

## Executive Summary

Large investment in infrastructure sectors such as power generation, railways, roads, ports, airports, irrigation, water supply and telecommunications 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. Provision of tax holidays for Industrial Undertakings and Enterprises have significantly enhanced the investment in “infrastructure development” in the last two decades. 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.

We conducted performance audit of the Income Tax Department (ITD) with the objectives of verifying whether

- (a) the deduction under section 80IA has been allowed by the ITD only to the eligible assessee/businesses in compliance with the provision of the Act/Rules/Circulars /Instructions;
- (b) adequate internal control mechanism exists for monitoring the allowance of deduction under section 80IA in general and specific circumstances;
- (c) there are lacuna/ambiguities in the provision of the Act in the administration of the policy relating to allowance of deduction that accentuates litigation; and
- (d) the objective of tax holiday or extension thereof has been achieved.

This performance audit covered assessments completed by the Assessing officers (AOs) during financial years 2012-13 to 2014-15 and up to the date of audit. Wherever necessary, assessment records of the selected assessee of previous assessment years were also examined.

The ITD irregularly allowed deduction to assessee in 33 cases across 13 states in respect of infrastructure developed by joint venture formed by collaboration with foreign companies, undertakings owned by Association of persons (AOPs), assessee who did not enter into agreement with the Government, non-compliant Industrial park and excluded works contractors. This resulted in underassessment of income involving tax effect of ₹ 205.84 crore.

**[Para 2.2]**

The ITD irregularly allowed deduction to assessee in 16 cases in eight states where the business of the assessee such as sale of plots, projects not covered under infrastructural facilities, conversion charges, development/maintenance of park etc, were not eligible for the deduction. This resulted in underassessment of income involving tax effect of ₹ 174.35 crore.

**[Para 2.3]**

The ITD irregularly allowed deduction to assessees in 19 cases in eight states in respect of income earned through sale of carbon credit which involved tax effect of ₹ 34.77 crore.

**[Para 2.8]**

The ITD irregularly considered additions made on account of treatment of expenditure as revenue, sale of fixed assets, disallowance made u/s 40A(3) 14A, 40(a) etc., for deduction in nine cases in five states. Consequently, the allowances were more than the amount claimed by the assessee involving consequential tax effect of ₹ 74.66 crore.

**[Para 2.9]**

The ITD irregularly allowed deduction to assessees in eight cases in two states in respect of profits derived from 'Railway Sidings/Jetties' constructed and operated by the assessees for their private purposes, which did not qualify to be treated as infrastructure facilities in terms of Explanation to section 80 IA(4). Irregular allowance of deduction attracted tax effect of ₹ 2066.70 crore.

**[Para 2.10]**

The ITD did not disallow deduction in 11 cases in six states despite belated filing of return which resulted in underassessment of income involving tax effect of ₹ 80.49 crore.

**[Para 3.2]**

The ITD irregularly allowed deduction to assessees in six cases in four states for the period beyond the permissible limit of 10 consecutive assessment years, starting from the declared initial assessment year. Incorrect allowance of deductions resulted in underassessment of income involving tax effect of ₹ 859.47 crore.

**[Para 3.3]**

The ITD irregularly allowed deduction to assessees in 15 cases in eight states where the assessee did not apportion the common expenses between eligible and non eligible units properly which resulted in excess allowance of deduction involving tax effect of ₹ 224.47 crore.

**[Para 3.4]**

The ITD irregularly allowed deduction to assessees in seven cases in four states in respect of the profits related to the enterprises or undertaking which were transferred in a scheme of amalgamation/demerger, even though such amalgamation/demerger was effected on or after 01.04.2007. Incorrect allowance of deduction resulted in underassessment of income involving tax effect of ₹ 376.10 crore.

**[Para 3.5]**

The ITD irregularly allowed deduction to assessees in 43 cases in 10 states due to mistake in calculation of income/tax, depreciation, double deduction allowed, deduction allowed on other head of income etc. Omission to disallow the deduction on these cases resulted in under assessment of income involving tax effect of ₹ 143.65 crore.

**[Para 3.6]**

The ITD irregularly allowed deduction to assessees in six cases in four states in the case of captive consumption of electricity where the assessees claimed excess deduction by adopting a rate higher than the market rate. The Assessing Officers (AOs) did not invoke the provisions of section 80 IA(8) to arrive at the correct amounts of eligible deduction in these cases which resulted in excess allowance of deduction involving tax effect of ₹ 15.10 crore.

**[Para 3.7]**

The ITD irregularly allowed deduction to assessees in 11 cases in six states though the plant and machinery being used were old or a pre-existing infrastructure facility or undertakings being formed by splitting up of business already in existence. Irregular allowance of deduction involved tax effect of ₹ 40.51 crore.

**[Para 3.8]**

The ITD irregularly allowed deduction to assessees in 27 cases in 12 states on interest receipts, sale of import license, insurance claim etc. that, inter alia, included the profit of the eligible business. Excess allowance of deduction attracted tax effect of ₹ 227.87 crore.

**[Para 3.10]**

The ITD irregularly allowed deduction to assessees in 65 cases in 11 states without verifying the information contained in the requisite audit report/certificate in Form 10CCB along with the profit and loss account and the balance sheet.

**[Para 4.4]**

The CBDT did not have any established mechanism to assess the impact of revenue foregone on account of deduction under section 80 IA on the economic and industrial growth of the country. There is no existing system to ascertain from the sponsoring ministries as to whether the tax holidays have had the desired impact on the growth of the economy. Therefore, the audit is unable to ascertain whether the very purpose of introducing the deductions in the Act has been achieved. The CBDT has also failed to produce any records to give an assurance that Government has put in any system to do the cost-benefit analysis of the scheme so as to assess the benefits to the society derived out of the concessions/disallowances given to the assessee companies.