

Chapter 3 – Tax incentives available under the Income Tax Act for Private Healthcare Facilities

3.1 Tax incentives available for private healthcare facilities under Income Tax Act

Tax incentives encourage the growth of private sector investment and serve as important policy tools for achieving economic and social objectives. The assessees engaged in the business of running hospitals, nursing homes, medical research institutes etc. can avail of reliefs and incentives under sections 10 (23C)⁴⁷, 11⁴⁸, 35AD⁴⁹ and 80IB (11B/11C)⁵⁰ of the Income Tax Act.

As per data furnished by the Department of Revenue, the amount of revenue foregone on account of weighted deduction⁵¹ in case of hospitals under section 35AD and on building and operating private hospitals in rural areas under section 80IB(11B) amounted to ₹ 5,418.91 crore and ₹ 7.04 crore respectively, as shown below:

Year	Table 3.1: Revenue foregone (₹ in crore)		
	Under section 35AD ⁵²	Under section 80IB(11B)	Total
2012-13	683.30	1.80	685.10
2013-14	1,054.20	1.80	1,056.00
2014-15	1,790.57	1.67	1,792.24
2015-16	1,890.84	1.77	1,892.61
Total	5,418.91	7.04	5,425.95

The ITD has not undertaken sector-specific analysis of revenue foregone under section 35AD to assess the impact of the incentives provided to different sectors including healthcare. The revenue foregone under section 80IB (11B/11C) is not very significant indicating that the incentive has been availed by very few assessees thereby defeating the purpose of introduction of this legislation. Audit sought the details of the number of assessees availing deductions under sections 35AD and 80IB (11B/11C), but the same could not be furnished by the Department.

⁴⁷ Section 10(23C) of the Income Tax Act, provides exemption to any hospital or institution in respect of income from treatment if it obtains approval from the prescribed authority for that purpose and subject to fulfilment of specified conditions.

⁴⁸ Under section 11 of the Income Tax Act, a trust or institute can avail exemptions subject to conditions laid down under that section when it runs hospitals for charitable purposes.

⁴⁹ For allowing incentive on the investment in some specified sector (which included hospital sector) section 35AD was first introduced through Finance Act 2009 with effect from 01 April 2010. It allows full deduction on the amount of fixed asset (other than landed asset) capitalized on the date of commencement of the business. Later on, w.e.f. 2012-13 i.e. from A.Y-2013-14 the amount of deduction allowable on the investment has been increased to one and one half times of the investment.

⁵⁰ Tax holiday is allowable for hospitals with more than 100 beds located in rural areas and non-metro urban areas for five years under section 80IB(11B)[introduced through Finance Act 2004] and section 80IB(11C)[introduced through Finance Act 2008] respectively. For rural areas, sunset clause was set as March 31, 2008 and for non-metro urban areas it was 31 March 2013.

⁵¹ Weighted deduction of 150 per cent of capital expenditure (other than expenditure on land, goodwill and financial assets) is allowed under section 35AD of the Act.

⁵² Includes other than hospitals, incentives availed by cold chain warehousing, hotels, housing etc.

Audit noticed that despite the considerable volumes of revenue foregone, no proper monitoring mechanism was in place. There were also discrepancies in the application of the provisions of income tax related to profit-linked/investment-linked tax incentives specific to the healthcare sector. Audit findings in this regard are discussed in the succeeding paragraphs.

3.1.1 Monitoring mechanism to assess the impact of tax incentives

The specific tax incentives provided by Government have a definite revenue impact and can be viewed as an indirect subsidy to tax payers, also referred to as 'tax expenditures'. The revenue impact of tax incentives was assessed by way of 'Revenue Foregone'⁵³, now termed as 'Revenue Impact of Tax Incentives under the Central Tax System'⁵⁴. The quantum of revenue foregone is the chief parameter to assess the impact of tax deduction which is treated as a measure of tax expenditure incurred for the promotion of organised activity (viz. creation of infrastructural facilities, accelerated depreciation as an incentive for capital investment) in the targeted sector.

In order to ascertain the existing mechanism within ITD to monitor the impact of tax incentives specific to assessee engaged in the business of private healthcare, audit sought the details of impact analysis undertaken by ITD. CBDT stated in its reply (November 2016) that direct tax concessions were provided by the Government as part of overall fiscal incentives to realise the macroeconomic objectives and to achieve policy goals of development and growth in various sectors of economy. CBDT further stated that no such quantitative exercise had been undertaken by the Department to assess the outcome of reliefs provided to private hospitals, medical colleges/research institutes, diagnostic centres etc.

3.1.2 The details of mechanism available within ITD to get evaluation done through any third parties/other agencies and the evaluation parameters employed to assess the impact of tax incentives were sought by audit. CBDT replied (November 2016) that ITD had not undertaken any evaluation study/specific analysis or research to assess the impact of tax incentives. However, feedback on the implementation and effectiveness of the existing provisions of the Income Tax Act were received from field authorities, tax payers and various stakeholders from time to time. It further informed that the feedback formed the basis for any intervention if required from the CBDT by way of legislative amendments or through notifications and circulars. However, CBDT, in its reply, did not specify the type, format and intervals at which feedbacks were obtained to decide upon the policy of continuing with deductions/exemptions.

⁵³ Revenue impact of tax incentives was laid before Parliament for the first time during Budget 2006-07 and during 2008-09 to 2014-15 as Annex-12 of the Receipts Budget 2006-07 by way of a 'Statement of Revenue Foregone'.

⁵⁴ In the year 2015-16 and onwards 'Statement of Revenue Foregone' has been termed as 'Statement of Revenue Impact of Tax Incentives under the Central Tax System'.

Although the incentives were introduced to strengthen the healthcare infrastructure, ITD has not taken any initiative to ascertain the impact of tax incentives in coordination with the Ministry of Health and Family Welfare.

3.2 Systemic Issues

The private healthcare sector comprises organizations working both on commercial basis for profit and on not-for-profit basis. The 'not-for-profit' healthcare sector includes Non-Government Organisations (NGOs), charitable trusts etc. A large number of hospitals and medical institutions enjoy the benefit of exemption either under section 11 or under section 10(23C). However many institutions which are not running for charitable purpose escape taxation by virtue of the fact that they are registered as Trusts and claim exemption under Income Tax Act as discussed in the following paragraphs.

3.2.1 Lack of measurable definition of "charitable Purpose"

Income of a charitable trust is exempt according to the provisions of sections 11, 12 and 13. The trust should be one established in accordance with law and its objects should fall within the definition of the term "Charitable purpose". Section 2(15) of the Income Tax Act defines charitable trust as to include relief of the poor, education, medical relief, preservation of environment and preservation of monuments or places or objects of artistic or historic interest and the advancement of any other object of general public utility. It was seen that the appellate Income Tax authorities had allowed exemptions to trusts as there was no performance-specific bar in the Income Tax Act to deny such exemption.

In Maharashtra, charitable trusts are governed by the Bombay Public Trust Act, 1950 (BPT Act) and while granting the registration under section 12AA of the Income Tax Act, the ITD requires the trusts to produce proof of registration under the BPT Act. Under section 41AA of the BPT Act, the Bombay High Court in 2004 introduced a scheme of measurable charity under which all charitable trust hospitals registered under the BPT Act, 1950, and having annual expenditure of more than ₹ 5 lakh were required to fulfil following conditions:

- a) Reserve 10 *per cent* of the total number of operational beds for indigent patients and provide medical treatment to these indigent patients free of cost.
- b) Reserve 10 *per cent* of the beds for the weaker section patients for treatment at concessional rate.
- c) Earmark 2 *per cent* of total patient billing as Indigent Patient Fund (IPF) to be utilised on the treatment of indigent patients. It was further required

that the Trust shall not ask for any deposit in case of admission of indigent patients.

Audit analysed a sample of ten trust hospitals⁵⁵ situated in Maharashtra on the basis of data supplied by the Charity Commissioner, Mumbai. The information was also obtained in respect of nine other cases through other sources⁵⁶ and also through field audits⁵⁷. Audit examination revealed that the conditions specified in the BPT Act were not fulfilled in some cases, as described below, though exemptions were allowed to such trusts:

- There was variation between the numbers of beds reserved for and the number of charity cases actually treated. Though, the number of beds reserved was shown to be 10 *per cent*, the actual bed occupancy in 8⁵⁸ hospitals out of 10⁵⁹ hospitals was less than 10 *per cent* for weaker sections of society;
- Out of the total patients treated by six hospitals⁶⁰; only 0.41-2.79 *per cent* belonged to the weaker sections of the society as against the stipulated 10 *per cent*; and
- In 6 out of 9⁶¹ cases, either no⁶² Indigent Patient Fund (IPF) was created or if created accounted for less than 2 *per cent*⁶³ of total patient billing. In 3 other cases⁶⁴, it was observed that reservations were not made for the

⁵⁵ CIT(Exemption):Bombay Hospital & Medical Research (AAATB3815C)2013-14, Jaslok Hospital & Research Centre (AAAAJ0028Q)2013-14, Diabetic Association of India(AAATD1338G)2013-14, Mandke Foundation (AAATM4557G)2013-14, Dr. Balabhhai Nanavati (AAATD0094K)2012-13 Bhatia General Hospital (AAATT3440K) 2013-14, National Health Education Society(AAATN0093Q) 2013-14, St. Joseph & Educational & Medical Relief Society (AAATS2693D) 2013-14, Breach Candy Hospital (AAATB0214D) 2012-13 and DY Patil Hospital (AABTP2448L)-2012-13.

⁵⁶ O/o the Charity Commissioner, Maharashtra, PAG Maharashtra Report No. 4 (General and Social Sector) for the year ended March 2015 (Chapter 3 on Audit of Transactions)

The nine hospitals are : CIT(E), Mumbai- Noble Medical Foundation and Research Centre (AAATN6572C)-2013-14, K J Somaiya Medical Trust(AAATK4296Q)2013-14, Sushrut Hospital and Research Centre 2013-14, Saifee Hospital 2013-14, People's Mobile Hospitals -2013-14,CIT(E) Pune- Mahatma Gandhi Mission Trust(AAATM4256E)2013-14, Kaushalya Medical Foundations (AAATK0989J)2013-14, Terna Medical College and Research Centre's Sahyadri Hospital-2013-14,Bethany Hospital -2013-14.

⁵⁷ In 8 cases information was also based on PAG-Maharashtra Report No. 4 (General and Social Sector) for the year ended March 2015

⁵⁸ CIT(Exemption):Bombay Hospital & Medical Research (AAATB3815C) 2013-14, Jaslok Hospital & Research Centre (AAAAJ0028Q) 2013-14, Diabetic Association of India(AAATD1338G)2013-14, Mandke Foundation (AAATM4557G) 2013-14, Dr. Balabhhai Nanavati (AAATD0094K)2012-13, Bhatia General Hospital (AAATT3440K) 2013-14, National Health Education Society (AAATN0093Q) 2013-14, St. Joseph & Educational & Medical Relief Society (AAATS2693D) 2013-14.

⁵⁹ The information was not available in respect of 9 other cases. Hence, the comment is limited to Charity Commissioner data.

⁶⁰ CIT (Exemption);, Jaslok Hospital & Research Centre (AAAAJ0028Q) 2013-14, Diabetic Association of India (AAATD1338G) 2013-14, Mandke Foundation (AAATM4557G) 2013-14, Dr. Balabhhai Nanavati (AAATD0094K) 2012-13, National Health Education Society (AAATN0093Q) 2013-14, St. Joseph & Educational & Medical Relief Society (AAATS2693D) 2013-14.

⁶¹ This information was not available in respect of 10 hospitals data provided by Charity Commissioner.

⁶² Noble Medical Foundation and Research Centre (AAATN6572C)-2013-14, K J Somaiya Medical Trust (AAATK4296Q) 2013-14, CIT(E) Pune - Mahatma Gandhi Mission Trust (AAATM4256E) 2013-14, Kaushalya Medical Foundations (AAATK0989J)2013-14

⁶³ Breach Candy Hospital (AAATB0214D) 2012-13 and Bethany Hospital 2013-14.

⁶⁴ National Health Education Society (AAATN0093Q) 2013-14, Sushrut Hospital and Research Centre 2013-14, Saifee Hospital 2013-14

indigent patients in OPD and advance was taken from them during admission, which was against the scheme.

The Income Tax Act, however, does not identify non-compliance with the BPT Act as a ground to deny exemption and the Income Tax Act does not have its own criteria to identify and classify charitable institutions on the basis of measurable and quantifiable parameters, like those described under the BPT Act. Under such circumstances, trusts that are not fulfilling the criteria for charity prescribed under governing Acts of the State were able to claim exemptions under the Income Tax Act. Further in cases where registration status of the trust assessee changes under state laws, it could not be ascertained whether ITD had any mechanism to deal with the exemptions already allowed in such cases. ITD's reply was awaited (April 2017).

The C & AG of India in its report number 4 of the year 2016 for the Government of Maharashtra placed before Maharashtra State Assembly pointed out several irregularities in respect of the charitable activities carried out by these hospitals in Maharashtra *vide* chapter number III. It was stated in the report that hospitals avail Government benefits without performing activities as specified under the Bombay Public Trust Act, 1950.

These hospitals have availed non-justified exemption amounting ₹ 249.66 crore involving revenue impact of ₹ 77.14 crore.

3.2.2 Exemption allowed to trust hospitals engaged in non-charitable activities

A charitable institution can also be engaged in non-charitable activities. As per Section 11(4A), deductions under section 11 shall not be admissible in relation to any income, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or the institution and separate books of accounts are maintained by such trust or institution in respect of such business. Section 10(23C)(via) of the Act provides that exemption to the trust is available if it exists "solely" for philanthropic purpose and not for purposes of profit. Further, section 13 specifies situations⁶⁵ in which the exemptions can be denied to trusts.

Audit noticed two cases in West Bengal and Maharashtra states where the Department allowed exemptions to trust hospitals where the activities

⁶⁵ (a)The property should be held under a trust or legal obligation; (b) The property should be so held for charitable or religious purposes which, enure for the benefit of the public. No part of the income or property of the trust should be used or applied directly or indirectly for the benefit of the settlor or other specified persons;(c) The trust should not be created for the benefit of any particular religious community or caste; (d) The exemption is restricted to such portion of the income as is applied or accumulated for application to charitable purpose in India;(e) The accounts of the trust should be audited in certain cases as provided in Sec. 12A(b); (f) The funds of the trust should be invested or deposited in the permissible forms and modes only.

indicated the fact of their being run for profit/ non charitable purposes. (Box 3.1).

Box 3.1: Illustrative cases on Exemption allowed to trust hospitals engaged in non-charitable activities

a. Charge: PCIT – Exemption, Kolkata, West Bengal

Assessee : National Neurosciences Centre

Assessment Year: 2013-14

PAN: AAATN2980N

The scrutiny assessment of the assessee for AY 2013-14 was completed in February 2016 allowing exemption under section 11 of the Act. The assessee is registered as a Trust under section 12AA and the stated aim of the assessee was mainly treatment of patients and related activities⁶⁶. As per the Income and Expenditure Account for the FY 2012-13, the trust had paid ₹6.64 crore⁶⁷ (₹5.16 crore in FY 2011-12), to Peerless Hospital a premium corporate Hospital at Kolkata, out of total charges of ₹12.32 crore (₹9.63 crore in FY 2011-12) collected from patients, and had surplus of ₹46.68 lakh (₹31.65 lakh in previous FY 2011-12) without any donation/subscription⁶⁸. As per the fixed assets schedule of the assessee trust, the fixed assets as on 31 March 2013 did not include any hospital building. The books of accounts also did not reveal any expenditure made towards any rent paid for such infrastructure for the treatment of patients. Thus, the assessee was operating without any building in its possession. The Trust was generating a surplus from patient charges while also spending significant amounts on reimbursement of expenses of Peerless Hospital for facilitating its business operations. It was evident that the Trust was functioning as an intermediary of a premium corporate hospital. While finalising the assessment, these issues were not taken into consideration and exemption was allowed under section 11 of the Act based on the claim of the assessee that expenditure incurred was for charitable purposes.

ITD in its reply (January 2017) stated that “out of total charges, the assessee paid donation to Peerless Hospital and surplus was created after expenses made for running the hospital.” It further stated that “the activity of medical relief was in the objective of the Trust” and that “no provision of the Income Tax Act prohibits the assessee registered under section 12A/12AA from receiving charges for providing medical relief, education etc. and for giving donation to the other entity”. ITD’s reply is not acceptable as the assessee did

⁶⁶ Outdoor treatment for neurological problems/surgery, Neurophysical tests.

⁶⁷ Includes bed charges, investigation charges, patient’s pharmacy bill, catering charges etc.

⁶⁸ The amount of donation and subscription received by the assessee trust in FY 2012-13 and FY 2011-12 was ₹0.12 lakh and ₹0.10 lakh respectively.

not possess any hospital building for incurring expenditure on the running of hospital and payments made to Peerless Hospital were shown as reimbursement of expenses. Therefore, considering the regular surplus being earned by the Trust, its objective of medical relief cannot be stated to be of charitable nature.

b. Charge: PCIT – Exemption, Mumbai, Maharashtra
Assessee: Mandke Foundation
Assessment Year: 2013-14
PAN: AAATM4557G

The scrutiny assessment of the assessee for AY 2013-14 was completed in March 2016 determining income at 'nil' after allowing exemption under section 11 of the Act. The assessee had entered into an agreement (1 December 2009) with Malti Vasant Heart Trust for operating and maintaining Kokilaben Hospital and there was no clause for providing medical education in the operation and maintenance contract between the assessee and Malti Vasant Heart Trust. The website of the Kokilaben Hospital⁶⁹ showed that it was conducting a 'Three year Post Graduate Programme in Emergency Medicine' from year 2012 for which the selected candidates had to pay demand draft favouring "Mandke Foundation (the assessee)".

Under the provisions of section 10A of the Medical Council Act, 1956, for conducting any post-graduation certificate course in medicine, proper permission is required from the Medical Council of India (MCI). MCI had issued a public notice stating that this post-graduation course in Emergency Medicine conducted by Kokilaben Hospital was not recognized by Central Government of India and it was illegal. Despite specific violations, the exemption was allowed, as there was no enabling provision in the Income Tax Act for denial of exemption for carrying out unauthorized business under the garb of charity. ITD's reply was awaited (April 2017).

3.2.3 Overlapping nature of section 10(23C) and section 11 of Income Tax Act

As per section 10(23C), the income of certain funds, Universities, educational institutions, hospitals, etc., that deal with philanthropy works are not to be included in the total income. Section 11 of the Act governs the grant of exemption to income of a charitable trust or institution. Thus Section 10(23C) and section 11 of the Income Tax Act, 1961 are overlapping in nature. Though, the contours of both the sections are more or less the same, absence of clear definitions and boundaries, besides existence of overlapping provisions covering the same purposes (philanthropy or charity) in both sections leave scope for confusion and varying interpretations, allowing the assesses to take unfair advantage of excluding the income or claiming exemption utilising one of these

⁶⁹ <http://www.kokilabenhospital.com/professionals/academicinitiatives/>

two provisions that suits them. The statute renders itself amenable to misuse by permitting an assessee to claim similar benefits under both the sections. Audit noticed instances, as illustrated below, where Assessing Officers allowed exemption under one section while disallowing exemption on the grounds of existence of profit motive under another.

In CIT (Exemption) Mumbai, scrutiny-assessments of Breach Candy Hospital Trust for the AY 2012-13 and National Health and Education Society for AY 2013-14 were completed in March 2015 and March 2016 respectively. In the case of Breach Candy Hospital, it was observed that the assessee had claimed and was allowed exemption under both the sections i.e. section 11 and 10(23C)⁷⁰. In the case of National Health and Education Society, the Assessing officer did not allow⁷¹ exemption under section 10(23C) stating the reason that the hospital trust did not exist “solely” for philanthropic purposes and was engaged in business for making profit, but was alternatively allowed exemption under section 11 as per the claim made by the assessee.

In the Exit Conference (May 2017), it was clarified that the powers in respect of approval under section 10 (23C) and registration under section 12A of the Income Tax Act were earlier vested with different authorities. However, with effect from FY 2014-15, these powers have been combined and vested with a single authority, viz. CIT (Exemption) who would be deciding the eligibility for exemption under both the sections to reduce the scope of any assessee availing exemptions under the alternate section if denied exemption under one section. Still, in view of the risks involved, this needs careful monitoring.

3.2.4 Maintenance of databases of charitable trusts/ institutions

The ITD maintains a database on exempt entities on its official website⁷² containing details of entities viz. name, address, state, city, jurisdiction, section under which registered, date of order etc. Structuring of the database of tax exempt entities maintained by the ITD in more detailed manner and establishing their linkage with the ITRs of the trusts would facilitate streamlining of assessment and detection of tax evasion. ITD may consider adopting the global best practices in respect of maintaining databases on exempt entities, as illustrated in Box 3.2 below.

⁷⁰ As per the scrutiny assessment order for AY 2012-13 dated 26 March 2015 the assessee was allowed exemption of ₹ 22.88 crore under section 11(1)(a) and exemption of ₹ 5.62 crore under section 10(23C).

⁷¹ As per para 5 of the scrutiny assessment order for AY 2013-14 dated 08 March 2016 the AO rejected the claim of exemption under section 10(23C) stating that the trust was having business and to make profit while allowing exemption of ₹ 4.04 crore under section 11(1)(a) of Income Tax Act.

⁷² <http://www.incometaxindia.gov.in/Pages/utilities/exempted-institutions.aspx>

Box 3.2: Best Practice – Database Structure of Tax Exempt Entities in USA

The database structure of tax exempt entities in USA is maintained as the National Taxonomy of Exempt Entities (NTEE) system and is used by the IRS and NCCS⁷³ to classify non-profit organizations. The NTEE Core Codes classification system divides the universe of non-profit organizations into 26 major groups under 10 broad categories. The coded classification allows the classification of NGOs into more than 400 categories representing broad sub-sectors, specific activity areas, organisation type and activities of the organisation. The use of such a system facilitates the collection, tabulation, presentation, and analysis of data by the types of organizations and their activities, promotes uniformity and comparability in the presentation of statistical and other data collected by various public and private agencies. It also provides better quality information as the basis for public policy debate and decision-making for the non-profit sector and for society at large.

3.2.5 Donations not being watched properly

Deduction under section 80G of the Income Tax Act is a taxation tool to help donee trusts to receive funds to further their charitable objectives. It also helps donors to claim the amounts of donation as deductions, resulting in lowering of their tax liability. One of the conditions for registration for availing tax benefits under section 80G stipulated that receipts issued to the donor should bear the 'Reference Number' and 'Date of the order'.

Audit noticed⁷⁴ that out of eighty seven cases falling under stand-alone hospital category, the section 80G certificates were available in 10 *per cent* of cases. In the remaining cases, only a list of donations received was available. In cases having representative receipts, we noticed instances, as given below, where nature of donation or mode of receipts was not on record:

- a) In PCIT-Exemption, Pune, in the case of The Umrao Institute of Medical Science and Research (PAN: AAATT2858F), the assessee Trust had received donations of ₹14.54 crore and ₹10.25 crore during AYs 2012-13 and 2013-14 respectively (50 *per cent* and 25 *per cent* of turnovers respectively). However, there was nothing on record to show the nature of donations or the mode of receipts. The case had been selected by the Department for verification of heavy cash deposits but the details of verification made were not available on file;

⁷³ National Centre for Charitable Statistics

⁷⁴ In Maharashtra region a sample of 106 hospitals was subjected to analysis. The sample was divided into two groups. The first sample consisted of eighty seven hospitals and the second sample consisted of nineteen hospitals having medical/nursing colleges.

- b) In PCIT-Exemption, Pune, in the case of Rasiklal Manikchand Dhariwal Foundation(PAN: AAATR1106J), a trust engaged in education and medical sector, the assessee showed receipt of corpus donation of ₹19.42 crore in AY 2012-13, out of which ₹16 crore was shown to be received from one company⁷⁵ having authorized and paid up share capital of ₹5 lakh only. There was no confirmation available on file in respect of ₹16 crore donation received. The remaining donation was received from the related group entities of assessee for which the confirmation was available in the file. The financial statements of the donor which had a meagre capital of ₹5 lakh, were not available.

In the sample consisting of nineteen hospitals with medical/nursing colleges, representative receipts⁷⁶ were available in four cases only⁷⁷.

The following deficiencies were noticed in audit:

- c) In PCIT-Exemption, Pune, in the case of Sadhu Vaswani Mission (PAN:AABTS2708Q), during AY 2013-14 it was found that the trust had submitted copies of donation receipts issued to various donors wherein the reference number and date of order were not found. Despite violation of prescribed conditions of section 80G, no action was found to have been taken.
- d) In PCIT-Exemption, Pune, in the cases of the Saraswati Dhanvantari Medical Education Social & Cultural Foundation (PAN: AAIT9786P for 2012-13 and 2013-14) and Sangamner Medical Foundation & Research Centre Trust (PAN: AACTS4864I for AY 2013-14), a substantial amount of donation at ₹16.53 crore (44.70 per cent of total income) was found. The trust received donations from a large number of donors in the range of ₹9,000 to ₹20,000 per donor to avoid taxation. As the number of donors was very large, it was impossible for the ITD to verify the genuineness of each claim.

In the absence of section 80G certificates, it was not clear as to how the Assessing Officers cross-verified the donation receipts vis-à-vis the claims. The 80G donation aspect needs more attention from the Department as it entails revenue foregone on account of exemption to recipients and also deduction to donors. In the absence of mechanism for cross verification of claims made by donors and donees, the chances of ineligible assessee getting deduction cannot be ruled out. There is no provision in the ITD module to enable validation

⁷⁵ M/s Sky Lux Cityscapes Private Limited

⁷⁶ Receipts issued to donors

⁷⁷ In remaining cases, only a list of donation received was available.

of section 80G certificates by Assessing Officers on similar lines as in done in the case of TDS certificates⁷⁸ under TRACES.

3.2.6 Lacuna in section 35AD of Income Tax Act

As per section 35AD of the Income Tax Act, expenditure incurred on the acquisition of any land or goodwill or financial instrument is not eligible for any deduction under section 35AD. Audit noticed that in the following case due to ambiguity in the Act, the AO had allowed deduction under section 35AD (Box 3.3).

Box 3.3: Illustrative case on ambiguity in Section 35AD of Income Tax Act

Charge: PCIT-4, Kolkata

Assessee: GPT Healthcare Private Limited

Assessment Year: 2013-14

PAN: AABCJ2967K

Audit noticed that the assessee had purchased one hospital building in Kolkata⁷⁹ at ₹19.03 crore and the purchase deed was registered on 12 February 2013. As per the registration deed, area of land on which the building was situated was 18.63 cottas. No separate land value was shown in the deed and as per the available records, it was seen that no further information on this was also sought from the assessee during the assessment. The deduction under section 35AD for the purchase price of ₹19.03 crore was allowed during assessment under section 143(3) on the entire value of the building including land, although in terms of section 35AD, the assessee was not eligible for deduction of expenditure incurred for acquisition of the land. In the absence of clarity in the Income Tax Act in respect of such assets where expenditure incurred on the acquisition of building included the land price, no disallowance could be made as to the value of the land.

Thus, it is evident that under section 35AD of the IT Act, where the value of the land and building are not separable, assesseees are claiming and are being allowed deduction on the total value of the land and building. ITD's reply was awaited (April 2017).

Allowance of deduction under section 35AD on the value of land in cases where it is included in the total cost of the building and where the two values are not separable needs to be clarified.

⁷⁸ TDS certificates are being generated online with effect from 1 April 2011. These TDS certificates shall carry a unique TDS certificate number. CPC(TDS) has provided the facility of validating the 197 certificates to the deductors on www.tdspc.gov.in (TRACES). This enables a deductor to first validate the 197 certificates given to him by their deductees and then furnish the same in TDS/TCS statement. Instructions were issued field authorities to issue only system generated certificates vide CBDT instruction no. 36 dated July 15, 2009.

⁷⁹ at 1 Khudiram Bose Sarani, Kolkata.

3.3 Compliance Issues relating to provisions specific to healthcare sector assessees

Audit noticed mistakes in assessments relating to deductions and exemptions specific to the healthcare sector as brought out in the following paragraphs.

3.3.1 Incorrect allowance of exemption for trading/commercial activities

In Maharashtra, audit noticed instances where trust hospitals were operating pharmacy stores in the hospital premises and were generating huge amounts of surplus on the sale of medicines. The margins of profits earned on the sale of medicines constituted major portion of their total surplus generated during a year. The Department, in the case of Jaslok Hospital and Hinduja Hospital (AY 2013-14) had taxed pharmacy income as business income. However, in seven such cases (listed in **Appendix-1**), the Department had not taxed the huge surplus generated from pharmacy business, despite the issues being identical in nature. This resulted in underassessment of income of ₹72.65 crore involving tax effect of ₹21.86 crore. One such case is illustrated below (Box 3.4):

Box 3.4 : Illustrative case on Exemption allowed for trading/commercial activities

a. Charge: PCIT – Exemption, Mumbai, Maharashtra

Assessee: : Guru Nanak Quin Centenary Memorial Hospital Trust

Assessment Year: 2013-14

PAN: AAATG2576K

The scrutiny assessment of the assessee for AY 2013-14 was completed in February 2016 determining income at 'nil' after allowing exemption of ₹9.79 lakh under section 10(23C)(via) of the Act. The assessee was running Guru Nanak Hospital and a pharmacy store named Guru Nanak Pharmacy inside the hospital where medicines were sold at MRP to in-house patients. As per the income and expenditure account, a surplus of ₹1.69 crore was generated from pharmacy business, which was 22.89 *per cent* of the total turnover of the Trust. The profit margin on medicines worked out to 61.33 *per cent*⁸⁰ which was not insignificant by any standards. As such the pharmacy business was not a minor business incidental to the attainment of the objectives of the Trust and it was running on commercial basis with a motive to earn profits. The surplus of ₹1.69 crore generated from the pharmacy business was required to be taxed separately as business income. The omission has resulted in underassessment of income by ₹1.69 crore and short levy of tax by ₹50.36 lakh. Department accepted the objection and has initiated remedial action (February 2017).

⁸⁰ Cost of medicines, disposables, consumables and implants was ₹ 324.93 lakh which was sold at ₹ 524.22 lakh

3.3.2 Other irregularities in allowance of exemption to hospital trusts

Sections 11, 12 and 13 of the Income Tax Act contain provisions governing the grant or withdrawal of registration, conditions for allowability of exemption to trusts or institutions in respect of income derived from property held under trust and voluntary contributions. Disposal of trust properties by trustees through unethical means is one of the concerns for the legislation governing the trusts. Income Tax Act also addresses such concerns under section 13(2)(c). As per the provisions, if any part of income or property held under the trust is applied directly or indirectly for the benefit of any person referred to in sub-section 3⁸¹ thereof, then the exemption benefit would not be available to the trust. Audit noticed instances of incorrect allowance of exemption on income of trust in contravention of conditions stipulated in the Act as brought out below.

In Maharashtra, Rajasthan and Uttar Pradesh states, audit noticed 17 cases involving tax effect of ₹32.87 crore (listed in **Appendix-2**), where the AOs had irregularly allowed exemption under section 11 of the Act. Three cases are illustrated below (See Box 3.5).

Box 3.5: Other irregularities in allowance of exemption to hospital trusts

a. Charge: CIT (Exemption), Mumbai, Maharashtra

Assessee: Padmashree Dr. D. Y. Patil Vidyapeeth (Deemed University)

Assessment Year: 2012-13

PAN: AABTP2448L

The scrutiny assessment of the assessee for AY 2012-13 was completed in February 2015 at 'nil' income after allowing exemption under section 11. Audit examination revealed that exemption under section 11(1) (d)⁸² was allowed on the amount of ₹7.32 crore shown as 'Corpus donations received during the year' that included an amount of ₹7.22 crore collected as 'Development fees' as part of tuition fees from students. This indicated that the amount which was treated as 'Corpus Fund' was a part of the admission fees paid to the Institute and was not a voluntary contribution received from the students. Thus the amount of ₹7.22 crore cannot be treated as 'Corpus Fund' for allowance of exemption under section 11(1)(d) and should have been brought to tax. The incorrect allowance of exemption resulted in underassessment of income by ₹7.22 crore involving tax effect of ₹2.23 crore. ITD's reply was awaited (April 2017).

⁸¹ Person includes author of trust or founder of institution, any person who made substantial contribution to the trust or institution, and where author, founder or member is HUF any trustee of trust, any relative of such author, founder or person aforesaid and any concern in which any of the persons referred earlier has a substantial interest.

⁸² Income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the Trust or Institution shall not be included in the income of the said Trust or Institution.

b. Charge: CIT (Exemption), Mumbai, Maharashtra**Assessee: Maharashtra Medical Foundation****Assessment Year: 2012-13****PAN: AAATM1753E**

The scrutiny assessment of the trust for AY 2012-13 was completed in February 2015 determining 'nil' income. The assessee trust had shown an amount of ₹33.85 crore (including an amount of ₹32.87 crore received from hospitals) as income in its 'Income and Expenditure Account'. As per records, the assessee received collections of ₹32.45 crore from two hospitals run by it on account of cash receipts over the counters. Further, as per the income computation sheet of the assessee, although TDS of ₹80.34 lakh was claimed, the income of ₹7.98 crore corresponding to the TDS had remained to be accounted for in the Income and Expenditure Account. This mistake resulted in underassessment of income of ₹7.98 crore involving revenue impact of ₹2.40 crore. ITD's reply was awaited (April 2017).

c. Charge: PCIT – Exemption, Mumbai, Maharashtra**Assessee: Mandke Foundation****Assessment Year: 2013-14****PAN: AAATM4557G**

The scrutiny assessment of the assessee was completed in March 2016 determining income at 'nil' after allowing exemption under section 11 of the Act. The assessee had entered into an Operating & Maintenance agreement with Malti Vasant Heart Trust for running a hospital namely "Kokilaben Dhirubhai Ambani Hospital & Medical Research Institute". The assessee trust had taken machinery on lease from its related party, Reliance Innoventures Private Limited, and had kept an amount of ₹74.49 crore as deposit with the party. As per terms of the contract, the assessee trust had to provide treatment services free of cost or at concessional rates to the employees of the related party. As the property of the trust was being made available for the benefit of Reliance Innoventures, a person referred to in section 13(3), the provisions of Section 13 were violated and exemption of ₹44.81 crore allowed to the trust was required to be withdrawn. This resulted in incorrect allowance of exemption of ₹44.81 crore involving tax effect of ₹13.85 crore. ITD's reply was awaited (April 2017).

3.3.3 Irregular allowance of depreciation/expenses resulting in double deduction

As per the judgement of the Hon'ble Supreme Court of India in the case of Escorts Ltd. vs Union of India⁸³ where a full deduction has been allowed in relation to a capital asset (under section 11 of the Act), no depreciation is to be allowed under section 32 on the same asset. It was further held that in the absence of clear statutory indication to the contrary, the statute should not be

⁸³ (1993) (199 ITR 43)

read so as to permit the assessee two simultaneous deductions. The Kerala High Court (2012)⁸⁴ also supported the above view. However, it was additionally held that if the assessee had claimed depreciation in such cases, then in order to reflect the true income available for application for charitable purposes, it should write back the depreciation amount in the account to form part of its income. Otherwise such notional claim becomes unaccounted cash surplus for the assessee outside its books of accounts⁸⁵.

In Maharashtra, audit noticed six cases (**Appendix-3**) where the Department had allowed depreciation along with capital expenditure on assets as application of income resulting in double deduction of ₹44.67 crore involving potential tax effect of ₹22.19 crore. In one case, the Department had disallowed depreciation of ₹27.97 crore in the assessment order but did not add back the same to taxable income while completing the assessment. Two cases are illustrated below (Box 3.6):

Box 3.6: Irregular allowance of depreciation/expenses resulting in double deduction

- a. Charge: PCIT-Exemption, Pune, Maharashtra**
Assessee: Mahatma Gandhi Mission
Assessment Year: 2013-14
PAN: AAATM4556E

As per the computation of income the assessee had claimed depreciation of ₹33.11 crore and also capital Expenditure of ₹1,130.95 crore which was allowed by the department. This resulted in incorrect allowance of depreciation amounting to ₹33.11 crore involving potential tax effect of ₹10.23 crore. ITD's reply was awaited (April 2017).

- b. Charge: PCIT-Exemption, Mumbai, Maharashtra**
Assessee: Mandke Foundation
Assessment Year: 2012-13
PAN: AAATM4557G

The assessing officer had disallowed depreciation in the assessment order but had not done the same while computing the income. This resulted in underassessment of income of ₹27.97 crore involving potential tax effect of ₹8.39 crore. ITD's reply was awaited (April 2017).

⁸⁴ Lissie Medical Institution vs. CIT (2012) 348 ITR 344 (Kerala)

⁸⁵ As held in the cited judicial ruling if a trust assessee after writing off full value of capital expenditure on acquisition of assets as application of income for charitable purposes and again claimed depreciation on the same amount such notional claim became cash surplus available with the assessee which was outside the books of accounts of the trust unless it was written back.

3.3.4 Irregular allowance of accelerated depreciation on life saving medical equipment

As per section 32⁸⁶ of the Income Tax Act, in respect of depreciation on 'machinery and plant' (life-saving medical equipment), the deductions shall be allowed at the rate of 40 *per cent* of the written down value of the relevant assets.

Audit noticed 33 cases involving tax effect of ₹3.91 crore (**Appendix-4**) in 15 states⁸⁷ where the AO had allowed irregular depreciation in contravention of the laid down provisions. Four cases are illustrated below (see Box 3.7).

Box 3.7: Illustrative cases on irregular allowance of depreciation on life saving medical equipment

a. Charge : PCIT-3, Delhi

Assessee: M/s Escort Heart Institute and Research Centre Limited

Assessment Year: 2010-11

PAN:AAACE8731F

Scrutiny of assessment records revealed that during the previous year relevant to AY 2010-11, the assessee had capitalized/claimed ₹7.39 crore under the head "Medical equipments - Life Saving equipments" and was allowed depreciation at the rates of 40 *per cent* and 20 *per cent* as applicable for medical equipments put to use for 180 days or more and for less than 180 days respectively. As per the details of additions to assets, the assets valued at ₹1.48 crore only were covered under the category "Life-saving medical equipments". Thus, the depreciation on the remaining assets valued at ₹5.90 crore should have been allowed at 15 *per cent* instead of 40 *per cent*. This mistake resulted in excess claim of depreciation of ₹1.48 crore⁸⁸ involving short levy of tax of ₹68.20 lakh. ITD's reply was awaited (April 2017).

b. Charge : CIT(Central-1), Chennai, Tamil Nadu

Assessee: M/s RHEA Healthcare Private Limited

Assessment Years: 2011-12 and 2012-13

PAN:AADCR9846F

It was observed that the assessee had claimed and was allowed depreciation at the rate of 40 *per cent* on assets which were not actually falling under the category of 'Life-saving medical equipment' as per the Income Tax Act. As per the assessment records for the AY 2013-14 in case of the same assessee, depreciation at the rate of 15 *per cent* was allowed on the same block of asset with the concurrence of the assessee. This resulted in excess allowance of

⁸⁶ read with Rule 5 and Appendix-I of IT Rule 1962.

⁸⁷ Andhra Pradesh & Telangana (1), Assam (2), Bihar (2), Delhi (6), Gujarat (3), Karnataka (1), Kerala (1), Madhya Pradesh (2), Maharashtra (1), Punjab (1), Rajasthan (1), Tamil Nadu (6), Uttar Pradesh (1) and West Bengal (4).

⁸⁸ 40% of ₹7.38 crore-(40% of ₹1.48 crore + 15% of ₹5.90 crore)

depreciation of ₹93.88 lakh Involving tax effect of ₹28.15 lakh. ITD's reply was awaited (April 2017).

c. Charge : CIT-3, Ludhiana, Punjab

Assessee: Navjot Singh Chug

Assessment Year: 2013-14

PAN: AATPC8006B

As per the assessment records, the assessee had fixed assets of ₹2.38 crore under the block with 40 *per cent* depreciation rate (Life-saving medical equipment). The assessee had claimed and was allowed (December 2015) depreciation at the rate of 40 *per cent* on one item, viz. 'Wavelight Ex500 Excimer' valued at ₹2.25 crore that was added in the block in FY 2012-13. As this item was not falling in the category of 'Life-saving medical equipment', depreciation should have been allowed at the rate of 15 *per cent* admissible to plant and machinery instead of 40 *per cent*. This resulted in excess allowance of depreciation of ₹56.25 lakh involving tax effect ₹22.94 lakh⁸⁹. ITD's reply was awaited (April 2017).

d. Charge : PCIT-I, Indore, Madhya Pradesh

Assessee: Smt. Manjushree Bhandari

Assessment Year: 2012-13

PAN: ABNPB6251C

As per the assessment records, the assessee had claimed and was allowed depreciation of ₹88.43 lakh at the rate of 40 *per cent* on 'Cath Lab Machine' (not specified in Appendix-I to Income Tax Rules) valued at ₹2.21 crore instead of allowable amount of ₹33.16 lakh at the admissible rate of 15 *per cent*. The mistake resulted in incorrect allowance of depreciation amounting to ₹55.27 lakh involving short levy of tax of ₹22.88 lakh including interest. ITD's reply was awaited (April 2017).

3.3.5 Irregular allowance of deduction under section 35AD

As per Section 35AD (1)(a) & (b), an assessee shall be allowed deduction at the specified rate⁹⁰, in respect of any expenditure of capital nature incurred for the purposes of any specified business during the previous year in which he commences operations of his specified business, if (a) expenditure is incurred prior to the commencement of its operations; and (b) amount is capitalized in the books of account of the assessee on the date of commencement of its operations. However, as per section 35AD(5)(ab) of the IT Act, deduction is allowable only if the assessee commences operation on or after 01 April 2010. Also sub section (2) of Section 35AD *inter-alia* lays down different conditions when deduction is not allowable viz. (i) if the business is set up by splitting up or

⁸⁹ involving tax effect of ₹.17.38 lakh with interest ₹5.56 lakh.

⁹⁰ 100 *per cent* upto the AY 2012-13, 150 *per cent* from AY 2013-14.

the reconstruction of a business already in existence; (ii) if it is set up by transfer to the specified business of machinery or plant previously used for any purpose etc.

Audit noticed five cases involving tax effect of ₹4.60 crore in six states⁹¹ (**Appendix-5**) where the AO had allowed irregular deduction under section 35AD in contravention of such provisions. Three cases are illustrated below (See Box 3.8).

Box: 3.8 Illustrative cases on Irregular deduction under section 35AD

a. Charge: PCIT- Hisar, Haryana
Assessee: M/s Vandam Health Care
Assessment Year: 2013-14
PAN: AAIFV0635N

The scrutiny assessment of the assessee was completed in October 2015 determining loss of ₹ 9.43 crore. As per the assessment records, the assessee, engaged in the business of hospital service, had commenced its operations on 1 April 2012. The assessee had incurred capital expenditure of ₹7.00 crore out of which ₹4.71 crore pertained to the period from 1 April 2012 to 31 March 2013, i.e. after commencement of business, on acquisition of assets. During assessment, deduction of ₹10.50 crore was allowed under section 35AD at the rate of 150 per cent of the entire capitalized cost of assets of ₹7.00 crore instead of ₹2.29crore⁹². The excess allowance of deduction under section 35AD had resulted in over assessment of loss by ₹7.07 crore at the rate of 150 per cent of capitalized expenditure of ₹4.71 crore involving potential tax effect ₹2.18 crore. The Department in its reply stated (September 2016) that the “proviso basically relates to previous year in which commencement of operation starts. In that previous year, all the capital expenditure which are incurred before the commencement of operation whether related to that previous year or prior previous years capitalised in the books of accounts are allowed as deduction during the previous year in which commencement of operation starts”. The Department’s reply is not tenable as the deduction under section 35AD is allowable on capital expenditure incurred prior to the commencement of business operations and not on the expenditure incurred during the previous year in which the business operations start. As capital expenditure of ₹4.71 crore was incurred after commencement of business operations, it was not eligible for allowance of deduction under section 35AD of the Act.

⁹¹ Andhra Pradesh & Telangana (1), Delhi (1), Haryana(1), Maharashtra(1) and West Bengal(1).

⁹² ₹2.29 crore = ₹7.00 crore - ₹4.71 crore

b. Charge: CIT-I Pune, Maharashtra**Assessee: Shri Shrirang Arun Limaye****Assessment Year: 2013-14****PAN:ABFPL2414D**

The assessee had set up a multi-specialty hospital under the name 'Deoyani Multi Speciality Hospital' in Kothrud, Pune in AY 2013-14 and the income from the hospital was shown as income from specified business. The assessee had claimed deduction under section 35AD. As per the computation sheet, the assessee had claimed deduction of the cost of capital assets amounting to ₹26.70 crore (including cost of hospital building of ₹19.27 crore on which depreciation was claimed) along with the cost of 'Transfer of Development Rights' (TDR)⁹³ purchased at ₹1.77 crore with a resultant loss of ₹42.72 crore. As per the extract of the Hospital Building Account for the period 01 April 2009 to 31 March 2013, the cost of the purchase of TDR was already included in the cost of the hospital building. Thus, the claim of the cost of TDR of ₹1.77 crore separately as capital expenditure had resulted in double deduction and was required to be disallowed. This resulted in excess allowance of deduction of ₹2.66 crore (150 per cent of ₹1.77 crore) under section 35AD involving potential tax effect of ₹82.25 lakh. ITD's reply was awaited (April 2017).

c. Charge: PCIT- 4, Hyderabad**Assessee: M/s. Premier Hospitals Private Limited****Assessment Year: 2012-13****PAN: AABCP2109H**

The assessee had claimed and was allowed deduction of ₹1.38 crore under section 35AD of the Income Tax Act. The assessee had commenced its business operations on 01 October 2011 and had made additions of ₹1.38 crore to capital expenditure after the date of commencement of business. The incorrect allowance of deduction of ₹1.38 crore under section 35AD resulted in potential short levy of tax of ₹44.84 lakh. ITD in its reply stated (July 2016) that remedial action was being initiated.

3.3.6 Irregular allowance of deduction under section 80IB

As per the Section 80IB(11C) of the IT Act, profits from the business of operating and maintaining a hospital shall be allowed deduction of hundred per cent of profits and gains for a period of five consecutive assessment years, beginning with the initial assessment year, if (i) a hospital was constructed and started functioning at any time during the period beginning on 01 April 2008 and ending on 31 March 2013; (ii) the hospital has at least one hundred beds for patients; (iii) construction of the hospital was in accordance with the regulations of the

⁹³ As per the assessee (February 2016), TDR was purchased from M/s Anand Developers who are traders and dealers of TDR.

local authority; and (iv) assessee furnishes, along with the return of income, a report of audit in such form as may be prescribed.

Audit noticed seven cases involving tax effect of ₹5.30 crore (**Appendix-6**) in four states⁹⁴ where the AOs had allowed irregular deductions in contravention of the provisions under section 80IB. Two cases are illustrated below (see Box 3.9).

Box 3.9: Illustrative cases on irregular deduction under section 80IB

a. Charge: PCIT-Central, Kanpur, Uttar Pradesh

Assessee: M/s. Rama Medicare Limited

Assessment Year: 2012-13

PAN: AAACR4680A

Under the provision of section 80IB, if 'return of income' is not submitted or return is submitted belatedly, the deduction under this section is not available. The scrutiny assessment of the assessee was completed in March 2015. The assessee had claimed and was allowed deduction of ₹8.21 crore under section 80IB although the return of income was filed belatedly on 28 March 2014, i.e. after the due date of submission of return on 30 September 2012. Hence, the deduction claimed by the assessee was required to be disallowed. The omission resulted in irregular allowance of deduction of ₹8.21 crore involving short levy of tax of ₹3.57 crore including interest. The department rectified (September 2016) the mistake under section 154 of the Act.

b. Charge: PCIT- Siliguri, West Bengal

Assessee: Dr. Chhang's Super Speciality Hospital Private Limited

Assessment Year: 2011-12, 2012-13 & 2013-14

PAN: AABCD9278M

The scrutiny assessments of the assessee for AYs 2011-12, 2012-13 and 2013-14 were completed in March 2014, March 2015 and December 2015 allowing deductions of ₹ 85.68 lakh, ₹4.80 crore and ₹ 5.31 crore respectively under section 80IB(11C). As per the notes to accounts, the assessee company was incorporated on 11 November 2003 and had commenced its business by starting diagnostic and OPD centre. The assessee started another separate business⁹⁵ of operating a hospital from June 2008 (i.e. FY 2008-09). As per the Profit and Loss Account of the assessee, the income from its hospital operations included income from medical and healthcare services viz. indoor, outdoor, emergency department as well as 'diagnostic & pathology'. As the income from 'diagnostic and pathology' was shown separately from other medical services and it was a significant proportion⁹⁶ of the total income, it was evident that the 'diagnostic and pathology' business had a separate business identity independent of the hospital services of the assessee; it was

⁹⁴ Andhra Pradesh & Telangana (2), Uttar Pradesh (1) and West Bengal (3).

⁹⁵ As per scrutiny assessment order for AY 2012-13 dated 16 March 15 the assessee started brand new business of operating hospital from 27 June 2008 for which license was obtained on 11 June 2009. The completion certificate was provided by local authority on 20 August 2010. It started claiming deduction under section 80IB(11C) of the IT Act from FY 2010-11 corresponding to AY 2011-12.

⁹⁶ 26 per cent (AY 2011-12), 25.7 per cent (AY 2012-13) and 27 per cent (AY 2013-14)

also pre-existing since 2003-04, and hence income from these operations were not eligible for exemption under section 80IB(11C). Audit noticed that the assessee had claimed and was allowed deduction under section 80IB(11C) in respect of the entire amount of profit from hospital operations which included income from 'diagnostic and pathology' business as well, while the deduction claimed in this respect from 'diagnostic and pathology' business was required to be disallowed. The omission to do so resulted in the irregular allowance of deduction of ₹2.88 crore⁹⁷ under section 80IB for three AYs involving tax effect of ₹89.09 lakh⁹⁸. ITD's reply was awaited (April 2017).

3.4 Summary of Findings:

- ITD has not undertaken any impact analysis to assess the outcome of relief provided to the assessee engaged in private healthcare sector. The Income Tax Act does not prescribe any measurable parameter to assess the extent of charitable activities being undertaken by hospital trusts in order to be eligible for availing exemptions under the Act. In the absence of any specific parameter as a pre-condition for availing the exemption benefits, the possibility remains that the assessee can avail of the exemptions without even carrying on any charitable function or activity that benefits the society at large and disadvantaged sections of the society in particular.
- The provision under section 35AD of the Act does not specify the allowability of deduction on capital investments in cases where the values of land and buildings were not separable, resulting in allowance of deduction on the combined value of land and building leading to loss of revenue.
- Audit noticed instances where ineligible exemptions were being allowed to assessee engaged in trading/commercial activities, as well as instances of incorrect allowance of accelerated depreciation on items not falling under life-saving medical equipment, incorrect allowance of deduction under section 80IB of the Income Tax Act on incomes from non-hospital activity and irregular allowance of deduction on provisioning rather than on actual capitalization under section 35AD of the Act.

3.5 Recommendations:

Audit recommends that:

- i) The CBDT may consider prescribing measurable parameters for assessment of charitable activities undertaken by private hospital trusts as a pre-condition for granting exemptions under the Income Tax Act, and amend the Act for this purpose if necessary.

⁹⁷ ₹21.42 lakh (AY 2011-12) + ₹123.41 lakh (AY-2012-13) + ₹143.51 lakh (AY 2013-14)

⁹⁸ ₹44.34 lakh (AY 2013-14) + ₹38.13 lakh (AY 2012-13) + ₹6.62 lakh (AY 2010-11)

The CBDT replied (May 2017) that the financial transaction such as cash deposits, interest Income etc. are reported by reporting entities. The cases for scrutiny are selected based on such information and the information available in the Income Tax returns.

The reply does not address the audit recommendation. The CBDT may reconsider prescribing measurable and quantifiable parameters with respect to charitable activities being undertaken to prevent the scope of misuse of the provision as observed and pointed by audit.

- ii) The CBDT may clarify how to assess value of land for the admissibility of deduction under section 35AD of the Income Tax Act in cases where the value of land is a part of the value of the building.

CBDT stated (June 2017) that the value of land could be taken as per the prevalent Circle rates of the land on the date of the sale deed.

Audit is of the view that CBDT may issue a clarification in this regard to ensure uniformity in assessment.

- iii) The CBDT may consider the possibility of introducing automated generation of 80G certificates above a certain threshold.

The CBDT replied (May 2017) that automated generation of 80G certificates on similar lines as under TRACES would not be feasible to implement and would be extremely complicated for small donors and small exempt organizations who would have to submit a statement to the Department and then obtain a certificate to be given to the donor.

Audit is of the view that in the absence of automated mechanism for cross verification of claims made by donors and donees, the chances of ineligible assessee getting deduction cannot be ruled out. CBDT has introduced similar provisions in the case of section 194IA of the Income Tax Act, wherein the purchaser is required to deduct TDS on any property worth ₹50 lakh or above. A similar provision indicating a suitable threshold to exclude the small donors may be included. The automated generation of 80G certificates would enhance transparency in the accounting of trusts and facilitate assessment and monitoring of deductions claimed under section 80G of the Act.