



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



## **Exemptions to Charitable Trusts and Institutions**

**Union Government  
(Direct Taxes)  
No. 20 of 2013**

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

**for the year ended March 2012**

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

**Union Government  
(Direct Taxes)  
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## **Preface**

The Report for the year ended March 2012 containing the results of the performance audit on Exemption to Charitable Trusts and Institutions has been prepared for submission to the President under Article 151(1) of the Constitution of India.

The audit of Revenue Receipts – Direct Taxes of the Union Government is conducted under Section 16 of the Comptroller and Auditor General of India (Duties, Powers and Conditions of Service) Act, 1971.

Our findings are based mainly on test audit conducted from February 2012 to July 2012.



## Executive Summary

- Income Tax Act, 1961 (Act) provides various tax exemptions to charitable trusts & institutions (Trusts) to fulfill their objectives. Income Tax Department (ITD) has the responsibility to oversee that the provisions of Act are duly complied by Trusts. The main objective of the present review is to seek assurance that registrations are given to Trusts involved in charitable activities only, and exemptions are allowed to eligible Trusts. Our study also seeks assurances that proper monitoring mechanism exists for utilization of accumulations and inadequacies in the provisions of Act relating to exemptions.
- We have pointed out lapses in registration process, allowance of exemptions during assessment, non-monitoring of accumulations of surplus income and Foreign Contributions (FCs) received. Besides, we have highlighted inconsistencies in Act which led to incorrect assessment and non-levy of taxes. Our report also touched upon the issue of under utilization of resources placed at the disposal of ITD.
- ITD received 1.75 lakh applications of Trusts during FY 09 to FY 11 for granting registrations/approvals or issuing notifications for claiming exemption. ITD granted registrations/approvals/notifications in 0.90 lakh cases while it denied approval in 0.36 lakh cases and 0.49 lakh cases were pending. We scrutinized all the 0.90 lakh cases where ITD granted registrations/approvals/notifications and noticed procedural mistakes in 6,948 cases (7.72 per cent).
- We identified 1.37 lakh assessments of Trusts (Scrutiny: 0.17 lakh & Summary: 1.20 lakh). We checked 0.81 lakh assessment cases (Scrutiny: 0.15 lakh & Summary: 0.66 lakh). We have highlighted 1,211 (Scrutiny: 1,019 & Summary: 264) objections of irregular exemption involving tax effect of ₹ 3,019.21 crore in the AR. The objections of scrutiny cases constitute 6.5% of total scrutiny cases test checked by audit.
- We noticed that ITD granted registration in 1,149 cases without verifying proper documents such as trust deed/audited accounts/audit reports/PAN and objects not charitable in nature. Competent authorities also either delayed or granted registration retrospectively (*paragraphs 2.3-2.30*). ITD allowed exemptions irregularly in 125 cases involving tax effect of ₹ 17.76 crore without granting registrations or despite rejection of registration by competent authorities (*paragraphs 2.31-2.39*).
- Trusts are earning huge profit consistently after spending meager expenditure as compared to their total income and accumulate it as surpluses. These surpluses are used for creating fixed assets for earning more profit or are transferred to other Trusts rather than for charitable purposes to avoid tax. For example, 22 Trusts accumulated surpluses of ₹ 819 crore ranging from 35.7 to

84.8 percent of their total income (*paragraphs 3.2-3.7*). Furthermore, ITD allowed irregular exemptions to Jamshetji Tata Trust and Navajbai Ratan Tata Trust who invested ₹ 3,139 crore in prohibited modes arising from accumulations of capital gains which involved tax effect of ₹ 1066.95 crore (*Box 3.1*). Four Cricket Associations engaged in commercial activity got irregular exemptions of TV subsidy received from BCCI involving tax effect of ₹ 37.23 crore (*paragraphs 3.28-3.32*). Trusts also got irregular exemptions for voluntary contributions received without specific direction or were carrying out commercial activities without maintaining separate accounts or violating the provisions of Section 13 of Act involving tax effect of ₹ 99.44 crore (*paragraphs 3.33-3.45*).

- Trusts were allowed exemptions for the surpluses accumulated beyond stipulated 15 per cent without following proper procedures as per Act and ITD could not tax the unspent accumulations after specified period/invested in non prescribed mode involving tax effect of ₹ 143.42 crore (*paragraphs 4.5-4.12*). CBDT has not issued any guidelines/circulars to watch FCs received with specific directions and utilized for the purpose for which it was received (*paragraph 4.13-4.14*).
- We observed several inconsistencies in Act. There are no specific provisions mentioned in Act for allowing deficit of earlier years, depreciation and repayment of loan to Trusts (*paragraphs 5.2-5.17*). In absence of these, the courts have taken divergent views. ITD has also not adopted uniform approach in allowing these matters. There is no internal mechanism within ITD to have control over the receipts issued by the entity having registration under section 80G (*paragraph 5.18-5.20*). There is no provision in Act to invest corpus fund in specified mode and tax interest earned thereon (*paragraphs 5.21-5.24*). The word “*substantially financed*” is not defined in Act (*paragraphs 5.30-5.33*). ITD in 30 cases allowed exemptions to Trusts who were claiming exemption benefit simultaneously/alternatively in both sections 10(23C) and 12A in different AYS (*paragraphs 5.34-5.40*). We also noticed deficiencies in Forms specified for Audit Report to be enclosed with the returns (*paragraph 5.41-5.42*).
- ITD has accorded low priority on Trusts for tax administration. ITD has made no efforts to utilize database maintained by Planning Commission on Trusts for tax compliance purpose (*paragraphs 6.23-6.26*).

## Summary of Recommendations

### With reference to Registration and Exemption

*(Paragraphs 2.1 to 2.53)*

1. The Ministry should ensure compliance to the existing mechanism to ascertain whether the competent authorities DGIT-E/CCIT/CIT/DIT-E have verified all the requisite documents as specified in Act for registration.
2. The Ministry may consider inserting box (PAN No) in Form No 10 A and also bringing about suitable changes in Rule 17A of the Income Tax Rules making PAN a pre-requisite condition for registration.
3. The Ministry may consider providing suitable database of registered trusts/institutions to AOs to have co-ordination between Approving Authorities and AOs. The activities beyond scope of its objects and omissions on the part of the assessee should be reported by AO to Approving Authorities so that withdrawal or penalty may be initiated against erring Institutions.
4. The Ministry may ensure that the competent authorities adhere to the limitation of time for passing order u/s 10(23C), 12A and 80G otherwise responsibilities may be fixed to avoid allowing exemption to the ineligible Trusts.

### With reference to Assessment

*(Paragraphs 3.1 to 3.79)*

- 5 The Ministry may evolve a mechanism so that Trusts are not allowed accumulations consistently through strict monitoring of Form 10 invariably in all the cases to cover all assessments whether in summary/scrutiny or bring amendment in the Act to restrict such accumulations up to a certain limit.
- 6 The Ministry may devise an appropriate control mechanism with clearly defined responsibilities to ensure utilization of accumulated funds over a period of time or tax the same.
- 7 The Ministry may evolve effective monitoring system to make AOs responsible to check investments in unauthorized modes in all the cases.
- 8 The Ministry may initiate action for withdrawal of exemption /cancellation of registrations/approvals u/s 12A / 10(23C) of Act in case of violation of provisions of section 13 of Act.

### With reference to Accumulations and Foreign Contribution

*(Paragraphs 4.1 to 4.27)*

- 9 ITD should monitor accumulations of income by Trusts that are used in specified mode, specified time and for specific purposes. Prescribed registers should be maintained and updated strictly to watch accumulations and this database should also be computerized and available to the AOs while finalizing assessments.
- 10 ITD may ensure that all the stipulated conditions are fulfilled before granting exemptions u/s 11(2) on the basis of Form 10 required to be filed by assessee before filing of returns.

- 11 ITD may ensure that FC cases are selected for scrutiny as per guidelines issued by CBDT.

**With reference to Inconsistencies in Act**

*(Paragraphs 5.1 to 5.43)*

- 12 The Ministry may bring suitable amendment in Act to streamline the treatment of depreciation, deficit and repayment of loans.
- 13 The Ministry should issue suitable instructions to verify information of major donations received u/s 80G during scrutiny cases to ensure proper accounting of donations/transactions in the accounts of donors.
- 14 The Ministry may bring suitable definition for the phrase “substantially financed” to clarify provisions of section 10(23C).
- 15 The Ministry may consider bringing suitable modifications in provisions for compliance with TDS provisions by Trusts and the provisions may be made for proper disclosure in the Audit Reports.
- 16 The Ministry may consider bringing out suitable changes in Forms to be submitted by Trusts.

**With reference to Resource Utilization**

*(Paragraphs 6.1 to 6.27)*

- 17 The Ministry may maintain a comprehensive database of Trusts with linkage of the PAN, details of registration and assessment. The Ministry may also consider making mandatory electronic filing of returns of Trusts.

## Chapter 1: Introduction

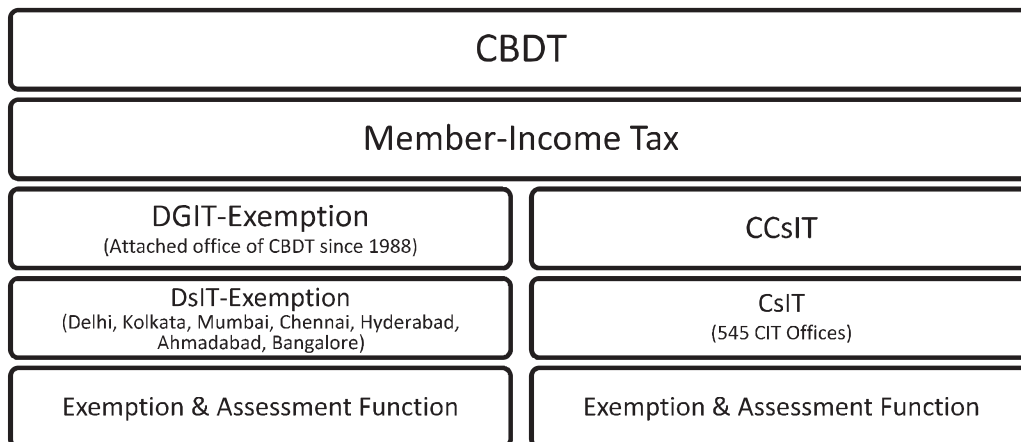
### Introduction

**1.1** Income Tax Act, 1961 (Act) provides for tax exemptions to various trusts, associations, institutions and other organizations engaged in charitable or religious activities in order to encourage and fulfill social objectives relating to areas such as charity, religion, medical and education etc. Income Tax Department (ITD) is responsible to enforce tax exemption provisions. ITD also ensures that incomes of genuine and eligible institutions and trusts only are exempted from levy of income tax and correct amount of tax is paid by them.

### Organizational set up

**1.2** The Director General of Income Tax-Exemption (DGIT-E), created in 1988, is responsible for issuing notifications in certain cases of exemption and for recommending exemption for notification to be made by Central Board of Direct Taxes (CBDT) in other cases. To assist DGIT-E, offices of the Director of Income Tax-Exemptions (DIT-E) were created in major/metro stations. Four offices of DIT-E in metro stations are in operation since 1988. DIT-E Bangalore and Hyderabad are working since 2001. These offices have mainly two functional wings, namely, Exemption Wing and Assessment Wing. The Exemptions wing is concerned with granting/processing of registration/approval/notification while the Assessment Wing is responsible for assessment of charitable trusts/institutions.

**1.3** In non-major/metro stations, the respective Chief Commissioners of Income Tax (CCsIT) discharge the functions of DGIT-E and are assisted by the Commissioner of Income Tax (CsIT), Additional/Joint /Deputy/Assistant Commissioners of Income Tax as well as the Income Tax Officers (ITOs). CITs have dual responsibilities of registration and assessment of Trusts apart from normal assessment function. The organogram of ITD responsible for exemption and assessment of charitable trusts/institutions is given below.



**1.4** The sanctioned strength and person-in-position of DIT-E offices<sup>1</sup> as on 31 March 2012 is given in Table 1.1.

**Table 1.1: Sanctioned strength & Person-in-position**

<b>Cadre</b>	<b>Sanctioned Strength</b>	<b>Person-in-position</b>	<b>Vacancy</b>
DIT-E	7	7	0
Addl./JDIT-E	8	7	1
DDIT/ADIT-E	19	18	1
ITO/TRO	25	28	NA

**Why we chose the topic**

**1.5** Earlier we have examined the working of the schemes of the exemptions under reviews on “Functioning of Directorate General of Income Tax (Exemptions), Calcutta<sup>2</sup>”, “Assessment of Private Hospitals and Nursing Homes<sup>3</sup>”, “Assessments of Private Schools, Colleges and Coaching Centres<sup>4</sup>” and “Assessments of Sports associations/institutions and Sports personalities<sup>5</sup>”. We pointed out procedural lapses in granting registration/exemption and inconsistencies in Act.

**1.6** The Public Accounts Committee (PAC) selected the review on “Assessments of Private Schools, Colleges and Coaching Centres” which, interalia, recommended<sup>6</sup> for creation of database of educational institutions and removal of overlapping nature of exemptions provided in Sections 11, 12 and 10(23C) of Act. These sections of Act are applicable to charitable trusts and institutions. PAC had also emphasized the need for effective tax deterrence against the rampant commercial exploitation of education in the country by various institutions.

**1.7** There has been rapid growth of non-governmental organizations and institutions in recent years in the areas of education, social and medical sectors which are getting registered for claiming exemptions from taxation on their income derived from their charitable and religious activities under the provisions of Act. Many private schools, colleges, coaching centers, hospitals, local authorities etc are running as charitable trusts/institutions to avail tax exemptions. A number of questions on the charitable character of these organizations and institutions are raised from time to time. Chart 1.1 shows deductions/exemptions claimed by assessees in AY 11<sup>7</sup> as recorded in Assessment Information System (AST). It is clear from Chart 1.1 that only 3 percent of assessees (51,570 Trusts) claimed 96 per cent (₹ 76,02,283 Cr) of total deductions/exemptions.

<sup>1</sup> SS & PIP does not include DIT-E office of Delhi

<sup>2</sup> Chapter V of C&AG's Report No.12A of 2001,

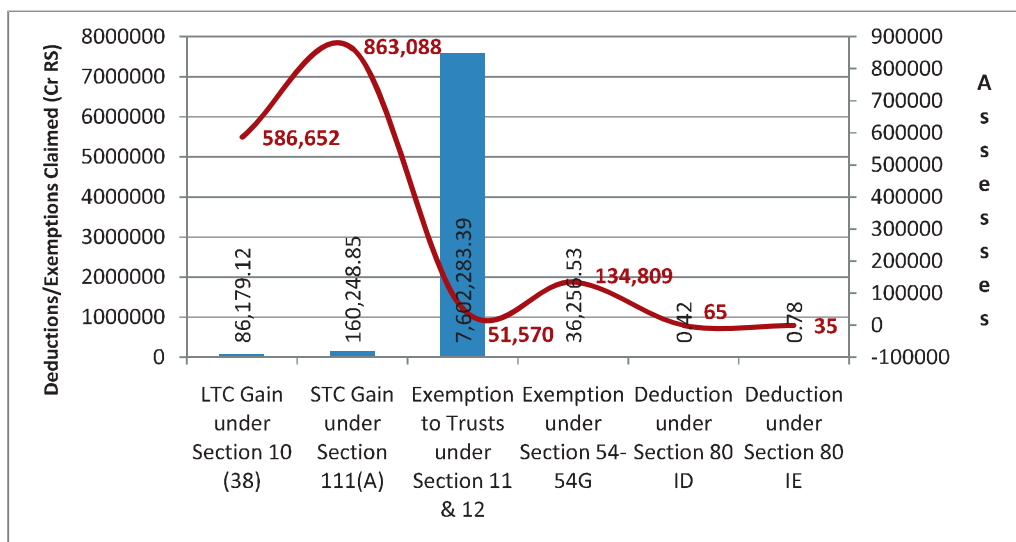
<sup>3</sup> Chapter III of C&AG's Report No.12A of 2002

<sup>4</sup> Chapter III of C&AG's Report No.13 of 2004

<sup>5</sup> Chapter III of C&AG's Report No.8 of 2007

<sup>6</sup> Public Accounts Committee 2006-07 Thirty sixth Report, Fourteenth Lok Sabha, (12/12/2006)

<sup>7</sup> Data made available by DGIT-System, New Delhi

**Chart 1.1: Deductions/Exemptions claimed by Assesseees in FY 11**

**1.8** As Trusts are availing majority of total exemptions, we undertook Performance Audit on 'Exemption to Charitable Trusts and Institutions' to seek assurance on scheme of registration and assessment processes.

#### Legal provisions

**1.9** Registration/approval granted to the Charitable Trusts and Institutions (Trusts) are allowed under section 12A by CIT and section 10(23C) by DGIT. Other relevant provisions dealing with application of money received by such institutions, issuance of notifications for sanctions and allowance of exemption from taxation including filing of returns under Act are available in Sections 2(15), 2(24)(iia), 10(23C), 11, 12, 12AA, 13, 80G, 115BBC, 139(4A) and 139(4C) of Act (**Annex 1**) Besides, there are certain circulars and instructions issued by CBDT and judicial decisions regarding registration/approval and assessment of Trusts.

#### Audit Objectives

**1.10** The objectives of our study are to seek assurances that

- Application for registration/approval/notification by a trust/institution/organization engaged in permissible charitable and religious activities is processed as per extant laws.
- Exemptions claimed by such institutions are allowed during assessment after fully satisfying the conditions prescribed there for and compliance of other existing tax provisions is made.
- Proper machinery within ITD exists to exercise necessary checks/controls in the area of potential and reported misuse of the provisions relating to exemptions available in Act.
- Monitoring and utilization of accumulation and foreign contributions are properly done by ITD.
- Inadequacies in the provisions of Act relating to exemptions exists.

### **Audit scope**

**1.11** The review covers the following:

- a. Registration of all identified trusts/institution engaged in charitable and religious activities under section 12A;
- b. Approval of all identified universities, educational institutes, hospitals and other funds or institution under section 10(23C);
- c. Notifications issued in respect of all identified institutions receiving donations and approval under section 80G(5) &
- d. Assessments of all the identified charitable or religious trusts or institutions, completed during Financial Year (FY) 09 to FY 11 and upto the date of audit.

### **Sample size**

**1.12** We covered 100 *per cent* units in trust circles/wards with 100 *per cent* assessments in scrutiny cases and 30 *per cent* of summary assessment cases. As regards company circles /wards including Section 25 companies, we covered 30 percent units with checking of 30 *per cent* assessments in scrutiny cases. In respect of mixed circles/wards, we covered 10 *per cent* units with checking of 50 percent assessments in scrutiny cases. We identified total 1,36,639<sup>8</sup> assessments cases in 554 units out of which 81,421<sup>9</sup> cases (60%) were selected for test check.

### **Audit methodology**

**1.13** We collected data regarding registration/approval/notification of the trusts/institutions/organizations engaged in the charitable or religious activities for availing exemptions under section 12A, 10(23) and 80G (5) from the offices of the concerned DIT(E)s/CCITs/CITs with reference to information contained in Form ITR 7 and compiled keeping in view various aspects of the review and comments offered accordingly.

### **Acknowledgment**

**1.14** We held an entry conference with CBDT on 10 April 2012 wherein we explained the audit objectives, scope and the main focus areas of audit examination. The Indian Audit and Accounts Department acknowledges the cooperation of ITD in facilitating the audit.

**1.15** We issued draft Performance Report to the Ministry in April 2013 for their comments. After receipt of the Ministry's reply in May 2013, we held exit conference to discuss our findings, and recommendations. We again issued draft Performance Report in June 2013 containing Ministry's views for their further comments. The Ministry has further furnished their comments in July 2013 which we have also incorporated in this report wherever possible.

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<sup>8</sup> Scrutiny cases : 17,295 & Summary cases: 1,19,344

<sup>9</sup> Scrutiny cases : 15,538 & Summary cases: 65,883



## Chapter 2: Registrations and Exemptions

### Processing the applications for registration

**2.1** It is a mandatory requirement for Charitable trusts/Institutions (Trusts) to get registration under Act for claiming exemption. A Trust shall apply in the prescribed form along with necessary documents to CsCIT/CsIT/DsIT-E to get itself registered/approved/notified. Thereafter, the concerned authority (**Annex 2**) after verifying the genuineness and objectives of Trusts shall issue or reject registration/approval/notification within the prescribed time limit of 06 months/12 months.

**2.2** We observed in 554 assessments units that ITD received 1.75 lakh applications of Trusts during FY 09 to FY 11 for granting registrations/approvals or issuing notifications for claiming exemption. Of the applications received, CsCIT/CsIT/DsIT-E granted 0.90 lakh registrations/approvals/notifications, rejected 0.36 lakh applications and 0.49 lakh applications were pending for disposal. We scrutinized all the 0.90 lakh cases where ITD granted registrations/approvals/notifications and noticed procedural mistakes in 6948 cases (7.72 %). The procedural mistakes are summarized below.

**ITD granted registrations/approvals/notifications to the 799 Trusts without verifying necessary documents such as copy of the Trust Deed, proper clauses in the Trust Deed, audited accounts etc.**

### Grant of approval/registration without adequate documents

**2.3** Income Tax Rule (Rule) 17A(a) provides that Trust should produce the Trust Deed along with an application in Form 10A either in original or a certified copy thereof to establish that Trust is created under an instrument together with two copies of audited accounts in Form 10B.

**2.4** We observed that in 342 cases, ITD granted approvals/registrations/notifications in the absence of certified copy of the Trust Deed or prescribed copies of audited accounts etc (see Box 2.1).

#### Box 2.1: Illustrative Case

In Karnataka, CIT Davangere granted registration u/s 12A to **Perioalumni** on 25 March 2008. The association was created without any Trust Deed or Memorandum of Association. The resolution revealed that its aims and objectives were meant to cater to the needs of the members of the association but not to the needs or objects of the general public. Besides, none of its activities fell under the ambit of charitable purpose as defined u/s 2(15) of Act.

**2.5** *The Ministry accepted (May 2013) the audit observation illustrated at Box 2.1 and withdrew the registration in April 2013.*

**2.6** *Audit is of the view that the Ministry may review the exemptions granted to the assessee and also evolve a system so that no registration is granted to Trust without*

*calling for prescribed documents such as copy of Trust deed, copies of audited accounts etc.*

**Non inclusion of dissolution clause in the Trust Deed**

**2.7** Para 2.7 (viii) of the Manual of Office Procedure (Volume-II) of 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 used for its objects. In the absence of dissolution clause, the corpus of Trust is susceptible to misuse at the time of dissolution.

**2.8** We observed that ITD granted approvals/registrations/notifications in 457 cases in which there was no dissolution clause in the Trust Deed (see Box 2.2).

**Box 2.2: Illustrative Case**

In the case of **Mumbai Railway Vikas Corporation** during AY 10 in DIT-E, Mumbai, the Trust Deed was silent about the dissolution clause. Assets and surplus were distributable amongst the shareholders and not to be given to some other Trusts for objects similar to Trusts. Similarly, in another case of **Sterlite Foundation**, the Managing Trustee was nominated always from the settler's family.

**2.9** *The Ministry stated (May 2013) that in Mumbai & Gujarat, Bombay Public Trust Act, 1980 ensure that no amount can go back to any founder etc because properties are transferred with the permission of the Charity Commissioner only to other Trusts having similar objects. Thus inclusion of dissolution clause in the deed is neither necessary nor legal in States where specific legislation bars such reversion.*

**2.10** *Audit is of the view that clauses in local legislation applicable to particular States do not cover across the country. Further, procedures prescribed in other Acts cannot be enforced under Income Tax Act which does not specify the fate of assets and properties generated out of public monies by Trusts exempted from tax. The Ministry has not highlighted the number of cases where the Charity Commissioner has taken action to revert the assets to other Trusts having similar objects. Therefore, the Ministry should insist upon inclusion of 'Dissolution Clause' in the Trust deed in all the States whether local legislation exists or not.*

**ITD granted registrations/approvals/notifications to 73 Trusts having no PAN which is in contravention of the provisions of Act.**

**Grant of registration without PAN**

**2.11** Under section 139A of Act, quoting of Permanent Account number (PAN) is made obligatory while filing documents/returns with ITD as it is the unique identity code of the tax payer. For obtaining registration u/s 12A, Trust has to apply in Form No 10A prescribed in Rule 17A of Income Tax Rules, 1962.

**2.12** We observed that ITD granted registrations and allowed exemptions to charitable trusts in 73 cases where PAN was missing. Further, Form 10 A does not have a column for quoting PAN and thereby it is not binding upon assessee to obtain PAN

before applying for the registration u/s 12A. In the absence of PAN, it is difficult to track such assessee who are not filing returns.

**2.13** *The Ministry agreed (May 2013) to examine the incorporation of PAN in Form 10A.*

**ITD granted approvals /registrations in 60 cases involving tax effect of ₹ 87.33 crore irregularly to Trusts whose objects were not charitable in nature.**

**Irregular exemption to Trusts which were not charitable in nature**

**2.14** According to the amended provision of Section 2(15) of Act with effect from 01 April 2009, any activity in the nature of rendering any service or any service in relation to any trade, commerce or business for a cess or any other consideration will not come under the purview of charitable purpose.

**2.15** We noticed that ITD granted exemptions to Trusts in 60 cases involving tax effect of ₹ 87.33 crore where whose objects were not charitable in nature (see Box 2.3).

**Box 2.3: Illustrative Case**

In DIT-E, Mumbai, ITD allowed **Society for Applied Microwave Electronics Engineering & Research** exemption u/s 11 during AY 09 and AY 10. The activities of the assessee were not charitable in nature but purely a research work for which separate provisions have been provided in Act. The assessee received ₹ 44.80 crore as grant from the Government together with other income and earned a surplus of ₹ 19.85 crore which was exempted by way of accumulation without following procedure laid down u/s 11(2) of Act. Irregular exemption allowed to research trusts resulted in underassessment of income aggregating ₹ 31.31 crore involving short levy of tax of ₹ 10.63 crore.

**2.16** *The Ministry agreed (May 2013) to examine the illustrated case at Box 2.4. However, the Ministry replied in July 2013 that undertaking scientific research has been held to be an object of general public utility hence eligible for registration u/s. 12A.*

**2.17** *Audit in addition to the illustrated case, also pointed out the cases where the activities of the assessee to whom the exemption was given under section 12 were not charitable in nature as per section 2(15) of Act. They were rendering services in relation to trade, commerce or business for a cess or any other consideration which do not come under the purview of charitable purpose. Therefore the Ministry, in addition to examining the cases, may issue suitable instructions that AO should allow exemption to Trusts who have application of income only for charitable purposes covered under section 2(15) of Act. Further, separate provisions exist in Act to the research institutions for availing exemption. Competent authorities may examine the activities/objectives of the assessee to justify granting registration under section 12AA instead of under section 10 (21) read with section 35 of Act.*

**There was no correlation in granting or rejecting approvals/registrations among different authorities. ITD did not take action to cancel registration in three cases involving tax effect of ₹ 4.94 crore.**

**Non-correlation of registration/approval allowed by different exemption authorities**

**2.18** The concerned CCIT is the competent authority for issuing notifications u/s 10(23C) while the CIT in regular charge and DIT-E are the competent authority for granting registration u/s section 12A.

**2.19** We observed that in three cases involving tax effect of ₹ 4.94 crore in which one ITD authority allowed registration for exemption. Another authority denied registration to these Trusts on the ground that Trusts did not exist for charitable/education purpose but for profit motive. However, ITD did not take action to cancel the registration of Trusts granted by the former authority and allowed exemption (see Box 2.4).

**Box 2.4: Illustrative Case**

In DIT-E, Mumbai, **Breach Candy Hospital** was granted registration u/s 12A in September 2007 and allowed exemption u/s 11 for AY 09. However, CCIT rejected approval u/s 10(23C) on 25 April 2010 for AY 03 to AY 11 on the ground of profit motive and no philanthropy. ITD did not take action to cancel the registration u/s 12A and disallow the exemption u/s 11. This resulted in underassessment of income of ₹ 14.56 crore involving tax effect of ₹ 4.94 crore.

**2.20** *The Ministry stated (May 2013) that approval under section 10(23C) given by CCIT, is denied in a particular case whereas registration is granted because requirement for registration and approval are different. The Ministry further stated that eligibility for section 10 (23C) approvals is more restrictive than for registration under section 12AA. It is therefore possible that approval under section 10(23C) is refused, even though Trust continues to be registered under section 12AA.*

**2.21** *Audit is of the view that there is lack of coordination among authorities denying the approval and exemption allowed by the AOs. The assessee and its core activities remain the same even if it is registered /approved on different sections. Since the eligibility for section 10(23C) is more restrictive than for registration under section 12AA, AO may allow exemption under section 11/12 after examination of facts of application of income with reference to order denying the approval.*

**ITD granted registration/exemption in 161 cases irregularly involving revenue impact of ₹ 24.23 crore with retrospective effect contravening provisions contained in Act.**

**Grant of registration/exemptions with retrospective effect**

**2.22** As per Section 12A(2) of Act where an application has been made on or after the 1st day of June, 2007, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution from the assessment year immediately following the financial year in which such application is made.

**2.23** We noticed that ITD granted registration to 161 Trusts from the period prior to which they filed applications for grant of registrations. Due to this, Trusts claimed irregular exemptions involving tax effect of ₹ 24.23 crore (see Box 2.5).

**Box 2.5: Illustrative Case**

**a.** In Madhya Pradesh, CIT Gwalior granted registration under section 12A to **Om Charitable Chikitsa, Gwalior** on 14 July 2010 with effect from AY 11. However, AO allowed exemption to the assessee for AY 08, AY 09 & AY 10. This resulted in irregular exemption without issue of registration involving tax effect of ₹ 24.80 lakh.

**b.** In Kerala, CIT Trivandrum, ITD completed assessments of **Kerala State Higher Education Council** for the AY 09 and AY 10 in summary manner in October 2010 allowing exemption of ₹ 61.18 lakh and ₹ 4.42 crore respectively u/s 11. ITD granted registration under Section 12A to assessee from AY 11 only. Irregular grant of exemptions involved total tax effect of ₹ 2.17 crore.

**2.24** *The Ministry accepted (May 2013) audit observations illustrated at Box 2.6 and initiated remedial actions. However, they stated that many of these cases appear to be summary assessment.*

**2.25** *Audit emphasize that more than 95 percent assessments of Trusts are finalized in summary. Therefore, CBDT may strengthen internal control mechanism to minimize such type of mistakes in summary assessment also.*

**There was a delay of more than 6 months to 24 months beyond stipulated period in granting approvals/registrations/notifications in 594 cases. The delay on the part of ITD resulted in deemed approval, to Trusts which were otherwise not eligible.**

**Delay in granting registration/approval/notification**

**2.26** Section 12AA/Rule 11AA(6) of Act provides that Commissioner shall pass an order for registration/notification u/s 12A/80(G) or reject the application within six months from the date on which such application was made. However, Section 10(23C) provides time limit for granting approval or rejecting the application within a period of 12 months from the end of the month in which such application is received.

**2.27** Act is not explicit about the consequences/remedies available in case an application is not processed within six months. Though there is a provision for appeal against refusal, no provision is there with regard to the delay made in processing the application. However, it was held<sup>10</sup> that the purpose of providing six month's time limit to the CIT would become meaningless if there is no cause of action or outcome at the end of six months. Therefore, after the expiry of six months the registration will be deemed to have been granted.

**2.28** We noticed that in 594 Trust cases, ITD delayed in issuance of registration/approval/notification after stipulated period of 6 or 12 months (see Box 2.6).

<sup>10</sup> Society for the promotion of Education, Adventure Sport & Conservation of Environment Vs. CIT(2008)171 Taxmann 113(ALL)

**Box 2.6: Illustrative Case**

In Madhya Pradesh, CIT Gwalior rejected the application of **Sarva Seva Samarjit Samiti** submitted for registration u/s 12AA on 18 June 2009 after stipulated period of six months on 29 January 2010. On appeal, ITAT set aside the order of CIT vide its order dated 28 May 2010 on the ground that CIT had passed its order after stipulated period of six months. Delay in rejection of the application within stipulated period by the CIT resulted in incorrect grant of approval to an institute which was not even eligible in the opinion of the CIT.

**2.29** *The Ministry accepted (May 2013) audit observation illustrated at Box 2.7. However, they stated that delays had taken place in exceptional cases. The time limit of 6 months is generally being followed.*

**2.30** *Audit is of the view that delays noticed in granting approval in 594 cases may not be exceptional. The Ministry may also ensure that time limit for passing order u/s 10(23C), 12A and 80G of the Act is adhered invariably in all the case; otherwise responsibility may be fixed for delay in granting approval so that only eligible Trusts are allowed exemption.*

**ITD allowed irregular exemptions involving tax effect of ₹ 8.88 crore to 53 Trusts without granting registrations /approvals/notifications.**

**Exemption granted without registration/approval/notification**

**2.31** Section 12A of Act provides that the benefits under section 11 and 12 will not be available unless conditions specified in clauses (a) and (b) of section 12A are satisfied. The Supreme Court held<sup>11</sup> that unless and until an institution is registered under section 12A, it is not entitled to claim exemption from payment of tax under section 11 and 12.

**2.32** We noticed that in 53 cases involving tax effect of ₹ 8.88 crore, ITD allowed exemptions irregularly without granting registrations (see Box 2.7).

**Box 2.7: Illustrative Case**

In Madhya Pradesh, CIT-II Jabalpur granted registration u/s 12A to **Vikas Mytri Sisters of St. Joseph of Tarbes**, Kotma on 03 February 2011 with effect from 01 April 2011. However, during AY 2010-11 and AY 2011-12 the assessee had claimed exemption and ITD allowed it u/s 11 & 12. It resulted in under assessment of income by ₹ 34 lakh for AY 2010-11 and ₹ 61 lakh for AY 2011-12. This resulted in short charge of tax of ₹ 28.50 lakh.

**2.33** *The Ministry stated (May 2013) that mistakes are few and in exceptional cases.*

**2.34** *Audit is of the view that mistakes noticed in audit are not exceptional. The Ministry may ensure that AO ascertain the registration status of the assessee invariably in all the cases before allowing exemption.*

**ITD allowed exemptions in 72 cases irregularly involving tax effect of ₹ 8.88 crore despite rejection of registrations/approvals by the competent authority**

**Exemption granted despite rejection of registration/approval/Notification**

**2.35** A Trust has to register itself with the jurisdictional DIT/CIT for claiming exemption u/s 12A/10(23C). Exemption under section 11 & 12 /10(23C) is available from AY immediately following registration/approval is allowed.

<sup>11</sup> U.P. Forest Corporation Vs. CIT(2007) 165 Taxman 533 (SC)



**2.36** We observed that in 72 Trust cases, AOs have irregularly granted exemptions to Trusts despite rejection of registrations/approvals involving tax effect of ₹ 8.88 crore (see Box 2.8).

**Box 2.8: Illustrative Case**

In Bihar, CIT Patna, CIT denied exemption u/s 10(23C)(iiiab) to **Bihar State Madarsa Educational Board**, in AY 07 on the ground that it was not wholly or substantially financed by the Government of Bihar, thus not falling under the preview of section 10(23C)(iiiab). CIT (A) granted relief only for the grant received from Government of Bihar. ITD charged tax in AY 08 & AY 09. However, ITD allowed exemption claimed for the AY 10 at summary stage irregularly. The irregular exemption resulted in underassessment of income of ₹ 6.33 crore with consequent non levy of tax of ₹ 3.27 crore.

**2.37** *The Ministry stated (May 2013) that they have initiated remedial action u/s 147 in respect of illustrated case at Box 2.9. However, the assessee has gone to ITAT appeal for all the AYs. The Ministry further stated that mistakes are mostly in summary cases and exceptional in nature.*

**2.38** *Audit is of the view that summary assessment should not be an excuse for such mistakes. There should be an effective mechanism which ensures that once a Trust is denied registration, it does not get further exemption as a Trust either in summary or scrutiny assessment. The Ministry may issue suitable instructions in this regard.*

**2.39** *The Ministry further stated in (July 2013) that a copy of the rejection order is always sent to AO so that no exemption is allowed in such cases. However, since large numbers of these cases are accepted under summary scheme, such mistakes occur. Such mistakes can however be avoided if the software of the ITD is modified whereby the registration/cancellation module is linked with the assessment module.*

**ITD allowed exemptions in 9 cases irregularly u/s 10(23C) (iiia)/(iiid) involving tax effect of ₹ 2.39 crore though the gross receipt exceeded ₹ one crore.**

**Exemption granted though the gross receipt exceeded ₹ one crore**

**2.40** Exemption u/s 10(23C)(iiia) and 10(23C)(iiid) is available to a University or other educational institution substantially financed by Government or who carries on educational activities for charitable purpose and not for the purpose of profit if the gross receipt of such institution is less than ₹ one crore. Where gross receipt exceeds ₹ one crore, approval from the CCIT is required in order to avail exemption u/s 10(23C)(vi).

**2.41** We noticed that in 9 cases involving tax effect of ₹ 2.39 crore, ITD granted exemption where gross receipts exceeded ₹ one crore and the institutions were not substantially financed by Government (see Box 2.9).

**Box 2.9: Illustrative Case**

In Haryana, CIT Faridabad, AO completed the assessment of **Vidya Mandir** for AY 07 after scrutiny in December 2008 allowing exemption u/s 10(23C)(iiid). We observed that though the gross receipts of the assessee trust exceeded prescribed limit of ₹ 1.00 crore, approval of the prescribed authority required under section 10(23C)(vi) was not obtained. This had resulted in irregular exemption of ₹ 1.66 crore involving tax effect of ₹ 97.89 lakh.

**2.42** *The Ministry stated (May 2013) that they are examining the applicability of facts of all cited cases.*

**2.43** *Audit is of the view that the Ministry may ensure that AOs check the status of registration of the assessee invariably in all such cases before allowing exemption.*

**2.44** *The Ministry further stated (July 2013) that such mistakes can however be avoided if the software of the ITD is modified whereby the registration/cancellation module is linked with the assessment module. Audit also recommends the modification in the assessment module.*

**ITD allowed exemptions in 9 cases irregularly u/s 80G though prescribed conditions were not fulfilled.**

**Exemption allowed under section 80G though prescribed conditions not satisfied**

**2.45** Section 80G(5)(ii) read with section 80G(5B) prescribes that for being eligible for 80G notification, the maximum application towards the religious purposes should not exceed five *per cent* of the income of any previous year.

**2.46** In DIT-E, Mumbai, ITD issued notification under section 80G in nine cases despite expenditure of the trust on religious purposes being in excess of five *per cent* of its total income.

**2.47** *The Ministry stated (May 2013) that these are exceptional cases and they generally implement the provision.*

**2.48** *Audit is of the view that the Ministry may reiterate suitable instructions for effective monitoring to minimize such type of mistakes.*

**ITD granted exemptions in 117 cases irregularly without submission of audit reports with the returns.**

**Exemption granted without submission of Audit report**

**2.49** Section 12A (1)(b) & 10(23C) provides that if the total income of Trust as computed under Act before exemption under Sections 11 and 12 exceeds the maximum amount which is not chargeable to income tax in any previous year, the accounts of the Trust for that year are required to be audited by an accountant as defined in the Explanation to Section 228(2) and the Audit Report in Form-10B vide Rule 17B is to be filed along with return of Income.

**2.50** We observed that ITD allowed exemptions to 117 Trusts without submission of the Audit Reports (see Box 2.10).

**Box 2.10: Illustrative Case**

In West Bengal, DIT-E, Kolkata, ITD allowed exemption of ₹ 4.98 crore & ₹ 6.65 crore during AY 10 and AY 11 respectively to **Susrut Eye Foundation & Research Centre** without submitting the Audit Report.



**2.51** *The Ministry again stated (May 2013) that mistakes are mostly in summary cases and exceptional in nature.*

**2.52** *Audit is of the view that the Ministry may consider incorporating gist of Audit report in ITR-7 to be processed electronically so that in no case, exemption is granted without having the accounts audited.*

### **Recommendations**

**2.53** We recommend that

- a. The Ministry should ensure compliance to the existing mechanism to ascertain whether the competent authorities DGIT-E/CCIT/CIT/DIT-E have verified all the requisite documents as specified in Act for registration.

*The Ministry assured (May 2013) to adhere to comply with the existing mechanism. The Ministry further stated (July 2013) that the competent authorities, DGIT(E)/CCIT/CIT/DIT(E), are statutory authorities, which discharge their functions vis-à-vis registration in accordance with the provisions of Act which includes due verification wherever prescribed.*

*Audit reiterates its view as we noticed cases where the competent authorities granted registration without calling for the requisite documents as specified in Act.*

- b. The Ministry may consider inserting box (PAN No) in Form No 10 A and also bringing about suitable changes in Rule 17A of the Income Tax Rules making PAN a pre-requisite condition for registration.

*The Ministry stated (May 2013) that incorporation of PAN in Form No 10 A would be examined.*

- c. The Ministry may consider providing suitable database of registered trusts/institutions to AOs to have co-ordination between Approving Authorities and AOs. The activities beyond scope of its objects and omissions on the part of the assessee should be reported by AO to Approving Authorities so that withdrawal or penalty may be initiated against erring Institutions.

*The Ministry stated (May 2013 & July 2013) that the database of non-profit organization is being developed. The exercise is under process and all approving authorities have been asked to upload details of all NPOs approved by them.*

- d. The Ministry may ensure that the competent authorities adhere to the limitation of time for passing order u/s 10(23C), 12A and 80G otherwise responsibilities may be fixed to avoid allowing exemption to the ineligible Trusts.

*The Ministry stated (May 2013) that time limits are generally being adhered to. The Ministry further stated (July 2013) that the statute already lays down/provides for the period of limitation within which approval/rejection of applications u/s 10(23C), 12A, 80G has to be done.*

*Audit reiterates its view as we noticed cases where the competent authorities did not adhere to the time limit provided in Act which led to the registration to ineligible Trusts.*

### Chapter 3: Assessments

**3.1** ITD has 5.60 lakh, 5.96 lakh and 6.64 lakh total registered Trusts in FY 09, FY 10 and FY 11 respectively in 3831 assessment units<sup>12</sup>. The average annual growth of number of Trusts during FY 09 to FY 11 was 8.9 *per cent*. We identified 1.37 lakh assessments of Trusts (Scrutiny: 0.17 lakh & Summary: 1.20 lakh) in 554 assessment units. We checked 0.81 lakh assessment cases (Scrutiny: 0.15 lakh & Summary: 0.66 lakh). We have highlighted 1,211 (Scrutiny: 1019 & Summary: 264) objections of irregular exemption involving tax effect of ₹ 3,019.21 crore in this AR. The objections on scrutiny cases constitute 6.5% of total scrutiny cases test checked by audit and are summarized in Chapter 3, 4 and 5.

**Twenty two Trusts accumulated surpluses of ₹ 819 crore ranging from 35.7 to 84.8 percent of their total income. These surpluses were used for creating fixed assets for earning more profit or transferred to other Trusts rather than charitable purpose to avoid tax.**

#### Irregular exemption to Trusts creating huge surpluses consistently

**3.2** Section 11(2) of Act provides that if application of funds is less than 85% of the total income, Trusts, in order to get exemption, can accumulate such funds for five years after submitting Form 10 to AO before filing return of income. Section 11(1)(d) provides that donations received with specific directions are credited to corpus of Trust fund and accumulated for utilization in future. However, Act does not prescribe the limit of accumulation of funds and Trusts are availing exemptions by accumulating maximum funds consistently year by year.

**3.3** We observed that 22 education institutions in Delhi, Mumbai, Pune, Chennai, Coimbatore, Kolkata and Odisha had huge excess of income over expenditure of ₹ 819.40 crore during AY 07 and AY 11 and accumulated these surpluses ranging from 35.7 to 84.8 *per cent* of their total income. Illustrations of 10 institutions are as shown in table 3.1 below:

Table 3.1: Institutions showing surpluses					
Trust and charge	AY	Income	Expenditure	Lakh ₹	
				Surplus	Surplus %
a. Tatwajnana Vidyapeeth, DIT-E, Mumbai	AY 08	495.37	75.19	420.18	84.82
	AY 09	557.32	128.49	428.83	76.94
	AY 10	508.41	78.46	429.95	84.57
b. Ishan Educational Research Society, DIT-E, Delhi	AY 07	358.90	168.58	190.32	53.02
	AY 08	488.14	203.75	284.38	58.26
	AY 09	588.98	206.83	382.15	64.90
	AY10	907.51	268.38	639.13	70.42
c. Symbiosis Open Education Society, CIT-I, Pune	AY 10	9554.51	1,599.43	7,955.08	83.26

<sup>12</sup> As on March 2010

d. Symbiosis Society, CIT-I, Pune	AY 09	31087	12,053	19,034	61.23
	AY 10	30626	15,369	15,257	49.82
	AY 11	33,339	16,140	17,199	51.59
e. Adarsh Educational Trust Erode, CIT-II Coimbatore	AY 08	4.22	2.61	1.61	61.80
	AY 09	6.94	2.48	4.46	35.70
f. Shanti Education Society, DIT-E, Delhi	AY 09	612.92	299.25	313.67	51.17
g. GRD Trust, CIT-I Coimbatore	AY 10	15.48	8.02	7.46	51.80
h. Saraswathi Educational Trust, Erode, CIT-II Coimbatore	AY 11	2.23	1.19	1.04	53.30
i. Ritnand Balved Education Foundation, DIT-E, Delhi	AY 10	50,066.62	31,860.37	18,206.25	36.36
<b>Total</b>		<b>1,59,219.55</b>	<b>78,465.03</b>	<b>80,754.51</b>	

**3.4** Table 3.1 indicates that three institutions namely **Tatwajnan Vidyapeeth**, DIT-E, Mumbai, **Ishan Educational Research Society**, DIT-E, Delhi and **Symbiosis Society Group**, CIT-I, Pune earned profit ranging from 50 to 84 per cent consistently during AY 07 and AY 11 and accumulated surpluses ₹ 622.20 crore.

**3.5** *The Ministry stated (May 2013) that accumulation of surplus upto 15% is allowed u/s 11(1) and beyond 15% too, it can be accumulated upto 5 years u/s 11(2) by filing Form 10. Therefore accumulation of surplus is permitted by law. The prescription of limit is not desirable or practical as funds are required to be accumulated for infrastructure development and other purposes as per specific needs.*

**3.6** *Audit has not questioned the legality of section 11(1) & 11(2) but pointed out instances of accumulations consistently citing illustration of misuse of such accumulations. In the case of CIT vs Sree Seetharama Anjaneya Veda Kendra (2008) 174 Taxman 523 (Ker.), it was held that the carry forward of income up to 85 per cent, though permitted u/s 11(2) of the Act, should not be adopted on a routine basis and if it is 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 followed from year to year, then the genuineness of the activities of Trust itself should be examined by the AO.*

**3.7** *The Ministry, in the Direct Tax Code, had also proposed that Trusts (Non Profit Organizations) apply at least 85 percent of income in the year to avail exemption. In order to restrict the misuse of accumulations, the Ministry may bring suitable amendment to the Act or evolve a suitable mechanism so that Trusts are not allowed accumulations consistently through strict monitoring of Form 10 invariably in all the cases to cover all assessments whether in summary/scrutiny.*

**ITD allowed irregular exemptions to Jamshetji Tata Trust and Navajbai Ratan Tata Trust who invested ₹ 3,139 crore in prohibited modes arising from accumulations of capital gains which involved tax effect of ₹ 1066.95 crore.**

**Irregular exemption of capital gains arising from accumulated funds**

**3.8** Section 13(1)(d) provides that provisions of section 11 or 12 will not be applicable if any funds of Trusts are invested in other than shares in a public sector company or shares as prescribed under section 11(5)(xii). Calcutta High Court<sup>13</sup> held that the term “income” includes “capital gains”, and therefore it should have been invested within the same year or the next year, as contemplated in section 11(1A).

**3.9** We noticed that 14 Trusts cases involving tax effect of ₹ 1090.03 crore where accumulations arising from capital gains were not either invested in specified mode or computed correctly. Moreover, in some cases, they did not fully utilize the sale proceeds for acquiring other capital assets. ITD allowed exemption irregularly in these assessments completed after scrutiny (see Box 3.1).

**Box 3.1: Illustrative Case**

In Maharashtra, DIT-E, Mumbai, **Jamshetji Tata Trust** and **Navajbai Ratan Tata Trust** earned ₹ 1,905 crore and ₹ 1,234 crore on account of capital gain during AY 09 and AY 10 respectively and invested the same in prohibited mode of investments which is in contravention to the provisions of section 13(1)(d) of Act. Thus, AO should have brought investment aggregating ₹ 3139 crore to tax at maximum marginal rate as per provision under section 164(2) read with proviso there under. It resulted in short levy of tax of ₹ **1066.95 crore**.

**3.10** *The Ministry accepted (May 2013) the audit observations as illustrated at Box 3.1 and initiated remedial action. However they stated that the number of cases in which prohibited investment was found by audit is only 14 cases, though the tax effect is very large in the illustrative cases. These cases are being examined.*

**3.11** *Audit is of the view that the Ministry may, in addition to examining the above cases, accept, in principle, that such mistakes should not occur at least in scrutiny assessments as pointed out in above cases. The Ministry needs to evolve effective monitoring system to make AOs responsible to check investments in unauthorized modes in all the cases.*

**3.12** *The Ministry stated (July 2013) that the mechanism already exists, the scrutiny assessments made by the AOs are subject to internal audit. CBDT is also providing training to the officers who are making assessments of Trusts.*

**3.13** *Audit is of the view that such mistakes have been noticed in scrutiny assessments and internal audit also failed to detect them despite existing mechanism and training.*

<sup>13</sup> CIT Vs. East India Charitable Trust (1996) 206 ITR 152

**In 25 cases, Trusts transferred accumulations to other Trusts treating as application of income which resulted in short levy of tax of ₹ 32.52 crore.**

**Irregular transfer of accumulations to related Trust**

**3.14** Explanation to sub section (2) of section 11 prohibits donation to other Trusts out of accumulated funds. However, there is no ban on transfer of payments to other Trusts out of current year's income subject to provisions of section 11(3).

**3.15** We observed that in 25 Trusts cases, Trusts had accumulated income and transferred to other Trusts treating it as application of income. This resulted in underassessment of income with short levy of tax of ₹ 32.52 crore (see Box 3.2).

**Box 3.2: Illustrative Cases**

In DIT-E, Mumbai, three Trusts namely **F.E. Dinshaw Trust** (AY 09 and AY 10), **F.E. Dinshaw Charities** (AY 05, AY 06 and AY 09) and **Manubhai Foundation** (AY 08 and AY 09) were irregularly transferring unspent amounts of accumulations to other related Trusts to avoid taxation. Irregular transfer of ₹ 3.25 crore in these cases involved tax effect of ₹ 1.04 crore.

**3.16** *The Ministry stated (May 2013) that these are exceptional cases and are being examined.*

**3.17** *Audit is of the view that instead of accepting these cases as exceptional, the Ministry may bring suitable amendment in Act to prohibit donations to other Trusts out of current income to restrict misuse of availing statutory deductions of 15 percent provided in Act. It would also curb the practice of Trusts of transferring current income to their sister concerns.*

**Four Trusts disbursed interest free loan of ₹ 14.85 crore to escape taxation involving short levy of tax of ₹ 6.23 crore.**

**Irregular transfer of money as interest free loan to avoid taxation**

**3.18** Many Courts have held in their judgments<sup>14</sup> that Trusts disbursing loan without proper interest or collateral are not entitled for exemptions. As per circular no. 100 of 1973, the disbursement of loan was to be considered as application only if the loans were advanced by an educational trust to students for higher studies if (a) the object of the trust is to give interest bearing loans for higher studies and (b) when it is offered as income at the time of repayment.

**3.19** We observed that ITD allowed irregular exemption to four Trusts who disbursed interest free loan of ₹ 14.85 crore to escape taxation involving short levy of tax of ₹ 6.23 crore (see Box 3.3).

**Box 3.3: Illustrative Case**

In DIT-E, Mumbai, an assessee **Shree Raj Foundation** made additional accumulations vide explanation to section 11(1) during AY 09 and AY 10 despite its actual application on the charitable purposes being very low. As the expenditure on the objects of Trust was non-existent during the year, the assessee used to show huge amounts of disbursements as interest free and unsecured loans and claimed loan disbursements as application. The advancement of irregular loan advances was to avoid taxation resulting in income of ₹ 5.25 crore escaping assessment with consequential tax effect of ₹ 1.77 crore.

<sup>14</sup> Ram Bhavan Dharmshala Vs State of Rajasthan 258 ITR 725 (Raj); Smt. Gomti Devi Banarsidas Vaid Charitable Trust Vs ITO (1986) 16 ITD 308 (All)

**3.20** *The Ministry accepted (May 2013) the audit observation illustrated at Box 3.3 and initiated remedial action. The Ministry further stated that advancement of loan without interest attracts provision of section 13 only if it is given to interested persons. The Board's circular is with reference to educational loan but cannot be taken as prohibiting other loans.*

**3.21** *The Ministry's stand is not acceptable as Board's circular specifies consideration of application of income **only if** the loans were advanced by an educational trust to students for higher studies provided the object of the trust is to give **interest bearing** loans for higher studies. The advancement of loan without interest is also against the Court decisions cited above.*

**3.22** *The Ministry further stated (July 2013) that there is no blanket ban on loan being given by Trusts to any particular person. However there should not be violation of section 13 meaning thereby that benefit should not be conferred on trustees or donor or settler etc. which is against the provision mentioned in section 13.*

**3.23** *Audit reiterates its view because disbursement of loan does not come under any category of charitable purposes envisaged u/s 2(15) of Act. Furthermore, CBDT circular No. 100/1973 specifies the situation where it amounts to application of income only if the loans were advanced by an educational trust to students for higher studies and that too with interest. It means disbursement of interest free loan should not be considered a charitable activity.*

**ITD allowed irregular exemptions to three Trusts who earned substantial income by accepting capitation fee in addition to other prescribed fee resulted in short levy of tax of ₹ 8.88 crore.**

#### **Irregular exemption to the institutions receiving donations/capitation fee**

**3.24** The Supreme Court has held<sup>15</sup> that every institution is free to devise its own fee structure subject to the limitation that there can be no profiteering and no capitation fee can be charged directly or indirectly, or in any form. The Supreme Court held<sup>16</sup> that the educational institutions could not charge more than the fees fixed by the Government in any form either as donation, capitation fee etc.

**3.25** We observed that AOs allowed irregular exemption to three Trusts who received capitation fee in addition to normal fee. This resulted in tax effect of ₹ 8.88 crore (see Box 3.4).

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<sup>15</sup>T.M.A. Pai Foundation & Others Vs. State of Karnataka & Others (SC- 31/10/2002),

<sup>16</sup>Unnikrishnan J P & others Vs State of Andhra Pradesh & others 1993 AIR 2178 SC (1) 594



**Box 3.4: Illustrative Case**

In DIT-E, Kolkata, **Bhawanipur Gujrati Education Society and Multiple Educational & Manpower**, engaged in the business of imparting education, accepted capitation fees of ₹ 354.61 crore during the AY 08 to AY 10<sup>17</sup>, in addition to other prescribed fees which was required to be brought to tax. Omission resulted in non levy of tax of ₹ 8.88 crore.

**3.26** *The Ministry stated (May 2013) that objection was raised in three cases out of which one is summary assessment. These are exceptional cases and will be looked into. The Ministry further stated (July 2013) that in box cases, Audit has held development fees/donations received by the educational institutions as being in the nature of capitation fees collected with profit motive. But Audit overlooked the fact that income derived from development fees was duly credited in the respective Income & Expenditure Account and both the entities had applied its income for the year to the extent of 85% for charitable purposes as laid down u/s. 11(1)(a) of Act. Therefore, no adverse view could be taken in this regard, especially considering the fact that both the entities were also approved u/s. 10(23C)(vi) for the relevant AY.*

**3.27** *The Ministry's view is not tenable as mere accounting of donation/capitation fees cannot be sufficient ground to legalise these funds which have been held illegal by the Apex court and therefore, required to be taxed.*

**ITD allowed irregular exemptions of TV subsidy received from BCCI to four Cricket Associations engaged in commercial activity which resulted in non levy tax effect of ₹ 37.23 crore.**

**Irregular exemption to Cricket Associations engaged in commercial activity**

**3.28** Section 2(15) of Act prescribed that from AY 10 onwards advancement of any other object of general public utility shall not be treated as "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, if the aggregate value of the receipts from the activities exceeds ₹ ten lakh in the previous year.

**3.29** We observed that DIT-E, Ahmedabad (06 December 2010) cancelled registration granted u/s 12A to **Gujarat Cricket association** from FY 05 onwards concluding that practice followed by the assessee trust treating TV rights from BCCI as corpus was not in order as it was purely commercial receipt within the ambit and scope of aforesaid proviso to section 2(15) of Act. AO (30 December 2011) did not allow exemption to the assessee Trust on the amount of TV rights income from BCCI during the AY 10.

**3.30** However, ITD allowed exemption in four similar cases for the income received from TV rights from BCCI in cases of **Saurashtra Cricket Association, Baroda Cricket Association, Kerala Cricket Association and Maharashtra Cricket Association** resulting in short levy of tax of ₹ 37.23 crore (see box 3.5).

<sup>17</sup> Assessments of Bhawanipur Gujrati Education Society & Multiple Educational & Manpower, for the AY 08 to AY 10 were completed after scrutiny in December 2009 and 2010

**Box 3.5: Illustrative Case**

In Gujarat, CIT-II Rajkot, **Saurashtra Cricket Association** received TV subsidy of ₹ 8.02 crore, ₹ 13.81 crore and ₹ 13.34 crore from BCCI during AY 08, AY 10 and AY 11 respectively on organizing various tournaments. Further assessee had also generated advertisement sales income of ₹ 1.12 crore during the one-day match on 14 November 2008 at Rajkot and only a small portion of receipts (1.5 per cent of gross receipts) were spent for “the promotion and development of sports” and it accumulated ₹ 19.44 crore. This resulted in under-assessment of ₹ 19.44 crore with short levy of tax of ₹ 8.45 crore.

**3.31** *The Ministry stated (May 2013) that in the case of Gujarat Cricket Association, the Hon’ble ITAT, Ahmadabad has restored the registration u/s.12A which was cancelled by the DIT (E), Ahmadabad. ITD has filed an appeal in Gujarat High Court against the order of ITAT. They further stated that there is no need to cancel registration as AO can deny exemption u/s 11 on year to year basis. Further, the scope of cancellation u/s 12AA is restricted only to cases where the activities are not according to objects or the activities are not genuine.*

**3.32** *Audit has commented upon irregular exemption to Cricket Associations engaged in commercial activity and not on registration. However, ITD has gone in High Court against cancellation of the registration. ITD may therefore review the exemption granted to the assessee in these cases.*

**ITD allowed irregular exemptions to 30 Trusts involving tax effect of ₹ 59.61 crore where voluntary contributions, received without specific directions, were taken to corpus fund instead of treating as income.**

**Irregular exemption of anonymous donations /voluntary contributions**

**3.33** Section 115 BBC of Act provides that where the total income of Trust includes any income by way of anonymous donations, tax shall be paid on total anonymous donations. Section 11(1)(d) of Act provides that any voluntary contributions made with a specific direction that they will form part of the corpus, shall not be included in the total income of the organization.

**3.34** We observed that AOs allowed treatment of voluntary contributions received without specific directions as income in corpus fund of the assesseees in 30 cases. This resulted in non-levy of tax of ₹ 59.61 crore (see box 3.6).

**Box 3.6: Illustrative Case**

In DIT-E, Delhi, **Technology Development Board**, notified u/s 10(23C) (iv), during AY 09, received voluntary contribution of ₹ 14.42 crore which was taken to corpus fund and not treated as income. This resulted in non-assessment of income of ₹ 14.42 crore and consequent non-levy of tax of ₹ 5.49 crore.

**3.35** *The Ministry stated (May 2013) that the legal position is correct. However, the individual cases will be examined for applicability on facts.*



**3.36** *Audit has not questioned the legal position. However, provisions of Act are not being complied properly. The Ministry, besides examining the cases, may evolve a system that such mistakes are minimized in future.*

**3.37** *The Ministry further stated (July 2013) that the mechanism already exists and the scrutiny assessments made by AOs are subject to internal audit. CBDT is also providing training to the officers who are making assessments of trusts.*

**3.38** *Audit reiterates its view since despite the existing mechanism in Act, the mistakes have been noticed in the scrutiny assessments.*

**ITD allowed irregular exemptions to 48 Trusts involving tax effect of ₹ 28.01 crore where trusts were carrying out commercial activities and did not maintain separate books of accounts.**

#### **Exemption granted to Trusts for trading/commercial activities**

**3.39** Section 11 of Act shall not apply in relation to any income of a Trust or an Institution being the profits and gains of business unless the business is incidental to the attainment of the objective of Trust and separate books of accounts are maintained by such Trust or Institution in respect of such business under Section 11(4A).

**3.40** We noticed that ITD allowed exemptions in 48 cases involving tax effect of ₹ 28.01 crore where Trusts were carrying out commercial activities and separate books of accounts were not maintained (see box 3.7).

#### **Box 3.7: Illustrative Case**

In Maharashtra, DIT (Exemption), Mumbai charge, an assessee “Sameeksha Trust” was carrying on the activity of publishing of journal named “Economic and Political Weekly” and books and was collecting subscription charges on commercial basis from the readers. Thus, it is clear that the assessee was running business activity in the garb of charity and the grant of exemption was irregular. The loss on account of non-taxing non-charitable activities resulted in underassessment of income of ₹ 2.24 crore, ₹ 6.23 crore and ₹ 3.89 crore with a consequential tax effect of ₹ 75.55 lakh, ₹ 2.11 crore and ₹ 1.31 crore during AYs 08, 09 and 10 respectively.

**3.41** *The Ministry stated (May 2013) that each case pointed out by audit will be examined on facts. However, incidental business and commercial activity is permitted by law except in the case of Trusts having object of general public utility.*

**ITD allowed irregular exemptions to 28 Trusts involving tax effect of ₹ 11.74 crore where Trusts violated the provisions of section 13 of Act.**

#### **Irregular exemption by violation of provisions of section 13 of Act**

**3.42** Section 13 of Act provides that exemption to charitable trusts available under section 11 or 12 would not be available if any income or property of Trust is applied for the benefit of any particular religious community/ caste or directly or indirectly for the benefit of any person referred to in section 13(3) or any funds of Trust are invested or deposited otherwise than in any or more of the forms or modes specified in section 11(5).

**3.43** We observed that ITD allowed exemptions in 28 cases involving tax effect of ₹ 11.74 crore where the assessee Trusts violated the provisions of section 13 of Act (see box 3.8).

**Box 3.8: Illustrative Case**

In Karnataka, DIT-E, Bangalore and CIT Mangalore, three trusts namely **Mahatma Gandhi Vidya Peetha Trust** (AY 09), **Nagarjuna Educational Society** (AY 09) and **Alva's Education Foundation** (AY 10) made payments for the benefit of interested persons specified in section 13(3) and the entire income of ₹ 11.13 crore was allowed as exemption u/s 11 instead of bringing it to tax. The omission resulted in irregular exemption of like amount involving tax effect of ₹ 3.91 crore.

**3.44** *The Ministry stated (May 2013) that payment to interested person attracts provision of sec 13(3) only if the same is unreasonable. There is no general ban on making any payment to interested persons as per section 13(3). Only thing required to be examined is that the payment made to the interested persons is reasonable considering the nature of activity or benefit taken by Trust.*

**3.45** *Audit of the view that the Ministry may reiterate instructions for AOs to be made responsible for irregular exemption by violation of provisions of section 13 of Act.*

**ITD allowed exemption on accumulated amounts to 11 Trusts involving tax effect of ₹ 99.63 crore though Trusts lost charitable character.**

**Exemption of accumulation u/s 11(2) despite assessee losing charitable character**

**3.46** Accumulation under section 11(2) is exempt subject to its application for stipulated period on the charitable objects of Trust. Section 11(3)(a) provides that, if in any year income accumulated for specific purpose or purposes of Trust is applied to purposes other than charitable or religious purposes or ceases to be accumulated or set apart for application of such purposes, it will become chargeable to tax as the income of the year.

**3.47** We noticed that ITD allowed exemption in 11 case involving tax effect of ₹ 99.63 crore where Trusts lost charitable character (see box 3.9).

**Box 3.9: Illustrative Case**

In DIT-E., Mumbai, **Credit Guarantee Fund Trust for Micro and Small Enterprises** was assessed for AY 10 under normal provisions and not as Trust in accordance with amendment in section 2(15) holding its objects non-charitable in nature and cancelling registration u/s 12AA. Since the assessee was no longer a charitable trust, the unused accumulation u/s 11(2) of AY 08 and AY 09 amounting to ₹ 94.39 crore and ₹ 154.62 crore respectively was required to be taxed in the current year. Therefore, AO did not bring the accumulations of previous years as income which resulted in underassessment of income of ₹ 249.01 crore with a tax effect of ₹ 84.63 crore.

**3.48** *The Ministry stated (May 2013) that if exemption is denied in one year but registration continues (which is permissible as per scheme of the Act), the accumulated surplus cannot be taxed unless period of five years is over.*

**3.49** *The Ministry may reconsider their reply as Audit pointed out the cases where registration has also been cancelled as Trusts lost its charitable character, action is required to tax unused accumulations also.*

**ITD allowed exemption in 4 case involving tax effect of ₹ 6.52 crore where income was not derived from property held under Trust.**

**Irregular exemption to income not derived from property held under Trust**

**3.50** Exemption under section 11 of Act is allowable to income derived from property held under Trust for charitable or religious purposes in India. Voluntary contributions received by Trust is also deemed to be an income derived from property held under Trust as provided u/s 12(1) of Act. Thus, if income is derived from property which is held by any institution/organization other than Trust, such income is not eligible for exemption.

**3.51** We observed that ITD allowed exemption in 4 case involving tax effect of ₹ 6.52 crore whose income were not derived from property held under Trust (see box 3.10).

**Box 3.10: Illustrative Case**

In Gujarat, CIT Gandhinagar, the total receipts of **Gujarat Council of Science City** for AY 07 were ₹ 39.76 crore out of which an amount of ₹ 5.96 crore (15% of the total receipt) was allowed to be set apart under section 11(1)(a) of Act and the remaining income of ₹ 6.04 crore was taxed. As the income of the assessee institution was not derived from property held under Trust, the exemption granted under section 11(1)(a) of Act was irregular. The irregular exemption resulted in under-assessment of income ₹ 5.96 crore involving short levy of tax of ₹ 2.65 crore. ITD accepted the observation and took remedial action (November 2011).

**3.52** *The Ministry stated (May 2013) that there are only 4 cases.*

**3.53** *Audit is of the view that the Ministry may examine the above cases and take remedial action.*

**ITD allowed irregular exemptions to 22 Trusts involving tax effect of ₹ 5.53 crore while computing 15 percent income on gross basis instead of net income.**

**Excess allowance of exemption granted under section 11(4) read with section 11(4A)**

**3.54** Madras High Court has held that “only net income can be considered for application and accumulation”<sup>18</sup>. As per Board’s circular<sup>19</sup>, the income of Trust has to be computed in terms of commercial principles and not as per other provisions of Act.

<sup>18</sup> 223 ITR 831 (Madras HC)(1997) - CIT VS PSG & Sons Charities

<sup>19</sup> CBDT Circular No. 5P (LLX-6) dated 19/06/1968.

Hence, 15 *per cent* of the income derived from the property held under Trust shall be of the net income after meeting all the expenditure to earn the income and not of the gross receipts.

**3.55** We observed that in 22 Trust cases involving tax effect of ₹ 5.53 crore, computation of income was inconsistent (see box 3.11).

**Box 3.11: Illustrative Case**

In Kerala, CIT Kochi, **Lissie Medical Institute**, engaged in the business of running Multi-Specialty Hospital, School of Nursing, College of Pharmacy etc., computed the net business income before allowing depreciation and establishment expenses. Assessee claimed depreciation and establishment expenses from the above net business income as application of income. AO, while completing the assessment for AY 10 after scrutiny, considered only the net income. However, while completing the assessments for the AY 07 and AY 08, AO disallowed depreciation and allowed exemption on the gross receipt instead of net business income. This resulted in under assessment of taxable income of ₹ 2.49 crore and ₹ 20.78 lakh in two AYs respectively with a total tax effect of ₹ 1.19 crore.

**3.56** *The Ministry stated (May 2013) that the legal position stated by audit is not correct. In section 11, the word 'income' refers to the gross income received from property of Trust and not net income. It appears that audit wing in Kerala alone is taking this objection.*

**3.57** *Audit is of view that the Ministry may clarify the position after taking consideration upon the Madras High Court judgment.*

**ITD allowed irregular exemptions to two Trusts involving tax effect of ₹ 41.01 crore to Investor Protection Funds under section 11 and 10(23EA) simultaneously.**

**Irregular grant of exemption to Investor Protection Funds (IPDs)**

**3.58** Section 10(23EA) provides that income of IPD by way of contributions received from recognized stock exchanges and the members thereof, alone, would be tax-exempt and all other income of IPD would become taxable. However, the IPDs started taking exemptions as Trusts under section 11 for such taxable income and they were claiming exemptions both under section 11 and 10(23EA) of Act.

**3.59** **The Stock Exchange Investor Protection Fund** was created with the specific objective of establishing a fund for the benefit of the customers of the members of Bombay Stock Exchange and the nature of fund was very restrictive. It gave benefits only to those persons who actually did the trade through the exchange's member on the exchange. Trust was dissolvable on dissolution of the Stock Exchange and the proceeds of the assessee was not to be given to any other Trust but would be shared with the Stock Exchange. Thus, the nature of the fund is more of a business facilitator of the Stock Exchange and non-charitable in nature (see box 3.12).

**Box 3.12: Illustrative Case**

In DIT-E, Mumbai, AO allowed irregular exemption under section 11 and 10(23EA) simultaneously of ₹ 123.7 crore involving tax effect of ₹ 41.01 crore to **Stock Exchange Investor Protection Fund & National Stock Exchange Investor Protection Fund**, during AY 08 to AY 10.

**3.60** *The Ministry stated (May 2013) that the cases will be examined for applicability on facts.*

**AOs allowed irregular exemption on dividend income involving tax effect of ₹ 163.66 crore under section 10(34) and 10(35) in 20 cases though it was not applied for the purpose of Trust.**

**Irregular exemption within exemption relating to Dividend**

**3.61** Section 11 to 13 deals with the quantum of income from the property held under charitable or religious Trusts which will not form the part of total income. Method of computation of such quantum is based on application of income generated from the property of Trust/ received by Trust. Any exclusion of income will not only defeat the basic purpose of this computation but also defeat the purpose of Chapter III which deals with “Incomes which do not form part of total income”. Dividend income prescribed u/s 10(34) and 10(35) is not covered u/s 11 to 13 applicable to Trusts.

**3.62** We noticed that AOs allowed exemption on dividend income u/s 10(34) and 10(35) though it was not applied for the purpose of Trust in 20 cases involving tax effect of ₹ 163.66 crore (see box 3.13).

**Box 3.13: Illustrative Case**

In DIT-E, Mumbai, AO allowed exemptions of dividend income of ₹ 89.26 crore under section 10(34) and 10(35) to **Sir Dorabji Tata Trust** during FY 09. AO should not have allowed this as income was not applied for the purposes of Trust. The omission has resulted in irregular allowance of exemption with potential tax effect of ₹ 30.34 crore.

**3.63** *The Ministry stated (May 2013) that dividend incomes which are exempt under section 10(34)/10(35) cannot be further subjected to conditions mentioned in section 11 for application of income purposes. Such dividend income would also be exempt in hands of charitable institutions. Only condition which will apply is regarding investment of such income which will have to be made in accordance with provision of section 13(1)(d), in the modes specified in section 11(5). All the mistakes are being looked into.*

**3.64** *Audit is of the view that the Ministry may consider all the provisions of section 11/12 for application of dividend income instead of only provision of section 13(1)(d) in the modes specified in section 11(5) or make suitable amendment in the Act.*

**Inconsistent stands taken by AOs**

**3.65** Section 13(1)(d) of Act provides that exemption under section 11 would not be available if shares are held in other than public sector company after 30 November 1983 provided such shares were not received by Trust as corpus donation before 1 June 1973.

**3.66** We found cases where AOs took inconsistent stand (see box 3.14).

**Box 3.14: Illustrative Case**

- a.** In ITO Ward 1(4), Pune, AO denied the benefit of exemption to **Dr. Vikhe Patil Foundation, Pune** during AY 09 on the ground that Trust was holding shares in a co-operative bank in violation of section 13(3). However, **Shree Chanakya Educational Society**, holding the shares in three co-operative banks during AY 09 and AY 10 was allowed exemption though both were being assessed in the same charge. This resulted in underassessment of income of ₹ 3.58 crore and ₹ 5.01 crore with tax effect of ₹ 1.22 crore and ₹ 1.70 crore respectively.
- b.** In DCIT Circle 6, Pune, AO allowed exemption to **Raja Shree Shivraya Pratisthan** during AY 09 who was holding shares in two co-operative banks. This resulted in income escaping assessment of ₹ 1.82 crore with a tax effect of ₹ 61.40 lakh.

**3.67** *The Ministry stated (May 2013) that the legal position is correct. Specific cases will be looked into.*

**3.68** *Audit is of the view that the Ministry may initiate remedial action in above cases.*

**AOs took inconsistent stands in 136 cases involving excess accumulations with tax effect of ₹ 72.32 crore where 15 per cent income was set apart at the initial stage.**

**Non uniform treatment of prescribed deduction for accumulation of funds**

**3.69** Section 11(1) of Act allow accumulation up to fifteen *per cent* of income every year, and require balance eighty five *per cent* to be applied for charitable purposes. It was held<sup>20</sup> that it would not be allowed to accumulate 15 % of total income first and then claim excess expenditure for its carry forward to subsequent years. Thus, the accumulation is permissible only to the extent surplus available limited to upper limit of fifteen *per cent*.

**3.70** There is no uniform stand of ITD in treatment of accumulation. Trusts were using this clause as standard deduction and the fifteen *per cent* income was being set apart at the initial stage without verifying whether there is any surplus or not. AOs took inconsistent stands in 136 cases involving excess accumulations with tax effect of ₹ 72.32 crore (see box 3.15).

**Box 3.15: Illustrative Case**

In Gujarat, CIT-Gandhinagar, **Bhanuvijayaji Universal Foundation** had set apart income to the extent of 15% u/s 11(1)(a) even though the actual unapplied income available for set apart was very much less than 15% of gross receipt. The incorrect computation of loss on account of irregular set apart of notional income aggregated to ₹ 2.15 crore with potential tax effect of ₹ 73.12 lakh.

**3.71** *The Ministry stated (May 2013) that the legal position is correct. This aspect is generally taken care of by AOs in scrutiny assessments.*

**3.72** *Audit is of the view that to cover summary assessments, the Ministry may consider suitable modifications in ITR-7 to be processed electronically so that above point is included in computation of income.*

<sup>20</sup> Dawat Institute of Dawoodi Bahra Community Vs. ITO (2008) 22 SOT 359 (Mumbai)



### **Non compliance of provisions of section 11 by the Local Authorities**

**3.73** As per Explanatory notes to Finance Act, 2002, incomes of Housing Boards of the States and of Development Authorities (hitherto being exempt under the provisions applicable to “local authorities”) would be taxable even if they may be deemed to be treated as Local Authorities under any other Central or State Legislation. However, these bodies started taking advantage of provisions of section 11 of Act for exemption of their incomes by getting themselves registered as charitable trusts and institutions.

**3.74** In Maharashtra, ITD denied exemption to **Mumbai Metropolitan Region Development Authority (MMRDA), Maharashtra Industrial Development Corporation (MIDC) and Slum Rehabilitation Authority (SRA)**, holding that they cannot be considered as Trust of any kind. However, these assesseees succeeded in the appeal at the CIT (Appeal).

**3.75** In DIT-E, Mumbai, AO denied exemption to **MMRDA** on grounds of non charitable nature of activities but assesseees succeeded in the appeal and matter was still subjudice on this account. We noticed that MMRDA was not eligible for exemption on the ground that the assessee advanced huge interest free loans ₹ 1992.48 crore to the persons of various Departments and units of Government of Maharashtra, and thus, attracted the provisions of section 13(1)(c). However, ITD did not consider the above aspect of violation of section 13(1)(c) for disallowing the exemption and the above fact was not brought out to the notice of appellate authorities.

**3.76** *The Ministry stated (May 2013) that there is no general rule that local authority cannot claim exemption u/s 11, since apart from Trusts, Companies under section 25, Company Act, Societies under Societies Registration Act etc. are also eligible for registration. It has been judicially held that erstwhile local authorities which enjoyed exemption of their income under section 10(20A) are also entitled for registration under section 12AA after deletion of that section. Only in cases where proviso to section 2(15) is attracted, exemption can be denied by applying section 13(8). The specific objections will be examined.*

**3.77** *Audit is of the view that the Ministry may clarify the position after examination and issue suitable instructions in this regard.*

### **Other mistakes**

**3.78** We also noticed various types of mistakes while allowing exemption to the charitable trust/institutions in 166 cases involving tax effect of ₹ 94.15 crore.

## Recommendations

### 3.79 We recommend that

- a. The Ministry may evolve a mechanism so that Trusts are not allowed accumulations consistently through strict monitoring of Form 10 invariably in all the cases to cover all assessments whether in summary/scrutiny or bring amendment in Act to restrict such accumulations up to a certain limit.

*The Ministry stated (May 2013) that surplus beyond 15 percent can be accumulated up to 5 years under section 11(2) by filing Form 10. Therefore accumulation of surplus is permitted by law. The prescription of limit is not desirable or practical as funds are required to be accumulated for infrastructure development and other purposes as per specific needs.*

*Audit has not questioned the legality of section 11(1) & 11(2) but pointed out instances of accumulations consistently citing illustrations of misuse of such accumulations. The Ministry, in the DTC, had also proposed that Trusts (Non Profit Organizations) apply at least 85 percent of income in the year to avail exemption.*

*The Ministry further stated (July 2013) that since all cases are not taken into scrutiny, it will not be feasible to make physical verification of accumulation and other issues in each and every case. However, the newly notified ITR-7 form already contains a field which requires disclosure of this information.*

*Audit reiterates its views as bulk of the returns of Trusts are finalized under summary only.*

- b. The Ministry may devise an appropriate control mechanism with clearly defined responsibilities to ensure utilization of accumulated funds over a period of time or tax the same.

*The Ministry stated (May 2013) that this aspect is being examined during scrutiny.*

*Audit is of the view that the Ministry may strengthen its internal control mechanism to ensure that mistakes of above nature are minimized in summary assessments also.*

*The Ministry further stated (July 2013) that as per the provisions of section 12A (b) of Act, the accounts of the trusts are required to be audited by an accountant, where the total income of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income tax in that previous year. The utilization of accumulated funds forms part of such audit proceedings. This aspect is also examined during the course of scrutiny proceedings.*

*Audit is of the view that the functions of the ITD held in Act are quasi judicial in nature and cannot be delegated to 3<sup>rd</sup> parties. Moreover, we found mistakes in*



*scrutiny cases also which shows that either provisions of Act are not being complied properly or appropriate control mechanism is lacking.*

- c. The Ministry may evolve effective monitoring system to make AOs responsible to check investments in unauthorized modes in all the cases.

*The Ministry stated (May 2013) that this aspect is being examined during scrutiny.*

*Audit here found mistakes in scrutiny assessments, which shows that these mistakes were not examined in scrutiny; the Ministry therefore needs to evolve a system so that such mistakes do not recur.*

- d. The Ministry may initiate action for withdrawal of exemption /cancellation of registrations/approvals u/s 12A / 10(23C) of Act in case of violation of provisions of section 13.

*The Ministry did not agree (May 2013) on the recommendation but agreed to examine the cases involving violation of Sec 13.*

*Audit of the view that the Ministry may reiterate instructions for AOs to be made responsible for irregular exemption by violation of provisions of section 13 of Act.*

## Chapter 4: Accumulations and Foreign Contributions

**ITD allowed irregularly exemptions u/s 11(2) to 120 Trusts involving tax effect of ₹ 106.10 crore for the surpluses accumulated without submitting Form 10 /details of investments made in specified modes to the AO.**

### Non-monitoring of accumulations of income of Trusts

**4.1** Audit manual of ITD prescribes<sup>21</sup> that separate registers have to be maintained in respect of accumulation of income, forms of investment and subsequent application of accumulation of income by Trusts. Besides, CBDT<sup>22</sup> has also prescribed that such register be maintained by AO for keeping a record of such accumulations of income and for monitoring utilization of such funds.

**4.2** We noticed 120 cases involving tax effect of ₹ 106.10 crore where Trusts were availing exemptions u/s 11(2) even in scrutiny cases for accumulated amounts without filing Form 10 or filing it belatedly. Details of investments and amounts accumulated in the last 11 years were not in the Schedules I and K specified in the returns. ITD did not monitor accumulation of income, forms of investment in specified mode and subsequent application of accumulation after specified period as the registers were not maintained properly and updated (see Box 4.1).

#### Box 4.1: Illustrative Case

In Kerala, CIT Trissur, **Guruvayur Devasom Board**, during AY 09 and AY 10, received hundi collections and donations as demand draft amounting to ₹ 24.64 crore and ₹ 29.21 crore respectively which were credited to the capital fund instead of considering the same as 'income from property held under the trust'. As Form No 10 required to be filed u/s 11(2)(a), was not filed for accumulation of income, it has to be assessed, which involved tax effect of ₹ 21.46 crore.

The Ministry stated (May 2013) that the case is under examination.

**4.3** *The Ministry stated (May 2013) that the Audit has pointed out lapses in implementation by AOs. These will be looked into. However, e-filing of ITR-7 will strengthen the monitoring mechanism for accumulations. The Ministry also stated (May 2013) that the mechanism in the form of appropriate column in ITR-7 and prescription for maintenance of register by AOs to monitor accumulation as per page 61 of Office Manual already exists. In scrutiny assessments, the AOs are examining this aspect. However, the mechanism can be strengthened by introducing e-filing of ITR-7 which will enable online maintenance of register. The ITD is in the process of making the e-filing of Returns by all assessees mandatory. Once this is achieved, the necessary data base will be created in the system to address such issues.*

<sup>21</sup> Para 8.3 of Chapter 5 of the Manual of Procedure Volume II

<sup>22</sup> Circular No.273 dated 03/06/1980

**4.4** *Audit is of the view that according to the scheme of Act, filing of Form 10 is to be made before completion of assessment (summary/scrutiny) and is mandatory in nature. AO should scrutinize all the Forms 10 and mistakes like ITR-7 filed without Form 10, incomplete Form 10 without necessary schedule 'I' & 'K', purpose of accumulation and investment made in non-specified mode etc may easily be tracked down prima facie. It would also ensure that only those assessee's claims are accepted (either summary or scrutiny assessment) who have fulfilled all the requirements of the Form 10. The Ministry may issue necessary instructions in this regard.*

**ITD did not tax accumulations of 23 Trusts after specified period involving tax effect of ₹ 100.07 crore.**

**Non taxation of short application of income/accumulations after specified period**

**4.5** Section 11(1) and (2) of Act provides that if the Trust is unable to apply at least 85 per cent of its income or does not opt for accumulation the portion of the income which could not be applied, it will become chargeable to tax. Section 11(3)(c) of Act provides that, if any income accumulated for specific purpose(s) of Trust is not applied for purposes for which it is so accumulated or set apart during the period of five years, it will become chargeable to tax in the following year at the expiry of five years.

**4.6** We noticed that in 23 cases involving tax effect of ₹ 100.07 crore, AOs did not monitor accumulated income to be taxed after specified period (see Box 4.2).

**Box 4.2: Illustrative Case**

In DIT-E, Mumbai, **Chief Minister's Relief Fund** approved u/s 10 (23C) (iv), was allowed surplus of ₹ 21.90 crore as exempt for AY 10 without following the procedures of accumulation under provisos in Act. The assessee had accumulations of ₹ 247.28 crore as on 31 March 2009 which were not utilized and as such were to be taxed. However, AO did not monitor period of accumulations and the accumulations due to be taxed after five years were not taxed. Therefore, non-taxing of accumulations of ₹ 269.18 crore resulted in under-assessment with a tax effect of ₹ 91.49 crore.

The Ministry accepted (May 2013) audit observation and initiated remedial action.

**4.7** *The Ministry stated (May 2013) that the Audit pointed out lapses in implementation by AOs and agreed to look into the matter.*

**4.8** *Audit is of the view that the Ministry needs to evolve effective monitoring system to check escapement of tax on accumulations remained unutilized after prescribed time limit of five years.*

**ITD allowed irregularly exemptions to 5 Trusts involving tax effect of ₹ 43.35 crore for accumulations invested in non specified modes.**

**Irregular exemption for investment not made in specified mode**

**4.9** Exemption under section 11 and 12 is not allowed for accumulated funds if not invested in specified modes prescribed under section 11(5) of Act.

**4.10** We noticed that ITD allowed exemption in five cases involving tax effect of ₹ 43.35 crore where investments were not made in specified mode (see Box 4.3).

**Box 4.3: Illustrative Case**

In Tamil Nadu, DIT-E, Chennai, AO allowed exemption of ₹ 247.95 crore to **National Institute of Ocean Technology** in AY 08. The assessee deposited ₹ 186.85 crore in bank and claimed it as expenditure in Receipt & Payment Account. Moreover, assessee did not submit notice in Form 10. AO should not have allowed it as investment in specified mode. It resulted in irregular exemption involving tax effect of ₹ 42.68 crore.

**4.11** *The Ministry stated (May 2013) that all cases will be examined for applicability on facts.*

**4.12** *Audit is of the view that the Ministry, besides examination of the cases, needs to evolve effective monitoring system to check escapement of tax on investments made in unspecified mode.*

**As per MHA web site, NGOs/Trusts received Foreign Contributions (FCs) ₹ 10,338 crore during FY 10 and MHA monitors it under FCRA, 1976. CBDT has not issued any guidelines/circulars to watch FCs received with specific directions and utilized for the purpose for which it was received.**

**Non Monitoring of FCs received by Trusts and NGOs**

**4.13** Non Government Organizations (NGOs)/Trusts receive FCs from time to time governed by Foreign Contributions Regulations Act (FCRA) 1976, amended by FCRA, 2010. The Ministry of Home Affairs (MHA) monitors receipt of FC and publishes it on its official website<sup>23</sup> showing year-wise/state-wise details of Associations/Trusts that received FC above ₹ 1 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 have to be submitted annually to MHA.

**4.14** As per MHA website, 21,508 Associations reported receipts of FCs amounting to ₹ 10,338 crore during the FY 10 for which CBDT has not issued any circular/guidelines. ITD has not ascertained the details viz. whether the voluntary donations/contributions received with any specific direction or whether it will form part of corpus fund and the same has been utilized for the purpose for which it was received and not used for any activities which are detrimental to national interest.

**ITD has not prescribed any column in the ITR form (ITR-7) for FCs to enable AOs in proper assessment.**

**Inconsistency in form of return**

**4.15** We noticed that there is no column available in form of IT return (ITR-7) to capture the figure relating to FCs/donations received by Trusts. This would enable AOs in proper assessment (see Box 4.4).

<sup>23</sup> <http://mha.nic.in/fcra.htm>

**Box 4.4: Illustrative Cases**

In Gujarat, DIT-E, Ahmadabad, ITD did not select for scrutiny of 73 assessee Trusts who received FCs amounting to ₹ 272.35 crore during AY 08 to AY 10.

**4.16** *The Ministry stated (May 2013) that in ITR-7 prescribed for AY 13 a separate column has been introduced for mentioning FCRA registration details and amount of FC received. Trusts which had received FCs during AY 08 to AY 10, were not selected for scrutiny since there were no CBDT guidelines for selection of the same in those relevant years. However, for AY 12 the cases which have received FCs above ₹ 1 crore have been selected for scrutiny.*

**FCs not utilized for the purpose**

**4.17** In DIT-E, Mumbai, we noticed diversion of funds by two Trusts<sup>24</sup> and institutions, who received FCs to the extent of ₹ 97.14 crore during AY 09 & AY 10 found to be differing in purpose of donation and its utilization. In DIT-E, Chennai, in 4 cases, FCs were utilized for other purposes resulting in the tax effect ₹ 6.18 crore. In one case in CIT Trichy and in one case in CIT Madurai, the amount received as FC was not utilized for the purpose.

**4.18** *The Ministry stated (May 2013) that eight cases mentioned in this para are being examined.*

**4.19** *Audit is of view that the Ministry, besides examining the cases, may ensure that FC have been spent for the purpose for which these had been received and unspent amount is taxed as per Law.*

**4.20** *The Ministry further stated (July 2013) that ITD can only verify whether the funds received have been used for the purpose of Trust and only in those cases which are selected for scrutiny.*

**4.21** *Audit is of the view that CBDT in March 2012 had itself recommended on the issue of Black Money to the Ministry of Finance that there should be sharing of real-time data under FCRA Act and DGIT (Exemption) and coordination amongst various enforcement agencies. As bulk of the returns of Trusts are processed in summary only, therefore, ITD should devise a mechanism to facilitate effective monitoring including summary cases also.*

**FCs mingled with the local funds**

**4.22** As per the provision of FCRA, the amount received from foreign donors should be kept in a designated bank account separately and should not be mingled with local funds. However, in following two cases, no separate accounts were maintained for FCs received in Chennai.

- a. In Chennai, Exemption Circle II, the **Diocese of Chengalput Educational Society** had closing balance ₹ 59.03 lakh as at the end of FY 06, which was deposited in 8% Bond along with the local contributions of ₹ 34.09 crore.

<sup>24</sup> "Pratham – Mumbai Education Initiative (AY 10) and World Renewal Spiritual Trust (AY 09 & AY 10)

- b.** In Chennai, Exemption Circle I V, **Aide-et-action**, an NGO, approved u/s 12AA, was in receipt of ₹ 15.28 crore and ₹ 11.71 crore as FC for AY 08 and AY 09. The assessee was also in receipt of ₹ 76.19 lakh and ₹ 1.81 crore as local donation. Assessee did not maintain separate books of accounts as stipulated in Act.

**4.23** *The Ministry stated (May 2013) that as far as Act is concerned, it is irrelevant whether the FCs and local funds are mixed by the assessee in same bank account. The only important issue is whether the funds received are towards corpus or otherwise and whether the funds are applied or accumulated as per the provisions of Act. Any violation of provisions of FCRA would be looked into by MHA where the assessee is required to file annual return.*

**4.24** *Ministry's stand is not acceptable. This provision of FCRA does not contradict the Act. As per section 17 (1) of FCRA Act (2010), every person who has been granted a certificate or given prior permission u/s 12 shall receive FC in a single account only through such one of the branches of a bank as he may specify in his application for grant of certificate. Furthermore, its 2nd proviso says that no funds other than FC shall be received or deposited in such account. It is clear from the above that an assessee receiving FCs is bound to maintain separate account for FCs and cannot mingle it with locally received funds. Further, in the absence of separate account, the Ministry would not be able to ensure that FCs (Corpus Fund) have been utilized for the purpose for which it was received.*

**4.25** *The Ministry stated (July 2013) that there is no provision under Act that Trust can be denied exemption on FCs if mixed with the local funds. Violation of the provisions of FCRA may attract penalty under FCRA but not under Act as per the existing provisions.*

**4.26** *Audit is of the view that the Ministry may bring suitable amendment in Act or issue instructions regarding maintenance of separate accounts for FCs and local funds as provided in the FCRA Act for proper monitoring of FCs and local funds.*

## **Recommendations**

**4.27** We recommend that

- a.** ITD should monitor accumulations of income by Trusts that are used in specified mode, specified time and for specific purposes. Prescribed registers should be maintained and updated strictly to watch accumulations and this database should also be computerized and available to the AOs while finalizing assessments.

*The Ministry stated (May 2013 and July 2013) that introduction of e-filing of ITR-7 will enable online maintenance of the register by AOs, process of which is going on. The Ministry also stated that the mechanism in the form of appropriate column in ITR-7 and prescription for maintenance of register by AOs to monitor accumulation as per page 61 of Office Manual already exists. In scrutiny assessments, the AOs are examining this aspect.*

*Audit is of the view that according to the scheme of Act, filing of Form 10 is to be made before completion of assessment and is mandatory in nature. So it has nothing to do with summary or scrutiny assessment. AOs should scrutinize all the Forms 10.*

- b.** ITD may ensure that all the stipulated conditions are fulfilled before granting exemptions u/s 11(2) on the basis of Form 10 required to be filed by assessee before filing of returns.

*The Ministry stated (May 2013) that AOs examine this aspect during scrutiny. The Ministry further stated (July 2013) that the declaration in Form 10 is considered at the time of scrutiny of the case. AOs examine whether or not the stipulated conditions are fulfilled for granting exemption u/s 11(2) during the course of scrutiny proceedings.*

*Audit is of the view that the Ministry should introduce e-filing and auto processing of Form 10 in respect of all the Trust cases whether under scrutiny or summary. It will ensure proper monitoring of accumulations made by Trusts, whether covered under summary or scrutiny.*

- c.** ITD may ensure that FC cases are selected for scrutiny as per guidelines issued by CBDT.

*The Ministry agreed (May 2013) to select FC cases in scrutiny as per guidelines. The Ministry further stated (July 2013) that guidelines for compulsory selection for scrutiny for last year laid down that the returns of organizations receiving donations in foreign currency in excess of ₹1 crore would be taken up for scrutiny. Placing such parameters may be examined this year also while finalizing the scrutiny guidelines for the current year.*



## Chapter 5: Inconsistencies in the Income Tax Act, 1961

**5.1** Act does not specifically allow deficit of earlier years, depreciation and repayment of loan in case of exempt entities. In the absence of any express provision in Act, the courts have taken divergent views. ITD has also not taken uniform practice in allowing depreciation, repayment of loan and deficit of earlier years.

**ITD has not taken uniform stand in allowance/disallowance of the depreciation to Trusts and allowed irregular depreciation in 240 cases involving tax effect of ₹ 248.39 crore.**

### Inconsistencies in allowance of depreciation

**5.2** The Supreme Court<sup>25</sup> (1993) held that where a full deduction has been allowed in relation to capital asset (under section related to exemptions), no depreciation is to be allowed under section 32 on the same asset. There is a fundamental axiom that double deduction is not intended unless there is a clear statutory indication to the contrary. The Kerala High Court (2012) also supported the above view. However, additionally it has been said that if the assessee claims depreciation, then in order to reflect the true income available for application of charitable purposes, it should write back the depreciation amount in the account to form part of its income. Otherwise such notional claim becomes unaccounted cash surplus for the assessee outside its books of accounts.

**5.3** ITD allowed depreciation in 240 cases irregularly involving tax effect of ₹ 248.39 crore and had not taken uniform action in allowance/disallowance of the depreciation in Trust cases (see Box 5.1)

#### Box 5.1: Illustrative Cases

- a.** In Kerala, CIT Kottayam, **Matha Amrithanandamayi Math**, claimed depreciation of ₹ 138.46 crore during AY 07 to AY 09 as application against income from property held under Trust. This was not in order as Trust has not added back depreciation for any of the AYs for which it already claimed deduction for acquisition of capital asset as application of money involving potential revenue impact of ₹ 46.77 crore.
- b.** In DIT-E, Mumbai, AOs allowed depreciation of ₹ 256.66 crore in 50 cases involving revenue impact of ₹ 90.30 crore. AOs disallowed depreciation of ₹ 27.60 crore in 10 cases involving revenue impact of ₹ 9.38 crore.
- c.** In DIT-E, Ahmadabad, AO allowed (November 2009) **BAPS Swaminarayan Sanstha** depreciation of ₹ 52.25 crore during AY 08. Later on, DIT-E, Ahmadabad issued directions (December 2009) to all AOs under its jurisdiction to disallow the depreciation on the ground of double deduction.
- d.** In DIT-E, Delhi, AO did not allow **Vivekanand Shiksha Samiti** depreciation for the AY 10. However, same AO allowed depreciation in the case of **Institute of Chartered Accountants of India** for the AY 10.

<sup>25</sup> Escort Ltd. Vs. Union of India(1993) 199 ITR 43

**5.4** *The Ministry stated (May 2013) that issue raised by audit will be examined.*

**5.5** *Audit is of the view that the Ministry may take a decision, in principle, whether depreciation to Trusts is to be allowed or not to remove inconsistencies in allowance of depreciation due to divergent views expressed by different Courts.*

**ITD did not take uniform stand to allow/disallow deficit of earlier years to 110 Trusts involving tax effect of ₹ 327.48 crore.**

**Inconsistencies in allowance of deficit of earlier years**

**5.6** In order to claim any relief or benefit under Act, there has to be provision for the purpose. Wherever intended, Act has specifically provided for such reliefs and benefits. As the profits of the business entities are taxed, Act has specifically provided for carry forward of losses in these cases. Act does not specifically allow carry forward of deficit in case of exempt entities.

**5.7** The Court has held<sup>26</sup> that the assessee can claim in respect of application over and above 100% of gross receipts in any year to be set off in the succeeding years against shortfall. Rajasthan High Court<sup>27</sup> has also held that excess of expenditure over income of charitable or religious nature incurred in earlier years can be adjusted against the income of current year. Similar views were expressed by the Gujarat High Court [1995],<sup>28</sup> and by the Bombay High Court [2003]<sup>29</sup>.

**5.8** We noticed that ITD had not uniformly allowed/disallowed deficit in 110 cases involving tax effect of ₹ 327.48 crore (see Box 5.2).

**Box 5.2: Illustrative Cases**

- a.** In DIT-E, Mumbai, ITD allowed in 38 cases, deficit of ₹ 245.72 crore to be carried forward involving revenue impact of ₹ **83.52 crore**. In 36 cases, deficit of ₹ **420.42 crore** involving revenue impact of ₹ **142.90 crore** was disallowed.
- b.** In DIT-E, Hyderabad, **A.P. State Housing Corporation** submitted their provisional accounts duly indicating losses for the AY 03 to AY 09 except AY 08 and was processed u/s 143(3). The losses of ₹ 158.7 crore were allowed to be carried forward/set-off which involved potential tax impact of ₹ 53.34 crore.
- c.** In DIT Delhi, AO allowed setting off of deficit of previous year in case of **Ram Sewa Swami Satyanand Trust**, for AY 10, but the same AO in another case of **Rameshwar Dayal Trust** for the same AY disallowed the same.

**5.9** *The Ministry stated (May 2013) that issue raised by audit will be examined.*

**5.10** *Audit is of the view that the Ministry may take a decision, in principle, whether deficit of earlier years in case of Trusts is to be allowed or not.*

**5.11** *The Ministry further stated (July 2013) that ITD has lost SLP before the Supreme Court and decided not to file SLP on this issue. ITD has opined that the issue has reached its finality.*

<sup>26</sup> CIT v. Matriseva Trust vs. 242 ITR 20 (Mad)

<sup>27</sup> CIT v. Maharana of Mewar Charitable Foundation [1987] 164 ITR 439 (Raj.),

<sup>28</sup> CIT v. Shri Plot Sweatamber Murti Pujak Jain Mandal, [1995] 211 ITR 293 (Gujarat)

<sup>29</sup> CIT v. Institute of Banking Personnel Selection 264 ITR 110

**5.12** *Audit reiterates its view that the Ministry may issue instructions on the basis of final decision of SLP for bringing uniform approach in dealing with 'Deficit issue'.*

**ITD allowed repayment of loans as application of income to 10 Trusts involving tax effect of ₹ 8.56 crore though this amount was already treated as an application of income in the year in which this was borrowed for acquisition of assets.**

**Inconsistencies in allowance of repayment of loans**

**5.13** CBDT clarified<sup>30</sup> (1973) that repayment of loan originally taken to fulfill one of the objects of Trust will amount to an application of income for charitable and religious purposes. Rajasthan High Court held<sup>31</sup> that the repayment of any debt or loan should be considered as application of income.

**5.14** This circular remained silent on treating the acceptance of loan as income. The allowance of deficit results in double benefit as Trusts have created deficit out of exempt income in some previous year. Again, allowing deficit for the same fund results in re-accumulation of exempt income.

**5.15** AOs allowed repayment of loans irregularly in 10 cases involving tax effect of ₹ 8.56 crore as application of income though this amount was already treated as an application of income in the year in which this was borrowed for acquisition of assets leading to dual benefit to the assessee (see Box 5.3).

**Box 5.3: Illustrative Case**

In Kerala, CIT Trissur, AO completed assessments of **Divine trust** for AY 08 to AY 10 after scrutiny which revealed that the assessee availed a loan for acquiring asset and the cost thereof was considered as application in the year the amount was borrowed. In this case, AO should not have allowed the repayment of loan as application. Inadmissible loan repayment claimed as application aggregating ₹ 2.31 crore involved total tax effect of ₹ 1.03 crore.

**5.16** *The Ministry stated (May 2013) that loan originally taken has to be taken as income/ receipt before application is claimed against it. Without treating as income, application cannot be claimed. The Board's instruction has clarified the allowability of repayment in respect of the loan taken. There was no doubt that the same had to be shown as receipt before claiming application. Since repayment is allowable as per Board's circular and since it has not been pointed out by audit in the cited cases that application had been claimed in earlier years without showing the loan as receipts/ income the audit objection is not on sound footing.*

**5.17** *The reply of the Ministry is not acceptable as in all the 10 cases relating to scrutiny assessments, Trusts did not show loan as receipts/income. Out of 10 cases, ITD accepted two cases and initiated remedial action and replies were awaited in remaining cases. The Ministry may therefore examine the facts of the cases and initiate remedial action.*

<sup>30</sup> Circular NO 100 dated 24/01/1973

<sup>31</sup> CIT Vs Maharana of Mewar Charitable Foundation [1987] 164 ITR 439

**There is no internal mechanism within ITD to have control over the receipts issued by the entity having registration under section 80G. ITD did not cross-check the donations received by 24 Trusts.**

**No monitoring system in respect of donations under section 80G**

**5.18** At present there is no internal mechanism within ITD to have control over the receipts issued by the entity having registration under section 80G. We noticed 24 cases where ITD did not cross check the donation received by the entity (see Box 5.4).

**Box 5.4: Illustrative Cases**

- a.** In DIT-E, Mumbai, **Shri Lalji Velji Charitable Trust** during AY 10 had received ₹ 4.98 crore as corpus donation from five related parties. However, accounts of donors available on the record did not show such amounts. This was not reconciled.
- b.** In Tamil Nadu, CIT II Trichy & CIT I Madurai rejected 115 applications & 410 applications received from Trusts respectively for approval u/s 80G during FY 09 to FY 11. A test check of returns rejected by Ward I(1), Theni and Circle-I Kumbakonam revealed that donations to the extent of ₹ 71.75 lakh and ₹ 1.11 crore respectively were collected by eleven Trusts. However, there is no system in place to verify as to whether any benefit u/s 80G was extended to the respective donors.
- c.** In ITO 11(1) Pune, an assessee, **Matrix Education Foundation**, received donation of ₹ 24 lakh during AY 09 solely from one of its contractor which had been awarded the contract for building construction. Despite the fact being mentioned in Review Report of Additional Commissioner, ITD did not take any action.
- The Ministry stated (May 2013) that the facts are being verified in all the three cases.

**5.19** *The Ministry stated (May 2013) that cross verification cannot be done in all cases but only in high value and suspect cases which is already being done during scrutiny assessment.*

**5.20** *Reply of the Ministry is not acceptable as illustrated cases at Box 5.4 a & c relate to scrutiny assessment involving high money value. The Ministry may reiterate instructions in this regard.*

**There is no provision in Act to invest corpus fund in specified mode and tax interest earned thereon. In absence of this AOs allowed exemptions on interest earned on corpus fund to two Trusts involving tax effect of ₹ 69.67 crore.**

**Exemption of interest earned on corpus fund**

**5.21** There is no clear provision in Act to invest corpus fund and whether interest earned thereon is to be treated as income of the trust. In the absence of clear cut provisions in Act, AOs are allowing exemptions on interest earned on corpus fund.

**5.22** We observed that in two cases, AOs treated interest on corpus fund as deemed application involving tax effect of ₹ 69.67 crore (see Box 5.5).

**Box 5.5: Illustrative Cases**

In DIT-E, Delhi, AO allowed ₹ 43.09 crore received by **Price Stabilization Fund Scheme** for AY 10 as interest on corpus fund as deemed application u/s 11(1)(2)(i). It resulted in non levy of tax of ₹ 16.42 crore.

**5.23** *The Ministry stated (May 2013) that the investment of trust funds in specified modes provided u/s 11(5) is not restricted to only income accumulation part but extends to all funds (including corpus) of the trust. Therefore, mode of investment is already specified. In the illustrated case the assessee did not receive any sum of ₹ 4308.56 lakh, the said amount was only the interest accrued on the corpus fund for the relevant financial year and the same has been given in notes to accounts. This amount has been kept with the Department of Commerce along with corpus fund. The whole amount was not actually released to the trust as there was no requirement.*

**5.24** *The reply of the Ministry is not acceptable as interest earned was deposited in Public Account of India and was treated as part of income not received during the year. In the computation of taxable income this amount was claimed as deemed application u/s 11 (1) (2) (i). The Ministry may examine facts of both cases and take suitable remedial action.*

**There is no enabling provision in Act to deduct TDS in case of Trusts. Therefore, AOs allowed expenditure incurred by Trusts in seven cases, without deducting TDS which involved tax effect of ₹ 9.49 crore.**

**No provision in Act to deduct tax at source in case of Trusts**

**5.25** There is no enabling provision in Act to disallow the expenses on which TDS has not been deducted by Trusts similar to the section 40(a)(ia), applicable for the entities computing income under Chapter IV.

**5.26** In the absence of any TDS on such amounts, such amounts are often unnoticed at the time of scrutiny. Statutory requirements imposed on Trusts like Audit Reports in Forms 10B or 10BB have no disclosure with regard to compliance with TDS provisions. If such amounts are made to comply with TDS provisions, ITD would have a handy tool to disclose such amounts.

**5.27** We noticed that in seven cases, AOs irregularly allowed expenditure incurred by Trusts without deducting TDS which involved tax effect of ₹ 9.49 crore (see Box 5.6).

**Box 5.6: Illustrative Cases**

In DIT-E, Hyderabad, **AP State Housing Corporation Ltd** for AY 03 to AY 07 and AY 09 did not deduct TDS on corresponding expenditure u/s 40(a)(ia), yet expenditure was not disallowed. This involved tax effect of ₹ 4.57 crore. ITD accepted the audit observation.

**5.28** *The Ministry stated (May 2013) that issue raised by audit will be examined.*

**5.29** *The Ministry, besides examining the cases, may take a decision, in principle, whether TDS has to be deducted by Trust or not.*

**Sub sections (iiiab) and (iiiac) u/s 10(23C) of Act exempt income of any university or other educational institution/hospitals existing solely for educational/philanthropic purposes and not for purposes of profit, which is wholly or substantially financed by the Government. However, the word “substantially financed” is not defined in Act. This has resulted in according tax benefits to Trusts.**

**Divergent interpretation of phrase “substantially financed”**

**5.30** Subsection (iiiab) and (iiiac) under section 10(23C) of Act exempt income of any university or other educational institution existing solely for educational purposes and not for purposes of profit, which is wholly or “*substantially financed*” by the Government. This also applies to 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 existing solely for philanthropic purposes and not for purposes of profit.

**5.31** However, the word “*substantially financed*” is not defined in Act. Section 2(18)(a) defines holding of not less than 40% of the shares of a company by the Reserve Bank as “substantially interested”.

**5.32** In the following cases, AOs took divergent stand while considering percentage of expenditure financed by Government to Trust.

Charge	Assessee	AY	% of Govt contribution to total exp.	Remarks
ADIT-E, Mumbai	Sadhana Education Trust	AY 09	50.00	Disallowed by AO but allowed by CIT(A)
DCIT 2 Jalgaon	Khandesh College Education Society	AY 10	49.00	Allowed
ITO (E) -II(1) under DIT-E,	Peoples Education Society	AY 10	57.40	Allowed
DIT-E, Delhi	National Institute of Fashion Technology	AY 09	14.00	Allowed

**5.33** *The Ministry stated (May 2013) that issue raised by audit will be examined.*

**Section 10 and section 11 of Act are of overlapping nature. ITD in 30 cases allowed exemptions to trusts who were claiming exemption benefit simultaneously/alternatively in both sections 10(23C) and 12A in different AYs.**

**Overlapping of clauses in sections 11, 12 & 10 (23C) allowing exemption to Trusts**

**5.34** Sections 10 and section 11 of Act are of the overlapping nature. Due to such non-exclusiveness, trusts and institutions who are otherwise not eligible for exemption under section 10 are taking exemptions under section 11.



**5.35** Public Accounts Committee (PAC) recommended<sup>32</sup> removal of overlapping nature of exemptions provided in sections 11, 12 and 10(23C). The PAC had also observed in the same report that sections 10 (23C) and section 11 and 12 of the Act are being misused by private educational institutions because of its overlapping nature. The Ministry assured that suggestions of the PAC to merge the above provisions governing tax exemptions for educational institutions had been forwarded for consideration to the expert group constituted for this purpose. However, ITD has not yet brought any change in law debarring simultaneous exemption under section 10 and section 11 at the same time.

**5.36** We noticed that ITD in 30 cases allowed exemptions to trusts who were claiming exemption benefit simultaneously/alternatively in both sections 10(23C) and 12A in different AYs (see Box 5.7).

**Box 5.7: Illustrative Cases**

**a.** In DIT-E, Mumbai, ITD denied exemption to **Sanskar Sarjan Education Society** for AY 09 was under section 10(23C)(iiiab) but allowed under section 11. Similarly, in two cases in Mumbai and in one case in Pune, assessee were claiming exemption benefit simultaneously/alternatively.

CCIT Kolkata rejected assessee's application (**Sree Shwetabmar Sthanakvasi Jain**) for exemption u/s 10(23C)(vi) for AY 10 onwards. ITD allowed exemption to the assessee for AY 11 as the assessee was registered u/s 12A.

The Ministry stated (May 2013) that scope of both the exemptions under Section 10 (23C) and Sections 11 and 12, although overlapping is not absolutely identical and admissibility depends on the facts of each case. In case of Sanskar Sarjan Education Society, exemption under Section 11 was allowed because the said institution was registered u/s.12A. The rejection of application u/s 10(23C)(vi) by the CCIT does not automatically dis-entitle the Trust from exemption u/s 11. Application u/s 10(23C)(vi) can be rejected if the applicant is found to be engaged in other activities apart from education. Facts in each case will have to be examined for applicability.

**5.37** *The Ministry stated (May 2013) that it is possible that approval u/s 10(23C) (which is given by CCIT) is denied in a particular case where registration is granted. This is because the requirements for registration and approval u/s 10(23C) are different. Section 10(23C) approvals are given to purely educational institutions or philanthropic hospitals and Institutions of State or National importance. The eligibility for section 10(23C) approval is, therefore, more restrictive than for registration.*

**5.38** *Audit is of the view that there are several instances where an assessee solely engaged in educational activities, availed exemption u/s 11 when they could not receive approval u/s 10(23C). Therefore, it is necessary to identify the section under which approval has to be granted at the approval/registration stage itself according to the nature of charitable activities carried out by the applicants and the registration/approval has to be restricted to the relevant section only [either u/s 12AA or u/s 10(23C) of the Act].*

**5.39** *The Ministry stated (July 2013) that the view of Audit does not seem to be in accordance with the provisions of Act, because there is no bar on a Trust/Institution*

<sup>32</sup> PAC (2006-07) thirty sixth Report on CAG's AR. No 13 of 2004 on "Assessment of Private Schools, Colleges and Coaching Centres"



*engaged in educational activities from getting registered u/s. 12AA and also approved u/s. 10(23C). Further, Trust is not required to apply for registration and approval u/s 10(23C) simultaneously and if it applies for section 10(23C) subsequently, the same has to be considered and cannot be denied on the sole ground that Trust is already registered u/s 12AA.*

**5.40** *Audit is of the view that the Ministry may clarify its stand on the assurance given to the PAC by them on the suggestions to merge provisions governing tax exemptions for educational institutions forwarded for consideration to the expert group.*

**Deficiencies were noticed in Forms specified for Audit Report to be enclosed with the returns.**

**Deficiencies in Forms specified for Audit Report to be enclosed with the returns**

**5.41** We observed the following deficiencies:

- a. Form No 10B and 10BB, specified for Audit Reports u/s 12A(b) and u/s 10(23C) do not have column for nature of activities and objectives of Trust.
- b. There is no column in the Forms for year wise details of accumulations/utilization of amounts. In the absence of such information, keeping track of utilization/taxation of accumulated funds after specified period is difficult.
- c. While the Form 10BB asks for details of donations of section 115BBC, no such information was required to be given in Form 10B.
- d. The Forms are silent on the aspect of compliance with the TDS provisions.

**5.42** *The Ministry stated (May 2013) that suggestions made by audit will be examined.*

**Recommendations**

**5.43** We recommend that

- a. The Ministry may bring suitable amendment in Act to streamline the treatment of depreciation, deficit and repayment of loans.

*The Ministry stated (May 2013) that the matter will be examined.*

- b. The Ministry should issue suitable instructions to verify information of major donations received u/s 80G during scrutiny cases to ensure the proper accounting of donations/transaction in the accounts of donors.

*The Ministry did not agree (May 2013) to issue any further instruction as cross verification is already being done by AOs during scrutiny.*

*Reply of the Ministry is not acceptable as illustrated cases at Box 5.4 a and c relate to scrutiny assessment involving high money value. The Ministry may reiterate instructions in this regard.*

*The Ministry further stated (July 2013) that the donations given or received u/s 80G are subjected to scrutiny. Once such cases are so selected, follow-up actions is taken in suitable cases.*

*Audit reiterates its view as cases pointed out are related to scrutiny assessment.*

- c. The Ministry may bring suitable definition for the phrase “*substantially financed*” to clarify provisions of section 10(23C).

*The Ministry stated (May 2013) that the matter will be examined.*

- d. The Ministry may consider bringing suitable modifications in provisions for compliance with TDS provisions by Trusts and the provisions may be made for proper disclosure in the Audit Reports.

*The Ministry stated (May 2013) that the matter will be examined.*

- e. The Ministry may consider bringing out suitable changes in Forms to be submitted by Trusts.

*The Ministry stated (May 2013) that Form ITR-7 is being notified and necessary changes, if required, shall be carried out.*

## Chapter 6: Utilization of Resources

**6.1** ITD has introduced several measures and tools to exercise necessary checks/controls in the areas of tax administration. We observed deficiencies in effective utilization of resources available with ITD relating to Trusts.

### **ITD has not maintained comprehensive database on Trusts.**

#### **Incomplete database**

**6.2** Based on PAC's recommendations (2006-07)<sup>33</sup> on "Assessments of Private Schools, Colleges and Coaching Centres", the Ministry of Finance, Government of India ensured that data base in respect of educational institutions would be prepared and updated periodically.

**6.3** Some of the Private Schools, Colleges and Coaching Centre are running as Trusts. We observed that ITD has maintained database of processed returns in electronic format with name of assessee Trusts, PAN, address and their relevant charge for last two years only. ITD did not capture registration and assessment details from manual returns of Trusts in the database. ITD also did not utilize the database effectively during assessment of Trusts.

**6.4** We observed that in DIT-E, Mumbai, the PAN database of assessees having Trusts status showed that out of 20,005 assessee Trusts, only 10,251 to 14,447 returns were processed during AY 09 to AY 12. Registration records of Gujarat charge revealed that database of 290 trusts/institutions to which ITD granted registration during the period FY 09 to FY 11 had not been created.

**6.5** Thus despite the assurance given (May 2006) by the Ministry to the PAC, the field formations have not taken any satisfactory action to create the reliable data base of Trusts even after lapse of 6 years.

**6.6** *The Ministry stated (May 2013) that database is under preparation. ITR-7 for AY 13 brought in new column which would make possibility on the creation of database.*

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<sup>33</sup> Action Taken Report of PAC, 2006-07, 36th Report, 14th Lok Sabha, on Assessment of private schools, colleges and coaching centres

## **Scrutiny assessment of Trusts constitutes only 2% of total returns.**

### **Non selection of Trusts cases for scrutiny assessment**

**6.7** The CBDT has formulated<sup>34</sup> scrutiny norms for selection of assessments for scrutiny under Computer Assisted Scrutiny System (CASS)/AIR. Further, the instructions provides for selection of cases for scrutiny other than selected under CASS by AOs with the approval of CCIT. CBDT prescribed<sup>35</sup> that if gross receipt of an assessee submitting return in ITR-7 is more than ₹ 5 crore, it should be selected for compulsory scrutiny.

**6.8** We observed that ITD selected only 2 per cent of total returns for scrutiny assessments of Trust cases.

**6.9** In Maharashtra, returns of five trusts<sup>36</sup>, whose gross receipt were ₹ 9.27 crore to ₹ 61.90 crore and seven cases pertaining to ADIT-E, Bangalore having receipt more than ₹ 5 crore for the AY 09 to AY 11 were not selected for scrutiny. In ADIT-E, Ahmedabad and the data collected from the website of MHA that 73 assessee-trusts who received FC to the tune of ₹ 272.35 crore, during the FY 07 to FY 09 were not selected for scrutiny.

**6.10** CBDT is yet to frame the norms for inclusion of Trusts in CASS for scrutiny assessment.

**6.11** *The Ministry stated (May 2013) that scrutiny guidelines for the year 2012-13 have been issued which consist of two specific criteria relating to Trusts.*

### **Manual processing of returns of Trusts**

**6.12** Trusts are filing returns in the form of ITR-7, manually along with details of amount accumulated in last five years and the investments made as provided under Act<sup>37</sup>. We observed that CBDT has not yet permitted e-filing of ITR-7.

**6.13** ITD may consider making mandatory electronic filing of returns for Trusts as it is catering to the high risk assessee who are taking total exemption of their income.

**6.14** *The Ministry stated (May 2013) that e-filing of ITR-7 is being examined.*

<sup>34</sup> The CBDT in instruction No.1 / 2009 dated 12/02/2009.

<sup>35</sup> CBDT instruction F.No. 255/93/2009 ITA-II dated 08/09/2010

<sup>36</sup> Audyogik Shikshan Mandal, Water and Land Management Institute, Everest Education Society, Dr. Babasaheb Ambedkar Marathwada University in ITO 8(1) & ITO1(1) Aurangabad

<sup>37</sup> Under section 11 (5) and the Schedule I and K of ITR-7.

**ITD does not have any system to analyze the number of Trusts registered with their filing of returns.**

**Non-filing /delay in filing of Income Tax Return**

**6.15** ITD does not have any system to analyze the number of Trusts registered with their filing of returns. Audit could not ascertain whether there existed any monitoring system to ascertain whether all Trusts are filing returns regularly and in time as per section 139(4A) & (4C).

**6.16** Earlier Trusts were filing returns at least to get their registrations and notifications renewed; therefore ITD had the opportunity to check the activities of Trusts at least once in three years. Now registrations are made permanent in nature so there is no disincentive for Trusts for not filing their returns.

**6.17** We noticed that 4,447 Trusts were not filing returns or filing it belatedly in Andhra Pradesh, Assam, Chhattisgarh, Gujarat, Haryana, Karnataka, Kerala, Punjab, Maharashtra and Tamil Nadu.

**6.18** *The Ministry stated (May 2013) that there is a system in ITD whereby a report can be generated in respect of those trusts who have stopped filing the return and also in respect of those trusts who have obtained PAN with Trust as the status and have not filed the return at all. Such a list is called 'stop-filer' list and 'non-filer' list. Such lists are generated and notices issued. Filing of returns is mandatory only for trusts having income above taxable limit before claiming exemption. Since there is a large no. of marginal trusts, there is a gap between the number of regd. entities and the return filed. There can be no correlation before number of regd. entities and number of returns received on account of the above position. As regards delayed returns, the same is a normal phenomenon and also permitted under the Act. It carries consequence of levy of interest in taxable cases.*

**6.19** *Audit is of the view that the Ministry may examine the cases of non filers pointed out above through the list of stop filers/non filers and initiate necessary action.*

**Difference between Central Action Plan and D&CR figures**

**6.20** We observed that ITD made electronic Demand & Collection Register (D&CR) of processed returns only for FY 11 and FY 12. For earlier years, it was maintained manually.

**6.21** We further observed that in DIT-E, Mumbai, there was difference between the electronic D&CR of processed returns and the Central Action Plan (CAP) figures. During FY 11 & FY 12, figures as per CAP were as 7,785 & 7,773 where as these were 5,852 & 6,069 as per electronic D&CR respectively. It shows that even after computerization of the charge, the returns are being processed manually.

**6.22** *The Ministry stated (May 2013) that figures relates to Mumbai only and the discrepancy is being reconciled.*

**The database on Voluntary Organizations (VOs) maintained by Planning Commission of India, does not have linkages of PAN and financial details. ITD has made no efforts to utilize this database for tax compliance purpose.**

#### **Non linkages of PAN of Voluntary Organizations (VOs) to the database**

**6.23** Gol, in its National Policy on the Voluntary Sector–2007<sup>38</sup> (the Policy), has committed that the Government will simplify and streamline the system for granting income tax exemption status to charitable projects under IT Act. At the same time, Gol will consider tightening administrative and penal procedures to ensure that these incentives are not misused by charities for private financial gain. As per para 6.5 of the Policy, Gol will commission suitable agencies to prepare and update databases of Voluntary Organizations (VOs) working in different fields and at different levels for communication within the voluntary sector, as well as between the voluntary sector and the public and private sector.

**6.24** Based on the Policy, the Planning Commission of India, in consultation with the various Ministries/Departments/Government Bodies, has devised a database for Voluntary Organizations/NGOs named “NGO Partnership System” in connection with requests for Government Grants under various schemes. As on 01 July 2012, 43120 entries were available. The database segregated the NGOs state-wise based on their activities.

**6.25** Despite the stated policy objective of facilitating income tax exemption of scrupulous VOs and penalizing unscrupulous VOs, ITD has not been made a participatory to this scheme. The database so made has no linkage of PAN of these entities or past financial status or tax compliance of these entities. The database also does not show details of grants etc. received by these entities. Further, the database is based on self-submission of the VOs and is not verified.

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<sup>38</sup> From websites [www.planningcommission.nic.in/data/ngo/npvol07.pdf](http://www.planningcommission.nic.in/data/ngo/npvol07.pdf) and [www.ngo.india.gov.in/ngo\\_stateschemes\\_ngo.php](http://www.ngo.india.gov.in/ngo_stateschemes_ngo.php)

**6.26** *The Ministry stated (May 2013) that database has been devised by Planning Commission and is voluntary in nature. Database in Planning Commission is prepared to fulfill their needs. Taxation of NGO is not the basis for creation of database by the Planning Commission. However, the suggestion will be examined for collecting any information which may be useful in the assessment of NGOs.*

### **Recommendations**

**6.27** We recommend that

The Ministry may maintain a comprehensive database of Trusts with linkage of the PAN, details of registration and assessment. The Ministry may also consider making mandatory electronic filing of returns of Trusts.

*The Ministry stated (May 2013) that proposal to make e-filing of return is under examination.*

**New Delhi**

**Dated:**



**(MANISH KUMAR)**

**Principal Director (Direct Taxes)**

**Countersigned**



**(SHASHI KANT SHARMA)**

**Comptroller and Auditor General of India**

**New Delhi**

**Dated:**



**Annex: 1****Sections of the Income Tax Act, 1961 for the purpose of Exemptions and Registration of Charitable Trusts and Institutions**

<b>Section of ACT</b>	<b>Description</b>
Section 2(15)	Charitable purpose includes Relief to the poor, education, medical relief and preservation of monuments or places or objects of artistic or historic interest, preservation of environment including watersheds forests and wildlife, and also by advancement of any other object of public utility if the intention is the benefit of a section of public distinguished from identified individually and is not restricted to objects beneficial to the whole of mankind living in a particular country or province.
Section 11	It deals with exemption of income derived from property held by the trust, capital gain arising on the transfer of property held by the trust, voluntary contributions not forming part of corpus subject to certain conditions.
Section 11(1)(d)	Voluntary Contributions forming part of Corpus is exempt.
Section 12(1)	Voluntary Contributions nor forming part of Corpus will be deemed to be Income derived from property held under the Trust. Thus it is implied that voluntary contributions forming part of Corpus is exempt.
Section 12AA	Prescribes procedure for Registration. As per Sections 12A(2) and 12A(1)(aa) inserted by the Finance Act, 2007 with effect from 01 June 2007, where an application for registration of Trust has been made on or after the 1 June 2007 the provisions of Sections 11 & 12 shall apply in relation to income of such Trust from AY immediately following FY in which such application is made.
Section 13	Provides for withdrawal of exemption granted under sec 11 to certain transactions.
Section 80G	Provides for 100% exemption to contribution made to Universities and Technical Institutions subject to conditions thereon and 50% exemption towards general and charitable purpose.
Section 10(23C)	Exclusively deals with Educational Institutions and Trusts created for specific purpose. Up to AY 99, income of Educational Institutions existing solely for educational purposes and not purposes of profit are exempted under section 10(22) of Income Tax Act. Such institutions could be run by any entity such as individual, Hindu Undivided Family, association of persons, firms, company and so on. These were not required mandatorily to file returns of income till AY 04. The provisions in Finance Bill 1998 recognised that section 10(22) was reported to be widely misused in the absence of

	<p>any monitoring mechanism for checking the genuineness of the activities of these institutions and therefore this clause of the section was omitted.</p> <p>It was clarified that Educational Institutions which are of charitable nature but not registered as trusts may now claim exemption of income with certain conditions as applicable to charitable trusts. With effect from 1 April 1999, the following tax laws have been enacted.</p>
Section 10(23C) (iiiab)	An educational institution existing solely for educational purposes and not for purposes of profit and which is wholly or substantially financed by the Government was exempt from levy of tax.
Section 10(23C) (iiia)	An educational institution existing solely for educational purposes and not for purposes of profit whose aggregate annual receipts did not exceed ₹ 1 crore was exempt.
Section 10(23C) (iv)	An institution established for charitable purposes having regard to the objects of the institutions and importance throughout India or throughout any State.
Section 10(23C) (v)	Any trust wholly for public Religious purpose or public religious and charitable purpose whose income accruing thereto is properly applied for the objects thereof.
Section 10(23C) (vi)	An educational institution existing solely for educational purposes and not for purposes of profit with annual receipts of more than ₹ 1 crore could claim exemption of income after obtaining approval from the prescribed Income Tax Authority for a period not exceeding three assessment years. Act under section 10(23C)(iiia)(iiiae)(via) provides for exemption in respect of hospitals established for specific purposes under certain condition.

**Annex: 2****Authority for Registration under Income Tax Act 1961 and Rules for Registration**

<b>Institutions</b>	<b>Rule</b>	<b>Section of Act</b>	<b>Authority</b>
Public Religious/Charitable Trust	2C(1)	10(23C)(iv) &(v)	CCIT / Director General-E
Educational Institutions other than those covered under Section 10(23)(iiiab)(ad)	2CA	10(23C)(vi) &(via)	Chief Commissioner of Income Tax/ Director General-E
Charitable trusts other than those in Sl. No. (1) and (2)		12AA	Commissioner or DIT-E
University a. Non-technical Institutions b. Technical Institutions	18AAA	80G(2)(a)(iii)	a. CCIT-E with the concurrence of Secretary, UGC b. DGIT-Es with the concurrence of Secretary, AICTE
All other institutions	11AA	80G(2d)(iv)	DIT-Es/CIT

### **Abbreviations**

AIR	Annual Information Return
AY	Assessment Year
AO	Assessing Officer
AST	Assessment Information System
BCCI	Board of Control for Cricket in India
CASS	Computer Assisted Scrutiny system
CCIT	Chief Commissioner of Income Tax
CIT	Commissioner of Income Tax
CBDT	Central Board of Direct Taxes
DGIT-E	Director General of Income Tax (Exemption)
DIT-E,	Director of Income Tax (Exemption)
D&CR	Demand and Collection Register
FCRA	Foreign Contribution Regulation Act
FC	Foreign Contribution
FY	Financial Year
ITD	Income Tax Department
ITO	Income Tax Officer
ITR-7	Income Tax Return (For Trusts)
MHA	Ministry of Home Affairs
NGO	Non Government Organization
PA	Performance Audit
PAN	Permanent Account Number
PAC	Public Accounts Committee
TDS	Tax Deducted at Source
Trust	Charitable Trust/Institution
VOs	Voluntary Organizations