

Chapter 4

Control Mechanism

4.1 Introduction

Internal control covers all activities including plans, policies, modus operandi, attitudes and efforts of the employees of an organisation to work in effective manner with a view to achieving its goals and objectives.

4.2 Revenue forgone

CBDT furnished the details of the revenue foregone⁴¹ on account of deduction allowed under section 80 IA during the AYs 2010-11 to 2012-13 as follows:

Table 4.1 : Details of the revenue foregone furnished by CBDT				(₹ in crore)
Assessment Year	2010-11	2011-12	2012-13	Total
Total Revenue foregone	14,227.00	14,012.00	13,136.40	41,375.40

4.2.1 Impact of revenue foregone unascertainable

Audit had sought for details regarding actual investment in infrastructure development directly relatable to the revenue foregone from the CBDT/Department of Revenue (October 2015). The CBDT replied (November 2015) that they maintained details of tax benefits claimed by the tax payer in their return of income. Monitoring of actual investment and positive externalities arising therefrom, primarily related to the Department of Economic affairs. The Department of Economic Affairs maintained that there was no input on the actual benefit realised from the scheme. However, based on feedback from industry associations, the tax incentives in the capital goods and hi-tech sectors have re-invigorated investment.

Further, details of tax benefit claimed by the tax payers in their return of income undergo changes at various levels of assessments/appeals. Hence maintenance of details of tax benefits claimed by the tax payers in their returns of income did not indicate the revenue foregone for the purpose of their impact on the economy of the country.

⁴¹ CBDT letter no F No.240/07/2015-A&PAC-II dated 26 November 2015

Thus, the CBDT did not have any 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. 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 place any system to do the cost-benefit analysis of the scheme so as to assess the benefits to the society out of the concessions/disallowances given to the assessee companies. The CBDT suggested that the study can be undertaken by expert bodies like NIPFP etc.

4.3 Absence of MIS reports relating to assessee companies claiming deduction under section 80IA

4.3.1 MIS Reports at AO/CIT level

Regular management information system (MIS) reports at AO/CIT level in respect of assessee companies claiming deductions under section 80IA may facilitate identification of assessee companies, impact of the deductions claimed and allowed, pendency of assessments, continuity of claim in infrastructure development, pending appeals etc.

- (a) In Kolkata, the ITD system did not provide details regarding claims of deductions under section 80IA of the IT Act. The ITD replied that since returns are submitted online these days, the only alternative to locate the assessees claiming deduction under section 80IA was to go through each of the returns individually or verify the records furnished during scrutiny.
- (b) In Uttar Pradesh, ITD system maintained the data/record related to claims of deductions under section 80IA on the system in '*Business Continuity Plan*'. Audit however found that the '*Business continuity plan*' captured the contents of the returns filed by the assessee companies only but did not have the information regarding actual allowance of deduction, disputed tax demand etc.

4.3.2 Maintenance of database by DGIT (Systems)

The information contained in the database provided by DGIT (Systems) New Delhi did not match with the details available in the actual assessments of the assessee companies. The database did not contain the data of deductions actually allowed during the assessments against the claims made by the

assesseees. The database also did not show deduction allowed in the cases where the assessee was having profit from eligible unit but no deduction was admissible as gross total income was negative. From the examination of the database, we observed that in Gujarat charge, 35 assesseees claiming the deduction of ₹ 302.07 crore under section 80IA, were not included in the data provided by DGIT (Systems) **(Appendix 22)**.

The issue of maintenance of appropriate database and MIS reports at AOs/CIT level and DG(Systems) was discussed in the Exit Conference (June 2016). Additional DG(Systems) wanted to know the exact nature of database which was required to be maintained at AO/CIT level. It was explained that while the data maintained by the DG(Systems) speaks about the deduction claimed by the assessee in the return of income, the claims actually allowed by the AO after scrutiny were not captured but were available in each scrutiny assessment file only. Additional DG(Systems) stated that exemption/allowance were granted under many sections and it was actually not possible to capture all the data. However, he added that the data as required by the audit could be filtered and made available as and when required. Audit held that difference between claim filed by assessee and admitted by AO should be maintained as it was useful data. Additional DG(Systems) agreed to look into this.

4.4 Incomplete report/certificate of the auditor

Deduction under section 80IA for consecutive 10 years out of 15 years from the date of commencement of the operation of the eligible business is subject to production of a proper report in Form 10CCB from an accountant accompanied by profit and loss account and balance sheet of the undertaking or enterprise treating each unit of the undertaking or enterprise as if the undertaking or the enterprise were a distinct entity as prescribed under section 80IA(7) read with Rule 18 BBB of Income Tax Rules, which must be scrupulously watched by the ITD before allowing the deduction.

4.4.1 The ITD allowed deduction involving tax effect of ₹ 121.88 crore under section 80IA in 65 cases in 10 states⁴² 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 **(Appendix 23)**.

⁴² Chhattisgarh(6), Gujarat(3), Jharkhand(1), Karnataka (5), Madhya Pradesh (1), Maharashtra(24), Tamil Nadu(22), Uttarakhand (1), Uttar Pradesh(1) and West Bengal(1)

Box 4.1: Illustrative cases on incomplete report/certificate of the auditor

a. Charge : CIT-1 Raipur
Assessee: M/s. Godawari Power and Ispat Ltd.
Assessment Year: 2010-11 to 2012-13
PAN : AAACI7189K

The assessee company claimed deduction of ₹ 17.20 crore, ₹ 34.44 crore and ₹ 27.43 crore for the three assessments years mentioned above. We observed that the assessee did not maintain and furnish the profit and loss account and balance sheet duly signed by Chartered Accountant treating its each power unit as a distinct unit for claiming the deduction as required by the provision of Rule 18BBB. In the absence of separate report in Form 10CCB etc. the deduction of ₹ 79.07 crore claimed by the assessee should have been disallowed by the ITD. AO's failure to disallow the deduction has resulted in irregular allowance of deduction of ₹ 79.07 crore involving tax effect of ₹ 35.49 crore. The ITD did not accept the audit observation stating that the assessee had dully maintained separate books of account in the Form No. 10CCB, as per Rule 18BBB along with balance sheet, profit and loss account etc. The reply was not tenable as the assessee had maintained only one report in Form 10CCB for all the units which was in violation of Rule 18BBB of Income Tax Rules for claiming deduction under section 80IA.

b. Charge : PCIT-2, Kolkata
Assessee: M/s. Balmer Lawrie & Co. Limited
Assessment Year: 2010-11
PAN : AABCB0984E

The AO allowed deduction of ₹ 17.15 crore under section 80IA from profits derived by the assessee from its 'Container Freight Station (CFS)'. However, the assessee did not submit Form 10CCB, separate accounts and balance sheet of CFS to claim the deduction. AO's omission to disallow the deduction has resulted in under assessment of income to the extent of deduction involving tax effect of ₹ 7.93 crore including interest. Reply from ITD was awaited.

c. Charge : CIT II Madurai
Assessee: M/s. Ramco Industries Ltd.
Assessment Year: 2010-11
PAN: AAACR 5284 J

The AO allowed deduction of ₹ 9.29 crore to the assessee though the assessee did not furnish requisite Form 10CCB, Separate P&L Account, Balance Sheet of the eligible unit. The incorrect allowance of deduction resulted in underassessment to that extent involving tax effect of ₹ 3.16 crore. Reply from ITD was awaited.

d. Charge : PCIT IV, Bengaluru
Assessee: M/s. Mysore mercantile Company Ltd.
Assessment Year: 2011-12 and 2012-13
PAN: AACCM1216H

The AO allowed deduction of ₹ 1.86 crore and ₹ 3.92 crore under section 80 IA for two years respectively. We noticed that the assessee company claimed deduction without furnishing the audit certificate in the prescribed form. AO's failure to disallow the deduction resulted in under assessment of income to that involving tax effect of ₹ 2.43 crore. Reply from ITD was awaited.

e. Charge : PCIT – Jamshedpur
Assessee: M/s. Jamshedpur Utilities and Service Company Ltd. (JUSCO)
Assessment Year: 2010-11
PAN : AABCJ3604P

The AO allowed deduction of ₹ 3.73 crore under section 80-IA, although the assessee did not submit the mandatory certified separate accounts and Form 10CCB as required. Incorrect allowance of deduction involved tax effect of ₹ 1.70 crore. The ITD agreed to examine the audit observation (October 2015).

It was therefore evident from above that the AOs irregularly allowed deduction to the assessees without examining the fact that whether the assessee companies had submitted the mandatory certified separate accounts or Form 10CCB as required. If submitted, whether the assessee had furnished therein all the requisite information viz. commencement of business of the undertaking, initial assessment year from which the assessee was claiming the deduction, the nature of business and the amount of deduction claimed etc. The CBDT agreed (June 2016) to consider incorporation of the changes in the ITR form.

4.5 Belated/non e-filing of Form 10CCB

With effect from AY 2013-14, it has been made mandatory to e-file Form 10CCB⁴³ on or before the due date of filing of return of income u/s 139(1). Prior to AY 2013-14 there was annexure-less e-filing.

We noticed in 37 cases that Form 10CCB were not e-filed in 32 cases whereas in 5 cases Form 10CCB were e-filed after due date of filing of the return. In these cases, the AOs irregularly allowed deduction of ₹ 798.76 crore under section 80IA involving tax effect of ₹ 259.09 crore. The compliance of this mandatory requirement was also not ensured by the system at the time of processing of return under section 143(1) (**Appendix 24**).

ITD accepted the audit observation in three cases. In another three cases, ITD stated that the cases were under scrutiny and would be taken care of. In 10 cases, ITD stated that the matter being system related issue would be referred to DGIT (Systems).

⁴³ Proviso to Rule 12(2) of Income Tax Rules 1962

It was seen from above that despite e-filing of Form 10CCB have been made mandatory with effect from AY 2013-14, the issue of non filing/ belated filing of the same still existed. The CBDT stated (June 2016) that the issue has been taken care in the Finance Act 2016 through amendment of section 143(1) of the IT Act. In accordance with the proviso to the Section, no disallowance could be made straight away as notice has to be given to the tax payer.

4.6 Form 10CCB not revised as per amendment in the Act

(i) While explaining the contents of the Finance Act, 2007, bringing in the sub-section 12A of Section 80IA under the scheme of amalgamation or demerger after 31.3.2007 so as to provide that the provisions of sub-section (12) shall not apply to any undertaking or enterprise which is transferred in a scheme of amalgamation or demerger after 31.3.2007, the CBDT explained that the main intention in providing benefit under section 80-IA had been to provide incentive to those who had taken initial investment and entrepreneur risk. ITD, despite introducing such a provision in the Act, did not introduce any change in the Form 10CCB to watch the implementation of this clause to prevent claim of irregular deduction being allowed based on the information contained in Form 10CCB.

(ii) Additions to fixed assets are required to be verified to ensure compliance with the conditions prescribed under section 80IA (3). Though Form 3CD gives details of depreciation allowable, Form 10CCB does not contain any information regarding depreciation admissible under the Act. Similarly in case of power generation units claiming depreciation as per the rate prescribed in Appendix 1A, no separate format for depreciation schedule has been prescribed in the return of income.

(iii) In our previous performance audit on 'adjustment of losses and depreciation relating to eligible units' which featured in (Para 3.6.3.27) of Chapter III of C&AG's Report No. PA 7 of 2008, it was recommended that the Ministry might consider making it mandatory for the assessee availing of 80IA deduction to furnish details of carry forward of loss/depreciation from the first year of operation in order to compute profits relating to eligible units as a distinct entity. It was also recommended that assessment orders clearly specify the details of losses to be carried forward for set off in future years for eligible and ineligible units separately.

During this performance audit also, it was noticed that the information relating to brought forward losses/unabsorbed depreciation of the eligible unit were not readily available with the AOs. Further, there were no clear speaking orders as to update the status of the brought forward losses/unabsorbed depreciation of the eligible unit. The CBDT agreed (June 2016) to examine the Audit Form 10CCB keeping in view the aforesaid issues.

4.7 Non selection of 80IA cases for scrutiny

4.7.1 CBDT issues instructions every year prescribing the procedure for selection of cases for scrutiny under various categories of assessees. The selection process would normally entail Compulsory Manual Scrutiny, Discretionary Manual Scrutiny and Computer Aided selection for Scrutiny (CASS) to ensure that there is no loss of revenue.

As per instruction No 10/2013 dated 5th August 2013 issued by the board on procedure and criteria for compulsory manual selection of scrutiny cases under during the year 2013- 2014, one of the criteria is “cases involving addition in an earlier assessment year in excess of ₹ 10 lakh on a substantial and recurring question of law or fact which is confirmed in appeal or is pending before an appellate authority.”

We noticed 19 cases⁴⁴ which fulfilled the criteria for being selected for scrutiny assessment but were not selected. In these cases, the assessee were wrongly allowed deduction in summary assessment u/s 143(1) as claimed involving tax effect of ₹ 7.54 crore (**Appendix 25**).

Box 4.2: Illustrative cases on non selection of 80 IA cases for scrutiny

a. Charge : Principal CIT-I Bhopal
Assessee: M/s. Madhya Pradesh Road Development Corporation Ltd.
Assessment Year: 2011-12
PAN : AAGCM5306C

The AO allowed deduction of ₹ 17.45 crore on the return processed in a summary manner. For AYs 2010-11 and 2012-13 the assessments were completed after scrutiny where the AO disallowed the deduction of ₹ 14.23 crore and ₹ 26.21 crore claimed under section 80IA respectively on the ground of ineligible business. This was a fit case for manual selection for scrutiny as per the CBDT's instructions for AY 2011-12 also. Non selection of the case for scrutiny resulted in incorrect allowance of deduction of ₹ 17.45 crore involving tax effect of ₹ 5.80 crore. ITD replied (August 2015) that the matter would be looked into.

⁴⁴ Andhra Pradesh (2), Madhya Pradesh (1), Maharashtra(5) and Tamil Nadu(11)

b. Charge : CIT, Tirupati
Assessee: M/s. Madurai Power Corporation Pvt. Ltd.
Assessment Year: 2011-12
PAN : AACCM7661C

The ITD allowed deduction of ₹ 58.34 crore on the return processed in a summary manner. The case was not selected for scrutiny under CASS. We observed that in AY 2010-11, the return was selected for scrutiny under CASS and an amount of ₹ 78.92 lakh on sale proceeds of sludge and waste oil was disallowed for deduction under section 80-IA by treating it as non-eligible business. Similarly, interest receipt of ₹ 2.26 crore, was added during the assessment. The assessee filed appeal before CIT (A) where appeal was partly allowed. Department further filed appeal before ITAT on a substantial and recurring question of law or fact which is pending finalisation. For AY 2012-13 also, the AO, while finalizing the assessment, disallowed the deduction on the same ground. Thus, return for AY 2011-12 should have been selected for manual scrutiny and the amount of ₹ 38.14 lakh on sale proceeds of sludge and waste oil for deduction should have been disallowed.

4.7.2 Information regarding criteria applied for selection for scrutiny assessment of cases claiming deduction under section 80IA was called for (October 2015) from the Director General of Income Tax (Systems). DIT (Systems) replied (December 2015) that three parameters were applied for scrutiny selection during FY 2014-15 and the criteria applied were confidential. The matter was taken up with the CBDT (February 2016) for providing us the three parameters and the criteria applied by the ITD for selection of scrutiny assessment cases of deduction under section 80IA. Reply from CBDT was still awaited (June 2016).

It was therefore evident from above that allowance of deduction without selecting the cases for compulsory scrutiny led to incorrect allowance of deduction. The CASS was also not aiding in identification of assessee for compulsory scrutiny in respect of deduction under section 80-IA. Cases were not being selected for scrutiny even though they fulfilled the criteria issued by the board. The CBDT agreed (June 2016) to direct the Directorate of Systems to look into the matter.

4.8 No procedure for cross linking sale/purchase claims of assessee

In Andhra Pradesh, CIT-V Hyderabad charge, cross-verification of records of United Port Services Pvt. Ltd., Hyderabad with its related parties (M/s. Kakinada Seaports Ltd., Hyderabad and M/s. Kakinada Marine & Offshore Complex, Hyderabad) revealed that the assessee made Bunker sales which also included sales made to its related parties who in turn had also claimed 80-IA deduction on sale of water and oil. In AY 2012-13, the assessee made water sales of ₹ 6.81 crore out of which sales made to M/s. KSPL was

₹ 1.73 crore. M/s. KSPL claimed deduction under section 80-IA on water sales of ₹ 1.84 crore. Similarly, M/s. KMOC have also claimed the deduction on water sales of ₹ 1.53 crore. As per the master agreement of assessee with M/s. KSPL, the assessee was the sole supplier of water in the entire port and by rerouting water, oil etc among each other is fraught with the risk of double claim of 80-IA deduction by both the assessee as well as its related parties.

Thus, there is a need to evolve a mechanism to cross check the cases of double claim of deduction on the same activities by the related parties during the scrutiny.

4.9 Requirement of Technical Certification

Deduction u/s 80IA is allowed based on the audit report from an accountant in Form 10CCB which contains information regarding date of commencement, quantum of deduction etc. The report of the accountant in Form 10CCB does not take into consideration the technicality involved in the development of infrastructure and assessee's eligibility therefor.

Prior to 1.4.2000, deduction for telecom sector u/s 80IA was allowed only for basic/ cellular/ radio paging and domestic satellite service and network trunking. In the new 80IA provision from 1.4.2000, broadband network or internet service provider were also included for such allowance if these were installed on or after 1 April 1995 but on or before 31 March 2000.

M/s. Aircel Cellular Ltd. incorporated on 20 December 1992 for cellular communication service was issued license in November 1994. The company started their business on 20 October 1995. Audit observed that in the absence of technical certificate, it was not known authoritatively whether the Aircel started internet services/broadband in 1995. If the assessee did not possess internet or broadband services in 1995, the assessee was eligible for deduction under old provisions only.

In the absence of any certificate by a technically competent authority, the nature of development of infrastructure facility cannot be ascertained. The CBDT agreed (June 2016) to examine the proposal during the budget exercise for the year 2017.

Recommendations

(i) 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.

(ii) 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 AYs 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.


(iii) 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.

(iv) 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.

New Delhi
Dated: 01 August 2016


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Dated: 01 August 2016


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