TAXATION OF CHARITABLE & RELIGOUS TRUST

(Including 80G & Registration U/S – 12AA)

PART - I

TAXATION & REGISTRATION

"A Trust" not defined in the Income tax Act and hence its meaning is to be understood as given in section 3 of the Indian Trust act - 1882 "A Trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner.

Income of a charitable trust is exempt specifically U/S 10 and under general provisions of sections 11, 12 and 13. To get the exemption the trust should be one established as per provisions of law and its objects should fall within the definition of the term "charitable purposes".

1. **Defination of income of the Trust Section 2(24)(iia)**

   Voluntary contribution received by a trust created wholly, or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes or by an association or institution referred to in clause (21) or (23) or by a fund or trust or institution referred to in sub clause (iv) or (v) or by any university or other educational institutions referred to in sub clause (iiiad) or (vi) or Hospital or other institution referred to in sub clause (iiiae) of clause (23C) of section 10 or by an electoral trust (w.e.f. 1.4.2010)

   Explanation- For the purpose of this sub clause trust includes any other legal obligation.

2. Income in Commercial sense - .

For the purpose of determining the income of the Trust eligible for exemption under section 11, the income arising from property held under Trust constitutes the income of the Trust. It will mean income from property, business, dividends, interest on securities or other interest etc. It will also include donations received by the trust by virtue of the provisions of section 12. In other words, the income for the purpose of section 11 is the income as per the accounts of the trust.

This situation is confirmed by many court pronouncements and by the CBDT in circular no. 5-P (LXX-6) dated 19-6-1968.

3. Definition of "Charitable purpose" Sec – 2(15)

Section 2(15) of the Income Tax Act, 1961 ('Act') defines "charitable purpose" to include the following:-

(i) Relief of the poor

(ii) Education

(iii) Medical relief, and

(iv) The advancement of any other object of general public utility.

(v) Preservation of environments (including water sheds, forests and wild life) and preservation of monuments or places or objects of artistic or historic interest (Added w.e.f. 1.4.2009 i.e. from A.Y. 2009-10)

An entity with a charitable object of the above nature was eligible for exemption from tax under section 11 or alternatively under section 10(23C) of the Act.

The section 2(15) was amended by Finance (No. 2)Act, 2008 w.e.f. 1-4-2009 by adding a proviso which states that the 'advancement of any other object of general public utility' shall not be a charitable purpose if it involves the carrying on of-

(a) Any activity in the nature of trade, commerce or business; or

(b) Any activity of rendering any service in relation to any trade, commerce or business;

for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention of the income from such activity.

Following second Proviso is inserted w.e.f. 1-4-2009

"Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to there in is Ten lakh rupees or less in the previous year."

It is further amended by The finance bill – 2011 that in second proviso for the words Ten lakh rupees the words Twenty five lakh rupees shall be substituted with effect from 1st day of April, 2012.

4. The implications arise from this amendment u/s 2(15)–

(Refer C.B.D.T. Circular No. 11/2008)

Position before the amendment is discussed herein below. The addition of second proviso does not make much difference except the small businesses are now out of the clutches of the first proviso.

4.1 This proviso to section 2(15) will not apply in respect of the first three limbs of Section 2(15), i.e. relief of the poor, education or medical relief. Consequently, where the purpose of a trust or institution is relief of the poor, education or medical relief, it will constitute 'charitable purpose' even if it incidentally involves the carrying on of commercial activities.

4.2 'Relief of the poor' encompasses a wide range of objects for the welfare of the Economically and socially disadvantaged or needy. It will, therefore, include within its ambit purposes such as relief to destitute, orphans or the handicapped, disadvantaged women or children, small and marginal farmers, indigent artisans or senior citizens in need of aid. Entities who have these objects will continue to be eligible for exemption even if they incidentally carry on a commercial activity,

subject, however, to the conditions stipulated under section 11(4A) or the seventh proviso to section 10(23C) which are that

(i) The business should be incidental to the attainment of the objectives of the entity, and

(ii) Separate books of accounts should be maintained in respect of such business.

Similarly, entities whose object is 'education' or 'medical relief' would also continue to be eligible for exemption as charitable institutions even if they incidentally carry on a commercial activity subject to the conditions mentioned above.

4.3 This proviso to section 2(15) will apply only to entities whose purpose is 'Advancement of any other object of general public utility' i.e. the fourth limb of the definition of 'charitable purpose' contained in section 2(15). Hence, such entities will not be eligible for exemption under section 11 or under section 10(23C) of the act if they carry on commercial activities. Whether such an entity is carrying on an activity in the nature of trade, commerce or business is a question of fact which will be decided based on the nature, scope, extent and frequency of the activity.

4.4 There are industry and trade associations who claim exemption from tax u/s 11 On the ground that their objects are for charitable purpose as these are covered under 'any other object of general public utility'. Under the principle of mutuality, if trading takes place between persons who are associated together and contribute to a common fund for the financing of some venture or object and in this respect have no dealings or relations with any outside body, then any surplus returned to the persons forming such association is not chargeable to tax. In such cases, there must be complete identity between the contributors and the participants. Therefore, where industry or trade association claim both to be charitable institutions as well as mutual organizations and there activities are restricted to contributions from and participation of only their members, these would not fall under the preview of the proviso to section 2(15) owing to the principle of mutuality. However, if such organizations have dealings with non-members, their claim to be charitable organizations would now be governed by the additional conditions stipulated in the proviso to section 2(15).

4.5 In the final analysis, however whether the assesses has for its object 'the advancement of any other object of general public utility' is a question of fact. If such assesses is engaged in any activity in the nature of trade, commerce or business or renders any service in relation to trade, commerce or business it would not be entitled to claim that its object is charitable purpose, in such a case, the object of 'general public utility' will be only a mask or a device to hide the true purposed which is trade, commerce or business or the rendering of any service in relation to trade, commerce or business. Each case would therefore be, decided on its own facts and no generalization is possible. Assesses who claim that their object is 'charitable purpose' within the meaning of section 2(15), would be well advised to eschew any activity which is in the nature of trade, commerce or business or the rendering of any service in relation to any trade, commerce or business.

4.6 The finance act 2010 has added second proviso to the aforesaid proviso that if the receipts from the activities referred there in is not exceeding Rs. 10 Lacs. It means the small activity of that kind are now not covered by the first proviso w.e.f. 1-4-2009.

5. **Meaning of 'Property held under Trust'**

The expression 'property used in Section 11 has the widest amplitude. It includes a business undertaking (J.K. Trust vs. CIT (1957) 32ITR 535 (SC)). It certainly takes in movable and immovable property like money, shares, securities, lands, buildings and houses. It may comprise of an interest in a partnership firm (C.I.T. vs. Shivanai Jushal Trust (1980) 4 Taxman 418 (Delhi)

Before the benefit of section 11 (1) can be claimed the property must be held under trust, which implies that the trust in respect of the property must be complete. In other words all the formalities which are required under the law of creation of a trust in respect of the property must be complied with (C.I.T. vs. Chhadani Lal Jain Trust (1977) 106 ITR 179 (All). In case of a trust in relation to an immovable property, the instrument of trust should be duly registered. (C.I.T. vs. Trustees of Dr. Divekar Charity Trust (1977) 110 ITR 227 (Bom.)) Where no immovable property is transferred to the trust, a deed of declaration and confirmation of the trust by which the trustees acknowledge the receipt of moneys, the acquisition of properties there from and the charitable purposes for which they are being held would also suffice (CIT vs. Ganpatrai Sagarmall (1980) 125 ITR 334 (Cal.)).

Further, if merely the income and not the property, out of which the income arises, is held under a charitable or religious trust, no exemption shall be allowed u/s 11 in respect of such income (Lall Choudhary vs. C.I.T. AIR 1956 Pat. 314; CIT vs. Thakur Das AIR 1960 SC 1219). Such income will be taxed in the hands of the settlor, under provisions of Section 60.

6. **Meaning of 'Religious Purpose'**

The expression 'religious purpose' has not been defined under the Act. 'Religious purposes' are necessarily associated with religion. A religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. A religion has its basic in a system of beliefs or doctrines, but it would not be correct to say that religion is nothing but a doctrine or belief.

'Religious purpose' includes the advancement, support or propagation of a religion and its tenets. The income of a Religious trust or institution is entitled to exemption even though it may be for the benefit of a particular religious community or caste. The exemption u/s 11 is, however, confined to public religious trusts only; any income from the property held under a trust for private religious purposes which does not ensure for the benefit of the public is not exemption.

7. TRUST CLAIMING EXEMPTION U/S 10.

Section 10 covers a number of categories but the most important among them is section 10 (23C) which covers income of specified/approved funds, Hospital or institution/approved Hospital or institution and University or Educational institution / approved University or Educational institution, subject to certain Conditions.

The sub section can be divided in to three group:-

(i) Wholly or substantially financed by the government 10 (23C)(iiiab)) & (iiiac)

(ii) The aggregate annual receipts do not exceed the amount prescribed (Rs. 1crore) 10 (23C)(iiiad) & (iiiae))

(iii) The aggregate annual receipts exceeds the prescribed amount (Rs. 1 Crore) are required to obtain approval from prescribe authority to avail exemption U/S 10(23C) (iv) to (via).

The approval is to be obtained from Chief Commissioner/Director General of Income Tax. The application for such approval is required to be sent to the Chief Commissioner/Director General, (under rule 2C & 2CA vide from 56 & 56D), through the commissioner of Income Tax having jurisdiction over the Hospital, University or Educational Institution (Section 10(23C) (iv) to (via).

8. Trust claiming general exemption (Sec. 11)

Subject to the provision of section 60 to 63 the following income

Shall not be includable in the total income of the trust in receipt of such income.

8.1 Income derived from the property held under trust for charitable or religious purposes to the extent.

(a) It is applied for such purposes in India. (Even capital expenditure is also created application of income.)

(b) It is accumulated and set apart for application up to 15% of such income. (11) (1) (a). The expression ‘such income’ only means income accruing or arising in favour of the trust – CIT v. P. Krishna Warriar (1964) 53 ITR 176 (SC).

8.2 If the trust is created before the commencement of this Act (1/4/62) and the trust is partially for such purpose.

(a) To the extent of application of income for such purpose in India.

(b) It is finally set apart for application to such purposes to the extent of 15% of such income. (11) (1) (b).

8.3 For income applied outside India.

(a) The trust is created after 1/4/1952 is respect of income applied for charitable purposes, which tend to promote international welfare in which India is interested.

(b) If the trust is created before 1/4/1952, then income applied outside India for charitable purposes.

Provide the board has by general or special order approved such exclusion.

8.4 Income in the form of voluntary contributions made with a specific direction that they should form part of the corpus of the trust or institution.

9. Conditions are to be complied with to claim the exemptions U/S 11.

9.1 The property from which income is derived should be held under a trust or other legal obligation.

9.2 The property should be held for charitable or religious purposes. In the case of charitable trust created on or after April 1, 1962, the further conditions are:

(a) The trust should not be created for the benefit of any particular religious community or caste;

(b) No part of the income should enure, directly or indirectly, for the benefit of the settler or other specified persons; and

(c) The property should be held wholly for charitable purposes.

9.3 The conditions mentioned at (b) and (c) also apply to religious trusts created on or after April 1, 1962.

9.4 The exemption is confined to the income which is applied to charitable or religious purposes or is accumulated for applying to such purposes within the limits of accumulation permitted under section 11(1) and (2).

9.5 The exemption is restricted to such portion of the income as is applied to charitable or religious purposes in India except in the cases covered by section 11(1)(c).

9.6 The trust should be registered U/S 12A.

9.7 The accounts of the trust should be audited for such accounting year in which its income (without giving effect to the provisions of section 11 and 12) exceeds the exemption limit.

9.8 The funds of the trust should be invested or deposited in any one or more of modes or forms mentioned in section 11(5).

10 Application of Income-

10.1 Income will include voluntarily contributions referred to section 12 – explanation 1 to Sec. 11(1).

10.2 Generally to be eligible for exemption 85% of the income must be applied for charitable or religious purposes because other exemptions and options are available.

10.3 If an assessee fails to abide by the option exercised, then the income not applied will be treated as the income of the previous year succeeding the previous year in which the income was received or derived, depending on the reason for exercising the option (section 11(1B)).

10.4 The assessee trust may also accumulate income for a specific purpose for a period of 5 years if,

(a) A specific notice to that effect is to be given to the assessing officer.

(b) The money so accumulated is invested or deposited in any of the modes specified U/S 11(5) (Section 11 (2)).

10.5 If the purposed specified can not be achieved then the purposed can be amended by a specific application (section 11 (3A)).

10.6 The word 'applied' necessarily does not mean 'spent'. Even if the amount has been earmarked and allocated for the purposes of the institution, it will be deemed to have been applied for its purposes – CIT v. Radhaswami Satsang Sabha (1954) 25 ITR 472 (All.).

10.7 It is not correct to equate the word 'applied' with the word 'spent'. If the Legislature intended that the amounts should actually be spent, there was nothing preventing it from using that word. The actual payment is irrelevant for purposes of finding out whether there has been an application of the funds – CIT v. Trustees of H.E.H. the Nizam's Charitable Trust (1981) 131 ITR 497 (AP).

10.8 The word 'applied' is wider in import than the word' expenditure' means 'disbursement'. 'Expend' means to put out or distribute; to spend. Considering these two words, the word 'applied' is of a wider import. The money or amount will not go out irretrievably when it is 'applied' to a purpose – CIT v. St. George Forana Church (1988) 36 Taxman 42/170 ITR 62 (Ker.).

11 Deemed Application of Income-

As per clause 2 of explanation to Section 11(1) provides deemed application of income if the income is received in previous year but applied for religious or charitable purposes in subsequent year by any amount –

(i) For the reason that the whole or any part of the income has not been received during that year, or

(ii) For any other reason, then –

(a) In the case referred to in sub-clause (i) so much of the income applied to such purposes in India during the previous year in which the income is received or during the previous year immediately following as does not exceed the said amount, and

(b) In the case referred to in sub-clause (ii) so much of the income applied to such purposes in India during the previous year immediately following the previous year in which the income was derived as does not exceed the said amount.

May at the option of the trust to be exercised in writing to the assessing officer before the expiry of time allowed for filing of return U/S 139 (1) then in that case such income will be deemed to be income applied during the previous year.

12 Registration with the Commissioner–(Section- 12A) (Now Sec.12AA(1)(b)

The trust should apply for registration (form No. 10A). If an assesses is an institution whose object is charitable as defined under section 2(15), it would be entitled to registration under section 12A, even though, as per definition of 'person' under section 2(31), it is falling in other category like company or AOP or local authority – Gujarat Maritime Board v. CIT (2005) 147 Taxman 31 (Ahd.) Registration under section 12A is a condition precedent for availing benefit under sections 11 and 12. Unless and until an institution is registered under section 12A, it cannot claim the benefit of section 11(1)(a) – U.P. Forest Corporation v. CIT (2007) 165 Taxman 533 (SC).

13. Conditions for Registration- (Sec – 12A)

The two conditions which are provided under section 12A, for registration of a trust are, firstly, that the person concerned should have made an application for registration in Form No. 10A to the prescribe authorities within the time limit. The second condition provides for the keeping of the accounts in a particular manner and further that such accounts should be audited.

The language of the section does not show that in order to be able to get registration under section 12A, there is necessity of first establishing as to how the concerned institution or, as the case may be, the society would be able to claim the exemptions under section 11 or 12. At the stage of grant of certificate under section 12A, the only enquiry which could possibly be made would be whether the society has actually made an application in time and whether the accounts of the society are maintained in the manner as suggested by the said section. Beyond that the scope of enquiry would not go – New life in Christ Evangelistic Association (NLC) v. CIT (2000) 111 Taxman 16 (Mad.). At the stage of consideration of the issue of registration under section 12AA, it is not a sine qua non to examine the aspect of the application of income. When the Commissioner has not doubted the aims and objects of the society, he can not through away the application of registration on this pretext – Modern Defense Shikshan Sansthan v. CIT (2007) 108 TTJ (Jodh.) 732. While considering an application for registration under section 12AA sufficiency or otherwise of initial contribution made by founder of trust and dedicated to objects of trust, is not a relevant factor – Acharya Seva Niyas Uttaranchal v. CIT (2007) 13 SOT 54 (Delhi) (URO).

14 Registration Procedure – (Sec 12AA)

Section 12 AA provides for a procedure to be followed for grant of registration to a trust or institution. The Commissioner shall call for documents and information and hold enquiries regarding the genuineness of the trust or institution. After he satisfied about the charitable or religious nature of the objects and genuineness of the activities of the trust or institution, he will pass an order refusing registration, subject to the condition that an opportunity of being heard shall be provided to the applicant before an order of refusal to grant registration is passed by the commissioner and the reasons for refusals of registration shall be mentioned in such order.

15 Cancellation of Registration – (Sec – 12 AA (3)

If the commissioner is satisfied that the activities of any trust or institution are not genuine or not carried out in accordance with the object of the trust or institution, he shall pass an order in writing (after providing an opportunity of being heard to the concerned trust or institution), to cancel the registration granted under section 12AA or registration obtained u/s 12A (Added w.e.f. 1-6-2010)

However, the commissioner can not utilize its power to cancel registration on basis of a search and seizure proceeding, prior to completion of the search and seizure assessment -Kalinga Inst. of Ind. Techn.v.CIT(2008)23SOT74 (Cuttack).

16. How to compute income from property held for charitable purposes –

For this purpose income means real commercial income which has been received by the assessee. It shall be computed not in accordance with the provisions of the Income- Tax Act but in accordance with the normal rule of accountancy. The "accumulation" or "application" in section 11(1)(a) must be of a real income. This view has been also adopted by the Central Board of Direct Taxes in Boards Circular dated May, 19, 1968 which makes it clear that the word "income" in section 11(1)(a) must be understood in commercial sense. The following points should note in this regard:

17. Computation of Total Income-

(i)	House property income- (Normal Working)	X
(ii)	Business Income (Normal Working)	X
(iii)	Capital Gain	X
(iv)	Income from other sources Gross receipts of the trust/institutions (Including donations credited to other funds Other than corpus and specific fund donations Where income is to be utilized).	X

	Total	X
	Less – Establishment Exp. (Including Depreciation)	E

	Net Income	X1

Net Income		X1
<u>Less - Deduction U/S 11</u>		
(i) Accumulation @ 15% (on the gross income)	Y	
(ii) Application of income for Charitable objects	Y	
(iii) Application of income for Creation of new capital Assets.	Y	
(iv) Deemed application of income. (Required and/ or spent in next year as the Case may be by Permitted option)	Y	
(v) Accumulation of income for specified purpose (Permitted for 5 years by filing of form 10)	Y	Y1
Total Income		(X1 – Y1)

18. Administrative expenses

A view is being taken by tax authorities that administrative expenses of a trust should be deducted to compute the income of a trust for the purpose of section 11. Treatment of such expenses as a deduction while computing income, instead of treatment of such expenditure as an application of income for charitable or religious purposes results in reduction of the permissible accumulation under section 11(1) (a). while it is no doubt true that the concept of commercial income requires deduction of expenses directly incurred to earn the income (such as fund raising expenses, expenses for soliciting donations, interest collection charges, etc.) it cannot be said that all the administrative n theexpenses are incurred only to earn income. Administrative expenses may also be incurred for the general objects and activities of the trust. Hence administrative expenses should not be deducted from the gross income to compute income for the purpose of sec. 11, unless they are directly attributable to the earning of such income. Such expenses are however deductible under the provisions of section 11 (1) (a), as an application of income for charitable or religious purposes.

This view is supported by the decision of High Courts MP. Cal. & Bom. And the Supreme Court in CIT vs. Programme for community Organization, 248 ITR 1, held that having regard to the plain language of section 11(1)(a) it is clear that a charitable or religious trust is entitled to accumulate twenty-five percent of its income derived from property held under trust.

19. Capital Gain

When a capital asset, being property held under trust is transferred resulting in capital gain, it may not be possible for the trust to use the entire capital gain during the year for charitable or religious purposes to fulfill the conditions of section 11 for exemption. Hence section 11(1)(a) provides that if such sale proceeds are utilized for acquiring another capital asset, the capital gain shall be deemed to be applied for the objects of the Trust. If only part of the sale proceeds are reinvested, the excess of the re-investment over the cost of the transferred asset is deemed to be applied and qualifies for exemption.

Though the sub-section does not mention any time limit for reinvestment it should be within the same year or the next year, as per the explanation of section 11(1). The reason for this time limit is that the capital gain is deemed to be applied for charitable purposes to the extent of cost of the capital asset acquired. If so the time limit should be the same as the time limit for application

of income under section 11(1). The Calcutta High Court, in the case of CIT vs. East India Charitable Trust (1996) 206 ITR 152 has confirmed this view.
As per the instruction of the board, fixed deposit with banks for a period exceeding six months can be considered to be capital asset. (Instruction no. 883 – F. No. 180/34/72 – IT (AI) of 25.9.1975) courts have had that even F.D. with banks less than 6 months are also capital asset but F.D. with company is not a capital asset.

20. Tax deduction at source- The amount deducted as tax at source cannot be considered as "income" for this purpose – CIT v. Jayshree Charity Trust 1985 Tax LR 247 (Cal.). In other words, income to be applied under section 11(1) has to be ascertained after deducting income-tax liability – CIT v. Baroda Industrial Development Corpn. Ltd. (1986) 24 Taxman 36 (Guj.).

21. Depreciation – Depreciation should be allowed while computing such income for this purpose – CIT v. Seth Manilal Ranchhoddas Vishram Bhavan Trust (1992) 105 CTR 303 (GUJ.). A trust can claim depreciation on assets even if the cost of assets has been fully allowed as application of income under section 11 in past years. Likewise, one can claim depreciation on assets which is received on account of transfer from another trust and cost of acquiring of which is not incurred by the asseessee. – CIT v. Institute of Banking Personnel Selection (IBPS) (2003) 131 Taxman 386 (Bom.).

22. Voluntary contributions – Voluntary contributions or donations with a direction to form part of corpus of trust is not chargeable to tax. Any other contribution / donation are deemed to be part of income derived from property held under trust. Tax is to be levied after deducting the expenditure.

23. Income Tax refund – Refund of income tax can by no stretch of imagination be held as income derived from property held under the trust – CIT v. Hamadard Dawakhana (Wakf) (2002) 120 Taxman 186 (Delhi).

24. Tax free income – Section 10(1) of the act excludes agricultural income. Agricultural income will not form part of total income for the purpose of computing the accumulation of income in access of 15 percent of the total income as laid down under section 11- CIT v. Nabhinandan Digamber Jain (2002) 257 ITR 91 (MP). Similar case will be for dividend and mutual fund income.

25. ACCUMULATION ON GROSS V/S NET INCOME: Accumulation of 15% of the income derived from the property has to be calculated on the income derived by the charitable trust and not on amount remained after expending money on charitable purposes – CIT v. Program for Community Organization (2001) 116 Taxman 60 (S.C.)

26. PAYMENT OF TAX: The expenditure incurred by way of payment of tax out of the current years income has to be considered as application for charitable purposes. CIT v. Janaki Ammal Ayya Nadar Trust (1985) 23 taxman 416 (Mad.). Even if entire income is utilized to pay taxes and no income is available for application u/s 11 (1) (a), entire income of the Trust shall be exempt and it can not be taxed on ground that the trust has failed to apply its income to charitable or religious purposes. CIT v. Apostolos Raptakos Trust (1995) 83 Taxman 422 (Bom.)

27. REVENUE OR CAPITAL PURPOSES: Application of the amount can be for revenue or capital purposes. So long as the expenditure is for capital purposes on the object of Trust income would be exempt. CIT v. Kannakia Parmeshwari Devasthanam & Charities (1982) 133 ITR 779 (Mad.).

28. EXPENDITURE TO THE CONTRARY OF TRUST DEED: u/s 11(1)(a) what is relevant is application of income for charitable purposes and exemption u/s 11 is available even if trustees have acted by spending money in contrary to terms of trust deed which does not empower them to apply trust income in India. Trustees of H.E.H. the Nizam's Pilgrimage Money Trust v. CIT (1987) 65 CTR (AP) 290.

29. EXPENDITURE OF EARLIER YEAR: There is nothing in language of section 11(1)(a) to indicate that expenditure incurred in earlier year cannot be met out of income of subsequent year. Utilising the income for meeting expenditure of earlier year would amount to application of income for charitable purposes. CIT v. Shri. Plot Swetambar Murti Pujak Jain (1994) 119 CTR (Guj.) 144; Govindu Naicker Estate v. Asst. Director of IT (1999) 105 Taxman 719 (Mad.).

30. EXCESS APPLICATION: Amount of excess application of the last year can be set off against the income of subsequent assessment year. CIT v. Matriseva Trust (2000) 242 ITR 20 (Mad.).

31. REPAYMENT OF LOAN IS APPLICABLE OF INCOME – Repayment of loan originally taken to fulfill one of the objects of the trust will amount to an application of the income for charitable and religious purposes – Circular no. 100, dated 24-1-1973.

32. LOAN FOR HIGHER STUDIES – As regards the loans advanced for higher studies, if the object of the trust is advancement of education and granting of scholarship loans is only one of the activities carried on for the fulfillment of the objectives of the trust, granting of loans, even if interest bearing, will amount to the application of income for charitable purposes. As and when the loan is returned to the trust, it will be treated as income of the year – Circular No. 100, dated 24-1-1973.

33. Anonymous Donation (Sec – 115 BBC)

Finance Act 2006 has introduced a new charging provision namely Section 115 BBC with effect from 1st April, 2007. (Assessment Year 2007-08) This section provides that where total income of the assessee being a person in receipt of income on behalf of

(a) Any education institution referred to in sub clause (iiiad) & (vi) of section 10 (23C),

(b) Any hospital/institution referred to in sub-clause (iiiae) & (viA),

(c) Any fund or trust or institution referred to in sub clause (iv) & (v) of section 10 (23C) or

(d) Any trust or institution referred to in section 11.

The Income Tax is payable:

(A) <u>Up to A.Y. 2009-10</u>

(i) Amount of income tax calculated on income by way of anonymous donation at the rate of 30%.

(ii) Amount of Income tax with which the assessee would have been chargeable, had his total income been reduced by the amount of income referred to in sub- clause (1).

(B) <u>From A.Y. 2010-11</u>

(i) The amount of income- tax calculated at the rate of thirty per cent on the aggregate of anonymous donations received in excess of the higher of the following namely:-

(a) Five percent of the total donations received by the assessee; or

(b) One lakh rupees, and

(ii) The amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the aggregate of anonymous donation received.

The term “anonymous donation” means any voluntary contribution referred to in section 2(24)(iia), where the person receiving such contribution does not maintain the record of the identity indicating the name and address of person making such contribution and such other particulars as may be prescribed. Sub-Section (2) of section 115 BBC provides that the exclusion which are

(i) Any trust or institution created or established wholly for religious purposes

(ii) Any trust or institutions created or established wholly for religious and charitable purposes other than any anonymous donation made with a specific direction that such donation is for any university or other educational institution or any Hospital or other medical institution run by such trust or institution.

34. Audit U/S 12A(b) of the Act

Where the total income of the Trust as computed under the Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount not chargeable to tax in any year (currently Rs. 1,60,000), the accounts of the Trust for the year must be audited by a Chartered Accountant and the Trust must file the auditors report in the prescribed form No. 10B, setting forth the prescribe particulars, with the Return of Income. The concept of income for this purpose would be slightly different from that for the purpose of the exemption under section 11, as the reference to total income under this section is to the income as computed under the Income Tax Act, and not to the commercial concept of income.

The report is divided into two parts. The first part requires the Auditor to certify about the maintenance of proper books of account and whether the accounts show a true and fair position. The Second part requires the Auditor to merely set forth the years surplus, accumulation of income and utilisation of

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income or property of the Trust for the excluded categories of person like founder, author, Trustees etc.

If the income is below the maximum amount not chargeable to tax at the time of filing the return, but is likely to exceed that amount as per proposed assessment due to circumstances not originally known, the trust may submit the report during the course of assessment proceedings. The CBDT has issued instructions regarding acceptance of belated report as under:

"Charitable Trust – Requirement of Filing Audit Report in Form No. 10B – Section 12 A (b) – Instructions regarding

The board have considered whether the requirement under section 12 A(b) of filing Audit report along with the return of income is mandatory so as to disentitle the trust from claiming exemption under section 11 and 12 in case of omission to furnish such report in the prescribe form along with the return.

Normally, it should be possible for a charitable or religious trust or institution to file the auditors report along with the return of total income, where such trust or institution claims exemption under section 11 and 12. However, in cases where for reasons beyond the control of the assessee, some delay has occurred in filing the said report, the exemption as available to such trust under sections 11 and 12 may not be denied merely on account of delay in furnishing the auditors report and the Income- tax officer should record reasons for accepting a belated audit report"

35. Forfeiture of exemption

(a) If the trust has not invested or deposited its funds in the modes specified u/s 11(5) or which holds any shares in a company (other than Govt. company or corporation) subject to certain exceptions.

(b) If the income is not applied for Public purposes.

(c) If the income is applied to a particular religious community or caste trusts.

(d) If any part of its income or property is use or applied or ensures, directly or indirectly for the benefit of a person specified in section 13(3)

i) The author or founder of the trust.

ii) A substantial contribute or whose total contributions to the trust up to the end of relevant previous year exceed Rs. 50000.

iii) Where the author or contributor is an HUF a member of the family.

iv) The trustee or manager of the Trust.

v) Any relative of such author, founder, contributor, member, trustee, or manager and

vi) any concern in which any of the persons aforesaid has a substantial interest.

Note-

1) As per explanation 3 to sec. 13 a person is said to substantial interest in a concern in following cases:-

(a) Where the concern is a company then 20% of voting power are owned by him or all of such persons in aggregate; or

(b) In case of any other concern if he or all of such persons are entitled to at least 20% of its profits in the aggregate.

Some examples of benefit deemed to be accrued to specified person (Directly or Indirectly)

Money lent

Use of property

Remuneration paid (except reasonable for professional competency)

Provision of services

Purchase of property

Sale of property

Diversion of income or property

Investments in concerns of substantial interest.

36. Penalty

Penalty U/S 272A(2) (e) is for trusts (for not filing of return by the date. Penalty for late filing is minimum Rs. 100/- per day and maximum Rs. 200/- per day.)

37. TDS Provisions (Sec. 192 to 206 A)

- All provisions are applicable similar to other ‘persons’/ assessees’
- Certificate for deduction at lower rate -Sec. 197(1).

38. Advance payment of taxes (Sec. 207 to 219)

All provisions are applicable similar to other ‘persons’ / assesses’

PART - II

GRANT OF EXEMPTION CERTIFICATE U/S 80G

Sub Section (1) -

" In computing the total income of an in assessee these shall be deducted in accordance with and subject to the provision of this section"

1) In certain types of funds & institutes mentioned in sub section – 2 (Mainly under Government's direction) an allowed at 100% deduction of donations to these funds and organization or as the case may be, sums of such nature plus fifty percentage of the balance of such aggregate and

2) In any other case an amount equal to 50% of the aggregate of the sums specified in sub section 2.

Sub Section – 2 (a)

This section consists a list of the funds & institution created be under direction of the government under sub clause I to III, and sub clause IV to VII a consist of other funds which approved for this purpose under this act.

Sub Section – 3

This Section is omitted from 01.04.1994

Sub Section – 4

This sub section restricts the donation where the aggregate of donations made under subcluse IV to VII (a) of Sec 2(a), to 10% of the gross total income, as reduced by any portion there of on which income tax is not payable under any provision of this act and by any amount in respect of which the assessee entitled to a deduction under any other provision of this chapter i.e. chapter VI – A

Sub Section – 5

Section 80G applies to donations to any institution or fund referred to tin sub – clause (iv) of clause (a) of sub – section (2), only if it is established in India for a charitable purpose and if it fulfiles the following conditions :-

I) Where the institution or fund derived any income, such income would not be liable to inclusion in its total income under the provisions of section 11 & 12 or clause (23AA) or clause (23C) of section 10 :

Where an institution or fund derives any income, being profits and gains of business, the condition that such income would not be liable to inclusion in its total income under the provisions of section 11 shall not apply in relation to such income, if –

(a) The institution or fund maintains separate books of account in respect of such business;

(b) The donation made to the institution or fund are not used by it, directly or indirectly, for the purpose of such business, and

(c) The institution or fund issues to a person making the donation a certificate to the effect that it maintains separate books of account in respect of such business and that the donations received by it will not be used directly or indirectly for the purposes of such business; and

II) The instrument under which the institution or fund is constituted does not or the rules governing the institution or fund do not contain any provision for the transfer or application at any time of the whole or any part of the income or assets of the institution or fund for any purpose other than a charitable purpose

- This condition will not requires to be fulfilled of a part of the income of trust is given to the members of the family or the author of the trust with a condition that such part would be spent on a particular charitable object of the trust

- After giving donation if some beds were reserved for the employees of the assessee – company it cannot be said in the present case that the assessee had any profit motive or has given donation in consideration of something done or meant to be done to the assessee. The object of making the donations appears to be purely a charitable nature, namely, providing relief to the poor including the employees if the assessee and reservation of a few beds for patients, who may be recommended by the assessee's officers, could not take the donations out of the purview of Sec.15B of the Indian I.T.Act,1922. It is the public generally which was to get benefit out of the donations made by the assessee to the hospital and if the employees of the assessee were also benefited thereby, it was nto of much consequence so long as the general public was not denied or refused the benefit of the hospital facilities. CIT V/S Maharaja Shri Umed Mills (1984) 148 ITR 72 (Raj).

III) The institution or fund is not expressed to be for the benefit of any particular religious community or caste;

EXCEPTIONS :

a. An Institution or fund established for the benefit of scheduled casted, backward classes, schedule tribes or of women and children shall not be deemed to be an institution or fund expressed to be for the benefit of a religious community or caste within the meaning of clause (iii) of sub section (5) – Explanation 1 to section 80G.

b. “Charitable purpose” does not include any purpose the whole or substantially the whole of which is of a religious nature – Explanation 3 to section 80G

c. Notwithstanding anything contained in clause (ii) of sub section (5) and explanation 3, an institution or fund which incurs expenditure, during any previous year, which is of a religious nature for an amount not exceeding five percentage of its total income in that previous year shall be deemed to be an institution or fund to which the provision of section 80G apply – Section 80G (5B).

d. Any donation given for the renovation or repairs of any temple, mosque, gurudwara, chuch or other place notified by the government to be historic, archaeological or artistic importance or to be a place of public worship of renown through any state or states, shall qualify for the benefit to a particular religious community

IV) The institution or fund maintains regular accounts of its receipts and expenditure;

V) The institution or fund is either constituted as a charitable trust or is registered under the societies registration act, 1860(21 of 1860), or under any law corresponding to that Act in force in any part of India or under Section 25 of the Companies Act,1956 or is a University established by law, or is any other educational institution recognized by the government or by a university established by law, or affiliated to any University established by law, or is an institution financed wholly or in part by the Government or a local authority and

VI) In relation to donations made after the 31st day of march,1992 the institution or fund is for the time being approved by the commissioner in accordance with the rules made in this behalf,

[That any approval shall have effect for such assessment year or years not exceeding five assessment years (earlier three years), as may be specified in the approval]

This provision is omitted by the Finance Act (No 2) 2009 w.e.f. 01.10.2009

After this amendment the approved once granted shall continue to be valid in perpetuity. Further the Commissioner will also have the power to withdraw the approval if the Commissioner is satisfied that the activity of such an institution or fund are not genuine or are not being carried our in accordance with the objects of the institution or fund. This amendment will take effect from October 1, 2009 shall be deemed to have been extended in perpetuity, Unless specifically withdrawn. However in case of approvals expiring before October 1, 2009, these will have to be renewed and once renewed these shall continue to be valid in perpetuity, Unless specifically withdrawn.

VII) Where any institution or fund had been approved under clause (vi) for the previous year beginning on the 1st day of April,2007 and ending on the 31st day of March,2008 such institution or fund shall for the purpose of this section and notwithstanding anything contained in the proviso to clause (15) of Section 2, be deemed to have been,-

(a) Established for charitable purposes for the previous year beginning on the 1st day of April,2008 and ending on the 31st day of March,2009.

(b) Approved under the said clause (vi) for the previous year beginning on the 1st day of April,2008 and ending in the 31st day of March, 2009.

Requirements for approval of an institution or fund under section 80G

Requirements for the approval u/s 80G has been specified under rule 11AA as under:

1) The application for approval of any institution or fund shall be made in form No. 10G in triplicate.
2) The application shall be accompanied by the following documents namely:-
   i) Copy of registration granted under section 12A or copy of notification issued under section 10(23) or 10 (23C) ;
   ii) Notes on activities of institution or fund since its inception or during the last three years, whichever is less ;
   iii) Copies of accounts of the institution or fund since its inception or during the last three years, whichever is less.

3) The commissioner may call for such further documents or information for the institution or fund or cause such inquiries to be made as he may deem necessary in order to satisfy himself about the genuineness of the activities of such institution or fund.

Usually following additional information is called:

i) Certificate of non-violation of provisions of section 11, 12 and 13.

ii) Certificate that condition of section 80G(5) have been satisfied.

iii) Name and Address of Trustees.

iv) Copy of PAN of Trust & all trustees.

v) List of Donors of Rs. 10,000/- & above.

vi) Declaration of no change in constitution & object of trust.

vii) Copy of certificate of registration of trust.

viii) Certified copy of Trust deed duly registered under Bombay Public trust Act, 1950.

ix) Copy of acknowledgement for filing returns of last three years.

x) Copy of financial statement along with the form 10B of last three years.

xi) Copy of last 80G Certificate.

4) Where the commissioner is satisfied that all the conditions laid down in clauses (i) to (v) of sub-section (5) of section 80G are fulfilled by the institution or fund, he shall record such satisfaction in writing and grant approval to the institution or fund specifying the assessment year or years for which the approval is valid.

5) Where the commissioner so satisfied that one or more of the conditions laid down in clauses (i) to (v) of sub section (5) of section 80G are not fulfilled, he shall reject the application for approval, after recording the reason for such rejection in writing However no order of rejection of an application shall be passed without giving the institution of fund an opportunity of being heard.

6) The time limit within which the commissioner shall pass an order either granting the approval or rejecting the application shall not exceed six month from the date on which such application was made. In computing the period of six months, any time taken by the applicant in not complying with the directions of the Commissioner under sub-rule (3) shall be excluded

- The authority conferred with power to grant exemption is not debarred from finding out the real purpose as distinguisher from the ostensible purpose and if it may find that the purpose of the trust was other than charitable then nothing debards the authority from denying the approval. The purpose of establishment – the real purpose as distinguished from the ostensible purpose – is germane to the enquiry which the commissioner has to hold while granting approval under section 80G(5)(vi).

- Scope of enquiry for the purpose of institution for grant of special deduction u/s 80 G, The inquiry of the authority approval cannot act as an assessing authority. The inquiry of the authority should be confined to finding out if institution satisfies prescribed condition. Actual assessment of institution would not affect claim for special deduction u/s 80G

- Once the applicant trust was registered u/s 12A and was granted approval u/s80G(5) and also renewed thereafter, CIT was not justified in refusing further renewal of approval on the ground that the income of the applicant trust was likely to be included in the taxable income for not compiling with the requirements of S.11 N.N.Desai Charitable Trust V. Commissioner of Income – Tax 246 ITR 452(Guj)

- The trust had made deposits in institution not approved for investment contravention of the provision of S.11(5) by the trust may be a material factor but can not be the sole determinative factor for refusing renewal was quashed and set aside. The commissioner was directed to grant renewal to the trust Orpat Charitable Trust v. CIT [2002] TR 690(Guj.) at the closer of the relevant previous year, as it is not possible to predicate these conditions in praesenti when the donation is made.

- It was held that the authorities were right in rejecting the application filed for renewal of exemption under section 80G(5) of the Act the institution has made very low expenses out of the total donations received under section 80G(5) of the Act.

- The provisions of the Act and the Rules that these nowhere stipulate that the continuation of the benefit u/s 80G(5) shall be granted only upon payment of the outstanding demand.

Application for approval for the trust / institutions specified u/s 80G (2) (b)

Any sum paid for the renovation or repair of temple, church , mosque, gurdwara or any other place notified by the Central Government in the Official Gazette to be a place or historic, archaeological or artistic importance or a place of worship of renown throughout any state or states, will qualify for deduction from the total income of the donor to the extent of 50 per cent of the donations. The DGIT (E) is the prescribed Authority to whom such application is to be made and he will recommend the applicants case with his comments to the CBDT for such notification.

The applicant under section 80G(2)(b) has to submit an application to the DIT(E)/CIT, with the following particulars / documents:

a) Applications on plain paper, in quadruplicate stating name of the temple, mosque, gurdwara, church or other place (as distinct from the name of the institution / trust undertaking renovation / repair work) with precise particulars to identify the name.

b) Copy of the trust deed or evidence of the instrument of creation of the trust, if any

c) The composition of the managing committee of the organization undertaking renovation/repair work.

d) Whether the permission of the State Government authorities has been obtained to carry out the renovation / repair work.

e) The category in which the notification is to be recommended is to be whether of historical importance or archaeological importance or artistic importance or a place of public worship of renown throughout a state or states. IN case it falls in more than one category, the same should specifically be mentioned.

f) In case recommendation is for the notification as building of historical, archaeological or artistic importance, the supporting material preferably with some expert opinion should be furnished.

g) In case the recommendation is for notification as a place of public worship renowned throughout a state if states the particular state or states must be specified and the material in support of the contention of importance should be furnished.