

Executive Summary

This performance audit covered the assessment of private hospitals, nursing homes/medical clinics, medical colleges/research institutes, diagnostic centres, pathological labs, medical supplies agencies/stores including those running on 'not-for-profit basis', and healthcare delivery professionals which included cases of scrutiny assessments, appeal and rectification cases completed during the period from 2012-13 to 2015-16. We conducted the performance audit for assessing the achievement of objectives behind the introduction of tax incentives specific to the healthcare sector and to derive an assurance that the existing systems and controls are adequate for compliance of provisions specific to the healthcare institutions and medical professionals under the Income Tax Act. The other objectives were to examine whether all types of healthcare institutions were effectively covered in the tax net of the Income Tax Department (ITD), and to assess the adequacy of efforts made by ITD towards this.

We had an Entry Conference with Central Board of Direct Taxes (CBDT) in August 2016 wherein we explained audit objectives, scope of audit and main areas of audit examination. We also had an Exit Conference with CBDT in May 2017 to discuss the audit findings and recommendations vis-à-vis their responses.

Summary of audit findings:

- a. Despite the availability of systems viz. Income Tax Payer Data Management System (ITDMS), Non-filers Monitoring System (NMS), Project Insight and other versatile tools for analyzing data collected from external sources for widening of tax base, audit noticed that these have not been effectively utilized/ implemented for strengthening the tax base in private healthcare sector and for identifying the stop-filers and non-filers. The existing tools could not be used to cross-verify whether medical professionals and medical companies/healthcare facilities registered with other registering agencies were effectively covered in the income tax net. Absence of any system of such cross-verification points to the possibility of potential assessee's remaining outside the tax net.

(Para 2.2, 2.5 and 2.6)

- b. Audit noticed that businesses under healthcare sector like medical clinics, diagnostic centres, pathological labs and other medical supplies agencies/stores under the existing allocation of codes based on the nature of business with respect to healthcare assessee's were not codified. This negatively impacts monitoring and vigilance of the healthcare sector as well as collection and sharing of relevant information on sector-specific issues.

(Para 2.3)

- c. Audit found that there was no mechanism in existence for the identification of non-filers through NMS in Delhi, Kerala, Rajasthan, Tamil Nadu states. The

NMS module also did not have any provision for generating reports based on the nature of business.

(Para 2.4)

- d. Surveys, though an effective tool for strengthening tax base as well as deterrence against evasion, were not utilised at all in some states during FYs 2012-13 to 2015-16 by ITD.

(Para 2.8)

- e. ITD has not undertaken any impact analysis to assess the outcome of relief provided to assessees engaged in the private healthcare sector.

(Para 3.1)

- f. The Income Tax Act does not prescribe any measurable parameters to assess the extent of charitable activities being undertaken by any hospital trust availing the benefit of exemptions under the Act. This gives rise to a possibility of assessees availing exemption without actually performing any charitable function. Audit noticed that hospitals in Maharashtra have availed unjustified exemptions amounting ₹249.66 crore involving revenue impact of ₹77.14 crore.

(Para 3.2.1)

- g. Audit noticed that in Maharashtra, out of eighty seven cases falling under stand-alone hospital category, the section 80G certificates were available only in 10 *per cent* of cases. In the absence of section 80G certificates, it was not clear as to how the Assessing Officers cross-verified the donation receipts vis-à-vis the claims. There is no provision in the ITD module to enable validation of section 80G certificates by Assessing Officers as in done in the case of TDS certificates under TRACES.

(Para 3.2.5)

- h. The provision under section 35AD of the Act does not specify the allowability of deduction on capital investments in cases where the value of land and building were not separable, resulting in allowance of excess deduction and loss of revenue.

(Para 3.2.6)

- i. Audit noticed instances where exemptions were allowed to ineligible assessees engaged in trading/commercial activities, as well as instances of incorrect allowance of accelerated depreciation on items not classified under life-saving medical equipment, incorrect allowance of deduction under section 80IB of the IT Act on incomes from non-hospital activities and irregular allowance of deduction on provisioning rather than on actual capitalization under section 35AD of the Act.

(Para 3.3.1 to 3.3.6)

- j. Audit noticed instances where the provisions relating to depreciation on machinery and plants as well as depreciation on other assets and amortisation of preliminary expenses were allowed erroneously. Provisions relating to allowances of business expenditure, tax deducted at source (TDS), minimum alternate tax (MAT) and set off of carry forward losses were not followed correctly by the ITD during assessment.

(Para 4.2 to 4.6)

- k. The Assessing officers omitted to obtain details of cases where cash receipt and payments were made in contravention to sec 269SS and 269T and also failed to initiate penalty proceedings. The computation and allowance of capital gains/losses were not carried out according to the provisions of the Act. In some cases, incomes of the assesseees were not considered in accordance with the laid down provisions of the Act.

(Para 4.7 to 4.10)

- l. The “referral fees” paid to the doctors by the private hospitals, nursing homes, diagnostic centres etc. for referring patients and payments made on account of “advertisement expenses” by the medical practitioners were allowed, although such expenditure has been held as disallowable and “unethical” as per CBDT’s directives and laws of regulatory bodies.

(Para 4.11)

Summary of Recommendations

With reference to tax base of assessee engaged in private healthcare sector

- ❖ The CBDT may consider
 - a. requesting the registering bodies/ agencies through their administrative Ministries/Departments making it mandatory to provide the PAN details by private hospitals, nursing homes/ medical clinics, medical colleges/ research institutes, diagnostic centres, pathological labs, medical supplies stores etc. at the time of registration; {Para 2.11(i)a}
 - b. modifying its existing mechanism to identify non-filer/ stop-filer private companies and registered medical professionals in healthcare sector to widen its tax base; {Para 2.11(i)b}
 - c. leveraging survey operations more effectively to strengthen the tax base of assessee related to the healthcare sector; {Para 2.11(i)c}
 - d. allocating specific codifications to different businesses in the healthcare sector that are not captured presently (viz. Medical Clinics, Diagnostic Centres, Pathological labs and other Medical supplies agencies/stores) under the existing codes specific to healthcare sector. {Para 2.11(i)d}
 - e. introducing provision for generating sector specific data in NMS module. {Para 2.11(i)e}
- ❖ The CBDT may review the criteria built into Computer Aided Scrutiny Selection (CASS) particularly in respect of Charitable Trust Hospitals which are high risk areas. {Para 2.11(ii)}

With reference to tax incentives available under the Income Tax Act for Private Healthcare facilities

- ❖ The CBDT may consider prescribing measurable parameters for assessment of charitable activities undertaken by private hospital trusts as a pre-condition for granting exemptions under the Income Tax Act, and amend the Act for this purpose if necessary. {Para 3.5(i)}
- ❖ The CBDT may clarify how to assess value of land for admissibility of deduction under section 35AD of the Income Tax Act in cases where the value of land is not separately determinable from the value of the building. {Para 3.5(ii)}
- ❖ The CBDT may consider the possibility of introducing automated generation of 80G certificates above a certain threshold. {Para 3.5(iii)}

With reference to compliance Issues

- ❖ The CBDT may issue a clarification for disallowance of expenditure in respect of all kinds of freebies and referral fees paid to medical practitioners as well as advertisement and business promotion expenses within the purview of explanation under section 37 of Income Tax Act 1961 to create an additional deterrence against such unethical practices. {Para 4.13}

