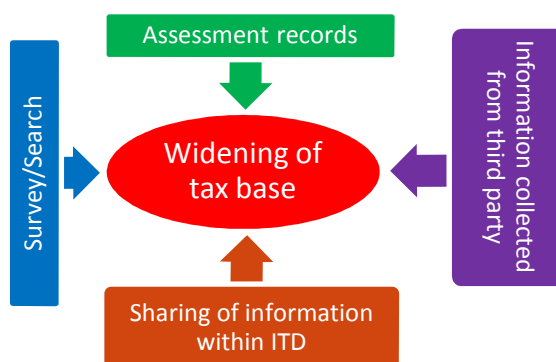


Chapter 3: Efforts of Income Tax Department to widen the tax base in real estate sector

3.1 In this chapter we try to ascertain whether all resources available with the assessing officers (AOs) like Annual Information Returns (AIRs), survey, search and seizure reports and information available in assessment records, etc. have been effectively utilized to widen the tax base by bringing more assessee under the tax net.

3.2 Tools available with ITD for widening the tax base

The ITD has made efforts⁶ to streamline various procedures and measures for widening the tax base in many ways which include compulsory quoting of PAN for certain specified transactions, mandatory furnishing of AIR for specified transactions by various agencies and collection of information from third parties under Central information Branch (CIB) scheme. Besides, the AOs can also utilize the search and seizure/survey reports to widen the tax base.



Result of examination by Audit of records/information is discussed in the following paragraphs.

3.3 Information collected from third party

3.3.1 The ROs/SROs in the states are required to submit information on sale/purchase of immovable properties to ITD through Annual Information Reports (AIRs). The information in respect of sale and purchase of immovable properties valuing ₹ 30 lakh and above is required to be furnished online by ROs/SROs in AIR.

⁶ Source: Central Action Plan 2014-15 of Central Board of Direct Taxes

The information received from ROs/SROs is both PAN and Non-PAN based. The PAN based information is available to jurisdictional assessing officers (JAOs) in Individual Transaction Statement (ITS) of the PAN for use during scrutiny assessments. Thus, the PAN based information is deemed to be forwarded to the JAOs.

The non-PAN information is downloaded/extracted by Intelligence and Criminal Investigation (I&CI) from the 'Enforcement System' module of ITD and forwarded to the concerned Pr. CCsIT for onward dissemination to JAOs for necessary action.

3.3.2 All 18 offices of I&CI were requested by Audit to provide the data on information received by I&CI and action taken thereon in respect of real estate sector (with regard to sales/purchases of immovable property) for the period from FY 2013-14 to FY 2016-17.

3.3.3 Information was provided to Audit by nine offices of I&CI on dissemination of information to JAOs and action taken thereon by JAOs. Audit noticed that information in respect of 3,06,072 non-PAN transactions⁷ relating to Real estate sector were disseminated by I&CI to JAOs during FY 2013-14 to FY 2016-17 for taking action. However, as per the data furnished, JAOs has taken action in respect of only 120 cases⁸ out of 90,292 cases, information for which were disseminated by Chandigarh, Kochi and Patna charges of I&CI. The data in respect of action taken on the disseminated information was not available in respect of six I&CI charges⁹. This indicates that AIRs information disseminated by the I&CI is considered as a low priority area by the JAOs.

3.3.4 Nine offices¹⁰ of I&CI did not furnish the information even of the cases disseminated. The I&CI, New Delhi did not provide the information stating (August 2017) that they were not the custodian of the information requested by Audit and that information may be available with the System Directorate of the Department. Audit approached (February 2018) the Pr. DGIT(Systems) to obtain the information. The Pr. DGIT(Systems) did not provide this information to Audit.

7 Ahmedabad-42 (2013-14), Bhopal-173 (2013-14), Chandigarh-477 (2013-14 to 2016-17), Jaipur-1,94,064 (2013-14 and 2014-15), Kochi-89,650 (2013-14 to 2015-16), Kolkata-76 (2013-14 to 2016-17), Lucknow-10,561 (2013-14) Mumbai-10,864 (2013-14 and 2014-15) and Patna-165 (Jharkhand - 2013-14, Bihar - 2016-17)

8 Chandigarh-106, Kochi-5 and Patna-9

9 Ahmedabad, Bhopal, Jaipur, Kolkata, Lucknow and Mumbai

10 Bengaluru, Bhubaneswar, Chennai, Guwahati, Hyderabad, Kanpur, Pune, Nagpur and New Delhi

3.3.5 As discussed in para 2.3.2, there were 5,38,999 property sale/ purchase transactions of ₹ 2,94,805 crore in which PAN was required to be mentioned. Out of these, there were 75,405 transactions of ₹ 15,460 crore where none of the parties had quoted PAN.

Audit sought response from selected sample charges in Maharashtra to know the status of action taken in regard to these transactions since they posed maximum risk as they might be unaccounted and/ or have been left out of tax purview. No response was received from ITD (February 2018).

The risk associated with non-PAN transactions in general and omissions on the part of ITD were highlighted in CAG Audit Report No. 4 of 2013 (Strengthening the Tax base through Use of Information) also. However, due importance was not accorded by the ITD to monitor non-PAN transactions despite these being under the highest risk category from the point of view of tax evasion in general and due to these being transactions of real estate sector in particular.

3.3.6 Audit verified 833 cases of sales/purchases of immovable properties each of rupees one crore and above, collected from the data of Registrar/Sub-registrar of properties, in selected assessment charges where PAN was available. During verification Audit noticed in 43 cases¹¹ that ITD failed to ensure that all transactions of sale/purchase of immovable properties were brought to tax net where the assessee filed their ITRs but did not show the transaction of sales of immovable properties of ₹ 90 crore in the ITRs. One such case is illustrated below:

- a. In Bihar, Pr. CIT-II Patna Charge, the scrutiny assessment of Smt. Gayatri Devi for the AY 2014-15 was completed in June 2016. Audit noticed from the data collected by audit from the SRO, Patna that the assessee had sold an immovable property of ₹ 1.04 crore. The AO had not verified¹² the issue to ensure that capital gain, if any, was taxed as I&CI of ITD failed to forward this information to AO.

Thus, there was a lack of mechanism in the ITD to ensure that persons involved in high value sales of immovable properties offered capital gain for tax.

3.4 Sharing of information within the ITD

The ITD has prescribed procedures for proper coordination between AOs charges and TDS charges with regard to timely sharing of information. The AOs may share the information relating to the third party noticed during scrutiny assessment and considered vital for assessment of that person, with another jurisdictional AO.

11 Andhra Pradesh & Telangana - 4, Bihar – 10, Odisha - 10, Jharkhand – 4 and Uttar Pradesh - 15

12 case was selected for limited scrutiny for verification of cash deposit in saving accounts only

During examining in the assessment charges, Audit noticed that although details (i.e. name of assessee, address with PAN as per sale deed) of seller/purchaser of immovable properties and transferor of the land (i.e. partner of a firm who contributed his land as capital in the firm) in 146 cases¹³ were available in scrutiny assessment records, such information was not shared by concerned AOs with other JAOs for verification.

Of these, we are illustrating two cases relating to information although available in assessment records but not shared by the concerned AOs with other JAOs below:

- a.** In Chhattisgarh, under ACIT Circle 1(1) Bhilai, Pr. CIT-2 Raipur charge, M/s Chauhan Housing Company purchased a piece of land from Smt. Kamla Chandrakar in March 2012 against stamp duty value of ₹ 1.25 crore. The details of the seller, Smt. Kamla Chandrakar were available in the assessment records of the buyer, however these were not shared with the concerned JAO {ITO Ward 1(3), Bhilai} for verification of capital gain. On verification of ITR of seller (Smt. Kamla Chandrakar) for the AY 2012-13, Audit noticed that sale consideration taken by the assessee for computation of long term capital gain was ₹ 50 lakh instead of ₹ 1.25 crore. Had the information been shared with the JAO underassessment of capital gain on ₹ 75 lakh could have been avoided.
- b.** In Madhya Pradesh, under Pr. CIT-Gwalior charge, the assessee (M/s KMJ Land Developers India Limited) during the AY 2012-13 purchased a land valuing ₹ 2.30 crore. Audit noticed that though sellers – Asheem Vaishya, Love Vaishya and Kush Vaishya filed return of income for the AY 2012-13, they did not offer capital gains against these amounts in their respective returns. It was also noticed that the AO did not share the above information with the concerned AOs of the sellers¹⁴ though the PAN was available on the sale deed. Thus total capital gains on sale of ₹ 2.30 crore escaped taxation.

This indicated that sharing of information between assessment charges which was required to plug leakage of revenue, was poor.

Recommendation: *It is recommended that the CBDT may put in place an IT driven mechanism for sharing of information within the department so as to utilize information such as those regarding sales/purchases transactions of immovable property effectively and plug the leakage of revenue.*

13 Andhra Pradesh & Telangana - 2, Bihar - 3, Chhattisgarh - 4, Delhi - 1, Gujarat - 4, Karnataka - 2, Madhya Pradesh - 50, Odisha -1, Tamil Nadu - 5, Uttar Pradesh - 73 and Uttarakhand -1

14 Asheem Vaishya - ITO Ward 2(1), Gwalior, Love Vaishya and Kush Vaishya - ITO Ward 2(3), Gwalior

The CBDT stated (July 2018) that there was already a system in place for sharing the information within the Department.

Audit is of the view that since mechanism of sharing of information within the ITD is not effective, there is a need to strengthen the mechanism and to make it robust.

3.5 Effectiveness of Survey in widening of tax base

Survey, carried out under section 133A and 133B of the Income Tax Act, 1961 is an effective tool for strengthening the tax base as well as deterring tax evasion. Survey reports need to be followed up for compliance from the defaulters. Prompt action to pass necessary orders by the competent authority for defaults detected during survey will result in timely collection of Tax.

Audit called for information in respect of surveys conducted in the real estate sector during the FYs 2013-14 to 2016-17 from selected assessment charges. The details of information provided by the ITD is shown below in Table 3.1.

Table 3.1: Information on surveys conducted in real estate sector in selected charges				
Sl. No.	State	Number of surveys conducted in real estate sector	Additions made in survey ₹ in lakh	New assessee detected in surveys
1.	Assam	8	0	0
2.	Bihar	0	0	0
3.	Gujarat	28	Not furnished	Not furnished
4.	Haryana	0	0	0
5.	Himachal Pradesh	0	0	0
6.	Jammu & Kashmir	0	0	0
7.	Jharkhand	3	0	0
8.	Karnataka & Goa	72	100.72	0
9.	Kerala	0	0	0
10.	Odisha	24	Not furnished	Not furnished
11.	Punjab & Chandigarh UT	3	0	0
12.	Rajasthan	4	Not furnished	Not furnished
13.	Tamil Nadu	5	623	1
14.	Uttarakhand	6	154.09	Not furnished
15.	West Bengal	7	225.32	0
Total		160	1,103.13	1

One hundred sixty surveys (33 per cent) of a total of 490 surveys conducted by ITD during 2013-14 to 2016-17 were in respect of the real estate sector. Audit analysed the information relating to surveys conducted and finalized by ITD relating to real estate sector during the period which revealed the following:

- a. Only one new assessee relating to the real estate sector had been added to the tax base and addition of income of only ₹ 11.03 crore was made by ITD as a result of these surveys.
- b. The information in respect of six states¹⁵ were not provided by the ITD.
- c. Information in respect of addition made in surveys by the jurisdictional assessing officers (JAOs) and new assessees detected in surveys was not provided in respect of four states¹⁶, which shows that maintenance of data in ITD was poor.
- d. Assessments were still pending in respect of 20 cases¹⁷ in Assam, Karnataka and West Bengal.
- e. In the case of M/s Classic Squares Realty Pvt. Ltd. (PCIT Panaji charge), the ITD did not select the case for scrutiny (Compulsory manual scrutiny) despite the fact that on the basis of survey, the assessee admitted an additional income of rupees one crore on account of unrecognized sales, undervaluation of work-in-progress and unsold commercial space, etc. for AY 2014-15.

The ITD, therefore, did not use surveys effectively to widen its tax base in the real estate sector.

3.6 Effectiveness of Search & Seizure in widening the tax base

Section 132 of the Act, empowers certain income tax authorities to carry out search and seizure in respect of any person to unearth any undisclosed income. The power to requisition books of account, etc. is also available to income-tax authority under section 132A. These provisions enable income tax authorities to get hold of evidence regarding the tax liability of a person which he may be withholding from the ITD. These also enable the authorities to get hold of assets representing income believed to be undisclosed and to attach so much of these assets as may be necessary to discharge the tax liability, arising out of the assessment of undisclosed income as a result of the search.

Audit collected information in respect of search and seizure conducted in the real estate sector during the FYs 2013-14 to 2016-17 from selected assessment charges. Information in respect of 18 states/UT¹⁸ was received. One hundred thirty four¹⁹ search and seizure operations (12 *per cent*) of the total of 1,100 search and seizure operations by ITD during FY 2013-14 to 2016-17 in selected

15 Andhra Pradesh & Telangana, Chhattisgarh, Delhi, Madhya Pradesh, Maharashtra and Uttar Pradesh

16 Gujarat, Odisha, Rajasthan and Uttarakhand (except additions made in surveys)

17 Assam - 8 cases, Karnataka - 7 cases and West Bengal - 5 cases

18 Andhra Pradesh & Telangana, Assam, Bihar, Goa, Jharkhand, Karnataka, Kerala, Odisha, Rajasthan, Tamil Nadu, Uttar Pradesh, Uttarakhand, West Bengal and NWR (Chandigarh UT, Haryana, Himachal Pradesh, Jammu & Kashmir and Punjab)

19 Assam-2, Bihar-2, Karnataka-32, Kerala-22, Odisha-4, Rajasthan-26, Tamilnadu-3, Uttar Pradesh-16, Uttarakhand-6, West Bengal-10 and NWR – 11

charges related to the real estate sector. Audit analysed the information relating to search and seizure conducted and finalised by ITD relating to real estate sector during the period which revealed the following:

- a. No new assessee relating to real estate sector was added to the tax base;
- b. In Andhra Pradesh & Telangana and Uttar Pradesh, ITD was not able to provide the information relating to real estate sector as no sector specific information in respect of search and seizure was being maintained; and
- c. The information in respect of five states²⁰ were not provided by the ITD.

Thus, search & seizure operations were not effective as far as widening of tax base was concerned.

3.7 Verification of assessment records in respect of real estate agents

From the assessment records of builders/developers in the selected assessment charges of Delhi jurisdiction, Audit identified 10 cases of real estate agents having valid PAN who received commission from builders/developers. Audit verified these cases in the concerned assessment charges and tried to ascertain whether these real estate commission agents filed their return of income and included commission income in their taxable income. Verification of these cases revealed that:

- Seven real estate agents had either not included or partially included commission income in their return of income;
- In two cases PAN mentioned did not pertain to the real estate agents mentioned by the builders/developers in their records;
- Only in one case commission income was included in the return of income by the real estate agent.

The ITD systems are not able to ensure that all payments made to the real estate agents are brought to the tax net. This fact has also been observed²¹ by assessing officer of Central Circle charge 27, New Delhi during the scrutiny assessment, wherein 58 out of 500 real estate agents had either not filed their return of income for AY 2010-11 and AY 2011-12 or the PAN quoted was not valid.

20 Chhattisgarh, Delhi, Gujarat, Madhya Pradesh and Maharashtra

21 M/s PACL Limited, AY 2010-11

3.8 Conclusion

Due importance was not accorded by the ITD to monitor non-PAN transactions despite these being under the highest risk category from the point of view of tax evasion in general and due to these being transactions of real estate sector in particular. There was a lack of mechanism in the ITD to ensure that persons involved in high value sales of immovable properties offered capital gain for tax.

Non-sharing of information by one assessment charge with other assessment charges indicated that there is an urgent need to strengthen this mechanism of sharing of information within the ITD.

The ITD did not use surveys effectively to widen its tax base in the real estate sector. The ITD systems are not able to ensure that all payments made to the real estate agents are brought to the tax net.