Section 11 & 12A Analysis

Mentorship Programme on Charitable Trusts
Conducted by ICAI, Kottayam

CA Shyjo Joseph FCA
Partner, M/s Jose Kappen & Co.
Chartered Accountants
Thodupuzha

CHARITABLE INSTITUTIONS
(Non Profit Organizations)

Charitable institutions are commonly known as non-profit organizations dedicated for public benefits. It mainly focuses on areas like poverty eradication, relief to poor, education, healthcare etc. These institutions are operating without profit motive.

Constitution of NPO

Broadly, the NPO's have four different types of constitution:

1. Trusts registered under the Indian Trust Act, 1882 or under Various State Trust Acts
2. Societies registered under the Society Registration Act, 1860/ The Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 or various state registration Acts
3. Section 8 Companies Registered under the Companies Act, 2013.
4. Unregistered Religious institutions through Deed of declaration or by the Decree of the Competent Authority of Religious Institution (ITAT cochin bench in the case of Merciful Jesus Church)

CHARITABLE OR RELIGIOUS PURPOSE

Religious Institution is not defined in the Income Tax Act, however *Sec 2(15) defines "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 (GPU)*

Provided that ***the advancement of any other object of general public utility*** *shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless—*

i. *such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and*

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

The assessing officers and Revenue Audit parties are of the opinion that, if any business is carried out by the charitable institutions then they are ineligible to claim exemption u/s 11 of the IT Act.

Recently the ITAT Chennai in Idhayangal **Charitable Trust vs CIT (Exemptions), Chennai on 18 February, 2025 (ITA No.: 2706/CHNY/2024) held that**

13. We rely on the judgement of Hon'ble Supreme court of India in case of Assistant Commissioner Of Income Tax .vs. Ahmedabad Urban Development Authority , wherein *Hon'ble Supreme Court of India has clearly mentioned that General Public Utility Charity has been recognized as distinguished from "per se category" of charity. The "per se categories" are:*

i. education,

ii. medical relief,

iii. relief to poor.

In the instant case assessee Trust falls clearly under the limb medical relief and relief to the poor and hence proviso to sec.2(15)is not applicable.

Circular no 11/2008

CONDITIONS FOR CLAIMING EXEMPTION

Any trust or institution carrying out activities for charitable/religious purposes may claim exemption under sections 11 and 12 of the I T Act. In order to claim exemption, they need to satisfy the following conditions:

- It should be a public trust or society or a company registered under section 8 or Unregistered Trust (by Decree /Deed of Declaration) etc.
- It should be formed with any one or more charitable or religious objects
- It should be registered with the Income Tax Department. The authority competent to grant registration u/s 12AB (for claiming exemption u/s 11 and 12) and the second proviso to Section 10 (23C) is the PCIT/CIT or CPC.

- It should fulfill the conditions laid down under clause (23C) of section 10 (referred to as first regime) or sections 11, 12, and 13 (referred to as second regime), as the case may be.
- It should Maintain Books of Accounts and other documents as prescribed Under Rule 17AA. (if gross receipt is more than the basic exemption limit)
- The accounts should be audited and report in Form No 10B/10BB should be furnished before one month of due date for furnishing return U/s 139(1) (Kerala High Court in the case of **Mary Queens Mission Hospital Vs CIT, held *that*** *condonation application should be considered without being too hyper-technical and should be in a judicious manner. the delay in filing the audit report in Form-10B can at best be 30 days.*
- Various forms for accumulation Viz. 9A, 10 should be filed within the due date
- Return (ITR 7) should be filed within the time allowed u/s 139(1) or 139(4)

ADMINISTRATIVE STRUCTURE AND AUTHORITIES

The provisions relating to the trusts or institutions and entities claiming exemption under the direct tax laws are administered mainly by Pr. Chief Commissioner of Income Tax (Exemptions) New Delhi, and the Commissioner of Income Tax (Exemptions) in 14 charges, viz. Ahmedabad, Bengaluru, Bhopal, Chandigarh, Chennai, Delhi, Hyderabad, Jaipur, Kochi, Kolkata, Lucknow, Mumbai, Patna and Pune

Registered Exempted Institutions as on 30.06.2025 (As per ITD)

SI No.	Particulars	Total Number of Registered Institutions	Total Number of Registered Institutions (Kerala)
1	Institutions Registered U/s 12AB	**382668**	**14315**
2.	Institutions Registered U/s 10(23C)	**5041**	**122**
3.	Institutions Registered U/s 80G(5)	**281040**	4699

Analysis of Income Tax Return from ITD

ITR	AY 2022-23	AY 2023-24	AY 2024-25
ITR-1	3,28,88,572	3,60,10,806	3,62,06,625
ITR-2	80,03,944	91,12,525	1,22,73,277
ITR-3	1,25,00,192	1,33,44,407	1,55,67,825
ITR-4	2,12,95,247	2,34,78,788	2,43,41,073
ITR-5	17,93,367	18,85,548	20,25,327
ITR-6	10,81,254	11,29,797	11,99,954
ITR-7	2,44,777	2,71,105	2,77,862
ITR-A	217	532	602
Others	6,839	4,634	369
Total	**7,78,14,409**	**8,52,38,142**	**9,18,92,914**

Contribution of Charitable Institutions in filing IT return during the Asst Year 2024-25 is 2,77,862 which is only 0.303% of total return (9,18,92,914)

Registration/ Approval process w.e.f. 01.04.2021

- The process for Registration / approval has been revised w.e.f. 01.04.2021 (New Sec 12AB was introduced)
- Registration & periodical re-registration for all trusts has been introduced. (5/10 Year validity for Regular Registration and 3 Year validity for Provisional Registration)
- Registration / renewal shall be done By CPC/ CIT(E) (Provisional registration and conversion of 12A/12AA to 12AB will be done by CPC and other cases viz. Renewal , Conversion of Provisional to Regular , Change in Objects should be done by Jurisdictional CIT(E)

- CPC will issue Registration Certificate in Form No.10AC and CIT(E) will issue the Registration Certificate in Form No. 10AD
- 10 AB application should be disposed off within 6 months from the end of the quarter.
- CPC is not examining the objects/ activities .CIT(E) will examine nature of objects/genuineness of activities – pass registration/approval order or reject Form 10AB and cancel provisional registration/approval.
- Renewal application should be filed before 6 months of expiry.

- Application for approval in respect of modification of objects shall be filed within 30 days.
- Regular registration application by provisionally registered institutions should be filed in Form no 10AB within 6 Months of commencement of activity or before 6 months of expiry which ever is earlier.
- The application should be filed electronically under Digital Signature or through EVC or Aadar OTP
- Condonation application is permitted for delay in filing application for registration w.e.f. 01.10.2024.

Application Form

- 12A/12AA to 12AB and Provisional Registration - Form No.10A
- For Renewal / Regular Registration - Form No. 10AB

Documents required for Registration Renewal

- Self certified copy of the Trust Deed/Memorandum of Association, Rules & Regulations, Society Registration Certificate deed of Declaration or decree
- Notes on activities
- Details of Governing Body Members/ Trustees (PAN, Aadhar, Mobile No., E-mail ID)
- Self certified copy of Financial Statements for the last 3 years.
- Self certified copy of existing 12AB, 80G, Darpan,FCRA Registration certificates etc. as applicable.

Time Line for Registration

Section 12A(1)(ac)	1st proviso to Sec. 10(23C)/ Sec. 80G(5)	Form to be filed	Purpose (Registration/Approval)	Issuing Authority	Time Period for filing of application	Order received in
(i)	(i)	10A	Regular Registration for 5 years	CPC	Up to 30.06.2024	Form 10AC
(ii) to (V)	(ii) and (iii)	10AB	• Renewal of regular registration • Conversion of prov. registration into regular registration • Regularization of inoperative registration • Re-registration in case of modification of objects	CIT(E)	• 06 Months prior to expiry of registration • 06 Months prior to expiry of registration or within 06 months of the commencement of activities whichever is earlier • 06 Months prior to commencement of relevant AY • Within 30 days in case of modification of objects	Form 10AD
(vi) A	(iv) A	10A	Provisional Registration for 03 years	CPC	01 Month prior to the PY for the relevant AY	Form 10AC
(vi) B	(iv) B	10AB	Regular Registration for 5 years /10 years (w.e.f. 01.10.2023	CIT(E)	Exemption will be available from the AY immediately following the FY in which the	Form 10AD

Mandatory Clauses

1. Provisions regarding "Amendment" should be specific that any amendment to the Trust Deed/ Memorandum of Association/ Bye –laws will be carried out only with the prior approval of the Commissioner of Income Tax having jurisdiction.
2. The mandatory clause on "Dissolution" stipulated that in the event of dissolution/ winding of the Trust/ Society/ Institution/ Organization the assets remaining as on the date of dissolution shall, under no circumstances, be distributed among the trustees/ members of the Managing Committee/ Governing body but the same shall be transferred to another Charitable Trust/ Society whose objects are similar to those of this Trust/ Society and which is registered u/s. 12AA of Income Tax Act at the time of transferor shall be vested with the Government.
3. Provisions in the Trust Deed/Memorandum of Association/Bye Laws that the funds of the Trust/ Society/ Association/ Institution will be invested strictly in accordance with provisions of section 11(5) r.w.s. 13 (1)(d) of the Income Tax Act

4. Provision that the Trust/ Society/ Institution/ Organisation formed/ constituted shall be irrevocable.
5. Provisions to the effect that if powers to effect amendment to the Trust Deed/ Memorandum of Association/ Bye laws have been given the Trustees/ Office bearers, it would not be extended to altering the basic character of the Trust/ Society/ Institution/ Organization and further, no such amendments which may prove to be repugnant to the provisions of section 2(15), 11,12,13 and 80G of the Income Tax Act, shall be made.
6. Provisions to the effect that the objects/activities of the Trust/ Society/ Institution/ Organization shall be carried out only in India.

7. Provisions that the accounts of the Trust/ Society/ Institution/ Organization shall be regularly maintained and every year, the accounts shall be closed by 31st March and the same shall be audited by a Qualified Chartered Accountant.
8. The instrument is devoid of a specific clause in the Trust Deed/ Memorandum of Association/ Bye laws that the income and the funds of the Trust/ Society/ Institution/ Organization will solely be utilized for the objects and no portion of it will be utilized for payment to the Trustees/Members/Office bearers by way of profit/ dividend/ interest etc.
9. There should be a specific clause to the effect that the benefit of the Trust/ Society/ Institution/ Organization is open to all, irrespective of caste, religion, creed, sex etc.

10. If the Trust/ Society/ Institution/ Organization do not intend to run any business, it may please be provided by way of amendment to the Trust Deed/ Memorandum of Association/ Bye- laws that it will not function in the nature of conducting any business activity and not for the purpose of profits.
11. In case the Trust/Society Institution/Organization intend to run any business, then it may be specified that it will satisfy the conditions stipulated in Section 11(4) and proviso to Section 80G(5)(1) of the Income tax Act, 1961.

INCOME

- Receipts from the Main Objects of the NPO
- Voluntary contributions received by the NPO (U/s 12(1))
- Receipt from sale of Capital Assets

CORPUS DONATION IS NOT AN INCOME (Sec. 11(1)(d))

Corpus donation means **Voluntary contributions received with a specific direction that they shall form part of the corpus of the trust or institution.**

- **It should be invested or deposited in the forms or modes specified in Sec 11 (5), maintained specifically for such corpus.(Separate Account)**
- Amount Spent out of Corpus donation shall not be allowed as application of income. (*Explanation 4)*

As per explanation 3A Religious Institutions or other places notified by the government can receive voluntary contribution for the purpose of its renovation, and the same (at the option of NPO) can be treated as Corpus contribution. But has to comply with the following conditions:-

- applies such corpus only for the purpose for which the voluntary contribution was received;
- Should not apply such corpus for making contribution or donation to any person;
- Maintains such corpus as separately identifiable; and
- Invests or deposits such corpus in the forms and modes specified under sub-section (5) of section 11.

In case of violation, such sum shall be deemed to be the income of such trust or institution of the previous year during which the violation takes place.

Anonymous Donation

- Name and address of the donor not available with the donee.
- Do not apply to religious trusts
- Taxable at @30% - u/s 115BBC
- The donor may be denied the benefit of the donation without PAN (Explanation 2A to section 80G)
- In the case of wholly CIs, anonymous donations shall be taxable if it exceeds 5% of total donations received or a sum of Rs.1 lakh whichever is more.

APPLICATION OF INCOME

- **Application of income for charitable trusts** refers to the expenditure out of income generated by a charitable/ religious trust towards its charitable or religious objectives to qualify for tax exemptions under the Income-tax Act.
- According to section 11, income must be "applied" for the charitable/ religious objects of the NPO within India, which includes spending on both Revenue and capital expenses i.e. purchase of assets, building construction etc.
- 85% of the income must be applied for such purposes.
- The application of income shall be allowed on a payment basis.

- Application is not ‘charge’ against income and therefore, the income is computed after deducting all the chargeable expenditure i.e., the expenditure which is incurred on earning that income. For example, the fund raising expenditure should not be treated as applied towards charitable purposes rather, such expenditure should be deducted from the income while determining the income subject to 85% application.
- Set-off of past deficit against current year income is not permissible. Therefore, the charitable trusts shall not be permitted to carry forward the losses or excess application of earlier years

Application of income needs to satisfy the following conditions:-

1. Application should be in India [section 11(1)(a) and 11(1)(b)]
2. Donation towards corpus not allowed [Explanation 2 to sub-section (1) of section 11] Finance Act, 2017 (w.e.f AY 18-19)
3. Donation to other trusts or institutions: only 85% allowed [Clause (iii) of Explanation 4 to sub-section (1) of section 11] Finance Act, 2023 (w.e.f AY 24-25) (up to AY 2023-24, 100 % application was allowed).

4. Section 40(a)(ia) (if TDS is not done in respect of application, then 30% will be disallowed) [Explanation 3 to sub section (1) of section 11] Finance Act, 2018 (wef AY 19-20).

In other words, only 70% of that expense shall be allowed as the application of income.

Disallowances 30% shall be considered as an application in the year in which TDS compliances are made on such amount.

The disallowance under section 40(a)(ia) per se does not result in tax liability.

5. Section 40A(3)/(3A): if the application of income in excess of Rs.10,000 is made in cash then 100% of the application will be disallowed. [Explanation 3 to sub-section (1) of section 11] Finance Act, 2018 (wef AY 19-20)

If payment for an expense exceeding Rs.10,000 is made in any mode other than account payee cheque, bank draft, net banking (i.e., payment in cash or bearer cheque), that payment or expense will not be considered while computing the application of income. However, the disallowance under section 40A(3) per se does not result in tax liability.

5A. Application out of loan raised during the year will not be allowed as application of Income.

6. No carry forward of excess application is allowed [Explanation 5 to sub-section (1) of section 11] Finance Act, 2021 (w.e.f AY 22-23)
7. Application of Income is purely on **payment** basis (Explanation to section 11(7)) Finance Act, 2022 (w.e.f AY 22-23)
8. No benefit should be provided to specified persons [section 13(1)(c)]
9. Donation to any trust or institution which is not registered under clause (23C) of section 10 or section 12AB, or to a trust or institution which has different objectives shall not qualify as application.

10. No part of the income of the trust or institution shall be applied beyond the objects of the trust or institution. That is a specified violation and reference will be made by AO to the PCIT/CIT.
11. No part of the income should be applied outside India except with the specific approval of the CBDT [clause (c) of sub-section 1 of section 11].
12. If the trust or institution cannot apply 85% of its income, it may accumulate for 1 year by filing form 9A or for 5 years by filing form 10.
13. Such accumulated income (Form 10) is to be applied with in 5 years and if not applied within 5 years, the same is taxable as per the provisions of section 115BBI.
14. Donations cannot be made out of the accumulated income.

Accumulation of Income

U/s 11(1) Explanation 1 (deemed application)

If 85% of the income derived during that could not be spent

i. for the reason that the whole or any part of the income has not been received during that year, (Eg. Interest accrued but not received) or

ii. for any other reason (Eg. received during the last day of the year etc.) Eg. Special Package Grant, CSR Grant Etc…

- File Form No **9A (electronically)** least two months prior to the due date for furnishing the return of income U/s 139(1). As per circular No 6/2023 it can be filed within the time allowed u/s 139(1) also.
- The income so accumulated shall be applied during the next year.
- If it is not applied then it will be taxable in the next year of receipt of Income.

Accumulation U/s 11(2)

If there is any short fall in the application of income (85%), then the NPO can accumulate its income:-

- It should be for a specific purpose/(s) in India. (Eg. Building Construction, Purchase of Assets etc., *Calcutta High court in DIT(E) vs. Trustees of Singhania Charitable Trust 199 ITR 819 held that the purpose /(s) should be specific and* A general listing of the trust's objectives won't suffice *whereas Madras High court band Karnataka high court has taken a liberal view)*

- The accumulation can be done for a maximum period of five years;
- The income so accumulated should be deposited in the forms or modes specified in Sec 11(5).
- File Form No 10 (electronically) at least two months prior to the due date for furnishing the return of income U/s 139(1). As per circular No 6/2023 it can be filed within the time allowed u/s 139(1) also
- The income so accumulated cannot be spent for making contribution to other registered trust or institution

Mode of Investment

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

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

iv. investment in units of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963);
v. investment in any security for money created and issued by the Central Government or a State Government;
vi. investment in debentures issued by, or on behalf of, any company or corporation both the principal whereof and the interest whereon are fully and unconditionally guaranteed by the Central Government or by a State Government;
vii. investment or deposit in any public sector company
viii. deposits with or investment in any bonds issued by a financial corporation which is engaged in providing long-term finance for industrial development in India

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

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

xi. any other form or mode of investment or deposit as may be prescribed.

Condonation of Delay in filing forms

The Respective PR.CCIT/ PR.CIT/ CITs can condone the delay in filing various forms for the asst. year 2018-19 and subsequent Asst. Years

(FORM NO 9A/10/10B/10BB) (Circular No 16/2024 dated 18th Nov. 2024)

Competent Authority	Period of delay
Pr.CIT/ CIT	Up to 365 days
Pr. CCIT	For delay more than 365 days

- No application for condonation of delay in filing of Form No. 9A, 10 , 10B,10BB shall be entertained beyond **three years from the end of the assessment year** for which such application is made.

- Condonation application should be disposed of, as far as possible, **within six months** from the **end of the month** in which such application is received by the Competent Authority.

Consequences of Violation

The accumulated amount is

a. applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto, or
b. Ceases to remain invested or deposited in any of the forms or modes specified in sub-section (5), or
c. not utilised for the purpose for which it is so accumulated or set apart during the period referred to in clause (*a*) of that sub-section,

d. credited or paid to any trust or institution registered U/s 12AA or section 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*) or sub-clause (*v*) or sub-clause (*vi*) or sub-clause (*via*) of clause (*23C*) of section 10,

To the extent of violation shall deemed to be the income in the previous year in which such violation is made.

Change the Purpose of Accumulation (Sec. 11(3A)

- On application to the Assessing officer
- The proposed purpose (charitable or religious purpose in India) should be as per the objects of the Trust.
- If the Permission is granted then it can be applied for the new specific purpose.
- The A O will not allow the application for change of purpose, if it is for the making contribution to other registered trust or institution other than on dissolution.

14. The trust or institution shall not pass on any benefit to the related persons and if that is done, such amount is taxable as per the provisions of section 115BBI, and a penalty is required to be levied as per the provisions of section 271AAE with effect from AY 2023-24 [Upto AY 2022-23 exemption was not allowed in such cases as per the provisions of section 13(1) (c)].
15. The trust or institution should invest all the funds in the modes prescribed u/s 11(5) and any violation will make such amount taxable as per the provision of section 115BBI with effect from AY 2023-24 [up to AY 2022-23 exemptions was not allowed in such cases as per the provisions of section 13(1)(d)].

16. The trust or institution should maintain the books of account prescribed under rule 17AA, failing which the exemption is denied and the net income computed as per the 22nd and 23rd proviso to clause (23C) of section 10 and sub-section (10) and (11) of section 13 of the Act becomes taxable with effect from AY 2023-24 [upto AY 2022-23 there was no specific provision to maintain books of account].
17. The trust or institution should get its accounts audited and file the report within time, failing which the exemption is denied and the net income computed as per the 22nd and 23rd proviso to clause (23C) of section 10 and sub-section (10) and (11) of section 13 of the Act becomes taxable with effect from AY 2023-24 [upto AY 2022-23 exemptions was not allowed in such cases as per the 10th proviso to clause (23C) of section 10 or clause (b) of sub-section (1) of section 12A of the Act].

18. The trust or institution should furnish the return of income within time, failing which the exemption is denied and the net income computed as per the 22nd and 23rd proviso to clause (23C) of section 10 and sub-section (10) and (11) of section 13 of the Act becomes taxable with effect from AY 2023-24 [upto AY 2022-23 exemptions is not allowed in such cases as per the provisions of clause (ba) of sub-section (1) of section 12A of the Act].
19. The trust or institutions are allowed to claim either the depreciation or cost of acquisition of the capital asset as application. (however both are simultaneously not allowed)

Application from Loans and borrowings

- Application for charitable or religious purposes, from any loan or borrowing, shall not be treated as application of income for charitable or religious purposes:
- **However repayment of loan shall be** treated as application, in the year of re-payment
- The loan re-payment should be made within a period of five years from the end of the previous year in which such application was made from loan or borrowing:
- **Provided also** that nothing contained in the first proviso shall apply where application from any loan or borrowing is made on or before the 31st day of March, 2021

CONTRIBUTION TO OTHER REGISTERED INSTITUTIONS (only 85%)

shall be treated as application for charitable or religious purposes only to the extent of eighty-five per cent of such amount credited or paid.]

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

Capital Gain

(1A) For the purposes of sub-section (1),—(*a*) where a capital asset, being property held under trust wholly for charitable or religious purposes, is transferred and the whole or any part of the net consideration is utilised for acquiring another capital asset to be so held, then, the capital gain arising from the transfer shall be deemed to have been applied to charitable or religious purposes to the extent specified hereunder, namely:—

- where the whole of the net consideration is utilised in acquiring the new capital asset, the whole of such capital gain;
- where only a part of the net consideration is utilised for acquiring the new capital asset, so much of such capital gain as is equal to the amount, if any, by which the amount so utilised exceeds the cost of the transferred asset;

Business Undertaking Sec 11(4)

(4) For the purposes of this section "property held under trust" includes a business undertaking.

(4A) Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business.

DEPRECIATION (Sec.11(6))

Depreciation in respect of any asset will not be allowed as application of income, if its acquisition was claimed as an application of income under this section in the same or any other previous year.

No exempted income other than the income under *clause* *(*1*), clause (*23C*), clause (*23EA*), clause (*23EC*), clause (*23ED*), clause (*46*), clause (*46A*) and clause (*46B*)of sec 10* shall operate to exclude any income derived from the property held under trust from the total income of the person in receipt thereof for that previous year:

Application on Actual Payment

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

Provided that where during any previous year, any sum has been claimed to have been applied by the trust or institution, such sum shall not be allowed as application in any subsequent previous year.

BOOKS OF ACCOUNT BY THE NPOs

Finance Act, 2022 has made it mandatory for the trust or institution to maintain the books of account where its total income exceeds the maximum amount which is not chargeable to income tax in any previous year. The trusts and institutions are also required to get their accounts audited by qualified accountant. Accordingly, the books of accounts and other documents required to be maintained by such trust or institution and the place where they are required to be maintained have been prescribed in rule 17AA of the Rules, which has been notified vide Notification No. 94/2022 (GSR 622 E) dated 10.08.2022 published in the Official Gazette.

Now the NPOs are required to maintain the books of account on the following aspects:

a. Cash book
b. Ledger
c. Journal
d. Copies of bills, whether machine numbered or otherwise serially numbered, wherever such bills are issued by the trust or institution, and copies or counterfoils of machine numbered or otherwise serially numbered receipts issued by the trust or institution Original bills wherever issued to the person and receipts in respect of payments made by the person

e. 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 Books of account for a business undertaking referred in sub-section (4) of section 11 of the Act Books of account for business carried on by the trust or institution other than the business undertaking referred to in sub-section (4) of section 11 of the Act.
f. Record of all the projects and institutions run by the person containing details of their name, address, and objectives as per rule 17AA(1)(d)(i)
g. Record of income of the person during the previous year as per rule 17AA(1)(d)(ii)
h. Record of application of income etc. out of income during the previous year as per rule 17AA(1)(d)(iii)

i. Record of application of income out of the income of any previous year preceding the current previous year as per rule 17AA(1)(d)(iv)

j. Record of voluntary contribution made with a specific direction that they shall form part of the corpus, as per rule 17AA(1)(d)(v);

k. Record of contribution received for the purpose of renovation or repair of temple, mosque, gurdwara, church, or other place notified under clause (b) of sub-section (2) of section 80G which is being treated as corpus, as per rule 17AA(1)(d)(vi);

l. Record of loans and borrowings as per rule 17AA(1)(d)(vii)
m. Record of properties as per rule 17AA(1)(d)(viii);
n. Record of specified persons as per rule 17AA(1)(d)(ix);
o. Any other documents containing any other relevant information as per rule 17AA(1)(d)(x).

The trust or institution needs to maintain books of accounts as per the provisions of the 10th proviso to clause (23C) of section 10 and clause (b) of sub-section (1) of section 12A. With effect from AY 2023-24, if it does not maintain books of accounts as prescribed by rule 17AA,the exemption shall not be available and the income of the trust or institution has to be computed as per the 22nd and 23rd provisos to clause (23C) of section 10 and sub-section (10)and (11) of section 13 of the Act. (Up to AY 2022-23 there was no specific provision under the Act providing for the maintenance of books of account)

VIOLATIONS

There has been a complete revamp of the provisions related to different violations by the NPOs. The following chart summarizes the provisions related to violations by the NPOs. Violations of different provisions

- **1st category:** Taxing certain specified income @30% u/s 115BBI
- **2nd category:** Registration to continue and taxing net income under section 13(10)/(11) and under 22nd /23rd proviso to section 10
- **3rd category:** Registration to be canceled in case of specified violations u/s 12AB (4)/(5) or under 15th proviso to section 10(23C)

1st category :- With effect from AY 2023-24, in case of these violations, the amount of violation is taxable @ 30%. The violations that fall in this category are as follows:

a. Accumulation without Form 10/9A
b. Violations with respect to accumulated income: Explanation 4 to 3rd proviso to clause (23C) of section 10 and section 11(3) and 11(1B)
c. Income invested in modes other than 11(5) modes [3rd proviso to clause (23C) of section 10 and section 13(1)(d)]
d. Benefits to specified persons [21st proviso to clause (23C) of section 10 and section 13(1)(c)]
e. Application outside India without Board approval [section 11(1)(c)]

<u>2nd category :-</u> With effect from AY 2023-24, where the taxable income of the trust is required to be computed as per the provisions of 22nd and 23rd provisos to clause (23C) of section 10 and sub-section (10) and (11) of section 13 of the Act. In the following cases:-

a. if the trust or institution does not maintain books of accounts as prescribed by rule 17AA.
b. Return of income has not been furnished within time
c. Tax audit report not submitted within time
d. Commercial activities are carried out by the trust or institution and proviso to clause (15) of section 2 of the Act is applicable.

In such cases, the income of the trust or institution is to be computed on a net basis as follows:

a. Revenue expenses are allowed
b. Expenses should be in India
c. Expenses should be for the objects of the trust or institution
d. Expenditure should not be from corpus as of 31st March of the previous year
e. Expenditure should not be from loans and borrowings
f. Depreciation on assets not allowed if the cost of asset claimed as application
g. Expenditure should not be donations to other persons
h. Section 40A(3)/(3A)/40(a)(ia) shall apply
i. no deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed

3rd category:- With effect from 01.04.2022, in case of the most severe violations, the registration of the NPO is canceled. The violations that make any trust or institution fall into this category are as follows:

a. Application beyond objects
b. Non-incidental business/non maintenance of books of incidental business
c. Application for private religious purpose
d. Benefits to particular religious community or caste
e. Ingenuine activity/violation of conditions for registration
f. Violation of other laws
g. Incomplete, false, or incorrect application

These verifications may take place in the following 3 different ways:

a. Suo moto
b. Reference made by the AO
c. Risk Management Strategy

The procedure for handling these violations is as follows:-

a. PCIT/CIT has the right to carry out enquiries
b. PCIT/CIT has the right to cancel or refuse to cancel the registration
c. Section 115TD is applicable to the charitable institutions u/s 10(23C)(iv)/(v)/(vi)/(via) as well.

In order to ensure time-bound disposals of these matters, the PCIT/CIT are required to dispose of these cases within 6 months from the end of the quarter in which the first notice is issued.

Where the PCIT/CIT has canceled the registration it is also to be examined whether the trust or institution has correctly reported the accreted income as per the provisions of section 115TD and paid tax at the maximum marginal rate. Further, it needs to be verified whether the trust or institution has claimed exemption u/s 11/12/10(23C) for the assessment year.

Sections 115TD, 115TE, and 115TF

Chapter XII-EB containing section 115TD was introduced by the Finance Act, 2016. It provides for the taxation of accreted income of the trust in certain cases. A society a company a trust or an institution carrying on charitable activity may voluntarily wind up its activities and dissolve or may also merge with any other charitable or non-charitable institution, or it may convert into a non-charitable organization. In order to ensure that the intended purpose of exemption availed by trust or institution is achieved, a specific provision in the Act was brought about for imposing a levy in the nature of an exit tax which is attracted when the organization is converted into a non-charitable organization or gets merged with a non charitable organization or a charitable organization with dissimilar objects or does not transfer the assets to another charitable organization. Accordingly, a new Chapter XII-EB consisting of Sections 115TD, 115TE, and 115TF was inserted in the Act.

The provisions of Chapter XII-EB were applicable to only the trusts and institutions registered u/s 12AB of the Act. The provisions have been made applicable to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or (v) or (vi) or (via) of clause (23C) of section 10 of the Act by the Finance Act, 2022.

Effects of cancellation of the registration:-

- The provisions of section 115TD, TE and TF applicable to the charitable institutions u/s 10(23C)(iv)/(v)/(vi)/(via) as well w.e.f. 01.04.23.

Section 115TD applies where:

- Registration of the trust or institution is canceled or it is converted into ineligible Form
- Merged with the entity having different objects
- Failed to transfer all its assets upon dissolution all its assets
- Failed to apply for registration renewal
- Accreted value of the assets is required to be taxed which is the fair market value of all the assets as reduced by the liabilities
- Provisions of section 115TD have also been made applicable in case of any trust or institution not making the application for regular registration within time

- Section 115TD prescribes circumstances under which exit tax is leviable:
- Trust is converted into **any form which is not eligible for grant of registration** under section 12A/12AA/12AB.
- i) The registration granted to it under section 12A/12AA/12AB has been **cancelled** or
- ii) Trust has **adopted or undertaken modification of its objects** which do not conform to the conditions of registration and it:
  - has not applied for fresh registration under section 12A/12AA/12AB in the said previous year.
  - has filed application for fresh registration under section 12A/12AA/12AB but the said application has been rejected.

- Trust **is merged with an entity** which is not having similar objectives and not registered u/s 12AA.
- Trust **failed to transfer upon dissolution all its assets** to any other trust or institution registered under section 12AA or approved u/s 10(23C) within a period of **twelve months from the end of the month in which the dissolution takes place.**
- **F**ailed to make an application for approval in accordance with clause (i)/(ii)/(iii) of first proviso to section 10(23C) or for registration under section 12A(1)(ac)(i)/(ii)/(iii), within the period specified therein, which expires in the said previous year.
  [Section 115TD(3)]

- **‘Accreted income’ – Meaning**
- **(a)** accreted income means the amount by which the aggregate fair market value of the total assets of the charitable institution exceeds the total liability of such institution;
- **(b)** such value shall be as on ‘specified date’;
- **(c)** the value shall be computed in accordance with the method of valuation as may be prescribed [Rule 17CB].
-
- **Tax shall be levied at Maximum Marginal Rate (MMR)**

DUE DATE

Form No	Purpose	Due Date	Section
10	Accumulation of Income for five years	31st August	11(2)
9A	Accumulation of income for 1 Year	31st August	11(1) Explanation 1(2)
10B/10BB	Audit Report	30th September	12A(1)(b)
10BD	Details of Donation Received U/s 80G	31st May	80G(5)(viii)
10BE	Certificate of Donation Received U/s 80G	31st May	80G(5)(xi)
ITR7	Income Tax Return-Audit case	31st October	139(4A)
ITR7	Income Tax Return-Non Audit case	15th September	139(4A)/139(4C)

Form No	Purpose	Due Date	Section
24Q/26Q	TDS Quarterly Return	31st July/	200(3) read with Rule 31A
		31st October/	
		31st January/	
		31st May	
16/16A	TDS Certificate	16A – 15th August/	203 read with Rule 31(3)
		15th November/	
		15th February/	
		15th June	
		16- 15th June	
26QB	Sale of Immovable property	Within 30 days from the end of the month of deduction	194IA read with Rule 31A(4A)

DRAFT COMPUTATION OF INCOME

Voluntary Contribution	xx		
Receipts from Main Objects	xx		
Receipts from Sale of Capital Asset	xx		
Gross Income		xxx	(A)
Less: Application of Income u/s 11			
Revenue Expenditure towards objects	xx		
Less: Revenue Expenditure applied not towards the objects	xx		
Less: Disallowance u/s 40(a)(ia) / 40A(3)	xx		
Less: Depreciation	xx		
Less: Outstanding Expenses/Sundry Creditors	xx		
Add: Outstanding Expense of PY paid during the year	xx	xxx	(B)
85% of Contribution to other trust registered u/s 12AB		xxx	(C)
Capital Expenditure towards objects	xx		
Less: Capital Expenditure applied not towards the objects	xx		
Less: Disallowance u/s 40(a)(ia)	xx		
Less: Disallowance u/s 40A(3)	xx		
Less: Sundry Creditors	xx	xxx	(D)
Loan Repayment		xxx	(E)
Net Income		xx	(F=A-B-C-D-E)
Less: Income Accumulated u/s 11(1)/ 11(2)		XX	G
Taxable Income		xx	(F-G)

Thank You…

CA Shyjo Joseph FCA
M/s Jose Kappen & Co.
Chartered Accountants
Thodupuzha