

Report of the Comptroller and Auditor General of India



लोकहितार्थं सत्यनिष्ठा
Dedicated to Truth in Public Interest

Performance Audit on Exemptions to Charitable Trusts and Institutions

Union Government
Department of Revenue - Direct Taxes
Report No. 12 of 2022

**Report of the
Comptroller and Auditor General of India**

for the year ended March 2021

**Performance Audit on
Exemptions to Charitable Trusts and Institutions**

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Preface

This Report for the year ended March 2021 has been prepared for submission to the President under Article 151 of the Constitution of India.

The Report contains significant results of the Performance Audit of Assessments of Charitable Trusts and Institutions completed by the Income Tax Department, Department of Revenue of the Union Government during the financial years 2014-15 to 2018-19.

The instances mentioned in this Report are those, which came to notice in the course of audit conducted from January to March 2020 and September to October 2020 and Supplementary field audit and a follow-up field audit, which continued till January 2022.

The audit has been conducted in conformity with the Auditing Standards issued by the Comptroller and Auditor General of India.

Executive Summary

The Income Tax Act, 1961 (the Act) provides for tax exemptions to various entities, including Government funded entities, engaged in objects which are charitable in nature, in order to encourage and fulfil social objectives, in areas such as charity, religion, medical, education etc. These entities receive donations, voluntary contributions and have other incomes from activities which are charitable in nature. The receipts of such entities are required to be applied for the objects for which these Trusts and Institutions have been set up. The Income Tax Department (ITD) has the responsibility of ensuring that incomes of genuine and eligible Trusts and Institutions only are exempted from levy of income tax and that they pay the correct amount of tax.

Audit conducted a Performance Audit on Exemptions granted by the Income Tax Department to Charitable Trusts and Institutions, with the objectives of examining:

- i. whether the CBDT ensures in an effective manner that the Charitable Trusts and Institutions, which are availing the benefits under Sections 10(23C), 11, 12, 13, 80G(5) of the Income Tax Act, complied with the prescribed procedures regarding registration/approval and ensures monitoring thereafter;
- ii. whether the ITD is efficient in granting the exemptions to the Charitable Trusts and Institutions under the above provisions of the Act and such exemptions are given to the eligible entities accurately and in a timely manner; and
- iii. whether the existing provisions in the Act/Rules/CBDT Instructions relating to Assessments of the Charitable Trusts/Institutions are sufficient or are there any lacuna/ambiguity/inconsistency.

The Performance Audit covered the assessment of the charitable or religious Trusts or Institutions relating to the AYs 2014-15 to 2017-18. The Pr. DGIT(Systems) provided assessee-wise data containing 6,89,011 cases, pertaining to ITRs processed /assessed/rectified during FY 2014-15 to FY 2018-19 with respect to Charitable Trusts and Institutions. The data received from the Pr. DGIT (Systems) was analysed and based on audit parameters a sample of 6,390 cases was drawn as audit universe for scrutiny by different field offices under our audit jurisdiction. However, due to the prevailing situation, arising out of the Covid-19 pandemic, the audit sample was reduced to 5,798 cases. Further, in respect of any assessee whose assessment for a particular Assessment Year was selected in the audit sample and where Audit found a deficiency or non-compliance, Audit selected all remaining assessments also between AYs 2014-15 to 2017-18 for this Performance Audit. Accordingly, 1,028 additional assessment cases were selected for this Audit.

Apart from the above audit sample, in order to examine summary cases, 200 high value summary cases in respect of PANs which were not part of the original sample including additional cases, were also selected for audit. Thus, the total audit sample for the PA was 7,026 cases, out of which the Department produced records of 6,260 cases and 766 cases were not produced to Audit.

An Entry Conference was held with the ITD/CBDT on 23rd December 2019. Field audit was conducted during January to March 2020 and September to October 2020. Supplementary field audit including the top 200 assessees, the top 200 summary cases and a follow-up field audit verification of cases highlighted in the Report No. 9 of 2019 (Direct Taxes) continued till January 2022. An Exit Conference on the Performance Audit was held with the CBDT on 4th March 2022.

During this Performance Audit, Audit checked 6,260 assessment records and noticed 1,580 errors, related to various systemic and compliance issues having tax effect of ₹ 1,983.34 crore.

Further, Audit also reviewed the action taken by the ITD through its Action Taken Note (ATN) relating to earlier PA findings in Report No. 20 of 2013 and Chapter VI of the Compliance Audit Report No. 9 of 2019 (Direct Taxes) and the recommendations of the Public Accounts Committee (PAC).

A summary of the main audit findings is given below:

- Audit noticed that certain irregularities relating to internal audit of the registration process, ineffective monitoring of accumulation of income and its utilization, ineffective monitoring of receipts and utilization of foreign contribution, the inadequacy of survey of educational Trusts, absence of provision for disclosure of TDS in the audit report, etc. which were highlighted in the earlier Performance Audit Report No. 20 of 2013 and some of the specific recommendations of the Public Accounts Committee (PAC) against such irregularities were not satisfactorily addressed by the ITD.

(Paragraph 3.2)

- Audit noticed an increasing trend in number of Trusts/Institutions claiming exemptions from AYs 2014-15 to 2016-17; however, the number of Trusts/Institutions claiming exemptions for AY 2017-18 slightly decreased.

(Paragraph 4.1.1)

- Analysis of data of 6.89 lakh cases pertaining to ITRs for AY 2014-15 to AY 2017-18 revealed that the ITD scrutinized only 0.25 lakh (3.7 per cent) of the total cases while 6.30 lakh (91.4 per cent) cases were processed under summary manner in an automated environment. However, Audit noted certain deficiencies in the ITD system which led to incorrect claims of exemption along with the possibility of revenue leakage such as:

- Due to wrong input of data required for selection criteria in CASS, several cases were incorrectly selected for scrutiny by the ITD system.
- There is an absence of adequate checks and validations to match the registrations/approvals data provided in the ITR Form-7 with the ITD systems database before allowing exemptions in case the returns were processed in summary manner. In 42 assessment cases, exemption was allowed although assessees did not mention their registration details under Section 12A/10(23C) of the Act in the ITR Form-7. In 10 assessment cases, the assessees claimed exemptions for years together prior to its registration or having no registration under the Act, and the same was allowed by the Department in the summary assessment.
- Analysis of data of 6.89 lakh cases provided by the Pr.DGIT (Systems) revealed that exemption was allowed in 0.21 lakh cases although registration under Section 12AA was not available. In case of foreign contribution, Audit noticed that in 347 cases, foreign contribution was received by the assessee though the registration details under FCRA were not available. Thus, field validations in the above related field were not available in the ITR Form-7.

(Paragraph 4.1.3, 5.3.1, 5.3.2, 5.3.4.1 and 5.3.4.2)

- Out of 6.89 lakh cases processed/assessed/ rectified by the ITD during the FY 2014-15 to FY 2018-19, in 5.12 lakh cases (74.3 per cent) the income returned was ₹ zero.

(Paragraph 4.1.6)

- Analysis of 580 high value exemption cases (having gross income of ₹ 50 crore or above) revealed that 186 cases, which pertained to government entities, were granted 50.8 per cent of total exemptions (₹ 1.31 lakh crore) whereas the remaining 394 cases, which pertained to private entities, were granted 49.2 per cent of total exemptions.

(Paragraph 4.3.6.2)

- An analysis of data of the top 200 audit sampled cases (involving 169 Trusts/Institutions) where gross income for each case was ₹ 167.9 crore or above, revealed that out of the 169 Trusts/Institutions, 101 Trusts/Institutions were Government entities while 66 were private entities (records of two entities were not produced to audit). Activity-wise analysis of data revealed that in case of Government entities, the top 30 entities (29 per cent) were engaged in other activities (like pension and gratuity fund, welfare board etc.) whereas in case of the top private entities, 28 entities (42 per cent) were engaged in educational activities.

(Paragraph 4.3.8.1)

- Audit observed that there is no clarity on allowing deduction under Section 80G for donations out of CSR fund. As a significant amount is spent by the companies toward CSR activities through the Trusts claiming exemptions under Section 80G, it requires urgent attention of the Department to bring clarity to the issue to ensure that the provisions are interpreted uniformly by the AOs and to minimise the possibility of litigation.

(Paragraph 5.1.2.3)

- The IT Act has no clarity regarding allowance of various expenses under the head “administrative and establishment expenses” for the purpose of determining application of income. Since administrative and establishment expenses could be of various categories, some part of which may be directly attributable for generation of income while some part may be towards charitable and religious purpose, the ITD needs to bring more clarity in the Act for this purpose.

(Paragraph 5.1.2.6)

- The IT Act has no provision to restrict donations by a Trust to another Trust out of current years’ income. Therefore, certain Trusts/Institutions are taking undue benefits by availing of the permissible accumulation of 15 *per cent* out of the current year’s income and then transferring the rest of the income to others trusts, and thereby making a chain of multiple donations. Audit noticed in four assessment cases that the Trusts/Institutions, which had received donations of ₹ 203.29 crore, had transferred ₹ 164.81 crore to other Trusts/Institutions by way of donations after claiming deduction of 15 *per cent* as accumulation. The recipient Trusts/Institutions also transferred the amounts to other trusts after claiming accumulation of 15 *per cent*. This chain of donation resulted in denial of charity to the beneficiaries and helped in accumulation in the hands of Trusts/Institutions.

(Paragraph 5.1.2.7)

- There was no parameter to verify the identity of the donors for detection of anonymous donation. Audit noticed six assessment cases where the department did not verify genuineness of the donors and therefore, did not tax the anonymous donation(s) as per provisions of the Act. The Ministry has since addressed this issue through the Finance Act 2020.

(Paragraph 5.1.2.10)

- The ITD did not produce registration/approval records of 194 cases (45 *per cent*) out of 425 cases registered/approved for exemptions during the FY 2014-15 to 2018-19. Further, Audit noticed deficiencies in following the prescribed procedure(s) relating to registration/approval such as delay in grant of registration/approval, irregular grant of registration, grant of

registration/approval without submission of prescribed documents, grant of registration without verification etc.

(Paragraph 5.2.1, 5.2.2, 5.2.3, 5.2.4 and 5.2.5)

- Audit noticed deficiencies in the Audit Report in Form 10B applicable to charitable Trusts/Institutions such as absence of details of break-up of receipt under different heads, details of corpus donation, deemed application of income etc. which impacted the quality of assessment, incorrect claim made by the assessee and loss of revenue.

(Paragraph 5.3.6)

- Audit observed that the ITD allowed accumulation in 66 assessment cases in contravention to the provisions stipulated under Section 11(2) of the Act.

(Paragraph 6.3)

- Audit noticed 22 assessment cases where the assessee utilised their income or property for the benefit of persons specified under Section 13(3) (i.e., related parties), but the ITD did not levy tax on such amount of income or property utilised for the benefit of the specified persons.

(Paragraph 6.4)

- Audit observed non-compliance of various provisions of the Income Tax Act in the assessment orders, which culminated in irregular allowance of double benefits to the assessee. In eight assessment cases, depreciation on assets was allowed as application of income, even though the relevant capital expenditure to acquire such assets had already been treated as application of income. In 11 assessment cases, the AO had allowed claims, pertaining to application of income incurred from the corpus fund, or other specific purpose funds.

(Paragraph 6.5.1 and 6.5.2)

- In 65 assessment cases, the AO while finalizing the assessment adopted incorrect figures, computed short demand, charged tax at a lower rate than the prescribed rate, levied interest/surcharge incorrectly, or granted excess interest on refund etc.

(Paragraph 6.8)

- The ITD has not allocated specific codes to different charitable activities linked with Section 11 and sub-Sections of 10(23C) under which exemption is being claimed. Further, the data relating to exemption claimed by the Government/Private Trust under different Sections were not being captured in ITR Form 7. The ITD needs to ensure activity wise monitoring of these private charitable entities, to mitigate the risk of ineligible claims.

(Paragraph 7.1.1)

- Although the PAC in 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 ITD, it was not until FY 2019-20 that the Internal Audit commenced in respect of the registration applications processed. Moreover, Audit noticed that the instructions issued with regard to Internal Audit of registration process was not uniformly implemented in all the states. Audit further noted that the circular issued by the ITD regarding Internal Audit is applicable to registration granted under Section 12AA only but does not cover cases approved under Section 10(23C) and 80G(5).

(Paragraph 7.1.3 and 7.1.4)

- Audit noticed that very few surveys were conducted by the Department in comparison to the number of assessees claiming exemption under the Act to monitor the activities of the Trusts/Institutions. Further, 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 surveys of only 0.3 *per cent* of the total 2,686 educational trusts (2,105 assessees) included in the audit sample during 2014-15 to 2018-19. Further, no survey was conducted in respect of 46 high value educational trusts (having receipt of ₹ 200 crore or more) during the aforesaid period.

(Paragraph 7.1.5)

- There was inconsistency in allowing exemption to Trusts/Institutions having activities not charitable in nature. Audit observed in 10 assessment cases where the AO assessed that the activities of the Trusts were not charitable in nature for one or more AYs but took no action 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 exemptions.

(Paragraph 7.1.6)

- Audit observed in eight cases that the status of the Trusts/Institutions was not reviewed by the competent authority as per provisions of Section 12AA(3) and 12AA(4), although the AO had denied the exemption under Section 11 of the Act for 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.

(Paragraph 7.1.7)

- Audit noticed that due to lack of monitoring of the activities of Trusts/Institutions engaged in scientific research, there were bogus claims of exemption by the trusts as well as issue of bogus certificates under Section 35(1)(ii) to the donors.

(Paragraph 7.1.9)

- Audit noticed deficiencies of the ITD in effective monitoring of accumulation and its utilizations by Trusts/Institutions in the manner laid down in the Act. In 32 assessment cases, the Department did not effectively monitor utilization of past accumulated income as provided in Section 11(2). Further, there is no provision in the Act for declaration of the purpose/period of accumulation under Section 10(23C).

(Paragraph 7.1.11 and 7.1.12)

- Audit observed that the ITD has no mechanism to verify receipt and utilization of foreign contribution shown in the ITR Form-7 and that disclosed with Ministry of Home Affairs (MHA) under the FCRA Act. Although the PAC had made specific recommendation that the ITD should formulate a data sharing mechanism with the MHA to keep a track of foreign contribution received and its application, the ITD has yet to take any action on the issue. The deficiency resulted in incorrect claim of exemption on foreign contribution in 35 cases.

(Paragraph 7.1.13)

Summary of Recommendations

Audit recommends that:

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

(Paragraph 5.1.1)

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

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

(Paragraph 5.1.1)

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

(Paragraph 5.1.2.1)

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

(Paragraph 5.1.2.3)

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

(Paragraph 5.1.2.4)

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

(Paragraph 5.1.2.6)

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

(Paragraph 5.1.2.7)

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

(Paragraph 5.1.2.8)

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

(Paragraph 5.1.2.9)

- *The ITD may stipulate specific parameters (apart from the donor's name and address) such as PAN etc., which must be disclosed by assessee to establish the identity of donors. Further, disclosure of PAN of the donor should be made mandatory above a threshold limit of donation to be decided by the ITD. ITD may also consider introducing a new Schedule in the ITR to capture the donors'*

details in order to strengthen the assessment procedure to mitigate the risk of money laundering and prevent leakage of revenue.

(Paragraph 5.1.2.10)

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

(Paragraph 5.2.2)

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

(Paragraph 5.2.4)

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

(Paragraph 5.2.5)

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

(Paragraph 5.2.6)

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

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

(Paragraph 5.3.1)

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

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

(Paragraph 5.3.2)

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

(Paragraph 5.3.5)

- *The ITD may consider modifying Form 10B incorporating:*

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

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

(c) detailed information on the claim of deemed application of income availed in a previous year which has to be reduced from the amount of application of income in the year of actual receipt

(d) the details of utilisation out of past accumulation in the return of income is certified by the Auditor.

to enable the Assessing Officer to verify the correctness of the claim made by the assessee.

(Paragraph 5.3.6.1, 5.3.6.2, 5.3.6.3 and 7.1.11)

- *The ITD may strengthen its assessment procedure for Trusts/Institutions to ensure correct computation of income and its application, and avoidance of double benefit to the trusts as per the existing provisions of the Act.*

(Paragraphs 6.2.1, 6.2.2, 6.5.1 and 6.5.2)

- *The ITD may strengthen its assessment procedure for Trusts/Institutions to ensure that no exemption is granted when income or property of the trust is utilised for the benefit of persons having substantial interest.*

(Paragraph 6.4)

- *The ITD may ensure that the CPC-ITR System automatically levies penalty for delay in filing of return at the time of processing of ITRs itself.*

(Paragraph 6.9)

- *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)

- *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)

- *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)

- *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)

- *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)

- *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)

- *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)

- *The ITD system may 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)

- *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 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)

Chapter 1: Introduction

1.1 Introduction

Charitable organisations/institutions have played a significant role in sharing government responsibility towards providing various services to the underprivileged people, development and welfare of the country through various charitable activities and running non-profitable organisation/institutions. Such organisations mainly depend upon donations, grants, fees etc. received from corporate houses, governments, voluntary contributions and foreign contributions etc. These organisations/institutions are to be registered under various enactments viz. Societies Registration Act, 1860; the Religious Endowments Act of 1863; the Indian Trusts Act of 1882; and the Charitable Endowments Act of 1890 etc. to obtain legal status and protect their interests and assets. Apart from voluntary organisations/institutions, some corporate houses and other entities also form companies under Section 25 of the Companies Act¹ for the purpose of promoting commerce, art, charity and religion etc. These companies are formed for philanthropic purposes only, and the payment of dividend is prohibited.

The Indian Constitution also guarantees a distinct legal space to such institutions through Article 19(1)(c) of the Constitution, relating to the right to form associations or unions. Charity and Charitable organizations are included in the Concurrent List or List-III (Seventh Schedule), Item 28, of the Constitution of India, which means that both the Central and the State Governments are competent to legislate on this subject.

Apart from the above legislations, the Income Tax Act 1961 is also applicable to charitable institutions, while in the case of foreign contributions received by these charitable institutions, the Foreign Contribution (Regulation) Act, 2010 will be applicable.

The Income Tax had been introduced in 1860, and in 1922, and 50 *per cent* tax exemption was granted to individuals on donations for charitable purposes. The Income Tax Act, 1961 (the Act) further broadened the definition of charitable purposes. Section 2(15) of the Act defines the expression “charitable purpose”. The Act provides for tax exemptions to various entities, including Government funded entities, engaged in objects which are charitable in nature, in order to encourage and fulfil social objectives in areas such as education, medical, relief of the poor, religion etc. subject to compliance of certain provisions enshrined in Section 10(23C), Section 11, Section 12, Section 13 etc. of the Act. These

¹ Section 25 has the provision for charitable and other companies under the Companies Act, 1956. Section 8 is the corresponding provision under the Companies Act, 2013.

entities receive donations, voluntary contributions and have other incomes from activities which are charitable in nature. The receipts of such entities are required to be applied for the objects for which these trusts and institutions have been set up. The Income Tax Department (ITD) has the responsibility of ensuring that incomes of genuine and eligible trusts and institutions are exempted from levy of income tax, and that they pay the correct amount of tax.

1.2 Legal Framework

1.2.1 Legal provisions relating to the Assessment Process for Income Tax Returns (ITRs) in the Income Tax Department are given in **Appendix 1.1**.

1.2.2 The specific provisions of the Act, relating to registration/approval/notification, assessment of the Charitable Trusts/Institutions and exemptions to Charitable Trusts/Institutions under Sections 10(23C)(iiiab) to (via), 11 and 12 are discussed in the succeeding paragraphs. **It is clarified that the phrases “Charitable” and “Not for profit” are not identical. The medical/educational institutions existing solely for philanthropic purposes and not for the purposes of profit are covered under Sections 10(23C)(iiiab) to (iiiiae); and 10(23C)(vi) and (via).**

1.2.2.1 Definition of ‘Charitable Purpose’ under Section 2(15)

Section 2(15) of the Act provides a 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 (vii) 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 01.04.2016 of the total receipts) from such activity or activities. Further, an entity with such activity will be treated as ‘non-exempt’ entity for the relevant previous year, as per Section 13(8).

1.2.2.2 Provisions relating to Charitable Trusts/Institutions covered under Sections 11 and 12

(a) Grant of exemptions under Section 11 and 12

Section 11(1) of the Act deals with exemption available to all charitable and religious organisations for income derived from property held for charitable or

religious purposes to the extent such income is applied for charitable or religious purpose in India and where any such income is accumulated or set apart for application to such purposes in India to the extent to which the income so accumulated or set apart is not in excess of 15 *per cent* of the income from such property.

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, the trust can opt for accumulation of the not applied portion of the income, to be spent for specified purpose(s) in the next five years. Such accumulation is required to be furnished to the Assessing officer in Form 10² before the due date³ prescribed in Section 139(1)⁴ for furnishing the return of income.

Section 11(5) provides that the accumulated funds shall be invested in the specified modes such as saving certificates issued under the small saving schemes, deposit in the post office, scheduled bank, units of the Unit Trust of India, deposits in public sector companies etc.

Further, Section 12 provides for exemption of income of trusts or institutions from contributions which shall, for the purposes of Section 11, deemed to be income derived from the property held under trust wholly for charitable or religious purposes and provisions of Section 11 and Section 13 shall apply accordingly.

Thus, to summarise, under Section 11, there is no requirement for institutions existing solely for philanthropic purpose or not for profit, but only a restriction that accumulation of income cannot exceed 15 *per cent*.

The conditions for applicability of Section 11 and 12, given in Section 12A, are summarised as under:

(i) Charitable Trusts/Institutions are required to make an application in Form 10A in the prescribed manner to the Pr. CIT/CIT before 1st day of July 1973 or before the expiry of one year from the date of its creation or the establishment of the Institution whichever is later, for registration under Section 12AA.

(ii) Where the total income of a trust or institution as computed without giving effect to the provision of Section 11 and 12 exceeds the maximum amount which is not chargeable to Income Tax in any previous year, the accounts of the

² Statement to be furnished to the Assessing officer under Section 11(2) of the Act.

³ The due dates for filing of ITR for the Ays 2014-15, 2015-16, 2016-17 and 2017-18 were 30 September 2014, 30 September 2015, 17 October 2016 and 07 November 2017 respectively.

⁴ Section 139(1) of the Act provides that a person other than a company if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income tax shall, on or before the due date, furnish a return of income.

trust or institution for that year are to be audited by a Chartered Accountant, and the Audit report in Form 10B is required to be filed before the due date.

(iii) With effect from 01.04.2018, entities in receipt of income have to furnish the return of income for the previous year in accordance with the provisions of Section 139(4A), within the time allowed under Section 139(1).

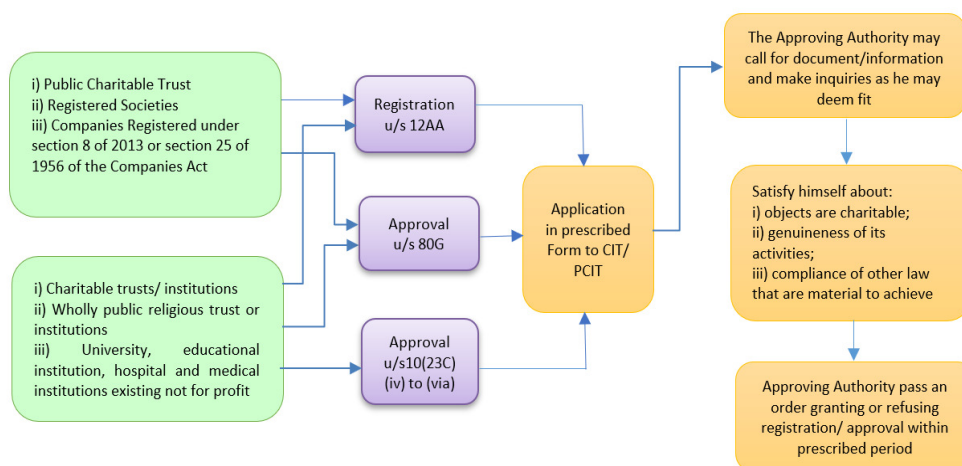
(b) Registration of Trust/Institution

Section 12AA of the Act provides that the Pr. CIT/CIT, on receipt of application for registration of a Trust/Institution, shall call for such documents or information as he thinks necessary and may also make such inquiries as he may deem necessary, in order to satisfy himself about the genuineness of activities of the organization. After satisfying himself about the objects of the trust or institution and the genuineness of its activities, he shall pass an order in writing registering the trust or institution.

The Section further provides that if the activities of Trust/Institution are not genuine or are not being carried out in accordance with the objects of the Trust/Institution or the activities are being carried out in a manner that the provisions of Sections 11 and 12 of the Act do not apply to exclude either whole or any part of the income of such Trust/Institution, Pr. CIT/CIT may, by an order in writing, cancel the registration of such trust or institution.

The procedure to be followed by the Department while granting registration/approval to entities for availing the benefit of exemption under different provisions of the Act is shown in the flow Chart 1.1 below.

Chart 1.1: Registration/Approval procedure



There is no bar on any Trust/Institution from getting registered under Section 12AA and approval under Section 10(23C), whose activities are charitable or religious in nature. Further, registration/approval, once granted, was perpetual

prior to 1 June 2020⁵, and could be cancelled only when the approving authority was satisfied that the activities of the Trusts/Institutions were not genuine or not being carried out in accordance with its objects. Once the objects of the Trusts/Institutions are established as charitable or religious, income of these entities from the property held by it shall be eligible for exemption, under different provisions of the Act.

(c) Circumstances under which the benefit of exemption would not be available under Section 11

Section 13 of the Act specifies the circumstances under which the benefit under Section 11 would not be available to an organization - (i) if the income is not applied for the benefit of the public; (ii) if the income is applied for the benefit of any particular religious community or caste; (iii) if the income or property is applied/used for the benefit of the specified person such as the founders, trustee, manager, chief functionary, major donors, and relatives of the founders or persons who have a substantial interest in the organization; and (iv) if the funds are invested in modes other than those specified in Section 11(5).

1.2.2.3 Provisions relating to special entities covered under Section 10(23C)

Apart from the Charitable Trusts/Institutions mentioned in para 1.2.2.2 above, there are certain educational, medical and religious institutions which are exempt under Section 10(23C) subject to fulfilment of certain conditions. The provisions of the Act relating to such special organizations are discussed in succeeding paragraphs:

(a) Organization funded by Government

University/Educational institutions and Hospital/Medical institutions, existing solely for educational/philanthropic purposes and not for the purposes of profit which are wholly or substantially⁶ financed by the Government, are exempt from tax under Section 10(23C)(iiiab) and 10(23C)(iiiac) respectively. Such organizations are not required to obtain approval from Pr. CIT/CIT for availing of exemption. Filing of Income Tax Return is mandatory⁷ for such organisations from AY 2016-17 onwards for claim of exemption. During the PA, Audit noticed that Government institutions like Indian Institute of Science Education and Research (IISER), Mohali, National Institute of Technology (NIT), Durgapur, Indian Institute of Management (IIM)⁸, Bengaluru etc. have claimed exemption under Section 10(23C)(iiiab) and Sanjay Gandhi Postgraduate Institute of

⁵ Re-registration and re-approval process was inserted under Section 12AB and Section 10(23C) respectively by the Finance Act 2020 with effect from 1 June 2020.

⁶ Rule 2BBB of the IT Rules provides that an entity, shall be considered as being substantially financed by the Government, if the Government grant exceeds 50 *per cent* of the total receipts including any voluntary contributions of such entity, during the relevant previous year.

⁷ Inserted with effect from 1.4.2016 (Finance Act, 2015)

⁸ IIM claimed exemptions in AY 2014-15 under Section 10(23C)(iiiab) and in subsequent AYs under Section 11.

Medical Sciences, Lucknow, Hassan Institute Of Medical Sciences, Hassan, Karnataka etc. have claimed exemption under Section 10(23C)(iiiac) of the Act.

(b) Organization having annual receipt not exceeding ₹ one crore

University/Educational institutions and Hospital/Medical institutions, existing solely for educational/philanthropic purposes and not for the purposes of profit, are exempt from tax under Section 10(23C)(iiiad) and 10(23C)(iii ae) of the Act respectively, if the annual income does not exceeds ₹ one crore. Such organizations are not required to obtain approval from Pr. CIT/CIT for availing of exemption. Filing of Income Tax Return is mandatory for such organisations for claim of exemption.

(c) Other specified organizations

The provisions of Section 10(23C)(iv) to 10(23C)(via) deal with other educational, medical institutions, funds and charitable and religious institutions which are exempt subject to fulfilment of certain conditions. Such specified organizations are:

(i) Section 10(23C)(iv): Any fund or institution established for charitable purposes which may be approved by the prescribed authority, having importance throughout India or any State or States can claim exemption under this Section. During the Performance Audit, Audit noticed that funds/ institutions like Punjab Building and Other Construction Workers Welfare Board, West Bengal State Health & Family Welfare Samity etc. have claimed exemption under this Section.

(ii) Section 10(23C)(v): Any trust or institution wholly for public religious purpose or public religious and charitable purpose is eligible to claim exemption and which may be approved by the prescribed authority. During the Performance Audit, Audit noticed that institutions like Ramkrishna Math, Shree Siddhivinayak Ganpati Temple Trust, Mumbai, The Assembly of God Church etc. have claimed exemption under this Section.

(iii) Section 10(23C)(vi): University or educational institution existing solely for educational purpose and not for the purposes of profit other than those mentioned in sub-clause (iiiab) or (iiiad) and which may be approved by the prescribed authority can claim exemption under this Section. During the Performance Audit, Audit noticed that institutions like MP Birla Institute of Management, Kolkata, Delhi Public School, Bhubaneswar, National Law Institute University, Gwalior etc. have claimed exemption under this Section.

(iv) Section 10(23C)(via): Hospital or medical institution existing solely for philanthropic purpose and not for the purposes of profit and which may be approved by the prescribed authority. During the Performance Audit, Audit noticed that institutions like Indian Red Cross Society, Mumbai, The Gujarat Research & Medical Institute, Ahmedabad etc. have claimed exemption under this Section.

The conditions for grant of exemption to the organizations mentioned in Sections 10(23C)(vi) to 10(23C)(via) are:

- (a) Such organizations are required to apply in Form No. 56D to the Pr. CIT/CIT for grant of approval in order to claim of exemption.
- (b) The Pr. CIT/CIT, on receipt of application, shall call for such documents or information as he thinks necessary and may also make such inquiries as he may deem necessary, in order to satisfy himself about the genuineness of activities of the organization. After satisfying himself about the objects and the genuineness of its activities, he shall pass an order in writing within 12 months granting approval to the institution or fund.
- (c) The income of such organizations shall not be used for any private benefit.
- (d) Filing of Income Tax Return in ITR-7 and the Audit report in Form 10BB are mandatory for claim of exemption.
- (e) The exemption is available subject to the condition of 85 *per cent* application of income for its objects and it can opt for accumulation of the unapplied portion of the income, to be spent within a maximum period of five years.
- (f) The accumulated funds have to be invested in the modes specified under Section 11(5).

1.2.2.4 Deduction in respect of donations to certain funds, charitable Trusts/Institutions etc.

The amount donated towards charitable Trusts/Institutions attracts deduction under Section 80G of the Act. Section 80G(5) contains pre-conditions which must be satisfied cumulatively, before the donation to the trust or institution becomes tax deductible in the hands of a donor. These conditions are summarized as under:

- (i) The income of the Trusts/Institutions would not be includable in total income by virtue of provisions contained in Sections 11, 12 or Section 10(23C).

- (ii) The income of the Trusts/Institutions is applied wholly for charitable purpose. Charitable purpose does not include religious purpose [Explanation 3 below Section 80G]. However, Section 80G(5B) permits application up to five *per cent* of the income of a year towards religious purposes in cases the Trusts/Institutions engaged in religious activities.
- (iii) The Trusts/Institutions are not for the benefit of any particular religious community or caste;
- (iv) The Trusts/Institutions maintain regular books of account regarding its receipts and expenditure; and
- (v) The Trusts/Institutions are approved by the Pr. CIT/CIT in this behalf.

Chapter 2: Audit Approach

This chapter discusses the reasons for selection of this topic, the objectives of this Performance Audit, the Audit methodology and associated aspects.

2.1 Why we chose this topic

The grounds for selecting this topic for performance audit were:

- As per the Receipt Budgets forming part of the Annual Budget of the Government of India, the total amount of exemption applied by the Charitable Trusts/Institutions has increased from ₹ 2.25 lakh crore in FY 2014-15 to ₹ 3.34 lakh crore in FY 2017-18, showing an increase of 48 per cent. The details of how this amount was arrived at are not available in the Budget, nor could they be traced from records produced to Audit.
- A Performance Audit on “Exemptions to the Charitable Trusts and Institutions” conducted and included in the C&AG’s Report No. 20 of 2013 had highlighted various lapses such as irregularities in the process of registration of Charitable Trusts/Institutions, irregular exemption to trusts which were not charitable in nature, non-monitoring of accumulations of income of trusts and non-monitoring of Foreign contribution received by trusts, Non-taxation of short application of income/accumulations after specified period, etc. The Public Accounts Committee (PAC), in its 104th Report, on the Action Taken by the Government on the observations/recommendations of the Committee contained in its 27th Report (16th Lok Sabha), had, *inter alia* expressed its concern over the serious nature of the violations and failure of the ITD to monitor whether the trusts were fulfilling the objectives under which they had been established. The Committee, in its report, also desired that the office of the Comptroller & Auditor General of India submit a report on the violations by Public Charitable trusts and make recommendations on how to remedy the gaps and prevent such recurrences in future.
- We also conducted a limited follow-up test-check of assessments of the charitable trusts and institutions and the audit findings thereon were included in the CAG’s Audit Report No. 9 of 2019.
- This present audit also aimed to ascertain whether deficiencies highlighted in the earlier Performance Audit, and in the limited follow-up test-check of assessments of the charitable Trusts/Institutions, had since been addressed by the ITD.

2.2 Audit objectives

This Performance Audit aimed to focus on:

- (i) Whether the CBDT ensures in an effective manner that the Charitable trusts and Institutions, which are availing the benefits under Sections 10(23C), 11, 12, 13, 80G(5) of the Income Tax Act, complied with the prescribed procedures regarding registration/approval and ensures monitoring thereafter;
- (ii) Whether the ITD is efficient in granting the exemptions to the Charitable trusts and Institutions under the above provisions of the Act and such exemptions are given to the eligible entities accurately and in a timely manner; and
- (iii) Whether the existing provisions in the Act/Rules/CBDT Instructions relating to Assessments of the Charitable Trusts/Institutions are sufficient or are there any lacuna/ambiguity/inconsistency.

2.3 Audit scope and coverage

From the assessee-wise data in respect of the Charitable Trusts/Institutions, containing 6,89,011 cases provided by the Pr. DGIT(Systems), initially a total of 6,390 cases falling under 47 Pr. CsIT/CsIT relating to scrutiny/rectification, under our audit jurisdiction, were selected as the audit sample for this performance audit. However, due to the prevailing situation arising out of the Covid-19 pandemic, the audit sample was reduced to 5,798 cases involving exemptions granted of ₹ 1.66 lakh crore⁹. The sample cases included the 200 top assessees involving exemptions granted of ₹ 1.07 lakh crore. Further, in respect of any assessee whose assessment for a particular Assessment Year was selected in the audit sample and where we found a deficiency or non-compliance, Audit selected all remaining assessments also between AYs 2014-15 to 2017-18 for this performance audit. Accordingly, 1,028 additional assessment cases were selected for this audit. Thus, the total audit sample covered 6,826 assessments.

Apart from the above audit sample, in order to examine summary assessment cases, 200 high value summary assessment cases (gross income more than ₹ 125 crore) in respect of PANs which were not part of the initial sample including additional cases, were also selected for audit. Thus, the total audit sample for the Performance Audit came to 7,026 cases. The details of the audit sample are tabulated in Table 2.1 below:

⁹ Source: Data received from Pr. DGIT(Systems)

| S. No. | Name of the State(s) | Audit sample | | | | Total |
|--------|---|---------------|---------------|------------------|-----------------------|--------------|
| | | Initial cases | Revised cases | Additional cases | Top 200 Summary cases | |
| | | 1 | 2 | 3 | 4 | |
| 1. | Andhra Pradesh and Telangana | 401 | 401 | 0 | 4 | 405 |
| 2. | Bihar | 91 | 62 | 0 | 1 | 63 |
| 3. | Delhi | 622 | 622 | 66 | 45 | 733 |
| 4. | Gujarat | 614 | 507 | 50 | 9 | 566 |
| 5. | Jharkhand | 66 | 66 | 1 | 1 | 68 |
| 6. | Karnataka and Goa | 571 | 441 | 182 | 27 | 650 |
| 7. | Kerala | 272 | 272 | 24 | 8 | 304 |
| 8. | Madhya Pradesh and Chhattisgarh | 251 | 236 | 201 | 2 | 439 |
| 9. | Maharashtra | 1,412 | 1,412 | 93 | 30 | 1535 |
| 10. | North Eastern States | 49 | 38 | 0 | 1 | 39 |
| 11. | Odisha | 98 | 98 | 34 | 3 | 135 |
| 12. | Punjab, Haryana, Himachal Pradesh and Jammu & Kashmir | 345 | 315 | 200 | 16 | 531 |
| 13. | Rajasthan | 304 | 304 | 97 | 5 | 406 |
| 14. | Tamil Nadu | 549 | 515 | 42 | 23 | 580 |
| 15. | Uttar Pradesh and Uttarakhand | 402 | 202 | 0 | 21 | 223 |
| 16. | West Bengal | 343 | 307 | 38 | 4 | 349 |
| 17. | Total | 6,390 | 5,798 | 1,028 | 200 | 7,026 |

In terms of number of cases in the initial audit sample, Maharashtra was the highest with 1,505 cases followed by Delhi at 688 cases. In terms of number of cases in the top 200 summary assessment cases, Delhi was the highest with 45 cases; out of these 45 cases, 24 were Government entities having total gross income of ₹ 8,027.1 crore, and 21 were Private entities having total gross income of ₹ 4,812.3 crore.

2.4 Audit methodology

- (i) An Entry Conference was held with the ITD/CBDT on 23rd December 2019, wherein the audit objectives, scope of audit and main focus areas of the performance audit, were explained to the ITD.
- (ii) In the course of the performance audit, data regarding registration/ approval, withdrawal of registration of Trusts/Institutions engaged in charitable and religious activities, was collected for scrutiny of the processes followed under Sections 12AA, 10(23C) and 80G(5)(vi) of the Act.

- (iii) The data was captured in audit checklists (generic and specific) from the assessment and other records pertaining to the approved samples, so as to examine the nature and extent of compliance with general provisions of the Act, relevant circulars of CBDT etc.
- (iv) Key documents were collected from the records provided by the ITD. These included assessment orders, including computation sheets (ITNS-150); AST screenshots of Income Tax Computation Sheets; notices issued to assessees; assessees' submissions; Income Tax Returns (ITRs), including details in the schedules, balance sheets, income and expenditure accounts, audit reports and other relevant records. Audit examined those documents, and also analysed the data captured in the generic and specific checklists during the course of the performance audit. Systemic and compliance issues, emanating as a result of such audit examination and analysis, were conveyed to the respective units (ward/circle/commissionerates) of ITD for their comments. Replies, wherever received, have suitably been incorporated in the report.
- (v) Audit also reviewed action taken by the ITD on the recommendations of the previous Performance Audit (PA) Report No. 20 of 2013 and Chapter VI of Compliance Audit Report No. 9 of 2019 and also on the recommendations made thereafter by the PAC on PA Report No. 20 of 2013 and action taken by the Ministry thereon, in its 27th Report and 104th Report presented in Parliament in December 2015 and in FY 2018-19 respectively.
- (vi) The draft Performance Audit was issued to the Ministry in December 2021. Partial replies were received in February and March 2022. An exit conference was held with the Ministry on 4th March 2022.

2.5 Non-production of records to Audit

Out of 7,026 sampled cases, the Department produced assessment records of 6,260 cases, and 766 cases were not produced to audit. Further, in respect of the sample cases, which were processed summarily or rectified in the ITD System, the Department provided incomplete information in a number of cases. In its reply, the ITO (Exemptions) Ward - 3, Bengaluru stated that where the rectification proceedings under Section 154/155 had been filed by the respective assessees before the CPC-ITR, were directly processed by the CPC-ITR and this office had no access to even the orders passed by them, in general. The AO further stated that still the screen shots of the cases to the extent available in AST/ITBA module had been made available to Audit. This issue was brought to the notice of the CBDT in March 2020 with a request to make available the selected processed/rectified cases to the Jurisdictional Assessing Officer.

Non-production of assessment records was 10.9 *per cent*, details of which are given in Table 2.2 below:

| Table 2.2: Details of non-production of assessment records | | | | |
|--|--------------|---------------|--------------------|--------------------|
| Name of the State | Audit sample | Cases audited | Cases not produced | |
| | | | In number | in <i>per cent</i> |
| Andhra Pradesh, Telangana and Odisha | 540 | 424 | 116 | 21.5 |
| Delhi, Madhya Pradesh and Chhattisgarh | 1,172 | 1,108 | 64 | 5.5 |
| Gujarat and Rajasthan | 972 | 859 | 113 | 11.6 |
| Karnataka & Goa | 650 | 557 | 93 | 14.3 |
| Maharashtra | 1,535 | 1,320 | 215 | 14.0 |
| Punjab, Haryana, Jammu, Himachal Pradesh | 531 | 522 | 9 | 1.7 |
| Tamil Nadu and Kerala | 884 | 792 | 92 | 10.4 |
| Uttar Pradesh, Uttarakhand, Bihar and Jharkhand | 354 | 350 | 4 | 1.1 |
| West Bengal & North Eastern States | 388 | 328 | 60 | 15.5 |
| Total | 7,026 | 6,260 | 766 | 10.9 |

It is seen from the above Table 2.2 that out of 766 cases not produced, Maharashtra has the highest number of non-production of cases (215 cases) followed by Andhra Pradesh, Telangana and Odisha (116 cases); however, in terms of percentage of non-production, Andhra Pradesh, Telangana and Odisha (21.5 *per cent*) were the highest followed by West Bengal and North Eastern States (15.5 *per cent*).

Further, non-production of assessment records included 17 cases (eight Scrutiny cases and nine Rectification cases) of the top 200 Trusts/Institutions having gross income ₹ 167.9 crore and above (involving exemption of ₹ 6,102.4 crore), selected from the data furnished by the ITD as detailed in **Appendix-2.1**. The main reasons for non-production of records as stated by the Department were limited attendance of key ITD officials in office due to the prevailing pandemic situation, restructuring of the Department, some records not readily traceable etc. Further, the Department could not produce records of 194 cases related to registration/approval out of 425 cases registered/approved after 2014¹⁰.

Non-production of records of registrations/approvals and incomplete production of summary/rectification cases were major constraints for the Audit to ascertain the due compliance of procedure laid down for registration and granting exemptions.

¹⁰ Refer para 5.2.1 of this PA report.

2.6 Acknowledgement

We acknowledge the co-operation of the Department in providing the necessary records/information and facilitating the conduct of this Performance Audit, despite the constraints faced due to COVID-19 pandemic.

Chapter 3: Status of Action Taken Notes (ATN) of the Ministry on earlier CAG's Audit Reports and Public Accounts Committee (PAC) recommendations

Audit had conducted a Performance Audit on Exemptions to Charitable Trusts and Institutions in the year 2012 and included the findings in the Comptroller and Auditor General of India's Audit Report No. 20 of 2013 which was laid in Parliament in December 2013.

The main objective of the earlier Performance Audit was to seek assurance that registrations are given to trusts involved in charitable activities only, and exemptions are allowed to eligible Trusts. The study also sought assurance that proper monitoring mechanism exists for utilisation of accumulations and identifying inadequacies in the provisions of the Act relating to exemptions.

The Report highlighted certain lapses such as (a) grant of approval/registration without adequate documents; (b) non-inclusion of dissolution clause in the Trust Deed; (c) Irregular exemption to trusts which were not charitable in nature; (d) Delay in granting registration/ approval/notification; (e) irregular exemptions to trusts creating huge surpluses consistently; (f) irregular exemption of anonymous donations/ voluntary contributions; (g) non-monitoring of accumulations of income of trusts; (h) Irregular exemption for investment not made in specified mode; (i) non-monitoring of foreign contribution received by trusts etc.

The Public Accounts Committee (PAC) examined the report as well as the action taken by the ITD and included their observations/ recommendations in its 27th Report (16th Lok Sabha) which was presented in Parliament in December 2015. Thereafter, the Committee (2018-19), presented its 104th Report (16th Lok Sabha) on the Action Taken by the Government on observations/ recommendations of the Committee contained in its 27th Report (16th Lok Sabha) to the Parliament in July 2018.

In this chapter, Audit attempted to review action taken by the Ministry on the recommendations of the PAC based on the audit findings/ recommendations contained in the Performance Audit Report No. 20 of 2013. The recommendations of the PAC as well as Audit and the status of action taken by the Ministry thereon are as follows:

3.1 Actions taken by the Ministry on the recommendations of the PAC

3.1.1 Actions taken relating to procedural issues relating to registration and ineffective monitoring of accumulation

With regard to procedural issues relating to registration and ineffective monitoring of accumulation, the Ministry submitted¹¹ before the PAC that proposed restructuring of the Exemption Directorate would result in specialization on exemption matters with better control as well as monitoring and the introduction of web based interactive platform for applying for registration would make the whole registration/approval/notification process faster, smoother and transparent. In response, the PAC desired that the Ministry should undertake these proposed measures expeditiously. The PAC further recommended¹² that the Ministry may bring suitable amendment to the Act or evolve a suitable mechanism to ensure that firstly, trusts are allowed accumulations consistently only as exceptions and secondly, the accumulated income is applied for objectives of the Trusts/Institutions within a specified time frame.

Audit noted that the Ministry has taken the following remedial measures relating to procedural issues relating to registration and ineffective monitoring of accumulation:

- (a) The Ministry through restructuring, created a separate '*Exemption wing*' in ITD for dealing exclusively with issues relating to exemptions to charitable Trusts/Institutions from November 2014 which is headed by a Chief Commissioner of Income Tax (Exemption) and has 14 Commissioners of Income Tax (Exemption) under him. They will be in charge of registration; verification and building the data bank. They will also be in charge of the entire administration which is required to implement these provisions relating to the exemption available to the Charitable Organisations.
- (b) Online Registration/approval through ITBA system has been introduced under Sections 12AA and 80G(5) in July 2016 and 10(23C)(iv), (v), (vi) and (via) in September 2016.
- (c) e-filing of Income Tax Returns and Audit Reports by Trusts/Institutions having taxable income above the exemption limit was mandatory from AY 2013-14 onwards.
- (d) Disclosure of year-wise details of accumulations, their utilisation and investments, through appropriate columns in ITR-7 had been introduced from AY 2013-14 onwards.

¹¹ Para 6, Part II of 27th Report (16th Lok Sabha)

¹² Para 10 (ii) of 27th Report (16th Lok Sabha)

3.1.2 Actions taken by the Ministry relating to compliance issues

Audit noted that the Ministry has taken the following remedial measures considering the recommendations made by Audit¹³ with reference to assessment of charitable trusts and institutions; and inconsistencies in the Act, through amendments in the Finance Act (No.2), 2014, the Finance Act, 2016 and the Finance Act, 2017 in respect of exemptions allowed to charitable trusts and institutions:

(i) Clarification of the phrase 'Substantially financed' under Section 10(23C)

Under clause of (iiiab) and (iiiac) of Section 10(23C), educational and medical institutions are exempt from tax if such institutions are wholly and substantially financed by the Government. However, the word "substantially financed" was not defined in the Act.

After being pointed out by Audit, Section 10(23C) of the Act was amended vide Finance (No.2) Act, 2014 by inserting an Explanation below Section 10 (23C). Rule 2BBB was inserted in the Income-Tax Rules vide Notification No. 79 /2014 dated 12th December 2014 to prescribe such percentage to be 50 *per cent*.

(ii) Treatment of claims of depreciation by Trusts/Institutions

Charitable Trusts/Institutions were availing deductions on capital expenditure and at the same time, they were availing depreciation on fixed assets. This amounted to a kind of double benefit.

After being pointed out by Audit, the Income-Tax Act was amended vide Finance (No.2) Act, 2014 to provide that under Section 11 and Section 10(23C), income for the purpose of application shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as application of income under these Sections in the same or any other previous year. This amendment is effective from 1st April, 2015.

(iii) Treatment of receipts of dividend by Trusts/Institutions

Charitable Trusts/Institutions were claiming exemption on dividend income on shares and mutual funds under Sections 10(34) and 10(35) though such dividend was not applied for charitable purposes.

Section 11 of the Income-Tax Act was amended vide Finance (No.2) Act, 2014 to provide that where a trust or an institution has been granted registration for purposes of availing exemption under Section 11, and the registration is in force for a previous year, then such trust or institution cannot claim any exemption

¹³ Report No. 20 of 2013 – Exemptions to Charitable Trusts and Institutions

under any provision of Section 10 [other than that relating to exemption of agricultural income and income exempt under Section 10(23C)]. Similarly, entities which have been approved for claiming benefit of exemption under Section 10(23C) would not be entitled to claim any benefit of exemption under other provisions of Section 10 (except the exemption in respect of agricultural income).

(iv) Cancellation of registration under Section 12AA

Section 12AA(3) and 12AA(4) of the Act was amended by the Finance (No.2) Act, 2014 which provides that if the activities of Trusts/Institutions are not genuine or the activities are not being carried out in accordance with the objects of the Trusts/Institutions or the activities are being carried out in a manner that the provisions of Sections 11 and 12 of the Act 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 i.e. the Pr. Commissioner or the Commissioner may by an order in writing cancel the registration of such trust or institution provided that no order under this sub-Section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.

(v) Special provisions relating to tax on 'Accreted income' of certain Trusts and Institutions

The Finance Act, 2016 had introduced a new Chapter XII-EB containing Sections 115TD to 115TF titled 'Special provisions relating to tax on accreted income of certain Trusts and Institutions'. It provides that where a Trust or Institution ceases to be a charitable organization by way of its conversion into any form which is not charitable or merges with a non-charitable entity, or transfers its assets to any trust which is non-charitable or does not transfer it to another charitable trust within a period of one year from dissolution, then the amount of net assets based on fair market value as on the date of such conversion or merger or dissolution which represents the income accreted to the trust over period of time shall be charged to additional income-tax at the Maximum Marginal Rate¹⁴.

(vi) Widening of survey under Section 133A to cover Charitable Trusts

Survey under 133A of the IT Act is an important tool with the ITD for detecting and preventing tax evasion. The ambit of survey operations, under Section 133A of the Income Tax Act, was widened to cover Charitable Trusts, vide Finance Act, 2017, to enable the Income Tax Authorities to conduct Surveys at premises where an activity for charitable purpose was being carried out.

¹⁴ The maximum marginal rate (MMR) is the rate of income tax applicable in relation to the highest slab of income

(vii) Provision to deduct tax at source in case of trusts

Audit noticed that there was no enabling provision in the Act, similar to the Section 40(a)(ia), to disallow expenses on which TDS should have been deducted but has not been deducted by trusts or after deduction, has not been paid on or before the due date of furnishing of return of income.

Section 11 and Section 10(23C) of the Income-Tax Act was amended vide Finance Act, 2018 to provide that if any payment on which tax is required to be deducted but has not been deducted or tax has been deducted but not paid within the due date of filing of return of income, then such amount shall not be considered as application of income.

(viii) Set-off of the deficit of earlier years with the current year's income

Audit had pointed out inconsistencies in allowance of carry forward of deficit in case of exempt entities and recommended that the Ministry may take a decision, in principle, whether deficit of earlier years in case of a trust was to be allowed or not to bring in uniformity.

Section 11 and Section 10(23C) was amended vide the Finance Act, 2021 to clarify that the calculation of income required to be applied or accumulated during the previous year shall be made without any set off or deduction or allowance of any excess application of any of the years preceding the previous year.

(ix) Absence of clarity in the Act regarding repayment of borrowed funds

Audit had pointed out inconsistencies in allowance of repayment of loans in cases of exempted entities and recommended that the Ministry may bring suitable amendment in the Act to bring a uniformity in allowance of repayment of loans.

Section 11 and Section 10(23C) was amended vide by the Finance Act, 2021 to clarify that application for charitable or religious purposes from any loan or borrowing, shall not be treated as application of income for charitable or religious purposes

(x) No monitoring system in respect of donations under Section 80G

Audit had pointed out that there was no internal mechanism within ITD to have control over the receipts issued by the entity having registration under Section 80G.

The Finance Act, 2020 with effect from 01.04.2021 had introduced a provision in this regard, which states that claim of the assessee for a deduction in respect of any donations made to an institution or fund to which the provision of Section 80G(5) apply, in the return of income for any assessment year filed by him, shall

be allowed on the basis of information relating to the said donation furnished by the institution or fund to the prescribed Income Tax authority or the person authorized by such authority, subject to verification in accordance with the risk management strategy formulated by the Board from time to time.

3.2 Deficiencies pointed out in CAG's Report No. 20 of 2013 that have not been satisfactorily addressed

Audit noticed that the following deficiencies had been pointed out in our earlier performance Audit Report No. 20 of 2013; however, these were not satisfactorily addressed by the ITD. These deficiencies have been discussed in detail in the succeeding Chapter 5 and Chapter 7.

(i) Internal Audit of the Registration process

The PAC recommended¹⁵ that the process of registration/approval of the Charitable Trusts/Institutions should be brought under the purview of Internal Audit of the Department.

Audit noted during the Performance Audit that the ITD has not addressed the issue which has been illustrated in paras 7.1.3 and 7.1.4.

(ii) Ineffective monitoring of accumulation of income and its utilisation

The PAC recommended¹⁶ bringing suitable amendment to the Act or evolving a suitable mechanism to ensure that accumulated income is applied for the objectives of the Trusts/Institutions within a specified time frame. The Ministry should perform strict monitoring of Form 10 invariably in all the cases to cover all assessments.

Audit noted during the Performance Audit that the ITD has not addressed the issue which has been illustrated in paras 7.1.11 and 7.1.12.

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

The PAC recommended¹⁷ that the Department should formulate the data sharing mechanism with the Ministry of Home Affairs (MHA) to keep a track of foreign contributions (FCs) received and their utilisation for the declared purpose. It was also recommended that a mechanism may also be developed particularly to monitor application of foreign contributions received and a clear set of guidelines in this regard be issued to all the AOs. Audit observed that desired mechanism to monitor the foreign contributions has yet to be established.

¹⁵ Para 7, Part II of 27th Report (16th Lok Sabha)

¹⁶ Para 10(ii) & (iii), Part II of 27th Report (16th Lok Sabha)

¹⁷ Para 15, Part II of 27th Report (16th Lok Sabha)

Audit noted during the Performance Audit that the ITD has not addressed the issue which has been illustrated in para 7.1.13.

(iv) Inadequacy of survey of educational trusts

The PAC desired¹⁸ that a survey of all the educational trusts be conducted in a time bound manner so as to verify whether they were misusing the provisions of 'Charitable Trusts' in the Income Tax Act considering the huge surpluses generated and accumulated by most of these trusts.

Audit noted during the Performance Audit that the ITD has not addressed the issue which has been illustrated in para 7.1.5.

(v) Absence of provision for disclosure of TDS in Audit Report

Audit had pointed out that audit reports in Forms 10B or 10BB had no disclosure with regard to TDS deducted/deductible by the trusts and the PAC recommended¹⁹ to the Ministry that appropriate provisions may be made for inclusion of such information in the Audit Reports of trusts since it would be an effective tool for greater transparency during assessment procedures.

However, Audit noticed that no provision has been made for inclusion of such information in the Audit Reports in Form 10B/10BB of trusts as pointed out by Audit.

3.3 Status of action taken by the Department and Audit comments thereon in respect of follow-up audit of 'Exemptions to Charitable Trusts and Institutions' included in Chapter VI of the Compliance Audit Report No. 9 of 2019 (Direct Taxes)

In pursuance to C&AG's Audit Report No. 20 of 2013 (Exemptions to Charitable Trusts and Institutions), the PAC inter alia expressed their concern over the serious nature of all the violations and failure of the ITD to monitor whether the trusts were fulfilling the objectives under which they have been established and also that public charitable trusts were being used to run business for profit. Further, the committee desired the office of the Comptroller & Auditor General of India to submit a report on the violations of the Public Charitable Trusts and make recommendations on how to remedy the gaps and prevent such recurrences in future. Therefore, C & AG decided to conduct a PA on Exemptions to Charitable Trusts and Institutions and accordingly data was sought for from the Department. Meanwhile, a limited follow up Audit of 'Exemptions to Charitable Trusts and Institutions' was carried out and results of the same were included in Chapter VI of the Compliance Audit Report No. 9 of 2019 (Direct Taxes).

¹⁸ Para 9, Part II of 27th Report (16th Lok Sabha)

¹⁹ Para 18 Part II of 27th Report (16th Lok Sabha)

During the current PA, Audit also verified action taken by the Department in respect of 42 cases (involving 34 assesseees) included in the above Report No. 9 of 2019, pertaining to CIT(E), Mumbai and CIT(E), Pune Charges.

The summary of status of action taken by the Department is categorized as follows:

(i) Cases where the audit observations were accepted by the Ministry

The Ministry has partially accepted audit observations in three cases and no further comments were offered to the Ministry in view of the reply. Details of the audit observation, reply of the Ministry and Audit comments thereon are given in **Appendix 3.1**.

(ii) Cases where the audit observations were not accepted by the Ministry

The Ministry did not accept the audit observations in 16 cases. Out of these cases:

- (a) In one case, no further comments was offered to the Ministry in view of the reply, mentioned in **Appendix 3.2**; and
- (b) In the remaining 15 cases, Audit did not accept the replies of the Ministry and requested to reconsider their replies/ to furnish further relevant documents to support Ministry's contention. Details of the audit observation, reply of the Ministry and Audit comments thereon are given in the **Appendix 3.3**.

(iii) Cases where no reply was furnished by the Ministry but the Department had taken/initiated remedial action or not accepted the audit observations.

The Ministry did not furnish replies to the audit observations in respect of 19 cases. However, it was noticed in the local field audit verification that the Department had either not accepted the audit observations or initiated/taken remedial action. Details of the audit observation, reply of the Ministry and Audit comments thereon are given in **Appendix 3.4**.

(iv) Cases where no reply was furnished by the Ministry and no action taken/initiated by the Department.

The Ministry did not furnish any reply and also no remedial action was initiated/taken by the Department in four cases. The gist of audit observations, current status of the cases are tabulated below:

| Table: 3.1: Cases where no reply was furnished by the Ministry and no action taken/initiated by the Department. | | | | | | |
|---|----------------------|-------------------|----------------------------------|--|-------------------------|---|
| Sl. No. | Name of the Assessee | AY | Para no. of Report No. 9 of 2019 | Gist of the audit observation | Tax Effect (₹ in crore) | Action taken by the ITD |
| 1. | T ₂ Trust | 2009-10 | 6.5 | ITD denied exemptions under Section 11, but allowed deductions for expenditure | 3.62 | Reply was awaited from the Ministry. Audit noticed from field verification that no remedial action was initiated/taken by the Department. |
| 2. | N ₅ Trust | 2013-14 & 2014-15 | 6.5 | ITD denied exemptions under Section 11, but allowed deductions for expenditure | 0.95 | Reply was awaited from the Ministry. Audit noticed from field verification that no remedial action was initiated/taken by the Department. |
| 3. | T ₂ Trust | 2014-15 | 6.5 | ITD denied exemptions under Section 11, but allowed deductions for expenditure | 0.37 | Reply was awaited from the Ministry. Audit noticed from field verification that no remedial action was initiated/taken by the Department. |
| 4. | T ₃ Trust | 2014-15 | 6.5 | ITD denied exemptions under Section 11, but allowed deductions for expenditure | 0.34 | Reply was awaited from the Ministry. Audit noticed from field verification that no remedial action was initiated/taken by the Department. |

As the time limit for issuing notice under Section 148 has been revised by amending provisions²⁰ of Section 149, there is likelihood of action on these cases become time barred. Therefore, the Ministry/CBDT is requested to initiate action after verification of the facts, on priority and intimate the same to Audit. Further, the Ministry/CBDT may also take suitable steps for avoiding recurrence of such anomalies in future, as pointed-out by Audit.

²⁰ Finance Act 2021 w.e.f. 01.04.2021

Chapter 4: Statistical Analysis of Population and Audit Sample

This chapter discusses the profile of the total population of charitable Trusts/Institutions, registration/approval granted to Trusts/Institutions and the profile of the audit sample.

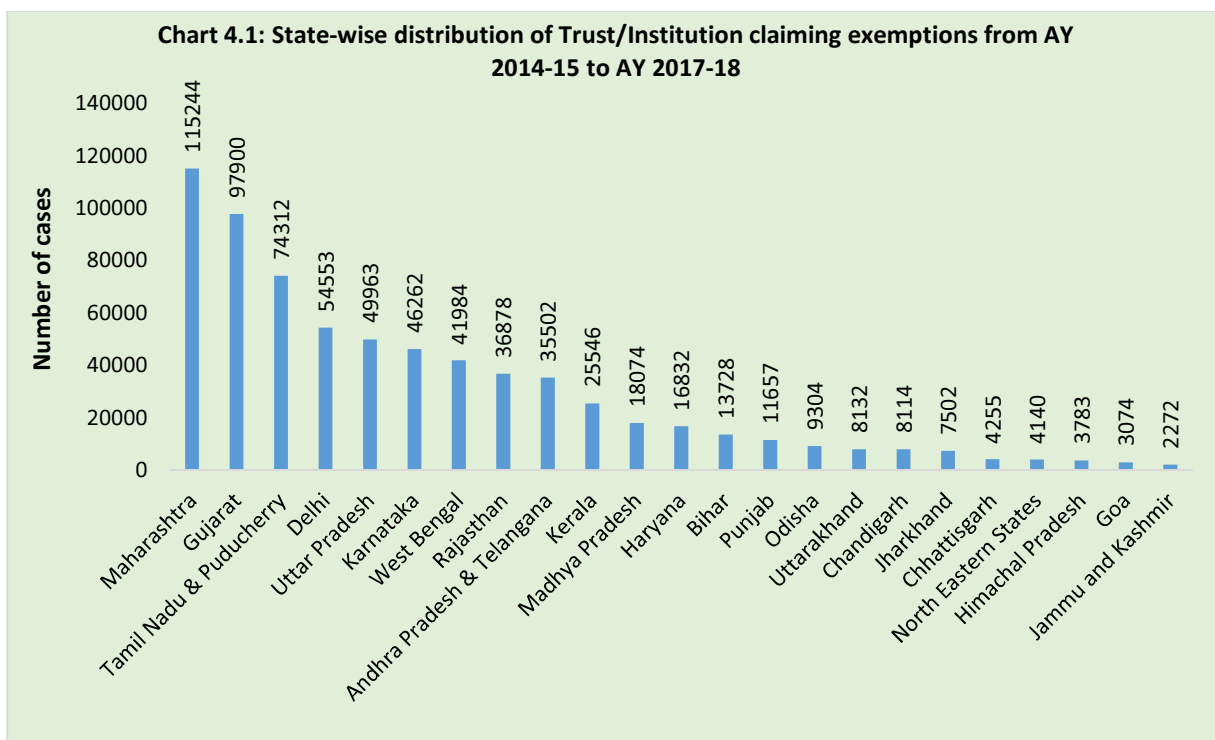
4.1 Profile of total population of charitable Trusts/Institutions

The Performance Audit covers assessments of the charitable or religious Trusts/Institutions relating to assessment year (AY) 2014-15 to AY 2017-18, processed, assessed and rectified during FY 2014-15 to FY 2018-19.

The Pr. DGIT(Systems) provided assessee-wise data in respect of the Charitable Trusts and Institutions, containing 6,89,011 cases pertaining to Income Tax Returns (ITRs) processed/assessed/rectified for AY 2014-15 to AY 2017-18 during FY 2014-15 to FY 2018-19. Out of 6,89,011 cases received from the Pr. DGIT(Systems) falling under 319 Pr. CsIT/CsIT, 6,29,905 were summary assessment cases, 25,214 cases were of scrutiny cases and the remaining 33,892 cases were relating to rectification/re-assessment/appellate orders. The data provided by Pr. DGIT (Systems) was analysed and the results are summarized in the succeeding paragraphs.

4.1.1 State-wise distribution of Trusts/Institutions claiming exemption

With a view to ascertaining state-wise distribution of Trusts/Institutions which claimed exemption from AY 2014-15 to AY 2017-18, Audit analysed the data of 6,89,011 cases provided by the Pr. DGIT(System) and the result is shown in *Appendix 4.1*. Audit analysis revealed that there was an increasing trend in number of Trusts/Institutions claiming exemptions from AYs 2014-15 to 2016-17; however, the number of Trusts/Institutions claiming exemptions decreased slightly for AY 2017-18. Further, Maharashtra had the highest number of Trusts/Institutions claiming exemptions from AY 2014-15 to AY 2017-18 at 16.7 per cent of total cases followed by Gujarat at 14.2 per cent and Tamil Nadu at 10.8 per cent. The State-wise distribution of Trusts/Institutions which claimed exemption from AY 2014-15 to AY 2017-18 is depicted in Chart 4.1 below:



4.1.2 Number of Income Tax Returns filed by the Charitable Trusts/ Institutions from AY 2014-15 to AY 2017-18

With a view to ascertain number of Income Tax Returns (ITRs) filed by the Trusts/Institutions for the AY 2014-15 to AY 2017-18, audit analysed the data of 6,89,011 cases provided by the Pr. DGIT(Systems) and the result thereof is depicted in Table 4.1 below:

| Population (Total returns) | Number of Trusts/ Institutions during the period | Number of returns filed by the Trusts/ Institutions between AY 2014-15 to AY 2017-18 | | | |
|----------------------------|--|--|-------------------|---------------------|--------------------|
| | | One (in per cent) | Two (in per cent) | Three (in per cent) | Four (in per cent) |
| 6,89,011 | 2,43,772 | 40,740 (16.7) | 52,234 (21.4) | 59,393 (24.4) | 91,405 (37.5) |

It was seen from the above Table 4.1 that there were only 37.5 per cent Trusts/Institutions where ITRs were received by the Department for all four AYs i.e. AYs 2014-15 to 2017-18 during the period of Audit.

4.1.3 Type of Assessments in total population and Audit sample²¹

From the data received from the Pr. DGIT(Systems), a total of 7,026 cases falling under 51 Pr. CsIT/CsIT comprising of 3,271 scrutiny cases, 3,255 cases of rectification/re-assessment/appellate orders etc. and 500 summary cases were selected as the Audit sample for this Performance Audit. Of these, 6,260 cases

²¹ Audit sample has been discussed in details in Chapter 2 of this PA Report.

were produced by the ITD whereas records related to 766 cases were not produced to audit. The type of assessments in the total population and Audit sample are given in Table 4.2 below:

| Type of Assessment (Scrutiny/Summary /Others) | Data furnished by Pr. DGIT (System) | | Audit Sample | | Produced to Audit | |
|--|-------------------------------------|--------------|--------------|--------------|-------------------|--------------|
| | No. of Cases | Percentage | No. of Cases | Percentage | No. of Cases | Percentage |
| Scrutiny | 25,214 | 3.7 | 3,271 | 46.6 | 3,081 | 49.2 |
| Summary | 6,29,905 | 91.4 | 500 | 7.1 | 495 | 7.9 |
| Others ²² | 33,892 | 4.9 | 3,255 | 46.3 | 2,684 | 42.9 |
| Total | 6,89,011 | 100.0 | 7,026 | 100.0 | 6,260 | 100.0 |

Thus, out of 6,89,011 cases pertaining to ITRs for AY 2014-15 to AY 2017-18, 3.7 per cent cases were scrutiny cases and 96.3 per cent cases were other than scrutiny cases which were processed/rectified/ revised etc. during FY 2014-15 to FY 2018-19. Out of 6,260 audited cases, we covered 49.2 per cent of scrutiny assessment and 50.8 per cent of other than scrutiny assessment cases.

4.1.4 Assessment Year wise exemption claimed

Audit analysed the data provided by the Pr. DGIT(Systems) to get assessment year wise break-up of exemption claimed under Sections 10 and 11 of the Act which is summarized in Table 4.3 given below:

| AY | Exemption claimed under Section 10 | | Exemption claimed under Section 11 | | Total exemptions for the year | |
|--------------|------------------------------------|------------------------|------------------------------------|------------------------|-------------------------------|------------------------------|
| | No. of Cases | Exemption (₹ in crore) | No. of Cases | Exemption (₹ in crore) | Total Cases | Total Exemption (₹ in crore) |
| 2014-15 | 11,621 | 49,383 | 1,35,862 | 2,16,918 | 1,47,483 | 2,66,301 |
| 2015-16 | 15,178 | 1,38,709 | 1,49,693 | 2,58,130 | 1,64,871 | 3,96,839 |
| 2016-17 | 20,786 | 1,56,902 | 1,68,766 | 2,53,494 | 1,89,552 | 4,10,396 |
| 2017-18 | 22,193 | 2,01,069 | 1,64,912 | 4,88,823 | 1,87,105 | 6,89,892 |
| Total | 69,778 | 5,46,063 | 6,19,233 | 12,17,365 | 6,89,011 | 17,63,428 |

It can be seen from the above Table 4.3 that there is an increasing trend of exemption claimed from AY 2014-15 to 2017-18. In comparison to the previous AY, during AY 2017-18, number of cases where exemption under Section 11 were claimed had decreased by 2.3 per cent whereas exemptions had increased by 92.8 per cent. Further, the amount of exemption claimed under Section 10 has increased steadily. One possible reason for such increase was that institutions which were substantially financed by the Government and claiming exemption under Sections 10(23C)(iiiab) and 10(23C)(iiiac) of the Act had to be mandatorily

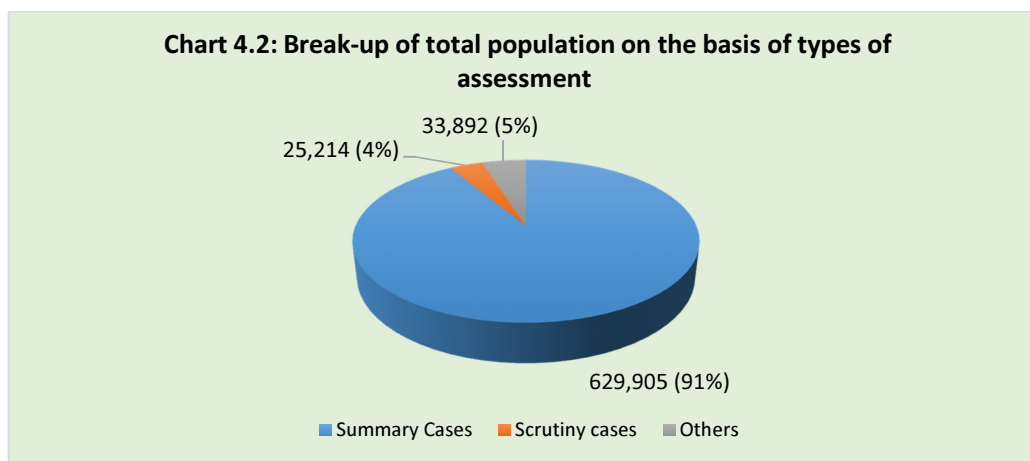
²² Others include rectification cases, Revision cases, order giving effects to appellate orders etc.

file return of income from AY 2016-17 onwards for claim of exemption as discussed in Para 1.2.2.2(a).

4.1.5 Number of Summary and Scrutiny cases

On the basis of types of assessment under different provisions of the Act, Audit analysed the total population to identify the nature of assessment in respect of Trusts/Institutions. Analysis depicted in **Appendix 4.2** shows that ITRs in respect of Trusts/Institutions were processed summarily under Section 143(1) for the period AYs 2014-15 to 2017-18 ranged from 87.2 *per cent* to 96.0 *per cent*. The number of scrutiny assessments increased from 0.7 *per cent* to 9.1 *per cent* during AY 2014-15 to AY 2016-17. It is further seen that the average *per cent* of selection of cases of Trusts/Institutions for scrutiny, which claimed exemptions during AY 2014-15 to 2016-17, was 3.7 *per cent*.

Assessment-wise break-up of total population of Trusts/Institutions claiming exemptions from AY 2014-15 to AY 2017-18 is shown in the Chart 4.2 below:



It can be seen from the chart 4.2 above that during the period, 91 *per cent* cases were processed summarily and only 4 *per cent* cases were selected for scrutiny assessment and the other 5 *per cent* cases were of rectification, revision and cases of order giving effect to appellate orders.

4.1.6 Returned and Assessed Income

With a view to analyse the income disclosed by the assessee and income assessed by the Department, Audit analysed the total population based on the returned and assessed income of the Trusts/Institutions. Details of the analysis are shown in **Appendix 4.3**. Audit analysis revealed that out of total 6.89 lakh cases processed/assessed/ rectified during the FY 2014-15 to FY 2018-19, the returned income was ₹ zero in 5,11,951 cases (74.3 *per cent* of total cases) whereas the assessed income was ₹ zero in 4,33,620 cases (62.9 *per cent* of total cases). Number of cases selected for scrutiny for all the four AYs i.e., AY 2014-15 to AY 2017-18, was the highest (22,376 cases) for cases with returned income of

₹ zero followed by cases with returned income more than ₹ zero and upto ₹ 50 lakh (2,717 cases) followed by case with returned income of more than ₹ one crore (201 cases).

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

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

From the data provided by the Pr. DGIT (Systems), pertaining to Income Tax Returns (ITRs) processed/assessed/rectified for AY 2014-15 to AY 2017-18 during the FY 2014-15 to FY 2018-19, Audit found that in 21,381 cases exemption were claimed under Section 11; however, registration under Section 12AA was not available. State-wise details are summarised in Table 4.4 given below:

| Table 4.4: Trusts not registered under Section 12AA but claimed exemptions | | |
|--|-----------------|---|
| State | Number of cases | Exemption under Section 11 (₹ in crore) |
| Andhra Pradesh and Telangana | 1,177 | 1,045.3 |
| Bihar | 955 | 256.4 |
| Chandigarh | 299 | 1,651.8 |
| Chhattisgarh | 125 | 113.9 |
| Delhi | 1,345 | 4,245.1 |
| Goa | 64 | 12.6 |
| Gujarat | 3,325 | 1,119.8 |
| Haryana | 583 | 298.3 |
| Himachal Pradesh | 137 | 64.7 |
| Jammu and Kashmir | 54 | 37.4 |
| Jharkhand | 307 | 108.3 |
| Karnataka | 1,094 | 1,082.7 |
| Kerala | 362 | 511.1 |
| Madhya Pradesh | 773 | 1,595.1 |
| Maharashtra | 3,745 | 2,500.8 |
| North Eastern States | 82 | 8.4 |
| Odisha | 276 | 352.0 |
| Punjab | 335 | 252.6 |
| Rajasthan | 1,307 | 605.1 |
| Tamil Nadu and Puducherry | 1,940 | 807.2 |
| Uttar Pradesh | 2,117 | 1,812.7 |
| Uttarakhand | 298 | 71.1 |
| West Bengal | 681 | 228.3 |
| Total | 21,381 | 18,780.7 |

It is seen from Table 4.4 above that incorrect allowance of exemption was the highest in Delhi charge followed by Maharashtra charge.

4.1.8 Foreign contribution received but registration status not available

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

From the data provided by the Pr. DGIT(Systems) pertaining to Income Tax Returns (ITRs) processed/assessed/rectified for AY 2014-15 to AY 2017-18 during the FY 2014-15 to FY 2018-19, Audit found that in 347 cases, where foreign contributions were received, registration under FCRA was not available. State-wise details are summarized in Table 4.5, given below:

| Table 4.5: State-wise cases where foreign contribution received but not registered under FCRA | | | |
|--|------------------------|---|--|
| State | Number of cases | Amount of foreign contribution received (₹ in crore) | Exemptions claimed (₹ in crore) |
| Andhra Pradesh and Telangana | 63 | 33.8 | 62.5 |
| Delhi | 1 | 0.1 | 0.9 |
| Goa | 5 | 0.3 | 1.7 |
| Gujarat | 1 | 0.1 | 0.2 |
| Himachal Pradesh | 3 | 2.3 | 5.5 |
| Karnataka | 104 | 73.8 | 165.0 |
| Kerala | 53 | 31.3 | 107.5 |
| Maharashtra | 48 | 22.8 | 122.6 |
| Odisha | 1 | 0.3 | 0.5 |
| Tamil Nadu and Puducherry | 61 | 19.8 | 64.3 |
| Uttar Pradesh | 3 | 0.6 | 3.0 |
| West Bengal | 4 | 2.4 | 2.2 |
| Total | 347 | 187.4 | 535.8 |

It is seen from Table 4.5 above that Karnataka had the highest receipt of foreign contribution without registration under FCRA Act 2010 followed by Andhra Pradesh and Telangana.

4.1.9 Invalid date of registration/approval

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

From the data provided by the Pr. DGIT (Systems), Audit observed that in 10 cases, the date of registration under Section 12AA and approval under Section 80G were incorrect dates (future dates). The details are given in Table 4.6 below:

| Table 4.6: Invalid date of registration/approval | | | | |
|--|-----------------|------|--|------------------------------------|
| CIT | Encrypted PAN | AY | Date of registration under Section 12A /12AA | Date of Approval under Section 80G |
| CIT (Exemptions), Pune | 118614718262 | 2016 | 16-04-2088 | - |
| CIT (Exemptions), Mumbai | 3847464966 | 2014 | 20-03-2044 | - |
| CIT (Exemptions), Mumbai | 69658229 736 | 2016 | 17-12-2090 | - |
| CIT (Exemptions), Bhopal | 6697882038 | 2016 | 30-07-2501 | - |
| CIT (Exemptions), Jaipur | 1121990705 | 2016 | 28-12-2077 | - |
| CIT (Exemptions), Pune | 794562645777 | 2014 | 17-10-2075 | - |
| CIT (Exemptions), Chennai | 549512250 | 2016 | 11-08-2021 | - |
| CIT (Exemptions), Kolkata | 512123131334 | 2014 | - | 28-08-2099 |
| CIT(Exemptions), Ahmedabad | 21201448184 | 2016 | - | 31-03-2025 |
| CIT (Exemptions), Mumbai | 827762293 | 2017 | - | 26-03-2099 |

Above cases indicate that appropriate field validation was not available in the ITR Form-7 in respect of the above fields.

4.2 Profile of registration granted to Trusts/Institutions

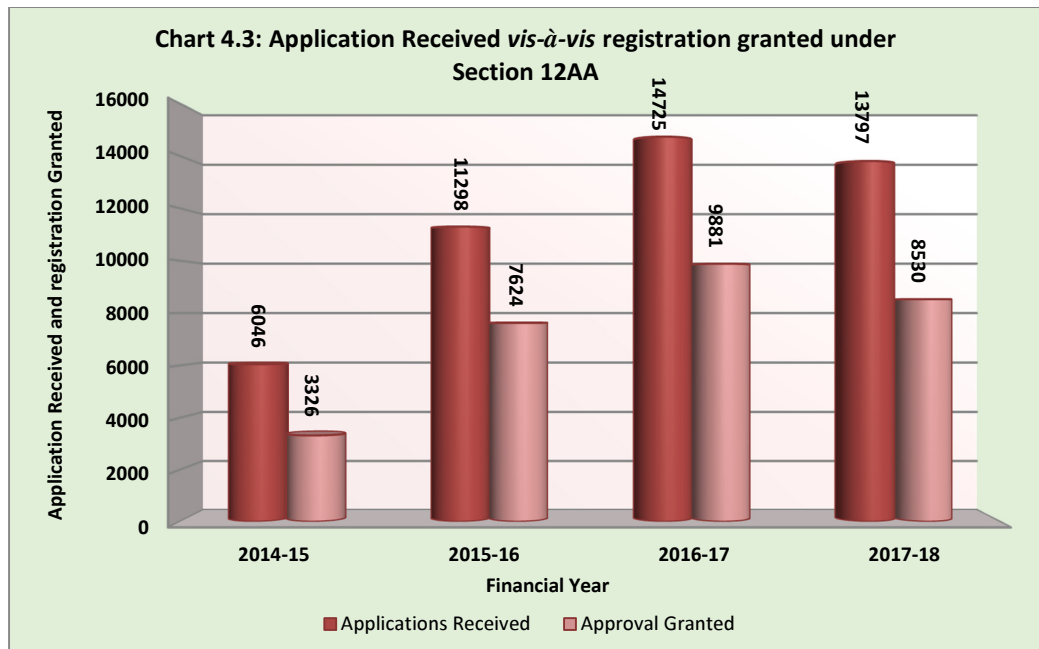
Audit analysed the data received from CsIT (Exemptions) relating to registration granted by the ITD, to the Charitable Trusts/Institutions, post restructuring and creation of designated CIT (Exemptions) in November 2014²³ i.e. registration granted from FY 2014-15 to FY 2017-18.

4.2.1 Grant of registrations/approvals

The data made available by CsIT(E) relating to registration/ approval of the Charitable Trusts/Institutions under Section 12AA during financial years (FYs) 2014-15 to 2017-18 was analysed.

Chart 4.3 below depicts the number of receipt of applications and grant of registration during FY 2014-15 to FY 2017-18.

²³ Prior to creation of designated CIT (Exemptions), registration to the Charitable Trusts/Institutions were given by jurisdictional CsIT.



It was seen from the above chart that there was an increasing trend in receipt of applications, as well as grant of registration/approval. The receipt of applications increased from 6,046 in FY 2014-15 to 13,797 in FY 2017-18 registering an increase of 128.2 *per cent* over the period of four FYs, whereas, the number of registration/approvals granted during the same period increased from 3,326 in FY 2014-15 to 8,530 in FY 2017-18 registering an increase of 156.5 *per cent*, though the number of application and registration/ approval (14,725 and 988 respectively) were slightly higher in FY 2016-17.

4.3 Profile of cases falling within the audit sample

Audit analysed sampled cases in respect of region and type of assessment and audited cases in respect of region, gross total income, returned income, assessed income, exemptions granted, nature of activities, types of entities (Government entity or private entity). These are given in the succeeding paragraphs:

4.3.1 Region and type of assessment-wise breakup of audit sample

Audit analysis of samples of 7,026 cases depicted in *Appendix 4.4* showed that out of 7,026 sampled cases, 3,271 cases (46.6 *per cent*) were of scrutiny assessment whereas 518 cases (7.4 *per cent*) were of summary assessment and remaining 3,237 cases (46.1 *per cent*) were of rectification, revision and cases of order giving effect to appellate orders.

4.3.2 Region-wise exemptions granted in respect of audited cases

With a view to quantifying the state/region wise break-up of total exemptions granted, Audit analysed the data made available by the ITD as well as data collected during field audit. Table 4.7 below depicts the State/region wise break-up of total exemptions granted of ₹ 1.68 lakh crore in respect of 6,064 audited cases relating to 47 Pr. CsIT /CsIT, covered during the PA:

| Name of the state | Number of Pr. CIT/CIT | Audited cases | | Exemptions granted | |
|--|-----------------------|---------------|-----------------------------|---------------------|-------------------------------|
| | | Number | Percentage of audited cases | Amount (₹ in crore) | Percentage of total exemption |
| Andhra Pradesh, Telangana and Odisha | 4 | 417 | 6.9 | 13,225.4 | 7.9 |
| Bihar and Jharkhand | 1 | 126 | 2.1 | 12,931.7 | 7.7 |
| Delhi | 5 | 688 | 11.3 | 30,695.8 | 18.3 |
| Gujarat | 4 | 497 | 8.2 | 9,001.8 | 5.4 |
| Karnataka & Goa | 6 | 530 | 8.7 | 9,933.1 | 5.9 |
| Kerala | 1 | 285 | 4.7 | 2,826.9 | 1.7 |
| Madhya Pradesh and Chhattisgarh | 1 | 373 | 6.2 | 9,840.8 | 5.9 |
| Maharashtra | 9 | 1,290 | 21.3 | 25,102.3 | 15.0 |
| Punjab, Haryana, Jammu, Himachal Pradesh | 4 | 506 | 8.3 | 8,914.8 | 5.3 |
| Rajasthan | 2 | 348 | 5.7 | 6,150.9 | 3.7 |
| Tamil Nadu | 4 | 478 | 7.9 | 15,486.7 | 9.2 |
| Uttar Pradesh and Uttarakhand | 2 | 202 | 3.3 | 11,067.7 | 6.6 |
| West Bengal & NER States | 4 | 324 | 5.3 | 12,460.0 | 7.4 |
| Total | 47 | 6,064 | 100.0 | 1,67,637.8 | 100.0 |

It was seen from the Table 4.7 above that out of 6,064 audited cases, Maharashtra had the highest number of cases (21.3 per cent) followed by Delhi (11.3 per cent) but in terms of quantum of exemptions granted, Delhi was the highest (18.3 per cent) followed by Maharashtra (15.0 per cent).

4.3.3 Assessment Year wise exemptions granted in respect of audited cases

With a view to quantifying the Section wise and assessment year wise break-up of exemption granted in respect of audited cases, Audit analysed the data made available by the ITD as well as data collected in field audit. Table 4.8 below depicts the Section wise break-up of total exemptions granted of ₹ 1.68 lakh crore in respect of 6,064 audited cases:

| Table 4.8: Assessment year wise exemptions in respect of 6,064 audited cases | | | | | | | | | |
|--|---------------------|------------------------------------|------------------------|---|------------------------|---|------------------------|--------------|------------------------|
| AY | Type of assessment | Exemption granted under Section 11 | | Exemption Granted under Section 10(23C)(iiiab) to (via) | | Exemptions granted under other sub-Sections ²⁴ of Section 10 | | Total | |
| | | No. of Cases | Exemption (₹ in Crore) | No. of Cases | Exemption (₹ in Crore) | No. of Cases | Exemption (₹ in Crore) | No. of Cases | Exemption (₹ in Crore) |
| 2014-15 | Scrutiny | 90 | 3384.4 | 13 | 1,212.9 | 5 | 2.2 | 108 | 4,599.5 |
| | Summary | 66 | 2,429.5 | 13 | 131.8 | 1 | 1.6 | 80 | 2,562.9 |
| | Others [#] | 833 | 14,192.3 | 184 | 5,335.6 | 51 | 3,090.7 | 1,068 | 22,618.5 |
| | Total | 989 | 20,006.1 | 210 | 6,680.3 | 57 | 3,094.6 | 1,256 | 29,780.9 |
| 2015-16 | Scrutiny | 599 | 22,484.5 | 123 | 4,161.7 | 32 | 3,174.6 | 754 | 29,820.8 |
| | Summary | 82 | 1,083.2 | 17 | 76.1 | 1 | 0.0 | 100 | 1,159.3 |
| | Others [#] | 587 | 11,929.7 | 109 | 1,194.5 | 18 | 491.7 | 714 | 13,615.9 |
| | Total | 1,268 | 35,497.4 | 249 | 5,432.3 | 51 | 3,666.3 | 1,568 | 44,596.1 |
| 2016-17 | Scrutiny | 1,590 | 61,606.1 | 466 | 16,499.8 | 63 | 4,121.9 | 2,119 | 82,227.7 |
| | Summary | 33 | 34.6 | 6 | 52.5 | 0 | 0.0 | 39 | 87.1 |
| | Others [#] | 524 | 2,389.2 | 156 | 3,075.1 | 22 | 1332.7 | 702 | 6,797.1 |
| | Total | 2,147 | 64,029.9 | 628 | 19,627.4 | 85 | 5,454.6 | 2,860 | 89,111.9 |
| 2017-18 | Scrutiny | 73 | 838.5 | 23 | 1,737.5 | 4 | 0.0 | 100 | 2,576.0 |
| | Summary | 60 | 1,197.0 | 19 | 43.4 | 1 | 1.6 | 80 | 1,242.0 |
| | Others [#] | 165 | 313.5 | 30 | 10.52 | 5 | 6.3 | 200 | 330.3 |
| | Total | 298 | 2,349.0 | 72 | 1,791.4 | 10 | 7.9 | 380 | 4,148.3 |
| Total | | 4,702 | 1,21,882.4 | 1,159 | 33,531.4 | 203 | 12,223.4 | 6,064 | 1,67,637.2 |

[#] Others include Rectification cases, Revision cases and cases of Order giving effect to Appellate orders.

It can be seen from Table 4.8 that out of 6,064 audited cases, 4,702 Trusts/ Institutions (77.5 per cent) were granted exemptions under Section 11 of the Act whereas 1,159 Trusts/Institutions (19.1 per cent) were granted exemption under Section 10(23C) (iiiab) to (via) of the Act. Further, out of the total exemptions of ₹ 1.68 lakh crore during the period from AY 2014-15 to 2017-18, ₹ 1.22 lakh crore (72.7 per cent) was granted under Section 11 and ₹ 0.34 lakh crore (20.0 per cent) was granted under Section 10(23C) (iiiab) to (via) of the Act. Thus, the majority of the Trusts/Institutions prefer to claim exemption under Section 11.

4.3.4 Gross Total income of the audited cases

Audit analysed the Gross Total Income of the trust/institutions (audited cases) from data made available by the ITD as well as data collected by Audit in the audit checklist during field audit and the result is given in Table 4.9 below:

²⁴ Sub-Sections 22B, 23A, 23B, 23D and 25 of Section 10, relating to News agencies, professional bodies, institutions for development of khadi and village industries, Mutual Funds notified by SEBI, approved pension and gratuity fund, notified board or trusts respectively.

| AY | No. of Audited Cases | Gross income vis-à-vis Number of cases | | | | | |
|--------------|----------------------|--|---------------------------------------|--|---|-----------------------|--------------------|
| | | Upto ₹ 10 crore | More than ₹ 10 Cr and upto ₹ 50 crore | More than ₹ 50 Cr and upto ₹ 100 crore | More than ₹ 100 Cr and upto ₹ 500 crore | More than ₹ 500 crore | Data not available |
| 2014-15 | 1,256 | 773 | 71 | 33 | 12 | 6 | 361 |
| 2015-16 | 1,568 | 948 | 212 | 70 | 53 | 17 | 268 |
| 2016-17 | 2,860 | 1,954 | 388 | 127 | 88 | 22 | 281 |
| 2017-18 | 380 | 228 | 37 | 10 | 9 | 1 | 95 |
| Total | 6,064 | 3,903 | 708 | 240 | 162 | 46 | 1,005 |

It can be seen from Table 4.9 above that out of 6,064 total audited cases, the gross income is '₹ 10 Crore or less' in 3,903 cases (64.4 per cent). Further, in 1,005 cases (16.6 per cent) the gross income of the Trusts/Institutions was not available since the cases were pertaining to summary or rectification cases, which were processed summarily or rectified in the ITD System and the record for which were not furnished to Audit.

4.3.5 Returned and Assessed Income of the Trusts/Institutions (audited cases)

Audit analysed the data made available by the ITD as well as data collected by Audit in the audit checklist during field audit, regarding the returned income and the assessed Income of the Trusts/Institutions in respect of audited cases. The result is given in Table 4.10 below:

| AY | Total audited cases | Returned Income | | | | Assessed Income | | | |
|--------------|---------------------|----------------------------|------------------------|--|---------------------|----------------------------|------------------------|--|---------------------|
| | | ₹ Zero or less than ₹ zero | ₹ 1 and upto ₹ 50 lakh | More than ₹ 50 lakh and upto ₹ 1 crore | More than ₹ 1 crore | ₹ Zero or less than ₹ zero | ₹ 1 and upto ₹ 50 lakh | More than ₹ 50 lakh and upto ₹ 1 crore | More than ₹ 1 crore |
| 2014-15 | 1,256 | 1,103 | 139 | 5 | 9 | 1,055 | 144 | 13 | 44 |
| 2015-16 | 1,568 | 1,441 | 110 | 5 | 12 | 1,263 | 151 | 25 | 129 |
| 2016-17 | 2,860 | 2,664 | 163 | 11 | 22 | 2,220 | 232 | 52 | 356 |
| 2017-18 | 380 | 313 | 57 | 6 | 4 | 288 | 62 | 7 | 23 |
| Total | 6,064 | 5,521 | 469 | 27 | 47 | 4,826 | 589 | 97 | 552 |

It is seen from Table 4.10 that out of the 6,064 audited cases, the returned income is '₹ zero or less than ₹ zero' in 5,521 cases (91.0 per cent of total cases) whereas the assessed income is '₹ zero or less than ₹ zero' in 4,826 cases (79.6 per cent of total cases).

4.3.6 Categorization of Trusts/Institutions on the basis of their activities and their types, whether Government entity or private entity

4.3.6.1 Categorization of Trusts/Institutions on the basis of activities

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 (via) subject to fulfilment of certain conditions.

Audit collected and analysed data in respect of 5,693 cases of audited sample, where activity related information was available in the assessment records. Audit could not gather activities of the Trusts/Institutions from the available records in the remaining 293 cases of the audited sample. Activity wise break-up of total exemptions 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 4.11 below:

| Nature of Activity | Number of sample cases engaged in the activity | Percentage of total sample cases | Total amount of exemptions granted to cases engaged in the activity (₹ in crore) | Percentage of total amount of exemptions 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 |

From the above Table 4.11, it is noticed that 47.2 *per cent* cases of 5,693 audited sample were engaged in educational activities against which 35.1 *per cent* of total exemptions was granted, followed by 28.1 *per cent* engaged in other²⁵

²⁵ Others' include entities with activities viz. General public utility, Preservation of Environment, Preservation of Monuments, Yoga,; and entities with more than one activity

activities against which 43.1 per cent of total exemptions was granted and remaining cases were engaged in medical relief, relief of the poor, environment, religious activities etc.

4.3.6.2 Categorization of Trusts/Institutions on the basis of their types whether Government entity or private entity

Exemptions are granted to Government as well as private entities under various provisions of the Act. We collected and analysed information in respect of 580 high value exemption cases (having gross income of ₹ 50 crore or above) from the audited cases, with a view to quantify activity wise break-up of exemptions granted to Government and private entities. The result is summarised in Table 4.12 below:

| Table 4.12 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 | 67 | 217 | 284 | 11.6 | 37.4 | 49.0 | 19,474.3 | 25,524.5 | 44,998.8 | 14.8 | 19.4 | 34.3 |
| Medical Relief | 18 | 44 | 62 | 3.1 | 7.6 | 10.7 | 10,751.4 | 5,873.8 | 16,625.2 | 8.2 | 4.5 | 12.7 |
| Relief of the Poor | 10 | 28 | 38 | 1.7 | 4.8 | 6.6 | 572.3 | 4,790.5 | 5,362.8 | 0.4 | 3.6 | 4.1 |
| Environment | 7 | 3 | 10 | 1.2 | 0.5 | 1.7 | 916.7 | 375.8 | 1,292.6 | 0.7 | 0.3 | 1.0 |
| Religious | 1 | 19 | 20 | 0.2 | 3.3 | 3.4 | 66.5 | 2,695.4 | 2,761.9 | 0.1 | 2.1 | 2.1 |
| Others | 83 | 83 | 166 | 14.3 | 14.3 | 28.6 | 34,926.6 | 25,307.2 | 60,233.8 | 26.6 | 19.3 | 45.9 |
| Grand Total | 186 | 394 | 580 | 32.1 | 67.9 | 100.0 | 66,707.8 | 64,567.2 | 1,31,275.1 | 50.8 | 49.2 | 100.0 |

It is seen from the above Table 4.12 that 32.1 per cent of the high value cases pertained to Government entities, against which 50.8 per cent of total exemptions (₹ 1,31,275.1 crore) were granted, whereas 67.9 per cent of high value cases pertained to private entities, against which 49.2 per cent of total exemptions were granted.

4.3.7 Analysis of top exemptions cases selected in the Audit Sample

4.3.7.1 Analysis of High value exemption cases with gross income above ₹ 50 crore

Audit identified 649 high value cases from the audit sample, where gross income of each case was above ₹ 50 crore, for detailed examination. Of these assessment cases, records of 580 cases were produced to Audit by the AOs. The details regarding types of the Trusts/Institutions (Government or Private), types

of assessment completed and exemptions granted are summarized in Table 4.13 below:

| Table 4.13: Details of 580 audited high value cases | | | | | | |
|---|---------------------|------------------------|--------------------------------|------------------------|--------------------|------------------------|
| Types of the trust / institution | Scrutiny Assessment | | Other than Scrutiny Assessment | | Total No. of Cases | Exemption (₹ in Crore) |
| | No. of Cases | Exemption (₹ in Crore) | No. of Cases | Exemption (₹ in Crore) | | |
| Government | 131 | 47,418.3 | 55 | 19,289.5 | 186 | 66,707.8 |
| Private | 279 | 49,745.1 | 115 | 14,822.0 | 394 | 64,567.2 |
| Total | 410 | 97,163.4 | 170 | 34,111.5 | 580 | 1,31,275.0 |

Audit noticed that out of 580 high value cases, 186 Trusts/Institutions (32.1 per cent) were Government entities wherein exemption of ₹ 66,707.8 crore was granted and the remaining 394 Trusts/Institutions (67.9 per cent) were private entities wherein exemptions of ₹ 64,567.2 crore was granted. Audit further noticed that in respect of 410 cases (70.7 per cent), scrutiny assessments were completed and the remaining cases were processed summarily.

4.3.7.2 Analysis of Top 200 exemption cases with gross income of ₹ 167.9 crore and above

Audit identified the top 200 cases of Trusts/Institutions from the audit sample, where in gross income of each case was ₹ 167.9 crore or above. Out of these 200 assessment cases, records of 183 cases were produced and 17 cases (**Appendix- 2.1**) were not produced to audit. Audit analyzed the data in respect of these 183 cases from data furnished by the Pr. DGIT (Systems). Audit also analyzed the data in respect of these cases, captured in the audit checklist during field audit from the assessment records. The result is summarized in Table 4.14 below:

| Table 4.14: Details of 183 audited cases of 'Top 200' assesseees | | | | | | |
|--|---------------------|------------------------|--|------------------------|-----------------------|------------------------|
| Types of the Trust/ Institution | Scrutiny Assessment | | Other ²⁶ than Scrutiny Assessment | | Total number of Cases | Exemption (₹ in Crore) |
| | No. of Cases | Exemption (₹ in Crore) | No. of Cases | Exemption (₹ in Crore) | | |
| Government | 65 | 42,600.4 | 30 | 16,413.1 | 95 | 59,013.5 |
| Private | 69 | 34,418.3 | 19 | 7,828.1 | 88 | 42,246.4 |
| Total | 134 | 77,018.7 | 49 | 24,241.2 | 183 | 1,01,259.9 |

Audit noticed that out of the top 183 audited cases, 95 Trusts/Institutions (51.9 per cent) were Government entities wherein exemption of ₹ 59,013.5 crore was granted and the remaining 88 Trusts/Institutions (48.1 per cent) were private entities wherein exemption of ₹ 42,246.4 crore was

²⁶ Other included Summary cases and rectification cases

granted. Audit further noticed that in respect of 134 cases (73.2 per cent), scrutiny assessments were completed and the remaining cases were processed summarily.

During this Performance Audit, 54 paras having money value of ₹ 1,225.20 crore were noticed in respect of these 580 high value cases relating to systemic and compliance issues viz. Incorrect computation of income and its application, ineffective monitoring of accumulation and its utilisation, ineffective monitoring of foreign contribution and its utilisation, irregular allowance of exemption on corpus donation etc. which are discussed in the succeeding chapters.

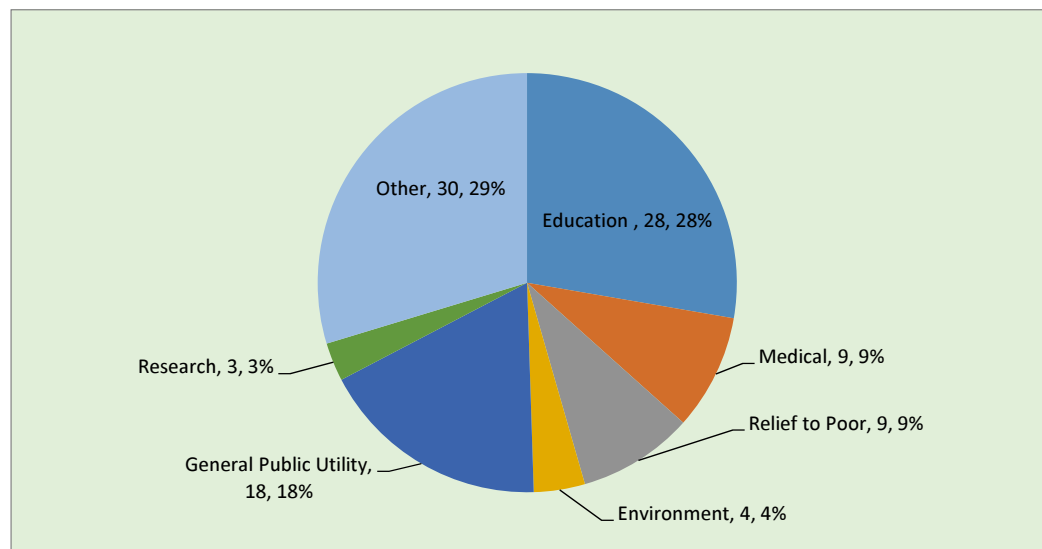
4.3.8 Profiling of top Trusts/Institutions

With a view to profiling top Trusts/Institutions, Audit selected top 200 cases involving 169 Trusts/Institutions from the audit sample where in gross income for each case was ₹ 167.9 crore or above. Audit collected data from assessment records in respect of 167 Trusts/Institutions for FYs 2014-15, 2015-16 and 2016-17 relating to nature of activity, nature of receipt, exemptions granted etc., while records of two assessees were not furnished to Audit. The details of 167 assessees are given in the succeeding paragraphs:

4.3.8.1 Type of entity and nature of activity

Audit noticed that out of 167 top assessees, 101 were Government entities and the remaining 66 assessees were private entities. The activity wise break-up of 101 Government entities is depicted in the Chart 4.4 below:

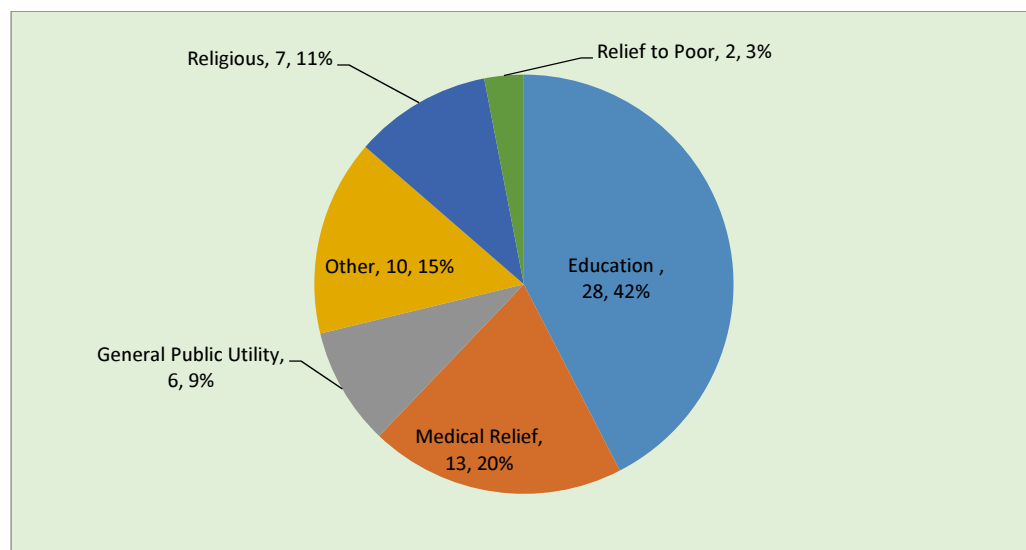
Chart 4.4 Activity-wise details of 101 top Government entities



It can be seen from the above Chart 4.4 that 29 per cent of the top 101 Government entities were engaged in 'other activities' (viz. pension and gratuity fund, welfare board etc.) and 28 per cent entities in educational activities.

The activity wise break-up of 66 private entities is depicted in Chart 4.5 below:

Chart 4.5 Activity-wise details of 66 private entities



It can be seen from the above Chart 4.5 that 42 *per cent* of the top 66 private entities were engaged in educational activities followed by 20 *per cent* in medical relief.

4.3.8.2 Exemptions granted to Government and Private entities

Audit collected data on exemptions granted during FYs 2014-15, 2015-16 and 2016-17 in respect of 167 top entities and the data is summarized in Table 4.15 below:

| Financial Year | Government | | Private | | Total | | Data not available with Audit No of entities |
|----------------|----------------|------------------------|----------------|------------------------|----------------|------------------------|---|
| | No of entities | Exemption (₹ in crore) | No of entities | Exemption (₹ in crore) | No of entities | Exemption (₹ in crore) | |
| 2014-15 | 75 | 37,763.39 | 52 | 18,657.97 | 127 | 56,421.36 | 40 |
| 2015-16 | 82 | 46,766.12 | 55 | 18,458.02 | 137 | 65,224.14 | 30 |
| 2016-17 | 84 | 47,662.64 | 53 | 21,377.70 | 137 | 69,040.35 | 30 |

It can be seen from the above Table 4.15 that exemption granted to Government entities had increased from ₹ 37,763.4 crore to ₹ 47,662.6 crore during FY 2014-15 to 2016-17, whereas exemptions granted to private entities had increased from ₹ 18,658.0 crore to ₹ 21,377.7 crore during the same period.

4.3.8.3 Nature of receipt of Government entities

Audit analysed information regarding the nature of receipt of 101 Government entities during FYs 2014-15 to 2016-17, which is summarized in Table 4.16 below:

| Financial Year | No of Cases | Grants from Government (₹ in crore) | | Receipt from Activity (₹ in crore) | | Other Receipts ²⁷ | | Total Receipt (₹ in crore) | Data not available with Audit |
|----------------|-------------|-------------------------------------|---|------------------------------------|---|------------------------------|---|----------------------------|-------------------------------|
| | | Amount (₹ in crore) | Percentage of Total Receipt during the year | Amount (₹ in crore) | Percentage of Total Receipt of the year | Amount (₹ in crore) | Percentage of Total Receipt during the year | | No of cases |
| 2014-15 | 83 | 16,857.4 | 34.59 | 10,494.9 | 21.5 | 21,379.5 | 43.9 | 48,731.8 | 18 |
| 2015-16 | 93 | 24,563.7 | 37.69 | 11,315.6 | 17.4 | 29,291.1 | 45.0 | 65,170.4 | 8 |
| 2016-17 | 93 | 29,528.4 | 43.76 | 11,330.6 | 16.8 | 26,626.3 | 39.4 | 67,485.3 | 8 |

It can be seen from the above Table 4.16 that the grant from Government to these entities had increased from ₹ 16,857.4 crore (34.6 per cent) to ₹ 29,528.4 crore (43.8 per cent) during FY 2014-15 to FY 2016-17 whereas the receipt from activity had increased marginally from ₹ 10,494.9 crore (21.5 per cent) to ₹ 11,330.6 crore (16.8 per cent) during the same period.

4.3.8.4 Nature of receipt of Private entities

Audit analysed information in respect of 66 private entities in respect of nature of receipt during FYs 2014-15 to 2016-17 which is summarized in Table 4.17 below:

| Financial Year | No of Cases | Grant from Govt. (₹ in crore) | | Receipt from Activity (₹ in crore) | | Other Receipt ²⁸ | | Total for the year (₹ in crore) | Data not available with Audit |
|----------------|-------------|-------------------------------|---|------------------------------------|---|-----------------------------|---|---------------------------------|-------------------------------|
| | | Amount (₹ in crore) | Percentage of Total Receipt during the year | Amount (₹ in crore) | Percentage of total Receipt of the year | Amount (₹ in crore) | Percentage of total Receipt during the year | | No of cases |
| 2014-15 | 63 | 66.2 | 0.3 | 9,880.4 | 42.4 | 13,365.3 | 57.3 | 23,312.0 | 3 |
| 2015-16 | 63 | 54.0 | 0.2 | 10,767.7 | 42.8 | 14,354.6 | 57.0 | 25,176.3 | 3 |
| 2016-17 | 62 | 243.9 | 1.0 | 13,041.2 | 52.7 | 11,455.2 | 46.3 | 24,740.2 | 4 |

²⁷ Other Receipts include other grant, foreign contribution, Donation (domestic), income from investment and miscellaneous income

²⁸ Other Receipt includes other grant, foreign contribution, Donation (domestic), income from investment and miscellaneous income

It is seen in the above Table 4.17 that Government grant to private entities was 0.3 per cent, 0.2 per cent and 1.0 per cent of total receipt for FY 2014-15, 2015-16 and 2016-17 respectively. However, the receipt from activity was 42.4 per cent, 42.8 per cent and 52.7 per cent and other receipts was 57.3 per cent, 57.0 per cent and 46.3 per cent of total receipts for the FY 2014-15, 2015-16 and 2016-17 respectively.

4.3.8.5 Receipt of foreign contribution

Audit analysed the collected data in connection with the receipt of Foreign Contribution in respect of Government and Private Entities, the result of which is given in Table 4.18 below:

| Financial Year | Government Entity | | Private Entity | | Total | | Foreign contribution Not received | Data not available with Audit |
|----------------|-------------------|---------------------|----------------|---------------------|--------------|---------------------|-----------------------------------|-------------------------------|
| | No. of cases | Amount (₹ in crore) | No. of cases | Amount (₹ in crore) | No. of cases | Amount (₹ in crore) | No. of cases | No. of cases |
| 2014-15 | 2 | 174.1 | 13 | 565.0 | 15 | 739.0 | 141 | 11 |
| 2015-16 | 1 | 179.6 | 12 | 488.9 | 13 | 668.5 | 154 | 0 |
| 2016-17 | 1 | 2.0 | 14 | 371.7 | 15 | 373.7 | 152 | 0 |

It can be seen from the above Table 4.18 that out of the total 43 assessment cases, where Foreign Contribution (FCs) was received from the FY 2014-15 to 2016-17, only four assessment cases with FCs of ₹ 355.7 crore were relating to Government entities whereas 39 assessment cases with FCs of ₹ 1425.6 crore were relating to Private entities.

4.3.8.6 Receipt of corpus donation

Audit analysed the collected data in connection with the receipt of Corpus Donation in respect of Govt. and Private Entities and result of which is given in Table 4.19 below:

| Financial Year | Government Entity | | Private Entity | | Total for the Year | | Corpus Donation Not received |
|----------------|-------------------|------------------------------|-----------------|------------------------------|--------------------|------------------------------|------------------------------|
| | No. of entities | Corpus donation (₹ in crore) | No. of entities | Corpus donation (₹ in crore) | No. of entities | Corpus donation (₹ in crore) | No. of entities |
| 2014-15 | 8 | 563.1 | 21 | 1,011.6 | 29 | 1,574.7 | 138 |
| 2015-16 | 9 | 579.4 | 22 | 1,004.0 | 31 | 1,583.3 | 136 |
| 2016-17 | 12 | 8918.6 | 20 | 1,244.4 | 32 | 10,163.0 | 135 |

It can be seen from the above Table 4.19 that out of the above 92 assessment cases where corpus donation was received from FY 2014-15 to 2016-17, 29 assessment cases with corpus donation of ₹ 10,061.1 crore were relating to Government entities whereas 63 assessment cases with corpus donation of ₹ 3,259.9 crore were relating to Private Entities.

4.3.9 Profiling of top Trusts/Institutions not selected for scrutiny

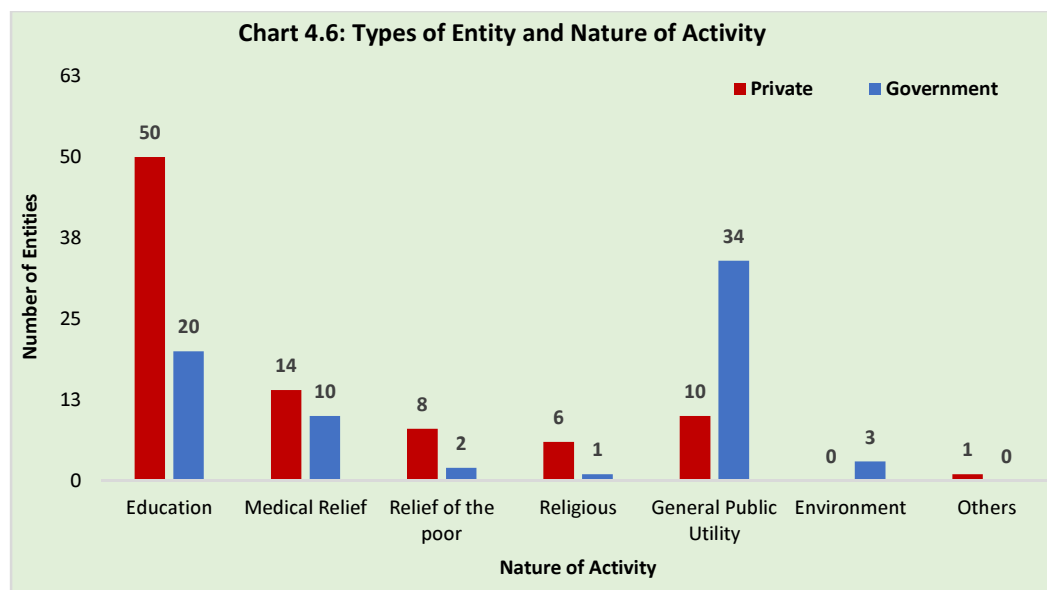
Audit collected data from assessment records in respect of 196 non-scrutiny assessment cases involving 159 Trusts/Institutions relating to nature of activity, exemptions details, types of trusts etc., while records in respect of four cases were not furnished to Audit. The analysis of data received from Pr. DGIT (Systems) and data collected from assessment record, in respect of 196 cases is given in succeeding paragraphs:

4.3.9.1 Types of entity and Nature of activity

Audit noticed that out of the 159 top assesseees, 70 were government entities and the remaining 89 assesseees were private entities. The activity wise break-up of Government and private entities are shown in Table 4.20 below:

| Nature of Activity | No. of Government entities | No. of Private entities | Total no. of entities |
|---------------------------|-----------------------------------|--------------------------------|------------------------------|
| Education | 20 | 50 | 70 |
| Medical Relief | 10 | 14 | 24 |
| Relief of the poor | 2 | 8 | 10 |
| Religious | 1 | 6 | 7 |
| General Public Utility | 34 | 10 | 44 |
| Environment | 3 | 0 | 3 |
| Political Party | 0 | 1 | 1 |
| Total | 70 | 89 | 159 |

Chart 4.6 below depicts activity wise break-up of Government and Private entities.



It can be seen from the above that majority of Government entities (48.6 per cent) were engaged in general public utility whereas majority of Private entities (56.2 per cent) were engaged in educational activities.

4.3.9.2 Government and Private entity wise Gross Income, Returned Income and Assessed Income

Audit analysed data of gross income, returned income and assessed income, in respect of these Government and Private Entities and the result is given in Table 4.21 below:

| Nature of activity | Nature of Trusts/ Institutions | Number of cases | Gross Income (₹ in crore) | Returned Income (₹ in crore) | Assessed Income (₹ in crore) |
|--------------------|--------------------------------|-----------------|---------------------------|------------------------------|------------------------------|
| Education | Government | 26 | 6,744.9 | 690.3 | 2,711.1 |
| | Private | 62 | 14,589.3 | 694.0 | 1,259.8 |
| Medical Relief | Government | 13 | 4,636.7 | 0.0 | 4.5 |
| | Private | 15 | 3,709.1 | 0.0 | 191.8 |
| Relief of the Poor | Government | 2 | 974.0 | 0.0 | 0.0 |
| | Private | 9 | 2,030.6 | 0.0 | 0.0 |
| Religious | Government | 1 | 181.5 | 0.0 | 181.5 |
| | Private | 6 | 4,067.5 | 0.0 | 0.0 |

| Nature of activity | Nature of Trusts/ Institutions | Number of cases | Gross Income (₹ in crore) | Returned Income (₹ in crore) | Assessed Income (₹ in crore) |
|------------------------|--------------------------------|-----------------|---------------------------|------------------------------|------------------------------|
| General Public Utility | Government | 45 | 39,343.1 | 2,488.6 | 4,593.6 |
| | Private | 11 | 2,985.6 | 1.1 | 331.3 |
| Environment | Government | 4 | 1,058.1 | 0.0 | 0.0 |
| | Private | 0 | 0.0 | 0.0 | 0.0 |
| Political Party | Government | 2 | 1,643.9 | 0.0 | 5.9 |
| | Private | 0 | 0.0 | 0.0 | 0.0 |
| TOTAL | | 196 | 81,964.4 | 3,874.0 | 9,279.4 |

It can be seen from the above Table 4.21 that though the number of cases of private entities (105 cases) were more than number of cases of Government entities (91 cases), gross income in case of the Government entities (₹ 52,938.4 crore) was more than that of private entities (₹ 29,026.0 crore). However, the returned income and assessed income in respect of cases of private entities were more than that of Government entities.

4.3.9.3 Receipt of foreign contribution

Audit analysed the data in connection with receipt of foreign contribution in respect of Government and private entities, and the result is given in Table 4.22 below:

| Nature of activity | Nature of Trusts/ Institutions | Cases where entities received Foreign Contribution | | Foreign Contribution (₹ in crore) | Cases where entities did not receive Foreign Contribution | Total no. of cases |
|--------------------|--------------------------------|--|---------------|-----------------------------------|---|--------------------|
| | | Number of cases | (In per cent) | | | |
| Education | Government | 5 | 19.2 | 5.8 | 21 | 26 |
| | Private | 12 | 19.4 | 195.2 | 50 | 62 |
| Medical Relief | Government | 2 | 15.4 | 3.6 | 11 | 13 |
| | Private | 2 | 13.3 | 64.9 | 13 | 15 |
| Relief of the poor | Government | 0 | 0.0 | 0.0 | 2 | 2 |
| | Private | 5 | 55.6 | 809.2 | 4 | 9 |

| Table 4.22: Government and Private entity and activity wise Foreign Contribution | | | | | | |
|--|--------------------------------|--|---------------|-----------------------------------|---|--------------------|
| Nature of activity | Nature of Trusts/ Institutions | Cases where entities received Foreign Contribution | | Foreign Contribution (₹ in crore) | Cases where entities did not receive Foreign Contribution | Total no. of cases |
| | | Number of cases | (In per cent) | | | |
| Religious | Government | 0 | 0.0 | 0.0 | 1 | 1 |
| | Private | 3 | 50.0 | 833.1 | 3 | 6 |
| General Public Utility | Government | 0 | 0.0 | 0.0 | 45 | 45 |
| | Private | 1 | 9.1 | 47.2 | 10 | 11 |
| Environment | Government | 0 | 0.0 | 0.0 | 4 | 4 |
| | Private | 0 | 0.0 | 0.0 | 0 | 0 |
| Political Party | Government | 0 | 0.0 | 0.0 | 0 | 0 |
| | Private | 0 | 0.0 | 0.0 | 2 | 2 |
| Total | | 30 | 15.3 | 1,959.00 | 166 | 196 |

It can be seen from the above Table 4.22 that the Government entities had received foreign contribution of ₹ 9.5 crore whereas Private entities had received foreign contribution of ₹ 1,949.5 crore during the same period.

4.3.9.4 Receipt of corpus donation

Audit analysed the data in connection with the receipt of Corpus Donation in respect of government and private entities and result is given in Table 4.23 below:

| Table 4.23: Government and Private entity and activity wise Corpus Donation | | | | | | |
|---|--------------------------------|-----------------------------------|------------|------------------------------|--|--------------------|
| Nature of activity | Nature of Trusts/ Institutions | Entities received Corpus Donation | | Corpus Donation (₹ in crore) | No. of cases not receiving Corpus Donation | Total no. of cases |
| | | Number of cases | In percent | | | |
| Education | Government | 2 | 7.7 | 41.9 | 24 | 26 |
| | Private | 10 | 16.1 | 196.7 | 52 | 62 |
| Medical Relief | Government | 1 | 7.7 | 218.0 | 12 | 13 |
| | Private | 2 | 13.3 | 126.7 | 13 | 15 |
| Relief of the poor | Government | 0 | 0.0 | 0.0 | 2 | 2 |
| | Private | 3 | 33.3 | 25.2 | 6 | 9 |

| Table 4.23: Government and Private entity and activity wise Corpus Donation | | | | | | |
|---|--------------------------------|-----------------------------------|-------------|------------------------------|--|--------------------|
| Nature of activity | Nature of Trusts/ Institutions | Entities received Corpus Donation | | Corpus Donation (₹ in crore) | No. of cases not receiving Corpus Donation | Total no. of cases |
| | | Number of cases | In percent | | | |
| Religious | Government | 0 | 0.0 | 0.0 | 1 | 1 |
| | Private | 0 | 0.0 | 0.0 | 6 | 6 |
| General Public Utility | Government | 4 | 8.9 | 2,012.9 | 41 | 45 |
| | Private | 0 | 0.0 | 0.0 | 11 | 11 |
| Environment | Government | 0 | 0.0 | 0.0 | 4 | 4 |
| | Private | 0 | 0.0 | 0.0 | 0 | 0 |
| Political Party | Government | 0 | 0.0 | 0.0 | 0 | 0 |
| | Private | 0 | 0.0 | 0.0 | 2 | 2 |
| Total | | 22 | 11.2 | 2,621.5 | 174 | 196 |

It can be seen from the above that the Government entities had received corpus donation of ₹ 2,012 crore (76 per cent of total corpus donation) who were involved in general public utility activity.

4.3.9.5 Exemptions granted to Government and Private Entities

Audit analysed the data in connection with the activity-wise exemptions granted to the government and private entities under different Sections of the Act, and result is given in Table 4.24 below:

| Table 4.24: Activity wise exemptions granted to Government and Private entities | | | | | | | | |
|---|--------------------------------|--|---------------------|-------------------------------------|---------------------|--|---------------------|---|
| Nature of Activity | Nature of Trusts/ Institutions | Exemptions granted under sub-Sections# of Section 10 | | Exemptions granted under Section 11 | | Exemptions granted under both sub-Sections# of Section 10 and under Section 11 | | Number of cases where data was not available with Audit |
| | | No. of entity | Amount (₹ in crore) | No. of entity | Amount (₹ in crore) | No. of entity | Amount (₹ in crore) | |
| Education | Government | 7 | 1,547.9 | 11 | 2,526.8 | 1 | 315.9 | 2 |
| | Private | 11 | 3,543.2 | 31 | 4,880.6 | 4 | 998.6 | 4 |
| Medical Relief | Government | 2 | 904.6 | 7 | 2,835.6 | - | - | 1 |
| | Private | 3 | 619.9 | 7 | 1,046.6 | - | - | 4 |

| Table 4.24: Activity wise exemptions granted to Government and Private entities | | | | | | | | |
|---|--------------------------------|--|---------------------|-------------------------------------|---------------------|--|---------------------|---|
| Nature of Activity | Nature of Trusts/ Institutions | Exemptions granted under sub-Sections# of Section 10 | | Exemptions granted under Section 11 | | Exemptions granted under both sub-Sections# of Section 10 and under Section 11 | | Number of cases where data was not available with Audit |
| | | No. of entity | Amount (₹ in crore) | No. of entity | Amount (₹ in crore) | No. of entity | Amount (₹ in crore) | |
| Relief of the Poor | Government | - | - | - | - | - | - | - |
| | Private | - | - | 8 | 1,453.1 | - | - | 1 |
| Religious | Government | 1 | 181.5 | - | - | - | - | - |
| | Private | 2 | 1,633.3 | 3 | 2,294.1 | - | - | 1 |
| General Public Utility | Government | 6 | 8,000.0 | 19 | 9,917.0 | 2 | 1,517.5 | 4 |
| | Private | 3 | 481.1 | 3 | 350.4 | 1 | 157.7 | - |
| Environment | Government | - | - | 2 | 354.9 | - | - | 1 |
| | Private | - | - | - | - | - | - | - |
| Political Party | Government | - | - | - | - | - | - | - |
| | Private | - | - | 2 | 16,38.1 | - | - | - |
| Total | | 35 | 16,911.5 | 93 | 27,297.2 | 8 | 2,989.7 | 18 |
| #10(21), 10(23C)(iiiab) to (iiid), 10(23C)(iv), 10(23C)(v), 10(23C)(vi), 10(23C)(via) 10(23D), 10(23FB), 10(25), 10(46) | | | | | | | | |

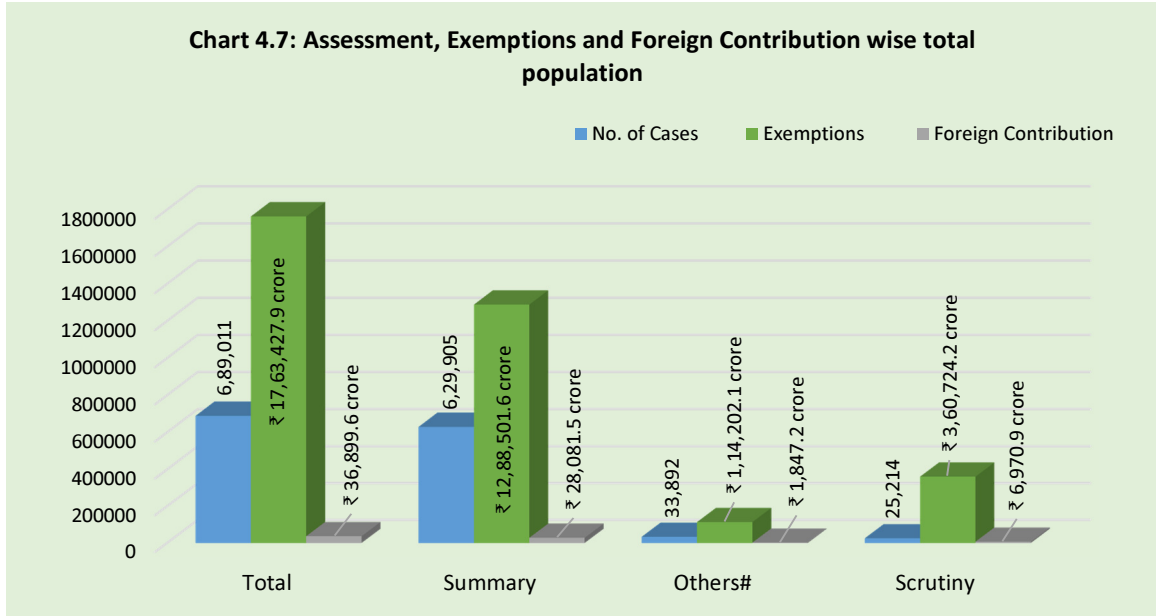
It can be seen from Table 4.24 above that the total exemptions of ₹ 15,634.3 crore was granted in 39 cases relating to Government entities under Section 11 whereas exemptions of ₹ 11,662.9 crore was granted in 54 cases relating to Private entities in respect of top summary cases.

4.3.9.6 Risk Analysis in summarily processed cases

The Pr. DGIT(Systems) provided assessee-wise data of 6,89,011 cases in respect of the Charitable Trusts and Institutions pertaining to Income Tax Returns (ITRs) processed/assessed/rectified for AY 2014-15 to AY 2017-18 during the FY 2014-15 to FY 2018-19. This data was analysed in respect of type of assessment, exemptions claimed and foreign contribution received and noticed that out of 6.89 lakh cases, 6.30 lakh cases (91.4 per cent) were processed in summary manner whereas the ITD had completed scrutiny assessment in respect of 0.25 lakh cases (3.7 per cent) and remaining 0.34 lakh cases (4.9 per cent) were

relating to rectification/ re-assessment/appellate orders as shown in **Appendix 4.5**.

Audit further analysed details of total number of cases and exemptions claimed and foreign contribution. The following Chart 4.7 depicts assessment, exemptions, foreign contribution wise distribution of total population:



Others include rectification cases, revision cases and cases of order giving effect to Appellate orders.

It can be further seen that out of total exemptions of ₹ 17,63,427.9 crore claimed by the Trusts/Institutions during aforesaid period, 73 per cent (₹ 12,88,501.6 crore) of exemptions was processed in summary manner whereas 20 per cent (₹ 3,60,724.2 crore) of exemptions were scrutinized by the Department and out of total foreign contribution of ₹ 36,899.6 crore received by the Trusts/Institutions during the period, 76 per cent (₹ 28,081.5 crore) of foreign contributions was processed in summary manner whereas only 19 per cent (₹ 6,978.4 crore) of foreign contributions were scrutinized by the Department.

Assessment year wise break-up of total cases based on type of assessment, exemptions claimed is given in Table 4.25 below:

| Table 4.25: Break-up of total population on the basis of AY, Assessment Type, Claim of Exemptions | | | | | | |
|---|---------------------------------------|------------|------------|------------|------------|-------------|
| Assessment Type | AY | 2014 | 2015 | 2016 | 2017 | TOTAL |
| Summary cases | No. of cases | 1,34,450 | 1,50,534 | 1,65,214 | 1,79,707 | 6,29,905 |
| | Percentage of total cases of the year | 91.2 | 91.3 | 87.2 | 96.0 | 91.4 |
| | Exemptions (₹ in crore) | 2,09,377.6 | 2,35,646.0 | 1,55,245.7 | 6,88,232.2 | 12,88,501.6 |

| Assessment Type | AY | 2014 | 2015 | 2016 | 2017 | TOTAL |
|--------------------------|---|-------------------|-------------------|-------------------|-------------------|--------------------|
| | Percentage of total exemptions for the year | 78.6 | 59.4 | 37.8 | 99.8 | 73.1 |
| Scrutiny cases | No. of cases | 1,000 | 7,071 | 17,143 | ^^ | 25,214 |
| | Percentage of total cases of the year | 0.7 | 4.3 | 9.0 | NA | 3.7 |
| | Exemptions (₹ in crore) | 7,381.7 | 1,24,275.6 | 2,29,066.9 | 0.0 | 3,60,724.2 |
| | Percentage of total exemptions for the year | 2.8 | 31.3 | 55.8 | 0.0 | 20.5 |
| Other cases [@] | No. of cases | 12,033 | 7,266 | 7,195 | 7,398 | 33,892 |
| | Percentage of total cases of the year | 8.2 | 4.4 | 3.8 | 4.0 | 4.9 |
| | Exemptions (₹ in crore) | 49,541.8 | 36,917.3 | 26,083.1 | 1,660.0 | 1,14,202.1 |
| | Percentage of total exemptions for the year | 18.6 | 9.3 | 6.4 | 0.2 | 6.5 |
| Total | No. of cases | 1,47,483 | 1,64,871 | 1,89,552 | 1,87,105 | 6,89,011 |
| | Exemptions (₹ in crore) | 2,66,300.0 | 3,96,838.9 | 4,10,395.6 | 6,89,892.2 | 17,63,427.9 |

^^ Data of scrutiny assessment cases for AY 2017-18 was not available during the period of audit.
[@] Others include rectification cases, revision cases and cases of Order giving effect to Appellate orders.

It can be seen from the above Table 4.25 that the number of cases of the Trusts/Institutions increased from 1.47 lakh to 1.87 lakh during AYs 2014-15 to 2017-18 whereas total amount of exemptions claimed by these Trusts/Institutions during the same period increased from ₹ 2,66,300.0 crore to ₹ 6,89,892.2 crore. Under summary assessment, there was an increase in the number of cases from 1.35 lakh to 1.65 lakh during the AY 2014-15 to 2016-17; however, the amount of exemptions claimed by the Trusts/Institutions decreased in respect of these cases from ₹ 2,09,377.6 crore to ₹ 1,55,245.7 crore during this period. Further, under scrutiny assessment, there was an increase in number of cases from 0.01 lakh to 0.17 lakh and the total amount of exemptions claimed by the Trusts/Institutions in respect of these cases increased from ₹ 7,381.7 crore to ₹ 2,29,066.9 crore during the AY 2014-15 to 2016-17. Data on scrutiny assessment for AY 2017-18 was not available during the audit period.

As a significant number of cases relating to the Trusts/Institutions are processed under summary manner in an automated environment, it is desirable that ITD systems are streamlined and robust enough so as to minimize the possibility of

leakage of revenue and also to facilitate seamless services to the users. However, during examination of top summary cases, Audit came across number of issues relating to ITD systems along with other issues, which are discussed in the succeeding chapters.

4.4 Conclusion

Audit noticed that there was an increasing trend in number of Trusts/Institutions claiming exemptions from AYs 2014-15 to 2016-17, however number of Trusts/Institutions claiming exemptions slightly decreased for AY 2017-18.

Audit further noticed that out of 6,89,011 cases pertaining to ITRs for AY 2014-15 to AY 2017-18, 3.7 *per cent* cases were assessed under scrutiny and 96.3 *per cent* cases were of other than scrutiny which were processed/rectified/ revised etc during FY 2014-15 to FY 2018-19.

Audit noticed number of applications relating to registration/ approval of the Charitable Trusts/Institutions under Section 12AA registered an increase of 128.2 *per cent* during FY 2014-15 to FY 2017-18 whereas the number of registrations/ approvals granted during the same period registered an increase of 156.5 *per cent*.

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

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

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

The Income Tax Act, 1961 (the Act) provides for exemption to Charitable Trusts/Institutions in accordance with the provisions of the Act and subject to certain conditions to be fulfilled by the Trusts/Institutions. Audit noted certain loopholes remaining in the Act/Rules/Circulars in the form of ambiguity or lack of clarity in the provisions which may be misused causing loss of revenue. Audit has identified certain systemic issues/ambiguity in the Act/inconsistency in allowing exemption in 65 cases²⁹ as given in Table 5.1 below and discussed in the succeeding paragraphs of this Chapter.

| Table No. 5.1: Observations relating to systemic deficiencies in granting the benefits to the Charitable Trusts and Institutions under provisions the Act | | |
|--|--|-------------|
| Sl. No. | Nature of observation | No of cases |
| 1 | Lacunae in the Act with regard to educational Trusts/Institutions | - |
| 2 | Absence of Standard Operating Procedure/instructions / guidelines for examining the valuation aspects of transaction with related party | - |
| 3 | Provision for disallowing set-off of deficit of earlier year with current year income | 5 |
| 4 | Absence of clarity in the provisions for deduction under Section 80G to corporates for amounts spent towards Corporate Social Responsibility | 32 |
| 5 | Absence of provision regarding utilisation of specific purpose donation treated as corpus | 1 |
| 6 | Provision regarding utilisation and repayment of borrowed fund | 9 |
| 7 | Inconsistency in assessment while treating administrative and other expenses | 1 |
| 8 | Absence of provision to restrict donations by a Trust to another Trust out of current years' income | 4 |
| 9 | Absence of provisions to consider long pending liability as income of the trust | 1 |
| 10 | Absence of provisions in the Act regarding accumulation of fund | 6 |

²⁹ Involving revenue impact of ₹ 491.47 crore

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

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

Providing affordable education to future generation is one of the important duties of a welfare state. In the 'National Policy on Education (NPE) 1986, modified in the year 1992', Government of India, stated³⁰ that the commercialisation of technical and professional education would be curbed and an alternative system would be devised to involve private and voluntary effort in the sector of education, in conformity with accepted norms and goals. The NPE 1986/92 was replaced with 'National Education Policy, 2020³¹', which stipulates³² that multiple mechanisms with checks and balances would combat and stop the commercialization of higher education and this will be a key priority of the regulatory system. The policy provides that all education institutions will be held to similar standards of audit and disclosure as a 'not for profit' entity and surpluses, if any, will be reinvested in the educational sector. It has also been mentioned³³ that the current regulatory regime has not been able to curb the commercialization and economic exploitation of parents by many 'for-profit' private schools.

Private educational institutions having objects of both education and other limbs of charity as defined under Section 2(15), can claim exemption under Section 11 after getting registration under Section 12AA. Low income (where annual income does not exceeds ₹ one crore³⁴) private educational institutions 'existing solely for educational purposes and not for the purposes of profit' can claim exemption under Section 10(23C)(iiiad). Private educational institutions, having no income limit, which are 'existing solely for educational purposes and not for the purposes of profit', can claim exemption under Section 10(23C)(vi) provided that prior approval from Pr.CIT/CIT has been obtained.

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

³⁰ Para 6.20 of National Policy on Education 1986, modified in 1992'

³¹ Issued by the Ministry of Human Resource Development, Government of India

³² Para 18.12 of 'National Education Policy, 2020'

³³ Para 8.3 of 'National Education Policy, 2020'

³⁴ ₹ five crore as amended by Finance Act 2021

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

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

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

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

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

| Table 5.2: Restriction imposed on Educational Trusts/Institutions covered under Section 10(23C)(vi) | | | |
|---|-------------------------|---|---|
| Sl. No. | Point of difference | Educational Trusts under Section 11 | Educational Trusts under Section 10(23C)(vi) |
| 1 | Activity | Apart from educational activity, the entity can engage itself into any charitable activity as per the Section 2(15) the Act | The entity cannot involve any other activity apart from education. The soleness/ exclusiveness condition was imposed to make institutions focus more on educational activities. |
| 2 | 'Not for profit' motive | No such condition was imposed under Section 11 | 'Not for profit' condition was imposed. |

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

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

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

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

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

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

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

| Table 5.3: Exemption granted to high value private educational Trusts/Institutions under Section 11 and 10(23C)(vi) | | | | |
|---|-------------|---------------------------|---------------------|-------------------------------|
| High Value Private Educational Trust/ Institution claimed Exemption | Total Cases | | Exemption Granted | |
| | Number | Percentage of total cases | Amount (₹ in crore) | Percentage of total exemption |
| Section 11 | 153 | 78.46 | 15,944.64 | 70.89 |
| Section 10(23C)(vi) | 42 | 21.54 | 6,547.42 | 29.11 |
| Total | 195 | 100.00 | 22,492.06 | 100.00 |

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

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

| Table 5.4: Gross income vis-à-vis exemption granted to Top 10 case of private educational Trusts/Institutions in terms of gross income which claimed exemption under Section 11 | | | | |
|---|--------------------------|---------|---------------------------|---|
| Sl. No. | Name of Assessee | AY | Gross Income (₹ in Crore) | Exemption Granted under Section 11 (₹ in Crore) |
| 1 | K ₁ Institute | 2016-17 | 698.40 | 698.40 |
| 2 | S ₁₀ Trust | 2015-16 | 684.79 | 684.79 |
| 3 | N ₈ Trust | 2016-17 | 626.22 | 626.22 |

| Table 5.4: Gross income vis-à-vis exemption granted to Top 10 case of private educational Trusts/Institutions in terms of gross income which claimed exemption under Section 11 | | | | |
|---|---------------------------|---------|---------------------------|---|
| Sl. No. | Name of Assessee | AY | Gross Income (₹ in Crore) | Exemption Granted under Section 11 (₹ in Crore) |
| 4 | S ₉ Committee | 2015-16 | 604.41 | 604.41 |
| 5 | S ₉ Committee | 2016-17 | 451.79 | 451.79 |
| 6 | V ₁ Foundation | 2016-17 | 332.08 | 332.08 |
| 7 | V ₁ Foundation | 2014-15 | 286.23 | 286.23 |
| 8 | T ₄ Institute | 2016-17 | 270.79 | 270.79 |
| 9 | V ₂ Sangha | 2015-16 | 258.80 | 242.01 |
| 10 | H ₁ Foundation | 2016-17 | 249.90 | 233.75 |
| Total | | | 4,463.41 | 4,430.47 |

It can be seen from the above table that out of total gross income of ₹ 4,463.41 crore, total exemption granted to Top 10 cases under Section 11 of ₹ 4,430.47 crore pertained to seven private educational Trusts/Institutions. Further, in terms of gross income as well as exemption granted, K₁ Institute (Refer para 6.10.3) was the highest and two assessees namely S₉ Committee (Refer para 6.10.2) and V₁ Foundation, were in the list of top cases in terms of gross income for two assessment years.

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

Reply of the Ministry was awaited (February 2022).

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

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

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

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

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

- (a) if any part of the income/property is lent without adequate security;
- (b) if any land/building or other property is made available for the use without charging adequate rent or other compensation;
- (c) if any amount is paid by way of salary/ allowance or otherwise out of the resources of the Trusts/Institutions for services rendered by the related party to such Trusts/Institutions and the amount so paid is in excess of what may be reasonably paid for such services;
- (d) if the services of the Trusts/Institutions are made available without adequate remuneration or other compensation;
- (e) purchase of share/security or other property for consideration which is more than adequate;
- (f) sale of share/security or other property for consideration which is less than adequate;

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

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

provisions are not applicable to Trusts/Institutions. Audit further noticed that the provision of Section 40A(2) of the Act regarding payments made to relatives as well as associates and the Transfer Pricing³⁷ provision under Section 92BA of the Act wherein the Arm's Length Price (ALP)³⁸ is determined to obtain the fair market value of transactions with related parties within India, defined as 'Specified Domestic Transaction' (SDT), are also not applicable to Trusts/Institutions. During the Performance Audit, audit examined Income Tax Return Form ITR-7 applicable to Trusts/Institutions and noted that Charitable Trusts/Institutions are not liable for audit under Section 92E³⁹ and are not required to submit an audit report in Form-3CEB⁴⁰, in case the entity has entered into any 'Specified Domestic Transaction' (SDT).

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

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

Reply of the Ministry was awaited (February 2022).

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

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

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

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

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

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

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

Audit noticed five cases⁴² relating to AY 2016-17 involving tax effect of ₹ 3.77 crore where Trusts/ Institutions were allowed to set-off of deficit of earlier financial year with the income of current financial year. Two cases are illustrated below:

- (i) In West Bengal, CIT(E) Kolkata, a private trust engaged in educational activity filed return of income for AY 2016-17 at ₹ 'Nil' income. The case was selected in the PA sample as 'High Value' case since the gross receipt of the trust was ₹ 52.36 crore. The scrutiny assessment was completed at an income of ₹ 'Nil' in December 2018. Audit noticed that the trust was allowed 'Excess application of income' of ₹ 7.28 crore made during AY 2014-2015 as 'Application of income', during the scrutiny assessment for AY 2016-17. Such carry forward of 'Excess application of money', from the earlier year, resulted in assessed income of ₹ 'Nil' for the AY 2016-17. In the absence of any specific provision in the Act, allowing the assessee to carry forward 'Excess application of income', was irregular involving tax effect of ₹ 2.17 crore. The DCIT (E), Circle – 1(1), Kolkata initiated action by issuing notice under Section 148 to the assessee in March 2021. Further details of action taken were awaited (February 2022).
- (ii) In Maharashtra, under CIT(E), Mumbai charge, a private trust engaged in educational activity, filed return of income for AY 2016-17 at ₹ 'Nil' income. The scrutiny assessment was completed in December 2018, assessing loss of ₹ 3.32 crore. The provisions of Section 11 of the Act allowed exemption in respect of income derived from the property of the trust to the extent it is applied towards objectives of the charitable trust and there is no provision under Section 11 which provides for carry forward of losses. As such, the determination of loss to the extent of ₹ 3.32 crore was not in order. The mistake resulted in irregular assessment of loss, involving potential tax effect of ₹ 1.13 crore.

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

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

The issue of absence of provision disallowing set-off of deficit of earlier year with the income of current year, had also been pointed out in CAG's earlier Audit Report No. 20 of 2013. In reply, the Ministry had submitted⁴³ to the PAC that the

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

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

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

Reply of the Ministry was awaited (February 2022).

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

Under Section 135 of the Companies Act 2013⁴⁴, certain specified companies are required to spend at least two *per cent* of the average profits of the immediately preceding three financial years on activities relating to Corporate Social Responsibility. The provision has been brought to share the burden of the Government in providing social services. The expenses are treated as application of income not allowable as deduction for computing taxable income of the assessee as it would result in subsidizing of around one-third of such expenses by the Government by way of tax expenditure⁴⁵. Considering this, corresponding provisions for disallowance of such expenses under Section⁴⁶ 37 was introduced⁴⁷ from 1 April 2015 but no such amendment was brought under Section 80G.

Audit noted that the Ministry of Corporate Affairs ('MCA') has clarified through General circular no. 01/2016 dated January 12, 2016 on the question of "What tax benefits can be availed under CSR?", that "no specific tax exemptions have been extended to CSR expenditure per se. The Finance Act, 2014 also clarifies that expenditure on CSR does not form part of business expenditure. While no specific tax exemptions have been extended to expenditure incurred on CSR, spending on several activities like Prime Minister's Relief Fund, scientific research, rural development projects, skill development projects, agriculture extension projects etc., which find place in Schedule VII of the Companies Act⁴⁸, already enjoys exemptions under different sections of the Income-tax Act, 1961."

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

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

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

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

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

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

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

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

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

Further Audit noted that at the different appellate levels viz. CIT (Appeals)/DRP Bengaluru, ITAT Bengaluru in the case of Goldman Sachs Services Pvt. Ltd⁴⁹ has taken different stands with regard to allowing deduction under section 80G on donations out of CSR funds.

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

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

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

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

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

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

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

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

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

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

The Income Tax Department⁵⁰ replied (August 2019) that provisions of Section 37 do not restrict the deduction allowed under Section 80G.

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

Thus it could be seen from the above that there is no clarity on allowing deduction under section 80G for donations out of CSR fund. As a significant amount⁵¹ is spent by the companies toward CSR activities it requires urgent attention of the Department.

Reply of the Ministry was awaited (February 2022).

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

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

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

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

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

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

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

5.1.2.5 Provision regarding utilisation and repayment of borrowed fund

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

Audit noticed nine assessment cases⁵² relating to AYs 2014-15 to 2016-17 involving tax effect of ₹ 38.68 crore where the assesseees were allowed dual benefit in either of the two ways - (a) by treating the capital expenditure met from the borrowed funds as application of income, and subsequently, by allowing repayment of loan against the same borrowed funds, also as application or (b) by treating repayment of loan as application of income without treating the loan as income/receipt. Four cases of three assesseees are illustrated below:

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

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

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

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

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

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

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

The issue of absence of clarity in provision regarding utilisation of borrowed fund had also been pointed out in the CAG's earlier Audit Report No. 20 of 2013, and the Ministry, in reply⁵³ had stated that loan originally taken has to be taken as income/ receipt before application is claimed against it. The Ministry further stated that the Board's instruction vide circular No. 100 of 24.01.1973 has clarified the allowability of repayment in respect of the loan taken and there was no doubt that the same had to be shown as receipt before claiming application.

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

5.1.2.6 Inconsistency in assessment while treating administrative and other expenses

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

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

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

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

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

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

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

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

The provisions of Section 11 of the Income-Tax Act provide for exemption to trusts or institutions in respect of income derived from property held under trust wholly for charitable or religious purposes. The primary condition for grant of exemption is that the income derived from property held under trust should be applied for charitable purposes, and where such income cannot be applied during the previous year, it has to be accumulated in the modes prescribed and applied for such purposes in accordance with various conditions provided in the Section. Such accumulation is treated as deemed application of income. Provisions of the Act⁵⁴ prohibit donations of accumulated amounts to another trust or institution. However, currently there is no restriction on transfer of payments to other trusts out of current years' income. Owing to this, there is likelihood of deemed application of 15 *per cent* being claimed by multiple trusts on the same fund. The Trust which received donation from assessee Trust could again pass the sum so received to other trusts and each Trust could claim 15 *per cent* as deemed application.

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

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

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

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

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

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

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

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

Reply of the Ministry was awaited (February 2022).

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

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

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

Reply of the Ministry was awaited (February 2022).

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

5.1.2.9 Absence of provisions in the Act regarding accumulation of fund

As per Section 11 of the Act, if the application of funds is less than 85 *per cent* of the total income, the Trusts/Institutions, in order to get exemption can accumulate funds for five years after filing Form 10 stating the purpose for which the income is being accumulated or set apart, and the period for such accumulation. However, the Act does not prescribe the limits of accumulation of funds. It was judicially held that⁵⁶ carry forward of income up to 85 *per cent* under Section 11(2) should not be adopted on a routine basis, and if done, then the very purpose of Trust will be defeated. In fact, Section 11(2) providing for carry over up to 85 *per cent* is an exception and if it is done from year to year, the genuineness of the activities of the trust itself needs examination.

The issue that the Act does not prescribe the limit of accumulation of funds and the trusts, without doing any charitable activity, are availing exemption by accumulating the maximum funds consistently year by year was also pointed out in the CAG's earlier Audit Report No. 20 of 2013, and the Public Accounts Committee, recommended⁵⁷ that the Assessing Officer may carry out physical inspection of the activities of the Trust in cases where there was consistent and increased accumulation of income and the Ministry may bring a suitable amendment to the Act or evolve a suitable mechanism to ensure that first trusts are allowed accumulations consistently only as exceptions and secondly, the accumulated income is applied for the objectives of the Trusts/Institutions within a specified time frame.

Audit noticed in six assessment cases⁵⁸ involving exemption of ₹23.74 crore that the trusts were availing exemption by accumulating the maximum funds persistently. Three cases are illustrated below:

- (i) In Maharashtra, CIT(E) Pune charge, a private trust engaged in the activity of 'General Public Utility', filed return of income for AYs 2014-15 and AY 2015-16 at ₹ 'Nil' income which were processed under summary manner at ₹ 'Nil' income and further rectified in March 2019 determining income ₹ 'Nil' for both the AYs. Audit noticed that the gross income of the assessee were ₹ 1.02 crore and ₹ 1.16 crore for AY 2014-15 and AY 2015-16 respectively against which the assessee did not apply any amount for its objects. The assessee, after setting apart 15 *per cent*, had accumulated almost 85 *per cent* of the gross receipt under Section 11(2) in both the AYs. ITO (E) Ward-1, Pune replied (February 2021) that the audit objection was not acceptable as the assessee had utilised the accumulated amount of AY 2014-15 and 2015-16 during AY 2019-20 and 2020-21 i.e. within five

⁵⁶ CIT vs Sree Seetharama Anjaneya Veda Kendra [2008] 174 Taxman 523 (Ker.)

⁵⁷ Para 23 of 104th Report (Sixteenth Lok Sabha)

⁵⁸ Delhi -2, Maharashtra -2 and Odisha -2

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

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

- (ii) In Delhi, CIT(E) Delhi charge, a private trust engaged in the activity of 'General Public Utility', filed return of income for AY 2016-17 at ₹ 'Nil' income. The scrutiny assessment was completed in December 2018 by accepting the returned income at ₹ 'Nil'. Audit noticed that the gross income of the assessee was ₹ 0.82 crore against which the assessee did not apply any amount for its objects. The assessee, after setting apart 15 *per cent*, had accumulated the remaining 85 *per cent* of the gross receipt under Section 11(2).
- (iii) In Delhi, CIT(E) Delhi charge, a private trust engaged in educational activity, filed return of income for AY 2016-17 at ₹ 'Nil' income. The scrutiny assessment was completed in December 2018 by accepting the returned income at ₹ 'Nil'. Audit noticed that the gross income of the assessee was at ₹ 3.27 crore (excluding an amount of ₹ 5,212 which was not received during the year) against which the assessee did not apply any amount for its objects. The assessee, after setting apart 15 *per cent*, had accumulated the remaining 85 *per cent* of the gross receipt under Section 11(2).

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

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

Reply of the Ministry was awaited (February 2022).

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

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

Audit noticed six assessment cases⁵⁹ involving tax effect of ₹ 2.26 crore where the Department did not verify genuineness of the donors and tax the anonymous donation(s) as per provisions of the Act. One case is illustrated below:

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

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

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

5.2 Procedural issues relating to grant of Registration/Approval

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

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

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

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

Out of the 425 cases, the ITD did not produce records relating to 194 cases (45.6 per cent) which included eight cases pertaining to the audit sample of 'top 200 assesseees'. Data/records were not furnished in five States⁶² by the Department. In respect of Odisha State, though the data relating to registration/approval of cases was provided but the relevant records were not produced to Audit.

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

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

⁶⁰ As per Pr. DGIT (Systems) data

⁶¹ As per Pr. DGIT (Systems) data

⁶² Delhi, Uttar Pradesh, Uttarakhand, Bihar and Jharkhand

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

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

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

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

5.2.2 Delay in grant of Registration/Approval

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

In Maharashtra, CIT(E) Pune charge, Audit noticed in the four registration cases that the Department had not granted approval within prescribed period of six months and there was delay ranging from one day to 75 days in granting approval under Section 80G(5)(vi). This issue also featured in the earlier Performance Audit Report No. 20 of 2013. In response, the Ministry had stated⁶³ that registration/approval would be granted using online system through the launch of 'Exemption Module' of the new Income Tax Business Application

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

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

Reply of the Ministry was awaited (February 2022).

5.2.3 Irregular grant of Registration

Section 12AA provides for the procedure to be followed for grant of registration to a trust or institution. Under Section 12AA, the Commissioner is required to call for documents and information and hold enquiries regarding the genuineness of the trust or institution. After his satisfaction about the charitable or religious nature of the objects and genuineness of the activities of the trusts or institution, he shall pass an order in writing either granting or refusing registration. Further, the Commissioner may accord approval⁶⁴ to any gratuity fund which, in his opinion, complies with the requirement of the condition provided⁶⁵ and may at any time withdraw such approval if, in his opinion the circumstances of the fund ceased to warrant the continuance of the approval.

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

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

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

Reply of the Ministry was awaited (February 2022)

5.2.4 Grant of Registration/Approval without submission of prescribed documents

The Trusts/Institutions seeking registration/approval under Section 12AA/80G(5)(vi)/10(23C) shall submit application in the prescribed form⁶⁶ along with documents to the approving authority. The concerned authority shall after making proper enquiry and satisfying himself about the objects and genuineness of the activities of the Trusts/Institutions, grant registration/ approval.

⁶⁴ under Rule 2 of Part 'C' of the fourth schedule of the Income Tax Act

⁶⁵ under Rule 3 of Part 'C' of the fourth schedule of the Income Tax Act

⁶⁶ Form 10A under Rule 17A and Form 56 & Form 56D under Rule 2C and rule 2CA

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

| Table 5.7: Details of cases where documents were not available | | | | | | | |
|--|---------------------------|-----------|--------------------------------------|---------------------------------|--|---------|---------------------------|
| Sl. No. | Assessee | Activity | Registration/ approval under Section | Date of registration / approval | Documents not available | AY | Gross income (₹ in crore) |
| 1 | A ₃ Sangh | Others | 12AA | 17.08.2016 | Form 10A, copies of Accounts, Trust deed | 2014-15 | 0.34 |
| 2 | S ₁₁ Institute | * | 12AA | 19.06.2017 | Form 10A, copies of Accounts, Trust deed | 2016-17 | 3.17 |
| 3 | S ₃ Mandal | * | 12AA | 05.01.2017 | Form 10A, Audited Accounts, Trust deed | 2015-16 | 0.39 |
| 4 | U ₁ Sanstha | Education | 80G(5)(vi) | 29.09.2015 | Form 10G, copies of Accounts, Copy of registration under Section 12AA/ 10(23C) | 2014-15 | 1.82 |
| 5 | K2 Institute | Education | 80G(5)(vi) | 08.05.2017 | Form 10G, copies of Accounts, Copy of registration under Section 12AA/ 10(23C) | 2016-17 | 83.69 |
| 6 | N ₃ Institute | Others | 80G(5)(vi) | 07.09.2016 | Form 10G, copies of Accounts, Copy of registration under Section 12AA/ 10(23C) | 2016-17 | 8.40 |
| * Details could not be verified by Audit | | | | | | | |

Three cases are illustrated below:

- (i) In Maharashtra, CIT (E) Pune charge, in the case of a trust, engaged in educational activity having gross income of ₹ 83.69 crore in AY 2016-17, the approval was granted in May 2017 under Section 80G(5)(vi). Audit observed that the requisite documents viz. Form 10G, copies of accounts and copy of registration under Section 12AA/10(23C) were not placed on record.
- (ii) In Maharashtra, CIT (E) Pune charge, in the case of a trust, engaged in educational activity having gross income of ₹ 3.17 crore in AY 2016-17, the registration was granted in June 2017 under Section 12AA(1)(b)(i). Audit observed that the requisite documents viz. Form 10A, Trust deed and copies of accounts were not placed on record.
- (iii) In Maharashtra, CIT (E) Pune charge, Audit noticed in the case of a trust, engaged in educational activity having gross income of ₹ 1.82 crore in AY 2014-15 that approval was granted in September 2015 under Section

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

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

Reply of the Ministry was awaited (February 2022).

5.2.5 Grant of Registration without verification

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

Audit noticed that in 15 cases⁶⁷ registrations were granted either without field enquiry/verification report or field enquiry was stated to be carried out but no such reports were available on records. One case is illustrated below:

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

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

Reply of the Ministry was awaited (February 2022).

⁶⁷ Andhra Pradesh and Telangana – 6; Maharashtra – 9

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

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

The issue of non-inclusion of dissolution clause in the Trust Deed had also featured in the earlier Performance Audit Report No. 20 of 2013. The Ministry, in its submission to the PAC⁶⁸, had stated that the audit observation was circulated amongst concerned officers, for compliance.

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

In pursuance to this, Section 115TD⁶⁹ was inserted in the Act, which provides for levy of additional income tax in case of conversion into, or merger with, any form which is not eligible for grant of registration under Section 12AA or on transfer of assets of a charitable Trust/Institution on its dissolution to a non-charitable Trust/Institution. Further, Para 2.7(viii) of Chapter 5 of the MOP (Volume-II) of the ITD, *inter alia*, provides that in case of dissolution of a trust, its net assets, after meeting all its liabilities, should not revert to its founder members, directors, donors etc., but shall be used for its objects. Para 2.8(ii) provides that the instrument of creation should be perused, to find out any violations of the conditions mentioned in para 2.7 (supra).

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

Audit noticed that in 42 cases⁷⁰ there was no dissolution clause in the instrument of creation of the trust, or the dissolution clause was not framed in terms of the instructions contained in the MOP. The deficiencies noticed in respect of three cases are illustrated below:

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

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

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

- (i) In Maharashtra, CIT(E) Pune charge, Audit observed in respect of a trust engaged in educational activities the registration was granted in August 2017 under Section 12AA(1)(b)(i). Audit examination revealed that there was no dissolution clause in the trust deeds. Also, the trust deed did not contain a clause regarding merger or conversion of trust and its application/use of net assets after meeting all its liabilities. Further, no resolution and affidavit regarding dissolution were found to be obtained from the trustees. This showed that the registration was granted to the trust without proper verification of the trust deed.
- (ii) In Tamilnadu, CIT(E) Chennai charge, the assessee, a private trust engaged in educational activity, and selected in the PA sample as 'High Value' case having gross receipt of ₹ 85.37 crore for AY 2016-17, was registered under Section 12AA. In the trust deed, regarding the procedure of dissolution, it was stated that 'if for any reason, this trust fails, the trust properties and funds shall revert to the founders and be dealt with as this estate in accordance with intestate or testamentary, successions as the case may be, to their estate'. The total corpus including the accumulated surplus of the trust as on 31.03.2016 was ₹ 11.92 crore. Thus, the dissolution clause in trust deed was not in conformity with para 2.7(viii) of Chapter 5 of the MOP and the trust was granted registration without proper verification of trust deed by the Department.
- (iii) In Kerala, Pr. CIT(E) Kochi charge, a private trust engaged in educational activity, was selected in the PA sample as 'High Value' case since the gross receipt of ₹ 53.82 crore for AY 2016-17. Audit noted from the trust deed that a clause had been included to the effect that 'the dissolution shall be dealt with by the approval of the Settlers, with the consent of the Patron. Thus, the dissolution clause in the trust deed was not in conformity with para 2.7(viii) of Chapter 5 of the MOP and the trust was granted registration without proper verification of trust deed. Audit further noted that the total corpus fund as on 31.03.2016 was ₹ 93.39 crore.

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

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

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

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

Reply of the Ministry was awaited (February 2022).

5.2.7 Procedural lapse in approval under Section 80G

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

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

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

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

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

Reply of the Ministry was awaited (February 2022).

5.3 Issues relating to ITD systems

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

| Table No. 5.8: Observations relating to ITD systems | | | |
|--|--|--------------------|-------------------|
| Sl. No. | Nature of observation | No of cases | Tax effect |
| 1 | Issues relating to selection criteria under Computer Aided Scrutiny Selection (CASS) | 17 | - |
| 2 | Non verification of the registration details during processing of Return of Income | 52 | - |
| 3 | Issues relating to processing of ITRs in the IT system | 12 | - |
| 4 | Exemptions claimed but registration status under Section 12AA not available | - | - |
| 5 | Foreign contribution received but registration status not available | - | - |
| 6 | Invalid date of registration/approval | - | - |
| 7 | Important information not currently captured in Return of income (ITR-7) | - | - |
| 8 | Information on Income of the Trusts/Institutions in Audit Report | - | - |
| 9 | Corpus donations with specific purpose | 7 | - |
| 10 | Allowance of deemed application in the subsequent assessment year | 3 | 2.53 |
| Total | | 91 | 2.53 |

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

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

In Karnataka, Audit noticed from the selection criteria under CASS for the AY 2015-16 and AY 2016-17 that out of the 571 sample cases selected, 37 cases were selected applying the criteria Form 10/10B 'not filed' or 'filed after due date'. Audit further observed that the due date of filing of Form 10/10B was extended. Audit examination revealed that out of these 37 cases, the assessee had filed the said Forms within the due date of filing of return in 17 cases⁷¹ (45.94 per cent). Further, out of the 17 cases, no addition to income returned

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

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

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

Reply of the Ministry was awaited (February 2022).

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

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

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

Audit noticed in 42 assessment cases⁷² that although the assesseees did not mention their registration details under Section 12A/10(23C) of the Act in return of income, exemption of ₹ 44.82 crore was allowed during returns processed summarily, in contravention of the aforesaid provisions of the Act. Since the Registration particulars were not available in the ITRs filed, Audit could not verify the applicability of exemptions in these cases.

Audit further noticed in 10 assessment cases⁷³ involving tax effect of ₹ 2.94 crore where the assesseees claimed exemptions for the years together prior to its registration or having no registration under the Act and the same was allowed by the Department.

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

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

Three cases are illustrated below:

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

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

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

Reply of the Ministry was awaited (February 2022).

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

Reply of the Ministry was awaited (February 2022)

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

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

Reply of the Ministry was awaited (February 2022)

5.3.3 Issues relating to processing of ITRs in the ITD System

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

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

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

| Sl. No. | Name of the Assessee | AY | Gross Income (₹ in crore) | Date of filing of ITR | Current Processing Status of ITR |
|---------|---------------------------|---------|---------------------------|-----------------------|----------------------------------|
| 10. | B ₂ Foundation | 2016-17 | 153.4 | 28.09.2016 | In progress |
| 11. | M ₂ Sansthan | 2014-15 | 182.5 | 25.09.2014 | In progress |
| 12. | F ₁ Trust | 2016-17 | 183.2 | 08.10.2016 | In progress |

The Department stated in the case of 'A₂' Institute for the AY 2014-15, that the return of the assessee filed in September 2014 was treated as defective by the CPC and a "defective" communication was sent to the assessee in November 2015. Further, a reminder was again sent to the assessee in February 2016. Return filed by the assessee in March 2016 was taken up for processing by the CPC and the ITR was processed in March 2016 determining a refund of ₹ 35.56 lakh.

It is evident that the return in respect of 'A₂' Institute for the AY 2014-15 was already processed through the ITD systems. However, it was still showing 'In progress' in the ITD system. Thus, the system was evidently not updating the current status of the ITR.

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

Reply of the Ministry was awaited (February 2022).

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

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

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

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

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

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

Reply of the Ministry was awaited (February 2022).

5.3.4.2 Foreign contribution received but registration status not available

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

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

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

Reply of the Ministry was awaited (February 2022).

5.3.4.3 Invalid date of registration/approval

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

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

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

Reply of the Ministry was awaited (February 2022).

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

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

Audit noticed that though the Department has revised⁷⁵ ITR 7 incorporating schedules relating to Income and Expenditure Account and Receipt and Payment Account etc., some information/data are still to be captured in ITR-7 which are discussed below:

⁷⁵ From AY 2019-20 onwards

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

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

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

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

The details of major contributors/donors (above a threshold to be specified by ITD), may also be captured in Form ITR-7, so as to prevent the inclusion of un-accounted money/ deviation of funds and to stop claiming of inadmissible exemptions, as has been done⁷⁷ by the CBDT in respect of Section 80G (5) for verifying the correctness/genuineness of claim of the donors based on information received from the donee.

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

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

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

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

Reply of the Ministry was awaited (February 2022).

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

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

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

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

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

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

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

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

Reply of the Ministry was awaited (February 2022).

5.3.6.2 Corpus donations with specific purpose

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

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

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

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

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

Reply of the Ministry was awaited (February 2022).

5.3.6.3 Allowance of deemed application in the subsequent assessment year

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

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

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

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

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

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

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

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

5.4 Conclusion

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

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

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

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

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

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

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

5.5 Summary of Recommendations

Audit recommends that:

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

(Paragraph 5.1.1)

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

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

(Paragraph 5.1.1)

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

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

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

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

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

(Paragraph 5.1.2.1)

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

(Paragraph 5.1.2.3)

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

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

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

(Paragraph 5.1.2.4)

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

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

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

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

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

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

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

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

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

(Paragraph 5.1.2.6)

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

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

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

(Paragraph 5.1.2.7)

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

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

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

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

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

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

(Paragraph 5.1.2.8)

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

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

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

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

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

(Paragraph 5.1.2.9)

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

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

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

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

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

The CBDT may therefore reconsider its reply.

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

(Paragraph 5.1.2.10)

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

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

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

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

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

(Paragraph 5.2.2)

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

(Paragraph 5.2.4)

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

(Paragraph 5.2.5)

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

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

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

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

(Paragraph 5.2.6)

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

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

(Paragraph 5.3.1)

(xvi) The ITD may -

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

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

(Paragraph 5.3.2)

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

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

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

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

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

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

(Paragraph 5.3.5)

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

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

- (a) details of receipt under different heads and income derived from property wholly held by trust.**
- (b) detailed information on receipt of corpus donations, its utilisation and claim of expenditure from corpus donation**
- (c) detailed information on the claim of deemed application of income availed in the previous year which has to be reduced from the amount of application of income in the year of actual receipt to enable the Assessing Officer to verify the correctness of the claim made by the assessee.**

(Paragraphs 5.3.6.1, 5.3.6.2 and 5.3.6.3)

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

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

Chapter 6: Compliance with existing provisions of Act/Rules/Circulars in making assessments

Exemptions are granted to charitable Trusts/Institutions under Sections 10(21), 10(23C) and 11 subject to fulfilment of various conditions specified under the Act. In order to ensure that the conditions specified for exemption are satisfied during assessment, the assessing officer is required to carry out due diligence in application of provisions of the Act, Rules framed thereunder, circulars/instructions issued by the CBDT from time to time and relevant judicial decisions. During this performance audit, Audit examined whether the Department had complied with all the provisions of the Act/ Rules/circulars in completing the test checked assessments.

Audit noticed mistakes in 950 assessment cases involving tax effect of ₹ 1,173.92 crore viz. irregular exemptions to trusts and institutions, incorrect computation of income, incorrect computation of application of income, irregular allowance of accumulation, irregular allowance of exemption on corpus donation, incorrect levy of tax/surcharge/interest, etc. Details of Audit observations noticed are tabulated below:

| Table 6.1: Category-wise Audit observations | | | |
|--|---|-------------|-------------------------|
| Sl. No. | Nature of observation | No of cases | Tax effect (₹ in crore) |
| 1 | Irregular allowance of exemption under Section 10(23C)(iiia) | 7 | 2.36 |
| 2 | Irregular allowance of exemption when the Trusts/Institutions are not substantially financed by the Government | 10 | 46.71 |
| 3 | Incorrect computation of income | 31 | 496.66 |
| 4 | Incorrect computation of application of income | 27 | 42.38 |
| 5 | Irregular allowance of accumulation | 66 | 68.14 |
| 6 | Allowance of exemption although income or property of the trust was utilized for the benefit of persons having substantial interest | 22 | 33.07 |
| 7 | Irregular allowance of depreciation on assets whose acquisition had already been claimed as application of income | 8 | 13.78 |
| 8 | Irregular allowance of expenditure from corpus/earmarked funds as application of income | 11 | 81.58 |
| 9 | Irregular allowance of exemption on corpus donation | 9 | 52.08 |
| 10 | Grant of exemption to trusts, although activities were not charitable in nature | 9 | 189.07 |
| 11 | Incorrect levy of tax/surcharge/interest | 65 | 103.11 |
| 12 | Non levy of penalty | 651 | 1.68 |
| 13 | Other deficiencies noticed in assessment | 34 | 43.30 |
| Total | | 950 | 1,173.92 |

6.1 Irregular allowance of exemptions

Exemptions are granted to Charitable Trusts/Institutions under Sections 10(23C) and 11 subject to fulfilment of various conditions specified under the Act. Audit noticed cases where the eligibility of Trusts/Institutions was not verified during assessment, which resulted in irregular allowance of exemptions. The cases are discussed in detail in the succeeding paragraphs.

6.1.1 Irregular allowance of exemption under Section 10(23C)(iiiad)

Section 10(23C)(iiiad)⁷⁸ provides exemption to any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipt of ₹ one crore.

Audit noticed in seven assessment cases⁷⁹ involving tax effect of ₹ 2.36 crore that exemption was irregularly allowed even though the aggregate annual receipts of these universities or educational institutions exceeded ₹ one crore. One case is illustrated below:

(i) In Punjab, CIT(E) Chandigarh charge, a private trust engaged in educational activity, filed return of income for AY 2016-17 and 2017-18 at ₹ 'Nil' income for both the years. The scrutiny assessment for AY 2016-17 was completed in December 2018 at ₹ 'Nil' income and the return of income (ITR) for AY 2017-18 was processed summarily at ₹ 'Nil' income. Audit noticed that the assessee was allowed exemption of ₹ 2.29 crore (₹ 1.12 crore in AY 2016-17 and ₹ 1.17 crore in AY 2017-18) under Section 10(23C)(iiiad). Since the gross receipt of the assessee trust exceeded the prescribed limit of ₹ one crore, approval of the Pr. CIT/CIT was required under Section 10(23C)(vi), but the same was not obtained by the assessee. This had resulted in irregular exemption of ₹ 2.29 crore, involving tax effect of ₹ 1.17 crore.

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

6.1.2 Irregular allowance of exemption when the Trusts/Institutions not substantially financed by the Government

As per Section 10(23C)(iiiab) of the Act, any income of any university or other educational institution existing solely for educational purposes and not for the purposes of profit, and which is wholly or substantially financed by the

⁷⁸ University/educational institutions existing solely for educational purposes and not for the purposes of profit are exempt from tax

⁷⁹ Andhra Pradesh -2, Punjab -2 and Rajasthan -3

Government, shall not be included in computing the total income of a previous year.

Rule 2BBB of the Income Tax Rules, 1962 (the Rules) further provides that for the purposes of the Section 10(23C)(iiiab), an entity shall be considered as being substantially financed by the Government, if the Government grant exceeds 50 *per cent* of the total receipts including any voluntary contributions, of such entity, during the relevant previous year.

Audit noticed in 10 assessment cases⁸⁰ involving tax effect of ₹ 46.71 crore that exemption was irregularly allowed to universities or educational institutions which were not substantially financed by the Government. Two cases are illustrated below:

(i) In Punjab, CIT(E) Chandigarh charge, a private society engaged in educational activity, filed return of income for AY 2015-16 and 2016-17 at ₹ 'Nil' income for both the AYs. The ITR for AY 2015-16 was processed summarily at ₹ 'Nil' income and scrutiny assessment for AY 2016-17 was completed in December 2018 at ₹ 'Nil' income. Audit noticed that for the AY 2015-16 and AY 2016-17, exemptions were allowed under Section 10(23C)(iiiab) even though the assessee was not substantially financed by Government. The grant received was ₹ 19.35 crore against gross receipt of ₹ 41.35 crore in both the AYs, which was less than the stipulated 50 *per cent* as per provision *ibid*. This resulted in irregular allowance of exemption of ₹ 5.57 crore, involving tax effect of ₹ 2.77 crore in both the AYs.

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 Rajasthan, under CIT(E) Jaipur charge, a government entity engaged in educational activity, and selected in PA sample as 'high value case⁸¹', filed return of income for AY 2016-17 at ₹ 'Nil' income. The scrutiny assessment was completed in December 2018 at ₹ 'Nil' income, after allowing exemption of ₹ 58.55 crore. Audit noticed that the total receipt of the institution was ₹ 60.09 crore, including Government grant of ₹ 1.38 crore. Since the Government grant was only 2.29 *per cent* of total receipt, it cannot be categorised as wholly or substantially financed by the Government. Thus, allowance of exemption of ₹ 58.55 crore under Section 10(23C)(iiiab) was irregular. This resulted in short levy of tax of ₹ 13.02 crore.

⁸⁰ Gujarat - 1, Punjab - 5 and Rajasthan - 4

⁸¹ Gross receipt of ₹ 50 crore or above

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

Thus, Audit noticed that in spite of specific provisions under Section 10(23C)(iiiab) of the Act, eligibility of Trusts/Institutions for exemption were not verified by the AOs in certain cases during assessment, resulting in revenue leakage.

6.2 Incorrect computation of income and its application

Under the provisions of the Income Tax Act, 1961, the assessing officer is required to make a correct assessment of the total income of the assessee and determine the correct sum payable by him or refundable to him on the basis of such assessment. Further, Section 11(1)(a) provides that the income derived from the property held under trust wholly for charitable or religious purposes, shall not be included in total income, to the extent it was applied to charitable purpose in India; and where any such income is accumulated or set apart for application to such purpose in India to the extent to which the income so accumulated or set apart is not in excess of 15 *per cent* of the income from such property. Audit noticed in 60 cases that the AOs, while finalizing the assessments, did not compute the income or application of income correctly, which are illustrated in the succeeding paragraphs:

6.2.1 Incorrect computation of income

Audit noticed errors in 31 assessment cases⁸² involving tax effect of ₹ 496.66 crore while determining income from the property held by the trusts due to non-consideration of various receipts of the trusts as income, mistakes in giving appeal effect etc. Seven cases are illustrated below:

- (i) In West Bengal, CIT(E) Kolkata charge, a Government society engaged in medical relief and selected in the audit sample as 'Top 200' case, filed return of income for AY 2016-17 at ₹ 'Nil' income and scrutiny assessment was completed in October 2018 at ₹ 'Nil' income. Audit noticed that in the assessment order, gross receipt of the institution was considered at ₹ 1,485.54 crore. However, scrutiny of the return of income and Form 10BB showed that the gross receipt of the assessee, for the period under consideration, was ₹ 2,525.04 crore. Thus, there was short consideration of gross receipt of ₹ 1,039.50 crore, having tax effect of ₹ 359.75 crore.

The Ministry has accepted (March 2022) the audit observation and remedial action has been taken under Section 154/143(3) in March 2021.

⁸² Gujarat-2, Karnataka-2, Kerala -1, Maharashtra -10, Punjab -6, Tamil Nadu -5, Uttar Pradesh -1 and West Bengal-4

- (ii) In Gujarat, CIT (E), Ahmedabad charge, a Government entity engaged in the activity of General Public Utility, filed return of income for AY 2015-16 at ₹ 'Nil' income. The gross receipt during the year was ₹ 481.18 crore and the case was selected in the PA sample as 'Top 200' case. The scrutiny assessment was completed in October 2018 at ₹ 733.88 crore. The assessee filed an appeal against the scrutiny assessment and appeal effect was given in March 2019 as per CIT(A)'s order of December 2018. Audit observed that while giving effect to the appeal order the AO incorrectly determined loss of ₹ 155.03 crore instead of income of the same amount which resulted in short levy of tax of ₹ 53.67 crore.

The Ministry has accepted (March 2022) the audit observation and remedial action has been taken by passing order under Section 154 in February 2021.

- (iii) In Maharashtra under CIT(E) Mumbai charge, a private trust established as a Corporate Social Responsibility arm of 'B' Ltd and engaged in multiple charitable activities, filed return of income for AY 2015-16 at ₹ 'Nil' income. The case was selected in the PA sample as 'high value' case since gross receipt of the trust was ₹ 55.89 crore. The scrutiny assessment was completed in December 2017, assessing income at ₹ 'Nil'. It was noticed from the 'Notes on Accounts' for the year ended 31st March 2015 that the assessee had applied for FCRA registration which was pending but the assessee accepted the foreign contribution, amounting to ₹ 63.22 crore during the year which was kept in an Escrow Account. Audit noted that there was a disclosure in the 'Notes on Accounts' that if the trust failed to obtain the FCRA registration, the said amount shall be refunded to the respective contributors.

As per Section 11(1) and 11(2) of the FCRA Act 2010, no person shall accept a foreign contribution unless it obtains a certificate of registration from the Central Government and if accepts any foreign contribution before its registration, it has to take prior permission from the Central Government. Audit however noticed that the assessee neither had necessary registration under the FCRA Act, 2010 nor obtained the prior permission of the Central Government before receiving the Foreign Contribution. Audit further noticed that in the subsequent year (i.e., AY 2016-17), the assessee obtained the FCRA registration in September 2015. Out of the foreign contribution of ₹ 63.22 crore kept in the Escrow account in the earlier year, the assessee transferred ₹ 47.76 crore to its FCRA account, and invested the remaining amount in Fixed Deposits. As per the provisions of Section 11 of the IT Act, the contribution, being a voluntary contribution, was required to be treated as income of the trust. Omission

to do so resulted in under-assessment of income of ₹ 63.22 crore involving short levy of tax of ₹ 21.39 crore.

Reply of the Ministry was awaited (February 2022).

(iv) In West Bengal, CIT(E) Kolkata charge, a private trust engaged in the activity of 'Medical Relief', filed return of income for AY 2016-17 at ₹ 'Nil' income. The case was selected in the PA sample as 'Top 200' case since gross receipt of the trust was ₹ 197.05 crore. The scrutiny assessment was completed in December 2018 at ₹ 'Nil' income (deficit of ₹ 41.47 crore). Audit noticed the following irregularities which resulted in aggregate tax impact of ₹ 3.37 crore:

- (a) In the computation of taxable income, the Assessing Officer had deducted 'Apportioned patient care fund' of ₹ 5.18 crore, treated as income by the assessee in its Income & Expenditure A/c', without corresponding deduction of the expenditure incurred against such income. This resulted in irregular increase in 'Deficit' of ₹ 5.18 crore involving tax impact of ₹ 1.77 crore.
- (b) 'Work in progress (WIP)' amounting to ₹ 1.96 crore, had been added to the 'Total of expenditure as per the Income & Expenditure A/c', while computing 'deficit' of ₹ 41.47 crore. Audit scrutiny revealed that there was a discrepancy in the closing balance of WIP for AY 2015-16 and opening balance of the WIP for AY 2016-17. The 'WIP' for AY 2016-17 was to be ₹ (-) 2.51 crore, instead of ₹ 1.96 crore as claimed by the assessee. This resulted in irregular increase in 'Deficit' of ₹ 4.47 crore while computing the income. The omission resulted in over determination of deficit of ₹ 4.47 crore involving tax impact of ₹ 1.53 crore.
- (c) The interest income of ₹ 27.31 lakh on 'Earmarked fund' was not treated as receipt while computing the income which involves tax impact of ₹ 6.64 lakh.

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

(v) In Uttar Pradesh, under CIT (E) Lucknow charge, a private trust engaged in educational activity, filed return of income for AY 2015-16 at ₹ 'Nil' income. The case was selected in the PA sample as 'high value' case since gross receipt of the trust was ₹ 99.69 crore. The scrutiny assessment, was completed under Section 143(3) read with Section 263, in December 2018, at income of ₹ 25.11 crore, after adding ₹ 9.83 crore spent on acquisition

of land for ‘J’ University’, which was neither a part of the assessee’s trust, nor was the expenditure made on any activity to meet the aims and objectives of the assessee’s trust. Audit noticed that the AO, out of the total fixed asset purchased for ‘J’ University’ for ₹ 42.76 crore, made partial disallowance of ₹ 9.83 crore and allowed ₹ 32.93 crore, which should also have been disallowed and added back to the income of the assessee. This resulted in short computation of income of ₹ 32.93 crore having tax effect of ₹ 16.23 crore.

The Ministry has accepted (March 2022) the audit observation and remedial action has been initiated by issuing notice under Section 154 in December 2021.

- (vi) In Maharashtra, CIT(E) Mumbai charge, a Local Authority created by Government of Maharashtra and engaged in the activity of ‘Relief of the Poor’ filed return of income for AY 2016-17 at ₹ ‘Nil’ income. The case was selected in the PA sample as ‘Top 200’ case since gross receipt of the trust was ₹ 180.37 crore. The scrutiny assessment was completed in December 2018, assessing income at ₹ 492.25 crore, after denying exemption under Section 11 of the Act. Audit scrutiny of balance sheet revealed that the assessee transferred an amount of ₹ 23.04 crore to a Fund, pertaining to deposit forfeited/lapsed. Audit observed from the notes to accounts that these deposits represent unclaimed deposit for more than three years which had been considered as ‘lapsed’ and directly transferred to a reserve fund. As this amount represents income of the assessee, it was required to be brought to tax. The omission to do so resulted in under-assessment of income of ₹ 23.04 crore, involving short levy of tax of ₹ 8.0 crore.

Reply of the Ministry was awaited (February 2022).

- (vii) In Maharashtra, CIT(E), Mumbai charge, a private trust engaged in the activity of ‘Relief of the Poor’ filed return of income for AY 2016-17 at ₹ ‘Nil’ income. The assessee was selected as ‘High value’ case in the audit sample since the gross receipt of the trust was ₹ 101.21 crore. The scrutiny assessment was completed in December 2018, assessing income at ₹ ‘Nil’. The trust has been established for the upliftment and well-being of the people residing under the umbrella of an institution, by providing them more spacious ownership flats with modern amenities in a better environment. Audit observed that the AO, while finalising the assessment did not allow deficit of ₹ 140.63 crore to be carried forward to the assessee as the deficit was met from the corpus donation (₹ 101.21 crore) and loan (₹ 90 crore). AO also concluded that the corpus donation and loan were in the nature of voluntary contributions and were to be applied towards the

object for claim of exemption. The corpus donation and loan being voluntary contribution should have been treated as income, which was not done by the AO. Omission of not computing total income at ₹ 50.58 crore, in accordance with the findings of assessment by the AO resulted in non levy of tax of ₹ 17.48 crore.

Reply of the Ministry was awaited (February 2022).

Thus, Audit noticed that in certain cases, while finalization of assessment, the Department did not consider various receipts of the trusts as income from the property held by the trusts which resulted in incorrect computation of income and short levy of tax.

6.2.2 Incorrect computation of application of income

Audit noticed 27 assessment cases⁸³ involving tax effect of ₹ 42.38 crore where the AOs, while finalizing the assessment, had treated inadmissible expenses as application of income for charitable or religious purpose. Those inadmissible expenses *inter alia* included allowance of deemed application without filing Form 9A, allowance of standard deduction under Section 24(a) on house property income, acceptance of various provisions and expenditure like Income Tax, TDS etc., as application of income. Five 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. The gross receipt of the trust was ₹ 55.17 crore and the assessment was completed in December 2019 at ₹ 'Nil' income. Audit noticed that the assessee had claimed deemed application of ₹ 24.79 crore during the previous year under clause (2) of Explanation (1) to Section 11(1). However, the assessee did not file the requisite Form 9A as envisaged in Rule 17 of IT Rules. Thus, claim of deemed application of ₹ 24.79 crore was not admissible with consequential tax effect of ₹ 12.13 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 Karnataka, CIT(E) Bengaluru 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 'High value' case since gross receipt of the trust was ₹ 81.69 crore. The scrutiny

⁸³ Andhra Pradesh -1, Karnataka -2, Kerala -1, Maharashtra -10, Odisha -1, Punjab -2, Rajasthan -3, Tamil Nadu -2 and West Bengal -5.

assessment was completed in September 2017 and income determined at ₹ 71.30 crore after disallowing exemption under Section 11. Audit noticed that project grants of ₹ 8.59 crore were diverted towards operational expenditure and the same was debited to the Income and Expenditure account and claimed as expenditure, which was allowed. The mistake resulted in short computation of income of ₹ 8.59 crore with a tax effect of ₹ 4.12 crore.

The Ministry has accepted (March 2022) the audit observation and initiated remedial action by issuing notice under Section 154 in January 2021.

- (iii) In Karnataka, CIT (E) Bengaluru charge, a private trust engaged in the activity of 'Education' filed return of income for AY 2015-16 at ₹ 'Nil' income. The case was selected in the PA sample as 'Top 200' case since gross receipt of the trust was ₹ 258.81 crore. The scrutiny assessment was completed in December 2017 by assessing income at ₹ 16.80 crore after denying exemption under Section 11. Audit noticed that while computing the income, depreciation at ₹ 6.64 crore was allowed twice resulting in short computation of income by ₹ 6.64 crore with a consequent short levy of tax including interest at ₹ 3.27 crore.

The Ministry has accepted (March 2022) the audit observation and remedial action has been taken by passing order under Section 154 in February 2021.

- (iv) In West Bengal, CIT(E) Kolkata charge, a private trust engaged in the activity of 'Medical Relief' filed return of income for AY 2016-17 at ₹ 'Nil' income. The case was selected in the PA sample as 'Top 200' case since gross receipt of the trust was ₹ 197.05 crore. The scrutiny assessment was completed in December 2018 at ₹ 'Nil' income. Audit noticed that the 'Provision of doubtful debt' of ₹ 37.40 lakh, had been treated as 'application of income' during assessment, by the AO, although the Act requires that only the actual expenditure incurred during the year can be treated as application and a mere provision cannot be allowed as application. The same view has also been expressed by the Apex Court⁸⁴. This resulted in short levy of tax of ₹ 9.75 lakh.

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

⁸⁴ Nachimuthu Industrial Association v/s CIT, reported in 235 ITR 190 [1999]

(v) In Maharashtra, under CIT(E) Mumbai charge, a Government society engaged in the activity of 'Medical Relief' filed return of income for AY 2015-16 at ₹ 'Nil' income. The case was selected in the PA sample as 'Top 200' case since gross receipt of the assessee was ₹ 860.94 crore. The scrutiny assessment of the trust was completed in October 2017, assessing income at ₹ 'Nil' income (deficit of ₹ 49.96 crore). Audit scrutiny of computation of income revealed that the assessee had claimed ₹ 88.00 crore towards grants in transit by exercising option as per clause 2 of explanation 1 to Section 11(1) of the Act which provides that such option should be exercised before the due date of filing of return of income. Since the assessee failed to file the return of income within due date, the option exercised was not allowable. However, the Department allowed the claim as per the returned income. The mistake resulted in under-assessment of income of ₹ 38.03 crore, with consequent short levy of tax ₹ 12.91 crore. Reply of the Ministry was awaited (February 2022).

Thus, Audit observed that in certain cases, the AOs while finalising assessments had allowed inadmissible expenses as application of income for charitable or religious purpose, which resulted in undue benefit to the assesseees.

6.3 Irregular Allowance of Accumulation

Section 11(2) of the Act 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 a Trust, the trust can opt for accumulation of the unapplied portion of the income, to be spent for specified purpose(s) in the next five years, provided the assessee furnishes a statement in Form 10, on or before the due date of furnishing the return of income, stating the purpose for which the income is being accumulated. Further, the income accumulated under Section 11(2) shall have to be invested in the modes specified under Section 11(5) in order to avail exemption.

Therefore, the purpose of accumulation should be specific and the accumulation should be for the objects of the Trust. The Hon'ble Madras High Court⁸⁵ had held that the purpose had to be specific and cannot be general in nature.

Audit noticed 66 assessment cases⁸⁶ involving tax effect of ₹ 68.14 crore where the AOs had allowed accumulation under Section 11(2) even though there was insufficient fund for accumulation, the purpose of accumulation was general in nature without mentioning the specific purpose, the assessee failed to furnish

⁸⁵ CIT vs. M. Ct. Muthaiah Chettiar Family Trust (2000) reported in 245 ITR 400

⁸⁶ Chhattisgarh -2, Delhi -2, Gujarat -1, Himachal Pradesh -2, Jammu -1, Karnataka -9, Madhya Pradesh -12, Maharashtra -25, Punjab -5, Tamil Nadu -3, Uttarakhand -1 and West Bengal -3.

Form 10 before the due date specified under Section 139(1) or the accumulation was not invested in the specified mode. Five cases are illustrated below:

(i) In Karnataka, CIT(E), Bengaluru Charge, scrutiny assessment of a private trust engaged in the activity of 'General Public Utility' filed return of income for AY 2016-17 at ₹ 'Nil' income. The scrutiny assessment was completed in December 2018 at ₹ 'Nil' after allowing exemption of ₹ 10.34 crore under Section 11. Audit noticed that the assessee had accumulated an amount of ₹ 7.96 crore and the purpose for accumulation was mentioned as 'Set apart for accumulation'. Since the purpose does not fulfil the conditions laid down in Section 11(2), the same should have been disallowed and brought to tax. The tax effect on this account works out to ₹ 3.50 crore. The DCIT (E), Circle 1, Bengaluru stated (September 2020) that the objections would be looked into for necessary remedial action.

Reply of the Ministry was awaited (February 2022).

(ii) In Maharashtra, CIT(E), Mumbai charge, a private corporate trust engaged in educational activity, filed return of income for AYs 2016-17 & 2015-16 at ₹ 'Nil' income. The scrutiny assessment for the AYs 2016-17 & 2015-16 was completed in December 2018 and December 2017 respectively, assessing income at ₹ 'Nil' after allowing accumulation under Section 11(2) for ₹ 9.64 crore and ₹ 4.91 crore respectively. Audit scrutiny revealed that the assessee had filed Form 10 for both the years in December 2017. Further, it was also noticed that the assessee had not filed Form 10 for AY 2014-15 but claimed accumulation of ₹ 70.18 lakh under Section 11(2). As the assessee had failed to file Form 10 within the stipulated period, the accumulation under Section 11(2) was not to be allowed. This resulted in under-assessment of income of ₹ 15.24 crore involving tax effect of ₹ 5.16 crore for AY 2014-15 to AY 2016-17.

The DCIT (E), Circle 1, Mumbai accepted (March 2021) the audit observations for AY 2015-16 and 2016-17 and proposed for remedial action under Section 263. For AY 2014-15, the Department had not accepted the audit observation stating the reason that no accumulation was claimed by the assessee for the relevant AY.

The reply for AY 2014-15 was not tenable as the assessee had claimed accumulation of ₹ 70.18 lakh under Section 11(2).

Reply of the Ministry was awaited (February 2022).

(iii) In Madhya Pradesh, under CIT(E) Bhopal charge, a private trust engaged in 'Medical Relief', filed original return of income for AY 2014-15 at ₹ 'Nil' income. The case was selected in the PA sample as 'High Value' case since

the gross receipt of the assessee was ₹ 59.78 crore. The rectification order was passed in January 2017, assessing the income as ₹ 'Nil'. Audit noticed that the assessee claimed an amount of ₹ 1.10 crore was accumulated for application for the next five years, but did not file Form 10 electronically/ manually. However, the accumulated amount of ₹ 1.10 crore was not added to the total income of the assessee. This resulted in short levy of tax of ₹ 42.94 lakh.

The Ministry, while not accepting the audit observation, stated (March 2022) that the assessee has not claimed any exemption under Section 11(2) of the IT Act and Form 10 is not applicable in this case. The assessee has not claimed any amount in Schedule I of ITR for accumulation of income under Section 11(2) of the Act. However, the assessee has claimed the amount of ₹ 1.09 crore under clause 2 of explanation of Section 11(1) of the Act.

Reply of the Ministry is being verified by the Field Audit office.

- (iv) In West Bengal, under CIT-(E), Kolkata charge, a Government society engaged in 'Research' activity, filed original return of income for AY 2016-17 at ₹ 'Nil' income. The case was selected in the PA sample as 'Top 200' case since the gross receipt of the assessee was ₹ 172.61 crore. The scrutiny assessment was completed at ₹ 'Nil' income in November 2018 at ₹ 'Nil' income. Audit noticed that the assessee had claimed and was allowed exemption under Section 10(21). Further, Audit noticed that the assessee was allowed statutory accumulation of 15 *per cent* of income under Section 11(1) of the Act, in the assessment order, even though the assessee was registered under Section 35(1)(ii) and not registered under Section 12/12AA. Such irregular accumulation of income, amounting to ₹ 21.00 crore, had a tax effect of ₹ 9.59 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.

- (v) In Tamil Nadu, CIT(E), Chennai charge, a private trust engaged in educational activity, filed return of income for AY 2016-17 at ₹ 'Nil' income. The case was selected in the PA sample as 'high value' case since the gross receipt of the trust was ₹ 50.03 crore. The scrutiny assessment was completed in November 2018 at ₹ 'Nil' income. Audit noticed that the total receipts were ₹ 50.03 crore and the total application of income was ₹ 70.04 crore during FY 2015-16. As the entire receipts was treated as applied, the assessee was not eligible for any accumulation. However, the assessee was allowed to accumulate ₹ 7.50 crore, being 15 *per cent* of total

receipts of ₹ 50.03 crore. This resulted in irregular accumulation of ₹ 7.50 crore.

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

Thus, Audit observed that in certain cases, the ITD had allowed accumulation in contravention of provisions stipulated under Section 11(2) of the Act.

6.4 Allowance of exemption although income or property of the trust was utilised for the benefit of persons having substantial interest

Section 13 provides that exemption to charitable Trusts/Institutions under Section 11 and Section 12 would not be available if any income or property of the trust is applied, directly or indirectly, for the benefit of person⁸⁷ specified in Section 13(3). Further, when a trust makes any payment or provide any services to specified persons then it has to disclose the details in the Audit Report in Form 10B whether any part of the income or property of the Trusts/Institutions was lent, or continues to be lent, in the previous year to a specified person.

Audit noticed 22 assessment cases⁸⁸ involving tax effect of ₹ 33.07 crore where the assessee had utilised their income or property for the benefit of persons specified under Section 13(3) but the Department did not levy tax on such amount of income or property utilised for the benefit of the specified persons. Six cases are illustrated below:

- (i) In Kerala, Pr. CIT(E), Kochi Charge, a Government body engaged in the activity of 'General Public Utility' filed original return of income for AY 2017-18 at ₹ 'Nil' income. The scrutiny assessment was completed in November 2019 at ₹ 'Nil' income. Audit noticed that the assessee availed Bank Overdraft (OD) of ₹ 215.00 crore and the same was given as loan to Government of Kerala. Against this, the assessee received ₹ 6.10 crore towards interest on loan and paid ₹ 8.26 crore towards interest on OD with Bank. As such, the Trust had incurred an extra expenditure of ₹ 2.16 crore (₹ 8.26 crore – ₹ 6.10 crore), which was allowed as application of income. Since the assessee utilized its fund for the benefit of its founder, allowance of ₹ 2.16 crore as application was not in order as per the provisions of Section 13(3). This resulted in short-levy of tax of ₹ 98.65 lakh.

The DCIT(E) Circle, Trivandrum replied (March 2020) that the fund was transferred as per Government directions and returned with one *per cent*

⁸⁷ The person specified in Section 13(3) are the author of the trust or founder of the institution; any person who has made a substantial contribution to the trust or institution of amount exceeding ₹ 50,000; where such author, founder or person is a HUF; any trustee of the trust or manager; any relative of any such author, founder, substantial contributor, member, trustee or manager.

⁸⁸ Himachal Pradesh -1, Karnataka -2, Kerala -1, Maharashtra -9, Punjab -6 and Tamil Nadu -3.

additional interest. The reply is not tenable as the fund was utilized for the benefit of the founder and not for the intended beneficiaries of the Trust. Hence, the extra interest expenditure incurred cannot be treated as application of income.

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 Punjab, CIT(E) Chandigarh a private society engaged in the activity of 'General Public Utility', filed return of income for AY 2016-17 at ₹ 'Nil' income and the scrutiny assessment was completed in December 2018 at a total income of ₹ 'Nil'. Audit noticed that although the assessee had disbursed interest free loan of ₹ 1.11 crore to related parties such as President and Treasurer of the organization, no disallowance was made in this respect in the assessment. This resulted in short levy of tax of ₹ 50.12 lakh. The AC/DCIT(E), Circle, Chandigarh replied (January 2020) that audit objection had been considered and action as per provisions of the Income Tax Act would be taken.

Reply of the Ministry was awaited (February 2022).

- (iii) In Maharashtra, CIT(E) Mumbai charge, a private entity engaged in educational activity, filed return of income for AY 2015-16 at ₹ 'Nil' income. The gross receipt of the assessee was ₹ 114.24 crore and selected as 'High value' case in the PA sample. The scrutiny assessment was completed in October 2017, assessing income at ₹ 'Nil'. Audit noticed that during the year, the assessee had purchased a New Flat and Garage from 'K' Ltd., for consideration of ₹ 10.00 crore, in a Co-operative Housing Society. Audit observed that one of the Members of Board of Governance of the entity, was the chairman and Managing Director of 'K' Ltd. The Act provides that no property or income of the trust shall be utilised for the benefit of person referred to Section 13(3) of the Act. However, there are no records such as Sale deed Agreement and NOC of the Co-operative Housing Society, allowing the assessee to utilise the Flat as Office premises. As the trust income was utilised for the benefit of related person referred to Section 13(3) of the Act, deduction under Section 11 was not allowable to the assessee.

Reply of the Ministry was awaited (February 2022).

- (iv) In Karnataka, under CIT(E) Bengaluru Charge, a private trust, engaged in educational activity, filed return of income for AY 2016-17 at ₹ 'Nil' income. The gross receipt of the assessee was ₹ 115.23 crore and this was selected as 'High value' case in the PA sample. The scrutiny assessment was

completed in December 2018, accepting the income returned at ₹ 'Nil'. It was noticed that during the year, the assessee paid ₹ 1.25 crore to M/s 'L' Pvt. Ltd. towards professional charges for running & maintenance of 'M' School; and ₹ 4.28 crore to M/s 'N' for value added course, conducted for various institutions of 'O' group. Audit noticed that there was substantial interest in the above concerns, by the family of the President of 'O' group and therefore the transactions of the Trust with the related concerns would have to be at arm's length. However, the transactions were not at arm's length, in terms of Hyderabad Tribunal judgement⁸⁹, as determined by the assessing officer, in the scrutiny assessment for AY 2017-18. Thus, undue benefit was passed on to specified persons and the exemption allowed in AY 2016-17 should have been withdrawn. This resulted in short computation of income of ₹ 33.90 crore with a consequent short levy of tax of ₹ 15.60 crore. The JCIT(E), Circle 1, Bengaluru replied (September 2018) that the matter would be looked into.

Reply of the Ministry was awaited (February 2022).

- (v) In Maharashtra, CIT(E) Mumbai charge, a private trust engaged in the educational activity, filed return of income for AYs 2014-15 and 2015-16 at ₹ 'Nil' income. The gross receipt of the assessee was ₹ 79.82 crore for AY 2015-16 and selected as 'High value' case in the PA sample. The scrutiny assessment was completed for AY 2014-15, in December 2016, followed by rectification in April 2018, determining income at ₹ 'Nil' and for AY 2015-16, in December 2017, assessing income at ₹ 'Nil'. Audit observed that the Department during assessment had disallowed deduction under Section 11 for rented property, to the related party, for violation of provisions of Section 13 of the Act and computed notional income from house property, of ₹ 60.20 lakh in AY 2015-16, and ₹ 54.73 lakh in AY 2014-15. Audit scrutiny of the computation of total income revealed that the Department considered this income as income of trust property, eligible for deduction under Section 11 of the Act and adjusted same against the expenses applied towards the objective of the trust, instead of treating this income for taxation separately, in view of the provisions of Section 13(1)⁹⁰ of the Act. The omission resulted in under-assessment of income of ₹ 60.20 lakh, in AY 2015-16, and ₹ 54.73 lakh, in AY 2014-15, involving short levy of tax, aggregating to ₹ 35.52 lakh.

⁸⁹ in the case of M/s NTR Memorial Trust in ITA No. 461 & 462/Hyd/2010 dated 18.3.2011 wherein it was held that the profit percentage to the extent of eight *per cent* is reasonable and not excessive.

⁹⁰ Section 13(1) of the Act, provides that exemption to charitable trusts or institutions under Section 11 or 12 would not be available, if any income or property of the trust is applied, directly or indirectly, for the benefit of any specified person referred to in Section 13(3). The person specified in Section 13(3) are the author of the trust or founder of the institution; any person who has made a substantial contribution to the trust or institution of amount exceeding ₹ 50,000; where such author, founder or person is a HUF; any trustee of the trust or manager; any relative of any such author, founder, substantial contributor, member, trustee or manager.

Reply of the Ministry was awaited (February 2022).

- (vi) In Maharashtra, Pr. CIT(E), Pune Charge, a private trust engaged in educational activity, having gross receipt of ₹ 424.75 crore, filed its return of income for AY 2016-17 at ₹ 'Nil' income. The case was initially processed in summary manner and subsequently, selected for scrutiny and assessment was completed in December 2018 under Section 143(3), by accepting the returned income at 'Nil'. Audit noticed that as per schedule-15 (Establishment Expenses) to Income and Expenditure Account, the Assessee trust had shown expenses of ₹ 144.79 crore and ₹ 75.77 crore towards rent and infrastructure development fees respectively to 'P' University and subsequently these amounts were knocked off by reducing the same amount from the respective sub-heads. Thus, the amounts were adjusted in the same year and not debited in the expenditure side. Audit further noticed that there was no mention either in the scrutiny assessment order or in the audit report in Form 10B about the said transaction made by the assessee with the related party. Audit could not ascertain reasons for knocking off and nature of transactions involved in it. Thus, undue benefit to related parties through this transaction could not be ruled out.

In reply (January 2022), DCIT (E) Circle Pune while not accepting the observation, stated that in Form 10B the assessee reflected the transaction with the related party, 'Q'. However, in respect of transaction between 'P' University and 'R' Society, both being two constituents of the assessee trust, these transactions were only notional entries and, therefore, knocked off while consolidating the Annual Accounts of the assessee Trust.

The reply of the Department was not tenable as the reply was silent about the purpose of such accounting treatment. If at all, both the units were the constituents of the assessee trust, the purpose of charging rent and infrastructure development fees by one constituent from another constituent of the assessee trust could not be ascertained.

Reply of the Ministry was awaited (February 2022).

Thus, Audit observed that in certain cases, although the assessee had utilised their income or property for the benefit of person specified in Section 13(3)⁹¹, the Department did not levy tax on such amount of income or property utilised for the benefit of the related persons.

⁹¹ The person specified in Section 13(3) are the author of the trust or founder of the institution; any person who has made a substantial contribution to the trust or institution of amount exceeding ₹ 50,000; where such author, founder or person is a HUF; any trustee of the trust or manager; any relative of any such author, founder, substantial contributor, member, trustee or manager.

6.5 Irregular allowance of double benefits to Trusts

Audit observed instances of non-compliance of various provisions of the Income Tax Act in the assessment orders, culminating in irregular allowance of double benefits to the assessee. These cases are illustrated below:

6.5.1 Irregular allowance of depreciation on assets whose acquisition had already been claimed as application of income

Section 11(6) and explanation to proviso⁹² inserted after the 17th proviso to clause (23C) of Section 10, stipulates that where any income is required to be applied or accumulated, then, for such purpose, the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this clause in the same or any other previous year.

Audit noticed eight assessment cases⁹³ involving tax effect of ₹ 13.78 crore where depreciation on assets had been allowed as application of income, even though the relevant capital expenditure to acquire such assets had already been treated as application of income, resulting in double benefit to the assessee. 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 2016-17 at ₹ 'Nil' income. The scrutiny assessment was completed in October 2018 accepting ₹ 'Nil' income as returned by the assessee after allowing exemption of ₹ 41.79 crore under Section 10(23C). Audit noticed that depreciation of ₹ 4.52 crore was allowed as application of income which resulted in double deduction of expenditure. This resulted in non-levy of tax of ₹ 1.56 crore including applicable interest.

The Ministry has accepted (March 2022) the audit observation and remedial action has been completed by passing order under Section 154 in March 2020.

(ii) In Punjab, CIT(E) Chandigarh charge, a Government society engaged in educational activity, filed return of income for AY 2017-18 at ₹ 'Nil' income and the scrutiny assessment was completed in October 2019 at ₹ 'Nil' income. Audit noticed that the assessee claimed depreciation of ₹ 9.81 crore as application of income which was allowed in assessment. This resulted in double deduction of expenditure as well as non-levy of tax of ₹ 4.57 crore including applicable interest.

⁹² as inserted by the Finance (No. 2) Act, 2014 effective from 1.4.2015

⁹³ Gujarat -1, Himachal Pradesh -2, Punjab -2, Tamil Nadu -1 and West Bengal -2

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

Thus, Audit observed that in certain cases, depreciation on assets had been allowed as application of income, even though the relevant capital expenditure to acquire such assets had already been treated as application of income resulting in double benefit to the assessee.

6.5.2 Irregular allowance of expenditure from corpus/earmarked funds as application of income

Section 11(1)(d) of the Income Tax Act, 1961, relates to income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution.

Audit noticed 11 assessment cases⁹⁴ involving tax effect of ₹ 81.58 crore where the AO had allowed claims, pertaining to application of income incurred from the corpus fund, or other specific purpose funds, resulting in double benefit to the assessee. One case is illustrated below:

- (i) In West Bengal, CIT(E), Kolkata charge, a private trust engaged in the activity of 'Medial Relief' filed return of income for AY 2014-15, AY 2015-16, AY 2016-17 and AY 2017-18 at ₹ 'Nil' income. The case for AY 2016-17 was selected in the PA sample as 'Top 200' case since gross receipt of the trust was ₹ 197.05 crore. The scrutiny assessments for AY 2014-15, AY 2015-16, AY 2016-17 and AY 2017-18 were completed in December 2016, December 2017, December 2018 and December 2019 respectively at ₹ 'Nil' income. Audit noticed from the assessment records of AY 2014-15 to AY 2017-18 that expenditure on addition of fixed assets and work in progress for certain projects, had been treated as application of income, although such expenditure had been incurred out of the voluntary contributions received in the 'Earmarked funds' for those projects and not treated as income of that assessment year. Such irregular treatment of expenditure, amounting to ₹ 145.55 crore⁹⁵, from earmarked funds, as application of income, had a tax effect of ₹ 62.32 crore⁹⁶.

The Ministry has accepted (March 2022) the audit observation and initiated remedial action by issuing notice(s) under Section 148 for AYs 2014-15, 2015-16 and 2017-18 in March 2021. For AY 2016-17, remedial action has been taken by passing order under Section 263/143(3) in December 2021.

⁹⁴ Jammu -3 and West Bengal -8

⁹⁵ ₹ 15.44 crore for AY 2014-15; ₹ 38.92 crore for AY 2015-16; ₹ 51.86 crore for AY 2016-17; ₹ 39.33 crore for AY 2017-18

⁹⁶ ₹ 5.92 crore for AY 2014-15, ₹ 16.34 crore for AY 2015-16, ₹ 22.61 crore for AY 2016-17 and ₹ 17.45 crore for AY 2017-18

Thus, Audit observed that in certain cases, the AOs had allowed claims, pertaining to application of income incurred from the corpus fund, or other specific purpose funds resulting in double benefit to the assessee.

6.6 Irregular allowance of exemption on corpus donation

Section 11(1)(d) provides that voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution, will not be included in the income of the Trust. Therefore, no voluntary contribution can be treated as corpus without any specific direction by the donor.

Audit noticed nine assessment cases⁹⁷ involving tax effect of ₹ 52.08 crore where the Department allowed exemption under Section 11(1)(d) treating the voluntary contributions as corpus, without ensuring that there was a specific direction of the donors. Two cases are illustrated below:

(i) In Gujarat, CIT(E) Ahmedabad charge, a private trust engaged in educational activity, filed return of income for AY 2015-16 at ₹ 'Nil' income. The case was selected as 'High value' case since the gross receipt of the trust was ₹ 58.14 crore. The scrutiny assessment was completed in September 2017 at ₹ 'Nil' income. Audit noticed that the assessee declared corpus receipt of ₹ 32.55 crore but did not furnish any evidence regarding any specific direction by the donor or any source of donation, although the Department asked the assessee to furnish the same. In the absence of such direction, the amount was required to be treated as income for the year under Section 11(1)(a) by the Assessing Officer but the same was not done. The omission resulted in under-assessment of income of ₹ 27.67 crore (85 per cent of ₹ 32.55 crore) with consequent non-levy of tax of ₹ 9.40 crore.

The Ministry has accepted (March 2022) the audit observation and initiated remedial action by issuing notice under Section 143(3) read with section 263 of the IT Act in March 2021.

(ii) In West Bengal, CIT(E) Kolkata charge, a Government society engaged in the activity of 'Preservation of Environment', filed return of income for AY 2016-17 at ₹ 'Nil' income. The case was selected as 'Top 200' case in the sample since the gross receipt of the trust was ₹ 207.59 crore. The scrutiny assessment was completed in December 2018 at ₹ 'Nil' income. Audit noticed that the assessee had accumulated unspent income of ₹ 84.08 crore as corpus fund, and claimed exemption thereon, under Section 11(1)(d) of the Act. The assessee had accumulated this corpus fund out of the ₹ 287.18 crore received from the Central/State Governments, for

⁹⁷ Gujarat -1, Maharashtra -3, Odisha -2, Rajasthan -2 and West Bengal -1.

'meeting obligatory eligible expenses, including committed liabilities'. Being specific in nature, such grants should be treated as legal obligations and not voluntary contributions and should be utilized only as per the directions of the sanctioning authority. The assessee had stated that the grants were kept as part of the capital of the project, which was to be withdrawn only for earmarked schemes. However, there was no direction in the sanction letters to keep the unutilized fund as corpus of the assessee, in absence of which, exemption on ₹ 84.08 crore allowed to the assessee, under Section 11(1)(d), was not admissible. This resulted in under-assessment of income by ₹ 84.08 crore, involving tax effect of tax of ₹ 38.12 crore including interest.

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

Thus, Audit observed that in certain cases, the Department allowed exemption under Section 11(1)(d) treating the voluntary contributions as corpus without ensuring that there was a specific direction of the donors in contravention of the provisions of the Act.

6.7 Grant of exemption to trusts, although activities were not charitable in nature

The Act provides exemption to charitable Trusts/Institutions in respect of income applied towards their objectives. However, any activity of advancement of any other object of general public utility which involves the carrying on of any activity in the nature of trade, commerce or business or any activity of rendering any service for a cess or fee or any other consideration where the aggregate receipts from such activity exceeds rupees twenty five lakh (20 per cent of total receipt with effect from 01.04.2016), shall not be treated as charitable purpose, irrespective of the nature of use or application, or retention, of the income from such activity.

In Maharashtra, Audit noticed in nine assessment cases that the Department allowed exemption of ₹ 549.15 crore under Section 11 involving tax effect of ₹ 189.07 crore even though the objectives or activities of the trusts were not charitable in nature. Six cases of two assesseees are illustrated below:

- (i) In CIT(E) Mumbai charge, a private trust engaged in the 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 at an income of ₹ 5.26 crore, ₹ 1.64 crore and ₹ 'Nil' respectively allowing aggregated exemption of ₹ 32.40 crore (₹ 11.26 crore for AY 2014-15, ₹ 9.42 crore for AY 2015-16

and ₹ 11.72 crore for AY 2016-17) under Section 11. The scrutiny assessment of AY 2014-15 was further rectified under Section 154 in December 2016 revising income at ₹ 'Nil'. Audit noticed that the objective of the assessee trust was to organise International Textile Machinery Exhibitions on the latest development of technology in the field of textile machinery. Audit observed that for the purpose of exhibition, the assessee had taken advances of ₹ 45.02 crore from the exhibitors for 'an Exhibition' and offered this income as business income and claimed the benefit of Section 11(4A)⁹⁸ which was allowed by the Department. The claim of assessee was not in order, as Section 11(4A) applies only when the business of the trust is incidental to the attainment of the objectives of the trust. Thus, conducting exhibition was not incidental to the objectives of the assessee but was the main objective of the assessee, which suggested that the sole activity of the assessee was rendering service for a cess or fee or any other consideration. In view of the provisions of Section 2(15), the activity of the assessee was not charitable in nature and hence the assessee was not eligible for exemption under Section 11. The omission to do so resulted in under-assessment of income of ₹ 23.79 crore for AY 2014-15 to AY 2016-17 involving short levy of tax of ₹ 8.14 crore.

The DCIT(E) Circle-1(1), Mumbai accepted (September 2021) the audit observation and initiated remedial action under Section 147 for AY 2014-15 and under Section 263 for AY 2015-16 and AY 2016-17.

- (ii) In Maharashtra, under CIT(E) Mumbai charge, , a private entity engaged in educational activity, filed return of income for AYs 2014-15, 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' cases since the gross receipt during the years were ₹ 114.24 crore and ₹ 134.63 crore respectively. The scrutiny assessments were completed in November 2016, October 2017 and October 2018, for AY 2014-15 to AY 2016-17, respectively, assessing income at ₹ 3.16 crore for AY 2014-15 and ₹ 'Nil' for AYs 2015-16 & 2016-17. Audit noticed that the Institution was said to be engaged in the activities for the promotion of training, research, professionalism and skill formation at all levels of the construction and other allied industries. Its activity also included undertaking consultancy, as well as setting up consultancy centres, to conduct research, training, organize conference, seminars etc. Audit also noticed that the assessee conducts programmes for the Management of Family-Owned Construction Business and service training programmes, either at entity's campus, or off campus, which were

⁹⁸ Section 11(4A) provided that shall exemption under Section 11 not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or institution, and separate books of account are maintained by such trust or institution in respect of such business.

designed as per requirement of the customers for the executive class and charged fees for these services.

It was observed that the assessee was not imparting any formal education, but was acting as service provider/trainer in the field of excelling the professional skills of the professionals involved in the field of construction and allied services. As such, the activities of the assessee could not be categorised solely as educational. The assessee was mere a service provider and functioning for profit motive. Audit noted that it was evident from the records viz., Income and Expenditure account and assessment orders of AYs 2013-14 to 2016-17, wherein the assessee was generating surplus continuously to the extent of 67 *per cent* of its total income every year, which showed charging of significant fees for the services provided during these years.

Audit also noticed that the Directorate General of Central Excise Intelligence (DGCEI), Pune conducted investigation towards non-payment of Service Tax under the Category of 'commercial training or coaching centre' which was confirmed by the Pr. Commissioner of Service Tax II vide order dated 30.07.2015, against which the assessee went in appeal in the Customs Excise Service Tax Appellate Tribunal, West Zonal Bench, Mumbai. Audit found that the Tribunal has disposed-off the above case in October 2017 in favour of Commissioner of Service Tax holding that the assessee's activities fall under the category of 'commercial training or coaching' and not under the category of vocational training institutions or institutes providing education in the field of sports, Pre-School and those institutes or establishment which issues any certificate or diploma or degree or any educational qualification recognised by law for the time being in force.' In view of the above findings of the Tribunal and provisions of Section 2(15) of the Act, the activities of assessee cannot be held as 'charitable', as envisaged in the Act. As such, exemption under Section 11, allowed to assessee, was not in order. The omission resulted in under-assessment of income of ₹ 218.95 crore involving tax effect of ₹ 74.91 crore, for AY 2014-15 to 2016-17.

It is pertinent to mention here that the Department had taken the same view in the case of a private trust engaged in educational activity, in AY 2016-17, wherein the exemption under Section 11 had been disallowed, holding that as per CBDT's circular no. 11 of 2008 dated 19.12.2008, activity of training and conducting examination is an activity of advancement of general public utility and as per the proviso of Section 2(15), such entities are not eligible for exemption under Section 11 or 10(23C) of the Act.

Thus, it was evident from the above that in certain cases, even though the objectives or activities of the trusts were not charitable in nature, the ITD irregularly granted exemption to Trusts/Institutions in contravention to the provision of the Act.

Reply of the Ministry was awaited (February 2022).

6.8 Incorrect levy of tax/surcharge/interest

Under the provisions of the Act, the assessing officer is required to make a correct assessment of the total income of the assessee and determine the correct sum payable by him or refundable to him on the basis of such assessment.

Audit noticed 65 assessment cases⁹⁹ involving tax effect of ₹ 103.11 crore where the AO while finalizing the assessment had mistakenly adopted figures, computed short demand, charged tax at a lower rate than the prescribed rate, short levy of interest/surcharge, excess grant of interest on refund etc.

Four cases are illustrated below:

(i) In Uttar Pradesh, CIT(E) Lucknow charge, a private trust engaged in educational activity, filed return of income for AY 2016-17 at ₹ 'Nil' income. The scrutiny assessment was completed in October 2018 at an income of ₹ 5.20 crore under the head Income from "Profit and Gains from business and profession" denying exemption under Section 11. Audit noticed that the AO, while computing tax in ITNS-150, had taken income at ₹ 'Nil' instead of ₹ 5.20 crore. This resulted in short levy of tax of ₹ 2.36 crore including applicable interest.

The Ministry has accepted (March 2022) the audit observation and remedial action has been initiated by issuing notice under Section 154 in December 2021.

(ii) In Maharashtra, CIT(E), Mumbai charge, a private society engaged in the activity of 'General Public Utility', filed return of income for 2016-17 at ₹ 'Nil' income. The scrutiny assessment was completed in December 2018 at an income of ₹ 36.02 crore denying exemption under Section 11. Audit noticed from the tax computation sheet that the Department computed tax at ₹ 'Nil' instead of ₹ 14.27 crore. This has resulted in short levy of tax of ₹ 15.07 crore including interest.

Reply of the Ministry was awaited (February 2022).

⁹⁹ Delhi-3, Gujarat-5, Himachal Pradesh-1, Jammu-1, Karnataka-6, Maharashtra-11, Odisha-4, Punjab-13, Rajasthan-8, Tamil Nadu-3 and Uttar Pradesh-10

(iii) In Karnataka, CIT(E) Bengaluru Charge, a Government corporate trust engaged in the activity of 'Relief of the poor', filed return of income for AY 2014-15 at ₹ 1.91 crore. The case was selected as 'High value' case in the PA sample since the gross receipt of the trust was ₹ 58.38 crore. The scrutiny assessment was completed in December 2016 and the income was determined at ₹ 'Nil'. The scrutiny order was further rectified under Section 154 in May 2017 and the income remained at ₹ 'Nil'. Audit noticed that the assessee had returned business income at ₹ 1.91 crore, which was taxable. However, in scrutiny assessment and the rectification order, the same was omitted and a refund of ₹ 1.05 crore was determined. Failure to assess the income returned, resulted in short levy of tax/excess refund of ₹ 65.74 lakh.

The Ministry has accepted (March 2022) the audit observation and remedial action has been taken by passing order under Section 154 of the IT Act in February 2021.

(iv) In Maharashtra, Pr. CIT(E), Pune Charge, a private trust engaged in educational activity, having gross receipt of ₹ 305.38 crore, filed return of income for AY 2017-18 at ₹ 'Nil' income. The case was initially processed in summary manner and subsequently, selected for scrutiny and assessment was completed in December 2018 under Section 143(3) determining income of ₹ 247.00 crore.

Audit noticed that AO, while finalizing the assessment, levied tax at the normal rate i.e. 30 *per cent* on additions made under Section 68¹⁰⁰ and Section 69¹⁰¹ of ₹ 152.95 crore instead of 60 *per cent* as stipulated under Section 115BBE¹⁰² of the Act. Further, it was noticed that interest under Section 234A for belated filing of return was not levied by the AO. These resulted in short levy of tax of ₹ 69.56 crore, including interest under Section 234A.

Reply of the Ministry was awaited (February 2022).

¹⁰⁰ As per Section 68, where any sum is found credited in the books of an assessee and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income- tax as the income of the assessee of that previous year.

¹⁰¹ As per Section 69 where in the financial year the assessee has made investments which are not recorded in the books of account, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year

¹⁰² As per Section 115 BBE of the Act, with effect from AY 2017-18, where the total income of an assessee includes any income referred to in Section 68 or 69, the tax shall be calculated at the special rate of 60 *per cent* and surcharge at the rate of 25 *per cent*.

Thus, Audit observed that in certain cases, at the time of finalization of assessment, the assessing officers had mistakenly adopted figures, computed short demand, charged tax at a lower rate than the prescribed rate, short levy of interest and surcharge, excess grant of interest on refund etc. which resulted in short levy of tax.

6.9 Non-levy of penalty

Section 139(4A) provides that every person who is in receipt of income derived from property held under trust or other legal obligation wholly for or charitable purposes or religious purposes, or in part only for such purposes; or income by way of voluntary contribution on behalf of such trust or institution for which he is taxable, must file a return of income, if such income (computed before allowing any exemption under Sections 11 and 12) exceeds the maximum amount not chargeable to income tax. Section 139(4C) provides for compulsorily filing of return by the institutions, if income (before giving effect to the provisions of Section 10) exceeds the maximum amount not chargeable to income tax. Further, Section 272A(2)(e) of the Act, provides that if any person fails to furnish the return of income which he is required to furnish under sub-Section (4A) or (4C) of Section 139 or to furnish it within the time allowed and in the manner required under those sub-Sections, he shall pay, by way of penalty, a sum of one hundred rupees for every day during which the failure continues.

Audit noticed 651 assessment cases¹⁰³ involving tax effect of ₹ 1.68 crore, where, despite delays in filing of return of income by the Trusts/Institutions, no penalty was levied/proceedings initiated by the Department. The State wise break-up of 651 cases is summarized in Table 6.2 below:

| Sl. No. | Name of State | Period of delay vis-à-vis no. of cases | | | | | Total |
|---------|------------------|--|--|--|---------------------------------------|---------------------|-------|
| | | Upto three month | More than three months and upto six months | More than six months and upto one year | More than one year and upto two years | More than two years | |
| 1 | Andhra Pradesh | 13 | 19 | 20 | 16 | 3 | 71 |
| 2 | Chhattisgarh | 1 | 8 | 4 | 1 | 0 | 14 |
| 3 | Delhi | 2 | 7 | 2 | 4 | 0 | 15 |
| 4 | Haryana | 1 | 2 | 1 | 1 | 0 | 5 |
| 5 | Himachal Pradesh | 1 | 1 | 0 | 0 | 0 | 2 |
| 6 | Jammu | 0 | 2 | 1 | 1 | 0 | 4 |
| 7 | Karnataka | 20 | 47 | 15 | 36 | 1 | 119 |

¹⁰³ Andhra Pradesh -71, Chhattisgarh -14, Delhi -15, Haryana -5, Himachal Pradesh -2, Jammu -4, Karnataka -119, Madhya Pradesh -117, Maharashtra - 187, Punjab -91 and Rajasthan -26.

| Table 6.2 Non-levy of penalty for delay in filing of Return | | | | | | | |
|---|----------------|--|--|--|---------------------------------------|---------------------|------------|
| Sl. No. | Name of State | Period of delay vis-à-vis no. of cases | | | | | Total |
| | | Upto three month | More than three months and upto six months | More than six months and upto one year | More than one year and upto two years | More than two years | |
| 8 | Madhya Pradesh | 32 | 46 | 18 | 21 | 0 | 117 |
| 9 | Maharashtra | 37 | 85 | 33 | 31 | 1 | 187 |
| 10 | Punjab | 25 | 32 | 7 | 11 | 16 | 91 |
| 11 | Rajasthan | 4 | 12 | 4 | 6 | 0 | 26 |
| Total: | | 136 | 261 | 105 | 128 | 21 | 651 |

The replies furnished by the ITD to Audit varied widely in different assessment charges, as mentioned below:

- a. In Madhya Pradesh, ITO (E), Bhopal did not accept the audit observation and replied (March 2020) that the objection of audit was subject matter of verification of jurisdiction of CPC/AO, as returns are filed online by assesseees and processed by the CPC before being selected for scrutiny assessment. However, ITO (E), Jabalpur replied (July 2020) that the cases were being referred to the JCIT(E), Raipur for taking appropriate action wherever applicable. The ITO(E), Gwalior, ITO(E) Indore and Ujjain replied in March 2020 and September 2020 respectively, that the matter would be looked into.
- b. In Andhra Pradesh, ITO (E), Ward 1, Sangareddy stated (September 2020) that the audit observation was acceptable and necessary action would be initiated. The ACIT (E), circle, Vijaywada stated (August 2020) that all the cases were processed in CPC, Bengaluru and due to unknown technical glitches, penalty was not imposed by CPC.
- c. In Maharashtra, the ITO (E), Ward 1(3), Mumbai stated (September 2020) that penalty under Section 272A(2)(e) is not a mandatory provision; the Addl. CIT/JCIT in his wisdom decides imposition of penalty after considering the facts and circumstances of case.

The reply of the Department is not acceptable as Section 139(4A) and (4C) are specific Sections applicable to charitable Trusts/Institutions which mandates filing return of income within due date under Section 139(1) and Section 272A(2)(e) provides that 'the penalty shall be levied' makes it amply clear that it is a mandatory provision and not a discretionary provision.

Reply of the Ministry was awaited (February 2022).

6.10 Other deficiencies noticed in assessment

Audit noticed 34 assessment cases¹⁰⁴ involving tax effect of ₹ 43.30 crore, where the AO did not comply with the provisions of the Act such as income from business not computed and taxed separately, grant of exemption for capitation fee/development fee collected, allowance of application made of past accumulation, non-investment of trusts fund in specified mode etc.

Three issues relating to non-compliance are illustrated below:

6.10.1 Irregular allowance of exemption under Section 10(23C)(via)

Section 10(23C)(via) provides that income of any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for the purposes of profit, and which may be approved by the prescribed authority, shall not be included in computing the total income of a previous year.

In Rajasthan, CIT(E), Jaipur charge, a private trust engaged in the activity of 'Relief of the poor', filed return of income for AYs 2016-17 and 2017-18 at ₹ 'Nil' income. The scrutiny assessments for the AY 2016-17 and AY 2017-18 were completed in November 2018 and December 2019 respectively at ₹ 'Nil' income for both the years after allowing exemption under Section 10(23C)(via). Audit observed that the Trust was engaged in the activities of running of hospital and two educational institutions namely (i) 'S' Nursing School and (ii) 'T' College of Nursing. Thus, the Trust was not existing solely for the purposes covered under Section 10(23C)(via), and hence, was not eligible for exemption. This resulted in irregular allowance of exemption involving tax effect of ₹ 0.92 crore and ₹ 1.76 crore for the AY 2016-17 and AY 2017-18 respectively.

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

6.10.2 Incorrect allowance of Exemption

Section 11(4A) of the Act provides that sub-Section (1) or sub-Section (2) or sub-Section (3) or sub-Section (3A) of Section 11 shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business.

¹⁰⁴ Andhra Pradesh -1, Jharkhand -2, Delhi -1, Gujarat -4, Himachal Pradesh -1, Jammu -6, Karnataka -3, Maharashtra -2, Odisha -2, Punjab -4, Rajasthan -4, Uttar Pradesh-1 and West Bengal -3.

In Andhra Pradesh, in CIT(E) Hyderabad Charge, a private entity, filed return of income for AY 2016-17 at ₹ 'Nil' income and scrutiny assessment was completed in December 2018 determining ₹ 'Nil' income. The assessee is engaged in the activity of running educational institutions and registered under Section 12AA of the Act. The gross receipt of the trust during the year was ₹ 196.94 crore and this was selected as 'Top 200' case in the sample for the PA. Audit observed that the assessee had earned a profit of ₹ 8.94 crore, through the activities of purchase and sale of books and providing transport facilities to students of the institution as well as also to the students of another trust, namely 'N₈' Educational Trust. According to the aforesaid provision of the Act, profits and gains of the business, incidental to the attainment of the objectives of the trust, shall only be eligible for exemption, under the category of charity. However, in the instant case, the assessee earned profit by extending these services to 'N₈' Educational Trust. As such, the profit earned on the above services to 'N₈' Educational Trust was not solely incidental to the objectives of the institution and should have been disallowed, treating it as business income not incidental to the objective of the institution. The omission resulted in under-assessment of income to that extent, with consequential short demand of ₹ 4.11 crore.

Reply of the Ministry was awaited (February 2022).

6.10.3 Irregular allowance of exemption on Development fee

Section 11(1)(d) of the Act provides that income in the form of voluntary contributions made with specific direction shall only form part of the corpus of the trust or institutions and the same shall not be included in the total income of the previous year of the trust in receipt of the income. Development fees, collected by educational institutions from their students are compulsory charges in the nature of fee, for studying and continuing studies in the institutions. Therefore, they cannot be classified as capital in nature for specific purpose or part of the Corpus fund.

In Odisha, under CIT(E) Hyderabad Charge, a private trust, filed return of income for AY 2016-17 at ₹ 'Nil' income and scrutiny assessment was completed in December 2018 at ₹ 'Nil' income. The assessee is engaged in the activity of running educational institutions and registered under Section 12AA of the Act. The gross receipt of the trust during the year was ₹ 628.20 crore and this was selected as 'Top 200' in the sample for the PA. Audit noticed that though 'Development fee' of ₹ 69.58 crore was collected by the assessee from the students, the same was not shown as income. Further, the claim of 'Corpus donation' of ₹ 70.20 crore was accepted as such, though no documents were produced by the assessee to show that the above donations were specifically authorized for the 'Corpus Fund' and claim of ₹ 2.52 crore towards 'Capital expenditure (fixed assets)' was allowed, though the same were acquired through

bank loans. This resulted in short levy/excess refund of tax of ₹ 12.25 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.

6.11 Conclusion

Audit noticed deficiencies in the assessment and noted instances of irregular grants of exemption under different provisions of the Act, incorrect computation of income and its application. There were instances of irregular allowance of accumulation, allowance of exemption although income or property of the trust was utilised for the benefit of persons having substantial interest and irregular grants of double benefit of exemption on the same amount due to allowance of depreciation on assets whose acquisition had already been claimed as application of income and allowance of expenditure from corpus/earmarked funds as application of income. Further, there were cases of incorrect computation of income and tax/surcharge/interest and non-levy of penalty for late filing of ITR.

6.12 Summary of Recommendations

Audit recommends that:

- (i) **ITD may strengthen its assessment procedure for Trusts/Institutions to ensure correct computation of income and its application, and avoidance of double benefit to the trusts as per the existing provisions of the Act.**

(Paragraphs 6.2.1, 6.2.2, 6.5.1 and 6.5.2)

In reply, the CBDT stated that the earlier system of computation of income of the assesses after verifying with old records has been now revamped with a new application for assessment functions called 'Income Tax Business Application' (ITBA) in which the AO is required to follow a more detailed and comprehensive approach while making addition/disallowance to compute taxable income and as a result of these systemic developments, computation errors can be avoided. Further, the Department has introduced the Faceless Assessment Scheme, 2019, presently incorporated in Section 144B of the IT Act to provide that all the assessment proceedings, including the scrutiny assessments of cases related to Trusts/Institutions, are conducted electronically in a faceless manner, through team-based assessment wherein specialised units such as Assessment Units, Verification Units, Technical Units and Review Units have been put in place for optimum utilization of the resources. Under this team-based assessment procedure, the Assessment Unit can request verification by the Verification Unit and seek technical assistance from the Technical Unit in order to prepare a

speaking order to facilitate an error-free assessment order. Finance Bill, 2022 has also proposed amendment in the Section 144B for hearing through Video Conferencing if requested by an assessee which will result in seamless and efficient implementation of Faceless Assessment.

Reply of the CBDT is not tenable as Audit noticed errors in computation of income and tax in the assessment orders passed through the ITBA system. Audit will await the final outcome of the efforts made by the CBDT to streamline the assessment procedure through Faceless Assessment Scheme, 2019 and its proposed amendments in Finance Bill, 2022.

(ii) ITD may strengthen its assessment procedure for Trusts/Institutions to ensure that no exemption is granted when income or property of the trust is utilised for the benefit of persons having substantial interest.

(Paragraph 6.4)

In reply, the CBDT stated that the earlier system of computation of income of the assesses after verifying with old records was prone to errors and has been now revamped with a new application for assessment functions called 'Income Tax Business Application' (ITBA) in which the AO is required to follow a more detailed and comprehensive approach while making addition/disallowance to compute taxable income and as a result of these systemic developments, computation errors can be avoided.

The E-assessment Scheme, 2019 was amended and renamed as Faceless Assessment Scheme, 2019, which is presently incorporated in Section 144B of the IT Act, provides that all the assessment proceedings, including the scrutiny assessments of cases related to Trusts/Institutions, are conducted electronically in a faceless manner, through team-based assessment. Specialised units such as Assessment Units, Verification Units, Technical Units and Review Units have been put in place for optimum utilization of the resources through economies of scale and functional specialization. Under this team-based assessment procedure, the Assessment Unit can request verification by the Verification Unit and seek technical assistance from the Technical Unit in order to prepare a speaking order to facilitate an error-free assessment order. Vide the Finance Bill, 2022, the procedure has been proposed to be amended to provide for hearing through Video Conferencing when requested by an assessee.

Further, Finance Bill, 2022 has proposed a new Section 115BBI in the IT Act to provide that trusts where income or property of a Trust/Institution, registered/approved under Section 12AA/10(23C), is utilised for the benefit of persons having substantial interest, as specified under Section 13, such unreasonable benefit shall be deemed to be the income of such person of the

previous year in which it is so applied and shall be taxable at the rate of 30 per cent.

Finance Bill, 2022 has also proposed a new Section 271AAE in the IT Act to provide that in case of violation of provision of Section 115BBI mentioned above, the AO may levy penalty of:

- (a) a sum equal to the aggregate amount of income applied, directly or indirectly, for the benefit of persons having substantial interest, where the violation is noticed for the first time during any previous year; and
- (b) a sum equal to two hundred per cent of the aggregate amount of income applied, directly or indirectly, for the benefit of persons having substantial interest, where violation is noticed again in any subsequent previous year.

The above proposed provisions aim to provide a deterrence as well as provide clarity and certainty in the manner of taxation in the scenario when unreasonable benefit is passed on by a trust or institution which is exempt under the Income-tax Act to a person having substantial interest.

Audit has noted from the reply of the CBDT that various proposals have been made by the CBDT in the current Finance Bill 2022. Audit will await the final outcome of the proposal approved and implemented by the CBDT. However, the CBDT has to ensure that no income or property of the Trust/Institution is utilized for the benefit of persons having substantial interest.

(iii) ITD may ensure that the CPC-ITR System automatically levies penalty for delay in filing of return at the time of processing of ITRs itself.

(Paragraph 6.9)

In reply, the CBDT stated that in order to ensure that return is filed within the due date. Finance Act, 2017 inserted Section 234F in the Income-tax Act, 1961 (the Income-tax Act) to provide for a levy of a fee in case of delayed furnishing of return of income. The said Section has subsequently been amended vide Finance Act, 2021 to provide that a late fee of ₹ 5000/- is to levied for a delayed filing of return of income. It may be noted that such late fee is levied at the time of submission of the return and hence is levied even before the return is processed.

As regards the penalty under clause (e) of sub-Section (2) of Section 272A, regarding penalty for failure to furnish the return of income under sub-Section (4A) or sub-Section (4C) of Section 139 within the permitted time, it may be noted that the said penalty can only be imposed after giving an opportunity to be heard to the assessee, as the processing of return is an automated process, it is not feasible to be impose the said penalty at the time of filing of the return of income.

Further Section 273B provides that no penalty under, inter-alia, sub-Section (2) of Section 272A shall be imposable if the assessee proves there was a reasonable cause for the failure.

As the processing of return by the Centralised Processing Centre is an automated process, it will not be possible for the assessee to prove a reasonable cause of failure at the time of processing of ITR. This is also in line with the principle of natural justice that show cause notice is given before imposition of penalty.

Moreover, as per the provisions of clause (ba) of sub-Section (1) of Section 12A of the Income-Tax Act, the exemption under Sections 11 and 12 is denied if the ITR is not filed by the trust or institution within time. Similar provisions have been proposed vide Finance Bill, 2022 for the trusts or institutions approved under sub clauses (iv), (v), (vi), (via) of clause (23C) of Section 10 by way of insertion of 20th proviso to the said clause.

Audit does not deny that the assessee should be given natural justice by providing an opportunity to be heard and to prove a reasonable cause of failure. Audit's intention is that penalty proceedings may be initiated automatically through ITD system subsequent to processing of ITR and notice in this regard may be issued to the assessee through the system itself.

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:

| 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:

| 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 assessee 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

Appendices

Appendix 1.1

(Refer Para no. 1.2.1)

Assessment Process

(a) Return of income:

Section 139(4A) provides that every person who is in receipt of income derived from property held under trust or other legal obligation wholly for or charitable purposes or religious purposes, or in part only for such purposes; or income by way of voluntary contribution on behalf of such trust or institution for which he is taxable, must file a return of income, if such income (computed before allowing any exemption under Sections 11 and 12) exceeds the maximum amount not chargeable to income tax. Section 139(4C) provides for compulsory filing of return by the institutions, if income (before giving effect to the provisions of Section 10) exceeds the maximum amount not chargeable to income tax.

(b) Summary processing {Section 143(1), 143(1A), 143(1B)}

In summary assessment, ITRs are checked for arithmetical accuracy, internal consistency etc. During processing of ITRs, information provided by the assessee are cross checked with the information available in the ITD systems vide Form 26AS, Annual Information Report (AIR), tax credits in Online Tax Accounting System (OLTAS), previous processed returns etc. and necessary adjustments, if required are made by the system itself without calling for records and information from the assessee. Thus, summary processing is non-intrusive in nature. However, if the systems detect any mismatch of information, the assessee is intimated through a system-generated communication and subsequently assessee makes its submission through the system only. After processing, if there is any demand due from the assessee, it is intimated through system generated demand notices. In case of excess payment of tax, refunds are issued through the Refund Banker Scheme, except in some exceptional cases wherein refund is allowed in manual mode.

The Centralized Processing Centre – Income Tax Return (CPC-ITR), Bengaluru was meant for processing of electronically filed ITRs in an automated environment. Further, in order to bring all the business processes of the Department in automated environment and to provide all the services to the end-users through a 'Single Window Interface/departmental portal', the Department introduced a new application named Income Tax Business Application (ITBA) in year 2018. Post introduction of ITBA, the CPC-ITR application was integrated with this new application through interface and continued to be used for processing of ITRs along-with other additional functionalities such as computation of tax for scrutiny assessment/rectification etc.

(c) Scrutiny Assessment

The Income Tax Returns filed by the assessee are selected for detailed scrutiny through Computer Aided Scrutiny Selection (CASS). Some cases are also selected manually by the Assessing Officer as per CBDT guidelines. The Act provides for two types of regular scrutiny assessments: (a) Assessment under Section 143(3) which is framed after affording opportunity to the assessee and taking all relevant facts and responses of the assessee on record. (b) Assessment under Section 144 (Best Judgment Assessment) is framed when, despite notices, the assessee does not respond and forgoes the opportunities to file a response. In addition to the above, scrutiny block assessments are conducted in cases of search cases (Section 153A/153C).

In scrutiny assessment, the Assessing Officer (AO) retrieves all records and information related to the assessee available with the ITD and additionally calls for record and Information from the assessee to satisfy himself that no income has been unaccounted and tax has been computed correctly. The Act prescribes time lines for issue of notices and completion of assessment proceedings. The AO finalises the assessment proceedings.

(d) Rectification of mistake

After processing of ITRs, if any mistake is noticed by the Department the processed order is rectified *suo-moto* and in case, if a request is made by the assessee, the same is rectified by passing order under Section 154 through CPC-ITR, Bengaluru except in some exceptional cases where rectification order is passed by the jurisdictional AO.

(e) Income escaping assessment

If the AO has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may assess or reassess such income and also any other income chargeable to tax which comes to his notice subsequently in the course of the reassessment subject to the provisions of the Act (Section 147).

(f) Revision of orders

The CIT/PCIT may direct the AO to enhance or modify an assessment, or to cancel an assessment and to do a fresh assessment, under Section 263/264 if he considers any order passed by the AO is erroneous, subject to provisions of the Act.


(g) Appeal Process

An aggrieved assessee can appeal to the Commissioner of Income Tax (Appeals) against the order of an AO, who shall comply with the directions given in the

appellate order. Further, appeal is also permitted to be made on questions of fact and law to the Income Tax Appellate Tribunal against the orders passed by appellate authorities. An appeal can be preferred to the High Court under Section 260A if any issue has not been considered or wrongly considered by the Appellate Tribunal and also to the Supreme Court under Section 261 in any case which the High Court certifies to be a fit one for appeal thereto.

(h) Penalty

In order to ensure compliance of the provisions of the Act and to have a deterrent effect for violations, the Act provides for exhaustive procedures for the imposition of penalty. Section 272A(2)(e) of the Act, provides that if any person fails to furnish the return of income which he is required to furnish under sub-Section (4A) or (4C) of Section 139 or to furnish it within the time allowed and in the manner required under those sub-Sections, he shall pay, by way of penalty, a sum of one hundred rupees for every day during which the failure continues.



Appendix 2.1

(Refer Para no. 2.5 and 4.3.7.2)

Non-Production of Top 200 cases of Audit Sample

| Sl. No. | OFFICE | CIT Name | AY | Gross Receipt (₹ in crore) | Section under which assessed | Exemption granted (₹ in crore) |
|---------|-------------|--------------------------------|---------|-------------------------------|------------------------------|-----------------------------------|
| 1 | MUMBAI | Pr. CIT (Central)-1 Mumbai | 2015-16 | 374.38 | 143(3) | 335.08 |
| 2 | MUMBAI | CIT (Exemption) Mumbai | 2014-15 | 194.56 | 154 | 194.56 |
| 3 | CHANDIGARH | CIT (Exemption) Chandigarh | 2015-16 | 242.79 | 143(3) | 238.18 |
| 4 | BHUBANESWAR | CIT (Exemption) Hyderabad | 2016-17 | 166.04 | 154 | 166.04 |
| 5 | BHUBANESWAR | Pr. CIT -1 Bhubaneswar | 2016-17 | 203.24 | 143(3) | 203.24 |
| 6 | AHMEDABAD | CIT (Exemption) Ahmedabad | 2016-17 | 735.25 | 154 | 735.25 |
| 7 | MUMBAI | CIT (Exemption) Pune | 2015-16 | 174.44 | 143(3) | 174.44 |
| 8 | MUMBAI | CIT (Exemption) Pune | 2016-17 | 350.61 | 143(3) | 350.60 |
| 9 | BANGALORE | CIT (Exemption) Bengaluru | 2016-17 | 278.61 | 154 | 0.00 |
| 10 | HYDERABAD | CIT (Exemption) Hyderabad | 2016-17 | 199.86 | 154 | 0.00 |
| 11 | MUMBAI | Pr. CIT (Central)-3, Mumbai | 2015-16 | 2,174.51 | 143(3) | 1,358.64 |
| 12 | MUMBAI | Pr. CIT (Central)-3, Mumbai | 2016-17 | 3,824.81 | 143(3) | 840.01 |
| 13 | MUMBAI | CIT (Exemption) Mumbai | 2015-16 | 630.68 | 154 | 630.68 |
| 14 | MUMBAI | Pr. CIT-21 Mumbai | 2016-17 | 158.60 | 143(3) | 158.60 |
| 15 | BANGALORE | CIT (Exemption) Bengaluru | 2016-17 | 264.36 | 154 | 0.00 |
| 16 | HYDERABAD | CIT (Exemption) Hyderabad | 2014-15 | 524.55 | 154 | 515.49 |
| 17 | JAIPUR | CIT (Exemption) Jaipur | 2014-15 | 201.58 | 154 | 201.58 |

Appendix 3.1

{Refer Para no 3.3(i)}

Status of action taken by the Department and Audit comments thereon in respect of follow-up audit of 'Exemptions to Charitable Trusts and Institutions' included in Chapter VI of the Compliance Audit Report No. 9 of 2019 (Direct Taxes)

| Sl. No. | Name of the Assessee | AY | Para no. of Report No. 9 of 2019 | Gist of the audit observation | Tax effect (₹ in crore) | Action taken by the ITD and Audit comments thereon |
|---|---------------------------|--------------------|----------------------------------|---|-------------------------|--|
| (i) Cases where the audit observations were accepted by the Ministry | | | | | | |
| 1. | O ₁ Foundation | 2014-15 | 6.3 | Income/ property of institutions were diverted to related group trust in contravention of provision of Section 13(1)(c)(ii). | 24.61 | Partially accepted by the Ministry and remedial action was taken under Section 143(3) read with Section 263 in December 2019. No further comments offered to the Ministry. |
| 2. | P ₃ Hospital | 2014-15 | 6.8 | Voluntary contribution including foreign currency donation was considered as corpus fund without specific direction of donor. | 13.17 | Partially accepted by the Ministry and remedial action was taken under Section 143(3) read with Section 263 in December 2019. No further comments offered to the Ministry. |
| 3. | S ₁ Sangh | 2012-13 to 2014-15 | 6.9.2 | The trust had not been applying income for charity and rather accumulating it by misusing the provision of accumulation. | - | Partially accepted by the Ministry and remedial action was taken under Section 263 in December 2019. No further comments offered to the Ministry. |

Appendix 3.2

{Refer Para no 3.3(ii)(a)}

Status of action taken by the Department and Audit comments thereon in respect of follow-up audit of 'Exemptions to Charitable Trusts and Institutions' included in Chapter VI of the Compliance Audit Report No. 9 of 2019 (Direct Taxes)

| (ii) Cases where the audit observations were not accepted by the Ministry | | | | | | |
|--|-----------------------------|-----------|---|--|--------------------------------|--|
| (a) Case where audit observation was not accepted by the Ministry and Audit offered no further comments to the Ministry | | | | | | |
| Sl. No. | Name of the Assessee | AY | Para no. of Report No. 9 of 2019 | Gist of the audit observation | Tax effect (₹ in crore) | Action taken by the ITD and Audit comments thereon |
| 1. | P ₂ Foundation | 2012-13 | 6.6.1 | The assessee invested in shares of its group of companies, which is a prohibited mode under Section 13(1)(d)(iii) read with Section 11(5). | - | The Ministry did not accept the audit observation. No further comments offered to the Ministry. However, the Ministry need to review the continuity of exemption provisions for investment by such trusts prior to 1.6.1973. |

Appendix 3.3

{Refer Para no 3.3(ii)(b)}

Status of action taken by the Department and Audit comments thereon in respect of follow-up audit of 'Exemptions to Charitable Trusts and Institutions' included in Chapter VI of the Compliance Audit Report No. 9 of 2019 (Direct Taxes)

| (b) Cases where audit observations were not accepted by the Ministry and Audit did not accept the replies of the Ministry | | | | | | |
|--|----------------------------|---------|----------------------------------|--|-------------------------|---|
| Sl. No. | Name of the Assessee | AY | Para no. of Report No. 9 of 2019 | Gist of the audit observation | Tax effect (₹ in crore) | Action taken by the ITD and Audit comments thereon |
| 1. | M ₇ Association | 2014-15 | 6.9.1 | ITD cancelled the registration of the trust but audit could not ascertain whether the Department taxed the accumulation on cancellation of registration. | - | The Ministry did not accept the audit observation. The reply of the Ministry was not tenable as per the provisions of Section 11(3) of the Income Tax Act, which stipulates that the accumulated income under Section 11(2) shall be deemed to the income of such person of the previous year in which it is applied for the purpose other than charitable or religious purposes. In view of the above, the Ministry was asked to reconsider its reply. Further reply was awaited. From field verification, Audit noticed that no further action was initiated by the Department (March 2022). |
| 2. | M ₈ Authority | 2014-15 | 6.9.1 | ITD cancelled the registration of the trust but audit could not ascertain whether the Department taxed the accumulation on cancellation of registration. | - | The Ministry did not accept the audit observation. The Ministry was asked to furnish the copy of Ministry's decision for accepting the High Court's decision in support of its reply, which was awaited. However, from field verification, Audit noticed from the Assessment order of AY 2016-17 that the assessment was completed by disallowing exemptions and assessing income as business income in December 2018. Also, it was |

| (b) Cases where audit observations were not accepted by the Ministry and Audit did not accept the replies of the Ministry | | | | | | |
|--|----------------------------|---------|----------------------------------|--|-------------------------|--|
| Sl. No. | Name of the Assessee | AY | Para no. of Report No. 9 of 2019 | Gist of the audit observation | Tax effect (₹ in crore) | Action taken by the ITD and Audit comments thereon |
| | | | | | | mentioned in the assessment order that if deduction under Section 11 was allowed to the assessee in appeal, the exemptions will be allowed as per provisions of the Act. |
| 3. | S ₆ Authority | 2014-15 | 6.9.1 | ITD cancelled the registration of the trust but audit could not ascertain whether the Department taxed the accumulation on cancellation of registration. | - | <p>The Ministry did not accept the audit observation stating that registration of the trust has been cancelled after invoking the proviso to Section 2(15) vide order dated 27.03.2014. The assessee has filed an appeal before ITAT against the said order, which is pending for disposal. Exemption under Section 11 has been denied to the assessee from AY 2009-10 onwards.</p> <p>The Ministry was requested to furnish reply in respect of taxation of income accumulated or set apart under Section 11(2) for future application on charitable purpose as per provision of Section 11(3), which was awaited.</p> <p>However, from field verification, Audit noticed from the Assessment order of AY 2016-17 that the assessment was completed by disallowing exemptions and assessing income as business income in December 2018. Also, it was mentioned in the assessment order that if deduction under Section 11 was allowed to the assessee in appeal, the exemptions will be allowed as per provisions of the Act.</p> |
| 4. | M ₅ Corporation | 2014-15 | 6.9.1 | The Department has held the | - | The Ministry did not accept the audit observation stating that |

| (b) Cases where audit observations were not accepted by the Ministry and Audit did not accept the replies of the Ministry | | | | | | |
|--|--------------------------|---------|----------------------------------|--|-------------------------|---|
| Sl. No. | Name of the Assessee | AY | Para no. of Report No. 9 of 2019 | Gist of the audit observation | Tax effect (₹ in crore) | Action taken by the ITD and Audit comments thereon |
| | | | | activities of the trust as non-charitable for the purpose of the Act, but the registration under Section 12A of these Trusts had not been cancelled. | | Hon'ble Bombay High Court, vide its decision in case of Goa Industrial Development Corporation vs. CIT has held that merely because the activities of the appellant were covered under the proviso to Section 2(15), that by itself would not render activities of the appellant as non-genuine activities so as to entitle commissioner to exercise power under Section 12AA(3) to cancel registration. Hence, the cancellation was not justified. However, from field verification, Audit noticed that in respect of AY 2014-15, Hon'ble ITAT has dismissed the revenue appeal vide order dated 21.05.2021. Further, from the Assessment order of AY 2016-17 Audit noticed that the assessment was completed by disallowing exemptions and assessing income as business income in December 2018. Also, it was mentioned in the assessment order that if deduction under Section 11 was allowed to the assessee in appeal, the exemptions will be allowed as per provisions of the Act. The reply of the Ministry was awaited. |
| 5. | M ₆ Authority | 2014-15 | 6.9.1 | The Department has held the activities of the Trust as non-charitable for the purpose of the Act, but the registration under Section 12A | - | The Ministry did not accept the audit observation stating that Hon'ble Bombay High Court, vide its decision in case of Goa Industrial Development Corporation vs. CIT has held that merely because the activities of the appellant were covered under the proviso to Section |

| (b) Cases where audit observations were not accepted by the Ministry and Audit did not accept the replies of the Ministry | | | | | | |
|--|----------------------------|---------|----------------------------------|--|-------------------------|--|
| Sl. No. | Name of the Assessee | AY | Para no. of Report No. 9 of 2019 | Gist of the audit observation | Tax effect (₹ in crore) | Action taken by the ITD and Audit comments thereon |
| | | | | of these Trusts had not been cancelled. | | 2(15), that by itself would not render activities of the appellant as non-genuine activities so as to entitle commissioner to exercise power under Section 12AA(3) to cancel registration. Hence, the cancellation was not justified. However, from field verification, Audit noticed that for AY 2014-15, the Hon'ble ITAT has allowed the assessee appeal vide order dated 23.11.2020. Further, from the Assessment order of AY 2016-17 Audit noticed that the assessment was completed by disallowing exemptions and assessing income as business income in December 2018. Also, it was mentioned in the assessment order that if deduction under Section 11 was allowed to the assessee in appeal, the exemptions will be allowed as per provisions of the Act. The reply of the Ministry was awaited. |
| 6. | M ₄ Corporation | 2014-15 | 6.9.1 | The Department has held the activities of the Trust as non-charitable for the purpose of the Act, but the registration under Section 12A of these Trusts had not been cancelled. | - | The Ministry did not accept the audit observation stating that Hon'ble Bombay High Court, vide its decision dated 20.01.2020, has held that where no findings had been recorded by Director that activities of assessee Trust were not genuine or that activities were not being carried out in accordance with objects of Trust, while cancelling the registration granted to assessee Trust on ground that it was directly hit by proviso to Section 2(15). Hence, the cancellation was not justified. |

| (b) Cases where audit observations were not accepted by the Ministry and Audit did not accept the replies of the Ministry | | | | | | |
|--|----------------------|---------|----------------------------------|--|-------------------------|--|
| Sl. No. | Name of the Assessee | AY | Para no. of Report No. 9 of 2019 | Gist of the audit observation | Tax effect (₹ in crore) | Action taken by the ITD and Audit comments thereon |
| | | | | | | However, from field verification, Audit noticed from the Assessment order of AY 2016-17 that the assessment was completed by disallowing exemptions and assessing income as business income in December 2018. The reply of the Ministry was awaited. |
| 7. | N7 Trust | 2014-15 | 6.9.1 | The Department has held the activities of the Trust as non-charitable for the purpose of the Act, but the registration under Section 12A of these Trusts had not been cancelled. | - | The Ministry did not accept the audit observation stating that Hon'ble Bombay High Court, vide its decision dated 20.01.2020, has held that where no findings had been recorded by Director that activities of assessee Trust were not genuine or that activities were not being carried out in accordance with objects of Trust, while cancelling the registration granted to assessee Trust on ground that it was directly hit by proviso to Section 2(15). Hence, the cancellation was not justified. However, from field verification, Audit noticed that for AY 2014-15, the Hon'ble ITAT has allowed the assessee appeal in respect of exemptions vide order dated 11.01.2021. Further, from the Assessment order of AY 2016-17 Audit noticed that the assessment was completed by disallowing exemptions and assessing income as business income in November 2018. The AO also mentioned in the assessment order that in the earlier years, the income of the assessee had been treated to be not charitable and exemption |

| (b) Cases where audit observations were not accepted by the Ministry and Audit did not accept the replies of the Ministry | | | | | | |
|--|----------------------|---------|----------------------------------|--|-------------------------|---|
| Sl. No. | Name of the Assessee | AY | Para no. of Report No. 9 of 2019 | Gist of the audit observation | Tax effect (₹ in crore) | Action taken by the ITD and Audit comments thereon |
| | | | | | | under Section 11 had been denied for which the assessee was in appeal. The reply of the Ministry was awaited. |
| 8. | N ₅ Fund | 2014-15 | 6.9.1 | The Department has held the activities of the Trust as non-charitable for the purpose of the Act, but the registration under Section 12A of these Trusts had not been cancelled. | - | The Ministry did not accept the audit observation stating that Hon'ble Bombay High Court, vide its decision in case of Goa Industrial Development Corporation vs. CIT has held that merely because the activities of the appellant were covered under the proviso to Section 2(15), that by itself would not render activities of the appellant as non-genuine activities so as to entitle commissioner to exercise power under Section 12AA(3) to cancel registration. Hence, the cancellation was not justified. However, from field verification, Audit noticed that for AY 2014-15, the appeal of the assessee is pending before CIT (Appeals). Further, Audit noticed from the Assessment order of AY 2016-17 that the assessment was completed by disallowing exemptions and assessing income as business income in December 2018. Also, it was mentioned in the assessment order that if deduction under Section 11 was allowed to the assessee in appeal, the exemptions will be allowed as per provisions of the Act. The reply of the Ministry was awaited. |
| 9. | T ₈ Fund | 2014-15 | 6.9.1 | The Department has held the activities of the | - | The Ministry did not accept the audit observation stating that Hon'ble Bombay High Court, vide |

| (b) Cases where audit observations were not accepted by the Ministry and Audit did not accept the replies of the Ministry | | | | | | |
|--|----------------------|---------|----------------------------------|--|-------------------------|--|
| Sl. No. | Name of the Assessee | AY | Para no. of Report No. 9 of 2019 | Gist of the audit observation | Tax effect (₹ in crore) | Action taken by the ITD and Audit comments thereon |
| | | | | Trust as non-charitable for the purpose of the Act, but the registration under Section 12A of these Trusts had not been cancelled. | | its decision dated 20.01.2020, has held that where no findings had been recorded by Director that activities of assessee Trust were not genuine or that activities were not being carried out in accordance with objects of Trust, while cancelling the registration granted to assessee Trust on ground that it was directly hit by proviso to Section 2(15). Hence, the cancellation was not justified. However, from field verification, Audit noticed that for AY 2014-15, the appeal of the assessee is pending before CIT (Appeals). Further, Audit noticed from the Assessment order of AY 2016-17 that the assessment was completed by disallowing exemptions and assessing income as business income in December 2018. The reply of the Ministry was awaited. |
| 10. | S7 Society | 2014-15 | 6.9.1 | The Department has held the activities of the Trust as non-charitable for the purpose of the Act, but the registration under Section 12A of these Trusts had not been cancelled. | - | The Ministry did not accept the audit observation stating that Hon'ble Bombay High Court, vide its decision dated 20.01.2020, has held that where no findings had been recorded by Director that activities of assessee Trust were not genuine or that activities were not being carried out in accordance with objects of Trust, while cancelling the registration granted to assessee Trust on ground that it was directly hit by proviso to Section 2(15). Hence, the cancellation was not justified. |

| (b) Cases where audit observations were not accepted by the Ministry and Audit did not accept the replies of the Ministry | | | | | | |
|--|----------------------------|---------|----------------------------------|--|-------------------------|--|
| Sl. No. | Name of the Assessee | AY | Para no. of Report No. 9 of 2019 | Gist of the audit observation | Tax effect (₹ in crore) | Action taken by the ITD and Audit comments thereon |
| | | | | | | However, from field verification, Audit noticed that for the AY 2014-15 appeal of the assessee is pending before CIT (Appeals). Further, Audit noticed from the Assessment order of AY 2016-17 that the assessment was completed by disallowing exemptions and assessing income as business income in December 2018. Also, it was mentioned in the assessment order that if the assessee succeeds in appeal, the income was to be computed under Section 11. The reply of the Ministry was awaited. |
| 11. | N ₂ Institution | 2014-15 | 6.9.1 | The Department has held the activities of the Trust as non-charitable for the purpose of the Act, but the registration under Section 12A of these Trusts had not been cancelled. | - | The Ministry did not accept the audit observation stating that Hon'ble Bombay High Court, vide its decision dated 20.01.2020, has held that where no findings had been recorded by Director that activities of assessee Trust were not genuine or that activities were not being carried out in accordance with objects of Trust, while cancelling the registration granted to assessee Trust on ground that it was directly hit by proviso to Section 2(15). Hence, the cancellation was not justified. However, from field verification, Audit noticed that for AY 2014-15, the Hon'ble ITAT has allowed the assessee's appeal and remitted back issue to the CIT (Appeal) vide order dated 02.08.2019. Further, Audit noticed from the Assessment |

| (b) Cases where audit observations were not accepted by the Ministry and Audit did not accept the replies of the Ministry | | | | | | |
|--|----------------------------|---------|----------------------------------|--|-------------------------|--|
| Sl. No. | Name of the Assessee | AY | Para no. of Report No. 9 of 2019 | Gist of the audit observation | Tax effect (₹ in crore) | Action taken by the ITD and Audit comments thereon |
| | | | | | | order of AY 2016-17 that the assessment was completed by disallowing exemptions and assessing income as business income in December 2018. Also, it was mentioned in the assessment order that if deduction under Section 11 was allowed to the assessee in appeal, the exemptions will be allowed as per provisions of the Act. The reply of the Ministry was awaited. |
| 12. | N ₄ Corporation | 2014-15 | 6.9.1 | The Department has held the activities of the Trust as non-charitable for the purpose of the Act, but the registration under Section 12A of these Trusts had not been cancelled. | - | The Ministry did not accept the audit observation stating that Hon'ble Bombay High Court, vide its decision dated 20.01.2020, has held that where no findings had been recorded by Director that activities of assessee Trust were not genuine or that activities were not being carried out in accordance with objects of Trust, while cancelling the registration granted to assessee Trust on ground that it was directly hit by proviso to Section 2(15). Hence, the cancellation was not justified. However, from field verification, Audit noticed that for AY 2014-15, assessee's appeal is pending before CIT (Appeals). Further, from the Assessment order of AY 2016-17 Audit noticed that the assessment was completed by disallowing exemptions and assessing income as business income in November 2018. The reply of the Ministry was awaited. |
| 13. | T ₆ Trust | 2014-15 | 6.9.1 | The Department has held the | - | The Ministry did not accept the audit observation stating that |

| (b) Cases where audit observations were not accepted by the Ministry and Audit did not accept the replies of the Ministry | | | | | | |
|--|----------------------------|---------|----------------------------------|--|-------------------------|---|
| Sl. No. | Name of the Assessee | AY | Para no. of Report No. 9 of 2019 | Gist of the audit observation | Tax effect (₹ in crore) | Action taken by the ITD and Audit comments thereon |
| | | | | activities of the Trust as non-charitable for the purpose of the Act, but the registration under Section 12A of these Trusts had not been cancelled. | | Hon'ble Bombay High Court, vide its decision dated 20.01.2020, has held that where no findings had been recorded by Director that activities of assessee Trust were not genuine or that activities were not being carried out in accordance with objects of Trust, while cancelling the registration granted to assessee Trust on ground that it was directly hit by proviso to Section 2(15). Hence, the cancellation was not justified. However, from field verification, Audit noticed that for AY 2014-15, Hon'ble ITAT has dismissed revenue appeal vide order dated 04.11.2020. Further, from the Assessment order of AY 2016-17 Audit noticed that the assessment was completed by disallowing exemptions and assessing income as business income in November 2018. The reply of the Ministry was awaited. |
| 14. | N ₁ Institution | 2014-15 | 6.9.1 | The Department has held the activities of the Trust as non-charitable for the purpose of the Act, but the registration under Section 12A of these Trusts had not been cancelled. | - | The Ministry did not accept the audit observation stating that Hon'ble Bombay High Court, vide its decision dated 20.01.2020, has held that where no findings had been recorded by Director that activities of assessee Trust were not genuine or that activities were not being carried out in accordance with objects of Trust, while cancelling the registration granted to assessee Trust on ground that it was directly hit by proviso to Section 2(15). Hence, the cancellation was not justified. |

| (b) Cases where audit observations were not accepted by the Ministry and Audit did not accept the replies of the Ministry | | | | | | |
|--|----------------------|---------|----------------------------------|--|-------------------------|--|
| Sl. No. | Name of the Assessee | AY | Para no. of Report No. 9 of 2019 | Gist of the audit observation | Tax effect (₹ in crore) | Action taken by the ITD and Audit comments thereon |
| | | | | | | <p>However, from field verification, Audit noticed that for AY 2014-15 the Hon'ble ITAT allowed the assessee appeal vide order dated 03.03.2021. Further, from the Assessment order of AY 2016-17 that the assessment was completed by disallowing exemptions and assessing income as business income in December 2018.</p> <p>The reply of the Ministry was awaited.</p> |
| 15. | M ₁ Board | 2014-15 | 6.9.1 | The Department has held the activities of the Trust as non-charitable for the purpose of the Act, but the registration under Section 12A of these Trusts had not been cancelled. | - | <p>The Ministry did not accept the audit observation stating that Hon'ble Bombay High Court, vide its decision in case of Goa Industrial Development Corporation vs. CIT has held that merely because the activities of the appellant were covered under the proviso to Section 2(15), that by itself would not render activities of the appellant as non-genuine activities so as to entitle commissioner to exercise power under Section 12AA(3) to cancel registration. Hence, the cancellation was not justified.</p> <p>However, from field verification, Audit noticed that for AY 2014-15, assessee's appeal is pending with CIT(A).from the Assessment order of AY 2016-17 that the assessment was completed by disallowing exemptions and assessing income as business income in November 2018. Also, it was mentioned in the assessment order that if deduction under Section 11 was</p> |

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| (b) Cases where audit observations were not accepted by the Ministry and Audit did not accept the replies of the Ministry | | | | | | |
|--|-----------------------------|-----------|---|--------------------------------------|--------------------------------|--|
| Sl. No. | Name of the Assessee | AY | Para no. of Report No. 9 of 2019 | Gist of the audit observation | Tax effect (₹ in crore) | Action taken by the ITD and Audit comments thereon |
| | | | | | | allowed to the assessee in appeal, the exemptions will be allowed as per provisions of the Act. The reply of the Ministry was awaited. |

Appendix 3.4

{Refer Para no 3.3. (iii)}

Status of action taken by the Department and Audit comments thereon in respect of follow-up audit of 'Exemptions to Charitable Trusts and Institutions' included in Chapter VI of the Compliance Audit Report No. 9 of 2019 (Direct Taxes)

| iii) Cases where no reply was furnished by the Ministry | | | | | | |
|---|-------------------------|---------|----------------------------------|---|-------------------------|---|
| Cases where the Ministry had not furnished any reply but the Department had taken/initiated remedial action or not accepted the audit observations. | | | | | | |
| Sl. No. | Name of the Assessee | AY | Para no. of Report No. 9 of 2019 | Gist of the audit observation | Tax effect (₹ in crore) | Action taken by the ITD and Audit comments thereon |
| 1. | S ₁₃ Society | 2015-16 | 6.3.1 | The assessee donated ₹ 80.00 crore to related party which was treated as application of income in contravention of provision of Section 13(1)(c)(ii). | 27.19 | <p>Reply was awaited from the Ministry.</p> <p>However, Audit noticed from field verification that CIT (E) Pune, while not accepting the audit observation, stated (September 2021) that assessee had not violated either 12th proviso of Section 10(23C)(vi) or provisions of Section 11(3) of IT Act as the donation of ₹ 80 crore had been made to Symbiosis Foundation, Indore (and not Symbiosis, Pune) and it was made out of revenue income earned by assessee trust during the year and not out of accumulated income of earlier years. Further, provisions of Section 13(3) gets attracted only when any benefit is ensured to the persons referred to in Section 13(3) of the Act.</p> <p>Since, no documentary evidence about treatment of said donation in books of Symbiosis Foundation, Indore and details of its Trustees/settlors had been</p> |

| iii) Cases where no reply was furnished by the Ministry | | | | | | |
|---|-----------------------|---------|----------------------------------|---|-------------------------|---|
| Cases where the Ministry had not furnished any reply but the Department had taken/initiated remedial action or not accepted the audit observations. | | | | | | |
| Sl. No. | Name of the Assessee | AY | Para no. of Report No. 9 of 2019 | Gist of the audit observation | Tax effect (₹ in crore) | Action taken by the ITD and Audit comments thereon |
| | | | | | | provided, therefore, Audit could not verify Department's contention. |
| 2. | S ₁₂ Trust | 2015-16 | 6.3 | The assessee diverted income of the property to the related trust/institution which was considered as application of income | 8.61 | <p>Reply was awaited from the Ministry.</p> <p>However, Audit noticed from field verification that CIT (E) Pune, while not accepting audit objection stated (September 2021) that the claim that the addition to fixed assets on account of gifts/donation of ₹ 25.34 crore has been claimed as application towards objects of the trusts out of accumulated income was factually incorrect. The statement and application of income towards objects of trusts clearly showed that the amount had been reduced/deducted from head of investment in Capital assets out of current income expenditure.</p> <p>The reply was not tenable as Audit contended that the assessee had gifted the properties as donation to another Trust and was making the adjustments towards the accumulated funds showing the expenditure in the current year under the Investments in capital assets. The breakup of the capital expenditure in the</p> |

| iii) Cases where no reply was furnished by the Ministry | | | | | | |
|---|--------------------------|---------|----------------------------------|--|-------------------------|---|
| Cases where the Ministry had not furnished any reply but the Department had taken/initiated remedial action or not accepted the audit observations. | | | | | | |
| Sl. No. | Name of the Assessee | AY | Para no. of Report No. 9 of 2019 | Gist of the audit observation | Tax effect (₹ in crore) | Action taken by the ITD and Audit comments thereon |
| | | | | | | computation of income shows that the additions to fixed assets Land and Building (other immovable properties) were inclusive of the value of the gifted property which was being adjusted against the old accumulation of funds under the respective earmarked funds of Land fund and Campus Building fund. |
| 3. | P ₁ Authority | 2013-14 | 6.4 | Exemptions was allowed to the assessee although activities were not charitable in nature in accordance with Section 2(15). | 5.01 | Reply was awaited from the Ministry. However, Audit noticed from field verification that the CIT (Exemptions), Pune while not accepting audit objection stated (September'2021) that the Assessee authority is State Government run body under Article 243W of the constitution with a mandate to create PIMPRI CHINCHWAD new town with objectives of developing urban housing and infrastructure, regulating land use and constructions, providing leasehold plots for housing to citizens. These objects cannot be termed as 'activity in nature of trade, commerce or activity of rendering any service in relation to any trade, commerce or business. |

| iii) Cases where no reply was furnished by the Ministry | | | | | | |
|---|-----------------------------|---------------------|---|---|--------------------------------|--|
| Cases where the Ministry had not furnished any reply but the Department had taken/initiated remedial action or not accepted the audit observations. | | | | | | |
| Sl. No. | Name of the Assessee | AY | Para no. of Report No. 9 of 2019 | Gist of the audit observation | Tax effect (₹ in crore) | Action taken by the ITD and Audit comments thereon |
| 4. | I ₃ Foundation | 2014-15 and 2015-16 | 6.4 | Exemption was granted to the assessee although the activities of the Trust/Institution was not charitable in nature | 7.22 | Reply was awaited from the Ministry. However, Audit noticed from field verification that CIT (E) Mumbai, while not accepting the audit observation, stated (December 2021) that the main object of the trust included relief of the poor, medical relief, education and other objects of general public utility including to uphold and promote the socio-economic welfare of the under-privileged Section of the society through education, free food among children etc. This clearly shows that supply of mid-day meals is in line with the objects of the Trusts. |
| 5. | T ₇ Trust | 2009-10 | 6.5 | ITD denied exemptions under Section 11, but allowed deductions for expenditure | 4.16 | Reply was awaited from the Ministry. However, Audit noticed from field verification that CIT (E) Mumbai stated in July 2019 that the conclusion of Audit on the fact narrated in objection and tax effect were not acceptable, but there was certainly lack of verification on the part of AO. Therefore, remedial action under Section 263 was initiated by passing order dated 31.03.2019, directing the AO to verify various |

| iii) Cases where no reply was furnished by the Ministry | | | | | | |
|---|---------------------------|---------|----------------------------------|--|-------------------------|--|
| Cases where the Ministry had not furnished any reply but the Department had taken/initiated remedial action or not accepted the audit observations. | | | | | | |
| Sl. No. | Name of the Assessee | AY | Para no. of Report No. 9 of 2019 | Gist of the audit observation | Tax effect (₹ in crore) | Action taken by the ITD and Audit comments thereon |
| | | | | | | issue including the issues raised by Audit. |
| 6. | S ₅ Trust | 2014-15 | 6.5 | ITD denied exemptions under Section 11, but allowed deductions for expenditure | 31.24 | Reply was awaited from the Ministry. However, Audit noticed from field verification that remedial action was taken under Section 263 of the Act by restricting expenditure towards administrative expenses only. |
| 7. | T ₆ Trust | 2009-10 | 6.5 | ITD denied exemptions under Section 11, but allowed deductions for expenditure | 10.85 | Reply was awaited from the Ministry. |
| 8. | T ₆ Trust | 2014-15 | 6.5 | ITD denied exemptions under Section 11, but allowed deductions for expenditure | 24.07 | However, Audit noticed from field verification, while not accepting the audit observation the DCIT (E)(HQ)(Judl.) Mumbai, stated (February 2020) that the expenses related to earning of income were required to be allowed. Further the CIT (Appeals) has allowed the exemptions to the assessee. |
| 9. | A ₁ Foundation | 2014-15 | 6.5 | ITD denied exemptions under Section 11, but allowed deductions for expenditure | 0.68 | Reply was awaited from the Ministry. However, Audit noticed from field verification that CIT (E) Mumbai, while not accepting the audit observation, stated (February 2019) that the AO has denied the exemption of the assessee and treated the assessee's income as a business income and it has rightly been allowed the legitimate expenses. Hence, the assessee trust, |

| iii) Cases where no reply was furnished by the Ministry | | | | | | |
|---|-----------------------|--------------------|----------------------------------|---|-------------------------|--|
| Cases where the Ministry had not furnished any reply but the Department had taken/initiated remedial action or not accepted the audit observations. | | | | | | |
| Sl. No. | Name of the Assessee | AY | Para no. of Report No. 9 of 2019 | Gist of the audit observation | Tax effect (₹ in crore) | Action taken by the ITD and Audit comments thereon |
| | | | | | | being treated as business entity become eligible for deduction of expenditure towards taxes paid to local authority' and 'miscellaneous expenses and others' as per provisions of income tax. The reply was not tenable as exemption was not given as activities were assessed as business activity; therefore, to compute business income, related expenses shall only be allowable as provided in Chapter IV of the Act. |
| 10 | S ₅ Trust | 2013-14 | 6.5 | ITD denied exemptions under Section 11, but allowed deductions for expenditure | 31.12 | Reply was awaited from the Ministry. However, Audit noticed from field verification that remedial action was taken under Section 154 of the Act in July 2018. |
| 11. | B ₁ Bourse | 2013-14 | 6.5 | ITD denied exemptions under Section 11, but allowed deductions for expenditure | 0.60 | Reply was awaited from the Ministry. However, Audit noticed from field verification that remedial action was taken under Section 154 of the Act in April 2019. |
| 12. | J ₁ Trust | 2009-10 to 2014-15 | 6.6.1 | The assessee invested in shares of its group of companies, which is a prohibited mode under Section 13(1)(d)(iii) read with Section 11(5). However, the registration of the | - | Reply was awaited from the Ministry. However, from field verification, Audit noticed that the Registration of the assessee was cancelled by PCIT 17, Mumbai vide order dated 31 October, 2019 with immediate effect. |

| iii) Cases where no reply was furnished by the Ministry | | | | | | |
|---|----------------------|------------------------------|----------------------------------|---|-------------------------|--|
| Cases where the Ministry had not furnished any reply but the Department had taken/initiated remedial action or not accepted the audit observations. | | | | | | |
| Sl. No. | Name of the Assessee | AY | Para no. of Report No. 9 of 2019 | Gist of the audit observation | Tax effect (₹ in crore) | Action taken by the ITD and Audit comments thereon |
| | | | | trusts was not reviewed. | | |
| 13. | N ₆ Trust | 2009-10 to 2014-15 | 6.6.1 | The assessee invested in shares of its group of companies, which was a prohibited mode under Section 13(1)(d)(iii) read with Section 11(5). However, the registration of the Trusts was not reviewed. | - | Reply was awaited from the Ministry. However, from field verification, Audit noticed that the Registration of the assessee was cancelled by PCIT 17, Mumbai vide order dated 31 October, 2019 with immediate effect. |
| 14. | T ₃ Trust | 2009-10 to 2014-15 | 6.6.1 | The assessee invested in shares of its group of companies, which is a prohibited mode under Section 13(1)(d)(iii) read with Section 11(5). However, the registration of the Trusts was not reviewed. | - | Reply was awaited from the Ministry. However, from field verification, Audit noticed that the Registration of the assessee was cancelled by PCIT 17, Mumbai vide order dated 31 October, 2019 with immediate effect. |
| 15. | T ₂ Trust | 2009-10 to 2014-15 | 6.6.1 | The assessee invested in shares of its group of companies, which was a prohibited mode under Section 13(1)(d)(iii) read with Section 11(5). However, the registration of the Trusts was not reviewed. | - | Reply was awaited from the Ministry. However, from field verification, Audit noticed that the Registration of the assessee was cancelled by PCIT 17, Mumbai vide order dated 31 October, 2019 with immediate effect. |
| 16. | S ₅ Trust | 2009-10 & 2011-12 to 2014-15 | 6.6.2 | The assessee hold investment in modes other than those prescribed under | - | Reply was awaited from the Ministry. However, Audit noticed from field verification that remedial |

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| iii) Cases where no reply was furnished by the Ministry | | | | | | |
|---|-----------------------------|------------------------------|---|--|--------------------------------|--|
| Cases where the Ministry had not furnished any reply but the Department had taken/initiated remedial action or not accepted the audit observations. | | | | | | |
| Sl. No. | Name of the Assessee | AY | Para no. of Report No. 9 of 2019 | Gist of the audit observation | Tax effect (₹ in crore) | Action taken by the ITD and Audit comments thereon |
| | | | | Section 11(5) but there was nothing on record to show that the investments were made from corpus /income of the Trusts as on 1.6.1973 or before. | | action was taken under Section 263 of the Act for the AY 2014-15. |
| 17. | S ₄ Trust | 2009-10 to 2014-15 | 6.6.2 | The assessee hold investment in modes other than those prescribed under Section 11(5) but there was nothing on record to show that the investments were made from corpus /income of the trusts as on 1.6.1973 or before. | - | Reply was awaited from the Ministry. However, Audit noticed from field verification that remedial action was taken under Section 263 of the Act for the AY 2014-15. |
| 18. | T ₇ Trust | 2009-10 & 2011-12 to 2014-15 | 6.6.2 | The assessee hold investment in modes other than those prescribed under Section 11(5) but there was nothing on record to show that the investments were made from corpus /income of the Trusts as on 1.6.1973 or before. | - | Reply was awaited from the Ministry. However, Audit noticed from field verification that DCIT (E) 2(1), Mumbai has taken remedial action for AY 2014-15 by passing order under 143(3) read with Section 263 in December 2019. Further, for AY 2013-14 remedial action initiated by issuing notice under Section 148 on 17.03.2020. |
| 19. | T ₁ Trust | 2009-10 to 2014-15 | 6.7 | The exemption granted based on the order of CBDT dated 10 November 2015 was irregular as the reversal of earlier | - | Reply was awaited from the Ministry. However, Audit noticed from field verification, while not accepting the audit observation the Addl. |

| iii) Cases where no reply was furnished by the Ministry | | | | | | |
|---|-----------------------------|-----------|---|--|--------------------------------|---|
| Cases where the Ministry had not furnished any reply but the Department had taken/initiated remedial action or not accepted the audit observations. | | | | | | |
| Sl. No. | Name of the Assessee | AY | Para no. of Report No. 9 of 2019 | Gist of the audit observation | Tax effect (₹ in crore) | Action taken by the ITD and Audit comments thereon |
| | | | | rejected order was erroneous since the Board has no power to review its own earlier rejected order. Further, after the CBDT passed the order, the approach adopted by the AO in granting exemption for different AYs was not consistent as AO granted exemption by passing order under Section 143(3) read with Section 147 in March 2016 for AY 2009-10 and under Section 154 in December 2015 for AY 2011-12 and AY 2012-13. | | CIT (E) Range-2, Mumbai, stated (March 2020) that the foreign remittance were approved by the CBDT order dated 10.11.2015 even for the previous year with effect from AY 2009-10 onwards. |

Appendix 4.1

(Refer Para no 4.1.1)

State wise distribution of Trusts/Institutions claiming exemption

| State-wise distribution of Trust/Institution claimed exemption from AY 2014-15 to AY 2017-18 | | | | | | | |
|--|----------------------------|-------------------------------------|-----------------|-----------------|-----------------|-----------------|--------------------------------|
| Sl. No. | Name of the State | No. of cases (Assessment Year wise) | | | | | Percentage of Total population |
| | | 2014-15 | 2015-16 | 2016-17 | 2017-18 | Total cases | |
| 1 | Andhra Pradesh & Telangana | 7,034 | 8,562 | 10,052 | 9,854 | 35,502 | 5 |
| 2 | Bihar | 3,351 | 3,152 | 3,844 | 3,381 | 13,728 | 2 |
| 3 | Chandigarh | 1,662 | 2,049 | 2,156 | 2,247 | 8,114 | 1 |
| 4 | Chhattisgarh | 960 | 984 | 1,132 | 1,179 | 4,255 | 1 |
| 5 | Delhi | 12,479 | 13,135 | 14,441 | 14,498 | 54,553 | 8 |
| 6 | Goa | 671 | 706 | 842 | 855 | 3,074 | 0 |
| 7 | Gujarat | 22,813 | 23,576 | 26,255 | 25,256 | 97,900 | 14 |
| 8 | Haryana | 3,078 | 3,964 | 4,911 | 4,879 | 16,832 | 2 |
| 9 | Himachal Pradesh | 793 | 902 | 1,053 | 1,035 | 3,783 | 1 |
| 10 | Jammu and Kashmir | 413 | 553 | 653 | 653 | 2,272 | 0 |
| 11 | Jharkhand | 1,833 | 1,806 | 1,977 | 1,886 | 7,502 | 1 |
| 12 | Karnataka | 10,256 | 10,978 | 12,429 | 12,599 | 46,262 | 7 |
| 13 | Kerala | 5,480 | 6,060 | 6,888 | 7,118 | 25,546 | 4 |
| 14 | Madhya Pradesh | 3,582 | 4,277 | 5,128 | 5,087 | 18,074 | 3 |
| 15 | Maharashtra | 24,310 | 27,382 | 31,654 | 31,898 | 1,15,244 | 17 |
| 16 | North Eastern States | 748 | 969 | 1,279 | 1,144 | 4,140 | 1 |
| 17 | Odisha | 2,059 | 2,227 | 2,549 | 2,469 | 9,304 | 1 |
| 18 | Punjab | 2,211 | 2,894 | 3,335 | 3,217 | 11,657 | 2 |
| 19 | Rajasthan | 7,304 | 9,023 | 10,453 | 10,098 | 36,878 | 5 |
| 20 | Tamil Nadu & Puducherry | 15,025 | 17,681 | 20,867 | 20,739 | 74,312 | 11 |
| 21 | Uttar Pradesh | 10,267 | 11,672 | 14,084 | 13,940 | 49,963 | 7 |
| 22 | Uttarakhand | 1,758 | 1,885 | 2,280 | 2,209 | 8,132 | 1 |
| 23 | West Bengal | 9,396 | 10,434 | 11,290 | 10,864 | 41,984 | 6 |
| Total | | 1,47,483 | 1,64,871 | 1,89,552 | 1,87,105 | 6,89,011 | 100 |

Appendix 4.2

(Refer Para no 4.1.5)

Number of Summary and Scrutiny cases

| Break-up of total population on the basis of types of assessment | | | | | | | |
|--|-----------------|-----------------|---------------------------------------|----------------|---------------------------------------|---------------------|---------------------------------------|
| AY | Total Cases | Summary Cases | | Scrutiny cases | | Others [@] | |
| | | No. of cases | Percentage of total cases of the year | No. of cases | Percentage of total cases of the year | No. of cases | Percentage of total cases of the year |
| 2014-15 | 1,47,483 | 1,34,450 | 91.2 | 1,000 | 0.7 | 12,033 | 8.1 |
| 2015-16 | 1,64,871 | 1,50,534 | 91.3 | 7,071 | 4.3 | 7,266 | 4.4 |
| 2016-17 | 1,89,552 | 1,65,214 | 87.2 | 17,143 | 9.1 | 7,195 | 3.7 |
| 2017-18 | 1,87,105 | 1,79,707 | 96.0 | # | NA | 7,398 | 4.0 |
| Total | 6,89,011 | 6,29,905 | 91.4 | 25,214 | 3.7 | 33,892 | 4.9 |
| # Data of Scrutiny assessment cases for AY 2017-18 was not available during the period of audit. @ Others include Rectification cases, Revision cases and cases of Order giving effect to Appellate orders. | | | | | | | |

Appendix 4.3

(Refer Para no 4.1.6)

Returned and Assessed Income

| Distribution of total population on the basis of returned income and assessed income | | | | | | | |
|--|---|---------------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| AY | | | 2014-15 | 2015-16 | 2016-17 | 2017-18 | Total |
| Returned Income | Less than ₹ zero | Scrutiny | 1 | 0 | 0 | 0 | 1 |
| | | Summary | 334 | 0 | 0 | 0 | 334 |
| | | Others [#] | 37 | 0 | 0 | 0 | 37 |
| | | Total | 372 | 0 | 0 | 0 | 372 |
| | Equal to ₹ zero | Scrutiny | 712 | 5,826 | 15,838 | 0 | 22,376 |
| | | Summary | 98,770 | 1,11,324 | 1,20,672 | 1,39,840 | 4,70,606 |
| | | Others [#] | 8,429 | 4,607 | 4,927 | 1,006 | 18,969 |
| | | Total | 1,07,911 | 1,21,757 | 1,41,437 | 1,40,846 | 5,11,951 |
| | More than ₹ zero and upto ₹ 50 lakh | Scrutiny | 283 | 1,031 | 1,403 | 0 | 2,717 |
| | | Summary | 35,256 | 39,120 | 44,457 | 39,289 | 1,58,122 |
| | | Others [#] | 3,516 | 2,556 | 2,100 | 6,377 | 14,549 |
| | | Total | 39,055 | 42,707 | 47,960 | 45,666 | 1,75,388 |
| | More than ₹ 50 lakh and upto ₹ one crore | Scrutiny | 6 | 73 | 29 | 0 | 108 |
| | | Summary | 55 | 42 | 44 | 202 | 343 |
| | | Others [#] | 18 | 25 | 14 | 10 | 67 |
| | | Total | 79 | 140 | 87 | 212 | 518 |
| | More than ₹ one crore | Scrutiny | 11 | 172 | 18 | 0 | 201 |
| | | Summary | 35 | 48 | 41 | 376 | 500 |
| | | Others [#] | 20 | 47 | 9 | 5 | 81 |
| | | Total | 66 | 267 | 68 | 381 | 782 |
| Assessed Income | Less than ₹ zero | Scrutiny | 0 | 0 | 0 | 0 | 0 |
| | | Summary | 0 | 0 | 0 | 0 | 0 |
| | | Others [#] | 20 | 0 | 0 | 0 | 20 |
| | | Total | 20 | 0 | 0 | 0 | 20 |
| | Equal to ₹ zero | Scrutiny | 715 | 5,828 | 13,989 | 0 | 20,532 |
| | | Summary | 80,140 | 96,793 | 1,02,462 | 1,18,260 | 3,97,655 |
| | | Others [#] | 8,020 | 4,141 | 2,413 | 859 | 15,433 |
| | | Total | 88,875 | 1,06,762 | 1,18,864 | 1,19,119 | 4,33,620 |
| | More than ₹ zero and upto ₹ 50 lakh | Scrutiny | 281 | 1,026 | 2,571 | 0 | 3,878 |
| | | Summary | 52,445 | 52,451 | 60,838 | 54,692 | 2,20,426 |
| | | Others [#] | 3,860 | 2,859 | 3,692 | 6,484 | 16,895 |
| | | Total | 56,586 | 56,336 | 67,101 | 61,176 | 2,41,199 |
| | More than ₹ 50 lakh and upto ₹ one crore | Scrutiny | 6 | 73 | 292 | 0 | 371 |
| | | Summary | 899 | 560 | 890 | 2170 | 4,519 |
| | | Others [#] | 57 | 92 | 400 | 23 | 572 |
| | | Total | 962 | 725 | 1582 | 2193 | 5462 |
| | More than ₹ one crore | Scrutiny | 11 | 175 | 436 | 0 | 622 |
| | | Summary | 966 | 730 | 1,024 | 4585 | 7305 |
| | | Others [#] | 63 | 143 | 545 | 32 | 783 |
| | | Total | 1,040 | 1,048 | 2,005 | 4,617 | 8,710 |
| Total Cases | | | 1,47,483 | 1,64,871 | 1,89,552 | 1,87,105 | 6,89,011 |

[#] Others include Rectification cases, Revision cases and cases of Order giving effect to Appellate orders.

Appendix 4.4

(Refer Para no 4.3.1)

Region and type of assessment-wise breakup of audit sample

| Region-wise breakup of audit sample on the basis of type of assessment | | | | |
|--|----------------------------------|------------|--------------|--------------|
| Name of the State | Total number of Assessment cases | | | |
| | Scrutiny | Summary | Others | Total |
| Andhra Pradesh, Telangana | 228 | 4 | 173 | 405 |
| Bihar | 44 | 1 | 18 | 63 |
| Delhi | 338 | 67 | 328 | 733 |
| Gujarat | 155 | 40 | 371 | 566 |
| Jharkhand | 46 | 2 | 20 | 68 |
| Karnataka and Goa | 293 | 93 | 264 | 650 |
| Kerala | 171 | 22 | 111 | 304 |
| Madhya Pradesh and Chhattisgarh | 144 | 62 | 233 | 439 |
| Maharashtra | 746 | 51 | 731 | 1528 |
| North Eastern States | 23 | 1 | 15 | 39 |
| Odisha | 65 | 21 | 49 | 135 |
| Punjab, Haryana, Himachal Pradesh, Jammu and Kashmir | 237 | 58 | 236 | 531 |
| Rajasthan | 174 | 31 | 201 | 406 |
| Tamil Nadu | 269 | 33 | 278 | 580 |
| Uttar Pradesh, Uttarakhand | 150 | 21 | 52 | 223 |
| West Bengal | 188 | 11 | 150 | 349 |
| Total | 3,271 | 518 | 3,237 | 7,026 |

Appendix 4.5

(Refer Para no 4.3.9.6)

Risk Analysis in summarily processed cases

| Assessment Type and Exemptions and Foreign Contribution wise distribution of total population | | | | | | |
|---|------------------|-------------|---------------------|-------------|-------------------------------|-------------|
| Type of Assessment (Scrutiny/ Summary/ Others) | Total Population | | Exemptions Claimed | | Foreign Contribution Received | |
| | No. of Cases | In per cent | Amount (₹ in crore) | In per cent | Amount (₹ in crore) | In per cent |
| Scrutiny | 25,214 | 3.7 | 3,60,724.2 | 20.4 | 6,970.9 | 19 |
| Summary | 6,29,905 | 91.4 | 12,88,501.6 | 73.1 | 28,081.5 | 76 |
| Others ¹³⁴ | 33,892 | 4.9 | 1,14,202.1 | 6.5 | 1,847.2 | 5 |
| Total | 6,89,011 | 100 | 17,63,427.9 | 100 | 36,899.6 | 100 |

¹³⁴ Others include Rectification cases, Revision cases and cases of Order giving effect to Appellate orders.

Abbreviations

| S. No. | Abbreviation | Description |
|--------|---------------------------|--|
| 1. | Act | Income Tax Act, 1961 |
| 2. | ACIT (E) | Assistant Commissioner of Income Tax (Exemption) |
| 3. | ADG (Audit & Inspections) | Additional Director General (Audit & Inspections) |
| 4. | AIR | Annual Information Report |
| 5. | ALP | Arm's Length Price |
| 6. | AO | Assessing Officer |
| 7. | AOP | Association of Person |
| 8. | AST | Assessment Information System |
| 9. | AY | Assessment Year |
| 10. | CASS | Computer Aided Scrutiny Selection |
| 11. | CBDT | Central Board of Direct Taxes |
| 12. | CCIT (E) | Chief Commissioner of Income Tax (Exemption) |
| 13. | CIT (A) | Commissioner of Income Tax (Appeal) |
| 14. | CIT(E) | Commissioner of Income Tax (Exemption) |
| 15. | CSR | Corporate Social Responsibility |
| 16. | CT | Corporate Tax |
| 17. | Pr. DGIT (Systems) | Principal Director General of Income Tax (Systems) |
| 18. | DCIT (E) | Deputy Commissioner of Income Tax (E) |
| 19. | DRP | Dispute Resolution Panel |
| 20. | DSIR | Department of Scientific and Industrial Research |
| 21. | FCs | Foreign Contribution |
| 22. | FCRA | Foreign Contribution Regulation Act |
| 23. | FY | Financial Year |
| 24. | IT | Income Tax |
| 25. | ITAT | Income Tax Appellate Tribunal |
| 26. | ITBA | Income Tax Business Application |
| 27. | ITD | Income Tax Department |
| 28. | ITO | Income Tax Officer |
| 29. | ITO (E) | Income Tax Officer (Exemption) |
| 30. | ITR/Return | Income Tax Return |
| 31. | JCIT (E) | Joint Commissioner of Income Tax (Exemption) |
| 32. | MAT | Minimum Alternate Tax |
| 33. | MCA | Ministry of Corporate Affairs |
| 34. | MHA | Ministry of Home Affairs |
| 35. | MOP | Manual of Officer Order |
| 36. | NEP | National Education Policy |
| 37. | NMS | Non-filer Monitoring System |
| 38. | NPE | National Policy on Education |
| 39. | OLTAS | Online Tax Accounting System |
| 40. | PA | Performance Audit |
| 41. | PAC | Public Account Committee |

| S. No. | Abbreviation | Description |
|---------------|---------------------|--|
| 42. | PAN | Permanent Account Number |
| 43. | Pr. CIT (E) | Principal Commissioner of Income Tax (Exemption) |
| 44. | Pr. CCIT | Principal Chief Commissioner of Income Tax |
| 45. | Rules | Income Tax Rules, 1962 |
| 46. | RWS | Read with Section |
| 47. | SDT | Specified Domestic Transaction |
| 48. | SOP | Standard Operating Procedure |
| 49. | TCS | Tax Collected at Source |
| 50. | TDS | Tax Deducted at Source |
| 51. | TEP | Tax Evasion Petitions |
| 52. | TP | Transfer Pricing |
| 53. | TPO | Transfer Pricing Office |
| 54. | WIP | Work in Progress |

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