

Chapter 1: Introduction

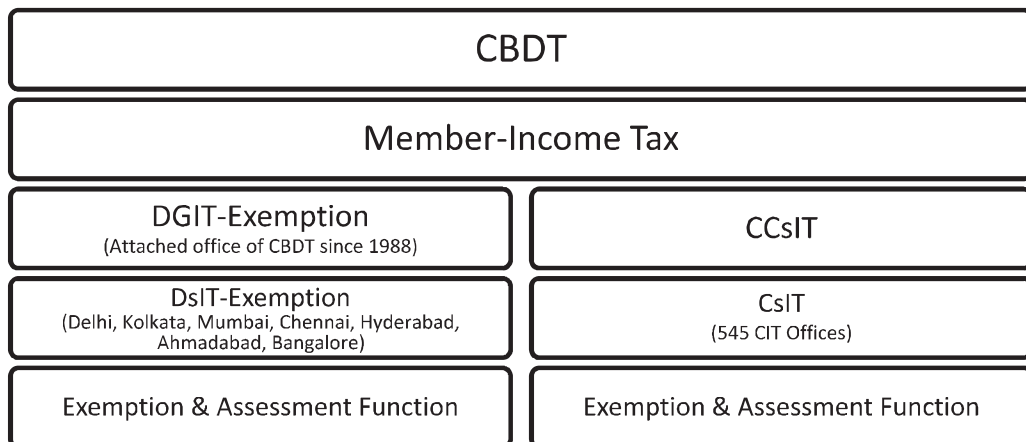
Introduction

1.1 Income Tax Act, 1961 (Act) provides for tax exemptions to various trusts, associations, institutions and other organizations engaged in charitable or religious activities in order to encourage and fulfill social objectives relating to areas such as charity, religion, medical and education etc. Income Tax Department (ITD) is responsible to enforce tax exemption provisions. ITD also ensures that incomes of genuine and eligible institutions and trusts only are exempted from levy of income tax and correct amount of tax is paid by them.

Organizational set up

1.2 The Director General of Income Tax-Exemption (DGIT-E), created in 1988, is responsible for issuing notifications in certain cases of exemption and for recommending exemption for notification to be made by Central Board of Direct Taxes (CBDT) in other cases. To assist DGIT-E, offices of the Director of Income Tax-Exemptions (DIT-E) were created in major/metro stations. Four offices of DIT-E in metro stations are in operation since 1988. DIT-E Bangalore and Hyderabad are working since 2001. These offices have mainly two functional wings, namely, Exemption Wing and Assessment Wing. The Exemptions wing is concerned with granting/processing of registration/approval/notification while the Assessment Wing is responsible for assessment of charitable trusts/institutions.

1.3 In non-major/metro stations, the respective Chief Commissioners of Income Tax (CCsIT) discharge the functions of DGIT-E and are assisted by the Commissioner of Income Tax (CsIT), Additional/Joint /Deputy/Assistant Commissioners of Income Tax as well as the Income Tax Officers (ITOs). CITs have dual responsibilities of registration and assessment of Trusts apart from normal assessment function. The organogram of ITD responsible for exemption and assessment of charitable trusts/institutions is given below.



1.4 The sanctioned strength and person-in-position of DIT-E offices¹ as on 31 March 2012 is given in Table 1.1.

Table 1.1: Sanctioned strength & Person-in-position

Cadre	Sanctioned Strength	Person-in-position	Vacancy
DIT-E	7	7	0
Addl./JDIT-E	8	7	1
DDIT/ADIT-E	19	18	1
ITO/TRO	25	28	NA

Why we chose the topic

1.5 Earlier we have examined the working of the schemes of the exemptions under reviews on “Functioning of Directorate General of Income Tax (Exemptions), Calcutta²”, “Assessment of Private Hospitals and Nursing Homes³”, “Assessments of Private Schools, Colleges and Coaching Centres⁴” and “Assessments of Sports associations/institutions and Sports personalities⁵”. We pointed out procedural lapses in granting registration/exemption and inconsistencies in Act.

1.6 The Public Accounts Committee (PAC) selected the review on “Assessments of Private Schools, Colleges and Coaching Centres” which, interalia, recommended⁶ for creation of database of educational institutions and removal of overlapping nature of exemptions provided in Sections 11, 12 and 10(23C) of Act. These sections of Act are applicable to charitable trusts and institutions. PAC had also emphasized the need for effective tax deterrence against the rampant commercial exploitation of education in the country by various institutions.

1.7 There has been rapid growth of non-governmental organizations and institutions in recent years in the areas of education, social and medical sectors which are getting registered for claiming exemptions from taxation on their income derived from their charitable and religious activities under the provisions of Act. Many private schools, colleges, coaching centers, hospitals, local authorities etc are running as charitable trusts/institutions to avail tax exemptions. A number of questions on the charitable character of these organizations and institutions are raised from time to time. Chart 1.1 shows deductions/exemptions claimed by assesseees in AY 11⁷ as recorded in Assessment Information System (AST). It is clear from Chart 1.1 that only 3 percent of assesseees (51,570 Trusts) claimed 96 per cent (₹ 76,02,283 Cr) of total deductions/exemptions.

¹ SS & PIP does not include DIT-E office of Delhi

² Chapter V of C&AG’s Report No.12A of 2001,

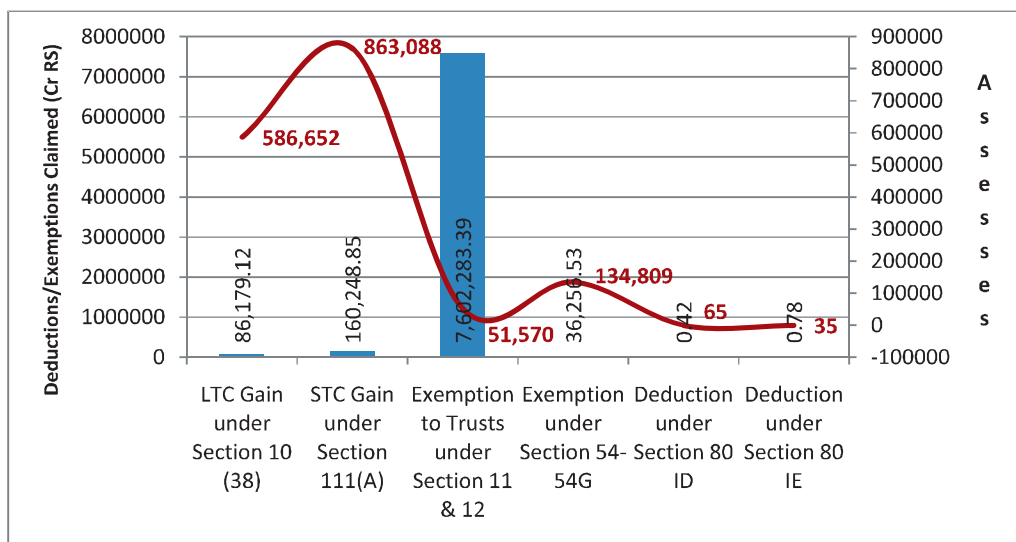
³ Chapter III of C&AG’s Report No.12A of 2002

⁴ Chapter III of C&AG’s Report No.13 of 2004

⁵ Chapter III of C&AG’s Report No.8 of 2007

⁶ Public Accounts Committee 2006-07 Thirty sixth Report, Fourteenth Lok Sabha, (12/12/2006)

⁷ Data made available by DGIT-System, New Delhi

Chart 1.1: Deductions/Exemptions claimed by Assesseees in FY 11

1.8 As Trusts are availing majority of total exemptions, we undertook Performance Audit on 'Exemption to Charitable Trusts and Institutions' to seek assurance on scheme of registration and assessment processes.

Legal provisions

1.9 Registration/approval granted to the Charitable Trusts and Institutions (Trusts) are allowed under section 12A by CIT and section 10(23C) by DGIT. Other relevant provisions dealing with application of money received by such institutions, issuance of notifications for sanctions and allowance of exemption from taxation including filing of returns under Act are available in Sections 2(15), 2(24)(ia), 10(23C), 11, 12, 12AA, 13, 80G, 115BBC, 139(4A) and 139(4C) of Act (**Annex 1**) Besides, there are certain circulars and instructions issued by CBDT and judicial decisions regarding registration/approval and assessment of Trusts.

Audit Objectives

1.10 The objectives of our study are to seek assurances that

- Application for registration/approval/notification by a trust/institution/organization engaged in permissible charitable and religious activities is processed as per extant laws.
- Exemptions claimed by such institutions are allowed during assessment after fully satisfying the conditions prescribed there for and compliance of other existing tax provisions is made.
- Proper machinery within ITD exists to exercise necessary checks/controls in the area of potential and reported misuse of the provisions relating to exemptions available in Act.
- Monitoring and utilization of accumulation and foreign contributions are properly done by ITD.
- Inadequacies in the provisions of Act relating to exemptions exists.

Audit scope

1.11 The review covers the following:

- a. Registration of all identified trusts/institution engaged in charitable and religious activities under section 12A;
- b. Approval of all identified universities, educational institutes, hospitals and other funds or institution under section 10(23C);
- c. Notifications issued in respect of all identified institutions receiving donations and approval under section 80G(5) &
- d. Assessments of all the identified charitable or religious trusts or institutions, completed during Financial Year (FY) 09 to FY 11 and upto the date of audit.

Sample size

1.12 We covered 100 *per cent* units in trust circles/wards with 100 *per cent* assessments in scrutiny cases and 30 *per cent* of summary assessment cases. As regards company circles /wards including Section 25 companies, we covered 30 percent units with checking of 30 *per cent* assessments in scrutiny cases. In respect of mixed circles/wards, we covered 10 *per cent* units with checking of 50 percent assessments in scrutiny cases. We identified total 1,36,639⁸ assessments cases in 554 units out of which 81,421⁹ cases (60%) were selected for test check.

Audit methodology

1.13 We collected data regarding registration/approval/notification of the trusts/institutions/organizations engaged in the charitable or religious activities for availing exemptions under section 12A, 10(23) and 80G (5) from the offices of the concerned DIT(E)s/CCITs/CITs with reference to information contained in Form ITR 7 and compiled keeping in view various aspects of the review and comments offered accordingly.

Acknowledgment

1.14 We held an entry conference with CBDT on 10 April 2012 wherein we explained the audit objectives, scope and the main focus areas of audit examination. The Indian Audit and Accounts Department acknowledges the cooperation of ITD in facilitating the audit.

1.15 We issued draft Performance Report to the Ministry in April 2013 for their comments. After receipt of the Ministry's reply in May 2013, we held exit conference to discuss our findings, and recommendations. We again issued draft Performance Report in June 2013 containing Ministry's views for their further comments. The Ministry has further furnished their comments in July 2013 which we have also incorporated in this report wherever possible.

⁸ Scrutiny cases : 17,295 & Summary cases: 1,19,344

⁹ Scrutiny cases : 15,538 & Summary cases: 65,883