

Office of the Comptroller and Auditor General of India

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Press release

C&AG's Audit Report No. 23 of 2018 on "Assessment of Assesseees in Real Estate Sector" tabled in Parliament today.

Report No. 23 of 2018 of the Comptroller and Auditor General of India- Performance Audit Report on "Assessment of Assesseees in Real Estate Sector" was tabled in Parliament today.

Introduction

Real estate can be segregated into three broad categories - i) - Residential comprising developed land, residential houses and condominiums; ii) Commercial comprising office buildings, warehouses and retail store buildings and iii) Industrial which includes factories, mines and farms, on the basis of its use. There are various players involved in this sector such as land owners, developers, contractors, sellers/buyers and real estate agents etc.

Audit findings

The performance audit covered cases of scrutiny assessments relating to Real Estate Sector completed by Income Tax Department (ITD) during the financial years 2013-14 to 2016-17. We also checked summary cases in respect of some of the selected cases.

During performance audit, C&AG noticed following audit observations:

- Audit noticed several companies outside the tax net. There is no mechanism with ITD to ensure that all the registered companies have PAN and are filing their ITRs regularly.

(paragraph 2.2)

- The system in the ITD to ensure compliance of filing of ITRs by the sellers of high value immovable properties was not effective.

(paragraph 2.3.1)

- The enforcement of provisions of the Act in respect of filing AIRs by Registrar/Sub-Registrar of properties in respect of sale or purchase of an immovable property by the ITD was weak.

(paragraph 2.3.5)

- ITD was not effectively using other third party data to widen their tax net.

(paragraph 2.4)

- Due importance was not accorded by the ITD to monitor non-PAN transactions despite these being under the highest risk category from the point of view of tax evasion in general and due to these being transactions of real estate sector in

particular.

(paragraph 3.3.5)

- There was a lack of mechanism in the ITD to ensure that persons involved in high value sales of immovable properties offered capital gain for tax.

(paragraph 3.3.6)

- Sharing of information between assessment charges which was required to plug leakage of revenue, was poor (paragraph 3.4).

(paragraph 3.4)

- The ITD did not use surveys effectively to widen its tax base in the real estate sector.

(paragraph 3.5)

- The transactions where sales consideration are undervalued and are lower than the value adopted for stamp duty purposes may remain untaxed in the hands of the sellers under section 43CA/50C and in the hands of buyers under section 56(2)(vii)(b), thus generating black money in the process.

(paragraph 4.2.3)

- In cases where shares were issued at high premium, the information about the subscribing entities was not shared with jurisdictional assessing officers for verification of sources of funds and to get assurance that no unaccounted money/own funds were introduced by the assessee through share premium. Justification for issue of shares at high premium was not examined by the ITD as fair market value of shares was not based on the valuation as per the balance sheet and thus manipulation of accounts to accommodate black money cannot be ruled out.

(paragraphs 4.3.1.1 and 4.3.1.2)

- There is no provision in the Income Tax Act to deal with the share application money which is pending for allotment of shares for long period which is a lacunae in the Act.

(paragraph 4.3.2)

- As the sources of funds reflected as unsecured loans in the balance sheet of real estate companies were not verified by ITD, introduction of undisclosed/unaccounted money of the assessee itself as unsecured loans cannot be ruled out in audit.

(paragraph 4.3.3.1)

- The AOs failed to implement the provisions of the section 69C as disallowance which should have been added to the assessed income, was not done.

(paragraph 4.5)

- There is no mechanism to ensure effective compliance of provisions relating to deduction of tax at source under section 194-IA.

(paragraph 4.6.1)

- The assessing officers were not following the provisions of the Act meticulously and committed mistakes in adopting the correct figures, applying provisions of the Act and in admitting expenditures/ deductions/exemptions.

(paragraph 4.7)

- There is a multiplicity of criteria for classifying housing projects for EWS/LIG groups by the Government of India on the basis of the size/affordability of the dwelling units. The purpose of providing deduction under section 80-IB(10) for better availability of housing to EWS and LIG section of the societies was not being met to the extent that the prices of dwelling units were out of reach of these target groups. **(paragraph 5.2.1)**

- Enforcement of conditions for allowing deductions under section 80-IB(10) was weak, leading to benefits being availed by non-eligible persons/ unintended groups. Thus, the targeted groups could not be benefited and the revenue foregone on this count year after year by the Government may have benefitted unintended persons.

(paragraph 5.2.2)

RECOMMENDATIONS

We recommend that

➤ *The CBDT, Ministry of Finance and Ministry of Corporate Affairs may have inter-ministerial arrangement to their mutual benefit where there is an interface between the ITD and ROC so that when a company is registered with ROC, the application for PAN is submitted automatically with the ITD. When PAN is issued to the newly incorporated company, it will automatically be sent to ROC Systems for updation. Further, the companies should be compulsorily required to submit a copy of acknowledgement of ITR while furnishing their annual reports in Form MGT-7. This will ensure that companies file their ITRs and at the same time the data of ROC will be in sync with that of ITD (paragraph 2.2).*

The CBDT replied (July 2018) that system of applying for PAN at the time of applying for registration of a company is already in vogue. The CBDT agreed (July 2018) to examine the feasibility of requiring a company to compulsorily submit a copy of acknowledgement of ITR while filing their annual reports in Form MGT-7.

➤ *The CBDT may consider taking up with the state governments to have an interface between IT system of ITD and that of Inspector General of Registrations (IGR) so that whenever sale of properties is registered with IGR office, the information is automatically populated into ITD systems as well (paragraph 2.3.1).*

The CBDT agreed (July 2018) to examine the recommendation and stated that although provisions are in place to identify non-filers having transaction of high value property, there is a need to strengthen its enforcement.

➤ *The CBDT may put a mechanism in place to ensure compliance of provisions of section 285BA and section 139A(5)(c) read with Rule 114B by AIR filers(paragraph 2.3.5).*

The CBDT replied (July 2018) that a new dedicated Reporting Portal had been operationalised in April 2018 wherein the Reporting Entities are required to register and upload the statements.

➤ *The CBDT may put in place an IT driven mechanism for sharing of information within the department so as to utilize information such as those regarding sales/purchases transactions of immovable property effectively and plug the leakage of revenue(paragraph 3.4).*

The CBDT replied (July 2018) that there was already a system in place for sharing the information within the Department.

Audit is of the view that since mechanism of sharing of information within the ITD is not effective, there is a need to strengthen the mechanism and to make it robust.

➤ *The CBDT may like to strengthen the system to address the issue of pending share application money after it is due for refund as per the Companies Act to prevent its misuse(paragraph 4.3.2).*

The CBDT replied (July 2018) that the cases pointed out by the C&AG would be examined.

➤ *The CBDT may consider to have a mechanism to ensure that TDR transactions are brought to tax say by having a provision to tax it at source (paragraph 4.4.1).*

The CBDT accepted (July 2018) to examine the issue during the course of the exercise for Budget 2019.

➤ *The CBDT may take steps for capturing the information in TRACES on Tax deducted at source and deposited by a purchaser of immovable property holding PAN under section 194-IA of the Act (paragraph 4.6.1).*

The CBDT accepted (July 2018) the recommendation and agreed to examine the issue.

➤ *The CBDT may consider introducing system based checks and validation to minimize manual interventions by assessing officers and avoiding mistakes in scrutiny assessments(paragraph 4.7).*

The CBDT replied (July 2018) that the assessments were already being done on ITBA. Further e-assessment has also been undertaken by the Department in a major way. Thus systems were in place to ensure proper checks and validations. The AO being a quasi-judicial authority, it is not possible to bring a fully system based assessment.

Audit is of the view that the CBDT may consider introduction of system based checks and validations to avoid mistakes in computation of income and tax thereon.