

Executive Summary

Real estate can be segregated into three broad categories - i) Residential comprising developed land, residential houses and condominiums; ii) Commercial comprising office buildings, warehouses and retail store buildings and iii) Industrial which includes factories, mines and farms, on the basis of its use. There are various players involved in this sector such as land owners, developers, contractors, sellers/buyers and real estate agents etc.

We conducted performance audit on 'Assessment of assesseees in Real Estate Sector' with the objective to ascertain whether (i) all the developers/builders/real estate agents dealing in real estate sector are in the tax net and filing income tax returns; (ii) all resources available with assessing officers e.g. Annual Information Returns (AIRs), surveys and searches & seizures reports and information available in assessment files etc. have been effectively utilized to widen the tax base by bringing more assesseees from this sector under the tax net; (iii) the existing systems and controls are adequate to promote compliance of provisions specific to the real estate sector under the Income Tax Act, 1961 as well as compliance to general provisions of the Act; and (iv) the Central Board of Direct Taxes (CBDT) has any system to ensure that intended benefits of allowing deductions under section 80-IB(10) to the real estate sector reached the eligible persons.

We covered the scrutiny assessments completed by Income Tax Department during the financial years 2013-14 to 2016-17. Total number of assessments relating to 'Real Estate Sector' completed by the Income Tax Department during 2013-14 to 2016-17 were 78,647 with assessed income of ₹ 1,76,990 crore in 5,001 assessment charges falling under 357 Pr. CsIT/ CsIT. Out of total of 78,647 assessments made in the period by the Department, we checked 17,155 assessment records (approx. 22 *per cent*) with assessed income of ₹ 1,02,106 crore during this performance audit. We noticed 1,183 mistakes (approx. 7 *per cent* of the audited sample) having tax effect of ₹ 6,093.71 crore, thus causing loss of revenue to the Government. Since a sample of 22 *per cent* has yielded errors of ₹ 6,093.71 crore, the Department needs to have the remaining 61,492 cases audited internally. The Department also needs to try to pin down the reasons for why there is such a substantial proportion of errors and fix the identified systematic faults and responsibility where the errors have happened as an act of commission.

We verified records of 923 transactions pertaining to third parties of sale/purchase of immovable properties each having consideration of more than rupees one crore from the scrutiny cases within the selected assessment charges/Intelligence & Criminal Investigation wing of ITD and office of

Registrar/Sub-Registrar of properties in the concerned assessment charges. During verification we noticed that Income Tax Department failed to bring 142 transactions into tax net.

Para-wise summary of findings are given below:

- Audit noticed several companies outside the tax net. There is no mechanism with ITD to ensure that all the registered companies have PAN and are filing their ITRs regularly (paragraph 2.2).
- The system in the ITD to ensure compliance of filing of ITRs by the sellers of high value immovable properties was not effective (paragraph 2.3.1).
- The enforcement of provisions of the Act in respect of filing AIRs by Registrar/Sub-Registrar of properties in respect of sale or purchase of an immovable property by the ITD was weak (paragraph 2.3.5).
- 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 (paragraph 2.4).
- 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 (paragraph 3.3.5).
- 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 (paragraph 3.3.6).
- Sharing of information between assessment charges which was required to plug leakage of revenue, was poor (paragraph 3.4).
- The ITD did not use surveys effectively to widen its tax base in the real estate sector (paragraph 3.5).
- 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 (paragraph 4.2.3).
- In cases where shares were issued at high premium, 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. 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 (paragraph 4.3.1.1 and 4.3.1.2).

- 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 lacunae in the Act (paragraph 4.3.2).
- 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 (paragraph 4.3.3.1).
- 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 (paragraph 4.5).
- There is no mechanism to ensure effective compliance of provisions relating to deduction of tax at source under section 194-IA (paragraph 4.6.1).
- The assessing officers 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 (paragraph 4.7).
- There is a multiplicity of criteria for classifying housing projects for EWS/LIG groups by the Government of India on the basis of the size/ affordability of the dwelling units. The purpose of providing deduction under section 80-IB(10) for better availability of housing to EWS and LIG section of the societies was not being met to the extent that the prices of dwelling units were out of reach of these target groups (paragraph 5.2.1).
- Enforcement of conditions for allowing deductions under section 80-IB(10) was weak, leading to benefits being availed by non-eligible persons/ unintended groups. Thus, the targeted groups could not be benefited and the revenue foregone on this count year after year by the Government may have benefitted unintended persons (paragraph 5.2.2).