CHAPTER III

TAXATION OF RELIGIOUS AND CHARITABLE TRUSTS IN INDIA

Philanthropic institutions in our country are serving laudable social objec­tive. In order to encourage philanthropic activity, the Government has given tax concessions to these institutions and in the Indian Income-tax Act, provisions to achieve these ends were incorporated as early as 1886. Section 5(1) of 1886 Act provided:

"Nothing in Section 4, shall render liable to tax - (e) any income derived from property solely employed for religious or public charitable purposes."

The expression "Charitable Purpose" was defined for the first time by the Charitable Endowments Act, 1890. Section 2 of the Act defines:

'Charitable Purpose' includes relief of the poor, education, medical relief and advancement of any other object of general
The Act of 1918 added that the property should be held under a trust and the Income-tax Act of 1922 retained the provisions relating to charities in the old form.

When the Income-tax Act of 1922 became practically incomprehensible, the Government appointed a Committee in 1958 to rewrite the Act. The Income-tax Bill, 1961 which was introduced in the Parliament to replace the Income-tax Act, 1922 was referred to a Select Committee. This Committee was of the opinion that the definition of "Charitable Purpose" needed a change to eliminate the tax-avoidance device inbuilt into it. It first considered the addition of the words "other than the furtherance of an undertaking for commercial profit", after the words, "any other object of general public utility", but subsequently, this was changed to *not involving the carrying on of any activity for profit*. However, these ten words (*not involving.... profit*) added to the definition of charitable purpose, instead of solving the matter, created more problems, mainly as a result of judicial interpretation. The picture became more and more blurred until finally in 1983. The Government perhaps heeding the advice of *Chokshi Committee*¹ or because of the fact that these ten words had become redundant due to the Supreme Court decision in *CIT v. Surat Art Silk Cloth Manufacturers Association*² deleted them with effect from 1st April 1984, but more than later. At the same time, the Government added a new clause (4A) to Section 11.³

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1 Officially the Committee was known as the *Direct Tax Laws Committee, Interim Report of December 1977*, p.5
2 (1980) 121 ITR 1 (SC);
3 Bijawat, Mahesh C. *Charitable purpose -Not involving the carrying on of any activity for profit-Retrospect and prospect* (Unpublished);
CHARITY

Charity is a word of art, of precise and technical meaning. The words "charity" and "charitable" must be considered in their legal and technical sense, the popular meaning of these words does not coincide with their legal meaning. But still it is difficult to fix the point of divergence, and no one has as yet succeeded in defining the popular meaning of the word "charity". An exhaustive definition of charity in its legal sense has never been attempted. The cases in which the question of charity has come before the courts are legion and no one who is versed in them will pretend that all the decisions even of the highest authority are easy to reconcile. Since a technical meaning is attached to "charity", the whole subject is enveloped in an artificial atmosphere.

The word "charity", if used generally or without qualifications or limitations, falls within the definition of "charitable purpose" given in the Indian Income-tax Act. Where under a trust deed, property was dedicated "for ever for religious and charitable objects" and the settlor illustrated eight objects of which one object was to

4 Per Lord Wright, National Antivivisection Society v. IR (1948) 16 ITR 1 at P.4 (HL)
5 The Commissioners for Special Purposes of Income Tax v. Pemsel (1891) AC 531; National Antivivisection Society v. IR (1948) 16 ITR 1 (HL); Verge v. Somerville (1924) AC 496 (PC).
7 Williams Trustees v. IR (1948) 16 ITR Suppl. 41 (HL);
8 Supra note 6.
"supply of fodder to animals and cattle", it was held to be a valid Charitable trust even if any of the objects does not fall within the category of charity in the legal sense.¹⁰

A charity, once established, does not die, though its nature may be changed.¹¹ If the purposes are not charitable per se, localization of them will not make them charitable.¹²

ENGLISH AND INDIAN LAW OF CHARITY

The first attempt in the English law to define "charity" was contained in the statute of Elizabeth (43 Eliz., C4). In the Preamble, the following sketchy list of charitable objects are enumerated:

"The relief of aged, impotent and poor people; the maintenance of sick and maimed soldiers and mariners; the maintenance of schools of learning, free schools and scholars in Universities; the repair of bridges, ports, havens, causeways, churches, sea banks and highways; the education and preferment of orphans; the relief, stock or maintenance of houses of correction; the marriage of poor maids; the supportation, aid and help of young tradesmen, handicraftsmen, and persons decayed; the relief or redemption of prisoners or captives; the aid or ease of any poor inhabitants concerning payment of taxes; the setting out of soldiers."

An early attempt was made by Sir Samuel Romilly in Morice v. Bishop of Durham¹³ to simplify the problem by a classification under four heads: "Relief of the

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¹⁰ Re Vallabhdas Karsondas Natha AIR 1947 382; CIT v. Radhaswami Satsang Sabha AIR 1954 All 291;

¹¹ National Antivivisection Society v. IR (1948) 16 ITR Suppl.1, 36 (HL);

¹² Williams' Trustees v. IR (1948) 16 ITR Suppl. 41 at 49 (HL); Houston v. Burns (1918) AC 337 (HL); Londonderry Church v. IR 17 TC 431. at p.457.

¹³ (1805) 10 Ves. 522 at p.532.
indigent, the advancement of learning, the advancement of religion and the advancement of objects of general public utility." This classification was later adopted by Lord Macnaghten in the celebrated judgement of Commissioners for Special Purposes v. Pemsel,14 "Charity in its legal sense comprises four principal divisions; trust for the relief of poverty, trusts for the advancement of education, trusts for the advancement of religion, and trusts for other purposes beneficial to the community not falling under any of the preceding heads."

It will be noticed that the first head in the definition of charitable purpose given in the Indian Income-tax Acts of 1922 and 1961, are borrowed from the summary of Sir Samuel Romilly; the second has been taken from the classification of Lord Macnaghten after removing the word "advancement"; the third is new one which is not to be found in both, summary of Sir Samuel Romilly and classification of Lord Macnaghten. The fourth is drawn from the last head in the summary of Sir Samuel Romilly.

Explaining the difference between English and Indian Law of Charity, Bhagwati J. In CIT v. Surat Art Silk Cloth Manufacturers' Association15 observed:

"The definition of charitable purpose in Indian Law thus goes much further than the definition of charity to be derived from the English cases, because it specially includes medical relief and embraces all objects of general public utility. In English Law it is not enough that a purpose falls within one of the four divisions of charity set out in Lord Macnaghten's classification. It must also be within the spirit and intendment of the preamble to the Statute of Elizabeth if it is to be regarded as charitable. There is no such limitation so far as Indian Law is concerned even if a purpose is not within the spirit and intendment of the preamble to the Statute of Elizabeth, it would be charitable if it

14 (1891) AC 531 at p.583.
falls within the definition of "Charitable Purpose", given in the statute. It is on account of this basic difference between the Indian and English Law of charity that Lord Wright uttered a word of caution in *All India Spinners' Association v. CIT*\(^{16}\) against blind adherence to English decisions on the subject. The definition of "Charitable Purpose" in the Indian statute must be construed according to the language used there and against the background of Indian life. The English decisions may be referred to for help or guidance but they cannot be regarded as having any binding authority on the interpretation of the definition in the Indian Act.\(^{17}\)

Lord Wright said in *All India Spinners' Association v. CIT*\(^{17}\):

"The difference in language, particularly the inclusion in the Indian Act of the word "public" is of importance. The Indian Act gives a clear and succinct definition which must be construed according to its actual language and meaning. English decisions have no binding authority on its construction and though they may sometimes afford help or guidance, cannot relieve the Indian Courts from their responsibility of applying the language of the Act to the particular circumstances that emerge under conditions of Indian life.\(^{18}\)

Thus, the definition of charitable purpose under Indian Income-tax Act, 1961 goes much further than the definition of charity to be derived from the English cases, because it embraces purposes of general public utility.\(^{19}\) Therefore, purposes which are not charitable in English law may be charitable under this Act.

\(^{16}\) (1944) 12 ITR 482 (PC).

\(^{17}\) (1944) 12 ITR 482 at p.486 (PC).

\(^{18}\) *CIT v. Andhra Chamber of Commerce* (1965) 55 ITR 722 at p.734 (SC); *Addl. CIT v. Surat Art Silk Cloth Manufacturers' Association* (1980) 121 ITR 1 at p.15-16 (SC); *Re Trustees of the Tribune* (1939) 7 ITR 415 at p.420-21 (PC);

PUBLIC CHARACTER OF CHARITY

A trust in order to be charitable must be of a public character. It must not be merely for the benefit of particular private individuals. 20

The law on this point is similar in England and in India. The rule is thus stated by Lord Wrenbury in Verge v. Somerville 21: "To ascertain whether a gift constitutes a valid charitable trust so as to escape being void on the ground of perpetuity, a first inquiry must be whether it is public - whether it is for the benefit of community or of an appreciably important class of community. The inhabitants of a parish or town, or any particular class of such inhabitants, may for instance, be the objects of such a gift, but private individuals, or a fluctuating body of private individuals, cannot."

In England and in India public character has been held to be essential to the validity of all charitable trusts. 22

A trust created for the benefit of the members of a club, 23 or an association 24

20 William's Trustees v. IR (1948) 16 ITR Suppl. 41 at p.50 (HL); Trustees of Gordhandas Govindram Family Charity Trust v. CIT (1952) 21 ITR 231.
21 (1924) AC 496 at p.499 (PC).
22 National Anti-vivisection Sociey v. IR (1948) 16 ITR Suppl. 1 at p.5 (HL) Re Compton (1945) 1 All.ER 198; D.V. Anur v. CIT (1945) 13 ITR 465; Trust for "education" must relate to public; Re Mercantile Bank of India (Agency) Ltd. (1942) 10 ITR at p.524: "Trust for "relief of the poor must have a public character";
24 CIT v. Ahmedabad Millowners' Association (1977) 106 ITR 725;
or the employees of a company, factory or institution, or establishing a recreation ground for the employees of a company is not for a charitable purpose because the trusts are not for the benefit of the public.

Where a trust was created by a wakf deed, for the poor relations of the settlor, held not charitable because no element of public benefit is involved. However, a trust for the benefit of the public, with a direction to give preference to relations and members of specified family in applying income is held a valid charity.

By "benefit of the public" is meant not the humanity as a whole, but some indefinite class of persons, a cross-section of the community.  


26 Wemher v. IR 21 TC 137.


28 Trustees of Gordhandas Govindram Family Charity Trust v. CIT (1952) 21 ITR 231; Dwarkadas Bhimji v. CIT (1948) 16 ITR 160; Mullick Somnath Charitable Trust v. CIT (1986) 160 ITR 3; Gordhandas Govindram Family Charity Trust v. CIT (1973) 88 ITR 47; Abdul Sathar v. C.Ag. IT AIR 1974 SC 1795;


intention is to benefit a large section of the public, as distinguished from specified individuals.  

A trust is a trust of public character if its main object is to benefit only Hindu women,  

or a particular sect,  

or the European Community,  

or returned soldiers,  

or police personnel  

tea-planters,  

or drapery and other tradesmen.  

In order to determine whether the trust is of a public character, the test is whether a common quality which unites the persons within a class is essentially public

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R 793; CIT v. A.P. Riding Club (1987) 168 ITR 393; Institution of Engineers v. IR 16 TC 158; 
Observation made to the contrary by Beaumount CJ in CIT v. The Grain Merchants' Association of Bombay (1938) 6 ITR 427, that object of general public utility means an object of general public utility which is available to the general public as distinct from any section of public CIT v. Surji Devi Kanjilal Jaipuria Charitable Trust (1990) 186 ITR 728;

31 Re Trustees of the Tribune (1935) 3 ITR 246 at p.273 per Tek Chand J. whose dissenting judgement was upheld by the Privy Council in (1939) 7 ITR 415 (PC); D.V. Arur v. CIT (1945) 13 ITR 465, pp.473, 474, 476.

32 Re Charusila Dassi (1946) 13 ITR 362 at p.375:


34 Ahmedabad Rana Caste Association v. CIT (1971) 82 ITR 704 (SC); CIT v. Ahmedabad Rana Caste Association (1973) 88 ITR 354 affirmed in (1983) 140 ITR 1 (SC); Londonderry Presbyterian Church House v. IR 27 T.C. 431 at pp.446-8, 451-2 - Section 13(1)(b) enacts that a Charitable Trust as distinct from a religious trust created on or after 1st April 1962 for the benefit of any particular religious community or caste is disentitled to exemption.


36 Verge v. Somerville (1924) AC 496 (PC).


38 Jackson v. Lord Advocate 10 TC 460;

39 IR v. Roberts 11 TC 425;
or impersonal nature, as being residents of a particular locality, country or district. Localisation of beneficiaries by geographical limit does not make a charity invalid.

Eleemosynary element is not essential for a valid charity. Trusts of which the dominant purpose is political are not charitable.

CHARITABLE PURPOSE

Section 2(15) of the Income-tax Act, 1961 defined charitable purpose as:-

40 CIT v. Andhra Chamber of Commerce (1965) 55 ITR 722 at p.729 (SC); Hyderabad Stock Exchange Ltd. v. CIT (1967) 66 ITR 195; Oppenheim v. Tobacco Securities Trust (1951) 1 All. ER 31 (HL); CIT v. Radhaswamy Satsang Sabha (1954) 25 ITR 472 at pp.500-1; Re Smith (1932) 1 Ch.153; Gift "unto my country England"; Verge v. Somerville (1924) AC 496 at p.499; Re, Lokmanya Tilak Jubilee National Trust Fund (1942) 10 ITR 26; Gifts of national imprtance for the inhabitants of British India; Williams' Trustees v. IR (1948) 16 ITR Suppl.41 (HL); Gifts for Welsh people residents in or near London; Keren v. IR 17 TC 27;

41 Londonerry Presbyteriam Church House v. JR 27 TC 431 (CA); Goodman v. Mayor or Saltash (1882) 7 AC 633, 642 (HL); Re Smith (1932) 1 Ch. 153; IR v. Tayport Town Council 20 TC 191; Re Mellody (1918) 1 Ch. 228; Williams' Trustees' v. IR (1948) 16 ITR Suppl. 41 at p.49 (HL); Houston v. Burns (1918) AC 337 (HL).

42 Re Trustees of The Tribune (1939) 7 ITR 415 (PC); CIT v. Breach Candy Swimming Bath Trust (1955) 27 ITR 279 at p.289; Incorporated Council of Law Reporting for England and Wales v. Att. Gen. 47 TC 321 (CA); IR v. Peebleshire Nursing Association 11 TC 335; Gauue v. Committee of Lunatic Hospital 3 TC 39 at p.43; Nuffield Foundation v. IR 28 TC 479 at p.493; St. Andrew's Hospital v. Shearsmith 2 TC 219; The Governors of the Rotunda Hospital, Dublin v. Coman 7 TC 517 (HL); Brighton College v. Marriott 10 TC 213 (HL);

43 Re Trustees of the Tribune (1939) 7 ITR 415 (PC); Re Lokamanya Tilak Jubilee National Trust Fund (1942) 10 ITR 26; Bonar Law Trust v. IR 17 TC 538; Re Tetley (1923) 1 Ch. 258 at p.262; affirmed in (1924) AC 262 (HL); CIT V. All India Hindu Mahasabha (1983) 140 ITR 748; Trustees for the Roll of Voluntary Workers v. IR 24 TC 320; National Antivivisection Society, v. IR (1948) 16 ITR Suppl. 1 at p.14 (HL); Animal Defence & Anti-Vivisection Society v. IR 32 TC 55; IR v. Temperance Council of Christian Churches 10 TC 748 at p. 752; Re Hood (1931) 1 Ch. 240; Bowman v. Secular Society Ltd. (1917) AC 406 at p.442 (HL); CIT v. Andhra Chamber of Commerce (1965) 55 ITR 722 (SC); All India Spinners' Association v. CIT (1944) 12 ITR 482 at p.486

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"Charitable Purpose" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility.

This definition classifies the charitable purpose under four heads:
1. Relief of the poor,
2. Education,
3. Medical Relief, and
4. The advancement of any other object of general public utility.

Now, these four heads are discussed one by one.

**Relief of the Poor**

The relief, in order to be charitable, need not be confined to give free doles or alms to the poor. It may be in the form of payment of wages for specific work given to them mainly with a view to relieving their poverty.44 It may be for the general public or a section of it.45

Relief of poverty as a charitable purpose must be public in character.46

A trust is charitable if it supplies a person with the bare necessities of life;47 but a person for some other specially necessitous circumstances cannot be said to be relieving him from poverty.48

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44 *All India Spinners' Association v. CIT* (1944) 12 ITR 482 (PC);
46 *Supra* see "Public character of Charity”.
47 *Trustees of Gordhandas Govindram Family Charity Trust v. CIT* (1952) 21 ITR 231 at p.239; *CIT v. Managing Trustee, Jalakhabal Trust* (1969) 72 ITR 733;
48 *Re Mercantile Bank of India (Agency) Ltd.* (1942) 10 ITR 512 at p.519.
In England, a trust for relieving poverty of relatives of a settlor is a good charitable object even if no member of the public is permitted to benefit in such trust. But in India relief of the poor by itself will not be a charitable object unless it involved an object of general public utility. Poverty here does not mean absolute want or grinding need.

Feeding of the poor is clearly a public charitable purpose. The amount spent for this purpose is outside the reach of tax net. But contributing towards the marriage expenses of a needy person of the community would not be a charitable purpose.

Poverty is not a necessary element in a charitable trust. It is also not necessary that a "Charity" should benefit only the poor to the exclusion of the rich. But while a trust may be charitable though not confined to the poor, it would not be charitable if it excludes the poor.

References:


50 Re de Carteret (1933) Ch. 103;

51 Muthuswamy v. Royalu AIR 1925 Mad. 689.


53 Kedia Jatiya Sahayak Sabha and Fund v. CIT (1963) 49 ITR 81; Trustees of Gordhandas Govindram Family Charity Trust v. CIT (1952) 21 ITR 231; Trustees of Gordhandas Govindram Family Charity Trust v. CIT (1968) 70 ITR 600;

54 Commissioners for Special Purposes of Income-tax v. Pemsel (1891) AC 531 at p.583; 3 TC 53 at p.96 (HL);

55 Verge v. Somerville (1924) AC 496 at p.504;

56 Re Macduff (1896) 2 Ch. 451 at p.464 (CA); Verge v. Somerville (1924) AC 496 at p.504 (PC); Lakshmi Narain Lath Trust v. CIT (1969) 73 ITR 402;
Education

A trust for the promotion of a particular branch of education like literature,\textsuperscript{57} music,\textsuperscript{58} fine arts,\textsuperscript{59} medicine or psychological healing,\textsuperscript{60} surgery,\textsuperscript{61} civil engineering,\textsuperscript{62} industrial and scientific research and training in the motor and transport industry,\textsuperscript{63} law\textsuperscript{64} etc., have been held to be charitable. Property held by a body corporate or unincorporated for the promotion of education is technically held upon a charitable trust.\textsuperscript{65}

Education includes professional\textsuperscript{66} or commercial education as well as higher education\textsuperscript{67} or technical education.\textsuperscript{68}

\textsuperscript{57} Re Shakespeare Memorial Trust (1923) 2 Ch. 398;

\textsuperscript{58} Re Delius' Will Trusts (1957) 1 All. E.R. 854; Royal Choral Society v. IR (1944) 12 ITR Suppl. 13 (CA);

\textsuperscript{59} Royal Choral Society v. IR (1944) 12 ITR Suppl. 13 (CA) at p.21 as per Lord Greene, M.R.: One paragraph in Tudor on Charities 5th ed. at p.39, is inadequate and misleading. The passage is: "The fine arts, however, are probably not regarded as objects of charity, and a gift to encourage artistic pursuits was held not charitable; but it is otherwise if the element of instruction is introduced. A gift for an art school is good."

\textsuperscript{60} Re Osmond (1944) Ch. 206;

\textsuperscript{61} Royal College of Surgeons v. National Provincial Bank Ltd. (1952) 1 All E.R. 984;

\textsuperscript{62} Institution of Engineers v. IR 14 T.C. 272;

\textsuperscript{63} CIT v. G.D. Naidu Industrial Educational Trust (1942) 10 ITR 358 at p.369.

\textsuperscript{64} CIT v. Bar Council, Madras (1943) 11 ITR 1;

\textsuperscript{65} Re Bootham 3 TC 134 at p.141;

\textsuperscript{66} Re Osmond (1944) Ch. 206; Trust for the promotion of medical profession is charitable; CIT v. Bar Council, Madras (1943) 11 ITR 1; for legal profession; Institution of Engineers v. IR 14 TC 272; for Engineers:

\textsuperscript{67} Commissioners for Special Purposes v. University College of North Wales 5 TC 408 at p.414 (CA); Charitable Gadodia Swadeshi Stores v. CIT (1944) 12 ITR 385;

\textsuperscript{68} Scottish Wollen Technical College v. IR 11 T.C. 139; CIT v. Sree Narayana Trust (1985) 155 ITR 389: Where the trust has an object to complete the work of establishing a technological college at a certain place.
A trust with the object of maintaining and building hostels attached to the colleges is also a charitable trust.\(^6\)

In *Sole Trustee, Loka Shikshana Trust v. CIT*\(^7\) the Supreme Court has given unduly restricted meaning of the word "education": "the systematic instruction, schooling or training given to the young in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. The word "education" has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education."

In England, the word "education" has received a liberal interpretation, viz, training of choir singers,\(^7\) dramatic and musical performance,\(^7\) publication of Law Reports.\(^7\) Similarly in India, "education" and expression of a wide and general character, has been used apparently with a view not to restrict its scope such as merely to start an educational school or College.\(^7\)

**Statutory exemptions**: Section 10(16) exempts from tax scholarships granted to meet the cost of education. Any payment made in pursuance of awards for literary, scientific or artistic work or attainment or for service for alleviating the distress of the poor, the weak and the ailing, or for the proficiency in sports and games, or gallantry awards instituted or approved by the Government, is exempt under

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70 (1975) 101 ITR 234 at p.241 (SC);
71 *Royal Choral Society v. IR* (1944) 12 ITR Suppl. 13 at p.16 (CA);
72 *Re Shakespeare Memorial Trust* (1923) 2 Ch. 398; *IR v. Glasgow Musical Festival Association* 11 TC 154; *Tenant Plays Ltd. v. IR* 30 TC 107 (CA); *Associated Artists Ltd. v. IR* 36 TC 499;
74 *Ecumenical Christian Centre v. CIT* (1983) 139 ITR 226 at p.231.
Section 10 (17A). Section 10(22) exempts any income of a University or other educational institution existing solely for educational purposes and not for purposes of profit. Any income of a games association established in India for the purpose of control, supervision, regulation or encouragement in India of the games of cricket, hockey, football, tennis or any other notified games is exempt from tax if such income applies or accumulates solely to the object for which it is established. Section 10 (23A) exempts certain incomes of an approved association or institution having as its object the control, supervision, regulation or encouragement of the profession of law, medicine, accountancy, engineering, architecture or such other professions as may be notified by the Central Government.

Medical relief
Medical relief does not mean free treatment or treatment at less than the ordinary price for all patients but charge the patients and then to apply the income for certain objects which are undoubtedly laudable. A hospital erected entirely for the benefit of the poor is nonetheless solely directed to that purpose because, in order to provide it with some nucleus of revenue apart from voluntary subscriptions, it runs a special ward for paying patients. But where a hospital takes paying patients at remunerative prices and applies its surplus income to the extension and improvement of the hospital building, the surplus is profit assessable to income tax. Similarly, a

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75 Secondary Board of Education, Orissa v. ITO (1972) 86 ITR 408;
76 Cricket Association of Bengal v. CIT (1959) 37 ITR 277.
78 IR v. Peeblesshire Nursing Association 11 TC 335 at p.350; Cawse v. Lunatic Hospital, Nottingham 3 TC 39;
79 St. Andrew's Hospital, Northampton v. Shearsmith 2 T.C. 219;
trust mainly for the purpose of making and selling cheap ayurvedic medicines and incidently to treat patients in a hospital was held to be non charitable.\(^80\) However, an asylum with substantial charitable endowments which took in patients at remunerative prices was considered to be charitable.\(^81\)

Thus a nursing home whose object was to supply nursing at less than cost price to sick persons of poor classes,\(^82\) running a hospital\(^83\) were held charitable in England.

**Statutory exemption**: Section 10 (22A) exempts from tax the income of hospitals, other medical institutions and convalescent homes "existing solely for philanthropic purposes and not for purposes of profit."

### Any other object of general public utility

"Any other object of general public utility" are very wide words. Their exact scope may require on other occasions very careful consideration. These words would exclude the object of private gain, such as an undertaking for commercial profit though all the same it would subserve general public utility.\(^84\) The Indian courts cannot be relieved from their responsibility of applying the language of the Act to the

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\(^81\) *Cawse v. Lunatic Hospital, Nottingham* 3 T.C. 39;

\(^82\) *Nuffield Foundation v. IR* 28 T.C. 479 at p.493;

\(^83\) *Trustees of the Mary Church House v. Anderson* 5 T.C. 48 at p.56.

particular circumstances that emerge under conditions of Indian life\textsuperscript{85} and the standard of customary law and common opinion amongst the community to which the parties interested belong.\textsuperscript{86} According to Russell J., "the question whether a gift is or may be operative for the public benefit is a question to be answered by the court by forming an opinion upon the evidence before it."\textsuperscript{87}

General public utility does not mean that trust must be for the benefit of the general public and not a section of the public,\textsuperscript{88} provided the section of community sought to be benefited must be sufficiently defined and identifiable by some common quality or a public or impersonal nature.\textsuperscript{89} Where there was no common quality uniting the potential beneficiaries into a class the trust might not be regarded as valid.\textsuperscript{90} General public utility includes benefit to the rich as well as to the poor.\textsuperscript{91}

\begin{itemize}
\item \textsuperscript{85} All India Spinners' Association v. CIT (1944) 12 ITR 482 at p.486 (PC).
\item \textsuperscript{86} CIT v. Ahmedabad Rana Caste Association (1968) 70 ITR 503 at p.512; Re the Trustees of the Tribune (1939) 7 ITR 415 at p.422;
\item \textsuperscript{87} Re Hummeltenberg (1923) 1 Ch. 237;
\item \textsuperscript{88} CIT v. Radhaswami Satsang Sabha (1954) 25 ITR 472; Contrary decision in CIT v. Bombay Grain Merchants Association, Bombay (1938) 6 ITR 427 was overruled in CIT v. Andhra Chamber of Commerce (1965) 55 ITR 722 at p.732 (SC); Williams' Trustees v. IR (1948) 16 ITR Suppl.41 at p.50 (HL); Trustees of Gordhandas Govindram Family Charity Trust v. CIT (1952) 21 ITR 231.
\item \textsuperscript{89} Ahmedabad Rana Caste Association v. CIT (1971) 82 ITR 704 at p.708 (SC); CIT v. Andhra Pradesh Riding Club (1987) 168 ITR 393; CIT v. Radhaswamy Satsang Sabha (1954) 25 ITR 472; CIT v. Western India Chamber of Commerce Ltd. (1982) 136 ITR 67; Kamla Town Trust v. CIT (1982) 133 ITR 632; CIT v. Andhra Pradesh Police Welfare Society (1984) 148 ITR 287; CIT v. Bengal Mills & Steamers Presbyterian Association (1983) 140 ITR 586; Addl. CIT v. Ahmedabad Millowners' Association (1977) 106 ITR 725 - If a substantial part of the objects is to benefit its own members, the body of persons is not establish for Charitable purposes only. If the trust property is applicable to the purposes, many of which are neither religious nor charitable then the income of the whole property is assessable to income-tax.
\item \textsuperscript{90} Ahmedabad Rana Caste Association v. CIT (1971) 82 ITR 704 at p.708 (SC);
\item \textsuperscript{91} Verge v. Somerville (1924) AC 496 (PC).
\end{itemize}
Under the Income-tax Act, the test of general public utility is applicable to the property held under trust "or other legal obligation" - a phrase which would include Moslem Wakfs and Hindu endowments. But a purpose which is charitable under the personal law of the parties cannot be accepted as such for the purposes of the Act unless a trust falls within the definition contained in the Act and satisfies the conditions prescribed in section 11, therefore, cannot claim exemption from liability to pay income-tax.

An eleemosynary element is not essential for a charitable trust. The purpose of providing the poor or the community in general with some useful thing without price or at low price may doubtless be itself a purpose of general public utility.

In *Re Trustees of The Tribune*, the Privy Council held that the object of supplying a State with an organ of educated public opinion is an object of general public utility, and it is a charitable object, in the absence of a private profit, even if the newspaper charges its readers and advertisers at ordinary commercial rates. The Court further held that if a newspaper has no dominant political purpose, the fact that the paper may acquire a particular political complexion does not affect its charitable character.

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92 *Re Trustees of The Tribune* (1939) 7 ITR 415 at p.442.
95 *Re, Trustees, of The Tribune* (1939) 7 ITR 415 at p.423; (PC).
96 (1939) 7 ITR 415 (PC).
When an object seeks to promote or protect the interests of a particular trade or industry, that object becomes an object of public utility but not so, if it seeks to promote the interests of those who conduct the said trade or industry.\footnote{Addl. CIT v. Ahmedabad Millowners' Association (1977) 106 ITR 725;}


In \textit{CIT v. Surat Art Silk Cloth Manufacturers Association}\footnote{(1980) 120 ITR 1 (SC).} a larger Bench of the Supreme Court reaffirmed the ratio of \textit{Andhra Chamber of Commerce.}

The same principle is applicable to a registered society to protect or promote a particular trade or industry.\footnote{Hosiery Industry Federation v. CIT (1983) 140 ITR 983;} Likewise, a company incorporated without
a profit motive, with the object of publishing Law reports, or maintaining and running a stock exchange, or promoting home industries, arts and crafts, or promoting road safety, or promoting the brick kiln trade, is established for an object of general public utility. Similarly, a society with an object of "dissemination of knowledge and the raising of the moral, intellectual, economic, social and political conditions of the public" or the general improvement and promotion of agriculture, or the lots of agriculturists, or to benefit the Scheduled Tribes, or to effect economic amelioration by imparting technical education, setting up model industries and reducing unemployment, or a State Road Transport Corporation working without the object of earning profit to provide transport service to the public and without issuing share capital entitled to dividend, is established for charitable purposes.

Where the dominant purpose of a State Bar Council is to ensure quality service of competent lawyers to the litigating public, to spread legal literacy, to promote law reforms and to provide legal assistance to the poor, is held charitable purpose. The promotion of temperance is also an object of general public utility.

105 CIT v. Bengal Home Industries Association (1963) 48 ITR 181;
106 CIT v. Automobile Association of Southern India (1981) 127 ITR 730;
107 CIT v. Delhi Brick Kiln Owners Association (1981) 130 ITR 55;
109 Royal Agricultural Society v. Wilson 9 TC 62; IR v. Yorkshire Agricultural Society 13 TC 58 (CA);
110 CIT v. World Agriculture Fair Memorial Farmers’ Trust Society (1985) 155 ITR 370;
111 Girijan Co-op. Corporation Ltd. v. CIT (1989) 178 ITR 359;
112 CIT v. Radhaswamy Satsang Sabha (1954) 25 ITR 472 at p.513; All India Spinners’ Association v. CIT (1944) 12 ITR 482 (PC); CIT v. Adarsh Gram Trust (1986) 159 ITR 41;
113 CIT v. A.P. State Road Transport Corporation (1986) 159 ITR 1 (SC);
115 IR v. Falkirk 11 TC 353; Dean Leigh v. IR 38 TC 315; IR v. Temperance Council of Christian Churches 10 TC 748;
Other examples: Some other examples of objects of general utility are research stations, preservation of places of historic interest or natural beauty, dharmashalas and sadavarts, almshouses, a memorial hall for cultural activities, public wells and cisterns, feeding Brahmans and travellers, and promoting unity amongst the members of a community and developing all aspects of their life.

A trust for the promotion of cricket or other sports among the public, or for the maintenance of a public swimming bath, or a public recreation ground serves an object of general public utility, since it promotes public health.

116 Coffee Board v. C. Ag. IT (1964) 52 ITR 126;
117 Re Verrall (1916) 1 Ch. 100; Trades House of Glasgow v. IR 46 TC 178; Section 80(G)(2)(b);
119 Mary v. Anderson 5 TC 48;
120 IR v. Roberts Marine Mansions 11 TC 425;
121 Mahakoshal Shaheed Smarak Trust v. CIT (1983) 140 ITR 795;
122 Jamnabai v. Khimji Vallubhdas ILR 14 Bom. 1;
124 CIT v. Ahmedabad Rana Caste Association (1973) 88 ITR 354 affirmed in 140 ITR 1 (SC);
125 CIT v. Ootacamund Gymkhana Club (1977) 110 ITR 392; Contrary view in Cricket Association of Bengal v. CIT (1959) 37 ITR 277; South India Athletic Association v. CIT (1977) 107 ITR 108; IR v. City of Glasgow Police Association 34 TC 76 at pp. 97, 105 (HL); Re Nottage (1895) 2 Ch. 649 (Yacht racing); Scottish Flying Club v. IR 20 TC 1 (Pleasure flights); Bangalore Race Club (1970) 77 ITR 435 (Horse racing); Section 10(23) of the Income-tax Act, 1961;
126 CIT v. Breach Candy Swimming Bath Trust (1955) 27 ITR 279;
127 Re Hadden (1932) 1 Ch. 133.
Other examples of general public utility are housing board,\textsuperscript{127} trade associations,\textsuperscript{128} Photographers' Association,\textsuperscript{129} Society framed to encourage film industry,\textsuperscript{130} film federation,\textsuperscript{131} Association to promote textile industry,\textsuperscript{132} Police Welfare Society,\textsuperscript{133} newspaper society,\textsuperscript{134} society set up for the propagation of artistic principles,\textsuperscript{135} running a newspaper whose dominant object is not political,\textsuperscript{136} political advancement and political education,\textsuperscript{137} promoting cottage industry or village industry,\textsuperscript{138} promotion of standards of behaviour of the buillion merchants towards the general public,\textsuperscript{139} refuge for domesticated animals and birds,\textsuperscript{140} supply of fodder to animals,\textsuperscript{141} promotion of entertainment and

\begin{itemize}
\item \textsuperscript{127} Vidarbha Housing Board v. ITO (1973) 92 ITR 430.
\item \textsuperscript{128} CIT v. Madhya Pradesh Anaj Tilhan Vyapari Maha Sangh (1988) 37 Taxman 230; (1988) 171 ITR 677;
\item \textsuperscript{129} CIT v. South Indian Photographic & Allied Traders Association (1987) 166 ITR 166;
\item \textsuperscript{130} CIT v. South Indian Film Chamber of Commerce (1981) 129 ITR 22.
\item \textsuperscript{131} CIT v. Film Federation of India (1988) 41 Taxman 239;
\item \textsuperscript{132} Southern India Mill Owners' Association v. CIT (1977) 110 ITR 871; CIT v. Textile Manufacturers Association (1972) 83 ITR 247; CIT v. Cotton Textiles Export Promotion Council (1968) 67 ITR 539;
\item \textsuperscript{133} CIT v. Andhra Pradesh Police Welfare Society (1984) 148 ITR 287;
\item \textsuperscript{134} CIT v. Indian and Eastern Newspaper Society (1982) 136 ITR 81;
\item \textsuperscript{135} CIT v. Victoria Technical Institute (1979) 120 ITR 358; Victoria Technical Institute v. CIT (1991) 188 ITR 57 (SC);
\item \textsuperscript{136} Re Trustees of the Tribune (1939) 7 ITR 415 (PC); Partap Press v. CIT (1961) 41 ITR 577;
\item \textsuperscript{137} Re Lokamanya Tilak Jubilee National Trust Fund (1942) 10 ITR 26; CIT v. All India Hindu Mahasabha (1983) 140 ITR 748; Nathu Ram Shiv Narain v. CIT (1982) 134 ITR 625;
\item \textsuperscript{138} Thiagarajan Charities v. Addl. CIT (1978) 114 ITR 699; All India Spinners' Association v. CIT (1944) 12 ITR 482 (PC);
\item \textsuperscript{139} CIT v. Madras Jewellers & Diamond Merchants Association (1981) 129 ITR 24;
\item \textsuperscript{140} CIT v. Shri Shaila Industrial and Spiritual Colony Charities (1973) 87 ITR 175;
\item \textsuperscript{141} Vallabhdas Karsondas Natha v. CIT (1947) 15 ITR 32;
\end{itemize}
sports, trust to maintain samadhi of family guru and to establish educational institutions.

Trusts created for the objects of promoting the social or the material condition of a particular community, welfare of employees of trust, conducting horse races and breeding horses for that purpose are not charitable objects.

Statutory exemptions: Certain bodies, authorities and institutions which serve objects of general public utility are granted special exemptions under section 10 of the Income-tax Act, 1961 e.g. local authorities, housing and town planning authorities, scientific research associations, sports associations, professional associations and institutions, institutions for the development of Khadi or Village Industries, and statutory authorities established for the development of Khadi or Village Industries, and for administering religious or charitable trusts and endowments.

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142 South Indian Athletic Association v. CIT (1977) 107 ITR 108;
144 Kedia Jatiya Sahayak Sabha & Fund v. CIT (1963) 49 ITR 74;
145 Zenith Tin Works Charitable Trust v. CIT (1976) 102 ITR 119;
146 Hydrabad Race Club v. CIT (1985) 153 ITR 54 (FB);
147 Clause 20;
148 Clause 20A;
149 Clause 21;
150 Clause 23;
151 Clause 23A;
152 Clause 23B;
153 Clause 23 BB;
154 Clause 23 BBA;
Not involving the carrying on of any activity for profit"  
(deleted words)

In the definition of "Charitable purpose" the words not involving the carrying on of any activity for profit, which could not find a place in the 1922 Act were added for the first time when the present Act was enacted in 1961. These words were deleted by the Finance Act, 1983 with effect from 1st April 1984, hence profits and gains of business in the hands of a charitable trust would not be exempt, except where the business fulfils the conditions specified in Section 11 (4A) of the Act.

For the period prior to their deletion, implications of these words became the bone of contention before the courts mainly as a result of judicial interpretation consequently the interpretative complexity persists. This complexity was solved as a result of the decision of the Supreme Court in Dharmadeepi v. CIT, 155 that the words not involving the carrying on of any activity for profit qualify or govern only the last head of charitable purpose and not the earlier three heads. 156 Where, therefore, the purpose of a trust or institution is relief of the poor, education or medical relief, the requirement of the definition of "charitable purpose" would be fully satisfied, even if an activity for profit is carried on in the course of the actual carrying out of the primary purpose of the trust or institution. But if the purpose of the trust or institution is such that it cannot be regarded as covered by the heads of "relief of the poor, education and medical relief", but its claim to be a charitable purpose rests only on the last head "advancement of any other object of general public utility", then the question would straight arise whether the purpose of the trust or institution involves the carrying on of any activity for profit. The last head of "Charitable Purpose" thus requires for its

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applicability, fulfillment of two conditions, (i) the purpose of the trust or institution must be advancement of an object of general public utility; and (ii) that purpose must not involve the carrying on of any activity for profit. It is not enough that as a matter of fact the activity of the trust results in profit. What is necessary to disentitle the trust to exemption is that the purpose should involve the carrying on of any activity for profit. Where the profit is merely a by-product of the activity of the trust, exemption cannot be denied.

A larger Bench of the Supreme Court reviewed the legal position in CIT v. Surat Art Silk Cloth Manufacturers Association and laid down the following propositions:

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158 Dharamposhana Co. v. CIT (1984) 114 ITR 463 (SC); CIT v. Andhra Chamber of Commerce (1981) 130 ITR 184 (SC): Section 10 (22);
159 CIT v. Surat Art Silk Cloth Manufacturers' Association (1980) 121 ITR 1 (SC); Umaid Charitable Trust v. CIT (1980) 125 ITR 55; CIT v. Rajasthan Charity Trust (1987) 165 ITR 759; Sole Trustee, Loka Shikshana Trust v. CIT (1975) 101 ITR 234 (SC); There was a sharp conflict of judicial opinion on the import of words. The interpretation of the Calcutta High Court in CIT v. Indian Chamber of Commerce (1971) 81 ITR 147 and Mysore High Court in CIT v. Loka Shikshana Trust (1970) 77 ITR 61; was inconsistent with, while that of Kerala High Court in CIT v. Indian Chamber of Commerce (1971) 80 ITR 645; CIT v. Cochin Chamber of Commerce (1973) 87 ITR 83; CIT v. Dharamodayam Co. (1974) 94 ITR 113 affirmed by the Supreme Court in (1977) 109 ITR 527 (SC); and Andhra Pradesh High Court in Andhra Pradesh State Road Transport Corporation v. CIT (1975) 100 ITR 392 affirmed by the Supreme Court in CIT v. Andhra Pradesh State Road Transport Corporation (1986) 159 ITR 1 (SC); was in consonance with the above said para. In Indian Chamber of Commerce v. CIT (1975) 101 ITR 796 the Supreme Court went further and held that the words not involving the carrying on of any activity for profit govern the word advancement and not the words object of general public utility and held that if the advancement or attainment of the object involves an activity for profit, tax exemption is not available.

(a) The words not involving the carrying on of any activity for profit govern the words object of general public utility, and not the word advancement. It is the object and not its accomplishment which should involve the carrying on of an activity for profit.\textsuperscript{161}

(b) The inhibition of the exclusionary clause would be attracted if an activity for profit is actually carried on as an integral part of the purpose of "as a matter of advancement of the purpose". If the constitution of a trust or institution expressly provides that the purpose shall be carried out by engaging in an activity which has a predominant profit motive, it would be non-charitable even though no activity for profit is actually carried on.

(c) It is not at all necessary that there must be a provision in the constitution of the trust or institution that the activity shall be carried on no-profit no loss basis or that profit shall be proscribed.\textsuperscript{162}

The judgement has been followed by the Supreme Court in CIT v. Federation of Indian Chamber of Commerce and Industry\textsuperscript{163} in which the main object of the Federation was to promote, protect and develop trade, commerce and industry in India, and in CIT v. Andhra Pradesh State Road Transport Corporation\textsuperscript{164} in which the main object of the Corporation was development of road transport.

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\textsuperscript{162} Madras Kirana Merchants' Association v. CIT (1978) 111 ITR 156; CIT v. Pruthivi Trust (1980) 124 ITR 488;

\textsuperscript{163} (1981) 130 ITR 186 (SC);

\textsuperscript{164} (1986) 159 ITR 1;
The ratio of this judgement applied by the Rajasthan, Madhya Pradesh, Calcutta, Delhi and Madras High Courts.

The controversial words not involving the carrying on of any activity for profit which were attached to the residuary object of ‘general public utility’ were omitted by the Finance Act, 1983 with effect from April 1, 1984.

The aforesaid last words restricted the carrying on of a business when the object of the trust was for any other object of general public utility. With the omission of these words, it appeared that even under the residuary object of general public utility, the restriction for carrying on the activity for profit was dispensed with. But it was not to be so for the reason that at the same time the Legislature inserted a new sub-section (4A) under section 11 of the Act which also came into force with effect from April 1, 1989 and further amended by the Finance Act 1991 which came into force with effect from April 1, 1992. The amended said sub-section reads as under:

"11. Income from property held for charitable or religious purposes

1 to 4 xxx xxx

(4A) Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) 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

165a CIT v. Ganesh Ram Laxminarayan Goel (1984) 147 ITR 468;
166 CIT v. Sangit Kala Mandir Trust (1987) 166 ITR 217;
books of account are maintained by such trust or institution in respect of such business.

It is submitted that a scrutiny of this newly inserted provision, it is clear that the omission of the words *not involving the carrying on of any activity for profit* from clause (15) of section 2 was intended not to relax or remove the existing restrictions, but to place fetters upon the business activity of all kinds carried on by a trust, whether the object of such trust was relief of the poor, education, medical relief and the advancement of any other object of general public utility. It is wrong to suggest that the position is same as it was in 1939, because section 11 (4A) controls the business activities of charitable trusts by withdrawing exemption (with one exception) of income from business of such trusts.

In conclusion, the effect of the amended provision is that while previously if a charitable trust or institution carried on any business to achieve the primary purpose of the relief of the poor, education, and medical relief, the first three objects given in section 2(15), the income derived from such business would be exempt from tax under this section, now such income would be taxable. There is now a total ban on exemption from tax on income derived from any business carried on by a religious or charitable trust, except the business is incidental to the attainment of the objectives of the charitable trust and separate books of account are maintained by such trust in respect of such business.

**Dominant Object of the trust must be charitable**

If there are several objects of a trust, some of which are charitable and some non-charitable, and the trustees in their discretion are to apply the income to
any of the objects, the whole trust fails and no part of the income is exempt from tax. Where the objects are distributive, each and everyone of the object must be charitable in order that the trust might be upheld as a valid charity. 169 If no definite part of property or its income is allocated to charitable purposes and it would be open to the trustees to apply the whole income to any of the non-charitable objects, no exemption can be claimed. 170

The only relaxation which may arise in some cases is that all the primary objects of the trust must be of a religious and charitable nature and the existence of any ancilliary or secondary object which is not of a religious or charitable nature but which is intended to subserve the religious or charitable objects may not prevent the grant of exemption. This is because such an ancilliary or secondary object, even though not of a religious or charitable nature, is intended to effectuate the main and primary objects of the trust. 171


171 Yogiraj Charity Trust v. CIT (1976) 103 ITR 77 at pp.78-82;
If the primary or dominant purpose of a trust is charitable, another object which by itself may not be charitable but which is merely ancillary or incidental to the primary or dominant purpose would not prevent the trust from being a valid charity. A clear distinction must be drawn between the object of a trust and the powers conferred upon the trustees as incidental to the carrying out of the object. If the only object of a trust is the construction and maintenance of a swimming bath which is a purpose of general public utility, the fact that the trustees are given the power to supply or sell refreshments to persons who resort to the bath would not make the trust charitable.


any the less charitable.  

A very cogent illustration is Trustees of the Charity Fund v. CIT\(^{175}\) where the trustees of a charitable trust were directed to give preference to the poor and indigent relations of the members of the family of the settlor, including distant and collateral relations. The Supreme Court held that since the dominant purpose of the trust was to provide benefit to the general public, it was a public charitable trust which was entitled to exemption from tax.\(^{176}\)

Distinguishing the Supreme Court decision of Trustees of The Charity Fund v. CIT,\(^{177}\) the Calcutta High Court in Mullick Somnath Charitable Trust v. CIT,\(^{178}\) observed that in that case the members of the family of the settlor were not the direct recipients of the benefit under the trust, rather supporting them was a subsidiary object, but in the present case the trustees had the discretion to spend the entire income of the trust for the support and maintenance of the poor relations of the settlor. Thus, it was held that the income of the trust was not exempt from tax.

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174 Yogiraj Charity Trust v. CIT (1976) 103 ITR 777 at p.782; CIT v. Andhra Chamber of Commerce (1965) 55 ITR 722 (SC); CIT v. Breach Candy Swimming Bath Trust (1955) 27 ITR 279; IR v. City of Glasgow Police Athletic Association 34 TC 76 at p.105 (HL);

175 (1959) 36 ITR 513 (SC);

176 CIT v. Trustees of Seth Meghji Mathuradas Charity Trust (1959) 37 ITR 419; CIT v. Moosa Haji Ahmed (1964) 52 ITR 147; CWT v. Trustees of the JP Pardiwala Charity Trust (1965) 58 ITR 46; Following the Supreme Court decision in Trustees of the Charity Fund, the courts in these cases held that preference given to the poor relatives or settlors would not affect the dominant object of the trust which was charity and thus, the trusts were entitled to exemption.

177 (1959) 36 ITR 513 (SC);

178 (1986) 160 ITR 3; See also: Abdul Sathar Haji Moosa Sait Dharmastapanam v. C. of Ag IT (1973) 91 ITR 5 (SC);
In *Andhra Chamber* case,\(^{179}\) the Court relied very strongly on the decisions in *IR v. Yorkshire Agricultural Society*\(^{180}\) and *Institution of Civil Engineers v. IR*\(^{181}\) for reaching the conclusion that merely because some benefits incidentally arose to the members of the society or institution in the course of carrying out its main charitable purpose, it would not by itself prevent the association or institution from being a charity. It would be a question of fact in each case "whether there is so much personal benefit, intellectual or professional, to the members of the society or body of persons as to be incapable of being disregarded."\(^{182}\)

Merely application of income to charity on the other hand will not avail to secure exemption if under the terms of the will or deed the income is applicable in the first instance to non-charitable objects and only the residue will go to charity.\(^{183}\)

It is submitted that if the primary or dominant purpose of a trust or institution is charitable, another object which by itself may not be charitable or profit making but which is merely ancillary or incidental to the dominant purpose, such a trust would not lose its character of charitable trust. But if purposes of the trust are distributive, each and every one of the purposes must be charitable to qualify as charitable trust. If the dominant purpose of a trust or institution is charitable but profit making is the real object then such a trust or institution would be prevented from being a valid charity. For example, where a blood bank collects blood on payment

\(^{179}\) (1965) 55 ITR 722 (SC);

\(^{180}\) (1928) 1 KB 611; 13 TC 58 (CA);

\(^{181}\) (1931) 16 TC 158 (CA);

\(^{182}\) This criterion has applied by the Supreme Court in *CIT v. Surat Art Silk Cloth Manufacturers' Association* (1981) 121 ITR 1 at p.12. (SC);

\(^{183}\) *Yogiraj Charity Trust v. CIT* (1976) 103 ITR 777 at p.782 (SC); *CIT v. Andhra Chamber of Commerce* (1965) 55 ITR 722 (SC); *Lawrence v. IR* 23 TC 333;
and supplies blood for a higher price on commercial basis. Undoubtedly, in such a case, the blood bank would be serving an object of general public utility but since it advances the charitable object by sale of blood as an activity carried on with the object of making profit, it would be difficult to call its purpose charitable.

**RELIGIOUS PURPOSES**

There is no definition to the term "religious purpose". The phrase "Charitable Purpose" would be enough to include religious purpose as well. However, religious purpose would include the advancement, support or propagation of a religion and its tenets. Gifts for a religious institution or for a religious purpose is *prima facie* a gift for charitable purpose. However, sections 11, 12 and 13 make a distinction between charitable and religious trusts. But the English Law as to superstitious uses is not acceptable in India.

"Property held under trust or other legal obligation": a phrase which would include *Moslem Wakfs and Hindu endowments*, and the expression "wholly for

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184 *S.M.N. Thangaswamy Chettiar v. CIT* (1965) 57 ITR 546 at p.550;  
185 *Ibid*; A religious purpose can also be a charitable purpose: *Commissioners for Special Purposes v. Pemsel*, as per Lord Mac Naghten "advancement of religion" is one of the four heads of charitable purpose.  
186 *Supra* p 382.  
187 *White v. White* (1893) 2 Ch. 41 (CA); *S.M.N. Thangaswamy Chettiar v. CIT* (1965) 57 ITR 546;  
188 *Boume v. Keane* (1919) AC 1815; *S.M.N. Thangaswamy Chettiar v. CIT* (1965) 57 ITR 546;  
189 *Re Trustees of The Tribune* (1939) 7 ITR 415 at p.422 (PC);
"religious purpose" means a religious purpose within the meaning of the personal law applicable to the assessee. ¹⁹⁰

Gifts for the construction, maintenance and renovation of temple, ¹⁹¹ for the establishment and worship of idols, ¹⁹² for installation of deity and provision for sadavarta, piyau and Kund, dharamshala, hospitals and other religious and educational institutions, ¹⁹³ for the performance of annual religious festivities, ¹⁹⁴ for holding an annual Majlis in remembrance of Imam, ¹⁹⁵ for rozas, mosques and Muslim festivals, ¹⁹⁶ for the maintenance of Khankahs, ¹⁹⁷ for maintaining Christian missions, ¹⁹⁸ for performing Zoroastrian Muktad Baj, Yejushni and other like ceremonies, ¹⁹⁹ and for the maintenance of the samadhi of a guru worshipped by the public, ²⁰⁰ are all upheld as valid gifts for religious purposes.

¹⁹⁰ Hirbai Rahim Charitable & Religious Trust v. CIT (1968) 68 ITR 821; ¹⁹¹ S.M.N. Thangaswamy Chettiar v. CIT (1965) 57 ITR 546 at pp.551 556; ¹⁹² Ganeshidevi Ramidevi Charity Trust v. CIT (1969) 71 ITR 696 at p.701; Bhupatinath v. Ramlal ILR 37 Cal. 128; ¹⁹³ Ganeshidevi Ramidevi Charity Trust v. CIT (1969) 71 ITR 696 at p.701; ¹⁹⁴ Annada Chanan Dutta v. Kamala Sundari Rai AIR 1936 Cal. 405 at p.407; ¹⁹⁵ Hirbai Rahim Charitable & Religious Trust v. CIT (1968) 68 ITR 821; ¹⁹⁶ Hazarat Pirmahomed Shah Saheb Roza Committee v. CIT (1967) 63 ITR 490 (SC); Mulla’s Mahomedan Law, N.M. Tripathi Private Ltd. (1990) 18th Ed. pp.193-4; ¹⁹⁷ Mohammed Kazim v. Syed Abi ILR 11 Pat. 288; ¹⁹⁸ Commissioners for Special Purposes v. Pemsel 3 TC 53 (HL); Ellis v. IR 31 TC 178 : Property held upon trust for use as a Roman Catholic Church, Chapel or mission hall as a parish room, meeting room or residence for clergy, teachers, or others engaged with the work of Roman Catholic Church or as a Roman Catholic elementary school or for promotion and aiding the work of the Roman Catholic Church, was held charitable. ¹⁹⁹ Jamshedji Cursetjee Tarachand v. Soonbai ILR 33 Bom. 122; CWT v. Pardiwala Charity Trust (1965) 58 ITR 46 at p.50; ²⁰⁰ CIT v. Guryani Brij Balabh Kaur Trust (1980) 125 ITR 381;
Where a trust created for the advancement of the Christian religion but it had not confined to purposes which were religious or charitable. It was held, the trust property could properly be used for non-charitable purposes.\(^{201}\)

Tucker, L.J. in *Oxford Group v. IR*\(^{202}\) laid down the following four principles regarding religious trusts:

1. The advancement of religion means the promotion of the spiritual teaching of a religious body and the maintenance of the spirit of the doctrines and observances upon which it rests or in which it finds expression.\(^{203}\)

2. A religious body may and usually does engage in a number of subsidiary activities which are not purely religious but it does not thereby lose its religious character, and a trust in favour of such a body *simpliciter* is a good charitable trust but the income can only be applied to those activities of the body which are purely religious.

3. A trust which is so worded as to permit the income to be used by a religious body in activities which are not purely religious is not a good charitable trust.

4. In the case of a company or other association, if the main object or objects are solely for the advancement of religion, the mere fact that the company or association is given certain powers, even though described as objects, which are purely

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\(^{201}\) *Ellis v. IR* 31 TC 178;

\(^{202}\) 31 TC 221 at p.248;

\(^{203}\) As per Rowlatt J. in *Keren Keyemeth Le Jisroel Ltd. v. IR* 17 TC 27 at p.33;
ancillary to the main objects, will not prevent the company or association being regarded as a body formed for religious purposes only, but tax exemption will be confined to such parts of income as are applied to its strictly religious activities.

(5) Where one of the main objects of a company or association permits for its attainment, of activities which were not purely religious then the company or association cannot be regarded for tax purposes as being a body formed for religious purposes only. 204

A charitable trust must always be public in nature, 205 but a religious trust may be private or public. 206 In the public religious trust the dedication is for the use or benefit of the public, but when property is set apart for worship of a family God, in which public is not interested, the trust is private one. 207 In other words, a public temple is one where a considerable portion of public or a section thereof has a beneficial interest and they are using it as a matter of right, 208 and gift for the purpose of such a temple must, therefore, benefit the public. 209 Tax exemption is confined to public religious trusts only. 210

204 Ellis v. IR 31 TC 178;
205 Supra see under "Public character of Charity"
206 CIT v. Jamal Mohamad (1941) 9 ITR 375 at p.384 (FB); CIT v. Administrator General of Bengal (1952) 21 ITR 241 at p.248;
207 CIT v. Administrator General of Bengal (1952) 21 ITR 241 at p.248;
208 CIT v. Girdharam Hariram Bhagat (1985) 154 ITR 10;
209 Mahant Ram Saroop Dasji v. S.P. Sahi AIR 1959 SC 951; S.M.N. Thangaswamy Chettiar v. CIT (1965) 57 ITR 546 at p.556;
210 Section 13(1)(a) : The income of a religious trust or institution is entitled to exemption even though it may be for the benefit of a particular religious community or caste.
This is made clear by section 13(1)(a) that nothing contained in section 11 shall operate to exempt "any part of the income from the property held under a trust for private religious purposes which does not enure for the benefit of the public."210

Therefore, an idol,211 roza or mosque212 to which the public have free access or a trust for the spiritual welfare of all mankind213 would be entitled to exemption as a public religious trust. Feeding of poor214 or money expended by a private religious trust on an object of public charity215 is not decisive on the question as to whether the religious trust is public or private. A family deity216 or an imambara217 which does not enure for the public benefit is not exempt.

211 Jamshedji Cursetjee Tarachand v. Soonbai ILR 33 Bom.122; CWT v. Pardiwala Charity Trust (1965) 58 ITR 46 at p.50;
212 Prasaddas Pal v. Jagannath Pal AIR 1933 Cal. 519
213 Jyotishwari Kalimata v. CIT (1946) 14 ITR 703;
214 Re Charusila Dasi (1946) 14 ITR 362; CIT v. Administrator General of Bengal (1952) 21 ITR 241;
Wakfs

If the property is permanently dedicated to God but the income is applied for personal benefit of the settlor’s family or descendants, such a Wakf is clearly non-charitable and not for "religious purposes", within the meaning of this Act and not entitled to exemption because it does not enure for the benefit of public.218

CREATION OF CHARITABLE OR RELIGIOUS TRUST

No formal deed, nor any other writing is necessary to constitute a charitable or religious trust, still less to constitute a legal obligation.219 A charitable trust may be created by any words sufficient to show the intention,220 If the intention is accompanied with or followed by a formal divesting of ownership of property on the part of the donor and vesting of the same in any other person or even in the donor himself as trustee, the dedication is complete.221 No technical


220 CIT v. Trustees of Shri Cutchi Lohana Panchtade Mahajan Trust (1975) 98 ITR 448;

words are necessary. A trust may even be created by the use of words which are primarily words of condition but such words will constitute a trust only "Where the requisites of a trust are present." A trust for charities without specifying any charities at all is valid. Even if some discretion is given to the trustee to spend the amount deposited with it on a charity of its own choice, it does not mean that either no trust is created or the trust so created is invalid. Dedication of property to God by a Hindu or in order to constitute Wakf by a Mohamedan, no instrument is necessary. But there must be a real dedication, whereby the property is completely given away and the owner completely divests himself of his onwership which is to be determined by his subsequent acts and conduct. If the trust had been really and validly created, any deviation by the founder of the trust or the trustees from the declared purposes would amount only to a breach of trust and would not detract from the declaration of trust.

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225 Tangella Narasimhaswami v. Madini Venkatatingam AIR 1924 Mad. 636 at p.638;

226 Shah Ali Hammad v. Mohammad Nazir Ali AIR 1929 All.329;


228 Birendra Keshri Prasad and Narain Sahee v. Bahuria Saraswati Kuer AIR 1934 Pat. 612 at p.614; Iswarlakshmi v. Ktitish AIR 1932 Cal. 419; Ram Dhan v. Prayag Narai AIR 1921 All. 37;

229 Maniti Ramrao v. Mallapur Shri Gopal Krishna AIR 1932 Bom. 305 at p.309;

230 Thanthi Trust v. ITO (1973) 91 ITR 261 at pp.284-5;
Kania J. in *Hanmantram Ramnath v. CIT* 231 said "Although the Indian Trusts Act does not apply to charitable trusts, 232 it is clear that the three certainties described are required to create a charitable trust. They are: (i) a declaration of trust which is binding on the settlor; (ii) setting apart definite property and the settlor depriving himself of the ownership thereof; and (iii) a statement of the objects for which the property is thereafter to be held."

There are three modes in which a voluntary transfer of property in favour of a temple or deity can be validly and effectually made:

(i) dedication of property directly to the deity, which is sanctioned by Hindu Law need no compliance with the provisions of the Transfer of Property Act;

(ii) Property may be transferred by way of gift to the trustee of a temple, complying with the provisions of Section 123 of the Transfer of Property Act;

(iii) by the creation of a trust. 233

While the opening of an account in one’s books and his disclaiming benefit from that account may serve as evidence of his intention to set up a trust, a trust will not be prefect till the trust fund or property is handed over to the trustee. 234

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231 (1946) 14 ITR 716 at p.718;
232 *Usha Trust v. CIT* (1983) 144 ITR 808;
In brief, with regard to charitable trust, a great deal of latitude is permitted and the rule is if there is a clear intention to make a gift for charity, the trust is not allowed to fail for uncertainty. The reason for this latitude is, the charity has been lauded, commended and recommended by all walks of society. Feeling of piety, compassion and benevolence have inspired men and women all over the world to make gifts to charitable and religious purposes to relieve distress and to promote the welfare of the state. Since a trust holds property and derives income for the benefit of either the public at large or individuals, it is inevitable that it should have tax remictions.

Almost every country with a system of direct taxation encourages religious and charitable institutions by offering tax immunity, if they use their income entirely for the purposes for which they have been set up and if they do not venture into any competitive trade. Similarly, in India tax exemptions are provided to these religious and charitable trusts under sections 11, 12, 12A, 13 of the Income-tax Act. They are also permitted to accumulate a part of their annual income in the ordinary course. If a religious or charitable trust wants to accumulate more of its income than is normally allowed, it will have to intimate the purpose of accumulation to the authorities and invest the money in specified modes. A trust may also conduct a business "subject to the condition that the business" subserves its primary object. For example, if the Gandhi Peace Foundation which has been established for propagation of Gandhian thought and philosophy which would admittedly be an object of general public utility, undertakes publication of a monthly journal for the purpose of carrying out this charitable object and charges a small price which is more than the cost of the publication and leaves a little profit. The pricing of the monthly journal would "undoubtedly be made in such a manner"

that it leaves some profit for the Foundation but that cannot have the effect of polluting the charitable character of the purpose, because the predominant object of the activity of publication of the monthly journal would be to carry out the charitable purpose by propagating Gandhian thought and philosophy and not to make profit.

CONDITIONS FOR EXEMPTION UNDER INCOME TAX ACT. 1961

Income from property held for Charitable or religious purposes (Section 11 of the Income-tax Act. 1961)

Section 11 of the Income-tax Act, 1961 provides that income derived from property held under trust wholly for charitable or religious purposes is exempt to the extent to which such income is applied for such purposes in India, and where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of 25 per cent of the income from such property. It further provides that the income in the form of voluntary contributions made with a specific direction that they shall form part of corpus of the trust or an institution shall also be exempted and there is no proviso or exception to it.

Section 11 also makes provision that in the event 75 per cent of the income has not been applied to charitable or religious purposes during the previous year, income so accumulated or set apart shall not be included in the total income of the previous year, provided the specified conditions are complied with.
The provisions of this section are subject to the provisions of sections 60 to 63 of the Income-tax Act, 1961 which deals with 'transfer of income' where there is no transfer of assets and revocable transfer of assets. In determining the income applied or accumulated for charitable or religious purposes, the accounts of the trust is to be taken into account. The word "income" must be understood in the commercial sense, which is arrived at in the context of what

236 Transfer of income where there is no transfer of assets Section 60: All income arising to any person by virtue of a transfer whether revocable or not and whether effected before or after the commencement of this Act shall, where there is no transfer of the assets from which the income arises, be chargeable to income-tax as the income of the transferor and shall be included in his total income.

237 Revocable transfer of assets Section 61: All income arising to any person by virtue of a revocable transfer of assets shall be chargeable to income-tax as the income of the transferor and shall be included in his total income.

Transfer irrevocable for a specified period. Section 62: (1) The provisions of section 61 shall not apply to any income arising to any person by virtue of a transfer—(i) be way of trust which is not revocable during the lifetime of the beneficiary, and, in the case of any other transfer, which is not revocable during the lifetime of the transferee; or (ii) made before the 1st day of April, 1961, which is not revocable for a period exceeding six years:
Provided that the transferor derives no direct or indirect benefit from such income in either case. (2) Notwithstanding anything contained in sub-section (1), all income arising to any person by virtue of any such transfer shall be chargeable to income-tax as the income of the transferor as and when the power to revoke the transfer arises, and shall then be included in his total income.

"Transfer" and "revocable transfer" defined. Section 63: For the purposes of sections 60, 61 and 62 and of this section,—(a) a transfer shall be deemed to be revocable if—(i) it contains any provision for the re-transfer directly or indirectly of the whole or any part of the income or assets to the transferor, or (ii) it, in any way, gives the transferor a right to re-assume power directly or indirectly over the whole or any part of the income or assets; (b) "transfer" includes any settlement, trust, covenant, agreement or arrangement.


239 CBDT Circular 5-P/LXX- 6 dated 19.5.1968; See also CIT v. Jayashree Charity Trust (1986) 159 ITR 280 at p.286;

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is available in the hands of the assessee subject to an adjustment of any expenses extraneous to the trust including expense of maintaining the trust property, depreciation, payment of income tax and wealth tax, tax deducted at source, apportioning any part of such expenses to capital donations received by the trust. Income applied for charitable or religious purposes must be allocated with reference to its source for the purposes of section 11 (1) (a).

Application of income

The word "applied" means the income is actually applied for charitable or religious purposes in the taxable territories. "Applied" does not necessarily mean "spent". If the legislature intended that the amounts should actually be spent, there is nothing preventing it from using that word. Even if the amount has been

241 Deoradha Madhava Trust v. Property Tax Officer (1980) 125 ITR 531;
244 CIT v. Jayshree Charity Trust (1986) 159 ITR 280;
245 CIT v. Ashoka Charity Trust (1982) 135 ITR 556;
247 H.E.H. Nizam’s Religious Endowment Trust v. CIT (1966) 59 ITR 582 (SC);
248 CIT v. Radhaswamy Satsang Sabha (1954) 25 ITR 472 at p.522;
earmarked and allocated for the purposes of the institution, it may be deemed to have
been applied. Thus, if amounts were debited in the accounts and communication
was made to the donee, it amounted to application of income.

Where the assessee-charitable trust transferred certain amount by making
debit entries against itself and credit entries in the name of the college and the
concerned college had drawn certain amount which showed that the amount had been
kept as a fund for the educational purposes, if a specified amount transferred to
the reserve fund in the relevant years was applied or finally set apart for application
for charitable or religious purposes, may amount to application of income.

The application of income for charitable or religious purposes takes place
in the year in which the income is adjusted to meet the expenses incurred for charitable
or religious purposes even if such expenses have been incurred in the earlier year and
adjusted against the income of subsequent year. The income is applied for
charitable purposes if it is used for acquiring a capital asset for fulfilling a charitable
purpose such as dharamshala, or if the trust income is donated to another charitable

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250 CIT v. Radhaswamy Satsang Sabha (1954) 25 ITR 472 at pp.522-3; CIT v. Sherwani Charitable
Trust (1975) 99 ITR 284;
252 CIT v. Thanthi Trust (1982) 137 ITR 735;
253 Hakim Abdul Hamid v. CIT (1973) 90 ITR 203 (FB); CIT v. Hamdard Dawakhana (1986) 157
ITR 639; See also CIT v. Radhaswami Satsang Sabha (1954) 25 ITR 472 at pp.522-3;
Ramchandra Poddar Charitable Trust (1987) 164 ITR 666;
George Forana Church (1988) 170 ITR 62;
trust, or if it is used for the repayment of loan originally taken to fulfil one of the object of the trust. But if the trust, instead of taking a loan, incurs the expenditure for charitable and religious purposes out of the corpus of the trust and seeks to reimburse the said amount out of the income of the subsequent year, or by accepting the onerous gift undertook the liability to discharge the debt before the creditor sold the shares to recover his dues, such a trust would not be entitled to claim exemption. What is to be seen is whether by incurring the expenditure of a capital nature, the objects of the trust were promoted by applying the income to those objects the burden lies upon the assessee. Where a trust existing for charitable purpose of giving loan to widows or persons whose financial condition is poor, gave interest free loans to needy persons and when the loans were repaid, they would constitute income of the trust for the purpose of applying the provisions of sub-section (1) and (2) of Section 11.

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258 CIT v. Maharana of Mewar Charitable Foundation (1987) 164 ITR 439;
259 CIT v. Avkash Nidhi (1986) 160 ITR 729;
261 CIT v. Cutchi Memon Union (1985) 155 ITR 51;
262 Re Chrusila Dassi (1946) 14 ITR 362;
Accretion to the amount so set apart by way of interest would also form part of trust fund for charities and eligible for exemption. \(^{263}\)

Section 11 (1A)\(^ {264}\) specified the requirement that where a capital asset, held by a charitable trust, is transferred, the capital gain arising from the transfer should be deemed to be applied to the purposes of the trust if the consideration received on transfer is utilized for acquiring another capital asset of the trust.\(^ {265}\)

**Accumulation of income**

Under the Income-tax Act, 1922 exemption was available to charitable trusts without any restriction upon the accumulation of income. The present Act imposed restrictions upon the accumulation of income. The income that is allowed to be accumulated for application to charitable and religious purposes should not exceed 25 per cent of the aggregate of the income from trust property\(^ {266}\) and voluntary donations deemed to be income under section 12.\(^ {267}\) Even if the accumulation is in excess of 25 per cent of the trust income, the trust or institution would be entitled to exemption from tax if the conditions in clauses (a) and (b) of section 11(2) are fulfilled.\(^ {268}\) As per these clauses accumulations beyond the above limit would not

\(^{263}\) *CIT v. Ram Nath A. Podar* (1963) 47 ITR 423;

\(^{264}\) Sub-section 1A of section 11 was inserted by Finance Act (No 2) 1971 with retrospective effect from 1st April 1982.


\(^{266}\) Section 11 (1) (a); *CIT v. Natwarlal Chowdhury Charity Trust* (1990) 84 CTR 210: The trust was held entitled to accumulate under section 11(1) (a) 25 percent of the deemed income under section 11(3) of the Act;

\(^{267}\) Explanation (1) to section 11 (1);

attract tax liability if a written notice is given to the Assessing Officer in the manner prescribed by Rule 17 in Form 10 specifying the purpose for which the income is desired to be accumulated as also the period for which the accumulation is proposed to be made, subject to the requirement that the income so accumulated is invested or deposited in government securities or any other approved securities as provided in section 11 (5), but in no case is the income allowed to be accumulated for more than 10 years. The same rules govern those trusts where the property is held in part only for charitable or religious purposes and the trusts are created on or after 1st April 1962. This restriction of stipulated investment was imposed to prevent the misuse of tax exempt funds from acquiring control over industry and business, and preventing indirect benefits to the author or his relatives. A trust can claim exemption if the surplus income derived from health centre, utilised in establishment of another health centre though surplus not accumulated was used for philanthropic purposes.

The expression "money so accumulated" will take in only so much of the amount of accumulation as in excess of the limits specified in section 11 (1)(a).

270 If the securities are sold and another property is purchased or invested for acquisition and construction of properties and buildings or there is a conversion of one asset into another or change of asset's shape or form, will not amount to application of income for charitable purposes, thereby defeating the very purpose of exemption i.e., to canalise the trust income only in Government securities : CIT v. S.R.M. C.T.M. Thiruppani Trust (1982) 134 ITR 555 ; CIT v. Hawbal Trust (1988) 172 ITR 140;
271 Section 11 (2) (a); CIT v. Walchand Diamond Jubilee Trust (1958) 34 ITR 228; For the assessment years 1983-84 and subsequent years, exemption will not be available unless accumulations are invested as provided under section 11 (5);
272 Section 11 (1)(b); No exemption is at all available to a trust created on or after 1st April 1962, where the property is held in part only for charitable or religious purposes.
273 CIT v. Economic and Entrepreneurship Development Foundation (1991) 188 ITR 540;
Thus, it is only that excess amount accumulated over 25 per cent of gross income which becomes disentitled to exemption and not the entire amount of accumulation.\textsuperscript{275}

Form No. 10 prescribed by Rule 17, which requires (a) the amount accumulated would be invested in Government securities before the expiry of six months\textsuperscript{276} from the end of the relevant accounting year and copies of the annual accounts of the trust, along with details of investment of money accumulated, would be furnished to the Assessing Officer, and (b) a request to be made to the Assessing Officer to give the benefit of the section to the assessee.

The expression "in the prescribed manner" occurring in section 11(1)(a) confers power on the rule making authority to prescribe a rule stating what particulars are to be mentioned in the prescribed form, the purpose and the period for which such income is to be accumulated especially when it was intended to be utilised for public and charitable purposes. But it does not confer power on the rule making authority to prescribe a time limit.\textsuperscript{277} If that were to be authorised then the rule making power practically creates a contradictory situation. Therefore, paragraphs 2 and 4 in Form 10 issued in pursuance of Rule 17 of the Income-tax Rules, 1962 are \textit{ultra vires} that the rule making authority has exceeded its limits in including in the Form the said two


\textsuperscript{276} Earlier it was four months period.

According to sub-section 3 of section 11 if any income is applied to the purposes other than charitable and religious ones, it shall be taxed in the year in which it is so applied. But sub-section (3A) of section 11 liberalises the position that failure to apply the income so accumulated in prescribed securities may arise due to unavoidable circumstances. In such case, Assessing Officer may, on receipt of an application from the person in receipt of income, allow such income to be applied for such other charitable or religious purposes in India as are in conformity with the objects of the trust.

Property held under trust or other legal obligation

It is clear from section 11 that the effective source from which the income arises is "property" and such property must be held under trust wholly or in part of charitable and religious purposes. In order to claim exemption the income must directly and substantially arise from property held under trust. Where a trust or legal obligation is not created on any property, but only the income derived from any property is set apart for religious and charitable purposes, no exemption will be


279 CIT v. Ramnath A. Podar (1963) 47 ITR 423 : accretion to orginal trust fund so set apart by way of interest is property; Guru Estate v. CIT (1963) 48 ITR 53 (SC) : Collection by Pandas for "Bhog" of Lord is not incomes arises from property held under trust; CIT v. P.K. Barooah (1970) 77 ITR 967;

No exemption is available in cases when a university professor who dedicates his salary for the benefit of the university or an advocate dedicates his professional fees, because the sources of income is not the property held under a charitable trust.

"Trust" includes "any other legal obligation." The words "other legal obligation" are wide enough to cover a case in which the trustees of a settlement are to pay the income to other trustees who in their turn are bound to apply it for purposes which are religious and charitable, or to include decree of a court, or Muslim Wakfs and Hindu endowments, or where a company, a society or association is obliged to apply its income for charitable purposes specified in its memorandum and Article of Association.

Property is a term of the widest import, and subject to any limitation or qualification which the context might require, it signifies every possible interest.

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281 CIT v. P.K. Barooh (1970) 77 ITR 967; Ganapat Rai Sagarmal (Trustees) for Charity Fund v. CIT (1963) 47 ITR 625; Raja P.C. Lall Chaudhary v. CIT (1957) 31 ITR 226; East India Chamber of Commerce Ltd. v. CIT (1957) 31 ITR 791; Vikram Deo Varma v. CIT (1956) 29 ITR 76; CIT v. Ramkrishna Dev (1959) 35 ITR 312 (SC);

282 Eggar v. CIT (1926) 2ITC 286;

283 CIT v. Thakurdas Bhargava (1960) 40 ITR 301 (SC);

284 Ganapat Rai Sagarmal (Trustees) for Charity Fund v. CIT (1963) 47 ITR 625; CIT v. Vyas and Dhotiwalla (1959) 35 ITR 55 (SC);

285 Explanation 1 to Section 13.

286 Vallabhadas Karsondas Natha v. CIT (1947) 15 ITR 32 at p.45

287 CIT v. Thanthi Trust (1982) 137 ITR 735 at p.753-4;

288 Re, the Trustees of the Tribune (1939) 7 ITR 415 (PC); Iswar Gopal v. CIT 18 ITR 743; Official Trustee of West Bengal v. CIT (1968) 67 ITR 218 affirmed in (1974) 93 ITR 348 (SC); Mahant Indresh Charandas v. State of U.P. (1971) 81 ITR 435;

which a person can acquire, hold and enjoy.\textsuperscript{290} The property consisted of the organisation and the undertaking as well as in the fluctuating stock of yarn and cloth of a spinner's association,\textsuperscript{291} and include the stock and goodwill of a press and newspaper.\textsuperscript{292} Even an office of trusteeship was held to be property especially when emoluments were attached to it.\textsuperscript{293}

Property also includes a business,\textsuperscript{294} or a trust's share in a partnership which is running business,\textsuperscript{295} or a partner's share in a partnership business\textsuperscript{296} or a debt owed to the settlor,\textsuperscript{297} or a right to exploit an overbridge as advertising space,\textsuperscript{298} or a business of printing press being run by the founder of the trust\textsuperscript{298a}. A business itself can be held under trust for

\textsuperscript{290} J.K. Trust v. CIT (1957) 32 ITR 535 at p.541 (SC); CIT v. Radhaswamy Satsang Sabha (1954) 25 ITR 472 at p.520; CIT v. P. Krishna Warrior (1964) 53 ITR 176 (SC); Dharmaposhanam Co. v. CIT (1978) 114 ITR 463 (SC); CIT v. Currimbhoy Ebrahim and Sons Ltd. (1935) 3 ITR 395 at p.400 (SC);

\textsuperscript{291} All India Spinners' Association v. CIT (1944) 12 ITR 482 at p.488; Cricket Association of Bengal v. CIT (1959) 37 ITR 277;

\textsuperscript{292} Re, The Trustees of The Tribune (1939) 7 ITR 415;

\textsuperscript{293} Angurbala Mullick v. Debabrata Mullick (1951) SCR 1125; The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Shri Shirur Mutt (1954) SCR 1005 at p.1009;


\textsuperscript{295} CIT v. L. Dewan Chand Trust (1965) 58 ITR 502;

\textsuperscript{296} CIT v. Hamdard Dawakhana (1960) 39 ITR 144;

\textsuperscript{297} CIT v. Sreenam- Surajmull Charity Trust (1971) 79 ITR 64 at pp.657-60;

\textsuperscript{298} Patil v. CIT (1974) 97 ITR 683;

\textsuperscript{298a} CIT v. Ashoka charities (1987) 163 ITR 579;
religious and charitable purposes,²⁹⁹ and the profits³⁰⁰ or income from business is income derived from property held under trust for religious and charitable purposes.³⁰¹ Managing agency,³⁰² or principal agency of an insurance company,³⁰³ is an office but it is a business and, hence, property which can be held under trust. If the property i.e. Managing Agency can be terminated at any time by the option of the trustees, it is no legal impediment to its being property which can be held on trust.³⁰⁴

Sub-section (4) of section 11 enacts that "property held under trust" includes a business undertaking so held.³⁰⁵ However, sub section (4A) of section 11 confines the exemption in respect of income from profits and gains of business, if the business in incidental to the attainment of the objectives of the trust or, as the case

²⁹⁹ Dharmodayam Co. v. CIT (1962) 45 ITR 478;
³⁰⁰ Charitable Gadodia Swadeshi Stores v. CIT (1944) 12 ITR 385;
³⁰¹ Dharmdeepti v. CIT (1978) 114 ITR 454 (SC); CIT v. Radhaswami Satsang Sabha (1954) 25 ITR 472; Profits from industrial and commercial concerns started and held in trust by a charitable and religious society; CIT v. Breach Candy Swimming Bath Trust (1955) 27 ITR 279 the income from charges made for admission and refreshments by a swimming bath held on trust;
³⁰² J.K. Trust v. CIT (1957) 32 ITR 535 (SC);
³⁰³ Dharma Vijaya Agency v. CIT (1960) 38 ITR 392;
³⁰⁴ J.K. Trust v. CIT (1957) 32 ITR 535 at p.540 (SC);
³⁰⁶ Section 11 (4A) was inserted by the Finance Act, 1983 with effect from 1st April 1984 and the crucial words not involving the carrying on of any activity for profit were deleted from the definition of the word "Charitable Purpose" under Section 2(15) and deleted section 13(1)(bb) which required the condition of exemption that in case of a charitable trust or institution for relief of the poor, education or medical relief, which carried on any business, the business should be carried on in the course of the actual carrying out of a primary purpose of the trust or institution. The Finance (No.2) Act, 1991 with effect from 1st April 1992 substituted section 11(4A);
may be, institution, and separate books of account are maintained by such trust or institution in respect of such business.\textsuperscript{307}

Property held under trust "wholly" or "in part" for charitable or religious purposes

The words "wholly for religious or charitable purposes" in section 11(1)(a) shows that the income from trust property would only be exempt if all the objects of the trust are of religious or charitable nature. In case a trust has ten distinct objects and nine of them are of a religious or charitable nature, but the tenth is not and there is nothing to prevent the trustees from applying the property of the trust in carrying out any of the objects of the trust including the object which is not of a religious or charitable nature, the income derived from the property of the trust would not be exempt from taxation under section 11(1)(a). The reason is that the trustees in such an event can apply the property of the trust exclusively for that object of the trust which is not of a religious or charitable nature. The only relaxation which has been permitted, in such cases, is that if all the primary objects of the trust are of a religious or charitable nature, the existence of an ancillary or secondary object which is not of a

\textsuperscript{307} \textit{CIT v. Hamdrad Dawakhana (Wakf) (1986) 157 ITR 639; section 11(4);}
religious or charitable nature but which is intended to subserve the religious and charitable objects, would not prevent the grant of exemption.  

The expression "in part" in section 11(1)(b) does not refer to an aliquot part; if half a house is held in trust wholly for religious or charitable purposes, it would be covered by section 11(1)(a), for in that event the subject matter of the trust is only the said half of the house and that half is held wholly for religious or charitable purposes.  

The dichotomy between the two expressions "wholly" and "in part" is not based upon the dedication of the whole or a fractional part of the property, but between the dedication of the said property wholly for religious or charitable purposes or in part for such purpose.  

The Judgement of the Supreme court in CIT v. P. Krishna Warrior is the leading authority on the question of property held in part for charitable and religious purposes. Four cases arise of property held in part only for charitable or religious purposes:  

(i) A property may be dedicated to a deity; subject to a charge that a part of the income shall be given to the beneficiaries including the shebait or to the grantor's heirs or other persons.  


309 CIT v. P. Krishna Warriar (1964) 53 ITR 176 at pp. 183-4 (SC);  

310 Ibid.  

311 (1964) 53 ITR 176 (SC); Ganeshdevi Ramidevi Charity Trust v. CIT (1969) 71 ITR 696;  

312 Manohar Mukherji v. Bhupendranath Mukherji ILR 60 Cal. 452 at p.488 (FB);  

(ii) A property may be given to an individual subject to, or burdened with a charge in favour of an idol or a religious institution or for charitable purpose.\textsuperscript{314} The question whether the idol itself shall be considered the true beneficiary, subject to a charge in favour of the heirs or specified relatives of the testator for their upkeep, or that, on the other hand, those heirs shall be considered the true beneficiaries of the property, subject to a charge for the upkeep, worship and expenses of the idol, is a question which can only be settled by a conspectus of the entire provisions of the will.\textsuperscript{315}

(iii) An owner of property may retain the property for himself but carve out a beneficial interest therefrom in favour of the public by way of easement or otherwise.\textsuperscript{316}

(iv) There may be many other instances where though there is a trust, it involves only a partial dedication of the property held under trust in the sense that only a part of the income of that property is utilized for religious or charitable purposes,\textsuperscript{317} and the balance of income to non-charitable purposes.\textsuperscript{318} For instance, where a Wakf-deed directed that half of the income of the trust should be utilized for the benefit of the members of the donor’s family, the other half for charitable purposes, the property was held in part only upon charitable trusts.\textsuperscript{319} But where a testator directed that three fourths of his estate should be utilized for charity, while the remaining one-fourth was to be given in the discretion of the trustee to the testator’s des-

\textsuperscript{314} Manohar Mukherji v. Bhupendranath Mukherji ILR 60 Cal. 452 at p.488 (FB); CIT v. P. Krishna Warriar (1964) 53 ITR 176;

\textsuperscript{315} Har Narayan v. Surja Kunwari AIR 1921 PC 20;

\textsuperscript{316} CIT v. P. Krishna Warriar (1964) 53 ITR 176 (SC); Where a Hindu builds a bathing ghat on the bank of river and allows his community to use it: Hemanta v. Gaurishankar Tiwari ILR 1941 All. 401 (PC);

\textsuperscript{317} CIT v. P. Krishna Warriar (1964) 53 ITR 176 at p.184 (SC);


\textsuperscript{319} CIT v. Jamal Mohammad (1941) 9 ITR 375;
Under section 11(1)(b), these partial trusts are eligible for exemption only if they have been created before the commencement of the Act.

Application of income for charitable purposes outside India

The important condition for exemption is that such income must be applied or accumulated for charitable or religious purposes in India. There are two exceptions to this rule. If the Central Board of Direct Taxes by general or special order so directs then exemption can be granted from tax in respect of income applied to religious or charitable purposes outside India, or (a) where the trust or other legal obligation was created before 1st April 1952 and (b) where the trust or other legal obligation is created on or after that date and the income is applied outside India to charitable purposes which tend to promote international welfare in which India is interested.

Reference to the Court

The question whether a particular object is of general public utility, like the question whether a particular trust is charitable, is a question of law which the court is to find and state any facts bearing thereof.321 The construction of the section is obviously a question of law but so also is the question - What is that real purpose of an association which claims to be charitable?322 Whether a religious trust is entitled to exemption as enuring for the benefit of the public is a mixed question of fact and law.323

320 Chaturbhuj Vallabhdas v. CIT (1946) 14 ITR 150-1; CIT v. Sherwani Charitable Trust (1975) 99 ITR 284; Incorporation of Tailors v. IR 2 TC 297 at p.312; Society of Writers v. IR 2 TC 257;
321 Re, Trustees of the Tribune (1939) 7 ITR 415 at p.421 (PC); National Antivivection Society v. IR (1948) 16 ITR Suppl.1 at pp.7 28, 29 (HL); Animal Defence Society v. IR 32 TC 55;
322 All India Spinners’ Association v. CIT (1944) 12 ITR 482 at p.488 (PC); Chaturbhuj Vallabhdas v. CIT (1946) 14 ITR 144 at p.151; Royal Choral Society v. IR (1944) 12 ITR Suppl.13, 14-15 (CA);
323 CIT v. Shri Dwarka Dheesh Temple (1946) 14 ITR 440 at p.445;
Income of Charitable Trusts or Institutions from Voluntary Contributions

According to Section 12, the income of a religious or charitable trust or institution derived from voluntary contributions and applicable solely to religious or charitable purposes is exempt from taxation.

"Institution" is a term difficult to define. Its meaning must always depend upon the context in which it is found. It connotes something more than a mere trust. It means "an undertaking formed to promote some defined purpose having in view generally the instruction or education of the public. It is the body (so to speak) called into existence to translate the purpose as conceived in the mind of the founders into a living and active principle." For instance, the Dayalbagh Satsang Sabha of Agra is an "institution," a tank is a charitable institution when there is a dedication in favour of that tank, a madrasah is an institution and Bengal Home Industries Association is a public charitable institution.

324 Chamber of Commerce v. CIT (1936) 4 ITR 397 at p.410; Guru Estate v. CIT (1963) 48 ITR 53 (SC);
325 CIT v. Radhaswami Satsang Sabha (1954) 25 ITR 472; Chamber of Commerce v. CIT (1936) 4 ITR 397 at p.410; Mahant Raghubar Prasad v. CIT (1954) 26 ITR 118;
326 Mayor of Manchester v. McAdam 3 TC 491 at p.497 (HL); Minister of National Revenue v. Trusts and Guarantee Company Limited (1940) A.C. 138; CIT v. Radhaswamy Satsang Sabha (1954) 25 ITR 472 at p.522;
327 CIT v. Radhaswami Satsang Sabha (1954) 25 ITR 472 at p.522;
328 Per Lord Macnaghten Mayor of Manchester v. McAdam 3 TC 491 at p.497 (HL); CIT v. Radhaswamy Satsang Sabha (1954) 25 ITR 472 at p.522; CIT v. Radhaswamy Satsang Sabha (1981) 132 ITR 647 at pp.654-5;
329 CIT v. Radhaswamy Satsang Sabha (1954) ITR 472 at p.522;
331 Masjid Shahid Ganj v. Shiromani Gurudwara Prabandhak Committee AIR 1940 PC 116;
332 CIT v. Bengal Home Industries Association (1963) 48 ITR 181;
So long as there is no element of profit-making so far as the members of the institution are concerned and so long as the institution pursues an object which is beneficial to the general public as distinguished from a class or community, it is entitled to exemption under appropriate provisions.\(^{333}\)

Though *Mutts* and temples are the most common forms of Hindu religious institutions. The maintenance of *sadavartas*, tanks, seats of learning and homes for the disabled or the destitutes and similar institutions are recognised by and well-known to Hindu Law.\(^{334}\)

### Voluntary contributions towards regular income of recipient trust

Section 12 provides that any voluntary contributions (other than those made with a specific direction that they shall form part of the corpus of the trust) shall be deemed to be income derived from property held under charitable or religious trust and the provisions of section 11 and 13 shall apply accordingly.\(^{335}\)

"Voluntary Contributions" means donations proper, e.g. donations to a charity school or offerings to an idol or a deity.\(^{336}\) Its meaning is not money paid "willing, without compulsion" but money "gifted, given gratuitously, without con-

\(^{333}\) Ibid


\(^{335}\) The Finance Act 1972 which substituted the present Section 12, inserted Section 2(24)(ii-a) which includes such voluntary contributions in the definition of income.

\(^{336}\) Supra p.386; See also CIT v. Radhaswamy Satsang Sabha (1954) 25 ITR 472; Secretary of State v. Radhaswamy Satsang Sabha (1945) 13 ITR 520 at p.534.
The word "voluntary" means an act done by one's own free will. The section does not insist on any particular manner in which "the voluntary contribution should be made to the charitable institution, and that being so, a deed by which a donor makes a single contribution or a contribution which recurs from year to year, would be sufficient to meet the requirements of the section. 338 It is implied that there has to be a specific directive for applying the donations solely for charitable or religious purposes. 339

The trustees of a public charitable trust could accept donations, gifts or endowments in the absence of any provision in the trust deed prohibiting them from receiving the gifts. 340

Voluntary contributions may be acquired for the mere innocent amusement or for promoting the general health, comfort and recreation of the public, from which no special advantage or benefit is sought to be derived by the contributor to the funds raised for its acquisition, for instance, a people’s place, a public recreation ground, public baths and wash houses, or other institutions of a like nature. 341 The contributions made by way of tickets and for advertisements should be regarded as

337 Ibid See also Society of Writers to the Signet v. IR 2 TC 257; Andhra Pradesh Welfare Fund v. CIT (1983) 143 ITR 82; CIT v. Gem and Jewellery Export Promotion Council (1983) 143 ITR 579; grant in aid from Government; IR v. National Book League 37 TC 455 (CA);
338 CIT v. Chhadami Lal Jain Trust (1977) 106 ITR 179;
340 Sardar Bahadur Indra Singh Trust v. CIT (1971) 82 ITR 561 at p.565; (SC);
341 IR v. New university club 2 TC 279 at p.287;
merely voluntary contributions.\textsuperscript{342} Entrance fees and subscriptions by entrants in consideration of the right to enjoy the benefits and privileges of club, society or institution are not sums voluntarily contributed.\textsuperscript{343} Thus, subscriptions received by a library held under a charitable trust would be exempt not under this section but under section 11.\textsuperscript{344}

**Voluntary Contributions towards corpus of recipient trust**

The contributions made with a specific direction that they shall form part of the corpus of the trust or institution shall remain outside the purview of section 12.\textsuperscript{345} Therefore, such contributions on capital account do not have to be applied to charitable purposes but can be retained as the corpus of the recipient trust without attracting any tax liability.\textsuperscript{346}

Voluntary contributions on capital account were unconditionally exempt from tax also under section 12 as it stood up to the assessment year 1972-73. Sub-section (2) of the old section applied only where the contribution constituted income of the receiving trust; it had no application where what was received by the trust formed part of its capital. Voluntary contributions made with a specific direction that they shall form part of the corpus of the donee trust and accepted by the donee trust as such, are not voluntary con-


\textsuperscript{343} Society of Writers to the Signet v. IR 2 TC 257; IR v. New University Club 2 TC 279;

\textsuperscript{344} Supra note 6, See Palkhivala's Income Tax p.386.

\textsuperscript{345} CIT v. Shri Dilleswara Charitable Trust (1984) 145 ITR 19;

\textsuperscript{346} Supra p. 387
tributions which constitute income within the meaning of section 12(1) of the Income-
tax Act, 1961, because the subject matter of the donation becomes part of the corpus or capital of the donee trust and cannot constitute income of the receiving trust. Such contribution will not, therefore, fall within the purview of sub-section(2) of section 12. In other words, sub-section (2) merely deemed certain income under section 12 to be income under section 11; it did not convert a capital receipt into an income receipt. This view has been affirmed by various High Courts.

A perusal of all these decisions would show that voluntary contributions by way of corpus donations can properly be received by charitable and religious trusts and institutions, and exemption from income-tax in respect thereof can be claimed even if the funds forming part of the corpus had not been utilised or applied or accumulated like other income of the trust. Many tax authorities do not agree with the plea of the trust for exemption from tax inspite of the aforesaid judgements and needless controversies and avoidable litigation follow. It would, therefore be most appropriate for the Board to clarify the above legal position by an elaborate Circular to avoid futile litigation.

347 Shri Dwarkadheesh Charitable Trust v. ITO (1975) 98 ITR 557;
Conditions for registration of trusts: Section 12A

Section 12A imposed conditions regarding registration of trust and audit of its accounts if the trust want to avail exemption from income tax under sections 11 and 12.

Registration under section 12A (a) is conditioned only on the fulfilment of the requirements laid down in that section namely that the application in this behalf is made in the prescribed form and in the prescribed manner to the commissioner within the time allowed for this purpose.

Rule 17A of the Income-tax Rules, 1962, prescribes the form and manner of making an application for registration of charitable and religious trust or institution.

The application is to be made in Form 10A and in the following manner and accompanied by the following documents:

(a) Form 10A in duplicate.

(b) Where the trust is created, or the institution is established, under an instrument, the instrument in original, together with one copy thereof; and where the trust is created, or the institution is established, otherwise than under an instrument, the document evidencing the creation of the trust or the establishment of the institution, together with one copy thereof.

If the instrument or document in original cannot conveniently be produced, it shall be open to the Chief Commissioner or Commissioner to accept a certified copy in lieu of the original.

349 Form 10A is attached as Annexure-1 appended with this work.

350 All documents which afford a logical basis for inferring the creation of a trust: Laxminarayan Maharaj v. CIT (1984) 150 ITR 465;
(c) Where the trust or institution has been in existence during any year or years, prior to the financial year in which the application for registration is made, two copies of the accounts of the trust or institution relating to such prior year or years (not being more than three years, immediately preceding the year in which the said application is made) for which such accounts have been made up.

**Audit report**

Section 12A(b) provides that the audit report is to be in the prescribed form, duly signed and verified by a Chartered Accountant and setting forth such particulars as may be prescribed. Rules 17B of the Income-tax Rules, 1961 lays down that report of audit of accounts of a trust or institution shall be in Form 10B.\(^{351}\)

Form 10B requires certain particulars to be given as annexures to the report. The duties of the auditor as such relate to his audit report primarily and only secondarily in relation to the particulars which are set forth in the annexure.

The annexure to the Form 10B requires that auditor to certify, *inter alia*, as to the non-application or non-user of the income or property for the benefit of persons referred to in section 13(3). The Board have considered a representation that while filling the Form 10B and its annexures, an auditor can accept as correct the list of persons covered by section 13(3) as given by the managing trustees, etc. The Board agrees that, till further instructions, an auditor can accept as correct the list of specified persons given by the managing trustees and base their report on the strength of this certificate.\(^{352}\)

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351 Form 10B is attached as Annexure-2 appended with this work.

Rule 17 prescribing notice for accumulation of income by charitable or religious trusts in Form no 10 and to be delivered to the Assessing Officer before the expiry of time allowed under section 139(1) and (2), whether fixed originally or on extension, for furnishing the return of income came up before the Bombay High Court in the case of CIT v. Trustees of Shri Teck Chand Chandi Ram Trust.\(^{353}\) It was held that this particular rule fixing a time limit went beyond the scope of section 11(2). The section does not envisage any time frame. Paragraphs 2 and 4 in Form No. 10 have been struck down as *ultravires* as the rule making authority overstepped its jurisdiction in stipulating these requirements in CIT v. Shree Padmanabhaswami Temple Trust\(^{354}\).

In *Harmanjit Trust v. CIT*\(^{355}\) the trust applied for time for furnishing the return. There was no response. The assessee filed the return, and with it, Form No. 10. It was held that this was in order.

Rule 17, as it stood prior to 1st April 1971, did not prescribe any time limit for filing Form No. 10. It is only for and from assessment year 1971-72 that From No.10 has a time limit in built.

Board’s Circular No. 273\(^{356}\) dated 3rd June 1980, mentions about the granting of powers to the commissioner to condone delay in filing Form No. 10 upon fulfilment of certain conditions.

\(^{353}\) (1989) 80 CTR (Bom) 161

\(^{354}\) (1979) 120 ITR 42; *ITO v. MCT Trust* (1976) 102 ITR 138; *affirming MCT Muthiah Chettiar Family Trust v. Fourth ITO* (1972) 86 ITR 282;

\(^{355}\) (1984) 148 ITR 214;

FORFEITURE OF EXEMPTION UNDER INCOME-TAX ACT

A Charitable and religious trust or institution does not qualify for exemption under section 13 if the income of such a trust is used for private religious purposes which does not enure for the benefit of the public 357, or a trust is created after 1st April 1962 for the benefit of any particular religious community or caste 358, or a trust which enures directly or indirectly for the benefit of any person interested in such trust 359 or if its funds are not invested or deposited in the forms or modes specified under section 11(5) of the Act. 360

Private Religious Trust

In case of a private religious trust, where the income does not enure for the benefit of the public, it cannot enjoy the benefit of section 11 because of ban enacted in section 13(1)(a). 361

A temple within a private building, even if accompanied by the feeding of the poor, etc. is not necessarily a public religious trust; and where a trust provides for such a temple and also a hospital, etc. only the portion of income applied to the hospital is exempt. 362 Whether a religious trust is public or private should be determined with reference to the deed of trust (if any) and other evidence and if the

357 Section 13(1)(a) of Income-Tax Act, 1961;
358 Section 13(1)(b) of the Income-Tax Act, 1961;
359 Section 13(1)(c) of the Income-Tax Act, 1961;
360 Section 13(1)(d) of the Income-Tax Act, 1961;
361 Supra See "Religious purposes";
362 Re Chansila Dasi (1946) 14 ITR 362;
deed is silent on this point with reference to other relevant evidence such as whether the benefit of worship etc., is in fact open to public. From the mere fact that the institution bears the name of a private person, the nature of the trust cannot be determined to be a private one. It is the object of the trust that has to be looked into. Where the primary purpose of the trust was to benefit the members of his family and to benefit the general public only remotely or indirectly, it cannot be called a public charitable trust.

Communal Trusts

To constitute a valid charitable trust it is not necessary that the benefit should go to the public generally. It is sufficient if a section of public is benefited.

A charitable trust or institution designed to benefit any particular religious community or caste is entitled to exemption if it is created or established before 1st April 1962. But this exemption will be denied if such a trust or institution is created or established on or after 1st April 1962.

363 CIT v. Sri Dwarka Dheesh Temple (1946) 14 ITR 440; Official Trustee of West Bengal v. CIT (1968) 67 ITR 218;
364 CWT v. H.E.H. the Nizam's Supplement and Religious Endowment Trust (1973) 89 ITR at p. 83;
365 Trustees of Gordhandas Govindram Family Charity Trust v. CIT (1973) 88 ITR 47 at p. 52; (SC);
Where a trust was created for the promotion of education and allied purposes of saraswath community, and it was registered in September 1946 it was excluded from the prohibition contained under section 13(1)(b) although it had been created or established for the benefit of a particular religious community or caste. However, this clause would not apply to a charitable trust or institution created or established with a direction in trust deed and discretion to the trustees to give preference to the members of a particular religious community or caste in selection of beneficiaries.

A trust or institution created or established for the benefit of Scheduled Castes, backward classes, Scheduled Tribes or women and children of a particular community or caste is not affected by this clause.


368 Trustees of the Charity Fund v. CIT (1959) 36 ITR 513 (SC) : A trust created for the relief and benefit of the poor and indigent Jewish community; CIT v. Meghji Mathuradas Charity Trust (1959) 37 ITR 419 : a trust for the benefit of Vaishiya Community; CIT v. Moosa Haji Ahmed (1964) 52 ITR 147 : a trust created with absolute discretion to the trustees to apply the income to help the poor, and that in doing so help must first be given to the relatives of the settlor who were poor, and thereafter, preference should be given to members of the Memon Jamat community who is residing in the mohalla of the settlor who were poor; CWT v. Trustees of J.P. Pardiwala Charity Trust (1965) 58 ITR 46; CIT v. Ebrahim Solaiman Saleji (1968) 69 ITR 758 : a direction in the trust deed to prefer the poor relations of the settlor; See also Westminster Bank v. Family Welfare Association (1954) 1 Ch. 252; Bracey v. Royal National Lifeboat Institution (1923) 2 Ch. 407; CIT v. Walchand Diamond Jubilee Trust (1958) 34 ITR 228 : preference to be given, in discretion of trustees to employees of settlor's company.  CIT v. Deshpande (1976) 102 ITR 390; Only charitable trusts and institutions are within this clause. The income of a religious trust or institution created or established at any time can qualify for exemption under section 11 even though it may be for the benefit of a particular religious community or caste.

369 Expanation 2; Section 10 (26B) and Explanation 1 to Section 80G.
Prohibited application or investment of trust funds

A charitable trust, with a direction in trust deed to give preference to relations and members of settlor’s family in applying the income of trust, is nonetheless a valid charity\textsuperscript{370} If such a trust is created or established before 1st April 1962 and may claim exemption under section 11. But if such a trust is created on or after 1st April 1962 it is not entitled to exemption under this clause. This clause operates to exclude from exemption, under section 11 if any income or part of such income of such a trust enures, or is used or applied directly or indirectly for the benefit of the settlor or his relatives or the other prohibited categories of persons referred to in sub-section (3) read with \textit{Explanation 1 and 3}.\textsuperscript{371} Likewise, exemption is denied to a trust created by a Hindu undivided family where any part of the income enures directly or indirectly for the benefit of any member of the Hindu undivided family or any relative of such member.\textsuperscript{372}

Even if a small portion of the income enures or is used or applied for the benefit of a person mentioned in sub-section (3), the entire income of the trust is

\begin{itemize}
\item \textsuperscript{370} \textit{Supra} note 29;
\item \textsuperscript{371} Insignificant benefit to a relative may be ignored like a direction in will to apply 1/3 of the estate, after defraying funeral expenses and debts to charitable purposes: \textit{Court Receiver v. CIT} (1964) 54 ITR 189 at pp.214-5; \textit{See also} Section 62 “Illusory or negligible benefit.”
\item \textsuperscript{372} \textit{Supra} pp 385-c; After the amendment made by the Finance Act 1966 - (i) the section operates to deny exemption not only where under the terms of the trust a benefit goes to the prohibited categories, but also where in administering the trust the trustees in fact apply, directly or indirectly, part of income or any property of the trust for the benefit of the prohibited categories even though such benefit may be given to them merely as members of the class of public beneficiaries: and (ii) the prohibited categories include not only the author of the trust or the founder of the institution and his relatives, but also any person who has made a substantial contribution to the trust or institution, his relatives and others.
\end{itemize}
denied exemption, except in the case provided for in sub-section 4. If in any of the circumstances specified under sub-section 2, the income or property of the trust is deemed to have been so used or applied, the exemption may be denied. The mere circumstance that a partnership concern was not in a position to pay the amounts due to a retiring partner on the date of his retirement from the partnership and the fact that the amounts were shown in the books of account of the firm as due to the partner cannot be considered as a loan or an investment within sub-section 2(a) or 2(h) respectively. The Income-tax Act does not lay down any criterion as regards the determination of the adequacy of the interest and security paid on money lent by the trust, it depends upon the facts of the case. The investments contemplated by sub-section 2(h) do not include loans which are specifically dealt with by sub-section 2(a). If the funds of the trust are invested in debentures or loans, then clause (a) would apply whereas if the funds are invested in equity capital i.e. shares, etc. then clause (h) would be attracted.

The expression "invest" in section 13(2)(h) connotes a positive act on the part of the trust whereby the funds of the trust are laid out or committed in any particular property or business or transaction with the object of earning profit or financial advantage or return. Where a charitable trust received from time to time

373 CIT v. Jamnadal Bajaj Sewa Trust (1988) 171 ITR 568; Court Receiver v. CIT (1964) 54 ITR 189;
375 Shree Poongalia Jain Swetamber Mandir v. CIT (1987) 168 ITR 516; Sub-section 2(a);
376 CIT v. Eternal Science of Man's Society (1981) 128 ITR 456; CIT v. Sarladevi Sarabhai Trust (1988) 172 ITR 698; CBDT Circular No. 45 dated 2.9.1970 clearly indicates that section 13(2)(h) will cover only those cases in which investments are made by the trust in the capital of the concerns to which section 13(2) applies. The circular further indicates that in the case of lendings by trust the provisions of clause (a) of sub-section 2 of section 13 will apply and not section 13(2)(h) and any contrary interpretation would not be a harmonious interpretation of clause (a) and (h) of sub-section 2 of Section 13.
shares of a company from various parties as donations, it could not be said that the trust had "invested" funds in said company within the meaning of section 13(2)(h).  

If the trust funds are invested or deposited in violation of the provisions of section 11 (5), exemption from tax would be lost despite the fulfilment of all other conditions.

**Forms or modes of investment: section 11(5)**

A uniform pattern of investment is laid down, with effect from 1st April 1983, for all categories of funds belonging to charitable and religious trusts or institutions. The same pattern of investment will apply in relation to accumulation of income in excess of 25 percent. The uniform forms and modes for investing funds of charitable and religious trusts and institutions are given below:

(i) investment in Government Savings Certificates;

(ii) deposits in any Post Office Savings Bank Account;

(iii) deposit in any account with any scheduled bank or a co-operative society engaged in carrying on the business of banking (including a cooperative land mortgage bank or a cooperative land development bank);

(iv) investment in Units of the Unit Trust of India;

(v) investment in any Central Government or State Government Securities;


379 *CIT v. Rattan Trust* (1980) 123 ITR 562; First proviso to sub-section (1)(c) of Section 13; Section 13 applies to trusts and institutions, both charitable and religious.
(vi) investment in debentures of any corporate body, the principal whereof and the interest whereon are guaranteed by the Central or State Government;

(vii) investment or deposit in public sector company;

(viii) deposits with or investment in any bonds issued by any financial corporation engaged in providing long-term funds for industrial development in India, if the corporation is approved by the Central Government for the purposes of section 36(1)(viii);

(ix) deposits with or investment in any bonds issued by any public company carrying on the business of providing long-term finance for construction or purchase of house in India for residential purposes, if the company is approved by the Central Government for the purpose of section 36(1)(viii);

(x) investment in immovable property;

(xi) deposits with Industrial Development Bank of India (with effect from 1st April 1985); and

(xi) any other prescribed form or mode of investment;

Any charitable or religious trust or institution will forfeit exemption from tax if any funds of the trust or institution are invested or deposited, after February 28, 1983, otherwise than in any one or more of the modes specified above. Such trusts and institutions will also forfeit exemption from tax if any part of their funds invested before 1st March, 1983 otherwise than in any one or more of the forms or modes specified above, continue to remain so invested or deposited after 30th November, 1983. Trusts or institutions which continue to hold any shares in a company (other
than a Government Company or a Statutory Corporation) after the said date will also forfeit exemption from income-tax.

With the amendment of section 13 by the Finance Act, 1992, with retrospective effect from 1st April 1983, the aforesaid provisions will, however, not apply in relation to assets which constituted the original corpus of the trust or institution as on 1st June 1973, \(^{382}\) and any accretion to the shares, forming part of the corpus by way of bonus shares allotted to the trust or institution. \(^{383}\)

The aforesaid provision will also not apply in relation to assets (being debentures issued by the company) acquired by the trust or institution before 1st March 1983. It will also not apply in relation to any funds representing the profits and gains of business (relevant to the assessment year 1984-85 or any subsequent year), if the trust or institution maintains separate books of account in respect of such business.

It is obvious that the authors of the trust and the trustees of the wholly charitable and religious trusts have to be extremely careful in creating a trust and after creation in managing its affairs. There are so many conditions attached for enabling such a trust to secure exemption for its income under section 11. It may be noted that failure to comply with any one of these conditions might cause forfeiture of exemption for its income. The amendments which have been made from time to time in sections 11, 12, 12-A and 13 have made the task of the creator of a trust or its trustees difficult.

\(^{382}\) The following words of clause(i) of the proviso to section 13(1)(d) have been omitted with effect from Ist April 1983- "any such assets were not purchased by the trust or institution or acquired by it by conversion of, or in exchange for any other asset".

\(^{383}\) After Clause(i) of the proviso to section 13(1)(d) clause (iia) have been inserted with effect from Ist April, 1983, by the Finance Act, 1992. "(iia) any accretion to shares forming part of corpus mentioned in clause(i), by way of bonus shares allotted to the trust or institution".
Such amendments affect even the most genuine charitable or religious trust. But it cannot be helped as the law applicable is the same to every trust.

WEALTH TAX ACT, 1957

Exemption in respect of certain assets

Any property held by an assessee under a trust or other legal obligation, for any public purpose of a charitable or religious nature in India is exempt from tax. If property consists of assets of business it must, after 1st April, 1986, satisfy the conditions laid down in section 11(4A) of the Income-tax Act, 1961, that 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.

The provisions regarding charitable trusts or institutions under Wealth-tax Act and the Income-tax Act are not identical. The three significant points of distinction are: Firstly, this Act does not contain definition of charitable purpose as in section 2(15) of the Income-tax Act. Secondly, under section 11 of the Income-tax Act, if property is held wholly for religious or charitable purposes the whole of the income

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384 *CWT v. Hyderabad Race Club* (1978) 115 ITR 453;
385 *CWT v. Trustees of H.E.H. the Nizam's Religious Endowment Trust* (1977) 108 ITR 229; Such purpose must be confined in its scope or application of income or assets in India.
386 The Finance Act, 1985 has amended section 5(1)(i) with effect from 1st April 1986 to withdraw the exemption from wealth-tax in respect of business assets of public charitable or religious trusts and institutions.
387 *Supra*; In the line with the provisions contained in the Income-tax Act, 1961 the assets held in business will be exempt from wealth-tax vide circular no. 421 dated 12.6.1985
388 *Managing Shebaits of Bhukailash Debutter Estate v. WTO* (1977) 106 ITR 904 at p.907;
is exempt and in case of property held in part only for such purposes the income applied or finally set apart for application thereto is exempt. The word "wholly" is absent in section 5(1)(i) and there is no provision for exempting part only of the property held for religious or charitable purposes. 389 Thirdly, unlike the provisions of the Income-tax Act, the application of money held under trust or under legal obligation is not relevant consideration for exemption under this clause. If the trustee holds the property for public purpose of a charitable or religious nature, even if they misapply or commit breach of trust, they will continue to enjoy exemption under the Act, 390 unless it falls within the purview and prohibition of section 21-A of the Act. Fourthly, the decisions under the Income-tax Act whereby dominant purpose of the trust alone should be the criteria for judging whether the exemption from tax is attracted, cannot be applied to the cases arising under this Act 391.

If the objects of trust are primarily or predominantly of a public charitable nature, the corpus would qualify for exemption. 392 Ceremonies performed for the peace of the soul of a deceased individual enure for the benefit of mankind at large and as such the purpose was a public purpose of religious nature. 393

Where the objects of the trust were to promote manufacture of Khadi, removal of untouchability, upliftment of women and other constructive activities on the line of Mahatma Gandhi’s doctrines i.e. to provide employment and means of livelihood to the poor village folks residing in rural areas and the formation of an Adarsh Gram or model village. It was held that the promotion and sale of Khadi was

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389 Trustees of K.B.H.M. Bhiwandiwalla Trust v. CWT (1977) 106 ITR 709 at pp. 716-7: Such apportionment is not possible in respect of the corpus of the property;

390 Managing Shebaits of Bhukailash Debutter Estate v. WTO (1977) 106 ITR 904;


392 Trustees of K.B.H.M. Bhiwandiwalla Trust v. CWT (1977) 106 ITR 709;

393 CWT v. Trustees of J.P. Pardiwala Charity Trust (1965) 58 ITR 46;
an object of general public utility and other objects were also charitable. The trust was entitled to exemption under section 5(1)(i). 394

A trust is not entitled to exemption where some of the objects of the trust are charitable, some of them are non-charitable and the two cannot be severed, 395 or where the beneficiaries are private individuals or fluctuating body of private individuals, 396 or where the object of trust as a whole was primarily and predominantly to provide maintenance and marriage expenses to the members of the settlor’s family and remotely, if any, to Hindus 397 or if the trustees are not holding under trust any specific property for any public purpose of a charitable or religious nature. 398

It is the object of the trust that has to be looked into for the purposes of exemption. Mere fact that the institution bears the name of the private person 399 or commemoration or associated with the name of family member 400 cannot make it a private trust. But if some of the assets of race club are used for the benefit of the members and on dissolution the assets would pass on to clubs having similar objects and aims, will not entitle the club to exemption even on the principle of mutuality. 401

For the purposes of claiming exemption the property held under trust must be used for the charitable or religious purposes in India. The exemption is not available if the property is held under trust for purposes outside India, even though the purposes may be of a charitable or religious nature. 402

Where, according to the objects of a trust the income was to be spent within India and outside India and the trustees had absolute discretion to spend the income

394 CIT v. Adarsh Gram Trust (1986) 159 ITR 41;
395 CWT v. Hyderabad Race Club (1978) 115 ITR 453;
396 CWT v. Trustees of J.P. Pardiwala Charity Trust (1965) 58 ITR 46;
397 Trustees of Gordhandas Govindram Family Charity Trust v. CWT (1973) 88 ITR 47 (SC);
398 Chintamani Ghosh v. CWT (1971) 80 ITR 331;
399 CWT v. H.E.H. the Nizam’s Supplemental & Religious Endowment Trust (1973) 89 ITR 80;
400 Bai Hirabai & Kesarbai Charitable & Religious Trust v. CIT (1968) 68 ITR 821 at pp. 833-4;
401 CWT v. Hyderabad Race Club (1978) 115 ITR 453;
402 Trustees of Nizam’s Pilgrimage Money Trust v. CWT (1988) 171 ITR 323 at p. 329;
in such proportion as they thought fit, whether in or outside India, the trust was held not entitled to exemption. But where there is no mention in the trust deed about application of income in India, trust will not entail denial of exemption so long as no expenditure was incurred outside India.

Assessment of property held under trust for public charitable or religious purposes: Section 21A of Wealth Tax Act.

There was no provision for the forfeiture of the exemption from Wealth-tax on the lines of the provisions contained in Income-tax Act, 1961. To provide a deterrent to the misuse of the income or property of the trust or institution, section 21A was introduced by the Finance Act 1972 with effect from 1st April 1973, to secure that where any part of the income of the trust or institution enures for the direct or indirect benefit of the author of trust, substantial contributor etc., or where any income or property of the trust or institution is used or applied (directly or indirectly) for the benefit of any such person, the trust or institution will be liable to pay Wealth-tax on the value of its entire property at the rate of 1.5 per cent or the rate applicable in the case of an individual, whichever is more beneficial to the revenue.

Where, however, trust funds are invested in any concern in which author, trustee, etc., has a substantial interest and such investment does not exceed 5 per cent of the capital of the concern, the exemption is denied only in relation to such investment and other assets will continue to qualify for exemption.

The Finance Act, 1984, with effect from 1st April, 1985, has modified the

404 Trustees of H.E.H. the Nizam's Sahebzada of Saif-e-Khas Trust v. CWT (1981) 127 ITR 694;
provision of Section 21A. The amended section provides that where any property is held under trust for any public purpose of charitable or religious nature in India, 

405 Executive Instructions - The Finance Act, 1984 with effect from 1-4-1985 enlarged the scope of flat rate assessment. Circular No. 387 dated 16-7-1984 [1985] 152 ITR (St) 1 explains the purport of the amendments.[only relevant paras].

36.3 With a view to ensuring that trust funds are not invested in contravention of the investment pattern laid down in the Income-tax Act, the Finance Act has amended section 21A of the Wealth-tax Act to secure that, in addition to the two circumstances mentioned in paragraph 36.1 above, a charitable or religious trust will also forfeit tax exemption in cases where the funds of the trust are not invested in accordance with the investment pattern laid down under the Income-tax Act.

36.5 Under section 10(21) of the Income-tax Act, income of a scientific research association for the time being approved for the purposes of section 35(l)(ii) of the Income-tax Act, which is applied solely for the purposes of the association is exempt from income-tax. The Finance Act, 1983 amended this provision to provide that this exemption will not be available if any income by way of contributions received by the association are invested or deposited after 29th February, 1983 otherwise than in one or more of the forms or modes specified in section 11(5) of the Income-tax Act in relation to investment or deposit of moneys by charitable or religious trusts and institutions.

Exemption from income-tax is also denied if any funds of the association, invested or deposited before 1st March, 1983 (otherwise than in the forms or modes referred to above) continue to remain so invested or deposited after 30th November, 1983. Further, tax exemption is also denied to such associations in cases where they hold any shares in any company (not being a Government company as defined in section 617 of the Companies Act, 1956) or a statutory corporation after 30th Nov 1983.

36.6 With a view to bringing the provisions of the Wealth-tax Act in this regard in line with the provisions of section 10(21) of the Income-tax Act, the Finance Act has amended section 21A of the Wealth-tax Act to secure that, a scientific research association, referred to in section 10(21) of the Income-tax Act, will forfeit exemption from Wealth-tax, if it invests its funds in contravention of the provisions of the said section 10(21). On forfeiture of exemption, wealth-tax shall be charged in such cases at the rates specified in the case of an individual in Part I of Schedule I to the Wealth-tax Act.

36.7 Under the Income-tax Act, a distinction is made between public charitable and religious trusts which are entitled to exemption under Section 11 of that Act and other religious and charitable trusts, funds, institutions, etc., which are entitled to exemption under section 10 of that Act. The distinction is that whereas trusts which seek exemption under section 11 have to fulfil various conditions (including the condition relating to investment of funds in specified modes) the trusts, institutions, etc., falling under certain clauses of section 10 enjoy complete exemption without any obligation to comply with the conditions applicable to trusts covered by section 11 of the Act. The Finance Act has provided that the provisions relating to forfeiture of exemption contained in section 21A of the Wealth-tax Act will not apply to the trusts, institutions, etc., which are entitled to tax exemption under clause (22), clause (22A), clause (23B), or clause (23C) of the section 10 of the Income-tax Act [pages 26, 27 and 28]. See Taxmann's Direct Taxes Circulars (1988) Vol.2, p. 1251;
tax shall be leviable upon and recoverable from the trustee or manager in respect of the property held by him under trust at the maximum marginal rate (i.e. the maximum marginal rate of tax applicable to an Indian citizen, resident in India, without excluding the value of asset under section 5) if the trust forfeits exemption by reason of any of the following factors, namely: Any property or income of public charitable trust is used or applied for the benefit of persons referred to in section 13(3) of the Income-tax Act e.g. the settlor, the trustee, their relatives, etc.; or any income of public charitable trust, created after 1st April 1962 enures for the benefit of persons referred to in section 13(3) of the Income-tax Act; or investment of funds of the trust is in contravention of provisions of section 13(1)(d) of the Income-tax Act; or investment of funds of approved scientific research institution is in contravention of proviso to section 10(21) of the Income-tax Act (clause (a)(ii)(1) of third Proviso).

But the aforesaid provisions are not applicable (wholly or partly): If the public charitable trust is created before 1st April 1962; (First proviso); or if the prohibited investment does not exceed 5 per cent (Second proviso) or in case of any institution, fund or trust referred to in sections 10(22), (22A) or (23C) of the Income-tax Act.

**Assessment of Oral Trusts**

Oral trust means a trust which is not declared by duly executed instrument in writing including a valid deed of Wakf.  

With a view to curb tax avoidance through the medium of oral trusts, the Finance Act, 1981 inserted section 21(4A) with effect from 1st April, 1981. According to section 21 (4A), where the assets chargeable to wealth-tax are held by a trustee under oral trust, the wealth tax is levied upon and recovered from such trustee in like

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406 *Explanation to section 21 (4A) of the Wealth-tax Act, 1957*
manner and to the same extent as would be leviable upon and recoverable from an individual who is citizen of India and is resident in India at rates specified in Part I of Schedule I or at the rate of 3 percent, whichever course would be more beneficial to revenue.

In conclusion, it can be said that the provisions regarding charitable and religious trusts given under the Wealth-tax Act, 1957 are analogous to the provisions provided under Income-tax Act, 1961. But a fundamental change under section 21 A of the Wealth-tax regarding assessment of property held under trust for charitable or religious purposes will be helpful to the legitimate activities of the trust and there will be adequate safeguards to ensure that the trust funds are in fact applied on the genuine objects of the trust.

GIFT-TAX ACT, 1958

Exemption in respect of certain gifts : Section 5

Any and all gifts to the Government or any local authority are exempt, irrespective of the amount. Government includes both Central and any State Government. The term local authority would include municipalities, corporations, Zilla Parishads, local boards, cantonment boards or even a road transport corporation, declared as a local authority.\footnote{Section 5(iv) of the Gift-tax Act, 1958;}

A gift to any institution or fund established for charitable purpose, to which provisions of section 80G of the Income- tax Act apply, is exempt without any monetary ceiling. Gifts made by such institution are exempt under Section 45 of the

\footnote{Section 5(iv) of the Gift-tax Act, 1958;}

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Act. The exemption is not restricted to gifts to established institutions. Initial gift which starts the fund is equally covered by section 5(1)(v). The exemption is not confined to donations in cash or money only but is applicable to all types of properties, movable or immovable.

In *CGT v. Pannalal Gupta* a trust was created with the objects, inter-alia, (i) to grant aids, to promote, establish, support and maintain *gurukulas*, schools, colleges and other institutions for the education of Hindu boys and girls; (2) to establish, etc., hospitals and other institutions for relief of the poor, etc.; (3) to grant relief on occasions of earthquakes, floods or other occasions of calamity, etc.; (4) to give scholarships to poor boys and girls to acquire education; (5) for such objects and purposes which the trustees may from time to time determine. The assessment year was 1962-63. The revenue contended that the object of trust deed was for the benefit of Hindu community alone. It was held, the other clauses take within their sweep the members of all communities. Looking to the trust deed as a whole, the objects could not be said to be for the benefit of any particular religious community or caste.

Gifts to notified institutions under section 80G(2) of the Income-tax Act and any settlement or trust created which provided that the income is to be used exclusively for the benefit of a notified monument, are exempt. A number of temples and monuments have been notified under section 80G of the Income-tax Act.

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407 *CGT v. Yogendra N. Mafatlal* (1965) 58 ITR 40; *CGT v. Lachhman Dass Oswal* (1977) 106 ITR 742; The amendment in 1973 gave statutory recognition to this view;


409 (1971) *Taxation* 331;

410 *Infra See* Chapter 6;

411 Section 5(va) (i) & (ii) of the Gift-tax Act, 1958;
The Gift-tax will not be levied in respect of gifts made by any institution or fund the income whereof is exempt from income-tax under section 11 or section 12 of the Income-tax Act, 1961. 412

The Finance Act, 1971 added Explanation 3 to section 45. If a charitable institution may make a gift. Subsequently it may loose exemption under Income-tax Act. The Explanation preserves and provides that the institution will not forfeit the exemption from gift-tax in respect of gifts made by it merely because (a) subsequent to the gift, any income of the institution or fund becomes chargeable to income-tax due to non-compliance with any of the provisions of sections 11, 12, or 12A of the Income-tax Act, relating to the application of income during the accounting year, or (b) the institution or fund forfeit exemption in respect of part of its income which arises from investments made in a concern in which the founder of the institution or fund or his relatives have a substantial interest. And the aggregate of the funds invested by the institution or fund in such concern does not exceed 5 per cent of the capital of that concern.

Therefore, the above said changes in the Gift-tax Act, 1958 will simplify the provisions relating to exemption of trusts beyond recognition and will make administration much easier.

412 Section 45 of the Gift-tax Act, 1958;