

Chapter I : Introduction

1.1 Introduction

A sound infrastructure is a *sine qua non* for economic development. Large investment in infrastructure sector such as power generation, railways, roads, ports, airports, irrigation, water supply and telecommunication services during the last decade or so has helped India to emerge as one of the fastest growing economies in the world. Infrastructure development has also provided a better investment climate in India.

Government alone cannot fulfill all the requirements of providing sound infrastructure. Therefore, private sector is also invited for the development of infrastructures within the country by providing tax holidays. The Finance Act, 1999 substituted section 80IA of the Income Tax Act (the Act) with a new section 80IA and section 80IB. Section 80IA provides for deductions in respect of profits and gains of industrial undertakings or enterprises engaged in “infrastructure development” or “eligible business” at hundred percent for a certain period subject to fulfillment of conditions provided in the section.

The provisions of section 80IA are briefly discussed in **Appendix 1**. The primary provisions of Sections 80A, 80AB, and 80AC, applicable to chapter VIA, are also applicable while allowing deduction under section 80IA. Rates of depreciation as per Appendix 1A read with 32(1)(i) are exclusively applicable to Power sector companies for which tax incentive under section 80IA is allowed.

1.2 Organisational set up

Central Board of Direct Taxes (CBDT) as a part of Department of Revenue, Ministry of Finance, Government of India is the Apex Body, charged with administration of Direct Taxes. CBDT is headed by a Chairperson and comprises six Members. In addition to their functions and responsibilities, the CBDT is responsible for exercising supervisory control over the field offices of the CBDT. The Principal Chief Commissioners of Income Tax (Pr.CCIT)/Chief Commissioners of Income Tax (CCIT)/Directors General of Income Tax (DsGIT) head the field offices. Each Pr.CCIT/CCIT/DGIT is assisted by Pr.CsIT/CsIT/DsIT, Additional/Joint CsIT, Deputy CsIT/DDsIT, Assistant CsIT/ADsIT and ITOs.

1.3 Why we chose the topic

According to the annual statement of revenue forgone under Central Tax System presented along with the Union budget by the Ministry of Finance, deductions under section 80 IA of the Income Tax Act for the financial year 2013-14 attributed to almost 16.5 *per cent* of the total revenue forgone/tax expenditure under direct taxes. Besides, other grounds to select the topic for performance audit are as under:

- Section 80-IA provides a 10-year tax holidays for infrastructure projects. The provisions in this section have evolved over the last two decades in line with the changing dynamics of Public-Private Partnerships (PPPs) in the infrastructure sector. While Build, Operate and Transfer (BOT) and Build, Own, Operate and Transfer (BOOT) are the most common models in PPP projects, slightly different variants of these are Build and Transfer (BT) and Build, Operate, Lease and Transfer (BOLT) which require an examination in the context of defining 'eligible business' engaged in infrastructure development.
- The provisions of section 80IA have led to tax disputes and a considerable debate on the scope and eligibility criteria for the tax holidays. In most of the cases, Courts and Tribunals have taken a liberal view keeping in mind the larger legislative intent behind a tax incentive provision, which also require an indepth examination in terms of their implementation.
- It was considered necessary to ascertain whether the systems issues/deficiencies in compliance of provisions relating to section 80IA pointed out earlier in Chapter III of C&AG's Report No.PA 7 of 2008, have been adequately addressed at appropriate levels since then.

1.4 Audit objectives

This performance audit is intended to seek an assurance through examination of selected scrutinized income tax returns of assessee companies that

- (i) deduction has been allowed by the Department only to the eligible assessee/ businesses in compliance with the provision of the Act/Rules/Circulars/Instructions;
- (ii) adequate internal control mechanism exists for monitoring the allowance of deduction under section 80IA in general and specific circumstances;

- (iii) there are no lacuna/ambiguities in the provision of the Act in the administration of the policy relating to allowance of deduction that accentuates litigation; and
- (iv) the objective of tax holidays or extension thereof under section 80IA has been achieved;

1.5 Audit scope

This performance audit covered cases of scrutiny assessments, revisions and rectifications made in the selected units during the financial years (FY) 2012-13 to 2014-15 and up to the date of audit. Wherever required, assessment records of previous assessment years were also examined.

1.6 Audit Sample

The Director General of Income Tax (Systems), New Delhi furnished details of deduction under section 80-IA claimed by the assessees comprising 4,977 records relating to AYs 2010-11 to 2012-13 as shown in the table below.

Details of deduction claimed as furnished by DGIT (Systems)		
(₹ in crore)		
Assessment Year	No. of cases	Deduction claimed
2010-11	1,516	40,740.00
2011-12	1,752	36,504.00
2012-13	1,709	32,220.00
Total	4,977	1,09,464.00

Assessment records of all these cases were taken up for audit. Besides, assessment records in respect of assessees claiming deductions under section 80-IA, if any, found during the course of audit and not included in the list provided by the DGIT (Systems) New Delhi, were also examined. Summary cases, if any, of the selected assessees were also examined, if considered necessary.

1.7 Acknowledgement

The Income Tax Department did not produce all the records requisitioned by audit. Out of 5,227 records requisitioned by audit, 4,153 records only were produced. Non production of records worked out to 20.55 per cent. **Appendix 2** depicts the details of non-production of records.

We however acknowledge the cooperation of ITD¹ in facilitating the audit by providing records and information in connection with the conduct of performance audit. We held an entry conference with CBDT on 5 August 2015 wherein we explained the audit objectives, scope of audit and the main focus areas of audit examination.

We issued draft performance audit report to the CBDT in April 2016 for their comments. After receipt of reply to the summary of recommendations of draft audit report from the CBDT in June 2016, we held an exit conference on 27 June 2016 to discuss audit findings and recommendations vis-à-vis the reply of the CBDT. We have included the CBDT's reply to the recommendations in this report together with audit comments thereon.

¹ Income Tax Department