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EXEMPTIONS TO CHARITABLE TRUSTS AND INSTITUTIONS

MINISTRY OF FINANCE

DEPARTMENT OF REVENUE

PUBLIC ACCOUNTS COMMITTEE
(2015-16)

TWENTY SEVENTH REPORT

SIXTEENTH LOK SABHA

LOK SABHA SECRETARIAT
NEW DELHI

PAC No. 2059

TWENTY SEVENTH REPORT

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(2015-16)

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L O K S A B H A S E C R E T A R I A T
N E W D E L H I

December, 2015 / Agrahayana, 1937 (Saka)

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(2015-16)

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15[1]. ***Vacant***

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22. Shri Ramchandra Prasad Singh

[1] Vacant *vice* Dr. M. Thambidurai who has been chosen as Hon'ble Deputy Speaker, Lok Sabha and has since resigned from the membership of the Committee.

INTRODUCTION

I, the Chairperson, Public Accounts Committee (2015-16), having been authorised by the Committee, do present this Twenty Seventh Report (Sixteenth Lok Sabha) on **'Exemptions to Charitable Trusts and Institutions'** based on C&AG Report No. 20 of 2013, Union Government (Performance Audit) relating to the Ministry of Finance, Department of Revenue.

2. The Report of the Comptroller and Auditor General of India was laid on the Table of the House on 13th December, 2013.

3. The Public Accounts Committee (2014-15) took up the subject for detailed examination and report. The Committee took evidence of the representatives of the Ministry of Finance, Department of Revenue on the subject at their sitting held on 25th November, 2014. As the Report on the subject could not be finalised due to paucity of time, the PAC (2015-16) reselected the subject. Based on the evidence taken by the previous Committee a draft Report was prepared and placed before the Committee for their consideration.

4. The Committee considered and adopted this draft Report this draft Report at their sitting held on 09th December, 2015. Minutes of the sittings form appendices to the Report.

5. For facility of reference and convenience, the Observations/Recommendations of the Committee have been printed in thick type and form Part II of the Report.

6. The Committee thank their predecessor Committee for taking oral evidence of the Ministry of Finance, Department of Revenue and obtaining the requisite information on the subject.

7. The Committee would also like to express their thanks to the representatives of the Ministry of Finance, Department of Revenue for tendering evidence before them and furnishing information in connection with the examination of the subject.

8. The Committee place on record their appreciation of the assistance rendered to them in the matter by the office of the Comptroller and Auditor General of India.

NEW DELHI;
9 December, 2015
18 Agrahayana, 1937 (Saka)

PROF. K.V. THOMAS
Chairperson,
Public Accounts Committee

PART- I

CHAPTER - 1

Introduction

A. Background

1. Charitable activities by various kinds of non-Governmental organizations are imperative in a country as populous and faced with equally myriad challenges as in India. The State while supporting such endeavours also has the responsibility of keeping in check any fraudulent enterprises. In this context, the 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 for enforcing 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.

2. 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 have been raised from time to time. Only 3 percent of assessees (51,570 Trusts) claimed 96 per cent (₹ 76,02,283 cr) of total deductions/exemptions. As Trusts are availing majority of total exemptions, the C&AG of India (hereinafter referred to as Audit) undertook Performance Audit on 'Exemption to Charitable Trusts and Institutions' to seek assurance on scheme of registration and assessment processes.

3. The main objective of Audit's review was to seek assurance that registrations were given to Trusts involved in charitable activities only, and exemptions were allowed to eligible Trusts. The study also sought assurances that proper monitoring mechanism existed for utilization of accumulations (domestic and foreign) as also for inadequacies in the provisions of Act relating to exemptions.

4. In their Performance Audit Report No. 20 of 2013, Audit 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, they covered 30 percent units with checking of 30 percent assessments in scrutiny cases. In respect of mixed circles/wards, they covered 10 percent units with checking of 50 percent assessments in scrutiny cases. Audit identified total 1,36,639 assessment cases (Scrutiny cases : 17,295 & Summary cases: 1,19,344) in 554 units out of which 81,421 cases (approx. 60%) (Scrutiny cases: 15,538 & Summary cases: 65,883) were selected for test check.

B. Audit findings

5. Audit has pointed out lapses in registration process, allowance of exemptions during assessment, non-monitoring of accumulations of surplus income and Foreign Contributions (FCs) received. It has also highlighted inconsistencies in the Act which apparently led to incorrect assessment and non-levy of taxes. Audit has also referred to the issue of under utilization of resources placed at the disposal of ITD.

C. Legal provisions

6. The legal provisions under which registration/approval are granted to the Charitable Trusts and Institutions (Trusts) are 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 (Appendix 1). Besides, there are certain circulars and instructions issued by CBDT and judicial decisions regarding registration/approval and assessment of Trusts.

D. Organizational set up

7. The Director General of Income Tax-Exemption (DGIT-E), created in 1988, was 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 were in operation since 1988 and DIT-E Bangalore and Hyderabad were working since 2001. These offices had mainly two functional wings, namely, Exemptions Wing and Assessment Wing. The Exemptions Wing was concerned with granting/processing of registration/approval/ notification while the Assessment Wing was responsible for assessment of Charitable Trusts/Institutions.

8. In non-major/metro stations, the respective Chief Commissioners of Income Tax (CCsIT) discharged the functions of DGIT-E and were 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 had dual responsibilities of registration and assessment of Trusts apart from normal assessment function.

9. As regards, the creation of separate wing in the Income Tax Department to deal with the issues relating to exemptions, Secretary, Department of Revenue, during oral evidence held on 25.11.2014 on the subject, informed the Committee as under :

> " ...The first measure we have taken is by way of a administrative restructuring of the Department. The cadre restructuring of the Income Tax Department has been approved and as a part of the cadre restructuring we have created a separate wing in the income tax department, or what may be called as a separate vertical in the Income Tax Department which is headed by a Chief Commissioner of Income Tax (Exemption) and he has under him 14 Commissioners of Income Tax (Exemption). This entire wing will exclusively deal with issues relating to exemption. They will be in charge of registration; verification and building the data bank. They will be in charge of the entire administration which is required to implement these provisions relating to the exemption available to the Charitable Organisations.
>
> This separate vertical which we have created has all India jurisdictions. The necessary notifications given effect to this cadre restructuring has been done and this cadre restructuring, by positioning a separate vertical or a separate wing to be in charge of exemptions, has been operationalised and has taken effect from the 15th November, 2014. We expect that as a result of this administrative reorganisation which has been there will be better administration. There will be more effective control and monitoring of the implementation of the provisions of the Income Tax Act relating to exemptions. ..."

10. On being asked about the present position of cadre restructuring in the Income Tax Department, the Ministry of Finance in their post evidence replies stated:

> "The cadre restructuring has been implemented w.e.f. 15.11.2014. In view of the recommendations of the Inter Ministerial Group on the Non Profit Sector, a new all India structure for exclusive jurisdiction over Non Profit Organizations has been created. Post restructuring of the Income Tax Department, the Exemptions wing is headed by a Chief Commissioner Income Tax (Exemptions) at Delhi having supervisory role over 15 CIT (Exemptions) all over the country. The exemption units will deal with all non-Profit Organizations including political parties claiming exemption u/s 13A of the IT Act. However, due to shortage of officers, six out of seven newly created charges of Commissioners of Income Tax (Exemptions) are held as additional charges. Further, the acute shortage of Joint Commissioners of Income Tax has led to a situation where most of these posts are not filled up and are held as additional charge."

CHAPTER - II

REGISTRATIONS AND EXEMPTIONS

A. Processing the applications for registration

11. 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 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.

12. Audit observed in 554 assessment 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. Audit scrutinized all the 0.90 lakh cases where ITD granted registrations/approvals/notifications and noticed procedural mistakes in 6,948 cases (7.72 %). Some crucial procedural mistakes are discussed below:

B. Grant of approval/registration without adequate documents

13. 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.

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

15. The Audit observed that out of the aforesaid 799 cases 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.

16. While furnishing their comments on the abovesaid Audit observation, the Ministry in their written reply stated as under:

> "As per the study made by the C&AG, while granting registrations/ approvals or issuing notification for claiming exemption, the Department approved 0.90 lakh cases and rejected 0.36 lakh cases. Thus the Department has denied registrations/ approvals or issuing notification in 28.57% cases. The Audit has reviewed all the cases and identified 342 cases only where grant of approval/registration was in absence of certified copy of the trust deed or prescribed copies of Audited accounts. The mistake thus identified is in 0.38% cases only, which shows that mistake has occurred in stray cases.
>
> In this context, two issues are clarified; firstly, a trust can apply for registration by submitting trust-deed along with prescribed form. However, Audit report may not be there as the Trust may apply for registration before commencing activities. Secondly, Trust cannot be granted registration without Trust Deed. It may be that in some cases the Trust Deed might have been misplaced from record. As regards the correctness of individual lapses and their acceptance/non-acceptance the field officers are in communication with Revenue Audit at local level."

C. <u>Non-inclusion of Dissolution Clause in the Trust Deed</u>

17. 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. Audit observed that ITD granted approvals/registrations/notifications in 457 cases in which there was no dissolution clause in the Trust Deed.

18. 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.

19. Audit was 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.

20. On being asked the specific reasons for non-inclusion of "Dissolution Clause" in the Trust Deed of 457 cases where ITD granted approvals/registrations/notifications, the Ministry in their written submission stated as under:

> "The Office Manual on the basis of which this objection is purportedly raised only states that it should be ensured that in case of dissolution the trust assets do not revert to funder's account. It does not stipulate that dissolution clause be insisted upon. However, such dissolution clause is generally being insisted upon since under the Indian Trust Act, the Trust can be dissolved and there is no bar on the assets reverting to the founder account.
>
> In the absence of any specific provision in Income Tax Act with respect to dissolution clause, rejection of application for registration on this account is neither enforceable nor legally sustainable.
>
> Further the judicial decisions too are not in favour of the Department on this issue. Some of these cases are as under:
>
> - Tara Educational and Charitable Trust vs DIT (ITA no 1247/Mum/2013 dated July 18, 2014).
> - Shree Prantij Dash ShrimaliVanikGyanti Trust vs. DIT (ITA no 407/Ahd/2013 dated June 21, 2013). In this case, the Hon'ble ITAT has relied on the case of Shree Chargam Dash PorwadMahamandal vs. DIT.
>
> Further as already explained earlier (May 2013) in Mumbai & Gujarat, Bombay Public Trust Act, 1980 ensures 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. In Rajasthan also from where many cases are reported, the position is similar.
It may be mentioned that outside Mumbai and Gujarat barring two stray cases of DIT(Exemptions) Kolkata, all other cases relate to pre-structured jurisdictions and with restructuring of Exemption Directorate, the error are expected to be minimized."

21. When asked about the action initiated for inclusion of “Dissolution Clause” in the trust deed in all the cases mentioned above the Ministry submitted as follows:

"The dissolution clause is not a mandatory requirement of law. However, the concerned CIT/DIT can satisfy himself if the Trust deed has other clauses which can take care that in the event of dissolution the monies do not go back to the settler of the trust or his/her family members, relatives, etc. This could be done if there is a ‘binding clause’ in the trust deed which prohibits use of trust funds for any purpose other than for the objects of the Trust.

The Audit objection was circulated for compliance amongst officers of the exemption directorate. Dissolution deed is being insisted upon by Commissioners. In the States of Gujarat and Maharashtra, the following practice is being followed:

- Resolution of the trustees that the trust is irrevocable and that in the event of dissolution, the money/property would go to another trust having similar objects (CY pres Doctrine).
- Affidavit of the trustee stating the above.
- In the conditions mentioned in the order granting registration u/s 12AA, one of the conditions is pertaining to dissolution clause wherein it is mentioned that in the event of dissolution, the monies with the trust would go to another trust having similar objectives."

D. Irregular exemption to Trusts which were not charitable in nature

22. 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. Audit noticed that ITD granted exemptions to Trusts in 60 cases involving tax effect of ₹87.33 crore whose objects were not charitable in nature.

23. Audit referred to a case under DIT-E, Mumbai, where 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 under assessment of income aggregating ₹31.31 crore involving short levy of tax of ₹10.63 crore.

24. In their reply on the issue, the Ministry stated:

> "For A.Y. 2008-09, the Audit objection raised has been examined with reference to the records and provisions of the Act and found that the same is acceptable and accordingly case for A.Y. 2008-09 has been re-opened and notice u/s 148 has been issued and served on the assessee on 28.03.2014.
>
> - For A.Y. 2009-10, the Audit objection raised has been examined with reference to the records and provisions of the Act and found that the same is acceptable and accordingly case for A.Y. 2009-10 has been re-opened and notice u/s 148 has been issued and served on the assessee on 28.03.2014.
> - The society was set up by Department of Electronic, Government of India. Explanation of the AO has been called."

25. On being asked to explain the circumstances leading to aforesaid objections raised by the Audit, the Ministry replied:

> "... It was the case of an assessee undertaking scientific research which has been held to be an object of general public utility hence eligible for registration u/s 12A. It may be mentioned that the issue involved is highly contentious, fact based and subjective and there is no patent error in implementation of law. The number of cases pointed out are very few considering the fact that the amendment hits all trusts with object of general public utility having business or trade like activity."

26. Audit in addition to the illustrated case, also pointed out the cases where the activities of the assessees 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.

27. On being asked if the amount of ₹87.33 crore not levied in these cases had since been recovered, the Ministry stated that the assessments were pending in reopened cases. When asked as to why the Department failed to take action to cancel the registration of Trusts which did not exist for charitable purpose, the Ministry replied that CsIT (E) had been directed to examine the facts and take action accordingly.

E. Delay in granting registration/approval/notification

28. 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.

29. 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[2] 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.

30. Audit noticed that in 594 Trust cases, ITD delayed in issuance of registration/approval/notification after stipulated period of 6 or 12 months.

31. While furnishing their views on the above-said Audit observation, the Ministry in their written replies submitted as follows :

[2] Society for the promotion of Education, Adventure Sport & Conservation of Environment Vs. CIT(2008)171 Taxmann 113(ALL)

" The time limit of 6 months is generally being followed. The delay has taken place in exceptional cases. Further, it can be seen from the Key to Performance Audit Report that barring stray cases, these procedural mistakes pointed out relate to jurisdictions which were outside the exemption directorate prior to restructuring. As mentioned earlier, post restructuring of the Income Tax Department w.e.f. 15.11.2014, the Exemptions wing is headed by a Chief Commissioner Income Tax (Exemptions) at Delhi having supervisory role over 15 CIT (Exemptions) all over the country. The exemption units will deal with all Non-Profit Organizations including political parties claiming exemption u/s 13A of the IT Act. This will bring uniformity in approach and procedures. Thus, a major systemic change by way of restructuring has already taken place, which will further reduce the error margin."

32. As regards the action initiated to ensure that time limit for passing order under section 10(23C), 12A and 80G of the Act is adhered invariably in all the cases, the Ministry stated as under :

"Restructuring of exemption directorate has been done which will result in specialization on exemption matters and better control and monitoring. Further, proposal to make time barring limit uniform in respect of sec. 12AA& 80G applications by allowing extended time for completion in respect of sec. 12AA applications by excluding time taken by applicants to comply with Commissioner's directions as available presently u/s 80G is under examination. This would also give applicants extended time for compliance and avoid rejections on account of compliance delays on their part. The suggestion is being examined in CBDT."

33. When asked about the plan to introduce web based interactive platform for applying for registration, submitting soft copy of necessary documents and communicating with each other, as far as practicable thus making the whole process faster, smoother, transparent and less time consuming the Ministry replied that the feasibility of such type of web based interactive plan is under discussion.

CHAPTER - III

ASSESSMENT OF IRREGULAR EXEMPTIONS

34. 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.

35. Audit observed that Trusts are earning huge profit consistently after spending meagre 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. Audit pointed out that, 22 Trusts accumulated surpluses of ₹ 819 crore ranging from 35.7 to 84.8 percent of their total income. Furthermore, ITD allowed irregular exemptions to Jamshetji Tata Trust and NavajbaiRatan Tata Trust who invested ₹ 3,139 crore in prohibited modes arising from accumulations of capital gains which involved tax effect of ₹ 1066.95 crore. Four Cricket Associations engaged in commercial activity got irregular exemptions of TV subsidy received from BCCI involving tax effect of ₹ 37.23 crore. 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.

A. <u>Irregular exemption to Trusts creating huge surpluses consistently</u>

36. Audit 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 some of the institutions are as shown in table below:

Institutions showing surpluses Lakh ₹					
Trust and charge	AY	Income	Expenditure	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
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 AY 09	4.22 6.94	2.61 2.48	1.61 4.46	61.80 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
Total		1,59,219.55	78,465.03	80,754.51	

37. It is seen from the above table that three institutions namely Tatwajnana 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 of ₹ 622.20 crore.

38. In their response to Audit on the abovesaid Audit observation, the Ministry stated 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.

39. According to Audit they have 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 upto 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.

40. 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 reiterated its views as bulk of returns of Trusts are finalised under summary only.

41. While furnishing their justification for accumulation of such a large amount of surpluses by the above-said Trusts, the Ministry in their written replies submitted as follows:

> "The Act allows accumulation of two types – under Explanation to section 11(1)(a) wherein there is postponement of application for a year. This is not for specific purpose but has to be applied in the next year. Accumulation is allowed under section 11(2) which is for a specific purpose and can be carried forward upto 5 years subject to fulfillment of conditions as mentioned in section 11(3). The accumulation for section 11(2) requires filing of Form no 10 as per Rule 17 of the Income Tax Rules 1962 while the accumulation/postponement of application under Explanation to section 11(1)(a) requires only intimating the Assessing Officer in writing before the filing of the Return of Income. This accumulation is allowed to be used in the subsequent years as per Explanation to section 11(1)(a). The accumulation of surplus by trusts is thus permissible as per law provided Form No.10 is filed in time by the assessee. At present none of the provisions of law have put any cap on the amount that can be accumulated. In fact, these provisions are meant to enable the trust to create proper infrastructure development for the fulfillment of its objectives. These provisions ensure that genuine charitable activities are encouraged and law does not cause hindrance to the process."

42. The Ministry's replies on certain specific educational institutions as observed by Audit are given below:

"(i) Tatwajnana Vidyapeeth DIT-E, Mumbai - The facts as stated by Audit are not correct and the correct position of the surpluses is as under:

AY	Income	Expenditure	Surplus	%
2008-09	632.51	128.49	504.02	79.00
2009-10	543.94	76.46	467.48	85.63
2010-11	673.09	108.29	564.80	83.91

The Audit observation regarding application of accumulation is also not correct as the assessee trust had applied the amount accumulated within the time barring period. ….The expenditure on properties includes repairs

and maintenance. The expenditure on objects includes remuneration to teaching non-teaching staff; free boarding and lodging for students and faculty, etc. No fee is charged from the students.

Surplus from the activities of the Trust - The surplus is mainly from the investments made in earlier years and low expenditure. The surplus continues to remain invested in accordance with the provisions of section 11(5). The act allows accumulation of surplus as per section 11(2) and the formalities in this regard are complete and available on record. There is no case of the accumulated funds getting barred by limitation for utilization of the same.

The Audit objection is not acceptable as there is no violation of any provision of the Act.
The assessee has not violated any provisions of the Act and no remedial action is called for on facts.

(ii) Symbiosis Open Education Society CIT-I, Pune - Audit objection is not acceptable for the reasons stated below:

In this case, the Revenue Audit has relied upon decision of the Hon'ble Supreme Court in the case of Municipal Corporation of Delhi vs. Children Book trust 1992(3) SCC 390 where the question of exemption of Municipal Tax from Delhi Municipal Corporation Act. The specific point of the said Act was that it wanted to give exemption if and only if such institutions was supported by voluntary contributions, which has not envisaged in the section 11 r.w.s section 2(15) or in section 10(23C)(vi) of the Income Tax Act, 1961.

Further, the Sub clause (iiiab) to (via) of Section 10(23C) of the Act provides for exemption from Income Tax to approved institutions which are solely for education or for Philanthropic Purposes and which are existing not for the purpose of profit. The approval is granted to such institutions which do not distribute profits to members or distribute assets to members in case of dissolution. Adding that the educational instructions, Universities, etc which exist not for profit are not liable to Income tax on their income stipulating the condition of course that the eligible institute applies its income at least 85% for the object for which it is approved. There are some provisions which permit accumulation of income provided the accumulations are applied for objects of the institutes with the specified time frame.

On the issue of 'exist or does not exist for profit' there is a large gap between Revenue Income and Revenue Expenditure which is in normal parlance called as 'revenue surplus'. The Revenue surplus many a time works out to be from 30% to 50% of the Revenue Income, which is in reality utilized for expansion and extension of infrastructure solely for the

purpose of education or medical facilities i.e the objects of the Institute for which it is approved.

Under the third proviso the section 10(23C) which specifically applies to the cases covered by sub-clause (iv), (v), (vi) or sub clause (via), what is required is application of income. The term 'Application of Income' is much wider than spending on Revenue account (revenue expenditure). It is an established proposition of law that investment in fixed assets is to be treated as an application on of income by a trust (M. Ct. M. Tiruppni Trust 230 ITR 636(SC). Even repayment of loan taken for the object is also an application of Income. Therefore, the 'Surplus for the purposes of S.10(23C) also should be worked out considering the meaning of application of income and should not be taken to mean revenue surplus.

In view of the foregoing, the allowance of exemption to the assessee is in order.

(iii) Symbiosis Society CIT-I, Pune - Audit objection is not acceptable for the reasons stated below.

In this case, the Revenue Audit has relied upon decision of the Hon'ble Supreme Court in the case of Municipal Corporation of Delhi vs. Children Book trust 1992(3) SCC 390 where the question of exemption of Municipal Tax from Delhi Municipal Corporation Act. The specific point of the said Act was that it wanted to give exemption if and only if such institution was supported by voluntary contributions, which has not envisaged in the section 11 r.w.s section 2(15) or in section 10(23C)(vi) of the Income Tax Act, 1961.
Further, the Sub clause (iiiab) to (via) of Section 10(23C) of the Act provides for exemption from Income Tax to approved institutions which are solely for education or for Philanthropic Purposes and which are existing not for the purpose of profit. The approval is granted to such institutions which do not distribute profits to members or distribute assets to members in case of dissolution. Adding that the educational institutions, Universities, etc which exits not for profit are not liable to Income tax on their income stipulating the condition of course that the eligible institute applies its income at least 85% for the object for which it is approved. There are some provisions which permit accumulation of income provided the accumulations are applied for objects of the institutes with the specified time frame.

On the issue of 'exist or does not exist for profit' there is a large gap between Revenue Income and Revenue Expenditure which is in normal parlance called as 'revenue surplus'. The Revenue surplus many a time works out to be from 30% to 50% of the Revenue Income, which is in reality utilized for expansion and extension of infrastructure solely for the

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The scheme of the Act is very different as far as section 11 and section 10(23C) are concerned. It talks about application of money and surplus in that relation. What needs to be stressed over here is the need to differentiate between the profit and the surplus, Commercial Transaction Vs. Charitable Transactions and a Business Enterprise (for personal profit) Vs. Charitable Organization (no personal profit). This issue has been settled in view of following decisions:-

1. Aditnar Educational Institutions etc Vs. ACIT (1997) 224 ITR 210 (SC)
2. CIT Vs. Pullikal Medical Foundation (P) Ltd. (1994) 210 ITR 299 (Ker)
3. Rangaraya Medical College Vs. ITO (1979) 117 ITR 284 (AP)

This is further supported by CBDT F.No. 194/16/77 IT (AI) dated 29th Oct 1977. In view of the foregoing, the allowance of exemption to the assessee is in order."

B. <u>Irregular exemption of capital gains arising from accumulated funds</u>

43. 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 held (CIT Vs. East India Charitable Trust (1996) 206 ITR 152) 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).

44. Audit scrutiny revealed 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.

45. The details of these cases are that in Maharashtra, DIT-E, Mumbai, where 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 the 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.

46. The Ministry accepted the above-mentioned Audit observation 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.

47. On being asked if the lapses pointed out in the instant cases were enquired into and if so, with what results, the Ministry stated:

> "In the cases involving accumulation of surplus, the generation of surplus is permitted by law. In the case of Jamshetji Tata Trust the Audit Objection is for two years i.e., AY 2009-10 and AY 2010-11. However, Audit objection was received only for AY 2009-10. Remedial assessment for AY 2009-10 was completed on November 3, 2011 u/s 143(3) of the Act raising demand of ₹330.14 crore. There was no Audit objection for AY 2010-11. The assessment for AY 2010-11 was completed in regular course u/s 143(3) of the Act on 30.03.2013 raising a demand of ₹300.21 crore. The Audit objection made in earlier year i.e. AY 2009-10 was taken into account in making this assessment.
> In the case of Navajbai Ratan Tata Trust, the assessments have been reopened by issuing notice u/s 148 for A.Y.2009-10 on 14.5.2013 and for A.Y.2010-11 on 20.1.2014. …."

48. When asked as to whether any explanation from the concerned Assessing Officer had been sought in these cases, the Ministry submitted that explanation of Assessing Officer in both the cases had been called on December 15, 2014. In other cases where Audit objections are accepted by the Department, CsIT have been asked to call for explanation of erring Assessing Officers, wherever liable, and take further action thereafter.

49. On being asked about the action taken to recover the short levy of tax in all the said cases, the Ministry replied:

> "… the assessment for AY 2010-11 in the case of Jamshetji Tata Trust was completed on 30.03.2013 u/s 143(3) of the Act raising demand of ₹ 300.21 crore. Appeal has been decided by ITAT on 26.03.2014. ITAT has upheld the forfeiture of exemption on account of investment in prohibited modes but has given relief on the ground that the exemptions granted u/s 10(34), 10(35) and section 10(38) cannot be fastened with additional requirements u/s 11 and therefore cannot be taxed for violation of provisions u/s 11. Therefore, dividend income on shares and mutual funds and LTCG on sale of shares is exempt u/s 10(34), 10(35) and section 10(38). However, denial of exemption in respect of other incomes was confirmed by ITAT. Demand of ₹ 55.83 crore on giving appeal effect to ITAT order has been collected.
>
> The assessment for AY 2009-10 has been reopened and completed in March 2014 in the case of Jamshetji Tata Trust raising a demand of ₹ 330.14 crore. The Assessing Officer has stayed the demand for AY 2009-10 as the issues were covered by the order of ITAT for Assessment Year 2010-11. The confirmed demand for A.Y. 2010-11 relates mainly to short term capital gains which does not enjoy exemption u/s 10. In A.Y. 2009-10, the capital gains is in the nature of long term capital gain which would be eligible for exemption u/s 10 as held by ITAT for A.Y. 2010-11. The entire demand for A.Y. 2009-10 has been stayed by A.O. taking this into account.
>
> In the case of Navajbai Ratan Tata Trust the assessments for AY 2009-10 & 2010-11 have been reopened."

50. When asked if the Ministry evolved any monitoring mechanism to make AOs responsible in all the cases, the Ministry replied:

> "The Ministry has amended ITR-7 and made e-filing compulsory for trust cases having taxable income above exemption limit before claim of exemption u/s 11. In this Return, Schedule J (B) gives the details of investments made under section 11(5). This would enable the Assessing Officer to detect whether there is any contravention in terms of investment in other than prescribed modes."

51. The Committee desired to know the measures taken by the CBDT to dissuade assessees from investing in unauthorized modes of investment on a recurring basis. The Ministry replied as under:

> "As per section 13(1)(d), Investment in non specified/unauthorized mode lead to denial of exemption u/s 11. Thus there is a legal provision to dissuade the assessee from investing in unauthorized modes of

investment, for which a strict watch is kept and is being enforced diligently. This can be seen from the fact that out of 81,421 assessment cases examined by Audit lapses were pointed out by them in only 14 cases even though all trusts are obliged to keep their funds in prescribed modes. This shows compliance to the extent of 99.99% of the provisions in this regard.

The law itself prescribes the permissible modes of investments. If investment is made in modes other than the prescribed ones, the assessee loses its entitlement for exemption u/s 11. Hence it is felt that there is no need to make further measures.

The Income-tax Act already provides the permissible forms or modes in which the investment has to be made by a trust or institution to claim exemption of its income, which has not been applied as mandated by section 11 of the Act.

Further, section 12AA of the Act has been amended by the Finance (No.2) Act, 2014 to provide that where a trust or an institution has been granted registration, and subsequently it is noticed that its activities are being carried out, inter-alia, in such a manner that its funds are invested in prohibited modes (i.e. situations referred to in section 13(1) of the Income-Tax Act), then the Principal Commissioner or the Commissioner may cancel the registration if such trust or institution does not prove that there was a reasonable cause for the activities to be carried out in the above manner."

52. On being asked about specific reasons for not examining the mistakes in scrutiny assessment cases and if any responsibility had been fixed against the concerned Assessing Officers, the Ministry replied:

"The Audit has pointed out lapses/irregularity in investment only in 14 cases though the amount involved is large. The mistakes pointed out are exceptional and relate to the facts of each case. There are no systemic mistakes.

The bulk of the tax effect ₹1066.95 crore out of ₹1090.03 crore) relates to Tata Trusts namely Jamshetji Tata Trust and Navajbai Ratan Tata Trust. Explanation of the Assessing Officers have been called by CIT(E), Mumbai in these cases and further administrative action will be taken by him, if required, after examining the explanation. In other cases, wherever Audit objections are accepted. Commissioner of Income Tax (Exemptions) have been asked to call for explanation of the assessing officers and to take further action after examining the explanation."

53. On being queried as to what measures have been taken by the CBDT to ensure that the accumulation made beyond 15 percent is again utilized for the objective of the trust after the specified period rather than being again accumulated, the Ministry stated:

> "As per the provisions of section 11, the amount accumulated by the trusts 11(2) has to be utilized for the objects for which it has been accumulated failing which it would be brought to tax as per Section11(1B) of the Act. The issue is examined in scrutiny assessments by Assessing Officers. Further as already submitted, electronic filing of return in ITR-7 has been introduced for trust cases. In this Return, the year wise accumulation is mentioned in Schedule I and the investment of the same is mentioned in Schedule J. The Assessing Officer will be able to use the same to identify if the trust has invested the accumulations as per the prescribed mode.
>
> Section 11 of the Income-Tax Act provides for the period for which the accumulation can be made in excess of 15 percent and also the forms or modes in which the said accumulated money can be invested. The use of the surplus funds is thus regulated by the Act and violation of the same results in withdrawal of exemption and cancellation of registration of the trust.
>
> Further, vide Finance (No.2) Act, 2014, section 12AA of the Income-Tax Act has been amended to, provide that if it is noticed that the activities of any trust which has earlier been granted registration in accordance with the provisions of the Act are being carried out in a manner such that provisions of sections 11 and 12 do not apply to exclude either whole or any part of income of such trust or institution, then the Principal CIT or CIT may cancel the registration of such trust or institution."

54. Since it is felt that accumulation has become a norm for some trusts, the Ministry was asked if there was any plan to put a cap on the aggregate amount of accumulation that can be made. In reply, the Ministry submitted as follows:

> "The accumulation by trusts is permissible as per law provided Form No. 10 is filed in time by the assessee. At present none of the provisions of law have put any cap on the amount that can be accumulated. In fact, these provisions are meant to enable the trust to create proper infrastructure development for the fulfilment of its objectives. The provisions are meant to ensure that genuine charitable activities are prompted and sustained.

55. On being asked what measures have been taken by the CBDT to ensure that the accumulation made beyond 15 percent and filed in newly notified ITR-7 is thoroughly examined in summary assessment, the Ministry submitted:

> "The newly notified ITR-7 has specific column- Schedule I- with respect to accumulation made beyond 15% which are mandatorily required to be filled by the assessee/NPO. Further, business rules of processing the summary returns are formulated keeping in view the requirement of law & rules. Hence, the computerized processing of returns will ensure thorough/proper examination of accumulations in summary assessments."

56. The Ministry was asked to comment on the view of Audit that such mistakes have been noticed in scrutiny assessments and internal Audit also failed to detect them despite existing mechanism and training. In response, the Ministry stated as under:

> "Such mistakes are arising out of facts of case and individual handling of the cases by different A.O. These are not systemic and are few. The cases mentioned by Audit here are 132. If all the mistakes pointed out by Audit in respect of all areas of assessments are taken from Chapter 3 of the key to Audit Report, the number of such cases total 540 which is a negligible portion of total scrutiny assessments Audited (81,000). The percentage of mistakes is even lower if the fact that all possible areas of mistakes in each case has been examined & pointed out by Audit and only 541 such mistakes in the Chapter on Assessments have been pointed out as can be seen from the Key.
>
> It is therefore submitted that the control mechanisms are in place which ensure that such mistakes are minimized.
>
> The Directorate of Audit does not collect information regarding the specific cases that are Audited in each charge. Information regarding the number of cases Audited and settled are monitored by the Directorate of Audit. It is thus not in possession of the information, if the cases illustrated by the C & AG in their report were subject to internal Audit. Further, as per Instruction no. 15 of 2013 of the CBDT where the receipt Audit raises an objection in a case, where Audit had been conducted by Internal Audit and no lapses were detected, then the explanation of the Auditing officer/official concerned is called for and further necessary action, as deemed fit by the Competent Authority, is taken."

C. Irregular exemption to Cricket Associations engaged in commercial activity

57. 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 ₹ 10 lakh in the previous year.

58. Audit observed that, 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.

59. Audit 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 (on December, 2011) did not allow exemption to the assessee Trust on the amount of TV rights income from BCCI during the AY 10.

60. 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. 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.

61. 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.

62. On this issue, the Audit stated that they had 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.

63. In the case of Saurashtra Cricket Association, the Ministry replied as under:

> "The facts are correct. The objection is raised by the revenue Audit party is acceptable in view of the amendment to Section 2(15) of the IT Act w.e.f. 01.04.2009 read with the proviso(s)….
>
> The issue involves interpretation of law as well as facts and circumstances of the case which have been wrongly interpreted by the AO.
>
> Remedial action has been initiated by issuing notice u/s 148 of the IT Act dated 01.01.2013.
>
> The position of remedial action is as under:
> AY 2007-08 - No remedial action was taken as proviso to sec. 2(15) has come into effect from AY 2009-10.
> AY 2009-10 - Demand of ₹ 15.6 crore was raised out of which ₹ 5 crore is collected.
> AY 2010-11 - Demand of ₹ 11.87 crore was raised out of which ₹ 5 crore is collected."

D. <u>Irregular exemption of anonymous donations /voluntary contributions</u>

64. 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.

65. Audit observed that AOs allowed treatment of voluntary contributions received without specific directions as income in corpus fund of the assessees in 30 cases. This resulted in non-levy of tax of ₹ 59.61 crore. 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.

66. The Ministry in their written submission on the matter stated:

> "Facts stated by Audit are correct. Dispute is whether grant received by assessee is of the nature of 'Corpus fund' or 'Voluntary contribution'.
> Previously, the Audit objection was treated not tenable therefore, was not accepted and a reply in this regard was sent to Audit vide this office letter dated 23.11.2012. However to protect the interest of the revenue, remedial action has been taken by issuance of notice u/s 148 of the Income Tax Act dated 28.03.2013.
> The Government of India has set up a Technology Development Board (the assessee) with adequate fund to consolidate further technology development in the country by bringing together the efforts of industry and R &D Institution for achieving integrated excellence. As per the section 8 of Chapter 4 of Technology Development Board (TDB) Act, 1995- the Central Government may, after due appropriation made by the Parliament by law, in this behalf may make to the board, grants and loans of such sums of money as the Government may considered necessary.
> The Ministry of Science and Technology, Government if India vide their letter dated 26.03.2008, released grant-in-aid of ₹ 14,42,04,214 to the assessee u/s 8 of the TDB Act 1995 for the year 2007-08 relevant to assessment year 2008-09 to enable the assessee to discharge its functions and obligations in terms of TDB Act 1995. This grant-in-aid was accounted for by the assessee in its corpus/capital fund in the Balance sheet and shown as contributions towards corpus/capital fund in schedule-I of the Balance sheet. The A.O. was of the view that in no way this grant can be interpreted as voluntary contribution.
> Assessment was completed vide order dated 28.02.2014 at Nil income. It was found during proceedings that grant was not Corpus requiring an addition of ₹ 14 crore (unspent amount).The assessee was allowed accumulation for next five years u/s 10(23CD)(iv) and thus no additional demand was raised. No action was taken against the AO as there was no revenue loss."

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

67. 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.

68. Audit noticed that ITD allowed exemption in 11 case involving tax effect of ₹ 99.63 crore where Trusts lost charitable character. 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. However, AO did not bring the accumulations of previous years as income which resulted in under assessment of income of ₹ 249.01 crore with a tax effect of ₹ 84.63 crore.

69. 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.

70. However, consequently, the Ministry in their written replies stated:

> "The addition is to be made for the A.Y. 2009-10 since the income of the assessee Trust was derived from property held for non-charitable purposes within the meaning and scope of section 2 (15). Since the assessee is not to be considered as a Charitable Trust, the unused accumulation u/s 11 (2) of A.Y. 2007-08 and A.Y. 2008-09 respectively needs to be taxed during the A.Y. 2009-10. Order u/s 143 (3) passed by the AO for the A.Y. 2009-10 has been set-aside by the DIT (E) u/s 263 and the same is pending for Assessment.
> Explanation of the AO has been called."

F. Irregular grant of exemption to Investor Protection Funds (IPDs)

71. 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.

72. According to Audit, 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. 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.

73. The Ministry in their written replies submitted to the Committee stated:

> "The facts of the case are found to be correct. The Audit objection raised above has been examined with reference to the records and provisions of the Act and found that the same is acceptable and accordingly the case for A.Y. 2008-09 and 2009-10 is being re-opened. The section 10 covers various incomes which do not fall into part of Total income. However, whether the income covered under section 10 are subject to the rigors of sec 11 is a legal issue and there are no precedents to the same."

G. <u>Non uniform treatment of prescribed deduction for accumulation of funds</u>

74. Section 11(1) of Act allows accumulation up to fifteen per cent of income every year, and requires balance eighty five per cent to be applied for charitable purposes. It was held 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.

75. Audit observed that 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. 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.

76. The Ministry stated that the legal position is correct. This aspect is generally taken care of by AOs in scrutiny assessments. The Ministry further submitted in their written replies:

> "The CIT has accepted the Audit objections. Remedial action has been completed for all the three years u/s 154 of the Act on 4.5.2012. *Vide* order u/s 154 claim of accumulation has been restricted to the extent of surplus income. As there was no loss of revenue, hence no action taken was against the AO."

77. The Ministry were asked as to why the Internal Audit wing did not point out these mistakes before these were noticed by the Audit. They submitted:

> "The Internal Audit Wing of the Department does not maintain a case-wise or a class-wise bifurcation of cases. It monitors the total number of Audit objections raised and settled. Whether each of these 303 cases has been seen by Internal Audit and their comments thereon can only be observed from the records. Consequent to the restructuring in the Income-tax Department, the entire Exemptions Wing has been centralised under the Chief Commissioner of Income Tax (Exemptions), New Delhi. This has resulted in the en-mass transfer of files from CsIT (Admn.) to CsIT (Exemptions), which process is still on. The detailed reply can hence not be given presently."

78. On being asked if any instructions were issued by the Ministry for AOs to be made responsible for irregular exemption by violation of provisions of the Act, the Ministry responded:

"The repetition of such irregularities, mistakes and omissions is avoided by observing regular control mechanism and supervision. The Audit reports are circulated amongst the Assessing Officers. These are also discussed during in-house training programs and seminars so as to bring more awareness amongst the executing Officers.

Periodical Inspections and Reviews by supervising officer is part of Action Plan and are generally adhered to. As per the Instruction no. 3 of 2007 of CBDT, explanation of officers is called for in case of lapses brought out by the Audit.

The issue regarding fixing Accountability of Assessing Officers for framing irresponsible orders was discussed in-depth in the 30th Annual Conference of Pr. Chief Commissioners/Chief Commissioners/Pr. Directors General/ Directors General at New Delhi in July 2014. Subsequently, on basis of deliberations in the conference, Board has issued instruction dated 07.11.2014 to the field formations wherein Assessment authorities have been sensitized about the need to avoid making frivolous additions. Further, the supervisory authorities have been directed to supervise the scrutiny assessments more effectively."

79. On being queried as to what action has been taken by the Ministry to revamp their assessment procedure in order to avoid such lapses in future, the Ministry replied:

"A detailed power point presentation for training on issues relating to exemption was prepared by Exemption Directorate in 2013 and circulated amongst all the officers. This presentation was used for in-house training as well as training of officers outside the Exemption Directorate. The presentation was updated and circulated in November, 2014 amongst all Commissioners for further circulation.

CBDT has *vide* Instruction No. 6/2009 directed that Range heads are required to effectively monitor cases during the progress of scrutiny assessment and in appropriate cases, may invoke provisions of section 144A of the IT Act to issue suitable directions to the Assessing Officer to enable him to frame a judicious order. Board vide Instruction dated 07.11.2014 in F.No. 279/Misc./52/2014-(ITJ) has re-emphasized the fact that Range Heads are required to follow the said Instruction in letter and spirit and are also required to ensure that frivolous additions or high-pitched assessments without proper basis are not made. Further, Principal Commissioners of Income-tax/Commissioners of Income-tax are also required to supervise the work of their subordinates in this regard.

> System of Review (Instruction No. 15 of 2008) and Inspection (Instruction No. 16 of 2008) by the supervisory officers, post-assessment, is also used as an effective tool to monitor the quality of scrutiny-assessments being framed. *Vide* Instruction of the Board dated 07.11.2014, supervisory officers have been directed to ensure due follow up of these Instructions which have a vital bearing on capacity building of tax-administrators and improving quality of work."

80. On being asked as to what measures have been taken by the Ministry to strengthen their internal control mechanism to ensure that mistakes of above nature are minimized in summary assessments also, the Ministry replied:

> "From Financial Year 2012-13 (A.Y. 2013-14), the Income-Tax Department has introduced e-filed return ITR-7 for entities engaged in charitable activities. The form contains a field which requires disclosure of information with respect to surplus/accumulation u/s 11(1) & 11(2). The e-filing of ITR-7 has been made mandatory and will strengthen the monitoring mechanism for accumulations and will help to overcome the shortcomings as pointed out by the C&AG.
>
> In addition summary assessments are also subject to internal Audit and revenue Audit through which such mistakes can be minimized."

81. Audit found mistakes in scrutiny cases also which shows that either provisions of Act are not being complied properly or appropriate control mechanism is lacking. The Ministry was asked the reasons for such cases. The Ministry stated the following in their written submission stated as follows:

> "The mistakes pointed out are exceptional and relate to the facts of each case. The mistake has also not been accepted in many cases based on facts of the case."

82. On being asked to elaborate on the specific measures taken to check recurrence of such state of affairs, the Ministry responded:

> "In principle, such mistakes should not occur in scrutiny assessment for which a monitoring system is already in place by way of Internal Audit,

Inspection, Reviews and Revenue Audit. The repetition of such irregularities, mistakes and omissions is avoided by observing regular control mechanism and supervision. In addition, these objections are circulated amongst the Assessing Officers. These are also discussed during in-house training programs and seminars so as to bring more awareness amongst the executing Officers."

83. The Ministry were asked to describe measures taken by the CBDT for withdrawal of exemption/cancellation of registrations/approvals u/s 12A/10(23C) of Act in case of violation of provisions of section 13, to which the Ministry replied as follows:

"Income Tax Act has been amended by the Finance (No.2) Act, 2014 wherein to rationalise the provisions relating to cancellation of registration of a trust, section 12AA of the Act has been amended to provide that where a trust or an institution has been granted registration, and subsequently it is noticed that its activities are being carried out in such a manner that, —
(i) it's income does not ensure for the benefit of general public;
(ii) it is for benefit of any particular religious community or caste (in case it is established after commencement of the Income-tax Act, 1961);
(iii) any income or property of the trust is applied for benefit of specified persons like author of trust, trustees etc.; or
(iv) its funds are invested in prohibited modes (i.e. situations referred to in section 13(1) of the Income-tax Act), then the Principal Commissioner or the Commissioner may cancel the registration if such trust or institution does not prove that there was a reasonable cause for the activities to be carried out in the above manner.

The above will come into force from April 1, 2015.

In order to rationalise the provisions relating to cancellation of registration of a trust, section 12AA of the Act has been amended by the Finance (No.2) Act, 2014 to provide that where a trust or an institution has been granted registration, and subsequently it is noticed that its activities are being carried out, inter alia, in such a manner that its funds are invested in prohibited modes (i.e. situations referred to in section 13(1) of the Income-tax Act), then the Principal Commissioner or the Commissioner may cancel the registration if such trust or institution does not prove that there was a reasonable cause for the activities to be carried out in the above manner."

84. On being asked if any action had been initiated against the AOs to make them responsible for allowing irregular exemption to assessees despite violation of provisions of section 13 of the Act, the Ministry replied:

"Commissioners of Income Tax (Exemptions) have been asked to call for explanation of the assessing officers wherever Audit objections are accepted and to take further action after examining the explanation.

The issue regarding fixing Accountability of Assessing Officers for framing irresponsible orders was discussed in-depth in the 30th Annual Conference of Pr. Chief Commissioners/Chief Commissioners/Pr. Directors General/ Directors General at New Delhi in July 2014. Subsequently, on basis of deliberations in the Conference, Board has issued instruction dated 07.11.2014 to the field formations wherein Assessment authorities have been sensitized about the need to avoid making frivolous additions. Further, the supervisory authorities have been directed to supervise the scrutiny assessments more effectively."

CHAPTER - IV

ACCUMULATIONS AND FOREIGN CONTRIBUTIONS

A. Non-monitoring of accumulations of income of Trusts

85. Audit manual of ITD (Para 8.3 of Chapter 5 of the Manual of Procedure Vol.-II) prescribes 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 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. Audit 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. Audit observed that 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.

86. 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 assesses mandatory. Once this is achieved, the necessary data base will be created in the system to address such issues.

87. In this regard, Audit was of the view that according to the Act, filing of Form 10 is to be done before completion of assessment (summary/scrutiny) and is mandatory in nature. AO should scrutinize all the Form 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 assessees' 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.

88. The Committee, therefore, desired to know, if necessary instructions had been issued in this regard, if so what was the outcome of those instructions. In reply thereto, the Ministry in their written replies stated as follows:

> "Form 10 is required to be filed before the expiry of time allowed u/s 139(1) for furnishing the return of income, with power to the CIT to condone the delay in filing Form No.10, if justified. The declaration in Form 10 is examined at the time of scrutiny of the case. Assessing Officers examine whether or not the stipulated conditions are fulfilled before granting exemption u/s 11(2) during the course of scrutiny proceedings.
>
> The suggestion of Audit that Assessing Officer should examine all the Forms 10 is under examination by CBDT.
>
> Practically, it may not be feasible to verify each and every Form 10, since a balance is required to be maintained between available manpower and quantum of verifications to be made."

89. Being asked as to whether any responsibility has been fixed for this act of omission, the Ministry replied as under:

> "Commissioners of Income Tax (Exemptions) have been asked to call for explanation of the Assessing Officers wherever Audit objections are accepted and to take further action after examining the explanation."

90. On being asked about the present position of recovery of ₹ 106.10 crore irregularly exempted, in 120 cases the Ministry replied that the assessments are pending in reopened cases.

B. Non-taxation of short application of income/accumulations after specified period

91. 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.

92. Audit noticed that in 23 cases involving tax effect of ₹ 100.07 crore, AOs did not monitor accumulated income to be taxed after specified period.

93. 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.

94. In their reply to the above said audit observation, the Ministry submitted as follows :

> "While passing the Assessment Order u/s 143 (3) for A.Y. 2009-10, the A.O. had allowed as exempt the accumulated surplus to the tune of about ₹ 21.90 crore. This was objected by the Audit as the assessee Trust had not filed the Form No. 10 in respect of the accumulation of income u/s 11(2) r.w.s. 10 (23C)(iv) of the Act, before filing its return of income. The audit objection is acceptable. The delay in filing of Form No. 10 for the A.Y. 2009-10 was condoned by the ld. DIT(E) vide Order dtd. 20.09.2013 and allowed the accumulation made u/s 11(2) in the said Order. Therefore, the objection raised by the Revenue Audit, though accepted, is not applicable now."

C. Irregular exemption for investment not made in specified mode

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

96. Audit noticed that ITD allowed exemption in five cases involving tax effect of ₹ 43.35 crore where investments were not made in specified mode. 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.

97. While furnishing their reply on the above case, the Ministry stated as under :

> "The Gross receipt of the association mentioned in the order was the total receipts of the association during the year of ₹ 291.71 crore excluding the opening balance. And the application of income of ₹ 307.98 crore represents entire payments made during the year by the association as per the receipts and payments account excluding the closing balance.
> The gross receipts shown in the order includes all the capital grants and deposits matured etc., and application of income includes all the payments made during the year.
> As per the income and expenditure accounts for the Asst. Year 2007-08, the income of the assessee was ₹ 18.50 crore and capital Grant of ₹ 21.29 crore. Out of the same the assessee has expended an amount of ₹ 10.96 crore as Revenue and ₹ 29.36 crore as Capital expenditure.
> For the reasons specified above, **the objection is not accepted**. However, remedial action has been initiated by issue of notice u/s 148 on 28.03.2014."

98. On being asked, if any, effective monitoring system had been evolved to check escapement of tax on accumulations remained unutilized after prescribed time limit of five years, the Ministry responded:

> “The mechanism in the form of appropriate column in return (ITR-7) and prescription for maintenance of register by Assessing Officers to monitor accumulation as per Page 61 of Office Manual already exists. In scrutiny assessments, the Assessing Officers are examining this aspect. However, the mechanism has been strengthened by introducing e-filing of ITR-7 which will enable online maintenance of the register. From Financial Year 2012-13 (A.Y. 2013-14), the Income-Tax Department has introduced e-filed return ITR-7 for entities engaged in charitable activities. The form contains a field which requires disclosure of information with respect to surplus/accumulation u/s 11(1) & 11(2). The e-filing of ITR-7 has been made mandatory and will strengthen the monitoring mechanism for accumulations and will help to overcome the shortcomings as pointed out by the C&AG.”

D. Non-monitoring of Foreign contribution received by Trusts and NGOs

99. 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 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.

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

101. On being asked as to what is the existing mechanism to ensure that FCs have been spent for the purpose for which these have been received and unspent amount is taxed as per law, the Ministry replied:

> "Under the scheme of Act, the global income from whatever source of a resident "trust" is taxable in India. Section 11 operates to exclude income from taxation subject to conditions mentioned therein. The Foreign Contribution (FC), therefore, is income of the 'trust' particularly in light of section 2(24)(iia) of the Act which includes any voluntary contribution whether from foreign or domestic source, as income. Section 11 provides exemption to the extent such income is applied in India for the purposes of trust.
>
> Therefore, the exemption in respect of FCs would be available to the extent such amount is applied for charitable purposes in India. The unspent amount is taxable subject to accumulation provisions like any unspent domestic contributions. The law already provides for this and this aspect is checked by Assessing Officers in scrutiny assessments.
>
> In manual scrutiny selection guidelines issued earlier by the Board, cases where contributions were received from countries outside India were selected for scrutiny. This ensured that foreign contributions received by NPOs/Trusts are under watch."

102. The Ministry was asked as to why no guidelines/circulars were issued by the CBDT to watch Foreign Contributions received and utilized for the purpose for which it was received. To this the Ministry replied:

> "Monitoring of utilization of FCs is already done in scrutiny assessment. Further, cases of FCRA donation above ₹ 1 crore have also been selected through scrutiny guidelines for F.Y. 12-13 and F.Y. 2013-14. Since FCs are at par with domestic donation in the eyes of the law, the existing provisions already apply to them.
> Further, ITR-7 prescribes a separate column for mentioning Foreign Contribution Regulations Act 1976 (FCRA) registration details and the amount of foreign contributions receipts which will enable the Assessing Officer to use the information meaningfully.
>
> In manual scrutiny selection guidelines issued earlier by the Board, cases where contributions were received from countries outside India were selected for scrutiny. This ensured that foreign contributions received by NPOs/Trusts are under watch."

E. <u>FCs not utilized for the purpose</u>

103. In DIT-E, Mumbai, Audit noticed diversion of funds by two Trusts (Pratham-Mumbai Education initiative (AY 10) and World Renewal Spiritual Trusts (AY 09 and AY 10) 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 was utilized for other purposes resulting in the tax effect of ₹ 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.

104. The Ministry stated that eight cases mentioned in this Para are being examined. The Ministry further stated 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.

105. Audit was 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.

F. FCs mingled with the local funds

106. 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.

107. 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.

(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.

108. The Ministry stated that as far as the 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.

109. According to Audit, Ministry's stand was 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 FCs 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.

110. The Ministry stated 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.

111. Audit was 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 FCR Act for proper monitoring of FCs and local funds.

G. Recommendations of Audit

112. Upon noticing the abovesaid irregularities in accumulations and Foreign Contributions, the Audit recommended that 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.

113. The Committee desired to know whether the Department had initiated the practice of maintaining prescribed control registers online and how would the Department ensure effective use of these registers in assessment process. The Ministry replied:

> "The mechanism has been strengthened by introducing e-filing of ITR-7 which will enable online maintenance of the register. From Financial Year 2012-13 (A.Y. 2013-14), the Income-Tax Department has introduced e-filed return ITR-7 for entities engaged in charitable activities. The form contains a field which requires disclosure of information with respect to surplus/accumulation u/s 11(1) & 11(2). The e-filing of ITR-7 has been made mandatory and will strengthen the monitoring mechanism for accumulations and will help to overcome the shortcomings as pointed out by the C&AG."

114. The Audit had also recommended that 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 assessees 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.

115. When asked as to how CBDT proposed to ensure monitoring of accumulations made by Trusts, whether covered under summary or scrutiny:

> "From Financial Year 2012-13 (A.Y. 2013-14), the Income-Tax Department has introduced e-filed return ITR-7 for entities engaged in charitable activities. The form contains a field which requires disclosure of information with respect to surplus/accumulation u/s 11(1) & 11(2). The year wise accumulation is mentioned in Schedule I and the investment of the same is mentioned in Schedule J. The Assessing Officer will be able to use the same to identify if the trust has invested the accumulations as per the prescribed mode.
>
> The e-filing of ITR-7 has been made mandatory and will strengthen the monitoring mechanism for accumulations and will help to overcome the shortcomings as pointed out by the C&AG.
>
> In ITR-7, in Schedule I, details of amounts accumulated by trusts are captured. The Schedule provides for amount and purpose of accumulation, amount applied for charitable purpose and the amount invested in modes specified in section 11(5) of the Income-tax Act. The said Schedule also captures the amount deemed to be income within the meaning of section 11(3) which captures any violation in respect of accumulation by the trust."

116. One another recommendation of Audit was that the 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.

117. On being asked what measures had been taken by the CBDT for evolving suitable parameters (like donor country/institution, money value, purpose, objects of the trust etc.) to select Foreign Contribution (FC) cases for scrutiny, the Ministry responded:

> "The ITR-7 prescribes a separate column for mentioning Foreign Contribution Regulations Act 1976 (FCRA) registration details and the amount of foreign contributions receipts. Trusts which had received FC more than ₹ 1 crore were selected for Scrutiny for FY 2012-13 and FY 2013-14. The criteria for selection of cases under scrutiny is decided on year to year basis after evaluating the results thereof / the feedback received from the field formations with regard to the relevance/utility of the criteria.
>
> Over the years, Board has devised system based methods while selecting cases for scrutiny which has substantially reduced the manual intervention in this process. As of now, bulk of the cases are selected through Computer Aided Scrutiny Selection (CASS) after applying broad based selection filters and 360 degrees data profiling while only a small number of cases are selected under the criteria-'Manual-Compulsory' on basis of predetermined parameters. Board has eliminated 'Manual-discretionary' method of scrutiny selection also, which had in the past, lead to complaints of harassment of tax-payers.
>
> A suitable CASS criterion is under consideration for selection of cases for scrutiny. A separate schedule has been developed for FCRA contribution in the ITR-7."

CHAPTER - V

INCONSISTENCIES IN THE INCOME TAX ACT, 1961

118. The Income Tax Act, 1961 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.

119. Audit observed several inconsistencies in the Income Tax Act, 1961 such as there being no internal mechanism within ITD to have control over the receipts issued by the entity having registration under section 80G. There is no provision in the Act to invest corpus fund in specified mode and interest earned thereon. The word “substantially financed” is not defined in Act. 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. Audit also noticed deficiencies in Forms specified for Audit Report to be enclosed with the returns.

120. When asked to comment on each of the above-mentioned Audit observations, the Ministry responded as under:

> "... As mentioned by Audit, Courts have taken divergent views on the issue of allowing depreciation, repayment of loan and deficit of earlier years. In the absence of express provisions, since income tax authorities have to obey jurisdictional High Court decisions, the divergent views taken by court has led to divergent stand in different jurisdictions and different times depending on the dynamics of the litigation. Similar is the position in respect of cases where the exemption depends on the extent of funding by Government in the absence of definition of the above phrase. However, amendment of law has already been carried out in respect of claim of depreciation in trust cases and definition of phrase "substantially financed". In respect of issue of deficit & repayment of loan, the matter is under consideration by CBDT.
>
> As regards claim of exemption benefit simultaneously u/s 10(23C) and 12A in different Assessment Years, as stated by the Ministry (July, 2013)

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 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.

(i) The Income-tax Act has been amended vide Finance (No.2) Act, 2014 to provide that under section 11 and section 10(23C), income for the purpose of application shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as application of income under these sections in the same or any other previous year.

(ii) From Financial Year 2012-13 (A.Y. 2013-14), the Income-tax Department has introduced e-filed return ITR-7 for entities engaged in charitable activities. The form contains information in respect of donations received by the entity. Further, all persons having income above ₹ 5 lakh are compulsorily required to file returns electronically. With regard to 80G claim, the return of the donor contains the details of the donee and his PAN along with the amount on which 80G deduction has been claimed. Data in this respect is therefore available with the Department. Thus a mechanism for detecting gross mismatch has been put in place which helps in capturing the details of donation made by the donor alongwith the details of the donee.

(iii) Section 13(1)(d)(i) of the Act clearly imposes a condition that all funds of charitable trust have to be invested or deposited in the modes prescribed u/s 11(5). There is, therefore, no distinction regarding corpus or non-corpus funds. Interest earned on any investment is a revenue receipt and is income derived from property held under trust, and is, therefore, subject to the same restrictions of accumulation and application as any other income. There is adequate clarity in law.

(iv) Section 10(23C) of the Act has been amended vide Finance (No.2) Act, 2014 by inserting an Explanation below clause 23C(iiiac) of section 10 that if the Government grant to a university or other educational institution, hospital or other institution during the relevant previous year exceeds a percentage (to be prescribed) of the total receipts (including any voluntary contributions), of such university or other educational institution, hospital or other institution, as the case may be, then such university or other educational institution, hospital or other institution shall be considered as being substantially financed by the Government for that previous year.

Rule 2BBB has been inserted in the income-tax Rules vide Notification No.79 /2014 dated 12th December, 2014 to prescribe such percentage to be 50%.

(v) Vide Finance (No.2) Act, 2014, section 11 of the Income-tax Act has been amended to provide that where a trust or an institution has been granted registration for the purposes of availing exemption under section 11, and the registration is in force for a previous year, then such trust or institution cannot claim any exemption under any provision of section 10 [other than that relating to exemption of agricultural income and income exempt under section 10(23C)].

Similarly, entities which have been approved or notified for claiming benefit of exemption under section 10(23C) would not be entitled to claim any benefit of exemption under other provisions of section 10 (except the exemption in respect of agricultural income)."

121. On the view of Audit that the Ministry may bring suitable amendment in the Act to streamline the treatment of depreciation, deficit and repayment of loans, the Committee desired to know if any steps had been taken by the CBDT to amend the Income Tax Act for this purpose. In response thereto, the Ministry submitted as follows:

"The Income-tax Act has been amended to provide that under section 11 and section 10(23C), income for the purpose of application shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as application of income under these sections in the same or any other previous year. This amendment is effective from 1st April, 2015.

There is no provision under the Act to carry forward deficit. However, in view of adverse decisions of High Courts, the issue is under examination by the CBDT. In respect of issue of repayment of loan also, the suggestions are being examined in CBDT."

122. In this regard, Secretary, Department of Revenue during the sitting of the Committee stated the following:

"….For example, it was pointed out to us and the Department had indeed also noted that there was this anomaly in the law and it was also pointed out in the Report that charitable organisations were availing deductions on capital expenditure and at the same time, they were availing depreciation. This amounted to a kind of double benefit that some of the charitable organisations were availing. This double benefit has been plugged by way

> of an amendment in the Finance Act, 2014 and the provision or the facility of depreciation is now no more available in such cases…"

123. Audit observed that 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. Audit raised a specific issue in Kerala, CIT Kottyam where 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 according to Audit was not in order as Trust had 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.

124. On this issue, the Ministry clarified:

> "The Audit has stated that when a Charitable Trust has already claimed deduction for acquisition of capital assets as application money, the further claim of depreciation on the same asset, is not admissible. Hence depreciation to the tune of ₹ 43.56 crore, ₹ 45.9 crore & ₹ 49 crore (totaling ₹ 138.46 crore) stands allowed as application not admissible for AYs 2006-07, 2007-08 & 2008-09 respectively.
>
> Remedial action u/s 147 has been initiated in respect of all the years involved. Assessments are pending."

125. On being asked if any instructions had been issued regarding cross verification of claim of donor for donation u/s 80G with documents of recipient Trusts, the Ministry replied:

> "From Financial Year 2012-13 (A.Y. 2013-14), the Income-Tax Department has introduced e-filed return ITR-7 for entities engaged in charitable activities. The form contains information in respect of donations received by the entity. Further, all persons having income above ₹ 5 lac are compulsorily required to file returns electronically. With regard to 80G claim, the return of the donor contains the details of the donee and his PAN along with the amount on which 80G deduction has been claimed. Data in this respect is therefore available with the Department. Thus, a mechanism for detecting gross mismatch has been put in place which helps in capturing the details of donation made by the donor along with the details of the donee.
>
> The information filed by the assessee in ITR-7 is accessible by all the Assessing Officers and they are expected to utilize the same while framing

assessments.100% verification is not feasible due to manpower constraints."

A. <u>No provision in Act to deduct tax at source in case of Trusts</u>

126. According to Audit, there is no enabling provision in the Act to disallow 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. 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. Audit observed that if such amounts were made to comply with TDS provisions, ITD would have a handy tool to disclose such amounts.

127. When asked as to what action has been taken by the Ministry to bring Trust assessees at par with other type of assessees in case TDS provisions are not complied with, the Ministry replied:

> "Under the existing provisions of the Income-tax Act, 1961, there is no exemption granted to Trusts from deducting tax on the payments from which tax is deductible under Chapter XVII-B of the Income-tax Act. The trusts or institutions exempt u/s 11 or 10(23C) are not governed by the normal provisions of Income-tax Act. At the same time, they have not been exempted from deducting TDS in respect of various payments made by them to various people and hence are covered by the provisions of Income-tax Act relating to deduction of Tax at source including interest, penalty and prosecution for defaults in respect of tax deduction. The only provision which is not applicable to them is section 40(a)(ia) which provides for disallowance of expenditure in case of non-deduction of tax. This is on account of the fact that for registered trusts claiming exemption, the income is computed under section 11 to 13 and not head wise computation under chapter IV of Income Tax Act (Sl.No. 14 to 59). Therefore, adequate deterrence for non-compliance with TDS provisions by Trust exists.
>
> Under the existing provisions of the Act the trust is treated at par with the other deductors for non-compliance of the TDS provisions. No specific dispensation has been provided to the trust deductors vis-à-vis other deductors."

128. On being asked if any provision had been made for proper disclosure of TDS deducted/deductible in the Audit Report relating to a Trust assessee, the Ministry replied that:

> "At present the Audit Report relating to an assessee being a trust does not contain a column for capturing such information. However, the suggestion has been noted."

129. When asked, if any modifications had been made in the existing provisions for compliance with TDS provisions by Trusts, the Ministry submitted:

> "Under the existing provisions of the Income-tax Act, 1961, there is no exemption granted to Trust from deducting tax on the payments from which tax is deductible under Chapter XVII-B of the Income-tax Act. The trusts or institutions exempt u/s 11 or 10(23C) are not governed by the normal provisions of Income-tax Act. At the same time, they have not been exempted from deducting TDS in respect of various payments made by them to various people and hence are covered by the provisions of Income-tax Act relating to deduction of Tax at source. However, a deterrent provision like section 40(a)(ia) is not applicable to them. This is because the section 40 begins with the phrase "notwithstanding anything to the contrary in section 30 to 38…." Therefore, the provisions of section 40(a)(ia) are not applicable to the trusts as business sections are not applicable to the trusts.
>
> Under the existing provisions of the Income-tax Act, 1961, there is no exemption granted to Trust from deducting tax on the payments from which tax is deductible under Chapter XVII-B of the Income-Tax Act. Therefore, the person responsible for making any payments specified under Chapter XVII-B on behalf of the trust is required to deduct tax as per the existing provisions of the Act. As there is no distinction between trust and non- trust payer in the matter relating to deduction of tax, the following provision of the Act for ensuring compliance of the TDS provisions are equally applicable to the trust also:
>
> i. Section 201(1) of the Act provides that if any person fails to deduct tax as per the provisions of Chapter XVII-B of the Act, he shall be deemed to be an assessee in default. Further as per the first proviso to Section 201(1) it is provided that the payer who fails to deduct the whole or any part of the tax on the payment made to a resident payee shall not be deemed to be an assessee in default in respect of such tax if such resident payee –
>
> (i) has furnished his return of income under section 139;

(ii) has taken into account such sum for computing income in such return of income; and

(iii) has paid the tax due on the income declared by him in such return of income, and the payer furnishes a certificate to this effect from an accountant in such form as may be prescribed. The date of payment of taxes by the resident payee shall be deemed to be the date on which return has been furnished by the payer.

ii. Section 201(1A) of the Act provides that if the person does not deduct tax under Chapter XVII-B of the Act, he shall be liable to pay simple interest at one percent for every month or part of the month on the amount of tax from the date on which such tax was deductible to the date on which such tax is deducted as per clause (i) of Section 201(1A) and one and half percent for every month or part of the month on the amount of tax from the date on which such tax was deductible to the date on which such tax is actually paid as per clause (ii) of Section 201(1A). It is further provided in proviso to Section 201(1a) that where the payer fails to deduct the whole or any part of the tax on the payment made to a resident and is not deemed to be an assessee in default under section 201(1) on account of payment of taxes by the such resident, the interest under section 201(1A)(i) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident payee.

iii. Section 271C of the Act provides that if a person fails to deduct tax under Chapter XVII-B of the Act, he shall be liable to pay by way of penalty, a sum equal to the amount of tax which such person failed to deduct.

iv. Section 276B of the Act provides that if a person fails to pay the tax deducted under Chapter XVII-B of the Act, he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years along with fine."

B. <u>Divergent interpretation of phrase</u>

130. Audit observed that Sub Section (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.

131. 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”.

132. 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

133. In this regard the Audit had desired the Ministry to bring suitable definition for the phrase "substantially financed" to clarify provisions of section 10(23C). When asked, if CBDT has effected any amendment in the Act for specifying suitable definition for the said phrase, the Ministry in their written replies submitted as follows:

> "Section 10(23C) of the Income Tax Act has been amended vide Finance (No. 2) Act, 2014 with effect from Asst. Year 2014-15 by inserting an Explanation below clause 23C(iiiac) of section 10 that if the Government grant to a university or other educational institution, hospital or other institution during the relevant previous year exceeds a percentage (to be prescribed) of the total receipts (including any voluntary contributions), of such university or other educational institution, hospital or other institution, as the case may be, then such university or other educational institution, hospital or other institution shall be considered as being substantially financed by the Government for that previous year.
>
> Rule 2BBB has been inserted in the income-tax Rules vide Notification No.79 /2014 dated 12th December, 2014 to prescribe such percentage to be **50%**."

CHAPTER - VI

UTILISATION OF RESOURCES

134. Audit scrutiny revealed that the ITD accorded low priority on Trusts for tax administration. ITD has not maintained comprehensive database on Trusts. Scrutiny assessment of Trusts constitutes only 2% of total returns. Moreover, the database on Voluntary Organizations (VOs) maintained by Planning Commission of India, did not have linkages of PAN and financial details. ITD has made no efforts to utilize this database for tax compliance purpose. On being asked to give their justification on the above-said Audit observations, the Ministry replied:

> "The Ministry relies on the reply given on the observations. The ITD has not accorded low priority on trust for tax administration.
>
> - The Ministry has started developing the data base of Non-Profit Organization (NPO) and all approving authorities have been asked to upload details of all NPOs approved by them. Data is available on the website http://www.incometaxindia.gov.in/. As on date there are 1,50,495 records available in the public domain in this website. All Assessing Officers (AO's) can check this data.
>
> - In the scrutiny guidelines for the financial year 2012-13 issued vide letter dated 23.08.2012, there were two specific criteria which related to trust cases namely Para (g) relating to cases hit by proviso to sec. 2(15)and para(j) relating to cases where FCRA donation of more than one crore was received for F. Y. 2010-11 (relevant to AY 2011-12). Even in the earlier year *vide* scrutiny guidelines dated 02.09.2011 there were two specific criteria relating to trust cases. One of the criteria was common namely cases hit by sec. 2(15) proviso and second criteria was cases (research organizations) approved by CBDT u/s 35 of IT Act. Thus scrutiny guidelines have tried to take the most relevant risk factors in different years for scrutiny selection in trust cases.
> - As regards non- selection of FC cases, as mentioned above, FC cases over ₹ 1 crore were selected for scrutiny in FY 2012-13 and FY 2013-14. The scrutiny guidelines are by nature dynamic and at the same time limited in scope, since the idea is to cover only the more critical risk areas in different years and avoid omnibus selection.
> - It also needs to be mentioned that scrutiny selection in trust cases is mainly through CASS.
> - Filing of returns is mandatory only for trusts having income above taxable limit before claiming exemption. Since there are a large number of marginal trusts, there is a gap between the number of registered entities

and the return filed. There can be no correlation before number of registered 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."

A. Incomplete Database

135. Based on PAC's recommendations (2006-07) 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.

136. Some of the Private Schools, Colleges and Coaching Centre are running as Trusts. Audit 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.

137. Audit 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.

138. 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.

139. Audit had, therefore, opined that to have co-ordination between Approving Authorities and AOs, the Ministry should consider providing suitable database of registered trusts/institutions to AOs.

140. On being asked, if such a database of Non-Profit Organizations had been developed and disseminated among assessing officers and approving authorities, the Ministry stated:

> "The Ministry has started developing the data base of Non-Profit Organization (NPO) and all approving authorities have been asked to upload details of all NPOs approved by them. Data is available on the website http://www.incometaxindia.gov.in/. As on date there are 1,50,495 records available in the public domain in this website. All Assessing Officers (AO's) can refer to this data while completing assessment."

141. Further, on the Audit observation that ITD did not capture registration and assessment details from manual returns of Trusts in the database and the Department also did not utilize the database effectively during assessment of trusts, the Ministry submitted as follows:

> "Filing of returns is mandatory only for trusts having income above taxable limit before claiming exemption. Since there are a large number of marginal trusts, there is a gap between the number of regd. entities and the returns filed. There can be no correlation between 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.
> 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 periodically and notices issued to assessee asking them to file returns."

B. Non-selection of Trust cases for scrutiny assessment

142. The CBDT has formulated[3] 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[4] that if gross receipt of an assessee submitting return in ITR-7 is more than ₹ 5 crore, it should be selected for

[3] The CBDT in instruction No. 1/2009 dated 12/02/2009.
[4] CBDT instruction F.No. 255/93/2009 ITA-II dated 08/09/2010.

compulsory scrutiny. Audit observed that ITD selected only 2 per cent of total returns for scrutiny assessments of Trust cases. In Maharashtra, returns of five trusts[5] 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. CBDT is yet to frame the norms for inclusion of Trusts in CASS for scrutiny assessment. 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.

143. Apprising the Committee about the reasons for selecting only 2 percent of cases for scrutiny assessment, the Ministry in their written replies submitted as follows:

> "In the scrutiny guidelines for the financial year 2012-13 issued vide letter dated 23.08.2012, there were two specific criteria which related to trust cases namely Para(g) relating to cases hit by proviso to sec. 2(15)and para(j) relating to cases where FCRA donation of more than one crore was received for F. Y. 2010-11 (relevant to AY 2011-12). Even in the earlier year vide scrutiny guidelines dated 02.09.2011 there were two specific criteria relating to trust cases. One of the criteria was common namely cases hit by sec. 2(15) proviso and second criteria was cases (research organizations) approved by CBDT u/s 35 of IT Act. Thus scrutiny guidelines have tried to take the most relevant risk factors in different years for scrutiny selection in trust cases.
>
> Generally around 2% of the cases are selected for scrutiny which is in accordance with the global practice. A balance is required to be maintained between available manpower and the number of cases selected for scrutiny. In the recent years, the focus is on selecting cases, based an appropriate risk parameter in which scrutiny is prescribed to be fruitful."

C. Manual processing of returns of Trusts

144. 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

[5] Audyogik Shikshan Mandal, Water and Land Management Institute, Everest Education Society, Dr. Babasaheb Ambedkar Mrathwada University in ITO 8(1) & ITO 1(1) Aurangabad

Act[6]. Audit observed that CBDT has not yet permitted e-filing of ITR-7. ITD may consider making mandatory electronic filing of returns for Trusts as it is catering to the high risk assesses who are taking total exemption of their income. The Ministry stated (May 2013) that e-filing of ITR-7 is being examined.

145. On being asked as to whether norms for inclusion of Trusts in CASS for Scrutiny assessment have been formed, the Ministry stated that such norms are framed on year to year basis keeping in view the most relevant risk factor and after evaluating the results thereof/the feedback received from the field formations with regard to the relevance/utility of the criteria.

146. On being asked whether e-filing of return by Trust assessee has been started, the Ministry replied:

> "Yes, e-filing of ITR- 7 has been introduced from FY 2012-13. Yes, e-filing of return has been made mandatory since AY 2014-15 in cases where the total income of the trust or institution as computed under the 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 the previous year."

147. On being asked whether any action had been taken to send the inputs provided by Trust assessee at the time of registration automatically in the comprehensive database so that duplication of efforts can be avoided, the Ministry replied:

> "The feasibility of such type of web based interactive plan is under discussion.....The inputs provided by Trust assessee at the time of registration will automatically go into the comprehensive database once the web based filing of application for registration u/s 12A and exemption u/s 80G and 10(23C) is made operational.
>
> Presently, there is no such functionality to automatically receive registration data and is under discussion."

148. In this regard, Secretary, Department of Revenue during oral evidence also submitted:

[6] Under Section 11 (5) and the Schedule I and K of ITR-7.

"The other point which I would like to mention is with regard to e-filing of IT Return 7, which applies to these Non Profit Organisations. Now, for the IT Returns we have provided the facility of e-filing, that is electronic filing of IT Returns through our system. By e-filing the process is much quicker. It will ensure better transparency. Slowly it will also ensure better assessment on the part of the Assessing Officer. While doing so we have also simultaneously made certain provisions in the whole process of e-filing which will ensure prevention of leakage of taxation or misuse of these provisions of the law. For example, we have insisted that the IT Return of the donor, somebody who is donating to a particular charitable organisation, the IT return of the donor will now contain the PAN of the donee. So, it will be easier for the Department to match what the donor is contributing, what the donor claims that he has contributed to a charitable organisation, whether it has been received by the donee organisation or by that charitable organisation so that there is proper tallying of the figures and this will plug any possibility of leakage of revenue or misreporting.

This will also ensure better monitoring of surpluses which are getting accumulated. You have very rightly expressed your concern about the accumulation of surpluses, not only in respect of the domestic proceeds but also in respect of the foreign donations which are coming. So, this will also ensure better monitoring of surpluses which are being accumulating over a period of time."

Part-II

Observations/Recommendations of the Committee

1. Secular Social objectives such as promotion of education, medical care and other kinds of charity are some areas in which efforts of the State are always inadequate, given the size of our country and the large section of the population that needs such care and protection. Therefore, the State has always recognized and sought to encourage the laudable role of private philanthropy in relieving distress and in helping to meet the socio-economic, cultural, medical, educational and religious needs of the society. To encourage the contributions of such Private Philantrophy (Charitable Trusts/Institutions) in catering to the needs of the society, tax concessions have been granted to them under the Indian Taxation system. Sections 2(15), 2(24)(iia), 10 (23C), 11, 12, 12AA, 13, 80G, 115BBC and 139 (4C) of the Income Tax Act 1961 deal with exemptions available to income of trusts and institutions created for charitable or religious purposes, subject to fulfillment of certain conditions. Since the tax concessions afforded to these institutions involve a sacrifice of public money, it became imperative to ensure that tax privileges are not abused and they are enjoyed only by those charitable and religious institutions which actually deserve them. In this regard, the Committee have examined Audit Report No. 20 of 2013 on "Exemptions to Charitable Trusts and Institutions".

2. The Committee's examination of the subject relating to exemptions is based on the Audit review of test check of 81,421 cases in the 554 units in trust circles/wards. The Audit collected data regarding registration/approval/ notification of the trusts/institutions/organizations engaged in the charitable or religious activities for availing exemptions under section 12 A, 10 (23) and 80 G(5) from the offices of the concerned DIT (E)s/CCITs/CITs with reference to information contained in Form ITR 7. The purpose of this review was stated to seek assurance that:

a) Application for registration/approval/notification by a trust/institution/ organization engaged in permissible charitable and religious activities is processed as per extant laws.

b) Exemptions claimed by such institutions are allowed during assessment after fully satisfying the conditions prescribed therefor and compliance of other existing tax provisions is made.

c) 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.

d) Monitoring and utilization of accumulation and foreign contributions are properly done by ITD.

e) Inadequacies in the provisions of Act relating to exemptions exists.

Examination of the subject by the Committee in detail has revealed several lapses in registration process, allowance of irregular exemptions during assessment, non-monitoring of accumulations of surplus income and Foreign Contributions (FCs) received. There have also been inconsistencies in the Income Tax Act which led to incorrect assessment and non-levy of taxes and under-utilization of resources placed at the disposal of Income Tax Department (ITD) etc. The Committee have dealt with these lapses in detail in the following Paragraphs.

<u>Processing the applications for registration</u>

3. One of the conditions for seeking exemption of income of trusts is that a trust or the institution is required to get itself registered under section 12 A of the Income Tax Act, 1961. Test check conducted by Audit of 554 assessment units revealed 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. 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. Audit scrutiny of all the 0.90 lakh cases where ITD granted registrations/approvals/notifications revealed procedural mistakes in 6,948 cases i.e. 7.72 percent such as grant of approval/registration to 799 trusts without

verifying necessary documents, non-inclusion of dissolution clause in the Trust Deed in 457 cases; grant of registration without PAN in 73 cases, irregular exemption to trusts in 60 cases whose objects were not charitable in nature, delay of more than 6 months to 24 months beyond stipulated period in granting approvals/registrations/notifications in 594 cases. The Committee are also perturbed to find that ITD allowed exemptions involving tax effect of ₹ 8.88 crore to 53 trusts without granting registrations/approvals/notifications. Further, ITD allowed exemptions in 72 cases irregularly involving tax effect of ₹ 8.88 crore despite rejection of registrations/approvals by the competent authority. The Committee are not convinced with the defence advanced by the Ministry of Finance that the aforesaid mistakes are mostly in summary cases and exceptional in nature. The Committee are of the view that summary assessment should not be an excuse for such mistakes. There should be an effective internal control mechanism to minimize such type of mistakes in summary assessment also. The Committee however, take a serious view of such blatant mistakes which are committed by the Assessing Officers while processing the applications for registrations without scrupulously following the provisions stipulated in the Act. They are of the firm opinion that no law can be effective if it is not implemented earnestly. The Committee, therefore, desire that as and when such cases of procedural mistakes in granting registrations/approvals/notifications are noticed, suitable punitive action should invariably be taken expeditiously against the officers including those involved in aforesaid 72 cases mentioned by Audit so as to inculcate a sense of responsibility and discipline among all and to save consequential loss to the exchequer.

<u>Non inclusion of Dissolution clause in the Trust Deed</u>

4. 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. The Committee observe that ITD

granted approvals/registrations/notifications in 457 cases in which there was no dissolution clause in the Trust Deed. According to the Ministry, inclusion of dissolution clause in the deed is neither necessary nor legal in States as 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. The Committee express their serious concern over the fact that as to how the clauses prescribed in the Bombay Public Trust Act 1980 can be enforced under Income Tax Act and in all the other States. The Ministry have further informed that in the absence of any specific provision in Income Tax Act with respect to dissolution clause, rejection of application for registration on this account is neither enforceable nor legally sustainable. However, Audit objection is stated to be circulated for compliance amongst officers of the exemption directorate, dissolution deed is being insisted upon by Commissioners. The Committee are of the view that in order to ensure that in case of dissolution of a trust, its net assets are utilized for the purpose for which the trust was originally founded and not benefit the founders of the trust or his/her family Member relatives etc. the Ministry should henceforth insist on inclusion of 'Dissolution Clause' in the Trust Deed compulsorily while registering trusts under Section 12 AA uniformily all over India. The Ministry may also consider incorporating the suitable provisions in the Income Tax Act 1961 so as to ensure the same.

<u>Irregular exemption to Trusts which were not charitable in nature</u>

5. According to the amended provision of Section 2(15) of the Income Tax 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. The Committee observe that ITD granted exemptions to Trusts in 60 cases involving tax effect of ₹ 87.33 crore, whose objects were not charitable in nature. In an illustrative case as pointed out by Audit, the Committee found that in DIT-E Mumbai, ITD allowed 'Society for Applied Microwave Electronics Engineering and

Research' exemption under section 11 during AY 09 and AY 10 where the activities of the assessee were not charitable in nature but purely a research work for which separate provisions have been provided in the Act. Irregular exemption allowed to research trusts resulted in under assessment of income aggregating ₹ 31.31 crore involving short levy of tax of ₹ 10.63 crore. The Committee cannot understand as to why the exemption was granted in this case u/s 11 of the Act when separate provisions exists in the Income Tax Act for the research institutions for availing exemption. As granting exemptions to the Trusts which were not charitable in nature is a serious issue which deprives the genuine Trusts/Institutions for availing the same, the Committee impress upon the Ministry to take stringent action against the Assessing Officers concerned for granting such irregular exemptions to those Trusts which were rendering services in relation to trade, commerce and do not come under the purview of charitable purpose. Besides, the Ministry may also take necessary action within a stipulated time frame to cancel the registration of those Trusts which do not exist for charitable purpose. Under no circumstances they should be allowed to enjoy the benefits of exemption, in case they are working purely on commercial lines with the main motive of making profits. The tax amount of ₹ 87.33 crore so short-levied in the aforesaid 60 cases may also be recovered at the earliest and the Committee be apprised of the same.

<u>Delay in granting registration/approval/notification</u>

6. 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. The Committee are constrained to observe that in 594 trust cases, ITD delayed in issuance of registration/approval/notification after stipulated period of 6 or 12 months despite having clear provisions u/s 10(23C), 12A and 80G of the Act. The delay on the part of ITD resulted in deemed approval, to

Trusts which were otherwise not eligible. The Committee are again perturbed to find that Income Tax Act is not explicit about the consequences/remedies available in case an application for ineligible trusts is not processed with six months. The Committee are not inclined to accept the contention of the Ministry that the delay has taken place in exceptional cases as delays noticed in granting approval in 594 cases may not be exceptional. These might have been either due to procedural lapses or deficient internal control on the part of AOs for not adequately applying the provisions of the Act deliberately. The way deemed approvals have been granted by the Department in all these 594 cases make the Committee feel that there is certainly something amiss in the working of the ITD which drastically needs to be streamlined. Therefore, they also desire that application seeking registration for trusts must be disposed of expeditiously. Further, there are no reasons as to why provisions to this effect cannot be incorporated in the Act. The Committee, therefore, desire that a serious thought needs to be given by CBDT in this regard. All cases where exemptions have been granted wrongly/illegally need to be probed with a view to fixing responsibility. The Committee have now been informed that restructuring of exemption Directorate would result in specialization on exemption matters with better control and monitoring. Further, proposal to make time barring limit uniform in respect of Section 12AA and 80 G applications by allowing extended time for completion in respect of Section 12AA applications by excluding time taken by applicants to comply with Commissioner's directions as available presently u/s 80 G is stated to be under examination of CBDT. The Committee have further been informed that the feasibility of introducing web based interactive platform for applying for registration, submitting soft copy of necessary documents and communicating with each other thus making the whole process faster, smoother, transparent and less time consuming is under discussion in CBDT. The Committee would like the Ministry to undertake these proposed measures expeditiously with a view to avoid delay in granting registration/approval/notification.

7. Keeping in view the aforesaid irregularities in the process of registration of charitable Trusts/Institutions, the Audit had desired that the process of registration under the Income Tax Act should be brought under the purview of Internal Audit. In this regard, the Ministry have informed that in case this proposal is found acceptable by the CBDT, suitable amendment to the Instruction No. 3/2007 would be required. They have also submitted that a Review Committee has already been constituted by the Board for the Review of Internal Audit Manual, 2011. The said Committee is being suitably advised to include the said proposal of the C&AG for its consideration. The Committee desire that the Department of Revenue should undertake such an exercise expeditiously in consultation with the Audit and in the meantime the process of registration of Charitable Trust/Institutions under the Income Tax Act should be brought under the purview of Internal Audit.

Assessment

8. The Committee also noticed several lapses in allowance of exemptions to Trusts during assessment. The most glaring lapses among those are (i) 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 (ii) 22 Trusts accumulated surpluses of ₹ 819 crore ranging from 35.7 to 84.8 percent of their total income (iii) ITD allowed irregular exemptions to Jamshetji Tata Trust and Navajbai Ratan Tata Trust who invested ₹ 3,319 crore in prohibited modes arising from accumulations of capital gains involving tax effect of ₹ 1066.95 crore. (iv) Four Cricket Associations engaged in commercial activity got irregular exemptions of TV subsidy received from BCCI involving tax effect of ₹ 37.23 crore. (v) 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 ₹ 99.36 crore etc.

Irregular exemption to Trusts creating huge surpluses consistently

9. The Committee note 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 percent of their total income. Further, the Committee find that three institutions namely Tatwajanana 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 percent consistently during AY 07 and AY 11 and accumulated surpluses of ₹ 622.20 crore. The Committee have been given to understand that accumulation of surplus is permitted by law as 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. However, at present none of the provisions of law have put any cap on the amount that can be accumulated. Keeping in view the aforesaid provisions for accumulation the Ministry have not accepted the audit objections in regard to the said three illustrative cases. In this regard, Audit had cited a case of CIT vs Sree Seetharaman Anjaneya Veda Kendra (2008) 174 Taxman 523 (Ker.) where it was held that the carry forward of income upto 85 percent, though permitted u/s 11(1) and 11(2) of the Act, should not be adopted on a routine basis and if it is done, the genuineness of the activities of Trust itself should be examined by the Assessing Officer. However, the Committee note that in the aforesaid cases, the Trusts had accumulated the surpluses of more than ₹ 500 crore consistently during the AY 2007 to AY 2011. As the consistent accumulation of funds defeats the very purpose of Trust and could led to misuse of such accumulations by the Trust, the Committee feel that appropriate amendment to this effect may be made in the Act so that trusts are not allowed to keep accumulations for a long period without spending the same on fulfillment of its objectives. Besides, they desire that the cases viz. Tatwajanana Vidyapeeth, DIT-E, Mumbai, Ishan Educational Research Society, DIT-E, Delhi and Symbiosis Society Group, CIT-I, Pune as pointed out by Audit where accumulations have been spent wrongly or illegally

must be re-investigated thoroughly with a view to fixing responsibility and their registration be cancelled. The Assessing Officers concerned who were in connivance with the Trusts, should be awarded exemplary punishment. The Committee also desire that a survey of all the educational trusts be conducted in a time bound manner so as to verify whether they are misusing the provisions of 'Charitable Trusts' in the Income Tax Act considering the huge profits generated and surpluses accumulated by most of these trusts. The Committee would like to be intimated about the precise steps taken in this direction.

10. The Committee note that the Act does not prescribe the limit of accumulation of funds and Trusts are availing exemptions by accumulating maximum funds consistently year after year. The Committee are disturbed to find that these surpluses have been used by Trusts for creating fixed assets for earning more profit or were being transferred to other Trusts rather than charitable purpose to avoid tax. The Committee while agreeing in principle with the view of the Ministry that 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, also feel that the same should not be allowed to be exploited for vested interests. Accordingly, the Committee recommend the following:

i). In cases where there is consistent and increased accumulation of income, the Assessing Officer may carry out physical inspection of the activities of the Trust.

ii). The Ministry may bring suitable amendment to the Act or evolve a suitable mechanism to ensure that first Trusts are allowed accumulations consistently only as exceptions and secondly, the accumulated income is applied for objectives of the Trusts/institutes within a specified time frame.

iii). The Ministry may perform strict monitoring of Form 10 invariably in all the cases to cover all assessments.

iv). In order to carry out the monitoring of Form 10 in all cases, CBDT and the Ministry may take necessary steps to increase manpower at their disposal. The Committee may be apprised of the progress in this regard.

Irregular exemption of Capital gains arising from accumulated funds

11. The Committee find the 14 Trusts cases involving tax effect of ₹ 1090.03 crore where accumulation arising from capital gains were not either invested in specified mode or computed correctly. In some cases, they did not fully utilize the sale proceeds for acquiring other capital assets. The Committee are surprised that ITD allowed exemption irregularly in these assessments even completed after scrutiny. The Committee observe that in Maharashtra, DIT-E, Mumbai where Jamshetji Tata Trust and Navajbai Ratan Tata Trust earned ₹ 1,905 crore and ₹ 1,234 crore respectively on account of capital gain during AY 09 and AY 10 and invested the same in prohibited mode of investments which is in contravention to the provisions of section 13 (l) (d) of the Act. Audit observed that AO should have brought investment aggregating ₹ 3139 crore to tax at maximum marginal rate as per provision under section 164(2) read with proviso thereunder. This resulted in short levy of tax of ₹ 1066.95 crore. However, the Ministry accepted the said cases and remedial action was reported to have been taken. In this regard, the Ministry have apprised the Committee that in case of Jamshetji Tata Trust, remedial assessment for AY 2009-10 was completed on 3rd November, 2011 u/s 143 (3) of the Act raising demand of ₹ 330.14 crore. The assessment for AY 2010-11 was completed in regular course u/s 143 (3) of the Act on 30.03.2013 raising a demand of ₹ 300.21 crore. Further, in the case of Navajbai Ratan Tata Trust, the assessments have been reopened by issuing notice u/s 148 for AY 2009-10 on 14.05.2013 and for AY 2010-11 on 20.01.2014. The Ministry have further submitted that explanation of Assessing Officer in both the cases had been called by CIT (E) Mumbai on 15th December, 2014. In other cases, wherever Audit objections are accepted, Commissioner of Income Tax (Exemptions) have been asked to call for explanation of the Assessing Officers and to take further action after examining the explanation. The Committee are

unable to understand as to why such explanations of AOs were not called earlier before being pointed out by the Committee. This implies that such mistakes were neither noticed by the AOs during the scrutiny assessment of these cases nor the same had been detected by the Internal Audit Wing of the ITD, while as per existing mechanism the scrutiny assessments made by the AOs are subject to Internal Audit. The Committee, also, note that no penalty has been provided under the Act in case trusts violated the above mentioned provisions except to tax the trusts for that year in which default occurs. They therefore, desire that suitable provisions therefor be incorporated in the Act.

Irregular exemption to Cricket Associations engaged in commercial activity

12. The Committee observe from the Audit report that ITD allowed irregular exemptions of TV subsidy received from BCCI to four Cricket Associations engaged in commercial activity which resulted in non levy of tax effect of ₹ 37.23 crore. The Committee find that though the 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 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. 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. 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. While accepting the Audit observation in the case of Saurashtra Cricket Association, the Ministry attributed that the issue has been wrongly interpreted by the Assessing Officer. However, remedial action is stated to has been initiated by issuing notice u/s 148 of the IT Act and demand of ₹ 5 crore each for the Annual years 2009-10 and 10-11 has been collected. In the opinion of the Committee such an inconsistent stand taken for similar instances indicates a lack of clarity on the part of Assessing Officer on the issue. The Committee would like to take stringent action against those Assessing Officers who are involved in assessment of such cases. It may also be ensured by the ITD that such cases of contrary and arbitrary decisions in similar cases do not recur and a mechanism may be created within the assessment procedures that such mistakes are caught during the process of assessment itself. Further, proper training may be imparted to all the Assessing Officers at regular intervals so as to keep them updated about the correct application of relevant provisions of the Income Tax Act.

13. The Committee also notice several cases where AOs have not made judicious application of relevant laws while assessing cases of exemption to Charitable Trusts/Institutions. The Committee regret to find that Assessing Officers have allowed exemptions irregularly in 11 cases involving tax effect of ₹ 99.63 crore despite assessee losing charitable character. In the case of Credit Guarantee Fund Trust for Micro and Small Enterprises, 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. However, the Assessing Officer did not bring the accumulations of previous years as income which resulted in under-assessment of income of ₹ 249.01 crore with a tax effect of ₹ 84.63 crore. In another case, in DIT – E, Mumbai, AO allowed irregular exemption under section 11 and 10 (23 EA) 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. Since the nature of the funds was more

of a business facilitator of the Stock Exchange and non-charitable in nature; allowing exemption is suggestive of imprudent functioning of Assessing Officers. The Committee again observe that Assessing Officers allowed treatment of voluntary contributions received without specific directions as income in corpus fund of the assessees in 30 cases. This clearly shows that the provisions of Act are not being complied with properly by the Assessing Officers. The Committee are constrained to observe that the said irregularities occurred despite the fact that in most of the cases, assessments were completed under scrutiny assessments. The Committee are again perturbed to note that even Internal Audit wing in the Department had failed to detect such irregularities. The Committee have now been apprised by the Ministry that the issue regarding fixing accountability of Assessing Officers for framing irresponsible orders was discussed in the 30th Annual Conference of Pr. Chief Commissioners/Chief Commissioners/Pr. Directors General/Directors General at New Delhi in July 2014 and on the basis of deliberations in the Conference, the Board had issued instructions dated 07-11-2014 to field formations wherein Assessing authorities have been sensitized about the need to avoid making frivolous additions. Range Heads are required to follow the said instructions in letter and spirit and are also required to ensure that frivolous additions or high pitched assessments without proper basis are not made. The supervisory authorities have also been directed to supervise the scrutiny assessments more effectively. However, the reply of the Ministry is silent about the calling for explanation of the AOs and various officers higher up in the hierarchy for adding such a large number of frivolous assessments. The Committee are unable to understand as to why the Ministry did not seek explanation of the senior officers in ITD for their failure to exercise the required supervision. The Committee, therefore, feel that a strong deterrent mechanism is required to be formulated within the specific time frame to make Assessing Officers and their superiors accountable, for wastage of time and resources of the Department by making frivolous assessments which ultimately resulted into piling of appeals at various levels. The Committee also recommend that an online database of assessment precedents may also be created which

could be accessed by all Assessing Officers and through which assessments made in similar cases can be shared to prevent inconsistent decision making.

Monitoring of Foreign accumulations

14. Non-Governmental Organisations (NGOs)/Trusts receive Foreign Contributions (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 showing year-wise/state-wise details of Trusts/Institutions 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. As per MHA website, 21,508 Associations reported receipts of FCs amounting to ₹ 10,338 crore during the FY 10 for which CBDT had not issued any circulars/guidelines to watch FCs received with specific directions and utilized for the purpose for which it was received. ITD did not ascertain the details viz. whether the voluntary donations/contributions were received with any specific direction or whether it would form part of corpus fund and the same would be utilized for the purpose for which it was received and not used for any activities which are detrimental to national interest. The Committee have been informed, that according to the Act, global income from whatever source of a resident trust is taxable in India and that exemption in respect of FCs would be available to the extent such amount is applied for charitable purposes in India. The unspent amount is taxable subject to accumulation provisions like any unspent domestic contributions and this aspect is checked by Assessing Officers in scrutiny assessments. The Committee observe that 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 12-13 and 13-14 the cases which have received FCs above ₹ 1 crore have been selected for scrutiny. Further, ITR-7 prescribes a separate column for mentioning FCR Act 1976 (FCRA) registration details and the amount of foreign contributions receipts which will enable the Assessing Officer to use the information

meaningfully. Having taken into account the very fact that large revenue potential is involved in assessment of religious and charitable Trusts, the Committee are of the opinion that in order to ensure that tax concessions are not abused it is but necessary that information contained in the ITR-7 are necessarily verified with reference to the past records, A suitable 'Computer Aided Scrutiny Selection (CASS) is also stated to be under consideration of the Ministry for selection of Foreign Contribution (FC) cases for scrutiny. The Committee would like to point out that the Ministry should have considered these steps prior to being pointed out by Audit. The Committee would like to be apprised of the present status of the implementation of CASS.

FCs not utilized for the purpose

15. The Committee observe that in DIT-E, Mumbai there was diversion of funds by two trusts Pratham-Mumbai Education Initiative (AY 10) and World Renewal Spiritual Trusts (AY 09 and AY 10) 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 was utilized for other purposes resulting in the tax effect of ₹ 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. According to the Ministry, ITD can only verify whether the funds received have been used for the purpose of Trusts and only in those cases which are selected for scrutiny. The Committee however, note that there is no mechanism in the CBDT to inspect the functioning of the Trust at every stage with a view to ensuring that the FCs are utilized strictly in accordance with the objective for which those have been received. It is only during the test check by the Audit, the cases of defaulting Trusts came to their notice and taxes were levied. The Committee, therefore, recommend that the ITD/CBDT should formulate a data sharing mechanism with the MHA to keep a track of FCs received and their application for the purpose those have been received. A mechanism may also be developed to particularly monitor application of foreign contributions received and a clear set of guidelines in this regard may be issued to all Assessing Officers within three months of presentation of this Report to the

Parliament. Ministry of Home Affairs should also have a proper monitoring mechanism to prevent the violation of FCR Act. by the Charitable Trusts.

Accumulations and Foreign Contributions

16. Accumulation of income, its subsequent application and investment in specified mode are the provisions of law which apply to every trust. Audit Manual of ITD (Para 8.3 of Chapter 5 of the Manual of Procedure Vol.-II) prescribes 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 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. Audit 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. Audit observed that 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. In this regard, Audit was of the view that according to the Act, filing of Form 10 is to be done before completion of assessment (summary/scrutiny) and is mandatory in nature. AO should scrutinize all the Form 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 assessees' claims are accepted (either summary or scrutiny assessment) who have fulfilled all the requirements of the Form 10. The Committee have been informed that the suggestion of Audit for examination of all the Forms 10 is under examination by CBDT. However, the Ministry have expressed their inability to verify each and every Form 10 since a balance is required to be maintained between available manpower and quantum of verifications to be made. The Committee were also informed that the declaration in Form 10 is examined at the time of scrutiny of the

case. The Committee, therefore, do not understand as to how in the absence of scrutiny of such a vital information provided in Form 10, correct assessment of income tax involved in a large number of assessments is possible. What further dismay the Committee is the fact that even no responsibility has been fixed for this act of omission despite asking the Commissioners of Income Tax (Exemptions) to call for explanation of the Assessing Officers wherever Audit objections are accepted. Further, as regards the recovery of ₹ 106.10 crore irregularly exempted the Ministry intimated that the assessments are pending in re-opened cases. The Committee are not happy over the tardy progress made in finalization of such cases. They also deplore the callous attitude of the Assessing Officers which resulted in such wrong assessments and consequential loss of revenue. The Committee would expect the officers to be more vigilant in future and also desire that the assessments in re-opened case should be completed expeditiously and the total tax recovered from these cases should also be intimated to the Committee within three months of the presentation of this Report.

<u>FCs mingled with the local funds</u>

17. 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. The Committee find that in two cases viz. in Chennai, Exemption Circle II, the Diocese of Chengalput Educational Society and Chennai, Exemption Circle IV, Aide-et-action, an NGO assessee did not maintain separate books of Accounts as stipulated in the Act. The Committee are unable to understand as to how in the absence of separate accounts for FCs, the Ministry ensure that FCs have been utilized for the purpose for which it was received. The Committee are again constrained to note that there is no provision under the Act for denying exemptions to those Trusts which mix the FCs with the local funds. However, violation of the provisions of FCRA may attract penalty under FCRA but not under Act as per the existing provisions. The Committee, therefore, desire that suitable amendments may also be made in the Income Tax Act as provided in

the FCRA regarding maintenance of separate accounts for FCs and local funds so as to enable the Assessing Officers to keep constant watch over the FCs received and effective utilisation thereof by the Trust.

Inconsistencies in the Income Tax Act, 1961

18. The Committee observe several inconsistencies in the Income Tax Act, 1961 such as there being no internal mechanism within ITD to have control over the receipts issued by the entity having registration under section 80G. There is no provision in the Act to invest corpus fund in specified mode and tax interest earned thereon. The word "substantially financed" is not defined in Act. 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. Audit also noticed deficiencies in Forms specified for Audit Report to be enclosed with the returns. In this regard, the Committee have been apprised by the Ministry that the Income Tax Act has been amended to provide that under section 11 and section 10(23C), income for the purpose of application shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as application of income under these sections in the same or any other previous year. This amendment is effective from 1st April, 2015. There is no provision under the Act to carry forward deficit. However, in view of adverse decisions of High Courts, the issue is under examination by the CBDT. In respect of issue of repayment of loan also, the suggestions are being examined in CBDT. The Committee would desire to be apprised of the latest position of the issues under examination of CBDT. The Committee are again perturbed to find that there is no enabling provision in the Act to disallow 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. Further, statutory requirements imposed on Trusts like Audit Reports in Forms 10B or 10BB have no disclosure with regard to compliance with TDS provisions. However, according to the Ministry under the existing provisions of the Act the trust is treated at par with the other deductors for non-compliance of the TDS provisions. No specific dispensation has been

provided to the trust deductors vis-à-vis other deductors. Further, with regard to making proper disclosure of TDS deducted/deductible in the Audit Report relating to a Trust assessee, the Committee have been apprised that at present the Audit Report relating to an assessee being a trust does not contain a column for capturing such information. However, the Ministry has noted this suggestion. The Committee are of the opinion that only noting the suggestion would not suffice until this is adequately implemented. The Committee, therefore, recommend that appropriate provisions may be made for inclusion of such information in the Audit Reports of trusts which as pointed out by Audit would be an effective tool for greater transparency during assessment procedures.

Incomplete database

19. The Committee note that based on PAC's recommendations (2006-07) 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. The Committee observe 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. The Committee have now been informed that the Ministry has started developing the database of Non-Profit Organisations (NPOs) and as on 31st October, 2014, the details in respect of 1,50,495 records have been uploaded on the website of Income Tax Department. While expressing their displeasure over the fact that this database has taken almost a decade to be completed, the Committee desire that the same may now be completed expeditiously and the monthly progress made in this regard may be intimated to Committee with the approval of Finance Minister. The Committee further recommend that a system may be incorporated in the software so that each time a trust is created, its details as well as other relevant information regarding registration, filing of returns, exemptions granted, FCs received/utilisation thereof, accumulation of income etc. are automatically included in the database.

The Committee further observe 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. The Committee are sad to find that if such a large number of returns are pending for processing in only Mumbai charge, the situation could have been worst in text check cases of Income Tax charges in all over India. Further in Gujarat charge only, the database of 290 Trusts/Institutions had not be created during the FY 09 to FY 11 the number could be more in all the charges. The Committee would desire to be apprised of the position in respect of processing/pendency of returns in regard to FY 2012 to 2015. According to the Ministry, since there are large numbers of marginal Trusts, there is a gap between the number of registered entities and the returns filed. However, 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 periodically and notices issued to assessees asking them to file returns. The Committee recommend the Ministry to strengthen their institutional and procedural safeguards so that traceability of "stop-filers/non-filers" could be managed well and revenue due to the Government be recovered. The Committee, also, desire that details having such list generated by the ITD during the last three years and action taken against the 'Stop filer' and 'Non-filer' assessees may be provided to them. The Committee also express the need for publishing the names of such defaulters on the website of the ITD. A monitoring mechanism is also required to be developed to keep a constant vigil over such assessees so as to ensure that all Trusts file their returns regularly and in time.

<u>Non-selection of Trust cases for scrutiny assessment</u>

20. The Committee further note that ITD selected only 2 percent of total returns for scrutiny assessments of Trust cases. The norms for inclusion of Trusts in CASS for scrutiny assessment have not been framed by CBDT till the laying of relevant Audit Report in the Parliament. The Committee are constrained to observe that in Maharashtra, returns of five trusts, 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. However, CBDT instruction No. 255/93/2009 ITA – II dated 08/09/2010 clearly prescribed that if gross receipt of an assessee submitting return in ITR – 7 is more than ₹ 5 crore, it should be selected for compulsory scrutiny. The Committee express their displeasure over the fact that in all these cases the Assessing Officers had not followed the instructions of their own Department which caused huge amount of revenue loss to the exchequer. The Committee, therefore desire to know about the fixing of responsibility against the Assessing Officers concerned for violating those instructions. The Committee also feel that the possibility of nexus between AOs and the Trust cannot be ruled out. Thus, the Ministry should enquire into all these cases with a view to fixing responsibility of the AOs concerned so as to avoid such lapses in future. The Committee have now been informed that 2 percent of the cases are selected for scrutiny in accordance with the global practice. Keeping in view the increasing number of religious and charitable Trust formed year by year in all the sectors of social life and large revenue effects involved therein, the Committee desire that the percentage of the cases which are selected for scrutiny should also be suitably augmented so as to circumvent the trusts from evading to pay their legitimate dues to the Government. The Committee also desire that not only instructions issued by the Board in this regard need to be followed in letter and spirit but review should also be undertaken in order to assess whether such instructions are also being followed

by the Assessing Officers. The Committee would like to be apprised of the outcome of such a review.

Inclusion of manpower in the newly restructured Exemption Directorate

21. The Committee note that restructuring of the Income Tax Department has been effected wherein a separate wing headed by a Chief Commissioner of Income Tax (Exemption) and 14 Commissioners of Income Tax (Exemption) under him has been created. Having all India jurisdiction this wing would exclusively deal with all the issues relating to exemption to charitable trusts and institutions such as their registration, verification, administration, building the data bank etc. which would be required to implement the provisions relating to exemption. The Committee understand that the necessary notifications in respect of this cadre restructuring have been made and that this restructuring has taken effect from the 15th November, 2014. The Committee however, observe from the post evidence replies submitted by the Ministry of Finance that due to shortage of officers, six out of seven newly created charges of Commissioners of Income Tax (Exemptions) are held as additional charges. Further, the acute shortage of Joint Commissioners of Income Tax has led to a situation where most of these posts are not filled up and are also held as additional charges. The Committee feel that mere creation of a separate wing i.e. the Exemption Directorate without adequate manpower to run the wing makes the entire exercise of restructuring superfluous. The Committee, therefore, recommend that all the posts in the Directorate be filled within six months to ensure proper and efficient functioning of the Exemptions wing. The Committee also recommend that the process of transfer of all the files related to the Exemption Directorate may be completed within a period of three months.

22. On the issue of electronic filing of ITR – 7 by trust assessee, the Committee have been informed that e-filing of ITR – 7 has been introduced from FY 2012-13 and it has been made mandatory since AY 2014-15. The Committee note that this has been done only after pointed by the Audit in their Report. The Committee thus feel that had this been done earlier, the cases of Trust assesses

who are taking total exemption of their income would have been reduced. Further with regard to the action taken by the CBDT to automatically upload the inputs provided by Trust assessees at the time of registration in the comprehensive database in order to avoid duplication of efforts, the Ministry submitted that the feasibility of such type of web-based interactive plan is under discussion. In the opinion of the Committee, this would certainly ensure the better and accurate assessment on the part of Assessing Officers and make the assessment process more faster which would ultimately result into prevention of leakage of revenue or misuse of provisions of the Income Tax Act. The Committee thus desire that the web-based interactive plan should be implemented expeditiously in order to plug any possibility of leakage of revenue or misreporting and the Committee be apprised about the finalization and implementation of this proposal within three months of presentation of this Report to Parliament.

23. The Committee's examination of the cases where the tax exemptions have been allowed to religious and charitable Trusts reveals that various concessions are allowed to trusts in recognition to the contributions made by them towards social objectives. Surprisingly, no effort has been made to monitor whether the trusts have been fulfilling the objectives under which they have been established and also for ensuring that there is no abuse of the concessions which are enjoyed by such trusts. In the absence of any effective mechanism to keep close watch over the functioning of a large number of trusts, the Committee are not able to appreciate the rationale for allowing exemptions to these trusts, more so when the amount of revenue involved in such exemptions is substantial and when the primary object behind the grant of such exemption is to enlarge the contributions made by these trusts in supplementing the work of the welfare state by catering to the educational, medical, socio-economic and religious needs of the people in the country. In the light of the deficiencies/shortcomings observed in the foregoing paragraphs, the Committee desire that the Ministry should seriously ponder and look into the whole issue afresh with a view to devising a procedure for proper and systemic evaluation of Charitable Trusts/Institutions so that those trusts which are not discharging their functions in consonance with

the objectives under which they have been established do not escape any tax liability.

NEW DELHI;
9 December, 2015
18 Agrahayana, 1937 (Saka)

PROF. K.V. THOMAS
Chairperson,
Public Accounts Committee

APPENDIX - I

LIST OF ACRONYMS USED IN THE REPORT

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

APPENDIX - II

SECTIONS OF THE INCOME TAX ACT, 1961 RELEVANT FOR REGISTRATION AND EXEMPTIONS TO CHARITABLE TRUSTS AND INSTITUTIONS

Section of ACT	Description
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 any monitoring mechanism for checking the genuineness of the activities of these institutions and therefore this clause of the section was omitted. 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.
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) (iiiad)	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 purposed 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)(iiiac)(iiiae)(via) provides for exemption in respect of hospitals established for specific purposes under certain condition.

APPENDIX - III

MINUTES OF THE NINTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (2014-15) HELD ON 25th NOVEMBER, 2014.

The Committee sat on Tuesday the 25th November, 2014 from 1500 hrs. to 1730 hrs. in Committee Room 'B' , Parliament House Annexe, New Delhi.

PRESENT

Prof. K. V. Thomas - Chairperson

MEMBERS

LOK SABHA

2. Shri Nishikant Dubey
3. Shri Gajanan Kirtikar
4. Shri Bhartruhari Mahtab
5. Shri Janardan Singh Sigriwal
6. Dr. Kirit Somaiya

RAJYA SABHA

7. Shri Bhubaneswar Kalita
8. Shri Shantaram Naik
9. Shri Sukhendu Sekhar Roy

LOK SABHA SECRETARIAT

1.	Shri A. K. Singh	-	Joint Secretary
2.	Smt Anita B. Panda	-	Director
3.	Shri Jayakumar T.	-	Additional Director

REPRESENTATIVES FROM THE OFFICE OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA

1.	Shri P. Shesh Kumar	-	Director General
2.	Ms. Tanuja Mittal	-	Principal Director
3.	Ms. Gurveen Sidhu	-	Principal Director
4.	Shri N. Goswami	-	Principal Director
5.	Shri P. Tiwari	-	Principal Director

REPRESENTATIVES OF THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE)

1.	Shri Shaktikanta Das	-	Secretary (Revenue)

2.	Ms. Anita Kapur	-	Chairperson, CBDT
3.	Shri A.K. Jain	-	Member (R)
4.	Smt. Promila Bhardwaj	-	DGIT (Systems)
5.	Shri Rajendra Kumar	-	CCIT (Exemption)

2. At the outset, the Chairperson welcomed the Members and the representatives of the Office of the C&AG of India to the Sitting of the Committee. The Chairperson then apprised the Members that during the Sitting, the Committee would consider the three draft Reports for adoption in the first instance. Thereafter, the Committee would take oral evidence of the representatives of the Ministry of Finance (Department of Revenue) on the subject **'Exemptions to Charitable Trusts and Institutions'** based on the C&AG's Report No. 20 of 2013 (Direct Taxes).

3. xxxx xxxx xxxx xxxx

4. xxxx xxxx xxxx xxxx

5. xxxx xxxx xxxx xxxx

6. After the tea break, the Committee assembled again. The Officers of the C&AG of India briefed the Committee on the issues relating to the subject 'Exemptions to Charitable Trusts and Institutions'. Thereafter, the representatives of the Ministry of Finance (Department of Revenue) were called in. The Chairperson during his introductory remarks has highlighted the audit objections regarding significant lapses in registration process of Charitable Trusts, irregular allowance of exemptions of Trusts during assessment involving tax effect of ₹ 3,019.21 crore in the Annual Return, failure of the CBDT to issue guidelines/circulars to watch the correct notification of foreign contributions received by the Trusts etc. The Chairperson further observed that the Income Tax Department should put in place technology as well as manual systems to assess correctly and collect revenue with interest leviable and to prevent recurrence of such cases in future and desired to have a status report of each illustrative cases pointed out by the Audit by 30.1.2015. He expressed displeasure of the Committee to the fact that an electronic database was still under construction for over five years.

Before commencing the examination, the Chairperson made it clear that the deliberations of the Committee were confidential and were not to be divulged to any outsider until the Report on the subject was presented to the Parliament. The Committee then proceeded with the examination of the subject.

7. The Members sought clarifications on various issues which *inter-alia* included grant of approval/registration to the Charitable Trusts without adequate documents, irregular exemption to Trusts which were not charitable in nature, accumulation of large amount of surpluses which are used for creating fixed assets for earning more profit or are transferred to other Trusts rather than for charitable purpose to avoid tax. The Members also sought the reasons for allowing irregular exemptions to various Trusts/Cricket Associations where they were carrying out commercial activities, Non-monitoring of Foreign Contributions (FCs) received by Trusts and NGOs and utilized for the purpose for which it was received etc. The representatives of the Ministry clarified the various issues raised by the Chairperson as well as Members and assured that the information sought by them would be furnished to the Committee expeditiously.

8. Before concluding, the Chairperson thanked the representatives of the Ministry of Finance (Department of Revenue) and also asked them to furnish the requisite information that was sought by the Members. The Chairperson also thanked the representatives of the Office of the C&AG of India for providing valuable assistance to the Committee in the examination of the subject.

The witnesses then withdrew.

A copy of the verbatim proceedings of the Sitting was kept on record

9. xxxx xxxx xxxx xxxx

<u>The Committee then adjourned.</u>

MINUTES OF THE FIFTEENTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (2015-16) HELD ON 9th DECEMBER, 2015.

The Committee sat from 1000 hrs. to 1100 hrs. on 9th December, 2015 in Room No. "51", Parliament House, New Delhi.

PRESENT

Prof. K. V. Thomas - Chairperson

MEMBERS

LOK SABHA

2. Shri Nishikant Dubey
3. Shri Bhartruhari Mahtab
4. Shri Janardan Singh Sigriwal
5. Shri Shiv Kumar Udasi
6. Dr. Kirit Somaiya
7. Dr. P. Venugopal
8. Shri Ramesh Pokhriyal "Nishank"
9. Shri Neiphiu Rio

RAJYA SABHA

10. Shri Bhubaneswar Kalita
11. Shri Sukhendu Sekhar Roy
12. Shri Anil Madhav Dave

LOK SABHA SECRETARIAT

1.	Shri A. K. Singh	- Additional Secretary
2.	Shri T. Jayakumar	- Director
3.	Shri Tirthankar Das	- Additional Director
4.	Shri A.K. Yadav	- Deputy Secretary
5.	Smt. Anju Kukreja	- Under Secretary

REPRESENTATIVES FROM THE OFFICE OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA

1.	Shri Balvinder Singh	-	Deputy C&AG (CRA)
2.	Shri Rakesh Jain	-	Deputy C&AG
3.	Shri Mukesh P. Singh	-	Director General of Audit
4.	Shri Manish Kumar	-	Principal Director of Audit (PAC)
5.	Shri L.S. Singh	-	Principal Director of Audit (RC)
6.	Shri Nilotpal Goswami	-	Principal Director of Audit (Customs)

2. At the outset, the Chairperson welcomed the Members to the Sitting of the Committee. Thereafter, the Committee took up the following draft Reports for consideration:

i. Draft Original Report on **"Exemptions to Charitable Trusts/Institutions"** based on C&AG Report No. 20 of 2013;
ii. XXX XXX XXX XXX
iii. XXX XXX XXX XXX

3. The Chairperson invited suggestions of the Members on the above mentioned draft Reports. After discussing the contents of these draft Reports, the Committee adopted the draft Reports at Sl. No (i) & (ii) with some changes/modifications which are indicated in the enclosed Annexures I & II respectively. The Committee then adopted the draft Report at Sl. No. (iii) without any changes/modifications.

4. The Committee authorized the Chairperson to finalise these Reports in the light of verbal discussion and consequential changes arising out of factual verification by the Audit and present the same to Parliament.

The Committee then adjourned.