

## **CHAPTER 2**

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## CHAPTER 2

### Oversight and linkages

Advertising sector registered a growth of 16.5 *per cent* during the last five years 2005-2009. No tax is deducted or collected at source on sale of time slots or telecast fees though nearly 40 *per cent* of the total revenue of the advertising sector is associated with the TV industry. Production of feature films by and large is in the hands of private sector. NFDC and Film Development Corporations/companies promoted by State Governments provide financial assistance and other support to the film producers. The Department has no mechanism to obtain information on subsidy/grants etc. granted by these development corporations to the film producers. The Department has no coordination with other Government Departments or the States' Revenue Department to identify the probable assesseees with a view to widen the tax base.

### Role of the Ministry of Information and Broadcasting

**2.1** The Ministry of Information and Broadcasting is the apex body for formulation and administration of the rules and regulations and guidelines relating to films, uplinking and downlinking of TV channels, quality of contents of TV programmes and advertisement.

**2.2** Production of feature films in the country is by and large in the hands of the private sector. The title of the films is required to be registered with film associations before start of the production of films, however, there is no mechanism to ascertain as to how many films have been completed and how many films are incomplete or have been abandoned mid way.

**2.3** The PAC in para 1.8 of its 175<sup>th</sup> Report of 8<sup>th</sup> Lok Sabha (1989-90) desired that the Department of Revenue should pursue vigorously with the Ministry of Information and Broadcasting to devise a foolproof system of maintaining records as regards the incomplete/abandoned films. We did not find any system in the Department to maintain records of incomplete/abandoned films.

**2.4** The Government exercised its control on uplinking and downlinking of TV channels through "Uplinking and Downlinking Guidelines"<sup>17</sup>. For regulating cable operators and DTH operators, etc. necessary legislations<sup>18</sup> have been enacted.

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<sup>17</sup> Guidelines for uplinking from India dated 2<sup>nd</sup> December 2005 and policy guidelines for downlinking of television channels dated 11<sup>th</sup> November 2005

<sup>18</sup> The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 & The Cable Television Networks (Regulation) Act 1995

## The Central Board of Film Certification

2.5 The Central Board of Film Certification (CBFC), popularly known as the Censor Board set up under the Cinematograph Act, 1952, is mainly responsible for certification of feature films for release and also the contents of television shows, television advertisement and promotional material meant for public exhibition through its nine regional offices<sup>19</sup> having its Headquarters at Mumbai. During the period January to December, 2009 the Board had issued total 13,488 certificates (3,521 for celluloid<sup>20</sup> films and 9,967 for video films).

## Film Development Boards/Corporations

2.6 With a view to promote and organize an integrated development of the Indian Film Industry and to foster excellence in cinema, National Film Development Corporation Ltd. (NFDC) was established in 1975. NFDC in addition to producing feature films provides film finance and essential pre-production, production and post production technical infrastructure support to the film industry. It provides a ready-made platform to producers of Indian films to promote their films globally. The NFDC (and its predecessor the Film Finance Corporation) has so far funded/produced over 300 films.

2.7 States<sup>21</sup> have also formed film development corporations/companies for promoting, providing technical and infrastructure support and finance to the regional cinema.

2.8 The Department has no mechanism to obtain information to ensure that all such persons who got money from the Government/corporations by way of subsidy, contribution or loan, file their returns.

Orissa Film Development Corporation, Cuttack released subsidy of ₹ 67.49 lakh to 25 film producers during the financial year 2008-09. We found that none of the producers to whom subsidy was released, filed their returns with the concerned jurisdictional assessing officer. As a result, subsidy amount and income from the film to which subsidy was released escaped assessment.

## Linkages with advertising sector

2.9 Advertising refers to any sponsored offering of goods, services or ideas through any medium of public communication. This sector has seen a growth of 16.5 per cent during the period 2005-2009 with increase in revenue from ₹ 13,040 crore to ₹ 21,650<sup>23</sup> crore during the same period. Advertising

<sup>19</sup> Bengaluru, Chennai, Cuttack, Hyderabad, Delhi, Guwahati, Kolkata, Mumbai and Thiruvananthapuram

<sup>20</sup> Celluloid films are produced on negative films and are shown in theatres with projectors whereas video films are produced on video tapes/video CDs, to be displayed through video players.

<sup>21</sup> Except Delhi all the states selected for review have promoted companies/corporations for development of regional cinema.

<sup>22</sup> ₹13.46 lakh to 8 producers under CIT, Bhubaneswar charge and ₹54.03 lakh to 17 producers under CIT, Cuttack charge

<sup>23</sup> Source: 'Indian Entertainment and Media Outlook 2010' by Price Waterhouse Coopers

provides revenue for the growth of satellite TV channels as nearly 40 per cent of the total revenue of the advertising sector is associated with the TV industry.

**2.10** TV Channels sell time slots or receive telecast fees for telecasting serials/sponsored programmes. The purchasers of the time slots air their programmes along with advertisement during the purchased time slot and receive income from advertisement charges.

**2.11** At present no tax is deducted or collected at source on the payment involved for sale of time slots or telecast fees.

**2.12** Besides the traditional advertisements displayed in TV channels, the in-film placements of brand advertising and co-promotion has gained momentum as a marketing strategy in recent times.

### **Linkage with intellectual property and royalty payments**

**2.13** Royalty is the consideration (including any lump sum consideration) received for transfer of all or any rights in respect of any copyright, films or video tapes for use in connection with television or tapes for radio broadcasting, but does not include consideration for sale, distribution or exhibition of cinematographic films. The production houses, being the owners of films, hold several rights in the form of music rights, distribution rights, overseas rights, satellite rights, video rights, etc. They receive royalty for such rights.

**2.14** Royalty payment is subject to tax deduction at source under the provisions of the Act.

As per section 40(a)(ia) of the Act, if any amount on which tax is deductible at source under chapter XVII-B, is paid without deducting tax or after deduction, tax has not been deposited during the previous year, then deduction of such amount is not allowable to the payer. We observed that the Department allowed royalty payment in three cases wherein TDS was not deducted, which have a tax effect of ₹ 4.21 crore. One case is illustrated below:

M/s Zee Entertainment Enterprises Ltd.<sup>24</sup> paid ₹ 2.73 crore to M/s B R Films for purchase of satellite rights of films without deduction of TDS. However, this amount had been allowed. This has resulted in underassessment of income having a tax effect of ₹ 1.45 crore.

Doordarshan Kendra, Bhubaneswar paid royalty of ₹ 57.17 lakh to two assesseees<sup>25</sup> during 2005-06 to 2008-09 but realization of tax on this amount could not be confirmed as both the assesseees had not filed their returns.

<sup>24</sup> Charge: CIT 11, Mumbai, AY 2005-06

<sup>25</sup> M/s HAS communications, Bhubaneswar-₹ 56.85 lakh, Mihir Kant Tripathy, Berhampur ₹ 32000

## Coordination between Income Tax Department and State Revenue Departments

**2.15** The Commercial Taxes Department of the State Governments regulate fixation and collection of Entertainment Tax from cinema halls and cable operators. The CBDT has issued instructions<sup>26</sup> from time to time for proper coordination of information from assessment proceedings of commercial taxes, which has bearing on Income Tax assessments in order to improve the quality of assessment and examine evasion of tax, if any. We found that there was no coordination between the Income Tax Department and Revenue Departments of the states.

In CIT, Cuttack we observed that the assessing officer considered total receipt from sale of tickets as ₹ 8.04 lakh, as declared by the assessee M/s. Mahendra Pradhan Movies (P) Ltd., Cuttack<sup>27</sup>. On correlating the Entertainment Tax assessment order<sup>28</sup> of the assessee, we found that receipt from sale of tickets was assessed at ₹ 19.70 lakh<sup>29</sup>. This resulted in underassessment of income by ₹ 11.66 lakh involving tax effect of ₹ 5.16 lakh (positive tax ₹ 4.98 lakh + potential tax ₹ 0.18 lakh) (including interest).

We noticed that after a survey in Mumbai City, Mumbai Suburban and Thane districts between May and December 2006, Maharashtra State Revenue Department found non/under reporting of 10.24 lakh cable connections by 3,804 cable operators and 889 unregistered cable operators. This practice of under reporting was prevailing since 2001. The Department adjudicated 2,115 cases upto December 2009 and levied entertainment duty of ₹ 21.15 crore and penalty of ₹ 34.51 crore. We observed that in absence of any established system, such vital information was not known to the Income Tax Department even though it had a bearing on the determination of taxable income of relevant financial year of the concerned assessee.

Considering that under reporting continued between April 2004 to March 2008, the actual revenue loss would be substantial. The same could not be ascertained.

## Correlation of assessee's returns with information available from other sources

**2.16** We noticed that the information available with industry sources was rarely used by the assessing officers during scrutiny assessment.

**2.17** We could not identify the assessments of 314 producers who produced feature films during 2005-06 to 2007-08 after linking the information collected from Central Board of Film Certification (CBFC), Chennai relating to

<sup>26</sup> Instructions issued in November 1974 and on 11 April 1979

<sup>27</sup> Charge: ACIT, Circle-2(2), Cuttack AY- 2006-07

<sup>28</sup> Additional Commissioner of Sales Tax, Central Circle, Cuttack

<sup>29</sup> Computed by compounding Entertainment Tax at 20 per cent of sales value of tickets - ₹ 393960 X (100/20)

films certified and producers thereof with the Blue Book<sup>30</sup> maintained in Media Range, Chennai.

**2.18** In six cases we observed that the persons earned income from films but did not declare this income. One such case is illustrated below:

Sri Shivaji Raju<sup>31</sup> acted in eight films during financial year 2004-05 and 2005-06 but did not disclose income in respect of five films.

### The International interface

**2.19** Bollywood films as also regional language films are highly acclaimed and immensely popular world wide largely on account of growing migration and settlement of Indians abroad. Income from screening Indian films abroad has increased steadily from ₹ 5.3 billion in 2005 to ₹ 9.77 billion<sup>32</sup> in 2008. The Indian films shot in foreign locations have also promoted tourism in those countries. Some foreign governments have extended incentives to the Indian film producers to encourage tourism.

### Recommendations

**2.20** *We recommend that*

- *the Department maintain coordination with other Central Government Departments and States' Revenue Departments to identify the probable assesseees with a view to widen the tax base and prevent tax evasion.*

While noting the recommendation, the CBDT stated (February 2011) that the Regional Economic Intelligence Committees under the respective DG'sIT/CC'sIT already exist to facilitate better coordination and flow of information/ intelligence between the various revenue departments of Central and State Governments. The CBDT further stated that amount of information is received electronically through Annual Information Return, TDS returns & FIU. The capacity of information gathering is also impacted by the capability of outside organizations such as State Governments to share the relevant information electronically and on a regular basis.

We are of the opinion that the CBDT should strengthen the mechanism of Regional Economic Intelligence Committees for collecting the information from various sources.

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<sup>30</sup> Maintained by the assessing officer, which contained names of assesseees along with PANs, details of pending assessments and penalty proceedings, etc.

<sup>31</sup> Chart: CIT I, Hyderabad, AY : 2005-06 and 2006-07

<sup>32</sup> Source: Study on Indian E&M Industry, 2009 by FICCI and KMPG

- *provisions for TDS on sale of time slots and on telecast fees should be incorporated in the Act;*

The CBDT noted (February 2011) the recommendation for consideration.

- *a mechanism may be developed to obtain information of such persons who got assistance from the Government/Government corporations by way of subsidy and grant, etc. on a regular prescribed interval.*

The CBDT stated (February 2011) that subsidy/government assistance is given to various categories of persons/entities and is not limited to film & television industry. Further, the subsidy given to the film sector is very small. However, feasibility for tracking the same would be analysed.