

Chapter VI: Write-off of Arrears of tax demand

6.1 Introduction

In the recent past, the arrears of tax demand have gone up many folds and are piling up year after year, despite several provisions⁵⁷ in the Income Tax Act (Act) and instructions issued by CBDT regarding recovery of tax demand. As on 31 March 2014, the total arrears of tax demand pending was ₹ 5.75 lakh crore which included ₹ 2.21 lakh crore (38 per cent) as certified⁵⁸ demand. The ITD instituted a specialised mechanism as Tax Recovery Officer (TRO) to monitor and recovery of arrears of tax demand by allocating one TRO exclusively for each CIT charge⁵⁹. When tax demand remained irrecoverable inspite of exercise of power of recovery by TRO, writing-off of arrears of tax demand is to be considered. The Rule 13 read with schedule VII of Delegation of Financial Powers, 1978 confers on the Commissioners of Income Tax (CsIT) has powers to write-off irrecoverable tax demands subject to approval of competent authority. Manual of Office Procedure (MOP), Volume-II (Technical) issued by CBDT, contains the provisions of law relating to write-off of arrears of tax demand.

The Public Accounts Committee (PAC) in its 29th Report presented to Lok Sabha on 11 August 2006 and Tax Administration Reform Commission (TARC) in 2014 also raised concern over process of recovery and write-off of arrears of tax demand. The present study deals with the evaluation of effectiveness of system of writing-off the arrears demand in the ITD.

6.2 Administrative set-up

The administrative set-up vis-a-vis monetary limits⁶⁰ for write-off of arrears of tax demand as prescribed by CBDT is shown in **Chart 6.1**.

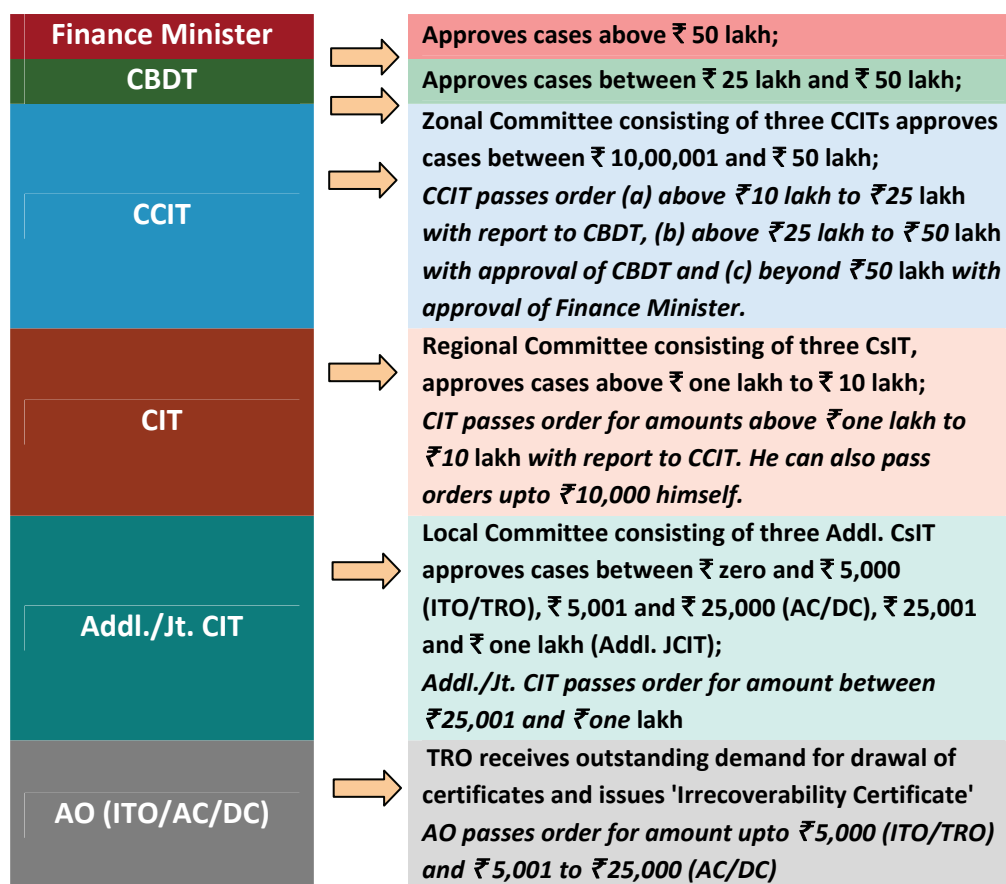
57 Chapter XVII-D consisting of Sections 220 to 232 and second schedule of the Act.

58 The demand issued by TRO through a notice in form 57 under Rule 2 of the second schedule of the Act.

59 After the recent restructuring of the ITD in November 2014, one TRO is provided for each CIT instead of each Range under any CIT.

60 CBDT's Instruction No. 14/2003 dated 06.11.2003.

Chart 6.1: Administrative set-up of write-off of arrears of tax demand



6.3 Legal provisions and procedures

There is no specific provision in the Act or in any of other Direct Tax Acts for writing-off of the tax arrears which become irrecoverable. In pursuance of Rule 31 of the General Financial Rules, 1963, powers to sanction write-off of the revenue have been delegated by the Central Government to the income-tax authorities. Chapter 13 of MOP, Volume-II (Technical) issued by CBDT, contains the provisions of law relating to write-off of arrears of tax demand. The CBDT has issued instructions/guidelines from time to time on powers and monetary limits for write-off of arrears of tax demand. The procedure is same for both total write-off and partial write-off. Tax arrears may be written-off by any one of the procedures: namely (i) Summary write-off, (ii) Ad-hoc procedure for write-off and (iii) Regular procedure for write-off.

6.4 Audit Objectives

The objectives of study were to seek assurance that

- a. write-off of arrears of tax demand was carried out periodically by the competent authority;

- b. laid down procedure was followed for write-off of arrears of tax demand; and
- c. ITD has an effective internal control mechanism for monitoring write-off of arrears of tax demand.

6.5 Audit Scope and Coverage

The study covers the examination of procedure/process followed for write-off of arrears in ITD during the period from FYs 2012-13 to 2014-15. Based on specific risk parameters⁶¹, 30 per cent of total Pr. CsIT/CsIT of the ITD was selected for the study. In the selected 89 Pr. CsIT/CsIT, all circles/TROs and 25 per cent of wards were covered in audit.

6.6 Constraints

In 13 states⁶², ITD did not supply all relevant information, replies and records requisitioned by audit. In two states⁶³, there was no co-relation of data for the period 2012-13 to 2013-14 with the data for the year 2014-15 due to restructuring of ITD in November 2014 and redistribution of work amongst existing and new offices.

6.7 Audit findings

Our audit findings are based on the information/data provided and records made available by the field formations of the ITD. Audit findings relating to write-off of arrears of tax demand by the ITD are described in the succeeding paragraphs.

6.7.1 Arrears of tax demand and write-off

The position of total arrears of tax demand *vis a vis* arrears of tax demand difficult to recover due to pending write-off/assessee not traceable/no asset and inadequate resources and amount written-off in respect of selected PCsIT/CsIT of 24 states/UTs⁶⁴ during FYs 2012-13 to 2014-15 is shown in Table 6.1 below:

61 Number of scrutiny assessments, nature of assessees/their turnover/exemptions/deductions issues relating to internal/external audit findings etc.

62 Andhra Pradesh, Assam, Bihar, Chhattisgarh, Delhi, Jharkhand Madhya Pradesh, Maharashtra, Rajasthan, Telangana, Uttar Pradesh, Uttarakhand, and West Bengal.

63 Karnataka and Goa.

64 Andhra Pradesh, Assam, Bihar, Delhi, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Jharkhand, Karnataka, Maharashtra, Odisha, Punjab, Rajasthan, Telangana, UT Chandigarh, Uttarakhand, Uttar Pradesh and West Bengal. No figures were made available for Chhattisgarh, Goa and Madhya Pradesh for all the three years; and for Kerala and Tamil Nadu for 2012-13 and 2013-14.

Table 6.1: Total arrears of tax demand			(₹ in crore)
	FY 2012-13	FY 2013-14	FY 2014-15
Total arrears of tax demand	2,77,770.80	2,90,011.60	3,27,722.08
<i>Arrears of tax demand difficult to recover due to Pending Write-off (PWO)/Assessee not traceable (ANT)/No asset and inadequate resources (NAR)</i>	34,962.26	34,782.28	74,077.78
Write-off during the period	1.49	0.66	0.06

[Source: Central Action Plan (CAP) Report and Quarterly Progress Report of ITD of selected PCsIT/CsIT]

The above table indicates that total arrears of tax demand in respect of selected Pr. CsIT/CsIT had increased by 17.98 *per cent* in March 2015 compared to March 2013. Percentage of PWO/ANT/NAR to total arrears of tax demand increased from 12.59 *per cent* in FY 2012-13 to 22.60 *per cent* in FY 2014-15. However, out of ₹ 74,077.78 crore of the demand difficult to recover due to PWO/ANT/NAR, only ₹ 2.21 crore was written-off during FYs 2012-13 to 2014-15 in nine states⁶⁵ out of selected 24 states/UTs covered in audit.

Arrear of tax demands of small amounts aggregating to ₹ 1.19 crore was not written-off in 14,252 cases and ₹ 68.96 lakh was written-off in 5,485 cases without following the appropriate procedures.

6.7.2 Write-off of arrears of tax demand

As per Para 2.1 of Chapter 13 of MOP Volume-II (Technical) of CBDT, small demands not exceeding ₹ 1,000 in each case can be summarily written-off by the Assessing Officer (AO) without any further enquiry if the amount is outstanding for more than five years and the amount does not relate to any live case⁶⁶. For write-off of arrears of tax demand of small amounts (below ₹ 500 in each case) which are not falling under summary write-off and the demand in any case is outstanding for more than eight years, an Inspector of Income Tax may be deputed to enquire into the assets of the defaulter and chances of recovery. In case, his report indicates that the demand has become irrecoverable, the AO may directly write-off the demand without waiting for a formal Certificate of Irrecoverability from the TRO.

Again arrears of tax up to ₹ 5,000 may be written-off under the 'ad hoc' procedure provided they have been outstanding against each assessee for non-availability of assessment records and detailed address of the assessee for more than five years immediately preceding the financial year during which they are proposed to be written-off. 'Each case' should be taken to

65 Assam, Chhattisgarh, Gujarat, Himachal Pradesh, Madhya Pradesh, Maharashtra, Odisha, Uttarakhand and UT Chandigarh.

66 In terms of MOP Volume-II read with monetary ceilings and conditions provided under various instructions, the latest being – Instruction no. 2/2010 dated 18.03.2010.

mean all the AYs to which the irrecoverable demands may relate in respect of single assessee.

6.7.2.1 We found that in arrears of tax demand of ₹ 1.19 crore (14,252 cases⁶⁷), the process of write-off was not initiated under the appropriate procedure of law in summary/adhoc manner:

In Assam, Gujarat, Jharkhand, Rajasthan and West Bengal, arrears of tax demand of ₹ 0.39 crore (5,814 cases), were not written-off following summary procedure though the amount of arrear of tax demand in each case was below ₹ 1,000 and the demand was pending for more than five years. In Assam, records of 213 cases and arrear of tax demand thereof were not available. ITD stated (July 2015) that the cases were more than 20 to 30 years old and the demands are not at all collectable.

In Jharkhand, Madhya Pradesh and Rajasthan, arrear of tax demand of ₹ 0.16 crore (6,661 cases) was not written-off, following the appropriate procedure though the amount of arrear of tax demand in each case was below ₹ 500 and outstanding for more than eight years. ITD accepted (June 2015) in 24 cases (₹ 0.07 lakh) of Jharkhand that the cases were very old and not traceable. However, action would be taken to trace out the records and write-off of the same.

In Gujarat and Jharkhand, the arrear of tax demand of ₹ 0.64 crore (1,777 cases) was not written-off following adhoc procedure though the amount of arrear of tax demand in each case was below ₹ 5,000 and outstanding for more than five years.

6.7.2.2 We found that arrears of tax demand of ₹ 68.96 lakh in 5,485 cases⁶⁸ was written-off in contravention to the above provision.

In Chhattisgarh and Odisha, arrear demand of ₹ 57.63 lakh (4,553 cases) and ₹ 4.53 lakh (694 cases) was written-off during FY 2013-14 and FY 2012-13 respectively on adhoc/summary basis by TRO without any authority.

In Assam and Odisha, arrear demand of ₹ 0.24 lakh (39 cases) and ₹ 0.19 lakh (two cases) were written-off under summary/adhoc procedure during FY 2014-15 and FY 2012-13 respectively although the arrear demand in each case exceeded ₹ 1,000/₹ 5,000.

In Odisha, arrear demands ₹ 6.37 lakh in 197 cases, each exceeding ₹ 2,000 but below ₹ 5,000 were written-off without issue of Irrecoverability Certificate during FY 2012-13.

67 Assam (213 cases), Gujarat (2,789 cases), Jharkhand (74 cases), Madhya Pradesh (116 cases), Rajasthan (10,934 cases) and West Bengal (126 cases).

68 Assam (39 cases), Chhattisgarh (4,553 cases) and Odisha (893 cases).

Arrears of tax demand of ₹ 290.83 crore were not declared irrecoverable by following regular procedure in cases where the assesseees were not traceable and there was no fund/asset or insufficient fund/asset.

6.7.3 Write-off of arrears of tax demand under Regular procedure

As per regular procedure for write-off, arrears of tax demand can be considered for write-off that are over three years old and have become “irrecoverable” due to following reasons:

- a. the assessee has died, become insolvent, not traceable, left India and no attachable assets;
- b. the assessee company has gone into liquidation;
- c. the assessee firm is dissolved and its business has discontinued; and
- d. in case when all the modes of recovery in accordance with the rules laid down in the Second Schedule including the recourse to civil imprisonment of the defaulter are exhausted and the arrears still remain.

Also before recommending a case for write-off, the concerned authority should satisfy itself as to whether adequate and timely steps were taken for recovery in the case.

6.7.3.1 Arrears of tax demand not declared ‘irrecoverable’ where the assessee was not traceable

We found that there were 260 cases⁶⁹ involving arrears of tax demand of ₹ 138.77 crore pertaining to the AYs from 1984-85 to 2009-10 where the demand remained outstanding as of 31 March 2015 due to ‘assessee not traceable’. Box 6.1 illustrates four such cases.

Box 6.1: Illustrative cases on Arrears of tax demand not declared ‘irrecoverable’ where the assessee was not traceable

- a. In Delhi, CIT-IX charge, in the case of **Vishal Global Limited**, arrear of tax demand of ₹ 40.03 crore for the AYs 1989-90 to 1998-99 was outstanding because the assessee was untraceable and there was no assets for recovery. The Addl. CIT Range-17 directed (March/June 2005) concerned AO for write-off of the arrear demand and the TRO was also requested to issue Irrecoverability Certificate (IC). In spite of the instructions given by the higher authority, the TRO had not issued the IC to enable the AO to submit write-off proposal till March 2015.
- b. In Delhi, CIT-VI (new CIT-IX) charge, in the case of **Vaishali International Management and Resources Limited** for the AY 2008-09, arrear of tax demand of ₹ 6.11 crore was pending for recovery. In June 2013, CIT directed the AO to locate the whereabouts of the Directors and follow up with the Police. No further progress was found on record. Audit however, noticed from the Annual Report (2004) of the assessee

69 Assam (three), Delhi (six), Gujarat (two), Jharkhand (eight), Karnataka (237) and West Bengal (four).

that the ITD instead of attempting to track the whereabouts of Directors from their service/pension records, proceeded in a routine manner yielding no fruitful result. Thus, the ITD had neither pursued the case properly nor initiated process for write-off. The ITD in their reply (August 2015) for both the above cases stated that dossier cases of above ₹ one crore were being reviewed to fine tune and optimise the strategy for recovery or process it for write-off.

c. In West Bengal, Pr. CIT-4 Kolkata charge, in the case of **V. R. B. Engineers & Consultants (Private) Limited** for the AY 1996-97, the arrear of tax demand of ₹ 7.44 crore was outstanding as on 31 March 2015. It was noticed from the Dossier Report (December 2003) that the CCIT-IV, Kolkata had directed AO to process the case for write-off if the company was not traceable by local enquiry or from Registrar of Companies (ROC). Records revealed that ITD had neither completed the process to trace the assessee nor had declared the demand as irrecoverable to initiate write-off process till 31 March 2015.

d. In West Bengal, Pr. CIT-2 Kolkata charge, in the case of **Yashman Dealers Private Limited** for the AY 1996-97, there was arrear of tax demand of ₹ 2.37 crore. The assessee was not traceable since July 2004. The AO intimated (June 2004) to TRO that CCIT-II, Kolkata had already issued directions to issue IC after ascertaining the possibility of collection of dues. Further, development in the case was not on record.

6.7.3.2 Irrecoverability certificate not issued in respect of cases where there is no fund/asset or insufficient fund/assets.

We found that in 240 cases⁷⁰ involving arrear demand of ₹ 152.06 crore, the assessee had either no funds/assets or insufficient fund/asset to meet the arrear tax demand. But despite remote possibility or no possibility at all for recovery of arrear demand, the arrear demands were not declared irrecoverable and 'Irrecoverability Certificate' was not issued for initiating write-off proceedings under appropriate procedure. Box 6.2 illustrates two such cases.

Box 6.2: Irrecoverability certificate not issued in respect of cases where there is no fund/asset or insufficient fund/assets

a. In West Bengal, Pr. CIT-1 Kolkata charge, in the case of **Rapti Nidhi Limited** for AY 1991-92, which was under liquidation since November 2005, the Official Liquidator had intimated (September 2009) the TRO that only ₹ 8,040 was available with the company as against the arrear of tax demand of ₹ 10.23 crore. Though the possibility of recovery of arrear demand was remote, 'IC' was not issued for initiating write-off proceedings under appropriate procedure.

b. In West Bengal, Pr. CIT-4 Kolkata charge, in the case of **Radiant Industries Limited** arrear demand of ₹ 1.04 crore for the AY 1998-99 was outstanding. The company was under liquidation. The company was sold in January 2005 under the orders of the High Court, Kolkata and the creditors of the company were requested to submit their claims by 25 October 2005. Accordingly, ITD initiated (September 2005) action to file its

70 Andhra Pradesh (six cases), Gujarat (two cases), Karnataka (228 cases), West Bengal (four cases)

claim but in the meantime, last date for filing of claim had expired and the claim could not be filed. The ITD however approached the Official Liquidator during September 2011 to April 2014 for any possible scope of recovery of arrear demand. Finally, in May 2014, the Official Liquidator intimated that funds of the assessee had already been distributed and no fund was lying available in the company. 'IC' was not issued despite any further possibility of recovery of arrear demand.

The ITD did not write-off arrears of tax demand of ₹ 278.64 crore for which 'Irrecoverability Certificates' were issued by the respective TROs.

6.7.4 Arrears of tax demand not written-off after issue of 'Irrecoverability Certificate'

As per Para 4.3 of Chapter 13 of MOP Volume-II (Technical) of CBDT, when a certified tax demand remains unrecoverable in spite of exercise of the powers of recovery conferred upon the TRO under the Act, the TRO issues 'Irrecoverability Certificate (IC)' in respect of the irrecoverable arrears of tax demand and refers it back to the jurisdictional AO for write-off proceedings of the tax demand under apt procedure of law.

We found that in 77 cases⁷¹ involving arrears of tax demand of ₹ 278.64 crore where write-off was not effected despite issue of 'IC' by the respective TROs. Four such cases are illustrated in Box 6.3.

Box 6.3: Illustrative cases on Arrears of tax demand not written off after issue of 'Irrecoverability Certificate'

- a. In Maharashtra, Pr. CIT-3 Mumbai charge, in the case of **Dynacraft Machine Company Limited** for the AYs 1981-82 to 1984-85, an 'IC' was issued for the outstanding arrear of tax demand of ₹ 65.67 crore by the jurisdictional TRO in September 2013. A write-off proposal was also submitted to the CBDT but no further action was taken. As a result, arrear of tax demand was not written-off till March 2015.
- b. In Maharashtra, Pr. CIT-2 Mumbai charge, in the case of **G. M. S. Computers (India) Limited** for the AYs 1995-96 to 1998-99, an 'IC' was issued by the jurisdictional TRO in September 2012 for the outstanding arrear of tax demand of ₹ 34.50 crore but no further action was taken till March 2015.
- c. In West Bengal, Pr. CIT-3 Kolkata charge, in the case of **Tea King Private Limited** for AYs 1976-77, 1979-80 and 1983-84 to 1987-88, an 'IC' was issued by the TRO in November 1996 for the arrear of tax demand of ₹ 11.58 crore and the proposal for write-off was sent to the Zonal Committee. In July 1999, based on the decision of the Zonal Committee, the total demand was recomputed (February 2001) at ₹ 22.47 crore by including interest under section 220(2). No further action was taken in this case till March 2015 even after lapse of more than 18 years from the date of issue of IC.
- d. In West Bengal, Pr. CIT-4 Kolkata charge, in the case of **Ganapati Commerce Limited**, for the AYs 1992-93, 1993-94, 1997-98 and 1998-99, an 'IC' was issued by the

71 Andhra Pradesh (nine cases), Assam (one case), Delhi (one case), Gujarat (three cases), Jharkhand (three cases), Karnataka (27 cases), Kerala (two cases), Madhya Pradesh (two cases), Maharashtra (six cases), Rajasthan (three cases) Tamil Nadu (six cases), West Bengal (14 cases).

jurisdictional TRO in November 2006 for the outstanding arrear of tax demand of ₹ 19.20 crore. No further action was taken till March 2015 even after lapse of more than eight years from the date of issue of IC.

Zonal Committee was not constituted for review of unrealisable demands in many states. In some of the states though such committee was constituted, no meeting was held during the period 2012-13 to 2014-15.

6.7.5 Review of unrealisable tax demands by Zonal Committee

As per instructions issued by the CBDT from time to time, where the tax arrears exceeded ₹ 10 lakh in any case, the CBDT constitutes Zonal Committees of CsIT for review, scrutiny and considerations of proposals for write-off of direct tax arrears. These committees are constituted for all the four Zones. Presently five committees are constituted for North Zone, four for South Zone, two for East Zone and four for West Zone. Further, the senior most Commissioner would preside over the proceedings of the meeting of the Zonal Committee and the commissioner concerned with the case would be the convener of the meeting.

As per CBDT's instruction no. 16 of 2003 dated 18 November 2003, the Zonal Committee was reconstituted consisting of permanent members of three CCsIT. The Zonal Committee will recommend the proposal for write-off of irrecoverable demand above of ₹ 10 lakh and upto ₹ 25 lakh. As per Para 5.2 of Chapter-13 of the MOP Volume-II (Technical), the Zonal Committee has to meet at least once a month and ensure continuous review of the unrealisable tax demand.

We found that no Zonal Committee was constituted in six states⁷², information regarding formation of Zonal Committee was not available in respect of three states⁷³. Further, in four states⁷⁴, though the Zonal Committee existed, no meeting was held during the period 2012-13 to 2014-15. In Gujarat, two meetings were held one each in year 2012-13 and 2013-14. In these states, therefore, periodical review of unrealizable demand was not carried out. In case of Tamil Nadu and Assam, we noticed that proposals for write-off were sent to the Zonal Committee but no decision was taken by the Committee.

72 Bihar, Jharkhand, Himachal Pradesh, Karnataka, Uttar Pradesh and Uttarakhand.

73 Andhra Pradesh, Kerala and Telangana.

74 Assam, Odisha, Rajasthan and West Bengal.

Arrears of tax demand of ₹ 86.47 crore was eliminated without following write-off procedure laid down in the Manual of CBDT.

6.7.6 Elimination of arrears of tax demand without write-off under laid down procedure

With a view to facilitating control over the arrears of tax demand and their recovery, ITD has prescribed various control registers and Reports like Demand & Collection Register (D&CR), Arrear Demand & Collection Register (ADCR), Quarterly Progress Report (QPR), etc. Demands raised during the year and its collection is watched by ITD through the D & CR and any amount remaining unpaid at the end of the financial year is to be carried forward in the ADCR to watch the tax demands. In Tax Recovery Offices, certified arrears of tax demand are monitored through QPR.

We found that in case of 4,981 Tax Recovery Certificates (TRCs), the arrears of tax demand of ₹ 86.47 crore were eliminated from records maintained by the ITD.

In West Bengal, Pr. CIT-2 and Pr. CIT-3 Kolkata charges, certified arrear demand of ₹ 86.40 core, relating to 4,978 TRCs was eliminated from QPR for the quarter ending September 2013 on the ground that the certificate folders were not physically found and the cases were very old. Certified arrear demand of ₹ 86.40 crore was thus reduced from the books of the ITD without writing off of the same under appropriate procedure *viz.* summary/adhoc/regular procedure.

In Rajasthan, Pr. CIT-1 Jodhpur charge, in three cases certified arrear of tax demand of ₹ 7.54 lakh shown outstanding in ADCR for the FY 2011-12 was not carried forward in ADCR for the FY 2012-13. Instead, the relevant TRCs were withdrawn without any specific orders of the competent tax authorities.

Old arrear demand of ₹ 1,630.02 crore was not declared irrecoverable and was not referred back to jurisdictional AOs by the TROs for initiating write-off after issue of IC.

6.7.7 Writing off of old inactive demands

As per Chapter 13 of the MOP Volume-II (Technical), when tax demands remain irrecoverable in spite of the exercise of the powers of recovery conferred under the Act, the question of write-off of arrears should be considered.

We found that in 12,007 cases⁷⁵ old arrears of tax demand of ₹ 1,630.02 crore were not declared irrecoverable and also the cases were not

⁷⁵ Odisha (115 cases), Assam (3,415 cases), Bihar (365 cases), Chhattisgarh (1,058 cases), Gujarat (1,273 cases), Jharkhand (1,516 cases), Karnataka (355 cases), Kerala (nine cases), Maharashtra (227 cases), Rajasthan (221 cases), Tamil Nadu (1,135 cases), Uttar Pradesh (314 cases), Uttarakhand (999 cases) and West Bengal (965 cases).

referred back to jurisdictional AOs by the TROs for initiating write-off proceedings under the appropriate procedure after issue of IC.

In Maharashtra, Pr. CIT-2 Mumbai Charge in 16 cases pertaining to the AYs ranging from 1981-82 to 2000-01, arrear demand totalling to ₹ 928.92 crore was pending for more than 10 to 20 years. Neither the AOs nor the TROs exercised the power delegated to them to review the cases pending for recovery and to identify the cases fit for write-off.

In Assam, Pr. CIT-1 Guwahati charge, in case of 1,752 TRCs, old arrears of tax demand of ₹ 71.99 crore were lying outstanding as on 31 March 2015 but no action for write-off was initiated. ITD stated that (July 2015), the demands were not collectible since 90 *per cent* of these cases were more than 20 to 30 years old and relevant records were also not available with them. ITD also stated that out of these arrear demands, ₹ 59 crore involving 1,651 TRCs were doubtful and not at all collectable.

In West Bengal, Pr. CIT-3 Kolkata charge, in case of 671 TRCs, the arrears of tax demand of ₹ 10.60 crore was declared (as shown in Monthly Progress Report for March 2014) as 'Inactive Demand' by the TRO as there was no physical existence of TRCs and the demands were only shown in Register-X. Besides, there was no PAN, jurisdiction, assessment folder and the demands were of 20 to 40 years old, where no action can be taken by them. In spite of this, write-off of the demands was not effected under appropriate procedure.

ITD stated that attempts were being made to recover ₹ 362.13 in Uttar Pradesh and further action for write-off would be taken. In respect of Odisha, ITD also stated that appropriate steps would be taken after instruction of the higher authorities. ITD accepted that efforts for recovery of ₹ 12.79 crore in Bihar were yet to be made in all the TRCs. In Jharkhand, ITD assured that appropriate action would be taken after examination of cases of ₹ 14.28 crore fit for write-off.

Audit is of the view that the procedure for action to be taken for write-off has been laid down in the Manual, ITD is required to take appropriate steps. The fact therefore remains that effective action was not taken either for timely recovery or write-off of arrears of tax demand.

Arrears of tax demand of ₹ 51.72 crore was not pursued for effective disposal due to lack of co-ordination between TRO and the jurisdictional AO.

6.7.8 Co-ordination between AO and TRO.

Co-ordination between the AO and TRO is crucial for ensuring speedy disposal of arrears of tax demand. Once the AO has referred the arrears of tax demand cases outstanding for more than one year⁷⁶ to TRO, it becomes

⁷⁶ CBDT's letter F. no. 402/2/2002-ITCC dated 18 January 2002.

imperative for the AO to keep the TRO informed of any subsequent revisions, reductions etc. made to the demand. Similarly, the TRO needs to intimate the AO the disposals made from time to time.

We found that in 79 cases⁷⁷ arrears of tax demand totalling ₹ 51.72 crore were not pursued for effective disposal due to lack of co-ordination between TRO and the jurisdictional AO. Box 6.4 illustrates two such cases.

Box 6.4: Illustrative cases on arrears of tax demand pending due to lack of co-ordination between AO and TRO

a. In Delhi, Pr. CIT(Central)-2 charge in the case of **ARK Steels (Private) Limited** for the AYs 1998-99 and 1999-2000 total arrears of tax demand of ₹ 12.88 crore, including interest under section 220(2) upto October 2002, was pending for recovery since FYs 2001-02 and 2002-03 respectively. The demand notice issued by the TRO in December 2002 to the assessee in his recorded address could not be served. In March 2003, the TRO informed the AO that the demand notice was received back with the remarks of the postal authorities “No such person at this address”. The demand notice was further issued by the TRO four times between April 2003 and July 2012 at the same address. Since September, 2012 the TRO had been continuously requesting the AO to provide the latest address, details of movable and immovable assets of the assessee to expedite the recovery proceedings. However, in this regard no reply was furnished by the AO to the TRO till July 2015 and the demand remained outstanding.

b. In West Bengal, Pr. CIT-1, Kolkata charge, in the case of **Somani Swiss Industries Limited** for the AYs 1994-95 to 1998-99, TRC for a demand of ₹ 6.27 crore was drawn in September 2005. Accordingly, a notice was issued (September 2005) to the assessee. It was evident from the records that the TRO intimated (September 2008) the concerned AO that the assessee company was not traceable. Earlier, the TRO had also requested (June 2008) the AO to invoke provisions of section 179⁷⁸ in respect of the Directors, if traceable. No evidence to the effect that such order was passed by the AO or declaration of demand as irrecoverable was available on record. ITD stated (July 2015) that the issue of order under section 179 and declaration of irrecoverability of demand was being looked into.

TRCs of arrears of tax demand of ₹ 136.67 crore were either not drawn up at all or delayed.

6.7.9 Drawal of Tax Recovery Certificate

In terms of Board’s order under section 119 of the Act in F. No. 402/2/2002-ITCC, dated 18.01.2002, it is required to issue TRC under section 222⁷⁹. In all cases where demand is one year old to ensure timely and prompt action of recovery so as to minimize the chances of disposing, removing, concealing of moveable/ immovable properties by defaulters.

77 Andhra Pradesh (24 cases), Assam (one case), Delhi (11 cases), Karnataka (38 cases) and West Bengal (five cases).

78 Section 179 provides for liability of directors of private company in liquidation.

79 Section 222 to 232 are related to the functions of TRO.

We found in 95 cases⁸⁰ involving arrears of tax demand of ₹ 136.67 crore where TRCs were either not drawn up at all or drawn up delayed. Box 6.5 illustrates two such cases.

Box 6.5: Delayed drawal/non-drawal of TRC

a. In Uttar Pradesh, CIT-II Kanpur charge, in the case of **Fine Industries Private Limited** demands of ₹ 20.54 crore and ₹ 37.94 crore after scrutiny assessment completed in December 2011 and January 2012, were pending for recovery for more than three years. AO intimated the TRO in August 2014 for effective recovery action by exercising the powers as per provisions of section 222 to 232 and drawal of TRC. However, no TRC has been drawn by the TRO as of date (June 2015).

b. In Bihar, CIT Central Patna charge, in the case of **Dr. Ajit Kumar Verma** for arrears demand of ₹ 2.31 crore, the AO had requested the TRO in February 2008 for issue of TRC but the same was not issued even after the lapse of seven years.

Thus, the above audit findings indicate that either the process of write-off of arrears of tax demand was not initiated or was written off in contravention to the provisions of CBDT manual. Moreover, lack of coordination between TRO and the jurisdictional AO has also resulted in piling up of outstanding arrears of tax demand. Further, Zonal Committees were either not constituted in most of the charges/states, or if constituted, no meeting was held for review, scrutiny and considerations of proposals of write-off of arrears of tax demand.

ITD has also not taken prompt action for identification of genuine cases which were fit for write-off. The CBDT also did not evolve any mechanism/system for monitoring of high value cases which were pending for a considerable time and were required to be written off.

The AOs and CsIT did not submit Reports/Statements as per the provisions laid down in the CBDT Manual. Registers required to be maintained for 'Tax Recovery' and 'Write-off' purpose were either not maintained or maintained improperly. No entry regarding irrecoverable demand or written off arrear demands was made in the Individual Running Ledger Account (IRLA) of the respective assessee for monitoring of such demands. There were anomaly in different reports viz. Dossier Report, CAP, QPR which may lead to risk of erroneous management information system. Internal Audit of the TROs was not done.

6.8 Internal Control

6.8.1 Submission of Reports/Statements by the AOs and CsIT

As per Para 15.1 and 15.2 of Chapter-13 of the MOP Volume-II (Technical), AO is required to submit quarterly statement in the prescribed pro-forma regarding the amount written-off to the jurisdictional CIT. Further, all jurisdictional CsIT are required to submit to the CBDT a half-yearly report in

⁸⁰ Andhra Pradesh (89 cases), Bihar (one case), Tamil Nadu (four cases) and Uttar Pradesh (one case).

the prescribed pro-forma showing the progress of recovery of the amount kept alive in cases of partial write-off and an annual statement regarding remission or abandonment of claims to revenue to the Director of Inspection (RS & PR) in the prescribed pro-forma.

We found that during the period from 2012-13 to 2014-15, AOs did not submit quarterly reports in case of 11 states⁸¹, the half yearly and annual reports were not submitted by six states⁸² by the CsIT to the CBDT and Director of Inspection (RS & PR).

This therefore indicates that effective monitoring and control on write-off, progress of recovery and remission or abandonment of claims were not exercised at the CIT and CBDT's level.

6.8.2 Maintenance of registers

As per Para 7.1 of Chapter 12 of MOP Volume-II (Technical), 11 important registers⁸³ are to be maintained by the TRO and AO is required to keep a register of irrecoverable demand (Para 15.1 of Chapter-13). The TROs in the ITD maintain a 'Register of Recovery Certificates' indicating details of TRCs issued by them.

Further, writing-off of irrecoverable demand (para 9.1 of Chapter-13) is purely an administrative act. It does not preclude the ITD from recovering the amount so written-off by exercising the powers under the Act. The recovery can also be effected by filing a civil suit. In view of Article 112 of the Schedule to the Limitation Act, 1963, civil suit cannot, however, be filed after the expiry of 30 years from the date on which the tax had become payable.

We observed the followings:

- a. In Odisha and Madhya Pradesh, most of the prescribed 11 registers were not prepared by the TROs. In Assam, West Bengal, Himachal Pradesh, the ITD did not maintain the 'Register of Recovery Certificates' properly.
- b. In 11 states⁸⁴, Register of Irrecoverable Demand was not prepared.
- c. In Assam, West Bengal and Himachal Pradesh, the ITD did not maintain any record to watch the progress of demand written-off.

This indicates that the internal control mechanism of the ITD was not effective.

81 Andhra Pradesh, Assam, Goa, Gujarat, Karnataka, Kerala, Odisha, Rajasthan, Tamil Nadu, Telangana and West Bengal.

82 Assam, Goa, Gujarat, Karnataka, Rajasthan and West Bengal.

83 Cash Book, Register of Movable and Immovable Properties attached and sold, Execution Register, Register of Daily Reduction/Collection of Certified Demand, Stay Register, Instalments Register, Disposal Register, Closed Certificates Register, Custody Register, Daily Diary and Register of Recovery in case of Companies in liquidation, BIFR and Sick.

84 Assam, Goa, Gujarat, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tamil Nadu and West Bengal.

6.8.3 Computerization and write-off of arrears of tax demands

With the computerization in the ITD, the Individual Running Ledger Account (IRLA) module allows the AO to enter the details of arrears of tax demand which have become irrecoverable. However, if on a future date, any collection is made from the concerned assessee out of irrecoverable/written-off arrear demands, the AO is to make entry in the IRLA of the respective assessee to that effect for proper monitoring of the demand.

In West Bengal as well as in Assam no information as to whether irrecoverable demands and written off demands of the pre-computerization and post computerization period were incorporated in the IRLA module was found from the records made available to audit. In Gujarat and Rajasthan, IRLA was not working properly and whenever demand was deposited by the assessee, the same was not reflected in IRLA automatically.

6.8.4 Anomaly in Dossier Reports, Central Action Plan (CAP) Reports and Quarterly Progress Report (QPR)

The CBDT has formulated Dossier Reports, CAP Reports, QPR etc. as effective control mechanism for monitoring arrears of tax demand. Arrears of tax demand shown in each Dossier Report should agree with the amount shown in assessment records and other related records.

We found that in 11 states⁸⁵, there were substantial mismatch in arrear demands with reference to other relevant records maintained by the ITD. Inconsistency in reporting in different report/returns is fraught with risk of erroneous management information system. Box 6.6 illustrates two such cases

Box 6.6: Illustrative cases on anomalies on Dossier Report, CAP and QPR

- a. In West Bengal, Pr. CIT-2, Kolkata charge, in the case of **Bahubali Traders Private Limited**, AY 2008-09, actual arrear of tax demand as per assessment records was ₹ 6.80 crore whereas in the relevant Dossier Report for the quarter ending March 2015 the arrear of tax demand against the assessee was shown at ₹ 10.33 crore
- b. In Delhi, CIT Central-II, Charge a demand of ₹ 27.92 crore was raised in February 2003 against **Usha General Foods Limited** for the block period 01.04.1990 to 14.02.2001. This demand was further enhanced to ₹ 54.73 crore in October 2011 by the AO under section 221(1). Audit scrutiny revealed that even after a lapse of more than three years of enhancement of demand, the CCIT was still sending the original demand of ₹ 27.92 crore to Directorate of Income Tax (Recovery) in the dossier for the quarter ending March 2015 resulting in incorrect reporting of ₹ 26.81 crore.

⁸⁵ Delhi, Goa, Gujarat, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, Tamil Nadu and West Bengal.

6.8.5 Internal Audit of TROs

Internal audit set up in the ITD ensures that regulations and procedures laid down for smooth functioning of the ITD are complied with sufficient safeguards against errors and frauds. An internal audit wing functions directly under the control of a CIT and chalks out quarterly programme for audit of different units of the ITD.

We found that the Internal Audit Wing of the ITD had not conducted internal audit of the TROs during 2012-13 to 2014-15. Recommendation was also made in Chapter 3 of the CAG's Audit Report No. 23 of 2011-12 regarding strengthening of internal audit of the post assessment collection process to effectively monitor the recovery of tax arrears by prescribing minimum number of TROs to be covered by internal audit every year.

6.9 Conclusion

During FYs 2012-13 to 2014-15, percentage of demand difficult to recover due to PWO/ANT/NAR with the total arrears of tax demand substantially increased from 12.59 *per cent* to 22.60 *per cent*. However, out of ₹ 74,077.78 crore of the demand difficult to recover due to PWO/ANT/NAR, only ₹ 2.21 crore was written off as of 31 March 2015. In most of the charges/states, Zonal Committee was either not constituted for review of unrealisable demands or if constituted, no meeting was held during the period 2012-13 to 2014-15.

We found that arrear demand was written off in contravention to the provisions of CBDT manual. The ITD did not write-off arrears of tax demand for which ICs were issued by the respective TROs. Arrear demand was also not declared irrecoverable by following regular procedure in cases where the assessee were not traceable and there was no fund/asset or insufficient fund/asset. Further, neither old arrears of tax demand were declared irrecoverable nor these were referred back to jurisdictional AOs by the TROs for initiating write-off after issue of IC. Arrear demand was not pursued for effective disposal due to lack of co-ordination between TRO and the jurisdictional AO. The AOs and CsIT did not submit Reports/Statements as per the provisions laid down in the CBDT Manual. Registers required to be maintained for 'Tax Recovery' and 'Write-off' purpose were either not maintained or maintained improperly.

The monetary limits for write-off of arrears of tax demands were last revised in 2003 which has not been revisited considering the latest restructuring in the ITD and growth in the revenue collection. The ITD has not taken prompt action for identification of genuine cases which were fit for write-off. The CBDT also did not evolve any mechanism/system for monitoring of high value cases which were pending for a considerable time and were required to be written off.


6.10 Recommendations

We recommend that:

- a. ITD may ensure that periodical review of the arrears of tax demand is conducted to identify unrealisable demands for initiating write-off proceedings under the appropriate procedure and there is proper co-ordination between the AOs and TROs for speedy disposal of arrear cases.
- b. ITD may prescribe a definite timeline to be observed by TROs as well as other authorities to avoid indefinite delay in deciding possibility of recovery of tax arrears and speedy disposal of write-off cases.
- c. ITD may ensure that details of outstanding demands categorised as PWO/ANT/NAR along with updated reports/statements/registers are properly maintained by TROs/AOs. ITD may also strengthen its Internal Audit Wing to ensure the audit of adequate number of TROs every year.

On above recommendations, the Ministry stated (30 November 2015) that in the light of Tax Administration Reform Commission's recommendations, the CBDT had already set up a Committee for updating and revising the existing guidelines which had submitted its report in June 2015 proposing simplification and improvement of write-off procedure. The Ministry further stated that the report of the Committee is under consideration and the recommendations of the Audit will be considered for incorporation in the revised guidelines proposed to be issued.

New Delhi
Dated: 9 February 2016


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Director General (Direct Taxes)

Countersigned

New Delhi
Dated: 9 February 2016


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Comptroller and Auditor General of India