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Taxation of Charitable Trusts
National Conference on Direct Taxes
Nagpur Branch of WIRC of ICAI
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Framework under IT Act 1961

Part 1: gateway, income and the s.13(10) test

Step 0 Gateway conditions

Registration

Valid registration under s.12A / 12AB for the year

Objects

Charitable (s.2(15)) or religious purposes

No private benefit

Not hit by s.13(1)(a) or (b): private religious or community-specific benefit

Step 1 Income before exemption

s.12

Voluntary contributions are income, except corpus donations

s.11(4), 11(4A)

Business income only if incidental to objects, with separate books

s.11(6)

No depreciation where cost was claimed as application

s.11(1A)

Capital gains deemed applied to the extent reinvested

Step 2 Is s.13(10) triggered?

s.13(8)

Proviso to s.2(15): GPU business receipts above 20%

s.12A(1)(b)(i)

Prescribed books not maintained

s.12A(1)(b)(ii)

Audit report not obtained or furnished in time

s.12A(1)(ba)

Return not filed within the time allowed

Any one trigger in Step 2 leads to Path A in Part 2; otherwise Path B

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Part 2: computation of income

Path A: s.13(10) triggered

Step 3A Computation

Income under the heads

No s.11 or s.12 exemption

Less: revenue expenditure only

Non-capital, incurred in India for the objects

s.13(11)

No other deduction, allowance or loss set-off

Benefits lost

s.11(1A), s.11(1)(d), s.11(2)

Path B: exemption available

Step 3B Less: exempt portion

s.11(1)(d)

Corpus donations with specific direction

s.11(1)(a)

Income applied in India, plus 15% accumulation

s.11(2) with s.11(5)

Form 10 accumulation, up to 5 years, permitted modes

s.11(1)(b), 11(1)(c)

Pre-Act partial trusts; application outside India where allowed

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Part 3: tax and other levies

Path A: s.13(10) triggered

Step 4A Tax

Normal rates

On the net balance after revenue expenditure, plus surcharge and cess

Path B: exemption available

Step 4B Specified income, s.115BBI

Accumulation above 15%

Where no provision permits it

Deemed income

s.11(1B) and s.11(3)

s.13(1)(c)

Application for benefit of specified persons

s.13(1)(d)

Investment outside permitted modes

30% on the aggregate

Plus surcharge and cess; no deduction or set-off



Step 4C Residual income

Normal rates

Any other non-exempt income

Step 5 Other levies, both paths

s.115BBC

Anonymous donations above the threshold at 30%

s.115TD

Accreted income tax on cancellation, conversion, merger or dissolution

Issues under IT Act 1961

- o Hospitals & Medical institutions – s.10(23C)(via) – existing solely for philanthropic purposes and not for purposes of profit
- o Would earning of surplus be fatal to claim of exemption?
- o Breach Candy Hospital Trust TS-1631-HC-2026(Bom)
- o Recurring surplus, i.e. excess of receipts over revenue expenditure, does not by itself establish that the hospital exists for profit, and its actual activities and application of funds, including capital expenditure, must be examined
- o Reliance on the revenue account alone is inadequate, as capital expenditure towards acquisition of assets and improvement of medical facilities must also be considered
- o No expenditure was fictitious, diverted to private persons or unrelated to hospital's objects
- o An approach that increased receipts from improved facilities establish a profit motive would penalise a philanthropic hospital for improving equipment or expanding capacity
- o Funds cannot be distributed to members, even upon dissolution
- o No minimum ratio of expenditure on poor and needy patients to gross receipts as a test of philanthropic character – treating paying patients is also philanthropic
- o Must be assessed from institution's overall activities and compliance with applicable scheme

Issues under IT Act 1961

- o Philanthropy serves the public at large and is not confined to free treatment of the poor - free treatment to the poor and needy cannot be the sole philanthropic activity of a hospital
- o Philanthropy is wider than charity in the technical English-law sense
- o Providing specialist treatment, modern equipment and skilled staff may also serve a philanthropic purpose
- o Charging patients does not, by itself, deprive a hospital of its philanthropic character
- o The expression "not for purposes of profit" requires examination of the institution's purpose and actual conduct, and does not require receipts and expenditure to balance at the end of each financial year
- o Surplus may be relevant evidence of a profit motive, but it is not conclusive by itself

- o Issues relating to registration u/s 12A
 - o Chamber of Tax Consultants v CIT [2026] 184 taxmann.com 374 (Bom)
 - o trust is always irrevocable unless deed has revocable clause;
 - o public charitable trust is always irrevocable since approval of all beneficiaries required for revocation;
 - o even if it has revocable clause, under MPT Act, money cannot revert to settlor but goes to PT Admin Fund;
 - o conditions of section 332(2) of the ITA 2025 would not be fulfilled on account of a mere absence of an irrevocability clause in the Trust Deed
 - o Inadequate opportunity/lack of show cause notice
- o Accumulation under s.11(2) – whether general objects can be specified in Form 10 or specific purposes
 - o If “as per resolution” stated in form, but resolution contained specific purposes – accumulation cannot be denied – CIT(E) v Bochasanwasi Shri Akshar Purshottam Public Charitable Trust 263 Taxman 247(SC), Sir Jamshetjee Jeejeebhoy Charity Fund v ITO 484 ITR 719 (Bom), B N Gamadia Parsee Hunnarshala Trust v ITO 490 ITR 434 (Bom)

- o Proviso to section 2(15):

- o whether applicable to rental income?

- Shanmukhananda Fine Arts & Sangeet Sabha v Dy DIT 157 taxmann.com 737 (Bom) - Just because assessee has been earning a regular income from letting out its auditorium does not mean petitioner was indulging in commercial activities

- ITO v Yashwantrao Chavan Centre [TS-781-ITAT-2026(Mum)] - letting of auditoriums - hall was let out only when not required for the trust's own charitable activities and the receipts generated therefrom were fully utilized for carrying out educational and welfare activities of the trust - hall receipts were merely a means to sustain and support the educational and welfare activities and not an independent business venture undertaken with profit motive - Merely because substantial receipts arise from one source cannot ipso facto lead to the conclusion that the trust itself exists for business purposes. Mere proportion of auditorium receipts can never become the sole determinative factor. The decisive test is not the quantum of receipts but the dominant purpose and actual application of income.

- o Whether applicable to trade bodies holding conferences and having a surplus?

Broad Framework under IT Act 2025

- o Significant Changes in Scheme of Taxation of Charitable & Religious Trusts
- o Merger of s.10(23C)(iv) to (via) regime with s.11 general exemption
- o Three broad categories
 - o Persons Exempt from Tax – Schedule VII read with section 11
 - o Income Not to be Included in Total Income of Eligible Persons – Schedule III read with section 11
 - o Registered Non-Profit Organisations – Chapter XVII (Special provisions Relating to Certain Persons) – Part B – Special Provisions for Registered Non-Profit Organisations – sections 332 to 355
- o 7 sections
 1. Registration
 2. Income of Regd NPO
 3. Commercial Activities by Regd NPO
 4. Compliances
 5. Violations
 6. Approval for purpose of deduction u/s 133(1)(b)(ii)
 7. Interpretation (Definitions)

Definition of Income – Voluntary Contributions

- o S.2(49)(c) – voluntary contributions received by –
 - (i) A registered NPO
 - (ii) An assn referred to in in Schedule III (Table S No 23) – (i.e. research assn)
 - (iii) Any university or other educational institn or any hospital or other institn referred to in Schedule VII (Table S No 19) –(i.e. receipts less than Rs 5 crore), or
 - (iv) An electoral trust
- o What about voluntary contributions received by an unregistered NPO or an NPO substantially financed by the Govt (Schedule VII, S No 18)?
 - o S.92(2)(m) – sum of money received without consideration
 - o May not apply to donations received in kind of assets other than property as defined

Persons Exempt from Tax – Schedule VII

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S No	Eligible Person	Condition	Section of 1961 Act
5	Body/Authority established, constituted or appointed by or under any Central, State or Provincial Act	Provides for admin of one or more public religious or charitable trusts/endowments or societies for religious/charitable purposes registered under Societies Regn Act 1860 or any other law	10(23BBA)
10	PM National Relief Fund and PM CARES Fund		10(23C)(i)
11	PM Fund (Promotion of Folk Art)		10(23C)(ii)
12	PM Aid to Students Fund		10(23C)(iii)
13	National Foundation for Communal Harmony		10(23C)(iiia)
14	Swachh Bharat Kosh set up by Central Govt		10(23C)(iiiaa)
15	Clean Ganga Fund set up by Central Govt		10(23C)(iiiaaa)

Persons Exempt from Tax – Schedule VII

S No	Eligible Person	Condition	Section of 1961 Act
16	CM/Lt Gov Relief Fund in respect of any State/UT	s.133(1)(xv) – only fund of its kind estd in State/UT, under overall control of Chief Secy/Dept of Finance of respective State/UT, and administered in a manner specified by State Govt/UT	10(23C)(iii aaaa)
17	University/Other Educational Institn wholly/substantially financed by Govt	Exists solely for educational purposes & not for purposes of profit – if govt grant exceeds prescribed % of total receipts, including donations, considered to be substantially financed by Govt	10(23C)(iii ab)
18	Hospital/Other Institution wholly/substantially financed by Govt	For reception & treatment of persons suffering from illness/mental defectiveness, or for reception & treatment of persons during convalescence, or of persons requiring medical attention/rehabilitation – exists solely for philanthropic purposes & not for profit - if govt grant exceeds prescribed % of total receipts, including donations, considered to be substantially financed by Govt	10(23C)(iii ac)

Persons Exempt from Tax – Schedule VII

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S No	Eligible Person	Condition	Section of 1961 Act
19	University/Other Educational Institn/Hospital/Other Institn	University/Educational Institn exists solely for educational purposes & not for profit Hospital/Other Institn is for reception & treatment of persons suffering from illness/mental defectiveness, or for reception & treatment of persons during convalescence, or of persons requiring medical attention/rehabilitation – exists solely for philanthropic purposes & not for profit Aggregate of annual receipts of person from such universities /educational institns/ hospitals/ institns does not exceed Rs 5,00,00,000	10(23C)(iii ad) & (iii ae)
29	Corpn estd under Central/State/ Provincial Act or Body/Institn/Assn wholly financed by Govt	Estd for promoting the interests of Scheduled Castes/ Scheduled Tribes/Backward Classes, or of any two, or all of them	10(26B)

Persons Exempt from Tax – Schedule VII

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S No	Eligible Person	Condition	Section of 1961 Act
30	Corpn estd by Central/State Govt for promoting interests of members of minority community		10(26BB)
42	Any body/authority/Board/Trust/Commission, not being a co, estd/consttd by/under Central/State Act with one/more of foll. purposes: (a) Dealing with and satisfying need for housing accommdtion; (b) Planning, development, improvement of cities, towns & villages; (c) Regulation or regulating & developing any activity for benefit of general public, or (d) Regulating any matter for benefit of general public	Body, etc notified by Central Govt	10(46A)

Income Not to be Included in Total Income of Eligible Persons – Schedule III

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S No	Income not to be included in total income	Eligible Person	Condition	Section of 1961 Act
23	Income of a research association	Research assn approved for the purpose of 45(3)(s)	i. Applies its income or accumulates it wholly and exclusively to objects for which established ii. Invests its funds received in modes specified in section 350 (Schedule XVI) iii. Satisfies conditions as prescribed iv. procedure for withdrawal of approval granted to be prescribed	10(21)(a)
24	Any Income (other than income from house property; income from rendering services; interest or dividend on investments)	Assn/Insttn established in India, having object of control, supervision, regln, encouragement of profession of law, medicine, accountancy, engineering, architecture or other notified profession	i. Approved by Central Govt by general or special order ii. procedure for withdrawal of approval granted to be prescribed	10(23A)

Income Not to be Included in Total Income of Eligible Persons – Schedule III

S No	Income not to be included in total income	Eligible Person	Condition	Section of 1961 Act
25	Income attributable to business of production, sale, or marketing, of khadi or products of village industries	Public charitable trust or registered under Societies Registration Act, 1860 or any corresponding law	i. exists solely for development of khadi or village industries or both, and not for profit ii. Applies its income or accumulates it wholly and exclusively solely for the development of khadi or village industries, or both iii. Approved by Khadi and Village Industries Commission for max 3 tax years at any one time iv. procedure for withdrawal of approval granted to be prescribed	10(23B)
36	Any income of the nature and to the extent which the Central Govt may notify	A body/authority/Board/Trust/Commission other than those covered under Schedule VII (Table S. No.42)	Such body/authority/Board/Trust/Commission: (a) Has been estd/constituted by or under Central/State/Provincial Act or constituted by Central/State Govt with object of regulating/administering any activity for benefit of general public; (b) Is not engaged in any commercial activity; and (c) Is notified by Central Govt	10(46)

Registered Non-Profit Organisations

- o Scheme of computation of income – not of exemption
 - o Will s.14 (s.14A of 1961 Act) apply?
 - o Irrespective of anything to the contrary contained in this Act, **for the purposes of computing the total income under this Chapter**, no deduction..... (Chapter IV) – not applicable to Chapter XVII
 - o Will MAT/AMT apply?
 - o S.206(2) – amounts to be reduced – income to which any of the provisions of s.11 apply or **any regular income of a regd NPO referred to in s.355**, if any such amount is credited to the statement of P&L
- O Definition of “registered NPO” – s.355(g)
 - o Any person having a valid regn under any specified provision and such regn has not been cancelled
- o Definition of “registration” – s.355(f)
 - o Includes provisional registration, provisional approval or approval, as referred to in the second proviso to s.10(23C) or 12AB(1) of IT Act 1961 and under s.332, but shall not include approval under second proviso to s.80G(5) of IT Act 1961 or s.354

Registration – s.332

o Persons who can make application for registration – s.332(1)

- (a) a public trust
- (b) A society registered under Societies Registration Act 1860 or under any law in force in India
- (c) A company registered u/s 8 of Companies Act 2013 or companies registered u/s 25 of Companies Act 1956 and deemed to have been registered in pursuance of s 465(2)(g) of Companies Act 2013
 - o Incorporation of Companies regd under repealed enactments continue to be valid and provns of 2013 Act to apply as if company incorporated under 2013 Act
- (d) A university estd by law or any other educational institn affiliated thereto/recognised by Govt
- (e) An Institution financed wholly or in part by the Govt or a local authority
- (f) Any person referred to in
 - o Schedule III (S No 27,28,29) - Investor Protection Fund set up by Stock Exchange, Commodity Exchange, Depository
 - o Schedule III (S No 36) – Body, Authority, Board, Trust or Commission estd under Central/State/Provincial Act with object of regulating or administering any activity for benefit of general public
 - o Schedule VII (S No 10, 11, 12) – PM National Relief Fund, PM CARES Fund, PM Fund (Promotion of Folk Art), PM Aid to Students Fund

Registration – s.332

- o Schedule VII (S No 13) – National Foundation for Communal Harmony
- o Schedule VII (S No 14, 15) – Swachh Bharat Kosh, Clean Ganga Fund set up by Central Govt
- o Schedule VII (S No 16) – CM/LT Gov Relief Fund in respect any State/UT
- o Schedule VII (S No 17) – University/educational institn wholly/substantially financed by Govt
- o Schedule VII (S No 18) – Hospital/other institn wholly/substantially financed by Govt
- o Schedule VII (S No 19) – University/other educational institn/Hospital/other institn with aggregate annual receipts of less than Rs 5 core
- o Schedule VII (S No 42) – Body/Authority/Board/Trust/Commission (not co) estd/constituted by/under a Central/State Act for
 - o dealing with and satisfying need for housing accommodation,
 - o planning, development or improvement of cities, towns and villages,
 - o regulating or regulating and developing any activity for benefit of general public, or
 - o regulating any matter for benefit of general public arising out of object for which it is created

(g) Any other person notified by the Board

Registration – s.332

- o S. 332(2) - Such person eligible for registration if:
 - o Such person constituted/regd/incorporated **in India** for carrying out one or more charitable purposes referred to in s.2(23) or one or more religious purposes or both; and
 - o Properties of such person are **held under an irrevocable trust** for the benefit of the general public –
 - o Wholly for charitable or religious purposes **in India**, or
 - o Partly for charitable or religious purposes in India, if such person was constituted/regd/incorporated prior to commencement of IT Act 1961 (1.4.1962)
 - o **Not eligible if any objects for purposes outside India – how can regd NPO even apply for permission to spend on objects outside India if spending outside India is not in the objects?**
 - o Eligible for registration – is regn mandatory for wholly exempt trusts?
 - o S.354 (earlier s.80G) approval – only for regd NPOs and **Sch VII S No 1 (Regimental Fund or non-public fund estd by Armed Forces)**

Charitable Purpose – s.2(23)

- o Definition of “charitable purpose” – s.2(23) – includes
 - a. Relief of the poor
 - b. Education
 - c. Yoga
 - d. Medical relief
 - e. Preservation of environment (including watersheds, forests and wildlife)
 - f. Preservation of monuments or place or objects of artistic or historic interest
 - g. Advancement of any other object of general public utility
- O Proviso to s.2(15) not included in definition of charitable purpose

Registration Application, Time Limits & Validity – s.332(3)

S No	Case	Time limit for furnishing application	Time limit for passing order	Validity of registration
1	Where activities have not commenced and not been registered at any time before making the application	Any time during tax year from which regn sought	3 months from end of month in which appln made	3 tax years commencing from tax year in which appln made
2	Where activities have commenced and not been registered at any time before making the application	Any time during tax year from which regn sought	6 months from end of quarter in which appln made	5 tax years commencing from tax year in which appln made
3	Where provisional registration granted and activities have commenced	Within 6 months of commencement of activities	6 months from end of quarter in which appln made	5 tax years commencing from tax year in which appln made
4	Where provisional registration due to expire and activities have not commenced	At least 6 months prior to expiry of provisional registration	6 months from end of quarter in which appln made	5 tax years following tax year in which appln made

Registration Application, Time Limits & Validity – s.332(3)

S No	Case	Time limit for furnishing application	Time limit for passing order	Validity of registration
5	Where registration due to expire in cases other than 4	At least 6 months prior to expiry of registration	6 months from end of quarter in which appln made	5 tax years following tax year in which appln made
6	Where registration has become inoperative due to switching over of regime u/s 333	Any time during tax year from which regn sought to be made operative	6 months from end of quarter in which appln made	5 tax years commencing from tax year in which appln made
7	Where registered NPO has adopted/undertaken modification of objects	Within 30 days of date of adoption/modification	6 months from end of quarter in which appln made	5 tax years commencing from tax year in which appln made

Registration Application, Time Limits & Validity – s.332(3)

- o CIT/Pr CIT – power to condone delay for reasonable cause – appln deemed to have been made within time – s.332(4)
- o In cases other than fresh regn cases, if total income of trust, without giving effect to provisions of this Part, does not exceed Rs 5 crore in each of 2 tax years preceding tax year in which application made, regn validity for 10 years instead of 5 years
- o If appln for regn not made within specified time and delay not condoned, liable to pay tax on accreted income u/s 352
- o CIT/Pr CIT to grant provisional regn in cases of fresh regn without commencement of activities
- o In other cases, to call for documents and information, make necessary inquiries to satisfy himself about compliance with requirements of any other law as are material for purpose of achieving its objects and genuineness of activities
- o In cases other than fresh regn, in case of rejection, also cancellation of regn
- o In cases registered prior to 1.4.2021, where appln made, CIT/Pr CIT can condone delay for reasonable cause and grant regn within 3 months from end of month in which appln made, for period of 5 years commencing AY 2021-22

Switching Over of Regimes – s.333

- o No exclusion of income from total income of regd NPO, other than:
 - o Schedule II, S No 1 – agricultural income
 - o Schedule III, S No 27 to 29 – Investor Protection Funds of Stock Exchanges, Commodity Exchanges, Depositories
 - o Schedule III, S No 36 – Regulatory or Administrative Body for Activity for benefit of general public
 - o Schedule VII, S No 10 to 19 – including educational/medical institutions wholly/substantially financed by Govt or with aggregate annual receipts of less than Rs 5 crore
 - o Schedule VII, 42 to 45 – Housing, Area Development Boards
- o Registration will become inoperative
 - o from date of notification specified in
 - o Schedule III, s 27-29 (IPFs)
 - o Schedule III, s 36 (Regulatory/Administrative Body for activity for general public)
 - o Schedule VII, s 42 (Housing, Area Development Boards)
 - o from 1st April of tax year
 - o Claim of exemption under Schedule VII, S No 43 to 45 (Credit Guarantee Funds)
- o Inoperative regn can be made operative by applying for regn u/s 332 – notification granting exemption ceases to have effect from date of grant of regn – thereafter not entitled to exemption under respective s.nos. of Schedules

Cancellation of Registration – s.351

- o In case of Specified Violation
- o Specified violation by regd NPOs defined:
 - a. Any income applied other than for its objects
 - b. It carries out any commercial activity in contravention of provisions of s.345 or s.346
 - c. It has applied any part of its total income for private religious purposes, which does not enure for the benefit of the public
 - d. Regd NPO created or established on or after commencement of **this Act** for charitable purpose, has applied any part of its income for benefit of any particular religious community or caste other than SC or ST or backward classes or women and children
 - e. Where any activity being carried out is not genuine or is not being carried out in accordance with all or any of the conditions subject to which it was regd
 - f. Not complied with the requirements u/s 332(7) and the order, direction or decree, holding that such non-compliance has occurred, has either not been disputed or has attained finality
 - o Compliance of such requirements of any other law as are material for the purpose of achieving its objects
 - g. Application referred to in s.332(1) contains any false or incorrect information

Cancellation of Registration – s.351

- o Procedure for Cancellation – can be initiated where, during any tax year:
 - o CIT/Pr CIT has noticed occurrence of one or more specified violations,
 - o CIT/Pr CIT has received a reference from the AO u/s 270(13), or
 - o A regd NPO has been selected as per the Risk Mgt Strategy formulated by the Board
- o CIT/Pr CIT shall:
 - o Call for such documents/information from the regd NPO or make such inquiry as he thinks necessary in order to satisfy himself about the occurrence of any specified violation
 - o Pass an order
 - o Either cancelling the regn of such regd NPO, after affording reasonable opportunity of being heard, for such tax year during which such specified violation took place and all subsequent tax years, if he is satisfied that one or more specified violations have taken place, or
 - o Not cancelling the regn of such regd NPO if he is not satisfied about the occurrence of any specified violation
 - o Forward a copy of the order to the AO and such regd NPO
- o Time limit for passing order – before expiry of 6 months from end of quarter in which first notice is issued by CIT/Pr CIT calling for any document/information or for making any inquiry

Income of Registered NPO

- o 3 Categories – regular income, specified income & residual income
- o S.334 - Income Tax payable by regd NPO on its total income – aggregate of
 - o 30% on **specified income**
 - o Rate applicable under other provisions on **taxable regular income** and any **residual income**
 - o **rate not specified**
 - o **Can s.202 (s.115BAC) rates be claimed by trust – irrespective of anything contained in this Act other than Chapter XVII-B**
 - o **Rates under Finance Act each year?**
 - o Defn of “residual income” – total income, as reduced by regular income and specified income
 - o Tax computation under these provisions applicable irrespective of nature of income – **special rates under section 115BAA (section 200 of 2025 Act) whether applicable – “irrespective of anything contained in this Act” also to be found in section 200**
 - o Rate applicable to LTCG? Rate for taxable regular income and residual income
- o S.334(2) – Provisions of this Chapter apply irrespective of anything to the contrary contained in any other provision of the Act – other than sections 96 to 98 (revocable transfer)
 - o No computation under heads of income
 - o Can GAAR provisions apply? **S. 178 – irrespective of anything contained in this Act**
 - o Unexplained credits, investment, asset, expenditure – s.102, 103, 104, 105 – no overriding clause

Income of Registered NPO

- o Definition of “regular income” – s.335 – means:
 - a. **income** from any charitable or religious activity, **for which it is registered**, carried out by such regd NPO in such tax year;
 - b. **income**, other than income covered in clause (e), derived from any property, deposit or investment held wholly for charitable or religious purposes by such regd NPO in such tax year;
 - c. **income**, other than income covered in clause (e), derived from any property, deposit or investment held in part for charitable or religious purposes by such regd NPO in such tax year;
 - d. Voluntary contribution received by such regd NPO in such tax year; and
 - e. Gains of any commercial activity permissible u/s 344, 345 & 346, carried out by such registered NPO in such tax year, computed in prescribed manner
- o Whether income includes capital gains on sale of investments?
 - o “Derived from” vs “Derived from transfer of” – whether any distinction?
 - o Manubhai A Sheth v N D Nirgudkar [1981] 128 ITR 87 (Bom) - capital gains made on sale of land situate in India, which land is used for agricultural purposes, would be revenue derived from such land and, therefore, agricultural income
- o Commercial Concept of Income - whether still continues?
- o Allowability of deduction for income tax?
- o Non-exempt corpus donations – whether regular income?

Income of Registered NPO

- o S.336 – Taxable Regular Income of Regd NPO
 - o Nil, where 85% or more of regular income for such tax year has been applied u/s 341 or accumulated u/s 342 for charitable or religious purposes, in such tax year, as per provisions of this Part
 - o In any other case, 85% of regular income for such tax year as reduced by its application for charitable or religious purposes u/s 341 or accumulated u/s 342 in such tax year as per provisions of this Part
- o S. 343 – Deemed Accumulated Income
 - o Regular income, as reduced by application of income and accumulated or set apart income u/s 342, to the extent of 15% of regular income
 - o If invested/deposited, to be invested/deposited in modes specified u/s 350

Income of Registered NPO

- o S. 338 – Exclusion from Regular Income
 - o **Income applied outside India** where CBDT, by general or special order, directs that such income shall not be so included in its total income
 - o If created before 1st April 1962, for charitable or religious purposes
 - o If created on or after 1st April 1962, for charitable purposes where such application of income outside India tends to promote international welfare in which India is interested
 - o **Application outside India allowed only if approved by CBDT**
 - o **Meaning of application outside India where beneficiaries are in India**
 - o **Would mere remittance outside India amount to application outside India?**
- o Corpus donations received u/s 339
 - o Means any donation made with a specific direction by the donor that it shall form part of the corpus of the regd NPO where such donation is invested or deposited in any of the modes permitted u/s 350 maintained specifically for such corpus
 - o Specific direction from donor – whether required to be in writing?
 - o Earmarking of corpus investments
 - o In absence of meeting conditions, treatment as regular income?
 - o Corpus donations received in kind?
- o **Exclusion from regular income**
 - o **no 15% accumulation on such income**
 - o **whether taxable as residual income?**

Income of Registered NPO

- o S.340 – Deemed Corpus Donation
- o Where property of regd NPO includes any temple, mosque, gurdwara, church or other place notified u/s 133(1)(b)(vii), option to treat sums received as donation for the purpose of renovation/repair of such temple, mosque, gurdwara, church or other place as deemed to form part of corpus u/s 339 – if it:
 - o Maintains such corpus as separately identifiable
 - o Applies such corpus only for the purpose for which the contribution was made
 - o Invests/deposits such corpus in any of modes specified in s.350
 - o Does not apply such corpus for making donation to any person

Application of Income – s.341

- o Following sums allowed as application of income to registered NPO:
- o Any sum applied for charitable or religious purpose in India for which it is registered where such sum is –
 - o Paid during such tax year
 - o Such payment is allowable u/s 36(4), (5), (6) and (7) and 35(b)(i) – other than cash payments exceeding Rs 10,000 and TDS deducted where deductible
- o 85% of sum paid by way of donation to any other regd NPO
- o Nil, with respect to any sum paid as corpus donation to any other regd NPO
- o Application of Income to include:
- o Amount invested/deposited back during the tax year in modes specified u/s 350 maintained specifically for such corpus if:
 - o Investment/deposit back is made within 5 years from end of tax year in which application of income was made from corpus, and
 - o Application of income from corpus is made after 31st March 2021, and no violation of any provision of this Part or any corresponding provision of IT Act 1961 with respect to such application
- o Amount repaid during the tax year towards any loan/borrowing
 - o Similar conditions

Application of Income – s.341

Amounts not to be treated as application of income:

- o Depreciation claimed in respect of an asset, acquisition of which has been claimed as an application of income in the same or any other tax year under this Part or any other corresponding provision of the IT Act 1961
- o Claim of set off or deduction or allowance of any excess application of any year preceding the tax year
- o Application from corpus, loan or borrowing, accumulated income, **specified income or deemed accumulated income** not to be considered as application of income
 - o Whether investment of specified income and deemed accumulated income to be now kept separately?
- o **Where application less than 85%, option to treat shortfall as deemed application**
 - o Where shortfall is due to non-receipt of income for the year, to be applied in year of receipt or following year
 - o Where shortfall is due to any other reason, to be applied in following year
 - o Option to be exercised by filing form before due date of return
- o **Capital Gains deemed to be application of income if net consideration utilised in acquiring a new capital asset**

Accumulation of Income – s.342

- o Regd NPO may accumulate/set apart any part of its regular income during any tax year
 - o by furnishing statement to AO in prescribed form and manner
 - o on or before due date specified in s.263(1) for furnishing return for such tax year
 - o stating therein the **purpose** and period, not exceeding 5 years, for which the income is being accumulated/set apart
- o Amount credited/paid to any other regd NPO out of income accumulated/set apart shall not be treated as application of income
- o Period for which income not to be applied for purpose of accumulation pursuant to an order or injunction of any court to be excluded from period of 5 years
- o Income accumulated/set apart to be invested/deposited in modes specified u/s 350 or applied to purpose as stated in the accumulation form
- o Regd NPO can make application to AO in prescribed form and manner for change of purpose of accumulation
- o On such application, AO may allow the regd NPO to apply its income
- o **Multiple purposes permissible**
- o **Whether general object can be a purpose? Controversy not settled**
- o Accumulation for general purpose vs specific purpose – FAQs – *Accumulation under proposed section 342 of the Bill can be for any purpose stated in the prescribed form* - validity & binding nature of FAQs on AO?

Specified Income of Registered NPO – s.337

S No	Specified Income	Tax Year
1	Anonymous Donation received by registered NPO [other than NPO wholly for religious purposes or wholly for charitable or religious purposes (excluding donations for medical/educational institutions)] excluding anonymous donations up to Rs 1,00,000 or 5% of total donations received by it during the tax year, whichever is higher	Tax Year of receipt of Anonymous Donations
2	Any portion of income applied by it, directly or indirectly, for the benefit of any related person, computed in prescribed manner	Tax year in which such application is made
3	Any portion of income applied outside India in contravention of s.338(a)	Tax year in which such application is made
4	Any investment made in contravention of s.350 out of any income, accumulated income, deemed accumulated income, corpus, deemed, corpus or any other fund	Tax year in which such investment is made
5	Any deemed corpus donation in respect of which condition specified in s.340 is violated	Tax year in which violation made
6	Any portion of accumulated income applied to purposes other than purpose of accumulation or setting apart	Tax year in which so applied

Specified Income of Registered NPO – s.337

S No	Specified Income	Tax Year
7	Any portion of accumulated income ceasing to be accumulated/set apart for application to such purposes as specified in s.342(1)	Tax year in which it ceases to be accumulated/set apart
8	Any portion of accumulated income if it is not utilised for the purpose for which it is accumulated/set apart within the period for which it was accumulated/set apart as specified in s.342(1)	Last of the tax years for which income was so accumulated/set apart
9	Any portion of accumulated income if it is credited/paid to any other regd NPO	Tax year in which it is so credited/paid
10	Any income applied to purposes other than charitable or religious purposes for which it is registered	Tax year in which it is so applied
11	Any income determined by the AO u/s 344 in excess of income shown in books of account of such business undertaking	Tax year to which such income relates
12	FMV of any asset not held in forms prescribed in para 1(1) to (30) of Sch XVI even after expiry of 1 year from end of tax year in which asset acquired	Tax Year immediately following expiry of Limitation Period
13	Deemed appln u/s 341(5) not actually applied by the regd NPO for its objects in India within the period specified in section 341(6)	Tax Year specified in s.341(6) by which such application is to be made

Specified Income of Registered NPO – s.337

- o Definition of anonymous donation unchanged – name and address and other prescribed particulars
- o Anonymous Donation provisions applicable to donations received by charitable-cum-religious trusts only if received for hospital or educational institutions – **retained**
 - o Decision of Bombay High Court in case of Shree Sai Baba Sansthan Trust Shirdi 167 taxmann.com 304
- o Definition of “related person” – same as amended s.13(3)
 - o “relative” defn also still broad – same as in expln 1 to s.13
- o Illustrations of benefit provided to related person in s.13(2) – deleted
- o **To be computed in prescribed manner**
- o Portion of income applied for benefit of – **whether applicable to lower charges for use of assets?**
 - o **Rule 183 – any income applied directly or indirectly for the benefit of any related person shall be computed in the manner as provided in sub-rule (2) in the following circumstances – (c) if any land, building or other property of the regd NPO is or continues to be made available for the use of any related person, for any period during the tax year without charging adequate compensation**
 - o **(2) the income....shall be the value of any benefit or facility granted or provided free of cost or at concessional rate to the related person**
- o Any impermissible investment made out of any income, accumulated income, deemed accumulated income, corpus, deemed corpus, or any other fund to be treated as specified income
 - o Schedule XVI (30) - any impermissible asset not so held after the expiry of one year from the end of the tax year in which such asset is acquired

Residual Income of Registered NPO – s.355(j)

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- o Definition of residual income – total income without giving effect to the provisions of Part B of Chapter XVII, as reduced by regular income and specified income
- o Total income not defined in this Chapter
- o Section 2(108) – Total amount of income referred to in section 5, computed in the manner as laid down under this Act
- o Headwise computation not applicable as Chapter XVII B overrides all other provisions of the Act (except sections 96 to 98 – revocable transfer)

Commercial Activities

- o S.344 - Where property held by regd NPO includes a business undertaking, and where claim made that the income of any such undertaking is eligible for any benefits under this Part, AO has power to determine income of such business undertaking as per provisions of this Act
- o S.355(e) – definition of “commercial activity”
 - o 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
 - o Applicable to both s.345 & s.346 – non-GPU as well as GPU NPOs
- o S. 345 - No regd NPO, other than regd NPO mentioned in s.346, shall carry out any commercial activity unless:
 - o Such commercial activity is incidental to attainment of objectives of the regd NPO
 - o Separate books of account are maintained for such activities
 - o Whether meaning of incidental business has to be as per SC in AUDA, or SC in Thanthi Trust?
- o S.346 – No regd NPO, carrying out advancement of any other object of GPU, shall carry out any commercial activity, unless –
 - o Such commercial activity is undertaken in the course of actual carrying out of advancement of any object of GPU
 - o The aggregate receipts from such activity do not exceed 20% of the total receipts of such NPO of relevant tax year, and
 - o Separate books of account are maintained by such registered NPO for such activities

- o Consequences of violation
- o S.351(1)(b) – specified violation by regd NPO (non-GPU cases) – carries out any commercial activity in contravention of the provisions of s.345
 - o Cancellation of registration
 - o Not regular income – residual income – gross income taxable – **section 353(1) not applicable**
 - o Under 1961 Act – only business income taxable and not eligible for exemption, cancellation if business not incidental or separate books of account not maintained
- o S.353(1)(d) – other violation if any regd NPO, carrying out advancement of any other object of GPU, carries out any commercial activity in contravention of provisions of s.346
 - o **Exceeding 20% limit can result in cancellation of registration**
 - o Regular income for such tax year as reduced by expenditure referred to in (3) shall be taxable regular income, chargeable to tax as per s.334
 - o **Definition of regular income does not include such income – only income from permissible business - contradiction?**
- o Non-maintenance of separate books of account
 - o specified violation – both GPU and non-GPU - can result in cancellation of registration
 - o Corresponding to s.12AB(4) – clause (b) of expln

- o Where total income, without deductions under this Part, exceeds maximum amount not chargeable to tax, required to maintain books of account and other documents in prescribed form and manner
- o Where total income, without deductions under this Part, exceeds maximum amount not chargeable to tax, accounts required to be audited and audit report furnished by prescribed date in prescribed form with prescribed particulars
- o Where total income, without deductions under this Part, exceeds maximum amount not chargeable to tax, required to furnish return of income as per provisions of s.263(1)(a)(iii) & (2) within time allowed u/s 263(1)(c)
 - o “Specified entity” also liable to file return if income before s.11 exemption exceeds maximum amount not chargeable to tax
- o Modes of investing or depositing money as specified in Sch XVI, or as notified by Central Govt
 - o Includes items earlier prescribed under rule 17C
 - o Units of mutual funds
 - o Debt instruments issued by any regd infrastructure finance company
 - o Investment in stock certificate under Gold Bonds Scheme 2015
 - o Units of Powergrid Infrastructure Investment Trust
 - o Any asset where such asset is not so held after expiry of 1 year from end of tax year in which acquired

- o Rule 187 – similar to rule 17AA of IT Rules 1962
- o Complete details – application of income, accumulated income, corpus donations, donations, movable and immovable properties, investments, related persons and transactions with such persons
- o To be kept at regd office – if kept elsewhere, resolution to be passed and filed with AO – disclosure in audit report
- o Format of final accounts – ICAI Guidance Note on Financial Statements of Non-Corporate Entities applicable – if statutory format prescribed, statutory audit prevails
 - o Format prescribed for trusts under Maharashtra Public Trusts Act 1950
 - o Format prescribed for companies under Companies Act 2013 applicable to section 8 companies
- o ICAI Technical Guide on Accounting for Not-for-Profit Organisations (updated June 2023) to be kept in mind
 - o Accounting for Donations in kind
 - o Accounting for restricted/earmarked funds and investments

- o Form 10B & 10BB replaced by Form 112 – same form for large and small trusts
- o 30 page form - 43 clauses and 48 schedules to be filled up
- o All transactions with related persons to be reported – whether at FMV or not
 - o Schedules ZD-1 to ZD-10 to reflect actual value of transactions and adequate value
- o Acceptance or repayment of loans or deposits exceeding Rs 20,000, receipts in cash exceeding Rs 2 lakh to be reported
- o Application of income – break up between electronic and other than electronic

Taxation on Violations – s.353

- o Applicable where any regd NPO in any tax year:
 - a. Fails to maintain books of account u/s 347
 - b. Fails to get books of account audited u/s 348
 - c. Fails to furnish its return of income u/s 349
 - d. Carrying out advancement of any other object of GPU, carries out any commercial activity in contravention of provisions of s.346
- o Only failure to get books of account audited or to file return of income – not failure to get audited within time or to file within time
- o Chargeable to tax on regular income for the tax year as reduced by certain expenditure – taxable as regular income as per s.334 (applicable tax rates)
- o In addition, specified income and residual income also chargeable under s.334 – s.338 not applicable
- o No exemption for corpus donations under 1961 Act [s.13(10)]
- o S.338 - Regular income not to include corpus donations u/s 339 – exclusion of s.338 from s.353 is only in respect of specified income and regular income – voluntary donations are regular income – is exemption for corpus donations available under 2025 Act even u/s 353?

Taxation on Violations – s.353

- o Expenditure allowable to be computed as under:
 - o No deduction for capital expenditure
 - o Expenditure should be incurred in India
 - o Expenditure should be for objects of the regd NPO
 - o Expenditure not made from corpus
 - o Expenditure not out of loan or borrowing
 - o Depreciation is not in respect of asset, acquisition of which has been claimed as application
 - o Expenditure is not in respect of contribution or donation to any person
 - o Expenditure is not on account of payment made without applicable TDS/paid in cash exceeding limits
 - o Set off/deduction/allowance of any other item not allowable

Tax on Accreted Income – s.352

- o Every specified person liable to pay additional income tax on accreted income at the maximum marginal rate in cases specified in the Table
 - o “Specified person” – s.355(l) – any person regd under any specified provision at any time since its incorpn or creation
 - o What about cases where regn cancelled or surrendered in earlier years and already suffered tax on accreted income?
- o Formula for computation of accreted income
 - o Aggregate FMV of total assets of specified person as on date specified in Table, computed in accordance with prescribed method valuation
 - Less**
 - o Total liability of such specified person as on date specified in table, computed in accordance with prescribed method of valuation

Tax on Accreted Income – s.352

S No	Case (i)	Case (ii)	Specified Date	Due date for Payment of Tax on Accreted Income
1	Regn granted under any specified provision has been cancelled or withdrawn	Appeal Preferred against order of cancellation	Date of Order Cancelling Regn	Date of receipt of order in any appeal, confirming cancellation of regn
2	Regn granted under any specified provision has been cancelled or withdrawn	Appeal not preferred against order of cancellation	Date of Order Cancelling Regn	Date on which period for filing appeal against order of cancellation expires
3	Adopted/undertaken Modification of objects during any tax year, such modified objects not conforming to condns of regn	Not applied for fresh regn under any specified provn in such tax year	Date of adoption/modification of any object	End of such tax year

Tax on Accreted Income – s.352

S No	Case (i)	Case (ii)	Specified Date	Due date for Payment of Tax on Accreted Income
4	Adopted/undertaken Modification of objects during any tax year, such modified objects not conforming to regn condns	Applied for fresh regn under any specified provn in such tax year, such appln rejected and appeal preferred against rejection	Date of adoption/modification of any object	Date of receipt of order in any appeal, confirming cancellation of regn
5	Adopted/undertaken Modification of objects during any tax year, such modified objects not conforming to regn condns	Applied for fresh regn under any specified provn in such tax year, such appln rejected and no appeal preferred against rejection	Date of adoption/modification of any object	Date on which period for filing appeal against order cancelling regn expires
6	Fails to make appln for renewal of regn	Period specified for making application expires in the tax year	Last date for making appln for regn	End of such tax year
7	Converts itself in any tax year into a form not eligible for grant of regn		Date of such conversion	End of such tax year

Tax on Accreted Income – s.352

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S No	Case (i)	Case (ii)	Specified Date	Due date for Payment of Tax on Accreted Income
8	Merged with any other entity other than regd NPO having same or similar objects and merger does not fulfil conditions that may be prescribed		Date of merger	Date of Merger
9	Failed to transfer upon dissolution all its assets to any other regd NPO within 12 months from end of month in which dissolution takes place		Date of Dissolution	Date on which such period of 12 months expires

Tax on Accreted Income – s.352

- o S.12AC – Provisions for merger of charitable trusts – conditions – merged with s. 352(2) – S No 8 (corresponding to s.115TD)
- o Accreted income to be reduced by such amount of accreted income as attributable to specified assets and liabilities related to such assets
- o “Specified Asset” – s.355(k) – any asset which is established to have been directly acquired by the specified person:
 - i. Out of its income referred to in S.No.1 of Schedule II (agricultural income)
 - ii. During period from date of creation/estment and ending on date from which specified provn became effective, if not allowed any benefit under this Part/S.11 & 12/S.10(23C)(iv), (v),(vi) or (via) during this period, where provisions of first/second proviso to s.12A(2) or eighth proviso to.10(23C) are not applicable [i.e. application made under sub-clause (i) or sub-clause(iii) of s.12A(1)(ac)]
 - iii. During period from date of creation/estment and ending on date from which specified provn became effective, due to provisions of first/second proviso to s.12A(2) or eighth proviso to.10(23C)
 - iv. Which has been transferred to any other specified person within 12 months from end of month in which dissolution takes place

Tax on Accreted Income – s.352

- o Payment of tax on accreted income deemed to be final payment of tax in respect of the said income – no further credit can be claimed by or any deduction allowed to the specified person in respect of the tax so paid under any other provision of the Act
- o Where specified person/principal officer/trustee of such specified person fails to pay the whole/ any part of tax on accreted income with time allowed, liable to pay simple interest @ 1% pm
- o Collection and recovery provisions of Act to apply – following persons deemed to be assessee in default:
 - o Specified person, and Principal Officer or Trustee of specified person
 - o Person to whom any asset forming part of computation of accreted income has been transferred, where tax on accreted income is payable due to failure to transfer assets within 12 months of dissolution
- o Liability of person to whom asset transferred is limited to extent to which asset received by him is capable of meeting the liability

Approval for Deduction u/s 133(1)(b)(ii) – s.354

- o Regd NPO & **Sch VII S No 1** may make appln for approval to CIT/Pr CIT if:
 - o Not expressed to be for benefit of any particular religious community or caste (irrespective of year of setting up)
 - o Estd in India for charitable purpose and does not incur expenditure of 5% or more of its total income during a tax year which is of religious nature
 - o Instrument under which constituted does not, or rules governing it, do not contain any provn for transfer at any time of whole/any part of its assets for any purpose other than a charitable purpose
 - o Maintains regular accounts of its receipts & expenditure
 - o Prepares statement for period (as prescribed) and delivers such statement in prescribed form verified and setting forth prescribed particulars
 - o Delivers to prescribed authority correction statement for rectification of mistake or to add, delete or update information furnished in delivered statement
 - o Furnishes certificate to donor specifying amount of donation within such period from date of receipt of donation containing requisite particulars as prescribed
- o Time limit for furnishing appln, for passing order and period of validity of approval – Table in s.354(2)
- o Procedure similar to that under s.332

*Thank
you*

