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# FINAL CA

**MAY '19**  
**REVISION NOTES**

**DIRECT TAX**

## Part - 5

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**SETTLEMENT COMMISSION**

**Definition of Case [Section 245A(B)]**

For the purpose of settlement of cases, the term ‘case’ has been defined to mean any proceeding for assessment under the Income-tax Act 1961, of any person in respect of any assessment year or years which may be pending before an Assessing Officer on the date on which an application under section 245C(1) is made. The deemed date of commencement of these proceedings are shown in the following table -

Proceeding	
Proceeding for assessment or re-assessment or re-computation under section 147	Date on which notice under section 148 was issued. Where a notice under section 148 is issued for any assessment year, a proceeding under section 147 shall be deemed to have commenced on the date of issue of such notice and the assessee can approach the Settlement Commission for other assessment years as well, even if notice under section 148 for such other assessment years has not been issued but could have been issued on that date. However, a return of income for such other assessment years should have been furnished under section 139 or in response to notice under section 142.
Proceeding for making fresh assessment in pursuance of an order under section 254 or 263 or 264, setting aside or cancelling an assessment.	Date on which order under section 254 or 263 or 264 setting aside or cancelling an assessment was passed.
In the case of a person whose income is being assessed or reassessed as a result of search or as a result of requisition of books of account or other documents or any assets.	The proceedings for assessment or reassessment shall be deemed to have commenced on the date of issue of notice initiating such proceedings and concluded on the date on which the assessment is made.
Any other proceeding for assessment, other than those referred to in the table and note above, shall be deemed to have <b>commenced from –</b> the date on which the return of income for that assessment year is furnished under section 139 or in response to a notice served under section 142 and	

concluded on - In a case where assessment is made	In a case where no assessment is made
the date on which the assessment is made	on the expiry of time specified for making assessment under section 153(1)

**APPLICATION FOR SETTLEMENT OF CASES [SECTION 245C]**

- An assessee may, at any stage of a case relating to him, make an application in the Form 34B, containing a full and true disclosure of his income which has not been disclosed before the Assessing Officer.
- He should also disclose the following to the Settlement Commission for settlement of his case–
  - the manner in which such income has been derived,
  - the additional amount of income-tax payable on such income and
  - other particulars as may be prescribed.

3. As per section 245C, an application can be filed before the Settlement Commission, only if the additional amount of income-tax payable on the income disclosed in the application exceeds the specified limit.

**Specified limit in search cases:- Additional Income tax payable exceeds 50 lakhs**

**Specified limit in search cases + relative of above mention person :- Additional Income tax payable exceeds 10 lakhs**

**Specified limit in other cases :- Additional Income tax payable exceeds 10 lakhs**

4. Tax and interest thereon, which would have been payable had such income been disclosed in the return of income before the Assessing Officer on the date of application, should be paid on or before the date of making the application. Further, proof of such payment should be attached with the application.

5. **Manner of calculation of additional amount of income-tax:** The additional amount of income-tax has to be calculated in the following manner as provided in sub-section (1B) read with sub-section (1C), in a case where the income disclosed in the application relates to only one previous year–

(i)	If the applicant has not furnished a return in respect of the total income of that year.	Tax should be calculated on the income disclosed in the application as if such income is the total income. Such tax represents the additional amount of income-tax.
(ii)	If the applicant has furnished a return in respect of the total income of that year.	The tax should be calculated on the aggregate of total income returned and the income disclosed in the application i.e. as if the aggregate represents the total income. The additional amount of income-tax is the amount calculated on such aggregate as reduced by the amount of tax calculated on the total income returned for that year.

Where the income disclosed in the application relates to more than one previous year, then the above procedure is to be adopted in respect of each previous year and the aggregate of tax payable is to be calculated

6. Every settlement application should be accompanied by the prescribed fees of Rs 500.

7. The settlement application cannot be withdrawn by the applicant

8. The assessee should also intimate to the Assessing Officer in the prescribed manner that he has made an application to the Settlement Commission. Such intimation should be made on the same date when he makes an application to the Settlement Commission.

### **Procedure On Receipt Of Application [Section 245D]**

(i) On receipt of the settlement application, the Settlement Commission shall issue a notice to the applicant, requiring him to explain as to why the application made by him be allowed to be proceeded with, within 7 days from the date of receipt of application.

(ii) After hearing the applicant, the Settlement Commission shall pass an order either rejecting or allowing the application to be proceeded with within 14 days from the date of application.

(iii) Application not disposed off within 14 days shall be treated as admitted.

2. The Settlement Commission shall call for a report from the Principal Commissioner or Commissioner within 30 days from the date of application.

3. The Principal Commissioner or Commissioner is required to furnish the report within 30 days from the receipt of communication from the Settlement Commission.

4. The Settlement Commission can also pass an order declaring the application as invalid on the basis of the report of the Principal Commissioner or Commissioner.

5. Such order should be passed in writing within 15 days of the receipt of report after giving the applicant an opportunity of being heard.

6. A copy of the order should be sent to the applicant and the Principal Commissioner or Commissioner.

7. The Settlement Commission may call for records from the Principal Commissioner or Commissioner in respect of an application which has not been declared invalid under sub-section (2C) or an application which has been allowed to be further proceeded with under sub-section (2D).
8. After examination of such records, the Settlement Commission may require the Principal Commissioner or Commissioner to make further enquiry or investigation and furnish a report on the matters covered by the application and any other matter relating to the case.
9. The Principal Commissioner or Commissioner shall furnish the report within a period of 90 days of the receipt of communication from the Settlement Commission.
10. If the Principal Commissioner or Commissioner fails to furnish the report within the said period of 90 days, the Settlement Commission may proceed to pass an order without such report.
11. Settlement Commission shall pass an order within 18 months from the end of the month in which the application was made.
12. All the orders passed by the Settlement Commission under section 245D(4) must provide for the terms of the settlement including any demand by way of tax, penalty, the manner in which any amount due as a result of the settlement should be paid and all other matters which are essential to make the settlement of the case effective.
13. Where the tax payable in pursuance of an order passed by the Settlement Commission is not paid by the assessee within 35 days of receipt of a copy of final order, the assessee shall be liable to pay simple interest @ 1¼% for every month or part of a month on the outstanding amount from the date of expiry of 35 days.

### **Abatement Of Proceeding Before The Settlement Commission**

Where an application made to the Settlement has been rejected	The date on which the application was rejected.
where an application has been declared invalid	The last day of the month in which the application was declared invalid.
Where an order has been passed not providing for the terms of settlement.	The day on which the order was passed not providing for the terms of settlement.
Where an order has not been passed within 18 months from the end of the month in which application is made	The date on which the time or period specified in section 245D(4A) expires.

#### Other points

1. On abatement of proceedings, the case would revert back to the Assessing Officer having jurisdiction or any other income-tax authority before whom the proceedings were pending at the time of making the application.
2. **Assessing Officer entitled to use the material, information and results of enquiry**
3. The period from the date on which the application was made before the Commission up to the date on which proceedings get abated shall be excluded from the time limit for completion of proceedings by the Assessing Officer
4. In case of abatement of settlement proceedings, the Assessing Officer is required to give credit for the tax and interest paid on or before the date of making the application or during the pendency of the case before the Settlement Commission.

**Other points**

1. The Settlement Commission is empowered to provisionally attach the property belonging to the applicant for protecting the interest of the revenue. Such provisional attachment is valid for a period of 6 months, after which it ceases to have effect. The Settlement Commission may, for reasons to be recorded in writing, extend the aforesaid period by such further period or period as it thinks fit.
2. **Order to be void if obtained by fraud or misrepresentation** : The order should also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that the settlement order was obtained by fraud or any misrepresentation of facts by the applicant. In cases where the settlement becomes void, the proceeding, in respect of which the settlement order was passed, must be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the Income-tax authority concerned may complete the proceedings for assessment or re-assessment of income or the levy of penalty, fine, etc., at any time before the completion of two years from the end of the financial year in which the settlement becomes void.
3. The Settlement Commission may, if it is satisfied that any person who made the application for settlement under section 245C has co-operated with the Settlement Commission in the conduct of the proceedings before it and has made a true disclosure of his income, and the manner in which such income has been derived, grant to such person immunity from prosecution for any offence under the Income-tax Act, 1961. Such an immunity may also be granted in the matter of imposition of any penalty under the Income-tax Act, 1961.

**BAR ON SUBSEQUENT APPLICATION FOR SETTLEMENT**

The option of going to the Settlement Commission would be available only once in the lifetime of a person. Any person related to the person who has already approached the Settlement Commission once, also cannot approach the Settlement Commission subsequently. The related person with respect to a person means –

Person	Related person
Individual	<ul style="list-style-type: none"> <li>• any company in which such person holds more than 50% of the shares or voting rights at any time; or</li> <li>• any firm or AOP or BOI in which such person is entitled to more than 50% of the profits at any time; or</li> <li>• any HUF in which such person is a karta</li> </ul>
Company	• any individual who held more than 50% of the shares or voting rights in such company at any time before the date of application before the Settlement Commission by such person
Firm or AOP or BOI	• any individual who was entitled to more than 50% of the profits in such firm, AOP or BOI, at any time before the date of application before the Settlement Commission by such person
HUF	• The karta of that HUF

***PENALTIES***

**Section 270A – Under Reporting and Misreporting of Income**

Who can Levy Penalty? AO/CIT/CIT(A)

**Calculation of under reported Income in different scenarios**

Case	Manner of computation of under reported income	
Where return is furnished and assessment is made for the first time.	Assessed income (-) Income determined under section 143(1)(a)	
Where no return has been furnished and the assessment is made for the first time	Person	Under reported Income
	Company, Firm or Local Authority	Assessed Income
	Other Persons	Assessed Income – BEL
Where income is not assessed for the first time	Income reassessed or recomputed (-) Income assessed or reassessed or recomputed in the order immediately preceding the order during the course of which penalty u/s 270A(1) has been initiated.	
Where under reported income arises out of determination of deemed total income in accordance with the provisions of section 115JB or section 115JC	$A - B) + (C - D)$ where, A = Total income assessed as per the general provisions i.e., provisions other than the provisions contained in section 115JB or section 115JC; B = The total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of under reported income; C = The total income assessed as per the provisions contained in section 115JB or section 115JC; D = The total income that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC been reduced by the amount of under reported income.	
Where an assessment or reassessment has the effect of reducing the loss declared in the return or converting that loss into income	The loss claimed (-) The income or loss, as the case may be, assessed or reassessed.	

**Meaning of Under-reported income in a case where the source of any receipt, deposit or investment is linked to an earlier year [Section 270A(4) & (5)]:**

In a case where the source of any receipt, deposit or investment appearing in the current assessment year is claimed to be an amount added to income or deducted while computing loss, as the case may be, in the assessment of such person in any earlier assessment year and no penalty was levied for such preceding year, under-reported income shall include such amount as is sufficient to cover such receipt, deposit or investment.

**Note** – Such amount shall be deemed to be the amount of income under-reported for the preceding year in the following order –

1. The preceding year immediately before the year in which the receipt, deposit or investment appears, being the first preceding year; and
2. Where the amount added or deducted in the first preceding year is not sufficient to cover the receipt, deposit or investment, the year immediately preceding the first preceding year and so on.

**Cases not included within the scope of under-reported income under section 270A [Section 270A(6)]:**

The amount of income in respect of which the assessee offers an explanation	The Assessing Officer/CIT/PC/ Commissioner (Appeals) is satisfied that the explanation is <i>bona fide</i> and all the material facts have been disclosed to substantiate the explanation.
The amount of under-reported income determined on the basis of an estimate	If the assessee has, on his own, estimated a lower amount of addition or disallowance on the same issue and has included such amount in the computation of his income and disclosed all the facts material to the addition or disallowance
The amount of under-reported income represented by any addition made in conformity with the arm's length price determined by the Transfer Pricing Officer	Where the assessee had maintained information and documents as prescribed under section 92D, declared the international transaction under Chapter X and disclosed all the material facts relating to the transaction

**Cases of misreporting of income [Section 270A(9)]:**

- (i) misrepresentation or suppression of facts;
- (ii) failure to record investments in books of account;
- (iii) claim of expenditure not substantiated by any evidence;
- (iv) recording of any false entry in books of account;
- (v) failure to record any receipt in books of account having a bearing on total income; and
- (vi) failure to report any international transaction or deemed international transaction or specified domestic transaction under Chapter X.

**Quantum of penalty leviable:**

Case	Penalty
Under reporting of income 270A(7)	50% of tax payable on under-reported income
Where under reporting of income results from misreporting of income by any person.270A(8)	200% of tax payable on such under-reported income

**IMMUNITY FROM IMPOSITION OF PENALTY AND PROSECUTION [SECTION 270AA]**

1. An assessee may make an application to the Assessing Officer for grant of immunity from imposition of penalty under section 270A if he -
  - (i) **Pays the tax and interest payable** as per the order of assessment under section 143(3) or reassessment under section 147, within the period specified in such notice of demand; and
  - (ii) **Does not prefer an appeal** against such assessment/ reassessment order.
2. The assessee can make such application in the prescribed form and verified in the prescribed manner **within one month from the end of the month** in which the order of assessment or reassessment is received
3. **Assessing Officer cannot grant immunity from penalty and prosecution if underreporting is because of mis-reporting.**
4. The Assessing Officer shall pass an order accepting or rejecting the application for immunity from penalty under section 270A or prosecution under section 276C or section 276CC within a period of **one month from the end of the month in which such application is received**
5. The order of the Assessing Officer passed under section 270AA(4) accepting or rejecting the application made by the assessee for immunity from penalty under section 270A shall be final

<b>PENAL PROVISIONS ON UNDISCLOSED INCOME FOUND DURING THE COURSE OF SEARCH [SECTION 271AAB]</b>	
<b>Circumstance</b>	<b>Rate of penalty</b>
If undisclosed income is admitted during the course of search in the statement furnished under section 132(4), and the assessee explains the manner in which such income was derived, pays the tax, together with interest if any, in respect of the undisclosed income, and furnishes the return of income for the specified previous year declaring such undisclosed income on or before the specified date (i.e., the due date of filing return of income or the date on which the period specified in the notice issued under section 153A expires, as the case may be).	<b>30%</b>
In all other cases	<b>60%</b>

**Relevant Definitions:**

1. ‘Specified date’ means the due date of furnishing of return of income u/s 139(1) or the date on which the period specified in the notice issued u/s 153A for furnishing of return of income expires, as the case may be.

2. “Specified previous year” “Specified previous year” is any one or both of the following –

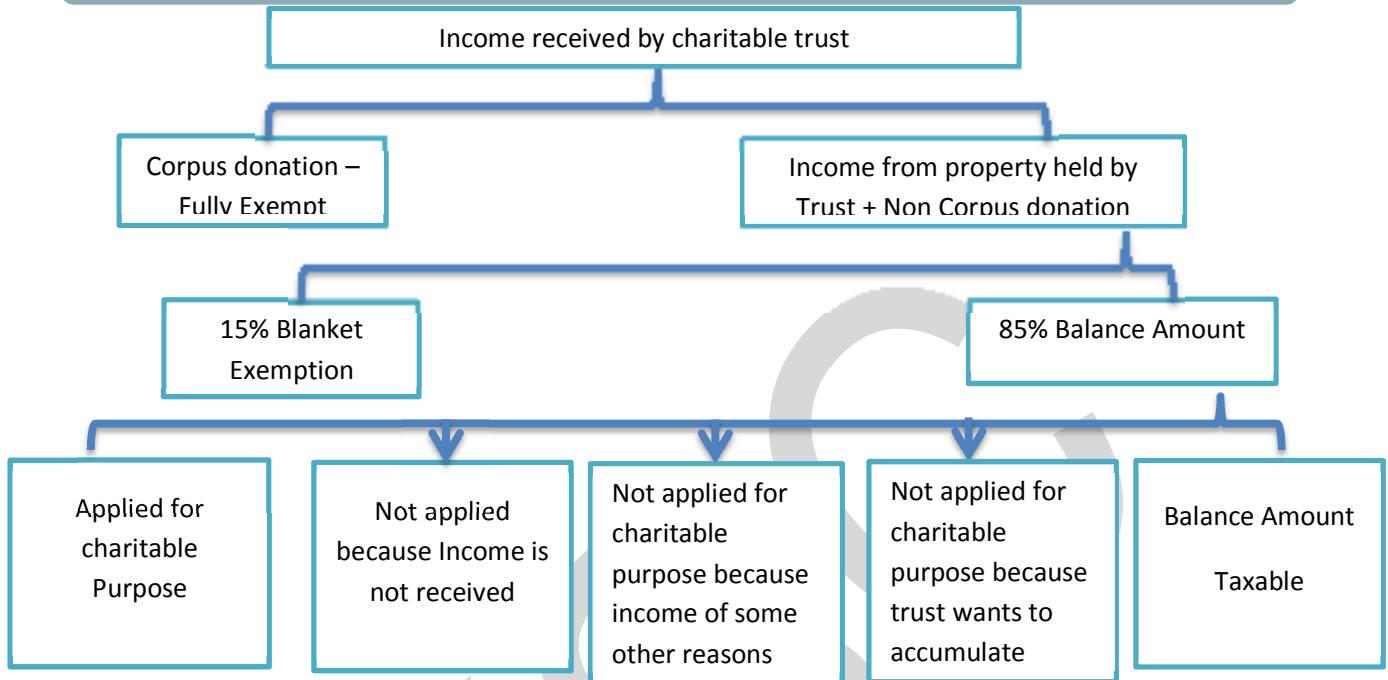
“Specified previous year” one	It is a previous year which satisfies all the following conditions – a. It ends before the date of search; b. The due date of filing return of income under section 139(1) has not expired before the date of search. c. Before the date of search, the assessee has not submitted return of income for the above previous year.
“Specified previous year” two	It is the previous year in which search is conducted

<b>NATURE OF DEFAULT</b>	<b>Section</b>	<b>AMOUNT OF PENALTY</b>
Failure to keep or maintain or retain books of account, documents etc. as required u/s 44AA	271A	Rs. 25,000
Failure to : ❖ keep and maintain any information and document as required under sub-section (1) or (2) of section 92D ❖ Report any international or specified domestic transaction which an assessee is required to do ❖ Maintain or furnish an incorrect information or document	271AA	2% of the value of each international transaction or specified domestic transaction entered into by such person
Failure to get accounts audited or to furnish the report of such audit as required u/s 44AB.	271B	Failure to get accounts audited or to furnish the report of such audit as required u/s 44AB. 0.5% of total sales turnover or gross receipts of business / gross receipts of profession or Rs. 1,50,000 whichever is less.
Failure to furnish report as required under section 92E on or before the due date u/s. 139(1) i.e. 30th Nov.	271BA	Rs. 1,00,000
Failure to deduct tax at source as per chapter XVII-B or to pay any part of the tax as required by – (i) Section 115-O(2) or (ii) the proviso to section 194B.	271C	A sum equal to the amount of tax which he failed to deduct or pay.



Failure to collect tax at source	271CA	A sum equal to the amount of tax which he failed to collect
Failure to furnish information or document under section 92D	271G	2% of the value of the international transaction or specified domestic transaction for each such failure
Failure to comply with the provision of Sections 269SS.	271D	Sum equal to amount of loan or deposit or specified sum [any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property], taken.
Furnishing incorrect information in reports or certificate given by an accountant or a merchant banker or a registered valuer under any provisions of this Act or Rules	271J	Rs. 10,000 for each such report or certificate.

**TAXATION OF CHARITABLE TRUST**



**Note 1 – Application for Charitable purpose**

1. Application covers revenue expenses, capital expenses, Repayment of loan, Donation to other charitable or religious trust.
2. **Amount credited or paid out of income of any trust by way of corpus donation to any trust or institution registered under section 12AA not considered as application**
3. **Provisions of sections 40(a)(ia), 40A(3) and 40A(3A) apply in case of application of income by trust.**
4. Creation of liability also amounts to application of Income

Note 2 - The balance 85% must be **applied** during the previous year for the purposes for which the trust has been created. However, it is possible that the trust is unable to apply the minimum of 85% of its income during the previous year due to either of the following reasons.

- (1) The whole or any part of the income has not been received during that year.
- (2) Any other reason.

In the first class of cases, the period of application is extended to cover the previous year in which the income is actually received and the previous year immediately following the year. However, the amount which may be so claimed to have been so applied during the subsequent previous year cannot exceed the amount of the income which had not been received earlier but received during a subsequent previous year.

In the second case, the period of application is extended to the previous year immediately following the previous year in which the income was derived.

Note 3 Accumulation of Income

**Conditions for accumulation**

1. Application in form 10 (It is not necessary for a charitable trust to particularize each and every object for which accumulation is sought. It is enough if the assessee seeks permission for accumulation for the objects of the trust.)
2. The money so accumulated or set apart should be invested or deposited in the modes specified in section 11(5).
3. Maximum period of accumulation is 5 years

**Non-submission of statement in prescribed form on or before the due date of filing return of income under section 139(1) [Section 13(9)]** - In case the statement in Form 10 is not submitted on or before the due date of filing return of income under section 139(1), then, the benefit of accumulation would not be available and such income would be taxable at the applicable rate. Further, the benefit of accumulation would also not be available if return of income is not furnished on or before the due date of filing return of income specified in section 139(1).

Section 11(3) Exemption is withdrawn

**Deemed income in case of non-utilisation or mis-utilisation of accumulated amount**

Where the accumulated income of the trust -

- (a) is applied for purposes other than charitable or religious purposes; or
- (b) ceases to remain invested or deposited in any of the modes mentioned under section 11(5) above; or
- (c) is not utilised for the purpose for which it is so accumulated or set apart during the period specified (not exceeding 5 years) or in the year immediately following thereof.
- (d) accumulated or set apart for application to charitable and religious purposes in India, is credited or paid to any trust or institution registered under section 12AA

such income shall be deemed to be the income of the previous year –

- (a) in which it is so applied; or
- (b) in which it ceases to remain so invested or deposited; or
- (c) immediately following the expiry of the period aforesaid; or
- (d) in which it is paid or credited.

**Transfer of a capital asset held under trust wholly for charitable or religious purposes [Section 11(1A)]** - Where the whole of the net consideration from the transfer of the capital asset is utilised for acquiring a new capital asset which is held under trust wholly for charitable or religious purposes, the entire amount of capital gains arising from the transfer would be deemed to have been applied for charitable or religious purposes. If, however, only a part of the net consideration is utilised in acquiring the new capital asset, the amount of capital gains deemed to have been utilised for charitable or religious purposes shall be equal to the excess of the proceeds utilised over the cost of the asset transferred.

**Charitable trust engaged in business activity [Section 11(4A)]** - Consequently, a charitable trust engaged in business activity will be liable to any tax on income from the activity. However, exemption would be available to the trust in respect of income earned from such business activity if –  
(a) such business is incidental to the attainment of the objects of the trust/institution; and  
(b) separate books of account are maintained by such trust/institution in respect of such business.

**No deduction for depreciation where cost of asset has been claimed as application of income -** Income for the purposes of application under section 11 shall be determined without allowing any deduction or allowance for depreciation or otherwise, in respect of any asset, the cost of acquisition of which has been claimed as an application of income under this section in the same or any other previous year [Section 11(6)].

**No claim for exemption under section 10 permissible where trust has been granted registration for availing exemption under section 11** - Where a trust or an institution has been granted registration for purposes of availing exemption under section 11, and the registration is in force for a previous year, then such trust or institution cannot claim any exemption under any provision of section 10 [other than exemption of agricultural income under section 10(1) and exemption available under section 10(23C)] [Section 11(7)].

**Section 12A – Conditions to be satisfied for claiming exemption.**

1. Trust has made application for registration u/s 12AA
2. Where the total income of the trust without giving effect to the provisions of section 11 and 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year, the accounts of the trust must be audited by a chartered accountant and the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such prescribed particulars, should be furnished along with the return.
3. In order to provide further clarity, section 12A provides for further condition that the person in receipt of the income chargeable to income-tax shall furnish the return of income within the time allowed under section 139(4A) of the Act.

**Other points**

1. The provisions of sections 11 and 12 would apply from the assessment year relevant to the financial year in which the application is made i.e., the exemption would be available only with effect from the assessment year relevant to the previous year in which the application is filed. It would not be available in respect of any earlier assessment year
2. In case where a trust or institution has been granted registration under section 12AA, the benefit of sections 11 and 12 shall be available in respect of any income derived from property held under trust in any assessment proceeding for an earlier assessment year which is pending before the Assessing Officer as on the date of such registration. The objects and activities of such trust or institution in the relevant earlier assessment year should be the same as those on the basis of which such registration has been granted.

Procedure for Registration [Section 12AA] - The Principal Commissioner or Commissioner, on receipt of an application for registration of a trust or institution made under section 12A(1) shall proceed as follows :

- (i) He would call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such enquiries as he may deem necessary in this behalf.
- (ii) After satisfying himself about the objects of the trust or institution and the genuineness of its activities, he shall pass an order in writing registering the trust or institution.
- (iii) If he is not satisfied, he shall pass an order in writing refusing to register the trust or institution.
- (iv) A copy of such an order issued under (ii) or (iii) above shall be sent to the applicant. However, an order under (iii) shall not be passed unless the applicant has been given a reasonable opportunity of being heard.
- (v) Every order granting or refusing registration shall be passed within six months from the end of the month in which the application for registration of trust or institution is received by the Principal Commissioner or Commissioner.
- (vi) Where a trust or an institution has been granted registration and subsequently, if the Principal Commissioner or Commissioner of Income-tax is satisfied that the activities of any trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, he can pass an order in writing canceling the registration granted under section 12AA and 12A (as it stood before its amendment by the Finance (No.2) Act, 1996). However, the trust or institution should be given a reasonable opportunity of being heard.

#### **Denial of Exemption [Section 13]**

##### **(i) Income not eligible for exemption under sections 11 and 12**

(a) **Income from property held under a trust for private religious purposes** - Where the property is held under a trust for private religious purposes, no part of the income will be exempt if it does not ensure for the benefit of the public [Section 13(1)(a)].

(b) **Income from trust established for benefit of any particular religious community or caste** - Where a trust has been established for the benefit of any particular religious community or caste, the income thereof will not be eligible for exemption. However, a trust or institution created or established for the benefit of scheduled caste, backward classes, scheduled tribes or women and children shall not be treated as a trust or institution created or established for the benefit of a religious community or caste within the meaning of section 13(1)(b).

(c) **Income of trust enuring for the benefit of any person referred to in section 13(3)** - Where the trust or the institution has been created or established after 31.3.1962, if any part of its income enures directly or indirectly for the benefit of any person referred to in section 13(3). Irrespective of the date of the creation of the trust or the establishment of the institution, if any part of its income or any property belonging to it during the relevant previous year is used or applied directly or indirectly for the benefit of any person referred to in section 13(3) [Section 13(1)(c)].

(d) **Deposit or investment of funds in impermissible modes** - Any income of a trust or institution, if funds are invested or deposited otherwise than in the forms or modes specified in section 11(5);

Section 13(3) gives the list of persons, use or application of the income or property of a trust for whose direct or indirect benefit results in a denial of the exemption contemplated in section 11 for a charitable or religious trust or institution. The said persons are:

- (1) The author of the trust or the founder of the institution.
- (2) Any person who has made a substantial contribution to the trust or institution, that is, any person whose total contribution up to the end of the relevant previous year exceeds ` 50,000.
- (3) Where the author, founder or the person making a substantial contribution is a HUF, any member of the family.
- (4) Any trustee of the trust or manager (by whatever name called) of the institution.
- (5) Any relative of any such author, founder, person, member, trustee or manager as referred to above.
- (6) Any concern in which any of the persons referred to in clauses (1) to (5) above has a substantial interest.

The expression “relative”, in relation to an individual, means -

- (a) spouse of the individual;
- (b) brother or sister of the individual;
- (c) brother or sister of the spouse of the individual;
- (d) any lineal ascendant or descendant of the individual;
- (e) any lineal ascendant or descendant of the spouse of the individual;
- (f) spouse of a person referred to in (b), (c), (d) or (e) above;
- (g) any lineal descendant of a brother or sister of either the individual or the spouse of the individual;

**Exemption not to be denied to charitable trusts providing educational or medical facilities to specified persons [Section 13(6)]** - A charitable or religious trust running an educational institution or a medical institution or a hospital shall not be denied the benefit of exemption under section 11 merely due to the reason that the benefit of educational or medical facilities have been provided to the specified persons referred to in section 13(3). However, the value of such facilities provided to such specified persons either free of cost or at a concessional rate would be deemed to be the income of the trust. Such income would not be eligible for exemption under section 11.

Section 2(15) states that ‘charitable purpose’ includes relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest and the advancement of any other object of general public utility.

In order to limit the ambit of the phrase “advancement of any other object of general public utility”, section 2(15) provides that “the advancement of any other object of general public utility” would not be a charitable purpose if it involves the carrying on of –

- (a) any activity in the nature of trade, commerce or business or,
- (b) any activity of rendering of any service in relation to any trade, commerce or business, for a fee or cess or any other consideration, irrespective of the nature of use or application of the income from such activity, or the retention of such income, by the concerned entity.

Thus, the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless,-

- (1) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and
- (2) the aggregate receipts from such activity or activities, during the previous year, does not exceed 20% of the total receipts, of the trust or institution undertaking such activity or activities, for the previous year

**Anonymous Donations received by Charitable Trusts/Institutions to be subject to tax [Section 115BBC]**

As per Section 115BBC has been inserted to tax anonymous donations received by the above entities at 30%. In order to provide relief to these trusts and institutions and to reduce their compliance burden, an exemption limit has been introduced, and only the anonymous donations in excess of this limit would be subject to tax@30% under section 115BBC.

The exemption limit is the higher of the following –  
5% of the total donations received by the assessee; or Rs. 1 lakh.

The total tax payable by such institutions would be –  
tax@30% on anonymous donations exceeding the exemption limit as calculated above; and tax on the balance income i.e. total income as reduced by the anonymous donations which have been subject to tax@30% under section 115BBC.

For this purpose, “anonymous donation” means any voluntary contribution referred to in section 2(24)(ia), where the person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed. However, the above provision does not apply to a trust or institution created or established wholly for religious purposes.