Chapter 6: Compliance with existing provisions of Act/Rules/ Circulars in making assessments

Exemptions are granted to charitable Trusts/Institutions under Sections 10(21), 10(23C) and 11 subject to fulfilment of various conditions specified under the Act. In order to ensure that the conditions specified for exemption are satisfied during assessment, the assessing officer is required to carry out due diligence in application of provisions of the Act, Rules framed thereunder, circulars/instructions issued by the CBDT from time to time and relevant judicial decisions. During this performance audit, Audit examined whether the Department had complied with all the provisions of the Act/ Rules/circulars in completing the test checked assessments.

Audit noticed mistakes in 950 assessment cases involving tax effect of ₹ 1,173.92 crore *viz.* irregular exemptions to trusts and institutions, incorrect computation of income, incorrect computation of application of income, irregular allowance of accumulation, irregular allowance of exemption on corpus donation, incorrect levy of tax/surcharge/interest, etc. Details of Audit observations noticed are tabulated below:

Table 6.1: Category-wise Audit observations

Sl. No.	Nature of observation	No of cases	Tax effect (₹ in crore)
1	Irregular allowance of exemption under Section 10(23C)(iiiad)	7	2.36
2	Irregular allowance of exemption when the Trusts/Institutions are not substantially financed by the Government	10	46.71
3	Incorrect computation of income	31	496.66
4	Incorrect computation of application of income	27	42.38
5	Irregular allowance of accumulation	66	68.14
6	Allowance of exemption although income or property of the trust was utilized for the benefit of persons having substantial interest	22	33.07
7	Irregular allowance of depreciation on assets whose acquisition had already been claimed as application of income	8	13.78
8	Irregular allowance of expenditure from corpus/earmarked funds as application of income	11	81.58
9	Irregular allowance of exemption on corpus donation	9	52.08
10	Grant of exemption to trusts, although activities were not charitable in nature	9	189.07
11	Incorrect levy of tax/surcharge/interest	65	103.11
12	Non levy of penalty	651	1.68
13	Other deficiencies noticed in assessment	34	43.30
	Total	**950**	**1,173.92**

6.1 Irregular allowance of exemptions

Exemptions are granted to Charitable Trusts/Institutions under Sections 10(23C) and 11 subject to fulfilment of various conditions specified under the Act. Audit noticed cases where the eligibility of Trusts/Institutions was not verified during assessment, which resulted in irregular allowance of exemptions. The cases are discussed in detail in the succeeding paragraphs.

6.1.1 Irregular allowance of exemption under Section 10(23C)(iiiad)

Section 10(23C)(iiiad)[78] provides exemption to any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipt of ₹ one crore.

Audit noticed in seven assessment cases[79] involving tax effect of ₹ 2.36 crore that exemption was irregularly allowed even though the aggregate annual receipts of these universities or educational institutions exceeded ₹ one crore. One case is illustrated bellow:

(i) In Punjab, CIT(E) Chandigarh charge, a private trust engaged in educational activity, filed return of income for AY 2016-17 and 2017-18 at ₹ 'Nil' income for both the years. The scrutiny assessment for AY 2016-17 was completed in December 2018 at ₹ 'Nil' income and the return of income (ITR) for AY 2017-18 was processed summarily at ₹ 'Nil' income. Audit noticed that the assessee was allowed exemption of ₹ 2.29 crore (₹ 1.12 crore in AY 2016-17 and ₹ 1.17 crore in AY 2017-18) under Section 10(23C)(iiiad). Since the gross receipt of the assessee trust exceeded the prescribed limit of ₹ one crore, approval of the Pr. CIT/CIT was required under Section 10(23C)(vi), but the same was not obtained by the assessee. This had resulted in irregular exemption of ₹ 2.29 crore, involving tax effect of ₹ 1.17 crore.

The Ministry has accepted (March 2022) the Audit observation and remedial action has been initiated by issuing notice under Section 148 in March 2021.

6.1.2 Irregular allowance of exemption when the Trusts/Institutions not substantially financed by the Government

As per Section 10(23C)(iiiab) of the Act, any income of any university or other educational institution existing solely for educational purposes and not for the purposes of profit, and which is wholly or substantially financed by the

[78] University/educational institutions existing solely for educational purposes and not for the purposes of profit are exempt from tax

[79] Andhra Pradesh -2, Punjab -2 and Rajasthan -3

Government, shall not be included in computing the total income of a previous year.

Rule 2BBB of the Income Tax Rules, 1962 (the Rules) further provides that for the purposes of the Section 10(23C)(iiiab), an entity shall be considered as being substantially financed by the Government, if the Government grant exceeds 50 *per cent* of the total receipts including any voluntary contributions, of such entity, during the relevant previous year.

Audit noticed in 10 assessment cases[80] involving tax effect of ₹ 46.71 crore that exemption was irregularly allowed to universities or educational institutions which were not substantially financed by the Government. Two cases are illustrated below:

(i) In Punjab, CIT(E) Chandigarh charge, a private society engaged in educational activity, filed return of income for AY 2015-16 and 2016-17 at ₹ 'Nil' income for both the AYs. The ITR for AY 2015-16 was processed summarily at ₹ 'Nil' income and scrutiny assessment for AY 2016-17 was completed in December 2018 at ₹ 'Nil' income. Audit noticed that for the AY 2015-16 and AY 2016-17, exemptions were allowed under Section 10(23C)(iiiab) even though the assessee was not substantially financed by Government. The grant received was ₹ 19.35 crore against gross receipt of ₹ 41.35 crore in both the AYs, which was less than the stipulated 50 *per cent* as per provision *ibid*. This resulted in irregular allowance of exemption of ₹ 5.57 crore, involving tax effect of ₹ 2.77 crore in both the AYs.

The Ministry has accepted (March 2022) the Audit observation and remedial action has been initiated by issuing notice under Section 148 in March 2021.

(ii) In Rajasthan, under CIT(E) Jaipur charge, a government entity engaged in educational activity, and selected in PA sample as 'high value case[81]', filed return of income for AY 2016-17 at ₹ 'Nil' income. The scrutiny assessment was completed in December 2018 at ₹ 'Nil' income, after allowing exemption of ₹ 58.55 crore. Audit noticed that the total receipt of the institution was ₹ 60.09 crore, including Government grant of ₹ 1.38 crore. Since the Government grant was only 2.29 *per cent* of total receipt, it cannot be categorised as wholly or substantially financed by the Government. Thus, allowance of exemption of ₹ 58.55 crore under Section 10(23C)(iiiab) was irregular. This resulted in short levy of tax of ₹ 13.02 crore.

[80] Gujarat - 1, Punjab - 5 and Rajasthan - 4

[81] Gross receipt of ₹ 50 crore or above

The Ministry has accepted (March 2022) the Audit observation and remedial action has been initiated by issuing notice under Section 148 in March 2021.

Thus, Audit noticed that in spite of specific provisions under Section 10(23C)(iiiab) of the Act, eligibility of Trusts/Institutions for exemption were not verified by the AOs in certain cases during assessment, resulting in revenue leakage.

6.2 Incorrect computation of income and its application

Under the provisions of the Income Tax Act, 1961, the assessing officer is required to make a correct assessment of the total income of the assessee and determine the correct sum payable by him or refundable to him on the basis of such assessment. Further, Section 11(1)(a) provides that the income derived from the property held under trust wholly for charitable or religious purposes, shall not be included in total income, to the extent it was applied to charitable purpose in India; and where any such income is accumulated or set apart for application to such purpose in India to the extent to which the income so accumulated or set apart is not in excess of 15 *per cent* of the income from such property. Audit noticed in 60 cases that the AOs, while finalizing the assessments, did not compute the income or application of income correctly, which are illustrated in the succeeding paragraphs:

6.2.1 Incorrect computation of income

Audit noticed errors in 31 assessment cases[82] involving tax effect of ₹ 496.66 crore while determining income from the property held by the trusts due to non-consideration of various receipts of the trusts as income, mistakes in giving appeal effect etc. Seven cases are illustrated below:

(i) In West Bengal, CIT(E) Kolkata charge, a Government society engaged in medical relief and selected in the audit sample as 'Top 200' case, filed return of income for AY 2016-17 at ₹ 'Nil' income and scrutiny assessment was completed in October 2018 at ₹ 'Nil' income. Audit noticed that in the assessment order, gross receipt of the institution was considered at ₹ 1,485.54 crore. However, scrutiny of the return of income and Form 10BB showed that the gross receipt of the assessee, for the period under consideration, was ₹ 2,525.04 crore. Thus, there was short consideration of gross receipt of ₹ 1,039.50 crore, having tax effect of ₹ 359.75 crore.

The Ministry has accepted (March 2022) the audit observation and remedial action has been taken under Section 154/143(3) in March 2021.

[82] Gujarat-2, Karnataka-2, Kerala -1, Maharashtra -10, Punjab -6, Tamil Nadu -5, Uttar Pradesh -1 and West Bengal-4

(ii) In Gujarat, CIT (E), Ahmedabad charge, a Government entity engaged in the activity of General Public Utility, filed return of income for AY 2015-16 at ₹ 'Nil' income. The gross receipt during the year was ₹ 481.18 crore and the case was selected in the PA sample as 'Top 200' case. The scrutiny assessment was completed in October 2018 at ₹ 733.88 crore. The assessee filed an appeal against the scrutiny assessment and appeal effect was given in March 2019 as per CIT(A)'s order of December 2018. Audit observed that while giving effect to the appeal order the AO incorrectly determined loss of ₹ 155.03 crore instead of income of the same amount which resulted in short levy of tax of ₹ 53.67 crore.

The Ministry has accepted (March 2022) the audit observation and remedial action has been taken by passing order under Section 154 in February 2021.

(iii) In Maharashtra under CIT(E) Mumbai charge, a private trust established as a Corporate Social Responsibility arm of 'B' Ltd and engaged in multiple charitable activities, filed return of income for AY 2015-16 at ₹ 'Nil' income. The case was selected in the PA sample as 'high value' case since gross receipt of the trust was ₹ 55.89 crore. The scrutiny assessment was completed in December 2017, assessing income at ₹ 'Nil'. It was noticed from the 'Notes on Accounts' for the year ended 31st March 2015 that the assessee had applied for FCRA registration which was pending but the assessee accepted the foreign contribution, amounting to ₹ 63.22 crore during the year which was kept in an Escrow Account. Audit noted that there was a disclosure in the 'Notes on Accounts' that if the trust failed to obtain the FCRA registration, the said amount shall be refunded to the respective contributors.

As per Section 11(1) and 11(2) of the FCRA Act 2010, no person shall accept a foreign contribution unless it obtains a certificate of registration from the Central Government and if accepts any foreign contribution before its registration, it has to take prior permission from the Central Government. Audit however noticed that the assessee neither had necessary registration under the FCRA Act, 2010 nor obtained the prior permission of the Central Government before receiving the Foreign Contribution. Audit further noticed that in the subsequent year (i.e., AY 2016-17), the assessee obtained the FCRA registration in September 2015. Out of the foreign contribution of ₹ 63.22 crore kept in the Escrow account in the earlier year, the assessee transferred ₹ 47.76 crore to its FCRA account, and invested the remaining amount in Fixed Deposits. As per the provisions of Section 11 of the IT Act, the contribution, being a voluntary contribution, was required to be treated as income of the trust. Omission

to do so resulted in under-assessment of income of ₹ 63.22 crore involving short levy of tax of ₹ 21.39 crore.

Reply of the Ministry was awaited (February 2022).

(iv) In West Bengal, CIT(E) Kolkata charge, a private trust engaged in the activity of 'Medical Relief', filed return of income for AY 2016-17 at ₹ 'Nil' income. The case was selected in the PA sample as 'Top 200' case since gross receipt of the trust was ₹ 197.05 crore. The scrutiny assessment was completed in December 2018 at ₹ 'Nil' income (deficit of ₹ 41.47 crore). Audit noticed the following irregularities which resulted in aggregate tax impact of ₹ 3.37 crore:

(a) In the computation of taxable income, the Assessing Officer had deducted 'Apportioned patient care fund' of ₹ 5.18 crore, treated as income by the assessee in its Income & Expenditure A/c', without corresponding deduction of the expenditure incurred against such income. This resulted in irregular increase in 'Deficit' of ₹ 5.18 crore involving tax impact of ₹ 1.77 crore.

(b) 'Work in progress (WIP)' amounting to ₹ 1.96 crore, had been added to the 'Total of expenditure as per the Income & Expenditure A/c', while computing 'deficit' of ₹ 41.47 crore. Audit scrutiny revealed that there was a discrepancy in the closing balance of WIP for AY 2015-16 and opening balance of the WIP for AY 2016-17. The 'WIP' for AY 2016-17 was to be ₹ (-) 2.51 crore, instead of ₹ 1.96 crore as claimed by the assessee. This resulted in irregular increase in 'Deficit' of ₹ 4.47 crore while computing the income. The omission resulted in over determination of deficit of ₹ 4.47 crore involving tax impact of ₹ 1.53 crore.

(c) The interest income of ₹ 27.31 lakh on 'Earmarked fund' was not treated as receipt while computing the income which involves tax impact of ₹ 6.64 lakh.

The Ministry has accepted (March 2022) the audit observation and remedial action has been taken by passing order under Section 263/143(3) in December 2021.

(v) In Uttar Pradesh, under CIT (E) Lucknow charge, a private trust engaged in educational activity, filed return of income for AY 2015-16 at ₹ 'Nil' income. The case was selected in the PA sample as 'high value' case since gross receipt of the trust was ₹ 99.69 crore. The scrutiny assessment, was completed under Section 143(3) read with Section 263, in December 2018, at income of ₹ 25.11 crore, after adding ₹ 9.83 crore spent on acquisition

of land for ''J' University', which was neither a part of the assessee's trust, nor was the expenditure made on any activity to meet the aims and objectives of the assessee's trust. Audit noticed that the AO, out of the total fixed asset purchased for ''J' University' for ₹ 42.76 crore, made partial disallowance of ₹ 9.83 crore and allowed ₹ 32.93 crore, which should also have been disallowed and added back to the income of the assessee. This resulted in short computation of income of ₹ 32.93 crore having tax effect of ₹ 16.23 crore.

The Ministry has accepted (March 2022) the audit observation and remedial action has been initiated by issuing notice under Section 154 in December 2021.

(vi) In Maharashtra, CIT(E) Mumbai charge, a Local Authority created by Government of Maharashtra and engaged in the activity of 'Relief of the Poor' filed return of income for AY 2016-17 at ₹ 'Nil' income. The case was selected in the PA sample as 'Top 200' case since gross receipt of the trust was ₹ 180.37 crore. The scrutiny assessment was completed in December 2018, assessing income at ₹ 492.25 crore, after denying exemption under Section 11 of the Act. Audit scrutiny of balance sheet revealed that the assessee transferred an amount of ₹ 23.04 crore to a Fund, pertaining to deposit forfeited/lapsed. Audit observed from the notes to accounts that these deposits represent unclaimed deposit for more than three years which had been considered as 'lapsed' and directly transferred to a reserve fund. As this amount represents income of the assessee, it was required to be brought to tax. The omission to do so resulted in under-assessment of income of ₹ 23.04 crore, involving short levy of tax of ₹ 8.0 crore.

Reply of the Ministry was awaited (February 2022).

(vii) In Maharashtra, CIT(E), Mumbai charge, a private trust engaged in the activity of 'Relief of the Poor' filed return of income for AY 2016-17 at ₹ 'Nil' income. The assessee was selected as 'High value' case in the audit sample since the gross receipt of the trust was ₹ 101.21 crore. The scrutiny assessment was completed in December 2018, assessing income at ₹ 'Nil'. The trust has been established for the upliftment and well-being of the people residing under the umbrella of an institution, by providing them more spacious ownership flats with modern amenities in a better environment. Audit observed that the AO, while finalising the assessment did not allow deficit of ₹ 140.63 crore to be carried forward to the assessee as the deficit was met from the corpus donation (₹ 101.21 crore) and loan (₹ 90 crore). AO also concluded that the corpus donation and loan were in the nature of voluntary contributions and were to be applied towards the

object for claim of exemption. The corpus donation and loan being voluntary contribution should have been treated as income, which was not done by the AO. Omission of not computing total income at ₹ 50.58 crore, in accordance with the findings of assessment by the AO resulted in non levy of tax of ₹ 17.48 crore.

Reply of the Ministry was awaited (February 2022).

Thus, Audit noticed that in certain cases, while finalization of assessment, the Department did not consider various receipts of the trusts as income from the property held by the trusts which resulted in incorrect computation of income and short levy of tax.

6.2.2 Incorrect computation of application of income

Audit noticed 27 assessment cases[83] involving tax effect of ₹ 42.38 crore where the AOs, while finalizing the assessment, had treated inadmissible expenses as application of income for charitable or religious purpose. Those inadmissible expenses *inter alia* included allowance of deemed application without filing Form 9A, allowance of standard deduction under Section 24(a) on house property income, acceptance of various provisions and expenditure like Income Tax, TDS etc., as application of income. Five cases are illustrated below:

(i) In Tamil Nadu, CIT(E) Chennai charge, a private trust engaged in educational activity, filed return of income for AY 2017-18 at ₹ 'Nil' income. The gross receipt of the trust was ₹ 55.17 crore and the assessment was completed in December 2019 at ₹ 'Nil' income. Audit noticed that the assessee had claimed deemed application of ₹ 24.79 crore during the previous year under clause (2) of Explanation (1) to Section 11(1). However, the assessee did not file the requisite Form 9A as envisaged in Rule 17 of IT Rules. Thus, claim of deemed application of ₹ 24.79 crore was not admissible with consequential tax effect of ₹ 12.13 crore including interest.

The Ministry has accepted (March 2022) the audit observation and remedial action has been initiated by issuing notice under Section 148 in March 2021.

(ii) In Karnataka, CIT(E) Bengaluru charge, a Government society engaged in the activity of 'General Public Utility' filed return of income for AY 2015-16 at ₹ 'Nil' income. The case was selected in the PA sample as 'High value' case since gross receipt of the trust was ₹ 81.69 crore. The scrutiny

[83] Andhra Pradesh -1, Karnataka -2, Kerala -1, Maharashtra -10, Odisha -1, Punjab -2, Rajasthan -3, Tamil Nadu -2 and West Bengal – 5.

assessment was completed in September 2017 and income determined at ₹ 71.30 crore after disallowing exemption under Section 11. Audit noticed that project grants of ₹ 8.59 crore were diverted towards operational expenditure and the same was debited to the Income and Expenditure account and claimed as expenditure, which was allowed. The mistake resulted in short computation of income of ₹ 8.59 crore with a tax effect of ₹ 4.12 crore.

The Ministry has accepted (March 2022) the audit observation and initiated remedial action by issuing notice under Section 154 in January 2021.

(iii) In Karnataka, CIT (E) Bengaluru charge, a private trust engaged in the activity of 'Education' filed return of income for AY 2015-16 at ₹ 'Nil' income. The case was selected in the PA sample as 'Top 200' case since gross receipt of the trust was ₹ 258.81 crore. The scrutiny assessment was completed in December 2017 by assessing income at ₹ 16.80 crore after denying exemption under Section 11. Audit noticed that while computing the income, depreciation at ₹ 6.64 crore was allowed twice resulting in short computation of income by ₹ 6.64 crore with a consequent short levy of tax including interest at ₹ 3.27 crore.

The Ministry has accepted (March 2022) the audit observation and remedial action has been taken by passing order under Section 154 in February 2021.

(iv) In West Bengal, CIT(E) Kolkata charge, a private trust engaged in the activity of 'Medical Relief' filed return of income for AY 2016-17 at ₹ 'Nil' income. The case was selected in the PA sample as 'Top 200' case since gross receipt of the trust was ₹ 197.05 crore. The scrutiny assessment was completed in December 2018 at ₹ 'Nil' income. Audit noticed that the 'Provision of doubtful debt' of ₹ 37.40 lakh, had been treated as 'application of income' during assessment, by the AO, although the Act requires that only the actual expenditure incurred during the year can be treated as application and a mere provision cannot be allowed as application. The same view has also been expressed by the Apex Court[84]. This resulted in short levy of tax of ₹ 9.75 lakh.

The Ministry has accepted (March 2022) the audit observation and remedial action has been taken by passing order under Section 263/143(3) of the Act in December 2021.

[84] Nachimuthu Industrial Association v/s CIT, reported in 235 ITR 190 [1999]

(v) In Maharashtra, under CIT(E) Mumbai charge, a Government society engaged in the activity of 'Medical Relief' filed return of income for AY 2015-16 at ₹ 'Nil' income. The case was selected in the PA sample as 'Top 200' case since gross receipt of the assessee was ₹ 860.94 crore. The scrutiny assessment of the trust was completed in October 2017, assessing income at ₹ 'Nil' income (deficit of ₹ 49.96 crore). Audit scrutiny of computation of income revealed that the assessee had claimed ₹ 88.00 crore towards grants in transit by exercising option as per clause 2 of explanation 1 to Section 11(1) of the Act which provides that such option should be exercised before the due date of filing of return of income. Since the assessee failed to file the return of income within due date, the option exercised was not allowable. However, the Department allowed the claim as per the returned income. The mistake resulted in under-assessment of income of ₹ 38.03 crore, with consequent short levy of tax ₹ 12.91 crore.

Reply of the Ministry was awaited (February 2022).

Thus, Audit observed that in certain cases, the AOs while finalising assessments had allowed inadmissible expenses as application of income for charitable or religious purpose, which resulted in undue benefit to the assessees.

6.3 Irregular Allowance of Accumulation

Section 11(2) of the Act provides that if in the previous year, income applied to charitable or religious purposes in India falls short of 85 *per cent* of the income derived during that year from the property held under a Trust, the trust can opt for accumulation of the unapplied portion of the income, to be spent for specified purpose(s) in the next five years, provided the assessee furnishes a statement in Form 10, on or before the due date of furnishing the return of income, stating the purpose for which the income is being accumulated. Further, the income accumulated under Section 11(2) shall have to be invested in the modes specified under Section 11(5) in order to avail exemption.

Therefore, the purpose of accumulation should be specific and the accumulation should be for the objects of the Trust. The Hon'ble Madras High Court[85] had held that the purpose had to be specific and cannot be general in nature.

Audit noticed 66 assessment cases[86] involving tax effect of ₹ 68.14 crore where the AOs had allowed accumulation under Section 11(2) even though there was insufficient fund for accumulation, the purpose of accumulation was general in nature without mentioning the specific purpose, the assessee failed to furnish

[85] CIT vs. M. Ct. Muthaiah Chettiar Family Trust (2000) reported in 245 ITR 400

[86] Chhattisgarh -2, Delhi -2, Gujarat -1, Himachal Pradesh -2, Jammu -1, Karnataka -9, Madhya Pradesh -12, Maharashtra -25, Punjab -5, Tamil Nadu -3, Uttarakhand -1 and West Bengal -3.

Form 10 before the due date specified under Section 139(1) or the accumulation was not invested in the specified mode. Five cases are illustrated below:

(i) In Karnataka, CIT(E), Bengaluru Charge, scrutiny assessment of a private trust engaged in the activity of 'General Public Utility' filed return of income for AY 2016-17 at ₹ 'Nil' income. The scrutiny assessment was completed in December 2018 at ₹ 'Nil' after allowing exemption of ₹ 10.34 crore under Section 11. Audit noticed that the assessee had accumulated an amount of ₹ 7.96 crore and the purpose for accumulation was mentioned as 'Set apart for accumulation'. Since the purpose does not fulfil the conditions laid down in Section 11(2), the same should have been disallowed and brought to tax. The tax effect on this account works out to ₹ 3.50 crore. The DCIT (E), Circle 1, Bengaluru stated (September 2020) that the objections would be looked into for necessary remedial action.

Reply of the Ministry was awaited (February 2022).

(ii) In Maharashtra, CIT(E), Mumbai charge, a private corporate trust engaged in educational activity, filed return of income for AYs 2016-17 & 2015-16 at ₹ 'Nil' income. The scrutiny assessment for the AYs 2016-17 & 2015-16 was completed in December 2018 and December 2017 respectively, assessing income at ₹ 'Nil' after allowing accumulation under Section 11(2) for ₹ 9.64 crore and ₹ 4.91 crore respectively. Audit scrutiny revealed that the assessee had filed Form 10 for both the years in December 2017. Further, it was also noticed that the assessee had not filed Form 10 for AY 2014-15 but claimed accumulation of ₹ 70.18 lakh under Section 11(2). As the assessee had failed to file Form 10 within the stipulated period, the accumulation under Section 11(2) was not to be allowed. This resulted in under-assessment of income of ₹ 15.24 crore involving tax effect of ₹ 5.16 crore for AY 2014-15 to AY 2016-17.

The DCIT (E), Circle 1, Mumbai accepted (March 2021) the audit observations for AY 2015-16 and 2016-17 and proposed for remedial action under Section 263. For AY 2014-15, the Department had not accepted the audit observation stating the reason that no accumulation was claimed by the assessee for the relevant AY.

The reply for AY 2014-15 was not tenable as the assessee had claimed accumulation of ₹ 70.18 lakh under Section 11(2).

Reply of the Ministry was awaited (February 2022).

(iii) In Madhya Pradesh, under CIT(E) Bhopal charge, a private trust engaged in 'Medical Relief', filed original return of income for AY 2014-15 at ₹ 'Nil' income. The case was selected in the PA sample as 'High Value' case since

the gross receipt of the assessee was ₹ 59.78 crore. The rectification order was passed in January 2017, assessing the income as ₹ 'Nil'. Audit noticed that the assessee claimed an amount of ₹ 1.10 crore was accumulated for application for the next five years, but did not file Form 10 electronically/ manually. However, the accumulated amount of ₹ 1.10 crore was not added to the total income of the assessee. This resulted in short levy of tax of ₹ 42.94 lakh.

The Ministry, while not accepting the audit observation, stated (March 2022) that the assessee has not claimed any exemption under Section 11(2) of the IT Act and Form 10 is not applicable in this case. The assessee has not claimed any amount in Schedule I of ITR for accumulation of income under Section 11(2) of the Act. However, the assessee has claimed the amount of ₹ 1.09 crore under clause 2 of explanation of Section 11(1) of the Act.

Reply of the Ministry is being verified by the Field Audit office.

(iv) In West Bengal, under CIT-(E), Kolkata charge, a Government society engaged in 'Research' activity, filed original return of income for AY 2016-17 at ₹ 'Nil' income. The case was selected in the PA sample as 'Top 200' case since the gross receipt of the assessee was ₹ 172.61 crore. The scrutiny assessment was completed at ₹ 'Nil' income in November 2018 at ₹ 'Nil' income. Audit noticed that the assessee had claimed and was allowed exemption under Section 10(21). Further, Audit noticed that the assessee was allowed statutory accumulation of 15 *per cent* of income under Section 11(1) of the Act, in the assessment order, even though the assessee was registered under Section 35(1)(ii) and not registered under Section 12/12AA. Such irregular accumulation of income, amounting to ₹ 21.00 crore, had a tax effect of ₹ 9.59 crore.

The Ministry has accepted (March 2022) the audit observation and remedial action has been initiated by passing order under Section 263 in March 2021.

(v) In Tamil Nadu, CIT(E), Chennai charge, a private trust engaged in educational activity, filed return of income for AY 2016-17 at ₹ 'Nil' income. The case was selected in the PA sample as 'high value' case since the gross receipt of the trust was ₹ 50.03 crore. The scrutiny assessment was completed in November 2018 at ₹ 'Nil' income. Audit noticed that the total receipts were ₹ 50.03 crore and the total application of income was ₹ 70.04 crore during FY 2015-16. As the entire receipts was treated as applied, the assessee was not eligible for any accumulation. However, the assessee was allowed to accumulate ₹ 7.50 crore, being 15 *per cent* of total

receipts of ₹ 50.03 crore. This resulted in irregular accumulation of ₹ 7.50 crore.

The Ministry has accepted (March 2022) the audit observation and remedial action has been initiated by issuing notice under Section 148 in March 2021.

Thus, Audit observed that in certain cases, the ITD had allowed accumulation in contravention of provisions stipulated under Section 11(2) of the Act.

6.4 Allowance of exemption although income or property of the trust was utilised for the benefit of persons having substantial interest

Section 13 provides that exemption to charitable Trusts/Institutions under Section 11 and Section 12 would not be available if any income or property of the trust is applied, directly or indirectly, for the benefit of person[87] specified in Section 13(3). Further, when a trust makes any payment or provide any services to specified persons then it has to disclose the details in the Audit Report in Form 10B whether any part of the income or property of the Trusts/Institutions was lent, or continues to be lent, in the previous year to a specified person.

Audit noticed 22 assessment cases[88] involving tax effect of ₹ 33.07 crore where the assessees had utilised their income or property for the benefit of persons specified under Section 13(3) but the Department did not levy tax on such amount of income or property utilised for the benefit of the specified persons. Six cases are illustrated below:

(i) In Kerala, Pr. CIT(E), Kochi Charge, a Government body engaged in the activity of 'General Public Utility' filed original return of income for AY 2017-18 at ₹ 'Nil' income. The scrutiny assessment was completed in November 2019 at ₹ 'Nil' income. Audit noticed that the assessee availed Bank Overdraft (OD) of ₹ 215.00 crore and the same was given as loan to Government of Kerala. Against this, the assessee received ₹ 6.10 crore towards interest on loan and paid ₹ 8.26 crore towards interest on OD with Bank. As such, the Trust had incurred an extra expenditure of ₹ 2.16 crore (₹ 8.26 crore – ₹ 6.10 crore), which was allowed as application of income. Since the assessee utilized its fund for the benefit of its founder, allowance of ₹ 2.16 crore as application was not in order as per the provisions of Section 13(3). This resulted in short-levy of tax of ₹ 98.65 lakh.

The DCIT(E) Circle, Trivandrum replied (March 2020) that the fund was transferred as per Government directions and returned with one *per cent*

[87] The person specified in Section 13(3) are the author of the trust or founder of the institution; any person who has made a substantial contribution to the trust or institution of amount exceeding ₹ 50,000; where such author, founder or person is a HUF; any trustee of the trust or manager; any relative of any such author, founder, substantial contributor, member, trustee or manager.

[88] Himachal Pradesh -1, Karnataka -2, Kerala -1, Maharashtra -9, Punjab -6 and Tamil Nadu -3.

additional interest. The reply is not tenable as the fund was utilized for the benefit of the founder and not for the intended beneficiaries of the Trust. Hence, the extra interest expenditure incurred cannot be treated as application of income.

The Ministry has accepted (March 2022) the audit observation and remedial action has been initiated by issuing notice under Section 148 in March 2021.

(ii) In Punjab, CIT(E) Chandigarh a private society engaged in the activity of 'General Public Utility', filed return of income for AY 2016-17 at ₹ 'Nil' income and the scrutiny assessment was completed in December 2018 at a total income of ₹ 'Nil'. Audit noticed that although the assessee had disbursed interest free loan of ₹ 1.11 crore to related parties such as President and Treasurer of the organization, no disallowance was made in this respect in the assessment. This resulted in short levy of tax of ₹ 50.12 lakh. The AC/DCIT(E), Circle, Chandigarh replied (January 2020) that audit objection had been considered and action as per provisions of the Income Tax Act would be taken.

Reply of the Ministry was awaited (February 2022).

(iii) In Maharashtra, CIT(E) Mumbai charge, a private entity engaged in educational activity, filed return of income for AY 2015-16 at ₹ 'Nil' income. The gross receipt of the assessee was ₹ 114.24 crore and selected as 'High value' case in the PA sample. The scrutiny assessment was completed in October 2017, assessing income at ₹ 'Nil'. Audit noticed that during the year, the assessee had purchased a New Flat and Garage from 'K' Ltd., for consideration of ₹ 10.00 crore, in a Co-operative Housing Society. Audit observed that one of the Members of Board of Governance of the entity, was the chairman and Managing Director of 'K' Ltd. The Act provides that no property or income of the trust shall be utilised for the benefit of person referred to Section 13(3) of the Act. However, there are no records such as Sale deed Agreement and NOC of the Co-operative Housing Society, allowing the assessee to utilise the Flat as Office premises. As the trust income was utilised for the benefit of related person referred to Section 13(3) of the Act, deduction under Section 11 was not allowable to the assessee.

Reply of the Ministry was awaited (February 2022).

(iv) In Karnataka, under CIT(E) Bengaluru Charge, a private trust, engaged in educational activity, filed return of income for AY 2016-17 at ₹ 'Nil' income. The gross receipt of the assessee was ₹ 115.23 crore and this was selected as 'High value' case in the PA sample. The scrutiny assessment was

completed in December 2018, accepting the income returned at ₹ 'Nil'. It was noticed that during the year, the assessee paid ₹ 1.25 crore to M/s 'L' Pvt. Ltd. towards professional charges for running & maintenance of 'M' School; and ₹ 4.28 crore to M/s 'N' for value added course, conducted for various institutions of 'O' group. Audit noticed that there was substantial interest in the above concerns, by the family of the President of 'O' group and therefore the transactions of the Trust with the related concerns would have to be at arm's length. However, the transactions were not at arm's length, in terms of Hyderabad Tribunal judgement[89], as determined by the assessing officer, in the scrutiny assessment for AY 2017-18. Thus, undue benefit was passed on to specified persons and the exemption allowed in AY 2016-17 should have been withdrawn. This resulted in short computation of income of ₹ 33.90 crore with a consequent short levy of tax of ₹ 15.60 crore. The JCIT(E), Circle 1, Bengaluru replied (September 2018) that the matter would be looked into.

Reply of the Ministry was awaited (February 2022).

(v) In Maharashtra, CIT(E) Mumbai charge, a private trust engaged in the educational activity, filed return of income for AYs 2014-15 and 2015-16 at ₹ 'Nil' income. The gross receipt of the assessee was ₹ 79.82 crore for AY 2015-16 and selected as 'High value' case in the PA sample. The scrutiny assessment was completed for AY 2014-15, in December 2016, followed by rectification in April 2018, determining income at ₹ 'Nil' and for AY 2015-16, in December 2017, assessing income at ₹ 'Nil'. Audit observed that the Department during assessment had disallowed deduction under Section 11 for rented property, to the related party, for violation of provisions of Section 13 of the Act and computed notional income from house property, of ₹ 60.20 lakh in AY 2015-16, and ₹ 54.73 lakh in AY 2014-15. Audit scrutiny of the computation of total income revealed that the Department considered this income as income of trust property, eligible for deduction under Section 11 of the Act and adjusted same against the expenses applied towards the objective of the trust, instead of treating this income for taxation separately, in view of the provisions of Section 13(1)[90] of the Act. The omission resulted in under-assessment of income of ₹ 60.20 lakh, in AY 2015-16, and ₹ 54.73 lakh, in AY 2014-15, involving short levy of tax, aggregating to ₹ 35.52 lakh.

---

89 in the case of M/s NTR Memorial Trust in ITA No. 461 & 462/Hyd/2010 dated 18.3.2011 wherein it was held that the profit percentage to the extent of eight *per cent* is reasonable and not excessive.

90 Section 13(1) of the Act, provides that exemption to charitable trusts or institutions under Section 11 or 12 would not be available, if any income or property of the trust is applied, directly or indirectly, for the benefit of any specified person referred to in Section 13(3). The person specified in Section 13(3) are the author of the trust or founder of the institution; any person who has made a substantial contribution to the trust or institution of amount exceeding ₹ 50,000; where such author, founder or person is a HUF; any trustee of the trust or manager; any relative of any such author, founder, substantial contributor, member, trustee or manager.

Reply of the Ministry was awaited (February 2022).

(vi) In Maharashtra, Pr. CIT(E), Pune Charge, a private trust engaged in educational activity, having gross receipt of ₹ 424.75 crore, filed its return of income for AY 2016-17 at ₹ 'Nil' income. The case was initially processed in summary manner and subsequently, selected for scrutiny and assessment was completed in December 2018 under Section 143(3), by accepting the returned income at 'Nil'. Audit noticed that as per schedule-15 (Establishment Expenses) to Income and Expenditure Account, the Assessee trust had shown expenses of ₹ 144.79 crore and ₹ 75.77 crore towards rent and infrastructure development fees respectively to 'P' University and subsequently these amounts were knocked off by reducing the same amount from the respective sub-heads. Thus, the amounts were adjusted in the same year and not debited in the expenditure side. Audit further noticed that there was no mention either in the scrutiny assessment order or in the audit report in Form 10B about the said transaction made by the assessee with the related party. Audit could not ascertain reasons for knocking off and nature of transactions involved in it. Thus, undue benefit to related parties through this transaction could not be ruled out.

In reply (January 2022), DCIT (E) Circle Pune while not accepting the observation, stated that in Form 10B the assessee reflected the transaction with the related party, 'Q'. However, in respect of transaction between 'P' University and 'R' Society, both being two constituents of the assessee trust, these transactions were only notional entries and, therefore, knocked off while consolidating the Annual Accounts of the assessee Trust.

The reply of the Department was not tenable as the reply was silent about the purpose of such accounting treatment. If at all, both the units were the constituents of the assessee trust, the purpose of charging rent and infrastructure development fees by one constituent from another constituent of the assessee trust could not be ascertained.

Reply of the Ministry was awaited (February 2022).

Thus, Audit observed that in certain cases, although the assessee had utilised their income or property for the benefit of person specified in Section 13(3)[91], the Department did not levy tax on such amount of income or property utilised for the benefit of the related persons.

[91] The person specified in Section 13(3) are the author of the trust or founder of the institution; any person who has made a substantial contribution to the trust or institution of amount exceeding ₹ 50,000; where such author, founder or person is a HUF; any trustee of the trust or manager; any relative of any such author, founder, substantial contributor, member, trustee or manager.

6.5 Irregular allowance of double benefits to Trusts

Audit observed instances of non-compliance of various provisions of the Income Tax Act in the assessment orders, culminating in irregular allowance of double benefits to the assessees. These cases are illustrated below:

6.5.1 Irregular allowance of depreciation on assets whose acquisition had already been claimed as application of income

Section 11(6) and explanation to proviso[92] inserted after the 17th proviso to clause (23C) of Section 10, stipulates that where any income is required to be applied or accumulated, then, for such purpose, 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 clause in the same or any other previous year.

Audit noticed eight assessment cases[93] involving tax effect of ₹ 13.78 crore where depreciation on assets had been allowed as application of income, even though the relevant capital expenditure to acquire such assets had already been treated as application of income, resulting in double benefit to the assessee. Two cases are illustrated below:

(i) In Tamil Nadu, CIT(E), Chennai charge, a private trust engaged in educational activity, filed return of income for AY 2016-17 at ₹ 'Nil' income. The scrutiny assessment was completed in October 2018 accepting ₹ 'Nil' income as returned by the assessee after allowing exemption of ₹ 41.79 crore under Section 10(23C). Audit noticed that depreciation of ₹ 4.52 crore was allowed as application of income which resulted in double deduction of expenditure. This resulted in non-levy of tax of ₹ 1.56 crore including applicable interest.

The Ministry has accepted (March 2022) the audit observation and remedial action has been completed by passing order under Section 154 in March 2020.

(ii) In Punjab, CIT(E) Chandigarh charge, a Government society engaged in educational activity, filed return of income for AY 2017-18 at ₹ 'Nil' income and the scrutiny assessment was completed in October 2019 at ₹ 'Nil' income. Audit noticed that the assessee claimed depreciation of ₹ 9.81 crore as application of income which was allowed in assessment. This resulted in double deduction of expenditure as well as non-levy of tax of ₹ 4.57 crore including applicable interest.

[92] as inserted by the Finance (No. 2) Act, 2014 effective from 1.4.2015

[93] Gujarat -1, Himachal Pradesh -2, Punjab -2, Tamil Nadu -1 and West Bengal -2

The Ministry has accepted (March 2022) the audit observation and initiated remedial action by issuing notice under Section 148 in March 2021.

Thus, Audit observed that in certain cases, depreciation on assets had been allowed as application of income, even though the relevant capital expenditure to acquire such assets had already been treated as application of income resulting in double benefit to the assessee.

6.5.2 Irregular allowance of expenditure from corpus/earmarked funds as application of income

Section 11(1)(d) of the Income Tax Act, 1961, relates to income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution.

Audit noticed 11 assessment cases[94] involving tax effect of ₹ 81.58 crore where the AO had allowed claims, pertaining to application of income incurred from the corpus fund, or other specific purpose funds, resulting in double benefit to the assessee. One case is illustrated below:

(i) In West Bengal, CIT(E), Kolkata charge, a private trust engaged in the activity of 'Medial Relief' filed return of income for AY 2014-15, AY 2015-16, AY 2016-17 and AY 2017-18 at ₹ 'Nil' income. The case for AY 2016-17 was selected in the PA sample as 'Top 200' case since gross receipt of the trust was ₹ 197.05 crore. The scrutiny assessments for AY 2014-15, AY 2015-16, AY 2016-17 and AY 2017-18 were completed in December 2016, December 2017, December 2018 and December 2019 respectively at ₹ 'Nil' income. Audit noticed from the assessment records of AY 2014-15 to AY 2017-18 that expenditure on addition of fixed assets and work in progress for certain projects, had been treated as application of income, although such expenditure had been incurred out of the voluntary contributions received in the 'Earmarked funds' for those projects and not treated as income of that assessment year. Such irregular treatment of expenditure, amounting to ₹ 145.55 crore[95], from earmarked funds, as application of income, had a tax effect of ₹ 62.32 crore[96].

The Ministry has accepted (March 2022) the audit observation and initiated remedial action by issuing notice(s) under Section 148 for AYs 2014-15, 2015-16 and 2017-18 in March 2021. For AY 2016-17, remedial action has been taken by passing order under Section 263/143(3) in December 2021.

---

[94] Jammu -3 and West Bengal -8

[95] ₹ 15.44 crore for AY 2014-15; ₹ 38.92 crore for AY 2015-16; ₹ 51.86 crore for AY 2016-17; ₹ 39.33 crore for AY 2017-18

[96] ₹ 5.92 crore for AY 2014-15, ₹ 16.34 crore for AY 2015-16, ₹ 22.61 crore for AY 2016-17 and ₹ 17.45 crore for AY 2017-18

Thus, Audit observed that in certain cases, the AOs had allowed claims, pertaining to application of income incurred from the corpus fund, or other specific purpose funds resulting in double benefit to the assessee.

6.6 Irregular allowance of exemption on corpus donation

Section 11(1)(d) provides that voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution, will not be included in the income of the Trust. Therefore, no voluntary contribution can be treated as corpus without any specific direction by the donor.

Audit noticed nine assessment cases[97] involving tax effect of ₹ 52.08 crore where the Department allowed exemption under Section 11(1)(d) treating the voluntary contributions as corpus, without ensuring that there was a specific direction of the donors. Two cases are illustrated below:

(i) In Gujarat, CIT(E) Ahmedabad charge, a private trust engaged in educational activity, filed return of income for AY 2015-16 at ₹ 'Nil' income. The case was selected as 'High value' case since the gross receipt of the trust was ₹ 58.14 crore. The scrutiny assessment was completed in September 2017 at ₹ 'Nil' income. Audit noticed that the assessee declared corpus receipt of ₹ 32.55 crore but did not furnish any evidence regarding any specific direction by the donor or any source of donation, although the Department asked the assessee to furnish the same. In the absence of such direction, the amount was required to treated as income for the year under Section 11(1)(a) by the Assessing Officer but the same was not done. The omission resulted in under-assessment of income of ₹ 27.67 crore (85 *per cent* of ₹ 32.55 crore) with consequent non-levy of tax of ₹ 9.40 crore.

The Ministry has accepted (March 2022) the audit observation and initiated remedial action by issuing notice under Section 143(3) read with section 263 of the IT Act in March 2021.

(ii) In West Bengal, CIT(E) Kolkata charge, a Government society engaged in the activity of 'Preservation of Environment', filed return of income for AY 2016-17 at ₹ 'Nil' income. The case was selected as 'Top 200' case in the sample since the gross receipt of the trust was ₹ 207.59 crore. The scrutiny assessment was completed in December 2018 at ₹ 'Nil' income. Audit noticed that the assessee had accumulated unspent income of ₹ 84.08 crore as corpus fund, and claimed exemption thereon, under Section 11(1)(d) of the Act. The assessee had accumulated this corpus fund out of the ₹ 287.18 crore received from the Central/State Governments, for

[97] Gujarat -1, Maharashtra -3, Odisha -2, Rajasthan -2 and West Bengal -1.

'meeting obligatory eligible expenses, including committed liabilities'. Being specific in nature, such grants should be treated as legal obligations and not voluntary contributions and should be utilized only as per the directions of the sanctioning authority. The assessee had stated that the grants were kept as part of the capital of the project, which was to be withdrawn only for earmarked schemes. However, there was no direction in the sanction letters to keep the unutilized fund as corpus of the assessee, in absence of which, exemption on ₹ 84.08 crore allowed to the assessee, under Section 11(1)(d), was not admissible. This resulted in under-assessment of income by ₹ 84.08 crore, involving tax effect of tax of ₹ 38.12 crore including interest.

The Ministry has accepted (March 2022) the audit observation and initiated remedial action by issuing notice under Section 148 of the IT Act in March 2021.

Thus, Audit observed that in certain cases, the Department allowed exemption under Section 11(1)(d) treating the voluntary contributions as corpus without ensuring that there was a specific direction of the donors in contravention of the provisions of the Act.

6.7 Grant of exemption to trusts, although activities were not charitable in nature

The Act provides exemption to charitable Trusts/Institutions in respect of income applied towards their objectives. However, any activity of advancement of any other object of general public utility which involves the carrying on of any activity in the nature of trade, commerce or business or any activity of rendering any service for a cess or fee or any other consideration where the aggregate receipts from such activity exceeds rupees twenty five lakh (20 *per cent* of total receipt with effect from 01.04.2016), shall not be treated as charitable purpose, irrespective of the nature of use or application, or retention, of the income from such activity.

In Maharashtra, Audit noticed in nine assessment cases that the Department allowed exemption of ₹ 549.15 crore under Section 11 involving tax effect of ₹ 189.07 crore even though the objectives or activities of the trusts were not charitable in nature. Six cases of two assessees are illustrated below:

(i) In CIT(E) Mumbai charge, a private trust engaged in the activity of 'General Public Utility' filed return of income for AYs 2014-15, 2015-16 and 2016-17 at ₹ 'Nil' income. The scrutiny assessments were completed in December 2016, December 2017 and December 2018 at an income of ₹ 5.26 crore, ₹ 1.64 crore and ₹ 'Nil' respectively allowing aggregated exemption of ₹ 32.40 crore (₹ 11.26 crore for AY 2014-15, ₹ 9.42 crore for AY 2015-16

and ₹ 11.72 crore for AY 2016-17) under Section 11. The scrutiny assessment of AY 2014-15 was further rectified under Section 154 in December 2016 revising income at ₹ 'Nil'. Audit noticed that the objective of the assessee trust was to organise International Textile Machinery Exhibitions on the latest development of technology in the field of textile machinery. Audit observed that for the purpose of exhibition, the assessee had taken advances of ₹ 45.02 crore from the exhibitors for 'an Exhibition' and offered this income as business income and claimed the benefit of Section 11(4A)[98] which was allowed by the Department. The claim of assessee was not in order, as Section 11(4A) applies only when the business of the trust is incidental to the attainment of the objectives of the trust. Thus, conducting exhibition was not incidental to the objectives of the assessee but was the main objective of the assessee, which suggested that the sole activity of the assessee was rendering service for a cess or fee or any other consideration. In view of the provisions of Section 2(15), the activity of the assessee was not charitable in nature and hence the assessee was not eligible for exemption under Section 11. The omission to do so resulted in under-assessment of income of ₹ 23.79 crore for AY 2014-15 to AY 2016-17 involving short levy of tax of ₹ 8.14 crore.

The DCIT(E) Circle-1(1), Mumbai accepted (September 2021) the audit observation and initiated remedial action under Section 147 for AY 2014-15 and under Section 263 for AY 2015-16 and AY 2016-17.

(ii) In Maharashtra, under CIT(E) Mumbai charge, , a private entity engaged in educational activity, filed return of income for AYs 2014-15, 2015-16 and AY 2016-17 at ₹ 'Nil' income. The cases for AYs 2015-16 and 2016-17 were selected in the PA sample as 'High Value' cases since the gross receipt during the years were ₹ 114.24 crore and ₹ 134.63 crore respectively. The scrutiny assessments were completed in November 2016, October 2017 and October 2018, for AY 2014-15 to AY 2016-17, respectively, assessing income at ₹ 3.16 crore for AY 2014-15 and ₹ 'Nil' for AYs 2015-16 & 2016-17. Audit noticed that the Institution was said to be engaged in the activities for the promotion of training, research, professionalism and skill formation at all levels of the construction and other allied industries. Its activity also included undertaking consultancy, as well as setting up consultancy centres, to conduct research, training, organize conference, seminars etc. Audit also noticed that the assessee conducts programmes for the Management of Family-Owned Construction Business and service training programmes, either at entity's campus, or off campus, which were

[98] Section 11(4A) provided that shall exemption under Section 11 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 institution, and separate books of account are maintained by such trust or institution in respect of such business.

designed as per requirement of the customers for the executive class and charged fees for these services.

It was observed that the assessee was not imparting any formal education, but was acting as service provider/trainer in the field of excelling the professional skills of the professionals involved in the field of construction and allied services. As such, the activities of the assessee could not be categorised solely as educational. The assessee was mere a service provider and functioning for profit motive. Audit noted that it was evident from the records *viz.*, Income and Expenditure account and assessment orders of AYs 2013-14 to 2016-17, wherein the assessee was generating surplus continuously to the extent of 67 *per cent* of its total income every year, which showed charging of significant fees for the services provided during these years.

Audit also noticed that the Directorate General of Central Excise Intelligence (DGCEI), Pune conducted investigation towards non-payment of Service Tax under the Category of 'commercial training or coaching centre' which was confirmed by the Pr. Commissioner of Service Tax II vide order dated 30.07.2015, against which the assessee went in appeal in the Customs Excise Service Tax Appellate Tribunal, West Zonal Bench, Mumbai. Audit found that the Tribunal has disposed-off the above case in October 2017 in favour of Commissioner of Service Tax holding that the assessee's activities fall under the category of 'commercial training or coaching' and not under the category of vocational training institutions or institutes providing education in the field of sports, Pre-School and those institutes or establishment which issues any certificate or diploma or degree or any educational qualification recognised by law for the time being in force.' In view of the above findings of the Tribunal and provisions of Section 2(15) of the Act, the activities of assessee cannot be held as 'charitable', as envisaged in the Act. As such, exemption under Section 11, allowed to assessee, was not in order. The omission resulted in under-assessment of income of ₹ 218.95 crore involving tax effect of ₹ 74.91 crore, for AY 2014-15 to 2016-17.

It is pertinent to mention here that the Department had taken the same view in the case of a private trust engaged in educational activity, in AY 2016-17, wherein the exemption under Section 11 had been disallowed, holding that as per CBDT's circular no. 11 of 2008 dated 19.12.2008, activity of training and conducting examination is an activity of advancement of general public utility and as per the proviso of Section 2(15), such entities are not eligible for exemption under Section 11 or 10(23C) of the Act.

Thus, it was evident from the above that in certain cases, even though the objectives or activities of the trusts were not charitable in nature, the ITD irregularly granted exemption to Trusts/Institutions in contravention to the provision of the Act.

Reply of the Ministry was awaited (February 2022).

6.8 Incorrect levy of tax/surcharge/interest

Under the provisions of the Act, the assessing officer is required to make a correct assessment of the total income of the assessee and determine the correct sum payable by him or refundable to him on the basis of such assessment.

Audit noticed 65 assessment cases[99] involving tax effect of ₹ 103.11 crore where the AO while finalizing the assessment had mistakenly adopted figures, computed short demand, charged tax at a lower rate than the prescribed rate, short levy of interest/surcharge, excess grant of interest on refund etc.

Four cases are illustrated below:

(i) In Uttar Pradesh, CIT(E) Lucknow charge, a private trust engaged in educational activity, filed return of income for AY 2016-17 at ₹ 'Nil' income. The scrutiny assessment was completed in October 2018 at an income of ₹ 5.20 crore under the head Income from "Profit and Gains from business and profession" denying exemption under Section 11. Audit noticed that the AO, while computing tax in ITNS-150, had taken income at ₹ 'Nil' instead of ₹ 5.20 crore. This resulted in short levy of tax of ₹ 2.36 crore including applicable interest.

The Ministry has accepted (March 2022) the audit observation and remedial action has been initiated by issuing notice under Section 154 in December 2021.

(ii) In Maharashtra, CIT(E), Mumbai charge, a private society engaged in the activity of 'General Public Utility', filed return of income for 2016-17 at ₹ 'Nil' income. The scrutiny assessment was completed in December 2018 at an income of ₹ 36.02 crore denying exemption under Section 11. Audit noticed from the tax computation sheet that the Department computed tax at ₹ 'Nil' instead of ₹ 14.27 crore. This has resulted in short levy of tax of ₹ 15.07 crore including interest.

Reply of the Ministry was awaited (February 2022).

[99] Delhi-3, Gujarat-5, Himachal Pradesh-1, Jammu-1, Karnataka-6, Maharashtra-11, Odisha-4, Punjab-13, Rajasthan-8, Tamil Nadu-3 and Uttar Pradesh-10

(iii) In Karnataka, CIT(E) Bengaluru Charge, a Government corporate trust engaged in the activity of 'Relief of the poor', filed return of income for AY 2014-15 at ₹ 1.91 crore. The case was selected as 'High value' case in the PA sample since the gross receipt of the trust was ₹ 58.38 crore. The scrutiny assessment was completed in December 2016 and the income was determined at ₹ 'Nil'. The scrutiny order was further rectified under Section 154 in May 2017 and the income remained at ₹ 'Nil'. Audit noticed that the assessee had returned business income at ₹ 1.91 crore, which was taxable. However, in scrutiny assessment and the rectification order, the same was omitted and a refund of ₹ 1.05 crore was determined. Failure to assess the income returned, resulted in short levy of tax/excess refund of ₹ 65.74 lakh.

The Ministry has accepted (March 2022) the audit observation and remedial action has been taken by passing order under Section 154 of the IT Act in February 2021.

(iv) In Maharashtra, Pr. CIT(E), Pune Charge, a private trust engaged in educational activity, having gross receipt of ₹ 305.38 crore, filed return of income for AY 2017-18 at ₹ 'Nil' income. The case was initially processed in summary manner and subsequently, selected for scrutiny and assessment was completed in December 2018 under Section 143(3) determining income of ₹ 247.00 crore.

Audit noticed that AO, while finalizing the assessment, levied tax at the normal rate i.e. 30 *per cent* on additions made under Section 68[100] and Section 69[101] of ₹ 152.95 crore instead of 60 *per cent* as stipulated under Section 115BBE[102] of the Act. Further, it was noticed that interest under Section 234A for belated filing of return was not levied by the AO. These resulted in short levy of tax of ₹ 69.56 crore, including interest under Section 234A.

Reply of the Ministry was awaited (February 2022).

---

[100] As per Section 68, where any sum is found credited in the books of an assessee and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income- tax as the income of the assessee of that previous year.

[101] As per Section 69 where in the financial year the assessee has made investments which are not recorded in the books of account, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year

[102] As per Section 115 BBE of the Act, with effect from AY 2017-18, where the total income of an assessee includes any income referred to in Section 68 or 69, the tax shall be calculated at the special rate of 60 *per cent* and surcharge at the rate of 25 *per cent*.

Thus, Audit observed that in certain cases, at the time of finalization of assessment, the assessing officers had mistakenly adopted figures, computed short demand, charged tax at a lower rate than the prescribed rate, short levy of interest and surcharge, excess grant of interest on refund etc. which resulted in short levy of tax.

6.9 Non-levy of penalty

Section 139(4A) provides that every person who is in receipt of income derived from property held under trust or other legal obligation wholly for or charitable purposes or religious purposes, or in part only for such purposes; or income by way of voluntary contribution on behalf of such trust or institution for which he is taxable, must file a return of income, if such income (computed before allowing any exemption under Sections 11 and 12) exceeds the maximum amount not chargeable to income tax. Section 139(4C) provides for compulsorily filing of return by the institutions, if income (before giving effect to the provisions of Section 10) exceeds the maximum amount not chargeable to income tax. Further, Section 272A(2)(e) of the Act, provides that if any person fails to furnish the return of income which he is required to furnish under sub-Section (4A) or (4C) of Section 139 or to furnish it within the time allowed and in the manner required under those sub-Sections, he shall pay, by way of penalty, a sum of one hundred rupees for every day during which the failure continues.

Audit noticed 651 assessment cases[103] involving tax effect of ₹ 1.68 crore, where, despite delays in filing of return of income by the Trusts/Institutions, no penalty was levied/proceedings initiated by the Department. The State wise break-up of 651 cases is summarized in Table 6.2 below:

Table 6.2 Non-levy of penalty for delay in filing of Return

Sl. No.	Name of State	Period of delay vis-à-vis no. of cases					
		Upto three month	More than three months and upto six months	More than six months and upto one year	More than one year and upto two years	More than two years	Total
1	Andhra Pradesh	13	19	20	16	3	**71**
2	Chhattisgarh	1	8	4	1	0	**14**
3	Delhi	2	7	2	4	0	**15**
4	Haryana	1	2	1	1	0	**5**
5	Himachal Pradesh	1	1	0	0	0	**2**
6	Jammu	0	2	1	1	0	**4**
7	Karnataka	20	47	15	36	1	**119**

[103] Andhra Pradesh -71, Chhattisgarh -14, Delhi -15, Haryana -5, Himachal Pradesh -2, Jammu -4, Karnataka -119, Madhya Pradesh -117, Maharashtra - 187, Punjab -91 and Rajasthan -26.

Table 6.2 Non-levy of penalty for delay in filing of Return							
Sl. No.	**Name of State**	**Period of delay vis-à-vis no. of cases**					
		Upto three month	**More than three months and upto six months**	**More than six months and upto one year**	**More than one year and upto two years**	**More than two years**	**Total**
8	Madhya Pradesh	32	46	18	21	0	**117**
9	Maharashtra	37	85	33	31	1	**187**
10	Punjab	25	32	7	11	16	**91**
11	Rajasthan	4	12	4	6	0	**26**
Total:		**136**	**261**	**105**	**128**	**21**	**651**

The replies furnished by the ITD to Audit varied widely in different assessment charges, as mentioned below:

a. In Madhya Pradesh, ITO (E), Bhopal did not accept the audit observation and replied (March 2020) that the objection of audit was subject matter of verification of jurisdiction of CPC/AO, as returns are filed online by assessees and processed by the CPC before being selected for scrutiny assessment. However, ITO (E), Jabalpur replied (July 2020) that the cases were being referred to the JCIT(E), Raipur for taking appropriate action wherever applicable. The ITO(E), Gwalior, ITO(E) Indore and Ujjain replied in March 2020 and September 2020 respectively, that the matter would be looked into.

b. In Andhra Pradesh, ITO (E), Ward 1, Sangareddy stated (September 2020) that the audit observation was acceptable and necessary action would be initiated. The ACIT (E), circle, Vijaywada stated (August 2020) that all the cases were processed in CPC, Bengaluru and due to unknown technical glitches, penalty was not imposed by CPC.

c. In Maharashtra, the ITO (E), Ward 1(3), Mumbai stated (September 2020) that penalty under Section 272A(2)(e) is not a mandatory provision; the Addl. CIT/JCIT in his wisdom decides imposition of penalty after considering the facts and circumstances of case.

   The reply of the Department is not acceptable as Section 139(4A) and (4C) are specific Sections applicable to charitable Trusts/Institutions which mandates filing return of income within due date under Section 139(1) and Section 272A(2)(e) provides that 'the penalty shall be levied' makes it amply clear that it is a mandatory provision and not a discretionary provision.

Reply of the Ministry was awaited (February 2022).

6.10 Other deficiencies noticed in assessment

Audit noticed 34 assessment cases[104] involving tax effect of ₹ 43.30 crore, where the AO did not comply with the provisions of the Act such as income from business not computed and taxed separately, grant of exemption for capitation fee/development fee collected, allowance of application made of past accumulation, non-investment of trusts fund in specified mode etc.

Three issues relating to non-compliance are illustrated below:

6.10.1 Irregular allowance of exemption under Section 10(23C)(via)

Section 10(23C)(via) provides that income of any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for the purposes of profit, and which may be approved by the prescribed authority, shall not be included in computing the total income of a previous year.

In Rajasthan, CIT(E), Jaipur charge, a private trust engaged in the activity of 'Relief of the poor', filed return of income for AYs 2016-17 and 2017-18 at ₹ 'Nil' income. The scrutiny assessments for the AY 2016-17 and AY 2017-18 were completed in November 2018 and December 2019 respectively at ₹ 'Nil' income for both the years after allowing exemption under Section 10(23C)(via). Audit observed that the Trust was engaged in the activities of running of hospital and two educational institutions namely (i) 'S' Nursing School and (ii) 'T' College of Nursing. Thus, the Trust was not existing solely for the purposes covered under Section 10(23C)(via), and hence, was not eligible for exemption. This resulted in irregular allowance of exemption involving tax effect of ₹ 0.92 crore and ₹ 1.76 crore for the AY 2016-17 and AY 2017-18 respectively.

The Ministry has accepted (March 2022) the audit observation and remedial action has been initiated by issuing notice under Section 148 in March 2021.

6.10.2 Incorrect allowance of Exemption

Section 11(4A) of the Act provides that 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.

[104] Andhra Pradesh -1, Jharkhand -2, Delhi -1, Gujarat -4, Himachal Pradesh -1, Jammu -6, Karnataka -3, Maharashtra -2, Odisha -2, Punjab -4, Rajasthan -4, Uttar Pradesh-1 and West Bengal -3.

In Andhra Pradesh, in CIT(E) Hyderabad Charge, a private entity, filed return of income for AY 2016-17 at ₹ 'Nil' income and scrutiny assessment was completed in December 2018 determining ₹ 'Nil' income. The assessee is engaged in the activity of running educational institutions and registered under Section 12AA of the Act. The gross receipt of the trust during the year was ₹ 196.94 crore and this was selected as 'Top 200' case in the sample for the PA. Audit observed that the assessee had earned a profit of ₹ 8.94 crore, through the activities of purchase and sale of books and providing transport facilities to students of the institution as well as also to the students of another trust, namely 'N8' Educational Trust. According to the aforesaid provision of the Act, profits and gains of the business, incidental to the attainment of the objectives of the trust, shall only be eligible for exemption, under the category of charity. However, in the instant case, the assessee earned profit by extending these services to 'N8' Educational Trust. As such, the profit earned on the above services to 'N8' Educational Trust was not solely incidental to the objectives of the institution and should have been disallowed, treating it as business income not incidental to the objective of the institution. The omission resulted in under-assessment of income to that extent, with consequential short demand of ₹ 4.11 crore.

Reply of the Ministry was awaited (February 2022).

6.10.3 Irregular allowance of exemption on Development fee

Section 11(1)(d) of the Act provides that income in the form of voluntary contributions made with specific direction shall only form part of the corpus of the trust or institutions and the same shall not be included in the total income of the previous year of the trust in receipt of the income. Development fees, collected by educational institutions from their students are compulsory charges in the nature of fee, for studying and continuing studies in the institutions. Therefore, they cannot be classified as capital in nature for specific purpose or part of the Corpus fund.

In Odisha, under CIT(E) Hyderabad Charge, a private trust, filed return of income for AY 2016-17 at ₹ 'Nil' income and scrutiny assessment was completed in December 2018 at ₹ 'Nil' income. The assessee is engaged in the activity of running educational institutions and registered under Section 12AA of the Act. The gross receipt of the trust during the year was ₹ 628.20 crore and this was selected as 'Top 200' in the sample for the PA. Audit noticed that though 'Development fee' of ₹ 69.58 crore was collected by the assessee from the students, the same was not shown as income. Further, the claim of 'Corpus donation' of ₹ 70.20 crore was accepted as such, though no documents were produced by the assessee to show that the above donations were specifically authorized for the 'Corpus Fund' and claim of ₹ 2.52 crore towards 'Capital expenditure (fixed assets)' was allowed, though the same were acquired through

bank loans. This resulted in short levy/excess refund of tax of ₹ 12.25 crore including interest.

The Ministry has accepted (March 2022) the audit observation and remedial action has been initiated by issuing notice under Section 148 in March 2021.

6.11 Conclusion

Audit noticed deficiencies in the assessment and noted instances of irregular grants of exemption under different provisions of the Act, incorrect computation of income and its application. There were instances of irregular allowance of accumulation, allowance of exemption although income or property of the trust was utilised for the benefit of persons having substantial interest and irregular grants of double benefit of exemption on the same amount due to allowance of depreciation on assets whose acquisition had already been claimed as application of income and allowance of expenditure from corpus/earmarked funds as application of income. Further, there were cases of incorrect computation of income and tax/surcharge/interest and non-levy of penalty for late filing of ITR.

6.12 Summary of Recommendations

Audit recommends that:

(i) ITD may strengthen its assessment procedure for Trusts/Institutions to ensure correct computation of income and its application, and avoidance of double benefit to the trusts as per the existing provisions of the Act.

(Paragraphs 6.2.1, 6.2.2, 6.5.1 and 6.5.2)

In reply, the CBDT stated that the earlier system of computation of income of the assesses after verifying with old records has been now revamped with a new application for assessment functions called 'Income Tax Business Application' (ITBA) in which the AO is required to follow a more detailed and comprehensive approach while making addition/disallowance to compute taxable income and as a result of these systemic developments, computation errors can be avoided. Further, the Department has introduced the Faceless Assessment Scheme, 2019, presently incorporated in Section 144B of the IT Act to provide that all the assessment proceedings, including the scrutiny assessments of cases related to Trusts/Institutions, are conducted electronically in a faceless manner, through team-based assessment wherein specialised units such as Assessment Units, Verification Units, Technical Units and Review Units have been put in place for optimum utilization of the resources. Under this team-based assessment procedure, the Assessment Unit can request verification by the Verification Unit and seek technical assistance from the Technical Unit in order to prepare a

speaking order to facilitate an error-free assessment order. Finance Bill, 2022 has also proposed amendment in the Section 144B for hearing through Video Conferencing if requested by an assessee which will result in seamless and efficient implementation of Faceless Assessment.

Reply of the CBDT is not tenable as Audit noticed errors in computation of income and tax in the assessment orders passed through the ITBA system. Audit will await the final outcome of the efforts made by the CBDT to streamline the assessment procedure through Faceless Assessment Scheme, 2019 and its proposed amendments in Finance Bill, 2022.

(ii) ITD may strengthen its assessment procedure for Trusts/Institutions to ensure that no exemption is granted when income or property of the trust is utilised for the benefit of persons having substantial interest.

(Paragraph 6.4)

In reply, the CBDT stated that the earlier system of computation of income of the assesses after verifying with old records was prone to errors and has been now revamped with a new application for assessment functions called 'Income Tax Business Application' (ITBA) in which the AO is required to follow a more detailed and comprehensive approach while making addition/disallowance to compute taxable income and as a result of these systemic developments, computation errors can be avoided.

The E-assessment Scheme, 2019 was amended and renamed as Faceless Assessment Scheme, 2019, which is presently incorporated in Section 144B of the IT Act, provides that all the assessment proceedings, including the scrutiny assessments of cases related to Trusts/Institutions, are conducted electronically in a faceless manner, through team-based assessment. Specialised units such as Assessment Units, Verification Units, Technical Units and Review Units have been put in place for optimum utilization of the resources through economies of scale and functional specialization. Under this team-based assessment procedure, the Assessment Unit can request verification by the Verification Unit and seek technical assistance from the Technical Unit in order to prepare a speaking order to facilitate an error-free assessment order. Vide the Finance Bill, 2022, the procedure has been proposed to be amended to provide for hearing through Video Conferencing when requested by an assessee.

Further, Finance Bill, 2022 has proposed a new Section 115BBI in the IT Act to provide that trusts where income or property of a Trust/Institution, registered/approved under Section 12AA/10(23C), is utilised for the benefit of persons having substantial interest, as specified under Section 13, such unreasonable benefit shall be deemed to be the income of such person of the

previous year in which it is so applied and shall be taxable at the rate of 30 *per cent.*

Finance Bill, 2022 has also proposed a new Section 271AAE in the IT Act to provide that in case of violation of provision of Section 115BBI mentioned above, the AO may levy penalty of:

(a) a sum equal to the aggregate amount of income applied, directly or indirectly, for the benefit of persons having substantial interest, where the violation is noticed for the first time during any previous year; and

(b) a sum equal to two hundred *per cent* of the aggregate amount of income applied, directly or indirectly, for the benefit of persons having substantial interest, where violation is noticed again in any subsequent previous year.

The above proposed provisions aim to provide a deterrence as well as provide clarity and certainty in the manner of taxation in the scenario when unreasonable benefit is passed on by a trust or institution which is exempt under the Income-tax Act to a person having substantial interest.

Audit has noted from the reply of the CBDT that various proposals have been made by the CBDT in the current Finance Bill 2022. Audit will await the final outcome of the proposal approved and implemented by the CBDT. However, the CBDT has to ensure that no income or property of the Trust/Institution is utilized for the benefit of persons having substantial interest.

(iii) ITD may ensure that the CPC-ITR System automatically levies penalty for delay in filing of return at the time of processing of ITRs itself.

(Paragraph 6.9)

In reply, the CBDT stated that in order to ensure that return is filed within the due date. Finance Act, 2017 inserted Section 234F in the Income-tax Act, 1961 (the Income-tax Act) to provide for a levy of a fee in case of delayed furnishing of return of income. The said Section has subsequently been amended vide Finance Act, 2021 to provide that a late fee of ₹ 5000/- is to levied for a delayed filing of return of income. It may be noted that such late fee is levied at the time of submission of the return and hence is levied even before the return is processed.

As regards the penalty under clause (e) of sub-Section (2) of Section 272A, regarding penalty for failure to furnish the return of income under sub-Section (4A) or sub-Section (4C) of Section 139 within the permitted time, it may be noted that the said penalty can only be imposed after giving an opportunity to be heard to the assesse, as the processing of return is an automated process, it is not feasible to be impose the said penalty at the time of filing of the return of income.

Further Section 273B provides that no penalty under, inter-alia, sub-Section (2) of Section 272A shall be imposable if the assessee proves there was a reasonable cause for the failure.

As the processing of return by the Centralised Processing Centre is an automated process, it will not be possible for the assesse to prove a reasonable cause of failure at the time of processing of ITR. This is also in line with the principle of natural justice that show cause notice is given before imposition of penalty.

Moreover, as per the provisions of clause (ba) of sub-Section (1) of Section 12A of the Income-Tax Act, the exemption under Sections 11 and 12 is denied if the ITR is not filed by the trust or institution within time. Similar provisions have been proposed vide Finance Bill, 2022 for the trusts or institutions approved under sub clauses (iv), (v), (vi), (via) of clause (23C) of Section 10 by way of insertion of 20th proviso to the said clause.

Audit does not deny that the assessee should be given natural justice by providing an opportunity to be heard and to prove a reasonable cause of failure. Audit's intention is that penalty proceedings may be initiated automatically through ITD system subsequent to processing of ITR and notice in this regard may be issued to the assessee through the system itself.