Chapter II: Systemic Issues and Internal Control

2.1 Introduction

Income Tax Act, 1961 (Act) provides for certain specific deductions relating to Pharmaceuticals Sector. We have come across cases where unintended benefits were given to the assessees due to certain provisions of the Act being deficient, unclear and ambiguous. The present chapter deals with systemic issues and internal control/monitoring mechanism by the ITD in dealing with assessees relating to Pharmaceuticals Sector.

ITD did not maintain data of incentives given to the Pharmaceutical Sector, hence audit is not able to assess the impact of revenue foregone in growth of the industry and finally in the fulfilment of objectives behind the incentive.

2.2 Impact of revenue foregone to the pharmaceuticals sector

The primary objective of any tax law and its administration is to raise revenue for the purpose of funding Government expenditure. The amount of revenue raised is dependent upon the collective tax base and the effective tax rates. The determinants of these two factors are a range of measures which include special tax rates, exemptions, deductions, rebates, deferrals and credits. These measures are collectively called as 'tax preferences' or 'tax expenditure'. They have an impact on Government revenues and also reflect a significant policy of the Government.

The receipt budget of Government of India includes a separate budget document titled "Statement of Revenue Foregone". This statement seeks to list the revenue impact of tax incentives or tax subsidies that are part of the tax system. We collected the information regarding the incentives given by the Government on account of revenue forgone by way of Deduction/Weighted deduction for expenditure on scientific research (Section 35 (1), (2AA) & (2AB), Deduction of profits of undertakings set-up in Sikkim, Uttarakhand, Himachal Pradesh (Section 80IC) to the assessees which is given in Table 2.1.

Table 2.1: Revenue forgone from 2006-07 to 2012-13

(₹ in crore)

Year	Revenue forgone under Section 35(1), (2AA) & (2AB) & 80IC	Increase in revenue forgone over the last year	Percentage increase from the last year
2006-07	4,877	--	--
2007-08	7,085	2,208	45.27
2008-09	8,055	970	13.69
2009-10	9,290	1,235	15.33
2010-11	12,354	3,064	32.98
2011-12	13,968	1,614	13.06
2012-13	14,708	741	5.30
2013-14 (projected)	16,443	1,735	11.80
Total	**86,781**		

Source: Receipt Budget for the years 2006-07 to 2012-13

As no information/data were available regarding total tax revenue and revenue forgone on Pharmaceuticals sector in the receipt budget, hence, the information regarding the revenue forgone due to deductions given to Pharmaceuticals sector, monitoring mechanism, impact analysis of the deduction allowed and sector-wise/state-wise data related to the assessee of Pharmaceuticals Sector were sought (August 2014) from CBDT/Department of Revenue.

CBDT has stated (September 2014) that this information pertains to Pharmaceutical industry and the concerned division of CBDT (TPL & ITA) do not maintain such record.

ITD does not have complete sector wise data of assessees of Pharmaceuticals Sector.

2.3 Sector wise data in the ITD

A list of Manufacturing units engaged in Pharmaceuticals sector published by National Pharmaceutical Pricing Authority (NPPA), Department of Pharmaceutical containing names, addresses, telephone numbers was referred to the ITD for providing PAN and jurisdiction charge of the assessees but the same could not be provided by the ITD. In absence of jurisdiction wise database of assessees engaged in Pharmaceuticals Sector, audit had to rely on its historical knowledge to find out assessees of the Pharmaceuticals Sector. Audit also obtained data from the Assessment Information System (AIS) maintained by the DGIT (Systems) of the ITD of assessees filing the return under code *'0105- Drugs and Pharmaceuticals'*. Audit observed that data provided by the DGIT (Systems) was incomplete as many Pharmaceutical manufacturing units indicated in the

Directory of Pharmaceutical Manufacturing Units in India did not exist in the database.

We sought information regarding data of assessees engaged in Pharmaceuticals sector (Manufacturer/Distributors/Stockists) from the Department of Pharmaceuticals under the Ministry of Science and Technology. We also sought (July 2014) to check whether the Directory of Pharmaceutical Manufacturing Units published by National Pharmaceutical Pricing Authority (NPPA) is updated. The reply of the Ministry is awaited (December 2014).

We also sought (August 2014) information regarding data of assessees engaged in Pharmaceuticals Sector from Office of the Drug Control Department (DCD). DCD stated (September 2014) that it is not having any data with respect to PAN, total income, total sales, total Export, Excise Registration number etc., with respect to licenses of Drug Manufacturer and Stockiest/Distributors of NCT of Delhi.

Thus, ITD along with Department of Pharmaceuticals and DCD did not maintain complete sector wise/industry wise data. In absence of sector/trade wise data, it would not be able to analyse the various aspects relating to policy formation, revenue foregone on particular sector/trade, contribution of such sector in tax revenue and the contribution of such sector is in tune with their growth etc.

ITD allowed weighted deduction on R&D under Section 35 (2AB) of the Act before receipt of approval from DSIR who is the approving authority.

2.4 Allowance of R&D expenditure awaiting approval from DSIR

Approval of expenditure incurred on in-house R&D facility by a company under Section 35 (2AB) includes that the prescribed authority shall submit its report in relation to the approval of expenditure by in-house R&D facility in Form 3CL to the Director General of Income Tax (Exemptions) within sixty days of its granting approval. It is also stipulated that the company shall maintain a separate account for each approved facility, which shall be audited annually and a copy thereof shall be furnished to the prescribed authority by 31 October of each succeeding year. Though DSIR is to submit the Form 3CL to DGIT (Exemption) within 60 days of its granting approval. But it is nowhere mentioned in the guidelines of DSIR that what is the time line to issue Form 3CL.

The due date for filing return of income under the Act is 30th September in respect of company not having international transactions. Thus, companies claim R&D expenditure in its return of income before getting approval of DSIR. The reason being that the due date for filing return of income of such assessee companies precedes the date of forwarding of approved Form 3CL report, i.e. 31st December by DSIR to DGIT (Exemptions). Therefore, R&D expenditure are claimed by assessee companies and allowed by the ITD in summary processing, before such expenditure is being approved by DSIR (see box 2.1).

Box 2.1: Illustrative cases on R&D expenditure claimed and allowed though approval of such expenditure was not given

Charge	**: CIT II, Delhi**
Assessee	**: Modi Mundipharma Pvt. Limited**
Assessment Year	**: 2011-12**
PAN	**: AACM2303F**

The assessee claimed and ITD allowed weighted deduction under Section *35(2*AB) of ₹ 3.15 crore in AY 2011-12 completed in January 2014. We observed that AO allowed the claim without verifying the form 3CL as Form 3CL was issued by DSIR in April *2014*. Thus, the ITD allowed weighted deduction under Section 35(2*AB)* before approval of DSIR. Reply is awaited (October 2014).

Thus the ITD allowed weighted deduction before approval of the DSIR. The date of forwarding of approved Form 3CL by DSIR to DGIT (Exemptions) should be prior to the due date of filing of ITR.

ITD allowed weighted deduction on R&D expenses under Section 35(2AB) of the Act without verifying the details of expenditure approved by Department of Scientific and Industrial Research in Form 3CL/3CM

2.5 Allowance of weighted deduction of R&D expenditure under Section 35(2AB)

Section 35 (2AB) provides for deduction of two times of the expenditure incurred on scientific research (excluding expenditure on purchase of land or building) by in-house R&D facility as approved by the Prescribed Authority[7]for a company engaged in the business of Biotechnology or of manufacture or production of any article or thing other than those specified in the list of the Eleventh Schedule of the Act. As per procedure prescribed under the Act, the assessee company furnishes application of agreement with Department of Scientific and Industrial Research (DSIR). After due process, DSIR grants approval of R&D facility in Form 3CM to the company and sends its report and details of approved expenditure in Form 3CL to Director General of Income Tax (Exemptions). DGIT (Exemptions) is to forward such reports (Form 3CM/3CL) to concern CCsIT/CsIT. Form 3CL contains the details of total cost of in-house research facility and also the annual production of eligible products of company during past 3 years. CCITs/CITs are to forward such reports to concerned jurisdictional AO who allows weighted deduction subject to the stipulated conditions.

7 Prescribed Authority is the Secretary, DSIR.

We observed that CCsIT/CsIT have not forwarded the copy of Form 3CL/3CM to the AOs for verification of the genuineness of deduction of R&D expenditure claimed by the assessees. ITD has allowed deduction without verifying the Form 3CL in which prescribed authority i.e. DSIR approve the expenditure incurred on in-house research. This resulted into loss (inclusive of potential loss) of ₹ 456.99 crore in 14 cases covering six states[8]. (see box 2.2).

Box 2.2: Illustrative cases on non-conformity of R& D figures with form 3CL

a. **Charge** : **CIT 1, Patna**
Assessee : **Alkem Laboratories Limited**
Assessment Year : **2010-11**
PAN : **AABCA9521E**

The assessee claimed weighted deduction under Section 35(2AB) of ₹ 67.91 crore which ITD allowed. However the DSIR, in response to the letter by AO with respect to scrutiny of subsequent AY 2011-12, replied (March 2014) that the assessee had violated conditions of DSIR guidelines by not submitting details of R&D expenses to DSIR and hence its approval was not extended beyond March 2009. Had the form 3CL been ensured by the ITD at the time of scrutiny of AY 2010-11 itself (March, 2013), such weighted deduction could have been disallowed. Omission to do so resulted in underassessment to the same extent with consequent short levy of tax of ₹ 23.08 crore. The ITD accepted the audit observation (July 2014).

b. **Charge** : **CIT I, Chennai**
Assessee : **SPIC Limited**
Assessment Year : **2010-11**
PAN : **AAACS4668K**

The assessee claimed ₹ 82.53 lakh as deduction under Section 35(2AB) against the actual expenses of ₹ 55.02 lakh. The claim of deduction had been allowed without the confirmation of approved expenditure in Form 3CL. This resulted in under assessment of income of ₹ 82.53 lakh involving potential tax effect of ₹ 24.76 lakh. Reply is awaited (October 2014).

8 Maharashtra, Delhi, Tamil Nadu, Andhra Pradesh, Bihar, Karnataka

c. **Charge** : **CIT-Central, Hyderabad**
Assessee : **Hetero Drugs Limited**
Assessment Year : **2009-10**
PAN : **AAACH5071K**

The assessee claimed ₹ 22.93 crore towards R&D expenditure and ₹ 34.40 crore towards weighted deduction under Section 35(2AB) and ITD allowed the same without the confirmation of the expenditure in Form 3CL. Hence the assessee is not entitled to weighted deduction of ₹ 11.47 crore (₹ 34.40 crore - ₹ 22.93 crore). This resulted in short computation of income to that extent with a consequential short demand of ₹ 5.85 crore.

ITD replied (December 2014) that DSIR examined the information relating to AY 2009-10 to AY 2011-12 in July 2013 and granted renewal up to 31 March 2015 vide order dated 23 July 2013. It was, however, observed that the expenditure relating to AY 2010-11 to 2012-13 were only certified and any Form 3CL certifying the expenditure relating to AY 2009-10 was not produced to audit.

d. **Charge** : **CIT V, Delhi**
Assessee : **Ranbaxy Laboratories Limited**
Assessment Year : **2008-09 to 2009-10**
PAN : **AAACR0127N**

The assessee claimed for AYs 2008-09 and 2009-10 weighted deduction on R&D expenditure under Section 35(2AB) of ₹ 670.80 crore and ₹ 645.50 crore respectively and ITD allowed the same. The claim of deduction had been allowed without the confirmation of approved expenditure in Form 3CL. The assessee has submitted the approval in Form 3CM of in-house research and development facility which is approval of recognition of R&D facility only. This resulted in under assessment of income to the same extent involving tax effect of ₹ 228 crore and ₹ 193.65 crore respectively. Reply is awaited (October 2014).

Thus R&D expenses have been allowed without the confirmation of approved expenditure in Form 3CL/3CM.

We further noticed in 6 other similar cases involving tax effect of ₹ 10.23 crore in Maharashtra that R&D figures depicted in DSIR website pertaining to assessee companies are not in conformity with the figures claimed as deductible under Section 35(2AB) (see box 2.3).

Box 2.3: Illustrative cases on non conformity of R & D figures as per DSIR website

Charge : CIT Central III, Mumbai
Assessee : Indoco Remedies Limited
Assessment Year : 2010-11 to 2011-12
PAN : AAACI0380C

Assessee claimed and ITD allowed weighted deduction on R&D expenditure under Section 35(2AB) of ₹ 40.50 crore. However, as per DSIR website the assessee was eligible for deduction of ₹ 13.43 crore only. This has resulted in excess allowance of weighted deduction of R&D expenditure amounting to ₹ 27.07 crore leading to underassessment of income to the same extent with consequent short levy of tax of ₹ 8.12 crore.

In reply the ITD forwarded the Form 3CL duly certified by the DSIR and stated that the same was submitted during the scrutiny assessment by the assessee. But the same was not available in the records provided to the audit by the ITD. However, as per the Form 3CL issued by the DSIR it was observed that the assessee for AYs 2010-11 and 2011-12 was eligible for weighted deduction of only ₹ 17.61 crore and ₹ 20.37 crore instead of ₹ 18.27 crore and ₹ 21.64 respectively claimed by the assessee. This has resulted into excess allowance of weighted deduction of ₹ 1.94 crore leading to under assessment of income to the same extent with consequent short levy of tax of ₹ 58.20 lakh.

We also noticed in two cases of an assessee in Maharashtra that assessee claimed the deduction of ₹ 344.55 crore involving tax effect of ₹ 103.37 crore under Section 35 (2AB) whereas their name did not appear in list of approved R&D expenditure in the Annual Report of DSIR (see box 2.4).

Box 2.4: Illustrative cases on R & D expenditure claimed and allowed though approval of such expenditure are not approved/pending with DSIR

Charge : CIT VII, Mumbai
Assessee : Piramal Life Science Limited
Assessment Year : 2009-10 and 2010-11
PAN : AABCN8532E

The assessee claimed and ITD allowed R&D expenditure of ₹ 344.55 crore to the assessee company without verification of documents or detailed scrutiny. In order to verify the genuineness/correctness of the deduction we searched DSIR website. Its name did not appear in the Annual Report of DSIR reflecting approved R&D expenditure of various assessees involving tax effect of ₹ 103.37 crore. Reply is awaited (October 2014).

Therefore, ITD allowed inadmissible R&D expenditure to the assessees without verifying the genuineness of the expenditure and approval of DSIR. ITD has also not prescribed any procedure to make Forms 3CL/3CM available to the AOs. ITD has also not made it mandatory to attach Forms 3CL/3CM along with ITR.

Pharmaceutical companies avoided deducting TDS on payments made to contract manufacturers by taking advantage of exclusion clause in Section 194C of the Act.

2.6 Deduction of TDS in respect of contract entered by assessee company with a manufacturing company for manufacture of products

Section 194C of the Act provided for deduction of TDS at the rate of two *per cent* from the payment to the contractor for carrying out any work in pursuance of a contract between the contractor and an assessee. According to CBDT circular[9] read with exclusion clause in explanation to Section 194C of the Act, 'Work' included manufacturing of a product by a contractor according to the requirement/ specification of a customer by using material purchased from such customer but did not include such manufacturing in the purview of 'Work Contract' if the material was purchased from a person other than the customer.

We noticed that the Pharmaceutical companies, by just not supplying raw materials directly to the contract manufacturers, treated such contracts as supply contracts and did not pay TDS taking advantage of exclusion clause of Section 194C. But they made binding conditions for contractors about source and price of raw materials to be purchased, rights of inspection and control over production process, controlled final price and exclusive buying rights etc. On termination of such contracts, the contract manufacturer were required to return technical know-how and all papers, documents, data etc. back to the Pharmaceutical company. Thus entire control of manufacturing process remained with the Pharmaceutical companies which made it akin to works contract only, attracting TDS.

Further, Karnataka High Court upheld ITD's view[10] that the contract entered by Pharmaceutical companies with a manufacturing company for preparation of products by a manufacturing company on above mentioned similar terms & conditions was a contract for work and not a contract for sale and thus attracted TDS.

Thus the relevant amount of tax was not collected in advance from such manufacturers through the deductors. In absence of the individual contract details, we could not work out the amount of TDS deductible in the following case (see box 2.5).

9 CBDT Circular No 681 of 1994

10 CIT, Central circle V. Nova Nordisk Pharma India Ltd. (2012) 18 taxmann.com 285 (Kar)

Box 2.5 Illustrative case on non-deduction of TDS in respect of contract entered by assessee company with a manufacturing company for preparation of products

Charge	**: CIT VIII, Mumbai**
Assessee	**: Pfizer Limited**
Assessment Year	**: 2010-11**
PAN	**: AAACP3334M**

The assessee entered into an agreement for manufacturing its patented pharmaceutical products with manufacturers such as Snehal Foods & Feeds, Medibios Laboratories Pvt. Limited, Kemwell Pvt. Limited and Geno Pharmaceuticals Limited, in Maharashtra. There were conditions in the agreement of procurement of raw material from the list of approved sources, selling of specific quantities of products as ordered by the Pfizer Limited on pre-determined prices. We observed that the manufacturer neither had the liberty to procure the materials from other suppliers nor had the freedom to sell the manufactured products to other customers or to determine price himself. However, Pfizer Limited was not deducting TDS on value of works done by the manufacturer by treating these contracts as sell contracts. Due to non availability of the exact details under assessment / tax effect could not be quantified.

Assessees take advantage of ambiguous provision related to salary and interest payment to Partners in the Firm to take undue benefit of 80IC deduction.

2.7 Allowance of excess deduction in respect of Partnership Firm

Sub-Section 10 of the Section 80IA read with sub-Section 7 of Section 80IC provides that where it appears to the AO that owing to the close connection between the assessee carrying on the eligible business and any other person or for any other reason profit is artificially increased, AO shall in computing, take the amount of profit as may be reasonably deemed to have been derived from the business. Section 40(b) provides that remuneration (salary) and interest are allowable to a Partner of a Firm if these are authorised by the partnership deed. Salary and interest are taxable in the hands of partners to whom these are payable.

We noticed in 13 cases in Haryana, Punjab and Himachal Pradesh that the Firm, enjoying tax deductions under Section 80IC, neither made provision for remuneration and interest in the partnership deed nor claimed the deduction of such expenditure. Thus, the Firm artificially increased the profit and thereby took undue benefit of deductions under Section 80IC leading to loss of revenue to exchequer amounting to ₹ 4.32 crore (see box 2.6).

Box 2.6: Illustrative cases on Non-payment of interest/ remuneration to Partners resulting in excess deduction

a. **Charge** : **Panchkula (Haryana)**
Assessee : **Admac Formulations**
Assessment Year : **2009-10 to 2011-12**
PAN : **AAAAA5219Q**

The assessee Firm neither made a provision for remuneration of ₹ 2.55 crore and interest of ₹ 1.37 crore for such three AYs in the partnership deed nor offered such income for taxation in the hands of partners. This resulted in excess claim of deduction of ₹ 3.92 crore under Section 80IC resulting in short levy of tax of ₹ 1.27 crore. Reply is awaited (October 2014).

b. **Charge** : **Karnal, (Haryana)**
Assessee : **GMH Organics**
Assessment Year : **2008-09 to 2010-11**
PAN : **AAGFG9690N**

The assessee Firm neither made a provision for remuneration of ₹ 2.43 crore and interest of ₹ 0.72 crore for such three AYs in the partnership deed nor offered such income for taxation in the hands of partners. This resulted in excess claim of deduction of ₹ 3.15 crore resulting in short levy of tax of ₹ 97.24 lakh. Reply is awaited (October 2014).

Thus the assessees do not provide for the interest/remuneration of the Partners and claimed excess deduction under Section 80IC.

We have raised the issue relating to payment of interest/remuneration of the Partners by the Firms availing exemptions/deductions under the Act in Report No. 7 of 2014 (Performance Audit of Assessment of Firms) laid on the table of Parliament on 18 July 2014 and gave recommendations to the Ministry in this regard.

ITD does not have any mechanism to correlate & verify carried forward losses / depreciation especially of losses / depreciation of the unit availing 80IC deduction.

2.8 Maintenance of data of brought forward loss or unabsorbed depreciation

Section 32 stipulates that unabsorbed depreciation relating to earlier AYs is allowed to be brought forward and set off against income of the assessee. Similarly unabsorbed business loss of the assessee is allowed to be carried forward for adjusting against the profit of following assessment years for the stipulated time period under the provisions of Section 72. The ITD is not maintaining any record of carry forward of loss (including depreciation) of the unit availing deduction under Section 80IC. Section 80IA(5) provides for set-off of losses of previous years of the eligible unit from its profit before claiming any deduction. Further, CBDT has directed[11] AOs to carry out necessary verifications and correlation of claim of unabsorbed loss/depreciation with past records at the time of scrutiny to ensure correctness of the allowance of claims.

We observed in 4 cases of Delhi, Karnataka and Rajasthan that ITD allowed the set off of loss/unabsorbed depreciation without taking into consideration the changes effected due to revision of assessments resulting into incorrect set-off or excess carry forward of losses/depreciation to the tune of ₹ 13.09 crore with consequent short levy of tax of ₹ 4.19 crore (See box 2.7). We observed that ITD did not maintain the data of brought forward losses / unabsorbed depreciation properly.

Box 2.7: Illustrative cases on Non maintenance of data of brought forward loss/depreciation allowable to an assessee

a. **Charge** : **CIT I, Delhi**
Assessee : **Akums Drugs & Pharmaceuticals Limited**
Assessment Year : **2011-12**
PAN : **AAECA7090B**

The assessee claimed and the ITD allowed deduction of ₹ 27.67 crore under Section 80IC which included deduction of ₹ 7.01 crore from one eligible unit (No.-III) after setting off its notional loss of ₹ 4.80 crore pertaining to AY 2010-11. However the losses of ₹ 3.83 crore and ₹ 24.73 crore respectively pertaining to AYs 2008-09 and 2009-10 were also required to be set off. After setting off such available losses, income should have been assessed at Nil for Unit III, instead of ₹ 7.01 crore. Omission to do so resulted in incorrect allowance of deduction under section 80IC of ₹ 7.01 crore with consequent short levy of tax of ₹ 2.17 crore. Reply is awaited (October 2014).

b. **Charge** : **CIT Central, Bangalore**
Assessee : **The Himalaya Drug Company**
Assessment Year : **2009-10**
PAN : **AADFT3025B**

The assessee claimed and the ITD during scrutiny assessment for AY 2009-10 allowed (March 2013) set off of brought forward loss of ₹ 4.36 crore (pertaining to AY 2005-06). Whereas the said brought forward loss was already disallowed by the ITD during scrutiny assessment of AY 2005-06 (October, 2012), which was not considered during scrutiny assessment for AY 2009-10. Moreover, the ITD also failed to disallow the aforesaid brought forward loss at the time of giving effect to the order of CIT (Appeal) (August 2013). Thus the ITD did not consider the final treatment of the said loss despite the information being available with ITD. Omission to do so resulted in under assessment to the same extent with consequent short levy of tax of ₹ 1.48 crore. The ITD (October 2014) has stated that the remedial action has been taken by issue of notice under Section 148.

[11] CBDT Circular No 9 of 2007

The above cases imply that due to non maintenance of data of brought forward losses/depreciation of the previous years the carry forward/set off could not be co-related.

We have raised the issue of non-maintenance of the data of brought forward losses/depreciation of the previous years the carry forward/set off in Report No. 20 of 2014 (Performance Audit on Allowance of Depreciation and Amortisation) laid on the table of Parliament on 28 November 2014 and gave recommendations to the Ministry in this regard.

ITD does not have any mechanism to correlate & verify the turnover declared in Income Tax with turnover declared in Central Excise which is part of the same Ministry of Finance.

2.9 Mechanism for cross-verification of turnover declared in Income Tax Return with the turnover declared in Excise Return

Manufacturers paying more than one crore rupees as Central Excise duty are required to file annual information in Form ER 4 under rule 12(2)(a) of the Central Excise Rules, 2002. This form contained details of quantity & value of raw materials as well as of quantity & value of finished goods. As the Central Excise and ITD both belong to the Ministry of Finance, ITD should have correlated/link the turnover of the assessees claiming exemptions /deductions as declared in Income Tax records (viz. 10CEB) with that of ER-4 for deepening the tax base. Such correlation/linking was easily possible in case of Large Taxpayer Unit (LTU) which is a single window clearance point for three taxes i.e. Income Tax, Central Excise & Service Tax and thereby data to be correlated/linked was readily available to the AOs.

We test checked in 14 States and observed that there was no mechanism with the ITD to cross-verify the turnover declared in ITR with the turnover declared in Central Excise Return. In absence of such cross-verification of turnover, possibility of revenue leakage in the form of incorrect deduction claimed under the provisions of the Act cannot be ruled out.

2.10 Recommendations

a. CBDT may maintain the sector-wise data of assessees to which various tax incentives have been prescribed under the Act.

The Ministry stated (January 2015) that considering the large number of taxpayers availing various incentives under the Act, it may not be feasible to segregate/identify the data regarding various tax-incentives sector-wise in an accurate manner. The Ministry also stated that the data is mainly captured from the business code filled in the return by the assessees who *are engaged in several businesses and there is possibility that the assessee may fill incorrect code. However, revision in the business code is under consideration.*

Audit is of the view that the maintenance of sector wise data is necessary for tax planning and sector specific policy by the concerned Departments of Government of India. Hence, there is a need of evolving a system of sector wise data. For this purpose, DSIR and NPPA may be requested to capture PAN details to facilitate the linking with ITRs.

b. The Ministry may develop a mechanism so that the copy of Form 3CM/3CL duly approved by DSIR are invariably attach with ITR. The Ministry may also prescribe the date of forwarding of approved Form 3CL by DSIR to DGIT (Exemptions) to precede the due date for filing the ITR.

The Ministry while explaining the system of approval of R&D expenditure by DSIR stated (January 2015) that the current scheme was designed in the pre computerised era and agreed to re-examine the issue.

Audit while agreeing with the reply of the Ministry, further suggested that approval of DSIR available with DGIT (Exemption) should be considered to be linked with ITR.

c. CBDT may consider issuing instructions to bring under the ambit of Section 194C of the Act such work contracts where the entire control of manufacturing process vests with the assessee companies.

The Ministry stated (January 2015) that implementation of C&AG suggestion would require legislative change in Section 194C as it is possible that some assessee may take advantage of the definition of work contract as defined in Section 194C. It further stated that a reference is being separately made to TPL Division for examination during budgetary exercise for 2015-16.

Audit is of the view that it is necessary to ensure that the Pharmaceutical Companies deduct the TDS on payments made to contract manufacturers. Ministry may, therefore decide to take appropriate decision to achieve this objective.

d. ITD may develop a mechanism to collect/receive information related to assessment available with other tax department and use it to deepen the tax base and bring the correct income to the tax-net. Alternatively the AIR in Form ER 4 should compulsory be called for from an assessee who is availing turnover based deductions under the provisions of the Act.