

Chapter 7: Internal Audit, Monitoring and Review of Trusts/Institutions

Audit attempted to examine as to how effectively ITD was monitoring the activities of Trusts/Institutions for which registrations/approvals were granted and exemptions were allowed, filing of ITRs by the Trusts/Institutions, accumulation of Income and its utilisation, receipt and utilisation of foreign contribution etc. Audit also attempted to examine the conduct of Internal Audit of the registration process and the assessment.

7.1 Audit noticed absence of Standard Operating Procedure (SOP) or Guidelines for verification of genuineness of activities of Trusts/Institutions, inconsistency in allowing exemptions to Trusts/Institutions, non-initiation of appropriate action against non-filers, inadequate number of surveys conducted, in-effective system to monitor accumulation and its utilisation etc. Audit also noticed non-implementation of uniform Internal Audit of Registration process across all States/charges. Table 7.1 below gives an overview of the audit findings:

Table 7.1: Issues relating to internal audit, monitoring and review of Trusts/Institutions			
Sl. No.	Issues in brief	No. of cases	Tax effect (₹ in crore)
1	Lack of provision of distinct business codes in ITR for capturing activity of Trusts/Institutions with distinction between Government and Private entity	-	-
2	Maintenance of database and action against non-filers	261	-
3	Deficiencies in Internal Audit of the Registration Process	-	-
4	Ambiguity in Board's Instruction regarding Internal Audit of cases registered under Section 10(23C) and 80G	-	-
5	Inadequacy of survey in monitoring the activities of the Trusts/Institutions	-	-
6	Inconsistency in allowing exemption to Trusts/Institutions having activity not charitable in nature	10	42.44
7	Review of charitable status of Trusts/Institutions whose activity either held not genuine or the property was utilized for the benefit of related parties	8	9.73
8	Lack of Standard Operating Procedure (SOP) or Guidelines for verification for genuineness of activity of Trusts/Institutions	-	-
9	Monitoring of activities of Trusts/Institutions engaged in scientific research activities	1	-
10	Absence of feedback/monitoring mechanism to monitor the activities of the Trusts/Institutions	-	-
11	Monitoring of accumulation of Income and its utilisation under Section 11(2)	32	60.94
12	Provisions for declaration of the purpose of Accumulation under Section 10(23C)	4	2.99

Sl. No.	Issues in brief	No. of cases	Tax effect (₹ in crore)
13	Absence of mechanism to verify receipt and utilisation of foreign contribution	35	182.10
14	Inadequate monitoring of receipts issued by the entity having registration under Section 80G	3	8.26
15	Issues requiring strengthening of monitoring by the Income Tax Department	-	-
Total		354	306.46

7.1.1 Lack of provision of distinct business codes in ITR for capturing activity of Trusts/Institutions with distinction between Government and Private entity

Section 2(15) of the Act defines the term 'Charitable Purpose' which includes seven types of activities undertaken by Trusts/ Institutions viz. (i) relief of the poor (ii) education (iii) yoga (iv) medical relief (v) preservation of environment (including water-sheds, forests and wildlife) (vi) preservation of monuments/ places/ objects of artistic or historic interest and (vii) the advancement of any other object of general public utility. Trusts/institutions wholly for charitable or religious purposes can avail exemption of income to the extent such income is applied in India under Section 11 of the Act. Further, universities, educational and medical institutions which are wholly or substantially financed by the Government and certain private religious, educational and medical institutions can also avail exemption under various provisions under Section 10(23C)(iiiab) to 10(23C)(via) subject to fulfilment of certain conditions.

Audit noticed that while the Act has specified several activities as 'charitable' under which both the Government and the private Trusts/Institutions can claim exemption under various provisions of the Act, ITD has not allocated specific codes to different charitable activities linked to Section 11 and sub-Sections of 10(23C) under which exemption is being claimed by the Trusts/Institutions. Also, data relating to exemption claimed by the Government/private trust under different Sections was not capturing in the present system through ITR Form 7.

With a view to identifying the activity wise and Government/Private trust wise break-up of total exemption granted (which was not fully available in the data provided by ITD), Audit collected and analysed data in respect of 5,693 out of 5,798 sample cases, excluding additional cases, where activity related information was available in the assessment records. The activity wise break-up of total exemption granted of ₹ 1.63 lakh crore in respect of 5,693 sample cases prepared on the basis of data furnished by the ITD as well as the data collected by Audit, is summarised in Table 7.2 below:

Table 7.2 Activity wise break-up of total exemption of ₹ 1.63 lakh crore				
Nature of Activity	Number of sample cases engaged in the activity	Percentage of Total sample cases	Total amount of exemption granted to cases engaged in the activity (₹ in crore)	Percentage of total amount of exemption granted to cases engaged in the activity
Education	2,686	47.2	57,175.5	35.1
Medical Relief	428	7.5	22,478.7	13.8
Relief of the Poor	629	11.0	7,618.7	4.6
Environment	38	0.7	1,425.8	0.9
Religious	312	5.5	4,070.6	2.5
Others	1,600	28.1	70,210.1	43.1
Total	5,693	100.00	1,62,979.4	100.00

Audit found that 47.2 per cent of 5,693 sampled cases were engaged in educational activities against which 35.1 per cent of total amount of exemption (₹ 1.63 lakh crore) was granted, followed by 28.1 per cent engaged in other¹⁰⁵ activities in respect of which 43.1 per cent of total amount of exemption was granted and the remaining cases were engaged in medical relief, relief of the poor, environment, religious etc.

Since exemption is granted to Government as well as private entity under various provisions under the Act, Audit also collected information in respect of 553 high value exemption cases (having gross income of ₹ 50 crore or above) with a view to quantify the activity wise break-up of exemption granted to Government as well as private entity. The data in respect of 553 high value sample cases, prepared on the basis of data furnished by the ITD as well as the data collected by audit is depicted in Table 7.3 below:

Table 7.3 Activity wise break-up of exemption granted to Government and private entity in respect of high value cases (gross income of ₹ 50 crore or above)												
Nature of Activity	Number of cases engaged in the activity			Percentage of total cases			Total amount of exemption granted to cases engaged in the activity (₹ in crore)			Percentage of total amount of exemption granted engaged in the activity		
	Govt.	Pvt.	Total	Govt.	Pvt.	Total	Govt.	Pvt.	Total	Govt.	Pvt.	Total
Education	65	197	262	11.8	35.6	47.4	19,254.9	22,491.7	41,746.6	15.2	17.8	33.0
Medical Relief	18	42	60	3.3	7.6	10.8	10,751.4	5,679.0	16,430.4	8.5	4.5	13.0
Relief of the Poor	10	28	38	1.8	5.1	6.9	572.3	4,790.5	5,362.8	0.5	3.8	4.2
Environment	7	3	10	1.3	0.5	1.8	916.7	375.8	1,292.6	0.7	0.3	1.0
Religious	1	19	20	0.2	3.4	3.6	66.5	2,695.5	2,761.9	0.1	2.1	2.2
Others	82	81	163	14.8	14.6	29.5	33,920.3	25,050.1	58,970.4	26.8	19.8	46.6
Grand Total	183	370	553	33.1	66.9	100.0	65,482.1	61,082.6	1,26,564.7	51.7	48.3	100.0

¹⁰⁵ Others' include entities with activities viz. General public utility, Preservation of Environment, Preservation of Monuments, Yoga,; and entities with more than one activity

It would be seen that 33.1 *per cent* of the high value cases pertained to Government entities, against which 51.7 *per cent* of total exemptions (₹ 1,26,564.7 crore) were granted, whereas 66.9 *per cent* of high value cases pertained to private entities, against which 48.3 *per cent* of total exemptions were granted.

Out of these 553 high value exemption cases, 262 Trusts/Institutions (197 private entity and 65 Government entity) were engaged in educational activity. Further, Audit noticed that the Government charitable entities availing exemption were authorities/bodies/institutes established by any law made by Legislature or notified by the Government, through which the Government primarily discharge its social responsibilities. These entities were largely controlled and substantially financed by the Government. In Audit's opinion, putting efforts and manpower for scrutiny assessment of Government's Trusts/Institutions were not as effective, since the entities were in relatively low-risk areas in terms of Income Tax exemption perspective. However, two-thirds (66.9 *per cent*) of the high value cases pertained to private charitable entities, which were availing almost half (48.3 *per cent*) of the total exemption granted (₹ 1.3 lakh crore) for different activities, under various provisions of the Act.

Sections 10(23C)(iiiab) to (iii ae), (vi) and (via) deals with exemptions to institutions for a specific purpose like University/Educational institution/Hospital/ Medical institutions established solely for educational purposes/ imparting medical services and not for profit. Section 10(23C)(iv) deals with any other fund or institution whose objects are of importance throughout India or throughout the State(s). Section 10(23C)(v) deals with any trust (including any other legal obligation) or institution wholly for public religious purposes or wholly for public religious and charitable purposes. Section 11 and 12 deals with exemption of income to Trusts/Institutions from property held for charitable and religious purposes and contributions.

Analysis of the provisions in Sections 10(23C)(iiiab) to (via) and Sections 11 and 12 revealed that these Sections have similar conditions and requirements like grant of exemption after getting approval/registration with the Pr. CIT/CIT {except for University/Educational institutions and Hospital/ Medical institutions which are wholly or substantially financed by the Government or having annual receipt not exceeding ₹ one crore, which are covered in Sections 10(23C)(iiiab) to (iii ae)}, minimum application of 85 *per cent* of total receipt, retention of income up to 15 *per cent* of total receipt without any condition, accumulation of short applied income for future application, investment of fund in specified mode, filing of return of income and audit of accounts for claiming the exemption.

Thus, Trusts/Institutions claiming exemption under Sections 11 and 12 of the Act may also be eligible to claim exemption under Sections 10(23C)(iiiab) to (via) subject to fulfilment of the conditions prescribed in the Act. Hence, there is a need to ensure activity wise monitoring of these private charitable entities, to mitigate the risk of ineligible claims, being processed and allowed. Presently, the ITD does not have any mechanism for monitoring the same.

Reply of the Ministry was awaited (February 2022).

7.1.2 Maintenance of database and action against non-filers

In order to have a proper mechanism to watch the activities of the Trusts/Institutions granted registration under various provisions of the Act, it should be ensured that all Trusts/Institutions are filing their return of income, and the fund/property at their disposal are applied towards the objects. A complete database of such assesseees vis-à-vis identification of non-filers or stop filers plays an important role in this regard.

Section 139(4A) and (4C) make it mandatory for every Trust/Institution etc. to file its return of income, if the total income exceeds the taxable limit. Section 12A was amended¹⁰⁶ to provide that all organization registered under that Section have to file return of income under Section 139(4A); otherwise, non-filing of return could be treated as a reason for cancellation of registration.

During the Performance Audit, Audit attempted to ascertain the non-filers in respect of 6,064 sample cases test checked during AY 2014-15 to AY 2017-18 and noticed 261 assessment cases of non-filing of return of income by the Charitable Trusts/Institutions. The State-wise details of non-filers are summarized in Table 7.4 below:

Sl. No.	Name of the State	Assessment Year wise No. of Non-filers				Total
		2014-15	2015-16	2016-17	2017-18	
1	Andhra Pradesh	36	14	2	5	57
2	Assam	1	0	0	0	1
3	Bihar	2	2	0	1	5
4	Chhattisgarh	1	1	0	0	2
5	Gujarat	12	7	1	4	24
6	Karnataka	9	4	0	0	13
7	Kerala	36	31	4	4	75
8	Madhya Pradesh	8	5	1	1	15
9	Maharashtra	10	4	1	2	17
10	Odisha	4	0	2	3	9
11	Punjab	6	3	0	0	9

¹⁰⁶ Clause (ba) inserted under Section 12A(1) by the Finance Act, 2017

Sl. No.	Name of the State	Assessment Year wise No. of Non-filers				Total
		2014-15	2015-16	2016-17	2017-18	
12	Rajasthan	15	6	4	5	30
13	Tamilnadu	3	1	0	0	4
Total:		143	78	15	25	261

The Department stated in three assessment cases¹⁰⁷ that there was no taxable income; hence, assesseees were not required to file ITRs; in four assessment cases¹⁰⁸ ITO (E) Ward-(4) Hyderabad issued notice under Section 142(1) and in five cases¹⁰⁹, ITD replied that necessary action would be taken. The ITO (E) Ward-1, Jaipur stated that there was no mechanism available in the system to find out the reasons for non-filing of ITR and in four assessment cases¹¹⁰, the assesseees were not reflected in the NMS¹¹¹ cases. In the remaining cases, Audit could not ascertain the reasons for non-filing of ITRs.

Thus, despite having a system for monitoring of non-filers, the Department did not initiate appropriate action in the majority of the cases. Further, in four cases, the ITD system could not detect non-filers. Reasons for not issuing notices in cases of non-filers needs to be examined by ITD.

Reply of the Ministry was awaited (February 2022).

7.1.3 Deficiencies in Internal Audit of the Registration Process

The PAC, in para 14 of its 104th Report (16th Lok Sabha), had recommended that the process of registration/approval of the Charitable Trusts/Institutions should be brought under the purview of Internal Audit of the Department in view of the irregularities pointed out by Audit in Audit Report No. 20 of 2013.

Accordingly, Internal Audit commenced¹¹² for the first time in FY 2019-20, in respect of the registration applications processed (i.e. approved/rejected) during FY 2018-19. The target of auditable cases for the first year was fixed at a minimum of 50 cases for each CIT(E). Thereafter, ADG (Audit & Inspections) was to circulate the target by 31st March, for the subsequent years, if there was any change in the target.

Audit noticed in nine states¹¹³ that internal audit of registration process had commenced. In Maharashtra, CIT(E) Pune charge, internal audit of cases registered under Section 12AA was carried out during the FY 2019-20. However, no internal audit had been conducted in CIT(E) Mumbai charge. Information

¹⁰⁷ ITO Jaipur (E) charge -1 (AY 2015-16) and ITO Kota (E) charge - 2 (AY 2014-15 and AY 2015-16)

¹⁰⁸ Hyderabad - 4

¹⁰⁹ ITO (E) Ward Ajmer charge - 3 and ITO(E) Ward(3) Hyderabad charge - 2

¹¹⁰ ITO(E) Ward Kota

¹¹¹ Non filer Monitoring System (NMS)

¹¹² vide CBDT's Instruction No. 06 of 2017 modified on 14.12.2018

¹¹³ Delhi, Punjab, Haryana, Himachal Pradesh, Jammu & Kashmir, Maharashtra, Bihar, Jharkhand and West Bengal

regarding internal audit of registration process was not furnished in five states¹¹⁴.

It is evident from above that the instructions issued for the Internal Audit of registration process were not implemented uniformly in all the States/ charges for which ITD needs to review the system in place for reiterating instructions for effective compliance in future, as recommended by the PAC¹¹⁵.

Reply of the Ministry was awaited (February 2022).

7.1.4 Ambiguity in Board's Instruction regarding Internal Audit of cases registered under Section 10(23C) and 80G(5)

The CBDT vide partial modification of Instruction No. 06 of 2017 dated 14.12.2018 has introduced a mechanism to conduct internal audit of process of registration of Charitable Trusts/ Institutions granted by CsIT(E).

Audit noticed that the checklist circulated with the aforesaid instruction covered only registration granted under Section 12AA. However, the CsIT(E) not only grant registration under Section 12AA but also accord approval under various sub-Section of Section 10(23C)/80G(5) of the Act.

Audit noticed that in CIT(E), Pune charge, although the Internal Audit of registration process was conducted in 50 cases as per the Board's instruction, none of the cases approved under Sections 10(23C) and 80G(5) was selected for Internal Audit. Further, the checklist circulated by the Board is required to be made comprehensive to cover cases of registration/approval granted viz. under Section 12AA, 10(23C) and 80G(5) also.

Thus, due to ambiguity in the instructions for conducting the Internal Audit of process of approval granted under Sections 10(23C) and 80G(5) of the Act, audit noted that internal audit of cases approved under Section 10(23C) and 80G(5) were not taken up.

Reply of the Ministry was awaited (February 2022).

7.1.5 Inadequacy of survey in monitoring the activities of the Trusts/ Institutions

Section 133A of the Act empowers the ITD to conduct surveys to gather information relating to the financial transactions of assessee and obtain a detailed understanding of their financial position. The PAC, in its Report¹¹⁶ recommended that survey of all educational trusts be conducted in a time-bound manner, to verify whether they were not misusing the provisions of

¹¹⁴ Madhya Pradesh, Chhattisgarh, Uttar Pradesh, Uttarakhand and Gujarat

¹¹⁵ Para 14 of 104th Report (16th Lok Sabha)

¹¹⁶ Para 9 of 27th Report (Sixteenth Lok Sabha)

'Charitable Trusts' of the Act. Accordingly, the ambit of survey operations, under Section 133A, was widened to cover Charitable Trusts, vide Finance Act, 2017¹¹⁷, to enable the Income Tax Authorities to conduct surveys at premises where an activity for charitable purpose was being carried out.

With a view to assessing the effectiveness of survey operations in respect of charitable Trusts/Institutions, Audit sought information relating to action taken by the Department based on survey and additional income disclosed thereof in respect of 75 survey cases in seven States. State-wise break up of the 75 cases mentioned above is given in Table 7.5:

Sl. No.	Name of the State	Activity wise breakup of survey conducted					Total
		Education	Medical Relief	Relief of the poor	Religious	Others	
1	Assam	0	1	0	0	1	2
2	Karnataka	6	0	0	1	8	15
3	Kerala	2	0	0	0	0	2
4	Maharashtra	19	0	1	6	10	36
5	Bihar	0	0	0	0	1	1
6	Tamil Nadu	0	1	0	0	1	2
7	West Bengal	10	0	0	0	7	17
Total		37	2	1	7	28	75

An analysis of action taken by the Department based on survey in respect of these 75 cases revealed the following:

- a. Registration was cancelled in four cases and additional income of ₹ 132.81 crore was disclosed in 30 cases (including three cases where registration was cancelled).
- b. 24 cases (including 18 educational trusts) were transferred to the concerned jurisdictional Central Circles for further assessment, since there were impounded materials during the course of survey.
- c. In eight cases, no additional income was disclosed and, in one case the assessment is still pending.
- d. The Department did not furnish the details in respect of 11 cases.

Further, out of 75 cases surveyed, 37 cases related to educational trusts, wherein registration was cancelled in two cases and additional income of ₹ 48.49 crore was disclosed in 14 cases.

¹¹⁷ As per the modification of provisions of Section 133A, the Income tax authorities may enter the premises where an activity for charitable purpose is carried on and may inspect books of account and other documents, verify cash, stock or other valuable articles or thing and call upon the trustee, employee or other person to furnish information as regards any matter, which may be useful for or relevant to any proceedings under the Income Tax Act, 1961

Audit observed that out of 5,986 audited cases comprising 4,627 assessees, survey was conducted only in 13 cases (0.3 per cent) by the Department. As, survey could be an effective tool to assess the actual financial position and detect bogus claim of exemption, the number of surveys conducted by the Department was inadequate in Audit's opinion.

Since the ITD does not maintain any activity-wise database of Trusts/ Institutions, Audit collected and analysed the available data and observed that the audit sample included 2,686 cases (2105 assessees) wherein 'Education' was the core activity of the Trusts/ Institutions. Of these, only eight (0.3 per cent) surveys were conducted during 2014-15 to 2018-19 by the ITD. Audit further noticed that no survey was conducted in respect of 46 high value educational trusts (having receipt of ₹ 200 crore or more) during the aforesaid period. In two States¹¹⁸, the Department did not produce the relevant information.

Since a significant number of private charitable entities are engaged in educational activities as pointed out in para 7.1.1 (Table 7.3), the Department needs to identify and survey those cases, particularly the high value exemption cases, as recommended by the PAC¹¹⁹, for effective monitoring, allowance of exemption to eligible assessees only and minimising the possibility of ineligible claims.

Reply of the Ministry was awaited (February 2022).

7.1.6 Inconsistency in allowing exemption to Trusts/Institutions having activity not charitable in nature

Section 2(15) of the Act provides definition of 'charitable purpose' which includes (i) relief of the poor (ii) education (iii) yoga (iv) medical relief (v) preservation of environment (including watersheds, forests and wildlife) (vi) preservation of monuments or places or objects of artistic or historic interest and (viii) the advancement of any other object of general public utility. The Section further provides that advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention of the income from such activity and the aggregate receipts from such activity or activities during the previous year exceed ₹ 25 lakh (20 per cent with effect from 1.4.2016 of the total receipts) from such activity or activities.

¹¹⁸ Uttar Pradesh and Uttarakhand

¹¹⁹ Para 9 of 27th Report (Sixteenth Lok Sabha)

Audit observed in 10 assessment cases¹²⁰ where the AO had assessed that the activities of the trusts were not charitable in nature for one or more AYs but no action had been taken to review exemptions for the other AYs although the objects of the trust were similar during the respective AYs which resulted in irregular grant of exemption involving tax effect of ₹ 42.44 crore. Two cases are illustrated below:

(i) In Karnataka, CIT(E) Bengaluru charge, a private trust engaged in the activity of 'Relief of the Poor', filed return of income at ₹ 'Nil' income. The scrutiny assessment was completed in December 2016 at an income of ₹ 2.87 crore. Audit noticed from the assessment records of AY 2016-17 that the AO had denied exemption under Section 11 stating that the activities of the assessee could not be considered as charitable within the meaning of Section 2(15). However, the claim of exemption under Section 11 for AY 2014-15 was not denied even though the activities of the assessee were similar. This resulted in short computation of income of ₹ 5.71 crore for AY 2014-15 involving tax effect of ₹ 1.29 crore.

Reply of the Ministry was awaited (February 2022).

(ii) In Chhattisgarh, CIT(E) Bhopal charge, Chhattisgarh a private society engaged in the object of 'General Public Utility', filed return of income for AY 2015-16 at an income of ₹ 0.49 crore, which was processed under summary manner in January 2017 and rectified under Section 154 in December 2018 at the same income. Audit noticed that the AO had denied exemption under Section 11 in AY 2016-17 and AY 2017-18 stating that the activities of the assessee cannot be considered as charitable within the meaning of Section 2(15). However, the claim of exemption for AY 2015-16 was not denied even though activities of the assessee were similar during the relevant previous year 2014-15. This resulted in short computation of income of ₹ 10.42 crore for AY 2015-16 involving tax effect of ₹ 3.81 crore.

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

7.1.7 Review of charitable status of entity where activity either held not genuine or the property was utilized for the benefit of related parties

Section 12AA(3) and Section 12AA(4) of the Act provide that if the activities of Trusts/Institutions are not genuine or are not being carried out in accordance with the objects of the Trusts/Institutions or the activities are being carried out

¹²⁰ Chhattisgarh -2 and Karnataka - 8

in a manner that the provisions of Sections 11 and 12 do not apply to exclude either whole or any part of the income of such Trusts/Institutions due to operation of Section 13(1) then, the competent authority may by an order in writing cancel the registration of such trust or institution. Section 13(1)(c) of the Act provide that if the income or property of the Trusts/Institutions is applied/used for the benefit of the specified person¹²¹, exemption under Section 11 will be lost.

Audit noticed in eight cases¹²² involving tax effect of ₹ 9.73 crore where the AO denied the exemption under Section 11 of the Act either holding that the activities of trusts were not genuine or the properties or income of the trusts were continuously utilised by the trust for the benefit of related persons referred to Section 13(3). However, the charitable status of the Trusts/Institutions was not reviewed by the competent authority. Two cases are illustrated below:

(i) In Maharashtra, CIT(E) Mumbai charge, a private trust engaged in the activity of 'Medical Relief', filed return of income for AY 2016-17 at ₹ 'Nil' income. The scrutiny assessment was completed assessing income of ₹ 4.01 crore in December 2018 after denying the exemption under Section 11 for violation of provisions of Section 13(1). Audit noticed from the assessment records of AY 2013-14 onwards that the Department was continuously denying exemption under Section 11 to the assessee, invoking the provisions of Section 13(1) read with Section 11. Though the Department continuously disallowed the deduction in respect of income derived from property of trust used for the benefit of the related parties as specified under Section 13(3), the assessee continued to flout the provisions governing the exemption and allowed the property of trust being used by the related party. Further, Audit also noticed that the AOs themselves during assessment orders held that the activity of the trust was not genuine. Therefore, the continuation of registration under Section 12AA granted to the assessee needed to be reviewed in light of the provisions of Section 12AA(3) and 12AA(4).

The ITO(Exemption) ward 1(2) Mumbai replied that the audit observation was acceptable and proposal for cancellation of registration was made to CIT(E), Mumbai in March 2021.

(ii) In Maharashtra CIT(E), Mumbai charge, a private trust engaged in educational activity, filed return of income for AY 2015-16 at ₹ 'Nil' income. The case was selected in PA sample as 'High value' case since the gross receipt of the trust was ₹ 79.82 crore. The scrutiny assessment was

¹²¹ founders, trustee, manager, chief functionary, major donors, relatives of the founders or persons who have substantial interest in the organization

¹²² Jharkhand - 1, Maharashtra - 2, Punjab - 3 and Tamil Nadu - 2.

completed in December 2017 assessing income at 'Nil' after allowing deduction of ₹11.21 crore under Section 11(1)(a) of the Act. Audit noticed that the assessee had rented part of trust property for the benefit of related party as specified in Section 13(3) of the Act, namely M/s 'J' Pvt Ltd, free of cost. On the basis of this information in the earlier assessment years AY 2009-10 to 2014-15, the Department disallowed deduction under Section 11 on violation of provisions of Section 13 of the Act. During the current year also, the assessing officer, after discussion, denied the submission of the assessee and computed notional income from house property of ₹ 0.60 crore.

Thus, from the above it was seen that even though the Department had continuously disallowed the deduction in respect of income derived from property of trust used, for the benefit of the related parties, as specified under Section 13(3) of the Act, the assessee continued to flout the provisions governing the exemption and allowed the property of trust to be used by the related party. Therefore, continuation of registration under Section 12AA of the IT Act granted to the assessee needed to be examined in light of the amended provisions of Section 12AA (4) of the Act.

Reply of the Ministry was awaited (February 2022).

7.1.8 Lack of Standard Operating Procedure (SOP) or Guidelines for verification for genuineness of activity of Trusts/Institutions

Any Charitable Trust/Institution has to mandatorily register with PCIT/CIT (E) for claiming exemption under different Sections viz. 11 and 10(23C)(iv) to (via) of the Act. The Pr. CIT/CIT, before granting registration/approval to a trust, has to satisfy himself about the genuineness of the activities of the organisation by calling for information/documents and making enquiries.

Audit noticed in 18 cases mentioned at paras 7.1.6 and 7.1.7 where the AO denied the exemption after finding the activity of the organisation to be not genuine or income of the trusts are utilised for the benefit of related persons referred to in Section 13(3)/ not charitable in nature. Audit observed that though there was a provision for verification of actual existence of the Trusts/ Institutions by sending a letter for compliance or by local enquiry, no such systemic mechanism was put in place to ensure genuineness of the activity of the organisation after granting registration/approval to a trust. The PAC vide para no. 23 of 27th Report (16th Lok Sabha) had also stated that the Ministry should seriously ponder and look into the whole issue afresh with a view to devising a procedure for proper and systemic evaluation of charitable trusts/institutions so that those trusts which are not discharging their functions

in consonance with the objectives under which they have been established, do not escape any tax liability.

Despite the PAC's recommendation for devising a procedure for proper and systemic evaluation of charitable trusts/institutions, the Department did not issue any such SOP/guidelines for assessing the genuineness of activity of the Trusts/Institutions.

Reply of the Ministry was awaited (February 2022)

7.1.9 Monitoring of activities of Trust/Institution engaged in scientific research activities

Section 35(1)(ii) prescribes a weighted deduction at the rate of 175 *per cent* to a donor for any sum paid to an approved research association. Section 11 also provides exemption to such research associations if they are registered under Section 12AA of the Act.

In Maharashtra, CIT(E) Mumbai charge, Audit observed that a private entity, for AY 2016-17 was registered under Section 12AA. During AY 2015-16, Audit noted that the Department started denying the exemption under Section 11 and eventually cancelled the registration under Section 12A vide order dated 05.02.2019 after finding that the assessee was not carrying out any research activity and had issued bogus certificate under Section 35(1)(ii) to the donors.

Audit noted that the CIT (E) Kolkata had come across (November 2015) eight¹²³ scientific research associations which were involved in 'money laundering through receipt of bogus donation and repayment in cash' and requested to take appropriate action in these cases to stop the misuse of the provisions and bogus donation. Further, Audit noted that the CBDT, in taking cognizance of the references received from field authorities had informed (December 2018) all the PCsIT/DGsIT regarding bogus donation racket under Section 35(1)(ii) and directed that while handling investigations/enquiries in these cases, the concerned AO should examine the specific transactions related to the sum donated and cash trail be clearly identified.

As per data available on ITD's website¹²⁴, there are 2,208 assesseees upto March 2020 which are notified as research association under Section 35(1)(ii) & (iii) by the CBDT.

Audit sought details of Trusts/Institutions registered under Section 35(1)(ii), non-filers of such research association, filing of audit reports etc. in Maharashtra Charge being the State with the highest collection of income tax and also with

¹²³ S₁₄ School, H₂ Foundation, M₉ Institute, B₄ Society, V₃ Foundation, S₁₅ Trust, H₃ Trust and R₂ Trust

¹²⁴ <https://www.incometaxindia.gov.in/Pages/utilities/Notified-Scientific-Research.aspx>

the significant number of Trusts/Institutions. However, the Department did not provide the information to Audit. Audit, therefore, could not ascertain whether the action was taken in this regard in respect of Maharashtra charge. In West Bengal charge, in the case of three Trusts/ Institutions¹²⁵, appropriate action was taken by the Department. However, details of action taken in respect of donors was not known to Audit.

Thus, considering the gravity of the issue, the ITD may explore the feasibility of certification of research activity by a specialised authority as checks and balances to ensure that the institutions are carrying out research activity and issuing genuine certificate enabling them for claiming deduction as was done in the case of Section 35(2AA) by the head of a National Laboratory or a University or the Indian Institute of Technology or the Principal Scientific Advisor to the Government of India and Section 35(2AB) by the Department of Scientific and Industrial Research (DSIR).

Reply of the Ministry was awaited (February 2022).

7.1.10 Absence of feedback/ monitoring mechanism to monitor the activities of the Trusts/Institutions

The PAC, in its Report,¹²⁶ observed that no efforts have been made by the ITD to monitor whether the Trusts have been fulfilling the objectives under which they have been established and also for ensuring that there was no abuse of the concessions which were enjoyed by such Trusts.

Audit attempted to ascertain whether the ITD/CBDT had devised any mechanism to monitor the extent to which charitable Trusts/Institutions have been fulfilling their objectives in the area of charity, religion, medical and education etc. for which exemptions are being provided under different Section of the Act.

In Delhi, no reply was furnished by the CIT (E), Delhi in this regard. However, in Bihar, Madhya Pradesh and Rajasthan, the DCIT (E), Patna, ITO (HQ), O/o the CIT (E), Bhopal and ITO (HQ), CIT(E), Jaipur charges, respectively stated that no such specific mechanism was available with the Assessing Officer. The ITO (HQ), CIT(E), Jaipur charge also stated that on the basis of different inputs viz. Computer Aided Scrutiny Selection (CASS) parameters, Tax Evasion Petitions (TEP), actionable information from other agencies, Trusts/ Institutions are scrutinized as per provision of the Income Tax Act, 1961.

Reply of the Ministry was awaited (February 2022).

¹²⁵ S₁₄ School, H₂ Foundation and M₉ Institute

¹²⁶ Para 39 of 104th Report (16th Lok Sabha)

7.1.11 Monitoring of accumulation of Income and its utilisation under Section 11(2)

Section 11(2) provides that if in the previous year, income applied to charitable or religious purposes in India falls short of 85 *per cent* of the income derived during that year from the property held under trust, the trust can opt for accumulation (in Form 10) of the unapplied portion of the income, to be spent for specified purpose(s) in the next five years, subject to fulfilment of certain conditions. Further, Section 11(3) provides that the accumulated amount under Section 11(2) will be the deemed income of the previous year if it is applied to purposes other than charitable or religious purposes, or ceases to be accumulated or set apart for application, or ceases to remain invested or deposited in any of the modes specified in Section 11(5), or is not utilised for the purpose for which it is so accumulated or set apart during the period not exceeding five years or in the year immediately following the expiry thereof.

During the Performance Audit, Audit collected information to ascertain the number of Trusts/Institutions which opted for accumulation *vis-a-vis* amount accumulated and noticed that out of 5,985 sample cases test checked, 846 (14.85 *per cent*) Trusts/Institutions opted for accumulation under Section 11(2) or 3rd proviso to Section 10(23C) of the Act, to be spent for specified purpose(s) in the next five years and the total amount accumulated was ₹ 4,997.54 crore during the AY 2014-15 to AY 2017-18. However, Audit noticed deficiencies in monitoring of utilisation of the accumulation, as discussed in detail in the succeeding paragraph.

Audit observed that there was no effective system to monitor past accumulations, their utilisation and levying tax on the amount if they are applied for purposes other than charitable/religious purposes, or cease to be accumulated, or ceased to remain invested in the specified modes, or are not utilised for the purpose for which they have been so accumulated. The Audit Report in Form 10B, filed as per rule 17B of the Income Tax Rules, 1962, does not contain adequate certification by the Auditor to this effect. Though Form 10B contains some qualifications about utilisation of past accumulation, it does not clearly certify the amount claimed by the assessee in its return of income¹²⁷ about utilisation of past accumulation. Form 10B does not reflect whether the amount of utilisation or part thereof has been routed through the Income and Expenditure Account.

Audit noticed 32 assessment cases,¹²⁸ involving revenue impact of ₹ 60.94 crore, where the Department did not effectively monitor utilisation of past

¹²⁷ 'Schedule-I' of ITR-7

¹²⁸ Delhi - 1, Gujarat -1, Haryana -1, Karnataka -3, Madhya Pradesh -4, Maharashtra - 12, Punjab -5, Tamil Nadu -1, Uttar Pradesh -2 and West Bengal -2

accumulated income in the manner laid down in the Act. Eight cases are illustrated below:

- (i) In Uttar Pradesh, CIT (E) Lucknow charge, a Government society 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 March 2018 at an income of ₹ 838.55 crore by holding its objects as non-charitable in accordance with amendment in Section 2(15) and taxed accordingly. Audit noticed that assessee had an accumulated amount of ₹ 29.93 crore in FY 2009-10. This amount was required to be spent on charitable purpose by 31.03.2015. Thus, the accumulated amount of ₹ 29.93 crore should have been treated as income of the assessee for AY 2016-17. Omission to do so resulted in under-assessment of income of ₹ 29.93 crore involving short levy of tax of ₹ 12.72 crore including interest. The Ministry has accepted (March 2022) the audit observation and remedial action has been initiated by issuing notice under Section 148 in March 2021.
- (ii) In West Bengal, CIT(E) Kolkata charge, a private trust engaged in multiple charitable activity, filed the return of income for AY 2016-17 at ₹ 6.86 crore. The scrutiny assessment was completed in April 2018 at the same income. Audit noticed that the assessee had accumulated ₹ 12.10 crore for specified purpose under Section 11(2), during AY 2010-11, and this amount was required to be utilized within five years from the year of accumulation. The assessee, however, utilised only ₹ 1.36 crore within five years (from AY 2011-12 to AY 2015-16), and offered only ₹ 6.86 crore for taxation, instead of the unutilized amount of ₹ 10.74 crore. The Department during assessment also did not monitor the past accumulation and its utilisation. This resulted in an under-assessment of income of ₹ 3.89 crore, involving undercharge of tax ₹ 1.68 crore. The Ministry has accepted (March 2022) the audit observation and remedial action has been initiated by passing order under Section 263 in March 2021.
- (iii) In Karnataka, CIT(E) Bengaluru charge, a private trust, engaged in the activity of 'Medical relief', filed return of income for AY 2016-17 at ₹ 'Nil' income. The scrutiny assessment was completed in December 2018 accepting returned income of ₹ 'Nil' after allowing exemption under Section 11 of ₹ 10.41 crore. Audit noticed that the assessee had utilised ₹ 3.00 crore being the amount accumulated/set apart during the financial year relevant to the AY 2011-12 towards revenue expenditure of the Trust. It was, however, noticed that the amount accumulated in AY 2011-12 was

stated to be towards 'construction of hospital'. As the accumulated amount was not applied towards the purpose specified, as provided in the Section 11(3) *ibid*, the same should have been brought to tax. This resulted in a short levy of tax of ₹ 1.35 crore.

The Ministry, while not accepting the audit observation, stated (March 2022) that as per the statement of total income for AY 2016-17, the assessee had reduced the 'amount utilised out of funds accumulated/set apart for the AY 2011-12' amounting to ₹2.72 crore from the total revenue expenditure of the AY 2016-17. Further, the entire capital expenditure amounting to ₹27.97 lakh incurred during the FY 2015-16 was from the funds accumulated/set apart for the AY 2011-12. Thus, the AO observed that utilisation of ₹ 3.00 crore during FY 2015-16 out of the funds accumulated for the AY 2011-12 was not claimed by the assessee as application of income for AY 2016-17.

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

- (iv) In Uttar Pradesh, under the CIT (E) Lucknow charge, a Government society, engaged in the activity of 'General Public Utility', filed return of income for AY 2015-16 at 'Nil' income. The case was selected in the PA sample as 'Top 200' case having gross receipt of the assessee during the year was ₹ 1272.21 crore. The scrutiny assessment was completed in March 2017 at ₹ 918.63 crore after an addition of ₹ 885.93 crore in different heads under normal provisions and not as Trust in accordance with amendment in Section 2(15) holding its objects non-charitable in nature. Audit noticed that the assessee had an accumulated amount of ₹ 5.53 crore in the FY 2008-09. This amount was required to be spent on charitable purpose by 31.03.2014. As the activity of the assessee was held by the AO as non-charitable, the accumulated amount should have been treated as Income of the assessee, in view of the provisions of Section 11(3)(a), but the same was not done. This resulted in short computation of income of ₹ 5.53 crore and consequent short charge of tax of ₹ 2.33 crore including applicable interest.

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

- (v) In Maharashtra, under CIT(E) Mumbai charge, a private entity engaged in educational activity, filed return of income for AYs 2015-16 and AY 2016-17 at ₹ 'Nil' income. The cases for AYs 2015-16 and 2016-17 were selected in the PA sample as 'High Value' case since the gross receipt during the years were ₹ 114.24 crore and ₹ 134.63 crore respectively. The scrutiny

assessments were completed in October 2017 and October 2018, respectively, assessing income at ₹ 'Nil' for AYs 2015-16 and 2016-17. Audit noticed that the assessee had granted advance of ₹ 1.30 crore as on March 2016 to a charitable trust 'U' and had paid ₹ 20.67 crore to a trust 'V' towards purchase of building during the AY 2015-16. The assessee claimed these amounts as application of Income accumulated under Section 11(2) of the Act. As per the aforesaid provisions, the amount paid to trusts, out of accumulated income of earlier years, was not to be allowed as application of income for the charitable purposes and, therefore, brought to tax. The omission resulted in under-assessment of income of ₹ 21.97 crore involving short levy of tax of ₹ 7.47 crore for the above AYs.

Reply of the Ministry was awaited (February 2022).

- (vi) In Punjab, under CIT(E) Chandigarh charge, a Government society engaged in the activity of 'General Public utility', and selected in the PA sample as 'Top 200 case' having gross receipt of ₹ 244.65 crore, filed return of income for AY 2015-16 declaring ₹ 'Nil' income, which was processed summarily and subsequently rectified at ₹ 'Nil' income. Audit noticed that the unutilized past accumulation of ₹ 6.58 crore, was not treated as income in AY 2015-16 after a lapse of five years. This resulted in under-assessment of income of ₹ 6.58 crore, involving short levy of tax of ₹ 3.98 crore including interest.

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

- (vii) In Maharashtra, CIT(E), Mumbai charge, a private trust engaged in activity of 'General Public Utility', filed return of income for AYs 2014-15, 2015-16 and 2016-17 at ₹ 'Nil' income. The scrutiny assessments were completed in December 2016, December 2017 and December 2018 determining income of ₹ 5.26 crore, ₹ 1.64 crore and ₹ 'Nil' respectively. The scrutiny assessment of AY 2014-15 was further rectified under Section 154 in December 2016 revising income at ₹ 'Nil'. Audit scrutiny revealed that the assessee had given an advance of ₹ 6.01 crore for 'Sanand Land' in earlier years and treated it as application of income under Section 11(2). Against this advance, the assessee received aggregate refund of ₹ 4.25 crore including ₹ 0.30 crore of AY 2016-17 till 31.03.2016 leaving balance of ₹ 1.76 crore to be recovered. Audit noticed that the Department allowed accumulation of the refund of ₹ 0.30 crore as deemed application under Section 11(2) again in the current year. Similarly, in AY 2014-15 and AY 2015-16, the assessee received refund of advance to the extent of ₹ 3.95 crore and ₹ 4.37 crore respectively against the property 'Sanand Land' and

'Gift City Land' which was again allowed to accumulate under Section 11(2) in both the years. The provisions of Section 11(2) of the Act allowed accumulation of any income of a financial year only once for the specific purposes. Once it is not applied within the stipulated period and for the specified purpose, it is not open to the assessee to claim accumulation of the same income on recurring basis on expiry of the stipulated period. The allowance of repeated accumulation of same amounts resulted in under-assessment of income of ₹ 10.38 crore involving tax effect of ₹ 3.50 crore for the above AYs.

Reply of the Ministry was awaited (February 2022).

- (viii) In Maharashtra, CIT(E), Pune Charge, a private trust involved in educational activity, having gross receipt of ₹ 424.75 crore, filed its return of income for AY 2016-17 in October 2016 declaring income at ₹ Nil. The return was initially processed in summary manner and subsequently selected for scrutiny and assessment was completed under Section 143(3) in December 2018 accepting the returned income. Audit noticed that in the Form 10 filed by the assessee, no accumulated fund was available to the assessee prior to AY 2011-12 for utilisation. Audit further noticed from the 'statement of accumulated fund & utilisation' submitted by the assessee that the assessee had claimed *inter alia* utilisation of accumulated fund of ₹ 301.90 crore pertaining to AY 2008-09 to 2010-11 during the previous year relevant to AY 2016-17 and the same was accepted by the AO. The AO while allowing the claim of the assessee did not take into consideration the information available in Form 10. Without prejudice to this, the allowance of accumulated fund pertaining to AY 2008-09 to 2010-11 by the AO was in contravention to the provision *ibid*.

In the reply (January 2022), while not accepting the objection, the Department stated that during course of scrutiny the accumulation of utilisation was duly verified and it provided a snapshot of utilisation of accumulation for AY 2006-07 to 2016-17.

The reply of the Department is not acceptable. Further scrutiny of the unutilized amount (Closing Balance as on 31.03.2016) of respective funds viz., Land Building and other asset fund, Land and Land Development, campus development, building equipment fund and research fund mentioned in the Balance Sheet vis-à-vis assessee's 'statement of accumulation & utilisation of funds' was done. An excess un-utilized amount of ₹ 1279.36 crore was lying with the assessee. This indicates that the amount accumulated for the dedicated fund had not been utilized within the stipulated time and statement submitted could not be relied upon and needs further scrutiny. The Department is requested to verify the same.

Reply of the Ministry was awaited (February 2022).

It is evident from above that in certain cases, the assessee had availed exemptions; however, the accumulated income was not utilised either within the stipulated time or for the specific purpose. Thus, the monitoring mechanism of past accumulation of Income and its utilisation under Section 11(2) is still required to be made more effective.

The issue of ineffective monitoring of accumulations, and their utilisation, had also been pointed out in CAG's earlier Audit Report No. 20 of 2013. The PAC had recommended that the Department to evolve a suitable mechanism to ensure that accumulated income is applied for the objectives of the Trusts/Institutions within a specified time frame and asked the Department to perform strict monitoring of Form 10 invariably to cover all assessments. In reply, the Ministry had stated that the ITD was in the process of making the e-filing of Returns by all assessees mandatory. Once this is achieved, the necessary database will be created in the system to address such issues. However, Audit observed that the issue has still not been resolved even after making the e-filing mandatory for all Trusts/Institutions and as a result, certain Trusts/Institutions are taking undue benefit.

Reply of the Ministry was awaited (February 2022).

7.1.12 Provisions for declaration of the purpose of Accumulation under Section 10(23C)

As per proviso of Section 10(23C) of the Act, fund or trust or institution, or any university, or other educational institution, or any hospital, or other medical institution, registered under clause (iv), (v), (vi) and (via) of Section 10(23C), may apply its income, or accumulate it for application, wholly and exclusively to the objects for which it is established, and, in a case where more than 15 *per cent* of its income is accumulated on or after the first day of April 2002, the period of the accumulation of the amount, exceeding 15 *per cent* of its income, shall, in no case, exceed five years, vide 3rd proviso to Section 10(23C).

Audit observed that there is no provision in the Act for declaration of the purpose of accumulation under Section 10(23C). No Statement (similar to Form 10, as mentioned in para 5.4.2) has been prescribed in the Act or Rules for being furnished to the Assessing Officer, intimating the purpose/period of accumulation. Further, there is no mechanism to monitor the past accumulation, its utilisation and levying tax on the amount remaining unutilised after five years either through an appropriate column in the return of income, or through the modality of the Audit Report (Form 10BB). Audit further noticed that in case of accumulation of the current year, no procedure is prescribed to treat the shortfall in the current year application, as taxable income. In the absence of

such a procedure, the Department is treating the deficit of the current year application, as accumulation, by default even though the same has not been claimed by the assessee in the requisite Form 10BB.

Audit noticed four assessment cases¹²⁹ involving revenue impact of ₹ 2.99 crore where the Department did not bring the unspent accumulated income to tax after expiry of prescribed period; and treated the shortfall in current year application, as accumulation under Section 10(23C). Two cases are illustrated below:

(i) In Tamil Nadu, CIT(E) Chennai charge, a private trust engaged in educational activity, filed return of income for AY 2017-18 at ₹ 'Nil' income and the scrutiny assessment was completed accepting returned income of ₹ 'Nil' in December 2019. Audit noticed that the accumulation pertaining to AY 2011-12 amounting ₹ 3.46 crore remained unspent up to AY 2016-17. The unspent accumulation was not brought to tax in AY 2017-18. This has resulted in non-levy of tax of ₹ 1.67 crore including applicable interest.

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

(ii) In West Bengal, CIT(E) Kolkata charge, a society engaged in educational activity, filed return of income for AY 2016-17 at ₹ 'Nil' income. The scrutiny assessment was completed in November 2018 followed by rectification under Section 154 in March 2020 at ₹ 'Nil' income. Audit observed that the AO had allowed accumulation of income of ₹ 2.97 crore under the 3rd proviso to Section 10(23C), to be applied in the next five years; however, no such accumulation had been claimed by the assessee through the audit certificate (Form 10BB). Since the assessee had not claimed the accumulation, the same should not have been considered as exempt, and should have been considered as taxable income for the period. This resulted in under-assessment of income of ₹ 2.97 crore involving under-charge of tax of ₹ 1.32 crore.

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

Thus, in the absence of a specific provision, there was no mechanism for monitoring accumulation of income and its utilisation under Section 10(23C) and in certain cases, the AOs were treating the shortfall in current year application,

¹²⁹ Tamil Nadu -3 and West Bengal -1

as accumulation, suo-moto, even though the same had not been claimed by the assessee.

7.1.13 Absence of mechanism to verify receipt and utilisation of foreign contribution

Non-Government Organizations (NGOs)/ Trusts are allowed to receive Foreign Contributions (FCs) in accordance with the provisions laid down in the Foreign Contribution (Regulation) Act (FCRA) 1976, amended by FCRA 2010.

The Ministry of Home Affairs (MHA) monitors receipts of FC and publishes it on its official website, showing year-wise/State-wise details of Associations/ Trusts that received FC above ₹ one crore. FCRA envisages registration of recipient of FCs with MHA. FCRA also stipulates maintenance of separate account in a designated bank for the FCs received and the purpose of its receipt in the accounts. The returns are to be submitted annually to MHA.

Section 7 of Foreign Contribution (Regulation) Act, 2010 read with Rule 24 of Foreign Contribution (Regulation), Rules, 2011 provides that before any foreign funds received by a registered association are passed on to any person/ association in India, the transferor has to ensure that the recipient is also registered under FCRA 2010 and has not been prohibited under the Act. Rule 4 of FCRA (Rules) also provides that foreign contribution cannot be invested in speculative mode including mutual funds and shares.

The issue of ineffective monitoring of foreign contribution, and their utilisation, was also pointed out in CAG's earlier Audit Report No. 20 of 2013. The PAC, in its Report¹³⁰ had recommended in July 2018 that the ITD/CBDT should formulate a data sharing mechanism with the MHA to keep a track of FCs received and their application for the purposes for which they have been received. The Committee also recommended developing a mechanism to monitor application of foreign contributions received and issuing a clear set of guidelines in this regard to all Assessing Officers. In reply, the ITD stated that CBDT will initiate discussion with MHA for sharing of data related to foreign contributions received. The data sharing mechanism will be streamlined after considering the learning of data matching results. Audit, however, observed that the ITD has still not formulated a data sharing mechanism with the MHA to keep track of Foreign Contributions (FCs) received and their utilisation for the declared purpose.

7.1.13.1 Audit noticed 35 assessment cases¹³¹ where the Trusts/Institutions received Foreign Contributions without having registration under FCRA, mismatch of figures of foreign contribution shown in ITR and that disclosed with MHA, donation of foreign contribution by recipient trust to other trusts which

¹³⁰ Para 28 of 104th Report (16th Lok Sabha)

¹³¹ Delhi -12, Jharkhand -1, Kerala -3, Maharashtra -7, Punjab -11 and Uttar Pradesh -1.

was not registered under FCRA, 2010 or investment in foreign contribution in speculative mode. In all the cases, the Department had allowed exemption on such foreign contribution involving tax effect of ₹ 182.10 crore.

Eight cases are illustrated below:

(i) In Delhi, CIT(E) Delhi charge, a private trust, engaged in the activity of medical relief, filed return of income for AY 2014-15 at ₹ 'Nil' income. The gross receipt of the trust was ₹ 197.21 crore and it was selected in the PA sample as 'Top 200' case. The scrutiny assessment was completed in December 2016 determining income at ₹ 'Nil'. Audit noticed from the Form FC-6 relating to account of foreign contribution submitted by the assessee to the MHA, that the assessee had received foreign contribution of ₹ 196.67 crore during the year; however only ₹ 18.67 crore was shown as foreign contribution in the ITR. This resulted in under reporting of foreign contribution and consequent under-assessment of income of ₹ 178.00 crore involving tax effect of ₹ 61.56 crore including interest.

Reply of the Ministry was awaited (February 2022).

(ii) In Delhi, CIT(E) Delhi charge, a Private Trust, engaged in the activity of medical relief, filed return of income for AY 2015-16 at ₹ 'Nil' income and the scrutiny assessment was completed in September 2017 determining ₹ 'Nil' income. Audit noticed that the assessee had received foreign contribution of ₹ 35.43 crore for the purpose of education, but most of the amount was spent on medical relief. Thus, the amount which was spent for the purpose other than purpose for which foreign contribution was received should have been disallowed. This omission resulted in under-assessment of income by ₹ 30.41 crore involving short levy of tax of ₹ 13.41 crore.

In reply, the ACIT(Exemption) Circle 2(1), Delhi stated that receipt and utilisation of foreign contribution is monitored by the FCRA wing under Ministry of Home Affairs. The trust is registered under Section 11 and as long as the assessee is utilising the funds received towards its object for which it was formed, there is no provision in the Act to disallow the expenses treating it as not a proper application of income.

The reply was not tenable since Section 8(1)(a) of the FCRA Act, 2010 stipulates that every person who is registered and granted a certificate or given prior permission under the Act and receives any foreign contribution, shall utilise such contribution for the purposes for which the contribution has been received. Thus, the assessee violated the provisions of the FCRA Act, 2010 but was allowed exemption on such foreign contribution, although not utilized for the declared purposes.

Reply of the Ministry was awaited (February 2022).

- (iii) In Jharkhand, CIT(E) Patna charge, a private religious trust, filed return of income for AY 2016-17 at ₹ 'Nil' income. The scrutiny assessment was completed in December 2018 at ₹ 1.20 crore. Audit noticed that the assessee utilized its funds (foreign contribution and domestic funds) through a single bank account and invested foreign contribution to the amount of ₹ 3.47 crore in mutual funds which was speculative in nature in contravention of FCRA Rules. In the assessment order, the AO had accepted that the fund was not deposited in the specified mode but no action was taken by the AO. This omission resulted in short levy of tax of ₹ 1.63 crore.

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

- (iv) In Maharashtra, CIT(E) Pune charge, a private trust engaged in multiple charitable activities filed return of income for AY 2016-17 at ₹ 'Nil' income which was summarily processed in March 2018 followed by rectification under Section 154 in March 2019 determining income at ₹ 'Nil'. Audit noticed that the assessee had received ₹ 22 lakh from a foreign country without having valid registration under FCRA. Similarly, the assessee had also received ₹ 5 lakh in FY 2014-15. Since the amount was received without valid registration, the same should have been assessed as unauthorised receipt of foreign contribution involving tax effect of ₹ 5.3 lakh.

Reply of the Ministry was awaited (February 2022).

- (v) In Delhi, in CIT(E) Delhi charge, a private trust, filed return of income for AY 2015-16 at ₹ 'Nil' income. The scrutiny assessment was completed in November 2018 at a total income of ₹ 'Nil'. Audit noted that as per the Schedule VC of the ITR-7 filed by the assessee, total foreign contribution received by the assessee during the year was ₹ 'Nil'. However, as per Form FC-6¹³² as declared to MHA, the amount of Foreign Contribution was shown as ₹ 79.23 crore. Thus ₹ 79.23 crore received as foreign contribution was not treated as income of the assessee during the year. This resulted in under-assessment of income by ₹ 79.23 crore involving tax effect of ₹ 35.00 crore including interest.

Reply of the Ministry was awaited (February 2022).

¹³² A form required to be maintained under FCRA Act

(vi) In Maharashtra, in CIT(E) Mumbai charge, a private trust, filed return of income for AY 2017-18 at ₹ 'Nil' income. The scrutiny assessment was completed in December 2019 at a total income of ₹ 'Nil'. Audit noticed from the Income and Expenditure Account that the assessee had received foreign donation of ₹ 58.15 crore during the year and submitted the details of foreign donation in Form FC-4¹³³. Audit observed that the assessee in Form FC-4 declared receiving of foreign donation to the extent of ₹ 47.67 crore only, which was certified by the tax auditor. The assessee could not explain the source and genuineness of foreign donation shown in the Income and Expenditure Account to the extent of ₹ 10.48 crore. This unexplained foreign contribution was required to be treated as anonymous donation under Section 115BBC(3) and added back to total income of the assessee. The omission resulted in under-assessment of income to the extent of ₹ 10.54 crore with short levy of tax of ₹ 10.77 crore including applicable interest.

Reply of the Ministry was awaited (February 2022).

(vii) In Delhi, CIT(E) Charge, a private trust engaged in religious activity, having gross receipt of ₹ 205.66 crore, filed its return of income for AY 2015-16 at ₹ 'Nil'. The assessment was completed in summary manner in April 2016 at ₹ 'Nil'. Audit noticed that the assessee had mentioned receipt of foreign contribution of ₹ 38.32 crore under other details in the ITR. However, in the schedule-VC (Voluntary Contribution) of the ITR, the assessee had shown only ₹ 11.21 crore as Foreign Contribution under corpus fund donation. Thus, the difference of ₹ 27.12 crore was to be included as income and offered to tax. However, the same was not included in its income by the assessee. Further, while processing the return under summary manner through the ITD systems, the difference amount of ₹ 27.12 crore was also not considered as income of the assessee. The omission resulted in under-assessment of income of ₹ 27.12 crore involving tax effect of ₹ 10.39 crore including interest.

Reply of the Ministry was awaited (February 2022).

(viii) In Delhi, CIT(E) Charge, assessment of a private trust, involved in educational activity, having gross receipt of ₹ 160.43 crore, for AY 2016-17 was processed in summary manner in May 2017 at income of ₹ Nil. Audit noticed that the assessee had shown ₹ 10.14 crore as foreign contribution as per Schedule VC of the ITR. The same was accepted in the summary processing through ITD systems. However, it was noticed from Form FC-4 under Rule-17(1) as declared by the assessee to the Ministry of Home

¹³³ A form required to be maintained under FCRA Act w.e.f. January 2016

Affairs (MHA), the amount of foreign contribution received for the relevant AY was shown as ₹ 27.69 crore. Thus, there was short declaration of the foreign contribution in the ITR by the assessee which resulted in under assessment of income of ₹ 17.55 crore involving tax effect of ₹ 6.78 crore.

Reply of the Ministry was awaited (February 2022)

7.1.13.2 Audit further noted that in eight of total of 35 assessment cases, mismatch of figures of foreign contribution shown in ITRs and those disclosed with MHA was noticed, as shown in Table 7.6 below:

Table 7.6: Mismatch in Foreign Contribution received by Trusts/Institutions						
Sl. No.	Assessee	CIT Charge	AY	Foreign contribution received during the year (₹ in crore)		
				Under Other Details in Part A of ITR-7	In Schedule VC to ITR 7	Disclosed in the return filed to MHA
1	S ₂ Trust	CIT (E) Delhi	2015-16	38.32	11.21	Not available with Audit
2	l ₂ Foundation	CIT (E) Delhi	2016-17	10.14	10.14	27.69
3	l ₂ Foundation	CIT (E) Delhi	2015-16	11.53	11.53	11.6
4	J ₂ University	CIT (E) Delhi	2014-15	0.1	0	Not applicable
5	T ₅ Institute	CIT (E) Delhi	2015-16	0.67	0	Not applicable
6	M ₃ Church	CIT (E) Kochi	2016-17	4.25	4.1	Not available with Audit
7	S ₈ Institute	CIT (E) Kochi	2014-15	1.96	0	Not available with Audit
8	R ₁ Institute	CIT (E) Kochi	2014-15	1.67	0	Not available with Audit

In all the cases, the Department had allowed exemption on such foreign contribution based on information provided by the assessee in the schedule VC (Voluntary Contribution) of the Form ITR-7.

Audit noticed that while processing ITRs, the ITD systems could not detect the difference in the amount relating to foreign contribution received, mentioned under 'other details in Part A of Form ITR-7' and in schedule VC (Voluntary Contribution) to ITR-7. This indicated inadequate checks and validation in the ITD systems for the aforesaid fields in Form ITR-7. As a majority of cases are processed in summary manner only, in the absence of relevant checks and validation in the ITD systems, risk of leakage of revenue to the exchequer cannot be ruled out.

Thus, due to absence of data sharing mechanism with MHA, deficiency in monitoring of receipt of foreign contribution and its utilisation by the ITD still persists, despite PAC's recommendation in its Report in July 2018 and assurance given by the ITD in its response to PAC's recommendation.

Reply of the Ministry was awaited (February 2022)

7.1.14 Inadequate monitoring of receipts issued by the entity having registration under Section 80G

Section 80G provides deduction in computing the total income of a person in respect of donation made to certain funds and charitable institutions. The Trusts/Institutions, therefore, take advantage of this provision and get themselves registered under this provision to attract the potential donors. The Act also provides that it is necessary to produce adequate proof of payment to claim deduction under Section 80G.

In CAG's Report No. 20 of 2013, it was pointed out that there was no internal mechanism within ITD to exercise control over the receipts issued by the entity having registration under Section 80G. In reply, the ITD submitted before the PAC that the Department had introduced e-filed return ITR-7 for charitable entities and the return captures information of donations received by the entity. On the other hand, a donor also e-filed return of income which captures details of PAN of a donee and the amount of 80G donation. Thus, by capturing the data furnished by the donor and the donee, a mechanism had been put in place for detecting gross mismatch between donation received and donation given. Audit, however, noticed three cases in respect of one assessee where there was a mismatch of amount of donation as disclosed by the donor and the donee which is illustrated below:

- (i) In Punjab, CIT(E) Chandigarh charge, a private trust engaged in multiple charitable activity, for the AYs 2015-16, 2016-17 and 2017-18 received a sum of ₹ 17.14 crore (2015-18) as corpus donation from related party. Cross verification of records of the related party revealed that the related party claimed exemption under Section 80G, but neither the assessee trust credited this amount in its income and expenditure accounts nor was it applied for charitable purposes. The ITD did not cross check the donation received by the entity, even when the record was available in the assessment file. As the Trust had not applied the donation for charitable purpose, the donation was required to be added back in the taxable income. This resulted in under- assessment of ₹ 17.14 crore, involving tax effect of ₹ 8.26 crore.

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

Audit noted that the issue has since been addressed by the Ministry by inserting explanation 2A below Section 80G(5E) with effect from 01.04.2021.

7.2 Issues requiring strengthening of monitoring by the Income Tax Department

During the Performance Audit, Audit noticed the following issues which require strengthening the monitoring mechanism in the ITD in respect of the Charitable Trusts/ Institutions:

(i) Deficiency in ITR Form-7 and Audit Report in Form 10B for effective monitoring of exemption claimed by Trusts/Institutions

Audit noted certain deficiencies in Income Tax Return Form ITR-7 and Audit Report in Form 10B for effective monitoring of exemption claimed by Trusts/Institutions. ITR-7 does not contain activity wise separate business code for Government and private entities, details of Balance Sheet, Schedules of assets and liabilities, year-wise receipt and utilisation of corpus donation, details of contributors/donor etc. Similarly, the Audit Report in Form 10B does not contain certification by the Auditor of details of receipt under different heads, information on receipt and utilisation of corpus donation, deemed application of income, disclosure of TDS deducted/deductible etc. In the absence of such information, Audit noted that quality of assessment has been impacted as incorrect claims made by the assesseees were allowed leading to loss of revenue to the exchequer etc. as discussed in para 5.3.5, 5.3.6 and 7.1.1 of this report.

(ii) Lack of effective monitoring of accumulation of income and its utilisation

Audit noticed that there is lack of effective monitoring of accumulation and its utilisations by Trusts/Institutions in the manner laid down in the Act. Although, the PAC had recommended bringing amendment to the Act or evolving a mechanism to ensure that accumulated income is applied for objectives of the Trusts/Institutions within a specified time frame, the Department is yet to develop a suitable mechanism in this regard. Audit also noted deficiency in Audit Report in Form 10B and 10BB submitted by the Trusts/Institutions claiming exemptions under Section 11(2) and 10(23C) respectively to monitor the past accumulation, its utilisation and levying tax on the amount remaining unutilised after five years. The deficiency in monitoring of accumulation and its utilisation has been duly discussed in paras 7.1.11 and 7.1.12 of this report.

(iii) Ineffective monitoring of receipts of foreign contribution and their utilisation

The PAC had recommended that the Department should formulate a data sharing mechanism with the Ministry of Home Affairs (MHA) to keep a track of foreign contributions (FCs) received by Trusts/Institutions and their utilisation

for the declared purpose. The PAC also recommended that a clear set of guidelines in this regard be issued to all the AOs. Audit observed that the ITD is yet to establish the desired mechanism to keep a track of Foreign Contributions (FCs) received and their utilisation for the declared purpose by the Trusts/Institutions. Audit noticed cases where there was a mismatch of figures of foreign contributions shown in ITR and those disclosed with MHA as well as violation of provisions of FCRA, 2010 by Trusts/Institutions. Audit findings in respect of ineffective monitoring mechanism of receipts and utilisation of foreign contribution have been discussed in detail in para 7.1.13 of this report.

(iv) Inadequacy of survey in monitoring the activities of the Charitable Trusts/ Institutions

Audit noticed that survey could be an effective tool to monitor the activities, assess the actual financial position and detect bogus claim of exemptions of the Charitable Trusts/Institutions. However, Audit noted that number of surveys conducted by the Department was inadequate, considering large number of assessee claiming exemption. In spite of specific recommendation of the PAC that survey of all educational trusts be conducted, in a time-bound manner, Audit observed that the ITD conducted very few surveys during 2014-15 to 2018-19 in respect of educational trusts included in the audit sample. Further, no survey was conducted in respect of high value (having receipt of ₹ 200 crore or more) educational trusts during the aforesaid period. The deficiency has been brought out in para 7.1.5 of this report.

(v) Internal Audit of the Registration/approval process

Despite specific recommendation of the PAC that the process of registration/approval of the Charitable Trusts/Institutions should be brought under the purview of Internal Audit of the Department to minimize the irregularities, audit noted that the cases approved under Section 10(23C) and 80G were yet to be brought under the purview of the Internal Audit of the Department. This would result in weak monitoring of the approval processes under the said Sections of the Act. Audit further noted that though the Internal Audit of registration cases under Section 12AA commenced for the first time in FY 2019-20, it has not been uniformly implemented in all the States/charges, as highlighted in paras 7.1.3 and 7.1.4 of this report.

(vi) Donations by a Trust to another Trust out of current years' income

Audit observed that Trusts/Institutions are in certain cases 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 series/string of Charitable/Religious Institutions. This resulted in denial of charity to the beneficiaries and helped in accumulation in the hands of

Trusts/Institutions. The ITD has no mechanism to monitor such donation(s) to other trusts. The misuse of the provision thus warranted further examination by the ITD. Audit findings in this respect has been brought out in para 5.1.2.7.

(vii) Absence of monitoring of activities of Trust/Institution engaged in scientific research

Audit noticed that there is lack of monitoring of the ITD of the activities of Trust/Institution engaged in scientific research. Certification of genuineness of activity by any specialised authority to the effect that the Trusts/Institutions are carrying out scientific research activities is not necessary for claiming exemption under the Act. This resulted in instances of bogus claim of exemption by the Trusts as well as issue of bogus certificate under Section 35(1)(ii) to the donors. The deficiency has been brought out in para 7.1.9 of this report.

All the issues mentioned above indicate that due importance is required to be given to the Charitable Trusts/ Institutions by the CBDT. The Department needs to streamline the systems and strengthen its monitoring mechanism to mitigate the risk of ineligible claims being allowed and to ensure that income of only genuine Charitable Trusts/Institutions is exempted from the levy of income tax as per the intent of the Law and ineligible amounts are brought to tax.

7.3 Conclusion

The ITD has not allocated separate codes to different charitable activities, linking them with Section 11 and sub-Sections of Section 10(23C) of the Act, for identification of Government and private entities, for better monitoring, improved vigilance with regard to private charitable entities and effective evaluation of risks for scrutiny selection. Despite having non-filers monitoring system, the Department did not initiate appropriate action in the majority of cases. Internal Audit of registration process could not be implemented effectively. The number of surveys conducted by the Department was inadequate.

The Department may consider making necessary provision in line with Section 35(2AA) & 35(2AB) with regard to certification of claims under Section 35(1)(ii). There was lack of an effective feedback mechanism to monitor the activities of the Trusts/Institutions. Audit noticed deficiencies in the monitoring of utilisation of past accumulation as well receipt of foreign contribution received by the Trusts/Institutions.

Audit noticed that the ITD systems, while processing ITR, could not detect mismatch in the amount relating to foreign contribution received by the assessee mentioned: under 'other details in Part A of Form ITR-7' and in schedule VC (Voluntary Contribution) to ITR-7. Further, there is no mechanism

in place to cross verify the amount relating to foreign contribution received, as provided by the assessee in the ITR with the information available with MHA.

Some of the irregularities viz. ineffective monitoring of accumulation and its utilisation, ineffective monitoring of foreign contribution and its utilisation, inadequacy of survey, etc. pointed out in CAG's Audit Report No. 20 of 2013 still persist.

The CBDT needs to review not only those cases pointed out by Audit but also the other Trust cases without exception.

7.4 Summary of Recommendations

Audit recommends that:

(i) The ITD may allocate separate codes to different classification of activities of Trusts/Institutions, linking them with Section 11 and sub-Sections of 10(23C) of the Act, for identification of Government and private entities, for better monitoring, improved vigilance in regard to private charitable entities and effective evaluation of risk for scrutiny selection.

ITD's Computer Aided Scrutiny Selection (CASS) may be refined to reflect the lower risk for Government entities and reduce the probability of selection for scrutiny, other things being equal. This is important because ITD resources for scrutiny are limited and should be better deployed to higher risk cases in private sector.

(Paragraph 7.1.1)

In reply, the CBDT stated that it may be noted that ITR-7 already captures the Section code under which the entity claiming exemption has been approved/registered. Further, it also captures the nature of expenditure which has been undertaken on the objects of the Trusts/ Institutions.

The selection of different cases under CASS is based on the risk assessment framework. The risk assessment framework identifies different types of risks which may result in violation of different provisions of the Income-tax Act. Such violations may take place in case of charitable institutions which are government entities as well as non-government entities. Therefore, it would not be appropriate to discriminate between government owned and other charitable institutions while running the CASS framework on the charitable institutions.

The reply of the CBDT is not tenable as the Audit contention was on allocation of separate codes to different activities of Trusts/Institutions instead of Section code under which the entity claiming exemptions and further, separate codes for Government and private entities, for better monitoring, improved vigilance in

regard to private charitable entities and effective assessment of risk for scrutiny selection

The Government charitable entities are controlled and substantially financed by the Government and thus are likely to be in low-risk areas in terms of Income Tax exemption perspective excluding cases where the AO has deemed them to be non-charitable in nature. Therefore, putting efforts and manpower for scrutiny assessment of Government's Trusts/Institutions in a large number of cases may not be as effective as scrutiny assessment of similarly placed private entities. In view of the above, the CBDT may reconsider its position.

(ii) The ITD may issue instructions to bring the cases approved under Section 10(23C) and 80G(5) of the Act under the purview of internal audit of the Department.

(Paragraph 7.1.4)

In reply, the CBDT stated that post scrutiny assessment, cases for internal audit are identified through risk-based analysis and any exemption/deduction claimed by an entity is given due weightage. Therefore, entities availing exemption under Section 10(23C) or 80G (5) of the Act are taken up for Internal Audit in the existing system and no further action is proposed.

Reply of the CBDT is not in line with the Audit recommendation as the CBDT has not responded to the recommendation on bringing the process of approval of cases approved under Section 10(23C) and 80G(5) of the Act under the purview of internal audit of the Department. The CBDT may reconsider its reply.

(iii) The ITD may:

- (a) capture data in the CPC-ITR/ITBA system, to ascertain the nature and activity of the concerned trusts through granular business codes and other means; and**
- (b) enhance the quantum of surveys being undertaken in respect of private educational Trusts/Institutions, particularly the high value exemption cases, so as to ensure more effective monitoring and minimize the possibility of ineligible claims, as desired by the PAC.**

(Paragraph 7.1.5)

In reply, the CBDT stated that ITR-7 already captures specific areas of activity of Trusts/Institutions. Survey action under Section 133A of the IT Act is one of the enforcement tools available with the Department which is used as a mechanism to detect tax evasion in different sectors of business. Being one of the enforcement tools, survey is sparingly used for creating necessary deterrence and an atmosphere of voluntary compliance. Further, survey actions are carried

out only in cases, where credible information related to tax evasion is available with the Department.

The reply of the CBDT is not tenable as the Audit contention was on allocation of separate business codes to different activities of Trusts/Institutions for identification of Government and Private entities, for better monitoring and improved vigilance in regard to Private educational Trusts/Institutions. Further, the CBDT may also examine the specific recommendations of the PAC for monitoring of activities of Private educational Trusts/Institutions included in Para 9 of the PAC's 27th Report (Sixteenth Lok Sabha). In view of the above, the CBDT may reconsider its reply.

(iv) The ITD may examine wherein, in any assessment year the Department denied exemption to a Trust/Institution considering the activities as non-charitable, the earlier years' assessments may be re-opened to ensure that undue benefit was not taken by such Trusts/Institutions.

(Paragraph 7.1.6)

(v) The ITD may consider issuing Standard Operating Procedure/Guidelines ensuring the genuineness of the activities of Trusts/Institutions before grant of registration/ accord of approval.

(Paragraph 7.1.8)

In reply, the CBDT 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 verification of genuineness of activities of

Trusts/Institutions through re-registration and provisional registration which is yet to be completed. 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 genuineness of activity of the Trusts/Institutions are verified before grant of registration/approval.

(vi) The ITD may consider certification of research activity of a Trust/Institution by specialised authority at the time of granting approval under Section 35(1)(ii) in line with Section 35(2AA) and 35(2AB).

(Paragraph 7.1.9)

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.

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 process of registration, inter-alia requires all the entities which are already approved under Section 35 of the Income Tax Act to apply for re-registration. 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 updated. At the time of applying for re-registration, the entity seeking approval under Section 35 in addition to providing comprehensive details about the research activities and facilities in Form 3CF, is also required to attach documentary evidence providing a note on the research activities undertaken by the applicant as well as other supporting documents evidencing its creation/incorporation of establishment.

Further, the second proviso to Section 35(1) provides that the Central Government may, before granting approval under, inter-alia, clause (ii) of sub-Section (1) of Section 35, may call for documents or information from the research association, university, college or other institution to verify the genuineness of the activities of the said entities. Hence, the Income-tax Act already provides power to ascertain the genuineness of the activities undertaken by entities seeking approval under the Income Tax Act.

Further, as an additional check and balance under the new process of registration, a statement of donation in Form 10BD is required to be filed by donee approved under, inter-alia, Section 35 of the Income Tax Act and certificate of donation is required to be provided to donor in Form 10BE. This has been done to ensure that there is a one-to-one matching between what is

received by the entity approved under Section 35 and what is claimed as deduction by the assessee. This mechanism has been introduced to ensure that the claim of the assessee is certified by the entity receiving any amount from the said assessee.

Audit will review the effectiveness of these provisions in ensuring and verifying genuineness of research activities in future audits.

(vii) The ITD may devise a monitoring mechanism (in addition to scrutiny assessment) to ensure that the entities which are availing the benefits under Sections 10(23C), 11, 12, 13, 80G(5) of the IT Act, are working towards achieving the objectives for which they are formed.

(Paragraph 7.1.10)

In reply, the CBDT stated that the Department has introduced the process of registration/re-registration of the Trusts/Institutions with effect from 01.04.2021 under which new entities which have not commenced activities may be granted provisional registration/approval for a period of three years and after that registration/approval is granted for five years. Before grant of registration/approval, provision has already been in the IT Act regarding verification and satisfaction of the competent authority about the genuineness of activities of the Trust/Institutions of registration/accord of approval.

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 has been granted and subsequently, the competent authority 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.

Hence, the above amendments shall ensure that the entities which are availing the benefits under Sections 11/10(23C) of the Income-tax Act, are working towards achieving the objectives for which they are formed.

Audit has noted from the reply of the CBDT that various proposals have been made by the CBDT regarding verification of genuineness of activities of Trusts/Institutions through re-registration and provisional registration which is 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 may strengthen the existing systems in place to make verification and monitoring processes robust to ensure that at the time of registration and re-registration,

only trusts/ institutions which are carrying out genuine charitable activities and working towards the objectives for which they are formed, are allowed benefits of Sections 10(23C), 11, 12, 13, 80G(5) of the IT Act.

(viii) Form 10B may be modified to ensure that the amount of utilisation out of past accumulation in the return of income is certified by the Auditor. Further, ITD system may also be suitably modified to maintain a schedule of year-wise accumulation and utilisation by automatic capture of data so that any unspent amount after specified period may be taxed accordingly.

(Paragraph 7.1.11)

The CBDT stated that in this regard, the draft revised Form 10B was circulated for public comments in 2019; however, due to the ongoing Covid-19 pandemic, in order to prevent the increase of additional compliance burden, the revised Form 10B has not been notified. The said form shall be modified and notified in due course and above issue shall be examined therein.

Audit will await the final outcome of the efforts made by the CBDT to streamline the monitoring mechanism.

(ix) Form 10BB may be modified so as to monitor amounts accumulated by the Trusts/Institutions registered under Section 10(23C) (iv to via). Further, ITD may consider specific declaration to be made by the assessee similar to Form 10, as per which statement to be furnished to the AO/prescribed authority under Section 11(2), intimating the purpose/ period of accumulation, by Trusts/Institutions registered under Section 10(23C) (iv to via), opting for accumulation of income for future application. Further, CPC-ITR/ITBA system may also be suitably modified to maintain a schedule of year-wise accumulation and utilisation by automatic capture of data so that any unspent amount after specified period may be taxed accordingly.

(Paragraph 7.1.12)

The CBDT stated that the Finance Bill, 2022 has proposed several amendments to, inter-alia, provisions pertaining to trusts and institutions referred under sub-clause (iv) or (v) or (vi) and (via) of clause (23C) of Section 10 and those registered under Section 12AA/12AB, so as to align the provisions of both the regimes governing exemption provided to the said trust and institutions under the relevant Sections.

Finance Bill, 2022 has specifically proposed to insert Explanation 3 to the third proviso to clause (23C) of Section 10 of the Income-tax Act to provide that for the purposes of determining the amount of application under this proviso, where eighty five *per cent* of the income referred to in clause (a) of the third proviso of the said clause, is not applied, wholly and exclusively to the objects

for which the trust or institution under the clause (23C) of Section 10 of the Income Tax Act is established, during the previous year but is accumulated or set apart, either in whole or in part, for application to such objects, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:-

- (a) such person furnishes a statement in the prescribed form and in the prescribed manner to the Assessing Officer, stating the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed five years.
- (b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-Section (5) of Section 11; and
- (c) the statement referred to in clause (a) of Explanation 3 to the third proviso to clause (23C) of Section 10 is furnished on or before the due date specified under sub-Section (1) of Section 139 for furnishing the return of income for the previous year.

Thus, the requisite amendments have been proposed to be made to the Income Tax Act to capture the details of the purpose of accumulation for the trusts or institutions referred under sub-clause (iv) or (v) or (vi) and (via) of clause (23C) of Section 10.

The details of the accumulated income and its application (year wise) are captured in Schedule-I of ITR-7.

The specific details of accumulated income and report on the satisfaction of different conditions under sub-Section (2) of Section 11 have been proposed to be sought from the auditor in draft revised Form 10B, which was circulated for public comments in 2019. However, due to COVID-19 pandemic the form could not be notified, but shall be done in due course.

Audit will await the final outcome of the efforts made by the CBDT to streamline the monitoring mechanism.

(x) The ITD may

- a. evolve an automated IT-based mechanism to cross-verify the foreign receipt available with MHA, with that in the ITR. The ITD may also consider bringing in new provisions in the Act, so as to treat foreign contribution received, utilized, donated or invested by Trusts/Institutions in violation of the FCRA Act 2010 as income not to be exempt under Section 11 and 10(23C).**

- b. put checks and validation in place in the ITD systems to restrict the user to provide inconsistent information/data within same/different Forms while filing ITR.**
- c. explore the feasibility of utilisation of relevant information/data available with the other Government Department/body which may plug-in leakage of revenue to the exchequer while processing ITRs in an automated environment.**

(Paragraph 7.1.13)

The CBDT stated that the current ITR-7 already captures details pertaining to registration under FCRA, 2010 and the amount of foreign contributions received by the charitable Trusts/Institutions. The current provisions of Section 12A and fifteenth proviso to clause (23C) of Section 10 already provide that a Trusts/Institutions seeking exemption under the respective Sections are also required to comply with the requirements of any other law for the time being in force. Hence, under the current provisions of the Income-tax Act any mis-utilisation of foreign contributions in violation of FCRA Act, 2010 can be a ground for cancellation of registration/approval of the charitable Trusts/Institutions and exemption under the respective provisions.

Section 12AB of the Income Tax Act, 1961 provides for cancellation of their registration, i.e. deregistration, if the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be.

If any violation being done by a trust is detected by the Investigation Directorate of the Income-tax Department, which is in contravention to the provisions of the Income Tax Act, 1961, such information is passed on by the Investigation Directorate to the assessment charge for taking necessary action for cancellation of registration of such trust.

Further, on detection of violation of other laws during the course of its investigation, the Income Tax Department (ITD) shares with the relevant LEAs, the necessary information for appropriate action by these agencies under their respective laws.

Reply of the CBDT is not in line with the Audit recommendation as the CBDT has not responded to the issue of utilisation of information/data available with the Ministry of Home Affairs (MHA) or the other Government Department/body and putting automated validation checks in the ITD systems for detecting inconsistent information in same/different Forms in the ITRs filed by the assessee Trust/ Institution. The response of CBDT is largely restricted to checks carried out for scrutiny assessment, investigation etc., whereas Audit's recommendation was for automated cross checking and utilization of data within various forms of

the ITRs filed and with the MHA FCRA database, which would be applicable for all assessments (including summary assessments).

The CBDT may also ensure timely sharing of information/ details with the other Law Enforcement Agencies for taking appropriate action under their respective laws.

Further, the CBDT may also examine its response given to the PAC's recommendation included in the PAC's Report No 104 July 2018, while initiating the remedial action.

New Delhi
Dated: 18 May 2022



(Monika Verma)
Director General (Direct Taxes-I)

Countersigned

New Delhi
Dated: 24 May 2022



(Girish Chandra Murmu)
Comptroller and Auditor General of India

