Chapter 5 : Impact of MAT

5.1 We attempted to ascertain whether the ITD has in place a mechanism to assess impact of MAT as well as that of MAT credit in respect of bringing zero tax companies into tax net and whether the companies with nil tax under normal provisions are paying any tax under MAT or not.

5.2 Identification of zero tax companies

5.2.1 We sought information from CBDT (TPL) in October 2016 whether the ITD had any mechanism in place to assess the impact of MAT in respect of bringing the zero tax paying companies into tax net. Besides, we also called for a list of companies paying nil tax under normal provisions as well as under special provisions together with details of total tax collected under section 115JB and MAT credit availed by the respective corporate assessees pertaining to the period from 2012-13 to 2015-16. The reply to the above queries were not furnished.

We took up the matter with Additional Secretary (Revenue)/ Chairman, CBDT in November 2016. DGIT (Systems) made available the details of 60,227 companies paying nil tax under normal provisions as well as under special provisions in January 2017.

5.2.2 Examination of the companies paying nil tax under provisions relating to MAT

We test checked 441 returns out of list of 60,227 cases supplied by DGIT (Systems) of companies that had paid nil tax under special provision. Audit noted in 24 of the 441 cases, the corporate assessees had paid tax under MAT provisions. In the remaining 417 cases, the main reasons for the corporate assessees tax liabilities becoming nil under special provisions of MAT are given below:

Table 5.1: Companies paying nil tax MAT provisions

Sl. No.	Items which led to nil tax liability under MAT provisions	No. of cases	Percentage in terms of cases	Amount of deduction (₹ in crore)	Percentage in terms of incentives
1	Reduction of profit of a sick industrial unit	63	15.1	24780.77	63.4
2	Set off of unabsorbed depreciation or brought forward losses	140	33.6	6004.62	15.4
3	Residual unadjusted items and Deferred tax credited to P&L A/c	11	2.6	2709.85	6.9

4	Income being exempt under section 10A, 10B, 10AA, 10(26B), 10(38) etc	101	24.2	2526.41	6.4
5	Deduction of exempt dividend income	39	9.4	867.03	2.2
6	Share of profit from partnership firm being exempt	4	1.0	689.27	1.8
7	Reduction of amount withdrawn from reserve/provision	12	2.9	312.12	0.8
8	Profits exempt, the assesse being engaged in life insurance business	4	1.0	248.63	0.6
9	Provision written back	4	1.0	211.96	0.5
10	Any other amount allowable as deduction	7	1.7	198.52	0.5
11	Reduction of profit on sale of agriculture land /agriculture income being exempt	24	5.8	179.35	0.5
12	Deduction of gratuity/Power and fuel expenses not debited to P&L Account	2	0.5	159.61	0.4
13	Income exempt by virtue of Sec 90(2)	2	0.5	113.07	0.3
14	Reduction of provisions for Diminution in value of investment	3	0.7	55.26	0.1
15	Investment written off adjusted against provision	1	0.2	41.02	0.1
	Total	**417**		**39097.49**	

In terms of number of returns/cases, set off of unabsorbed depreciation and/or brought forward losses (33.6 *per cent*), income being exempt under section 10A, 10B, 10AA, 10(26B), 10(38) etc. (24.2 *per cent*), reduction of profit of a sick industrial unit (15.1 *per cent*), deduction of exempt dividend income (9.4 *per cent*) and reduction of profit on sale of agriculture land /agriculture income being exempt (5.8 *per cent*) are the top five incentives/exemptions/ deductions accounting for 88.1 *per cent* of number of sample cases which are nullifying the tax liability under MAT provisions.

In terms of amount of exemptions/deductions, reduction of profit of a sick industrial unit (63.4 *per cent*) followed by set off of unabsorbed depreciation and brought forward losses (15.4 *per cent*), residual unadjusted items and Deferred tax credited to P&L A/c (6.9 *per cent*), income being exempt under section 10A, 10B, 10AA, 10(26B), 10(38) (6.4 *per cent*) and deduction of exempt dividend income (2.2 *per cent*) are the top five incentives/exemptions/deductions accounting for 94.3 *per cent* of total amount of the sample cases, which are nullifying the tax liability under MAT provisions.

5.3 Companies liable to pay tax under MAT escaping levy of MAT

The Act provides that, where in the case of an assessee being company, the income-tax payable on the total income as computed under normal provisions of the Act is less than percentage of its book profit prescribed from time to time, then such book profit shall be deemed to be the total income of the assessee. Further Explanation 1 below sub section 2 of section 115JB prescribed certain adjustment to be carried out for computing book profit.

We noticed in 34 assessment cases in 14 states[88] where although tax was leviable under special provisions, it was levied under normal provisions of the Act which resulted in short levy of tax of ₹ 127.86 crore **(Appendix 33)**.

Box 5.1 : Illustrative cases on non-levy of tax under MAT

(a) Charge: Pr. CIT, Thrissur
Assessee: The Catholic Syrian Bank Ltd.
Assessment Year: 2011-12
PAN: AABCT0024D

AO, while passing rectification order (2014), determined 'nil' income under normal provision and no tax was levied. However, the assessee had a book profit of ₹ 29.29 crore and was liable to pay tax under special provisions. Omission resulted in non assessment of book profit of ₹ 29.29 crore involving tax effect of ₹ 5.84 crore. Reply from ITD was awaited.

(b) Charge: Pr. CIT-2, Chandigarh
Assessee: M/s Venus Remedies Ltd.
Assessment Year: 2013-14
PAN: AAACV6524H

AO, while computing tax liability of the assessee, did not compute book profit and levied tax under normal provisions. The assessee while computing book profit claimed deduction of ₹ 43.25 crore for depreciation as per Income Tax Act in addition to book depreciation and ₹ 1.55 crore for scientific research under section 10 of the Act and offered tax under normal provision being higher of the two. As the above deductions were not an allowable adjustments under special provisions of the Act, considering the above additions the assessee was liable to pay tax under special provisions. Omission resulted in non computation of book profit of ₹ 62.67 crore involving tax effect of ₹ 12.17 crore (difference of tax to be levied under special provisions and tax levied under normal provisions). ITD did not accept the observation stating that depreciation was an allowable deduction during computation of book profit. Further, on the issue of deduction for scientific research, ITD accepted the observation but

[88] Andhra Pradesh & Telangana (6), Assam (1), Bihar (2), Delhi (1), Himachal Pradesh (3), Karnataka (4), Kerala (3), Madhya Pradesh (3), Maharashtra (3), Punjab (2), Tamilnadu (3), Uttar Pradesh (1) and West Bengal (2)

stated that even after considering the same for disallowance, the assessee would still be liable to tax under normal provisions (November 2016). The reply was not tenable as the depreciation as per Income Tax Act was not an allowable deduction.

Although the above mentioned companies were liable to pay tax under MAT, special provisions of section 115JB were not applied in these cases.

5.4 The objective of MAT scheme nullified due to provisions of MAT credit

MAT credit under section 115JAA was introduced with effect from 1 April 1997. Subsequent to introduction of new section 115JB from AY 2001-02, the provisions for MAT credit were not applicable up to AY 2005-06 and only set off of the credit available upto AY 2000-01 was allowed which could be availed up to AY 2005-06. From AY 2006-07, the provisions of MAT credit were re-introduced allowing carry forward of MAT credit upto seven years, which was further extended upto 10 years vide Finance Act 2009. Recently, the Finance Bill 2017 has extended the period of set off to 15 years. No justification was given for reintroduction of MAT credit.

In Kerala and Maharashtra, test check of 12 assessment records pertaining to six Pr. CIT charges revealed that the MAT credit aggregating ₹ 380.53 crore brought forward from earlier years was completely availed in subsequent year(s) as shown below.

(₹ in crore)

Table 5.2 : Cases of MAT credit availed nullifying the scheme of MAT

Sr. No.	Name of the assessee/ PAN	Pr.CIT/ CIT Charge	AYs for which the MAT credit was carried forward	MAT credit carried forward	MAT credit set off	AYs in which adjusted
1.	Peekay Steel castings/ AABCP3517H	Kozhikode	2011-12	0.77	0.77	2012-13
2.	Malabar Institute of Medical Science/ AACCM3480H	Kozhikode	2008-09	0.72	0.72	2011-12
3.	Malabar Institute of Medical Science/ AACCM3480H	Kozhikode	2009-10	1.00	1.00	2011-12 2012-13
4.	Parrisons Foods Pvt. Ltd/AACCP2898J	Kozhikode	2007-08	0.87	0.87	2008-09
5.	Parrisons Foods Pvt. Ltd/AACCP2898J	Kozhikode	2013-14	0.25	0.25	2014-15
6.	Tata Sons/ AAACT4060A	Pr CIT 2 Mumbai	2007-08 2008-09	354.54	354.54	2009-10, 2010-11, 2011-12
7.	Brinton Carpets Asia Pvt. Ltd./ AAACB7059H	Pr CIT 1 Pune	upto AY 2009-10	0.72	0.72	2010-11, 2011-12

8.	Igate Computer System Ltd./ AABCP6219N	Pr CIT 1 Pune	2011-12	7.68	7.68	2012-13
9.	Neelkanth Mansion and Infrastructure Pvt Ltd./ AAACN1245R	Pr CIT 14 Mumbai	2010-11 2011-12	1.02	1.02	2013-14
10.	Rashtriya Chemicals & Fertilizers Ltd./ AAACR2831H	Pr CIT LTU Mumbai	2012-13	8.75	8.75	2013-14
11.	Bristlecone India Ltd./ AAACM5186E	Pr CIT 2 Mumbai	2006-07, 2007-08 2008-09	0.16	0.16	2010-11, 2011-12 2012-13
12.	Positive Packaging Industries Ltd./ AAACP2836Q	Pr CIT 3 Mumbai	2009-10, 2010-11	4.05	4.05	2012-13
	Total			**380.53**	**380.53**	

5.5 Conclusion

Excess of tax collected under MAT over tax under the normal provision and allowed to the assessee in the subsequent years as set off of MAT credit nullified to that extent the impact of original objective of introduction of MAT for collection of tax from companies covered under special provisions.

New Delhi **(SANJAY KUMAR)**
Dated: 10 July 2017 **Principal Director (Direct Taxes)**

Countersigned

New Delhi **(SHASHI KANT SHARMA)**
Dated: 10 July 2017 **Comptroller and Auditor General of India**