

## Chapter V: Fictitious demands during scrutiny assessments

### 5.1 Introduction

The source of Government's revenue consists of borrowings, corporation tax, income tax, custom-excise duties, service tax, non-tax revenue, non-debt capital receipts. Corporation and income tax together constitute 33 *per cent* of Government Revenues. Considering the importance of revenue collection in the yearly budget exercise, it is of utmost importance that the revenue collection reporting must be based on realistic figures.

For the financial year 2015-16, total tax collection of Pr. Chief Commissioner of Mumbai region was ₹ 2,48,061 crore of which collection of corporate tax was ₹ 1,45,708.30 crore. During test check we noticed that the AOs had not allowed credit of full amount of pre-paid taxes (i.e. advance tax and tax deducted at source) to the assesseees and levied higher amount of interest under section 234B or 234C which resulted in unrealistic demands, which were collected. As a result there was inflated collection of revenue of ₹ 14,185.74 crore during FY 2015-16. Some of the cases analysed by Audit are discussed in the subsequent paragraphs.

### 5.2 Short credit of advance tax payment

Section 207 of the Income Tax Act, 1961 (Act) provides for payment of advance tax in accordance with the provision of section 208 to 209. During test check, Audit noticed in the following five cases (Table 5.1) that erroneous demands were created by giving short credit of advance tax and by levying interest under section 234B on the short payment of advance tax so determined by the Department.

Table 5.1: Cases where credit for full pre-paid taxes was not given						(₹ in crore)
Sl. No.	Name of Assessee, AY	Charge	Date of scrutiny/ appeal effect order	Date of rectification/ refund order (Amount refunded)	Irregularities noticed	
1	State Bank of India, 2014-15	Pr. CIT 2, Mumbai	30.03.2016	31.03.2016 (9,407.69)	Credit for full advance tax was not given and excess interest under section 234B was levied.	
2	Bank of Baroda, 2014-15	Pr. CIT 2, Mumbai	21.03.2016	12.04.2016 (1,572.09)	Credit for full advance tax was not given.	
3	Bank of India, 2014-15	Pr. CIT 2, Mumbai	29.3.2016	31.3.2016 (584.0) 18.4.2016 (452.0)	Credit of advance tax of ₹ 1,170 crore was not given.	
4	IDBI Bank Ltd., 2009-10	Pr. CIT LTU, Mumbai	22.3.2016	31.3.2016 (100.50)	Appeal effect order was erroneously prepared and credit of advance tax was short given.	
5	DHL Express (India) Pvt. Ltd., 2012-13	Pr. CIT 9, Mumbai	30.03.2016	07.07.2016 (10.48)	Credit of TDS of ₹ 25.12 crore was not given	

Some major cases are highlighted below:

**5.2.1** In Pr. CIT-II Mumbai charge, scrutiny assessment of **State Bank of India** for the assessment year 2014-15 was completed on 30 March, 2016 determining income of ₹ 17389.58 crore. We noticed that against paid advance tax of ₹ 4,908 crore, credit for advance tax of ₹ 1,202 crore only was given. We also noticed that interest of ₹ 5,853.63 crore was levied under section 234B for 24 months which works out to 5.75 *per cent* per month, as against one *per cent* per month. As a consequence, illusory demand of ₹ 10,109.37 crore was raised. Interestingly, on the one hand the demand was paid by the assessee on 30 March, 2016 itself and on the other hand, the assessee had applied for rectification of the mistake on the same date i.e. 30 March 2016, seeking full credit of advance tax paid. The rectification order was passed on the next day i.e. 31 March, 2016, determining refund of ₹ 9,407.69 crore after allowing full credit of advance tax of ₹ 4,908 crore and regular assessment tax paid on 30.03.2016. Though the refund order was issued on 31 March 2016 itself after obtaining necessary approval on the same day, the actual refund was transferred on 2 April 2016, i.e. in the next financial year.

Similar mistake was made in the scrutiny assessment order of assessment year 2013-14, completed on 27 March 2015, wherein a demand of ₹ 7,094.32 crore was raised by giving credit for advance tax of ₹ 1,173 crore, instead of the full amount of ₹ 6,144 crore. In this case also the assessee had paid the demand immediately. The mistake was rectified under section 154 on 31 March 2015 and a refund of ₹ 6,771.11 crore was determined.

**5.2.2** In Pr. CIT-II Mumbai Charge, scrutiny assessment of **Bank of Baroda** for the assessment year 2014-15 was completed on 21 March 2016, determining income at ₹ 5,045.33 crore. We noticed that against advance tax paid of ₹ 1,890 crore, the assessing officer had given credit of ₹ 595 crore only. The consideration of less advance tax resulted in creation of non-existent demand of ₹ 1067.29 crore including interest under section 234B of ₹ 203.29 crore, against an actual refund of ₹ 501.68 crore. The assessee had paid the demand of ₹ 1067.29 crore on 28 March, 2016, and applied for rectification on the very next day i.e. 29 March, 2016, pointing out that the credit of advance tax was not correctly given. We noticed that the department had passed the rectification order on 12 April, 2016 (i.e. in the next financial year) and refund of ₹ 1572.09 crore was released on 26 April, 2016, which included interest under section 244A of ₹ 56.85 crore which could have been reduced if the full credit for pre-paid taxes was given during the original assessment.

### **5.3 Withholding of refund by levy of interest under section 234B/234C**

Section 234B of the Act provides for levy of simple interest at the rate of one *per cent* per month if advance tax paid is less than 90 *per cent* of the assessed tax.

Section 234C of the Act provides for levy of simple interest at the rate of one percent for deferment of payment of advance tax instalment on specified due dates.

During test check we noticed the following 13 cases (Table 5.2) in which the refunds to the assesseees were not issued since undue interest under section 234B or 234C was levied. The method adopted was to withhold the refund by making contra-adjustment in 'Assessment Information System" (AST) and levy interest under section 234B/234C to the extent of the amount for refund.

Table 5.2: Cases where refund was adjusted by levy of interest under section 234B or 234C						(₹ in crore)	
Sl. No.	Name of Assessee, AY	Charge		Date of scrutiny (refund withheld)	Date of rectification order (amount refunded)	Amount of Interest paid	
1	Housing Development Corporation Ltd., 2013-14	Pr. CIT Mumbai	LTU,	25.02.2016 (181.91)	21.04.2016 (213.65)	32.59	
2	Kotak Mahindra Bank Ltd., 2012-13	Pr. CIT Mumbai	2,	23.03.2016 (23.46)	12.07.2016 (29.33)	5.87	
3	Kotak Mahindra Bank Ltd., 2013-14	Pr. CIT Mumbai	2,	28.03.2016 (25.5)	Rectification order yet to pass	--	
4	Hewlett Packard Financial Services (I) Pvt. Ltd., 2013-14	Pr. CIT Mumbai	2,	29.03.2016 (20.14)	28.09.2016 (24.18)	4.03	
5	BSE Ltd., 2013-14	Pr. CIT Mumbai	2,	29.01.2016 (17.82)	20.05.2016 (21.33)	3.40	
6	Air India Ltd., 2013-14	Pr. CIT Mumbai	5,	23.03.2016 (31.29)	28.07.2016 (40.49)	6.32	
7	Birla Sunlife Asset Management Pvt. Ltd, 2013-14	Pr. CIT Mumbai	6,	18.03.2016 (11.25)	08.11.2016 (13.72)	2.47	
8	Drive India Enterprises Solutions Ltd., 2013-14	Pr. CIT Mumbai	9,	29.03.2016 (18.26)	31.03.2017 (21.49)	3.36	
9	Metropolitan Stock Exchange Ltd., 2013-14	Pr. CIT Mumbai	14,	31.03.2016 (12.98)	24.06.2016 (15.45)	0.13	
10	Crest Logistics and Engineers Pvt Ltd., 2013-14	Pr. CIT Mumbai	14,	15.02.2016 (32.69)	13.04.2016 (38.58)	5.88	
11	Kotak Mahindra Asset Management Co., 2013-14	Pr. CIT Mumbai	14,	28.03.2016 (10.95)	09.05.2016 (13.03)	2.08	
12	Lichen Metals Pvt Ltd., 2012-13	Pr. CIT Mumbai	14,	31.03.2016 (7.79)	11.05.2016 (10.32)	2.06	
13	Deposit Insurance & Credit Guarantee Ltd., 2013-14	Pr. CIT Mumbai	LTU,	18.03.2016 (167.77)	04.04.2016 (167.77)	Nil	

We give below three illustrated cases:

**5.3.1** In Pr. CIT LTU Mumbai Charge, in the case of **Housing Development Finance Corporation Ltd.** scrutiny assessment for the assessment year 2013-14

was completed in February 2016. We observed that the assessee had pre-paid taxes of ₹ 1,920.90 crore as against tax payable of ₹ 1,738.99 crore. Thus, the assessee was entitled for refund of ₹ 181.91 crore. However, the refund was withheld by incorrect levy of interest of ₹ 181.91 crore under section 234B. The mistake was rectified by the Department in the next financial year on 21 April 2016, when interest levied earlier under section 234B was withdrawn and refund of ₹ 213.65 crore including interest under section 244A of ₹ 32.59 crore was issued to the assessee.

**5.3.2** In Pr. CIT LTU, Mumbai charge, the assessment of **Deposit Insurance and Credit Guarantee Corporation** for the assessment year 2013-14 was completed on 18 March, 2016 determining income of ₹ 8,703.34 crore. We noticed that the assessee had paid advance tax of ₹ 2 991.57 crore against tax liability of ₹ 2,823.80 crore. Thus, the assessee was entitled for refund of ₹ 167.77 crore. However, the refund was not issued as undue interest of ₹ 167.77 crore was levied under section 234C. The mistake was rectified by the Department on 4 April, 2016 i.e. in the next financial year and refund of ₹ 167.77 crore was issued to the assessee.

**5.3.3** In Pr. CIT 14, Mumbai charge the assessment of **Metropolitan Stock Exchange Ltd.** for the assessment year 2013-14 was completed on 31 March 2016 determining tax of ₹ 1.86 crore against which the assessee had pre-paid taxes by way of TDS of ₹ 14.84 crore. However, no refund was issued to the assessee since interest of ₹ 12.98 crore was levied under section 234B incorrectly. The mistake was rectified on 24 June 2016 (i.e. in the next financial year) and a refund of ₹ 15.45 crore including interest under section 244A of ₹ 2.47 crore for the period from April 2013 to June 2016 was issued. Thus, incorrect levy of interest under section 234B at the stage of scrutiny assessment resulted in exaggerated revenue collection and excess interest outgo of ₹ 12.98 lakh as interest under section 244A.

In reply Department stated that there were 2,591 entries in e-TDS data base and since 31 March 2016 was the last day for passing order under section 143(3), the server of Income tax department was not functioning properly, so the order was passed without giving credit of TDS.

The reply is not tenable as the Department had given credit for full amount of TDS of ₹ 14.84 crore. The Department has not given any reply on the levy of interest under section 234B when available tax credit was more than the tax.

#### **5.4. Other observations**

**5.4.1** In Pr. CIT LTU Mumbai charge, in the case of **Union Bank of India** for the assessment year 1991-92, effect to appeal order (ITAT) was given on 21 March 2016 determining demand of ₹ 752.06 crore which was paid by the assessee on 31 March, 2016. We noticed that the demand was created due to incorrect addition of ₹ 872.27 crore on account of the refund previously issued, instead of the correct amount of ₹ 105.78 crore. The assessee had applied for rectification of the mistake on 31 March 2016, the date on which the demand was paid. The mistake was rectified by the Department on 1 April 2016 (in the next financial year) and refund of ₹ 762.48 crore including interest under section 244A of ₹ 3.57 crore for the month of April 2016 was issued to the assessee, since it is fully payable even for part of the month under section 244A.

#### **5.5 Conclusion**

As discussed above, Audit found instances where the ITD had raised exaggerated demands to achieve its revenue collection targets by resorting to unwarranted methods such as not allowing full credit of the prepaid taxes in the assessment, levying interest under section 234B or 234C on undue demands etc. Finally the inflated demands collected by the department were refunded in the next financial year along with the interest under section 244A. This eventually put a heavy burden on the exchequer in the form of avoidable interest paid on refunds.