



E – NEWS LETTER



Tuticorin Branch of Southern India Regional Council of The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)

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Thoughts of Chairman

Dear Colleagues,



Greetings,

Every human being cares for others but sometimes they are selfish. In our work spot, we dictate and get things done through some pressure to our assistants. Because of this fact, we have lot of “Labour Turnover” in our work spot.

Normally, we are not in a position to appreciate the services of our sub-ordinates. It is too bad. Please make conscious efforts to give at least few words of appreciations to whoever meets. We could notice a genuine, happy smile on people’s face when you give them a few words of appreciation at the Restaurant or Aircraft “I really enjoyed the food. I liked the hospitality” you can get the great experience when you meet the same people in Restaurant or Aircraft in different occasions; you will get the Royal treatment at this time.

Appreciation is a magical expression. It is so powerful, giving and looking at the receiver’s response, the giver feels really wonderful.

All of us are endowed with this power to believe and visualise what we want to happen to us in reality. This power to visualise can actually help us create a better life for ourselves. It is not without reason that mankind was endowed with the capacity to visualise, fantasise, and imagine. Nothing in nature is created or done without a reason. Sometimes we understand it.

Everything that we want to happen has to be envisioned in the mind first. Our imagination is a specially designed tool, which provides us with the ability to actualise our goals. It is through creative mental meanderings that a child learns to develop her ability to realise the inner longings. Creative imagination is the first step in concrete realisation. We have to dream, see it in our mind first for it to happen in reality.

Happy days are beginning of new life everyday. Cheer and enjoy.

With warm regards,

CA B.Francis Amal George

Watch the wordings in the Will

A Will must be a simple document but one must also ensure reasonable clarity in the wordings, writes R.L.NARAYANAN

A Will is essentially a declaration and comes into effect after the lifetime of the person concerned. It is revocable during the lifetime of the person who makes the Will.

As the intention of the person making the Will is to make sure that there are no disputes relating to his or her estate and to provide for the beneficiaries and as a number of technical matters may arise in the property being taken by the beneficiaries concerned, all care and caution should be exercised in the making of a Will. Otherwise, the Will itself may lead to disputes and thus, preventing the very purpose for which it was executed.

The most important thing to be adhered is to keep the Will a simple document. Though it would be very tempting to include a lot of matters, which have an emotional base and in the process refers to many extraneous things, it is desirable that a reasonable clarity is achieved in employing the wordings. It can be written in any language that the Testator – the person making the will – is familiar with.

Care is to be taken to sign the Will in every page. Even when signing genuinely, the possibilities of this being questioned later have to be kept in mind and for this purpose, signature must be affixed in a place and manner, which will rule out possibilities of thinking that the Will has been made up, in a paper, which is pre-signed by the Testator.

Needs two witnesses

A Will must be attested, at least, by two witnesses. Each of the witnesses must have seen the Testator sign the Will. The witnesses must sign the Will in the presence of the Testator. It is also desirable, but not mandatory, that the witnesses sign in the presence of each other. The witnesses must, normally, be of an age that they will outlive the Testator. That is because, if the Will is questioned, it has to be proved by at least one witness who is capable of giving evidence and this will save a lot of other issues from arising in the process of proving the Will. It is desirable also that the witnesses are not beneficiaries under the Will.

It is advisable to name the beneficiary concerned. It is best to ensure that the beneficiary is properly named and identified to avoid confusion relating to the identity of the beneficiary.

It is important that the clauses in the Will are not inconsistent with other clauses. There should not be a conflict while reading the Will as a whole. The wordings should not be of a doubtful nature where it is not clear as to whether a particular person is made beneficiary or otherwise, Caution should be exercised to make sure that the Will is free from mistakes.

Make sure that specific description is given of properties and assets as far as possible. For example, if wordings to the effect that “ I give my jewellery to all my four children” are used, it will definitely be doubtful as to which child is to take which item of jewellery. It will be a good idea to list the movables in a separate notebook as part of the Will.

A will can become void on the ground that it does not express any definite intention of the Testator and is, therefore, uncertain. The usage of wordings like “ I give my house to my only daughter” will result in the position that the daughter is to take the property absolutely. If there are any restrictions should be specified. Certain dispositions may become void because of the fact that there is no person answering the description, in existence, at the time of the Testator’s death.

It is well known that the Will should be executed voluntarily and that there should not be any fraud or coercion. Another factor, which will vitiate the Will, is making of the Will owing to importunity. This means that there should be no annoyance or pestering or harassment or demand of such a nature that it takes away the free agency of the Testator. In all cases, adequate care must be taken to ensure that the intention of the Testator is fully captured in the Will so that the scope for disputes is reduced to a minimum level.

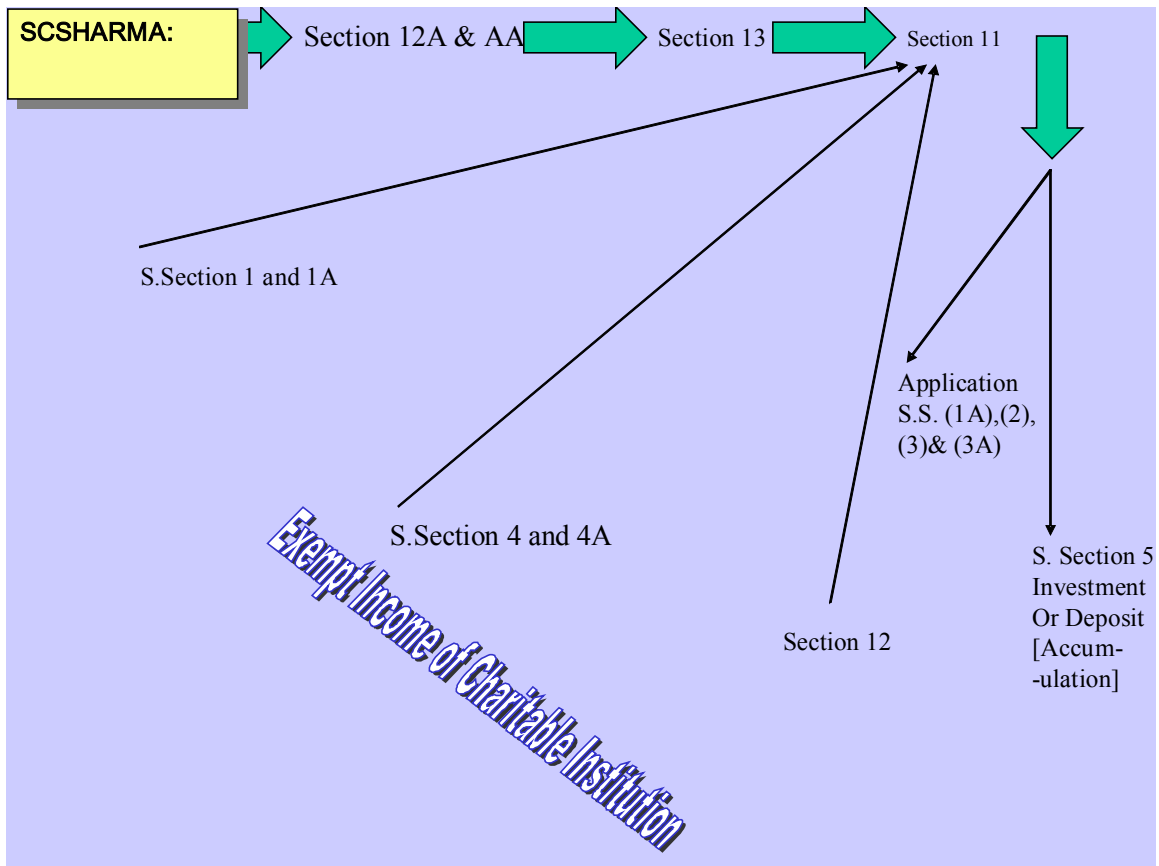
- Courtesy the Hindu

Exempt Income of Charitable Institution

While studying Section 11, 12, 12A, 12AA and 13 we should make a proper sequence of these sections to understand them. Firstly we should read Section 2(15) to understand meaning of charitable purpose. This is due to the fact that Income of only those institutions is exempt which are registered Under Section 12A and 12AA. To get a registration under these sections institution should be one with objects enumerated under Section 2(15). Secondly we should take note of the fact that before studying rules about Application [i.e. S.S. (1A), (2), (3) and (3A)] and Investments or deposits [i.e. S.S. (5) of S. 11] we are required to read Section 11(1) (a), (b) and 12 to understand what incomes are there in the hands of Charitable Institution on which rule of application and accumulation has to be applied. We should read Section 11 (1) (c), (1A) and (d) on which rule of accumulation applies but no rule of application applies. Lastly incomes enumerated under 11 (4 & 4A)*** for which neither rule of application applies nor rule of accumulation applies. Further Section 13 is there which needs study before Section 11 to understand those incomes on which exemption of Section is not available. As far as Taxability of Income is concerned we should understand that Trust are Taxable as per Section 164.

*** [see clause (iii) of proviso of clause (d) of Subsection (1) of Section 13 and circular no 642 dated 15 December 1992].

(NOW REFER CHART ENCLOSED HERE WITH)



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- ❖ Object of trust can't be changed. Because owner of trust is beneficiary (General Public) only Court can change.
- ❖ Authorities are to ascertain only genuineness of activities of trust and how income derived from trust property is applied for charitable or religious purpose. Not nature of activity by which income derived by trust.
[Sanjeevamma Hanumanthe Gowda Charitable Trust Vs. Director of Income Tax (Exemption) (Kar.) 155 ITR 466 (2006)]
- ❖ Charitable Purpose includes relief of the poor, education, medical relief and advancement of any other object of general public utility. [Section 2(15)]
- ❖ The advancement of any object beneficial to the public or a section of the public, as distinguished from an individual or group of individual, would be an object of general public utility.
[Circular NO. 395, Dated 24 Sept. 1984]
- ❖ Test which have been laid down by the supreme court in the case of Lok Shikshan Trust 101 ITR 234 and Indian Chamber of Commerce 101 ITR 234 for the defination of Charitable Purpose is :-
 - (a) is the object of general public utility?

(b) Does the advancement of the object involve activities bringing in money?

(c).If so such activities are undertaken

i. For Profit

ii. Not for profit

If answer to (a) and (b) is positive then to qualify for the registration answer to (c) (i) should be negative.

- ❖ If a trust desire to accumulate income in excess of the limits specified in section 11(1) the conditions specified in section 11(2) have to be fulfilled in respect of the entire accumulation and not merely in respect of the in respect of the accumulation in excess of 25% (Now 15%).[Circular 12P, Dated 26th November, 1968]
- ❖ Donation received by a charitable trust from members of the public on being capital receipts cannot be regarded as income of the trust. Accordingly such donation should be excluded from the income of the trust for the purpose of calculating the accumulations limit of 25% (which is Now 15%).
- ❖ There should be invitation and eligibility both to general public in respect of objects of the concern.
- ❖ Trust received donations or trustee contributed money or TDS not deducted then it not affect condition of registration U/s 12A.
[St. George Education Trust Vs. Dir. Income Tax (Exeption) (Bang.) 9 SOT 293]
Charging of fees was incidental to prominent object of assessee i.e. imparting of education and there for surplus generated not come in ambit for denying exemption Under Section 10 (23C) (iii ad).
[DCIT Vs. St. Paul Sr. Sec. School (Delhi) 9 SOT 589]
- ❖ While filing Form 10B and it's Annexure an auditor can accept as correct the list of persons covered by section 13(3) as given by managing trustees, etc. [Circular No. 143, dated 20th August, 1974]
- ❖ Investment in 'Indira Vikas Patra' and 'Kisan Vikas Patra' are in accordance with the norms and modes specified in section 11(5).
[Circular No. 566, Dated 17th July 1990]
- ❖ The position in respect of Charitable Trusts and Religious Institutions would continue to be the same till 31-03-1990 as it was before the amendments made by the Direct Tax Laws (Amendment) Act, 1987.
[Circular No. 524, Dated 17th, October, 1988]
[This was undue burden on revenue, since provisions remained discontinued for two years and this was fresh introduction of sections].
- ❖ Repayment of the loan, originally taken to fulfill one of the objects of the trust, will amount to an application of the income for charitable and religious purposes. As regards loans advanced for higher studies, if the only object of the trust is to give interest bearing loan for higher studies, it will amount to carrying on money lending business. If however the object of the trust is advancement of education and granting of scholarship loan is only one of the activities carried on for the fulfillment of the objectives, granting of loans, even interest bearing, will amount to the application of income for charitable purpose.
[Circular No. 100, Dated 24th Jan, 1973]
- ❖ Filed an application on 2/08/2002 U/s 12A for grant of registration. Commissioner rejected on 7/11/2003. held impugned order had been passed beyond statutory period

prescribed u/s 12AA. And Application shall be deemed to have been allowed. [Sambandh Orgn. Vs. DCIT (Del. Tri.) 156 TaxMann 183]

❖ Section 12A and 12AA:-

Application has to made with in 1 year from the date of creation of organization seeking registration. If application has been made after expiry of 1 yr then CIT can grant registration from date of creation of trust if he is satisfied that delay is due to sufficient reason [such power has been withdrawn by finance act, 2006]. And if he is not so satisfied will grant registration from 1st day of financial year in which application made.

Accounts of institution will be audited if receipt of it exceeds 50000/- in a year.

❖ Commissioner then on receipt of application for registration shall ascertain genuineness of activity of trust.

❖ Section 13:- [Section 11 not apply(or no exemption is available)] :-

(a). when benefit of property is not open to general public then income of that property [Income of private Trust].

- ❖ Where there was no obligation on the stock exchange that the income from the properties derived by the assessee was to be exclusively used for charitable purposes and it was permissible for the assessee to distribute the whole or part of such income by way of dividends amongst its shareholders, the high court was right in holding that the assessee was not entitled to exemption under section 11 read with section 2(15). [Delhi Stock exchange Association Ltd. Vs. CIT (1997) 225 ITR 235 (SC)]. In this case this 13 (1) (a) factor has been taken care off by the registration granting authority and Apex Court.

TRUSTS

I. Public Trust:-

(a). Wholly for Charitable Purpose.

Registration cannot be denied and 11 shall apply.

(b). Only one property under trust for part beneficiary is public and for part beneficiary is not Public at Large :- in that case Section 11 (1) (b) is available for trusts created before existence of Income Tax Act, 1961.

(c). Many properties some are wholly for charitable purpose and some for private purpose:- in that case 11 (1) (a) is available for properties available wholly for charitable purposes.

II. Private Trust:-

(a).If trust is wholly for the benefit of individuals or group of Individuals then in that case benefit of 11 will not be provided.

(b). Income of trust or institution created or established for the benefit of any particular religious community or cast.

(c). Income open for the benefit of person specified in Section 13(3) and income used for the benefit of Section 13(3).

(d) Any income if invested in other than modes specified U/s 11(5)

or if shares are being held by trust [other than share of Government Company]

** (C). and (d) is disallowance. Here only part of trust income has been kept out of ambit of Section 11 which fall under this section.

- ❖ However Exemption will not be denied to Incomes enumerated under (d) if:-
 - Asset was part of corpus as on 1.6.1973.
 - Asset is accretion to shares held on 1.6.1973 by way of bonus shares allotted to the trust
 - Asset is Debenture issued before 1.3.1983
 - Funds represent profit and gains of business if separate books maintained.*** [clause (iii) of proviso of clause (d) of Subsection (1) of Section 13]
- ❖ Following incomes shall be deemed to be used for the benefit of Section 13(3):-
 - If any property or income is lent or continues to be lent to 13(3) without security or interest.
 - If any land, building or other property of trust made available to 13 (3) without adequate rent or Compensation.
 - Salary allowance – Excess to reasonable
 - Service made available to 13(3) with out remuneration
 - Share, security or other property purchased from 13 (3) for more than adequate consideration.
 - Share, security, property sold to 13(3) for less than adequate consideration
 - Share, security or property sold to 13 (3) for less than adequate consideration.
 - Income or property diverted to 13 (3)
 - Funds remained invested in an organization in which 13 (3) hold interest of more than 20%

If this investment not exceed 5% of capital of that concern and is according to 11(5) then in that case funds can be invested even if 13 (3) holds substantial interest in it.

- ❖ Section 13 (3) is :-
 - Author / Founder
 - Person contributing more than Rs. 50,000/-
 - Trustee or manager of trust
 - Relative of above
 - Concern in which above person hold interest of more than 20%
- ❖ Relative means:-
 - Spouse
 - Brother and sister
 - Brother and sister of spouse
 - Lineal ascendants or descendants
 - Lineal ascendants or descendants of spouse
 - Spouse of above
 - Lineal descendants of brother or sister of individual or spouse
- ❖ Organization related with development of Schedule Caste or Backward caste, woman or children will be considered an object of general public utility.
- ❖ Section 11 &12 [Incomes for which exemption has been granted and rules of Application and accumulation of Income]
 - Firstly we have income under 11(1) (a) and 11 (1) (b) and section 12 (1) these income are following:-

- (a) Income of Property held under trust for charitable and religious
- (b) Voluntary contribution received by trust

These incomes are exempt if institution apply to charitable purposes in India 85 % or more of such income. If income applied is not 85% of such income then that much of income will be exempt which has applied for such purpose.

Remaining 15% of the income which has been accumulated for charitable object is to be invested in modes specified under section 11(5)

- Secondly we have income under section 12(2) i.e.

Value of services, being medical or educational services, made available by the institution to 13 (3). This income specified under section 12 (2) has been directly made taxable and no observance of application and accumulation rules needed.

This income is taxable in the hands of trust.

- Thirdly we have income under section 11 (4 and 4A) i.e.

Income of a business of trust when business is incidental to attainment of the objective of charitable institution and separate books of account are maintained.

A.O. has been given power to assess such income, when any difference arise between that assessed income and income specified in books of account then that difference if taxable amount in the hands of Charitable institution.

According to the provisions of section section 11(4A), as amended through the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992, profits and gains of business in the case of a trust or institution will not be liable to tax if the business is incidental to the attainment of the objectives of the trust or institution, as the case may be. Separate books of account are to be maintained by the trust or institution in respect of such business. Income of any other business which is not incidental to the attainment of the objectives of the trust or institution will not be exempt from tax [Circular No. 642, Dated 15th December 1992]

The business income of a trust as disclosed by the accounts plus its other incomes will be the income of the trust for the purposes of section 11(1). The trust must spend at least 75% (Now 85%) of this income and not accumulate more than 25% (Now 15%) of thereof. Excess accumulation if any will become taxable under 11(1)

[Circular No. 5P, Dated 19th June, 1968]

The objects of the trust were charitable and the business carried on by the trustees was corpus or property held under trust, which produced or resulted in income, the business was only a means of achieving the objects of the trust; it was only a medium through which the objects were accomplished, the income derived by the assessee from the business carried on by the trust was exempt from income tax [Thiagarajar Charaties Vs. CIT (Addl.) (1997) 225 ITR 1010 (SC)].

Considering above two circulars (Specially Later i.e. No. 642, Dated 15th December 1992] and case law Quoted above it can be concluded that profits and gains of incidental business is exempt from tax altogether and should not be made part of Total Income of trust to apply section 11(1) (a) test as to applicability of income.

Further investment of income of that business can be made even in modes, which are not specified in section 11(5).

- Fourthly we have income received from sale of capital asset (being property held under charitable trust)

Example :-

Property :- 7 lakh

Sold :- 22 Lakh

Gain:- 15 Lakh

Invest 22 Lakh :- No Taxable Gain

Invest 18 Lakh:- Taxable Gain = 15-(18-7) shall be taxable.

- ❖ When institution could not apply 85 % of its income for the charitable purpose then in that case Assessee can: -

- If Institution could not receive that amount in the year or due to any other reason unable to use it for charitable object. Then he may Intimate Under Explanation of Section 11 (1) before 139(1) time limit. This application can be made for the reason that income has not been received or for any other reason.

Then that income shall be considered income applied for the charitable purpose and shall not be considered as such in the year of receipt or year succeeding it. Where such income has actually not been applied to charitable purpose then that income shall be taxed in the year following the year of receipt.

- Apply Under section 11 (2) in form No10 (Manner -Rule 17) to A.O. specifying purpose for which accumulated and the period (Up to 5 years). That amount shall remain invested in 11(5) mode.

If such amount is not utilized after time limit of accumulation, ceases to remain invested in 11(5), applied for other than specified purpose. Then shall be taxed in such year.

If purpose for which accumulation has been granted is no more then A.O. can allow that income to be applied for other charitable purpose.

By

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AS-11 (Revised 2003)

THE EFFECTS OF CHANGES IN FOREIGN
EXCHANGE RATES

-S.MEENAKSHI
(CA Student)

OBJECTIVE

- An enterprise may carry on activities involving foreign exchange in 2 ways:
 - Transactions in foreign currency
 - Foreign operations
- . Transactions must be expressed in reporting currency
- . Financial statement of foreign operations must be translated into enterprise foreign currency

Scope:

This standard is applied

- In accounting for transactions in foreign currency
- In translating the financial statement of foreign operations
- In accounting for foreign currency transactions in forward exchange contracts
 - does not specify the currency in which the transactions should be reported

FOREIGN CURRENCY TRANSACTIONS

- Denominated or requires settlement in foreign currency and includes transactions like:
 - a) Buys or sells goods/services in foreign currency
 - b) Borrows or lends funds
 - c) Becomes a party to unperformed forward exchange contract
 - d) Acquires/dispose assets or incurs/settles liabilities

Contd.,

- On initial recognition, foreign currency transactions should be recorded by applying the exchange rate
- At each B/s date:
 - a) Monetary items-closing rate
 - b) Non monetary items at historical cost-exchange rate at the date of transaction
 - c) Non monetary items at fair value – exchange rate that existed when the values were determined

RECOGNITION OF EXCHANGE DIFFERENCE

- Exchange Difference results when there is a change in exchange rate between the date of transaction and date of settlement
- Transactions settled in the same accounting period Exchange Difference recognized in that period
- Subsequent a/c period the exchange difference recognized in each intervening period up to the period of settlement is determined by change in exchange period

CLASSIFICATION OF FINANCIAL OPERATIONS

- INTEGRAL FOREIGN OPERATION
- NON INTEGRAL FOREIGN OPERATION

INTEGRAL FOREIGN OPERATION

- Carries on business as it is an extension of the reporting enterprise's operations
- Exchange rate has an immediate effect on the enterprise cash flow statement
- Thus, the exchange rate affects the individual monetary items of foreign operations

NON INTEGRAL FOREIGN OPERATION

- Accumulates cash and incurs expenses, generates income in local currency
- Enters into transactions in foreign currency
- Changes in exchange rate has little/no effect on present / future cash flows
- Affects the net investment

FINANCIAL STATEMENTS

INTEGRAL FOREIGN OPERATION:

- a) Financial stmt is translated as if the transaction had been those of the reporting enterprise itself
 - b) The cost and depreciation of fixed assets –exchange rate at the date of purchase of asset
 - c) Cost of inventory-exchange rate that existed when those costs were incurred
- Eg: Average rate for a week/month may be used

Contd.,

NON INTEGRAL FOREIGN OPERATION:

- a) Assets & Liabilities, both monetary and non monetary-closing rate
- b) Income & Expense- exchange rate at the date of transaction
- c) The resulting Exchange Difference accumulated in a foreign currency translation reserve until disposal of net investment

CONSOLIDATION OF NFO:

- When NFO is consolidated, but it is not wholly owned, the accumulated Exchange Difference are reported as part of minority interest in consolidated B/s
- Normal consolidation procedures followed-elimination of Intra group balances and intra group transactions
- But Exchange Difference arising on intra group monetary items is not eliminated as it represents commitment to convert one currency to other and exposes to gain/loss

DISPOSAL OF NFO

- The cumulative interest of Exchange Difference which have been deferred and which relates to that operation should be recognized as income/expense in same period in which gain/loss is recognized.
- Partial disposal-the proportionate share of accumulated Exchange Difference is included in gain/loss

CHANGE IN CLASSIFICATION

- IFO TO NFO-Exchange Difference on translation of non monetary assets are accumulated in foreign currency translation reserve
- NFO TO IFO-translation of non monetary items treated as historical cost

FORWARD EXCHANGE CONTRACTS

- Agreement to exchange different currencies at a forward rate
- The enterprise may enter into such contract not intended for speculation
- The premium/discount arising at the inception should be amortised as income/expense over the life of the contract
- Exchange difference should be recognised in the statement of P/L in which the

Contd.,

- P/L arising on cancellation or renewal of such contract should be treated as income/expense for that period
- If the contract is intended for speculation, premium or discount is ignored, and at each B/s date the value of contract is marked to its current market value.

DISCLOSURE

- Amount of exchange difference is included in net profit/loss for the period
- Net exchange difference accumulated in foreign currency translation reserve and an reconciliation of the amount of exchange difference at the beginning and end of the period
- Reason for using different Currency

Contd.,

If there is a change in the classification of the foreign operation the enterprise should disclose:

a) Nature of change

b) Reason of change

c) Impact of change in classification on Share holder's funds

d) Impact on net P/L for each prior period had the change occurred at the earliest period presented

Differences

AS 11

- Deals with forward exchange contract for hedging and trading or speculation
- The terms IFO and NFO are used

IAS 21

- Does not deal with hedge accounting and Forward Exchange Contract
- IFO- Foreign operation integral to the operations of reporting enterprise
- NFO- Foreign entity

THANK YOU