

Chapter 2: Completeness of the tax base of assessee engaged in real estate sector

2.1 In this chapter, we focus on the issue whether or not all the developers/builders/real estate agents dealing in real estate sector are in the tax net and filing income tax returns.



For this purpose, we collected information from the Registrar of Companies (ROC), Real Estate Regulatory Authority (RERA) and Confederation of Real Estate Developers' Associations of India (CREDAI) regarding details of entities engaged in real estate sector registered with them and Registrar/sub-registrar of properties and compared it with the tax database with the ITD.

2.2 Verification of tax base against ROC data

We could obtain the details of companies dealing in real estate sector from ROCs in 12 states as shown in Table 2.1 below.

Table – 2.1: Details of companies relating to Real Estate Sector received from ROCs			
State	Total no. of companies	PAN not available with respect to Col. 2	PAN available with respect to Col. 2
1	2	3	4
Andhra Pradesh & Telangana	7,520	7,391	129
Bihar	454	454	0
Delhi	4,622	4,518	104
Gujarat	1,278	1,278	0
Karnataka	3,048	1,853	1,195
Kerala	1,787	1,161	626
Odisha	1,323	1,323	0
Rajasthan	1,439	1,439	0
Tamil Nadu	4,258	3,404	854
Uttarakhand	107	107	0
Uttar Pradesh	7,849	7,849	0
West Bengal	20,893	20,893	0
Total	54,578	51,670	2,908

The ROC maintains a database of all companies that register with them at the time of their incorporation. The companies are required to file annual returns with them. Form MGT-7, prescribed in the Companies (Management and Administration) Rules, 2014, requires a company to file its annual report mentioning its PAN compulsorily.

As can be seen from Table 2.1 above that ROCs did not have information about PAN in respect of 51,670 (95 per cent) of a total of 54,578 companies for which data was made available to Audit. It was difficult for Audit to ascertain from the information obtained from ROCs whether these companies were in the tax net of the ITD or not except in case of Andhra Pradesh & Telangana where Audit could identify PAN in respect of 147 of these companies.

Audit forwarded the information received from ROCs without PAN data to ITD to ascertain whether these companies were filing ITRs. However, no reply was received from ITD.

All corporate assesseees are compulsorily required to file their ITRs with ITD irrespective of income or loss.

Audit attempted to ascertain whether the companies in ROC data with PAN were regular in filing their ITRs. In respect of 840 companies¹ with PAN coming under selected assessment charges, we noticed that 159 companies² (19 per cent) were not filing their ITRs.

From the above, it can be concluded that there is no mechanism with ITD to ensure that all the registered companies have PAN and are filing their ITRs regularly.

Recommendation: *The CBDT, Ministry of Finance and Ministry of Corporate Affairs may have inter-ministerial arrangement to their mutual benefit where there is an interface between the ITD and ROC so that when a company is registered with ROC, the application for PAN is submitted automatically with the ITD. When PAN is issued to the newly incorporated company, it will automatically be sent to ROC Systems for updation. Further, the companies should be compulsorily required to submit a copy of acknowledgement of ITR while furnishing their annual reports in Form MGT-7. This will ensure that companies file their ITRs and at the same time the data of ROC will be in sync with that of ITD.*

The CBDT stated (July 2018) that system of applying for PAN at the time of applying for registration of a company is already in vogue. The CBDT agreed (July 2018) to examine the feasibility of requiring a company to compulsorily submit a copy of acknowledgement of ITR while filing their annual reports in Form MGT-7.

1 Andhra Pradesh & Telangana – 276 (129 + 147 identified by Audit), Kerala – 179 and Tamil Nadu - 385

2 Andhra Pradesh & Telangana - 49, Kerala – 86 and Tamil Nadu - 24

2.3 Verification of tax base against RO/SRO data

To keep a watch on high value transactions undertaken by the taxpayer, the Income-tax Law has framed the concept of statement of financial transaction or reportable account previously called as 'Annual Information Return (AIR)'.

Section 285BA of the Act and Rule 114E of the Income Tax Rules, 1962 (the Rules) provide for furnishing of statement of financial transactions annually by the Registrar or Sub-Registrar of properties. This AIR is to be submitted for purchase or sale by any person of immovable property for an amount of ₹ 30 lakh or more. In addition, the I&CI also collects information on sale or purchase of immovable property valuing ₹ five lakh or more but less than ₹ 30 lakh from ROs/SROs under CIB scheme.

Section 139A(5)(c) read with Rule 114B requires mentioning of permanent account number (PAN) by a person in documents pertaining to the transactions of sale or purchase of any immovable property exceeding ₹ 10 lakh with effect from 1st January 2016 (before 1st January 2016 rupees five lakh).

2.3.1 Audit collected the information of sellers of immovable properties valuing rupees one crore and more; and having valid PAN, from the assessment records of the selected assessment charges, RO/SRO of properties and I&CI wing. Audit attempted to verify the assessment records/ ITRs of the sellers in the concerned assessment charges to see whether all the sellers of immovable properties have filed their ITRs.

Audit could verify 923 such cases and found that in 90 cases (9.7 per cent) involving transaction value of ₹ 391.40 crore, the sellers had not filed their ITRs as shown in Table 2.2 below.

Table 2.2: Non-filers identified from the data of sales/purchases transactions			
State	Cases verified	Cases where ITR not filed	Amount involved in Col. 3 (₹ in crore)
1	2	3	4
Andhra Pradesh & Telangana	51	3	12.41
Bihar	48	19	33.88
Delhi	140	4	23.70
Jharkhand	77	2	2.51
Gujarat	125	6	27.30
Madhya Pradesh	100	8	13.14
Odisha	70	7	13.31
Rajasthan	75	3	30.62
Uttar Pradesh	143	6	7.69
West Bengal	94	32	226.84
Total	923	90	391.40

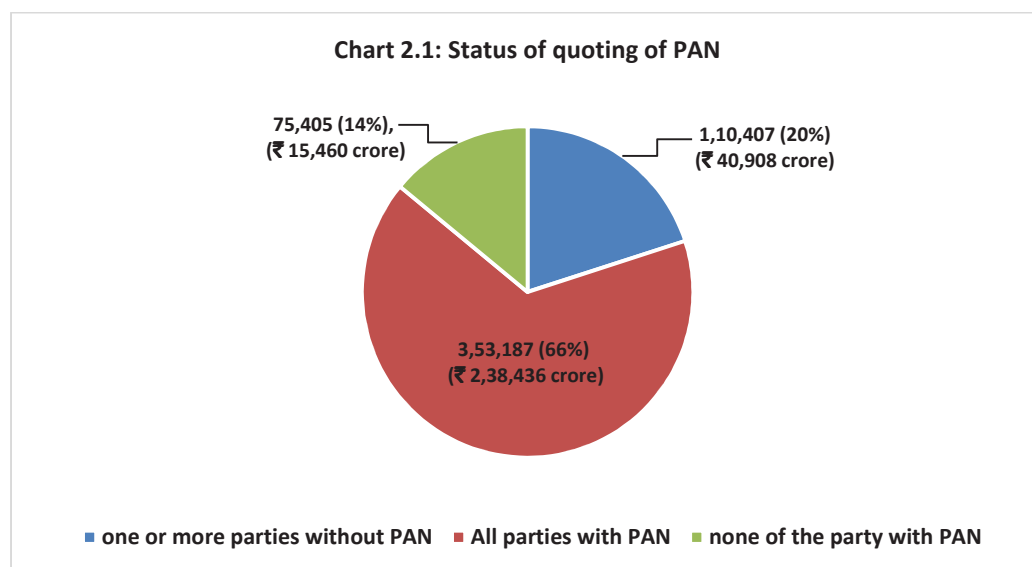
Thus, the system in the ITD to ensure compliance of filing of ITRs by the sellers of high value immovable properties was not effective.

Recommendation: *The CBDT may consider taking up with the state governments to have an interface between IT system of ITD and that of Inspector General of Registrations (IGR) so that whenever sale of properties is registered with IGR office, the information is automatically populated into ITD systems as well.*

The CBDT agreed (July 2018) to examine the recommendation and stated that although provisions are in place to identify non-filers having transaction of high value property, there is a need to strengthen its enforcement.

2.3.2 We carried out a detailed analysis in respect of sale/purchase transactions of immovable property in Maharashtra being the state with the highest collection of income tax and also with significant contribution in the real estate sector. For this we collected the data from Inspector General of Registrations (IGR), Maharashtra, pertaining to 104 Sub Registrar Offices (SROs) under Pune jurisdiction and 24 SROs under Mumbai City jurisdiction in respect of sale/purchase of immovable property carried out during July 2012 to January 2015. This data contained 9,10,151 property sale/purchase transactions³ having entries of 27,88,789 buyer/seller parties involving ₹ 3,01,301 crore.

Analysis of above data shows that PAN was required to be mentioned in 5,38,999 transactions of ₹ 2,94,805 crore as the value of each of these transaction was rupees five lakh or more. The Chart 2.1 below depicts the status of quoting of PAN in these transactions.



³ This data has been analysed here to verify the availability of PAN of transacting parties in property registration documents. This data has also been used in para 4.2.3 for applicability of section 56(2)(vii)(b), 43CA and 50C.

Thus, 34 *per cent* of these transactions had instances where one or more parties of buyers/sellers had not mentioned their PAN. Sixty seven of these transactions, each with a transaction value more than ₹ 10 crore, involved ₹ 1,681 crore. There were 75,405 transactions involving ₹ 15,460 crore where none of the parties (buyers/sellers) had quoted PAN.

2.3.3 In Delhi, Audit received information in respect of 13,650 transactions of sales/purchases of immovable property registered during FYs 2013-14 to 2016-17 from five Registrars of properties. In these transactions PAN of 6,591 sellers and 5,542 buyers were not available.

2.3.4 Similarly, while verifying the transactions where PAN of either of the parties to a transaction (i.e. either buyer or seller) was available in Andhra Pradesh & Telangana, Delhi and Madhya Pradesh, we noticed that PAN in respect of the other parties in 102 cases⁴ was not available in the property registration documents.

Source of investment in non-PAN transactions may remain out of purview of ITD. There may be a possibility that capital gain arising in non-PAN transactions may also have escaped taxation.

2.3.5 The Director I&CI (Delhi) informed (October 2017) that there were about 4,450 SROs in India who were required to submit online information of the sale or purchase of immovable property above ₹ 30 lakh. It was also informed that all the SROs were not complying with this procedure and some of them were not submitting the information online.

The enforcement of provisions of the Act in respect of filing of AIRs by ROs/SROs in respect of sale or purchase of an immovable property by the ITD was weak.

Recommendation: *The CBDT may put a mechanism in place to ensure compliance of provisions of section 285BA and section 139A(5)(c) read with Rule 114B by AIR filers.*

The CBDT stated (July 2018) that a new dedicated Reporting Portal had been operationalised in April 2018 wherein the Reporting Entities are required to register and upload the statements.

4 Andhra Pradesh & Telangana - 79, Delhi - 9 and Madhya Pradesh - 14

2.4 Verification of tax base against RERA, CREDAI and other sources

We identified the assessees in real estate sector from the information collected from RERA, CREDAI and other sources who should have filed their ITRs in the selected assessment charges and we tried to ascertain whether all of them filed their ITRs during FYs 2013-14 to 2016-17. The result of the above comparison is given in Table 2.3 below.

Table-2.3: Comparison of data from third parties on assessees in real estate sector identified by audit with data of ITD			
State	Number of Real estate entities/parties identified by Audit from third party sources verified in selected charges	ITRs received in the selected charges	ITRs not received
Gujarat	121	77	44
Karnataka & Goa	1,222	937	285
Kerala	532	416	116
Tamil Nadu	978	921	57
West Bengal	99	73	26
Total	2,952	2,424	528

Audit observed that in 528 cases (18 per cent) out of 2,952 entities/parties identified by Audit, ITRs were not filed. The ITD was supposed to issue notice to the concerned persons seeking the details of ITRs filed and to ask for filing the ITR, if the same had not been filed. However, the ITD issued notices for filing of ITRs only in 37 cases⁵.

ITD was not effectively using other third party data to widen their tax net. Audit is of the view that there is a need to strengthen the mechanism for identifying the non-filers.

2.5 Conclusion

Audit noticed several companies outside the tax net and several high value property transactions escaping tax. There is no mechanism with ITD to ensure that all the registered companies have PAN and are filing their ITRs regularly. The system for ensuring compliance of filing of ITRs by the sellers of high value immovable properties was not effective.

The enforcement of provisions of the Act in respect of filing of Annual Information Reports (AIRs) by Registrar/Sub-Registrar of properties in respect of sale or purchase of an immovable property by the ITD was weak. ITD was not effectively using other third party data to widen their tax net. There is a need to strengthen the mechanism for identifying the non-filers.

⁵ Kerala – 11 cases and West Bengal – 26 cases