

Taxation of NGO with recent development

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- ❑ Post-qualification experience of around 23 years in the field of direct & indirect tax particularly income tax, service tax and VAT ,sales tax and GST.
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- ❑ Authored the book **DNA of GST Audit and Annual return, The DNA of TDS&TCS (including withholding tax, advance tax and equalisation levy)** ,Background material on GST for empowerment of girl students ICAI, New Delhi
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TAX UPDATE



Changes in
income tax
law related to
taxation of
NGO

CONTENTS

- Conditions for claiming exemption
- nature of receipts of NGO and taxation
- corpus, grant and voluntary contribution difference in treatment
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Scope of analysis

Recent supreme court judgment

ACIT(Exemption) Vs. Ahmedabad urban development [2022] 144 taxmann.com 78 (SC)

CIT(E) Vs. Gandhinagar Urban Development Authority[2023] 148 taxmann.com 339 (SC)/[2023]

CIT(E) Vs. **Servants of People Society**_[2022] 145 taxmann.com 234 (SC)

M/S NEW NOBLE EDUCATIONAL SOCIETY Vs. CCIT & OTHERS (SC) CIVIL APPEAL NO. 3795 OF 201

Taxation provisions section 11, 12, 13, 80G, 115BBC etc.

Income tax Rule

New rule 17 w.e.f 01-04-2023
accumulation/short application of Income,

17A- Application for registration

17B- Books of account and other documents to be kept and maintained

17C-Audit report

Conditions for claiming exemptions

income shall not be included in the total income of charitable or religious person	Section 11
Exempt income of educational institution , hospital, medical institution etc	Section 10(23C)
Income of trusts or institutions from contributions	Section 12
Conditions for applicability of section11 &12 claiming exemption u/s 11	Section 12A
Procedure for Registration upto 31-03-2021	Section 12AA
Procedure for fresh registration from 01-04-2021	Section 12AB
Exemption u/s 11 shall not to apply in certain cases	Section 13

option to be exercised in accordance with the provisions of the Explanation 1 to section 11 (1)	New rule 17 (1) w.e.f 01-04-2023	Income not applied during the year due to either income not received or any other reason	Application in form 9A <i>electronically</i> before ITR due date u/s139(1)
Section 11(2)	New rule 17(2) w.e.f 01-04-2023	85% Income not applied during the year but to be accumulated for specific purpose upto 10 years	Application in form 10 <i>Electronically</i> Before ITR due date u/s139(1) for accumulation along with purpose max upto 10 years and investment in mode 11(5)
Rule 17A	Rule 17A substituted by the Income-tax (Sixth Amendment) Rules, 2021, w.e.f. 1-4-2021	application under section 12A (1)(ac)(i) related to migration from old regime to new regime /(vi) other residuary cases – FORM 10A Other cases (new registration, inactive cases, provisional to regular etc – form no 10AB	Application for registration of charitable or religious trusts etc.
Rule 17B	Income-tax (Twenty-fourth Amendment) Rules, 2022, w.e.f. 10-8-2022.	Books of account and other documents to be kept and maintained.	<i>books of account including cash book, ledger, journal;, copies of bills, whether machine numbered or otherwise serially numbered issued by the assessee, and copies or counterfoils of machine numbered or otherwise serially numbered receipts issued by the assessee; any other book</i>

Nature of Receipts of NGO

Real Income-Income
from property held
under Trust

Deemed income

- Grant
- Donation /Voluntary contribution
- Corpus Donation
- Rental income
- Income on investment such as interest, dividend etc
- Deemed Income
- Capital gain
- Business income where business is incidental to attainment of objective of NGO

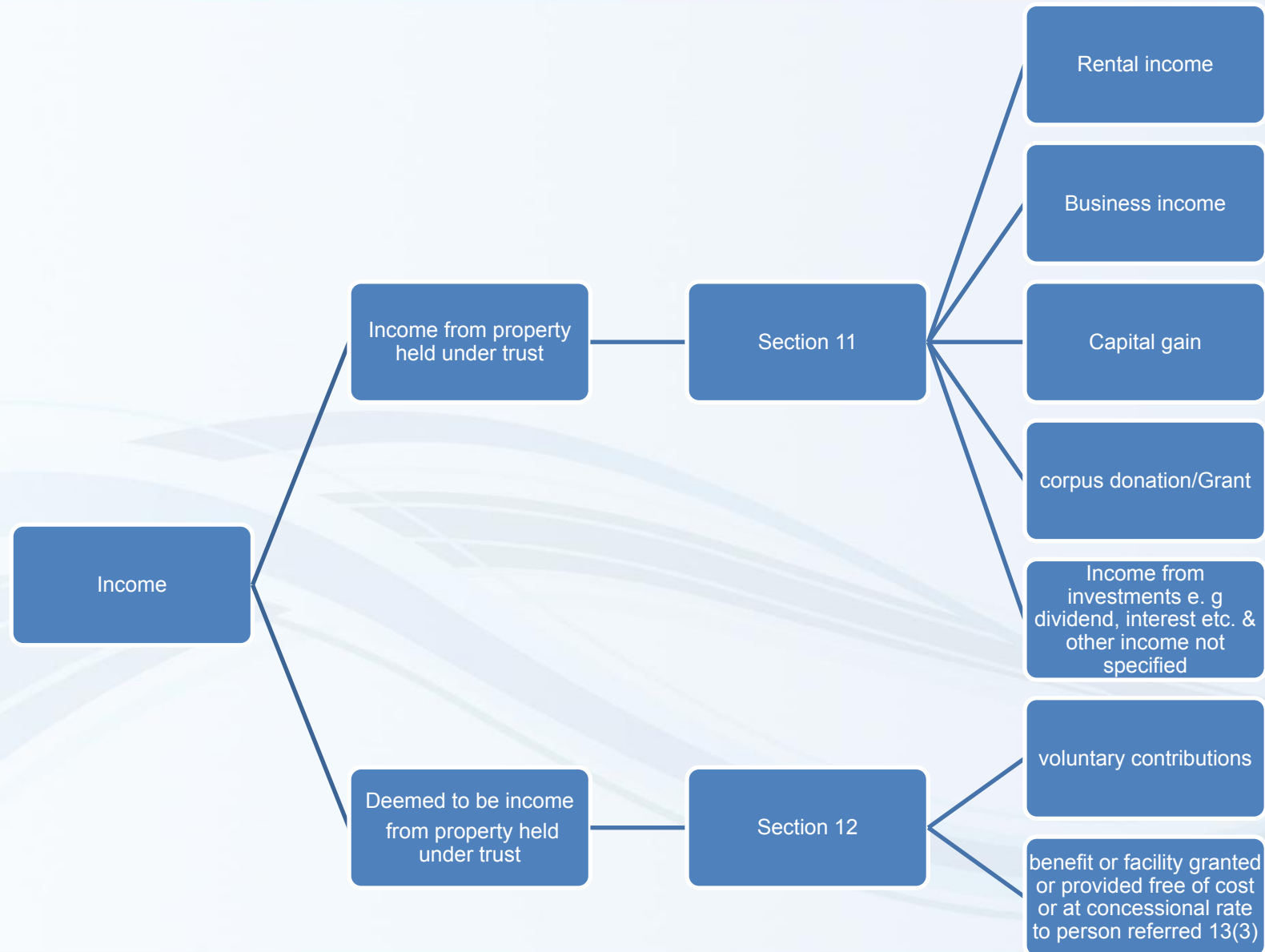
Income derived from property held under trust.

- Voluntary contribution received by religious or charitable trust/ institution deemed to be Income derived from property held under trust. section 12(1)
- Value of services at free of cost or concessional rate to a specified person by medical or educational institution as referred in section 13(3) deemed to be Income derived from property held under trust. -Section 12(2)
- Business undertaking where such business is incidental to attainment of the object of the trust. AO has power to determine income of such undertaking and anything excess as compared to amount reported by NGO shall be deemed application for other than charitable or religious purpose. for example NGO has reported Net income of Business undertaking of Rs 5 lacs and AO has determined net income of Rs 8 lacs then excess amount of Rs 3 lacs shall be deemed as income applied for other than income for charitable purpose.

Comparison

Grant	Corpus donation	General donation
Conditional receipts for utilization- contractual enforceable by law- generally through written contract. A grant gives some control to the funder as to how funds are used and sets conditions for future funding.	voluntary contributions made with a specific direction that they shall form part of the corpus	voluntary contributions made without any specific direction that they shall form part of the corpus. Donations are usually given wholeheartedly by people who really want to help someone in need.
grant is for a specific purpose with specific terms and conditions. <u>collaboration between the funder and the recipient organization.</u>	specific direction that they shall form part of the corpus, but no specific manner of direction whether written, oral , through box etc. is missing in income tax law.	Donation is a free and unrestricted contribution
Unutilized portion treated as liability, refundable if not utilized	Income u/s 2(24)(iia)	Income u/s 2(24)(iia)
Time limit for utilisation – as agreed between parties	No time limit for utilization under income tax – excluded from total income.	To be utilised in same year or next financial year, however 15% could be accumulated.
Anonymous donation provisions u/s 115BBC is not applicable.	Anonymous donation provisions u/s 115BBC is not applicable.	Anonymous donation provisions u/s 115BBC is applicable.
By default not taxable except cash expenditure, non deduction of TDS section 40a(ia)/40A(3)/(3A)	Income character but by default exempt	Income and by default taxable – exempt if conditions of income tax law satisfied.

Income of a trust or institution



Deemed to be income from property held under trust –section 12

Deemed to be income derived from property held under trust

voluntary contributions (except corpus received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes deemed to be income derived from property held under trust

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 specified person u/s 13(3) shall be deemed to be income of such trust or institution derived from property held under trust and shall be chargeable to income-tax notwithstanding the provisions of sub-section (1) of section 11.

Meaning of value of service =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 under section 13(3)

Note: For the purposes of section 11 "property held under trust" includes a business undertaking so held.-section 11(4)

**Income of NGO is generally taxable
unless condition of exemption is fulfilled**

Section 12A-Conditions to be fulfilled for claiming exemption u/s 11

Upto 31-03-2021: section 12A(1)

- (aa) **Application for registration** in prescribed form (form 10A) to Pr. CIT(E) **within 1 year from the date of the creation** of the trust or the establishment of the institution **and such trust or institution is registered under [section 12AA](#)**
 - (ab) If after registration , trust/institution has **adopted or undertaken modifications of the objects** which do not conform to the conditions of registration, application in the prescribed form(form 10A) and manner, within a period of 30 days from the date of said adoption or modification to the PR. CIT(E) and such trust or institution is registered under [section 12AA](#).
 - (b) **Audit on or before due date** if 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.
 - (ba) person in receipt of the income has **furnished the return of income** for the previous year in accordance with the provisions of sub-section (4A) of [section 139](#), within the time allowed under that section
- Note: if delay in filing of application for registration , 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.[section 12A(2)]

Effect of registration on pending assessments:

Provided that *where registration has been granted to the trust or institution under section 12AA/12AB*, then, the provisions of [sections 11](#) and [12](#) shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which (1) **assessment proceedings are pending** before the Assessing Officer as on the date of such registration and (2) the **objects and activities of such trust or institution remain the same** for such preceding assessment year:

Provided further that no action under section 147 shall be taken by the Assessing Officer in case of such trust or institution for any assessment year preceding the aforesaid assessment year only for non-registration of such trust or institution for the said assessment year.

Provided also that provisions contained in the first and second proviso shall not apply in case of any trust or institution which was refused registration or the registration granted to it was cancelled at any time under *section 12AA/12AB*.

Section 12A-Conditions to be fulfilled for claiming exemption u/s 11

From 01-04-2021:

- (a) An NGO is registered under new provision for registration under section 12A(1)(ac)
- (b) ***Audit** on or before due date if 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.

changes by FA 2023 w.e.f 01-10-2023 clause (b) substitute by new clause (b)

(b) where the total income of the trust or institution as 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 in any previous year,—

(i) the books of account and other documents have been kept and maintained in such form and manner and at such place, as may be prescribed; and

(ii) the accounts of the trust or institution for that year have been audited by an accountant defined in the Explanation below sub-section (2) of section 288 before the specified date referred to in section 44AB and the person in receipt of the income furnishes by that date 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]

Time limit for furnishing return not extended but exemption may be allowed in the case of belated return-change in section 12A(ba)

(ba) person in receipt of the income has furnished the return of income for the previous year in accordance with the provisions of sub-section (4A) of section 139, within the time allowed under that section.

Substituted clause (ba) w.e.f 01-04-2023:

(ba) the person in receipt of the income has furnished the return of income for the previous year in accordance with the provisions of sub-section (4A) of section 139, within the time allowed under [sub-section (1) or sub-section (4) of] that section;

Why registration is required?

If no registration, the contribution or donation received shall be taxable in the hand of trust or institution, because **exclusion to only those NGO who are registered under income tax.**

section 56(2)(x) where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017,—

(a) any sum of money, without consideration, the aggregate value of which exceeds ₹50,000/-, the whole of the aggregate value of such sum;

(b) any **immovable property**,—

(A) without consideration, the stamp duty value of which exceeds ₹50,000/-, the stamp duty value of such property;

(B) for a consideration, the stamp duty value of such property as exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely:—

(i) the amount of ₹ 50,000/-; and

(ii) the amount equal to 5% of the consideration.

(c) **any property, other than immovable property**,—

(A) without consideration, the aggregate fair market value of which exceeds ₹50,000, the whole of the aggregate fair market value of such property;

(B) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding ₹50,000/-, the aggregate fair market value of such property as exceeds such consideration :

Provided that this clause **shall not apply** to any sum of money or any property received—

- (I) from any relative; or
- (II) on the occasion of the marriage of the individual; or
- (III) under a will or by way of inheritance; or
- (IV) in contemplation of death of the payer or donor, as the case may be; or
- (V) from any local authority as defined in the Explanation to clause (20) of section 10; or
- (VI) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10; or**
- (VII) from or by any trust or institution registered under [section 12A or section 12AA/12AB]];**
or
- (VIII) by 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) of section 10; or**
- (IX) by way of transaction not regarded as transfer under clause (i) or clause (iv) or clause (v) or] clause (vi) or clause (via) or clause (viaa) or clause (vib) or clause (vic) or clause (vica) or clause (vicb) or clause (vid) or clause (vii) of section 47; or
- (X) from an individual by a trust created or established solely for the benefit of relative of the individual;
- (XI) from such class of persons and subject to such conditions, as may be prescribed .

Explanation.—For the purposes of this clause, the expressions "assessable", "fair market value", "jewellery", "property", "relative" and "stamp duty value" shall have the same meanings as respectively assigned to them in the Explanation to clause (vii).]

New procedure for registration- section 12AB- Action to be taken on receiving application for registration:

Application under clause (i) of s-12A(1)(ac)	Already registered u/s 12A/12AA	<i>order in writing registering the trust or institution for a period of 5 years;</i>	S-12AB (3) –Time limit for Order- 3 months <i>from the end of the month in which the application was received.</i>
Application under clause (ii)	Trust registered u/s 12AB and application for renewal before expiry of 6 months	call for such documents or information from the trust or institution or make such inquiries as he thinks necessary in order to satisfy about— (A) the genuineness of activities of the trust or institution; and ; (B) the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects;	Order within 6 months from the end of the month in which the application was received.
Application under clause (iii)	<i>Provisionally registered under section 12AB earlier and application after starting activities</i>	pass an order in writing registering the trust or institution for a period of 5 years; or if he is not so satisfied, pass an order in writing rejecting such application and also cancelling its registration after affording a reasonable opportunity of being heard;	
Application under clause (iv)	<i>registration of the trust or institution has become inoperative</i>		
Application under clause (v)	<i>modifications of the objects</i>		
Application under clause (vi)	<i>in any other case</i>	<i>pass an order in writing provisionally registering the trust or institution for a period of 3 years from the AY from which the registration is sought,</i>	

In case of an application made under sub-clause (vi) of clause (ac) of sub-section (1) of section 12A during PY 2021-21, the provisional registration shall be effective from the AY 2022-23 Rule 17A(7)

Procedure for registration – rule 17A – substituted w .e .f 01-04-2021

Relevant section of application	Case of registration	Application form	Relevant provisions of rule
Application under clause (i) of s-12A(1)(ac)	Already registered u/s 12A/12AA- renewal u/s 12AB	<i>Form No. 10A</i>	Order approving registration or <i>rejection in form 10AC and issue a sixteen digit alphanumeric Unique Registration Number (URN) to the applicants making application.example :AACAM6904AE20210</i> <i>order of registration –rule 17A(5)</i>
Application under clause (ii)	Trust registered u/s 12AB and application for renewal before expiry of 6 months	<i>Form No. 10AB</i>	<i>order of registration or rejection in Form No.10AD and in case if the registration is granted, sixteen digit alphanumeric number Unique Registration Number (URN) rule 17A(8)</i>
Application under clause (iii)	<i>Provisionally registered under <u>section 12AB</u> earlier and application after starting activities for regular registration/approval</i>		
Application under clause (iv)	<i>registration of the trust or institution has become inoperative now become operative</i>		
Application under clause (v)	<i>modifications of the objects</i>		
Application under clause (vi)	<i>in any other case. Example:</i>	<i>Form No. 10A</i>	Order approving registration – form 10AC and issue a sixteen digit alphanumeric Unique Registration Number (URN) to the applicants making application order of registration or rejection -Provisional registration

Provision Related to Renewal of Registration

Section 12AB

For Existing NGO

Situation 1: **Already registered with income tax** - application for renewal of cases covered under sub clause ii (Regular Registration & apply for renewal) iii (*Provisionally registered and applying for regular registration*), and v(*modifications of the objects*)

Nature of order : if not satisfied rejecting such application and also cancelling its registration; otherwise approve

registration of the trust or institution has become inoperative Due to availing exemption u/s 10(23C) - if not satisfied rejecting such application; otherwise approve

Situation 2- Application under any other case for registration - Refer next slide

Amendment in Residuary sub clause vi of section 12A(1)(ac) related to time limit for filing application for registration

Old Provision

in any other case,
application for registration at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration is sought,

Finance Act 2023

in any other case, where activities of the trust or institution have—

- (A) activities **not commenced**, at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration is sought;
- (B) **activities commenced** and no income or part thereof of the said trust or institution has been excluded from the total income on account of applicability of sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, or section 11 or section 12, for any previous year ending on or before the date of such application, **at any time after the commencement of such activities,]**

and such trust or institution is registered under section 12AB;

Amendment in Residuary sub clause vi of section 12AB(c) related to nature of order

<p>Situation 1-Old application pending Prior to FA-2023</p>	<p>Situation -2 Activities not started but application after amendment of FA-2023</p>	<p>Situation-3 Activity already started and no exemption otherwise</p>
<p><i>provisionally registering the trust or institution</i></p>	<p><i>provisionally registering the trust or institution</i></p>	<p>Regular registration the trust or institution for a period of five years; but after verifying the genuineness of activities , compliances, other laws and object of the trust</p>
<p><i>for a period of three years from the assessment year from which the registration is sought,</i></p>	<p><i>for a period of three years from the assessment year from which the registration is sought,</i></p>	<p>five years for any previous year ending on or before the date of such application, at any time after the commencement of such activities,]</p>
<p><i>No power to reject the application</i></p>	<p><i>No power to reject the application</i></p>	<p><i>Application may be rejected after affording a reasonable opportunity of being heard</i></p>

Late Application for Registration-Section 12A(2)

12A (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.**
i.e if application is made in FY 2023-24 exemption from AY 2024-25.

Provided that the provisions of sections 11 and 12 shall apply to a trust or institution, where the application is made under—

(a) sub-clause (i) of clause (ac) of sub-section (1), from the assessment year from which such trust or institution was earlier granted registration-**Migration from old registration to New registration at the time of introducing new scheme of registration;**

(b) sub-clause (iii) of clause (ac) of sub-section (1), from the first of the assessment year for which it was **provisionally registered-Already provisionally registered now applied for regular registration**

Documents accompanied the registration form 10A/AB- R-17A(2)

- (a) instrument creating or establishing the applicant like **registered trust deed, certificate of incorporation , MOA, AOA, Bye laws.** etc
- (b) where the applicant is created, or established, otherwise than under an instrument, **self-certified copy of the document evidencing the creation or establishment of the applicant;**
- (c) **self-certified copy of registration** with Registrar of Companies or Registrar of Firms and Societies or Registrar of Public Trusts, as the case may be;
- (d) **self-certified copy of registration under FCRA** ,if the applicant is registered under such Act;
- (e) **self-certified copy of existing order granting registration** under section 12A or section 12AA or section 12AB, as the case may be;
- (f) **self-certified copy of order of rejection** of application for grant of registration under section 12A or section 12AA or section 12AB, as the case may be, if any;
- (g) where the applicant has been in existence during any year or years prior to the financial year in which the application for registration is made, **self-certified copies of the annual accounts** of the applicant 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;
- (h) where a **business undertaking is held by the applicant** as per the **provisions of section 11(4)** and the applicant has been in existence during any year or years prior to the financial year in which the application for registration is made, **self-certified copies of the annual accounts of such business undertaking** 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 and self-certified copy of the report of audit as per the provisions of section 44AB for such period;
- (i) where the **income of the applicant includes profits and gains of business** as per the **provisions of section 11(4A)** and the applicant has been in existence during any year or years prior to the financial year in which the application for registration is made, **self-certified copies of the annual accounts** of such business 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 and self-certified copy of the report of audit as per the provisions of section 44AB for such period;
- (j) **self-certified copy of the documents evidencing adoption or modification of the objects;**
- (k) **note on the activities of the applicant.**

Signature of application form – rule 17A (3)&(4)

As per Rule 17A (4) Form Nos. 10A or 10AB, as the case may be, shall be verified by the person who is authorised to verify the return of income under section 140, as applicable to the applicant.

Rule 17A (3) Form Nos. 10A or 10AB, as the case may be, shall be furnished electronically, —

- (i) under digital signature, if the return of income is required to be furnished under digital signature;
- (ii) through electronic verification code(EVC) in a case not covered under clause (i).

GENERAL GROUND FOR CANCELATION OF REGISTRATION[S-12AB(4)]

Where registration of a trust or an institution has been granted under clause (a) or clause (b) of sub-section (1) and subsequently, the Principal Commissioner or Commissioner is satisfied that the

*(1) activities of such trust or institution are **not genuine** or*

*(2) activities are **not being carried out in accordance with the objects of the trust** or institution, he shall pass an order in writing cancelling the registration of such trust or institution after affording a reasonable opportunity of being heard.*

Show cause Notice for cancellation of registration:

- Object of the NGO to be charitable or religious.
- Genuineness of the activities to be established. So documentary proof of the activities must be kept. Now focus will shift from examination of expenses to genuineness of the activities.

Note: Sub-sections (4) and (5) of section 12AB substituted by the **Finance Act, 2022, w.e.f. 1-4-2022.**

SPECIFIC GROUND FOR CANCELATION OF REGISTRATION[S-12AB(4)]

where registration of a trust or an institution has been granted under clause (a) or clause (b) of sub-section (1) and subsequently, it is noticed by the PCIT/CIT that—

*(a) **specified violations** during any previous year;*

(b) reference from the Assessing Officer under the second proviso to sub-section (3) of section 143 for any previous year

*(c) **risk management strategy, formulated by the Board***

then, the Principal Commissioner or the Commissioner may, by an order in writing, after affording a reasonable opportunity of being heard, cancel the registration of such trust or institution.

The PCIT or CIT shall

(i) call documents or information or make enquiry

(ii) Order in writing cancelling the registration after reasonable opportunity of being heard

(iii) Order not to cancel registration

(iv) Forward copy of order to AO

Order in clause (ii) or (iii) within six month of first notice issued for calling documents or information or make enquiry - S-12AB(5)

specified violations for cancellation of registration- 12AB(4) Explanation

- A. Fund apply for object other than object of NGO
- B. Business Income but business not incidental to the objective of the NGO or books of account not maintained separately
- C. Income applied for private religious purpose.
- D. income has been applied for the benefit of any particular religious community or caste;
- E. activities not genuine
- F. conditions of registration not complied with
- G. non compliance of any other law, order or decree
- H. application for registration **incomplete or false or incorrect information - Inserted by the Finance Act, 2023, w.e.f. 1-4-2023.**

Other ground for cancellation of registration-[Rule 17A(6)]

Cancellation of registration

Application form not duly filled fully/partly

providing false or incorrect information in form of application

providing false or incorrect documents with application

Application form not properly verified

*If, at any point of time, it is noticed that Form No. 10A has not been duly filled in by not providing, fully or partly, or by providing false or incorrect information or documents required to be provided under sub-rules (1) or (2) or by not complying with the requirements of sub-rules (3) or (4), the Principal Commissioner or Commissioner, as referred to in sub-rule (5), after giving an **opportunity of being heard**, may **cancel the registration** in Form No. 10AC and Unique Registration Number(URN), issued under sub-rule (5), and such registration or such Unique Registration Number (URN)**shall be deemed to have never been granted or issued**. [Rule 17A(6)]*

Natural justice before rejection of application

- ❑ *The Principal Commissioner or the Commissioner may, by an order in writing, after affording a reasonable opportunity of being heard, cancel the registration of such trust or institution.*
- ❑ *The discretion to be exercised judiciously and not arbitrarily*
- ❑ *The reply must be considered before taking decision of cancellation*
- ❑ *Reasonable time to submit reply and opportunity of personal hearing is part of principle of natural justice.*

If registration application rejected- appeal to ITAT- section 253

Appeals to the Appellate Tribunal.

(1) Any assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order—

- (a) an order passed by a [Deputy Commissioner (Appeals)] [before the 1st day of October, 1998] [or, as the case may be, a Commissioner (Appeals)] under section 154, section 250, section 270A, section 271, section 271A, section 271J or section 272A; or
- (b) an order passed by an Assessing Officer under clause (c) of section 158BC, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, after the 30th day of June, 1995, but before the 1st day of January, 1997; or]
- (ba) an order passed by an Assessing Officer under sub-section (1) of section 115VZC; or]
- (c) an order passed by a Principal Commissioner or] Commissioner under section **12AA or 12AB** or **under clause (vi) of sub-section (5) of section 80G** or under section 263 or under section 270A] or under section 271 or under section 272A or an order passed by him under section 154 amending his order under section 263 or an order passed by a Principal Chief Commissioner or] Chief Commissioner or a Principal Director General or Director General or a Principal Director or] Director under section 272A; or

Books of account and other documents & Audit

Section 12A(1)(b)- Amended from 01.04.2023

Rule 17AA Books of account and other documents to be kept and maintained Inserted by the Income-tax (Twenty-fourth Amendment) Rules, 2022, w.e.f. 10-8-2022..

Amendments in section -12A(1)(b) related to audit and books of account

Old Provision

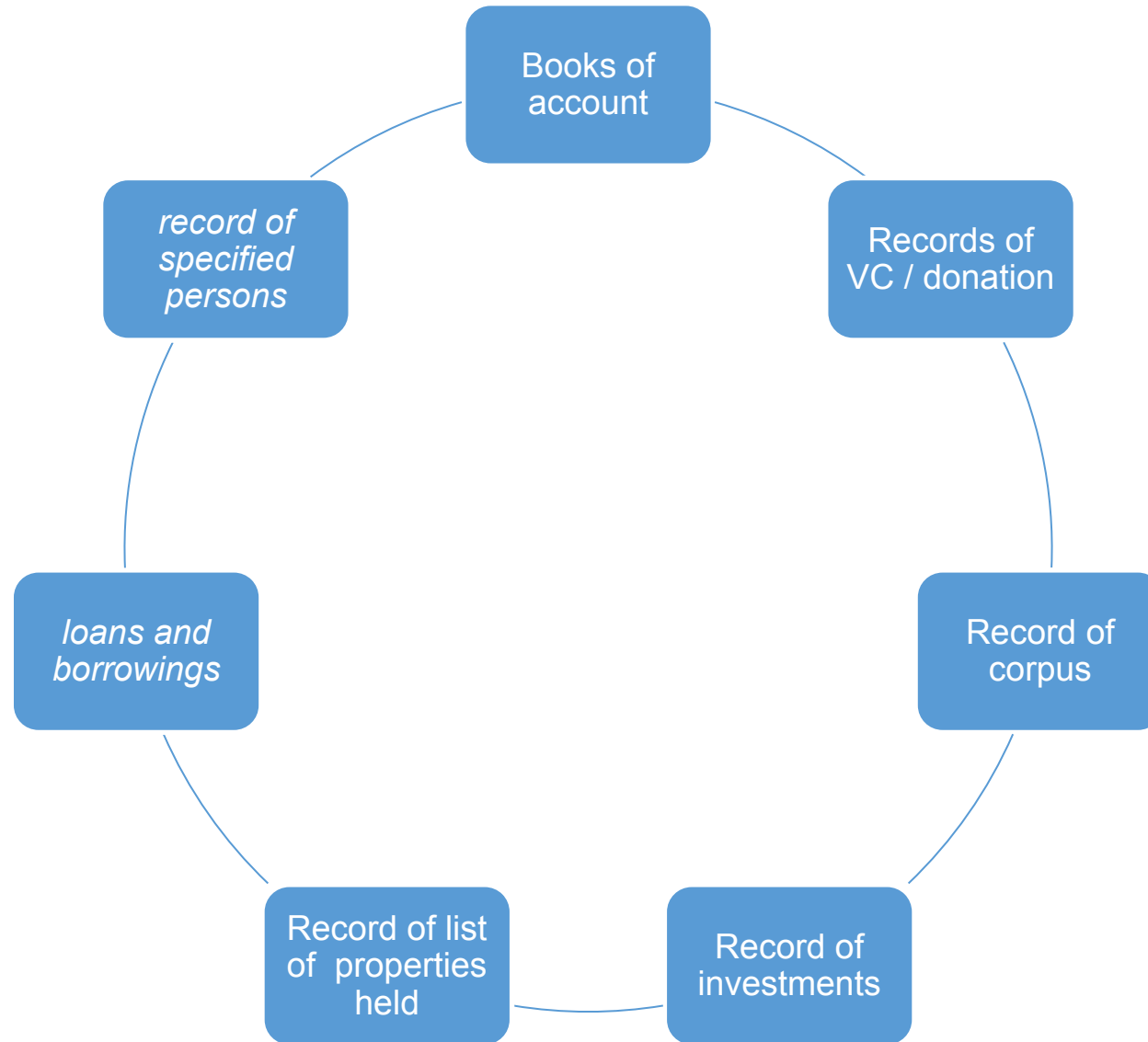
where the total income of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year, the accounts of the trust or institution for that year have been **audited by an accountant** as defined in the Explanation below sub-section (2) of section 288 [before the specified date referred to in section 44AB and the person in receipt of the income furnishes by that date] 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;

New Provision

where the total income of the trust or institution as 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 in any previous year,—

(i) the **books of account** and **other documents** have been kept and maintained in such form and manner and at such place, as may be prescribed; and

(ii) the accounts of the trust or institution for that year have been **audited by an accountant** defined in the Explanation below sub-section (2) of section 288 before the specified date referred to in section 44AB and the person in receipt of the income furnishes by that date 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;



Books of account and other records – rule 17AA

Books of Accounts/ Other Records to be maintained S 12A(1)(b)

- books of account
- books of account, as referred in clause (a), for business undertaking
- books of account, as referred in clause (a), for business carried on by the assessee other than the business undertaking referred in sub-section (4) of section 11
- Mode of books of account: written form or in electronic form or in digital form or as print-outs
- Where books of account? at its registered office or may be kept at any other place in India as the management may decide by way of a resolution and where such a resolution is passed but intimation to jurisdictional Assessing Officer in writing giving the full address and such intimation shall be duly signed and verified by the person who is authorised to verify the return of income.
- Period of retention : shall be kept and maintained for a period of 10 years from the end of the relevant AY. If re-assessment reopened till finalization of re-assesement

Books of account – rule 17AA
true and fair view of the state
of the affairs
Means no material
misstatement

- a) books of account, including the following, namely: -
 - (i) cash book;
 - (ii) ledger;
 - (iii) journal;
 - (iv) copies of bills, **whether machine numbered or otherwise serially numbered**, wherever such bills are issued by the assessee, and copies or counterfoils of machine numbered or otherwise serially numbered receipts issued by the assessee;
 - (v) original bills wherever issued to the person and receipts in respect of payments made by the person;
 - (vi) any other book that may be required to be maintained in order to give a **true and fair view of the state of the affairs** of the person and explain the transactions effected;
- (b) books of account of business undertaking incidental to the object of the trust.
- (c) books of account of other business undertaking.

Books of account and other records – rule 17AA

Other Records to be maintained S 12A(1)(b)

- record of all the projects and institutions including name, address and objectives;
- record of voluntary contribution(donation) containing details of name, address, PAN/Aadhar if available,
- record of income from property held under trust including list of properties
- Income other than contribution
- Record of application of income, in India,
- Payment to other NGO along with object for payment made.
- Record of application of income outside India.

**Books of Accounts/ Other
Records to be maintained
S 12A(1)(b)**

- Record of deemed application of income referred in clause (2) of Explanation 1 of sub-section (1) of section 11 of the Act
- income accumulated along with purpose
- Investment section 11(5)
- Investment other than section 11(5)
- Preceding year income application of accumulated Income by way of payment along with with object
- Preceding year income deemed application by way of payment along with object
- Preceding year income Investment section 11(5)
- Preceding year income Investment other than section 11(5)
- Record of corpus contribution
- Application of corpus contribution
- Payment to other NGO from corpus contribution
- Investment of corpus contribution in section 11(5)
- Investment of corpus contribution in other than section 11(5)

**Books of Accounts/ Other
Records to be maintained
S 12A(1)(b)**

- Application of accumulated corpus of preceding year along with object and details of person to whom payment is made
- Application of accumulated corpus of preceding year to other NGO
- Application of accumulated corpus of preceding year in section 11(5)
- Application of accumulated corpus of preceding year other than section 11(5)
- Details of donors of Contribution received for renovation/repair of religious construction such as temple etc. but treated as corpus
- Such contribution in received in preceding P.Y. but treated as corpus in current P.Y.
- Application of such contribution
- Application of such contribution by way of payment to other NGO along with object.

**Books of Accounts/ Other
Records to be maintained
S 12A(1)(b)**

- Application of such contribution in section 11(5)
- Application of such contribution other than section 11(5)
- Record of loans and borrowing containing information regarding amount, application and repayment
- record of immovable and movable properties held by the assessee such as address of the properties, address of the properties, transfer of such properties and transfer of such properties.
- record of specified persons, as referred to in sub-section (3) of section 13 of the Act,
- any other documents containing any other relevant information.
- The books of account and other documents in electronic form or in digital form
- The books of account and other documents shall be kept and maintained at its registered office

Audit of NGO

Section 12A(1)(b)

Rule 17B- Substituted by the Income-tax Amendment (Third Amendment.) Rules, 2023, w.e.f. 1-4-2023

Audit of NGO – SECTION

12A(1)(b) (ii)

Audit requirement: if income without exemption of 11/12 exceeds maximum amount which is not chargeable to income-tax

Time limit – refer 44AB- 30 st September

Form of audit report- prescribed form – refer rule 17B

12A(1)(b) where the total income of the trust or institution as 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 in any previous year,—

(i) the books of account and other documents have been kept and maintained in such form and manner and at such place, as may be prescribed⁵⁹; and

(ii) the accounts of the trust or institution for that year have been audited by an accountant defined in the Explanation below sub-section (2) of section 288 before the specified date referred to in section 44AB and the person in receipt of the income furnishes by that date 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;]

AUDIT REPORT RULE 17B

FORM 10B- total income exceed
w/o exemption exceeds
Rs.5cr/FCRA contribution
received/income applied outside
India

others- Form 10BB

17B. The report of audit of the accounts of a trust or institution which is required to be furnished under sub-clause (ii) of clause (b) of sub-section (1) of section 12A, shall be in—

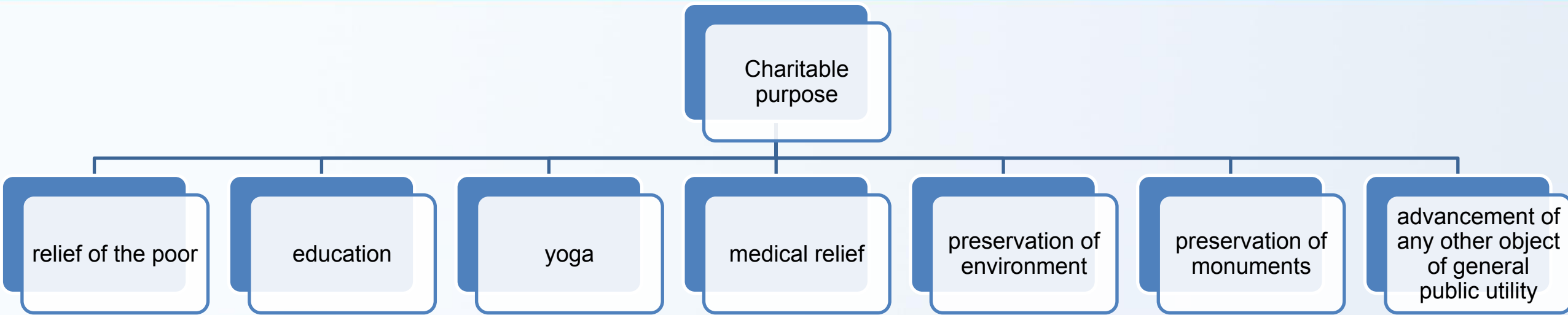
(a) Form No. 10B where—

- i. the total income of such trust or institution, without giving effect to the provisions of sections 11 and 12 of the Act, exceeds rupees five crores during the previous year; or
- ii. such trust or institution has received any foreign contribution during the previous year; or
- iii. such trust or institution has applied any part of its income outside India during the previous year;

(b) Form No. 10BB in other cases.

Claiming exemption u/s 11

Meaning of charitable purpose- section 2(15)



"charitable purpose" includes relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, 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, **unless—**

- (i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and
- (ii) the **aggregate receipts** from such activity or activities during the previous year, **do not exceed 20%** of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;

Meaning of charitable activity in GST for claiming exemption

**NOTIFICATION NO. 12/2017-CENTRAL TAX (RATE),
DATED 28-6-2017**

Services by an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) by way of **charitable activities**.

- (r) "charitable activities" **means** activities relating to—
 - (i) **public health** by way of,—
 - (A) care or counselling of
 - (I) terminally ill persons or persons with severe physical or mental disability;
 - (II) persons afflicted with HIV or AIDS;
 - (III) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or
 - (B) **public awareness** of preventive health, family planning or prevention of HIV infection;
 - (ii) **advancement of religion, spirituality or yoga;**
 - (iii) **advancement of educational programmes or skill development** relating to,—
 - (A) abandoned, orphaned or homeless children;
 - (B) physically or mentally abused and traumatized persons;
 - (C) prisoners; or
 - (D) **persons over the age of 65 years** residing in a rural area;
 - (iv) **preservation of environment** including watershed, forests and wildlife;

Note: other exemption 74-health care services, transportation of a patient in an ambulance, 66- service provided by/to educational institution. For detail refer to notification no 12/2017-CENTRAL TAX (RATE).

Important recent landmark judgment

1. Capitation fee for admission of students, trust was not entitled for registration under section 12AA as it was not running charitable activities- Karnataka Chamber of Commerce and Industry Vs. Commissioner of Income Tax, Hubli [2021] 126 taxmann.com 21 (SC) SC confirmed Kar HC.

Assessee, a charitable trust, was running an educational institution - Pursuant to search operation in office of assessee, several documents were seized which disclosed receipt of capitation fee by assessee for admission of students - Treasurer and secretary of trust in their statements had also admitted that trust was collecting capitation fee for admission of students - Thus, Commissioner rejected application of assessee for grant of registration under section 12AA - Tribunal also upheld same on ground that trust was not running charitable activities - High Court by impugned order agreed with Commissioner and Tribunal and dismissed appeal of assessee - Whether there was no ground to interfere with impugned order of High Court and instant appeal filed against same was to be dismissed - Held, yes [Paras 5 and 6]

capitation fees” means any amount by whatever name called, whether in cash or in kind paid or collected or received directly or indirectly in addition to the fees determined

2. Where assessee-society engaged in running educational institutions, earned income from business of community hall, Kalyana Mandapam and Gnanavapi and utilized surplus income for objects of trust, i.e., running educational institutions and providing medical relief to poor, assessee was duly entitled to exemption under section 11. income derived from Kalyana Mandapam, Gnanavapi and Community Hall cannot be treated as business of the trust. The trust has not conducted any business. Whatever income earned from the Kalyana Mandapam, Gnanavapi and Community Hall, is utilised for the educational purpose and the society is running educational Institution, which is the primary object of the trust; on the other hand, running Kalyana Mandapam, Gnanavapi and Community Hall is not a primary object.**[Sri Ram Samaj Vs. Joint Director of Income Tax (Exemptions) [2020] 119 taxmann.com 334 (Madras)] HC**

3. Where assessee-trust was established with a main object to consider all questions concerning relations between employers and employees in Southern India in order to protect their interests and lower authorities denied its claim of exemption under section 11, taking view that substantial sums of money were received by assessee from conducting conferences and seminars which were not incidental to its main objects, since lower authorities had not rendered any finding as to whether activity carried out by assessee was a commercial activity, benefit of exemption under section 11 could not have been denied to assessee.**[Employers Federations of Southern India Vs. Commissioner of Income Tax (Exemptions)-III, Chennai [2020] 122 taxmann.com 87 (Madras)] HC**

4. Where assessee-company, registered under section 25 of Companies Act, was engaged in **imparting 'financial education/awareness' to investor** in field of investments, merely because assessee earned certain revenue, it could not be said that activities of assessee were not charitable so as to cancel its registration under section 12AA. **Investor Financial Education Academy Vs. Income Tax Officer (Exemptions)-4, Chennai [2020] 121 taxmann.com 281 (Madras) HC**

5. registration cannot be rejected on ground that financials have not been furnished: It is settled proposition of law that for the purpose of registration u/s 12AA of the Act, the threshold condition *i.e.* **genuineness of the activities** is to be decided **with the object clause of institution**. In other words, when the object of the institution, the appellant in this case, is proved to be charitable within the meaning of section 2(15) of the Act as has been held by Hon'ble Apex Court in the identical facts and circumstances in a case of *Bar Council of Maharashtra (supra)*, further scrutiny of the financials of the appellant are not required because it is otherwise within the purview of AO to examine at the time of assessment if the appellant is entitled to exemption u/s 11 of the Act. **Advocate Welfare Fund Trustee Committee Vs. Commissioner of Income-tax (Exemption), New Delhi. [2020] 117 taxmann.com 701 (Delhi - Trib.)**

6. Advocate welfare fund trustee committee established under Bar Council of Delhi being engaged in safeguarding rights, privileges and interest of advocates, its dominant purpose is advancement of general public utility within meaning of section 2(15) . Held, yes **Advocate Welfare Fund Trustee Committee Vs. Commissioner of Income-tax (Exemption), New Delhi. [2020] 117 taxmann.com 701 (Delhi - Trib.)**

7. Where assessee-society had been constituted by Ministry of Textiles, Government of India to promote handloom sector by organizing exhibitions in different parts of country for display and sale of handloom fabrics/cloth manufactured by handloom weavers and handloom society and motive was to provide a platform for handloom weavers of country for marketing and displaying their products through exhibitions and activities were not for any private gain or profit and receipts were used for activities of society, assessee could not be said to be involved in carrying on any business, trade or commerce and it was eligible for benefit of section 11. **[Income Tax Officer (E), Trust Word 1(1) Vs. Delhi Association of Corporation & Apex Societies of Handlooms. [2020] 119 taxmann.com 376 (Delhi - Trib.)**

8. Where assessee trust was engaged in providing asylum/shelter to cows and maintaining **gaushalas** and famine relief centres to provide proper treatment and fodder to needy stray cows, merely because assessee earned certain revenue from sale of milk, milk product, cattle feed etc., it could not be said that activities of assessee were not charitable so as to cancel its registration under section 12A. **Rajasthan Gau Seva Sangh Vs. Commissioner of Income-tax Exemption.**

**Commissioner of Income-tax
(Exemption) vs Servants of
People Society [2022] 145
taxmann.com 234 (SC)**

Section 2(15), read with section 11, of the Income-tax Act, 1961 - Charitable Purposes (Objects of general public utility) - Assessment years 2010-11, 2012-13 to 2014-15 - High Court by impugned order held that where assessee-society, running a printing press and publishing a newspaper, ploughed back profit, if any, made by it to charitable activities, it could not be said that assessee was involved in any trade, commerce or business - Consequently, benefit of exemption claimed by assessee under section 11 was to be allowed - Whether SLP filed by revenue against said order of High Court was to be dismissed - Held, yes [Para 4] [In favour of assessee]

**ACIT (EXEMPTION) Vs
Ahmedabad Urban
Development
Authority[2022] 143
taxmann.com 278 (SC)**

- ❑ Whether an assessee advancing general public utility cannot engage itself in any trade, commerce or business, or provide service in relation thereto for any consideration - Held, yes
- ❑ **Whether term 'incidental' in section 11(4A) is to be interpreted in light of sub-clause (i) of proviso to section 2(15), i.e., that activity in nature of business, trade, commerce or service in relation to such activities should be conducted actually in course of achieving GPU object, and income, profit or surplus or gains can then, be logically incidental - Held, yes**
- ❑ **level of fees or collection towards forms, brochures, or exams** are significantly higher than cost, such income would attract mischief of proviso to section 2(15), and would have to be within limits prescribed by sub-clause (ii) of proviso to section 2(15) - Held, yes [Paras 197 and 199] [In favour of assessee.
- ❑ Whether **bodies involved in trade promotion** (such as AEPC), or set-up with objects of purely advocating for, co-ordinating and assisting trading organisations, can be said to be involved in advancement of objects of general public utility - Held, yes
- ❑ organisations provide additional services such as courses meant to skill personnel, providing private rental spaces in fairs or trade shows, consulting services, etc. then income or receipts from such activities, would be business or commercial in nature

**CIT(E) Vs. Gandhinagar Urban
Development Authority [2023] 148
taxmann.com 339 (SC)**

Section 2(15), read with sections 11 and 12A, of the Income-tax Act, 1961 - Charitable purpose (Objects of general public utility) - High Court by impugned order held that assessee-urban development authority **executing works in connection with supply of water, disposal of sewerage and provision of other services and amenities**, could be said to be providing general public utility service within meaning of section 2(15) and hence eligible for benefit of section 11 - Whether in view of Supreme Court's decision in Asstt. CIT (Exemption) v. Ahmedabad Urban Development Authority [2022] 144 taxmann.com 78/[2023] 290 Taxman 137/[2022] 449 ITR 389, SLP filed by revenue against impugned order was to be dismissed - Held, yes [Para 2] [In favour of assessee]

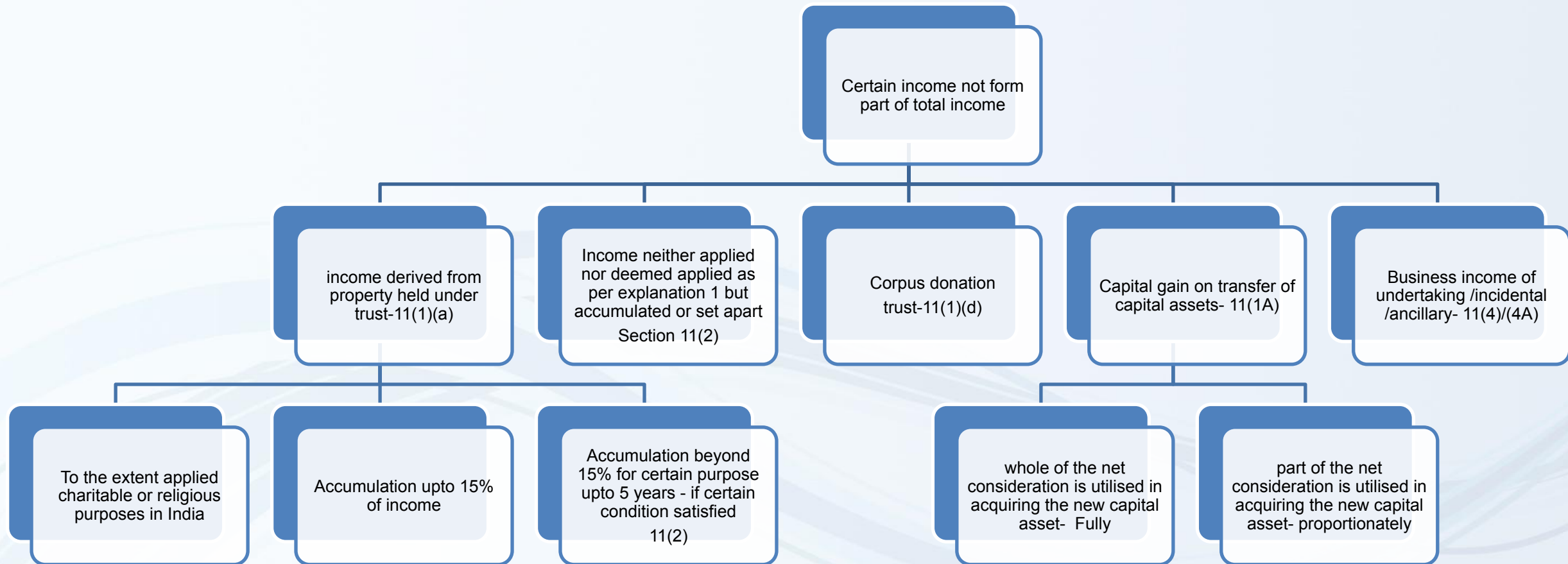
**New Noble Educational
Society Vs. CCIT(E)
[2022] 143 taxmann.com
276 (SC)**

Requirement for educational charitable institution, society or trust seeking approval under section 10(23C) is to 'solely' engage itself in education or educational activities and not engage in any activity of profit which are unrelated to education

While considering applications for approval under section 10(23C), Commissioner is not bound to examine only objects of institutions, to ascertain genuineness he is also free to call for audited accounts or other such documents for recording satisfaction where society, trust or institution genuinely seeks to achieve object which it professes.

Registration of trust or charities is obligatory under state or local laws and concerned trust, society, other institution etc. seeking approval under section 10(23C) should also comply with provisions of such state laws, this would enable Commissioner or concerned authority to ascertain genuineness of trust, society etc.

Income does 'not form part of total income section 11



Explanation to section 11(1)

Explanation 1

Explanation 2

Explanation 3

1. While computing 15% accumulation voluntary contributions referred to in section 12 shall be deemed to be part of the income;

2. Deemed application-if actual application short of 85% due to
(i) income has not been received during that year
(ii) Due any other reason

In case (i) above Income applied during the PY in which received or immediately following FY Form 9A before due date of return filing.

In case (ii) above Income applied during immediately following PY Form 9A before due date of return filing.

If out of unutilised income corpus donation to other NGO, to that extent not treated as application of income for charitable or religious purpose.

Computation of application of income is subject to section 40A(3)/(3A) cash payment during the same FY/ following FY and section 40(a)(ia) TDS provisions.

Option for deemed application under explanation 1 : option of the person in receipt of the income [(such option to be exercised before the expiry of the time allowed under section 139(1) for furnishing the return of income, in such form and manner as may be prescribed –rule 17)] 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

Explanation -1 to section 11(1)

For the purposes of clauses (a) and (b),—

- (1) in computing the 15% 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 85% 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 before the expiry of the time allowed under section 139(1) for furnishing the return of income, in such form and manner as may be prescribed(**Form 9A**) 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 (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 (ii), during the previous year immediately following the previous year in which the income was derived.]

While filing form 9A:

A. The details of income in this regard are:

i	Amount of income derived from property held under trust / held under trust in part , during the above mentioned previous year: Rs.....;	Amount in ₹
iii	Amount of income [out of (i)] actually applied to charitable or religious purposes in India: Rs	Amount in ₹
liii	Amount of income referred to in (ii) that falls short of 85% of the income referred to in (i) : Rs.....;	Amount in ₹
liv	The amount of income in respect of which the option is being exercised: Rs.....	Amount in ₹
Vv	Balance offered for tax	Amount in ₹

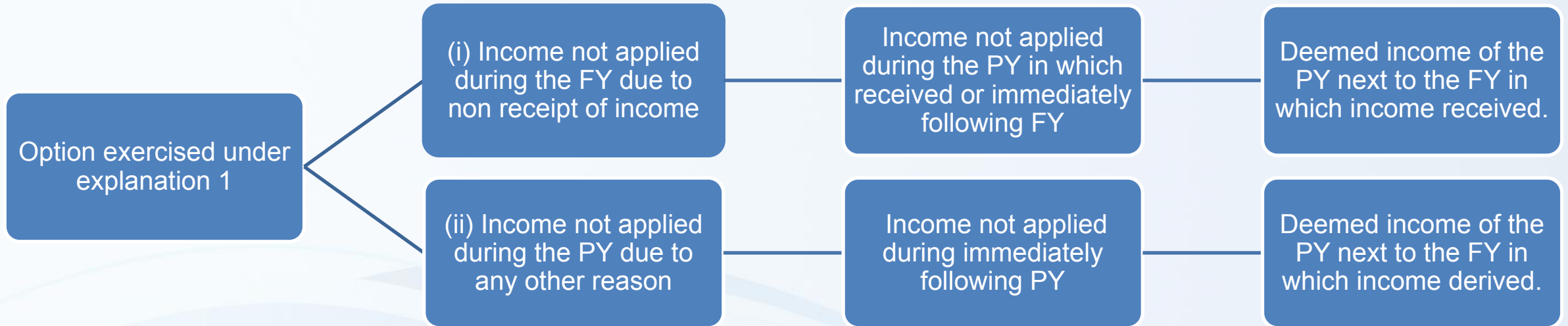
Reasons for short fall: amount not received, any proceeding in court, amount accrued but not due, stay matter, pending in appeal, inability to spend due to approval is pending from approving authority, bank account attached etc.

Governing body resolution explaining reason and authorizing person to file 9A.

Mention the option and option to be exercised before the expiry of the time allowed under section 139(1) for furnishing the return of income, Ensure utilisation within time limit.

Filing of form 9A within due date of filing ITR.

Consequences if option exercised under explanation -1 but income not applied for charitable or religious purpose within time allowed.[Section 11(1B)]



Where any income in respect of which an option is exercised under clause (2) of the Explanation 1 to section 11(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.]

Explanation 01(1)

While computing 15% limit voluntary contribution shall be deemed to be part of income.

Example: Rental income Rs 1 lacs, Donation/ Contribution Rs. 2 lacs

Maximum accumulation @15% of Rs 3 Lacs = Rs 45,000

Explanation 01(2) –Deemed Application in the previous year in which income is derived irrespective of actual receiving of income.

This provision is optional and could be availed by filing Form 09A. Time limit extended and fund could be utilised In the previous year in which income is received or in the immediately following PY.

If income not received during the year or for any other reasons income derived could not be applied during the previous year/required to file Form -09A on or before due date of return seeking permission for application in future year.

Eg: Interest on FDR credited but not paid to NGO.

Suppose interest credited during FY 21-22 of Rs. 01 cr not received during FY -21-22 but it will be received in FY 25-26, by filing form 09A the same shall be deemed to be applied during FY itself. But the condition is interest income must be applied for during FY-25-26 or FY-26-27.

Explanation 2 to section 11(1) related corpus donation to other NGO from Current year Income shall not be treated as Application of income.(Finance Act 2017) w.e.f A.Y 2018-19

Any amount credited or paid, out of income referred to in clause (a) or clause (b) read with *Explanation 1*, 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) of section 10 or other trust or institution registered under section 12AA [or section 12AB, as the case may be , being **contribution with a specific direction that it shall form part of the corpus**], shall not be treated as application of income for charitable or religious purposes, as a result thereof tax on such payment to other NGO

Explanation 3 to section 11(1) FINANCE ACT 2018 w.e.f AY 2019-20

For the purposes of determining the amount of application under clause (a) or clause (b), the provisions of sub-clause (ia) of clause (a) of section 40 and sub-sections (3) and (3A) of section 40A, shall, *mutatis mutandis*, apply as they apply in computing the income chargeable under the head "Profits and gains of business or profession".

Section 40a(ia) if tax to be deductible and tax not deducted or after deduction not deposited – 30% shall be not allowed as income applied for charitable or religious purpose.

Section 40A(3)/(3A) Cash revenue expenditure or capital exp. – not treated as application of income.

EXPLANATION 04

1. Application of **Corpus fund** for charitable or Religious purpose shall not be treated as application of income since it is unconditionally exempt/ not forming part of total income. However, corpus donation must be deposited in any of the mode specified u/s11(5) to claim exemption inserted by FA,2021 w.e.f AY 22-23.

Provided that the amount not so treated as application, or part thereof, shall be treated as application for charitable or religious purposes in the previous year in which the amount, or part thereof, is invested or deposited back, into one or more of the forms or modes specified in sub-section (5) maintained specifically for such corpus, from the income of that year and to the extent of such investment or deposit:

note: Amount paid to other NGO shall be treated as application in the year in which invested in S 11(5) within 5 years forming part of corpus from the income of that year to the extent of investment in S 11(5).

EXPLANATION 04

2. Amount of **loan or borrowings applied for charitable or religious purpose** shall not be treated as application of income for charitable or religious purpose however repayment of loan or borrowings shall be treated as application of income. For eg: Suppose during FY-21- 22 Loan of Rs. 2 Crore, donation Rs. 1 lacs, expenditure on various charitable activity Rs 2.01 crore, in such case Rs 1 lacs shall be treated as application of income for charitable purpose however if in the following FY NGO has refunded loan of Rs 1 crore in FY 22-23 then, Rs 1 crore shall be treated as application of income for FY22-23.

3. *any amount credited or paid, other than the amount referred to in Explanation 2, 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) of section 10, as the case may be, or other trust or institution registered under section 12AB, as the case may be, shall be treated as application for charitable or religious purposes only to the extent of eighty-five per cent of such amount credited or paid. - **Inserted by the Finance Act, 2023, w.e.f. 1-4-2024***

No donation multiple trust in series-Amendment by FA-2023

Instances have come to the notice that certain trusts or institutions are trying to defeat the intention of the legislature by forming multiple trusts and accumulating 15% at each layer. By forming multiple trusts and accumulating 15% at each stage, the effective application towards the charitable or religious activities is reduced significantly to a lesser percentage compared to the mandatory requirement of 85%.

In order to ensure intended application toward charitable or religious purpose, it is proposed that only 85% of the eligible donations made by a trust or institution under the first or the second regime to another trust under the first or second regime shall be treated as application only to the extent of 85% of such donation. Accordingly, amendments are proposed:

Time limit for furnishing form 9A / 10 - Prior to 2 Months of the due date of return

- **The due date for furnishing form 9A and form 10 is same as the due date of furnishing the return of income.** The trusts are also required to furnish audit report in form 10B/10BB one month before the due date for furnishing return of income. **The auditors are required to report the details of form 10/9A in the audit report.** Since the due date for furnishing form 9A/10 is one month before the due date of furnishing the ITR, auditors find it difficult to report.
- Form No. 9A- Income not utilized due to receiving at the year end or need some more conditions to be satisfied
- Form No. 10 - Accumulation of Fund for Specific Purpose

In order to rationalise the provisions, it is proposed to provide for filing of Form No. 10A/9A at least two months prior to the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year. Necessary amendments in this regard are proposed

Explanation 05 inserted by Finance Act 2021 w.e.f AY-22-23

Any excess expenditure in any of the preceding previous year shall be ignored and cannot be taken from calculation of application of income for charitable purpose For example: During FY 20-21 Donation Rs. 2 lacs expenditure for various charitable activity Rs.2.10 lacs. In this case excess application of expenditure of Rs 10000 will not be allowed to claim in next FY 21-22. Donation Rs 4 lacs expenditure for various charitable activity Rs. 3 lacs Surplus Rs. 1 lacs. In such case NGO could not claim set off of Rs 10000 of excess expenditure of FY -20-21 in FY21-22.

Income neither applied nor deemed applied as per explanation 1 but accumulated or set apart –S-11(2)

statement in the prescribed form 10 to the Assessing Officer, stating the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed 5 years ; excluding period during which the income could not be applied due to an order or injunction of any court, shall be excluded

statement to be furnished on or before the due date specified under section 139(1) for furnishing the return of income for the previous year:

If Conditions to be fulfilled-such accumulated/set apart income don't form part of total income

money so accumulated or set apart is invested or deposited in the forms or modes specified in section 11(5);

amount accumulated or set apart shall not be credited or paid to other NGO whether during accumulation period or thereafter, if so paid shall not be treated as application of income. Exception provided in section 11(3A).

Note: consequence of non compliance of provision of section 11(2)- refer section 11(3)

Form 10

- To be filed on or before the due date of filing of return.
- Resolution of Governing body/ Trustee for such accumulation or set part setting out the purpose for which the accumulation is required.
- Period for which accumulation is required.
- purpose of accumulation
- The accumulated funds shall be deposited /invested in mode prescribed in section 11(5).
- Previous filing details of form 10 in any of the preceding FY
- Deemed income due to not making investment in 11(5) mode or not utilised for specific purpose or not utilised at all or paid to other NGO as referred in section 11(3).
- amount accumulated or set apart shall not be credited or paid to other NGO whether during accumulation period or thereafter, if so paid shall not be treated as application of income. Exception provided in section 11(3A).

Reporting accumulation/set apart of current year income

<i>Sl. No</i>	<i>Purpose for which amount is being accumulated or set apart</i>	<i>Amount in ₹</i>	<i>Period of accumulation/ setting apart ending on</i>

Reporting of previous accumulation/set apart for which form 10 already filed:

<i>Year of accumulation</i>	<i>Date of filing Form10</i>	<i>Amount accumulated</i>	<i>Period for which accumulated/ set apart</i>	<i>Amount applied up to the end of the previous year</i>	<i>Amount remaining for application</i>	<i>Amount deemed to be income within meaning of sub-section (3) of section 11</i>

out of incomes detailed in 3 above, **due to the order/injunction of the court** the income as detailed below could not be applied for the purpose for which it was accumulated or set apart

<i>S. No</i>	<i>Amount of income</i>	<i>Previous year in which accumulated or set apart</i>	<i>Period during which it could not be applied due to court order</i>	<i>Details of court order</i>

Extract of section 11(2) -Accumulation or set apart.

- 2) Where 85% of the income referred to in clause (a) or clause (b) of sub-section (1) read with the Explanation to that subsection 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 furnishes a statement in the prescribed form 10 and in the prescribed manner(rule 17) to the Assessing Officer, stating the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed 5 years;
 - b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in section 11(5);
 - c) the statement referred to in clause (a) is furnished on or before the due date specified under section 139(1) for furnishing the return of income for the previous year:

Provided that in computing the period of 5 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.]

[Explanation.—Any amount credited or paid, out of income referred to in clause (a) or clause (b) of sub-section (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.]

Consequence of non compliances of condition of section 11(2)-Refer section 11(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 purpose 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 or, as the case may be, of the previous year immediately following the expiry of the period aforesaid.

Income accumulated or set apart can't be applied for approved purpose due to circumstances beyond control ? Can be used for other charitable or religious purpose (except credit or payment to other registered or approved NGO, but such payment/credit allowed in the case of dissolution) with approval of AO section 11(3)

utilisation for other charitable or religious purpose with approval of AO:

As per section 11 (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).

Payment /credit to other NGO out of accumulated income shall not be allowed except dissolution: 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 section 11(3)(d).

Payment /credit to other NGO from accumulated or set apart income shall be allowed only in the case of dissolution 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 section 11(3)(d) in the year in which such trust or institution was dissolved..

business undertaking –section 11(4)

- ❑ For the purposes of this section 11 "**property held under trust**" includes a **business undertaking** so held.
- ❑ A claim is made by NGO that the **income of any such undertaking shall not be included in the total income** of the persons in receipt thereof,
- ❑ but 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 by AO is > 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**. In other words excess so determined shall be included in the total income and become taxable.
- ❑ This is a case where income applied for charitable or religious purpose but still deemed as applied for non charitable/religious purpose.

Treatment of business income of a trust –section 11(4A)

- ❑ Provisions of Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) of section 11 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.
- ❑ in other words generally exemptions provisions of Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) of section 11 shall not be applicable to business income (i. e business income shall be included in the total income and subject to tax) except where following conditions are satisfied:
 1. **business is incidental to the attainment of the objectives** of the trust; **and**
 2. **separate books of account** are maintained by such trust or institution in respect of such business.

Summary of deemed income & income forming part of total income for tax liability

Section	Nature of income	Cases of deemed income/income forming part of total income	Treatment under income tax
11(1)	Any income	85% income not applied for charitable purpose and option under explanation 1 not exercised.	Taxable Income of the PY in which under utilised.
11(1A)	Capital gain	If net consideration not utilised/partly utilised for acquisition of new capital assets.	Net consideration/ proportionate of non utilisation shall be income of the PY of transfer of capital assets.
11(1B)	Any income	Option exercised under explanation 1 but not applied during the year of receipt of income or in the next FY	previous year immediately following the previous year in which the income was received/derived;
11(3)(a)	Any income	Income applied to purposes other than charitable or religious purposes or ceases to be accumulated or set apart for application	Deemed income of the previous year in which it is so applied or ceases to be so accumulated or set apart
11(3)(b)	Any income	ceases to remain invested or deposited in any of the forms or modes specified in section 11(5),	Deemed income of the previous year in which ceases to remain so invested or deposited
11(3)(c)	Any income	not utilised for the purpose for which it is so accumulated or set apart during the period sought or in the year immediately following the expiry thereof,	Deemed income of the previous year immediately following the expiry of the period aforesaid.
11(3)(d)	Any income	credited or paid to any trust or institution registered u/s 12A or approved educational institution or any hospital or other medical institution u/s 10(23C)(iv)/(v)(vi)(via) except the case of dissolution of trust or institution accumulating or set apart.	Deemed income of the previous year in which credited or paid to other trust or institution.
11(4)	Income of undertaking	If income assessed by AO > income shown in the accounts of undertaking	Excess shall be deemed to be applied to purposes other than charitable or religious purposes
11(4A)	Business income -	Business is not incidental/ancillary of the object of trust or separate books of account not maintained.	No exemption u/s 11 and income shall be taxable income.

Can NGO claim depreciation ? Optional if cost of capital not claimed as application of income- section 11(6)

- amendment by the Finance (No. 2) Act, 2014, w . e. f. 1-4-2015.
- where any income is required to be applied or accumulated or set apart for application, then, for such purposes the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this section in the same or any other previous year.
- depreciation may be allowed if cost of capital assets not claimed as application in any of the PY.

Whether approval & exemption u/s 10(23)/(46) and registration u/s 12A/12AA/AB & exemption u/s 11 both simultaneously or any one of these two? - optional -Section 11(7)

Amendment by FA 2020 :

Where a trust or an institution has been granted registration [under clause (b) of sub-section (1) of section 12AA]] or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996] and the said registration is in force for any previous year, then, nothing contained in section 10 [other than [clause (1), clause (23C) and clause (46)] thereof] shall operate to exclude any income derived from the property held under trust from the total income of the person in receipt thereof for that previous year:

Provided that such registration shall become inoperative from the date on which the trust or institution is approved under clause (23C) of section 10 or is notified under clause (46) of the said section, as the case may be, or the date on which this proviso has come into force, whichever is later:

Provided further that the trust or institution, whose registration has become inoperative under the first proviso, may apply to get its registration operative under section 12AA or section 12AB subject to the condition that on doing so, the approval under clause (23C) of section 10 or notification under clause (46) of the said section, as the case may be, to such trust or institution shall cease to have any effect from the date on which the said registration becomes operative and thereafter, it shall not be entitled to exemption under the respective clauses.

Mode of investments u/s 11(5)

- i. investment in savings certificates as defined in clause (c) of section 219 of the Government Savings Certificates Act, 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).
- iv. investment in units of the Unit Trust of India
- 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;
- 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 section 36(1)(viii)];
- 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 and which is eligible for deduction under section 36(1)(viii)];
- x. (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.
- xi. deposits with the Industrial Development Bank of India
- xii. any other form or mode of investment or deposit as may be prescribed (Rule 17C)

Securities specified under rule 17C prescribed u/s 11(5)

1. Investments in units issued under any scheme of mutual fund referred to in section 10(23D);
2. Any transfer of deposits to Public Account of India;
3. 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;
4. Investment by way of acquiring equity shares of a 'depository';
5. Investment made, on or after 26-11-1999, by a recognised stock exchange referred to in clause (f) of section 2 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 investor;
6. Investment made on or after 1-3-2007 by way of acquiring equity shares of an incubatee by an incubator. [The term 'incubatee' shall mean such incubatee as may be notified by the Government of India in the Ministry of Science and Technology. The term '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] and
7. Investment by way of acquiring shares of National Skill Development Corporation.

New provisions of section 80G approval

**Donation paid to fund or institution as referred in section 80G(2)(a)(iv) allowed as deduction u/s 80G.
Limit of deductions & conditions**

Conditions to be satisfied by fund or institutions- section 80G(5)

if fund or institution 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 or section 10(23AA) or (23C)
- ii. the instrument creating institution or fund 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. 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 , or under any law corresponding to that Act in force in any part of India or under section 25 of the Companies Act, 1956 (now section 8 company), or is a University established by law, or is any other educational institution recognized by the Government or by a University established by law, or affiliated to any University established by law, or is an institution financed wholly or in part by the Government or a local authority;
- vi. For 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; and
- vii.clause (vii) omitted. **[(viii) and (ix) shall be inserted after clause (vii) by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, w.e.f. 1-4-2021**
- viii. **deliver statement in form 10DB and verified in such manner and setting forth such particulars and within such time as may be prescribed**
- ix. **institution or fund furnishes to the donor, a certificate specifying the amount of donation in such manner, containing such particulars and within such time from the date of receipt of donation, as may be prescribed:**

Process for approval of fund or institution u/s 80G(5)

Process for approval of fund or institution u/s 80G(5)

1st proviso to section 80G(5)(ix):application for approval and time limit for application

Application for approval : *Provided that the institution or fund referred to in clause (vi) shall make an application in the prescribed form 10A(electronically on income tax portal) and manner to the Principal Commissioner or Commissioner, for grant of approval,*

Time limit for making application for approval under new system:

- i. where the institution or fund is approved under clause (vi) (as it stood immediately before its amendment by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020), within 3 months from the 1st day of April, 2021. i.e upto 30th June 2021;
note: this period has been extended to 31-08-2021 vide circular no 12/2021 dated 25-06-2021
- i. where the institution or fund is approved and the period of such approval is due to expire, **at least 6 months prior to expiry** of the said period;
- ii. where the institution or fund has been **provisionally approved**, at least 6 months prior to expiry of the period of the provisional approval or within 6 months of commencement of its activities, whichever is earlier;
- iii. in any other case, at least **1 month prior to commencement of the previous year** relevant to the assessment year from which the said approval is sought:

2nd proviso to section 80G(5)(ix): Approval or cancellation

Provided further that the Principal Commissioner or Commissioner, on receipt of an application made under the first proviso, shall,—

- (i) where the application is made under clause (i) of the said proviso, pass an order in writing granting it **approval for a period of 5 years;**
- (ii) where the application is made under clause (ii) or clause (iii) of the said proviso,—
 - (a) call for such documents or information from it or make such inquiries as he thinks necessary in order to satisfy himself about—
 - (A) the **genuineness of activities** of such institution or fund; and
 - (B) the **fulfilment of all the conditions** laid down in clauses (i) to (v);
 - (b) after satisfying himself about the genuineness of activities under item (A), and the fulfilment of all the conditions under item (B), of sub-clause (a),—
 - (A) pass an order in writing granting it **approval for a period of 5 years;** or
 - (B) if he is not so satisfied, pass an order in writing rejecting such application and also cancelling its approval after affording it a **reasonable opportunity of being heard;**
- (iii) where the application is made under clause (iv) of the said proviso, pass an order in writing granting it **approval provisionally for a period of 3 years** from the AY from which the registration is sought, and send a copy of such order to the institution or fund:

4th proviso to section 80G(5)(ix): effective date of approval

Provided also that the approval granted under the second proviso shall apply to an institution or fund, where the application is made under—

- (a) clause (i) of the first proviso, from the assessment year from which approval was earlier granted to such institution or fund;
- (b) clause (iii) of the first proviso, from the first of the assessment years for which such institution or fund was provisionally approved;
- (c) in any other case, from the assessment year immediately following the financial year in which such application is made.]

3rd proviso to section 80G(5)(ix): Time limit for passing order

Provided also that the order under clause (i), sub-clause (b) of clause (ii) and clause (iii) of the first proviso shall be passed in such form and manner as may be prescribed, before expiry of the period of three months, six months and one month, respectively, calculated from the end of the month in which the application was received:

New system of approval- section 80G(5)(ix)- Action to be taken on receiving application for approval :

Applicable clause of 80G(5)(xi) 1 st proviso	Different Cases of application for approval u/s 80G(5)	Time limit for making application for approval 1 st proviso to section 80G(5)(ix)	Order and validity period of approval 2 nd proviso to section 80G(5)(ix)	Time limit within which order to be passed 3 rd proviso to section 80G(5)(ix)	Approval effective for the AY:4 th proviso to section 80G(5)(ix)
(i)	Already having approval u/s 80G(5) in old system	within 3 months from the 1st day of April, 2021. I . e upto 30 th June 2021 or further extended period.	order in writing approving fund or institution for a period of 5 years;	within 3 months from the end of the month in which the application was received.	AY from which approval was earlier granted
(ii)	Already approved and the period of such approval is due to expire,	at least 6 months prior to expiry	where the application is made under clause (ii) or clause (iii) of the said proviso,— (a) call for such documents or information from it or make such inquiries as he thinks necessary in order to satisfy himself about— (A) the genuineness of activities of such institution or fund; and (B) the fulfilment of all the conditions laid down in clauses (i) to (v);	Order within 6 months from the end of the month in which the application was received.	from the assessment year immediately following the financial year in which such application is made.
(iii)	provisionally approved	at least 6 months prior to expiry of the period of the provisional approval or within 6 months of commencement of its activities, whichever is earlier;	(b) after satisfying himself about the genuineness of activities under item (A), and the fulfilment of all the conditions under item (B), of sub-clause (a),— (A) pass an order in writing granting it approval for a period of 5 years; or (B) if he is not so satisfied, pass an order in writing rejecting such application and also cancelling its approval after affording it a reasonable opportunity of being heard;		Provisionally approved —from the first of the assessment years for which such institution or fund was provisionally approved;
(iv)	in any other case	1 month prior to commencement of the PY relevant to the AY from which the said approval is sought	pass an order in writing granting approval provisionally for a period of 3 years from the AY from which the registration is sought, and send a copy of such order to the institution or fund:	Order within 1 months from the end of the month in which the application was received.	from the assessment year immediately following the financial year in which such application is made.

New provisions of section 80G for statement of donations and donation certificates

**statement of donations
and donation certificates**

**Relevant statutory
provisions**

Section 80G(5)(viii)

Rule 18AB

Statement in *Form No. 10BD*

Donation certificate in Form No. 10 BE

*Consequence of delay in filing of
statement or issue of certificate- section
234G*

**Section 80G (5) (viii)/(xi)
rule: 18AB**

ORIGINAL sSTATEMENT
Correction Statement
Certificate of Donation

18AB.(1) For the purpose of clause (viii) of sub-section (5) of section 80G and clause (i) to sub-section (1A) of section 35, the prescribed authority shall be the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) as the case may be.

(2) Statement of particulars required to be furnished by any research association, university, college or other institution or company or fund (hereinafter referred to as reporting person) under clause (viii) of sub-section (5) of section 80G or under clause (i) to sub-section (1A) of section 35 shall be furnished in respect of each financial year, beginning with the financial year 2021-2022, in Form No. 10BD and shall be verified in the manner indicated therein.

While reporting in Form 10BD

Naturewise aggregation such as all corpus donation together shall be reported

all general donation together shall be reported

Donation by the company consolidating the amount of the various employee's where the real donors are the employees whereas the payment made by the company or payment from the joint account of various persons

(3) The reporting person, referred to in sub-rule (2), shall, while aggregating the amounts for determining the sums received for reporting in respect of any person, —

(i) take into account all the donations of the same nature paid by that person during the financial year; and

(ii) proportionately attribute the value of the donation or the aggregated value of all the donations to all the persons, in a case where the donation is recorded in the name of more than one person and where no proportion is specified by the donors, attribute equally to all the donors.

Consequences of delay in filing of statement or issue of certificate

Fee for default relating to statement or certificate.

234G. (1) Without prejudice to the provisions of this Act, where,—

- (a) the research association, university, college or other institution referred to in clause (ii) or clause (iii) or the company referred to in clause (iia) of sub-section (1) of section 35 fails to deliver or cause to be delivered a statement within the time prescribed under clause (i), or furnish a certificate prescribed under clause (ii) of sub-section (1A) of that section; or
- (b) the institution or fund fails to deliver or cause to be delivered a statement within the time prescribed under clause (viii) of sub-section (5) of section 80G, or furnish a certificate prescribed under clause (ix) of the said sub-section,

it shall be liable to pay, by way of fee, **a sum of ₹200/- for every day during which the failure continues.**

(2) The amount of fee referred to in sub-section (1) shall,—

(a) not exceed the amount in respect of which the failure referred to therein has occurred;

(b) be **paid before delivering or causing to be delivered the statement or before furnishing the certificate** referred to in sub-section (1).

Note: applicable from FY 2021-22 and last date 31st May of next FY.

Following clauses (viii) shall be inserted after clause (vii) of sub-section (5) of section 80G by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, w.e.f. 1-4-2021

Newly inserted section 80G(5)(viii):

Original statement:

the institution or fund prepares such statement for such period as may be prescribed and deliver or cause to be delivered to the **prescribed income-tax authority** or the person authorised by such authority such statement in such form(form 10DB) and verified in such manner and setting forth such particulars and within such time as may be prescribed:

Correction statement:

Provided that the institution or fund may also deliver to the said prescribed authority, (a) correction statement for rectification of any mistake or to add, delete or update the information furnished in the statement delivered under this sub-section in such form and verified in such manner as may be prescribed;

Summery of prescribed rule 18AB

Rule 18AB(1)	prescribed income-tax authority	<i>prescribed authority shall be the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) as the case may be.</i>
18AB(2)	Who has to file statement	<i>Statement of particulars required to be furnished by any research association, university, college or other institution or company or fund approved u/s 80G(5)(viii) or 35(1A)(i)</i>
18AB(2)	Applicability	<i>beginning with the financial year 2021-2022</i>
18AB(2)	Prescribed form	Form 10BD
18AB(4)	Mode of furnishing application	<i>Form No. 10BD, shall be furnished electronically- DSC/EVC verification</i>
18AB(5)	Who will verify statement?	<i>Form No. 10BD shall be verified by the person who is authorised to verify the return of income under section 140</i>
18AB(6)	Certificate of donations u/s 80G(5)(ix) or 35(1A)(ii)	<i>Form No. 10 BE specifying the amount of donation received during financial year from such donor, beginning with the financial year 2021-2022</i>
18AB(9)	Time limit for statement	<i>Form No. 10BD shall be furnished on or before the 31stMay, immediately following the financial year in which the donation is received.</i>
18AB(8)	Time limit for certificate	<i>required to be furnished to the donor on or before the 31st May, immediately following the financial year in which the donation is received.</i>
18AB(7)	Format of data structure etc.	<i>Principal Director General of Income-tax (Systems) or the Director General of Income-tax(Systems)</i>

**statement of donation
&
certificates of donation received**

¹**[FORM No. 10BD**
(See rule 18AB)

[e Form]

Statement of particulars to be filed by reporting person under clause (viii) of sub-section (5) of section 80G and clause (i) to sub-section (1A) of section 35 of the Income-tax Act, 1961

Part A

Details of the reporting person reporting the donations

¹	PAN	A	B	C	D	E	1	2	3	4	F
²	Reporting period	Y	Y	Y	Y	-	Y	Y			

Part B

Details of the donors and donations

Sl. No.	Unique Identification Number of the donor	ID code	Section code	Name of donor	Address of donor	Donation Type	Mode of receipt	Amount of donation (Indian rupees)
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I _____,son/daughter of _____,hereby declare that the details given in the form are true and correct to the best of my knowledge and belief.

I undertake to communicate forth with any alteration in the particulars submitted,made at any time hereafter.I further declare that I am filing this form in my capacity as _____ (designation)having Permanent Account Number (PAN) _____ and that I am competent to file this form and verify it.

Signature

Instructions to fill the form:

1. Multiple form 10BD may be filed by the same reporting person, as per the procedures laid down by the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be.
2. The address and contact details of the reporting person filing the statement, as per the latest Income Tax Return filed by the reporting person, will be displayed on the screen and if there is a change, the reporting person will be provided an option to change the details.
3. In section code, the section under which donor is allowed to claim deduction for the donation needs to be filled out of the following options:
 - a) Section 80G
 - b) Section 35(1)(ia)
 - c) Section 35(1)(ii)
 - d) Section 35(1)(iii)

4. In “**Unique identification number of the donor**”, one of the following shall be filled:
- If PAN or Aadhaar number is available, one of that should be mandatorily filled and the following ID code shall be filled:

Type of Identification	Code
PAN	1
Aadhaar Number	2

- If neither PAN or Aadhaar is available, one of the following should be filled:

Type of Identification	Code
Taxpayer Identification Number of the country where the person resides;	3
Passport number;	4
Elector's photo identity number	5
Driving License number	6
Ration card number	7

5. In “**Donation type**”, one of the following needs to be selected:

- Corpus
- Specific grant
- Others

6. In “**Mode of receipt**”, one of the following needs to be selected:

- Cash
- Kind
- Electronic modes including account payee cheque/draft
- Others

7. In case of a donor which have given **donations, which are eligible under different sections** or which are of **different types** or in **different modes**, separate rows should be filled for each such combination.]

¹[FORM NO. 10BE

(See rule 18AB)

Certificate of donation under clause (ix) of sub-section (5) of section 80G and under clause (ii) to sub-section (1A) of section 35 of the Income-tax Act, 1961

Donee	1	PAN of the reporting person	A	B	C	D	E	1	2	3	4	F		
	2	Name of the reporting person												
	3	Address of the reporting person												
	4	Order number granting approval under section 80G or Notification number under section 35 (Unique Registration Number)												
	5	Date of approval/Notification												
Donor	6D	Unique Identification Number	PAN	A	B	C	D	E	1	2	3	4	F	
			Aadhaar											
			Other											
		7a	Name of Donor											
		8 ⁿ	Address of Donor											
	9 ^d	Amount of donation received												
	10 ^o	Financial year in which such donation was received												
	11 ^a	Type of donation	Corpus	Specific grants	Others									
	12 ⁱ	Section under which donation is eligible for deduction	Section 80G(5)(vi)	Section 35(1)(ii)	Section 35(1)(iia)	Section 35(1)(iii)								

VERIFICATION

I, son/daughter of solemnly declare that to the best of my knowledge and belief, the information given in the certificate is correct and complete and is in accordance with the provisions of the Income-tax Act, 1961. I further declare that I am making this certificate in my capacity as _____ and I am also competent to issue this certificate. I am holding permanent account number _____.

Date:

Signature:] _____

1. Inserted by the Income-tax (Sixth Amendment) Rules, 2021, w.e.f. 1-4-2021.

Thank You

**THANK YOU
CA PP SINGH**

Contact details for any issue/clarification

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