

14

**ASSESSMENT OF PRIVATE
SCHOOLS, COLLEGES AND
COACHING CENTRES**

**MINISTRY OF FINANCE
(DEPTT. OF REVENUE)**

**PUBLIC ACCOUNTS
COMMITTEE
2005-2006**

FOURTEENTH REPORT

FOURTEENTH LOK SABHA



**LOK SABHA SECRETARIATE
NEW DELHI**

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PUBLIC ACCOUNTS COMMITTEE
(2005-2006)

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ASSESSMENT OF PRIVATE SCHOOLS,
COLLEGES AND COACHING CENTRES

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)



Presented to Lok Sabha on.....
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LOK SABHA SECRETARIAT
NEW DELHI

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COMPOSITION OF PUBLIC ACCOUNTS COMMITTEE
(2005-2006)

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INTRODUCTION

I, the Chairman, Public Accounts Committee having been authorised by the Committee to submit the Report on their behalf, do present this 14th Report relating to “Assessment of Private Schools, Colleges and Coaching Centres” on Chapter-III of the Report of C&AG of India for the year ended 31 March, 2003 (No. 13 of 2004), Union Government (Direct Taxes - System Appraisal).

2. The Report of the C&AG of India for the year ended 31 March, 2003 (No. 13 of 2004), Union Government (Direct Taxes-System Appraisals) was laid on the Table of the House on 13 July, 2004.

3. The Committee took the evidence of the representatives of the Ministry of Finance (Deptt. of Revenue) on the subject at their sitting held on 20th January, 2005. The Committee considered and finalised this Report at their sitting held on 30 May, 2005. Minutes of the sittings form Part - II of the Report.

4. For facility of reference and convenience, the observations and recommendations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in a consolidated form in Appendix to the Report.

5. The Committee would like to express their thanks to the Public Accounts Committee (2004-2005) for taking evidence on the subject obtaining information thereon.

6. The Committee would like to express their thanks to the officers of the Ministry of Finance (Deptt. of Revenue) for the cooperation extended by them in furnishing information and tendering evidence before the Committee.

7. The Committee place on record their appreciation of the assistance rendered to them in the matter by the Office of the Comptroller and Auditor General of India.

NEW DELHI;
3 June, 2005

13 Jyaishta, 1927 (Saka)

PROF. VIJAY KUMAR MALHOTRA,
Chairman,
Public Accounts Committee.

REPORT

ASSESSMENT OF PRIVATE SCHOOLS, COLLEGES AND COACHING CENTRES

I. Introductory

Education plays a positive role in correcting social and regional imbalances and in securing a rightful place for the disadvantaged and the minorities. The field of education, either at primary level or higher level, has witnessed a sea change in the last decade with the mushrooming of private educational institutions all over the country. The Government, though remains the single largest provider of education, private educational institutions are fast gaining a steady ground of late. There has been a unanimous view that with the entry of private sector in this field, education has become a money spinning business for most of these private institutions. The management of these schools had been extorting hefty sums in the name of donations/capitation fee and development fund etc. Consequently, it is essential to ensure that correct income from this business is brought to tax by Government. The Income Tax Act provides the methodology for assessment of income from these private educational institutions and lays down responsibilities of the assessee engaged in such business.

2. With a view to encouraging the promotion and development of education, income of such educational institutions which are established solely for the purpose of education either on no-profit basis or run by charitable trusts has been exempted from levy of income tax subject to certain conditions. However, a large number of private schools, colleges and coaching centres have come up whose income is not so exempted from levy of income tax. Therefore, it is required of the Income Tax Department to ensure through the operation of the provisions contained in the Income Tax Act that income of only genuine and eligible institutions are exempted from levy of income tax and correct amount of tax is paid by all institutions not so exempt.

II. Tax Assessment Policy and laws for exemption of income of private educational institutions

3. Income Tax Act, 1961, (the Act) provides for exemption of income of educational institutions as given below:—

(a) Educational Institutions run by Trusts:

4. Sections 11, 12 and 13 of the Act, *inter-alia* deal with exemption in respect of income of educational institutions run by charitable trusts. Section 2(15) defines "Charitable purposes" to include relief of the poor, education, medical relief and the advancement of any other object of general public utility.

(b) Educational Institutions run other than by Trusts

(i) *Upto assessment year 1998-99*

5. Income of educational institutions existing solely for educational purposes and not for purposes of profit was exempted under section 10(22) of the Income Tax Act. Such institutions could be run by any entity such as individual, Hindu Undivided

Family, association of persons, firms, company and so on. No mechanism was, however, prescribed under the Act through which the Income Tax Department could independently ensure that the institutions exist solely for educational purposes and not for purposes of profit. These were not required mandatorily to file returns of income till assessment year 2003-04.

(ii) With effect from 1 April 1999

6. Since provisions for exemption u/s 10(22) were being widely misused due to absence of any monitoring mechanism to check genuineness of these institutions, these were omitted. New provisions under clause 10(23 C) were inserted with the intention to strengthen and tighten the provisions of exemption from levy of tax to income of educational institutions so that exemption could be availed only by those institutions that exist solely for educational purposes and not for purposes of profit.

7. The following tax laws have been enacted from 1st April, 1999 for exemption of income of educational institutions run other than by Trusts:

(i) An educational institution existing solely for educational purposes and not for purposes of profit and which is wholly or substantially financed by the Government was exempt from levy of tax, **under section 10(23C) (iiiab)**.

(ii) An educational institution existing solely for educational purposes and not for purposes of profit whose aggregate annual receipts did not exceed Rs. 1 crore was exempt, **under section 10(23C) (iiia)**.

(iii) An educational institution existing solely for educational purposes and not for purposes of profit with annual receipts of more than Rs. 1 crore could claim exemption of income after obtaining approval from the prescribed Income Tax authority for a period not exceeding three assessment years at any one time provided it applied its income exclusively to the objects for which it was established, **under section 10(23C) (vi)**.

(c) Coaching Centres

8. The Act does not separately deal with exemption of income of coaching centres which do not fall into the category of educational institutions existing for charitable purposes and thus, exemptions described above are not available to them. Their income is to be taxed under the provisions applicable to normal business under Sections 15 to 59 of the Act.

9. Regarding new provisions under clause 10 (23C), it has been pointed out by Audit that the purpose of insertion of new clause u/s (23C) may not have been served and rather created more complications and infructuous work as detailed below:

(i) The institutions run by trusts are required to apply for registration u/s 12A within one year from the date of creation of trusts and every order granting or refusing registration shall be passed within six months after receipt of the application of the institution. However, there is no such time limit laid down for the institutions in applying for approval or passing the order by the prescribed authority u/s 10(23C) (vi).

- (ii) The institutions falling u/s 10(23C) (iiiab) & 10 (23C) (iiiad) are not required to file the returns of income if these are not registered u/s 12A. In the absence of return of income, no mechanism is available to ensure that these institutions actually exist solely for educational purposes and not for purposes of profit. Further, no verification is possible whether their annual receipt is less than Rs. one crore in a particular year when they did not file the return.

III. Audit Review

10. This Report is based on the Audit Review contained in Chapter-III of the Report of the Comptroller and Auditor General of India for the year ended 31 March 2003, No. 13 of 2004 Union Government (Direct Taxes) relating to "**Assessment of Private Schools, Colleges and Coaching Centres**" (Appendix-I). The Audit review covered assessments of 5558 selected private educational institutions, schools, colleges and coaching centres, run either by charitable trusts or by private management imparting education in the fields of computer, banking, Civil Services, medicine, engineering, higher education etc. completed during the period 1999-2000 to 2001-02.

IV. Objectives

11. Audit reviewed the efficiency of assessment of various educational institutions, with a view to ascertaining:

- (i) whether all private schools & colleges and coaching centres are on the records of the Income Tax Department and are subject to assessments;
- (ii) whether adequate steps have been taken by the department to bring all the private schools & colleges and coaching centres into the tax net and results of such efforts are quantified;
- (iii) the extent of irregularities and mistakes of commission and omission in the assessments of the institutions;
- (iv) whether there exists any machinery within the department to exercise adequate and necessary checks in this area of potential and reported misuse; and
- (v) whether tax laws have been enacted with clear, unambiguous and effective provisions for their administration and for prevention of abuse or misuse.

12. The Audit review of the private schools, colleges and coaching centres has revealed several irregularities in the assessments of the institutions which *inter-alia* includes the following:

- (i) Failure to evaluate the genuineness of exemption claimed by educational institutions.
- (ii) Exemption of income irregularly without obtaining requisite approval/ registration.
- (iii) Income of coaching centres exempted irregularly.
- (iv) Exemption of investments made in unspecified modes.
- (v) Unexplained credits/donations/deposits in the name of sister concerns not taxed.

- (vi) Contributions/donations received without specific directions and capital gains not taxed.
- (vii) Weakness in administration of law.

V. Prescribed conditions to become eligible for availing exemption of income

13. The Committee desired to know the conditions needed for educational institutions to become eligible for availing exemption of income tax. In reply, the Ministry of Finance (Department of Revenue) stated in a note as under:

- (i) "In respect of the institutions falling u/s 10(23C)(vi), existing solely for the purpose of education, the income derived is exempt provided the following conditions prescribed under the provisions of the Act are satisfied:
 - (a) The institutions should not be run for the purpose of profit.
 - (b) It should be approved by the prescribed authority [Director General of Income-tax(DGIT) (Exemption) or Chief Commissioner of Income-tax (CCIT)] if it is not wholly or substantially financed by the Government or if its annual receipt exceeds Rs. 1 crore;
 - (c) The trusts/institutions applies its income, or accumulates for application, wholly and exclusively to the objects for which it was established and in a case where more than 15% of its income is accumulated on or after the 1st day of April, 2002, the period of accumulation of the amount exceeding 15% of its income shall in no case exceed five years;
 - (d) The institution does not invest or deposit its funds for any period during the previous year otherwise than in any one or more forms or modes specified in sub-section 5 of section 11 of the Act;
 - (e) The application for approval has to be made in form no. 56D and the approval once issued shall be valid for a period not exceeding 3 assessment years.
- (ii) For institutions entitled to exemption u/s 11, the following conditions have to be satisfied:
 - (a) The income derived from the property held under trusts should be applied, or accumulated to be applied, wholly for a charitable purpose (education);
 - (b) The income accumulated or set apart for application on educational purposes in India, should not exceed 15% of the total income of the institution. If it exceeds 15%, then it should be deposited/invested in forms/modes specified in section 11(5) of the Act;
 - (c) In order to be eligible for availing exemption, such an entity should have applied for and obtained registration from the prescribed authority u/s 12A".

14. The Committee enquired as to how it is ensured that the aforesaid conditions are fulfilled by parties while claiming exemptions. Explaining in this regard, the Ministry stated that violation of the conditions prescribed in the Act will entail withdrawal of exemption and the income of such entities should then be computed in accordance with the provisions of the Act. The Ministry further conceded that wherever it is

noticed that the conditions are not being fulfilled, to example, non-availability of registration u/s 12A or approval u/s 10 (23C) (vi); violation of the conditions prescribed; contravention of the provisions of section 13; etc., action is being initiated against the defaulting institution by scrutinizing the returns, denying the exemption wherever warranted, and re-computing the income as per the provisions of law.

The Committee desired to know whether all private schools, colleges and coaching centres are on the records of the Income tax Departments and are subject to assessments. In reply, the Ministry stated as under:

"All private schools and colleges and Coaching Centres do not fall under the taxable category, and, therefore, not subject to assessments as many of them are not liable to file returns. Educational institutions covered by the provisions of section 10(23C) (iiiab), 10(23C) (iiiad) or u/s 11, provided their income before giving effect to sections 11 & 12 is below Rs. 50,000/-, are not liable to file returns. Educational institutions having aggregate receipts of more than Rs. 1 crore and falling under the provisions of section 10(23C)(vi) are liable to file returns.

There may be some private schools/colleges and all coaching centres, which are not entitled for exemption for Income Tax. While such institutions running with a profit motive fall under the taxable category and have to file returns of income if they have taxable income, the Department is keeping a watch on all such institutions. Surveys have also been carried out on some non-complaint educational institutions to bring them under the tax net and to unearth undisclosed income. In a few cases search & seizure action u/s 132 have also been conducted. Such private schools, colleges and coaching centres who have taxable income and are not filing regular returns are then brought under the tax net."

VI. Non-availability of a separate and exclusive database of educational institutions

15. It has been pointed out in the Audit para that there is no systematic and organized approach in the department to ensure that all educational institutions which are required to fulfill certain obligations under the Act are in fact doing so before claiming the prescribed benefit or exemption. Though the Act has been amended through Finance Act, 2003 making it obligatory on the part of educational institutions not working for the purpose of profit to file the return, audit noticed that no specific guidelines or monitoring mechanism have been introduced to ensure that amendment could be given effect to by the assessing officers.

16. Out of the database of 62,279 educational institutions collected from different sources, audit could locate only 10,376 institutions from the demand and collection registers of 855 selected assessment units against the total existing 2110 assessment units.

17. The Department had not made any effort to identify revenue potential in this field by effective co-ordination and correlation with the state government or universities or other regulatory authorities. The department could have effectively exercised control over receipt of return by serving notices to the defaulting private schools/colleges and coaching centres by keeping track through a proper control mechanism after

compiling the data themselves. Department started serving notices to the assesseees after audit requisitioned assessments for review.

18. When asked whether there was any centralised arrangement in the Ministry to have an up-to-date database of private educational institutions, the Ministry of Finance (Department of Revenue) stated as under:

"as per provision of Section 139(4A)/139(4C) educational institutions with no profit motive and having income above Rs. 50,000/- have to file return of income. Further educational institutions other than those which are wholly or substantially financed by the Government and whose annual receipts are above Rs. 1 crore, have to obtain approval from the CBDT, and now from Chief Commissioners of Income-tax/Directors General of Income-tax (CCsIT/DsGIT) w.e.f. 3.4.2001 in terms of the provisions of Section 10(23C) (vi). The institutions exempt u/s 11 are granted registration u/s 12A by the Commissioners of Income-Tax (CsIT). The data of only such institutions which were granted exemption u/s 10(23C)(vi) are maintained in the ITA Section of the CBDT till 31.3.2001 and the data of institution which are granted exemption u/s 11 by the Cs IT or u/s 10 (23C) (vi) by CCsIT/DsGIT is maintained by the CsIT or the CCsIT/DsGIT concerned.

The CIB Section of the Income Tax Department is engaged in collection of information and preparing a data base of private schools, colleges and coaching centres as obtained from various sources. The database of assesseees are maintained as per their status as laid down in the Income-tax Act, viz. Individual, Hindu Undivided Family, Firm, Association of Persons, Body of Individual, Company, etc. There is no separate status for schools, colleges and coaching centres since such institutions can be run by individuals, HUFs, firms, AOPs, Companies, etc. and therefore, no centralized separate database is maintained by the Ministry."

19. In their vetting comments on the above reply, the audit stated that:

"CIB was not able to collect any information in respect of educational institutions during the period 1999-2000 to 2001-2002, as the required "code" for private schools, colleges and coaching centres was created by the Board only in October 2002."

20. The Secretary (Revenue) while deposing before the Committee also conceded:

".....We do not have activity-wise data bases at present. This is of course something which we do need and that is part of our computerisation programme and we would like to develop it if we are to have a good harassment free taxation system which at the same time ensured that information flows in so that every year is covered"

21. The Committee desired to know the reasons for non-availability of such a database despite spending crores of Rupees on computerisation of the Department. The Committee also sought to know as to why more professionals/professional agencies cannot be hired for developing a scientific database and retrieving data. The Ministry *vide* their written information stated as under:

"The computerisation process has just completed the third phase under which all Officers and one staff member of each assessing Circle/Ward have been

provided with new PCs. This would speed up the work of processing of returns, issuing of refunds, creating databank of different financial transactions to match with returned incomes, etc. Presently 60 cities are on the network, and in the next phase all the Income-tax officers, located at more than 500 towns and cities, would be put on the national network and this would enhance information-sharing and efficiency.

Once the filing of returns is made compulsory, they will have to obtain PAN and then it would be easy to match the information with the returns, and other IT softwares."

22. On the question of involving professionals in building up a database, the Ministry stated as follows:

"Moreover various projects are underway in the Directorate General of Income-tax (Systems), which would help in building up a scientific database. The expertise of professional agencies are being utilised in these areas, and more professionals/professional agencies would be engaged in this exercise."

VII. Non-selection of assessments for scrutiny

23. As per Audit, the department completed 95.5 per cent of the assessments of educational institutions selected by audit only in summary manner during the period 1999-2000 to 2002-03 as shown below:

Name of State	No. of assessing units selected by audit	Total number of assessments made	No. of scrutiny assessments	No. of summary assessments	Percentage of scrutiny assessments
Delhi	59	690	78	612	11.3
Andhra Pradesh	71	1242	130	112	10.5
Karnataka	63	334	27	307	8
Maharashtra	61	1242	47	1195	3.8
West Bengal	37	1142	44	1098	3.9
Rajasthan	61	564	14	550	2.5
Tamil Nadu	85	1640	23	1617	1.4
Punjab	60	290	1	289	0.34
Orissa	18	630	Nil	630	Zero
Total	515	7719	348	7719	4.5

24. Audit Scrutiny has revealed that the Department completed about 97 per cent of all assessments in summary manner in 2000-01 and 2001-02. According to Audit, unless cases involving fulfilment of special conditions for claiming exemption of income such as the assessments of educational institutions are identified and adequate number are selected for scrutiny, the Department has no means to ensure effective compliance of law in such cases.

25. According to Audit, the Department was not in a position to ensure application of the special provisions of the Act in respect of educational institutions in 95 per cent of cases available with the assessing officers that were completed in summary manner. Besides, no specific instructions were found to be issued by the Board for selection of

cases for scrutiny relating to the educational institutions during the period covered in the Audit review. However, the Committee were informed by the Ministry during their oral evidence that such instructions have been issued in this regard. Explaining the position in this connection, the Chairperson (CBDT) stated as under:

"These instructions are generally issued every year for taking up cases for guidelines for scrutiny because a large number of cases are not scrutinized. About 98 per cent of cases are completed on the basis of the returns filed by the assessee and about two per cent of the cases are picked up for scrutiny. Every year these guidelines have been issued. In this year, these guidelines have been issued on 20th September, 2004. According to these guidelines, all cases where exemption is claimed under section 11 of the IT Act and the gross receipt exceeding Rs. 5 crore will be picked up for scrutiny. So, these cases of exception will be picked up under this category by the officers."

26. When asked by the Committee to elaborate as to why limit of Rs. 5 crore has been fixed as gross receipt for selecting cases of charitable trusts for scrutiny, the Ministry stated as follows:

"Since every charitable trust claims exemption under Section 11, it was felt that only big trusts should be compulsorily scrutinised. Therefore, the lower limit of Rs. 5 crore of gross receipt has been fixed for compulsory scrutiny. However, a residual clause has been inserted to enable the field officers to select any other case for scrutiny with the prior approval of the CCIT concerned."

27. The Public Accounts Committee undertook an on-the-spot visit to Southern region in November, 2004 and at Thiruvananthapuram and Kochi and held informal discussions with CCIT and other concerned officials of the Income Tax Department. It was brought to the notice of the Committee that Audit have observed various deficiencies in the assessments of Kuttakaran Foundation, Kochi, M/s Kalabhavan, M/s. PMA Management Education Foundation and M/s Kerala Holy Cross Society Pvt. Ltd. and M/s. Delta School Society, Darul Aman Islamic Complex and Shri Chitra Thirunal College of Engineering, falling under Kerala Income Tax Commissionerates. During the discussions held thereon, the Committee had expressed the opinion that profit making institutions must not be allowed any tax exemptions and those cases where exemptions are claimed should be selected for scrutiny assessments.

As regard the organisational structure of the Commissionerates, the Committee were given to understand by the concerned officials that the Kerala region had an acute shortage of officers/staff as all levels. For instance out of 243 posts of Income Tax Insectors, 192 posts were lying vacant. Explaining the position for this shortage the CCIT stated that the lack of willingness particularly on the part of officers to serve in the region was the major factor behind such a glaring shortage of personnel to many key posts. Moreover, the vacancies at the level of Income Tax Officers and below could not be filled for want of Recruitment Rules, delay in conducting departmental examination etc. It was pointed out that shortage of staff had adversely affected the performance of the region in terms of completion of assessments, appeals etc.

VIII. Widening the tax base by including educational institutions

28. Prevention of tax evasion and widening of the tax base are two most important functions of the Department which could be achieved through an efficient performance of the Central Information Branch as well as their Survey Operations.

Central Information Branch (CIB)

29. In order to fulfil the above objects the Department had, with effect from 1 July 1997, commissioned Central Information Branch (CIB) under a Commissioner which collects information about assesseees from different sources with respect to their potential for yielding income tax and passes it to the concerned assessing officers. Thereafter, the assessing officers are required to initiate appropriate action under the Act to call for returns and/or examine the specific information in assessments.

30. Audit noticed that CIB had not collected and passed on any information to the assessing officers in respect of educational institutions of assessing units selected for review, during the period 1999-2000 to 2001-2002. In Rajasthan, however, CIB collected 81 cases of educational institutions in Jaipur, Alwar, Udaipur, Ajmer and Kota charge of which details in respect of 10 cases falling in Udaipur, Ajmer and Kota charges were passed on to the assessing officers which were brought into the tax net. In other charges, assessing officers stated that the above information could not be collected as the required code for private schools/colleges and coaching centres was created by the Board *vide* their instructions issued only in October, 2002.

31. Audit noticed that the Ministry had not taken effective/adequate steps for widening the tax base of educational institutions through adequate and focussed exercise of powers, which equip them to conduct surveys and investigations. When asked to specify steps taken for widening the tax base of educational institutions, the Ministry informed the Committee as follows:

"Steps have been initiated by the Assessing Officers by issuing notices u/s 142(1) where returns are not being regularly filed by the existing assesseees and also in the cases of non-filers. Moreover, educational institutions generally fall under the Proviso to section 139(1) due to ownership or lease of building or buses/vehicles and are also covered by these provisions. Besides, search and seizure operations and surveys are being conducted on such unscrupulous educational institutions to bring them into the tax net."

IX. Survey Operations

32. The assessing officers are empowered under sections 133A & 133B of the Act to survey the business premises of the taxpayer to locate assesseees and unearth unaccounted income.

33. Audit has examined in their review the records of CITs (Investigating Circles) to see whether the Department had taken adequate steps to bring all the private schools, colleges and coaching centres into tax net during the period 1999-2000 to 2001-2002 through the mechanism of survey and has pointed out that no surveys were conducted in Mumbai, Thane, Pune, Aurangabad, Kolhapur and Nagpur. In Delhi charge, only one CIT confirmed that no surveys were conducted and other 13 CITs did not furnish reply. In Tamil Nadu charges, DIT (Exemption) and CIT-VIII, Chennai confirmed that no

such surveys were conducted and replies from 16 CITs were awaited. In Andhra Pradesh, only one private educational institution in Visakhapatnam charge and 7 in Vijayawada charge were brought into the tax net. In Rajasthan, the Department, conducted 1138 surveys and only one educational institution was brought into tax net. In other charges, no surveys were reported to be conducted.

34. On being asked as to whether any survey on the business premises of private schools, colleges and coaching centres and to locate new assesseees has been conducted so far, the Ministry replied:

"A large number of surveys are conducted every year by the Department to unearth undisclosed income and bring non-assesseees into the tax net. Though majority of educational institutions are exempt u/s 10(23C) (iiiab), (iiiad), (vi) or u/s 11, some surveys have also been conducted on schools, colleges and coaching centres. Various field formations have reported about surveys conducted on such institutions. For example, in Mumbai Region a survey u/s 133A was conducted on 11.3.2002 on M/s Mahesh Tutorials which resulted in the detection of undisclosed income of Rs. 50 lakhs on which additional tax of Rs. 17 lakhs has already been collected. Similarly in two surveys conducted in Delhi, in the financial year 2003-04, undisclosed income of Rs. 138 lakhs was detected and additional tax of Rs. 50.29 lakhs has been collected."

X. Procedural lapses/irregularities

A. Irregular exemptions without approval/registration from prescribed Authority

35. According to Section (23C)(vi), inserted by the Finance (No. 2) Act, 1998, effective from 1st April, 1999, an educational institution existing solely for educational purposes and not for the purpose of profit and whose aggregate annual receipts exceed Rs. one crore is required to obtain an approval from the prescribed authority for claiming exemption of income. The assessee has to submit an application in the prescribed form to the Board/DGIT for approval which shall have effect at any time for a period not exceeding three years.

36. With effect from 1 April, 1997, every trust needs to obtain registration to become eligible to claim exemption of income under sections 11 & 12. It is stipulated that the assessee has to make an application for registration to the CIT either before 1 July 1973 or within one year from the date of creation of trust. If application is made after expiry of the aforesaid period, the Commissioner on reasonable grounds may condone the delay. Every order granting or refusing registration shall be passed before the expiry of six months from the end of the month in which the application is received.

37. Audit has noticed that there is no mechanism in the Department to ensure that exemption of income is granted only to those institutions who have obtained approval/registration from prescribed authority.

38. Explaining the mechanism available by which the assessing officer could link the approvals/registration granted to the educational institutions with the returns of these institutions being processed in his charge, the Ministry, in their written note, informed the Committee *viz.:*

"In most of the cases, the assessee either mentions the registration number and the date of the certificate of the registration u/s 12A in the relevant column of the

return filed or files copies of the relevant certificate issued u/s 12A or 10(23C) along with the return of income. In case the AO has any doubts about the registration certificates, he cross checks with the relevant register maintained in the office of the DIT (Exemption)/CIT. When even these particulars are not available in the return of income filed or in the earlier returns, the AO requires the assessee to furnish these particulars. This procedure generally eliminates wrong claims for exemption."

39. As regards, the mechanism followed to see that educational institutions seeking exemption from taxes are not running for profit and that they are not diversifying funds for other/personal purposes, the Ministry stated:

"The system of giving approvals is rigid and meticulous. Every effort is made so that only genuine and non profit-making institutions get approval. Moreover, scrutiny of cases is also a deterrent for errant institutions. Besides, the other suggestions under consideration are:

- (a) A clause may be inserted in Section 10(23C) so as to provide for mandatory audit of accounts and enclosing the audit report with the return of income every year.
- (b) Penalty u/s 271B may be made applicable to audit u/s 10(23C) and 12A.
- (c) Institutions should apply to the Assessing Officer in the specified form and specify the purpose for accumulation irrespective of the fact whether the accumulation is 15% or more.
- (d) Form No. 3A should be modified so as to,
 - (i) include the nature of activity in the Return. If this information is not given, the return may be treated as defective u/s 139(9), and
 - (ii) include a column for number & date for approval u/s 10(23C).
- (e) Restructuring of field organisations to deal with exempt cases more comprehensively."

40. The audit have cited a number of cases which revealed delays in grant or rejection of approvals under section 10(23C) (vi) of the Act.

B. Pendency of approvals under Section 10(23C)(vi)

41. As per the provisions, the educational institutions run either by non trusts or trusts could claim exemption of their income under both the sections 10(23C)(vi)/ 11&12 according to their convenience as these sections are not mutually exclusive in operation. There is no mechanism in the Department to ensure that exemption of income is granted only to those institutions who have obtained approval/registration from prescribed authority.

42. Audit has also noticed during the review that there is no time-limit for granting approval or rejection under Section 10(23C) (vi). Also there is no specific provision for dealing with cases whose applications are pending for approval for any reason. Moreover, the assessing officer is not competent to grant exemption of income in such cases without approval of prescribed authority.

43. As regards the fixation of time-limit for granting approval under 23C(vi), the Secretary (Revenue) stated during evidence:

"It would be useful from the Department's point of view if we have a time-limit. We would like to see whether we can put in a year or so during which approval can be cleared."

44. With regard to steps initiated by the Department to fix the time-limit for granting approval by prescribed authority, the Ministry in a note furnished subsequently to the Committee stated that the proposal to fix the time-limit is under active consideration.

C. Exemption of income without approval of prescribed authority (paragraphs 3.17.1, 3.17.2 and 3.17.3)

Paragraph 3.17.1

45. The Audit Paragraph 3.17.1 has highlighted that in Karnataka, Bangalore charge, assessments of Desheeya Vidhyashala Samithi, Shimoga and Education Society of Sisters of St. Joseph of Cluny, Bangalore for the assessment years 1999-00 to 2001-02 were completed in a summary manner between January 2000 and March 2002. Audit scrutiny revealed that though the annual aggregate receipts of these institutions crossed Rs. one crore, yet they did not either get themselves approved by the prescribed authority under section 10(23C) (vi) or get recognized under section 12A of the Act. However, the assessing officer exempted the income though he was not competent to do so. Non-compliance of either of the provisions *viz.* sections 10(23C)(vi) or 12A of the Act required withdrawal of exemption. Failure to disallow the exemption resulted in under assessment of income totalling Rs. 81.32 lakh with consequent non-levy of total tax and interest of Rs. 30.51 lakh.

46. The Ministry, when asked to comment on the audit observations, have stated as follows:

"In the case of Desheeya Vidhyashala Samithi, the objection raised by the C & AG has not been accepted by the AO, as the assessee had applied to the competent authority in prescribed form No. 56D for registration of the institution and apparently no omission has taken place. However, remedial action u/s 148 has been initiated as a measure of abundant precaution and the assessment is to be finalized shortly. In the case of Education Society of the Sisters of St. Joseph's of Cluny, the relevant returns were processed u/s. 143(1) only. Since *w.e.f.* 1/6/99 the AO had no powers to make any adjustments to the returned income u/s 143(1), necessary remedial action was initiated u/s 148 subsequent to processing u/s 143(1), and the assessments are to be finalized."

47. In response to a query as to whether the assessee has applied for approval from prescribed authority, the Ministry have informed that in the first case, the assessee had applied to the competent authority for registration on 15/10/2001 which was pending at the time of processing u/s 143(1). In the second case, the assessee did not apply to the competent authority.

*If any tax or interest is found due on the basis of such return, after adjustment of any tax deducted at source, any advance tax paid, any tax paid on self-assessment and any amount paid otherwise by way of tax or interest, then, without prejudice to the provisions of sub-section (2), an intimation shall be sent to the assessee specifying the sum so payable, and such intimation shall be deemed to be a notice of demand issued under section 156 and all the provisions of this Act shall apply accordingly.

48. The Ministry further informed that in the instant cases, the procedure for granting of approvals could not be followed as the cases were summarily assessed u/s 143(1).*

49. Regarding remedial steps taken to withdraw the exemption of income granted to those institutions and to recover the tax due from them, the Ministry submitted that the proceedings u/s 148/147 has been initiated in both the cases and are likely to be completed by 31.03.2005. The tax demand and the interest thereon, will be recovered expeditiously thereafter.

50. Elaborating upon the measures proposed by them in order to ensure that such lapses are not repeated in future, the Ministry stated as follows:

"Though no adjustment is possible at the summary assessment stage, necessary instructions have been issued to the Assessing Officers to ensure that such cases should be selected for scrutiny u/s 143(2). The Ministry (CBDT) has issued guidelines, *vide* Instruction No. 10/2004, to compulsorily select those cases for scrutiny where the exempt income exceeds Rs. 2 lakhs; and where exemption is claimed u/s 11 and the gross receipts exceed Rs. 5 crore. Thus, with the selection of these cases for scrutiny, the mistakes would be eliminated/restricted from Assessment Year 2003-04 onwards."

Paragraph 3.17.2

51. The Audit paragraph 3.17.2 states that in Tamil Nadu Charge, seven cases of educational institutions run by trusts were noticed where there was no evidence available in the records regarding submission of application for approval under section 10(23C) (vi) by the assessees. In six other cases, though the institutions had submitted applications, yet approvals of the prescribed authority granting exemption were not available on record. However exemption was allowed by the assessing officer in these cases without approval from prescribed authority. These cases attracted levy of tax amounting to Rs. 6.73 crore.

52. Responding to the Committee's query on aforesaid Audit observation, the Ministry, in a written note, stated as under:

"The audit's observation is misplaced because the exemption was allowed u/s 11 and not u/s 10(23C)(vi). Though the registration u/s 10(23C)(vi) had not been sought for in 7 cases and had not been granted in 6 other cases, the institutions were registered u/s 12A and were eligible for exemption u/s 11. Under section 10(23c)(vi) of the Income Tax Act, any income of an Educational Institution existing solely for educational purposes, and not for purposes of profit, is exempt if such educational institution is approved by the Director General of Income Tax (Exemption). Section 11 exempts the income of any institution derived from property held for charitable or religious purposes and section 2(15), which defines charitable purpose, includes education also. It is at the option of the institution to seek exemption u/s 10(23C)(vi) or u/s 11 of the Income Tax Act, and the exemptions under these two section are, therefor, not mutually exclusive."

53. The Audit have responded on the aforesaid reply as under:

"Annual receipts of the institutions exceeded thd prescribed limit of Rs. one crore and they were required to get approval u/s 10(23C)(vi). Out of 13 cases, six assessees had applied for approval u/s 10(23C)(vi) which were pending and assessing officers were granting exemption u/s 11&12."

54. The Committee desired to know as to how the assessing officer ensured that requisite approvals had been obtained by those institutions before claiming the exemption of income. In reply, the Ministry stated:

"As the exemption was granted u/s 11 of the Act, the fact that registration u/s 10(23C)(vi), wherever applicable, was either not sought for or not granted was not relevant for the assessing officer. The officers have allowed the exemption u/s 11 after due verification."

55. The Ministry further stated that the approval u/s 10(23C)(vi) has since been granted in the case of Hindu Educational Organisation in November 2003.Necessary instructions have been issued to all field formations to be careful in allowing exemptions, and select all such liable cases for scrutiny assessment.

Paragraph 3.17.3

56. The Audit Paragraph 3.17.3 reveals that in Delhi, DIT (Exemption) charge, the assessing officer completed the assessments of three educational institutions, *viz.* **Oberio Educational Society, St. Joseph Academy and M/s DAV College Trust and Management Society**, which are run by trusts, for the assessment years 2000-01 to 2002-03 in summary/scrutiny manner after allowing exemption under section 10(23C)(vi). Audit scrutiny further revealed that DGIT/DIT (Exemption), Kolkata, the competent authority, had rejected the assessee's applications on 30 August, 2000, 19 June, 2002 and 18 July, 2002, for grant of approval under section 10(23C)(vi) on the grounds that the purpose of the institutions was not solely educational. However, the assessing officer irregularly granted exemption of income without approval of DGIT/DIT which resulted in non-levy of tax of Rs. 23.35 lakh, Rs. 16.35 lakh and Rs. 29.36 crore respectively for the three assessment years.

57. The Committee desired to know as to why the assessing officer did not take into account the rejection of the applications submitted by the assessee for grant of approval by DGIT/DIT (exemption), Kolkata. The Committee also desired to know the basis on which the assessing officer granted exemption of income to these institutions without such approval. The Ministry in their written note, stated as follows:

"The assessee being educational institutions registered u/s 12A of the Income-tax Act, 1961, their income was exempt u/s 11 of the Income-tax Act irrespective of the fact that their applications u/s 10(23C)(vi) were pending for approval.

1. Oberoi Educational Society: In this case, the Assessing Officer had submitted a report on assessee's application for grant of exemption u/s 10(23C)(vi) recommending the same, which was forwarded to the then DGIT (Exemption). In this case the application u/s 10(23C)(vi) for A.Y. 2000-01 was received on 14.10.1999 and the then DGIT (Exemption), Kolkata forwarded the report to CBDT on 30th August 2002 recommending rejection. As per existing procedure, all the applications received up to 31.3.2001 are to be processed for grant of exemption by the CBDT. However, in respect of applications received after 1.4.2001, the DGIT (Exemption) himself is empowered to grant exemption u/s 10(23C)(vi).

In the case of the assessee for the A.Y. 2002-03, notice u/s 143(2) has already been issued and the case is under scrutiny. For A.Y. 2000-01 and 2001-02, in

which audit has raised an objection, remedial action has been taken by issue of notices u/s 148 of the I.T. Act, 1961.

2. St. Joseph Academy: In this case, for A.Y. 1999-00, 2000-01 & 2001-02 the Assessing Officer had submitted a report on assessee's application for grant of exemption u/s 10(23C)(vi) recommending the same, which was forwarded to the then DGIT (Exemption). However, the then DGIT, *vide* his letter dated 19.6.02, forwarded the report to CBDT recommending rejection of the same. As per existing procedure, all the applications received up to 31.3.2001 are to be processed for grant of exemption by the CBDT. However, in respect of applications received after 1.4.2001, the DGIT (Exemption) himself is empowered to grant exemption u/s 10(23C)(vi) of the I.T. Act, 1961.

For A.Y. 2001-02, in which audit has raised an objection, remedial action has been taken by issue of notice u/s 148 of the I.T. Act.

3. D.A.V. College Trust & Management Society: In this case, audit has raised objections for A.Y. 2000-01, 2001-02 & 2002-03 saying that the accounts submitted with the return were not correct. The notes on the accounts submitted along with the audited balance sheet pointed out certain infirmities in the accounts of the assessee and the objections raised by the audit was accepted as correct. Since all these cases were processed u/s 143(1)(a) of the Income-tax Act, it was not within the scope of the section to make adjustments. This fact was already in the knowledge of the then A.O. and notice u/s 148 of the Income-tax Act for A.Y. 2000-01 was issued on 26.11.02. Notices u/s 143(2) were issued for A.Y. 2001-02 and 2002-03 for scrutinizing the cases.

As per the Ministry, these cases were subsequently referred for statutory audit u/s 142(2A) and after receipt of the reports of the Special Auditor, assessments were completed for A.Y. 2000-01 & 2001-02 raising a demand of Rs. 16.61 crore and 24.12 crore respectively. Assessment for A.Y. 2002-03 is still pending for disposal".

58. In reply to a query whether requisite approvals had been subsequently granted by the prescribed authority in all those cases, the Ministry stated as under:

"The approval u/s 10(23C) in the first two cases, where the audit objection was on this issue, have not yet been given as the matter is still being examined. Even in the third case, the approval is yet to be given. However, all the three institutions are registered u/s 12A and are claiming exemption u/s 11 and 12 of the Income-tax Act."

59. As regards the steps taken/initiated to recover the pending revenues in the cases highlighted by the Audit, the Ministry informed in a note as follows:

"There is no loss of revenue in the first two cases as the exemptions were correctly allowed u/s 11 and 12 of the Act. However, remedial steps have been initiated as a measure of abundance precaution. In the third case, there is no loss of revenue due to any mistake on behalf of the AO as he was not empowered to make any adjustments in the income u/s 143(1). However, the objection was accepted on its merits and remedial action has already been taken in assessment

years 2000-01 and 2001-02, which have resulted in the creation of demand of Rs. 16.61 crore and 24.12 crore respectively. A sum of Rs. 1.5 crore has been collected so far and the assessee's appeal is pending with the CIT (appeal)."

60. When asked to suggest a remedy to overcome such situation in future, the Ministry stated:

"All the three cases had been completed u/s 143(1), which does not allow the AO to make any adjustments in the income declared by the assessees. However, to enable the assessing officers to have a deeper look into such cases, CBDT has issued guidelines, *vide* Instruction No. 10/2004 dated 20.9.2004, to compulsorily select those cases for scrutiny assessment where the exempt income exceeds Rs. 2 lakhs; and where exemption has been claimed u/s 11 and the gross receipts exceed Rs. 5 crore."

D. Exemption granted without registration (Para 3.19)

61. Audit has noticed the 37 cases in Assam, Bihar, Kerala, Maharashtra, Madhya Pradesh, Orissa, Rajasthan, Tamil Nadu and West Bengal charges where educational institutions run by trusts had not obtained registration under section 12A of the Act, the assessing officers allowed exemption under sections 11 & 12 without registration, resulting in non-levy of tax of Rs. 3.54 crore as shown below:—

<i>(Rs. in lakh)</i>				
Sl. No.	Name of assessee and CIT & CIT charge	Assessment Year	Gist of mistakes	Tax effect
1	2	3	4	5
1.	Kuarmunda don BOSco Society Rourkela and eight others , Orissa	1998-99 to 2001-02 Summary	Assessee had claimed exemption stating that they were registered but registration numbers were not mentioned. Copies of registration were also not made available to audit.	94.80
2.	St. Francis of Assisi Church, Lazmi and 14 others , Jorhat and Dibrugarh, Assam	1999-00 to 2001-02 Summary	Educational institutions run by the Trusts were neither registered nor had applied for registration but exemption was granted by the assessing officer.	93.26
3.	Computer Management Technical Education Society, Trichy and 3 others Chennai , Tamil Nadu	1999-00 & 2001-02 Summary	Trusts were granted exemption without obtaining registration.	89.70
4.	DAV Model School, CIT Durgapur, Kolkata	1999-00 to 2001-02 Summary	Assessee claimed exemption under section 11 and granted by the assessing officer though it was not registered under section 12A.	21.70

1	2	3	4	5
5.	Indian Institute of Business and Management, Patna, Bihar	2001-02 Summary	Assessee claimed exemption under section 10(22) though it was not registered and being coaching centre, provisions of exemption were not applicable.	18.50
6.	Our Lady of Nazareth School, Thane, Maharashtra	2001-02 Summary	In the absence of trust deeds, trust was not registered. The assessing officer however allowed exemption for income of Rs. 40.95 lakh under section 11 without registration.	12.28
7.	M/s Indo Friends Foundations Indore, Madhya Pradesh	2000-01 Summary	Registration was granted with effect from assessment year 2001-02. Hence assessee was not eligible for exemption for assessment year 2000-01.	7.39
8.	Ettumanoorappan Educational Society, and Pentecost Educational Society, Kottayam, Kerala	2000-01 1995-96 to 1997-98 Summary	Perusal of audited accounts revealed that the assessee had excess of income over expenditure. Exemption under section 11 was not admissible as registration granted under section 12A was effective from 1 April 2002.	6.33
9.	Millat Education Society, Patna, Bihar	2001-02 Summary	Trust was not registered under section 12A. In addition, it received voluntary contribution of Rs. 15.30 lakh from different sources without specific direction, which was not taxed.	6.19
10.	M/s Vinay Prakash Vidya Bhawan Society, Jodhpur and one other at Ajmer, Rajasthan	1996-97 Scrutiny 1999-00 Summary	Assessee were granted exemption under section 11 though they were not registered under section 12A.	4.27

62. While commenting on the cases pointed out by the Audit, the Ministry stated:

"The objections have been mostly raised against orders u/s 143(1) and as such are not acceptable as the assessing officers are not empowered to make any adjustments in the declared income. Even on merits, most of the objections have been found to be misplaced and untenable.

For example, in Kerala region the audit has raised the objection that in cases where Trusts had not obtained registration u/s 12A, the assessing officers had

allowed exemptions under section 11 and 12. The objections raised by the audit is primarily on account of incorrect interpretation of the provisions in the Income Tax Act relating to exemptions available to educational institutions/trusts. Exemptions to the educational institutions are available under section 11, section 12 and also under sub clauses (iiiab), (iiiad) and (vi) of section 10(23C). As per the provisions of the Act, registration u/s 12A is required only in cases where exemption is claimed under section 11 & section 12 of the Income Tax Act. The condition of obtaining registration u/s 12A is not required if the educational institution's income is claimed as exempt under sub clauses (iiiab), (iiiad) and (vi) of section 10(23C). In the cases where the Audit has raised the objection, the assessee Trusts have claimed their income as exempt u/s 10(22) (applicable upto assessment year 1998-99) and u/s 10(23C) (iiiad) (applicable from A.Y. 1999-2000) as they were existing solely for educational purposes and not for the purpose of profit. The Supreme Court in the case of Adinar Educational Institution (224 ITR 310) has held that if the object of the society is educational purposes and not for the purpose of profit, the income of the assessee is exempt from tax. Similar view has been taken by the Kerala High Court in Geetha Bhavan Trust (213 ITR 297). Moreover, the CBDT's instruction No. 112 dated 29.10.1977 states that where all the objects of the Trusts are educational and the surplus, if any from running the educational institution is used for educational purposes only, it can be held that the institution is existing solely for educational purposes and not for purpose of profit. The objection raised by the audit is therefore not correct and should be dropped.

There are only two cases reported under this para from Kerala. In the case of M/s. Ettumanoorappan Educational Society, the audit observed that since the Society was granted registration u/s 12A w.e.f. 31.3.2003, the income of the Society for the assessment years 1999-2000 and 2000-2001 is taxable. The Audit objection arises from the mistaken notion that the income of the society prior to the date of registration u/s 12A is taxable. It may be mentioned that the income of the society is totally exempt u/s 10(23C)(iiiad). Section 10(23C) (iiiad) reads as under:

"Any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed or..." (The amount so prescribed is Rs. 1 crore)

The Society satisfies all the conditions laid down in Section 10(23C)(iiiad) and its income is totally exempt u/s 10(23C)(iiiad). Hence, even if registration has not been granted to the Institution, it is not liable to be taxed. The objection raised by the audit is not correct and hence, not acceptable.

The objection in the case of Pentecost Educational Society was raised on the basis of incorrect interpretation of the Income Tax Act relating to exemption available to educational institutions/trusts u/s 10(22). The audit is of the view that since registration has been granted w.e.f. 1.4.99 only, the income of the society is taxable for the assessment years 1995-96 and 97-98. The assessment years mentioned by audit are 1995-96 to 1997-98 and during this period, section

10(22) was in existence. Section 10(22) as it stood at the relevant time reads as under:—

"any income of a university or other educational institution, existing solely for educational purposes and not for purposes of profit"

In this case the society existed to promote education on a charitable basis. The Society runs a school and is existing solely for educational purposes. The audit objections are therefore not acceptable and should be dropped.

Further, in Orissa region, the audit has pointed out in 8 cases that copy of registration u/s 12A granted by the CIT was not made available to them. In 6 cases the objections have been found to be untenable on verification as the registration certificates were either available on the records of the AO or the CIT. In the other two cases remedial action has been initiated."

63. On being asked as to why the cases pointed out by the Audit were not noticed by the Assessing Officers/Internal Audit Wing, the Ministry have stated that the internal audit in summary cases is done only in 0.5% of the cases and most of the cases never go through the audit scrutiny of the Internal Audit Wing.

64. As regards the present position of the cases highlighted in the Audit paragraph, the Ministry have stated that in cases where the audit objection has been accepted, the cases have been reopened by issuing notices u/s 148 of the Act. However, in most of the cases the objection has not been accepted as the institutions were either already registered u/s 12A or were not required to obtain such registration because their incomes were otherwise exempt u/s 10(23C).

65. The Committee desired to know the remedial measures taken to ensure that exemption of income is granted only to those institutions, who fulfilled the mandatory requirement, as per the law, the Ministry, in their reply, stated as follows:

"The existing system of granting registrations is a rigorous one in itself whereby the scrutiny of applications made u/s 12AA and u/s 10(23C) (vi) in the office of the DGIT/DIT & CCIT/CIT is made thoroughly and registration is granted only after complete satisfaction by these statutory authorities. Wherever shortcomings are noticed in conforming to statutory requirements, the applicants are heard in detail and allowed full opportunity to remedy the same, failing which the applications are rejected through a reasoned order.

In addition to the existing system, the finance Act, 2004 has now laid down a condition w.e.f. 1.10.2004, u/s 12AA(3), that where a trust or institution has been granted registration u/s 123A and subsequently the statutory authority is satisfied that the activities of the trust or institution are not genuine or are not being carried out in accordance with its objectives, he/she shall pass an order in writing cancelling the registration. Such powers of cancellation of approval granted u/s 10 (23C) is also available to the CCIT/DGIT if they are satisfied subsequently that (i) such institution has not applied its income in accordance with the provisions contained in clause (a) of the third proviso; or has not invested/deposited its funds in accordance with the provisions contained in clause (b) of the third proviso; or (ii) the activities of such an institutions are not genuine; or are not being carried out in accordance with all or any of the conditions subject to which it was approved.

Further, the Ministry (CBDT) has issued guidelines, *vide* Instruction No. 10/2004 dated 20.9.2004, to compulsorily select those cases for scrutiny where the

exempt income exceeds Rs. 2 lakhs; and where exemption has been claimed u/s 11 and the gross receipts exceed Rs. 5 crore."

E. Exemptions granted without audited accounts and audit Report (Paragraph 3.24.1)

66. According to Audit paragraph, where the total income of the trust or institution as computed under the Act without giving effect to the provisions of sections 11 & 12 exceeded Rs. 50,000 in any previous year, the accounts of such trusts or institutions should be audited for such accounting year and audit report filed in Form 10B along with the return of income for the relevant assessment year.

67. In paragraph 3.24.1, Audit has noticed the 25 cases in Gujarat, Jharkhand, Maharashtra, Orissa and Rajasthan, where the educational institutions run by trusts for the assessment years 1999-2000 to 2001-2002 claimed exemption without furnishing audited accounts and audit report. Non-compliance of the above provision required withdrawal of exemption in these cases and levy of tax of Rs. 1.86 crore as shown below:—

<i>(Rs. in lakh)</i>				
Sl. No.	Name of assessee and CIT & CIT charge	Assessment Year	Gist of mistakes	Tax effect
1.	Kheda Education Society, and 12 other cases, Gujarat	1997-98 to 2001-02 Summary	Accounts were not audited and audit certificates not filed with the returns, though total income of the institutions exceeded Rs. 50,000 without giving effect to the provisions of section 11 & 12.	64.65
2.	Bhatkya Vimukta Jamati Shikshan Vikas, Pune and six at Kolhapur, Aurangabad, Thane, Maharashtra	1998-99 & 2002-03 Summary	Exemption under section 11 was allowed even though the requisite audit report was not furnished along with the return of income.	64.18
3.	St. Stephen's School & Indian Institute of Science and Management, Hazaribagh and Ranchi, Jharkhand	2000-01 to 2001-02 Summary	Audit Reports in the prescribed form No. 10B were not filed though total income of the institutions exceeded Rs. 50,000 without giving effect to the provisions of section 11 & 12	51.23
4.	Gurunanak Public School, Sambalpur Orissa	1999-2000 to 2001-02 Summary	Certified accounts were not filed along with returns of income.	4.02
5.	M/s Sindhi Panchayat Education, Jaipur Rajasthan	1998-99 & 1999-00 Summary	Accounts of the assessee disclosed that Rs. 3.55 lakh was transferred to another institution, MC Sindhi Panchayat Sr. Hr Secondary School. Taking this into account, prescribed income limit of Rs. 50,000 was exceeded. Audit Report in the prescribed form No.10B was not filed.	1.68

68. As regards the specific reasons for overlooking the aforesaid cases the Ministry have stated that in most of the cases, the returns were processed u/s 143(1) of Income Tax Act and the assessing officers have not powers to make adjustments in the incomes declared by the assessees.

69. When the Committee sought to know the Ministry's position on having a mechanism to identify the educational institutions claiming the exemption without furnishing audited accounts and audit reports, the Ministry stated:

"Though there is no special mechanism to identify such errant educational institutions, the existing system of scrutinising returns is deterrent enough for unscrupulous assessees to make such unlawful claims. The role of internal audit is limited in these cases as the internal audit wing is required to see only 0.5% of all the cases processed u/s 143 (1). As such, 99.5% of such cases do not pass through the audit scrutiny of the internal audit wing of the department".

70. The Committee pointed out that it was a mandatory requirement as per the Act to submit the audited accounts. They, therefore, desired to know as to how the income of educational institutions was being exempted in these cases without audited accounts. The Ministry replied as follows:

"Since most of the cases were completed in a summary manner u/s 143 (1), the assessing officer had no power to adjust the declared income. Further, even on merits, the audit objections are not acceptable in many cases. For example, in the case of Indian School of Science and Management (A.Y. 2000-01), the total income without giving effect to the provisions of section 11 and 12 was Rs. 46,417/-. The assessee did not claim exemption u/s 11 or 12 of the Act. The registration to the institution u/s 12A was only granted w.e.f. 1.4.2000 i.e. relevant to the A.Y. 2001-02. As such, as per provisions of section 12A(b), audit report in form 10B was not required to be filed. Thus it is seen that audit has raised an objection that exemption was granted even though the assessee did not file the audit report in form 10B whereas, the facts of the case show that the assessee neither claimed any exemption nor was required to file audit report in form 10B.

Wherever the mistakes have been found to be acceptable on merits, necessary remedial action have been initiated/completed."

71. During oral evidence, when the Committee desired to know the Ministry's reaction to the proposal that every educational institution should mandatorily be required to submit audited accounts along with the returns of income within a year, the Secretary (Revenue) stated that this would require an amendment of Section 139(4) (c) so that all institutions, irrespective of monetary limits for receipt or whether financed by the Government should also be brought under the requirements of mandatory submission of audited accounts.

XI. Weakness in administration of law

Non-monitoring of filing of returns by educational institutions

72. Audit paragraph pointed out that there is no central agency in the department to monitor the filing of income tax returns by educational institutions. Consequently,

the department is not in a position to ensure that all private schools, colleges and coaching centres file returns of income.

73. While providing category-wise details of the education institutions, which are covered under the criteria of levy and non-levy of income tax, the Ministry stated as under:

"Income of educational institutions are exempt u/s 10(23C) (iiiab) (iiiad) and 10 (23C) (vi) and educational institutions deriving income from property held under trust are exempt u/s 11 of the Income-tax Act, 1961. While educational institutions having aggregate receipts upto Rs. 1 crore neither have to apply for approval nor have to file returns, those with aggregate receipts above Rs. 1 crore have to apply for approval and have to file returns u/s 139(4C). All institutions being Trusts and registered u/s 12A have to file returns u/s 139(4A).

However, educational institutions, which run with a profit motive, are liable for levy of tax and are required to file their returns with their jurisdictional officer. Such institutions may be constituted as Society or private enterprise including Proprietary institutions. Besides, coaching centres are not covered under the provisions of section 10(23C) or 11 and fall in the taxable category if their income is above taxable limit."

74. When the Committee desired to know the mechanism devised by the Department to exercise adequate and necessary checks on potential and reported misuse of these provisions by the educational institutions, the Ministry stated as follows:

"The department has trust/AOP Circles/Wards for assessment of the majority of educational institutions claiming exemption u/s 10(23) (vi) or 11. Section 139 (4C) (e) makes it mandatory for educational institutions existing solely for the purpose of education and not running with a profit motive, to file their returns if their income exceeds Rs. 50,000/- Similarly, section 139(4A) makes it mandatory for Trusts to file their returns if their income exceeds Rs. 50,000/-. While for approvals u/s 10 (23C) (vi), audited accounts and any such other information may be called from the applicant assessee by the Central Government/CCs concerned before granting approval, assessee who are granted registrations u/s 12A have to enclose accounts with their returns. This ensures that the audited accounts of a large number of institutions are available with the department which are scrutinized to bring unaccounted and/or unapplied income to tax and to find diversion of profit for personal gains and/or violations in appropriation and application of the receipts/income in accordance with the provisions of Section 13 of the Act. Section 12AA (3) and the 11th proviso to Section 10(23C) (vi) provide for cancellation of the registrations u/s 12A and rescinding the notification or withdrawing the approval u/s 10(23C) (vi) respectively wherever subsequently it is found that the institution is not genuine or the activities are not being carried out in accordance with all or any of the objects and/or conditions, or in a case where the application of income or investment/deposits are found to be not in accordance with the provisions of Law."

75. The Committee further desired to know the methodology adopted by the Ministry in order to ascertain that all the private schools/colleges and coaching centres

comply with the requirement of filing of return of income. The Ministry, in their written note stated as follows:

"Sections 139 (1) and 139 (4A)/(4C) specifically provide for filing of returns by certain categories of educational institutions. If returns are not filed within the due date, notices u/s 142 (1) and/or 148 are issued, as the case may be. It is not compulsory for all educational institutions to file returns of income. However, the department is vigilant and the monitoring of defaulting institutions is an on-going process wherein, surveys and searches are conducted selectively in appropriate cases.

Further, where it is subsequently found that the institution is not genuine or the activities are not carried in accordance with the specified purpose/objects, the notification/approval or registration u/s 10(23C) or 12A can be rescinded/withdrawn or cancelled."

76. The Committee sought to know the details of the position of actual number of private schools/colleges and coaching centres, those filing return of income and are subject to assessment as well as those not filing return of income and are not on the records of the Income Tax Department. In reply, the Ministry stated:

"Besides the institutions allowed exemption, there are private institutions, in various status, who file their returns in their respective jurisdictional wards/circles if they have taxable income. Thus, all educational institutions do not fall under the taxable entity and are not required to file their returns. The Department does not have a comprehensive and separate data base on private schools, colleges and coaching centers and, therefore, it is not possible to say as to how many such educational institutions are actually filing their returns and how many are not."

77. On being enquired as to what action has been taken against the non-filers of returns, the Ministry informed the Committee that non-filers of returns are brought to the tax net by issuing notices u/s 142 (1) and 148. They are also covered under surveys and searches to bring their undisclosed income to tax.

78. The Ministry, in their written note, further informed that the audit's recommendation of mandatory filing of returns have been taken care of by inserting sub-section 4C to section 139 w.e.f. 1.4.2003 in respect of educational institutions with aggregate receipts above Rs. one crore.

79. During the course of oral evidence, the Committee expressed the view that all educational institutions should be asked to file their returns as this would result in widening the tax base and also in better monitoring of such institutions. The Ministry, in their reply, informed the Committee that the proposal to make filing of returns compulsory for all educational institutions is under active consideration.

Non-verification of activities of educational institutions

80. According to Audit paragraph, it was judicially (Aditanar Educational Institution Vs Addl. CIT 224ITR 310 (SC) held that availability of exemption should be evaluated each year to ascertain whether the institution existed during the relevant year solely for educational purposes and not for the purpose of profit. Finance Act, 1998, also

provided that exemption to educational institutions should be granted only after ensuring that their activities were carried out according to their objectives.

81. Audit however, noticed that the assessing officers did not ensure whether the institutions were in fact fulfilling the prescribed conditions.

82. Audit review has also revealed that the department has no effective and working mechanism to evaluate the genuineness of exemption claimed by educational institutions as maximum assessments had been finalized in summary manner, which has, in turn, defeated the very purpose of tax policy decided in the Finance Act, 1998 to the effect that exemption to educational institutions should be granted only after ensuring that their activities were in accordance with their objectives.

XII. Inadequacies in law

83. According to Audit, two separate clauses providing exemption under Section 10(23C) and 11 and 12 of the Act overlap each other and are being misused by private educational institutions. Adit analysis of tax laws made from administration of tax policy has also revealed the following inadequacies:

(i) The very purpose of abolition of automatic exemption provided earlier under section 10 (22) of the Act has been defeated as new provisions enacted under sections 10 (23C) (iiiab)/(iiiad) did not yet provide any monitoring mechanism for checking the genuineness of activities. Such institutions are not required to file returns.

(ii) Educational institutions that claim exemption under section 10(23C) (vi) are required to obtain approval every three years from the prescribed authority while in the case of trusts, registration once granted is not necessary to be renewed further. There is no specific and clear-cut provision whether educational institutions could claim exemption only under section 11 & 12 or also under section 10 (23C) (vi) as both the sections are not mutually exclusive. Educational institutions run by trusts, which are not obtaining requisite approval under section 10 (23C) (vi), are now claiming exemption under sections 11 & 12 according to their convenience. There is no mechanism to ensure that the institutions could claim exemption either only under section 11 & 12 or 10 (23C) (vi) of the Act.

(iii) There is no time limit for granting approvals under Clause 10(23C) (vi) and nothing has been specified as to how in the absence of approval, exemption of income during that period is to be regulated.

(iv) Trusts are required to furnish audited accounts with audit certificate alongwith returns of income while there is no such provision in the case of exemption under Section 10 23C) (vi) Hence, early evaluation of activities is difficult in respect of educational institutions run by other than trusts.

(v) Under Section 11(5) of the Act, the unutilised surplus of the institutions is required to be invested in specified investments for the specified period and used for educational purposes only. However, no monitoring mechanism is in place to monitor such investments".

84. While agreeing to the aforesaid point raised in Audit paragraph, the Secretary (Revenue) during evidence stated as follows:

"We have looked at that aspect. There is a loophole there which can be made use of by some people. Whether we can make use of both the provisions or we should synchronise it by merging the two and have a single provision, I think we will have to study that a little more. That is because there are institutions under Sections 11 to 13, which deal with not only education but also with many other purposes. They are multipurpose trusts. So, even if we say that all educational institutions must come under section 10 (23C) (vi), we cannot also deny the facility to register a multipurpose trust. So, how can these two be reconciled?... We would really like to see how it could be synchronised. Probably, we need to talk to Law Ministry and so on but we will certainly look at that provision in greater detail."

XIII. Miscellaneous

(a) Income escaping assessment

85. According to the Audit para, it has been judicially (Unnikrishnan J.P. & Others Vs State of Andhra Pradesh & Other, 1993 AIR 2178, SCR(1) 594) held that there cannot be compromise on commercialization of education and the educational institutions cannot charge more than the fees fixed by the Government in any form either as donation or capitation fees.

86. Besides income from school activities, the private educational institutions earn substantial income from donations in the name of building fund or by charging hefty fees for availing facilities like swimming pool etc. Such institutions are understood to have amassed huge wealth in the name of such funds/charges etc. The amount of donation asked by well-known institutions even for admission into a nursery class, reportedly range between Rs. 25,000 and Rs. 50,000.

87. During evidence, the Committee desired that the funds created by such institutions should form a part of their income and thus should be appropriately taxed. The Committee opined that exemption should not be allowed on such funds. In this connection, the Ministry agreed to consider the proposal and take necessary suitable measures.

(b) Institutions run by different franchisees

88. During evidence, the Committee referred to the fact that a number of private bodies run a number of educational institutions through different franchisees and pointed out that they all should be considered as a single entity for the levy of appropriate tax. Explaining the position in this regard, the Ministry informed that as per existing provisions of law, and the accounting standards prescribed by the Institute of Chartered Accountants of India, this cannot be done as franchisees are separate entities and cannot be merged with the parent institution. They have to be taxed separately. However, individual branches of one parent institution are not taxed separately and their accounts are merged with that of the parent institution.

(c) Status of Computerisation

89. The Committee drew the attention of the witnesses to the fact that the Ministry have not been able to prepare database despite the fact huge funds have been spent

over the past 5-6 years on computerisation. Explaining the position in this regard, the Secretary (Revenue) deposed during evidence as follows:

"At present, we are using four software programmes. There is a problem of compatibility between these software. We are trying to upgrade these software to see that all the information flows in. We would also like to integrate the income-tax information system with that of the excise and customs information system and perhaps the VAT system so that information flows there. Once the information flows in, we will go through a system of cross verification whether the evasion is taking place and we can then make sure that the problem of evasion is handled effectively without creating too much of harassment in the field. This is our objective and we are working towards it. Hopefully in a couple of years we will try to bring all these systems together and we are giving very high priority to it."

90. Supplementing in this regard, the Chairperson (CBDT) stated:

"Computerisation really started in 2001 and now we are in 2005. We have made a lot of headway in many Departments."

91. She added:

"We have spent a lot of money on computers already. We have a number of applications on which we are working. Each and every return is processed in the computer and then we have a system by which we have PAN data also. There are a number of applications, which are processed simultaneously and with passage of time, we are updating our computers also."

OBSERVATIONS/RECOMMENDATIONS

92. The field of education has witnessed unprecedented change in the last decade with the emergence of a large number of private educational institutions and coaching centres all over the country. With a view to encouraging the promotion and development of education, income of educational institutions established solely for the purpose of education either on no-profit basis or run by charitable trusts has been exempted from levy of income tax subject to certain conditions.

93. Income Tax Act, 1961, provides for exemption of income of educational institutions. Sections 11, 12 and 13 of the Act, *inter-alia* deal with exemption in respect of income of educational institutions run by charitable trusts. Section 2(15) defines "Charitable purposes" to include relief of the poor, education, medical relief and the advancement of any other object of general public utility. These institutions are required to fulfill certain conditions to be eligible for availing exemption of income.

94. Upto assessment year 1998-99 income of educational institutions existing solely for educational purposes and not for purposes of profit was exempted under section 10 (22) of the Income Tax Act. Such institutions could be run by any entity such as individual, Hindu Undivided Family, association of persons, firms, company and so on. These were not required mandatorily to file returns of income till assessment year 2003-04.

95. The memorandum explaining the provisions in Finance Bill 1998, recognized that section 10(22) was widely misused in the absence of any monitoring mechanism for checking the genuineness of the activities of these institutions. This clause of the section was therefore, omitted with effect from 1 April, 1999. It was made clear that educational institutions, which are of charitable nature but not registered as trusts might now claim exemption of income with certain conditions as applicable to charitable trusts.

96. The following provisions under clause 10 (23C) were inserted *w.e.f.* 1st April, 1999 for exemption of income of educational institutions:

(a) Section 10 (23C) (iiiab)—An educational institution, which is wholly or substantially financed by the Government, was exempt from levy of tax under this section.

(b) Section 10 (23C) (iii ad)—An educational institution, whose aggregate annual receipts did not exceed Rs. one crore, was exempt under this section.

(c) Section 10 (23C) (vi) : An educational institution with annual receipts of more than Rs. one crore could claim exemption of income after obtaining approval from the prescribed Income Tax Authority for a period not exceeding three assessment years at any one time provided it applied its income exclusively to the objects for which it was established, under this Section.

(d) The Act does not separately deal with exemption of income of coaching centres. Coaching Centres are not educational institutions existing for charitable purposes falling within the ambit of sections 10, 11 and 12 of the Act. As such, exemptions described above are not available to them. Their income is to be taxed under the provisions applicable to normal business under sections 15 to 59 of the Act.

97. The Committee's examination of the subject is based on the Audit review, which sought to ascertain the efficiency of the Income Tax Department to assess various educational institutions. The objectives of the Audit review included whether all private educational institutions are on the records of the Income Tax Department and are subject to assessments whether adequate steps have been taken by the department to bring all the private educational institutions into the tax net whether there exists any machinery in the department to exercise adequate and necessary checks in this area and whether tax laws have been enacted with clear, unambiguous and effective provisions for their administrations and for prevention of abuse of misuse. While it is required of the Income Tax Department to ensure through the operation of the Income Tax Act that incomes of only genuine and eligible institutions are exempted from levy of income tax and correct amount of tax is paid by all institutions not so exempt, the Committee during their examination of the subject, noticed a number of inadequacies in the system as well as deficiencies in the proper implementation of tax laws which has resulted in substantial revenue loss to the Government. These facts have been discussed in the succeeding Paragraphs.

98. The Committee note that a large number of private schools, colleges and coaching centres have come up whose income is not so exempt from levy of income tax. The Committee are concerned to note that there exists no database in the

Department of Revenue, Ministry of Finance, in respect of such private educational institutions and coaching centres. The Committee regret to observe that there is no systematic and organised approach in the Department to ensure that all educational institutions, which are required to fulfill certain obligations under the Act to claim the exemptions are, in fact, doing so before claiming the tax benefit. The Secretary (Department of Revenue) conceded during evidence that at present they do not have activity-wise databases. The Committee are constrained to point out that the Ministry of Finance, with large resources at their command have not made any effort to identify the total assessees in the country by having effective co-ordination with the State Governments/Universities/other regulatory authorities which has resulted in substantial revenue loss to the exchequer. The Committee understand that various projects are underway in the Directorate General of Income-tax (Systems), which would help in building up a scientific database and for this the expertise of professional agencies is proposed to be utilised by the Ministry of Finance (Department of Revenue). The CIB Section of Income Tax Department is also stated to be engaged in collection of information and preparing a database of schools, colleges and coaching centres as obtained from various sources. The Committee would like the Ministry to undertake these proposed measures expeditiously with a view to creating a reliable database within four months of the presentation of this Report. The database, once prepared, should be updated periodically so that none of the potential assessees escape the scrutiny of Income Tax Department.

99. The Committee note that the bulk of assessments of private schools, colleges and charitable trusts are by and large completed in a summary manner, which is not desirable. The Committee would like to point out that unless cases involving assessments of educational institutions are identified and adequate number are selected for scrutiny, the department will have no means to ensure effective compliance of tax laws in such cases. The Chairperson, CBDT conceded during evidence that 98 per cent of cases are completed on the basis of returns filed by the assesseees and about two per cent of the cases are picked up for scrutiny. The Committee have now been informed that guidelines have been issued on 20.09.2004 to pick up all the cases where exemption is claimed under section 11 of the Income Tax Act and the gross receipt exceeds Rs. 5 crore for scrutiny assessment. Besides, a residual clause has been inserted to enable the field officers to select any other case for scrutiny with the prior approval of the Chief Commissioner of Income Tax (CCIT) concerned. The Committee would like to point out that the Ministry should have considered these steps prior to being pointed out by Audit. Considering the very fact that large revenue potential exist in assessment of all eligible private educational institutions, the Committee recommend that not only the guidelines issued by the Department in this regard should be followed scrupulously but discretion should also be allowed to the assessing/supervisory officers to randomly pick up cases for scrutiny so as to prevent these institutions from evading the payment of their legitimate dues to the Government.

100. The Committee's examination of the subject reveals that so far the Department has not been able to widen the tax base by identifying such private educational institutions run by trusts or other than trusts which earn huge sums of money by functioning in a not-so charitable manner. The Committee feel that in order to discourage the practice of claiming exemption by ineligible institutions under the

existing provisions of the Income Tax Act, it is high time that the Department applies the provisions of tax exemptions with utmost care and only to genuine and eligible institutions. For this, it is essential that the Department should prepare and monitor a comprehensive database of all such institutions and make it mandatory for them to file their annual income tax returns. The Committee have already emphasised the need for creating a reliable database earlier in this Report.

The Committee note that Section 139 (4C) (e) makes it mandatory for educational institutions that exist solely for the purpose of education and not running with the profit motive, to file their returns in case their income exceeds Rs. 50,000. The Committee, however, understand that there is no central agency in the Department to monitor the filing of income tax returns by educational institutions. Consequently, the Department is not in a position to ensure that all private schools, colleges and coaching centres file their returns of income. It is, therefore, not clear to the Committee as to how the income of educational institutions could be assessed correctly in the absence of complete information about potential assesseees. In response to the Committee's view that every educational institution should be mandatorily required to file returns, it has been informed by the Ministry that this has been taken care of by inserting Sub-section (4C) to Section 139 *w.e.f.* 1st April, 2003 in respect of educational institutions with aggregate receipts above Rs. 1 crore. The Committee have also been informed that the proposal to make filing of returns compulsory for educational institutions is under active consideration of the Department. The Committee hope that an early decision will be taken in the matter. They recommend that a foolproof mechanism may be evolved to ensure that all the private educational institutions (as per the databases to be created) which have assessable income file their returns regularly and the defaulters are brought to book.

The Committee note that another tool for unearthing undisclosed income available with the Department is Section 133A and 133B of the Income Tax Act that empower the assessing officers to survey the business premises of taxpayers to locate new assesseees. However, they feel that adequate steps have not been taken by the concerned authorities to bring all the private schools, colleges and coaching centres into the tax net through adequate and focussed use of the said power to conduct surveys. The Committee note that no surveys were conducted in Bombay, Thane, Pune, Aurangabad, Kolhapur and Nagpur during the period 1999-2000 to 2001-2002. In Delhi, only one CIT confirmed to Audit that no survey was conducted and other 13 CITs did not furnish a reply. In Tamil Nadu charge, DIT (Exemption) and CIT-VIII, Chennai confirmed that no surveys were conducted. In Andhra Pradesh, only one private educational institution in Visakhapatnan charge and 7 in Vijayawada charge were brought into tax net. In Rajasthan, the Department had conducted 1138 surveys and only one educational instituion was brought into tax net. In other charges, no surveys were reported to be conducted. The Ministry have asserted that a large number of surveys are conducted every year and that various field formations have reported about surveys being conducted on such institutions. The Committee find it incomprehensible as to how in the absence of any reliable database (as commented earlier), it is possible for the assessing officer to use the power of survey efficiently. Moreover, the aforesaid argument does not seem to carry weight as the Ministry have

not supported their contention by furnishing exact figures of the number of surveys conducted by them during last 2-3 years and the number of assessees identified as a result thereof. The Committee would like to be apprised of the details of the cases which were brought under the tax net during the preceding two years, as a result of the efforts initiated by them alongwith the number of new assessees that have been brought to tax net and the amount of additional revenue realised from them. The Committee hope that with creation of a reliable database of private educational institutions, the Department would instruct the assessing officers to use the powers available with them under relevant provisions of the Act judiciously to identify potential taxpayers and progressively wipe out the widening gap between taxpaying and tax-evading educational institutions.

101. The Committee note that an educational institution existing solely for educational purposes and not for the purpose of profit and whose aggregate annual receipts exceed Rs. one crore is required to obtain an approval from the prescribed authority for claiming exemption of income. With effect from 1 April, 1997, every trust needed to obtain registration to become eligible to claim exemption of income under sections 11&12. The assessee has to make an application for registration to the CIT either before 1 July, 1973 or within one year from the date of creation of trust. If application is made after expiry of the aforesaid period, the Commissioner on reasonable grounds may condone the delay. Every order granting or refusing registration shall be passed before the expiry of six months from the end of the month in which the application is received. These provisions indicate that educational institutions run either by non trusts or trusts could claim exemption of their income under both the sections 10(23C)(vi) and 11&12 according to their convenience as these sections are not mutually exclusive in operation.

The Committee are constrained to point out that there is no system in the Department at present to ensure that exemption of income is granted only to those educational institutions which have obtained approval/registration from prescribed authority. In support of this inadequacy a number of instances have been cited by the Audit in the Paragraphs under review. The Committee are, therefore, not convinced by the plea of the Department that the system of giving approvals is rigid and meticulous and that every effort is made so that only genuine and non-profit making institutions get approval. The Committee have also been given to understand that a number of suggestions under consideration of the Ministry in this regard are that: (i) a clause may be inserted in Section 10(23C) so as to provide for mandatory audit of accounts and enclosing the audit report with the return of income every year; (ii) Penalty u/s 271B may be made applicable to audit u/s 10(23C) and 12A; and (iii) Institutions should apply to the Assessing Officer in the specified form and specify the purpose for accumulation irrespective of the fact whether the accumulation is 15% or more. According to the Ministry, Form No. 3A should also be modified so as to include the nature of activity in the Return. If this information is not given, the return may be treated as defective u/s 139(9) and include a column for number & date for approval u/s 10(23C). Needless to say that these measures now proposed by the Ministry should have been taken much earlier. The Committee expect the Ministry to finalise these proposals and implement the same expeditiously.

102. The Committee note that prior approval of prescribed authority is required for claiming exemption of income by an educational institution existing solely for educational purposes and not for the purpose of profit and whose aggregate annual receipts exceed Rs. one crore. However, there is no time limit for granting such approval or rejection under Section 10 (23C) (vi) and there is no specific provision for dealing with cases where applications are pending for approval for some reason. The assessing officer is not competent to grant exemption of income in such cases without approval of prescribed authority. Citing the examples of delay in or rejection of approvals, the Audit noticed in Maharashtra charge, that as on 31 March 2003, 103 cases were pending approval for exemption. Out of 103 cases, 88 were pending with DIT(Exemption) Mumbai alone. Out of 88 pending cases, 24 were pending for more than two years, 33 were pending for more than one year and institutions were claiming exemption under section 10 (23C)(vi) without approval of prescribed authority. Thus the objective of introducing the new provision 10(23C)(vi) for grant of approval after examination of the genuineness of the activities of such institutions has not been served. Keeping in view these shortcomings, the Committee feel that there is no reason as to why appropriate legal provisions could not be incorporated in the Act so as to specify a fixed time limit for disposal of such applications. The proposal to fix the time limit is now stated to be under active consideration of the Ministry. The Ministry have also assured to put the names of the institutions, that have been granted registration/approvals, on their website. The Committee would like to be informed of the precise steps taken in this regard. They cannot but over emphasised that there should be an inbuilt system in the Department to review these shortcomings noticed from time to time so as to *suomoto* take suitable remedial measures without any delay.

103. Chapter-III of the Audit Report on Assessment of Private Schools, Colleges and Coaching Centres has highlighted the cases relating to exemption of income without approval of prescribed authority in paras 3.17.1, 3.17.2 & 3.17.3; exemption granted without registration in para 3.19; and exemptions granted without audited accounts and audit reports in Para 3.24.1. In para nos. 3.17.1 to 3.17.3, two cases in Karnataka region, thirteen cases in Tamil Nadu and three cases in Delhi region have been reported which attracted non-levy of tax and interest of Rs. 36.79 crore. Similarly in para 3.19, 37 cases in Assam, Bihar, Kerala, Maharashtra, Madhya Pradesh, Orissa, Rajasthan, Tamil Nadu and West Bengal charges have been identified where the exemption of income without registration resulted in non-levy of tax of Rs. 3.54 crore. In case of para 3.24.1, exemptions were reportedly granted without audited accounts in 24 cases in Gujarat, Jharkhand, Maharashtra, Orissa and Rajasthan, that led to non-levy of tax of Rs. 1.26 crore.

In respect of Para 3.17.1, the Committee note that failure on the part of the Department to disallow exemption in the case of two assesseees in Karnataka, Bangalore Charge, viz. Desheeya Vidyashala Samithi, Shimoga and Education Society of Sisters of St. Joseph of Cluny, Bangalore resulted in under assessment of income totalling Rs. 81.32 lakh with consequent non-levy of total tax and interest of Rs. 30.51 lakh. Although the annual aggregate receipts of the institutions crossed Rs. one crore, they did not get themselves approved by the prescribed authority under Section 10(23C)

(vi) or get recognised under Section 12A of the Act. Moreover, the assessing officer exempted the income though he was not competent to do so. The Committee feel that mere application u/s 10(23)(vi) does not entitle an assessee to exemption which can be allowed only on receipt of approval from competent authority. The Ministry have explained that in these cases, the procedure for granting of approvals could not be followed as the cases were summarily assessed u/s 143(1). Regarding remedial steps taken to withdraw the exemption of income granted to those institutions and to recover tax due from them, the Committee have been informed that the proceedings u/s 148/147 have been initiated in both the cases which are likely to be completed by 31.03.2005. The tax demand and the interest thereon according to the Ministry will be recovered expeditiously thereafter. The Committee regret to point out that the proceedings were made to wait till 31st March, 2005 for completion, when the cases were already more than 3 years old. The Committee recommend that the Ministry should put in place a suitable mechanism for completion of remedial action on priority basis in similar cases, instead of waiting till the last day of the Financial Year, so that the revenue could be realised faster.

104. In Tamil Nadu charge, seven cases of educational institutions run by trusts were noticed, where no evidence was available in the records regarding submission of application by the assesseees for approval under section 10(23C)(vi). In six other cases, the concerned institutions had submitted applications, but the approvals of the prescribed authority granting exemption were not available on record. However, exemption was allowed by the assessing officer in these cases without approval from prescribed authority. These cases attracted levy of tax of Rs. 6.73 crore. Further, annual receipts of the institutions exceeded the prescribed limit of Rs. one crore and they were required to get approval u/s 10(23C) (vi). Out of 13 cases, six assesseees had applied for approval u/s 10(23C) (vi), which were pending and assessing officers were granting exemption u/s 11 & 12. The Ministry have now informed the Committee that the approval u/s 10(23C)(vi) has since been granted in the case of Hindu Educational Organisation in November, 2003. According to the Ministry the notification u/s 10(23C)(vi) was issued in the aforesaid case, though the income was exempted u/s 11 of the Act. The Committee would like to point out that the principle issue here is availability of alternate provisions, namely Sections 11/12 and Section 10(23C) (vi), in the statute to the assesseees and the resultant redundancy of section 10(23C) (vi), when assesseees could end up avoiding the rigours of detailed examination and prolonged procedure contemplated under Section 10(23C) (vi) of the Act. The Committee feel that since two separate Clauses providing exemption under Sections 10(23C), 11 and 12 overlap each other, these are being misused by educational institutions, apart from creating flaws in their tax assessments. They, therefore, recommend that this deficiency should be suitably resolved by necessary amendments in the provisions or by introducing a single section/clause for exemption of educational institutions, whether run by trusts or other than trusts. They further urge the Ministry to strive in order to ensure that institutions flouting the legal requirement with impunity should be dealt sternly.

105. The Committee are distressed to find that irregular grant of exemption without approval of DGIT/DIT in case of three educational institutions Oberoi Educational Society, St. Joseph Academy and M/s DAV College Trust and Management

Society, run by trusts in Delhi DIT (Exemption) charge, resulted in non-levy of tax of Rs. 23.35 lakh, Rs. 16.35 lakh and Rs. 29.36 crore respectively for the assessment years 2000-01 to 2002-03. In case of Oberoi Education Society, the Department took almost three years to process the application under section 10(23C)(vi), which was ultimately not approved. It was also found that the approval u/s 10(23C) (vi) in all the cases has not yet been given and in the first two cases the matter is still being investigated. The Committee are surprised that the Department took three years to decide for grant of exemption under section 10(23)(vi) and rejection by DG (IT), Kolkata in the case of Oberoi Education Society. Oberoi Education Society is a peculiar case when the department took almost three years to process the application under section 10 (23C)(vi) which was ultimately not approved. Whereas, there is no compulsion on the assessee to avail the exemption as it is free to invoke section 11/12, being a trust, there is also no compulsion on the department to finally decide applicability of section 10(23C)(vi), a provision that was specifically introduced to ensure rigorous application of provisions for exemptions. What has surprised the Committee is the fact that there is no mechanism available within the department to identify or link the cases of trusts and those seeking exemption of section 10(23C)(vi). The combined effect of all these shortcomings is that a significant provision of the act, introduced with specific purpose, is not enforced. The Committee feel that this needs to be seriously examined and suitable time limit fixed for deciding cases of application u/s 10(23C)(vi) and penalizing such institutions which do not follow the requirement instead of routinely allowing exemption u/s 11/12A. From the foregoing, the Committee are constrained to observe that loopholes in enforcement of significant provisions of the Act need to be seriously examined and suitable time limit fixed for deciding cases of application u/s 10(23C)(vi). They feel that the very purpose of having a law is defeated, if it is not implemented earnestly. The Committee, therefore, desire that as and when such cases of illegal or irregular exemptions come to the notice of the Department, suitable punitive action should be taken expeditiously against the erring officials without fear or favour, in order to prevent consequential loss to the exchequer.

106. With effect from 1st April, 1997, every trust is required to obtain registration to become eligible to claim exemption of income u/s 11 and 12. The test checks by Audit has revealed that in 37 cases falling in Assam, Bihar, Kerala, Maharashtra, Madhya Pradesh, Orissa, Rajasthan, Tamil Nadu and West Bengal charges, where educational institutions run by trusts had not obtained registration u/s 12A of the Act; the assessing officers allowed exemption under sections 11 and 12 without registration resulting in non-levy of tax of Rs. 3.54 crore. In their response, the Ministry have stated that most of the cases were completed u/s 143(1), wherein the Assessing Officer could not have disturbed the declared income. Moreover, in few cases, the institutions had approvals under the relevant clauses of section 10(23C) and, thus there was no requirement to be registered u/s 12A. The Ministry have taken the stand that these sections are not mutually exclusive and are applicable to educational institutions at the option of the assessee applicant. While the Committee desire

that the Assessing Officers must ensure that eligible assesseees get registered before claiming any exemption, they also feel that cases of trusts must be processed u/s 11 & 12 that exclusively deal with exemption in respect of educational institution run by Charitable Trusts and not under section 10(23C) or 143(1) which do not bind them to get themselves registered before claiming exemptions. The Committee are also not impressed by the assertion of the Ministry that the existing system of granting registrations is a rigorous one and registration is granted only after complete satisfaction of the statutory authorities, as the Ministry themselves have admitted that they have reopened the cases where the audit has objected that the educational institutions run by trusts were allowed exemptions without registration. The Committee, therefore, recommend that it should be ensured that trusts that claim tax exemptions for running educational institutions invariably get themselves registered. Besides, they desire that all cases where exemptions have been granted wrongly or illegally must be probed with a view to fixing responsibility. The Committee would like to be intimated about precise steps taken in this direction.

107. Where the total income of the trust or institution as computed under the Act without giving effect to the provisions of Sections 11 and 12 exceeded Rs. 50 thousand in any previous year, the accounts of such trusts or institutions should be audited for such accounting year and audit report filed in Form 10B alongwith the return of income for the relevant assessment year. The Committee note that in 25 cases falling in Gujarat, Jharkhand, Maharashtra, Orissa and Rajasthan charges, the educational institutions run by the trusts for the assessment years 1999-2000 to 2001-2002 claimed exemption without furnishing audited accounts and audit reports. According to the Committee non-compliance of the above provision required withdrawal of exemptions in these cases and levy of tax of Rs. 1.26 crore. In most of the cases according to the Ministry, the returns were processed under Section 143(1) of the Income Tax Act and the assessing officers have no powers to make adjustments in the income declared by the assesseees. The Ministry have admitted that there is no special mechanism to identify such errant educational institutions, the existing system of scrutinising returns is deterrent enough for unscrupulous assesseees to make such unlawful claims. The role of internal audit is limited in these cases as the internal audit wing is required to see only 0.5% of all the cases processed u/s 143(1). As such, 99.5% of such cases do not pass through the audit scrutiny of the internal audit wing of the Department. The Committee are not aware whether the aforesaid cases have been selected for scrutiny by the concerned authorities subsequent to the issue of audit observation. As the Ministry have themselves admitted that there is no special mechanism in place, the Committee need to be satisfied as to how the Ministry consider the existing system of scrutinising returns as adequate. The Committee would like to be informed, if any, measures are contemplated to strengthen the system in this regard.

108. From the foregoing it is evident that the laws providing tax exemption to educational institutions suffer from various inadequacies, for example, the

new provisions enacted under Section 10(23C)(iiiab)/(iiiad) do not yet provide any monitoring mechanism for checking the genuineness of activities of institutions claiming exemptions. There is no mechanism to ensure that the institution could claim exemption only under sections 11 and 12 or 10(23C) (vi) of the Act. Also, there is no time limit for granting approvals under clause 10(23C) (vi) and nothing has been specified as to how in the absence of approval, exemption of income during that period is to be regulated. Besides there is not provision in the case of exemption under Section 10(23C) (vi) to furnish the audited accounts with audit certificate alongwith returns of income and finally, no monitoring mechanism currently is available to monitor the investment of unutilised surplus of the institutions u/s 11(5) of the Act. While conceding that there exists a loophole, the Secretary (Revenue) informed the Committee during evidence that they will have to study a little more to see if they can make use of both the provisions [(Sections 11, 12 and 10 (23C) (vi)] or synchronise it by merging the two and have a single provision. The Committee are also of the view that the purpose of insertion of new Clause under Section (23C) may not have been yielded the desired results and had rather created more complications and infructuous work. While observing that the existing tax laws are already very complex, the Committee feel that it is imperative that the law is made simpler and clearer to avoid any misinterpretation/misuse of the same. They, therefore, desire that the Department of Revenue should undertake such an exercise expeditiously in consultation with the Ministry of Law as well as the Audit and the lacunae, in the law be plugged suitably.

109. The Committee are of the view that apart from earning income from educational activities, several private institutions earn income by asking for donations/contributions from their wards in the name of building fund, swimming pool charges, calamity fund, poor fund etc. although it has been judicially held in case of Unnikrishnan J.P. & Others Vs State of Andhra Pradesh & Others, 1993 AIR 2178, SCR(1) 594 that the educational institutions cannot charge more than the fees fixed by the Government in any form, either as donation or capitation fees. The Committee are convinced that there is no dearth of cases where big amount as donations are taken before allowing admission of children in various schools. During evidence the Committee had, therefore, desired that these funds should form a part of the income of such institutions and be taxed and exemption should not be allowed on such funds. The Ministry have subsequently agreed to consider the proposal and take necessary suitable measures. The Committee would like to be intimated of the precise steps taken in this regard.

110. The Committee further find that certain educational institutions are earning substantial income by lending their premises for commercial activities and that there is no restriction made by the Ministry on conducting such unspecified/commercial activities in the premises of educational institutions. In response to the Committee's desire that educational institutions should be discouraged to use its premises for this purpose, the Ministry had also promised to consider the proposal and take necessary suitable measures.

The Committee would like to be apprised of the outcome of the steps taken in this regard in due course of time.

111. During their study visit to Kerala region on the subject in November, 2004, the Committee were given to understand by the concerned Income Tax Officials that the performance of the region was not up to the mark in respect of the completion of assessments, appeals etc. The main reason attributed by them was the shortage of staff. Out of 243 posts of Income Tax Inspectors, 192 posts were stated to be lying vacant. It may just be possible that other regions might also be experiencing similar problems. The Committee, therefore recommend that urgent steps are needed to assess the staff requirements in all the regions so as to take prompt steps to fill up the requisite vacancies wherever needed, expeditiously so that the work, at least on this account, does not suffer. The Committee also desire that the Department of Revenue should explore the feasibility of delegating some powers to Chief Commissioners/Commissioners of Income Tax to recruit officials in Group "C" and "D" cadres to facilitate speedy recruitment and early filling up of vacancies. As a long time measure, the Ministry/CBDT should undertake a detailed exercise of the overall manpower requirement in all the regions so as to ensure optimum number of persons at all levels with a view to ensuring smooth functioning.

APPENDIX I

CHAPTER III OF AUDIT REPORT NO. 13 OF 2004 (DIRECT TAXES) ON “ASSESSMENT OF PRIVATE SCHOOLS, COLLEGES & COACHING CENTRES” (PARAGRAPHS 3.17.1, 3.17.2, 3.17.3, 3.19 & 3.24.1)

3.1 Introduction

With a view to encouraging the promotion and development of education, income of educational institutions established solely for the purpose of education either on no-profit basis or run by charitable trusts has been exempted from levy of income tax subject to certain conditions. A large number of private schools, colleges and coaching centres have also come up whose income is not so exempted from levy of income tax. It is required of the Income Tax Department to ensure through the operation of the Income Tax Act. That incomes of only genuine and eligible institutions are exempted from levy of income tax and correct amount of tax is paid by all institutions not so exempt.

3.2 Tax Policy and laws

Income Tax Act, 1961, (the Act) provides for exemption of income of educational institutions as given below.

3.2.1 Educational Institutions run by Trusts

Sections 11, 12 & 13 of the Act, *inter alia* deal with exemption in respect of income of educational institutions run by charitable trusts. Section 2(15) defines "Charitable purposes" to include relief of the poor, education medical relief and the advancement of any other object of general public utility. These institutions are required to fulfill certain conditions to be eligible for availing exemption of income as given below:

Table 1: Prescribed conditions to be eligible for availing exemption of income

Sl. No.	Section of the Act	Subject	Prescribed conditions
1	11(1)	Application of income	Institution is permitted to set apart and accumulate 15* percent of income for 5 years for application to educational purposes and such amount will be exempt from tax.
2	11(5)	Investment of accumulated income	Accumulated funds are required to be invested in the specified modes such as post office, nationalised banks, public companies etc.
3	12A(a)	Registration	Educational institution is required to obtain registration from CIT within one year from the date of its creation.
4	12A(b)	Audited accounts	Educational institution is required to enclose audited accounts and audit report with the return of income if income exceeds Rs. 50,000 in previous year without giving effect to sections 11 & 12 of the Act.

*Prior to assessment year 2002-03, the institution was permitted to accumulate 25 percent of income for 10 years.

3.2.2 Educational Institutions run other than by Trusts

• Upto assessment year 1998-99

Income of educational institutions existing solely for educational purposes and not for purposes of profit was exempted under section 10(22) of the Income Tax Act. Such institutions could be run by any entity such as individual, Hindu Undivided Family, association of persons, firms company and so on. No mechanism was however prescribed under the Act through which the Income Tax Department could independently ensure that the institutions exist solely for educational purposes and not for purposes of profit. These were not required mandatorily to file returns of income till assessment year 2003-2004.

• With effect from 1 April 1999

The memorandum explaining the provisions in Finance Bill 1998, recognized that section 10(22) was reported to be widely misused in the absence of any monitoring mechanism for checking the genuineness of the activities of these institutions. This clause of the section was therefore, omitted. It was clarified that educational institutions, which are of charitable nature but not registered as trusts may now claim exemption of income with certain conditions as applicable to charitable trusts. In appropriate cases, Central Government may also grant exemption by issuing a notification.

3.2.3 Following tax laws have been enacted:

- An educational institution existing solely for educational purposes and not for purposes of profit and which is wholly or substantially financed by the Government was exempted from levy of tax, **under section 10 (23C) (iiiab)**.
- An educational institution existing solely for educational purposes and not for purposes of profit whose aggregate annual receipt did not exceed Rs.1 crore was exempted **under section 10(23C) (iiia)**.
- An educational institution existing solely for educational purposes and not for purposes of profit with annual receipts of more than Rs.1 crore could claim exemption of income after obtaining approval from the prescribed Income Tax authority for a period not exceeding three assessment years at any one time provided it applied its income exclusively to the objects for which it was established, **under section 10(23C) (vi)**.

3.2.4 Coaching Centres

The Act does not separately deal with exemption of income of coaching centres. It has been judicially (Bihar Institute of Mining and Surveying Vs CIT (208 ITR 608) (Patna), and Aditanar Education Institutions Vs Addl. CIT in 224 ITR 310 and Lok Siksha Trust Vs CIT in 10 ITR 234 (Supreme Court) held that coaching of students for particular examination does not amount to imparting education and such coaching institute is not a charitable institution within the meaning of section 2(15) of the Act. Accordingly, coaching centres are not educational institutions existing for charitable purposes falling within the ambit of sections 10, 11 and 12 of the Act. As such, exemptions described above are not available to them. Their income is to be taxed under the provisions applicable to normal business under sections 15 to 59 of the Act.

3.2.5 Salient features of changes in law after 1 April 1999

- Educational institutions run other than by trusts, could accumulate upto 25 percent of income with effect from assessment year 2000-01 which could be applied to educational purposes within a period of ten years in line with the facility available to educational institutions run by charitable trusts.
- Finance Act, 2002 reduced the percentage of accumulation of income from 25 percent to 15 percent and the period of 10 years to 5 years and these changes have been made applicable to educational institutions run both by trusts and other than trusts with affect from assessment year 2002-03.
- Finance Act, 2003 inserted section 139(4C) which provided that if the total income of any educational institution not working for the purpose of profit exceeded the taxable limit without giving effect to provisions of section 10(23C) (vi), such institution shall furnish its return of income failing which penalty of Rs. 100 can be imposed for each day of default under section 272A(2)(e) of the Act. However educational institutions covered under section 10(23C) (iiiab) & (iiiad) have been left out of the purview of filling returns of income under this provision.
- It has also been provided that where the educational institutions are approved under section 10(23C) (vi) and the prescribed authority is not satisfied about genuineness of their activities or whose activities are not being carried out in accordance with the conditions subject to which these were approved, it may after giving a reasonable opportunity, withdraw the approval.

3.3 Objectives

Audit reviewed the efficiency of assessment of various educational institutions, with a view to ascertaining:

3.3.1 whether all private schools & colleges and coaching centres are on the records of the Income Tax Department and are subject to assessments;

3.3.2 whether adequate steps have been taken by the department to bring all the private schools & colleges and coaching centres into the tax net and results of such efforts are quantified;

3.3.3 the extent of irregularities and mistakes of commission and omission in the assessments of the institutions:

3.3.4 whether there exists any machinery within the department to exercise adequate and necessary checks in this area of potential and reported misuse; and

3.3.5 whether tax laws have been enacted with clear, unambiguous and effective provisions for their administration and for prevention of abuse or misuse.

3.4 Scope of review

Review covered assessments of selected private educational institutions, schools, colleges and coaching centres run either by charitable trusts or by private management imparting education including in the fields of computer, banking, civil services, medical, engineering, higher education etc. completed during the period 1999-2000 to 2001-2002. Some cases pertaining to earlier assessment years have also been selected to assess the efficiency of administration of the exemptions claimed under section 10(22) of the Act.

3.5 Audit methodology

Audit prepared a database of 62,279 private schools, colleges and coaching centres which were other than those funded by Government, from different sources such as advertisements appearing in newspapers and magazines, Directorates of Education, telephone directories etc. These educational institutions were thereafter classified CIT wise based on their addresses/geographical location and separate lists were prepared. Such lists were forwarded to the respective CITs during January 2003 and February 2003 for confirmation of receipt of returns or otherwise from these institutions. No response was received from the CITs confirming receipt of return of these institutions. Audit thereafter, could locate assessments of 10,376 educational institutions from the demand and collection registers of selected assessing units.

3.6 Sample size

There were 2110 assessing units (524 offices of DCITs/ACITs and 1586 offices of ITOs) in the audit jurisdiction located in 17 States namely, Andhra Pradesh, Assam, Bihar, Delhi, Gujarat, Himachal Pradesh, Jharkhand, Kerala, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Punjab, Rajasthan, Tamil Nadu, West Bengal and Uttar Pradesh.

3.6.1 Audit covered 50 percent offices of DCITs/ACITs and 25 percent offices of ITOs in metro cities and 75 percent offices of DCITs/ACITs and 25 percent offices of ITOs in other cities. 100 percent of assessments completed after scrutiny were selected. 50 percent of assessments completed in summary manner were selected in metro cities and 25 percent in other than metro cities.

3.6.2 Based on the above sample size, audit selected 855 assessment units (322 offices of DCITs/ ACITs and 535 offices of ITOs) and examined assessments in respect of 5,558 educational institutions out of 10,376 educational institutions found recorded in the selected assessment units.

3.7 Constraints

The department does not maintain any separate database of educational institutions. Audit had to collect details of assessments in respect of educational institutions by referring to demand and collection registers of selected assessment units and experience of previous audits.

3.7.1 The department did not produce requisitioned assessment records to audit as shown below:

Table 2: Non production of records by the department

Name of State	No. of records called for by audit	No. of records not produced to audit	Percentage of non production
Kerala	1050	946	93
Orissa	79	30	38
Jharkhand	259	159	57
Rajasthan	290	58	20
Tamil Nadu	336	84	24
West Bengal	1209	67	6
Delhi	1090	721	66
Gujarat	1911	1160	61
Total	2392	1344	56

3.7.2 Assessing officers generally stated that records were not produced because of non existence of separate and exclusive database of such institutions and also dislocation of records consequent to restructuring of the department. It was, however, essential that department should have maintained data of such institutions for exercising control over receipt of returns of income and ensuring compliance with the Act. Further, more than two years had elapsed after restructuring of the department within which time assessment records should have been handled, stored and documented properly.

3.7.3 Draft audit reviews of effectiveness of assessments of private schools, colleges and coaching centres were forwarded to the respective CCITs/CITs (Audit) by the field audit offices between July 2003 to September 2003 for their comments Review report was issued to Ministry on 18 November 2003. Reply was awaited.

3.8 Database of educational institutions

There is no systematic and organized approach in the department to ensure that all educational institutions which are required to fulfil certain obligations under the Act are in fact doing so before claiming the prescribed benefit or exemption. Though the Act has been amended through Finance Act, 2003 making it obligatory on the part of educational institutions not working for the purpose of profit to file the return, audit noticed that no specific guidelines or monitoring mechanism have been introduced to ensure that amendment could be given effect to by the assessing officers.

3.8.1 Out of the database of 62,279 educational institutions collected from different sources, audit could locate only 10,376 institutions from the demand and collection registers of 855 selected assessment units against the total existing 2110 assessment units.

3.8.2 The department had not made any effort to identify revenue potential in this field by effective co-ordination and correlation with the State government or universities or other regulatory authorities. The department could have effectively exercised control over receipt of return by serving notices to the defaulting private schools/colleges and coaching centres by keeping track through a proper control mechanism after compiling the data themselves. Department started serving notices to the assesseees after audit requisitions assessments for review.

3.9 Non selection of assessments for scrutiny

The department completed 95.5 percent of the assessments of educational institutions selected by audit only in summary manner during the period 1999-2000 to 2002-03 as shown below:—

Table 3: Selection of cases for scrutiny assessments

Name of state	No. of assessing units selected by audit	Total number of assessments made	No. of scrutiny assessments	No. of summary assessments	Percentage scrutiny assessments
1	2	3	4	5	6
Delhi	59	690	78	612	11.3
Andhra Pradesh	71	1242	130	112	10.5
Karnataka	63	334	27	307	8

1	2	3	4	5	6
Maharashtra	61	1242	47	1195	3.8
West Bengal	37	1142	44	1098	3.9
Rajasthan	61	564	14	550	2.5
Tamil Nadu	85	1640	23	1617	1.4
Punjab	60	290	1	289	0.34
Orissa	18	630	Nil	630	Zero
Total	515	7719	348	7719	4.5

3.9.1 In Maharashtra charge, all 402 assessments of educational institutions in Thane, Kolhapur, Nagpur, Aurangabad charge during the years 1999-2000 to 2001-2002 were completed in summary manner.

3.9.2 The department completed about 97 percent of all assessments in summary manner in 2000-01 and 2001-02. Unless cases involving fulfilment of special conditions for claiming exemption of income such as the assessments of educational institutions are identified and adequate number are selected for scrutiny, the department will have no means to ensure effective compliance of law in such cases.

3.9.3 Audit scrutiny revealed that the department was not in a position to ensure application of the special provisions of the Act in respect of educational institutions in 95 percent of cases available with the assessing officers that were completed in summary manner. Board have not issued any specific instruction for selection of cases for scrutiny relating to the educational institutions during the period covered in this review.

3.10 Widening the tax base of educational institutions

Prevention of tax evasion and widening of the tax base are two of the most important functions of the department and could be achieved through the performance of Central Information Branch and survey operations.

3.11 Central Information Branch (CIB)

In order to fulfil the above objects the department had, with effect from 1 July 1997, commissioned Central Information Branch (CIB) under a Commissioner which collects information about assesseees from different sources with respect to their potential for yielding income tax and passes it to the concerned assessing officers. Thereafter, the assessing officers are required to initiate appropriate action under the Act to call for returns and/or examine the specific information in assessments.

3.11.1 Audit noticed that CIB had not collected and passed on any information to the assessing officers in respect of educational institutions of assessing units selected for review, during the period 1999-2000 to 2001-02. In Rajasthan, however, CIB collected 81 cases of educational institutions in Jaipur, Alwar, Udaipur, Ajmer and Kota charges of which details in respect of 10 cases falling in Udaipur, Ajmer and Kota charges were passed on to the assessing officers which were brought into the tax net. In other charges, assessing officers stated that the above information could not be collected as the required code for private schools/colleges and coaching centres was created by the Board *vide* their instructions issued only in October 2002.

3.12 Survey operations

The assessing officers are empowered under sections 133A & 133B of the Act to survey the business premises of the taxpayer to locate assesseees and unearth unaccounted income.

3.12.1 Audit examined the records of CITs (Investigating Circles) to see whether the department had taken adequate steps to bring all the private schools, colleges and coaching centres into tax net during the period 1999-00 to 2001-02 through the mechanism of survey.

3.12.2 Audit noticed that no surveys were conducted in Mumbai, Thane, Pune, Aurangabad, Kolhapur and Nagpur. In Delhi, only one CIT confirmed that no surveys were conducted and other 13 CITs did not furnish reply. In Tamil Nadu charges, DIT (Exemption) and CIT-VIII Chennai confirmed that no such surveys were conducted and replies from 16 CITs were awaited. In Andhra Pradesh, only one private educational institution in Visakhapatnam charge and 7 in Vijayawada charge were brought into the tax net. In Rajasthan, department conducted 1138 surveys and only one educational institution was brought into tax net. In other charges, no surveys were reported to be conducted.

3.12.3 Department should utilise powers of survey operations effectively and efficiently to widen the tax base in respect of educational institutions.

3.13 Results of examination of assessments of educational institutions

Audit noticed 650 cases involving tax effect of Rs.174.18 crore relating to procedural lapses/irregularities, incorrect application of income, diversion of funds for non charitable purposes, income escaping assessment and non-levy of penalty for non filing of returns and other omissions during examination of assessments of private schools & coaching centres, as narrated below.

3.14 Procedural Lapses/irregularities

3.15 Irregular exemptions without approval/registration from prescribed authority

An educational institution existing solely for educational purposes and not for the purpose of profit and whose aggregate annual receipts exceed Rs.one crore is required to obtain an approval from the prescribed authority for claiming exemption of income. The assessee has to submit its application in the prescribed form to the Board/DGIT (with effect from April 2001 to CCIT/DI (Exemption) for approval which shall have effect at any time for a period not exceeding three years.

3.15.1 With effect from 1 April 1997, every trust needed to obtain registration to become eligible to claim exemption of income under sections 11&12. The assessee has to make an application for registration to the CIT either before 1 July, 1973 or within one year from the date of creation of trust. If application is made after expiry of the aforesaid period, the Commissioner on reasonable grounds may condone the delay. Every order granting or refusing registration shall be passed before the expiry of six months from the end of the month in which the application is received.

3.15.2 Above provisions indicate that educational institutions run either by non trusts or trusts could claim exemption of their income under both the sections 10(23C)(vi)/11&12 according to their convenience as these sections are not mutually exclusive in operation. There is no mechanism in the department to ensure that exemption of income is granted only to those institutions who have obtained approval/registration from prescribed authority. Further there is no time limit for granting approval or rejection under section 10(23C) (vi) and there is no specific provision for dealing with cases whose applications are pending for approval for any reason. The assessing officer is not competent to grant exemption of income in such cases without approval of prescribed authority.

PARAGRAPHS UNDER EXAMINATION

Exemption of income without approval of prescribed authority (paragraphs 3.17.1, 3.17.2 & 3.17.3)

3.17.1 In Karnataka, Bangalore charge, assessments of Desheeya Vidyashala Samithi, Shimoga and Education Society of Sisters of St. Joseph of Cluny, Bangalore for the assessment years 1999-00 to 2001-02 were completed in a summary manner between January 2000 and March 2002. Audit scrutiny revealed that though the annual aggregate receipts of the institutions crossed Rs. 1 crore they did not either get themselves approved by the prescribed authority under section 10 (23C) (vi) or get recognized under section 12 A of the Act. However, the assessing officer exempted the income though he was not competent to do so. Non-compliance of either of the provisions *viz.* sections 10 (23C) (vi) or 12A of the Act required withdrawal of exemption. Failure to disallow the exemption resulted in under assessment of income totalling Rs.81.32 lakh with consequent non levy of total tax and interest of Rs.30.51 lakh.

3.17.2 In Tamil Nadu charge, seven cases of educational institutions run by trusts were noticed where there was no evidence available in the records regarding submission of application for approval under section 10 (23C) (vi) by the assesseees. In another six cases, the institutions had submitted application but approvals of the prescribed authority granting exemption were not available on record. However exemption was allowed by the assessing officer in these cases without approval from prescribed authority. These cases attracted levy of tax of Rs.6.73 crore.

3.17.3 In Delhi, DIT (Exemption) charge, the assessing officer completed the assessments of three educational institutions, Oberoi Educational Society, St. Joseph Academy and M/s DAV College Trust and Management Society run by trusts for the assessment years 2000-01 to 2002-03 in summary/scrutiny manner after allowing exemption under section 10 (23C) (vi). Audit scrutiny revealed that DGIT/DIT (Exemption), Kolkata the competent authority had rejected the assesseees' applications on 30 August 2000, 19 June 2002 and 18 July 2002, for grant of approval under section 10 (23C) (vi) on the grounds that the purpose of the institutions was not solely educational. However the assessing officer irregularly granted exemption of income without approval of DGIT/DIT which resulted in non-levy of tax of Rs.23.35 lakh, Rs. 16.35 lakh and Rs.29.36 crore respectively for the three assessment years.

Exemption granted without registration (paragraph 3.19)

Audit noticed 37 cases in Assam, Bihar, Kerala, Maharashtra, Madhya Pradesh, Orissa, Rajasthan, Tamil Nadu and West Bengal charges where educational institutions run by trusts had not obtained registration under section 12A of the Act. The assessing officers allowed exemption under sections 11 & 12 without registration resulting in non levy of tax of Rs. 3.54 crore as shown in Appendix-6 at serial numbers 10 to 19.

Exemptions granted without audited accounts & audit report (paragraph 3.24.1)

Audit noticed 25 cases in Gujarat, Jharkhand, Maharashtra, Orissa and Rajasthan were the educational institutions run by trusts for the assessment years 1999-2000 to 2001-02 claimed exemption without furnishing audited accounts and audit report. Non-compliance of the above provision required withdrawal of exemption in these cases and levy of tax of Rs. 1.26 crore as shown in Appendix-6 at serial numbers 25 to 29.

APPENDIX 6

Chapter III

Assessment of Private Schools, Colleges & Coaching Centres

(Rs. in lakh)

Sl. No.	Name of assessee and CIT & CIT charge	Assessment year	Gist of mistakes	Tax effect
1	2	3	4	5
Supplement to Para 3.19				
10.	Kuarmunda don Bosco Society Rourkela and eight others , Orissa	1998-99 to 2001-02 Summary	Assessee had claimed exemption stating that they were registered but registration numbers were not mentioned. Copies of registration were also not made available to audit.	94.80
11.	St. Francies of Assisi Church, Lazmi and 14 others , Jorhat and Dibrugarh, Assam	1999-2000 to 2001-02 Summary	Educational institutions run by the Trusts were neither registered nor had applied for registration but exemption was granted by the assessing officer.	93.26
12.	Computer Management Technical Education Society, Trichy and 3 others Chennai, Tamil Nadu	1999-2000 & 2001-02 Summary	Trusts were granted exemption without obtaining registration.	89.70
13.	DAV Model School, CIT Durgapur, Kolkata	1999-2000 to 2001-02 Summary	Assessee claimed exemption under section and granted by the assessing officer thought it was not registered under section 12A.	21.70
14.	Indian Institute of Business and Management, Patna, Bihar	2001-02 Summary	Assessee claimed exemption under section 10(22) thought it was not registered and being coaching centre, provisions of exemption were not applicable	18.50
15.	Our Lady of Nazerath School, Thane, Maharashtra	2001-02 Summary	In the absence of trust deeds, trust was not registered. The assessing officer however allowed exemption for income of Rs.40.95 lakh under section 11 without registration.	12.28
16.	M/s Indo Friends Foundations Indore, Madhya Pradesh	2000-01 Summary	Registration was granted with effect from assessment year 2001-02. Hence assessee was not eligible for exemption for assessment year 2000-01.	7.39
17.	Ettumanoorappan Educational Society, and Pentecost Educational Society, Kottayam, Kerala	2000-01 1995-96 to 1997-98 Summary	Perusal of audited accounts revealed that the assessee had excess of income over expenditure. Exemption under section 11 was not admissible as registration granted under section 12A was effective from April 2002.	6.33
18.	Millat Education Society, Patna, Bihar	2001-02 Summary	Trust was not registered under section 12A. In addition, it received voluntary contribution of Rs. 15.30 lakh from different sources without specific direction, which was not taxed.	6.19

1	2	3	4	5
19.	M/s Vinay Prakash Vidya Bhawan Society, Jodhpur and one other at Ajmer, Rajasthan	1996-97 Scrutiny 1999-2000 Summary	Assesseees were granted exemption under section 11 though they were not registered under section 12A.	4.27
25.	Supplement to Para 3.24.1 Kenda Education Society, and 12 other cases Gujarat	1997-98 to 2001-02 Summary	Accounts were not audited and audit certificates not filed with the returns, though total income of the institutions exceeded Rs. 50,000 without giving effect to the provisions of section 11 & 12.	64.65
26.	Bhatkya Vimukta Jamati Shikshan Vikas, Pune and six at Kolhapur, Augrangabad, Thane, Maharashtra	1998-99 & 2002-03 Summary	Exemption under section 11 was allowed even though the requisite audit report was not furnished along with the return of income.	64.18
27.	St. Stephen's School & Indian Institute of Science and Management Hazari-bagh and Ranchi Jharkahand	2000-01 to 2001-02 Summary	Audit Reports in the prescribed form No. 10B were not filed though total income of the institutions exceeded Rs.50,000 without giving effect to the provisions of section 11 & 12.	51.23
28.	Gurumanak Public school, Sambalpur Orissa	1999-2000 to 2001-02 Summary	Certified accounts were not filed along with returns of income.	4.02
29.	M/s Sindhi Panchayat Education, Jaipur Rajasthan	1998-99 & 1999-2000 Summary	Accounts of the assessee disclosed that Rs. 3.55 Lakh was transferred to another institution, MC Sindhi Panchayat Sr. Hr. Secondary School. Taking this into account, prescribed income limit of Rs. 50,000 was exceeded. Audit Report in the prescribed form No. 10B was not filed.	1.68

APPENDIX II

STATEMENT OF OBSERVATIONS AND RECOMMENDATIONS

Sl. No.	Para No.	Ministry/ Deptt.	Observations and Recommendations
1	2	3	4
1.	92	Finance (Revenue)	The Field of education has witnessed unprecedented change in the last decade with the emergence of a large number of private educational institutions and coaching centres all over the country. With a view to encouraging the promotion and development of education, income of educational institutions established solely for the purpose of education either on no-profit basis or run by charitable trusts has been exempted from levy of income tax subject to certain conditions.
2.	93	-do-	Income Tax Act, 1961, provides for exemption of income of educational institutions. Sections 11, 12 & 13 of the Act, <i>inter-alia</i> deal with exemption in respect of income of educational institutions run by charitable trusts. Section 2(15) defines "Charitable purposes" to include relief of the poor, education, medical relief and the advancement of any other object of general public utility. These institutions are required to fulfil certain conditions to be eligible for availing exemption of income.
3.	94	Finance (Revenue)	Upto assessment year 1998-99 income of educational institutions existing solely for educational purposes and not for purposes of profit was exempted under section 10(22) of the Income Tax Act. Such institutions could be run by any entity such as individual, Hindu Undivided Family, association of persons, firms, company and so on. These were not required mandatorily to file returns of income till assessment year 2003-04.
4.	95	-do-	The memorandum explaining the provisions in Finance Bill 1998, recognized that section 10(22) was widely misused in the absence of any monitoring mechanism for checking the genuineness of the activities of these institutions. This clause of the section was therefore, omitted with effect from 1 April 1999. It was made clear that educational institutions, which are of charitable nature but not registered as trusts might now claim exemption of income with certain conditions as applicable to charitable trusts.

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5.	96	Finance (Revenue)	<p>The following provisions under clause 10(23C) were inserted <i>w.e.f.</i> 1st April, 1999 for exemption of income of educational institutions:</p> <p>(a) Section 10(23) (iiiab)—An educational Institution, which is wholly or substantially financed by the Government, was exempt from levy of tax under this section.</p> <p>(b) Section 10(23C) (iiiad) — An educational Institution, whose aggregate annual receipts did not exceed Rs. one crore, was exempt under this section.</p> <p>(c) Section 10(23C) (vi) — An educational Institution with annual receipts of more than Rs. one crore could claim exemption of income after obtaining approval from the prescribed Income Tax Authority for a period not exceeding three assessment years at any one time provided it applied its income exclusively to the objects for which it was established, under this Section.</p> <p>(d) The Act does not separately deal with exemption of income of coaching centres. Coaching Centres are not educational institutions existing for charitable purposes falling within the ambit of sections 10, 11 and 12 of the Act. As such, exemptions described above are not available to them. Their income is to be taxed under the provisions applicable to normal business under sections 15 to 59 of the Act.</p>
6.	97	-do-	<p>The Committee's examination of the subject is based on the Audit review, which sought to ascertain the efficiency of the Income Tax Department to assess various educational institutions. The objectives of the Audit review included whether all private educational institutions are on the records of the Income Tax Department and are subject to assessments; whether adequate steps have been taken by the department to bring all the private educational institutions into the tax net; whether there exists any machinery in the department to exercise adequate and necessary checks in this area and whether tax laws have been enacted with clear, unambiguous and effective provisions for their administration and for prevention of abuse or misuse. While it is required of the Income Tax Department to ensure through the operation of the Income Tax Act that incomes of only genuine and eligible</p>

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			<p>institutions are exempted from levy of income tax and correct amount of tax is paid by all institutions not so exempt, the Committee during their examination of the subject, noticed a number of inadequacies in the system as well as deficiencies in the proper implementation of tax laws which has resulted in substantial revenue loss to the Government. These facts have been discussed in the succeeding Paragraphs.</p>
7.	98	Finance (Revenue)	<p>The Committee note that a large number of private schools, colleges and coaching centres have come up whose income is not so exempt from levy of income tax. The Committee are concerned to note that there exists no database in the Department of Revenue, Ministry of Finance, in respect of such private educational institutions and coaching centres. The Committee regret to observe that there is no systematic and organised approach in the Department to ensure that all educational institutions, which are required to fulfil certain obligations under the Act to claim the exemptions are, in fact, doing so before claiming the tax benefit. The Secretary (Department of Revenue) conceded during evidence that at present they do not have activity-wise databases. The Committee are constrained to point out that the Ministry of Finance, with large resources at their command have not made any effort to identify the total assesseees in the country by having effective co-ordination with the State Governments/Universities/other regulatory authorities which has resulted in substantial revenue loss to the exchequer. The Committee understand that various projects are underway in the Directorate General of Income-tax (Systems), which would help in building up a scientific database and for this the expertise of professional agencies is proposed to be utilised by the Ministry of Finance (Department of Revenue). The CIB Section of Income Tax Department is also stated to be engaged in collection of information and preparing a database of schools, colleges and coaching centres as obtained from various sources. The Committee would like the Ministry to undertake these proposed measures expeditiously with a view to creating a reliable database within four months of the presentation of this Report. The database, once prepared, should be updated periodically so that none of the potential assesses escape the scrutiny of Income Tax Department.</p>

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8.	99	Finance (Revenue)	<p>The Committee note that the bulk of assessments of private schools, colleges and charitable trusts are by and large completed in a summary manner, which is not desirable. The Committee would like to point out that unless cases involving assessments of educational institutions are identified and adequate number are selected for scrutiny, the department will have no means to ensure effective compliance of tax laws in such cases. The Chairperson, CBDT conceded during evidence that 98 per cent of cases are completed on the basis of returns filed by assesseees and about two per cent of the cases are picked up for scrutiny. The Committee have now been informed that guidelines have been issued on 20.09.2004 to pick up all the cases where exemption is claimed under section 11 of the Income Tax Act and the gross receipt exceeds Rs. 5 crore for scrutiny assessment. Besides, a residual clause has been inserted to enable the field officers to select any other case for scrutiny with the prior approval of the Chief Commissioner of Income Tax (CCIT) concerned. The Committee would like to point out that the Ministry should have considered these steps prior to being pointed out by Audit. Considering the very fact that large revenue potential exist in assessment of all eligible private educational institutions, the Committee recommend that not only the guidelines issued by the Department in this regard should be followed scrupulously but discretion should also be allowed to the assessing/supervisory officers to randomly pick up cases for scrutiny so as to prevent these institutions from evading the payment of their legitimate dues to the Government.</p>
9.	100	-do-	<p>The Committee's examination of the subject reveals that so far the Department has not been able to widen the tax base by identifying such private educational institutions run by trusts or other than trusts which earn huge sums of money by functioning in a not—so charitable manner. The Committee feel that in order to discourage the practice of claiming exemption by ineligible institutions under the existing provisions of the Income Tax Act, it is high time that the Department applies the provisions of tax exemptions with utmost care and only to genuine and eligible institutions. For this, it is essential that the Department should prepare and monitor a comprehensive database of all such institutions and make it mandatory</p>

for them to file their annual income tax returns. The Committee have already emphasised the need for creating a reliable database earlier in this Report.

The Committee note that Section 139 (4C) (e) makes it mandatory for educational institutions that exist solely for the purpose of education and not running with the profit motive, to file their returns in case their income exceeds Rs. 50,000. The Committee, however, understand that there is no central agency in the Department to monitor the filing of income tax returns by educational institutions. Consequently, the Department is not in a position to ensure that all private schools, colleges and coaching centre file their returns of income. It is, therefore, not clear to the Committee as to how the income of educational institutions could be assessed correctly in the absence of complete information about potential assesseees. In response to the Committee's view that every educational institution should be mandatorily required to file returns, it has been informed by the Ministry that this has been taken care of by inserting Sub-section (4C) to Section 139 *w.e.f.* 1st April, 2003 in respect of educational institutions with aggregate receipts above Rs. 1 crore. The Committee have also been informed that the proposal to make filing of returns compulsory for educational institutions is under active consideration of the Department. The Committee hope that an early decision will be taken in the matter. They recommend that a foolproof mechanism may be evolved to ensure that all the private educational institutions (as per the databases to be created) which have assessable income file their returns regularly and the defaulters are brought to book.

The Committee note that another tool for unearthing undisclosed income available with the Department is Section 133A and 133B of the Income Tax Act that empower the assessing officers to survey the business premises of taxpayers to locate new assesseees. However, they feel that adequate steps have not been taken by the concerned authorities to bring all the private schools, colleges and coaching centres into the tax net through adequate and focussed use of the said power to conduct surveys. The Committee note that no surveys were conducted in Bombay, Thane, Pune, Aurangabad, Kolhapur and Nagpur during the period 1999-2000 to 2001-2002.

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			<p>In Delhi, only one CIT confirmed to Audit that no survey was conducted and the other 13 CITs did not furnish a reply. In Tamil Nadu charge, DIT (Exemption) and CIT-VIII, Chennai confirmed that no surveys were conducted. In Andhra Pradesh, only one private educational institution in Visakhapatnan charge and 7 in Vijayawada charge were brought into tax net. In Rajasthan, the Department had conducted 1138 surveys and only one educational institution was brought into tax net. In other charges, no surveys were reported to be conducted. The Ministry have asserted that a large number of surveys are conducted every year and that various field formations have reported about surveys being conducted on such institutions. The Committee find it incomprehensible as to how in the absence of any reliable database (as commented earlier), it is possible for the assessing officer to use the power of survey efficiently. Moreover, the aforesaid argument does not seem to carry weight as the Ministry have not supported their contention by furnishing exact figures of the number of surveys conducted by them during last 2-3 years and the number of new assesseees identified as a result thereof. The Committee would like to be apprised of the details of the cases which were brought under the tax net during the preceeding two years, as a result of the efforts initiated by them alongwith the number of new assesseees that have been brought to tax net and the amount of additional revenue realised from them. The Committee hope that with creation of a reliable database of private educational institutions, the Department would instruct the assessing officers to use the powers available with them under relevant provisions of the Act judiciously to identify potential taxpayers and progressively wipe out the widening gap between taxpaying and tax-evading educational institutions.</p>
10.	101	Finance (Revenue)	<p>The Committee note that an educational institution existing solely for educational purposes and not for the purpose of profit and whose aggregate annual receipts exceed Rs. one crore is required to obtain an approval from the prescribed authority for claiming exemption of income. With effect from 1 April 1997, every trust needed to obtain registration to become eligible to claim exemption of income under sections 11 & 12. The assessee has to make an application for registration to the CIT either</p>

before 1 July, 1973 or within one year from the date of creation of trust. If application is made after expiry of the aforesaid period, the Commissioner on reasonable grounds may condone the delay. Every order granting or refusing registration shall be passed before the expiry of six months from the end of the month in which the application is received. These provisions indicate that educational institutions run either by non trusts or trusts could claim exemption of their income under both the sections 10(23C)(vi) and 11 & 12 according to their convenience as these sections are not mutually exclusive in operation.

The Committee are constrained to point out that there is no system in the Department at present to ensure that exemption of income is granted only to those educational institutions which have obtained approval/registration from prescribed authority. In support of this inadequacy a number of instances have been cited by the Audit in the Paragraphs under review. The Committee are, therefore, not convinced by the plea of the Department that the system of giving approvals is rigid and meticulous and that every effort is made so that only genuine and non-profit making institutions get approval. The Committee have also been given to understand that a number of suggestions under consideration of the Ministry in this regard are that: (i) a clause may be inserted in Section 10(23C) so as to provide for mandatory audit of accounts and enclosing the audit report with the return of income every year; (ii) Penalty u/s 271B may be made applicable to audit u/s 10(23C) and 12A; and (iii) Institutions should apply to the Assessing Officer in the specified form and specify the purpose for accumulation irrespective of the fact whether the accumulation is 15% or more. According to the Ministry, Form No. 3A should also be modified so as to include the nature of activity in the Return. if this information is not given, the return may be treated as defective u/s 139(9); and include a column for number & date for approval u/s 10(23C). Needless to say that these measures now proposed by the Ministry should have been taken much earlier. The Committee expect the Ministry to finalise these proposals and implement the same expeditiously.

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11.	102	Finance (Revenue)	<p>The Committee note that prior approval of prescribed authority is required for claiming exemption of income by an educational institution existing solely for educational purposes and not for the purpose of profit and whose aggregate annual receipts exceed Rs. one crore. However, there is no time limit for granting such approval or rejection under Section 10(23C) (vi) and there is no specific provision for dealing with cases where applications are pending for approval for some reason. The assessing officer is not competent to grant exemption of income in such cases without approval of prescribed authority. Citing the examples of delay in grant or rejection of approvals, the Audit noticed in Maharashtra charge, that as on 31 March 2003, 103 cases were pending approval for exemption. Out of 103 cases, 88 were pending with DIT(Exemption) Mumbai alone. Out of 88 pending cases, 24 were pending for more than two years, 33 were pending for more than one year and institutions were claiming exemption under section 10 (23C)(vi) without approval of prescribed authority. Thus the objective of introducing the new provision 10(23C)(vi) for grant of approval after examination of the genuineness of the activities of such institutions has not been served. Keeping in view these shortcomings, the Committee feel that there is no reason as to why appropriate legal provisions could not be incorporated in the Act so as to specify a fixed time limit for disposal of such applications. The proposal to fix the time limit is now stated to be under active consideration of the Ministry. The Ministry have also assured to put the names of the institutions, that have been granted registration/approvals, on their website. The Committee would like to be informed of the precise steps taken in this regard. They cannot but over emphasised that there should be an inbuilt system in the Department to review these shortcomings noticed from time to time so as to <i>suomoto</i> take suitable remedial measures without any delay.</p>
12.	103	-do-	<p>Chapter-III of the Audit Report on Assessment of Private Schools, Colleges and Coaching Centres has highlighted the cases relating to exemption of income without approval of prescribed authority in paras 3.17.1, 3.17.2 & 3.17.3; exemption granted without registration in para 3.19; and exemptions granted without audited accounts and audit</p>

reports in Para 3.24.1. In para nos. 3.17.1 to 3.17.3 two cases in Karnataka region, thirteen cases in Tamil Nadu and three cases in Delhi region have been reported which attracted non-levy of tax and interest of Rs. 36.79 crore. Similarly in para 3.19, 37 cases in Assam, Bihar, Kerala, Maharashtra, Madhya Pradesh, Orissa, Rajasthan, Tamil Nadu and West Bengal charges have been identified where the exemption of income without registration resulted in non-levy of tax of Rs. 3.54 crore. In case of para 3.24.1, exemptions were reportedly granted without audited accounts in 24 cases in Gujarat, Jharkhand, Maharashtra, Orissa and Rajasthan, that led to non-levy of tax of Rs. 1.26 crore.

In respect of Para 3.17.1, the Committee note that failure on the part of the Department to disallow exemption in the case of two assesseees in Karnataka, Bangalore Charge, *viz.* Desheeya Vidyashala Samithi, Shimoga and Education Society of Sisters of St. Joseph of Cluny, Bangalore resulted in under assessment of income totalling Rs. 81.32 lakh with consequent non-levy of total tax and interest of Rs. 30.51 lakh. Although the annual aggregate receipts of the institutions crossed Rs. one crore, they did not get themselves approved by the prescribed authority under Section 10(23C) (vi) or get recognised under Section 12A of the Act. Moreover, the assessing officer exempted the income though he was not competent to do so. The Committee feel that mere application u/s 10(23C)(vi) does not entitle an assessee to exemption which can be allowed only on receipt of approval from competent authority. The Ministry have explained that in these cases, the procedure for granting of approvals could not be followed as the cases were summarily assessed u/s 143(1). Regarding remedial steps taken to withdraw the exemption of income granted to those institutions and to recover tax due from them, the Committee have been informed that the proceedings u/s 148/147 have been initiated in both the cases which are likely to be completed by 31.03.2005. The tax demand and the interest thereon according to the Ministry will be recovered expeditiously thereafter. The Committee regret to point out that the proceedings were made to wait till 31st March, 2005 for completion, when the cases were already more than 3 years old. The Committee recommend that the Ministry should put in place a suitable mechanism for

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13.	104	Finance (Revenue)	<p data-bbox="651 373 1263 464">completion of remedial action on priority basis in similar cases, instead of waiting till the last day of the Financial Year, so that the revenue could be realised faster.</p> <p data-bbox="651 478 1263 1749">In Tamil Nadu charge, seven cases of educational institutions run by trusts were noticed, where no evidence was available in the records regarding submission of application by the assesseees for approval under section 10(23C)(vi). In six other cases, the concerned institutions had submitted applications, but the approvals of the prescribed authority granting exemption were not available on record. However, exemption was allowed by the assessing officer in these cases without approval from prescribed authority. These cases attracted levy of tax of Rs. 6.73 crore. Further, annual receipts of the institutions exceeded the prescribed limit of Rs. one crore and they were required to get approval u/s 10(23C) (vi). Out of 13 cases, six assesseees had applied for approval u/s 10(23C) (vi), which were pending and assessing officers were granting exemption u/s 11 & 12. The Ministry have now informed the Committee that the approval u/s 10(23C) (vi) has since been granted in the case of Hindu Educational Organisation in November, 2003. According to the Ministry the notification u/s 10(23C) (vi) was issued in the aforesaid case, though the income was exempted u/s 11 of the Act. The Committee would like to point out that the principle issue here is availability of alternate provisions, namely sections 11/12 and Section 10(23C) (vi), in the statute to the assesseees and the resultant redundancy of Section 10(23C) (vi), when assesseees could end up avoiding the rigours of detailed examination and prolonged procedure contemplated under Section 10(23C) (vi) of the Act. The Committee feel that since two separate Clauses providing exemption under Sections 10(23C), 11 and 12 overlap each other, these are being misused by educational institutions, apart from creating flaws in their tax assessments. They, therefore, recommend that this deficiency should be suitably resolved by necessary amendments in the provisions or by introducing a single section/clause for exemption of educational institutions, whether run by trusts or other than trusts. They further urge the Ministry to strive in order to ensure that institutions flouting the legal requirement with impunity should be dealt sternly.</p>

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14.	105	Finance (Revenue)	<p>The Committee are distressed to find that irregular grant of exemption without approval of DGIT/DIT in case of three educational institutions Oberoi Educational Society, St. Joseph Academy and M/s DAV College Trust and Management Society, run by trusts in Delhi DIT (Exemption) charge, resulted in non-levy of tax of Rs. 23.35 lakh, Rs. 16.35 lakh and Rs. 29.36 crore respectively for the assessment years 2000-01 to 2002-03. In case of Oberoi Education Society, the Department took almost three years to process the application under section 10(23C) (vi), which was ultimately not approved. It was also found that the approval u/s 10(23C) (vi) in all the cases has not yet been given and in the first two cases the matter is still being investigated. The Committee are surprised that the Department took three years to decide for grant of exemption under section 10(23C) (vi) and rejection by DG (IT), Kolkata in the case of Oberoi Education Society. Oberoi Education Society is a peculiar case when the department took almost three years to process the application under section 10 (23C)(vi) which has ultimately not approved. Whereas, there is no compulsion on the assessee to avail the exemption as it is free to invoke section 11/12, being a trust, there is also no compulsion on the department to finally decide applicability of section 10(23C)(vi), a provision that was specifically introduced to ensure regorous application of provisions for exemptions. What has surprised the Committee is the fact that there is no mechanism available within the department to identify or link the cases of trusts and those seeking exemption of section 10(23C)(vi). The combined effect of all these shortcomings is that a significant provision of the Act, introduced with specific purpose, is not enforced. The Committee feel that this needs to be seriously examined and suitable time limit fixed for deciding cases of application u/s 10(23C) (vi) and penalizing such institutions which do not follow the requirement instead of routinely allowing exemption u/s 11/12A. From the foregoing, the Committee are constrained to observe that loopholes in enforcement of significant provisions of the Act need to be seriously examined and suitable time limit fixed for deciding cases of application u/s 10 (23C) (vi). They feel that the very purpose of having a law is defeated, if it is not implemented earnestly. The Committee, therefore, desire that as and when such cases of illegal or</p>

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			irregular exemptions come to the notice of the Department, suitable punitive action should be taken expeditiously against the erring officials without fear or favour, in order to prevent consequential loss to the exchequer.
15.	106	Finance (Revenue)	<p>With effect from 1st April, 1997, every trust is required to obtain registration to become eligible to claim exemption of income u/s 11 and 12. The test checks by Audit has revealed that in 37 cases falling in Assam, Bihar, Kerala, Maharashtra, Madhya Pradesh, Orissa, Rajasthan, Tamil Nadu and West Bengal charges, where educational institutions run by trusts had not obtained registration u/s 12A of the Act; the assessing officers allowed exemption under sections 11 and 12 without registration resulting in non-levy of tax of Rs. 3.54 crore. In their response, the Ministry have stated that most of the cases were completed u/s 143(1), wherein the Assessing Officer could not have disturbed the declared income. Moreover, in few cases, the institutions had approvals under the relevant clauses of section 10(23C) and, thus, there was no requirement to be registered u/s 12A. The Ministry have taken the stand that these sections are not mutually exclusive and are applicable to educational institutions at the option of the assessee applicant. While the Committee desire that the Assessing Officers must ensure that eligible assesseees get registered before claiming any exemption, they also feel that cases of trusts must be processed u/s 11 & 12 that exclusively deal with exemption in respect of educational institution run by Charitable Trusts and not under 10(23C) or 143(1) which do not bind them to get themselves registered before claiming exemptions. The Committee are also not impressed by the assertion of the Ministry that the existing system of granting registrations is a rigorous one and registration is granted only after complete satisfaction of the statutory authorities, as the Ministry themselves have admitted that they have reopened the cases where the audit has objected that the educational institutions run by trusts were allowed exemptions without registration. The Committee, therefore, recommend that it should be ensured that trusts that claim tax exemptions for running educational institutions invariably get themselves registered. Besides, they desire that all cases where exemptions have been granted wrongly or illegally must be probed with a view to fixing responsibility. The</p>

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			Committee would like to be intimated about precise steps taken in this direction.
16.	107	Finance (Revenue)	<p>Where the total income of the trust or institutions as computed under the Act without giving effect to the provisions of Sections 11 and 12 exceeded Rs. 50 thousand in any previous year, the accounts of such trusts or institutions should be audited for such accounting year and audit report filed in Form 10B alongwith the return of income for the relevant assessment year. The Committee note that in 25 cases falling in Gujarat, Jharkhand, Maharashtra, Orissa and Rajasthan charges, the educational institutions run by the trusts for the assessment years 1999-2000 to 2001-2002 claimed exemption without furnishing audited accounts and audit reports. According to the Committee non-compliance of the above provision required withdrawal of exemptions in these cases and levy of tax of Rs. 1.26 crore. In most of the cases according to the Ministry, the returns were processed under Section 143(1) of the Income Tax Act and the assessing officers have no powers to make adjustments in the income declared by the assesseees. The Ministry have admitted that there is no special mechanism to identify such errant educational institutions, the existing system of scrutinising returns is deterrent enough for unscrupulous assesseees to make such unlawful claims. The role of internal audit is limited in these cases as the internal audit wing is required to see only 0.5% of all the cases processed u/s 143(1). As such, 99.5% of such cases do not pass through the audit scrutiny of the internal audit wing of the Department. The Committee are not aware whether the aforesaid cases have been selected for scrutiny by the concerned authorities subsequent to the issue of audit observation. As the Ministry have themselves admitted that there is no special mechanism in place, the Committee need to be satisfied as to how the Ministry consider the existing system of scrutinising returns as adequate. The Committee would like to be informed, if any, measures are contemplated to strengthen the system in this regard.</p>
17.	108	-do-	<p>From the foregoing it is evident that the laws providing tax exemption to educational institutions suffer from various inadequacies, for example, the new provisions enacted under Section 10(23C)(iiiab)/(iiiad) do not yet</p>

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			<p>provide any monitoring mechanism for checking the genuineness of activities of institutions claiming exemptions. There is no mechanism to ensure that the institution could claim exemption only under section 11 and 12 or 10 (23C) (vi) of the Act. Also, there is no time limit for granting approvals under clause 10(23C)(vi) and nothing has been specified as to how in the absence of approval, exemption of income during that period is to be regulated. Besides there is no provision in the case of exemption under Section 10(23C) (vi) to furnish the audited accounts with audit certificate alongwith returns of income and finally, no monitoring mechanism currently is available to monitor the investment of unutilised surplus of the institutions u/s 11(5) of the Act. While conceding that there exists a loophole, the Secretary (Revenue) informed the Committee during evidence that they will have to study a little more to see if they can make use of both the provisions [(Sections 11, 12 and 10(23C)(vi)] or synchronise it by merging the two and have a single provision. The Committee are also of the view that the purpose of insertion of new Clause under Section (23C) may not have been yielded the desired results and had rather created more complications and infructuous work. While observing that the existing tax laws are already very complex, the Committee feel that it is imperative that the law is made simpler and clearer to avoid any misinterpretation/misuse of the same. They, therefore, desire that the Department of Revenue should undertake such an exercise expeditiously in consultation with the Ministry of Law as well as the Audit and the lacunae, if any, in the law be plugged suitably.</p>
18.	109	Finance (Revenue)	<p>The Committee are of the view that apart from earning income from educational activities, several private institutions earn income by asking for donations/ contributions from their wards in the name of building fund, swimming pool charges, calamity fund, poor fund etc. although it has been judicially held in case of Unnikrishnan J.P. & Others Vs State of Andhra Pradesh & Others, 1993 AIR 2178, SCR(1) 594 that the educational institutions cannot charge more than the fees fixed by the Government in any form, either as donation or capitation fees. The Committee are convinced that there is no dearth of cases where big amount as donations are taken before allowing admission of children in various schools. During</p>

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			evidence the Committee had, therefore, desired that these funds should form a part of the income of such institutions and be taxed and exemption should not be allowed on such funds. The Ministry have subsequently agreed to consider the proposal and take necessary suitable measures. The Committee would like to be intimated of the precise steps taken in this regard.
19.	110	Finance (Revenue)	The Committee further find that certain educational institutions are earning substantial income by lending their premises for commercial activities and that there is no restriction made by the Ministry on conducting such unspecified/commercial activities in the premises of educational institutions. In response to the Committee's desire that educational institutions should be discouraged to use its premises for this purpose, the Ministry had also promised to consider the proposal and take necessary suitable measures. The Committee would like to be apprised of the outcome of the steps taken in this regard in due course of time.
20.	111	-do-	During their study visit to Kerala region on the subject in November, 2004, the Committee were given to understand by the concerned Income Tax Officials that the performance of the region was not up to the mark in respect of the completion of assessments, appeals etc. The main reason attributed by them was the shortage of staff. Out of 243 posts of Income Tax Inspectors, 192 posts were stated to be lying vacant. It may just be possible that other regions might also be experiencing similar problems. The Committee, therefore, recommend that urgent steps are needed to assess the staff requirements in all the regions so as to take prompt steps to fill up the requisite vacancies wherever needed, expeditiously so that the work, at least on this account, does not suffer. The Committee also desire that the Department of Revenue should explore the feasibility of delegating some powers to Chief Commissioners/Commissioners of Income Tax to recruit officials in Group "C" and "D" cadres to facilitate speedy recruitment and early filling up of vacancies. As a long time measure, the Ministry/CBDT should undertake a detailed exercise of the overall manpower requirement in all the regions so as to ensure optimum number of persons at all levels with a view to ensuring smooth functioning.

PART-II

MINUTES OF THE THIRTEENTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (2004-2005) HELD ON 20 JANUARY, 2005

The Committee sat from 1100 hrs. to 1230 hrs. on 20 January, 2005 in Committee Room "E", Parliament House Annexe, New Delhi.

PRESENT

Prof. Vijay Kumar Malhotra — *Chairman*

MEMBERS

Lok Sabha

2. Shri Ramesh Bais
3. Shri Khagen Das
4. Dr. M. Jagannath
5. Dr. R. Senthil
6. Shri Madan Lal Sharma
7. Shri Brij Bhushan Sharan Singh
8. Dr. Ram Lakhani Singh
9. Kunwar Revati Raman Singh
10. Shri Tarit Baran Topdar

Rajya Sabha

11. Shri Prasanta Chatterjee
12. Shri R.K. Dhawan
13. Shri V. Narayanasamy
14. Shri Jairam Ramesh
15. Prof. R.B.S. Verma

SECRETARIAT

1. Shri S.K. Sharma — *Joint Secretary*
2. Shri Ashok Sarin — *Director*
3. Smt. Anita B. Panda — *Under Secretary*

Officers of the office of the Comptroller and Auditor General of India

1. Shri M.S. Shekhawat — *ADAI*
2. Shri P. Sesh Kumar — *Pr. Director*

Representatives of the Ministry of Finance

(Department of Revenue)

1. Shri K.M. Chandrasekhar — *Secretary (Revenue)*
2. Smt. Shobha Majumdar — *Chairperson (CBDT)*
3. Shri M.S. Darda — *Member (A & J)*
4. Shri Satish Chandra — *Addl. Secretary (R)*

2. At the outset, Chairman welcomed the Members and the officers of the Office of C&AG of India. The officers from the office of the C&AG of India briefed the Committee on specific points arising out of Chapter-III of Audit Report No. 13 of 2004 (Direct Taxes) relating to "Assessment of Private Schools, Colleges and Coaching Centres" (Paragraph Nos. 3.17.1, 3.17.2, 3.17.3, 3.19 & 3.24.1). Thereafter, representatives of the Ministry of Finance (Department of Revenue) and the Central Board of Direct Taxes were called and the Committee took their oral evidence. After some discussion, Hon'ble Chairman directed the Ministry of Finance (Department of Revenue) to furnish written information on all the points relating to the subject, which were raised by the Members of the Committee during the evidence, at the earliest.

3. A copy of the verbatim proceedings of the sitting has been kept on record.

The Committee then adjourned.

MINUTES OF THE SECOND SITTING OF THE PUBLIC ACCOUNTS COMMITTEE
(2005-2006) HELD ON 30TH MAY, 2005

The Committee sat from 1100 hours to 1140 hours on 30th May, 2005 in Committee Room 'D', Parliament House Annexe, New Delhi.

PRESENT

Prof. Vijay Kumar Malhotra—*Chairman*

MEMBERS

Lok Sabha

2. Shri Madan Lal Sharma
3. Shri Brij Bhushan Sharan Singh
4. Dr. Ramlakhan Singh
5. Shri Tarit Baran Topdar

Rajya Sabha

6. Shri R.K. Dhawan
7. Dr. K. Malaisamy
8. Prof. R.B.S. Verma

SECRETARIAT

1. Shri Ashok Sarin — *Director*
2. Shri N.S. Hooda — *Under Secretary*
3. Smt. Anita B. Panda — *Under Secretary*

Representatives of the office of the Comptroller and Auditor General of India

1. Ms. Mamta Kundra — Pr. Director of Audit (Direct Taxes)
2. Mrs. Sumedha Verma Ojha — Director of Audit (Direct Taxes)

2. To begin with, the Chairman, PAC welcomed the Members and Audit Officers to the sitting of the Committee.

3. The Committee took up for consideration of the following Draft Reports:

- (i) Original Report on Chapter III of C&AG's Report No. 13 of 2004 relating to "Assessment of private schools, colleges and coaching centres" (Paras 3.17.1, 3.17.2, 3.17.3, 3.19 and 3.24.1).
- (ii) Action Taken Report on 55th Report (13th Lok Sabha) on Chapter V of C&AG's Report No. 12A of 2002 relating to "Refunds under Income Tax Act of 1961".

4. The Committee adopted the same without any modifications/amendments and authorised the Chairman to finalise the Draft Reports in the light of changes suggested by Audited through factual verification, if any, or otherwise and to present the same to Parliament in the next session.

The Committee then adjourned.