

EXEMPTIONS TO CHARITABLE TRUSTS AND INSTITUTIONS

[Action Taken by the Government on the Observations/Recommendations of the Committee contained in their 27th Report (16th Lok Sabha)]

MINISTRY OF FINANCE (DEPARTMENT OF REVENUE)

**PUBLIC ACCOUNTS COMMITTEE
(2018-19)**

ONE HUNDRED AND FOURTH REPORT

SIXTEENTH LOK SABHA



**LOK SABHA SECRETARIAT
NEW DELHI**

PAC NO. 2138

ONE HUNDRED AND FOURTH REPORT

PUBLIC ACCOUNTS COMMITTEE (2018-19)

(SIXTEENTH LOK SABHA)

EXEMPTIONS TO CHARITABLE TRUSTS AND INSTITUTIONS

[Action Taken by the Government on the Observations/Recommendations of the Committee contained in their 27th Report (16th Lok Sabha)]

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



Presented to Lok Sabha on:

Laid in Rajya Sabha on:

**LOK SABHA SECRETARIAT
NEW DELHI**

July, 2018 /Ashadha, 1940 (Saka)

CONTENTS

	PAGE
COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE (2017-18)	(iii)
COMPOSITION OF THE SUB COMMITTEE - III OF PUBLIC ACCOUNTS COMMITTEE (2017-18)	(iv)
COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE (2018-19)	(v)
INTRODUCTION	(vi)
CHAPTER I Report	1
CHAPTER II* Observations/Recommendations which have been accepted by the Government	
CHAPTER III* Observations/Recommendations which the Committee do not desire to pursue in view of the replies received from the Government	
CHAPTER IV* Observations/Recommendations in respect of which replies of the Government have not been accepted by the Committee and which require reiteration	
CHAPTER V* Observations/Recommendations in respect of which the Government have furnished interim replies	

APPENDICES*

- I Minutes of the 8th sitting of the Sub-Committee III of Public Accounts Committee (2016-17) held on 16th February, 2017.
- II Minutes of the 4th sitting of the Sub-Committee III of Public Accounts Committee (2017-18) held on 29th August, 2017.
- III Minutes of the 15th sitting of the Sub-Committee III of Public Accounts Committee (2017-18) held on 13th March, 2018.
- IV Minutes of the 17th sitting of the Sub-Committee III of Public Accounts Committee (2017-18) held on 2nd April, 2018.
- V Minutes of the 23rd sitting of the Public Accounts Committee (2017-18) held on 10th April, 2018.
- VI Minutes of the 8th sitting of the Public Accounts Committee (2018-19) held on 4th July, 2018.

VII Analysis of the Action Taken by the Government on the Observations/Recommendations of the Public Accounts Committee contained in their Twenty-seventh Report (Sixteenth Lok Sabha)

**Not appended to the cyclostyled copy of the Report*

COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE
(2017-18)

Shri Mallikarjun Kharge - **Chairperson**

MEMBERS

LOK SABHA

2. Shri Sudip Bandyopadhyay
3. Shri Subhash Chandra Baheria
4. Shri Prem Singh Chandumajra
5. Shri Nishikant Dubey
6. Shri Gajanan Chandrakant Kirtikar
7. Shri Bhartruhari Mahtab
8. Smt. Riti Pathak
9. Vacant¹
10. Shri Abhishek Singh
11. Prof. Ram Shanker
12. Dr. Kirit Somaiya
13. Shri Anurag Singh Thakur
14. Shri Shivkumar C. Udasi
15. Dr. P. Venugopal

RAJYA SABHA

16. Vacant²
17. Vacant³
18. Shri Bhubaneswar Kalita
19. Shri Mohd. Ali Khan⁴
20. Shri Sukhendu Sekhar Roy⁵
21. Vacant⁶
22. Vacant⁷

¹ Shri Neiphiu Rioh Ceased to be a Member of Committee consequent upon acceptance of his resignation from Lok Sabha w.e.f. 22 February, 2018.

² Shri Naresh Agrawal ceased to be a Member of Committee consequent upon his retirement from Rajya Sabha on 2 April, 2018

³ Shri Satyavrat Chaturvedi ceased to be a Member of Committee consequent upon his retirement from Rajya Sabha on 2 April, 2018

⁴ Elected w.e.f. 29 December, 2017 in lieu of vacancy caused due to retirement of Shri Shantaram Naik.

⁵ ceased to be a Member of Committee consequent upon his retirement from Rajya Sabha on 18 August, 2017 and re-elected w.e.f. 29 December, 2017.

⁶ Shri Ajay Sancheti ceased to be a Member of Committee consequent upon his retirement from Rajya Sabha on 2 April, 2018

⁷ Shri Bhupender Yadav ceased to be a Member of Committee consequent upon his retirement from Rajya Sabha on 3 April, 2018

Sub-Committee – III (Direct and Indirect Taxes)

Convenor	:	1. Shri Nishikant Dubey
Alternate Convenor	:	2. Shri Satyavrat Chaturvedi
Members	:	3. Shri Shivkumar C. Udasi
		4. Shri Bhupender Yadav
		5. Shri Sukhendu Sekhar Roy
		6. Shri Ajay Sancheti

COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE
(2018-19)

Shri Mallikarjun Kharge - **Chairperson**

MEMBERS

LOK SABHA

2. Shri Subhash Chandra Baheria
3. Shri Sudip Bandyopadhyay
4. Shri Prem Singh Chandumajra
5. Shri Gajanan Chandrakant Kirtikar
6. Shri Bhartruhari Mahtab
7. Smt. Riti Pathak
8. Shri Ramesh Pokhriyal “Nishank”
9. Shri Janardan Singh Sigriwal
10. Shri Abhishek Singh
11. Shri Gopal Shetty
12. Dr. Kirit Somaiya
13. Shri Anurag Singh Thakur
14. Shri Shivkumar Chanabasappa Udasi
15. Dr. Ponnusamy Venugopal

RAJYA SABHA

16. Prof. M. V. Rajeev Gowda
17. Shri Bhubaneswar Kalita
18. Shri Shwait Malik
19. Shri Narayan Lal Panchariya
20. Shri Sukhendu Sekhar Roy
21. Vacant
22. Vacant

SECRETARIAT

1. Shri A.K. Singh - Additional Secretary
2. Shri T. JayaKumar - Director
3. Smt. Anju Kukreja - Under Secretary

INTRODUCTION

I, the Chairperson, Public Accounts Committee (2018-19), having been authorised by the Committee, do present this One hundred and fourth Report (Sixteenth Lok Sabha) on Action Taken by the Government on the Observations/Recommendations of the Committee contained in their Twenty-seventh Report (Sixteenth Lok Sabha) on "**Exemptions to Charitable Trusts and Institutions**" relating to Ministry of Finance (Department of Revenue).

2. The Twenty-Seventh Report was presented to Lok Sabha/laid in Rajya Sabha on 16th December, 2015. Replies of the Government to all the Observations/Recommendations contained in the Report were received. The Sub-Committee III of PAC (2016-17) took oral evidence of the representatives of the Ministry of Finance (Department of Revenue) on non-submission of Action Taken Notes on the aforesaid Report on 16th February, 2017. The Sub-Committee III (Direct and Indirect Taxes) for the year (2017-18) also took oral evidence of the representatives of the Ministry of Finance (Department of Revenue) on the subject on 29th August, 2017 and 13th March, 2018. The Sub-Committee considered and adopted the draft Action Taken Report on the subject at their sitting held on 2nd April, 2018. The Report was also considered and adopted by the Public Accounts Committee (2017-18) during their sitting held on 10th April, 2018. As the Report could not be presented to the Parliament during the last tenure of the Committee (2017-18), the Report was considered again and adopted by the Public Accounts Committee (2018-19) during their sitting held on 4th July, 2018. Minutes of the sittings form Appendices to the Report.

3. For facility of reference and convenience, the Observations and Recommendations of the Committee have been printed in thick type in the body of the Report.

4. The Committee place on record their appreciation of the assistance rendered to them in the examination by the Office of the Comptroller and Auditor General of India.

5. An analysis of the action taken by the Government on the Observations/Recommendations contained in the Twenty-seventh Report (Sixteenth Lok Sabha) is given at *Appendix-VI*.

REPORT
PART – I

This Report of the Committee deals with the Action Taken by the Government on the Observations and Recommendations contained in their 27th Report (16th Lok Sabha) on the subject "**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. In their 27th Report (16th Lok Sabha) which was presented to the Lok Sabha on 16th December, 2015, the Committee had dealt with the various issues such as lapses in registration process, allowance of exemptions during assessment, non-monitoring of accumulations of surplus income and Foreign Contributions (FCs) received, inconsistencies in the Act which apparently led to incorrect assessment and non-levy of taxes, irregular exemption to Trusts which were not charitable in nature etc.

3. The 27th Report contains 23 observations/recommendations. The Action Taken Notes in respect of all the 23 observations/recommendations have been received from the Ministry of Finance (Department of Revenue) and these have been categorized as follows:

(i) Observations/Recommendations of the Committee which have been accepted by the Government:

Para Nos. 1, 2, 3, 4, 5, 8, 9, 14, 16, 17, 19, 20, 21, 22 & 23

Total: 15
Chapter - II

(ii) Observations/Recommendations which the Committee do not desire to pursue in view of the replies received from the Government:

Para Nos. 11, 12 & 13

Total: 03
Chapter - III

(iii) Observations/Recommendations in respect of which replies of the Government have not been accepted by the Committee and which require reiteration:

Para Nos. NIL

**Total: NIL
Chapter – IV**

(iv) Observations/Recommendations in respect of which Government have furnished interim replies:

Para Nos. 6,7,10,15 &18

**Total: 05
Chapter –V**

4. The Committee desire that Government should furnish final/conclusive action taken replies to the recommendations for which interim replies have been furnished.

5. The Action Taken Notes furnished by the Ministry of Finance (Department of Revenue) have been reproduced in the relevant chapters of this Report. In the succeeding Paragraphs, the Committee will deal with the action taken by the Government on some of their Observations/Recommendations made in the original Report, which need reiteration or merit comments:

A. Delay in submission of Action Taken Notes

6. The 27th Report (16th Lok Sabha) of the Public Accounts Committee was presented to Lok Sabha/laid in Rajya Sabha on 16th December, 2015. As per procedure, the Ministry of Finance (Department of Revenue) was required to furnish the Action Taken Notes duly vetted by Audit on the observations and recommendations as contained in the Report within a period of six months from the presentation of Report to Parliament i.e. by 15th June, 2016. However, the vetted Action Taken Notes were received in this Secretariat only on 15th March, 2017 i.e. after being pointed out by the Sub-Committee III (Direct and Indirect Taxes) of Public Accounts Committee at their sitting held on 16th February, 2017.

7. On being asked about the reasons for delay in submission of Action Taken Notes, the Secretary, Ministry of Finance (Department of Revenue) in his deposition before the Committee on 16th February, 2017 stated as under:

“This Report of the Public Accounts Committee was presented to the Parliament on 16th of December, 2015, and, we, of course, received it very soon, that is, on

18th December. I was given to understand that normally six months time is available to us for compliance of the PAC's recommendations. But since we could not do it before 16th of June, we requested for extension of time on 14th of June and then the report was finally submitted not very late but by 28th of July. That was the time when the first action taken report on this was submitted. After that, after three months, we got some comments from the C&AG because they had vetted the reply which was given by us to the Report of the Public Accounts Committee and they had raised 23 paragraphs. In respect of 23 paragraphs, we were asked to submit some extra explanation. Now it has already been three months. Since then we are trying because this entire audit is for the period of 2011-13. So, those three years, the entire work of giving exemption and keeping the files of exempted entity was with the field authority. Then, we created in 2014 a Directorate which is centrally now giving all the exemption certificates, etc. So, this is for that period. We have already, since October, 2016, in the last three months, been trying to collect all the information from the field authority.

Sir, my request would be that if you can kindly grant us time up to 15th of March, then we would be able to submit a response to these 23 paragraphs because we want to do a good job."

8. As per procedure in vogue since 1996, it is incumbent upon all the Ministries to furnish Action Taken Notes to the PAC duly vetted by C&AG, within six months of presentation of PAC Report in Parliament. The Committee are constrained to observe from the ATNs that there was avoidable delay at every stage on the part of the Ministry of Finance (Department of Revenue) in the finalization of the Action Taken Notes. The Ministry of Finance have sought to justify the delay by simply enumerating that they were trying to collect further information from the field authority as sought by the C&AG during the course of vetting of ATNs. The Committee find this reply of the Ministry unconvincing because responsibility rested with the Ministry of Finance for timely preparation of ATNs, submission of those to C&AG for vetting and furnish the same to PAC within the prescribed time frame. The Committee also feel that with advanced Information Technology the Ministry could have furnished the requisite Action Taken Notes within the stipulated period of six months. That the Ministry failed to do so is nothing but regrettable. The Committee would now expect the Ministry of Finance to fix responsibility of the officials concerned in this regard and desire to evolve an effective mechanism for taking suitable action at various stages in finalization/vetting of these Action Taken Notes for their timely submission to the Committee in future.

**(B) Delay in granting registration/approval/notification
(Recommendation Para No. 6)**

9. Upon noticing 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 80 G of the Act, the Committee felt that there was certainly something amiss in the working of the Income Tax Department which drastically needs to be streamlined. The Committee had, therefore, desired that application seeking registration for Trusts must be disposed of expeditiously. They had also desired to incorporate provisions to this effect in the Income Tax Act. Further, they had recommended that all cases where exemptions had been granted wrongly/illegally need to be probed with a view to fix responsibility.

10. The Ministry of Finance (Department of Revenue) in their Action Taken Note on the aforementioned recommendation have stated as under:

“The time limit currently provided under section 12A of the Act is indicative in nature. In the context of such provisions, generally the courts have held that non-rejection within specified period does not automatically result in deemed approval. However, considering the fact that in section 10 (23C) of the Act in context of approval, the proviso prescribes specifically that order of approval or rejection shall be passed within one year, similar provision in context of section 12AA of the Act can be considered. This would require amendment of the Act and may be considered during the budgetary exercise of 2017-18. The Income Tax Department is shortly computerizing the functions and processes of Exemption Wing of the Department through the launch of the Exemption Module of the new Income Tax Business Application (ITBA). This will enable the ITD authorities to grant registration u/s 12AA and approval u/s 80G using the online system. This functionality is expected to be launched in July 2016. Once this system stabilizes and all ITD authorities are trained, thereafter, all registrations u/s 12AA and approvals u/s 80G will be done on the system and will be available in the Centralized database. In the next step, CBDT may consider making e-filing of application for registration u/s 12AA and approval u/s 10(23C) and 80G mandatory which will then ensure that taxpayer is able to submit the applications under form 10G (for section 80G), form 56 [for section 10(23C)(iv)&(v)] and form 56D [for section 10(23C)(vi)&(via)] online and also track to their status.”

11. The C&AG during the course of vetting of above said Action Taken Note, made the following comments:

“The Committee may be apprised of the latest status of the Exemption Module of the new Income Tax Business Application (ITBA) and mandatory e-filing of application for registration under section 12AA and approval u/s 10(23C) and 80G.”

12. The counter comments of the Ministry on the above mentioned Audit Comments are as under:

"The Exemption module of ITBA has been implemented. Registration/approval u/s 12AA, 80G(5) [w.e.f. 08.07.2016] and 10(23C)(iv), (v), (vi) and (via) [w.e.f. 23.09.2016] can be done on ITBA by the Principal Commissioner of Income Tax/ Commissioner of Income Tax (Exemption). Training for officers and staff from Exemption division was conducted. As on 05.03.2017, 143 orders have been passed in the Module for grant of registration / approval and 1581 orders passed manually have been uploaded in the Module. As a next step, the respective Forms for application for registration u/s 12AA and approval u/s 10(23C) and 80G(5), are being examined for changes and enhancements to make them compatible with E-filing. This process is expected to be completed by 31/03/2017. After this is done, the proposed Forms will be considered for notification in Income Tax Rules and a decision to make E-filing mandatory will be taken."

13. The Committee observe from Action Taken Notes that in regard to mandatory e-filing of application for registration of Charitable Trusts and Institutions under section 12AA and approval u/s 10 (23C) and 80 G, the respective forms for application for registration under these sections were being examined for changes and enhancements to make them compatible with E-filing. This process was expected to be completed by 31st March, 2017. Thereafter, the proposed Forms will be considered for notification in Income Tax Rules and a decision to make E-filing mandatory would be taken. The Committee are constrained to observe that this issue was pointed out by Audit in their Audit Report for the year 2013 but the Ministry is yet to take such a decision. As delay in granting registration/approval results in revenue loss to the Government the Committee desire that the Department of Revenue should undertake such an exercise expeditiously and apprise the Committee of the progress made in this regard.

**(C) Irregularities in the process of registration of Charitable Trusts/Institutions
(Recommendation Para No. 7)**

14. Keeping in view the 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 had informed that in case this proposal was found acceptable by the CBDT,

suitable amendment to the Instruction No. 3/2007 would be required. They had also submitted that a Review Committee has already been constituted by the Board for the Review of Internal Audit Manual, 2011. The said Committee was being suitably advised to include the said proposal of the C&AG for its consideration. The Committee, therefore, desired 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.

15. The Ministry of Finance (Department of Revenue) in their Action Taken Note have stated as under:

“Review of Internal Audit Manual is in progress. Necessary action will be completed as early as possible.”

16. In their vetting comments, the Office of C&AG stated:

“The Committee may be apprised of the latest status of the review of Internal Audit manual.”

17. In this regard, of the Ministry responded as below:

“The observations of the Hon’ble PAC were considered by the Committee appointed for revision of Internal Audit Manual (IAM). The IAM Committee has now on 27/02/2017 submitted its final report to the CBDT. The same shall be considered and a final decision on the recommendation shall be taken.”

18. The Committee note that the Internal Audit Manual Committee had submitted its final Report to the CBDT on 27th February, 2017 for consideration and final decision thereon by the Ministry on this report. The Committee are disappointed with the reply given by the Ministry which is devoid of any details. In view of this the Committee are doubtful as to whether any concrete action has been taken by the Ministry on the report of the Internal Audit Manual Committee presented on 27.02.2017. The Committee deplore the casual approach shown by the Ministry to their very specific recommendation for revision of Internal Audit Manual. The Committee would, therefore, like to be apprised of the recommendations made by the Internal Audit Manual Committee in their Report and action taken thereon by the Department of Revenue within three months of

the presentation of this report. The Committee expect a detailed, complete, clear and specific reply from the Ministry in this regard.

**(C) Irregular exemption to Trusts creating huge surpluses consistently
(Recommendation Para No. 9)**

19. The Committee had noted that 22 educational 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 found that three institutions namely TatwajananaVidyapeeth, 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 were 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 had not accepted the audit objections in regard to the said three illustrative cases. In this regard, Audit had cited a case of CIT vsSreeSeetharaman 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 noted 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 lead to misuse of such accumulations by the Trust, the Committee had felt 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 had desired that the cases viz. TatwajananaVidyapeeth, 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 had also desired 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.

20. The Ministry of Finance (Department of Revenue), in their Action Taken Note on the abovesaid recommendation have stated as under:

"As per the existing provisions of the Act relating to exemption to Trust or institution in respect of income derived from property held under Trust and voluntary contribution, whereas 15% of the income can be accumulated indefinitely by the Trust or Institution, 85% of such income can be accumulated for a period of five years subject to certain conditions. The conditions are that,-

- (i) The purpose of accumulation and period of accumulation is specified in writing, and
- (ii) The money remains invested in prescribed mode only.

Further, the Finance Act, 2016, inter alia, has introduced a new Chapter XII-EB containing sections 115TD to 115TF titled 'Special provisions relating to tax on accreted income of certain Trusts and Institutions' to provide, inter alia, that where a Trust or Institution being regulated u/s 12AA of the Act ceases to be charitable organisation by way of its conversion into any form which is not eligible for grant of registration under section 12AA, or merger with any entity other than an entity which is a Trust or institution having objects similar to it and registered under section 12AA, or transfers its assets to any trust which is non-charitable or does not transfer it to another charitable trust within a period of one year from dissolution, then amount of net asset based on fair market value as on date of such conversion or merger or dissolution which represents the income accreted to the trust over period of time shall be charged to additional income-tax at the maximum marginal rate.

Therefore, the Act has provisions which draw the requisite balance in ensuring enough funds and flexibility with the Trust to plan long-term investment requirement on one hand and on the other placing restrictions to ensure utilisation for charitable purpose in time bound manner. The potential misuse of assets created out of benefit or exemption has also now been addressed through levy of tax on accreted income which is in the nature of exit tax. Therefore, providing legislatively that accumulation should only be an exception would not be feasible. However, as indicated in para 9, the Assessing Officer can examine more closely such cases of routine and persistent accumulation of income to detect genuineness of activities.

As regards the suggestion for putting a cap on the amount that can be accumulated, it may be mentioned that providing upper cap of amount to be accumulated would not only amount to micro managing the affairs of the Trusts, but also create anomaly of the sort wherein the upper limit of an amount, say Rs 50 lakhs, may be too much for a small Trusts having an annual income of Rs 25 lakhs and meagre for a trust

with higher annual income, say Rs 5 crore, for which, it would be only 10%. Accordingly, to provide a cap would not be pragmatic.

The proposal of the Committee that Trusts are not allowed to keep accumulations for a long period without spending the same on fulfilment of its objectives has been referred to the CBDT for further necessary action at their end. As regards the 3 cases where accumulations have been spent wrongly or illegally, requisite reports were called for from the concerned authorities and the same are detailed as below:-

S.No.	Name of the Case	Action Taken
1.	Ishan Educational Research Society, Delhi.	CIT(E)Delhi has reported that assessment proceedings u/s 147 of the I.T. Act 1961 is being initiated for the A.Y. 2013-14 for taxing the accumulated income of Rs. 38.92 lac which is not utilized during the stipulated period and similarly notice u/s 143(2) of the I.T. Act, 1961 shall be issued for A.Y. 2015-16 by 30.09.2016 for taxing the amount of Rs. 2.09 crore which has not been utilized during the stipulated period in case it is not selected for scrutiny under Computer Assisted Scrutiny Selection (CASS).
2.	TatwajanaVid yapeeth, Mumbai.	CIT(E), Mumbai, has reported that in the case of TatwajanaVidyapeeth - for the A.Y. 2012-13 and 2013-14 - no action is proposed as cases have been completed under scrutiny and details have been verified. For A.Y. 2010-11 and 2011-12, details are being verified and if utilisation is not found to be in order, re-opening will be made in these Assessment Years. For A.Y. 2014-15 case has been re-opened and is getting time barred on 31.12.2016. For A.Y. 2015-16 and 2016-17, the utilisation of accumulation can be verified during the assessment proceedings. If the amount remains unutilized same may be added back in next year.
3.	Symbiosis Society Group, Pune.	It has been reported by CIT(E) Pune that the assessee Trust accumulated the surpluses and utilized the same without violating any provisions of I.T. Act, 1961 and the accumulations have not been spent wrongly or illegally as has been verified by the Assessing Officer and therefore there is no need for fixing responsibility on the part of then Assessing Officers in respect of these nor is there any case which can be made out for cancellation of the registration granted u/s 12AA of the IT Act, 1961 in these cases.

21. The C&AG of India in their vetting have desired to be apprised of the latest status of the issue referred to CBDT. In this regard, replies of the Ministry are as under:

“As per the provisions of the Income Tax Act relating to exemption to Trust or Institutions in respect of income derived from property held under Trust and voluntary contributions, 15% of the income can be accumulated indefinitely whereas maximum 85% of such income can be accumulated for a period of 5 years subject to the conditions –

- (i) The purpose of accumulation and period of accumulation is given by assessee in Form No. 10.
- (ii) The money is invested in specified modes as per section 11(2) of the Income Tax Act, 1961.

The above provisions of Income Tax Act, 1961 are examined by the AOs regularly during scrutiny assessment u/s 143(3) of the Income Tax Act, 1961. The cases which are not selected in scrutiny are assessed summarily u/s 143(1) of the Income Tax Act, 1961 by the CPC, Bangalore. However in these cases accumulation issue cannot be verified by CPC as in many cases assessee leaves accumulation column blank. To plug this loophole a committee was formed in November 2016 in the Central Board of Direct Taxes (CBDT). The committee has been asked to consider the feasibility of amending ITR-7 Form to make accumulation column as a mandatory field to be filled by the assessee. The Committee is expected to submit its report shortly.

Keeping in view the existing provisions in the Income Tax Act as mentioned above, the amendment for not allowing accumulation for a long period without spending the same on fulfilment of the objectives was not considered necessary. However, In Finance Bill 2017, Exemption Charges have been given survey power u/s 133A for on the spot verification interalia in the accumulation issue and other issues of the Income Tax Act, 1961 w.e.f. 01.04.2017

Updated status report of action taken in three cases is as under:

Sl. No.	Name of the Case	Action Taken
1.	Ishan Educational Research Society, Delhi.	CIT (E) Delhi has reported that assessment proceedings u/s 147 of the I.T. Act 1961 has been initiated for the A.Y. 2013-14 and 2015-16 for taxing the accumulated income of Rs. 38.92 lac and Rs. 2.09 crore respectively, which has not been utilized during the stipulated period. Assessments are pending. After completing the assessments, if required explanation of the concerned officer will be called accordingly.
2.	Tatwajana Vidyapeeth, Mumbai.	CIT(E), Mumbai, has reported that in the case of Tatwajana Vidhyapeeth for the A.Y. 2008—09 case was re-opened and has been completed at income of Rs. 1.34 crores for AY 2009-10 the case was completed at Income of Rs. 4.36 crores for the A.Y. 2012-13 and 2013-14 no action is proposed as cases have been completed under scrutiny and details have been verified for A.Y. 2010-11 and 2011-12, cases have been re-opened u/s 147 of the Income Tax Act, 1961. For A.Y. 2014-15 assessment has been completed on 18.11.2016 and a demand of Rs. 36.93 lacs has been raised. For A.Y. 2015-16, case has been selected under compulsory scrutiny so that the utilization of accumulation can be verified

		during the assessment proceedings. If the amount remains unutilized same may be added back in next year. For AY 2016-17 case is yet to be selected for scrutiny. Explanation of the concerned officer has been called for in respect of the completed assessments.
3.	Symbiosis Society Group, Pune	It has been reported by CIT(E) Pune that the assessee Trust accumulated the surpluses and utilized the same without violating any provisions of I.T. Act, 1961 and the accumulations have not been spent wrongly or illegally as has been verified by the Assessing Officer. Therefore there is no need for fixing responsibility on the part of then Assessing Officer in respect of these cases. Nor is there any case which can be made out for cancellation of the registration granted u/s 12AA of the IT Act, 1961 in these cases.

22. The Committee note that to plug the loophole of leaving accumulation column blank in the ITR, a Review Committee was formed in November 2016 in the CBDT, which had been asked to consider the feasibility of amending ITR-7 Form to make accumulation column as a mandatory field to be filled by the assessee. The Committee would like to know about the details of the Report of that Committee and the steps taken by the Ministry thereon. The Committee would also like to be apprised as to whether the ITR-7 Form has since been amended, if so, when and how many cases of consistent accumulation of funds have been noticed by the ITD as a result thereof. The Committee would also desire to be apprised of the present position of assessment proceedings in cases of Ishan Educational Research Society, Delhi, Tatwajana Vidyapeeth, Mumbai and Ritnand Balved Education Foundation , DIT-E, Delhi The Committee feel that since these cases are very old, the Department of Revenue should make earnest and vigorous efforts to complete the same and recover the outstanding dues at the earliest.

**(D) Availing exemptions by accumulating maximum funds
(Recommendation Para No. 10)**

23. While observing 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 recommended the following:

- (i) In cases where there was 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.

24. The Ministry of Finance (Department of Revenue) in their Action Taken Note have stated as follows:

“As recommended in (i) physical inspection of the activities of the Trusts, can always be conducted by the Assessing Officers in suitable cases u/s 133A. Strict monitoring of Form 10 invariably in all the cases to cover all assessments does not seem to be feasible given the limited manpower and policy of conducting scrutiny in limited number of cases.

Cadre restructuring took place in November 2014. The process of recruitment is progressing.”

25. In their vetting comments to the aforesaid Action Taken Note, the Audit have desired to be apprised of the latest status of the recruitment made so far after Cadre restructuring.

26. In response, thereto, the Ministry submitted as follows:

“The status of recruitment(s)/Promotions made so far after cadre restructuring is as under:

Cadre/Year	2013	2014	2015	2016	Remarks
PCCIT	-	19	29	*	*Process initiated
CCIT	-	35	27	30 + 68*	*Process initiated
PCIT	-	292	-	-	
Commissioner	4	48	-	-	
ACIT (PR)	189	199	196	*	*Process initiated for considering around 180 officers
AssttComm- issioner (DR)	180	179*	176*	awaited	* As on 28/02/2017
Inspector	1449	452	323	319*	*Requisition sent to SSC and result awaited
Tax Assistant	329	1017	1528	658*	*Requisition sent to SSC and result awaited

Stenographer	389	87	587	280*	*Requisition sent to SSC and result awaited
M.T.S.			4500*		*Requisition sent to SSC and result awaited

Sr no (ii) of para 10 states as under:

“(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”

As per the existing provisions of the Act relating to exemption to trust or institution in respect of income derived from property held under Trust and voluntary contribution whereas 15% of the income can be accumulated indefinitely by the Trust or Institution, 85% of such income can be accumulated for a period of five years subject to certain conditions. The conditions are that:

- (i) The purpose of accumulation and period of accumulation is specified in writing, and
- (ii) The money remains invested in prescribed mode only.

Further, the Finance Act, 2016, *inter alia*, has introduced a new Chapter XII-EB containing sections 115TD to 115TF titled ‘Special provisions relating to tax on accreted income of certain Trusts and Institutions’ to provide, *inter alia*, that where a trust or institution being regulated u/s 12AA of the Act ceases to be charitable organisation by way of its conversion into any form which is not eligible for grant of registration under section 12AA, or merger with any entity other than an entity which is a Trust or Institution having objects similar to it and registered under section 12AA, or transfers its assets to any trust which is non-charitable or does not transfer it to another charitable Trust within a period of one year from dissolution, then amount of net asset based on fair market value as on date of such conversion or merger or dissolution which represents the income accreted to the Trust over period of time shall be charged to additional income-tax at the maximum marginal rate.

Therefore, the Act has provisions which draw the requisite balance in ensuring enough funds and flexibility with the Trust to plan long-term investment requirement on one hand and on the other placing restrictions to ensure utilisation for charitable purpose in time bound manner. The potential misuse of assets created out of benefit or exemption has also now been addressed through levy of tax on accreted income which is in the nature of exit tax. Therefore, providing legislatively that accumulation should only be an exception would not be feasible. However, as indicated in para 9, the Assessing Officer can examine more closely such cases of routine and persistent accumulation of income to detect genuineness of activities.

As regards the suggestion for putting a cap on the amount that can be accumulated, it may be mentioned that providing upper cap of amount to be accumulated would not only amount to micro managing the affairs of the trusts, but also create anomaly of the sort wherein the upper limit of an amount, say Rs 50 lakhs, may be too much for a small trusts having an annual income of Rs 25 lakhs and meagre for a trust with higher annual income, say Rs 5 crore, for

which, it would be only 10%. Accordingly, to provide a cap would not be pragmatic.

In this regard, it may be mentioned that the Finance Bill, 2017 has proposed with effect from 1st April, 2017 to widen the scope of section 133A of the Act, which empowers an income-tax authority to enter any place, at which a business or profession is carried on, or at which any books of account or other documents or any part of cash or stock or other valuable article or thing relating to the business or profession are kept, for the purposes of conducting a survey, to include any place, at which an activity for charitable purpose is carried on.

As regards second limb of the recommendation, it may be further mentioned that clause (a) of sub-section (2) of section 11 of the Act provides for furnishing of a statement in the prescribed form and in the prescribed manner to the Assessing Officer, stating the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed five years.”

27. The Committee are constrained to observe that since the cadre restructuring took place in November, 2014, recruitment of Inspector, Tax Assistant, Stenographer, and M.T.S., requisition was sent to SSC and results are still pending. Again the reply is silent about the date of sending of requisition to SSC and latest position in this regard. Since increase in manpower would help in timely disposal of cases, increase in tax deduction from the trusts, the Committee would desire that such posts should be filled up expeditiously.

The Committee also take note of the steps taken by the Ministry with effect from 01.04.2017 (i) to widen the scope of Section 133A of the Act empowering Income Tax Authority to enter any place and conduct a survey where an activity for charitable purpose is carried on; and (ii) empowering the Assessing Officer to obtain a statement, under sub Section 2 of Section 11 of the Act, indicating purpose for which income accumulated or set apart and such accumulation shall in no case exceed five years. The Committee hope that the Ministry will enforce the new rule in letter and spirit without enhancing scope of harassment and corruption by Assessing Officers and at the same time to ensure that the accumulated income is used for objectives of the Trusts/Institutes within five years of its accumulation.

**(D) Foreign Contributions (FCs) not utilized for the purpose
(Recommendation Para No. 15)**

28. The Committee observed that in DIT-E, Mumbai there was diversion of funds by two trusts (i) Pratham-Mumbai Education Initiative (AY 10) and (ii) World Renewal Spiritual Trusts (AY 09 and AY 10), who received Foreign Contributions (FCs) to the extent of ₹ 97.14 crore during AY 09 & AY 10 found to be differing in purpose of donation and its utilization. The DIT-E, Chennai, in 4 cases, utilized the FCs for other purposes resulting in the tax effect of Rs. 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 real 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, noted that there was 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 was only during the test check by the Audit, the cases of defaulting Trusts came to the notice of the IT Department and taxes were levied. The Committee, therefore, recommended 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.

29. In their Action Taken Notes, the Ministry of Finance (Department of Revenue) stated as under:

“FCRA Act is administered by MHA which has a database of entities who have received foreign donations. CBDT has signed an MOU with CBEC on 23rd November 2015 to streamline data exchange. Similar MOU for data exchange is proposed to be signed with other data exchange partners. A secure data exchange platform to streamline exchange and utilization of information will be implemented under Project Insight in a phased manner in 2017-18. CBDT will initiate discussion with MHA for sharing of data related to foreign contributions received. The data sharing mechanism will be streamlined after considering the learning of data matching results.”

30. In this connection Audit in their vetting comments had desired to be apprised of the latest status of similar MOU for data exchange proposed to be signed with other data exchange partners. In their counter comments, the Ministry submitted that:

“The draft MOU for data exchange was shared with MCA on 24th December 2015. The list of important MCA forms relevant for Income Tax Department was also shared with MCA on 26th February 2016. A copy of MOU was also shared with SFIO on 22nd August 2016. In February 2017, MCA has communicated their data requirements. The data sources, data structure and exchange mechanism are being discussed. The MOU is expected to be finalized in consultation with MCA in March 2017.”

31. The Committee are constrained to observe that the CBDT has still not formulated a data sharing mechanism with the MHA to keep a track of Foreign Contributions (FCs) received and their utilisation for the declared purpose. The Department of Revenue have merely submitted that a secure data exchange platform to streamline exchange and utilization of information will be implemented under Project Insight in a phased manner in 2017-18 and CBDT will initiate discussion with MHA for sharing of data related to foreign contributions received. Once again the Ministry have submitted a vague reply to a specific recommendation of the Committee. The reply is devoid of particulars about implementation of data exchange programme, sharing of data related to foreign contributions with the Ministry of Home Affairs etc. The Ministry have also not apprised about the finalization of MoU with the MCA for data exchange. The Committee are, unhappy to note that inspite of lapse of more than two years of presentation of PAC Report to Parliament, the data sharing mechanism has still not been developed by the Department of Revenue with the Ministry of Home Affairs. The Committee would, therefore, desire to furnish a detailed reply containing comprehensive information and present status of streamlining the data exchange system alongwith the action taken against officials responsible for the delay.

(E) Inconsistencies in the Income Tax Act, 1961
(Recommendation Para No. 18)

32. The Committee 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 was no provision in the Act to invest corpus fund in specified mode and tax interest earned thereon. The word “substantially financed” was 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 were 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 was no provision under the Act to carry forward deficit. However, in view of adverse decisions of High Courts, the issue was under examination by the CBDT. In respect of issue of repayment of loan also, the suggestions were being examined in CBDT. The Committee had desired to be apprised of the latest position of the issues under examination of CBDT. The Committee were again perturbed to find that there was no enabling provision in the Act to disallow expenses on which TDS had 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 was treated at par with the other deductors for non-compliance of the TDS provisions. No specific dispensation had 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 were 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 had noted this suggestion. The Committee were of the opinion that only noting the suggestion would not suffice until this was adequately implemented. The Committee, had therefore, recommended 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.

33. The Ministry of Finance (Department of Revenue) in their Action Taken Note have stated as under:

The comments in this regard are as under:

- Invest corpus fund in specified mode and tax interest earned thereon;

The provisions relating to investment of accumulated income in specified mode as contained under section 11(5) of the Act. Section 13(1)(d) of the Act provides that no benefit of exemption shall be available, if any funds of trust or institution are invested or deposited in any form or mode otherwise than that provided u/s 11(5) of the Act. Therefore, all funds including corpus fund have to be invested in specified mode. Further, the Act mentions income to be income derived from property held under trust and it does not exclude any income to the trust by way of interest from corpus. As such, the interest earned on the investment made shall only be exempt subject to procedural requirement and conditions under sections 11 to 13 of the Act. If these conditions are not satisfied then interest income is taxable.

- carry forward deficit;
- repayment of loan.

The provisions of law are based on utilisation of income towards charitable purposes. Therefore, no provision for treatment of deficit or its carry forward has been provided in respect of use of borrowed money and repayment of loan. Vide CBDT circular No 100 dated 24.01.1973, it has been clarified that repayment of the loan originally taken to fulfil one of the objects of the Trust will amount to an application of the income for charitable and religious purposes.

Further as regards, the recommendation that as Audit report relating to a Trust does not contain a column for capturing an information regarding TDS deducted/ deductible, appropriate provision may be made for inclusion of such information in the audit report of Trusts, it may be mentioned that in this regard, proposal for amending Income-Tax Rules,1962 to carry out necessary amendments is under examination for making necessary changes in the audit report to be furnished for A.Y 2017-18.”

34. Ministry of Finance (Department of Revenue) in their further Action Taken Notes have submitted as below;

“The proposed amendment of the Income-tax Rules is under progress. The CBDT has constituted a Committee of officers to examine the changes to the audit report in Form No. 10B including the issues raised by the PAC. The Committee has been required to submit its report by 31/03/2017. Necessary amendment will be made thereafter.”

35. The Committee are unhappy to note that the proposed amendment of Income Tax Rules is still under progress. The Committee would desire to be apprised of the present position of amendment of the Income-Tax Rules, and

whether the Committee of officers constituted for examination of changes to the Internal Audit report of the Trusts in Form No. 10B have submitted their report, if so, what observations they have made and action taken thereon by the Ministry. They would desire the Ministry to furnish the requisite details within one month of presentation of this Report to expedite Parliament.

(F) Exemption to Tata Educational and Development Trust

36. The Committee find that the Tata Educational and Development Trust, established on 27.7.2008 was allowed exemption (November 2015) under section 11(1) (c) towards foreign contributions (USD 100 million) made during 2008-09 to 2015-16 to two foreign Universities namely (1) Cornell University and (2) Harvard Business School for creation of Endowment Fund and Construction of a new Executive Building named "Tata Hall" respectively. Section 11 (1) (c) of the Income Tax Act 1961 provides that in the case of trusts created after 01.04.1952, the application of income outside India should be with reference to international welfare in which India is interested whereas the order of CBDT is for charitable purpose. The order of CBDT is not in accordance with the provisions of the Act. Charitable or religious purpose could be applied only in the case of trusts created before 01.04.1952. The funds for the said donations/foreign contribution were received from group companies and other Tata trusts. The group companies sponsoring such grants to Harvard for Tata Hall claimed it as business promotion expenses. Claim of the assessee for exemption was rejected by the Board in June 2014 on the ground that there was no international welfare where India was interested was served the said granting of funds. Construction of Tata Hall at Harvard did not amount to international welfare in which India was interested. Assessments already decided prior to the issue of CBDT's order were reopened under section 154, which was irregular.

Year wise details of Foreign Contribution made

Assessment year	Amount (USD in Million)
2009-10	12.50
2010-11	18.75
2011-12	43.75
2012-13	5.0
2013-14	5.0
2014-15	5.0
2015-16	5.0
2016-17	5.0

Total	100
--------------	------------

37. While furnishing the explanation for such improper exemption which is for promotion of business brand name, the Ministry of Finance (Department of Revenue) in their written replies submitted as follows:

“In the case of M/s Tata Educational and Development Trust, the trust was permitted u/s 11(1)(c) {vide CBDT’s Order No. 180/9/2010 – ITA 1 dated 10/11/2015 –to divert the fund to the extent of ₹100 crores for the purposes of application of the same to the extent the same is applied outside India for charitable purpose for grant for creation of endowment funds through contribution at the Cornell University, for scholarship of Indian Students as well as for joint collaboration project between India and Cornell Scientists and grant for financial assistance to Harvard Business School for construction of a new Executive Building named “Tata Hall”. Therefore, the exemption allowed to the Trust was within the purview of the Act.”

38. The Audit in their vetting comments to the aforesaid reply stated as under:

“Ministry stated that the exemption in the case of M/s Tata Educational and Development Trust was permitted u/s 11(1)(c) vide CBDT’s Order No 180/9/2010-ITA 1 dated 10/11/2015 and the exemption allowed to the Trust was within the purview of the Act. The reply of the Ministry not tenable on the following grounds:

M/s Tata Educational and Development Trust was established on 25/07/2008 with the objectives of establishment of projects by way of foundations or grants in India or outside, support study and exchange programmes that promote the spread of knowledge by way of scholarships and freeships to students and teachers in programmes in India or outside, scholarships/ free-ships to resident Indian students in India and abroad amongst other charitable purpose in India.

- (i) As per section 11(1)(c), in the case of trusts created after 01.04.1952, the application of income outside India should be with reference to international welfare in which India is interested whereas the order of CBDT is for charitable purpose, which is not in accordance with the provisions of the Act. Charitable or religious purpose could be applied only in the case of trusts created before 01.04.1952. Further, even the authority of the Board for issuing an order modifying the provisions of the Act is not covered by the provisions of section 119 of the Act, which enables the Board to give relaxation in cases covering issues related to Chapter IV and VI-A, certain relaxation for condoning delay in application for refund etc and issuing orders for efficient management of assessment and collection of revenue but not for changing provisions of the Act. The claim of the assessee for exemption was rejected by the Board in 2014 vide order dated 02.06.2014, after considering the various submissions made by the assessee justifying the gifting of fund, on the ground that there was no

international welfare where India was interested was served by the said granting of funds. There was no reason for reversing the decision taken in 2014, in November 2015 for grant of exemption as there was no change in the provisions of the Act nor the purpose of the grant of exemption underwent any change so as to attract international welfare in which India was interested. Bulk of the grants were released before the issue of the order and authority under which it was made with retrospective effect is not known. The wording of the provision emphasise that the order should be in existence prior to claiming, i.e., filing of return, to be eligible for exemption.

- (ii) Construction of Tata Hall at Harvard did not amount either to charity or international welfare in which India was interested. Instead it was for the promotion of personal interest of one/some of the trustees of various Tata trusts. 'Gift Agreement' executed between the Dean, Harvard Business School (HBS) and Shri Ratan Tata provided that the pledge for US\$ 50 Million was in consideration of the donors abiding interest in Harvard Business School and that in recognition of donors generous support, a new building to be constructed on the HBS campus will be named in the donor's honour, the Tata Hall. Thus the funding to the HBS is neither charity nor in International welfare in which India was interested. The funds for the said donations were received from group companies and other Tata trusts. The group companies sponsoring such grants to Harvard for Tata Hall claimed it as business promotion expenses as can be seen from their annual accounts (e.g.accounts of M/s Tata Motors Ltd for FY2010-11).
- (iii) The trust deed did not support such grants towards any of the objects of the trust. The purposes for which donation was made did not match with the objects of the trust.
- (iv) Assessments for AYs 2011-12 and 2012-13 already decided prior to the issue of CBDT's order were reopened under section 154 to give the benefit of CBDT's order. In these cases, such reopening under section 154 was irregular as there was no mistake apparent from the records to be rectified.

39. The Committee are concerned to note that Public Charitable Trusts are used to run commercially for profit businesses, and have repeatedly violated provisions of the Income Tax Act. The Committee are aghast to note that the Trusts are investing money in prohibited modes of investments despite the law which strictly prohibiting Public Charitable Trusts from holding such assets post 1973. The value of these prohibited investments run into thousand of crores. The Committee are appalled to note that no action has been taken by the Trustees or the Income Tax Department to remedy the situation. The Committee are again perturbed to find that Tata Trusts have been claiming dividend income which forms the majority of their income, is exempt from the requirement of applying 85

percent of Trust income towards charitable purposes. This accumulation of funds as corpus, without applying towards charitable purposes is seemingly against the very spirit and objects of the Trust itself. In addition, it is seen that tax exempt public charity money is being funneled outside the country to fund rich foreign universities by the Tata Educational and Development Trust as opposed to being used for the benefits of the people of our country. (The Tata Education and Development Trust was set up in 2008 with funds from other Tata Trusts and included a provision that allowed it to spend public charity money overseas, when the mandate of the original Tata Trusts was to spend the public charity money exclusively in India.) At a time when under-privileged students of universities such as Tata Institute of social sciences are protesting lack of basic funds and scholarships, it is difficult to comprehend the justification of spending millions of dollars of public charity money on foreign universities. Given the repeated nature of these violations, the Committee are of the view that these Trusts do not meet the criteria for holding exemption u/s 12AA of the Income Tax Act. The Committee further observe that in 2014, the CBDT *vide* its order dated 2-6-2014 had rejected the application for exemption of these foreign donations, on the ground that there was no international welfare in which India is interested. However, the same was reversed with retrospective effect *vide* an order dated 10.11.2015, without assigning any reason. The Committee are concerned over the serious nature of all the aforesaid issues including continued and blatant tax violations by Trusts and Charitable Institutions including Tata Trusts. Surprisingly, no efforts have been made by the Income Tax Department 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, therefore, desire that an Expert Group under the Income Tax Department may be constituted to look into the violations committed by Tata Trust afresh with a view to devising a procedure for proper and systemic evaluation of such Trusts so that these Trusts do not escape the tax liability and the funds transferred out of country are used by these trusts in supplementing the work of the welfare of the people with in India by catering their educational, medical, socio-economic and religious needs. The Committee desire to be apprised of the list of Charitable Trust/Institutions outside the country who have given scholarships to students of India from the

funds transferred to foreign universities by the Tata Trust during the last five years. The Committee further be apprised of the number of poor and rich students who had received such scholarships. The Committee is also concerned that in addition to the violation of the Income Tax Act, the Committee has also not seen any document to prove that the Trusts have secured permission from the Charity Commissioner to hold these prohibited modes of investment. The Committee recommend that this matter should be brought to the attention of the Charity Commissioner for appropriate action. The Committee also desire the office of the Comptroller and Auditor General of India to submit a report on the violations of the Public Charitable Trusts, and make recommendations on how to remedy the gaps and prevent such recurrences in future.

NEW DELHI;
18 July, 2018
27 Ashadha, 1940 (Saka)

MALLIKARJUN KHARGE
Chairperson,
Public Accounts Committee