

**Report of the
Comptroller and Auditor General of India
for the year ended March 2017**

**Assessment of Private Hospitals, Nursing
Homes/Medical Clinics, Medical Colleges/Research
Institutes, Diagnostic Centres, Pathological labs and
other Medical supplies agencies/stores**

**Union Government
Department of Revenue - Direct Taxes
Report No. 27 of 2017
(Performance Audit)**

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

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Preface

This Report for the year ended March 2017 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 of assessment of Private Hospitals, Nursing Homes/Medical Clinics, Medical Colleges/Research Institutes, Diagnostic Centres, Pathological labs and other Medical supplies agencies/stores etc. of the Department of Revenue – Direct Taxes of the Union Government in 2012-13 to 2015-16.

The instances mentioned in this Report are those, which came to notice in the course of test audit for the period 2012-13 to 2015-16 conducted during the period July 2016 to November 2016.

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

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 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 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}

Chapter 1 – Introduction

1.1 Overview

Indian healthcare sector is one of the fastest growing service areas and has witnessed significant growth in terms of revenue and employment generation in recent years. With liberalization of the economy, the per capita income had increased manifolds, which in turn increased the demand for high value quality health services. The public infrastructure for providing health related services is not sufficient to cater to the increasing demands of quality health services in the country.

The healthcare sector in India comprises both private and public sectors. The private sector provides nearly 80 *per cent* of outpatient care and about 60 *per cent* of inpatient care. The private health care sector comprises organizations that operate both on profit and not-for-profit basis. The “not-for-profit” organizations include healthcare service providers such as Non-Government Organizations (NGO’s), charitable institutions, trusts, etc. The private sector in India has a dominant presence in medical education and training, hospital infrastructure and ancillary service areas such as medical technology and diagnostics. As per sector-wise data of the Department of Industrial Policy and Promotion¹, the share of foreign direct investment (FDI) inflows in “hospitals and diagnostic centres” has been increasing at an accelerating rate. This sector attracted FDI of ₹23,169.91 crore between April 2000 and September 2016 as indicated below.

Year	Amount of FDI Inflows (₹ in crore)
From April 2000 to March 2013	7,437.93
From April 2013 to March 2014	3,994.60
From April 2004 to March 2015	4,072.59
From April 2015 to March 2016	4,278.09
From April 2016 to September 2016	3,386.70
Total	23,169.91

1.2 Healthcare infrastructure

The healthcare infrastructure is divided into the following segments:

➤ **Hospitals**, which include government hospitals and private hospitals. The government hospitals include primary healthcare centres, district hospitals and general hospitals. The private hospitals include nursing homes/medical clinics, mid-tier and top-tier private hospitals. It also includes hospitals run by trusts, charitable institutions and NGOs;

¹ Fact sheet on FDI from April 2000 to September 2016, source: dipp.nic.in

- **Medical Colleges/Research Institutes;**
- **Clinical Establishment** which include small clinics providing healthcare services without nursing aids and poly-clinic services;
- **Diagnostics Centres/Pathological Labs** which comprise businesses and laboratories that offer analytic or diagnostic and pathological laboratory services; and
- **Medical Equipment and Supplies** which include establishments primarily engaged in medical equipment management and supplies such as surgical, dental, orthopaedic, ophthalmologic, laboratory, consumables etc.

Among the professionals engaged in delivery of healthcare services, there are all types of surgeons, doctors (all disciplines), nurses and allied health professionals (AHPs) viz. technologists, radiologists etc.

1.3 Why we chose the topic

The grounds for selecting this topic for performance audit are:

- The health sector has witnessed a robust annual growth of 15 *per cent*². The sector is projected to grow from ₹ 684,000 crore in 2015 to ₹ 823,700 crore in 2018 with a CAGR of 12.1 *per cent*³.
- The fees charged by health professionals, private hospitals, nursing homes, medical clinics, medical colleges, diagnostic centres, pathological labs, medical supply stores etc. for their services are mostly received in cash, which is a high-risk area with potential for evasion of tax.
- As this sector is expanding very fast, the sources of investment for acquisition of assets require proper verification to plug the loopholes on any possible transfer of money from untaxed sources or unaccounted funds for such investments.

It was therefore felt necessary to verify whether the revenue department was satisfying itself that the income tax was duly being levied and collected based on all incomes generated from these services. Given the special nature of healthcare business, it was felt necessary to verify whether the Income Tax Department (ITD) was adequately equipped and vigilant while dealing with assessee engaged in the business of providing health related services.

² National Health Policy 2015

³ Industry Forecast -Healthcare -India -Q1 2015, Business Monitor International, 05 December 2014;

1.4 Audit objective

The audit was conducted to:

- ascertain whether the objectives of introduction of tax incentives specific to private hospitals, nursing homes/medical clinics, medical colleges/research institutes, diagnostic centres, pathological labs, medical supplies agencies/stores etc. have been achieved optimally and whether adequate monitoring mechanism is in place;
- derive an assurance that the existing systems and controls are adequate to promote compliance of provisions specific to the healthcare institutions and medical professionals under the Act as well as compliance to general provisions of the Income Tax Act;
- examine whether all the private hospitals, nursing homes/medical clinics, medical colleges/research institutes, diagnostic centres, pathological labs, medical supplies agencies/stores etc. were covered in the tax net of the Income Tax Department (ITD) and to ascertain whether the efforts made by ITD to strengthen the tax base were adequate.

1.5 Legal Framework

The assessee engaged in the business of Private Hospitals, Nursing Homes/Medical clinics, Medical Colleges/Research Institutes, Diagnostic Centres, Pathological labs, Medical supplies agencies/stores etc. are governed by all the provisions of the Income Tax Act that are generally applicable to the different class of assessee viz. Companies, Firms, Trusts, Charity firms, Association of Persons, Hindu Undivided families, Individuals etc. Further, the Income Tax Act provides specific tax incentives to hospitals. It provides a five-year tax holiday in respect of profits derived from the business of operating and maintaining hospitals located anywhere in India other than the excluded areas subject to certain conditions, besides deduction of capital expenditure incurred in connection with setting up of new hospitals, also subject to certain conditions. Further, it allows higher rate of depreciation on medical equipment to incentivize the hospitals to upgrade their healthcare infrastructure and to provide access to patients to the latest technology. The provisions specific to healthcare sector are given in **Annexure 1A**. Other important deductions and allowances admissible under the Income Tax Act which are also availed by the assessee in healthcare sector are given in **Annexure 1B**. There have been important judicial pronouncements, and circulars based on these, indicating that (i) there should be a direct nexus between the research activities undertaken and business of the assessee and that (ii) unlawful expenditure in form of commission paid to doctors to be disallowed as business expenditure. These are shown in **Annexure 2**.

1.6 Scope of audit and sample size

1.6.1 The audit covered assessment cases relating to Private Hospitals, Nursing Homes/Medical Clinics, Medical Colleges/Research Institutes, Diagnostic Centers, Pathological Labs, Medical Supplies Agencies/Stores etc., including those running on 'not-for-profit basis', and healthcare delivery professionals. The performance audit covered cases of scrutiny assessments, appeal and rectification cases completed during the period 2012-13 to 2015-16. Wherever necessary, assessment records of previous assessment years in respect of the selected assessees were also examined.

1.6.2 The Director General of Income Tax (Systems), New Delhi furnished only the Commissionerate-wise consolidated data in respect of health sector assessees (for three categories coded⁴ as '604' Medical Professionals, '605'-Nursing Home and '606'-Speciality Hospitals) with respect to assessments completed during the financial years from 2012-13 to 2015-16 for all the regions. The data contained PCIT/CIT wise and assessing officer-wise number of scrutiny assessments completed and aggregate amounts of income returned and assessed to tax.

The selection⁵ of Commissionerates and units within each Commissionerate was therefore based on risk analysis of consolidated data obtained from DGIT (Systems) and information available at regional levels specific to different jurisdictions and not based on granular level data pertaining to the assessees. Within the selected assessment units⁶ under different PCsIT/CsIT in 20 states⁷ (detailed in **Annexure 3**), a total of 3,210 assessees were identified for examination in audit based on the information available in the 'Demand and Collection Register' maintained by the selected assessment units and through discussions with the Department.

⁴ The codes for nature of business are extracted from Part-A of Income Tax Return – Nature of business. Code 6 is related to Service.

⁵ Sample selection of Commissionerates was made by applying filter on the aggregate data (Excel format) and subject to minimum requirements (2 Commissionerates) and resource availability. Further, 50 per cent circles and 10 per cent ITO wards for each selected PCIT/CIT were selected based on risk parameters like Number of scrutiny assessments, nature of assessees, their turnover, exemptions, deductions, issues relating to internal/ external audit findings etc.

⁶ 50 per cent circles and 10 per cent ITO wards for each selected PCIT/CIT based on risk parameters like Number of scrutiny assessments, nature of assessees, their turnover, exemptions, deductions, issues relating to internal/ external audit findings etc.

⁷ Number of assessees in the PCIT/CIT office in the States located in Tamil Nadu-267, Kerala-132, Karnataka-31, UP-110, Bihar-124, Jharkhand-76, Delhi-281, Madhya Pradesh-104, Chattisgarh-43, Uttarakhand-64, Haryana-80, Punjab-50, Gujarat-156, Rajasthan-203, Maharashtra-589, Andhra Pradesh & Telangana-267, Odisha-42, Assam-63 and West Bengal-528.

1.7 Audit methodology

The audit included:

- i) the examination of data held by Income Tax Department and detailed examination of assessment cases of the assessee engaged in the business of Private Hospitals, Nursing Homes/Medical Clinics, Medical Colleges/Research Institutes, Diagnostic Centres, Pathological Labs, Medical Supplies Agencies/Stores etc., for ascertaining compliance to the provisions of the Income Tax Act, 1961.
- ii) Collection of data and information from other sources *viz.* registering bodies, Directorates of Investigation, Intelligence & Criminal Investigation etc., (discussed in para 2.2). The data so obtained from these sources were issued to the Commissioners of Income Tax to ascertain whether the entities were subject to tax assessment.
- iii) Survey through issue of questionnaire⁸ to:
 - a) the Controlling Officers of CGHS/DGHS/PSUs that empanel Private Hospitals, Nursing Homes/Medical Clinics, Medical Colleges/Research Institutes, Diagnostic Centres, Pathological labs, Medical supplies agencies/stores and Authorised Medical Attendants (AMAs) to ascertain whether such empanelled healthcare facilities/professionals were within the income tax net; and
 - b) other registering authorities and healthcare institutions (as discussed in para 2.4 and 2.5 of this report) to ascertain whether the conditions for registration as a healthcare facility/professional included reporting on the income tax registration status.

1.8 Constraints

The following constraints were faced by audit while conducting this performance audit:

- The assessment unit-wise detailed data of assessee related to health sector was not furnished by DGIT (Systems). Due to non-availability of case-wise detailed data of the selected units, attempts to select a representative sample through scientific sampling techniques was not possible.

⁸ To provide: (a) the list of private hospitals, nursing homes/medical clinics, medical colleges/research institutes, diagnostic centres, pathological labs and other Medical supplies agencies/stores and Authorised Medical Attendants which are empanelled with your organisation for providing health facility to Central Government/State Government/PSU employees, alongwith their complete address, phone numbers, email Ids; (b) While empanelling/registering a medical professional/health facility, it may please be stated whether PAN/TAN details and status of filing of income tax returns are sought and collected. (c) Please state the terms and conditions of empanelment of these institutions along with the list of documents which are a mandatory requirement for registration. (d) What are the criteria for de-registering/de-listing (black-listing) the medical facilities/professionals from empanelled/registered body?

- Further, out of total of 3,210 cases identified during this performance audit for which records were sought by audit, 230 assessment folders relating to 32 PCsIT/CsIT⁹ were not received (as detailed in **Annexure 4**), despite repeated requests, reminders and discussions at different levels. This had hindered the audit process.

CBDT stated (June 2017) that the Board had noted this.

1.9 Acknowledgement

We acknowledge the cooperation of ITD in facilitating the conduct of this performance audit. At the start of this performance audit, an Entry Conference was held with CBDT in August 2016 wherein audit objective, scope of audit, audit methodology etc., were explained.

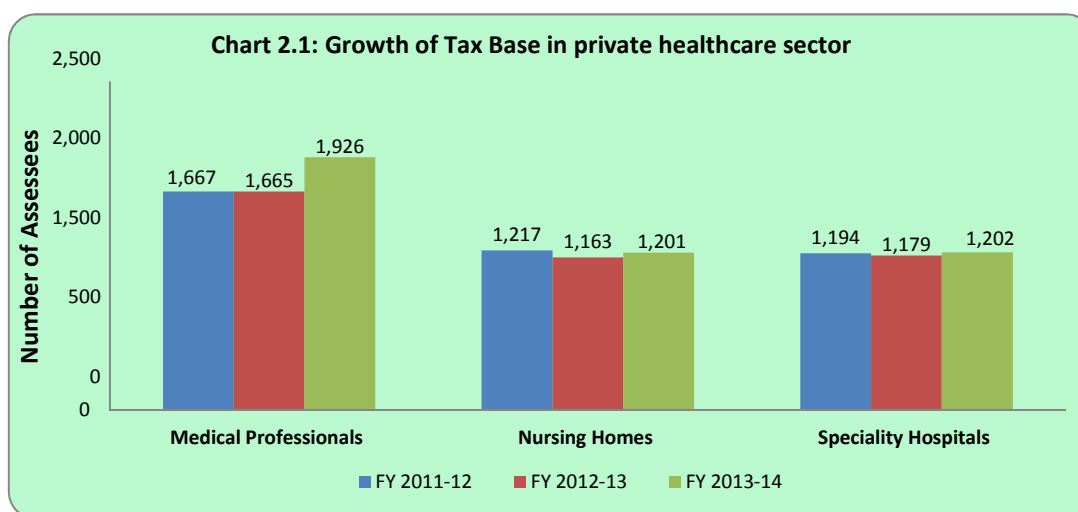
We issued draft performance audit report to the Ministry on 3 May 2017 for their comments. Post receipt of the Ministry's response in May 2017, we held Exit Conference with CBDT on 26 May 2017 to discuss audit findings and audit recommendations vis-à-vis their comments. We have duly incorporated the Ministry's comments together with the audit comments in the report.

⁹ Kerala-2 (CIT-1, Kochi),UP-6 (PCIT-1, PCIT-Ghaziabad), Bihar-27 (PCIT-Patna, PCIT-Muzaffarpur, PCIT-Darbhanga), Delhi-14(PCIT-1,PCIT-3, PCIT-4, PCIT-6), Madhya Pradesh-17 (CIT-1, Indore) Chattisgarh-3 (PCIT-Raipur),Haryana-7 (PCIT Hisar, PCIT, Karnal, PCIT, Faridabad), Gujrat-13(PCIT-Baroda, PCIT-4, Ahmedabad, Rajasthan-11 (PCIT-III, Jaipur, PCIT-Udaipur), Maharashtra-97 (PCIT-16, Mumbai, CIT (Exemption), Mumbai), Andhra Pradesh & Telangana-11 (PCIT-2, Hyderabad, PCIT-3, Hyderabad, PCIT-4, Hyderabad,PCIT-1, Visakhapatnam), Odisha-4 (PCIT-Cuttack, PCIT-Bhubaneswar-1), and West Bengal-18 (PCIT-3, PCIT-4, PCIT-8, PCC-1, PCIT (Exemption))

Chapter 2 – Tax base of assessee engaged in private healthcare sector

2.1 Tax base of assessee engaged in business/ profession of private healthcare sector

The Private Health Expenditure¹⁰ as a percentage of GDP has shown an increasing trend during FY 2011-12 to 2013-14, growing respectively at the rates of 3.21 per cent, 3.24 per cent and 3.28 per cent respectively during these three years. GDP at factor cost at current prices in the year 2013-14 was estimated at ₹104.73 lakh crore, growing itself at the rate of 11.5 per cent over the first revised estimates of GDP of ₹ 93.89 lakh crore for 2012-13, which in turn grew at 11.9 per cent over the second revised estimates of GDP for 2011-12 of ₹83.91 lakh crore. This translates into an expansion of the private healthcare expenditure by more than ₹35,000 crore and ₹39,000 crore during the two years 2012-13 and 2013-14 respectively. However, despite this remarkable expansion, the number of corporate assessee in the categories viz. Medical Professionals, Nursing Homes, Speciality Hospitals had actually declined in FY 2012-13 and then increased marginally in FY 2013-14. It could be seen from the graph below that the increase in tax base was not commensurate with growth in the private health care sector.



Source: ITR Statistics, Income Tax Department; World Health Organisation Global Health Expenditure database

2.2 Mechanism available with ITD for widening of tax base

As per Action Plan for the year 2016-17 of CBDT, the strategy for widening tax base *inter-alia* includes devising and pursuing region-specific strategies, efficient handling of information without valid Permanent Account Number (PAN) and

¹⁰ Private Health expenditure includes direct household (out-of-pocket) spending, private insurance, charitable donations, and direct service payments by private corporations.

ensuring compliance from identified non-filers. ITD uses various tools of assessment and information-based investigations for detecting tax evasion. The Non-filers Monitoring System was introduced by ITD to identify the non-filers/stop-filers from the PAN holders who have not filed/stopped filing their returns. ITD also undertakes survey operations to collect evidence of tax evasion. The Department receives data relating to cash transactions in bank accounts, registered immovable property below the circle rate and capital market transactions in the form of Annual Information Return (AIR), which is analysed to identify cases of tax evasion.

To enhance the performance of the ITD, as well as to increase the revenue of the government, ITD envisaged an integrated data mining tool that would allow them to search for tax information across different internal and external sources. The Income Tax Payer Data Management System (ITDMS) assists in generating a 360-degree profile of an entity by compiling information from all data sources such as AIR, TDS and the Central Information Branch (CIB) that helps the government to track tax payments of individuals. ITDMS is used for analysing data gathered from AIRs, PAN database, ITD applications etc. to unearth illegal transactions. ITDMS is a data mining tool used by ITD for detection of potential cases of tax evasion. This tool has been implemented in all the offices of DGIT (Investigation) in ITD. ITD has also initiated Project Insight for data mining, collection, collation and processing of information on high value transactions for effective risk management with a view to widening and deepening the tax base.

Despite the availability of the above systems and 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 as discussed in the succeeding paragraphs.

2.3 Allocation of specific jurisdiction for assessment and codes to assessees related to healthcare sector

Allocation of specific jurisdiction and proper codification of different businesses in the healthcare sector are essential for proper monitoring, collection and sharing of relevant information as also for the expert handling of sector-specific issues in the course of assessment. Specified jurisdiction/codification based on the nature of business/income for a growing sector like health is also essential for the Department to carry out quality assessment, better monitoring and improved vigilance.

As stated already in para 1.6.2, the Department has codified¹¹ the healthcare sector assessee under three categories, viz. (a) '604' covering 'Medical Professionals', (b) '605' covering 'Nursing Homes' and (c) '606' covering 'Specialty Hospitals'. Thus, businesses under health sector like Medical Clinics, Diagnostic Centres, Pathological labs and other Medical supplies agencies/stores are not codified. Further, the jurisdictional CIT (COs) in states could not even furnish the data pertaining to these three existing codes, stating that their offices had no facility to generate the requested report.

Audit noticed that the corporate and non-corporate assessee engaged in business/ profession of Private Hospitals, Nursing Homes etc. were distributed geographically/alphabetically, independent of the nature of business, for assessment purpose amongst the Assessing Officers in Gujarat, Maharashtra, Rajasthan, Tamil Nadu and West Bengal states. Only the assessments of (i) 'non-corporate assessee' engaged in the Medical Profession/stores in Pune, Mumbai (Maharashtra), Kolkata (West Bengal) and Delhi and (ii) 'corporate assessee' engaged in healthcare business in Bengaluru¹², were being done in specified jurisdictions.

2.4 Non-filers Monitoring System (NMS)¹³ and action taken on NMS data

The Non-filers Monitoring System (NMS) was implemented by ITD to prioritize action on non-filers with potential tax liabilities. This project was initiated in February 2013 to identify PAN holders who have not filed their returns based on specific information available in its databases viz. the Annual Information Return (AIR), Central Information Branch (CIB) or TDS/TCS returns.

In healthcare sector, the income (payment) is received largely in form of cash and without any deduction of TDS. Such cash receipts or payments are not being captured by any third party in AIR¹⁴. Thus NMS is not able to identify/ track the high value cash transactions occurring in the private healthcare sector.

CBDT has notified¹⁵ standard operating procedure for processing and monitoring cases of 'Non-filers of IT Returns' identified by the Directorate of Systems under the NMS cycles after which notices under section 142(1)/148 of the Income Tax Act were to be issued in appropriate cases. In order to ascertain compliance to

¹¹ The codes for nature of business are extracted from Part A of Income Tax Return – Nature of business. Code 6 is related to Service.

¹² under PCIT-2, Bengaluru

¹³ The Non-filers Monitoring System (NMS) is a pilot project to prioritise action on non-filers with potential tax liabilities. Data analysis was carried out to identify non-filers about whom specific information was available in various sources such as Annual Information Return (AIR), Centralised Information Branch (CIB), TDS/TCS Statement etc. The identified non-filers are informed by SMS, e-mails and letters in batches. (source: Step by step Guide version 1.0 (October 2015) issued by Directorate of Income tax (System))

¹⁴ Section 285BA of the Income Tax Act provides that specified entities are required to furnish a statement of financial transaction or reportable account in respect of specified financial transactions or any reportable account in respect of specified financial transactions or any reportable account registered/recorded/maintained by them during the financial year to the income-tax authority or such other prescribed authority.

¹⁵ CBDT Instruction number 14 of 2013 dated 23 September 2013

instructions issued by CBDT, details of the action taken in the Commissionerates were examined by Audit in respect of non-filers identified by the ITD itself.

The detailed lists of non-filers along with action taken thereof could be furnished in respect of West Bengal, Assam and Gujarat only, where out of 18,333 cases¹⁶, ITD had closed 3,627 cases¹⁷ and the remaining 14,706 cases¹⁸ were “under verification/action pending” or were yet to be closed. Audit found that no such process of identification of on non-filers through NMS existed in Delhi, Kerala, Rajasthan, Tamil Nadu states.

In West Bengal, out of 808 cases, in case of 668 non-filers¹⁹, the AOs were yet to initiate proceedings under section 142(1) read with section 148 in Assessment Information System (AST) of ITD. For such cases, verification or any further action was pending even after the expiry of periods ranging from one year to two years from the identification of the assessee. In the remaining 140 cases²⁰, it could not be ascertained whether the assessee was engaged in business/profession of private healthcare sector. ITD’s reply is awaited (April 2017).

It was seen that by Audit that the NMS module also did not have any provision for generating reports based on the nature of business (Code-wise). The code-wise information in respect of healthcare sector hence could not be furnished by ITD.

2.5 Systems and mechanism operating within ITD to link third party data ineffective

During audit, efforts were made to assess the efficacy of the existing systems and mechanisms available and operating within the Income Tax Department (ITD) for bringing Private Hospitals, Nursing Homes, Medical Professionals, Diagnostic Centres, Pathological labs and other Medical supplies agencies/stores in the medical service sector in the income tax net. Audit collected information through survey questionnaire on likely assessee in respect of 26 states from different third party sources (**Annexure 5A**) viz. various registering bodies, government agencies, besides official websites²¹ etc. as indicated below:

¹⁶ PCIT Central 2 Kolkata – 295, PCIT-8 Kolkata – 1296; Gujarat (8 units) – 16024 and PCIT Jorhat - 728

¹⁷ PCIT Central 2 Kolkata – 159, PCIT-8 Kolkata – 624; Gujarat (8 units) – 2693 and PCIT Jorhat - 151

¹⁸ PCIT Central 2 Kolkata – 136, PCIT-8 Kolkata – 672; Gujarat (8 units) – 13321 and PCIT Jorhat - 577

¹⁹ FY 2012-13 (270) and FY 2013-14 (398) of three units under PCIT-8 (Range-22), Kolkata (being the specified jurisdiction for Medical professionals/stores etc.)

²⁰ relating to PCIT (Central)-2, Kolkata

²¹ Mediffee, SulekhaVouchers, Just Dial Limited, Yellow Pages, Service tax database etc.

Table 2.1: Third party sources/ registering bodies from which details of probable assesseees was collected

Sl. No.	Name of third party sources from which data/information collected/obtained:
1	Medical Council of India and States
2	Indian School of Nursing/Nursing Council
3	Dental Council of India and States
4	Central Government Health Scheme
5	Municipal Corporations/ Municipalities
6	Central/State Public Sector Undertakings
7	Department of Health and Family Welfare, State Governments
8	Charity Commissioners
9	Pollution Control Board
10	Drug Inspector/Controller
11	Blood Bank database
12	Registrar of Companies
13	Polio Immunisation Authority
14	District Collectors
15	Scientific & Industrial Research Organizations (SIROs) (Medical Sciences) ²²

Data were collected through survey questionnaires from the respective Controlling Officers of the above agencies to ascertain whether the healthcare facilities/ professionals empanelled with them were covered by the income tax net. The data of probable assesseees as depicted in **(Annexure 5B)** (approximately 3,20,733 records with respect to 26 states) so obtained from the sources mentioned in Table 2.1 were segregated according to jurisdictions and issued to the respective Pr.CsIT/CsIT of ITD²³ (May 2016 to December 2016) for verifying the income tax registration status of such assesseees and to identify the non-filers/stop-filers among them, if any. However, any attempt to identify such status through cross verification of such data with the income tax assessee database records proved by and large unsuccessful (as discussed in para 2.6 *infra*).

ITD in its replies stated²⁴ (August-October 2016) that the current system in the Department did not allow name-based search without PAN and expressed difficulty to manually search and identify assesseees under respective jurisdictions. The reply confirms that the existing mechanisms in ITD for strengthening and widening of tax base for identification of probable assesseees engaged in business/profession in the private healthcare sector are either inoperative or grossly inadequate. It also suggests that the Departmental tools to map data collected from external sources for identification of details of probable assesseees without PAN, which is a part of the strategy outlined in

²² Recognised by Department of Scientific & Industrial Research (DSIR), Ministry of Science & Technology, New Delhi.

²³ Different PCsIT/CsIT/others in respect of Andhra Pradesh & Telangana, Assam, Bihar, Chhattisgarh, Delhi, Goa, Gujarat, Haryana, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Odisha, Punjab, Rajasthan, Tamil Nadu, Uttarakhand, Uttar Pradesh and West Bengal.

²⁴ Different PCsIT/CsITs in respect of Andhra Pradesh & Telangana, Delhi, Jharkhand, Rajasthan, Uttar Pradesh, Uttarakhand, and West Bengal.

their Central Action Plan for the year 2016-17, were ineffective, as detailed in the following section.

2.6 Coverage of registered medical professionals/active companies in PAN database:

2.6.1 Data/information sought on registered medical professionals from Medical Council (MC) and Dental Council (DC) were received only in case of eight states viz. Assam, Arunachal Pradesh, Karnataka, Tamil Nadu, Tripura, Uttarakhand and West Bengal, while it could not be obtained in Andhra Pradesh & Telangana, Delhi, Gujarat, Kerala, Maharashtra, Rajasthan and Uttar Pradesh. Out of the first eight states, the ITD's PAN database was made available by the Department in case of West Bengal only.

In West Bengal, the data of registered medical professionals collected from the registering bodies, viz. West Bengal Medical Council (WBMC) and West Bengal Dental Council (WBDC), were verified²⁵ vis-à-vis the PAN database of ITD. Out of the total 19,822 registered practitioners, PAN registration status of only 4,849 cases²⁶ could be traced. The remaining 14,973 cases²⁷ were again referred (December 2016) to the Department²⁸ for reconfirmation of their existence in their tax net. ITD's reply was awaited (April 2017).

In remaining six states Medical/Dental Council data could not be verified as the relevant PAN database was not furnished by the Department.

2.6.2 To ascertain the coverage of private healthcare companies in the income tax net, the data of such companies were extracted from the official website of the Registrar of Companies (ROC) by issuing a letter. Their income tax registration status (PAN and jurisdiction details) was verified from the official website of ITD through "Know Your PAN" search feature on the basis of "date of incorporation" or "Corporate Identity Number" (CIN). A total of 4,851 cases of private hospitals, nursing homes, diagnostic centres etc. identified in Assam, Chhattisgarh, Delhi, Gujarat, Maharashtra, Meghalaya, Mizoram, Manipur, Nagaland, Tamil Nadu, Tripura and West Bengal from the ROC database were test checked in audit.

²⁵ Steps followed in comparing data relating to West Bengal Medical Council/West Bengal Dental Council (Kolkata, Howrah and North & South 24 Paraganas shown under district column against their current address) with PAN database (as received from the department in respect of Circle-22, Ward 22(1) and Ward (2) under PCIT-8, Kolkata) included:

- firstly, all the PAN databases were converted into excel format by fixed width method and merged,
-secondly, Names in both PAN database & medical council database cleaned by removing salutations such as M/s, Shri, Smt, Dr, Ms, Mrs etc. and then removing additional spaces, if any, and
-finally, Name of both the databases was matched using formula INDEX & MATCH.

²⁶ 4849 = 4401(WBMC) and 448 (WBDC)

²⁷ 14973 = 13992(WBMC) and 981 (WBDC)

²⁸ Pr.CCIT (West Bengal & Sikkim), Pr.CIT-8 Kolkata, Pr.CCIT-19, Kolkata; Pr.CCIT-20 Kolkata and Pr.CCIT-21, Kolkata.

Out of the above cases, PAN could not be ascertained in 3,379 cases²⁹ (69.65 per cent), whereas in respect of 1,472 cases³⁰, PAN and jurisdiction status could be traced, the details of which were referred to ITD to reconfirm their existence in the tax net. ITD's reply was awaited (April 2017).

Audit noticed that there was a mismatch in the number of corporate taxpayers registered with the ITD as compared to the number of active companies registered with the ROC, even though all of them were required to file tax returns mandatorily, pointing to the possibility of existence of non-filers, who could otherwise have been detected in case ITD had a system of checking the PAN status with the external databases of other Government agencies. Thus the ITD could not effectively utilize the existing tools for identifying potential tax payers or non-filers/ stop-filers from the databases of other registering bodies.

2.6.3 Audit, attempted to ascertain through a questionnaire³¹ based survey whether the private healthcare facilities and AMAs empanelled with PSUs were within the income tax net. Out of the 207 PSUs in 4 states³², responses from 78 PSUs³³ were received. Based on the responses and subsequent checking in audit, a total of 271 cases³⁴ were verified in West Bengal and Gujarat to ascertain the tax filing status out of which 137 cases³⁵ of empanelled hospitals, nursing homes, etc. were identified³⁶ as tax filers. The remaining 134 cases³⁷ that could not be identified were forwarded to the Department for ascertaining their existence in the income tax net. ITD's reply was awaited (April 2017).

2.6.4 The details of 49,856 healthcare units³⁸ where licenses were issued by the Municipal Corporations and Director General of Health and Family Welfare in 10 states were referred to the ITD to verify their income tax registration

²⁹ Assam:84, Delhi:101 cases out of 160 cases test checked, Gujarat:155, Maharashtra: 111, Meghalaya: 3, Mizoram:1, Manipur:3, Nagaland: 1,Tamil Nadu: 2442, Tripura: 4, and West Bengal: 474.

³⁰ Assam: 120, Delhi: 59 out of 160 cases test checked, Maharashtra: 167, Meghalaya: 5, Gujrat-387, Manipur:8 Tripura: 2, and West Bengal: 724)

³¹ Questionnaire calling for the following information was issued to the Controlling Officers:

- a. list of private hospitals, nursing homes/medical clinics, medical colleges/ research institutes, diagnostic centres, pathological labs and other Medical supplies agencies/ stores and Authorised Medical Attendants which are empanelled with their organisation for providing health facility to Central Government/ State Government/ PSU employees, along with their complete address, phone numbers, email IDs;
- b. whether PAN/TAN details and status of filing of income tax returns are sought and collected, While empanelling/ registering a medical professional/ health facility;
- c. terms and conditions of empanelment of these institutions along with the list of documents which are mandatory requirement for registration; and
- d. Criteria for de-registering/ de-listing (black-listing) the medical facilities/ professionals from empanelled/ registered body.

³² Assam: 49, Gujarat: 10, Maharashtra: 4 and West Bengal: 144.

³³ Assam: 8, Gujarat: 6 and West Bengal: 64.

³⁴ West Bengal: 239, Gujarat: 25

³⁵ WB: 137 (in case of Assam there were no empanelled agency as informed by 8 PSUs).

³⁶ Included in the tax net of the department as checked/identified from the selected units of 13 PCsIT/CsIT from West Bengal.

³⁷ Gujarat: 25 and West Bengal: 102.

³⁸ Assam (0+612), Chhattisgarh (0+1325), Delhi (0+932), Gujarat (4314+0), Karnataka (439 +17040), Maharashtra (647+0), Rajasthan (0+97), Tamil Nadu (738+3713), Uttarakhand (0+8128), West Bengal (9086+2785). Figures in bracket represents details for Municipal corporations and Director General of Health and Family Welfare respectively.

status. ITD could not furnish any information on the existence of these units in their tax net in the absence of PAN details. Here also, the existing tools could not be utilized effectively to widen the tax base as per the existing strategy of the ITD.

2.7 Role of Investigation wing in strengthening/widening of tax base in medical service sector

The Intelligence and Criminal Investigation(I&CI) wing/Investigation wing³⁹ of the Department collects, collates and disseminates information under section 285BA⁴⁰ of the Income Tax Act, 1961 (Annual Information Return-AIR) as well as other information under the Compulsory Central Information Branch(CIB) codes⁴¹. Audit sought information to ascertain the efforts made by them for strengthening the tax base in healthcare sector. ITD informed that no information was collected in respect of private hospitals, nursing homes etc. during FY 2012-13 to 2015-16, in any of the states except in Punjab where only 5 cases⁴² of assessee engaged in healthcare sector were noticed and brought into the tax net by the Investigation wing.

2.8 Surveys under Income Tax Act

The Income Tax authorities are empowered to carry survey under section 133A and 133B of the Income Tax Act. Surveys enable ITD to identify new assessee, stop filers and detect tax evasions.

Information in respect of regular surveys conducted by ITD was sought at the Commissionerate (Pr.CIT/ CIT) level. It was seen that during FYs 2012-13 to 2015-16, out of total 1,172 surveys conducted by ITD, only 147 surveys (12.54 per cent) conducted in Andhra Pradesh & Telangana, Assam, Gujarat, Jharkhand, Kerala, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu, and West Bengal pertained to the healthcare sector, which resulted in accrual of additional revenue by ₹4,925.65 lakh in respect of assessee engaged in business/ profession of healthcare sector in these states. (Table 2.2).

³⁹ Andhra Pradesh & Telangana, Assam, Chhattisgarh, Delhi, Gujarat, Haryana, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Odisha, Punjab, Rajasthan, Tamil Nadu and West Bengal.

⁴⁰ Under section 285BA of the IT Act read with Rule 114E (up to FY 2015-16), it is obligatory on the part of certain category of persons to furnish annual information return on specified financial transactions.

⁴¹ Based on threshold limits of various transactions codes 401 to 415 relating to sale of immovable property, transfer of capital asset, time deposit, sale & purchase of motor vehicle, payment to hotel/restaurants, payment/deposit in cash, investor details etc.

⁴² In case of Punjab Already included in the tax base as such no new assessee were identified.

Table: 2.2: Results of Survey Operations

Name of the State	Total no. of surveys conducted in the selected units	No. of surveys conducted in health sector in the selected units	Addition made in taxable income as a result of surveys (₹ in lakh)
Andhra Pradesh & Telangana	287	32	712.13
Assam	*	1	100
Delhi	NIL	NIL	NIL
Gujarat	*	3	0.01
Haryana	*	NIL	NIL
Jharkhand	8	8	NIL
Karnataka	*	NIL	NIL
Kerala	549	75	2,637.94
Madhya Pradesh	258	5	0
Maharashtra	15	7	1,253.67
Odisha	1	NIL	NIL
Punjab	3	NIL	NIL
Rajasthan	32	2	61.89
Tamil Nadu	15	0	0
Uttarakhand	4	4	0
Uttar Pradesh	NA	2	129.66
West Bengal	*	8	30.35
Total	1,172	147	4,925.65

Source: Information provided by field formations of ITD; *: Not Available

Further, in West Bengal, surveys were conducted only in eight cases pertaining to three units⁴³ (specified jurisdiction for medical professionals/stores etc.), where the total number of assesses in the state stood at 46,225⁴⁴.

In Delhi, Haryana, Karnataka, Odisha, Punjab, Tamil Nadu and Uttar Pradesh, no surveys were conducted in respect of assesseees related to the healthcare sector. The information on surveys conducted was not provided by the ITD in case of Bihar and Chhattisgarh.

Thus surveys, though an effective tool for strengthening tax base as well as deterrence against evasion, were not utilised altogether in some states during FYs 2012-13 to 2015-16 by ITD. The reasons for not carrying out such surveys were called for from the Department. The CBDT replied (May 2017) that the Exemption charges have now been given power to survey under section 133A of the Income Tax Act, 1961 with effect from 01.04.2017.

Audit has noticed that such powers were already bestowed with AO and that the number of surveys conducted was found inadequate. The potential of survey, which is an effective tool for strengthening tax base as well as a deterrence against evasion, was not utilized at all in some states.

⁴³ Circle- 22, Kolkata, Ward-22(1), Kolkata and Ward-22(2), Kolkata under PCIT-8 (Range-22), Kolkata

⁴⁴ As per the PAN database as on 23 November 2016 furnished by Range 22 (Circle 22, Ward 22(1) and Ward 22(2)) under PCIT-8, Kolkata.

2.9 Selection criteria for scrutiny

ITD uses Computer Aided Scrutiny Selection (CASS) for selection of cases for scrutiny in a centralized manner, based on the risk analysis and 360-degree data profiling of tax payers. Prior to the introduction of CASS in November 2004 and even till the AY 2012-13, trust hospitals having annual receipts of more than ₹5 crore were required to be compulsorily selected for scrutiny assessments. After the introduction of online filing of ITR 7 (Returns for Trusts and Charitable Institutions) with effect from AY 2013-14, selection of such cases is now being done through CASS. However, the Assessing Officer can still exercise discretion for manual selection under specified circumstances.

In CIT (Exemption), Pune case records, the selection criteria for CASS were indicated in general terms like “Large receipts reported by trust for charitable purposes”, “Large amount spent on charity”, “Large cash deposits” etc. Audit noticed that some assesseees having significant gross receipts (e.g. Mahatma Gandhi Mission, Aurangabad, having a turnover of ₹ 1,635 crore (AY 2013-14), Terna Public Trust (Terna Medical College and Research Centre's Sahyadri Hospital) having gross receipts of ₹89 crore (FY 2013-14)), were not selected for scrutiny during AY 2012-13. Neither did the Assessing Officer utilise his powers of manual selection despite the turnover of the assesseees being high and far above the earlier prescribed threshold.

In PCIT-Siliguri, West Bengal, in case of Dr. Chhang’s Super Specialty Hospital Private Limited, although the assessee had earned high incomes⁴⁵ during the FYs 2009-10 to 2012-13, it was not selected for scrutiny during AY 2010-11, though selected for the subsequent years (AYs 2011-12, 2012-13 and 2013-14). Similarly, in PCIT-Exemption, Kolkata, in case of Kothari Welfare Institute, the assessee despite having very high income⁴⁶ during FY 2010-11, was not selected for scrutiny during the subsequent year AY 2011-12, when the income had dropped significantly but still remained high.

2.10 Summary of Findings

- The existing allocation of codes based on nature of business with respect to healthcare assesseees does not allow for separate classification with respect to Medical Clinics, Diagnostic Centres, Pathological labs and other Medical supplies agencies/stores, leading to the possibility of potential taxpayers under these categories remaining uncovered in the tax net.

⁴⁵ Dr.Chhang’s Super Specialty Hospital Private Limited, Siliguri having total operating income of ₹ 1,305.96 lakh, ₹1,609.05 lakh, ₹2,020.89 Lakh and ₹ 2,195.63 lakh in FYs 2009-10, 2010-11, 2011-12 and 2012-13 respectively.

⁴⁶ Kothari Welfare Institute, Kolkata having income of ₹6,656.32 lakh, ₹ 861.55 lakh and ₹1,058.92 lakh in FYs 2010-11, 2011-12 and 2012-13 respectively.

- Although ITD has systems and tools for analyzing data collected from external sources for widening of tax base, the same could not be effectively utilized/ implemented for strengthening of the tax base in private healthcare sector and for identifying the stop-filers and non-filers. The existing tools could not verify whether medical professionals and medical companies/healthcare facilities registered with other registering agencies were effectively covered in the income tax base of assesseees as well. Absence of such cross-verification points to the possibility of many potential assesseees remaining outside the tax net.
- The scope and results of survey operations conducted in private healthcare sector during FYs 2012-13 to 2015-16 were inadequate and ineffective to identify the potential assesseees in the healthcare sector and for widening of the tax base in this sector.

2.11 Recommendations

Audit recommends that:

- i) The CBDT may consider
 - a. requesting the registering bodies/agencies through their administrative Ministries/Departments for introducing provision of mandatory quoting of PAN details as a pre-condition while registering the private hospitals, nursing homes/medical clinics, medical colleges/ research institutes, diagnostic centres, pathological labs, medical supplies stores etc;

The CBDT replied (May 2017) that requiring mandatory quoting of PAN as a part of registration process for private hospitals, nursing homes/medical clinics, medical colleges/research institutes, diagnostic centers, pathological labs, medical supplies stores of the respective Municipality, State or Central Government was beyond the remit of the Income Tax Department.

Audit is of the view that in such cases CBDT may reconsider instituting an appropriate mechanism to ensure that all potential assesseees are included in the taxpayer base to reduce the scope of evasion.

- 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;

The CBDT replied (May 2017) that the non-filer monitoring system (NMS) of ITD identifies the non-filers based on significant financial transactions reported to the ITD by the reporting entities.

Audit is of the view that the CBDT may consider modifying the NMS module to generate sector-specific details of stop-filers and non-filers to widen its tax base.

- c. using survey operations more effectively to strengthen the tax base of assesseees related to the healthcare sector and fixing of sector-specific targets for survey operations to factor in the increases in revenues of the private healthcare sector;

The CBDT replied (May 2017) that the Exemption charges have been given power to survey under section 133A of the Income Tax Act, 1961 with effect from 1 April 2017.

The reply is not acceptable as there were no surveys conducted at all in some states.

- d. allocating specific codifications to different businesses in the healthcare sector that are not covered presently (viz. Medical Clinics, Diagnostic Centres, Pathological labs and other Medical supplies agencies/stores) under the existing codes specific to healthcare sector.

The CBDT agreed during Exit Conference (May 2017) to examine this issue.

- e. introducing provision for generating sector specific data in NMS module.

The CBDT replied (May 2017) that the recommendation is already included in NMS criteria.

The reply is not acceptable as the NMS module did not have any provision for generating reports pertaining to the healthcare sector at all, and within the healthcare sector, reports based on the nature of business (hospitals, nursing homes, diagnostic centres, pathological labs, professionals etc.).

- ii) The CBDT may review the criteria built into CASS particularly in respect of Charitable Trust Hospitals which are high risk areas.

The CBDT replied (May 2017) that the recommendation is already included in CASS module.

The reply is not acceptable as audit noticed instances where trusts having significant amount of gross receipts had not been selected for scrutiny. As the assessment of charitable trusts is a high risk area CBDT may reconsider the audit recommendation.

Chapter 3 – Tax incentives available under the Income Tax Act for Private Healthcare Facilities

3.1 Tax incentives available for private healthcare facilities under Income Tax Act

Tax incentives encourage the growth of private sector investment and serve as important policy tools for achieving economic and social objectives. The assessee engaged in the business of running hospitals, nursing homes, medical research institutes etc. can avail of reliefs and incentives under sections 10 (23C)⁴⁷, 11⁴⁸, 35AD⁴⁹ and 80B (11B/11C)⁵⁰ of the Income Tax Act.

As per data furnished by the Department of Revenue, the amount of revenue foregone on account of weighted deduction⁵¹ in case of hospitals under section 35AD and on building and operating private hospitals in rural areas under section 80B(11B) amounted to ₹ 5,418.91 crore and ₹ 7.04 crore respectively, as shown below:

Year	Table 3.1: Revenue foregone (₹ in crore)		
	Under section 35AD ⁵²	Under section 80B(11B)	Total
2012-13	683.30	1.80	685.10
2013-14	1,054.20	1.80	1,056.00
2014-15	1,790.57	1.67	1,792.24
2015-16	1,890.84	1.77	1,892.61
Total	5,418.91	7.04	5,425.95

The ITD has not undertaken sector-specific analysis of revenue foregone under section 35AD to assess the impact of the incentives provided to different sectors including healthcare. The revenue foregone under section 80B (11B/11C) is not very significant indicating that the incentive has been availed by very few assessee thereby defeating the purpose of introduction of this legislation. Audit sought the details of the number of assessee availing deductions under sections 35AD and 80B (11B/11C), but the same could not be furnished by the Department.

⁴⁷ Section 10(23C) of the Income Tax Act, provides exemption to any hospital or institution in respect of income from treatment if it obtains approval from the prescribed authority for that purpose and subject to fulfilment of specified conditions.

⁴⁸ Under section 11 of the Income Tax Act, a trust or institute can avail exemptions subject to conditions laid down under that section when it runs hospitals for charitable purposes.

⁴⁹ For allowing incentive on the investment in some specified sector (which included hospital sector) section 35AD was first introduced through Finance Act 2009 with effect from 01 April 2010. It allows full deduction on the amount of fixed asset (other than landed asset) capitalized on the date of commencement of the business. Later on, w.e.f. 2012-13 i.e. from A.Y-2013-14 the amount of deduction allowable on the investment has been increased to one and one half times of the investment.

⁵⁰ Tax holiday is allowable for hospitals with more than 100 beds located in rural areas and non-metro urban areas for five years under section 80B(11B)[introduced through Finance Act 2004] and section 80B(11C)[introduced through Finance Act 2008] respectively. For rural areas, sunset clause was set as March 31, 2008 and for non-metro urban areas it was 31 March 2013.

⁵¹ Weighted deduction of 150 per cent of capital expenditure (other than expenditure on land, goodwill and financial assets) is allowed under section 35AD of the Act.

⁵² Includes other than hospitals, incentives availed by cold chain warehousing, hotels, housing etc.

Audit noticed that despite the considerable volumes of revenue foregone, no proper monitoring mechanism was in place. There were also discrepancies in the application of the provisions of income tax related to profit-linked/investment-linked tax incentives specific to the healthcare sector. Audit findings in this regard are discussed in the succeeding paragraphs.

3.1.1 Monitoring mechanism to assess the impact of tax incentives

The specific tax incentives provided by Government have a definite revenue impact and can be viewed as an indirect subsidy to tax payers, also referred to as 'tax expenditures'. The revenue impact of tax incentives was assessed by way of 'Revenue Foregone'⁵³, now termed as 'Revenue Impact of Tax Incentives under the Central Tax System'⁵⁴. The quantum of revenue foregone is the chief parameter to assess the impact of tax deduction which is treated as a measure of tax expenditure incurred for the promotion of organised activity (viz. creation of infrastructural facilities, accelerated depreciation as an incentive for capital investment) in the targeted sector.

In order to ascertain the existing mechanism within ITD to monitor the impact of tax incentives specific to assessee engaged in the business of private healthcare, audit sought the details of impact analysis undertaken by ITD. CBDT stated in its reply (November 2016) that direct tax concessions were provided by the Government as part of overall fiscal incentives to realise the macroeconomic objectives and to achieve policy goals of development and growth in various sectors of economy. CBDT further stated that no such quantitative exercise had been undertaken by the Department to assess the outcome of reliefs provided to private hospitals, medical colleges/research institutes, diagnostic centres etc.

3.1.2 The details of mechanism available within ITD to get evaluation done through any third parties/other agencies and the evaluation parameters employed to assess the impact of tax incentives were sought by audit. CBDT replied (November 2016) that ITD had not undertaken any evaluation study/specific analysis or research to assess the impact of tax incentives. However, feedback on the implementation and effectiveness of the existing provisions of the Income Tax Act were received from field authorities, tax payers and various stakeholders from time to time. It further informed that the feedback formed the basis for any intervention if required from the CBDT by way of legislative amendments or through notifications and circulars. However, CBDT, in its reply, did not specify the type, format and intervals at which feedbacks were obtained to decide upon the policy of continuing with deductions/exemptions.

⁵³ Revenue impact of tax incentives was laid before Parliament for the first time during Budget 2006-07 and during 2008-09 to 2014-15 as Annex-12 of the Receipts Budget 2006-07 by way of a 'Statement of Revenue Foregone'.

⁵⁴ In the year 2015-16 and onwards 'Statement of Revenue Foregone' has been termed as 'Statement of Revenue Impact of Tax Incentives under the Central Tax System'.

Although the incentives were introduced to strengthen the healthcare infrastructure, ITD has not taken any initiative to ascertain the impact of tax incentives in coordination with the Ministry of Health and Family Welfare.

3.2 Systemic Issues

The private healthcare sector comprises organizations working both on commercial basis for profit and on not-for-profit basis. The 'not-for-profit' healthcare sector includes Non-Government Organisations (NGOs), charitable trusts etc. A large number of hospitals and medical institutions enjoy the benefit of exemption either under section 11 or under section 10(23C). However many institutions which are not running for charitable purpose escape taxation by virtue of the fact that they are registered as Trusts and claim exemption under Income Tax Act as discussed in the following paragraphs.

3.2.1 Lack of measurable definition of "charitable Purpose"

Income of a charitable trust is exempt according to the provisions of sections 11, 12 and 13. The trust should be one established in accordance with law and its objects should fall within the definition of the term "Charitable purpose". Section 2(15) of the Income Tax Act defines charitable trust as to include relief of the poor, education, medical relief, preservation of environment and preservation of monuments or places or objects of artistic or historic interest and the advancement of any other object of general public utility. It was seen that the appellate Income Tax authorities had allowed exemptions to trusts as there was no performance-specific bar in the Income Tax Act to deny such exemption.

In Maharashtra, charitable trusts are governed by the Bombay Public Trust Act, 1950 (BPT Act) and while granting the registration under section 12AA of the Income Tax Act, the ITD requires the trusts to produce proof of registration under the BPT Act. Under section 41AA of the BPT Act, the Bombay High Court in 2004 introduced a scheme of measurable charity under which all charitable trust hospitals registered under the BPT Act, 1950, and having annual expenditure of more than ₹ 5 lakh were required to fulfil following conditions:

- a) Reserve 10 *per cent* of the total number of operational beds for indigent patients and provide medical treatment to these indigent patients free of cost.
- b) Reserve 10 *per cent* of the beds for the weaker section patients for treatment at concessional rate.
- c) Earmark 2 *per cent* of total patient billing as Indigent Patient Fund (IPF) to be utilised on the treatment of indigent patients. It was further required

that the Trust shall not ask for any deposit in case of admission of indigent patients.

Audit analysed a sample of ten trust hospitals⁵⁵ situated in Maharashtra on the basis of data supplied by the Charity Commissioner, Mumbai. The information was also obtained in respect of nine other cases through other sources⁵⁶ and also through field audits⁵⁷. Audit examination revealed that the conditions specified in the BPT Act were not fulfilled in some cases, as described below, though exemptions were allowed to such trusts:

- There was variation between the numbers of beds reserved for and the number of charity cases actually treated. Though, the number of beds reserved was shown to be 10 *per cent*, the actual bed occupancy in 8⁵⁸ hospitals out of 10⁵⁹ hospitals was less than 10 *per cent* for weaker sections of society;
- Out of the total patients treated by six hospitals⁶⁰; only 0.41-2.79 *per cent* belonged to the weaker sections of the society as against the stipulated 10 *per cent*; and
- In 6 out of 9⁶¹ cases, either no⁶² Indigent Patient Fund (IPF) was created or if created accounted for less than 2 *per cent*⁶³ of total patient billing. In 3 other cases⁶⁴, it was observed that reservations were not made for the

⁵⁵ CIT(Exemption):Bombay Hospital & Medical Research (AAATB3815C)2013-14, Jaslok Hospital & Research Centre (AAAAJ0028Q)2013-14, Diabetic Association of India(AAATD1338G)2013-14, Mandke Foundation (AAATM4557G)2013-14, Dr. Balabhhai Nanavati (AAATD0094K)2012-13 Bhatia General Hospital (AAATT3440K) 2013-14, National Health Education Society(AAATN0093Q) 2013-14, St. Joseph & Educational & Medical Relief Society (AAATS2693D) 2013-14, Breach Candy Hospital (AAATB0214D) 2012-13 and DY Patil Hospital (AABTP2448L)-2012-13.

⁵⁶ O/o the Charity Commissioner, Maharashtra, PAG Maharashtra Report No. 4 (General and Social Sector) for the year ended March 2015 (Chapter 3 on Audit of Transactions)

The nine hospitals are : CIT(E), Mumbai- Noble Medical Foundation and Research Centre (AAATN6572C)-2013-14, K J Somaiya Medical Trust(AAATK4296Q)2013-14, Sushrut Hospital and Research Centre 2013-14, Saifee Hospital 2013-14, People's Mobile Hospitals -2013-14,CIT(E) Pune- Mahatma Gandhi Mission Trust(AAATM4256E)2013-14, Kaushalya Medical Foundations (AAATK0989J)2013-14, Terna Medical College and Research Centre's Sahyadri Hospital-2013-14,Bethany Hospital -2013-14.

⁵⁷ In 8 cases information was also based on PAG-Maharashtra Report No. 4 (General and Social Sector) for the year ended March 2015

⁵⁸ CIT(Exemption):Bombay Hospital & Medical Research (AAATB3815C) 2013-14, Jaslok Hospital & Research Centre (AAAAJ0028Q) 2013-14, Diabetic Association of India(AAATD1338G)2013-14, Mandke Foundation (AAATM4557G) 2013-14, Dr. Balabhhai Nanavati (AAATD0094K)2012-13, Bhatia General Hospital (AAATT3440K) 2013-14, National Health Education Society (AAATN0093Q) 2013-14, St. Joseph & Educational & Medical Relief Society (AAATS2693D) 2013-14.

⁵⁹ The information was not available in respect of 9 other cases. Hence, the comment is limited to Charity Commissioner data.

⁶⁰ CIT (Exemption);, Jaslok Hospital & Research Centre (AAAAJ0028Q) 2013-14, Diabetic Association of India (AAATD1338G) 2013-14, Mandke Foundation (AAATM4557G) 2013-14, Dr. Balabhhai Nanavati (AAATD0094K) 2012-13, National Health Education Society (AAATN0093Q) 2013-14, St. Joseph & Educational & Medical Relief Society (AAATS2693D) 2013-14.

⁶¹ This information was not available in respect of 10 hospitals data provided by Charity Commissioner.

⁶² Noble Medical Foundation and Research Centre (AAATN6572C)-2013-14, K J Somaiya Medical Trust (AAATK4296Q) 2013-14, CIT(E) Pune - Mahatma Gandhi Mission Trust (AAATM4256E) 2013-14, Kaushalya Medical Foundations (AAATK0989J)2013-14

⁶³ Breach Candy Hospital (AAATB0214D) 2012-13 and Bethany Hospital 2013-14.

⁶⁴ National Health Education Society (AAATN0093Q) 2013-14, Sushrut Hospital and Research Centre 2013-14, Saifee Hospital 2013-14

indigent patients in OPD and advance was taken from them during admission, which was against the scheme.

The Income Tax Act, however, does not identify non-compliance with the BPT Act as a ground to deny exemption and the Income Tax Act does not have its own criteria to identify and classify charitable institutions on the basis of measurable and quantifiable parameters, like those described under the BPT Act. Under such circumstances, trusts that are not fulfilling the criteria for charity prescribed under governing Acts of the State were able to claim exemptions under the Income Tax Act. Further in cases where registration status of the trust assessee changes under state laws, it could not be ascertained whether ITD had any mechanism to deal with the exemptions already allowed in such cases. ITD's reply was awaited (April 2017).

The C & AG of India in its report number 4 of the year 2016 for the Government of Maharashtra placed before Maharashtra State Assembly pointed out several irregularities in respect of the charitable activities carried out by these hospitals in Maharashtra *vide* chapter number III. It was stated in the report that hospitals avail Government benefits without performing activities as specified under the Bombay Public Trust Act, 1950.

These hospitals have availed non-justified exemption amounting ₹ 249.66 crore involving revenue impact of ₹ 77.14 crore.

3.2.2 Exemption allowed to trust hospitals engaged in non-charitable activities

A charitable institution can also be engaged in non-charitable activities. As per Section 11(4A), deductions under section 11 shall not be admissible in relation to any income, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or the institution and separate books of accounts are maintained by such trust or institution in respect of such business. Section 10(23C)(via) of the Act provides that exemption to the trust is available if it exists "solely" for philanthropic purpose and not for purposes of profit. Further, section 13 specifies situations⁶⁵ in which the exemptions can be denied to trusts.

Audit noticed two cases in West Bengal and Maharashtra states where the Department allowed exemptions to trust hospitals where the activities

⁶⁵ (a)The property should be held under a trust or legal obligation; (b) The property should be so held for charitable or religious purposes which, enure for the benefit of the public. No part of the income or property of the trust should be used or applied directly or indirectly for the benefit of the settlor or other specified persons;(c) The trust should not be created for the benefit of any particular religious community or caste; (d) The exemption is restricted to such portion of the income as is applied or accumulated for application to charitable purpose in India;(e) The accounts of the trust should be audited in certain cases as provided in Sec. 12A(b); (f) The funds of the trust should be invested or deposited in the permissible forms and modes only.

indicated the fact of their being run for profit/ non charitable purposes. (Box 3.1).

Box 3.1: Illustrative cases on Exemption allowed to trust hospitals engaged in non-charitable activities

a. Charge: PCIT – Exemption, Kolkata, West Bengal

Assessee : National Neurosciences Centre

Assessment Year: 2013-14

PAN: AAATN2980N

The scrutiny assessment of the assessee for AY 2013-14 was completed in February 2016 allowing exemption under section 11 of the Act. The assessee is registered as a Trust under section 12AA and the stated aim of the assessee was mainly treatment of patients and related activities⁶⁶. As per the Income and Expenditure Account for the FY 2012-13, the trust had paid ₹6.64 crore⁶⁷ (₹5.16 crore in FY 2011-12), to Peerless Hospital a premium corporate Hospital at Kolkata, out of total charges of ₹12.32 crore (₹9.63 crore in FY 2011-12) collected from patients, and had surplus of ₹46.68 lakh (₹31.65 lakh in previous FY 2011-12) without any donation/subscription⁶⁸. As per the fixed assets schedule of the assessee trust, the fixed assets as on 31 March 2013 did not include any hospital building. The books of accounts also did not reveal any expenditure made towards any rent paid for such infrastructure for the treatment of patients. Thus, the assessee was operating without any building in its possession. The Trust was generating a surplus from patient charges while also spending significant amounts on reimbursement of expenses of Peerless Hospital for facilitating its business operations. It was evident that the Trust was functioning as an intermediary of a premium corporate hospital. While finalising the assessment, these issues were not taken into consideration and exemption was allowed under section 11 of the Act based on the claim of the assessee that expenditure incurred was for charitable purposes.

ITD in its reply (January 2017) stated that “out of total charges, the assessee paid donation to Peerless Hospital and surplus was created after expenses made for running the hospital.” It further stated that “the activity of medical relief was in the objective of the Trust” and that “no provision of the Income Tax Act prohibits the assessee registered under section 12A/12AA from receiving charges for providing medical relief, education etc. and for giving donation to the other entity”. ITD’s reply is not acceptable as the assessee did

⁶⁶ Outdoor treatment for neurological problems/surgery, Neurophysical tests.

⁶⁷ Includes bed charges, investigation charges, patient’s pharmacy bill, catering charges etc.

⁶⁸ The amount of donation and subscription received by the assessee trust in FY 2012-13 and FY 2011-12 was ₹0.12 lakh and ₹0.10 lakh respectively.

not possess any hospital building for incurring expenditure on the running of hospital and payments made to Peerless Hospital were shown as reimbursement of expenses. Therefore, considering the regular surplus being earned by the Trust, its objective of medical relief cannot be stated to be of charitable nature.

b. Charge: PCIT – Exemption, Mumbai, Maharashtra
Assessee: Mandke Foundation
Assessment Year: 2013-14
PAN: AAATM4557G

The scrutiny assessment of the assessee for AY 2013-14 was completed in March 2016 determining income at 'nil' after allowing exemption under section 11 of the Act. The assessee had entered into an agreement (1 December 2009) with Malti Vasant Heart Trust for operating and maintaining Kokilaben Hospital and there was no clause for providing medical education in the operation and maintenance contract between the assessee and Malti Vasant Heart Trust. The website of the Kokilaben Hospital⁶⁹ showed that it was conducting a 'Three year Post Graduate Programme in Emergency Medicine' from year 2012 for which the selected candidates had to pay demand draft favouring "Mandke Foundation (the assessee)".

Under the provisions of section 10A of the Medical Council Act, 1956, for conducting any post-graduation certificate course in medicine, proper permission is required from the Medical Council of India (MCI). MCI had issued a public notice stating that this post-graduation course in Emergency Medicine conducted by Kokilaben Hospital was not recognized by Central Government of India and it was illegal. Despite specific violations, the exemption was allowed, as there was no enabling provision in the Income Tax Act for denial of exemption for carrying out unauthorized business under the garb of charity. ITD's reply was awaited (April 2017).

3.2.3 Overlapping nature of section 10(23C) and section 11 of Income Tax Act

As per section 10(23C), the income of certain funds, Universities, educational institutions, hospitals, etc., that deal with philanthropy works are not to be included in the total income. Section 11 of the Act governs the grant of exemption to income of a charitable trust or institution. Thus Section 10(23C) and section 11 of the Income Tax Act, 1961 are overlapping in nature. Though, the contours of both the sections are more or less the same, absence of clear definitions and boundaries, besides existence of overlapping provisions covering the same purposes (philanthropy or charity) in both sections leave scope for confusion and varying interpretations, allowing the assesses to take unfair advantage of excluding the income or claiming exemption utilising one of these

⁶⁹ <http://www.kokilabenhospital.com/professionals/academicinitiatives/>

two provisions that suits them. The statute renders itself amenable to misuse by permitting an assessee to claim similar benefits under both the sections. Audit noticed instances, as illustrated below, where Assessing Officers allowed exemption under one section while disallowing exemption on the grounds of existence of profit motive under another.

In CIT (Exemption) Mumbai, scrutiny-assessments of Breach Candy Hospital Trust for the AY 2012-13 and National Health and Education Society for AY 2013-14 were completed in March 2015 and March 2016 respectively. In the case of Breach Candy Hospital, it was observed that the assessee had claimed and was allowed exemption under both the sections i.e. section 11 and 10(23C)⁷⁰. In the case of National Health and Education Society, the Assessing officer did not allow⁷¹ exemption under section 10(23C) stating the reason that the hospital trust did not exist “solely” for philanthropic purposes and was engaged in business for making profit, but was alternatively allowed exemption under section 11 as per the claim made by the assessee.

In the Exit Conference (May 2017), it was clarified that the powers in respect of approval under section 10 (23C) and registration under section 12A of the Income Tax Act were earlier vested with different authorities. However, with effect from FY 2014-15, these powers have been combined and vested with a single authority, viz. CIT (Exemption) who would be deciding the eligibility for exemption under both the sections to reduce the scope of any assessee availing exemptions under the alternate section if denied exemption under one section. Still, in view of the risks involved, this needs careful monitoring.

3.2.4 Maintenance of databases of charitable trusts/ institutions

The ITD maintains a database on exempt entities on its official website⁷² containing details of entities viz. name, address, state, city, jurisdiction, section under which registered, date of order etc. Structuring of the database of tax exempt entities maintained by the ITD in more detailed manner and establishing their linkage with the ITRs of the trusts would facilitate streamlining of assessment and detection of tax evasion. ITD may consider adopting the global best practices in respect of maintaining databases on exempt entities, as illustrated in Box 3.2 below.

⁷⁰ As per the scrutiny assessment order for AY 2012-13 dated 26 March 2015 the assessee was allowed exemption of ₹ 22.88 crore under section 11(1)(a) and exemption of ₹ 5.62 crore under section 10(23C).

⁷¹ As per para 5 of the scrutiny assessment order for AY 2013-14 dated 08 March 2016 the AO rejected the claim of exemption under section 10(23C) stating that the trust was having business and to make profit while allowing exemption of ₹ 4.04 crore under section 11(1)(a) of Income Tax Act.

⁷² <http://www.incometaxindia.gov.in/Pages/utilities/exempted-institutions.aspx>

Box 3.2: Best Practice – Database Structure of Tax Exempt Entities in USA

The database structure of tax exempt entities in USA is maintained as the National Taxonomy of Exempt Entities (NTEE) system and is used by the IRS and NCCS⁷³ to classify non-profit organizations. The NTEE Core Codes classification system divides the universe of non-profit organizations into 26 major groups under 10 broad categories. The coded classification allows the classification of NGOs into more than 400 categories representing broad sub-sectors, specific activity areas, organisation type and activities of the organisation. The use of such a system facilitates the collection, tabulation, presentation, and analysis of data by the types of organizations and their activities, promotes uniformity and comparability in the presentation of statistical and other data collected by various public and private agencies. It also provides better quality information as the basis for public policy debate and decision-making for the non-profit sector and for society at large.

3.2.5 Donations not being watched properly

Deduction under section 80G of the Income Tax Act is a taxation tool to help donee trusts to receive funds to further their charitable objectives. It also helps donors to claim the amounts of donation as deductions, resulting in lowering of their tax liability. One of the conditions for registration for availing tax benefits under section 80G stipulated that receipts issued to the donor should bear the 'Reference Number' and 'Date of the order'.

Audit noticed⁷⁴ that out of eighty seven cases falling under stand-alone hospital category, the section 80G certificates were available in 10 *per cent* of cases. In the remaining cases, only a list of donations received was available. In cases having representative receipts, we noticed instances, as given below, where nature of donation or mode of receipts was not on record:

- a) In PCIT-Exemption, Pune, in the case of The Umrao Institute of Medical Science and Research (PAN: AAATT2858F), the assessee Trust had received donations of ₹14.54 crore and ₹10.25 crore during AYs 2012-13 and 2013-14 respectively (50 *per cent* and 25 *per cent* of turnovers respectively). However, there was nothing on record to show the nature of donations or the mode of receipts. The case had been selected by the Department for verification of heavy cash deposits but the details of verification made were not available on file;

⁷³ National Centre for Charitable Statistics

⁷⁴ In Maharashtra region a sample of 106 hospitals was subjected to analysis. The sample was divided into two groups. The first sample consisted of eighty seven hospitals and the second sample consisted of nineteen hospitals having medical/nursing colleges.

- b) In PCIT-Exemption, Pune, in the case of Rasiklal Manikchand Dhariwal Foundation (PAN: AAATR1106J), a trust engaged in education and medical sector, the assessee showed receipt of corpus donation of ₹19.42 crore in AY 2012-13, out of which ₹16 crore was shown to be received from one company⁷⁵ having authorized and paid up share capital of ₹5 lakh only. There was no confirmation available on file in respect of ₹16 crore donation received. The remaining donation was received from the related group entities of assessee for which the confirmation was available in the file. The financial statements of the donor which had a meagre capital of ₹5 lakh, were not available.

In the sample consisting of nineteen hospitals with medical/nursing colleges, representative receipts⁷⁶ were available in four cases only⁷⁷.

The following deficiencies were noticed in audit:

- c) In PCIT-Exemption, Pune, in the case of Sadhu Vaswani Mission (PAN:AABTS2708Q), during AY 2013-14 it was found that the trust had submitted copies of donation receipts issued to various donors wherein the reference number and date of order were not found. Despite violation of prescribed conditions of section 80G, no action was found to have been taken.
- d) In PCIT-Exemption, Pune, in the cases of the Saraswati Dhanvantari Medical Education Social & Cultural Foundation (PAN: AAIT9786P for 2012-13 and 2013-14) and Sangamner Medical Foundation & Research Centre Trust (PAN: AACTS4864I for AY 2013-14), a substantial amount of donation at ₹16.53 crore (44.70 per cent of total income) was found. The trust received donations from a large number of donors in the range of ₹9,000 to ₹20,000 per donor to avoid taxation. As the number of donors was very large, it was impossible for the ITD to verify the genuineness of each claim.

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. The 80G donation aspect needs more attention from the Department as it entails revenue foregone on account of exemption to recipients and also deduction to donors. In the absence of mechanism for cross verification of claims made by donors and donees, the chances of ineligible assessee getting deduction cannot be ruled out. There is no provision in the ITD module to enable validation

⁷⁵ M/s Sky Lux Cityscapes Private Limited

⁷⁶ Receipts issued to donors

⁷⁷ In remaining cases, only a list of donation received was available.

of section 80G certificates by Assessing Officers on similar lines as in done in the case of TDS certificates⁷⁸ under TRACES.

3.2.6 Lacuna in section 35AD of Income Tax Act

As per section 35AD of the Income Tax Act, expenditure incurred on the acquisition of any land or goodwill or financial instrument is not eligible for any deduction under section 35AD. Audit noticed that in the following case due to ambiguity in the Act, the AO had allowed deduction under section 35AD (Box 3.3).

Box 3.3: Illustrative case on ambiguity in Section 35AD of Income Tax Act

Charge: PCIT-4, Kolkata

Assessee: GPT Healthcare Private Limited

Assessment Year: 2013-14

PAN: AABCJ2967K

Audit noticed that the assessee had purchased one hospital building in Kolkata⁷⁹ at ₹19.03 crore and the purchase deed was registered on 12 February 2013. As per the registration deed, area of land on which the building was situated was 18.63 cottas. No separate land value was shown in the deed and as per the available records, it was seen that no further information on this was also sought from the assessee during the assessment. The deduction under section 35AD for the purchase price of ₹19.03 crore was allowed during assessment under section 143(3) on the entire value of the building including land, although in terms of section 35AD, the assessee was not eligible for deduction of expenditure incurred for acquisition of the land. In the absence of clarity in the Income Tax Act in respect of such assets where expenditure incurred on the acquisition of building included the land price, no disallowance could be made as to the value of the land.

Thus, it is evident that under section 35AD of the IT Act, where the value of the land and building are not separable, assesseees are claiming and are being allowed deduction on the total value of the land and building. ITD's reply was awaited (April 2017).

Allowance of deduction under section 35AD on the value of land in cases where it is included in the total cost of the building and where the two values are not separable needs to be clarified.

⁷⁸ TDS certificates are being generated online with effect from 1 April 2011. These TDS certificates shall carry a unique TDS certificate number. CPC(TDS) has provided the facility of validating the 197 certificates to the deductors on www.tdspc.gov.in (TRACES). This enables a deductor to first validate the 197 certificates given to him by their deductees and then furnish the same in TDS/TCS statement. Instructions were issued field authorities to issue only system generated certificates vide CBDT instruction no. 36 dated July 15, 2009.

⁷⁹ at 1 Khudiram Bose Sarani, Kolkata.

3.3 Compliance Issues relating to provisions specific to healthcare sector assessees

Audit noticed mistakes in assessments relating to deductions and exemptions specific to the healthcare sector as brought out in the following paragraphs.

3.3.1 Incorrect allowance of exemption for trading/commercial activities

In Maharashtra, audit noticed instances where trust hospitals were operating pharmacy stores in the hospital premises and were generating huge amounts of surplus on the sale of medicines. The margins of profits earned on the sale of medicines constituted major portion of their total surplus generated during a year. The Department, in the case of Jaslok Hospital and Hinduja Hospital (AY 2013-14) had taxed pharmacy income as business income. However, in seven such cases (listed in **Appendix-1**), the Department had not taxed the huge surplus generated from pharmacy business, despite the issues being identical in nature. This resulted in underassessment of income of ₹72.65 crore involving tax effect of ₹21.86 crore. One such case is illustrated below (Box 3.4):

Box 3.4 : Illustrative case on Exemption allowed for trading/commercial activities

a. Charge: PCIT – Exemption, Mumbai, Maharashtra

Assessee: : Guru Nanak Quin Centenary Memorial Hospital Trust

Assessment Year: 2013-14

PAN: AAATG2576K

The scrutiny assessment of the assessee for AY 2013-14 was completed in February 2016 determining income at 'nil' after allowing exemption of ₹9.79 lakh under section 10(23C)(via) of the Act. The assessee was running Guru Nanak Hospital and a pharmacy store named Guru Nanak Pharmacy inside the hospital where medicines were sold at MRP to in-house patients. As per the income and expenditure account, a surplus of ₹1.69 crore was generated from pharmacy business, which was 22.89 *per cent* of the total turnover of the Trust. The profit margin on medicines worked out to 61.33 *per cent*⁸⁰ which was not insignificant by any standards. As such the pharmacy business was not a minor business incidental to the attainment of the objectives of the Trust and it was running on commercial basis with a motive to earn profits. The surplus of ₹1.69 crore generated from the pharmacy business was required to be taxed separately as business income. The omission has resulted in underassessment of income by ₹1.69 crore and short levy of tax by ₹50.36 lakh. Department accepted the objection and has initiated remedial action (February 2017).

⁸⁰ Cost of medicines, disposables, consumables and implants was ₹ 324.93 lakh which was sold at ₹ 524.22 lakh

3.3.2 Other irregularities in allowance of exemption to hospital trusts

Sections 11, 12 and 13 of the Income Tax Act contain provisions governing the grant or withdrawal of registration, conditions for allowability of exemption to trusts or institutions in respect of income derived from property held under trust and voluntary contributions. Disposal of trust properties by trustees through unethical means is one of the concerns for the legislation governing the trusts. Income Tax Act also addresses such concerns under section 13(2)(c). As per the provisions, if any part of income or property held under the trust is applied directly or indirectly for the benefit of any person referred to in sub-section 3⁸¹ thereof, then the exemption benefit would not be available to the trust. Audit noticed instances of incorrect allowance of exemption on income of trust in contravention of conditions stipulated in the Act as brought out below.

In Maharashtra, Rajasthan and Uttar Pradesh states, audit noticed 17 cases involving tax effect of ₹32.87 crore (listed in **Appendix-2**), where the AOs had irregularly allowed exemption under section 11 of the Act. Three cases are illustrated below (See Box 3.5).

Box 3.5: Other irregularities in allowance of exemption to hospital trusts

a. Charge: CIT (Exemption), Mumbai, Maharashtra

Assessee: Padmashree Dr. D. Y. Patil Vidyapeeth (Deemed University)

Assessment Year: 2012-13

PAN: AABTP2448L

The scrutiny assessment of the assessee for AY 2012-13 was completed in February 2015 at 'nil' income after allowing exemption under section 11. Audit examination revealed that exemption under section 11(1) (d)⁸² was allowed on the amount of ₹7.32 crore shown as 'Corpus donations received during the year' that included an amount of ₹7.22 crore collected as 'Development fees' as part of tuition fees from students. This indicated that the amount which was treated as 'Corpus Fund' was a part of the admission fees paid to the Institute and was not a voluntary contribution received from the students. Thus the amount of ₹7.22 crore cannot be treated as 'Corpus Fund' for allowance of exemption under section 11(1)(d) and should have been brought to tax. The incorrect allowance of exemption resulted in underassessment of income by ₹7.22 crore involving tax effect of ₹2.23 crore. ITD's reply was awaited (April 2017).

⁸¹ Person includes author of trust or founder of institution, any person who made substantial contribution to the trust or institution, and where author, founder or member is HUF any trustee of trust, any relative of such author, founder or person aforesaid and any concern in which any of the persons referred earlier has a substantial interest.

⁸² Income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the Trust or Institution shall not be included in the income of the said Trust or Institution.

b. Charge: CIT (Exemption), Mumbai, Maharashtra**Assessee: Maharashtra Medical Foundation****Assessment Year: 2012-13****PAN: AAATM1753E**

The scrutiny assessment of the trust for AY 2012-13 was completed in February 2015 determining 'nil' income. The assessee trust had shown an amount of ₹33.85 crore (including an amount of ₹32.87 crore received from hospitals) as income in its 'Income and Expenditure Account'. As per records, the assessee received collections of ₹32.45 crore from two hospitals run by it on account of cash receipts over the counters. Further, as per the income computation sheet of the assessee, although TDS of ₹80.34 lakh was claimed, the income of ₹7.98 crore corresponding to the TDS had remained to be accounted for in the Income and Expenditure Account. This mistake resulted in underassessment of income of ₹7.98 crore involving revenue impact of ₹2.40 crore. ITD's reply was awaited (April 2017).

c. Charge: PCIT – Exemption, Mumbai, Maharashtra**Assessee: Mandke Foundation****Assessment Year: 2013-14****PAN: AAATM4557G**

The scrutiny assessment of the assessee was completed in March 2016 determining income at 'nil' after allowing exemption under section 11 of the Act. The assessee had entered into an Operating & Maintenance agreement with Malti Vasant Heart Trust for running a hospital namely "Kokilaben Dhirubhai Ambani Hospital & Medical Research Institute". The assessee trust had taken machinery on lease from its related party, Reliance Innoventures Private Limited, and had kept an amount of ₹74.49 crore as deposit with the party. As per terms of the contract, the assessee trust had to provide treatment services free of cost or at concessional rates to the employees of the related party. As the property of the trust was being made available for the benefit of Reliance Innoventures, a person referred to in section 13(3), the provisions of Section 13 were violated and exemption of ₹44.81 crore allowed to the trust was required to be withdrawn. This resulted in incorrect allowance of exemption of ₹44.81 crore involving tax effect of ₹13.85 crore. ITD's reply was awaited (April 2017).

3.3.3 Irregular allowance of depreciation/expenses resulting in double deduction

As per the judgement of the Hon'ble Supreme Court of India in the case of Escorts Ltd. vs Union of India⁸³ where a full deduction has been allowed in relation to a capital asset (under section 11 of the Act), no depreciation is to be allowed under section 32 on the same asset. It was further held that in the absence of clear statutory indication to the contrary, the statute should not be

⁸³ (1993) (199 ITR 43)

read so as to permit the assessee two simultaneous deductions. The Kerala High Court (2012)⁸⁴ also supported the above view. However, it was additionally held that if the assessee had claimed depreciation in such cases, then in order to reflect the true income available for application for charitable purposes, it should write back the depreciation amount in the account to form part of its income. Otherwise such notional claim becomes unaccounted cash surplus for the assessee outside its books of accounts⁸⁵.

In Maharashtra, audit noticed six cases (**Appendix-3**) where the Department had allowed depreciation along with capital expenditure on assets as application of income resulting in double deduction of ₹44.67 crore involving potential tax effect of ₹22.19 crore. In one case, the Department had disallowed depreciation of ₹27.97 crore in the assessment order but did not add back the same to taxable income while completing the assessment. Two cases are illustrated below (Box 3.6):

Box 3.6: Irregular allowance of depreciation/expenses resulting in double deduction

- a. Charge: PCIT-Exemption, Pune, Maharashtra**
Assessee: Mahatma Gandhi Mission
Assessment Year: 2013-14
PAN: AAATM4556E

As per the computation of income the assessee had claimed depreciation of ₹33.11 crore and also capital Expenditure of ₹1,130.95 crore which was allowed by the department. This resulted in incorrect allowance of depreciation amounting to ₹33.11 crore involving potential tax effect of ₹10.23 crore. ITD's reply was awaited (April 2017).

- b. Charge: PCIT-Exemption, Mumbai, Maharashtra**
Assessee: Mandke Foundation
Assessment Year: 2012-13
PAN: AAATM4557G

The assessing officer had disallowed depreciation in the assessment order but had not done the same while computing the income. This resulted in underassessment of income of ₹27.97 crore involving potential tax effect of ₹8.39 crore. ITD's reply was awaited (April 2017).

⁸⁴ Lissie Medical Institution vs. CIT (2012) 348 ITR 344 (Kerala)

⁸⁵ As held in the cited judicial ruling if a trust assessee after writing off full value of capital expenditure on acquisition of assets as application of income for charitable purposes and again claimed depreciation on the same amount such notional claim became cash surplus available with the assessee which was outside the books of accounts of the trust unless it was written back.

3.3.4 Irregular allowance of accelerated depreciation on life saving medical equipment

As per section 32⁸⁶ of the Income Tax Act, in respect of depreciation on 'machinery and plant' (life-saving medical equipment), the deductions shall be allowed at the rate of 40 *per cent* of the written down value of the relevant assets.

Audit noticed 33 cases involving tax effect of ₹3.91 crore (**Appendix-4**) in 15 states⁸⁷ where the AO had allowed irregular depreciation in contravention of the laid down provisions. Four cases are illustrated below (see Box 3.7).

Box 3.7: Illustrative cases on irregular allowance of depreciation on life saving medical equipment

a. Charge : PCIT-3, Delhi

Assessee: M/s Escort Heart Institute and Research Centre Limited

Assessment Year: 2010-11

PAN:AAACE8731F

Scrutiny of assessment records revealed that during the previous year relevant to AY 2010-11, the assessee had capitalized/claimed ₹7.39 crore under the head "Medical equipments - Life Saving equipments" and was allowed depreciation at the rates of 40 *per cent* and 20 *per cent* as applicable for medical equipments put to use for 180 days or more and for less than 180 days respectively. As per the details of additions to assets, the assets valued at ₹1.48 crore only were covered under the category "Life-saving medical equipments". Thus, the depreciation on the remaining assets valued at ₹5.90 crore should have been allowed at 15 *per cent* instead of 40 *per cent*. This mistake resulted in excess claim of depreciation of ₹1.48 crore⁸⁸ involving short levy of tax of ₹68.20 lakh. ITD's reply was awaited (April 2017).

b. Charge : CIT(Central-1), Chennai, Tamil Nadu

Assessee: M/s RHEA Healthcare Private Limited

Assessment Years: 2011-12 and 2012-13

PAN:AADCR9846F

It was observed that the assessee had claimed and was allowed depreciation at the rate of 40 *per cent* on assets which were not actually falling under the category of 'Life-saving medical equipment' as per the Income Tax Act. As per the assessment records for the AY 2013-14 in case of the same assessee, depreciation at the rate of 15 *per cent* was allowed on the same block of asset with the concurrence of the assessee. This resulted in excess allowance of

⁸⁶ read with Rule 5 and Appendix-I of IT Rule 1962.

⁸⁷ Andhra Pradesh & Telangana (1), Assam (2), Bihar (2), Delhi (6), Gujarat (3), Karnataka (1), Kerala (1), Madhya Pradesh (2), Maharashtra (1), Punjab (1), Rajasthan (1), Tamil Nadu (6), Uttar Pradesh (1) and West Bengal (4).

⁸⁸ 40% of ₹7.38 crore-(40% of ₹1.48 crore + 15% of ₹5.90 crore)

depreciation of ₹93.88 lakh Involving tax effect of ₹28.15 lakh. ITD's reply was awaited (April 2017).

c. Charge : CIT-3, Ludhiana, Punjab

Assessee: Navjot Singh Chug

Assessment Year: 2013-14

PAN: AATPC8006B

As per the assessment records, the assessee had fixed assets of ₹2.38 crore under the block with 40 *per cent* depreciation rate (Life-saving medical equipment). The assessee had claimed and was allowed (December 2015) depreciation at the rate of 40 *per cent* on one item, viz. 'Wavelight Ex500 Excimer' valued at ₹2.25 crore that was added in the block in FY 2012-13. As this item was not falling in the category of 'Life-saving medical equipment', depreciation should have been allowed at the rate of 15 *per cent* admissible to plant and machinery instead of 40 *per cent*. This resulted in excess allowance of depreciation of ₹56.25 lakh involving tax effect ₹22.94 lakh⁸⁹. ITD's reply was awaited (April 2017).

d. Charge : PCIT-I, Indore, Madhya Pradesh

Assessee: Smt. Manjushree Bhandari

Assessment Year: 2012-13

PAN: ABNPB6251C

As per the assessment records, the assessee had claimed and was allowed depreciation of ₹88.43 lakh at the rate of 40 *per cent* on 'Cath Lab Machine' (not specified in Appendix-I to Income Tax Rules) valued at ₹2.21 crore instead of allowable amount of ₹33.16 lakh at the admissible rate of 15 *per cent*. The mistake resulted in incorrect allowance of depreciation amounting to ₹55.27 lakh involving short levy of tax of ₹22.88 lakh including interest. ITD's reply was awaited (April 2017).

3.3.5 Irregular allowance of deduction under section 35AD

As per Section 35AD (1)(a) & (b), an assessee shall be allowed deduction at the specified rate⁹⁰, in respect of any expenditure of capital nature incurred for the purposes of any specified business during the previous year in which he commences operations of his specified business, if (a) expenditure is incurred prior to the commencement of its operations; and (b) amount is capitalized in the books of account of the assessee on the date of commencement of its operations. However, as per section 35AD(5)(ab) of the IT Act, deduction is allowable only if the assessee commences operation on or after 01 April 2010. Also sub section (2) of Section 35AD *inter-alia* lays down different conditions when deduction is not allowable viz. (i) if the business is set up by splitting up or

⁸⁹ involving tax effect of ₹.17.38 lakh with interest ₹5.56 lakh.

⁹⁰ 100 *per cent* upto the AY 2012-13, 150 *per cent* from AY 2013-14.

the reconstruction of a business already in existence; (ii) if it is set up by transfer to the specified business of machinery or plant previously used for any purpose etc.

Audit noticed five cases involving tax effect of ₹4.60 crore in six states⁹¹ (**Appendix-5**) where the AO had allowed irregular deduction under section 35AD in contravention of such provisions. Three cases are illustrated below (See Box 3.8).

Box: 3.8 Illustrative cases on Irregular deduction under section 35AD

- a. Charge: PCIT- Hisar, Haryana**
Assessee: M/s Vandam Health Care
Assessment Year: 2013-14
PAN: AAIFV0635N

The scrutiny assessment of the assessee was completed in October 2015 determining loss of ₹ 9.43 crore. As per the assessment records, the assessee, engaged in the business of hospital service, had commenced its operations on 1 April 2012. The assessee had incurred capital expenditure of ₹7.00 crore out of which ₹4.71 crore pertained to the period from 1 April 2012 to 31 March 2013, i.e. after commencement of business, on acquisition of assets. During assessment, deduction of ₹10.50 crore was allowed under section 35AD at the rate of 150 *per cent* of the entire capitalized cost of assets of ₹7.00 crore instead of ₹2.29crore⁹². The excess allowance of deduction under section 35AD had resulted in over assessment of loss by ₹7.07 crore at the rate of 150 *per cent* of capitalized expenditure of ₹4.71 crore involving potential tax effect ₹2.18 crore. The Department in its reply stated (September 2016) that the “proviso basically relates to previous year in which commencement of operation starts. In that previous year, all the capital expenditure which are incurred before the commencement of operation whether related to that previous year or prior previous years capitalised in the books of accounts are allowed as deduction during the previous year in which commencement of operation starts”. The Department’s reply is not tenable as the deduction under section 35AD is allowable on capital expenditure incurred prior to the commencement of business operations and not on the expenditure incurred during the previous year in which the business operations start. As capital expenditure of ₹4.71 crore was incurred after commencement of business operations, it was not eligible for allowance of deduction under section 35AD of the Act.

⁹¹ Andhra Pradesh & Telangana (1), Delhi (1), Haryana(1), Maharashtra(1) and West Bengal(1).

⁹² ₹2.29 crore = ₹7.00 crore - ₹4.71 crore

b. Charge: CIT-I Pune, Maharashtra**Assessee: Shri Shrirang Arun Limaye****Assessment Year: 2013-14****PAN:ABFPL2414D**

The assessee had set up a multi-specialty hospital under the name 'Deoyani Multi Speciality Hospital' in Kothrud, Pune in AY 2013-14 and the income from the hospital was shown as income from specified business. The assessee had claimed deduction under section 35AD. As per the computation sheet, the assessee had claimed deduction of the cost of capital assets amounting to ₹26.70 crore (including cost of hospital building of ₹19.27 crore on which depreciation was claimed) along with the cost of 'Transfer of Development Rights' (TDR)⁹³ purchased at ₹1.77 crore with a resultant loss of ₹42.72 crore. As per the extract of the Hospital Building Account for the period 01 April 2009 to 31 March 2013, the cost of the purchase of TDR was already included in the cost of the hospital building. Thus, the claim of the cost of TDR of ₹1.77 crore separately as capital expenditure had resulted in double deduction and was required to be disallowed. This resulted in excess allowance of deduction of ₹2.66 crore (150 per cent of ₹1.77 crore) under section 35AD involving potential tax effect of ₹82.25 lakh. ITD's reply was awaited (April 2017).

c. Charge: PCIT- 4, Hyderabad**Assessee: M/s. Premier Hospitals Private Limited****Assessment Year: 2012-13****PAN: AABCP2109H**

The assessee had claimed and was allowed deduction of ₹1.38 crore under section 35AD of the Income Tax Act. The assessee had commenced its business operations on 01 October 2011 and had made additions of ₹1.38 crore to capital expenditure after the date of commencement of business. The incorrect allowance of deduction of ₹1.38 crore under section 35AD resulted in potential short levy of tax of ₹44.84 lakh. ITD in its reply stated (July 2016) that remedial action was being initiated.

3.3.6 Irregular allowance of deduction under section 80IB

As per the Section 80IB(11C) of the IT Act, profits from the business of operating and maintaining a hospital shall be allowed deduction of hundred per cent of profits and gains for a period of five consecutive assessment years, beginning with the initial assessment year, if (i) a hospital was constructed and started functioning at any time during the period beginning on 01 April 2008 and ending on 31 March 2013; (ii) the hospital has at least one hundred beds for patients; (iii) construction of the hospital was in accordance with the regulations of the

⁹³ As per the assessee (February 2016), TDR was purchased from M/s Anand Developers who are traders and dealers of TDR.

local authority; and (iv) assessee furnishes, along with the return of income, a report of audit in such form as may be prescribed.

Audit noticed seven cases involving tax effect of ₹5.30 crore (**Appendix-6**) in four states⁹⁴ where the AOs had allowed irregular deductions in contravention of the provisions under section 80IB. Two cases are illustrated below (see Box 3.9).

Box 3.9: Illustrative cases on irregular deduction under section 80IB

a. Charge: PCIT-Central, Kanpur, Uttar Pradesh

Assessee: M/s. Rama Medicare Limited

Assessment Year: 2012-13

PAN: AAACR4680A

Under the provision of section 80IB, if 'return of income' is not submitted or return is submitted belatedly, the deduction under this section is not available. The scrutiny assessment of the assessee was completed in March 2015. The assessee had claimed and was allowed deduction of ₹8.21 crore under section 80IB although the return of income was filed belatedly on 28 March 2014, i.e. after the due date of submission of return on 30 September 2012. Hence, the deduction claimed by the assessee was required to be disallowed. The omission resulted in irregular allowance of deduction of ₹8.21 crore involving short levy of tax of ₹3.57 crore including interest. The department rectified (September 2016) the mistake under section 154 of the Act.

b. Charge: PCIT- Siliguri, West Bengal

Assessee: Dr. Chhang's Super Speciality Hospital Private Limited

Assessment Year: 2011-12, 2012-13 & 2013-14

PAN: AABCD9278M

The scrutiny assessments of the assessee for AYs 2011-12, 2012-13 and 2013-14 were completed in March 2014, March 2015 and December 2015 allowing deductions of ₹ 85.68 lakh, ₹4.80 crore and ₹ 5.31 crore respectively under section 80IB(11C). As per the notes to accounts, the assessee company was incorporated on 11 November 2003 and had commenced its business by starting diagnostic and OPD centre. The assessee started another separate business⁹⁵ of operating a hospital from June 2008 (i.e. FY 2008-09). As per the Profit and Loss Account of the assessee, the income from its hospital operations included income from medical and healthcare services viz. indoor, outdoor, emergency department as well as 'diagnostic & pathology'. As the income from 'diagnostic and pathology' was shown separately from other medical services and it was a significant proportion⁹⁶ of the total income, it was evident that the 'diagnostic and pathology' business had a separate business identity independent of the hospital services of the assessee; it was

⁹⁴ Andhra Pradesh & Telangana (2), Uttar Pradesh (1) and West Bengal (3).

⁹⁵ As per scrutiny assessment order for AY 2012-13 dated 16 March 15 the assessee started brand new business of operating hospital from 27 June 2008 for which license was obtained on 11 June 2009. The completion certificate was provided by local authority on 20 August 2010. It started claiming deduction under section 80IB(11C) of the IT Act from FY 2010-11 corresponding to AY 2011-12.

⁹⁶ 26 per cent (AY 2011-12), 25.7 per cent (AY 2012-13) and 27 per cent (AY 2013-14)

also pre-existing since 2003-04, and hence income from these operations were not eligible for exemption under section 80IB(11C). Audit noticed that the assessee had claimed and was allowed deduction under section 80IB(11C) in respect of the entire amount of profit from hospital operations which included income from 'diagnostic and pathology' business as well, while the deduction claimed in this respect from 'diagnostic and pathology' business was required to be disallowed. The omission to do so resulted in the irregular allowance of deduction of ₹2.88 crore⁹⁷ under section 80IB for three AYs involving tax effect of ₹89.09 lakh⁹⁸. ITD's reply was awaited (April 2017).

3.4 Summary of Findings:

- ITD has not undertaken any impact analysis to assess the outcome of relief provided to the assessee engaged in private healthcare sector. The Income Tax Act does not prescribe any measurable parameter to assess the extent of charitable activities being undertaken by hospital trusts in order to be eligible for availing exemptions under the Act. In the absence of any specific parameter as a pre-condition for availing the exemption benefits, the possibility remains that the assessee can avail of the exemptions without even carrying on any charitable function or activity that benefits the society at large and disadvantaged sections of the society in particular.
- The provision under section 35AD of the Act does not specify the allowability of deduction on capital investments in cases where the values of land and buildings were not separable, resulting in allowance of deduction on the combined value of land and building leading to loss of revenue.
- Audit noticed instances where ineligible exemptions were being allowed to assessee engaged in trading/commercial activities, as well as instances of incorrect allowance of accelerated depreciation on items not falling under life-saving medical equipment, incorrect allowance of deduction under section 80IB of the Income Tax Act on incomes from non-hospital activity and irregular allowance of deduction on provisioning rather than on actual capitalization under section 35AD of the Act.

3.5 Recommendations:

Audit recommends that:

- i) 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.

⁹⁷ ₹21.42 lakh (AY 2011-12) + ₹123.41 lakh (AY-2012-13) + ₹143.51 lakh (AY 2013-14)

⁹⁸ ₹44.34 lakh (AY 2013-14) + ₹38.13 lakh (AY 2012-13) + ₹6.62 lakh (AY 2010-11)

The CBDT replied (May 2017) that the financial transaction such as cash deposits, interest Income etc. are reported by reporting entities. The cases for scrutiny are selected based on such information and the information available in the Income Tax returns.

The reply does not address the audit recommendation. The CBDT may reconsider prescribing measurable and quantifiable parameters with respect to charitable activities being undertaken to prevent the scope of misuse of the provision as observed and pointed by audit.

- ii) The CBDT may clarify how to assess value of land for the admissibility of deduction under section 35AD of the Income Tax Act in cases where the value of land is a part of the value of the building.

CBDT stated (June 2017) that the value of land could be taken as per the prevalent Circle rates of the land on the date of the sale deed.

Audit is of the view that CBDT may issue a clarification in this regard to ensure uniformity in assessment.

- iii) The CBDT may consider the possibility of introducing automated generation of 80G certificates above a certain threshold.

The CBDT replied (May 2017) that automated generation of 80G certificates on similar lines as under TRACES would not be feasible to implement and would be extremely complicated for small donors and small exempt organizations who would have to submit a statement to the Department and then obtain a certificate to be given to the donor.

Audit is of the view that in the absence of automated mechanism for cross verification of claims made by donors and donees, the chances of ineligible assessee getting deduction cannot be ruled out. CBDT has introduced similar provisions in the case of section 194IA of the Income Tax Act, wherein the purchaser is required to deduct TDS on any property worth ₹50 lakh or above. A similar provision indicating a suitable threshold to exclude the small donors may be included. The automated generation of 80G certificates would enhance transparency in the accounting of trusts and facilitate assessment and monitoring of deductions claimed under section 80G of the Act.

Chapter 4 – Compliance Issues with respect to other provisions of Income Tax Act availed by healthcare sector assesseees

4.1 Audit findings on compliance issues

During the examination of assessment records in respect of Private Hospitals, Nursing Homes/Medical Clinics, Medical Colleges/Research Institutes, Diagnostic Centres, Pathological labs and other Medical supplies agencies/stores, audit noticed mistakes relating to deductions, quality of assessment, income escaping assessment etc. This chapter deals with audit issues relating to deficiencies in the application of provisions of the IT Act and relevant Rules/Judicial pronouncements by the Assessment Officers during assessment in respect of the aforesaid assesseees.

Audit noticed that in 149 cases, the provisions of the Income Tax Act were not followed correctly, involving tax effect of ₹74.45 crore. The mistakes noticed in assessment and the corresponding tax effects are summarized in Table 4.1. Detailed audit findings in this regard are discussed in subsequent paragraphs.

Table 4.1: Types of mistakes noticed in assessment

Sl. no.	Nature of Mistakes and Para Number of the Report	Number of cases	Tax effect (₹ lakh)
1.	Irregular allowance of depreciation/amortisation (Para 4.2.1& 4.2.2)	9	231.39
2.	Irregular allowance of business expenditure (Para 4.3)	23	361.56
3.	Non-deduction of tax deducted at source (TDS) (Para 4.4)	13	266.11
4.	Irregularities regarding Minimum Alternative Tax (MAT) (Para 4.5)	5	465.74
5.	Irregularities regarding set off of carried forward losses (Para 4.6)	8	1,561.95
6.	Non levy of penalty (Para 4.7)	7	217.65
7.	Incorrect computation of Capital Gains/Losses (Para 4.8)	8	296.26
8.	Income escaping assessment (Para 4.9)	22	279.73
9.	Other mistakes during assessment (Para 4.10)	26	1,441.99
10.	Irregular allowance of unlawful expenditure (Para 4.11)	28	2,322.25
Total		149	7,444.63

4.2 Irregular allowance of depreciation/amortisation

4.2.1 In eight cases of five states⁹⁹ (**Appendix-7**) depreciation was irregularly allowed under section 32 of the IT Act on assets (other than life-saving equipment - discussed in para 3.3.4) involving total tax effect of ₹2.06 crore. Three cases are discussed below (Box: 4.1)

Box 4.1: Illustrative cases on irregular allowance of depreciation (Other than life saving equipment)

a. Charge: PCIT-2, Guwahati, Assam

Assessee: GNRC Limited

Assessment Year: 2011-12

PAN: AAACG7527P

The scrutiny of the assessment was completed in March 2014 with assessed income of ₹4.93 crore. It was noticed from the Income Tax depreciation schedule attached to Tax Audit Report that the total allowable depreciation as per IT Act was ₹4.93 crore. However, in the assessment order, the Assessing Officer had allowed ₹6.78 crore towards depreciation. As such, there was excess allowance of depreciation of ₹1.85 crore and consequently, there was underassessment of income to that extent with tax effect of ₹83.48 lakh¹⁰⁰. The ITD's reply was awaited (April 2017).

b. Charge: PCIT-2, Delhi

Assessee: M/s Noida Medicare Centre Limited

Assessment Year: 2012-13 and 2013-14

PAN: AAACN0980B

The scrutiny of the assessment for AY 2012-13 was completed in March 2015 with assessed income of ₹63.80 lakh and for AY 2013-14 in March 2016 at assessed income of ₹4.22 crore which was revised in May 2016 to ₹3.96 crore. Scrutiny revealed that the foreign exchange fluctuation due to exchange rate difference was booked on a deferred credit basis from the supplier of the capital equipment. As the payment for this exchange rate difference was not actually made by the assessee, the amount cannot be a part of the value of asset¹⁰¹. Hence the assessee was not eligible to claim depreciation on the exchange rate difference on addition of assets. The omission to disallow the depreciation resulted in under-assessment of

⁹⁹ Assam (1), Delhi (2) Tamil Nadu (3) and Uttar Pradesh (1).

¹⁰⁰ (Tax @33.2175 per cent on ₹184.80 lakh i.e. ₹61.39 lakh plus interest u/s 234B @36 per cent on ₹61.39 lakh i.e. ₹22.10 lakh)

¹⁰¹ Section 43A of the Income Tax Act provides that if assessee acquires a depreciable asset from a country outside India for the purpose of business or profession and in consequences of a change in the rate of exchange during any previous year after the acquisition of such asset, there is an increase or reduction in the liability of the assessee as expressed in Indian currency *at the time of making payment*, the increase or reduction in the liability shall be deducted or added to the value of the depreciable asset.

income by ₹1.46 crore involving short levy of tax of ₹47.37 lakh relating to AYs 2012-13 and 2013-14. ITD's reply was awaited (April 2017).

- c. Charge: PCIT-1, Coimbatore, Tamil Nadu**
Assessee: M/s Vedanayagam Hospital Limited
Assessment Year: 2013-14
PAN: AAACV9940R

The scrutiny assessment of the assessee was completed in March 2016 with income of ₹2.95 crore after allowing depreciation of ₹2.52 crore which included ₹2.45 crore on plant & machinery. Audit scrutiny revealed that depreciation was allowable only to the tune of ₹1.48 crore. This resulted in excess allowance of depreciation of ₹1.05 crore involving tax effect of ₹33.96 lakh. The Department agreed to take remedial action in the case (October 2016).

4.2.2 Irregular allowance of amortisation of preliminary expenses

As per section 35D of the IT Act, certain preliminary expenses, incurred by an Indian company or a resident non-corporate assessee before the commencement of business, qualify for amortisation of one-fifth of such expenditure as deduction in each of the five successive years beginning with the year in which the business commences or, as the case may be, the previous year in which extension of industrial undertaking is completed, or the new industrial unit commences production or operation. In one case, as discussed below, entire preliminary expenditure was allowed as deduction instead of one-fifth of such expenditure.

Box 4.2: Irregular allowance of amortisation of preliminary expenses

- a. Charge: PCIT, Noida, Uttar Pradesh**
Assessee: M/s Jaypee Healthcare, Noida
Assessment Year: 2013-14
PAN: AACCJ9811D

Scrutiny of assessment records for the Assessment Year 2013-14 revealed that during assessment (February 2016), the assessee was allowed preliminary expenses of ₹1.01 crore before assessing the income at nil. However, it was found that the amount of ₹1.01 crore was the total preliminary expenses incurred by the assessee during FY 2012-13 whereas ₹20.27 lakh, being one-fifth of the said preliminary expenses, was only required to be allowed to the assessee. Hence, there was excess computation of loss of ₹81.10 lakh (₹101.37 lakh – ₹20.27 lakh) involving potential tax effect of ₹25.05 lakh. The Department stated that the matter would be looked into. Further development was not intimated to Audit (April 2017).

4.3 Irregular allowance of business expenditure

Section 37 of the IT Act allows deduction of expenditure which is of revenue nature and expended wholly and exclusively for the purpose of business or profession. Audit noticed that in 23 cases of 11 states¹⁰² (**Appendix-8**), the AOs had allowed business expenditure in contravention of the laid down provisions involving a tax effect of ₹3.62 crore. Three cases are discussed below (see box 4.3).

Box 4.3: Illustrative cases on irregular allowance of business expenditure

- a. Charge : PCIT-1, Kochi, Kerala**
Assessee : Aster DM Healthcare (P) Limited
Assessment Year: 2012-13
PAN:AACCD7912K

The scrutiny assessment was completed in March 2015 at loss of ₹6.11 crore. It was observed that legal and professional expenses/business promotion expenses of ₹6.63 crore were incurred in connection with the acquisition of new investments (hospitals) and being capital in nature, was allowed during assessment. The irregular allowance has resulted in potential tax effect of ₹2.15 crore. ITD's reply was awaited (April 2017).

- b. Charge : PCIT-2, Hyderabad, Andhra Pradesh & Telangana**
Assessee : M/s Hyderabad Institute of Oncology Pvt. Ltd
Assessment Year: 2012-13
PAN:AACCH3376D

The assessment was completed in June 2014 at 'nil' income which was rectified under section 154 while arriving at the income of ₹4.62 crore under MAT. Loss on foreign exchange fluctuation towards purchase of capital goods of ₹1.34 crore was claimed and allowed as revenue expenditure. This has resulted in incorrect allowance of revenue expenditure of ₹80.33 lakh after deducting the allowable depreciation. The potential tax effect worked out to ₹24.82 lakh. The department rectified the assessment order under section 154 of the IT Act in September 2016.

¹⁰² Andhra Pradesh & Telangana (4), Assam (7), Delhi (2), Jharkhand (1), Kerala (2), Maharashtra (2), Rajasthan (1), Tamil Nadu (1), Uttar Pradesh (2) and West Bengal (1).

c. Charge: PCIT, Trivandrum, Kerala
Assessee: M/s PRS Hospital
Assessment Year: 2010-11
PAN:AADFP4651M

The assessment of M/s PRS Hospital was completed after scrutiny in March 2013 with assessed income of ₹2.98 crore after allowing prior period expenditure of ₹57.05 lakh which was not allowable under the provisions of the IT Act. This involved tax effect of ₹17.63 lakh. The Department rectified the mistake in March 2016.

4.4 Non-deduction of Tax at Source (TDS)

As per section 40(a)(ia), any interest, commission or brokerage (rent, royalty), fees for professional or technical services or amounts payable to a contractor or sub-contractor etc., as detailed therein, on which tax is deductible at source (TDS) and has not been deducted or, after deduction, has not been paid on or before the specified due date, shall not be allowed as expense in computing the income.

Audit noticed thirteen cases (**Appendix-9**) in nine states¹⁰³ in which the AO had allowed expenses on which TDS was not deducted, in violation of the laid down provisions, involving tax effect of ₹2.66 crore. Two cases are discussed below (Box 4.4).

Box 4.4: Illustrative cases on Non-deduction of TDS

a. Charge : PCIT-16, Mumbai, Maharashtra
Assessee: Shri Sudhansu S Bhattacharya
Assessment Year: 2012-13
PAN:AABPB4376R

The assessee, a medical professional, whose income was assessed at ₹18.56 crore after scrutiny in March 2015, had claimed and was allowed professional expenses of ₹42.55 lakh on which TDS was not deducted. This had led to underassessment of income to that extent with resultant short levy of tax of ₹13.15 lakh. ITD's reply was awaited (April 2017).

¹⁰³ Andhra Pradesh & Telangana(1), Bihar (1), Haryana(1), Jharkhand (1), Maharashtra (3), Uttar Pradesh (3) and West Bengal (2).

b. Charge : PCIT, Ranchi, Jharkhand**Assessee: The Chotanagpur Regional Handloom Weavers Corporation Union, IRBA, (Ranchi)****Assessment Year: 2013-14****PAN:AAAAT5001D**

The assessment was completed in February 2015 at assessed income of ₹1.56 crore. The assessee, engaged in the business of hospital services, had paid ₹1.01 crore towards 'Labour charge' to M/s SSS Limited (a company) during the FY 2012-13 relating to the AY 2013-14, but the TDS was made against ₹30.78 lakh only. Thus, amount of ₹70.16 lakh (₹1.01 crore less ₹30.78 lakh) should have been disallowed under section 40(a)(ia), but the assessing officer had added back only ₹40.24 lakh to the income of the assessee, instead of ₹70.16 lakh. This omission resulted in irregular allowance of expenses of ₹29.92 lakh (₹70.16 lakh less ₹40.24 lakh) with consequent short levy of tax of ₹9.24 lakh. ITD's reply was awaited (April 2017).

4.5 Irregularities regarding Minimum Alternate Tax (MAT)

Section 115JB provides for levy of MAT at prescribed percentage of the book profit if the tax payable on total income under the normal provisions is less than such percentage of the book profit arrived at after certain additions and deletions as prescribed.

Audit noticed five cases (**Appendix-10**) in five states¹⁰⁴ where the AO had not assessed income under Section 115JB correctly, involving tax effect of ₹4.66 crore. Two cases are discussed below (see box 4.5).

Box 4.5 : Illustrative cases on irregularities regarding Minimum Alternate Tax (MAT)**a. Charge: PCIT-2, Bengaluru, Karnataka****Assessee: M/s Manipal Health Enterprises Pvt. Ltd****Assessment Year: 2013-14****PAN:AAGCM5933R**

The assessee whose scrutiny assessment was completed in March 2016 with assessed income of ₹67.41 crore, had claimed an amount of ₹2.39 crore as MAT credit while computing the tax payable which was allowed in the assessment order. However, during the AYs 2011-12 and 2012-13, income of the assessee was assessed under normal provisions of the IT Act and the tax was calculated accordingly. As such there was no MAT credit available for the assessee to claim for the AY 2013-14. This resulted in irregular grant of MAT credit leading to short levy of tax of ₹3.25 crore. The department stated

¹⁰⁴ Andhra Pradesh & Telangana (1), Karnataka (1), Tamil Nadu (2) and West Bengal (1).

(August 2016) that the assessee had paid tax of ₹2.38 crore under MAT in the previous assessment year as tax payable under the normal provisions of the Act was only ₹33.84 lakh. Hence, ₹2.38 crore was lying as MAT credit to be adjusted. The reply is not acceptable as the department had adopted the computation statement of the assessee instead of the assessment order under section 143(3) relating to AYs 2011-12 and 2012-13.

b. Charge: PCIT-4, Chennai, Tamil Nadu

Assessee: M/s Medall Health Care Private Limited

Assessment Year: 2013-14

PAN: AABCP 9015E

The scrutiny assessment was completed during March 2016 at a loss of ₹11.51 crore. While arriving at income as per the normal provisions (not invoking section 115JB), disallowance of ₹2.33 crore was made under Section 14A of the IT Act in respect of expenditure relating to the exempted income. However, while arriving at the book profit under Section 115JB of the IT Act, the said expenditure was not considered. Further, while arriving at the book profit, brought forward loss of ₹2.64 crore was erroneously adjusted instead of the correct amount of ₹1.08 crore. These mistakes resulted in short computation of book profit by ₹3.89 crore and short levy of MAT by ₹1.06 crore including interest. The ITD's reply was awaited (April 2017).

4.6 Irregularities regarding set off of carried forward losses

Section 72 provides for carry forward of loss for set-off in the following AYs where the loss is not wholly set off against income under any head of the relevant year, to the extent it is not set off.

Audit noticed eight cases (**Appendix-11**) in six states¹⁰⁵ in which the AO had allowed set off of losses in contravention of the laid down provisions involving tax effect of ₹15.62 crore. Two cases in this regard are discussed below (see box 4.6).

Box 4.6: Illustrative cases on Irregularities regarding set off of carried forward losses

a. Charge: PCIT-1, Coimbatore, Tamil Nadu

Assessee: M/s Ganga Medical Centre and Hospital (P) Limited

Assessment Year: 2010-11

PAN:AABCG8283F

The assessment of the company was completed during March 2013 at assessed income of ₹0.65 crore after adopting the revised return of income and adjustment of brought forward loss of ₹3.57 crore. Audit scrutiny

¹⁰⁵ Gujarat (2), Karnataka (1), Maharashtra (1), Tamil Nadu (1), Uttar Pradesh (1) and West Bengal (1).

revealed that in the revised return of income, the assessee had unabsorbed depreciation of ₹2.22 crore which was deducted from the gross total income to arrive at the taxable income. Further, the brought forward loss of ₹3.57 crore was wrongly deducted from the total income although there was no brought forward loss available. This had resulted in excess set off of brought forward loss of ₹3.57 crore leading to short levy of tax of ₹1.21 crore.

b. Charge: PCIT(Central Circle), Bengaluru, Karnataka

Assessee: M/s. Sri Srinivasa Educational and Charitable Trust

Assessment Year: 2012-13

PAN: AAGCS0925B

Scrutiny of the assessment records revealed that while passing the assessment order in January 2016 for the AY 2012-13 under section 153A¹⁰⁶ of the IT Act with an income of ₹43.74 crore, loss of ₹1.68 crore relating to AY 2011-12 was already set off. However, while passing the rectification order, the loss for ₹12.41 crore relating to AY 2011-12 was set off which again included the loss of ₹1.68 crore. This had the effect of setting off of loss of ₹1.68 crore twice which was irregular. This resulted in excess set off of loss of ₹1.68 crore with a potential short levy of tax of ₹54.38 lakh. ITD had initiated remedial action for rectification under section 154 in September 2016.

4.7 Non levy of penalty

Audit found seven cases (**Appendix-12**) in seven states¹⁰⁷ where penalty should have been levied under section 271C¹⁰⁸ and 271D¹⁰⁹ for violation of provision under section 269SS and 269T; non-levy of such penalty in these cases resulted in tax effect of ₹2.18 crore. Two of the cases are detailed below (Box 4.7):

¹⁰⁶ Read with section 143(3) of the IT Act.

¹⁰⁷ Delhi (2), Gujarat (1), Maharashtra (1), Kerala (1), Rajasthan, Tamil Nadu (1) and West Bengal (1).

¹⁰⁸ Section 271C of Income Tax Act provides that if any person fails to deduct the whole or any part of tax as required by or under the provisions of chapter XVII-B or pay the whole or any part of the tax as required by or under sub-section (2) of section 115O or the second proviso to section 192B, then such person shall be liable to pay by way of penalty a sum equal to the amount of tax which such person failed to deduct or pay as aforesaid.

¹⁰⁹ Under section 269SS of the Income Tax Act, no person shall, take or accept from any other person, any loan or deposit otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account if the amount is ₹20,000 or more. Non-compliance to this will attract penalty equal to the amount under section 271D.

Box 4.7: Illustrative cases on Irregularities on Non levy of penalty**a. Charge: PCIT-1 (Corporate), Kochi, Kerala****Assessee: M/s Molecule 7 Hospitals and Medical Institutions Pvt. Ltd.****Assessment Year: 2012-13****PAN:AACCD7912K**

The scrutiny assessment of the assessee was completed in March 2015 with Nil income. During the previous year relevant to the assessment year, the assessee had accepted ₹80.69 lakh both in cash and bank and repaid ₹74.74 lakh both in cash and bank. Since, both the transactions were made otherwise than by account payee cheque or account payee bank draft (required as per Section 269SS and section 269T¹¹⁰ respectively), penalties of ₹80.69 lakh under Section 271D and ₹74.74 lakh under Section 271E respectively were to be levied. However, the AO did not initiate to levy such penalties. ITD's reply was awaited (April 2017).

b. Charge: CIT-4, Ahmedabad, Gujarat**Assessee: Satyamev Hospitals Pvt. Ltd.****Assessment Year: 2013-14****PAN: AAMCS4193B**

The assessee, engaged in the business of running a private hospital, filed (October 2013) its return of income for AY 2013-14 declaring total loss of ₹1.97 crore. The income was assessed (February 2016) at loss of ₹1.71 crore under section 144 of the IT Act. It was observed from the Tax Audit Report that the assessee had repaid to a person the loan amount of ₹36.52 lakh¹¹¹ through a mode otherwise than by an account payee cheque or account payee draft. But no procedure for levy of penalty was initiated under section 269T¹¹² of the IT Act. Failure to do so resulted into non-levy of penalty of ₹36.52 lakh. ITD's reply was awaited (April 2017).

¹¹⁰ Under section 269T of the Income Tax Act, no branch of a banking company or a co-operative bank and no other company or co-operative society and no firm or other person shall repay any loan or deposit made with it otherwise than by an account payee cheque or account payee bank draft drawn in the name of person who has made the loan or deposit or use of electronic clearing system through a bank account if the amount is ₹20,000 or more.

¹¹¹ Shri Jayesh Sandesara, Ahmedabad (PAN AKUPS3647M)

¹¹² As per section 269T of the IT Act read with section 271E if a person repays any loan in excess of ₹20,000 otherwise than by a crossed account payee cheque or demand draft it shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit so repaid.

4.8 Incorrect computation of Capital Gain/Loss

Section 45 of the Act provides that any profits or gains arising from the transfer of a capital asset shall be chargeable to income tax under the head capital gains. Section 50B of the Act provides that any profits or gains arising from slump sale¹¹³ shall be chargeable to income tax as capital gains arising from the transfer of long term capital asset. Section 54F of the Act provides that capital gain on transfer of certain capital assets shall not be charged in case of investment in residential house.

Audit noticed eight cases (**Appendix-13**) in seven states¹¹⁴ where income was not considered in accordance with the laid down provisions, involving tax effect of ₹2.96 crore. Three cases are discussed below (see box 4.8).

Box 4.8: Illustrative cases on Incorrect computation of Capital Gain/Loss

a. Charge: PCIT-21, Delhi

Assessee: Dr. Jawahar Lal Chakravarty

Assessment Year: 2012-13

PAN:AABPC8294M

In the instant case, the assessee whose assessment was completed in March 2016 at assessed income of ₹76.42 lakh, had sold unlisted securities and earned a capital gain of ₹6.95 crore. This capital gain was claimed and allowed as exemption under section 54F¹¹⁵ of the IT Act as the assessee had purchased a residential property for ₹10.50 crore. The assessee was holding more than one property, one being his residence at New Delhi¹¹⁶ and another property at Okhla¹¹⁷ on which he was earning "Income from House Property". Hence, he was not eligible for claiming exemption under section 54F of the IT Act. The omission to disallow the same resulted in under assessment of capital gain of ₹6.95 crore involving short levy of tax and interest of ₹1.95 crore. ITD's reply was awaited (April 2017).

¹¹³ Under Indian Income tax Act, 1961, "slump sale" means the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales. Therefore transferor is not required to assign value to each "assets and liabilities" of "business undertaking" to be transferred.

¹¹⁴ Andhra Pradesh & Telangana (1), Delhi (1), Karnataka (1), Maharashtra (1), Tamil Nadu (2) and West Bengal (2).

¹¹⁵ Section 54F of the IT Act provides exemption to an individual or a HUF who transferred any long-term capital asset but other than residential house if assessee has purchased, within one year before the date of transfer or 2 years after the date of transfer or constructed within 3 years after the date of transfer one residential house. Assessee should not own on the date of transfer of the original asset more than one residential house (other than new house).

¹¹⁶ 38/61, Punjabi Bagh, New Delhi

¹¹⁷ D-170, Okhla

b. Charge: PCIT-16, Mumbai, Maharashtra**Assessee: Dr.Gautam N Allahbadia****Assessment Year: 2012-13****PAN:AAAPA9976F**

The assessee whose income was assessed at ₹6.43 crore in March 2015, had a flat in Bandra, Mumbai worth ₹3.90 crore in June 2011 and claimed exemption of ₹2.09 crore under section 54 of the IT Act. Audit scrutiny revealed that the assessee had paid ₹1.25 crore as booking amount in June 2012 for purchase of another flat in Bandra at ₹6.60 crore and the builder had also allotted that flat to the assessee, though the agreement was not registered nor was the stamp duty paid. Since no new asset was purchased within two years from the sale of the old flat, the assessee was not eligible for exemption under section 54 of the IT Act. The omission to disallow the exemption claimed resulted in underassessment of 'Long Term Capital Gain' of ₹2.09 crore with consequent short levy of tax of ₹58.49 lakh including interest of ₹15.48 lakh under section 234B. ITD's reply was awaited (April 2017).

c. Charge: PCIT-8, Kolkata, West Bengal**Assessee: Purnendu Roy****Assessment Year: 2013-14****PAN: ADKPR4048L**

In this case, the assessee who was assessed in March 2016 with an income of ₹1.33 crore, had made advance payment of ₹93.33 lakh up to FY 2011-12 for a property (flat) to 'Bengal Unitech Universal' but it was sold at ₹1.40 crore during FY 2012-13. As per schedule 5 (Current Assets-Loans & Advances) of balance sheet, as on 31 March 2013, the assessee had made advance payment of ₹77.15 lakh upto 31 March 2012 for a flat from 'Bengal Unitech Universal'. However the flat was not included in the opening balance of "fixed assets schedule" and no additions were made in respect of the same under "fixed assets". This implied that the flat was not actually transferred to the assessee. However, long term capital gain was considered at ₹9,625/- (after indexation as per IT Act) in respect of the flat in the computation of total income. Therefore, the entire transaction was either a venture or trade of the assessee by booking a flat and selling the booking right before completion/delivery at a profit for making windfall gains and this transaction was allowable as a short term capital gain. In either of the cases, there was underassessment of income of ₹46.57 lakh¹¹⁸ leading to undercharge of tax of ₹14.39 lakh. ITD's reply was awaited (April 2017).

¹¹⁸ ₹1.40 crore less ₹93.33 lakh less ₹9,625.

4.9 Income escaping assessment

Section 5 of the IT Act provides that the total income of a person for any previous year includes all income, from whatever source derived, which is received or deemed to be received or which accrues or arises during such previous year, unless specifically exempted from tax under the provisions of the IT Act.

Audit noticed that in 22 cases (**Appendix-14**) in 11 states¹¹⁹, income was not considered in accordance with the laid down provisions, involving tax effect of ₹2.80 crore. Two cases are discussed below (see box 4.9).

Box 4.9: Illustrative cases on Income escaping assessment

a. Charge: PCIT-5, Chennai, Tamil Nadu

Assessee: M/s. Primex Scans and Labs Private Limited

Assessment Year: 2013-14

PAN:AAGCP2852F

The scrutiny assessment of the assessee, a closely held company, was completed in February 2016 at assessed loss of ₹2.94 crore. Audit examination revealed that the assessee had issued shares at a premium of ₹3.65 crore. However, the fair market value of the shares as per the Valuation Report¹²⁰ was ₹2.41 crore only. This had resulted in the issue of shares at premium in excess of the fair market value, in violation of provisions under Section 56(2) (viib) of the IT Act¹²¹ by ₹1.24 crore resulting in potential tax effect of ₹38.23 lakh. The Department replied (June 2016) that the audit observation would be looked into.

b. Charge: PCIT-7, Mumbai

Assessee: SRL Diagnostics Pvt. Ltd.,

Assessment Year: 2013-14

PAN: AACT9117E

The assessment was completed at loss of ₹4.01 crore in March 2016. It was noticed from the assessment records that while computing the income, the assessee was disallowed an amount of ₹1.33 crore under section 14A¹²² of the

¹¹⁹ Andhra Pradesh & Telangana (2), Assam (1), Bihar (1), Delhi (1), Haryana (1), Maharashtra (7), Rajasthan (2), Tamil Nadu (1), Uttar Pradesh (4) and West Bengal (1).

¹²⁰ Discounted cash flow method adopted by the assessee.

¹²¹ As per Section 56(2) (viib) of the Income Tax Act, 1961 where a Company, not being a company in which the public are substantially interested, receives in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of share shall be chargeable to tax.

¹²² Section 14A stipulates that no deduction shall be made in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act.

IT Act. However, it was seen that while computing the disallowance, the gross value of asset was adopted instead of the net value as per Rule 8D¹²³ of the Income Tax Rules. Consequently, the amount to be disallowed was ₹3.12 crore, resulting in short disallowance of ₹1.79 crore and short levy of tax of ₹35.80 lakh. ITD's reply was not received (April 2017).

4.10 Other mistakes during assessment

Audit also noticed 24 cases in ten states¹²⁴ (**Appendix-15**) of miscellaneous nature such as irregular allowance of interest expenditure, mistake in computation of income, allowance of provisional expenses, mistake in levy of interest, etc. involving tax effect ₹14.42 crore¹²⁵. Three cases are illustrated below (see box 4.10).

Box 4.10: Illustrative cases on Other Mistakes during assessment.

- a. Charge: CIT-4, Chennai, Tamil Nadu**
Assessee: M/s Medall Health Care Private Limited
Assessment Year: 2013-14
PAN:AABCP9015E

The assessment was completed in March 2016 at loss of ₹11.51 crore. It was noticed that the assessee had given an amount of ₹54.46 crore as interest-free advance to its subsidiaries and step-down subsidiaries¹²⁶ whereas an amount of ₹8.46 crore was incurred as interest expenditure. Hence, the proportionate interest expenditure of ₹6.13 crore from the total finance cost of ₹13.29 crore had to be disallowed since the loan was not utilised for assets of the assessee company which resulted in short computation of business income to the tune of ₹6.13 crore. This resulted in potential tax loss of ₹1.90 crore. The Department replied (October 2016) that remedial action would be taken, if necessary.

- b. Charge: PCIT-Exemptions, Bangaluru, Karnataka**
Assessee: M/s Gokula Education Foundation (Medical)
Assessment Year: 2011-12
PAN:AAATG1779Q

The scrutiny assessment of the assessee was completed in March 2014 at income of ₹30.48 crore. It was noticed that as per Para 7.7 of the assessment order, ₹1.80 crore as expenditure incurred outside India was disallowed and

¹²³ Rule 8D provides the method of computation of expenditure pertaining to exempt income.

¹²⁴ Andhra Pradesh & Telangana (2), Bihar (1), Delhi (4), Haryana (1), Karnataka (1), Kerala (2), Maharashtra (1), Tamil Nadu (5), Uttar Pradesh (2) and West Bengal (3)

¹²⁵ Total understatement of tax ₹909.55 lakh and overcharge of tax ₹532.44 lakh.

¹²⁶ Step down subsidiaries means subsidiary company of a company which is subsidiary to another company.

added back to the total income. However, while concluding the assessment order, this was not considered for disallowance. Omission to disallow the same resulted in short computation of income and consequential short levy of tax of ₹66.22 lakh. The ITD accepted (March 2017) the audit observation.

c. Charge: PCIT-4, Kolkata
Assessee: Phoenix Cardio Care India Private Limited
Assessment Year: 2013-14
PAN: AABCE4709J

In the instant case, assessment was completed in March 2016 with assessed income of ₹39.40 lakh. It was observed that during the previous year of AY 2013-14, the assessee had issued 6300 shares @ ₹940 each (Face value: ₹10 plus Share premium: ₹930 per share). As against this, Audit had arrived¹²⁷ at fair market value of the shares at ₹205¹²⁸ per share resulting in excess of ₹735 per share (₹940 less ₹205) towards the fair market value of share premium. Therefore, ₹46.30 lakh (₹735 for 6,300 shares) was needed to be added back under section 56(2)(viib)¹²⁹ of the IT Act to the total income of the assessee. Omission to do so had resulted in under-assessment of income to the tune of ₹46.30 lakh involving total undercharge of tax of ₹19.46 lakh. ITD's reply was not received (April 2017).

d. Charge: PCIT(Central Circle), Bengaluru, Karnataka
Assessee: M/s. Anand Social & Educational trust
Assessment Year: 2009-10 to 2012-13
PAN: AAATA7392M

The assessee trust was running Dr. Ambedkar Medical and Hospital, whose assessment for the AYs 2009-10 to 2012-13 were concluded under section 153A/143(3) of the IT Act in March 2016 with assessed incomes of ₹12.68 crore, ₹14.85 crore, ₹22.74 crore and ₹27.86 crore respectively. While computing the tax liability, interest under section 234B of the IT Act was charged at ₹10.75 crore from the date of determination of the total income under section 143(1) of the IT Act, instead of correct amount of ₹15.16 crore, leviable for the period from the date commencing on the first day of April next following such FY and ending on the date of reassessment/re-

¹²⁷ As per Rule 11U and 11UA of Income Tax Rule 1962.

¹²⁸ Fair value=(Gross asset- Gross liability)/Total no. of Share issued=(`981.39 lakh less `669.37 lakh)/ `1.524 lakh.

¹²⁹ sub section 2(viib) of section 56 implies that the income shall be chargeable to the income Tax under the head "Income from other sources" namely "....where a company not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of shares....".

computation under section 147/153A of the IT Act, as required under section 234B(3)¹³⁰ of the IT Act. This has resulted in short levy of interest under section 234B(3) by ₹4.41 crore¹³¹ respectively. The department in its reply (June 2016) stated that the issue would be examined.

4.11 Irregular allowance of unlawful expenditure

As per CBDT directive dated August 2012¹³², claim for any expense incurred in providing freebies¹³³ to medical practitioners in violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 shall be inadmissible under section 37(1) of the Income Tax Act, being an expense prohibited by the law. It has been judicially held¹³⁴ that any commission paid to private doctors for referring patients was prohibited by law and hence not to be allowed as business expenditure.

4.11.1 Audit noticed in 19 cases in eight states¹³⁵ (**Appendix-16A**) in which AO had allowed such expenditure in contravention to such provisions involving tax effect of ₹5.56 crore. Three cases are discussed below (see box 4.11).

Box 4.11: Illustrative cases on irregular allowance of unlawful expenditure

a. Charge : PCIT-4, Chennai, Tamil Nadu

Assessee: M/s Life Cell International Private Limited

Assessment Year: 2013-14

PAN: AAECA7997B

The scrutiny assessment of the assessee was completed in March 2016 at income of ₹35.59 crore. As per records, the assessee had claimed and was allowed exemption of ₹6.91 crore shown as referral fees under the head 'Other expenses'. As the said expenses were not allowable as per CBDT circular no. 5 of 2012, the same were required to be disallowed and added back to the taxable income. Omission to do so resulted in undercharge of income by ₹6.91 crore involving short levy of tax of ₹2.07 crore. ITD's reply was awaited (April 2017).

¹³⁰ As per the amended section 234B(3) w.e.f 1.6.2015, where as a result of an order of reassessment or re-computation u/s 147/153A the amount on which interest was payable under sub section(1) is increased the assessee shall be liable to pay simple interest at the rate of 1 per cent of every month or part of it comprised in the period commencing on the first day of April next following such financial year and ending on the date of reassessment/re-computation under section 147/153A, on the amount by which the tax on total income determined on the basis of reassessment /re-computation exceeds the tax on the total income determined under subsection(1) of section 143 or on the basis of regular assessment as referred to in subsection(1) as the case may be.

¹³¹ ₹70.17 lakh, ₹73.27 lakh, ₹178.77 lakh and ₹117.74 lakh for four years (AYs 2009-10 to 2012-13)

¹³² circular No.5/2012 dated 01 August 2012

¹³³ Like gifts, travel facility, hospitality, cash or monetary grants.

¹³⁴ Hon'ble Punjab and Haryana High Court in CIT Vs KAP Scan and Diagnostic Centre Pvt. Ltd [2012] 344 ITR476 (Punjab & Haryana)

¹³⁵ Andhra Pradesh & Telangana (5), Bihar (1), Delhi (1), Kerala (2),Maharashtra (1), Tamil Nadu (3), West Bengal (6).

b. Charge : PCIT-8, Kolkata, West Bengal**Assessee: Debjit Ghosh****Assessment Year: 2012-13 and 2013-14****PAN:AGJPG7542C**

The assessee engaged in trading of surgical and medical equipment had debited ₹1.09 crore in AY 2012-13 and ₹2.32 crore in AY 2013-14 in the Trading and Profit & Loss Account under the head 'Business Promotion'. As the business promotion expenditure made by the assessee was incurred mainly for giving freebies like gifts, travel facility, hospitality, cash or monetary grant to the medical practitioners, the expenditure was not an allowable expenditure. The incorrect allowance resulted in underassessment of income of ₹3.21 crore¹³⁶ involving tax effect of ₹99.31 lakh¹³⁷ (₹30.55 Lakh for AY 2012-13 and ₹68.76 lakh for AY 2013-14). ITD's reply was awaited (April 2017).

c. Charge : PCIT-4, Kolkata, West Bengal**Assessee: M/s Peerless Hospitex Hospital Research Centre Limited****Assessment Year: 2010-11 , 2011-12 and 2012-13****PAN:AABCP7225L**

In the above case, payments of referral fees of ₹47.53 lakh, ₹51.77 lakh and ₹63.40 lakh were made to the doctors in AY 2010-11, AY 2011-12 and AY 2012-13 respectively. As the expenses were 'unlawful' in nature they were required to be disallowed and added back to the total income of the assessee in the relevant AYs. Omission to do so resulted in underassessment of income of ₹47.53 lakh, ₹51.77 lakh and ₹63.40 lakh in the AY 2010-11, AY 2011-12, and AY 2012-13 respectively with consequential total tax effect of ₹51.75 lakh¹³⁸. ITD's reply was awaited (April 2017).

¹³⁶ ₹321.40 lakh = ₹98.86 lakh (AY 2012-13) and ₹222.54 lakh (AY 2013-14)

¹³⁷ ₹30.55 lakh (AY 2012-13) + ₹68.76 lakh (AY 2013-14)

¹³⁸ ₹16.16 lakh, ₹16.00 lakh and ₹19.59 lakh in the AY 2010-11, AY 2011-12, and AY 2012-13 respectively.

4.11.2 Further, in nine cases (**Appendix-16B**) in Maharashtra, audit noticed that advertisement and business promotion expenses of ₹52.21 crore were allowed by the Department although advertising has been deemed as “unethical” practice as per Para 6¹³⁹ of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulation, 2002 and Para 6(1)¹⁴⁰ of Homoeopathic Practitioners - (Professional Conduct, Etiquette & Code of Ethics) Regulations. This resulted in undercharge of tax of ₹16.93 crore in such cases. One case is illustrated below (see box 4.12):

Box 4.12: Illustrative case on irregular allowance of unlawful expenditure

Charge: PCIT-16, Mumbai, Maharashtra

Assessee: M/s Batra's Positive Health Clinic Private Limited

Assessment Years: 2012-13 & 2013-14

PAN: AABCD3857G

The scrutiny assessments of the assessee for AYs 2012-13 and 2013-14 were completed in March 2015 and March 2016 at income amounts of ₹9.75 crore and ₹8.48 crore respectively. Audit noticed that the assessee had claimed and was allowed expenditure of ₹23.84 crore and ₹27.83 crore incurred on account of advertisement and business promotion expenses in AYs 2012-13 and 2013-14 respectively. As such practices were declared “unethical” by the regulatory bodies, the expenditure incurred thereon was to be considered as “illegal” and hence added back under the provisions of Section 37. Omission to do so resulted in underassessment of incomes by ₹23.84 crore and ₹27.83 crore involving short levy of tax of ₹7.74 crore and ₹9.03 crore in AYs 2012-13 and 2013-14 respectively. ITD's reply was awaited (April 2017).

¹³⁹ Para 6 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulation, 2002-**UNETHICAL ACTS** : A physician shall not aid or abet or commit any of the following acts which shall be construed as unethical - Advertising: Soliciting of patients directly or indirectly, by a physician, by a group of physicians or by institutions or organisations is unethical. A physician shall not make use of him / her (or his / her name) as subject of any form or manner of advertising or publicity through any mode either alone or in conjunction with others which is of such a character as to invite attention to him or to his professional position, skill, qualification, achievements, attainments, specialities, appointments, associations, affiliations or honours and/or of such character as would ordinarily result in his self advertisement or journals provided it shall be permissible for him to publish his name in connection with a prospectus or a director's or a technical expert's report.

¹⁴⁰ Para 6(1) of Homoeopathic Practitioners - (Professional Conduct, Etiquette & Code of Ethics) Regulations 1982 (As amended as per notification published in the Official Gazette dated July 12, 2014)-**Advertising**: Solicitation of patients directly or indirectly by a practitioner of Homoeopathy either personally or by advertisement in the newspapers, by placards or by the distribution of circular cards or handbills is unethical. A practitioner of Homoeopathy shall not make use of, or permit others to make use of, him or his name as a subject of any form or manner of advertising or publicity through lay channels which shall be of such a character as to invite attention to him or to his professional position or skill or as would ordinarily result in his self-aggrandisement (2)He shall further not advertise himself directly or indirectly through price lists or publicity materials of manufacturing firms or traders with whom he may be connected in any capacity, nor shall he publish cases, operations or letters of thanks from patients in non-professional newspapers.

In the Exit Conference, it was stated by the Department that clarification had already been issued in this regard (Circular No. 5 of 2012) and after that such instances had reduced. However, all the items, like referral fees, advertisement or business promotion expenditure etc. were not covered under the said clarification.

4.12 Summary of Findings

- The provisions relating to the 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, minimum alternate tax and set off of carry forward losses were not followed correctly by the ITD during assessment. The Assessing officers omitted to obtain details of cases where cash receipts and payments were made in contravention with 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, income of the assessee was not considered in accordance with the laid down provisions of the Act.
- The referral fees paid to the doctors by private hospitals, nursing homes, diagnostics 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 Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 read with Homoeopathic Practitioners - (Professional Conduct, Etiquette & Code of Ethics) Regulations respectively.

4.13 Recommendations

The CBDT may include the provision of 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.

The CBDT replied (May 2017) that any legislative intervention in specific form of mentioning specific items as unallowable expenditure under section 37 of the Act will only dilute the wider ambit of explanation 1 to section 37. Thus according to CBDT, adequate legal provisions exist and necessary circulars have already been issued by CBDT in this regard. Hence no further intervention in the form of legislative enactment to the Act is required in this matter.

The reply is not acceptable. As observed by Audit, the Assessing Officers are taking divergent views due to the lack of clarity in CBDT instructions in this regard. Hence the CBDT may issue further necessary clarifications to ensure uniformity and consistency in assessments, even without amending the law.

**New Delhi
Dated**

**(Govinda Bhattacharjee)
Director General (Direct Taxes)**

Countersigned

**New Delhi
Dated**

**(Shashi Kant Sharma)
Comptroller and Auditor General of India**

Annexures

Annexure 1A: Legal Provisions with respect to tax incentives availed by private health care sector under the Income Tax Act

Section as per Income Tax Act	Provision in brief								
10(23C)	<p>In computing the total income of a previous year of any person, any income falling within any of the following clauses relating to such assessee (Private Hospital etc.) shall not be included if income received by any person on behalf of—</p> <ul style="list-style-type: none"> ➤ any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, and which is wholly or substantially financed by the Government (Section 10(23C)(iiia)); ➤ any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, if the aggregate annual receipts of such hospital or institution do not exceed the amount of annual receipts as may be prescribed (Section 10(23C)(iiiae)); ➤ any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, other than those mentioned in sub-clause (iiia) or sub-clause (iiiae) and which may be approved by the prescribed authority (section 10(23C)(vii)) 								
11	<p>Section 11 deals with the exemption of income from property held in trust/institution or other legal obligation for religious/charitable purpose wholly or in part and voluntary contributions.</p> <table border="1" data-bbox="560 1451 1401 2016"> <thead> <tr> <th data-bbox="560 1451 692 1491">Section</th> <th data-bbox="692 1451 1401 1491">Nature of income and Extent to which exemption allowed</th> </tr> </thead> <tbody> <tr> <td data-bbox="560 1491 692 1720">11(1)(a)</td> <td data-bbox="692 1491 1401 1720">Income derived from property held under trust wholly for charitable or religious purposes to the extent income is applied to such charitable or religious purposes in India and where such income is accumulated or set apart for such application, to the extent of 15% of the income from such property.</td> </tr> <tr> <td data-bbox="560 1720 692 1944">11(1)(b)</td> <td data-bbox="692 1720 1401 1944">Income derived from property held under trust wholly for charitable or religious purposes to the extent income is applied to such charitable or religious purposes in India and where such income is accumulated or set apart for such application, to the extent of 15% of the income from such property, where the trust was created before the commencement of the Income tax act.</td> </tr> <tr> <td data-bbox="560 1944 692 2016">11(1)(c)</td> <td data-bbox="692 1944 1401 2016">Income derived from property held under trust for a charitable purpose, which tends to promote international</td> </tr> </tbody> </table>	Section	Nature of income and Extent to which exemption allowed	11(1)(a)	Income derived from property held under trust wholly for charitable or religious purposes to the extent income is applied to such charitable or religious purposes in India and where such income is accumulated or set apart for such application, to the extent of 15% of the income from such property.	11(1)(b)	Income derived from property held under trust wholly for charitable or religious purposes to the extent income is applied to such charitable or religious purposes in India and where such income is accumulated or set apart for such application, to the extent of 15% of the income from such property, where the trust was created before the commencement of the Income tax act.	11(1)(c)	Income derived from property held under trust for a charitable purpose, which tends to promote international
Section	Nature of income and Extent to which exemption allowed								
11(1)(a)	Income derived from property held under trust wholly for charitable or religious purposes to the extent income is applied to such charitable or religious purposes in India and where such income is accumulated or set apart for such application, to the extent of 15% of the income from such property.								
11(1)(b)	Income derived from property held under trust wholly for charitable or religious purposes to the extent income is applied to such charitable or religious purposes in India and where such income is accumulated or set apart for such application, to the extent of 15% of the income from such property, where the trust was created before the commencement of the Income tax act.								
11(1)(c)	Income derived from property held under trust for a charitable purpose, which tends to promote international								

		welfare in which India is interested To the extent income is applied to such charitable or religious purposes outside India. Exemption is available only if the Board has directed such exemption.
	11(1)(d)	Income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution is eligible for 100 per cent exemption.
	11(2)	<p>Where the balance 85 per cent of the income is not applied or is not deemed to have been applied to charitable or religious purposes in India during the previous year, such income so accumulated or set apart shall not be included in the total income if the following conditions are fulfilled:</p> <ul style="list-style-type: none"> • such person furnishes a statement in the prescribed form and in the prescribed manner to the Assessing Officer, stating the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed five years; • the money so accumulated or set apart is invested or deposited in the forms or modes specified in subsection (5)
	11(3)	<p>Any income referred to in sub-section (2) which—</p> <p>(a) is applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto, or</p> <p>[(b) ceases to remain invested or deposited in any of the forms or modes specified in sub-section (5), or]</p> <p>(c) is not utilised for the purpose for which it is so accumulated or set apart during the period referred to in clause (a) of that sub-section or in the year immediately following the expiry thereof,</p> <p>[(d) is credited or paid to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10,]</p> <p>shall be deemed to be the income of such person of the previous year in which it is so applied or ceases to be so accumulated or set apart or ceases to remain so invested or deposited or [credited or paid or], as the case may be, of the previous year immediately following the expiry of the period aforesaid.]</p>
	11(3A)	Notwithstanding anything contained in sub- section (3), where due to circumstances beyond the control of the person in receipt of the income, any income invested or deposited in accordance with the provisions of clause (b) of sub- section (2) cannot be applied for the purpose for which it was accumulated or set apart, the 2 Assessing] Officer may, on an

		<p>application made to him in this behalf, allow such person to apply such income for such other charitable or religious purpose in India as is specified in the application by such person and as is in conformity with the objects of the trust; and thereupon the provisions of sub- section (3) shall apply as if the purpose specified by such person in the application under this sub- section were a purpose specified in the notice given to the 3 Assessing] Officer under clause (a) of sub- section (2).</p>
	11(4A)	<p>The deductions under section 11 shall not be admissible in relation to any income, being profits and gains of business profit unless (i) the business is incidental to attainment of objectives of the institution and (ii) separate books of account are maintained in respect of such business.</p>
12	<p>Any voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes (not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution) shall for the purposes of section 11 be deemed to be income derived from property held under trust wholly for charitable or religious purposes and the provisions of that section and section 13 shall apply accordingly.</p> <p>(2) The value of any services, being medical or educational services, made available by any charitable or religious trust running a hospital or medical institution or an educational institution, to any person referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-section (3) of section 13, shall be deemed to be income of such trust or institution derived from property held under trust wholly for charitable or religious purposes during the previous year in which such services are so provided and shall be chargeable to income-tax notwithstanding the provisions of sub-section (1) of section 11.</p>	
13	<p>The exemption granted by Sections 11 or 12 of the Act would not, however, be available in the following cases and circumstances:</p> <ul style="list-style-type: none"> • Where any part of the income from property held under trust for private religious purposes does not enure for the benefit of the public; • In the case of a trust for charitable purposes or an institution created or established for charitable purposes on or after 1.4.1962, any income of the trust will not qualify for tax exemption if the trust or institution is created or established for benefit of any particular religious community or caste. By virtue of explanation 2 to Section 13, any trust created for the benefit of Scheduled Castes, backward classes, or Scheduled Tribes or women or children would not be deemed to be a trust or institution created or established for the benefit of any particular religious community or caste for purposes of this exemption. Consequently, income derived by trusts or institutions established purely for the benefit of scheduled castes or tribes or backward classes or women or children would qualify for tax exemption even though the income is applied in reality for the benefit of a particular community or caste. • In the case of a trust or institution established after 1.4.1962 or in the case of a trust, whenever created or established, if the income of the 	

	<p>trust or institution is applied during the accounting year, directly or indirectly for benefit of any of the specified persons or if under the terms of the trust or the rules governing that institution, any part of the income of the trust enures for the benefit of such specified persons, whether directly or indirectly, the trust would not be given tax exemption under Section 11, with the exception that (i) where such use or application is by way of compliance with a mandatory term of the trust or a mandatory rule governing the institution, and (ii) where such use or application relates to any period before the 1st day of June, 1970, the aforementioned provision shall not apply.</p> <ul style="list-style-type: none"> Where any business is owned by a religious or charitable trust or institution, the income of such business shall be determined by the Assessing Officer in the same way as the assessment of business income of any other assessee. Consequently, any additions to the business income shown in the accounts of the assessee made by the Assessing Officer is deemed to be income applied by the trust for purposes other than charitable or religious. Such additions, therefore, do not qualify for tax exemptions under Section 11(4).
32 read with rule 5(1) Appendix I.	In respect of depreciation of machinery (life saving medical equipment ¹⁴¹) owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the deductions shall be allowed @ 40 per cent of written down value of the relevant assets.
35AD	<p>An assessee shall be allowed a deduction in respect of the whole of any expenditure of capital nature incurred, wholly and exclusively, for the purposes of any specified business carried on by him during the previous year in which such expenditure is incurred by him : Provided that the expenditure incurred, wholly and exclusively, for the purposes of any specified business, shall be allowed at the specified rate as deduction during the previous year in which he commences operations of his specified business, if— (a) the expenditure is incurred prior to the commencement of its operations; and (b) the amount is capitalized in the books of account of the assessee on the date of commencement of its operations.</p> <p>This provision is admissible for specified business in the nature of building and operating a new hospital with at least 100 beds for patients. Further the capital expenditure shall not include acquisition of land or goodwill or financial instrument.</p>
80IB(11B/11C)	Where the gross total income of an assessee includes any profits and gains derived from any business as specified, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to such percentage and for such number of assessment years as specified in this section.

¹⁴¹ (a)D.C. Defibrillators for internal use and pace makers, (b) Haemodialysors, (c) Heart lung machines, (c) Cobalt Therapy Unit,(d) Colour Doppler, (e) Spect Gamma Camera, (f) Vascular Angiography System including Digital subtraction Angiography, (h) Ventilator used with anaesthesia apparatus, (i) Magnetic Resonance Imaging System, (j)Surgical Laser, (k) Ventilators other than those used with Aanesthesia, (l) Gamma nife, (m) Bone Marrow Transplant Equipment including silastic long standing intravenous catheters for chemotherapy, (n) Fiberoptic endoscopes including paediatric resectoscope/audit resectoscope, Peritoneoscope, Arthroscope, Microlaryngoscope, Fiberoptic Flexible Nasal Pharyngo Bronchoscope, Video Laryngo Bronchoscope and Video Oesophango Gastroscopy, Stroboscope, Fiberoptic Flexible Oesophgo Gastroscopy and (o) Laparoscope (single incision).

	<p>The amount of deduction in the case of an undertaking deriving profits from the business of operating and maintaining a hospital in a rural area/other than excluded area shall be hundred <i>per cent</i> of the profits and gains of such business for a period of five consecutive assessment years, beginning with the initial assessment year, if</p> <p>(i) such hospital is constructed at any time during the period beginning on 1 October, 2004 and ending on 31 March, 2008; (for hospitals in rural area) and 1 April, 2008 and ending on the 31 March, 2013 (for hospitals in other than the excluded area¹⁴² (ii) the hospital has at least one hundred beds for patients; (iii) the construction of the hospital is in accordance with the regulations, for the time being in force, of the local authority; and (iv) the assessee furnishes along with the return of income, the report of audit.</p>
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¹⁴² "excluded area" shall mean an area comprising (i) urban agglomeration in Greater Mumbai, Delhi, Kolkata, Chennai, Hyderabad, Bangalore, Ahmedabad, (ii) Districts of Faridabad, Gurugram, Gautam Budh Nagar, Ghaziabad, Gandhinagar and City of Secunderabad.

Annexure-1B: Other legal provisions applicable to assessee engaged in private healthcare business or profession

Section as per Income Tax Act	Provision in brief
37	Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profit and gains of business or profession. Further, as per the explanation given below section 37 any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure".
40(a)(ia)	Following amounts shall not be deducted in computing the income from the business in the case of any assessee "any interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work)], on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139."
40A(3)	Where the assessee incurs any expenditure in respect of payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees, no deduction shall be allowed in respect of such expenditure.
44AB	Every person, carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year; or carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year; or (d) carrying on the Business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AD and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his business and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed. Note: As per Guidance Note on Tax Audit Issued By ICAI the activities that have been held to be Business inter alia includes Nursing home.
44AA	Maintenance of accounts by certain persons carrying on profession or business- Every person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as is notified by the Board in the Official Gazette shall keep and maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of this Act. As per Rule 6F of Income Tax Rules, 1962; books of account and other documents are to be kept and maintained under section 44AA(3) by persons carrying on certain professions. As per rule 6F(1) every person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or authorised representative or film artist shall keep and maintain the books of account and other documents specified in sub-rule (2): Provided that nothing in this sub-rule shall apply in

	<p>relation to any previous year in the case of any person if his total gross receipts in the profession do not exceed one lakh fifty thousand rupees in any one of the three years immediately preceding the previous year, or, where the profession has been newly set up in the previous year, his total gross receipts in the profession for that year are not likely to exceed the said amount.</p> <p>(2) The books of account and other documents referred to in sub-rule (1) shall be the following, namely:- (i) a cash book;(ii) a journal, if the accounts are maintained according to the mercantile system of accounting;(iii) a ledger;(iv) carbon copies of bills, whether machine numbered or otherwise serially numbered, wherever such bills are issued by the person, and carbon copies or counter foils of machine numbered or otherwise serially numbered receipts issued by him: Provided that nothing in this clause shall apply in relation to sums not exceeding twenty-five rupees;(v) original bills wherever issued to the person and receipts in respect of expenditure incurred by the person or, where such bills and receipts are not issued and the expenditure incurred does not exceed fifty rupees, payment vouchers prepared and signed by the person. Provided that the requirements as to the preparation and signing of payment vouchers shall not apply in a case where the cash book maintained by the person contains adequate particulars in respect of the expenditure incurred by him.</p> <p>3) A person carrying on medical profession shall, in addition to the books of account and other documents specified in sub-rule (2), keep and maintain the following, namely:- (i) a daily case register in Form No.3C;(ii) an inventory under broad heads, as on the first and the last day of the previous year, of the stock of drugs, medicines and other consumable accessories used for the purpose of his profession.</p>
194I	<p>Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of rent, shall, at the time of credit of such income to the account of the payee or at the time of payment thereof. Provided further that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such income by way of rent is credited or paid, shall be liable to deduct income-tax under this section.</p>
194H	<p>Any person, not being an individual or a Hindu undivided family, who is responsible for paying, to a resident, any income by way of commission (not being insurance commission referred to in section 194D) or brokerage, shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the specified rate.</p>
194J	<p>194J: Any person, not being an individual or a Hindu undivided family who is responsible for paying to a resident any sum by way of (a) fees for professional services, or (b) fees for technical services (ba) any remuneration or fees or commission other than those on which tax is deductible under section 192, to a director of a company, or (c) royalty, or (d) any sum referred to in clause (va) of section 28 shall, at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct at the specified rate of such sum as income-tax on income comprised therein. 'Professional Services' means services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or advertising or such other profession as is notified by the Board for the purposes of section 44AA or of this section.</p>

Annexure-2: Important judicial pronouncements and Circulars

Case Reference	Judicial ruling
2013 (11) TMI 145 ITAT CHENNAI <i>Assistant Commissioner of Income tax versus Harvey Heart Hospitals Ltd.</i>	The assessee has not shown any nexus between the research carried on by the doctors and the business of the assessee – The assessee has not furnished any details of expenditure and the outline of research and development carried out in the course of carrying on of its business – A general claim that the company has carried on research and development is not sufficient to allow the expenditure.
2012 (6) TMI 620 Punjab and Haryana High Court <i>Commissioner of Income tax versus Kap Scan and Diagnostic Centre P. Ltd.</i>	The commission paid to private doctors for referring patients for diagnosis could not be allowed as a business expenditure. The amount which can be allowed as business expenditure has to be legitimate and not unlawful and against public policy.
2010 (12) TMI 212 ITAT, AHMEDABAD <i>ITO versus Apollo Hospitals International Ltd.</i>	The terms and conditions in respect of the doctors who are under FGCs (Fixed Salary and Guarantee money) are not akin to the salaried employees. Their relationship with the hospital, thus, cannot be said to be an employer employee relationship. Thus the deduction of tax at source is required to be made as per section 194J of the Income Tax Act.
The Hon'ble ITAT – Kolkata, <i>Suraksha Diagnostic & Eye centre vs Department of Income Tax¹⁴³</i>	In the instant case, it was held that the amount paid towards purchase of computer software could not be treated as amount paid towards fees for technical services. Hence, the purchase of computer software is capital expenditure and not allowable under the Income Tax Act.
CBDT Circular	As per circular number 5 of 2012 dated 1 August 2012 issued by CBDT (para 1 and para 2) freebies like gifts, travel facility, hospitality, cash or monetary grant provided to the medical practitioners and their professional associations mainly by the pharmaceutical industries including health sector organization is also taxable as business income or income from other sources depending on the facts of each case.

¹⁴³ ITA no. 2121/coal/2010

Annexure 3: Sample selection of Commissionerates and units thereunder

Name of the State	Number of PCsIT/CsIT selected	Number of selected units		
		Circles	Wards	Total
Andhra Pradesh & Telangana	6	18	24	42
Assam	3	4	4	8
Bihar	2	4	5	9
Chhattisgarh	2	4	4	8
Delhi	10	26	15	41
Gujarat	3	5	5	10
Haryana	3	9	28	37
Jharkhand	2	7	6	13
Karnataka	7	19	30	49
Kerala	3	6	11	17
Madhya Pradesh	2	4	4	8
Maharashtra	13	19	8	27
Odisha	2	4	5	9
Punjab	4	7	17	24
Rajasthan	3	5	6	11
Tamil Nadu	6	17	24	41
Uttarakhand	3	4	5	9
Uttar Pradesh	4	8	6	14
West Bengal	13	34	21	55
Total	91	204	228	432

Annexure 4 : Non-production of records

Name of the State	Records called for (Number)	Records not produced	Percentage of non-production
Andhra Pradesh & Telangana	267	11	4.12
Assam	63	0	0.00
Bihar	124	27	21.77
Chhattisgarh	43	3	6.98
Delhi	281	14	4.98
Gujarat	156	13	8.33
Haryana	80	7	8.75
Jharkhand	76	0	0.00
Karnataka	31	0	0.00
Kerala	132	2	1.52
Madhya Pradesh	104	17	16.35
Maharashtra	589	97	16.47
Odisha	42	4	9.52
Punjab	50	0	0.00
Rajasthan	203	11	5.42
Tamil Nadu	267	0	0.00
Uttarakhand	64	0	0.00
Uttar Pradesh	110	6	5.45
West Bengal	528	18	3.41
Total	3210	230	7.17

Annexure 5A
List of external sources

Sl. No.	Name of State	External Sources
1	Andhra Pradesh & Telangana	The IMA, Hyderabad, The Andhra Pradesh & Telangana Pollution Control Board, The Telangana Private Hospitals and Nursing Homes Association, Hyderabad.
2	Assam	(Department of Health and Family Welfare, PCB, Private Blood Bank, ROC, Assam, (https://data.gov.in/catalog/company-master-data), Director, Department of Health and Family Welfare, Guwahati, Assam, Private Blood Banks, obtained from www.cdsco.nic.in/writereaddata/bloodbanksindiafeb2015.pdf School of Nursing Indian School of Nursing NER, (obtained from www.indiannursingcouncil.org . 2013-14), , Pollution Control Board, Assam SIRO (Medical Sciences) ¹ (DIRECTORY OF SIROs (As on December 2014)(http://www.dsr.gov.in/direct/14_siroadir.pdf) and MCI(Indian Medical Council, (as obtained from www.mciindia.org/informationDesk/IndianMedicalRegister.aspx),
3	Arunachal Pradesh	MCI (Indian Medical Council, (as obtained from www.mciindia.org/informationDesk/IndianMedicalRegister.aspx), Private Blood Bank),
4	Bihar	DM, Patna, IMA, Patna Dental College, Drug Controller, Department of Health, CMO Muzaffarpur, Patna Nagar Nigam
5	Chhattisgarh	Health and Family Welfare, Govt of Chhattisgarh, Municipal Council, Raipur and Durg
6	Delhi	(Medical Council of India, Dental Council of India, Delhi Nursing Council, Department of health of family Welfare, Medifee, Sulekha Vouchers, TDS payment schedules, list of creditors/debtors),
7	Gujarat	Just Dial, CGHS, Mineral Development Corporation Ltd, State Petroleum Corporation Ltd, Power Corporation Ltd, GSPC Pipavav Power Company Limited, State Petronet Limited, Metro Link Express for Gandhinagar and Ahmedabad Ltd, Medical Council, IMA Gujarat, State Dental Council, Council of Homoeopathic System of Medicine),
8	Haryana	Medical Council, Dental Council, Municipal Corporations/Municipalities, Department of Health and Family Welfare, SIRO, Pollution Control Board, Blood Banks, ROC, Central and State PSUs

9	Jharkhand	State Pollution Control Board, Indian Medical Association, Director General of Health Services, Directorate of Ministry of Health & Family Welfare Govt. Of Jharkhand and District Collectorate Health Services.
10	Karnataka	Medical Council, Dental Council, Municipal Corporations/Municipalities, Department of Health and family Welfare, Scientific and Research Organisation, Pollution Control Board, Blood Banks, ROC, Central & State PSUs
11	Kerala	Municipal Corporations/Municipalities, Pollution Control Board, CGHS, Indian Medical Council, doctorskerala.com
12	Madhya Pradesh	(Divisional Joint Director, Health Services, Chief Medical & Health Officers, SDM, Drug Inspector)
13	Maharashtra	Medical Council, Dental Council, Municipal Corporations, DHFW,SIRO, PCB, Blood Banks, ROC, Central and State PSUs, Charity Commissioner, Service tax database, www.practo.com, www.healthfrog.in.
14	Odisha	Department of Health and Family Welfare, Pollution Control Board, CGHS
15	Punjab	Medical Council, Dental Council, Municipal Corporations/Municipalities, Department of Health and Family Welfare, SIRO, Pollution Control Board, Blood Banks, ROC, Central and State PSUs
16	Rajasthan	Medical Council, Dental Council, Municipal Corporation/Municipalities, DH & FW, PCB, ROC, CGHS, Others (Just Dial Limited)
17	Tamil Nadu	ROC, Medical Council, Dental Council, Directorate of Medical and Rural Health Services, Municipal Corporations/ Municipalities, Pollution Control Committee, CGHS
18	Uttarakhand	Medical Council, Drug Controller, Uttarakhand Pollution Control Board
19	Uttar Pradesh	Uttar Pradesh Pollution Control Board, Medical Council, Indian Medical Association, Director General of Health Services, Municipal Corporation, CNO, CMS, Director of Health Service/ Medical & Rural Health Centre of UP, Controller of Central Drug Standard Control Organisation, Swasthya Seva Mahanideshalaya
20	Tripura	MCI(Indian Medical Council, (as obtained from www.mciindia.org/informationDesk/ Indian Medical Register. aspx., ROC, Tripura (https://data.gov.in/catalog/company-master-data, Private Blood Bank Private Blood Banks, obtained from www. cdsco. nic.in/writereaddata/bloodbanksindiafeb2015.pdf)

21	Manipur	(ROC), Manipur (https://data.gov.in/catalog/company-master-data , School of Nursing, Private Blood Bank)
22	Nagaland	ROC Nagaland (https://data.gov.in/catalog/company-master-data , Private Blood Banks obtained from www.cdsc0.nic.in/writereaddata/bloodbanksindiafeb2015.pdf)
23	Meghalaya	ROC, Meghalaya (https://data.gov.in/catalog/company-master-data School of Nursing, Private Blood Banks, obtained from www.cdsc0.nic.in/writereaddata/bloodbanksindiafeb2015.pdf)
24	Mizoram	ROC, Mizoram (https://data.gov.in/catalog/company-master-data School of Nursing, Private Blood Bank)
25	West Bengal	West Bengal Medical Council (as furnished by them as on September 2016), West Bengal Dental Council (http://www.wbdc.org.in/search.php) (as on June 2011, downloaded in August 2016), Municipal Corporations/ Municipalities (As on June 2016) (as furnished by 25 Municipalities), Department of Health and Family Welfare, Government of West Bengal (http://www.wbhealth.gov.in/) (As on December 2010), Scientific & Industrial Research Organizations (SIROs) (Medical Sciences) ¹ (Directory OF SIROs (As on December 2014) (http://www.dsir.gov.in/direct/14_sirodir.pdf), Pollution Control Board, West Bengal(as furnished by PCB West Bengal and Assam in November 2016), Blood banks (down loaded from www.wbhealth.gov.in/wbsapcs/blood_bank.htm), Registrar of Companies (ROC), Kolkata (http://data.gov.in/catalog/company-master-data), Central and State PSUs, Andaman and Nicobar Islands (received from Directorate of Health Services, A & N Administration.

Annexure 5B

Potential assesseees engaged in business/profession of Private Hospitals, Nursing Homes, Diagnostic centres etc. collected from the registering bodies/external sources

Sl. no.	Name of the State	Total number of potential assesseees
1	Andhra Pradesh & Telangana	33,481
2	Assam	23,457
3	Arunachal Pradesh	771
4	Bihar	1,206
5	Chhattisgarh	4,951
6	Delhi	1,895
7	Gujarat	10,843
8	Haryana	944
9	Jharkhand	687
10	Karnataka	6,025
11	Kerala	5,762
12	Madhya Pradesh	7,346
13	Maharashtra	22,581
14	Manipur	23
15	Meghalaya	13
16	Mizoram	05
17	Nagaland	02
18	Odisha	2,159
19	Punjab	354
20	Rajasthan	6,846
21	Tamil Nadu	1,36,395
22	Tripura	17
23	Uttarakhand	14,676
24	Uttar Pradesh	1,691
25	West Bengal	38,603
	Total	3,20,733

Source: External/Third Party Sources as indicated in Annexure 5A.

Appendices

Appendix-1
(Refer para 3.3.1)

Incorrect allowance of exemption for trading/commercial activities

Sl. No.	State	Name of the assessee with PAN	AY	CIT Charge	Tax effect (₹ in lakh)
1	Maharashtra	Guru Nanak Quin Centenary Memorial Hospital Trust AAATG2576K	2013-14	CIT(Exemption), Mumbai	50.36
2	Maharashtra	Bombay Hospital Trust AAATB3815C	2011-12	CIT(Exemption), Mumbai	388.25
3	Maharashtra	Bombay Hospital Trust AAATB3815C	2010-11	CIT(Exemption), Mumbai	339.04
4	Maharashtra	The Bhatia General Hospital AAATT3440K	2013-14	CIT(Exemption), Mumbai	404.86
5	Maharashtra	Marathwada Medical & Research Institute AAATM6631K	2013-14	CIT(Exemption), Pune	145.21
6	Maharashtra	Bombay Hospital Trust AAATB3815C	2012-13	CIT(Exemption), Mumbai	402.89
7	Maharashtra	Bombay Hospital Trust AAATB3815C	2013-14	CIT(Exemption), Mumbai	455.06
	Total				2,185.67

Appendix-2
(Refer para 3.3.2)

Other irregularities in allowance of exemption to hospital trusts

Sl. No.	State	Name of the assessee with PAN	AY	CIT Charge	Tax effect (₹ in lakh)
1	Maharashtra	The Bomanjee Dinshaw Petit Parsee General Hospital AAATB3553H	2010-11	CIT -Exemption Mumbai	35.35
2	Maharashtra	Maharashtra Medical Foundation AAATM1753E	2012-13	CIT -Exemption Mumbai	240.37
3	Maharashtra	The Bomanjee Dinshaw Petit Parsee General Hospital AAATB3553H	2013-14	CIT -Exemption Mumbai	23.72
4	Maharashtra	The Bomanjee Dinshaw Petit Parsee General Hospital AAATB3553H	2010-11	CIT -Exemption Mumbai	72.70
5	Maharashtra	The Bomanjee Dinshaw Petit Parsee General Hospital AAATB3553H	2011-12	CIT -Exemption Mumbai	48.36
6	Maharashtra	Padmshree DY Patil AABTP2448L	2012-13	CIT -Exemption Mumbai	222.98
7	Maharashtra	Mandke Foundation AAATM4557G	2013-14	CIT -Exemption Mumbai	30.90
8	Maharashtra	Hastimal Sancheti Montrial Trust AAATH0666F	2013-14	CIT -Exemption Pune	248.71
9	Maharashtra	Dr.DY Patil Vidya Pratisthan Society AABTD1482A	2013-14	CIT -Exemption Pune	211.41
10	Maharashtra	NM Wadia Institute of Cardiology AAATN0856G	2012-13	CIT -Exemption Pune	32.97
11	Maharashtra	Lokmanya Medical Foundation, AAATL2106Q	2013-14	CIT -Exemption Pune	0.00
12	Maharashtra	Marathwada Medical & Research Institute AAATM6631K	2013-14	CIT -Exemption Pune	569.50
13	Maharashtra	Mandke Foundation AAATM4557G	2013-14	CIT -Exemption Mumbai	1,384.81
14	Uttar Pradesh	Nazreth Hospital Society, Allahabad AAATN1730G	2012-13	PCIT-Exemption Lucknow	71.67

15	Rajasthan	M/s State Institute of Health & Family Welfare, Jaipur-AAATS3404N	2013-14	CIT -Exemption Jaipur	22.46
16	Rajasthan	Rajasthan Medical relief Society, Rajsamand-AAATR8252R	2013-14	CIT -Exemption Jaipur	1.59
17	Rajasthan	Apollo Animal Medical group Trust, Jaipur-AABTA0145K	2008-09	CIT -Exemption Jaipur	69.70
	Total				3,287.20

Appendix-3
(Refer para 3.3.3)

Irregular allowance of depreciation to resulting in double deduction

Sl. No.	State	Name of the assessee with PAN	AY	CIT Charge	Tax effect (₹ in lakh)
1	Maharashtra	The Bomanjee Dinshaw Petit Parsee General Hospital AAATB3553H	2013-14	CIT (Exemption), Mumbai	90.64
2	Maharashtra	The Bomanjee Dinshaw Petit Parsee General Hospital AAATB3553H	2010-11	CIT (Exemption), Mumbai	81.2
3	Maharashtra	The Bomanjee Dinshaw Petit Parsee General Hospital AAATB3553H	2011-12	CIT (Exemption), Mumbai	111.51
4	Maharashtra	Mahatma Gandhi Mission (MGM), AAATM4256E	2013-14	CIT (Exemption), Pune	1,022.97
5	Maharashtra	GD Birla Medical Research & Educational Foundation AAATG4151C	2010-11	CIT (Exemption), Mumbai	73.95
6	Maharashtra	Mandke Foundation AAATM4557G	2013-14	CIT (Exemption), Mumbai	839.06
	Total				2,219.33

Appendix-4
(Refer para 3.3.4)

Irregular allowance of accelerated depreciation on life saving medical equipments

Sl. No.	State	Name of the assessee with PAN	AY	CIT Charge	Tax effect (₹ in lakh)
1	Gujarat	Sterling Adlife India Ltd. AADCA0897M	2010-11	Pr.CIT 4, Ahmedabad	22.99
2	Gujarat	Sanjivani Super speciality Hospitals Pvt Ltd. AALCS8908H	2012-13	Pr.CIT 4, Ahmedabad	11.71
3	Gujarat	ZyduS Hospitals and Healthcare Research Pvt. Ltd. AAACZ3443K	2013-14	Pr.CIT 4, Ahmedabad	1.25
4	Rajasthan	Sh. Ram Goyal Prop. M/S Kamla Nagar Hospital, Jodhpur ABXPG4604Q	2012-13	CIT-II, Jodhpur	1.91
5	Punjab	Sh. Navjot Singh Chugh AATPC8006B	2013-14	CIT 3 Ludhiana	22.94
6	West Bengal	M/s Peerless Hospitex Hospital Research Centre Ltd. AABCP7225L	2013-14	PCIT-4 Kolkata	3.88
7	West Bengal	M/s AMRI Hospitals Ltd. AAECS6786N	2012-13	PCIT-1 Kolkata	1.28
8	West Bengal	Woodlands Multispecialty Hospital Ltd. AAACW9160A	2013-14	PCIT-4 Kolkata	1.58
9	West Bengal	Atrium Diagnostics & Health Care Services (P) Ltd. AAHCA0244N	2010-11	PCIT-Siliguri	7.45
10	Maharashtra	M/s Siddhivinayak Children Hospital ABRFS3858C	2013-14	CIT I Pune	1.32
11	Bihar	M/s Ford Hospital & Research centre Pvt. Ltd., Patna AABCF3445J	2012-13	CIT-1, Patna	23.13
12	Bihar	M/s Ford Hospital & Research centre Pvt. Ltd., Patna AABCF3445J	2013-14	CIT-1, Patna	19.12
13	Uttar Pradesh	Yashoda hospital and research centre Ltd. AAACY0508N	2013-14	Pr. CIT Ghaziabad	5.35
14	Assam	M/s Dispur Hospitals Pvt. Ltd. AACCD1256C	2010-11	CIT-2, Guwahati	4.50
15	Assam	Assam Hospital Ltd. AAECA3073E	2013-14	CIT-2, Guwahati	2.14
16	Andhra Pradesh & Telangana	M/s Durga Bhavani Hospitals Pvt. Ltd. AADCD7431J	2013-14	Pr. CIT 5 Hyderabad	3.44

17	Delhi	M/s Escort heart Institute and Research Centre Ltd. AAACE8731F	2010-11	Pr.CIT 3 Delhi	68.2
18	Delhi	M/s Umkal Healthcare Pvt. Ltd. AAACU7727R	2010-11	Pr.CIT 9 Delhi	27.79
19	Delhi	M/s Umkal Healthcare Pvt. Ltd. AAACU7727R	2011-12	Pr.CIT 9 Delhi	24.17
20	Delhi	M/s Home trail Estate Pvt. Ltd. AACCH1467K	2013-14	Pr.CIT 4 Delhi	1.26
21	Delhi	M/s Fortis C-Doc healthcare Ltd. AABCF5973F	2013-14	Pr.CIT 3 Delhi	2.33
22	Delhi	Flt. Lt. Rajan Dhall Charitable Trust AAATF0185H	2010-11	Pr.CIT, Exemption	4.47
23	Karnataka	M/s Medihope Hospitals & Research Centre Pvt. Ltd. AAHCM5554F	2013-14	PCIT-2, Bengaluru	40.23
24	Tamil Nadu	RHEA Health Care Pvt. Ltd. AADCR9846F	2011-12	CIT (Central 1), Chennai	13.12
25	Tamil Nadu	RHEA Health Care Pvt. Ltd. AADCR9846F	2012-13	CIT (Central 1), Chennai	15.03
26	Tamil Nadu	Bharat Medicare Pvt. Ltd. AABCB 5881A	2012-13	Pr CIT 1, Chennai	6.56
27	Tamil Nadu	Primex Health Care Research Pvt. Ltd. AAGCM0514Q	2013-14	CIT 5, Chennai	2.21
28	Tamil Nadu	MIOT Hospitals Ltd. AAACM2162N	2011-12	CIT 4, Chennai	1.7
29	Tamil Nadu	MIOT Hospitals Ltd. AAACM2162N	2012-13	CIT 4, Chennai	2.49
30	Kerala	Ananthapuri Hospitals Pvt. Ltd. AADCA6276A	2013-14	Pr CIT, Trivandrum	8.84
31	Madhya Pradesh	M/s Kalyan Memorial Charitable Trust AAATK4285D	2012-13	Pr.CIT-Gwalior	6.23
32	Madhya Pradesh	M/s Kalyan Memorial Charitable Trust AAATK4285D	2013-14	Pr.CIT-Gwalior	9.67
33	Madhya Pradesh	Smt. Manjushree Bhandari ABNPB6251C	2012-13	Pr.CIT-1, Indore	22.88
	Total				391.17

Appendix-5
(Refer para 3.3.5)

Irregular allowance of deduction under section 35AD

Sl. No.	State	Name of the assessee with PAN	AY	CIT Charge	Tax effect (₹ in lakh)
1	Haryana	M/s Vandam Healthcare, Hisar AAIFV0635N	2013-14	CIT Hisar	218.55
2	Maharashtra	Shrirang Arun Limaye ABFPL2414D	2013-14	CIT I Pune	82.25
3	Andhra Pradesh & Telangana	M/s Premier Hospitals Pvt. Ltd. AABCP2109H	2012-13	Pr.CIT 4, Hyderabad	44.84
4	Delhi	M/s Aar Aar Medical Services Pvt. Ltd. AAICA2961M	2013-14	CIT-1 Delhi	39.1
5	West Bengal	M/s GPT Healthcare Private Ltd. AABCJ2967K	2013-14	PCIT-4 Kolkata	75.05
	Total				459.79

Appendix-6
(Refer para 3.3.6)

Irregular allowance of deduction under section 80IB

Sl. No.	State	Name of the assessee with PAN	AY	CIT Charge	Tax effect (₹ in lakh)
1	Uttar Pradesh	M/s Rama Medicare Ltd. AAACR4680A	2012-13	Pr. CIT Central Kanpur	356.9
2	Andhra Pradesh & Telangana	M/s Ramya Hospitals, AAIFR4508G	2010-11	Pr. CIT-2, Vishakapatnam	5.41
3	Andhra Pradesh & Telangana	M/s Ramya Hospitals, AAIFR4508G	2012-13	Pr. CIT-2, Vishakapatnam	7.23
4	West Bengal	Dr.Chhang's Super Specialty Hospital Pvt. Ltd. AABCD9278M	2013-14	PCIT-Siliguri	44.34
5	West Bengal	Dr.Chhang's Super Specialty Hospital Pvt. Ltd. AABCD9278M	2012-13	PCIT-Siliguri	38.13
6	West Bengal	Dr.Chhang's Super Specialty Hospital Pvt.Ltd. AABCD9278M	2011-12	PCIT-Siliguri	6.62
7	Maharashtra	M/s Eureka Medicare Private Limited AABCE6829M	2012-13, 2013-14	CIT-I Nagpur	71.34
	Total				529.97

**Appendix-7
(Refer para 4.2.1)**

Irregular allowance of depreciation (other than life savings equipment)

Sl. No.	State	Name of the assessee with PAN	AY	CIT Charge	Tax effect (₹ in lakh)
1	Uttar Pradesh	M/s Ajanta Hospital and IVF Centre Pvt. Ltd. AAECA 6979R	2013-14	Pr. CIT-I Lucknow	1.68
2	Assam	GNRC Ltd. AAACG7527P	2011-12	CIT-1, Guwahati	83.48
3	Delhi	M/s Noida Medicare Centre Ltd. AAACN0980B	2012-13	Pr.CIT-2, Delhi	13.43
4	Delhi	M/s Noida Medicare Centre Ltd. AAACN0980B	2013-14	Pr.CIT-2, Delhi	33.94
5	Tamil Nadu	M/s Vedanayagam Hospital Ltd. AAACV9940R	2013-14	Pr. CIT 1, Coimbatore	33.96
6	Tamil Nadu	M/s Sheela Clinic AAHFS8304C	2009-10	Pr. CIT 1, Coimbatore	14.27
7	Tamil Nadu	M/s Bharat Scans Pvt. Ltd. AABCB2272K	2013-14	Pr. CIT 1, Chennai	18.49
8	Maharashtra	Dr Kantilal Hastimal Sancheti ARZPS1433K	2013-14	CIT-1, Pune	7.09
	Total				206.34

Irregular allowance of amortisation of Preliminary Expenses (Refer para 4.2.2)

Sl. No.	State	Name of the assessee with PAN	AY	CIT Charge	Tax effect (₹ in lakh)
1	Uttar Pradesh	Jaypee Healthcare, AACJ9811D	2013-14	Pr.CIT Noida	25.05

Appendix-8
(Refer para 4.3)

Irregular allowance of business expenditure

Sl. No.	State	Name of the assessee with PAN	AY	CIT Charge	Tax effect (₹ in lakh)
1	Uttar Pradesh	M/s Yashoda hospital and Research Centre Ltd. AAACY0508N	2013-14	Pr. CIT Ghaziabad	6.00
2	Uttarakhand	M/s Super Max Laboratories AABFS3800R	2013-14	Pr. CIT Dehradun	1.88
3	Assam	M/s GNRC Ltd. AAACG7527P	2012-13	CIT-1, Guwahati	2.69
4	Assam	M/s Assam Hospital Ltd. AAECA3073E	2011-12	CIT-2, Guwahati	1.72
5	Assam	M/s Assam Hospital Ltd. AAECA3073E	2012-13	CIT-2, Guwahati	
6	Assam	Babina Healthcare and Hospitality Industries AADCB4009N	2012-13	CIT- Jorhat	2.50
7	Assam	M/s Jivan Hospital AAGFJ7583F	2013-14	PCIT- Jorhat	1.62
8	Assam	M/s Assam Hospital Ltd. AAECA3073E	2011-12	CIT-2, Guwahati	1.84
9	Assam	M/s Down Town Hospitals Ltd. AAACD7247B	2012-13	CIT-1, Guwahati	5.16
10	Delhi	Shri Ankit Gupta AKFPG9034R	2012-13	CIT-21 Delhi	11.69
11	Delhi	M/s Mahajan Imaging Pvt. Ltd. AKFPG9034R	2013-14	CIT-6 Delhi	3.25
12	Rajasthan	Sh. Anil Gupta ABRPG5219R	2013-14	CIT-III, Jaipur	2.22
13	Kerala	Aster DM Healthcare Pvt. Ltd. AACCD7912K	2012-13	Pr. CIT-1, Corporate Kochi	215.13
14	Kerala	PRS Hospital AADFP4651M	2010-11	Pr. CIT, Trivandrum	17.63
15	Tamil Nadu	M/s Dr. Agarwal's Eye Hospital Ltd. AAACD2373G	2010-11	Pr. CIT 1, Chennai	16.92
16	Maharashtra	M/s Batra's Positive health Clinic Pvt. Ltd. AABCD3857G	2012-13	Pr.CIT 16 Mumbai	17.48

17	Maharashtra	M/s Batra's Positive Health Clinic Pvt. Ltd. AABCD3857G	2013-14	Pr.CIT 16 Mumbai	7.68
18	Jharkhand	M/s Suryamukhi Dinesh Educational Development and Social Welfare Society	2012-13	Pr.CIT Ranchi	8.66
19	Andhra Pradesh & Telangana	M/s. Hyderabad Institute of Oncology Pvt. Ltd. AACCH3376D	2012-13	Pr.CIT-2 Hyderabad	24.82
20	Andhra Pradesh & Telangana	M/s Incor Hospitals Pvt. Ltd. AACCI1469G	2013-14	Pr.CIT-2 Hyderabad	4.90
21	Andhra Pradesh & Telangana	M/s Gowri Gopal Hospitals Pvt. Ltd. AACCS9035Q	2012-13	Pr.CIT-2 Hyderabad	1.69
22	Andhra Pradesh & Telangana	M/s Vijaya Diagnostic Centre Pvt. Ltd. AABCV5096R	2013-14	Pr.CIT-5 Hyderabad	3.64
23	West Bengal	Kedar Ranjan Banerjee ADBPB0794N	2013-14	PCIT-8 Kolkata	2.44
	Total				361.56

Appendix-9
(Refer para 4.4)

Non deduction of Tax at Source

Sl. No.	State	Name of the assessee with PAN	AY	CIT Charge	Tax effect (₹ in lakh)
1	Maharashtra	Dr. Praful B. Amin AACPA8293A	2013-14	Pr CIT-16, Mumbai	5.10
2	Maharashtra	Sudhanshu S Bhattacharya AABPB4376R	2012-13	CIT 16 Mumbai	13.15
3	Jharkhand	M/S The Chotanagpur Regional Handloom Weavers Corporation Union, Irba (Ranchi) AAAAT5001D	2013-14	Pr.CIT Ranchi	9.24
4	West Bengal	M/s Peerless Hospitex Hospital Research Centre Ltd. AABCP7225L	2013-14	PCIT-4 Kolkata	4.52
5	West Bengal	M/s Ruby General Hospital Ltd. AABCR6028D	2012-13	PCIT-4 Kolkata	2.16
6	Maharashtra	Dr. Aijaz B Ashale AHCPA2086P	2012-13	CIT 16 Mumbai	8.66
7	Bihar	M/s Basudeo Health Foundation Private Limited AACCB4923G	2012-13	CIT-1, Patna	9.00
8	Haryana	Dr Sanjeev Gupta, Faridabad AAPPG7614P	2013-14	CIT Faridabad	1.40
9	Andhra Pradesh & Telangana	M/s Mediciti Health care Services Pvt. Ltd. AADCM7719A	2013-14	Pr. CIT 4, Hyderabad	15.58
10	Uttar Pradesh	M/s Ajanta Hospital and IVF Center Pvt. Ltd., Lucknow AAECA6979R	2013-14, 2014-15	PCIT-I, Lucknow	24.69
11	Uttar Pradesh	M/s Yashoda Hospital and Research Centre Ltd. Ghaziabad AAACY0508N	2012-13	Pr. CIT, Ghaziabad	34.12
12	Uttar Pradesh	M/s Nazreth Hospital Society, Allahabad AAATN1730G	2012-13	PCIT- Exemption, Lucknow	54.66
13	Delhi	M/s Nava Healthcare Pvt. Ltd. AACCN3480A	2013-14	Pr.CIT 6, Delhi	83.83
	Total				266.11

Appendix-10
(Refer para 4.5)

Irregularities regarding Minimum Alternate Tax (MAT)

Sl. No.	State	Name of the assessee with PAN	AY	CIT Charge	Tax effect (₹ in lakh)
1	Tamil Nadu	Dr. Agarwal's Eye Institute Pvt. Ltd. AAACCD 2372H	2013-14	Pr. CIT 1, Chennai	28.17
2	Karnataka	M/s. Manipal Health Enterprises Pv.t Ltd. AAGCM5933R	2013-14	PCIT-2, Bengaluru	324.96
3	West Bengal	Woodlands Multispecialty Hospital Ltd. AAACW9160A	2012-13	PCIT-4 Kolkata	5.11
4	Andhra Pradesh & Telangana	M/s Oxygen Medicare (Hyderabad) Pvt. Ltd. AANCS6650E	2013-14	Pr.CIT-4 Hyderabad	1.76
5	Tamil Nadu	Medall Health Care Pvt. Ltd. AABCP9015E	2013-14	Pr. CIT 4, Chennai	105.74
	Total				465.74

Appendix-11
(Refer para 4.6)

Irregularities regarding set off of brought forward losses

Sl. No.	State	Name of the assessee with PAN	AY	CIT Charge	Tax effect (₹ in lakh)
1	Gujarat	Shalby Ltd, Ahmedabad AAICS5593B	2013-14	Pr.CIT 4 Ahmedabad	1046.12
2	Tamil Nadu	M/s Ganga Medical Centre and Hospital (P) Ltd. AABCG8283F	2010-11	Pr. CIT 1, Coimbatore	121.3
3	Maharashtra	Shri Vasant Punjabi Darade AABPD5252A	2013-14	CIT 16 Mumbai	10.05
4	West Bengal	P.N Memorial Neuro centre & Research Institute Ltd. AADCP4772G	2013-14	PCIT-4 Kolkata	17.19
5	Karnataka	M/s Sri Srinivasa Educational and Charitable Trust AAGCS0925B	2012-13	Pr.CIT, Central Circle, Bengaluru	54.38
6	Uttar Pradesh	M/s Clara Swain Hospital AABAC7218C	2013-14	PCIT-Bareilly	33.65
7	Gujarat	Shalby Ltd, Ahmedabad AAICS5593B	2014-15	Pr.CIT 4 Ahmedabad	257.45
8	Tamil Nadu	M/s Bharathi Raja Hospital and Research Centre Pvt. Ltd. AABCB2272K	2011-12	Pr.CIT 1, Chennai	21.81
	Total				1561.95

Appendix-12
(Refer para 4.7)

Non levy of penalty

Sl. No.	State	Name of the assessee with PAN	AY	CIT Charge	Tax effect (₹ in lakh)
1	Kerala	Molecules 7 Hospitals and Medical Institutions Pvt. Ltd. AACCD7912K	2012-13	Pr.CIT-1, Corporate kochi Kochi	155.43
2	Tamil Nadu	M/s Dr. Ganesan's Hitech Diagnostic Centre Pvt Ltd. AADCD7458H	2012-13	Pr. CIT 1, Chennai	10.00
3	Maharashtra	Nazim A Shahbazker AAEPS7790M	2012-13	CIT 16 Mumbai	3.70
6	West Bengal	Purnendu Roy ADKPR4048L	2013-14	PCIT-8, Kolkata	5.00
7	Gujarat	Satyamev Hospitals Pvt. Ltd. AAMCS4193B	2013-14	Pr.CIT 4 Ahmedabad	36.52
8	Rajasthan	Maya Kanwar Ba Mahila Vikas Samiti AAAAM3485C	2012-13, 2013-14	CIT-3 Jaipur	3.00
9	Gujarat	Dr. Amit Vishnubhai Patel AGHPP4275H	2013-14	Pr.CIT 4 Ahmedabad	4.00
	Total				217.65

Appendix-13
(Refer para 4.8)

Incorrect computation of capital gains/ losses

Sl. No.	State	Name of the assessee with PAN	AY	CIT Charge	Tax effect (₹ in lakh)
1	Tamil Nadu	Bay life Medicare Pvt. Ltd. AAECB1439M	2011-12	Pr. CIT 1, Chennai	9.5
2	Tamil Nadu	M/s Life cell International Pvt. Ltd. AAECA7997B	2013-14	CIT 4, Chennai	3.32
3	Maharashtra	Dr. Gautam N Allahabadia AAAPA9976F	2012-13	Pr.CIT 16, Mumbai	58.49
4	Andhra Pradesh & Telangana	M/s Yashoda Health care services Pvt. Ltd., AABCD6598G	2013-14	Pr.CIT 5, Hyderabad	1.52
5	Delhi	Dr. Jawahar Lal Chakravarty AABPC8294M	2012-13	CIT 21, Delhi	194.68
6	Karnataka	Dr. B. Shermila AFJPB7843K	2011-12	PCIT-2, Bengaluru	12.12
7	West Bengal	Purnendu Roy ADKPR4048L	2013-14	PCIT-8, Kolkata	14.39
8	West Bengal	Biswas Medical Centre AAEFB6571F	2013-14	PCIT-8, Kolkata	2.23
	Total				296.25

**Appendix-14
(Refer para 4.9)**

Income escaping assessment

Sl. No.	State	Name of the assessee with PAN	AY	CIT Charge	Tax effect (₹ in lakh)
1	Rajasthan	Dr. Ram Lal Sharma (Prop. Padmawati Maternity & Nursing Home, Sikar) AFCPS0038M	2010-11	CIT-III, Jaipur	1.62
2	Rajasthan	Dr. Ram Lal Sharma (Prop. Padmawati Maternity & Nursing Home, Sikar) AFCPS0038M	2011-12	CIT-III, Jaipur	
3	Haryana	Dr Sandeep Chaudhary, Karnal AEMPC4744F	2012-13	CIT Karnal	7.92
4	Tamil Nadu	M/s Primex Scans and Labs Pvt. Ltd. AAGCP2852F	2013-14	CIT 5, Chennai	38.23
5	Maharashtra	Shri Sultan Ahmed Pradhan AADPP0456A	2012-13	Pr.CIT 16 Mumbai	13.47
6	Maharashtra	Shri Sultan Ahmed Pradhan AADPP0456A	2013-14	Pr.CIT 16 Mumbai	19.13
7	Maharashtra	Deepak J Namjoshi ABAPN5520D	2012-13	Pr.CIT 16 Mumbai	3.25
8	Maharashtra	SRL Diagnostics Pvt. Ltd. AAACT9117E	2013-14	CIT 7 Mumbai	35.80
9	Maharashtra	Milind Vasant Kirtane AAGPK6765Q	2013-14	CIT 16 Mumbai	4.38
10	Maharashtra	Dr.Rakesh Sinha AAQPS2577L	2012-13	CIT 16 Mumbai	10.03
11	Maharashtra	Dr.Rakesh Sinha AAQPS2577L	2013-14	CIT 16 Mumbai	2.18
12	Bihar	M/s Macmillan Life Science Pvt. Ltd., Patna AAGCM1179H	2012-13	CIT-1, Patna	22.04
13	Uttar Pradesh	M/s Burlington Clinic Pvt. Ltd. AACCB6261D	2012-13	Pr. CIT-I Lucknow	62.66
14	Uttar Pradesh	Sri Manoj Ruhela ADDP3168C	2011-12	Pr. CIT-I Lucknow	1.52
15	Uttar Pradesh	Sri Rajat Dheseer AAJPD9207F	2013-14	Pr. CIT-I Lucknow	12.25
16	Uttar Pradesh	M/s Yashoda Hospital and Research Centre Ltd., Ghaziabad AAACY0508N	2013-14	Pr. CIT, Ghaziabad	15.89

17	Assam	M/s Rahman Hospitals Pvt. Ltd. AADCR1767K	2013-14	CIT-2, GHY	2.08
18	Andhra Pradesh & Telangana	M/s Indian Immunologicals Ltd. AAACI6620F	2013-14	Pr. CIT2 Hyderabad	11.11
19	Andhra Pradesh & Telangana	M/s Lalitha Gayathri Hospitals Pvt. Ltd. AACCL0919N	2013-14	Pr. CIT4 Hyderabad	11.80
20	Delhi	Shri Surya Bhan AAAPB3985D	2013-14	CIT 21 Delhi	1.24
21	West Bengal	Purnendu Roy ADKPR4048L	2013-14	PCIT-8 Kolkata	1.12
22	Delhi	Dr.Sajal Halder AADPH2744R	2013-14	CIT 21 Delhi	2.01
	Total				279.73

Appendix-15
(Refer para 4.10)

Other mistakes during assessment

Sl. No.	State	Name of the assessee with PAN	AY	CIT Charge	Tax effect (₹ in lakh)
1	Maharashtra	Shri Ashok Johari AAKPJ9857C	2013-14	CIT 16 Mumbai	6.91
2	Bihar	M/s Solvate Laboratories Pvt. Ltd., Patna AAICS2647A	2013-14	CIT-1, Patna	3.09
3	Andhra Pradesh & Telangana	M/s Vijaya Diagnostic Centre Pvt. Ltd. AABCV5096R	2013-14	Pr. CIT 5 Hyderabad	1.10
4	Andhra Pradesh & Telangana	M/s Ravindranath GE Medical Associates Pvt. Ltd. AABCR4013N	2013-14	Pr. CIT 3 Hyderabad	532.44
5	Delhi	M/s Indraprastha Medical Corporation Ltd. AAACI2398N	2012-13	CIT 4, Delhi	18.68
6	Delhi	M/s Sondhi Charitable Hospital Society AACTS4226N	2012-13	CIT(Exemption), Delhi	7.10
7	Delhi	Dr.(Mrs.) Anusuya Sharma AAQPS7981Q	2011-12	CIT 21 Delhi	3.17
8	Delhi	M/s Escorts Heart and Super Speciality Institute Ltd. AAACE9671L	2013-14	CIT 3 Delhi	16.87
9	West Bengal	Ashok Kr Sharaf AKKPS3693R	2012-13	PCIT-8 Kolkata	1.23
10	West Bengal	M/s B. P. Poddar Hospital & Medical Research Pvt. Ltd. AACCB1618G	2010-11	PCIT-2 Kolkata	14.49
11	West Bengal	Phoenix Cardiocare India Pvt. Ltd. AABCE4709J	2013-14	PCIT-4 Kolkata	19.46
12	Haryana	Dr Sanjeev Gupta, Faridabad AAPPG7614P	2011-12	CIT Faridabad	7.00
13	Kerala	Lisie Medical Institutions AAATL1070D	2012-13	CIT (Exemption)	11.75
14	Tamil Nadu	M/s A.G Eye Hospitals Pvt. Ltd. AACCD8536B	2013-14	CIT , Trichy (Circle 3(1), Trichy)	34.03

15	Tamil Nadu	M/s Medall Health Care Pvt. Ltd. AABCP9015E	2013-14	CIT 4, Chennai	189.59
16	Tamil Nadu	M/s Perfint Health Care Pvt. Ltd. AADCP6854D	2013-14	CIT 5, Chennai	48.96
17	Tamil Nadu	M/s Lifetime Wellness RX International AADCA 8021H	2013-14	CIT 4, Chennai	9.48
18	Tamil Nadu	Bharat Scans Pvt. Ltd. AABCB2272K	2013-14	Pr. CIT 1, Chennai	3.94
19	Kerala	HRC Health Research Center Pvt. Ltd. AACCD8855F	2012-13	Pr. CIT, Trivandrum	6.53
20	Karnataka	Anand Social & Educational Trust AAATA7392M	2009-10	CIT(Central Circle), Bengaluru	70.17
21	Karnataka	Anand Social & Educational Trust AAATA7392M	2010-11	CIT(Central Circle), Bengaluru	73.27
22	Karnataka	Anand Social & Educational Trust AAATA7392M	2011-12	CIT(Central Circle), Bengaluru	178.77
23	Karnataka	Anand Social & Educational Trust AAATA7392M	2012-13	CIT(Central Circle), Bengaluru	117.74
24	Karnataka	M/s Gokula Education Foundation AAATG1779Q	2011-12	PCIT(Exemption), Bengaluru	66.22
	Total				1,441.99

Appendix-16A
(Refer para 4.11.1)

Irregular allowance of unlawful expenditure

Sl. No.	State	Name of the assessee with PAN	AY	CIT Charge	Tax effect (₹ in lakh)
1	West Bengal	M/s Peerless Hospitex Hospital Research Centre Ltd. AABCP7225L	2012-13	PCIT-4 Kolkata	19.59
2	West Bengal	M/s Peerless Hospitex Hospital Research Centre Ltd. AABCP7225L	2010-11	PCIT-4 Kolkata	16.16
3	West Bengal	M/s Peerless Hospitex Hospital Research Centre Ltd. AABCP7225L	2011-12	PCIT-4 Kolkata	16.00
4	West Bengal	Debjit Ghosh AGJPG7542C	2013-14	PCIT-8 Kolkata	68.76
5	West Bengal	Debjit Ghosh AGJPG7542C	2012-13	PCIT-8 Kolkata	30.55
6	West Bengal	P.N Memorial Neuro centre & Research Institute Ltd. AADCP4772G	2013-14	PCIT-4 Kolkata	14.52
7	Tamil Nadu	M/s Life Cell International Pvt. Ltd. AAECA7997B	2013-14	CIT 4, Chennai	207.30
8	Tamil Nadu	Medi Span Ltd. AAACM3942J	2012-13	CIT 4, Chennai	29.07
9	Tamil Nadu	M/s Diabetics Supply Centre AADFD7141E	2011-12	Pr CIT 5, Chennai	8.54
10	Maharashtra	Smt Kaushal Sameer Kadam AHWPK1763B	2013-14	CIT 16 Mumbai	7.43
11	Bihar	M/s Aglomed Limited, Patna, AABCA9519L	2012-13	CIT-1, Patna	23.84
12	Andhra Pradesh & Telangana	M/s Innova Child Heart Hospital Pvt. Ltd. AABCI5589A	2013-14	Pr. CIT 2	2.59
13	Andhra Pradesh & Telangana	M/s.Ravindranath GE Medical Associated Pvt.Ltd. AABCR4013N	2012-13	Pr. CIT3	24.95
14	Andhra Pradesh & Telangana	M/s Life shine Medical Services Pvt. Ltd. AABCL6193P	2013-14	Pr. CIT4	2.89
15	Andhra Pradesh & Telangana	M/s Chalasani Hospitals Pvt. Ltd., Visakhapatnam AAECC0005G	2013-14	Pr. CIT1, Visakhapatnam	8.38
16	Delhi	M/s Heritage hospitals Pvt. Ltd. AAACH8678L	2013-14	Pr.CIT-4	2.47
17	Kerala	Institute of Radiology and Imaging Sciences Pvt. Ltd. AABCI2704H	2010-11	Pr CIT-1, Kochi	41.62

18	Andhra Pradesh & Telangana	M/s Sri Sainath Multi Speciality Hospitals Pvt. Ltd. AAKCS8803J	2012-13	Pr. CIT-III, Hyderabad	28.94
19	Kerala	Kalish Drugs and Surgicals AAIFK5906F	2013-14	Pr. CIT- Trivandrum	2.86
		Total			556.46

Appendix-16B
(Refer para 4.11.2)

Irregular allowance of unlawful expenditure (advertisement and business promotion expenses)

Sl. No.	State	Name of the assessee with PAN	AY	CIT Charge	Tax effect (₹ in lakh)
1	Maharashtra	Batra's Positive Health Clinic Pvt. Ltd. AABCD3857G	2012-13	Pr.CIT-16, Mumbai	773.58
2	Maharashtra	Batra's Positive Health Clinic Pvt. Ltd. AABCD3857G	2013-14	Pr.CIT-16, Mumbai	903.00
3	Maharashtra	Abhay J Agarwal AABPA0891N	2012-13	Pr.CIT-16, Mumbai	1.71
4	Maharashtra	Jugalkishore Agarwal AABPA0892R	2012-13	Pr.CIT-16, Mumbai	2.01
5	Maharashtra	Anil M. Potdar ADNPP7426R	2013-14	Pr.CIT-16, Mumbai	2.77
6	Maharashtra	Dr.Nilesh Vishwas Shelke AQTPS9940C	2011-12	Pr.CIT-1, Pune	1.52
7	Maharashtra	Dr.Nilesh Vishwas Shelke AQTPS9940C	2010-11	Pr.CIT-1, Pune	3.61
8	Maharashtra	Dr.Nilesh Vishwas Shelke AQTPS9940C	2012-13	Pr.CIT-1, Pune	1.37
9	Maharashtra	Dr.Nilesh Vishwas Shelke AQTPS9940C	2013-14	Pr.CIT-1, Pune	3.34
		Total			1,692.91

Abbreviations

AHP	Allied Health Professionals
AIR	Annual Information Return
AMA	Authorised Medical Attendants
AO	Assessing Officer
AST	Assessment Information System
BPT	Bombay Public Trust
CAGR	Compounded Annual Growth Rate
CASS	Computer Aided Scrutiny Selection
CBDT	Central Board of Direct Taxes
CGHS	Central Government Health Service
CIB	Central Information Branch
CIN	Corporate Identity Number
CIT	Commissioner of Income Tax
DC	Dental Council
DGHS	Directorate General Health Service
DGIT	Director General of Income Tax
I&CI	Intelligence and Criminal Investigation
IPF	Indigent Patient Fund
ITD	Income Tax Department
ITDMS	Income Tax Payer Data Management System
MAT	Minimum Alternate Tax
MC	Medical Council
MRP	Maximum Retail Price
NMS	Non-filers Monitoring System
NCSS	National Centre for Charitable Statistics
NTEE	National Taxonomy of Exempt Entities
OPD	Out Patients Department
PAN	Permanent Account Number
PCIT	Principal Commissioner of Income Tax
PSU	Public Sector Undertaking
ROC	Registrar of Companies
TCS	Tax Collected at Source
TDS	Tax Deducted at Source
TDR	Transfer of Development Rights
NGO	Non-Government Organization
WBMC	West Bengal Medical Council
WBDC	West Bengal Dental Council

Glossary

- ❖ **Assessing Officer (AO)** means the Income-Tax Officer or Assistant Commissioner of Income-Tax or Deputy Commissioner of Income-Tax or Joint Commissioner of Income-Tax or Additional Commissioner of Income-Tax who is authorized by the Board to exercise or perform all or any of the powers and functions conferred on, or assigned to an AO under the Income tax Act, 1961.
- ❖ **Annual Information Return (AIR):** As per section 285BA of the Income Tax Act, 1961, specified entities are required to furnish AIR in respect of specified financial transactions registered by them during the FY to the Income Tax Authority.
- ❖ **Computer Aided Scrutiny Selection (CASS):** Income Tax Department has implemented the computer aided scrutiny selection (CASS) system to select income tax returns for scrutiny on a compulsory selection basis using pre-defined criteria on a centralised basis.
- ❖ **Corporate Identity Number (CIN):** CIN is a unique 21 digit alpha-numeric number given to all Companies registered with the Registrar of Companies in India.
- ❖ **Integrated Tax Payer Data Management System (ITDMS):** Integrated Tax Payer Data Management System is a data mining tool implemented by the ITD which assists in generating a 360 degree profile of an entity by compiling information from all data sources.
- ❖ **Medical Council of India (MCI):** The Medical Council of India is a statutory body with the responsibility of establishing and maintaining high standards of medical education and recognition of medical qualifications in India. It registers doctors to practice in India, in order to protect and promote the health and safety of the public by ensuring proper standards in the practice of medicine.
- ❖ **Non-Filers Monitoring System (NMS):** Non-Filers Monitoring System is a monitoring system of IT Department that identifies the people who are liable to file taxes but haven't done so. Upon identifying such non-compliant taxpayers, system automatically sends a non-compliance email to taxpayer's registered email address. NMS uses information available in/ from AIR (Annual Information Return), CIB (Centralised Information Branch), TDS Statements.
- ❖ **Permanent Account Number (PAN):** PAN is a ten-digit alphanumeric number issued in form of laminated card, by the ITD. It is also a national identification number of the taxpayer which has to be mandatorily quoted on the return of income and in all the correspondence with the Department.
- ❖ **Project Insight:** Project Insight' is an integrated platform introduced by ITD to monitor high value transactions, with a view to curbing the circulation of black money. This project has been initiated for data mining, collection, collation and processing of such information for effective risk management with a view to widening and deepening tax base
- ❖ **Registrar of Companies (RoC):** Registrars of Companies (ROC) appointed under Section 609 of the Companies Act covering the various States and Union Territories are vested with the primary duty of registering companies and Limited Liability Partnerships (LLPs) floated in the respective states and the Union Territories and ensuring that such companies and LLPs comply with statutory requirements under the Act.

- ❖ **TRACES:** TRACES is TDS reconciliation, analysis and correction enabling system. It is a web based application of the ITD that provides an interface to all stakeholders associated with TDS administration. It enables viewing of challan status, downloading of NSDL console file, justification report and Form 16/16A as well as viewing of annual tax credit statement.