

Charitable Trust & Exit Tax

➤ Some Important Points for Exam:

- Yoga is included for charitable purposes.
- Corpus Donation is exempt from tax if they are received with a specific direction that they shall form part of corpus of trust & are invested in specified modes of 11(5). If not invested then it would not be exempt for that PY.
- Trust can claim application of money for repayment of loan to the extent of repayment.
- Persons specified in 13(3): Author/Trustee, Person making contribution > 50,000 } Also if these persons are members of HUF, Relative of author, trustee or member } Such Person or Concern has substantial Interest.
- Section 13(6), If trust has provided facilities to persons referred in 13(3) then trust shall not be denied exemption u/s 11.
- No approval or registration required:
 - Educational Institution whose annual receipts do not exceed 5 crores. **Section 10(23C)(iiia)**;
 - Hospital for treatment of persons suffering from mental defectiveness whose annual receipts do not exceed 5 crores. **Section 10(23C)(iiia)**; or
 - Combined of the above two (Trust running both) does not exceed 5 crores.
- Voluntary contribution forming part of corpus of trust should be invested in specified modes.
- Treatment of Anonymous Donation:
Ex: Anonymous Donation 5 Lakhs

First Add: 5% of total donations of 1 Lakhs whichever is higher (It is a part which is not taxed @30%) (It is added before set apart of 15%)

At last add: Remaining amount i.e. (5 Lakhs - Donation added above) (It is to be taxed @30%)

➤ May23:

A public company has created a charitable trust exclusively for the benefit of the public. The trust has granted interest free loans, inter alia, to some of the **company's employees** in order to enable their children to pursue higher studies, as per the objects of the trust. The Assessing Officer considers this benefit as being covered under section 13(3) and proposes to withdraw the exemption from tax granted to the trust. The benefit of section 11 would not be available to a public charitable trust, if any part of its income accrues directly or indirectly for the benefit of any person to in section 13(3). **Employees are not covered in list of prohibited person of 13(3)**

*Relationship pursuant to a contract like that of an employer and an employee cannot be said to be a relative. "Relative" means a person connected by birth or marriage with another person. This line of reasoning is based on the Patna High Court ruling in **CIT v. Tata Steel Charitable Trust (1993) 203 ITR 764.***

LM Trust runs an educational institution, received annual receipts during F.Y. 2022-23 amounting to 2.40 crores. The trust also runs a hospital for treatment. The total receipts for the hospital during F.Y. 2022-

23 amounted to 2.50 crores. LM Trust is **not registered** for tax exemption u/s. 11, 12 or any other such clause. The consultant of the trust told them they are not required to pay any tax even not given Registration under the Act.

Here, combined receipts of 4.90 crores from educational institution (2.40 crores) and hospital (2.50 crores), does not exceed 5 crores. Consultant is correct.

➤ **Nov22:**

FM Trust established for the purpose of promotion of **Yoga**:

(i) During the financial year 2022-23, it received a voluntary contribution of 125 lakhs with a specific direction that it should form part of the corpus of the trust. The trust invested such amount in the **shares of M/s. Bend and Blend Private Ltd.**, a private sector company.

(ii) Apart from the above-mentioned 125 lakhs, during the financial year 2022-23, it received 95 lakhs from other voluntary contributions and 60 lakhs of fees towards providing Yoga classes.

(i) Voluntary contribution of 125 lakhs is invested in Investment in shares of private company is not a specified mode under section 11(5). Hence, 125 lakhs received by Fit Me Foundation would not be exempt under section 11.

(ii) Voluntary contributions of 95 lakhs and fees towards providing Yoga classes of 60 lakhs would be income from property held for charitable purposes and eligible for unconditional exemption of 15% under section 11.

Mr. Nagaraj is the founder of SS Trust, a public charitable trust. The trust runs a hospital, **Mr. Ram, son of Mr. Nagaraj**, was admitted in May 2022 in the hospital due to COVID for treatment. He was charged a total fee of 3 lakhs as against the amount of 5 lakhs charged by the hospital for similar treatment to the general public. The Board of trustees were served with a notice by the income tax authorities for cancellation of registration u/s 12A.

Here, SS Trust shall not be denied the benefit of exemption in respect of its entire income merely due to the reason that the benefit of medical facilities have been provided to Mr. Ram, son of Mr. Nagaraj, being the specified person. Registration cannot be cancelled. Section 13(6).

As per section 12(2), the value of medical facilities provided to Mr. Ram, being the specified person, at a concessional rate would be deemed to be the income of the trust and such income would not be eligible for exemption under section 11. Hence, 2,00,000, being the concessional value of medical services would be deemed to be the income of SSVB Trust.

The remaining income would be eligible for benefit of section 11.

➤ **May22: (8 Marks)**

Raj Charitable trust registered received corpus donation of 5 lakhs during the previous year 2022-23. The trust intends to utilize it during the PY 23-24 and claimed that since the donor gave the donation with a specific direction that it is towards the corpus of the trust, it is exempt from tax. Further, during the year, the trust took a loan of 20 lakhs from a nationalized bank and out of it, applied 18 lakhs on the construction of its building. The trust claimed 18 lakhs as application for charitable purposes during the year.

Corpus Donation would not be exempt as the same is not invested in PY 22-23.

Since the loan is not repaid the application of money would not be allowed.

Both the claims are incorrect.

Smile Foundations is a NPO trust that runs a school. The total receipts consisting of voluntary contributions and the government grants of the trust during the previous year 2022-23 amounted to 30 lakhs (14 lakhs and 16 lakhs respectively). Is Trust required to take approval?

Since, the trust is substantially financed by govt, Govt. Grants of 16 Lakhs constitute 53.33% of its total receipts of 30 Lakhs (14 Lakhs voluntary contribution 16 Lakhs Govt. Grants) which is more than 50% of its total receipts. Hence, the income of institution is exempt u/s 10(23C)(iiiab). It is not required to get the approval of prescribed authority.

➤ **July21: (8 Marks)**

Tulsi Foundations, a public charitable and religious trust registered under section 12AB, runs a hospital and also owns a temple. It furnishes you the following information for the year ended 31st March, 2023:

- (i) Gross receipts from hospital 200 Lakhs.
 - (ii) Voluntary contributions (not included in gross receipts) received from public amounted to 35 lakhs. It includes corpus donation of 5 lakhs and anonymous donation 10 lakhs. Out of the anonymous donations of 10 lakhs, 8 lakhs are made to the donation box of temple.
 - (iii) Operational expenses incurred for the hospital amounted to 94 lakhs and for the temple amounted to 15-lakhs.
 - (iv) On 1st January 2023, 6 lakhs was paid to a contractor in cash for the overall maintenance of the hospital. This amount is included in the operational expenses of the hospital.
 - (v) On 1st May, 2022, the trust purchased and installed new computer software for 25 lakhs for the hospital: The rate of depreciation is 40% as per the Income-tax Act, 1961.
 - (vi) The trust gave donation of 12 lakhs to Balaji trust (having objects of charitable nature), registered under section 12AB, but not similar to the objects of the donor trust.
- Compute the total income and income tax liability of the trust for the A.Y. 2023-24 in such a manner that it can avail the optimal benefit within the four corners of law.

(a) Computation of total income of Tulsi Foundations for the A.Y.2023-24

Particulars	`	`
Gross receipts from hospitals		2,00,00,000
Add: Voluntary contributions other than corpus donation and anonymous donation		20,00,000
Corpus donation [does not form part of total income]		Nil
Anonymous donations for temple [not subject to tax u/s 115BBC]		<u>8,00,000</u>
		2,28,00,000
Add: Anonymous donations other than for temple [to the extent not chargeable to tax u/s 115BBC(1)(i)] [1,75,000, being 5% of total donations of 35,00,000 or 1,00,000, whichever is higher] [See Note 1 at the end of the solution]		<u>1,75,000</u>
		2,29,75,000
Less: 15% of income eligible for being set apart without any condition [See Note 2 at the end]		<u>34,46,250</u>

		1,95,28,750
Less: Amount applied for charitable purposes		
- Operational expenses incurred for hospital and temple [94 lakhs + 15 lakhs - 6,00,000 not treated as application as payment to contractor not made upto 31-3-23]	1,03,00,000	
- Purchase of computer [it is beneficial for the trust to claim cost of computer itself as application of income in the year asset is acquired. If the cost of asset is claimed as application, then, depreciation will not be allowed as deduction as per section 11(6)]	25,00,000	
- Donation to charitable trust registered u/s 12AA allowable as application, since it is not given with a specific direction that it shall form part of corpus of the trust nor is it given out of accumulated income	12,00,000	
		<u>1,40,00,000</u>
Total income [other than anonymous donation taxable@30% under section 115BBC(1)(i)]		55,28,750
Add: Anonymous donation taxable @30% u/s 115BBC(1)(i) [See Note at the end of the solution]		<u>25,000</u>
Total Income of the trust		<u>55,53,750</u>

Computation of tax liability of the trust for the A.Y. 2023-24

Particulars	₹
Tax on total income of 55,28,750 i.e., total income [excluding anonymous donations of 25,000 chargeable to tax u/s 115BBC(1)(i)]	16,58,625
Tax on anonymous donations taxable@30% [$25,000 \times 30\%$]	<u>7,500</u>
	16,66,125
Add: Surcharge@10%, since total income exceeds 50 lakhs but does not exceed 1 crore.	<u>1,66,613</u>
	18,32,738
Add: Health and Education cess @4%	<u>73,310</u>
Total tax liability	<u>19,06,048</u>
Total tax liability (rounded off)	19,06,050
<p>Note - To avail the maximum benefit, the amount of 55,28,750 (i.e., Total income excluding anonymous donation taxable@30% u/s 115BBC) can be accumulated or set apart for such period not exceeding 5 years by exercising an option on or before the due date for filing return of income and such amount should be invested in modes specified u/s 11(5).</p>	

1) As per SC Ruling, CIT vs. Programme for Community Organisation (2001) 116 Taxman 608, 15% of gross receipts would be eligible for accumulation u/s 11(1)(a). Accordingly, in the above solution, 15% of gross receipts has been considered.

2) It is also assumed that no amount has been applied out of the amount received towards corpus and the same is invested in modes prescribed u/s 11(5).

3) As per substituted section 12AB(4) by FA 2022, where any part of the income is applied by the trust or institution for other than the objects of trust then Principal Comm/Comm shall cancel the registration.

➤ **Other Special Points for question solving: (V.IMPORTANT)**

- Agricultural Income is not considered in income as exemption u/s 10(1) would apply.
- Dividend from Indian Companies & Income from Mutual Funds is part of income.
- If payment is not made in same FY then than it would not be considered as applied. Ex: Amount payable to foreign teachers but payment made in next year.
- If payments not realized, then do not include if trust follows cash system of accounting.
- If TDS not deducted on certain payments, then not to be considered in applied.
- For L&B purchased, SDV is not considered for applied purpose as 56(2)(x) does not apply here.
- Corpus Donation to other trusts are not permissible.
- Payment by crossed cheques not allowed.
- Excess of purchase price over sale price of old asset is considered as applied.

➤ **EXIT TAX (Section 115TD):**

- The Accreted Income of trust shall be taxable @MMR i.e. **34.944% (30%+12%+4%)**. (Yaad Rakhna).
- When the tax on accreted income is levied on the FMV & if subsequent transfer of such asset, the cost of acquisition shall be FMV of such asset.
- Exit Tax is additional tax payable other than normal income tax. Even if no income tax is payable
- Exit Tax has to be paid within 14 days for different cases.
- Interest @ 1% p.m. or part of the month from the 15th day till date on which tax is actually paid.

- How to calculate Accreted Income:

Aggregate FMV of Total Asset - Total Liability of Trust = Accreted Income

Asset shall not include:

- 1) Assets acquired out of **agricultural income**.
- 2) Assets acquired from the **date of creation of trust to the date from which registration approval becomes effective u/s 12AA/12AB/10(23C)**. (If benefits allowed to trust u/s 11 & 12 for earlier PY's then registration shall be deemed to be from the date of earliest PY).
- 3) Asset **transfer on dissolution** to other trust **within 12 months from end of month** in which dissolution takes place.

FMV OF TOTAL ASSETS:

Particulars	FMV
1) Quoted shares & securities	Average of lowest & highest price on valuation date (If no trading, then immediately preceding the valuation Date)
2) Unquoted shares & securities	$\frac{A+B-L}{PE} \times PV$

	<p>A: BV of all assets (other than B)(exclude TDS, Advance Tax excess of refund, deferred expenditure)(Asset Side)</p> <p>B: FMV of bullion, jewellery, stones, artistic work, shares, Securites & immovable property.</p> <p>L: BV of Liab. Excluding:</p> <p>i) Paid up capital of equity shares.</p> <p>ii) Amount set apart for payment of dividends. (Eq.& Pref.)</p> <p>iii) Reserve & surplus, any name, even if negative, depreciation reserve</p> <p>iv) Provision for taxation (Not Income tax paid) (Less: Refund after tax payment)</p> <p>v) Provisions for unascertained liabilities.</p> <p>vi) Contingent Liabilities other than arrears of dividends payable for cumulative pref. shares.</p> <p>PE: Amount of paid up equity share.</p> <p>PV: Paid up value of equity share.</p>
3) Unquoted shares or sec. (Other than equity)	FMV/NRV on Valuation date on basis of valuation report.
4) Immovable Property	<p>i) SDV on Valuation date</p> <p>ii) FMV/NRV on Valuation date</p> <p>} Higher</p>
5) Business Undertaking	A+B-L
6) Other Asset	FMV/NRV on Valuation Date

Now, FMV calculated shall be reduced by amount of TDS/TCS or (advance tax payment - refund claimed) & Unamortised amount of deferred revenue expenditure shown as asset.

LIABILITIES:

Book Value of Liabilities in Balance Sheet **but excluding:**

- i) capital fund/accumulated fund/corpus.
- ii) reserve & surplus or excess of income over expenditure
- iii) contingent liability
- iv) Provisions for unascertained liabilities.
- v) Provision for taxation (Other than TDS/TCS/(Advance tax - refund claimed))

➤ Dec21:

Ramnarayan Foundation Trust was formed on 01-04-2008. It applied for registration u/s. 12AA of the Act and got the registration approved from prescribed authority with effect from 01-04-2012. The trust got the exemption from payment of taxes satisfying the conditions laid down in Sections 11 to 13 from 01-04-2012. The trust got dissolved on 29-12-2022.

The Balance Sheet of the Trust on the date of dissolution was as under:

Liabilities	Amount (₹)	Assets	Amount (₹)
Corpus of the trust	6,00,000	Land and Building	12,00,000
Reserves (created out of accumulated amount of 15% each year)	3,00,000	Investment in Equity Shares - Quoted	4,00,000

Loan taken for purchase of Land and Building	9,00,000	Investment in Equity Shares - Unquoted (in Z Ltd.)	1,50,000
Loan taken for the purchase of unquoted shares (taken in year 2009-10)	1,00,000	Cash	1,00,000
		Bank Balance	50,000
Total	19,00,000	Total	19,00,000

Additional information:

(i) **FMV** of Land and Building is 50,00,000.

(ii) 50% of the Unquoted shares were acquired during the **year 2009-10**.

(iii) Market Value of quoted shares on the date of dissolution is 46,50,000.

(iv) Land and Building is **acquired out of agricultural income**.

(v) With respect to Z Ltd. in which the trust invested in unquoted shares, the following additional information was available as on 29-12-2022:

(a) 1,00,000 Equity Shares with face value of 10 each

(b) Total Book Value of the assets (other than bullion, jewellery) is 60,00,000.

(c) Market Value of bullion and jewellery is 30,00,000.

(d) Liabilities amounting to 35,00,000.

(vi) The trust distributed the assets on dissolution, valuing 8,00,000 to another trust registered u/s 12AA of the Act before 31-12-2022.

Compute the tax payable by Ramnarayan Foundation Trust for the A.Y. 2023-24 u/s 115TD

As per section 115TD, the accreted income of Ramnarayan Foundation trust, a charitable trust, registered under section 12AA would be chargeable to tax at the rate of 34.944% [30% plus surcharge @12% plus cess@4%] on non-distribution of assets on dissolution to another trust registered u/s 12AA within 12 months from the end of the month in which the dissolution takes place

Computation of accreted income and tax liability in the hands of Ramnarayan Foundation trust on dissolution

Particulars	Amount (₹)
Aggregate FMV of total assets as on 29.12.2012, being the specified date (date of dissolution) [See Working Note 1]	52,12,500
Less: Total liability computed in accordance with the prescribed method of valuation [See Working Note 2]	<u>Nil</u>
Accreted Income	52,12,500
Less: Value of assets distributed within a period of 12 months from the end of the month of dissolution	<u>8,00,000</u>
	<u>44,12,500</u>
Tax Liability @ 34.944% of ₹ 44,12,500	15,41,904
Tax Liability (rounded off)	15,41,900
Working Notes:	
(1) Aggregate FMV of total assets on the date of dissolution	
- Land and building, FMV as on 29.12.2022, Land & Building not considered since acquired out of agricultural income exempt u/s 10(1)	Nil

- Equity shares - quoted [market value on the date of dissolution] (No info of highest & lowest MV of shares)	46,50,000
- Equity shares - unquoted in Z Ltd. [Since the trust was registered only on 1.4.2012 and benefit of section 11 and 12 was available to the trust only from A.Y.2013-14, relevant to P.Y.2012-13, the value of 50% of the unquoted shares purchased in P.Y.2009-10, in respect of which benefit under sections 11 and 12 was not allowed, has to be ignored for computing accreted income]	4,12,500
<p>Value of unquoted shares = 4,12,500 [50% of 8,25,000 (Book value of assets (other than bullion, jewellery) of Z Ltd. i.e., 60,00,000 + Market value of bullion and jewellery of Z Ltd. i.e., 30,00,000 - Liabilities of 35,00,000 x paid up value of shares i.e., 1,50,000/ total amount of paid up equity share capital as shown in the Balance Sheet of 10,00,000)]</p>	
- Cash	1,00,000
- Bank Balance	<u>50,000</u>
	<u>52,12,500</u>
(2) Total liability	
- Corpus Fund of 6,00,000 [not includible]	Nil
- Reserves and Surplus 3,00,000 [not includible]	Nil
- Loan taken for purchase of land and building	Nil
- Loan taken for purchase of unquoted shares [Since the entire loan is in relation to unquoted shares acquired during the year 2007-08, when the trust was not eligible for exemption under section 11 and 12, the same is not deductible]	<u>Nil</u>
	<u>Nil</u>

ALL THE BEST!