)]-** In case the statement in Form 10 is not submitted and return of income is not filed on or before the due date of filing return of income under section 139(1), then, the benefit of accumulation would not be available and such income would be taxable at the applicable rate. Further, the benefit of accumulation would also not be available if return of income is not furnished on or before the due date of filing return of income specified in section 139(1).

Note – Section 11(2) stipulates the conditions for accumulation, on fulfillment of which the income so accumulated or set apart would not be included in the total income of the previous year of the trust. The condition stipulated in clause (c) of Section 11(2) is that the statement in Form 10 has to be furnished at least 2 months prior to the due date of filing of return of income u/s 139(1). However, as per section 13(9), the income accumulated would not be excluded from total income if Form 10 is not submitted on or before the due date under section 139(1). Section 13(9) permits exclusion of accumulated income from total income of the previous year, if Form 10 is filed on or before the due date under section 139(1). CBDT Circular No.6/2023 dated 24.5.2023 clarifies that the statement of accumulation in Form No.

10 is required to be furnished at least two months prior to the due date of furnishing return of income so that it may be taken into account while auditing the books of account. However, the accumulation/deemed application shall not be denied to a trust as long as the statement of accumulation/deemed application is furnished on or before the due date of furnishing the return as provided in section 139(1).

7. Manner of computation of income of a trust violating certain conditions [Sections 13(10) & (11)]

- (i) **Consequences of failure to comply with stipulated conditions:** If a trust or an institution violates certain stipulated conditions, the income shall be chargeable to tax after allowing deduction for expenditure (other than capital expenditure) incurred in India for the objects of the trust/ institution.

The following are the violations:

- It has receipts from trade, commerce etc. while advancing the object of general public utility, in excess of 20% of total receipt;
- It fails to maintain prescribed books of account;
- It fails to get its books of account audited and furnish audit report on or before the specified date;
- It fails to file return of income under section 139(4A) (or 139(4C), as the case may be, for the first regime trust) within the time stipulated under section 139(1) or 139(4).

- (ii) **Conditions to be fulfilled for claim of deduction of revenue expenditure:** The deduction for revenue expenditure incurred is subject to fulfilment of the following conditions:

- (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) there is no claim of depreciation on those assets, whose acquisition cost has been claimed as application of income in any previous year; and
- (d) such expenditure is not in form of any contribution or donation to any person.

- (iii) **Disallowances:** While determining the amount of expenditure allowable as deduction, the following points need to be considered:
- Capital expenditure is not allowed as a deduction.
 - Disallowance under sections 40(a)(ia), on account of non-deduction of tax or non-payment of tax deducted at source on or before the due date of filing of return, would be attracted
 - Disallowance of expenditure in respect of cash payment in excess of ₹. 10,000 under section 40A(3) and 40A(3A) would be attracted .
 - 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.

8. Anonymous donations received by Charitable Trusts/Institutions to be subject to tax [Section 115BBC]

- (i) As per the provisions of the Income-tax Act, 1961, tax exemption under section 10(23C) and section 11 are available to certain entities, as briefed in the table below, on fulfillment of the conditions prescribed under the relevant sections –

Entity	Applicable section
Charitable or religious trusts/institutions	11
Universities and other educational institutions	10(23C)(iiiad) and (vi)
Hospitals and other medical institutions	10(23C) (iii ae) and (vi a)
Notified funds or institutions established for charitable purposes	10(23C)(iv)
Notified trusts or institutions established wholly for public religious purposes or wholly for public religious and charitable purposes	10(23C)(v)

- (ii) As per section 115BBC anonymous donations received by the above entities are taxed at 30%.
- (iii) In order to provide relief to these trusts and institutions and to reduce their compliance burden, an exemption limit has been introduced, and only the anonymous donations in excess of this limit would be subject to tax@30% under section 115BBC.

- (iv) The exemption limit is the higher of the following –
- (1) 5% of the total donations received by the assessee; or
 - (2) ₹ 1 lakh.
- (v) The total tax payable by such institutions would be –
- (1) tax@30% on anonymous donations exceeding the exemption limit as calculated above; and
 - (2) tax on the balance income i.e., total income as reduced by the anonymous donations which have been subject to tax@30% under section 115BBC.
- (vi) The following table illustrates the calculation of anonymous donations liable to tax @30% under section 115BBC –

I	II	III	IV	V	VI
Situation	Total donations during the year (₹)	Anonymous donations received during the year (₹)	Exemption [5% of total donations or ₹ 1,00,000, whichever is higher] (₹)	Anonymous donations taxable@30% (₹)	Donations subject to tax at normal rates# (₹)
A	15,00,000	4,00,000	1,00,000	3,00,000	12,00,000
B	30,00,000	7,00,000	1,50,000	5,50,000	24,50,000
C	40,00,000	10,00,000	2,00,000	8,00,000	32,00,000

It is possible to take a view that the remaining donations reflected in Column VI which are taxable at normal rates would be eligible for application of income and thereby, the benefit of exemption under section 11 can be claimed in respect of such donations.

- (vii) For this purpose, “**anonymous donation**” means any voluntary contribution referred to in section 2(24)(ia), where the 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.

Section 115BBC does not apply to trust or institution wholly for religious purposes.

- (viii) However, the above provision does not apply to a trust or institution created or established wholly for religious purposes.

- (ix) Further, anonymous donations to trusts/institutions created or established wholly for religious and charitable purposes (i.e., partly charitable and partly religious institutions/trusts) would be taxed only if such anonymous donation is 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. Other anonymous donations received by such trusts/institutions are not taxable.
- (x) Section 13(7) provides that the exemption provisions contained in section 11 or section 12 shall not be applicable in respect of any anonymous donation referred to in section 115BBC on which tax is payable in accordance with the provisions of that section.
- (xi) For example, section 11(1)(d) provides that any 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 and deposited or invested in modes specified u/s 11(5), shall not be included in the total income of such trust/institution for the relevant previous year. However, if a trust or institution established wholly for charitable purposes receives an anonymous donation with a specific direction that the donation shall form part of the corpus of the trust or institution, such anonymous donation would not be exempt by virtue of section 11(1)(d). It would be taxable at 30% as provided in section 115BBC.
- (xii) Similarly, section 10(23C) provides that any anonymous donation referred to in section 115BBC on which tax is payable in accordance with the provisions of the said section shall be included in the total income. Consequently, sections 10(23C) and 13 provide that any income by way of any anonymous donation which is taxable under the provisions of section 115BBC shall not be excluded from the total income of the trust or institution.

ILLUSTRATION 14

The following trusts claim that anonymous donations received by them during the financial year 2024-25 are not liable to tax under section 115BBC:

- (i) *A charitable trust referred to in section 11 which applied the entire amount of anonymous donations for purposes of the trust during the relevant financial year.*
- (ii) *A trust established wholly for religious purposes which applied 85% of the amount of anonymous donations for the purposes of the objects of the trust during the relevant financial year.*

Examine the validity of the claim made by the trusts.

SOLUTION

- (i) Section 115BBC provides for levy of tax @ 30% on anonymous donation received by, *inter alia*, charitable trusts or institutions referred to in section 11 in the following manner:
- (a) the amount of income-tax calculated @30% on the aggregate of anonymous donations received in excess of 5% of the total donations received by the assessee or one lakh rupees, whichever is higher; and
 - (b) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the aggregate of the anonymous donations received in excess of 5% of the total donations received by the assessee or ₹ 1 lakh, as the case may be.

Further, section 13(7) provides that the exemption provisions contained in sections 11 and 12 shall not be applicable in respect of any anonymous donation liable to tax under section 115BBC. As such, application of the anonymous donations received by the charitable trust for charitable purposes does not confer any exemption from tax. Therefore, the claim for non-taxability under section 115BBC of anonymous donations received by the charitable trust is not valid in law.

However, a view may be taken that anonymous donation upto higher of 5% of total donations or ₹ 1 lakh, which is taxable at normal rates would be eligible for application of income and thereby, the benefit of exemption under section 11 would apply.

- (ii) Section 115BBC(2) provides that the provisions contained in section 115BBC(1) relating to the taxability of anonymous donations are not applicable to any trust or institution created or established wholly for religious purposes. As such, the trust established wholly for religious purposes is not liable to be taxed in respect of the anonymous donations received by it. Therefore, the claim made by the trust is valid in law. The application or non-application of such anonymous donation for the purposes of trust during the relevant financial year is not germane to the issue of taxability under section 115BBC.

9. Taxation of specified income of NPOs chargeable to tax by charitable trusts/institutions [Section 115BBI]

(i) Rate of tax on Specified Income

As per section 115BBI specified income of a trust/institution availing exemption under the first regime [section 10(23C)(iv)/(v)/(vi)/(via)] or second regime [Section 11], would be chargeable at the rate of 30%.

(ii) No deduction for expenditure or allowance

Further, no deduction in respect of any expenditure or allowance or set-off of any loss would be allowed under any provisions of the Income-tax Act, 1961 while computing specified income.

(iii) Meaning of “Specified Income”

“Specified income” means:

- (a) income accumulated or set apart in excess of 15% of the income, where such accumulation is not allowed under any specific provision of the Income-tax Act, 1961.
- (b) deemed income on account of violation of certain conditions stipulated for accumulation of income under section 11(3) and corresponding provision in section 10(23C).
- (c) deemed income on account of violation of deemed application provisions specified under 11(1B) read with *Explanation 1* below to section 11(1).
- (d) any income which is not exempt under section 10(23C) on account of violation of the provisions of clause (b) of the third proviso to section 10(23C) i.e., invested in impermissible mode or which is not excluded from the total income as per section 13(1)(d).
- (e) any income which is applied for the benefit of any specified prohibited person referred to in section 13(3).
- (f) any income derived from a property held under trust for a charitable purpose which tends to promote international welfare in which India is interested to the extent to which such income is not applied towards charitable purposes outside India.

ILLUSTRATION 15

SR Trust is a registered charitable trust under section 12AB. During the P.Y.2024-25, the trust had applied ₹ 5 lakh for the benefit of the trustee and ₹ 3 lakh for the benefit of Mr. Satish, who has donated ₹ 1.5 lakh to the trust upto 31.3.2025. Also, an amount of ₹ 2 lakh set apart in the P.Y.2022-23 by the trust for charitable purposes u/s 11(2) has been utilized in the P.Y.2024-25 for making donation to another registered charitable trust with similar object as SR Trust. What is the amount of “specified income” liable to tax@30% under section 115BBI for A.Y. 2025-26?

SOLUTION

Section 115BBI provides for levy of tax @ 30% on certain “specified income” of a trust. Section 115BBI defines “specified income” to include income which has been applied for the benefit of prohibited persons u/s 13(3), which includes, *inter alia*, trustee of the trust and a person who has made substantial contribution to the trust (i.e., whose total contribution upto 31.3.2025 is more than ₹ 50,000). Specified income also includes deemed income on account of violation of certain conditions stipulated in section 11(3) for accumulation of income. Donation to another charitable trust out of accumulated income is one such violation. Accordingly, “specified income” of SR Trust liable to tax@30% under section 115BBI for A.Y. 2025-26 would be ₹ 10 lakh [₹ 5 lakh (amount applied for the benefit of the trustee) + ₹ 3 lakh (amount applied for the benefit of Mr. Satish) + ₹ 2 lakh (donation made to another trust out of accumulated income of an earlier previous year)].

10. Tax on accreted income of certain trusts and institutions [Chapter XII-EB]**(1) Background for introduction of Exit Tax**

- (i) As per section 2(24), "income" includes any voluntary contribution received by a charitable trust or institution or a fund.
- (ii) Sections 11 and 12 and section 10(23C)(iv)/(v)/(vi)/(via) provide exemption to trusts or institutions or funds or education institutions or hospitals in respect of income derived from property held under trust and voluntary contributions, subject to the conditions stipulated thereunder.
- (iii) The exemption is subject to the condition that the income derived from property held under trust should be applied for charitable purposes; and where such income cannot be applied during the previous year, it has to be accumulated and invested in the modes prescribed and applied for such purposes in accordance with specified conditions.
- (iv) If the accumulated income is not applied in accordance with the conditions provided in the said section within a specified time, then such income is deemed to be taxable income of the trust or the institution. Section 12AA or 12AB or section 10(23C) (iv) / (v) / (vi) / (via) provides for registration/approval of the trust or institution which entitles them to be able to get the benefit of sections 11 and 12 and section 10(23C) (iv) / (v) / (vi) / (via). It also provides the circumstances under which the registration can be cancelled. Section 13 of the Act provides for the circumstances under which exemption under section 11 or 12 or section 10(23C) (iv) / (v) / (vi) / (via) in respect of whole or part of income would not be available to a trust or institution or funds or education institutions or hospitals.

- (v) A society or a company or a trust or an institution carrying on charitable activity may –
- (1) voluntarily wind up its activities and dissolve; or
 - (2) merge with any other charitable or non-charitable institution; or
 - (3) convert into a non-charitable organization.

There is, however, no specific provision in the income-tax law as to how the assets of such a charitable institution should be dealt with.

- (vi) Under section 11, certain amount of income of prior period can be brought to tax on failure of certain conditions. However, there is no provision in the Income-tax Act, 1961, which ensure that the corpus and asset base of the trust accreted over a period of time, with promise of it being used for charitable purpose, continues to be utilised for charitable purposes and is not used for any other purpose.
- (vii) Consequently, it is always possible for charitable institutions to transfer assets to a non-charitable institution.
- (viii) In order to ensure that the benefit conferred over a period of time by way of exemption is not misused and to plug the gap in law that allows the charitable trusts having built up corpus/wealth through exemptions being converted into non-charitable organisation with no tax consequences, Chapter XII-EB imposes additional income-tax in the nature of an exit tax when the organization is converted into a non-charitable organization or gets merged with a non-charitable organization or does not transfer the assets to another charitable organisation.
- (ix) Upto A.Y.2022-23, the provisions of the Chapter XII-EB comprising of sections 115TD, 115TE and 115TF were made applicable to only the trusts or institutions under the second regime. With effect from A.Y. 2023-24, the provisions of Chapter XII-EB also extended to trusts or institutions or fund approved under first regime.

For this purpose, term “specified person” has been inserted to include within its ambit the trust or institution under first regime and provisions of section 115TD, 115TE and 115TF has been amended.

- (x) For the purposes of section 115TD, 115TE and 115TF, “Specified person” means
- (a) any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in section 10(23C)(iv)/(v)/(vi)/(via); or
 - (b) a trust or institution registered under section 12AA or section 12AB.

(2) Salient Features:

	Section	Provision
(i)	115TD(1)	<p><u>Circumstances where levy of tax on accreted income is attracted:</u></p> <p>The accreted income of a specified person shall be taxable at the maximum marginal rate@34.944% on –</p> <ol style="list-style-type: none"> (1) conversion into a form not eligible for grant of registration under section 12AA or section 12AB or approval under section 10(23C) (iv) / (v) / (vi) / (via); or (2) merger with an entity not having similar objects and registered under section 12AA or section 12AB or approved under section 10(23C) (iv) / (v) / (vi) / (via); or (3) non-distribution of assets on dissolution to any other specified person within a period of 12 months from the end of the month in which the dissolution takes place. <p>This levy of exit tax shall be in addition to income chargeable in the hands of the entity.</p> <p><i>W.e.f. A.Y. 2025-26, new section 12AC has been inserted to provide that where a trust or institution approved under the first regime or registered under the second regime, as the case may be, merges with another trust or institution, the exit tax provisions contained in Chapter XII-EB i.e., exit tax would not apply if –</i></p> <ul style="list-style-type: none"> • <i>the other trust or institution has same or similar objects.</i> • <i>the other trust or institution is approved under the first regime or registered under the second regime; and</i> • <i>the said merger fulfils the conditions as may be prescribed.</i>
(ii)	115TD(3)	<p><u>Deemed conversion into non-eligible form - Circumstances:</u></p> <p>A specified person shall be deemed to have been converted into any form not eligible for registration under section 12AA or section 12AB or approval under section 10(23C) (iv) / (v) / (vi) / (via) in a previous year, if, —</p> <ol style="list-style-type: none"> (i) the registration granted to it under section 12AA or section 12AB or approval under section 10(23C) (iv) / (v) / (vi) / (via) has been cancelled; or (ii) it has adopted or undertaken modification of its objects which do not conform to the conditions of registration and,—

		<p>(a) it has not applied for fresh registration under section 12AA or section 12AB or approval under section 10(23C)(iv) / (v) / (vi) / (via) in the said previous year; or</p> <p>(b) it has filed application for fresh registration u/s 12AA or 12AB or approval under section 10(23C) (iv)/(v)/(vi)/(via) but the said application has been rejected; or</p> <p>(iii) it has failed to make an application for –</p> <p>(a) reapproval/re-registration; or</p> <p>(b) renewal of approval/registration where the period of approval/registration is due to expire; or</p> <p>(c) final approval/registration within the period specified under clause (i)/(ii)/(iii) of the first proviso to section 10(23C) or clause (i)/(ii)/(iii) of section 12A(1)(ac), as the case may be, which expires in the said previous year.</p>
(iii)	115TD(2)	<p>Meaning of Accreted Income:</p> <p>Aggregate FMV of total assets of the specified person as on the specified date</p> <p style="text-align: center;">Less</p> <p>Total liability of the specified person computed in accordance with the prescribed method of valuation [See <i>Method of Valuation prescribed by CBDT given in pages 10.77 to 10.81</i>]</p>
		<p>Notes –</p> <p>(1) Accreted income attributable to any asset which is established to have been directly acquired by the specified person out of its agricultural income exempt under section 10(1) would be ignored. Liability, in relation to such asset, also has to be ignored.</p> <p>(2) Accreted income attributable to any asset acquired by the specified person during the period beginning from the date of its creation or establishment and ending on the date from which the registration under section 12AA or section 12AB or approval under section 10(23C) (iv) / (v) / (vi) / (via) became effective⁸, if the</p>

⁸Where the benefit under sections 11 and 12 or section 10(23C) (iv) / (v) / (vi) / (via) have been allowed to the trust or institution in respect of any previous year or years beginning prior to the date from which the registration or approval under section 12AA or 12AB or under section 10(23C) (iv) / (v) / (vi) / (via) became effective, then, the registration or approval shall be deemed to have become effective from the

		<p>specified person has not been allowed any benefit of sections 11 and 12 or approval under section 10(23C) (iv) / (v) / (vi) / (via) during the said period, would be ignored. Liability, in relation to such asset, also has to be ignored.</p> <p>(3) The asset and the liability of the charitable organisation which have been transferred on dissolution to another charitable trust or institution registered under section 12AA or section 12AB or a fund / institution / trust / university / educational institution / hospital / medical institution approved under section 10(23C) within specified time have to be ignored while calculating accreted income.</p>												
		<p>Meaning of specified date [Explanation below section 115TD(7)]:</p> <table border="1"> <thead> <tr> <th></th> <th>Case</th> <th>Specified Date</th> </tr> </thead> <tbody> <tr> <td>(i)</td> <td>conversion of the trust or institution registered u/s 12AA/12AB or approved under section 10(23C) (iv) / (v) / (vi) / (via) into a form not eligible for registration u/s 12AA/12AB or under section 10(23C) (iv) / (v) / (vi) / (via)</td> <td>The date of conversion</td> </tr> <tr> <td>(ii)</td> <td>merger with an entity not having similar objects or not registered u/s 12AA/12AB or not approved u/s 10(23C)(iv)/(v)/(vi)/ (via)</td> <td>The date of merger</td> </tr> <tr> <td>(iii)</td> <td>non-distribution of assets on dissolution to any charitable institution registered u/s 12AA/12AB or approved u/s 10(23C) within a period twelve months from dissolution.</td> <td>The date of dissolution</td> </tr> </tbody> </table>		Case	Specified Date	(i)	conversion of the trust or institution registered u/s 12AA/12AB or approved under section 10(23C) (iv) / (v) / (vi) / (via) into a form not eligible for registration u/s 12AA/12AB or under section 10(23C) (iv) / (v) / (vi) / (via)	The date of conversion	(ii)	merger with an entity not having similar objects or not registered u/s 12AA/12AB or not approved u/s 10(23C)(iv)/(v)/(vi)/ (via)	The date of merger	(iii)	non-distribution of assets on dissolution to any charitable institution registered u/s 12AA/12AB or approved u/s 10(23C) within a period twelve months from dissolution.	The date of dissolution
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first day of the earliest previous year. Accordingly, accreted income attributable to asset acquired during the said period has to be considered. Liability in relation to such asset has to be reduced.

		(ii)	Where it has adopted or undertaken modification of its objects which do not conform to the conditions of registration/ approval and has not made an application for fresh registration/approval or the application made has been rejected.	The date of adoption or modification of any object.						
		(iii)	Where it has failed to make an application for – (a) reapproval/re-registration, (b) renewal of approval/ registration where the period of approval/ registration is due to expire, or (c) final approval/registration within the period specified under clause (i)/(ii)/(iii) of the first proviso to section 10(23C) or clause (i)/(ii)/(iii) of section 12A(1)(ac), as the case may be, which expires in the said previous year.	The last date for making an application for registration or approval						
(iv)	115TD(4)	<p><u>Exit tax payable even if no income-tax is payable by the specified person:</u></p> <p>Even if no income-tax is payable by the specified person on its total income, tax on accreted income shall be payable by the trust or institution, like any other additional income-tax.</p>								
(v)	115TD(5)	<p><u>Period within which tax on accreted income has to be paid to the credit of the Central Government:</u></p> <p>The principal officer or the trustee of the specified person, as the case may be, and the specified person shall also be liable to pay the tax on accreted income to the credit of the Central Government <u>within fourteen days from.—</u></p> <table border="1"> <thead> <tr> <th></th> <th>Circumstance</th> <th>Relevant date</th> </tr> </thead> <tbody> <tr> <td>(1)</td> <td>Where the registration or approval granted u/s 12AA/12AB or u/s 10(23C)(iv)/(v)/ (vi)/(via) has been cancelled</td> <td>the date on which – (a) the period for filing appeal under section 253 against the order cancelling the registration expires and no appeal has been filed by the specified person; (or)</td> </tr> </tbody> </table>				Circumstance	Relevant date	(1)	Where the registration or approval granted u/s 12AA/12AB or u/s 10(23C)(iv)/(v)/ (vi)/(via) has been cancelled	the date on which – (a) the period for filing appeal under section 253 against the order cancelling the registration expires and no appeal has been filed by the specified person; (or)
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			(b) the order in any appeal, confirming the cancellation of the registration, is received by the specified person.
(2)	(i) Where the trust has modified its objects and has not applied for fresh registration u/s 12AA/12AB or approval under section 10(23C)(iv)/(v)/(vi)/(via) (ii) where the trust has failed to apply for – (a) re-registration/re-approval; or (b) renewal of registration/ approval, where the period of validity of registration or approval set to expire; or (c) final registration/ approval within the specified time period which expires in the relevant P.Y.		the end of the previous year
(3)	Where the trust has modified its objects and has filed application for fresh registration u/s 12AA/12AB or approval under section 10(23C)(iv)/(v)/(vi)/(via) but the same was rejected		the date on which – (a) the period for filing appeal under section 253 against the order rejecting the application expires and no appeal has been filed by the specified person; (or) (b) the order in any appeal, confirming the cancellation of the application, is received by the specified person
(4)	Where trust has merged with an entity not having similar objects or not		the date of merger

		registered u/s 12AA/12AB or not approved under section 10(23C) (iv) / (v) / (vi) / (via)					
		(5) Where the trust fails to transfer upon dissolution all its assets to another registered trust or institution or approved fund or institution within 12 months from the end of the month in which the dissolution takes place	the date on which the period of 12 months expires.				
(vi)	115TD(6)	<p><u>No credit available for tax paid on accreted income:</u> The tax on accreted income shall be treated as final payment of tax in respect of such income for which no credit can be taken by the specified person or any other person.</p>					
(vii)	115TD(7)	<p><u>Non-availability of deduction under any other provision of the Act:</u> No deduction is allowable under any other provision of the Act to the specified person or any other person in respect of the income which has been charged to tax or the tax thereon.</p>					
(viii)	115TE	<p><u>Interest for non-payment of tax within prescribed time:</u> In case of failure of payment of tax within the prescribed time, a simple interest@1% p.m. or part of it shall be applicable for the period of non-payment.</p> <p><u>Period of non-payment:</u></p> <table border="1"> <thead> <tr> <th>Beginning from</th> <th>Ending with</th> </tr> </thead> <tbody> <tr> <td>The date immediately after the last date on which such tax was payable</td> <td>The date on which the tax is actually paid.</td> </tr> </tbody> </table>		Beginning from	Ending with	The date immediately after the last date on which such tax was payable	The date on which the tax is actually paid.
Beginning from	Ending with						
The date immediately after the last date on which such tax was payable	The date on which the tax is actually paid.						
(ix)	115TF	<p><u>Circumstance when specified person is deemed to be assessee-in-default:</u> The principal officer or the trustee and specified person shall be deemed to be assessee-in-default for non-payment of tax and all provisions related to the recovery of taxes shall apply. Further, in the case of transfer of assets upon dissolution of the trust or institution to a recipient, which is not a charitable organisation, the recipient of assets of the trust shall also be liable to be held as assessee-in-default in case of non-payment of tax and interest. However, in such a case, the recipient's liability shall be limited to the extent to which the assets received by him is capable of meeting the liability.</p>					

Note - As per section 115TD(2), "Accreted Income" means the aggregate FMV of total assets of the specified person as on the specified date less total liability of such specified person computed in accordance with the prescribed method of valuation. Accordingly, Rule 17CB provide for method of valuation of assets and liabilities.

Method of valuation for the purposes of section 115TD(2)

Rule	Provision	
(1)	<p>The aggregate fair market value of the total assets of the specified person, shall be the aggregate of the fair market value of all the assets in the balance sheet as reduced by—</p> <p>(i) any amount of income-tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of income-tax claimed as refund under the Act, and</p> <p>(ii) any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset.</p>	
(2)	<p>The fair market value of the asset shall be determined in the following manner, namely –</p>	
	(I) Shares and securities	
	(a) Quoted shares and securities	<p>(i) the <u>average of the lowest and highest price of such shares and securities</u> quoted on a recognised stock exchange as on the specified date; or</p> <p>(ii) where on the specified date, there is <u>no trading</u> in such shares and securities on a recognised stock exchange, the <u>average of the lowest and highest price of such shares and securities on a recognised stock exchange on a date immediately preceding the specified date</u> when such shares and securities were traded on a recognised stock exchange,</p>
	(b) Unquoted shares equity	$\frac{(A + B - L) \times (PV)}{PE}$ <p>where,</p> <p>A = book value of all the assets in the balance sheet (other than bullion, jewellery, precious stone, artistic work, shares,</p>

			<p>securities, and immovable property) as reduced by-</p> <p>(i) any amount of income-tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of income-tax claimed as refund under the Act; and</p> <p>(ii) any amount shown in the balance sheet as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;</p> <p>B = fair market value of bullion, jewellery, precious stone, artistic work, shares, securities and immovable property as determined in the manner provided in this rule;</p> <p>L = book value of liabilities shown in the balance sheet, but not including the following amounts, namely: —</p> <p>(i) representing contingent liabilities other than arrears of dividends payable in respect of the paid-up capital in respect of equity shares;</p> <p>(ii) the amount set apart for payment of dividends on preference shares and equity shares;</p> <p>(iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;</p> <p>(iv) any amount representing provision for taxation, other than amount of income-tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of income-tax claimed as refund under the Act, to the extent of the excess over the tax payable with reference to the book profits in</p>
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		<p>accordance with the law applicable thereto;</p> <p>(v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;</p> <p>(vi) any amount of cumulative preference shares;</p> <p>PE = total amount of paid up equity share capital as shown in the balance-sheet;</p> <p>PV = the paid up value of such equity share.</p>
(c)	Shares and securities other than equity shares	The fair market value of shares and securities other than equity shares shall be estimated to be price it would fetch if sold in the open market on the specified date on the basis of the valuation report from a merchant banker or an accountant in respect of such valuation.
II. Immovable property		
		<p>The fair market value of an immovable property shall be higher of the following:</p> <p>(a) price that the property shall ordinarily fetch if sold in the open market on the specified date on the basis of the valuation report from a registered valuer; and</p> <p>(b) stamp duty value as on the specified date.</p>
III. A business undertaking		
		<p>The fair market value of a business undertaking, held by a specified person, shall be its net assets determined in accordance with the following formula:</p> <p>Fair market value = (A + B - L),</p> <p>The value of A, B and L would be determined in the same manner as discussed above in the case of unquoted equity shares.</p>
IV. Any other asset		
		<p>The fair market value of any asset, other than those referred to in (I), (II) and (III), shall be the price that the asset shall ordinarily fetch if sold in the open market on the specified date on the basis of valuation report from a registered valuer.</p> <p>However, in case no valuer is registered for valuation of such assets, the valuation report shall be obtained from a valuer who is a member of any one of the professional valuer bodies viz. Institution of Valuers, Institution of Surveyors (Valuation Branch), Institution of Government Approved</p>

		Valuers, Practising Valuers Association of India, the Indian Institution of Valuers, Centre for Valuation Studies, Research and Training, Royal institute of Chartered Surveyors; India Chapter, American Society of Appraisers, USA; Appraisal institute, USA or a valuer who is appointed by any public sector bank or public sector undertakings for valuation purposes.					
(3)	<p>The total liability of the specified person shall be the book value of liabilities in the balance sheet on the specified date but not including the following amounts, namely -</p> <ul style="list-style-type: none"> (i) capital fund or accumulated funds or corpus, by whatever name called; (ii) reserves or surpluses or excess of income over expenditure, by whatever name called; (iii) any amount representing contingent liability; (iv) any amount representing provisions made for meeting liabilities, other than ascertained liabilities; (v) any amount representing provision for taxation, other than the amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of income-tax claimed as refund under the Act, to the extent of the excess over the income-tax payable with reference to the income in accordance with the law applicable thereto. 						
Explan- ation	Meaning of certain terms						
	Term	Meaning					
	Accountant	A fellow of the Institute of Chartered Accountants of India within the meaning of the Chartered Accountants Act, 1949 who is not appointed by the specified person as an auditor;					
	Balance sheet	The Balance Sheet of such specified person (including the notes annexed thereto and forming part of the accounts) as drawn up on the specified date which has been audited by an accountant.					
	Quoted share or security	A share or security quoted on any recognised stock exchange with regularity from time to time, where the quotations of such shares or securities are based on current transaction made in the ordinary course of business;					
	Specified date	<p>The date referred to in <i>Explanation</i> to section 115TD of the Act.</p> <p>Meaning of specified date [Explanation below section 115TD]:</p> <table border="1"> <thead> <tr> <th></th> <th>Case</th> <th>Specified Date</th> </tr> </thead> <tbody> <tr> <td>(i)</td> <td>Conversion into a form not eligible for registration u/s 12AA/12AB or approved u/s 10(23C)(vi)/(v)/(vi)/(via)</td> <td>The date of conversion</td> </tr> </tbody> </table>		Case	Specified Date	(i)	Conversion into a form not eligible for registration u/s 12AA/12AB or approved u/s 10(23C)(vi)/(v)/(vi)/(via)
	Case	Specified Date					
(i)	Conversion into a form not eligible for registration u/s 12AA/12AB or approved u/s 10(23C)(vi)/(v)/(vi)/(via)	The date of conversion					

		<p>Date of conversion</p> <p>(a) date of order cancelling registration or approval</p> <p>(b) date of adoption or modification of any object</p> <p>(c) last date for making an application for renewal of registration/ approval or re-registration/re-approval where the period of validity set to expire or final registration/approval</p>
	(ii)	<p>merger with an entity not having similar objects or not registered u/s 12AA/12AB or not approved u/s 10(23C)(vi)/(v)/(vi)/(via)</p> <p>The date of merger</p>
	(iii)	<p>non-distribution of assets on dissolution to any charitable institution registered u/s 12AA/12AB or approved u/s 10(23C) within a period twelve months from dissolution</p> <p>The date of dissolution</p>
	Stamp duty value	The value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of an immovable property.
	Unquoted share and security	Share or security which is not a quoted share or security.



10.3 TAXATION OF DISCRETIONARY TRUSTS

Section 164 deals with taxation of trustees of discretionary trusts. This section applies in the case of a representative assessee referred to in section 160(1)(iii)/(iv) in a case where any income or part thereof is not specifically receivable on behalf of or for the benefit of any one person or where the individual shares of the persons on whose behalf or for whose benefit such income or such part thereof is receivable are indeterminate or unknown.

The representative assessee referred to in clauses (iii) and (iv) of section 160(1) are the Court of Wards, the Administrator General, the Official Trustee or any receiver or manager including any person whatever his designation who in fact manages the property on behalf of another, appointed by or under any order of a Court and a trustee appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise (including any Wakf Validating Act, 1913).

Such a discretionary trust will be liable to tax at the maximum marginal rate of income-tax on their entire income.

With a view to obviating hardship in genuine cases where the circumstances are such that tax evasion could not be considered to be main purpose of creating a trust, certain exceptions have been specified where the trust would not be taxed at the maximum marginal rate. The exceptions are as under:

- (1) Where none of the beneficiaries has any other income chargeable to tax exceeding the maximum amount not chargeable to income-tax in the case of an AOP and none of the beneficiaries is a beneficiary under any other trust; or
- (2) Where the relevant income or part of the relevant income is receivable under a trust declared by any person by a will and such trust is the only trust so declared under the will.
- (3) the relevant income or part of relevant income is receivable under a trust created before 1.3.1970 by a non-testamentary instrument and the Assessing Officer is satisfied that the trust was so created bona fide exclusively for benefit of the dependent relatives of settlor or where the settlor is a HUF for the benefit of the members of such families in circumstances where such relatives or members are mainly dependent on the settlor for their support and maintenance.
- (4) In cases where the relevant income is receivable by the trustee on behalf of provident fund, superannuation fund, gratuity fund, pension fund or any other fund created bona fide by a person carrying on a business or profession exclusively for the benefit of persons employed in such business or professions.

In the above four cases the income of the trustees will not be taxed at the maximum marginal rate. The relevant income or part of relevant income will be taxable as if it were the total income of an AOP.

Where any income in respect of which a trustee appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise, is liable as a representative assessee consists of, or includes, profits and gains of business, the above concessional treatment i.e. assessing the income at the rate applicable to an AOP will apply only if such profits and gains are receivable under a trust declared by any person by will exclusively for the benefit of any relative dependent on him for support and maintenance and such trust is the only trust so declared by him.

For the purposes of these provisions, a trust under which a discretionary power is given to the trustees to decide the allocation of the income every year or a right is given to the beneficiary to exercise the option to receive the income or not each year will all be regarded as discretionary trusts

and assessed accordingly. This is made clear in *Explanation 1* to section 164 which provides as under:

- (a) Any income in respect of which the Court of Wards, the Administrator General, the Official Trustee, receiver, manager or trustee appointed under a trust declared by a duly executed instrument in writing (including Wakf deed) is liable as a representative assessee or any part thereof shall be regarded as not being specifically receivable on behalf or for the benefit of any person unless the person on whose behalf or for whose benefit such income or such part thereof is receivable during the previous year is expressly stated in the order of the Court or the instruments of trust or wakf deed, as the case may be, and is identifiable as such on the date of such order, instrument or deed.
- (b) The individual shares of the person on whose behalf or for whose benefit such income or part thereof is receivable will be regarded as indeterminate or unknown unless the individual shares of such persons are expressly stated in the order of the court or the instrument of trust or wakf deed, as the case may be, and are ascertainable as such on the date of such order, instrument or deed.

This Explanation seeks to prevent trustees and beneficiaries from manipulating the arrangements in such a manner that a discretionary trust is converted into a specific trust whenever it suits them tax-wise.

- (1) **Income from property held under trust wholly for charitable or religious purposes [Section 164(2)]:** In case the relevant income, (in respect of which the shares of the beneficiaries are indeterminate or unknown), is derived from property held under trust wholly for charitable or religious purpose or which is of the nature referred to in section 2(24)(iia) [voluntary contributions received by a trust] or which is of the nature referred to in sub-section (4A) of section 11 [business income received by a trust], the tax shall be charged on so much of the income as is not exempt under section 11 or section 12 as if the income not so exempt were the relevant income of an association of persons.

However, where the whole or any part of the relevant income is not exempt under section 11 or section 12 because any income thereof is for the benefit of prohibited persons or the rules with regard to investments in specified channels have not been followed, tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate.

- (2) **Income from property held under trust partly for charitable or religious purposes and partly for other purposes [Section 164(3)]:** In case the relevant income is derived from property held under trust partly for charitable or religious purposes and partly for other

purposes or which is of the nature referred to in section 2(24)(iia) (voluntary contributions received by a trust) or which is of the nature referred to in sub-section (4A) of section 11 (business income received by a trust) and the individual share of the beneficiaries in the income applicable to purposes other than charitable or religious purposes is not known, tax liability will be the aggregate of the following:

- (a) the tax which would be chargeable on that part of the relevant income which is applicable to charitable or religious purposes (as reduced by the income, if any, which is exempt under section 11 as if such part (or such part so reduced) were the total income of the association of persons; and
- (b) the tax on that part of the relevant income which is applicable to purposes other than charitable or religious purposes, and which is either not specifically receivable on behalf of or for the benefit of any one person or in respect of which shares of beneficiaries are indeterminate or unknown, at the maximum marginal rate.

However, in the following cases, income will be charged to tax as if it were income of an association of persons:

- (a) where none of the beneficiaries has any other income chargeable to tax exceeding the maximum amount not chargeable to income-tax in the case of an AOP and none of the beneficiaries is a beneficiary under any other trust; or
- (b) where the relevant income is receivable under a trust created by will and such trust is the only trust so declared by him; and
- (c) where the trust is a non-testamentary one created before March 1, 1970 for the exclusive benefit (to the extent it is not utilised for charitable or religious purposes) of relatives of the settler mainly dependent on the settler for their support or maintenance or where settler is a Hindu undivided family, for the exclusive benefit of its members so dependent upon it.

Where the relevant income consists of or includes profits and gains of business, the preceding concessional method of taxation shall apply only if the income is receivable under a trust declared by any person by will exclusively for the benefit of any relative dependent on him for support and maintenance and such trust is the only trust so declared by him.

Where the whole or any part of the relevant income is not exempt under section 11 or section 12 because any income thereof is for the benefit of prohibited persons or the rules with regard to investment in specified channels have not been followed, tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate.

- (3) **Taxation of Oral Trusts [Section 164A]:** Oral Trust is a trust which is not declared by a duly executed instrument in writing. As per section 164A, any income which a trustee receives or is entitled to receive on behalf of or for the benefit of any person under an oral trust will be chargeable to income tax at the maximum marginal rate.

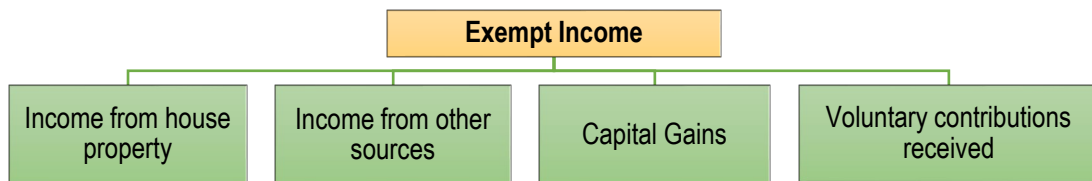
However, such trust shall be deemed to be a trust declared by a duly executed instrument in writing if a statement in writing, signed by the trustee or trustees, setting out the purpose or purposes of the trust, particulars as to the trustee or trustees, the beneficiary or beneficiaries and the trust property, is forwarded to the Assessing Officer within three months from the date of declaration of the trust.

- (4) **Case where part of trust income is chargeable [Section 165]:** In cases where only some portion of the trust's income to which the beneficiary or beneficiaries is/are entitled is taxable and the other portion is not taxable, the taxable portion of the income received by him from the trust as a beneficiary shall be only such portion thereof as bears to the whole income of the trust. In other words, where a part only of the trust income is chargeable to tax under this Act, the beneficiaries' share of the income should be taken to be that derived proportionately from the chargeable and non-chargeable portions of the trust income.

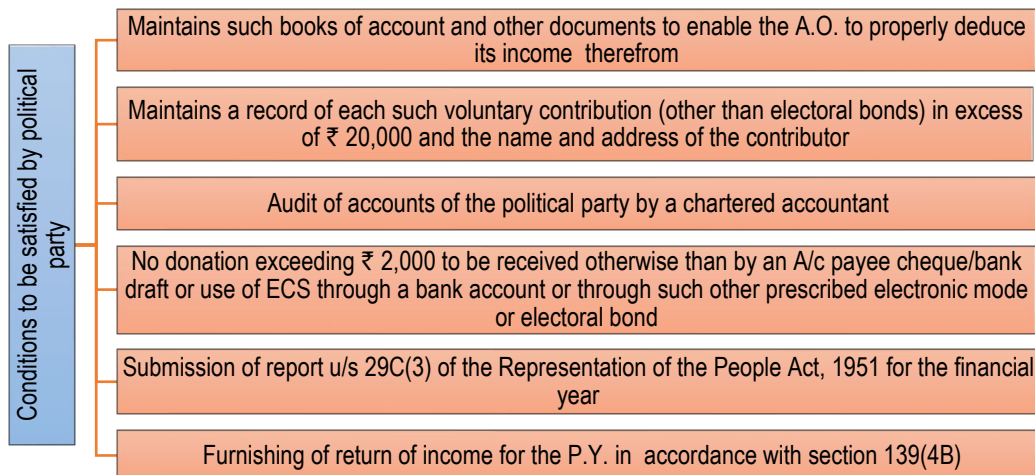


10.4 SPECIAL PROVISIONS RELATING TO INCOME OF POLITICAL PARTIES [SECTION 13A]

Section 13A of the Income-tax Act, 1961 grants exemption from tax to political parties in respect of their income specified below:



The aforesaid categories of income would qualify for exemption provided additional conditions for availing the benefit of the said section which are as under are met :



Meaning of “Political Party” and “Electoral bond”:

Political Party	A political party registered under section 29A of the Representation of the People Act, 1951
Electoral Bond	A bond issued by a scheduled bank (as authorised by the Central Government) under a scheme notified by the Central Government.

ILLUSTRATION 16

Explain in the context of provisions of the Act, whether the income derived during the year ended on 31.03.2025 in following case shall be subject to tax in the A.Y. 2025-26:

A political party, duly registered under section 29A of the Representation of the People Act, 1951, received rent of ₹ 1,25,000 per month of one of its building let out to a bank from 01.06.2024.

SOLUTION

Rent received by the political party from the bank is an income chargeable under the head "Income from house property". However, according to the provisions of section 13A, income from, *inter alia*, house property shall not be included in total income of a political party registered under section 29A of the Representation of the People Act, 1951, provided the political party fulfils the conditions as specified therein including furnishing a return of income for the previous year in accordance with the provisions of section 139(4B) on or before the due date under section 139. Therefore, if the stipulated conditions are fulfilled by the political party, rent of ₹ 1,25,000 per month received by the registered political party from letting out of its building to a bank would not be included in its total income.

ILLUSTRATION 17

The books of account maintained by a National Political Party registered with Election Commission for the year ended on 31.3.2025 discloses the following receipts:

		₹
(a)	Rent of property let out to a departmental store at Chennai	6,00,000
(b)	Interest on deposits other than banks	5,00,000
(c)	Contribution of ₹ 21,000 each from 100 persons (who have secreted their names)	21,00,000
(d)	Contribution from 10 persons by way of electoral bonds of ₹ 25,000 each	2,50,000
(e)	Cash contribution @ ₹ 2,100 each from 1,000 members (recorded in books of account)	21,00,000
(f)	Net profit of cafeteria run in the premises at Delhi	3,00,000

Compute the total income of the political party for the assessment year 2025-26, with reasons for inclusion or otherwise.

SOLUTION

The total income of a political party registered with the Election Commission is to be computed as per section 13A under which the income derived from house property, income from other sources and income by way of voluntary contributions received from any person, on fulfilling of the conditions as mentioned thereunder, are exempt from tax. However, in this case, since cash contribution in excess of ₹ 2,000 is received from 1000 persons, the political party has violated the condition of receipt of donation through account payee cheque/draft or prescribed electronic modes. Further, the political party has also violated the condition of maintenance of records in case of donations exceeding ₹ 20,000 received otherwise than by way of electoral bonds. Hence, its total income has to be computed as under without providing for exemption available under section 13A:

Computation of total income of National Political Party

	Particulars	₹
(a)	The rent of the property of ₹ 6 lacs located at Chennai [assuming the same to be the Gross Annual Value] less 30% of ₹ 6 lacs, being deduction u/s 24	4,20,000
(b)	Interest received on deposits	5,00,000
(c)	Contribution from 100 persons (who have secreted their names) of ₹ 21,000 each	21,00,000
(d)	Contribution from 10 persons by way of electoral bonds of ₹ 25,000 each	2,50,000

(e)	Cash contribution @ ₹ 2,100 each from 1,000 members (recorded in books of account)	21,00,000
(f)	Net profit of cafeteria at Delhi	3,00,000
Total Income		56,70,000

Note – Alternatively, the political party can contend that only ₹ 45 lakh is taxable on account of non-maintenance of records and receipt of cash donations, in which case the total income would be computed as under:

Computation of total income of National Political Party

	Particulars	₹
(a)	Rent of the property of ₹ 6 lacs located at Chennai	Exempt
(b)	Interest received on deposits	Exempt
(c)	Contribution from 100 persons (who have secreted their names) of ₹ 21,000 each	21,00,000
(d)	Contribution from 10 persons by way of electoral bonds of ₹ 25,000 each	Exempt
(e)	Cash contribution @ ₹ 2,100 each from 1,000 members (recorded in books of account)	21,00,000
(f)	Net profit of cafeteria at Delhi	3,00,000
Total Income		45,00,000

Note: It is presumed that the conditions regarding maintenance of books of account, audit, submission of report under section 29C of the Representation of the People Act, 1951 and filing of return of income under section 139(4B) are fulfilled by the political party, and hence it is eligible for exemption of income under section 13A.



10.5 SPECIAL PROVISIONS RELATING TO VOLUNTARY CONTRIBUTIONS RECEIVED BY ELECTORAL TRUSTS [SECTION 13B]

- (1) **Voluntary contribution treated as income:** Any voluntary contribution received by an electoral trust (as may be approved by the CBDT in accordance with the scheme to be made by the Central Government) shall be treated as its income under section 2(24).
- (2) **Conditions for availing exemption under section 13B:** Any voluntary contributions received by an electoral trust would be exempt, if such electoral trust:
 - (I) distributes to a registered political party during the previous year, 95% of the aggregate donations received by it during the year along with the surplus if any, brought forward from any earlier previous year and
 - (II) function in accordance with the rules made by the Central Government.

- (3) **Functions of an electoral trust:** Accordingly, the Central Government has notified Rule 17CA which provides that the following shall be the functions of an electoral trust referred to in section 13B –
- (i) The electoral trust may receive voluntary contributions from
 - (a) an individual who is a citizen of India;
 - (b) a company which is registered in India; and
 - (c) a firm or Hindu undivided family or an Association of persons or a body of individuals, resident in India.
 - (ii) A receipt indicating the following shall be issued by the trust immediately on receipt of any contribution indicating the following:
 - (a) name and address of the contributor;
 - (b) Permanent account number of the contributor or passport number in the case of a citizen who is not a resident;
 - (c) amount and mode of contribution including name and branch of the Bank and date of receipt of such contribution;
 - (d) name of the electoral trust;
 - (e) Permanent account number of the electoral trust;
 - (f) date and number of approval by the prescribed authority; and
 - (g) Name and designation of the person issuing the receipt.
 - (iii) The electoral trust shall not accept contributions-
 - (a) from an individual who is not a citizen of India or from any foreign entity whether incorporated or not;
 - (b) from any other electoral trust which has been registered a company under section 25 of the Companies Act, 1956⁹ and approved as an electoral trust under the Electoral Trusts Scheme, 2013;
 - (c) from a Government company as defined in section 2(45) of the Companies Act, 2013; and

⁹Section 8 of the Companies Act, 2013

- (d) from a foreign source as defined in section 2(j) of the Foreign Contribution (Regulation) Act, 2010.
- (iv) The electoral trust shall accept contributions only by way of an account payee cheque drawn on a bank or account payee bank draft or by electronic transfer to its bank account and shall not accept any contribution in cash.
- (v) The electoral trust shall not accept any contribution without the PAN of the contributor, who is a resident and the passport number in the case of a citizen of India, who is not a resident.
- (vi) A political party registered under section 29A of the Representation of the People Act, 1951 shall be an eligible political party and an electoral trust shall distribute funds only to the eligible political parties.
- (vii)
 - (a) The electoral trust may, for the purposes of managing its affairs, spend upto 5% of the total contributions received in a year subject to an aggregate limit of ₹ 5 lakh in the first year of incorporation and ₹ 3 lakh in subsequent years;
 - (b) the total contributions received in any financial year alongwith the surplus from any earlier financial year, if any, as reduced by the amount spent on managing its affairs, shall be the distributable contributions for the financial year;
 - (c) an electoral trust shall be required to distribute the distributable contributions received in a financial year, referred to in point (b) above, to the eligible political parties before 31st March of the said financial year, subject to the condition that at least 95% of the total contributions received during the financial year along with the surplus brought forward from earlier financial year, if any, are distributed.
- (viii) The trust shall obtain a receipt from the eligible political party indicating the name of the political party, its permanent account number, registration number, amount of fund received from the trust, date of the receipt and name and designation of person signing such receipt.
- (ix) The electoral trust shall not utilize any contributions for the direct or indirect benefit of the members or contributors, or for any of the following persons, namely:
 - (a) the members (including members of its Executive Committee, Governing Committee or Board of Directors) of the electoral trust;
 - (b) any relative of such Members;

- (c) where such member or contributor is a Hindu undivided family, a member of that Hindu undivided family;
 - (d) any person who has made a contribution to the trust;
 - (e) any person referred in section 13(3); and
 - (f) any concern in which any of the persons referred to in clauses (a),(b),(c),(d) and (e) has a substantial interest.
- (x) (a) An electoral trust shall keep and maintain such books of account and other documents in respect of its receipts, distributions and expenditure as may enable the computation of its total income in accordance with the provisions of the Act;
- (b) The electoral trust shall also maintain a list of persons from whom contributions have been received and to whom the same have been distributed, containing the name, address and permanent account number (PAN) of each such person along with the details of the amount and mode of its payment including the name and branch of the bank.
- (xi) Every electoral trust shall get its accounts audited by an accountant as defined in the *Explanation* below section 288(2) and furnish the audit report in Form No.10BC along with particulars forming part of its Annexure, to the Commissioner of Income-tax or the Director of Income-tax, as the case may be, having jurisdiction over the electoral trust, on or before the due date specified for furnishing the return of income by a company under section 139.
- (xii) An electoral trust shall maintain a regular record of proceedings of all meetings and decisions taken therein.
- (xiii) Every electoral trust shall furnish a certified copy of list of contributors and a list of political parties, to whom sums were distributed in the manner prescribed in (vii) above, to the Commissioner of Income-tax or the Director of Income-tax, as the case may be, every year along with the audit report;
- (xiv) Any change in the shareholders, subsequent to the approval granted under the Electoral Trusts Scheme, 2013 shall be intimated to the Board within thirty days of such change.

Section 2(22AAA) defines 'Electoral Trust' to mean a trust so approved by the CBDT, in accordance with the scheme made in this regard by the Central Government.

In exercise of the powers conferred by section 2(22AAA), the Central Government, has through *Notification No.9/2013 dated 31.1.2013*, notified the Electoral Trusts Scheme, 2013 to lay down the procedure for grant of approval to an electoral trust which will receive voluntary contributions and distribute the same to political parties.

Eligibility

A company registered for the purposes of section 25 of the Companies Act, 1956 satisfying all of the following conditions shall be eligible to make an application for approval as an electoral trust, namely –

1. The company should be registered on or after 1.4.2012 for the purposes of section 25 of the Companies Act, 1956;
2. The name of the company registered for the purposes of section 25 of the Companies Act, 1956 has to include the phrase "electoral trust";
3. The sole object of the electoral trust should be to distribute the contributions received by it to the political party, registered under section 29A of the Representation of the People Act, 1951;
4. The electoral trust should have a permanent account number.

Criteria for Approval

An electoral trust shall be considered for approval if it fulfills all of the following conditions, namely –

1. The company registered for the purposes of section 25 of the Companies Act, 1956, which satisfies the above conditions;
2. The object of the electoral trust shall not be to earn any profit or pass any direct or indirect benefit to its members or contributors, or to any person referred to in section 13(3) or any person referred to in Rule 17CA(10) of the Rules;
3. It has made adequate arrangement for recording the receipts from the contributors in accordance with Rule 17CA;
4. The stipulations contained in Rule 17CA for functioning of the electoral trust are specifically included in the articles of association of the company registered for the purposes of section 25 of the Companies Act, 1956.

Renewal of approval

1. The approval shall be valid for the assessment year relevant to the financial year in which such application has been made and for a further period, not exceeding three assessment years, as may be specified in the approval.
2. The electoral trust may apply for renewal of approval at any time during the financial year immediately preceding the last assessment year, for which the approval has been originally granted, and such renewal of approval may be granted after examining the application in the same manner as laid out for approval in this scheme.

Withdrawal of approval

1. The CBDT may withdraw the approval granted under this Scheme if it is satisfied that the electoral trust has ceased its activities or its activities are not genuine or are not carried out in accordance with all or any of the conditions laid down under this Scheme or the provisions of Rule 17CA of the Rules, or any other condition imposed in the approval granted.
2. In order to ascertain whether an electoral trust, after its approval, is functioning in accordance with the provisions of Rule 17CA of the Rules, the CBDT may call for information or documents as it may deem fit from the electoral trust or may get an enquiry conducted in this regard by an income-tax authority or any other agency.
3. If the Commissioner of Income-tax or the Director of Income-tax is satisfied that an approved electoral trust is not fulfilling any of the conditions specified under this Scheme or the conditions subject to which approval was granted to it or does not function in accordance with Rule 17CA, he may, after making appropriate enquiries, furnish a report to the CBDT in this regard and the Board may take such action on the report as it may deem fit.
4. An order for withdrawal of the approval shall be passed after giving the electoral trust an opportunity of being heard, and shall record the reasons in writing for the withdrawal of approval.
5. A copy of the order withdrawing the approval shall be sent to the applicant, the Assessing Officer and the Commissioner of Income-tax or the Director of Income-tax, as the case may be.



10.6 TAXATION REGIME FOR SECURITIZATION TRUSTS AND ITS INVESTORS

(1) Meaning of Securitisation Trust [Clause (d) of Explanation below section 115TCA]:

“Securitisation trust” means a trust being a special purpose distinct entity or a special purpose vehicle (as per the guidelines on securitisation of standard assets issued by RBI) or a trust setup by a securitisation company or a reconstruction company, which fulfils such conditions, as may be prescribed.

(2) Exemption of income of securitisation trust from the activity of securitisation:

The income of securitisation trust from the activity of securitisation shall be exempt under section 10(23DA).

(3) Taxability of income from securitisation trust in the hands of the investor [Section 115TCA(1)]:

Section 115TCA(1) provides that any income accruing or arising to, or received by, a person, being an investor from the securitisation trust, out of investments made in the securitisation trust, shall be taxable in the hands of investor in the same manner as if the investor had made investment directly in the underlying assets and not through the trust.

(4) Nature of income paid or credited by securitisation trust in the hands of the investor [Section 115TCA(2)]:

The income paid or credited by the securitisation trust shall be deemed to be of the same nature and in the same proportion in the hands of the investor of the securitisation trust, as if it had been received by, or had accrued and arisen to, the securitisation trust during the previous year.

(5) Deemed credit to investor [Section 115TCA(3)]:

If the income accruing or arising to, or received by, the securitisation trust, during a previous year has not been paid or credited to the investor, the same shall be deemed to have been credited to the account of the said person on the last day of the previous year in the same proportion in which such person would have been entitled to receive the income had it been paid in the previous year.

(6) Statement specifying the details of nature of income to be furnished to investor and prescribed income-tax authority [Section 115TCA(4)]:

The securitisation trust shall provide breakup regarding nature and proportion of its income and such other relevant details to the investors and also to the prescribed income-tax authority in the prescribed form and verified in the prescribed manner, within the prescribed period.

(7) Income taxed in the year of accrual not taxable again in the year of payment [Section 115TCA(5)]:

Where income has been included in the total income of the investor in a previous year, on account of it having accrued or arisen in the said previous year, the same shall not be included in the total income of such person in the previous year in which such income is actually paid to him by the securitisation trust.

(8) Deduction of tax at source in respect of income payable to investor [Section 194LBC]:

Tax deduction at source under section 194LBC shall be effected by the securitisation trust at the time of payment or credit of income to the account of the investor, whichever is earlier.

S. No	Payee	Rate of TDS
(i)	Resident individuals and HUF	25%
(ii)	Resident payees, other than individuals and HUF	30%
(iii)	Non-corporate non-residents and foreign companies	Rates in force

Where any income as aforesaid is credited to any account in the books of account of the person liable to pay such income, such crediting is deemed to be credit of such income to the account of the payee and tax has to be deducted at source. The account to which such income is credited may be called "Suspense account" or by any other name.

(9) Application for low or nil deduction of tax at source:

The facility for the investors to obtain low or nil deduction of tax certificate would be available; the investor can make an application to the Assessing Officer, and he can, on an application made by the assessee in this behalf, issue a certificate under section 197 in this behalf for no deduction of income-tax or deduction of income-tax at a lower rate.

(10) **Meaning of certain terms:**

Explanation	Term	Meaning
(a)	Investor	A person who is holder of any securitised debt instrument or securities, or security receipt issued by the securitisation trust
(b)	Securities	Debt securities issued by a Special Purpose Vehicle as referred to in the guidelines on securitisation of standard assets issued by RBI



10.7 SCHEME FOR TAXATION OF REAL ESTATE INVESTMENT TRUST (REIT) AND INFRASTRUCTURE INVESTMENT TRUST (INVIT) [CHAPTER XII-FA – SECTION 115UA]

- (1) The SEBI has notified the regulations relating to two categories of investment vehicles namely, the Real Estate Investment Trust (REIT) & Infrastructure Investment Trust (Invit).
- (2) The SEBI (Real Estate Investment Trusts) Regulations, 2014 (“REIT Regulations”) provide a framework for registration and regulation of Real Estate Investment Trusts (“REIT’s”).

Salient features of the REIT Regulations, as approved by the SEBI:

- (a) REITs shall be set up as a trust and registered with SEBI. It shall have parties such as Trustee, Sponsor group, inducted sponsor and Manager.
- (b) The trustee of a REIT means a person who holds the REIT assets in trust for the benefit of the unit holders, in accordance with these regulations. The trustee has to registered with the Board as Debenture Trustee and should not be an associate of the sponsor(s) or manager.
- (c) REIT shall invest in commercial real estate assets, on a freehold or leasehold basis, either directly or through a holdco and/or special purpose vehicles (SPVs). Real estate for the purpose of REIT Regulations means land and any permanently attached improvements to it, whether leasehold or freehold and includes buildings, sheds, garages, fences, fittings, fixtures, warehouses, car parks, etc. and any other assets incidental to the ownership of real estate but does not include mortgage.
- (d) Once registered, the REIT shall raise funds through an initial offer. Subsequent raising of funds may be through follow-on offer, rights issue, qualified institutional placement, etc.

- (e) Units of REITs shall be mandatorily listed on a recognized Stock Exchange and REIT shall make continuous disclosures in terms of the listing agreement.
- (f) Not less than 80% of the value of the REIT assets shall be invested in completed and rent and/or income generating properties.
Upto 20% of the value of REIT assets shall be invested in following:
 - (1) developmental properties, whether directly or through a company or LLP;
 - (2) mortgage backed securities;
 - (3) listed/ unlisted debt of companies/body corporates in real estate sector;
 - (4) equity shares of companies which are listed on a recognized stock exchange in India which derive not less than 75% of their operating income from Real Estate activity;
 - (5) unlisted equity shares of companies which derive not less than 75% of their operating income from real estate activity
 - (6) government securities;
 - (7) unutilized FSI of a project where it has already made investment;
 - (8) TDR acquired for the purpose of utilization with respect to a project where it has already made investment;
 - (9) money market instruments or cash equivalents.
- (g) REIT shall distribute not less than 90% of the net distributable cash flows, subject to applicable laws, to its unitholders, at-least on a half yearly basis.
- (h) A REIT shall not invest in units of other REITs.

- (3) Likewise, the SEBI (Infrastructure Investment Trusts) Regulations, 2014 (“InvIT Regulations”) provide a framework for registration and regulation of Infrastructure Investment Trusts (“InvITs”).
- (4) The Finance (No.2) Act, 2014 had introduced a special taxation regime for providing the manner of taxability of –
 - (i) income in the hands of business trusts; and
 - (ii) income distributed by such business trusts in the hands of the unit holders.

Section 2(13A) of the Income-tax Act, 1961 defines a business trust to mean a trust registered as an Infrastructure Investment Trust (Invit) under SEBI (Infrastructure Investment Trusts) Regulations, 2014 or as a Real Estate Investment Trust (REIT) under SEBI (Real Estate Investment Trusts) Regulations, 2014.

Chapter XII-FA contains the special provisions relating to business trusts. Section 115UA(1) provides that any income distributed by a business trust to its unit holders shall be deemed to be of the same nature and in the same proportion in the hands of the unit holder, as it had been received by, or accrued to the business trust.

However, as per section 115UA(3A), any sum other than the following components of income—

- (i) interest and dividend (received from SPV and distributed to unit holders)
- (ii) rental income from directly owned real estate assets distributed to unitholders
- (iii) income chargeable to tax in the hands of the business trust under section 115UA(2)

received by a unit holder from a business trust which is chargeable to tax under section 56(2)(xii) in the hands of unitholders under the head "Income from Other Sources" would not be deemed to be of same nature. Such sum chargeable to tax under section 56(2)(xii) would include repayment of debt or amount paid against redemption of units to the unit holders.

(5) Exemption of certain income to business trust [Section 10(23FC)]

Section 10(23FC) exempts any income of a business trust by way of-

- interest or dividend received or receivable from a Special Purpose Vehicle (SPV). Thus, the business trust enjoys a pass-through status in respect of interest or dividend received or receivable from a SPV.

"SPV" means any Indian company, -

- (i) in which the REIT holds or proposes to hold not less than 50% of the equity share capital or interest;
- (ii) which holds not less than 80% of its assets directly in properties and does not invest in other special purpose vehicles; and
- (iii) which is not engaged in any activity other than holding and developing property and any other activity incidental to such holding or development;

(6) Exemption of Rental income of REIT from directly owned real estate asset [Section 10(23FCA)]

Any income of a business trust, being a REIT, by way of renting or leasing or letting out any real estate asset owned directly by such business trust is exempt in the hands of the business trust.

(7) Any distributed income referred to in section 115UA received by unit holders is exempt in their hands under section 10(23FD) to the extent it does not comprise of

- interest referred to in sub-clause (a) of section 10(23FC) (interest income from SPV distributed to unitholders) or
- dividend income referred to in section 10(23FC)(b) from a special purpose vehicle which has exercised option under section 115BAA and distributed to unit holders or
- rental income referred to in section 10(23FCA) (rental income from directly owned real estate assets).

(8) Section 115UA(2) provides that subject to the provisions of sections 111A and 112, the total income of a business trust shall be chargeable to tax at the maximum marginal rate.

(9) Section 56(2)(xii) provides that any specified sum received by a unit holder from a business trust during the previous year with respect to unit held by him at any time during the previous year would be chargeable to tax in the hands of unit holder under the head "Income from other sources.

Specified sum is to be computed in the following manner:

Specified sum = A (-) B (-) C (which shall be zero if sum of B and C is greater than A)	
A	aggregate of sum distributed by the business trust with respect to such unit, during the previous year or during any earlier previous year or years, to such unit holder, who holds such unit on the date of distribution of sum or to any other unit holder who held such unit at any time prior to the date of such distribution, which is - (a) not in the nature of interest and dividend referred to in section 10(23FC) or rental income referred to in section 10(23FCA); and (b) not chargeable to tax in the hands of the business trust under section 115UA(2).
B	amount at which such unit was issued by the business trust; and
C	amount charged to tax under this clause in any earlier previous year;

(10) Section 115UA(3) provides that distributed income or any part thereof, which is in the nature of

- **interest income** received by the business trust from the SPV or
- **dividend income** received or receivable by the business trust from a SPV which has exercised the option under section 115BAA or
- **rental income** from real estate assets owned directly by the REIT [referred to in section 10(23FCA)]

is deemed to be the income of the unit holder in the previous year of distribution and subject to tax in the hands of the unit holder in that year.

(11) Any person responsible for making payment of income distributed on behalf of the business trust to a unit holder is required to furnish a statement to the unit holder and the prescribed authority within the prescribed time.

The statement should be in the prescribed form and manner. It should contain the particulars of the nature of income paid during the previous year as well as the other details as may be prescribed [Section 115UA(4)].

(12) Under section 139(4E), a business trust is mandatorily required to furnish a return of its income or loss in every previous year. All the provisions of the Income-tax Act, 1961 would apply as if it were a return required to be furnished under section 139(1).

(13) The scheme of taxability of income in the hands of the business trust, unit holders, sponsors etc. is briefed in the table given hereunder –

	Transaction	Section	Tax and TDS implications
(1)	Transfer of listed units of the business trust by the unit holders		<u>Tax implications in the hands of unit holders:</u>
		2(42A)	➤ STT leviable on trading of listed units on a recognized stock exchange. ➤ The period of holding of units of business trust to qualify as “long-term capital assets” is “ more than 12 months ”. If the transfer takes place before 23 July 2024, the period of holding to qualify as long-term capital asset would be 36 months instead of 12 months.
		112A	➤ Long-term capital gains upto ₹ 1.25 lakh would be exempt in the hands of the

			<p>unitholders; Long-term capital gain exceeding ₹ 1.25 lakh would be taxable @10% (if transfer takes place before 23.7.2024) or @12.5% (if transfer takes place on or after 23.7.2024) plus surcharge, if applicable, and health and education cess @4%.</p>
		111A	<p>➤ Short-term capital gains would be subject to concessional rate of tax @15% (if transfer takes place before 23.7.2024) or 20% (if transfer takes place on or after 23.7.2024) (plus surcharge, if applicable, and cess@4%).</p>
(2)	Exchange of shares in SPV by sponsor for units of Business Trust	47(xvii)	<p><u>Tax implications in the hands of the sponsor:</u></p> <p>➤ Such exchange is not treated as a transfer. Hence, taxability of capital gains on such transfer deferred to the time of disposal of units by the sponsor.</p>
		112A & 111A	<p>➤ The sponsor would get the same tax treatment on offloading of units under an Initial offer on listing of units as it would have been available had he offloaded the underlying shareholding through an IPO. STT shall be levied on sale of such units of business trust which are acquired in lieu of shares of SPV, under an initial offer at the time of listing of units of business trust in the like manner as in the case of sale of unlisted equity shares under an IPO. The benefit of concessional tax regime of tax @15% or 20%, as the case may be, on STCG and @10% or 12.5%, as the case may be, on LTCCG exceeding ₹ 1.25 lakh under section 112A shall be available to the sponsor on sale of units received in lieu of shares of SPV subject to levy of STT.</p>
		49(2AC)	<p>➤ For computing capital gains in the hands of the sponsor, cost of acquisition of units would be deemed to be the cost of acquisition of shares to the sponsor;</p>

		2(42A)	<ul style="list-style-type: none"> ➤ For computing capital gains in the hands of the sponsor, the period of holding of units to include the period of holding of shares for determining whether the capital gains are long-term or short-term.
(3)	Interest income of business trust from SPV		<p><u>Tax implications in the hands of the business trust & unit holders and TDS implications in the hands of the SPV & business trust:</u></p> <ul style="list-style-type: none"> ➤ Pass-through status for interest received by business trust from SPV:
		10(23FC)	<ul style="list-style-type: none"> ➤ Interest income is not taxable in the hands of the business trust; and
		194A(3)(xi)	<ul style="list-style-type: none"> ➤ SPV is not required to deduct tax at source on interest paid to business trust.
			<p>Tax consequences on distribution of such income by the business trust to the unitholders:</p>
		115UA(3)	The distributed income or any part thereof, received by a unit holder from the REIT, which is in the nature of interest received or receivable from a SPV is deemed as income of unit holder.
		115A(1)(a) (iiac)	<ul style="list-style-type: none"> ▪ Interest income taxable in the hands of the unit holders – <ul style="list-style-type: none"> ○ @5%, in case of unit holders, being non-corporate non-residents or foreign companies; and ○ at normal rates of tax, in case of resident unit holders.
		194LBA	<ul style="list-style-type: none"> ▪ Business trust to deduct tax at source on interest component of income distributed to unit holders at the time of payment or credit of income to the account of the unit holder, whichever is earlier: <ul style="list-style-type: none"> ○ @5%, in case of unit holders, being non-corporate non-residents or foreign companies; and ○ @10%, in case of resident unit holders.

(4)	Interest payments to non-resident lenders on ECBs by the business trust	194LC	<p><u>TDS implications in the hands of business trust:</u></p> <ul style="list-style-type: none"> ➤ An Indian Company or a business trust paying interest income to a non-resident, not being a company, or to a foreign company is liable to deduct TDS@5% [Such interest would attract tax in the hands of the non-resident lenders @5% as per section 115A]. <ul style="list-style-type: none"> ▪ The above concessional rate of TDS@5% is applicable to interest in respect of money borrowed by the Indian Company or the business trust in foreign currency from a source outside India – <ul style="list-style-type: none"> (i) Under a loan agreement between 1st July 2012 and 30th June, 2023. (ii) By issuing long term infrastructure bonds between 1st July 2012 to 1st October 2014. (iii) By issuing long term bond including long term infrastructure bonds between 1st October 2014 and 30th June, 2023. (iv) By way of issue of rupee denominated bond on or before 30th June, 2023. ▪ However, tax is required to be deducted @4% in respect of monies borrowed by it from a source outside India by way of issue of any long-term bond or rupee denominated bond between 1st April, 2020 and 30th June, 2023, which is listed only on a recognised stock exchange located in any IFSC [Such interest would attract tax in the hands of the non-resident lenders @4% as per section 115A]. ▪ Further, tax is required to be deducted @9% in respect of monies borrowed by it from a source outside India by way of issue of any long-term bond or rupee denominated bond on or after 1st July,
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			2023, which is listed only on a recognised stock exchange located in any IFSC [Such interest would attract tax in the hands of the non-resident lenders @9% as per section 115A]
(5)	Dividend received by the business trust from SPV		<u>Tax implications in the hands of the SPVs, business trust and unit holders and TDS implications in the hands of the SPV & business trust:</u>
		10(23FC)(b)	<ul style="list-style-type: none"> ➤ Pass-through status for dividend received by business trust from SPV: <ul style="list-style-type: none"> - Dividend received or receivable from a special purpose vehicle, by the business trust would be exempt in its hands; - Consequently, SPV is not required to deduct tax at source on dividend paid to business trust.
		115UA(3)	<ul style="list-style-type: none"> ➤ Tax consequences on distribution of such income by the business trust to the unitholders: The distributed income or any part thereof, received by a unit holder from the REIT, which is in the nature of dividend received or receivable from a SPV, which has exercised option under section 115BAA, is deemed as income of unit holder.
		10(23FD)	<ul style="list-style-type: none"> ▪ Dividend income taxable in the hands of the unit holders – <ul style="list-style-type: none"> ○ 10%¹⁰, in case of unit holders, being non-corporate non-residents or foreign companies; and ○ at normal rates of tax, in case of resident unit holders. <p>(However, in case where SPV has not exercised option under section 115BAA, dividend income distributed</p>

¹⁰ On harmonious interpretation of law and on the principle that in case of non-resident, the TDS rates should not be less than the tax rates, distributed income, being dividend would be taxable @10%. However, on independent reading of section 115A, it is possible to take a view that the tax rate for such dividend income is 20%.

			by the business trust would be exempt in the hands of the unit-holders)
		194LBA	<ul style="list-style-type: none"> ▪ Business trust to deduct tax at source on dividend component of income distributed to unit holders at the time of payment or credit of income to the account of the unit holder, whichever is earlier, where SPV has exercised option under section 115BAA: <ul style="list-style-type: none"> ○ @ 10%, in case of unit holders, being non-corporate non-residents or foreign companies; and ○ @10%, in case of resident unit holders. <p>(However, in a case where SPV has not exercised option under section 115BAA, no tax is required to be deducted at source by the business trust on dividend income distributed by it to the unitholders)</p>
(6)	Capital gains on disposal of assets by the Business Trust	115UA(2)	<p><u>Tax implications in the hands of the Business Trust and Unit holders:</u></p> <ul style="list-style-type: none"> ➤ Capital gains is chargeable at the applicable rates in the hands of the Business Trust: <ul style="list-style-type: none"> ▪ In case of long-term capital gains, the provisions of section 112 would apply; ▪ In case of short-term capital gains on sale of listed shares, the provisions of section 111A would apply; ▪ Short-term capital gains, other than the gains subject to tax under section 111A, would be subject to maximum marginal rate.
		10(23FD)	<ul style="list-style-type: none"> ➤ If such capital gains are further distributed to unitholders, the component attributable to capital gains would be exempt in the hands of the unit holders.
(7)	Rental income arising to REIT from real estate property	10(23FCA)	<ul style="list-style-type: none"> ➤ Rental income of REIT from directly owned real estate asset Any income of a business trust, being a REIT, by way of renting or leasing or letting

	directly held by it		out any real estate asset owned directly by such business trust is exempt in the hands of the business trust
		194-I	<p>➤ Rental income received or credited to a REIT</p> <p>Where the income by way of rent is credited or paid to a business trust, being a REIT, in respect of any real estate asset, owned directly by such business trust, tax is not deductible at source.</p>
		115UA(3)	<p>➤ Distributed income received by unit holder</p> <p>The distributed income or any part thereof, received by a unit holder from the REIT, which is in the nature of income by way of renting or leasing or letting out any real estate asset owned directly by such REIT is deemed as income of unit holder.</p>
		194LBA	<p>➤ Distribution by REIT to unit holders of rental income from real estate assets directly owned by it</p> <ul style="list-style-type: none"> ▶ TDS@10% in case of distribution to a resident unit holder ▶ TDS at rates in force in case of distribution to a non-resident unit holder.
(8)	Repayment of debt / Amount paid against redemption of units to unitholders	56(2)(xii)	<p>➤ Any sum other than the following components of income –</p> <ol style="list-style-type: none"> (a) Interest and dividend received from SPV and distributed to unitholders (b) Rental income from real estate assets directly owned by it; and (c) Income chargeable to tax in the hands of the business trust u/s 115UA(2) received by a unitholder from a business trust is chargeable to tax in the hands of unit holder under the head “Income from other sources”. It would be computed in the manner specified under section 56(2)(xii).

(9)	Income of business trust [Other than interest and dividend from SPV, rental income from real estate property]	115UA(2)	<u>Tax implication in the hands of the Business Trust and Unit holders:</u> <ul style="list-style-type: none"> ➤ Long-term capital gains chargeable to tax u/s 112 ➤ Short-term capital gains chargeable to tax u/s 111A ➤ Any other income of the trust is chargeable to tax at the maximum marginal rate.
		10(23FD)	<ul style="list-style-type: none"> ➤ The above income distributed to unit holders would be exempt in their hands.

ILLUSTRATION 18

A business trust, registered under SEBI (Real Estate Investment Trusts) Regulations, 2014, gives particulars of its income for the P.Y.2024-25:

- (1) Interest income from Beta Ltd. – ₹ 4 crore;
- (2) Dividend income from Beta Ltd. – ₹ 2 crore;
- (3) Short-term capital gains on sale of listed shares of Beta Ltd. transferred on 1.9.2024 – ₹ 1.5 crore;
- (4) Short-term capital gains on sale of developmental properties – ₹ 1 crore
- (5) Interest received from investments in unlisted debentures of real estate companies – ₹ 10 lakh;
- (6) Rental income from directly owned real estate assets – ₹ 2.50 crore

Beta Ltd. is an Indian company in which the business trust holds 70% of the shareholding.

Discuss the tax consequences of the above income earned by the business trust in the hands of the business trust and the unit holders, assuming that the business trust has distributed ₹ 10 crore to the unit holders in the P.Y.2024-25 (Assume that Beta Ltd. does not opt to pay tax under section 115BAA).

SOLUTION

Tax consequences in the hands of the business trust and its unit holders

- (1) **Interest income of ₹ 4 crore from Beta Ltd.:** There would be no tax liability in the hands of business trust due to pass-through status enjoyed by it under sub-clause (a) of section 10(23FC) in respect of interest income from Beta Ltd., being the special purpose vehicle. Therefore, Beta Ltd. is not required to deduct tax at source on interest payment to the business trust.

The distributed income or any part thereof, received by a unit holder from the REIT, which is in the nature of interest income received or receivable from a SPV is deemed income of the unit holder as per section 115UA(3).

The business trust has to deduct tax at source under section 194LBA –

- @ 10%, on interest component of income distributed to resident unit holders; and
- @ 5%, on interest component of income distributed to non-corporate non-resident and foreign companies' unit holders.

The interest component of income received from the business trust in the hands of each unitholder would be determined in the proportion of 4/11.1, by virtue of section 115UA(1).

- (2) **Dividend income of ₹ 2 crore from Beta Ltd.:** The dividend distributed by the SPV to the business trust is exempt by virtue of section 10(23FC). Any distributed income referred to in section 115UA, which is in the nature of dividend income received or receivable from SPV, in a case where the SPV has exercised the option under section 115BAA, is taxable in the hands of unitholders by virtue of section 10(23FD). However, since Beta Ltd., being a SPV does not opt for section 115BAA, dividend component is exempt in the hands of the unitholders. Consequently, business trust is not required to deduct tax at source on the dividend component distributed to the unitholders.
- (3) **Short-term capital gains of ₹ 1.50 crore on sale of listed shares of Beta Ltd.:** As per section 115UA(2), the business trust is liable to pay tax@20% under section 111A in respect of short-term capital gains on sale of listed shares of special purpose vehicle. There would, however, be no tax liability on the capital gain component of income distributed to unit holders, by virtue of the exemption contained in section 10(23FD).
- (4) **Short-term capital gains of ₹ 1 crore on sale of developmental properties:** It is taxable at maximum marginal rate in the hands of the business trust as per section 115UA(2). There would be no tax liability in the hands of the unit holders on the capital gain component of income distributed to them, by virtue of the exemption contained in section 10(23FD).
- (5) **Interest of ₹ 10 lakh received in respect of investment in unlisted debentures of real estate companies:** Such interest is taxable at maximum marginal rate, in the hands of the business trust, as per section 115UA(2). However, there would be no tax liability in the hands of the unit holders on the interest component of income distributed to them, by virtue of section 10(23FD).
- (6) **Rental income of ₹ 2.50 crore from directly owned real estate assets:** Any income of a business trust, being a REIT, by way of renting or leasing or letting out any real estate asset owned directly by such business trust is exempt in the hands of the trust as per section 10(23FCA).

Where the income by way of rent is credited or paid to a business trust, being a REIT, in respect of any real estate asset held directly by such REIT, no tax is deductible at source under section 194-I.

The distributed income or any part thereof, received by a unit holder from the REIT, which is in the nature of income by way of renting or leasing or letting out any real estate asset owned directly by such REIT is deemed income of the unit holder as per section 115UA(3). The business trust has to deduct tax at source@10% under section 194LBA in case of distribution to a resident unit holder and at rates in force in case of distribution to a non-resident unit holder.

The rental income component received from the business trust in the hands of each unitholder would be determined in the proportion of 2.5/11.1, by virtue of section 115UA(1).



10.8 SPECIAL TAXATION REGIME FOR INVESTMENT FUNDS AND INCOME RECEIVED FROM SUCH FUNDS [CHAPTER XII-FB] [SECTIONS 115UB, 10(23FBA) & 10(23FBB)]

(1) Tax liability of the unit holders:

Any income accruing or arising to, or received by, a person, being a unit holder of an investment fund, out of investments made in the investment fund shall be chargeable to income-tax in the same manner as if it were the income accruing or arising to, or received by, such person had the investments made by the investment fund, been made directly by him [Section 115UB(1)].

Note – Accordingly, income in the hands of the non-resident investor from offshore investments routed through Category I or Category II AIFs, being a deemed direct investment outside India by the non-resident investor, is not taxable in India under section 5(2) of the Act [Circular No. 14/2019, dated 3.7.2019].

(2) Exemption of income of investment fund other than income under the head profits and gains from business and profession [Section 10(23FBA)]

The Scheme provides for exemption of income, other than income chargeable under the head “Profits and gains of business or profession”, in the hands of investment fund. The income in the nature of profits and gains of business or profession shall be taxable in the hands of the investment fund.

(3) Exemption to unit holder of income under the head “Profits and gains from business or profession” of investment fund [Section 10(23FBB)]

Income accruing or arising to, or received by, a unit holder of an investment fund, being that proportion of income which is of the same nature as income chargeable under the head “Profits and gains of business or profession” at investment fund level, shall be exempt under section 10(23FBB). This implies that all income from investment fund is taxable in the hands of unit holders except income under the head “PGBP”.

(4) TDS in respect of income of units of investment fund to unit holders [Section 194LBB]

Investment fund to deduct tax at source on any income (other than the proportion of income which is of the same nature as income chargeable under the head “Profits and gains of business or profession” which is taxable at investment fund level) payable by the investment fund to a unit holder

- @10%, in case of payable to a resident unit holder
- at rates in force in case of payable to a non-corporate non-resident or foreign company unit holder

In case of income payable to a non-corporate non-resident or foreign company unit holder, no deduction is to be made in respect of any income that is not chargeable to tax under the Act.

Such tax has to be deducted at the time of credit of such income to the account of the payee or at the time of payment, whichever is earlier.

For this purpose, any such income credited to any account, whether called “suspense account” or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be the credit of such income to the account of the payee, and the provisions of section 194LBB shall apply accordingly.

(5) Pass - through status for current year losses:

If in any year there is a loss under any head of income at the fund level and such loss cannot be or is not wholly set-off against income under any other head of income of the said previous year, then out of such losses,

- (i) the loss arising to the Investment Fund under the head “Profits & Gains of Business or Profession” shall not be allowed to be passed through to the investors but has to be carried over at fund level to be set off against income of the next year in accordance with the provisions of Chapter VI

- (ii) loss other than loss under the head “profits and gains from business or profession” would not be allowed be passed through to the investors if such loss has arisen in respect of a unit which has not been held by the unit holder for a period of at least 12 months [Section 115UB(2)].

Note – By implication, losses other than those referred to in (i) and (ii) above, which cannot be wholly set-off against current year income, would be passed on to the unit holders to be carry forward and set-off in their individual hands in accordance with the provisions of Chapter VI.

(6) Pass through status for losses accumulated as on 31.3.2019:

Losses, other than loss under the head “profits and gains from business or profession”, if any, accumulated at the level of investment fund as on 31.3.2019, shall be

- deemed to be the loss of a unit holder who held the unit as on 31.3.2019 in respect of the investment made by him in the investment fund in the same manner as it were the loss incurred by him had he made such investments directly and
- shall be allowed to be passed through to the investors for the remaining period calculated from the year in which the loss has occurred for the first time taking that year as the first year and set off against their income in accordance with the provisions of Chapter VI.

Further, such accumulated losses shall not be available to the investment fund on or after 1.4.2019.

(7) Nature of income in the hands of unitholders:

The income paid or credited by the investment fund shall be deemed to be of the same nature and in the same proportion in the hands of the unit holder as if it had been received by, or had accrued or arisen to, the investment fund during the previous year. [Section 115UB(3)].

(8) Tax on total income:

As per section 115UB(4), the total income of the investment fund is chargeable to tax as follows:

Investment Fund	Rate of tax
A company or a firm	Rate or rates specified in the Finance Act of the relevant year (30%/25%, as the case may be, for a company and 30% for firm for A.Y.2025-26)
Other than a company or a firm	Maximum marginal rate

(9) Deemed credit on the last day of the previous year:

If the income accruing or arising to, or received by, an investment fund, during a previous year is not paid or credited to the unitholders, it shall be deemed to have been credited to the account of the unit-holder on the last day of the previous year in the same proportion in which such person would have been entitled to receive the income had it been paid in the previous year [Section 115UB(6)].

Income taxed in the year of accrual not taxable again in the year of payment [*Explanation 2* below section 115UB]:

It has been clarified that any income which has been included in the total income of the unit holder of an investment fund in a previous year, on account of it having accrued or arisen in the said previous year, would not be included in his total income in the previous year in which such income is actually paid to him by the investment fund.

(10) Summary:

The following table gives a summary of the above provisions:

	Particulars	Investment Fund	Unit holder
(i)	Income under the head “Profits and gains of business or profession” of the Investment Fund	Taxable	Exempt
(ii)	Income, other than profits and gains of business or profession	Exempt. Tax to be deducted on such income distributed to unitholders - @10%, in case of resident payee - at rates in force in case of non-resident payee	Taxable, as if he had directly made the investment.
(iii)	Loss under the head “Profits and gains of business or profession” incurred by the investment fund	To be carried forward for set-off as per Chapter VI at the Fund level	Not passed on to investors
(iv)	Loss (other than loss referred to in (iii) above) where such loss has arisen	The Act is silent relating to the permissibility or otherwise of carry	Not allowed to be carried forward by the unitholder. He cannot

	in respect of unit which has not been held by the unit holder for a period of at-least 12 months	forward of these losses in the hands of investment funds.	set-off such losses against his income.
(v)	Losses (other than losses referred to in (iii) and (iv) above) remaining after set-off against current year income.	Not allowed to be carried forward for set-off by the Investment Fund	Unit-holder can carry forward and set-off such losses against his income as per Chapter VI

Note – Losses, other than business losses, accumulated at the level of the investment fund as on 31.3.2019 would be deemed to be the loss of the unit holder who held the unit as on 31.3.2019 in respect of the investments made by him in the investment fund, in the same manner as it were the loss incurred by him had he made such investments directly. Such loss can be carried forward by the unitholder for the remaining period calculated from the year in which the loss had occurred for the first time taking that year as the first year. Accordingly, he can set-off such loss in accordance with the provisions of Chapter VI. The loss so deemed to be the loss of the unitholder shall not be available to the investment fund on or after 1.4.2019.

(11) Statement to be furnished:

The person responsible for crediting or making payment of the income on behalf of an investment fund and the investment fund are required to furnish, within the prescribed time, to the person who is liable to tax in respect of such income and to the prescribed income-tax authority, a statement in the prescribed form and verified in the prescribed manner. Such statement should give details of the nature of the income paid or credited during the previous year and such other relevant details as may be prescribed [Section 115UA(7)].

(12) Every investment fund has to compulsorily file its return of income or loss under section 139(4F), if it is not required to do so under any other provision of section 139. The provisions of the Act would apply as if such return of income or loss were a return required to be furnished under section 139(1).

(13) Meaning of certain terms:

	Term	Meaning
(a)	Investment fund	Any fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which has been granted a certificate of registration as a Category I or a Category II Alternative Investment Fund and is regulated under the

		Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, made under the Securities and Exchange Board of India Act, 1992 or regulated under the International Financial Services Centers Authority (Fund Management) Regulations, 2022 made under the International Financial Services Center Authority Act, 2019;
(b)	Trust	A trust established under the Indian Trusts Act, 1882 or under any other law for the time being in force.
(c)	Unit	Beneficial interest of an investor in the investment fund or a scheme of the investment fund and shall include shares or partnership interests.

ILLUSTRATION 19

The following are the particulars of income of four investment funds for P.Y.2024-25:

Particulars	A	B	C	D
	₹ in lakh			
Business Income		2	(2)	5
Capital Gains	16	14	(6)	20
Income from other sources	4	4	8	(2)

Compute the total income of the investment funds and each unitholder for A.Y.2025-26, assuming that:

- (1) each investment fund has 20 unitholders each having one unit held by them for a period exceeding 24 months; and
- (2) income from investment in the investment fund is the only income of the unitholder.

If Investment Fund C has the following income components for A.Y.2026-27, what would be the total income of the fund and the unit holder for that year?

Business Income ₹ 2 lakh

Capital Gains ₹ 9 lakh

Income from Other Sources ₹ 8 lakh.

SOLUTION

Computation of total income of the investment fund for A.Y. 2025-26

Particulars	A	B	C	D
	₹			
Business Income	Nil	2,00,000	Nil	3,00,000
Total Income	Nil	2,00,000	Nil	3,00,000

Computation of total income of a unit holder of the following Investment funds for A.Y. 2025-26

Particulars	A	B	C	D
	₹			
Capital Gains	80,000	70,000	-	1,00,000
Income from other sources	20,000	20,000	30,000	-
Total Income	1,00,000	90,000	30,000	1,00,000

Notes:

- (i) The total income of Investment Fund B would be chargeable to tax @30% if the fund is a firm and @30%/25%, as the case may be, if the fund is a company and at the maximum marginal rate, in any other case.
- (ii) In case of Investment Fund D, the loss from other sources ₹ 2 lakh is set-off against business income of ₹ 5 lakh.
- (iii) In case of Investment Fund C, the business loss of ₹ 2 lakh is set-off against income from other sources of ₹ 8 lakh. Loss of ₹ 6 lakh under the head "Capital gains" cannot be set-off against income under any other head. The same can be carried forward by the Unitholder for set-off in the subsequent years since, the units are held for a period of 12 months or more.

For A.Y. 2026-27, brought forward capital loss of ₹ 30,000 [₹ 6 lakh/20] can be set-off against capital gains of ₹ 45,000 [₹ 9 lakh/20] by the unit-holder since, the period of holding of units is 24 months or more. Business income of ₹ 2 lakh would be taxable in the hands of the Investment Fund. Income from other sources of ₹ 40,000 (₹ 8 lakh/20) would be taxable in the hands of the unitholders.

SIGNIFICANT SELECT CASES

1	<i>New Noble Educational Society v. CCIT (2022) 448 ITR 594 (SC)</i>	
	Issue	Analysis & Decision
	<p>Does the requirement under section 10(23)(vi) to solely engage itself in education mean that such institution cannot have objects not related to education? Also, is it necessary that the profits of business referred to in the seventh proviso to section 10(23C) be the profits of such business incidental to educational activity and not any other activity?</p>	<p>Relevant provision of law: Under section 10(23C)(vi), income of a university or educational institution existing solely for educational purposes and not for the purposes of profit, approved by the Principal Commissioner or Commissioner would be exempt.</p> <p>As per the second proviso to section 10(23C), the Principal Commissioner or Commissioner, on receipt of application from an institution under clause (ii) or clause (iii) of the first proviso thereof, shall call for documents or information from it or make such enquiries to satisfy himself about the genuineness of the activities of the institution and compliance of such requirements of any other law for the time being in force by it as are material for the purpose of achieving its objects.</p> <p>As per the seventh proviso to section 10(23C), the exemption provisions under section 10(23C)(vi) would not apply in relation to income of the educational institution, being profits and gains of business, unless the business is incidental to the attainment of its objectives and separate books of account are maintained by it in respect of such business.</p> <p>Issue under consideration: The issue under consideration is whether the requirement under section 10(23)(vi) to solely engage itself in education mean that such institution cannot have objects not related to education. Also, is it necessary that profits of business referred to in the seventh proviso to section 10(23C) be the profits of such business incidental to educational activity and not any other activity.</p> <p>Analysis and Conclusion:</p> <p>The Supreme Court, made the following observations and conclusions:</p> <p>(a) The requirement of the charitable institution, society or trust, etc., to "solely" engage itself in</p>

		<p>education or educational activities, and not engage in any activity of profit, means that such institutions cannot have objects which are unrelated to education. In other words, all objects of the society, trust, etc., must relate to imparting education or be in relation to educational activities.</p> <p>The term "solely" is not the same as "predominant/mainly". The term "solely" means to the exclusion of all others.</p> <p>(b) Where the objective of the institution appears to be profit-oriented, such institutions would not be entitled to approval under section 10(23C). At the same time, where surplus accrues in a given year or set of years <i>per se</i>, it is not a bar, provided such surplus is generated in the course of providing education or educational activities.</p> <p>(c) The seventh proviso to section 10(23C), as well as section 11(4A) refer to profits which may be "incidentally" generated or earned by the charitable institution. In the present case, the same is applicable only to those institutions which impart education or are engaged in activities connected to education.</p> <p>(d) The reference to "business" and "profits" in the seventh proviso to section 10(23C) and section 11(4A) merely means that the profits of business which is "incidental" to educational activity—i.e., relating to education such as sale of text books, providing school bus facilities, hostel facilities, etc.</p> <p>However, where institutions provide their premises or infrastructure to other entities, trusts, societies, etc., for the purposes of conducting workshops, seminars or even educational courses (which the concerned trust is not actually imparting) and outsiders are permitted to enrol in such seminars, workshops, courses, etc., then the income derived from such activity cannot be characterised as part of education or "incidental" to the imparting education.</p>
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		<p>Additionally, the Supreme Court also held that wherever registration of trust or charities is obligatory under State or local laws, the concerned trust, society, other institution, etc., seeking approval under section 10(23C) should also comply with provisions of such State laws. This would enable the Commissioner or concerned authority to ascertain the genuineness of the trust, society, etc. This reasoning is reinforced by the recent insertion of another proviso of section 10(23C) with effect from April 1, 2021.</p>
2.	<i>ACIT (Exemptions) v. Ahmedabad Urban Development Authority (and other appeals) (2022) 449 ITR 1 (SC)</i>	
	Issue	Analysis & Decision
	<p>When can an activity be considered as trade, commerce or business for attracting the provisions of the proviso to section 2(15)?</p>	<p>Relevant provision of law: 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.</p> <p>However, as per the proviso to section 2(15), "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,-</p> <ol style="list-style-type: none"> (1) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and (2) the aggregate receipts from such activity or activities, during the previous year, does not exceed 20% of the total receipts, of the trust or institution undertaking such activity or activities, for the previous year.

As per section 11(4A), for the purpose of availing the beneficial provisions of section 11(1)/(2)/(3) and (3A), the business must be incidental to the objectives of the trust and the trust has to maintain separate books of account in respect of such business. Likewise, the seventh proviso to section 10(23C) provides that for the purpose of availing exemption under section 10(23C)(iv)/(v)/(vi)/(via), the business should be incidental to the attainment of its objectives and separate books of accounts are maintained by the trust in respect of such business.

Issue under consideration: The issue under consideration is when an activity can be considered as trade, commerce or business for attracting the provisions of the proviso to section 2(15).

Analysis: The first consideration would be whether the activity concerned was or is in any manner covered by the objects clause. Thereafter, if the accounts disclose that the amounts paid are nominal mark-up over and above the cost incurred towards supplying the services, the activity may fall within the description of one advancing the general public utility. If on the other hand, there is a significant mark-up over the actual cost of service, the next step would be ascertain whether the quantitative limit in the proviso to section 2(15) is adhered to. **It is only in the event of the trust actually carrying on an activity in the course of achieving one of its objects, and earning income which should not exceed the quantitative limit prescribed at the relevant time, that it can be said to be driven by charitable purpose.**

Section 11(4A) [and Seventh proviso to section 10(23C)] must be interpreted harmoniously with section 2(15), with which there is no conflict. **Carrying out activity in the nature of trade, commerce or business, or service in relation to such activities, should be conducted in the course of achieving the object of general public utility, and the income, profits or surplus or gains must, therefore, be incidental.** The requirement in section 11(4A) [and Seventh proviso to section 10(23C)] of maintaining separate books of account is

		<p>also in line with the necessity of demonstrating that the quantitative limit prescribed in the proviso to section 2(15), has not been breached.</p> <p>Conclusion: The conclusions arrived at by way of this judgment, neither precludes any assessee (whether statutory or non-statutory) advancing objects of general public utility, from claiming exemption, nor the taxing authorities from denying exemption, in the future, if the receipts of the relevant year exceed the quantitative limit. The assessing authorities must on a yearly basis, scrutinize the record to discern whether the nature of the assessee's activities amount to "trade, commerce or business" based on its receipts and income (i. e., whether the amounts charged are on cost-basis, or significantly higher). If it is found that they are in the nature of "trade, commerce or business", then it must be examined whether the quantified limit (as amended from time to time) in proviso to section 2(15), has been breached, thus disentitling them to exemption.</p>
3.	<i>CIT v. St. Peter's Educational Society (2016) 385 ITR 66 (SC)</i>	
	Issue	Analysis & Decision
	<p>Would imparting education/training in specialized field like communication, advertising etc. and awarding diplomas/certificates constitute an "educational purpose" for grant of exemption u/s 10(23C)(vi)?</p>	<p>Institutions engaged in providing specialized training in certain fields and awarding diplomas and certificates are also eligible for tax exemption in terms of section 10(23C)(vi). It is not mandatory for such institutions to impart education in formalized manner or conduct only recognized educational courses. Further, when corporates depute employees for gaining specialized knowledge, such imparting of knowledge by the institution would not mean that the institution is engaged in the activity of general public. Making of profit incidentally will not make the institution as existing for making profit.</p>

TEST YOUR KNOWLEDGE

Questions

1. A trust, unless created for "charitable purpose", does not qualify to claim exemption under Chapter III of the Act. In this context, explain the meaning of "charitable purpose" and examine whether the following objects constitute part of it:
 - (i) Rural reconstruction and upliftment of the masses through Cottage Industry.
 - (ii) Welfare of industrial workers with a stipulation that the workers of settlor of trust have got preference over others.

2. Ramji Charitable Trust has filed return of income for the Assessment Year 2025-26 in December 2025 and applied only 50% of its income for specified purposes. It intends to accumulate the balance 35% of income to be spent in future years. Accordingly, it filed its Statement in Form 10 in August, 2025 and deposited the money so accumulated in post office savings bank account. While completing the assessment, the Assessing Officer disallowed the accumulated income of 35% and taxed the same on the ground that the trust has filed its return of income after the due date for filing return of income . Discuss the validity of the action of the Assessing Officer in this case.

3. An institution operating for promotion of education claiming exemption under section 11 since 1994 furnishes the following data for the assessment year 2025-26:

S. No.	Particulars	₹ in crores
(i)	Fees collected from students	14
(ii)	Construction of a new computer science laboratory	0.50
(iii)	Land acquired to be used as a cricket field for the students	2
(iv)	Amount earmarked and set apart for construction of an arts block within the next 4 years.	4

Compute the total income of the institution for the A. Y. 2025-26.

4. A public charitable trust registered under section 12AB, for the previous year ending 31.3.2025, derived gross income of ₹ 21 lakhs, which consists of the following:

	(₹ in Lacs)
(a) Income from properties held by trust (net)	10
(b) Income (net) from business (incidental to main objects)	4
(c) Voluntary contributions from public	7

The trust applied a sum of ₹ 11.60 lacs towards charitable purposes during the year which includes repayment of loan taken for construction of orphanage ₹ 3.60 lacs. The entire expenditure incurred on construction of orphanage was allowed as application of income in the P.Y. 2020-21.

Determine the taxable income of the trust for the assessment year 2025-26.

5. Work out, from the following particulars, the amount of capital gain which shall be deemed to have been applied for charitable or religious purpose arising out of sale of a capital asset utilized for the purposes of trust to the extent of 60%:

Particulars	₹
Cost of transferred asset	2,40,000
Sale consideration	3,60,000
Cost of new asset purchased	3,00,000

6. An electoral trust approved by the CBDT is not liable to income-tax in respect of voluntary contribution received and other income - Examine the correctness of the statement.
7. Helpage is a charitable trust set up on 1.4.2010 with the object of providing relief to the poor. Later on, in April, 2012, it changed its object to medical relief. It applied for registration on the basis of its new object, i.e., medical relief, on 1.9.2012 and was granted registration under Section 12AA on 1.2.2013.

On 1.4.2024, Helpage got merged with Poor Aid, is not eligible for registration under section 12AB or approval under section 10(23C). All the assets and liabilities of the erstwhile trust became the assets and liabilities of Poor Aid. The trust appointed a registered valuer for the valuation of its assets and liabilities. From the following particulars (including the valuation report), calculate the tax liability in the hands of the trust arising as a result of such merger:

(i) **Land**

Location	Date of purchase	Stamp duty value on 1.4.2024	Value which the land would fetch, if sold in the open market on 1.4.2024	Book Value on 1.4.2024
		₹	₹	₹
Noida	1.9.2010	55 lakhs	58 lakhs	50 lakhs
Gurgaon	1.9.2013	100 lakhs	120 lakhs	110 lakhs

(ii) **Shares**

Type of shares	Date of purchase	Face value of each share	Purchase price of each share	Price at which each share is quoted on BSE as on 1.4.2024		Open market value as on 1.4.2024 #
				Highest price	Lowest price	
		₹	₹	₹	₹	₹
5000 Quoted equity shares of A Ltd.	1.5.2014	100	110	320	300	
2000 Preference shares of B Ltd.	1.9.2015	100	100	-	-	180

on the basis of report of Merchant Banker

(iii) **Liabilities**

Book value of liabilities on 1.4.2024 = ₹ 120 lakhs. This includes –

- (a) Corpus fund ₹ 12 Lakhs.
- (b) Provision for taxation ₹ 8 lakhs; and
- (c) Reserves and Surplus ₹ 18 lakhs

8. “Serving the poor”, a charitable trust, is registered under section 12AB of the Act. On 1.4.2024, it got merged with another entity not eligible for registration under section 12AB or approval under section 10(23C).

All the assets and liabilities of the erstwhile trust became the assets and liabilities of the merged entity.

The trust appointed a registered valuer for the valuation of its assets and liabilities. From the following particulars (including the valuation report), calculate the tax liability in the hands of the trust arising as a result of such merger:

- (i) Stamp duty value of land held ₹ 15 lakhs. However, if this land is sold in the open market, it would ordinarily fetch ₹ 17 lakhs. The book value of the land is ₹ 20 lakhs.
- (ii) 75,000 equity shares in Ink Ltd. traded in Delhi Stock Exchange. The lowest price per share on 1.4.2024 was ₹ 75 and the highest price on that day was ₹ 85. The book value was ₹ 67 lakhs.
- (iii) 55,000 preference shares held in N Ltd. The shares will fetch ₹ 44 lakhs, if they are sold in the open market on 1.4.2024. Book value was ₹ 25 Lakhs.
- (iv) Corpus fund as on 1.4.2024 ₹ 15 Lakhs.
- (v) Outside liabilities ₹ 90 lakhs
- (vi) Provision for taxation ₹ 5 lakhs.
- (vii) Liabilities in respect of payment of various utility bills ₹ 6 lakhs.

Answers

1. Section 2(15) defines “charitable purpose” to include relief of the poor, education, medical relief, yoga, 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. However, “advancement of any other object of general public utility” would not be a charitable purpose, if it involves carrying on of any activity in the nature of trade, commerce or business or, any activity of rendering of any service in relation to any trade, commerce or business, for a fee or cess or any other consideration, irrespective of the nature of use or application of the income from such activity or the retention of such income, by the concerned entity.

“Advancement of any other object of general public utility” would continue to be a “charitable purpose”, if the total receipt from 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 does not exceed 20% of the total receipts of the trust in the previous year, and such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility.

- (i) The Supreme Court has, in *Thiagarajar Charities vs. Addl. CIT (1997) 225 ITR 1010*, observed that “cottage industry” is associated with the idea of a small, simple enterprise or industry in which employees work in their own houses or in a small place, gathered together for the purpose, using their own equipments and is usually found in rural areas or so carried on, by the poorer section of the society. In substance, the activity of rural reconstruction and upliftment of masses through cottage industry is to afford relief to the poor and consequently, it is for charitable purpose.
- (ii) The welfare of industrial workers with a stipulation that the workers of settlor of trust have preference over others would also constitute “charitable purpose” within the meaning of section 2(15). The Patna High Court has, in *CIT v. Tata Steel Charitable Trust (1993) 203 ITR 764*, observed that exemption under section 11(1) can be availed only if the following conditions are satisfied –
- (1) the trust is created for a charitable purpose; and
 - (2) no part of the income of such trust enures or has been used or applied directly or indirectly for the benefit of any person referred to in section 13(3).

The list of persons contained in section 13(3) does not include employees of the settlor of the trust. Section 13(3)(d), which includes any relative of the author, can have no application because “relative” means a person connected by birth or marriage with another person. A person having relationship pursuant to a contract like that of an employer and an employee cannot be said to be a relative. The High Court concluded that it was immaterial that any employee of the settlor of the trust had acquired any benefit out of the income of the trust as an ordinary member of the community. Therefore, the application of part of the income of the trust for the benefit of the employees of the settlor cannot disentitle the trust from claiming exemption under section 11.

2. Section 11(2) provides that a charitable trust has to apply 85% of its income to charitable purposes and where 85% of its income is not applied for such purposes, the trust may accumulate or set apart either the whole or part of its income for future application for such purposes in India. The requirement of the Act is that the trust has to make an application/intimation in the prescribed form, for accumulation of income, specifying the purpose and the period (not exceeding 5 years). The application should be filed or furnished before the assessing authority two months prior to the due date specified under section 139(1). Further, the money so set apart or accumulated should be invested/deposited in any one or more of these modes or forms specified under section 11(5).

In case the statement in Form 10 is submitted in August, 2025 and the amount accumulated was deposited in post office savings bank account, which is a mode specified in section 11(5). However, the benefit of accumulation would not be available if the return of income is not furnished on or before the due date of filing of return of income under section 139(1). In this case, trust has not filed its return on or before the due date under section 139(1). The return of income was filed only in December, 2025. Therefore, the action of the Assessing Officer, in this case, is valid.

3. Computation of total income of the institution for the A.Y. 2025-26

Particulars	₹ (in crores)
Fees received	14.00
Less : 15% (exempt even if not spent for the objects of the institution)	2.10
	11.90
Less: Amount applied for charitable purposes	
Actual amount spent on construction of computer science lab (See Note 1)	0.50
Actual amount spent on purchase of land for cricket field (See Note 1)	2.00
	2.50
	9.40
Less : Accumulated for specified purpose (See Note 2)	4.00
Total Income	5.40

Notes:

- (1) The institution must utilise 85% of its income within the previous year for the objects of the institution. The institution can apply its income either for revenue expenditure or for capital expenditure provided the expenditure is incurred for promoting the objects of the institution. Land acquired and meant for use as cricket field for students is a capital expenditure incurred for promoting the objects of the institution and hence, eligible for deduction. Likewise, the amount spent on construction of computer science laboratory is also eligible for deduction.
- (2) Section 11(2) provides that a trust/institution can accumulate or set apart its income for a specified purpose by furnishing statement in prescribed format to the concerned Assessing Officer. However, the period for which the funds can be accumulated cannot exceed 5 years. The amount so accumulated should be invested in the forms and

modes specified in section 11(5). In this case, the institution has to furnish statement in Form 10 two months prior to the due date of filing return of income 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 being accumulated or set apart, which shall, in no case, exceed five years. Further, the institution has to invest ₹ 4 crore in the specified forms and modes.

Note – Section 11(2) stipulates the conditions for accumulation, on fulfillment of which the income so accumulated or set apart would not be included in the total income of the previous year of the trust. The condition stipulated in clause (c) of Section 11(2) is that the statement in Form 10 has to be furnished at least 2 months prior to the due date of filing of return of income u/s 139(1). However, as per section 13(9), the income accumulated would not be excluded from total income if Form 10 is not submitted on or before the due date under section 139(1). Section 13(9) permits exclusion of accumulated income from total income of the previous year, if Form 10 is filed on or before the due date under section 139(1). CBDT Circular No.6/2023 dated 24.5.2023 clarifies that the statement of accumulation in Form No. 10 is required to be furnished at least two months prior to the due date of furnishing return of income so that it may be taken into account while auditing the books of account. However, the accumulation/deemed application shall not be denied to a trust as long as the statement of accumulation/deemed application is furnished on or before the due date of furnishing the return as provided in section 139(1).

4. Computation of taxable income of public charitable trust

	Particulars	₹
(i)	Income from property held under trust (net)	10,00,000
(ii)	Income (net) from business (incidental to main objects)	4,00,000
(iii)	Voluntary contributions from public	7,00,000
	Voluntary contribution made with a specific direction towards corpus are alone to be excluded under section 11(1)(d). In this case, there is no such direction and hence, included.	21,00,000
	Less: 15% of the income eligible for retention / accumulation without any conditions	3,15,000
		17,85,000

Less: Amount applied for the objects of the trust		
(i)	Amount spent for charitable purposes (₹ 11,60,000 - ₹ 3,60,000)	8,00,000
(ii)	Repayment of loan for construction of orphan home (See Note below)	-
Taxable Income		9,85,000

Note - As per *Explanation 4(ii)* to section 11(1), any application for charitable or religious purposes, from any loan or borrowing in the concerned year, shall not be treated as application of income for charitable or religious purposes. However, the amount not so treated as application, shall be treated as application in the year in which the loan is repaid. The Fourth proviso to *Explanation 4(ii)* to section 11(1) clarifies that this provision will, however, not apply where application is from loan or borrowing made on or before 31.3.2021.

Since the amount spent on construction of orphanage was allowed as deduction in the P.Y. 2020-21, repayment of loan taken for such purposes will not be allowed as application as it would tantamount to double deduction.

5. In this case, since the asset which is transferred is utilized for the purposes of the trust only to the extent of 60%, only the proportionate amount (i.e., 60%) of the capital gain would be regarded as having been applied for charitable or religious purposes.

As per section 11(1A), where a capital asset held under trust is transferred, and only a part of the net consideration is utilized for acquiring a new capital asset, only so much of the capital gain as is equal to the amount, if any, by which the amount so utilized exceeds the cost of the transferred asset shall be considered to have been applied for the objects of the trust.

In this case, only a part of the net consideration of ₹ 3,60,000 is utilized for acquiring the new capital asset costing ₹ 3,00,000. The amount utilized in acquiring the new asset (i.e., ₹ 3,00,000) exceeds the cost of the transferred asset (i.e., ₹ 2,40,000) by ₹ 60,000.

Therefore, only 60% of (₹ 3,00,000 – ₹ 2,40,000) = 60% of ₹ 60,000 = ₹ 36,000 is deemed to be applied for the objects of the trust.

6. Section 13B provides exemption in respect of voluntary contribution received by an electoral trust approved by the CBDT in accordance with the scheme to be made by the Central Government.

Voluntary contribution received by an electoral trust would be treated as its income under section 2(24), but shall be exempt under section 13B if the trust distributes to a registered political party during the year, 95% of the aggregate donations received by it during the year along with surplus brought forward from any earlier years. Another condition for availing the benefit under this section is that the electoral trust should function in accordance with the rules framed by the Central Government.

It may be noted that the exemption under section 13B will be available only in respect of voluntary contribution received by an electoral trust. The exemption cannot be claimed in respect of any other income of the electoral trust.

Therefore, the given statement is not correct.

7. As per section 115TD, the accreted income of "Helpage", a charitable trust, registered under section 12AA which is merged with Poor Aid, an entity not entitled for registration under section 12AB or approval under section 10(23C), would be chargeable to tax at the rate of 34.944% [30% plus surcharge @12% plus cess@4%].

Computation of accreted income and tax liability in the hands of the Helpage trust arising as a result of merger with Poor Aid

Particulars	Amount (₹)
Aggregate FMV of total assets as on 1.4.2024, being the specified date (date of merger) [See Working Note 1]	1,39,10,000
Less: Total liability computed in accordance with the prescribed method of valuation [See Working Note 2]	82,00,000
Accreted Income	57,10,000
Tax Liability @ 34.944% of ₹ 57,10,000 (rounded off)	19,95,300
Working Notes:	
(1) Aggregate fair market value of total assets on the date of merger	
- Land at Noida, being immovable property, purchased on 1.9.2010	-
Since the trust was registered only on 1.2.2013 and benefit of section 11 and 12 was available to the trust only from A.Y.2013-14, relevant to P.Y.2012-13, being the previous year in which the application for registration is made, the value of land purchased in P.Y.2010-11, in respect of which benefit under sections 11 and 12 was not availed, has to be ignored for computing accreted income.	

-	Land at Gurgaon, being an immovable property, purchased on 1.9.2013 [The fair market value of land would be higher of ₹ 120 lakhs i.e., price that the land would ordinarily fetch if sold in the open market and ₹ 100 lakhs, being stamp duty value as on the specified date, i.e., 1.4.2024]	1,20,00,000
-	Quoted equity shares of A Ltd. [5,000 x ₹ 310 per share] [₹ 310 per share, being the average of the lowest (₹ 300) and highest price (₹ 320) of such shares on the specified date]	15,50,000
-	Preference shares of B Ltd. [2,000 x ₹ 180 per share] [The fair market value which it would fetch if sold in the open market on the specified date i.e., FMV on 1.4.2024]	3,60,000
		1,39,10,000
(2)	Total liability	
-	Reserves and Surplus ₹ 18 lakhs [not includible]	-
-	Corpus Fund of ₹ 12 lakhs [not includible]	-
-	Provision for taxation ₹ 8 lakhs [not includible]	-
-	Other Liabilities	
	[₹ 120 lakhs - ₹ 18 lakhs - ₹ 12 lakhs - ₹ 8 lakhs]	82,00,000
		82,00,000

8. As per section 115TD, the accreted income of “Serving the poor”, a charitable trust, registered under section 12AA which merged with an entity not entitled for registration under section 12AB or approval under section 10(23C), would be chargeable to tax at maximum marginal rate @ 34.944% [30% plus surcharge @12% plus cess@4%].

Computation of accreted income and tax liability in the hands of the trust arising as a result of merger with the “not eligible” entity for A.Y. 2025-26

Particulars	Amount (₹)
Aggregate FMV of total assets as on 1.4.2024, being the specified date (date of merger) [See Working Note 1]	1,21,00,000
Less: Total liability computed in accordance with the prescribed method of valuation [See Working Note 2]	96,00,000
Accreted Income	25,00,000
Tax Liability @ 34.944% of ₹ 25,00,000	8,73,600

Working Notes:	
(1) Aggregate fair market value of total assets on the date of merger	
- Land, being an immovable property	17,00,000
[The fair market value of land would be higher of ₹ 17 lakhs i.e., price that the land would ordinarily fetch if sold in the open market and ₹ 15 lakhs, being stamp duty value as on the specified date]	
- Quoted equity shares in Ink Ltd. [75,000 x ₹ 80 per share]	60,00,000
[₹ 80 per share, being the average of the lowest (₹ 75) and highest price (₹ 85) of such shares on the date of merger]	
- 55,000 preference shares of N Ltd.	
[The fair market value which it would fetch if sold in the open market on the date of merger i.e., FMV on 1.4.2024]	44,00,000
	1,21,00,000
(2) Total liability	
- Outside liabilities	90,00,000
- Corpus Fund of ₹ 15 lakhs [not includible]	-
- Provision for taxation ₹ 5 lakhs [not includible]	-
- Liabilities in respect of payment of various utility bills [since this liability is an ascertained liability]	6,00,000
	96,00,000