Programme on FCRA Amendments & Taxation of Unregistered Trusts

Taxation of Unregistered NPOs

A statutory analysis — what is established, what is arguable, and what is not available

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Note to Participants

The positions discussed are supported by judicial authority but remain largely untested at the highest level in the specific context of unregistered charitable trusts. Significant litigation risk exists at lower levels. Registration under Section 12AB remains the only complete solution in appropriate cases. The propositions are developed with a view to provide good support for unregistered trusts and whose registration is cancelled or not renewed.

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Session Roadmap

Thirteen parts · Each section presents arguments for and against — not just one side

I — Mapping of Provisions

ITA 1961 → ITA 2025 · Warm up

II — Three Regimes

Three regimes under both Acts · Not rate regimes

III — Four Benefits Lost

Real cost of non-registration

IV — Section 2(24) / 2(49)

Definition of income · 1961 vs 2025

V — Proposition 1

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VI — Proposition 2

Section 57(iii) / 93 — The Nexus Test for object expenditure

VII — Case Laws

Ratios · Citations · For and against analysed

VIII — Sample Computation

How the propositions work in practice

IX — Which Rate

AOP/Firm rate · Four statutory answers

X — Section 115TD vs 352

Tax on accreted income — Major difference · Quantified

XI — CSR Funding

Complete No for unregistered NPO · Rule 4(1) CSR Rules

XII — Action Plan & Cautions

What to do · Penalty · Honest risks · Policy proposition

ITA 1961 to ITA 2025 — The Key Mapping

PART I — MAPPING OF PROVISIONS · Understanding the new provisions before the argument begins · AY 2026-27 onwards

ITA 1961	ITA 2025	Subject	Key Point
Section 57(iii)	Section 93	Deduction of expenditure under IFOS	Provisions word to word IDENTICAL — every judicial interpretation applies to ITA 2025
Section 2(24)	Section 2(49)	Definition of income — inclusive	Voluntary contributions — unregistered NPOs not specifically covered under Section 2(49)(c)
Section 12AB	Section 332	Registration of NPOs	Without registration — no Chapter XVII-B code — general provisions apply
Section 13(10) / 13(11)	Section 353	Compliance failures — registered NPO — deduction with conditions	Registration INTACT — Section 352 not triggered
Section 115TD	Section 352	Accreted income tax	IMPORTANT CHANGE — cancellation itself triggers Section 352 under ITA 2025. Need to contest cancellation immediately.
Section 161(1A)	OMITTED from Section 304	MMR on entire income if NPO has any business income	Identical provision absent under ITA 2025
Section 164(2) Proviso	Section 307(2) Proviso	AOP rate for public trust — not MMR	Unchanged across both Acts

Section 57(iii) = Section 93 — Word for Word

PART I — MAPPING OF PROVISIONS · Read them together — before we dive deep into the analysis and arguments

Section 57(iii) — ITA 1961	Section 93 — ITA 2025
Any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income.	Any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income.

What does this mean — "for the purpose of making or earning such income"

- 75 years of judicial interpretation of Section 57(iii) shall apply equally to Section 93 — Eastern Investments (1951), Maharani Saheb of Morvi (1975), Rajendra Prasad Moody (1978), Godhra Electricity (1997), Petroleum Sports Board (2014) — all the ratios will hold good under ITA 2025 equally.
- As the words are identical, Revenue may not succeed for a stricter construction of Section 93 unless the court takes a different view.
- Capital expenditure is expressly excluded under both provisions — this limit applies equally.

Three Regimes Under ITA 1961

PART II — THREE REGIMES · Computational regimes — not rate regimes · AY ≤ 2025-26 · Rate is a separate downstream question

#	Regime	Registration Status	Statutory Trigger	Computational Consequence
1	Exemption Regime	Registration valid — Section 12A/12AA/12AB	No adverse trigger. All conditions of Sections 11-13 satisfied.	Section 11 exemption applies. Income applied on objects is exempt. Complete code — no further question.
2	Section 13(10) Regime	Registration INTACT — Not cancelled	One of four triggers: books not maintained · accounts not audited · return not furnished · GPU business excess [Proviso — S.2(15)]	Section 11 denied for that year. Section 13(10) framework applies. Four conditions on deduction. Section 115TD not triggered.
3	General Provisions Regime	Never registered — OR — Cancelled/denied	Section 11 never applied or has fallen away permanently. Section 13(10) does not apply — requires registration to be intact.	General provisions govern. Section 57(iii) — no conditions on corpus, borrowings, or agency. More flexible than Regime 2. This is today's subject.

Paradox: Regime 3 (no conditions) is more flexible than Regime 2 (four conditions). A cancelled or unregistered NPO has a stronger deduction position than one with registration intact but a compliance failure.

Three Regimes Under ITA 2025

PART II — THREE REGIMES · The same three-regime structure applies as under ITA 1961 · Regime 2 is significantly more onerous — nine conditions vs four

#	Regime	Registration Status	Statutory Trigger	Computational Consequence
1	Exemption Regime	Registration valid — Section 332, in good standing	No adverse trigger. All conditions of Chapter XVII-B satisfied.	Section 341 exemption applies. Income applied on objects is exempt. Chapter XVII-B — complete code.
2	Section 353 Regime	Registration INTACT — Not cancelled/denied	One of four triggers — S.353(1): books not maintained [S.347] · accounts not audited [S.348] · return not furnished [S.349] · GPU commercial excess [S.346]	Section 341 exemption denied for that year. Nine conditions on deduction — more onerous than ITA 1961. S.353(2): specified/residual income ALSO taxed. Section 352 NOT triggered.
3	General Provisions Regime	Never registered — OR — Cancelled/renewal denied	Chapter XVII-B does not apply/has fallen away. Section 353 does not apply — requires registration intact. Section 352 applies only if ever registered.	General provisions govern. Section 93 — no special corpus/borrowing/application restrictions, but subject to the independent nexus test. More flexible than Regime 2.

Paradox confirmed under ITA 2025: Regime 3 (Section 93 — no conditions) is more flexible than Regime 2 (Section 353 — nine conditions), under both Acts.

Section 346 — Restriction on Commercial Activities

PART II — THREE REGIMES · Applies ONLY to GPU NPOs — fourth limb of Section 2(15)/2(23) · NOT to medical relief, education, or relief of the poor

Critical — Who is subject to Section 346: Section 346 applies ONLY to registered NPOs whose object is advancement of any other object of general public utility ("GPU"). Medical relief institutions, schools, and poverty relief trusts are OUTSIDE Section 346 entirely — CBDT Circular 11/2008.

Condition 1 — Activity in course of advancement of GPU object

Example: Trade chamber charging registration fees for trade promotion events — within the object — NOT commercial. Same chamber running a restaurant in its premises — NOT within the object — commercial activity — counts toward 20% limit.

Condition 2 — Aggregate commercial receipts ≤ 20% of total receipts

Example: Sports promotion trust — cafeteria income 15% of total receipts — within limit. If cafeteria grows to 25% — Condition 2 violated — Section 353 triggered. Finance Bill 2026: no automatic cancellation — tax consequences only.

Condition 3 — Separate books of account for commercial activities

Example: Heritage trust renting premises for corporate events — if considered commercial, must maintain separate books — even if Conditions 1 and 2 are satisfied. Failure of Condition 3 alone triggers Section 346 violation.

If ANY ONE condition is violated → Section 346 contravened → Section 353(1)(d) triggered → income computed under Section 353 framework for that year. Finance Bill 2026: commercial excess no longer triggers registration cancellation under Section 351.

Section 13(10) ITA 1961 vs Section 353 ITA 2025

PART II — THREE REGIMES · Registration intact — compliance failure — triggers and conditions compared

Aspect	Section 13(10) — ITA 1961	Section 353 — ITA 2025	Change
Books not maintained	Yes — Trigger 1	Yes — S.353(1)(a) — Section 347	No change
Accounts not audited	Yes — Trigger 2	Yes — S.353(1)(b) — Section 348	No change
Return not filed	Yes — Trigger 3	Yes — S.353(1)(c) — Section 349	No change
Commercial excess — GPU NPOs	Yes — Trigger 4 — S.11(4A) limit	Yes — S.353(1)(d) — S.346 (GPU, 20% limit)	GPU only. Finance Bill 2026: no auto-cancellation.
Capital expenditure excluded	Yes	Yes — Section 353(3)(a)	No change
Must be incurred in India	Not expressly required	YES — Section 353(3)(b) — NEW	NEW — NPOs with intl. programmes
Objects/not corpus/borrowings/depreciation/donation	Yes — four conditions	Yes — Sections 353(3)(c)-(g)	No change
Cash payment compliance	Not express	YES — S.353(3)(h) — S.36(4)-(7) — NEW	NEW
TDS compliance	Not express	YES — S.353(3)(i) — S.35(b)(i) — NEW	NEW — TDS default risks total disallowance
Specified/residual income also taxed	Not in S.13(10)	YES — Section 353(2) — Section 338 disapplied	NEW — wider impact

Important — surrendered / lapsed registration: Section 353 does NOT apply to a trust whose registration has validly ceased by surrender or effective cancellation — such a trust is in Regime 3. Navajbai Ratan Tata Trust v. PCIT (2021) 189 ITD 535 (Mum. ITAT): once surrender is given effect, the trust stands on a fundamentally different footing — Revenue cannot apply Regime 2 provisions to a trust that is no longer registered.

Section 353 — What Changed — Practical Impact

PART II — THREE REGIMES · Three new conditions · One new consequence · One important relaxation — Finance Bill 2026

Three New Conditions Under Section 353 — Not in Section 13(10)

NEW 1 — Expenditure must be incurred in India

- Section 353(3)(b). No equivalent in Section 13(10). Under ITA 2025, expenditure incurred outside India does not qualify. Significant for NPOs funding international charitable work — in addition to Section 338 restrictions.

NEW 2 — Cash payment compliance

- Section 353(3)(h) — Sections 36(4) to (7). Not express under Section 13(10). Now expressly required. Payments in violation do not qualify for deduction — NPOs making cash charitable payments above prescribed limits face disallowance.

NEW 3 — TDS compliance

- Section 353(3)(i) — Section 35(b)(i). Not express under Section 13(10). Now expressly required. Expenditure on which TDS was required but not deducted does not qualify — ensure complete TDS compliance on salaries, fees, rent, contractor payments.

New Consequence — Section 353(2)

- Specified income (Section 337) and residual income also chargeable to tax. Section 338 (accumulation benefit) disapplied. Wider tax impact than Section 13(10).

Finance Act 2026 — Relaxation

- Commercial activity excess under Section 346 removed from specified violations. Excess commercial income now triggers Section 353 tax consequences only — NOT automatic cancellation.

Paradox confirmed: Regime 3 (Section 93 — no conditions) more flexible than Regime 2 (Section 353 — nine conditions). A cancelled or unregistered NPO has a stronger deduction position than one with registration intact but a compliance failure.

What Non-Registration Actually Costs

PART III — FOUR BENEFITS LOST ON NON-REGISTRATION · These four benefits are lost entirely on non-registration

1. Capital Expenditure as Application

- Under Section 11 — building a hospital, buying equipment — treated as 'application' of income and exempt. Under Section 57(iii) — capital expenditure is expressly excluded. The single most significant financial cost for asset-building NPOs.

2. Automatic 15% Accumulation Buffer

- Up to 15% of income automatically exempt — no conditions — no time limit. Without Section 11, every rupee of net surplus is taxable. No buffer. No equivalent outside Chapter XVII-B.

3. Section 342 — 5-Year Accumulation

- Save for a specific future project for up to 5 years — tax-free each year. Without registration, accumulated surplus is taxable annually. Most significant operational cost for NPOs planning large capital projects.

4. CSR Eligibility — Rule 4(1) CSR Rules

- Section 12AB registration is a mandatory legal requirement for CSR recipients under Rule 4(1) of the CSR Rules 2014. Without it — legally ineligible to receive any CSR funds. Not a tax disadvantage — an existential funding cutoff.

Definition of Income — 1961 Act vs. 2025 Act

PART IV — SECTION 2(24) / SECTION 2(49) — THE FOUNDATION · Revenue's error begins here — at the definition — before any argument is even made

Revenue's current assumption: All receipts of an unregistered charitable NPO are income. Tax is payable on gross receipts. The ITR utility computes tax on gross receipts. This is not required by statute — Section 2(24) / Section 2(49) shows why.

Clause	Item	Note
(i) / (a)	Profits and gains	Not 'of business' — no qualifier — the key clause — Hycron India Ltd. (2008) Raj. HC
(ii) / (b)	Dividend	Specifically enumerated as income
(iia) / (c)	Voluntary contributions	ITA 1961: all trusts created wholly or partly for charitable purposes. ITA 2025: registered NPOs only — material difference (next slide)
Corpus donations (Proviso)	—	ITA 1961: excluded by proviso to S.2(24)(iia). ITA 2025: excluded as CAPITAL RECEIPTS — not by proviso to S.2(49)(c), which does not apply to unregistered NPOs. Capital receipt principle applies universally — stronger basis under ITA 2025
(vii) / (viia)	Profits/gains of specific businesses (mutual insurance / co-op banking)	Qualified — 'of business' — contrast with (i)/(a) which has no such qualifier

Key: Where Parliament wanted to include specific business income, it added the qualifier 'of business' — see clauses (vii)/(viia). Clause (i)/(a) says simply 'profits and gains' — no qualifier. Corpus donations are excluded as capital receipts under both Acts — but the statutory basis differs (see proviso row above).

The Material Difference — Voluntary Contributions

PART IV — SECTION 2(24) / SECTION 2(49) — THE FOUNDATION · Definitions under ITA 1961 and ITA 2025 are not identical

Section 2(24)(iia) — ITA 1961

- Income includes voluntary contributions received by a trust created wholly or partly for charitable or religious purposes — other than corpus donations.
- Scope: ALL charitable trusts — registered and unregistered.
- The gross voluntary contribution received = income — by express statutory inclusion. The starting point is the receipt itself.

Section 2(49)(c) — ITA 2025

- Income includes voluntary contributions received by: (i) a registered NPO; (ii) specified research associations; (iii) approved educational/hospital institutions; (iv) electoral trusts.
- Scope: Registered NPOs and specified entities ONLY. Unregistered charitable trust NOT covered.
- No specific statutory inclusion of its voluntary contributions.

The argument for unregistered NPOs under ITA 2025: Unlike Section 2(24)(iia) of ITA 1961 — which expressly brought the gross voluntary contribution received by any charitable trust into income — Section 2(49)(c) of ITA 2025 does not contain a corresponding 'specific' inclusion for an unregistered NPO. The statutory equation 'gross voluntary contribution received = income' no longer expressly applies to an unregistered NPO under ITA 2025. This materially strengthens the argument that the taxable measure must be determined under the general charging and computation provisions — including Section 93 — rather than by treating gross voluntary contributions themselves as the statutory measure of income. Whether, and to what extent, object-expenditure qualifies under Section 93 remains a separate nexus enquiry.

Caution: The omission from Section 2(49)(c) does not by itself establish that voluntary contributions are not income. Income under Section 2(49) remains inclusive. The significance is that the specific statutory inclusion applicable under ITA 1961 is no longer present. Corpus donations remain excluded as capital receipts — independent of Section 2(49)(c) — applies to all assessees.

Profits and Gains — Net Income Concept, Not Gross Receipts

PART V — PROPOSITION 1 · Section 2(24)(i) / Section 2(49)(a) · Conceptual foundation · Untested at Supreme Court level — use as framing

Section 2(24)(i) / 2(49)(a): Income includes — 'profits and gains' [No qualifier — not 'of business' · Contrast with clauses (vii)/(viia) which say 'of business' · A gain is conceptually distinct from a gross receipt and ordinarily connotes an economic accretion]

Arguments — Four Limbs

- 'Profits and gains' not confined to business — Hycron India Ltd. (2008) 308 ITR 251 (Raj. HC): 'the term is wide enough and need not be restricted to profits and gains of business or profession'.
- Contrast this with clauses (vii)/(viia) of Section 2(24) — which explicitly say 'profits and gains of business' — Parliament qualifies when it means business. Clause (i)/(a) has no qualifier.
- A charitable NPO prepares an Income and Expenditure Account. Surplus is a gain — an economic accretion — fits in 'profits and gains'.
- Shaw Wallace (1932 PC): income connotes a monetary return coming in as 'a gain or profit' — gains recognised as distinct from profits.

The Computation — IFOS Single Head + Section 70

Revenue view (gross receipts): Dividend + Interest (excl. corpus) = ₹1,50,00,000. Tax at applicable MMR (~34.3%) if indeterminate beneficiaries = ₹51,45,000+.

Our position — three stages: Stage 1 — S.57(iii) against interest: Interest ₹50,00,000 less object-expenditure ₹1,35,00,000 = source loss ₹85,00,000 [Harprasad — loss = negative income].

Stage 2 — Dividend offered gross under S.57(i) only: ₹1,00,00,000 (no S.57(iii) against it).

Stage 3 — S.70(1) intra-head set-off: Dividend ₹100L − Source loss ₹85L = ₹15,00,000. Tax at AOP rate (~6.5% eff.) ≈ ₹97,500.

The Nexus Test — Arguments For and Against

PART VI — PROPOSITION 2 — SECTION 57(iii) / SECTION 93 · Honest assessment — so participants know what they will face in proceedings

For Us — Two Chains + Property Held Under Trust

- Real income chain: Shoorji Vallabhdas (1962 SC) — hypothetical income not taxable. Godhra Electricity (1997 SC) — real income from true character of accrual [real income chain only]. Petroleum Sports Board — denying expenditure taxes gross receipts.
- Section 57(iii) nexus chain — STRONG JUDICIAL SUPPORT: Eastern Investments (1951 SC) · Rajendra Prasad Moody (1978 SC) · Mahakalp Arogya Pratisthan (ITAT Mum 2023) · St. Johns Marthoma Syrian Church (ITAT Mum July 2026) — full play to S.57(iii) — gross receipts taxation not permissible.
- Property held under trust — additional argument: Shares and investments settled in trust = property held under trust — trust law fact independent of Section 11. Income from property held under trust retains property character — Section 57(iii) applies on same basis.

Revenue's Counter

- The Section 11 surplusage argument — Parliament provided relief on charitable application only through Section 11. Allowing Section 57(iii) achieves the same result without satisfying the conditions Parliament prescribed. This remains the most serious objection.
- No transactional nexus — a donor gives because of charitable motivation, not because the NPO spent money. The bank pays interest because money was deposited, not because of charitable programmes. Section 57(iii) requires nexus.
- Dilip Kumar (2018 SC Constitution Bench) — exemption provisions strictly construed. [Distinguished: Section 57(iii)/93 is a COMPUTATION provision — not an exemption.]
- No Supreme Court decision directly allows Section 57(iii) deduction for charitable object-expenditure of an unregistered NPO. Petroleum Sports Board is Delhi HC; Mahakalp and St. Johns Marthoma are Mumbai ITAT decisions.

Honest assessment: Basic Section 57(iii) proposition — strong judicial support: Delhi HC + multiple Mumbai ITAT benches. No contrary jurisdictional HC or SC authority on the precise issue. Revenue can bring in the Section 11 surplusage objection. Dilip Kumar distinguishable: computation not exemption. Precise S.70 set-off against dividend: strong statutory — untested in courts.

PGBP — An Additional Route Under ITA 2025

PART VI — ADDITIONAL ROUTE UNDER ITA 2025 ONLY · Three questions must be answered in sequence · S.161(1A) removed from S.304 ITA 2025 · Specific fact situations only

Why safer under ITA 2025: Section 161(1A) — MMR on ENTIRE income if ANY business income arises — OMITTED from Section 304 ITA 2025.

Q1 — CAPACITY

Can an NPO carry on business?

Yes. Absence of private distribution of profit does not, by itself, prevent an NPO from carrying on business. Parliament specifically contemplated business income of trusts in Section 11(4)/11(4A). Thanthi Trust (2001) 247 ITR 785 (SC) · FICCI (1981) 130 ITR 186 (SC) · Andhra Chamber (1965) 55 ITR 722 (SC)

Q2 — CHARACTERISATION

Is this particular activity actually business?

Not necessarily. Systematic earning of receipts does not, by itself, establish business. Character judged with reference to dominant purpose — not volume of receipts. CBDT Circular 11/2008 — proviso to S.2(15) applies ONLY to GPU. Kandivli Halai Lohana (2026 ITAT Mum) — dominant purpose test. Raj Dadarkar (2017) 394 ITR 592 (SC) — both limbs required. AUDA (2022 SC) — GPU only.

Q3 — HEAD OF INCOME

If genuinely business — under what head?

Primary stated object in trust deed determines the head — PGBP. Section 37(1) gives stronger deduction nexus than Section 93. Subject to Raj Dadarkar two-limb test: (1) primary stated object AND (2) systematic organised conduct. Karanpura (1962) 44 ITR 362 (SC) · Chennai Properties (2015) 373 ITR 673 (SC) · Rayala Corporation (2016) 386 ITR 500 (SC) — 'no more res integra'

Under ITA 1961 — exceptional caution: Section 161(1A) — where applicable — exposes ENTIRE income to MMR if ANY business income arises. The correct head must be determined from facts and law — do not argue PGBP merely for rate advantage.

Case Laws — Proposition 1 — Profits and Gains = Net Income

PART VII — CASE LAWS · Real income chain · Section 2(24)(i) / 2(49)(a) · For and against · Citations

Case & Citation	Ratio — What the Court Decided	Relevance for NPO	Limitation / Counter
CIT v. Shaw Wallace (1932) 59 IA 206 — Privy Council — Never overruled	Income connotes a periodical monetary return coming in as a gain or profit from definite sources. Not every receipt. Net concept from a definite source.	Foundation. Gross receipts ≠ income. Net accretion is the taxable measure. Gains recognised as distinct from profits — not confined to business.	Commercial context. Section 2(24)(iia) under ITA 1961 specifically includes voluntary contributions — may override for that category.
CIT v. Shoorji Vallabhdas (1962) 46 ITR 144 (SC) — celebrated passage at p.148	'If income does not result at all, there cannot be a tax even though in book-keeping an entry is made about a hypothetical income which does not materialise.'	Supports conduit argument for restricted grants where NPO has no beneficial interest. Real income principle — tax follows substance not form.	Morvi Industries (1971 SC) — obligation to pay forward does not negate income at receipt. Revenue will cite. Distinguish: NPO never acquires beneficial interest.
Godhra Electricity v. CIT (1997) 225 ITR 746 (SC) — real income, not hypothetical accrual	Real income must be determined from the true and practical character of the accrual. Accounting entries or theoretical entitlement cannot substitute for examination of income truly accrued.	Supports broader proposition that income tax is a tax on real income — not gross receipts. Together with Shoorji Vallabhdas forms the real income chain.	Decided on income accrual — NOT a Section 57(iii) expenditure or nexus decision. Do not cite for Section 57(iii) entity-level nexus.
CIT v. Hycron India Ltd. (2008) 308 ITR 251 — Rajasthan HC	'The term profits and gains in Section 2(24)(i) is wide enough and its scope need not be restricted to profits and gains of business or profession.'	Directly supports Section 2(24)(i)/2(49)(a) argument. I&E Account surplus is a gain within the provision. Not confined to business.	Rajasthan HC only — not Supreme Court. Not binding outside Rajasthan. No confirming SC decision on this specific point.
Morvi Industries v. CIT (1971) 82 ITR 835 (SC) — DISTINGUISHED	Obligation to pay a third party does not negate income at receipt. Beneficial interest arose first — then obligation operated.	Revenue will cite this against the conduit/real income argument.	Distinguish pre-emptively: (1) No beneficial interest ever arises; (2) Obligation is pre-existing; (3) BPT Act/State-supervised; (4) Corpus donations fall outside even S.2(24)(iia).

Case Laws — Proposition 2 — Section 57(iii) / Section 93

PART VII — CASE LAWS · The Section 57(iii) nexus chain — Eastern Investments → Rajendra Prasad Moody → Petroleum Sports Board

Section 57(iii)/Section 93 Nexus Chain: Eastern Investments (1951 SC) → Maharani Saheb of Morvi (1975 Bom HC) → Rajendra Prasad Moody (1978 SC) → Petroleum Sports Board (2014 Del HC) → Mahakalp Arogya Pratisthan (2023 ITAT Mum) → St. Johns Marthoma Syrian Church (2026 ITAT Mum)

Case & Citation	Ratio — What the Court Decided	Relevance for NPO	Limitation / Counter
Eastern Investments v. CIT (1951) 20 ITR 1 (SC) — earliest SC authority	'Not necessary to show that expenditure was profitable or that any profit was earned. It is enough that the expenditure was incurred for the purpose of making or earning income.' — Bose J.	Bedrock. Section 57(iii)/93 uses identical words. 75 years of standing. Purpose of earning sufficient — income need not be produced.	Does not address nexus between charitable expenditure and investment income specifically.
Maharani Saheb of Morvi v. CIT (1975) 100 ITR 67 — Bombay HC	Indirect nexus between expenditure and income-earning is sufficient. A direct causal link between each rupee of expenditure and each rupee of income is not required.	Directly relevant for Mumbai proceedings. NPO's object-expenditure has indirect nexus to investment income — confirmed sufficient.	Bombay HC — not Supreme Court. Strong persuasive authority in ITAT Mumbai.
CIT v. Rajendra Prasad Moody (1978) 115 ITR 519 (SC) — primary SC authority	'Section 57(iii) must be liberally construed. The object of earning income is sufficient — income need not actually be produced.' Expressly followed Eastern Investments.	Primary Supreme Court authority. Liberal construction as governing standard. Directly applicable to Section 93 ITA 2025 — identical words.	Padmavati Jaikrishna (1987 SC) — personal obligation distinguished. Revenue may cite. Distinguished: NPO's obligation is institutional and pre-existing.
CIT v. Harprasad & Co. P. Ltd. (1975) 99 ITR 118 (SC) — loss = negative income	'Income' or 'profits and gains' should be understood as including losses. Loss is negative profit — both must enter computation in the same mode.	Establishes that where qualifying S.57(iii) expenditure exceeds receipts from the non-dividend IFOS source, the resulting negative computation is a statutory source loss.	Harprasad qualification: losses from a source whose income does NOT enter computation are ineligible for set-off. Interest income of unregistered NPO fully enters computation — qualification does not apply.

Property Held Under Trust — Character of Income

PART VII — A FRESH AUTHORITY — ITAT MUMBAI — AUGUST 2026 · Kandivli Halai Lohana Mitra Mandal Trust · ITA Nos. 1921 & 1920/MUM/2026 · 04 August 2026

The Facts: Charitable trust — objects: education, medical relief, relief of the poor. Earns rental income and license fees from properties held under trust. AO held: systematic exploitation of properties = trade, commerce or business → Proviso to Section 2(15) invoked → Section 11 exemption denied. CBDT Circular 11/2008 disregarded. AUDA (SC) applied broadly.

ITAT Held — Five Key Ratios

- 1. Source and quantum of receipts cannot by themselves determine the true character of a charitable institution. [Para 7.2]
- 2. Rental income from properties held under trust — even systematic and substantial — does not ipso facto constitute trade, commerce or business. [Para 7.4]
- 3. The decisive test is the predominant object of the institution and the manner of application of income — not the source or volume of receipts. [Paras 7.2, 9]
- 4. AUDA (2022 SC) distinguished — confined to GPU institutions — cannot be applied to institutions with objects of education, medical relief or relief of the poor. [Paras 8, 8.1]
- 5. An institution cannot be denied exemption merely because it adopts economically prudent methods for augmenting its resources. [Para 8.1]

CBDT Circular No. 11/2008 — Binding on Revenue

- Proviso to Section 2(15) does NOT apply to first three limbs — relief of the poor, education, medical relief — even if commercial activities are incidentally carried on. Mandatory enquiry: first determine true character of objects — ONLY then consider whether GPU proviso applies.

Dividend from Shares Held Under Trust

- Shares settled as trust property → dividend is income from property held under trust → property character established by trust law — not by Section 11 registration. Assessable under IFOS — Section 57(iii) applies — net surplus taxable. Surat Art Silk (1980 SC) confirms.

For unregistered NPOs: The concept of 'property held under trust' is a trust law concept — not a creation of Section 11. Income from property held under trust retains its character as income from property — assessable under IFOS — Section 57(iii) applies — whether or not Section 11 registration is available. Revenue cannot re-characterise it as business income.

Case Laws — Proposition 2 — Section 57(iii) / Section 93

PART VII — CASE LAWS · Lead cases · Section 70 architecture · Convergence of both chains

Case & Citation	Ratio	Relevance for NPO	Note
Petroleum Sports Board v. DDIT (2014) 362 ITR 235 (Del HC) — LEAD CASE	Section 11 denied. IFOS. Section 57(iii) must receive full play. Rajendra Prasad Moody followed. Disallowing expenditure = taxing gross receipts. Net surplus only taxable.	Most directly on point. Applies both chains. Lead with this in every proceeding.	Delhi HC — persuasive — not binding outside Delhi. S.11 surplusage argument not expressly addressed.
Mahakalp Arogya Pratisthan v. ITO (2023) ITA 2368/Mum/2022 — ITAT Mumbai D Bench	Not claiming S.11 since AY 1993-94. IFOS. S.57(iii) deduction for donations paid to other charitable trusts as object-expenditure. Revenue's direct nexus objection rejected. Petroleum Sports Board followed.	Mumbai ITAT — D Bench. Entity not claiming Section 11 for decades. Donations to other trusts allowed as object-expenditure. Nexus objection directly answered.	ITAT — not binding on HC. Persuasive in Mumbai proceedings.
St. Johns Marthoma Syrian Church v. AO ITA 2625/Mum/2026 — ITAT Mumbai SMC — 02 July 2026	MPT Act trust — not registered under Section 12A/12AB. Section 57(iii) allowed even if not claimed in original return — appellate authority has power to allow. Mahakalp followed. AO directed to verify and allow.	Mumbai ITAT — July 2026 — 58 days before this presentation. MPT Act registration = our clients. Section 57(iii) claimable at appellate stage even if missed in original return — Goetz India (SC).	SMC bench. Primary decision on Section 143(1) scope + appellate power. Section 57(iii) allowed subject to factual verification.
Chugandas (SC 1965) 55 ITR 17 + Cocanada Radhaswami Bank (SC 1965) 57 ITR 306 — ARCHITECTURE ONLY	Chugandas: Heads of income are classifications for computation — not exhaustive delimitations. Cocanada: Though interest on securities is separately computed, set-off provisions operate independently.	SC authority for the architectural proposition only: computation and set-off (Section 70) are distinct statutory stages. Used carefully.	Decided in business income context — not IFOS. Used only for the broader architectural principle.
CIT v. Dilip Kumar & Co. (2018) 9 SCC 1 — SC Constitution Bench — DISTINGUISHED	Every tax exemption must be strictly construed. Ambiguity resolved against assessee.	Distinguished: Section 57(iii)/93 is a COMPUTATION provision — not an exemption. Dilip Kumar applies to exemptions only. State this in every written submission.	Revenue WILL cite Dilip Kumar. Pre-empt explicitly: computation vs exemption.

How the Propositions Work — Two Scenarios

PART VIII — SAMPLE COMPUTATION · IFOS is one head · Scenario A — investment-heavy NPO · Scenario B — donation-heavy NPO · AY 2026-27

Key: IFOS is ONE head of income. Section 57(i) and Section 57(iii) are additive — not alternative. Excess Section 57(iii) deductions against interest flow through the single head computation to reduce total IFOS including dividend. No direct Section 57(iii) claim against dividend is needed.

Scenario A — Investment-Heavy NPO	Rs.	Basis
Corpus donations	—	Capital receipt — not income
Dividend income	10,00,000	S.2(24)(ii)/S.57(i) — collection charges only deductible directly
Interest on FDs	25,00,000	IFOS — Section 57(iii) deduction available — nexus stronger
Less: S.57(iii) object-expenditure vs interest [Petroleum Sports Board]	(35,00,000)	Nexus — entity level — earning and application one integrated activity
Less: S.57(i) collection charges on dividend	(10,000)	Specifically allowable against dividend income
Net IFOS / Total Income	NIL (IFOS loss)	Single head — excess S.57(iii) flows through — reduces total IFOS incl. dividend
Tax at AOP rate	NIL	NOT MMR — AOP slab rates — including basic exemption

Scenario B — Donation-Heavy NPO	Rs.	Basis
General donations	50,00,000	Income — S.2(24)(iia) ITA 1961 / general sweep ITA 2025
Interest on FDs	5,00,000	IFOS
Less: S.57(iii) vs interest [nexus stronger]	(5,00,000)	Net interest = nil
Less: S.57(iii) vs donations [nexus weaker — arguable]	(35,00,000)	S.11 surplusage objection possible — Petroleum Sports Board (Del HC) helpful but no SC decision
Net IFOS if S.57(iii) vs donations succeeds	15,00,000	Best case — nexus argument accepted
Net IFOS if S.57(iii) vs donations disallowed	50,00,000	Worst case — donations taxable in full — AOP rate applies
Tax at AOP rate — best case	~3,51,000	On Rs.15L at AOP rates — NOT MMR

Scenario A illustrates why investment-heavy NPOs benefit most from these arguments. Scenario B shows the honest position for donation-heavy NPOs — the outcome depends critically on whether Section 57(iii) is accepted against voluntary contributions. AOP rate applies in both scenarios — never MMR.

AOP Rate — Not Maximum Marginal Rate

PART IX — WHICH RATE · Section 164(2) ITA 1961 · Section 307(2) ITA 2025 · Five independent pillars — each sufficient

Revenue's position: Public trust → beneficiaries indeterminate → Section 164(1)/Section 307(1) → Maximum Marginal Rate (~42.744%). AOP rate (not firm rate): rate applicable to an association of persons — AOP slab rates under the Finance Act, including basic exemption.

1. Section 164(2)/Section 307 — Main Provision

The main provision itself taxes income from property held under trust wholly for charitable purposes as income of an AOP — AOP rate. The MMR proviso applies ONLY to non-charitable portions of mixed trusts. A wholly charitable trust has no non-charitable portion — MMR does not arise without reaching the proviso.

2. Prior question — Does Section 307(1)/164(1) apply at all?

A public charitable trust does not distribute income in fractional shares to individual beneficiaries. Income is applied to impersonal charitable objects. If Section 307(1) does not apply, MMR does not arise and general rate provisions determine the rate.

3. CBDT Circular No. 320 dated 11.01.1982 — Binding

CBDT expressly clarified: charitable/religious trusts where members or trustees are not entitled to any share in income — taxable at ordinary rates, NOT MMR. Binding on the Department — confirmed by Rose Trust (ITAT Del 2025).

4. Department's Own Publication + ITAT Delhi 2025

Ordinary non-exempt charitable income taxed at normal AOP rates — S.13(1)(c)/(d) violations attract MMR (do not apply here). Rose Trust v. DCIT (ITAT Del 2025): CPC's mechanical MMR levy quashed. Vindhya Trust (ITA 131/Del/2025): same position.

5. Proviso — Surplusage Canon — Corroborative

The Proviso to S.164(2)/307(2) must be capable of applying to some public trust. If all beneficiaries are always indeterminate, the Proviso could never operate — Parliament does not enact surplusage. Corroborates the above four pillars.

S.115BBI note: Finance Act 2022 — Section 115BBI overrides the MMR proviso to Section 164(2) for Section 13(1)(c)/(d) violations of REGISTERED NPOs — applies 30% flat. Does NOT apply to unregistered NPOs.

The Most Urgent Issue — Section 352 Under ITA 2025

PART X — SECTION 115TD vs SECTION 352 · Most practitioners do not know this — every NPO that ever held registration is potentially at risk

Trigger / Aspect	Section 115TD — ITA 1961	Section 352 — ITA 2025
Registration cancelled	NOT a trigger.	YES — Section 352(1)(a). Cancellation itself immediately triggers accreted income tax at MMR.
Failure to renew in time	Not a trigger.	YES — Section 352 trigger if delay not condoned.
Modification of objects	Not listed.	YES — Section 352(1)(b) — independent trigger.
'Specified person' definition	Current/recent registration.	Section 355(l): ANY entity registered at ANY TIME since incorporation — catches trusts registered decades ago.
Entity that NEVER registered	Section 115TD does not apply.	Section 352 does not apply — never a 'specified person' under Section 355(l).
Accreted income formula	FMV of assets less liabilities — tax at MMR.	Same formula at MMR. Mumbai hospital trust with Rs.10 crore property = Rs.4 crore tax on cancellation.

Voluntarily surrendered registration — Navajbai Ratan Tata Trust v. PCIT (2021) 189 ITD 535 (Mum. ITAT): Tata Trusts surrendered Section 12A registration in 2015. Department passed formal cancellation only in 2019 — after Section 115TD came into force. ITAT held: surrender effective from 2015 — Department cannot postpone effective cessation to attract subsequently enacted exit tax. Section 352 cannot revive a completed historical surrender that occurred before it came into force. However: the trust remains a 'specified person' — any FUTURE qualifying event (modification of objects, merger, dissolution) triggers Section 352.

Action Plan — What to Do

PART XII — ACTION PLAN & CAUTIONS · Three situations — each requires a different response — priority order matters

Situation 2 — Unregistered / Cancelled / Never Registered · Section 93 — no conditions

#	Step	Detail
1	Corpus donations — exclude	Capital receipts — not income — capital receipt principle under trust law — independent of S.2(49)(c). ITA 1961: proviso to S.2(24)(iia). Always claim — no risk.
2	Return of income — filing status	Verify applicable ITR form after notification under ITA 2025. ITA 2025 separately recognises 'trust' in its architecture. Do not assume automatic AOP classification. Claim S.93 deduction in the appropriate schedule with legal basis stated.
3	Document every rupee of object-expenditure	Bills, vouchers, programme reports. Banking channels for significant payments. TDS compliance throughout. Cash payments >Rs.10,000/transaction — do not claim [S.58(2)/S.40A(3)].
4	Claim Section 93 deduction — disclose fully	State legal basis in return. Petroleum Sports Board. Full disclosure of all receipts. Bona fide argument + full disclosure = protection against 200% misreporting penalty.
5	Claim AOP rate — not MMR	S.164(2) main provision directs AOP rate for property held under trust for charitable purposes. CBDT Circular 320 — binding. Rose Trust/Vindhya Trust (ITAT Del 2025) — CPC's MMR levy quashed. File at AOP rate — challenge any mechanical MMR at assessment.

Situation 3 — Registration Cancelled · URGENT — Section 352 stakes — file ITAT appeal immediately: File ITAT appeal under Section 253(1)(f) immediately — every day matters — Tata Trust: surrender effective from date of communication, do not let Revenue fix a later date. Establish public trust character — BPT Act certificate — Charity Commissioner registration is decisive. Quantify Section 352 exposure — FMV all assets — evaluate asset transfer to registered charity under Section 352(3).

Critical Cautions

PART XII — ACTION PLAN & CAUTIONS · Be completely honest with every client — what this analysis does and does not achieve

Section 11 surplusage objection — the challenge

- Parliament provided relief on charitable application only through Section 11. Revenue can argue Section 57(iii) achieves through the back door what Parliament made available only through registration. Not conclusively answered at Supreme Court level. Petroleum Sports Board is Delhi HC — not binding outside Delhi.

Section 57(iii) against voluntary contributions — weaker nexus

- Nexus between charitable expenditure and voluntary donations is difficult to establish classically. A donor gives because of charitable motivation — may not be because the NPO applies income on objects. Significant litigation risk. IFOS single head argument helps — but the donation nexus issue remains. Disclose risk fully.

TDS compliance — Section 353(3)(i) — potentially severe

- Under ITA 2025 Section 353, expenditure must be allowable under Section 35(b)(i). TDS default may disallow the entire payment — not merely 30% — under Revenue's reading. Ensure complete TDS compliance before year end for any NPO in Regime 2.

Surrendered registration — three fact patterns — distinguish carefully

- Pattern 1: Surrender completed before exit tax provision came into force — Tata Trust reasoning applies. Pattern 2: Surrender requested but effective date disputed — establish effective date first. Pattern 3: Surrender/cancellation after Section 352 operative — Section 352 applies directly; trust remains 'specified person' for all future exit events.

Penalty: Bona fide argument + full disclosure = protection against 200% misreporting penalty [Section 270A/Section 463]. Residual risk: 50% under-reporting if deduction disallowed. Do not seek specific penalty advice from this session.

Registration Is the Only Complete Solution

PART XII — ACTION PLAN & CAUTIONS · These arguments are a litigation defence — not a substitute for Section 12AB registration

What registration gives you that no argument can replicate:

- Capital expenditure treated as 'application' of income — exempt
- Automatic 15% accumulation buffer — no conditions
- 5-year accumulation for specific projects — tax-free each year
- CSR eligibility — Rule 4(1) CSR Rules

Argument	What it achieves	Assessment	Use
Corpus donation exclusion	Capital receipt — not income — trust law principle	Very strong — established	Always — no risk
AOP rate not MMR	CBDT Circular 320 + Proviso to S.164(2)/307(2)	Strong — established	Always — defend at CIT(A)/ITAT
Section 57(iii) — investment/property income	Net surplus — income from property held under trust character — S.57(iii) applies	Reasonably arguable — fact-sensitive	With full disclosure
Section 57(iii) — voluntary contributions	Net surplus on donations — nexus weaker	Significant litigation risk	Disclose risk fully — fact-specific

Always pursue registration in parallel. Challenge every denial at ITAT. These arguments protect clients while registration is being restored — they do not replace it.

A Policy Case for Reform

PART XIII — A POLICY CASE FOR REFORM · ICAI's opportunity to make a considered policy recommendation in the public interest

The Paradox the Current Law Creates: The tax system offers two positions — everything or nothing. Full exemption under Section 12AB — or taxation under Revenue's interpretation. There is no middle ground which is litigation free. NPOs doing the job which otherwise government should do — feeding the hungry, education and medical assistance to the needy — reduces the burden on the revenue as compared to tax concessions.

The Suggestion

- Allow unregistered charitable NPOs to claim a deduction for expenditure actually incurred on their charitable objects — subject to conditions.
- Do not invoke accreted income tax if NPO continues to pursue charitable objects.
- Provide concessional tax rate or higher exemption limits.
- Provide CSR eligibility.
- Simply: do not tax money genuinely spent on the poor.

The Riders — To Prevent Abuse

- Revenue expenditure only — no capital expenditure
- Fully vouched — bills, receipts, utilisation certificates
- Objects qualifying under Section 2(15)/Section 2(27)
- Full return of income filed — all receipts disclosed
- No anonymous donations — no unvouched cash expenditure

The Statutory Parallel: Section 13(10)/Section 353 already does this for registered NPOs with compliance failures — allows deduction of revenue object-expenditure subject to conditions while denying Section 11 exemption. The suggestion extends a simpler version to unregistered NPOs. The precedent is already in the Act.

This suggestion is not for charity towards NGOs. It is for charity through NGOs — supported by a tax system that recognises reality.

Summary of Conclusions

What is established · What is arguable · What is not available · What must be done

Position	Legal Basis	Assessment	Action
Corpus donations — not income	ITA 1961: proviso to S.2(24)(iia). ITA 2025: capital receipt principle — independent of registration.	Very strong	Always claim
AOP rate — not MMR	Section 164(2) main provision · CBDT Circular 320 · Rose Trust/Vindhya Trust (ITAT Del 2025) · Prior question on Section 307(1) applicability.	Strong	Always claim — challenge CPC's MMR levy
Section 57(iii) — investment/property income	Eastern Investments · Rajendra Prasad Moody · Petroleum Sports Board · Property held under trust character — Kandivli Halai Lohana.	Reasonably arguable	With full disclosure
S.57(iii) vs donations/dividend (indirect via IFOS single head)	IFOS is one head — excess deductions against interest flow through to reduce total IFOS incl. dividend. S.57(i) and S.57(iii) are additive.	Arguable — fact-sensitive — litigation risk on donation nexus	Disclose risk — compute both scenarios
Capital expenditure — any route	Section 57(iii)/Section 93 expressly excludes capital expenditure.	Not available	Do not claim. Pursue registration.
Section 352 — fight cancellation urgently	ITAT appeal — Section 253(1)(f). Tata Trust: effective date of surrender matters. Section 355(l): specified person catches past registrations.	File immediately	Top priority — existential stakes

Summary of Conclusions

What is established · What is arguable · What is not available · What must be done

Position	Legal Basis	Assessment	Action
Corpus donations — not income	ITA 1961: Proviso to Section 2(24)(iia). ITA 2025: capital receipt principle — independent of registration status — not Section 2(49)(c), which does not apply to unregistered NPOs.	Very strong — established	Always claim — no risk
Firm rate — not MMR	CBDT Circular 320 (binding) + Proviso to Section 164(2)/307(2) — five statutory arguments.	Strong — established	Always claim — defend at CIT(A) and ITAT
Section 57(iii) — investment income — income from property held under trust	Eastern Investments · Rajendra Prasad Moody · Petroleum Sports Board. Nexus stronger — property held under trust — income from property character — Kandivli Halai Lohana.	Reasonably arguable — fact-sensitive	Claim with full disclosure — bona fide position
Section 57(iii) — voluntary contributions	Petroleum Sports Board — entity-level approach. Section 11 surplusage objection is a genuine counter. Nexus weaker for voluntary contributions.	Significant litigation risk	Disclose risk fully — fact-specific decision
Capital expenditure deduction — any route	Section 57(iii)/93 expressly excludes capital expenditure. No route around this.	Not available	Do not claim. Pursue registration.
Section 352 — fight cancellation	ITAT appeal — Section 253(1)(f). Every day matters — existential stakes under ITA 2025.	File immediately	Top priority — Section 352 exposure can exceed asset value

In Summary

For an unregistered NPO, the difficult question is how that income is to be computed under the ordinary provisions. The propositions examined today support taxation of the real income — net surplus — in an appropriate case. The deduction of object-expenditure against voluntary contributions remains fact-sensitive and litigable. IFOS is one head — excess Section 57(iii) deductions against interest flow through to reduce total IFOS including dividend. Income from property held under trust retains its property character established by trust law — independently of Section 11 registration. The rate on whatever net surplus arises is AOP rate — not MMR — established by the main provision of Section 164(2), CBDT Circular 320, and confirmed by ITAT Delhi 2025.

Topic	Key Takeaway
Corpus donations	Capital receipts — not income — trust law principle — ITA 1961: proviso to S.2(24)(iia) · ITA 2025: capital receipt principle — claim always
AOP rate — not MMR	Section 164(2) main provision · CBDT Circular 320 · Rose Trust/Vindhya Trust (ITAT Del 2025) — claim always — challenge CPC's MMR levy
Section 57(iii)/93	Investment/property income — reasonably arguable · Donations — significant litigation risk — disclose fully · IFOS single head — excess flows through
Section 352	Contest cancellation immediately — Tata Trust: effective date of surrender matters — every day matters under ITA 2025
CSR eligibility	Complete bar — registration non-negotiable for CSR-dependent NPOs
The honest truth	Registration under Section 12AB/Section 332 is the only complete solution. These are litigation defences — not a substitute for registration.

M/s Rajput Jain & Associates

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THANK YOU

Disclaimer: The content of this document is intended to provide a general guide to the subject matter. Every effort has been made to keep the information cited error-free. The contents are for information purposes only and do not constitute advice or a legal opinion; they reflect the understanding of Rajput Jain & Associates of the law and provisions prevailing as on the date of preparation and may vary according to one's interpretation of the law. This should not be relied upon as the sole basis for any decision which may affect you or your business. For specific guidance, please consult us directly.

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