

**OFFICE OF THE
COMPTROLLER & AUDITOR GENERAL OF INDIA**

NEW DELHI
22nd November, 2016

**CAG AUDIT REPORT ON ALLOWANCE OF DEDUCTION TO THE
ASSEESSES ENGAGED IN INFRASTRUCTURE DEVELOPMENT
PRESENTED IN PARLIAMENT**

The Comptroller & Auditor General of India (C&AG) carried out a Performance Audit Report No. 28 of 2016 on “Allowance of deduction to the assessees engaged in infrastructure development” during the period from July 2015 to October 2015. The Report was tabled in Parliament today.

Audit findings

This performance audit covered cases of scrutiny assessments, revisions and rectifications made in the selected units during the financial years (FY) 2012-13 to 2014-15 and up to the date of audit. The Director General of Income Tax (Systems), New Delhi furnished details of assessees who claimed deduction under section 80-IA relating to AYs 2010-11 to 2012-13.

During audit, C&AG noticed certain systemic and internal control issues besides mistake in compliance as briefly discussed below:

Systemic Issues

During performance audit, C&AG noticed systemic issues in 229 cases involving tax effect of ₹ 2716.79 crore
2.2 to 2.10) *(Paragraphs*

Major issues are given below:

The ITD irregularly allowed deduction to assesseees in 33 cases across 13 states in respect of infrastructure developed by joint venture formed by collaboration with foreign companies, undertakings owned by Association of persons (AOPs), assesseees who did not enter into agreement with the Government, non-compliant Industrial park and excluded works contractors. This resulted in underassessment of income involving tax effect of ₹ 205.84 crore.

[Para 2.2]

The ITD irregularly allowed deduction to assesseees in 16 cases in eight states where the business of the assesseees such as sale of plots, projects not covered under infrastructural facilities, conversion charges, development/maintenance of park etc, were not eligible for the deduction. This resulted in underassessment of income involving tax effect of ₹ 174.35 crore.

[Para 2.3]

The ITD irregularly allowed deduction to assesseees in 19 cases in eight states in respect of income earned through sale of carbon credit which involved tax effect of ₹ 34.77 crore.

[Para 2.8]

The ITD irregularly considered additions made on account of treatment of expenditure as revenue, sale of fixed assets, disallowance made u/s 40A(3) 14A, 40(a) etc., for deduction in nine cases in five states. Consequently, the allowances were more than the amount claimed by the assessee involving consequential tax effect of ₹ 74.66 crore.

[Para 2.9]

The ITD irregularly allowed deduction to assesseees in eight cases in two states in respect of profits derived from 'Railway Sidings/Jetties' constructed and operated by the assesseees for their private purposes, which did not qualify to be treated as infrastructure facilities in terms of Explanation to section 80 IA(4). Irregular allowance of deduction attracted tax effect of ₹ 2066.70 crore.

[Para 2.10]

Compliance issues

C&AG noticed mistakes in assessments in 146 cases involving tax effect of ₹ 2153.05 crore.

(Paragraphs 3.2 to 3.12)

Major observations are given below:

The ITD did not disallow deduction in 11 cases in six states despite belated filing of return which resulted in underassessment of income involving tax effect of Rs. 80.49 crore.

[Para 3.2]

The ITD irregularly allowed deduction to assessees in six cases in four states for the period beyond the permissible limit of 10 consecutive assessment years, starting from the declared initial assessment year. Incorrect allowance of deductions resulted in underassessment of income involving tax effect of ₹ 859.47 crore.

[Para 3.3]

The ITD irregularly allowed deduction to assessees in 15 cases in eight states where the assessee did not apportion the common expenses between eligible and non eligible units properly which resulted in excess allowance of deduction involving tax effect of ₹ 224.47 crore.

[Para 3.4]

The ITD irregularly allowed deduction to assessees in seven cases in four states in respect of the profits related to the enterprises or undertaking which were transferred in a scheme of amalgamation/demerger, even though such amalgamation/demerger was effected on or after 01.04.2007. Incorrect allowance of deduction resulted in underassessment of income involving tax effect of ₹ 376.10 crore.

[Para 3.5]

The ITD irregularly allowed deduction to assessees in 43 cases in 10 states due to mistake in calculation of income/tax, depreciation, double deduction allowed, deduction allowed on other head of income etc. Omission to disallow the deduction on these cases resulted in under assessment of income involving tax effect of ₹ 143.65 crore.

[Para 3.6]

The ITD irregularly allowed deduction to assessees in six cases in four states in the case of captive consumption of electricity where the assessees claimed excess deduction by adopting a rate higher than the market rate. The Assessing Officers (AOs) did not invoke the provisions of section 80 IA(8) to arrive at the correct amounts of eligible deduction in these cases which resulted in excess allowance of deduction involving tax effect of ₹ 15.10 crore.

[Para 3.7]

The ITD irregularly allowed deduction to assessees in 11 cases in six states though the plant and machinery being used were old or a pre-existing infrastructure facility or

undertakings being formed by splitting up of business already in existence. Irregular allowance of deduction involved tax effect of ₹ 40.51 crore.

[Para 3.8]

The ITD irregularly allowed deduction to assesseees in 27 cases in 12 states on interest receipts, sale of import license, insurance claim etc. that, inter alia, included the profit of the eligible business. Excess allowance of deduction attracted tax effect of ₹ 227.87 crore.

[Para 3.10]

Internal control issues

C & AG also highlighted the control issues of the ITD relating to allowance of deduction to the assesseees engaged in infrastructure development (*paragraphs 4.2 to 4.9*).

C & AG noticed that the CBDT did not have any established mechanism to assess the impact of revenue foregone on account of deduction under section 80 IA on the economic and industrial growth of the country. There is no existing system to ascertain from the sponsoring ministries as to whether the tax holidays have had the desired impact on the growth of the economy. Therefore, the audit is unable to ascertain whether the very purpose of introducing the deductions in the Act has been achieved. The CBDT has also failed to produce any records to give an assurance that Government has put in any system to do the cost-benefit analysis of the scheme so as to assess the benefits to the society derived out of the concessions/disallowances given to the assessee companies.

[Para4.2]

Besides, following major irregularity were also noticed relating to control mechanism:

The ITD irregularly allowed deduction to assesseees in 65 cases in 11 states without verifying the information contained in the requisite audit report/certificate in Form 10CCB along with the profit and loss account and the balance sheet.

[Para4.4]

Belated/non e-filing of Form 10CCB in 37 cases involved tax effect of ₹ 259.09 crore

[Para4.5]

Recommendations by C & AG

With reference to systemic issues

- **The CBDT may evolve a suitable mechanism to determine the value of transient products during currency of business where the market price of such products is indeterminable.**

The CBDT agreed (June 2016) to re-examine the issue relating to the due diligence required for determination of the value of the transient products.

- **Taking into account the nature of business in various sectors like power generation through windmill, power generation by cogeneration plants, the CBDT may consider defining the term undertaking appropriately within the section.**

The CBDT stated (June 2016) that the observations of CAG in para 2.6 actually pertain to wrong allowance of deduction u/s 80IA in some stand alone cases. It does not seem necessary to define the term “undertaking” with a view to avoid such kind of instances.

Audit is of the view that with a view to avoiding unintended benefit of exemption and possible misuse of the Act, necessary clarification may be issued by the CBDT.

- **The CBDT may modify the provisions of section 80IA(5) so that a uniform stand is taken by all AOs on the treatment of setting off brought forward loss (es) pertaining to the period prior to initial assessment year.**

The CBDT stated (June 2016) that the feasibility of issue of a clarification under the existing law will be examined.

- **The CBDT may consider taxing the income from the sale proceeds of carbon credit as income from other sources.**

The CBDT stated (June 2016) that the issue whether any legislative amendment is required to consider sale proceeds of carbon credit as income from other sources under the Act will be examined during the course of upcoming budget exercise 2017.

- **CBDT may consider incorporating provisions similar to first proviso to section 92C(4) stipulating that no deduction under section 10A, 10AA, 10B or under chapter VI-A to be allowed in respect of amount of income enhanced on the additions made by the AO during assessments.**

The CBDT stated (June 2016) that the issue whether any legislative amendment is required under the Act will be examined during the course of upcoming budget exercise 2017.

Issues relating to mistake in assessments

- The CBDT may ensure that mistakes in assessments pointed out by Audit have been duly taken care of with a view to avoiding the loss of revenue.

Issues relating to control mechanism

- **The CBDT may evolve a mechanism for proper linkage between tax benefit allowed by the ITD with the actual investment made by the assessee as per records of the Department of Economic Affairs thereagainst to assess the impact of tax holiday.**

The CBDT stated (June 2016) that the study can be undertaken by expert bodies like NIPFP etc.

Audit is of the view that the Government should evolve a mechanism for proper linkage between tax benefit allowed by the ITD under 80IA and the intended benefit to the economy. It may require compiling data from various Ministries which would help in impact analysis to facilitate better Governance.

- **The CBDT may design and generate MIS reports containing following information:**

Nature of business like development of infrastructure roads, ports, generation of power etc., year of commencement of the eligible business together with the Initial assessment year from which deduction was claimed by the assessee

and loss suffered by the assessee in the eligible business in relevant PYs in which such deduction was claimed.

The CBDT stated (June 2016) that the changes in ITR form suggested by audit will be considered for incorporation.

- **Deduction allowed or if deduction disallowed in original assessment whether the same was allowed by CIT(Appeal), ITAT, High Courts & Supreme Court;**

The CBDT stated (June 2016) that the AO will capture the reasons in ITBA while giving effect to CIT(A), ITAT, High Court orders.

- **The CBDT may consider revision of Form 10CCB to include columns for allowable depreciation and brought forward losses/unabsorbed depreciation of the eligible unit showing yearwise breakup.**

The CBDT stated (June 2016) that revision of audit form 10CCB would be examined.

- **The CBDT may consider certification of the infrastructure activity for each sector separately, by a technically competent authority viz sector regulator.**

The CBDT stated (June 2016) that the issue will be examined during the budget exercise for the year 2017.

BSC/SJ/RSJ