Chapter 5: Systemic deficiencies/ effectiveness of provisions relating to the Trusts/Institutions

In this Chapter, Audit attempted to ascertain whether there are lacunae/ambiguities/inconsistencies in the Act/ Rules/Circular relating to assessments of the Charitable Trusts/Institutions. Audit also attempted to ascertain the procedural and systemic deficiencies relating to registration of the Charitable Trusts/Institutions and deficiencies in IT systems. Results of examination by Audit of registration/assessment records/ information are discussed in the succeeding paragraphs.

5.1 Systemic deficiencies viz. lacunae/ ambiguity /inconsistency in the Act /Rules /Circulars

The Income Tax Act, 1961 (the Act) provides for exemption to Charitable Trusts/Institutions in accordance with the provisions of the Act and subject to certain conditions to be fulfilled by the Trusts/Institutions. Audit noted certain loopholes remaining in the Act/Rules/Circulars in the form of ambiguity or lack of clarity in the provisions which may be misused causing loss of revenue. Audit has identified certain systemic issues/ambiguity in the Act/inconsistency in allowing exemption in 65 cases[29] as given in Table 5.1 below and discussed in the succeeding paragraphs of this Chapter.

Table No. 5.1: Observations relating to systemic deficiencies in granting the benefits to the Charitable Trusts and Institutions under provisions the Act

Sl. No.	Nature of observation	No of cases
1	Lacunae in the Act with regard to educational Trusts/Institutions	-
2	Absence of Standard Operating Procedure/instructions / guidelines for examining the valuation aspects of transaction with related party	-
3	Provision for disallowing set-off of deficit of earlier year with current year income	5
4	Absence of clarity in the provisions for deduction under Section 80G to corporates for amounts spent towards Corporate Social Responsibility	32
5	Absence of provision regarding utilisation of specific purpose donation treated as corpus	1
6	Provision regarding utilisation and repayment of borrowed fund	9
7	Inconsistency in assessment while treating administrative and other expenses	1
8	Absence of provision to restrict donations by a Trust to another Trust out of current years' income	4
9	Absence of provisions to consider long pending liability as income of the trust	1
10	Absence of provisions in the Act regarding accumulation of fund	6

[29] Involving revenue impact of ₹ 491.47 crore

Table No. 5.1: Observations relating to systemic deficiencies in granting the benefits to the Charitable Trusts and Institutions under provisions the Act		
Sl. No.	**Nature of observation**	**No of cases**
11	Absence of requirement to verify identity of the donors for detection of anonymous donation	6
	Total	**65**

5.1.1 Lacunae in the Act with regard to educational Trusts/Institutions

Providing affordable education to future generation is one of the important duties of a welfare state. In the 'National Policy on Education (NPE) 1986, modified in the year 1992', Government of India, stated[30] that the commercialisation of technical and professional education would be curbed and an alternative system would be devised to involve private and voluntary effort in the sector of education, in conformity with accepted norms and goals. The NPE 1986/92 was replaced with 'National Education Policy, 2020[31]', which stipulates[32] that multiple mechanisms with checks and balances would combat and stop the commercialization of higher education and this will be a key priority of the regulatory system. The policy provides that all education institutions will be held to similar standards of audit and disclosure as a 'not for profit' entity and surpluses, if any, will be reinvested in the educational sector. It has also been mentioned[33] that the current regulatory regime has not been able to curb the commercialization and economic exploitation of parents by many 'for-profit' private schools.

Private educational institutions having objects of both education and other limbs of charity as defined under Section 2(15), can claim exemption under Section 11 after getting registration under Section 12AA. Low income (where annual income does not exceeds ₹ one crore[34]) private educational institutions 'existing solely for educational purposes and not for the purposes of profit' can claim exemption under Section 10(23C)(iiiad). Private educational institutions, having no income limit, which are 'existing solely for educational purposes and not for the purposes of profit', can claim exemption under Section 10(23C)(vi) provided that prior approval from Pr.CIT/CIT has been obtained.

Analysis of the provisions of Section 10 and 11 revealed that the conditions and requirements for educational institutions to claim exemption under Section 10(23C) and 11 are almost similar but the educational institutions claiming exemption under Section 11 should be merely for 'charitable purpose' as defined

[30] Para 6.20 of National Policy on Education 1986, modified in 1992'
[31] Issued by the Ministry of Human Resource Development, Government of India
[32] Para 18.12 of 'National Education Policy, 2020'
[33] Para 8.3 of 'National Education Policy, 2020'
[34] ₹ five crore as amended by Finance Act 2021

under Section 2(15) whereas the educational institutions claiming exemption under Section 10(23C) should be 'solely for educational purposes and not for the purposes of profit'. The Apex Court while adjudicating the issue of fee structure and other issues of private educational activities in the case of P.A. Inamdar & Others vs. State of Maharashtra & Others [2005], had advised the institutions to make a provision for reasonable surplus which should ordinarily vary from six *per cent* to 15 *per cent* for utilisation in the expansion of the system and development of education. The institutions were also advised to refrain from profiteering and accepting capitation fees.

Further, the CBDT vide Circular No.14 of 2015 dated 17.08.2015 clarified the 'Not for profit' issue of the educational trusts covered under Section 10(23C)(vi) which inter-alia prescribes that –

a) mere generation of surplus from year to year cannot be a basis for rejection of application under Section 10(23C)(vi) on the ground that it amounts to an activity of the nature of profit making, if such surplus is used for educational purposes. The surplus should be used 'wholly and exclusively to the object for which it is established'.

b) collection of small fees from students by way of application fee, examination fee, fee for issuing transfer certificate, subscription for library etc. cannot be termed as profit making activity. But these should not exceed the prescribed fees fixed by the State or Central Government and the institutions are barred from taking Capitation fee, directly or indirectly, in any form.

From the comparative study of the provisions of Section 11 and Section 10(23C)(vi), Audit noticed that there are additional restrictions for private educational institutions covered under Section 10(23C)(vi) Such restrictions are given in Table 5.2 below:

Table 5.2: Restriction imposed on Educational Trusts/Institutions covered under Section 10(23C)(vi)

Sl. No.	Point of difference	Educational Trusts under Section 11	Educational Trusts under Section 10(23C)(vi)
1	Activity	Apart from educational activity, the entity can engage itself into any charitable activity as per the Section 2(15) the Act	The entity cannot involve any other activity apart from education. The soleness/ exclusiveness condition was imposed to make institutions focus more on educational activities.
2	'Not for profit' motive	No such condition was imposed under Section 11	'Not for profit' condition was imposed.

Table 5.2: Restriction imposed on Educational Trusts/Institutions covered under Section 10(23C)(vi)			
Sl. No.	**Point of difference**	**Educational Trusts under Section 11**	**Educational Trusts under Section 10(23C)(vi)**
3	Deemed application[35] of income	The concept of deemed application is available as per explanation 2 to Section 11	No benefit of deemed application is available. This was to ensure maximum utilisation of resources of the current year for education purposes.
4	Capital Gain	Exemption on Capital gain is available if net consideration is reinvested in another capital asset	No such exemption on reinvestment is available. This was to ensure maximum utilisation of resources for education
5	Corpus Donation	Corpus Donation is not part of the income and thus exempted from the purview of application.	No such exemption is available on corpus donation prior to 1.4.2020[36]. This was to ensure maximum utilisation of resource for education and also to ensure that capitation fee was not charged from students for creating Corpus fund.
6	Utilisation of Accumulation	Accumulation can be utilized for any object i.e. for educational activity as well for other activities as mentioned in the Memorandum/By-law of the Trusts/Institutions	No such option is available. The Trusts/Institutions has to apply it only for educational activity.
7	Unspent Accumulation	Unspent accumulation is taxable in the 6th year of accumulation.	Exemption is lost if unspent accumulation is not utilized within maximum period of 5 years.

Thus, it can be seen from the above table that there are some specific restrictions for private educational institutions covered under Section 10(23C)(vi) with the intent of checking the profit motive and safeguard of the interest of students. But educational Trusts/Institutions registered under Section 12AA and claiming exemption under Section 11 are not covered by such restrictions.

Audit, however, noticed that there is no restriction in the Act for educational Trusts/Institutions from getting registered under Section 12AA and claim exemption under Section 11, if the entity has the objectives of both education and other limbs of charity as defined under Section 2(15). As a result, most of the private educational Trusts/Institutions get themselves registered under

[35] Deemed Application- If in the previous year the trust is not able to utilize 85 *per cent* of its income due to the fact that such income has not been received or for any other reason, then the organization has an option to apply the income in the year of receipt or in the year, immediately following the year of receipt.

[36] The Finance Act, 2020 however clarified that corpus donation is also exempted from taxation under Section 10(23C)(iv) to (via).

Section 12AA (as shown in Table 5.3 below). Since there is no condition in the Act requiring a certain amount of work to be done in each area of activity, the Registering authorities have to allow such application for registration.

With a view to ascertaining the number of high value (having gross income of ₹ 50 crore or above) private educational Trusts/Institutions, which claimed exemption under Section 11 and 10(23C)(vi), Audit collected and analysed available data in respect of audited cases; and details are summarized in Table 5.3 below:

Table 5.3: Exemption granted to high value private educational Trusts/Institutions under Section 11 and 10(23C)(vi)

High Value Private Educational Trust/ Institution claimed Exemption	Total Cases		Exemption Granted	
	Number	Percentage of total cases	Amount (₹ in crore)	Percentage of total exemption
Section 11	153	78.46	15,944.64	70.89
Section 10(23C)(vi)	42	21.54	6,547.42	29.11
Total	**195**	**100.00**	**22,492.06**	**100.00**

It can be seen from the above Table 5.3 that out of 195 high value private educational Trusts/Institutions, 153 cases (78.46 *per cent*) claimed exemption under Section 11 and the remaining 42 cases (21.54 *per cent*) claimed exemption under Section 10(23C)(vi). Further, out of total exemption granted of ₹ 22,492.06 crore, ₹ 15,944.64 crore (70.89 *per cent*) pertained to exemption claimed under Section 11 and the remaining ₹ 6,547.42 crore (29.11 *per cent*) pertained to exemption claimed under Section 10(23C)(vi).

Audit further analysed the Top 10 assessment cases in terms of gross income pertaining to private educational Trusts/Institutions, which claimed exemption under Section 11. Details are given in Table 5.4 below:

Table 5.4: Gross income vis-à-vis exemption granted to Top 10 case of private educational Trusts/Institutions in terms of gross income which claimed exemption under Section 11

Sl. No.	Name of Assessee	AY	Gross Income (₹ in Crore)	Exemption Granted under Section 11 (₹ in Crore)
1	K_1 Institute	2016-17	698.40	698.40
2	S_{10} Trust	2015-16	684.79	684.79
3	N_8 Trust	2016-17	626.22	626.22

Table 5.4: Gross income vis-à-vis exemption granted to Top 10 case of private educational Trusts/Institutions in terms of gross income which claimed exemption under Section 11				
Sl. No.	**Name of Assessee**	**AY**	**Gross Income (₹ in Crore)**	**Exemption Granted under Section 11 (₹ in Crore)**
4	S_9 Committee	2015-16	604.41	604.41
5	S_9 Committee	2016-17	451.79	451.79
6	V_1 Foundation	2016-17	332.08	332.08
7	V_1 Foundation	2014-15	286.23	286.23
8	T_4 Institute	2016-17	270.79	270.79
9	V_2 Sangha	2015-16	258.80	242.01
10	H_1 Foundation	2016-17	249.90	233.75
Total			**4,463.41**	**4,430.47**

It can be seen from the above table that out of total gross income of ₹ 4,463.41 crore, total exemption granted to Top 10 cases under Section 11 of ₹ 4,430.47 crore pertained to seven private educational Trusts/Institutions. Further, in terms of gross income as well as exemption granted, K_1 Institute (Refer para 6.10.3) was the highest and two assessees namely S9 Committee (Refer para 6.10.2) and V_1 Foundation, were in the list of top cases in terms of gross income for two assessment years.

Since there is no restriction regarding the profit motive under Section 11 of the Act as stipulated in Section 10(23C)(vi), most of the private educational Trusts/Institutions are claiming exemptions under Section 11. Further, it is pertinent to mention that as per the 'National Education Policy 2020', all educational institutions should be 'Not for Profit'. However, provisions of the Income Tax Act are not fully in consonance with the intent of the Policy makers in the educational sector. Audit noted that Education is the subject matter of the Concurrent List. Efforts are required to be made by the concerned Ministries/ Departments of Government of India and the State Governments to arrive at a common strategy to ensure that the stated objective of the Union and State Governments to provide affordable quality education to all, is met

Reply of the Ministry was awaited (February 2022).

5.1.2 Inadequacy and ineffectiveness of certain provisions relating to Trusts/ Institutions

The Act, read with various circulars and instructions issued by the CBDT, provided the conditions of admissibility of expenditure, deductions to be

followed by the assessee. The Assessing Officers were expected to verify the compliance thereto during assessment proceedings. During the PA, Audit came across absence/inadequacy of certain provisions in the Act which allowed the Trusts/Institutions to take undue benefit and also affected the quality of assessment. The cases relating to deficiencies/loopholes are discussed in succeeding paragraphs:

5.1.2.1 Absence of Standard Operating Procedure/instructions / guidelines for examining the valuation aspects of transaction with related party

Section 13(1)(c) of the Act specifies that if the income or property of a trust or an institution is applied/used for the benefit of the related person(s) specified in Section 13(3) who may be the founders, trustee, manager, chief functionary, major donors, relatives of the founders or persons who have a substantial interest in the organization, the benefit of exemption under Section 11 would not be available to such Trusts/Institutions. Section 13(2) specifies the following benefits which would result in attraction of Section 13(1)(c), if made available to related person(s):

(a) if any part of the income/property is lent without adequate security;

(b) if any land/building or other property is made available for the use without charging adequate rent or other compensation;

(c) if any amount is paid by way of salary/ allowance or otherwise out of the resources of the Trusts/Institutions for services rendered by the related party to such Trusts/Institutions and the amount so paid is in excess of what may be reasonably paid for such services;

(d) if the services of the Trusts/Institutions are made available without adequate remuneration or other compensation;

(e) purchase of share/security or other property for consideration which is more than adequate;

(f) sale of share/security or other property for consideration which is less than adequate;

Although violation of provisions mentioned above would result in forfeiture of exemption of Trusts/Institutions, Audit noticed that there was no Standard Operating Procedure /instructions /guidelines for the purpose of determining/ examining the valuation aspect of the terms ‘adequate’ and ‘reasonable’ as referred to in Section 13(2) in case of transaction with related parties.

Audit noticed that the payment of salary, bonus, commission or remuneration, interest and share of profit given to partners of Firm (who are in turn, related parties) are covered by Section 40(b) as well as Partnership Deed as per the provision of 184(1)(i) of the Act in case of Partnership Firms; however, these

provisions are not applicable to Trusts/Institutions. Audit further noticed that the provision of Section 40A(2) of the Act regarding payments made to relatives as well as associates and the Transfer Pricing[37] provision under Section 92BA of the Act wherein the Arm's Length Price (ALP)[38] is determined to obtain the fair market value of transactions with related parties within India, defined as 'Specified Domestic Transaction' (SDT), are also not applicable to Trusts/ Institutions. During the Performance Audit, audit examined Income Tax Return Form ITR-7 applicable to Trusts/Institutions and noted that Charitable Trusts/ Institutions are not liable for audit under Section 92E[39] and are not required to submit an audit report in Form-3CEB[40], in case the entity has entered into any 'Specified Domestic Transaction' (SDT).

Audit observed that in the absence of Standard Operating Procedure/ instructions / guidelines for determining/examining the valuation aspects of transactions with related parties, the Assessing Officers do not have any systemic mechanism available for determining 'adequacy' and 'reasonableness' of transaction made with related parties, as referred to in Section 13(2).

Audit further observed that in certain cases, although the assessee had utilised their income or property for the benefit of person specified in Section 13(3)[41], the AOs did not levy tax on such amount of income or property utilised for the benefit of the related persons. Issues relating to diversion of income and properties of the Trusts/Institutions to the related parties have been highlighted in para 6.4 of Chapter 6.

Reply of the Ministry was awaited (February 2022).

5.1.2.2 Provision for disallowing set-off of deficit of earlier year with current year income

There was no provision in the Act, to disallow carry forward of the excess expenditure over income that was derived from property held for charitable or religious purposes to the subsequent assessment year. However, the Ministry has addressed this issue through the Finance Act 2021, by inserting explanation 5 to the Section 11(1) with effect from 01.04.2022.

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37 Transfer pricing can be defined as the value which is attached to the goods or services transferred between related parties.

38 "Arm's length price" means a price which is applied or proposed to be applied in a transaction between persons other than associated enterprises, in uncontrolled conditions.

39 Section 92E of the Act provides that every person who has entered into an international transaction or specified domestic transaction during a previous year shall obtain a report from an accountant and furnish such report on or before the specified date in the prescribed form duly signed and verified in the prescribed manner by such accountant and setting forth such particulars as may be prescribed.

40 Form 3CEB is report from an accountant to be furnished under Section 92E relating to international transaction(s) and specified domestic transaction(s).

41 The person specified in Section 13(3) are the author of the trust or founder of the institution; any person who has made a substantial contribution to the trust or institution of amount exceeding ₹ 50,000; where such author, founder or person is a HUF; any trustee of the trust or manager; any relative of any such author, founder, substantial contributor, member, trustee or manager.

Audit noticed five cases[42] relating to AY 2016-17 involving tax effect of ₹ 3.77 crore where Trusts/ Institutions were allowed to set-off of deficit of earlier financial year with the income of current financial year. Two cases are illustrated below:

(i) In West Bengal, CIT(E) Kolkata, a private trust engaged in educational activity filed return of income for AY 2016-17 at ₹ 'Nil' income. The case was selected in the PA sample as 'High Value' case since the gross receipt of the trust was ₹ 52.36 crore. The scrutiny assessment was completed at an income of ₹ 'Nil' in December 2018. Audit noticed that the trust was allowed 'Excess application of income' of ₹ 7.28 crore made during AY 2014-2015 as 'Application of income', during the scrutiny assessment for AY 2016-17. Such carry forward of 'Excess application of money', from the earlier year, resulted in assessed income of ₹ 'Nil' for the AY 2016-17. In the absence of any specific provision in the Act, allowing the assessee to carry forward 'Excess application of income', was irregular involving tax effect of ₹ 2.17 crore. The DCIT (E), Circle – 1(1), Kolkata initiated action by issuing notice under Section 148 to the assessee in March 2021. Further details of action taken were awaited (February 2022).

(ii) In Maharashtra, under CIT(E), Mumbai charge, a private trust engaged in educational activity, filed return of income for AY 2016-17 at ₹ 'Nil' income. The scrutiny assessment was completed in December 2018, assessing loss of ₹ 3.32 crore. The provisions of Section 11 of the Act allowed exemption in respect of income derived from the property of the trust to the extent it is applied towards objectives of the charitable trust and there is no provision under Section 11 which provides for carry forward of losses. As such, the determination of loss to the extent of ₹3.32 crore was not in order. The mistake resulted in irregular assessment of loss, involving potential tax effect of ₹ 1.13 crore.

Audit noted that the assesse had filed return of income after the due date of filing of return of income under Section 139(1) of the Act. Hence, the determined loss was itself not in order in view of the provisions of Section 80 of the Act.

Thus, despite having no specific provision in the Act, the AOs are allowing set-off of deficit of earlier year with current year's income which was irregular.

The issue of absence of provision disallowing set-off of deficit of earlier year with the income of current year, had also been pointed out in CAG's earlier Audit Report No. 20 of 2013. In reply, the Ministry had submitted[43] to the PAC that the

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[42] Maharashtra -3, Rajasthan -1 and West Bengal -1.

[43] Para 33 of 104th report (16th Lok Sabha) of July 2018

provisions of law are based on utilisation of income towards charitable purposes. Therefore, no provision for treatment of deficit has been provided. However, Audit observed that the AOs were allowing set-off of deficit of earlier year with the income of current year, in the absence of clarity.

Reply of the Ministry was awaited (February 2022).

5.1.2.3 Absence of clarity in the provisions for deduction under Section 80G to corporates for amounts spent towards Corporate Social Responsibility

Under Section 135 of the Companies Act 2013[44], certain specified companies are required to spend at least two *per cent* of the average profits of the immediately preceding three financial years on activities relating to Corporate Social Responsibility. The provision has been brought to share the burden of the Government in providing social services. The expenses are treated as application of income not allowable as deduction for computing taxable income of the assessee as it would result in subsidizing of around one-third of such expenses by the Government by way of tax expenditure[45]. Considering this, corresponding provisions for disallowance of such expenses under Section[46] 37 was introduced[47] from 1 April 2015 but no such amendment was brought under Section 80G.

Audit noted that the Ministry of Corporate Affairs ('MCA') has clarified through General circular no. 01/2016 dated January 12, 2016 on the question of "What tax benefits can be availed under CSR?", that "no specific tax exemptions have been extended to CSR expenditure per se. The Finance Act, 2014 also clarifies that expenditure on CSR does not form part of business expenditure. While no specific tax exemptions have been extended to expenditure incurred on CSR, spending on several activities like Prime Minister's Relief Fund, scientific research, rural development projects, skill development projects, agriculture extension projects etc., which find place in Schedule VII of the Companies Act[48], already enjoys exemptions under different sections of the Income-tax Act, 1961."

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[44] Section 135 of the Companies Act, 2013 provides that certain specified companies shall spend in every financial year, at least two *per cent* of the average net profits of the company made during the three immediately preceding financial years or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy. Further, if a company is in default in complying with the provisions of sub-section (5) or sub-section (6) of Section 135 of the Companies Act, the company shall be liable to a penalty.

[45] Para 13 of Circular 1 of 2015 issued by CBDT issued on 21 January 2015

[46] Explanation 2 to the Section 37(1) provides that any expenditure incurred by an assessee on the activities relating to Corporate Social Responsibility referred to in section 135 of the Companies Act, 2013 (18 of 2013) shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.

[47] Explanation 2 to Section 37(1) inserted vide Finance Act 2014 w.e.f. AY 2015-16

[48] Schedule vii of the Companies Act specifies activities which may be included by companies in their corporate social responsibility policies

Thus, this clarification issued by the Ministry of Corporate Affairs supports the view that deduction under section 80G is allowable on such contributions and deduction under section 80G cannot be denied on the basis of statutory obligation.

From the comparative study to the provisions of the Companies Act, 2013 and the Income Tax Act, 1961, Audit noted that CSR expenditure under the Companies Act is mandatory for the specified companies; under the Income Tax Act donations/contributions to Trusts/Institutions including donations depicted as CSR expenditure of the companies is voluntary.

Audit further noted that the expenditure incurred on CSR is not an allowable expenditure under Section 37 of the IT Act, whereas Section 80G, specifically mentions two instances viz. contributions towards Swacha Bharat Kosh and Clean Ganga Fund, where CSR expenditure is not allowable as deduction under section 80G.

However, Audit noted that other than Swacha Bharat Kosh and Clean Ganga Fund, the Act is silent on contribution/donation out of CSR expenditure to Trusts especially In-house Trusts, funds, foundation etc. Audit observed instances where corporate entities carried out a major part of their CSR activities through their in-house foundations/trusts and claimed benefit of deduction under Section 80G. As expenditure towards CSR activities are not tax deductible under section 37 of the Act, in-house foundations/trusts were used as a mechanism for claiming 80G deduction having significant revenue implications.

Further Audit noted that at the different appellate levels viz. CIT (Appeals)/DRP Bengaluru, ITAT Bengaluru in the case of Goldman Sachs Services Pvt. Ltd[49] has taken different stands with regard to allowing deduction under section 80G on donations out of CSR funds.

In Maharashtra, Audit noticed in eight assessment cases that four Trusts/ Institutions received donation of ₹ 1,653.70 crore for incurring CSR expenses on behalf of their corporates and issued certificates under Section 80G to enable them to claim deduction while computing taxable income. The allowance of deduction under Section 80G for computing taxable income had revenue impact of ₹ 284.06 crore. Audit further noted that in Maharashtra, in other 10 cases, assessees had incurred expenses of ₹ 64.09 crore and claimed deduction of ₹ 32.02 crore under Section 80G, which were disallowed by the ITD. Three cases are illustrated below:

(i) In Maharashtra, CIT(E) Mumbai charge, a private trust engaged in multiple charitable activities filed return of income for AY 2016-17 at ₹ 'Nil' income. The receipt of the trust was ₹ 611.70 crore during the year. The scrutiny

[49] IT(TP)A No. 2355/Bang/2019 – M/s. Goldman Sachs Services vs. JCIT

assessment was completed in December 2018 at an income of ₹ 'Nil'. Audit observed that the assessee trust received donation amounting to ₹ 611.65 crore during the year. This included donation of ₹ 584.36 crore received from 'A' Ltd. towards CSR expenses. Audit noticed that the assessee was also registered under Section 80G. This made the donors eligible to claim 50 *per cent* of the donation as deduction under Section 80G while computing tax liability. This had an effect of subsidising such expense by the Government to the same extent of reduction in tax liability of the company. Similarly, the assessee in AY 2015-16 received donation of ₹ 752.91 crore comprising donation of ₹ 729.17 crore received from 'A' Ltd. towards CSR activities. The absence of enabling provision to disallow the deduction under Section 80G to donor unlike to provisions brought in Section 37 had revenue impact of ₹ 225.49 crore for both AYs.

(ii) In Maharashtra, CIT(E) Mumbai charge, a private trust engaged in multiple charitable activities filed return of income for AYs 2015-16 and AY 2016-17 at ₹ 'Nil' income. The cases were selected in the sample as 'High Value' cases since the gross receipts of the assessee were ₹ 66.08 crore and ₹ 55.89 crore for AY 2015-16 and AY 2016-17 respectively. The scrutiny assessments for AYs 2015-16 and AY 2016-17 were completed at an income of ₹ 'Nil' in December 2017 and December 2018 respectively. Audit observed that the assessee trust was created as a Corporate Social Responsibility arm of 'B' Ltd. and received donations of ₹ 63.59 crore and ₹ 51.38 crore in the AY 2015-16 and AY 2016-17 respectively for CSR activities from the related corporate group concerns. The assessee is a trust registered under Section 80G enabling the donors to claim deduction of 50 *per cent* of such donation. The absence of enabling provision to disallow the deduction under Section 80G to the donors, unlike the provision of Section 37, had aggregate revenue impact of ₹ 19.70 crore for both the AYs.

In AY 2015-16, the DCIT (E), Circle – 1, Mumbai shared the information regarding claim of deduction under Section 80G with the jurisdictional assessing officers of the donor companies, namely 'B' Ltd., 'C' Ltd, 'D' Ltd and 'E' Ltd, with the remark that the deduction under Section 80G was not an allowable deduction, as it was given under CSR. However, no such action was initiated by the AO in AY 2016-17.

(iii) In Maharashtra, under CIT(E), Mumbai charge, a private trust engaged in multiple charitable activities filed return of income for AY 2016-17 at ₹ 'Nil' income. The receipt of the trust was ₹ 74.55 crore during the year and selected in the PA sample as 'High Value' case. The scrutiny assessment was completed in December 2018, assessing income at ₹ 'Nil'. Further,

returns of income of AY 2015-16 and 2017-18 were filed in September 2015 and in October 2017 and the same were processed summarily, accepting the returned income at ₹ 'Nil'. Audit observed that the assessee trust received donations amounting to ₹ 73.53 crore in AY 2016-17, ₹ 13.87 crore in AY 2015- 16 and ₹ 136.85 crore in AY 2017-18 for CSR activities from the related corporate group namely 'F' Ltd. From the records of AY 2016-17, it was seen that the assessee, in lieu of this donation, granted receipt, mentioning the deduction available under Section 80G, to the donor, for their donation. The assessee is a trust registered under Section 80G of the Act, enabling the donors to claim deduction of fifty *per cent* of such donation. The absence of an enabling provision to disallow the deduction under Section 80G to the donors, unlike the provision of Section 37 of the Act, had aggregate revenue impact of ₹ 38.76 crore.

In reply, the DCIT (E), Circle–1, Mumbai stated that the relevant information has been passed on to the concerned assessing officer of the corporate donors, for further necessary action.

Besides, during regular compliance audit in Maharashtra charge, Audit noticed in 24 assessment cases that the specified companies incurred expenditure to the extent of ₹ 329.07 crore towards CSR and were allowed deduction of ₹ 142.82 crore under Section 80G having revenue impact of ₹ 49.05 crore.

The Income Tax Department[50] replied (August 2019) that provisions of Section 37 do not restrict the deduction allowed under Section 80G.

Audit noted that in reply to an audit observation illustrated at sl. no.(ii) above, the Assessing Officer shared the information with the assessing officers of the donor companies stating that the deduction under Section 80G was not an allowable deduction, as it was given under CSR, whereas in other cases the Assessing Officers replied that provisions of Section 37 do not restrict the deduction allowed under Section 80G.

Thus it could be seen from the above that there is no clarity on allowing deduction under section 80G for donations out of CSR fund. As a significant amount[51] is spent by the companies toward CSR activities it requires urgent attention of the Department.

Reply of the Ministry was awaited (February 2022).

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[50] DCIT Circle - 6(2)(1), DCIT Circle - 6(2)(2), DCIT Circle - 8 (3)(1), DCIT (LTU) – 1, Mumbai, ACIT Circle – 2, Pune & DCIT – Circle – 1(2)(2)

[51] As per the 5th Annual report of MCA, the specified companies had spent ₹ 10,066 crore and ₹ 14,503 crore during FY 2014-15 and FY 2015-16 respectively towards CSR expenditure

5.1.2.4 Absence of provision regarding utilisation of specific purpose donation treated as corpus

As per Section 11(1)(d), any voluntary contributions received by a Trusts/Institutions, with a specific direction that they shall form part of the corpus, shall not be included in the total income of the Trusts/Institutions. However, there is no specific provision in the Act to treat the specific purpose donations as income, if the Trusts/Institutions later pass it on to other organizations without utilising them for the specific purpose for which they are received. In the absence of such a provision, the corpus of the trust is susceptible to misuse. One such case is discussed.

In West Bengal, CIT(E) Kolkata charge, a private trust, engaged in the activity of 'Medical Relief' filed return of income at ₹ 'Nil' income and the scrutiny assessment was completed in October 2018 accepting the ₹ 'Nil' income. Audit observed that the assessee was allowed exemption in AY 2016-17 amounting to ₹ 1.45 crore under Section 11(1)(d). The assessee received this sum towards corpus donation. Audit further noticed that during the year, the balance of the corpus fund of the assessee of ₹ 3.29 crore had got reduced by ₹ 1.76 crore, with no corresponding increase in assets or application of fund. In response to the audit observation, the ITO Ward (E) – 1(4), Kolkata explained that the assessee had donated the fund to other entities for different purposes such as doctors' remuneration, maintenance of hospital etc. Audit, however, did not find any mention of this in the relevant donation payment order.

In reply, the ITO Ward (E) – 1(4), Kolkata stated (October 2020) that there is no provision in the Act to tax the corpus donation if it is not utilized as per direction of the donor. Audit however noted that this resulted in allowance of irregular exemption with a tax effect of ₹ 0.48 crore.

The Ministry has accepted (March 2022) the audit observation and remedial action has been taken by passing order under Section 263/143(3) in September 2021.

5.1.2.5 Provision regarding utilisation and repayment of borrowed fund

CBDT, vide their circular No. 100 of 24.1.1973, clarified that the repayment of loan originally taken to fulfil one of the objects of the trust will amount to an application of income for charitable and religious purposes. This circular remained silent on treating the acceptance of loan as income. However, the Ministry has addressed this issue through the Finance Act 2021, by inserting explanation 4(ii) to the Section 11(1) with effect from 01.04.2022.

Audit noticed nine assessment cases[52] relating to AYs 2014-15 to 2016-17 involving tax effect of ₹ 38.68 crore where the assessees were allowed dual benefit in either of the two ways - (a) by treating the capital expenditure met from the borrowed funds as application of income, and subsequently, by allowing repayment of loan against the same borrowed funds, also as application or (b) by treating repayment of loan as application of income without treating the loan as income/receipt. Four cases of three assessees are illustrated below:

(i) In Odisha, CIT (Exemption) Hyderabad Charge, a private trust engaged in educational activity, filed return of income for AY 2015-16 at ₹ 'Nil' income. The scrutiny assessment was completed determining ₹ 'Nil' income in December 2017. Audit noticed that the assessee expended ₹ 119.58 crore towards acquisition of fixed assets. Audit further noticed from the balance sheet that the assessee availed bank loans of ₹ 133.77 crore during the financial year for acquiring the building and equipment. As cost of fixed assets acquired through borrowed funds does not qualify for exemption under Section 11, the claim of the same was to be disallowed. The omission resulted in excess refund of tax and interest of ₹ 6.72 crore.

The Ministry has accepted (March 2022) the audit observation and remedial action has been initiated by issuing notice under Section 148 in June 2021.

(ii) In Himachal Pradesh, CIT(E) Chandigarh charge, a private trust engaged in educational activity, filed return of income for AYs 2014-15 and 2015-16 at ₹ 'Nil' income. The return of AY 2014-15 was rectified in March 2018 at ₹ 'Nil' income and the scrutiny assessment for AY 2015-16 was completed in November 2017 at ₹ 'Nil' income. Audit noticed that during AY 2014-15 and AY 2015-16, the assessee society had incurred expenditure of ₹ 5.99 crore against the income of ₹ 8.13 crore. However, as per audit report in Form 10BB, the assessee society had claimed expenditure of ₹ 8.13 crore, which was inclusive of repayment of secured loans. Amount utilised for repayment of secured loans was not to be allowed as application towards the aims and objects of the assessee society as the assessee had not treated the loan as income on its receipt. Thus, the society had not applied or accumulated its income to the extent of 85 *per cent* and there was a shortfall of ₹ 0.92 crore in application of income, which was required to be brought to tax. This resulted in under-assessment of income to the same extent involving tax effect of ₹ 0.37 crore.

[52] Himachal Pradesh -2, Maharashtra -1, Odisha -3, Tamil Nadu -1 and West Bengal -2

The Ministry has accepted (March 2022) the audit observation and initiated remedial action by issuing notice under Section 148 in March 2021.

(iii) In West Bengal, under CIT(E) Kolkata charge, a private trust engaged in educational activity, filed return of income for AY 2014-15 at ₹ 'Nil' income. The gross receipt of the trust during the year was ₹ 167.93 crore. The return was summarily processed and further rectified under Section 154 in September 2016 at ₹ 'Nil' income. Audit noticed that the assessee utilized borrowed funds of ₹ 80.50 crore for meeting capital expenditure and claimed it as application of income. Since repayment of loan is treated as application of income in view of the CBDT's circular dated 24.01.1973, utilisation of borrowed fund for meeting capital expenditure should not be treated as application of income, as this would result in double benefit to the assessee. This resulted in irregular allowance of Capital Expenditure of ₹ 80.50 crore as application of income, resulting in under-assessment of income of an identical amount, having tax effect of ₹ 27.34 crore.

The Ministry has accepted (March 2022) the audit observation and initiated remedial action by issuing notice under Section 148 of the IT Act in March 2021.

The issue of absence of clarity in provision regarding utilisation of borrowed fund had also been pointed out in the CAG's earlier Audit Report No. 20 of 2013, and the Ministry, in reply[53] had stated that loan originally taken has to be taken as income/ receipt before application is claimed against it. The Ministry further stated that the Board's instruction vide circular No. 100 of 24.01.1973 has clarified the allowability of repayment in respect of the loan taken and there was no doubt that the same had to be shown as receipt before claiming application.

Thus, due to absence of clarity in the Act regarding treatment of receipt and utilisation of borrowed fund, the assessees were allowed dual benefit by treating the capital expenditure met from the borrowed funds as application of income, and subsequently, by allowing repayment of loan against the same borrowed funds also as application.

5.1.2.6 Inconsistency in assessment while treating administrative and other expenses

Section 11(1)(a) provides that income derived from property held by the trust wholly for charitable or religious purposes will not be treated as income, to the extent to which such income is applied to such purposes in India.

[53] Para 33 of 104th Report (16th Lok Sabha) of July 2018

Hence, income which is not applied to charitable purposes is to be deducted for arriving at exempted income.

In West Bengal, CIT(E) Kolkata charge, a private trust engaged in the activity of 'Medical Relief' filed return of income for AY 2016-17 at ₹ 'Nil' income. The case was selected in the PA sample as 'Top 200' case, since gross receipt of the trust was ₹ 197.05 crore. The scrutiny assessment for AY 2016-17 was completed in December 2018 at ₹ 'Nil' income. Further, the returns of income for AYs 2014-15, 2015-16 and 2017-18 filed at ₹ 'Nil' income and the scrutiny assessment were completed in December 2016, December 2017 and December 2019 respectively at ₹ 'Nil' income. Audit made a comparative study of the assessment orders for the AY 2014-15 to AY 2017-18, and noticed that a particular expenditure, under the head of 'Administrative and establishment/other expenses', had been treated as 'application of income', whereas in another AY, the same expenditure, having the same character, had not been treated as 'application'. Audit noticed such inconsistencies in treating administrative and establishment expenses as application of income, in respect of 23 different kinds of expenditure, under the head 'Administrative and other expenses', during these four AYs. Audit examination of the assessment order for the AY 2015-16 revealed that the assessee did not contest such disallowance of 'Administrative and establishment expenses'. Audit further noticed that the percentages of disallowance of administrative expenditure, towards application of income, were found to vary widely, from 100 *per cent* to 4.18 *per cent*, for the AY 2014-15 to AY 2017-18. Audit noted that neither had any justification been offered nor had any instruction/circular of the CBDT been quoted in the assessment order for offering such differential treatment.

In reply, the DCIT (E), Circle - 1, Kolkata stated (September 2020) that it had also noted such inconsistency in treating 'Administrative and establishment/ other expenses' as pointed out by audit. Later, in October 2020, the DCIT (E), Circle – 1, Kolkata stated that while determining net income available for application, establishment and administrative expense had to be deducted from the total income to arrive at the net income. The reply of the Department is not tenable since administrative and establishment expenses could be of various categories and some part of which may be directly attributable for generation of income and some part may be towards charitable and religious purpose.

Thus, due to lack of clarity in provisions of the Act regarding allowance of various expenses under the head administrative and establishment expenses for the purpose of determining application of income, differential treatment of such expenses was noted. Thus, this issue needs to be clarified so as to bring consistency in the treatment of the administrative and establishment expenses as application of income at the time of the assessment.

The Ministry while accepting (March 2022) the audit observation stated that remedial action has been initiated by issuing notice under Section 148 in March 2021 for AY 2014-15, 2015-16 and 2017-18. For AY 2016-17, order under Section 263/143(3) has been passed in March 2021.

5.1.2.7 Absence of provision to restrict donations by a Trust to another Trust out of current years' income

The provisions of Section 11 of the Income-Tax Act provide for exemption to trusts or institutions in respect of income derived from property held under trust wholly for charitable or religious purposes. The primary condition for grant of exemption is that the income derived from property held under trust should be applied for charitable purposes, and where such income cannot be applied during the previous year, it has to be accumulated in the modes prescribed and applied for such purposes in accordance with various conditions provided in the Section. Such accumulation is treated as deemed application of income. Provisions of the Act[54] prohibit donations of accumulated amounts to another trust or institution. However, currently there is no restriction on transfer of payments to other trusts out of current years' income. Owing to this, there is likelihood of deemed application of 15 *per cent* being claimed by multiple trusts on the same fund. The Trust which received donation from assessee Trust could again pass the sum so received to other trusts and each Trust could claim 15 *per cent* as deemed application.

In Maharashtra, Audit noticed in four assessment cases that the Trusts/ Institutions received donations of ₹ 203.29 crore. Of this, an amount of ₹ 164.81 crore was transferred to another trust or institution by way of donations after claiming deduction of 15 *per cent* as deemed application. The recipient Trusts/ Institutions also transferred these amounts to another trust after claiming deemed application of 15 *per cent*. Two cases are illustrated below:

(i) In CIT(E) Mumbai charge, a private trust engaged in multiple charitable activities filed return of income for AY 2016-17 at ₹ 'Nil' income. The receipt of the trust was ₹ 74.55 crore during the year, and this selected in the PA sample as 'High Value' case. The scrutiny assessment was completed in December 2018, assessing income at ₹ 'Nil'. Audit noticed that the assessee had received donation of ₹ 74.55 crore and claimed ₹ 47.43 crore as application towards object of the trust during the year. Audit further observed that the application amount of ₹ 47.43 crore included donations of ₹ 46.28 crore to another trust. Thus, the assessee trust was virtually not doing any charitable work by itself and was donating

[54] Explanation 2 to the Section 11(1) and Explanation to sub Section (2) of Section 11

to other trusts. Apart from this, the other trusts to whom assessee had donated would also claim 15 *per cent* as deemed application. This fact was test checked on a sample basis. In respect of two trusts, 'G' Foundation and 'H' Foundation, Audit noticed that they had claimed 15 *per cent* of total receipts as deemed application of income for AY 2016-17. The trust, 'G' Foundation, again donated ₹ 10.72 crore to other trusts. As a result, each trust was claiming 15 *per cent* as deemed application by adopting this modus operandi and ultimately very little amount could be left at the end for actual application to charity work.

(ii) In Maharashtra, under CIT(E), Mumbai charge, a private trust engaged in multiple charitable activities filed returns of income for AYs 2015-16 and AY 2016-17 at ₹ 'Nil' income. The cases were selected in the audit sample as 'High Value' cases since the gross receipt of assessee were ₹ 66.08 crore and ₹ 55.89 crore for AY 2015-16 and AY 2016-17 respectively. The assessments were completed in December 2017 for AY 2015-16 and in December 2018 for AY 2016-17, assessing income at ₹ 'Nil'. Audit observed that the assessee had received donation of ₹ 69.18 crore in AY 2015-16 and ₹ 55.89 crore in AY 2016-17, from 'B' Ltd and group companies and claimed ₹ 68.86 crore and ₹ 55.00 crore, respectively, as application towards object of the trust. Audit further observed that of the above amounts, claimed to have been utilised towards object of the trust, the assessee had given donations/ grants of ₹ 65.75 crore and ₹ 51.02 crore, respectively, to 15 different trusts engaged in the activity of education and other charitable works such as relief of the poor, medical relief etc. Thus, it can be observed that the assessee trust was not doing any significant charitable work by itself and was donating to other trusts. Apart from the above, the other trusts to whom the assessee had donated could also have claimed 15 *per cent* as deemed application.

In reply, the DCIT (E), Circle – 1, Mumbai (March 21), while not accepting the observation, stated that there is no ban on transfer of payments to other trusts out of current year income. There is no provision in the Act which prohibits a trust from such transfer. The reply of the Department is not acceptable, as the exemption is allowed for application of income of the trust towards charity. Mere transfer of amount from one trust to another trust without actual application defeats the very purpose of allowing exemption to trust.

Thus, due to absence of specific provision, Trusts/Institutions were taking undue benefits through availing of the permissible accumulation of 15 *per cent* out of current year's income by making a chain of multiple donations routed through a string of Charitable/Religious Institutions. This resulted in denial of charity to the

beneficiaries and helps only in accumulation in the hands of Trusts/Institutions, which was not consistent with the intent of the Legislature.

Reply of the Ministry was awaited (February 2022).

5.1.2.8 Absence of provisions to consider long pending liability as income of the trust

Section 12(1) provides that any voluntary contributions received by a charitable trust (except corpus donation) shall for the purposes of Section 11 be deemed to be income derived from the property held under trust. The Act does not provide inclusion of any income which was received by charitable trust in the guise of loan and subsequently the lenders have never demanded repayment of the loan from the trust. In such a case, even though the trust is an ultimate beneficiary from such loan but due to absence of enabling provisions to include such loan as voluntary contribution in the income of assessee, the income remained out of the ambit of total income of the trust. Such income would also be susceptible to misuse at the time of dissolution in determining the value of net assets.

Audit noted that in Maharashtra, CIT(E) Mumbai charge, a private trust engaged in the activity of 'Relief of the Poor' filed return of income for AY 2016-17 at ₹ 'Nil' income. The assessee was selected as 'High value' case in the audit sample since the gross receipt of the trust was ₹ 101.21 crore. The scrutiny assessment was completed in December 2018, assessing income at ₹ 'Nil'. Audit noticed that the assessee had been consistently receiving unsecured interest free loans aggregating ₹ 417.00 crore since FY 2010-11 from a Mumbai based trust 'I'. In the notes to accounts, the Tax auditor had made a remark that the trust had not paid the amounts on the due date and the lender had not demanded the amounts due. This indicated that the entire loan received as on 31 March 2016 was evidently not a liability of the assessee, as it was never repaid by the assessee nor demanded by the lender. Hence, the entire outstanding loan was required to be treated as voluntary contribution under Section 12(1) and should have been included in the total income of the assessee. However, absence of a specific enabling provision under the Act, such as Section 41(1)[55] for normal assessee, to include such income in the total income of the trust resulted in under-assessment of income of ₹ 327.00 crore (excluding loan of ₹ 90.00 crore received in the current year) involving revenue impact of ₹ 113.17 crore.

Reply of the Ministry was awaited (February 2022).

[55] Section 41(1) provides for taxing any amount benefit which was obtained by a person with respect to any loss, expenditure or trading liability incurred in any earlier Assessment Years

5.1.2.9 Absence of provisions in the Act regarding accumulation of fund

As per Section 11 of the Act, if the application of funds is less than 85 *per cent* of the total income, the Trusts/Institutions, in order to get exemption can accumulate funds for five years after filing Form 10 stating the purpose for which the income is being accumulated or set apart, and the period for such accumulation. However, the Act does not prescribe the limits of accumulation of funds. It was judicially held that[56] carry forward of income up to 85 *per cent* under Section 11(2) should not be adopted on a routine basis, and if done, then the very purpose of Trust will be defeated. In fact, Section 11(2) providing for carry over up to 85 *per cent* is an exception and if it is done from year to year, the genuineness of the activities of the trust itself needs examination.

The issue that the Act does not prescribe the limit of accumulation of funds and the trusts, without doing any charitable activity, are availing exemption by accumulating the maximum funds consistently year by year was also pointed out in the CAG's earlier Audit Report No. 20 of 2013, and the Public Accounts Committee, recommended[57] that the Assessing Officer may carry out physical inspection of the activities of the Trust in cases where there was consistent and increased accumulation of income and the Ministry may bring a suitable amendment to the Act or evolve a suitable mechanism to ensure that first trusts are allowed accumulations consistently only as exceptions and secondly, the accumulated income is applied for the objectives of the Trusts/Institutions within a specified time frame.

Audit noticed in six assessment cases[58] involving exemption of ₹23.74 crore that the trusts were availing exemption by accumulating the maximum funds persistently. Three cases are illustrated below:

(i) In Maharashtra, CIT(E) Pune charge, a private trust engaged in the activity of 'General Public Utility', filed return of income for AYs 2014-15 and AY 2015-16 at ₹ 'Nil' income which were processed under summary manner at ₹ 'Nil' income and further rectified in March 2019 determining income ₹ 'Nil' for both the AYs. Audit noticed that the gross income of the assessee were ₹ 1.02 crore and ₹ 1.16 crore for AY 2014-15 and AY 2015-16 respectively against which the assessee did not apply any amount for its objects. The assessee, after setting apart 15 *per cent*, had accumulated almost 85 *per cent* of the gross receipt under Section 11(2) in both the AYs.

ITO (E) Ward-1, Pune replied (February 2021) that the audit objection was not acceptable as the assessee had utilised the accumulated amount of AY 2014-15 and 2015-16 during AY 2019-20 and 2020-21 i.e. within five

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[56] CIT vs Sree Seetharama Anjaneya Veda Kendra [2008] 174 Taxman 523 (Ker.)
[57] Para 23 of 104th Report (Sixteenth Lok Sabha)
[58] Delhi -2, Maharashtra -2 and Odisha -2

succeeding years as per the provision of the Act. Further, remedial action regarding taxation of unutilized accumulated amount of ₹ 58.10 lakh pertaining to AY 2013-14 which was required to be taxed in AY 2019-20 was proposed under Section 148.

The reply of the Department is not tenable as it is not specific to the Audit observation. AO in its reply merely provided the details of utilisation of accumulated amount within the stipulated five years, though the Audit observation was regarding non-utilisation of any amount out of the gross income of the assessee for AY 2014-15 and AY 2015-16 during the relevant previous years. The assessee, after setting apart 15 *per cent*, had accumulated the remaining 85 *per cent* of the gross receipt without any utilisation towards its objects. Further, only after pointing out by Audit, AO had proposed remedial action regarding taxation of unutilized accumulated amount of ₹ 58.10 lakh pertaining to AY 2013-14 under Section 148 for taxation in AY 2019-20. Thus, allowance of accumulation upto maximum permissible limit of 85 *per cent* without any utilisation towards objects of the trusts and non-monitoring of its utilisation within stipulated period defeats the very purpose of charitable activities to beneficiaries.

(ii) In Delhi, CIT(E) Delhi charge, a private trust engaged in the activity of 'General Public Utility', filed return of income for AY 2016-17 at ₹ 'Nil' income. The scrutiny assessment was completed in December 2018 by accepting the returned income at ₹ 'Nil'. Audit noticed that the gross income of the assessee was ₹ 0.82 crore against which the assessee did not apply any amount for its objects. The assessee, after setting apart 15 *per cent*, had accumulated the remaining 85 *per cent* of the gross receipt under Section 11(2).

(iii) In Delhi, CIT(E) Delhi charge, a private trust engaged in educational activity, filed return of income for AY 2016-17 at ₹ 'Nil' income. The scrutiny assessment was completed in December 2018 by accepting the returned income at ₹ 'Nil'. Audit noticed that the gross income of the assessee was at ₹ 3.27 crore (excluding an amount of ₹ 5,212 which was not received during the year) against which the assessee did not apply any amount for its objects. The assessee, after setting apart 15 *per cent*, had accumulated the remaining 85 *per cent* of the gross receipt under Section 11(2).

Thus, Audit observed that certain assessees did not carry out any charitable activity during the year and were taking undue benefit by accumulating persistently the maximum permissible amount under the Act. This resulted in

denial of charity to the beneficiary which is contrary to the intention of the Legislature.

Reply of the Ministry was awaited (February 2022).

5.1.2.10 Absence of requirement to verify identity of the donors for detection of anonymous donation

Section 115BBC(1) provides for taxation of anonymous donations in certain cases. Further, Section 115BBC(3) defines 'Anonymous donation' as a 'Voluntary contribution' referred to in Section 2(24)(iia), where a person receiving such contribution, does not maintain a record of the identity of the donors indicating their name, address and 'other records as prescribed'.

Audit noticed six assessment cases[59] involving tax effect of ₹ 2.26 crore where the Department did not verify genuineness of the donors and tax the anonymous donation(s) as per provisions of the Act. One case is illustrated below:

(i) In West Bengal, CIT(E) Kolkata charge, a private trust engaged in the educational activity, filed return of income for AY 2016-17 at ₹ 'Nil' income. The scrutiny assessment was completed in December 2018 at an income of ₹ 0.02 crore. Audit noticed that the trust had received donations amounting to ₹ 1.38 crore, for which it had not mentioned the names and addresses of the donors. Omission to bring this anonymous donation under the tax net resulted in non-levy of tax, amounting to ₹ 0.63 crore under Section 115BBC(3).

The Ministry has accepted (March 2022) the audit observation and remedial action has been initiated by issuing notice under Section 148 in March 2021.

Thus, Audit noticed that barring name and address, the Act does not specify any other information *viz.* PAN, other documents etc., to verify identity of the donors, which could be checked by the Assessing Officers, for establishing the donor's identity during assessment.

5.2 Procedural issues relating to grant of Registration/Approval

5.2.1 Prior to creation of designated CIT (Exemption) charges in November 2014, registration/approval was accorded by the jurisdictional CITs and records were maintained in the respective jurisdictional charges. Audit sought the data/records related to registration/approval of sample cases for the period of FY 2014-15 to 2018-19 from the Department to verify whether the prescribed procedures were being followed before according registration/approval.

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[59] Maharashtra -2, Punjab -1 and West Bengal -3

Details of cases furnished by the Department to the Audit are summarised in Table 5.5 below:

Table 5.5: State-wise details of Registration/Approval granted for the period of FY 2014-15 to 2018-19				
Sl. No.	**Name of the State**	**Cases Registered**	**Cases Produced**	**Cases not Produced**
1	Andhra Pradesh & Telangana	33	19	14
2	Odisha	12	0	12
3	Maharashtra	104	71	33
4	Karnataka & Goa	15	8	7
5	West Bengal and NER	34	4	30
6	Uttar Pradesh & Uttarakhand	28[60]	0	28
7	Bihar	4[61]	0	4
8	Jharkhand	0	0	0
9	Gujarat	12	1	11
10	Rajasthan	33	25	8
11	Tamil Nadu	40	40	0
12	Kerala	20	20	0
13	Punjab, Himachal Pradesh, Haryana, Jammu	36	27	9
14	Delhi	28	0	28
15	Madhya Pradesh & Chhattisgarh	26	15	11
Total		**425**	**230**	**195**

Out of the 425 cases, the ITD did not produce records relating to 194 cases (45.6 *per cent*) which included eight cases pertaining to the audit sample of 'top 200 assessees'. Data/records were not furnished in five States[62] by the Department. In respect of Odisha State, though the data relating to registration/approval of cases was provided but the relevant records were not produced to Audit.

In Delhi, CIT (Exemption), Delhi charge replied that no such list was maintained. In Uttar Pradesh, the CIT (E), Lucknow charge replied that no manual records were being maintained. In Karnataka, CIT (E), Bengaluru charge replied that the registration records prior to FY 2015-16 had been weeded out. In West Bengal, CIT (E), Kolkata charge stated that grant of approval of registrations was outside the purview of Audit. In Gujarat, CIT (E), Ahmedabad charge stated that due to shifting to the new premises and paucity of space therein, requisitioned folders pertaining to FY 2016-17 could not be traced out since they were very old.

Thus, where no records or very few records were produced, Audit could not verify whether all conditions *viz.* the procedure followed for filing the applications; the time taken in disposal of applications; whether proper enquiry

[60] As per Pr. DGIT (Systems) data
[61] As per Pr. DGIT (Systems) data
[62] Delhi, Uttar Pradesh, Uttarakhand, Bihar and Jharkhand

had been made regarding existence of the Trusts/Institutions and genuineness of their activities or whether the assessees were given opportunity in cases where registrations/approvals were refused; were complied with regard to registration/approval of the Trusts/Institutions.

In a test check of registration/approval records of 230 cases where records were produced, Audit noticed deficiencies in 120 cases such as delay in grant of registration/ approval, irregular grant of registration, grant of registration/approval without submission of prescribed documents, grant of registration without verification, non-inclusion of dissolution clause in trust deed and procedural lapses in approval under Section 80G, etc. Table 5.6 gives an overview of the audit findings on issues related to grant of registration/approval:

Table 5.6: Observations on Procedural issues relating to grant of registration/Approval

Sl. No.	Nature of observation	No. of cases
1	Delay in grant of Registration/Approval	4
2	Irregular grant of Registration	1
3	Grant of Registration/Approval without submission of prescribed documents	48
4	Grant of Registration without verification	15
5	Grant of Approval to Trusts/Institutions whose instruments have no dissolution clause or inadequate dissolution clause	42
6	Procedural lapses in approval under Section 80G	10
Total		**120**

Detailed audit findings in this regard are discussed in the succeeding paragraphs.

5.2.2 Delay in grant of Registration/Approval

Section 12AA of the Act and Rule 11AA(6) of the Income Tax Rules provides that the competent authority shall, on receipt of application for registration/ approval under Section 12AA and Section 80G(5)(vi), pass an order, granting or refusing registration before the expiry of six months from the end of the month in which the application was made. CBDT vide their instruction No. 16 of 2015 had directed all the CsIT(E) to adhere to the time limit for registration process and the CCIT(E) to monitor adherence to the prescribed time limit and initiate suitable administrative action in case of laxity.

In Maharashtra, CIT(E) Pune charge, Audit noticed in the four registration cases that the Department had not granted approval within prescribed period of six months and there was delay ranging from one day to 75 days in granting approval under Section 80G(5)(vi). This issue also featured in the earlier Performance Audit Report No. 20 of 2013. In response, the Ministry had stated[63] that registration/approval would be granted using online system through the launch of 'Exemption Module' of the new Income Tax Business Application

[63] Para 10 of 104th Report (Sixteenth Lok Sabha)

(ITBA). However, Audit noted the delay in granting approval has continued to occur.

Reply of the Ministry was awaited (February 2022).

5.2.3 Irregular grant of Registration

Section 12AA provides for the procedure to be followed for grant of registration to a trust or institution. Under Section 12AA, the Commissioner is required to call for documents and information and hold enquiries regarding the genuineness of the trust or institution. After his satisfaction about the charitable or religious nature of the objects and genuineness of the activities of the trusts or institution, he shall pass an order in writing either granting or refusing registration. Further, the Commissioner may accord approval[64] to any gratuity fund which, in his opinion, complies with the requirement of the condition provided[65] and may at any time withdraw such approval if, in his opinion the circumstances of the fund ceased to warrant the continuance of the approval.

In Andhra Pradesh, CIT(E) Tirupati charge, during verification of registration records of an assessee, dealing in pension and gratuity fund, a private trust selected as 'Top 200' case in the PA sample having gross receipt of ₹ 610.91 crore for AY 2016-17, Audit noticed that registration was granted under Section 12AA instead of approval of pension and gratuity trust under the Fourth Schedule of the Act

The DCIT(E), Vijayawada, replied (June 2020) that the assessee was granted a valid registration under Section 12A by the CIT(E), therefore, the exemption cannot be denied.

The reply is not tenable as the conditions/objectives stipulated for registration under 12A are not relevant to the gratuity trust as the approval for pension and gratuity fund should be accorded according to the Fourth Schedule of the Act.

Reply of the Ministry was awaited (February 2022)

5.2.4 Grant of Registration/Approval without submission of prescribed documents

The Trusts/Institutions seeking registration/approval under Section 12AA/ 80G(5)(vi)/10(23C) shall submit application in the prescribed form[66] along with documents to the approving authority. The concerned authority shall after making proper enquiry and satisfying himself about the objects and genuineness of the activities of the Trusts/Institutions, grant registration/ approval.

[64] under Rule 2 of Part 'C' of the fourth schedule of the Income Tax Act
[65] under Rule 3 of Part 'C' of the fourth schedule of the Income Tax Act
[66] Form 10A under Rule 17A and Form 56 & Form 56D under Rule 2C and rule 2CA

In Maharashtra, CIT(E) Pune Charge, Audit noticed in 48 cases that the prescribed documents such as Form 10A, Form 10G, copies of annual accounts, Trust Deed, etc. were not available on record in the relevant files produced to Audit. Six such cases are given in Table 5.7 below:

Table 5.7: Details of cases where documents were not available

Sl. No.	Assessee	Activity	Registration/ approval under Section	Date of registration / approval	Documents not available	AY	Gross income (₹ in crore)
1	A_3 Sangh	Others	12AA	17.08.2016	Form 10A, copies of Accounts, Trust deed	2014-15	0.34
2	S_{11} Institute	*	12AA	19.06.2017	Form 10A, copies of Accounts, Trust deed	2016-17	3.17
3	S_3 Mandal	*	12AA	05.01.2017	Form 10A, Audited Accounts, Trust deed	2015-16	0.39
4	U_1 Sanstha	Education	80G(5)(vi)	29.09.2015	Form 10G, copies of Accounts, Copy of registration under Section 12AA/ 10(23C)	2014-15	1.82
5	K2 Institute	Education	80G(5)(vi)	08.05.2017	Form 10G, copies of Accounts, Copy of registration under Section 12AA/ 10(23C)	2016-17	83.69
6	N_3 Institute	Others	80G(5)(vi)	07.09.2016	Form 10G, copies of Accounts, Copy of registration under Section 12AA/ 10(23C)	2016-17	8.40

* Details could not be verified by Audit

Three cases are illustrated below:

(i) In Maharashtra, CIT (E) Pune charge, in the case of a trust, engaged in educational activity having gross income of ₹ 83.69 crore in AY 2016-17, the approval was granted in May 2017 under Section 80G(5)(vi). Audit observed that the requisite documents *viz.* Form 10G, copies of accounts and copy of registration under Section 12AA/10(23C) were not placed on record.

(ii) In Maharashtra, CIT (E) Pune charge, in the case of a trust, engaged in educational activity having gross income of ₹ 3.17 crore in AY 2016-17, the registration was granted in June 2017 under Section 12AA(1)(b)(i). Audit observed that the requisite documents *viz.* Form 10A, Trust deed and copies of accounts were not placed on record.

(iii) In Maharashtra, CIT (E) Pune charge, Audit noticed in the case of a trust, engaged in educational activity having gross income of ₹ 1.82 crore in AY 2014-15 that approval was granted in September 2015 under Section

80G(5)(vi) read with Rule 11AA. The requisite documents *viz.* Form 10G, copies of accounts, copy of registration under Section 12AA/ 10(23C) for the said approval were not available on record.

Thus, registration/ approval under Section 12AA/80G(5)(vi) in certain cases seem to have been granted by the Department without following its own prescribed set of documents, as relevant documents were not found available on records produced to Audit.

Reply of the Ministry was awaited (February 2022).

5.2.5 Grant of Registration without verification

A trust has to register itself with the concerned authority for claiming exemptions under Section 11 of the Act. As per Section 12AA, the approving authority is required to call for documents and information from the assessee and hold enquiries regarding the genuineness of the trust. Para 2.8 (Point no. iii) of Chapter 5 of the Manual of Office Procedure (MOP), Volume II (Technical) of the ITD also prescribes verification of actual existence of the entity before grant of registration. Such verification should be made either by sending a letter seeking its compliance or by local enquiry. After the approving authority is satisfied about the charitable or religious nature of the objects and genuineness of the activities of the trust, he/she shall pass an order in writing either granting or refusing registration.

Audit noticed that in 15 cases[67] registrations were granted either without field enquiry/verification report or field enquiry was stated to be carried out but no such reports were available on records. One case is illustrated below:

In Maharashtra, CIT (E) Pune charge, a private trust was granted registration under Section 12AA(1)(b)(i) of the Act in July 2015. Audit noticed that though the enquiry for verification of existence and genuineness of activities was carried out by the ITO (E), Aurangabad and stated to be submitted his report to the JCIT (E), Aurangabad, the said report was not placed on record.

Thus, in the absence of the relevant documents, Audit could not ascertain as to how the Approving Authority, before granting the registration under Section 12AA, satisfied itself about the existence and genuineness of the activities of the Trust.

Reply of the Ministry was awaited (February 2022).

[67] Andhra Pradesh and Telangana – 6; Maharashtra – 9

5.2.6 Grant of Approval to Trusts/Institutions whose instruments have no dissolution clause or inadequate dissolution clause

A charitable trust may voluntarily wind up its activities and dissolve or may also merge with any other non-charitable institution, or may convert into a non-charitable organisation. In such cases, there was no clarity in the law as to how the assets of such charitable institution shall be charged to tax.

The issue of non-inclusion of dissolution clause in the Trust Deed had also featured in the earlier Performance Audit Report No. 20 of 2013. The Ministry, in its submission to the PAC[68], had stated that the audit observation was circulated amongst concerned officers, for compliance.

The PAC (2015-16) viewed that in order to ensure that in case of dissolution of a trust, its net assets are utilized for the purpose for which the trust was originally founded and not benefit the founders of the trust or his/her family Member relatives etc. the Ministry should henceforth insist on inclusion of 'Dissolution Clause' in the Trust Deed compulsorily while registering trusts under Section 12 AA uniformly. The Ministry may also consider incorporating suitable provisions in the Income Tax Act, 1961 so as to ensure the same.

In pursuance to this, Section 115TD[69] was inserted in the Act, which provides for levy of additional income tax in case of conversion into, or merger with, any form which is not eligible for grant of registration under Section 12AA or on transfer of assets of a charitable Trust/Institution on its dissolution to a non-charitable Trust/Institution. Further, Para 2.7(viii) of Chapter 5 of the MOP (Volume-II) of the ITD, *inter alia*, provides that in case of dissolution of a trust, its net assets, after meeting all its liabilities, should not revert to its founder members, directors, donors etc., but shall be used for its objects. Para 2.8(ii) provides that the instrument of creation should be perused, to find out any violations of the conditions mentioned in para 2.7 (supra).

It is, thus, imperative on the part of the ITD to ensure the presence of the prescribed dissolution clause in the deed/memorandum of association/other instruments of creation, before grant of approval/registration.

Audit noticed that in 42 cases[70] there was no dissolution clause in the instrument of creation of the trust, or the dissolution clause was not framed in terms of the instructions contained in the MOP. The deficiencies noticed in respect of three cases are illustrated below:

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[68] Para 4 of Part II of 27th Report (Sixteenth Lok Sabha)

[69] inserted by the Finance Act, 2016 with effect from 1st June 2016

[70] Kerala - 2, Maharashtra - 9, Odisha - 1, Punjab - 2, Tamil Nadu - 3 and West Bengal – 25.

(i) In Maharashtra, CIT(E) Pune charge, Audit observed in respect of a trust engaged in educational activities the registration was granted in August 2017 under Section 12AA(1)(b)(i). Audit examination revealed that there was no dissolution clause in the trust deeds. Also, the trust deed did not contain a clause regarding merger or conversion of trust and its application/use of net assets after meeting all its liabilities. Further, no resolution and affidavit regarding dissolution were found to be obtained from the trustees. This showed that the registration was granted to the trust without proper verification of the trust deed.

(ii) In Tamilnadu, CIT(E) Chennai charge, the assessee, a private trust engaged in educational activity, and selected in the PA sample as 'High Value' case having gross receipt of ₹ 85.37 crore for AY 2016-17, was registered under Section 12AA. In the trust deed, regarding the procedure of dissolution, it was stated that 'if for any reason, this trust fails, the trust properties and funds shall revert to the founders and be dealt with as this estate in accordance with intestate or testamentary, successions as the case may be, to their estate'. The total corpus including the accumulated surplus of the trust as on 31.03.2016 was ₹ 11.92 crore. Thus, the dissolution clause in trust deed was not in conformity with para 2.7(viii) of Chapter 5 of the MOP and the trust was granted registration without proper verification of trust deed by the Department.

(iii) In Kerala, Pr. CIT(E) Kochi charge, a private trust engaged in educational activity, was selected in the PA sample as 'High Value' case since the gross receipt of ₹ 53.82 crore for AY 2016-17. Audit noted from the trust deed that a clause had been included to the effect that 'the dissolution shall be dealt with by the approval of the Settlers, with the consent of the Patron. Thus, the dissolution clause in the trust deed was not in conformity with para 2.7(viii) of Chapter 5 of the MOP and the trust was granted registration without proper verification of trust deed. Audit further noted that the total corpus fund as on 31.03.2016 was ₹ 93.39 crore.

The DCIT (E), Trivandrum replied (March 2020) that the registration was granted by the CIT (Exemption) after verification of the objective of the trust and the AO could not deny the exemption under Section 11 on the basis of a clause upon which the registration was granted by a superior authority.

The reply of the Department is not acceptable since inclusion of the prescribed dissolution clause in the deed/memorandum of association/ other instruments of creation, before grant of approval/registration was not ensured by the CIT (Exemption). Further, the AO should have brought

to the notice of CIT(E) the shortcomings noticed in the requisite dissolution clause.

Audit noted that instances of the irregularity regarding non-inclusion of dissolution clause in the trust deed or dissolution clause not in conformity with the manual of office procedure of the Department have continued to occur and the concerned Trust/Institution continued to receive the benefit of exemptions every year.

Reply of the Ministry was awaited (February 2022).

5.2.7 Procedural lapse in approval under Section 80G

As per Rule 11AA of the Income Tax Rules, 1962 (the Rules), application for approval of any institutions or funds under Section 80G(5)(vi) shall be submitted in Form No. 10G and accompanied by the following documents, namely

(i) Copy of registration granted under Section 12AA or copy of notification issued under Section 10(23) or 10(23C);
(ii) Notes on activities of institution or fund since its inception or during the last three years, whichever is less; and
(iii) Copies of accounts of the institution or fund since its inception or during the last three years, whichever is less.

In Rajasthan, CIT(E) Jaipur charge, in 10 cases the application for registration under Section 12A and for approval under Section 80(G)(5)(vi) were filed on same date. Audit observed that the Department granted registration and approval on the same date. Thus, the procedure laid down in Rule 11AA for approval under Section 80(G) was not adhered to.

The ITO (HQr), O/o the CIT (E), Jaipur stated that although Rule 11AA requires the above-mentioned documents yet in the interest of expeditious disposal of applications, the sanctioning authority may condone the deficiency in case of simultaneous applications because the approval under Section 80G(5)(vi) would in any case be conditional upon the grant of registration under Section 12A. Further, it was also mentioned that the simultaneous processing of Form 10A and 10G ensure a closer examination of the applicant and also save time both of the Department and the applicant.

The reply is not tenable as AO did not strictly follow the prescribed procedure under Rule 11AA for the granting the approval under Section 80G. Further, there is no provision in the Act to condone the deficiency in case of documents needed to be provided as per Rule 11AA.

Reply of the Ministry was awaited (February 2022).

5.3 Issues relating to ITD systems

Audit noted certain deficiencies relating to ITD systems such as lack of adequate validation and checks to match the data/information relating to registrations/approvals of the Trusts/Institutions while returns were processed in summary manner and absence of necessary information in the Auditor's Report in 91 cases as summarised in Table 5.8 below:

Table No. 5.8: Observations relating to ITD systems

Sl. No.	Nature of observation	No of cases	Tax effect
1	Issues relating to selection criteria under Computer Aided Scrutiny Selection (CASS)	17	-
2	Non verification of the registration details during processing of Return of Income	52	-
3	Issues relating to processing of ITRs in the IT system	12	-
4	Exemptions claimed but registration status under Section 12AA not available	-	-
5	Foreign contribution received but registration status not available	-	-
6	Invalid date of registration/approval	-	-
7	Important information not currently captured in Return of income (ITR-7)	-	-
8	Information on Income of the Trusts/Institutions in Audit Report	-	-
9	Corpus donations with specific purpose	7	-
10	Allowance of deemed application in the subsequent assessment year	3	2.53
Total		**91**	**2.53**

5.3.1 Issues relating to selection criteria under Computer Aided Scrutiny Selection (CASS)

Every year, cases are being selected for scrutiny under Computer Aided Scrutiny Selection (CASS) on the basis of certain selection criteria. A list of such cases is intimated by the Principal Director General of Income Tax (Systems) to the jurisdictional authorities concerned for further scrutiny assessment process.

In Karnataka, Audit noticed from the selection criteria under CASS for the AY 2015-16 and AY 2016-17 that out of the 571 sample cases selected, 37 cases were selected applying the criteria Form 10/10B 'not filed' or 'filed after due date'. Audit further observed that the due date of filing of Form 10/10B was extended. Audit examination revealed that out of these 37 cases, the assessees had filed the said Forms within the due date of filing of return in 17 cases[71] (45.94 *per cent*). Further, out of the 17 cases, no addition to income returned

[71] three cases in AY 2015-16 and 14 in AY 2016-17

was made in respect of 16 cases (94 *per cent*). The error was occurred due to not capturing the revised due date of filing of return by the IT system which adversely affected the efficacy of the selection criteria.

Audit noted that due to incorrect capture of data required for selection criteria in CASS, several of cases were incorrectly selected for scrutiny by ITD system. Thus, to that extent, there is a risk of corresponding potential cases escaping selection of scrutiny assessment, due to the constraint of human resources available for scrutiny assessment.

Reply of the Ministry was awaited (February 2022).

5.3.2 Non verification of the registration details during processing of Return of Income

Section 12A of the Act makes it mandatory for charitable trusts to get themselves registered for claiming exemptions under Section 11. The exemptions shall apply in relation to the income of a trust or institution from the assessment year (AY) immediately following the financial year in which the application is made by the trust or to any AY for which the proceedings are pending before the Assessing Officer (AO) as on the date of such registration. Further, the second proviso to Section 12A(2) applicable from 01.10.2014 provides that no action under Section 147 shall be taken by the AO for any preceding AY, only for non-registration of such trusts or institutions for the said AY.

Similarly, the first proviso of Section 10(23C) makes it mandatory for the fund or trust or institution or university or other educational institution or hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), under the respective sub-clauses, to get themselves registered for claiming exemptions under Section 10(23C).

Audit noticed in 42 assessment cases[72] that although the assessees did not mention their registration details under Section 12A/10(23C) of the Act in return of income, exemption of ₹ 44.82 crore was allowed during returns processed summarily, in contravention of the aforesaid provisions of the Act. Since the Registration particulars were not available in the ITRs filed, Audit could not verify the applicability of exemptions in these cases.

Audit further noticed in 10 assessment cases[73] involving tax effect of ₹ 2.94 crore where the assessees claimed exemptions for the years together prior to its registration or having no registration under the Act and the same was allowed by the Department.

[72] Gujarat – 2, Maharashtra - 25, Punjab – 3, Karnataka-11 and Tamil Nadu - 1

[73] Andhra Pradesh - 2, Bihar - 1, Jharkhand - 1, Maharashtra -3 and Tamil Nadu - 3

Three cases are illustrated below:

(i) In CIT(E), Chandigarh charge, a private trust engaged in the activity of 'relief of the poor' (as per return of income), filed return of income for AYs 2014-15 and 2015-16 at ₹ 'Nil' income. The returns were processed summarily after allowing exemption for ₹ 14.29 crore (₹ 6.97 crore for A.Y 2014-15 and ₹ 7.32 crore for AY 2015-16). Audit noticed that although the activity of the trust is 'Relief of the poor' as per return of income, it claimed exemption under Section 10(23C)(vi)[74]. Audit further noticed that the assessee had not obtained approval under Section 10(23C)(vi) as per the return of income and hence not eligible for exemption; however, the ITD system irregularly allowed exemption to the extent of ₹14.29 crore. This had a tax effect of ₹ 5.80 crore for both the AYs.

The Ministry has accepted (March 2022) the audit observation and initiated remedial action by issuing notice under Section 148 in March 2021.

(ii) In Maharashtra, CIT(E) Pune charge, a private trust engaged in the activity of 'Relief of the poor' applied for registration under Section 12A in November 2015 and the same was granted in March 2016. It was seen from assessment records of AY 2015-16 that the assessee claimed exemption for AY 2009-10 to 2014-15 without having valid registration under Section 12AA. In all these years, the returns of income were processed summarily and the exemption was allowed. The aggregate exemption allowed during the AY 2009-10 to AY 2014-15 worked out to ₹ 5.83 crore involving revenue loss of ₹ 1.48 crore.

Reply of the Ministry was awaited (February 2022).

(iii) In Andhra Pradesh, CIT(E) Hyderabad charge, a private trust engaged in educational activity, applied for registration under Section 12AA of the Act in December 2014. The CIT(E), Hyderabad rejected the application for registration in September 2015. On appeal by the assessee, CIT(E) granted registration in July 2017 with retrospective effect. Audit observed that the assessee meanwhile claimed ₹ 1.98 crore and ₹ 9.64 crore as exemption for AY 2015-16 and AY 2016-17 respectively and the same were allowed under summary process without duly verifying the entitlement in respect of claim of exemption during the processing of returns.

Reply of the Ministry was awaited (February 2022)

[74] Only university or educational institution existing solely for educational purpose and not for the purposes of profit can claim exemption 10(23C)(vi) for which approval of CIT is necessary.

It is evident from the above that though the Act makes it mandatory for Trusts/Institutions to get themselves registered under Section 12AA/ sub-clause (iv) to (via) of Section 10(23C) for claiming exemptions, the ITD system allowed exemptions without having the necessary details. Thus, it appears that the ITD system did not have checks and validations to match the data/information relating to registrations/approvals of the Trusts/Institutions provided in the return of income with ITD-ITR systems database before allowing exemptions where the returns were processed in summary manner. Since out of 6,89,011 cases pertaining to ITRs for AY 2014-15 to AY 2017-18 relating to Trusts/Institutions, 6,29,905 cases (91.0 *per cent*) were processed under summary manner, and the Act prohibits reopening of the cases of earlier assessment years' only for the reasons of non-registration of Trusts/ Institutions, the possibility of revenue leakage in these summarily processed cases could not be ruled out.

Reply of the Ministry was awaited (February 2022)

5.3.3 Issues relating to processing of ITRs in the ITD System

Section 143(1) relating to processing of ITRs made under Section 139 provides that no intimation under Section 143(1) shall be sent after the expiry of one year from the end of the FY in which the return is made.

In Delhi charge, Audit noticed that in 12 cases out of 47 cases, processing of ITRs under Section 143(1) were still in progress (December 2021), as per the ITD system. Details of cases are given below in Table 5.9:

Table 5.9: Summary cases under process

Sl. No.	Name of the Assessee	AY	Gross Income (₹ in crore)	Date of filing of ITR	Current Processing Status of ITR
1.	B_3 Party	2015-16	970.3	31.10.2015	In progress
2.	J_2 University	2016-17	525.0	17.10.2016	In progress
3.	I_1 Institution	2014-15	136.5	26.09.2014	In progress
4.		2016-17	276.5	17.10.2016	In progress
5.	A_2 Institute	2014-15	135.7	29.09.2014	In progress
6.	C_1 Society	2014-15	147.6	30.09.2014	In progress
7.	L_1 Trust	2014-15	150.6	20.11.2014	In progress
8.	D_1 Society	2014-15	128.5	18.09.2014	In progress
9.		2015-16	151.8	31.03.2017	In progress

Table 5.9: Summary cases under process					
Sl. No.	**Name of the Assessee**	**AY**	**Gross Income (₹ in crore)**	**Date of filing of ITR**	**Current Processing Status of ITR**
10.	B_2 Foundation	2016-17	153.4	28.09.2016	In progress
11.	M_2 Sansthan	2014-15	182.5	25.09.2014	In progress
12.	F_1 Trust	2016-17	183.2	08.10.2016	In progress

The Department stated in the case of 'A_2' Institute for the AY 2014-15, that the return of the assessee filed in September 2014 was treated as defective by the CPC and a "defective" communication was sent to the assessee in November 2015. Further, a reminder was again sent to the assessee in February 2016. Return filed by the assessee in March 2016 was taken up for processing by the CPC and the ITR was processed in March 2016 determining a refund of ₹ 35.56 lakh.

It is evident that the return in respect of 'A_2' Institute for the AY 2014-15 was already processed through the ITD systems. However, it was still showing 'In progress' in the ITD system. Thus, the system was evidently not updating the current status of the ITR.

In the remaining cases, Audit could not ascertain whether these cases had been processed, as status of ITRs in the ITD systems were still showing 'In progress'. The reasons for showing status of ITR 'In progress' in the ITD systems were not known to Audit. Details of further action taken by the ITD on these ITRs were also not reflected in the systems, for which corrective measures were required to be taken. Also, the possibility of revenue loss to the exchequer could not be ruled out if appropriate action in the remaining cases has not been taken

Reply of the Ministry was awaited (February 2022).

5.3.4 Issues relating to absence of data validation in the data furnished by the Pr. DGIT (Systems)

The Pr. DGIT(Systems) provided assessee-wise data in respect of the Charitable trusts and institutions, containing 6,89,011 cases pertaining to Income Tax Returns (ITRs) processed/assessed/rectified for AY 2014-15 to AY 2017-18 during the FY 2014-15 to FY 2018-19. On analysis of the said data, Audit noted the following:

5.3.4.1 Exemptions claimed but registration status under Section 12AA not available

Charitable Trusts/Institutions are required to obtain registration under Section 12AA for claiming exemptions under Section 11.

Audit found through data analysis that in 21,381 cases exemptions were claimed under Section 11; however, registration under Section 12AA was not available (refer Table 4.4 of Chapter 4).

Thus, it showed that validation of the above related fields in the ITR Form-7 was not adequate.

Reply of the Ministry was awaited (February 2022).

5.3.4.2 Foreign contribution received but registration status not available

Charitable Trusts/Institutions are required to obtain registration under the Foreign Contribution (Regulation) Act, 2010, for receiving foreign contribution.

Audit found through data analysis that in 347 cases, where foreign contributions were received; registration under FCRA was not available (refer Table 4.5 of Chapter 4).

Thus, it showed that validation in the above related fields in ITR Form-7 was not adequate.

Reply of the Ministry was awaited (February 2022).

5.3.4.3 Invalid date of registration/approval

Charitable Trusts/Institutions are required to obtain registration under Section 12AA for claiming exemptions under Section 11 and approval under Section 80G for receiving donation.

Audit observed through data analysis that in 10 cases, dates of registration under Section 12AA and approval under Section 80G were entered incorrectly (future dates) (refer Table 4.6 of Chapter 4).

Thus, it showed that validation in the above related fields in ITR Form-7 was not adequate.

Reply of the Ministry was awaited (February 2022).

5.3.5 Important information not currently captured in Return of income (ITR-7)

Charitable trusts claiming exemption under Section 11(1) are required to file Income Tax Returns in Form ITR-7, supported by Audit Report in Form 10B and where there is a claim for accumulation of income or deemed application, Form 10 or Form 9A respectively has to be filed.

Audit noticed that though the Department has revised[75] ITR 7 incorporating schedules relating to Income and Expenditure Account and Receipt and Payment Account etc., some information/data are still to be captured in ITR-7 which are discussed below:

[75] From AY 2019-20 onwards

(a) Although the nature of activity was already incorporated as mandatory field in ITR –7 w.e.f. AY 2019-20, the ITD has not allocated separate codes to different charitable activities as defined in Section 2(15) and Section 10(23C)(iiiab) to 10(23C)(via) of the Act, for effective monitoring (Refer para 7.1.1).

(b) ITR-7 does not contain the details of Balance Sheet along with Schedule of assets and liabilities. The return also does not classify the assets which have been treated as application of income in the past and those which have not been treated as application, and eligible for depreciation allowance in view of Section 11(6)[76]. Instances were noticed that Trusts/Institutions had claimed depreciation on the assets, which had already been treated as application of income due to non-availability of the relevant information. Hence, two separate fixed asset schedules become a necessity (Refer para 6.5.1).

(c) There is no column/schedule in ITR – 7 to monitor the year-wise receipt and utilisation of corpus donation as the treatment for application of income are different for corpus and non-corpus donation. Corpus donation is exempt from application of income as per provision of Section 11(1)(d) whereas non corpus donation is to be applied for charitable purpose as per Section 11(1). Further, it is difficult to identify the year wise closing balance of corpus donation as the relevant information is not captured in ITR-7. Audit found cases where the ITD allowed exemption treating the voluntary contribution as corpus without ensuring that there was a specific direction of the donors (Refer para 6.6).

(d) The Department is capturing details regarding voluntary contribution as per schedule VC (Voluntary Contribution) of Form ITR-7 *viz.* local contribution through corpus fund donation, Grants received from Government, Grants received from Companies under Corporate Social Responsibility (CSR), Other specific grants, Other Donations and voluntary contribution; and foreign contribution through corpus fund donation and other than corpus fund donation. But details of major contributors/donors are not being captured in Form ITR-7 presently.

The details of major contributors/donors (above a threshold to be specified by ITD), may also be captured in Form ITR-7, so as to prevent the inclusion of un-accounted money/ deviation of funds and to stop claiming of inadmissible exemptions, as has been done[77] by the CBDT in respect of Section 80G (5) for verifying the correctness/genuineness of claim of the donors based on information received from the donee.

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[76] Section 11(6) of the IT Act provides that depreciation shall not be allowed while computing income subject to application against those assets which have been treated as application in earlier years.

[77] Finance Act 2020, w.e.f. 01.04.2021

This information will also enable the AO to verify the genuineness of the contributors/donors, while finalizing assessments.

Thus, it could be seen that in certain cases, the Trusts/Institutions are taking undue advantage for want of requisite information with the ITD. If the relevant information/data viz. details of balance sheet, details of receipt and utilisation of corpus donation, details of donors etc. is made available with the ITD, many of these issues could be resolved at the time of processing of the return itself or at the time of the scrutiny assessment. Thus, capturing these details/ information in the ITR-7 would enhance the quality of the assessment and bring transparency in allowance of exemptions. Also, it will help in selection of potential high-risk cases for scrutiny through Computer Aided Scrutiny Selection (CASS).

Reply of the Ministry was awaited (February 2022).

5.3.6 Important information not currently captured in the Auditor's Report

Charitable trusts claiming exemption under Section 11(1) are required to file Income Tax Returns in Form ITR-7, supported by Audit Report in Form 10B. The Audit Report prescribed under Rule 17B requires the Accountant to give his opinion whether to the best of his information, the accounts give a true and fair view. Besides, the Auditor has to provide some prescribed information in the Audit Report. The principal aim of this Audit Report is to enable the Assessing Officer to satisfy himself about the genuineness of the claim for exemption under Section of the Act and also whether the institution has complied with the requirements prescribed by the statute.

Audit is of the opinion that some additional information/data is required to be provided in the Audit Report so as to enable AOs to check the veracity of the assessee's claim during assessment which are discussed in the succeeding paragraphs.

5.3.6.1 Information on Income of the Trusts/Institutions in Audit Report

Section 11 of the Act provides exemption for income derived from property held under a Trust wholly for charitable or religious purposes to the extent such income is applied for charitable or religious purpose in India.

Income of the Charitable Trusts/Institutions broadly includes income from activity, income from house property, income from incidental business activity, capital gains, interest on security, income referred under Section 10 except agricultural income etc. apart from voluntary contributions.

Audit noted that Audit report in Form 10B does not contain details of receipt under different heads of the Trusts/Institutions during the previous year and whether the property from which income is derived is wholly held by the Trust.

In the absence of the above information, Audit could not ascertain the correctness of receipt declared by the assessee Trusts/Institutions in ITR-7, especially business income of Trust/Institution which is incidental to the attainment of the objectives of the trust, receipt of anonymous donation and receipt of foreign contribution, particularly the cases which were processed summarily.

Reply of the Ministry was awaited (February 2022).

5.3.6.2 Corpus donations with specific purpose

Section 11(1)(d) provides for exemption of income in the form of voluntary contributions made to the Trusts/Institutions with a specific direction that they shall form part of the corpus of a trust or institution.

Audit noticed that the claim of exemption on account of corpus donation is not supported or certified by the Auditor in the existing Form 10B. Further, any expenditure incurred out of Corpus donations should be excluded from the application of income, which is also not covered in the Auditor's Report.

Audit collected information on 5,985 audited sample cases to ascertain the number of Trusts/Institutions which had received donation with specific direction. Audit observed that 906 (15.14 *per cent*) Trusts/Institutions had received donation with specific direction. Out of the 906 sample cases test checked, Audit noticed irregularities in 21 assessment cases involving tax effect of ₹ 134.14 crore regarding receipt and utilisation of corpus donation e.g. exemption was irregularly allowed on corpus donation (Refer Para 6.6 of Chapter 6), expenditure from corpus/earmarked funds was irregularly treated as application of income (Refer Para 6.5.2 of Chapter 6), corpus donation was not utilized as per specific direction of the donor etc. (Refer Para 5.1.2.4 of Chapter 5).

In Karnataka, CIT(E) Bengaluru charge, in seven assessment cases, Audit could not ascertain whether the provisions of Section 11(1)(d) were complied with in respect of claims of ₹ 4.37 crore, as the claims were not certified by the Auditor in the existing Form 10B of the Income Tax Rules, 1962.

Audit could not ascertain the action taken by the concerned AO while concluding the assessments. Details of exemptions claimed and allowed in these cases could not be verified by Audit.

Reply of the Ministry was awaited (February 2022).

5.3.6.3 Allowance of deemed application in the subsequent assessment year

As per clause 2 of Explanation to Section 11(1), if in the previous year, a Trust is not able to utilize 85 *per cent* of its income in case such income has not been received in the previous year or for any other reason, then the trust has an

option to apply such income in the year of receipt or in the year, immediately following the year of accrual of income.

For this purpose, the Trust has to furnish Form 9A before expiry of the time allowed under Section 139(1) for furnishing the return of income of the relevant assessment year.

Form 9A provides information of amount of income deemed to have been applied to charitable purposes during the previous year. However, the Auditor's Report in Form 10B does not provide details of claim of deemed application of income availed in the previous year which has to be reduced from the amount of application of income in the year of actual receipt. Such details in the Audit Reports would enable the AOs to compute the income correctly.

In Karnataka, Audit noticed three assessment cases of one assessee, where the AO did not adjust the deemed application of income claimed in an assessment year against the income applied in the subsequent assessment year resulting in short computation of income of ₹ 6.04 crore having tax effect of ₹ 2.53 crore. One case is illustrated below:

(i) In Karnataka, CIT(E) Bengaluru charge, a Trust engaged in educational activity, filed return of income for AY 2015-16 at ₹ 'Nil' income. The scrutiny assessment was completed at an income of ₹ 'Nil' after allowing exemption under Section 11 of ₹ 16.38 crore in October 2017. Audit noticed that the assessee trust had claimed deemed application of income amounting to ₹ 1.29 crore which is stated to be adjusted against the Department of Science and Technology Grant for the financial year 2015-16. Scrutiny of records of the assessment year 2014-15 revealed that the trust had claimed deemed application of income of ₹ 3.25 crore which was required to be adjusted during AY 2015-16. However, no such amount was adjusted during AY 2015-16 resulting in short computation of income by ₹ 3.20 crore with a consequent short levy of tax of ₹ 1.40 crore including applicable interest.

The Ministry while not accepting the audit observation stated (March 2022) that as per the detailed statement of computation of income furnished by the assessee, in response to the notice issued under Section 154 subsequent to the audit objection, the amount of ₹ 3.25 crore carried forward from the AY 2014-15 had been included by the assessee in its total income for the AY 2015-16 which was declared at ₹ 17.75 crore.

Ministry's reply is being verified by the Field Audit office.

5.4 Conclusion

Audit noticed that there is no restriction in the Act for educational Trusts/Institutions from getting registered under Section 12AA and claim

exemption under Section 11, if the entity has objectives of both education and other limbs of charity as defined under Section 2(15). As a result, most of the private educational Trusts/Institutions get themselves registered under Section 12AA

The allowance of deduction towards CSR expenses under Section 80G would affect the Government's intent of sharing burden by corporate entities for welfare state. There is lack of clarity in the provision relating to prohibition of any claims of application made out of corpus donation/specific purpose funds. The assessees were allowed dual benefit by treating the capital expenditure met from the borrowed funds as application, and subsequently, by allowing repayment of loan against the same borrowed funds as application. There was inconsistency in treatment of administrative expenses. Audit also noticed lack of provisions to discourage the circulation of trust funds amongst various trusts without having actual application of income on the stated objectives of the Trusts/Institutions.

Due to lack of provisions to discourage accumulation by the Trusts/Institutions, Audit noticed that the Trusts/ Institutions were consistently accumulating receipts upto the maximum permissible amount under the Act without carrying out any charitable activity. In the test checked cases, there was a delay ranging from one day to 75 days in granting approval under Section 80G(5)(vi).

Audit noted that in certain cases, registration/ approval was granted under Section 12AA/ 80G(5)(vi) without following the prescribed procedure, and registration under Section 12AA was granted without making field enquiry about the existence and genuineness of the activities of the trust. Instances of irregularity regarding non-inclusion of dissolution clause in the trust deed or dissolution clause in conformity with the Manual of Office Procedure of the Department have continued to occur.

ITD system did not have adequate checks and validations to match the data/information relating to registrations/approvals of the Trusts/Institutions while returns were processed in summary manner. The Department is not capturing the details of contributor/donor to prevent the inclusion of un-accounted money/ deviation of funds from one head to another head and to stop claiming of inadmissible exemptions, as has been done by the CBDT in respect of Section 80G (5) for verifying the correctness/genuineness of claim of the donors based on information received from donee.

In the absence of any specific provision in the IT Act to disallow exemption in case of diversion of funds given for a particular purpose, specified by a donor to other activities/ purpose, exemptions are either allowed or not being restricted having the risk of loss of revenue to the exchequer.

5.5 Summary of Recommendations

Audit recommends that:

(i) The ITD may consider: granting registration to educational Trusts/ Institutions under Section 12AA on the condition that separate accounts have to be maintained for educational and non-educational activities and educational activities are to be dealt with as per the provisions of Section 10(23C). Further, the CBDT may consider the option of getting a separate ITR filed by the Assessee Trusts/ Institutions for educational activities and non-educational activities.

(Paragraph 5.1.1)

(ii) The purpose of having two sets of overlapping sections, especially with respect to educational and medical purposes, one under 'not for profit category' (which involves higher restrictions) under Section 10(23C) and another 'the charitable category' (with fewer restrictions) under Section 11 is not clear to Audit. Logically, most entities with a choice would not opt for the restriction, not for profit category. In general, the stipulations under various sub-sections of Section 10(23C), requiring that institutions exist solely for philanthropic purposes and not for the purposes of profit, are more onerous than those under Section 11, which merely restrict accumulation of annual income beyond 15 per cent and have no specific "not for profit" purpose; however, the provisions for exemption of income under both categories are virtually identical.

Department of Revenue may consider reviewing these stipulations in the Act under various categories in the light of clear Governmental policy determination in terms of which charitable objectives merit exemption of income with a requirement of "solely philanthropic purposes and not for the purpose of profit" and which charitable objectives merit income exemption without such a requirement.

(Paragraph 5.1.1)

The CBDT stated that a charitable institution may be carrying out more than one category of charitable activities. For example, a charitable institution may be registered for educational as well as medical purposes. Activity wise monitoring would mean that such trusts or institutions would have to maintain separate books of account for such segments. Presently, the law does not have any such requirement. Bringing such a requirement will add additional compliance burden on the charitable trusts or institutions which is not desirable.

Further, many expenses such as administrative expenses are common expenses and it may not be possible to allocate them to closely inter-linked segments.

Also, the difference between two regimes is proposed to be eliminated by various proposals contained in the Finance Bill, 2022. After enactment both the regimes would operate on equal footing.

Audit has noted from the reply of the CBDT that various proposals have been made by the CBDT in the current Finance Bill 2022. Audit will await the final outcome of the proposal approved and implemented by the CBDT. However, the CBDT may enact the provisions of the Act in such a way that educational Trusts/Institutions may not take undue benefit of the provisions of Act.

(iii) The ITD may issue a Standard Operating Procedure/instructions/ guidelines for examining the valuation aspects of transactions with related parties and devise a clear mechanism to justify the 'reasonableness' and 'adequacy' of the transactions held with the related party of the trust so that the Assessing Officer may satisfy himself as to the reasonableness and adequacy of the transactions during the Assessment proceedings; and levy tax on amount of Income or property utilized for the benefit of the related parties in excess of the amount assessed as reasonable and adequate.

(Paragraph 5.1.2.1)

(iv) CBDT needs to consider bringing an amendment or issuing binding clarification as to whether donations to trusts, including in-house/corporate trusts, out of CSR expenditure by specified companies covered by Section 135 of the Companies Act, 2013 is eligible for deduction under section 80G or not. Such an amendment or binding clarification is necessary to ensure that the provisions are interpreted uniformly by the Assessing Officers across all assessment charges and also to minimize the possibility of litigation.

(Paragraph 5.1.2.3)

The CBDT stated that Corporate Social Responsibility contribution is in the nature of application of income and hence cannot be allowed as expenditure. A specific amendment to this effect was brought in Section 37 of the Income Tax Act vide Finance (No.2) Act, 2014. The eligibility of entities listed in Section 80G of the Income Tax Act prior to this amendment was not withdrawn as it is subject to conditions specified in the said Section. However, for the eligibility of donation to Swachh Bharat Kosh, and Clean Ganga Fund set up by the Central Government, which was introduced in Section 80G subsequent to amendment of Section 37 with regard to corporate social responsibility, a condition was stipulated that only those donations to these two funds will qualify for deduction under Section 80G of the Income-Tax Act which is not spent by the assessee in pursuance of corporate social responsibility under sub-Section (5) of Section 135 of the Companies Act, 2013.

Audit noted that the reply of the CBDT has only mentioned two schemes/ programmes of the Government of India, whereas Audit had observed that undue benefit is being taken by the corporates by spending the amount towards CSR through their own trust(s). It has a peculiar implication in that expenses on CSR incurred directly are not allowable as deduction, but CSR expenses through an in-house or other Charitable Trust would be allowable as deduction. This would likely defeat the very purpose of the intention of the Legislature. The CBDT may reconsider the Audit recommendation.

(v) The ITD may consider bringing in new provisions in the Act, so as to ensure that specific purpose donation, if not utilized for the specified purpose (like mere transferring such donation later on to other organizations etc.) should attract denial of exemptions and be treated as income in the year in which it is detected.

(Paragraph 5.1.2.4)

The CBDT stated that a trust or institution is not allowed to donate to other trusts or institutions towards corpus as per the provisions of Explanation 2 to sub-Section (1) of Section 11 and 12th proviso to clause (23C) of Section 10. Further, as per 14th proviso to clause (23C) of Section 10 and Explanation to sub-Section (2) of Section 11, no donation to other trusts and institutions can be made by a trust or institution out of its accumulated income.

Further sub-Section (2) of Section 11 of the Income-tax Act provides, that where 85 *per cent* of income of trust or institution is not applied but is accumulated, such income shall not be included in the total income of the previous year of the person in receipt of the income subject to certain conditions.

Similarly, sub-Section (3) of Section 11 of the Income Tax Act provides for the specific previous year in which the accumulated income will be subjected to tax in case of different types of violations which include the income being applied to purposes other than charitable and religious purposes which have been specified as per the requirement of sub-Section (2) of Section 11, or when the income is credited or paid to any other trust or institution registered under 12AA/12AB or to any trust of institution referred under sub-clause (iv), (v), (vi), (via) of clause (23C) of Section 10.

Vide Finance Bill, 2022 similar provisions have also been proposed to be introduced in clause (23C) of Section 10 by way of insertion of Explanation 3 and Explanation 4 to the third proviso of clause (23C) of Section 10.

Reply of the CBDT is not tenable as the Provisions of Explanation 2 to sub-Section (1) of Section 11 and 12th proviso to clause (23C) of Section 10 provide that corpus donation given to another charitable trust out of current year's income should

not be allowed as application of income. Further, 14th proviso to clause (23C) of Section 10 and Explanation to sub-Section (2) of Section 11 provide that amount donated to other trusts out of accumulation shall not be treated as application of income.

Audit noted that no such restriction has been imposed under the Act in respect of donation given to another charitable trust out of corpus donation which is exempted under Section 11(1)(d) of the Act. Further, as the corpus donation is not a part of income and there is no time limit for its utilisation, it is very difficult to monitor the same in absence of any specific provision in the Act.

The Finance Bill 2022 is also silent on this issue. The CBDT may reconsider its reply to the audit recommendation.

(vi) The ITD may issue suitable instructions/clarifications to deal with consistent treatment of administrative and establishment expenses for the purpose of application of income.

(Paragraph 5.1.2.6)

In reply, the CBDT stated that adequate provisions are there in Sections 11, 12 and 13 of the Act. Further, the allowability of any expenses depends on the facts of the case.

Reply of the Department is not tenable as the Act has no clarity regarding determination of net income available for application. Since establishment and administrative expense could be of various categories and some part of which may be directly attributable for generation of income and some part of may be towards charitable and religious purpose. the CBDT needs to ensure consistent approach by the AOs while allowing administrative and establishment expenses as application of income. In the view of the above, the CBDT may reconsider its reply.

(vii) The ITD may consider bringing in a new provision in the Act to stipulate that voluntary contributions received from other Trusts/Institutions out of current year's income shall not be eligible for the permissible accumulation at the rate of 15 per cent in the hands of such recipient trust or institution.

(Paragraph 5.1.2.7)

The CBDT stated that explanation 2 of sub-Section (1) of Section 11 already provides that any amount credited or paid by a trust or institution to any other trust or institution registered under Section 12AA or 12AB or trust of institution referred to under sub-clause (iv), (v), (vi) or (via) of clause (23C) of Section 10 being contribution with a specific direction to form part of corpus shall not be treated as application of income. Explanation to sub-Section (2) of Section 11 provides that no donation to other trusts and institutions can be made by a trust or institution out of its accumulated income.

Similar provisions are also available under the 12th proviso and 14th proviso to clause (23C) of Section 10.

The specific suggestion for legislative amendment however, was discussed during the 2022 budgetary exercise and was not found to be acceptable.

Reply of the Department is not tenable as the Act stipulates no restriction on transfer of general donation to other Trusts out of current years' income. As a result, an organization is considered as a charitable organization even if the entire donation is given to another trust/institution after availing of the permissible accumulation of 15 per cent.

Audit is of the view that mere transfer of amount from one trust to another trust, especially through a chain of trusts after 15 per cent permissible accumulation at each stage without actual application defeats the very purpose of allowing exemption. To mitigate the risk of bogus application for charitable purposes in such cascading transactions, the CBDT may consider bringing in a specific provision to restrict the recipient Trusts/ Institutions in case no charitable activity was undertaken by these Trusts/ Institutions during the year. Further*, 15 per cent accumulation may not be allowed to the recipient trusts in such cases.*

(viii) The ITD may consider bringing in a new provision in the Act for taxing any long pending liability received in the guise of loan as voluntary contribution on cessation of liability, similar to provisions of Section 41(1) of the Act.

(Paragraph 5.1.2.8)

The CBDT stated that application of income is allowed to the trust or institution in the year when such sum is actually paid. Finance Bill, 2022 has proposed to insert Explanation in Section 11 and Explanation 3 in clause (23C) of Section 10 to clarify that any sum payable by any trust or institution (registered/approved under Section 12AA/AB or as referred to in clauses (iv), (v), (vi), (via) of clause (23C) of Section 10) 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 such trust according to the method of accounting regularly employed by it.

Hence, since application of income is allowed on the basis of actual payments, provisions similar to sub-clause (1) of Section 41 are not required in case of charitable Trusts/Institutions registered/approved under Section 12AA/AB or as referred to in clauses (iv), (v), (vi), (via) of clause (23C) of Section 10.

Reply of the CBDT is not tenable as the CBDT's response is on allowing liability on actual payment basis. However, Audit contention was that any amount which

was received by charitable trust in the guise of loan and subsequently the lenders have never demanded the repayment of loan from the trust, may be treated as income of the Trusts/Institutions and taxed accordingly. The CBDT may reconsider its reply to the audit recommendation.

(ix) The ITD may evolve a suitable mechanism by issuing a Standard Operating Procedure for Assessing Officers for carrying out physical inspection of the activities of the trust in cases where there had been consistent and increased accumulation to ensure that trusts are allowed accumulations consistently only in exceptional cases.

(Paragraph 5.1.2.9)

In reply, the CBDT stated that the Department has introduced the Faceless Assessment Scheme, 2019, incorporated in Section 144B of the IT Act to provide that all the assessment proceedings, including the scrutiny assessments of cases related to Trusts/Institutions, are conducted electronically in a faceless manner, through team-based assessment. The Finance Bill, 2022 has also proposed amendment in Section 144B for hearing through Video Conferencing if requested by an assessee.

Further, the e-Verification Scheme, 2021 has also been notified in December 2021 which provides for collection, verification and processing of the information available with Revenue from various sources, to be passed on to the Assessing Officer for incorporation in ongoing scrutiny proceedings or for re-assessment proceedings under the Act.

Reply of the CBDT is not in line with the Audit recommendation as the CBDT has not given any specific reply to the recommendation on keeping watch on the Trusts which are not doing any charitable activity but are availing exemption by accumulating the maximum funds persistently year by year.

Further, the PAC in its 104th Report at Para 23 (Sixteenth Lok Sabha Report) had also asked the Ministry to bring a suitable amendment to the Act or evolve a suitable mechanism to ensure that firstly trusts are allowed accumulations consistently only as exceptions; and secondly, the accumulated income is applied for the objectives of the Trusts/Institutions within a specified time frame. Audit noted that the issues raised by the PAC have not been addressed satisfactorily.

Since the Act does not prescribe any ceiling for accumulation of funds and more than 96 per cent of ITRs are processed in a summary manner, the CBDT may explore the feasibility of developing a mechanism under Faceless Assessment regime for ensuring that Trusts/Institutions are allowed accumulations persistently only in exceptional cases.

The CBDT may therefore reconsider its reply.

(x) The ITD may stipulate specific parameters (apart from the donor's name and address) such as PAN etc., which must be disclosed by assessee to establish the identity of donors. Further, disclosure of PAN of the donor should be made mandatory above a threshold limit of donation to be decided by the ITD. ITD may also consider introducing a new Schedule in the ITR to capture the donors' details in order to strengthen the assessment procedure to mitigate the risk of money laundering and prevent leakage of revenue.

(Paragraph 5.1.2.10)

The CBDT stated that vide Finance Act, 2020, provisions are inserted for filing of statement of donation by donee to cross-check claim of donation by donor. These provisions are effective from 01.04.2021.

As per the provisions inserted in Section 80G(2)(viii), 80G(2)(ix) and Section 35(1A) vide Finance Act, 2020, w.e.f. 01.04.2021, deduction under Section 80G(2)(a)(iv)/Section 35 to a donor shall be allowed only if a statement is furnished by the donee who shall be required to furnish a statement in respect of donations received and in the event of failure to do so, fee and penalty shall be levied.

Statement of particulars under clause (viii) and clause (ix) of sub-Section (5) of Section 80G or under sub-Section (1A) of Section 35 is to be furnished by the donee as per Rule 18AB of the Income Tax Rules, 1962 in Form No. 10BD. Form No. 10BD consists of the unique identification number of the donors which can be PAN or Aadhar No. If neither is available, then any one of the taxpayer identification number of the country where the person resides, passport number, Elector's photo identity number, driving license number, ration card number, needs to be provided.

The CBDT may ensure to tax the anonymous donations received by the Trusts/Institutions, in case the genuineness of such donor is not established.

(xi) The ITD may ensure that the timeline prescribed in the Act for granting approval to the Trusts/Institutions may be adhered to by the CIT(E).

(Paragraph 5.2.2)

(xii) The ITD may ensure that due procedure is followed by the CIT(E) while granting registration/approval to the Trusts/Institutions.

(Paragraph 5.2.4)

(xiii) The ITD may ensure that field enquiry about the existence and genuineness of the activities of the Trust/Institution may be conducted and a report thereof with necessary documentation may be kept on record while granting registration.

(Paragraph 5.2.5)

In reply to recommendations mentioned at Paragraph(s) 5.2.2, 5.2.4 and 5.2.5 above, the CBDT, in reply stated that the Finance Act, 2020, inter alia, amended several provisions relating to approval/registration/notification of entities referred to in Sections 12AA, 10(23C) and 80G of the Income Tax Act. It was provided that such entities seeking registration/approval for exemptions/ deductions under the said Sections shall be granted approval for a period not exceeding five years at a time. The new process of registration will also be applicable to entities that are already approved under the said Sections, which will be required to apply for re-registration or approvals. It was also provided that new entities seeking exemption but which have not commenced activities may be granted provisional registration/approval for a period of 3 years.

Further, Finance Bill, 2022 has also proposed amendments in Section 12AB and Section 10(23C) to provide that where registration/approval or provisional registration/approval to a Trust/Institution has been granted and subsequently, the Pr.CIT/CIT has noticed occurrence of one or more specified violation, as prescribed, the registration/approval or the provisional registration/approval granted to the Trust/Institution may be cancelled after providing a reasonable opportunity of being heard.

Audit has noted from the reply of the CBDT that various proposals have been made by the CBDT regarding re-registration or approval of Trusts/Institutions which are yet to be completed, since the last date for furnishing the application for re-registration is 31.03.2022. Several proposals regarding cancellation of registration/approval have also been made in the current Finance Bill 2022. Audit will await the final outcome of the re-registration process as well proposed approval and implementation of Finance Bill 2022. However, the CBDT has to ensure that due procedure is followed while granting registration/approval to the Trusts/Institutions.

(xiv) The ITD may review the cases for taking remedial action where exemptions were granted to the assessees, where there was no dissolution clause in the trust deed, or the dissolution clause is not in conformity with the stipulated provisions. Further, the ITD also need to evolve a system to ensure that no registration is granted to exempt entities in the absence of an appropriate dissolution clause.

(Paragraph 5.2.6)

(xv) The ITD may take steps to strengthen the IT system so that input of data should commensurate with the selection criteria for proper identification of cases to be scrutinised.

The ITD should consider expanding the data elements captured in ITR 7, if need be, restricted based on a gross income or exempted income threshold to be determined by the ITD. This will enable capturing of relevant data enabling a better and more risk-based approach to CASS selection without inconveniencing smaller trusts/entities.

(Paragraph 5.3.1)

(xvi) The ITD may -

(a) consolidate registration data of all the Trusts/ Institutions registered under Section 12AA/80G/10(23C) of the Act digitally and match it with the data filled in ITRs to verify genuineness of registration while processing of ITRs through CPC; and

(b) suitably modify the second proviso to Section 12A(2) to enable AO to re-open such cases where assessee has claimed irregular exemption under Section 11 or 12 without having a valid registration.

(Paragraph 5.3.2)

In reply, the CBDT stated that the Finance Act, 2020, inter alia, amended several provisions relating to approval/registration/notification of certain entities referred to in Sections 10(23C), 12AA, 35 and 80G of the Income Tax Act. It was provided that such entities seeking approval/registration/ notification for exemptions/deductions under the said Sections shall be granted approval for a period not exceeding five years at a time. The new process of registration will also be applicable to entities that are already approved under the said Sections, which will be required to apply for re-registration or approvals. It was also provided that new entities seeking exemption but which have not commenced activities may be granted provisional registration for a period of 3 years.

Accordingly, vide Notification No. 19 of 2021 dated 26.03.2021, the new procedure for the registration/approval/notification of the exempt entities covered under the above-mentioned Sections has been notified.

The new forms capture comprehensive information electronically which may be mapped to the information provided in ITR-7. The last date for furnishing the application for re-registration is 31.03.2022. Once the re-registration process is complete, the database of the charitable institutions will be undated. So far, CPC was not in a position to verify the registration details of the charitable institution at the time of processing the return since the data base of the trusts and institutions was not complete. With the completion of the re-registration process, CPC would be in a position to verify the registration details of the charitable institutions at the time of processing of the return.

Once the re-registration date base is complete, no trust or institution will be able to claim the exemption without having valid re-registration. Therefore, there is no need to have such an amendment. Exemption to such charitable institutions can be denied under the existing provisions of Section 12AB.

The CBDT may ensure that adequate controls are incorporated in the ITD systems, namely the CPC, for verifying the registration details of the charitable Trusts/ Institutions at the time of processing of the return so that undue benefits are not allowed.

(xvii) The ITD may capture data/information relating to contributor/donor in Form ITR-7 as has been done in respect of Section 80G (5) to bring transparency and accountability for the funds contributed/donated.

(Paragraph 5.3.5)

The CBDT stated that the recommendation would be examined while notifying ITR-7.

(xviii) ITD may consider modifying Form 10B incorporating:

(a) details of receipt under different heads and income derived from property wholly held by trust.

(b) detailed information on receipt of corpus donations, its utilisation and claim of expenditure from corpus donation

(c) detailed information on the claim of deemed application of income availed in the previous year which has to be reduced from the amount of application of income in the year of actual receipt to enable the Assessing Officer to verify the correctness of the claim made by the assessee.

(Paragraphs 5.3.6.1, 5.3.6.2 and 5.3.6.3)

In reply the CBDT stated that in the draft Form 10B, which was circulated for public comments in 2019, specific details of business activities carried out by the trust including the nature of business, balance sheet, profit and loss account, amount of profit and loss, details of accounting policies in preparation of accounts, deemed income under sub-Section (1B) of Section 11 etc. were sought. However, due to COVID-19 pandemic the form could not be notified and shall be done in due course. Further, in respect of corpus donation, the CBDT stated that suitable amendments to Form No. 10B will be examined while finalisation of the same.

Audit will await the final outcome of the efforts being made by the CBDT.