TAXATION OF CHARITABLE TRUSTS AND INSTITUTIONS - A STUDY

Celebrating the 60th Year of Excellence

The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

TAXATION OF CHARITABLE TRUSTS AND INSTITUTIONS - A STUDY

[Based on the law as amended by the Finance Act, 2008]

Direct Taxes Committee
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

© THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form, or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior permission in writing, from the publisher.

Website	:	www.icai.org
E-mail	:	dtc@icai.org
First Edition	:	January, 1978
Reprinted	:	July, 1978
Second Revised Edition	:	October, 1980
Third Revised Edition	:	March, 1984
Fourth Revised Edition	:	May, 1999
Fifth Revised Edition	:	January, 2002
Sixth Edition	:	February, 2009
Price	:	Rs. 300/-
ISBN No	:	978-81-8441-213-0
Published by	:	The Publication Department on behalf of CA. Mukta K. Verma, Secretary, Direct Taxes Committee, The Institute of Chartered Accountants of India, A-94/4, Sector-58 Noida -201 301.
Printed by	:	Sahitya Bhawan Publications, Hospital Road, Agra 282 003. February/2009/1000 Copies

FOREWORD TO THE SIXTH EDITION

Taxation of "Charitable trusts and Institutions" is an important area in the Income-tax Act. Since the medium of charitable trusts is widely perceived as a toll of tax planning, the government has progressively made the law relating to taxation of charitable trust very strict. In the recent past there have been many amendments in the law through which the Government has tried to bring the anonymous donations made to these trusts under the tax net. The Government may bring more stringent rules so that no income of these charitable trusts and institutions actually chargeable to tax escapes the tax net. The amendment of the definition of Charitable purpose under section 2(15) is one of the important steps in this direction.

This publication brings out all aspects of the law of taxation relating to a charitable trust. Recent case laws which may be important for our members have also been included. However, all essential aspects relating to audit of public charitable Institutions have been dealt with separately in the "Guidance Note on the audit of Public Charitable Institutions".

I deeply appreciate CA. A.H. Dalal, Past President, ICAI and CA. Gautam Nayak for revising this important publication. I further compliment the members of the Direct Taxes Committee and particularly CA. Mahesh P. Sarda, Chairman, Direct Taxes Committee who took all efforts in bringing out this revised publication.

I hope and wish that the revised edition will prove to be a useful guide in the hands of our members.

Date : 3.2.2009 **Ved Jain**
Place : New Delhi **President**

PREFACE TO THE SIXTH EDITION

The publication "Taxation of charitable trusts and institutions – A Study" deals with the legal aspects of taxation of charitable trusts and institutions. The fifth revised edition of this publication was published in the year 2002. Since then, many significant amendments have been put on the statute book by the Finance Ministry. The amendment relating to taxation of anonymous donations is very important as it intends to pug the loopholes in the law giving way to tax planning. The impact of the amendment of the recent circulars clarifying the meaning of charitable trusts and institutions have also been taken care of.

The Direct Taxes Committee has thoroughly debated all these issues and has come out with this revised edition.

I am thankful to CA. A.H. Dalal, Past President, ICAI and CA. Gautam Nayak for preparing the draft of this revised edition. I thank all the members of the Direct Taxes Committee for devoting their valuable time in considering the revised draft in detail.

CA. Ved Jain, President and CA. Uttam Prakash Agarwal, Vice-President, have been the guiding force in this endeavour.

Finally, I appreciate the efforts of CA. Mukta Kathuria Verma, Secretary, Direct Taxes Committee, CA. Anil K. Bhatt, Former Sr. Assistant Secretary for providing technical and administrative support in co-ordinating this project and Mr. Y.S. Rawat, Private Secretary for rendering secretarial assistance.

I am sure that this revised edition will be of great use to the members.

Date : 2.2.2009
Place : New Delhi

Mahesh P. Sarda
Chairman
Direct Taxes Committee

FOREWORD TO THE FIFTH EDITION

The law of taxation of charitable trusts and institutions is highly complex and has always been the subject matter of frequent amendments due to the fact that the medium of charitable institutions is widely perceived as a handy tool for tax planning. Recently the law relating to taxation of educational institutions and hospitals has undergone drastic changes and the Government is keen to bring all the charitable institutions claiming exemption of their income under the Income-tax Act into tighter scrutiny in the coming years.

The Fiscal Laws Committee has brought out two important publications on this subject. The first one "Taxation of Charitable Trusts and Institutions - A Study" comprehensively covers all the facets of the law of taxation of charitable trusts and the second one "Guidance Note on Audit of Public Charitable Institutions under the Income-tax Act, 1961" brings out all the essential aspects of audit of charitable institutions under the Income-tax Act.

I thank Mr. N. K. Poddar, FCA, Kolkata, a former Council Member, who has done the commendable job of preparing the revised version of the study on taxation of charitable trusts and institutions.

I compliment the Fiscal Laws Committee for bringing out these two publications after exhaustive deliberations and analysis. I am sure that they will be of great use to the members.

New Delhi
11th January, 2002

N.D. Gupta
President

PREFACE TO THE FIFTH EDITION

Since the publication of the last edition of this book, much water has flowed in the form of legislative changes as well as judicial pronouncements by the different High Courts and the Supreme Court covering numerous grey areas. Tax Laws including those relating to charities cannot remain static. The latest panel to suggest changes in the provisions relating to charitable institutions is the Advisory Group headed by Sri Parthasarthi Shome appointed by the Planning Commission, which gave its report in May, 2001. The panel has interalia recommended that the income-based deduction for donations under section 80G and 80GGA should be converted to a tax credit at the lowest marginal rate of 10 percent without any limit as a fraction of gross income. Further, the exemption under sections 10 and 11 to 13 of the Income-tax Act, 1961 in respect of income derived by charitable trusts and institutions should be restricted only to donative non-profit organisations (NPO) and should be denied to those in which 90 per cent of the receipts are through donations. The panel has also suggested that non-distribution constraint should be made explicit and universal. The recommendations made by the Shome Panel are under the consideration of the Planning Commission as well as the Government.

The revision of this volume has involved the rewriting and recording of a considerable part of the text and the introduction of many new forms and cases. All the changes brought out through the various enactments have been discussed elaborately at the appropriate places. This edition is based on the Income-tax law as amended by the Finance Act, 2001 and covers cases and circulars reported till the end of October, 2001 including 250th Volume of the Income Tax Reports.

Attempt has been made to reproduce most of the important clarificatory as well as explanatory circulars issued from time to time in relation to the taxation of charitable trusts and institutions. The judicial decisions have been discussed elaborately. An alphabetical updated table of cases covering more than 400 court decisions has been given at the end of this volume. All relevant forms prescribed in the Income-tax Rules, 1962, which are

required to be filled in by the charitable trusts and institutions to comply with the various laws and regulations have also been reproduced along with the text of Statute Law and the Rules.

On behalf of the Fiscal Laws Committee I thank Mr. N. K. Poddar, FCA, Kolkata, a former Council Member, who has revised this publication in a most comprehensive and competent manner covering all the facets of the law relating to taxation of charitable trusts and institutions.

I thank the members of the Fiscal Laws Committee for their valuable cooperation in finalising this publication.

I also thank Mr. N. D. Gupta, President and Mr. A.K. Chandak, Vice-President for their able guidance.

The Fiscal Laws Committee has also brought out a Guidance Note on Audit of Public Charitable Institutions under the Income-tax Act, 1961.

I am sure that the above publications, taken together, will be a great aid to the members for understanding the complex law of taxation and audit of public charitable institutions under the Income-tax Act, 1961.

Sunil Goyal
Chairman
Fiscal Laws Committee

New Delhi
11th January, 2002

Contents

1.	**Introduction**	1
2.	**What Constitutes a Valid trust?**	3
	Property held under legal obligation	4
	Requirements as to the creation of trusts	7
	Intention of the author and declaration of trust	9
	Creating trust merely by book entries	12
	Declaration of trust by the trustees	13
	Registration: whether essential	13
3.	**Trust Property**	16
4.	**Objects or Purposes of the trust**	18
	Relief of the Poor	20
	Education	22
	Medical Relief	26
	Any other object of general public utility not involving the carrying on of any activity for profit	27
	Charitable purpose	57
	Effect of the amendment	57
	Effect on sections 11(4) and 11(4A)	62
	Trust for religious purpose	63
5.	**Objects mingled with power**	67
6.	**Charitable objects mingled with non-charitable objects - Dominant purpose**	70

7.	**Uncertain or Indefinite objects**	82
	Presumption of Charitable trust from usage	84
8.	**Beneficiaries under the trust**	86
9.	**Religious trusts or endowments**	99
	Establishment of a religious trust or endowment	102
	Complete or partial dedication	103
10.	**Construction of endowment or trust deed**	106
	Procedure for amendment of the trust deed	108
11.	**Nature and scope of exemption from Income-tax**	117
	'Income' how to be computed/ understood: Commercial Sense	117
	Depreciation & deductible expenses	118
	Income includes voluntary contributions	121
	Year of application	127
	Adjustment/Set off of earlier year's excess expenditure against the income of subsequent year	129
	Accumulation of income beyond 15%	131
	Exemption from Capital Gains in certain cases	139
	Meaning of "Application to charitable purposes"	141
	Donation by one trust to another – Whether application of income	145
	Capital expenditure – Whether application of income	146
	Grant of depreciation, not a case of double deduction	148
	Repayment of loan or debt - Treated as application	149
	Payment of taxes – Whether application	150
	Business undertaking held as trust property	151

Old Section 11(4A) – Assessment Year 1984-85 to 1991-92 153
New Section 11(4A) – Assessment Year 1992-93 & onwards 155

12. Conditions to be satisfied for claiming exemption under Section 11 of the Income-tax Act 158
Condition as to registration 158
Conditions as to audit 163
Private religious trusts 164
Communal trusts 165
Restrictions on carrying on of any business 168
Direct or indirect benefit to interested parties 175
Deemed use or application of income or property of the trust 178
What is “adequate” 184
Funds of the trust: Capital of the concern 185
Who is a prohibited or interested person 193
What is substantial interest 195
Conditions as to investment of trust funds 195

13. Mixture of Charitable and religious objects 203

14. Taxation of non-exempt income of a charitable trust 206

15. Obligation as to filing of the return 212

16. Deduction in respect of donations to charitable institutions 214

17. Certain specified charitable and other institutions 222

18. Assessment to Wealth-tax 235

19. Suggestion regarding drafting of trust deed 241

20. APPENDICES 243

Appendix A–Extracts from the Income-tax Act, 1961 243

Section 2(15), 2(24), 10 243

Section 10(22), 10(22A), 10(22B) 244

Section 10(23A), 245

Section 10(23AA), 10(23AAA), 10(23AAB) 246

Section 10(23B), 247

Section 10(23BBA), 10(23C) 248

Section 11, 256

Section 11(1A) 258

Section 11(1B), 11(2) 260

Section 11(3) 261

Section 11(3A) 262

Section 11(4), 11(4A), 11(5) 263

Section 12 266

Section 12A 267

Section 12AA 269

Section 13 270

Section 80G 278

Section 115BBC 287

Section 139(4A) 288

Section 139 (4C) 289

Section 164(2) & (3) 290

Appendix B– Extracts from the Income-tax Rules, 1962 293
Rule 2BC & 2C 293
Rule 2CA, 294
Section 11AA 295
Rule 16C 296
Rule 16CC, 17, 17A 297
Rule 17B, 17C 298
Rule 18AAA 299
Rule 18AAAA 300
Rule 18AAAAA 301

Appendix C – Form No.9 – Application for grant of approval or continuance thereof to a fund under section 10 (23AAA) of the Income-Tax Act, 1961. 303

Appendix D – Form No.10 – Notice to the Assessing Officer / Prescribed Authority under section 11(2) of the Income-Tax Act, 1961 305

Appendix E – Form No.10A – Application for registration of charitable or religious trust or institution under clause (aa) of sub-section (1) of section 12A of the Income-tax Act, 1961 307

Appendix F – Form No.10AA - Details of accounts under section 80G(5C)(v) of the Income-tax Act, 1961 for providing relief to the victims of earthquake in Gujarat 309

Appendix G – Form No.10B – Audit Report under section 12A(b) 312

Appendix H – Form No.10BB – Audit report under section 10(23C) 317

Appendix I – Form No.10G – Application for grant of approval or continuation thereof – Section 80G(5)(vi) 324

Appendix J – Form No.55 - Application for approval of an association or institution for exemption under section 10(23) or continuance thereof. 328

Appendix K – Form No.56 – Application for grant of exemption or continuance under section 10(23C) (iv) & (v) 331

Appendix L – Form No.56D – Application for grant of exemption or continuance under section 10(23C) (vi) & (via) 336

Appendix M – Extracts from the Wealth Tax Act, 1957 – Sections 5 & 21A 342

Appendix N – Relevant Circulars of the Central Board of Direct Taxes 345

Circular Letter: F.No.20/23/67-IT (AI) dated 28.7.67 345

Circular No.5(LXX-6) of 1968 dated 19.6.68 345

Extracts from the Official Minutes of the Twelfth Meeting of Direct Taxes Advisory Committee (Central) held in New Delhi, on 17.8.68 347

Circular No.29 [F.No.20/22; 69/II(AI] dated 23.8.69 347

Circular No.51 [F.No.152(49) 70-TPL] dated 23.12.1970 348

Circular No.100 [F.No.195/1/72-IT(AI) dated 24.1.78 350
Circular No.143[F.No.180/74/73 IT (AI)] dated 20.8.74 351
Circular No.F180/54/72-IT (AI) dated 25.9.75 352
Circular No.204 dated 24.7.76 352
Board's F. No.267/482/77-IT (Part) dated 9.2.78 – CBDT Bulletin Tech. XXIII/582 : (1992) 195 ITR 825, 833 (Cal) 359
Circular No.273 dated 3.6.80 359
Circular No.317 dated 19.12.81 361
Circular No.322 dated 16.1.82 362
Circular No.335 dated 13.4.82 363
Circular No.566 dated 17.7.90 364
Circular No.580 [F.No.133/303/90-TPL] dated 14.9.90 365
Circular No.596 dated 15.3.91 366
Circular No.372 dated 8.12.82 – Clarifications on amendments made by the Finance Act, 1983 367
Circular No.551 dated 23.1.90 – Clarifications on amendments made by the Direct Tax Laws (Amendment) Act, 1987 373
Circular No.621 dated 19.12.91 – Clarifications on amendments made by the Finance (No.2) Act, 1991 379
Circular No.636 dated 31.8.91 – Clarifications on amendments made by the Finance Act, 1992 382
Circular No.642 dated 11.12.92 – Clarifications on amendments made by the Finance (No.2) Act, 1991 385
Circular No.657 dated 30.8.93 – Clarifications on amendments made by the Finance Act, 1993 385

Circular No.762 dated 18.2.98 – Clarifications on amendments made by the Finance (No.2) Act, 1996 386

Circular No.772 dated 23.12.98 – Clarifications on amendments made by the Finance (No.2) Act, 1998 389

Circular No.779 dated 14.9.99 – Clarifications on amendments made by the Finance Act, 1999 390

Circular No.794 dated 9.8.2000 – Clarifications on amendments made by the Finance Act, 2000 392

Circular No.7 dated 05.09.2003 – Explanatory Notes on the provisions relating to Direct Taxes (Finance Act, 2003) 394

Circular No.14 dated 28.12.2006 – Explanatory Notes on the provisions relating to Direct Taxes (Finance Act, 2006) 395

Circular No.1 dated 27.04.2007 – Explanatory Notes on the amendments made by the Taxation Laws (Amendment) Act, 2006 397

Circular No.3 dated 12.3.2008 – Explanatory Notes to the provisions of the Finance Act, 2007 401

Circular No.11 dated 19.12.2008 – Explanatory Notes to the provisions of the Finance Act, 2007 406

22. Table of case decisions 409

1
Introduction

1.00 Charity is a human instinct that drives man to think favourably of others and do them good. In our country the benevolent role played by charitable and religious trusts has historical background and their existence has originated from the basic cultural traits peculiar to us.

1.01 The Direct Taxes Enquiry Committee, in its final report published in December, 1971, had observed that "*by tradition, private philanthropy in our country has been playing a very special and prominent role in enriching our cultural heritage and in catering to the education, medical, socio-economic and religious needs of our people. In so doing, it has supplemented the work of a Welfare State, and the State, in turn has recognized it's contribution by giving generous tax treatment to the donations given to philanthropic institutions and also to the income thereof applied for public, religious or charitable purposes*."

1.02 In 1860 when income-tax was first introduced in India, "*income from the property solely employed for religious or public charitable proposes*" was exempt from the tax. Since then, although the Income-tax Act was amended from time to time on innumerable occasions, the income derived from property held for charitable or religious purposes always enjoyed exemption from tax net.

1.03 Altruism is the noblest of human attributes. But at the same time, selfishness is the main spring of the human actions. It was observed by the Direct Taxes Enquiry Committee that there is no good cause which human ingenuity cannot defile and experience has shown that even in our country, these altruistic media have been abused with impunity for selfish personal ends.

1.04 Since the tax concessions afforded to these institutions involve a sacrifice of public revenues, it became imperative to ensure that tax privileges are not abused and they are enjoyed

only by those charitable and religious institutions, which deserve them.

1.05 With this end in view, the sections in the Income-tax Act, dealing with this subject, underwent major changes in several respects, principally in 1939, 1952, 1961, 1966, 1970, 1975, 1983, 1989, 1998, 2000, 2001, 2003, 2006 and 2008. Therefore, it is a matter of considerable importance to study the provisions of law governing the creation of a charitable or a religious trust as also the law specifying the conditions and circumstances which, when satisfied, would entitle it to enjoy exemption from tax.

2

What Constitutes a Valid Trust?

2.00 Section 3 of the Indian Trusts Act, 1882 defines a trust as under: "*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 owner*."

2.01 The above definition is applicable only to the "*Private Trusts*" for section 1 of the Indian Trust Act, 1882 clearly provides that public or charitable endowments are saved from its operation. We, however, are not concerned here with private religious endowments and there is no such thing as private charitable trust[1]. The universal rule is that the law recognises no purpose as charitable unless it is of a public character. It is a clearly established principle of law of charities that a purpose is not charitable unless it is directed to the public benefit, the benefit of the community or a section of the community and not to the benefit of particular private individuals so that the element of public benefit is the necessary condition of legal charity[2]. However, the line of distinction between purposes of public and private nature is fine and practically incapable of definition.

2.02 The distinction between a private and a public trust has been brought out by the Supreme Court in *Deoki Nandan v. Murlidhar*[3]. Quoting from Lewin on Trust (15 Edition, pages 15 and 16), their Lordships observed as under:

---

[1] Per Leach, C.I.T.v M. Jamal Mohamad Sahib (1941) 9 ITR 375, 384 (Mad), Chaturbhuj Vallabhdas. v. CIT (1946) 14 ITR 144, 148 (Bom)

[2] Per Lord Simonds. Oppenheim v. Tobacco Securities Trust Co. Ltd. (1951) 1 All. ER 31 at 33 (HL); Williams Trustees v. I.R.C. (1948) 16 ITR Suppl. 41, 51 (HCL); Trustees of Gordhandas Govindram Family Charity Trust v. CIT (1952) 21 ITR 231 (Bom).

[3] AIR 1957 SC 133, 131

> "*By public trust must be understood such as are constituted for the benefit either of the public at large or some considerable portion of it answering a particular description. To this class belong all trusts for charitable purposes and indeed public trusts and charitable trusts may be considered in general as synonymous expressions. In private trusts, the beneficial interest is vested absolutely in one or more individuals who are, or within a certain time may be, definitely ascertained*..."

2.03 In order to constitute a valid charity as was held by the Supreme Court in *CIT v. Andhra Chamber of Commerce*[1], it is not necessary that the object should be to benefit the whole of mankind or all the persons living in a particular country or province. It is sufficient if the intention is to benefit a sufficiently large section of the public as distinguished from specified individuals. But the section of the community sought to be benefited must be sufficiently defined and identifiable by some quality of public or personal nature.

PROPERTY HELD UNDER LEGAL OBLIGATION

2.04 Section 11 of the Act, provides exemption from tax for the income derived from property held under trust for charitable or religious purposes. But according to Explanation 1 to section 13, for the purposes of sections 11, 12, 12A and 13 of the Income tax Act, 1961, "*trust*" includes any other legal obligation. The words "*other obligation*" are wide enough to cover a case in which the trustees of a settlement are to pay the income to other trustees who in their turn are bound to apply it for purposes which are religious or charitable. Such was the view expressed by the Bombay High Court in *Vallabhdas Karsondas Natha v. C.I.T*[2]*.* As pointed out by Sir George Rankin in re *The Trustees of the Tribune*,[3] It is to be observed that under the Income-tax Act the test of general public utility is applicable not only to trusts in the English sense but is to be applied to property, held under trust or other legal obligation - a phrase which would include Muslim and Hindu endowments. In the case *of Mahant Indresh Charan Das v.*

---

[1] (1965) 55 ITR 722, 729 (SC)
[2] (1947) 15 ITR 32, 45 (Bom)
[3] (1939) 7 ITR 415, 422 (PC)

State of Uttar Pradesh,[1] the Allahabad High Court held that the property held by the Chief of Udasi sect was held under legal obligation wholly for religious or charitable purposes.

2.05 Legal obligation means obligation, which is enforceable by law. Such obligation is created only where the creator of the trust binds himself or his property rights to such obligation as he is by law bound to give effect. The various forms of "*legal obligations*", apart from the trust, are as under:

(i) A limited company registered under section 25 of the Companies Act, 1956;

(ii) A society registered under Societies Registration Act, 1860;

(iii) A Hindu endowment;

(iv) A Muslim Wakf.

(i) *Companies*:- An association may be registered under section 25 of the Companies Act, 1956 if the Central Government is satisfied that it is about to be formed as a limited company for promoting commerce, art, science, religion, charity or any other useful object and it intends to apply its profit, if any, or other income in promoting its objects and to prohibit the payment of any dividend to its members. In such cases the Central Government may by license direct that the association may be registered as a company with limited liability without the addition to its name of the word "*Limited*" or the words "*Private Limited*". A host of companies so registered have claimed exemption from tax under section 11 of the Act as a charitable institution with success. Though the grant of a license to a company under section 25 of the Companies Act, 1956, would *prima facie* show that the assessee had come into existence for a charitable or any other useful object, for the purpose of the definition of "*charitable purpose*" in the Income-tax Act, the issue of such a license cannot be taken as conclusive because, at the time of issue of the license, it may not have been necessary for the concerned authorities to apply their mind to the provisions of the Income-tax Act, and the question of assessee's claim for exemption from income-tax on the ground that its objects

[1] (1971) 81 ITR 435 (All)

are charitable in nature will have to be considered independently having regard to the provisions of the Income-tax Act. Such was the view expressed by the Madras High Court in *CIT v. Ootacamund Gymkhana Club*[1]. Later in *Addl. CIT v. Surat Art Silk Cloth Mfrs. Association*[2], the Supreme Court observed that the object of private profit was eliminated by recognition of the assessee under section 25 of the Companies Act, 1956. However, a company registered under section 25 of the Companies Act, 1956 without a commercial or profit-making motive must, nevertheless, be assessed as a company under the Income-tax Act. Thus if, in any year, the surplus of such a company becomes chargeable to tax, the rate of tax applicable will be as that of a company and not an association of persons. Such was the view expressed by the Allahabad High Court in the case of *Upper India Chamber of Commerce v. Commissioner of Income-Tax*[3].

(ii) *Societies*: Section 20 of the Societies Registration Act lays down that charitable societies and societies established for the promotion of science, literature or the fine arts may be registered under that Act. A society registered under the said Act is a legal entity apart from its members and under section 6 of the said Act; it can sue or be sued in its own name. In *Secretary of State for India v. Radha Swami Sat Sang*[4] it was held by the Bombay High Court that the registration of a charity under the Societies Registration Act, 1860 was a *prima facie* evidence of valid dedication of property for charitable purposes.

(iii) *Hindu Endowments*: A Hindu may dedicate for religious purposes all property, which he can validly dispose of by gift or by will. In *Ishwar Gopal Jew (Sree Sree) v. CIT*[5], a lady installed a deity and dedicated some immovable properties for defraying the expenses of daily worship and periodical festival of the deity. The dedication was conveyed in a registered deed. It was held by the Calcutta High Court that the instrument was one of dedication and the endowment, though not made through the medium of trust, created a legal obligation in the deity and its shebait to apply the

[1] (1977) 110 ITR 392 (Mad)
[2] (1980) 121 ITR 1, 13 (SC)
[3] (1947) 15 ITR 263, 270 (All)
[4] (1945) 13 ITR 520 (All)
[5] (1950) 18 ITR 743 (Cal)

income of the endowed properties for the purposes specified in the deed of dedication and for no other purposes. The properties were held under a legal obligation for religious purposes, although there was no trust in the strict sense of English Trust.

(iv) *Muslim Wakf*: Trusts under the Mohammedan Law are called Wakfs. Wakf signifies dedication of property either in express terms or by necessary implication for any charitable or religious object or to secure any benefit to human being. Section 2 of the Mussalman Wakf Validation Act defines Wakf as dedication by person professing Islam or the Mussalman faith, or any property for any purposes recognized by the Mussalman Law as religious, pious or charitable. The settlor or the author of the Wakf is called Wakf and the trustee is called *Mutwalli or Sajjadanashin*. But the *Mutwalli* is not a trustee in the English sense. He is merely curator or a manager. As soon as the Wakf is declared, all right of property vests in the Almighty. In the words of Amir Ali, under Mohammedan Law, the moment the Wakf is created, all rights of property go out of the Wakf and vest in God, the Almighty. Although Wakf under the Mohammedan law is primarily made for purposes of charity, there are cases where benefit is secured to the settlor's family and the charity is the beneficiary of the balance income of the Wakf. In such cases, Wakf will be for charitable purposes in part and the exemption under the Act shall operate only in respect of this part. Such was the view of the Chief Court of Sind in *CIT v. Ibrahimji Hakimji & Ors.*[1]. But a Wakf created after 1st April, 1962 partly for religious and partly for non-religious purposes shall not be eligible for exemption under the Income-tax Act.

REQUIREMENTS AS TO THE CREATION OF TRUSTS

2.06 As already indicated above, although the provisions of the Indian Trust Act, 1882 do not apply to a charitable or religious trust, but the three certainties of a valid trust, as laid down in section 6 of the Indian Trust Act, are also essential for creating a

[1] (1940) 8 ITR 501 (Sind)

valid charitable trust. Kania J. observed in the case of *Hanumantram Ramnath v. CIT*[1]. that these three certainties are:

(i) a declaration sufficient to show an intention to create a trust by the settlor; (The declaration must be binding on him).

(ii) setting apart definite property and the settlor depriving himself of the ownership thereof; and

(iii) a statement of the object for which the property is thereafter to be held.

2.07 Thus, while the provisions of the Indian Trusts Act do not apply to charitable or religious trust, there is a common area of legal principles which cover all trusts, private and public, and merely because they find a place in the Indian Trusts Act, they cannot become untouchable where public trusts are involved. This was established by the decision of the Supreme Court in *State of U.P. v. Bansi Dhar*[2]. It must however be noted that trusts and institutions are separately dealt with in the Act – see section 11 itself as well as sections 12, 12A and 13. The expressions refer to entities differently constituted as held by the Supreme Court in *Asst. CIT vs. Thanthi Trust*[3].

2.08 The Bombay High Court in the case of *Court Receiver v. CIT*[4] reiterated the conditions which are necessary for creating a valid trust. The conditions laid down by the Bombay High Court in the said case are as under:

(i) Intention on the part of the author of the trust to create a trust;

(ii) The trust property or the subject of the trust;

(iii) Purpose or the object of the trust; and

(iv) Beneficiary under the trust.

Similar conditions are laid down by the Delhi High Court in CIT v. Brig. Kapil Mohan[5].

---

[1] (1946) 14 ITR 716, 718 (Bom)
[2] AIR 1974 SC 1084, 1090
[3] (2001) 247 ITR 785, 795 (SC)
[4] (1964) 54 ITR 189, 208 (Bom)
[5] (2001) 252 ITR 830 (Del)

INTENTION OF THE AUTHOR AND DECLARATION OF TRUST

2.09 Neither formal deed nor any other writing is necessary to constitute a charitable or religious trust. The Supreme Court laid down in the case of *C.I.T. v. Thakar Das Bhargava*[1] that—

> "*It is indeed true, as has been observed by the High Court, that a trust may be created by any language sufficient to show the intention and no technical words are necessary. A trust may even be created by the use of words which are primarily words of condition but such words will constitute a trust only where the requisites of a trust are present, namely, where there are purposes independent of the donee to which the subject matter of the gift is required to be applied and an obligation on the donee to satisfy those purposes*."

The above principles were reiterated by the Supreme Court in *C.I.T. v. Tollygunge Club*[2].

2.10 The Privy Council, in the case of *All India Spinner's Association v. C.I.T.*[3], the Kerala High Court in *Dharmaposhanam Co. v. C.I.T.*[4], the Bombay High Court in *A.J. Patel v. C.I.T.*[5] and *C.I.T. v. Trustees Shri Cutchi Lohana Panchtade Mahajan Trust*[6], the Allahabad High Court in *C.I.T. v. Sant Baba Mohan Singh*[7] and the Calcutta High Court in *C.W.T. v. Surjit Singh (Sardar)* [8] also held that a formal deed is not necessary to constitute a valid charitable or religious trust.

2.11 However, as observed by *Halsbury*[9], as in the case of an ordinary trust, there must be certainty of intention on the donor's part to make a gift to charity. The word used must be such that on

---

[1] (1960) 40 ITR 301, 305 (SC)
[2] (1977) 107 ITR 776 (SC)
[3] (1944) 12 ITR 482, 487 (PC)
[4] (1965) 58 ITR 600, 611 (Ker)
[5] (1974) 97 ITR 683 (Bom)
[6] (1975) 98 ITR 448 (Bom)
[7] (1979) 118 ITR 1015 (All)
[8] (1982) 138 ITR 186 (Cal)
[9] Halsbury's Laws of England, 4th Edition, Vol. 5, Para 572

the whole they ought to be construed as imperative. A mere expression of desire or hope will not create a trust of any kind. But the word "trust" itself is not to be used.

2.12 Where a testator expressed a desire in his will that his executrix and executor should spend money to preserve, maintain and support certain religious and charitable institutions in the manner he was doing and he also specified the amounts he was spending on such charities, it was held by the Patna High Court in *Maharaj Bahadur Ram Ran Vijay Prasad Singh v. The Province of Bihar*[1] that the provisions in the will did not annex any obligation to the ownership of property or any portion thereof and amounted only to a pious wish of the testator and therefore no binding trust was created through the will.

2.13 As was observed by the Lahore High Court in *Prem Nath v. Har Ram*[2], the dedication to a trust is complete only when there is clear and unequivocal manifestation of the intention to create a charitable or religious trust and there must also be a formal divesting of the ownership of the property on the part of the donor and vesting of the same in the trustee. There can be no real dedication—not even by execution of a deed-unless the owner completely divests himself of his ownership[3]. Similar views were expressed by the Madras High Court in *C.I.T. v. Naidu Industrial Educational Trust (G.D.)*[4] where the facts were as under:

> *Sri G.D. Naidu who was largely interested in Motor Engineering and Transport Companies, created a trust and purported to endow it with the shares held by him in some Transport Companies of which he had control and some immovable property. Under the deed, the institution was not to be brought into being immediately and the companies in which Mr. Naidu was interested were to have the benefit of the assets of the trust. Mr. Naidu also reserved to himself the power to revoke the trust at any time.*
>
> *On these facts, the Madras High Court held that in view of the provisions of the deed of trust by which the assets could be*

[1] (1942) 10 ITR 446 (Pat)
[2] AIR 1934 Lahore 771
[3] AIR 1934 Pat 612 also see AIR 1932 Cal 419 & AIR 1921 All 37
[4] (1942) 10 ITR 358 (Mad)

utilised for the founders' own purposes or the purposes of his companies, the deed did not create a trust wholly for charitable purpose. The idea that some day the institution contemplated by the deed might be founded was not sufficient compliance with the provisions of section 4(3)(1) of the Income-tax Act, 1922..

2.14 On the question of valid dedication of property of the trust or an institution for the charitable or religious purposes, the Supreme Court laid down in *Menakuru Dasaratharami Reddi v. D. Subba Rao*[1] that the dedication to charity need not necessarily be by instrument of grant. It can be established by cogent and satisfactory evidence or conduct of the parties and user of the property, which show the extinction of the private secular character of the property and its complete dedication to charity. The same view was later taken by the Allahabad High Court in *C.I.T. v. Sant Baba Mohan Singh*[2]. The Supreme Court also held in *Deoki Nandan v. Murlidhar*[3] that a dedication may take place by a more unambiguous declaration of the settlors' intention to dedicate the properties to the public. In *Ramchandra Shukla v. Shree Mohadeoji*[4] their Lordships of the Supreme Court observed that a dedication of property for religious or a charitable purpose can, according to Hindu law, be validly made orally and no writing is necessary to create an endowment except where it is created by a will. It can be made by a gift inter-vivos or by a bequest or by a ceremonial relinquishment. Appropriation of a property for specific religious or charitable purposes is all that is necessary for a valid dedication. A trust in the sense in which it is understood in English law is unknown in the Hindu systems. Hindu piety found expression in gifts to idols, to religious institutions and for all purposes considered meritorious in the Hindu social and religious system.

2.15 In *C.I.T. v. Bengal Mills and Steamers Presbyterian Association*[5] their Lordships of the Calcutta High Court held that a trust may and often arise out of a contract. If the parties, by an

---

[1] AIR 1957 SC 797
[2] (1979) 118 ITR 1015 (All)
[3] AIR 1957 SC 133
[4] AIR 1970 SC 458
[5] (1983) 140 ITR 586 (Cal)

agreement, intend to create a trust in respect of a property and the property is subsequently transferred to the proposed trustee by a conveyance, the Court will treat the two deeds as part of the same transaction and hold that by the combined operation of the two deeds, a Trust came into effect. In this particular case, the Court held that although at the time of formation of the trust or of the Association, there were no properties settled on trust, yet when the Association, in course of time, acquired properties by way of donations or otherwise, it was under a legal obligation to hold those properties in trust for religious purposes as set out in its Memorandum and that the cash and other properties, as and when acquired by the Association, were invested with the character of the trust properties.

CREATING TRUST MERELY BY BOOK ENTRIES

2.16 Merely making an entry in the books of account to the credit of charity does not create a valid trust unless there is setting apart of ascertained property and there is evidence to show that the settlor had divested himself of the ownership of the property. Such was the view expressed by the Bombay High Court in *Hanmantram Ramnath v. C.I.T.*[1]. Similarly O'Sullivan, J. speaking for the Court observed in *C.I.T. v. Kalechand Motiram*[2] that "the mere placing of an amount in an account and applying the accruing interest towards a charitable purpose does not amount to a trust. The situation is not altered merely by describing the account as for dharam or dharmada."

2.17 However, as was held by the Calcutta High Court in *C.I.T. v. Trustees of Sreeram Surajmull Charity Trust*[3], entries in the books followed by a registered deed transferring ownership to the trustees does create a valid trust.

2.18 Further, what happens when a credit entry is made not in the books of the donor but in the books of his debtor in favour of a trustee showing intention to create a trust? Such an entry would amount to a specific appropriation for the trust. Such was the

[1] (1946) 14 ITR 716 (Bom)
[2] (1949) 17 ITR 304, 336 (Sind)
[3] (1971) 79 ITR 649 (Cal)

decision of the Madras High Court in *Jai Narayan Jai Gobind v. Controller of ED*[1].

2.19 A valid trust can also be created by a partner of a firm, if the firm, on the instructions of the partner, makes a credit entry in the trust account in the books of the firm against making appropriate debit entry in the partner's account. The Allahabad High Court held in the case of *Gopal Jalan v. CIT*[2] that in such cases it is not necessary that the cash balance with the firm on the date of the transfer to the trust should be equal to or more than the amount so debited. Reference in this connection may also be made to the decisions of the Allahabad High Court in *Juggilal Kamlapat v. CIT*[3], the Bombay High Court in *Chimanbhai Lalbhai v. CIT*[4] and of the Rajasthan High Court in *K.. P. Bros. v. CIT*[5].

DECLARATION OF TRUST BY THE TRUSTEES

2.20 According to *Halsbury's Laws of England (4th Edition, Vol. 5 paragraph 593)*, when a fund raised from numerous contributors for somewhat indefinite purposes is vested in trustees, the trustees have *prima facie* implied authority to declare the trusts and the trusts so declared will be binding until set aside at the instance of the Attorney General or of one or more of the donors[6].

2.21 In certain circumstances there may be presumptions as to the existence of a charitable trust. Detailed discussions in this regard are made later in paragraphs 7.05 to 7.08.

REGISTRATION: WHETHER ESSENTIAL

2.22 Further, in order to constitute a valid dedication for charitable purposes, no registration is necessary if the trust relates to movable property. But if the trust relates to immovable property worth more than one hundred rupees, the provisions of section 17(1) of the Indian Registration Act, 1908 read with section 123 of

---

[1] (1963) 49 ITR (ED) 105, 121 (Mad)
[2] (1972) 86 ITR 317 (All)
[3] (1964) 52 ITR 811, 815, (All), affirmed in (1970) 75 ITR 186 (SC)
[4] (1958) 34 ITR 259 (Bom)
[5] (1961) 42 ITR 650 (Raj)
[6] AG v. Mathieson, (1907) 2 Ch. 394, 395, Henri Wood National Memorial Trust v. Moisienitsch (1967) 1 All ER 238

the Transfer of Property Act, 1882 must be complied and thus registration is obligatory. Such was the decision of the Calcutta High Court in *Gostha Behari Ghose v. University of Calcutta*[1]. It has, however, been held by the Allahabad High Court in *Ram Kumar Ram Chandra & Co. v. C.I.T*[2] that a Hindu deity is not a "*living person*" within the meaning of section 123 of the Transfer of Property Act. It cannot also accept a transfer by a donor. A dedication in favour of a Hindu deity is not therefore, a gift under the Transfer of Property Act. Similar view was expressed by the Madras High Court in *Narsinghswami v. Venkatalingam*[3] and Patna High Court in *Sanatan Dharama Sabha v. Smt. Sobhi*[4]. In the circumstances, therefore, the provisions of section 123 of the Transfer of Property Act, 1882 do not apply to such a dedication and as such no registration of dedication is necessary. Further, a trust created by a will does not require any stamp as was held by the Delhi High Court in *Anaro Devi (Smt.) v. Shankar Nath*[5].

2.23 It must, however, be stated here that under the provisions of section 12A of the Income-tax Act, 1961, which was introduced by the Finance Act, 1972 with effect from 1st April, 1973, exemption from income-tax in respect of income derived from property held under trust or other legal obligation shall not be available unless the person in receipt of the income makes an application in Form No.10A prescribed under rule 17A of the Income-tax Rules, 1962 for registration of the trust or the institution to the Commissioner of Income-tax before the 1st day of July, 1973 or before the expiry of a period of one year from the date of creation of the trust or establishment of the institution, whichever is later. With effect from 1st June 2007, the provisions of sections 11 and 12 shall apply from the assessment year immediately following the previous year in which the application is made.

2.24 The application for the purpose of registration has to be made in Form No. 10A and should be accompanied by the original instrument or a certified copy thereof if the original cannot be

[1] AIR 1972 Cal 61
[2] (1965) 58 ITR 721 (All)
[3] AIR 1927 Mad 636 FB
[4] 125 PLR 1903
[5] AIR 1974 Delhi 17

conveniently produced together with a copy thereof. In the case of a trust or an institution, which has not been created under an instrument, the document evidencing the creation of the trust or establishment of the institution must be sent together with a copy thereof.

2.25 Section 12AA of the Income-tax Act, 1961, introduced by the Finance (No.2) Act, 1996 lays down the procedure to be followed for grant of registration to a trust or institution. Section 12AA now provides that on receipt of an application for registration of a trust or institution made under clause (a) of section 12A of the said Act, the Director of Income-tax (Exemptions) shall call for such documents and information, as he thinks necessary, and hold inquires regarding the genuineness of the trust or institution. After he is 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 granting registration. If the Director is not so satisfied, he will pass an order refusing registration, subject to the condition that an opportunity of being heard shall be provided to be applicant before an order of refusal to grant registration is passed and the reasons for refusal of registration shall be indicated in such order. An appeal to the Tribunal can be filed against an order under section 12AA on or after 1st June 1999. Sub-section (2) of section 12AA further provides that the order granting or refusing registration has to be passed within six months from the end of the month in which the application for registration is received by the Director and a copy of such order shall be sent to the applicant.

2.26 Further discussion in this respect including discussions as to the full scope of sections 12A and 12AA is made in Chapter 12 hereunder.

3

Trust Property

3.01 As already indicated earlier, in order to create a valid trust for charitable or religious purposes, there must be transfer of some property to the trust. Section 11 of the Income-tax Act, 1961, also provides that in order to claim exemption from tax, there must be some income derived from property held under the trust or other legal obligation.

3.02 It was held by the Patna High Court in *Raja P.C. Lal Chaudhary v. C.I.T.*[1] that a dedication of income to a charitable purpose would not create a valid charitable trust. The mere practice of appropriating the income of a certain property to a charitable purpose is merely a case of application of income and does not create a valid trust. In such a case, exemption under section 11 of the Act cannot be claimed. Reference in this connection may also be made to the decisions of the Supreme Court in *C.I.T. v. Vyas and Dhotiwala*[2] and *C.I.T. v. Thakar Das Bhargava*[3]. In both these cases, the Supreme Court held that where the income was not received on behalf of any religious or charitable institution, the exemption from taxation could not be claimed. A mere declaration by the assessee that the income earned shall be utilized for charitable purposes, or a charitable trust shall be created out of the income so received would not entitle him to claim exemption from tax. But a right to receive income from a property can be held under a legal obligation for a charitable purpose, as was held by the Bombay High Court in *Vallabhdas Karsondas Natha v. C.I.T.*[4]

3.03 However, the word "*Property"* as used in section 11 of the Income-tax Act is a word of very wide import. It is not confined to cash or securities of visible tangible assets. The Bombay High

---

[1] (1957) 31 ITR 226 (Pat)
[2] (1959) 35 ITR 55 (SC)
[3] (1960) 40 ITR 301, 306 (SC)
[4] (1947) 15 ITR 32 (Bom)

Court held in *A.J. Patel v. C.I.T.*[1] that the word property is a term of widest import and, subject to any limitation or qualification which the context might require, it signifies every possible interest which a person can acquire, hold and enjoy. It was held in this case that the right to exploit the space for advertisement was property, which could be held on trust. It has been held in various cases that the expression 'property' would include the stock-in trade and goodwill of a concern, a business undertaking, a partner's share in a partnership business and managing agency or a principal agency of an insurance company, etc.

3.04 Voluntary contributions received by a charitable or religious trust are defined to be income under section 2(24)(iia). Such voluntary contributions, though in the nature of income, would normally not have been regarded as income from property held in trust, had it not been for the deeming fiction created by section 12(1), that such voluntary contributions (other than corpus contributions) received by a trust created wholly for charitable or religious purposes shall be deemed to be income derived from property held under trust wholly for charitable or religious purposes.

[1] (1974) 97 ITR 683 (Bom)

4

Objects or Purposes of the Trust

4.01 Unless the trust or the institution has been established for charitable purposes, the benefit of exemption from tax as envisaged in section 11 of the Income-tax Act, 1961 cannot be claimed. Section 2(15) of the Act, prior to its amendment by the Finance Act, 1983 w.e.f. 1.4.1984 defined "*charitable purpose*" to include "*relief of the poor, education, medical relief and the advancement of any other object of general public utility not involving the carrying on of any activity for profit*." The definition given in the Act is inclusive and it is neither exhaustive nor exclusive. The legislative history of the definition of "*charitable purpose*" in the income tax law of India with reference to the development in England has been briefly referred to by Bhagwati J. in his majority judgment of the Supreme Court in *Addl. C.I.T. v. Surat Art Silk Cloth Mfrs. Association.*[1]

4.02 Charity is a word of art, of precise and technical meaning and as observed by the House of Lords in *Special Commissioners of Income-tax v. Pemsels*[2]. The words "*charity*" and "*charitable purposes*" must be construed in their legal or technical sense, which is different from their popular meaning.

4.03 The above definition is modeled on Lord Macnaughtan's dictum in *Pemsel's case.* The only difference is that the words describing the fourth and last residuary head of charity in the Indian Act were very wide. The expression used was "*the advancement of any other object of general public utility"* whereas in Lord Macnaughtan's definition, the words used were "*other purposes beneficial to the community*". The difference in the language, particularly the inclusion in the Indian Act of the words "*public*" is of importance. The observation in the English cases that

[1] (1980) 121 ITR 1, 14-15 (SC)
[2] (1891) 3 TC 53, 94, 96, 99 (HL)

every object of general public utility need not necessarily be charitable, is too wide when applied to Indian conditions. However, the Indian Act gives a clear and sufficient definition, which must be construed according to its actual language and meaning. It is for this reason that the Supreme Court as well as the Judicial Committee of the Privy Council have uttered a note of warning against blind and indiscriminate acceptance of English decisions on the law of charity in construing the Indian Statute *vide All India Spinners' Association v. C.I.T.*[1]*, C.I.T. v. Andhra Chamber of Commerce*[2] and *C.I.T. v Ahmedabad Rana Caste Association.*[3] The Delhi High Court in *C.I.T.v. All India Hindu Mahasabha*[4] following the decision of the Supreme Court in *Laxman Balwant Bhopatkar v. Charity Commissioner*[5] held that a political purpose cannot be said to be a charitable purpose.

4.04 In *C.I.T. v. ITI Employees Death & Superannuation Relief Fund*[6] their lordships of the Karnataka High Court were dealing with the case of the trust, which was created by the employees of the Indian Telephone Industries for the benefit of about 20,000 employees in various towns in the country. The trust funds consisted of monthly contribution by employees, contributions made by the ITI Management, donations, interest and income earned by the trust from investments etc. The assessee claimed itself to be a charitable trust established for a charitable purpose. The court following its earlier decision in *C.I.T. v. BEL Employees Death Relief Fund and Service Benefit and Association*[7] held that the benefit under the trust would be utilised only by specialised persons, who were employees of a public sector company and who were required to be the subscribers or their dependants. Contributions were collected for the personal benefit of the members. Therefore, the association could not be held to be one formed for a charitable purpose within the meaning of section 2(15) of the Act and accordingly its income was not exempt under

---

[1] (1944) 12 ITR 482 (PC)
[2] (1965) 55 ITR 722 (SC)
[3] (1973) 88 ITR 354 (Guj) affirmed in (1983) 140 ITR 1 (SC)
[4] (1983) 140 ITR 748 (Del)
[5] AIR 1962 SC 1589 = 1963 (2) SCR 625
[6] (1998) 234 ITR 308 (Karn)
[7] (1997) 225 ITR 270 (Karn)

sections 11 and 12 of the Act. (see also *Zenith Tin Works Charitable Trust v. CIT*)[1].

4.05 However, it is necessary to analyse the four heads, under which the definition of "*charitable purpose*" in section 2(15) of the Act, at all material times classified them.

RELIEF OF THE POOR

4.06 According to the Halsbury's Laws of England, [4th Edition, volume 5, paragraph 515] the word "*poor"* is a relative term, not confined to the destitute. It may be taken as meaning persons who have to go short, having regard, for example, to their status in life. The gift may be general and indefinite or for the poor of a particular town or other place or for a particular class of poor or the poor of a particular class as poor gentlewomen, persons of moderate means or widows of limited means with small dependent children or persons who are not supporting, unsuccessful literary men, poor pious persons, poor emigrants, widows and children of a particular disaster etc. Further, the relief in order to be charitable, need not be given in the form of free doles or alms to the poor. It may take the economically sounder form of wage for work of labor done by the beneficiaries. In *Jaipur Charitable Trust v. C.I.T.*[2] their Lordships of the Delhi High Court held that the objects such as "*to found and maintain institution where work at living wages can be provided to poor and middle-class people*" and "*to found institutions for imparting education in workmanship and for providing employment and means of earning for the unemployed and the needy were nothing but charitable objects*".

4.07 However, the relief, in order to be charitable must, in every case, be to such section of the community, which may be well defined and identified by some common quality of public nature. If the class were vague and ill defined, the institution would not be a valid charitable trust. As was observed by the Supreme Court in *C.I.T.v. Andhra Chamber of Commerce*[3] the object need not be to benefit all persons living in a particular country or province. It is

[1] (1976) 102 ITR 119 (Bom)
[2] (1981) 127 ITR 620 (Del)
[3] (1965) 55 ITR 722 (SC)

sufficient if the object is to benefit a section of the public as distinguished from specified individuals.

4.08 In England, there have been many cases where the trusts for the poor relations of the author have been held to be charitable in nature. But in India, a Full Bench of the Madras High Court in the case of *C.I.T.v. M. Jamal Mohamad Sahib*[1] held that a trust for the "*poor relations*" of the settlor is not for charitable purpose. Similar view was also expressed by the Bombay High Court in *Gordhandas Govindram Family Charity Trust (Trustees of) v. C.I.T.*[2] where the Court went on to add that the trust would not be held to be charitable even when a remote benefit to the community was also made or envisaged therein. In *Mullick Somnath Charitable Trust v. C.I.T.,*[3] their Lordships of the Calcutta High Court held that if object of the trust is to help only the relations of the settlor, poor or not, the same cannot be a public Charitable Trust, though the relations may be poor and indigent. The poor relations of the settlor wherever have been made direct recipient of the benefits of the trust, the trust was held to be not entitled to exemption under section 11.

In *CIT, Bombay v. D. D. Deshpande*[4], it was held that the dominant object of the trust was that of religious and charitable nature. The provision in the trust deed where the settler had expressed a desire to give financial aid to poor members of the family of the settlor and their descendants was only a desire and no fetter was placed upon the trustees to utilize the income of the trust for charitable purpose. A direction was not given to the trustees, but simply a desire was expressed. (See *CIT v. Trustees of Abdulkadar Ebrahim Trust*[5]*, Addl. CIT v. A. A. Bibjiwala Trust*[6] and *CIT v. Mahendra Mohta Seva Nidhi*[7]. A trust generally for public charitable purposes, with a mere direction to give preference to the poor relations of the settlor will not lose its exemption on the ground that it is not for the benefit of the public

[1] (1941) 9 ITR 375 (Mad)
[2] (1952) 21 ITR 231 (Bom)
[3] (1986) 160 ITR 3 (Cal)
[4] (1976) 102 ITR 390 (Bom)
[5] (1975) 100 ITR 85 (Bom)
[6] (1975) 100 ITR 516 (Guj)
[7] (1985) 152 ITR 516 (P&H)

but is for the benefit of the relatives of the settlor. (*Trustees of Charity Fund v. CIT*[1]*, Managing Trustees of Jalkhabai Trust*[2]*, Trustees of the J. P. Pardiwala Charity Trust*[3]*)*.

4.09 In so far as the trusts created after 1st April, 1962 are concerned, the position is now clear that the exemption will not be available and no other view can be taken in view of the provisions of section 13(1)(c)(ii) of the Act which states that if any part of the income or any property of the trust or institution during the previous year is used or applied directly or indirectly for the benefit of any person referred to section 13(3) of the Act, the trust will lose the benefit of exemption contained in section 11 of the Act. The only exception provided in the first proviso to section 13(1)(ii) of the Act relates to a case where the trust or institution was created or established before 1-4-1962 and the use of its income or property for the benefit of the prohibited persons specified in section 13(3) of the Act, is by way of compliance with a mandatory term of the trust or a mandatory rule governing the institution.

4.10 However, poverty is not a necessary element in a charitable trust. A valid charitable trust may exist notwithstanding the fact that in its administration, the benefit is not confined by the donor to the poor to the exclusion of the rich. It is not a necessary element in a charitable purpose that the trust should provide something for nothing or for less than its cost or at a price less than its ordinary price; in other words, elemosynary element is not essential. This is now well-established by the decision of the House of Lords in *Goodman v. Mayor of Salfash*[4] where a trust was upheld as charitable even when the rich along with the poor, could directly claim to share the benefit. But while a trust may be charitable though not confined to the poor, it would not be charitable, if it excludes the poor.

EDUCATION

4.11 The meaning of the term "e*ducation"* as used in sub-section (15) of section 2 of the Act was best explained by the

[1] (1959) 36 ITR 513 (SC)
[2] (1969) 72 ITR 733 (Ker)
[3] (1965) 58 ITR 46 (Bom)
[4] (1882) 7 AC 633

Supreme Court in *Sole Trustee, Loka Shikshana Trust v. C.I.T*[1]. Khanna J. speaking on behalf of himself as well as Gupta J. observed as under:

> "*The sense in which the word "education" has been used in section 2(15) is the systematic instruction, schooling or training given to the young in preparation for the work of life. It also connotes the whole course of scholastic instruction, which a person has received. The word "education" has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education. According to this wide and extended sense, travelling is education, because as a result of traveling you acquire fresh knowledge. Likewise, if you read newspapers and magazines, see pictures, visit art galleries, museums and zoos, you thereby add to your knowledge. Again, when you grow up and have dealings with other people, some of whom are not straight, you learn by experience and thus add to your knowledge of the world. If you are not careful, your wallet is liable to be stolen or you are liable to be cheated by some unscrupulous person. The thief who removes your wallet and the swindler who cheats you teach you a lesson and in the process make you wiser though poorer. If you visit a night club, you get acquainted with and add to your knowledge about some of the not much revealed realities and mysteries of life. All this in a way is education in the great school of life. But this is not the sense in which the word "education" is used in clause (15) of section 2. What education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by normal schooling*".

4.12 It may be mentioned here that their Lordships of the Supreme Court in the said case applied the tests laid down by the Privy Council in *re Trustees of the Tribune*[2] where in the question involved was, whether a trust, the object of which is to supply the people with an organ of educated public opinion, should be

---

[1] (1975) 101 ITR 234 (SC)
[2] (1939) 7 ITR 415 (PC)

considered to be one for education or for any other object of general public utility. Their Lordships in *Tribune's* case had unequivocally expressed the view that they were not prepared to hold that the property in question was held for the purpose of "*education*" in the sense that word was used in section 4 of the Indian Income-tax Act, 1922.

4.13 According to Halsbury's Laws of England (4th Edition, Volume 5, paragraph 522) the advancement and propagation of education and learning generally are charitable purposes, even in the absence of an element of poverty in the class of beneficiaries, but the trust must be for the benefit of a sufficient section of the community. It needs to be confined to education by a teacher in a class room and it need not be connected with teaching or education in the conventional sense. This category of charitable purposes extends to the improvement of a useful branch of human knowledge and its public dissemination. The furtherance of religious and mental improvement is charitable. Halsbury goes on to say further in paragraph 524 that the promotion of education in particular subjects, such as art, artistic taste, the appreciation of fine arts, music, commercial education, training for industrial employment, the art and science of Government, economic and sanitary science or psychological healing is charitable. But education in the cause of particular political party is not charitable nor is the presentation of classical, artistic, cultural and educational dramatic works. A trust whose purpose is mere increase of knowledge is not charitable in the legal sense and gifts to the simplified spelling society[1] and for investigations into the efficacy of a new alphabet[2] have been held not to be charitable. In *Bihar Institute of Mining & Mines Surveying v. C.I.T,*[3] the Court held that coaching of students in an institution is not imparting education, which can be said to be a process of training and developing of students and character of students by normal schooling. A coaching institute cannot be said to be an institution where normal schooling is done. Coaching institute was held not to be entitled to exemption from income tax under section 10(22) of the said Act.

---

[1] (1929) 45 TLR 344
[2] (1957) 1 All ER 745
[3] (1994) 208 ITR 608 (Pat)

4.14 Further the preservation of objects of historic interest for public inspection is a charitable purpose as was held in *re Cranstoun National Provincial Bank Ltd. v. Royal Society etc*[1]. Gifts for the education of special classes of persons forming a section of the community such as women and girls who are not self-supporting or the employees in the whole of a particular industry are charitable. However, gifts for the education of descendants of named persons or the education of employees or of children of employees or former employees of a limited company are not charitable.

4.15 It may be mentioned here that section 10(22) of the Act [now sections 10(23C)(iiiab), (iiiad) and (iv)] exempted any income of a university or other educational institution existing solely for educational purposes and not for purposes of profit and section 10(23A) exempted certain incomes of an approved association or institution having as its object, the control, supervision, regulation or encouragement of the profession of law, medicine, accountancy, engineering, architecture, or such other profession as may be notified by the Central Government. In *Rao Bahadur A .K. D. Dharmaraja Education Charity Trust v. C.I.T.*[2] their Lordships of the Madras High Court held that in order to claim exemption under section 10(22) of the Income-tax Act, 1961, it is not necessary that the assessee itself should be an educational institution and so long as the profits of an institution or society, which exists for educational purpose is incidental to the purpose of education, the income of such institute or society is exempt from tax under section 10(22) of the Act. However, if on fact, it is found that only a small amount had been spent for educational purposes leaving a huge surplus for other charitable purpose and a part of it is also spent for religious purposes, it could not be said that the institution was wholly for educational purposes, and, therefore, section 10(22) had no application, in the facts and circumstances of this case. In *C.I.T., Karnataka II, Bangalore v. Saraswath Poor Students Fund*[3], their Lordships of the Karnataka High Court held that the scope of exemption under section 10(22) of the Income-tax Act is wider than that granted under section 11. The exemption

[1] (1932) 1 Ch. 537
[2] (1990) 182 ITR 80 (Mad)
[3] (1984) 150 ITR 142 (Karn)

under section 10(22) is in respect of whole of the income of the assessee and not restricted to such income applied or accumulated for charitable purposes, as provided under section 11. In order to be entitled to exemption under section 10(22), the assessee must prove that it is an educational institution existing solely for education purposes. The primary object of the assessee being to extend financial help to the students and not to establish any educational institution to impart education to students, it was therefore not an educational institution and was not entitled to exemption under section 10(22).

4.16 But *Beg* J. in his separate judgement in *Sole Trustee, Loka Shikshana Trust v. C.I.T.*[1] observed that although the term "*education*" as used in section 2(15) of the Act is wider and more comprehensive than education contemplated in section 10(22) of the Act, yet the educational effects of a newspaper or publishing business are only indirect, problematical and quite incidental so that without imposing any condition or qualification upon the nature of information to be disseminated or material to be published, the mere publication of news or views cannot be said to serve a purely or even a predominantly educational purpose in the ordinary and usual sense.

It may be noted that section 10(22) has since been deleted from the statute book by the Finance (No.2) Act, 1998 with effect from 1.4.99 and corresponding provisions have now been made in sub clauses (iiiab), (iiiad) and (vi) of clause (23C) of section 10 of the Act.

MEDICAL RELIEF

4.17 Medical relief does not mean free treatment or treatment at less than the ordinary price for all patients. As was observed by the Lord President, Clyde in *Commissioners of Inland Revenue v. The Peeblessire Nursing Association*[2] that a hospital erected entirely for the benefit of the poor is none the less solely directed to that purpose because in order to provide it with some nucleus of revenue apart from voluntary subscription, it runs a special ward for paying patients. Nobody is lawfully entitled to say that to

[1] (1975) 101 ITR 234, 258 (SC)
[2] (1926) 11 TC 330, 350

provide cheap first class nursing for those who cannot afford is any the less a purely charitable undertaking because, as an incident and adjunct of the operation, it also provides some services to persons who are perfectly well able to pay and actually pay a full price for them. An eleemosynary element is not essential.

ANY OTHER OBJECT OF GENERAL PUBLIC UTILITY NOT INVOLVING THE CARRYING ON OF ANY ACTIVITY FOR PROFIT.

4.18 The last or the residuary category consisting of the words "*any other object of general public utility*", as these existed prior to their omission by the Finance Act, 1983 w.e.f. 1.4.1984, are very wide words. The only serious limitation put on the character of a "*general public utility*" is that it clearly excludes the object of private profit making though the undertaking may subserve general public utility. Reference in this connection may be made to the observations of Lord Wright in *All India Spinner's Association v. C.I.T.*[1] wherein it was stated that these are very wide words but their exact scope may require very careful consideration.

In *Bar Council of Maharastra v. C.I.T*[2]*.* their Lordships of the Bombay High Court held that under the Indian Act, a purpose would be charitable if it is for the advancement of any other object of general public utility. "*General*" means pertaining to a whole class. "*Public*" means the body of people at large and "*utility*" means usefulness. Therefore, the advancement of any object beneficial to the public or a section of the public as distinguished from an individual or group of individuals would be a charitable purpose. Looking to the functions of the Bar Council, the Court observed that the primary object with which the body is constituted is to benefit the public at large by having at its roll Advocates who are not only competent so far as law is concerned but who are respectable, fit and proper persons to belong to the noble profession of lawyers. The Court, therefore, held that a State Bar Council is clearly a body constituted for general public utility and the entire income of such a body is entitled to exemption under

[1] (1944) 12 ITR 482 (PC)
[2] (1980) 126 ITR 27 (Bom) affirmed in (1981) 130 ITR 28 (SC)

section 11 of the Act. This decision was later affirmed by the Supreme Court.[1] Their Lordships of the Supreme Court observed that the dominant purpose of a State Bar Council as reflected by the various obligatory functions is to ensure quality service of competent lawyers to the litigating public, to spread legal literacy, promote law reforms and provide legal assistance to the poor, while the benefit accruing to the lawyer-members is incidental.

4.19 In fact the decision of the Supreme Court in *C.I.T.v. Andhra Chamber of Commerce*[2] is the leading authority on the concept and construction of "*any other object of general public utility*". It was held by the Supreme Court that a Chamber of Commerce incorporated as a company under section 25 of the Companies Act, 1956 without a profit motive and having as its object promotion, protection, aiding and stimulation of trade, commerce and industries, is established for charitable purpose. These objects were held to be objects of general public utility.

4.20 The following are some of the cases where the objects were held by the Courts to be of general public utility.

(i) Maintaining & running a Stock Exchange—*Hyderabad Stock Exchange Ltd. v. C.I.T.*[3]

(ii) Promoting home industries, arts and crafts—*Royal Agriculture Society of England v. Wilson*.[4]

(iii) Effecting economic amelioration by imparting technical education, setting up of model industries and reducing unemployment—*C.I.T. v. Radhaswami Satsang Sabha*[5]

(iv) Establishment of research stations—*Coffee Board v. Deputy Commissioner of Ag. I. Tax.*[6]

(v) Preservation of places of historic interest or natural beauty—In re *Verrall*.[7]

---

[1] (1981) 130 ITR 28 (SC)
[2] (1965) 55 ITR 722 (SC)
[3] (1967) 66 ITR 195 (AP)
[4] (1924) 9 TC 62
[5] (1954) 25 ITR 472, 513 (All.)
[6] (1964) 52 ITR 126.
[7] (1916) Ch.100, (1932) 1 Ch. 537

(vi) Establishment and maintenance of Dharamshalas and Sadavarts.[1]

(vii) Establishment and maintenance of almshouses, rest homes, public wells and cisterns.[2]

(viii) Feeding Brahmins and travelers.[3]

(ix) Promotion of agriculture or horticulture.[4]

(x) Trust for relief of refugees.[5]

(xi) Trust for promotion of cricket or other sports among the public.

(xii) Trust for the maintenance of a public swimming bath—*C.I.T.v. Breach Candy Swimming Bath Trust.*[6]

(xiii) Trust for a public recreation ground—*re Hadden, Public Trustee v. More*[7] and *Guild v. IRC*[8].

(xiv) Promotion of unity and brotherhood amongst members of a community[9].

(xv) Complete development of all aspects of life comprising economic, physical, and intellectual as well as spiritual well being[10].

(xvi) Provision of dinner to Brahmins on specified occasions.

(xvii) Raj Roffar (ceremonies) as may have to be performed in connection with the members of the settlor's family.

---

[1] ILR 16 Bom 626; (1946) 14 ITR 440; (1969) 71 ITR 697 (Cal); (1972) ITR 683 (Guj); (1986) 158 ITR 32 (Raj); (1995) 20395 711 (Raj) & (1982) 147 ITR 463 (MP)
[2] (1985) 155 ITR 370 (Del); 5 TC 48, 11 TC 425; ILR 14 Bom 1; (1968) 2 Ali ER 276
[3] ILR 21 Mad 10 also (1983) 140 ITR 1 (SC)
[4] (1923) 39 TLR 675
[5] (1967) 111 Sol. J. 758
[6] (1955) 27 ITR 279 (Bom)
[7] (1932) 1 Ch. 133
[8] (1993) 199 ITR 566 (HL)
[9] (1973) 88 ITR 354 (Guj) affirmed in (1933) 140 ITR 1 (SC)
[10] (1977) 106 ITR 709 (Bom); (1985) 155 ITR 358 (Ker)

(xviii) Establishing, maintaining, running and helping Gaushalas, Pinjarapoles and other similar institutions etc.—*C.I.T. v. Swastik Textile Trading Co. (P) Ltd.*[1]

(xix) Supply of fodder to animals and cattle—*Vallabhadas Karsondas Natha v. C.I.T*[2]

(xx) Trust for the protection and benefit of animals—in *re Wedowood Allen v. Wedowood*[3] and *C.I.T.v. Swastik Textile Trading Co. (P) Ltd.*[4]

(xxi) Promoting social and physical well being of persons to enable them to participate in sports and games—*C.I.T. v. Ootacamund Gymkhana Club.*[5]

(xxii) Protecting, safeguarding, guiding and furthering the interest and welfare of merchants dealing in diamonds, bullion jewellery etc., and to provide facility for authoritative weighment of bullion or jewellery for a nominal charge, *Addl. C.I.T. v. Madras Jewellery & Diamond Merchants Association*[6]

(xxiii) To promote, develop and protect Brick Kiln Trade, Commerce & Industries. *Addl. C.I.T. v. Delhi Brick Kiln Owners Association.*[7]

(xxiv) Raising of moral, intellectual, economic, social and political condition of people. *Ganga Prasad Varma Memorial Society v. C.I.T.*[8]

(xxv) Construction of hall for social and cultural activities, library, reading rooms, garden, children's park, museum, guest houses, shops,

---

[1] (1977) 110 ITR 393 (Mad)
[2] (1947) 15 ITR 32 (Bom)
[3] (1915) 1 Ch. 113, 117, 122
[4] (1977) 110 ITR 393 (Mad) cf (1985) 153 ITR 521 (AP) FB; (1987) 168 ITR
[5] (1977) 110 ITR 392 (Mad)
[6] (1981) 129 ITR 214 (Mad)
[7] (1981) 130 ITR 55 (Del)
[8] (1982) 134 ITR 421 (All)

offices, playgrounds, *Mahakoshal Shaheed Smarak Trust v. C.I.T.*[1]

(xxvi) Giving financial and other help on the occasion of marriage *C.I.T.v. Bharti Khatri Seva Trust*[2] or sacred thread ceremony *C.I.T.v. Anand Swarup Brijendra Swarup Charitable Trust*[3], and *C.I.T.v. PT.Ram Shanker Misra Trust.*[4]

(xxvii) Bar Council constituted to enroll as Advocates qualified and proper persons, to safeguard the interest of the Advocates, to assist the disable Advocates, to promote law reforms etc. *Bar Council of Uttar Pradesh v. C.I.T., Lucknow*[5] and *Bar Council of Rajasthan v. C.I.T.*[6]

(xxviii) An Institution established for the benefit of the Police or of a particular community and their families *C.I.T. v Andhra Pradesh Police Welfare Society*[7], *C.I.T. v. Surji Devi Kunji Lal Jaipuria Charitable Trust.*[8].

(xxix) Promoting Commerce, Art, Science or any other useful object connected with photographic and allied trade. *C.I.T. v. South Indian Photographic & Allied Trades Association*[9]

(xxx) Improvement in the conditions of the members of scheduled tribes, *Girijan Co-operative Corporation Ltd. v. C.I.T.*[10]

(xxxi) To promote, encourage and protect the interests of the Banking & Pawn Brokers' Trade *C.I.T.v A.P.Bankers & Pawn-brokers' Association*[11]

---

[1] (1983) 140 ITR 795 (MP)
[2] (1994) 205 ITR 96 (All)
[3] (1991) 187 ITR 656 (All)
[4] (1996) 222 ITR 252 (All)
[5] (1983) 143 ITR 584 (All)
[6] (1982) 147 ITR 720 (Raj)
[7] (1984) 148 ITR 287 (AP)
[8] (1990) 186 ITR 728 (All)
[9] (1987) 166 ITR 166 (Mad)
[10] (1989) 178 ITR 359 (AP)
[11] (1988) 170 ITR 476 (AP)

(xxxii) To promote the interest of people engaged in the business of trading in grains and oil seeds and to assist, regulate and control such trade. *C.I.T.v. Madhya Pradesh Anaj Tilhan Vyapari Mahasangh*[1]

(xxxiii) To organize seminars, conferences and workshops to educate people on commercial laws, tax laws, auditing, accounting, direct and indirect taxes. *CIT v. Jodhpur Chartered Accountants Society*[2]

(xxxiv) To develop various kinds of plants that restore environmental balance and also help in the conservation of various plants. *DIT(E) v. Agri-Horticultural Society*[3]

(xxxv) Promotion of yoga and propagation of teachings of philosophies[4]. *CIT v. Rajneesh Foundation*

4.21 But under the new Act of 1961, a rider has now been added to the earlier expression "*the advancement of any other object of general public utility*" used in the 1922 Act. However, simultaneously with the change in the definition of "*charitable purpose*", designed to exclude "*the carrying on of any activity for profit*", the Select Committee also amended the definition of "*property held under trust*" for charitable purposes to include a business undertaking. This was done by enacting sub-section (4) in section 11 of the Act. Though at first sight the two changes would seem to clash with each other, it is possible to reconcile them. It is, however, well settled by now that the rider "*not involving the advancement of any other object of general public utility*" governs the words *"the advancement of any other object of general public utility"* and not the words "*relief of the poor, education and medical relief*". See *Dharmadeepti v. C.I.T.*[5] and *Addl. C.I.T.v. Surat Art Silk Cloth Mfrs. Association*[6] also *Addl.*

[1] (1988) 171 ITR 677 (MP)
[2] (2002) 258 ITR 548 (Raj)
[3] (2005) 273 ITR 198 (Mad)
[4] (2006) 280 ITR 553 (Bom)
[5] (1978) 114 ITR 454 (SC)
[6] (1980) 121 ITR 1 (SC)

C.I.T.v. Aroor Brothers Charitable Trust[1] and *C.I.T.v. Hyderabad Stock Exchange Ltd.*[2]. Where, therefore, the purpose of a trust or institution is relief of the poor, education or medical relief, the requirement of the definition of "*charitable purpose*" would be fully satisfied, even if an activity for profit is carried on in the course of the actual carrying out of the primary purpose of the trust or institution.

4.22 A charitable trust can carry on business and utilise its profits therefrom for a charitable purpose, but a charitable trust cannot have as its purpose an activity that involves the buying and selling of goods and the making of profit. The business undertaking may be the means for effectuating a charity, but not a charitable object itself. The Finance Minister also made this point perfectly clear in the Rajya Sabha. He said in effect that if a trust conducted a newspaper and made profit from that it will have to be taxed unless the trust uses the income from the newspaper for charitable purposes other than that of running a newspaper, like medical relief, education and relief to the poor, etc. It is no longer possible to contend that the publishing of a newspaper itself was a charitable activity. Thus to that extent, the decision of the Privy Council in *re The Trustees of Tribune*[3] must be considered to have been superseded by the new definition in 1961 Act.[4] The Rajasthan High Court in *Umaid Charitable Trust v. C.I.T.*[5] held that the Legislature did not intend to debar a trust created for a charitable purpose from holding property including a business undertaking. But the object of the trust must not be the carrying on of any activity for profit. Distinction must be made between the objects of a trust and the powers conferred on the trustees. To qualify as a charitable trust under section 2(15) of the Act of 1961, the activity involved in carrying out a charitable purpose must not be motivated by a profit objective but it must be undertaken for the purpose of advancement or carrying out the charitable purposes. The Court also observed that whenever an activity is carried on which yields profit, the inference cannot be drawn that the activity must be for profit and the charitable purpose involves the carrying

[1] (1978) 115 ITR 418 (Ker)
[2] (1976) Tax Law Reports 1136 (AP)
[3] (1939) 7 ITR 415 (PC)
[4] (1975) 101 ITR 234, 254 (SC)
[5] (1980) 125 ITR 55 (Raj)

on of an activity for profit. In other words, the object must be of general public utility, but if for advancement of that object, it becomes necessary to carry on any activity for profit, such an activity would not detract from the charitable purpose.

4.23 In *C.I.T.v Sangit Kala Mandir Trust*[1] the Court found that one of the objects in the trust deed authorised the trustees to organise Kavi Sammelan, debate and other cultural and literary programmes and social gatherings for the benefit of the public and invite poets, artists and other learned persons therein. Another clause in the deed empowered the trustees to carry on business on behalf of the trust. The finding of the Tribunal was that the assessee did not carry on any activity for profit. The Court held that the primary and dominant objects of the trust were all objects of general public utility and the power to run business was held to be incidental and ancillary to the carrying on of such object. To the same effect is the decision in *C.I.T. v. Thyaga Brahma Gana Sabha (Sri)*[2] In this case, the court held that the exclusionary clause does not require that the activity must be carried on in such a manner that it does not result in any profit at all. Charitable purpose would not lose it character merely because some profit had arisen from the activity—see *Director of Income-tax (Exemption) v. Shilpam*[3].

4.24 In this connection a distinction must be made between the powers of the trust to invest its money for the purpose of earning the profit which they could apply to the purposes of the trust and the objects of the trust as such. What is necessary to disentitle the trust from exemption is that the purpose should involve the carrying on of any activity for profit. Exemption is denied where the profit is the object or an essential ingredient of the object of the trust, but not where profit is merely a by-product of the activity of the trust.

4.25 Here it may be useful to quote from the separate judgment delivered by Beg J. in *Sole Trustee, Loka Shikshana Trust v. C.I.T.*[4]

---

[1] (1987) 166 ITR 217 (Cal)
[2] (1991) 188 ITR 160 (Mad)
[3] (1998) 230 ITR 126 (Cal)
[4] (1975) 101 ITR 234, 255-56 (SC)

"*The use of the words "for profit", however shows that the involvement of profit making should be of such a degree or to such an extent as to enable us to infer it to be the real object. As a rule, if the terms of the trust permit its operation "for profit", they become prima facie, evidence of a purpose falling outside charity. They would indicate the object of profit making unless and until it is shown that the terms of the trust compel the trustee to utilise the profits of business also for charity. This means that the test introduced by the amendment is: Does the purpose of a trust restrict spending the income of a profitable activity exclusively or primarily upon what is "charity" in law? If the profits must necessarily feed a charitable purpose, under the terms of the trust, the mere fact that the activities of the trust yield profit will not alter the charitable character of the trust. The test now is, more clearly than in the past, the genuineness of the purpose tested by the obligation created to spend the money exclusively or essentially on "charity". If that obligation is there, the income becomes entitled to exemption, that, in our opinion is the most reliable test. The difficult question, however, still remains. What is the meaning of "charitable purpose" which is only indicated but not defined by section 2(15) of the Act? It seems to me that a common concept or element of "charity" is shared by each of the four different categories of charity. It is true that charity does not necessarily exclude carrying on an activity which yields profit, provided that profit has been used up for what is recognized as charity. The very concept of charity denote altruistic thought and action. Its object must necessarily be to benefit others rather than one's self. Its essence is selflessness. In a truly charitable activity any possible benefit to the person who does the charitable act is merely incidental or even accidental and immaterial. The action which flow from charitable thinking is not directed towards benefiting one's self. It is always directed at benefiting others. It is this direction of thought and effort and not the result of what is done, in terms of financially measurable gain, which determines that it is charitable. This direction must be evident and obligatory upon the trustee from the terms of a deed of trust before it can be held to be really*

> *charitable. We think that this governing idea of charity must qualify the purpose of every category enumerated in section 2(15) of the Act of 1961. We think that the word introduced by the Act of 1961 to qualify the last and widest category of objects of public utility were really intended to bring out what has to be the dominant characteristic of each and every category of charity. They were intended to bring the last and most general category in line with the nature of activities considered truly charitable and mentioned in the earlier categories*."

4.26 The argument by the Counsel on behalf of the *Loka Shikshana Trust* that since that objects of the trust did not include "profit making" the exemption could not be denied was repelled by Beg. J. in the following words:

> "*But as I have already indicated, the absence of such a condition from the trust deed could not determine its true character. That character is determined far more certainly and convincingly by the absence of terms which could eliminate or prevent profit-making from becoming the real or dominant purpose of the trust. It is what the provisions of the trust make possible or permit coupled with what had been actually done without any illegality in the way of profit-making, in the case before us, under the cover of the provisions of the deed, which enable us to decipher the meaning and determine the predominantly profit-making character of the trust*."

4.27 However, in a later case, the Madras High Court in *Madras Kirana Merchants' Association v. C.I.T.*[1] following the observations of Mr. Justice Krishna Iyer in *Indian Chamber of Commerce v. C.I.T.*[2] held that the presence of a clause that the activities of the association shall be carried on the basis of 'no profit or no loss' in the Memorandum of Association is not an indispensable requirement to satisfy the test of charitable purpose. Such a condition may be written or unwritten and if it is unwritten, it can be gathered from long years of invariable practice or spelt from strong surrounding circumstances.

---

[1] (1977) CTR 217 (Mad)
[2] (1975) 101 ITR 796 (SC)

4.28 The observation of Beg. J. in the case of Loka Shikshana Trust as referred to in paragraphs 4.25 and 4.26 were in effect approved by the majority judgement of the Supreme Court in *Addl. C.I.T. v. Surat Silk Cloth Mfrs. Association*[1]. Bhagwati J., who delivered the majority judgement of the Supreme Court observed at pages 25 and 26 of the reports as under:

> "*The test which has, therefore, now to be applied is whether the predominant object of the activity involved in carrying out the object of general public utility is to subserve the charitable purpose or to earn profit. Where profit making is the predominant object of the activity, the purpose, though an object of general public utility would cease to be a charitable purpose. But where the predominant object of the activity is to carry out the charitable purpose and not to earn profit, it would not lose its character of a charitable purpose merely because some profit arises from the activity. The exclusionary clause does not require that the activity must be carried on in such a manner that it does not result in any profit. It would indeed be difficult for persons in charge of a trust or institution to so carry on the activity that the expenditure balances the income and there is no resulting profit. That would not only be difficult of practical realisation but would also reflect unsound principle of management. We, therefore, agree with Beg. J. When he said in Sole Trustee, Loka Sikhshana Trust's case [1975] 101 ITR 234, 256 (SC) that*:
>
> "*If the profits must necessarily feed a charitable purpose under the terms of the trust, the mere fact that the activities of the trust yield profit will not alter the charitable character of the trust. The test now is, more clearly than in the past, the genuineness of the purpose tested by the obligation created to spend the money exclusively or essentially on charity*."

4.29 The learned judge also added that the restrictive condition "*that the purpose should not involve the carrying on of any activity for profit would be satisfied if profit-making is not the real object*."

---

[1] (1980) 121 ITR 1 (SC)

4.30 This last category of "*charitable purpose*" was further explained by the Supreme Court in *Indian Chamber of Commerce v. C.I.T.*[1] The question involved in this case was whether the income derived by a Chamber of Commerce from (a) arbitration fees levied by the chamber (b) fees collected for issuing certificates of origin and (c) share of profit in Messers, Calcutta Licenced Measures for issue of certificate of weighment and measurement, was exempt from income-tax under section 11 read with section 2(15) of the Act. Explaining the new qualifying words in the 1961 Act "*not involving the carrying on of any activity for profit*" added in section 2(15), Krishna Iyer J. who delivered the judgement of the Court Observed as under:

> *"The true test is to ask for answers to the following questions: (a) Is the object of the assessee one of general public utility? (b) Does the advancement of the object involve activities bringing in moneys? (c) If so, are such activities undertaken, (i) for profit, or (ii) without profit? Even if (a) and (b) are answered affirmatively, if clause (i) is answered affirmatively,"the claim for exemption collapses. The solution to the problem of an activity being one for or irrespective of profit is gathered on a footing of facts. What is the real nature of the activity? One which is ordinarily carried on by ordinary people for gain? Is there a built-in prescription in the Constitution against making a profit? Has there been, in practice, profit from this venture? Although the last is a weak test, the mere fact that a service is rendered is no answer to chargeability because all income is often derived by rendering some service or other."*
>
> *"A pragmatic condition, written or unwritten, proved by a prescription of profits or by long years of invariable practice or spelt from strong surrounding circumstancesindicative of anti-profit motivation-such a condition will qualify for "charitable purpose" and legitimately get round the fiscal hook. Short of it, the tax tackle holds you fast. A word about the burden of proof is necessary here. Income, ordinarily chargeable, can be free from exigibility only if the*

[1] (1975) 101 ITR 796, 808-809

> *assessee discharges the onus of bringing himself within section 2 (15). In so doing, he has to attract and repel—attract the condition that his objects are of "general public utility" and repel the charge that he is advancing these objects by involvement in activities for profit. Once this broad dual basis is made out, the revenue will not go into meticulous mathematics and charge every chance excess or random surplus. If the activity is prone to yielding income and in fact results in profits, the revenue will examine the reality or pretense of the condition that the activity is not for profit. Here, one may well say: "Suit the action to the word, the word, to the action*."

4.31 In this background, the Court held that the activities of charging fees and issuing certificates of origin as also settlement of disputes among traders by arbitration are undoubtedly services of general public utility. But all these activities are amenable to tax as being carried on for profit, there being nothing to show that the Chamber was undertaking these jobs on a "*no profit*" basis. If the fee charged for doing so is more or less commensurate with the expense, the chamber had to incur, a minor surplus will not attract tax. Every type of service oriented activity where some charge is levied from the beneficiary and at the end of year some surplus is left behind, does not lose the benefit of section 2(15). For then, one cannot conceive of any object of general public utility, which can be advanced by the Chamber of Commerce. The Court went on to add that in the absence of any "*magna carta*" binding the Chamber not to sell arbiter justice, it is not entitled to claim exemption from tax in respect of income from such activities.

4.32 An attempt was made by the Counsel for the assessee in *Sole Trustee, Loka Shikshana Trust v. C.I.T.*[1] to claim that "*profit*" under section 2(15) of the Act means private profit. The Supreme Court, however, repelled the said contention on the ground that the word used in the definition given in section 2(15) is profit and not private profit and it would not be permissible to read in the above definition the word "*private*" as qualifying "*profit*" even though such word is not there. The Supreme Court pointed out further that if it was the sole purpose of amendment in the

[1] (1975) 101 ITR 234, 255 (SC)

definition as introduced in 1961, the amendment was not necessary at all for it had been declared by the Courts even before the amendment that activities motivated by private profit making fell outside the concept of charity altogether. The new word "*not involving the carrying on of any activity for profit*" clearly imposed a new qualification on public utilities entitled to exemption for it was obvious that unless such a limitation was introduced, the fourth and last category would become too wide to prevent its abuse.

4.33 In A*ndhra Pradesh State Road Transport Corporation v. C.I.T.*[1] the Andhra Pradesh High Court, however, held that "the charitable purposes mentioned in section 2(15) of the Income-tax Act, 1961 are only illustrative and not exhaustive. The object of the words "*not involving the carrying on of any activity for profit*" mentioned in the Act is only to restrict the benefit to public utility service without profit motive as distinguished from public utility service with some private gain. Any other interpretation will make the exempting provision illusory. Since the Andhra Pradesh State Road Transport Corporation which was established for purpose of providing for an efficient transport system has no profit motive though it earns income in the process, it is not liable to income-tax. The Court went on to add that the object of the statute is obviously not to completely eschew or bar any business activity from a public utility concern in order to qualify it for the benefit under section 2(15) of the Act, but only to restrict the benefit to those concerns whose object is not to make a profit but to be of utility to the public.

4.34 The interpretation put by the Andhra Pradesh High Court in the said case was approved by the Supreme Court in *C.I.T. v. Surat Art Silk Mfrs. Association.*[2]

4.35 The rider not involving the carrying on of an activity for profit to the expression "*any other object of general public utility*" came in for judicial interpretation once again in the case of *C.I.T. v. Madras Stock Exchange*[3]*.* In this case the Madras High Court was dealing with a common reference in respect of four assessees of whom three were Chambers of Commerce and the fourth was

[1] (1975) 100 ITR 392 (AP) affirmed in (1986) 159 ITR 1 (SC)
[2] (1980) 121 ITR 1, 17 (SC)
[3] (1976) 105 ITR 546 (Mad) affirmed in (1981) 130 ITR 184 (SC)

the Madras Stock Exchange. The question that arose for determination in each of these cases related to the construction of section 2(15) of the Income-tax Act, 1961 but the facts in respect of each of the said four cases were somewhat different.

4.36 In the case of *Andhra Chamber of Commerce*[1], the Chamber was incorporated as a company under section 26 of the Indian Companies Act, 1913 without a profit motive and had as its objects, protection, aiding and stimulation of trade, commerce and industry. Earlier the Supreme Court in this case had already held that the Chamber was established for charitable purpose and was entitled to exemption under section 4(3)(i) of the Income-tax Act, 1922. The Madras High Court later in the said case was concerned with the assessment year 1962-63 corresponding to the calendar year 1961 where the Chamber had claimed exemption in respect of rental income derived by it from a building, which was purchased by it in 1944 and wherein the assessee had made substantial alterations, additions and improvements and had let out a portion thereof, which was not required for its own use, to the tenants. Before the High Court it was contended by the Revenue that the letting out of the property by the assessee in this case was an activity for profit and though the assessee was exempt from tax under the provisions of the Act of 1922, this exemption was taken away under the Act of 1961 when, in accomplishing its purposes, the assessee engaged itself in activity for profit. It was submitted that as in this case there was no written condition in the constitution of the assessee tabooing profits, the assessee could not enjoy the exemption and the mere prohibition of distribution of income by way of dividend, etc., being only a manner of application of the income, had no relevance. For the assessee, it was submitted that section 2(15) had to be read with section 11 and that if the contentions for the Revenue were to be accepted then section 11 would be rendered otiose. It was contended that the provisions for exemption would have scope for application only if there was income and, therefore, there was no need either in the constitution governing the assessee or otherwise to taboo profits. It was, therefore, submitted that mere earning of income could not bring the case within the scope of the closing words of section 2(15) and this was not a case where there

[1] (1965) 55 ITR 722 (SC)

was any activity for profit but there was a mere earning of income from the property held under trust, which came within the scope of the exemption under section 11. The Madras High Court considered the two earlier judgements of the Supreme Court delivered in the case of *Sole Trustee, Loka Shikshana Trust v. C.I.T.*[1] and in *Indian Chamber of Commerce v. C.I.T.*[2] and referring to the observations made by Mr. Justice Krishan Iyer, at page 805, in the case of Indian Chamber of Commerce, the Court observed that "the emphasis is on accomplishing its objects by carrying on any activity for profit. In other words, if in the advancement of its object, the Chamber resorts to carrying on of activities for profit, then necessarily section 2(15) cannot cover. The advancement of charitable objects must not involve *profit-making activities*. This is considered to be the mandate of the new amendment"[3]. Here it may be useful to quote from the judgement delivered by *Sethuraman J.* in the case of *C.I.T.v. Madras Stock Exchange Ltd.*[4]

> "*The dictionary meaning of the word "involve" is "to envelop, to entangle, to include, to contain, to imply." (See the Shorter Oxford Dictionary, 3rd Edition, page 1042). The word "involve" thus contemplates the objective of general public utility being sought to be achieved by carrying on an activity for profit. If we analyse properly the two decisions of the Supreme Court, it would be clear that both of them illustrate the different aspects of the provisions. In the Loka Shikshana Trust's case, the object of the trust could not be achieved without carrying on the business of publication of newspapers. If the profit making activity is thus the appointed means of achieving a charitable object of general public utility, then the profit would be taxable. One cannot carry on a business and also claim exemption on the income therefrom by merely saying that it is for charitable purpose. There is a distinction between: (a) a business being held under trust whose profits feed a charity; and (b) the carrying on of a business in carrying out what is conceived as charitable purpose. In the former*

[1] (1975) 101 ITR 234, 243 (SC)
[2] (1975) 101 ITR 796, 805 (SC)
[3] (1976) 105 ITR 546, 554-555 affd in (1981) 130 ITR 184 (SC)
[4] (1976) 105 ITR 546, 555-556.

case, the income is clearly exempt. In the latter, the income may be taxable. The distinction is somewhat fine, but it has to be kept in mind. The proposition that one must run the activity on a "no profit no loss basis" is applicable to a case where in the course of carrying out a charitable purpose there is an activity. In such a case, if the aim was not to render the service on "no profit no loss basis", the profit would be taxable. Similarly, the test that the profit from a business, which is taxable, by a charity indulging in it, is also applicable primarily to a case where the profit making activity is embarked upon as the appointed means of achieving the purpose of the trust. For instance, the fee for arbitration or the fee for issuing certificates of origin might have been conceived as part of its objects of assisting trade and commerce by the Indian Chamber of Commerce in Indian Chamber of Commerce v. Commissioner of Income Tax. But there was no self-imposed embargo on making profits. It was, therefore, held that the activity was for making profits. If there was any such activity in the present case, then the Andhra Chamber of Commerce would not be exempted from tax. We have, therefore, to look into the present case to find out as to what the objects of the Chamber were and whether it was seeking to accomplish the said objects by indulging in an activity for profit.

The object of the Chamber was clearly to promote trade and industry. The construction of a building was for the purpose of locating its office. The Chamber fulfills many functions like arranging periodical meeting of its members in promotion of its objects, receiving officials and ministers so as to make representations in order to ensure smooth flow of trade, commerce and manufacture and helping the members in other ways conceived by it. It has necessarily to keep a house in which all these functions could be carried on. When the space available in the building was found to be surplus naturally made it available for rent by letting out part of it. By doing so, it was not carrying on any activity for profit as conceived by the provision. A person who lets out a property and enjoys the income therefrom, is more passive than active. It is not, therefore, reasonable to

> *call it an activity for profit. As rightly pointed out by the learned Counsel for the assessee, the whole of Section 11 would be rendered useless if the construction sought to be placed for the revenue is to be accepted. If merely because there is an income either from the property or from other investments it should be held that it is an activity for profit, then the exemption under section 11 would have no scope to operate. It would be reduced to a dead letter. Any construction, which would render a provision otiose, should be avoided. Therefore, it is necessary to give scope for the exemption under section 11 keeping at the same time in mind the amendment to section 2(15). It is possible to do so in the present case by holding that the assessee by purchasing a building and letting out some surplus area was not indulging in any activity for profit. Section 11 does not taboo the earning of profit as, unless there was profit, there would be no need for the exemption provision. It is only on the postulate of profits being there, that any exemption provision would find a place in the statute*."

4.37 It may, however, be noted that the Calcutta High Court in its decision in the case of *Bengal National Chamber of Commerce and Industry v. C.I.T.*[1] did not agree with the said view expressed by the Madras High Court. In this case, the assessee trust acquired land and constructed a house on such land. It claimed exemption under section 11 in respect of the rental income regularly derived from a portion of the property, which was, let out, to the extent such income was spent for objects of general public utility. The Calcutta High Court following the tests laid down by Mr. Justice Krishna Iyer, in *Indian Chamber of Commerce v. C.I.T.*[2] held that here it cannot be said that the advancement of the object of general public utility does not involve activity for profit. As such, the Calcutta High Court was of the view that the letting out of property was an activity for profit and accordingly the exemption under section 11 was not available to the assessee trust.

4.38 The Madras High Court then dealt with the case of *South Indian Film Chamber of Commerce,*[3] which owned a building in

[1] (1978) 111 ITR 514 (Cal)
[2] (1975) 101 ITR 796 (SC)
[3] (1991) 129 ITR 22 (Mad)

which there were vaults for storage of films. These vaults were provided at the instance of the Chief Inspector of Explosives. The assessee also undertook the distribution of raw films at the instance of the Controller of Imports. The claim of the assessee was that the property income derived from it as also the income derived from the distribution of raw films and cinematography films were exempt from tax under section 11 of the Act. The exemption was denied by the Income-tax Department on the ground that this was a case in which the assessee had undertaken activities for profit, which would bring it within the scope of taxable ambit. The Madras High Court held that if the assessee itself indulges in an activity and that if profits arise from it, it could be legitimately said that the activity was adapted to such profit. But that was not the case here. The assessee was an instrument of the Government for the purposes of ensuring certain standards in the matter of storage of films or distribution thereof. The Madras High Court held that these activities were not for profit so as to be hit by the last portion of the definition in section 2(15).

4.39 The other assessee, Southern Indian Chamber of Commerce claimed that its receipts during the assessment year 1962-63, which included surplus realised from conducting an exhibition at the time of its Golden Jubilee, which also synchronized with the termination of Second Five Year Plan Development was exempt from taxation. This claim was rejected by the Income-tax Officer and the Appellate Assistant Commissioner but was upheld by the Tribunal. The Madras High Court, on a reference, held that there was nothing to show that at the time when the exhibition was organised the assessee thought of the object as a profit-making proposition and the fact that, in spite of handsome surplus, it did not repeat the organisaton of any such exhibition went to show that this was not an activity for profit. At the time when it started the exhibition, it could not have estimated the number of persons who would visit it so that it could fix an entry fee in such a manner that it derived no profit. That the assessee ultimately derived a profit was only fortuitous and, hence, the claim of the assessee for exemptions was upheld[1].

[1] (1981) 129 ITR 22 (Mad)

4.40 The last of the assessee in that common reference was the Madras Stock Exchange, which was registered under the Indian Companies Act, 1913. The Madras Stock Exchange claimed that its receipts during the relevant year, which included income derived from:

(a) preparation and sale of Year Book.

(b) market reports, and

(c) listing fee

was exempt from taxation. Every year the assessee prepared what is called "*Year Book*" in which the detailed particulars of the Companies whose shares were dealt with in the Stock Exchange were compiled. The market reports were also issued every day when the market was opened, giving quotation of the shares and securities. This listing fees were also derived from the companies, which wanted their shares being dealt with in the Stock Exchange. Both the Income-tax Officer and the Appellate Assistant Commissioner had rejected the assessee's claim on the ground that the Madras Stock Exchange derived income from carrying on business. The Madras High Court, however held that the assessee was not carrying on any business. The compilation of the Year Book was only intended to give particulars of the brokers and their constituent public to know the nature and details of the shares that were dealt with in the Stock Exchange. It was a kind of amenity for the benefit of the brokers and the public so that they could decide on a notional basis the value of the shares so as to deal in them. The publication of market report was also a beneficial activity so as to enable the public to know the price at which the shares were being dealt with in the Stock Exchange. The High Court held that these activities were not undertaken with a view to make the gain. As regards the listing fee also the High Court held that the mere receipt of listing fee could not be said to be an activity for profit as the Stock Exchange, in listing shares, carried on what could be called a statutory function under the Securities Contracts (Regulation) Act, 1956. It was, therefore, held that there was no activity for profit within the meaning of section 2(15) of the Income-tax Act, 1961 and as such the claim for exemption was upheld.

4.41 The same view was expressed earlier by the Andhra Pradesh High Court in *C.I.T. v. Hyderabad Stock Exchange Ltd.*[1] In this case the sources of income of the stock exchange consisted of interest from G.P. Notes, from Railway Shares and on Fixed Deposits. It was held by the Andhra Pradesh High Court that these sources of income could not be attributed to any activity of a commercial nature and as such the income was exempt from assessment under section 11 read with section 2(15) of the Income-tax Act, 1961. Here it may be useful to quote from the judgement delivered in the said case by *Kondaiah J.* who explained the meaning of the concluding words used in section 2(15) of the Act as under:

> "*The expression "not involving the carrying on of any activity for profit' governs only the last of the four categories indicated in the definition of "charitable propose". This view of ours gains support from the use of the word 'and' and a comma before it and after the expression 'medical relief'. However, we are unable to agree with Mr. Rama Rao that the expression 'not involving the carrying on of any activity for profit' is referable to any other object of general public utility". In our considered opinion, that expression governs only 'the advancement of any other object'. In other words, the advancement of any other object of general public utility should not involve the carrying on of any activity for profit. It is the advancement but not the object of general public utility that should not involve the carrying on of any activity for profit. The use of the term 'activity' instead of "business" is also pertinent to be noticed. According to the Concise Oxford Dictionary 'activity' means 'exercise of energy', "spheres of action*."

4.42 The expression '*activity*' is of wider import than business. Any sphere of action or exercise of energy for profit must be held to be an 'activity for profit' within the meaning of clause (15) of section 2. An activity without profit motive is excluded. Where the advancement of the object of the assessee involves the carrying on of any activity for profit, the exemption permissible under section 11 is excluded. The intendment of the legislature in adding

[1] (1976) Tax Law Reports 1136 (AP)

the expression "*not involving the carrying on of any activity for profit"* after the words "*the advancement of any other object of general public utility"* is obvious. The field of public utility which was construed to be very wide, by the Supreme Court in the case of *Andhra Chamber of Commerce*[1] is sought to be restricted by importing the expression "*not involving the carrying on of any activity for profit' into the definition of charitable purpose*". The legislature intended to take away the benefit of the exemption under section 11 from such of those who carry on a regular business or activity for profit, although it advances the object of general public utility. Hence, any involvement in the carrying on of an activity for profit in advancing the object of general public utility disentitles the assessee from getting exemption under section 11. In other words, in spite of the fact that there is advancement of any object of general public utility, the assessee would be disentitled to claim exemption because such advancement involves the carrying on of an activity for profit. However, it must be borne in mind that the involvement in carrying on of any activity for profit, by a trust whose purpose is relief of the poor, education or medical relief, would not, in any event, disentitle such trust from claiming the exemption under section 11 read with section 2(15) of the Act.

4.43 The views expressed by both Madras and Andhra Pradesh High Courts as to the meaning and purport of the expression "not involving the carrying on of any activity for profit" also finds support from the observations of Krishna Iyer J. in *Indian Chamber of Commerce v. Commissioner of Income-tax.*[2]*.*

> "*To sum up, section 2(15) excludes from exemption the carrying on of activities for profit even if they are linked with the objectives of general public utility, because the statute interdicts, for purposes of tax relief, the advancement of such objects by involvement in the carrying on of activities for profit*."

4.44 In *Sole Trustee, Loka Shikshana Trust v. C.I.T.*[3]*,* Khanna J. speaking on behalf of himself and Gupta J. observed "*As a result of the addition of the word "not involving the carrying on of any*

[1] (1965) 55 ITR 722 (SC) = (AIR 1965 SC 1281)
[2] (1975) 101 ITR 796, 805 (SC)
[3] (1975) 101 ITR 234, 242 (SC)

activity for profit" at the end of the definition in section 2(15) of the Act, even if the purpose of trust is "advancement of any other object of general public utility", it would not be considered to be "charitable purpose" unless it is shown that the above purpose does not involve the carrying on of any activity for profit. The result thus of the change in the definition is that in order to bring a case within the fourth category of charitable purpose, it would be necessary to show that: (1) the purpose of the trust is advancement of any other object of general public utility, and (2) the above purpose does not involve the carrying on of any activity for profit. Both the above conditions must be fulfilled before the purpose of the trust can be held to be charitable purpose. It is not necessary for the decision of this case, as already mentioned above, to go into the question as the whether the words "not involving the carrying on of any activity for profit" also qualify the first categories of charitable purpose, namely relief of the poor, education and medical relief."

4.45 A reading of the paragraphs 4.30 to 4.44 would seem to suggest an almost unanimity of judicial view as to the meaning of the last head "*advancement of any other object of general public utility not involving the carrying on of any activity for profit*" to the effect that:-

(a) the purpose of the trust or institution must be advancement of an object of general public utility;

(b) the crucial words "*not involving the carrying*" on of any activity for profit" qualify "*advancement*" and not "*object of general public utility*";

(c) no activity for profit must be carried on for the purpose of achieving or attaining the object of general public utility. In other words, the means to achieve or carry out the object of general public utility must not involve the carrying on of any activity for profit;

(d) whenever an activity is carried on which yields profit, the inference must necessarily be drawn in the absence of some indication to the contrary, that the activity is for profit and the charitable purpose involves the carrying on of an activity for profit.

4.46 This was so until the decision of the Supreme Court in *Addl. C.I.T. v. Surat Art Silk Cloth Mfrs. Association.*[1] In this case, the Supreme Court by majority (A.P. Sen J. dissenting) virtually overruled its earlier decision in *Indian Chamber of Commerce v. C.I.T.*[2] and disapproved the observation of Khanna and Gupta JJ. In *Sole Trustee, Loka Shikshana Trust v. C.I.T.*[3] the majority judgement of the Supreme Court was delivered by Bhagwati J. who also spoke for Untwalia and Tulzapurkar JJ. The majority judgement may be summarized as under:

(a) The last head of "*charitable purpose*" requires for its applicability, fulfillment of two conditions:

  (i) the purpose of trust or institution must be advancement of an object of general utility; and

  (ii) that purpose must not involve the carrying on of any activity for profit.

(b) The ten crucial words "*not involving the carrying on of any activity for profit*" go with "*object of general public utility*" and not with "*advancement*". In this respect, Pathak J. also gave a dissenting note and observed that the restrictive clause must be read with "the advancement of any other object of general public utility and not with "*the object of general public utility*".

(c) What these words require is that the object should not involve the carrying on of any activity for profit. The emphasis is on the object of general public utility and not on its accomplishment or attainment. It is not necessary that the accomplishment of the object or the means to carry out the object should not involve an activity for profit. This is not the mandate of the newly added words. The true meaning of these last ten words is that when the purpose of a trust or institution is the advancement of an object of general public utility, it is that object of general public utility and not its accomplishment or carrying out which must not involve the carrying of any activity for profit.

---

[1] (1980) 121 ITR 1 (SC)
[2] (1975) 101 ITR 796 (SC)
[3] (1975) 101 ITR 234 (SC)

(d) When can the purpose of a trust or institution be said to involve the carrying on of any activity for profit? This was answered by explaining that one must see whether the purpose of the trust or institution in fact involves the carrying on of an activity for profit or, in other words, whether an activity for profit is actually carried on as an integral part of the purpose. The inhibition of exclusionary clause would be attracted only when:

(i) there is an activity for profit; and

(ii) it must be involved in carrying out the purpose of the trust or institution or, in other words, it must be carried on in order to advance the purpose e.g., promotion of sports by holding cricket matches on commercial lines with a view to making profits. It would be non-charitable even though no cricket matches are in fact organised.

(e) What is the meaning of the expression "*activity for profit*"? This question was posed by the court to itself with the understanding that every trust or institution must have a purpose for which it is established and every purpose must for its accomplishment involve the carrying on of an activity. The Court thereafter answered the question by observing that "*it is not, therefore, enough that as a matter of fact an activity results in profit but it must be carried on with the object of earning profit, profit making must be end to which the activity must be directed or, in other words, the predominant object of the activity must be making of profit*." If it is so, the purpose, though an object of general public utility, would cease to be charitable purpose. But where the predominant object of the activity is to carry out the charitable purpose and not to earn profit, it would not lose its character of a charitable purpose merely because some profit arises from the activity.

(f) The exclusionary clause does not require that the activity must be carried on in such a manner that it does not result in any profit. It would indeed be difficult for the persons in charge of trust or institution to carry on the activity that the expenditure balances the income and there is no resulting profit. That would not only be difficult of practical realisation

but would also reflect unsound principle of management. If the profits must necessarily feed a charitable purpose under the terms of the trust, the mere fact that the activities of the trust yield profit will not alter the charitable character of the trust: what is essential is that profit making should not be the real object.

(g) It is not at all necessary that there must be provision in the constitutions of the trust or institutions that the activity shall be carried on no profit no loss basis or that profit shall be prescribed. Even if there is no such express provision, the nature of the charitable purpose the manner in which the activity for advancing the charitable purpose is being carried on and the surrounding circumstances may clearly indicate that the activity is not propelled by a dominant profit motive. What is necessary to be considered is whether, having regard to all the facts and circumstances of the case, the dominant object of the activity is profit making or carrying out a charitable purpose. If it is the former, the purpose would not be charitable purpose, but, if it is the latter, the charitable character of the purpose would not be lost.

4.47 Explaining the reasons for his views, Bhagwati J. observed that if the contrary construction, as suggested by the revenue, was accepted, section 11(4) would be rendered wholly superfluous and meaningless and after the enactment of section 13(1)(bb), totally redundant. In that event, it would not be possible for a charitable trust or institution whose purpose is promotion of an object of general public utility to carry on any activity for profit at all. Not only would it be precluded from carrying on a business in the course of the actual carrying out of the primary purpose of the trust or institution, but it would also be unable to carry on any business even though the business is held under trust or legal obligation to apply its income wholly to the charitable purpose or is carried on by the trust or institution by way of investment of its monies for the purpose of earning profit which, under the terms of its constitution is applicable solely for feeding the charitable purpose. The consequence would be that not only income from such business but also income derived from other sources would lose the exemption. This would indeed be a far-reaching consequence

and, in the opinion of the majority, was never intended to be brought about by the legislature.

4.48 It may be noted that Pathak J. who delivered a separate judgement agreed more or less with the views of the majority as delivered by Bhagwati J. save and except one, that is to say, the newly added ten crucial words in the definition of "*charitable purpose*" qualify the word "*advancement*" and not the word "*the object of general public utility*" Sen J. who delivered an altogether dissenting judgement felt that that the two decisions of the Supreme Court in *Sole Trustee, Loka Shikshana Trust v. C.I.T. and Indian Chamber of Commerce v. C.I.T. laid down the correct law.*

4.49 In *C.I.T.v Federation of Indian Chambers of Commerce & Industries*[1] their Lordships of the Supreme Court following their earlier judgement in *Surat Art Silk's case,* held that the income derived by the Federation from the activities such as holding the Indian Trade Fair and sponsoring the conference of the Afro-Asian Organisation were for the advancement of the dominant object and purpose of the Federation viz. promotion, protection and development of trade, commerce and industry in India were exempt from tax under section 11 read with section 2(15) of the Income-tax Act, 1961. Mr. Justice A.P. Sen and Mr. Justice E.S. Venkataramiah, however, delivered separate judgements holding that the majority decision in Surat Art Silk's case has virtually wiped off the restrictive words "*not involving the carrying on of any activity for profit*" occurring in section 2(15) thereby defeating the very object and purpose of the Legislature. Mr. Justice Venkataramiah also observed that it was not permissible for the Supreme Court, by a process of judicial construction, to wipe out the aforesaid restricted words when the Government had not accepted the recommendations of the Direct Taxes Laws Committee for the deletion of the words "*not involving the carrying on of any activity for profit*". It is not the function of a Court of Law to give the words a strange and unnatural meaning. Mr. Justice Sen also observed that the majority decision in Surat Art Silk's case has the effect of neutralizing the radical changes brought about by Parliament in the system of taxation of income and profits

[1] (1981) 130 ITR 186 (SC)

of charities, with particular reference to "*objects of general public utility*" to prevent tax evasion by diversion of business profits to charities.

4.50 In *Ganga Prasad Verma Memorial Society v. C.I.T.*[1] their Lordships of the Allahabad High Court held that receiving rent from building and interest on fixed deposits, does not amount to carrying on of an activity for profit within the meaning of section 2(15) of the Act. In *Mahakoshal Shaheed Smarak Trust v. C.I.T.*[2], their Lordships of the Madhya Pradesh High Court also held that where the rental income derived by a charitable trust went to feed the objects of general public utility, the activity of letting out properties could not be said to be an act involving the carrying on of any activity for profit within the meaning of section 2(15) of the Act. Later in *C.I.T.v. Ganeshram Laxminarayan Goyal*[3], their Lordships again upheld the claim of exemption made by the trust under section 11 of the Act, when it was found that its object was to construct Dharmasala for the use and residence of the travelling public free of any charge and also to let out certain shops of the Dharamsala Building in order that from the income of those shops, the Dharamsala be run and the building thereof maintained properly.

4.51 A question very often arises in practice whether the fund raising activities carried out by a charitable institution in order to feed the expenditure incurred on charitable purposes should be regarded as "*activities for profit*" so as to deny claim for exemption from tax under section 11 read with section 2(15) of the Act. One such case of Maheswari Pragati Mandal, an institution established with the object of making provision for mental, physical and cultural advancement of the Maheshwaries came to be considered by the Bombay Bench of the Income-tax Appellate Tribunal. The said institution had organised "*Anand Mela*" and had also collected advertisements for publication in the Souvenir published by it. The Bombay Bench of the Tribunal in ITA Nos. 1208-1210 (Bom) 77-78 by its order dated 3rd June, 1978 held that souvenir's advertisements and Anand Mela were merely fund raising activities and they were not undertaken in the course of

[1] (1982) 134 ITR 421 (All)
[2] (1983) 140 ITR 795 (MP)
[3] (1983) 33 CTR (MP) 20

advancement of an object of general public utility or of carrying out the objects of the trust. The Tribunal felt that the fund raising activities only enabled the assessee to have sufficient funds with which it could attain its various objects as set out in Clauses III of its Memorandum of Association. In this view of the matter the Bombay Bench of the Tribunal allowed the assessee's appeal filed against the orders passed by the Commissioner of Income-tax under section 263 of the Act holding that orders passed by the Income Tax Officer were neither erroneous nor prejudicial to the interests of the revenue. In *Addl. C.I.T. v. Etawah District Exhibition & Cattle Fair Association*[1], their Lordships of the Allahabad High Court held that the holding of an agricultural and industrial exhibition and cattle fair involved an activity for profit and the assessee association was not entitled to exemption under section 11 of the Act.

4.52 In *C.I.T. v. Shri Ram Education Foundation*[2], their lordships of the Delhi High Court were dealing with the case of a society, which was established to furnish theoretical and practical education in business & science. It was provided that the foundation could open schools, colleges and other educational institutions, open industrial and commercial undertakings as a means of training men or in support of the institutions solely or in partnership with others. In furtherance of its objects, the foundation was running a vocational training center, which trained women in the art of stitching and embroidery. Sale of products of the training center resulted in some surplus, which was sought to be taxed by the tax authorities. The contention of the assessee was that the primary object and purpose of the training center was an object of general public utility and it did not involve carrying on of any activity for profit. This contention was upheld by both the Tribunal as well as by the High Court relying on *Surat Art Silk's case*.

4.53 It may however be noted that the rider "*not involving the carrying on of any activity for profit*" as appearing in section 2(15) was removed by the Finance Act, 1983 with effect from 1st April, 1984. As a result of such amendment, much of the controversy, as

[1] (1981) 131 ITR 461 (All)
[2] (2001) 250 ITR 504 (Del)

referred to in paragraphs 4.21 to 4.52 earlier, did not exist any longer till 1.4.2008. However, the aforesaid discussions would certainly assist the reader to understand and appreciate the full scope of sub-section (4A) of section 11 of the Act, which was inserted by the Finance (No.2) Act, 1991 w.e.f. 01.04.92 and which section for some time dealt with the effect of carrying on of a business by a charitable trust or institution. This aspect is discussed later in paragraphs 11.85 to 11.95 and paragraphs 12.24 to 12.42.

4.54 The definition of charitable purpose given in section 2(15) of the Income-tax Act has been the subject matter of amendment from time to time in recent years, curtailing the scope of exemption given to the income of charitable trusts. In keeping with this tradition the definition has been amended with effect from 01.04.2009 by adding a proviso to the section of just five lines, which will affect the exemption of charitable trusts for advancement of any other object of general public utility very substantially.

4.55 In para 180 of the Budget Speech for the year 2008-09, the Finance Minister stated as follows:

"Charitable purpose" includes relief of the poor, education, medical relief and any other object of general public utility. These activities are tax exempt, as they should be. However, some entities carrying on regular trade, commerce or business or providing services in relation to any trade, commerce or business and earning incomes have sought to claim that their purposes would also fall under "charitable purpose". Obviously, this was not the intention of Parliament and hence, I propose to amend the law to exclude the aforesaid cases. Genuine charitable organizations will not in any way be affected."

4.56 It should thus be noted that the intention of Finance Minister was only to exclude from exemption entities carrying on business and earning incomes for which exemption was claimed on the basis that the purpose would fall under charitable purpose. The actual effect of the amendment is however far reaching and going much beyond the case of the above entities.

CHARITABLE PURPOSE

4.57 The existing section 2(15) defines charitable purpose to include relief of the poor, education, medical relief, and the advancement of any other object of general public utility. A proviso is added as follows:

‘‘Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business for a cess or fee or any other consideration, irrespective of the nature of use or application or retention of the income from such activity.”

4.58 It may be noted that earlier the words “object of general public utility” were followed by “not involving the carrying on of any activity for profit.” which were omitted by the Finance Act, 1983 with effect from 01.04.1984. These words were subject matter of several cases which went to the High Courts and the Supreme Court for deciding the exact implications of these qualificatory words.

4.59 The ten restrictive words referred to above ‘not involving the carrying on of any activity for profit’ occurring in the definition of charitable purpose in section 2(15) of the Act, which did not find a place in the 1922 Act, had generated large scale litigation due to the unnecessarily narrow interpretation of the Department, till they were omitted from the said section 2(15) along with section 13(1)(bb), by the Finance Act, 1983 with effect from 01.04.1984. A reformation of these words however still haunts the business income made by charitable trust in the form of a new sub-section (4A), which has been introduced in section 11 to deny exemption to the business income of all charitable trusts in general, excepting those saved by the exceptions provided therein.

EFFECT OF THE AMENDMENT

4.60 Thus, the most uncertain aspect of the law relating to the business income had been settled since 1984 or at least since 1992 (15 years). This is no longer so on account of the proviso

inserted in section 2(15), relating to carrying on any activity in the nature of trade, commerce or business.

4.61 The direct effect of the amendment is that in case of trust for advancement of any other object of general public utility, if it involves the carrying of any activity in the nature of trade, commerce or business or activity of rendering any service in relation to said business for a cess or fee or any other consideration, the exemption will not be allowed in respect of such income irrespective of the nature of use or application or retention of the income from such activity. Further, one view is that it is not only the business income but the entire income of the trust which will be taxable in case of trusts set up after 1.4.1962, since the income of such a trust would be regarded as income from property held under trust only partly for charitable or religious purposes. The other view is that it is only the income from such business or activity that would lose the benefit of the exemption.

4.62 The intention appears to be to reverse the ratio of the judgment of the Supreme Court in the case of *CIT vs. Gujarat Maritime Board*[1] where the Supreme Court held that " any other object of general public utility in section 2(15) of the Income-tax Act, 1961 is of the widest connotation. That expression would prima facie include all objects which promote the welfare of the general public. The effect of the amendment would be that all Chambers of Commerce and trade organizations, gymkhanas and clubs which promote sports of various kinds, which are claiming exemption under section 11, would lose the exemption as the activities by chambers of arbitration and issuing certificates of origin, and activities by gymkhanas and clubs of running canteen, hiring ground or buildings etc., will be considered to be activity of the nature of trade, commerce or business, even if the income by way of cess, fee or for consideration is used irrespective of the nature of use or application on objects. It will thus hit a very large number of trusts for general public utility.

4.63 Further, if a trust is formed for educational or medical purpose and also for general public utility, will the income from activities for educational or medical objects be exempt and only

[1] (2007) 295 ITR 561 (SC)

that for the general public utility be taxable to the extent it arises from business activities? There is no provision in the amendment to deal with such cases. One view is that since the amendment is only in respect of the fourth limb of the definition of "charitable purpose", "any other object of general public utility", it is only the income from such activities for general public utility that would lose the benefit of exemption, and not the income from activities for medical or educational purposes or for relief of the poor. The other view is that if one of the objects ceases to be charitable as per the amendment, even though the other objects may be charitable, the exemption would be lost as per the decision of the Supreme Court in the case of *Yogiraj Charitable Trust vs. CIT*[1]. In other words, as per this view, it cannot be partly for charitable purpose and partly for non-charitable purpose. There is however one exception in section 11(1)(b) in case of income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of the Act on 1.4.1962. Such trust may be saved from the loss of exemption under the new proviso.

4.64 The Central Board of Direct Taxes has issued the long awaited Circular No.11/2008 dated 19.12.2008 stating that the following implications arise from the amendment.

> "2.1 The newly inserted 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."

Thus, it is now clear that the amendment does not apply to trust which are for the first three objects of relief of the poor, education or medical relief, which can constitute charitable purpose, even if incidentally it involves the carrying on of commercial activities.

[1] (1976) 103 ITR 777(SC)

4.65 The Circular states further as follows:

> "3. The newly inserted 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 the charitable purpose contained in section 2(15). Hence such entities will not be eligible under section 11 or 10(23C) of the Act if they carry on commercial activity. 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."

4.66 In para 3.1, the Circular states :

> "there are industry and trade associations who claim exemption from tax under section 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 associations claim both to be charitable institutions as well as mutual organizations and their activities are restricted to contributions from and participation of only their members, these would not fall under the purview of the proviso to section 2(15) owing to the principle of mutuality. However, if such organizations have dealing with non-members, their claim to be charitable organizations would now be governed by the additional condition stipulated in the proviso to section 2(15)."

It is well settled that the concept of charity and mutuality are mutually exclusive of each other. A charitable institution is for the benefit of the public and not for the mutual benefit of the contributors to the common fund. If a trust is for charitable object, the deed will provide for income to be utilized for charitable purpose only and in the event of its dissolution or winding up, the income and corpus will be handed over to another trust with similar objects, but it cannot be paid or distributed among the members in any case; otherwise, it will cease to be charitable. On the other hand, if the constitution of industry or trade association provides for payment or distribution of surplus among the members, it can never be considered charitable, as such trust cannot pay or distribute any amount to its member.

4.67 It is thus perplexing that the circular refers to trade associations claiming both to be charitable institution as well as mutual organization and if their activities are restricted to contribution from and participation of only their members, these would not fall under the purview of the proviso to section 2(15) owing to principle of mutuality.

4.68 Para 3.2 of the CBDT Circular states as follows:

"In the final analysis, whether the assessee has for its object 'the advancement of any other object of general public utility' is a question of fact. If such assessee 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 device to hide the true purpose 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. Assessees, 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. "

Thus, the Circular leaves the position of trade associations and chambers of commerce quite uncertain, even though the Finance Minister has stated that they would not be affected by the amendment. The circular does not lay down any guidelines for determining whether the entity is carrying on any commercial activity. The activities of chambers of commerce for issuing certificate of origin, arbitration, etc. may be considered to be commercial in nature and therefore, not eligible for exemption, by stating that such entities would be well advised to eschew any commercial activity.

EFFECT ON SECTION 11(4) AND (4A)

4.69 There is no amendment proposed in sections 11(4) and (4A) so that the trust for first three objects of relief of poor, educational and medical relief will get the benefit of section 11(4) and (4A) if the provisions of these sections are complied with even if, activity in the nature of business is carried on.

4.70 Section 11 (4) deals with cases where the business itself is settled in trust for a charitable purpose. The two other cases of trust carrying on business may be (i) where the business is carried on as incidental to the attainment of the objectives of the trust or institution or (ii) the activities may be carried de hors the objects of the trust and are not incidental to the attainment of the objects of the trust. The first type of trust will be governed by section 11(4A) and get the benefit of the exemption without being hit by the amendment, whereas the second type of trust will not get exemption under section 11(4A) of the Income-tax Act.

4.71 Of course, the condition regarding separate books of account being maintained in respect of such business must be complied with. The Supreme Court held in case of *Thanthi Trust*[1] that even if business is held as property in trust for charitable purpose under section 11(4), it must also comply with the conditions of section 11(4A) namely, the profit or gain of business is incidental to the attainment of the objectives of the trust.

[1] (2001) 247 ITR 785 (SC)

4.72 A question arises from the above analysis whether business for general public utility settled in trust under section 11(4) and carrying on activities which are in order to fulfill the objects of the trust can get exemption and be not hit by the proviso in section 2(15). It is for consideration whether section 11(4) will override the proviso added in section 2(15) for trust for general public utility.

4.73 Similarly, a question arises whether a trust for general public utility can claim the exemption under section 11(4A), if it complies with the conditions of section 11(4A) by utilizing the income from such business activities on its objects of general public utility and separate books of account are maintained. It is for consideration whether section 11(4A) can override the proviso to section 2(15). In other words, one view is that the scope of sections 11(4) and 11(4A), which are not amended, will be confined to the cases for the relief of the poor, educational and medical relief, and also to trusts for general public utility, if in the latter case, there is no business activity carried on by the trust. The other view which is possible is that, notwithstanding the amendment in the definition of "charitable purpose", if a business is carried on not as a part of the objects of the trust, but purely to earn income to feed the otherwise charitable objects, it would not be affected by the amendment but would continue to enjoy exemption by virtue of sections 11(4) and 11(4A).

TRUST FOR RELIGIOUS PURPOSE

4.74 The issue which arises is whether the trust purely for religious purpose which is of public nature, is affected by the amendment. Under plain reading of the section, the trust for public religious purpose cannot be considered to be a trust for general public utility and therefore, will not be hit by the Amendment. Though, a public religious trust is not defined under the Income-tax Act, 1961, the charitable purpose includes religious purpose of public nature also, though, sections 11 to 13 and 10(23C) use both the expressions charitable and religious purpose. Therefore, the trust for religious purpose is exempt under sections 11 to 13 if

it is for the purpose of the public and not hit by the restriction under section 13(1)(a) which deals with income from property held under the trust for private religious purposes, which does not enure for the benefit of the public.

4.75 Plethora of representations were made to the Finance Minister after the presentation of the Budget that the proposed amendment in section 2(15) should be modified. For example, it was suggested that in the first part of the proviso it should be stated as under: -

"if it involves the carrying on of any activity in the nature of trade, commerce or business which is not incidental to the attainment of objectives of the trust or institution"

Such a modification of the proviso would have avoided any conflict with section 11(4A) of the Act and all such trusts falling under section 11(4A) would have been saved from the loss of exemption.

4.76 However, the amendment in section 2(15) was passed without any modification whatsoever with the following remarks by the Finance Minister.

"I once again assure the House that genuine charitable organizations will not in any way be affected. The CBDT will, following the usual practice, issue an explanatory circular containing guidelines for determining whether an entity is carrying on any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business. Whether the purpose is a charitable purpose will depend on the totality of the facts of the case. Ordinarily, Chambers of Commerce and similar organizations rendering services to their members would not be affected by the amendment and their activities would continue to be regarded as "advancement of any other object of general public utility."

4.77 The intention of the Finance Minister in this speech is not brought out by the wording of the new proviso to section 2(15), nor by the CBDT Circular. He has stated that ordinarily the Chamber

of Commerce and similar organizations rendering services to their members would not be affected by the amendment and their activities would continue to be regarded as advancement of any other object of general public utility. But as the amendment does not provide for any such exception, if the objects of chamber involve any activity of commercial nature, the chamber will be liable to pay tax as it will cease to be for a charitable purpose. This is the view taken by the CBDT Circular as well. If the section does not give effect to the intention of the Finance Minister, the interpretation of the section will prevail over the intention of the Finance Minister, as held by the Courts in several cases. In order to find out the legislative intent or to ascertain the object or purpose behind the legislation, the speech made by the Minister or the mover of the Bill can be taken into consideration. But, in the absence of ambiguity in a provision, the speech of the Minister cannot be used as an aid to the interpretation of a provision. The opinion rendered by the Law Ministry as well as the reply of the Minister to a question before the Parliament are not relevant and obviously cannot be treated as binding on the courts (*Kerala SIDC v. CIT*)[1].

4.78 Mere genuineness of a charitable organization cannot take such entity out of the purview of amendment. The proviso should have been specifically amended to give exemption to chambers of commerce or trade associations like the exemption given to Agricultural Produce Market Committees (APMC) or State Agricultural Marketing Boards (SAMB) under the new section 10(26AAB).

4.79 It will be appreciated from the above discussion arising from the five lines amendment to the section 2(15) regarding charitable purpose, that it will revive endless litigation which ended in 1984 by the deletion of the (in)famous ten words and the clock is put backwards more than twenty years by the amendment, which could have been drafted so as to apply only to “entities carrying on regular trade, commerce or business or providing services in relation to any trade, commerce or business and

[1] 259 ITR 51 (SC)

earning income which have sought to claim that their purpose would also fall under charitable purpose." However, the amendment has gone far beyond the intention of the Finance Minister as stated in para 180 of the Budget speech to exclude such cases from exemption. The proviso to section 2(15) should have taken care of genuine trusts, chambers of commerce and trade associations by specifically providing for their exemption by amendment similar to the Agricultural Produce Market Committee or Board as per section 10(26AAB).

5

Objects Mingled With Power

5.01 As already discussed earlier, a clear distinction must be made between the primary object of the trust and the powers of the trustees, which enable the objects to be achieved. Lord Wrenbury observed in *Cotman v. Brougham*[1] that the objects of the company and the powers of the company to be exercised in effecting the objects are different things.

5.02 The principles laid down in the said case were applied by the Kerala High Court in *C.I.T.v. Shri Shaila Industrial and Spiritual Colony Charities*[2]. The facts of the case were that the assessee was a registered society established for charitable purposes. The property settled on trust was a business. The primary object of the society was to utilise all the profits for moral, scientific and spiritual well being of the public in general. The question before the Court was whether some of the clauses in the Memorandum of Association which gave powers to the society to take up managing agencies, purchase lands, erect buildings, to lend and borrow money etc. disentitled it from claiming exemption from tax. On these facts, the Kerala High Court held that the objects in the Memorandum of Association of a company may include what are not real objects but are enabling powers to achieve the objects. Distinction should be made between the primary object of a company and the powers which enable the object to be achieved. The Memorandum of Association of the society disclosed a mingling of the real objects of the society with its powers, which were distinct from the primary objects of the society and were intended merely to carry out its objects. In these circumstances the society was held to be established for charitable purposes. This view was later affirmed and reiterated by the Supreme Court in *Dharmadeepti v. C.I.T.*[3]

---

[1] (1918) AC 514 (HL)
[2] (1973) 87 ITR 175, 182-183, (Ker)
[3] (1978) 114 ITR 454, 458 (SC)

5.03 In *Addl. C.I.T.v. Surat Art Silk Cloth Mfrs. Association*[1] the Supreme Court again reaffirmed the view that if the primary or dominant purpose of a trust or institution is charitable another object which by itself may not be charitable but which is merely ancillary or incidental to the primary or dominant purpose would not prevent the trust or institution from being a valid charity. The enquiry, the court felt, was therefore, limited to the question whether the object which was said to be non-charitable was a main or primary object of the trust or institution or it was ancillary or incidental to the dominant or primary object which was charitable. The Court observed that the objects which are in the nature of powers conferred upon the assessee for the purpose of securing the fulfillment of the dominant or primary purpose would not militate against the charitable character of the assessee.

5.04 In *C.I.T. v. Breach Candy Swimming Bath Trust*[2] the only object of the trust was the construction and maintenance of a swimming bath which is a purpose of general public utility. The Bombay High Court held that the fact that the trustees are given the power to supply or sell refreshments to persons who resort to the bath would not make the trust any the less charitable. In *Victoria Technical Institute v. C.I.T. (Additional) and Another*[3]*,* their Lordships of the Supreme Court held that the object to impart or to assist in imparting instructions to persons of either sex in scientific or artistic principles, which underlie the industrial and commercial occupations of the people (including specially handicapped manufacturers and agricultural labours) as well as instructions in the manual and other practice involved in the application of such principles and to assist persons of either sex, who were engaged in artistic, industrial or commercial occupations were objects of general public utility. In this case, one of the means to carry out the aforesaid objects, as stated in the Society's Memorandum, was, buying and selling on commission, articles produced by handicraftsmen or otherwise. The Supreme Court held that the requirement of the definition of charitable purpose would be fully satisfied, if an activity was carried out in the course of the actual carrying out of the primary purpose of the Society. So long as the purpose did not involve the carrying on of an activity for profit, it

[1] (1980) 121 ITR 1 (SC)
[2] (1955) 27 ITR 279 (Bom)
[3] (1991) 188 ITR 57 (SC)

was immaterial how the monies for achieving or implementing such purpose are found, whether by carrying on an activity for profit or not.

5.05 However, after the decision of the Supreme Court in *Sole Trustee, Loka Shikshana Trust v. C.I.T.*[1] the powers of the trustees as embodied in the trust deed should be carefully read and considered. It may be mentioned here that the trust deed in this case gave very wide powers to the trustees in the matter of utilisation of the trust but the trustees could divert its assets as well as any of its funds to other institutions whose objects are "similar to the objects" of the trust and in "carrying out the object and purposes of this trust either fully or partially". It was, therefore, held by the Supreme Court that the power of diverting the asset and income of the trust is decisive on the question whether the trust is either wholly or predominantly for a charitable purpose or not. When the trustee is given the power of deciding what purpose is allied to or like an object covered by the trust and how it is to be served by a diversion of trust properties and funds, the trust could not be said to be wholly charitable for a trustee could divert so much as to make the charitable part or aspect, if any, purely illusory. In fact *Mr. Justice Beg* expressed a doubt even as to the validity of such a trust.

[1] (1975) 101 ITR 234, 257 (SC)

6

Charitable Objects Mingled with Non-charitable objects- Dominant Purpose

6.01 If there are several objects of the trust, some of which are charitable, and some are non-charitable, and the trustees have unfettered discretion to apply the income to any of the objects, the whole trust would fail and no part of the income would be exempted from tax. This view was expressed by the Privy Council in *Mohammad Ibrahim Rize v. C.I.T.*[1] and by the Court of Appeal in *Oxford Group v. Inland Revenue Commissioners.*[2]

6.02 Similar view was expressed by the Supreme Court in *East India Industries (Madras) Private Ltd. v. C.I.T.*[3] In this case the trust was established for various objects, one of which was to manufacture, buy, sell and distribute pharmaceutical, medicinal, chemical and other preparations and other articles. The objects included several charitable and religious purposes. One of the clauses of the trust deed provided that the objects shall be independent of each other and the trustee shall have power to apply the whole or any part of the trust property or fund whether capital or income, in carrying out all or any of such objects of the trust as the trustees may deem fit. It was held by the Supreme Court that as the trustees could under the deed validity spend the entire income of the trust in carrying on business of manufacture, sale and distribution of medicinal and other preparations, which act was neither charitable nor religious, the trust property was not held for religious or charitable purposes within the meaning of the Income-tax Act, 1961. Similar views were also expressed by the Delhi High Court in *C.I.T. v. Jaipur Charitable Trust*[4] the Bombay

---

[1] AIR 1930 PC 226
[2] (1949) 2 All ER 537
[3] (1967) 65 ITR 611 (SC)
[4] (1971) 81 ITR 1 (Del) affirmed in (1976) 103 ITR 777 (SC)

High Court in *Zenith Tin Works Charitable Trust v. C.I.T*[1] and the Allahabad High Court in *J.K Hosiery Factory v. C.I.T.*[2]

6.03 Thus, where the objects are distributive, each and every one of the objects must be charitable in order that the trust is held to be a valid charity. The reason is that in such cases no definite part of the property or of its income is allocated to charitable purposes and it would be open to the trustees to apply the whole income to any of the non-charitable object. However, the fact that the income is applied only to charitable object is immaterial.[3]

6.04 But at this stage it may be interesting to note another decision of the Supreme Court in *C.I.T.v. Dharmodayam Co.*[4] In this case the business of Kuries was itself held under trust for charitable or religious purposes and the assessee trust was deriving income from property, interest on securities and Kuries or Chit Funds. Clause 39 of the Articles of Association of the assessee trust, which was alleged by the department to have vitiated the charitable purpose of the institution read as under:

> "*The profits of this company not be divided among the members. From the annual net profits from the working of the company, such proportion as the general meeting may deem fit may be set apart towards a reserve fund for the stability of the company and towards a reserve for bad debts and the balance of the profit may in accordance with the objects in the memorandum be spent on charity, education, industry and other purposes of public interest*".

6.05 *Mr. Justice Chandrachud* who delivered the judgement of the Supreme Court in the said case observed at page 533 that it was undisputed that the assessee never engaged itself in any industry. It is notorious that Memorandum and Articles of Association of companies usually cover a variety of activities, only a few of which are in fact undertaken or intended to be undertaken. That obviates the necessity for applying for amendment of the articles from time to time and helps to rule out a possible challenge on the ground that the company has acted

[1] (1976) 102 ITR 119 (Bom)
[2] (1971) 81 ITR 557 (All)
[3] CIT v. All India Hindu Mahasabha (1983) 140 ITR 748 (Del)
[4] (1977) 109 ITR 527 (SC)

beyond its powers in undertaking a particular form of activity. The only activity in which the assessee was engaged over the years was the conduct of Kuries, which business was held in trust and was not carried on its behalf. Confirming the decision of the Kerala High Court[1] wherein it was observed that "*there is no case that Dharmodayam Company ever started any industry, there is also no ground for the saying that the object of the company was to start an industry for the purpose of making profit, the mere promotion of industry cannot be said to be starting an industry for the profit*", the Supreme Court negatived the plea of the revenue that Clause 39 vitiated the charitable purpose of the institution.

6.06 In *Dharmaposhanam Co. v. C.I.T.*[2] their Lordships of the Supreme Court reiterated and observed that it would be a different case where one or more of the objects mentioned in the Memorandum of Association, although included therein, were never intended to be undertaken. If there is evidence pointing to that conclusion, clearly the Court will ignore the object and proceed to consider the case as if it did not exist in the memorandum.

6.07 In *C.I.T. v. Andhra Chamber of Commerce*[3] the primary objects of the company, registered under section 25 of the Act, were to promote and protect trade, commerce and industries, to aid, stimulate and promote the development of trade, commerce and industries, and to watch over and protect the general commercial interests of India or any part thereof. In one of the many incidental clauses of the Memorandum was specified the object of promotion of or opposition to legislation and to procure change of law and practice, trade, commerce and manufacture. The decisions in the cases of *Rex v. The Special Commissioner of Income Tax,*[4] *Commissioner of Inland Revenue v. The Temperance Council of the Christian Churches of England and Wales,*[5] *Bowman v. Secular Society Ltd.*[6] and *Laxman Balwant Bhopatkar v. Charity Commissioner, Bombay*[7] were cited by the

[1] (1974) 94 ITR 113, 119 (Ker)
[2] (1978) 114 ITR 463 (SC)
[3] (1965) 55 ITR 722 (SC)
[4] (1925) 10 Tax Case 73
[5] (1926) 10 Tax Case 748
[6] (1917) AC 406, 422 (HL)
[7] (1963) 2 SCR 625 (SC)

revenue before the Court to bring home the idea that one of the objects for which the chamber was established was political, and political purpose being not a charitable purpose did not come within the meaning of the expression "*for the advancement of any other object of general public utility*." The Supreme Court repelled the said contention on the ground that if the primary or dominant purpose of a trust is charitable, another object which by itself may not be charitable but which is merely ancillary or incidental to the primary or dominant purpose, would not prevent the trust from being a valid charity. The primary purpose of the Chamber in this case was to promote and protect trade, commerce and industries and to watch over and protect the general commercial interests of India or any part thereof. It is only for the purpose of securing these primary onus that it was one of the objects mentioned in the Memorandum of Association that the assessee may take steps to urge or oppose legislative or other measures affecting trade, commerce or manufacture. It was held by the Supreme Court that such an object must be regarded as purely ancillary or subsidiary and not the primary object.

6.08 The above position of law was reiterated by Supreme Court in *Yogiraj Charity Trust v. C.I.T.*[1] In the said case, some of the clauses in the trust deed authorised the trustees to open and maintain commercial institutions where work at living wages could be provided to the poor and it also authorised them to contribute to commercial, technical, industrial or commercial concerns, institutions, associations or bodies imparting any type of training or providing employment to persons. It was found by the Supreme Court that clauses 11 and 16 of the deed gave an uncontrolled discretion to the trustees to spend the whole of the trust fund on any of the non-charitable object of the trust e.g. engagement in commercial institutions giving employment on wages which was not a charitable object. Since each clause was independent and distinct and non-charitable clauses were neither ancillary nor secondary to the primary dominant purpose of the trust and these clauses could not subserve the main object of the trusts; the claim for exemption was negatived by the Supreme Court.

[1] (1976) 103 ITR 777 (SC)

6.09 In *C.I.T. v. Gayathri Women Welfare Association*[1] the Court held that rehabilitating economically handicapped women and destitute by giving them suitable employment is a charitable purpose. The mere fact that the assessee set up an ancillary unit to the HMT Watch factory resulting in the assessee providing employment to 79 women drawn from weaker section of the society does not change the dominant object.

6.10 In *P.C. Raja Ratnam Institution v. Municipal Corporation of Delhi and Others*[2] their Lordships of the Supreme Court were dealing with the case of an assessee which was a non profit making registered society and its objects were to organise and run schools with a view to promote educational welfare. The Municipal Corporation demanded payment of general tax from the assessee and the exemption claimed by the assessee was rejected. The High Court rejected the Writ Petition on the ground that in order to qualify for exemption, it had to provide for education and medical relief, that mere imparting education could not be called giving relief in as much as fees were also charged from the students. Their Lordships of the Supreme Court held that the test of charitable purpose is satisfied by the proof of any of the three conditions, namely relief of the poor, education or medical relief. The fact that some fee was charged from the students was not decisive in as much as the proviso to section 115(4)(a) of Delhi Municipal Corporation Act indicated that the expenditure incurred in running the society might be supported either wholly or in part by voluntary contributions.

6.11 In *C.I.T. v. Cherupushpam Hospital Trust,*[3] their Lordships of the Kerala High Court dealt with the case of a charitable trust, whose objects included, inter alia, relief to the poor, sick and deserving by establishing hospitals, nursing homes, asylums, sanitariums, nursing schools and other training institutions, reading rooms, libraries, health & recreation centres, rehabilitation centres, housing colonies as also to do all activities which would help the sick, poor, disabled, convalescent and/or otherwise handicapped and to do such other acts of general public utility. The trustees carried on businesses in textiles for the purpose of

[1] (1993) 203 ITR 389 (Karn)
[2] (1990) 181 ITR 354 (SC)
[3] (1990) 181 ITR 512 (Ker)

financing the construction of a hospital in a land taken on lease. The Court held that since the object of the trust was charitable purpose, the fact that the trustees were authorised to carry on business to find funds for the trust in order to effectuate the objects of the trust is of no relevance and the exemption available under section 11 of the Act could not be denied. The Court relied upon the decision of the Supreme Court in *Surat Art Silk Cloth Manufacturers Association*[1] case. Same view was reiterated in *Thiagarajan Charities v. Addl. C.I.T.*[2].

6.12 However, if some of the objects cannot properly be called as ancillary or incidental to another and these so called ancillary objects are not charitable in nature, the exemption under section 11 must be denied.

6.13 The Supreme Court in *C.I.T. v Indian Sugar Mills Association*[3] held that the following objects were neither ancillary nor incidental in the case of the assessee, which was a trade union and since the objects were not charitable purposes within the meaning of section 4(3)(i) of the 1922 Act, the exemption from tax was rightly denied, even assuming that in some remote and indirect manner these objects might be of some public utility. The objects in question were:

(i) to regulate the terms and conditions of employment in the mills and factories;

(ii) to promote good relations between the employers and employees;

(iii) to adjudicate controversies between members of this association;

(iv) to establish just and equitable principles in trade and impose restrictive conditions on the conduct of the sugar trade and business.

6.14 At this stage, it may be interesting to refer to the decision of the Full Bench of the Kerala High Court in *C.I.T. v. Dharmadeepti.*[4] In the said case before the Kerala High Court, the

[1] (1980) 121 ITR 1 (SC)
[2] (1997) 225 ITR 1010 (SC)
[3] (1974) 97 ITR 486, 493 (SC)
[4] (1975) 100 ITR 375 (Ker) (FB)

facts were that the main objects of the assessee company were, *inter alia,* (i) to give charity (ii) to promote education and (iii) to establish association etc. with the objects of promoting charity or education etc. The objects incidental or ancillary to the attainment of the above main objects were to run chitties (Kuries) and the other objects were to establish, promote and carry on any other business. It was contended on behalf of the assessee that while no business activities as contemplated in "*other objects*" had been actually carried on, no income whatsoever had been derived from any such business of conducting the chitties which was an incidental object and which business was the property held under trust for a charitable purpose. The Kerala High Court, however, refused to grant exemption under section 11 of the Act on the ground that in view of the altered definition of the term "*charitable purpose*", the question whether the object of a company is a main object or only an incidental object loses much of its significance because even in cases where a business is conducted, not in carrying out the objects of the company but only in aid of achieving the objects of the company, if that business is so-linked or connected with the objects of the company and if the objects are such that it will fall only under "*objects of general public utility*", the charitable purpose will cease to be a "*charitable purpose*" as defined in the Act. Applying the principles laid down by the same Bench of the High Court earlier in *Dharmaposhanam Co., v. C.I.T.*[1] the High Court held once again that since there is no restriction that any part of the income from the business must be applied to charitable purposes alone and there is an implied discretion in the directors to apply the income or property of the company to all or any of the purpose which will include business, the assessee was not entitled for exemption from tax under section 11 of the Act.

6.15 The decision of the Kerala High Court in *C.I.T. v. Dharmadeepti*[2] was reversed on appeal by the Supreme Court. Their Lordships of the Supreme Court observed that the power to run the Kurie business stems, in this particular case, from the provision "*to run chitties (Kuries)*" mentioned in sub-clause (b) of clause 3 of the Memorandum which was prefaced by the

[1] (1975) 100 ITR 351 (Ker) (FB)
[2] (1978) 114 ITR 454, 458 (SC)

enumeration "*the objects incidental or ancillary to the attainment of the above main objects*". The main object were clearly charitable in nature and these specified in sub-clause (b) of clause 3 were really in the nature of powers incidental or ancillary to the attainment of main objects. As such the Supreme Court held that the income from the Kurie business was intended to be applied only to the charitable purpose of giving to charity or the promotion of education and this was the basis on which the license was granted under section 25 of the Companies Act to the assessee. In this view of the matter, their Lordships felt that there being no question of applying the income from the Kurie business to the "*other objects*" set fourth in sub-clause (c) of clause 3 of the Memorandum of Association, it was not necessary to consider the effect of the inclusion of those "*other objects*" in the Memorandum and also whether the assessee could embark on the realisation of those objects without complying with section 149 of the Companies Act, 1956.

6.16 It may, however, be noted that in the earlier case of *Dharmaposhana Co v. C.I.T.*[1]*,* the main objects of the company itself were, *inter alia,* to raise funds by conducting Kuries with company as foreman, receiving donations and subscription by lending money on interest and by such other means as the company may deem fit for the promotion of charity, education, industries etc. and public good. However, one of the clauses in the Articles of Association provided that the profit of the company shall not be divided among the members, but should, after meeting the expenses of the company, be utilized for promoting education, industry, social welfare and such other purposes of common good, as are resolved by the general meeting of the company. In spite of such a restrictive clause, the Full Bench of the Kerala High Court held that in the absence of any restriction introduced on the directors of the company obliging them to apply the income in its entirety or any specified part thereof for any of the charitable purposes and since the income could be applied for any purpose, including a non-charitable purpose or conducting Kuries, the principles laid down by the Supreme Court in *East India Industries (Madras) Private Ltd. v. C.I.T.*[2] were clearly applicable and the

[1] (1975) 100 ITR 145 (Ker) (FB)
[2] (1967) 65 ITR 611 (SC)

company was not entitled to exemption from tax under section 11 of the Act. This decision of the Kerala High Court was affirmed on appeal by the Supreme Court.[1]

6.17 However, it may be of greater interest to note the earliest decision of the Kerala High Court in *C.I.T. v Dharmodayam Co.*[2] In this case the objects were almost similar to those found in *Dharmaposhanam Co. v. C.I.T.*[3]. But the Kerala High Court following its earlier decision in the case of the same assessee (1922 Act) held that the business of conducting Kuries was held under trust by the company. Conducting Kuries was not itself a purpose or object of the company; it was a property of the company and, therefore, the company was entitled to exemption from tax even under section 11 of the Income-tax Act, 1961.

6.18 When the Kerala High Court decision in *Dharamaposhanam Co. v. C.I.T.*[4] went in appeal before the Supreme Court, their Lordships observed that the operation of an industry ordinarily envisaged profit-making activity, and so far as advancement of public good was concerned, it was open to the assessees, in the absence of any limiting provision in the Memorandum, to pursue a profit-making activity in the course of carrying out that purpose, depending on the nature and purposes of the public good. Since the court found that the Memorandum contained some objects which were charitable and others which were non-charitable, all enjoying an equal status, it was open to the appellant, in its discretion, to apply its income from conducting Kuries and money lending to any of the objects and no definite part of its income was related to charitable purposes only, it was held that the assessee was not entitled to exemption from tax under section 11 of the Act.

6.19 This decision of the Kerala High Court in *C.I.T. v. Dharmodayam Co.*[5] has since been approved by the Supreme Court.[6] The Supreme Court held that despite the change brought about by the Income-tax Act, 1961, by framing a new definition of

[1] (1878) 114 ITR 463 (SC)
[2] (1974) 94 ITR 113 (Ker)
[3] (1975) 100 ITR 351 (Ker) (FB)
[4] (1975) 100 ITR 351 (Ker) (FB) affirmed in (1978) 114 ITR 436 (SC)
[5] (1974) 94 ITR 113 (Ker)
[6] (1977) 109 ITR 527 (SC)

"*charitable purpose*" with the addition at the end of the words "*not involving the carrying on of any activity for profit*", a business which is held in trust cannot, by mere reason of the amendment, become a business started for the purpose of advancing an object of general public utility. In this case, it was found as a matter of fact that the business of Kuries was not started by the assessee trust with the object or for the purpose of advancing an object of general public utility but the business of Kuries was held under the trust for charitable or religious purposes.

6.20 In *Addl. C.I.T. v A.L.N. Rao Charitable Trust*[1] the Karanataka High Court held that where the main object of trust was relief of the poor, education and medical relief, the carrying on of a business with a view to fulfilling those objects would not deprive the assessee of the exemption under section 11 of the Act.

6.21 In *C.I.T. v. Bangalore Stock Exchange Ltd.,*[2] the Karnataka High Court held that even though the objects specified in the Memorandum of Association of the assessee included the carrying on of business as financiers and promoters etc., no activity falling under that clause was carried on by it during the relevant period. The contention of the department that the object, namely, carrying on business as financiers and promoters etc., or similar objects mentioned in the Memorandum of Association would involve the assessee in carrying on an activity for profit, whether or not the assessee had, in fact, carried on any activity pursuant to such objects during the relevant period, was negatived by the court. The Court further observed that if and when the affairs of the assessee took the shape of a profit-making concern, the department would have ample powers and opportunity to deny the exemption to the assessee. The mere possibility of the happening of such an event should not deter the Court from holding that the income of the assessee was not liable to tax on the basis of the existing facts. Their Lordships also pointed out that even if the assessee carried on any business which was not of charitable nature, only the income derived from that source would not get the protection of section 11 of the Income-tax Act.

---

[1] (1976) 102 ITR 474 (Karn)
[2] (1978) 115 ITR 493 (Karn)

6.22 It appears from a reading of the said judgment that their Lordships of the Karnataka High Court decided the above case following the principles laid down by the Supreme Court in *C.I.T.v. Dharmodayam Co.*[1] In the judgment of the Karnataka High Court the Memorandum of Association has not been fully extracted and, therefore, it is not known whether the object "*carrying on business as financiers, promoters etc*." appeared in the assessee company's Memorandum of Association under the heading "*Main Objects*" or under the headings "*Incidental/ancillary objects*" or "*other objects*" or whether there was no such classification and all object of the company appeared under one heading "*objects of the company*". However, at page 496 of the report, it has been mentioned that the object "*carrying on business as financiers, promoters etc.*" was one of the "*principal objects*" of the company. In that event, it is submitted with respect that the assessee's case would be hit by the later decision of the Supreme Court in *Dharmaposhanam Co. v. C.I.T.*[2] The Supreme Court in the said case reiterated the well-established principle that if the objects of an institution included some objects which were charitable and others which were non-charitable, all enjoying an equal status, the exemption from tax must be denied, for it was open to the assessee, in its discretion, to apply its income wholly to any such non-charitable object. Their Lordships of the Supreme Court underlined that the court can ignore an object set out in the Memorandum of Association only when there was evidence pointing out that the said object was never intended to be undertaken.

6.23 It is also submitted with greatest respect that the view taken by the Hon'ble Karnataka High Court in the said case to the effect that even if the assessee carried on any business which was not of charitable nature, only the income derived from that source would not get the protection of section 11 of the Act requires reconsideration. It is felt that if any one of the objects of an association are held to be non-charitable and, therefore, outside the scope of section 2(15) of the Act, the assessee may be denied total exemption not only in respect of income from that source but in respect of all sources, the only exception being a case covered

[1] (1977) 109 ITR 527 (SC)
[2] (1978) 114 ITR 463 (SC)

by section 13(1)(bb) of the Act which is explained in paragraph 12.24 later.

6.24 In *Addl. C.I.T. v. Etawah District Exhibition & Cattle Fair Association,*[1] the objects of the assessee-Association were, *inter alia, to* encourage development of art, agriculture, horticulture and industry of the District and to improve the breeding of cattle, sheep, goat, horse and poultry etc., in the District. Their Lordships of the Allahabad High Court held that these objects were not charitable objects and since all the objects of the assessee-association stood on the same footing and the trustees or managers of the association could apply the income or property to any of these objects, the entire claim for exemption must fail and the Tribunal was not justified in allowing exemption under section 11(1)(b) in respect of the amount actually spent on charities.

6.25 In *C.I.T. v. Leign Bazar Merchants Association Ltd.*[2]**,** their Lordships of the Madras High Court were dealing with the case of an assessee who was registered as a guarantee company under the Indian Companies Act, 1913. The prominent object of the assessee was to promote trade and commerce. There was a mixing up of the objects with the powers of the assessee company in various clauses in the Memorandum of Association. The Court held and observed that in order to find out whether the assessee was entitled to exemption under section 11 of the Act, the test to be applied was whether the object which is said to be non-charitable is a main or primary object or it is ancillary or incidental to the dominant or primary object which is charitable. There must be an obligation created to spend the money exclusively and essentially on charities and where there is no such obligation; the claim for exemption under section 11 must fail. The mere fact that the assessee company has not distributed its surplus profits among its members as dividends is not sufficient. Whether there is a legal obligation to distribute its profits on charitable purposes has to be seen from the relevant clauses of the Memorandum and not from the practice adopted, as it is always permissible for the assessee to deviate from such practice.

---

[1] (1981) 131 ITR 461 (All)
[2] (1999) 235 ITR 367 (Mad)

7
Uncertain or Indefinite Objects

7.01 In the case of charitable trust, there is an exception to the general rule that there is no valid trust unless the objects thereof are specified. With regard to charitable trust, a great deal of latitude is permitted and the rule is that provided there is a clear intention to make a gift for charity, the trust is not allowed to fail for uncertainty. Indefiniteness as regards the specification of the objects is, therefore, regarded only as an indefiniteness in regard to the manner in which the trust will be administered and so if a clear intention to create a trust in favour of charity is discernible, defects in the mode prescribed or absence of any such prescription does not invalidate the trust. The defect is taken as attaching to a matter which in not essential.

7.02 A trust for charitable purpose will not become invalid, if the choice of the specific charitable objects to be benefited is left to the trustees, nor is to be condemned as invalid or illusory, if, by the language of the deed, the trustees are given an absolute discretion to apply the fund at such time as they may think fit or retain it so long as they choose. Such were the observations of the Calcutta High Court in *C.I.T. v. Sardar Bahadur Sardar Indra Singh Trust.*[1] Similar view was also taken earlier by the Allahabad High Court in *J.K. Charitable Trust v. C.I.T.*[2], *C.I.T. v. Radhaswami Satsang Sabha* [3] and *Thakur Das Shyam Sunder v. Addl. C.I.T.*[4]

7.03 In *Gangabai Charities v. C.I.T.*[5], their Lordships of the Supreme Court found on perusal of a trust deed that specified that after completion of construction of the building, the Trustees might let or allow the building or portion thereof for use of the public for

---

[1] (1956) 29 ITR 781 (Cal)
[2] (1955) 28 ITR 110 (All)
[3] (1954) 25 ITR 472 (All)
[4] (1974) 93 ITR 27 (All – FB)
[5] (1992) 197 ITR 416 (SC) also see (2001) 250 ITR 666 (SC)

social, cultural, religious, educational purposes, for holding and conducting discourses and for running schools for the development of Sanskrit language free or on such terms as the trustees considered reasonable. The building was let out as a marriage mandap to be used by the members of the public as such. The trust also ran a printing press. The Court held that it was not possible to call out in clear terms any specific charitable or religious objects from the trust deed to conclude that the trust was set up wholly for charitable or religious purposes. The words "*religious, charitable, cultural and social purposes*" referred to in the deed were not avowed as the objects of the trust: they were only the objects of those, who claimed to put the trust property to use. There was no mention in the deed as to how income derived from the trust property was to be utilised. There was no mandate that the income must be spent on religious or charitable purposes. Therefore, the trust did not meet the requirements of section 11(1)(a) and the income of the trust was held to be not exempt from tax.

7.04 This view was again followed and reiterated by the Madras High Court in *Assembly Rooms v. CIT*[1]. The Court examined the clauses of the trust deed and found that the trustees were under no obligation to apply the income derived from the letting of rooms to any specified charitable object. There was no mandate in the trust deed that income from the trust property was to be spent on religious and charitable purposes. The obligation to invest monies of the trust, in the securities authorised by section 20 of the Indian Trusts Act, 1882, was only for the surplus that remained in the hands of the trustees. The income realised from the investment made in the securities was available for the use of the trustees and the manner in which that money was to be utilised was not set out in the trust deed. The Madras High Court therefore held that the assessee trust was not entitled to exemption under section 11 of the Act. However, the Madras High Court in *C.I.T. v. Babulal Khinchand Trust*[2] found that where a trust deed clearly provided that if the settlor left no wife or children, the trust properties shall be applied for such charitable purposes, as may be decided upon by the trustees, the exemption from tax cannot be denied. The

[1] (2000) 241 ITR 76 (Mad)
[2] (2000) 243 ITR 790 (Mad)

discretion given to the trustees was not to choose any purpose, but only purposes, which were charitable and for which the trust properties and income therefrom could be utilised. The court therefore held that this was a valid charitable trust.

PRESUMPTION OF CHARITABLE TRUST FROM USAGE

7.05 According to *Halsbury's Laws of England (4th Edition, paragraph 599)* in the absence of any document declaring the trust of a fund, their nature may be determined by usage. The trust's accounts showing the application of the income of a fund for a long period may determine the charitable purposes for which the fund is held. A charitable trust may be presumed from such circumstances as the receipt for a long period of a rent charge by a charity.[1]

7.06 Various periods of uninterrupted usage have been held sufficient to establish charitable trust[2]. Further, a charity once established does not die but its nature may be changed. This was held by the House of Lords in *National Anti-Vivisection Society (The) v. I.R.C*[3].

7.07 In *Mahant Puran Atal v. Darshan Das*[4], it was held by the Allahabad High Court that where a certain property is proved to have been held for many generations solely for charitable purposes, the Court should presume the existence of a charitable trust. It was held by the Full Bench of the Allahabad High Court in *Thakur Das Shyam Sunder v. Addl. C.I.T.*[5] that a trust for charities without specifying any charities at all is valid. If *dharmada* was being collected for purposes of charity in accordance with a custom, its disposal was equally governed by the obligation created by that custom that the amount was to be spent only for some charitable purpose.

---

[1] A.G. v. West (1858) 27 LJ Ch. 789
[2] A.G. v. West (1858) 27 LJ Ch. 789 (30 years) and AG v. Moor (1855) 20 BEAV 119 (100 Yrs.)
[3] (1948) 16 ITR Suppl. (1) (HL)
[4] ILR 34 All 468
[5] (1974) 93 ITR 27 (All – FB)

7.08 In *Nagor Durgah (Trustees) v. C.I.T.*[1] it was held by the Madras High Court that even where the custom or usage inflicted an obligation for the application of the income from a property for charitable or religious purposes, an obligation as referred to in section 11 was created. In that case, properties were dedicated to a saint and offerings were made to him for their utilization for the purposes of the Durgah. The obligation in that case was held to have been imposed by the custom.

7.09 However, if there is a mixture of charitable and non-charitable objects, there must be clear indication of obligation on the part of the trustees to apply compulsorily a definite portion of the trust income for such charitable purposes. If this be left to the discretion of the trustees i.e. if a trustee is given a discretion to apply the trust property for purposes some of which are and some are not charitable, the trust is void for uncertainty. A simple instance of this is a gift for charitable or benevolent purposes. Such a gift is void, for benevolent purposes are, as is well settled, not necessarily charitable. The leading case on the point is the case of *Bowman v. Secular Society Ltd.*[2]*.*

7.10 In *re Diplock Wintle v. Diplock,*[3] it has been held that a trust, which is a mixture of charitable and benevolent purposes, is void on account of uncertainty.

[1] (1954) 26 ITR 805 (Mad)
[2] (1917) AC 406, 441 (HL)
[3] (1940) Ch. 988, 109 L.J. (Ch) 407

8
Beneficiaries Under the Trust

8.01 The universal rule is that the law recognises no purpose as charitable unless it is of a public character. A purpose must in order to be charitable be directed to the benefit of the community or a section of the community and not to the benefit of particular private individuals. In this connection, it is useful to refer to the observations of Lord Westbury in *Verge v. Somerville.*[1]

> "*To ascertain whether a gift constitutes a valid charitable trust so as to escape being void on the ground of perpetuity, a first enquiry must be whether it is public, whether it is for the benefit of the community or of an appreciable important class of the community. The inhabitants of a parish or town, or any particular class of such habitants, may for instance be the object of such a gift, but private individuals, or a fluctuating body of private individuals, cannot*."

8.02 In order that a trust falls within the meaning of section 2(15) of the Act, the overriding test of general public utility mentioned in the fourth category of charitable purpose *viz.* "*any other object of general public utility*" is also applicable to all the three other classes *viz. "relief of the poor, education, medical relief" by the rule of* ejusdem generies.

8.03 The Supreme Court's decision in *C.I.T. v. Andhra Chamber of Commerce*[2] is the leading authority on the concept and construction of "*general public utility*". It was held by the Supreme Court in the said case that an object beneficial to a section of the public was an object of general public utility. To serve as a charitable purpose, it was not necessary that the object should be

---

[1] (1924) AC 496, 499 (PC)
[2] (1965) 55 ITR 722 (SC)

to benefit the whole of mankind or even all persons living in a particular country or province. It was sufficient if the intention was to benefit a section of the public as distinguished from specified individuals. The section of the community sought to be benefited must undoubtedly be sufficiently defined and identifiable by some common quality of a public or impersonal nature. Where there was no common quality uniting the potential beneficiaries into a class, it might not be regarded as valid. Reference in this regard may also be made to the decision of the Supreme Court in the case of *Ahmedabad Rana Caste Association v. C.I.T.*[1] and of the Gujarat High Court in *C.I.T. v. Ahmedabad Rana Caste Association*[2] and in *Addl. C.I.T. v. Ahmedabad Millowners' Association*[3] and of the Madras High Court in *Addl. C.I.T. v. South India Hire Purchase Association*[4]

8.04 The "*section of the public*" which is to be benefited to make the purpose a charitable, one should have a common quality of either a "*public*" nature or an "*impersonal*" nature. What is the exact nature of a "*section of the public*" which can legitimately become an object of a charity, is considered by Lord Green M.R. in *Powell v. Comption.*[5] In that case a bequest was made for the education of a small number of individual relatives of a testatrix. The question which arose was whether these individuals formed a "*section of the public*" so as to make the trust a charitable trust. Lord Greene M.R. held that the trust was not a valid trust, making the following observations:

> "*No definition of what is meant by a section of the public has, so far as I am aware, been laid down, and I certainly do not propose to be the first to make the attempt to definite it. In the case of many charitable gifts it is possible to identify the individuals who are to benefit, or who, at any given moment, constitute the class from which the beneficiaries are to be selected. This circumstance does not, however, deprive the gift of its public character. Thus, if there is a gift to relieve the poor inhabitants of a parish,*

[1] (1971) 82 ITR 704 (SC)
[2] (1973) 88 ITR 354 (Guj) affirmed in (1983) 140 ITR 1 (SC)
[3] (1977) 106 ITR 725 (Guj)
[4] (1979) 116 ITR 793 (Mad)
[5] (1945) 1 CH 123, 129 (CA)

> *the class to benefit is readily ascertainable. But they do not enjoy the benefit, when they receive it, by virtue of their character as individuals but by virtue of their membership of the specified class. In such a case the common quality which unites the potential beneficiaries into a class is essentially an impersonal one. It is definable by reference to what each has in common with the others, and that is something into which their status as individuals does not enter*."

8.05 Our Supreme Court has approved of the said principle in *Ahmedabad Rana Caste Association's case*[1] and has held that the members of the Rana caste had a relationship which was an impersonal one, dependent upon their status as members of that caste and accordingly the association was held entitled to exemption from tax.

8.06 Where the primary purpose of a society is benefit of the members themselves or their families, the society cannot be considered as having been established for charitable purposes even if it is formed for the study of a particular science and that study tends indirectly to the promotion of education generally. Such were the views expressed in *The Geologist's Association v. The Commissioners of Inland Revenue,*[2] and *Commissioner of Inland Revenue v. The Royal Naval and Royal Marine Officers' Association*[3].

8.07 In *Naresh Sengupta Foundation v. C.I.T.,*[4] the Court held that where the trust gave founder's family right to receive part of the income, it was not entitled to claim exemption from tax even though the relevant clause was claimed by the trust to be non-operative. In *Sri Gopalji Lalji-Ka-Mandir Trust*[5] it was held that the trust in question was created for the religious benefits of its creators and their children in future. The manner in which trustees would be appointed shows that an attempt had been made to keep it in the full control of the family. The provision had been

---

[1] (1971) 82 ITR 704 (SC)
[2] (1928) 14 TC 271
[3] 36 TC 187
[4] (1994) 207 ITR 340 (Cal)
[5] (1984) 146 ITR 513 (MP)

made that members of the family, in times of need, shall have right of residence in the temples and shall also have two meals in a day. In these circumstances, the Court held that the assessee trust could not be said to be a public charitable or religious trust.

8.08 In *Delhi Stock Exchange Association Ltd. v. C.I.T.*[1], their Lordships of the Delhi High Court found that the Delhi Stock Exchange Association Ltd., being a company limited by shares was at liberty to distribute its entire profits or income by way of dividends amongst it shareholders, employees or even their relatives. The Court held agreeing with the Tribunal that the claim for exemption under section 11 had to fail because there was no trust or other legal obligation compelling the assessee to utilise its income only for charitable purposes. The Court further observed that the mere fact that the company did not in fact distribute any dividends would not be of any help to the assessee as the requirement for the purposes of exemption was not the factual position but whether in law, the company was under obligation to devote its profits only to religious or charitable purposes.

8.09 In *C.I.T. v. Radhaswami Satsang Sabha*[2]. It was held that the Satsangis of Radhaswami Satsang Sabha, being followers of one religion are cross-section of the public, and a charitable trust for the benefit of Satsangis as such must be deemed to be a trust for an object of a general public utility. In *Suresh Sunderrao Nayak v. M.K. Pandey, DIT(E)*[3], the Bombay High Court held that the trust which was for the benefit of devotees of a particular deity was not a private trust but a charitable trust, and the mere fact that some devotees who were poor were given monthly cash assistance did not mean that the beneficiaries were identifiable.

8.10 In *C.I.T. (Additional) v. D. D. Deshpande*[4] the supreme object of the trust was to effect revival by spreading and giving currency to the Karma Marg mingled with Bhakti as substantiated by Sri Dryaneshwar Maharaj. However, the settlor, in the trust deed, had expressed a desire to give financial aid to the poor

---

[1] (1980) 126 ITR 532 (Del)
[2] (1954) 25 ITR 472, 504 (All)
[3] (2007) 288 ITR 79 (Bom)
[4] (1976) 102 ITR 390 (Bom)

members of the settlor and their descendants. On these facts the Bombay High Court held that there was no dispute that the dominant object of the trust was religious and charitable in nature. The provision in the trust deed regarding financial aid to the poor members of the family of the settlor was only a desire and no fetter was placed upon the power of the trustees to utilise the income of the trust for charitable purposes. Even a direction was not given to give preference but simply a desire was expressed. The trust was, therefore, held to be a charitable institution. Reference in this connection may also be made to the decision of the Bombay High Court in *C.I.T. v. Trustees of Abdulcadar Ebrahim Trust*[1] and of the Gujarat High Court in *Addl. C.I.T. v. Bibijiwala Trust.*[2]

8.11. In *Ganeshi Devi Rami Devi Charity Trust (Smt.) v. C.I.T.*[3]*,* the Calcutta High Court was concerned with the question whether the provision that the management is left to private individuals and not to the public would, in any way, affect the nature of the trust for the purpose of the Income-tax Act. The Court held that section 2(15) does not deal with the matter of control and management of the fund and, therefore, the implication is that the matter of management of the fund is not an essential matter for the purpose of defining "*charitable purposes*" so far as the Income-tax Act is concerned. Therefore, it was held that even if the funds are controlled by a body of persons which is not a public body in any sense, but if the fund "*enures to the benefit of the public*", it would still be a charitable purpose within the meaning of the Income-tax Act.

8.12 In *South Indian Athletic Association Ltd. v. C.I.T.*[4]*,* the Madras High Court held that public benefit is essential in order that there may be a charitable purpose. Promotion and encouragement of mere entertainment cannot be called a charitable purpose. It suffers also from vagueness as no Court would be in a position to administer a trust for mere promotion and encouragement of entertainment. Encouragement of art is different from encouragement of mere entertainment. Promotion of inter-course

[1] (1975) 100 ITR 85 (Bom)
[2] (1975) 100 ITR 516 (Guj)
[3] (1969) 71 ITR 696, 704 (Cal)
[4] (1977) 107 ITR 108, 116, 117 (Mad)

among the members of the association cannot be considered to be charitable purpose.

8.13 In *Addl. C.I.T. v Ahmedabad Millowners' Association,*[1] the Gujarat High Court was concerned with an assessee which was a commercial association of persons and which existed only for its members who were both the legal owners and beneficiaries of its income and profit. The objects of the association were:

(a) the protection of the interests of mill owners and users of motive power of any description in this part of the country and of those connected with them;

(b) the protection of good relations between the persons and bodies using such power;

(c) the doing of all those acts and things by which these objects may be attained;

(d) the promotion and protection of the trade, commerce and manufacture in general and of the cotton trade in particular;

(e) to establish or aid in the creation of funds to benefit employees of the Association or dependants of such persons and to subscribe, donate or guarantee for charitable or benevolent purpose at the discretion of the association; and

(f) the promotion of good relations between the employers and the employees.

8.14 The question before the Gujarat High Court was whether the objects of the association fell within the meaning of the expression "*charitable purpose*" as envisaged in section 2(15) of the Act. The Court held that the expression object of "*general public utility*" in section 2(15) would include only those objects which promote the welfare of the general public and not the personal and individual interest of some persons. All the three clauses (a), (b) and (c) aim at protecting personal interests and not public interests, and the association is bound to carry on its activity keeping in mind the narrower concept of promotion of the personal and self-serving interests of individuals who are considered "*mill-owners and users of motive power*," even when their interests are

[1] (1977) 106 ITR 725 (Guj)

in conflict with the interest of their own trade or industry. When an object seeks to promote or protect the interests of a particular trade or industry, that object may be an object of public utility, but not so, if it seeks to promote the interests of those who conduct the said trade or industry. If "*mill-owners and users of motive power*" have any common quality, the same is obviously of a "*private*" nature, as each one of them is concerned with his own interest and shares nothing in common with the public. Granting that this is their common quality, it would not be said that the said common quality possesses the attributes of a public or impersonal nature. The Court also held that though the second part of clause (e), which contemplates subscriptions, donation or guarantees for "*charitable or benevolent*" purposes at the discretion of the association, may be said to embody within it an object of public utility, the first part thereof cannot be said to be one for general public utility. Reliance was placed in this regard on the decision in *Oppenheim v. Tobacco Security Trust Co., Ltd.*[1] to which reference was made by the Supreme Court in the case of *Ahmedabad Rana Caste Association v. Commissioner of Income-tax,*[2] where the facts were that the trustees were directed to apply certain income in providing for the education of children of "*employees*" or "*former employees*" of the Tobacco Security Trust Co. Ltd. or any of its subsidiary of allied companies. The House of Lords held that though the group of persons indicated was numerous, nexus between them was employment by particular employers and accordingly, the trust did not satisfy the public benefit requisite to establish it as charitable. As regards the second part of Clause (e), reference was made by the Court to the earlier decision of the Supreme Court in the case of *C.I.T. v. Indian Sugar Mills Association,*[3] wherein the Supreme Court, in respect of an exactly similar clause, had observed that in some remote and indirect manner such object might be called a charitable purpose within the meaning of section 2(15) of the Income-tax Act, 1961. On the same ground the Court also held that clause (f) is an offending one as even assuming that in some remote and indirect manner such an object might be of some

[1] (1951) 1 All. ER 31 at 33 (HL)
[2] (1971) 82 ITR 704, 710 (SC)
[3] (1974) 97 ITR 486 (SC)

public utility, it cannot be called a charitable purpose within the meaning of section 2(15) of the Act.

8.15 It may be mentioned here that the Gujarat High Court in the said case of *Ahmedabad Mill Owners Association* followed the principles laid down by House of Lords in *Commissioners of Inland Revenue v. City of Glasgow Police Athletic Association.*[1] In the said case, Lord Cohen had summarised the legal position in such cases as under at page 105 of the report:

(i) If the main purpose of the body of persons is charitable and the only elements in its constitution and operations which are non-charitable are merely incidental to that main purpose, that body of persons is a charity notwithstanding the presence of those elements —*Royal College of Surgeons of England v. National Provincial Bank*[2]*.*

(ii) If, however, a non-charitable object is itself one of the purposes of the body of persons and is not merely incidental to the charitable purposes, the body of persons is not a body of persons formed for charitable purposes only, within the meaning of the Income-tax Act — *Oxford Group v. Inland Revenue Commissioners*[3]*.*

(iii) If a substantial part of the objects of the body of persons is to benefit its own members, the body of persons is not established for charitable purposes only — *I.R.C. v. Yorkshire Agricultural Society.*[4]

8.16 The Supreme Court in *Addl. C.I.T. v. Surat Art Silk Cloth Mfrs. Association*[5] also took the same view as taken by Lord Cohen in the case referred to in paragraph 8.15 above. In this case, the objects of the association were quoted by Bhagwati J. at page 7 of the reports as under:

(a) to promote commerce and trade in art silk yarn, raw silk, cotton yarn, art silk cloth, silk cloth and cotton cloth.

---

[1] (1953) 34 TC 76 (HL)
[2] (1952) AC 631 (HL)
[3] (1949) 2 All ER 537; 31 TC 221 (CA)
[4] (1928) 1 KB 611 (CA)
[5] (1980) 121 ITR 1, 11-13 (SC)

(b) to carry on all and any of the business of art silk yarn, raw silk, cotton yarn as well as art silk cloth, silk cloth and cotton cloth belonging to and on behalf of the members.

(c) to obtain import licenses for import of art silk yarn, raw silk, cotton yarn and other raw materials as well as accessories required by the members for the manufacture of art silk, silk and cotton fabrics.

(d) to obtain export licenses and export cloth manufactured by the members.

(e) to buy and sell and deal in all kinds of cloth and other goods and fabrics belonging to and on behalf of the members.

(f) to do all other lawful things as are incidental or conducive to the attainment of the above objects.

8.17 The Court observed that where the main or primary objects are distributive, each and every one of the objects must be charitable in order that the trust or institution might be upheld as a valid charity. But if the primary or dominant purpose of a trust or institution is charitable, another object which by itself may not be charitable but which is merely ancillary or incidental to the primary or dominant purpose would not prevent the trust or institution from being a valid charity. The test, which has, therefore, to be applied is whether the object which is said to be charitable is a main or primary object of the trust or institution or it is ancillary or incidental to the dominant or primary object which is charitable. The Court also reiterated that an institution did not cease to be charitable merely because the members thereof were incidentally benefited in carrying out its main charitable purpose. Of course, the court observed that each case was required to be examined on the facts of its own to determine whether there was so much personal benefit, intellectual or professional to the members of the institution or society as to be capable of being disregarded. Applying the above criterion to the case before it, the Supreme Court observed that the dominant or primary purpose of the assessee was to promote commerce and trade in art silk yarn, raw silk, cotton yarn, art silk cloth, silk cloth and cotton cloth as set out in sub-clause (a) of clause (3) of the Memorandum and these undoubtedly fell within the category of advancement of an object

of general public utility. The Court further observed that the objects set out in sub-clauses (b) to (e) of clause (3) were, in fact, in the nature of powers conferred upon the assessee for the purpose of securing the fulfillment of the dominant or primary purpose. Therefore, the court observed that when the dominant or primary purpose of the assessee was charitable, the subsidiary objects set out in sub clauses (b) to (e) of clause (3) would not militate against its charitable character and the purpose of the assessee would not be any the less charitable.

8.18 In *Southern India Mill Owners' Association v. C.I.T.*[1] the Madras High Court was concerned with an association of mill-owners in the four States of South India. The primary and dominant purpose of the association was only to promote and protect the textile industry. The textile mills, which got import licences for cotton had to deposit a certain amount specified by the Textile Commissioner with the association and this amount was to be distributed among the exporters of yarn and cloth who had suffered losses in the export market, in accordance with the directions of the Textile Commissioner. Pending receipt of instructions from the Textile Commissioner regarding disposal of the amounts, the assessee kept the amounts in banks and earned interest and claimed exemption from tax. This claim was negatived by the Income tax authorities but was allowed by the Tribunal. On reference, it was contended on behalf of the department that the association was constituted only for the benefit of the members and not for any general public benefit. The court overruling the department's contention observed that one will have to find out what are the main or primary objects of the association and if there are any objects which are incidental to the main objects and which are beneficial to the members as contrasted with the general public, then such incidental objects would not detract from the public utility emerging from the main objects. The court went through the objects for which the association came into existence and found that the primary and dominant purpose of the association was only to promote and protect the textile industry, which occupied a pre-eminent place in the economy of South India and any-thing intended to promote and protect the economic activity of such an industry was bound to have its effect on the

[1] (1977) 110 ITR 871 (Mad)

economy of the country and in particular of South India. In this view of the matter, the Madras High Court upheld the assessee-association's contention that it was constituted for the benefit of general public and not for the benefit of its members. Any benefit which accrued to the members because of its objects were merely incidental and would not militate against its charitable character. These principles laid down by the Madras High Court were later affirmed and reiterated by the Supreme Court in *Additional C.I.T. v. Surat Art Silk Cloth Mfrs. Association.*[1]

8.19 In *Madras Hotels Association v. C.I.T.*[2] the main activity of the assessee was to secure permits for rice, wheat, sugar and other articles of food needed by its members, who were proprietors of several hotels and restaurants in Madras city, from the authorities empowered to issue those permits, to purchase the articles on the basis of those permits and make them over to the members. On these facts, the Madras High Court held that the activities of the association being only to consolidate its manpower and potential and utilise it for the benefit of its members was only for the purpose of a private gain which was obviously inconsistent with an object of general public utility.

8.20 In *C.I.T. v. Western India Chamber of Commerce Ltd.*[3] their Lordships of the Bombay High Court found that the assessee was an organisation, formed with the object of benefiting community, carrying on trade and commerce in seeds, wheat and other similar commodities, all of which were for charitable purposes. It was, however, found that article 92 of its Articles of Association provided that in the case of winding up of the Chamber, its property could be distributed amongst its members. Based on this clause it was argued before the Court on behalf of the Revenue that this clause indicated that the object of the organisation was to promote only the interests of its members. The Court held that an organisation which provides for distribution of its properties amongst its members on a winding up, is not for that reason an organisation formed for the profits and gains of its members. It was only in the case of winding up that the property and income of the organisation were to be distributed amongst

[1] (1980) 121 ITR 1, 12-13
[2] (1978) 111 ITR 241 (Mad)
[3] (1982) 136 ITR 67 (Bom)

members. If during the lifetime of the organisation it was under obligation to spend its income for charitable purposes, the Court held that it can claim exemption from taxation on that account during its lifetime.

8.21 In *C.I.T. v. South Indian Film Chamber of Commerce*[1] their Lordships of the Madras High Court dealt with the case of a society which was registered under the Societies Registration Act, 1980 and which was formed with the objects, *inter alia,* to encourage and develop the film industry in all its branches in south India, to watch protect and extend the rights and privileges of its members and of film trade in general, to encourage and facilitate film production, distribution and exhibition of films and to do various things for the purpose to assist the persons in this line of activity. The assessee-society assisted its members by supplying them raw materials and carbon and keeping the films in vault and safe custody. The building owned by the society was also let out. The society accordingly derived income from property, distribution of raw films, cinema, carbons etc. and also income by way of remuneration for other services rendered to its members. The society claimed that the income received by it from the various sources was exempt from tax as the properties were held by it under trust wholly for charitable purposes. The Tribunal held that the society was entitled to exemption under section 11 of the Act and also rejected the alternative contention urged on behalf of the Revenue that the income derived by way of services rendered to the members was liable to Income-tax under section 28(iii). The Madras High Court agreeing with the findings of the Tribunal observed that section 28(iii) had no application where the income received by a charitable trust was exempt under section 11 of the Act.

8.22 In *Director of Income Tax (Exemptions) v. Bharat Diamond Bourse*[2], their lordships of the Bombay High Court were dealing with the case of a bourse set up in Bombay essentially for the purposes of increasing the export of polished diamonds from India. The association was incorporated as a company. The memorandum clearly indicated that the assessee did not exist for the purpose of profit. It was also laid down that the income would

[1] (1981) 129 ITR 22 (Mad)
[2] (2000) 245 ITR 437 (Bom)

be applied solely for the promotion of the objects of the association and no portion of its income directly or indirectly be paid by way of dividend, bonus or profit to the members of the association and no remuneration or other benefits would be given to any of the members, whether they were officers or servants except with the prior approval of the Central Government. On these facts, the Bombay High Court held that the assessee was entitled to exemption under section 11. This ratio laid down by the Bombay High Court was affirmed by the Supreme Court[1], though exemption was denied on the ground of income being utilised for benefit of the founder.

[1] (2003) 259 ITR 280 (SC)

9

Religious Trusts or Endowments

9.01 A religious endowment is one, which has as its object the establishment, maintenance or worship of an idol or deity or any object or purpose subservient to religion. A religious trust, as was held by the Full Bench of the Madras High Court in *C.I.T. v. M. Jamal Mohamad Sahib*[1] may be private or public but a charitable trust must always be public.

9.02 Gift for public religious purposes are *prima facie* gifts for charitable purposes. Such was the view expressed by the Madras High Court in *Thangaswamy Chettiar v. C.I.T.*[2] However, a distinction has been made between charitable and religious trusts in sections 11, 12 and 13 of the Income-tax Act, 1961. While "*charitable purpose*" has been defined in section 2(15) of the Act, there is no definition of "*religious purpose*" under the Act. Religious purpose would normally include the advancement, support or propagation of a religion and its tenets.

9.03 A religious endowment must be held to be private or public, according as the beneficiaries thereunder are specific persons or sections thereof. When property is dedicated for the worship of a family idol, it is private and not a public endowment. But where the beneficiaries are not members of a family or a specified individual, then, the endowment can only be regarded as public, intended to benefit the general body of worshipers. This distinction between a private and a public endowment was best explained by the Supreme Court in *Deoki Nandan v. Murlidhar*.[3]

9.04 The distinction as aforesaid is important in as much as the exemption granted by section 11 is confined to public religious trusts alone and does not extend to private religious trusts which

---

[1] (1941) 9 ITR 375 (Mad) (FB)
[2] (1965) 57 ITR 546 (Mad); 58 ITR 140 (Bom)
[3] AIR 1957 SC 133

do not enure for the benefit of the public. Section 13(1) (a) of the Income-tax Act, 1961 makes it perfectly clear that nothing contained in section 11 or section 12 of the Act shall operate so as to exempt any part of the income from property held under a trust for private religious purpose which do not ensure for the benefit of the public. Thus, family deities i.e., those deities which have been worshipped by the members of a particular family from generations and wherein the public by custom has acquired no right to offer "*pujas*" were held by the Calcutta High Court in *Ganeshi Devi Rami Devi Charity Trust (Smt.) v. C.I.T.*[1] to be not exempt under section 11 of the Act. Similar view was also taken by the Calcutta High Court in *re Smt. Charusila Dassi*[2]

9.05 The question whether a particular temple is a public temple or not is always a question of fact to be decided on the basis of various circumstances. The circumstance that the public or a section thereof have been regularly worshipping in the temple as a matter of course and they can take part in the festivals and ceremonies conducted in that temple apparently as a matter of right is a strong piece of evidence to establish the public character of the temple. In general, the origin of the temple, the manner in which its affairs are managed, the nature and extent of gifts received by it, right exercised by the devotees in regard to worship therein, the consciousness of the manager and the consciousness of the devotees themselves as to the character of the temple are factors that go to establish whether a temple is a public temple or private temple. These principles were laid down by the Supreme Court in *Goswami Shri Mahalaxmi Valreji v. Ranchhoddas Kalidas.*[3]

9.06 Later in, *Dhaneshwarbuwa Guru Purshottambuwa v. The Charity Commissioner, State of Bombay,*[4] a serious question, arose as to whether, Shri Vithal Rukhamai Sansthan founded by Sukharam Moharaj at Amalner was a private Devasthan or a public religious trust. It was found on evidence that everybody could not perform puja without the permission of the Pujari. The origin of the endowment was obscure and no direct evidence was

[1] (1969) 71 ITR 696, 706 (Cal)
[2] (1946) 14 ITR 362 (Cal)
[3] AIR 1970 SC 2025, 2031
[4] AIR 1976 SC 871

available. The Supreme Court, however, held that it is not always possible to have all the features of a public trust in a given case. Even some of the tests laid down by it may, in a given case, be sufficient to enable the court to come to a conclusion about the character of the trust. Their Lordships further held and observed that the simple fact that the public is not and may not be allowed to the inner most sanctum where the deity is installed except under special circumstances and with special permission, would not lead to the conclusion that the temple is a private temple. Even in acknowledged public temples any and everybody cannot perform puja in the sense in which the head Pujari daily performs at various stages. Their Lordships pointed out that when the origin of an endowment is obscure and no direct oral evidence is available, the court will have to resolve the controversy about the character of the trust on documentary evidence for which the trust was created, the consistent manner in which the property has been dealt with or managed by those in charge, the manner in which the property has long been used by the public, the contribution of the public, to all intents and purposes, as a matter of right without the least interference or restriction from the temple authorities, to foster maintenance of the worship, the accretion to the trust property by way of grants from the State of gifts from outsiders inconsistent with the private nature of the trust, the nature of devolution of the property, which are all important elements in determination of the question, whether a property is a private or a public endowment.

9.07 In *Smt. Sarjoo & Others v. Pandit Ayodhya Prasad & Others*[1] the Allahabad High Court was concerned with a case where the evidence disclosed that the Pandas had treated the temple as family property dividing the offerings among themselves by turns, they performed the Pooja and festivals in the temple, they had made the repairs and reconstruction from time to time, they managed all its affairs, they defrayed the expenses of its maintenance and paid for consumption of electric energy, they appropriated the offerings after spending them on the maintenance of temple, and that they did not employ any Pujari. On these facts the Court held the temple to be a private

[1] AIR 1979 All 74

endowment even when it was found that the public were allowed to worship in the temple and to perform the Shringar.

9.08 In *Parichchan Das v. Bihar State Board of Religious Trust and Others,*[1] their Lordships of the Supreme Court again reiterated that there can be no simple or conclusive factual test to determine the character of a trust. The totality of circumstances and their effect must be considered. The court pointed out that the fact that members of the public were permitted to go to the temple without any hindrance might not be a circumstance which by itself would conclusively establish that the temple was a public temple in the absence of an element of right in the user of the temple by the public. Conversely, the Court pointed out that the free use of the properties of the temple by the Mahant at a time when he was the sole manager of the temple and its properties would not necessarily lead to the inference that the temple was not a public temple. But the Court pointed out that the donation of lands by members of the public to the institution and the location of the temple at a place freely accessible and convenient to the public are important circumstances determining whether it was private or public temple.

ESTABLISHMENT OF A RELIGIOUS TRUST OR ENDOWMENT

9.09 The Madras High Court observed in *Ramanathan Chettiar v. Palaniappa Chettiar*[2] that there are three modes in which a voluntary transfer of property in favour of a temple can be validly and effectually made:

(i) dedication of property directly to the deity, which would not need compliance with the provisions of the Transfer of Property Act, 1882.

(ii) transfer of property by way of gift to the trustee of a temple complying with the provisions of Section 123 of the Transfer of Property Act, 1882.

(iii) creation of a trust.

[1] AIR 1980 SC 514
[2] ILR (1945) Mad 500

Similar view was also taken by the Calcutta High Court in *Official Trustees of West Bengal v. C.I.T.*[1]

9.10 Further, it was held by the Allahabad High Court in *Ram Kumar Ram Chandra & Co. v. C.I.T.*[2] that a dedication in favour of a Hindu deity is not a gift within the meaning of section 122 of the Transfer of Property Act, 1881, and, therefore, the provisions regarding acceptance by donee etc., as contained in the said Act have no application to such a dedication. However, the essentials of a Hindu religious endowment are the following:

(i) property in respect of which the endowment is made must be designated with precision.

(ii) the object or purpose of dedication should be clearly indicated.

(iii) the founder must effectively divest himself of all beneficial interest in the endowed property.

9.11 No writing is necessary to create an endowment nor a trust is required for that purpose. No '*religious ceremony*' such as *Sankalp*, *Samarpan*, *Pranapratishta* or *Kumbhabhishekam* etc., is necessary to establish a religious endowment. A clear and unequivocal manifestation of the intention to create a trust and vesting of property with the trustee is enough to constitute dedication. Reference in this connection may be made to the decision of the Supreme Court in *Ramachandra Shukla v. Shree Mahadeoji.*[3]

COMPLETE OR PARTIAL DEDICATION

9.12 A property may be dedicated entirely to a religious or charitable institution or to a deity. This is an instance of complete dedication. As was observed by the Supreme Court in *Dasarathrama Reddi v. Subba Rao*[4] where a dedication is complete, trust in favour of a public religious or charitable purpose is created.

---

[1] (1968) 67 ITR 218 (Cal)
[2] (1965) 58 ITR 721 (All)
[3] AIR 1970 SC 458
[4] (1957) 12 MLJ (SC) 175

9.13 The normal case of partial dedication, as was held by the Calcutta High Court in *Sridhar Jiu v. Manindra Kumar Mitra*[1] to an idol is one where the disposer has purported to dispose of property in favour of an idol, but in such a manner as to show an intention of benefiting his family in perpetuity. However, there may be many other instances of partial dedication.

9.14 The decision of the Supreme Court in *C.I.T. v. P. Krishna Warriar*[2] is the leading authority on the question of partial dedication. There are four cases of property being held in part only for charitable or religious purposes.

(i) The whole property may be dedicated to an idol or settled upon charitable trusts, subject to a portion of the income being given to the Shebait or to the grantor's heirs or other persons.

(ii) The heirs may take the property beneficially but subject to a charge in favour of charity or an idol.

(iii) The owner of the property may retain the property for himself but grant the community or section of the community a beneficial interest therein by way of easement or otherwise.

(iv) The property may be held upon trust to apply a specified part of the income to charitable purposes and the balance of income to non-charitable purposes.

9.15 It is necessary to make a clear distinction between cases where a specified part of the income is directed to be applied to charity as against those where a specified part of the corpus is held upon trust for charitable or religious purposes; the remainder of the corpus or the income, as the case may be settled upon non-charitable trusts.

9.16 Where a specified part of the corpus is held upon trust for charitable or religious purposes, the case falls under section 11(1)(a) of the Act. But where only a specified part of the income is set apart for charitable or religious purposes, the case falls

[1] AIR 1941 Cal 272
[2] (1964) 53 ITR 176, 184 (SC)

within section 11(1)(b) of the Act—property held in part only for charitable or religious purposes.

9.17 The Supreme Court had occasion to interpret the expression "*in part*" as used in section 4(3)(1) of the old Act corresponding to section 11(1) (b) of the Income-tax Act, 1961 in *C.I.T. v. P. Krishna Warriar*[1]*,* Subba Rao J. Speaking for the Court observed at pages 183 and 184 of the reports as under:

> "*In our view, the expression" in part "does not refer to an aliquot part: if half a house is held in trust wholly for religious or charitable purpose, it would be covered by the first part of the substantive clause (1) for in that event the subject-matter of the trust is only the said half of the house and that half is held wholly for religious or charitable purposes. The expression "in part", therefore, must apply to a case other than a property a part of which is wholly held for religious or charitable purposes*."

9.18 The dichotomy between the two expressions "*wholly*" and "*in part*" is not based upon the dedication of the whole or a fractional part of property, but between the dedication of the said property wholly for religious or charitable purposes or in part for such purpose. If so understood, the two limbs of the substantive clause fall into a piece. The first limb deals with a property or a part of it held in trust wholly for religious or charitable purposes, and the second limb provides for such a property held in trust partly for religious or charitable purposes.

[1] (1964) 53 ITR 176 (SC)

10

Construction of Endowment or Trust Deed

10.01 The question whether a deed of dedication creates absolute or partial dedication must be settled by a conspectus of all the provisions of the deed. The test is the extent of dedication, and for this purpose, the whole deed will have to be read. In *Sri Sri Jagannath Jew v. C.I.T.*[1], the Calcutta High Court laid down the following principles to be followed in construing deed of endowments of trusts.

(a) In construing a deed, the opening words by themselves of the deed are not conclusive; the deed as a whole has to be construed to find out whether it was intended that the property would vest in the idol.

(b) The answer to the question, to whom do the substantial benefits of the property under the deed go, may in certain circumstances be an important, relevant and guiding factor in construing the intention.

(c) Where the expenses for the purpose of the idol are prescribed in limiting the terms so that in case the income increases or is available beyond what is required for the purpose of the idol, the disposal of the surplus may be a factor which would indicate that the property was not intended to be vested in the idol.

(d) There is, however, no fixed rule that when income was expanding and expenses were static, leaving a residue, it must be presumed, notwithstanding the comprehensive language, that the deed was intended only to create a charge in favour of the deity. In all cases it is necessary to find out the intention from the whole deed.

(e) There is no fixed rule of construction depending upon the use or any particular terms.

---

[1] (1971) 81 ITR 353, 372 (Cal)

(f) If the property is wholly dedicated to the worship of the idol and no beneficial interest is reserved to the settlor, his descendants or other persons, the dedication is complete but if in the deed it is found that there is only a charge in favour of the deity and beneficial interest is reserved either to the settlor, his descendants or to other persons or objects, the dedication is partial.

(g) The provision of remuneration or maintenance and residence of the Shebaits are not factors indicating that the property was not intended to be vested in the idol.

(h) A property may be given to the deity either by creating a trust in the technical sense of the term or by dedication to the deity and vesting the property in the idol.

(i) The expression "*trust*" is often used in general sense and when Shebaits are enjoined to perform certain functions in relation to the deity they also discharge duties in the nature of trust.

(j) The use of the expression "*trust*" or "*trustee*" is neither conclusive nor indicative whether the property was vested in the deity or not.

10.02 In construing the language of an indenture of trust, the substance of the matter should primarily be looked at and too rigid and technical approach ought not to be encouraged. If upon scrutiny of all the relevant provisions of the indenture of trust, it appears that a valid trust, as contemplated by the Indian Trust Act has been created then, instead of giving too much importance to want of precise language, the substance of the matter should be looked at. Such was the view expressed by the Bombay High Court in *C.I.T. v. Trustees of Dr. Divekar Charity Trust.*[1]

10.03 In *Laxmi Narain Lath Trust v. C.I.T.,*[2] their Lordships of the Rajasthan High Court held that in respect of charities, the Courts applied the doctrine of Cypres which envisages that where a clear charitable intention is expressed, it will not be permitted to fail because the mode, if specified, cannot be executed and the law will substitute another mode Cypres i.e. as nearly as possible to

[1] (1977) 110 ITR 227 (Bom)
[2] (1988) 170 ITR 375 (Raj)

the mode specified by the donor. The said doctrine is applied on the principle that the Court would lean in favour of charity and where a general charitable goal is projected and particular objects and modes are indicated, the Court acting to fulfill the broader benevolence of the donor and to avert the frustration of the good to the community, reconstruct, as nearly as may be, the charitable intent and makes viable what otherwise may die. In the supplementary deed, the settlor and the trustees had stated that the settlor had intended to create a charitable trust for the benefit of the public by the original deed executed in 1948, but on account of some words used in certain sub clauses of Objects Clause (2), the true intention of the settlor was not being reflected and therefor, it was necessary to rectify the said mistake in the original settlement deed, so as to put on record the true intention of the settlor and the trust created by him. The Court held that it was permissible for the settlor to clarify his intention in creating the trust under the original settlement deed by executing the supplementary deed. After the execution of the supplementary deed, it was not open to the trustees to apply the funds of the trust for non -charitable purposes. In *Delhi Stock Exchange Association Ltd. v. C.I.T.*[1], their Lordships of the Hon'ble Supreme Court held that there must be an obligation created to spend the money exclusively and essentially on charity. If the trust deed or the Memorandum & Articles of Association of the institution permit distribution of the whole or part of its income by way of dividends amongst its members or shareholders, exemption under section 11 read with section 2(15) of the Act can not be claimed and /or allowed.

PROCEDURE FOR AMENDMENT OF THE TRUST DEED

10.04 Several amendments have from time to time been made in the provisions regulating exemption from tax granted to charitable or religious trusts. Such amendments could not have been foreseen by the settlors of the trusts, where the settlement took place several years before. Some condition or clause in the deed may, on account of changes in law, disentitle the trust from claiming exemption from tax. In such cases, the Advocate General

[1] (1980) 126 ITR 532 (Del)

or two or more persons, having an interest in the trust, and having obtained leave of the Court, may institute a suit, whether contentious or not, under section 92 of the Civil Procedure Code, 1908 in the Principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject matter of the trust is situate, to obtain a decree declaring that the trust property shall be allocated to only such purposes as may fall within the expression "*charitable purpose*" as contained in section 2(15) of the Income-tax Act, 1961. The Court can also be moved to delete such objects which may be considered objectionable from the angle of claiming exemption from tax under the Act or for getting any direction of the Court for the proper administration of the trust.

10.05 When a representative suit is filed under section 92 of the Civil Procedure Code, 1908, the Court has a duty to consider what is best in the interests of the public and the decision of the Court binds not only the parties to it but also all the persons interested in the trust. It may be noted that section 92 of CPC does not apply to any religious trust in Bihar and Madras and any public trust in Andhra Pradesh, Bombay, Gujrat and Rajasthan.

10.06 The decisions in *Laxmi Narain Lath Trust v. C.I.T.*[1] and *C.I.T. v. Delhi Stock Exchange Association Ltd.*[2] are illustrative of cases involving deletion of objectionable/offending clauses by subsequent amendments. The Courts held that the trust or the institution concerned was entitled to exemption from tax no sooner the offending clauses were removed by a subsequent amendment.

10.07 In *Sakthi Charities v. Commissioner of Income-tax*[3], Madras, the High Court held that where the founder of the trust did not provide for alteration of the objects of the trust at any future time, once a trust had been founded with certain objects, those objects could not be deleted even by the founder of the trust, though it was possible to add some other objects without any detriment to the original objects. The Court under section 92 of the Civil Procedure Code, 1908 can give a direction, which is

[1] (2000) 244 ITR 272 (Raj)
[2] (2001) 248 ITR 258 (Del)
[3] (1984) 149 ITR 624 (Mad); also (1990) 182 ITR 483 (Mad)

necessary for the administration of the trust; but it cannot, in exercise of that power, alter the objects of that trust. Even assuming that the District Court has the necessary power to delete the offending clauses, it could not do so with retrospective effect from the date when the original trust deed had come into force, and consequently, the offending clauses could be held to have been deleted only from the date of the decree and not before. In *C.I.T. v. Kamla Town Trust*[1], the Court by concession held that rectification of a trust deed will not have retrospective effect. In *Bhriguraj Charity Trust v. C.I.T.*[2], the Court held that rectification of a trust deed cannot have retrospective effect.

10.08 In *C.I.T. v. Ramaswamy Iyer,*[3] the settlor, who was also the sole trustee of an endowment for charitable purposes, executed a supplemental deed which provided that 30 per cent of the income could be spent by way of expenditure or gift in favour of poor relations of the founder. The Madras High Court held that the trustee cannot alter the trust deed without a power being reserved therefor in himself in the trust deed itself. Since in the case before it, the court found that no such power was reserved in the founder in the original deed, the original trust deed stood in law without being in any way influenced or afflicted by the subsequent supplemental deed. In *Sri Agastyar Trust v. CIT*[4], their Lordships of the Hon'ble Supreme Court also took the view that if no power is given to the trustees to amend, alter, vary or change in any manner the objects of the trust, a subsequent document, seeking to amend the original trust deed, executed by the trustees would be clearly without any authority and non est in law.

10.09 In *Jagdamba Charity Trust v. C.I.T.*[5] *and in Yogiraj Charity Trust v. C.I.T.*[6], their Lordships of the Delhi High Court were concerned with a trust deed which originally contained certain clauses which were found by the High Court as well as the Supreme Court to be offending and/or objectionable for the purpose of claiming exemption under section 11 of the Income-tax

---

[1] (1996) 217 ITR 699 (SC)
[2] (1997) 228 ITR 50 (Del – FB)
[3] (1977) 110 ITR 364 (Mad)
[4] (1999) 236 ITR 23 (SC)
[5] (1981) 128 ITR 377 (Del)
[6] (1984) 149 ITR 7 (Del)

Act, 1961. The founder of the trust, after knowing the view of the High Court filed a suit for rectification of the trust deed under section 26 of the Specific Relief Act before the Sub-judge, Delhi. The trust as well as two of its trustees were made defendants in the said suit. In the plaint it was stated that the plaintiff had been desirous of creating a charitable trust for the amelioration of the public and that in order to satisfy his intention, will and understanding, the trust had been founded by the deed executed in 1949. It was further stated in the plaint that the intention and belief of the plaintiff since the creation of the trust was to maintain the trust as charitable trust and for the well-being of the public. However, the Court had held that due to the provisions contained in certain clauses of the original deed, the same was non-charitable and that the defendant trust was not entitled to the exemption claimed under the Income-tax Act. The plaintiff founder further stated in the plaint that from the very beginning he was under the honest belief that the object clause of the trust deed aimed only at public charity and that some bonafide mistake and difference in interpretation seemed to have occurred in the trust deed as reflected in the judgment of the High Court of Delhi. It was stated that since the decision of the High Court had created some doubt regarding the validity of some clauses of the trust deed, it had become expedient and necessary that the trust deed should be rectified by deletion of some clauses and words in some of its clauses and that some words and clauses should be added to remove any doubt as to its objects. It was also prayed that it was expedient to allow the rectification since the inception of the trust. The plaint in the suit was presented in the beginning of 1972. The plaintiff as well as defendants were represented by counsel. In March, 1972, the Sub-judge, Delhi, granted a decree as prayed for by the plaintiff. In other words, the trust deed was directed to be rectified, as prayed for by the petitioner, and it was also stated that rectification would have effect from the very inception of the trust.

10.10 Their Lordships of the Delhi High Court in the case under reference considered two questions, firstly whether the provisions of section 26 of the Specific Relief Act could be invoked in the manner in which it was done in the present case and secondly whether on the terms of the amendment of the trust deed, the assessee was entitled to exemption under sections 11 and 12 of the Income-tax Act, 1961 in respect of the assessment years

1966-67 and 1967-68, since the amendment is fully retrospective. As regards the first question, the Court held that the rectification of the trust deed would be within the ambit of section 26 of the Specific Relief Act, but their Lordships observed that they experience considerable difficulty in bringing the terms of the relief sought for before the Sub-judge in the present case under the provisions of the Section 26. The scope of the above provision, in the opinion of their Lordships, was very narrow and restricted. It could be invoked only in a case where the intention of a party to the document is very plain and clear, but on account of fraud or mutual mistake of the parties, the instrument as drawn up in writing has failed to express their real intention. The Court, however, found that in the present case, it is an admitted fact that the rectification was sought to remove the difficulties created by the interpretation given by the Delhi High Court in respect of certain clauses of the trust deed. In these circumstances, the Court felt that it was not possible to say that any mistake was committed, while drafting the instrument in bringing out "*the author's true intention, much less a mutual mistake of the parties*." All that has happened is that the author executed what he considered to be a charitable Trust to which income-tax exemption could be available, but has found to his dismay that the document executed by him will not enable him to secure exemption for tax purpose and, therefore, required to be modified to secure that exemption. On this basis, their Lordships expressed grave doubts whether rectification under section 26 of the Specific Relief Act was the appropriate procedure for the parties to remedy the situation when the object of the application was more to obtain by way of a side wind a tax advantage which the parties could have obtained, but did not because of the phraseology employed in drawing up the instrument originally. Later, however, the Court observed that for the purposes of the present case, they were not really concerned whether the provisions of section 26 of the Specific Relief Act could have been properly invoked but with the effect, vis-a-vis the Income-tax Department of the order, which has been passed by the Sub-Court under that section. Their Lordships observed that right or wrong, and whether within the purview of section 26 or not, there was an order of the Sub-court which was binding on both the parties, namely, the author and the trustees. In the face of this order which was binding on both of them, neither the author of the trust nor the trustees could go contrary to the

terms of the trust deed as amended. In this context, the Court further observed that the failure to give notice to the Income-tax Department in the suit for rectification was also not quite relevant, inasmuch as, the Income-tax Department was not a party to or bound by the terms of the trust deed, so much so that such failure could vitiate the rectification or entitle the Department to ignore the Court's order of amendment. So far as the Income-tax Department is concerned, its province under section 11 of the Act, the Court observed, was to find out and give effect to the contract between the parties; it was entitled to ask whether the trustees are holding the properties in question, under a legal obligation wholly for religious or charitable purposes. There could be no doubt, having regard to the order by which the trustees were bound, that they can administer the trust only in terms of the amendment directed by the Court. The trustees were and must be deemed, from the very beginning to have under a legal obligation to hold the properties only for the objects and with the powers set out in the trust deed, as amended. The Court, therefore, held that whatever may be the correctness or otherwise of the order passed under section 26 of the Specific Relief Act, it was not open to the assessing officer to say that the trustees could administer the trust in accordance with the original deed and that the claim for exemption would have to be dealt with on the basis of the old deed. The Court further observed that though they were concerned with the assessment years 1966-97 and 1967-68, since the amendment was fully retrospective, it was also not possible for the assessing officer to say that in the relevant accounting years, that the trustees held the properties subject to the terms of the old deed and not under the terms of the amended deed. The Court, however, observed that it was necessary to find out whether despite the amendment made to the trust deed retrospectively, as a matter of fact, during the relevant accounting years, some of the clauses of the original trust deed which were previously held objectionable were at all acted upon. The Court held that if it was so, then the income of the assessee would not enjoy exemption in spite of the fact that the amended trust deed had retrospective operation. The matter was, therefore, directed by the Court to be looked into by the tax authorities from this angle.

10.11 In *C.I.T.v. Thanthi Trust*[1] their Lordships of the Madras High Court found that the founder of the assessee-trust taking note of the amendment in the definition of the expression "charitable purpose" as contained in section 2(15) of the 1961 Act as compared to the one contained in 1922 Act, executed a supplementary deed in June, 1961 wherein it was stated that as the daily newspaper and its services had been placed on a footing of permanency and had been enlarged and improved as contemplated by the original trust deed and as the trust was in possession of sufficient fund and properties for continuing all the improvements and enlargements, the surplus income of the trust after defraying all the expenses, should be devoted by the trustees for certain specified educational purposes. After the execution of the said supplementary deed, the trustees took out an originating summon on the original side of the Madras High Court for determination of the question as to whether the trustees were bound to utilise the surplus funds of the assessee-trust after defraying all expenses; in connection with the newspaper business for one or more of the purposes mentioned in the said supplementary deed. The Court by its judgement held that it was clear that the object of the trust was not in any manner opposed to law and there was nothing illegal in the prayer being allowed and passed a decree declaring that the trustees were bound under the supplementary deed to utilise the surplus income and the funds of the assessee-trust after defraying all expenses in connection with the newspaper business for one or other of the purposes set out in the supplementary deed.

10.12 In course of assessment proceedings, the Assessing Officer rejected the claim of the assessee trust made under section 11 of the 1961 Act on various grounds. The main line of attack by the Revenue before the Tribunal was that the supplementary deed was invalid and ineffective in as much as the founder who had divested himself of his interest in the newspaper business and had created in irrevocable trust in respect thereof had no power to alter the terms of the trust deed and that clause 3 of the original deed only empowered the founder to confer additional powers on the trustees for the proper administration of the trust and had not conferred any power on the founder of the

[1] (1982) 137 ITR 735 (Mad)

trust to alter the objects of the trust. It was further contended that even if the supplementary deed was valid and effective, no property having been separately endowed for the said objects, there was no scope for the application of section 11 of the Income-tax Act, 1961 in as much as there was a trust for charitable purposes of the income only and not of the property which yields the income.

10.13 Their Lordships of the Madras High Court, however, held that when a trust deed shows a clear intention to devolve the property to charity, the Court will not allow the trust to fail either for uncertainty or for lack of suitable direction by the founder. The Court will invoke the Cypress doctrine. Therefore, even if the founder of the trust was held to have no power to execute the supplementary deed, the decree of the High Court could not be said to be without jurisdiction and a decision regarding the administration of the trust had to be taken as a *judgement in rem* and not as a *judgment in personem.* The Court, therefore, upheld the Tribunal's order holding that the decision of the High Court created a legal obligation on the trustees to spend the income from the trust after defraying the expenses of the newspaper business for the purposes set out in the supplementary deed and, therefore, the trust property which was business should be taken to be held under a legal obligation for the various charitable objects.

10.14 In *Kamla Town Trust v. C.I.T.*[1] their Lordships of the Allahabad High Court held that the Assessing officer was not entitled to go behind the rectification decree and adjudge the validity of the rectification of a trust deed. The Court further observed that after the deed is rectified by a decree of the Court, the deed as rectified will be deemed to be operative ever since its original execution. The portions that have been deleted by the rectification decree will have to be treated non-existent from the very beginning of the life of the trust deed. Dealing with the question as to when a trust deed could be rectified under section 31 of the Specific Relief Act, the Court referred to the Snell's Principles of Equity, wherein it has been stated that the general rule is that there can be no rectification where the mistake is

[1] (1975) Tax LR 829 (All) partly affirmed in (1996) 217 ITR 699

merely unilateral; but there are four cases where a unilateral mistake may be rectified. These are—fraud, estoppel, equitable jurisdiction and unilateral transaction.

10.15 In regard to unilateral transaction, it has been stated that where a transaction is unilateral, unilateral mistake suffices. Thus it is not quite correct to say that mistake in unilateral transaction cannot be rectified. Assuming that section 31 of the Specific Relief Act does not apply to unilateral transaction, yet any unilateral mistake occurring in a unilateral transaction can be rectified; so, even though a suit filed for rectification of indenture of a public trust is purported to be under section 31, the Civil Court being courts of general jurisdiction will be deemed to possess the equitable jurisdiction to rectify unilateral mistake in unilateral transactions. The mere putting of the label of section 31 of the Specific Relief Act at the head of the plaint cannot deprive the Court of its otherwise undeniable jurisdiction. The court further observed that if there is any mistake in the expression of intention in creating the trust, the mistake will be mutual within the meaning of section 31 of the Specific Relief Act.

10.16 In *Sakthi Charities v. Commissioner of Income-tax,*[1] their Lordships of the Madras High Court held that where a trust deed contained charitable and non charitable objects and the non charitable objects of the trust deed were deleted subsequently with retrospective effect and a declaratory decree was obtained from the Court, it was held that the trust was rightly refused exemption, since the original trust deed did not empower the trustees to alter object clauses of the trust deed.

[1] (1990) 182 ITR 483 (Mad)

11

Nature and Scope of Exemption from Income-tax

11.01 If the trust or institution has been validly created or established for charitable or religious purpose, the income derived by it from property held under trust or other legal obligation and applied to such purposes shall be exempt from tax in the manner laid down in section 11 of the Income-tax Act, 1961 provided certain prescribed conditions are satisfied.

"INCOME" HOW TO BE COMPUTED/ UNDERSTOOD: COMMERCIAL SENSE

11.02 Section 11(1) provides that subject to the provisions of section 60 to 63, "*the following income shall not be included in the total income of the previous year*".... The reference in sub-section (a) is invariably to "*income*" and not to "*total income*". The expression "*total income*" has been specifically defined in section 2(45) of the Act as "*the total amount of income computed in the manner laid down in this Act*." It would, accordingly, be incorrect to assign to the word "*income*" used in section 11(1) (a), the same meaning as has been specifically assigned to the expression "*total income*" vide section 2(45) of the Act. This is the view taken by the Central Board of Direct Taxes in its Circular No. 5 LXX-6 of 1968 dated 19th June 1968 (Refer to Appendix – N). The Board further explained in the said Circular that where the trust derives income from house property, interest on securities, capital gains or other sources, the word "*income*" should be understood in its commercial sense.

11.03 In *C.I.T. v. Rao Bahadur Calavala Cunnan Chetty Charities*[1] their Lordships of the Madras High Court held that taking into account the purposes for which the conditions of section 11(1)(a) are imposed, it would be clear that one has to

[1] (1982) 135 ITR 485 (Mad)

consider the income as arrived at in the context of what is available in the hands of the assessee, subject of course to any adjustment for expenses extraneous to the trust. The expression "*income*" has to be understood in the popular or general sense and not in the sense in which the income is arrived at for purposes of assessment to tax by the applications of some artificial provisions either giving or denying deductions. If the expression "*income*" is so understood, then the Court held that the assessing authorities have to take the accounts of a charitable institution with reference to the receipts and deduct therefrom the expenses necessary for earning or looking after that income. The net amount that remains would be available for distribution or application for charitable purposes. In applying the income for charitable purposes, even capital expenditure may be incurred. Therefore, the nature of the expenditure in the hands of the entity, which receives the money, is not the criterion. The Court further held that there is no need or scope to arrive at the income of a charitable trust in the manner contemplated by the Income-tax Act, i.e. section 14.

11.04 The same view was re-iterated by the Madras High Court later in *C.I.T. v. Estate of V.L. Ethiraj (By official Trustee)*[1], by the Andhra Pradesh High Court in *C.I.T. v Trustee of H.E.H. the Nizams Supplemental Religious Endowment Trust*[2], by the Kerala High Court in *C.I.T. v. St. George Forana Church*[3] and in *C.I.T. v Programme for Community Organisation*[4], by the Gujarat High Court in *C.I.T. v Ganga Charity Trust Fund*[5], by the Calcutta High Court in *C.I.T. v Jayashree Charity Trust*[6] and in *C.I.T. v Birla Janahit Trust*[7].

DEPRECIATION & DEDUCTIBLE EXPENSES

11.05 In *C.I.T. v. Sheth Manilal Ranchoddas Vishram Bhawan Trust*[8], it was held that the amount of depreciation debited to the

[1] (1982) 136 ITR 12 (Mad)
[2] (1981) 127 ITR 378 (AP)
[3] (1988) 170 ITR 62 (Ker)
[4] (1997) 228 ITR 620 (Ker)
[5] (1986) 162 ITR 612 (Guj)
[6] (1986) 159 ITR 280 (Cal)
[7] (1994) 208 ITR 372 (Cal)
[8] (1992) 198 ITR 598 (Guj)

accounts of a charitable trust has to be deducted to arrive at the income available for application to charitable and religious purposes. The same view was taken by the Karnataka High Court in *C.I.T. v. Society of the Sisters of St. Anne*[1], by the Madhya Pradesh High Court in *C.I.T. v. Raipur Pallottine Society.*[2] The Madras[3], Karnataka[3], Madhya Pradesh[3], and Gujarat[3] & Calcutta High Courts[3] have also held that the charitable trusts are entitled to claim depreciation in computing its income on commercial principles. The aforesaid view also finds support from the decisions of the Bombay High Court in the cases of *CIT v. Framjee Cawasjee Institute*[4] and *CIT v. Institute of Banking Personnel Selection*[5], where the High Court held that the depreciation should be allowed as a deduction to arrive at funds available for expenditure towards the objects of the trust under section 11(1) of the Act.

11.06 In *CIT v. Ashoka Charity Trust*[6], the Calcutta High Court held that in the case of a trust which had income from property as well as from voluntary contributions, the expenditure incurred on the objects of the trust should be considered to have been met from the income derived from the property held under trust and no pro rata allocation of expenditure could be made. Similarly, the Bombay High Court, in *CIT v. Silk and Art Silk Mills' Association Ltd.*[7], considering the case of an association deriving income from properties under trust and subscription, which was exempt on the grounds of mutuality, held that the entire expenditure should be presumed to have been met out of the taxable income first for the purpose of section 11 and that it could not be apportioned on a pro rata basis. In *C.I.T. v. Panchayati Akhara Nirmal*[8], their Lordships of the Allahabad High Court held that agricultural income derived by a charitable trust is required to be considered for the purposes of section 11(1)(a) of the said Act, and where agricultural and non

---

[1] (1984) 146 ITR 28 (Karn)
[2] (1989) 180 ITR 579 (MP)
[3] (1982) 135 ITR 485 (Mad); (1984) 146 ITR 28 (Kar); (1989) 180 ITR 579 (MP); (1992) 198 ITR 598 (Guj), (1999) 240 ITR 513 (Cal)
[4] (1993) 109 CTR (Bom) 463
[5] (2003) 264 ITR 110 (Bom)
[6] (1982) 135 ITR 536 (Cal)
[7] (1990) 182 ITR 38 (Bom)
[8] (1991) 190 ITR 121 (All) and 192 ITR 186 (All)

agricultural properties are held under trust for charitable purposes and no separate accounts are maintained, the Assessing Officer has no option but to allocate the amount spent on charitable/ religious purposes between agricultural and non agricultural income in an appropriate ratio, before applying the rule laid down in section 11(1) (a) of the said Act. However, the Madhya Pradesh High Court, in *CIT v. Nabhinandan Digambar Jain*[1] , did not agree with this view, and held that agricultural income, being exempt under section 10, would not form part of the total income of the trust.

11.07 In *Hindusthan Welfare Trust v. Director of Income-tax* (Exemption)[2], the Calcutta High Court held that the loss on sale of investment was not allowable in computing the real income of a charitable trust in a commercial manner.

11.08 In *Director of Income-tax (Exemption) v. Girdharilal Shewnarain Tantia Trust,*[3] their Lordships of the Calcutta High Court held that a charitable trust is not entitled to claim deduction under section 80T of the Income-tax Act, 1961.

11.09 In *C.I.T. v Birla Janahit Trust*[4], the Calcutta High Court drew a distinction between the expenditures incurred for the purposes of earning the income, which are deductible in computing the income for the purposes of section 11 and the expenditure incurred for carrying out the purposes of the trust, which must be considered as application of income for charitable purposes. It is important to understand and appreciate this distinction, since permitted accumulation of 15% (then 25%) under section 11(1)(a) of the said Act is to be calculated with reference to the income of the trust to be computed first in a commercial sense and according to its accounts, as explained in Central Board's said Circular dated 19th June, 1968. In other words, 85% of the income to be applied for charitable or religious purposes shall be the commercial income of the trust computed with reference to its books of accounts and not its total income as defined in section 2(45) of the Act. This aspect was also explained

---

[1] (2002) 257 ITR 91 (MP)
[2] (1993) 201 ITR 564 (Cal)
[3] (1993) 199 ITR 215 (Cal)
[4] (1994) 208 ITR 372 (Cal)

by the Kerala High Court in *C.I.T. v Programme for Community Organisation*[1] (which decision has been approved by the Supreme Court[2]).

INCOME INCLUDES VOLUNTARY CONTRIBUTIONS

11.10 "*Voluntary contributions*" means donations proper. It means and includes money gifted, or given gratuitously and without consideration. But entrance fees and subscriptions paid by entrants to a society or an institution as a condition precedent to their membership and as the price of admission to the privileges and benefits of the society or institution, are given under a contract and are not part of voluntary contributions – see *Trustees of Sri Kot Hindu Stree Mondal v. C.I.T*[3].

11.11 From the very beginning i.e. even under the 1922 Act, the voluntary contributions received by a charitable or religious institution and applicable solely to charitable or religious purposes were not to be included in the total income of the trust or the institution, as the case may be. This exemption was granted by section 4(3)(ii) of the Income-tax Act, 1922. Section 12(1) of the Income-tax Act, 1961 also granted similar exemption. But in the 1961 Act, a new sub-section (2) was inserted in section 12 of the Act to provide that where a voluntary contribution was made to a trust or a charitable or religious institution by another charitable or religious institution to which the provisions of section 11 were applicable, such voluntary contributions were deemed as income derived from property in the hands of the recipient trust.

11.12 However, the Finance Act, 1972 made drastic change; *inter alia,* in regard to the provisions relating to voluntary contributions. As regards the objects of these changes, it was stated in Circular No. 108 dated 20th March, 1973 issued by the Central Board of Direct Taxes, New Delhi that these changes were made with a view to ensure that the tax exempt funds of charitable and religious trusts or institutions are applied to the purposes of

---

[1] (1997) 228 ITR 620 (Ker)
[2] (2001) 248 ITR 1 (SC)
[3] (1994) 209 ITR 396 (Bom)

such trusts and institutions, and are not diverted for the benefit of the author of the trust, founder of the institution, persons who have made substantial contributions or who manage the affairs of the trust or institution.

11.13 By the Finance Act, 1972, the definition of the word "*income*" in section 2(24) of the Income-tax Act, 1961 was amended to specifically provide that voluntary contributions received by a charitable or religious trust or institution, regardless of whether such trust or institution had been created or established wholly or partly for charitable or religious purposes, will be regarded as "*income*" for the purposes of the Income-tax Act, 1961. Similarly, section 12 of the Act was recast to provide specifically that voluntary contributions received by a trust or institution created or established wholly for charitable or religious purposes shall for the purposes of sections 11 and 13 of the Act, be regarded as "*income"* derived from property held under trust wholly for charitable or religious purpose.

11.14 However, in section 11(1)(d) as well as in section 12 of the Act, it is abundantly made clear that the voluntary contributions, which are made by the donor with a specific direction that they shall form part of the corpus of the trust or institution, shall not be regarded as income in the hands of the recipient trust. Thus, if a donor, while making the donation, makes it clear that the donation so made shall form part of the corpus of the trust or institution, it would be a capital receipt and shall not be chargeable to tax. It must, however, be mentioned here that even the earlier provisions contained in section 4(3)(ii) of the Income-tax Act, 1922 as well as section 12 of the Income-tax Act, 1961 applied only where the contribution constituted income of the receiving trust; they had no application where what was received by the trust formed part of its capital. Such was the view expressed by the Allahabad High Court in *Shri Dwarikadheesh Charitable Trust v. I.T.O.*[1] In the said case, the J.K. Charitable Trust had made donations to the assessee trust with the specific direction that they shall constitute part of the corpus or capital of the donee trust, and the donee trust had accepted the donations subject to that condition. The revenue wanted to treat the said donations as income under the provisions

[1] (1975) 98 ITR 557 (All)

of section 12(2) of the Act. The Allahabad High Court, however, held that these donations were capital receipts and, therefore, could not be dealt with, as if they were income from property held under trust within the meaning of section 11 of the Act. Same view was also taken by the Gujarat High Court in *C.I.T. v. Bal Utkarsh Society*[1].

11.15 In *C.I.T. v. Trustees of Visha Nima Charity Trust*[2] Their Lordships of the Bombay High Court considered the question whether contributions received by a charity trust from sale of tickets of a charity show organised by it and from advertisements in souvenir taken out on the occasion could be treated as voluntary contributions within the meaning of section 12(1) of the Act. The Court held that the appeal issued by the trustees made it clear that the object of the trust was to have a permanent home for providing shelter to those who come to Bombay for a short duration. The members of the public to whom the appeal was addressed wanted only to help a noble cause and would not have paid the high price charged for tickets merely for entertainment. In the appeal, there was reference to the advertisement in the souvenir being likely to contribute to the advancement of the business of the persons from whom the advertisements were sought. It was, therefore, held that the contributions made by way of tickets and for advertisements were merely voluntary contributions and were exempt under sub-section (1) of section 12 of the Income-tax Act, 1961.

11.16 To appreciate the practical applications of section 2(24)(iia) of the Act, consider the case of a religious trust, which runs a temple. It keeps a charity box in the temple with the inscription thereon "*donations put in this box are towards the corpus of the temple trust*". Will such total collections in the box enjoy exemption from tax under Section 12 of the Income-tax Act, 1961 read with section 2(24) (iia) of the Act? The identity of the contributors is not known. Section 2(24)(iia) read with section 12 of the Income-tax Act, 1961 excludes from the total income of a charitable or religious trust income by way of voluntary contributions made with

[1] (1979) 119 ITR 137 (Guj) also (1984) 145 ITR 29 (Mad); (1986) ITR 726; (1987) 166 ITR 22; (1988) 172 ITR 382
[2] (1982) 138 ITR 564 (Bom)

a specific direction that they shall form a part of the corpus of the trust or institutions.

11.17 The "*direction*" referred to in the Act is generally in the form of a letter given by the donor at the time of making the donation. But in certain cases it may be inferred from the facts and circumstances of the cases. Thus, for example, if a trust makes a general appeal for donation towards the corpus of the trust for a specific purpose, all donations made in pursuance of such an appeal would form part of the corpus of the trust and would, therefore, enjoy exemption from tax under section 12 read with section 2(24)(iia) of the 1961 Act, especially if the receipt issued to the donor also clearly indicates that the donation is a corpus donation.

11.18 In the instant case, the charity box kept in the temple clearly bears an inscription to the effect that "*donations put in the box are towards the corpus of the temple trust*". One view is that the donor putting money in the box is thus aware of such inscription and the donations so made are clearly intended towards the corpus of the temple trust. As per this view, in such cases, even though there is no specific direction in writing given by each of the donor putting money in the box, such direction can be inferred from the facts and circumstances and therefore, the entire donation collected in the box would enjoy exemption from tax under section 12 read with section 2(24)(iia) of the Act. It may be noted that the Tribunal has taken a different view of the facts and circumstances, in the cases of *Prabodhan Prakashan v. ADIT*[1] and *Shri Digambar Jain Naya Mandir v. ADIT*[2], holding that it could not be inferred from such box collections that the donors' intention was to donate the amount towards the corpus of the trust. It may be mentioned here that the Act nowhere makes it obligatory that such direction must be given by the donor in writing. Further, it is also not necessary to identify the contributors to box collections in the case of a temple, for the provisions of section 115BBC to tax ghost or anonymous donations at a flat rate of 30% only in the case of charitable trusts, and not religious trusts.

---

[1] (1994) 50 ITD 135 (Bom)

[2] (1999) 70 ITD 121 (Cal)

11.19 The Direct Tax Laws (Amendment) Act, 1989 inserted clause (d) in sub section (1) of section 11 of the Act with effect from 1.4.89 to provide that income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution shall be excluded from the total income of the trust or institution. The earlier provision contained in sub clause (iia) of clause (24) of section 2 excluding corpus donations received by a charitable or religious trust or institution from the purview of the expression "income" was found to be widely used for tax avoidance by giving corpus donations to another trust and keep such amount out of the regulatory provisions of sections 11 and 13. Therefore, the Amending Act amended the said sub clause (iia) of the clause (24) of section 2 to secure that all donations received by a charitable or religious trust or institution, including corpus donations, were treated as income of such trust or institution. However, under the provisions of section 11(1)(d) of the Act, such corpus donations, along with other income of the trust or institution would be exempted, if the recipient trust or institution complies with the requirements for exemption under section 11. In case the trust or institution loses the exemption under section 11, either by not complying with the conditions laid down in section 12A or by falling within the mischief of section 13, corpus donations will be included in its income and taxed accordingly.

11.20 In *Khemraj Nemichand Shrishrimal Charitable Trust v. C.I.T.,*[1] the assessee, a charitable trust, enjoying the benefits of exemption under sections 11 to 13 of the Act, received a sum of Rs. 1,50,000 with a specific direction that the money should be utilised for agricultural development purposes, such as, organisation of seminars to enlighten the agriculturists as regards modern techniques of agricultural operations or some sort of programme by which the agriculturists in general are benefited to overcome their existing problems. The Court held that the amount in question was not a corpus donation and was taxable as income of the trust. The Court further held that the amount spent in organising Kissan Rally by Congress (I) party, could not be treated as an expenditure towards charitable purpose.

[1] (1998) 231 ITR 43 (MP)

11.21 In *R. B. Shreeram Religious and Charitable Trust v. C.I.T.*[1], the Supreme Court held that if the voluntary contributions are not applied for charitable purposes, the assessee cannot claim exemption under section 12(1) of the Act.

11.22 Section 11 of the Act grants exemption from tax in respect of income derived from property held under trust—

(i) wholly for charitable or religious purposes to the extent to which such income is applied to such purposes in India and where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set part does not exceed 15% (25% till assessment year 2002-03)of the income derived from such property [Section 11(1)(a)];

(ii) in part only for charitable or religious purposes to the extent to which such income is applied to such purposes in India, and where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of 15% (25% till assessment year 2002-03) of the income from such property. In this case, however, the trust must have been created prior to 1.4.1962 [Section 11(1)(b)].

11.23 It must be emphasized that all the exemptions contained in section 11 of the Act are subject to the provisions of sections 60, 61, 62 and 63 of the Act. Sections 60 to 63 of the Act are contained in Chapter V of the Income-tax Act, 1961, which deals with the case and circumstances when income of other persons shall be included in the assessee's total income. Section 60 provides that where income is transferred by an assessee without there being a transfer of assets producing the income, such income shall be included in the total income of the transferor. Sections 61 and 63 deal with revocable transfer of assets and provide that income arising by virtue of a revocable transfer of assets shall be included in the total income of the transferor unless such revocable transfer is exempt under section 62 of the Act. Thus, if a trust falls within the purview of sections 60 to 63 of the Act, the provisions of section 11 of the Act shall not apply to it.

[1] (1998) 233 ITR 53 (SC)

11.24 Dealing with these provisions, the Allahabad High Court in *C.I.T. v. Radhaswami Satsang*[1] held that in cases where exemption is claimed under section 11 on the ground of existence of a legal obligation wholly for religious purposes, it has to be examined whether the legal obligation is revocable or not. If the legal obligation is revocable, section 63(a)(ii) would come into operation and section 61 would be attracted and as a result thereof, the income would become chargeable in the hands of the transferor. In that case, the benefit of exemption under section 11 cannot be allowed.

11.25 Thus in order to comply with the provisions of section 11 of the Act 85% of the income derived from property held in trust for charitable or religious purposes must be applied by the assessee to such purposes in India. It is thus clear that a trust may accumulate 15% of its income derived from property held under trust for application in future to charitable or religious purposes without any condition. The balance income will enjoy exemption only if conditions laid down in section 11(2) are satisfied. See *Thakur Das Sureka Charity Fund v. C.I.T.*[2]

YEAR OF APPLICATION

11.26 Normally, the 85% of the income derived from property held under trust should be spent during the accounting year in which such income is earned. But in some cases it may not be possible for the trust or the institution to apply such 85% of the income during the relevant accounting year itself. In such cases, Explanation (2) of section 11(1) of the Act provides that no tax will be levied on the unspent portion in that year, if certain conditions are satisfied: viz.,

(i) The trust or institution sends an intimation to the Income-tax Officer exercising its option to apply the unspent portion of the said 85% of the income in the succeeding accounting year.

(ii) The option is to be exercised in writing before the expiry of the time allowed for furnishing the return of income under section 139(1).

---

[1] (1980) 19 CTR (All) 345
[2] (1983) 139 ITR 437 (Cal)

(iii) The shortfall to the extent to which it is attributable to the non-receipt of income is applied to such purposes during the previous year in which the income is actually received or during the previous year immediately following thereafter.

(iv) The shortfall, for any other reasons whatever, is applied to such purposes during the previous year immediately following the previous year in which the income was derived.

11.27 To illustrate, assume that income derived from property held under trust for charitable or religious purposes during the previous year ending 31st March, 2008 is Rs.1,00,000; of which Rs.40,000; has been actually received. In this case, in order to avail of the exemption contained in section 11 of the Act, in respect of the whole of Rs. 1,00,000, which was derived during the previous year ending 31st March, 2008, the trust need not apply more than Rs. 40,000/- for charitable purposes during the said accounting year. In fact the exemption would be available, even when a part of Rs. 40,000/- is applied during the next accounting year i.e. 31st March, 2009.

11.28 Thus the charitable trust would be entitled to exemption in respect of its entire income of Rs. 1,00,000/- derived during the previous year ending 31st March, 2008, if the following conditions are satisfied:

(i) An option in writing is exercised within the prescribed time to spend the shortfall in subsequent accounting years.

(ii) Rs. 40,000/- should be spent before 31st March, 2008.

(iii) Rs. 45,000/- should be spent in the accounting year in which the balance of Rs. 60,000/- is received or in the immediately succeeding accounting year.

11.29 If the above conditions are fulfilled, it would be deemed by a fiction of law that the charitable trust has spent 85% of income derived from property during the accounting year ended 31st March, 2008 itself and no tax would be payable by it on the shortfall from 85%.

11.30 Sub-section (1B) inserted by the Taxation Laws (Amendment) Act, 1975, however, provides that where the income, in respect of which an option referred to above is exercised by the trustee, is not applied to charitable or religious purposes in India during the stipulated period, then, such, income would be deemed to be the income of the trust of the previous year immediately following the previous year in which the income was received or, where the income was already received in the year in which it was derived, it would be deemed to be the income of the previous year immediately following the previous year in which the income was derived.

11.31 Thus, if in the said illustration, Rs. 40,000/- is not spent before 31st March, 2008, unspent amount shall be deemed to be the income of the trust for the assessment year 2008-09; likewise, if Rs. 45,000/- (assuming that the balance of Rs. 60,000/- was received in the accounting year ended 31st March, 2009) is not spent before 31st March, 2010, then Rs. 45,000/- would be deemed to be the income of the assessment year 2010-11.

11.32 It may be noted that the Finance Act, 2006 has inserted section 115BBC with effect from 1st April 2007, to provide that anonymous donations received by a trust or institution referred to in section 11 would be taxed at a flat rate of 30% (plus applicable surcharge and education cess), subject to the exceptions contained in that section. In view of the amendment, such anonymous donations would not qualify for the exemption under section 11, and would not form part of the computation of the 15% accumulation under section 11(1)(a). However, even if such anonymous donations are taxed, there would still be an obligation to utilise the amount of donations only for charitable or religious purposes, as per the objects of the trust.

ADJUSTMENT/ SET OFF OF EARLIER YEAR'S EXCESS EXPENDITURE AGAINST THE INCOME OF THE SUBSEQUENT YEAR

11.33 In *C.I.T. v. Maharana of Mewar Charitable Foundation,*[1] their Lordships of the Rajasthan High Court held that if the

[1] (1987) 164 ITR 439 (Raj)

expenses for charitable and religious purposes have been incurred in the earlier year and the said expenses are adjusted against the income of a subsequent year, the income of that year can be said to be applied for charitable and religious purposes in the year in which the expenses incurred for charitable and religious purposes had been adjusted. Adjustment of excess expenditure against income of following year would amount to application of income for charitable purpose.

11.34 This view was reiterated by the Gujarat High Court in *C.I.T. v. Shri Plot Swetambar Murti Pujak Jain Mandal*[1] ,by the Madras High Court in *C.I.T. v. Matriseva Trust*[2] & in *Gonvindu Naicker Estate v. ADI*[3] and by the Bombay High Court in the case of *CIT v. Institute of Banking Personnel Selection*[4]. It was held and observed that where the expenditure on charitable and religious purposes had been incurred in an earlier year, such expenditure if adjusted against the income of the subsequent year, the income of that subsequent year can be said to have been applied for charitable or religious purposes in the year in which the expenditure was incurred. It was also held that income derived from trust property has to be determined on commercial principles and the application of such commercial principles also warrants the conclusion that the expenditure incurred in an earlier year can be set off against the income of the subsequent year. The counsel appearing for the Revenue had contended that the loss incurred under one head could only be set off against the income from the same head. The Madras High Court however rejected this contention by observing that the said principle was of no relevance in the context of section 11 of the Income-tax Act, 1961, which was a benevolent provision and the expenditure incurred on religious or charitable purposes in an earlier year or years can be adjusted against the income of the subsequent year, if in the books of accounts of the trust, such earlier expenditure had been set off against the income of the subsequent year. In *Trustees of Balkan-Ji Bari*[5]*,* the Bombay Bench of the Tribunal upheld the assessee's contention that it should be allowed the adjustment of

[1] (1995) 211 ITR 293 (Guj)
[2] (2000) 242 ITR 20 (Mad)
[3] (2001) 248 ITR 368 (Mad)
[4] (2003) 264 ITR 110(Bom)
[5] (1979) 10 CTR (Trib.) 22

excess amount spent towards charitable purposes in the earlier years against current income to determine the funds available with the assessee for the purpose of section 11(1) of the Act.

ACCUMULATION OF INCOME BEYOND 15%

11.35 Section 11(2) of the Act provides that where 85% of the income derived from property held under trust is neither applied, nor deemed to have been applied to charitable or religious purposes in India during the previous year in which it is derived, but such income is accumulated or set apart for application in future to such purposes in India, the income accumulated or set apart shall be exempt from tax provided the following conditions are satisfied:

(a) The trust, by notice in writing to the assessing officer concerned, specifies in Form No. 10, prescribed under Rule 17 of the Income-tax Rules, 1962, the purpose for which the income is so accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed 5 years. The notice should be given before the expiry of the time allowed under section 139(1) for furnishing the return of income. The Commissioner has now been authorised by the Board's Circular No. 273 dated 3.6.80 (Refer to Appendix – N) to condone the delay in appropriate cases. The maximum period of accumulation in respect of any income accumulated or set apart on or after 1st April, 2001 has now been reduced from 10 years to 5 years by the Finance Act, 2001, which has inserted another proviso in section 11(2) of the Act with effect from 01.04.2002.

(b) The money so accumulated or set apart is invested or deposited in the forms or modes specified in section 11(5)—See paragraph 12.89.

(c) A copy of the resolution passed by the trustee deciding to set apart the income has to be filed along with the notice referred to in (a) above.

(d) Copies of the annual accounts of the trust along with details of investment and utilization, if any, of the money so accumulated have to be furnished to the assessing officer

before the expiry of six months commencing from the end of the each relevant previous year or before the 30th day of June immediately following such previous year, whichever is later.

11.36 In *Director of Income-tax (Exemption) v. Trustee of Singhania Charitable Trust*[1], their Lordships of the Calcutta High Court held that where a charitable trust gives notice for accumulation of income under section 11(2) of the Act, the trust must indicate some specific purpose or purposes. It cannot list all its objects as purposes for accumulation of income under section 11(2). A concrete purpose or an itemised purpose must be specifically intimated. The Delhi High Court, in a series of decisions, including *CIT v. Hotel & Restaurant Association*[2], *DIT(E) v. Daulat Ram Education Society*[3], *DIT(E) v. Eternal Science of Man's Society*[4], *DIT(E) v. Mamta Health Institute for Mother and Children*[5] and *Bharat Kalyan Pratishthan v. DIT(E)*[6], has however held that section 11(2) does not prohibit plurality of purposes. So long as the purposes specified by the assessee find place in its objects and so long as the said purposes are charitable in nature, the accumulation is valid.

11.37 It may be mentioned here that section 11(2)(a) provides that the notice of such accumulation is required to be given in the prescribed manner. Rule 17 of the Income-tax Rules, 1962 deals with the matter and prescribes Form No. 10, as the form of notice. While the section and/or the rule does not prescribe any time-limit for making such investments, paragraph 2 of Form No. 10 says that such investment are to be made before the expiry of 6 months from the end of the previous year.

11.38 The Madras High Court, however, in the case of *M.CT. Muthiah Chettiar Family Trust v. 4th I.T.O.*[7] declared paragraph 2 of the said form as *ultra vires,* holding that the rule making

[1] (1993) 139 ITR 199 (Cal)
[2] (2003) 261 ITR 190 (Del)
[3] (2005) 278 ITR 260 (Del)
[4] (2007) 290 ITR 535 (Del)
[5] (2007) 293 ITR 380 (Del)
[6] (2008) 299 ITR 406 (Del)
[7] (1972) 86 ITR 282 (Mad.)

authority had exceeded its limit in including in the Form, the paragraphs 2 and 4, since the words "*in the prescribed manner*" in section 11(2) of the Act do not confer power on the rule making authority to prescribe a time-limit for making investment in order to claim exemption under this section. The Court added that where the purpose and intendment of the Act is to give a statutory concession and tax relief to an assessee under certain circumstances, if those circumstances exist *instantieo,* the concession is gained and there can be no question of divesting of such concession by a rule followed up by a form made by the rule making authority under the Act. Similar view was taken by the Jammu & Kashmir High Court in *C.I.T. v. Shri Krishen Chand Charitable Trust*[1] and Kerala High Court in *C.I.T. v Shree Padmanabhaswami Temple Trust*[2] and by the Andhra Pradesh High Court in *C.I.T. v. Mumtaz Yarud Dowla Waqf*[3].

11.39 *In C.I.T. v. Nagpur Hotel Owners' Association,*[4] the apex court, however, held that since no time limit is prescribed under Rule 17 for giving notice of accumulation in Form No. 10, notice can be filed at any time before the completion of assessment. The Gujarat High Court has further held in *CIT v. Mayur Foundation*[5], that since assessment proceedings are pending till disposal of appeal by the Tribunal, it can even be filed during pendency of proceedings before the Tribunal. In *C.I.T. v. Anjuman Moinia Fakharia,*[6] the Court held that an application for accumulation filed under section 11(2) beyond the time limit would not disentitle the assessee to claim exemption from income-tax. The same view was also taken earlier by the Punjab & Haryana High Court in *Harmanjit Trust v. C.I.T.*[7], by as well as the Bombay High Court in *Trustees of Tulsidas Gopalji Charitable Trust and Chaleshwar Temple Trust v. C.I.T*[8].

11.40 Further, the language of section 11(2) now makes it clear that this section is applicable only where 85% of the income

[1] (1975) 98 ITR 387 (J & K)
[2] (1979) 120 ITR 42 (Ker)
[3] (1998) 234 ITR 6 (AP)
[4] (2001) 247 ITR 201 (SC)
[5] (2005) 274 ITR 562 (Guj)
[6] (1994) 208 ITR 568 (Raj)
[7] (1984) 148 ITR 214 (PH)
[8] (1994) 207 ITR 368 (Bom)

derived is not spent and any portion thereof is accumulated or set apart for application in future. Thus section 11(2) has no application in respect of the 15% of the income allowed to be accumulated under sections 11(1)(a) and 11(1)(b) and the conditions prescribed in sections 11(2)(a) and 11(2)(b) are not to be complied with in respect of the said 15%. However, under the provisions of section 11(2), as were then in force prior to the enactment of the Taxation Laws (Amendment) Act, 1975, the Central Board of Direct Taxes by its Circulars Nos. LXX-7) of 1968 dated 26.11.68 and 29 dated 23.8.69 (Refer to Appendix – N) had taken the view that if a trust accumulates more than 25% (now 15%) of its income derived from property held under trust for charitable or religious purpose, the conditions regarding investment in Government securities, as specified in section 11(2) of the Act, is required to be complied with in respect of the whole of the accumulated amount i.e., including the said 15% referred to in sections 11(1)(a) and 11(1)(b) and not only in respect of the unspent amount out of the said 85%.

11.41 The Jammu & Kashmir High Court, however, had occasion to consider the provisions of section 11(1)(a) and section 11(2) in *C.I.T. v. Shri Kishen Chand Charitable Trust.*[1] The High Court held that a combined reading of both the provisions would clearly show that section 11(2), while enlarging the scope of exemption, removes the restriction imposed by section 11(1)(a) and does not take away the exemption allowed by section 11(1)(a). The Court went on to add that "*where a statute, particularly a taxing statue, confers a concession by one particular provision in the statute and then further liberalizes and enlarges that concession by another provision in that statute, then the concession granted by the earlier provision cannot be deemed to be taken away*". Section 11(2), of course lays down the conditions, the compliance of which is necessary to avail of the exemption but they are merely for the purpose of availing of the further exemption and not for depriving or taking away the exemption granted under section 11(1)(a). It is also well established that if a taxing statute is either ambiguous or reasonably capable of more than one interpretation, then the interpretation which is beneficial to the subject should be accepted. Moreover, the object of enacting provisions like section

[1] (1975) 98 ITR 387 (J&K)

11 of the Act is to promote the laudable purpose, viz., charity, and afford relief to the trust. In the light of this also the provisions referred to cannot be interpreted in such a manner as to effect a deprivation of such a relief.

11.42 The Karnataka High Court in *Additional Commissioner of Income-tax, Mysore & Another v. A.L.N. Rao Charitable Trust*[1] and the Madhya Pradesh High Court in *Mohanlal Hargovinddas Public Charitable Trust v. C.I.T.*[2] took the same view as that taken earlier by the Jammu & Kashmir High Court as referred to here in above. It was reiterated that if the accumulations are in excess of 15% (then 25%) of the income, derived from the property held under trust, the assessee needs to satisfy the conditions laid down in section 11(2) of the Act only in respect of such excess over 15%. In other words, 15% of the income in the case of a charitable trust would always be exempt even if it is not spent and is carried forward as surplus to the succeeding year and the assessee is not obliged and/or required to specify any particular purpose for which such 15%, or any portion thereof is to be spent and in respect of such 15%, the conditions as to investment in Government securities as laid down in section 11(2) of the Act would not apply. This view was later followed by the Kerala High Court in *C.I.T. v. H. H. Marthanda Varma Elayaraja of Travancore Trust & Others*[3].

11.43 In Additional *C.I.T. v. A.L.N. Rao Charitable Trust*[4], Trust, the Supreme Court held that section 11(2) does not restrict operation of section 11(1) (a), 25% (now 15%) of the income accumulated under section 11(1) (a) need not be invested in Government securities. In *Commissioner of Income-tax, Tamilnadu IV, Madras v. C.M. Kothari Charitable Trust*[5], their Lordships of the Madras High court held that an assessee trust can claim exemption both under section 11(1) as well as under section 11(2). Both are complementary to each other and not mutually exclusive and this would also appear to be the view of the Government as reflected in the CBDT Circular No.45 dated 2nd September, 1972 reported in 79 ITR (*Statute*) Page 33.

---

[1] (1976) 103 ITR 44 (Karn) (FB)
[2] (1980) 122 ITR 130 (MP)
[3] (1981) 129 ITR 191 (Ker)
[4] (1995) 216 ITR 697 (SC)
[5] (1984) 149 ITR 573 (Mad)

11.44 Where the income so accumulated under section 11(2) of the Act is applied to purposes other than those in respect of which such accumulation or setting apart was made or ceases to be accumulated or set apart for application thereto or ceases to remain invested under section 11(2)(b) of the Act or is not utilized for the purpose for which it was so accumulated or set apart during the period referred to in section 11(2)(a), the assessing officer has been given power under section 11(3) of the Act to treat the income so accumulated or set apart as the income of the previous year in which it is so applied or ceases to be so accumulated or set apart or ceases to remain so invested or deposited or, as the case may be, of the previous year immediately following the expiry of the period aforesaid.

11.45 The Finance Act, 2002 has amended section 11(2) by insertion of an explanation to provide that the amount accumulated cannot be credited or paid to any other trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in section 10(23C), as any such credit or payment shall not be treated as application of income for charitable or religious purposes, either during the period of accumulation or thereafter. Any such credit or payment by the donor trust to another trust or institution shall be deemed to be the income of the donor trust in such year of credit or payment.

11.46 It may however be clarified that the amendment is applicable only to the payment made to other trusts/institutions out of amount accumulated under section 11(2) and not to payment out of current year's income, which will continue to be treated as application of income. Similarly, payment made to another trust/institution out of the 15% accumulation permissible under section 11(1) will not be hit by the above amendment. Though the explanation to section 11(2) refers to amount credited or paid to another trust out of income referred to in section 11(1), the reference is to only that part of the income which is accumulated under section 11(2). This is because the explanation states that any amount credited or paid to other trusts/institutions shall not be treated as application of income of the donor trust either during the period of accumulation or thereafter. So far as

amounts accumulated under section 11(1)(a) are concerned, there is no need to treat any donation made out of such accumulation as an application of income towards charitable or religious purposes, as there is no obligation to spend such accumulation within a specified period, nor is there any provision for taxing such accumulation if it is not spent for charitable or religious purposes. Even if the explanation were to apply, there would accordingly be no consequence. Since the 15% accumulation under section 11(1) is unconditional and need not be spent at all by the trust, the question of not treating the same as application of income in case it is credited or paid to another trust (in the subsequent year) does not arise. Thus the better view is that the explanation covers only payments made from amounts accumulated for a specified period under section 11(2) and not from unconditional accumulation contemplated in section 11(1). In any case, section 11(3) , which begins with the words "income referred to in sub-section (2)", makes it explicitly clear that the restriction imposed by section 11(3)(d) applies only to income accumulated under section 11(2) and not to the current year's income or to the accumulation under section 11(1).

11.47 Section 11(3A) inserted by the Taxation Laws (Amendment) Act 1975, provides exemptions to section 11(3) discussed above, if certain conditions as mentioned therein are satisfied. Section 11(3A) provides that where the income so accumulated cannot be applied to the purposes for which it was accumulated due to circumstances beyond the control of the trustees, the income invested or deposited may, subject to the permission of the assessing officer, be applied to such other charitable or religious purposes in India as are specified in an application made to assessing officer, provided such other purpose to which it is applied is in conformity with the objects of the trust. In such a case the provisions of section 11(3) shall apply, as if the purpose specified by such person in the application under this section were a purpose specified in the notice given to the assessing officer under section 11(2)(a). Thus section 11(3)(c) has been superseded by section 11(3A) to the extent specified therein.

11.48 It may be mentioned here that in view of the Explanation (1) to section 11(1) of the Act, the income includes voluntary contribution made without a specific direction that they shall form

part of the corpus of the trust or institution. Therefore, in determining the 85% of the income which is required to be spent under the provisions of sections 11(1)(a) and 11(1)(b) of the Act, the trustee should take into account such voluntary contributions which are made by the donors without any direction that they shall form part of the corpus of the trust.

11.49 Under the provisions of section 11(1)(c) of the Act, income derived from property held under trust for charitable purposes which tend to promote international welfare in which India is interested shall be exempt from tax to the extent to which such income is applied to such purposes outside India. This relief is also admissible to a trust for any other charitable or religious purposes if it was created before 1st April, 1952. Under sections 11(1)(a) and 11(1)(b), the exemption is granted only in respect of income, which is applied to charitable or religious purposes in India. In *Trustees of H.E.H. The Nizam's Sahebzadas of Sarf-E-Khas Trust v. C.W.T.*[1] Their Lordships of the Andhra Pradesh High Court held that merely because the trust did not provide specifically that the income of the trust should be spent in India alone, it did not materially alter the situation in as much as there was nothing on record to show that any part of the income was actually spent outside the country.

11.50 In *Trustees of H.E.H. The Nizams Pilgrimage Money Trust v. C.W.T.*[2], their Lordships of the Andhra Pradesh High Court held that in section 11(1)(a), the words "*in India*" are not there after the words "*income derived from property held under trust wholly for charitable or religious purposes*", which means that it is immaterial for the purpose of section 11(1)(a), whether charitable or religious purposes are confined to the taxable territories or not. It was sufficient, if the income was spent within India, and, to the extent, that income will be exempt under the said provision. A perusal of section 5(1)(i) of the Wealth Tax Act, 1957 makes it clear that for claiming exemption thereunder, it is necessary that the property should be held under trust or other legal obligation for any public purpose of charitable or religious nature in India. Exemption is not available, if the property is held under trust for purposes outside India, even though the purpose may be of a charitable or religious

[1] (1981) 127 ITR 694 (AP)
[2] (1988) 171 ITR 323 (AP)

nature. There is a difference between the language employed in section 5(1)(i) of the Wealth Tax Act, 1957 as compared to section 11(1)(a) of the Income tax Act, 1961 on this score. The Court, therefore held that since all the objects and purposes of the trust were intended to be performed outside India and none within India, the trust property was not entitled to exemption under section 5(1)(i) of the Wealth Tax Act, 1957 and resolution of the trustees resolving to utilise the income of the trust fund for charitable purposes in India was invalid and ineffective.

EXEMPTION FROM CAPITAL GAINS IN CERTAIN CASES

11.51 Section 11(1A) inserted by the Finance (No. 2) Act, 1971 with retrospective effect from 1st April, 1962 provides that if a capital asset held by a trust wholly for charitable or religious purposes is transferred by the trust and the consideration received on transfer is utilized for acquiring another capital asset for the said purposes, the capital gains arising on such transfer shall be exempt to the extent specified hereunder:

(a) Where the whole of the net consideration (sale price—expenses incurred in relation to the transfer) is utilised in acquiring the new capital asset, no income by way of capital gains shall be charged to tax.

(b) Where only a part of the consideration is utilized in acquiring the new capital asset, the capital gains to the extent of the excess of the amount utilized in acquiring the new capital asset as compared to the cost of the transferred asset shall be deemed to have been applied for charitable or religious purposes and the balance of the capital gains shall be treated as income derived from property held under trust within the meaning of section 11(1) of the Act.

11.52 To illustrate, assume that a capital asset of the cost price of Rs. 60,000 was sold for Rs. 1,00,000 and new capital asset for being held under trust wholly for charitable or religious purposes is

acquired out of the consideration so received for (a) Rs. 1,00,000 (b) Rs. 80,000. The income assessable under the head "Capital gains" in this case amounts to Rs. 40,000 (1,00,000—60,000). In (a) since the whole of Rs. 1.00.000 is utilized, the capital gains of Rs. 40,000 shall be deemed, by a fiction of law to have been applied for charitable or religious purposes and shall, therefore, be exempt from tax. In (b) excess of the amount paid for acquiring new capital asset over the cost of the transferred asset is Rs.20,000 (80,000—60,000). Therefore, Rs. 20,000 shall be exempt from tax as aforesaid and the balance of Rs. 20,000 shall be treated as income derived from property held under trust within the meaning of section 11(1) of the Act.

11.53 In *I.T.O. v. Estate of N.C. Vasantha Kokilam*[1], the Madras Bench of the Income Tax Appellate Tribunal held that investment of money by way of fixed deposits amounts to acquisition of new capital asset within the meaning of section 11(1A) and the assessee trust was, therefore, not chargeable to capital gains tax. This view is also supported by the Circular issued by the Central Board of Direct Taxes on 25th September, 1975.

11.54 In *C.I.T. v. Hindustan Welfare Trust,*[2] the Calcutta High Court held that deposit in a Scheduled Bank amounts to investment in new capital asset within the meaning of section 11(1A). Imposition of minimum period of six months by CBDT through its Circular was not a valid condition. In *C.I.T. v. Ambalal Sarabhai Trust*[3], their Lordships of the Gujarat High Court found that 10% of the sale consideration had been invested by the assessee trust in a Bank and balance 90% had been invested in a fixed deposit with the purchaser. The provisions of section 11(1A) were fully satisfied and the assessee was held to be entitled to exemption from tax on the Capital gains arising to the charitable trust on sale of shares. In *Bafna Charitable Trust v. C.I.T.*[4] the Court held that investment in English Mortgage of Immovable Property amounts to utilization for acquisition of another capital asset. This view was reiterated by the Delhi High Court in *Director*

[1] (1981) 20 CTR (Trib) 22
[2] (1994) 206 ITR 138 (Cal)
[3] (1988) 173 ITR 673 (Guj)
[4] (1998) 230 ITR 864 (Bom)

of Income-tax (Exemption) v. DLF Qutab Enclave Complex Medical Charitable Trust[1].

11.55 Similar provisions as discussed in paragraph 11.51 and 11.52 above have also been made in respect of capital gains arising on sale of capital assets held under trust in part only for charitable or religious purpose [Section 11(1A)(b)].

MEANING OF "APPLICATION TO CHARITABLE PURPOSES"

11.56 In order to be "*application*" within the meaning of section 11 of the Act, it is not necessary that the particular amount must be spent in any year for charitable or religious purposes only after the trust had derived income from property held under trust for that year. In *Siddaramanna Charities Trust v. C.I.T.*[2] the Mysore High Court was concerned with a question whether a sum of Rs. 25,000 spent by the trust for charitable purposes on the very first day of the previous year could be treated as application of income for the said previous year for the purposes of section 11 of the Act, when the income earned during the whole of the previous year was Rs. 25,000 only. The High Court upheld the assessee-trust's contention and held that the benefit of section 11(1)(a) was available in respect of Rs.25,000 spent on the first day of the previous year even when such application did not obviously come from the income of that particular previous year.

11.57 The Supreme Court in *H.E.H. Nizam's Religious Endowment Trust v. C.I.T.*[3] held that "*applied*" means that the income is actually applied for and spent for charitable or religious purposes. Same view was also taken by the Madhya Pradesh High Court in *Mohan Lal Hargovinddas Public Charitable Trust v. C.I.T.*[4]

11.58 However, any part of the income applied to a purpose, which constitutes a breach of trust, will not enjoy the benefit of exemption and will be liable to be included in the total income.

---

[1] (2001) 248 ITR 41 (Del)
[2] (1974) 96 ITR 275 (Mys)
[3] (1966) 59 ITR 582, 588 (SC)
[4] (1980) 122 ITR 130, 134 (MP)

Such was the view expressed by the Madras High Court in *C.I.T. v. Ramaswamy Iyer*[1].

11.59 The Allahabad High Court in *C.I.T. v. Lucknow Diocesan Trust Association*[2] dealing with the case of a charitable and religious trust governed by the Charitable and Religious Trusts Act, 1922 and not by the Indian Trusts Act, 1882 held that there was no restriction placed in the former Act in regard to payment to the trustees for managing the affairs of the assessee trust and accordingly the payment of management charges to the trustees was held to be permissible deduction from the income of the assessee trust under section 11 of the Act.

11.60 In *C.I.T. v. Birla Janahit Trust*[3], the Court held that expenditure on salary and miscellaneous expenses for carrying out purposes of trust must be considered as application of income for charitable purposes.

11.61 In *C.I.T. v. Trustees of H.E.H. the Nizam's Charitable Trust*[4] their Lordships of the Andhra Pradesh High Court explaining the meaning of the expression "*applied to*" as appearing in section 11 of the Act held that it is sufficient if the assessee provides or sets apart the fund for a charitable purpose and it is not necessary that the assessee must have to spend the amount specified for a charitable purpose during the relevant previous year in order to secure exemption under section 11 of the Act. The Court observed that if the intention of the Legislature was otherwise, nothing prevented the Legislature from using the word "*spent*" instead of "*applied*" in section 11. In this view of the matter, the Court held that the money which was sanctioned by the trust to the donees concerned, who made request for a grant from the trust must be deemed to have been applied within the meaning of section 11 of the Act, as soon as the trust passed the resolution and the secretary of the trust informed the donee about the grant and the purpose for which it was granted. The Court held that the Tribunal was justified in holding that the actual payment to the donee during the relevant previous year was irrelevant.

---

[1] (1977) 110 ITR 364, 371(Mad)
[2] (1980) 123 ITR 38 (All)
[3] (1994) 208 ITR 372 (Cal)
[4] (1981) 131 ITR 497 (AP)

11.62 In *Nachimuthu Industrial Association v. C.I.T.*[1] their Lordships of the Madras High Court, however, held that in order to constitute application of the income for charitable purposes within the meaning of section 11 of the Income-tax Act, 1961, resolution passed by the trustees was not enough and it was necessary that actual payments are made to the donee during the relevant year. This view was later affirmed by the Hon'ble Supreme Court. The Apex Court held that when the Tribunal recorded a finding of fact that the amount was not actually applied for charitable or religious purposes, the assessee was not entitled to exemption under section 11 of the Act.

11.63 Later in *C.I.T. v. Thanthi Trust*[2] their Lordships of the Madras High Court were concerned with a case where the assessee-trust transferred substantial sums of moneys which represented 75% of its income to the account of an educational institution in its own books of accounts by making debit entries against itself and claimed that such entries amounted to "*application*" of the income within the meaning of section 11(1) of the Act. Their Lordships examined this question on the assumption that the educational institution was aware of the credit entries made in each of the years inasmuch as the institution did withdraw certain amounts from its account which stood credited with the various sums in the assessment years in question. The Court observed that even though the amount had been credited and such credit entries had been accepted by the educational institution, still if the assessee had not completely divested its ownership of the money and had retained some beneficial interest therein, such as investing the same either in its own business or with third parties and getting interest thereon, the gift as evidenced by the credit entries cannot be said to be complete. However, the Court observed that in the absence of any material brought on record by the Revenue, it could not be assumed that the assessee-trust had retained any beneficial interest in the money, after making the credit entries. Therefore, it was held that the assessee should be taken to have fully divested itself of the moneys credited and kept the same always ready for payment to the educational institution. Since the credit entries in this case had

[1] (1980) 123 ITR 611 (Mad) affirmed in (1999) 235 ITR 190 (SC)
[2] (1982) 137 ITR 735 (Mad) affirmed in (1999) 239 ITR 502 (SC)

been followed up by withdrawal of a portion of the amount by the college in one year and more than the amount credited in another year, the Court observed that it will clearly lead to the inference that the amount had been kept as a fund for the educational purposes, which fund can be operated at any time by the college. The Court also held that the mere fact that the educational institution chose to keep the money with the assessee trust could not make any difference so long as it had not been shown by the Revenue that the assessee trust retained nay beneficial interest over the money standing to the credit of the educational institution. In that view of the matter and having regard to the fact that credit entries were followed up by the withdrawals of the amounts later, the Court held that the entries amounted to a gift of the money in favour of the educational institution and as such it must be treated as a proper application as contemplated by section 11. The Court further observed that it was not a case of a mere credit entry which could be reversed at any time; nor was it a case where credit entry was made without there being any cash in hand, so that it could be said that the assessee was not a position to physically hand over the money on the dates of the credit entries. This view was later affirmed by the Hon'ble Supreme Court. The Apex Court held and observed that the issue was essentially a question of fact. It was no part of the Revenue's case at any point of time that the credit entries made in the assessee's books of accounts were not genuine or true or that they were mere make belief or bogus. Further, the Income-tax Officer never doubted the said entries. The Court therefore affirmed the view taken by the High Court. The Madras High Court again reiterated the same view in relation to the assessment of the assessee for the subsequent year[1] too.

11.64 In *CIT v. Sacred Heart Church*[2], the Gujarat High Court considered a case where the trust had incurred expenditure towards advancement of loan to persons belonging to the weaker sections of society for the purpose of its charitable objects. The said amount was written off in the year under consideration as the chances of recovery were found to be remote and was transferred to the expenditure account and adjusted against the income of the year under consideration. The Gujarat High Court held that the

[1] (1999) 239 ITR 510 (Mad)
[2] (2005) 278 ITR 180 (Guj)

income was applied in the year under consideration, when the right of recovering the loan was waived and the amount was adjusted against the income of that year. According to the Court, the adjustment of the expenses incurred by a trust for charitable and religious purposes in an earlier year against the income earned by the trust in the subsequent year would amount to applying the income of the trust for charitable and religious purposes in the subsequent year in which such adjustment had been made.

DONATION BY ONE TRUST TO ANOTHER – WHETHER APPLICATION OF INCOME

11.65 In *C.I.T. v. Trustees of the Jadi Trust*[1] their Lordships of the Bombay High Court held that when a charitable trust hands over a donation to another charitable trust, it would amount to application of income for charitable purpose by the donor trust. The donor trust would be entitled to exemption under section 11, although it may be necessary to ascertain whether the funds were deliberately being diverted to non-charitable purposes through the medium of a donee trust. Their Lordships in this respect followed the decision in *I.R.C. v. Helen Salter Charitable Trust Ltd.*[2] wherein it was held by Slade J, in the context of section 360 (1) of the Income & Corporation Taxes Act, 1970 (U.K.) and section 35(1) of the Finance Act, 1965 (U.K.) that if one Charitable Corporation acting infra vires transfers money applicable for charitable purposes to another Corporation established exclusively for charitable purposes, whose management is, as a matter of fact, entirely separate and distinct from that of the transferor Corporation, the transfer will by itself amount of an "*application*" of such money within the meaning of the said two sub-sections, except in the case where the transferor has knowledge that the recipient intends to misapply it; and that subject to this exception, the transfer will entitle the transferor to claim relief under the two sub-sections without having to show what use the recipient charity has made of the money. The same view was taken by the Gujarat High Court in *C.I.T. v. Sarla Devi Sarabhai Trust*[3]*.* This view is

[1] (1982) 133 ITR 494 (Bom)
[2] (1980) 1 All ER 785 (Ch. D)
[3] (1988) 172 ITR 698 (Guj)

also accepted by the Department as evident from C.B.D.T. Instruction No. 132 dated 05.01.78. The view that donation made by one trust to another charitable trust would amount to application of income for charitable purposes was reiterated by the Madras High Court in *C.I.T. v. Matriseva Trust*[1], in *C.I.T. v. M. CT. Muthiah Chettiar Family Trust & Others*[2] and in *C.I.T. v. Aurobindo Memorial Fund Society*[3]

11.66 The amendment to section 11(2) effected by the Finance Act, 2002 with effect from 1st April 2003 effectively nullifies the decisions in *M. Ct. Muthaiah Chettiar Family Trust* and *CIT v. Sarladevi Sarabhai Trust (No. 2)* to the extent that it concerns donation of funds accumulated under section 11(2) to another trust (see discussion in paragraphs 11.44 and 11.45 above). The amendment does not affect the position as regards donations to another trust out of current income, which continues to be regarded as application of income by the donor trust.

CAPITAL EXPENDITURE: WHETHER APPLICATION OF INCOME

11.67 Further, in order to get the benefit of exemption from tax under section 11 of the Act, it is not necessary that the application of the income should be such so as to result in revenue expenditure. Where the dominant object of the trust was to establish a "*Dharamshala*" for the use of the Hindu Public, the Gujarat High Court held in *Satya Vijay Patel Hindu Dharamshala Trust v. C.I.T.*[4] that the amounts spent by the trustee in the construction of the new Dharamshala was an application of the income towards the charitable purposes of the trust. The same view was expressed by the Madras High Court in *C.I.T. v. Kannika Parameswari Devasthanam & Charities*[5] as well as in *C.I.T. v. Rao Bahadur Calavala Cunnan Chetty Charities*[6]. The Court held that so long as the expenditure has to be incurred out of the income

[1] (2000) 242 ITR 20 (Mad)
[2] (2000) 245 ITR 400 (Mad)
[3] (2001) 247 ITR 93 (Mad)
[4] (1972) 86 ITR 683 (Guj)
[5] (1982) 133 ITR 779 (Mad)
[6] (1982) 135 ITR 485 (Mad)

earned by the trust, even if such expenditure is for capital purposes on the objects of the trust, the income would be exempt.

11.68 In *S.R.M.M.C.T.M. Thiruppani Trust v. C.I.T.,*[1] the Supreme Court held that the amount utilised by the assessee in purchasing a building to be used as a hospital was nothing but application of income for charitable purposes under section 11(1)(a) of the Act.

11.69 In *C.I.T. v S.R.M.C.T.M. Thiruppani Trust*[2]*,* their Lordships of the Madras High Court were dealing with the provisions of section 11(2) of the Act. The assessee trust had taken over a building in recovery of a debt due to it from another firm, which was shown as the asset in the balance sheet. The assessee claimed that it had applied its income in the purchase of a building for the purposes of the trust. The Court held that the recovery by the assessee trust of an outstanding due to it from its debtor cannot be treated as an application of income of the trust for charitable purposes. The Court held that the asset as it is sometimes called is "*in meal or in malt*". The change of its shape or form involves no application of the income for charitable purposes.

11.70 In *Deo Radha Madhava Lalji Genda Trust v. Property Tax Officer*[3]*,* their Lordships of the Madhya Pradesh High Court held that the term "*religious purposes or charitable purposes*" are not to be rigidly and narrowly construed so as to exclude all other expenses which are directly connected with the upkeep, maintenance and expenses of the trust itself, the objects of which are exclusively religious and charitable. The terms have not been used in a narrow and limited sense; they have been used in a larger and wider sense so as to cover and include within their ambit all expenses directly connected with and ancillary to the maintenance, upkeep, safety and existence of the corpus of the trust. If the trust property was not properly maintained and proper accounts were not kept, the very existence of the trust would be in jeopardy and its object and purpose would be lost. From the mere fact that a part of the rental income was spent in maintenance,

[1] (1998) 230 ITR 636 (SC)
[2] (1982) 134 ITR 555 (Mad)
[3] (1980) 125 ITR 531 (MP)

repairs, payment of salaries to employees, taxes and legal expenses etc., it could not be said that the rent derived from the trust house was not applied exclusively to religious or charitable purposes.

11.71 However, later their Lordships of the Madras High Court in *C.I.T.v. Kannika Parameswari Devasthanam & Charities*[1] observed that the mere fact that the application of income resulted in the maintenance or improvement of property held under trust for charitable purposes could not entitle the trust to exemption of such income under section 11 of the Act.

GRANT OF DEPRECIATION, NOT A CASE OF DOUBLE DEDUCTION

11.72 It may be mentioned here that even when the whole of the capital expenditure may be treated as an application of income towards charitable or religious purpose for the purposes of section 11 of the Act, the trust may also claim depreciation in respect of the assets used by it for its purposes on the basis of normal commercial principles following the Board's Circular dated 19th June, 1968. It is submitted that there is no question of double deduction on account of grant of depreciation in such cases in view of the fact that while the depreciation is allowed in respect of the assets used by the trust for the purpose of its activity following normal commercial principles, the capital expenditure is deducted from the surplus under section 11 of the Act treating the same as an application of income. Thus both operate in two different fields. This view has since been accepted by the Bombay High Court in the cases of *CIT v. Framjee Cawasjee Institute*[2] and *CIT v. Institute of Banking Personnel Selection*[3]. Here the Bombay High Court was dealing with the case of a charitable trust, which claimed both depreciation as well as deduction in respect of capital expenditure incurred by it on acquisition of various assets. The High Court held that the claim for deduction is made on the ground that income of trust has to be determined on normal commercial principles, while the deduction in respect of capital

[1] (1982) 133 ITR 779 (Mad)
[2] (1993) 109 CTR (Bom) 463
[3] (2003) 264 ITR 110 (Bom)

expenditure is taken into consideration in order to see whether the income as determined is utilised or applied towards the objects of the trust. Thus, the question of depreciation of assets on the one hand and the application of income towards the objects of the trust are two different issues. The High Court, therefore, upheld the allowance of both depreciation as well as full deduction in respect of capital expenditure incurred by the assessee trust on acquisition of various assets.

REPAYMENT OF LOAN OR DEBT – TREATED AS APPLICATION

11.73 In *C.I.T. v. Janmabhumi Press Trust*[1], the Karnataka High Court held that the repayment of a debt incurred by the trust for construction of the building, which in turn would augment its income, should be treated as application of the income of the trust for charitable purposes. In this respect, the court followed the view earlier taken by the Madras High Court in *C.I.T. v. Kannika Parameswari Devasthanam & Charities*[2] as well as by the Kerala High Court in *C.I.T. v. St. George Forana Church*[3].

11.74 The Central Board of Direct Taxes in its Circular No. 100 dated 24th January, 1973 [F.No. 195/1/72-IT (A.1.)] also observed that repayment of loan originally taken by a trust to fulfill one of its objects will amount to an application of income for charitable and religious purposes within the meaning of the Act. It also observed in that very Circular that where the object of the trust is advancement of education and it grants scholarship loans to students for higher studies in fulfillment of the objectives of the trust, granting of such loans, even if interest-bearing, will amount to application of income for charitable purposes.

11.75 However, when the loan is returned to the trust, it will be treated as the income of that year. In *C.I.T. v. Cutchi Memon Union*[4], the court held that the view, that the repayment of loans advanced by the assessee trust constituted the assessee' income to be recycled by the trust for charitable or religious purposes for

[1] (2000) 242 ITR 457 & 703 (Karn)
[2] (1982) 133 ITR 779 (Mad)
[3] (1988) 170 ITR 62 (Ker)
[4] (1985) 155 ITR 51, 54 (Karn)

availing the benefit of section 11, is in consonance with the tenor of the aforesaid Circular No.100, dated 24.01.1973.

11.76 In *C.I.T. v. Ramachandra Poddar Charitable Trust*[1], the Calcutta High Court held that the mere fact that the assessee had applied its accumulated income of the earlier years for the purpose of charity will not absolve the assessee of its duty to apply its income for the purpose of charity in the current year nor will it enlarge the limit of the amount which is permitted to be accumulated by section 11(1)(a). An assessee may borrow money and spend it for charitable object. The circular merely recognises that in such a case, application of income for repayment of loan taken for charitable purpose will amount to application of income for charitable purpose.

PAYMENT OF TAXES: WHETHER APPLICATION

11.77 In *C.I.T. v. Trustees of H.E.H. The Nizam's Supplemental Religious Endowment Trust*[2], the Andhra Pradesh High Court held that payments on account of income-tax and wealth-tax are not expenditure by themselves for the purpose of the trust. But it can hardly be disputed that such expenses are incidental to the carrying out of charitable purposes. It is an incidence of the income or the accumulation of the income of the trust and as such must be deducted from the income of the trust determined on commercial principles based on its books of account.

11.78 In *C.I.T. v. Jayashree Charity Trust*[3], the Court held that the amount which is taken away by deduction at source under section 194 is not available to the trust for application to charitable purposes. Though section 198 provides that the amount deducted by way of Income tax shall be deemed to be income, it can neither be spent nor accumulated for charitable purposes. The immunity from taxation that has been granted to the income of charitable trust, the Court observed, cannot be denied on the ground that the deemed income under section 197/ 198 has not been actually spent for the purpose of charity.

---

[1] (1987) 164 ITR 666, 672-73 (Cal)
[2] (1981) 127 ITR 378 (AP); also see (1986) 162 ITR 612 (Guj)
[3] (1986) 159 ITR 280 (Cal)

11.79 In *C.I.T. v. Janaki Ammal Ayya Nadar Trust*[1], their Lordships of the Madras High Court held that there is no prohibition in law for a trust spending the entire current year's income for payment of tax and such payment is necessary to preserve the property of a trust when the demand is lawfully made. Accordingly, the expenditure incurred by way of payment of tax out of current year's income will have to be considered as an application of income for charitable purposes; because the payment is made to preserve the Corpus, the existence of which is absolutely necessary for the trust.

11.80 However, in *C.I.T. v. Hamdard Dawakhana (Wakf)*[2], their Lordships of the Delhi High Court held that refund of income-tax received by a charitable institution cannot be treated as income derived from property held under trust and accordingly the provisions of section 11(2) of the Act relating to accumulation of income cannot be applied to such refunds.

BUSINESS UNDERTAKING HELD AS TRUST PROPERTY

11.81 Section 11(4) of the Income-tax Act, 1961 lays down that "property held under trust" for the purposes of section 11 may include a business undertaking held by the trust. It further states that if a claim is made that the income of any such undertaking should not be included in the total income of the trust, the Income-tax Officer shall have power to determine the income of such undertaking in accordance with the provisions of this Act relating to assessment and determination of income under the head "Profit and gains of Business or Profession." It, however, provides that if the income so determined by the Income-tax Officer is in excess of the accounting profits of the undertaking held by the trust, such excess shall be deemed to be applied to purposes other than charitable or religious purposes. The result would be that the provisions of section 11(1) shall not apply to such excess and the same will be charged to tax.

11.82 It is now well-established that "*property*" is a term of widest import and business would undoubtedly be property unless there

[1] (1985) 153 ITR 159 (Mad)
[2] (2001) 249 ITR 601 (Del)

was something to the contrary in the enactment. The Privy Council in re. *The Trustees of the Tribune*[1] did not question the view expressed by the Bombay High Court that the business of running the newspaper. "*Tribune*" was property held under trust for charitable purposes. The Supreme Court in *J.K. Trust v. C.I.T*[2] and in *C.I.T. v. P. Krishna Warriar*[3] endorsed the said view and held that "business" is property and could be held under trust for charitable and religious purposes. This view is now apparent from a perusal of section 11(4) of the Act, which provides that for the purposes of section 11 of the Act, the expression "*property held under trust*" would include a business undertaking so held.

11.83 In *C.I.T. v. Birla Education Trust*[4]*,* the Court held that under sub-section (4), the Assessing Officer can determine the income and compare it with the income appearing in the accounts. The income spoken of in sub-section (4) is the gross income of the business undertaking and not the net income. Sub-section (4) of section 11 is neither a charging section nor a machinery provision, entitling the Assessing Officer to assess the income for the purpose of levying tax. It comes into operation where a claim is made that the income of a business undertaking of a trust shall not be included in the total income of the person in receipt thereof. When such a claim is made, the Assessing Officer has been authorised to determine the income. Where the income so determined is in excess of the income as shown in the books of account of the undertaking, then such excess shall be deemed to have been applied to purposes other than charitable or religious purposes.

11.84 There is no indication in sub-section (4) of section 11 that it was envisaged to be in derogation of or to supersede or supplant any other provision of section 11. An expenditure, for purposes other than charitable or religious purpose is liable to be dealt with by sub-section (3) and by reason of its operation, it is not entitled to exclusion. Such excess will not be covered by sub-section (4), which is envisaged, for a different contingency.

---

[1] (1939) 7 ITR 415 (PC)
[2] (1957) 32 ITR 535 (SC)
[3] (1964) 53 ITR 176 (SC)
[4] (1985) 153 ITR 579 (Cal)

OLD SECTION 11(4A): ASSESSMENT YEAR 1984-85 TO 1991-92

11.85 The Finance Act, 1983 has inserted sub-section (4A) in section 11 of the Act to provide that exemption under section 11 shall not be available with effect from the assessment year 1984-85 in relation to any income, being profits and gains of business, unless:

(a) the business is carried on by a trust wholly for public religious purposes and such business consists of either printing and publication of books or publication of books simpliciter or is of a kind notified by the Central Government in this behalf in the Official Gazette; or

(b) the business is carried on by an institution wholly for charitable purposes and the work in connection with the business is mainly carried on by the beneficiaries of the Institution;

(c) Separate books of accounts are maintained by the trust or institution in respect of aforesaid business in both the cases.

11.86 As a result of insertion of the sub-section (4A), an institution established wholly for charitable purposes shall enjoy exemption from tax in respect of business income only if the work in connection with the business is mainly carried on by the beneficiaries of the institution. Thus, if an institution running a widow home carried on business activities through the widows, who mainly perform all work in connection with the business, the business income shall enjoy exemption from income-tax under section 11 of the Act. Similarly, in the case of an Institution established wholly for public religious purposes, the exemption from tax in respect of business income will be available only if the business consists either of printing and publication of books or of publication of book simpliciter.

11.87 In the case of trusts established wholly for public religious purposes, the Central Government has also been authorised to notify any other business activity, which may also enjoy exemption under section 11 of the Act.

11.88 In all these cases, it has been clearly provided in section 11(4A) of the Act that the trust or institution concerned must maintain separate books of accounts in respect of the business activities.

11.89 In other words, if the business activities carried on by a charitable or religious trust or institution does not fall within the purview of section 11(4A) of the Act, the business income shall forfeit exemption and will be liable to tax. If, however, such a trust, or institution derives any other income from property held under trust other than business activities, the same, however, will continue to enjoy exemption from tax under section 11 of the Act.

11.90 The provisions of section 11(4A) were brought into force with effect from 1st April, 1984 and were made applicable in respect of the assessment year 1984-85 and onwards. Section 11(4A) does not deal with the income being profits and gains of business which is held in trust for public religious purposes or a business carried on by an institution wholly for charitable purposes.[1]

11.91 In *Thanti Trust v. CBDT*[2], their Lordships of the Madras High Court held and observed that section 11(4A) of the Act will only apply in case where the business carried on by the trust is not held under trust for a charitable purpose, but the said income from business, being the profits and gains of business carried on by a trust created wholly for public religious purposes or by an institution in such a case, will be eligible for exemption only when the two conditions laid down in clauses (a) & (b) of sub-section (4A) of section 11 of the Act are satisfied. In that case, the court found that in as much as the business carried on by the trust was itself held under trust for public charitable purposes and the business is carried on only for the purposes of carrying out the charitable objects, section 11(4A) cannot have any application.

11.92 The said decision of the Madras High Court however, was reversed by the Supreme Court. The Apex Court held that the business of the trust in the assessment year 1979-80 to 1983-84 was not carried on in the course of the actual carrying out of the

[1] See C.I.T. v. Dharmodayam & Co. (1997) 225 ITR 686 (Ker)
[2] (1995) 213 ITR 639 (Mad) – reversed in (2001) 247 ITR 785 (SC)

primary purpose of the trust as required by section 13(1)(bb) and its income was not, therefore, exempt from tax. The business of the trust was the running of a newspaper and that business did not directly accomplish, wholly or in part, the trust's objects of relief of the poor and education. The Court further held that in relation to the assessment years 1984-85 to 1991-92, the trust was not wholly for public religious purposes and it was also not an institution; and, therefore, the trust did not fall within the provisions of section 11(4A), as it then stood and was not entitled to exemption from tax.

NEW SECTION 11(4A): ASSESSMENT YEAR 1992-93 & ONWARDS

11.93 In order to remove certain anomalies and hardships, sub-section (4A) of section 11 was substituted by a new sub-section (4A) with effect from 01-04-92. Before the substitution, exemption under section 11 was denied, where a business, other than the business of printing and publication of books by a trust wholly for public religious purposes was carried on and in the case of an institution for charitable purposes, the business was mainly carried on by the beneficiaries of the institution. The amended sub section (4A) ensures that income of a trust or an institution, being profits and gains of business or profession incidental to the objectives of the trust or institution, enjoys exemption from tax under section 11.

11.94 When the case of *Thanthi Trust*[1] for the assessment years 1992-93, 1995-96 & 1996-97 came up before the Madras High Court through a Writ Petition, the counsel for the Revenue submitted that in view of the amendment effected in section 11(4A) of the Act with effect from 1.4.92, the Revenue was entitled to bring to tax the assessee's income from the newspaper business notwithstanding the fact that the business was held in trust, as the business carried on by it cannot be regarded as a business which is incidental to the attainment of the main objects of the trust which are relief to poor and education. Their Lordships of the Madras High Court, however, rejected the Revenue's

[1] (1999) 238 ITR 635 (Mad) affirmed in (2001) 247 ITR 785 (SC)

contention. The court noted that prior to amendment in 1992, the exemption under sub-section (4A) was limited to business carried on by the trust wholly for public religious purposes and the business consisted of printing of books and of publication of books or of a kind notified by the Central Government in that behalf or the business was carried on by the institution wholly for charitable purposes and the work in connection with the business was mainly carried on by the trust or institution. The requirement that separate books of account should be maintained by the trust or institution is a common feature of sub-section (4A) before as also after the amendment. However, after the amendment, the permissible categories of business which a charitable trust could carry on and still qualify for exemption were enlarged. After the amendment, it is provided that any business that a trust or institution may carry on should be incidental to the attainment of its objectives. This amendment therefore, does not in anyway affect the enunciation by the division bench of this court earlier that if the business is held in trust, the same is outside the purview of section 11(4A). In other words, a business held in trust, whether before or after the amendment in 1992, would not be hit by section 11(4A) of the Act.

11.95 The Supreme Court[1], however, affirmed the said decision of the Madras High Court in relation to assessment years 1992-93, 1995-96 and 1996-97, it being not disputed that the income of the newspaper business had been employed to achieve its objectives of education and relief to the poor. The Apex Court held that the trust was entitled to exemption for these assessment years as the business of the trust was incidental to the attainment of the objectives of the trust, namely, the objectives of education and relief of the poor. Their lordships of the Supreme Court observed that after amendment of section 11(4A) in 1992, all that is required for the business income of the trust or institution to be exempt from tax is that the business should be incidental to the attainment of the objects of the trust or institution. A business whose income is utilized by the trust or the institution for the purposes of achieving its objectives is a business which is incidental to the

[1] (2001) 247 ITR 785 (SC)

attainment of the objectives of the trust or institution. The apex court further observed that the scope of sub-section (4A) after amendment is more beneficial to a trust or institution than it was, as originally enacted. In fact, if the object of the Parliament was to give trusts and institutions no more benefit than that given by section 13(1)(bb), the language of section 13(1)(bb) would have been employed in the substituted sub-section (4A).

11.96 Full scope of section 13(1)(bb) of the Act, since omitted by the Finance Act, 1983 with effect from 01.04.84, vis-à-vis new section 11(4A) of the Act has been discussed later in paragraph 12.24 and onwards.

12

Conditions to be Satisfied for Claiming Exemption under Section 11 of the Income-tax Act

In order to claim exemption from income-tax under section 11 of the Act, a trust or institution which has been validly created or established must satisfy certain conditions which are enumerated in sections 12A and 13 of the Income-tax Act, 1961. These conditions are discussed in the following paragraphs.

CONDITION AS TO REGISTRATION

12.01 Under section 12A(a) of the Act, which was introduced by the Finance Act, 1972 with effect from 1st April, 1973 read with Rule 17A of the I.T. Rules 1962, the person in receipt of income must make an application for registration of the trust or the institution to the Commissioner of Income-tax before 1st July, 1973 or before the expiry of a period of one year from the date of creation of the trust or establishment of the institution, whichever was later. The Commissioner of Income-tax was, however, empowered to admit, in his discretion, belated application for registration in deserving cases. The application for the purpose has to be made in Form No. 10A and should be accompanied by the original instrument under which it is created or established together with a copy therefore. In the case of a trust or institution, which has not been created/established under an instrument, the document evidencing the creation of the trust or establishment of the institution should be sent together with a copy thereof. In either case, if the original instrument or document cannot conveniently be produced the Commissioner of Income tax has been empowered to accept a certified copy in lieu of the original. The application should ordinarily be accompanied by two copies of the

accounts for each one of the three years prior to the year in which the application is made. Where, however, the trust or institution was not in existence in any of the three prior years or the accounts for any such year have not been made up, copies of the accounts for such year or years may not be submitted along with the application.

12.02 Section 12A was amended by the Finance (No.2) Act, 1991 with effect from 1st October, 1991 to provide that where an application for registration is filed after the due date, the provisions of sections 11 and 12 will apply from the date of creation of the trust or establishment of the institution, only if the Chief Commissioner or Commissioner is satisfied that the delay in making the application was for valid and sufficient reasons. Otherwise, the provisions of sections 11 and 12 will apply from the first day of the year in which the application is made. The Commissioner of Income-tax must not reject the application for condonation of delay in a mechanical manner without application of mind to the relevant material. Before rejecting the application, he must give to the assessee trust sufficient opportunity of being heard. Otherwise, his order is liable to be set aside, as held by the Rajasthan High Court in *Sanatan Dharm Mahaveer Dal v. C.I.T.*[1].

12.03 Dealing with the provisions of section 12A(a), prior to its amendment by the Finance (No.2) Act, 1991, their Lordships of the Calcutta High Court in *Anand Marga Pracharak Sangha v. C.I.T.*[2], held that where the application for registration is admitted by the Chief Commissioner or the Commissioner of Income-tax belatedly and the registration has been granted by condoning the delay, the registration shall have retrospective effect from the date of creation of the trust. Otherwise, the very purpose of condoning the delay becomes nugatory. Therefore, in order to save the provision from the absurdity of self-negation, the Court held that the proviso inserted below section 12A(a) prior to its substitution by the Finance (No.2) Act, 1991 with effect from 1st October, 1991 impliedly requires that the condonation of delay will relate back and give effect of registration to the very date of creation of the trust or institution. This position however, was later made clear by the Legislature itself by the substitution of the existing proviso with

[1] (2001) 252 ITR 46 (Raj)
[2] (1996) 218 ITR 254, 273 (Cal)

a new proviso with effect from 1st October, 1991, which makes it quite clear now that where condonation was granted and the trust was registered upon condonation, registration shall have effect from the date of creation of the trust.

12.04 In *Laxminarayan Maharaj v. C.I.T.*[1], their Lordships of the Madhya Pradesh High Court held that when the trust is not created under an instrument, it is impossible to produce any constitutive document and hence, the rules require the production of evidential documents i.e. documents evidencing the creation of the trust. The evidential documents are not limited to documents which directly prove the creation of the trust; they would embrace all documents which would afford a logical basis for inferring the creation of the trust and all such documents can be described as "*documents evidencing creation of trust*" within the meaning of Rule 17A(a), If the words "*documents evidencing the creation of the trust*" are construed as limited to documents directly evidencing the creation of the trust, it will be impossible to have a trust registered, which was not created under an instrument. This could never have the intention of the framer of the rule.

12.05 In *Fifth Generation Education Society v. C.I.T.*[2], their Lordships of the Allahabad High Court held that when a charitable trust or institution makes application in Form No. 10A, the Commissioner of Income-tax at this stage, is not required to examine whether the applicant trust has applied any income for charitable purposes or not. At this stage, all that the Commissioner can examine is whether the application is made in accordance with the requirement of section 12A read with rule 17A of the Income-tax Rules, 1962 and whether Form No. 10A had been properly filled up. The Commissioner may also see whether the objects of the trust are charitable or not. It is not the requirement of section 12A that any activity should be carried on by the charitable trust before obtaining registration under section 12A(a) of the said Act.

12.06 The view taken by the Allahabad High Court, as aforesaid, was reiterated by the Madras High Court in *New Life in Christ*

[1] (1984) 150 ITR 465 (MP)
[2] (1990) 185 ITR 634 (All)

Evangelistic Association v. C.I.T.[1]. The Court held that the language of section 12A of the Act does not show that in order to be able to get registration, 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 exemption under sections 11 and 12 of the Act. There is nothing in the language to suggest that an institution of a religious nature be precluded from getting registration under section 12A of the Act. The question of exemption under sections 11 and 12 of the Act or, as the case may be, under section 80G of the Act, would come only when the said exemptions are claimed by the society at the time when it is assessed to tax. There is no need to prejudge the issue at the stage of granting registration certificate under section 12A of the Act. The only enquiry, which could possibly be made at this stage, 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 section 12A. Beyond that the scope of enquiry would not go. There is no question of considering at this stage how the income of the society would be applied. The Karnataka High Court, in the case of *Sanjeevamma Hanumanthe Gowda v. DIT(E)*[2], has taken a similar view, holding that the nature of activity by which income is derived by the trust cannot be gone into at the time of registration under section 12AA of the Income-tax Act.

12.07 However, the Kerala High Court, while considering the impact of new section 12AA inserted on the statute book with effect from 1.4.1997 took a different view in *Self Employers Service Society v. C.I.T.*[3]**.** The Court observed that earlier to section 12AA, there was no provision in the Act for processing an application for exemption in respect of income of a charitable or religious trust or institution on satisfying certain conditions. Under the new provisions of section 12AA, the Chief Commissioner or Commissioner has been empowered to call for documents and information and hold enquiries regarding the genuineness of the trust or institution. If he is 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 granting registration. If he is not

[1] (2000) 246 ITR 532 (Mad)
[2] (2006) 285 ITR 327 (Kar)
[3] (2001) 247 ITR 18 (Ker)

satisfied, he will refuse registration. In that case the society was not able to do any of the charitable activities during the first year of its function. After its application for registration was rejected, the society resolved to start a technical educational institution. The court therefore held that since the society has not done any charitable work and the activities which it had carried on were only for the purpose of generating income for its members, the rejection of the application under section 12AA was justified. The court however observed that the society was free to make a fresh application when it started charitable work and the Commissioner was directed to consider such application in accordance with law.

12.08 The law is now made very clear by the enactment of the new section 12AA, by the Finance (No.2) Act, 1996. In view of section 12AA(a), the Chief Commissioner or Commissioner shall call for documents and information and hold enquiries regarding the genuineness of the activities of the trust or institution. After he is 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 granting registration and if he is not so satisfied, 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 refusal of registration shall be clearly indicated in such order. With effect from 1st June, 1999, an appeal can be filed against such an order to the Tribunal.

12.09 Section 12A(2), inserted by the Finance Act 2007 with effect from 1st June 2007, now provides that in respect of applications for registration filed on or after 1st June, 2007, the exemption under sections 11 and 12 will apply for the assessment year following the financial year in which the application is made. In other words, exemption will now be available only in respect of income of the previous year in which the application is made and subsequent years. Therefore, the Commissioner also has no power to grant registration retrospectively prior to the year of application. The Finance (No.2) Act, 2004 has inserted sub-section (3) in section 12AA with effect from 1st October 2004, empowering the Commissioner to cancel the registration granted under section 12AA after giving the trust a reasonable opportunity of hearing, if he is satisfied that the activities are not genuine or

are not being carried out in accordance with the objects of the trust. The Uttaranchal High Court, in the case of *Welham Boys School Society v. CBDT*[1]*,* has held that prior to such amendment, the Commissioner had no such inherent power to cancel registration, and that the amendment is not retrospective in nature.

12.10 Section 12AA(2) further lays down a period of 6 months from the end of the month in which the application was made for the Commissioner to grant or refuse registration. The Special Bench of the Tribunal, in the case of *Bhagwad Swarup Shri Shri Devraha Baba Memorial Shri Hari Parmarth Dham Trust v. CIT*[2], and the Allahabad High Court, in the case of *Society for the Promotion of Education Adventure Sport and Conservation of Environment v. CIT*[3]*,* have held that if the application is not disposed of within the time limit by the Commissioner, the registration shall be deemed to have been granted.

12.11 The Supreme Court, in the case of *ACIT v. Surat City Gymkhana*[4]*,* has held that once a trust is registered under section 12A, it is a fait accompli, and the Assessing Officer cannot thereafter make a further probe into the objects of the trust.

CONDITION AS TO AUDIT

12.12 Section 12A(b) of the Act read with the Rule 17B of the Income-tax Rules, 1962 provides that where the total income of the trust or institution (without giving effect to the provisions of sections 11 and 12 exceeds Rs. 50,000/- in any previous year, the accounts of the trust or institution for that year must be audited by a Chartered Accountant. This limit of Rs.50,000 has been replaced by the maximum amount not chargeable to income tax in any previous year, by the Taxation Laws (Amendment) Act, 2006, effective assessment year 2006-07 onwards. The report of audit which should be in Form No. 10B prescribed by Rule 17B of the Income-tax Rules, 1962 must be furnished to the assessing officer along with the return of income for the relevant assessment year. However, if such report does not accompany the return of income,

---

[1] (2006) 285 ITR 74 (Utt)
2 (2008) 299 ITR (AT) 161 (Del)(SB)
[3] (2008) 216 CTR 167 (All)
[4] (2008) 300 ITR 214 (SC)

the return will not be invalid, but the trust will be denied exemption contained under sections 11 and 12 of the Act. (Also see section 292B).

12.13 In *I.T.O. v. Jeevdaya Kheta*[1] the Cuttack Bench of the Income Tax Appellate Tribunal held that the provisions of section 12A(b) of the Act are procedural and enabling provisions. The requirement appears to be that for finalizing the assessment, the audit report should be made available to the Assessing Officer for properly investigating the whole issue. The Tribunal, therefore, held that it cannot be said that it was mandatory that the return should definitely and positively be accompanied by an audit report. It was enough if the audit report was filed before the assessment order was passed.

12.14 In *C.I.T. v. Rai Bahadur Bissesswarlal Motilal Malwasie Trust*[2], their Lordships of the Calcutta High Court held that the requirement to submit an audit report along with return of total income as laid down in section 12A is not a mandatory condition. A charitable trust is entitled to claim exemption from income-Tax, even if the audit report is submitted before completion of assessment or in course of appellate proceedings as laid down in *C.I.T. v. Hardeodas Agarwalla Trust*[3]. Same view was reiterated in *C.I.T. v. Shazedanand Charity Trust*[4], in *C.I.T. v. Devradhan Madhavalal Genda Trust*[5] and in *CITv. Andhra Pradesh State Road Transport Corporation*[6] .

PRIVATE RELIGIOUS TRUSTS

12.15 The trust or institution should not have been created or established for private religious purposes, which do not ensure for the benefit of the public. [Section 13(1)(a)]

---

[1] (1981) 24 CTR (Trib) 34
[2] (1992) 195 ITR 825 (Cal)
[3] (1992) 198 ITR 511 (Cal)
[4] (1997) 228 ITR 292 (PH)
[5] (1998) 230 ITR 714 (MP)
[6] (2006) 285 ITR 147 (AP)

COMMUNAL TRUSTS

12.16 If the trust or institution has been created or established after 1-4-1962, it must not be for the benefit of any particular religious community or caste. Explanation 2 to section 13, however, provides that a trust or institution created or established for the benefit of the scheduled castes, backward classes, scheduled tribes or women and children shall not be deemed to be a trust or institution created or established for the benefit of a religious community or caste within the meaning of section 13(1)(b) of the Act. Considering the effect of Explanation 2 to section 13, the Kerala High Court in *C.I.T. v. Palghat Shadi Mahal Trust*[1] held that the entire Muslim Community is considered as backward in the State of Kerala. The educational concessions were given to Muslims in Kerala as a whole treating them as a backward class. The assessee trust was not intended for one individual Muslim or one sub-group of the Muslim Community. If the trust were intended for the benefit of all the members of the scheduled caste, it would be covered by Explanation 2 to section 13 of the Act.

12.17 In *C.I.T. v. Maheswari Agarwal Marwari Panchayat (Shri)*[2], their Lordships of the M.P. High Court held that although the assessee trust was established for the benefit of the members of a particular religious community, the bar under section 13(1)(b) of the Act is not applicable to it inasmuch as it was created or established before the commencement of the 1961 Act, and as such the trust was entitled to the benefit of exemption under section 11 in respect of its entire income.

12.18 In *Shantagauri Ramniklal Trust & Others v. CIT*[3], their lordships of the Gujarat High Court held that in order to reach a conclusion whether a community is a religious community, there must be something to show that the community is abiding by a particular faith to be considered as a member of the community or its identification is on account of practicing or following customs or practices. Merely by adhering to distinct cultural practices in its social interactions may not be sufficient to treat a community, as a

[1] (1999) 236 ITR 722 (Ker)
[2] (1982) 136 ITR 556 (MP)
[3] (1999) 239 ITR 528 (Guj)

religious community. A caste, in order to be excluded from the benefit of exemption, must be a religious caste or a part of the religious community as an identifiable mark. In considering the question whether a community is a religious community or not, what is to be inquired into is not whether members of that community adhere to a common religion or faith; but inquiry to be made is as to what is the purpose of such people coming together. It is a purpose for which a number of individuals come together to form a community which will determine the nature of the community for its objective and not the practice followed by individual members. A community without any objective means a number of individuals organized into a body or society. The purpose for which such organized society comes into existence gives it the colour for its identification. A number of persons coming together for the purpose of practicing a religious faith or practice, which has direct relevance to spiritual attainment than temporary purposes, are named as religious community. Thus, the relevant inquiry for determining the question whether a community is a religious community must be whether such collection of people has been organised into a society with a bond of having system, beliefs or doctrine which is regarded as conducive to their spiritual well being. If a collective organisation is for other purposes, the fact that many of such community follow a common faith will not be a ground to hold it as a religious community.

12.19 In other words, formation of community must have nexus with following a common faith. In *State of Kerala v. M.P. Shanti Verma Jain*[1], the Supreme Court found that the objects of the trust clearly showed that the trust was meant for propagation of the Jain religion and rendering help to the followers of the Jain religion. Even the medical aid and similar facilities were to be rendered to persons devoted to the Jain religion and to Non-Jains, if suffering from ailments. But the medical aid could be given to Non-Jains, if any member of the families managing the trust showed sympathy and was interested in their treatment. The Apex Court agreeing with the Tribunal therefore held and observed that the dominant purpose of the trust in the present case being propagation of the Jain religion and to serve its followers, it was hit by the provisions of section 4(3)(b) of the Kerala Agricultural Income-tax Act, 1950,

[1] (1998) 231 ITR 789 (SC)

which section was more or less identical with section 13(1)(b) of the Income-tax Act, 1961. The Supreme Court held that the income was not entitled to exemption.

12.20 The above principle laid down by the Supreme Court was applied by the Jammu and Kashmir High Court in *Ghulam Mohidin Trust v. C.I.T.*[1], where the court found that the objects of the assessee trust clearly showed that the dominant purpose was the promotion of Muslim theology among the Muslim Intelligentsia. It was specifically provided that the selection for financial assistance, by way of exgratia grants or loans on easy terms to scholars of educational institutions, has to be confined to Muslims only. The Court therefore held that the case of the assessee trust was clearly hit by section 13(1)(b) of the said Act.

12.21 However, the Madras High Court in *C.I.T. v. Gujrathi Mandal*[2] held that language cannot be equated to religion or caste. The Court in that case was dealing with a trust whose main object was to impart knowledge or education primarily in Gujarati language and to help promote religious, social and moral standards of the Mandal members. The court observed that there was no requirement in the memorandum of association that Mandal members should belong to any particular religion. All that was required was that the members should know Gujarati. Their lordships observed that the commonality of language is mainly due to the residence in a particular residential area and is not related to the religious beliefs of the persons concerned. The religions practised by the people of the country are not confined to any particular linguistic area. The Court therefore held that the benefit of exemption under section 11 couldn't be denied to the assessee trust mainly because the members were required to know the Gujarati language.

12.22 It may be noted that this condition is applicable only to charitable trusts and institutions. The income of a religious trust or institution, created at any time can qualify for exemption under section 11 of the Act, even when it is created or established for the benefit of a particular religious community or caste. Further, if a charitable trust is created for the public, and discretion or direction

[1] (2001) 248 ITR 587 (J & K)
[2] (1999) 240 ITR 293 (Mad)

is given to the trustees to give preference, other conditions being equal, to the members of a particular religious community or caste, in the selection of beneficiaries, the trust should not lose exemption in view of the principles laid down by the Supreme Court in *Trustees of the Charity Fund v. C.I.T.*[1].

12.23 In *C.I.T. v. Barkate Saifiyah Society*[2], the Court held that section 13(1)(b) applies only to trusts, which are purely for charitable purposes. Trusts for charitable and religious purposes are not covered by section 13(1)(b).

RESTRICTIONS ON CARRYING ON OF ANY BUSINESS

12.24 A new clause (bb) was inserted in section 13(1) of the Act by the Taxation Laws (Amendment) Act, 1975 to provide that if a trust or institution for the relief of the poor, education or medical relief carried on any business, income from such business would not enjoy exemption for tax unless the business was carried on in the course of actual carrying out of the primary purpose of the trust or institution. This provision was applicable only where a regular business was carried on by the trust or institution and such business was not in the course of the actual carrying out of its primary purpose. Thus, a trust running a nursing home providing medical relief could not lose exemption in respect of the profits derived from running the nursing home inasmuch as the business of running the nursing home was being carried on in the course of actual carrying out of the primary purpose of providing medical relief. The exemption under this section was forfeited only in respect of income arising from business activities. The other income of the trust derived from property held under trust was still exempt under section 11 of the Act.

12.25 In *Thanti Trust v. Assistant Commissioner*[3], the Court held that business was carried on by the assessee trust in the course of actual carrying out of the purpose of the trust, and therefore section 13(1)(bb) of the Act was held to be not applicable.

---

[1] (1959) 36 ITR 513 (SC)
[2] (1995) 213 ITR 492 (Guj)
[3] (1995) 213 ITR 626 (Mad) reversed in (2001) 247 ITR 785 (SC)

12.26 The aforesaid decision of the Madras High Court was however reversed by the Supreme Court. The Apex Court explained that a public charitable trust may hold its business as part of its corpus. It may carry on a business, which he does not hold as part of its corpus. But this distinction has no consequence in so far as section 13(1)(bb) is concerned. That section will apply to a public charitable trust for the relief of the poor, education or medical relief that carries on a business regardless of whether or not that business is held by the trust as part of its corpus; even a business that is held by such a trust as a part of its corpus is carried on by the trust and, therefore, section 13(1)(bb) will apply to such a trust. The words used in section 13(1)(bb) are wide enough to control not only the profits from an activity carried on in the course of the actual carrying out of the purpose of the trust or institution but also income from the corpus of the trust property if the corpus of the trust includes a business. The exemption under section 11 will not be available unless the business is carried on in the course of actually accomplishing the primary purpose of the trust. The business must, therefore, be carried on in the course of the actual accomplishment in the relief of the poor, education or medical relief. At page 794 of the reports, the Apex Court held that Thanthi trust carried on the business of running a newspaper. That business did not directly accomplish wholly or in part the trust's objectives of relief to the poor and education. Its income only feeds such an activity, it cannot therefore be held to be carrying on the newspaper business in the course of the actual accomplishment of its objectives of education and relief of the poor. In this view of the matter, it is humbly submitted that the earlier decisions of the Kerela High Court in *C.I.T. v. Dharmadeepti*[1]; and of the Madras High Court in *C.I.T. v. Nagi Reddi Charities*[2] are no longer good law.

12.27 However, the Madras High Court in *Dasa Balinjika Seva Sangam v. C.I.T.*[3] correctly held that the chit business, not being carried on by the assessee in the course of the actual carrying out of the objects of the trust, was hit by section 13(1)(bb) of the Act and the trust was therefore not entitled to claim exemption under section 11 of the Act.

---

[1] (1999) 236 ITR 397 (Ker)
[2] (2000) 241 ITR 431 (Mad)
[3] (1999) 240 ITR 854 (Mad)

12.28 In *C.I.T. v. Samyuktha Gowda Saraswatha Sabha*[1], their lordships of the Madras High Court held that as the objects of the assessee were education and other objects of general public utility, the letting out of the marriage hall Kalyana Mandapam was not one of the objects of the assessee, but an activity carried on to fulfill the objects of the trust. The income derived from the letting out was not its business income, but its property income. Hence, the provisions of section 13(1)(bb) of the Act were not applicable and the assessee was entitled to claim exemption under section 11 of the Act.

12.29 The said section 13(1)(bb) has been omitted by the Finance Act, 1983 with effect from 1st April, 1984. Simultaneously the Finance Act, 1983 also omitted with effect from the said date, the rider "*not involving the carrying on of any activity for profit*", which was earlier added by the Act of 1961 to govern the words "*the advancement of any other object of general public utility*" as appearing in the definition of the expression "*charitable purpose*" under section 2(15) of the Act.

12.30 The Finance Act, 1983 also inserted a new sub-section (4A) in section 11 of the Act to provide that exemption under section 11 shall not be available in relation to any income, being profits and gains of business, unless:

(a) the business is carried on by a trust wholly for public religious purposes and such business consists of either printing and publication of books or publication of books simpliciter or is of a kind notified by the Central Government in this behalf in the Official Gazette; or

(b) the business is carried on by an institution wholly for charitable purposes and the work in connection with the business is mainly carried on by the beneficiaries of the institution;

(c) The trust or institution maintains separate books of accounts in respect of the aforesaid business in both the cases.

[1] (2000) 245 ITR 242 (Mad)

12.31 In order to fully appreciate the effect of the above amendment it is necessary to refer to the provisions of the old section 4(3) of the Income-tax Act, 1922. Section 4(3) of the Income-tax Act, 1922 immediately after its amendment in 1939 stood as under:

> "*4(3) This Act shall not apply to the following classes of income;*
>
> *(i) Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes, the income applied or finally set apart for application thereto. In this sub-section "charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility.*
>
> *(ii) Any income derived from business carried on behalf of a religious or charitable institution when the income is applied solely to the purpose of the institution and:*
>
> *(a) the business is carried on in the course of the carrying out of a primary purpose of the institution, or*
>
> *(b) the work in connection with the business is mainly carried on by the beneficiaries of the Institution*."

12.32 The exact scope of clause (ia) which was inserted by the Legislature in 1939 raised a controversy. The Department contended that the object of this sub-section was to limit the scope of section 4(3)(i) in so far as it related to a business held on trust and the business income of a trust would be immune from taxation only if the conditions prescribed in clause (ia) were fulfilled. On the other hand, it was contended for the assessee that section 4(3)(i) related to a business held under trust, and that clause (ia) was introduced by the legislature to extend the exemption to the case of any other business not held on trust but income of which was applied for the purposes of a religious or a charitable institution

and the business was carried on behalf of such institution. The viewpoint of the Department was, however, not accepted by several decisions of the various High Courts.

12.33 In *Charitable Gododia Swadeshi Stores v. C.I.T*[1]. The Lahore High Court observed thus at page 390:

> "*clause (ia) as it stands cannot in any way derogate or subtract anything from clause (i). It rather adds to the list of exceptions and provides immunity for a certain kind of business, which in the view of the legislature had not already been provided for. A new clause inserted by the legislature cannot be presumed to be inconsistent with or repugnant to a foregoing clause in its same sub-section, unless it is so expressly provided. Viewed in its proper perspective, therefore, clause (ia) can be taken to apply only to such business, as is carried on behalf of religious or charitable institutions, which were not held under trust and, not to such business as was itself held under trust or was conducted by or on behalf of such charitable or religious institutions, as were held under trust. If it was intended to narrow down the scope of clause (i) so as to withdraw the exemption enjoyed by a business held in trust or conducted by or on behalf of a religious or charitable trust, the new clause should have been added as proviso to the old clause*."

12.34 The Allahabad High Court took the same view in C*ommissioner of Income-tax v. Radhaswami Satsang Sabha*[2], At page 521 the Learned Judges observed as follows:

> "*Clause (i) of sub-section (3) of section 4 deals with income derived form property held under trust or other legal obligation for religious or charitable purposes, while clause (ia) deals with income derived from business carried on behalf of a religious or charitable institution. The two clauses, therefore, do not necessarily overlap*".

[1] (1994) 12 ITR 385,390 (Lahore)
[2] (1954) 25 ITR 472 (All)

12.35 The Bombay High Court followed these decisions in *J.K. Trust v. Commissioner of Income-tax*[1]. The learned judges observed that the true scope of section 4(3)(ia) is that it includes within its scope income from business carried on behalf of a religious or charitable institution whether or not there is any trust either in regard to the business or in regard to the institution.

12.36 In this state of judicial pronouncements, the legislature brought an amendment to the said section by Act XXV of 1953. The amendment took effect from April 1, 1952. The amendment provision was in these terms:

> "*Any income, profits or gains falling within the following clauses shall not be included in the total income of the person receiving them;*
>
> *(i) Subject to the provisions of clause (c) or sub-section (1) of section 16, any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, in so far as such income is applied or accumulated for application to such religious or charitable purposes as relate to anything done within the taxable territories, and in the case of property so held in part only for such purposes, the income applied or finally set apart for application thereto;*

Provided that such income shall be included in the total income.

> *(b) in the case of income derived from business carried on behalf of a religious or charitable institution, unless the income is applied wholly for the purposes of the institution and either-*
>
> *(i) the business is carried on in the course of the actual carrying out of a primary purposes of the institution, or*

[1] (1958) 33 ITR 32 (Bom)

(ii) the work, in connection with the business, is mainly carried on by beneficiaries of the institution.

12.37 It may be noted that the provisions of old clause (ia) were then enacted in the form of the proviso (b) to clause (i).

12.38 The question that then arose was whether the terms of the proviso (b) operate to exclude income from business altogether, through the business, which is property held under trust or other legal obligation wholly or partly for religious or charitable purposes.

12.39 The said question came up for consideration before the Madras High Court in *Thiageswar Dharma Vanikam v. C.I.T*[1]. It was contended for the Department that the very object of the proviso was to exclude business income altogether from the operation of the exemption under section 4(3)(i) of the Act and that the terms of the proviso make the object of the Legislature quite manifest and clear.

12.40 The Madras High Court following the decisions of the Bombay High Court in *Dharma Vijaya Agency v. C.I.T.*[2] of the Kerala High Court in *C.I.T. v. Krishna Warriar*[3] and in *Dharmodayam Co. v. C.I.T.*[4] held that proviso (b) to section 4(3)(i) does not restrict the operation of the main proviso in section 4(3)(i). If a trust carried on business and the business itself is held in trust and the income from such business is applied or accumulated for application for the charitable or religious purpose of the trust, the conditions prescribed in section 4(3)(i) are fulfilled and the income is exempt from taxation. It was held that proviso (b) to section 4(3)(i) has application only to businesses, which are not held in trust, and the field of its operation is, therefore, distinct and separate from that covered by section 4(3)(i) of the Act.

12.41 The Supreme Court thereafter affirmed the decision of the Kerala High Court in *C.I.T. v. P. Krishna Warriar*[5]. Subba Rao J speaking for the Court observed that business is property and if a

[1] (1963) 50 ITR 798 (Mad)
[2] (1960) 38 ITR 392 (Bom)
[3] (1962) 44 ITR 828 (Ker)
[4] (1962) 45 ITR 478 (Ker)
[5] (1964) 53 ITR 176 (SC)

business is held in trust wholly or partly for religious or charitable purposes it falls clearly under the substantive part of section 4(3)(i) and in that event clause (b) of the proviso cannot be attracted as that clause applies only to a business not held in trust but carried on behalf of a religious or charitable institution. In *C.I.T. v. Dharmodayam Co.*[1] Wherein the Court once again drew a distinction between a business held under trust for charitable or religious purposes and one carried on behalf of a charitable or religious institution. It held that despite the change brought about by the 1961 Act, by framing a new definition of "*charitable purpose*" with the addition at the end of the words "*not involving the carrying on of any activity for profit*", a charitable trust cannot lose exemption if the business is held under trust and is not started by it for the purpose of advancing an object of general public utility.

12.42 It may be noticed that the provisions of section 11(1) of the Act of 1961 are in *pari materia* with that of section 4(3)(i) of the 1922 Act and the proviso (b) to section 4(3)(i) contained language somewhat similar to that now appearing in section 11(4A)(b). Since the legislature through the Finance Act, 2008 has again amended the definition of the expression "*charitable purpose*" as contained in section 2(15) of the 1961 Act, it is to be seen whether a charitable trust can still claim exemption in respect of income from "*business held in trust*" even when the work in connection with the business is carried on not mainly by the beneficiaries of the institution but by others (see detailed discussion in Chapter 4).

DIRECT OR INDIRECT BENEFIT TO INTERESTED PARTIES

12.43 Section 13(1)(c)(i) provides that in the case of trust or institution for charitable or religious purposes, which has been created or established on or after 1-4-1962, no part of its income should, under the terms of the trust or the rules governing the institution, enure directly or indirectly for the benefit of certain interested persons referred to in section 13(3) of the Act, otherwise, the trust or institution shall lose exemption altogether.

[1] (1977) 109 ITR 527 (SC)

This condition does not apply if the trust or institution was created or established before 1-4-1962.

12.44 Section 13(1)(c)(i) provides that no part of the income or property of a trust or institution (whenever created or established) should be used or applied directly or indirectly for the benefit or certain interested persons referred to in section 13(3) of the Act. Otherwise, the trust or institution shall lose exemption altogether. In *CIT v. Kamla Town Trust*[1], the Allahabad High Court held that the burden is on the Revenue to prove that section 13 applies. In *Champa Charitable Trust*[2], the Court held that if the income of the trust is applied for the benefit of another trust who has made substantial contribution to the first trust, there would be violation of section 13(1)(c)(i). In *Anand Marga Pracharak Sangha v. C.I.T.*[3], the Court held that if the trust incurred expenditure on criminal litigation for defending the trustees and where the criminal case is connected with the affairs of the trust and the implementation of its objects, the meeting of expenditure on criminal litigation by the trust does not amount to benefit being conferred upon the trustees within the meaning of section 13.

12.45. However, the first proviso to section 13(1)(i)(c)(ii) grants exemption from the said condition, if the trust or institution, was created or established before 1-4-1962 and its income or property is being used or applied for the benefit of those interested persons only by way of compliance with a mandatory term of the trust or a mandatory rule governing the institution. The Punjab & Haryana High Court in *C.I.T v. Rattan Trust*[4] dealing with the first proviso to section 13(1)(c)(ii) held that it is not necessary that the mandatory nature of the rule governing the trust deed providing for direct or indirect benefit to the settlor should be in the rules of the trust before the commencement of the 1961 Act. Since this proviso was brought by an amendment made with effect from 1st April, 1971, by the Finance Act, 1970, it is enough if the mandatory term is introduced in the trust deed through an amendment made thereto before the amended law took effect. The Supreme Court[5] however

[1] (2005) 279 ITR 89 (All)
[2] (1995) 214 ITR 764 (Bom)
[3] (1995) 218 ITR 254 (Cal)
[4] (1980) 123 ITR 562 (PH)
[5] (1997) 227 ITR 356 (SC)

reversed the decision of the Punjab & Haryana High Court and held that the mandatory term should have existed in the trust deed before April 1, 1962.

12.46 In *C.I.T. v. Nagarathu Vasiyargal Sangam*[1], their lordships of the Madras High Court were dealing with the case of an assessee, which was a trust established before the commencement of the 1961 Act. Its trust deed was amended after 01.04.1962 and the amendment introduced a mandatory requirement for payments to persons interested in trusts. The court held that since the mandate did not exist before 01.04.1962 and it was brought in by amending the trust deed at a later stage, the benefit of the first proviso to section 13(1)(c)(ii) cannot be claimed.

12.47 The second proviso to section 13(1)(c)(ii) provides that the trust or institution shall not lose exemption in respect of any use or application, whether directly or indirectly, of any part of its income or any property of the trust or institution for the benefit of certain interested persons referred to in section 13(3) of the Act, in so far as such use or application relates to any period before the 1st day of June, 1970.

12.48 Interpreting the said second proviso to section 13(1)(c)(ii) the Benches of the Tribunal both in Calcutta (see ITA No. 562 (Cal) of 1977-78-*Ramkumar Jalan Public Charitable Trust)* as also in Bombay (see ITA No. 2488 (Bom) of 1973-74) have been uniformly holding that loans granted and/or investment made by a trust prior to 1st June, 1970 and continued even thereafter though in violation of the provisions of section 13(2) of the Act, would not deny it exemption from tax.

12.49 The Finance Act, 2000 has inserted sub-section (2) in section 12 by numbering the existing provision as sub-section (1) with effect from 01.04.2001. New sub-section (2) of section 12 provides that the value of any medical or educational services made available by any charitable or religious trust running a hospital or medical institution or an educational institution to any person referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-section (3) of section 13 shall be

[1] (2000) 246 ITR 164 (Mad)

deemed to be the income of such trust or institution derived from property held under trust wholly for charitable or religious purposes during the previous year in which such services are to be provided and shall be chargeable to income tax notwithstanding the provisions of section 11(1). The expression '*value*' has been defined in the explanation to section 12 to mean the value of any benefit or facility granted or provided free of cost or at concessional rate to any of the specified persons. A new sub-section (6) has also been inserted by the Finance Act, 2000 in section 13 with effect from 01.04.2001 to provide that a trust running an educational institution or a medical institution or a hospital shall not lose the benefit of exemption of any income, other than the value of benefits of educational or medical facilities provided to specified persons, solely on the ground that such benefits have been provided to the specified persons.

DEEMED USE OR APPLICATION OF INCOME OR PROPERTY OF THE TRUST

12.50 Section 13(2) of the Act lays down that without prejudice to the generality of the provisions of section 13(1)(c) (discussed earlier in paragraphs 12.41 to 12.47) the income or property of the trust or institution or any part of such income or property shall for the purposes of section 13(1)(c) be deemed to have been applied for the benefit of prohibited persons or interested persons referred to in section 13(3) in the following cases and/or circumstances and the trust shall, therefore lose exemption under section 11 of the Act.

(a) If any part of the property or income of the trust or institution is or continues to be lent to any of the prohibited persons without either adequate security or adequate interest or both;

(b) if any land, building, other property of the trust or institution is, or continues to be made available for the use of the prohibited persons for any period during the previous year without charging adequate rent or other compensation;

(c) if any amount is paid by way of salary, allowance or otherwise during the previous year to any of the prohibited persons out of the resources of the trust or institution for

services rendered by such person to the trust or institution and the amount paid is in excess of what may be reasonably paid for such services,

(d) if the services of the trust or institution are made available to any of the prohibited persons during the previous year without adequate remuneration or compensation;

(e) if any share, security or other property is purchased by or on behalf of the trust or institution from any of the prohibited persons during the previous year for consideration which is more than adequate;

(f) if any share, security or other property is sold by or on behalf of the trust or institution to any of the prohibited persons during the previous year for a consideration, which is less than adequate

(g) if any income or property of the trust or institution exceeding Rs. 1,000 is diverted during the previous year in favour of any of the prohibited persons;

(h) if any funds of the trust or institution are or continue to remain invested for any period during the previous year (not being a period before the 1st day of January, 1971) in any concern in which any of the prohibited persons has a substantial interest.

12.51 However, section 13(4) provides that if the funds of the trust invested in any concern in which the prohibited persons have a substantial interest, do not exceed five per cent of the capital of that concern, the entire income of the trust shall not forfeit exemption from tax, but the exemption shall be denied only to the income derived by the trust from such investment.

12.52 In *C.I.T. v. Nachimuthu Industrial Association*[1], their Lordships of the Madras High Court dealing with the provisions of section 13(2)(a) as well as section 13(2)(h) of the Act held that for an amount to fall within the mischief of the former, there must be a loan and to constitute a loan, there must be a positive act of lending, coupled with an acceptance by the other side of the money as a loan. The relationship of borrower and lender must

[1] (1982) 138 ITR 585 (Mad)

come into existence by act of the parties and the mere circumstance that a partnership concern was not in a position to pay the amount due to the assessee trust on the date of its retirement from the partnership and the fact that the amount were shown in the books of firm as due to the assessee trust cannot convert the amount due as an advance by the assessee trust to the partnership. In regard to section 13(2)(h) of the Act, the Court held that in order to constitute an investment, the moneys must be laid out in such a manner as to acquire some species of property which would bring an income to the investor. The mere fact of non-payment by the partnership concern of the amounts due to the assessee could not be held to be a case of "*investment*" of any moneys by the assessee trust with the partnership firms as under stood in the business would inasmuch as the partnership firms were bound to return the moneys due and payable to the assessee as and when demanded. This Court, therefore, held that neither section 13(2)(a) nor section 13(2)(h) would apply in the case of the assessee trust and the exemption would not be denied. The Bombay High Court in the case of *Trustees of Mangaldas N. Varma Charitable Trust v. CIT* [1] also held that the expression "funds" implies an act of investment of money by the trustees and the term "are invested" implies a positive act by the persons authorising viz. the trustees. It was also observed that the expression "*continues to remain invested*" as used in section 13(2)(h) presupposes a positive act of investment by trustees at an earlier stage. In this view of the matter, the Bombay High Court held that if a charitable trust received shares by way of donation and continues to hold such shares along with bonus shares issued thereafter, there would be no violation within the meaning of section 13(2)(h) of the Act. However, so far as holding of shares is concerned, the provisions of section 13(1)(d) may get attracted, resulting in loss of exemption (refer paragraphs 12.90 and 12.91).

12.53 This view has been reiterated by the Delhi High Court in *C.I.T. v. Sir Shri Ram Foundation*[2]. Their Lordships of the Delhi High Court analysed the meaning of the expression '*fund*' and '*investment*' in different dictionaries and held and observed that these two expressions have to be understood in the context in

[1] (1994) 207 ITR 332 (Bom)
[2] (2001) 250 ITR 55 (Del) at pages 59 – 63

which these are used in section 13(2)(h) of the Act. The Court held that what is contemplated is that the trust having assets in the form of money or cash or balance in a bank or any other form capable of being invested by a positive act and pursuant to a decision of the trust was laid out or committed in a prohibited concern, before it can be held that such an investment comes within the mischief of section 13(2)(h) of the Act.

12.54 In *Auditor Dasaradha Rami Reddy Charities v. C.I.T.*[1], their Lordships of Madras High Court held that a promissory note cannot be equated to funds, but at best could only be an actionable claim and an investment of an actionable claim cannot be conceived of when an institution receives promissory note donated to it and these are kept intact, there is no investments of the funds of the trust in the Pro-notes by a person authorised to do so in its behalf. The use of the words "*funds of the trust or institution are invested or deposited*" clearly contemplated that monies belonging to the irust or institution, should be invested or deposited by a positive act on behalf of the trust or institution and if such investment is not in any of the modes specific under section 11(5) of the Act, only then the benefit of exclusion of such income from the total income would not be available to the trust.

12.55 In *C.I.T. v. Pittie Charitable Trust*[2], the Court held that if a trust receives as donation fixed deposits in a company, there is no lending of income, funds or property of the trust within the meaning of section 13(2)(a).

12.56 In *C.I.T. v. Trustees of Mangaldas N. Varma Charitable Trust*[3], the Court held that a receipt of shares by way of donation does not amount to investment of trust fund within the meaning of section 13(2) (h). Same view was taken by the Calcutta High Court in *C.I.T. v. Birla Charity Trust*[4], and in *C.W.T. v. Bharat Charity Trust,*[5] by the Gujarat High Court in *C.I.T. v. Insanyat Trust*[6], *C.I.T. v. Sahitya Trust*[7], *Sarabhai Foundation v. C.I.T*[1] & *C.I.T. v. Lalbhai*

[1] (1989) 177 ITR 249 (Mad)
[2] (1994) 207 ITR 1053 (Bom)
[3] (1994) 207 ITR 332 (Bom)
[4] (1998) 170 ITR 150 (Cal)
[5] (1993) 199 ITR 420 (Cal)
[6] (1988) 173 ITR 248 (Guj)
[7] (1993) 203 ITR 349 (Guj)

Dalpatbhai Charity Trust[2]*,* by the Allahabad High Court in *C.I.T. v. J.K.Charitable Trust*[3] and by the Delhi High Court in *C.I.T. v. Sir Shri Ram Foundation*[4] and in *C.I.T. v. Sir Sobha Singh Public Charitable Trust*[5].

12.57 In *C.I.T. v. Eternal Science of Man's Society*[6] the Delhi High Court held that in section 13(2) of the Income-tax Act, 1961, a distinction has been made between '*loans and other investments*'. Since a specific provision has been made in clause (a) of section 13(2) in regard to loans made by a charitable trust or institution to a person specified in section 13(3), these loans will not fall within the generic terms '*investment*' as appearing in clause (h) of section 13(2). If the funds of a trust are invested in debentures or loans, then clause (a) of section 13(2) would be applicable, whereas if funds are invested in equity capital i.e. shares etc., then clause (h) of section 13(2) would be attracted. In the case of a loan or debenture, the Court observed that what was required to be examined was whether adequate security or adequate interest or both had or had not been provided. The Court further observed that the distinction between section 13(2)(a) and section 13(2)(h) also accords with reasons as in the former case there was no participation in profits and no fluctuation of investment, but only a fixed interest return; whereas in the later, there is a participation in profits and the value of investment fluctuates. Two provisions have to be construed in a harmonious manner. If investments were held to include loans, as urged by the Revenue, the Court observed that it would render clause (a) of section 13(2) otiose.

12.58 In *Commissioner of Income-tax v. Polisetty Soma Sundaram Charities*[7]*,* their Lordships of the Andhra Pradesh High Court held that the expressions "*lent*" and "*invested*" as appearing in sections 13(2)(a) and 13(2) (h) are sought to be made applicable in different situation, the legitimate inference is that they bear a distinct interpretation. In commercial parlance, "*lent*" is

---

[1] (1994) 209 ITR 390 (Guj)
[2] (1994) 209 ITR 865 (Guj)
[3] (1992) 196 ITR 31 (All)
[4] (2001) 250 ITR 55 (Del)
[5] (2001) 250 ITR 475 (Del)
[6] (1981) 128 ITR 456 (Del)
[7] (1990) 183 ITR 377 (AP)

associated with advancing money for an agreed rate of interest returnable within a specified period of time. Though the expression "*invest*" in a broad sweep takes in lending also, it should be considered as confined to the layout of an amount in a venture or institution with a profit motive and with no promise of assured return. In the process of investment, an element of risk is involved and the expectation of return or profit is not assured and the depletion of capital itself is not an abnormal feature. In the case of lending, the return by way of interest is generally assured and the element of risk is minimal. Reference in this context may also be made to the *Circular No. 45 dated 2nd September, 1970*[1] issued by the CBDT as well as to the decision in *C.I.T. v. Nirmala Bakubhai Foundation*[2]*.*

12.59 In *Haji Latif Charitable Trust*[3]*,* the Bangalore Bench of the Income-tax Appellate Tribunal was considering the case where the assessee trust became a partner in a firm in which the relative of a trustee was partner with 20 per cent shares in the profits and losses of the firm. The Tribunal held that the capital contributed in the firm by the assessee trust was nothing but an investment within the meaning of section 13(2)(g) of the Act. The Tribunal also held that the expression "*capital of the concern*" used in section 13(4) of the Act would include the aggregate capital of all the partners as also the borrowed capital of the firm. In this view of the matter, the Tribunal was of the view that since capital contributed by the assessee trust being Rs. 24,000 only as against the aggregate capital including borrowings amounting to Rs. 5,79,719, the assessee trust was entitled to the benefit of section 13(4) of the Act.

12.60 In *C.I.T. v. Chandrika Educational Trust*[4]*,* the Court held that if the charitable trust becomes partner in a firm and more than 5% of the capital is contributed by the trust, it is not entitled to the exemption under section 11, but delayed withdrawal of profits of the firm in which the trust is a partner, would not amount to

[1] (1991) 79 ITR (St) 33
[2] (1997) 226 ITR 394 (Guj)
[3] (1979) 13 CTR (Trib) 6
[4] (1994) 207 ITR 108 (Ker)

investment in the firm. Same view was reiterated in *Sree Narayana Chandrika Trust v. C.I.T*[1].

WHAT IS "ADEQUATE"

12.61 In the absence of any definition of the term "*adequate*", difficulty is likely to arise in considering as to what is adequate rent, or adequate security, or adequate interest or adequate remuneration or adequate consideration-the words used in section 13(2) of the Act, since no guidelines in the Act had been given for the purposes of determining as to what is "*adequate"*.

12.62 The expression "*adequate consideration*" has been judicially interpreted in a number of cases in connection with the provisions of section 64 of the Income-tax Act, 1961, section 4 of the Wealth-tax Act,1957 and section 4 of the Gift-tax Act, 1957.

12.63 In the Imperial dictionary, the word "*adequate*" is stated to mean equal, proportionate, exactly correspondent, fully sufficient. In *Thiagarajar Tulsidas Kilachand v. C.I.T.*[2], the Supreme Court held that adequate consideration does not mean good consideration. It stated that there may be good consideration to support a contract, but adequate consideration to avoid tax is quite a different thing. Same view was expressed by the Calcutta High Court in *P.J.P. Thomas v. C.I.T*[3]. It was stated in the said case that adequacy of consideration connotes that consideration should be in money or money's worth of such a value or valuation that it should provide a dependable test for Courts, Tribunals, or taxing authorities for interpreting the adequacy of the consideration involved. In this respect, *Sethuraman J.* observed in *Smt. V. Amirthan Ammal v. C.I.T.*[4] that "*adequate consideration*" contemplated by section 64 of the Income-tax Act, 1961 is consideration equal or nearly equal to the value of the assets transferred.

12.64 In *C.G.T. v. Cawasji Jahangir Co. (P) Ltd.*[5], the Bombay High Court held that the expression "*adequate consideration*" has

[1] (1997) 224 ITR 445 also see 224 ITR 449, 453, 464 and 468 (Ker)
[2] (1961) 42 ITR 1 (SC)
[3] (1962) 44 ITR 897 (Cal)
[4] (1976) 102 ITR 350 (Mad)
[5] (1977) 106 ITR 390 (Bom)

to be construed in a broad sense. In order that the Court may hold that a particular transfer is not for adequate consideration, the difference between the true value of the property transferred and the consideration that passed for the same, must be appreciable.

12.65 In *C.G.T. v. Indo Traders & Agencies (Madras) Pvt. Ltd.*[1], their Lordships of the Madras High Court held that adequate consideration is not necessarily what is ultimately determined by someone else as '*Market value*'. The Court held that unless the price was such as to shock the conscience of the Court, it would not be possible to hold that the transaction is otherwise than for adequate consideration. It was further observed that if the consideration, which passed, can be considered to be reasonable and fair, it cannot be considered to be inadequate.

12.66 In the market, the rates of interest are always fluctuating. The rate of interest charged by the commercial banks on overdrafts or cash credit limits, vary at present, between 10 percent to 15 percent. But the best of companies pay interest on deposit (unsecured) at rates varying between 8 percent to 12 percent depending upon the period of deposits. In the circumstances, the task of the trustees is very difficult and an honest difference of opinion between the trustees and the Assessing Officer on the determination of what is adequate interest or rent etc. may lead to loss of exemption to the trust.

FUNDS OF THE TRUST: CAPITAL OF THE CONCERN

12.67 Neither "*funds of the trust*" nor "*capital of the concern*" – the two expressions used in section 13(2)(h) read with section 13(4) of the Act, have been defined or explained. "*Funds of the trust*" normally consist of initial contribution made by the settlors and all accumulations or accretions thereto during the relevant period, whether by way of voluntary contributions or income derived from the property held under trust. The fund may be defined as the capital sum or the permanently available stock of pecuniary resources. A loan obtained by a trust can, in no case, form part of the "*trust fund*". The Finance Minister while moving the

[1] (1981) 131 ITR 313 (Mad)

Finance Bill, 1970 in the Parliament also explained in his Budget Speech that "t*rust fund*" means the corpus and income of the trust. But the Assessing Officers in some cases are holding "*loans*" obtained by the trust as a part of "*trust fund*".

12.68 The meaning of the expression "*fund*" as given in the different dictionaries is as under:

(a) According to the Concise Oxford dictionary, the word '*fund*' (n) means "*permanent stock of something ready to be drawn upon; stock of money of money esp. one set apart for a purpose; pecuniary resources; stock of national debt as mode of investment*";

(b) According to Chambers Twentieth Century dictionary, the word "*fund*" (n) means "*a sum of money on which some enterprise is founded or expenses supported; supply or source of money; a store laid up; supply (pl.) permanent government debts paying interest, money (pl., slang)*"

(c) According to the Shorter Oxford English dictionary, the word "*fund*"(n) means, "*source of supply"; a permanent stock that can be drawn upon: a stock or sum of money specially one set apart for a particular purpose; pecuniary sources; a portion of revenue set apart as a security specified funds*", and

(d) According to the Stroud's Judicial dictionary, the word-

(i) "*funds*" or "*estate*" may mean *actual cash resources of a particular kind, for example, money in a drawer or bank, or it may be a mere accountancy expression used to describe a particular category, what a person uses in making up his accounts*.

(ii) "*trust funds*", in its ordinary expression and as used in the Trust Investment Act, 1889, is confined *in its meaning to cash awaiting investment but signifies funds belonging to the trust including money on security or otherwise as well as investment cash; therefore, the power to vary the extent to all investments whether made under the Act or not*, and

(iii) "*trust funds*"..... *in a state of investment include investments specially settled by a will containing no*

express power of sale; the trustees accordingly have power to sell such investments and re-investment in any authorised security.

(e) "Black's Law Dictionary, Fifth Edition: *Fund* means *an asset or group of assets set aside for the specific purpose*.

A generic term and all-embracing as compared with term 'money' etc. which is specific. A sum of money or other liquid assets set apart for a specific purpose or available for the payment of debts or claims. In the plural, this word has a variety of slightly different meanings, as follows: moneys and much more, such as notes, bills, cheques, drafts, stocks and bonds, and in broader meaning may include property of every kind ..... Money in hand, assets, cash, money available for the payment of a debt, legacy, etc. Corporate stocks or Government securities; in this sense usually spoken of as the 'funds'. Assets, securities, bonds or revenue of a State or Government appropriated for the discharge of its debts. Generally, working capital, sometimes used to refer to cash or to cash and marketable securities."

(f) Dictionary for Accountants, 4th Edition, by Eric L. Kohler: *Fund* means

i. *An asset or group of assets within any organisation, separated physically or in the accounts or other from both assets and limited to specific uses. Examples: a petty cash or working fund; a replacement and renewal fund; accident fund a contingent fund; a pension fund.*

Example: a trust fund created by a will; an endowment fund; a sinking fund.

ii. *Pl. Current assets less current liabilities (on an accrual basis); working capital; a term used in cash flow statement*.

(g) Chambers "Twentieth Century Dictionary, New Edition

"*Fund*: (n) *a sum or money on which some enterprise is founded or expense supported; a supply or source of money*:

(h) The Concise Oxford Dictionary, 5th Edition.

'*Fund*: (n) *Permanent stock of something ready to be drawn upon-stock of money-pecuniary resources*'.

(i) Webster's Seventh New Collegiate Dictionary-based on Webster's Third New International Dictionary (p. 538): *Fund* means

a. an available quantity of material or intangible resources; supply;

b. *a sum of money or other resources, the principal or interest of which is set apart for a specific objective*.

12.69 The expression '*invest*' in section 13(2)(h) of the Act is used as a verb and the meaning of the said expression in the standard dictionaries is as follows:

a. Chamber's Twentieth Century Dictionary, New Edition.

"*..... to lay out for profit as by buying property, shares etc*."

b. The Concise Oxford Dictionary, 5th Edition.

'*..... lay out money on, as (invest) in a car*.

c. Webster's Seventh New Collegiate Dictionary:

i. to commit (money) in order to earn a financial return;

ii. *to make use of for future benefits or advantage, to make an investment*."

"*In general. - The word has a variety of meanings, but the sense in which it is employed must be gathered from the context. It is not a legal term with a settled meaning but it is a term in common use, suggesting money, in common speech, although technically it may be employed to cover other articles of value, for the term 'fund' or 'funds' is generic and all embracing as compared with the term money, etc. which is specific In the plural. "Capital : cash, money or moneys; money and negotiable paper immediately or readily convertible into cash, available pecuniary resources; money in hand or available for the payment of a debt, legacy, etc.; specie, or a stock of*

convertible wealth; and 'funds' may mean or include not only money, as the term is generally understood, but other circulating medium or instrument or tokens in general use in the commercial world as the representatives of value, such as bank notes, bills, cheques, drafts, notes, stocks and bonds, deposits or certificates of deposit, evidences of money lent to the Government, constituting a national debt, for which interest is paid at prescribed intervals ....."

d. Corpus Juris Secundum Vol. XXXVII

"*In General. - The word has a variety of meanings, but the sense in which it is employed must be gathered from the context. It is not a legal term with a settled meaning but it is a term in common use, suggesting money, in common speech, although technically it may be employed to cover other articles of value, for the term "fund" or "funds" is generic and all embracing as compared with the term 'money', etc. which is specific ....." In the plural, "capital : cash, money, or moneys; money and negotiable paper immediately or readily convertible into cash, available pecuniary resources; money in hand or available for the payment of a debt, legacy, etc. specie, or a stock of convertible wealth; and 'funds' may mean or include not only money, as the term is generally understood, but other circulating medium or instrument or tokens in general use in the commercial world as the representatives of value, such as bank notes, bills, cheques, drafts, notes, stocks and bonds, deposits or certificates of deposit, evidences of money lent to the Government, constituting a national debt, for which interest is paid at prescribed intervals*."

12.70 The Supreme Court, in *R.K. Dalmia v. The Delhi Administration*[1], explained the expression “fund” as under:

“*The word “fund” may mean actual cash resources of a particular kind (e.g. money in a drawer or a bank), or it may be a mere accountancy expression used to describe a particular category which a person used in making up his accounts. The words payment out of “when used in*

[1] AIR 1962 SC 1821

> *connection with the words "fund" in its first meaning connote actual payment, e.g., by taking the money out of the drawer or drawing a cheque on the bank; when used in connection with the word "fund" in its second meaning they connote that, for the purposes of the account in which the fund finds a place, the payment is debited to that fund, an operation which, of course, has no relation to the actual method of payment or the particular resources out of which the payment is made*".

12.71 In *C.I.T. v. Sir Shri Ram Foundation*[1] and in *C.I.T. v. Sobha Singh Public Charitable Trust*[2], their lordships of the Delhi High Court analysed the meaning of the expressions '*fund*' and '*investment*' from different dictionaries and applied the principles laid down by the apex court in *Dalmia's case*.

12.72 The term "*capital*" is a word of many different applications and even in the legal, economic and accountancy sense it is used to describe conception at different times, although its users do not always recognize the fact (L.C.B, Gower: *the Principles of Modern Company Law. (3rd Edition, Page 102).*

12.73 In *Carter's "Advanced Accounts"* (1932) at page 1 itself, it is started that in book keeping the capital of a business is the sum total of the assets and the capital of the proprietor of the business is the surplus or excess of assets over liabilities.

> *"Kekker and Ferrara"* in their book "*Management Accounting for Profit Control"* (Second Edition at page 395) has defined the expression "capital employed by a company" to mean the sum total of its assets as shown on its Balance Sheet.

12.74 In *Texas Land and Mortgage Company, v. Holtham*[3] in reply to the argument of Finlay Q.C., that "*the capital of the company, properly so called, is the share capital*" *Cave J. remarked-*

---

[1] (2001) 250 ITR 55 (Del)
[2] (2001) 250 ITR 475 (Del)
[3] (1894) 3 TC 255, 260

"*To the extent that you borrow you increase the capital of the company*".

12.75 In *Indore Malwa United Mills Ltd. v. State of M.P*[1]*,* the Supreme Court observed that after borrowing the money becomes the company's money. Following the said observation, the Calcutta High Court in *Century Enka Ltd. v. I.T.O.*[2] in the context of section 80J of the Act held that the expression "*capital employed*" would include borrowing also.

12.76 In *C.I.T. v. Indian Oxygen Ltd.*[3]*,* the Calcutta High Court has cited with approval the decision of the *House of Lords* in the case of B*irmingham Small Arms Co. Ltd.,*[4] to the effect that the words "*capital employed in a trade or a business*" do not bear any significant different meaning from the words "*capital of a trade or a business*".

12.77 The Calcutta Bench of the Income tax Appellate Tribunal in the case of *Ramkumar Jalan Public Charitable Trust* (ITA No. 1862 (Cal) of 1977-78) held that the expression "*capital of the concern*" used in section 13(4) of the Act is wide enough to include not only the share capital of the company in which the investment was made but sum total of the assets, that is to say, the aggregate of capital plus all liabilities.

12.78 However, their Lordships of the Gujarat High Court in *C.W.T. v. Lallubhai Gordhandas Charitable Trust*[5] held that the expression '*capital of that concern*' which occurs in the second proviso to section 21A of the Wealth Tax Act, 1957 is intended to take within its sweep all the types of concerns in which the trusts could invest its funds. The word '*capital*' will therefore, take colour from the type of concern to which it is applied. In the context of a partnership concern, by the capital of a partnership is meant the aggregate of the sums contributed by the partners for the purpose of commencing or carrying in the partnership business and intended to be risked by them in their business. The capital of a partnership is therefore, not the same thing as its assets, which

[1] (1965) 55 ITR 736 (SC)
[2] (1977) TLR 615 (Cal); (1977) 107 ITR 909 (Cal)
[3] (1978) 113 ITR 109, 114 (Cal)
[4] (1951) 2 All ER 226 (HL)
[5] (1999) 239 ITR 448 (Guj)

may vary from day to day and would include everything belonging to the firm, which has money value. There is a fundamental distinction between a firm's capital on the one hand and its assets often called '*capital assets*' on the other. That distinction is critical to an understanding of the true nature of capital where a partner brings in the assets and is credited with its capital value in the firm's books, the asset as such will cease to be his property and will thereafter belong to the firm. The partner's capital will thereafter be unaffected by fluctuations in the value of the asset, which will represent capital profits or losses potentially divisible between the partners in their capital profit sharing ratios. Similarly, when the concern is a company registered under the Companies Act, 1956, the word capital will have to be understood in the context of the provisions of that Act. As provided by section 13(4) of the Companies Act, in the case of a company having a share capital, the Memorandum shall state the amount of share capital with which the company is to be registered and the division thereof in the shares of a fixed amount. The word '*capital*' is used in Company Law in various senses, but it is properly used to denote the share capital of a company. A reserve fund could not be properly called in itself a capital. The meaning of the word '*capital*' in the context of the provisions of the second proviso to section 21A of the said Act cannot be made mercurial by attaching it to all the assets that the company may own, nor can it include the reserves of the company, which can at any subsequent time be distributed as dividend. The expression '*capital employed*' stands on a different footing in the context of the provisions of section 80J of the Income-tax Act, read with rule 19A of the rules framed thereunder and cannot be projected in the expression (capital of that concern) occurring in the second proviso to section 21A of the Wealth Tax Act, the purpose underlying the provisions of section 80J being different from the object sought to be achieved by the provisions of the second proviso to section 21A of the said Act, and for that matter even the provisions of section 13(4) of the Income-tax Act, 1961.

12.79 Section 13(2)(a) provides that if any part of the property or income of the trust or institution is or continues to be lent to any of the prohibited persons, then the trust will lose exemption if such lending is either without adequate security or without adequate interest or both. Thus where the trust lends its income or property

to any of the prohibited persons, it must charge an adequate rate of interest and must also insist on adequate security. The existence of both adequate interest as also adequate security is essential and absence of any or both would result in total loss of exemption in respect of the entire income of the trust and not necessarily the income by way of interest due and/or received on the said loan.

12.80 The expression "*security*" has not been defined in the Act. But the Income Tax Appellate Tribunal, "A" Bench, Calcutta, in the case of *Harak Chand Kankaria Charitable Trust* in ITA No. 3626 and 3627 (Cal) of 1977-78 held that a personal guarantee of a person holding substantial wealth would be sufficient compliance with the requirement of providing "*adequate security*" for the purposes of section 13(2)(a) of the Act.

WHO IS A PROHIBITED OR INTERESTED PERSON

12.81 For the purpose of section 13(1)(c) read with section 13(2) of the Act, the following is the list of prohibited or interested persons:

(a) the author of the trust or the founder of the institution;

(b) any person who has made a substantial contribution to the institution; trust or institution, that is to say, any person whose total contribution upto the end of the relevant previous year exceeds Rs. 50,000/-;

(c) where such author, founder or other person in Hindu undivided family, a member of the family;

(d) any trustee of the trust or manager of the institution;

(e) any relative of any such author, founder, person, member, trustee, or manager as aforesaid;

(f) any concern in which any of the person referred to in (a) to (e) has a substantial interest – See section 13(3).

12.82 In *C.I.T. v. Charat Ram Foundation*[1], their lordships of the Delhi High Court noted that the expressions '*founder*' and

[1] (2001) 250 ITR 64 (Del)

'*institution*' have not been defined in section 13 of the Act. The court held and observed that the persons who subscribe to the Memorandum of Association can be described as the founders of the society or the company concerned. The word '*institution*' both in legal and colloquial use admits of application to physical things. One of its meanings, as defined in Webster's Dictionary is '*an establishment, especially of public character or affecting a community*'. The term is sometimes used as descriptive of an establishment or a place where the business or operation of a society or association is carried on. At other times, it is used to designate the organised body. The expression '*substantial contribution*' has to be understood in its ordinary or popular sense. The court rejected the assessee's stand before the Tribunal to the effect that in order to become a substantial contribution, the contributions must be made during the particular previous year. The court held that it is not permissible to read the expression 'during the previous year' in section 13(3)(b) of the Act.

12.83 In *C.I.T. v. Rai Bahadur Bissweswarlal Motilal Halwasia Trust*[1], their lordships of the Calcutta High Court following the principles laid down by the Supreme Court in *C.I.T. v. Thanthi Trust*[2] held that when the trust and institution referred to in section 13 are not one and the same thing and they are different entities, the grant of loan or advance by a trust to its manager would not be hit by the mischief of the provisions of sections 13(1)(c) and 13(2)(a) of the Act.

12.84 In *C.I.T. v. Tata Steel Charitable Trust*[3], the Court held that if the employees of settlor derive benefit of trust as members of public, the trust cannot lose exemption. The employees of settlor are not covered by section 13(3).

12.85 For the purposes of section 13 (see Explanation 1 thereto), the term "*relative*" in relation to an individual, means-

(a) the spouse of the individual,

(b) the brother or sister of the individual,

(c) the brother or sister of the spouse of the individual,

---

[1] (2001) 252 ITR 84 (Cal)
[2] (2001) 247 ITR 785 (SC)
[3] (1993) 203 ITR 764 (Pat)

(d) any lineal ascendant or descendant of the spouse of the individual,

(e) the spouse of any person, referred to in (b), (c), (d) or (e) above,

(f) any lineal descendant of a brother or a sister of either the individual or of the spouse of the individual.

WHAT IS SUBSTANTIAL INTEREST

12.86 Explanation 3 to section 13 of the Act provides that a person shall be deemed to have a substantial interest in a concern-

(a) in a case where the concern is a company, if its equity shares carrying not less than 20 per cent of the voting power are, at any time during the previous year, owned beneficially by such person and partly by one or more of the other persons referred to in section 13(3);

(b) in the case of any other concern, if such person is entitled, or such person and one or more of the other person referred to in section 13(3) are entitled in the aggregate, at any time during the previous year, to not less than 20 per cent of the profit of such concern.

CONDITIONS AS TO INVESTMENT OF TRUST FUNDS

12.87 Clause (d) of section 13(1) substituted by the Finance Act, 1983 with effect from 1st April, 1983, in place of the earlier section 13(1)(d), which was inserted by the Taxation Laws (Amendment) Act, 1975, provides that any trust or institution established for charitable or religious purpose shall not be entitled to claim exemption from tax available under section 11 of the Act in respect of any portion of its income, if for any period during the previous year-

(i) any of its funds are invested of deposited after 28th February, 1983 otherwise than in anyone or more of the forms or modes specified in section 11(5); or,

(ii) any of its funds, invested or deposited before 1st March, 1983, otherwise than in anyone or more of the forms or modes specified in section 11(5), continue to remain so invested or deposited after 30th November, 1983.

(iii) any shares in a company (not being a Government Company or a corporation established by or under Central, State or Provincial Act) are held by the trust or institution after 30th November, 1983.

12.88 The proviso to the new section 13(1)(d) grants exemption from the aforesaid provisions in relation to the following-

(i) any assets held by the trust or institution, as part of its corpus, as on 1st June, 1973, provided such assets were not purchased by it or acquired by it by conversion of, or in exchange for, any other asset;

(ii) any accretion to the shares, forming part of the Corpus mentioned in Clause(i) by way of bonus shares allotted to the trust of institution;

(iii) any debentures, issued by or on behalf of any company or corporation, acquired by the trust or institution before 1st March, 1983;

(iv) where the debentures of an Indian company are acquired by the trust or institution after 28th February, 1983, but before 25th July, 1991, the exemption from tax under section 11 will be denied only in respect of interest on such debentures. if the debentures are not disinvested by the 31st March, 1992, the trust or institution will lose exemption under section 11;

(v) any asset not being an investment or deposit in any of the forms or modes specified in sub-section (5) of section 11, after the expiry of one year from the end of the previous year in which such asset is acquired on the 31st day of March, 1993, whichever is later;

(vi) any funds representing the profits and gains of business in respect of any previous year relevant to

the assessment year 1984-85 or years subsequent thereto provided separate books of account are maintained by the trust or institution in respect of such business – See *C.I.T. v. Deoraha Public Charitable Trust*[1] and *C.I.T. v. Savan Pubic Charitable Fund.*[2]

12.89 Section 11(5) of the Act inserted by the Finance Act, 1983 with effect from 1st April, 1983 lays down the forms and modes of investing or depositing the funds of a trust established for charitable or religious purposes. These are as under-

(i) Saving certificates, as defined in section 2(c) of the Government Saving Certificates Act, 1958 and any other securities or certificates issued by the Central Government under the Small Savings Scheme.

(ii) Deposit in any account with the Post Office Savings Bank.

(iii) Deposits in any account with a Scheduled bank, i.e., State Bank of India or any nationalised bank or any other bank included in the Second Schedule to the Reserve Bank of India Act, 1934 or with a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank).

(iv) Units of the Unit Trust of India.

(v) Central or State Government securities.

(vi) Debentures, both the principal whereof and the interest where on are fully and unconditionally guaranteed by the Central/ State Government.

(vii) Investment or deposit in any Public Sector Company. Where a charitable trust had invested its income in shares of a public sector company, which ceases to be such owing to dis-investment by the government, the exemption will continue to be

[1] (1992) 196 ITR 110 (Cal) followed in (1999) 240 ITR 513 (Cal)
[2] (1993) 201 ITR 877 (Cal)

available for three years from the date of such cessation. Where the investment is by way of deposits etc., the exemption will continue till the date of maturity of the deposit or the other investment, as the case may be.

(viii) Bonds issued by a financial corporation, which is included in providing long term finance for industrial development in India and which is approved by the Central Government for the purposes of section 36(1)(viii) of the Act.

(ix) Bonds issued by a Public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purpose and which company is approved by the Central Government for the purposes of section 36(1)(viii) of the Act.

(x) Immovable property, not including any machinery or plant other than machinery or plant installed in a building for the convenient occupation of the building.

(xi) Deposit with the Industrial Development Bank of India.

(xii) Deposits with or investments in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long term finance (repayment with interest in 5 or more years) for urban infrastructure in India (project for providing portable water supply, sanitation, sewerage, drainage, solid waste management, roads, bridges and flyovers for urban transport)

(xiii) Any other form or mode of investment or deposit as may be prescribed. Rule 17C specifies the following other modes:

(a) Investment in Units issued under any scheme of mutual funds referred to section 10(23D);

(b) Any transfer of deposit to Public Account of India;

(c) Deposits made with an authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages or for both;

(d) investment by way of acquiring equity shares of a depository as defined in section 2(1)(e)of the Depositories Act, 1996;

(e) investment made by a recognised stock exchange referred to in section 2(f) of the Securities Contracts (Regulation) Act, 1956, (hereafter referred to as investor) in the equity share capital of a company (hereafter referred to as investee)—

(A) which is engaged in dealing with securities or mainly associated with the securities market ;

(B) whose main object is to acquire the membership of another recognised stock exchange for the sole purpose of facilitating the members of the investor to trade on the said stock exchange through the investee in accordance with the directions or guidelines issued under the Securities and Exchange Board of India Act, 1992 by the Securities and Exchange Board of India established under section 3 of that Act ; and

(C) in which at least fifty-one per cent. of equity shares are held by the investor and the balance equity shares are held by members of such investors.

(f) investment by way of acquiring equity shares of an incubatee (notified by the

Ministry of Science and Technology, Government of India) by an incubator (Technology Business Incubator or Science and Technology Entrepreneurship Park notified by the Ministry of Science and Technology, Government of India).

12.90 Thus a reading of new section 13(1)(d), of the Act as substituted by the Finance Act, 1983 clearly indicates that every trust or institution established for charitable or religious purposes must dispose of equity and/or preference shares held by it in any company (not being a Government company or a statutory Corporation) on or before 30th November, 1983; otherwise, it will lose exemption from tax available under section 11 of the Act. Clause (i) of proviso to section 13(1)(d) grants exemption only in respect of those shares, which had been received by the trust or institution by way of donation towards its corpus prior to 1st June, 1973.

12.91 No relaxation has been granted in respect of shares purchased by the trust or institution or acquired by it by conversion of or in exchange for, any other asset at any time whatsoever. Even in respect of debentures issued by or on behalf of any company or corporation and held by a charitable trust or institution. The relaxation as to their holding will be available only if these were acquired before 1st March, 1983. It may be interesting to note that both sub clause (i) and (ii) of clause (d) of section 13(1) use the expression *invested or deposited* as against the expression *held* used in sub clause (iii) thereof. This difference could have led a trust or institution to contend and in the opinion of the author successfully, that any asset other than shares, which were received by a trust or an institution established for charitable or religious purposes by way of donation in kind, and which are not in any one of the forms or modes specified in section 11(5) of the Act, may continue to be held by it without involving any risk of loss of tax exemption otherwise available under section 11 of the Act. However, this controversy has now become irrelevant in view of the insertion of clause (iia) in proviso to section 13(1)(d) of the said Act by the Finance (No.2) Act, 1991 with retrospective effect from

1.4.1983. The new clause (iia) clearly requires all charitable trust to *hold* investments or deposits only in any of the forms or modes specified in section 11(5) of the said Act.

12.92 In *C.I.T. v. Bhoruka Public Welfare Trust*[1], the Calcutta High Court following an earlier decision in *C.I.T. v. Deoraha Public Charitable Trust*[2] as well as the Circular dated 15th March, 1991 issued by the CBDT held that the provisions of section 13(1)(d) of the Act would be applicable from the assessment year 1984-85 and not from the assessment year 1983-84.

12.93 By an amendment made by the Finance (No. 2) Act, 1991, it has now been provided that where the debentures of an Indian company are acquired by the trust of institution after 28th February, 1983, but before the 25th July, 1991, the exemption from tax under section 11 will be denied only in respect of such debentures. If debentures are not disinvested by the 31st March, 1992, the trust or institution will lose tax exemption under section 11.

12.94 Further a new clause (iia) has been inserted in the proviso in clause (d) of sub-section (1) of section 13 to secure that mere accretion to the existing holding of shares by way of bonus shares or acceptance of donations in kind or any asset not confirming the provisions of section 11(5) will not make the fund or trust or institution lose tax exemption. The trusts or institutions will, however, be required to dispose or convert the assets not confirming to the requirement of section 11(5) into permissible investments within one year from the end of the financial year in which such bonus shares or other assets are received or 31.03.1993, whichever is later.

12.95 Later, the Madras High Court in *C.I.T. v. Kumudam Endowments*[3] noted that in view of new clause (iia) having been inserted in the proviso to section 13(1)(d) by the Finance (No.2) Act, 1991 read with the Finance Act, 1992 with retrospective effect

[1] (1999) 240 ITR 513 (Cal)
[2] (1992) 196 ITR 110 (Cal)
[3] (2000) 242 ITR 159 (Mad)

from 1st April, 1983, the time for disinvestments by charitable trust was extended up to March 31, 1993. Therefore, an assessee could not be denied the benefit of exemption for any of the earlier years, even when the tax authorities found that no disinvestment was made by the charitable trust or institution by 31st March, 1993. However, the exemption can be withdrawn for the assessment year 1993-94, if the disinvestment is not made on or before 31.3.1993, as held by the Bombay High Court in *Director of Income-tax (Exemptions) v. Shardaben Bhagubhai Mafatlal Public Charitable Trust*[1]**.**

[1] (2001) 247 ITR 1 (Bom)

13

Mixture of Charitable and Religious Objects

13.01 Can a trust whose objects are partly charitable and partly religious in nature enjoy exemption under section 11 of the Act?

13.02 Although section 2(15) of the Act defines only "*charitable purpose*" and "*religious purpose*" has not been defined under the Act, still the exemption from tax contained in sections 11 and 12 of the Act would be applicable to the trusts established for religious purposes.

13.03 The expression "*charitable purpose*" also includes "*religious purpose*". Such was the view expressed by the Bombay High Court in *C.G.T. v. H.H. Sir Shahaji, The Chhatrapati Maharajasaheb of Kolhapur*[1] *and by the Madras High Court in S.M.N. Thangaswamy Chettiar and Anr. v. C.I.T*[2]*.* The Madras High Court in the said case observed that the use of the phrase "*religious or charitable purposes*" in section 4(3) of the 1922 Act corresponding to section 11 of the Act is due more or less to historical reasons and not because of any intention on the part of the Legislature to have a dichotomy between religious and charitable purposes, the latter meaning only secular charitable purposes. In *C.I.T. v. Social Service Centre*[3], the Assessing Officer found that the trust was mainly engaged in religious activities and he refused exemption because the expenditure was incurred by way of donation to a Diocese and for construction of a church. Their lordships of the Andhra Pradesh High Court held that since religious and charitable activities went together under section 11 of the Act, which uses the words "*charitable or religious"*, expenditure on religious activities could not be denied exemption.

---

[1] (1965) 58 ITR 140 (Bom)
[2] (1965) 57 ITR 546 (Mad)
[3] (2001) 250 ITR 39 (AP)

13.04 That a religious purposes can also be a charitable purposes was recognized by *Lord Machnaughten* in his celebrated judgment in *C.I.T. v. Pemsel*[1]*,* where that eminent judge grouped under the following heads, the Charitable purposes which would come within the language of the Statute of Elizabeth; (1) the relief of poverty (2) education (3) the advancement of religion (4) other purposes beneficial to the community not falling under any of the preceding heads. In a later case in *White v. White*[2]*,* it was held that bequest for a religious institution or for a religious purpose was *prima facie* a charitable purpose.

13.05 In the circumstances, even when the objects of a trust are partly charitable and partly religious in nature, the trust would be entitled to exemption from tax provided the trust is for the benefit of the public at large, as distinguished from an individual or group of individuals. Reference in this connection may be made to the decision of the Gujarat High Court in *C.I.T. v. Ahmedabad Rana Caste Association*[3]*,* and of the Andhra Pradesh High Court in *C.W.T. v. H.E.H The Nizam's Supplemental and Religious Endowment Trust*[4]*.*

13.06 However, it may be mentioned here that section 13(1)(b) of the Act provides that in the case of a trust for charitable purposes or a charitable institution created or established after the commencement of this Act, the income thereof shall not be immune from taxation, if the trust or institution is created or established for the benefit of any particular religious community or caste.

13.07 Thus while a purely religious trust (whenever established) may exist for the benefit of any particular religious community or caste, a charitable trust or institution created or established after 1st April, 1962 cannot enjoy immunity from tax, if it exists for the benefit of any particular community or caste.

13.08 In actual practice, it is difficult to comprehend a religious purpose without reference to any particular community or caste.

---

[1] (1891) AC 531, 583 (PC)
[2] (1892) 2 Ch. 41
[3] (1973) 88 ITR 354 (Guj) affirmed in (1983) 140 ITR 1 (SC)
[4] (1973) 89 ITR 80 (AP)

Thus the question has arisen before the courts as to whether a mixture of both charitable and religious objects in the case of a trust or institution created or established after 1st April, 1962, would disentitle a trust from exemption, in view of the fact that if benefit to any particular religious community or caste is envisaged in any single object of the trust, the whole trust would be disentitled from tax exemption. The Gujarat High Court, in the case of *CIT v. Barkate Saifiyah Society*[1] and *CIT v. Chandra Charitable Trust*[2], has held that a trust, which is for both charitable as well as religious purposes, is not covered by section 13(1)(b), as it applies only to purely charitable trusts.

[1] (1995) 213 ITR 492 (Guj)
[2] (2007) 294 ITR 86 (Guj)

14

Taxation of Non-exempt Income of a Charitable Trust

14.01 Section 115BBC has been inserted in the Income-tax Act by the Finance Act 2006 w.e.f. 1st April 2007 to provide that anonymous donations received by the following entities would be taxed in their hands at the rate of 30% (plus applicable surcharge and education cess).

a. University or other educational institution exempt under section 10(23C)((iiiad) or (vi).

b. Hospital or other medical institution exempt under section 10(23C)(iiiae) or (via).

c. Fund or institution or trust notified by the Central government exempt under section 10(23C)(iv) or (v).

d. Trust or institution referred to in section 11.

14,02 Anonymous donation means any voluntary contribution referred to in section 2(24)(iia) where the recipient does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed. So far, particulars or details required to be maintained by the trust/fund/institution have not been prescribed.

14.03 It would appear that anonymous donations even if they are by way of corpus donations will be hit by section 115BBC. However, corpus donations would be supported by specific directions from the donor and hence by their very nature would generally not be anonymous.

14.04 The provisions of section 115BBC will not apply to trusts or institutions established wholly for religious purposes. The provisions will also not apply to a trust/institution established for religious and charitable purposes except in cases where donations are received by the trust with specific direction of the donor that

the donation is for any university or hospital or other educational/medical institution.

14.05 It is not clear as to how a person can give directions that the donation should be for a specific university or hospital or other educational/medical institution and yet remain anonymous. Perhaps, from the facts and circumstances, where it can be inferred that the anonymous donor has directed the utilization of the donation for the specific purpose, this provision may apply. The intention seems to be that the donors of all donations received by a university/other educational institution or hospital/medical institution should be identifiable.

14.06 A trust will be liable to pay income tax @ 30% on the anonymous donations and on the balance income the tax will be calculated at the regular rate. The balance income will, of course, be calculated after taking into account the exemption under sections 10(23C) and 11.

14.07 If a trust or other institution holds property either wholly or partly for charitable or religious purposes and the exemption available under sections 11 and 12 of the Act is denied to it on technical grounds i.e. non-compliance with or violation of the provisions of section 13 of the Act or otherwise, the question that may arise is as to how the relevant income, which is derived from property held under trust, either wholly or partly for charitable or religious purposes or which is of the nature of voluntary contributions, not being contributions made to the corpus of the trust, as is referred to in section 2(24)(iia) of the Act or which is of the nature referred to in section 11(4A), shall be charged to tax. The relevant provisions are found in sub-sections (2) and (3) of section 164 of the Act.

14.08 Sub-section (2) of section 164 of the Act provides that the relevant income which is derived from property held under trust wholly for charitable or religious purposes as also the income of the trust from voluntary contributions referred to in section 2(24)(iia) of the Act as well as business income referred to in section 11(4A) of the Act and which is not exempt under section 11 or section 12 of the Act, shall be charged to tax as if the relevant income, not so exempt, were the income of an "*Association of persons*".

14.09 A new proviso to sub-section (2) of section 164 was added by the Finance Act, 1985. As a result of the new proviso, where a charitable or religious trust forfeits tax exemption because of the contravention of the provisions contained in section 13(1)(c) and/or section 13(1)(d), tax shall be charged on such income or part thereof at the maximum marginal rate of income-tax (including surcharge) applicable to the highest slab of income in the case of an Association of persons. This proviso is made effective from 1st April, 1985, and will, accordingly, apply in relation to the assessment year 1985-86 and subsequent years.

14.10 Sub-section (3) of section 164 of the Act concerns itself with the manner of charging to tax the income derived from property held under trust in part only for charitable or religious purposes as also the income of the nature of voluntary contributions referred to in section 2(24)(iia) of the Act as well as business income referred to in section 11(4A) of the Act. It is provided that the rate of tax for that portion of income from property held under trust in part only for charitable or religious purposes as well as the income of the trust by way of certain voluntary contributions referred to in section 2(24)(iia) as well as business income referred to in section 11(4A) of the Act shall be as under:

a) the tax which would be chargeable, if the whole of the relevant income (as reduced by the income, if any, which is exempt under section 11, were the total income of an "*association of person*", or

b) the aggregate of-

   i) the tax on that portion of the income which is applicable to charitable or religious purposes, to the extent it is not exempt under section 11, at the rates applicable to an "*Association of persons*", and

   ii) tax on the income which is applicable to purposes other than charitable or religious purposes and in respect of which the shares of the beneficiaries are indeterminate or unknown, at the maximum marginal rate, whichever course is more beneficial to the revenue.

14.11 As a result of the amendments made by the Finance (No. 2) Act, 1980, in sub-section (3) of section 164, with effect from 1.4.1980, the tax on the income which is applicable to other purposes would be at the rate of income-tax including surcharge applicable to highest slab of income of an association or persons, as specified in the Finance Act of the relevant assessment year.

14.12 However, the proviso to section 164(3) of the Act saves such income from the rigors of maximum marginal rate in case where-

i) none of the beneficiaries of such income has any other income chargeable under the 1961 Act exceeding the maximum amount not chargeable to tax in the case of an AOP; or

ii) the relevant income is receivable under a trust declared by will and such trust is the only trust so declared; or

iii) the relevant income is receivable under the trust created before 1st March, 1970, by a non-testamentary instrument, and the Income-tax officer is satisfied that the trust, to the extent it is not for charitable or religious purposes, was created *bona fide* exclusively for the benefit of the relatives of the settlor, or where the settlor is a Hindu undivided family, exclusively for the benefit of the members of such family, in the circumstances where such relatives or members were mainly dependent on the settlor for their support and maintenance, the tax shall be charged as if the relevant income (as reduced by the income, if any, which is exempt under section 11) were the total income of an "*association of persons*."

14.13 The Finance (No. 2) Act, 1980 made some amendments in the proviso to section 164(3) also and had inserted two new Explanations in the sub-section. The amendments are effective from the assessment year 1980-81 and onwards. The effect of the amendment is as follows:

i) The benefit of the proviso would be available in respect of that part of the income which is not applicable to charitable or religious purpose, if none of the beneficiaries has any other income chargeable under the Act and none of them is a beneficiary under any other trust.

ii) The benefit of the concessional tax treatment in respect of a trust declared by will, by a person will be withdrawn if such person has declared any other trust by will.

iii) Any income in respect of which the persons mentioned in section 160(1)(iii) and (iv) are liable as representative assessee or any part of these will be deemed as not being specifically receivable on behalf or for the benefit of any one person, unless the person on whose behalf or for whose benefit such income or such part there of is receivable during the previous year is expressly mentioned in the order of the court or instrument of trust or the Wakf deed and is identifiable on the date of the order, instrument of trust or the Wakf deed. Further, the individual shares of the beneficiaries will be deemed to be indeterminate or unknown, unless the individual shares of such beneficiaries are expressly stated in the order of the Court or an instrument of trust or the Wakf deed and are ascertainable on the date of such order, instrument or deed.

14.14 A new proviso was added by the Finance 1984 to sub-section (3) of section 164. As a result of the new proviso, where a charitable or religious trust forfeits tax exemption because of the contravention of the provisions contained in section 13(1)(c) and/or section 13(1)(d), tax shall be charged on such income or part thereof at the maximum marginal rate of income tax (including surcharge) applicable to the highest slab of income in the case of an association of persons. In other words, as a result of the said proviso, the charitable or religious trusts, in respect of which exemption is forfeited because of contravention of either section 13(1)(c) or section 13(1)(d), would be chargeable to tax at the

maximum marginal rate. This proviso is sought to be made effective from 1st April, 1985 and will accordingly, apply in relation to the assessment year 1985-86 and subsequent years.

14.15 Section 13(4) of the Act provides that where the aggregate of the funds of the trust or institution invested in a concern in which any person referred to in section 13(3) has a substantial interest does not exceed five per cent of the capital of that concern, the exemption under section 11 or section 12 shall be denied only to the income arising to the trust or the institution from such investment. The said income from investment shall be charged to tax in the hands of the trust or institution, in accordance with the provisions of section 164(2) or 164(3), as the case may be, as if the relevant income, not so exempt, were the income of an "*association of persons*".

15

Obligation as to Filing of the Return

15.01 Under section 139(4A) substituted by the Direct-tax Laws (Amendment) Act, 1989, with effect from 1st April, 1989, the trustees are required to file a return of total income of the trust or institution, as the case may be, in the manner provided under section 139(1) of the Act, if its total income (without giving effect to the provisions of sections 11 and 12 of the Act) exceeds the maximum amount, which is not chargeable to income-tax.

15.02 Thus, if a charitable trust had derived an income of Rs. 2,00,000/- and/or by way of voluntary contributions from property held under trust and has applied 85% of its income (Rs.1,70,000) for charitable purposes in accordance with the provisions of section 11(1)(a) of the Act, the balance of Rs. 30,000/- is not chargeable to tax as the accumulation is permitted up to 15%. But the trust must furnish its return of income in accordance with the provisions of section 139(4A) of the Act for its income of Rs.2,00,000/- (without giving effect to the provisions of sections 11 of the Act) exceeded the maximum amount, which is not chargeable to tax.

15.03 Further, as already mentioned in paragraph 12.12 earlier, if the total income of the trust or institution (without giving effect to the provisions of sections 11 and 12) exceeds the maximum amount which is not chargeable to tax (currently Rs.1,50,000) in any previous year, the return of total income must be accompanied with an audit report in Form No. 10B prescribed by Rule 17B of the Income-tax Rules, 1962.

15.04 In *Thanthi Trust v. WTO*[1], their Lordships of the Madras High Court held and observed that where a person holds net

[1] (1999) 235 ITR 621 (Mad)

wealth assessable under the Act, but claims exemption under any of the provisions of the Act, he is bound to file a return.

15.05 In *DIT(E) v Malad Jain Yuvak Mandal Medical Relief Centre*[1], their lordships of the Bombay High Court held that a charitable trust, whose income is exempt under section 10(22) of the Act is required to file its returns under section 139(4A) of the Income-tax Act, 1961. Sub-section (4C) has now been inserted in section 139 with effect from 1st April 2003, which provides for filing of a return of income by a fund, trust or institution referred to in sub-clauses (iiiad), (iiiae), (iv), (v), (vi) and (via) of section 10(23C), if its total income, without giving effect to the exemption under section 10, exceeds the maximum amount not chargeable to tax.

15.06 If the trustees, without reasonable cause, fail to furnish the return of total income which is required to be furnished under section 139(4A) or 139 (4C) or fail to furnish it within the time allowed and in the manner required by that section then, the trust or institution shall be liable to penalty under section 272A(2)(e) equivalent to Rs.100 for every day during which the default continues.

[1] (2001) 250 ITR 488 (Bom)

16

Deduction in Respect of Donations to Charitable Institutions

16.00 Any person making a donation to a charitable institution, which fulfills the following conditions, shall be entitled to claim a deduction from his gross total income of 50% of the qualifying amount of donation under section 80-G of the Act. The conditions as specified under section 80-G (5) are as under:

a) where the trust or institution derives any income, such income is exempt under sections 11 and 12, 10(23AA) or 10(23C) of the Act; where an institution or fund derives any business income, it must satisfy the following further conditions:-

   (i) separate books of account in respect of such business are maintained

   (ii) the donations made to it are not utilised directly or indirectly for the purposes of such business

   (iii) a certificate is issued by it to the donors 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.

b) the trust deed or the rules governing the institution do not contain any provisions for the transfer or application at any time of the whole or any part of its income or assets;

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

d) the institution or fund maintains regular accounts of its receipts and expenditure;

e) the institution or fund is either constituted as a public charitable trust or is registered under the Societies Registration Act, 1860 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 approved by the Central Government under section 10(23) or is an institution financed wholly or in part by the Government or a local authority.

f) the institution or fund is for the time being approved by the Commissioner in accordance with the rules (Rule 11A and Form No. 10G are prescribed).

16.01 It has, however, been clarified in Explanation (1) to section 80-G of the Act that an institution or fund established for the benefit of scheduled castes, backward classes, scheduled tribes or 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 (c) above.

16.02 Explanation 2 to section 80G further provides that a deduction to which an assessee is entitled in respect of any donation made to an institution or fund to which section 80-G(5) applies shall not be denied merely on either or both of the following grounds: viz.

i) that, subsequent to the donation, any part of income of the institution or fund has become chargeable to tax due to non-compliance with any of the provisions of sections 11, 12 or 12A of the Act;

ii) that under section 13(1)(c) of the Act, the exemption under section 11 or 12 is denied to the institution or fund in relation to any income arising to it from any investment referred to in section 13(2)(h) of the Act, where the aggregate of the funds invested by it in the interested concern did not exceed 5% of the capital of that concern.

16.03 A public religious fund or institution is charitable on general principles, and a donation made before 1st April, 1964 to such a fund or institution qualified for tax relief, provided the fund or institution was non-communal in character. But in view of the Explanation 3 to section 80G of the Act, such a donation made after 1st April, 1964 is no longer entitled to tax benefit since the expression "*charitable purpose*" for the purposes of the said section does not include any purpose the whole or substantially the whole of which is of a religious nature.

16.04 In *Woodcraft Products Ltd. v. I.T.O.*[1] the Special Bench of the Income Tax Appellate Tribunal held at Calcutta that if something is done for the benefit of persons of all religions of the world or for the uplift of the humanity by raising the general standard of morality in the matter of honesty, truthfulness, etc., just because all the religions also place emphasis on these aspects of life, it will not be possible to say that such objects or purposes are of religious nature in the sense the word "*religion*" or "*religious*" is used in the Income-tax Act. Moreover, Explanation (3) to section 80G does not cover a case of an object, which is of a religious nature in the technical sense. It will cover a case only when the whole or substantially the whole of the purpose is of a religious nature. The language in which the explanation (3) is couched sufficiently indicates that it will cover a case in which one or more of the objects of the trust have been or are of religious nature, as commonly understood, i.e. meaning the religious nature according to a particular religion in contradistinction with other religion. Anything that is available to the people of all religions, the Tribunal observed, cannot be held to be of religious nature in the strict legal sense.

16.05 In *Upper Ganges Sugar Mills Ltd. and Others v. Commissioner of Income-tax,*[2] the Supreme Court held that when a particular clause in the trust deed permitted the trustees to support prayer halls and places of worship, it set out a purpose, the whole or substantially the whole of which is of a religious nature. Such a trust is obviously outside the purview of section 80G.

---

[1] (1982) 1 ITD 1 (Cal)
[2] (1997) 227 ITR 578 (SC)

16.06 The Finance Act, 1999 has inserted a new sub-section (5B) in section 80G of the said Act to provide that in case an institution or fund spends not more than 5% of its income during the relevant previous year for religious purpose, the benefit of this section will not be denied to them.

16.07 An initial gift made for the purpose of starting or constituting a trust for charitable purpose is also entitled to the deduction under section 80G of the Act. Reference in this connection may be made to the decisions of the Bombay High Court in *C.G.T. v. Yogendra N. Mafatlal & Another*[1] the Punjab and Haryana High Court in *Commissioner of Gift-tax v. Lachhman Das Oswal*[2] and of the Gauhati High Court in *Commissioner of Income-tax v. Ramniwas Karwa.*[3]

16.08 Section 80G(3) of the Act (since omitted by the Finance Act, 1994 w.e.f. 1.4.94) provided that the benefit under section 80G of Act cannot be claimed, if the aggregate of then donations made is less than Rs.250/-. Section 80G(4) of the Act, however, provides the maximum limit up to which donations qualify for tax relief. The maximum limit is 10% of the gross total income (as reduced by any portion thereof on which income-tax is not payable under any provision of the Income-tax Act, 1961 and by any amount in respect of which the assessee is entitled to a deduction under any other provision of Chapter VIA). But the maximum limit referred to above does not apply to the donations made to the National Defense Fund, the Jawaharlal Nehru Memorial Fund, the Prime Minister' Drought Relief Fund the Prime Minister's National Relief Fund, the Prime Minister's Armenia Earthquake Relief Fund, the Africa (Public Contributions – India) Fund, National Children's Fund, Indira Gandhi memorial Trust, Rajiv Gandhi Foundation, National Foundation for Communal Harmony, University or educational institution of national importance and the Maharashtra Chief Minister's Relief Fund, any fund set up by the State Government of Gujarat exclusively for providing relief to the victims of earthquake in Gujarat, any Zila Saksharta Samiti, the National Blood Transfusion Council or any State Blood Transfusion Council, any fund set up by a State Government to

---

[1] (1965) 58 ITR 40 (Bom)
[2] (1977) 106 ITR 742 (P&H)
[3] (1978) 112 ITR 433 (Gau)

provide medical relief to the poor, the Army Central Welfare Fund or the Indian Naval Benevolent Fund or the Air Force Central Welfare Fund, the Andhra Pradesh Chief Minister's Cyclone Relief Fund, 1996, the National Illness Assistance Fund, the Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund, the National Sports Fund, the National Cultural Fund, the Fund for Technology Development & Application, the National Trust for welfare of persons with Autism, Cerebral Palsy, Mental Retardation & Multiple Disabilities.

16.09 With effect from 1-4-1978, no special treatment shall be allowed in respect of the donations made for the renovation or repair of temple, mosque, gurudwara, church or other place as is notified by the Central Government in the Official Gazette to be of historic, archaeological or artistic importance or to be a place of public worship of renown throughout any State or States.

16.10 Explanation 5 to section 80-G of the Act, which was inserted by the Finance Act, 1976 with effect from 1st April, 1976 provides (purported to be "*for the removal of doubts*") that no deduction shall be admissible under section 80-G of the Act in respect of any donation unless such donation is of a sum of money. Earlier, there was a conflict of judicial view on this issue inasmuch as while the *Bombay High court in C.I.T. v. Associated Cement Co, Ltd.*[1] and the Mysore High Court *in C.I.T. v. Bangalore Woollen Cotton & Silk Mills Co. Ltd.*[2] held that there was no reason why the application of section 80-G should be restricted to donations made in cash only, the *Andhra Pradesh High Court in C.I.T. v. Amonbolu Rajiah*[3] and the Allahabad High Court in *C.I.T. v. Gopal Krishna Singhania*[4] took the contrary view. The Supreme Court in H.H. Sri Rama Verma v. CIT[5], upheld the latter view that it applied only to donations in cash, and not to donations in kind.

16.11 An assessee is not entitled to claim relief under section 80-G of the Act in respect of sums, which did not constitute a part of

---

[1] (1968) 68 ITR 478 (Bom)
[2] (1973) 91 ITR 196 (Mys)
[3] (1976) 102 ITR 403 (AP)
[4] (1980) 121 ITR 260 (All)
[5] (1991) 187 ITR 308 (SC)

his total income of the relevant accounting year. In other words the exemption is not available in respect of a sum donated out of the income of an earlier year. Such was the view expressed by the Calcutta High Court in *Basant Kumar Aditya Vikram Birla v. C.I.T.*[1] and in *C.I.T. v. Samnugger Jute Factory Co. Ltd. & Another*[2] and by the Madras High Court in *Stanes Motor (South India) Ltd. v. C.I.T., Madras*[3]. The above decisions were delivered on the phraseology used in section 88 of the Income-tax Act, 1961. However, in view of the difference in the language now used in section 80-G of the Act, a different interpretation is possible and it may be represented possible successfully that a deduction could now be claimed in respect of a sum donated out of the income of an earlier year.

16.12 Rule 11AA of the Income-tax Rules, 1962 inserted by the Income-tax (Seventh Amendment) Rules, 1962 prescribes the procedure for making application for approval of any institution or fund under clause (vi) of such section (5) of section 80-G in Form No. 10G. The application has to be made in triplicate accompanied by the following documents:

(i) Copy of registration certificate 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.

16.13 The Commissioner may call for such further documents or information from the institution or fund or cause such enquiries to be made, as he may deem necessary in order to satisfy himself about the genuineness of the activities of such institution or fund. Where the Commissioner is satisfied that all the conditions laid down in clauses (i) to (v) of sub section (5) of section 80G are

---

[1] (1968) 70 ITR 657 (Cal)
[2] (1953) 24 ITR 265 (Cal)
[3] (1975) 100 ITR 341 (Mad)

fulfilled by the institution, 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. If the Commissioner is not so satisfied, he may, after giving the institution or fund an opportunity of being heard, reject the application for approval. The application for approval must be disposed by the commissioner within a period of six months from the date when the same is made to him by the institution or fund. An approval granted shall be valid for such assessment year or years, not exceeding five assessment years, as may be specified in the approval. From 1st June 2007, an appeal lies to the Tribunal against an order under section 80G(5).

16.14 While considering the question of renewal of recognition under section 80G of the Act, the Commissioner of Income tax need not remain necessarily confined to the objects of the trust as set out in the deed of declaration. The Commissioner is not debarred from finding out the real purpose as distinguished from the ostensible purpose, and, if he finds that the purpose of the trust is other than charitable, then nothing debars him from denying the approval. The real purpose of the trust is germane to the enquiry, which the Commissioner has to hold, while granting approval under section 80G(5)(vi) of the Act. The Commissioner cannot shut his eyes towards the activities actually carried on by the trust.

16.15 In *Kirti Chand Tarawati Charitable Trust v. Director of Income-tax (Exemption) and Others*[1], the Court found that the assessee trust having received donations for charitable purposes, instead of being spent on charity, they were utilised for investment so as to earn returns thereon and utilise the same for purposes other than charitable purposes viz. construction of temple. The Court therefore upheld the order passed by the authority denying renewal of recognition under section 80G of the Act.

16.16 It is interesting to note that in order to entitle the assessee to claim the deduction under section 80G of the Act, it is not necessary that the recipient trust must possess a certificate granted by the Commissioner of Income tax having Jurisdiction over it to the effect that the donation made to this trust or

[1] (1998) 232 ITR 11 (Del)

institution shall enjoy exemption in the hands of the donor under section 80G of the Act. In fact, earlier there was no provision in the Income tax Act, 1961 under which the assessee could make an application to the Commissioner of Income tax requesting him for the issue of such a certificate nor there was any obligation on the Commissioner to issue any such certificate. However, as a matter of practice and for the sake of convenience the Commissioner of Income tax used to issue such an exemption certificate when a request to that effect was made by any charitable trust or any institution and a certificate so issued used to be valid for the period specified therein. As already discussed earlier in paragraph 16.12 herein above, Rule 11AA now prescribes the procedure for making application for approval of any institution or fund under clause (vi) of sub-section (5) of section 80G of the said Act in Form no. 10G. Such a certificate is issued by the Commissioner of Income tax only when he is satisfied that the particular trust or institution satisfies all the requisite conditions as are laid down in section 80(5) of the Act.

16.17 However, even if in any particular case, a certificate to this effect is not produced by the donor before the Assessing Officer assessing him, the Assessing Officer must allow the deduction under section 80G of the Act in respect of the donations so made, if he, on a perusal of the evidence which may be produced by the donor, is satisfied about the genuineness of the activities of the donee trust and that the donee trust has fully satisfied all the conditions laid down in section 80G(5) of the Act. The mere absence of a certificate from the Commissioner of Income-tax to this effect is no ground for refusal to allow a deduction admissible under section 80G of the Act.

17

Certain Specified Charitable and Other Institutions

17.01 Section 10(22) of the Act (prior to its omission by the Finance (No.2) Act, 1998 w.e.f. 1.4.99) exempted any income of a University or other educational institution which exists solely for educational purposes and not for purposes of profit. The words "*solely for educational purposes and not for purposes of profit*" were judicially interpreted by the Orissa High Court in *Secondary Board of Education, Orissa v. Income-tax Officer*[1]. The facts in the said case were that the Secondary Board of Education, Orissa derived income from various sources, One of the sources of income of the Board was profits from compilation, publication, printing and sale of the textbooks. It was found that the income and expenditure of the Board was controlled and the entire expenditure was directed towards development and expansion of educational purposes. Even if there was some surplus, it remained as a part of the sinking fund to be dedicated to the cause of education as and when necessary, That being the objective and there being various ways of control of the income and expenditure, the Orissa High Court held that the Board could not be said to be existing for purposes of profit and it was held to exist solely for purposes of education.

17.02 In *Brahmin Education Society v. Asst. Commissioner of Income Tax*[2], the Court was considering the case of a society, which was formed solely for educational purposes and with a non-profit motive. In order to attain the main objects, the society received donations & grant from persons and it also conducted chits for raising funds for the purpose of running the educational institutions. The Kerala High Court held that if an institution exists solely for the purpose of education, and it derives income from any other source and if that income is used only for the purpose of

[1] (1972) 86 ITR 408 (Orr)
[2] (1997) 227 ITR 317 (Ker)

education, then it will come under section 10(22) of the Act and section 11(4) cannot override section 10(22).

17.03 In *Educational Institute of American Hotel & Motel Association v. CIT*[1]*,* the Authority for Advance Ruling held that an entity may have income from different sources. It does not mean that in framing of objectives of the institution, the item of surplus of receipts over expenses should be completely absent.

17.04 In Addl. *C.I.T. v. Aditanar Educational Institution*[2]*,* the Madras High Court was concerned with an institution, which was founded for the purposes of establishing, running, managing or assisting colleges, schools and other educational institutions. In pursuance of its objects, the assessee established a college, which was affiliated to Madurai University. The management of the College was vested in a registered body. During the relevant previous years, the assessee received substantial donation from another trust called "*Thanti Trust*" and the question arose whether exemption under section 10(22) was available to the assessee trust in respect of such donations received from Thanti Trust. The contention on behalf of the revenue was that exemption under section 10(22) would apply to the educational institution as such, and not to any one else who ran an educational institution or assisted it financially. The Madras High Court following an earlier decision of the Allahabad High Court in *Katra Education Society v. I.T.O.*[3] held that an educational society could be regarded as an educational institution if the society was running as educational institution. The Madras High Court also considered another question as to whether an assessee could merely by running an institution for educational purposes, get exemption for all its income, whether it related to the educational purposes or not. Their Lordships observed that the matter will have to be investigated each year, and so long as it was found that the institution existed for educational purposes in the relevant year, and so long as its profit is incidental to the purpose of education, the income would be exempt, and not any income however remotely connected with the educational institutions. There must be some correlation between the income earned and the

[1] (1996) 219 ITR 183 (AAR)
[2] (1979) 118 ITR 235 (Mad)
[3] (1978) 111 ITR 420 (All)

educational institution. Any income, which has a direct relation or incidental to the running of the institution as such, would qualify for exemption.

17.05 In *C.I.T. v. Rao Bhadur Calavala Cunnan Chetty Charities*[1], their Lordships of the Madras High Court held that an educational institution run by another trust can also enjoy total exemption in respect of its income under section 10(22) of the Act. The Court followed in this regard its earlier decision in *Addl. C.I.T. v. Aditanar Educational Institution* and held that though the schools themselves do not appear to be held in trust, they are institutions brought into existence by the trust, and therefore, the income would be eligible for exemption.

17.06 The decision of the Madras High Court has since been approved by the Supreme Court[2]. The apex Court held that it would be unreal and hypertechnical to hold that the assessee was only a financing body and would not come within the scope of "*other educational institution*" as envisaged in section 10(22) of the Act. The object of the society was to establish, run, manage or assist colleges or schools or other educational institutions solely for educational purposes and in that regard to raise or collect funds, donations, gifts etc. Colleges and schools are the media through which the assessee imparted education and effectuated its objects. In substance and reality, the sole purpose for which the assessee had come into existence was to impart education at the levels of colleges and schools and so, such an educational society should be regarded as an "*educational institution*" coming within section 10(22) of the Act. The language of section 10(22) of the Act is plain and clear and the availability of the exemption should be evaluated each year to find out whether the institutions existed during the relevant year solely for educational purposes and not for purposes of profit. After meeting the expenditure, if any surplus results incidentally from the activity lawfully carried on by the educational institution, it will not cease to be one existing solely for educational purposes, since the object is not one to make profit. The decisive or acid test is whether, on an overall view of the matter, the object is to make profit. In evaluating or appraising the above, one should also bear in mind the distinction/difference

[1] (1982) 135 ITR 485 (Mad)
[2] (1997) 224 ITR 310 (SC)

between the Corpus, the objects and the powers of the concerned entity.

17.07 In *Birla Vidhya Vihar Trust v. C.I.T*[1] their Lordships of the Calcutta High Court also held that for the purpose of section 10(22) of the Act, the recipient or the owner of the income may be an assessee or any person apart from university or an educational institution. What is material is that the income must be derived from a source, which is a university or an educational institution and which must fulfill the other requirements, namely that it must exist solely for the educational purposes and not for purposes of profit. If those conditions are fulfilled, then if the recipient or the owner of the income is other than the educational institution or a university, it would not affect the position. In this case the High Court allowed exemption to the charitable trust under section 10(22) in respect of the income from two schools, even though the trust had other objects too.

17.08 In *C.I.T. v. Sindhu Vidya Mandal Trust*[2] the objects of the assessee trust were the advancement of education, the spread of all kinds of useful knowledge, to work for mental, moral and physical welfare of the students and to run high schools and other institutions. The assessee trust was running a primary school and a secondary school. The school was run by the trust and they were part of the assessee trust. The Revenue had refused exemption under section 10(22) of the Act on the ground that the assessee trust though an educational trust cannot be termed as an institution within the meaning of section 10(22) of the Act. Their Lordships of the Gujarat High Court held that the word "*institution*" is not used in the narrow sense, as urged by the Revenue. The institution is a word of wide import. In that view it was held that the assessee trust came within the expression "*other educational institution*" as appearing is section 10(22) of the Act and the exemption was accordingly granted.

17.09 Clause (22) of section 10 has been omitted from the Statute book by the Finance (No.2) Act, 1998 with effect from 1.4.1999. Earlier the Central Board of Direct Taxes by Circular No. 712 dated July 25, 1995 had clarified that section 10(22) does not

[1] (1982) 136 ITR 445 (Cal)
[2] (1983) 142 ITR 633 (Guj)

impose any restriction regarding mode of investment of funds and therefore, such institutions are not required to invest their funds in the modes specified under section 11(5). However, consequent to omission of clause (22) of section 10 with effect from 1.4.1999, the educational institutions also would have to shift their investments to specified investments. The educational institutions, which are of charitable nature will henceforth have to claim income-tax exemption under clauses (iiiab), (iiiad) or (vi) of section 10(23C) or under sections 11 and 12 of the Income tax Act subject to fulfillment of necessary conditions. In appropriate cases, the Director General (Exemptions) may also grant exemption by issue of an approval under sub clauses (iv) or (v) of clause (23C) of section 10 of the Act.

17.10 Section 10(22A) of the Act inserted by the Finance Act, 1970 with effect from 1st April, 1970 exempted any income of a hospital or other institution established for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit.

17.11 In *C.I.T. v. Shri Narayana Chandrika Trust*[1], the assessee's only object was the establishment and running etc. of hospitals. For the purpose of augmenting the income available for the purpose of the hospital, the trust became a partner in certain partnership firms. The Tribunal found as a fact that the trust joined the firm as partner only to raise income for the purpose of running the hospital. The assessee's claim for exemption under section 10(22A) was denied by the tax authorities. The Court held that a hospital is not merely the buildings in which it is housed, or the equipment that is contained in it, but something more. In dealing with the question whether the income is that of the hospital, the Court observed that the significance of the expression "*any income of a hospital*", in section 10(22A) had to be noted. Both the word "*any*" and "*of*" carry a meaning. It is not income "*from*", a hospital that is exempt but "*any income of a hospital*", if the word has been "*from*" the position would have been that the income

[1] (1995) 212 ITR 456 (Ker)

should have been derived from the actual running of the hospital itself. What appears to be relevant is that the income should reach the hospitals to be utilised by it for philanthropic purposes and not for the purposes of profit. The stress is on the recipient of the income. If that is the hospital, that is the trust running it, section 10(22A) must apply. The emphasis is not on whether the income was derived from the educational institution, or hospital itself, but on the purpose for which the institution, trust or society was existing and utilising the income. The Court held that such an interpretation will subserve the object of the new provisions. Clauses (22) and (22A), appears to be to foster the growth of educational institutions and hospitals existing solely for such purposes and not for profit.

17.12 Clauses (22A) of section 10 has also been omitted from the Statute book by the Finance (No.2) Act, 1998 with effect from 1.4.1999. The medical institutions, which are of charitable nature, will henceforth have to claim income tax exemption under clauses (iiiac), (iiiae) or (via) of section 10(23C) or sections 11 and 12 of the Income tax-Act subject to fulfillment of necessary conditions. In appropriate cases, the Central Government may also grant exemption by issue of an approval under sub clauses (iv) or (v) of clause (23C) of section 10 of the Act.

17.13 Section 10(23B) inserted by the Finance Act, 1973 with effect from 1st June, 1974 exempts any income of any approved institution constituted as a public charitable trust or registered under the Societies Registration Act, 1980 or under any law corresponding to that Act in force in any part of India and existing solely for the development of Khadi or Village Industries or both and not for purposes of profits to the extent of which such income is attributable to the business of production, sale or marketing or Khadi or products of village industries provided the institution applies its income or accumulates it for application, solely for the development of khadi or village industries or both.

17.14 It may be seen that the expression "*not for purposes of profit*" is commonly used in section 10(23B) and various clauses of section 10(23C) and as such the principles laid down by the Orissa High Court in the said *case of Secondary Board of*

Education, Orissa v. Income-tax Officer[1] as to the meaning and purport of the said words shall apply uniformly and an incidental profit will not deprive the institution of the benefit of exemption under the respective sections. In none of these cases, the rigorous provisions of sections 11,12, 12A and 13 of the Income-tax Act, 1961 shall apply. The exemptions contained in sections 10(22), 10(22A) and 10(22B) of the Act were blanket in nature and no other special conditions were required to be satisfied. In *Bar Council of U.P. v. C.I.T*[2] their Lordships of the Allahabad High Court held that section 10(23A) and section 11 of the Act do not run mutually and exclusively. These sections can also have simultaneous application, if the necessary ingredients of the provisions are made out. There is nothing in section 10(23A) and section 11 to suggest that they are inconsistent with each other and cannot operate simultaneously.

17.15 The Finance Act, 1995 has inserted a new clause (23AAA) in section 10 with effect from 1st April, 1996 so as to provide for exemption from income tax of any income received by any person on behalf of a fund established for such purposes, as may be notified by the Board for the welfare of the employees or their dependents, of which fund such employees are members. The exemption will be available, if the fund applies its income or accumulates it for application wholly and exclusively to the objects for which it is established. The aforesaid fund must invest its monies being contributions made by the employees and other sums received by it in any one or more of the forms or modes specified in sub-section (5) of section 11. It is also provided that the said fund is to be approved by the Commissioner of Income-tax in accordance with the rules made in this behalf and such approval shall have effect for such assessment year or years not exceeding 3 assessment years, as may be specified in the order of approval.

17.16 The object of the omission of clauses (22) and (22A) and consequent amendment in clause (23C) is that all educational and medical institutions, which are financed and managed by Government, should continue to enjoy the benefit of tax exemption. Other institutions, whose annual receipts do not

[1] (1972) 86 ITR 408 (Orissa)
[2] (1983) 143 ITR 584 (All)

exceed rupees one crore, or such amount as may be prescribed in the Income-tax Rules, 1962, should also continue to avail of this exemption as in the past. But the remaining educational and medical institutions would be required to follow the same conditions, as are prescribed for funds, institutions and trusts established for charitable purposes or for public religious purposes. Hence these institutions would be required to make an application to the prescribed authority for grant of tax exemption. To enable these institutions to shift their investments to specified investments, the fifth proviso gave them time up to March 30, 2001, to do so.

17.17 Section 10(23C) of the Income-tax Act, 1961 inserted by the Taxation Laws (Amendment Act), 1975 with effect from 1st April, 1976, and as amended from time to time including interalia by the Finance (No.2) Act, 1998, exempts any income received by any person on behalf of-

(i) The Prime Minister's National Relief Fund; or

(ii) The Prime Minister's Fund (Promotion of Folk Art); or

(iii) The Prime Minister's Aid to Student's Fund; or

(iiia) The National Foundation for Communal Harmony

(iiiab) Any university or other educational institution existing solely for educational purposes and not for purposes of profit, and which is wholly or substantially financed by the Government; or

(iiiac) any hospital or other institution financed for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or for persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, and which is wholly or substantially financed by the Government; or

(iiiad) any university or other educational institution existing solely for educational purposes and not purposes of profit, if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed; or

(iiiae) any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or for persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, if the aggregate annual receipts of such hospital or institution do not exceed the amount of annual receipts as may be prescribed; or

(iv) any other fund or institution established for charitable purposes which may be notified by the Central Government in the Official Gazette, having regard to the objects of the fund or institution and its importance throughout India of throughout any State or States; or

(v) any trust (including any other legal obligation) or institution wholly for public religious purposes, and charitable purposes, which may be notified by the Central Government in the Official Gazette, having regard to the manner in which the affairs of the trust or institution are administered and supervised for ensuring that the income accruing thereto is properly applied for the objects thereof;

(vi) any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which may be approved by the prescribed authority; or

(via) any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of person during convalescence or for persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit other than those mentioned in sub-clause (iiiae) and which may be approved by the prescribed authority.

17.18 The Direct Tax Laws (Amendment) Act, 1989 had substituted new sub-clauses (iv) and (v) in clause (23C) in section 10 with effect from 1st April, 1990. The new sub clauses (iv) and

(v) of clause 23C empowers the Central Government to notify in the Official Gazette:

(a) Any fund or institution established for charitable purposes, having regard to its objects and importance throughout India or throughout any State or States;

(b) Any trust or institution which is either wholly for public religious purposes or wholly for public charitable and religious purposes, having regard to the manner in which its affairs are administered and supervised to ensure that its income is properly applied for the objects and purposes thereof.

17.19 The conditions laid down for grant of exemption or continuation thereof under sub- clauses (iv), (v), (vi) and (via) of section 10(23C) of the Act, are similar and are as below:

(i) The application for approval should be made in Form No. 56 or 56D prescribed under Rules 2C and 2CA of the Income-tax Rules, 1962 to the Director General (Income Tax Exemptions) for the purposes of grant of such exemption or continuance thereof. The application is to be made in the financial year preceding the assessment year for which exemption is sought.

(ii) The Director General before issuing the notification may, for satisfying himself about the genuineness of the activities of the fund or trust or institution, call for such documents (including audited annual accounts) or information from the fund or trust or institution as he thinks necessary. He may also make such enquiries as he may deem necessary in this behalf. The notification or approval shall be issued/granted within a period of 12 months from the end of the month in which the application was made.

(iii) The fund or trust or institution must apply its income or accumulate it for application, wholly or exclusively, to the objects for which it is established. If more than 15% of its income is accumulated on or after 1st April 2002, the period of accumulation of the amount in excess of 15% shall not exceed 5 years. Any payment or credit by the fund or trust or institution out of such

accumulation to a trust/institution registered under section 12AA or referred to in sub-clause (iv),(v),(vi) or (via) of section 10(23C) is not to be treated as an application of income to its objects.

(iv) The fund or trust or institution should not have invested or deposited its funds (other than voluntary contributions received and maintained in the form of jewelleries, furniture or any other article as notified in the Official Gazette by the Central Board of Direct Taxes) during the previous year otherwise than in any one or more of the forms specified in section 11 (5) of the said Act. Such investment requirement does not apply to assets forming part of the corpus as on 1st June 1973, to equity shares of a public company held as part of the corpus of a university/educational institution/hospital /medical institution on 1st June 1998, to debentures of a company or corporation acquired before 1st March 1983 and to bonus shares received on such equity shares. In case a non-permissible asset is acquired, the exemption shall not be lost if the asset is disposed of within one year after the end of the year in which the asset was acquired.

(v) The exemption shall not apply to any income of the fund or trust or Institution being profits and gains of business, unless the business is incidental to the attainment of its objects and separate books of accounts are maintained in respect of such business.

(vi) The fund or trust or institution shall get its accounts audited in Form No.10BB and furnish the audit report along with its return of income.

(vii) The notification or approval may be rescinded or withdrawn if the Director General is satisfied that the trust or fund or institution has not applied its income or invested or deposited its funds as prescribed, or if its activities are not genuine or are not being carried out in accordance with all or any of the conditions of notification/approval. This can be done only after giving the trust or fund or institution a reasonable opportunity to show cause.

(viii) Anonymous donations taxable under section115BBC would not get the benefit of exemption, and would be taxed under section 115BBC at the rate of 30% (plus applicable surcharge).

17.20 The Supreme Court, in the case of *American Hotel and Lodging Association Educational Institute vs. Central Board of Direct Taxes*[1], considered the approval procedure laid down for section 10(23C)(vi). The Court held that there is a difference between stipulation of conditions and compliance therewith. The threshold conditions are actual existence of an educational institution and approval of the prescribed authority for which every applicant has to move an application in the standardised form in terms of the first proviso. It is only if the pre-requisite condition of actual existence of the educational institution is fulfilled that the question of compliance with the requirements in the proviso would arise. The third proviso contains monitoring conditions/ requirements like application, accumulation, deployment of income in specified assets whose compliance depends on events that have not taken place on the date of the application for initial approval. To make the section with the proviso workable, the monitoring conditions in the third proviso like application/utilisation of income, pattern of investments to be made, etc., can be stipulated as conditions by the prescribed authority subject to which the approval could be granted. While imposing stipulations subject to which approval is granted the prescribed authority may insist upon a certain percentage of accounting income to be utilised/applied for imparting education in India. The prescribed authority must give an opportunity to the applicant institution to comply with the monitoring conditions which have been stipulated for the first time under the third proviso. After the grant of the approval, if it is brought to the notice of the prescribed authority that the conditions on which approval was given are breached or that the circumstances mentioned in the thirteenth proviso exist, then the prescribed authority can withdraw the approval earlier granted by following the procedure mentioned in that proviso.

17.21 The Supreme Court also noted that the third proviso to section 10(23C)(vi) confines the words “application of income” to

[1] (2008) 301 ITR 86 (SC)

the objects for which the institution is established. It does not use the words "in India" in the matter of application or accumulation of income, though in several other sections like sections 10(20A), 10(22B) and 11(1)(a), etc., Parliament had used the words "in India". Therefore, it cannot read the words "in India" into the third proviso. But while imposing conditions subject to which the application is granted, the prescribed authority may insist upon a certain percentage of accounting income being utilised/applied for imparting education in India.

17.22 In *DIT(E) v. Malad Jain Yuvak Mandal Medical Relief Centre*[1], their Lordships of the Bombay High Court held that an assessee, who claims exemption under section 10(22) of the Act, must file returns each year so as to enable the assessing officer to evaluate and ascertain whether the assessee existed solely for educational purposes and not for purposes of profit.

[1] (2001) 250 ITR 488 (Bom)

18

Assessment to Wealth-tax

18.01. Section 3 of the Wealth-tax Act, 1957 earlier postulated only two categories of assessable units under the Act, viz., "*Individual*" and "*Hindu Undivided Family*", as the levy of wealth-tax on the other category of "*company*" had been once withdrawn by section 13 of the Finance Act, 1960, but now re-introduced through sub-section (2) inserted by the Finance Act, 1992 with effect from 01.04.1993. On this basis, cases went to the Courts with the argument that the Wealth tax Act does not provide for levy of any tax on charitable trust and as such no wealth-tax can be charged from the trustees. However, the Supreme Court in the case of *Gordhandas Govindram Family Charity Trust (Trustees of) v, C.I.T.*[1] held following the principles laid down in *C.I.T. v. Sodra Devi*[2]*, V. Venugopala Ravi Varma Rajah v. Union of India & Another*[3], *Suhashi Karuri v. Wealth-tax Officer*[4], and *Abhay L. Khatau v. Commissioner of Wealth-tax*[5], that there is no dispute that section 5(1)(i) of the Act proceeds on the basis that a trust property comes within the scope of the Act. Section 3 of the Act brings with its scope an '*individual',* which expression in view of the General Clauses Act, includes individuals as well, unless the context, far from not indicating that the individual does not include individuals, clearly shows that, at any rate, so far as trustees are concerned, it includes individuals. Reference in this connection may also be made to the decision of the Supreme Court in *Banarsi Dass v. Wealth-tax Officer*[6].

18.02 Thus, there can be no doubt now that the trustees of the charitable or religious trust or institution may be charged to wealth-tax, of course with reference to only those assets, as fall within the new definition of '*assets*' as contained in section 2(ea) inserted on

---

[1] (1973) 88 ITR 47 (SC)
[2] (1957) 32 ITR 615, 620 (SC)
[3] (1969) 74 ITR 49 (SC)
[4] (1962) 46 ITR 953 (Cal)
[5] (1965) 57 ITR 202 (Bom)
[6] (1965) 56 ITR 224 (SC)

the statute book by the Finance Act, 1992, with effect from 1st April, 1993, unless they enjoy exemption under section 5(1)(i) read with section 21A of the Act.

18.03 It may however be noted that the Supreme Court affirmed the decision of the Bombay High Court in *Bombay Cricket Association's*[7] case wherein it was held that a trust not being an individual, or an HUF or a company is not a taxable entity as enumerated in section 3, and therefore, was not chargeable to wealth tax.

18.04 Section 5(1)(i) of the Wealth-tax Act, 1957 provides that wealth tax shall not be payable in respect of any property held under trust or other legal obligation for any public purpose of charitable or religious nature in India. It is interesting to note the difference in the language in respect of the relevant provisions between Income-tax Act, 1961 and the Wealth-tax Act, 1957. Under section 11 of the Income-tax Act, to earn exemption, income should have been derived from property held wholly or in part for religious or charitable purposes. If property is held wholly for religious or charitable purposes, the whole of the income is exempt and the case of property held in part only for such purposes, the income applied or finally set apart for application thereto is exempt. In the Wealth-tax Act, there is an omission of the word "*wholly*" in section 5(1)(i) and there is no provision for exempting part only of the property held for religious or charitable purposes.

18.05 The Bombay High Court in the case of *Trustees of K. B. H. M. Bhiwandiwalla Trust v. Commissioner of Wealth-tax*[8] held that this difference in language is intentional. The reason as given by the Court was that in case of income arising from property held under trust partly for charitable purposes and partly for other purposes, apportionment is possible. Such apportionment is not possible in respect of the corpus of the property. The Court went on to add that the intention of the legislature in omitting the word "*wholly*" in section 5(1)(i) as a qualifying word regards the requirements concerning the objects of the trust is that if it can be said that primarily or predominantly the objects of a trust are of a

[7] (1987) 166 ITR 356 (Bom) affirmed in (2001) 118 Taxman 884 (SC)
[8] (1977) 106 ITR 709 (Bom)

public charitable nature, the corpus would qualify for exemption. In the said case before the Bombay High Court, out of the five objects of the trust four fell within section 5(1)(i) of the Wealth-tax Act, 1957. The Court found that one of the objects, which provided "*for payment of monthly pocket expenses and annual clothing allowances to the members of the families of the settlor and his brothers*" was not public purpose of a charitable nature. But the trustees were not given discretion to use the whole income of the trust on any one of the specified objects. The Court held that under section 5(1)(i) of the Wealth-tax Act, all the objects need not fall within the expression "*public purpose of a charitable or religious nature in India*". It would be sufficient if the objects of the trust considered as a whole could be regarded to be within the expression.

18.06 The Madras High Court in *C.W.T. v. Attur Thuluva Vellalar Sangam*[9] held that for the purpose of claiming exemption under the Wealth-tax Act, it is not essential that the trust claiming to be a charitable trust must be wholly and exclusively engaged in charitable activity. It is sufficient, if its primary or predominant object is charitable. The court found that income of the trust was at all times applied for charitable purposes and as such, it was entitled to exemption under section 5(1)(i) of the Wealth-tax Act, 1957.

18.07 The said distinction was further explained by the Andhra Pradesh High Court in *Trustees of H.E.H. The Nizam's Pilgrimage Money Trust v. C.W.T./C.I.T.* [10]. In this case the Nizam created the Nizam's Religious and Endowment Trust with securities of Rs.40 lakhs for carrying out the objects of the trust specified in the trust deed. While the objects of the trust deed enjoined the trustees to spend income on the objects within the taxable territories, the other two required the trustees to spend on objects outside the taxable territories. While expressing desire that the income should be spent for all the four purposes equally, the settlor, however, left absolute discretion with the trustees to spend the income in such shares and proportions and in such manner as they deemed fit. The trust was denied exemption under section 5(1)(i) of Wealth-

[9] (2000) 243 ITR 774 (Mad)
[10] (1988) 171 ITR 323 (AP) affirmed in (2000) 242 ITR 676 (SC)

tax Act, 1957. The Andhra Pradesh High Court held that in order to be entitled to exemption under section 5(1)(i) of the Wealth tax Act, the property must be held under trust for religious and charitable purposes and such purposes must be confined in its scope to the taxable territories. Under the Income-tax Act, it is immaterial whether the charitable or religious purposes for which the trust is created are confined to the taxable territories; it is essential that they must be applied or accumulated for application or set apart for application within the taxable territories and thus the area of application of income is relevant under the Income-tax Act. However, under the Wealth-tax Act, the area of purpose of the trust is the decisive factor for claming exemption. In exercise of the absolute discretion vested in them, even if the trustees resolve not to spend the income accrued to the trust, on objects outside the taxable territories, still the benefit of section 5(1)(i) of the Act is not available to the assessee inasmuch as the discretion was not exercised irrevocably; and the trustees have circumscribed their activities for the time being in relation to the specified objects of the trust. It is always open to the trustees to change their mind and spend on the other specified purposes of the trust. Hence, the Court confirmed the disallowance of exemption for the trust property under section 5(1)(i) of the Wealth-tax Act. This decision was later affirmed by the Supreme Court.

18.08 Section 21A of the Wealth-tax Act, 1957, inserted by the Finance Act, 1972 with effect from 1.4.1973 however, provides that where any part of the property or income of a trust for any public purposes of a charitable or religious nature in India is used or applied or any part of the income of a trust created on or after 1-4-1962 enures, directly or indirectly for the benefit of any person referred to in section 13(3) of the Income-tax Act, 1961, wealth-tax shall be levied at the normal rate or at 1.5%, whichever course is more beneficial to the revenue. As a result of the amendment made in section 21A of the Wealth-tax Act with effect from 1st April, 1985, that is to say, the assessment year 1985-86 and onwards, where any property is held under trust for any public purpose of a charitable or religious nature in India, tax shall be levied upon and recoverable from the trustee or manager in respect of the property held by him under trust at the "*maximum marginal rate*", if the trust forfeits exemption by reason of any of the following factors, namely :

(i) any part the trust's property or any income of the trust, including income by way of voluntary contributions is used or applied, directly or indirectly, for the benefit of any person referred to in section 13(3) of the Income-tax Act, e.g., the settlor, the trustee, their relatives, etc.; or

(ii) any part of income of the trust, created on or after 1st April, 1962, including income by way of voluntary contributions, enures, directly or indirectly, for the benefit of any of the persons referred to in section13(3) of the Income-tax Act; or

(iii) any funds of the trust are invested or deposited or any shares in a company are held by the trust in contravention of the investment pattern for trust funds laid down in clause (d) of sub-section(1) read with sub-section (5), of section 13 of the Income-tax Act.

18.09 The Explanation below the second proviso to section 21A has also been amended to provide that the expression "*maximum marginal rate*" would mean the rate of wealth-tax applicable in relation to the highest slab of wealth in the case of an individual as specified in Part I of the Schedule to the Wealth-tax Act, 1957.

18.10 However, an exemption has been granted in the case of a trust which is created before 1-4-1962 if any part of the property or income of such trust is used or applied for the benefit of any person referred to in section 13(3) of the Income-tax Act, 1961 only by way of compliance with a mandatory term of the trust.

18.11 Explanation (a) to section 21A of the Act provides that any part of the property or income of a trust shall be deemed to have been used or applied for the benefit of any person referred to in section 13(1) of the Income tax Act, 1961 in every case in which it can be so deemed to have been used or applied within the meaning of section 13(1)(c) of the Income-tax Act, 1961 at any time during the period of 12 months ending with the relevant valuation date.

18.12 The utility and importance of the provisions of section 21A of the Act could be fully understood by reference to the decision of

the Calcutta High Court in *Managing Shebaits of Bhukailash Debutter Estate v. Wealth-tax Officer*[11]. The court in the said case was concerned with the wealth-tax assessment of Bhukailash Debutter Estate in respect of the assessment years 1964-65 to 1967-68 when there was no provision in the Wealth-tax Act corresponding to section 21A [which was inserted for the first time by the Finance Act, 1972 with effect from 1st April, 1973]. In the said case it was found, as a matter of fact, that the income from property held under trust was being used by the trustees for their own personal benefit. The Calcutta High Court, in the absence of section 21A of the Act, held that, unlike the provisions of the Income-tax Act, 1961, the holding of a property by the assessee either under a trust or other legal obligation for public purpose of a charitable or religious nature, is the only statutory requirement under section 5(1)(i) of the Wealth-tax Act 1957, entitling the assessee to claim exemption under the Act and the application of the money held under a trust or under legal obligation is not a relevant consideration for such exemption. Therefore, where the property in question was conceded to be a public religious endowment, the Court held that the circumstance that the income therefrom was being used by the trustees for their own personal benefit, will not disentitle the property to exemption from payment of wealth-tax.

18.13 In view of the insertion of section 21A in the Wealth-tax Act with effect from 1st April, 1973, the principles laid down in the said case are no more applicable, as after the said date, if any part of the property or income of a trust for any public purpose of a charitable or religious nature in India is used or applied or any part of the income of a trust created on or after 1st April, 1962 enures directly or indirectly for the benefit of any person referred to in section 13(3) of the Income-tax Act,1961, the trust will be denied the benefit of exemption contained in section 5(1)(i) of the Wealth-tax Act, 1957.

[11] (1977) 106 ITR 904 (Cal)

19

Suggestion Regarding Drafting of Trust Deed

19.01 In the circumstances and with a view to provide proper safeguard, it is suggested that the instrument of trust or institution created or established hereafter should contain, inter alia, the following clauses:

> "*1. Nothing contained in this deed shall be deemed to authorize the trustees to do any act which may in any way be construed as violative or contrary to the provisions of sections 2(15), 10(23B), 10(23C), 11, 12, 12A, 12AA, 13 and/or 80G of the Income tax Act, 1961 and/or any statutory modifications thereof and all activities of the trust shall be carried out with a view to benefit the public at large, without any profit motive and in accordance with the provisions of the Income Tax Act, 1961 or any statutory modification thereof.*
>
> *2. The Trust is hereby expressly declared to be a public charitable trust and all the provisions of this deed are to be constituted accordingly*".

19.02 It is also advisable to have a clause stating that the trust created is irrevocable, so that the provisions of sections 61 or 62 of the Income-tax Act are not attracted.

19.03 Further, in order to have flexibility in the operations of the trust, it is advisable to grant power to the trustees to spend for its objects not only the income of the trust, but also any part of its corpus.

APPENDICES

APPENDIX - A

Extracts from the Income-tax Act, 1961

I. **Section 2(15) :** ‘‘charitable purpose” includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility.

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity.

Section 2(24) : "income" includes:

(iia) voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes 12 or by an association or institution referred to in clause (21) or clause (23), or by a fund or trust or institution referred to in sub-clause (iv) or sub-clause (v) or by any university or other educational institution referred to in sub-clause (iiiad) or sub-clause (vi) or by any hospital or other institution referred to in sub-clause (iiiae) or sub-clause (via) of clause (23C) of section 10.

Explanation - For the purposes of this sub-clause, “trust” includes any other legal obligation.

II. **Section 10: Incomes not included in total income** - In computing the total income of a previous year of any

person, any income falling within any of the following clauses shall not be included -

[1]**(22)** any income of a university or other educational institution, existing solely for educational purposes and not for purposes of profit;

[2]**(22A)** any income of a hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit;

(22B) any income of such news agency set up in India solely for collection and distribution of news as the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that the news agency applies its income or accumulates it for application solely for collection and distribution of news and does not distribute its income in any manner to its members:

Provided further that any notification issued by the Central Government under this clause shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years (including an assessment year or years commencing before the date on which such notification is issued) as may be specified in the notification;

Provided also that where the news agency has been specified, by notification, by the Central Government and subsequently that Government is satisfied that such news agency has not applied or accumulated or distributed its income in

[1] Omitted by the Finance (No.2) Act, 1998, w.e.f. 1.4.99
[2] Omitted by the Finance (No.2) Act, 1998, w.e.f. 1.4.99

accordance with the provisions contained in the first proviso, it may, at any time after giving a reasonable opportunity of showing cause, rescind the notification and forward a copy of the order rescinding the notification to such agency and to the Assessing Officer.

(23A) Any income (other than income chargeable under the head "Income from house property" or any income received for rendering any specific services or income by way of interest or dividends derived from its investments) of an association or institution established in India having as its object the control, supervision, regulation or encouragement of the profession of law, medicine, accountancy, engineering or architecture or such other profession as the Central Government may specify in this behalf, from time to time, by notification in the Official Gazette:

Provided that-

(i) the association or institution applies its income, or accumulates it for application, solely to the objects for which it is established; and

(ii) the association or institution is for the time being approved for the purpose of this clause by the Central Government by general or special order.

Provided further that where the association or institution has been approved by the Central Government and subsequently that Government is satisfied that -

(i) such association or institution has not applied or accumulated its income in accordance with the provisions contained in the first proviso; or

(ii) the activities of the association or institution are not being carried out in accordance with all or any of the conditions subject to which such association or institution was approved,

it may, at any time after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned association or institution, by order, withdraw the approval and forward a copy of the order withdrawing the approval to such association or institution and to the Assessing Officer;

(23AA) any income received by any person on behalf of any Regimental Fund or Non-Public Fund established by the armed forces of the Union for the welfare of the past and present members of such forces or their dependants:

(23AAA) any income received by any person on behalf of a fund established, for such purposes as may be notified by the Board in the Official Gazette, for the welfare of employees or their dependants and of which fund such employees are members if such fund fulfils the following conditions, namely :

(a) the fund - (i) applies its income or accumulates it for application, wholly and exclusively to the objects for which it is established; and (ii) invests its funds and contributions and other sums received by it in the forms or modes specified in sub-section (5) of section 11;

(b) the fund is approved by the Commissioner in accordance with the rules made in this behalf:

Provided that any such approval shall at any one time have effect for such assessment year or years not exceeding three assessment years as may be specified in the order of approval;

(23AAB) any income of a fund, by whatever name called, set up by the Life Insurance Corporation of India on or after the 1st day of August, 1996 or any other insurer under a pension scheme,-

(i) to which contribution is made by any person for the purpose of receiving pension from such fund;

(ii) which is approved by the Controller of Insurance or the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999), as the case may be.

Explanation. - For the purposes of this clause, the expression "Controller of Insurance" shall have the meaning assigned to it in clause (5B) of section 2 of the Insurance Act, 1938 (4 of 1938);

(23B) any income of an institution constituted as a public charitable trust or 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, and existing solely for the development of khadi or village industries or both, and not for purposes of profit, to the extent such income is attributable to the business of production, sale, or marketing, of khadi or products of village industries:

Provided that --

(i) the institution applies its income, or accumulates it for application solely for the development of khadi or village industries or both ; and

(ii) the institution is, for the time being, approved for the purpose of this clause by the Khadi and Village Industries Commission:

Provided further that the Commission shall not, at any one time, grant such approval for more than three assessment years beginning with the assessment year next following the financial year in which it is granted:

Provided also that where the institution has been approved by the Khadi and Village Industries Commission and subsequently that Commission is satisfied that -

(i) the institution has not applied or accumulated its income in accordance with the provisions contained in the first proviso; or

(ii) the activities of the institution are not being carried out in accordance with all or any of the conditions subject to which such institution was approved,

it may, at any time after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned institution, by order, withdraw the approval and forward a copy of the order withdrawing the approval to such institution and to the Assessing Officer.

Explanation - For the purposes of this clause, -

(i) "*Khadi and Village Industries Commission*" means the Khadi and Village Industries Commission established under the Khadi and Village Industries Commission Act, 1956 (61 of 1956);

(ii) "*khadi*" and "*village industries*" have the meanings respectively assigned to them in that Act;

(23BBA) any income of any body or authority (whether or not a body corporate or corporation sole) established, constituted or appointed by or under any Central, State or Provincial Act which provides for the administration of any one or more of the following, that is to say, public religious or charitable trusts or endowments (including maths, temples, gurdwaras, wakfs, churches, synagogues, agiaries or other places of public religious worship) or societies for religious or charitable purposes registered as such under the Societies Registration Act, 1860 (21 of 1860), or any other law for the time being in force:

Provided that nothing in this clause shall be construed to exempt from tax the income of any trust, endowment or society referred to therein.

(23C) any income received by any person on behalf of--

(i) the Prime Minister's National Relief Fund; or

(ii) the Prime Minister's Fund (Promotion of Folk Art); or

(iii) the Prime Minister's Aid to Students Fund; or

(iiia) the National Foundation for Communal Harmony; or

(iiiab) any university or other educational institution existing solely for educational purposes and not for purposes of profit, and which is wholly or substantially financed by the Government ; or

(iiiac) any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, and which is wholly or substantially financed by the Government ; or

(iiiad) any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed ; or

(iiiae) any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, if the aggregate annual receipts of such hospital or institution do not exceed the amount of annual receipts as may be prescribed ; or

(iv) any other fund or institution established for charitable purposes which may be approved by the prescribed authority, having regard to the objects of the fund or institution and its importance throughout India or throughout any State or States; or

(v) any trust (including any other legal obligation) or institution wholly for public religious purposes or wholly for public religious and charitable purposes, which may be approved by the prescribed authority, having regard to the

manner in which the affairs of the trust or institution are administered and supervised for ensuring that the income accruing thereto is properly applied for the objects thereof:

(vi) any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which may be approved by the prescribed authority ; or

(via) any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiac) or sub-clause (iiiae) and which may be approved by the prescribed authority ;

Provided that the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall make an application in the prescribed form and manner to the prescribed authority for the purpose of grant of the exemption, or continuance thereof, under sub-clause (iv) or sub-clause (v) or sub clause (via):

Provided further that the prescribed authority, before approving any fund or trust or institution, or any university or other educational institution or any hospital or other medical institution, under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), may call for such documents (including audited annual accounts) or information from the fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, as it thinks necessary in order to satisfy itself about the genuineness of the activities of such fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, and the

prescribed authority may also make such inquiries as it deems necessary in this behalf :

Provided also that the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) -

(a) applies its income, or accumulates it for application, wholly and exclusively to the objects for which it is established; and in a case where more than fifteen percent of its income is accumulated on or after the 1st day of April, 2002, the period of the accumulation of the amount exceeding fifteen percent of its income shall in no case exceed five years; and

(b) does not invest or deposit its funds, other than--

(i) any assets held by the fund, trust or institution or any university or other educational institution or any hospital or other medical institution where such assets form part of the corpus of the fund, trust or institution or any university or other educational institution or any hospital or other medical institution as on the 1st day of June, 1973;

(ia) any asset being equity shares of public company, held by any university or other educational institution or any hospital or other medical institution where such asset form part of the corpus of any university or other educational institution or any hospital or other medical institution as on the 1st day of June, 1998;

(ii) any assets (being debentures issued by, or on behalf of, any company or corporation), acquired by the fund, trust or institution or any university or other educational institution or any hospital or other medical institution before the 1st day of March, 1983;

(iii) any accretion to the shares, forming part of the corpus mentioned in sub-clause (i) and sub clause (ia), by way of bonus shares allotted to the fund, trust or institution or any university or other educational institution or any hospital or other medical institution;

(iv) voluntary contributions received and maintained in the form of jewellery, furniture or any other article as the Board may, by notification in the Official Gazette, specify,

for any period during the previous year otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11:

Provided also that the exemption under sub-clause (iv) or sub-clause (v) shall not be denied in relation to any funds invested or deposited before the 1st day of April, 1989, otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 if such funds do not continue to remain so invested or deposited after the 30th day of March, 1993:

Provided also that the exemption under sub-clause (vi) or sub-clause (via) shall not be denied in relation to any funds invested or deposited before the 1st day of June, 1998, otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 if such funds do not continue to remain so invested or deposited after the 30th day of March, 2001:

Provided also that the exemption under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall not be denied in relation to voluntary contribution, other than voluntary contribution in cash or voluntary contribution of the nature referred to in clause (b) of the third proviso to this sub-clause, subject to the condition that such voluntary contribution is not held by the trust or institution, or any university or other educational institution or any hospital or other medical institution otherwise than in any one or more of the forms or modes specified in sub-section (5) of

section 11, after the expiry of one year from the end of the previous year in which such asset is acquired or the 31st day of March, 1992, whichever is later:

Provided also that nothing contained in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall apply in relation to any income of the fund or trust or institution or any university or other educational institution or any hospital or other medical institution being profits and gains of business, unless the business is incidental to the attainment of its objectives and separate books of account are maintained by it in respect of such business:

Provided also that any notification issued by the Central Government under sub-clause (iv) or sub-clause (v), before the date on which the Taxation Laws (Amendment) Bill 2006 receives the assent of the President, shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years (including an assessment year or years commencing before the date on which such notification is issued) as may be specified in the notification:

Provided also that where an application under the first proviso is made on or after the date on which the Taxation Laws (Amendment) Bill, 2006 receives the assent of the President, every notification under sub-clause (iv) or sub-clause (v) shall be issued or approval under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall be granted or an order rejecting the application shall be passed within the period of twelve months from the end of the month in which such application was received:

Provided also that where the total income, of the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), without giving effect to the provisions of the said sub-clauses, exceeds the maximum amount which is not chargeable to tax in any previous year, such trust or institution or any university or other educational institution or any hospital or other medical

institution shall get its accounts audited in respect of that year by an accountant as defined in the Explanation below sub-section (2) of section 288 and furnish along with the return of income for the relevant assessment year, the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed:

Provided also that any amount of donation received by the fund or institution in terms of clause (d) of sub-section (2) of section 80G in respect of which accounts of income and expenditure have not been rendered to the authority prescribed under clause (v) of sub-section (5C) of that section, in the manner specified in that clause, or which has been utilised for purposes other than providing relief to the victims of earthquake in Gujarat or which remains unutilised in terms of sub-section (5C) of section 80G and not transferred to the Prime Minister's National Relief Fund on or before the 31st day of March, 2004 shall be deemed to be the income of the previous year and shall accordingly be charged to tax:

Provided also that where the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) does not apply its income during the year of receipt and accumulates it, any payment or credit out of such accumulation to any trust or institution registered under section 12AA or to any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall not be treated as application of income to the objects for which such fund or trust or institution or university or educational institution or hospital or other medical institution, as the case may be, is established:

Provided also that where the fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) is notified by the Central Government or is

approved by the prescribed authority, as the case may be, or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via), is approved by the prescribed authority and subsequently that Government or the prescribed authority is satisfied that -

(i) such fund or institution or trust or any university or other educational institution or any hospital or other medical institution has not -

(A) applied its income in accordance with the provisions contained in clause (a) of the third proviso; or

(B) invested or deposited its funds in accordance with the provisions contained in clause (b) of the third proviso; or

(ii) the activities of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution -

(A) are not genuine; or

(B) are not being carried out in accordance with all or any of the conditions subject to which it was notified or approved,

it may, at any time after giving a reasonable opportunity of showing cause against the proposed action to the concerned fund or institution or trust or any university or other educational institution or any hospital or other medical institution, rescind the notification or, by order, withdraw the approval, as the case may be, and forward a copy of the order rescinding the notification or

withdrawing the approval to such fund or institution or trust or any university or other educational institution or any hospital or other medical institution and to the Assessing Officer:

Provided also that in case the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in the first proviso makes an application on or after the 1st day of June, 2006 for the purposes of grant of exemption or continuance thereof, such application shall be made at any time during the financial year immediately preceding the assessment year from which the exemption is sought:

Provided also that any anonymous donation referred to in section 115BBC on which tax is payable in accordance with the provisions of the said section shall be included in the total income:

Provided also that all pending applications, on which no notification has been issued under sub-clause (iv) or sub-clause (v) before the 1st day of June, 2007, shall stand transferred on that day to the prescribed authority and the prescribed authority may proceed with such applications under those sub-clauses from the stage at which they were on that day.

III. **Section 11** - **Income from property held for charitable or religious purposes** - (1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income--

(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property;

(b) income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India ; and where any such income is finally set apart for

application to such purposes in India, to the extent to which the income so set apart is not in excess of fifteen per cent of the income from such property ;

(c) income derived from property held under trust--

(i) created on or after the 1st day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and

(ii) for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India ;

Provided that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income;

(d) income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution.

Explanation -For the purposes of clauses (a) and (b), -

(1) in computing the fifteen per cent of the income which may be accumulated or set apart, any such voluntary contributions as are referred to in section 12 shall be deemed to be part of the income ;

(2) if, in the previous year, the income applied to charitable or religious purposes in India falls short of the eighty-five per cent of the income derived during that year from property held under trust, or, as the case may be, held under trust in part, 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 person in receipt of the income [such option to be exercised in writing before the expiry of the time allowed under sub-section (1) of section 139, for furnishing the return of income], be deemed to be income applied to such purposes, during the previous year, in which the income was derived ; and the income so deemed to have been applied shall not be taken into account in calculating the amount of income applied to such purposes, in the case referred to in sub-clause (i), during the previous year in which the income is received or during the previous year immediately following, as the case may be, and, in the case referred to in sub-clause (ii), during the previous year immediately following the previous year in which the income was derived.

(1A) For the purposes of sub-section (1) -

(a) where a capital asset, being property held under trust wholly for charitable or religious purposes, is transferred and the whole or any part of the net consideration is utilised for acquiring another capital asset to be so held, then, the capital gain arising from the transfer shall be deemed to have been applied to charitable or religious purposes to the extent specified hereunder, namely:-

(i) where the whole of the net consideration is utilised in acquiring the new capital asset, the whole of such capital gain;

(ii) where only a part of the net consideration is utilised for acquiring the new capital asset, so much of such capital gain as is equal to the amount, if any, by which the amount so utilised exceeds the cost of the transferred asset;

(b) where a capital asset, being property held under trust in part only for such purposes, is transferred and the whole or any part of the net consideration is utilised for acquiring another capital asset to be so held, then, the appropriate fraction of the capital gain arising from the transfer shall be deemed to have been applied to charitable or religious purposes to the extent specified hereunder, namely:--

(i) where the whole of the net consideration is utilised in acquiring the new capital asset, the whole of the appropriate fraction of such capital gain ;

(ii) in any other case, so much of the appropriate fraction of the capital gain as is equal to the amount, if any, by which the appropriate fraction of the amount utilised for acquiring the new asset exceeds the appropriate fraction of the cost of the transferred asset.

Explanation - In this sub-section,--

(i) "appropriate fraction" means the fraction which represents the extent to which the income derived from the capital asset transferred was immediately before such transfer applicable to charitable or religious purposes;

(ii) "cost of the transferred asset" means the aggregate of the cost of acquisition (as ascertained for the purposes of sections 48 and 49) of the capital asset which is the subject of the transfer and the cost of any improvement

thereto within the meaning assigned to that expression in sub-clause (b) of clause (1) of section 55;

(iii) "net consideration" means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

(1B) Where any income in respect of which an option is exercised under clause (2) of the Explanation to sub-section (1) is not applied to charitable or religious purposes in India during the period referred to in sub-clause (a) or, as the case may be, sub-clause (b), of the said clause, then, such income shall be deemed to be the income of the person in receipt thereof--

(a) in the case referred to in sub-clause (i) of the said clause, of the previous year immediately following the previous year in which the income was received, or

(b) in the case referred to in sub-clause (ii) of the said clause, of the previous year immediately following the previous year in which the income was derived.

(2) Where eighty-five per cent of the income referred to in clause (a) or clause (b) of sub-section (1) read with the Explanation to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:--

(a) such person specifies, by notice in writing given to the Assessing Officer in the prescribed manner, 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 ten years ;

(b) the money so accumulated or set apart is invested or deposited in the forms or modes specified is sub-section (5).

Provided that in computing the period of ten years referred to in clause (a), the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded.

Provided further that in respect of any income accumulated or set apart on or after the 1st day of April, 2001, the provisions of this sub-section shall have effect as if for the words “ten years” at both the places where they occur, the words “five years” had been substituted.

Explanation - Any amount credited or paid, out of income referred to in clause (a) or clause (b) of subsection (1), read with the Explanation to that sub-section, which is not applied, but is accumulated or set apart, to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, shall not be treated as application of income for charitable or religious purposes, either during the period of accumulation or thereafter.

(3) Any income referred to in sub-section (2) which--

(a) is applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto, or

(b) ceases to remain invested or deposited in any of the forms or modes specified in sub-section (5), or

(c) is not utilised for the purposes for which it is so accumulated or set apart during the period referred

to in clause (a) of that sub-section or in the year immediately following the expiry thereof,

(d) is credited or paid to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10,

shall be deemed to be the income of such person of the previous year in which it is so applied or ceases to be so accumulated or set apart or ceases to remain so invested or deposited or credited or paid, as the case may be, of the previous year immediately following the expiry of the period aforesaid.

(3A) Notwithstanding anything contained in sub-section (3), where due to circumstances beyond the control of the person in receipt of the income, any income invested or deposited in accordance with the provisions of clause (b) of sub-section (2), cannot be applied for the purpose for which it was accumulated or set apart, the Assessing Officer may, on an application made to him in this behalf, allow such person to apply such income for such other charitable or religious purpose in India as is specified in the application by such person and as is in conformity with the objects of the trust ; and thereupon the provisions of sub-section (3) shall apply as if the purpose specified by such person in the application under this sub-section were a purpose specified in the notice given to the Assessing Officer under clause (a) of sub-section (2).

Provided that the Assessing Officer shall not allow application of such income by way of payment or credit made for the purposes referred to in clause (d) of sub-section (3) of section 11.

Provided further that in case the trust or institution, which has invested or deposited its income in accordance with the provisions of clause (b) of sub-section (2), is dissolved,

the Assessing Officer may allow application of such income for the purposes referred to in clause (d) of sub-section (3) in the year in which such trust or institution was dissolved.

(4) For the purposes of this section "property held under trust" includes a business undertaking so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the Assessing Officer shall have power to determine the income of such undertaking in accordance with the provisions of this Act relating to assessment; and where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes.

(4A) Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business.

(5) The forms and modes of investing or depositing the money referred to in clause (b) of sub-section (2) shall be the following, namely:--

(i) investment in savings certificates as defined in clause (c) of section 2 of the Government Savings Certificates Act, 1959 (46 of 1959), and any other securities or certificates issued by the Central Government under the Small Savings Schemes of that Government ;

(ii) deposit in any account with the Post Office Savings Bank;

(iii) deposit in any account with a scheduled bank or a co-operative society engaged in carrying on the business of banking (including a co-operative land

mortgage bank or a co-operative land development bank).

Explanation - In this clause, "scheduled bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), or any other bank being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934);

(iv) investment in units of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963);

(v) investment in any security for money created and issued by the Central government or a State Government;

(vi) investment in debentures issued by, or on behalf of, any company or corporation both the principal whereof and the interest whereon are fully and unconditionally guaranteed by the Central Government or by a State Government;

(vii) investment or deposit in any public sector company;

Provided that where an investment or deposit in any public sector company has been made and such public sector company ceases to be a public sector company,-

(A) such investment made in the shares of such company shall be deemed to be an investment made under this clause for a period of three years from the date on which

such public sector company ceases to be a public sector company;

(B) such other investment or deposit shall be deemed to be an investment or deposit made under this clause for the period up to the date on which such investment or deposit becomes repayable by such company;

(viii) deposits with or investment in any bonds issued by a financial corporation which is engaged in providing long-term finance for industrial development in India and which is eligible for deduction under clause (viii) of sub-section (1) of section 36;

(ix) deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction of purchase of houses in India for residential purposes and which is eligible for deduction under clause (viii) of sub-section (1) of section 36;

(ixa) deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for urban infrastructure in India.

Explanation — For the purposes of this clause,—

(a) ‘‘long-term finance’’ means any loan or advance where the terms under which moneys are loaned or advanced provide for repayment along with interest thereof during a period of not less than five years;

(b) ‘‘public company’’ shall have the meaning assigned to it in section 3 of the Companies Act, 1956 (1 of 1956);

(c) ‘‘urban infrastructure’’ means a project for providing potable water supply, sanitation and sewerage, drainage, solid waste management, roads, bridges and flyovers or urban transport ;

(x) investment in immovable property.

Explanation - "Immovable property" does not include any machinery or plant or plant (other than machinery or plant installed in a building for the convenient occupation of the building) even though attached to or permanently fastened to, anything attached to the earth;

(xi) deposits with the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964 (18 of 1964);

(xii) any other form or mode of investment or deposit as may be prescribed.

IV. Section 12 - Income of trusts or institutions from contributions

(1) Any voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes (not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution) shall for the purposes of section 11 be deemed to be income derived from property held under trust wholly for charitable or religious purposes and the provisions of that section and section 13 shall apply accordingly.

(2) The value of any services, being medical or educational services, made available by any charitable or religious trust running a hospital or medical institution or an educational institution, to any person referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-section (3) of section 13, shall be deemed to be income of such trust or institution derived from property held under trust

wholly for charitable or religious purposes during the previous year in which such services are so provided and shall be chargeable to income-tax notwithstanding the provisions of sub-section (1) of section 11.

Explanation - For the purposes of this sub-section, the expression ‘‘value’’ shall be the value of any benefit or facility granted or provided free of cost or at concessional rate to any person referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-section (3) of section 13.

(3) Notwithstanding anything contained in section 11, any amount of donation received by the trust or institution in terms of clause (d) of sub-section (2) of section 80G in respect of which accounts of income and expenditures have not been rendered to the authority prescribed under clause (v) of sub-section 5C of that section, in the manner specified in that clause, or which has been utilised for purposes other than providing relief to the victims of earthquake in Gujarat or which remains unutilised in terms of sub-section (5C) of section 80G and not transferred to the Prime Minister’s National Relief Fund on or before the 31st day of March, 2004 shall be deemed to be the income of the previous year and shall accordingly be charged to tax.

V. Section 12A - Conditions as to registration of trusts, etc –

(1) The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:-

(a) the person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and in the prescribed manner to the Commissioner before the 1st day of July, 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution, whichever is later and such trust or institution is registered under section 12AA.

Provided that where an application for registration of the trust or institution is made after the expiry of the period aforesaid, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution,-

(i) from the date of the creation of the trust or the establishment of the institution if the Commissioner is, for reasons to be recorded in writing, satisfied that the person in receipt of the income was prevented from making the application before the expiry of the period aforesaid for sufficient reasons;

(ii) from the 1st day of the financial year in which the application is made, if the Commissioner is not so satisfied;

Provided further that the provisions of this clause shall not apply in relation to any application made on or after the 1st day of June, 2007;

(aa) the person in receipt of the income has made an application for registration of the trust or institution on or after the 1st day of June, 2007 in the prescribed form and manner to the Commissioner and such trust or institution is registered under section 12AA;

(b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year, the accounts of the trust or institution for that year have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and the person in receipt of the income furnishes along with the return of income for the relevant assessment year the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

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

VI. Section 12AA- Procedure for registration –

(1) The Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) or clause (aa) of sub-section (1) of section 12A, shall -

(a) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and

(b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he -

(i) shall pass an order in writing registering the trust or institution;

(ii) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution,

and a copy of such order shall be sent to the applicant.

Provided that no order under sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

(1A) All applications, pending before the Chief Commissioner on which no order has been passed under clause (b) of sub-section (1) before the 1st day of June, 1999, shall stand transferred on that day to the Commissioner and the Commissioner may proceed with such applications under that sub-section from the stage at which they were on that day.

(2) Every order granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (a) or clause (aa) of sub-section (1) of section 12A.

VII. Section 13 – Section 11 not to apply in certain cases

(1) Nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof -

(a) any part of the income from the property held under a trust for private religious purposes which does not enure for the benefit of the public;

(b) in the case of a trust for charitable purposes or a charitable institution created or established after the commencement of this Act, any income thereof if the trust or institution is created or established for the benefit of any particular religious community or caste;

[1](bb) In the case of a charitable trust or institution for the relief of the poor, education or medical relief, which carries on any business, any income derived from such business, unless the business is carried on in the course of the actual carrying out of a primary purpose of the trust or institution;

(c) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof-

(i) if such trust or institution has been created or established after the commencement of this Act and under the terms of the trust or the rules governing the institution, any part of such income enures, or

[1] Omitted by the Finance Act, 1983, w.e.f. 1-4-1984

(ii) if any part of such income or any property of the trust or institution (whenever created or established) is during the previous year used or applied,

directly or indirectly for the benefit of any person referred to in sub-section (3).

Provided that in the case of a trust or institution created or established before the commencement of this Act, the provisions of sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-section (3), if such use or application is by way of compliance with a mandatory term of the trust or a mandatory rule governing the institution.

Provided further that in the case of a trust for religious purposes or a religious institution (whenever created or established) or a trust for charitable purposes or a charitable institution created or established before the commencement of this Act, the provisions of sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-section (3), in so far as such use or application relates to any period before the 1st day of June, 1970 ;

(d) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof, if for any period during the previous year -

(i) any funds of the trust or institution are invested or deposited after the 28th day of February, 1983, otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11; or

(ii) any funds of the trust or institution invested or deposited before the 1st day of March, 1983, otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 continue to remain so invested or deposited after the 30th day of November, 1983; or

(iii) any shares in a company, other than

(A) shares in a public sector company;

(B) shares prescribed as a form or mode of investment under clause (xii) of sub-section (5) of section 11,

are held by the trust or institution after the 30th day of November, 1983.

Provided that nothing in this clause shall apply in relation to -

(i) any assets held by the trust or institution where such assets form part of the corpus of the trust or institution as on the 1st day of June, 1973;

(ia) any accretion to the shares, forming part of the corpus mentioned in clause (i), by way of bonus shares allotted to the trust or institution;

(ii) any assets (being debentures issued by, or on behalf of, any company or corporation) acquired by the trust or institution before the 1st day of March, 1983;

(iia) any asset, not being an investment or deposit in any of the forms or modes specified in sub-section (5) of section 11, where such asset is not held by the trust or institution, otherwise than in any of the forms or modes specified in sub-section (5) of section 11, after the expiry of one year from the end of the previous year in which

such asset is acquired or the 31st day of March, 1993, whichever is later;

(iii) any funds representing the profits and gains of business, being profits and gains of any previous year relevant to the assessment year commencing on the 1st day of April, 1984, or any subsequent assessment year :

Explanation - Where the trust or institution has any other income in addition to profits and gains of business, the provisions of clause (iii) of this proviso shall not apply unless the trust or institution maintains separate books of account in respect of such business.

Explanation - For the purposes of sub-clause (ii) of clause (c), in determining whether any part of the income or any property of any trust or institution is during the previous year used or applied, directly or indirectly, for the benefit of any person referred to in sub-section (3), in so far as such use or application relates to any period before the 1st day of July, 1972, no regard shall be had to the amendments made to this section by section 7 [other than sub-clause (ii) of clause (a) thereof] of the Finance Act, 1972.

(2) Without prejudice to the generality of the provisions of clause (c) and clause (d) of sub-section (1), the income or the property of the trust or institution or any part of such income or property shall, for the purposes of that clause, be deemed to have been used or applied for the benefit of a person referred to in sub-section (3) -

(a) if any part of the income or property of the trust or institution is, or continues to be, lent to any person referred to in sub-section (3), for any period during the previous year without either adequate security or adequate interest or both;

(b) if any land, building or other property of the trust or institution is, or continues to be, made available for the use of any person referred to in sub-section (3)

for any period during the previous year without charging adequate rent or other compensation;

(c) if any amount is paid by way of salary, allowance or otherwise during the previous year to any person referred to in sub-section (3) out of the resources of the trust or institution for services rendered by that person to such trust or institution and the amount so paid is in excess of what may be reasonably paid for such services ;

(d) if the services of the trust or institution are made available to any person referred to in sub-section (3) during the previous year without adequate remuneration or other compensation;

(e) if any share, security or other property is purchased by or on behalf of the trust or institution from any person referred to in sub-section (3) during the previous year for consideration which is more than adequate;

(f) if any share, security or other property is sold by or on behalf of the trust or institution to any person referred to in sub-section (3) during the previous year for consideration which is less than adequate;

(g) if any income or property of the trust or institution is diverted during the previous year in favour of any person referred to in sub-section (3) :

Provided that this clause shall not apply where the income, or the value of the property or, as the case may be, the aggregate of the income and the value of the property so diverted does not exceed one thousand rupees;

(h) if any funds of the trust or institution are, or continue to remain, invested for any period during the previous year (not being a period before the 1st day of January, 1971) in any concern in which any

person referred to in sub-section (3) has a substantial interest.

(3) The persons referred to in clause (c) of sub-section (1) and sub-section (2) are the following, namely :-

(a) the author of the trust or the founder of the institution ;

(b) any person who has made a substantial contribution to the trust or institution, that is to say, any person whose total contribution up to the end of the relevant previous year exceeds fifty thousand rupees ;

(c) where such author, founder or person is a Hindu undivided family, a member of the family;

(cc) any trustee of the trust or manager (by whatever name called) of the institution;

(d) any relative of any such author, founder, person, member, trustee or manager as aforesaid;

(e) any concern in which any of the persons referred to in clauses (a), (b), (c), (cc) and (d) has a substantial interest.

(4) Notwithstanding anything contained in clause (c) of sub-section (1) but without prejudice to the provisions contained in clause (d) of that sub-section, in a case where the aggregate of the funds of the trust or institution invested in a concern in which any person referred to in sub-section (3) has a substantial interest, does not exceed five per cent of the capital of that concern, the exemption under section 11 or section 12 shall not be denied in relation to any income other than the income arising to the trust or the institution from such investment, by reason only that the funds of the trust or the institution have been invested in a concern in which such person has a substantial interest.

(5) Notwithstanding anything contained in clause (d) of sub-section (1), where any assets (being debentures issued by, or on behalf of, any company or corporation) are acquired by the trust or institution after the 28th day of February, 1983, but before the 25th day of July, 1991, the exemption under section 11 or section 12 shall not be denied in relation to any income other than the income arising to the trust or the institution from such assets, by reason only that the funds of the trust or the institution have been invested in such assets if such funds do not continue to remain so invested in such assets after the 31st day of March, 1992.

(6) Notwithstanding anything contained in sub-section (1) or sub-section (2), but without prejudice to the provisions contained in sub-section (2) of section 12, in the case of a charitable or religious trust running an educational institution or a medical institution or a hospital, the exemption under section 11 or section 12 shall not be denied in relation to any income, other than the income referred to in sub-section (2) of section 12, by reason only that such trust has provided educational or medical facilities to persons referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-section (3).

(7) Nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof, any anonymous donation referred to in section 115BBC on which tax is payable in accordance with the provisions of that section.

Explanation 1 - For the purposes of sections 11, 12, 12A and this section, “trust” includes any other legal obligation and for the purposes of this section “relative”, in relation to an individual, means—

(i) spouse of the individual;

(ii) brother or sister of the individual;

(iii) brother or sister of the spouse of the individual;

(iv) any lineal ascendant or descendant of the individual;

(v) any lineal ascendant or descendant of the spouse of the individual;

(vi) spouse of a person referred to in sub-clause (ii), sub-clause (iii), sub-clause (iv) or sub-clause (v);

(vii) any lineal descendant of a brother or sister of either the individual or of the spouse of the individual.

Explanation 2 - A trust or institution created or established for the benefit of Scheduled Castes, backward classes, Scheduled Tribes or women and children shall not be deemed to be a trust or institution created or established for the benefit of a religious community or caste within the meaning of clause (b) of sub-section (1).

Explanation 3 - For the purposes of this section, a person shall be deemed to have a substantial interest in a concern,-

(i) in a case where the concern is a company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than twenty per cent of the voting power are, at any time during the previous year, owned beneficially by such person or partly by such person and partly by one or more of the other persons referred to in sub-section (3);

(ii) in the case of any other concern, if such person is entitled, or such person and one or more of the other persons referred to in sub-section (3) are entitled in the aggregate, at any time during the previous year, to not less than twenty per cent of the profits of such concern.

VIII. Section 80G - Deduction in respect of donations to certain funds, charitable institutions, etc.

(1) In computing the total income of an assessee, there shall be deducted, in accordance with and subject to the provisions of this section, -

(i) in a case where the aggregate of the sums specified in sub-section (2) includes any sum or sums of the nature specified in sub-clause (i) or in sub-clause (iiia) or in sub-clause (iiiaa) or in sub-clause (iiiab) or in sub-clause (iiie) or in sub-clause (iiif) or in sub-clause (iiig) or in sub-clause (iiiga) or in sub-clause (iiih) or sub-clause (iiiha) or sub-clause (iiihb) or sub-clause (iiihc) or sub-clause (iiihd) or sub-clause (iiihe) or sub-clause (iiihf) or sub-clause (iiihg) or sub-clause (iiihh) or sub-clause (iiihi) or sub-clause (iiihj) or in sub-clause (vii) of clause (a) or in clause (c) or in clause (d) thereof, an amount equal to the whole of the sum or, as the case may be, sums of such nature plus fifty per cent of the balance of such aggregate; and

(ii) in any other case, an amount equal to fifty per cent of the aggregate of the sums specified in sub-section (2).

(2) The sums referred to in sub-section (1) shall be the following, namely :-

(a) any sums paid by the assessee in the previous year as donations to -

(i) the National Defence Fund set up by the Central Government; or

(ii) the Jawaharlal Nehru Memorial Fund referred to in the Deed of Declaration of Trust adopted by the National Committee at its meeting held on the 17th day of August, 1964; or

(iii) the Prime Minister's Drought Relief Fund; or

(iiia) the Prime Minister's National Relief Fund; or

(iiiaa) the Prime Minister's Armenia Earthquake Relief Fund; or

(iiiab) the Africa (Public Contributions - India) Fund; or

(iiib) the National Children's Fund; or

(iiic) the Indira Gandhi Memorial Trust, the deed of declaration in respect whereof was registered at New Delhi on the 21st day of February, 1985; or

(iiid) the Rajiv Gandhi Foundation, the deed of declaration in respect whereof was registered at New Delhi on the 21st day of June, 1991; or

(iiie) the National Foundation for Communal Harmony; or

(iiif) a University or any educational institution of national eminence as may be approved by the prescribed authority in this behalf; or

(iiig) the Maharashtra Chief Minister's Relief Fund during the period beginning on the 1st day of October, 1993 and ending on the 6th day of October, 1993 or to the Chief Minister's Earthquake Relief Fund, Maharashtra; or

(iiiga) any fund set up by the State Government of Gujarat exclusively for providing relief to the victims of earthquake of Gujarat; or

(iiih) any Zila Saksharta Samiti constituted in any district under the chairmanship of the Collector of that district for the purposes of

improvement of primary education in villages and towns in such district and for literacy and post-literacy activities.

Explanation - For the purposes of this sub-clause, "town" means a town which has a population not exceeding one lakh according to the last preceding census of which the relevant figures have been published before the first day of the previous year; or

(iiiha) the National Blood Transfusion Council or to any State Blood Transfusion Council which has its sole object the control, supervision, regulation or encouragement in India of the services related to operation and requirements of blood banks.

Explanation - For the purposes of this sub-clause, -

(a) "National Blood Transfusion Council" means a society registered under the Societies Registration Act, 1860 (21 of 1960) and has an officer not below the rank of an Additional Secretary to the Government of India dealing with the AIDS Control Project as its Chairman, by whatever name called;

(b) "State Blood Transfusion Council" means a society registered, in consultation with the National Blood Transfusion Council, under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India and has Secretary to the Government of that State dealing with the Department of

Health, as its Chairman, by whatever name called; or

(iiihb) any fund set up by a State Government to provide medical relief to the poor; or

(iiihc) the Army Central Welfare Fund or the Indian Naval Benevolent Fund or the Air Force Central Welfare Fund established by the armed forces of the Union for the welfare of the past and present members of such forces or their dependants; or

(iiihd) the Andhra Pradesh Chief Minister's Cyclone Relief Fund, 1996; or

(iiihe) the National Illness Assistance Fund; or

(iiihf) the Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund in respect of any State or Union territory, as the case may be :

Provided that such Fund is -

(a) the only Fund of its kind established in the State or the Union territory, as the case may be;

(b) under the overall control of the Chief Secretary or the Department of Finance of the State or the Union territory, as the case may be;

(c) administered in such manner as may be specified by the State Government or the Lieutenant Governor, as the case may be; or

(iiihg) the National Sports Fund to be set up by the Central Government; or

(iiihh) the National Cultural Fund set up by the Central Government; or

(iiihi) the Fund for Technology Development and Application set up by the Central Government; or

(iiihj) the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities constituted under sub-section (1) of section 3 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999); or

(iv) any other fund or any institution to which this section applies; or

(v) the Government or any local authority, to be utilised, for any charitable purpose other than the purpose of promoting family planning; or

(vi) an authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both; or

(via) any corporation referred to in clause (26BB) of section 10; or

(vii) the Government or to any such local authority, institution or association as may be approved in this behalf by the Central Government, to be utilised for the purposes of promoting family planning;

(b) any sums paid by the assessee in the previous year as donation for the renovation or repair of any such

temple, mosque, gurdwara, church or other place as is notified by the Central Government in the Official Gazette to be of historic, archaeological or artistic importance or to be a place of public worship or renown throughout any State or States.

(c) any sums paid by the assessee, being a company, in the previous year as donations to the Indian Olympic Association or to any other association or institution established in India, as the Central Government may, having regard to the prescribed guidelines by notification in the Official Gazettee, specify in this behalf for -

(i) the development of infrastructure for sports and games; or

(ii) the sponsorship of sports and games,

in India

(d) any sums paid by the assessee, during the period beginning on the 26th day of January, 2001 and ending on the 30th day of September, 2001, to any trust, institution or fund to which this section applies for providing relief to the victims of earthquake in Gujarat

(3) No deduction shall be allowed under sub-section (1) if the aggregate of the sums referred to in sub-section (2) is less than two hundred and fifty rupees;[1]

(4) Where the aggregate of the sums referred to in sub-clauses (iv), (v), (vi), (via) and (vii) of clause (a) and in clauses (b) and (c) of sub-section (2) exceeds ten per cent of the gross total income (as reduced by any portion thereof on which income-tax is not payable under any provision of this Act and by any amount in respect of which the assessee is entitled to a deduction under any other provision of this Chapter), then the amount in excess of ten

[1] Omitted by the Finance Act, 1994, w.e.f. 1.4.94

per cent of the gross total income shall be ignored for the purpose of computing the aggregate of the sums in respect of which deduction is to be allowed under sub-section (1).

(5) This section applies to donations to any institution or fund referred to in sub-clause (iv) of clause (a) of sub-section (2), only if it is established in India for a charitable purpose and if it fulfils the following conditions, namely :-

(i) where the institution or fund derives any income, such income would not be liable to inclusion in its total income under the provisions of sections 11 and 12 or clause (23AA) or clause (23C) of section 10 :

Provided that 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 donations made to the institution or fund are not used by it, directly or indirectly, for the purposes of such business; and

(c) the institution or fund issues to the 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;

(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;

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

(iv) the institution or fund maintains regular accounts of its receipts and expenditure;

(v) the institution or fund is either constituted as a public 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 (1 of 1956), or is a University established by law, or is any other educational institution recognised 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;

(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 :

Provided that any approval shall have effect for such assessment year or years, not exceeding five assessment years, as may be specified in the approval.

(5A) Where a deduction under this section is claimed and allowed for any assessment year in respect of any sum specified in sub-section (2), the sum in respect of which deduction is so allowed shall not qualify for deduction under any other provisions of this Act for the same or any other assessment year.

(5B) 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 per cent of its total income in that previous year shall be deemed to be an institution or fund to which the provisions of this section apply.

(5C) This section applies in relation to amounts referred to in clause (d) of sub-section (2) only if the trust or institution or fund is established in India for a charitable purpose and it fulfils the following conditions, namely: -

(i) it is approved in terms of clause (vi) of sub-section (5);

(ii) it maintains separate accounts of income and expenditure for providing relief to the victims of earthquake in Gujarat;

(iii) the donations made to the trust or institution or fund are applied for providing relief to the earthquake victims of Gujarat on or before the 31st day of March, 2004;

(iv) the amount of donation remaining unutilised on the 31st day of March, 2004 is transferred to the Prime Minister's National Relief Fund on or before the 31st day of March, 2004;

(v) it renders accounts of income and expenditure to such authority and in such manner as may be prescribed, on or before the 30th day of June, 2004.

Explanation 1 - An institution or fund established for the benefit of Scheduled Castes, backward classes, Scheduled 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 2 - For the removal of doubts, it is hereby declared that a deduction to which the assessee is entitled in respect of any donation made to an institution or fund to which sub-section (5) applies shall not be denied merely on either or both of the following grounds, namely :-

(i) that, subsequent to the donation, any part of the income of the institution or fund has become chargeable to tax due to non-compliance with any of the provisions of section 11, section 12 or section 12A;

(ii) that, under clause (c) of sub-section (1) of section 13, the exemption under section 11 or section 12 is denied to the institution or fund in relation to any income arising to it from any investment referred to in clause (h) of sub-section (2) of section 13 where the aggregate of the funds invested by it in a concern referred to in the said clause (h) does not exceed five per cent of the capital of that concern.

Explanation 3 - In this section "charitable purpose" does not include any purpose the whole or substantially the whole of which is of a religious nature.

Explanation 4 - For the purposes of this section, an association or institution having as its object the control, supervision, regulation or encouragement in India of such games or sports as the Central Government may, by notification in the Official Gazette, specify in this behalf, shall be deemed to be an institution established in India for a charitable purpose.

Explanation 5 - For the removal of doubts, it is hereby declared that no deduction shall be allowed under this section in respect of any donation unless such donation is of a sum of money.

(6) Omitted by the Finance Act, 1968 w.e.f. 1.4.69

IX. Section 115BBC – Anonymous donations to be taxed in certain cases.

(1) Where the total income of an assessee, being a person in receipt of income on behalf of any university or other

educational institution referred to in sub-clause (iiiad) or sub-clause (vi) or any hospital or other institution referred to in sub-clause (iiiae) or sub-clause (via) or any fund or institution referred to in sub-clause (iv) or any trust or institution referred to in sub-clause (v) of clause (23C) of section 10 or any trust or institution referred to in section 11, includes any income by way of any anonymous donation, the income-tax payable shall be the aggregate of-

(i) the amount of income-tax calculated on the income by way of any anonymous donation, at the rate of thirty per cent; and

(ii) the 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 clause (i).

(2) The provisions of sub-section (1) shall not apply to any anonymous donation received by -

(a) any trust or institution created or established wholly for religious purposes;

(b) any trust or institution 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.

(3) For the purposes of this section, "anonymous donation" means any voluntary contribution referred to in sub-clause (iia) of clause (24) of section 2, where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed.

X. Section 139 – Return of income

(4A) Every person in receipt of income derived from property held under trust or other legal obligation wholly for charitable or religious purposes or in part only for such

purposes, or of income being voluntary contributions referred to in sub-clause (iia) of clause (24) of section 2, shall, if the total income in respect of which he is assessable as a representative assessee (the total income for this purpose being computed under this Act without giving effect to the provisions of sections 11 and 12) exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1).

(4C) Every

(a) scientific research association referred to in clause (21) of section 10;

(b) news agency referred to in clause (22B) of section 10;

(c) association or institution referred to in clause (23A) of section 10;

(d) institution referred to in clause (23B) of section 10;

(e) fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (iiiad) or sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (iiiae) or sub-clause (via) of clause (23C) of section 10;

(f) trade union referred to in sub-clause (a) or association referred to in sub-clause (b) of clause (24) of section 10,

shall, if the total income in respect of which such scientific research association, news agency, association or institution, fund or trust or university or other educational institution or any hospital or other medical institution or trade union is assessable, without giving effect to the provisions of section 10, exceeds the maximum amount

which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1).

XI. Section 164 – Charge of tax where share of beneficiaries unknown.

(2) In the case of relevant income which is derived from property held under trust wholly for charitable or religious purposes, or which is of the nature referred to in sub-clause (iia) of clause (24) of section 2, or which is of the nature referred to in sub-section (4A) of section 11, tax shall be charged on so much of the relevant income as is not exempt under section 11 or section 12, as if the relevant income not so exempt were the income of an association of persons:

Provided that in a case where the whole or any part of the relevant income is not exempt under section 11 or section 12 by virtue of the provisions contained in clause (c) or clause (d) of sub-section (1) of section 13, tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate.

(3) In a case where the relevant income is derived from property held under trust in part only for charitable or religious purposes or is of the nature referred to in sub-clause (iia) of clause (24) of section 2 or is of the nature referred to in sub-section (4A) of section 11, and either the relevant income applicable to purposes other than charitable or religious purposes (or any part thereof) is not specifically receivable on behalf or for the benefit of any one person or the individual shares of the beneficiaries in the income so applicable are indeterminate or unknown, the tax chargeable on the relevant income shall be the aggregate of -

(a) the tax which would be chargeable on that part of the relevant income which is applicable to

charitable or religious purposes (as reduced by the income, if any, which is exempt under section 11) as if such part (or such part as so reduced) were the total income of an association of persons; and

(b) the tax on that part of the relevant income which is applicable to purposes other than charitable or religious purposes, and which is either not specifically receivable on behalf or for the benefit of any one person or in respect of which the shares of the beneficiaries are indeterminate or unknown, at the maximum marginal rate:

Provided that in a case where-

(i) none of the beneficiaries in respect of the part of the relevant income which is not applicable to charitable or religious purposes has any other income chargeable under this Act exceeding the maximum amount not chargeable to tax in the case of an association of persons or is a beneficiary under any other trust ; or

(ii) the relevant income is receivable under a trust declared by any person by will and such trust is the only trust so declared by him; or

(iii) the relevant income is receivable under a trust created before the 1st day of March, 1970, by a non-testamentary instrument and the Assessing Officer is satisfied, having regard to all the circumstances existing at the relevant time, that the trust, to the extent it is not for charitable or religious purposes, was created bona fide exclusively for the benefit of the relatives of the settlor, or where the settlor is a Hindu undivided family, exclusively for the benefit of the members of such family, in circumstances where such relatives or members were mainly dependent on the settlor for their support and maintenance,

tax shall be charged on the relevant income as if the relevant income (as reduced by the income, if any, which is

exempt under section 11) were the total income of an association of persons:

Provided further that where the relevant income consists of, or includes, profits and gains of business, the preceding proviso shall apply only if the income is receivable under a trust declared by any person by will exclusively for the benefit of any relative dependent on him for support and maintenance, and such trust is the only trust so declared by him:

Provided also that in a case where the whole or any part of the relevant income is not exempt under section 11 or section 12 by virtue of the provisions contained in clause (c) or clause (d) of sub-section (1) of section 13, tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate.

Explanation 1- For the purposes of this section,-

(i) any income in respect of which the persons mentioned in clause (iii) and clause (iv) of sub-section (1) of section 160 are liable as representative assessee or any part thereof shall be deemed as being not specifically receivable on behalf or for the benefit of any one person unless the person on whose behalf or for whose benefit such income or such part thereof is receivable during the previous year is expressly stated in the order of the court or the instrument of trust or wakf deed, as the case may be, and is identifiable as such on the date of such order, instrument or deed;

(ii) the individual shares of the persons on whose behalf or for whose benefit such income or such part thereof is received shall be deemed to be indeterminate or unknown unless the individual shares of the persons on whose behalf or for whose benefit such income or such part thereof is receivable, are expressly stated in the order of the court or the instrument of trust or wakf deed, as the case may be, and are ascertainable as such on the date of such order, instrument or deed.

APPENDIX - B

Extracts from the Income-tax Rules, 1962

I. Rule 2BC – Amount of annual receipts for the purposes of sub-clauses (iiiad) and (iiiae) of clause (23C) of section 10.

(1) For the purposes of sub-clause (iiiad) of clause (23C) of section 10, the amount of annual receipts on or after the 1st day of April, 1998, of any university or other educational institution, existing solely for educational purposes and not for the purposes of profit, shall be one crore rupees.

(2) For the purposes of sub-clause (iiiae) of clause (23C) of section 10, the amount of annual receipts on or after the 1st day of April, 1998, of any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, shall be one crore rupees.

II. Rule 2C - Guidelines for approval under sub-clauses (iv) and (v) of clause 23C of Section 10.

(1) The prescribed authority under sub-clause (iv) and (v) of clause (23C) of section 10 shall be the Chief Commissioner or Director General, to whom the application shall be made as provided in sub-rule (2).

(2) The application to be furnished under sub- clause (iv) and (v) of clause (23C) of section 10 by a fund, trust or institution shall be in Form No.56.

Explanation - For the purpose of this rule, “Chief Commissioner or Director General” means the Chief Commissioner or Director General whom the Central Board of Direct Taxes may, authorize to act as prescribed authority for the purposes of sub-clause (iv) or

sub-clause (v) of clause (23C) of section 10 in relation to any fund or trust or institution.

III. Rule 2CA – Guidelines for approval under sub-clauses (vi) and (via) of clause(23C) of section 10.

(1) The prescribed authority under sub-clauses (vi) and (via) of clause (23C) of section 10 shall be the Chief Commissioner or Director General, to whom the application shall be made as provided in sub-rule (2).

(1A) The prescribed authority under sub-clauses (vi) and (via) of clause (23C) of section 10 shall be the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) for applications received prior to 3rd day of April, 2001.

Provided that in case of applications received prior to 3rd day of April, 2001 where no order has been passed granting approval or rejecting the application as on 31st day of May, 2007 the prescribed authority under sub-clauses (vi) and (via) of clause (23C) of section 10 shall be the Chief Commissioner or Director General.

(2) An application for approval shall be made in Form No. 56D by any university or other educational institution or any hospital or other medical institution referred to in sub-clause (vi) or sub-clause (via) of clause (23C) of section 10.

(3) The approval of the Central Board of Direct Taxes or Chief Commissioner or Director General , as the case may be, granted before the 1st day of December, 2006 shall at any one time have effect for a period not exceeding three assessment years.

Explanation - For the purposes of this rule, “Chief Commissioner or Director General” means the Chief Commissioner or Director General to whom the Central Board of Direct Taxes may, authorize to act as prescribed authority for the purpose of sub-clause (vi) and sub-clause (via) of clause (23C) of section 10 in

relation to any university or other educational institution or any hospital or other medicial institution.

IV. Rule 11AA – Requirements for approval of an institution or fund under section 80G.

(1) The application for approval of any institution or fund under clause (vi) of sub-section (5) of section 80G shall be in Form No. 10G and shall be made 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 from 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.

(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 is 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 reasons for such rejection in writing:

Provided that no order of rejection of an application shall be passed without giving the institution or 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 months from the date on which such application was made.

Provided that 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.

V. Rule 16C - Requirements for approval of a fund under section 10(23AAA).

(1) The fund shall be formed under a trust and it shall be evidenced by a trust deed.

(2) The contributions to the fund are to be made by the employees by way of periodical subscription.

(3) The application for approval of any fund under clause (23AAA) of section 10 shall be made in form No. 9 to the Commissioner having jurisdiction over the area or territory in which the accounts are kept and such application shall be accompanied by the documents mentioned therein.

(4) Where the Commissioner is satisfied that all the conditions laid down in clause (23AAA) of section 10 are fulfilled in the case of the fund, he shall record such satisfaction in writing and grant approval to the fund specifying the assessment year or years for which the approval is valid so however that such approval shall, at one time, have effect for such assessment year or years not exceeding three assessment years.

(5) Where the Commissioner is satisfied that one or more of the conditions laid down in clause (23AAA) of section 10 are not fulfilled, he shall reject the application for approval, after recording the reasons for such rejection in writing :

Provided that no order of rejection of an application shall be passed without giving an opportunity of being heard.

VI. Rule 16CC - Form of report of audit prescribed under tenth proviso to section 10(23C)

The report of audit of the accounts of a fund or trust or institution or any university or other educational institution or any hospital or other medical institution which is required to be furnished under the tenth proviso to clause (23C) of section 10 shall be in Form No. 10BB.

VII. Rule 17 – Notice for accumulation of income by charitable or religious trust or institution or association referred to in clauses (21) and (23) of section 10.

The notice to be given to the Assessing Officer or the prescribed authority under sub-section (2) of section 11 or under the said provision as applicable under clause (21) or clause (23) of section 10 shall be in Form No. 10 and shall be delivered before the expiry of the time allowed under sub-section (1) of section 139, for furnishing the return of income.

VIII. Rule 17A – Application for registration of charitable or religious trusts, etc.

An application under clause (aa) of sub-section (1) of section 12A for registration of a charitable or religious trust or institution shall be made in duplicate in Form No. 10A and shall be accompanied by the following documents, namely:-

(a) where the trust is created, or the institution is established, under an instrument, the instrument in original, together with one copy thereof; and where the trust is created, or the institution is established, otherwise than under an instrument, the document evidencing the creation of the trust or the establishment of the institution, together with one copy thereof:

Provided that if the instrument or document in original cannot conveniently be produced, it shall be open to the

Commissioner to accept a certified copy in lieu of the original;

(b) where the trust or institution has been in existence during any year or years, prior to the financial year in which the application for registration is made, two copies of the accounts of the trust or institution relating to such prior year or years (not being more than three years immediately preceding the year in which the said application is made) for which such accounts have been made up.

IX. Rule 17B – Audit report in the case of charitable or religious trusts, etc.

The report of audit of the accounts of a trust or institution, which is required to be furnished under clause (b) of section 12A, shall be in Form No. 10B.

X. Rule 17C – Forms or modes of investment or deposits by a charitable or religious trust or institution.

The forms and modes of investment or deposits under clause (xii) of sub-section (5) of section 11 shall be the following, namely:-

(i) investment in the units issued under any scheme of the mutual fund referred to in clause (23D) of section 10 of the Income-tax Act, 1961;

(ii) Any transfer of deposits to the Public Accountant of India;

(iii) deposits made with an authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, town and villages, or for both;

(iv) investments by way of acquiring equity shares of a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act,1996 (22 of 1996);

(v) investment made by a recognized stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) (hereinafter referred to

as investor) in the equity share capital of a company (hereinafter referred to as investee) -

(A) which is engaged in dealing with securities or mainly associated with the securities market;

(B) whose main object is to acquire the membership of another recognized stock exchange for the sole purpose of facilitating the members of the investor to trade on the said stock exchange through the investee in accordance with the direction or guidelines issued under the Securities and Exchange Board of India Act, 1922 (15 of 1922) by the Securities and Exchange Board of India established under section 3 of that Act; and

(C) in which at least fifty one percent equity shares are held by the investor and the balance equity shares are held by members of such investor;

(vi) investment by way of acquiring equity shares of an incubatee by an incubator.

Explanation - *For purpose of this clause,-*

(a) "incubatee" shall mean such incubatee as may be notified by the Government of India in the Ministry of Science and Technology;

(b) *"incubator" shall mean such Technology Business Incubator or Science and Technology Entrepreneurship Park as may be notified by the Government of India in the Ministry of Science and Technology.*

XI. Rule 18AAA – Prescribed authority for approval of a University or any educational institution of national eminence for the purpose of section 80G.

For the purpose of a sub-clause (iiif) of clause (a) of sub-section (2) of section 80G, the prescribed authority,-

(a) in relation to a university or any non-technical institution of national eminence shall be the Director General (Income-tax Exemptions), who shall grant approval with the concurrence of the Secretary, University Grants Commission;

(b) in relation to any technical institution of national eminence shall be the Director General (Income-tax Exemptions) who shall grant approval with the concurrence of the Secretary, All India Council of Technical Education.

Explanation - For the purpose of this rule,-

(1) "All India Council of Technical Education" means the All India Council of Technical Education established under section 3 of the All India Council for Technical Education Act, 1987 (52 of 1987);

(2) "University Grants Commission" means the University Grants Commission established under section 4 of the University Grants Commission Act, 1956 (3 of 1956).

XII. Rule 18AAAA - Prescribed authority for the purpose of receiving separate accounts from trusts or funds or institutions for providing relief to the victims of earthquake in Gujarat.

(1) For the purpose of sub-section (5C) of section 80G, the prescribed authority shall be the Director General of Income-tax (Exemptions).

(2) The trust, the fund or the institution, which is established in India for a charitable purpose and is approved in terms of clause (*vi*) of sub-section (5) shall maintain separate accounts of income and expenditure for providing relief to the victims of earthquake in Gujarat and get such accounts audited by an accountant, as defined in the *Explanation* to sub-section (2) of section 288 and furnish the report of such audit, duly signed and verified by such accountant to the Director General of Income-tax (Exemptions) in Form No. 10AA. Such authority, on receipt of the accounts in the said form, shall give the finding as to whether the

donations received for the purpose of providing relief to the victims of earthquake in Gujarat are chargeable to tax in the hands of the trusts or the fund or the institution under clause (*23C*) of section 10 or under section 12 or not, as the case may be, and determine the extent thereof.

(3) Where the findings of the Director General of Income-tax (Exemptions) are not beneficial to the assessee, such authority shall give an opportunity to the assessee before making the findings.

(4) The Director General of Income-tax (Exemptions) shall bring his findings to the knowledge of the concerned Assessing Officer within one month of making such findings.

XIII. Rule 18AAAAA - Guidelines for specifying an association or institution for the purposes of notification under clause (c) of sub-section (2) of section 80G.

In specifying an association or institution for notification under clause (c) of sub-section (2) of section 80G, the Central Government shall satisfy itself that,-

(a) the association or institution has as its object the control, supervision, regulation or encouragement in India of the games or sports notified under Explanation 4 to section 80G;

(b) the association or institution has a proven record of its dedication towards development of infrastructure of sports or games or promotion of sports or games for at least a period of three years;

(c) the association or institution does not distribute any part of its income in any manner to its members except as grants to any association or institution affiliated to it;

(d) the association or institution applies the amount received by way of donation referred to in clause (c) of sub-section (2) of section 80G for purposes of development of

infrastructure for games or sports in India or for sponsoring of games or sports in India;

(e) the association or institution maintains regular accounts of its receipt and expenditure;

(f) the association or institution files its return of income regularly;

(g) the notification issued by the Central Government under clause (c) of sub-section (2) of section 80G shall have effect in relation to the assessment year or years, not exceeding three assessment years (including an assessment year or years commencing before the date on which such notification is issued), as may be specified in such notification.

APPENDIX – C

FORM NO.9

[*See* rule 16C]

Application for grant of approval or continuance thereof to a fund under section 10(23AAA) of the Income-tax Act, 1961

1. Name of the organisation (in which the members of the fund are employed) in full (in block letters)

2. Address of the office of the trust/fund where the accounts are kept

3. Objects of the fund

4 Names and addresses of trustees/office bearers of the fund

5. Classes and number of employees admitted to the fund -

   (i) in India

   (ii) outside India

6. Assessment particulars -

   Ward/Circle where assessed and permanent account number/GIR number

7. Source of funds/annual accretion

8. Whether the trust proposes to accumulate funds for achievement of the purposes mentioned in item (3) above and if so the manner thereof

9. (i) Details of modes in which the funds are invested or deposited, showing the nature, value and income from the investment

   (ii) Whether any funds have been invested in the modes {other than those specified in section 11(5)}

I certify that the information furnished above is true to the best of my knowledge and belief. I undertake to communicate forthwith any alteration in the terms or in the rules governing the fund made at any time hereafter.

S*ignature*

……

Place ……

Date: …… *Designation*

……

Address

Notes: The application form (in triplicate) should be sent to the Commissioner of Income tax having jurisdiction over the fund along with the following documents :

(i) A copy of instrument of trust evidencing the formation of the fund.

(ii) Notes on activities of the fund since its inception or during the last three years, whichever is less.

(iii) Copies of accounts of the fund since its inception or during the last three years, whichever is less.

APPENDIX – D

FORM NO. 10

[See rule 17]

Notice to the Assessing Officer/Prescribed Authority under section 11(2) of the Income-tax Act, 1961

To

The Assessing Officer/Prescribed Authority,

……..

……..

I, ……, on behalf of …… [name of the trust/ institution/ association] hereby bring to your notice that it has been decided by a resolution passed by the trustees/ governing body, by whatever named called, on ……. (copy enclosed) that, out of the income of the trust/institution/association for the previous year(s), relevant to the assessment year 20…. - 20…. and subsequent ……. previous year(s), an amount of Rs. ……. per cent of the income of the trust/ institution/ association/such sum as is available at the end of the previous year(s) should be accumulated or set apart till the previous year(s) ending ……. in order to enable to trustees/ governing body by whatever name called, to accumulate sufficient funds for carrying out the following purposes of the trust/association/institution :-

(1) ……..

(2) ……..

2. Before expiry of six months commencing from the end of each previous year, the amount so accumulated or set apart has been/will be invested or deposited in any one or more of the forms or modes specified in sub-section (5) of section 11.

3. Copies of the annual accounts of the trust/institution/association along with details of investment (including deposits) and utilisation,

if any, of the money so accumulated or set apart will be furnished to you before the expiry of six months commencing from the end of each relevant previous year.

4. It is requested that in view of our complying with the conditions laid down in section 11(2) of the Income-tax Act, 1961, the benefit of that section may be given in the assessments of the trust/exempting the income in respect of the trust/ institution/ association in respect of the incomes accumulated or set apart as mentioned above.

Date ……

……

Signature

……

Designation

……

Address

Notes:

1. This notice should be signed by a trustee/ principal officer.

2. Delete the inappropriate words.

APPENDIX - E

FORM NO. 10A

[See rule 17A]

Application for registration of charitable or religious trust or institution under clause (aa) of sub-section (1) of section 12A of the Income-tax Act, 1961

To,

The Commissioner of Income-tax,

……

Sir,

I, ……., on behalf of …… …… [name of the trust of institution] hereby apply for the registration of the said trust/ institution under section 12A of the Income-tax Act, 1961. The following particulars are furnished herewith.

1. Name of the *trust/institution in full [in block letters]
2. Address
3. Name(s) and address(es) of author(s)/ founder(s)
4. Date of creation of the trust or establishment of the institution
5. Name(s) and address(es) of trustee(s)/ manager(s)

I also enclose the following documents:

1 (a) *Original/ Certified copy of the instrument under which the trust / institution was created / established together with a copy thereof.

(b) *Original/ Certified copy of document evidencing the creation of the trust or the establishment of the institution,

together with a copy thereof. [The originals, if enclosed, will be returned].

2. Two copies of the accounts of the *trust/ institution for the latest *one/ two/ three years.

I undertake to communicate forthwith any alteration in the terms of the trust, or in the rules governing the institution, made at any time hereafter.

Date……

…….

Signature

…….

Designation

……

Address

*Strike out whichever is not applicable.

APPENDIX – F

FORM NO. 10AA

[See Rule 18 AAAA]

Details of accounts under section 80G(5C)(v) of the Income-tax Act, 1961, for providing relief to the victims of earthquake in Gujarat

I. GENERAL DETAILS

(a) Name and address of the trust/fund/institution…....

(b) Registration No./Date : ……..……..

(c) Permanent Account No : ……..……..

(d) Authority granting approval under section 80G : ..…

(e) Number and date of approval : …….…….

II. DETAILS OF PROJECT FOR GUJARAT EARTHQUAKE RELIEF

(a) Nature of project : ……

(b) Date of commencement : ……

(c) Date of completion : ……

(d) Amount raised by donation :……

(e) Branch-wise Bank Account number in which donations received : ……...…….

III. DETAILS OF OTHER PROJECTS BEING RUN BY THE TRUST/FUND/INSTITUTION DURING 26-1-2001 TO 31-3-2003*

Name of the project	Nature	Date of commencement	Date of completion
(a) ……			
(b) ……			
(c) ……			
(d) ……			

IV DETAILS OF RECEIPTS DURING 26-1-2001 To 30-9-2001 in Rs)

(i) Total receipts: ..……..
Out of which

(ii) Amount received through donations: ……
Out of which

(iii) Amount received through donations for Gujarat earthquake relief: …….
Out of which

(iv) Amount spent on or before 31-3-2003* for the purpose of Gujarat earthquake relief: ……

(v) Amount unutilized, which is transferred to Prime Minister's National Relief Fund on or before 31-3-2003* …….

(vi) Amount not spent for Gujarat earthquake relief : ……..……

(vii) Amount unutilized, which is transferred to Prime Minister' National Relief Fund after 31-3-2003*: ……

(viii) Amount received through donations for Gujarat earthquake relief after 30-9-2001:……. ……

(ix) Amount of donations received for Gujarat earthquake relief, which is chargeable to tax under section 12 or section 10(23C). …….

V. DETAILS OF EXPENDITURE DURING 26-1-2001 TO 30-9-2001 in Rs.

(Please enclose copy of approval)

Item	Total amount paid	Date of last payment
(i) Provision of medical relief :		
(ii) Construction of houses and buildings		
(iii) Towards education and building of		

schools etc.		
(iii) Infrastructure creation :		
(iv) Any other purpose (please specify):		

*I/We have examined the books of account including the balance sheet and the profit and loss account of the trust/fund/ institution……. (Permanent Account No…..…) relating to period for which donations were received and utilized by the said trust/fund/institution for the purpose of Gujarat earthquake relief work.

I/We *have obtained all the information and explanations which to the best of *my/our knowledge and belief were necessary for the purposes of the audit. In *my/our opinion, separate books of account have been kept by the assessee in respect of donations received and utilized for the purpose of Gujarat earthquake relief work.

* Now 31.3.2004

In*my/our opinion and to the best of *my/our information and according to explanations given to *me/our opinion and to the best of *my/our information and according to explanations given to *me/us, the said accounts give a true and fair view.

Place : …… ……....

Date : …… Signed

Accountant

APPENDIX - G

FORM NO.10B

[See rule 17B]

Audit report under section 12A(b) of the Income-tax Act, 1961, in the case of charitable or religious trusts or institutions

*I/We have examined the balance sheet of …….. [name of trust or institution] as at ……... and the profit & loss account for the year ended on that date which are in agreement with the books of account as maintained by the said trust or institution.

*I/We have obtained all the information and explanations which to the best of *my/our knowledge and belief were necessary for the purposes of the audit. In *my/our opinion, proper books of account have been kept by the head office and the branches of the above-named *trust/ institution visited by me/us so far as appears from *my/our examination of the books and proper returns adequate for the purposes of audit have been received from branches not visited by *me/us, subject to the comments given below:

In *my/our opinion and to the best of *my/our information, and according to the information given to *me/us, the said accounts give a true and fair view -

(i) in the case of the balance sheet, of the state of affairs of the above named *trust/institution as at ……, and

(ii) in the case of the profit & loss account, of the profit or loss of its accounting year ending on ……

The prescribed particulars are annexed hereto.

Place ……..
Date ……

……
Signed
⊥Accountant

1. *Strike out whichever is not applicable.

2. ⊥This report has to be given by-

   (i) a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949); or

   (ii) any person who, in relation to any State, is, by virtue of the provisions of sub-section (2) of section 226 of the Companies Act, 1956 (1 of 1956), entitled to be appointed to act as an auditor of the company registered in that State.

3. Where any of the matters stated in this report is answered in the negative, or with a qualification, the report shall state the reasons for the same.

ANNEXURE

STATEMENT OF PARTICULARS

I. APPLICATION OF INCOME FOR CHARITABLE OR RELIGIOUS PURPOSES

1.	Amount of income of the previous year applied to charitable or religious purposes in India during that year	……
2.	Whether the trust/ Institution* has exercised the option under clause (2) of the *Explanation* to section 11(1)? If so, the details of the amount of income deemed to have been applied to charitable or religious purposes in India during the previous year	……
3.	Amount of income accumulated or set apart/ finally set apart* for application to charitable or religious purposes, to the extent it does not exceed 25% of the income derived from property held under trust wholly/ in part only* for such purposes	
4.	Amount of income eligible for exemption under section 11(1)(c) (Give details)	……

5. Amount of income, in addition to the amount referred to in item 3 above accumulated or set apart for specified purposes under section 11(2) .....

6. Whether the amount of income mentioned in item 5 above has been invested or deposited in the manner laid down in section 11(2)(b)? if so the details thereof .....

7. Whether any part of the income in respect of which an option was exercised under clause (2) to the *Explanation* to section 11(1) in any earlier year is deemed to be income of the previous year under section 11(1B)? If so, the details thereof .....

8. Whether, during the previous year, any part of income accumulated or set apart for specified purposes under section 11(2) in any earlier year - .....

   (a) has been applied for purposes other than charitable or religious purposes or has ceased to be accumulated or set apart for application thereto, or .....

   (b) has ceased to remain invested in any security referred to in section 11(2)(b)(i) or deposited in any account referred to in section 11(2)(b)(ii) or section 11(2)(b)(iii), or .....

   (c) has not been utilised for purposes for which it was accumulated or set apart during the period for which it was to be accumulated or set apart, or in the year immediately following the expiry thereof? if so, the details thereof. .....

II. APPLICATION OR USE OF INCOME OR PROPERTY FOR THE BENEFIT OF PERSONS REFERRED TO IN SECTION 13(3)

1.	Whether any part of the income or property of the *trust/ institution was lent, or continues to be lent, in the previous year to any person referred to in section 13(3) (hereinafter referred to in this Annexure as such person)? If so, give details of the amount, rate of interest charged and the nature of security, if any.	…….
2.	Whether any land, building or other property of the *trust/ institution was made, or continued to be made, available for the use of any such person during the previous year? If so, give details of the property and the amount of rent or compensation charged, if any.	…….
3.	Whether any payment was made to any such person during the previous year by way of salary, allowance or otherwise? If so, give details	…….
4.	Whether the services of the *trust/ institution were made available to any such person during the previous year? If so, give details thereof together with remuneration or compensation received, if any	…….
5.	Whether any share, security or other property was purchased by or on behalf of the *trust/ institution during the previous year from any such person? If so, give details thereof together with the consideration paid	……..
6.	Whether any share, security or other property was sold by or on behalf of the *trust/ institution during the previous year to any such person? If so, give details thereof together with the consideration received	…….
7.	Whether any income or property of the *trust/	

Institution was diverted during the previous year in favour of any such person? If so give details thereof together with the amount of income of value of property so diverted ……

8. Whether the income or property of the *trust/ institution was used or applied during the previous year for the benefit of any such person in any other manner? If so, give details ……

*Strike out whichever is not applicable

III. INVESTMENTS HELD AT ANY TIME DURING THE PREVIOUS YEAR(S) IN CONCERNS IN WHICH PERSONS REFERRED TO IN SECTION 13(3) HAVE A SUBSTANTIAL INTEREST

Sl. No.	Name & address of the concern	Where the concern is a company, no. & Class of shares held	Nominal value of the Investment	Income from the Investment	Whether the amount in col.(4) exceeded 5% of the capital of the concern during the previous year- say - Yes/No
(1)	(2)	(3)	(4)	(5)	(6)
Total					

Place ……..
Date ……

…….
Signed
Accountant

APPENDIX – H

FORN NO.10BB

[See rule 16CC]

Audit report under section 10 (23C) of the Income-tax Act, 1961, in the case of any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of section 10(23C).

(i) *I/We have examined the Balance Sheet as at ……and the Income and Expenditure or Profit and Loss Account for the year ended on that date attached herewith of …….(name of fund or trust or institution or any university or other educational institution or any hospital or other medical institution).

(ii) *I/We certify that the Balance Sheet and the Income and Expenditure Account or Profit and Loss Account are in agreement with the books of account maintained by the head office at ……and ……..branches.

(iii) Subject to comments below-

(a) *I/We have obtained all the information and explanations which to the best of *my/our knowledge and belief were necessary for the purpose of the audit.

(b) In *my/our opinion, proper books of account have been kept by the head office and branches of the above-named fund, or trust, or institution or any university or other educational institution or any hospital or other medical institution so far as appears from my /our examination of the books of account.

(c) In *my/our opinion and to the best of *my/our information and according to the information given to

me/us, the said accounts read with notes thereon, if any, given a true and fair view-

(1) In the case of Balance Sheet, of the state of affairs of the above-named fund, or trust, or institution or any university or other educational institution or any hospital or other medical institution as at …. and

(2) In the case of Income and Expenditure Account or Profit and Loss Account, surplus or deficit or profit or loss for the year ended on that date.

The prescribed particulars are annexed herewith:

Place :

Date :

……...
Signed
Name
Membership No.
Address

Notes:

1. *Strike out whichever is not applicable.

2. This report has to be given by –

(i) a chartered accountant within the meaning of the Chartered Accountant Act, 1949 (38 of 1949); or

(II) any person who, in relation to any State, is, by virtue of the provisions of sub-section (2) of section 226 of the Companies Act, 1956 (1 of 1956), entitled to be appointed to act as an auditor of the company register in that State.

3. Where any of the matters stated in this report is answered in the negative, or with a qualification the report shall state the reasons for the same.

ANNEXURE

Statement of particulars

PART A

GENERAL

1.	Name of the fund or trust or institution or any university or other educational institution or any hospital or other medical institution	……
2.	Address	……
3.	Permanent Account Number	……
4.	Assessment year	……
5	Sub-clause of section 10(23C) under which the fund or trust or Institution or any university or other education institution or any hospital or other medical institution is seeking exemption	……
6.	Number and date of notification/approval of the fund or trust or Institution or any university or other educational institution or any hospital or other medical institution.	……

PART B

APPLICATIONOF INCOME FOR CHARITABLE OR RELIGIOUS OR EDUCATIONAL OR PHILANTHROPIC PURPOSES

7.	Nature of charitable / religious / educational/ philanthropic activity [as referred to in sub-clause (iv), (v), (vi) or (via) of section 10(23C)]	……
8.	Total income of the previous year of the fund or trust or institution or any university or other educational institution or any hospital or other medical institution	……
9.	Amount of income of the previous year applied during the year wholly and exclusively to the objects for which it is established	……

10.	Amount of income of the previous year accumulated for application, wholly and exclusively, to the objects for which it is established, to the extent it does not exceed 15% of income of that year.	.....
11.	Amount of income, exceeding 15% of income of the year, accumulated in accordance with clause (a) of the third proviso to section 10(23C)	.....
12.	(a) Whether, during the previous year, any part of the income, not exceeding 15% of income accumulated in any earlier year, was applied for purposes other than to the objects for which it is established or has ceased to be accumulated for application thereto?	.....
	(b) If the answer to (a) above is 'yes' then give details of income so applied or ceased to be so accumulated	.....
13.	(a) Whether, during the previous year, any part of the income of any earlier year exceeding 15% of the income, that was accumulated in accordance with clause (a) of the third proviso to section 10(23C) in that year, was applied for purposes other than to the objects for which it is established or has ceased to be accumulated for application thereto?	.....
	(b) If the answer to (a) above is 'yes' then give details of income so applied or ceased to be so accumulated.	.....
14	(a) Whether, during the previous year, any part of the income of any earlier year exceeding 15% of the income, that was accumulated in accordance with clause (a) of the third proviso to section 10(23C) in that year, was not utilized for purposes for which it was accumulated during the period for which it was to be accumulated.?	.....
	(b) If the answer to (a) above is 'yes' then give details thereof, together with amount of income not so utilized.	.....

PART C

OTHER INFORMATION

15. (a) Whether any funds, other than the assets or voluntary contributions referred to in clause (b) of the third proviso to section 10(23C), were invested or deposited for any period during the previous year, otherwise than in the forms and modes specified in sub-section (5) of section 11 .....

(b) If the answer to (a) above is 'yes' then give details as under:- .....

Sl. No.	Nature of investment or deposit	Amount invested or deposited	Period of investment or deposit

16. In relation to any income being profits and gains of business,-

(a) Whether the business was incidentals to the attainment of the objectives of the fund or trust or institution or university or other educational institution or hospital or other medical institution .....

(b) whether separate books of account were maintained in respect of such business? .....

(c) if the answer to (a) and/or (b) above is 'no' then state the amount of such income .....

17. (a) Whether during the previous year, any part of the accumulated income was paid or credited to any trust or institution registered under section 12AA or to any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause(vi) or sub-clause (via) of clause (23C) or section 10? .....

	(b)	if the answer to (a) above is 'yes' then give details thereof, together with the amount of income so paid or credited	……
18.	(a)	Whether any voluntary contribution, other than voluntary contribution in cash or voluntary contribution of nature referred to in clause (b) of the third proviso to section 10(23C), was held during the previous year, otherwise than in any of the forms or modes specified in sub-section (5) of section 11, after the expiry of one year from the end of the previous year in which such voluntary contribution was received?	……
	(b)	If the answer to (a) above is 'yes' then give details thereof, including the amount of such voluntary contribution	……
19.	(a)	Whether any anonymous donation referred to in section 115BBC was received during the year? (See notes 2 & 3)	……
	(b)	If the answer to (a) above is 'yes' then state the amount of such anonymous donation.	……

Place

Date ……

Signed

Auditor

Notes

1. Strike out whichever is not applicable.

2. This item is not applicable to any anonymous donation received by-

(a) any trust or institution created or established wholly for religious purposes;

(b) any trust or institution created or established wholly for religious and charitable purposes other than any anonymous donation made with a specifies 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

3. This item is applicable for assessment year 2007-08 and subsequent assessment years.

APPENDIX - I

FORM NO.10G

[See Rule 11AA]

Application for grant of approval or continuance thereof to institution or fund under section 80G(5)(vi) of the Income-tax Act, 1961.

1. Name of the institution/ fund in full (in block letters)
2. Address of the registered office of the institution/ fund
3. Legal Status [Please specify whether the institution/ fund is -
   - (i) constituted as public charitable trust;
   - (ii) 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;
   - (iii) registered under section 25 of the Companies Act,1956 (1 of 1956);
   - (iv) an University established by law;
   - (v) any other educational institution recognised by the Government or by any university established by law or affiliated to any university established by law;
   - (vi) an institution wholly or partly financed by the Government or a local authority;
   - (vii) An institution established with the object of controlling, supervising, regulating or encouraging games or sports and is approved for this purpose under section 10(23); or
   - (viii) A Regimental Fund or Non-Public Fund established by the armed forces of the Union for the welfare of past or present members of

such forces or their dependents.]

4. Objects of the institution/ fund and geographical area over which its activities are undertaken

5. Names & addresses of trustees/ office bearers of the institution or fund

6. (i) If registered under section 12A(a) of the Income-tax Act, the registration number and date of registration

   (ii) If notified under section 10(23) or under section 10(23C) of the Income-tax Act, the details thereof

   (iii) If responses to (i) & (ii) are negative, whether any application for the same has been filed? If yes, enclose a copy of the same.

7. (a) Period of last approval, if any. Please enclose a copy of the approval

   (b) If any change in the aims and objects and the rules and regulations have been made since the last approval, the details thereof

8. Assessment Particulars -

   (a) Ward/Circle where assessed and permanent account number/GIR number

   (b) Is the income exempt under sections 10(22), 10(22A), 10(23), 10(23AA), 10(23C) or 11?

   (c) Whether any arrears of taxes are outstanding? If so, give reasons

9. Amount accumulated for the purposes mentioned in item (4) above

10. (i) Details of modes in which the fund are invested or deposited, showing the nature, value and income from the investment;

    (ii) Whether any funds have not been invested in the modes specified in section 11(5)?

11. (i) Is the institution/fund carrying on any business? If yes, give details

    (ii) Is the business incidental to the attainment of its objects?

12. Details of nature, quantity and value of contributions (other than cash) and the manner in which such contributions have been utilised.

13. Details of shares, security or any other property purchased by or on behalf of the trust from any interested person as specified in sub-section (3) of section 13.

14. Whether any part of the income or any property of the association was used or applied in a manner which results directly or indirectly in conferring any benefit, amenity or perquisite (whether converted into money or not), on any interested person as specified in sub-section (3) of section 13? If so, details thereof.

I certify that information furnished above is true to the best of my knowledge & belief.

I undertake to communicate forthwith any alteration in the terms or in the rules governing the institution/ fund made at any time hereafter.

Place ……..

Date …….

…….
Signature

…….
Designation

…….
Address

Notes: The application form (in triplicate) should be sent to the Commissioner of Income-tax having jurisdiction over the institution or fund along with the following documents:

(i) Copy of registration granted under section 12A or copy of notification issued under section 10(23) or section 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.

APPENDIX J

FORM NO. 55[*]
***(See* Rule 2C)**

Application for approval of an association or institution for purposes of exemption under section 10(23) or continuance thereof for the year .....

1. Name and address of the association/ institution
2. Legal status, whether registered society/ others. Please enclose a copy of certificate of registration
3. Date of inception or setting up of the association
4. Activities encouraged in India as reflected in the memorandum (please specify each game/activity)
5. Activities, if any, encouraged outside India (give details)
6. Name and address of the office bearers
7. Total income of the association including voluntary contributions for the previous year relevant to the assessment year for or from which the exemption is sought
8. Amount of income referred to above that has been or deemed to have been utilised wholly and exclusively for the objects of the association [income deemed to have been utilised shall have the same meaning as assigned to it in sub-sections (1) and (1A) of section 11]
9. Amount accumulated for the purpose mentioned in column (8) above
10. (i) Details of modes in which the funds of the

[*] Needs to be omitted after substitution of rule 2C by the IT (Sixth Amdt.) Rules, 2007 w.e.f. 1.6.2007.

association are invested or deposited showing the nature, value and income from the investment.

(ii) Details of funds not invested in the modes specified in section 11 (5):

Sl. No.	Name and address of the concern	In the case of a company, number and class of shares held	Nominal value of the investment	Income from the investment
(1)	(2)	(3)	(4)	(5)

11. (i) Is the association carrying on any business (give details?)

    (ii) Is the business incidental to the attainment of its objectives?

12. Details of nature, quantity and value of contributions (other than cash) and the manner in which such contributions has been utilized.

13. Details of shares, security or other property purchased by or on behalf of the association from any interested person as specified in sub-section (2) of section 13

14. Whether any part of the income or any property of the association was used or applied, in a manner which results directly or indirectly in conferring any benefit, amenity or perquisite (whether converted into money or not), or any interested person as specified in sub-section (3) of section 13. If so, details thereof

15. Amount deemed to be income of the

association by virtue of sub-section (3) of section 11 as made applicable by the third proviso to section 10(23)

16. (i) State the assessment particulars including permanent account number/ GIR number, name of the ward/circle

    (ii) Last assessed and returned income

17. Has the association/institution distributed its income in the last three years among its members? If so, please indicate reasons/ purposes i.e., whether as a loan, grant, subsidy or income

18. Enclose audited accounts including balance sheet, annual report, if any, with certified copies of income appropriation towards the object of the association.

Certified that the above information is true and to the best of my knowledge and belief.

……..

Signature

……..

Designation

……..

Full Address

Notes:

1. The application form should be sent to the Director General Income-tax (Exemptions) through the Commissioner of Income-tax having jurisdiction over the trust or institution. Four copies of the application form along with the enclosures should be sent.

2. The applicant shall furnish any other documents or information as required by the DG Income-tax (Exemptions) or any authority authorised by the DG Income-tax (Exemptions).

APPENDIX - K

[FORM NO. 56]

[See Rule 2C]

Application for grant of exemption or continuance thereof under section 10(23C)(iv) and (v) for the year ……

1. Name and address of registered office of the trust/ institution
2. Legal status – whether trust or registered society/ others. Please enclose a copy of certificate of registration
3. Objects of the trust
4. Names and addresses of the trustees/ office bearers
5. Geographic area over which the activities of the trust are performed. Enclose details of work done in different places with addresses of branch offices and names and addresses of office bearers in these places
6. Enclose copies of memorandum of association, articles of association, trust deed, rules/ regulations of the trust or institution and those of other institutions like schools, hospitals etc. managed by the trust/institution
7. Enclose copies of audited accounts and balance sheet for the last three years along with a note on the examination of accounts and on the activities as reflected in the accounts and in the annual reports with special reference to the appropriation of income towards objects of the trust

8. Has the trust received any donations from a foreign country to which the provisions of Foreign Contributions (Regulations) Act, 1976, applies? Give details

9. Give assessment particulars:-

   (i) Ward/Circle of jurisdiction and the last income returned and assessed with permanent account number/ GIR number

   (ii) Is the income exempt under section 11?

   (iii) Is any recovery of tax, etc., outstanding against the trust?

   (iv) Whether any penalties have been initiated / levied?

10. Total income of the trust including (voluntary contributions) for the previous year relevant to the assessment year for or from which the exemption is sought

11. Amount of income referred to above that has been or deemed to have been utilised wholly and exclusively for the objects of the trust [income deemed to have been utilised shall have the meaning assigned to it in sub-sections (1) and (1A) of section 11]

12. Amount accumulated for the purposes mentioned in column (3) above

13. (i) Details of modes in which the funds of the trust are invested or deposited showing the nature, value and income from the investment

    (ii) Details of funds not invested in the modes specified in section 11(5):

Sl. No	Name and address of the concern	In the case of a company, number and class of shares held	Nominal value of the investment	Income from the investment
(1)	(2)	(3)	(4)	(5)

14. (i) Is the trust carrying on any business (give details)?

    (ii) Is the business incidental to the attainment of its objects?

15. Details of nature, quantity and value of contributions (other than cash) and the manner in which such contributions have been utilized.

16. Details of shares, security or other property purchased by or on behalf of the trust from any interested person as specified in sub-section (2) of section 13.

17. Whether any part of the income or any property of the association was used or applied, in a manner which results directly or indirectly in conferring any benefit, amenity or perquisite (whether converted into money or not), on any interested person as specified in sub-section (3) of section 13? If so, details thereof.

18. Amount deemed to be income of the trust if sub-section (3) of section 11 is made applicable.

19. The income that would have been assessable if the trust had not enjoyed the benefit of section 10(23C)(iv) or (v).

Certified that the above information is true to the best of my knowledge and belief.

Place ……

Date …….

Signature

D*esignation*

Full Address

Notes :

1. In this form, the term "trust" also include a fund or institution or any other legal obligation.

2. The application form should be sent to the Chief Commissioner or Director General whom the Central Board of Direct Taxes may authorise to act as prescribed authority for the purposes of sub-clause (iv) or sub-clause (v) of clause (23C) of section 10, through the Commissioner of Income-tax or Director of Income-tax (Exemptions) having jurisdiction over the trust or institution. Four copies of the application form along with the enclosures should be sent.

3. Copies of the following documents should be annexed : -

   (i) Deed of trust /memorandum and Articles of Association.

   (ii) A list of trustees enclosing settlor /members of the Governing Council.

   (iii) A photocopy of the latest certificate under section 80G issued by the Commissioner of Income-tax.

   (iv) True copies of the assessment orders passed for the last three years.

   (v) Photocopy of communication from the Commissioner of Income-tax with reference to the application of the trust/institution for a registration under section 12A.

4. The applicant shall furnish any other documents or information as required by the Chief Commissioner or Director General or any authority authorised by the Chief Commissioner or Director General.

APPENDIX – L

[FORM NO. 56D]

[See Rule 2C]

Application for grant of exemption or continuance thereof under section 10(23C)(vi) and (via) for the year……..

1. Name and address of registered office of the university or other educational institution or the hospital or other medical institution referred to in sub-clause (vi) or sub-clause (via) of clause (23C) of section 10.
2. Legal status, whether trust, registered society/ others. Please enclose a copy of the certificate of registration/relevant document evidencing legal status.
3. Objects of the university or other educational institution or hospital or other medical institution referred to in serial number 1.
4. Names and addresses of the trustees/ office bearers.
5. Geographic area over which the activities of the university or other educational institution or hospital or other medical institution referred to in serial number 1 are performed. [Enclose details of work done in different places with addresses of branch offices and names and addresses of office bearers in these places].
6. Enclose copies of memorandum of association, articles of association, trust deed, rules/ regulations of the university or other educational institution or hospital or

other medical institution referred to in serial number 1.

7. Enclose copies of audited accounts and balance sheet for the last three years along with a note on the examination of accounts and on the activities as reflected in the accounts and in the annual reports with special reference to the appropriation of income towards objects of the university or other educational institution or hospital or other medical institution referred to in serial number 1.

8. Has the university or other educational institution or hospital or other medical institution referred to in serial number 1 received any donations from a foreign country to which provisions of Foreign Contributions (Regulations) Act, 1976, applies? Give details.

9 Give assessment particulars:-

(i) Ward/Circle of jurisdiction and the last income returned and assessed with permanent account number/ GIR number.

(ii) Is the income exempt under section 11?

(iii) Is any recovery of tax, etc., outstanding against the university or other educational institution or hospital or other medical institution referred to in serial number 1?

(iv) Whether any penalties have been initiated / levied?

10. Total income including voluntary contributions, if any, of the university or other educational institution or hospital or other medical institution referred to in serial

number 1 for the previous year relevant to the assessment year for or from which the exemption is sought.

11. Amount of income referred to above that has been or deemed to have been utilised wholly and exclusively for the objects of the university or other educational institution or hospital or other medical institution referred to in serial number 1 (income deemed to have been utilised shall have the meaning assigned to in sub-sections (1) and (1A) of section 11).

12. Amount accumulated for the purposes mentioned in column (3) above.

13. (i) Details of modes in which the funds of the university or other educational institution or hospital or other medical institution referred to in serial number 1 are invested or deposited showing the nature, value and income from the investment.

(ii) Details of funds not invested in the modes specified in section 11(5):

Sl. No	Name and address of the concern	In the case of a company, number and class of shares held	Nominal value of the investment	Income from the investment
(1)	(2)	(3)	(4)	(5)

14. (i) Is the university or other educational institution or hospital or other medical institution referred to in serial number 1 carrying on any business (give details)?

    (ii) Is the business incidental to the attainment of its objects?

15. Details of nature, quantity and value of contributions (other than cash) and the manner in which such contributions have been utilized.

16. Details of shares, security or other property purchased by or on behalf of the university or other educational institution or hospital or other medical institution referred to in serial number 1 from any interested person as specified in sub-section (2) of section 13.

17. Whether any part of the income or any property of the university or other educational institution or hospital or other medical institution referred to in serial number 1 was used or applied, in a manner which results directly or indirectly in conferring any benefit, amenity or perquisite (whether converted into money or not), on any interested person as specified in sub-section (3) of section 13? If so, details thereof.

18. Amount deemed to be income of the university or other educational institution or hospital or other medical institution referred to in serial number 1 if sub-section (3) of section 11 is made applicable.

19. The income that would have been assessable if the university or other educational institution or hospital or other medical institution referred to in serial number 1 had not enjoyed the benefit of section 10(23C)(vi) or (via).

Certified that the above information is true to the best of my knowledge and belief.

Place:

Date:

Signature

D*esignation*

Full Address

Notes :

1. The application form should be sent to the Chief Commissioner or Director General whom the Central Board of Direct Taxes may authorize to act as prescribed authority for the purposes of sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 through the Commissioner of Income-tax or Director of Income-tax (Exemptions) having jurisdiction over the university or other educational institution or hospital or other medical institution referred to in serial number 1 of this Form. Four copies of the application form along with the enclosures should be sent.

2. Copies of the following documents should be annexed : -

   (i) Deed of trust /memorandum and articles of association/ other documents evidencing legal status of the enterprise;

   (ii) a list of major office bearers including settlor / members of the Governing body;

   (iii) a photocopy of the latest certificate under section 80G issued by the Commissioner of Income-tax, if any;

(iv) true copies of the assessment orders passed for the last three years, if any;

(v) photocopy of communication from the Commissioner of Income-tax with reference to the application of the trust / institution for a registration under section 12A, if any.

3. The applicant shall furnish any other documents or information as required by the Chief Commissioner or Director General or any authority authorised by the Chief Commissioner or Director General.

APPENDIX - M

Extracts from the Wealth Tax Act, 1957

I. Section 5 - EXEMPTIONS IN RESPECT OF CERTAIN ASSETS.

Wealth-tax shall not be payable by an assessee in respect of the following assets, and such assets shall not be included in the net wealth of the assessee -

(i) any property held by him under trust or other legal obligation for any public purpose of a charitable or religious nature in India :

Provided that nothing contained in this clause shall apply to any property forming part of any business, not being a business referred to in clause (a) or clause (b) of sub-section (4A) of section 11 of the Income-tax Act in respect of which separate books of account are maintained or a business carried on by an institution, fund or trust referred to in clause (23B) or clause (23C) of section 10 of that Act;

II. Section 21A – ASSESSMENT IN CASES OF DIVERSION OF PROPERTY, OR OF INCOME FROM PROPERTY, HELD UNDER TRUST FOR PUBLIC CHARITABLE OR RELIGIOUS PURPOSES.

Notwithstanding anything contained in clause (i) of section 5, where any property is held under trust for any public purpose of a charitable or religious nature in India, and

(i) any part of such property or any income of such trust [whether derived from such property or from voluntary contributions referred to in sub-clause (iia) of clause (24) of section 2 of the Income-tax Act] is used or applied, directly or indirectly, for the benefit of any person referred to in sub-section (3) of section 13 of the Income-tax Act, or

(ii) any part of the income of the trust [whether derived from such property or from voluntary contributions referred to in sub-clause (iia) of clause (24) of section 2 of the Income-

tax Act] being a trust created on or after the 1st day of April, 1962, enures, directly or indirectly, for the benefit of any person referred to in sub-section (3) of section 13 of the said Act, or

(iii) any funds of the trust are invested or deposited, or any shares in a company are held by the trust, in contravention of the provisions of clause (d) of sub-section (1) of section 13 of the Income-tax Act,

wealth-tax shall be leviable upon, and recoverable from, the trustee or manager (by whatever name called) in the like manner and to the same extent as if the property were held by an individual who is a citizen of India and resident in India for the purposes of this Act:

Provided that in the case of a trust created before the 1st day of April, 1962, the provisions of clause (i) shall not apply to any use or application, whether directly or indirectly, of any part of such property or any income of such trust for the benefit of any person referred to in sub-section (3) of section 13 of the Income-tax Act, if such use or application is by way of compliance with a mandatory term of the trust :

Provided further that -

(a) in the case of any association referred to in clause (21) of section 10 of the Income-tax Act, -

(i) the provisions of clause (i) and clause (ii) shall not apply; and

(ii) the other provisions of this section shall apply with the modifications that, -

(1) for the words, brackets, letter and figures "in contravention of the provisions of clause (d) of sub-section (1) of section 13 of the Income-tax Act", the words, brackets and figures "in contravention of the provisions contained in the proviso to clause (21) of

section 10 of the Income-tax Act" had been substituted; and

(2) for the words "at the maximum marginal rate", the words and figures "at the rates specified in sub-section (2) of section 3" had been substituted;

(b) in the case of any institution, fund or trust referred to in clause (22) or clause (22A) or clause (23B) or clause (23C) of section 10 of Income-tax Act, the provisions of clauses (i) to (iii) shall not apply.

Explanation : For the purposes of this section, -

(a) any part of the property or income of a trust shall be deemed to have been used or applied for the benefit of any person referred to in sub-section (3) of section 13 of the Income-tax Act in every case in which it can be so deemed to have been used or applied within the meaning of clause (c) of sub-section (1) of that section at any time during the period of twelve months ending with the relevant valuation date;

(b) "trust" includes any other legal obligation.

APPENDIX - N

RELEVANT CIRCULARS OF THE CENTRAL BOARD OF DIRECT TAXES

1. Circular Letter: F. No. 20/23/67-IT (AI), dated 28-7-1967.

47/S. 11 Grant of exemption certificates to charitable trusts: A number of cases have come to the notice of the Board where charitable trusts, whose income is exempt under section 11, are filing applications for refund every year to claim refund in respect of tax deducted at source under section 193 or section 195. The Board desires that in such cases the Income-tax Officers should be instructed to bring to the notice of the trusts the provisions of section 197 under which the trust can ask the Income-tax Officer to issue a certificate in its favour directing that either no tax should be deducted at source or the deduction should be made at a lower rate. These certificates should be promptly issued by the Income-tax Officers so that the trusts can collect their interest and dividend income without deduction of tax at source. The certificates issued by the Income-tax Officers can be reviewed by them once in three years.

---

2. Circular: No. 5 (LXX-6) of 1968, dated 19.6.1968

In Board's Circular No. 2-P (LXX-5) of 1963, dated the 15th May, 1963, it was explained that a religious or charitable trust claiming under Section 11(i) of the Income-tax Act, 1961, must spend at least 75 per cent of its total income for religious or charitable purposes. In other words, it was not permitted to accumulate more than 25 per cent of its total income. The question has been reconsidered by the Board and the correct legal position is explained below.

2. Section 11(1) provides that subject to the provisions of Sections 60 to 63, "the following income shall riot be included in the total income of the previous year ……..". The reference in sub-section (a) is invariably to "income" and not to "total income". The expression "total income" has been specifically defined in section 2(45) of the Act as "the total amount of income computed

in the manner laid down in this Act". It would accordingly be incorrect to assign to the word "income" used in section 11(1)(a), the same meaning as has been specifically assigned to the expression "total income" vide section 2(45).

3. In the case of a business undertaking held under trust, its 'income' will be the income as shown in the accounts of the undertaking. Under section 11(4), any income of the business undertaking determined by the I.T.O. in accordance with the provisions of the Act, which is in excess of the income as shown in its accounts, is to be deemed to have been applied to purposes other than charitable or religious, and hence it will be charged to tax under sub-section (3). As only the income disclosed in the account will be eligible for exemption under section 11(1), the permitted accumulation of 25% will also be calculated with reference to this income.

4. Where the trust derives income from house property, interest on securities, capital gains, or other sources, the word, "income" should be understood in its commercial sense, i.e. book income, after adding back any appropriations or applications thereof towards the purposes of the gust or otherwise, and also after adding back any debits made for capital expenditure incurred for the purposes of the trust or otherwise it should be noted, in this connection, that the amount so added back will become chargeable to tax under section 11(3) to the extent that they represent outgoings for purposes other than those of the trust. The amounts spent or applied for the purposes of the trust from out of the income computed in the aforesaid manner, should be not less thin 75% of the latter, if the trust is to get the full benefit of the exemption under section 11(1).

5. To sum up, the business income of the trust as disclosed by the accounts plus its other income computed as above, will be the ‘income’ of the trust for purposes of section 11 (1). Further, the trust must spend at least 75% of this income and not accumulate more than 25% thereof. The excess accumulation, if any, will became taxable under section 11 (1).

---

3. Extracts from the Official Minutes of the Twelfth Meeting of the Direct Taxes Advisory Committee (Central) held in New Delhi on 17.8.1968

46/S.11. *Donation of trust property in kind by charitable trust*: It was clarified that Section 11(1) (a) required that where income derived from property held under trust was accumulated for future application to charitable purposes in India, the extent of such accumulation should not exceed 25% of the income from the property or Rs. 10,000, whichever is higher. Thus, where a charitable trust donated, for charitable purposes, not out of its income but out of its corpus, movable or immovable property, equivalent to or more in value than 75% of the trust income for the year, the trust could not be regarded to have satisfied the requirement of section 11(1)(a).

---

4. Circular No. 29 (F. No. 20/22; 69/II(AI), dated 23.8.1969

Section 11. *Income from property held for charitable or religious purposes*.

41/S. 11. *Charitable Trust-Income required to be applied for charitable purposes-Instructions regarding*.

Attention is invited to the Board's Circular No. 5-(PLXX-6) of 1968 and 12-P(LXX-7) of 1968 which had been duly endorsed to all Chambers of Commerce. References are still being received from the public seeking clarifications regarding the taxability of income under the provisions of sections 11(1) and 11(2) of the Income-tax Act, 1961.

2. The legal position is clarified as under:

(a) Under section 11(1)(a), a trust claiming exemption is allowed to accumulate 25% of its income or Rs. 10,000, whichever is higher. Thus, if a trust accumulates a larger income than the limits prescribed for exemption, what would be chargeable to tax is the excess over the exempted

limit, and not the entire accumulation including the exempted portion.

(b) Section 11(2), however, provides that if the conditions laid down in the sub-section are satisfied, restrictions as regards accumulation or setting apart of income shall not apply for the period during which the conditions prescribed therein remain satisfied. To avoid taxation under section 11(1)(a), investment in Government securities as prescribed in section 11(2), has to be made not only in respect of excess amount which is chargeable under section 11(1)(a) but of the entire unspent balance including the exempted portion.

(c) Subsequently, if it is found that the provisions of section 11(2) have been violated and the income has been applied to purposes other than charitable or religious purposes or the amounts cease to be accumulated or set apart, the entire accumulation covered by section 11(2) will be subjected to tax under section 11(3).

3. Thus, while under section 11(1) (a) the tax will be levied in the year to which the income relates, under section 11 (3) the income would be chargeable in the year in which the amounts cease to be accumulated for the specific purpose mentioned. Thus, when the amounts are taxed under section 11(3), the benefit which would have been available to a trust in respect of 25 % of its income or Rs. 10,000, under section 11(1) (a) would also be lost.

---

5. Circular No. 51 (F. No. 152(49) 70-TPL) dated 23.12.1970

Section 13: Section 11 not to apply in certain cases.

49/S. 13. Section 13 as substituted by the Finance Act, 1970 Clarification regarding.

Reference is invited to paragraph 21 of the Board's Circular No.45 dated the 2nd September, 1970 [See Finance Act, 1970 - Volume III which explained the scope and ambit of section 13 of the Income-tax Act, 1961, as substituted by the Finance Act, 1970.

2. A question has been raised whether the provision in section 13(2)(h) of the Income-tax Act which provides for the forfeiture of exemption from a tax in a case where the trust funds are invested in a concern in which the author of the trust or other persons specified in section 13(3) have a substantial interest would apply with reference to shares in a company initially settled on the trust or donated to it subsequently. The Board have been advised that the expression "funds of the trust", as used in section 13(2)(h) of the Act, is wide enough to cover not only uninvested case but also shares, stocks, Government securities, etc., and, in fact, property of every kind belonging to the trust. Now, the provisions of section 13(2)(h) apply not only in a case where the funds of the trust are invested, during the relevant previous year, in any concern in which the author or other persons referred to in section 13(3) have a substantial interest but also in a case where such funds, having been invested in such a concern before the beginning of the relevant previous year, continue to remain so invested for any period during that previous year. It, therefore, follows that a trust will forfeit exemption from tax if it continues to hold, after 31st December 1970, shares in company in which its author or other connected persons are substantially interested, regardless of whether the shares form part of the original corpus of the trust or were subsequently acquired by it. The same considerations will apply in regard to investment towards capital of any concern other than a company. In other words, if a trust which has invested its funds in any concern is which the author etc. are substantially interested does not divest itself of such investments before 1st January, 1971, it will forfeit the exemption from tax on its entire income if the investment in such concern exceeds 5% of the capital of the concern. Where the investment does not exceed 5% the capital of the concern, however, the exemption from tax will be forfeited only in relation to the income from such investment and not in relation to the remainder of its income.

---

6. Circular No. 100 (F No. 195/1/72-IT(AI), dated 24.1.1978

44/S. 11. Repayment of a debt incurred for charitable purposes by a charitable trust and loans advanced by educational trust-Application of income.

Section 11 of the Income-tax Act requires 100% of the income of a charitable and religious trust to be applied for religious and charitable purposes to be entitled to the exemption under the said section. Two questions have been considered the application of income:

(i) Where a trust incurs a debt for the purposes of the trust, whether the repayment of the debt would amount to an application of the income for the purposes of the trust; and

(ii) Whether loans advanced by an educational trust to students for higher studies would be treated as application of income for charitable purposes.

2. Board has decided 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. As regards the loan advanced for higher studies, if the only object of the trust is to give interest-bearing loans for higher studies, it will amount to carrying on of money-lending business. If, however, the object of the trust is advancement of education and granting of scholarship loans as only one of the activities carried on for the fulfillment of the objectives of the trust, granting of loans even 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 that year.

---

7. Circular No. 143 [F. No. 180/74/73 IT (AI)], dated 20.8.1974.

Section 12A: Conditions as to registration of trusts.

14/S. 12A(b) requirement of filing audit report by charitable and religious trusts.

Under section 12A(b) of the Income-tax Act, 1961 in the cases of charitable and religious trusts or institutions whose total income without giving effect to the provisions of sections 11 and 12 of the Income tax Act, 1951, exceeds 25,000 rupees in any previous year, the accounts of the trust or institution should have been audited by an Accountant as defined in the Explanation below section 288(2) and the person in receipt of the income should furnish along with the return of income for the relevant assessment year the report of such audit in the prescribed form duly signed and verified by such authority and setting forth such particulars as may be prescribed. Rule 17B of the Income-tax Rules, 1962 lays down that the report of audit of accounts of the trust or the institution should be in Form 10B. The annexure to the form 10B requires the auditor to certify, interalia as to the non-application of non-user of the income or property for the benefit of persons referred to in section 13 (3).

2. The Board have considered a representation that while filing the Form 10B and its annexure, an auditor can accept as correct the list of persons covered by section 13(3) as given by the managing trusts, etc. The Board agrees that till, further instructions, an auditor can accept as correct the list of specified persons given by the managing trustees and base their report on the strength of this certificate.

---

8. Circular No. F 180/54/72-IT (A1) dated 25th September, 1975.

To

All Commissioners of Income Tax

Subject: **Charitable and religious trusts-Capital Gains-Section 11(IA) of the I.T. Act, 1961**

"Section 11(1A) of the Income-tax Act, 1961 provides that where a capital asset, being property held under trust wholly for charitable or religious purposes is transferred and the whole or any part of the net consideration is utilised for acquiring another capital asset to be so held, then the capital gains arising from the transfer shall be deemed to have been applied to charitable and religious purposes to the extent specified therein.

The Board had occasion to examine whether investments of the Net consideration in fixed deposits with a Bank would be regarded as utilisation of the amount of the net consideration for acquiring another capital asset within the meaning of section 11(1A) of The Income-tax Act, 1961. The Board had been advised that investments of the net consideration in fixed deposit with a Bank for a period of 6 months or above would be regarded as utilisation of the net consideration for acquiring another capital asset within the meaning of section 11 (1A) of the Income-tax Act, 1961.

These instructions may be brought to the notice of all officers working in your charges".

Yours faithfully,

Sd/-

---

9. Circular No. 204 dated 24-07-1976.

In respect of the provisions of the Taxation Laws (Amendment) Act, 1975 (hereinafter referred to as "the Amending Act") which came into force w.e.f. 1st Oct., 1975 and 1st Jan., 1976,

explanatory notes were issued under Circular No. 179, dt. 30th Sept., 1975 and Circular No. 197, dt. 17th April, 1976, respectively. The following explanatory notes are hereby issued in respect of the provisions of the Amending Act which have come into force w.e.f. 1st April, 1976 and those which are to come into force w.e.f. 1st April, 1977.

Amendments to s. 11

4.1 A number of amendments have been made in the provisions of the IT Act relating to taxation of charitable or religious trusts or institutions, with a view to rationalising them and making them more effective. The modifications made in s. 11 are explained hereunder:

(i) Hitherto, one of the conditions for tax exemption in the case of a trust or institution for charitable or religious purposes was that the whole of its income during any previous year should be applied for its objects within the previous year in which it was derived. Income applied by a trust or institution to charitable or religious purposes during the period of three months immediately following the previous year could be deemed to be income applied to such purposes during the previous year in cases where the trustees exercised an option in this behalf. This provision has been liberalised in two respects. Firstly, instead of having to apply its entire income within the specified period, the trust or institution will have to apply only 75 per cent of the income to such purposes. (In computing this 75 per cent of the income to be so applied, voluntary contributions or donations referred to in s. 12 will also be deemed to be part of the income derived from property held under trust.) Secondly, the period during which the specified percentage of the income, has to be applied to charitable or religious purposes has also been extended. If the income applied to charitable or religious purposes during the previous year falls short of 75 per cent of the income derived during the year, the trust or institution may apply an amount equal to the shortfall for such purposes during the previous year immediately following the year in which such income was derived. If the whole or any part of the income has not been received during the previous year, and the shortfall in the income applied to charitable or religious purposes arises on that account only, then a further extended time has been provided

for applying the income to such purposes in the year in which such income is received or in the previous year next following. Thus, in a case where the income derived in a previous year amounted to Rs. 1 lakh out of which an amount of Rs. 40,000 was not received during the previous year, the person in receipt of the income could obviously not apply Rs. 75,000 to such purposes. In such a case if an amount of not less than Rs. 60,000 has actually been applied to such purposes in the year in which the income of Rs. 1 lakh was derived, the deficiency could be made up in the year in which the balance of income is received or in the previous year next following. For availing of the benefit of the extended time beyond the relevant previous year, the trust or institution will, in either case, have to exercise an option in writing under cl. (2) of the Expln. to s. 11(1) within the time allowed under sub-s. (1) or sub-s. (2) of s. 139 for furnishing the return of income, whether fixed originally or on extension. Income applied to such purposes during the extended time shall be deemed to have been applied to such purposes during the previous year in which it was derived.

(ii) Where, in the previous year, the income applied by a trust or institution to charitable or religious purposes in India falls short of 75 per cent of its income and the trust or institution has exercised an option under cl. (2) of the Expln. to sub-s. (1) of s. 11 but such shortfall is not made good during the extended period, such income will be deemed to be the income of a later previous year as explained hereunder. In a case where the income was not received in the previous year in which it was derived, it will be deemed to be the income of the previous year immediately following the previous year in which the income was received. In any other case, it will be deemed to be the income of the previous year immediately following the previous year in which the income was derived.

(iii) Prior to the amendment made by the Amending Act, sub-s. (2) of s. 11 permitted accumulation of, setting apart of the income of a charitable or religious trust or institution for a period up to 10 years under certain circumstances. Sub-s. (3) of s. 11, inter alia, provides that where the income of a charitable or religious trust or institution accumulated or set apart under the aforesaid provision is not actually applied to the purposes for which it was so accumulated or set apart within the specified period, it will be

deemed to be the income of the previous year immediately following the expiry of the specified period.

(iv) As the failure to apply the income accumulated or set apart in the specified manner may arise due to circumstances beyond the control of the trustees, etc. the Amending Act has inserted a new sub-s. (3A) in s. 11. The new sub-section provides that in such cases the ITO may, on receipt of an application from the person in receipt of the income, allow such income to be applied for such other charitable or religious purposes in India as are in conformity with the objects of the trust or institution. Where there is a failure to apply the income so accumulated or set apart even for such other purposes, the case will be dealt with under sub-s.(3) as if the revised purpose were a purpose for which the income was originally allowed to be accumulated or set apart under sub-s. (2).

4.2 The aforesaid amendments have come into force w.e.f. 1st April, 1976 and will, accordingly, apply in relation to the asst. yr. 1976-77 and subsequent years.

Amendments to s. 13

5. Sec. 13 spells out certain circumstances in which the exemption provided under s. 11 or s. 12 in respect of income from property held under trust for charitable or religious purposes will not be available. The Amending Act has made a number of amendments to this section. These are briefly explained in paragraphs 6 to 8 below.

6. According to the definition contained in cl. (15) of s. 2, the expression "charitable purpose" includes (a) relief of the poor, (b) education, (c) medical relief, and (d) advancement of any other object of general public utility not involving the carrying on of any activity for profit. The effect of the words in italics above is that a trust or institution established for the advancement of any object of general public utility, other than relief of the poor, education or medical relief, can be said to have been established for charitable purposes only if its object does not involve the carrying on of any activity for profit. Such a restriction does not obtain in the case of trusts established for relief of the poor, education and medical relief. The Amending Act has introduced a new cl. (bb) in sub-s. (1) of s. 13 to provide that in the case of a charitable trust or

institution for the relief of the poor, education or medical relief, any income derived from business will not be exempt from income-tax unless the said business is carried on in the course of the actual carrying out of a primary purpose of the trust or institution. The aforesaid provision will come into force w.e.f. 1st April, 1977 and will, accordingly, apply in relation to the asst. yr. 1977-78 and subsequent years.

7.1 A new cl. (d) has been inserted in sub-s. (1) of s. 13 and a new sub-s. (5) has also been inserted in the said section with a view to regulating the modes and forms in which the funds of trusts or institutions claiming exemption under s. 11 or s. 12 can be deposited or invested. Clause (d) of s. 13(1) provides that if any funds of a charitable or religious trust or institution are invested or deposited or remain invested or deposited in any mode or form other than those specified in s. 13(5) at any time during any previous year commencing on or after 1st April, 1978, the income of the said trust will lose exemption from income-tax. Although the provision will take effect from 1st April, 1977, it will be applicable only in relation to the asst. yr. 1979-80 and subsequent years.

7.2 The aforesaid provision in cl. (d) of s. 13(1) has been made subject to cl. (bb) of s. 13(1). The effect of this will be that the restriction in cl. (d) of s. 13(1) will not apply to any investment made in a business by a charitable trust or institution established for the relief of the poor, education or medical relief, if the said business is carried on by the trust or institution in the course of the actual carrying out of a primary purpose of the trust or institution.

7.3 The forms and modes of investing and depositing funds referred to in cl. (a) of s. 13(1) have been spelt out in sub-s. (5) of s. 13. For this purpose, the funds of charitable and religious trusts and institutions have been divided into the following four types :

(i) funds represented by corpus (including original corpus) of any charitable or religious trust or institution existing immediately before 1st June, 1973;

(ii) funds represented by corpus coming into existence on or after 1st June, 1973 and being either the original corpus or contributions with a specific

direction to form part of the corpus, but not in the form of cash;

(iii) funds represented by corpus coming into existence on or after 1st June, 1973 and being either original corpus or contributions made with specific direction to form part of the corpus, in the form of cash;

(iv) funds other than those represented by the corpus referred to in (a), (b) and (c) above.

7.4 Funds of the type mentioned at (a) and (b) in para 7.3 above have been grouped into one category and cl. (b) of s. 13(5) provides that they may be invested or deposited in any form or mode except in equity shares of a company which is neither a Government company nor a statutory corporation. In other words, in respect of these funds there is no restriction regarding their investment except that they should not be in the form of equity shares of a company which is neither a Government company nor a statutory corporation. It may be noted that these provisions do not prohibit investment in the form of preference shares of companies in the private sector.

7.5 The funds of the type mentioned at (c) in para 7.3 above fall in another category and cl. (a) of s. 13(5) provides the following forms and modes for their deposit or investment :

(a) investment in Government savings certificates;

(b) deposit in any Post Office Savings Bank Account;

(c) deposit in any account with any nationalised bank (including the State Bank of India and its subsidiary banks);

(d) investment in units of the Unit Trust of India;

(e) investment in any Central Government or State Government securities;

(f) investment in debentures of any corporate body, the principal whereof and the interest whereon are guaranteed by the Central or a State Government; and

(g) investment or deposit in any Government company.

7.6 The funds of the type mentioned at (d) in para 7.3 above fall in the third category and cl. (c) of s. 13(5) provides that they can be invested or deposited only in any of the four forms and modes mentioned at (a) to (d) of paragraph 7.5 above. 7.7 The provision contained in cl. (d) of s. 13(1), which restricts the deposit or investment of the funds of a charitable or religious trust or institution to the forms and modes specified in s. 13(5), will not apply, however, to any moneys accumulated or finally set apart and invested or deposited in the manner referred to in cl. (b) of sub-s. (2) of s. 11. This exception has been carved out because the forms or modes in which the moneys accumulated or set apart, referred to in sub-s. (2) of s. 11, have been specified in that sub-section itself.

7.8 Although these provisions come into force w.e.f. 1st April, 1977, as mentioned in para 7.1 above, the restrictions contained in s. 13(1)(d) will be applicable only in respect of the previous years commencing on or after 1st April, 1978. The trusts and institutions concerned have, thus, the time available till then to bring about the necessary changes in the forms and modes of investments held by them so as to conform with the new provisions.

8. Sec. 13 provides, inter alia, that a charitable or religious trust or institution shall not be entitled to exemption under s. 11 or s. 12 if any part of its income or property is used or applied directly or indirectly for the benefit of any person specified in s. 13(3). One of the categories of persons specified therein consists of those who have made a "substantial contribution" to the trust or institution. The expression "substantial contribution" was not defined by the IT Act so far. The new cl. (b) of s. 13(3) states that a person whose total contribution to the trust up to the end of relevant previous year exceeds Rs. 5,000, shall be treated as a person who has made a "substantial contribution". The amount of Rs. 5,000 will be reckoned from the date on which the trust or institution is created or established. The object of this provision is to give a precise definition of the term "substantial contribution" rather than leaving it to varying interpretations by various authorities. The amended

provision will apply in relation to the asst. yr. 1977-78 and subsequent years.

---

10. Board's F. No. 267/482/77 – IT (Part) dated February 9, 1978 – CBDT Bulletin Tech.XXIII/582 : (1992) 195 ITR 825, 833 (Cal)

Charitable trust – Requirement of filing audit report in Form No.10B – Section 12A(b) – Instruction regarding - The Board have considered whether the requirement under section 12A(b) of filing audit report 'along with 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 prescribed form along with the return.

Normally, it should be possible for a charitable or religious trust or institution to file the auditor's report along with the return of total income, where such trust or institution claims exemption under sections 11 & 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 & 12 may not be denied merely on account of delay in furnishing the auditor's report and the Income-tax Officer should record reasons for accepting a belated audit report.

---

11. Circular No. 273 dated June 3, 1980

To

All Commissioners of Income-tax

Subjects: **Charitable and religious trust-Application for accumulation of income under Section 11 (2) of the LT. Act, 1961 -Condonation of delay-Regarding.**

Sir,

Charitable and religious trusts are entitled to exemption

from income-tax under section 11 of the LT. Act, 1961, after they fulfil the requirements enumerated in sections 11 to 13. These trusts are allowed to accumulate or set apart income derived by them from property held under trust provided they fulfil the conditions spelt out in section 11 (2) read with rule 17 of the IT, Rules, 1962, and Form No. 10.

2. Very often trusts are not able to file the application in Form No. 10 within the time allowed under section 139(I)/139(2) as extended by the I.T.O. The Central Board of Direct Tastes is then approached by these trusts for condoning the delay for filing applications. The Board by virtue of the powers vested in it under section 119(2)(b) has been condoning the delay in individual cases after satisfying itself that certain conditions are satisfied.

3. With a view to expediting the disposal of applications filed by trusts for condoning the delay, the Board has passed a general order under section 119(2)(b) by which the Cs. I.T. have been authorised to admit belated applications under section 11 (2) read with rule 17 of the I.T.Rules, 1962. A copy of this order is enclosed. All applications for condoning the delay under section 11(2) will henceforth be disposed of by Cs. I.T. in terms of the enclosed order.

Yours faithfully,

(Sd.) V.B. Srinivasan, Secretary, C.B.D.T.

[F. No. 180/57/80-IT (A)]

Order under Section 119 (2) (b) of the LT. Act, 1961 3rd June, 1980.

In exercise of the powers conferred under section 119 (2) (b) of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby authorises the Commissioners of Income-tax to admit applications under section 11(2) read with rule 17 of the IT. Rules, 1962, from persons deriving income from property held under trust wholly for charitable or religious purposes for accumulation of such income to be applied for such purposes in India when the aforementioned applications are filed beyond the time stipulated. Commissioners of Income-tax will, while

entertaining such applications satisfy themselves that following conditions are fulfilled:

(a) that the genuineness of the trust is not in doubt;

(b) That the failure to give notice to the Income tax Officer under section 11(2) of the Act and investment of the money in the prescribed securities was due only to oversight;

(c) That the trustees or the settlor have not been benefited by such failure directly or indirectly;

(d) That the accumulation or setting apart of income was necessary for carrying out the objects of the trust.

(sd.) V.B. Srinivasan,

Secretary,

Central Board of Direct Taxes.

(F.No. 180/57/80-IT (AI)

---

12. Circular No. 317 dated 19/12/1981

Section 13(1)(d) of the I.T. Act, 1961, read with section 13(5)-Clarification regarding.

Under section 13(1)(d) of the I.T. Act, 1961, any charitable or religious trust/institution can claim exemption under section 11 for and from any assessment year relevant to a previous year beginning on or after lst April, 1981 only if the assets of the trust/institution are invested in the manner prescribed in section 13(5).

2. In response to representations made on the subject, the Finance Minister made a statement in the Lok Sabha on 31st March, 1981, to the effect that the mode of investment prescribed by section 13(5) is to be modified so as to permit charitable or religious trusts/institutions to invest trust funds in immovable

properties as well. An assurance has been given that a suitable amendment to the Income-tax Act will be sponsored at an early date and that it shall be made effective from lst April, 1981, pending the amendment, in consonance with the Government's declared policy. The Commissioners of Income-tax can issue/renew recognition certificates under section 80G if the only reason for consideration in the matter is the holding of assets in the shape of immovable properties, by the applicant trust/institution.

---

13. Circular No. 322 dated 16/1/1982

Section 13(1)(d)-Assessment Year 1982-83-Previous year beginning prior to 1-4-1981-Renewal of Recognition Certificate under section 80G-Clarification regarding.

Section 13(1)(d) of the Income-tax Act, 1961, provides that subject to the provision of section 13(1)(bb) a trust/institution for charitable or religious purposes will lose the exemption under section 11 for assessment year commencing from assessment year 1982-83 if any funds of the trust or institution are invested or deposited or continue to remain invested or deposited for any period during any previous year commencing on or after lst April, 1981 in any of the forms or modes other than those specified in section 13(5). The Board has received references as to whether in cases where the previous year of the trust/institution is the calendar year 1981, the assessment year for invoking the provision of section 13(1)(d) would be assessment year 1982-83 or 1983-84.

2. The Board desire to point out that if any previous year commences on or after 1st April, 1981, the provision of section 13(1)(d) would be applicable from the very first assessment year relevant to the previous year beginning after lst April, 1981. However, where the previous year commences before lst April, 1981, the provision of section 13(1)(d) will not apply for assessment year 1982-83 and the trust will not lose the exemption under section 11 merely by the application of section 13(1)(d). In such cases, renewal of recognition certificate under section 80G by the Commissioners of Income-tax would be in order. The Commissioner of Income-tax will, however, not be able to renew

section 80G certificate where the previous year begins on or after 1st April, 1981 and the trust has not complied with the provision of section 13(1)(d). This position will hold good for all previous years starting after 1st April, 1981, irrespective of the assessment year involved.

3. The legal position may please be brought to the notice of all officers working in your charge particularly those assessing the cases of charitable and religious trusts.

---

14. Circular No. 335 dated 13/4/1982

Requirements of section 13(1)(d) of the Income-tax Act, 1961, read with section 11(1)(a)-Clarification regarding.

Section 11(1)(a) of the Income-tax Act, 1961, provides for grant of exemption from income-tax to income derived from property held under trust for charitable or religious purposes to the extent the income is applied for such purposes in India. Where any such income is accumulated or set apart for application to such purposes in India the extent to which the income is permitted to be accumulated or set apart is 25% of the income. Therefore, under section 11(1)(a) income derived from property held under trust enjoys exemption when at least 75% of the income is applied for charitable or religious purposes.

2. Section 13(l)(d) was introduced by the Taxation Laws (Amendment) Act, 1975. It provides for denial of exemption under section 11 for any assessment year commencing from 1982-83, if any funds of the trust or institution are invested or deposited or continue to remain invested or deposited for any period during any previous year commencing on or after lst April, 1981 in any form or mode other than those specified in section 13(5). The Finance Bill, 1982, contains a provision to extend this period to one year so that the requirements will be applicable from assessment year 1983-84, for the previous year commencing on or after 1st April, 1982.

3. The effect of the insertion of section 13(1)(d) on section 11(1)(a) has been examined. The exemption under section 11(1)(a) will be available only if at least 75% of the income is applied for charitable

or religious purposes in India during the year and the remaining amount is invested in the forms or modes specified under section 13(5). Thus, both the requirements will have to be fulfilled before the trust can claim and avail of the exemption under section 11(1)(a). An example to illustrate the position is given below:

A trust derives income from property held for charitable purposes to the extent of Rs. 40,000 in an year. Under section 11(1)(a) it has to spend at least Rs. 30,000 on charitable purpose. The balance of Rs. 10,000 will have to be invested in the forms or modes prescribed under section 13(5). It is only then that the entire income of the trust will get exemption under section 11(1)(a).

4. It may, however, be clarified that in regard to the accumulation of income permitted under section 11(2), the provisions of section 13(6) make it clear that the requirements of section 13(1)(d) read with section 13(5) will not apply. This is because the mode of investing moneys allowed to be accumulated under section 11(2) is specified in that section itself.

---

15. Circular No. 566 dated 17/7/1990

Mode of investment as specified in sub-section (5) of section 11 of the Income-tax Act-Investment in "Kisan Vikas Patra" and "Indira Vikas Patra"-Clarification regarding.

Sub-section (5) of section 11 of the Income-tax Act, 1961, specifies the forms and modes of investment or deposit of surplus money by public charitable or religious trusts and institutions as referred to in section 11(2)(b) of the Act. Clause (i) of the said sub-section (5) specifies one of the forms of investment as investment in savings certificates as defined in clause (c) of section 2 of the Government Savings Certificates Act, 1959, and any other securities or certificates issued by the Central Government under the Small Savings Scheme.

2. Representations have been received seeking clarification whether investment in "Indira Vikas Patra" and "Kisan Vikas Patra"

are covered by the form or mode of investment specified in the aforesaid clause (i) of sub- section (5) of section 11.

3. Section 2(c) of the Government Savings Certificates Act, 1959, defines "savings certificates" as certificates to which that Act applies. Section 12 of the said Act empowers the Central Government to make rules to carry out the purposes of that Act. The Indira Vikas Patra Rules, 1986, and the Kisan Vikas Patra Rules, 1988, have been notified by the Central Government in exercise of the powers conferred by the aforesaid section 12 of the Government Savings Certificates Act, 1959. Thus, both these Patras are Savings Certificates to which the aforesaid Government Savings Certificates Act, 1959, applies. These are, therefore, covered by section 11(5)(i) of the Income-tax Act read with section 2(c) of the Government Savings Certificates Act.

4. It is, therefore, clarified that the investment in "Indira Vikas Patra" and "Kisan Vikas Patra" are in accordance with the norms and modes specified in section 11(5) of the Income-tax Act.

---

16. Circular No. 580 [F.No.133/303/90-TPL] dated 14th September, 1990

Subject: Exemption under section 10(23C)(iv)/(v) of the Income-tax Act, 1961 - Clarification regarding.

Under section 10(23C)(iv) and (v) of the Income-tax Act, 1961,income received by certain charitable and religious funds, trusts and institutions is exempt from tax if the conditions specified for this purpose are satisfied. One such condition, as laid down in the third proviso to section (23C), is that the fund, trust or institution applies its income or accumulates it for application wholly and exclusively to the object for which it is established and it does not invest or deposit its funds (other than voluntary contributions received and maintained in the form of jewellery, furniture or any other article as the Board may, by notification in the Official Gazette specify) for any period during the previous year otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 of the Income-tax Act.

2. References have been received from various trusts and institutions pointing out that certain funds, trusts and institutions running hospitals, creches, orphanages, schools, etc., and enjoying exemption under section 10(23C)(iv) or (v) of the Income-tax Act, often receive donations in kind from various sources for application towards their charitable purposes. These contributions may be in the shape of books, clothes for the poor, grains to feed the poor, drugs, hospital equipment, etc. It has been pointed out that all these are used as such for the purposes of the fund, trust or institution.

3. A doubt has, however, been raised as to whether the fund, trust or institution would be eligible for the tax exemption under section 10(23C)(iv) or (v) of the Act even if the donations-in-kind are not in the form of jewellery, furniture or any other article notified by the Board for the purposes of these provisions.

4. Since the donations-in-kind, of the nature referred to above, received by a fund, trust or institution, would be income within the meaning of section 2(24) of the Income-tax Act, it is clarified that use of these towards objects for which the fund, trust or institution is established would be regarded as application of the income of the fund, trust or institution within the meaning of clause (a) of the third proviso to section 10(23C). Accordingly, the fund, trust or institution would be eligible for the tax exemption if the other conditions specified in section 10(23C)(iv) or (v) of the Income-tax Act are satisfied.

(Sd.) Arbind Modi,

Officer on Special Duty [DS(TPL)]

---

17. Circular No: 596 dated dated 15/3/1991

Applicability of section 13(1)(d) of the Income-tax Act, 1961, for assessment year 1983-84-Clarification regarding.

Clause (d) of sub-section(1) of section 13 of the Income-tax Act was substituted by the Finance Act, 1983, with effect from 1st April, 1983. The provisions of the new sub-clause were to be

applicable from the assessment year 1983-84 onwards. This was also clarified in paragraph 18.7 of the Board's Circular No. 372, dated 8th December, 1983 [F. No. 131/(27)/83-TPL]. However, under sub-clause (ii) of the said section, religious/charitable trusts and institutions, having investments otherwise than in one or more of the forms or modes specified in section 11(5) of the Act, which had been made before lst March, 1983, were allowed to change their pattern of investment to that specified in section 11(5) before the 30th November, 1983. Many trusts and institutions, which changed their investment pattern between 1st April, 1983 and 30th November, 1983, were denied the benefit of exemption for the assessment year 1983-84 in view of the provisions of section 13(1)(d).

2. The issue has been considered in the Board and it is decided that the provisions of section 13(1)(d) would be applicable from the assessment year 1984-85 and not from the assessment year 1983-84. It is also decided that appellate decisions on this issue, hitherto in favour of the assessee, may not be further contested, and pending appeals/references may be withdrawn by the Chief Commissioners of Income-tax, in exercise of the powers delegated to them.

---

18. Circular No. 372 dated 08/12/1982

Finance Act, 1983 - Explanatory Notes On Provisions Relating To Direct Taxes.

x x x x

8. Under section 2(15) of the Income-tax Act, "Charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility not involving the carrying on of any activity for profit. Section 3(a) of the Finance Act has omitted the words "not involving the carrying on of any activity for profit" from the definition. This amendment is consequential to the amendment made in section 11 of the Income-tax Act by section 6(b) of the Finance Act whereunder profits and gains of business in the case of charitable or religious trusts and institutions will not be entitled to exemption under that

section, except in cases where the business fulfils the conditions specified in section 11(4) of the Act. The amendment takes effect from 1st April, 1984, and will, accordingly, apply in relation to the assessment year 1984-85 and subsequent years.

[Section 3(a) of the Finance Act]

x x x x

(x) Modifications of the provisions relating to charitable and religious 1 and 3 - Sections 11and 13

18.1 Under the existing provisions of the Income-tax Act, the income from any property held under trust for charitable or religious purposes is exempt from tax to the extent to which such income is applied to such purposes in Indian. Over the years the relevant provisions have been modified with a view to reducing the possibilities of misuse of the tax concession by persons connected with the affairs of the trust or institution.

18.2 The Finance Act has made certain amendments to the relevant provisions with a view to regulating the investment of trust funds and to bring to charge business profits of such trusts, except in certain cases. The substance of the modifications in this regard is explained in the following paragraphs.

18.3 Where any trust or institution does not apply 75 per cent. of its income to charitable or religious purposes on the ground that it seeks to accumulate the income for application to charitable or religious purposes in a later year, it has to fulfil the following conditions laid down in the section 11(2) of the Income-tax Act;

(a) the trust is to give a notice to the Income-tax Officer specifying the purposes for which the income is being accumulated and the period of accumulation;

(b) the income so accumulated is to be invested in Government or other approved securities or deposited in Post Office Savings Bank, scheduled banks, co-operative banks and approved financial corporations.

Section 13(1) (d) of the Income-tax Act provides that exemption under section 11 shall not operate for the assessment year 1983-

84 or any subsequent year if any funds of the trust or institution are invested or deposited or continue to remain invested or deposited for any period during any previous year commencing on or after 1st April, 1982, otherwise than in any of the forms or modes specified in sub- section (5) of section 13.

18.4 The Finance Act has amended the aforesaid provisions and laid down a uniform pattern of investment for the income accumulated under section 11(2) and the funds referred to in section 13(1) (d) of the Act. The forms and modes of investing or depositing such income or other funds of charitable and religious trusts and institutions are the following :-

(i) investment in savings certificates as defined in section 2(c) of the Government Savings Certificates Act, 1959, or any other security or certificate issued by the Central Government under the Small Savings Scheme of that Government;

(ii) deposit in any account with the Post Office Savings Bank;

(iii) deposit in any account with a scheduled bank or a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank). For the purposes of this provision, "scheduled bank" means the State Bank of India, a subsidiary bank of the State Bank of India, a corresponding bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, or any other bank included in the Second Schedule to the Reserve Bank of India Act, 1934;

(iv) investment in units of the Unit Trust of India;

(v) investment in any security issued by the Central Government or any State Government;

(vi) investment in debentures issued by, or on behalf of, any company or corporation both the principal whereof and the interest whereon are fully and unconditionally guaranteed by the Central Government or any State Government;

(vii) investment or deposit in any Government company as defined in section 617 of the Companies Act, 1956.

(viii) deposits with or investment in any bonds issued by a financial corporation which is engaged in providing long-term finance for industrial development in India, if such corporation is approved by the Central Government for the purposes of section 36(1) (viii) of the Income-tax Act;

(ix) deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes, if such company is approved by the Central Government for the purposes of section 36(1) (viii) of the Income-tax Act;

(x) investment in immovable property. For the purposes of this provision, the term "immovable property" will not include any machinery or plant (other than machinery or plant installed in a building for the convenient occupation of the building) even though attached to, or permanently fastened to anything attached to, the earth.

18.5 Section 13(1) (d), as amended by the Finance Act, provides that the income of any charitable or religious trust or institution will not be entitled to exemption under section 11 or section 12, if for any period during the previous year -

(i) any funds of the trust or institution are invested or deposited, after the 28th February, 1983, otherwise

than in any one or more of the forms or modes specified above;

(ii) any funds of the trust or institution invested or deposited before 1st March, 1983, otherwise than in any one or more of the forms or modes specified above, continue to remain so invested or deposited after 30th November, 1983; or

(iii) any shares in a company (other than a Government company as defined in section 617 of the Companies Act, 1956, or a statutory corporation) are held by the trust or institution after 30th November, 1983. The provisions of sub-section (2) and sub-section (4) of section 13 of the Income-tax Act have also been amended to clarify that the provisions of the said sub-sections shall be without prejudice to the requirements laid down in section 13(1) (d) of the Act.

18.6 However, the aforesaid provisions will not apply in relation to:-

(i) any assets held by the trust or institution, where such assets formed part of the corpus of the trust or institution as on 1st June, 1973, and such assets were not purchased by the trust or institution or acquired by it by conversion of, or in exchange for, any other asset;

(ii) any assets (being debentures issued by, or on behalf of, any company or corporation) acquired by the trust or institution before 1st March, 1983; and

(iii) any funds representing the profits and gains of business being profits and gains of any previous year relevant to the assessment year 1984-85 or any subsequent assessment year.

The exception mentioned in (iii) above will, however, not apply unless the trust or institution maintains separate books of account in respect of such business.

18.7 The aforesaid provisions relating to the investment of trust funds take effect from 1st April, 1983, and will, accordingly, apply in relation to the assessment year 1983-84 and subsequent years. It is relevant in this connection to note that the existing provisions of section 13(1) (d), which would otherwise have come into operation from the assessment year 1983-84, stand superseded by the amendments made by the Finance Act.

(xi) Business income of charitable and religious trusts and institutions

19.1 The Finance Act has inserted a new sub-section (4A) in seetion 11 of the Income-tax Act to provide that the provisions of sub-section (1) of that section relating to exemption of income derived from property held under trust for charitable or religious purposes; or of sub-section (2) thereof relating to accumulation or setting apart of such income for application to such purposes; or the connected provisions of sub-sections (3) and (3A) of the said section will not apply in relation to profits and gains of business. This provision will apply irrespective of whether the profits and gains are derived from a business carried on by the trust or institution or from a business undertaking which is held in trust for such purposes. An exception has, however, been made in relation to profits and gains of business in the following cases :-

(a) where the business is carried on by a trust wholly for public religious purposes and the business consists of printing and publication of books or publication of books or the business is of a kind notified by the Central Government in this behalf in the Official Gazette;

(b) the business is carried on by an institution wholly for charitable purposes and the work in connection with the business is mainly carried on by the beneficiaries of the institution.

19.2 The exceptions mentioned under (a) and (b) above will not be available unless separate books of account are maintained by the trust or institution in respect of such business. In consequence of the new provision made in sub-section (4A) of section 11, clause (bh) of section 13(1) of the Income-tax Act (which restricted the

exemption of business income in the case of charitable trusts and institutions for the relief of the poor, education or medical relief, only in cases where the business is carried on in the course of the actual carrying out of a primary purpose of the trust or institution) has been omitted.

19.3 It is relevant to note that the provisions of new sub-section (4A) of section 11 do not override the provisions of section 10 of the Income-tax Act, and as such, profits derived by any trust, institution, association, etc., referred to in clauses (21), (22), (22A), (23), (23A), (23B), (23BB) and (23C) will continue to be exempt from income-tax.

19.4 The Finance Act has also amended section 164 of the Income-tax Act to clarify that profits and gains of business which are not exempt under section 11 of the income-tax Act will be charged to income-tax as if such profits and gains (including any other income, if any, which is also not exempt under section 11) were the income of an association of persons.

19.5 The aforesaid amendments take effect from 1st April, 1984, and will, accordingly, apply in relation to the assessment year 1984-85 and subsequent years.

---

19. Circular No.551 dated 23/01/1990

Explanatory Notes on the provisions of the Direct Tax Laws (Amendment) Act, 1987

x x x x

3.37 Provisions of the new sub-clauses (iv) and (v) of clause (23C) relating to exemption of income of a notified charitable fund or institution or a notified wholly public religious or a wholly public religious and charitable trust or institution. - The new sub-clause (iv) and (v) of clause (23C) empower the Central Government to notify in the Official Gazette :-

(a) any fund or institution established for charitable purposes, having regard to its objects and importance

throughout India or throughout any State or States ; and

(b) any trust or institution, which is either wholly for public religious purposes or wholly for public religious and charitable purposes having regard to the manner in which its affairs are administered and supervised to ensure that its income is properly applied for the purposes thereof,

for the purposes of exempting the income of such fund, institution or trust.

3.38 Thus, the main provisions of the said new sub-clauses (iv) and (v) of clause (23C) are essentially the same as those of the old sub- clauses (iv) and (v). However, a number of conditions have been laid down in the new sub-clauses (iv) and (v) which must be satisfied before exemption under these sub-clauses can be granted or continued. Thus, while there was only one proviso to the old sub-clauses (iv) and (v), which provided that the notification issued under those clauses shall have effect for such assessment year or years as is specified in the notification, there are six provisos to the new sub-clauses (iv) and (v), which lay down various conditions.

3.39 The conditions laid down for grant of exemption or continuation thereof under the said sub-clauses (iv) and (v) are essentially the same as those in the case of clause (23) relating to sports associations, which have been enumerated at serial Nos. (i) to (v) in para 3.36 ante, with the following difference :-

(i) The provisions of sub-sections (2) and (3) of section 11 are not made applicable to the accumulation of income by institutions, etc., exempt under sub-clauses (iv) and (v) of clause (23C), while they are applicable in the case of institutions exempt under clause (23) and also clause (21). The effect is that while scientific research and sports institutions and associations exempt under clauses (21) and (23) can accumulate, for application to their purposes, only 25 per cent. of their income without any time limit and without fulfilling any

conditions and the balance 75 per cent. for a period of 10 years after complying with certain requirements mentioned in section 11(2), there is no such embargo in the case of religious or charitable institutions, etc., exempt under sub-clauses (iv) and (v) of clause (23C). The latter can accumulate any amount out of income for application to their objects for any period of time and without having to comply with the requirements mentioned in section 11(2). The only restriction is that such accumulation must be invested in assets specified in section 11(5) and should be for the purposes connected with the objects of the institutions, etc.

(ii) Being of charitable and/or religious nature, the condition mentioned at serial No. (ii) in para 3.36 ante in the case of clause (23) is not applicable in the case of sub-clauses (iv) and (v) of clause (23C).

3.40 it may be noted that while under the old provisions of the said sub-clauses (iv) and (v), a notification could have effect for any number of assessment years mentioned therein, under the new provisions the notification shall not have effect, at any one time, for more than three assessment years.

3.41 Prescribed authority for the purposes of clause (21) read with section 35, clause (23) and sub-clauses (iv) and (v) of clause (23C). - The prescribed authority for the purposes of clause (21) read with section 35 with the Secretary, Department of Scientific and Industrial Research, Government of India, (Refer to new rule 6 substituted by the Income-tax (Eighth Amendment) Rules 1989, issued under Notification No. S. O. 669(E), dated 23-8-1989).

The prescribed authority for the purposes of clause (23) and sub-clauses (iv) and (v) of clause (23C) shall be the Director-General (Income-tax Exemptions). (Refer to new rule 2C inserted by the Income- tax (Ninth Amendment) Rules, 1989, issued under Notification No. S. O. 675(E), dated 28-8-1989).

x x x x

TAX TREATMENT OF CHARITABLE AND RELIGIOUS TRUSTS, INSTITUTIONS ETC.

4.1 Omission of sections 11, 12, 12A and 13 by the Amending Act, 1987, and their restoration by the Amending Act, 1989:- The Amending Act, 1987, omitted the following sections of the Income-tax Act :-

(i) Section 11, which exempted the income of charitable and religious trusts, institutions etc., subject to fulfilment of certain conditions.

(ii) Section 12, which dealt with voluntary contributions received by religious or charitable trusts and institutions.

(iii) Section 12A, which laid down conditions for application of the provisions of sections 11 and 12.

(iv) Section 13, which enumerated the cases and circumstances in which the provisions of sections 11 and 12 did not apply.

The provisions of these sections, after certain modifications, were incorporated in a new section 80F inserted by the Amending Act, 1987. However, following representations in this regard, the Amending Act, 1989, has omitted the said new section 80F and has restored back sections 11, 12, 12A and 13 (refer to items 3 and 6 of the Table given in para 2.4 ante). The Amending Act, 1989, has further made certain modifications in section 11, which are discussed in the following paras.

4.2 Amendment to sub-section (1) of section 11 by the Amending Act, 1989, to exclude corpus donations from the total income of the trust or institution and amendment of definition of "income" contained in section 2(24) by the Amending Act, 1987 :- The Amending Act, 1989, has inserted a new clause (d) in sub-section (1) of section 11 to provide that income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution shall be excluded from the total income of the trust or institution. For understanding the background of this amendment, it will be relevant to discuss the

amendment made to the definition of the term "income" in section 2(24) by the Amending Act, 1987.

4.3 Under the old provisions of sub-clause (iia) of clause (24) of section 2, any voluntary contribution received by a charitable or religious trust or institution with a specific direction that it shall form part of the corpus of the trust or institution was not included in the income of such trust or institution. Since this provision was widely being used for tax avoidance by giving donations to a trust in the form of corpus donations so as to keep this amount out of the regulatory provisions of sections 11 to 13, the Amending Act, 1987, amended the said sub-clause (iia) of clause (24) of section 2 to secure that all donations received by a charitable or religious trust or institution, including corpus donations, were treated as income of such trust or institution. However, under the provisions of the new section 80F, also introduced by the Amending Act, 1987, such corpus donations, along with other income of the trust or institution, would have been exempt if spent for charitable purposes or invested in specified assets mentioned in section 80F.

4.4 As already pointed out, the Amending Act, 1989, omitted the new section 80F introduced by the Amending Act, 1987, and revived the old section 11. Consequently, corpus donations to trusts, etc., would also be governed by the provisions of section 11. Since stipulations in clauses (a) and (b) of sub-section (1) of section 11 that 75 per cent. of the income of the trust should be spent during the year and only 25 per cent. can be accumulated for application to its purposes in future could not have been made applicable to corpus donations, the Amending Act, 1989, has further amended section 11 to exclude corpus donations from the total income of the trust, as explained in para 4.2 above.

4.5 The effect of the amendment of the definition of "income" contained in section 2(24) by the Amending Act, 1987 and the amendment of sub-section (1) of section 11 by the Amending Act, 1989, is that although corpus donations would be treated as income in the hands of the recipient, in the case of trusts or institutions, which comply with the requirements for exemption under section 11, these will be excluded from their income. However, in case the trust or institution loses the exemption under section 11, either by not complying with the conditions laid down in

section 12A or by falling within the mischief of section 13, corpus donations will be included in its income and taxed.

4.6 Consequential amendments in sections 2(24) and 11(1) by the Amending Act, 1989 :- The Amending Act, 1989, has also made the following amendments :-

(i) Consequential amendments in the definition of "income" contained in section 2(24) pursuant to the omission of section 80F and revival of clauses (21) and (23) and sub-clauses (iv) and (v) of clause (23C) of section 10.

(ii) Consequential amendments in section 11(1) pursuant to the amendment of sub-section (1) of section 139 and the omission of sub- section (2) of section 139.

4.7 Amendments to sub-section (5) of section 11 by the Amending Act, 1989, to expand the scope of specified assets for purposes of investment of accumulated income of trusts, etc. Sub-section (5) of section 11 enumerates the forms and modes of investing or depositing the money referred to in section 11(2)(b), i.e. 75 per cent. of the income of the trust which is accumulated for application to the purposes of the trust in future. The Amending Act, 1989, has amended the said sub-section (5) to expand its scope as follows:-

(i) In place of "Government companies" as defined in section 612 of the Companies Act, 1956, public sector companies have been included in the list of institutions where investments or deposits can be made.

(ii) A new clause (xii) has been inserted which empowers the Central Government to prescribe any other form or mode of investment or deposit for the purposes of this sub-section. Thus, for future expansion of the scope of sub-section (5) of section 11, amendment of the Act will not be necessary. It can be prescribed in the rules.

4.8. These amendments come into force with effect from 1st April, 1989, and will, accordingly, apply to the assessment year 1989-90 and subsequent assessment years.

---

20. Circular No: 621 dated 19/12/1991

Finance (No. 2) Act, 1991--Explanatory Notes on the provisions relating to direct taxes.

x x x x

Modification of the provisions relating to charitable trusts.

15. Section 13(1)(d) of the Income-tax Act, as amended by the Finance Act, 1983, provides that exemption from tax to a charitable or religious trust or institution will be forfeited if any funds of the trust or institution are invested or deposited after 28-2-1983, otherwise than in any one or more of the forms or modes mentioned in section 11(5) of the Income-tax Act. Assets not held in any one or more of the permissible forms or modes including shares in companies were required to be liquidated by 30th November, 1983. Exceptions were, however, made in relation to assets received as corpus donation before 1st June, 1973, and in relation to debentures of companies acquired before 1st March, 1983.

15.1. With a view to removing hardship arising out of this scheme, a new sub-section (5) has been inserted in section 13 of the Income-tax Act to provide that where the debentures of an Indian company are acquired by the trust or institution after the 28th February, 1983, but before the 25th July, 1991, the exemption from tax under section 11 will be denied only in respect of interest on such debentures. If debentures are not disinvested by the 31st March, 1992, the trust or institution will lose exemption under section 11.

15.2. Further, a new clause (iia) has been inserted in the proviso in clause (d) of sub-section (1) of section 13 to secure that mere accretion to the existing holding of shares by way of bonus shares

or acceptance of donations in kind or any asset not conforming to the provision of section 11(5) will not make the fund or trust or institution lose tax exemption. The trusts or institutions will, however, be required to dispose or convert the assets not conforming to the requirement of section 11(5) into permissible investment within one year from the end of the financial year in which such bonus shares or other assets are received or 31-3-1992, whichever is later.

15.3. These amendments take effect retrospectively from 1st April, 1983.

15.4. Another provision relating to exemption from tax of charities is contained in section 10(23C)(iv) and (v) of the Income-tax Act. Prior to the amendment made by the Direct Tax Laws (Amendment) Act, 1989, income of a fund or institution established for charitable or public religious purposes and notified by the Central Government was exempted from tax under this provision without any conditions. The Direct Tax Laws (Amendment) Act, 1989, amended this provision to secure that notified funds or institutions can claim exemption from tax only if the following conditions are fulfilled : ---

(i) the income of the fund or institution is applied wholly and exclusively to the object for which the fund or institution is established ;

(ii) the funds are invested in any one of the forms or modes specified in sub-section (5) of section 11 of the Income-tax Act.

15.5. Funds and institutions claiming exemption under section 10(23C)(iv) or (v) were given time up to 30-3-1990 to disinvest any funds invested or deposited before 1-4-1989 in any form or mode not permissible under section 11(5).

15.6. The Finance Act has provided further time up to 31-3-1992 to such funds and institutions to dispose or convert investments made before 1-4-1989 which do not conform to the investment pattern prescribed in section 11(5) of the Income-tax Act.

15.7. The exemption under section 10(23C) (iv) or (v) to these funds and institutions is not available in respect of any business

income unless the business is incidental to the attainment of their objectives and separate books of account are maintained in respect of the business.

15.8. In order to bring exemption of charitable or religious trusts in line with the corresponding provisions in section 10(23C)(iv) or (v) sub-section (4A) of section 11 has been amended to permit trust and institutions to carry on business activities if the business activities are incidental to the attainment of its objective. The charitable or religious trust will no longer lose complete exemption from income-tax. However, the profits and gains from such business activity will be subjected to tax.

15. 9. This amendment will be effective from 1st April, 1992.

15.10. Under the existing provision contained in clause (a) of section 12A of the Income-tax Act, a person in receipt of income of any trust or institution is required to file an application for registration before the expiry of one year from the date of creation of the trust or establishment of the institution. The concerned authority may in his discretion condone the delay for filing an application for registration.

15.11. With a view to rationalising the provision in this regard, section 12A has been amended to provide that, where an application for registration is filed after the due date, the provisions of sections 11 and 12 will apply from the date of the creation of the trust or establishment of the institution only if the Chief Commissioner or Commissioner is satisfied that the delay is for valid reasons. If not, the provisions of sections 11 and 12 will apply from the first day of the financial year in which the application is made.

x x x x

Streamlining the procedure for approval of trusts

30. Under the existing provisions of section 80G of the Income-tax Act, funds and institutions seeking donation from public, obtain advance administrative approval from the Commissioner so as to enable the donors to claim deduction under section 80G.

30.1. With a view to streamlining the procedure for approval and enabling the concerned fund or institution to indicate to the prospective donors their status as a trust or institution, donations to which would be eligible for deduction under section 80G, this section has been amended so as to provide that the fund or institution is required to be approved statutorily by the Commissioner. However, such approval shall have effect for such number of assessment years not exceeding three assessment years, as may be specified in the approval.

---

21. Circular No. 636 dated 31/08/1991

Finance Act, 1992-Explanatory Notes on the provisions related to Direct Taxes.

x x x x

Provisions relating to charitable trusts and other institutions.

23. Under the existing provision of section 13(1)(d) of the Income-tax Act, exemption from income-tax provided to a charitable or religious trust or institution will be forfeited if any funds of the trust or institution are invested or deposited after 28th February, 1983, otherwise than in any one or more of the forms or modes specified in section 11(5) of the Act. The specified forms or modes of investment, generally are Government securities, units of the Unit. Trust of India, bonds issued by certain financial corporations, deposits in Post Office Saving Bank or in any scheduled bank or immovable property other than plant or machinery. However, the proviso to section 13(1)(d) provided that the aforesaid provisions shall not apply to, -

(i) any assets held by the trust or institution where such assets form part of the corpus of the trust of institution as on the 1st day of June, 1973, and such assets were not purchased by the trust or institution or acquired by it by conversion of, or in exchange for, any other asset.

(ii) any debentures of a company or a corporation acquired before 1st March, 1983.

So far as the assets for conforming to the provisions of section 11(5) are concerned, the proviso to section 13(1)(d) provided that holding such assets would not make the trust or institution lose tax exemption if such assets were disposed of or converted into permissible investments within one year from the end of the financial year in which such assets were received or 31st March, 1992, whichever was later.

23.1 Certain anomalies and hardships arising out of the requirements of the aforesaid investment pattern had been brought to the notice of the Government. With a view to removing these, the Act.

(i) amends clause (i) in the proviso to section 13(1)(d) to provide that the provisions of section 13(1)(d) shall not apply in relation to assets held by the trust or institution where such assets form part of the corpus of the trust or institution as on the 1st day of June, 1973, irrespective of the fact whether such assets are held originally by the trust or institution or they are acquired by the conversion or exchange of the original assets or purchased out of the sale proceeds on transfer of the original assets, as the case may be,

(ii) inserts a new clause (ia) the proviso to section 13(1)(d) so that it shall not apply in relation to any accretion to the assets, being shares of a company, forming part of the corpus of the trust or institution, as on 1st June, 1973, where such accretion arises by way of allotment of bonus shares.

(iii) amends clause (iia) in the proviso to section 13(1)(d) to provide that where an assets, other than an investment or deposit mentioned in section 11(5), is held by the trust or institution, and can be disinvested by 31st day of March, 1992, it can now be disinvested by 31st day of March, 1993.

23.2 The amendments at (i) and (ii) above take effect retrospectively from 1st April, 1983, and the amendment at (iii) takes effect from 1st April, 1992.

23.3 Under the provisions of section 10(21), section 10(23), and clause (iv) and (v) of section 10(23C) of the Income-tax Act, the notified scientific research associations, the notified sports associations or institutions, the notified wholly public religious and charitable trust or institution are required to invest or deposit their funds in any one or more of the forms and modes specified in section 11(5) of the Income-tax Act. If there is a violation of the aforesaid requirement, the exemption from income-tax is denied to such associations, institutions, trusts etc. It is also provided that where the funds are not so invested, such investments are to be converted into permissible investment by 30th March, 1992.

23.4 It had been represented that whereas the trusts of institutions which claim exemption under section 11 are allowed to retain the assets forming part of their corpus as on 1st June, 1973, or debentures of a company or corporation acquired before 1st March, 1983, this facility was not available to the associations, institutions, trusts etc. referred to in section 10(2), 10(23) and clauses (iv) and (v) of section 10(23C).

23.5 The Act, therefore, amends the aforesaid provisions to provide that in case of the associations, institutions, funds or trusts referred to in section 10(21), 10(23) and clauses (iv) and (v) of section 10(23C), the requirement of investment of funds in any one or more of the forms or modes specified in section 11(5) will not be insisted upon in certain cases. It provides that (i) funds held by these associations or institutions, etc., and forming part of their corpus as on 1st June, 1973, and any accretion thereto by way of bonus shares, and (ii) debentures acquired by them before 1st March, 1983 are not to be disinvested.

23.6 These amendments take effect retrospectively from 1st April, 1990.

23.7 Further, the period of disinvestment of funds held otherwise than in the forms or modes specified in section 11(5) has been extended from 30th march, 1992 to 30th March, 1993.

23.8 This amendment takes effect from 1st April, 1992. [Sections 4 and 5]

---

22. Circular No. 642 dated 11/12/1992

Explanatory notes on provisions relating to Direct Taxes in Finance (No.2) Act, 1991 - Modification of provisions relating to charitable trusts.

x x x x

In partial modification to para 15.8 of the Circular No. 621, dated 19th December, 1991 issued from F. No. 133/389/91-TPL, it is clarified that according to the provisions of section 11(4A) of the Income-tax Act, as amended through the Finance (No. 2) Act, 1991 with effect from 1.4.1992, profits and gains of business in the case of a trust or institution will not be liable to tax if the business is incidental to the attainment of the objectives of the trust or institution, as the case may be. In addition, separate books of account are to be maintained by the trust or institution in respect of such business. Income of any other business which is not incidental to the attainment of the objectives of the trust or institution will not be exempt from tax.

---

23. Circular No. 657 dated 30/08/1993

Finance Act, 1993-Explanatory Notes on the provisions regarding to Direct Taxes

x x x x

Amendment of the provisions relating to accumulation of income for charitable or religious purposes

21. Section 11(2) of the Income-tax Act provides that where seventy five per cent. of the income derived from property held under trust, or held under trust in part, wholly for charitable or

religious purposes is not applied, or is not deemed to have been applied, and is accumulated or set apart for application to such purposes in India, it shall not be included in the total income of the previous year of the person in receipt of the income, provided such person gives a notice in writing to the Assessing Officer in the prescribed manner specifying the purpose for which the income is being accumulated or set apart and the money so accumulated or set apart is invested or deposited in the forms or modes specified in section 11(5). However, such period of accumulation was not exceed ten years as provided in clause (a) of section 11(2).

21.1 Section 11(3) of the Income-tax Act provides, inter alia, that where the income accumulated or set apart is not utilised for the purpose for which it is so accumulated or set apart during the period mentioned in clause (a) of section 11(2), it shall be deemed to be the income of the person of the previous year immediately following the expiry of the aforesaid period. Representations had been received to the effect of the aforesaid provisions created hardship in cases where the income accumulated or set apart could not be applied for the purpose for which it was accumulated or set apart during the said period due to an order or injunction of any court.

21.2 As a measure of rationalisation, the Act amends section 11(2) of the Income-tax Act to provide that the computing the period referred to in clause (a) thereof, the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded.

21.3 This amendment takes effect retrospectively from 1st April, 1962, and, accordingly, applies in relation to the assessment year 1962-63 and subsequent years.

---

24. Circular No. 762 dated 18/02/1998

Finance Act (No 2), 1996 - Explanatory Notes on provisions relating to Direct Taxes.

x x x x

Registration of charitable and religious trusts

19.1 Under the existing provisions of the Income-tax Act, exemption from income-tax in respect of the income of a charitable or religious trust or institution is available only if the conditions specified in that section are satisfied. One of these conditions is that the person in receipt of the income shall make an application for registration of the trust or institution in the prescribed from and in the prescribed manner to the Chief Commissioner or Commissioner of Income-tax within the specified time. However, there was no provision in the Income-tax Act for processing of such an application and granting or refusal of registration to the concerned trust or institution.

19.2 Hence the Act now provides for a procedure to be followed for grant of registration to a trust or institution. According to this procedure, the Chief Commissioner or Commissioner shall call for documents and information and conduct enquiries to satisfy about the genuineness of the trust or institution. After he is 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 granting registration. If he is not so satisfied, he will pass an order refusing registration. However, an opportunity of being heard shall have to be provided to the applicant before an order of refusal to grant registration is passed by the Chief Commissioner or Commissioner. The reasons for refusal of registration shall also have to be mentioned in that order. The order granting or refusing registration has to be passed within six months from the end of the month in which the application for registration is received by the Chief Commissioner or Commissioner and a copy of such order shall be sent to the applicant.

19.3 It has also been provided that the grant of registration shall be one of the conditions for grant of income-tax exemption.

19.4 These amendments shall take effect from the 1st day of April, 1997.

x x x x

35.1 Under section 80G of the Income-tax Act, a deduction from total income is allowed in respect of donations made by an

assessee. In most cases the deduction is 50% of the donations. However, in respect of donations to certain funds and universities, deduction of 100% is allowed.

35.2 Certain State Governments have proposed to establish funds to provide medical relief to poor people. The funds shall be constituted with the help of grants from the State Governments and donations from individuals and trade bodies.

35.3 The Finance Act has amended section 80G of the Income-tax Act, 1961, to provide for 100% deduction for donations made to these funds.

35.4 This amendment will be effective from 1st April, 1997 i.e. in respect of assessment year 1997-98 and subsequent years. Thus, persons making donations during the financial year ended 31st March, 1997 will be eligible to obtain the deduction as above.

100% deduction to donations made to National or State Blood Transfusion Councils and also to funds set up by the Armed Forces

36.1 The Supreme Court had directed the Union Government in the case of Common Cause vs. Union of India & Ors., to take steps to establish a National Council of Blood Transfusion, as a society registered under the Societies Registration Act, 1860. In consultation with the National Council, the State Governments shall establish State Councils. The National and the State Councils shall frame programmes covering the entire range of services related to operation and requirement of Blood Banks and shall be empowered to collect funds from trade, industry and individuals.

36.2 In order to facilitate the collection of funds for the National and the State Blood Transfusion Councils, the Hon'ble Court directed the Government of India (Ministry of Health and the Ministry of Finance) to find out ways and means to secure grant of 100% exemption from income-tax to the donors in respect of donations made to the National Council and the State Councils.

36.3 To give effect to the above, the Finance Act has amended section 80G of the Income-tax Act, 1961 to provide for deduction

at 100% for donations made to National Council of Blood Transfusion headed by an officer not below the rank of an Additional Secretary to the Government of India dealing with the Aids Control Project, and the State Councils headed by the

Secretary, Health of the concerned State Government, to be set up in consultation with the National Council.

36.4 The Finance Act has further amended the section 80G to provide for deduction at 100% to donations made to the following funds of the Armed Forces :

(i) The Army Central Welfare Fund,

(ii) The Indian Naval Benevolent Fund, and

(iii) The Air Force Central Welfare Fund.

36.5 These amendments also take effect from the assessment year 1997-98 and shall apply to the donations made during the financial year 1996-97 and subsequent years.

---

25. Circular No. 772 dated 23/12/1998

Finance (No. 2) Act, 1998 - Explanatory Notes on provisions relating to Direct Taxes

x x x x

8. Provisions relating to exempting the income of educational institutions, universities, hospitals and other medical institutions

8.1. Under the provisions of clauses (22) and (22A) of section 10 of the Income-tax Act, before amendment, educational and medical institutions enjoyed a blanket exemption from income-tax if they existed solely for educational purposes and not for the purposes of profit. In the absence of any monitoring mechanism for checking the genuineness of their activities, these provisions have been misused.

8.2. The Act omits the aforesaid clauses (22) and (22A) from the statute. The exemption would, however, continue in respect of any

university or other educational institution, hospital or other medical institution which is wholly or substantially financed by Government, under the new sub-clause (iiiab) and (iiiac) inserted in section 10(23C) of the Income-tax Act, by the Finance (No. 2) Act, 1998.

8.3. Further, under sub-clause (iiiad) and (iiiae) in section 10(23C), the income of other educational and medical institutions would also be exempt if their annual receipts are below a limit to be prescribed. The limit has since been prescribed at Rs. one crore vide Notification No. S.O. 897(E) dated 12th October, 1998.

8.4. The income of the remaining educational and medical institutions would be exempt if they are approved by the prescribed authority on application made by them under sub-clauses (vi) and (via) of section 10(23C). This approval would be subject to their adherence of conditions similar to those specified for sub-sections (iv) and (v) of section 10(23C) regarding maintenance of accounts, expenditure and accumulation of funds and investment of funds in specified assets. The accumulated income is required to be invested in the modes specified in section 11(5). These institutions are given time upto 30th March, 2001 to transfer their investments to specified securities. The Rules and Forms in this regard have since been notified vide Notification No. S.O. 897(E) dated 12th October, 1998. By this notification the Central Board of Direct Taxes have been designated as the Prescribed Authority for the purpose of approval under sub-clauses (vi) and (via) of section 10(23C).

8.5. These amendments will take effect from 1st April, 1999 and will, accordingly, apply in relation to assessment year 1999-2000 and subsequent years.

26. Circular No.779 dated 14/09/1999

Finance Act, 1999 - Explanatory Notes on provisions relating to Direct Taxes

x x x x

15. Rationalisation of provisions relating to registration of trusts

15.1 Section 12AA of the Income-tax Act details the provisions for registration of trust/institution for which an application has been filed under section 12A of the Income-tax Act. Under the existing provisions, the application for the registration of trust or institution can be filed either before the Chief Commissioner of Income-tax or Commissioner of Income-tax. Similarly, the power for passing order with regard to registration under section 12AA is vested with both i.e. the Chief Commissioner and Commissioner. However, in practice, the application under section 12A for registration is actually filed before the Commissioner of Income-tax and the order under section 12AA is also passed by him. Hence, with a view to rationalise these provisions, the Act amends both sections 12A and 12AA so as to delete the reference to Chief Commissioner therefrom and to provide that the application for registration of a trust or an institution is now to be made to the Commissioner only and the order regarding registration shall also be passed by him.

15.2 The Act has inserted a new sub-section (1A) in section 12AA so as to provide that all applications pending before the Chief Commissioner on which no order has been made by him before 1st June, 1999 shall stand transferred from 1st June, 1999 to the Commissioner and the Commissioner may proceed with such applications from the stage at which it was on that day.

15.3 As per the existing provisions, a trust or institution that is refused registration under section 12AA is not able to file an appeal against such refusal. With a view to provide natural justice to the aggrieved trust or institution, the Act amends section 253 of the Income-tax Act relating to appeals to the Appellate Tribunal so as to enable such trust/institution to file an appeal before the ITAT against an order passed under section 12AA.

15.4 These amendments take effect from 1st June, 1999.

x x x x

33. Deduction for donations made to funds or institutions for charitable purposes

33.1 Under the provision of 80G of the Income tax Act, 1961, a deduction in respect of donations to certain funds, institutions etc. is provided. However, clause (ii) of sub-section (5) of that section

provides that if such fund or institution has in its instrument any provision for the transfer or application of the whole or any part of the income or asset for any purpose other than a charitable purpose, it could not avail of the benefit under this section. It has also been provided in Explanation 3 that for the purpose of this section, 'charitable purpose' does not include any purpose the whole or substantially the whole of which is of a religious nature. These provisions have been interpreted to deny the benefit to even such funds or institutions as are predominantly engaged in charitable activities but are either inspired to do charity by tenets of religion or spend a negligible amounts on purposes other than charitable. It would be harsh to deny the benefits to the institutions which are engaged in activities, the whole or substantially the whole of which are of charitable nature.

33.2 In order to mitigate hardship to such funds or institutions, the provisions of section 80G are amended so as to provide that in case such institutions or funds spend upto five per cent of their income during the relevant previous year for religious purpose, the benefit of deduction will not be denied to them.

33.3 This amendment will take effect from the 1st day of April, 2000 and will, accordingly, apply in relation to assessment year 2000-2001 and subsequent years.

---

27. Circular No.794 dated 09/08/2000

Finance Act, 2000 - Explanatory Notes on provisions relating to Direct Taxes.

x x x x

16. Charitable trust not to lose exemption, if funds remain invested for three years in the public sector companies after disinvestment by the Government in such companies

16.1. Under the existing provisions the income from property held under a trust and used wholly for charitable or religious purposes is exempt from income-tax. This exemption is confined only to such portion of income which is applied for charitable or religious

purposes or is accumulated for applying to such purposes, provided such accumulation is not more than 25% of the total income of the trust.

16.2. Provisions of sub-section (2) of section 11 provide that the money so accumulated or set apart must be invested or deposited in specified forms or modes, mentioned in sub-section (5) or section 11.

16.3. Under the provisions of clause (vii) of sub-section (5) of section 11, investment or deposit in any public sector company is specified as an eligible mode of investment for charitable trusts. The benefit of exemption is not available if a trust holds any shares of a company other than a public sector company. Some public sector companies may cease to be a public sector company, after disinvestment by the Government.

16.4. It has been provided by the Act that an investment or deposit in a public sector company shall continue to be one of the eligible modes of investment for charitable or religious trusts, for a period of three years (in the case of shares), and the date of maturity of other investments or deposits, from the date a public sector company ceases to be a public sector company.

16.5. This amendment will take effect from 1st April, 2001 and will accordingly, apply in relation to the assessment year 2001-2002 and subsequent years.

17. Charitable trusts allowed to invest funds in long-term finance for urban infrastructure

17.1. Under clause (ix) of sub-section (5) of section 11, deposits with or investment in any bonds issued by a public company formed or registered in India, with the main object of carrying on the business of providing long-term finance for construction of houses in India for residential purposes, is included as an eligible investment for trusts.

17.2. The Act has inserted a new clause in this sub-section so as to provide that investment in public companies formed and registered in India with the main object of carrying on the business

of providing long-term finance for urban infrastructure would also be specified as one of the eligible modes for investment.

17.3. The term 'urban infrastructure' has been defined to mean a project for providing potable water supply, sanitation and sewerage, drainage, solid waste management, roads, bridges and flyovers or urban transport.

17.4. The amendment will take effect from 1st April, 2001 and will accordingly, apply in relation to the assessment year 2001-2002 and subsequent years.

18. Charitable trust not to lose exemption if educational or medical facilities provided to specified person

18.1. The existing provisions provide that the income of a charitable or religious trust will not be exempt if any part of such income or any property of the trust is used or applied directly or indirectly for the benefit of any person such as the author of the trust, trustee or any relative of such persons or any concerns in which such persons have a substantial interest (referred to as a specified person).

18.2. The Act has inserted a new sub-section in section 13 to provide that a trust running an educational institution or a medical institution or a hospital shall not lose the benefit of exemption of any income, other than the value of benefits of educational or medical facilities provided to specified persons, solely on the ground that such benefits have been provided to specified persons.

18.3 The amendment will take effect from 1st April, 2001 and will, accordingly, apply in relation to the assessment year 2001-2002 and subsequent years.

28. Circular No.7 dated 05/09/2003

Finance Act, 2003 - Explanatory Notes on provisions relating to Direct Taxes.

x x x x

22. Empowering Assessing Officers to allow inter-trust donations where a trust or institution is being dissolved

22.1 Under the existing provision contained in the proviso to sub-section (3A) of section 11, where due to circumstances beyond the control of a trust or institution in receipt of the income, the accumulated income could not be applied for the purpose for which it was accumulated or set apart, transfer of any such accumulated income to other charitable trusts/institutions is not allowed as application of income towards charitable purposes. This provision had created genuine problems for those trusts and institutions which were being wound-up.

22.2 In order to remove this hardship, the Finance Act, 2003 has amended the proviso to sub-section (3A) of section 11 so as to empower the Assessing Officer to allow donation to another trust or institution as application of accumulated income for charitable purposes in the year in which the trust or institution claiming exemption is dissolved.

22.3 This amendment will take effect from 1st April, 2003, and will, accordingly, apply in relation to the assessment year 2003-04 and subsequent years.

29. Circular No.14 dated 28/12/2006

Finance Act, 2006 - Explanatory Notes on provisions relating to Direct Taxes.

x x x x

6. Providing a time limit for grant/continuance of exemption for certain charitable and religious trusts and institutions and certain educational and medical institutions.

6.1 Under the provisions of section 10(*23C*)(*iv*), (*v*), (*vi*) and (*via*), a fund, trust or institution or university or other educational institution or hospital or other medical institution is required to make an application for grant of exemption under the said clauses to the prescribed authority.

6.2 A new proviso has been inserted in section 10(*23C*) to provide that such application made on or after 1-6-2006 shall be made at

any time during the financial year immediately preceding the assessment year from which the exemption is sought.

6.3 *Applicability* - Assessment year 2007-08 onwards.

25. Taxation of anonymous donations received by wholly charitable trusts or institutions including non-profit educational or medical institutions

25.1 Income of wholly charitable or religious trusts or institutions as well as partly charitable or religious trusts or institutions is exempt from income-tax under sections 11 and 12, subject to the fulfilment, *inter alia*, of certain conditions of application of income and investment in specified modes. Similarly, income of any university or other educational institution referred to in sub-clause (*iiiad*) or sub-clause (*via*) or any hospital or other medical institution referred to in sub-clause (*iiiae*) or sub-clause (*via*) or any fund or institution referred to in sub-clause (*iv*) or any trust or institution referred to in sub-clause (*v*) of clause (*23C*) of section 10, is exempt from income-tax subject to the fulfilment of conditions specified in the said clause.

25.2 With a view to prevent channelisation of unaccounted money to these institutions by way of anonymous donations, a new section 115BBC has been inserted to provide that any income of a wholly charitable trust or institution by way of anonymous donation shall be included in its total income and taxed at the rate of 30 per cent. Anonymous donation made to wholly charitable and religious trusts or institutions, *i.e*. mixed purpose trusts or institutions shall be taxed only if it is for any university or other educational institution or any hospital or other medical institution run by them. Anonymous donation to wholly religious trusts or institutions will not be taxed.

25.3 Anonymous donation has been defined in the new section to mean any voluntary contribution referred to in section 2(*24*)(*iia*) of the Act, where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as maybe prescribed.

25.4 Consequential amendments have been made in section 10(*23C*) and section 13 to provide that any income by way of any anonymous donation which is taxable under section 115BBC, shall be included in the total income of the assessee.

25.5 *Applicability* - From Assessment year 2007-08 onwards.

25.6 Amendments of clarificatory nature have further been made in section 2(*24*)(*iia*) to include in the definition of income, voluntary contributions received by any university or other educational institution or any hospital or other medical institution referred to in sub-clauses (*vi*) and (*via*) respectively of section 10(*23C*). The sixth proviso to clause (*23C*) of section 10 already indicated treatment of voluntary contributions as income with exemption in certain circumstances.

25.7 *Applicability* - From assessment year 1999-2000 onwards.

25.8 Amendments have also been made to provide that voluntary contributions received by any university or other educational institution or any hospital or other medical institution referred to in sub-clauses (*iiiad*) and (*iiiae*) respectively of section 10(*23C*) shall be included in the definition of income.

25.9 *Applicability* - From Assessment year 2007-08 onwards.

30. Circular No.1 dated 27/04/2007

Taxation Laws (Amendment) Act, 2006 – Explanatory Notes on the amendments

5. Removal of the requirement of renewal of notification issued under sub-clauses (iv) and (v) of section 10(23C).

5.1 Under the Eighth Proviso to section 10(23C), any notification issued by the Central Government in terms of sub-clause (iv) or sub-clause (v) of the said section has, at any one time, effect for such assessment year or years, not more than three assessment years, including an assessment year or years commencing before the date on which the notification is issued.

5.2 A need has been felt to dispense with the requirement of periodic renewal of notifications. The requirement of periodic

renewal of notifications has been resulting in delays in their renewal. In order to overcome delays, the eighth proviso to section 10(23C) has been amended so as to provide that the above mentioned limit of effectivity for three assessment years shall be applicable in respect of notifications issued by the Central Government under sub-clause (iv) or sub-clause (v) before the date on which Taxation Laws (Amendment) Bill, 2006 receives the assent of the President.

5.3 The Taxation Laws (Amendment) Bill, 2006 received the assent of the President on 13.07.2006. Therefore, on account of the above amendment any notification issued by the Central Government under the said sub-clause (iv) or sub-clause (v), on or after 13.07.2006 will be valid until withdrawn and there will be no requirement on the part of the assessee to seek renewal of the same after three years.

5.4 Applicability: Notifications issued on or after 13th July, 2006.

6. Providing a time limit for issue of notification under sub-clauses (iv)and (v) or for approval under sub-clauses (vi) and (via) of section 10(23C).

6.1 Under the existing provisions of clause (23C) of section 10, in respect of application made under the First Proviso, there is no time limit for issue of notification under sub-clauses (iv) and (v) or for grant of approval under sub-clauses (vi) and (via) or for passing an order rejecting such application. Resultantly, applications remain pending for long.

6.2 Since a time limit is necessary to expedite disposal of applications, a new proviso has been inserted in section 10(23C) to provide that where an application under the first proviso to the said section is made on or after the date on which the Taxation Laws (Amendment) Bill, 2006 receives the assent of the President, every notification under sub-clause (iv) or sub-clause(v) shall be issued or approval under sub-clause (vi) or sub-clause (via) shall be granted or an order rejecting the application shall be passed within the period of twelve months from the end of the month in which such application was received. The assent of the President was received on 13.07.2006.

6.3 Applicability: Applications made on or after 13th July, 2006.

7. Requirement of getting the accounts audited and furnishing of Audit Report by fund or trust or university or other educational institution or hospital or other medical institution referred to in sub-clauses (iv),(v),(vi) or (via) of clause (23C) of section 10.

7.1 Under the existing provisions of section 10(23C), there is no requirement on the part of any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clauses (iv), (v), (vi) or (via) of section 10(23C) to furnish audited accounts along with the return of income.

7.2 A new tenth proviso has been inserted in section 10(23C) which provides that if the total income of any entity referred to in sub-clauses (iv), (v), (vi) and (via) of section 10(23C), without giving effect to the provisions of the said sub-clauses, exceeds the maximum amount not chargeable to tax in any previous year, it shall get its accounts audited in respect of that year by an accountant as defined in the Explanation below sub-section (2) of section 288 and shall furnish such audit report along with the return of income for the relevant assessment year. The report must be in the prescribed form duly signed and verified by the accountant and setting forth such particulars as may be prescribed. For this purpose, Form No. 10BB has been notified vide notification S.O. 1176 (E) dated 25.7.2006.

7.3 Applicability: Assessment year 2006-07 onwards.

8. Raising of threshold limit for audit of accounts by a charitable or religious trust or institution.

8.1 One of the conditions to be fulfilled for availing exemption under sections 11 and 12 as contained under the existing provisions of clause (b) of section 12A is that the accounts of the trust or institution for the previous year should have been audited in any case in which the total income of the trust or institution as computed under the Income-tax Act, 1961 without giving effect to the provisions of section 11 and section 12 exceeds fifty thousand rupees in that previous year and furnish the report of such audit

along with the return of income for the relevant assessment year in the prescribed form.

8.2 The exemption limit or the maximum amount which is not chargeable to income-tax in any previous year is revised from time to time. Therefore, the aforesaid condition regarding the total income of the trust or institution exceeding fifty thousand rupees in any previous year has been amended to provide for the requirement of getting the accounts audited if in the previous year the total income exceeds the maximum amount which is not chargeable to income-tax.

8.3 Applicability: Assessment year 2006-07 onwards.

17. Furnishing of the return of income mandatory in the case of a university, college or other institution Section 139

17.1 The existing provisions of clause (e) of sub-section (4C) of section 139 provide that every fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via) of clause (23C) of section 10 shall, if the total income in respect of which such entities are assessable, without giving effect to the provisions of section 10, exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed Form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of the Income-tax Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1).

17.2 The Act expands the scope of the aforementioned provisions of clause (e) of sub-section (4C) of section 139 whereby any university or other educational institution referred to in sub-clause (iiiad) and any hospital or other institution referred to in sub-clause (iiiae) will also be required to furnish their return of income for the previous year, if the total income in respect of which such entities are assessable, without giving effect to the provisions of section 10, exceeds the maximum amount which is not chargeable to income-tax, in the prescribed Form and verified in the prescribed manner and setting forth such other particulars as may be

prescribed and all the provisions of the Income-tax Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1).

17.3 Applicability: Assessment year 2006-07 onwards.

17.4 A university, college or other institution may not as such be required to furnish the returns of income. It has, however, been decided that the entities approved under clause (ii) or clause (iii) of sub-section (1) of section 35 of the Income-tax Act, 1961 should be required to furnish their returns of income. Clause (b) of section 12 of the Act accordingly provides for this requirement and lays down that every university, college or other institution referred to in clause (ii) and clause (iii) of sub-section (1) of section 35, which is not required to furnish its return of income or loss under any other provision of section 139, shall furnish its return in respect of its income or loss in every previous year and that all the provisions of the Income-tax Act, 1961 shall apply to such return as if it were a return under sub-section (1) of section 139.

17.5 Applicability: Assessment year 2006-07 onwards.

31. Circular No.03 dated 12/03/2008

Finance Act, 2007 - Explanatory Notes to the Provisions of the Finance Act 2007.

12. Substitution of the power of notification of certain charitable and religious entities by power of approval by the prescribed authority.

12.1 Under sub-clauses (iv) and (v) of clause (23C) of section 10, the income of the funds, trusts and institutions referred to therein is exempt from tax if they are notified by the Central Government. Sub-clause (iv) relates to any fund or institution established for charitable purposes having importance throughout India or throughout any State or States. Sub-clause (v) relates to any trust (including any other legal obligation) or institution wholly for public religious purposes or wholly for public religious and charitable purposes.

12.2 As the existing procedure of centralised notification by the Central Government for the purpose of claiming exemption was found to be time-consuming and cumbersome, a need was felt to streamline such procedure. Accordingly, the said sub-clauses have been amended to substitute such procedure of notification by the Central Government by a new procedure of approval by the prescribed authority. The prescribed authority will be the Chief Commissioner of Income-tax or Director General of Income-tax designated for this purpose by Central Board of Direct Taxes. With this decentralization of the powers of the Central Government to the field authorities, no notification for exemption under the said sub-clauses will be issued by the Central Government on or after 1.6.2007.

12.3 Consequential amendments have been made in the second proviso, ninth proviso and thirteenth proviso to clause (23C) of section 10 and in sub-clause (ii) of the first proviso to sub-section (3) of section 143. Through these amendments, a reference to approval by the prescribed authority has been included in addition to notification issued under the said sub-clauses. To give effect to the aforesaid amendment, a new proviso has also been inserted after the fifteenth proviso which provides that all pending applications in respect of which no notification has been issued under the said sub-clauses (iv) or (v) before the 1st day of June, 2007, shall stand transferred on that day to the prescribed authority and the prescribed authority may proceed with such applications under those sub-clauses from the stage at which they were on that day. Vide notification S.O. 850(E) dated 30th May, 2007, the relevant Rule 2C of Income Tax Rules, 1962 was amended to reflect the above change in procedure. Further, vide Notification S.O. 851(E) dated 30th May, 2007, certain Chief Commissioners and Directors General were authorized by the Central Board of Direct Taxes to act as prescribed authority for the purposes of sub-clause (iv) and sub-clause (v) of clause (23C) of section 10 w.e.f. 1.6.2007.

12.4 Consequential amendment has also been made in section 296 to provide that every notification issued before the 1st day of June, 2007 under sub-clause (iv) of clause (23C) of section 10 shall be placed before each House of Parliament within the specified period.

12.5 *Applicability*- These amendments will take effect from the 1st day of June, 2007.

16. Removal of the requirement for charitable or religious trusts or institutions to file for registration within one year of creation or establishment.

16.1 Sections 11 and 12 grant exemption in respect of income of charitable or religious trusts or institutions. In order to claim such exemption, inter alia, the trust or institution is required to make an application for registration under clause (a) of section 12A in the prescribed form and in the prescribed manner to the Commissioner within one year from the date of its creation or establishment and such trust or institution has to be registered under section 12AA.

16.2 Where such application is made after one year, the Commissioner has the powers to condone such delay, if he is satisfied that the trust or institution was prevented from making the application within the specified time limit for sufficient reasons. If the Commissioner is so satisfied, the exemption under sections 11 and 12 shall apply to such trust or institution from the date of creation of the trust or establishment of the institution. However, where the Commissioner is not so satisfied, the exemption shall become applicable only from the 1st day of the financial year in which the application is made.

16.3 A need has been felt to streamline the procedure relating to the registration of charitable or religious trusts or institutions. In line with such intention, the abovementioned clause (a) has been sunset by restricting its applicability to applications made before 1.6.2007. A new clause (aa) has been inserted in section 12A to provide that the provisions of section 11 and 12 shall not apply in relation to the income of the trust or institution unless the person in receipt of the income has made an application for the registration of the trust or institution on or after the 1st day of June, 2007 in the prescribed form and in the prescribed manner to the Commissioner and such trust or institution is registered under section 12AA.

16.4 In addition, section 12A has been re-numbered as sub-section (1) of section 12A and new sub-section (2) has been inserted in section 12A to provide that where an application has been made on or after the 1st day of June, 2007, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution for the assessment year immediately following the financial year in which such application is made.

16.5 With the above amendments, a trust or institution will no longer be compelled to file an application for registration within one year from the date of its creation or establishment. Thus, where an application is filed on or after the 1st day of June, 2007, the exemption under sections 11 and 12 shall be available on a prospective basis. Accordingly, the discretion presently vested with the Commissioner to determine the period from which the exemption shall be applicable and the consequent power of condonation of delay for prior years stand removed.

16.6 Consequential amendments have been made in sub-sections (1) and (2) of section 12AA so as to include a reference to an application for registration of a trust or institution made under newly inserted clause (aa) of section 12A.

16.7 *Applicability-* These amendments will take effect from the 1st day of June, 2007.

17. Allowing share investment in certain cases as a permissible investment mode for a trust or institution.

17.1 Section 11(5) of the Act specifies various permissible forms and modes of investing or depositing the funds of a trust or institution for the purposes of availing exemption. Residual clause (xii) of section 11(5) allows any other form or mode as maybe prescribed in Rule 17C of the Income Tax Rules, 1962. Under clauses (iv) and (v) of Rule 17C, investment in the equity share capital of certain companies by certain entities has been permitted.

17.2 However, under sub-clause (iii) of clause (d) of sub-section (1) of section 13, exemption under the provisions of section 11 or section 12 is not allowable in respect of the income of a trust or

institution, if any shares are held by it for any period during the previous year after 30.11.1983. The only exception which has been provided is for shares held in a public sector company by the trust or institution.

17.3 This had resulted in an anomalous situation whereby share investment is allowed as a permitted form or mode of investment under section 11(5)(xii) read with rule 17C, whereas such share investment stands prohibited under section 13(1)(d)(iii).

17.4 With a view to harmonise the provisions of section 13(1)(d)(iii) with those of section 11(5)(xii), sub-clause (iii) of clause (d) of sub-section (1) of section 13 has been substituted with a new sub-clause. This new sub-clause provides that the provisions of section 11 and section 12 shall not apply in respect of any income of a charitable or religious trust or institution, if for any period during the previous year, any shares in a company are held by the trust or institution after the 30th day of November, 1983, other than

(A) shares in a public sector company;

(B) shares which are prescribed as a form or mode of investment under clause (xii) of sub-section (5) of section 11,

17.5 *Applicability*- This amendment will take effect retrospectively from the 1st day of April, 1999 and will accordingly apply in relation to the assessment year 1999-2000 and subsequent assessment years.

32. Circular No.11 dated 19/12/2008

Subject:-Definition of 'Charitable purpose' under section 2(15) of the Income-tax Act, 1961 – reg.

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.

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. However, it was seen that a number of entities who were engaged in commercial activities were also claiming exemption on the ground that such activities were for the advancement of objects of general public utility in terms of the fourth limb of the definition of 'charitable purpose'. Therefore, section 2(15) was amended vide Finance Act, 2008 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.

2. The following implications arise from this amendment –

2.1 The newly inserted 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.

2.2. '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 account 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.

3. The newly inserted 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.

3.1. 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 associations claim both to be charitable institutions as well as mutual organizations and their activities are restricted to contributions from and participation of only their members, these would not fall under the purview 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).

3.2. In the final analysis, however, whether the assessee has for its object 'the advancement of any other object of general public utility' is a question of fact. If such assessee 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 purpose 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. Assessees, 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.

TABLE OF CASES

A	Pages
A.G. v. Mathieson (1907) 2 CH. 394, 395	13
A.G. v. West (1858) 27, LJ. Ch. 789	84
A.J. Patel v. C.I.T. (1974) 97 ITR 683 (Bom)	9, 17
Abhay L. Khatau v. C.W.T. (1965) 57 ITR 202 (Bom)	235
Ahmedabad Rana Caste Association v. C.I.T. (1971) 82 ITR 704 (SC)	87,88,92
All India Spinners' Association v. C.I.T. (1944) 12 ITR 482, 487 (PC)	9, 19, 26, 27
American Hotel and Lodging Association Educational Institute V. Central Board of Direct Taxes – (2008) 301 ITR 86 (Sc)	233
Anand Marga Pracharak Sangha v. C.I.T. (1995) 218 ITR 254 (Cal)	159, 176
Anaro Devi (Smt.) v. Shankar Nath AIR 1974 Delhi 17	14
Andhra Pradesh State Road Transport Corporation v. C.I.T. (1975) 100 ITR 392 (AP) – affirmed in (1986) 159 ITR 1 (SC)	40
Assembly Rooms v. CIT (2000) 241 ITR 76 (Mad)	83
Auditor Dasaradha Rami Reddy Charities v. C.I.T. (1989) 177 ITR 249 (Mad)	181

B

Bafna Charitable Trust v. C.I.T (1998) 230 ITR 864 (Bom)	140
Banarsi Dass v. Wealth Tax Officer (1965) 56 ITR 224 (SC)	235
Bar Council of Maharashtra v. C.I.T. (1980) 126 ITR 27 (Bom) affirmed (1981) 130 ITR 28 (SC)	27
Bar Council of Rajasthan v. CIT (1982) 147 ITR 720 (Raj)	31
Bar Council of Uttar Pradesh v. CIT, Lucknow (1983) 143 ITR 584 (All)	31, 228
Basant Kumar Aditya Vikram Birla v. C.I.T. (1968) 70 ITR 657 (Cal)	219
Bengal National Chamber of Commerce and Industry v. C.I.T. (1978) 111 ITR 514 (Cal)	44
Bhagwad Swarup Shri Shri Devraha Baba Memorial Shri Hari Parmarth Dham Trust v. CIT (2008) 299 ITR (AT) 161 (Del)(SB)	163
Bharat Kalyan Pratishthan v. DIT (E) (2008) 299 ITR 406 (Del)	132
Bhriguraj Charity Trust v. C.I.T. (1997) 228 ITR 50 (Del – FB)	110
Bihar Institute of Mining & Mines Surveying v. C.I.T (1994) 208 ITR 608 (Pat)	24
Birla Vidhya Vihar Trust v. C.I.T. (1982) 136 ITR 445 (Cal)	225
Birmingham Small Arms Co. Ltd. (1951) 2 All ER 226 (HL)	191

Bombay Cricket Association (1987) 166 ITR 356 (Bom) affirmed in (2001) 118 Taxman 884 (SC) 236

Bowman v. Secular Society Ltd. (1917) AC 406 (HL) 72, 85

Brahmin Educational Society v. Asst. CIT (1997) 227 ITR 317 (Ker) 222

Pages

C

Century Enka Ltd. v. ITO (1977) TLR 615 (Cal); (1977) 107 ITR 909 (Cal) 191

C.G.T. v. Cawasji Jehangir Co. (P) Ltd. (1977) 106 ITR 390 (Bom) 184

C.G.T. v. H.H. Sir Shahaji The Chhatrapati MaharajaSaheb of Kolhapur (1965) 58 ITR 140 (Bom) 203

C.G.T. v. Indo Traders and Agencies (Madras) Pvt. Ltd. (1981) 131 ITR 313 (Mad) 185

C.G.T. v. Lachhman Das Oswal (1977) 106 ITR 742 (P&H) 217

C.G.T. v. Yogendra N. Mafatlal & Another (1965) 58 ITR 40 (Bom) 217

Champa Charitable Trust (1995) 214 ITR 764 (Bom) 176

Charitable Gadodia Swadeshi Stores v. C.I.T. (1944) 12 ITR 385 (Lahore) 172

Charusila Dassi (Smt.) (1946) 14 ITR 362 (Cal) 100

Chaturbhuj Vallabhdas v. C.I.T. (1946) 14 ITR 144, 148 (Bom) 3

Chimanbhai Lalbhai v. C.I.T. (1958) 34 ITR 259 (Bom) 13

C.I.T. (Additional) v. A.A. Bibjiwala Trust (1975) 100 ITR 516 (Guj.)	21
C.I.T. (Additional) v. A.L.N. Rao Charitable Trust (1976) 102 ITR 474 (Karn)	79
C.I.T. (Additional) v. A.L.N. Rao Charitable Trust (1976) 103 ITR 44 (Karn)	135
C.I.T. (Additional) v. A.L.N. Rao Charitable Trust (1995) 216 ITR 697 (SC)	135
C.I.T. v A.P. Bankers & Pawn-brokers Association (1988) 170 ITR 476 (AP)	31
C.I.T. (Additional) v. Aditanar Educational Institution (1979) 118 ITR 235 (Mad)	223
C.I.T. (Additional) v. Ahmedabad Millowners' Association (1977) 106 ITR 725 (Guj)	87, 91
C.I.T. v. Ahmedabad Rana Caste Association (1973) 88 ITR 354 (Guj) affirmed in (1983) 140 ITR 1 (SC)	17, 87, 188, 204
C.I.T. v. All India Hindu Mahasabha (1983) 140 ITR 748 (Del)	19, 71
C.I.T. v. Ambalal Sarabhai Trust (1988) 173 ITR 673 (Guj)	140
C.I.T. v. Amonbolu Rajiah (1976) 102 ITR 403 (AP)	218
C.I.T. v. Anand Swarup Brijendra Swarup Charitable Trust (1991) 187 ITR 656 (All)	31
C.I.T. v. Andhra Chamber of Commerce (1965) 55 ITR 722	4, 19, 20, 28, 41, 47, 61, 76, 86
C.I.T. v Andhra Pradesh Police Welfare Society (1984) 148 ITR 287 (AP)	31

CIT v. Andhra Pradesh State Road Transport Corporation (2006) 285 ITR 147 (AP)	164
C.I.T. v. Anjuman Moinia Fakharia (1994) 208 ITR 568 (Raj)	133
C.I.T. (Additional) v. Aroor Bros. Charitable Trust (1978) 115 ITR 418 (Ker)	33
CIT v. Ashoka Charity Trust (1982) 135 ITR 536 (Cal)	119
C.I.T. v. Associated Cement Co. Ltd. (1968) 68 ITR 478 (Bom)	218
C.I.T. v. Aurobindo Memorial Fund Society (2001) 247 ITR 93 (Mad)	146
C.I.T. v. Babulal Khinchand Trust (2000) 243 ITR 790 (Mad)	83
C.I.T. v. Bal Utkarsh Society (1979) 119 ITR 137 (Guj)	123
C.I.T. v. Bangalore Stock Exchange Ltd. (1978) 115 ITR 493 (Karn)	79
C.I.T. v. Bangalore Woollen Cotton & Silk Mills Co. Ltd. (1973) 91 ITR 196 (Mys)	218
C.I.T. v. Barkate Saifiyah Society (1995) 213 ITR 492 (Guj)	168, 205
C.I.T. v. BEL Employees Death Relief Fund & Service Benefit and Association (1997) 225 ITR 270 (Karn)	19
C.I.T. v. Bengal Mills and Steamers Presbyterian Association (1983) 140 ITR 586 (Cal)	11
C.I.T. v. Bharti Khatri Seva Trust (1994) 205 ITR 96 (All)	31

C.I.T. v. Bhoruka Public Welfare Trust (1999) 240 ITR 513 (Cal)	201
C.I.T. (Additional) v. Bibijiwala Trust (1975) 100 ITR 516 (Guj)	90
C.I.T. v. Birla Charity Trust (1998) 170 ITR 150 (Cal)	324
C.I.T. Central-I, Calcutta v. Birla Education Trust (1985) 153 ITR 579 (Cal)	152
C.I.T. v. Birla Janahit Trust (1994) 208 ITR 372 (Cal)	118, 120, 142
C.I.T. v. Breach Candy Swimming Bath Trust (1955) 27 ITR 279 (Bom)	29, 68
CIT v. Brig. Kapil Mohan (2001) 252 ITR 830 (Del)	8
C.I.T. v. C.M. Kothari Charitable Trust (1984) 149 ITR 573 (Mad)	135
CIT v. Chandra Charitable Trust (2007) 294 ITR 86 (Guj)	205
C.I.T. v. Chandrika Educational Trust (1994) 207 ITR 108 (Ker)	183
C.I.T. v. Charat Ram Foundation (2001) 250 ITR 64 (Del)	193
C.I.T. v. Cherupushpam Hospital Trust (1990) 181 ITR 512 (Ker)	74
C.I.T. v. Cutchi Memon Union (1985) 155 ITR 51, 54 (Karn)	149
C.I.T. (Additional) v. D.D. Deshpande (1976) 102 ITR 390 (Bom)	21, 89

C.I.T. (Additional) v. Delhi Brick Kiln Owners Association (1981) 130 ITR 55 (Del) 30

C.I.T. v. Delhi Stock Exchange Association Ltd. (2001) 248 ITR 258 (Del) 109

C.I.T. v. Deoraha Public Charitable Trust (1992) 196 ITR 110 (Cal) 197, 201

C.I.T. v. Devradhan Madhavlal Genda Trust (1998) 230 ITR 714 (MP) 164

C.I.T. v. Dharmadeepti (1975) 100 ITR 375 (Ker) 75

C.I.T. v. Dharmadeepti (1978) 114 ITR 454, 458 (SC) 76

C.I.T. v. Dharmadeepti (1999) 236 ITR 397 (Ker) 169

C.I.T. v. Dharmodayam Co. (1977) 109 ITR 527 (SC) 71, 80, 175

C.I.T. v. Dharmodayam Co. (1974) 94 ITR 113 (Ker) 72, 78

C.I.T. v. Dharmodayam Co. (1997) 225 ITR 686 (Ker) 154

C.I.T. v. Estate of V. L. Ethiraj (By Official Trustee) (1982) 136 ITR 12 (Mad) 118

C.I.T. (Additional) v. Etawah District Exhibition and Cattle Fair Association (1981) 131 ITR 461 (All) 55, 81

C.I.T. v. Eternal Science of Man's Society (1981) 128 ITR 456 (Del) 182

C.I.T. v. Federation of Indian Chambers of Commerce and Industries (1981) 130 ITR 186 (SC) 53

CIT v. Framjee Cawasjee Institute (1993) 109 CTR 463 (Bom)	119, 148
C.I.T. v. Ganeshram Laxminarayan Goyal (1983) 33 CTR (MP) 20	54
C.I.T. v Ganga Charity Trust Fund (1986) 162 ITR 612 (Guj)	118
C.I.T. v. Gayathri Women Welfare Association (1993) 203 ITR 389 (Karn)	74
C.I.T. v. Gopal Krishna Singhania (1980) 121 ITR 260 (All)	218
CIT v. Gujarat Maritime Board (2007) 295 ITR 561 (SC)	58
C.I.T. v. Gujarathi Mandal (1999) 240 ITR 293 (Mad)	167
C.I.T. v. Hamdard Dawakhana (Wakf) (2001) 249 ITR 601 (Del)	151
C.I.T. v. Hardeodas Agarwalla Trust (1992) 198 ITR 511 (Cal)	164
C.I.T. v. Hindustan Welfare Trust (1994) 206 ITR 138 (Cal)	140
C.I.T. v. H.H. Marthanda Varma Elayaraja of Travancore Trust & Others (1981) 129 ITR 191 (Ker)	135
CIT v. Hotel & Restaurant Association (2003) 261 ITR 190 (Del)	132
C.I.T. v. Hyderabad Stock Exchange Ltd., (1976) Tax Law Reports p. 1136 (AP)	33, 47
C.I.T. v. Ibrahimji Hakimji (1940) 8 ITR 501 (Sind)	7

C.I.T. v. Indian Oxygen Ltd. (1978) 113 ITR 109 (Cal)	191
C.I.T. v. Indian Sugar Mills Association (1974) 97 ITR 486 (SC)	75, 92
C.I.T. v. Insaniyat Trust (1988) 173 ITR 248 (Guj)	181
CIT v. Institute of Banking Personnel Selection (2003) 264 ITR 110 (Bom)	130, 148
C.I.T. v. ITI Employees Death and Superannuation Relief Fund (1998) 234 ITR 308 (Karn)	19
C.I.T. v. J.K Charitable Trust (1992) 196 ITR 31 (All)	182
C.I.T. v. Jaipur Charitable Trust (1971) 81 ITR 1 (Del) affirmed in (1976) 103 ITR 777 (SC)	70
C.I.T. v. Janaki Ammal Ayya Nadar Trust (1985) 153 ITR 159 (Mad)	151
C.I.T. v. Janmabhumi Press Trust (2000) 242 ITR 457, 703 (Karn)	149
C.I.T. v. Jayant Charitable Trust (1994) 207 ITR 332 (Bom)	166
C.I.T. v. Jayashree Charity Trust (1986) 159 ITR 280 (Cal), (1981) 127 ITR (AP)	118, 150
CIT v. Jodhpur Chartered Accountants Society (2002) 258 ITR 548 (Raj)	32
C.I.T. v. Kalechand Motiram (1949) 17 ITR 304 (Sind)	12
CIT v. Kamla Town Trust (2005) 279 ITR 89 (All)	176

C.I.T. v. Kamla Town Trust (1996) 217 ITR 699 (SC)	110
C.I.T. v. Kannika Parameswari Devasthanam and Charities (1982) 133 ITR 779 (Mad)	146, 148, 149
C.I.T. v. Krishna Warriar (1962) 44 ITR 828 (Ker)	174
C.I.T. v. Kumudam Endowments (2000) 242 ITR 159 (Mad)	201
C.I.T. v. Lalbhai Dalpatbhai Charity Trust (1994) 209 ITR 865 (Guj)	181
C.I.T. v. Leign Bazar Merchants Association Ltd. (1999) 235 ITR 367 (Mad)	81
C.I.T. v. Lucknow Diocesan Trust Association (1980) 123 ITR 38 (All)	142
C.I.T. v. M. CT. Muthiah Chettiar Family Trust & Others (2000) 245 ITR 400 (Mad)	146
C.I.T. v. M. Jamal Mohamad Sahib (1941) 9 ITR 375 (Mad) (FB)	3, 21, 99
C.I.T. v. Madhya Pradesh Anaj Tilhan Vyapari Mahasangh (1988) 171 ITR 677 (MP)	32
C.I.T. (Additional) v. Madras Jewellery and Diamond Merchants Association (1981) 129 ITR 214 (Mad)	30
C.I.T. v. Madras Stock Exchange (1976) 105 ITR 546 (Mad) affirmed in (1981) 130 ITR 184 (SC)	40, 42
C.I.T. v. Maharana of Mewar Charitable Foundation (1987) 164 ITR 439 (Raj)	129
CIT v. Mahendra Mohta Seva Nidhi (1985) 152 ITR 516 (P & H)	21

C.I.T. v. Maheswari Agarwal Marwari Panchayat (Shri) (1982) 136 ITR 556 (MP) 165

C.I.T. v. Matriseva Trust (2000) 242 ITR 20 (Mad) 130, 146

CIT v. Mayur Foundation (2005) 274 ITR 562 (Guj) 133

C.I.T. v. Mumtaz Yarud Dowla Waqf (1998) 234 ITR 6 (AP) 133

CIT v. Nabhinandan Digambar Jain (2002) 257 ITR 91 (MP) 120

C.I.T. v. Nachimuthu Industrial Association (1982) 138 ITR 585 (Mad) 179

C.I.T. v. Nagarathu Vasiyargal Sangam (2000) 246 ITR 164 (Mad) 177

C.I.T. v. Nagi Reddi Charities (2000) 241 ITR 431 (Mad) 169

C.I.T. v. Nagpur Hotel Owners' Association (2001) 247 ITR 201 (SC) 133

C.I.T. v. Naidu Industrial Educational Trust (G.D.) (1942) 10 ITR 358 (Mad) 10

C.I.T. v. Nirmala Bakubhai Foundation (1997) 226 ITR 394 (Guj) 183

C.I.T. v. Ootacamund Gymkhana Club (1977) 110 ITR 392 (Mad) 6, 30

C.I.T. v. P. Krishna Warriar (1964) 53 ITR 176 (SC) 104, 105, 152, 174

C.I.T. v. PT. Ram Shanker Misra Trust (1996) 222 ITR 252 (All) 31

C.I.T. v. Palghat Shadi Mahal Trust (1999) 236 ITR 722 (Ker) 165

C.I.T. v. Panchayeti Akhara Nirmal (1991) 190 ITR 121 (All) and 192 ITR 186 (All) 119

C.I.T. v. Pemsel (1891) AC 531, 583 (PC) 204

C.I.T. v. Pittie Charitable Trust (1994) 207 ITR 1053 (Bom) 181

C.I.T. v. Polisetty Soma Sundaram Charities (1990) 183 ITR 377 (AP) 182

C.I.T. v. Programme for Community Organisation (1997) 228 ITR 620 (Ker) 118, 121

C.I.T. v. Radhaswami Satsang (1980) 19 CTR (All) 345 127

C.I.T. v. Radhaswami Satsang Sabha (1954) 25 ITR 472 (All) 28, 82, 89, 172

C.I.T. v. Rai Bahadur Bissesswarlal Motilal Halwasia Trust (1992) 195 ITR 825 (Cal) 164

C.I.T. v. Rai Bahadur Bissweswarlal Motilal Halwasia Trust (2001) 252 ITR 84 (Cal) 194

C.I.T. v. Raipur Pallottine Society (1989) 180 ITR 579 (MP) 119

CIT v. Rajneesh Foundation (2006) 280 ITR 553 (Bom) 32

C.I.T. v. Ramchandra Poddar Charitable Trust (1987) 164 ITR 666, 672-73 (Cal) 150

C.I.T. v. Ramaswamy Iyer (1977) 110 ITR 364 (Mad) 110, 142

C.I.T. v. Ramniwas Karwa (1978) 112 ITR 433 (Gau) 217

C.I.T. v. Rao Bahadur Calavala Cunnan Chetty Charities (1982) 135 ITR 485 (Mad)	117, 146, 224
C.I.T. v. Rattan Trust (1980) 123 ITR 562 (PH) reversed by (1997) 227 ITR 356 (SC)	176
CIT v. Sacred Heart Church (2005) 278 ITR 180 (Guj)	144
C.I.T. v. S.R.M.C.T.M. Thiruppani Trust (1982) 134 ITR 555 (Mad)	147
C.I.T. v. Sahitya Trust (1993) 203 ITR 349 (Guj)	181
C.I.T. v. Samnugger Jute Factory Co. Ltd. & Another (1953) 24 ITR 265 (Cal)	219
C.I.T. v. Samyuktha Gowda Saraswatha Sabha (2000) 245 ITR 242 (Mad)	170
C.I.T. v Sangit Kala Mandir Trust (1987) 166 ITR 217 (Cal)	34
C.I.T. v. Sant Baba Mohan Singh (1979) 118 ITR 1015 (All)	9, 11
C. I.T. v. Saraswath Poor Students Funds (1984) 150 ITR 142 (Karn)	25
C.I.T. v. Sardar Bahadur Sardar Indra Singh Trust (1956) 29 ITR 781 (Cal)	82
C.I.T. v. Sarla Devi Sarabhai Trust (1988) 172 ITR 698 (Guj)	145
C.I.T. v. Savan Pubic Charitable Fund (1993) 201 ITR 877 (Cal)	197
C.I.T. v. Shazedanand Charity Trust (1997) 228 ITR 292 (PH)	164

C.I.T. v. Sheth Manilal Ranchoddas Vishram Bhavan Trust (1992) 198 ITR 598 (Guj) 118

C.I.T. v. Shree Padmanabhaswami Temple Trust (1979) 120 ITR 42 (Ker) 133

C.I.T. v. Shri Krishen Chand Charitable Trust (1975) 98 ITR 387 (J& K) 133, 134

C.I.T. v. Shri Narayana Chandrika Trust (1995) 212 ITR 456 (Ker) 226

C.I.T. v. Shri Plot Swetambar Murti Pujak Jain Mandal (1995) 211 ITR 293 (Guj) 130

C.I.T. v. Shri Ram Education Foundation (2001) 250 ITR 504 (Del) 55

C.I.T. v. Shri Shaila Industrial & Spiritual Colony Charities (1973) 87 ITR 175 (Ker) 67

CIT v. Silk and Art Silk Mills' Association (1990) 182 ITR 38 (Bom) 119

C.I.T. v. Sindhu Vidya Mandal Trust (1983) 142 ITR 633 (Guj) 225

C.I.T. v. Sir Shri Ram Foundation (2001) 250 ITR 55 (Del) 180, 182, 190

C.I.T. v. Sir Sobha Singh Public Charitable Trust (2001) 250 ITR 475 (Del) 182, 190

C.I.T. v. Social Service Centre (2001) 250 ITR 39 (AP) 203

C.I.T. v. Society of the Sisters of St. Anne (1984) 146 ITR 28 (Karn) 119

C.I.T. v. Sodra Devi (1957) 32 ITR 615 (SC) 235

C.I.T. (Additional) v. South India Hire Purchase Association (1979) 116 ITR 793 (Mad) 87

C.I.T. v. South Indian Film Chamber of Commerce (1991) 129 ITR 22 (Mad)	44, 97
C.I.T. v. South Indian Photographic & Allied Trades Association (1987) 166 ITR 166 (Mad)	31
C.I.T. v St. George Forana Church (1988) 170 ITR 62 (Ker)	118, 149
C.I.T. (Additional) v. Surat Art Silk Cloth Mfrs. Association (1980) 121 ITR 1, 12-13 (SC)	6, 18, 32, 37, 40, 50, 68, 75, 93, 96
C.I.T. (Additional) v. Surat City Gymkhana (2008) 300 ITR 214 (SC)	163
C.I.T. v. Surji Devi Kunji Lal Jaipuria Charitable Trust (1990) 186 ITR 728 (All)	31
C.I.T. v. Swastik Textile Trading Co. (P) Ltd. (1977) 110 ITR 393 (Mad)	30
C.I.T. v. Tata Steel Charitable Trust (1993) 203 ITR 764 (Pat)	194
C.I.T. v. Thakar Das Bhargava (1960) 40 ITR 301, 305, (SC)	9, 16
C.I.T. (Asst.) v. Thanthi Trust (2001) 247 ITR 785, 795 (SC)	8, 62, 194
C.I.T. v. Thanthi Trust (1982) 137 ITR 735 (Mad) affirmed in (1999) 239 ITR 502 (SC)	114, 143
C.I.T. v. Thyaga Brahma Gana Sabha (Sri) (1991) 188 ITR 160 (Mad)	34
C.I.T. v. Tollygunge Club (1977) 107 ITR 776 (SC)	9

C.I.T. v. Trustees of Abdulkadar Ebrahim Trust (1975) 100 ITR 85 (Bom)	21, 90
C.I.T. v. Trustees of Dr. Divekar Charity Trust (1977) 110 ITR 227 (Bom)	107
C.I.T. v. Trustees of H.E.H. The Nizam's Charitable Trust (1981) 131 ITR 497 (AP)	142
C.I.T. v. Trustee of H.E.H. The Nizam's Supplemental Religious Endowment Trust (1981) 127 ITR 378 (AP); (1986) 162 ITR 612 (Guj)	118, 150
C.I.T. v. Trustees of the Jadi Trust (1982) 133 ITR 494 (Bom)	145
CIT v. Trustees of Mangaldas N. Verma Charitable Trust (1994) 207 ITR 332 (Bom)	181
C.I.T. v. Trustees of Sreeram Surajmull Charity Trust (1971) 79 ITR 649 (Cal)	12
C.I.T. v. Trustees of Visha Nima Charity Trust (1982) 138 ITR 564 (Bom)	123
C.I.T. v. Trustees Shri Cutchi Lohana Panchtade Mahajan Trust (1975) 98 ITR 448 (Bom)	9
C.I.T. v. Vyas & Dhotiwala (1959) 35 ITR 55 (SC)	16
C.I.T. v. Western India Chamber of Commerce Ltd. (1982) 136 ITR 67 (Bom)	96
Coffee Board v. Commissioner of Ag. I. Tax (1964) 25 ITR 126	28
Commissioner of Inland Revenue v. City of Glasgow Police Athletic Association (1953) 34 TC 76 (HL)	93

Commissioner of Inland Revenue v. The Peeblessire Nursing Association (1926) 11 TC 330, 350	26
Commissioner of Inland Revenue v. The Royal Naval and Royal Marine Officers' Association 36 TC 187	88
Commissioner of Inland Revenue v. The Temperance Council of the Christian Churches of England & Wales (1926) 10 TC 748	72
Cotman v. Brougham (1918) AC 514 (HL)	67
Court Receiver v. C.I.T. (1964) 54 ITR 189, 208 (Bom)	8
Cranstoun National Provincial Bank Ltd. v. Royal Society etc. (1932) 1 Ch. 537	25
C.W.T. v. Attur Thuluva Vellalar Sangam (2000) 243 ITR 774 (Mad)	237
C.W.T. v. Bharat Charity Trust (1993) 199 ITR 420 (Cal)	181
C.W.T. v. Bombay Cricket Association (2001) 118 Taxman 884 (SC)	236
C.W.T. v. H.E.H. The Nizam's Supplemental and Religious Endowment Trust (1973) 89 ITR 80 (AP)	204
C.W.T. v. Lallubhai Gordhandas Charitable Trust (1999) 239 ITR 448 (Guj)	191
C.W.T. v. Surjit Singh (Sardar) (1982) 138 ITR 186 (Cal)	9

D

Dasa Balinjika Seva Sangam v. CIT (1999) 240 ITR 854 (Mad)	169
Dasarathrama Reddy v. Subba Rao (1957) 12 MLJ (SC) 175	103
Delhi Stock Exchange Association Ltd. v. C.I.T. (1980) 126 ITR 532 (Del) SLP granted by SC (1983) 141 ITR (St.) 47 (SC)	89, 108
Deo Radha Madhava Lalji Genda Trust v. Property Tax Officer (1980) 125 ITR 531 (MP)	147
Deoki Nandan v. Murlidhar AIR 1957 SC 133, 137	3, 11, 99
Dhaneshwarbuwa Guru Purshottambuwa v. The Charity Commissioner, State of Bombay AIR 1976 SC 871	100
Dharma Vijaya Agency v. C.I.T. (1960) 38 ITR 392 (Bom)	174
Dharmadeepti v. C.I.T. (1978) 114 ITR 454 (SC)	32, 67
Dharmaposhanam Co. v. C.I.T. (1965) 58 ITR 600 (Ker)	9
Dharmaposhanam Co. v. C.I.T. (1975) 100 ITR 351 (Ker) (FB)	76, 78
Dharmaposhanam Co. v. C.I.T. (1978) 114 ITR 463 (SC)	72, 80
Dharmaposhanam Co. v. C.I.T. (1975) 100 ITR 145 (Ker) (FB)	77
Dharmodayam Co. v. C.I.T. (1962) 45 ITR 478 (Ker)	174

Diplock Wintle v. Diplock (1940) Ch. 988, 109 L.J. (ch) 407	85
Director of Income-tax (Exemptions) v. Agri-Horticulture Society (2005) 273 ITR 198 (Mad)	32
Director of Income-tax (Exemptions) v. Bharat Diamond Bourse (2000) 245 ITR 437 (Bom)	97
Director of Income-tax (Exemptions) v. DLF Qutab Enclave Complex Medical Charitable Trust (2001) 248 ITR 41 (Del)	141
Director of Income-tax (Exemptions) v. Daulat Ram Education Society (2005) 278 ITR 260 (Del)	132
Director of Income-tax (Exemptions) v. Eternal Science of Man's Society (2007) 290 ITR 535 (Del)	132
Director of Income-tax (Exemptions) v. Girdharilal Shewnarain Tantia Trust (1993) 199 ITR 215 (Cal)	120
Director of Income-tax (Exemptions) v. Malad Jain Yuvak Mandal Medical Relief Centre (2001) 250 ITR 488 (Bom)	213, 234
Director of Income-tax (Exemptions) v. Mamta Health Institute for Mother and Children (2007) 293 ITR 380 (Del)	132
Director of Income-tax (Exemptions) v. Shardaben Bhagubhai Mafatlal Public Charitable Trust (2001) 247 ITR 1 (Bom)	202
Director of Income-tax (Exemption) v. Shilpam (1998) 230 ITR 126 (Cal)	34

Director of Income-tax (Exemption) v. Trustees of Singhania Charitable Trust (1993) 139 ITR 199 (Cal) 132

E

East India Industries (Madras) Pvt. Ltd. v. C.I.T. (1967) 65 ITR 611 (SC) 70, 77

Educational Institute of American Hotel & Motel Association v. CIT (1996) 219 ITR 183 (AAR) 223

F

Fifth Generation Education Society v. C.I.T. (1990) 185 ITR 634 (All) 160

G

Ganeshi Devi Rani Devi Charity Trust (Smt.) v. C.I.T. (1969) 71 ITR 696 (Cal) 90, 100

Ganga Prasad Varma Memorial Society v. C.I.T. (1982) 134 ITR 421 (All) 30, 54

Gangabai Charities v. C.I.T. (1992) 197 ITR 416 (SC), also see (2001) 250 ITR 666 (SC) 82

Ghulam Mohidin Trust v. CIT (2001) 248 ITR 587 (J&K) 167

Girijan Co-operative Corporation Ltd. v. C.I.T (1989) 178 ITR 359 (AP) 31

Gonvindu Naicker Estate v. ADI (2001) 248 ITR 368 (Mad) 130

Goodman v. Mayor of Salfash (1882) 7 AC 633 22

Gopal Jalan v. C.I.T. (1972) 86 ITR 317 (All) 13

Gordhandas Govindram Family Charity Trust (Trustees of) v. C.I.T. (1952) 21 ITR 231 (Bom) 21

Gordhandas Govindram Family Charity Trust (Trustees of) v. C.I.T. (1973) 88 ITR 47 (SC) 235

Gostha Behari Ghosh v. University of Calcutta AIR 1972 (Cal) 61 14

Goswami Shri Mahalaxmi Valreji v. Ranchhoddas Kalidas AIR (1970) SC 2025, 2031 100

Guild (Executor Nominate of the Late James Young Russel) v. IRC (1993) 199 ITR 566 (HL) 29

H

H.E.H. Nizam's Religious Endowment Trust v. C.I.T. (1966) 59 ITR 582 (SC) 141

H.H. Sri Rama Verma v. CIT (1991) 187 ITR 208 (SC) 218

Hadden Public Trustee v. More (1932) 1 ch. 133 29

Haji Latif Charitable Trust (1979) 13 CTR (Trib) 6 183

Halsbury's Laws of England, 4th Edition, Vol. 5, Para 572 9

Hanumantram Ramnath v. C.I.T. (1946) 14 ITR 716 (Bom) 8, 12

Harmanjit Trust v. C.I.T. (1984) 148 ITR 214 (PH) 133

Henri Wood National Memorial Trust v. Moisienitsch (1967) 1 All ER 238 13

Hindustan Welfare Trust v. Director of Income-tax (Exemption) (1993) 201 ITR 564 (Cal) 120

Hyderabad Stock Exchange Ltd. v. C.I.T. (1967) 66 ITR 195 (AP) 28

I

I.R.C. v. Helen Salter Charitable Trust Ltd. (1980) 1 All ER 785 (Ch.D) 145

I.R.C. v. Yorkshire Agricultural Society (1928) 1 KB 611 (CA) 93

I.T.O. v. Estate of N.C. Vasantha Kokilam (1981) 20 CTR (Trib) 22 140

I.T.O. v. Jeevdaya Kheta (1981) 24 CTR (Trib) 34 164

Indian Chamber of Commerce v. C.I.T (1975) 101 ITR 796, 808-809 (SC) 36, 38, 42, 44, 48, 50

Indore Malwa United Mills Ltd. v. State of M.P. & Others (1965) 55 ITR 736 (SC) 191

Iswar Gopal Jew (Sree Sree) v. C.I.T. (1950) 18 ITR 743 (Cal) 6

J

Jaipur Charitable Trust v. C.I.T. (1981) 127 ITR 620 (Del) 20

J.K. Charitable Trust v. C.I.T. (1955) 28 ITR 110 (All) 82

J.K. Hosiery Factory v. C.I.T. (1971) 81 ITR 557 (All) 71

J.K. Trust v. C.I.T. (l958) 33 ITR 32 (Bom) 172/173

J.K. Trust v. C.I.T. (1957) 32 ITR 535 (SC) 152

Jagdamba Charity Trust v. C.I.T. (1981) 128 ITR 377 (Del) 110

Jai Narayan Jai Govind v. Controller of ED (1963) 49 ITR (ED) 105 (Mad) 13

Juggilal Kamlapat v. C.I.T. (1964) 52 ITR 811 (All) affirmed (1970) 75 ITR 186 (SC) 13

K

K.P. Bros. v. C.I.T. (1961) 42 ITR 650 (Raj) 13

Kamla Town Trust v. C.I.T. (1975) Tax LR 829 (All) partly affirmed in (1996) 217 ITR 699 115

Katra Education Society v. I.T.O. (1978) 111 ITR 420 (All) 223

Kerala SIDC v. CIT 259 ITR 51 (SC) 65

Khemraj Nemichand Shrishrimal Charitable Trust v. C.I.T (1998) 231 ITR 43 (MP) 125

Kirti Chand Tarawati Charitable Trust v. Director of Income-tax (Exemption) & Others (1998) 232 ITR 11 (Del) 220

L

Laxman Balwant Bhopatkar v. Charity Commissioner AIR 1962 SC 1589 = (1963) 2 SCR 625 (SC) 19, 72

Laxmi Narain Lath Trust v. C.I.T. (1988) 170 ITR 375 (Raj) 107

Laxmi Narain Lath Trust v. C.I.T. (2000) 244 ITR 272 (Raj) 109

Laxminarayan Maharaj v. C.I.T (1984) 150 ITR 465 (MP) 160

M

M. CT. Muthiah Chettiar Family Trust v. 4th I.T.O. (1972) 86 ITR 282 (Mad)	132
Madras Hotels Association v. C.I.T. (1978) 111 ITR 241 (Mad)	96
Madras Kirana Merchants Association v. C.I.T. (1977) CTR 217 (Mad)	36
Mahakoshal Shaheed Smarak Trust v. CIT (1983) 140 ITR 795 (MP)	31, 54
Mahant Indresh Charan Das v. State of Uttar Pradesh (1971) 81 ITR 435 (All)	5
Mahant Puran Atal v. Darshan Das ILR 34 (All) 468	84
Maharaj Bahadur Ram Ran Vijay Prasad Singh v. The Province of Bihar (1942) 10 ITR 446 (Pat)	10
Managing Trustees of Jalkhabai Trust (1969) 72 ITR 733 (Ker.)	22
Managing Shebaits of Bhukailash Debutter Estate v. W.T.O. (1977) 106 ITR 904 (Cal)	240
Menakuru Dasaratharami Reddi & Another v. D. Subba Rao AIR 1957 SC 797	11
Mohammed Ibrahim Rize v. C.I.T. AIR 1930 PC 226	70
Mohanlal Hargovinddas Public Charitable Trust v. C.I.T. (1980) 122 ITR 130 (MP)	135, 141
Mullick Somnath Charitable Trust v. C.I.T (1986) 160 ITR 3 (Cal)	21

N

Nachimuthu Industrial Association v. C.I.T. (1980) 123 ITR 611 (Mad) affirmed in (1999) 235 ITR 190 (SC) 143

Nagor Durgah (Trustees) v. C.I.T. (1954) 26 ITR 805 (Mad) 85

Naresh Sengupta Foundation v. C.I.T. (1994) 207 ITR 340 (Cal) 88

Narsinghswami v. Venkatalingam AIR 1927 Mad 636 (FB) 14

National Anti-Vivisection Society (The) v. I.R.C (1948) 16 ITR Suppl. (1) (HL) 84

New Life in Christ Evangelistic Association v. CIT (2000) 246 ITR 532 (Mad) 161

O

Official Trustee of West Bengal v. C.I.T. (1968) 67 ITR 218 (Cal) 103

Oppenheim v. Tobacco Securities Trust Co. Ltd. (1951), All. ER 31 at 33 (HL) 3, 92

Oxford Group v. Inland Revenue Commissioners (1949) 2 All ER 537; 31 TC 221 (CA) 70, 93

P

P.C. Raja Ratnam Institution v. Municipal Corporation of Delhi (1990) 181 ITR 354 (SC) 74

P.J.P. Thomas v. C.I.T. (1962) 44 ITR 897 (Cal) 184

Parichchan Das v. Bihar State Board of Religious Trust AIR 1980 SC 514 102

Powell v. Comption (1945) 1 CH. 123 (CA) 87

Prabodhan Prakashan v. ADIT (1994) 50 ITD 135 (Bom) 124

Prem Nath v. Har Ram AIR 1934 Lahore 771 10

R

R.B. Shreeram Religious and Charitable Trust v. C.I.T. (1998) 233 ITR 53 (SC) 126

R.K. Dalmia v. The Delhi Administration AIR 1962 SC 1821 189

Raja P.C. Lal Chaudhary v. C.I.T. (1957) 31 ITR 226 (Pat) 16

Ramanathan Chettiar v. Palaniappa Chettiar ILR (1945) Mad 500 102

Ramachandra Shukla v. Shree Mohadeoji AIR 1970 SC 458 11, 103

Ram Kumar Ram Chandra & Co. v. C.I.T. (1965) 58 ITR 721 (All) 14, 103

Rao Bahadur A.K.D.Dharmaraja Education Charity Trust v. Commissioner of Income Tax (1990) 182 ITR 80 (Mad) 25

Rex v. The Special Commissioner of Income Tax (1925) 10 Tax Case 73 72

Royal Agricultural Society of England v. Wilson (1924) 9 TC 62 28

Royal College of Surgeons of England v. National Provincial Bank (1952) AC 631 (HL) 93

S

S.M.N. Thangaswamy Chettiar & Anr. v. C.I.T. (1965) 57 ITR 546 (Mad)	99, 203
S.R.M.M.C.T.M. Thiruppani Trust v. C.I.T (1998) 230 ITR 636 (SC)	147
Sakthi Charities v. C.I.T. (1984) 149 ITR 624 (Mad), also (1990) 182 ITR 483 (Mad)	109, 116
Sanatan Dharm Mahaveer Dal v. C.I.T (2001) 252 ITR 46 (Raj)	159
Sanatan Dharama Sabha v. Smt. Sobhi 125 PLR 1903	14
Sanjeevamma Hanumanthe Gowda v. DIT(E) (2006) 285 ITR 327 (Kar)	161
Sarabhai Foundation v. C.I.T (1994) 209 ITR 390 (Guj)	181
Satya Vijay Patel Hindu Dharamshala Trust v. C.I.T. (1972) 86 ITR 683 (Guj)	146
Secondary Board of Education, Orissa v. I.T.O. (1972) 86 ITR 408 (Orr)	222, 228
Secretary of State for India v. Radha Swami Sat Sang (1945) 13 ITR 520 (All)	6
Self Employers Service Society v. CIT (2001) 247 ITR 18 (Ker)	161
Shantagauri Ramniklal Trust & Others v. CIT (1999) 239 ITR 528 (Guj)	165
Shri Digambar Jain Naya Mandir v. ADIT (1999) 70 ITD 121 (Cal)	124

Shri Dwarikadheesh Charitable Trust v. I.T.0 (1975) 98 ITR 557 (All)	122
Siddaramanna Charities Trust v. C.I.T. (1974) 96 ITR 275 (Mys)	141
Smt. Sarjoo & Others v. Pandit Ayodhya Prasad & Others AIR 1979 All 74	101
Smt. V. Amirtham Ammal v. C.I.T. (1976) 102 ITR 350 (Mad)	184
Society for the Promotion of Education Adventure Sport and Conservation of Environment v. CIT (2008) 216 CTR 167 (All)	163
Sole Trustee, Loka Shikshana Trust v. C.I.T. (1975) 101 ITR 234 (SC)	23, 26, 34, 39, 42, 48, 50, 69
Southern India Mill Owners' Association v. C.I.T. (1977) 110 ITR 871 (Mad)	95
South Indian Athletic Association Ltd. v. C.I.T. (1977) 107 ITR 108, 116, 117 (Mad)	90
Special Commissioners of Income Tax v. Pemsels (1891) 3 TC 53 (HL)	18
Sree Narayana Chandrika Trust v. C.I.T (1997) 224 ITR 445 (Ker) also see ITR 449, 453, 464 and 468 (Ker)	183
Sri Agastyar Trust v. CIT (1999) 236 ITR 23 (SC)	110
Sri Gopalji Lalji-Ka-Mandir Trust (1984) 146 ITR 513 (MP)	88
Sri Sri Jagannath Jew v. C.I.T. (1971) 81 ITR 353, 372 (Cal)	106

Sridhar Jiu v. Manindra Kumar Mitra AIR 1941 Cal 272 — 104

Stanes Motor (South India) Ltd. v. C.I.T. (1975) 100 ITR 341 (Mad) — 214

State of Kerala v. M.P. Shanti Verma Jain (1998) 231 ITR 789 (SC) — 166

State of U.P. v. Bansi Dhar AIR 1974 SC 1084, 1090 — 8

Suhashi Karuri v. W.T.O. (1962) 46 ITR 953 (Cal) — 237

Suresh Sunderrao Nayak v. M. K. Pandey, DIT (E) (2007) 288 ITR 79 (Bom) — 89

T

Texas Land and Mortgage Co., v. Holthem (1894) 3 TC 255 — 190

Thaigeswar Dharma Vanikam v C.I.T. (1963) 50 ITR 798 (Mad) — 174

Thakur Das Shyam Sunder v. Addl. C.I.T. (1974) 93 ITR 27 (All – FB) — 82, 84

Thakur Das Sureka Charity Fund v. C.I.T. (1983) 139 ITR 437 (Cal) — 127

Thangaswami Chettiar v. C.I.T. (1965) 57 ITR 546 (Mad); 58 ITR 140 (Bom) — 99

Thanthi Trust v. Assistant C.I.T. (1995) 213 ITR 626 (Mad) reversed in 2001 247 ITR 785 (SC) — 168

Thanthi Trust v. CBDT (1995) 213 ITR 639 (Mad) reversed in (2001) 247 ITR 785 (SC) — 154

Thanthi Trust v. WTO (1999) 235 ITR 621 (Mad) — 212

Thanthi Trust v. CIT (1999) 238 ITR 635 (Mad) affirmed in (2001) 247 ITR 785 (SC)	155
The Geologist's Association v. The Commissioners of Inland Revenue (1928) 14 TC 271	88
Thiagarajan Charities v. Addl. C.I.T. (1997) 225 ITR 1010 (SC)	75
Thiagarajar Tulsidas Khilachand v. C.I.T. (1961) 42 ITR 1 (SC)	184
Trustees of Charity Fund v. C.I.T. (1959) 36 ITR 513 (SC)	22
Trustees of Balkan-Ji Bari (1979) 10 CTR (Trib) 22	130
Trustees of Gordhandas Govindram Family Charity Trust v. CIT (1952) 21 ITR 231 (Bom)	3
Trustees of H.E.H. The Nizam's Pilgrimage Money Trust v. C.W.T. /C.I.T. (1988) 171 ITR 323 (AP) – Affirmed in (2000) 242 ITR 676 (SC)	138, 237
Trustees of H.E.H. The Nizam's Sahebzadas of Sarf-E-Khas Trust. v. C.W.T. (1981) 127 ITR 694 (AP) The Supreme Courts decision reported at (1981) 130 ITR 28 (SC)	138
Trustees of the J.P. Pardiwala Charity Trust (1965) 58 ITR 46 (Bom)	22
Trustees of K.B.H.M. Bhiwandiwalla Trust v. C.W.T. (1977) 106 ITR 709 (Bom)	236
Trustees of Mangaldas N. Verma Charitable Trust v. CIT (1994) 207 ITR 332 (Bom)	180
Trustees of Sri Kat Hindu Stru Mondal v. C.I.T.	121

(1994) 209 ITR 396 (Bom)

Trustees of the Charity Fund v. C.I.T. (1959) 36 ITR 513 (SC) 168

Trustees of the Tribune (1939) 7 ITR 415, 422 (PC) 4, 23, 33, 152

Trustees of Tulsidas Gopalji Charitable Trust and Chaleshwar Temple Trust v. C.I.T (1994) 207 ITR 368 (Bom) 133

U

Umaid Charitable Trust v. C.I.T. (1980) 125 ITR 55 (Raj) 33

Upper Ganges Sugar Mills Ltd. and Others v. Commissioner of Income Tax (1997) 227 ITR 578 (SC) 216

Upper India Chamber of Commerce v. C.I.T. (1947) 15 ITR 263, 270 (All) 6

V

V. Venugopala Ravi Varma Rajah v. Union of India & Another (1969) 74 ITR 49 (SC) 235

Vallabhdas Karsondas Natha v. C.I.T. (1947) 15 ITR 32, 45 (Bom) 4, 16, 30

Verge v. Somerville (1924) AC 496 (PC) 86

Verrall (1916) Ch. 100, (1932) 1 Ch. 537 28

Victoria Technical Institute v. C.I.T. (Additional) (1991) 188 ITR 57 (SC) 68

W

Wedowood Allen v. Wedowood (1915) 1 Ch. 113, 117, 122	30
Welham Boys School Society v. CBDT (2006) 285 ITR 74 (Utt)	163
White v. White (1892) 2 Ch. 41	204
Williams Trustees v. I.R.C (1948) 16 ITR Suppl. 41, 51 (HL)	3
Woodcraft Products Ltd. v. I.T.O. (1982) 1 ITD 1 (Cal)	216

Y

Yogiraj Charity Trust v. C.I.T. (1976) 103 ITR 777 (SC)	59, 73
Yogiraj Charity Trust v. C.I.T. (1984) 149 ITR 7 (Del)	110

Z

Zenith Tin Works Charitable Trust v. C.I.T. (1976) 102 ITR 119 (Bom)	20, 71