

Chapter 1: Introduction

1.1 On the basis of its use, real estate can be segregated into three broad categories-i) Residential comprising developed land, residential houses and condominiums; ii) Commercial comprising office buildings, warehouses and retail store buildings and iii) Industrial which includes factories, mines and farms. Due to change in the economic scenario of the country, real estate activities which were once primarily limited to urban areas, are now spreading to smaller towns as well. There are various players involved in this sector such as land owners, developers, contractors, sellers/ buyers and real estate agents etc.

1.2 Assesseees in database of the Department

The filing of Income Tax Returns (ITRs) by the assesseees in real estate sector and their assessed income has shown steady rise in the sector during FYs 2013-14 to 2016-17 as is given in Table 1.1 below.

Table 1.1: Details of ITRs received/scrutinized				₹ in crore
Financial Year	ITRs filed (population)	Scrutiny assessments (in numbers)	Income as per ITRs in respect of Col. 3	Assessed income in respect of Col. 3
1	2	3	4	5
2013-14	2,18,925	8,948	16,175	30,920
2014-15	3,17,730	22,551	18,580	43,837
2015-16	3,36,777	20,750	23,812	47,055
2016-17	3,38,220	26,398	32,970	55,178
Source: Pr. DGIT(Systems)				

1.3 Why we chose the topic

The grounds for selecting this topic for performance audit were:

- The 'White paper on black money' published by the Ministry in 2012 identified 'Real Estate' as one of the sectors of the economy or activities more vulnerable to the menace of black money. The Paper indicated that due to rising prices of real estate, the tax incidence applicable on real estate transactions in the form of stamp duty and capital gains tax can encourage tax evasion through under reporting of transaction price which leads to both generation and investment of black money.

- A performance audit on “Business of Civil Construction” for the year ending March 2010 (Report no. 12 of 2011-12) was conducted. Our major audit finding highlighted absence of proper database of the assessees engaged in the business of civil construction, non-dissemination of information collected by Central Information Branch {now Intelligence and Criminal Investigation (I&CI)} and several mistakes relating to compliance in the scrutiny assessment. This audit would ascertain whether deficiencies pointed out earlier had been addressed.
- There has been rapid urbanization in India and up-gradation of city infrastructure by the governments resulting into growth in real estate and resultant tax revenue.
- A number of tax concessions have been given to this sector.
- There are several parties involved in this sector viz. land owners, developers, sellers, buyers, contractors and real estate agents all of whom may be liable to pay income tax.
- The sources of investment in real estate suggest possible transfer of money from untaxed sources or unaccounted funds.

1.4 Audit objectives

The objectives of the performance audit were to ascertain whether:

- All the developers/builders/real estate agents dealing in real estate sector are in the tax net and filing income tax returns.
- All resources available with assessing officers e.g. Annual Information Returns (AIRs), surveys and searches & seizures reports and information available in assessment files etc. have been effectively utilized to widen the tax base by bringing more assessees from this sector under the tax net.
- The existing systems and controls are adequate to promote compliance of provisions specific to the real estate sector under the Income Tax Act, 1961 (the Act) as well as compliance to general provisions of the Act.
- The Central Board of Direct Taxes (CBDT) has any system to ensure that intended benefits of allowing deductions under section 80-IB(10) to the real estate sector reached to the eligible persons.

1.5 Legal Framework

Some general and specific sections relating to real estate sector of the Act are given below:

Section	Brief description
28 to 44	These sections provide for allowance of expenditure, depreciation, interest etc. while computing the profits and gains from business and profession.
43CA	It provides for charging of tax on excess of value adopted for the purpose of payment of stamp duty over the sales consideration on transfer of an asset (other than a capital assets) being land or building or both by an assessee (seller).
45(2)	This section provides for charging of tax on the profits or gains arising from the transfer by way of conversion by the owner of a capital asset into or its treatment by him as stock in trade of a business carried on by him.
50C	It provides for charging of tax on excess of value adopted for the purpose of payment of stamp duty over the sales consideration on transfer of a capital asset, being land or building or both by an assessee (seller).
50D	It provides that where the consideration received or accruing on transfer by an assessee, of a capital asset is not ascertainable or cannot be determined, then, for the purpose of capital gains, the fair market value of the said asset on the date of transfer shall be deemed to be the full value of the consideration received or accruing on such transfer.
54F	It provides for exemption to an Individual or a Hindu Undivided Family (HUF) on capital gain from transfer of long term capital asset, other than a residential house.
54GB	It provides for exemption to an Individual or a Hindu Undivided Family (HUF) on capital gain from transfer of long term capital asset, being a residential property (a house or a plot of land).
56(2)(viib)	It provides that where a closely held company issue shares to a resident at a premium in a manner that the issue price exceeds the Fair Market Value (FMV), the difference between the issue price and FMV of such shares is to be taxed in the hands of the company issuing the shares.
56(2)(vii)(b)	As per provisions of this section, the excess of stamp duty valuation of immovable property over its actual sales consideration, if it is more than ₹ 50,000, is taxable in the hands of individual and HUF only (buyer).
69C	It provides that where in any financial year the assessee has incurred any expenditure and he offers no explanation about the source thereof or the explanation offered by him is not satisfactory, in the opinion of the assessing officer, the amount of such expenditure deemed to be the income of the assessee for such financial year.
80-IB(10)	This section provides for deduction in respect of profits and gains to an undertaking engaged in developing and building housing projects subject to fulfillment of certain conditions.
194-IA	It provides for deduction of tax at source by purchaser being an Individual and HUF on sales consideration of immovable property.

1.6 Scope of audit and sample size

In this performance audit, scrutiny assessments completed by Income Tax Department (ITD) during the financial years (FYs) 2013-14 to 2016-17 have been covered.

The field audit offices (FAOs) selected assessing charges for this performance audit from the assessing officer-wise aggregate data of income tax returns (ITRs) of assessees of Real Estate Sector processed during last four years, provided by the Pr. Director General of Income Tax (Systems) {Pr. DGIT(Systems)}. For this purpose following methodology was adopted.

We divided FAOs in two categories viz. metro charges (Delhi, Mumbai, Kolkata, Chennai including their branch offices) and non-metro charges (Ahmedabad, Bengaluru, Chandigarh, Hyderabad and Lucknow offices including branch offices). Total number of assessments relating to 'Real Estate Sector' completed by the Income Tax Department during 2013-14 to 2016-17 were 78,647 with assessed income of ₹ 1,76,990 crore in 5,001 assessment charges falling under 357 Pr. CsIT/ CsIT. Adopting a top down approach on total aggregate assessed income of four years, we selected 462 assessment charges falling under 121 Pr. CsIT/ CsIT. In the selected assessment charges, assessment records in respect of 100 *per cent* of the scrutiny cases relating to 'Real Estate Sector' were selected. We were to select a minimum of 2,000 scrutiny cases in each of the metro charges and 1,500 in each of the non-metro charges, for examination. Out of a total of 78,647 scrutiny assessment cases relating to 'Real Estate Sector' completed by the ITD during 2013-14 to 2016-17, Audit examined 17,155 assessment records in two phases – August 2017 to January 2018 and July-August 2018 (*Appendix-I*).

1.7 Audit methodology

1.7.1 We collected the assessing officer (AO) wise aggregate data of ITR of assessees of Real Estate Sector processed during FYs 2013-14 to 2016-17 from the Pr. DGIT (Systems) which was used in identifying the assessment charges for selection where assessees falling under business code for 'builders'- 401 (Builders), 402 (Estate agents), 403 (Property Developers) and 404 (Others) relating to real estate sector were scrutinized.

1.7.2 We checked the scrutiny cases identifying them from the Demand and Collection Register (D&CR) of the selected assessment charges and also summary cases in respect of some of the selected assessees wherever felt necessary. Besides, relevant past assessment records were also linked wherever felt necessary.

1.7.3 Out of our sample, we selected 30 builders/ developers based on turnover, land-banks, inventory size and number of projects etc. for detailed analysis. The credibility/genuineness of various transaction viz. incomes and expenses, sale/purchase of land/flats, unsecured loans, loans and advances given to or received from other assessees, and sundry debtors and sundry creditors, in respect of these selected builders/developers was verified with reference to the relevant assessment records of the other concerned assessees/parties. For the verification of the linked records the assessment charges other than those selected for the Performance audit were also visited.

1.7.4 We also collected information regarding real estate sector from different sources such as Inspector General of Registrations (IGR), Maharashtra, Registrar/sub-registrar of properties, Registrar of Companies (ROC), Real Estate Regulatory Authority (RERA), Confederation of Real Estate Developers' Associations of India (CREDAI), I&CI wing and DG(Investigation) of ITD for verifying action taken by the ITD to bring all liable persons into the tax net.

1.7.5 The information received from ROC was forwarded to Pr. DGIT(Systems) to ascertain whether all those entities were in the tax net and that information received from Registrar/Sub-Registrar offices (RO/SRO) was linked with the assessment records in the ITD. The Ministry of Finance, Department of Revenue was also approached for details about the achievement of intended benefits by granting incentives/deductions to the housing sector under section 80-IB(10) of the Act.

1.7.6 An Entry Conference was held with the Income Tax Department (ITD) on 25 October 2017 wherein audit objectives, scope of audit and other thrust areas of the performance audit were explained to the ITD. Draft performance audit report was issued to the CBDT on 25 May 2018 for their comments. An Exit meeting with the CBDT was held on 02 July 2018 where major audit findings and audit recommendations were discussed.

1.7.7 Replies to audit recommendations were received on 06 July 2018. Response of the CBDT through replies and in exit conference has been appropriately incorporated in the Report.

1.7.8 Out of total of 78,647 assessments made in the period by the Department, we checked 17,155 assessment records (approx. 22 per cent) with assessed income of ₹ 1,02,106 crore during this performance audit. We noticed 1,183 mistakes (approx. 7 per cent of the audited sample) having tax effect of ₹ 6,093.71 crore. Since a sample of 22 per cent has yielded errors of ₹ 6,093.71 crore, the Department needs to have the remaining 61,492 cases audited internally. The Department also needs to try to pin down the reasons

for why there is such a substantial proportion of errors and fix the identified systematic faults and responsibility where the errors have happened as an act of commission.

1.8 Acknowledgement

We acknowledge the co-operation of the ITD in providing the assessment records and facilitating the conduct of this performance audit.