# Revised
# Update on
# Tax treatment of Capital gain
# in the hands of Charitable Trust

1. There is a special provision to levy the tax on capital gain arising on transfer of capital assets in case of all the taxpayers. In such cases, the gain is required to be computed in the manner specified in Chapter *IV-E* of the Income Tax Act, 1961{*hereinafter referred to as the Act}* under the heading "Income from Capital Gain" and is to be charged u/s 45 of the Act.

2. However, the same mode is not applicable if the capital assets so transferred is the property held under trust wholly or in part for charitable or religious purposes within the meaning of section 11(1) and 11(1A) of the Act.

3. For trust, income is to be computed under normal "commercial principles" without resorting to "computation mechanism" as provided under respective head of income, while determining income available for application u/s 11 of the Act.

4. Section 4(1) of the Act mandates charging of income-tax on 'total income", which is defined in section 2(45) of the Act

5. As per section 2(45) of the Act, **"total income"** means the total amount of **"income"** referred to in section 5, computed in the manner laid down in the Act.

6. We may see that in the statute two different expressions are used, **"total income"** and **"income"**, which are mutually exclusive and are different from each other.

7. An **"income"** becomes **"part of a total income"** **or** finally the **"total income"**, when such income is classified in accordance with section 14 of the Act and computed in the following manner:

| | | | |
|---|---|---|---|
| *(i)* | Income from salary | - | in accordance with section 16 |
| *(ii)* | Income from house property | - | in accordance with section 24 |
| *(iii)* | Profits and gains of business or profession | - | in accordance with section 29 |
| *(iv)* | Capital gains | - | in accordance with section 48 |
| *(v)* | Income from other sources | - | in accordance with section 57 |

The above mechanism was approved by the Apex Court in the case of ***CIT vs. Harprasad & Co. (P.) Ltd. (975) 99 ITR 118 (SC).***

8. In other words, an income which is to form part of the total income u/s. 2(45) of the Act, is to be classified under the various heads of the income u/s. 14 and, accordingly, subject to the computation provisions of Chapter IV (ss. 14 to 59) of the Act.

9. It also means that an **"income"** which ***does not*** form part of **"total income"** as defined in section 2(45), ***need not*** be computed in the manner laid down u/s 14 r.w. sections 16, 24, 29, 48 and 57.

10. In the case of charitable or religious trust or institution the provisions of section 16 shall not be applicable.

11. Incomes specified in **clause (1) to (50) of section 10** of the Act are **not** included in computing the **"total income"**. Therefore, the same are **not** subjected to computation provisions of the Act, as mentioned above.

12. Similarly, incomes specified **in clause (a) to (d) of section 11(1) r.w. section 11(1A)** are **not** included in the **"total income"** of a charitable or religious trust or institution subject to fulfilment of certain conditions.

13. In other words, income of a charitable trust or institution subject to its application for charitable purposes, for which it has been formed (per its constituting charter) is ***exempt*** from tax under Chapter III (ss.10 to 13B) of the Act. The said income ***does not*** form part of the **"total income"** of the entity to which it arises or accrues or is received by it.

14. Therefore, the income of a charitable or religious trust or institution, which is claimed to be ***exempt*** u/s 11 and 11(1A) and the claim is so allowable, **need not** be computed in the manner laid down in the Act, as mentioned above.

15. Such **"income"** is to be computed under **"normal commercial principles"** without resorting to computation mechanism as provided under respective head of income while determining income available for application u/s 11 of the Act. It stands explained that only the **"income"** as reflected in the accounts of the trust/institution that is to be applied or deemed to have been applied for charitable purposes, and which, therefore, has to be computed in the **"commercial sense**". The above position has been clarified by the CBDT *{the Board}* long back, which is as follows:

**CBDT**
**Circular No. 5-P (LXX-6) of 1968**
**Dated 19.6.1968**

***Subject : Section 11-Charitable trusts-Income required to be applied for charitable purpose-Instructions regarding.***

In Board's Circular No. 2-P(LXX-5) of 1963, dated the 15th May, 1963, it was explained that a religious or charitable trust claiming exemption under section 11(1) of the Income- tax Act, 1961, must spend at least 75 per cent of its total income, for religious or charitable purposes. In other words, it was not permitted to accumulate more than 25 per cent of its total income. The question has been reconsidered by the Board and the correct legal position is explained below.

2. Section 11(1) provides that subject to the provisions of sections 60 to 63 "the following income shall not be included in the total income of the previous year . . . ".

The reference in sub-section (a) is invariably to **"income"** ***and not to*** **"total income".** The expression **"total income"** has been specifically defined in section 2(45) of the Act as "the total amount of income . . . computed in the manner laid down in this Act". It would accordingly be incorrect to assign to the word **"income"** used in section 11(1)(a), the same meaning as has been specifically assigned to the expression **"total income"** vide section 2(45).

3. In the case of a **business undertaking** held under trust, its "income" will be the income as shown in the accounts of the undertaking. Under section 11(4), any income of the business undertaking determined by the Income tax Officer in accordance with the provisions of the Act, which is in excess of the income as shown in its accounts, is to be deemed to have been applied to purposes other than charitable or religious, and hence it will be charged to tax under sub-section (3). As only the income disclosed by the account will be eligible for exemption under section 11(1), the permitted accumulation of 25 per cent will also be calculated with reference to this income.

4. Where the trust derives **income from house property**, **interest on securities**, **capital gains,** or **other sources**, the word **"income"** should be understood in its **"commercial sense", *i.e.,* book income**, ***after adding back*** any appropriations or applications thereof towards the purposes of the trust or otherwise, and also after adding back any debits made for capital expenditure incurred for the purposes of the trust or otherwise. It should be noted, in this connection, that the amounts so added back will become chargeable to tax under section 11(3) to the extent that they represent outgoings for purposes ***other than*** those of the trust. The amounts spent or applied for the purposes of the trust from out of the income computed in the aforesaid manner, should be not less than 75 per cent of the latter, if the trust is to get the full benefit of the exemption under section 11(1).

5. To sum up, the business income of the trust as disclosed by the accounts plus its other income computed above, will be the "income" of the trust for purposes of section 11(1). Further, the trust must spend at least 75 per cent of this income and not accumulate more than 25 per cent thereof. The excess accumulation, if any, will become taxable under section 11(1).

16. The above interpretation has been approved in numerous court cases, some of which are as follows:

*(i)* *CIT vs. Programme for Community Organisation (1997) 228 ITR 620 (Ker.) since approved by the apex court (reported at (2001) 248 ITR 1 (SC)*

*(ii)* *CIT vs. Institute of Banking Personnel Selection (IBPS) (2003) 264 ITR 110 (Bom).*

*(iii)* *Improvement Trust Fatehabad vs. ITO (Exemptions), Rohtak in ITA No. 6334/Del/2016 Assessment Year: 2013-14 before ITAT, "SMC", Delhi Benches, New Delhi.*

*(iv)* *Director of Income-tax vs. Girdharilal Shewnarain Tantia Trust [1993]199 ITR 215 / 71 Taxman 150 (Cal.).*

*(v) CIT vs. P.S.G. & Sons Charities 1996 Tax LR 477 (Mad.).*

*(vi) CIT v. Jayashree Charity Trust [19861159ITR 280 (Cal.)*

17. Before we read further, it may be noted that the definition of "Income" under section 2(24) includes **Capital Gains** and so, obviously, for the purposes of section 11, Capital Gains will be forming the part of the income of trust as well.

**Capital gain has to be treated at par with other income under section 11.**

18. For charitable trust there is a **special mechanism of computation** of total income in **Chapter *III*** of the Act comprising **section 11 to 13B**.

19. More particularly, section 11(1A) deals with capital gain arising on transfer of a capital asset, being a ***property held under trust***.

20. **"Income"**, as defined under section 2(24) of the Act, ***includes*** **Capital Gains**, Therefore, for the purposes of section 11(1)(a), Capital Gains are also considered as a part of the income. Since, Capital Gains are also considered as a part of the income, therefore, they can be applied for charitable or religious purposes.

21. It may be noted that section 11(1A) was not there on the inception of the Act **and** in absence of any provision related to it, all charitable trust were ***required to apply the Capital Gains for charitable purposes*** under the provisions of section 11(1)(a) only.

22. Requirement of utilizing capital gains on fulfilment of the objects of the trust was resulting in the ***depletion of the basic corpus of the trust*** only.

23. It was felt necessary to allow an **option** to the charitable trust whereby they can ***invest the sale proceeds from Capital Assets in new Capital Assets*** so that the corpus would remain intact in the end.

**CBDT in Circular No. 2-P(LXX-5), dated 15-05-1963**

24. This issue was aptly recognized by the **CBDT in Circular No. 2-P(LXX-5), dated 15-05-1963** wherein it was stated that –

*"when the capital assets is forming part of the corpus is transferred with a view to acquire further capital assets for the use and benefit of the Trust, then **Capital Gains should be regarded as having been applied for charitable purposes** within the meaning of section 11(1). "*

**CBDT**
**Circular No. 2-P(LXX-5)**
**Dated 15-5-1963**

1. Under section 11(1), a religious or charitable trust which accumulates its income

in excess of 25 per cent of its total income or Rs. 10,000, whichever is higher, is liable to pay tax on the income accumulated by it in excess of the said limit. In other words, such a trust has to apply at least 75 per cent of its total income, **including any capital gains** forming part of it during the relevant previous year, in order to be entitled to exemption on the entire amount of its income. In this connection, a question was raised during the ***third meeting*** of the ***Direct Taxes Advisory Committee*** whether the **capital gains** arising to a trust from the sale of a capital asset belonging to it would be regarded as having been applied for the purposes of the trust, if the trust invested the amount received from the sale of the capital asset, including the capital gains realised, in acquiring another capital asset for the trust. This point has been considered **and** **it has been decided that** *where a religious or charitable trust transfers a capital asset forming part of the corpus of its property solely with a view to acquiring another capital asset for the use and benefit of the trust* ***and*** *utilises the capital gains arising from the transaction in* ***acquiring the new capital asset****, the amount of capital gain so utilised* ***should be regarded as having been applied for the religious or charitable purposes of the trust within the meaning of section 11(1).***

**2.** Under sub-section (2) of section 11, a trust, which desires to accumulate its income in excess of the limit specified in sub-section (1) for subsequent application to the purposes of the trust, is entitled to do so on giving a notice to the Income-tax Officer in this behalf in the prescribed form and investing the money so accumulated in certain securities of the Government. Under **rule 17** of the Income-tax Rules, 1962, the notice of accumulation is required to be given in **Form No. 10** of the Income-tax Rules, 1962. According to **para 2** of this Form, the accumulated money has to be invested in specified securities **before the expiry of one month commencing from the end of the relevant previous year** **and**, according to **para 3** to the Form, copies of the annual accounts of the trust along with details of investment and utilisation, if any, of the money so accumulated or set apart, have to be furnished to the Income-tax **Officer before April 30 every year**. It was pointed out during the ***third meeting*** of the ***Direct Taxes Advisory Committee*** that it may not always be possible for the trustees to ascertain the income of the trust within one month of the end of the previous year and they may not, therefore, be able to comply with the requirements referred to above. In respect of the ***assessment year 1962-63***, instructions were issued in the *Board's Circular No. 17(LXX-4), dated 2-6-1962* [Clarification 6 to Sl. No. 165 on p. 1.499 *post*] that the ***first requirement*** should be regarded as having been fulfilled if the accumulated money were invested in the specified securities before ***September 30, 1962***, **and** similarly the ***second requirement*** should be regarded as having been fulfilled if copies of the relevant accounts along with details of investment and utilisation of the accumulated money were furnished to the Income-tax Officer concerned before ***September 30, 1962***. Having regard to the difficulty mentioned above, *it has now been decided that in respect of* ***subsequent assessment years****, trustees should be allowed to invest the accumulated income in specified securities within an extended period of four months commencing from the end of the relevant previous year. Similarly, with regard to the second requirement of furnishing copies of accounts, etc., it has been decided that trustees may be allowed to do so within a period of four months from the end of the relevant previous year or before April 30 of the assessment year,* ***whichever is later.***

**Circular No. 52, dated 30-12-1970**

25. CBDT further *vide i*ts **Circular No. 52, dated 30-12-1970** has rightly clarified that the **intent** of the legislature was not in favour of imposing tax liabilities in cases where the capital gains as well as the consideration is **applied** for acquisition of new Capital Assets.

**CBDT**
**Circular : No. 52 [F. No. 152(55) 70-TPL],**
**Dated 30-12-1970**

**164. Capital gain arising to charitable trust - Whether it could be regarded as having been applied to charitable purposes *if* trust *invests* amount received from sale of capital asset *in acquiring another capital asset for* trust - Section 11(1) as amended by the Finance Act, 1970**

Under section 11(1), as amended by the Finance Act, 1970, income derived from property held under trust for charitable or religious purposes is exempt from income-tax only to the extent such income is actually ***applied*** to such purposes during the previous year itself or within three months next following. As **"income"** includes **"capital gains"** a charitable or religious trust will ***forfeit exemption*** from income-tax in respect of its income by way of **capital gains *unless*** such income is also ***applied*** to the purposes of the trust during the period referred to above. In this connection, a question has been raised whether the capital gains arising to a charitable or religious trust from the sale of capital assets belonging to it would be regarded as having been applied to charitable or religious purposes, if the trust invests the amount received from the sale of the capital asset, including the capital gains realised, in acquiring another capital asset for the trust. This question was earlier examined by the Board in 1963 and instructions were issued *vide* **Circular No. 2-P(LXX-5), dated 15-5-1963** [Annex] to the effect that where a charitable or religious trust transfers a capital asset forming part of the corpus of its property solely with a view to acquiring another capital asset for the use and benefit of the trust, and utilises the capital gains arising from the transaction in acquiring the new capital asset, the amount of capital gains so utilised would be regarded as having been applied to the charitable or religious purposes of the trust within the meaning of section 11(1). ***The Board have decided that the above instructions should continue to be operative notwithstanding the changes made in the scheme of tax exemption of charitable or religious trusts through the Finance Act, 1970***.

26. To overcome the burden of tax in such cases, Charitable Trust are conferred the ***option*** of saving tax by claiming benefits of ***re-investment with regard to profit arising on sale of capital assets***.

27. This is done by **insertion** of **section 11(1A)** by the Finance (No.2) Act, 1971 ***w.r.e.f.*** 1.4.1962.

28. **Section 11(1A)** provide that the **Capital Gains** arising from transfer of a **capital asset**, being a **property held under trust**, will be **deemed** to have been **utilized** for the purposes of section 11(1)(a) ***if*** the **net consideration** received is **re-invested** in **another capital asset**.

29. In fact, insertion of section 11(1A) is nothing but logical outcome of the earlier stands taken in this regards. All the more important, insertion of section 11(1A) in 1971 was given retrospective effect right from 1.4.1962 ***i.e.*** the date of commencement of the Income Tax Act-1961.

30. The relevant part of **section 11(1A)** is produced hereunder for better understanding:

**Income from property held for charitable or religious purposes.**

**11.** (1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income—

(*a*) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to 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 fifteen per cent of the income from such property;

(*b*) income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India; and, where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of fifteen per cent of the income from such property;

(*c*) income derived from property held under trust—

(*i*) created on or after the 1st day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and

(*ii*) for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India:

**Provided** that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income;

(*d*) income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution.

*Explanation 1*.—For the purposes of clauses (*a*) and (*b*),—

(*1*) in computing the fifteen per cent of the income which may be accumulated or set apart, any such voluntary contributions as are referred to in section 12 shall be deemed to be part of the income;

(*2*) if, in the previous year, the income applied to charitable or religious purposes in India falls short of eighty-five per cent of the income derived during that year from property held under trust, or, as the case may be, held under trust in part, by any amount—

(*i*) for the reason that the whole or any part of the income has not been received during that year, or

(*ii*) for any other reason,

then —

(*a*) in the case referred to in sub-clause (*i*), so much of the income applied to such purposes in India during the previous year in which the income is received or during the previous year immediately following as does not exceed the said amount, and

(*b*) in the case referred to in sub-clause (*ii*), so much of the income applied to such purposes in India during the previous year immediately following the previous year in which the income was derived as does not exceed the said amount,

may, at the option of the person in receipt of the income (such option to be exercised before the expiry of the time allowed under sub-section (1) of section 139 for furnishing the return of income, in such form and manner as may be prescribed) be deemed to be income applied to such purposes during the previous year in which the income was derived; and the income so deemed to have been applied shall not be taken into account in calculating the amount of income applied to such purposes, in the case referred to in sub-clause (*i*), during the previous year in which the income is received or during the previous year immediately following, as the case may be, and, in the case referred to in sub-clause (*ii*), during the previous year immediately following the previous year in which the income was derived.

*Explanation 2*.—Any amount credited or paid, out of income referred to in clause (a) or clause (b) read with Explanation 1, to any other trust or institution registered under section 12AA, being contribution with a specific direction that they shall form part of the corpus of the trust or institution, shall not be treated as application of income for charitable or religious purposes.

*Explanation 3*.—For the purposes of determining the amount of application under clause (a) or clause (b), the provisions of sub-clause (ia) of clause (a) of section 40 and sub-sections (3) and (3A) of section 40A, shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head “Profits and gains of

business or *profession"*.

**(1A)** For the purposes of sub-section (1),—

(*a*) where a **capital asset**, being **property held under trust *wholly*** for charitable or religious purposes, is **transferred and** the whole or any part of the **net consideration** is **utilised** for **acquiring another capital asse**t to be **so held**, **then**, the **capital gain** arising from the transfer shall be ***deemed*** to have been **applied** to charitable or religious purposes to the extent specified hereunder, namely:—

(*i*) where the **whole** of **the net consideration** is **utilised** in acquiring the new capital asset, the **whole** of such **capital gain**;

(*ii*) where only **a part** of **the net consideration** is **utilised** for acquiring the new capital asset, so much of such **capital gain** as is equal to the amount, if any, by which the amount **so utilised exceeds** the ***cost of the transferred asset***;

(*b*) where a **capital asset**, being **property held under trust *in part*** only for such purposes, is **transferred and** the whole or any part of the **net consideration** is **utilised** for **acquiring another capital asset** to be **so held**, **then**, the ***appropriate fraction*** of the **capital gain** arising from the transfer shall be ***deemed*** to have been **applied** to charitable or religious purposes to the extent specified hereunder, namely:—

(*i*) where the whole of the net consideration is utilised in acquiring the new capital asset, the whole of the ***appropriate fraction*** of such capital gain;

(*ii*) in any other case, so much of the ***appropriate fraction*** of the capital gain as is equal to the amount, if any, by which the ***appropriate fraction*** of the amount utilised for acquiring the new asset exceeds the ***appropriate fraction*** of the ***cost of the transferred asset***.

*Explanation.*—In this sub-section,—

(*i*) ***"appropriate fraction"*** means the fraction which represents the extent to which the income derived from the capital asset transferred was immediately before such transfer applicable to charitable or religious purposes;

(*ii*) ***"cost of the transferred asset"*** means the aggregate of the cost of acquisition (as ascertained for the purposes of sections 48 and 49) of the capital asset which is the subject of the transfer **and** the cost of any improvement thereto within the meaning assigned to that expression in sub-clause (*b*) of clause (*1*) of section 55;

(*iii*) ***"net consideration"*** means the full value of the consideration received **or** accruing as a result of the transfer of the capital asset **as reduced by** any ***expenditure*** incurred wholly and exclusively in connection with such transfer.

31. Section 11(1A) refers to two situations:

*(i)* where the capital asset is ***property held under a Trust*** **wholly** for charitable purposes;

*(ii)* where the capital asset is ***property held under a Trust*** **in part** only for such purposes

32. Now, a question emerges whether the profit arising from sale of capital assets can be saved ***if*** it is ***applied*** in accordance with 11(1)(a) ***and not*** 11(1A)?

33. It may be noted that there is ***no bar*** **and** it is at the ***discretion*** of the Trust to apply the Capital Gains for charitable purposes u/s 11(1)(a) **or** towards purchase of a new Capital Asset in accordance with 11(1A).

34. Obvious purpose for introduction of section 11(1A) was to provide an ***option*** to the assessee for keeping its corpus safe. It never meant withdrawal of exemption of capital gains under section 11(1)(a).

35. In short, a Trust can **utilize** the **capital gains** for charitable purposes under section 11(1)(a) **and** the portion of capital gains which is **not** so utilized only shall be **deemed to have been applied** for charitable purposes under section 11(1A). In this regard, the following two observation are worth noting:

*(i)* Investment in **fixed deposit** is also considered as an investment in **capital asset** for the purpose of section 11(1A) of the Act. ***The CBDT instruction no. 883, dated 24.09.1975***, specifies that, such fixed deposits should be for 6 months or more. It may further be noted that few High Courts have held that even such 6 months time limit is legally not valid. The nature of asset is important and not the time frame.

*(ii)* **No time limit** has been provided under section 11(1A) for retention of the new asset as is there in the case of capital gain exemption u/s 54EC, 54F ***etc.***

36. However, in any case the application has to be made in same financial year ***unless*** the assessee exercises the option available under *Explanation* to section 11(1), to apply the income in subsequent year.

37. In this regards the judgement of Calcutta High Court in the case of ***Hindustan Welfare Trust vs. ITO (1988) 26 ITD 1 (AT) (SB) (Cal)*** is supportive, wherein it is held that net consideration invested in a **fixed deposit** is an investment for acquiring **another capital asset** for the purpose of making investment in ***"another capital asset"*** for claiming exemption u/s 11(1) of the Act.

38. In ***CIT vs. East India Charitable Trust (1994) 206 ITR 152 (Cal.)*** the Calcutta High Court has held that in view of section 11(5)(vii), deposits with public sector companies, shall qualify as ***"another capital asset"*** within the meaning of section 11(1A).

39. ITAT, Delhi, in the case of ***Dalmia Charitable Trust vs. Income-Tax Officer 1986 15 ITD 480 Delhi*** has accepted the above proposition *vide* order dated 6.9.1985.

40. Calcutta High Court in the case of ***CIT vs. Hindusthan Welfare Trust [1993] 70 Taxman 93 / [1994] 206 ITR 138 (Cal.)*** has also accepted the above proposition.

41. ***ITAT, Lucknow, in the case of ACIT, Kanpur vs. M/s. The Upper India Chamber of Commerce, in ITA/601/Lkw/2011 for assessment year 2008-19*** has also accepted the above proposition.

**CBDT's Instruction No. : 883 dated 24.9.1975**

42. The CBDT instructions No. 883 dated 24.9.2075 are as follows:

**BOARD'S INSTRUCTION NO. 883 [XXI/1/74]**
**dated 24.9.1975**
**Sec. 11(1A) of the IT Act, 1961**
**Another capital asset — Scope of the expression**

Sec. 11(1A) of the IT Act, 1961, provided that where a capital asset, being property held under trust wholly for charitable or religious purposes is transferred and the whole or any part of the net consideration is utilised for acquiring another capital asset to be so held, then the capital gain arising from the transfer shall be deemed to have been applied to charitable or religious purposes to the extent specified therein.

**2.** The Board had occasion to examine whether investment of the net consideration in **fixed deposit** with a bank would be regarded as utilisation of the amount of the net consideration for acquiring ***'another capital asset'*** within the meaning of s. 11(1A) of the IT Act, 1961. The Board has been advised that **investment** of the **net consideration** in **fixed deposit** with a bank for a period of six months **or** above would be regarded as utilisation of the net consideration for acquiring 'another capital asset' within the meaning of s. 11(1A) of the IT Act, 1961.

43. Income Tax Appellate Tribunal, Amritsar in the case of ***Akhara Ghamanda Dass vs. Asst. CIT (2000) 68 TTJ (Asr) 244*** has held that section 11(1A) is not meant for calculation of capital gains tax, **but** is to operate ***after*** capital gains are worked in accordance with the provisions of sections 45 to 55 **and** is meant to allow exemption u/s 11(1)(a) r.w. section 11(1A) ***if*** the **net consideration** is **utilised** for **acquiring another capital asset** to be held for charitable or religious purpose.

44. Further, **no time limit** has been provided under section 11(1A), **for retention** of the new asset. Under the prevailing provisions each year's income and application are treated separately for the purposes of exemptions. Therefore, if the asset is **"so held"** till the end of the relevant previous year **and** is disposed of in the subsequent year, then the exemptions **cannot** be denied nor can it be withdrawn in the next year.

**Computation and exemption**

45. Computation of capital gain on transfer of a capital asset in the hands of a charitable or religious trust or institution, **and** exemption of such capital gain u/s 11(1) of the Act are two difference aspects.

46. ITAT, Lucknow, following and referring the decisions of various courts, in the case of ***ACIT, Kanpur vs. M/s. The Upper India Chamber of Commerce, in ITA/601/Lkw /2011 for assessment year 2008-19***, *vide* order dated 5.11.2014, highlighted the mechanism of computation of income in the case of charitable / religious Trust /Institution registered u/s 12A of the Act and seeking exemption u/s 11 of the Act, as follows:

*1. Heads of income under section 14 have **no** relevance **and** question of allowing statutory deductions will not arise - The 'income' contemplated by the provisions of section 11 is the **real income** **and** not the income as assessed or assessable in view of the above judgments. Assessment of Trusts is a separate code in itself once an institution has been granted registration u/s 12A.*

*2. It is abundantly clear that the '**income**' occurring in the Act for the purpose of a Trust should be considered what is available in the hands of the assessee i.e. Trust subject to an adjustment of any expenses extraneous to the trust.*

*3. **Section 11(1A)** in itself is a separate specific section which governs the overall taxability of capital gains in a trust and being a specific section it shall prevail over section 50C which is a general section **and** **does not** start with a non-obstante clause.*

*4. In the case of a Trust and for the purpose of Sec. 54F where question of utilization of the funds in case of sale of an asset arises it would be the **available funds** with the assessee **and** **not** the deemed income. This is on the ground that what is, not available with the assessee can never be invested.*

*5. **Section 11(1A) is a complete code in itself** **and** since it is a complete code in itself, the computation of eligible exemption is to be worked out within its framework as far as, far as possible. Being an exemption provision, beneficial interpretation is to be given. However, in any interpretation, the maxim 'ut res magis valeat guan par eat' should be kept in mind. The construction that would reduce the legislation to a futility should be avoided, and the alternative that will introduce uncertainty, fiction or confusion info the working of the system should be rejected. An interpretation which leads to unworkable results and absurdity should be avoided.*

*6. It is further being submitted that deeming fiction contained in any other provision cannot be brought into section 11(1A) being an exemption section. Only the plain meaning of the language has to be construed for the operation of the exemption provisions.*

47. Relying on the decision in the case of ***Akhara Ghamanda Dass vs. Asst. CIT (supra), Income Tax Appellate Tribunal, Bangalore,*** in the case of ***Al-Ameen Educational Society vs. DIT(E), in ITA No. 575(B)/2011 for assessment year 2006-07 held on 14.2.2012 as follows:***

"16. The provisions of Sec.11(1A)(a)(ii) of the Act contemplates a computation of capital gain under the normal provisions of the Act. This is clear from the expression used in Sec.11(1A)(a) of the Act which refers to "where a capital asset, being property held under trust wholly for charitable or religious purposes, is transferred **and** the whole or any part of the net consideration is utilised for acquiring another capital asset to be **so held**, then, the ***capital gain*** **arising from the transfer**...". So also Sec.11(1A)(a) (ii) of the Act which uses the expression **"so much of *such capital gain*..." .** The expression ***capital gain*** or the ***mode of computation of capital gain*** has **not** been defined for the purpose of Sec.11(1A) of the Act **and** *therefore the normal expression* ***capital gain*** *and the* ***computation of such capital gain*** *as laid down in the provisions of Sec.45 to 55A of the Act will apply. For determining the quantum of capital gain which will be deemed to be application of income for charitable purpose and become eligible to get exemption u/s.11(1) of the Act, the provisions of Sec.11(1A) of the Act have to be applied.*

16.1 In the light of the legal position as explained above let us see as to whether the Assessee can claim the benefit of provisions of Sec.11(1A)(a) of the Act and to what extent. The provisions applicable in the present case was Sec.11(1A)(a)(ii) of the Act because the entire net consideration was not utilized in acquiring another capital asset to be held under trust wholly for charitable or religious purposes. The net sale consideration received on transfer in the present case was Rs.4,00,00,000/-. The cost of acquisition of the property without the benefit of indexation was Rs.1,33,01,892/-. As we have already held ***capital gain*** on transfer of capital asset has to be made in accordance with the provisions of Sec.45 to 55A of the Act.

***Such computation would be as follows***:

| | | |
|---|---|---|
| *(i)* | Sale proceeds | Rs. 4,00,00,000.00 |
| *(ii)* | Less: Indexed cost of acquisition | Rs. 2,51,22,642.00 |
| *(iii)* | Long term capital gain | Rs. 1,48,77,358.33 |

17. The Assessee has entered into agreement for sale of the property on 12.7.2001. The amount received by the Assessee towards sale consideration over a period of time and utilization of the same for acquiring new capital asset were as follows:

| **F.Y** | **Amount received** | **Investment in Capital Asset** |
|---|---|---|
| 2001-02 | Rs. 90,00,000 | Rs.1,05,50,322 |
| 2002-03 | Rs.1,20,00,000 | Rs. 90,55,186 |
| 2003-04 | Rs.1,22,73,125 | Rs. 15,05,697 |
| 2005-06 | Rs. 67,26,875 | Rs. 67,26,875 |
| Total | Rs.4,00,00,000 | Rs.2,78,38,080 |

17.1 In the case of Trustees of ***Shri Ramanagar Trust vs. Third ITO13 ITD 426 (Mum)*** it has been held that **advances received** by a trust in the period earlier to the previous year in which transfer of a capital asset by a trust takes place, **if invested in purchase of capital asset** in the period earlier to the previous year in which transfer of the capital asset takes place such purchase should also be considered as application of capital gain for charitable purpose. If that decision is applied then the difference between the sum of Rs.2,78,38,080/- which is the investment out of net sale consideration received on transfer of capital asset made by the Assessee and the cost of the transferred asset would be deemed to have been applied to charitable or religious purposes. The expression **"Cost of the transferred asset"** is defined in ***Explanation (ii) to Sec.11(1A) of the Act***, and it lays down **that "Cost of the transferred asset"** means the aggregate of the **cost of acquisition** (as ascertained for the purposes of Sec.48 and 49) of the capital asset which is the subject of the transfer and the **cost of any improvement** thereto within meaning assigned to that expression in sub-clause (b) of Clause (1) of Section 55. ***Thus the difference between the capital gain utilized in acquisition of new assets viz., Rs.2,78, 38,080/- and the indexed cost of acquisition viz., Rs.2,51,22,641/- viz., Rs.27,15,449/- should be considered as application of capital gain for charitable purpose which would be entitled to exemption income u/s. 11(1) of the Act.*** The remaining sum of Rs.1,21,61,909.33 Ps. {Rs.1,48,77,358.33 Ps. being capital gain as per normal provisions of the Act and Rs. 27,15,449 which is eligible for exemption as application of capital gain for charitable purpose u/s.11(1A)(a)(ii) of the Act}, should be considered as **not applied** for charitable purposes and not eligible for deduction u/s.11(1) of the Act."

48. In the light of above, the following ***illustrations*** clarify the treatment of capital gains under section 11(1A), which illustrates and explain the computation of capital gain and the capital gain deemed to have been applied u/s 11(1A) for the purposes of section 11(1)(a).

## Consideration and Net Consideration are the same

***Illustration 1***
***{Consideration and Net Consideration are same}***

| | | |
|---|---|---|
| *(i)* | Cost of acquisition | Rs. 40,000/- |
| *(ii)* | Cost of the transferred asset *{Explanation (ii)}* | Rs. 40,000/- |
| *(iii)* | Sale Proceeds/Net Consideration | Rs. 1,00,000/- |
| *(iv)* | Re-investment in another capital asset | Rs. 1,00,000/- |

***Solution 1***
***{Consideration and Net Consideration are same}***

| | | |
|---|---|---|
| *(i)* | Net Consideration | Rs.1,00,000/- |
| *(ii)* | Cost of acquisition | Rs. 40,000/- |
| *(iii)* | Cost of the transferred asset *{Explanation (ii)}* | Rs. 40,000/- |
| *(iv)* | Capital gains *{(i) - (ii)}* | Rs. 60,000/- |
| *(v)* | Investment in another capital asset | Rs.1,00,000/- |
| *(vi)* | Shortfall in re-investment *{(i) - (v)}* | Nil |
| *(vii)* | Capital gains deemed to have been applied for charitable purposes *{v) - (iii}* | Rs. 60,000/- |
| *(viii)* | Capital gains exempt u/s 11(1)(a) ***r.w.*** 11(1A) *(vii)* | Rs. 60,000/- |
| *(ix)* | Taxable capital gain *{(iv) - (viii)}* | Nil |

***Illustration 2***
***{Consideration and Net Consideration are same}***

| | | |
|---|---|---|
| *(i)* | Cost of acquisition | Rs. 40,000/- |
| *(ii)* | Cost of the transferred asset *{Explanation (ii)}* | Rs. 40,000/- |
| *(iii)* | Sale Proceeds/Net Consideration | Rs. 1,00,000/- |
| *(iv)* | Re-investment in another capital asset | Rs. 80,000/- |

***Solution 2***
***{Consideration and Net Consideration are same}***

| | | |
|---|---|---|
| *(i)* | Net Consideration | Rs.1,00,000/- |
| *(ii)* | Cost of acquisition | Rs. 40,000/- |
| *(iii)* | Cost of the transferred asset *{Explanation (ii)}* | Rs. 40,000/- |
| *(iv)* | Capital gains *{(i) - (ii)}* | Rs. 60,000/- |
| *(v)* | Investment in another capital asset | Rs. 80,000/- |
| *(vi)* | Shortfall in re-investment *{(i) - (v)}* | Rs. 20,000/- |
| *(vii)* | Capital gains deemed to have been applied for charitable purposes *{v) - (iii}* | Rs. 40,000/- |
| *(viii)* | Capital gains exempt u/s 11(1)(a) ***r.w.*** 11(1A) *(vii)* | Rs. 40,000/- |
| *(ix)* | Taxable capital gain *{(iv) - (viii)}* | Rs. 20,000/- |

## Consideration – Expenses on transfer = Net Consideration as per *Explanation (iii)*

***Illustration 3***
***{Consideration – Expenses on transfer = Net Consideration}***

| | | |
|---|---|---|
| *(i)* | Cost of acquisition | Rs. 40,000/- |
| *(ii)* | Cost of the transferred asset *{Explanation (ii)}* | Rs. 40,000/- |
| *(iii)* | Sale Proceeds | Rs. 1,00,000/- |
| *(iv)* | Expenses on transfer of capital asset | Rs. 5,000/- |
| *(v)* | Net consideration *{Explanation (iii)}* | Rs. 95,000/- |
| *(vi)* | Re-investment in another capital asset | Rs. 95,000/- |

***Solution 3***
***{Consideration – Expenses on transfer = Net Consideration}***

| | | |
|---|---|---|
| *(i)* | Net consideration *{Explanation (iii)}* | Rs. 95,000/- |
| *(ii)* | Cost of acquisition | Rs. 40,000/- |
| *(iii)* | Cost of the transferred asset *{Explanation (ii)}* | Rs. 40,000/- |
| *(iv)* | Capital gains *{(i) - (ii)}* | Rs. 55,000/- |
| *(v)* | Investment in another capital asset | Rs. 95,000/- |
| *(vi)* | Shortfall in re-investment *{(i) - (v)}* | Nil |
| *(vii)* | Capital gains deemed to have been applied for charitable purposes *{(v) - (iii)}* | Rs. 55,000/- |
| *(viii)* | Capital gains exempt u/s 11(1)(a) ***r.w.*** 11(1A) *(vii)* | Rs. 55,000/- |
| *(ix)* | Taxable capital gain *{(iv) - (viii)}* | Nil |



***Illustration 4***
***{Consideration – Expenses on transfer = Net Consideration}***

| | | |
|---|---|---|
| *(i)* | Cost of acquisition | Rs. 40,000/- |
| *(ii)* | Cost of the transferred asset *{Explanation (ii)}* | Rs. 40,000/- |
| *(iii)* | Sale Proceeds | Rs. 1,00,000/- |
| *(iv)* | Expenses on transfer of capital asset | Rs. 5,000/- |
| *(v)* | Net consideration *{Explanation (iii)}* | Rs. 95,000/- |
| *(vi)* | Re-investment in another capital assets | Rs. 80,000/- |

***Solution 4***
***{Consideration – Expenses on transfer = Net Consideration}***

| | | |
|---|---|---|
| *(i)* | Net consideration *{Explanation (iii)}* | Rs. 95,000/- |
| *(ii)* | Cost of acquisition | Rs. 40,000/- |
| *(iii)* | Cost of the transferred asset *{Explanation (ii)}* | Rs. 40,000/- |
| *(iv)* | Capital gains *{(i) - (ii)}* | Rs. 55,000/- |
| *(v)* | Investment in another capital asset | Rs. 80,000/- |
| *(vi)* | Shortfall in re-investment *{(i) - (v)}* | Rs. 15,000/- |
| *(vii)* | Capital gains deemed to have been applied for charitable purposes *{(v) - (iii)}* | Rs. 40,000/- |
| *(viii)* | Capital gains exempt u/s 11(1)(a) ***r.w.*** 11(1A) *(vii)* | Rs. 40,000/- |
| *(ix)* | Taxable capital gain *{(iv) - (viii)}* | Rs. 15,000/- |

## Consideration – Expenses on transfer = Net Consideration and indexed cost of asset transferred as per *Explanation (ii)* r.w. Section 48 and 49

***Illustration 5***
***{Consideration – Expenses on transfer = Net Consideration & indexation}***

| | | |
|---|---|---|
| *(i)* | Cost of acquisition | Rs. 40,000/- |
| *(ii)* | Indexed cost of the capital asset transferred *{As per section 48}* | Rs. 50,000/- |
| *(iii)* | Cost of the transferred asset *{As per Explanation (ii)}* | Rs. 50,000/- |
| *(iv)* | Sale Proceeds | Rs. 1,00,000/- |
| *(v)* | Expenses on transfer of capital asset | Rs. 5,000/- |
| *(vi)* | Net consideration *{Explanation (iii)}* | Rs. 95,000/- |
| *(vii)* | Re-investment in another capital assets | Rs. 95,000/- |

***Solution 5***
***{Consideration – Expenses on transfer = Net Consideration & indexation}***

| | | |
|---|---|---|
| *(i)* | Net consideration *{Explanation (iii)}* | Rs. 95,000/- |
| *(ii)* | Cost of acquisition | Rs. 40,000/- |
| *(iii)* | Indexed cost of the capital asset transferred *{As per section 48}* | Rs. 50,000/- |

| | | |
|---|---|---|
| *(iv)* | Cost of the transferred asset *{As per Explanation (ii)}* | Rs. 50,000/- |
| *(v)* | Capital gains *{(i) - (iii)}* | Rs. 45,000/- |
| *(vi)* | Investment in another capital asset | Rs. 95,000/- |
| *(vii)* | Shortfall in re-investment *{(i) - (v)}* | Nil |
| *(viii)* | Capital gains deemed to have been applied for charitable purposes *{(vi) - (iv)}* | Rs. 45,000/- |
| *(ix)* | Capital gains exempt u/s 11(1)(a) ***r.w.*** 11(1A) *(viii)* | Rs. 45,000/- |
| *(x)* | Taxable capital gain *{(iv) - (ix)}* | Nil |

***Illustration 6***
***{Consideration – Expenses on transfer = Net Consideration & indexation}***

| | | |
|---|---|---|
| *(i)* | Cost of acquisition | Rs. 40,000/- |
| *(ii)* | Indexed cost of the capital asset transferred *{As per section 48}* | Rs. 50,000/- |
| *(iii)* | Cost of the transferred asset *{As per Explanation (ii)}* | Rs. 50,000/- |
| *(iv)* | Sale Proceeds | Rs. 1,00,000/- |
| *(v)* | Expenses on transfer of capital asset | Rs. 5,000/- |
| *(vi)* | Net consideration *{Explanation (iii)}* | Rs. 95,000/- |
| *(vii)* | Re-investment in another capital assets | Rs. 80,000/- |

***Solution 6***
***{Consideration – Expenses on transfer = Net Consideration & indexation}***

| | | |
|---|---|---|
| *(i)* | Net consideration *{Explanation (iii)}* | Rs. 95,000/- |
| *(ii)* | Cost of acquisition | Rs. 40,000/- |
| *(iii)* | Indexed cost of the capital asset transferred *{As per section 48}* | Rs. 50,000/- |
| *(iv)* | Cost of the transferred asset *{As per Explanation (ii)}* | Rs. 50,000/- |
| *(v)* | Capital gains *{(i) - (iii)}* | Rs. 45,000/- |
| *(vi)* | Investment in another capital asset | Rs. 80,000/- |
| *(vii)* | Shortfall in re-investment *{(i) - (v)}* | Rs. 15,000/- |
| *(viii)* | Capital gains deemed to have been applied for charitable purposes *{(vi) - (iv)}* | Rs. 30,000/- |
| *(ix)* | Capital gains exempt u/s 11(1)(a) ***r.w.*** 11(1A) *(viii)* | Rs. 30,000/- |
| *(x)* | Taxable capital gain *{(iv) - (ix)}* | Rs. 15,000/- |

**Application of section 50C**

49. Another issue relating to taxation of charitable trust / institution is - ***"Whether the provisions of section 50C of the Act shall be applicable in computation of capital gains in the hands of charitable trust / institution?.***

50. ITAT, Lucknow, following and referring the decisions of various courts, in the case of ***ACIT, Kanpur vs. M/s. The Upper India Chamber of Commerce, in ITA/601/ Lkw/2011 for assessment year 2008-19***, *vide* order dated 5.11.2014 has held that "*section 11(1A) has specifically defined the meaning of "net consideration" for the purposes of capital gains and so the same shall prevail over the deemed sale consideration as provided u/s 50C."*

51. The above proposition of law is supported by the decision of ITAT, Lucknow in the case of ***ACIT vs. Shri. Dwarikadhish Temple Trust, Kanpur in I.T.A. No. 256 & 257/LKW/2011***, wherein it was held that:

*"6.1 From the order of CIT(A), we find that the assessee is a charitable and religious trust registered u/s 12A of the Act. It is also noted by the Assessing Officer that the assessee has sold immovable property for total sale consideration of Rs.2.25 lac and the entire sale consideration was invested in other capital asset i.e. fixed asset with bank. The Assessing Officer invoked the provisions of section 50C of the Act and computed the capital income at Rs.66.38 lac based on the value adopted by stamp duty authorities for stamp duty purposes. We find that the CIT(A) has decided this issue in favour of the assessee by following the Tribunal decision in the case of* ***Gyanchand Batra vs Income Tax Officer 115 DTR 45 (JP-Trib).***

*6.2 We also find that it is specifically mentioned in section 50C(1) of the Act that the stamp duty value is to be considered as full value of consideration received or accruing as a result of transfer for the purpose of section 48 of the Act. It is true that the assessee is a charitable trust and the income of the assessee has to be computed u/s 11 of the Act. As per sub section (1A) of section 11 of the Act, if the net consideration for transfer of capital asset of a charitable trust is utilized for acquiring new capital asset, then the whole of the capital gain is exempt. Considering all these facts, we do not find any reason to interfere in the order of CIT(A) on this issue."*

**Carry forward and set off**

52. Another issue relating to taxation of charitable trust / institution is - "Whether any excess expenditure incurred by the charitable trust / institution in earlier assessment year could be allowed to be set off against income of subsequent years by invoking Section 11 of the Income Tax Act, 1961?"

53. Till very recently, the Revenue Authorities were very consistently disallowing the charitable trusts' claim of carry forward of their losses/deficits of the earlier years for setoff against their incomes of subsequent years, and thus such deficits were considered as dead losses.

However, the issue of allowability of the claim of loss u/s 11 **and** carry forward of the same to subsequent year to be set off against incomes of subsequent years by the charitable trusts is **no longer *"Res Intigra"*** as the **Hon'ble Supreme Court** in the case of ***"CIT(Exemptions) vs. Subros Educational Society"*** **(2018) 303 CTR 1 /** ***166 DTR 257 (SC),*** have upheld the judgement of the jurisdictional Hon'ble Delhi High Court, in the same case reported in IT No. 382 of 2015 dated 23.9.2015, **and** have categorically dismissed the SLP being filed by the Revenue Authorities against the said judgement.

54. Therefore, in view of the binding judgement of the Hon'ble Supreme Court in the case of **"CIT(Exemptions) vs. Subros Educational Society"** ***(2018) 303 CTR 1 / 166 DTR 257 (SC),*** as above, the issue of allowability of the claim of loss u/s 11 and carry forward of the same to subsequent year to be set off against incomes of subsequent years by the charitable trusts, ***has attained finality*** in favour of charitable trusts assessees and as such from now onwards, there should not be any question of any disallowance in this regards, by the ld. Assessing Authority.

***Disclaimer***

*This document has been prepared for academic use only to share with fellow professionals and all concerned the law relating to tax treatment of capital gains in the hands of charitable and religious trusts and institutions under Income Tax Act, 1961. Though every effort has been made to avoid errors or omissions in this document yet any error or omission may creep in. Therefore, it is notified that I shall not be responsible for any damage or loss to any one, of any kind, in any manner there from. I shall also not be liable or responsible for any loss or damage to any one in any matter due to difference of opinion or interpretation in respect of the text. On the contrary it is suggested that to avoid any doubt the user should cross check the correct law and the contents with the published / notified / Gazetted materials..*

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***6.6.2020***