

DIRECT TAXED REFRESHER COURSE -

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ISSUES IN REGISTRATION & TAXATION OF CHARITABLE & RELIGIOUS TRUSTS

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[01] CHAPTER XVII-EB-S .115 TD: -Accreted income: -

[01] Broad provisions: -

[a] Specified person- Explanation [ia] and [iii]-Section 115TD- four entities as approved U/S. 10 [23C] or the entities **registered U/S. 12A, U/S. 12AA or 12AB.**

[b] Converted in to **any form not eligible for [i] Registration** U/S. 12A, U/S. 12AA/S. 12AB **or [ii] approval** U/S.10[23C]–under **four clauses [iv] to [via] only [not all 15]-5 cases** **OR**

[c] Merged with any other entity except an entity [i] having **similar objects 'and'** [ii] **registered U/S. 12A, U/S. 12AA or U/. 12AB** or approved U/s. 10[23C] **[subject to section 12AC] OR.**

[d] [i] Failure to transfer all the assets [ii] to another Specified person [iii] within an year from the end of the month of dissolution, [excluding transfers made- proviso [3] to sub-section [2]. then

[e] [Additional] income-tax on accreted income **[f] Maximum Marginal Rate.**
Note: - Sub-section [6] – No further credit for any other demand.

[02] Accreted income formula-Sub-Section 2: - **as at specified date**

Aggregate fair market value of all the assets-S. 2. [22B] _____

Less total liabilities _____

Exclusion of assets: -

[01] Acquired out of **agricultural income** and [02] out of **pre-registration income**

Note: -Sub-section [7] of Section115TD- No deduction of any nature while computing this income.

[03] Fatal Cases of 'Conversion': - Sub-section [3]: -

[a] **Cancellation of Registration** granted U/S. 12A, U/S. 12AA or U/s. 12AB

[b] **Cancellation of Approval** grated U/S, 10[23C]

[c] **Modification of objects not conforming to the conditions** of registration or approval **AND** [I] it has **not applied** for fresh Registration or Approval. **OR**

[d] It has applied for fresh Registration or Approval but such application is rejected.

[e] Failure to apply for registration in accordance with **clauses [i], [ii] or [iii]** of Section 12A [1] [ac]

[f] Failure to apply for approval in accordance with **sub-clauses [i], [ii] or [iii]** of first proviso to Section 10[23C].

Date of conversion: - Explanation [i] U/s. 115TD- [i] the date of cancellation, [ii] the date of modification, [iii] the last date of making an application.

Specified date: - Explanation [ii] U/s. 115TD- [i] Date of **conversion**-see above, [ii] the date of **modification**, [iii] the **last date of making an application** for registration.

Sub-section [5] contains provisions for the payment of tax.

Do not give an opportunity of any action under S .115 TD.

Distribution of assets within one year of dissolution or **merger** is **generally not applicable**

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Only for reference: -Registration under section 12AB: -: -

It is one of the **basic conditions for claiming the exemptions under section 11 and 12** of income from payment of income-tax.

Section 11 and 12 [both running into roughly twelve pages] provide for the **computation of income**.

Section 12A provided for the **conditions** for the applicability of Sections 11 and 12.

Section 12AA has become **inoperative** after **Section 12AB** was introduced in the Income-Tax Act, 1961, **WEF 01st April, 2021**.

[02] Procedure of Cancellation of registration u/s. 12AB, sub-section [1]: -
‘during the stage of processing the application itself’: -

PCIT powers: - S. 12AB [1] [b]

To satisfy himself about; -

[a] **the genuineness of the [i] objects and [ii] activities** and

[b] **Material compliances of the laws** applicable to the applicant trust.

He has the powers to

[a] call for the documents,

[b] Call for the information and

[c] to make enquiry

If he is **not so satisfied**, he is duty bound to

[a] afford a **reasonable opportunity of being heard** to the applicant,

[b] Pass an order to **reject** the application,

[c] Pass an order to **cancel** the registration also, **if already given and**

[d] **Send a copy** of such order to the applicant.

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Procedure of Cancellation of registration u/s. 12AB, sub-section [4] in the cases of Specified Violations: - 'after grant of registration': -

[01] Source of information of Specified Violations: - [a] He **himself** notices it.

[b] Reference by **Assessing Officer**. **[c]** **Risk Management strategy** of the IT Dept.

[02] Cases of Specified Violations: -

[a] Application of income for **purposes other than the objects of the trust**.

[b] Application of income for **private religious purposes**

[c] Application of income for **particular religious community by the Trust if it is set up after 1961**.

[d] Non-genuine activities

[e] Activities carried out in **breach of conditions for registration**

[f] Non-incidental business income

[g] Non-maintenance of separate books for incidental business income

[h] Decree, direction or **order etc. about the breach of laws**

[i] Form 10A or form 10AB contains **FALSE or INCORRECT information**

[03] Procedure as above.

He has the powers to

[a] call for the **documents**,

[b] Call for the **information** and **[c]** to make **enquiry**

If he is **not so satisfied**, he is duty bound to

[a] afford a **reasonable opportunity of being heard** to the applicant,

[b] Pass an order to **cancel** the registration as **already given and**

[c] **Send a copy** of such order to the Assessing Officer and the Party.

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[03] Section 115BBC-Anonymous Donation: -

[01] What is it? : -Sub-section [3] -Where the receiver trust does not maintain a record of the identity of the donor like name, address and other particulars as prescribed.

[02] Applicable to all seven entities only [out of total sixteen entities]: -

[i] Section 11 entities,

[ii] **Six entities**-Section 10 [23C] Sub-clauses- [iiiad, [iiiiae], [iv], [v], vi] and [via] entities,

However, **Section 11 entities only** which are [a] **solely religious** institutions and [b] which are **religious as well as charitable institutions excluding educational & medical institutions** are not covered by these provisions.

[03] Not Applicable at all to nine entities of Section10 [23C] only [out of total sixteen entities]: - [fully out of section 115BBC]

[i] **First seven** entities of section 10 [23C] - **govt. institutions, Sub-clause [i] – [iiiiaaaa]**

[ii] Two entities **educational & medical institutions-govt. financed-Sub-cl [iiiab]–[iiiac]**

[04] Section 115BBC and proposed section 337 -Confusing limits of Tax free Anonymous Donation: -

<u>No. [01]</u>	<u>Particulars [02]</u>	<u>U/S. 115BBC [03]</u>	<u>U/S. 337-proposed [04]</u>
<u>01</u>	<u>Limits: - higher of [1] or [2] below</u>	<u>[1] 5% of 'Total donation' [not of anonymous donation.]</u>	<u>[1] 5% of 'such' donation [not of total donation.]</u> <u>See note [*] below.</u>
		<u>[2] One lakh rupees-fixed.</u>	<u>[2] 'Up to' one lakh rupees.</u> <u>Exact amount is not very clear like HRA, S. 44AB limits etc.</u>

[*] Note: -No. 01 of Column [04] above table: - This is in the context of anonymous donation –see entry No. 1 of table below section 337,

[05-A] Example U/s. 115BBC: -

Total donations Rs. 25,00,000.00, Anonymous donations Rs. 85,000.00

Working of Tax free donation: -

Higher of [i] Five per cent of 'total donation' –Rs. 1,25,000.00 and [ii] one lakh rupees,

i. e. **Tax free Anonymous Donation** is Rs. 1,25,000.00 **against actual Rs. 85,000.00**

[05-B] Example U/S. 337-propsoed Bill: - Total donations Rs. 25,00,000.00, Anonymous donations Rs. 85,000.00

Working of Tax free donation: -

Higher of [i] Five per cent of 'such donation' –Rs. 4,250.00 and [ii] up to one lakh rupees,

i. e. **Tax free Anonymous Donation seems to be Rs. 85,000.00. There is no mention of 'actual amount, but maximum up to one lakh rupees.'**

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[04] Issues related to Capital expenditure claimed as an application

[A] Depreciation: -

Such depreciation is Inadmissible.-**section11 [6]**

[01 Selecting the 'right type' of capital assets for claiming the application: -

[i] Principle- Sequence [a] firstly **Nil depreciation rated** asset like land, [b] **then low depreciation rated** assets, [c] then assets having **progressively higher rate of depreciation** serially.

[ii] Example: -[01] **land-** no depreciation asset, [02] **Furniture and fixture-**10% rate item, [3] **Machinery-**15% rate item, [4] **Computers-**40% rate item,

[iii] Why this selection: -

Assets **claimed as an application** is **not eligible for claiming depreciation** under section n11 [6]. **To reduce the disallowance of depreciation**, it is practically **advisable to select the low depreciation-rated assets as an application** as far as possible.

[B] Example of only a part of the cost of capital expenditure [against full cost] claimed as an application: -

Example: -Shortfall in the application of revenue nature for 85% limit-**FY 2024-2025.**

<u>No.</u>	<u>Particulars</u>	<u>Amount-Rs.</u>
01	Gross income	25,00,000.00
02	15% Statutory Accumulation	03,75,000.00
03	Application of Revenue nature	20,00,000.00
04	Shortfall in application to be made good out of capital	01,25,000.00
	[No. 01 less No. 02 and No. 03.]	
05	Cost of capital assets-assumed- 15% rate of depreciation	02,00,000.00;

Note: -Depreciation on Rs. 1,25,000.00 –claimed as an application at No. 04 above- will only be disallowed in future and depreciation on balance Rs. 75,000.00 not claimed as an application will be allowed as usual regularly in future.

[C] Illustrative Reconciliation statement for every year from the year of such claim for depreciation of each asset.

[i] Audit report in form 10B / 10BB requires the auditor to give the details of such **assets claimed as an application** and **depreciation, if not disallowed** in the computation of income.

[ii] Still, In future, the **IT department definitely seeks to know if it such a claim** is made by the assessee.

It is, therefore, necessary to prepare **a reconciliation statement** WRT such assets and the **admissible depreciation** thereon.

Given below is such **an example based on above example** at No. [b]

No.	Tax Year	Op. Book WDV -Rs.	Book Depreciation- Rs. rounded off	WDV for S. 11 Depreciation- Rs. [Rs. 75,000 @85%]	Depreciation- as per S .11- Rs rounded off
01	2025-2026	1,70,000.00	25,500.00	63,750.00	9,560.00
02	2026-2027	1,44,500.00	21,680.00	54,190.00	8,130.00
03	2027-2028	1,22,820.00	18,420.00	46,060.00	6,910.00
04	2028-2029	1,04,400	15,660.00	39,150.00	5,870.00

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[05] Commencement of Activities: - Section 11 and section 80G.

[01] No definition: -

This term is **used under new regime** of taxation of the Trusts. However, it is **not defined** anywhere.

[02] Significance: -

It has got **effects on the year of registration** of the trusts under the provisions of Section 12AB as well of the **year of approval** under section 80G [5] of the Act.

Any discrepancy in the **determination of incorrect year will adversely affect the respective years of registration and approval** and may have **very adverse effects** like [i] **cancellations thereof** and [ii] attracting **section 115TD.**

As such, this **concept needs to be understood very carefully** as implied under the provisions of the Income-Tax Act, 1961.

[03]Example: -

[a] Educational institution **got registered** under the Maharashtra Public Trusts Act, 1950, on **15th December, 2021. [FY 2021-2022]**

[b] It **applied for the permission** to open the school in **April, 2022. [FY 2022-2023]**

[c] It **received the permission** to open the school in **August, 2023. [FY 2023-2024]**

[d] It [i] appointed the **staff**, [ii] obtained the leasehold **buildings**, [ii] completed all the necessary **infrastructural arrangements** in **November, 2024. [FY 2024-2025]**

[e] It commenced **actual teaching** in the school in June 2025, [FY **2025-2026.**]

Conclusion: -

Previous Year of Commencement of activities: -2022-2023. [Not any year between 2023-2026 or 2021-2022.]

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[06] Sections 11 to 13- Computational aspect- add and deduct -charitable as well as religious -against full exclusion under Section 10 [23C]-charitable entities only.

Section 12, Sub-section 02 -Value of 'educational or medical' services-[no other services]

[A] Section 12- Income of such trusts or institutions: -

Following items are includes in the income of the trust or institutions: -

[Sub-section 01] Non-corpus voluntary contribution: -

Non-contractual income, it is a donation in practice.

[Sub-section 02] Value of 'educational or medical' services-[no other services]

Value of educational or medical services-**free or at discounted rate**- made available to **persons covered by Section 13**, sub-section [3], under five clauses [a] to [d] and [cc] hereof.

It covers the following beneficiary persons: -

[a] Author or founder of the Trust;

[b] Contribution [donation]: -

[i] **'More than' [not equal to] Rs. one lakh** in the previous year or

[ii] **'More than' [not equal to] Rs. ten lakhs 'in aggregate' [during the life time of the contributor.] Challenge of record maintenance**

[Note: -

No reference is made to the Section 13 [3] [e] **substantial interest**, but only to the contribution made. Section 13 [3] [e] is applicable for Section13 [1] and section 13 [2] only like [a] to [d] above.

[c] Member of HUF, if author or founder is HUF;

[cc] Trustee or manager [naming of designation not relevant] of such trust and

[d] Relative of [a], [b] & [cc] above.

Relative for [d] above: -As per Explanation I below section 13-**Wide.**

[01] Spouse, [02] Brother or sister of both,

[03] Lineal ascendant or descendant of both, [04] Spouse of No. [02] and [03]

[05] Lineal descendant of brother or sister of self or of the spouse.

Example: -

[01] Shri K is trustee of K Orthopaedic Centre;

[02] It is registered under S. 12AB of the Act.

[03] Shri K undergoes a surgery at K Orthopaedic Centre;

[04] Regular cost of this surgery is Rs. 12,00,000.00

[05] Concessional cost of this surgery is billed to him at Rs. 5,50,000.00

[06] Income of K Orthopaedic Centre; from such provision of services at lower rates – Rs. 6,50,000.00. Neither application out of this income is allowed nor is 15% accumulation allowed therefrom.

Notes: -

[01] This value is **not at all subject to 85%** application and **15%** accumulation U/S. 11 but **fully chargeable to income-tax. Explanation 1 to sub-section [2], section 12.**

Our duty: -We are to discharge our duty WRT **Form 10B or 10BB reporting, if applicable. Obtain list and declaration and add suitable note to the report.**

[Sub-section 3]: - Redundant- Gujarat earth quake donations.-pre-March, 2004, cases.

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[07] Income of the Trust –

General case: -

[A] Total Income of the Trust to determine the amount to be applied-

[a] Credit side total of the Income and Expenditure account

[b] Less: -

[01] Anonymous donation Taxable @ 30%

[02] Value of Service to persons covered by **Section 12 [2]** – fully taxable- normal rates

[c] Balance income to be applied – [a] less [b]

[B] 15% accumulation will be calculated WRT this income- [c] above.

From the point of view of all these issues, one must be very **vigilant about this claim.**

Note: - No form 9A or Form 10 is required to be filed for this statutory accumulation.

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[09] Section 12A -Condition for application of Section 11 and 12: -

[01] Sub-section [1] [ac]: -

Timely Making of an **application for registration AND Registration** U/S. 12AB.

[Proviso to Section 12A [1] [ac]: -PCIT has a **power to admit belated application** if he is satisfied that **there was a reasonable cause** in making such application.

[02] Sub-section [1] [b]: -

[i] Keeping and maintaining **books of account as other records**-rule 17AA

[ii] Submission of **audit report in form 10B / 10BB** by **specified date.**

[03] Sub-section [1] [ba]: -Income-Tax **Return** U/S. 139 [4A] **by due date.**

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[10] Section 10 [23C]: -A Toothless Lion

This **clause of section 10,** being a part of **items not forming part of total income,** played a very **vital role** in the journey of many **charitable institutions.**

[01] It primarily dealt with **fifteen different entities** as under: -

Seven entities directly under the Governments and Union Territories [sub-clause [i] to [iii-aaaa]

Six solely Educational and Medical entities: - [sub-clause [iii-ab] to [iii-ae] and [sub-clause [vi] and [via]

[a] Financed by the Government; [b] Receipts up to five crore rupees and

[c] Other institutions approved by the Principal Commissioner of Income-Tax or by the CIT

Other two trusts or funds or institutions as approved by the Principal Commissioner of Income-Tax or by the CIT- Sub-clauses [iv] and [v].

[02] Absolute Change of scenario: -

[A] Two landmark and equally important judgements of the Supreme Court of India, one after the other

[i] Noble Education Society-19th October, 2022, **['solely' educational or medical institutions]** and

[ii] Ahmedabad Urban Development Authority-27th Oct., 2022, **[general public utility]**

[B] Making it mandatory initially for **four such entities** [sub-clauses iv to via} **to be covered by the Section 11 and 12 by the Finance Act, 2024 and**

[C] Proposed **Income –Tax Bill, 2025, consolidating all the provisions** [Section 10[23C] and Section11] in relation to such **all Non-profit organisations**

[D] These **two judgements** and **two amendments** to the in relation to such all Non-profit organisations have made this clause totally redundant.

Hence only the **discussion** is made with reference to other provisions like **Sections 11 to 13, Section 80G, and section 115BBC, 115BBi and 115TD primarily.**

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[11] Renewals of the registrations and approvals under the New regime of Trust-taxation-from April, 2021: -

Some issues: -

[A] Validity: -These registrations and approvals are **valid up to 31st March, 2026.**

[B] Renewals: -

Renewals due latest by 30th Sept., 2025. You can **start now from April, 2025, itself** based on your accounts of 2024-2025. We have already **furnished such four forms** so far under the new regime.

[C] Clauses [ii] used for the first time: -

For the **first time**, the option of **renewal of ‘regular registration’ and ‘regular approval’** is available. **Section12A [a] [ac] [ii] or clause [ii] under first proviso to Section 80G [5].**

[D] Ten year period of registration only, [not approval]: -

As per **proviso to section 12AB, [1]: -**

[a] in case of **application** under **first five sub-clauses** of **Section 12A [1] [ac]**

[b] Following trusts will get **‘registration only’ [not approval for ten years]**

[i] Income is ‘up to’ Rs. five crore

[ii] Such income is before deductions U/S/ 11 and 12

[iii] Such income is during each of two previous years immediately before the year of the application for renewal of registration

[E] Old registration and approvals [regular or provisional] under the Income-Tax Act, 1961, **will continue** under the New Income-Tax Bill, 2025.

[F] There were **approvals U/S. 10 [23C] and registrations U/S. 12AB.** Under the **Income-Tax Bill, 2025**, both are **clubbed** together as **‘Registration’ only.** However, **approval U/S. 80G will be continued for** Registered NPOs **U/S. 354**

[G] An approval for Registered NPOs U/S. 354: -

[i] Unlike past, all entities to apply

[ii] Approval will be for five years only & not for ten years like some registrations.

[iii] There is no deduction on account of donations to such trusts under new regime.

[iv] Limit of religious expenditure-reduced from 5% -Section 50G [5B] to 4.99% - section 354 [1] [b] of total income-Needs clarification / correction.

[H] Reply to notices for renewal of registration and approval: -

Needs to be extremely systematic-

[01] Name, address, PAN

[02] Salutation clause – Dear Sir / Madam,

[03] Subject: -

[04] Reference to the Notice number.

[05] Main body of the reply: -

[i] Copy all the questions serially in the reply

[ii] Give self-explanatory answer, in **suitable paragraphs**, if needed, to every question.

[iii] Bold and underline important parts of the reply

[iv] Supporting Enclosures as per main body

[v] Cross-referencing to Enclosures,

[vi] Highlighting the points **in the enclosures, preferably mild yellow/rosy colour,**

[vii] Accuracy and purity of English language.

Notes to enclosures: -

[a] Declaration about Section 2 [15] infringement: - Just copy the question and mould it suitably as declaration.

[b] Declaration about legal compliance: -Just copy the question and mould it suitably as declaration

[c] Note on activities: -

It may be divided as under: -

[1] General **note on the objects;** [2] **Year-wise list of few activities** carried out;

[3] Give some **photos and newspapers cuttings** possible below the activity itself;

[4] **Sample Invoices**, preferably **under GST Act**, and **subjected to TDS**

[12] Section 115BBI: -Specified income: -

[01] Applicability: -

Only five entities: -Section 10 [23C] –Sub-clauses [iv] to [via] and section 11 entities.

[02] Rate of Tax: - Thirty per cent

[03] What is specified income: -

[a] Accumulation more than 15%

[b] Violation of section 13 [1] [c] – income diverted to interested persons

[c] Violation of section 13 [1] [d] – breach of section 11 [5]

[d] Violation of section 11 [1] [d] – Corpus not invested.

[e] Violation of section 11 [1] B) – Accumulated amount remain unspent

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[13] Restriction on application of income on inter-trust basis: -

<u>No.</u>	<u>Particulars of income of donor trust</u>	<u>Nature of Limitation on application on inter-trust basis</u>	<u>Section</u>
01	Regular income	Only 85% of the amount applied to another registered trust is treated as an application	Clause [iii], Expl. 4, Section 11 [1]
02	Corpus donation	Not permitted to be made by one trust to another registered trust	Expl. 2, Section 11 [1]

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[14] Due Date Table: -

<u>No.</u>	<u>Particulars OF Form, statement or Return</u>	<u>Due date</u>
01	10BD	31 st May
02	9A OR 10	31 st August
03	10B or 10BB	30 th September
04	ITR-7 <u>[not ITR-5]</u>	31 st October

Recommendation or precaution: -While furnishing form 9A or form 10, it is recommended to **specify the purpose** for which the amount of income is accumulated as '**charitable as per the Act.**'

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