

Report of the Comptroller and Auditor General of India



लोकहितार्थ सत्यनिष्ठा
Dedicated to Truth in Public Interest

Assessment of Assesseees in Real Estate Sector

Union Government
Department of Revenue – Direct Taxes
Report No. 23 of 2018

**Report of the
Comptroller and Auditor General of India**

for the year ended March 2018

**Performance Audit on
Assessment of Assesseees
in Real Estate Sector**

**Union Government
Department of Revenue - Direct Taxes
Report No. 23 of 2018**

Laid on the table of Lok Sabha/Rajya Sabha on _____

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Preface

This Report for the year ended March 2018 has been prepared for submission to the President under Article 151 of the Constitution of India.

The Report contains significant results of the performance audit on Assessment of Assesseees in Real Estate Sector, completed by the Department of Revenue – Direct Taxes of the Union Government during the financial years 2013-14 to 2016-17.

The instances mentioned in this Report are those, which came to notice in the course of test audit for the period 2013-14 to 2016-17 conducted during the period August 2017 to January 2018 and July – August 2018.

The audit has been conducted in conformity with the Auditing Standards issued by the Comptroller and Auditor General of India.

Audit wishes to acknowledge the cooperation received from the Department of Revenue - Central Board of Direct Taxes at each stage of the audit process.

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).

Summary of Recommendations

We recommend that

➤ *The CBDT, Ministry of Finance and Ministry of Corporate Affairs may have inter-ministerial arrangement to their mutual benefit where there is an interface between the ITD and ROC so that when a company is registered with ROC, the application for PAN is submitted automatically with the ITD. When PAN is issued to the newly incorporated company, it will automatically be sent to ROC Systems for updation. Further, the companies should be compulsorily required to submit a copy of acknowledgement of ITR while furnishing their annual reports in Form MGT-7. This will ensure that companies file their ITRs and at the same time the data of ROC will be in sync with that of ITD (paragraph 2.2).*

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

➤ *The CBDT may consider taking up with the state governments to have an interface between IT system of ITD and that of Inspector General of Registrations (IGR) so that whenever sale of properties is registered with IGR office, the information is automatically populated into ITD systems as well (paragraph 2.3.1).*

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

➤ *The CBDT may put a mechanism in place to ensure compliance of provisions of section 285BA and section 139A(5)(c) read with Rule 114B by AIR filers (paragraph 2.3.5).*

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

➤ *It is recommended that the CBDT may put in place an IT driven mechanism for sharing of information within the department so as to utilize information such as those regarding sales/purchases transactions of immovable property effectively and plug the leakage of revenue (paragraph 3.4).*

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

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

➤ *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 (paragraph 4.3.2).*

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

➤ *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 (paragraph 4.4.1).*

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

➤ *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 (paragraph 4.6.1).*

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

➤ *The CBDT may consider introducing system based checks and validation to minimize manual interventions by assessing officers and avoiding mistakes in scrutiny assessments (paragraph 4.7).*

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.

➤ *The Ministry may like to put in place a mechanism whereby the ITD gets inputs from the concerned administrative Ministry before it reviews the incentives given in schemes under the provisions of the Act so that the Ministry is in a position to monitor and measure the benefits of tax incentive to the intended groups (paragraph 5.1).*

The CBDT stated (July 2018) that administrative ministries were being requested to provide an impact assessment study in respect of tax concessions provided for the sectors under their jurisdiction and provide a cost-benefit analysis on various aspects.

ITD did not have any information with it with regard to impact of revenue foregone on growth in housing sector when the Audit asked for the same which gives reasons to believe that the benefits of tax incentives for the intended groups are not being monitored.

➤ *The Ministry may ensure the verification of certificate in form 10CCB and in the case of the certificate found to be incorrect, the Chartered Accountant may be held accountable (paragraph 5.2.2).*

The CBDT accepted (July 2018) the recommendation.

Chapter 1: Introduction

1.1 On the basis of its use, 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. Due to change in the economic scenario of the country, real estate activities which were once primarily limited to urban areas, are now spreading to smaller towns as well. There are various players involved in this sector such as land owners, developers, contractors, sellers/ buyers and real estate agents etc.

1.2 Assesseees in database of the Department

The filing of Income Tax Returns (ITRs) by the assesseees in real estate sector and their assessed income has shown steady rise in the sector during FYs 2013-14 to 2016-17 as is given in Table 1.1 below.

Table 1.1: Details of ITRs received/scrutinized				₹ in crore
Financial Year	ITRs filed (population)	Scrutiny assessments (in numbers)	Income as per ITRs in respect of Col. 3	Assessed income in respect of Col. 3
1	2	3	4	5
2013-14	2,18,925	8,948	16,175	30,920
2014-15	3,17,730	22,551	18,580	43,837
2015-16	3,36,777	20,750	23,812	47,055
2016-17	3,38,220	26,398	32,970	55,178
Source: Pr. DGIT(Systems)				

1.3 Why we chose the topic

The grounds for selecting this topic for performance audit were:

- The 'White paper on black money' published by the Ministry in 2012 identified 'Real Estate' as one of the sectors of the economy or activities more vulnerable to the menace of black money. The Paper indicated that due to rising prices of real estate, the tax incidence applicable on real estate transactions in the form of stamp duty and capital gains tax can encourage tax evasion through under reporting of transaction price which leads to both generation and investment of black money.

- A performance audit on “Business of Civil Construction” for the year ending March 2010 (Report no. 12 of 2011-12) was conducted. Our major audit finding highlighted absence of proper database of the assessees engaged in the business of civil construction, non-dissemination of information collected by Central Information Branch {now Intelligence and Criminal Investigation (I&CI)} and several mistakes relating to compliance in the scrutiny assessment. This audit would ascertain whether deficiencies pointed out earlier had been addressed.
- There has been rapid urbanization in India and up-gradation of city infrastructure by the governments resulting into growth in real estate and resultant tax revenue.
- A number of tax concessions have been given to this sector.
- There are several parties involved in this sector viz. land owners, developers, sellers, buyers, contractors and real estate agents all of whom may be liable to pay income tax.
- The sources of investment in real estate suggest possible transfer of money from untaxed sources or unaccounted funds.

1.4 Audit objectives

The objectives of the performance audit were to ascertain whether:

- All the developers/builders/real estate agents dealing in real estate sector are in the tax net and filing income tax returns.
- 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 assessees from this sector under the tax net.
- The existing systems and controls are adequate to promote compliance of provisions specific to the real estate sector under the Income Tax Act, 1961 (the Act) as well as compliance to general provisions of the Act.
- 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 to the eligible persons.

1.5 Legal Framework

Some general and specific sections relating to real estate sector of the Act are given below:

Section	Brief description
28 to 44	These sections provide for allowance of expenditure, depreciation, interest etc. while computing the profits and gains from business and profession.
43CA	It provides for charging of tax on excess of value adopted for the purpose of payment of stamp duty over the sales consideration on transfer of an asset (other than a capital assets) being land or building or both by an assessee (seller).
45(2)	This section provides for charging of tax on the profits or gains arising from the transfer by way of conversion by the owner of a capital asset into or its treatment by him as stock in trade of a business carried on by him.
50C	It provides for charging of tax on excess of value adopted for the purpose of payment of stamp duty over the sales consideration on transfer of a capital asset, being land or building or both by an assessee (seller).
50D	It provides that where the consideration received or accruing on transfer by an assessee, of a capital asset is not ascertainable or cannot be determined, then, for the purpose of capital gains, the fair market value of the said asset on the date of transfer shall be deemed to be the full value of the consideration received or accruing on such transfer.
54F	It provides for exemption to an Individual or a Hindu Undivided Family (HUF) on capital gain from transfer of long term capital asset, other than a residential house.
54GB	It provides for exemption to an Individual or a Hindu Undivided Family (HUF) on capital gain from transfer of long term capital asset, being a residential property (a house or a plot of land).
56(2)(viib)	It provides that where a closely held company issue shares to a resident at a premium in a manner that the issue price exceeds the Fair Market Value (FMV), the difference between the issue price and FMV of such shares is to be taxed in the hands of the company issuing the shares.
56(2)(vii)(b)	As per provisions of this section, the excess of stamp duty valuation of immovable property over its actual sales consideration, if it is more than ₹ 50,000, is taxable in the hands of individual and HUF only (buyer).
69C	It provides that where in any financial year the assessee has incurred any expenditure and he offers no explanation about the source thereof or the explanation offered by him is not satisfactory, in the opinion of the assessing officer, the amount of such expenditure deemed to be the income of the assessee for such financial year.
80-IB(10)	This section provides for deduction in respect of profits and gains to an undertaking engaged in developing and building housing projects subject to fulfillment of certain conditions.
194-IA	It provides for deduction of tax at source by purchaser being an Individual and HUF on sales consideration of immovable property.

1.6 Scope of audit and sample size

In this performance audit, scrutiny assessments completed by Income Tax Department (ITD) during the financial years (FYs) 2013-14 to 2016-17 have been covered.

The field audit offices (FAOs) selected assessing charges for this performance audit from the assessing officer-wise aggregate data of income tax returns (ITRs) of assessees of Real Estate Sector processed during last four years, provided by the Pr. Director General of Income Tax (Systems) {Pr. DGIT(Systems)}. For this purpose following methodology was adopted.

We divided FAOs in two categories viz. metro charges (Delhi, Mumbai, Kolkata, Chennai including their branch offices) and non-metro charges (Ahmedabad, Bengaluru, Chandigarh, Hyderabad and Lucknow offices including branch offices). 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. Adopting a top down approach on total aggregate assessed income of four years, we selected 462 assessment charges falling under 121 Pr. CsIT/ CsIT. In the selected assessment charges, assessment records in respect of 100 *per cent* of the scrutiny cases relating to 'Real Estate Sector' were selected. We were to select a minimum of 2,000 scrutiny cases in each of the metro charges and 1,500 in each of the non-metro charges, for examination. Out of a total of 78,647 scrutiny assessment cases relating to 'Real Estate Sector' completed by the ITD during 2013-14 to 2016-17, Audit examined 17,155 assessment records in two phases – August 2017 to January 2018 and July-August 2018 (*Appendix-I*).

1.7 Audit methodology

1.7.1 We collected the assessing officer (AO) wise aggregate data of ITR of assessees of Real Estate Sector processed during FYs 2013-14 to 2016-17 from the Pr. DGIT (Systems) which was used in identifying the assessment charges for selection where assessees falling under business code for 'builders'- 401 (Builders), 402 (Estate agents), 403 (Property Developers) and 404 (Others) relating to real estate sector were scrutinized.

1.7.2 We checked the scrutiny cases identifying them from the Demand and Collection Register (D&CR) of the selected assessment charges and also summary cases in respect of some of the selected assessees wherever felt necessary. Besides, relevant past assessment records were also linked wherever felt necessary.

1.7.3 Out of our sample, we selected 30 builders/ developers based on turnover, land-banks, inventory size and number of projects etc. for detailed analysis. The credibility/genuineness of various transaction viz. incomes and expenses, sale/purchase of land/flats, unsecured loans, loans and advances given to or received from other assessees, and sundry debtors and sundry creditors, in respect of these selected builders/developers was verified with reference to the relevant assessment records of the other concerned assessees/parties. For the verification of the linked records the assessment charges other than those selected for the Performance audit were also visited.

1.7.4 We also collected information regarding real estate sector from different sources such as Inspector General of Registrations (IGR), Maharashtra, Registrar/sub-registrar of properties, Registrar of Companies (ROC), Real Estate Regulatory Authority (RERA), Confederation of Real Estate Developers' Associations of India (CREDAI), I&CI wing and DG(Investigation) of ITD for verifying action taken by the ITD to bring all liable persons into the tax net.

1.7.5 The information received from ROC was forwarded to Pr. DGIT(Systems) to ascertain whether all those entities were in the tax net and that information received from Registrar/Sub-Registrar offices (RO/SRO) was linked with the assessment records in the ITD. The Ministry of Finance, Department of Revenue was also approached for details about the achievement of intended benefits by granting incentives/deductions to the housing sector under section 80-IB(10) of the Act.

1.7.6 An Entry Conference was held with the Income Tax Department (ITD) on 25 October 2017 wherein audit objectives, scope of audit and other thrust areas of the performance audit were explained to the ITD. Draft performance audit report was issued to the CBDT on 25 May 2018 for their comments. An Exit meeting with the CBDT was held on 02 July 2018 where major audit findings and audit recommendations were discussed.

1.7.7 Replies to audit recommendations were received on 06 July 2018. Response of the CBDT through replies and in exit conference has been appropriately incorporated in the Report.

1.7.8 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. 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.

1.8 Acknowledgement

We acknowledge the co-operation of the ITD in providing the assessment records and facilitating the conduct of this performance audit.

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

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



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

2.2 Verification of tax base against ROC data

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

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

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

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

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

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

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

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

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

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

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

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

2.3 Verification of tax base against RO/SRO data

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

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

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

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

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

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

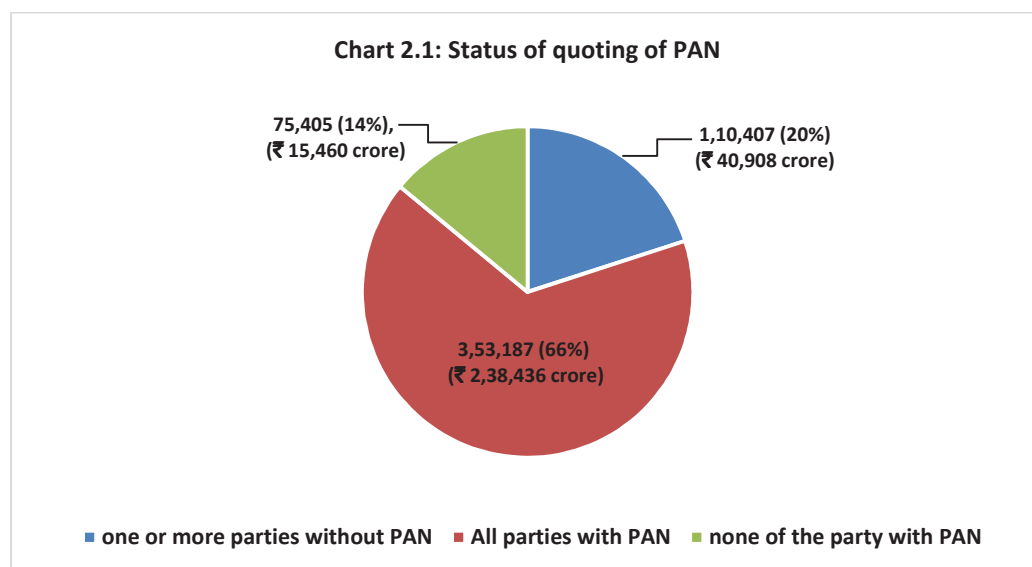
Thus, the system in the ITD to ensure compliance of filing of ITRs by the sellers of high value immovable properties was not effective.

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.5 Conclusion

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

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

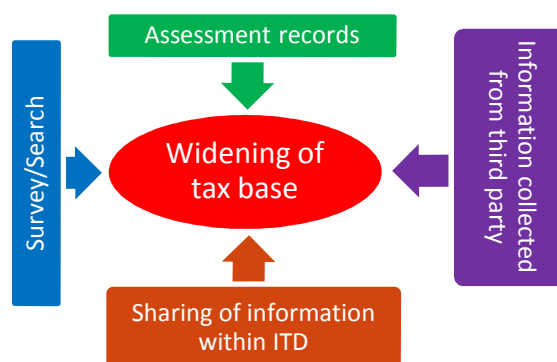
⁵ Kerala – 11 cases and West Bengal – 26 cases

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

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

3.2 Tools available with ITD for widening the tax base

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



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

3.3 Information collected from third party

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.4 Sharing of information within the ITD

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

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

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

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

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

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

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

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

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

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

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

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

3.5 Effectiveness of Survey in widening of tax base

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

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

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

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

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

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

3.6 Effectiveness of Search & Seizure in widening the tax base

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

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

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

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

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

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

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

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

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

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

3.7 Verification of assessment records in respect of real estate agents

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

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

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

20 Chhattisgarh, Delhi, Gujarat, Madhya Pradesh and Maharashtra

21 M/s PACL Limited, AY 2010-11

3.8 Conclusion

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

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

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

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)(viiia) and (viiib) 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

31 ITA 18/1999

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.

Chapter 5: Assessment of impact of tax incentives provided to housing projects

5.1 In order to promote the housing sector and to encourage better availability of dwelling units for the lower and middle class sections of society, section 80-IB(10)³² was introduced in the Income Tax Act, 1961 in 1998. Under this section, subject to fulfillment of certain conditions deduction from profit was to be allowed to the builder. This chapter highlights the attempt of audit to ascertain whether the benefits intended in introducing section 80-IB(10) of the Act were achieved by allowing deductions to the real estate sector.

The specific tax incentives provided by the Government have a definite revenue impact, known as 'Revenue Foregone' and may be viewed as an indirect subsidy to tax payers. The quantum of revenue foregone may be used to assess the impact of tax deduction incurred for the promotion of organised activity (viz. creation of infrastructural facilities, accelerated depreciation as an incentive for capital investment) in the targeted sector. The details of revenue foregone during last four FYs are shown in Table 5.1 below.

Table 5.1: Revenue foregone on account of deduction under section 80-IB(10)			
Financial Year	Amount of Revenue foregone (₹ in crore)		
	Corporate	Firms/BOI/AOP	Individual ³³
2013-14	180.1	266.0	82.0
2014-15	105.4	172.9	63.6
2015-16	56.9	136.6	40.3
2016-17	65.27	89.92	22.7

Source: Figures are as per respective Receipt Budget

Against a query of the Audit, whether the Government of India have put in any mechanism to monitor the impact of the tax incentives like under section 80-IB(10) of the Act, the Ministry replied (January 2018) that such concessions are provided to various sectors upon specific requests/ recommendations made by the administrative ministries under the jurisdiction of which such sectors are covered and that specific sectoral analysis of revenue foregone may be undertaken by the administrative Ministry which has recommended direct tax concessions as a policy initiative to lead development of that sector.

Thus, the Ministry does not have any mechanism to assess the impact of revenue foregone in terms of creating affordable housing and its effect on growth in the housing sector.

Recommendation: *The Ministry may like to put in place a mechanism whereby the ITD gets inputs from the concerned administrative Ministry before it*

³² abolished w.e.f. 1.4.2016

³³ includes deduction allowed other than under section 80-IB(10)

reviews the incentives given in schemes under the provisions of the Act so that the Ministry is in a position to monitor and measure the benefits of tax incentive to the intended groups.

The CBDT stated (July 2018) that administrative ministries were being requested to provide an impact assessment study in respect of tax concessions provided for the sectors under their jurisdiction and provide a cost-benefit analysis on various aspects.

ITD did not have any information with it with regard to impact of revenue foregone on growth in housing sector when the Audit asked for the same which gives reasons to believe that the benefits of tax incentives for the intended groups are not being monitored.

5.2 Affordable criteria and allowance of deduction

5.2.1 Non-existence of affordability criteria

Section 80-IB(10) of the Income Tax Act, 1961 provides for hundred *per cent* deduction of profit derived from an undertaking engaged in the business of development or construction of housing projects subject to fulfillment of certain conditions viz.

- completion of the project within the prescribed period,
- size of plot of land which has a minimum area of one acre,
- maximum built-up area of residential unit up to 1,000 sq. ft. for Delhi and Mumbai and its outskirts within 25 Kms from its municipal limits and 1,500 sq. ft. for other areas,
- not more than one residential unit in the housing project is allotted to any person not being an individual.
- non-allotment of unit to the spouse or minor children of an individual to whom unit is allotted in the housing project, etc.

In addition, section 80AC provides that the return of income for an assessment year has to be filed before the due date specified under the Act to avail deduction under section 80-IB(10) in that assessment year. For claiming deduction under section 80-IB(10), the assessee is required to file a certificate from chartered accountant in the prescribed form 10CCB.

As per report of Technical Group on Urban Housing shortage³⁴, prepared in 2012, there was overall shortage of 18.78 million housing units, out of which, 96 *per cent* of shortage was in the economically weaker section (EWS) and low income group (LIG) categories. In November 2017, the Minister of State

³⁴ Source: Government of India Ministry of Housing And Urban Poverty Alleviation, National Buildings Organisation www.mhupa.gov.in

in-Charge, Housing and Urban Affairs stated that shortage in housing has been assessed at 10 million.

A Task Force³⁵ set up by the Ministry of Housing and Urban Poverty Alleviation (MHUPA) suggested parameters for a affordable house for households belonging to EWS/LIG categories as a unit

- (i) with carpet area most likely between 300 and 600 sq. ft. (i.e. 27.87 to 55.74 sq. mtr.), with
- (ii) the cost not exceeding four times the household gross annual income;
- (iii) EMI/rent not exceeding 30 *per cent* of the household's gross monthly income.

MHUPA set up another Task Force in November 2010 for developing transparent qualified criteria and a separate set of guidance for affordable housing in PPP projects for circulation to states. The Task Force in its Report of November 2012 considered an affordable house as an individual dwelling units with a carpet area of not more than 60 sq. mt. and preferably within the price range of 5 times the annual income of the household; and recommended that

- Minimum size of a habitable EWS dwelling unit should be of a carpet area of 21-27 sq. mt. EWS category and 28-40 sq. mt. for LIG category,
- the maximum household income for the EWS and LIG category should be ₹ 8,000/- and ₹ 16,000/- per month or an annual income of ₹ 100,000 for EWS and ₹ 200,000/- for LIG,
- provisions of section 80-IB(10) be made applicable for Affordable Housing projects sanctioned after 31st March 2008, at least for 10 years till 2018 which fulfill the conditions prescribed by the MHUPA.

Reserve Bank of India in its notification³⁶ dated 15 July 2014 also indicated to consider ₹ 10 lakh as cost of construction of dwelling unit in a housing project exclusively for the purpose of construction of houses only for EWS and LIG.

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.

Audit observed that dwelling units having built-up area as prescribed in section 80-IB(10) were being offered by the builders, availing deduction under section 80-IB(10), between ₹ 16 lakh (Delhi) to ₹ 3.15 crore (Mumbai). As such, these were out of reach for EWS and LIG categories, as a person earning rupees one

35 'High Level Task Force on Affordable Housing for All' under the Chairmanship of Shri Deepak Parekh, Chairman of the Housing Development Finance Corporation Limited (HDFC) (2008)

36 RBI/2014-15/127 -DBOD.BP.BC.No.25 / 08.12.014 / 2014-15 July 15, 2014 on Issue of Long Term Bonds by Banks – Financing of Infrastructure and Affordable Housing.

lakh per annum is unlikely to afford such costly dwelling units. Thus, the purpose of providing deduction under section 80-IB(10) for better availability of housing to EWS and LIG section of the societies were not being met to that extent.

5.2.2 Irregularities in allowing deduction under section 80-IB(10)

During examination of the assessment records, provided in selected assessment charges, Audit noticed that the ITD did not ensure that the pre-conditions for availing the benefits under the provisions of section 80-IB(10) were fulfilled in respect of 72 cases involving tax effect of ₹ 270.68 crore. The deduction was allowed despite non fulfilling of the requisite pre conditions such as filing of return of income beyond due date, project not completed within the specified time, the built up area of the residential unit being more than provided in the section; allotment of more than one residential unit, income not derived from business of developing and building housing project, non-production of report in Form 10CCB and non-maintenance of separate accounts of business of developing and building housing projects etc.

Five cases are illustrated below:

- a. In Karnataka, PCIT-IV Bengaluru charge, the assessments of an assessee Shri Syed Aleemulah for the AYs 2012-13 and 2013-14 were completed under section 143(3) in March 2015 and March 2016 determining income of ₹ 24.66 lakh and ₹ 14.01 lakh after allowing deduction of ₹ 2.81 crore and ₹ 4.57 crore under section 80-IB(10) respectively.

Audit observed that in AY 2012-13, the assessee had allotted more than one Flats (No. 902, 1002 in B-Block and 1103 in A-Block) to Mr. Hidayath and his family members.

Audit also observed that for AY 2013-14 an inspection of the project was carried out by the departmental officer on the direction of concerned JAO in March 2016 which showed three duplex apartments viz. B-901 & B-1001, B-902 & B-1002 and B-903 & B-1003 had a built up area of more than 3,100 sq. ft. which exceeded the prescribed limit of 1,500 sq. ft. Further, apartment no. B-902/B-1002 were allotted to a single person. Thus, this project did not qualify for the deduction under section 80-IB(10). However, the AO did not take into consideration this inspection report during scrutiny assessment and allowed deduction.

Hence the deduction of ₹ 7.38 crore (₹ 2.81 crore + ₹ 4.57 crore) claimed for unqualified projects was required to be disallowed. The mistakes had resulted in short levy of tax of ₹ 240.72 lakh (₹ 86.83 lakh + ₹ 153.89 lakh).

- b. In Goa, PCIT Panaji charge, assessment of M/s Anand Developer for the AY 2012-13 was completed under section 143(3) in March 2015 at returned income of ₹ 0.62 lakh after allowing deduction of ₹ 3.19 crore as claimed by the assessee. Audit noticed that the assessee had filed the return of income on 31.12.2012, i.e. after due date of filing of return i.e. 30.09.2012. As the return of income was not filed before the due date, deduction allowed under section 80-IB(10) was required to be disallowed. However, the ITD did not consider the disallowance resulting in short levy of tax of ₹ 1.51 crore.
- c. In Delhi, PCIT-3, assessment of M/s Pearls Infrastructure Projects Limited for the AYs 2011-12 and 2012-13 was completed under section 153A read with section 143(3) in March 2016 at returned income ₹ 12.92 crore and ₹ 27.57 crore respectively. The assessee had claimed deduction of ₹ 1.93 crore and ₹ 4.91 crore under section 80-IB(10) respectively. Audit observed that the assessee was not eligible for this deduction since the assessee had not complied with the conditions laid down in the section 80-IB(10).
- (i) The assessee has shown completion of one project (Pearls Gateway Tower, Vadodara, Gujarat) in AY 2011-12. Audit noticed that all the flats constructed in this project were more than prescribed size of 1,500 sq. ft.
- (ii) The assessee has shown completion of another project (Nirmal Chhaya Tower, Zirakpur, Punjab) in AY 2012-13, wherein out of 751 dwelling units, 520 units were of more than prescribed size of 1,500 sq. ft. Besides, in this project, 433 units were sold to a company (M/s PACL Limited).
- (iii) No project completion certificate from the competent authority to substantiate that the project was completed within the time schedule and certificate in form 10CCB was available in the assessment records for both the AYs.

Thus, the AO failed to watch the compliance of provisions of section 80-IB(10) and allowed the deduction resulting under assessment of income of ₹ 6.84 crore involving short levy of tax of ₹ 3.37 crore including interest.

- d. In Goa, PCIT Panaji charge, assessment of M/s Prudential Developer for the AY 2010-11 was completed under section 143(3) read with section 147 in April 2013, AYs 2011-12 and 2013-14 under section 143(3) in April 2013 and March 2016 respectively after allowing deduction under

section 80-IB(10) of ₹ 15.37 lakh, ₹ 3.25 crore and ₹ 28.55 lakh respectively. Audit observed that

- (i) As per Form 10CCB the project was under construction in AY 2010-11.
- (ii) Two units in Project Pristine were allotted to Mr. Rohan Ramchandra Pai Pannandikar and his spouse Mrs. Nutan Rohan Pannandikar (Flat nos. 2/T-1 and 2/T-2).
- (iii) Two units in the Project were allotted to Mr. Sunher Nipun Thanawalla and Ms. Lina Nipun Thanawalla (Flat no. 4/T-1) and Mr. Sunher Nipun Thanawalla and Mr. Nipun Thanawalla (Flat no. 4/T-2).

Thus, the AO has allowed deduction to a non-eligible project and which was under construction in AY 2010-11. Failure to comply with the provisions ibid has resulted in short levy of tax of ₹ 1.42 crore for the three AYs.

- e. In Maharashtra, Pr. CIT (Central-III), Mumbai charge, the assessment of M/s Hubtown Limited for the assessment year 2014-15 was completed under section 143(3) in December 2016. Audit observed that the assessee withdrew ₹ 15.06 crore from purchases stating that this purchase was made from a supplier which was appearing in the list of bogus dealers published by Maharashtra Sales Tax department. Audit noticed that though this withdrawal resulted into increase in profit, however, this withdrawal did not result into any increase in tax revenue as the same was allowed as deduction under section 80-IB(10). This resulted into undue benefit to the assessee.

From the above, it can be seen that the AOs had committed such errors in the assessments ignoring clear provisions in the Act which obviously reflect weaknesses in internal controls on the part of ITD which need to be addressed.

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 benefited unintended persons.


Recommendation: *The Ministry may ensure the verification of certificate in form 10CCB and in the case of the certificate found to be incorrect, the Chartered Accountant may be held accountable.*

The CBDT accepted (July 2018) the recommendation.

5.3 Conclusion

The Ministry does not have any mechanism to assess the impact of revenue foregone in terms of creating affordable housing and its effect on growth in the housing sector. There is a multiplicity of criteria for classifying housing projects for EWS/LIG groups by the Government of India in terms 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 were not being met to the extent that the prices of dwelling units were out of reach of these target groups. 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.

New Delhi
Dated: 07 January 2019



(Sanjay Kumar)

Principal Director (Direct Taxes-I)

Countersigned

New Delhi
Dated: 07 January 2019



(Rajiv Mehrishi)

Comptroller and Auditor General of India

Appendix

Appendix-I (Refer paragraph 1.6)

Selection of cases

State	Charges		Number of cases		
	CsIT	AO	Selected	Produced	Not produced
Andhra Pradesh & Telangana	10	28	1,050	1,006	44
Assam	4	12	370	370	0
Bihar	4	12	320	310	10
Chandigarh	2	15	341	340	1
Chhattisgarh	3	14	200	200	0
Delhi	13	33	1,909	1,897	12
Gujarat	4	4	1,017	967	50
Haryana	4	27	767	765	2
Himachal Pradesh	1	2	7	7	0
Jharkhand	4	11	277	277	0
Karnataka & Goa	6	71	1,560	1,476	84
Kerala	7	21	607	597	10
Madhya Pradesh	5	54	800	800	0
Maharashtra	12	17	2,025	1,967	58
Odisha	4	13	407	392	15
Punjab	5	18	232	222	10
Rajasthan	4	7	900	900	0
Tamil Nadu	11	28	1,500	1,500	0
Uttar Pradesh	5	8	1,161	1,125	36
Uttarakhand	2	21	173	173	0
West Bengal	11	46	1,872	1,864	8
Total	121	462	17,495	17,155	340

Glossary

Addl. CIT	Additional Commissioner of Income Tax
AIRs	Annual Information Returns
AO	Assessing Officer
AY	Assessment Year
CAP	Central Action Plan
CBDT	Central Board of Direct Taxes
CCIT	Chief Commissioner of Income Tax
CIB	Central Information Branch
CREDAI	Confederation of Real Estate Developers' Associations of India
D&CR	Demand and Collection Register
DAO	Designated Assessing Officer
DCF	Discounted Free Cash Flow
DIT	Directorate of Income Tax
DRC	Development Rights Certificate
EWS	Economically Weaker Section
FAO	Field Audit Office
FMV	Fair Market Value
FSI	Floor Space Index
FT & TR	Foreign Tax & Tax Research
FY	Financial Year
HUF	Hindu Undivided Family
I&CI	Intelligence and Criminal Investigation
IGR	Inspector General of Registrations
ITD	Income Tax Department
ITRs	Income Tax Returns
JAOs	Jurisdictional Assessing Officers
JCSIT	Joint Commissioner of Income Tax
LIG	Lower Income Group
MAT	Minimum Alternate Tax
NAV	Net Assets Value
NMS	Non-filers Monitoring System
PAN	Permanent Account Number
Pr. CIT	Principal Commissioner of Income Tax
Pr. DGIT	Principal Director General of Income Tax
RERA	Real Estate Regulatory Authority
RO	Registrar Office
ROC	Registrar of Companies
SRO	Sub-Registrar Office
TAN	Tax Deduction and Collection Account Number
TCS	Tax Collected at Source
TDR	Transfer of Development Rights
TDS	Tax Deducted at Source
TRACES	TDS Reconciliation Analysis and Correction Enabling System
WIP	Work in Progress

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