

Executive Summary

Search and Seizure is a very powerful tool available to Income Tax Department to unearth any concealed income or valuables and to check the tendencies of tax evasion thereby mitigating the generation of black money. The Income Tax Department resorts to search and seizure only in cases where there is sufficient reason to believe that the person concerned would not disclose the true picture of his income in the normal course of filing of return and regular assessment.

We conducted performance audit on search and seizure assessments in Income Tax Department with the objective to examine (i) the extent of compliance with the existing provisions of the Act/Rules /Circular/Instructions in making such assessments and also to point out systemic deficiency, if any, in these assessments; and (ii) the efforts made by the department in coordinating with other Government agencies/different wings of the department to disseminate information during the course of assessment, regarding undisclosed income detected during search and seizure operations.

The Performance Audit (PA) covered the search assessments completed during the financial years 2014-15 to 2017-18. Total 1417 number of Groups were assessed during the period 2014-15 to 2017-18 by different field offices under our audit jurisdiction. Out of this audit universe sample of 185 Groups was drawn. We checked 24,869 assessment records with assessed income of ₹1,71,503.78 crore during the performance audit. We issued 1659 observations related to absence of provisions in the Act, non-compliance to the Income Tax provisions, non-centralisation of search assessees, non-uniformity in making additions, non-implementation of the recommendations given in the Appraisal Report during search assessments and non-levy of penalty etc. having tax effect of ₹4150.02 crore. Besides, we also analysed the sustainability of additions made during search assessments.

As we have seen a limited number of assessment cases/records as per our sample, the Ministry needs to examine this issue in its entirety and not only in the cases covered by the sample.

Para-wise summary of findings are given below:

- Audit noticed cases where there were loopholes/deficiency in the provisions of the Act in respect of search assessments. These deficiencies mainly relate to absence of specific provisions in the Act/Rules.
(Paragraph 2.4)
- Audit noticed that the department did not centralise all cases in respect of certain groups for assessments due to which issues relating to the assessee's pointed out in Appraisal Report could not be addressed.
(Paragraph 2.5)
- Audit observed in respect of certain Groups that 76.5 *per cent* of additions made in assessments did not stand the test of judicial scrutiny in appeals at the level of CIT (A)/ITAT. We also observed cases where sustainability of additions made in the assessment orders was nil at appellate stage.
(Paragraph 2.6)
- Audit noticed cases where AOs, while finalizing the assessments, did not take uniform stand in making additions on account of bogus purchases, accommodation entries and in adoption of figures of assessed income/revised income. The additions were made arbitrarily either on lump sum amount basis or different percentage ranging from five *per cent* to 50 *per cent* under similar circumstances without proper justification.
(Paragraph 2.7)
- Audit noticed cases of non-compliance of CBDT's instructions/orders such as allowing appeal without collecting the requisite demand and non-filing of appeal in the High Court despite the directions of DGIT (Investigation). Audit also noticed cases where AO dropped penalty proceedings under sections 271(1)(c)/271AAB of the Act without approval of higher authority.
(Paragraph 2.8)
- Audit observed cases where, AO did not assess the income of the relevant assessment year covered under search.
(Paragraph 2.9)

- Audit noticed cases where AO, while finalizing the search assessments, did not levy penalty though the same was leviable.

(Paragraph 2.11)

- Audit noticed cases where AO while finalizing the search assessments, did not assess unexplained credit, levied tax on normal provisions instead of leviable under special provisions of section 115JB of the Act, computed short demand, charged tax at a rate less than the prescribed rate, short levied interest, surcharge and did not disallow expenditure related to exempt income, allowed incorrect MAT credit etc.

(Paragraph 2.12)

- Audit noticed cases where AO did not comply with the provisions such as non-referring of cases to Transfer Pricing Officer (TPO), Action on offence committed by Chartered Accountant in IT Act, Delay in action on Entry provider, Assessment without filing of IT Return, Prior approval of Joint Commissioner not taken before passing assessment order, etc. during search assessments.

(Paragraph 2.13)

- Audit observed delay ranging from one month to 14 months in handing over of Appraisal Report along with seized material to the AO. This inordinate delay in handing over seized materials may result in less time for assessment which has attendant risk of human error for hasty completion of assessment thus affecting the quality of assessments.

(Paragraph 3.1.1)

- Audit noticed cases where AO did not verify the source/genuineness of the transaction pointed out in Appraisal Report and did not add undisclosed income recommended in the Appraisal Report, unsecured loan/advance received from entry provider, entire undisclosed income pointed out in Appraisal Report was not assessed, expenditure was not added back to the income of the assessee for want of evidence of TDS, action was not initiated by the department despite receipt of search folders and materials. Though the department was required to coordinate with other wings of ITD viz Investigation wing, TDS circle etc. in these cases and resolve the issues before finalization of the assessments but the same was not done.

(Paragraph 3.1.2)

- Audit noticed cases where AO had not made addition of undisclosed income admitted by the assessee or disallowed the expenditure based on the statement made on oath during the course of search and also had not resolved the matter with the Investigation Wing.

(Paragraph 3.1.3)

- Audit noticed cases where other government agencies i.e. REIC and CBEC did not share information with ITD. As a result, AO could not address the issues like removal of stocks without payment of excise duty, purchases in cash without invoices/bills and genuineness of sources of investment etc. either in search assessments or finalized assessment without examining the requisite information which may be prejudicial to the interest of revenue.

(Paragraph 3.2.1)

- Audit observed that the information relating to advancing of loans to the paper companies, wrong claim of PSI subsidy/sales tax subsidy was not shared by ITD with other government agencies/authorities either directly or through REIC.

(Paragraph 3.2.2)

- Audit observed in certain Groups where Action Notes based on comprehensive and methodical examination of seized material, were not prepared by the AO. Audit also observed that Separate Narrative Reports were not prepared and sent to the Member (Investigations).

(Paragraph 3.3)

- Audit noticed cases that though the information relating to sellers of land/flat/commodities had been pointed out in the respective Appraisal Report, who could be potential assesseees. Yet Department did not initiate any action in this regard. The department also did not confirm whether these sellers were in the tax net of the department and regularly filing the return.

(Paragraph 3.4)

Summary of recommendations

Audit recommends that:

- *The CBDT may introduce suitable provision for not allowing set off of losses of previous years/earlier years assessed in regular assessments against the undisclosed income detected during search and seizure.*

(Paragraph 2.4.1)

The CBDT stated (June 2020) that the observation of C&AG is already incorporated in law due to which no further action is required.

The CBDT may examine the adequacy of the current provisions with respect to bogus purchase, inflated invoices etc. as undisclosed income from these do not get covered under the existing provisions.

- *Audit reiterates that the CBDT may introduce a time limit for issuing notices under amended section 153A/153C.*

(Paragraph 2.4.2)

The CBDT stated (June 2020) that the issue shall be examined by TPL Division.

- *the CBDT may examine whether these are errors of omission or commission and take necessary action as per law in that regard.*

(Paragraph 2.4.3)

- *ITD may strengthen the mechanism for monitoring of compliance of existing instructions of CBDT regarding centralisation of all the search cases in central circles, so that all the issues pointed out in Appraisal Report could be addressed and assessment made more effective.*

(Paragraph 2.5)

The CBDT stated (June 2020) that the purpose of centralisation is to ensure that all cases directly connected with the Group searched are assessed at one place to prevent any loss of revenue and to facilitate a proper assessment. But this does not necessarily mean that the related parties are also to be centralized.

Audit is of the view that all the assesseees related to issues pointed out in Appraisal Report may be centralized and their assessments should be completed in a nameless/faceless manner, where the assesseees as well as

AOs are not aware of each other's identities, to ensure transparency in the assessments.

- *the Department may like to ensure that the search warrants are issued after proper examination of the information available, research and due diligence in a manner which is above suspicion as search and seizure involves lot of harassment to the assesseees and their families. The possibility of role of judicial body may also be explored. The CBDT may also analyse the reasons for low sustainability and fix the responsibility of the concerned officers.*

(Paragraph 2.6)

- *the CBDT may examine the reasons for wide variations in the applicability of the same law under similar conditions and find a solution to ensure consistency in making assessments. The CBDT may also investigate whether these are errors of omission or commission and take necessary action as per law in that regard.*

(Paragraph 2.7, 2.8 to 2.12)

- *CBDT may put in place a mechanism so as to ensure that Appraisal Report along with seized material be handed over to assessment wing within stipulated time so that AO could have sufficient time to examine all the issues pointed out in Appraisal Report.*

(Paragraph 3.1.1)

- *the CBDT may put in place a mechanism so as to ensure that the issues pointed out in Appraisal Report are duly addressed during assessment.*

(Paragraph 3.1.2)

- *ITD may strengthen its assessment procedure to make effective use of provision 132(4) of the Act.*

(Paragraph 3.1.3)

The CBDT agreed (June 2020) to examine the audit recommendation.

- *ITD may strengthen the mechanism of sharing of information amongst different wings of the Department as well as with other Government agencies and ensure its timeliness for effective assessments and prevent undue benefit to the assesseees.*

(Paragraph 3.2)

The CBDT stated (June 2020) that the existing practices/mechanisms already provide for effective sharing of information within the Department as well as with other Government agencies and the Board has issued various instructions from time to time directing the field formations concerned to adhere strictly to the timeline. However, the CBDT agreed that the mechanism in place needs to be strengthened.

- *the CBDT may fix responsibility where Action Note/Separate Narrative Report is not prepared and further appropriate action be taken so that objective of search and seizure operations is not defeated.*

(Paragraph 3.3)

- *ITD may devise a system to track the new assesseees added in the tax net consequent upon search operations/assessments and also to watch that these assesseees are tax compliant.*

(Paragraph 3.4)

The CBDT stated (June 2020) that after obtaining the report from Pr. CIT, they will find out the lapses and ensure that the same do not occur in future.