

Chapter 4: Adequacy of systems and controls for compliance with provisions of the Act

4.1 In this chapter, Audit attempted to ascertain whether the existing systems and controls are adequate to ensure compliance with general and specific provisions of the Act relating to the real estate sector.

The Income Tax Act, 1961 and Income Tax Rules, 1962 read with various circulars and Instructions issued by CBDT provided the conditions of admissibility of expenditure, deductions to be followed by the assessee. The assessing officers were expected to verify the compliance thereto during assessment proceedings or other relevant departmental proceedings.

The 'White Paper on Black Money' published by the Ministry of Finance in 2012 which identified Real Estate as one of the sectors more vulnerable to the menace of black money, described two different modus operandi for generation of black money. The first is the approach of not declaring or reporting the whole of the income or the activities leading to it. The other more sophisticated approach for generation of black money which is often preferred, involves manipulation of financial records and accounting by which the accounts prepared for reporting and presenting before the authorities are manipulated to misrepresent and under disclose income, thereby generating unaccounted, undeclared and unreported income that amounts to black money.

Some of the ways for manipulating books of accounts identified in 'White Paper on Black Money' are introduction of capital through share application money, issuing shares at heavy premium and introducing own money; and share capital through foreign companies/entities. Raising bogus unsecured loan may also be a way of manipulating books of accounts.

Under valuation of the immovable property during sale/purchase from the prevailing fair market value (i.e. value adopted for stamp duty purpose) and inflation of construction expenses are also sources of generation of black money in the real estate sector.

Audit attempted to verify from the assessment records whether black money was being generated and used in the real estate sector in such manner and whether the ITD is alert in unearthing such black money and bringing it to tax while scrutinizing of such returns marked for their scrutiny.

The results of the audit examination are given in the succeeding paragraphs.

4.2 Generation of black money through undervaluation of properties

4.2.1 To address the issue of undervaluation in sale and purchase of immovable properties, section 43CA (introduced through the Finance Act, 2013) and section 50C provide²² for taxing the differential amount in the hands of the seller if the amount of sale consideration of immovable property is below the value adopted by the stamp duty authority.

During examination of assessment records in selected charges and linking them with the data collected from RO/SROs, we noticed 58 cases²³ where the mistakes in adoption of value of immovable properties for computing business income/capital gain in the hand of sellers involving tax effect of ₹ 63.91 crore have been noticed. One case is illustrated below:

- a. In Gujarat, Pr. CIT-II, Surat charge, the assessee Shri Balvant Rai Bhikhabhai Vashi had transferred an immovable property during the AY 2013-14 for a sale consideration of ₹ 3.19 crore. However, as per stamp duty authority, the fair market value of the land was ₹ 16.36 crore. Omission on the part of the ITD to adopt value as per section 50C resulted in escapement of capital gain tax of ₹ 3.94 crore including interest.

4.2.2 Section 56(2)(vii)(b) was suitably amended through the Finance Act, 2013, so as to tax the excess of stamp duty valuation of immovable property over its actual sales consideration, if the difference is more than ₹ 50,000, in the hands of the purchaser as 'Income from other sources' if the purchaser was individual or HUF.

During examination of assessment records in selected charges, we noticed 21 cases²⁴ where the AO made mistakes in adoption of value of immovable properties for computing income involving tax effect of ₹ 9.69 crore. One case is illustrated below:

- a. In Madhya Pradesh, Pr. CIT-I Indore charge, case of Shri Jitendra Kumar Soni for the AY 2014-15 was assessed under section 143(3) in November 2016. Audit noticed that an agreement for purchase of plot was entered into by the assessee in July 1980 with the seller (M/s United Tyres Pvt. Ltd.) and entire consideration of ₹ 4.50 lakh was paid in cash. The assessee had got registered this plot of land in his name in August 2013. The fair market value of the said plot as per the stamp authority on the date of registration was ₹ 7.18 crore.

22 Section 43CA is applicable for computing income from business and profession from sale of property whereas section 50C is applicable for computing capital gain from sale of capital assets.

23 Bihar – 8, Chhattisgarh – 3, Delhi – 1, Gujarat – 29, Jharkhand – 4, Karnataka – 1, Madhya Pradesh – 6, Maharashtra – 2, Tamil Nadu – 2, West Bengal – 1 and Uttar Pradesh – 1

24 Chhattisgarh – 1, Gujarat – 14, Jharkhand – 2, Madhya Pradesh – 3 and Tamil Nadu – 1

As per section 56(2)(vii)(b), if the date of agreement and date of registration of property is not same and the amount of sale consideration is paid in cash, in such a case fair market value prevailing on the date of registration of property is to be taken as sale value. Further, the difference between the actual purchase price and fair market value is to be treated as income from other sources in the hands of buyer. Therefore, the differential amount of ₹ 7.13 crore was required to be taxed in the hands of the assessee. Omission to do so resulted in underassessment of income by ₹ 7.13 crore with consequent short levy of tax of ₹ 3.24 crore including interest.

4.2.3 Audit analysed data of 9,10,151 transactions²⁵ of ₹ 3,01,301 crore completed in Mumbai (provided by IGR, Maharashtra) to see the compliance of provision of section 56(2)(vii)(b) and 43CA where PAN was available. For this purpose, we use the following criteria:

- a. Transactions with sales consideration equal to or greater than ₹ 10 lakh;
- b. The difference between stamp duty valuation and sales consideration was more than ₹ 50,000; and
- c. The transaction was registered on or after 1 April 2013.

Audit observed 40,906 transactions in which, as per PAN, the purchasers were either Individuals or HUFs and hence attracted provisions of section 56(2)(vii)(b). The total difference between stamp duty valuation and sales consideration in these transactions was of ₹ 6,057 crore.

On linking this data with common field of PAN in our selected sample, we found 4,033 transactions having differential amount of ₹ 1,816 crore which should have been taxed under section 56(2)(vii)(b) and 43CA of the Act. In a test check of 976 transactions in 19 assessment cases in selected assessment charges, Audit noticed that the ITD had taken action only in respect of 37 transactions (i.e. four *per cent*) pertaining to three assessment cases. In remaining 939 transactions pertaining to 16 assessment cases, Audit noticed undervaluation of ₹ 256.80 crore having revenue impact of ₹ 86.78 crore (under section 43CA), ITD had not taken any action. One case is illustrated below:

²⁵ This data has been used here to verify applicability of section 56(2)(vii)(b), 43CA and 50C. This data has also been used in para 2.3.2 for verifying the availability of PAN of transacting parties in property registration documents.

- a. In Maharashtra, Pr. CIT (Central)-III, Mumbai charge, assessment of M/s Marathon Realty Limited for the assessment year 2014-15 was completed under section 143(3) in March 2016. It was noticed from the data provided by the state registration authorities that in 11 transactions of immovable property, there was a difference of ₹ 18.21 crore between fair market value (as per stamp duty authority) and transaction value. Thus, differential amount was required to be brought to tax under section 43CA. Omission to do so resulted in underassessment of income by ₹ 18.21 crore involving tax impact of ₹ 5.91 crore.

The transactions where sales consideration are undervalued and are lower than the value adopted for stamp duty purposes may remain untaxed in the hands of the sellers under section 43CA/50C and in the hands of buyers under section 56(2)(vii)(b), thus generating black money in the process.

4.3 Introduction of unaccounted money

Audit while examining the aspect of introduction of unaccounted/undisclosed money in the real estate sector, focused its examination on two important book entries - 'share premium' and 'unsecured loan'. The results of the audit examination are given in the succeeding paragraphs.

4.3.1 Issue of shares at high premium

Share premium is the amount paid by the subscriber/shareholder to a company for acquiring the shares of the company over and above the face value of the shares.

Rule 11UA of Income Tax Rule, 1962 read with section 56(2)(viia) and (viib) of the Act recognized following two methods for fair market value (FMV) of shares and securities.

- The 'Net Assets Value' (NAV) method represents the value of the business with reference to the asset base of the entity and the attached liabilities on the valuation date.
- The 'Discounted Free Cash Flow' (DCF) method values the business by discounting its free cash flows for the explicit forecast period and the perpetuity value thereafter.

During examination of selected assessment records, we noticed 24 cases²⁶ of assesseees in real estate sector where shares were issued at high premium ranging from ₹ 170 to ₹ 4,990 to resident and non-resident entities. Audit observed that the DCF method was mostly used by Chartered Accountants

²⁶ Andhra Pradesh & Telengana – 3 cases, Delhi – 2 cases, Haryana - 5 cases, Maharashtra - 8 cases, Punjab – 1 case, Tamil Nadu- 4 cases and West Bengal - 1 case

(CAs)/Merchant Bankers for valuation of FMV of shares. Assessee used excessively high future growth projections which were being used by CAs or Merchant Bankers for issuing valuation certificates with disclaimers and without going into the current state of affairs of the assessee and without due regard to comparable accounting ratios in the same line of business.

4.3.1.1 Audit observed cases where shares were issued at high premium and many of the subscribing companies had common directors which indicated that doubtful funds may have been introduced by way of layering through multiple entities. The AOs had not shared the information about the subscribing entities with JAOs for verification of sources of funds and to get assurance that no unaccounted money/own funds were introduced by the assessee through share premium. Two cases are illustrated below:

- a. In Maharashtra, Pr. CIT (Central)-III, Mumbai charge, assessment of M/s RKW Developers Pvt. Limited for AY 2010-11 was completed under section 143(3) in December 2012 determining income of ₹ 1.44 crore. The case was reopened to verify the share premium of ₹ 78.70 crore received from 30 subscribers and re-assessed under section 143(3) read with section 147 on the same income in March 2016. It was mentioned in the office note that the identity, genuineness and creditworthiness of the subscribers have been examined during re-assessment and no adverse effect was noticed. Audit, however, noticed that 12 entities having common directors which were from FY 2008-09 and FY 2009-10, have given ₹ 10.79 crore as share premium. The balance sheets or profit and loss accounts of these companies did not show any strength since they have negligible reserves and assets or business activity and meager income but huge amount of loans. Thus possibility of induction of unaccounted money by way of share premium cannot be ruled out.
- b. In Maharashtra, Pr. CIT- XIV, Mumbai charge, assessment of M/s. Galaxy Infraprojects Developers Private Limited for assessment year 2009-10 was reopened to verify the share premium of ₹ 9 crore, received from 10 subscribers and re-assessed under section 143(3) read with section 147 for an income of ₹ 0.32 lakh in February 2016. It was mentioned in the office note that the identity, genuineness and creditworthiness of the subscribers have been examined during re-assessment and no adverse effect was noticed. Audit, however, noticed that all these entities have shown meagre or nil income from business activity and filed 'Nil' return of income. The balance sheets or profit and loss accounts of these companies do not have strength of their own and had raised unsecured loans from other entities for subscribing shares of the assessee. Also six of the subscribing companies had common directors in them.

In both the above cases, the information about the subscribing entities was not shared with jurisdictional assessing officers for verification of sources of funds and to get assurance that no unaccounted money/own funds were introduced by the assessee through share premium. In view of the risk of introduction of doubtful funds ITD should have probed these further.

4.3.1.2 Audit examined the extent of assurance derived by ITD regarding creditworthiness of the subscriber and the fair market value of the shares where shares were issued at high premium. Four cases are illustrated below where manipulation of accounts to accommodate black money cannot be ruled out:

- a. In Maharashtra, Pr. CIT(Central)-III, Mumbai charge, M/s Kalpataru Land Pvt. Limited issued its shares at premium of ₹ 990 per share during FY 2012-13 based on the valuation justified by the CA. Audit noticed that valuation of the CA was not justified as the assessee had negative reserves and no significant transaction except capitalizing interest expenses to the cost of land purchased on loan. Thus, it can be seen that the DCF method was being used arbitrarily for projecting the high share premium based on unrealistic future growth projections, not matching with the health of the company.
- b. In Delhi, Pr. CIT (Central)-3 charge, in the case of M/s Uppal Chadha Hi-tech Developers Private Limited for the AY 2014-15, the assessee issued 28.77 lakh equity shares of ₹ 10 each at a premium of ₹ 1,554 per share. As per Rule 11UA read with section 56(2)(viib), fair market value (FMV) of each share works out to ₹ 18.68. Therefore, possibility of escaping of tax under the above provisions on ₹ 444.63 crore received over and above FMV cannot be ruled out.
- c. In Tamilnadu, PCIT-1 Chennai charge, M/s Arunakri Homes Private Limited for AY 2014-15 issued 40,000 equity shares of ₹ 10 each at a premium of ₹ 450 per equity share. The fair market value of share should be the face value of the share i.e. ₹ 10 each as there was no Reserves and Surplus as on 31.3.2013. As the assessee company received consideration in excess of FMV, possibility of escaping of tax under section 56(2)(viib) on ₹ 1.80 crores received over and above FMV cannot be ruled out.
- d. In Punjab, PCIT Ludhiana-II charge, M/s Kushal Multi Developers (P) Limited issued 65,000 equity shares of ₹ 10 each at a premium of ₹ 170 per share in FY 2013-14 (relevant AY 2014-15). The fair market value of shares should have been the face value of the shares i.e. ₹ 10 each as there was no net worth of the assessee company as on

31.3.2013. As the assessee company received consideration in excess of FMV, possibility of escaping of tax under section 56(2)(viib) on ₹ 1.10 crores received over and above FMV cannot be ruled out.

Justification for issue of shares at high premium was not examined by the ITD as fair market value of shares was not based on the valuation as per the balance sheet and thus manipulation of accounts to accommodate black money cannot be ruled out in these cases.

4.3.1.3 The provisions mentioned under Rule 11UA of the Income Tax Rules, 1962 read with section 56(2)(viib) of the Act, for valuation of FMV of unlisted shares and equities for levy of tax on the difference between the issue price and the FMV, are applicable only when the entities subscribing shares at premium are residents.

- a. In Maharashtra under Pr. CIT- XIV, Mumbai charge, M/s Neepa Real Estate Private Limited issued 2,00,000 equity shares of face value of ₹ 10 each during the period relevant to assessment year 2012-13 to M/s MSREF Indian Investment One Limited at ₹ 2,500 per share including premium. Audit noticed that the shares were issued in excess of the fair market value, certified by a Chartered Accountant at ₹ 1,650 per equity share including share premium. There was nothing on records to suggest that the assessing officer had verified the creditworthiness and genuineness of the subscriber.

Absence of enabling provision/standard operating procedure and inadequate verification could have led to escapement of excess premium of ₹ 17 crore from taxation.

4.3.2 Share application money pending for allotment of shares

As per section 42 of the Companies Act, 2013, the company shall allot shares within 60 days from the receipt of the share application money. If it fails to allot the share within 60 days, share application money shall be refunded within 15 days from the expiry of 60 days. If the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of 12 *per cent* per annum from the expiry of the 60th day.

Audit noticed in 14 cases that share application money was either pending for allotment of shares or due for refund beyond the period prescribed as per Companies Act. It was also noticed that share application money received in 12 cases was higher than the authorized share capital and this fact had not been examined by the assessing officer. The details are shown below in Table 4.1.

Table 4.1: Details of cases of share application money							
(₹ in crore)							
Sl. No.	Name of the assessee	AY	Pr. CIT charge	Authorised share capital	Share application money	Outstanding as on	Remarks
1.	Suncity Haryana SEZ Developers Pvt. Limited	2014-15	Pr. CIT 8, New Delhi	0.10	37.52	31 March 2014	Pending for allotment of shares ₹ one lakh (from FY 2012-13), due for refund ₹ 37.51 crore ²⁷
2.	Madav Buildcon Pvt. Limited	2013-14	Pr. CIT 6, New Delhi	0.01	4.44	31 March 2013	Pending for allotment of shares ₹ 2.62 crore from FY 2010-11 and ₹ 4.44 crore from FY 2011-12
3.	Opus Projects Limited	2014-15	Pr. CIT 7, New Delhi	2.0	9.26	31 March 2014	Pending for allotment of shares from FY 2010-11
4.	Vidhya Shree Buildcon Pvt. Limited	2014-15	Pr. CIT 9, New Delhi	5.0	0.95	31 March 2014	Pending for allotment of shares from FY 2012-13
5.	Krishna Laxmi Developers Pvt. Ltd.	2013-14	Pr. CIT 2, Hyderabad	0.05	2.50	31 March 2013	Pending for allotment of shares from FY 2011-12
6.	Sanskrit Estates Private Limited	2012-13	Pr. CIT 1, Bhubaneswar	0.10	1.39	31 March 2012	Pending for allotment of shares from FY 2010-11
7.	Amantara Properties Pvt. Ltd.	2014-15	CIT-1, Chennai	0.08	2.11	31 March 2014	Pending for allotment of shares from FY 2009-10
8.	AKR Infrastructure Ltd.	2013-14	CIT-1, Chennai	1.00	0.45	31 March 2013	Pending for allotment of shares from FY 2011-12
9.	Banyan Projects Pvt. Ltd.	2013-14	CIT-1, Chennai	0.10	16.16	31 March 2013	₹ 14.32 crore were pending for allotment for last five years
10.	Crown Real Estate Pvt. Ltd.	2013-14	CIT-1, Chennai	0.50	4.42	31 March 2013	Pending for allotment of shares ₹ 3.66 crore from FY 2011-12

²⁷ due for refund ₹ 42.18 crore in FY 2012-13

11.	Chennai Integrated Construction Company Pvt. Ltd.	2013-14	CIT-1, Chennai	2.00	3.46	31 March 2013	Pending for allotment of shares ₹ 3.32 crore from FY 2011-12
12.	Amrapali Eden Park Developers Pvt. Ltd.	2013-14	CIT (C)-1, New Delhi	0.30	10.53	31 March 2013	Pending for allotment of shares ₹ 10.09 crore from FY 2011-12
13.	M/s Suncity Buildcon Pvt. Limited	2013-14	Pr. CIT 8, New Delhi	1.0	215.05	31 March 2013	Share application money due for refund ₹ 215.05 crore. Though share application money due for refund in FY 2011-12 was ₹ 56.03 crore, the assessee again raised ₹ 154.01 crore during FY 2012-13.
14.	Marg Properties Limited	2014-15	CIT-4, Chennai	0.05	0.54	31 March 2014	Shown as current liabilities from FY 2012-13

Audit noticed that in the case of the assessee at sl. No. 9, 10, 11 and 12 raised share application money inspite of the fact that they have share application money pending for allotment in the previous financial year which was more than the authorized share capital.

It was also observed that one assessee, M/s Marg Properties Ltd. transferred ₹ 54.00 lakh to other current liabilities in FY 2012-13 since the assessee could not issue shares as the authorized share capital was only ₹ 5.0 lakh. This liability was outstanding as on 31 March 2014.

Thus, the possibility of routing its own un-accounted money through share application money by the assessee cannot be ruled out. There is nothing on record to show that the AO has examined this whole gamut of circulation of money in the form of share application money because of absence of provision in the Act.

There is no provision in the Income Tax Act to deal with the share application money which is pending for allotment of shares for long period which is a lacuna in the Act.

Recommendation: *The CBDT may like to strengthen the system to address the issue of pending share application money after it is due for refund as per the Companies Act to prevent its misuse.*

The CBDT stated (July 2018) that the cases pointed out by the C&AG would be examined.

4.3.3 Introduction of own money as unsecured loans

Out of 7,228 assessment records provided by ITD in Delhi, Maharashtra, Tamilnadu and West Bengal charges, we identified 149 assessment records of company assessee wherein loans outstanding at the end of financial year was more than ₹ 10 crore. The selected assessment records were examined to verify the extent of assurance derived by ITD on parameters like identity, creditworthiness and genuineness of the lenders. The details of unsecured loan transactions are shown below in Table 4.2.

Table 4.2: Details of non-verification of unsecured loans				
State	No. of assessment records of recipients	Amount involved (₹ in crore)	No. of loan providers	Number of loan providers verified by ITD
Maharashtra	134	9,430.23	1,220	132 (pertaining to 21 cases)
West Bengal	7	490.24	288	19 (pertaining to one case)
Delhi	5	133.68	46	Nil
Tamilnadu	3	38.5	11	Nil
Total	149	10,092.65	1,565	151 (pertaining to 22 cases)

4.3.3.1 During examination of identified assessment cases, Audit noticed that though ITD verified identity and genuineness of transactions by calling for loan confirmation and bank statements in most of the cases, the creditworthiness of the loan providers was verified in respect of only 22 assessment records (14.8 per cent) by requisitioning their balance sheets and profit/loss account. Thus, in remaining 127 assessment records, unsecured loan of ₹ 8,547.50 crore reflected in the balance sheet was admitted by ITD without verification of the loan providers' creditworthiness.

As the sources of funds reflected as unsecured loans in the balance sheet of real estate companies were not verified by ITD, introduction of undisclosed/unaccounted money of the assessee itself as unsecured loans cannot be ruled out in audit.

Two cases are illustrated below:

- a. In Maharashtra, Pr. CIT (Central)-III, Mumbai charge, the assessee (M/s Marathon Realty Pvt. Ltd.) had received unsecured loan of

₹ 5.00 crore in AY 2013-14 from its group company M/s Marathon Fiscal Pvt. Ltd. wherein directors were common. Audit noticed that the ITD had disallowed unsecured loan of ₹ 2.64 crore raised by M/s Marathon Fiscal Pvt. Ltd. during the relevant financial year for AY 2013-14 as the same were found to be raised by it from various bogus entities. Since M/s Marathon Fiscal Pvt. Ltd. had raised loan from bogus parties and further financed it to M/s Marathon Realty Pvt. Ltd. Thus, there is a possibility that the assessee used M/s Marathon Fiscal Pvt. Ltd. as a layer to avoid detection of routing of own money in the form of unsecured loans.

- b. In Delhi, CIT(Central)-2 charge, scrutiny assessment of M/s Sheel Buildcon Pvt. Limited for the assessment year (AY) 2007-08 was completed under section 153C read with section 153A in March 2014 determining 'nil' income. The assessee had shown unsecured loan of ₹ 1.5 crore from M/s Par Excellence Leasing and Finance Services Pvt. Limited. Genuineness of the loan was not verified by ITD. However, on verification of this loan, Audit noticed that this loan was not appearing in the books of accounts of the relevant AY of M/s Par Excellence Leasing and Finance Services Pvt. Limited. In view of this, possibility of introduction of own money in the form of unsecured loans by the assessee itself cannot be ruled out.

4.4 Absence of mechanism for monitoring of income on Transfer of Development Rights

When land is acquired for public amenities like roads, gardens, schools, markets, etc. by Municipal Corporations, the owner of the land is often granted a Development Rights Certificate (DRC) instead of monetary compensation. This DRC is transferable and can be sold in the market and such transactions are commonly referred to as transfer of development rights (TDR). TDR can be utilised by the original recipients or transferred to any other person. It is also generated on slum redevelopment projects where an owner or builder redevelops slums free of cost and in lieu gets TDR as an incentive. A TDR transaction is entered into by the concerned parties at a mutually agreed price.

White Paper on Black Money had also clearly highlighted TDR transactions as 'more sophisticated form occasionally resorted to which consists of cash for the purchase of transferable development rights (TDR)'.

4.4.1 Audit noticed 33 cases²⁸ in Maharashtra, Uttar Pradesh and West Bengal where expenditure of ₹ 11,448.39 crore on account of TDR was

28 Maharashtra – 22 cases, Uttar Pradesh – 1 case and West Bengal – 10 cases

allowed. As these transactions are high risk area involving heavy amount where the White Paper has also indicated involvement of cash, there may be a risk that these transactions remain out of tax purview. There may be a case ITD may like to have a mechanism to deduct tax at source in such cases. One such case is illustrated below:

- a. In Maharashtra, CIT-V Mumbai charge, the re-assessment of M/s DB Realty Limited for the AY 2009-10 was completed under section 143(3) read with section 147 in December 2016 on the basis of information received from the Investigation Wing. In this case, the assessee refunded ₹ 26.99 crore in cash to M/s Bhoomi Group against deposit given for purchase of TDR which was not accounted for in the books of accounts of the company. Though, both these entities were organized entities and still they transacted in cash. By dealing in cash, they hid TDR transaction from tax authorities.

Recommendation: *The CBDT may consider to have a mechanism to ensure that TDR transactions are brought to tax say by having a provision to tax it at source.*

The CBDT accepted (July 2018) to examine the issue during the course of the exercise for Budget 2019.

4.5 Unexplained expenditure not brought to tax

As per section 69C of the Act, where in any financial year, an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the AO is not satisfied with the explanation offered, the amount covered by such expenditure or part thereof is deemed to be the income of the assessee for such FY. It provides further that such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income.

Audit observed 40 cases²⁹ where the AOs disallowed the expenditures on bogus purchases or unexplained expenditures of ₹ 544.13 crore under section 69C. Although AO was required to add this disallowed expenditure to the taxable income for that particular assessment year (AY), they did not do so. Instead they reduced this disallowed amount from 'Closing work-in-progress' (CWIP) of that AY which does not have the same impact as far as tax is concerned. Thus, there was no deemed income of ₹ 544.13 crore on account of disallowance of unexplained expenditure under section 69C. Three cases are illustrated below:

- a. In Delhi, CIT-1, Central Circle-1 charge, scrutiny assessment of M/s Amrapali Zodiac Developers Pvt. Limited for the assessment

29 Maharashtra – 28 cases, Delhi – 12 cases

year 2011-12 was completed under section 153C read with section 143(3) in March 2016. Audit noticed that the ITD disallowed expenses on account of bogus purchases of ₹ 37.45 crore. This amount was reduced from the work-in-progress (WIP) of the assessee during the respective year. Reduction of expenditure from WIP did not result in increased taxable income in the year of disallowance. Thus, deemed income of ₹ 37.45 crore escaped tax consequently loss of revenue to the Government.

- b. In Maharashtra, Pr. CIT (Central)-II, Mumbai, assessments of M/s Kamlashanti Landmarc Property Pvt. Limited for AY 2009-10 and 2010-11 was completed under section 143(3) read with section 153A in March 2016. The ITD disallowed bogus purchases under section 69C aggregating ₹ 3.83 crore made from M/s Karma Ispat Limited. The said disallowances were reduced from WIP instead of adding disallowed expenditure to the assessed income. Thus, there was no increase in taxable income of that year. Therefore, deemed income of ₹ 3.83 crore escaped tax consequently loss of revenue to the Government.
- c. In Delhi, CIT-1, Central Circle-1 charge, scrutiny assessment of M/s Amrapali Princely Estate Private Limited for the assessment year 2011-12 was completed under section 153C read with section 143(3) in March 2016. Audit noticed that the ITD disallowed expenses on account of bogus purchases of ₹ 34.83 crore. This amount was reduced from the work-in-progress (WIP) of the assessee during the respective year. As a result deemed income of ₹ 34.83 crore escaped tax consequently loss of revenue to the Government.

As per section 69C unexplained expenditures are to be disallowed treating as deemed income of that particular AY. Therefore disallowance under section 69C should have been added to the assessed income which was not done. Thus, the AOs failed to implement the provisions of the section 69C.

The reply from the Ministry was awaited (October 2018).

4.6 Absence of a mechanism to ensure deduction of tax at source and its deposit by a purchaser

Keeping in view the higher risk of non-reporting of transactions and corresponding tax evasion in this sector, a new section 194-IA was introduced through the Finance Act, 2013 (effective from 01 June 2013) requiring that in case of transaction of immovable property involving consideration of ₹ 50 lakh or more, TDS at the rate of one *per cent* would be deducted by a buyer being an individual or HUF while making payment(s) to seller.

This has been done so that the non-reporting on the part of the seller could be monitored through an alternative source and also that tax could be collected in advance.

For depositing TDS with the Government by the buyer, tax deduction account number (TAN) is not required. Instead, the buyer can deposit the tax with the Government using his PAN.

Audit observed certain systemic issues which rendered the objectives of section 194-IA ineffective. In case both the parties in the transaction decide not to report PAN, there is no mechanism with the ITD to ensure deduction of tax at source. Even if the tax has been deducted at source, it cannot be assured that the same has been deposited as TDS Reconciliation, Analysis and Correction Enabling System's (TRACES) accessibility has not been extended to monitor tax deducted at source by a PAN holder.

4.6.1 As indicated in para 2.3.2, there were 75,405 transactions of ₹ 15,460 crore in Maharashtra where none of the transacting parties had mentioned PAN. Similarly in Bihar, in 85 cases involving transactions of ₹ 136.93 crore PAN of buyers/sellers was not available.

There is no mechanism to ensure effective compliance of provisions relating to deduction of tax at source under section 194-IA.

Recommendation: The CBDT may take steps for capturing the information in TRACES on Tax deducted at source and deposited by a purchaser of immovable property holding PAN under section 194-IA of the Act.

The CBDT accepted (July 2018) the recommendation and agreed to examine the issue.

4.7 Poor quality of assessments by assessing officers

Any sound tax administration system aims to take positive steps to prevent evasion of taxes by assesseees and assess the tax receivables in the best interest of revenue and to bring under its ambit untaxed or under taxed assesseees.

During examination of assessment records in selected charges, we noticed 648 cases³⁰ involving tax effect of ₹ 5,749.43 crore where such efforts on the part of the department were found wanting. A large number of irregularities noticed by Audit reflect arithmetical or computation errors, non-levy/short levy of interest, mistakes in computation of income from business/house properties, admission of incorrect claims of expenditure/exemptions, incorrect carry forward/set-off of losses, mistakes relating to capital gains,

30 Andhra Pradesh & Telangana – 25, Assam – 4, Bihar – 21, Chandigarh – 18, Chhattisgarh – 16, Delhi – 126, Gujarat – 27, Haryana – 60, Jharkhand – 20, Karnataka & Goa – 56, Kerala – 10, Madhya Pradesh – 48, Maharashtra – 88, Odisha – 5, Punjab -9, Rajasthan – 10, Tamil Nadu – 37, Uttar Pradesh – 57, Uttarakhand – 4 and West Bengal – 7

special provisions (MAT) and TDS provisions, etc. AOs had committed such errors in the assessments ignoring clear provisions in the Act. This reflects lack of adequate controls in the IT systems of the ITD where manual entries override computer calculated amounts and other weaknesses in internal controls which need to be addressed. Twenty four cases are illustrated below:

- a. In Delhi, Pr. CIT (Central)-1 charge, assessment of M/s Sahara India Commercial Corporation Limited for the AY 2011-12 was completed under section 143(3) read with section 153A in November 2016. While calculating total demand, the AO adjusted refund of ₹ 21.88 crore pertaining to AY 2009-10. Audit noticed that there was a demand of ₹ 28.73 crore instead of refund in AY 2009-10. The mistake resulted in short levy of demand of ₹ 21.88 crore.
- b. In Karnataka, Pr. CIT(C) Bengaluru charge, assessment of M/s LG Builders and Developers Pvt. Limited for the AY 2014-15 was completed under section 143(3) read with section 153D determining income of ₹ 7.83 crore in March 2016. Audit noticed that AO has computed the tax demand including interest of ₹ 2.35 crore instead of ₹ 3.48 crore. The mistake resulted in short levy of tax of ₹ 1.13 crore including interest. The remedial action has been taken by the ITD under section 154 in August 2016.
- c. In Rajasthan, Pr. CIT-I Jaipur charge, assessment of M/s Prism Buildcon Private Limited for the AY 2014-15 was completed under section 143(3) in December 2016 determining income of ₹ 8.62 crore. During assessment, the AO had disallowed exemption of ₹ 2.0 crore on sale of agriculture land. However, while computing the total income, AO omitted to add disallowance of ₹ 2.0 crore. This omission resulted in under computation of income by ₹ 2.0 crore with tax effect of ₹ 1.10 crore including interest.
- d. In Delhi, Pr. CIT (Central)-3 charge, the original scrutiny assessment of M/s PAFL Limited for AYs 2008-09 and 2010-11 was completed under section 143(3) determining income of ₹ 32.09 crore and ₹ 92.07 crore in December 2009 and March 2013 respectively. The assessment for both the AYs was reassessed under section 153A read with section 143(3) in November 2016 determining income of ₹ 3909.61 crore and ₹ 7090.67 crore respectively. Audit noticed that AO worked out interest under section 234B(3) at ₹ 408.57 crore and ₹ 1022.89 crore as against leviable interest of ₹ 1370.69 crore and ₹ 1903.06 crore respectively, resulting in short levy of interest aggregating to ₹ 1842.28 crore.

- e. In Tamil Nadu, Pr. CIT-III, Chennai charge, assessment in the case of M/s Vicoans Infrastructure & Environmental Engineering Pvt. Limited for AY 2009-10 was completed under section 144 read with section 147 determining income of ₹ 66.76 crore in December 2016. Audit noticed that AO worked out interest under section 234A(3) for belated filing of return on 27.12.2016 at ₹ 2.04 crore as against leviable interest of ₹ 19.74 crore, resulting short levy of interest of ₹ 17.70 crore.
- f. In Karnataka, Pr. CIT(Central)-Bengaluru charge, assessment in the case of M/s Sukant Developer India Pvt. Limited for the AY 2008-09 was completed under section 143(3) read with section 147 determining income of ₹ 40.44 crore in December 2016. Audit noticed that the AO charged interest under section 234B(3) at ₹ 11.27 crore as against leviable interest of ₹ 14.43 crore, resulting in short levy of interest by ₹ 3.16 crore.
- g. In Uttar Pradesh, Pr. CIT-I, Lucknow charge, assessment of M/s Sahara City Homes-Sri Ganganagar for AY 2012-13 was completed under section 143(3) determining income of ₹ 117.08 crore in March 2015. Audit noticed that the AO omitted to levy interest of ₹ 2.53 crore under section 234A for belated filing of return on 22.03.2013.
- h. In Karnataka Pr. CIT(Central), Bengaluru charge, in the case of an individual Shri K. Muniraju, the assessee had made payments of ₹ 55.46 lakh, ₹ 25.87 crore, ₹ 9.89 crore, ₹ 98.98 lakh and ₹ 8.00 crore by cash during the AYs 2010-11 to 2014-15 respectively to purchase land and the same was allowed in assessment. As the expenditure was in cash, it was required to be disallowed under section 40A(3) of the Act and brought to tax. However, the same was not done, which resulted in short computation of income of ₹ 45.30 crore with consequent short levy of tax of ₹ 22.89 crore.
- i. In Delhi, CIT-9 charge, assessment of M/s Vighneshwara Developers Pvt. Limited for the AY 2013-14 was completed under section 144 in March 2016 determining income of ₹ 54.52 crore. Audit scrutiny revealed that in the assessment order the AO had incorrectly adopted income of ₹ 20.84 crore as business loss of ₹ 20.84 crore. This resulted in underassessment of income of ₹ 41.68 crore involving tax effect of ₹ 18.39 crore.
- j. In Maharashtra, Pr. CIT(C)-II, Mumbai charge, assessment of M/s Housing Development & Infrastructure Limited for AY 2011-12 was completed under section 143(3) in March 2014. The ITD allowed deduction under section 35AD of ₹ 383.94 crore. Audit scrutiny revealed that the business

of the assessee had commenced prior to 1st April 2009 and as such the basic condition of claiming deduction was not fulfilled by the assessee, therefore allowance of deduction granted was not in order. Omission to disallow the same resulted in irregular allowance of deduction of ₹ 383.94 crore with consequent short levy of tax of ₹ 124.57 crore.

- k.** In Gujarat, Pr. CIT-3, Ahmedabad charge, in the case of Shri Pravinbhai M. Kapopara for the AY 2012-13, the assessee doing business under his proprietorship entity named “S. M. Developers” had 121 completed and unsold units as on 31 March 2012. As per the Delhi High Court judgment in case of CIT Vs Ansal Housing Finance & Leasing Company Limited³¹, the assessee had to offer deemed income on those units. However, neither did the assessee offer any such income nor the AO demanded the same in assessment. Omission to do so resulted in underassessment of income of ₹ 1.32 crore and consequent short levy of tax of ₹ 61 lakh including interest.
- l.** In Delhi, CIT-3 charge, assessment of M/s DLF Utilities Limited for the assessment year 2014-15 was completed under section 143(3) in December 2016 determining loss of ₹ 118.89 crores. Audit noticed that the correct amount of loss was ₹ 111.89 crore instead of ₹ 118.89 crore. The mistake resulted in over assessment of loss of ₹ 7.00 crore involving potential tax effect of ₹ 2.16 crore. The ITD while accepting the audit observation passed rectification order under section 154.
- m.** In Andhra Pradesh & Telangana, Pr.CIT-2 Hyderabad charge, assessment of M/s Intime Properties Limited for the AY 2013-14 was completed under section 143(3) in March 2016 determining ‘Nil’ income after allowing set-off of brought forward business losses of ₹ 18.42 crore to the extent of income. Audit scrutiny of Tax Audit Report and balance sheet revealed that there was a substantial change in share holding pattern, i.e. more than 51 *per cent*. Hence as per section 79, the assessee was not entitled to set-off of brought forward losses pertaining to the period prior to change in shareholding. This led to irregular allowance of set-off of brought forward loss of ₹ 18.42 crore with consequent short levy of tax of ₹ 6.23 crore.
- n.** In Kerala, Pr. CIT-I, Trivandrum charge, in the case of M/s Kerala State Housing Board the ITD had allowed set-off losses of ₹ 13.88 crore, ₹ 6.63 crore, ₹ 55.73 crore and ₹ 43.58 crore in four AYs, viz. 2010-11, 2011-12, 2013-14 and 2014-15 respectively despite the fact that the losses set-off were already adjusted in earlier years and hence were not

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available for set-off. This resulted in irregular set-off of ₹ 119.82 crore involving tax effect of ₹ 39.81 crore.

- o.** In Delhi, Pr.CIT (Central)-1, New Delhi, assessment of M/s Emaar MGF Land Limited for AY 2010-11, was completed under section 153A r.w.s. 143(3) in December 2016 at an income of ₹ 137.73 crore under special provisions. Audit scrutiny revealed that AO made addition of ₹ 20.78 crore under different heads to book profit under section 115JB. However, it omitted to make similar additions under normal provisions of the Act resulting in under assessment of income to that extent involving potential tax effect of ₹ 7.06 crore.
- p.** In Rajasthan, Pr. CIT-I, Jaipur charge, assessment of M/s Abha Precision Farming Private Limited for the AY 2012-13 was completed under section 143(3) in March 2015 at returned income of ₹ 'Nil'. Audit noticed that the AO failed to disallow unspecified adjustment of ₹ 9.29 crore on account of profit on sale of agricultural land resulting in short computation of book profit to that extent involving short levy of MAT of ₹ 2.51 crore including interest. The AO replied that the remedial action has been taken under section 147 read with section 143(3) in August 2017.
- q.** In Maharashtra, Pr. CIT(Central)-I, Mumbai charge, in the assessments of M/s Peninsula Land Limited for the AYs 2009-10 and 2010-11 assessed under section 143(3) read with section 153A in December 2016, the ITD allowed set-off of MAT credit totaling ₹ 16.31 crore even though the entire brought forward MAT credit was set-off in AY 2008-09. Incorrect grant of MAT credit resulted in short collection of tax of ₹ 16.31 crore.
- r.** In West Bengal, Pr. CIT(Central)-I, Kolkata charge, assessment of M/s Bengal Shelter Housing Development for AY 2012-13 was completed under section 143(3) determining income of ₹ 10.61 crore in March 2015. Audit noticed that the assessee had not paid interest of ₹ 21.14 crore on bank loan on or before the due date of filing of return. However, in the computation of income statement, unpaid interest of ₹ 10.53 crore only was added back. The balance of ₹ 10.61 crore also remained to be added back by the AO. Omission resulted in underassessment of income by ₹ 10.61 crore with consequent under charge of tax of ₹ 3.44 crore. The AO revised the assessment under 143(3) read with section 263 in July 2017.
- s.** In Uttar Pradesh, PCIT Central, Noida charge, assessment of M/s Assotech CP Infrastructure Pvt. Limited for the AY 2012-13 was completed under section 143(3) in January 2015 determining income of

₹ 7.17 crore. Audit noticed that while computing tax on assessed income, credit of ₹ 2.53 crore on account of self-assessment tax which was neither deposited nor claimed by the assessee in the ITR, was allowed to the assessee. The omission resulted in irregular allowance of tax credit by ₹ 3.16 crore including interest.

- t. In Maharashtra, Pr. CIT(C)-III, Mumbai charge, the assessment of M/s Housing Development and Infrastructure Limited for the assessment year 2012-13 was completed under section 143(3) in March 2015. The AO omitted to disallow work-in-progress of ₹ 451.48 crore pertaining to AY 2010-11 resulting in incorrect computation of closing work-in-progress and consequent underassessment of income to that extent involving potential tax of ₹ 146.48 crore.
- u. In Maharashtra, Pr. CIT(C)-III, Mumbai charge, the assessment of M/s Housing Development and Infrastructure Limited for the assessment year (AY) 2014-15 was completed under section 143(3) in December 2016 allowing set-off of business loss/unabsorbed depreciation of ₹ 247.95 crore. Audit scrutiny revealed that the business loss/unabsorbed depreciation pertaining to AY 2012-13 was disallowed in AY 2013-14 on the ground that the assessee had not claimed it in the return of income for the AY 2012-13. Accordingly allowance of set-off of business loss/unabsorbed depreciation of ₹ 247.95 crore was irregular. This resulted in underassessment of income by the same amount with consequent short levy of tax of ₹ 84.28 crore.
- v. In Maharashtra, Pr. CIT(C)-II, Mumbai charge, the assessment of the company M/s Sheth Developers and Realtors (India) Limited for the assessment year 2014-15 was completed under section 143(3) in November 2016. Audit scrutiny revealed that the AO allowed deduction of ₹ 94.62 crore (₹ 37.59 crore - 1/5th of pre-operative interest expenses of ₹ 187.94 crore and ₹ 57.03 crore - capitalised during the FY 2013-14) from income from house property under section 24(b). Further scrutiny revealed that the total interest expenses ₹ 244.97 crore (₹ 187.94 crore + ₹ 57.03 crore) incurred till completion was also capitalized and forms part of the fixed assets under building and plant & machinery. It was also noticed that the assessee claimed depreciation on this amount in business income. Hence capitalization of interest expenses in the fixed asset amounts to double claim of the interest. Thus, the allowance of capitalization of interest expenses of ₹ 244.97 crore would result in double allowance of expenditure {i.e. under section 24b and 32(1)} involving tax effect of ₹ 83.26 crore.

- w. In Goa, PCIT-Panaji charge scrutiny assessment of a company M/s Models Constructions Private Limited for the AY 2014-15 was completed in December 2016 determining taxable income of ₹ 4.82 crore. Scrutiny of assessment records revealed that the assessing officer while computing the tax liability, allowed set off of MAT credit of ₹ 53.81 lakh pertaining to assessment year 2013-14. Since the tax for the assessment year 2013-14 was levied under normal provisions, therefore, no MAT credit under section 115JAA for AY 2013-14 was available for set off. This mistake resulted in incorrect allowance of MAT credit of ₹ 53.81 lakh.
- x. In Karnataka, PCIT-IV, Bangalore, scrutiny assessment of a firm M/s Premdeep Promoters for AY 2012-13 was completed in January 2015 determining the taxable income at ₹ 1.90 crore under normal provisions. Scrutiny of assessment records revealed that the assessee had received rental income of ₹ 3.79 crore from letting of commercial buildings which was treated as income from house property and avail deduction of 30 *per cent* under section 24(b) of the Act. The Supreme Court in the case of Chennai Properties and Investments Ltd. Vs. Commissioner of Income Tax [2015] 373 ITR 673 (SC) has decided that if an assessee is having his house property and by way of business he is giving the property on rent and if he is receiving rent from the said property as his business income, the said income, even if in the nature of rent, should be treated as “Business Income” because the assessee is having a business of renting his property and the rent which he receives is in the nature of his business income. Therefore, the rental income had to be treated as income from business and assessed as such. Failure to do so has resulted in short levy of tax of ₹ 31.05 lakh.

Thus, the AOs were not following the provisions of the Act meticulously and committed mistakes in adopting the correct figures, applying provisions of the Act and in admitting expenditures/deductions/exemptions.

The reply from the Ministry was awaited (October 2018).

Recommendation: *The CBDT may consider introducing system based checks and validation to minimize manual interventions by assessing officers and avoiding mistakes in scrutiny assessments.*

The CBDT stated (July 2018) that the assessments were already being done on ITBA. Further e-assessment has also been undertaken by the Department in a major way. Thus systems were in place to ensure proper checks and validations. The AO being a quasi-judicial authority, it is not possible to bring a fully system based assessment.

Audit is of the view that the CBDT may consider introduction of system based checks and validations to avoid mistakes in computation of income and tax thereon.

4.8 Conclusion

The transactions where sales consideration are undervalued and are lower than the value adopted for stamp duty purposes may remain untaxed in the hands of the sellers under section 43CA/50C and in the hands of buyers under section 56(2)(vii)(b), thus generating black money in the process is a high risk area.

In cases where shares were issued at high premium, justification for issue of shares at high premium was not examined by the ITD as fair market value of shares was not based on the valuation as per the balance sheet and thus manipulation of accounts to accommodate black money cannot be ruled out. There is no provision in the Income Tax Act to deal with the share application money which is pending for allotment of shares for a long period which is a lacunae in the Act.

As the sources of funds reflected as unsecured loans in the balance sheet of real estate companies were not verified by ITD, introduction of undisclosed/unaccounted money of the assessee itself as unsecured loans cannot be ruled out in audit.

The AOs failed to implement the provisions of the section 69C as disallowance which should have been added to the assessed income, was not done. There is no mechanism to ensure effective compliance of provisions relating to deduction of tax at source under section 194-IA. The AOs were not following the provisions of the Act meticulously and committed mistakes in adopting the correct figures, applying provisions of the Act and in admitting expenditures/ deductions/exemptions.