

Taxation of Charitable Trust and Computation of Income

Presentation at Nagpur Branch of WIRC of ICAI

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Points for Discussion

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Charitable Purpose

Section 2(15)-"charitable purpose" includes

- relief of the poor,
- education (*has wide meaning-but restricted to formal education-SC*)
- 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

The advancement of any other object of general public utility

Advancement of any other object of general public 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

The advancement of any other object of general public utility

Exception

- such activity is undertaken in the course of actual carrying out of such object AND
- the aggregate receipts from such activity or activities during the previous year, do not exceed 20% of the total receipts

As per section 13(8) in the year in which such receipts are more than 20% - No Exemptions – One year Exemption – Another year No Exemption

However, FA 2022 – Net Receipts be taxed (w.e.f. 01/04/2023)

Difference between section 11 & 10(23C)

The following differences which existed earlier have now been eliminated

- **Accumulation procedure** including Form 10 (2022-23)
- **Accumulation period** which was 6 years u/s 11 now reduced to 5 years (2022-23)
- **Withdrawal of approval and registration** is extended to section 10(23C) by extending the scope of proviso 4 and 5 in section 143
- **Section 115TD** (including 115TE and 115TF) applied to institution approved u/s 10(23C)

Conditions for claiming Exemption u/s 11

Any person deriving income from property held wholly under trust for charitable or religious purpose (Section 11)

- **Exempt to the extent Applied** to purposes In **India** & Accumulated (upto 15%)
- Minimum **85% of income is to be applied** towards purpose in India (Either revenue or capex) i.e., income up to 15% can be Freely Accumulated or set apart for application for such purpose in India (Addl. CIT Vs. ALN Rao Charitable Trust 1996 AIR 344-15% is exempt without any condition)
- Extra Accumulation- File Form No 10
- Deemed to be applied- File Form No 9A

Accumulation of Income as per section 11(2)

Accumulation (over and above 15%) is allowed if

- **Form 10 is filled – 2 months prior to return u/s 139(1)-** (specifying the purpose-Specific Vs. General)
- Accumulated funds are **invested as per 11(5)** various modes are provided-5years

Against: DIT(E) v Trustees of Singhania Charitable Trust [1993] 199 ITR819 (Cal) & Cotton Textiles Export Promotion Council v. First ITO [1983] 4 ITD 642 (Mum Trib)

For a **definite and concrete purpose** & mere reproduction of objects of the trust not sufficient.

Favour: DIT(E) v Envisions [2015] 378 ITR 483 (Kar) & Bharat Kalyan Pratisthan v DIT(E) [2008] 299 ITR 406(Del) & Mitsui & Co. Environmental Trust, 211 CTR 352(Del)

Plurality of purposes is permitted & an assessee **may utilize the funds for some or all of the objects of the trust**. Sufficient state that amount would be utilized for objects of the trust in general

Accumulation of Income as per section 11(2)

Accumulated income will be taxed if Accumulated income is

- credited/paid to other registered trusts
- applied to other purpose
- not invested or ceases to be invested as per 11(5)
- Not utilized for the purpose for which it was accumulated or set apart during the period

Then it will be treated as income in the year of default or **last year for which income is accumulated or set apart.** (w.e.f. 01/04/2023)

However, in case beyond control- Application can be made to AO seeking permission to apply accumulated income for purpose other than for which it was accumulated. But in no case AO can allow paying the accumulated money to another registered trust, except during dissolution.

Period of accumulation effectively reduced from 6 years to 5 years

There are 2 omissions which effectively reduced the period of accumulations from 6 years to 5 years

(c) is not utilized for the purpose for which it is so accumulated or set during the period referred to in clause (a) of that sub-section or ~~in the year immediately following the expiry thereof~~

.....

shall be deemed to be the income of such person for the last previous year for which income is accumulated or set apart~~of the previous year immediately following the expiry of the period aforesaid].~~

Deemed application as per explanation 1 to section 11

- Income was derived but not received-Deemed Application, if said income is applied in the year of receipt or immediate next year otherwise treat it as income in year following the year of receipt.
- Any other reason- Deemed Application-if said income is applied in year following the year of receipt-otherwise treat it as income in the year following the year of receipt

Then, upon filing of Form 9A (to be filed **2 months prior** to **return u/s 139(1)**) - income to that extent will be deemed to be applied in the year in which it is derived and same income will not be considered as application of income in the year in which it is applied.

Restriction on certain applications

- If Income received is **contributed as corpus of** any other registered trust etc. then this won't be considered as application. *Donation can be given for application towards objects. (So, corpus fund be used to contribute Corpus of another trust.-This is one of the reasons why corpus fund is to be invested separately.)*
- **Section 40(a)(ia) and 40A(3) & (3A) applies** i.e., amount disallowed as per these sections not to be considered for determining the amount of application (i.e. while computing 85%)
- Any excess application or preceding previous year not be considered in the year under consideration (**no set-off of earlier deficit** /excess application) [applicable from 01.04.2023]
- **Depreciation** cannot be claimed on that Capital Asset the acquisition of which was considered as Application of income (FA2015)
- A registered trust claiming exemption u/s 11 **cannot claim exemption under any section** of the Income Tax Act other than 10(1)

Benefits to specified persons

- Specified persons u/s 11 (3)
 - Author/Founder- Settlor
 - Substantial Contributor Cumulative Donations Rs 50,000
 - Member of HUF (Settlor/substantial contributor)
 - Trustee/Manager
 - Relative
 - Concern in which substantial interest

- If any specified person is benefited – Such part of income being taxed at MMR [proviso to 164(2)]- (FA 2022, w.e.f. 01/04/2023)

Benefits to specified persons

- Benefits in the form of:
 - Income/ property lent **without adequate security/ interest**
 - Land/ Building/ Other Property made available **without adequate rent/ compensation**
 - Salary/ Allowance/ other paid **in excess of reasonable amount**
 - Services made available **without adequate remuneration/ compensation**

Penalty provisions for undue benefit to specified persons (S. 271AAE)

- 100% for 1st Violation
- 200% for subsequent Violation
- The above provisions are **without prejudice to other provisions.**
- Such excess benefit will **not be regarded as application** of income
- Such benefit will **be taxable in the hands of specified person.**

Taxation of Anonymous Donations u/s 115BC

Anonymous Donation means any voluntary contribution [as per 2(24)(iia)] where Person receiving donation does not maintains the Record of identity of the person giving such contribution -**taxed @ 30%** of the Aggregate anonymous donation received in excess of the **higher of the following:**

- Rs.1,00,000/-
- 5% of the total donations received

Section not applicable in case of:

- Wholly Religious trust or institution
- Wholly Religious and charitable trust or institution (other than specific donation for university/ hospital/ educational or medical institution)
- Anonymous donation received by educational institutions and hospital wholly or substantially financed by the government

Taxation on sale of Capital Assets 11(1A)

Capital Asset, being Property held under trust wholly for charitable or religious purpose – transferred

- If cost of new asset > Net Consideration from Asset transferred- **Whole of capital gain** will be deemed as Application
- If cost of new Asset < Net consideration from Asset transferred- **(Cost of new Asset – cost of asset transferred)** – will be deemed as Application.

Cost of Asset transferred = cost as per **sec 48 and 49**

Net Consideration= full value of consideration accrued/ received less exp. Incurred for transfer.

Taxation on sale of Capital Assets 11(1A)

Time Limit of investing in New Asset?

Section 11 (1A) **doesn't provide any time limit**

- Basically sale proceeds are considered as income from property u/s 11(1)(a) – so application be **done in same year**
- So automatically provisions of deemed application and Accumulation will be applicable.

Any holding period is prescribed for transferred capital Asset or new capital asset??

No such minimum holding period is prescribed.

Taxation of Corpus Fund

- Voluntary contribution is **income as per section 2(24)(iia)**
- While voluntary contribution with specific direction to form part of corpus- **Exempt- Section 11(1)(d)**
- Such corpus fund is to be **invested separately as per 11(5)**
- Utilization of Corpus Donation will **not be treated as application** of income

Interest received on Corpus fund?

Commissioner of Income-Tax. (Exemption), Kochi vs. Mata Amrithanandamayi Math Amritapuri [2018] 94 taxmann.com 82 (SC)-if it is specifically mentioned by the donor that interest shall also form part of corpus

Audit u/s 12A(1)(b)

Following are the conditions for availing the exemption u/s 11:

- Registration
- Audit by qualified chartered accountant
- File return of income on or before the date as specified u/s 139(1)

It means audit is pre-requisite for claiming exemption under section 11 and 12, where the total income of the trust computed without giving effect to the provisions of section 11 and 12 exceeds Rs 2,50,000 in any previous year, then the accounts of the trust for that year should be audited by a Chartered Accountant.

Under the Section 12A(b) of the Income Tax Act there is a condition for audit in Form 10B/ 10BB & furnishing of the audit report along with return. This audit report should be filed at least one month prior to the due date for furnishing the return of income under sub-section (1) of section 139”, i.e. on or before 30th September.

Condonation for delay in filing of Form 10B

With effect form AY: 2018-19, in order to claim the exemption u/s 11 the **audit report in the form 10B** should be filed **on or before the 30th September- No Exemption** will be allowed if Audit Report in the **Form 10B** is filed after the due date.

Condonation for delay- CBDT vide their circular no. 16/2022 dated 19/07/2022 and 2/2020 dated 03/01/2020 has authorized the various offices to **condone the delay in filing of audit report in the Form 10B** for the **AY: 2018-19 or any subsequent years:**

Delay in days	Income Tax Officer
Where delay is up to 365 days	CIT
Where delay is beyond 365 days up to 3 years	PCIT/ CCIT

ITR Form for charitable trusts registered u/s 12AB

The return of income of the trust should be filed as per the provisions of section 139(4A) in the manner provided in section 139 of the Act.

All organizations or trust are required to file the return in **ITR-7 by 31st October** (as amended by Finance Act 2020, earlier it was 30th September) of the assessment year as where the income of a charitable trust, before claiming exemption under section 11 to 12 exceeds the maximum amount chargeable to tax, its accounts are required to be audited.

The return must be **accompanied by an Audit Report in Form 10B/10BB** prescribed under Rule 17B of the Income-Tax Rule, 1962.

Draft Computation of Income

Aggregate of income u/s 11,12 and 10(23C)(iv),(v),(vi) and (via) excluding Voluntary contribution			XXXXXX
Less: Application of Income			
Amount applied to charitable purposes in india during the previous year –			
- Revenue Account	XXXXXX		
- Capital Account	<u>XXXXXX</u>		
		XXXX	
Income Exempt u/s 11(1)(a)			
		XXXX	
Income Accumulated or Set Apart Upto 15% (of Voluntary Contributions other than corpus and Aggregate of income referred to in sections 11 and 12)			
			XXXXXX
Gross Total Income			XXXXXX

Multiple claim of exemption

- Can a trust claim exemption u/s 10 (23C) and 11 simultaneously??

[Where registration is not required i.e. u/s 10 (23C)(iiiab) (iiiac) (iiiad) (iiiiae)]

- Exemption u/s 10 (23C)(iv)(v)(vi)(via) and 11 **cannot be claimed simultaneously** owing to section 11 (7)- Since, the moment registration is sought in another regime, **earlier registration will become inoperative**
- A registered trust cannot claim exemption under any clause of section 10 except clause (1), 10 (23C) and 46

Maintenance of Books of Accounts and other documents

Under the Income-tax Act, ordinary taxpayers are required to maintain books of accounts and get them audited. The requirement to maintain the books of account is prescribed under Section 44AA. However, there is no specific provision under the Act providing for the books of accounts to be maintained by trusts or institutions.

The Finance Act 2022 amended Section 12A to provide that where the total income of the trust or institution under both regimes, without giving effect to an exemption under section 11 and 12, exceeds the maximum amount which is not chargeable to tax, such trust or institution shall keep and maintain books of account and other documents in such form and manner and at such place, as may be prescribed.

The CBDT has notified a Rule 17AA prescribing books and other documents to be kept and maintained by trust or institution registered under section 12A/10(23C).

Maintenance of Books of Accounts and other documents

1. Every fund trust is required to keep and maintain the following books of account and other documents:

a. Books of account, including the following:

- Cash Book;
- Ledger;
- Journal;
- Copies of bills;
- Original bills;
- Any other book that may be required to be maintained to give a true and fair view.

b. Books of account for business undertaking and business carried on by assessee other than business undertaking referred to in section 11(4).

Maintenance of Books of Accounts and other documents

c. Other documents for maintaining:

- Record of all projects and institutions run by the person containing details of their name, address, and objectives;
- Record of income in respect of voluntary contribution containing details of donor, income from property held under trust along with list of such property, and other income of fund or institution or trust, etc.;
- Record in respect of the application of income in India & outside India, deemed application of income, income accumulated or set apart, money invested in the specified mode, etc.;
- Record of voluntary contribution received & its application;
- Records of loans and borrowings;
- Record of properties held by trust;
- Record of the specified person.

Maintenance of Books of Accounts and other documents

2. The books of account and other documents may be kept in written form or in electronic form or in digital form or as printouts of data stored digitally.
3. The books of account and other documents shall be kept and maintained by the entities at their registered office. However, books may be kept in another place if management decided to do so by passing a resolution.
4. The books of account and other documents shall be kept and maintained for a period of 10 years from the end of the relevant assessment year.

Maintenance of Books of Accounts and other documents

(d) record of the following, out of the income of the person of any previous year preceding the current previous year, namely:

- 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;
- application out of the deemed application of income referred to in clause (2) of Explanation 1 of sub-section (1) of section 11 of the Act, for any preceding previous year, containing details of year of deemed application, amount of application during the previous year out of such deemed application, name and address of the person to whom any credit or payment is made and the object for which such application is made;
- 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;

Maintenance of Books of Accounts and other documents

(d) record of the following, out of the income of the person of any previous year preceding the current previous year, namely:

- money invested or deposited in the forms and modes specified in subsection (5) of section 11 of the Act;
- money invested or deposited in the forms and modes other than those specified in subsection (5) of section 11 of the Act;
- record of voluntary contribution made with a specific direction that they shall form part of the corpus, in respect of-
 - the contribution received during the previous year containing details of name of the donor, address, permanent account number (if available) and Aadhaar number (if available);
 - application out of such voluntary contribution referred to in item
 - containing details of amount of application, name and address of the person to whom any credit or payment is made and the object for which such application is made;

Registration/ Renewal of Registration u/s 12A/ 12AA/ 12AB

- It is mandatory for a trust to get the registration under Section 12AB of the Income-tax Act, 1961 so as to claim exemption under Section 11.
- All the existing Charitable Trust or Institutions registered under the following sections
 - Section 12A
 - Section 12AA
 - Section 80G
- As a result of which, Section 12AA will cease to exist and section 12AB will come into effect.

Registration/ Renewal of Registration u/s 12A/12AA/12AB/80G

Clause No.	Application Type	Form
(i)	Already registered trust under old regime to reapply	Form 10A
(ii)	Reapply within 3 years of provisional registration - Or Within 6 months of start of activity, whichever is earlier	Form 10AB
(iii)	Renewal of registration under new regime to apply for renewal -6 Months prior to expiry	Form 10AB
(iv)	To make the registration u/s 11 to be operative- 6 months prior to the commencement of the Assessment Year	Form 10AB
(v)	Application in case of modification of objects – 30 days from the change of object	Form 10AB
(vi)	Any other case including new registration- NOW AMENDED - SEE NEXT SLIDE (w.e.f. 01/10/2023)	Form 10A/Form 10AB

Registration/ Renewal of Registration u/s 12A/12AA/12AB/80G

In case of fresh registration u/s 12AB/80G

Condition	Time Limit	Form
The trust has not commenced its activity, i.e. newly incorporated trust	At least one month prior to the commencement of the previous year	Form 10A
The trust has commenced its activity, i.e. existing trust	At any time after the commencement of activity	Form 10AB

Registration/ Renewal of Registration u/s 12A/ 12AA/ 12AB/ 80G

Vide the circular 07/2024 dated 25/04/2024, the department has once again extended the date of filing of Form- 10A and Form- 10AB to 30/06/2024

Power of withdrawal of Registration / Approval

- In case of 'specified violations', the AO to send reference to CIT/PCIT for withdrawal of Registration/ Approval.
- CIT(A) after granting opportunity may withdraw.

Specified violation meaning Section 12A

- Application of income **other than for the objects** for which it is established.
- Religious trust as applied its income which **does not ensure benefit of the public** or benefit only to particular religious community or caste.
- **No separate books of accounts for business** which has to be incidental business.
- Any **business carried** which is **not incidental to the object**
- Activity is **not genuine**
- **Conditions of approval** violated
- **Violation of any other law** when such violation attains finality

Effect of withdrawal of registration u/s 12A / 12AA

- Section 115TD will become applicable if, such withdrawal attains finality
- In such case the assessee has to transfer its assets to another registered or approved trust within one year or otherwise pay tax at MMR on accreted income- The liability will be on the trust as well as trustees
- Accreted income means present fair value of assets less liabilities (reduced by the value of creations of assets not acquired by utilization of acquired income)

Taxation of Accreted Income u/s 115TD

A registered trust which gets converted into any form which is not eligible for registration under clause (iv),(v),(vi), of section 10 (23C) or section 12 AA or 12 AB Or

- **Gets merged with other entity** which is not a registered trust having similar objects Or
- **Fails to transfer its assets upon dissolution** to other registered trust within 12 Months from the end of the month in which dissolution took place
- Certain additional conditions are inserted vide FA 2023 wherein registration is **not renewed or regular registration is not applied** (in case of prov Reg)

Then such trust is required to **pay income tax at Maximum Marginal Rate** on its accreted income in addition to income tax on its total income
Accreted income is difference between fair market value of assets and liabilities

TAXATION OF SPECIFIED INCOME U/S 115BBI

Where the total income of a trust or an institution claiming exemption u/s 10(23C)(iv)/(v)/(via) or section 11, includes any specified income, **notwithstanding any other provision of the Act**, shall be liable to pay:

- Income Tax **@ 30% on such specified income.**
- Income Tax that would have been chargeable had the total income being reduced by the amount of such specified income.

Notwithstanding any thing contained in this Act:

- No deduction of any expenditure, or
- Set- off of any losses

Shall be allowed against such specified income.

TAXATION OF SPECIFIED INCOME U/S 115BBI

Specified Income:

- Income accumulated or set apart in **excess of 15% of the income**- if not allowed under any specific provision of **this Act**.
- Deemed income as referred in explanation 4 to third proviso to **10(23C), or 11(1B) or 11(3)**.
- Income which is **not exempt u/s 10(23C) or 13(1)(b)** on account of **violations of provisions**.
- Deemed income under **twenty first proviso to 10(23C)** or which is **not excluded** from total income u/s 13(1)(c)
- Income which is not excluded from total income u/s 11(1)(c).

Due dates of filing of various forms by the Trusts

Sr. No.	Form No.	Description of the Form	Due Date
1.	Form 10BD	Details of donations received by the trusts registered u/s 80G	31 st May
2.	Form 10	Accumulation of fund u/s 11(2)	31 st August
3.	Form 9A	Deemed Application	31 st August
4.	Form 10B/ 10BB	Audit Report u/s 12(1)(b)	30 th Sept
5.	ITR	Income Tax Return u/s 139(4A)	31 st Oct

Recent Amendments applicable to Charitable Trusts

- Any excess application or preceding previous year not be considered in the year under consideration (**no set-off of earlier deficit /excess application**) [applicable from 01.04.2023]
- Expenses allowed as **application on Actual Payment basis** & not on accrual basis (FA2022,01.04.2023) Utilization of Loan Funds will not be treated as application of income
- **Use of corpus & Loan fund** for Application towards objects Not allowed (FA2021,2023)
- No retrospective **applicability of registration** (FA 2023)
- Insertion of clause 10 to section 13- Only **net income can be taxed in case of non-allowance of exemption u/s 11** in certain cases

No Retrospective applicability of registration

- As per provisos to section 12A (2) where registration is given during pendency of assessment then exemption can be claimed even for that Assessment year for which Assessment is pending.
- If registration is granted to a trust then the Assessing Officer shall not re open earlier assessment years merely for the reason that trust was not registered
- These provisions are omitted vide FA 2023 considering the new scheme of registration, **where a trust is required to get registered before commencement of its activities**, these provisos will become redundant.(Applicable from 01/04/2023)
- Opinion: Apparently, it can be seen that, **CBDT has missed on a fact that, there are still many trusts which have lot of activities but are not yet registered u/s 12 A or 10 (23C)** of the Act In those all cases, these amendments may create problem

Taxation of gross receipts

In Existing Scenario – In case where
Receipts from commercial activities (advancement of any other
object of General Public Utility) exceeds 20%
Audit report or ITR is not furnished in time

Entire receipts were taxed.

FA 2023 has brought amendment – Clarificatory in Nature-
[Sec13(10) and 23rd proviso to 10 (23C)]– owing to which **tax to be
computed only after allowing deduction of all expenditure** (exp from
corpus, loan, depreciation on cap. Asset claimed as application,
donation to any other person not to be considered) - 40(a)(ia),
40A(3) and (3A) shall also apply.

Brief about recent changes in Form 10B/ 10BB

General information required in the form

- A thorough detailed audit report
- Details and nature of activity
- Details of Business
- Details of donation received including FCRA donations.
- Details of 80G receipt issued

Relating to Computation of Application of Income

- Option under clause 2 of explanation 1 to sec 11(1) including details of unutilised option.
- Corpus donation details.
- Details of accumulation under 11(2), its investment, violation and change of object of accumulation
- Full Details of specified person for S. 13(1)(c) clause-wise
- Details of situation and violations under various sub clauses of 13(2).

Brief about recent changes in Form 10B / 10BB

Relating to business by trust

- Details of audit including tax audit of such business.
- TDS details and violations
- Payment in cash violations
- Specific disclosure ICDS effect

Relating to other income tax compliances 269SS
and 269T

Brief about recent changes of Form 10BD

Every trust registered u/s 80G of the Income Tax:

- Should file the details of the donations received by them in the Form 10BD
- On or before 31st May of the succeeding financial year

Amendment on account of the effect of Supreme Court decision

Ahmedabad Urban Development Authority SC 115 CCH 131

- The judgment applies to general public utility not falling in the first six categories given in S. 2(15)
- Proviso cannot alter the essence of the main provision
- If the incidental activities are carried at cost or marginal profit, it is not a business activity.
- If however, incidental business carried with the high profit motive, it will be considered as business attracting proviso 1 to S. 2(15), namely, 20% of the Gross Revenue affecting the exemption.
- Although 2 judgments are separate, the interpretation and observations given in one judgment may be used in other judgment and vis-a-vis

Amendment on account of the effect of Supreme Court decision

New Noble Educational Society Civil Appeal No. 3795 of 2014 (SC) 29

- Solely means solely and not predominantly
 - Education means scholastic education
- Activity other than education now divided into (1) incidental to education and (2) other activities not incidental to education
 - Incidental to education has to be related to own students
- Activities not relating to own students, even if educational, will fall in other activities affecting the exemption.
- Effective prospectively (whether from the date of Supreme Court judgment or from next financial year)

Thank You

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