

Taxation of Charitable Trusts

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While presenting a Paper of Charitable Trusts, I am reminded of eminent jurist Shri Nani Palkhiwala. In his Treatise on Income Tax Law & Practice (Feb 1990 ed), he observed at Page 9, the Income Tax Act 1961 suffered more than 3300 amendments in less than 30 years. So, as we know, the Income Tax Act 1961 (the Act) is the most dynamic statute in India. He also stated on the same page (*Quote*) The tragedy of India is the tragedy of waste – waste of national time, energy and manpower. Tens of millions of manhours crammed with intelligence and knowledge – of taxgatherers, taxpayers and tax advisers – are squandered every year in grappling with the torrential spate of mindless amendments. The feverish activity achieves no more good than fever.“ (*Unquote*).

Thus, we are here to waste our time and energy with intelligence and knowledge. We are aware about the issues being thrown before us about the system of registration and approval of charitable trusts. I know, we have no choice.

Hence, this write up is an attempt to elucidate on taxation of charitable trusts to the best of my knowledge and ability.

The Taxation of Trusts is so vast, it is just impossible to cover the same in 90 minutes. In fact, in my opinion, one may not be able to cover the entire taxation of trusts 30 days with 90 minutes every day!

This Presentation, I have divided into two :

- A. Tax Returns, Audit, Intimation, Assessment and Appeal – as per the Act.
- B. Tax registration u/s 12A and approvals u/s 80G. Renewal of registration / approval and appeal to Tribunal against rejection / approval under the Income Tax Act 2025.

Tax Returns, Audit, Intimation, Assessment and Appeal

1. **Tax Returns** : Every person claiming exemption 11 and 12 shall file income tax return on or before the due date [Sec 139(4A) rws 139(1)].

The charitable trusts are required to get its accounts audited u/s 33(2) of the Maharashtra Public Trusts Act 1950, hence the due date for filing return of income is 31st October of every assessment year.

Likewise, s 8 company (non-profit company) is also subject to audit u/s 139 of the Companies Act 2013 (likewise sec 25 companies registered under the Companies Act 1956), the due date for filing return of income is 31st October of every assessment year.

Even, otherwise, both the above entities are also subject to audit under sec 12A(1)(b)(ii) of the Income Tax Act 1961 (Audit Report in form 10B/10BB), hence the due date applicable is also 31st Oct of every assessment year.

2. Income Tax Return (ITR) is to be filed in ITR-7 – by trusts as well as non-profit companies.
3. **Audit Report** : Every entity claiming exemption u/s 11 / 12 of the Act, shall furnish an audit report in the prescribed format before the specified date [Sec 12A(1)(b)(ii) rw Rule 17BB]. The specified date shall mean one month prior to the due date as per sec 139(1) of the Act.

In other words, the specified date for filing audit reports in 10B/10BB is 30th Sept of the assessment year.

4. Filing of Audit Reports – Forms 10B / 10BB.
 - a. Audit report filed after specified date but on or before due date.
 - b. Audit report filed after due date but before processing of the return by CPC.
 - c. Audit report not filed at all.
 - d. Audit report submission in appeal proceedings.

- e. Submission of wrong audit report
 - f. Condonation of Delay to Prin CIT.
- b. Generally, the filing of any audit report required by the Act are directory and not mandatory. The Courts and Tribunals are liberal in condoning the delay in filing the audit reports.

Gujarat Oil & Allied Industries [1993] 201 ITR 325 (Guj.) held that the provision about furnishing of the auditor's report along with the return has to be treated as procedural provision and, therefore, directory in nature.

Further in **Al Jamia Mohammediyah Education Society**, [2025] 176 taxmann.com 761 (SC) to contend that a long-standing charitable trust with a consistent history of compliance cannot be non-suited due to a bona fide professional error, in the absence of any mala fides.

5. Form 10B is applicable in following three situations :
- a. Total income without exemptions exceed Rs 5.00 crores in the previous year;
 - b. Receipt of foreign contribution;
 - c. Application of any income outside India.

Audit report in Form 10BB is to be filed in other cases.

6. The following case laws are relevant :

- a. Audit report filed after specified date but before due date.

Saraswati Devi Educational and Social Trust ITA Nos. 873-874/KOL/2025.

Seva Bharathi ITA No 365 & 1307/Hyd/2025

- b. Audit report filed after due date but before processing of the return by CPC.

Indian Association of the Experiment International Living vs ITO [ITA No 1516/Del/2021]

- c. Audit report not e-filed at all.

If audit report is not filed at all, obviously, the exemption u/s 11 will not be available. However, that does not mean, the entire receipts are taxable. The income to be computed as per commercial principles.

Dr Sukumar J Magdum Foundation ITA No 320/Pun/2023

- d. Audit report submission in appeal proceedings.

Audit Report in form 10B e-filed on 02/09/2018 for A Y 2016-17 [One day before filing the appeal to CIT(A)]. Hon'ble Gujarat HC condoned the delay. **Sarvodaya Charitable Trust** (2021) 278 Taxman 148. and **Laxminarayan Dev Shrishan Seva Khendra** [2024] 167 taxmann.com 548 (Gujarat) and also **Shahzedanand Charity Trust** – (1997) 228 ITR 292 (P & H)

- e. Submission of wrong audit report

Instead of Form 10B wrongly Form 10BB was filed or vice versa.

National Institute of Ophthalmology ITA No.423/Pun/202 so also **Aditi Educational Trust** ITA No. 2492/BLR/ 2025.

- f. Condonation of Delay to Prin CIT / CBDT.

CBDT Circulars 16/2024 and 17/2024 allow condonation of delay in filing Forms 9A/10/10B/10BB and Forms 10IC/10ID where applicants show **reasonable cause and genuine hardship** with supporting evidence; Principal CsIT/CsIT can admit up to 365 days delay while higher authorities handle delays beyond 365 days. Applications must be filed within three years from the end of the assessment year and are to be disposed of within six months.

Shamal Mohan Patil Education Society vs CIT (E) Pune, where a delay of 1128 days condoned by Hon'ble Bombay HC.

7. **Intimation** : A return filed is processed by CPC Bengaluru. Generally, it is accepted without any additions.

However, the income determined and / or tax credit allowed u/s 143(1)(a) may be different from the returned income due to :

- a) Exemption u/s 11 may not be available due to
 - (i) Withdrawal of provisional approval by CIT(E)
 - (ii) Withdrawal of regular registration during assessment.
 - (iii) Delayed filing of audit report
 - (iv) Non-filing of audit report
 - (v) Commercial / business activity receipts are more than 20% of total receipts.
 - (vi) Violation of any other law by the assessee-trust/company. Sec 12AB(4). Held prospective amendment. ITA No 10/Del/2025.
 - b) Incorrect data entry in the return of income e.g. Interest credited in FCRA Savings Bank a/c. Explanation to Rule 17B rws 2(1)(h) of FCR Act 2010. Form 10B applicable. Auditor uploaded Form 10BB as there being no direct contribution.
 - c) Excessive credit e.g. Taxable Bonds issued by Gol.
 - d) MMR applied – 30% tax in deference to Cir 320 dt 11/01/1982.
8. An appeal is to be preferred within 30 days of the receipt of demand notice to CIT(A) by filing Form 35. In case 30 days having been over, seek reprocessing and file appeal against order u/s 154.

9. **Assessment** : The Assessing Officer may take the scrutiny assessment under CASS for limited scrutiny or complete scrutiny.

- a. Ensure notice u/s 143(2) is issued within the statutory limit i.e. within 3 months from the end of the financial year in which the return is furnished. Failure to issue notice u/s 143 (2), the assessment is void. Defect is not curable u/s 292BB of the Act. CIT vs **Lakshman Das Khandelwal** (2019) 417 ITR 325 (SC).
- b. Limited scrutiny converted to complete scrutiny without prior approval.

A case selected for limited scrutiny under CASS, the Assessing Officer has no jurisdiction to examine or make additions on issues beyond the specific reasons for selection, unless the case is formally converted into complete scrutiny with prior written approval of the Pr. CIT/CIT, as mandated by CBDT Instruction No. 20/2015 dated 29.12.2015.

Weilburger Coatings (India) (P.) Ltd., [2023] 155 taxmann.com 580 (Cal) and **Manikrao Satav** ITA 391/PUN/2023.

- c. Accumulation permissible 15% of income. Sec 11(1)(a).
- d. If actual utilisation is less than 85%, application u/s 11(2) for accumulation up to 5 years by filing Form 10 to be e-filed before the due date (not the specified date) Rule 17(2). Form 9A iro non-receipt of income to be filed two months before due date as per Expl 1 to sec 11(1), whereas Rule 17 requires Form 9A to be filed before due date.

Income set aside by filing Form 10 shall be invested as per sec 11(5). Investments cease as per sec 11(5) is treated as income u/s 11(3)(ii).

Utilisation of accumulation in 5 years – Proviso to sec 11(2).

The judicial decisions quoted in **para 6** above are equally applicable to delay in filing Form 9A/10.

Even the Hon'ble Bombay High Court allowed submission of Form 10 during reassessment proceedings. **Sakal Relief Fund** (2017) 295 CTR 0561 (Bom).

- e. Provisions of sec 40A(3),(3A) and sec 40(a)(ia) shall apply *mutatis mutandis*.
- f. Repayment of Loan can be considered as application of income. CBDT Cir 100 dt 24/01/1973.
- g. Capital gains exempt u/s 11(1A) if the consideration is used in acquiring another capital asset

CBDT's Instruction No. 883 dated 24.9.1975 deposit for more than 6 months is acquisition of another asset.

Calcutta High Court in **Hindustan Welfare Trusts** (1993) 111 CTR (Cal) 284.

- h. Corpus donations not a revenue receipt hence not income. To constitute corpus donation identity and express declaration of donor is essential.
- i. Donation to other trusts 85% application of the donated amount. Explanation 4 (iii) to sec 11(1)(a) & (b). Corpus Donation to other trust is not allowed.
- j. Anonymous Donations : For religious trust sec 115BBC is not applicable. For charitable trusts all anonymous donations are taxable. For partly religious and partly charitable trusts, 30% tax on excess of 5% of total donations or Rs 1.00 lakhs. Anonymous donations are those donations where the trust does not maintain record of name, address etc of donors.

k. Sec 115TD :

A specified person has—

- (a) converted into any form which is not eligible for grant of registration under section 12AA or section 12AB, or approval under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10;
- (b) merged with any entity other than an entity which is a trust or institution having objects similar to it and registered under section 12AA or section 12AB or approved under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10; or
- (c) failed to transfer upon dissolution all its assets to any other specified person within a period of twelve months from the end of the month in which the dissolution takes place,

then, in addition to the income-tax chargeable in respect of the total income of such specified person, the accreted income of the specified person as on the specified date shall be charged to tax and such specified person shall be liable to pay additional income-tax (herein referred to as tax on accreted income) at the maximum marginal rate on the accreted income.

115TD(2) The accreted income for the purposes of sub-section (1) means the amount by which **the aggregate fair market value** of the total assets of the specified person, **as on the specified date, exceeds the total liability** of such specified person, computed in accordance with the method of valuation, as may be prescribed

115TD(3) : For the purposes of sub-section (1), a specified person shall be deemed to have been converted into any form not eligible for registration under section 12AA or section 12AB or approval under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 in a previous year, if,—

- (i) **the registration or approval granted** to it under section 12AA, or section 12AB, or sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, **has been cancelled**; or

Parallel section 352 under the 2025 Act.

10. **Appeal** : An appeal is to be preferred within 30 days of the receipt of demand notice to CIT(A) by filing Form 35 against the assessment.

Tax registration u/s 12A and approvals u/s 80G

Income Tax Act 1961

11. Sec 536(2)(c) of the Income Tax Act 2025 (for short 2025 Act), is reproduced below :

“The provisions of the repealed Income-tax Act shall continue to apply to any proceeding pending on the date of commencement of this Act and to any proceedings initiated on after the 1st April, 2026 (including notices, assessment, re-assessment, recomputation, rectification, penalty, reference, revision and appeals) in respect of any tax year beginning before the 1st April, 2026 and such proceedings shall be carried out as per the procedure specified in the repealed Income-tax Act”;

12. This implies that any Form (Form 10A, 10AB, Form 35, Form 36 etc which is pending at the commencement of the 2025 Act i.e. 01st April 2026, the old Act i.e. 1961 Act shall continue to apply even after 01st April 2026 as if such 1961 Act is not repealed.
13. Terminology : Registration – Sec 12A
Approval - Sec 80G
14. There is no statutory requirement that every charitable trust/company shall seek registration u/s 12A of the Act. It is optional. CBDT Circular 3 dt 12/03/2008 para 16.5. In such a case, the entity will lose the exemption provided by sec 11/12 of the Act. It will not be subject to MMR. Refer Cir 320 dt 11/01/1982. The tax rates including surcharge & cess will be those applicable to an individual.
15. Form 10A is to be e-filed separately for 12A registration and 80G approval. Initially a provisional registration and / or provisional approval is granted.

Such applications are rejected for a) Non-submission of basic documents; b) Non-submission of additional information called; c) No reply to SCNs issued by CIT(E); and c) Objects are not charitable;

16. A newly formed trust shall apply for regular approval within 6 months of the commencement of its activities.

For an existing trusts, this condition is impossible to fulfil. Hon'ble Tribunal in the following cases have held that this condition is applicable to new trusts only and not applicable to existing trusts.

MITCON Forum for Social Development ITA No 613/Pun/2025.

17. Six months before the expiry of registration/approval, the assessee-trusts shall apply for renewal of registration / approval.

Renewal applications were rejected for failure to apply for renewal within 6 months before the expiry of registration / approval. In practice, it was hyper-technically applied. For instance, in CES Foundation, the trust was provisionally approved initially. It applied for regular approval well in time. The approval was granted up to AY 2025-26 i.e. up to 31/03/2025. Technically, the CES should have applied for further renewal of approval before 30/09/2024. However, CIT(E) granted regular approval to its earlier application on 18/11/2024. CES Foundation applied for regular approval from AY 2026-27 onwards on 23/11/2024. CIT(E) rejected the application because of delay (should have applied before 30/09/2024). Pune Tribunal allowed the appeal, in **CES Foundation** ITA No 1846/Pun/2024.

18. Even if the applications are within time, initially many applications were rejected. Hon'ble Tribunals all over India had allowed the appeals of the assessee-trusts by setting orders of rejection and directed to CITs(E) to reconsider the same *de novo* adjudication.

The rejections were on account of :

- a) Non-submission of information called.

Kanishka Foundation ITA No.1732/Mum/2023
Siddhakala Bhakta Mandal ITA No. 1731/Mum/2023
Suresh Chandekar Smruti Pratishtapan ITA No.1233/PUN/202

- b) Wrong Clause : Wrong Clause selection was the major reason for rejection. Clause (ii) is applicable to assessee already having regular registration / approval. Clause (iii) is applicable to assessee having provisional registration / approval and now seeking regular registration / approval.

U V Patel Foundation ITA No.1956/PUN/2024
Abhinav Shikshan Sanstha ITA No.459/PUN/2025
Cosmos Foundation ITA No.2570/PUN/2024

- c) Delay in making the application in Form 10AB

Deccan Gymkhana ITA Nos.444 & 1554/PUN/2025
Sunder Nagar Satsang Sabha ITA No. 7234/Mum/2025

19. The registration / approval granted can be withdrawn if it is subsequently found that :

- a. The activities of the trust are not genuine;
- b. The activities of the trust are not carried out in accordance with all or any of the conditions subject to which it is granted;
- c. The applicant has obtained the registration / approval by fraud;
- d. The applicant has obtained the registration / approval by misrepresentation of facts; and
- e. The trust has violated any condition prescribed in the Act.

20. Application for fresh registration / approval and their renewal shall be as per sec 332 (registration) and sec 354 (approval) 2025 Act.

Form 104 - application for provisional registration/approval – Authority CPC.
Provisional registration / approval shall be granted within one month from the end of the month in which application is made.

Form 105 - application for regular registration/approval – Authority Jurisdictional Prin Comm or Comm. Registration / approval shall be granted within six months from the end of the quarter in which application is made.

21. In case of rejection, the appeal shall lie to the Income Tax Appellate Tribunal u/s 362(1)(b) of 2025 Act. The appeal shall be in Form 115. Appeal to be filed within two months from the end of the month in which the order is communicated to the assessee (Sec 362(3) of 2025 Act) whereas sec 253(3) had provided for 60 days up to 01/10/2024 (order communication date) and two months from the end of the month in which the order is communicated to the assessee after 01/10/2024.
22. The decisions quoted in this Paper shall apply, in my opinion, *mutatis mutandis*, to the issues arising under the 2025 Act.
23. No change in appeal fees – 1961 Act and 2025 Act.

Your suggestions / corrections / comments are welcome on WhatsApp No 91687 94033 or sharadvaze@gmail.com.

THANKS