

**ASSESSMENT OF RELIGIOUS
AND CHARITABLE TRUSTS**

**MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

**PUBLIC ACCOUNTS
COMMITTEE
1998-99**

TWELFTH LOK SABHA

SECRETARIAT

131R

EIGHTH REPORT
PUBLIC ACCOUNTS COMMITTEE
(1998-99)

(TWELFTH LOK SABHA)

**ASSESSMENT OF RELIGIOUS AND
CHARITABLE TRUSTS**

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

*Action Taken on 102nd Report of Public Accounts Committee
(10th Lok Sabha)*



Presented to Lok Sabha on 17.03.1999
Laid in Rajya Sabha on 17.3.1999

LOK SABHA SECRETARIAT
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CONTENTS

	PAGE
COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE (1998-99)	(iii)
INTRODUCTION	(v)
CHAPTER I Report	1
CHAPTER II Recommendations or observations, which have been accepted by the Government.	5
CHAPTER III Recommendations or observations, which the Committee do not desire to pursue in view of the replies received from the Government	16
CHAPTER IV Recommendations or observations, replies to which have not been accepted by the Committee and which require reiteration.	21
CHAPTER V Recommendations or observations in respect of which Government have furnished interim replies/no replies.	23
APPENDIX	
Conclusions and Recommendations	28
PART II	
Minutes of the sittings of Public Accounts Committee held on 11.3.1999	30

**COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE
(1998-99)**

Shri Manoranjan Bhatia — *Chairman*

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| 5. Shri B.S. Dahiya | — | <i>Asstt. Director</i> |

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INTRODUCTION

I, the Chairman, Public Accounts Committee having been authorised by the Committee to present the Report on their behalf, do present this Eighth Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their 102nd Report (10th Lok Sabha) on Assessment of Religious and Charitable Trusts.

2. This Report was considered and adopted by the Public Accounts Committee at their sitting held on 11 March, 1999. Minutes of the sitting form Part-II of the Report.

3. For facility of reference and convenience, the recommendations of the Committee have been printed in thick type in the body of the report and have also been reproduced in a consolidated form in the Appendix to the Report.

4. 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;
12 March, 1999

21 Phalguna, 1920 (Saka)

MANORANJAN BHAKTA,
Chairman,
Public Accounts Committee.

CHAPTER I

REPORT

This Report of the Committee deals with the action taken by the Government on the observations and recommendations contained in their 102nd Report (10th Lok Sabha) based on Paragraph 2.02 of the Report of C&AG of India for the year ended 31 March, 1992, No. 5 of 1993, Union Government (Revenue Receipts — Direct Taxes) relating to "Assessment of Religious and Charitable Trusts."

2. The 102nd Report, presented to Lok Sabha on 28.4.1995, contained 18 recommendations/observations. The Action taken notes have been received in respect of all the recommendations/observations and categorised as follows:—

- (i) Recommendations and observations that have been accepted by the Government;
Sl. Nos. 1, 4, 7, 8, 12, 13, 15, 16 and 18 (Paragraph Nos. 95, 98, 101, 102, 106, 107, 109, 110 and 112);
- (ii) Recommendations and observations, which the Committee do not desire to pursue in view of the replies received from the Government;
Sl. Nos. 6, 10 & 11 (Paragraph Nos. 100, 104 and 105);
- (iii) Recommendations and observations replies to which have not been accepted by the Committee and which require reiteration.
Sl. No. 17 (Paragraph No. 111);
- (iv) Recommendations and observations to which the Government have furnished interim replies
Sl. Nos. 2, 3, 5, 9 and 14 (Paragraph Nos. 96, 97, 99, 103 and 108).

3. The Committee note with serious annoyance that the Ministry of Finance, Department of Revenue (Central Board of Direct Taxes) have not yet furnished final replies in respect of the observations/recommendations of the Committee contained in Paragraph Nos. 96, 97, 99, 103 and 108 of the Report even after a period of more than three years. The Committee deplore this unconscionable delay and desire that the final replies, duly vetted by Audit, be furnished within a period of three months failing which the Committee would be constrained to fix responsibility suo-motu for such a lackadaisical attitude.

Assessment of Religious and Charitable Trusts

4. The Sections 11 to 13 of the Income Tax Act, 1961 deal with exemptions available to income of trusts and institutions created for religious or charitable purposes subject to fulfilment of certain conditions. The Wealth Tax is also not charged on property held under trust or other legal obligations for public purposes of a religious and charitable nature. The donors are given relief from Income Tax and Gift Tax* in

* Since abolished w.e.f. 1.10.1998 vide Finance Act (No. 2 of 1998)

respect of donations paid to institutions established in India for charitable purposes. The Committee had during the examination of the Audit Review noticed a number of inadequacies in the system as well as deficiencies in the existing law and its applicability.

5. In the light of the deficiencies/shortcomings the Committee had made observations/recommendations such as devising a procedure for proper and systematic evaluation of religious and charitable trusts 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, incorporation of suitable provisions in the Act so that offenders are not able to evade the tax, evolution of a suitable mechanism to bring such voluntary donations within the ambit of taxation which are received off the record in the form of jewellery or cash etc. and for which no account is maintained, bringing the institutions mentioned under Section 10 (22) and 10 (22A) under the scrutiny and control of the Department as is being done in the case of those covered under the provisions of Section 11 of Income Tax Act, evolution of foolproof system to ensure that all the trusts which have assessable income file their returns regularly and penalising the defaulting trusts under provisions of the Act, further investigation of cases where the exemption have been granted wrongly/illegally with a view to fix responsibility, taking of remedial action in all the cases in order to prevent recurrence of such cases in future and undertaking of periodical review by the Department to ensure that there is no laxity in the implementation of the instructions.

6. The various observations/recommendations of the Committee and the Action Taken Notes furnished by the Ministry thereon have been reproduced in the subsequent chapters of this Report.

7. The Committee will now deal with the action taken by Government on some of their observations/recommendations.

Action against erring departmental Officers (Sl. Nos. 12, 13 and 16 Paragraphs 106, 107 and 110)

8. Commenting on the manner of granting exemptions, the Committee had desired that all case where exemptions were granted wrongly/illegally needed to be probed further with a view to fixing responsibility. The Committee had also recommended for making suitable provisions in the Income Tax Act so as to provide for disposal of application seeking registration of trusts within a definite time frame.

9. In their action taken replies, the Ministry of Finance, Department of Revenue (Central Board of Direct Taxes) have stated:

“Instructions have been issued to the field officers to dispose of the applications seeking registration for trusts expeditiously. A copy of the instruction issued vide letter F.No.181/1/95-ITA-I, dated 14th February, 1996 is enclosed. Further,

necessary instructions have been issued to the senior officers concerned for analysing the cases where the exemptions have been granted wrongly/illegally, with a view to fixing the responsibility. Appropriate action would be taken in the cases where the lapses committed by Assessing Officers are not found bonafide.

As for statutory time limit for the registration of a case u/s 12A, it is stated that a new Section 12AA has been inserted in the Income-tax Act w.e.f. 1.4.1997. Sub-Section 2 of Section 12AA says that every order granted or refusing registration under clause B of Section 1 shall be passed before expiry of six months from the end of the month in which the application was received under clause (A) of Section 12A."

10. While the Committee are pleased to note that in pursuance of their recommendations, the Ministry have inserted a new Section-12AA in the Income Tax Act w.e.f. 1 April, 1997 which provides that applications for registration of trusts must be disposed of within the stipulated period, the Committee hope that the Ministry will not rest satisfied with the mere issuing of instructions and that the Ministry would assert its authority and take appropriate and conclusive action in all cases of wrong/illegal exemptions within a period of three months. They would also like to be apprised of the action taken in the matter.

Need to complete review cases expeditiously

(Sl. No. 17, Paragraph 111)

11. Expressing their serious concern over the irregularities in granting exemptions under Wealth Tax, the Committee had desired that a periodic review should be undertaken by the Department to ensure that there is no laxity in the implementation of the instructions and the cases which were under review should be completed expeditiously.

12. The Ministry of Finance in their action taken reply have stated as follows:—

"As a follow up of the recommendations of the Hon'ble Committee in its 26th Report (1980-81), instructions were issued by the C.B.D.T. for proper co-ordination between the records of various Direct Taxes and between various assessing officers. These instructions have now been reiterated. Also, the Departmental Audit teams have been advised to conduct periodical review of the follow up of Board's instructions by the assessing officers, in the course of audit work. Whenever, the audit team notices a case of withdrawal of exemption under the I.T. Act, it shall scrutinise corresponding assessment records under other Direct Taxes to ensure that desired action has been taken by the assessing officer under the provisions of other Direct Taxes."

13. The Committee are constrained to observe that no tangible action has been taken as yet by the Ministry in respect of the cases which were under review even after a period of more than three years since the presentation of their report. The Committee view with concern the deliberate non-compliance on the part of the Department and therefore direct the Department to review all such cases and submit a report to the Committee within three months. The Committee would also like the Department to take conclusive follow up action warranted by the review undertaken by them and conduct periodical review of the follow up of its instructions by field functionaries with a view to securing compliance of their own instructions issued pursuant to the recommendation of the Committee.

CHAPTER II

RECOMMENDATIONS/OBSERVATIONS WHICH HAVE BEEN ACCEPTED BY THE GOVERNMENT.

Recommendation of the Committee

The State has always recognised and sought to encourage the laudable role of private philanthropy in relieving distress and in helping to meet the socio-economic, cultural and religious needs of the Society. Such an encouragement has been a feature of the Indian taxation system. Section 11 to 13 of the Income Tax Act, 1961 deal with exemptions available to income of trusts and institutions created for charitable or religious purposes, subject to fulfilment of certain conditions. Wealth tax is also not charged on property held under trust or other legal obligations for public purposes of a religious and charitable nature. Donors are given relief from income tax and gift tax in respect of donation paid to institution established in India for charitable purposes. The Committee have during the examination of the Audit Review noticed a number of inadequacies in the system as well as deficiencies in the existing law and its applicability which have been brought out in the succeeding paragraphs.

[Para 95 of 102nd Report—1994-95 (No. 5 of 1995)—10th Lok Sabha]

Action Taken by the Government

This para is general in nature. The P.A.C. during the examination of the Audit Review noticed some inadequacies in the system and the deficiencies in the existing Law, and its applicability, which have been pointed out in the succeeding paragraphs. The ATNs in respect of all the succeeding paras have been furnished separately.

[F. NO. 241/2/95—A & PAC II]

Recommendation of the Committee

The Income-tax Act provides a separate exemption under Section 10(23-A) for specified income of an association or institution established in India for encouragement of the profession of law, medicine, engineering and accountancy etc. The Committee have found during the course of their examination that inspite of having a specific provision for such professional bodies, Government have been allowing general exemptions under section 10(23) (c) (iv) to such bodies with the result that certain additional exemption by way of income from house properties, dividends and interest etc. is also granted to these institutions/associations. According to the Ministry of Finance there is no prohibition in granting exemption under section 10(23)(v) (iv) to the professional bodies which are covered by section 10(23A) so long as these bodies fulfil conditions of Section 10(23). The Ministry of Law had earlier opined that the provisions of section 10(23A) would prevailed over that of section 10(23)(c) (iv), however, in their latest opinion the Ministry have observed that the mere fact that an institution is governed by Section 10(23A) may not take away from its exemption

afforded under of Section 10(23) (c) (iv). The Committee have noticed that a lot of flexibility exists in law so far as the interpretation and applicability of provisions of Section 10(23A) and 10(23) (c) (iv) are concerned with regard to the exemptions which are being granted to professional institutions/associations. Whereas some professional bodies are covered under the provisions of Section 10(23)(c)(iv). Others continue to remain under Section 10 (23A) resulting in total lack of uniformity. They are surprised to note divergent views expressed by the Ministry of Law on two different occasions with regard to the interpretation of these sections. The matter is reported to have been once again referred to the Ministry of law for eliciting fresh opinion. Keeping in view the huge revenue implications the Committee desire that the whole issue should be re-appraised and the opinion of the Attorney General should be solicited with a view to having an authoritative opinion in the matter. The Committee would like to be apprised about the final decision taken in this regard.

[Para 98 of 102 Report—1994-95 (No. 5 of 1995)—10th Lok Sabha]

Action Taken by the Government

As desired by the Committee, the opinion of Attorney General of India was solicited. A summary of the queries referred to Attorney General of India and his opinion are as follows:

Queries	Opinion
1. Having regard to its object and source of income whether the Institute is entitled for exemption only under section 10(23A) of the Act.	No, provided conditions laid down in other exemption provisions are satisfied.
2. Whether the objects of the Institute can be said to be for charitable purpose within the meaning of Section 2(15) of the Act?	Yes.
3. If answer to Question No. 2 is in affirmative, whether the Institution is entitled for exemption under section 10(23) (c) (iv) also, notwithstanding the provisions under section 10(23A) of the Act.	Yes, provided the condition set out in section 10(23C) are satisfied.

[F. No. 241/2/95-A & PAC II
F.No. 181/1/95-ITA-I]

Recommendation of the Committee

The Committee find that assessment of trusts done earlier as scrutiny cases under Section 143(3) of Income Tax Act have been brought under the purview of summary assessment scheme w.e.f. April 1988. Bulk of assessments of religious and charitable trusts are now completed in a summary manner without independently applying the statutory conditions prescribed under Section 11 to 13 of the Income Tax Act. Under the specific provisions of Section 143(1) *prima facie* allowance or

disallowance can be made just on the basis of information available in the return or accompanying documents. No reference to past record is permissible to make such adjustments. According to the Ministry of Finance, the changeover to new system was necessitated due to increasing volume of work, manpower constraints and to pay more attention to bigger cases of trusts. Besides all trusts having income of more than Rs. 50,000 before giving effect to the provisions of Section 11 and 12 are also required to file audited Report in Form 10—13. This coupled with detailed information contained in various columns of form 3A acts as sufficient safeguards to prevent abuse of concessions and to ensure that all conditions have been fulfilled by charitable trusts for being given benefits under Section 11 even where assessments are completed in a summary manner under Section 143(1) (a). Besides, specific guidelines have been formulated for selection of trust cases for compulsory scrutiny apart from 5% of the cases which are randomly taken up for scrutiny. Instructions have also been issued by Chairman, CBDT in 1989 which have again been reiterated by the Board in 1991 to the effect that the returns should expeditiously and invariably be linked with assessment records after they are processed under Section 143(1) (a) of the Income Tax Act.

The Committee however are not convinced with the justification advanced by the Ministry of Finance for switching over to the new system. In their view, the new procedure of assessments under which all the returns are initially processed under Section 143(1)(a) of the Income Tax Act for *prima facie* adjustments if any, merely on the basis of returns/accompanying documents and only very small percentage of cases are selected for detailed scrutiny cannot be as effective as the earlier procedure under which under Section 143(3) all the cases had to pass through strict scrutiny assessments. Besides, keeping in view the very fact that cases processed under Section 143(1) (a) are also opened very sparingly for scrutiny, the possibility of evading the tax liabilities by a large number of trusts cannot be ruled out. The Committee also take a serious note of the fact that only 5% of the cases are selected on random basis for compulsory scrutiny and the guidelines for compulsory scrutiny under some sections relating to trusts have also been issued only recently. Having taken into account the very fact that large revenue effects in assessment of religious and charitable trusts are involved, the Committee desire that not only the guidelines issued by Department in this regard should be followed scrupulously but the percentage of the cases of which are selected on random basis should also be suitably augmented so as to circumvent the trusts from evading to pay their legitimate dues to the Government. They are also of the opinion that in order to ensure that tax concessions are not abused it is but necessary that information contained in the records which are filed before the assessing authorities are necessarily verified with reference to the past records. The Committee 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 while deciding cases under Section 143(1)(a). The Committee would like to be apprised of the outcome of such a review.

[Para 101 and 102 of 102nd Report of PAC 1994-95-10th Lok Sabha]

Action Taken by the Government

At present certain categories of Trust cases are being selected for compulsory scrutiny as per the norms laid down by DGIT (Exemptions). Out of the remaining returns, 5% cases are selected for scrutiny on random basis. The estimated workload of the returns in the financial year 1995-96 is likely to be about 20,000 out of which 10% will be selected for compulsory scrutiny. If the percentage of cases to be selected on random basis is increased from 5% to 10%, it will generate extra workload of 900 scrutiny assessments. The target for disposing of scrutiny cases in trust circles has been fixed at 80 per assessing officer and the increase in percentage from 5 to 10 would need 12 more assessing officers and 6 Deputy Directors. The existing sanctioned strength of Assessing Officers in all the four Directorates is 16 and that of DDsIT it is 8. A request for sanction of 12 more posts of Assessing Officers and 6 Deputy Directors of Income Tax has been made to the Administration. The percentage of scrutiny cases selected on random basis shall be increased as soon as extra posts are sanctioned.

As regards the verification of information contained in the records which are filed before the assessing authorities, with reference to the past records of the assessee; to ensure that tax concessions are not abused; instructions have been issued to the Assessing Officers to verify the correctness of information furnished by way of subsequent assessment years' returns of income or in any other manner with reference to the past records of the assessee wherever assessments have been completed u/s 143(3). The Officers have been directed to take appropriate action in case any discrepancy is noticed.

DGIT (Exemptions) has been directed to undertake a review to assess;

- (a) whether instructions/circulars issued by the Board for processing of returns u/s 143(1)(a) are being followed by the Assessing Officers;
- (b) whether the returns are expeditiously and invariably linked with the assessment records after they are processed u/s 143 (1) (a); and
- (c) whether the cases are being selected for scrutiny in accordance with the norms laid down by the DGIT (Exemption).

The DGIT (Exemptions) has been requested to complete the review by 30.6.96. A report on the outcome of the review shall be sent in due course. (Para 101 and 102 of 102nd Report).

[F.No. 241/2/95-A & PAC, II,
F. No. 228/1/95-ITA-II.]

Additional Action Taken by the Government

The DGIT had been directed to undertake a review to examine whether Board's circulars and instructions are being properly observed by the Assessing Officers. On the basis of review undertaken, it is found that adequate steps have been taken by the Assessing Officers to follow the instructions while processing the cases

u/s 143(1) (a). The Assessing Officers are also guided from time to time by instructions and circulars issued on the subject. The answer to the specific questions raised are as follows:—

- | | |
|--|------------------------------|
| 1. Whether instruction/circular issued by the Board for processing of returns u/s 143 (1) (a) are being followed by the assessing officer. | Yes |
| 2. Whether the returns are expeditiously and invariably linked with the assessment records after they are processed u/s/143(3) (i) (a). | Yes within a reasonable time |
| 3. Whether the cases are being selected for scrutiny in accordance with the norms laid down by the DGIT (E). | Yes |

[F.No. 228/1/95-ITA-II,
F.No. 241/2/95-A & PAC-II]

Recommendation of the Committee

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 12A of the Income Tax Act, 1961 before the expiry of a period of one year from the date of creation of the trust/Institution. However, by Finance (No. 2) Act, 1991, this condition has further been relaxed and the application can now be made even after the expiry of a period of one year. The delay can be condoned by the Chief Commissioner or Commissioner of Income Tax, provided he is satisfied for such delay on reasonable grounds. In such cases, the exemption will be available from the date of creation of the trust or institution. In case the delay is not condoned the exemption is available from the first day of the financial year in which the application is made. Test check conducted by audit revealed that in the case of nine assessees, the assessments were completed and exemption in income tax had been allowed even when trust had either not been registered with the Income Tax Department or their applications for registration were pending or they were granted exemption from a date later than that applied for. Such irregular exemption granted to trusts resulted in underassessment of income of Rs. 71.77 lakhs with tax effect of Rs. 42.20 lakhs. As an illustrative case audit pointed out the case of a trust in Gujarat, where the trust was created on 22 March, 1981 but it applied for registration only on 17 October, 1990 i.e. after a lapse of more than eight years. Yet the registration was granted by the Commissioner of Income Tax w.e.f. the date of filing of application. Thus the assessee trust which was not eligible for exemption of income for the assessment year 1989-90 was granted incorrect exemption resulting into non levy of tax amounting to Rs. 10.16 lakhs. Out of 12 cases reported by the audit, the Ministry accepted irregularities in six cases and out of these in the one case it was revealed that the registration was granted even after a period of three years.

The Committee take a serious note of the fact that incorrect grant of exemption granted in the past to the religious and charitable trusts has resulted in under assessment of income and non levy of tax involving huge amounts. They find that when under Section 12 A it is a pre-requisite that a trust must get itself registered before filing the claim of exemption, some of the trusts have been granted exemption even when these had either not come forward for registration at all or their applications for the same were pending. They also note that under the Income Tax Act there is no time prescribed under which the grant of registration is to be accorded by the Chief Commissioner/ Commissioner of Income Tax as a result of which the applications remain pending for years together. They are not convinced with the defence advanced by the Ministry of Finance in this regard, under which they delay in disposal of application is stated to be on account of incomplete application, time taken for verification of supporting documents, modifications to be carried out in trust, deeds and work pressure in the office of the Commissioner of Income Tax. The way exemptions have been granted in the past by the Department without ascertaining the legal status of the trusts makes the Committee feel that there is certainly something amiss in the working of the department which drastically needs to be streamlined. Therefore, they also desire that application seeking registration for trusts must be disposed of expeditiously. They see no reason as to why legal provisions to this effect cannot be incorporated in the Act itself specifying time limit for disposal of such applications when a period already stand prescribed in the Act for making the application for registration by the trust. They, further 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 further with a view to fixing responsibility. The Committee would also like to be intimated in this regard.

[Para Nos. 106 & 107 of 102nd Report of PAC 94-95-10th Lok Sabha]

Action taken by the Government

Instructions have been issued to the field officers to dispose of the applications seeking registration for trusts expeditiously. A copy of the instruction issued *vide* letter F.No. 181/1/95-ITA-I, dated 14th February, 1996 is enclosed. Further, necessary instructions have been issued to the senior officers concerned for analysing the cases where the exemptions have been granted wrongly/illegally, with a view to fixing the responsibility. Appropriate action would be taken in the cases where the lapses committed by Assessing Officers are not found bonafide.

As for statutory time limit for the registration of a case u/s 12 A, it is stated that a new Section 12AA has been inserted in the Income-Tax Act w.e.f. 1.4.1997. Sub-Section 2 of Section 12AA says that every order granting or refusing registration under clause B of Section 1 shall be passed before expiry of six months from the end of the month in which the application was received under clause (A) of Section 12A.

[F. No. 241/2/96-A&PAC-II,
F. No. 181/1/95-ITA-I.]

F.No. 181/1/95-ITA-I
 Government of India
 Ministry of Finance
 Department of Revenue
 Central Board of Direct Taxes
 (ITA-I Section)

New Delhi, the 14th February, 1996

SUBJECT:— Exemption to charitable and religious trusts under the Income-tax Act, 1961, and their assessment.

.....

In the 102nd Report of the Public Accounts Committee of Tenth Lok Sabha (1994-95) on Assessment of Religious and Charitable Trusts, the Committee have observed as under:—

- (i) There was no system to check if trusts having assessable income were filing Income-tax return or not;
- (ii) some trusts, which were not registered under section 12A of Income-tax Act, 1961, were enjoying exemption;
- (iii) no list of institutions enjoying exemption u/s 10 (22) and 10(22A) was being maintained and how in the absence of complete information, income could be correctly assessed;
- (iv) there is no time-limit prescribed under the Income-tax Act for disposal of registration applications under section 12A and there is considerable delay.

(2) In view of the above observations, the Board has decided that:—

- (i) Notices under section 142(1) /148 must be invariably issued in all cases of trusts which have taxable income but have not filed return of income and their assessment should be completed expeditiously;
- (ii) the assessing officer must ensure that exemption is granted under section 11 & 12 of the Income-tax Act, 1961 only if the institution/trust/fund have already been registered u/s 12A of the Income-tax Act, 1961.
- (iii) the Assessing Officer must keep a list of all such Institutions which seek exemption u/s 10 (22) and 10 (22A) to ensure that those institutions file their return of Income in time and exemption u/s 10 (22) and 10(22A) is properly granted;

(iv) application made 'for' registration u/s 12A should be processed expeditiously to avoid undue hardship and problems in assessment.

(3) The decisions of the Board as above may be communicated to all the officers working in your charge and should be strictly complied with.

Sd/-

(ASHUTOSH CHANDRA)
DEPUTY SECRETARY (ITA-I)

To

All Chief Commissioners of Income-tax,
All Directors General of Income-tax and
Director General (Income-tax Exemptions), Calcutta.

Recommendation of the Committee

Under the provisions specified in Section 11(5) of the Income Tax Act the incomes sought to be accumulated have to be invested or deposited by the religious or charitable trusts in the prescribed modes and the tax becomes leviable at the maximum marginal rates in case such funds are invested or deposited in any mode other than those specified. Under the Act the specified modes are Government Saving Certificates, deposit in Post Office, saving banks, deposits with any scheduled/Cooperative Bank, investments in Central or State Government Securities, units of UTI, debentures guaranteed by the Central/State Government, deposit with any public sector company, Industrial Development Bank etc. Audit has brought out in the review cases of nine such assessee trusts where illegal exemptions were granted in clear violation of these stipulated provisions under the Income Tax Act. This resulted in under assessment of total income amounting to Rs. 52.57 lakhs and non levy of income tax of Rs. 37.76 lakhs. In the case of a trust assessed in Gujarat charge alone the income was not assessed despite the fact that the trust was not eligible for exemption which consequently resulted in non levy of income tax aggregating to Rs. 23.43 lakhs and wealth tax of Rs. 5.48 lakhs. Likewise, exemption from the levy of tax in respect of income by way of profits and gains of business of a trust is available w.e.f. assessment year, 1984-85 (and prior to April 1, 1992) only if the work is carried on by the beneficiaries of the trust/institution wholly for charitable purposes or if the business consists of printing and publication of books or a kind notified by the Central Government which is carried on by a trust wholly for public religious purposes. In both the cases the trust or institution is required to maintain separate books of accounts for such business. According to Audit in the case of four assessee trusts, the assessed income by way of profits and gains was not brought to tax, despite the fact that the business was not of permitted kind and was not being carried on by the beneficiaries of the trusts. Separate books of accounts were also not being maintained in such cases. The omission to bring to tax, the business income in eight assessments for the assessment years, 1984-85 to 1990-91 lead to under assessment of income of Rs 31.58 lakhs with tax effect of Rs. 17.40 lakhs. Though the Committee have not gone into the details of the cases mentioned above, they desire that remedial action in all cases mentioned above should be taken by immediately and all necessary steps should also be taken to ensure that such mistakes do not occur in future.

[Para 109 of 102nd Report of PAC, 1994-95 (10th Lok Sabha)]

Action Taken by the Government

As desired by the P.A.C., the necessary instructions had been passed to the officers concerned to complete the remedial action immediately and also to ensure that such lapses do not occur in future.

[F. No. 241/2/95- A & PAC-II]

Recommendation of the Committee

Under the Gift Tax Act, 1958 donation made by any person to any charitable institution or fund which is not exempted under the provisions of Income Tax Act are

liable to gift tax. Audit in their review have pointed out a case in Tamil Nadu charge where a sum of Rs. 4 lakhs was received by a Trust towards its corpus during the previous years relevant to the assessment year, 1985-86. This contribution, however, was not used for any charitable purposes but against setting off losses of the earlier years. The contributions were, therefore, not exempted under the provisions of Income Tax Act and the amount should have treated as gift and charged to Gift Tax. The omission to do so resulted in no-levying of Gift Tax of Rs. 820,250/- for the assessment year, 1985-86. According to the Ministry of Finance, in the instant case since the assessee had filed an appeal before the Income Tax Appellate Tribunal, the amount was still outstanding. Action by the Department against the concerned Officer who had completed the assessment also was not taken since he had retired and the mistake had been considered to be bonafide. The Committee, however, take a serious view of such blatant mistakes which are committed by the assessing officers while granting tax exemption without scrupulously following the provisions stipulated in the Act and without exercising a detailed scrutiny of the cases. They are also anguished to note the way such officers are allowed to escape their responsibilities under the defensive cover of their seniors. 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 illegal and irregular exemptions come to the notice of the Department, suitable punitive action should invariably be taken expeditiously against the officers so as to inculcate a sense of responsibility and discipline among all and to save consequential loss to the exchequer.

[Para 110 of 102nd Report of P.A.C., 1994-95 (10th Lok Sabha)]

Action Taken by the Government

As desired by the P.A.C., the necessary instructions have been issued to the senior officers concerned for thoroughly examining the cases where illegal and irregular exemptions have been granted, with a view to fix the responsibility for the erring officers. Appropriate action would also be taken in the cases where the lapses committed by Assessing Officers are not found bonafide.

[F. No. 241/295-A & PAC-II]

Recommendation of the Committee

The Committee's examination of the cases where the exemption 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. The Committee also note that the Ministry have been asking their Directorate of Special Investigation and Directorate of Management Services to go into certain aspects of the working of these institutions very occasionally. The representatives of the Board also conceded during evidence that though evaluation has been done by examining trusts in a random manner, but no proper systematic evaluation study has been undertaken during the last ten

years. However, they accepted the fact that there was a need to undertake such a study. In the absence of existence of any effective system evolved for scrutinizing 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 exemption is substantial and when the primary object behind 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 the look into, the whole issue afresh with a view to devising a procedure for proper and systematic evaluation of religious and charitable trusts 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.

[Para 112 of 102nd Report of P.A.C., 1994-95 (10th Lok Sabha)]

Action Taken by Government

The Ministry shares the concern of the Committee regarding the monitoring of functioning of trusts with reference to their social objectives. Normally, when a trust approaches the department for renewal of its Notification for exemption, the activities undertaken and utilization of funds are examined. However, a study as being conducted whereby the problem is being examined in totality, in case of hospitals and educational institutions seeking exemption u/s 10(22) & (22A). The Study Group's report is expected to be finalised by February, 1996. Measures required for effective monitoring is one of the areas under study. Suitable steps shall be taken promptly, thereafter.

[F.No. 241/2/95-A & PAC-II,
F.No. 181/1/95-ITA-I]

Additional Action Taken by Government

The Ministry have given serious consideration to the recommendations of the Committee as well as the Study Group. Several Legislative Changes have been brought out in the Finance (No.2) Act, 1998 in order to rationalise the scheme of granting exemptions to the educational and medical institutions. The existing Sections 10(22) and 10 (22A) of the Income-tax Act, 1961, dealing with the exemptions of these institutions have since been omitted with effect from 1.4.1999. Clauses (iiiab), (iiiac), (iiiad), (iiiae), (vi) and (vja) have been inserted in section 10(23C) of the Income Tax Act, 1961, with effect from 1.4.1999 to regulate the grant of exemptions to these institutions. These provisions, *inter alia*, now require the institutions having an annual receipt exceeding the prescribed limit to make an application in the prescribed form to the prescribed authority who shall grant exemption only upon fulfilment of the prescribed conditions.

[F.No. 241/2/95-A & PAC-II,
F.No.154/4/97-TPL].

CHAPTER III

RECOMMENDATIONS / OBSERVATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF THE REPLIES RECEIVED FROM THE GOVERNMENT

Recommendation of the Committee

From the statistical information furnished to the Committee they are also surprised to note that in some of the charges the number of returns filed by the trusts were more than the actual number of trusts registered. CBDT was also not able to explain the reasons for such variations. There was also no system to check if the defunct trusts which had assessable income chose not to file the income tax returns. In some of the cases test checked by Audit it was revealed that some of the trusts did not file the returns even though they had assessable income. It was also found that even unregistered trusts were filing their returns and yet enjoying exemptions under the provisions of Act. Also no comprehensive list was being maintained of all those institutions which enjoy exemptions under Section 10(22) and 10(22A). The Committee fail to understand as to how in the absence of the complete information available regarding the functioning of both registered and unregistered trusts, CBDT was able to assess the income of trusts correctly. They are of the considered view that this is an area which requires urgent attention. They also desire that some foolproof system needs to be evolved to ensure that all the trusts which have assessable income file their returns regularly and defaulting trusts are suitably penalised under the different provisions already existing in Act.

[Para 100 of 102nd Report of PAC, 1994-95, (10th Lok Sabha)]

Action Taken by the Government

The Committee has observed that the number of returns filed were found to be more than the trusts registered. This may have been because some trusts file their returns of income for one or more years together.

As regards defunct or other trusts which have assessable income but are not filing returns, the Income-tax Act provides that notice can be issued under section 148 if the Assessing Officer has reason to believe that income of an assessee has escaped assessment. Further notice can be issued u/s 142 (1), calling for return of income. The Act is sufficient in this regard. However, in view of the Committee's observations in this para, instructions have been issued to field officers to ensure that trusts which have been having taxable income should file their returns to make sure that exemptions are not granted to unregistered trusts where the Act specifically provides for registration; and they have also been instructed to maintain separate lists of institutions which seek exemptions u/s 10(22) and 10(22A), so that their returns can be monitored and exemption is properly granted.

[F. No. 241/2/95-A & PAC II,
F. No. 181/1/95-ITA-I.]

Recommendation of the Committee

Under Section 12 of the Income-tax Act, any voluntary contribution received by a Trust created wholly for charitable or religious purposes shall be deemed to be income derived from the property held by the Trust if such contribution has not been made with a specific direction that the same shall form the corpus of the Trust. Donations towards earmarked funds such as building fund, scholarship fund etc. cannot be taken to be made towards the corpus fund but are merely to be treated as appropriation of income for a specific purpose and are, therefore, to be included in the total income. The Committee's examination, however, revealed a number of cases in different charges where the exclusion from total income of donations to earmarked funds or voluntary contributions/grants without specific direction of the donors to treat them as corpus funds resulted in non assessment of income amounting to a substantial amount. Out of 15 cases of assessee trusts pointed out by Audit in which such irregularities had been committed, the Ministry of Finance accepted four cases involving a revenue effect to the tune of Rs. 2.47 lakhs in three cases alone. In one case, relating to Assam, the correct amount of tax revenue could not be ascertained since the reassessment proceedings were reported to be in progress. Though the remedial action in the other three cases was reported to have been initiated by re-opening the assessments the Committee are not happy over the tardy progress made in finalisation of such cases. They also deplore the callous attitude of the assessing authorities which resulted in such wrong assessments and the consequential loss of revenue. The Committee would expect the officers to be more careful and vigilant in future and also desire that the pending action in respect of all the cases should be completed expeditiously and the total tax effect involved in all the cases should also be intimated to the Committee.

[Para 104 of 102nd Report of PAC, 1994-95 (10th Lok Sabha)].

Action Taken by the Government

In this para PAC observed that u/s 12 of the IT Act, any voluntary contribution received by a trust created wholly for charitable or religious purposes, not being contributions made with the specific direction that they shall form the corpus of the trust shall be deemed to be income derived from property held by the trust. The Committee's examination reveals a number of cases where the exclusion from the total income of donations to earmark funds or voluntary contributions/grants without specific directions of the donors to treat them as corpus fund resulted in non assessment of income amounting to a substantial amount. The Ministry shares the concern with the PAC and assure them that the officers dealing with trust cases would be more careful and vigilant in future so that the lapses pointed out by the Committee are avoided in future.

The present position in respect of the illustrative cases, where the objections have been accepted by the Ministry, are discussed below in brief:

(i) *Ganesh Mandir Society, Shillong-CIT NER Shillong*

Reply: The assessments for AY 1989-90, 1991-92 and 1992-93 were completed on 4.8.94 and the demand raised amounting to Rs. 13,573/- has already been collected

on 6.9.94. The reassessment proceedings for AY 1983-84 to 1988-89 and 1990-91 are in progress and would be completed by March, 1996.

[F. No. 241/2/95-A & PAC II]

(i) *Ganesh Mandir Society, Shillong—CIT NER Shillong*

The assessments for AY 1989-90, 1991-92 and 1992-93 were completed on 4.8.1994 and the demand raised, amounting to Rs. 13,573/- has already been collected on 6.9.94. The re-assessment proceedings for AY 1983-84 to 1988-89 and 1990-91 were completed in March, 1996 and there is no outstanding tax liability in this case.

(ii) *Anjali Charitable Trust, Bombay—DIT (Exemp.), Bombay*

Though the objection in this case was accepted by the Deptt. initially, however, on due verification it is found that the shares in question (face value - Rs. 2.80 lakhs) were received by the trust on 8.11.83 and not during the previous year relevant for AY 1989-90, as pointed out by the Audit and, therefore, no remedial action was necessary for AY 1989-90. However, exemption stands denied for AY 1989-90, as well as for subsequent years and the trust has no justification to disinvest the shares even after 31.3.93. The assessment for 1984-85 is already barred by limitation and in that year the income was below Rs. 1000 only and accordingly no return was also filed.

(iii) *Parnami Sahyog Samiti Trust, Jaipur—CIT, Jaipur.*

The audit objection had been accepted in this case. The remedial action was completed on 30.1.95 u/s 143(3)/148 and net demand of Rs. 1,25,825/- (including interest) was raised. CIT(A) has cancelled the assessment order (reducing the demand to 'nil'). The Department has filed second appeal which is pending in ITAT.

(iv) *Gopal Krishna Gosala, Orissa—CIT, Bhubaneswar*

The audit objection has been accepted in this case. However, since the original assessment order was passed ex-parte u/s 144 of the IT Act, and the CIT on petition u/s 264 filed by the assessee trust, passed the order u/s 264 on 26.12.95, cancelling the original assessment order. The audit objection is being taken care of while passing the fresh assessment in this case.

Recommendation of the Committee

With a view to preventing abuse in the application and investment of trust funds there are stringent provisions in the Income-tax Act under which entire income of the trust becomes liable to tax if a part of whole of the income or property is directly or indirectly applied or used for the benefit of a certain category of persons such as author founder of the trust institution, any trustee or manager or substantial contributors, or any specified relative of the aforementioned persons. The benefit is also not available if the benefit is restricted to any particular religious community or caste or the employee or member of a trust/institution or a substantial donor. Test check conducted by Audit of assessment records for the assessment years 1981-82 to 1990-91 alone revealed cases of 11 such assessee trusts, whose properties were used for the benefit of

prohibited category of persons or their relatives or were restricted in a particular religious community or caste. This resulted in non-assessment of income of Rs. 70.11 lakhs together with revenue loss to the tune of Rs. 34.11 lakhs. Out of these, the Ministry of Finance accepted only four cases involving a total tax effect of Rs. 21.15 lakhs. Whereas remedial action in respect of 2 cases was reported to have been completed, reassessment proceedings under section 147 in other two cases was reported to have been initiated. The Committee however, take a serious note of the fact that despite stringent provisions existing in the law, exemptions have illegally been granted to the trusts which in turn has resulted in causing substantial revenue loss to the Government. What further irks the Committee is the very fact that no, effort has been made by CBDT to maintain charge-wise information of such illegal exemptions which have been granted during the past several years. The Committee, therefore, do not understand as to how in the absence of such a vital information, monitoring and correct assessment of income-tax involved in a large number of assessments is possible. What further dismay the Committee is the fact that even remedial action is also not taken promptly by the department in such cases which in itself reflects poorly on the working of the officials of the department. They are not at all happy over the a low progress made so far in desposal of pending cases and desire that earnest efforts must be made to expeditiously complete not only the re-assessment proceedings which are reported to be pending but also those cases where action under section 147 has been initiated.

[Para 105 of 102nd Report of PAC 1994-95-10th Lok Sabha]

Action Taken by the Government

The PAC observed that there is a possibility of abuse in the application and Investment of trust funds. Test cases conducted by Audit revealed 11 such assessee trusts where properties were used for the benefit of prohibitory category of persons and their relatives or were restricted to a particular religious community or caste. As required earlier, there are stringent provisions in the IT Act to prevent such abuse like where the total income of the trust/institution exceeds Rs. 25,000/ in a previous year, the accounts of the trust/institution are required to be audited. From the Audit Report, it is easy to identify cases where funds and/or properties of the trusts are misused by the persons referred to in section 13(3) of the IT Act. In case of a trust where benefit is restricted to members of any particular religious community or caste as is evident from the trust deed, exemption is not allowed.

Wherever the Audit points out the cases of illegal exemptions granted by the Assessing Officers, the case is examined at different levels and if the objection is accepted then immediate remedial action is taken to modify the assessment and recover the additional demands.

Further, normally a book is also published by the Department on the avoidable mistakes pointed out by the Audit and the same is circulated amongst all the officers. In the circumstances, no separate information is being maintained in respect of such trusts.

The Committee also expressed their unhappiness on the fact that remedial action is also not taken promptly by the Department. Recently, the CBDT has issued Instruction No. 1928 which clearly states that in all cases of audit objections whether the objection is acceptable or not, remedial action has to be initiated as a precautionary measure to protect revenue.

All efforts are being made to dispose of the pending audit objections and expeditiously complete the remedial action. The specific information in respect of 3 illustrative cases is discussed below in brief:—

(i) *Council of Baptist Church, NER India — CIT NER Shillong*

In this case for AY 1984-85 and 1985-86, assessments were completed on 11.7.94 and the demand of Rs. 29,66,530/- was raised. However, the entire demand stands vacated in view of CIT (Appeals) order dated 13.12.95.

(ii) *Hazi Essa Hazi Moosa Trust, CCIT, Cochin*

In this case the wealth-tax assessments for AYs 1982-83 to 1985-86 were completed u/s 16(3)/17 of the WT act on 13.3.95, as a result wealth-tax demand of Rs. 31,082/- was raised which is yet to be collected. The income-tax reassessment of AYs 1984-85 and 1985-86 were cancelled in first appeal and Department's appeals before the ITAT for both these years are pending.

(iii) *Prince Mukkaramjah Trust — CCIT, Hyderabad*

In this case objection was accepted in principle. However, the ITAT in the appeal against the order u/s 263 held that there was no violation of Section 13(1)(c) and set aside the order passed u/s 263 by the CIT. Reference application against the order of ITAT has been filed u/s 256 (1) of the IT Act. Meanwhile, the CIT(A) also held the assessment as infructuous. In the circumstances, the issue raised by the Audit has become academic in nature.

[F. No. 241/2/95-A&PAC II]

(iv) *Jeypore Evangelical Lutheran Church, Orissa CIT, Bhubaneswar.*

Originally the audit objection was accepted in principle subject to factual verification. On factual verification it is found that;

- (a) Afforestation was one of the listed objectives of the trust. A specific amount of Rs. 2.25 lakhs was received, out of which Rs. 1.89 lakhs was spent for this purpose in the same year. Thus, specific funds received for the programme to carry out the objects of the trust have been spent for that purpose only.
- (b) The issue pertaining to usage of advance of Rs. 7.35 lakhs by the persons covered u/s 13(3) has been verified by the Department and it is found that none of these payments is covered u/s 13(3) of the IT Act.

Thus, on verification, the audit objection is not acceptable in this case.

CHAPTER IV

RECOMMENDATIONS / OBSERVATIONS REPLIES TO WHICH HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION

Recommendation of the Committee

Property held under trust or other legal obligations for any charitable or religious purposes for the benefit of general public is also exempted from levy of wealth tax. However, no exemption is available under Wealth Tax Act if the trust forfeits exemption under Income Tax Act for any infringement of its provisions. Audit in their test checks conducted have pointed out cases of 62 assessees under different charges where exemption of Income from properties of trusts was not available and the properties in question should have been taxed for wealth tax. However, surprisingly in most of the cases as brought out by audit neither any return of wealth tax had been filed nor any notice was issued by the department for filing such return. Besides, even in cases in which the wealth tax returns were filed erroneous deductions on account of exemption of certain assets was noticed with consequential non levy of tax at the maximum marginal rates. Such mistakes according to the Audit Review resulted in non levy of wealth tax amounting to Rs. 102.14 lakhs in 188 assessments completed for the assessment years ranging from 1981-82 to 1991-92. The Ministry of Finance accepted irregularities only in five cases, and remedial action in other cases was reported to have been initiated as a precautionary measure. The Committee cannot but express their serious concern over the irregularities which have been committed. Though they have been informed that instructions have been issued from time to time for effecting proper correlation between the Income tax, wealth tax and gift tax records relating to the assesseees and coordination between the assessing officers, the Committee are not satisfied with the results achieved in view of the fact that there have been a number of instances of wrong assessment. The Committee desire that earnest efforts should be made to ensure that instructions are followed scrupulously. A periodical review should also be undertaken by the department in order to ensure that there is no laxity in so far as the implementation of the instructions are concerned. They also desire that action in respect of the cases which are under review should be completed expeditiously.

[Para 111 of 102nd Report of P.A.C., 1994-95 (10th Lok Sabha)]

Action Taken by the Government

As a follow up of the recommendations of the Hon'ble Committee in its 26th Report (1980-81), instructions were issued by the C.B.D.T. for proper co-ordination between the records of various Direct Taxes and between various assessing officers.

These instructions have now been reiterated. Also, the Departmental Audit teams have been advised to conduct periodical review of the follow up of Board's instructions by the assessing officers, in the course of audit work. Wherever, the audit team notices a case of withdrawal of exemption under the I.T. Act, it shall scrutinise corresponding assessment records under other Direct Taxes to ensure that desired action has been taken by the assessing officer under the provisions of other Direct Taxes.

[F. No. 241/2/95-A & PAC-II, F. No.326/3/95-W.T.]

CHAPTER V

RECOMMENDATIONS OR OBSERVATIONS IN RESPECT OF WHICH GOVERNMENT HAVE FURNISHED INTERIM REPLIES/NO REPLIES

Recommendation of the Committee

The Income of an institution, trust or fund created for charitable or religious purposes can be exempted under Section 10(23) (c) (iv) and (v) or Section 11 of the Income Tax Act. Although some of the conditions for grant of tax exemption under both these Sections are common, yet, under the provisions sub section 4-A of Section 139, the filing of returns by assesseees under section 11 has been made mandatory if the total income without taking into account the provisions of this section is taxable. At the same time, in the case of assesseees exempted under section 10(23)(c) (iv) and (v) filing of returns has not been made necessary as the income does not form part of the total income. According to the Ministry of Finance (Department of Revenue), the reasons for granting exemptions to religious and charitable trusts under two different sections of Income Tax Act are to do away with the requirement of filing of an annual return and to impose any time limit for accumulation of funds is the case of those trusts which are of national and statewise importance. In this context, the Public Accounts Committee in their 144th Report (1982-83), (7th Lok Sabha) had expressed the view that grant of exemption under Section 10(23)(c)(iv) and (v) freed the grantee institutions from all legislative, judicial and administrative control of Income Tax Law. The Committee had, therefore, recommended that this section should be scrapped altogether from the statute book. According to Ministry of Finance, on the recommendations of the Economic and Administrative Reforms Committee (Jha Committee) to whom the matter was referred and on the basis of recommendations of PAC, Clause (iv) and (v) of Section 23 were amended by the Direct Tax Laws (Amendment Act, 1989) with effect from 1st April, 1990 to provide for conditional notifications issued by the Central Government under which a trust or institution is granted exemption for maximum period of the assessment years.

[Para No. 96 of 102nd Report of PAC, (1994-95)-(10th Lok Sabha)]

Action Taken by the Government

Amendments to the provisions pertaining to assessment of religious and charitable trusts have been proposed in Sections 9, 10 and 11 of the working draft of the Income-tax Bill, 1997. The draft Income-tax Bill is currently under discussion. A copy of the working draft is enclosed for reference of the Committee.

[F. No. 241/2/95-A & PAC-II,
F. No. 154/4/97-TPL]

Recommendation of the Committee

While the Committee note that in pursuance of their earlier recommendation, an amendment has been made in the Act according to which a conditional notification is now issued to keep a further check on the misuse of the utilisation of funds by trusts, they are still not fully satisfied with the efficacy of the present system. In view of the very fact that at the time of grant of renewal of such trusts, total reliance is placed on the information supplied by the respective trusts in the prescribed form and no detailed scrutiny is exercised, the Committee feel that it may not be possible for the assessing authorities to ensure whether all the conditionalities of law have been fulfilled or whether the renewal at all is justified. The Committee, therefore, desire that the Ministry of Finance should re-examine the desirability of retaining both the sections simultaneously in the Act in order to ensure effective monitoring of the cases. The Committee would like to be apprised of the final outcome of such a review together with the decision taken in this regard.

[Para 97 of 102nd Report of PAC (1994-95)—(10th Lok Sabha)]

Action Taken by the Government

Amendments to the provisions pertaining to assessment of religious and charitable trusts have been proposed in sections, 9, 10 and 11 of the working draft of the Income-tax Bill, 1997. The draft Income-tax Bill is currently under discussion. A copy of the working draft is enclosed for reference of the Committee.

[F. No. 241/2/95-A & PAC-II,
F. No. 154/4/97-TPL]

Recommendation of the Committee

Every person on receipt of income derived from the property held under trust set up wholly for religious and charitable purposes is required to furnish a return of such income under Income Tax Act if the total income, without giving effect to the provisions of Section 11 and 12 exceeds the maximum of the amount which is not chargeable to income tax. The Committee, however, note that Section 10(22) of the Income Tax Act allows exemption to any income of a University or other educational institutions existing solely for educational purposes and not for the purposes of profit. Similarly under Section 10(22A) any income of a hospital or other institution is exempted if it has been established for the reception, treatment, convalescence or rehabilitation of persons requiring medical attention and which is existing solely for philanthropic purposes and not for profit. There is, however, no requirement under the law for the institutions referred to in Section 10(22) and 10(22A) to file returns voluntarily resulting thereby the possibility of evasion of tax by a large number of such institutions. The case of Madras Medical Mission cited in the Review conducted by Audit is only one small case. According to the Ministry of Finance's own admission, there are a very large number of hospitals, trusts, convalescence homes and organisations offering medical treatment which *prima facie* enjoy benefit of Section 10(22A). Besides, though under some existing provisions in the Income Tax Act action can be taken against such institutions/organisations but in Committee's view, in the

absence of statutory requirement for filing of income tax returns, the identification of the organisations which choose not to file the returns leaves a big question mark. The representative of the Board was candid in admitting that the only area where they are not in a position to systematically evaluate the performance of the trusts is the educational institutions and hospitals under Section 10(22) and 10(22A). The Secretary, Revenue also conceded that in view of the large number of institutions coming forward for exemptions, the matter did require a second look. The Committee are of the firm view that taking into account the very fact that there are a large number of institutions/hospitals/organisations which often seek exemption under the provision of Section 10(22) and 10(22A), there is an urgent need to ensure that the income that they earn is used strictly in accordance with the objectives for which these have been set up. 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. This in the view of the Committee can only be ensured if the income earned by such institutions passes through the strict scrutiny of the Income Tax Department. They, therefore, desire the Ministry of Finance to seriously consider bringing the institutions mentioned under Section 10(22) and 10(22A) under the scrutiny and control of the department as is exercised in the case of those covered under the provisions of Section 11 of the Income Tax Act.

[Para 99 of 102nd Report of PAC (1994-95) — (10th Lok Sabha)]

Action Taken by the Government

Amendments to the provisions pertaining to assessment of religious and charitable trusts have been proposed in Sections, 9, 10 and 11 of the working draft of the Income-tax Bill, 1997. The draft income-tax Bill is currently under discussion. A copy of the working draft is enclosed for reference of the Committee.

[F. No. 241/2/95-A & PAC-II,
F. No. 154/4/97-TPL.]

Recommendation of the Committee

Donations specifically made towards the corpus of the trusts created for charitable and religious purposes are not included in the total income of the trust for levying tax. Donor is also exempted from tax payment. The inherent intention in granting such exemption is that the amount received towards donation to corpus funds should be utilised for charitable and religious purposes. However, the Committee note that under the Act, no time limit has been prescribed for utilization of such funds with the result that though both donors and donees trust enjoy tax exemptions, there is a possibility that the donated fund may not be spent on avowed objectives and remain unutilized indefinitely. Besides in the event of a trust subsequently becoming defunct the amount would escape tax liabilities. As an illustration, Audit in their review have brought out the case of a trust in UP charge which was created on 31st March, 1978 with an initial donation of Rs. 45,000/- with the object of constructing a hospital to give free medical relief to the general public, however, despite the fact that the trust continued to receive contributions, the hospital was not completed till the end of the previous year relevant to the assessment year, 1983-84. The entire balance of Rs. 82,670/- as on 31-3-1983

was lying unspent. While defining the defunct trusts as those which are set up with a particular objective but are not able to garner donations to carry on with their objectives, the representative of Board informed that on the request being made by a trust a maximum period of 10 years is granted to such trusts to accumulate their income. The Committee, however, note that there is no mechanism which exists in the department to inspect the functioning of trust at every state with a view to ensuring that the income earned is utilized strictly in accordance with the objectives for which these trusts are established. It is only during the process of searches and surveys conducted by intelligence agencies that the cases of defaulting trusts come to their notice and taxes are levied. The Committee are of the view that a period of 10 years for allowing accumulation of income from Corpus by these trusts is on the higher side and the desirability of reducing this period further needs to be considered, so that during the scrutiny of assessments, all those trusts which fails to utilize the income from the corpus funds towards the avowed objective could be brought within the purview of tax liabilities. Besides some suitable mechanism should also be evolved to bring such voluntary donations within the ambit of taxation which are received off the record in the form of jewellery or cash etc. and for which no account is maintained. The Committee are of the view that since the trusts stand to benefit by such donations, these should not be allowed to easily get away from the penalties.

[Para 103 of 102nd Report of PAC (1994-95) — (10th Lok Sabha)]

Action Taken by the Government

Amendments to the provisions pertaining to assessments of religious and charitable trusts have been proposed in Sections, 9, 10 and 11 of the working draft of the Income-tax Bill, 1997. The draft Income-tax Bill is currently under discussion. A copy of the working draft is enclosed for reference of the Committee.

[F. No. 241/2/95-A & PAC-II,
F. No. 154/4/97-TPL]

Recommendation of the Committee

Under Section 11(1) (a) of the Income Tax Act, Income derived from property held under trust wholly for charitable or religious purposes is exempt from tax liabilities to the extent such income is applied for the objective of the trust during the year or accumulated and set apart for such purposes so long as it does not exceed 25% of its income. If a trust is unable to apply 75% of its income during the year and wished to accumulate more than 25% of its income for future utilisation and seeks tax exemption for the current year, the trust has to file form 10 in which it has to state the purpose and the period of accumulation (which is no case should exceed 10 years). The money so set apart is required to be invested in prescribed modes such a Central and State Governments Securities, Scheduled Bank deposits etc. In case, the money so accumulated is not applied for the specified purpose within the prescribed period or ceases to remain invested in prescribed modes, then such income is deemed to be the income of the trust or institution in the previous year in which the default occurs or the year immediately following the expiry of the prescribed period. The Committee

find from the test review conducted by Audit that in the case of 66 Trusts, either prescribed procedure for the accumulation of more than 25% of the total income for prescribed period and purposes was not followed or the accumulated income was not utilised for the purposes specified within the prescribed time limit. This resulted in under charge of tax amounting to Rs. 191.98 lakhs in 1978 assessments. The Ministry of Finance accepted the mistakes for having allotted accumulations under Section 11(2) in eight cases involving a total amount of Rs. 10.06 lakhs and the remedial action was reported to have been taken. The Committee were also informed that in respect of other cases where the Audit objections had not been accepted, the remedial action was being taken as a precautionary measure. The Committee, however, note that no penalty had been provided under the Act in case trusts violated the above mentioned provisions except to tax the trusts in the year in which default occurs. According to the Ministry of finance this itself was considered to be an adequate compensation for breach of conditions. The Committee are however of the considered view that this could not be considered as a sufficient deterrent and stringent measure to check such malpractices. They desire that suitable provisions therefore, be incorporated in the Act so that offenders are not able to evade the payment of tax easily. They desire the Ministry of Finance to examine the incorporation of such a provision and apprise the Committee in this regard in due course of time.

[Para 108 of 102nd Report of PAC (1994-95) — 10th Lok Sabha]

Action Taken by the Government

Amendments to the provisions pertaining to assessment of religious and charitable trusts have been proposed in Sections, 9, 10 and 11 of the working draft of the Income-tax Bill, 1997. The draft Income-tax Bill is currently under discussion. A copy of the working draft is enclosed for reference of the Committee.

[F. No. 241/2/95-A & PAC-II,
F. No. 154/4/97-TPL]

NEW DELHI;
12 March, 1999

21 Phalgun, 1920 (Saka)

MANORANJAN BHAKTA,
Chairman,
Public Accounts Committee.

APPENDIX

CONCLUSIONS AND RECOMMENDATIONS

Sl. No.	Para No.	Ministry/ Deptt. concerned	Conclusions and Recommendations
1	2	3	4
1.	3	Ministry of Finance (Deptt. of Revenue)	The Committee note with serious annoyance that the Ministry of Finance, Department of Revenue (Central Board of Direct Taxes) have not yet furnished final replies in respect of the observations/recommendations of the Committee contained in Paragraph Nos. 96, 97, 99, 101, 102, 103 and 108 of the Report even after a period of more than three years. The Committee deplore this unconscionable delay and desire that the final replies, duly vetted by Audit, be furnished within a period of three months failing which the Committee would be constrained to fix responsibility <i>suo motu</i> for such a lackadaisical attitude.
2.	10	— do —	While the Committee are pleased to note that in pursuance of their recommendations, the Ministry have inserted a new Section-12AA in the Income Tax Act w.e.f. 1 April, 1997 which provides that applications for registration of trusts must be disposed of within the stipulated period, the Committee hope that the Ministry will not rest satisfied with the mere issuing of instructions and that the Ministry would assert its authority and take appropriate and conclusive action in all cases of wrong/illegal exemptions within a period of three months. They would also like to be apprised of the action taken in the matter.

1	2	3	4
3.	13	— do —	<p>The Committee are constrained to observe that no tangible action has been taken as yet by the Ministry in respect of the cases which were under review even after a period of more than three years since the presentation of their report. The Committee view with concern the deliberate non-compliance on the part of the Department and therefore direct the Department to review all such cases and submit a report to the Committee within three months. The Committee would also like the Department to take conclusive follow up action warranted by the review undertaken by them and conduct periodical review of the follow up of its instructions by field functionaries with a view to securing compliance of their own instructions issued pursuant to the recommendation of the Committee.</p>

PART II

MINUTES OF THE TWENTY-THIRD SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (1998-99) HELD ON 11 MARCH, 1999

The Committee sat from 1500 hrs. to 1600 hrs. on 11 March, 1999 in Committee Room No. "62", Parliament House.

PRESENT

Shri Manoranjan Bhakta — *Chairman*

MEMBERS

Lok Sabha

2. Shri Ram Tahal Choudhary
3. Shri C. Gopal
4. Shri Vijay Kumar Khandelwal
5. Shri Rupchand Pal
6. Dr. T. Subbarami Reddy
7. Shri Prabhat Kumar Samantaray

Rajya Sabha

8. Shri Md. Salim
9. Shri J. Chitharanjan
10. Shri Jayant Kumar Malhoutra
11. Shri Vayalar Ravi

SECRETARIAT

- | | | |
|-------------------------|---|---------------------------|
| 1. Shri Devender Singh | — | <i>Deputy Secretary</i> |
| 2. Shri S. C. Kaliraman | — | <i>Assistant Director</i> |
| 3. Shri R. C. Tiwari | — | <i>Committee Officer</i> |

OFFICERS OF THE OFFICE OF C&AG OF INDIA

- | | | |
|--------------------------|---|------------------------------------|
| 1. Shri D. Swarup | — | <i>DGA (CR)</i> |
| 2. Ms. Sudha Rajagopalan | — | <i>DGA (DS)</i> |
| 3. Shri M. M. Arya | — | <i>Pr. Director (Direct Taxes)</i> |

2. The Committee took up for consideration the following draft Reports on:

- | | | | | |
|-------|--|---|---|---|
| (i) | * | * | * | * |
| (ii) | * | * | * | * |
| (iii) | Action taken on 102nd Report of PAC (10th Lok Sabha) on "Assessment of Religious and Charitable Trusts". | | | |

3. The Committee deliberated on the subject matter of the above mentioned draft Reports and adopted the same with certain modifications and amendments as shown in Annexures I*, II* and III respectively.

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

The Committee then adjourned.

Amendments/modifications made by the Public Accounts Committee in the Draft Report relating to assessment of religious and charitable trusts

Page	Para	Line	Amendments/Modifications
6	13	5	<i>Add after report. "The Committee view with concern the deliberate non-compliance on the part of the Department and therefore direct the Department to review all such cases and submit a report to the Committee within three months."</i>
6	13	5	<i>Substitute "The Committee would also like" for "The Committee therefore reiterate their earlier recommendation and trust that"</i>
6	13	7	<i>Substitute 'to' for 'would'</i>

**LIST OF AUTHORISED AGENTS FOR THE SALE OF LOK SABHA SECRETARIAT
PUBLICATION**

Sl. No.	Name of Agent	Sl. No.	Name of Agent
ANDHRA PRADESH		UTTAR PRADESH	
1.	M/s. Vijay Book Agency, 11-1-477, Mvlargadda, Secunderabad-500 306.	12.	Law Publishers, Sardar Patel Marg, P.B. No. 77, Allahabad, U.P.
BIHAR		WEST BENGAL	
2.	M/s. Crown Book Depot, Upper Bazar, Ranchi (Bihar).	13.	M/s. Madimala, Buys & sells, 123, Bow, Bazar Street, Calcutta-1.
GUJARAT		DELHI	
3.	The New Order Book Company, Ellis Bridge, Ahmedabad-380 006. (T.No. 79065)	14.	M/s. Jain Book Agency, C-9, Connaught Place, New Delhi, (T.No. 351663 & 350806)
MADHYA PRADESH		15.	M/s. J.M. Jalna & Brothers, P. Box 1020, Mori Gate, Delhi-110006. (T.No. 2915064 & 230936)
4.	Modern Book House, Shiv Vilas Place, Indore City. (T.No. 35289)	16.	M/s. Oxford Book & Stationery Co., scindia House, Connaught Place, New Delhi-110 001. (T.No. 3315308 & 45896)
MAHARASHTRA		17.	M/s. Bookwell, 2/72, Sant Nirankari Colony, Kingsway Camp, Delhi-110 009. (T.No. 7112309).
5.	M/s. Sunderdas Gian Chand, 601, Girgaum Road, Near Princes Street, Bombay-400 002.	18.	M/s. Rajendra Book Agency, IV-DR59, Lajpat Nagar, Old Dobule Storey, New Delhi-110 024. (T.No. 6412362 & 6412131).
6.	The International Book Service, Deccan Gymkhana, Poona-4.	19.	M/s. Ashok Book Agency, BH-82, Poorvi Shalimar Bagh, Delhi-110 033.
7.	The Current Book House, Maruti Lane, Raghunath Dadaji Street, Bombay-400 001.	20.	M/s. Venus Enterprises, B-2/85, Phase-II, Ashok Vihar, Delhi.
8.	M/s. Usha Book Depot, Law Book Seller and Publishers' Agents Govt. Publications, 585, Chira Bazar, Khan House, Bombay-400 002.	21.	M/s. Central News Agency Pvt. Ltd., 23/90, Connaught Circus, New Delhi-110 001. (T.No. 344448, 322705, 344478 & 344508).
9.	M & J Services, Publishers, Representative Accounts & Law Book Sellers, Mohan Kunj, Ground Floor, 68, Jyotiba Fuele road Nalgaum, Dadar, Bombay-400 014.	22.	M/s. Amrit Book Co., N-21, Connaught Circus, New Delhi.
10.	Subscribers Subscription Service India, 21, Raghunath Dadaji Street, 2nd Floor, Bombay-400 001.	23.	M/s. Books India corporation Publishers, Importers & Exporters, L-27, Shastri Nagar, Delhi-110 052. (T.No. 269631 & 714465).
TAMIL NADU		24.	M/s. Sangam Book Depot, 4378/4B, Murari Lal Street, ansari Road, Darya Ganj, New Delhi-110 002.
11.	M/s. M.M. subscription Agencies, 14th Murali Street, (1st Floor), Mahalingapuram, Nungambakkam, Madras-600 034. (T. No. 476558)		