

Chapter 3: Internal control and ambiguity in the provisions of the Act/Rules

The performance audit envisaged to ascertain whether the systems, internal controls and processes were sufficient and robust enough to ensure effective assessments so as to prevent revenue loss due to under reporting of income or inflation of the expenses by the assessees. The aim was also to check loopholes and ambiguity in the existing provisions as well as weaknesses in the quality of assessments which would provide a gap to be exploited by the assessees to manipulate the reporting of income and expenditure. The present chapter deals with systemic issues and internal control/monitoring mechanism by the ITD in dealing with assessees relating to entertainment sector.

3.1 Verification of transactions in respect of films shot abroad

For shooting a feature film in foreign locations, Indian production houses hire the services of foreign line production companies (line producers i.e. the resident companies which are registered in that specific country). The pre and/or post production expenses incurred by the foreign line producers are reimbursed by the assessee (Indian production house) on the basis of the agreement entered into between them and all the expenses reimbursed to the line producer are being claimed as expenditure by the assessee in its profit and loss account. Further, in most of the countries like United Kingdom (UK), Italy, Spain, Australia, Mauritius etc. there is an incentive scheme run by the respective Governments for film production houses with a view to promote tourism and provide employment opportunities in their respective countries.

Tax treaties signed under section 90 of the Act contain mechanism under the 'exchange of information' by virtue of which AO can make request to foreign jurisdiction for verification of production cost reimbursed by Indian film producer to foreign line producers and quantum of subsidies/incentives from foreign Government under section 90 of the Act.

3.1.1 During the performance audit, out of 208 production houses in Maharashtra, we identified 28 production houses/companies for examination which were mainly engaged in production of movies. Out of these 28 production houses/companies, we test checked the records of four production companies²⁵, whose films were shot in foreign countries during the period of coverage of audit. Out of the four, three production companies

²⁵ M/s Yashraj Films Pvt. Ltd., M/s Sunny Sounds Pvt. Ltd. & M/s Excel Entertainment Pvt. Ltd. in PCIT-16, Mumbai and M/s Red Chillies Entertainment Pvt. Ltd. in PCIT (Central)-2, Mumbai

had hired/engaged the foreign line producers. Audit findings in this regard are discussed in succeeding paragraphs.

In four scrutiny assessment cases related to three production houses²⁶, the assessee had claimed and was allowed the production cost of ₹ 223.78 crore during the period 2010-11 to 2013-14 reimbursed to the foreign line producers. Audit noticed that the AOs allowed the claim made by the assessees against the production cost reimbursed to the foreign line producers without making any verification. In none of the cases, the AOs had called for the details of expenses incurred by foreign line producers under the mechanism for exchange of information in section 90 of the Act.

Thus, ITD did not verify the details of expenses on account of cost of production made by the foreign line producers and relied completely upon the claim made by the assessees i.e., domestic producers. Hence, there is a possibility that the assessee may be allowed excess/irregular expenses.

3.1.2 As per the first proviso to Rule 9A of IT Rules, the cost of production of a feature film shall be reduced by the subsidy received by film producer under any scheme framed by the Government where such amount of subsidy has not been included in computing total income of the assessee.

We noticed in four scrutiny assessment cases of four production companies that in two cases²⁷, the assessees had reduced the cost of production of movies by disclosing incentives/subsidy of ₹ 16.69 crore from foreign countries while in other two cases²⁸, the assessee had not shown any incentive/subsidy while claiming the cost of production of movies. Audit noticed that, in both the situations, AOs had accepted the submission of assessees and allowed the expenses without verifying the details of incentives/subsidy received from foreign country while completing the assessment under scrutiny. Audit further noticed that there was nothing on record to show the terms & conditions under which the incentive/subsidy was received from the foreign country. The AOs also did not utilize the mechanism of ‘exchange of information’ under section 90 of the Act with respect to the quantum and condition of the incentive/subsidy received from foreign country.

Thus, the AOs were not ascertaining the correctness of the incentives/subsidy received from the foreign countries while completing the assessments and were relying completely on the disclosures made by the assessees. In the absence of verification, there is a possibility of suppression of the amount of

26 M/s Yashraj Films Pvt. Ltd. (AY 2011-12 & AY 2013-14), M/s Sunny Sounds Pvt. Ltd. (AY 2014-15) and M/s Red Chillies Entertainment Pvt. Ltd. (AY 2012-13)

27 M/s Yashraj Films Pvt. Ltd. (AY 2013-14) and M/s Sunny Sounds Pvt. Ltd. (AY 2014-15)

28 M/s Red Chillies Entertainment Pvt. Ltd. (AY 2012-13) and M/s Excel Entertainment Pvt. Ltd. (AY 2012-13)

incentive/subsidy received from foreign countries by the assessees and irregular expenses on account of cost of production may be claimed by the assessees, thus putting the interest of revenue to the Government at risk.

Our Performance Audit Report on ‘Levy and collection of Service Tax on Entertainment Sector’²⁹ also highlighted the issue of non-verification of transactions between Indian production house and foreign company and it was suggested that there is a need to examine the complete loop of transactions between all the parties to verify if due service tax has been levied or not.

3.2 Verification of transactions of inter-related parties and revenues earned by movie producers

The film industry consists of the technological and commercial institutions of filmmaking, artists and allied service providers. Considering the involvement of multiple parties in making the movies, it is important that the information furnished by an assessee is utilized to cross-verify the correctness of the information given by another assessee having transactions with the former (related party) to avoid the evasion of tax. Further, when different accounting methods are adopted by the inter-related parties of film industry, then comprehensive verification of the transactions is required to safeguard the interest of revenue.

3.2.1 We noticed in the case of an assessee, viz. M/s Gemini Industries and Imaging Ltd. (PCIT-10, Chennai) where excess exemption was allowed due to different accounting methods adopted by inter-related parties. The case is illustrated below (See Box 3.1).

Box: 3.1 Illustration of transactions of inter-related parties

Charge: PCIT-10, Chennai

Assessee: M/s Gemini Industries and Imaging Ltd.

Assessment Years: 2008-09 to 2014-15

Section 10(2A) of the Act provides that in the case a person being a partner of a firm which is separately assessed as such, his share in the total income of the firm shall not be included in computing the total income of previous year.

The scrutiny assessments of the assessee for AYs 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 were completed in January 2010, December 2011, March 2013, March 2014, March 2015, March 2016 and December 2016 respectively at income of ₹ (-) 4.39 crore, ₹ 1.58 crore, ₹ 4.16 crore, ₹ 29.71 crore, ₹ 14.19 crore, ₹ 38.89 crore and

29 C&AG Report No. 31 of 2017

₹ (-) 0.60 crore respectively. Audit noticed that the assessee had claimed and was allowed exemption under section 10(2A) of ₹ 195.50 crore towards share of profit received from M/s Anand Cine Service (firm) for the AYs 2008-09 to 2014-15. However, for the AYs 2008-09 to 2014-15, the firm had shown total profit of ₹ 26.44 crore out of which ₹ 25.57 crore pertained to the share of profit of the assessee. In this context, it was seen from notes to account of the assessee that share of profit from the firm was recognized on accrual basis whereas the firm followed cash system of accounting. As the objective behind exemption under section 10(2A) is to avoid double taxation, the profit which was credited by the assessee in their profit and loss account over and above the profit from the firm was not eligible for exemption under section 10(2A) and was required to be taxed in the hand of the assessee. As such, there was excess allowance of exemption under section 10(2A) by ₹ 169.93 crore (₹ 195.50 crore - ₹ 25.57 crore) with consequent short levy of tax of ₹ 74.52 crore including interest.

In Maharashtra, we also noticed that 376 cases were assessed in the film circle in FY 2016-17 and 170 cases related to film were assessed in four central assessment charges during 2013-14 to 2016-17. Out of total 546 cases, 243 cases pertained to Individuals/ HUF who were following cash³⁰ basis of accounting, while 303 cases pertained to companies/ firms who were following mercantile³¹ system of accounting. Due to adoption of different accounting methods, the income from one party was being deferred and expenses of the same was claimed by another party. Considering the involvement of high risk in cases of inter-related parties of the film industry, ITD need to look at such cases with greater amount of care to ensure that undue benefit is not being availed of by the assessees.

3.2.2 In film industry, a producer is the key person who makes the profit from sale of various rights (distribution rights, satellite rights, music rights, sponsorship revenue etc.) of film produced by him. The receipts of the producer mainly come from the distributors. The producer sells the distribution rights broadly in three ways – (i) Minimum guarantee basis (ii) Outright lease and (iii) Advance and commission clause lease which relates to overflow. Out of these, under the third arrangement, if the earnings of film exceed the specified limit, the surplus receipt (called ‘overflow’) is shared by the distributor and the producer according to the ratio specified in the agreement between them.

³⁰ Under cash basis of accounting, transactions for revenue and expenses are recognised only when the corresponding cash is received or payments are made

³¹ Under mercantile system of accounting, transactions are recognised as and when they take place

In Maharashtra, out of 28 production houses, we test checked the records of three production houses³² where the assessees had furnished the gross amount from sale of film rights, however, no details were provided by the assessees whether the income offered was on account of minimum guarantee or was from overflow of revenue or whether the income was inclusive of overflow. One case is illustrated below (see Box 3.2).

Box 3.2 Illustration of monitoring of revenue from overflow

Charge: PCIT-16, Mumbai

Assessee: M/s Dharma Production Pvt. Ltd. (DPPL)

Assessment Years: 2011-12 to 2014-15

The assessee had provided the general conditions of the agreement under which it had to receive the income. No bifurcation of actual amount received against overflow was available on record. As a result, the amount received from overflow could not be ascertained. We also noticed in the same charge that another assessee³³ had given the details of income earned by sale of various rights of films and had also given the details of share received from overflow of revenue separately. However, the AO did not enquire about the overflow received in case of M/s DPPL.

In the Income Tax Act/Rules, no specific form has been prescribed for the producer to submit the details of revenue earned from overflow as well as from various rights of movie, though there is a specific provision (Section 285B) in the Act which makes it mandatory for a producer to submit the details of payments in a statement (Form No. 52A) made by him or due from him to each person who is engaged by him in production of movie. Hence, whether the producer has offered the correct income from film as well as overflow of receipt is not ascertainable due to absence of mechanism mandating full disclosure of income earned from various rights of movie.

3.3 Variation in treatment of cost of production paid to foreign line producer

Section 9(1)(vii) of the Act provides that income by way of fees for technical services payable by a person who is a resident, outside India or for the purpose of making or earning any income from any source outside India, shall be deemed to accrue or arise in India. Further, as per explanation 2 to Section 9(1)(vii) of the Act, ‘fees for technical services’ means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services.

32 M/s Dharma Production Pvt. Ltd., PCIT-16 Mumbai (AYs 2011-12 to 2014-15), M/s Sunny Sounds Pvt. Ltd., PCIT-16, Mumbai (AY 2014-15), M/s Balaji Motion Pictures Ltd., PCIT (Central) 2, Mumbai (AY 2011-12 to 2015-16)

33 M/s Yash Raj Films Pvt. Ltd. assessed in scrutiny manner during AY 2011-12 to 2014-15

In Maharashtra, in the case of M/s Endemol South Africa (Proprietary) Ltd. (ESAL) for AY 2012-13, the AO³⁴ of International Taxation had concluded that the line producer fee of ₹ 9.60 crore paid by the Indian producer³⁵ was of the nature of technical services for managerial and technical services provided for the production and not in the nature of administrative charges. On this ground, the AO had rejected the assessee's claim of refund stating that withholding of tax @ 10 per cent by the Indian producer while making payment to ESAL was proper. This view was also sustained by the Dispute Resolution Panel (DRP) considering such payment to line producer as fees for technical services.

We noticed in three other cases³⁶ where the payment of ₹ 223.76 crore was made by Indian producers against cost of production of movies to the foreign line producers which include fees for technical services, however, no tax was withheld by the Indian producers. The ITD had also not disallowed the expenses of ₹ 223.76 crore which indicated that there was lack of consistency within the various assessment charges of the ITD although the nature of payment, i.e., payment of line producer fees was same in all the cases.

The ITD in case of M/s Red Chillies Entertainment Pvt. Ltd. while not accepting the objection had stated (April 2018) that the TDS was not required on making payment to M/s Winford Productions Ltd. (the foreign line producer) by the assessee as the payment was made for expenses and the services rendered by M/s Windford Productions Ltd. and the same could not be treated as 'Technical Services'.

The audit observation was raised to highlight the inconsistent approach adopted by the ITD in the treatment of expenses on account of production cost payment to the foreign line producer. In one case (M/s Endemol South Africa (Proprietary) Ltd. under DCCC-4(2), Mumbai), payment was treated as fee for technical services while in three other cases, the same was treated as administrative expenses. ITD had not offered any explanation for such inconsistent treatment.

3.4 Variation in treatment of write off of inventory and pre-operative expenses

We noticed in Tamil Nadu that the AO had disallowed the 'write off of inventory of film rights and work in progress of films' amounting to ₹ 8.01 crore in case of M/s Penta Media Graphics Ltd. for AY 2014-15 in the charge of CIT-10, Chennai, whereas, in another case of M/s G.V. Films Ltd. for

34 DCIT (IT)-2(2)(1), Mumbai

35 M/s Endemol India Pvt. Ltd.

36 (i) M/s Sunny Sounds Pvt. Ltd./AY 2014-15 (PCIT-16, Mumbai) (ii) M/s Yashraj Films Pvt. Ltd./AY 2011-12 & AY 2013-14 (PCIT-16, Mumbai) and (iii) M/s Red Chillies Entertainment Pvt. Ltd./AY 2012-13 (PCIT (Central) 2, Mumbai)

AY 2013-14 in the same charge, disallowance of ₹ 142 crore was not made in respect of the ‘film rights and the work in progress written off’. Thus, there was no uniformity in allowance of write off of inventory of film rights by the AO despite the fact that both the assessees were assessed in the same circle.

We also noticed in the charge of PCIT-5, Bengaluru that the AO had disallowed the pre-operative expenses of ₹ 2.93 crore in one case³⁷ and concluded that same should be amortized over a period of 10 years since the business activity commenced in next financial year. The disallowance was also upheld in the appeal (July 2016). However, in another case³⁸, the claim of pre-operative expenses of ₹ 78.23 lakh was allowed by the another AO under the same central range. Thus, despite the facts and circumstances being similar in nature, different treatment was given by the same AO.

3.5 Absence of provision of TDS on purchase of distribution rights of movies under production

In Maharashtra, PCIT-16, Mumbai Charge, audit noticed in the case of, M/s Cynergy Pictures Pvt. Ltd., that the assessee had received an advance of ₹ 2.50 crore against movies under production, viz. ‘Rakhtacharitra 1’ & ‘Rakhtacharitra 2’ in FY 2009-10 (AY 2010-11), however, tax was not deducted at source by the payer, as a result, it could not get reflected in Form 26AS³⁹ of the assessee. The movies were released during FY 2010-11 (AY 2011-12). Audit further noticed that the assessee had not filed its Income Tax Return (ITR) for AY 2011-12 and the assessment for AY 2011-12 was completed under best judgment as per section 144 of the Act at an income at ₹ 1.65 crore. While completing the assessment, the AO had considered those receipts for taxation which were reflecting in Form 26AS and as such, amount of ₹ 2.50 crore received by the assessee had escaped levy of tax. Had tax at source been deducted on the amount of advance of ₹ 2.50 crore, the same would have come to the notice of AO through Form 26AS and could have been brought to tax. The omission had resulted in short levy of tax of ₹ 83.04 lakh.

Audit also noticed that two assessees⁴⁰ engaged in the production of motion pictures had received advance against the movies under production from various parties, which were *inter alia* involved in the distribution of movies. However, Tax was deducted at source by only one party on a partial amount while making payment to the assessee. The situation (deduction/non-deduction of TDS) had arisen because of the absence of TDS provision on

37 M/s. GMR Sports Pvt. Ltd.

38 M/s Royal Challengers Sports (P) Ltd.

39 Form 26AS is a consolidated tax statement which has all the tax related information associated with a PAN

40 M/s Maddock Films Pvt. Ltd. and M/s Rajkumar Hirani Films Pvt. Ltd. (both in PCIT 16, Mumbai)

distribution rights of under production movies. In such a situation, the tracking of income received by the producers from the distributors becomes very difficult for ITD as it is left on the discretion of the producers to offer the advance as income or not.

Though the provision had been made for ‘production of programmes for broadcasting or telecasting activity’ under section 194C vide Explanation (iv)(b) wherein it is mentioned that “work” for the purpose of Section 194C shall include ‘broadcasting and telecasting including production of programmes for such broadcasting or telecasting’, however, the distribution/production of movie had not been included within the ambit of ‘work’ for the purpose of deduction of tax at source under section 194C.

3.6 Absence of provision on amortization of franchisee fee

Audit noticed from test check of scrutiny assessment cases of five Indian Premier League (IPL) franchisees⁴¹ in two states that they had purchased the IPL franchise rights from Board of Control for Cricket in India (BCCI) in the year 2008 for a period of 10 years and they had to pay equal annual instalment of franchisee fee to BCCI in order to sustain the right. Audit further noticed that three franchisee companies (ISPL, KRSPL and GMRSPL) were claiming such instalment as revenue expenditure whereas two franchisee companies (JICPL and RCSPL), though paying franchisee fee in instalments, had capitalized the entire bid amount and were claiming depreciation on it @ 25 *per cent*. The ITD had treated it as intangible asset and allowed depreciation @ 25 *percent* on the amount of instalments paid. CIT (A) Mumbai has sustained the stand of ITD in the case of ISPL. However, the higher appellate authorities have adopted different views in this respect where, Income Tax Appellate Tribunal (ITAT) Mumbai had treated the instalment of franchisee fee as revenue in nature and ITAT Bangalore in the case of GMRSPL had ordered to capitalize the entire bid amount (instead of annual instalments actually paid) and allowed depreciation @ 25 *per cent* thereon.

Hence, the same expense had been treated differently at different appellate levels and as such the issue was litigated due to absence of specific provision in the Act to deal with such expenses.

41 (i) M/s Jaipur IPL Cricket Pvt. Ltd. (JICPL) in PCIT (Central)-1, Mumbai, (ii) M/s Knight Riders Sports Pvt. Ltd. (KRSPL) in PCIT (Central)-2, Mumbai, (iii) M/s Indiawin Sports Pvt. Ltd. (ISPL) in PCIT (Central)-3, Mumbai, (iv) M/s Royal challengers Sports (P) Ltd. (RCSPL) in PCIT-5, Bengaluru and (v) M/s GMR Sports Pvt. Ltd. (GMRSPL) in PCIT (Central), Bengaluru

3.7 Lack of mechanism for monitoring and utilization of Form 52A

Section 285B was introduced⁴², 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 to the jurisdictional Assessing Officer 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 under section 272A(2)(c) is leviable @ ₹ 100 per day.

In our Performance Audit Report⁴³ on ‘Taxation of Assessee engaged in Film and Television industry’ following recommendations were made by the audit to be considered by the Central Board of Direct Taxes (CBDT) for implementation:

- 1) Receipt of Form 52A may be suitably monitored;
- 2) Suitable provisions be made in the Act to disallow expenditure on the films if the Form is not received before filing of income tax return;
- 3) The Form may be amended to include PAN of the persons to whom payment is being made

CBDT had agreed (February 2011) to look into the suggestions made by the audit for the first two recommendations and had accepted (February 2011) the third recommendation.

3.7.1 Form 52A containing particulars of all payments over fifty thousand rupees has been made applicable to producers of cinematograph films only and has not been extended to assessees involved in other segments of entertainment sector such as documentaries, event managements etc. which are similar to film production and substantial amounts of expenses are incurred in these segments. In the absence of an enabling provision in respect of assessees involved in the entertainment sectors other than film sector, effective verification of expenses claimed by assessees in these sectors was not being carried out by AOs during the assessment proceedings.

3.7.2 In the case of producers, their assessments were being concluded without verifying the payment details contained in Form 52A, rendering the

42 as clarified by CBDT vide circular no. 204 issued in July 1976

43 Para 3.37 of Report (Direct Taxes) No. 36 of 2010-11.

mechanism ineffective. We observed in two assessment cases in two states⁴⁴ that there was mismatch in the details of payments shown in Form 52A and the amounts accounted for in Profit & Loss Account. The payment details indicated in Form 52A were lesser than those indicated in Profit and loss account and the assessments were completed based on the higher amounts of expenditure recognized in the Profit and Loss Account. One case is illustrated below (See Box 3.3).

Box 3.3: Illustration of variation observed in payment as per Form 52A vis-a-vis Profit and loss account

Charge: CIT-6, Hyderabad

Assessee: Veera Venkata Danayya Dasari

Assessment Year: 2013-14

The assessment of the assessee was completed in March 2016 at an income of ₹ 4.24 crore. The assessee had produced two films viz “Nayak” and “Cameraman Gangatho Rambabu” during FY 2012-13 relevant to AY 2013-14 and claimed production expenses against these movies. Audit noticed that assessee had claimed ₹ 4.59 crore as production expenses in the profit and loss account, whereas the payment shown by the assessee in Form 52A was ₹ 2.87 crore only. Thus, there was a variation of ₹ 1.72 crore between Form 52A and Profit & Loss Account. However, AO did not correlate the information furnished in Form 52A with production expenses claimed by the assessee while completing the assessment.

The ITD replied (January 2018) that Form 52A reflected the payments made above ₹ 50,000 up to the date of filing while the payments made post filing of Form 52A were not reflected in the same. Further, the expenditure debited to Profit and Loss account and Form 52A were not comparable figures as both could relate to different periods of time. Merely because expenditure was not reflected in Form 52A, the same could not be disallowed.

Reply of the ITD is not tenable as the columns of Form 52A included both the amounts paid and amount due as on the date of filing of Form 52A. Further, as per the ledger of the assessees, the payments were made during the FY 2012-13 only and all the recipients were corporate entities who follow the mercantile system of accounting. Hence, the contention of ITD that the expenditure debited to Profit and Loss account and Form 52A were not comparable was not correct.

44 Karnataka (Sri Seethabhairaveshwara Productions in PCIT-2, Bengaluru) and Andhra Pradesh & Telangana (Sri D. V. V. Danayya)

3.7.3 Form 52A in the present format does not require the PAN of the payee. In the absence of PAN of the payee, it would be difficult to trace the person to whom payment has been made and verify the correctness of the transaction. Despite recommendation made in report on 'Taxation of Assessee engaged in Film and Television Industry' regarding inclusion of PAN of the persons to whom payment is made by the assessee and acceptance of the same by the Ministry, ITD has not taken any action in this regard. Thus the very purpose of Form 52A towards getting information about the recipient is defeated.

3.7.4 We observed in case of 77 producers in 10 states that they had produced and released 152 movies during the period mentioned against the respective movie. The applicable Form 52A was (i) not submitted for 140 movies in ten states; and (ii) not submitted within prescribed time for 12 movies in three states as depicted in table below. However, the applicable penalty was not levied by the ITD.

Table 3.1: Non submission/delayed submission of Form 52A

State	Number of producers	Number of movie released	Number of Form 52A not submitted	Number of Form 52A submitted with delay
Andhra Pradesh and Telangana	5	8	1	7
Assam	1	1	1	0
Karnataka	7	19	17	2
Kerala	23	33	30	3
Maharashtra	9	29	29	0
Punjab	1	1	1	0
Rajasthan	3	3	3	0
Tamilnadu	24	52	52	0
Uttar Pradesh	1	1	1	0
West Bengal	3	5	5	0
Total	77	152	140	12

3.8 Mismatch in the data provided by DGIT (Systems) and Assessment Charge data

We noticed from the analysis of the scrutiny data as per 'Demand & Collection Register' (D&CR) vis-à-vis data provided by DGIT (Systems), New Delhi for the period FY 2013-14 to FY 2016-17 in four states where exclusive Film Circle and Film Wards exist that the actual number of scrutiny cases were higher than the number of cases shown in the list of DGIT (Systems),

New Delhi. For example, number of cases in D&CR compared to DGIT(Systems) were higher by 373 and 284 in circle 16(1), Mumbai and circle 20(1), Chennai respectively during the above period.

The variation in overall number of scrutiny cases finalized during financial year 2013-14 to 2016-17 ranges from 02 to 141 (**Appendix-4**). Mismatch in the data provided by DGIT (Systems) shows non-reliability of sector-wise data gathered in ITD.

3.9 Conclusion

- There is a possibility of irregular claim of expenses by the assessee due to deficient monitoring mechanism in respect of the verification of the expenses as claimed by the Indian production houses on account of production cost payment made to the foreign line producers.
- There is scope for suppression of profits by disclosing less incentive/subsidy due to deficient monitoring mechanism in respect of verification of the incentive/subsidy received by the Indian production houses from Foreign Governments.
- Inter related parties of this sector are following different accounting methods leaving the scope for deferment/escapement of income.
- As per the existing provision in the Act, it is not mandatory for the producer to submit the details of revenue earned from overflow and from various movie rights. Thus, there is risk of evasion of tax due to possibility of underreporting of income by the producers.
- There was no uniformity in applying provisions of withholding tax in respect of payments made to foreign line producers as there was no clarity in treatment of such payments as administrative charge or fee for technical services.
- There was no uniformity in allowing pre-operative expenses by the assessing officers despite the facts and circumstances being similar in nature indicating inconsistent approach adopted by assessing officers in similar cases.
- Though there is a provision of TDS under section 194C on payment against ‘production of programmes for broadcasting and telecasting’, no such provision existed for payment against purchase of distribution rights of movies under production. Thus, there is risk of escapement of income as payment details do not get reflected in Form 26AS of the assessee (producer).

- There is no specific provision in the Act/rules for ensuring uniformity and consistency in allowance of franchisee fee as paid by IPL franchisee to BCCI. This is resulting in litigation of the matter as various appellate authorities are treating such franchisee fee differently.
- Submission of Form 52A is not monitored and details of production cost disclosed by film producer in Form 52A is not properly verified during assessment rendering the mechanism ineffective. Form 52A in the present format does not seek PAN of payee, rendering it difficult to track the payee for cross verification of the related party transactions.

3.10 Recommendations

Audit recommends that:

- a. The CBDT may issue instructions to AOs for comprehensive verification of transactions with respect to cases involving:
 - i. the reimbursement of production cost by Indian producers to foreign line producers
 - ii. receipt of quantum of subsidies/incentives by Indian producers from foreign government
 - iii. Adoption of different accounting methods by inter related parties of this sector and revenues earned by movie producers from overflow and from various movie rights
- b. In respect of effective utilisation of Form 52A, the CBDT may consider:
 - i. to pursue pro-actively the receipt of Form 52A from all movie producers
 - ii. extending disclosure requirement vide Form 52A for assessees engaged in other emerging sub-sectors of Entertainment Industry, viz. documentary producer, event management firms/companies etc.
 - iii. changing template of Form 52A to include PAN of payees receiving payments from the movie producers
 - iv. capturing the details of receipts earned by movie producers from various movie rights/ overflow (surplus receipts)
 - v. making it mandatory to disclose all details sought as per Form 52A

- vi. making it necessary to disclose, separately, details of amounts actually paid during the financial year and amounts due for payment as on the date of filing of Form 52A to facilitate cross verification of receipts in respect of the assessees who are following cash/mercantile basis of accounting

The CBDT replied (June 2018) that the format of Form 52A shall be examined and revised as per the recommendations made by the Audit.