

Chapter-3: Coordination among different wings of the ITD and between ITD and other Government agencies

Coordination amongst different wings of ITD/other government agencies and timely sharing of vital information between assessment charges is important to ensure appropriate timely action and quality assessments. Coordination and sharing of information is also very important for the purpose of cross verification of information of the related assessee to prevent the possible leakage of revenue.

In this chapter we attempted to ascertain whether the ITD had proper coordination among its different wings and with other government agencies to make assessments of search cases more meaningful and effective. We noticed 368 cases with monetary impact of ₹ 420.74 crore relating to issues of lack of coordination amongst different wings of ITD and between ITD and other Government agencies.

3.1 Co-ordination amongst different wings of ITD

3.1.1 Delay in handing over of seized material resulting in less time for assessment

All the work relating to search & seizure like preparation of Appraisal Report and handing over of seized books of accounts to the respective AOs should be completed by the Investigation Wing within a period of 60 days from the date on which the last of the authorizations for search was executed and sent to the assessing charge. Further, as per section 153B of the Act, the prescribed time limit of completion of assessment u/s 153A of the Act is within 21 months from the end of the financial year in which last of the authorisation of search was executed.

We observed delay ranging from one month to 14 months in handing over of Appraisal Report along with seized material to the AO in 39 Groups in five states¹⁶ which shows the lack of coordination between Investigation and Central Assessment wings of the ITD. This inordinate delay in handing over seized materials may result in less time for assessment which has attendant risk of human error for hasty completion of assessment thus affecting the quality of assessments. Three cases are illustrated below:

¹⁶ Chandigarh, Delhi, Maharashtra, Punjab and West Bengal

- In Punjab, Pr. CIT (Central), Chandigarh charge, a search was conducted on 04 July 2012 in the case of a Group. Audit observed that the Appraisal Report along with seized material was handed over to the AO on 02 July 2013. Thus, there was a delay of 303 days against the prescribed norm of 60 days in forwarding Appraisal Report along with seized material.
- In Delhi, Pr. CIT (Central-2), Delhi charge, a search was conducted on 24 May 2012 in the case of a Group. Audit observed that the Appraisal Report along with seized material was handed over to the AO on 25 February 2013. Thus, there was a delay of 7 months and 1 day against the prescribed norm of 60 days in forwarding Appraisal Report along with seized material.
- In West Bengal, Pr. CIT (Central)-1 Kolkata charge, a search was conducted in the case of a Group on 07 January 2016. Audit observed that the Appraisal Report along with seized material was handed over to the AO after delay of 14 months.

We, therefore, recommend that the CBDT may put in place a mechanism so as to ensure that Appraisal Report along with seized material be handed over to assessment wing within stipulated time so that AO could have sufficient time to examine all the issues pointed out in Appraisal Report.

3.1.2 Action on recommendations given in the Appraisal Report during assessment

Under the provisions of section 153A r.w.s 143(3) of the Act, the AO, after verifying the genuineness of the undisclosed income determined on the basis of material discovered during search shall assess or reassess the total income of the assessee. As per Instructions no. 1886 of July 1991, any variation in the assessment order from the findings in the Appraisal Report and reasons therefore, will be clearly recorded. Further, if the AO is not in agreement¹⁷ with any finding/conclusion drawn in the Appraisal Report, the matter should be resolved by range head with the concerned additional/joint DIT (Investigation). The CIT may also resolve the issue with the DIT (Investigation)¹⁸.

¹⁷ Para 6.43 of Search and seizure manual (Vol-I)

¹⁸ Board's letter F.No. 286/161/2006-IT (Inv. II) dated 22 December 2006

We noticed 260 cases in 13 states¹⁹ where AO did not verify the source/genuineness of the transaction pointed out in Appraisal Report and did not add undisclosed income recommended in the Appraisal Report, unsecured loan/advance received from entry provider, entire undisclosed income pointed out in Appraisal Report was not assessed, expenditure was not added back to the income of the assessee for want of evidence of TDS, action was not initiated by the department despite receipt of search folders and materials involving tax effect of ₹ 327.02 crore. Though the department was required to coordinate with other wings of ITD viz. Investigation wing, TDS circle etc. in these cases and resolve the issues before finalization of the assessments but the same was not done. Five cases are illustrated below:

- In Uttar Pradesh, Pr. CIT (Central), Kanpur charge, a search was conducted in the case of an assessee of a Group in August 2015 and the assessment was completed in December 2017. Audit noticed from the Appraisal Report that the assessee involved in Hawala activities as revealed from seized materials showing currency notes bearing peculiar numbers delivered to different persons at different places of ₹ 156.45 crore during the AYs 2015-16 and 2016-17 and the AO was directed to look into the source of the cash in the hands of the assessee and details of the persons to whom cash of ₹ 156.45 crore had been delivered. However, the AO, while finalizing the search assessments, neither verified the source/genuineness of the above transaction nor added in the income. Moreover, no reasons were recorded for not doing so. Omission resulted in escaping of income of ₹ 153.54 crore being undisclosed income involving tax and interest of ₹ 64.29 crore.
- In Maharashtra, Pr. CIT (Central)-2 Mumbai charge, a search was conducted in the case of an assessee in December 2014 and found that the assessee was involved in obtaining accommodation entries of share application money from paper/shell companies. Audit noticed from the books of accounts that during the AY 2009-10, the assessee had taken share premium of ₹ 2.70 crore. Details of above share premium were not included in the return filed by the assessee. However these details were neither called for by the AO/Department nor was it discussed in assessment order finalised u/s 153A r.w.s. 143(3) of the Act in December 2016. Omission resulted in non-addition of undisclosed income of ₹ 2.70 crore involving tax effect of ₹ 1.71 crore including interest.

¹⁹ Andhra Pradesh & Telangana, Assam, Delhi, Gujarat, Jharkhand, Karnataka, Kerala, Madhya Pradesh & Chhattisgarh, Maharashtra, Odisha, Tamil Nadu, Tripura, Uttar Pradesh & Uttarakhand

Department didn't accept audit objection stating that addition for AYs 2010-11 to 2014-15 was made on the basis of findings of the search action on assessee Group as well as search on other Group. Since, no such information was available for AY 2009-10, it could not be concluded that share premium was bogus.

Department's reply is not acceptable on the grounds that the assessee was engaged in practice of obtaining bogus share application money and the department added the amount pertaining to share application money in the assessment for AYs 2010-11 to 2014-15. Since the assessee had similar transaction in AY 2009-10, which was also a part of the block assessment, the AO should have verified the creditworthiness of subscribers for this assessment year as well.

- In Andhra Pradesh, Pr. CIT (Central), Hyderabad charge, a search was conducted in the case of a company in May 2013 and the assessment was completed in January 2015. Audit noticed that as per Appraisal Report, undisclosed income of ₹ 51.59 crore was declared in the hands of the assessee in the AY 2011-12. However, only ₹ 41.31 crore was added during assessment, leaving a balance of ₹ 10.28 crore without stating any reason for variation. Undisclosed income of ₹ 10.28 crore indicated in the Appraisal Report was not brought to tax in the relevant assessment year in the hands of the assessee and the matter was also not resolved by the AO with the Investigation Wing.
- In Delhi, Pr.CIT (Central)-3, Delhi charge, a search was conducted in the case of a Group and other associate concerns in June 2012 and the assessment was completed in October 2015. In the Appraisal Report it was stated that the assessee had failed to provide any evidence about deduction of TDS on sub-contract payment of ₹ 1013.48 crore and ₹ 120.10 crore in AYs 2012-13 and 2013-14 respectively. As such the entire expenditure was required to be added back in the income of the assessee. However, the assessing officer while finalizing the assessment did not add back the above amount to the income of the assessee. There was no evidence in the assessment records that the assessee had submitted evidence for deduction of TDS. Moreover, the Department failed to furnish any deviation note or the evidence of any meeting with the investigation wing on this issue. The omission resulted in under assessment of income by ₹ 1133.58 crore involving tax effect of ₹ 589.81 crore including interest. The Department stated (August 2019) that remedial action had been initiated by issuing notice u/s 154/155 of the Act in August 2019.

- In Kerala, CIT (Central), Kochi charge, a search was conducted in March 2016 in the case of an assessee of a Group. The documents seized during search were evidencing cash investments to the tune of ₹ 17.38 crore by kingpin of the Group of institutions in that Group holding company in violation of the provisions of The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act 2015. It was recommended in the Appraisal Report that similar exercise may be carried out to ascertain the foreign asset holdings of other promoters of the core promoter group, especially that of the assessee. Though the search folder along with the seized materials were forwarded to the jurisdictional assessing officer in May 2017, the department did not initiate any action in this regard so far.

We, therefore, recommend that the CBDT may put in place a mechanism so as to ensure that the issues pointed out in Appraisal Report are duly addressed during assessment.

3.1.3 Addition made on statement based on oath under section 132(4) of the Act

As per the provisions of section 132(4) of the Act any statement recorded under the oath during search operations may be used as evidence under the Act.

Section 131(1) of the Act also empowers the AO to seek information from the assessee during the course of assessment to verify the facts presented before him. Further, as per Instructions no. 1886 of July 1991, any variation in the assessment order from the findings in the Appraisal Report and reasons therefore, will be clearly recorded. More so, if the AO is not in agreement²⁰ with any finding/conclusion drawn in the Appraisal Report, the matter should be resolved by range head with the concerned additional/joint DIT (Investigation). The CIT may also resolve the issue with the DIT (Investigation)²¹.

The issue relating to non-utilisation of statement recorded on oath u/s 132(4) of the Act in an effective manner for assessing undisclosed income was also highlighted in CAG's Audit Report No. 7 of 2006, however, irregularity still persists.

²⁰ Para 6.43 of Search and Seizure Manual (Vol-I)

²¹ Board's letter F.No. 286/161/2006-IT (Inv. II) dated 22 December 2006

We noticed 25 cases in six states²² involving tax effect of ₹ 93.72 crore where AO did not use assessee's statement made under oath u/s 132 (4) of the Act as an evidence or verify the same by seeking information under u/s 131 of the Act. Further, AO did not make addition of undisclosed income admitted by the assessee or not disallowed the expenditure based on the statement made on oath during the course of search. Also, AO neither recorded any reasons for not making additions/disallowing expenditure nor resolved the matter with the Investigation Wing as was required as per aforesaid CBDT instructions and Search and Seizure Manual in the case of disagreement with the findings/conclusion drawn in Appraisal Report. Two cases are illustrated below:

- In Gujarat, Pr.CIT (Central), Ahmedabad charge, a search was conducted in case of an assessee of a Group in January 2015 and the assessment was completed in December 2016. It was observed from Appraisal Report that the assessee had paid additional amount of ₹ 1.26 crore in cash for undervaluation of furniture imported from country 'A' through an entity in country 'B' for AYs 2009-10 and 2010-11. This fact was accepted by the assessee in statement recorded u/s 132(4) of the Act. However, the same was not disallowed u/s 40A(3) of the Act in the assessment and the reasons for the same were also not recorded by the AO. This resulted in under assessment of income of ₹ 1.26 crore involving tax effect of ₹ 42.81 lakh. Department stated that assessee had offered net profit on unaccounted under-invoiced purchases and clearly shown in return of income. It was, further, stated that provision of section 40A(3) of the Act is applicable in respect of expenses debited to profit and loss account.

The department's reply is not acceptable on the grounds that as per section 40A(3) of the Act, no deduction shall be allowed in respect of any expenditure incurred in cash beyond the prescribed limit in the Act by the assessee. There is no condition that the expenditure should be debited to profit and loss account. In this case the assessee had incurred expenses on account of under invoiced purchase in cash and the same was offered as profit for income tax purposes which clearly indicated that the profit was arrived after claiming expenditure and hence disallowable u/s 40A(3) of the Act.

²² Bihar, Gujarat, Jharkhand, Maharashtra, Odisha and Uttar Pradesh & Uttrakhand

- In Uttar Pradesh, PCIT(Central), Kanpur charge, a search was conducted in the case of a Group in October 2013 and the assessment was completed in October 2016. AO, while finalizing the assessment, in the case of an assessee of the Group for the AY 2013-14 concluded that the assessee had unverified cash loan/ receipts of ₹ 201.99 crore and added ₹ 86.99 crore stating that the assessee had admitted ₹ 115 crore u/s 132(4). However, audit found that neither the assessee had offered aforesaid amount in its return nor the AO had added the same in the assessment order. Omission resulted in underassessment of income of ₹ 115 crore involving tax effect of ₹ 67.16 crore including interest.

We, therefore, reiterate that ITD may strengthen its assessment procedure to make effective use of provision 132(4) of the Act.

The CBDT agreed (June 2020) to examine the audit recommendation.

3.2 Co-ordination between ITD and other Government agencies

3.2.1 Non-sharing of information by other government agencies/ authorities with ITD

Regional Economic Intelligence Committees (REICs) have been set up²³ in different parts of the country to ensure operational co-ordination between different economic enforcement agencies in the region, gather general economic intelligence on trade and industry and facilitate exchange/sharing of information on important cases processed or booked by them. The REICs comprise all officers of the Department of Revenue of the rank of Commissioner and above under the CBEC and CBDT who have administrative responsibility for enforcement of tax laws, heads of related agencies of Central and State Governments, local heads of banks, etc. in the region. Periodical meetings are held in which the information processed by different agencies are exchanged. Wherever the representative/Nodal Officer of the Income Tax Department in the REIC receives any information having search potential from the other participating agencies, the same should be passed on to the DIT (Investigation) for appropriate action.

We noticed eight cases in Maharashtra where other government agencies i.e. REIC and CBEC did not share information with ITD. As a result, AO could not address the issues like removal of stocks without payment of excise duty,

²³ Para 2.16 (2) of the Search and Seizure Manual Vol. I

purchases in cash without invoices/bills and genuineness of sources of investment etc. either in search assessments or finalized assessment without examining the requisite information which may be prejudicial to the interest of revenue. Two cases are illustrated below:

- i) In Maharashtra, Pr. CIT (Central), Nagpur charge, a search was conducted in May 2013 in the case of an assessee and found that DGCEI Pune had conducted a search in February 2010 on the assessee premises and detected that the assessee had clandestinely removed stock during December 2009 to February 2010 by receiving consideration in cash of ₹ 26.27 crore without payment of duty. The assessee accepted the finding and paid the excise duty of ₹ 1.91 crore. The assessee also made purchases of stocks in cash of ₹ 20.62 crore without invoices / bills from four suppliers. One of the suppliers was Group company who supplied stock by receiving consideration in cash of ₹ 7.33 crore. For the above cash sales, cash purchase of ₹ 5.06 crore was made. We noticed that the AO has disallowed the above cash purchases of ₹ 20.62 crore and ₹ 5.06 crore in the assessment order under section 153A r.w.s. 143(3) dated March 2016 and under section 40A (3) of the Act in the case of a HUF and a company respectively. If these discrepancies of cash purchases of ₹ 25.68 crore and cash sales ₹ 33.59 crore found by DGCEI, Pune had been shared timely with the Income Tax Department, the same could have been addressed at the time of regular assessment to stop the avoidance of tax.
- ii) In Maharashtra Pr. CIT (Central)-II, Mumbai charge, a search was conducted in the case of a company of a Group in September 2013. During the course of search proceedings, it was found that the assessee company was having ₹ 642.78 crore as receivable on behalf of its 825 clients on account of unsettled positions on the platform of National Spot Exchange Ltd. (NSEL). To examine the genuineness of sources of investments in respect of 821 clients out of the 825 clients who were having unsettled position on NSEL as on March 2013, these cases were transferred to the DIT(I&CI), Mumbai by DIT (inv.). The office of Jt. Commissioner of Police (EOW), Mumbai was also requested to share the information in relation to the Group in general and the company in particular from the perspective of Income tax proceedings. However, no information had been received from the either of the office even though all the above agencies including DIT(Inv.) and CIT(C) were members of REIC. As a result, the AO finalised the assessment without examining the requisite information which may be prejudicial to the interest of revenue.

Hence, purpose for formation of such a forum like Regional Economic Intelligence Council (REIC) was defeated in this case.

Department stated (August 2019) that information had not been received from DG(I&CI) and Joint CP (EOW) and matter was getting barred by limitation, the AO passed the order. Further, if any information is shared by the DIT(I & CI) and Joint CP (EOW) leading to escarpment of income, the option of remedial u/s 147 of the Act is always available with the department.

3.2.2 Non-sharing of information to other government agencies/ authorities by ITD

Para 6.60, 6.61 and 6.62 of Search and Seizure Manual Vol. I also prescribe the procedure of sharing information found during search/ post search/ assessment proceedings to the concerned enforcement agencies, authorities or departments either directly and/or through the Regional Economic Intelligence Committee. Where such information pertains to a sensitive matter, the manner and mode of communication should be finalised in consultation with the DIT (Investigation). The fact of such communication should also be reported to the AO, Range Additional/Joint CIT, CIT and the DIT (Investigation). This may also be mentioned in the Appraisal Report if such communication has been made before its finalisation.

We observed 11 cases in four states²⁴ where the information relating to advancing of loans to the paper companies, wrong claim of Industrial Promotional Subsidy (PSI)/sales tax subsidy was not shared by ITD with other government agencies/authorities either directly or through REIC. Four cases are illustrated below:

- i) In Maharashtra, Pr. CIT (Central)-III, Mumbai charge, a search was conducted in the premises of a Group in December 2015. During search and assessment procedure, ITD came to know that the Group was not eligible for additional loan initially as per prescribed exposure limit fixed by NBFC Act from a NBFC. Subsequently, 16 unrelated private limited companies were formed by the Group in which directors and shareholders will be the employees of the company and ultimately channelized into entities for the project payments to obtain excess funds from the NBFC as advised by the NBFC. Finally, the NBFC advanced a loan of ₹ 463 crore during FYs 12-13 to 14-15 to these companies though, the

²⁴ Gujarat, Maharashtra, Uttar Pradesh & Uttrakhand and West Bengal

financial conditions of these paper companies were not so sound to be eligible to get a loan. Audit observed that the issue of granting a loan to paper company without eligibility was a serious issue and required to be shared with other government department/agencies so as to prevent the occurrence of such type of irregularities in other cases. However, the information was not shared by the ITD either directly or through REIC. As such possibility of occurrence of such lapses may not be ruled out.

The department stated (June 2019) that the REIC folders were maintained by the Directorate of Investigation and were not shared with the Central charges. However, aforesaid information was shared with RBI by Central charges in June 2019 as per the recommendation made in the Appraisal Report.

The department's reply is not tenable as the aforesaid information was shared after six months of observation raised by Audit. Further, such vital information should be passed on to concerned agencies on real time basis so that such irregularities could be checked in time.

- ii) In Maharashtra Pr. CIT (Central), Pune charge, a search was conducted in case of a company of a Group in October 2015 and found many discrepancies. Subsequently, the case was referred for special audit u/s 142(2A) of the Act. The case was also referred for special investigative audit by Central Bank of India. Many discrepancies were reported in these two reports. One of the discrepancies was irregular claim of depreciation of ₹ 372.70 crore during AYS 2010-11 to 2016-17 on assets for which invoices listing and other supporting documents were not made available for verification. Based on the aforesaid special audit report and special investigative report, the AO concluded in assessment order that assessee did not purchase any assets and the quantum of fixed assets were inflated in books of accounts and accordingly disallowed the entire irregular claim of depreciation of ₹ 372.70 crore u/s 144 r.w.s. 153A of the Act in August 2018. Department also disallowed Industrial Promotional Subsidy (PSI)/sales tax subsidy of ₹ 181.12 crore received during the aforesaid AYS from Govt. of Maharashtra under PSI for setting up mega project unit treating as revenue receipts. As the assessee had wrongly claimed PSI subsidy from Government of Maharashtra, the information along with Special Audit Report and Special Investigative Audit Report should have been shared with Govt. of Maharashtra for necessary action. However, Audit could not ascertain from the assessment record whether the information was shared with Govt. of

Maharashtra/other relevant agencies/department by the AO either directly or through the REIC.

- iii) In Uttar Pradesh, Pr. CIT (Central), Kanpur charge, a search was conducted in October 2013 in the case of a company of a Group. The assessment for AY 2014-15 was completed in March 2016 without any addition to returned income of ₹ 54.28 crore. The assessee company was a closely held public limited company and engaged in the business of various commodities including agricultural commodities. Books of accounts of the assessee were showing purchase and sales but no opening or closing stock and showing business loss every year. However, there was steep increase in investment in FDs out of borrowed funds and advances from customers from AYs 2010-11 to 2014-15. The assessee company had purchased agricultural commodities from different foreign countries and sold directly to other countries abroad without bringing the same in India. The company had managed its whole business from India and issued sale invoices to foreign customers/purchasers. The assessee company had created a huge liability by raising funds from foreign creditors and advances from customers and invested in FDs, thereby earned interest income which was set off against business loss due to purchases at higher cost and sales at lower price by incurring heavy amount as other expenses. The assessee company had declared huge amount of ₹ 2,249.22 crore as sundry creditors and ₹ 415.65 crore as advance from customers for the AY 2014-15. The aspect of over invoicing of purchase, invasion and taxes, duties and others were required to be investigated by the Central Investigation Agency under the Foreign Exchange Management Act (FEMA), Money Laundering Act and Enforcement Directorate (ED). However, ITD had not passed on any such information to ED for investigating genuineness of the business and foreign creditors/advances. Department's reply was awaited.
- iv) In Uttar Pradesh, Pr. CIT (Central), Kanpur charge, a search was conducted in case of an assessee in October 2015 and found that the assessee had deposited an amount of ₹ 50.04 lakh to Allahabad Development Authority (ADA) in August 2008 for getting the map for construction of hospital at Allahabad approved. However, it was found that on the given address there was a palatial residence of the assessee instead of hospital building as approved by the Allahabad Development Authority. In this regard, it was suggested in Appraisal Report to pass on the information to the Allahabad Development Authority. It was noticed from record made available to audit that ITD didn't pass on this information to ADA.

Department's reply was awaited.

Thus, there was lack of co-ordination between different wings of the ITD as well as with other government agencies/authorities. Besides, the vital information either was not shared or shared belatedly. As a result, timely action could not be taken by the concerned agencies/authorities.

We, therefore, recommend that ITD may strengthen the mechanism of sharing of information amongst different wings of the Department as well as with other Government agencies and ensure its timeliness for effective assessments and prevent undue benefit to the assesseees.

The CBDT stated (June 2020) that the existing practices/mechanisms already provide for effective sharing of Information within the Department as well as with other Government agencies and the Board has issued various instructions from time to time directing the field formations concerned to adhere strictly to the timeline. However, the CBDT agreed that the mechanism in place needs to be strengthened.

3.3 Monitoring mechanism in Search and Seizure assessments

3.3.1 Submission of Action Note based on a comprehensive and methodical examination of seized material

In terms of Para 1.5 of CBDT Instruction issued vide F. No. 286/161/2006-IT (Inv. II) dated 22.12.2006, an Action Note, based on a comprehensive and methodical examination of seized material, in addition to the comments available in the Appraisal Report, must be prepared within 90 days of receipt of the seized material by Assessing Officer. Further, as per Para 1.7 of above mentioned CBDT Instruction, a copy of the Action Note prepared should be sent to the CIT(Central) through the Addl./Joint CIT as part of compliance report to enable proper supervision by him.

We analysed the issue in respect of 185 selected Groups across the states and our observations in this regard are as under:

- (i) In 36 selected Groups in Haryana, Maharashtra, Odisha, Punjab, Tamil Nadu and Uttar Pradesh charge, Action Notes were not prepared by the AO for search assessments completed during the financial years 2014-15 to 2018-19. Further, in four cases in

Maharashtra charge the department intimated that Action Note was not available as per records.

- (ii) In 74 selected Groups in Assam, Bihar, Gujarat, Jharkhand, Kerala, Maharashtra, Rajasthan, Tamil Nadu and West Bengal charges, the concerned PCIT/CIT did not furnish the information preparation/submission of Action Note.

As the preparation/submission of Action Note is an important tool of the monitoring mechanism, non-preparation/submission of the same was a serious lapse which hampered the proper supervision of search assessments by the competent authority.

3.3.2 Submission of Separate Narrative Report on the qualitative aspects of the assessments

Assessing officer has to prepare a Separate Narrative Report on the qualitative aspect of assessment in cases where seizure/surrender/estimated concealment is ₹ 50 lakh or more and to send to Member (Inv.) every quarter (Sl. No. 05 of Central Board of Direct Tax instruction No.1886/1991[F.No.286/109/91-IT (Inv.II) of 18th July 1991).

We examined the issue of submission of Separate Narrative Report across the states and our observations in this regard are as under:-

1. In eight selected Groups in Maharashtra and Odisha charge Separate Narrative Reports were not prepared by the AOs for search assessments completed during the financial years 2014-15 to 2018-19. Further it was not ascertainable in six Groups in Uttar Pradesh whether these were submitted or not.
2. In 59 selected Groups in Assam, Bihar, Gujarat, Jharkhand, Kerala, Maharashtra, and West Bengal charge, the concerned PCIT/CIT did not furnish the information preparation/submission of Separate Narrative Report.

Thus, in the absence of response from the department, the audit could not ascertain whether the Separate Narrative Report was being sent regularly.

We, therefore recommend that the CBDT may fix responsibility where Action Note/Separate Narrative Report is not prepared and further appropriate action be taken so that objective of search and seizure operations is not defeated.

3.4 Widening of Tax Base

Consequent upon Search and Seizure Operations, a number of new assesseees are found and added to the tax net resulting in widening of tax base and increase revenue to the exchequer.

We noticed 25 cases in Bihar and Maharashtra charge that though the information relating to sellers of land/flat/commodities had been pointed out in the respective Appraisal Report, who could be potential assesseees. Yet Department did not initiate any action in this regard. The department also did not confirm whether these sellers were in the tax net of the department and regularly filing the return. Two cases are illustrated below:

- In Bihar, Pr. CIT (Central), Patna charge, a search was conducted in the case of a Group in January 2015. We noticed from Appraisal Report of the Group that AO was suggested to verify the liability of tax as per provision of section 50C of the Act in the hands of sellers for capital gain and also income from other source in the hands of purchasers as applicable with effect from 30 June 2013 u/s 56(2)(VII)(b) of the Act. We observed that 18 persons (individual/firm/company) had sold land/flat to the Group (11 assesseees) at ₹ 536.91 lakh. The information was to be shared with concerned AO of the sellers for the purpose of capital gain but the same was not shared to the concerned AOs. Further it was noticed that assessment of two purchaser was not found done in the concerned central circle Patna. However, they had purchased land/flat at ₹ 47.31 lakh whose stamp value was ₹ 93.45 lakh. There was a difference between purchase value and stamp value of ₹ 46.14 lakh. As assessment of these assesseees was not found done hence audit could not verify whether the two purchasers had offered the tax on differential amount and also whether the purchasers were filing their income tax return regularly. Department's reply was awaited.
- In Maharashtra, Pr. CIT (Central), Nagpur charge, a search was conducted in August 2012 in the case of a Group, which included the assessee, and the assessment was completed in March 2016. Audit noticed from Appraisal Report that the assessee had purchased soyabean seeds of ₹ 687.59 crore for the AYs 2007-08 to 2013-14 from Unregistered Dealer (URD). The assessee had not provided identity of supplier of URD purchases like PAN, address of seller and valid invoice etc. Neither the search wing nor assessment charge was able to get the identity of those suppliers even though payment to some of the suppliers were more than

rupees one crore. It could not be ascertained whether the suppliers were in the tax net and filing income tax returns regularly. Further, it was also not confirmed whether such receipts were offered as income and not agricultural income by URD as these incomes were added u/s 40A(3) of the Act in the case of the assessee.

Further, Department stated in five Groups in Maharashtra that there was no quantification of new assessee added to tax net after search-seizure assessment. Regarding monitoring of regularly filing of ITR and selection for scrutiny of searched assessee, the department informed in one Group of Maharashtra that no such monitoring was applicable whereas in another Group case of Maharashtra the Department informed that it was not possible to monitor.

We, therefore, recommend that ITD may devise a system to track the new assessee added in the tax net consequent upon search operations/assessments and also to watch that these assessee are tax compliant.

The CBDT stated (June 2020) that after obtaining the report from Pr. CIT, they will find out the lapses and ensure that the same do not occur in future.

3.5 Conclusion

Coordination amongst different wings of ITD was lax as was evident from delay in handing over the seized material and Appraisal Reports by the Investigation wing to the Assessing Officer.

AO did not make addition of undisclosed income or disallow the expenditure though admitted by the assessee on oath during the course of search. There was lack of co-ordination between different wings of the Income Tax Department as well as with other government agencies/authorities. There were instances where the information available with one department/other government agency was not shared with ITD or vice versa. As a result, the issues that emanated from search could not be examined with corroborative evidence. Further, there were cases where timely action was not taken by the concerned agencies/authorities due to delayed/non-sharing of vital information. Non preparation and non-submission of Action Note and Separate Narrative Report which are important tools for supervision of

search assessments by the competent authority, hampered the monitoring mechanism. Besides, there was no proper mechanism in ITD to identify the additions of new assessees in tax net due to search and seizure operations/assessments and also to monitor the filing of returns regularly by them.

3.6 Recommendations

Audit recommends that:

(i) *the CBDT may put in place a mechanism so as to ensure that Appraisal Report along with seized material be handed over to assessment wing within stipulated time so that AO could have sufficient time to examine all the issues pointed out in Appraisal Report.*

(Paragraph 3.1.1)

(ii) *the CBDT may put in place a mechanism so as to ensure that the issues pointed out in Appraisal Report are duly addressed during assessment.*

(Paragraph 3.1.2)

(iii) *ITD may strengthen its assessment procedure to make effective use of provision 132(4) of the Act.*

(Paragraph 3.1.3)

The CBDT agreed (June 2020) to examine the audit recommendation.

(iv) *ITD may strengthen the mechanism of sharing of information amongst different wings of the Department as well as with other Government agencies and ensure its timeliness for effective assessments and prevent undue benefit to the assessees.*

(Paragraph 3.2)

The CBDT stated (June 2020) that the existing practices/mechanisms already provide for effective sharing of information within the Department as well as with other Government agencies and the Board has issued various instructions from time to time directing the field formations concerned to adhere strictly to the timeline. However, the CBDT agreed that the mechanism in place needs to be strengthened.

(v) *the CBDT may fix responsibility where Action Note/Separate Narrative Report is not prepared and further appropriate action be taken so that objective of search and seizure operations is not defeated.*

(Paragraph 3.3)

(vi) *ITD may devise a system to track the new assesseees added in the tax net consequent upon search operations/assessments and also to watch that these assesseees are tax compliant.*

(Paragraph 3.4)

The CBDT stated (June 2020) that after obtaining the report from Pr. CIT, they will find out the lapses and ensure that the same do not occur in future.

New Delhi
Dated: 03 August 2020


(Neelesh Kumar Sah)
Principal Director (Direct Taxes-I)

Countersigned

New Delhi
Dated: 04 August 2020


(Rajiv Mehrishi)
Comptroller and Auditor General of India

