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CHAPTER 3

System Issues

Controls on assessments

Despite special Film Circles being created in four cities with a view to assess all the assessees involved in film and TV related activities at one unit, cases were being assessed in other units also. Form 52A is deficient to the extent that it does not require the PAN of the person to whom payment has been made. There was no system in the Department to monitor the receipt of mandatory information in Form 52A for monitoring the expenditure on films. No penal action was taken in most of the cases for non/late filing of Form 52A. Information furnished in Form 52A was rarely verified or used. Expenditure on the films was allowed without receipt of Form 52A. Provisions of section of 285B regarding filing of Form 52A were not made applicable to the producers of TV serials. There is no provision in the Act for deducting TDS on revenue from sale of distribution rights of the films. In absence of clear provisions and instructions for assessment of income of foreign telecast companies huge sums had been blocked in litigation. Huge demands were outstanding at the end of 31 March 2010.

Failure of the concept of Film Circle

3.1 With a view to having an overall control on the assessments and to achieve greater co-ordination and effective handling of the assessments of assessees related to the Film industry, special Film Circles have been created in Mumbai³³, Chennai³⁴, Hyderabad³⁵ and Bengaluru³⁶, where maximum number of films are produced.

3.2 As a natural corollary to this, the Department should have ensured that all film and television related assessees are assessed in the Film Circles. We, however, noticed that 465 assessees³⁷ related to film and television industry were being assessed outside Film Circles. Thus, the purpose of creation of Film Circles to assess all film related assessees at one place is not fully served.

3.3 On this being pointed out by us, CCIT-I, Mumbai issued instructions (April 2010) to all CCsIT in Mumbai to transfer all cases relating to Film and TV industry to Film Circle.

3.4 We also found that assessment jurisdiction of persons associated with television and audio/video production activities had been excluded from the purview of Hyderabad Film Circle. Thus, the very purpose of creating a film

³³ Range 11(1) of CIT, 11

³⁴ CIT IV, Media range

³⁵ Range 13 (1) of CIT Hyderabad-I

³⁶ DCIT 7(2), Bengaluru

³⁷ 140 assessees in Mumbai, 23 assessees in Chennai and 302 assessees in Hyderabad

circle is defeated as the persons who are holding audio and video rights, satellite rights of films would be assessed outside the Film Circle, thereby negating the possibility of their income tax returns being correlated with others.

Difference between number of film personalities and those actually assessed

3.5 The Department is not maintaining any database of film and TV related personalities. Even though the AST³⁸ provides for codes for business and profession, the Department did not have a category-wise data base as the filling up of the business/profession code column in the income tax returns is never insisted upon. As a result there was no mechanism available with the Department to ensure that all film and TV related personalities have been filing their returns regularly. The Department has made no efforts to reconcile the figures of film personalities available with other organisations, cultural directories etc. and to ensure that all the film related assessee file their return of income (ROI) to broaden the tax base.

3.6 As per the information collected from producers/artists council, Andhra Pradesh Film Chamber of Commerce and other agencies, there were 2,463 film related personalities in Hyderabad. Of which only 881 persons filed their returns in Film Circle, Hyderabad whereas 364 assessee³⁹ filed their returns either in other than Film Circle or out of Andhra Pradesh.

3.7 We observed that of the 5,364 assessee registered with the Media Range, Chennai, 3,770 assessee (70 per cent) did not file their returns in 2009-10 where as it was 56 per cent in 2006-07.

Lack of coordination within the Department

3.8 The provisions of TDS under chapter XVII-B of the Act specifies that tax is required to be deducted at source by the payer on specified sums. The tax is to be deducted either at the time of actual payment or giving credit to the payee in the books, which ever is earlier.

3.9 Under the provisions of section 40(a)(i) of the Act, any assessee paying specified sums which are chargeable under the Act and payable outside India or in India to non-resident or foreign company shall not be allowed as deduction unless tax is deducted at source under chapter XVII-B or after deduction has been paid to the Government account within the time prescribed under section 200(1).

3.10 These provisions further enable the Department to get automatic compliance with TDS provisions and disclosure of income by the payees on

³⁸ One of the module of ITD applications software used for assessment of income tax returns of assessee. The process starts with entering the returns received from assessee into the system.

³⁹ Of the 35 ranges specifically addressed to furnish the information regarding the number of assessee related to film and television activities assessed under their respective jurisdiction we have received information only from 19 Ranges.

behalf of whom tax is deducted. To ensure the compliance of these provisions, coordination among the assessing officers within the Department is required. We observed 13 cases involving tax effect of ₹ 81.56 crore in which non compliance of TDS provisions was not communicated to the concerned jurisdictional officer by the other assessing officer. One case is illustrated below:

The Department charged distribution revenue⁴⁰ of ₹ 8.05 crore received by M/s. MTV Asia LDC (a non-resident) from the assessee - M/s. Viacom 18 Media Pvt. Ltd.⁴¹ (formerly known as M/s. MTV India Pvt. Ltd.), its Indian agent, as royalty. The assessing officer of M/s. MTV Asia LDC did not communicate the fact that the Indian agent (the assessee) had not deducted TDS on royalty to the concerned jurisdictional officer of the Indian agent (the assessee). Due to this, royalty payment by the assessee was incorrectly allowed, resulting in under assessment of income having a tax effect of ₹ 4.66 crore (including interest)

Mandatory information - Form 52A

3.11 Section 285B was introduced in 1976 with an object, as clarified by CBDT vide circular No. 204 issued in July 1976, to check inflation of expenditure by the film producers and enable the Department to get information about the recipients of payment for necessary action. Under this section, every person carrying on production of cinematograph film is required to furnish a Statement in Form 52A providing particulars of all payments of over ₹ 50,000 in aggregate, made by him or due from him to the persons engaged by him in the production, for each financial year or part of it, till completion of production, within 30 days from the date of completion of production or within 30 days from the end of the financial year, whichever is earlier. In case of default, penalty u/s 272A(2)(c) is leviable which is ₹ 100 for every day during which the failure continued.

Deficiency in Form 52A

3.12 A review of Form 52A revealed that Form 52A does not require the PAN of the person to whom payment has been made. In absence of this it would be difficult to trace the person to whom payment has been made. The very purpose of Form 52A towards getting information about the recipient is defeated.

Furnishing of information in Form 52A by TV serial producers

3.13 Provisions of section 285B were not made applicable to the TV serial producer since the Department interpreted 'cinematograph film' as a feature film.

⁴⁰ Revenue collected from distributors of satellite signals

⁴¹ Charge: CIT11, Mumbai; AYS-2005-06 & 2006-07

3.14 The term 'cinematograph' as per Cinematograph Act, 1952 includes any apparatus for representation of moving pictures or series of pictures and the term 'film' means a cinematograph film. Thus as per the definitions, TV serial would also fall within the purview of cinematograph film and therefore, the provisions of section 285B of the Act would be applicable to the producers of TV serials and may be required to file the required information in Form 52A.

No system to monitor filing of Form 52A

3.15 For compliance to the provisions of the Act, it is necessary that the Department should have information about the films under production. In absence of information on number of films under production during the year, the Department may not be in a position to ascertain how many Forms 52A were required to be filed and how many had not been filed. The Department had not devised any system to monitor filing of Form 52A by the producers as neither record regarding receipt of Form 52A was being maintained nor the information regarding films under production was available with the Department.

3.16 The PAC in their recommendation in Para No.103 of 71st Report (8th Lok Sabha)-1986-87 has observed that the CIT, Madras had admitted that in the absence of source register, the correct number of statements actually received could not be given and that the suitable instructions had been issued to the concerned Inspecting Assistant Commissioners to maintain a register and record of cases of producers. We observed that despite assurance given to the PAC, the Department has not been able to maintain necessary register/records for monitoring Form 52A even after lapse of more than two decades.

Non filing/late filing of Form 52A

3.17 By comparing the number of films certified by the Censor Board with the number of Forms 52A received by the Department, we observed that during the period 2006-07 to 2009-10, Form 52A was not filed by the producers in 1,770 cases (detailed in Table 1). Particularly in Orissa, Form 52A was not filed even in a single case, whereas in Kerala Form 52A was filed only in 3 cases.

Table 1 : Cases where Form 52A were not filed

State	No. of cases
Andhra Pradesh	514
Kerala	191
Karnataka	500
Tamil Nadu	440
Delhi	36
Orissa	86
West Bengal	2
Uttar Pradesh	1

3.18 We observed that Form 52A was filed late in 302 cases⁴² and this delay ranged from 3 days to 4 years.

Non levy of penalty

3.19 The Department had not taken any action in most of the cases under section 272A(2)(c) to levy penalty for non-filing and late filing of Form 52A. The penalty for non-filing and late filing of Form 52A comes to ₹ 18 crore in respect of 2,072 films⁴³.

3.20 We also observed in one case⁴⁴ that the assessing officers completed assessment after scrutiny in 2009-10 but no penalty proceedings were carried out against him for non compliance of provision of section 285B.

3.21 In one case the director of the assessee company⁴⁵ admitted in a statement recorded under section 131, that they had not filed Form 52A in respect of ongoing films namely FAREBI, NAHLE PE DEHLA, BACHELOR and one untitled production. However, no penalty proceedings were initiated for non filing of Form 52A. This omission resulted in non-levy of penalty aggregating to ₹ 12.43 lakh.

Allowance of expenditure without receipt of Form 52A

3.22 Section 285B requires that Form 52A should be filed within 30 days from the date of completion of the feature film or end of the relevant financial year, whichever is earlier. It means that Form 52A should be received in the Department before completion of the relevant assessment. However, there is no enabling provision in the Act which disallows the expenditure on the film if required Form 52A is not filed within time.

3.23 We observed that in absence of such enabling provision, expenditure of ₹ 145.36 crore on 23 films was allowed in Andhra Pradesh without receipt of Form 52A.

3.24 We also observed in four cases⁴⁶ that the assessing officers finalized the assessment after scrutiny without ascertaining the reasons for huge differences between the expenses declared in Form 52A and the cost of production as per their Profit and Loss account.

⁴² Karnataka-128 cases, Tamil Nadu-171 cases, Kerala-3 cases

⁴³ AP-514, Kerala-194, Karnataka-628, Orissa-86, TN-611, Delhi-36, UP-1, West Bengal-2

⁴⁴ Sri Niranjan Rana - assessment years 2004-05 to 2009-10-assessed by ACIT, Circle -1(2), Bhubaneswar

⁴⁵ Charge: CIT-11, Mumbai, Assessee- M/s Dhariwal Films Pvt Ltd., AY 2003-04 to 2005-06

⁴⁶ M/s Madras Talkies, CIT IV, Chennai, AY 2007-08; M J Antony, CIT IV, Chennai, AY 2006-07; S.P. Bala Subramanian, CIT IV, Chennai, AY 2006-07; Sri N. Srinivasa Reddy, Hyderabad

Non correlation of information in Form No. 52A with the assessment records of concerned assesseees

3.25 Form 52A is one of the important tools available with the assessing officers to ensure that all film related personalities engaged in the production of a film disclose correct particulars of income.

3.26 We observed that producers of films have filed Form 52A in the office of the Additional Commissioner of Income Tax Range 11(1), Mumbai. However, there was no system to forward Form 52A by Additional Commissioner of Income Tax Range 11(1), Mumbai to the Assessing officers concerned for correlation. The same were more or less used for levy of penalty under section 272A(2)(c) in case of late filing rather than its actual purpose of correlation during scrutiny assessment. Out of 110 cases of film producers made available, our efforts to correlate expenditure aggregating to ₹ 214.75 crore allowed to 20 film producers did not yield result due to non production of Form 52A. Thus, due to non availability of a system for passing Form 52A to the concerned assessing officer, Department had failed to utilize the information made available by film producers for detection of non-disclosure or incorrect disclosure of income during scrutiny assessment.

Absence of TDS provisions for film distribution rights

3.27 Income derived from sale of satellite rights and music rights for further use in telecast for televisions and radio broadcast is subject to TDS provisions. However, the income derived by producers/distributors from sale/lease of distribution rights of a film is not liable to TDS. Similarly, TDS provisions are not applicable⁴⁷ on sharing of proceeds from film exhibition between film producers/distributors and a film exhibitor owning cinema theatre/multiplexes. TDS provisions need to be broadened to cover activities like distribution of rights of films and sharing of proceeds from film exhibition to avoid tax evasion and broaden the tax base.

Demand, collection and arrears of tax

3.28 Our study revealed that outstanding demand in respect of Mumbai film Circle has increased by 60 *per cent* during the period from 2006-07 to 2009-10 whereas in Chennai Film circle it increased by 161 *per cent* during 2007-08 to 2009-10. Details are given in Table 2 below. The Department should consider appropriate action to reduce the outstanding demands.

⁴⁷ CBDT's clarification vide circular No. 736 dated 13.02.1996

(₹ in crore)

Film Circles	Financial Year	Demand outstanding as on 1st April	Addition due to transfer in from other Circles, wards	Demand made during the year	Total demand due	Amount realized during the year	Demand outstanding as on 31st March
1	2	3	4	5	6	7	8
Mumbai	2006-07	362.03	0	440.67	802.70	411.83	390.87
	2007-08	390.88	0.01	94.25	485.14	178.43	306.71
	2008-09	306.71	1.31	370.71	678.73	257.09	421.64
	2009-10	421.64	0	439.98	861.62	234.84	626.78
Hyderabad	2006-07	NA	NA	NA	NA	NA	NA
	2007-08	12.88	0	6.40	19.28	6.49	12.79
	2008-09	12.79	0	4.62	17.41	5.57	11.84
	2009-10	11.84	0.26	2.07	14.17	8.03	6.14
Chennai	2006-07	NA	NA	NA	NA	NA	NA
	2007-08	63.18	3.60	33.98	100.76	25.67	75.09
	2008-09	75.09	2.62	40.98	118.69	40.10	78.59
	2009-10 (upto 12/2010)	78.59	10.83	167.41	256.83	60.64	196.19

Search & seizure

3.29 Section 132 of the Act provides for unearthing undisclosed income and detects evasion of tax. Section 132 empowers the Department to conduct search for unproduced books of accounts/documents or undisclosed income and seize the same. This is significant considering the media reports on investment of money in films from the underworld. We observed that during the period under review, 19 searches⁴⁸ were conducted on films related assesses in which additions to income of ₹ 72.54 crore⁴⁹ were made.

Surveys

3.30 Sections 133A and 133B empower the Income Tax authorities to conduct surveys. Surveys enable the Department not only to gather information relating to financial transactions of the existing assesseees, but also to identify new assesseees. Surveys also help in checking the veracity of the statements filed by the assesseees and detecting tax evasion. We found that though a separate Range was created exclusively for Media industry in Tamil Nadu as the industry requires close monitoring and correlation of information, surveys were not given the importance they deserve. Five surveys were conducted in the Media Range, Chennai during the period from 2006-07 to 2009-10.

⁴⁸ Tamil Nadu-5, Andhra Pradesh-6, Karnataka-3, Maharashtra-5

⁴⁹ Tamil Nadu-NIL, Andhra Pradesh-₹ 13.79 crore, Karnataka-NIL, Maharashtra-₹ 58.75 crore

Assessment of foreign telecast companies

3.31 Under the provisions of the Act, payment for uplinking and use of transponders and satellite charges to foreign satellite companies are subject to withholding tax⁵⁰. Similarly, the income received by the foreign satellite companies is taxable in India subject to issues relating to permanent establishment and provisions of Double Taxation Avoidance Agreement (DTAA).

3.32 Foreign Telecast Companies (FTCs) started their operations around 1992 in Indian sub-continent by uplinking signals from abroad. Their main source of income was advertisement revenue from sale of air time and subscription revenue for their pay channels. Their activity is continuously carried out in India with the help of an Indian agent who canvasses for space selling for advertisements, establishing the distribution network and delivering the programmes to Indian viewers.

3.33 In absence of specific provisions in the Act with regard to taxation of FTCs, the taxation of FTCs has been a vexatious issue as no uniform basis had been adopted by the assessing officers for taxation of income of FTCs from their operations in India. Keeping this in view, the CBDT through circular No. 742 of May 1996 clarified that profits of FTCs not having any branch office or permanent establishment in India or those not maintaining country-wise accounts, shall be determined by adopting a presumptive profit rate of 10 *per cent* of the gross receipts meant for remittance abroad or the income returned by such companies, whichever is higher. This circular was in respect of advertisement revenue. However, the issue of taxation of subscription revenue was not dealt with and no clarification in this regard was issued.

3.34 The aforesaid circular was subsequently withdrawn and revised instructions were issued (circular No. 6 of March 2001) providing for determination of taxable profits in accordance with the provisions of the Act. It was further clarified that where accounts for Indian operations are not available, the provisions of Rule 10 of the Income-Tax Rules, 1962 shall be invoked and in case the FTC is a resident of a country with whom India has the Double Taxation Avoidance Agreement, its business income (including receipts from advertisement) can be taxed only if it has a permanent establishment in India. As regards taxation of FTCs who are residents of countries with whom India does not have a Double Taxation Avoidance Agreement, the same was to be dealt with as per the provisions of section 5 read with section 9 of the Act.

3.35 The revised instructions restored the pre May 1996 status. In cases where there was absence of country wise accounts⁵¹, the assessing officers estimated the profits at rates varying from 10 *per cent* to 30 *per cent*.

⁵⁰ Withholding tax refers to deduction of tax at source (TDS) by the payers from the payment made to the recipient.

⁵¹ Multinational companies are supposed to prepare their accounts showing country wise transactions.

Similarly, in some cases the subscription revenue was considered as royalty. This led to protracted litigations pending with various judicial fora. The controversy still persists despite the FTCs continuing their operations over two decades and huge revenues being remitted abroad. As a result, revenue of ₹ 972.98 crore has been locked up in litigation from four to ten years. Cases of two assesseees are illustrated below:

In the case of Star Group including channel companies like i) M/s. Star TV Entertainment Ltd (broadcasting channels Star Plus, Star World), ii) M/s. Star Asian Movies Ltd (broadcasting Star Gold), iii) M/s. Star International Movies Ltd (broadcasting Star Movies), iv) M/s. Channel V Music Networks Ltd, (broadcasting Channel V music), and conduit companies like Star Ltd and Asian Broadcasting FZ LLC⁵², income was assessed in the hands of ultimate beneficiaries i.e. channel companies. Some part of the same income was also assessed in the hands of conduit companies like Star Ltd and Asian Broadcasting FZ LLC. Star group approached Settlement Commission (March 2007) self declaring income of ₹ 1,500 crore for assessment years 2000-01 to 2006-07 and the Commission prima facie accepted the application. However, the Department filed a writ in the Mumbai High Court in December 2007 against the very acceptance by the Commission. As a result amount of ₹ 880.68 crore⁵³ has been locked up in the litigation.

In the case of M/s. MTV Asia LDC, Singapore⁵⁴, (Telecasting MTV channel), the assessing officer had taxed 30 *per cent* of the entire revenue as business income. On the appeal of the assessee, the CIT (A) ordered to assess 10 *per cent* of the income as revenue. Against this the Department has gone into appeal in May 2007 which is pending. As a result amount of ₹ 2.93 crore⁵⁵ has been locked up.

Wealth not assessed due to non-correlation of Income Tax assessment records

3.36 The Board has issued instructions⁵⁶ to the Assessing Officers for ensuring proper co-ordination amongst assessment records pertaining to different direct taxes and for simultaneous disposal of income tax and wealth tax assessment cases so that there is no evasion of tax as also regulate unaccounted wealth. We observed that in 18 cases the assesseees either had not filed their Wealth Tax returns or did not account for their total wealth and the Department failed to initiate assessment proceedings for assessing the wealth on the basis of information available with them. Two cases are illustrated below:

⁵² Assessment years 2000-01 to 2006-07

⁵³ Revenue locked up is gathered from the dossiers

⁵⁴ Assessment year 2004-05

⁵⁵ Tax locked up shown as per the scrutiny report of AO before filing 2nd appeal

⁵⁶ November 1973, April 1979 and September 1984

M/s. Yashraj Films Pvt. Ltd.⁵⁷ had not filed returns of wealth though the assessee had the wealth of ₹ 8.88 crore in the form of bungalow and vehicles. The Department had also not initiated any proceedings for wealth tax on the basis of information available from Income Tax assessment.

An actor⁵⁸ was having a flat and motor cars which were chargeable to wealth tax. However neither did she file her return of net wealth nor did the Department initiate any wealth tax proceedings resulting in escapement of taxable wealth aggregating to ₹ 2.39 crore.

Recommendations

3.37 We recommend that

- *the Department may put a system in place to ensure that all assessees related to the film and television industry are assessed in the specially created Film Circles and that case records of those assessees who file their returns outside Film Circles are migrated to Film Circles;*

While appreciating the issue, the CBDT stated (February 2011) that as computerization and e-filing evolves, focus on professional codes, completeness of returns, etc. can be made.

- *provisions for deduction of TDS on sale of distribution rights and sharing of proceeds from exhibition of films may be introduced;*

The CBDT stated (February 2011) that the issue has been addressed in Direct Tax Code Bill, 2010.

- *a suitable system may be devised to collect the information about the films which are under production;*

The CBDT agreed (February 2011) to look into the suggestion.

- *in respect of Form 52A we recommend that*
 - ◆ *receipt of Form may be suitably monitored;*

The CBDT agreed (February 2011) to look into the suggestion.

- ◆ *suitable provisions be made in the Act to disallow the expenditure on the films if Form is not received before filing of income tax return;*

The CBDT stated (February 2011) that disallowance of expenditure is made only in cases where substantive law expressly provides for a specific mode of payment and is not

⁵⁷ Charge: CIT-11, Mumbai, AYs- 2004-05 to 2007-08

⁵⁸ Charge: CIT-11, Mumbai, AYs-2005-06 to 2007-08

complied with and not for non-submission of information. Hence disallowance of expenditure on non-filing of return would be harsh on the tax payer and therefore, the recommendation may not be practicable. However, the issue of monitoring the submission of forms is being looked into. The CBDT further stated that amount of penalty for late submission of Form 52A may be considered for increase.

- ◆ *Form be amended to include PAN of the person to whom payment is being made;*

The CBDT accepted (February 2011) the recommendation.

- ◆ *submission of Form may be made mandatory to the producers of TV programmes.*

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