



Report of the Comptroller and Auditor General of India



लोकहितार्थ सत्यनिष्ठा
Dedicated to Truth in Public Interest

Assessment of Assesseees in Entertainment Sector

Union Government
Department of Revenue – Direct Taxes
Report No. 1 of 2019

**Report of the
Comptroller and Auditor General of India**

for the year ended March 2018

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Entertainment Sector**

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Laid on the table of Lok Sabha/Rajya Sabha on _____

Table of Contents

| Contents | Page |
|--|-----------------|
| <i>Preface</i> | <i>i</i> |
| <i>Executive Summary</i> | <i>iii-vi</i> |
| <i>Summary of Recommendations</i> | <i>vii-viii</i> |
| Chapter 1: Introduction | 1-4 |
| Chapter 2: Coordination effort within/outside the department and expansion of tax base | 5-19 |
| Chapter 3: Internal control and ambiguity in the provisions of the Act/Rules | 21-34 |
| Chapter 4: Compliance issues relating to provisions of Income Tax Act | 35-61 |
| Appendices | 63-71 |
| Abbreviations | 73 |

Preface

This Report for the year ended March 2018 has been prepared for submission to the President under Article 151 of the Constitution of India.

The Report contains significant results of the performance audit of Assessment of Assessee in Entertainment Sector of the Department of Revenue – Direct Taxes of the Union Government in 2013-14 to 2016-17.

The instances mentioned in this Report are those, which came to notice in the course of test audit for the period 2013-14 to 2016-17 conducted in two phases from August 2017 to February 2018 and from July 2018 to August 2018.

The audit has been conducted in conformity with the Auditing Standards issued by the Comptroller and Auditor General of India.

Audit wishes to acknowledge the cooperation received from the Department of Revenue - Central Board of Direct Taxes at each stage of the audit process.

Executive Summary

This performance audit covered the assessment of assessee engaged in key sub-sectors of entertainment sector viz. television, radio, music, event management, films, animation and visual effects, broadcasting, sports and amusement which included cases of scrutiny assessment, appeal and rectification completed during the period 2013-14 to 2016-17. We conducted the performance audit for assessing the effectiveness of the efforts of the Income Tax Department (ITD) to coordinate within the department and with other central/state government departments to identify the probable assessee in the entertainment sector and check evasion of income tax. The other objectives were to check loopholes/ambiguity in the existing provisions applicable to entertainment sector, and to assess the efficiency and effectiveness of the Assessing Officers (AOs) in ensuring compliance with the provisions of the Income Tax Act/Rules.

We covered the scrutiny assessments completed by the ITD during the financial years 2013-14 to 2016-17. Out of total of 13,031 assessments made in the period by the ITD, we checked 6,516 assessment records (approx. 50 *per cent*) with assessed income of ₹ 47,979.44 crore during this performance audit. We noticed 726 instances (approx. 11 *per cent* of the audited sample) concerning systemic and compliance issues involving tax effect of ₹ 2,267.82 crore, thus causing loss of revenue to the Government. As we have seen a limited number of assessment cases/records as per our sample, the Ministry needs to verify this in its entirety and not only in the cases of the sample.

We had an Entry Conference with Central Board of Direct Taxes (CBDT) in October 2017 wherein we explained the audit objectives, scope of audit and main areas of audit examination. We also had an Exit Conference with CBDT in June 2018 to discuss the audit findings and recommendations vis-à-vis their responses.

Summary of audit findings:

Audit noticed that the number of cases selected for scrutiny assessments under the business code 906 [Others (Entertainment sector)] was not commensurate with the additions made in scrutiny assessments of cases under this code during FYs 2013-14 to FYs 2016-17. As a number of segments of the entertainment sector, viz. sports, event management, artist, animation, cable business etc. are clubbed under this code, segment specific

refinement of assesseees may not be possible for selection under scrutiny and monitoring purposes.

(Para 2.1)

Audit noticed instances where useful information of the assessee was not shared amongst different charges of Income Tax Department (ITD), thereby impacting the quality of assessment. Even, information of cash transactions, being a major source of unaccounted income, was not passed on to other charges of ITD for further verification of such transactions.

(Para 2.2.1 and 2.2.2)

Despite specific film circles/wards created to assess all the assesseees of film and television industry in dedicated units, sufficient efforts were not made by the ITD to assess them in the designated circles/wards thereby defeating the purpose of cross-verification of related transactions and prevention of possible leakages of revenue.

(Para 2.2.3)

Audit noticed instances where ITD did not utilise available sources effectively for collection and analysis of data from other central and state government departments.

(Para 2.3)

Surveys, though an effective tool for strengthening tax base as well as deterrence against evasion, were not utilised at all in some states during FY 2013-14 to FY 2016-17.

(Para 2.4)

Audit found that verification of the expenses as claimed by the Indian film production houses on account of production cost payment made to the foreign line producers was not being done during assessment proceedings. This indicates deficient monitoring mechanism, leaving the scope of irregular claim of expenses by the assessee to reduce tax liability.

(Para 3.1.1)

Audit noticed that verification of the incentive/subsidy received by the Indian film production houses from Foreign Governments was not being done during assessments, thereby, leaving the scope of suppression of profits by disclosing less incentive/ subsidy.

(Para 3.1.2)

Audit noticed that inter-related parties of the entertainment sector were following different accounting methods, thereby impacting proper cross verification of transactions made by them.

(Para 3.2.1)

Audit found that there was no monitoring mechanism to examine the details of revenue earned from overflow and from various movie rights by the film producers. Thus, there was risk of evasion of tax due to possibility of underreporting of income by the producers.

(Para 3.2.2)

Audit found that there was lack of uniformity while applying provisions of withholding tax in respect of payments made to foreign line producers, reason being lack of clarity in treatment of such payments as administrative charge or fee for technical services.

(Para 3.3)

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.

(Para 3.4)

Audit found that 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).

(Para 3.5)

Audit found that there was no uniformity in allowance of franchisee fee, as paid by Indian Premier League (IPL) franchisee to Board of Control for Cricket in India (BCCI), by the ITD, resulting in litigation of the matter and various appellate authorities treating such franchisee fee differently.

(Para 3.6)

Audit found that despite acceptance of recommendation (made in our earlier report No. 36 of 2010-11) by the Ministry for inclusion of PAN of payee in Form 52A, no action has been taken by the ITD in this regard. Audit also found control weaknesses in respect of Form 52A wherein submission of Form 52A was not being monitored and the details of production cost disclosed by film producer in Form 52A was not being properly verified during assessment.

(Para 3.7)

Audit noticed instances where additions made by the assessing officers to the income of the assessee on ad hoc basis by applying varying percentage ranging from five *per cent* to 20 *per cent* despite the grounds of additions were same.

(Para 4.2)

Audit noticed instances where provisions related to allowances of deductions/expenses/set off and carry forward of losses/ MAT etc. were not followed correctly by the ITD. Audit also found the cases where the assessing officers committed mistakes in computation of tax during assessment.

(Para 4.3 to 4.7)

Summary of Recommendations

With reference to coordination effort within/outside the department and expansion of tax base

Audit recommends that

- a. CBDT may consider allocating separate codes to film artist and to emerging segments in entertainment industry viz. sports, event management etc. to ensure better monitoring, improved vigilance and identification of assessees for detailed scrutiny.

{Para 2.6(a)}

- b. The ITD may strengthen the existing mechanism for sharing and cross-verification of needful information within the department to ensure quality assessments.

{Para 2.6(b)}

- c. The CBDT may effectively coordinate with external agencies such as central/state revenue departments/authorities for cross verification of revenue collection figures disclosed by assessees in its ITRs.

{Para 2.6(c)}

- d. The CBDT may ensure that cases related to film and television industry are assessed in the film circles/wards so that the related transactions could be cross verified and leakage of revenue could be prevented.

{Para 2.6(d)}

With reference to internal control and ambiguity in the provisions of the Act/Rules

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

{Para 3.10(a)}

- 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 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.

{Para 3.10(b)}

With reference to Compliance Issues

Audit recommends that:

- a.** The CBDT may ensure that assessment orders are self explanatory (speaking orders) while arriving at ad hoc additions and thus also avoiding non-uniformity in ad hoc additions in similar cases.
{Para 4.9(a)}
- b.** CBDT may ensure that the provisions/conditions laid down in the Income Tax Act with respect to allowances of deductions/expenses/set off and carry forward of losses/ MAT etc. are duly complied with by the Assessing Officers in order to improve the quality of assessments.
{Para 4.9(b)}
- c.** CBDT may make it mandatory for the Assessing Officers, at all stages of assessments, to auto generate tax demand through its assessment module having in built checks and validations to prevent recurring and avoidable mistakes in computation of tax and interest.
{Para 4.9(c)}

Chapter 1: Introduction

1.1 Introduction

Entertainment sector consists of different segments under its fold such as television, radio, music, event management, films, animation and visual effects, broadcasting, sports and amusement etc. This sector has witnessed a strong growth in the last five years making it one of the fastest growing sectors in India.

1.2 Significance of the Sector

India had 168 million TV households in 2014, which makes it the third largest television market in the world. The number of TV households will reach 196 million by 2019 along with 175 million Cable & Satellite subscriber base, indicating 90 *per cent* penetration of TV in households. The size of the television industry, estimated at Indian Rupee (INR) 542 billion in 2015, will reach INR 1098 billion by 2020. Animation and visual effects is new emerging area in India which offers opportunity in both domestic and foreign market. The broadcast segment in India has around 800 satellite television channels and 242 FM channels. In the film segment, India maintained its position as a top film producer and has produced 1827 digital films in 2015. The Indian film industry is expected to reach INR 204 billion by 2019, up from INR 126.4 billion in 2014¹. The organized event management industry in India has grown at 15 *per cent* annually from INR 28 billion in 2011-12 to INR 43 billion in 2014-15. The Indian sports sector is experiencing a sea change with all-around developments initiated by the government such as 'Khelo India' and involvement of private sector by organizing tournaments through various leagues. The estimated value of the sports infrastructure market was INR 800 billion in 2016. Additionally, the sports sponsorship market in India grew approximately at 12.5 *per cent* on year to year basis in 2015 to reach INR 52 billion².

1.3 Why we chose the topic

The grounds for selecting this topic for performance audit were:

- As this sector is expanding very fast and is a significant source of revenue to the Government as pointed out above, we felt it was necessary to focus on this sector and see that the income tax is duly levied and collected from the business in this area.
- In the year 2010-11, we had conducted performance audit on "Taxation of assessee engaged in the Film and Television Industry"

1 Source: Achievements report (Media and Entertainment), Ministry of Information & Broadcasting

2 Source: EY report on -The Indian events Industry and KPMG-CII report on the business of sports.

wherein we had focussed only on Film and Television Industry. We, therefore, decided to broaden the scope by covering all the segments of the entertainment sector and conduct a comprehensive audit.

- This office conducted a performance audit on Entertainment Sector in Indirect Taxes Wing (Service Tax) during the year 2016-17 wherein we had highlighted that the Central Board of Excise and Customs (CBEC) needs to utilise the already available data optimally and evolve a system of using third party data to identify potential assessees for broadening the tax base. Accordingly, we decided to cover these aspects from direct taxes side as well.

1.4 Objectives of the performance audit

The objectives of conducting the performance audit were:

- a. to study the effectiveness of the department's efforts to coordinate within the department and with other central/state government departments to identify the probable assessees and to widen the tax base in the entertainment sector and check evasion of Income tax;
- b. to ascertain whether the systems, internal controls and processes are sufficient and robust to ensure effective assessment of assessees of Entertainment Sector and to check loopholes/ambiguity in the existing provisions applicable to entertainment sector;
- c. to assess the efficiency and effectiveness of the Assessing Officers (AOs) in ensuring compliance with the provisions of the Income Tax Act/Rules in relation to entertainment sector.

1.5 Legal Frame Work

The assessees engaged in the business of entertainment sector are governed by all the provisions of the Income Tax Act that are generally applicable to the different class of assessees viz. Companies, Firms, Trusts, Individuals etc. Further, the Income Tax Act/rules provide specific tax incentives to the assessees of entertainment sector. It provides deduction in respect of professional income from foreign sources in case of author, playwright, artist, musician and actor; being a resident in India. It also allows deduction in respect of expenditure on production and on acquisition of distribution rights of feature films.

Legal provisions relating to the taxation of assessees falling under Entertainment Sector with relevant latest judicial decisions and circulars of the CBDT are given in **Appendix-1**.

1.6 Audit Scope and Sample Selection

The audit covered assessment cases relating to assessees engaged in key sub-sectors of entertainment sector viz. television, radio, music, event management, films, animation and visual effects, broadcasting, sports and amusement etc. The performance audit covered the cases of scrutiny assessment, appeal and rectification completed during the period 2013-14 to 2016-17. Wherever necessary, assessment records of previous assessment years in respect of the selected assessees were also examined.

The Director General of Income Tax (Systems), New Delhi furnished the Commissionerate-wise consolidated data of assessees associated with cable TV Production (code 901), film distribution (code 902), film laboratories (code 903), motion picture producers (code 904), television channels (code 905), others (code 906) and advertisement agencies (code 701) in respect of scrutiny assessments completed during the financial years 2013-14 to 2016-17. The selection of Commissionerates and units³ within each Commissionerate was based on risk analysis of consolidated data obtained from DGIT(Systems) and information available at regional levels specific to different jurisdictions. We compulsorily selected dedicated film circles/wards created in four states⁴ for selection of assessment cases. Within the selected assessment units under PCsIT/CsIT in 21 states (**Appendix-2**), a total of 6,691 assessment cases comprising all the segments of entertainment sector were identified for examination in audit based on the information available in the 'Demand and Collection Registers' maintained by the selected assessment units. Besides, we conducted detailed analysis in 24 cases to cross verify the correctness of the related party transactions.

1.7 Audit Methodology

- a. An entry conference with CBDT was held on 25 October 2017 wherein we explained the audit objectives, scope of audit and main focus areas of the performance audit.
- b. Collection of data and information relating to assessees engaged in entertainment sector was also sought from other sources to study the department's effort to make the assessment effectively.
- c. Results of the audit examination were conveyed to the concerned AOs for their comments and draft review reports containing audit observations (conveyed during the period August 2017 to

3 100 per cent corporate circles and 25 per cent non-corporate circles for each selected PCIT/CIT were selected by field offices except Mumbai office and 50 per cent corporate circles, 25 per cent central circles and 10 per cent non-corporate circles for each selected PCIT/CIT were selected by Mumbai office based on risk parameters and resource availability.

4 Andhra Pradesh & Telangana, Karnataka, Maharashtra and Tamil Nadu

February 2018) were issued to the respective CCIT/CIT by the field audit offices for comments of the Income Tax Department (ITD).

- d. We issued draft performance audit report to the CBDT on 07 May 2018 for their comments. Post receipt of the CBDT's response 04 June 2018, we held Exit Conference with CBDT on 20 June 2018 to discuss audit findings and audit recommendations vis-à-vis their comments.
- e. Considering the high percentage of non-production of records for the performance audit and the fact that non-production of records in certain PCsIT/CsIT charges was very high, the audit was carried out in two phases. Out of total of 6,691 cases identified during this performance for which records was sought for audit, 175 cases (**Appendix-3**) were not received from the ITD.
- f. We have duly incorporated the CBDT's comments together with the audit comments in the report.

1.8 Audit Findings

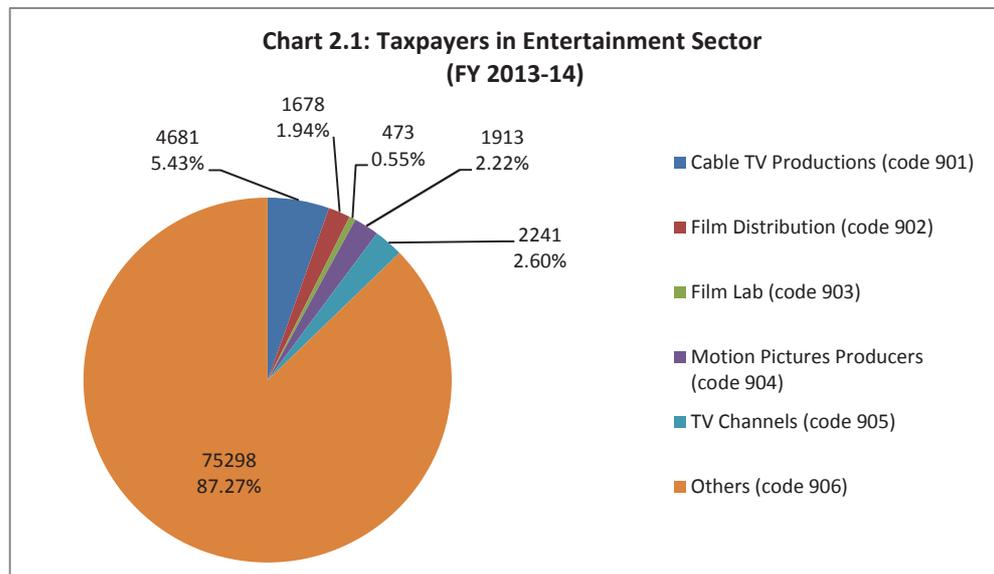
Out of total of 13,031 assessments made in the period by the ITD, we checked 6,516 assessment records (approx. 50 *per cent*) with assessed income of ₹ 47,979.44 crore during this performance audit. We noticed 726 instances (approx. 11 *per cent* of the audited sample) concerning systemic and compliance issues involving tax effect of ₹ 2,267.82 crore. Since a sample of 50 *per cent* has yielded errors of ₹ 2,267.82 crore, the ITD needs to have the remaining 6,515 cases audited internally. The ITD also needs to try to pin down the reasons for why there are such substantial proportion of errors and fix the identified systematic faults and responsibility where the errors have happened as an act of commission. Audit findings are discussed in subsequent chapters.

Chapter 2: Coordination effort within/outside the department and expansion of tax base

2.1 Tax base of assesseees related to entertainment sector under different codes

Allocation of specific codes to different businesses is essential for proper monitoring, collection and sharing of relevant information as also expert handling of sector-specific issues in the course of assessment.

ITD has allocated codes to the assesseees engaged in entertainment sector under six categories⁵. Of six categories, five categories have been assigned to Film & television sector while one category has been allotted for 'others'⁶. Code wise data of assesseees available in the website of ITD showed that during FYs 2013-14, only 13 per cent of assesseees in entertainment sector were falling under five categories assigned to Film & television sector whereas a significant proportion, i.e., 87 per cent of assesseees in entertainment sector were falling in 'others' category of entertainment sector. Number of taxpayers related to this sector under six categories is depicted in chart given below.



Source: ITR statistics, Income Tax Department

5

| | |
|------|---|
| 0901 | Entertainment Industry [Cable T.V. productions] |
| 0902 | Entertainment Industry [Film distribution] |
| 0903 | Entertainment Industry [Film laboratories] |
| 0904 | Entertainment Industry [Motion Picture Producers] |
| 0905 | Entertainment Industry [Television Channels] |
| 0906 | Entertainment Industry [Others] |

6 It covers assesseees associated with sports, film, event management, cable business, animation etc.

With a view to assess the scientific selection of cases under scrutiny under different categories especially for codes 906, we further analysed the data⁷ with respect to the number of scrutiny assessments completed and additions made during the period 2013-14 to 2016-17 for entertainment sector. Details of number of scrutiny assessments and addition made under different codes of entertainment sector is shown in the table below:

Table: 2.1: Number of scrutiny assessments completed and additions made under different codes of entertainment sector during the period 2013-14 to 2016-17

(₹ in crore)

| Business Code | No. of scrutiny assessments (FY 2013-14) | Additions made in scrutiny assessments (FY 2013-14) | No. of scrutiny assessments (FY 2014-15) | Additions made in scrutiny assessments (FY 2014-15) | No. of scrutiny assessments (FY 2015-16) | Additions made in scrutiny assessments (FY 2015-16) | No. of scrutiny assessments (FY 2016-17) | Additions made in scrutiny assessments (FY 2016-17) |
|---------------|--|---|--|---|--|---|--|---|
| 901 | 64 | 48.98 | 96 | 94.09 | 120 | 58.29 | 159 | 179.83 |
| 902 | 111 | 259.49 | 193 | 397.79 | 223 | 595.75 | 214 | 348.49 |
| 903 | 11 | 25.72 | 15 | 13.22 | 13 | 36.51 | 19 | 0.26 |
| 904 | 174 | 142.69 | 238 | 180.4 | 332 | 598.68 | 316 | 197.00 |
| 905 | 98 | 951.93 | 159 | 1519.57 | 203 | 1869.49 | 239 | 1751.77 |
| 906 | 771 | 2863.42 | 1657 | 6284 | 1815 | 9757.85 | 1995 | 10306.31 |
| Total | 1229 | 4292.23 | 2358 | 8489.07 | 2706 | 12916.57 | 2942 | 12783.66 |

Source: Data obtained from DGIT (Systems)

Additions made during scrutiny assessments in code 906 [Others (Entertainment sector)] as a proportion of total additions made in cases relating to entertainment sector continuously increased from 66.71 *per cent*⁸ in FY 2013-14 to 80.62 *per cent*⁹ in FY 2016-17. However, the number of cases selected for scrutiny assessments as a proportion of total scrutiny assessments in cases relating to entertainment sector under code 906 increased from 62.74 *per cent*¹⁰ in FY 2013-14 to 67.82 *per cent*¹¹ in FY 2016-17. Number of scrutiny assessments for each codes as a percentage of total number of scrutiny assessments in entertainment sector vis-à-vis additions made in each code as a percentage of total additions in this sector has been depicted for each FY (FY 2013-14 to FY 2016-17) in the chart below:

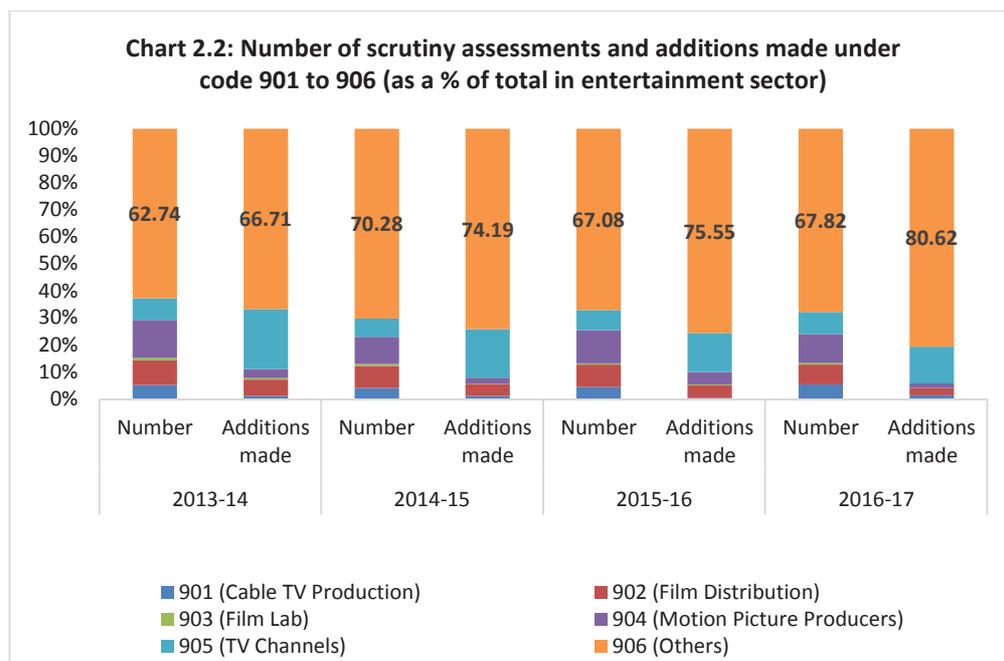
7 Data obtained from DGIT (Systems)

8 Addition of ₹ 2,863.42 crore out of total addition of ₹ 4,292.23 crore

9 Addition of ₹ 10,306.31 crore out of total addition of ₹ 12,783.66 crore

10 771 out of 1,229

11 1,995 out of 2,942



It is seen from above that there has been significant expansion (up to 80 *per cent*) in the additions in the scrutiny assessments made under code 906 (others) indicating that the assessee falling under this code are significant source for revenue generation in this sector. However, the number of cases selected for scrutiny assessments under this code was not commensurate with the additions made in scrutiny assessments of cases under this code during FYs 2013-14 to FYs 2016-17.

As a number of segments, viz. sports, event management, artist, animation, cable business etc. are clubbed in 906 code, segment specific refinement of assessee may not be possible for selection under scrutiny and monitoring purposes. Thus, there is a need to identify categories under code 906 and further delineate it for allotment of specific code to the assessee under emerging segments such as sports, event management, artist etc., in order to facilitate scientific selection and effective evaluation of risk for scrutiny selection.

2.2 Coordination within the department

The assessing units in ITD are structured in such a way so as to administer the different provisions of the Act pertaining to levy and collection of direct taxes. While regular assessments / re-assessments under the various provisions of the Act viz. 143(3), 147, 263, etc., are carried out in corporate/ non-corporate assessment circles and wards, search and seizure related assessments under sections 153A, 153C, etc., are concluded in central circles. Assessments under Tax Deducted at Source (TDS) and International taxation provisions are carried out by designated AO (TDS) and AO (International

Taxation) respectively. Further, for the purpose of efficient correlation between related assessee records and for effective cross-verification of information pertaining to assessments between personalities of film/TV industry, the ITD has created dedicated film/media assessing units. Coordination amongst various wings of the ITD and sharing of information is very important to prevent the possible leakage of revenue. Audit findings regarding coordination within the department are discussed in the succeeding paragraphs.

2.2.1 Sharing and using of information

Audit noticed in 11 cases in Karnataka and Maharashtra involving tax effect of ₹ 201.96 crore that the information in respect of assessees was not shared amongst different charges of ITD at the time of completing the assessment, thereby impacting the quality of assessment. Three cases are illustrated below (see Box 2.1).

Box 2.1 Illustrations of sharing and using of information

(a) Charge: PCIT-10, Mumbai
Assessee: M/s JMD Telefilms Industries Ltd.
Assessment Years: 2014-15 and 2015-16

The scrutiny assessments for AYs 2014-15 and 2015-16 of the assessee was completed in December 2016 at income of ₹ 1.26 crore and ₹ 1.78 crore respectively. Audit noticed that an investigation report of PDIT (Investigation), Kolkata on “Bogus LTCG through penny stock companies” was sent to DGIT (Investigation), Mumbai vide letter dated 27 April 2015 wherein the details of the penny stock companies and their *modus operandi* were explained and the concerned DGsIT were requested to disseminate the report to the AOs through the CCsIT concerned. Audit further noticed that the assessee (M/s JMD Telefilms Industries Ltd.) was one of the penny stock companies as per the Kolkata investigation report. However, while completing the scrutiny assessments in December 2016, AO did not take any cognizance of information of PDIT (Investigation), Kolkata, indicating that either the information was not shared with AO by the CCIT or the AO had not taken any action on the shared information. Thus, sharing of information by the Kolkata unit of ITD was not effectively utilized by the assessment charge of Mumbai office, thereby impacting the quality of scrutiny assessments.

(b) Charge: PCIT-11, Mumbai

Assessee: M/s Stellar Interactive Media Pvt. Ltd. (SIMPL)

Assessment Year: 2013-14

As per Section 68 of the Act, where any sum is found credited in the book of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the AO, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.

The scrutiny assessment of the assessee was completed in March 2016 at income of ₹ 27.73 lakh. During the assessment proceedings, AO had sent letter to DCIT, Circle 8(2), Kolkata on 10 March 2016 to verify the identity, genuineness and the credit worthiness of the M/s Sahara Universal Mining Corp. Ltd. (SUMCL), as the assessee had received share application money along with premium of ₹ 579.28 crore from M/s SUMCL, Kolkata. Local verification by the audit revealed that the DCIT(8), Kolkata did not share the required information with the AO, who in turn, completed the assessment on 30 March 2016 without adding back the unexplained amount of ₹ 579.28 crore to the income of the assessee. Considering the substantial amount involved, the AO could have verified the genuineness of transaction through third party data source, viz. data available with Ministry of Corporate Affairs (MCA) while completing the scrutiny assessment. Thus, both the AOs failed to ensure verification of genuineness before completion of scrutiny assessment of assessee. Had the information been shared between two assessment charges of the ITD, the unexplained amount of ₹ 579.28 crore would have been added back to the income of the assessee and amount of ₹ 187.95 crore be brought to tax. This is indicative of the fact that sharing of information between the different charges of the ITD was not effective leaving the scope of leakage of revenue.

(c) Charge: PCIT-25, Mumbai

Assessee: Sameer Baijnath Joshi

Assessment Year: 2011-12

As per Section 50B of the Act, any profits or gains arising from the slump sale effected in the previous year shall be chargeable to income-tax as capital gains arising from the transfer of long-term capital assets and shall be deemed to be the income of the previous year in which the transfer took place.

The assessee had filed its return of Income for AY 2011-12 in September 2011 declaring total income of ₹ 33.51 lakh and the same was assessed in a summary manner under section 143(1) of the Act. Audit scrutiny of

another assessee, viz. M/s Recept Entertainment Pvt. Ltd. (REPL)¹² revealed that the assessee (Sameer B Joshi) had sold on slump sale basis his business undertakings, viz. 'Chandan Cinema' and 'Chandan Cinema Canteen', to REPL at an agreed value of ₹ 38.84 crore vide agreement dated 7th February 2011. In lieu of the above business undertakings, M/s REPL issued equity share of like amount of ₹ 38.84 crore to the assessee. Since, the above transfer was done on slump sale basis, the capital gain was required to be taxed in the hand of the transferor, i.e., Sameer Joshi, as per the provisions of Section 50B. However, the assessee had not offered any capital gain on account of above transaction as per his return of income filed in September 2011. Audit also noticed from the Income Tax Return (ITR) of Sameer B. Joshi for AY 2011-12 that there was increase in capital amounting to ₹ 10.65 crore, however, the source of increase in capital/investment could not be ascertained from the details available in ITR.

Audit further noticed that the Assessing Officer (AO) of REPL¹³, instead of intimating to AO of Circle 25(3), intimated the AO of Circle 21(2), Mumbai on 13 June 2014 about the slump sale made by the assessee (Sameer B. Joshi) to verify the above transactions. However, AO of Circle 21(2), Mumbai had not taken any action stating that the case did not pertain to his charge. AO of Circle 21(2) Mumbai neither took any action nor referred the case to AO of Circle 25(3) to safeguard the interest of revenue. Had the information been sent to the actual assessment charge, i.e., Circle 25(3), the above transaction would have been brought to tax. This indicated lack of co-ordination within the different assessment units of ITD. The case for AY 2011-12 has become time barred which led to loss of revenue of ₹ 11.95 crore excluding interest.

2.2.2 Verification of cash transactions

White paper on black money¹⁴ highlighted that the cash has always been a facilitator of black money as transactions made in cash do not leave any audit trail. Given the primary importance of cash in relation to generation and use of black money, work needs to be done by way of legal curbs and regulations that can restrict the generation and flow of black money within the economy. As per section 40A(3) of the Act, where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or

12 AY 2011-12, which was assessed in the assessment charge of ITO 11(1)(3), Mumbai (now ITO 16(1)(3), Mumbai)

13 ITO 11(1)(3), Mumbai (now ITO 16(1)(3), Mumbai)

14 Issued by Ministry of Finance, Department of Revenue, CBDT (May 2012)

account payee bank draft, exceeds twenty thousand rupees, no deduction shall be allowed in respect of such expenditure.

During the examination of cases selected for sample, we noticed in five cases in three states¹⁵ that cash transactions were conducted among related parties. However, efforts were not made by the AO to obtain the details of corresponding parties and to pass the information to the jurisdictional AOs. Two cases are illustrated below (see box 2.2).

Box 2.2 Illustrations of verification of cash transactions

(a) Charge: PCIT-6, Hyderabad

Assessee: K. Venugopal (Proprietor of M/s KV Films)

Assessment Year: 2012-13

The scrutiny assessment of the assessee was completed in March 2015 at income of ₹ 1.29 crore. Audit noticed from the ledger account of the assessee that assessee had received a consideration of ₹ 2.92 crore in cash against sale of various movie rights, however, details of purchasers were not available in the records. Audit further noticed that the AO had not obtained the details of the film rights purchasers, from whom the cash payments were received by the assessee, to pass on the information to jurisdictional AOs of purchaser. Not obtaining and sharing of information by the AO with the jurisdictional AO prevented verification of cash transactions and disallowance of the same against the purchaser under section 40A(3) of the Act.

ITD replied (January 2018) that though there was no specific violation in the case of the assessee, efforts would be made to obtain the details from the assessee and forward the same to the jurisdictional AO. The reply of the ITD is not tenable as cash transactions, being a major source of unaccounted income, must be verified for quality scrutiny assessment and the details of persons making payment in cash needs to be shared with respective AOs to prevent possible leakage of revenue.

(b) Charge: PCIT-10, Chennai

Assessee: M/s Thirupathi Brothers Film Media

Assessment Year: 2013-14

Audit noticed from assessment records of the assessee that during survey, the assessee had admitted to have received ₹ 2.45 crore in cash from M/s Studio Green during FY 2012-13. Audit cross verified the assessment records of M/s Studio Green for AY 2013-14 and found that AO (assessing M/s Studio Green) had not added back the amount of expenses for which payment was made in cash by the M/S Studio Green to M/s Thirupathi

15 Andhra Pradesh & Telengana, Maharashtra and Tamilnadu

Brothers Film Media, violating the section 40A(3) of the Act. Had the information of cash transaction been shared by AO of assessee, i.e., M/s Thirupathi Brothers Film Media to the jurisdictional AO, assessing M/S Studio Green, trail of such transactions would have been detected for prevention of possible leakage of revenue.

2.2.3 Effectiveness of creating dedicated Film Circles/wards

With a view to have an overall control on the assessments and to achieve greater co-ordination and effective handling of the assessments of assesseees related to Film industry, dedicated Film Circles have been created in Mumbai, Chennai, Bengaluru and Hyderabad as maximum number of films are produced there.

To serve the above purpose, it was of utmost importance that all the cases related to film and television industry are assessed in the Film Circle. However, in Mumbai, it was noticed from the scrutiny data received from DGIT (Systems), New Delhi that from FY 2013-14 to 2016-17, 240 assesseees of film and television segment (business code 901 to 905) were assessed in other charges i.e. other than film Circles/ Wards. Similar issue was also raised in C&AG Report no. 36 of 2010-11¹⁶ wherein it was reported that 140 assesseees were assessed outside the film circle, and CCIT-I Mumbai had issued instructions (April 2010) to all CCsIT in Mumbai to transfer all cases related to film and television industry to the Film Circle. However, still 240 cases were found to be assessed in other charges. Similarly, in Bengaluru, 62 assesseees related to film and television segment were assessed outside Film Circles¹⁷. Thus the purpose to assess the cases of Film and Television Industry with a view to mitigate risk of revenue loss by cross verifying the facts and figures of inter-related projects and assesseees was not fulfilled. The respective AOs of other than film circles, should have transferred such cases relating to film and television to the dedicated film circles, instead of assessing them in their charge. ITD need to ensure that cases related to film and television sector are compulsorily transferred to dedicated circles, and in case of failure by AO to do so, responsibility may be fixed.

2.3 Coordination with other State/Central Government Departments

According to section 131(1) of the Income Tax Act, 1961 (Act), AOs shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908, including, inter alia, "compelling the production of books of account and other documents". Further, ITD Manual

¹⁶ Report on "Taxation of assesseees engaged in the Film and Television Industry".

¹⁷ DCIT 2(3)(1), Bengaluru, ITO 2(3)(5), Bengaluru- both under PCIT 2, Bengaluru

of Office Procedure prescribed by CBDT¹⁸ entrusts ITD with the responsibility to liaise with other Government departments and agencies like Enforcement Directorate, Customs and Central Excise Department, Central Economic Intelligence Bureau, Sales tax and Trade tax Departments, State Excise Departments, District Administration, Government agencies dealing with economic offences and police authorities to enable income-tax authorities to get hold of vital information on assessees, both existing as well as potential. Audit found that the information of the assessee available with other departments was not effectively utilized by AOs while completing assessment, thereby leaving the scope of leakage of revenue. Audit findings in this regard are discussed in succeeding paragraphs.

2.3.1 Coordination with State Governments

Entertainment tax, now subsumed in Goods and Services Tax (GST), could be obtained and utilized by the ITD to verify the income offered through the chain of producers upto the level of exhibitors on the sale of movie tickets that was collected by the State Governments. Thus, box office collection could be selected to cross verify the actual receipts shown in the books of the assessee with respect to those shown for the purpose of entertainment tax.

2.3.1.1 We sought information of entertainment tax data of Delhi state through the Accountant General for cross verification of entertainment tax deposited by the assessee and the income offered as per Income Tax Act. We received details of entertainment tax collected in respect of 30 assessee. We test checked and cross examined the entertainment tax deposited by the assessee and the income offered as per Income Tax Act in respect of two assessee, viz. M/s Movie Times Cineplex Pvt. Ltd. and M/s M2K Entertainment Pvt. Ltd. Audit findings in this regard are discussed in succeeding paragraphs.

In Delhi, The details of tickets sold are prepared separately for each show of the movie in Form '7'¹⁹ showing gross amount received from the sale of tickets and the amount of entertainment tax and surcharge collected. Audit noticed that non verification of revenue collection figures offered by the assessee in its books of accounts with reference to collection as shown in Form '7' had resulted in short demand of ₹ 67.99 crore. The cases are illustrated below (see box 2.3).

18 Para 9 – Chapter 4 of ITD MOP – Vol. III; Para 34.2.2. under Chapter 9 of Vol. II

19 As per rule 14 of the Delhi Entertainment and Betting Tax Rules, 1997

Box: 2.3 Illustrative cases of coordination with other central/state departments

(a) Charge: PCIT-6, Delhi

Assessee: M/s Movie Times Cineplex Pvt. Ltd.

Assessment Years: 2011-12 to 2014-15

The assessee engaged in the business of running two multiplex cinemas in Delhi had offered income of ₹ 127.95 crore (exclusive of entertainment tax) in its Profit & Loss Account for AYs 2011-12 to 2014-15 from the sale of tickets. However, audit noticed from the information provided by the Entertainment Tax Department, Delhi, that the assessee had deposited entertainment tax of ₹ 46.01 crore against the two cinema halls during the above period. As such, taking into consideration the applicable 20 per cent entertainment tax on sale of tickets, the corresponding income generated by the cinema halls worked out to ₹ 230.06 crore. Thus, there was under reporting of income of ₹ 102.11 crore (₹ 230.06 crore - ₹ 127.95 crore) involving tax effect of ₹ 43.93 crore including interest. ITD had initiated remedial action under section 148 of the Act in March 2018.

(b) Charge: PCIT-6, Delhi

Assessee: M/s M2K Entertainment Pvt. Ltd.

Assessment Years: 2011-12 to 2014-15

The assessee engaged in the business of running two multiplex cinemas in Delhi had offered income of ₹ 39.72 crore (exclusive of entertainment tax) in its Profit & Loss Account for AYs 2011-12 to 2014-15 from the sale of tickets. However, audit noticed from the information provided by the Entertainment Tax Department, Delhi, that the assessee had deposited entertainment tax of ₹ 19.36 crore against the two cinema halls during the above period. As such, taking into consideration the applicable 20 per cent entertainment tax on sale of tickets, the corresponding income generated by the cinema halls worked out to ₹ 96.80 crore. Thus, there was under reporting of income of ₹ 57.08 crore (₹ 96.80 crore - ₹ 39.72 crore) involving tax effect of ₹ 24.06 crore including interest.

ITD replied (February 2018) that assessee had checked its records and performance reports submitted to entertainment tax department, however, it could not locate any figure of entertainment tax collected and deposited as shown by the audit and there might be some error in picking-up the figures. The reply was not tenable as the AO had relied upon the statement of assessee and not verified the entertainment tax deposited by the assessee with the state department for cross-verification of income offered by the assessee in its Income Tax Return(ITR).

2.3.1.2 In Maharashtra, every theatre owner had to file a weekly return in Form B under The Bombay Entertainment Duty Act, 1923. This weekly return included the movie wise details of revenue collection and entertainment tax paid. Hence, the Entertainment Tax Department of the State Government had primary information about the revenue realized from the exhibition of a film.

Audit noticed from test check of 12 cases²⁰ in Maharashtra (Pr. CIT-16, Mumbai charge) that in none of the cases the AO had taken any initiative to verify the revenue collection with actual collection as shown in Form B.

The cases illustrated above show that ITD did not liaise with other departments and it had accepted the disclosures made by assesseees without any cross verification.

2.3.1.3 In Karnataka, every person running the business of amusement had to file a monthly return in Form XXIII in accordance with Section 4E read with Rule 17-A of the Karnataka Entertainment Tax Act, 1958. The monthly return included details relating to payment for admission and all complimentary tickets and passes or relating to collection of amounts and the entertainment tax paid.

In Karnataka, PCIT-1, Bengaluru charge, audit noticed that an assessee, Bengaluru Leisure Pvt. Ltd., had furnished total collection from business of amusement in Form-XXIII at ₹ 3.75 crore (net of entertainment tax) during FY 2012-13 (relevant to AY 2013-14). However, the assessee had offered only ₹ 2.78 crore as income in the Profit & Loss account (P/L account) for the same FY, and thus, suppressed the income to an extent of ₹ 0.97 crore. Omission by AO to cross-verify the amount of actual collection declared by the assessee in Form XXIII and amount offered in the P/L account had resulted in under-assessment of income of ₹ 0.97 crore involving tax effect of ₹ 0.42 crore. The ITD accepted (September 2018) the audit observation and agreed to initiate the remedial action.

2.3.2 Coordination with Central Government Departments

To increase the revenue of the government and identify potential assesseees, information of external sources such as data of other central government agencies could be utilized by the ITD. Audit noticed instances where ITD did not coordinate with central government agencies while completing

20 (1) Rajiv Malhotra (2) M/s Swanston Multiplex Cinema Pvt. Ltd. (3) M/s Quality Cine Labs Pvt. Ltd. (4) M/s The Bengal Properties Pvt. Ltd. (5) M/s Fida Films and Hotels Company Pvt. Ltd. (6) M/s Shringar Films (7) Champaklal Pranlal Zaveri (8) Rahul Madhusudan Haskar (9) M/s Raksha Entertainment Pvt. Ltd. (10) M/s Rajshri Pictures Pvt. Ltd. (11) M/s Maruti International and (12) M/s Mukta Arts Ltd.

assessments, thereby, leaving a scope of leakage of revenue. Audit findings in this regard are discussed below:

2.3.2.1 Coordination with Registrar of Copyrights

As per section 33 to 35 of Copyright (Amended) Act, 2012²¹, the copyright society has to register itself with the Registrar of Copyrights afresh after a period of five years. Further, the renewal is subject to continued collective control of the copyright society being shared with the authors of works in their capacity as owners of copyright or of the right to receive royalty.

In Maharashtra, PCIT-16, Mumbai charge, the assessment of assessee, M/s Indian Performing Right Society Ltd. for AYs 2013-14 and 2014-15 was completed after scrutiny at income of ₹ 21.63 lakh and ₹ 19.81 lakh in March 2016 and December 2016 respectively. The assessee, engaged in collecting royalty on behalf of its members being composers or owner of any musical works, had been declaring net income as payable to its members and the same was claimed as exempt from tax. Audit noticed that fresh registration was not taken by the assessee, thus violating the provisions of Copyright (Amended) Act, 2012. Therefore, the royalty income of ₹ 38.28 crore and ₹ 39.67 crore in the AYs 2013-14 and 2014-15 respectively was required to be treated as income in the hands of the assessee and brought to tax.

Had the ITD co-ordinated with the Registrar of Copyrights and taken action in the case, undue benefit availed by the assessee could have been prevented and loss to exchequer avoided.

2.3.2.2 Coordination with Central Board of Film Certification

Audit also noticed that though the films are being certified by Central Board of Film Certification (CBFC), and there is existence of exclusive film circle and film ward in four states, the ITD has not devised any system to verify the Form 52A²² received *vis-à-vis* CBFC data of films certified. In the absence of such cross verification, the ITD is not in a position to ascertain about number of forms 52A required to be filed by the assessee. In the subsequent chapter (para 3.7.4), we have highlighted that Form 52A had not been submitted/delayed submitted by the producers of movie for 152 movies, thereby, impacting the effective verification by the AOs with respect to expenses claimed by the assessee. The ITD needs to devise the mechanism

21 Copyright Act is formulated by Ministry of Commerce and Industry

22 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

for utilizing the information of CBFC for proper monitoring of receipt of Form 52A from the assesseees.

2.4 Role of survey in strengthening/widening of tax base

Sections 133A and 133B of the Income Tax Act empower the ITD to conduct surveys to gather information relating to the financial transactions of the assessee. Survey enables ITD to identify new assesseees, stop filers and detect tax evasions.

Information in respect of regular surveys conducted (within the selected units) in the entertainment sector during FY 2013-14 to 2016-17 was sought from ITD. It was seen that 25 surveys were conducted in six states²³ wherein additions/disclosures of ₹ 262.17 crore were made. However, no surveys were conducted in 13 states²⁴ during FY 2013-14 to 2016-17 in entertainment sector. No information was received with respect to survey conducted in Gujarat state. Thus, surveys, though an effective tool for strengthening tax base as well as deterrence against evasion, were not utilised altogether in 14 states during FYs 2013-14 to 2016-17 by the ITD.

2.5 Conclusion

- Business Code 906 (others) account for 87 per cent of the assesseees in entertainment sector and the assesseees falling under this code are significant source for revenue generation in this sector. There is a need to identify categories under code 906 and further delineate it for allotment of specific code to the assesseees under emerging segments such as sports, event management, artist etc., in order to facilitate scientific selection and effective evaluation of risk for scrutiny selection.
- Useful information of the assessee was not shared amongst different charges of ITD, thereby impacting the quality of assessment. ITD has also not coordinated with other state and central government departments effectively for collection and analysis of data available with them.
- Despite specific film circles/wards created to assess all the assesseees of film and television industry in dedicated units, sufficient efforts were not made by the ITD to assess them in the designated circles/wards thereby defeating the purpose of cross-verification of related transactions and prevention of possible leakages of revenue.

23 Andhra Pradesh & Telengana, Karnataka & Goa, Kerala, Maharashtra, Rajasthan and Tamilnadu

24 Bihar, Delhi, Haryana, Himachal Pradesh, J&K, Jharkhand, Madhya Pradesh, NER, Odisha, Punjab, Uttar Pradesh, Uttrakhand and West Bengal

- Surveys, though an effective tool for strengthening tax base as well as deterrence against evasion, were not utilised adequately during FY 2013-14 to FY 2016-17.

2.6 Recommendations

Audit recommends that

- a. CBDT may consider allocating separate codes to film artist and to emerging segments in entertainment industry viz. sports, event management etc. to ensure better monitoring, improved vigilance and identification of assessees for detailed scrutiny.

The CBDT replied (June 2018) that the codes specifying nature of business have been rationalized and revised in the return forms notified for AY 2018-19 and as per the revised codes, the column pertaining to "Culture and sports" includes various new and emerging segments in entertainment industry. The CBDT has already allotted code (in the new ITR form for AY 2018-19) to individual artists excluding authors which covers artists in all fields. Hence, no separate code for film artists is now required.

In this context, it is stated that event management, an emerging segment of entertainment sector, has not been allocated separate code in the return forms notified for AY 2018-19. As regards allocating codes to film artists, audit is of the view that film artists, being high risk assessees, may be allocated separate codes for better monitoring, improved vigilance and identification of such assessees for detailed scrutiny.

- b. The ITD may strengthen the existing mechanism for sharing and cross-verification of needful information within the Department to ensure quality assessments.

The CBDT replied (June 2018) that the suggestion is noted for improvement/enhancement.

- c. The CBDT may effectively coordinate with external agencies such as central/state revenue departments/authorities for cross verification of revenue collection figures disclosed by assessees in its ITRs.

The CBDT replied (June 2018) that the suggestion is noted for improvement/enhancement for data exchange with other potential partners in State/ Central Government.

- d. The CBDT may ensure that cases related to film and television industry are assessed in the Film circles/wards so that the related transactions could be cross verified and leakage of revenue could be prevented.

The CBDT replied (June 2018) that separate film circles are already created in major stations such as Mumbai, Chennai and Hyderabad to assess cases related to film and entertainment sector at one place in a centralized manner and no further action is required at the end of CBDT on this issue.

The reply does not address the audit recommendation, as the number of assesseees being assessed outside film circles/wards had actually increased from 140 (highlighted in C&AG Report of 36 of 2010-11) to 240 during the period of audit. The CBDT may ensure that cases related to film and television industry are assessed in the already created Film circles/wards so that the related transactions could be cross verified and leakage of revenue prevented.

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 assessee 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 assessee 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 assessee 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 assessee 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 assessee. 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 assesseees and irregular expenses on account of cost of production may be claimed by the assesseees, 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 assesseees 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 assesseees.

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 assessee had furnished the gross amount from sale of film rights, however, no details were provided by the assessee 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 assesseees 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 assesseees⁴⁰ 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 GMRSP) 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 GMRSP 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. (GMRSP) 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 assessee 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 assessee involved in the entertainment sectors other than film sector, effective verification of expenses claimed by assessee 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 assessee, 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 assessee 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 assesseees 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.

Chapter 4: Compliance issues relating to provisions of Income Tax Act

4.1 Introduction

During examination of assessment records in respect of Entertainment Sector, audit noticed mistakes relating to application of provisions of the Act/Rules, escapement of income, irregular allowance of expenses and deductions, irregular claim/set off/carry forward of losses, incorrect computation of profits/tax and other issues.

Audit noticed that in 592 cases the provisions of the Act were not followed correctly involving tax effect of ₹ 1,922.93 crore. The mistakes noticed in assessments and corresponding tax effect are given in the Table below and detailed audit findings in this regard are discussed in succeeding paragraphs.

| Nature of Mistakes | No. of Cases | Tax Effect (₹ in crore) |
|--|--------------|----------------------------|
| Absence of justification in making additions | 208 | - |
| Income escaping assessment | 83 | 643.39 |
| Incorrect/ irregular allowance of expenses and deductions | 179 | 826.75 |
| Irregular claim/ set off/ carry forward of losses | 31 | 80.81 |
| Mistakes in computation of book profit u/s 115JB and MAT credit u/s 115JAA | 25 | 91.38 |
| Mistakes in computation of tax and other issues | 66 | 280.60 |
| Total | 592 | 1,922.93 |

4.2 Absence of justification in making additions

While making additions to the income of assesseees on ad hoc basis, AOs were adopting different approaches in respect of disallowance although the grounds of the additions were same. We noticed 208 assessment cases in five states⁴⁵ where there was no uniformity in making additions to the income of assesseees on ad hoc basis in the assessment orders. These additions were largely made on percentage basis ranging from five *per cent* to 20 *per cent* on ad hoc basis for varied reasons such as 'want of vouchers', unsubstantiated expenses, absence of third party vouchers etc. However, no specific justification or the basis of additions was recorded in the assessment orders by the AOs for the differential treatment even though the grounds of addition were same. Illustrations in respect of Maharashtra and Karnataka states are discussed below (see box 4.1).

⁴⁵ Maharashtra (129 cases), Karnataka (55 cases), Andhra Pradesh & Telangana (15 cases), Uttar Pradesh (5 cases), Madhya Pradesh (4 cases)

Box 4.1: Illustrations of absence of justification in making additions

- (a) We noticed in 129 cases in the Film Circle (ACIT-16(1), Mumbai) in Maharashtra that the additions to the tune of ₹ 13.75 crore were made on ad hoc basis where (i) addition of only 1 *per cent* of total expenses was made in two assessment cases; (ii) 2.5 *per cent* of total expenses was added in one assessment case; (iii) lump sum addition of ₹ 1 lakh to ₹ 1.50 lakh was made in four assessment cases; while in remaining 122 cases, there were variation in the additions made by AOs ranging from 5 *per cent* to 50 *per cent*.
- (b) We noticed in 55 assessment cases in Karnataka that the additions to the tune of ₹ 9.86 crore were made on ad hoc basis. These additions were largely made on percentage basis ranging from 5 *per cent* to 20 *per cent*. In 28 cases, additions were made in terms of amounts only. No specific justification or basis of additions was recorded by AOs in the assessment orders.

This indicated that there was no consistency in making ad hoc additions by the AOs despite the fact that the grounds of additions were same and in some cases even the AOs were same. No speaking orders were made by AOs in their assessment orders to logically arrive at the different percentage of additions especially in similar issues. Further, where significant expenses were incurred, the ratio of ad hoc addition was one *per cent* to 2.5 *per cent* as compared to ad hoc addition ranging from five *per cent* to 50 *per cent* in lesser expenses claimed by assessee. Thus, assessments made by AOs were inadequate and additions made were subjective and arbitrary.

4.3 Income escaping assessment

Sections 28 to 59 of the Act deal with the manner in which the income from any business, profession, capital gains and other sources have to be computed. Deductions allowable against these sources of income are required to be disallowed and added back to the income of the assessee to fulfil the conditions prescribed in the Act.

Audit noticed that in 83 cases, income was not computed in accordance with the laid down provisions, involving tax effect of ₹ 643.39 crore as discussed in succeeding paragraphs.

4.3.1 Unexplained credit not brought to tax

As per Section 68 of the Act, where any sum is found credited in the books of an assessee and the AO found no explanation about the nature and source thereof or the explanation offered by the assessee is not, in the opinion of

the AO, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that year.

We noticed in 18 cases in six states⁴⁶ that ITD had not made additions under section 68 of the Act although the amount credited in the books of the assessee remained unexplained. This had resulted in short levy of tax of ₹ 305.31 crore. Four cases are illustrated below (see box 4.2).

Box 4.2: Illustration of Unexplained credit not brought to tax

(a) Charge: PCIT-16, Mumbai

Assessee: M/s M. I. Marathi Media Ltd.

Assessment Year: 2013-14

The scrutiny assessment was completed in February 2016 at a loss of ₹ 6.56 crore. The assessee had credited an amount of ₹ 88.24 crore as interest free inter corporate deposit received from M/s Prosperity Agro India Ltd. (PAIL) in AY 2013-14. However, the Balance Sheet of PAIL did not reflect any such deposit given to the assessee. Hence, the entry in assessee's books denotes an unexplained credit and the same should have been added to the income of assessee under the provisions of Section 68. Omission to do so had resulted in short levy of tax of ₹ 38.65 crore including interest.

(b) Charge: PCIT-10, Chennai

Assessee: M/s Gemini Industries and Imaging Ltd.

Assessment Year: 2012-13

The scrutiny assessment was completed in March 2015 at an income of ₹ 14.19 crore. In FY 2011-12 the assessee had issued 36,00,010 shares of face value of ₹ 100 and premium at ₹ 900 per share to three persons as shown below:

| Sl. No. | Name of person | No. of shares as on 31/03/2011 | Shares issued in 2011-12 | No. of shares as on 31/03/2012 |
|---------|-----------------------|--------------------------------|--------------------------|--------------------------------|
| 1 | A. Ravishankar Prasad | 9,25,000 | 24,69,295 | 33,94,295 |
| 2 | A. Manohar Prasad | 29,09,794 | 5,04,705 | 34,14,499 |
| 3 | P.Kiran | - | 6,26,010 | 6,26,010 |
| | Total | 38,34,794 | 36,00,010 | 74,34,804 |

However, audit noticed from the records of A. Manohar Prasad that his actual investment in the assessee company was at ₹ 34.15 crore only as on 31 March 2012 (₹ 100 x 34,14,499 shares) which indicated that he had not paid any premium for the shares allotted to him. However, a premium of ₹ 45.42 crore was shown as received by the assessee from Manohar

46 Andhra Pradesh & Telangana, Assam, Karnataka, Maharashtra, Odisha and Tamilnadu

Prasad. Similarly, from the records of A. Ravishankar Prasad, audit noticed that that no such investment was made by him in the assessee company. However, an investment of ₹ 246.93 crore including premium (₹ 1,000 x 24,69,295 shares) has been shown against his name.

Therefore, the face value and premium of ₹ 292.35 crore (₹ 45.42 crore + ₹ 246.93 crore) shown in the books of assessee were in nature of unexplained cash credit under section 68 of the Act and should have been added back to assessed income. The omission had resulted in short levy of tax to the tune of ₹ 118.11 crore including interest.

Besides, audit noticed that the opening balance of share premium amounting to ₹ 233.77 crore was also not paid by above mentioned shareholders. Therefore, the share premium amount of ₹ 233.77 crore shown in the balance sheet for the year 2011-12 by the assessee was also required to be treated as unexplained cash credit under section 68 of the Act and required to be added back to assessed income of the assessee company. The omission had resulted in short levy of tax to the tune of ₹ 103.15 crore including interest.

(c) Charge: PCIT-1, Hyderabad

Assessee: M/s Arka Leisure & Media Entertainment Pvt. Ltd.

Assessment Year: 2013-14

The scrutiny assessment was completed in March 2016 at a loss of ₹ 19.39 crore. Audit noticed that the assessee had shown in its books of accounts (as on 31 march 2013) an amount of ₹ 15.22 crore and ₹ 14.99 crore being share premium received from M/s Agri Gold Farm Estates India Private Limited (AGFEIPL) and M/s Dream Land Ventures India Private Limited (DLVIPL) respectively. However, the books of account of AGFEIPL showed 'nil' investment in assessee company, while, as per books of account of DLVIPL, it had invested only ₹ 8.40 crore as against ₹ 14.99 crore shown in the books of the assessee. Thus, there was a difference of ₹ 21.81 crore in the books of the assessee to that of the books of two allottee companies with respect to the amount invested in shares. Consequently, the excess amount of ₹ 21.81 crore shown in the books of assessee should have been treated as unexplained credits under section 68 of the Act and added back to the income of assessee. The omission resulted in underassessment of income of ₹ 21.81 crore involving tax effect of ₹ 7.07 crore.

(d) Charge: PCIT-1, Bhubaneswar
Assessee: M/s N.K Media Ventures (P) Ltd.
Assessment Years: 2012-13 & 2014-15

The scrutiny assessments were completed in March 2015 and December 2016 determining loss of ₹ 5.68 crore and ₹ 6.15 crore respectively. Audit noticed that the share application money of ₹ 2.80 crore and ₹ 3.35 crore and unsecured loan of ₹ 3.74 crore and ₹ 4.57 crore were shown in the Balance Sheet as at 31 March 2012 and 31 March 2014 respectively. However, neither the assessee had furnished documentary evidence in support of the share application money/unsecured loans nor the same was called for by the AO during the scrutiny assessment. In the absence of verification of the above, share application Money of ₹ 6.15 crore (₹ 2.80 crore + ₹ 3.35 crore) and unsecured loan of ₹ 8.30 crore (₹ 3.74 crore + ₹ 4.56 crore) were required to be added to the income as unexplained cash credit. Omission had resulted in incorrect allowance of unexplained cash credit to the extent of ₹ 14.45 crore (₹ 6.15 crore + ₹ 8.30 crore) involving total tax effect of ₹ 4.98 crore including interest.

4.3.2 Income not offered for tax

In 65 assessment cases in 14 states⁴⁷ involving tax effect of ₹ 338.08 crore, we found that the ITD had not brought to tax the amount which was realized as income of the assessee under various provisions of the Act. Four cases are illustrated below (see box 4.3).

Box 4.3: Illustrations of cases where income not offered for tax

(a) Charge: PCIT (Central)-3, Mumbai
Assessee: M/s The Board of Control for Cricket in India (BCCI)
Assessment Years: 2010-11 to 2014-15

As per Rule 115 of the Income Tax Rules, the rate of exchange for the calculation of the value in rupees of any income accruing or arising to the assessee in foreign currency shall be the Telegraphic Transfer (TT) buying rate of such currency as on the date on which the tax was required to be deducted.

The scrutiny assessments of the assessee for AYs 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 were completed in February 2013, December 2013, December 2013, March 2016 and December 2016 at assessed income of ₹ 874.18 crore, ₹ 856.83 crore, ₹ 1,304.57 crore, ₹ 1,371.65 crore and ₹ 1,131.09 crore respectively. As per the clause of 'Invitation to Tender' for

47 Andhra Pradesh & Telangana, Assam, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Maharashtra, Odisha, Punjab, Rajasthan, Tamilnadu and Uttar Pradesh

auction of IPL franchise, BCCI had to receive the instalments of franchisee fee in Indian Rupees converted at the TT selling exchange rate published by the SBI at the time of payment. Audit noticed that the instalments were paid by franchisees⁴⁸ in Indian rupees by using same exchange rate of 1 USD = 40 INR (Exchange rate as on the date of agreement with franchisee) for every year. However, BCCI did not recover the fee as per current prevailing exchange rate. Similarly, the ITD also had not assessed the income considering the provisions of Rule 115. As such, income of BCCI from franchisee fee from FY 2009-10 to 2013-14 was received less by ₹ 325.78 crore resulting in short levy of tax of ₹ 100.67 crore.

(b) Charge: PCIT-2, Bengaluru

Assessee: M/s Kasthuri Medias Pvt. Ltd.

Assessment Year: 2014-15

As per Section 50C of the Act, if a property is sold below the value fixed by the stamp valuation authority, then the value assessed by such authority shall be the deemed value of consideration for the purpose of calculating capital gain.

The scrutiny assessment of the assessee was completed in December 2016 at a loss of ₹ 7.41 crore. The assessee, while computing the capital gain, had adopted a consideration of ₹ 1.50 crore on sale of commercial property as against the fair market value of ₹ 4.52 crore⁴⁹ as per stamp valuation authority and the same was also allowed by the AO. This had resulted in under assessment of capital gain of ₹ 2.59 crore (net of indexed cost of acquisition of ₹ 1.93 crore) with consequent tax effect of ₹ 58.60 lakh.

(c) Charge: CIT (Exemptions), Chandigarh

Assessee: M/s Himachal Pradesh Cricket Association

Assessment Year: 2014-15

The scrutiny assessment was completed in December 2016 at an income of ₹ 12.30 crore. Audit noticed that during the year, assessee had received consideration amounting to ₹ 11.24 crore from BCCI which was not offered as income and considered as advance in their books. Whereas the TDS of ₹ 22.47 lakh on the said amount was claimed by the assessee and also allowed by the ITD while computing the tax. The mistake had resulted in escapement of income of ₹ 11.24 crore involving tax effect of ₹ 5.08 crore escaping assessment.

48 M/s Indiawin Sports Pvt. Ltd. (ISPL), M/s Knight Riders Sports Pvt. Ltd. (KRSPL) and M/s Jaipur IPL Cricket Pvt. Ltd. (JICPL)

49 Calculated by extrapolating the stamp duty paid by the purchaser @ one per cent of the value fixed as per reverse mechanism.

(d) Charge: PCIT-1, Lucknow
Assessee: Ganga Dutta Upadhyaya
Assessment Year: 2012-13

The scrutiny assessment was completed in March 2015 at an income of ₹ 26.92 lakh. Audit noticed that the assessee had received total income of ₹ 10.90 crore as reflected in its 26AS, however, it had accounted ₹ 7.93 crore only in the profit and loss account and claimed the entire TDS of ₹ 15.63 lakh deducted thereon. The AO did not add back the remaining amount of ₹ 2.97 crore to the income of the assessee. The omission had resulted in underassessment of income of ₹ 2.97 crore involving tax effect of ₹ 1.24 crore.

4.4 Incorrect/ irregular allowance of expenses and deductions

Provisions of the Act allow the assessee to claim various expenses and deductions on fulfilment of certain prescribed conditions. If these conditions were not fulfilled, the corresponding expense/deductions were required to be disallowed by the assessing officer. We noticed 179 cases involving tax effect of ₹ 826.75 crore where Incorrect/irregular allowance of expenses and deductions were made by ITD.

4.4.1 Non/short deduction or non-deposit of TDS

As per Section 40(a)(ia) of the Act, no deduction of expenditure is allowed in computing the income chargeable under the head “Profits and gains of business or profession” on which tax is deductible at source and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in section 139(1).

We noticed in 50 assessment cases in 14 states⁵⁰ involving tax effect of ₹ 591.25 crore that the assessee had claimed expenses although the applicable TDS thereon was not deducted or, after deduction, not deposited to the government account within prescribed time limit. However, the ITD had not disallowed these expenses. Five cases are illustrated below (see box 4.4).

50 Andhra Pradesh & Telangana, Goa, Gujarat, Haryana, J&K, Karnataka, Kerala, Maharashtra, NER, Odisha, Rajasthan, Tamilnadu, Uttar Pradesh and West Bengal

Box 4.4: Illustrations of non/ short deduction or non-deposit of TDS

(a) Charge: PCIT-4, Chennai

Assessee: M/s New Generation Media Corporation Pvt. Ltd.

Assessment Year: 2014-15

The scrutiny assessment of the assessee was completed in December 2016 at a loss of ₹ 43.66 lakh. The assessee had claimed the expenses of ₹ 8.36 crore towards 'design & development and service charges' and ₹ 11.25 crore towards 'equipment hire charges' on which TDS was not deducted and the same was confirmed from Form 26Q as well as 26AS of corresponding assessee. However, the expenditure was not disallowed under section 40(a)(ia) of the Act. The omission had resulted in underassessment of ₹ 19.61 crore with consequent short levy of tax of ₹ 8.86 crore including interest.

(b) Charge: PCIT-1, Hyderabad

Assessee: Celebrity Cricket League

Assessment Years: 2012-13 & 2014-15

The scrutiny assessments of the assessee for AY 2012-13 and AY 2014-15 were completed in March 2015 and September 2016 at a loss of ₹ 24.86 crore and at nil income respectively. Audit noticed from Form 26Q as well as books of accounts of the assessee that the assessee had claimed 'professional or technical services' amounting to ₹ 5.77 crore and ₹ 5.49 crore in AY 2012-13 and AY 2014-15 respectively on which TDS was not deducted. However these expenditure were not disallowed under section 40a(ia) of the Act. Omission had resulted in underassessment of ₹ 5.77 crore and ₹ 5.49 crore with consequent short levy of tax of ₹ 1.78 crore and ₹ 1.70 crore (aggregated tax effect of ₹ 3.48 crore) for AY 2012-13 and AY 2014-15 respectively.

(c) Charge: PCIT (Central), Bengaluru

Assessee: K. Manju

Assessment Years: 2007-08 to 2012-13

The scrutiny assessments for AY 2007-08 to 2012-13 were completed in March 2014 at income of ₹ 1.10 crore, ₹ 1.14 crore, ₹ 1.57 crore, ₹ 0.76 crore, ₹ 3.64 crore and ₹ 1.26 crore respectively. Audit noticed that AO, while discussing the assessment order, had disallowed the expenditure of ₹ 6.83 crore from AY 2008-09 to 2012-13, on which no tax was deducted at source. However, while computing the taxable income, the same was not added back to the income of the assessee. Further, AO had adopted the undisclosed income of the assessee at ₹ 2.23 crore instead of ₹ 6.84 crore, resulting in under assessment of income of ₹ 4.62 crore. The omissions had

resulted in under assessment of income of ₹ 11.45 crore involving a tax effect of ₹ 6.09 crore.

(d) Charge: PCIT, Panaji

Assessee: Goa Cricket Association

Assessment Years: 2009-10, 2010-11 & 2011-12

The scrutiny assessments for AYs 2009-10, 2010-11 and 2011-12 were re-opened under section 147⁵¹ wherein the claim of exemption under section 11 on the ground of non-registration of the assessee as a charitable trust as per the provisions of section 12AA was disallowed. Before the conclusion of the re-opened proceedings for the said AYs, the TDS Officer communicated (December 2012) that the assessee was in default in deduction of TDS under sections 194C, 194J and 194-I of the Act. Despite timely communication, the AO did not act on the information received for disallowing the related expenditure aggregating to ₹ 17.03 crore⁵². The omission resulted in short computation of income of equal amount involving short levy of tax aggregating to ₹ 9.19 crore.

(e) Charge: PCIT-1, Kolkata

Assessee: R. P. Techvision (India) Pvt. Ltd.

Assessment Year: 2013-14

The audit noticed from Tax Audit Report that total tax of ₹ 21.05 crore was deducted by the assessee while making payments for commission, contractors, fee for professional & technical service and rent but the same was not deposited to the Government Account. It was further noticed that out of ₹ 21.05 crore, only ₹ 59.01 lakh⁵³ was disallowed during scrutiny assessment completed in March 2016. Thus, the balance amount of ₹ 20.46 crore was required to be added back for not depositing the TDS to Government Account. Irregular allowance of expenditure of ₹ 20.46 crore resulted in under assessment of income of ₹ 20.46 crore involving short levy of tax of ₹ 6.64 crore.

4.4.2 Allowance of deductions without fulfilling the prescribed conditions.

Audit noticed in 48 assessment cases in 10 states⁵⁴ that assessee were allowed excess deduction resulting in loss of revenue of ₹ 68.10 crore. Four cases are illustrated below (see box 4.5).

51 March 2014 (AYs 2010-11 & 2011-12) and March 2016 (AY 2009-10)

52 AY 2009-10: ₹ 5.96 crore; AY 2010-11: ₹ 6.37 crore; AY 2011-12: ₹ 4.70 crore

53 ₹ 33.26 lakh for advertisement and ₹ 25.75 lakh for business promotion

54 Andhra Pradesh & Telangana, Goa, Gujarat, Haryana, Karnataka, Maharashtra, Rajasthan, Tamilnadu, Uttar Pradesh and West Bengal

Box 4.5: Illustrations of allowance of deduction without fulfilling the prescribed conditions

(a) Charge: PCIT (Exemption), Kolkata
Assessee: M/s Cricket Association of Bengal
Assessment Year: 2012-13 to 2014-15

As per Section 13(8) read with provision of section 2(15) of the Act, advancement of any other object of general public utility shall not be a charitable purpose if it involves the carrying on of any activity in the nature of trade, commerce or business in any assessment year, the exemption under section 11 of the Act is not applicable for that assessment year.

The scrutiny assessments of the assessee for AYs 2012-13, 2013-14 and 2014-15 were completed in November 2014, January 2016 and December 2016 respectively at an income of ₹ Nil after allowing exemption under section 11 of the Act. The assessee had claimed and was allowed exemption of ₹ 34.75 crore under section 11 of the Act from AY 2012-13 to AY 2014-15 although it had received subsidy of ₹ 98.02 crore from BCCI which was commercial in nature and, hence the AO should have disallowed the exemption claimed by the assessee and brought the same to tax. It is pertinent to mention that in the case of BCCI and other eight state cricket associations⁵⁵, AO had considered their activities as commercial after hosting of Indian Premier League (IPL) and disallowed the exemption and taxed the subsidies received from BCCI as commercial receipts. However, in the instant case, AO had allowed the exemption to the assessee, i.e., M/s Cricket Association of Bengal despite the transaction being commercial in nature. The mistake had resulted in underassessment of income of ₹ 34.75 crore for AY 2012-13 to AY 2014-15 with consequent short levy of tax of ₹ 13.71 crore including interest.

The ITD in its reply (March 2018) stated that the assessee-society is a member of the national body, Board of Control for Cricket in India (BCCI), which regulates and promotes the sport of cricket in India and the main object of the assessee-society is to promote the sport of cricket in the State of West Bengal. The assessee, being a State Cricket Association, is entitled to revenue on sale of tickets, advertisement, contractual income etc. when it conducts international matches. It is entitled to all in-stadia sponsorships, advertisements and beverage revenue, etc. It earns income under the following head:- (1) Subscription from members (2) Sale of tickets

55 (1) Mumbai Cricket Association (Maharashtra) (2) Rajasthan Cricket Association (Rajasthan) (3) Punjab Cricket Association (Punjab) (4) Tamil Nadu Cricket Association (Tamil Nadu) (5) Kerala Cricket Association (Kerala) (6) Gujarat Cricket Association (Gujarat) (7) Uttar Pradesh Cricket Association (Uttar Pradesh) and (8) Jharkhand Cricket Association (Jharkhand)

(3) Revenue from advertisements (4) Receipts from BCCI (5) Interest from bank deposits (6) Revenue from contractual payments like beverage. It uses all these incomes to promote the sport of cricket in the State of West Bengal. The assessee-society, being a member of BCCI, hosts the matches which are conducted by BCCI and sell tickets to the cricket viewers. The role of the assessee is only to provide stadium for conducting matches. Other than that, it has no role in conducting the international matches and Indian Premier League matches. The other activity of the assessee-society is to conduct training programmes, inter-university, inter-school and inter-association matches and provide coaching classes for college students at district level in the State of West Bengal. Expenditures involved in such activities were met out of surplus funds remaining with the assessee-society. It also receives funds from BCCI for meeting these expenditures, being the host. Therefore, it cannot be said that the assessee is conducting any business activity. In view of the above, proviso to Section 2(15) of the Act is not applicable and the assessee is eligible for exemption under Section 11 of the Act for all the assessment years under consideration.

The reply of the department is not tenable as the department itself stated that the assessee sold its advertisement rights and other commercial rights to various corporate to borne the expenditure for one day matches, T-20 matches and Indian Premier League matches. As the assessee sold its advertisement rights and commercial rights to various corporates, the income from such sale of advertisement rights and commercial rights were required to be considered as commercial income. Further, deduction of TDS under section 194C by the BCCI implies that the payment made by the BCCI to the assessee was purely on contractual basis. So, the receipt from the BCCI was required to be treated as commercial income of the assessee. Hence, as per provisions of Section 2(15) of the Income Tax Act, 1961 the assessee was not eligible for exemption of tax.

(b) Charge: CIT-6, Hyderabad

Assessee: M/s Sri Venkateswara Cine Chitra Pvt. Ltd.

Assessment Year: 2013-14

The scrutiny assessment of the assessee was completed in March 2016 at nil income. The assessee had offered income of ₹ 13.86 crore and claimed production cost of ₹ 15.70 crore against the movie 'Ongole Gita' which was released on 1st February 2013. As the film was not released within 90 days before the end of the financial year, the assessee was eligible for claiming cost of production only to the extent of ₹ 13.86 crore as per the provisions of Rule 9A. However, AO allowed full expenditure of ₹ 15.70 crore on

account of production cost to the assessee. The mistake had resulted in allowing excess expenditure of ₹ 1.84 crore with short levy of tax of ₹ 59.74 lakh.

The ITD partially accepted audit observation (January 2018) stating that the publicity and positive prints expenses of ₹ 87.65 lakh included in the production cost were otherwise allowable under section 37 of IT Act. The reply is not tenable. As per rule 9A, the cost of production has to be restricted to the extent of income realized by the assessee.

(c) Charge: PCIT-3, Mumbai
Assessee: M/s Cinepolis India Pvt. Ltd.
Assessment Year: 2014-15

The scrutiny assessment was completed in December 2016 at a loss of ₹ 15.16 crore. Audit noticed that the Government of Punjab, Bihar, Maharashtra and Madhya Pradesh had exempted the assessee from collection of entertainment tax due to which the assessee treated the collection of entertainment tax of ₹ 13.08 crore as capital receipt and claimed exemption thereon. The said claim of exemption was also allowed by the AO. However, it was seen from the 'Entertainment Tax Exemption Agreements' entered into between the assessee and the states that the said exemption was related to the multiplex projects which required heavy capital and long gestation period to make profits. Consequently, the amount of exemption received by the assessee on account of entertainment tax was required to be adjusted against the block of assets of multiplex under the provision of explanation 10 of Section 43(1) of the IT Act. Omission had resulted in underassessment of income of ₹ 13.08 crore with consequent potential tax effect of ₹ 4.44 crore.

(d) Charge: PCIT-2, Bengaluru
Assessee: M/s Big Animation India Pvt. Ltd.
Assessment Years: 2013-14 & 2014-15

The scrutiny assessments for AY 2013-14 and AY 2014-15 was completed in February 2016 & July 2016 at a loss of ₹ 20.54 crore and ₹ 24.06 crore respectively. Audit noticed that during the AY 2014-15, the assessee had debited in the profit and loss account the operational expenses of ₹ 23.96 crore which included ₹ 19.33 crore towards amortised cost of movies. Out of the above amount, ₹ 15.34 crore pertained to the 50 per cent amortised cost of animated movie titled as 'Krishna and Kans'. However, the accounting policy of the assessee envisaged amortization of the inventories cost of release movies & serials over a period of 10 years on straight line basis, commencing from the year in which it was licensed for broadcasting. However, for the movie 'Krishna and Kans', the cost was

amortised over the period of two years i.e. ₹ 15.34 crore being 50 per cent of total cost was amortised each in two assessment years (AY 2013-14 and AY 2014-15) which was irregular, as it was required to be amortised over the period of 10 years. Omission to do so has resulted in underassessment of income of ₹ 24.54 crore involving cumulative tax effect of ₹ 8.16 crore in both the assessment years.

4.4.3 Expenses not allowable under various provisions of the Act

Audit noticed in 81 assessment cases in 15 states⁵⁶ that though the expenses were not allowable to the assessee under various provisions of the Act, the ITD had allowed the expenses leading to the short demand of ₹ 167.41 crore. Four cases are illustrated below (see box 4.6).

Box 4.6: Illustrations of expenses not allowable under various provisions of the Act

(a) Charge: PCIT-2, Ahmedabad

Assessee: M/s Fuse Plus Media Pvt. Ltd.

Assessment Year: 2011-12

The scrutiny assessment of the assessee was completed in January 2014 at an income of ₹ 6.59 crore. The assessee had debited an amount of ₹ 2.26 crore towards 'Product Development Expenses' which was capital in nature as the assessee had derived enduring benefit from it. Hence, the same was required to be capitalised. Omission had resulted in under-assessment of income of ₹ 1.70 crore (after giving the benefit of depreciation @ 25 per cent being an intangible assets) with consequent short levy of tax of ₹ 75.49 lakh.

(b) Charge: CIT-4, Hyderabad

Assessee: M/s Prakash Arts Pvt. Ltd.

Assessment Years: 2013-14 to 2014-15

The scrutiny assessments of the assessee were completed in March 2016 and November 2016 at an income of ₹ 3.92 crore and ₹ 4.06 crore respectively. The assessee had incurred expenditure of ₹ 16.12 crore (₹ 12.95 crore towards 'Hoarding erection & maintenance' and ₹ 3.17 crore towards 'Bus shelter erection & maintenance'). Since the above expenses were in nature of capital expenditure, the same were required to be capitalised.

56 Andhra Pradesh & Telangana, Assam, Bihar, Delhi, Goa, Gujarat, Haryana, Himachal Pradesh, J&K, Karnataka, Maharashtra, Odisha, Rajasthan, Tamilnadu and Uttar Pradesh

The omission had resulted in excess allowance of expenditure of ₹ 13.70 crore (after giving the benefit of depreciation @ 15 *per cent* being plant and machinery) with consequential short demand of ₹ 3.96 crore.

(c) Charge: CIT-2, Delhi

Assessee: M/s Bharti Telemedia Ltd.

Assessment Year: 2013-14

Audit noticed that the assessee had debited interest expenses of ₹ 43.20 crore under the head 'Finance Cost' in profit and loss accounts during AY 2013-14. The above expenses included ₹ 16.40 crore towards interest provision on disputed entertainment tax and ₹ 26.80 crore towards interest provision on disputed licence fee. Thus, the expenses being unascertained liability should have been disallowed and added back to the income of the assessee. Omission to do so had resulted in over assessment of loss amounting to ₹ 43.20 crore involving potential tax effect of ₹ 14.02 crore. The ITD in its reply (October 2017) stated that the provisions were recognised when the company had a present obligation as result of past event and determined based on the best estimates required to settle the obligation at the balance sheet date. It had also quoted a decision of Hon'ble ITAT in case of M/s Bharti Airtel Services Ltd.

The reply was found not to be acceptable. As per notes to profit & loss accounts, the interest expenses were the provision of contingent nature created during the year, and hence, the same was not allowable. The decision quoted by ITD was relating to provision made by the assessee in respect of diminution in the value of stock and hence, it was not relevant in the instant case.

(d) Charge: PCIT-16, Mumbai

Assessee: M/s UTV Software Communication Ltd.

Assessment Year: 2012-13

The scrutiny assessment was completed in March 2016 at nil income. Audit noticed that the assessee had taken short term borrowing of ₹ 113.76 crore and claimed interest expense of ₹ 88.84 crore. As per Cash Flow Statement for AY 2011-12, the assessee had capitalised interest of ₹ 34.72 crore (i.e. approximately 57.81 *per cent* of total interest) in the books of account and claimed remaining interest expenses of ₹ 25.33 crore as revenue expenditure. Audit also noticed that the assessee had inventory i.e. Capital Work in Progress (CWIP) of ₹ 402.24 crore in the AY 2012-13 (Previous Year ₹ 555.70 crore) and also there was no change in accounting method during

current year. Hence, the proportionate interest of ₹ 50.63 crore (57 per cent of the total interest of ₹ 88.84 crore) against the CWIP should have been capitalised during AY 2012-13 also. Omission had resulted in under assessment of income of ₹ 50.63 crore involving short levy of tax of ₹ 22.34 crore including interest.

4.5 Irregular set off/carry forward of losses

We noticed in 31 cases involving tax effect of ₹ 80.81 crore where irregular set off/ carry forward of losses were allowed by ITD. The cases are discussed in succeeding paragraphs:

4.5.1 Losses adjusted against additions made under section 68 and 69 of the Act

As per Section 115BBE of the Act, where the total income of an assessee includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, the income-tax payable shall be the aggregate of (a) the amount of income-tax calculated on income referred to in the above sections, at the rate of 30 per cent; and (b) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (a). It also stipulates that notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) of sub-section (1).

Audit noticed in seven cases in Delhi and Maharashtra states that the additions made by AOs were set off against the losses, which was in contravention of the Section 115BBE of the Act. The mistake had resulted in loss of revenue of ₹ 24.31 crore. Three cases are illustrated below (see box 4.7).

Box 4.7: Illustrations of losses adjusted against additions made under section 68 and 69 of the Act

(a) Charge: PCIT (Central)-1, New Delhi

Assessee: M/s International Recreation & Amusement Ltd.

Assessment Year: 2015-16

The scrutiny assessment of the assessee was completed in December 2016 at an income of ₹ 2.50 crore. The AO made additions of ₹ 34.53 crore to the income of the assessee on account of "Unaccounted Cash Receipts" under section 68 of the Act which was required to be taxed @ 30 per cent

as per provision of sub section (1) of Section 115 BBE of the Act. However, current year loss of ₹ 32.03 crore was set off against the above additions. The mistake had resulted in under-assessment of income of ₹ 32.03 crore involving short levy of tax of ₹ 13.17 crore including interest. ITD replied (March 2018) that the said provision is applicable only from the AY 2017-18 onwards and this case been assessed for AY 2015-16.

Reply of the department is not tenable as provision for non-deduction of any expenditure or allowance was already there in section 115BBE when it was introduced by Finance Act 2012. The losses in current year are arrived at after allowing business expenditure. Hence, current year losses cannot be set-off against the income assessed under section 68 of the Act. Moreover, ITD has found the same issue acceptable and re-opened the case under section 148 in respect of M/s INX News Pvt. Ltd. which is illustrated below.

(b) Charge: PCIT-3, Delhi

Assessee: M/s INX News Private Limited

Assessment Year: 2013-14

The scrutiny assessment was completed in March 2016 at nil income after setting off of brought forward losses of ₹ 36.85 crore. Audit noticed that AO had added an amount of ₹ 12.20 crore to the income of assessee on account of "Share Application Money" under section 68 treating it as bogus transfer of money. However, the AO allowed the set off of brought forward losses against the above additions made under section 68. The mistake had resulted in under assessment of income of ₹ 12.20 crore involving short levy of tax of ₹ 5.38 crore including interest. ITD had initiated remedial action under section 148 of the Act in March 2018.

(c) Charge: PCIT-16, Mumbai

Assessee: M/s Naurang Godavari Entertainment Ltd.

Assessment Year: 2013-14

The scrutiny assessment of the assessee was completed in March 2016 at an income of ₹ 7.84 crore. The AO had made addition of ₹ 13.56 crore under section 68 of the Act and ₹ 1.70 crore under other provisions of the Act. However, the business loss of ₹ 7.42 crore which was required to be set off against addition of ₹ 1.70 crore, had been set off against the total addition, resulting in underassessment of income of ₹ 5.72 crore with consequent short levy of tax of ₹ 2.52 crore including interest.

4.5.2 Excess set off of losses

Under section 72 of the Income Tax Act, 1961, where the net result of computation under the head 'Profits & Gains of Business or Profession' is a loss to the assessee and such loss cannot be wholly set off against income under any other head of the relevant year, so much of the loss as had not been set off shall be carried forward to the following assessment year/years, to be set off against the profits and gains of business or profession of those years. Audit noticed in 13 assessment cases in six states⁵⁷ that excess set off of the losses was allowed resulting in short demand of tax/ interest of ₹ 24.21 crore. Three cases are illustrated below (see box 4.8).

Box 4.8: Illustrations of irregular claim/ set off/ carry forward of loss

(a) Charge: PCIT-16, Mumbai

Assessee: M/s Star Entertainment Media Ltd.

Assessment Year: 2013-14

The scrutiny assessment was completed in March 2016 at an income of ₹ 40.52 crore which was rectified in May 2016 under section 154 of the Act at an income of ₹ 27.66 crore. The AO had allowed the set off of brought forward losses of ₹ 49.63 crore as against available losses of ₹ 18.64 crore. As such, there was excess set off of losses of ₹ 30.99 crore involving short levy of tax of ₹ 13.02 crore including interest.

(b) Charge: CIT-1, Kochi

Assessee: M/s Indo Asian News Channel Pvt. Ltd.

Assessment Year: 2014-15

The scrutiny assessment was completed in November 2016 at nil income after setting off of losses pertaining to AY 2011-12 of ₹ 75.17 lakh and AY 2012-13 of ₹ 3.97 crore. However, as per assessment order of AY 2012-13, the income was assessed at ₹ 5.50 crore, hence, set off of losses pertaining to AY 2012-13 against current year income was irregular. The mistake had resulted in excess allowance of losses of ₹ 3.65 crore (after allowing loss for AY 2011-12 of ₹ 75.17 lakh and for AY 2013-14 of ₹ 31.03 lakh) involving short levy of tax of ₹ 1.58 crore including interest.

ITD in its reply (January 2018) stated that in AY 2012-13, addition was made under section 68 of the Act on protective basis, hence set off of loss relating to AY 2012-13 was in order. Reply of the ITD is not tenable as there was no loss for AY 2012-13 to be carried forward in the subsequent years.

⁵⁷ Andhra Pradesh & Telangana, Kerala, Madhya Pradesh, Maharashtra, Tamilnadu and West Bengal

(c) Charge: PCIT-16, Mumbai
Assessee: M/s Crest Animation Studios Ltd.
Assessment Year: 2011-12

The scrutiny assessment was completed in May 2015 at an income of ₹ 113.79 crore. Audit noticed that the AO had allowed the set off of business loss of ₹ 19.22 crore as against the available losses of ₹ 8.99 crore. The mistake had resulted in underassessment of ₹ 10.23 crore involving tax effect of ₹ 4.65 crore.

4.5.3 Irregular allowance of carry forward of losses

Audit observed in 11 assessment cases in eight states⁵⁸ that excess losses were allowed for carry forward for future set off resulting in potential loss of revenue of ₹ 32.29 crore. Three cases are illustrated below (see box 4.9).

Box 4.9: Illustrations of irregular allowance of carry forward of losses

(a) Charge: PCIT-3, Kolkata
Assessee: M/s Bangla Entertainment Pvt. Ltd.
Assessment Year: 2011-12

The scrutiny assessment of the assessee was completed in March 2014 at a loss of ₹ 5.80 crore. Audit noticed that the assessee had filed return of income for AY 2011-12 beyond the time limit prescribed under section 139(1). Hence the loss was not allowable to be carried forward under the provisions of section 80. However, the assessee was allowed to carry forward the loss. This had resulted in irregular allowance of carry forward of loss of ₹ 5.80 crore involving potential tax effect of ₹ 1.79 crore. ITD accepted the objection (January 2016) and took remedial action under section 263 of Act.

(b) Charge: PCIT, Trivandrum
Assessee: M/s Asianet Satellite Communications Ltd.
Assessment Year: 2014-15

The scrutiny assessment was completed in December 2016 at nil income. Audit noticed that the AO had allowed unabsorbed depreciation of ₹ 178.72 crore as against the available unabsorbed depreciation of ₹ 120.46 crore to be carried forward to subsequent year. As such, there was excess carry forward of unabsorbed depreciation of ₹ 58.26 crore

58 Andhra Pradesh & Telangana, Assam, Gujarat, Karnataka, Kerala, Maharashtra, Tamilnadu and West Bengal

involving potential short levy of tax of ₹ 18.96 crore. ITD rectified the mistake under section 154 of the Act (January 2018).

(c) Charge: PCIT-13, Mumbai

Assessee: M/s Super Fight Promotions Pvt. Ltd.

Assessment Year: 2014-15

The scrutiny assessment was completed in November 2016 at a loss of ₹ 2.73 crore. Audit noticed that there was change in share holding pattern of the assessee company due to which it was not eligible for carry forward of the available losses for the subsequent years under section 79 of the Income Tax Act. However, the assessee had claimed and the AO allowed the brought forward loss of ₹ 10.10 crore, resulting in underassessment of income of ₹ 10.10 crore involving tax effect of ₹ 3.12 crore.

4.6 Mistakes in computation of book profit under section 115JB and MAT credit under section 115JAA of the Act

Section 115JB of the Act specifies the manner of computing the book profits in cases where the tax under normal provision is less than that of MAT provision. Further, as per section 115JAA(1A) of the Income Tax Act, where any amount of tax is paid under section 115JB(1) or minimum alternate tax (MAT) by an assessee, credit in respect of tax so paid shall be allowed to him in accordance with the provisions of this section. Further, the set-off in respect of brought forward tax credit shall be allowed for any assessment year to the extent of the difference between the tax on his total income and the tax which would have been payable under the provisions of section 115JB.

4.6.1 Under assessment of book profits

Audit noticed in 21 cases in Gujarat, Karnataka and Maharashtra that there was mistake in computation of income under section 115JB resulting in underassessment of income and consequent short demand of tax/ interest of ₹ 87.30 crore. Three cases are illustrated below (see box 4.10).

Box 4.10: Illustrations of under assessment of book profits

(a) Charge: PCIT-3, Bengaluru,

Assessee: M/s IDG Media Pvt. Ltd.

Assessment Years: 2013-14 & 2014-15

The scrutiny assessment was completed in December 2015 and March 2016 at nil income for both AYs. Audit noticed that though the assessee had adjusted the unabsorbed depreciation of ₹ 1.64 crore against the book profit of AY 2012-13, it again claimed the same unabsorbed depreciation while computing the book profits for the AYs 2013-14 and 2014-15. The same was also allowed by the AO. This had resulted in underassessment of book profit aggregating to ₹ 3.28 crore involving tax effect of ₹ 69.75 lakh.

(b) Charge: PCIT-16, Mumbai

Assessee: M/s Bang Bang Films Pvt. Ltd.

Assessment Year: 2014-15

The scrutiny assessment of the assessee was completed in October 2016 at a loss of ₹ 1.52 crore. Audit noticed that the assessee had not routed the consideration of ₹ 22.28 crore on transfer of business on slump sale basis through profit and loss account but directly shown it in the computation of income for adjusting the loss. As such profit and loss was not prepared in accordance with the provisions of Part II and III of Schedule VI of the Companies Act 1956. This had resulted in underassessment of book profits by ₹ 17.62 crore (₹ 22.27 crore - ₹ 4.66 crore i.e. loss as per P&L account) with consequent short levy of tax of ₹ 4.85 crore including interest.

(c) Charge: PCIT-11, Mumbai

Assessee: M/s Scod 18 Networking Pvt. Ltd.

Assessment Year: 2014-15

The scrutiny assessments were completed in December 2016 at an income of ₹ 10.44 crore. Audit noticed that in AY 2014-15, the assessee had changed its accounting policy pertaining to treatment of Set Top Box (STB) due to which assessee adjusted surplus amount of ₹ 21.85 crore from reserves. Further, as per Accounting Standard (AS)-06, any changes the resultant surplus or deficit in past year due to change in depreciation method should be charged to Profit & Loss Accounts which was not done. Omission to do so had resulted in underassessment of income of ₹ 21.85 crore involving tax effect of ₹ 4.58 crore.

4.6.2 Irregular allowance of MAT credit under section 115JAA

We noticed in four cases in Gujarat, Maharashtra and Tamilnadu states that assesseees were allowed excess set off of MAT credit of ₹ 4.08 crore. One case is discussed below (see Box 4.11).

Box 4.11: Illustrations of irregular allowance of MAT credit under section 115JAA

Charge: CIT-10, Chennai

Assessee: M/s Mavis Satcom Ltd.

Assessment Year: 2012-13

The AO had allowed MAT credit of ₹ 2.11 crore relating to AY 2012-13 although the assessee had paid tax under normal provisions in that year and there was no MAT credit available for set off. The mistake had resulted in loss of revenue of ₹ 2.87 crore including interest.

4.7 Mistakes in computation of tax

We noticed mistakes in computation of tax and other issues in 66 cases involving tax effect of ₹ 280.60 crore as discussed in succeeding paragraphs.

4.7.1 Mistakes in levy of tax/surcharge/interest

Audit noticed in 29 assessment cases in 11 states⁵⁹ that there was mistake in computation of tax/interest resulting in loss of revenue of ₹ 144.76 crore. Seven cases are illustrated below (see box 4.12).

Box 4.12: Illustrations of mistake in levy of tax/ interest

(a) Charge: PCIT-16, Mumbai

Assessee: M/s Star India Pvt. Ltd.

Assessment Year: 2012-13

The scrutiny assessment of the assessee was completed in January 2017 at an income of ₹ 898.79 crore. Audit noticed that the AO had levied interest of ₹ 2.52 crore under section 234B of the Act, instead of ₹ 59.93 crore which resulted in short levy of interest of ₹ 57.41 crore.

(b) Charge: PCIT (Central)-3, Mumbai

Assessee: M/s The Board of Control for Cricket in India (BCCI)

Assessment Year: 2014-15

The scrutiny assessment of the assessee was completed in December 2016 at an income of ₹ 1131.09 crore. Audit noticed that though the assessed income was more than ₹ one crore, the surcharge @ 10 per cent was not levied. Omission had resulted in loss of revenue of ₹ 34.95 crore.

59 Andhra Pradesh & Telangana, Delhi, Goa, Gujarat, Haryana, Himachal Pradesh, Karnataka, Maharashtra, Punjab, Tamilnadu and Uttar Pradesh

(c) Charge: PCIT (Exemption), Ahmedabad
Assessee: M/s Gujarat Cricket Association
Assessment Year: 2014-15

The scrutiny assessment was completed in December 2016 at an income of ₹ 83.56 crore. Audit noticed that though the income was more than ₹ one crore, the AO had not levied the surcharge. This had resulted in loss of revenue of ₹ 2.78 crore. ITD had initiated remedial action under section 154 of the Act in September 2017.

(d) Charge: CIT (Exemptions), Chandigarh
Assessee: M/s Haryana Cricket Association
Assessment Year: 2012-13

The scrutiny assessment was completed in March 2015 at an income of ₹ 27.29 crore. Audit noticed that surcharge was not levied which led to short demand of ₹ 57.34 lakh.

(e) Charge: PCIT, Hyderabad
Assessee: M/s Orissa Cricket Association
Assessment Year: 2012-13

The scrutiny assessment was completed in March 2015 at an income of ₹ 25.94 crore. Audit noticed that the tax of ₹ 10.88 crore was leviable. However, ITD levied tax of ₹ 10.23 crore resulting in short levy of tax of ₹ 64.29 lakh.

(f) Charge: PCIT-16, Mumbai
Assessee: M/s Zee Entertainment Enterprises Ltd.
Assessment Year: 2011-12

The scrutiny assessment was completed in February 2016 at an income of ₹ 835.96 crore. Audit noticed that assessment was rectified under section 154 by disallowing MAT credit allowed during scrutiny assessment. While computing tax demand in the rectification order, the AO erroneously computed tax at ₹ 138.44 crore instead of actual tax liability of ₹ 173.95 crore resulting in short levy of tax of ₹ 35.51 crore. Further, there was also short levy of interest under section 234D of ₹ 70.48 lakh on refund issued earlier. The mistakes resulted in short levy of tax ₹ 36.21 crore.

(g) Charge: PCIT (Central)-3, Delhi
Assessee: M/s Pearls Broadcasting corporation Ltd.
Assessment Year: 2011-12

The block assessment of the assessee was completed in March 2016 at an income of ₹ 83.11 crore. Audit noticed that the AO had raised the total demand of tax of ₹ 38.37 crore instead of correct amount of ₹ 44.72 crore

due to short levy of interest under section 234B(3) and non-levy of interest under section 234A(3). The mistakes had resulted in short levy of demand of ₹ 6.35 crore. ITD had accepted the observation and rectified the mistake under section 154 of the Act in September 2017.

4.7.2 Incorrect grant of TDS credit/ relief under section 90/91

Audit noticed in seven cases in Karnataka, Kerala and Maharashtra states that the AO had incorrectly allowed the TDS credit/ relief under section 90/91 resulting in loss of revenue of ₹ 23.51 crore. One case is illustrated below (see box 4.13).

Box 4.13: Illustrations of incorrect grant of TDS credit/ relief under section 90/91

Charge: PCIT (Central)-2, Mumbai

Assessee: M/s Sony Pictures Networks India Pvt. Ltd.

Assessment Year: 2012-13

The scrutiny assessment was completed in January 2017 at an income of ₹ 434.21 crore. Audit noticed that the assessee had claimed and was allowed foreign tax credit relief of ₹ 21.52 crore under section 90 of the Act on royalty income of ₹ 324 crore received from Multi Screen Media Singapore (MSMS) on which no tax was deducted in Singapore by MSMS. However, it was seen from profit and loss account as well as 3CEB Report⁶⁰ that no royalty income was received by the assessee from Multi Screen Media Singapore (MSMS) during the Assessment year. Since, Singapore incentive scheme covered only royalty payment for nil withholding tax whereas other payments made by a Singapore entity required withholding tax for which credit in India was allowed. Thus the tax credit claimed by the assessee should have been disallowed. Omission had resulted in loss of revenue of ₹ 21.52 crore.

4.7.3 Mistake in computation due to adoption of wrong figures

Audit observed in 30 assessment cases in eight states⁶¹ that the AO had adopted wrong figures in assessment which led to loss of revenue of ₹ 112.33 crore. Seven cases are illustrated below (see box 4.14).

⁶⁰ Report furnished by the accountant relating to International transactions

⁶¹ Andhra Pradesh & Telangana, Delhi, Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Tamilnadu and West Bengal

Box 4.14: Illustrations of mistake in computation due to adoption of wrong figures

(a) Charge: PCIT-16, Mumbai

Assessee: M/s Crest Animation Studios Ltd.

Assessment Year: 2011-12

The scrutiny assessment was completed in May 2015 at an income of ₹ 113.79 crore. Audit noticed that the AO had made addition of ₹ 111.97 crore to the income of assessee while completing the assessment. The addition, inter alia, includes amount of ₹ 89.16 crore (being 50 per cent of 'other expenses' of ₹ 178.32 crore) against which the assessee did not offer any explanation. Audit further noticed from the Income Tax Return (ITR) of the assessee that it had already added back an amount of ₹ 170.06 crore to its income which was included in other expenses of ₹ 178.32 crore. Thus, the AO should have disallowed 50 per cent of ₹ 8.26 crore (₹ 178.32 crore - ₹ 170.06 crore), i.e., ₹ 4.13 crore. The AO, however, disallowed ₹ 89.16 crore instead of ₹ 4.13 crore. The mistake had resulted in over assessment of income of ₹ 85.03 crore (₹ 89.16 crore - ₹ 4.13 crore) involving excess levy of tax of ₹ 70.61 crore including interest and penalty.

(b) Charge: PCIT-1, Baroda

Assessee: M/s Divine Multimedia (India) Limited

Assessment Year: 2013-14

The scrutiny assessment was completed in March 2016 at an income of ₹ 2.41 crore. Audit noticed that the AO had mentioned in the assessment order the unverifiable transaction of ₹ 7.48 crore in respect of seven parties, to be added to the income of assessee. However, while computing the taxable income, AO adopted the unverifiable amount of ₹ 2.13 crore instead of ₹ 7.48 crore, resulting in under assessment of income of ₹ 5.35 crore with consequent short levy of tax of ₹ 2.36 crore including interest. ITD had accepted the audit observation and initiated the remedial action under section 154 of the Act in April 2018.

(c) Charge: PCIT-2, Bengaluru

Assessee: M/s Siddaramanna Shailendra Babu

Assessment Year: 2012-13

The scrutiny assessment of the assessee was completed in March 2015 at a loss of ₹ 5.74 crore. Audit noticed that AO adopted the figure of returned loss at ₹ 11.52 crore as against the actual loss of ₹ 1.15 crore and after making the addition of ₹ 5.78 crore the AO determined the loss at

₹ 5.74 crore instead of income of ₹ 4.63 crore. The mistake had resulted in underassessment of income of ₹ 4.63 crore as well as allowing incorrect carry forward of loss of ₹ 5.74 crore with consequent total tax effect of ₹ 3.70 crore.

(d) Charge: PCIT-10, Chennai

Assessee: M/s Thirupathi Brothers Film media Pvt. Ltd.

Assessment Year: 2012-13

The scrutiny assessment of the assessee was completed in March 2015 at an income of ₹ 3.93 crore. Audit noticed that the assessee filed revised return of income at ₹ 3.93 crore as against original return of income of ₹ 1.92 crore. However, in assessment order, income was taken at ₹ 1.93 crore instead of correct revised income of ₹ 3.93 crore. The mistake had resulted in short assessment of income amounting to ₹ 2 crore with consequent total tax effect of ₹ 88.25 lakh including interest. ITD rectified the mistake under section 154 of the Act (October 2017).

(e) Charge: PCIT (Central)-3, Mumbai

Assessee: M/s The Board of Control for Cricket in India (BCCI)

Assessment Years: 2014-15

The scrutiny assessment was completed in December 2016 at assessed income of ₹ 1,131.09 crore. Audit noticed that assessee had credited ₹ 108.02 crore towards 'Income from Media Rights' which was net of TV and other production cost of ₹ 59.32 crore. However, while computing the income, the assessee had again claimed the production cost of ₹ 59.32 crore as expenses and the same was allowed by AO. The mistake had resulted in under assessment of Income of ₹ 59.32 crore involving short levy of tax of ₹ 20.16 crore.

(f) Charge: CIT-10, Chennai

Assessee: M/s Mavis Satcom Ltd.

Assessment Year: 2012-13

The scrutiny assessment was completed in March 2015 at an income of ₹ 5.46 crore. Audit noticed that the AO had adopted the income of ₹ 2.26 crore as per original return of income instead of revised return of income of ₹ 8.59 crore while computing the taxable income. The mistake had resulted in under assessment of income of ₹ 6.33 crore involving short levy of tax of ₹ 2.79 crore including interest.

(g) Charge: PCIT-3, Delhi

Assessee: M/s Digivision Entertainment Pvt. Ltd.

Assessment Year: 2014-15

The scrutiny assessment of the assessee was completed in December 2016 at a loss of ₹ 7.76 crore. Audit noticed that assessee had filed its return of income at 'nil' after setting off of brought forward losses of ₹ 7.76 crore of previous AYs. As such, the income should have been assessed at nil income as against allowing loss of ₹ 7.76 crore. The mistake had resulted in irregular allowance of carry forward of loss of ₹ 7.76 crore involving potential tax effect of ₹ 2.64 crore. The ITD had initiated the remedial action under section 154 of the Act in March 2018.

4.8 Conclusion

- The assessing officers made ad hoc additions to the income of the assesseees by applying varying percentages ranging from five *per cent* to 20 *per cent*, thereby making the additions to the income subjective and arbitrary. There was no or inadequate justification for the same.
- Audit noticed in 384 cases where Assessing officers did not comply with the provisions laid down in the Act with respect to allowances of deductions/expenses/set off and carry forward of losses/ MAT, mistakes in computation of tax and interest etc., involving tax effect of ₹ 1,922.93 crore, which impacted quality of assessments.

4.9 Recommendations

Audit recommends:

- a. The CBDT may ensure that assessment orders are self explanatory (speaking orders) while arriving at ad hoc additions and thus also avoiding non-uniformity in ad hoc additions in similar cases.
- b. CBDT may ensure that the provisions/conditions laid down in the Income Tax Act with respect to allowances of deductions/expenses/ set off and carry forward of losses/MAT etc. are duly complied with by the Assessing Officers in order to improve the quality of assessments.

The CBDT while agreeing to the recommendation during Exit Conference (June 2018) stated that with the implementation of Income Tax Business Application (ITBA), the Assessing Officer is required to follow a more detailed and comprehensive approach while making additions/disallowance to compute taxable income.

- c. CBDT may make it mandatory for the Assessing Officers, at all stages of assessments, to auto generate tax demand through its assessment module having in built checks and validations to prevent recurring and avoidable mistakes in computation of tax and interest.

The CBDT while agreeing to the recommendation during Exit Conference (June 2018) stated that, it has been made mandatory for the AOs to pass the assessment orders through ITBA, which has in-built checks and validation to prevent arithmetical error in computation of tax and interest.



(Neelesh Kumar Sah)

Principal Director (Direct Taxes-II)

New Delhi

Dated: 05 February 2019

Countersigned



(Rajiv Mehrishi)

Comptroller and Auditor General of India

New Delhi

Dated: 06 February 2019

APPENDICES

Appendix-1
(Refer Para 1.5)
Legal Framework

Relevant Sections/ Rules of the Income Tax Act/ Rules governing the Entertainment industry

| Section/ Rule | Contents |
|--|--|
| Section 44AA(3) read with Rule 6F | Maintenance of books of accounts by film artists. |
| Section 44AB | Submission of audit report certified by a Chartered Accountant |
| Section 80(IB)(7A) read with Rule 18BD ⁶² | Deduction to multiplex theatres for a period of five consecutive years beginning from the initial assessment year |
| Section 80RR read with Rule 29A ⁶³ | Deduction of income in respect of professional income from foreign sources in case of author, playwright, artist, musician and actor; being a resident in India. |
| Section 194C | Tax deduction at source (TDS) for payment of any sum to any resident for any work in pursuance of a works contract. As per Explanation III thereto "works" shall include a) Advertising b) Broad casting and Telecasting including production of programmes for such broadcasting and telecasting etc. |
| Section 194J | TDS in respect of payment by way of fees for professional services or technical services and royalty payments. Royalty does not include consideration on the sale, distribution and exhibition of Cinematographic films. |
| Section 285B read with Rule 121A | Submission of statements of expenditure (viz. Form 52A) containing particulars of all payments over ₹ 50,000 by Film producers with respect to a particular film produced. |
| Section 272A | Penalty for non filing of Form 52A within prescribed time. |
| Rules 9A and Rule 9B | Deduction in respect of cost of production of a feature film and cost of acquisition of distribution rights of feature film respectively |

⁶² Deduction available when Completion/ Occupancy Certificate was received between 1-04-2002 and 31-03-2005

⁶³ No deduction is available w.e.f. AY 2005-06.

CIRCULARS OF CBDT

| Circular No. and date | Contents |
|-----------------------------|---|
| 675 dated 03-01-1994 | CBDT clarified that a script writer can be regarded as "playwright" and similarly "director" can be treated as an 'artist' for the purposes of section 80RR of the Act. However, a producer would not be entitled to deduction under section 80RR of the Act, because he does not fall under any of the categories mentioned in the said section. |
| 715 dated 08-08-1995 | CBDT has given clarification on various provisions relating to tax deduction at source regarding changes introduced through Finance Act, 1995. Advertisement agencies, contract on hoardings, etc. are covered under this Circular. |
| 742 dated 02-05-1996 | CBDT has clarified that the income in the cases of the foreign telecasting companies (FTCs), which are not having any branch office or permanent establishment in India or are not maintaining country wise accounts, shall be computed by adopting a presumptive profit rate of 10 <i>per cent</i> of the gross receipts meant for remittance abroad or the income returned by such companies, whichever is higher and subject the same to tax at the prescribed rate, i.e., 55 <i>per cent</i> at present. |
| 06 of 2001 dated 05-03-2001 | <p>CBDT has clarified that the total income of FTCs from advertisements, hitherto computed on a presumptive basis shall now be determined in accordance with the other provisions of the Income tax Act, 1961 in relation to the AY 2002-03 and subsequent assessment years. In case, accounts for Indian operations are not available, the provisions of rule 10 of the Income tax Rules, 1962 may be invoked. Where an FTC is a resident of a country with whom India has a Double Taxation Avoidance Agreement (DTAA), its business income (including receipts from advertisement) can be taxed only if it has a Permanent Establishment in India. Taxation of FTCs who are residents of countries with whom India does not have a DTAA, shall be governed by the provisions of section 5, read with section 9 of the Income tax Act, 1961.</p> <p>It further reiterated that the guidelines for computation of profits of FTCs in Circular No. 742 and 765 were applicable only to the income stream from advertising. Other kinds of income like subscription charges receivable from cable operators in respect of pay channels and income from the sale or lease of decoders, etc., shall continue to be taxed in accordance with the paragraph 2 above.</p> |
| 05 of 2002 dated 30-07-2002 | CBDT has given further clarification on various provisions relating to tax deduction at source |

| | |
|-----------------------------|--|
| | regarding changes introduced through Finance Act, 1995. Advertisement agencies, contract on hoardings, etc. are covered under this Circular. |
| 04 of 2016 dated 29-02-2016 | CBDT has clarified that while applying the relevant provision of TDS on a contract for content production, a distinction is required to be made between (i) a payment for production of content/programme as per the specifications of the broadcaster/ telecaster and (ii) a payment for acquisition telecasting rights of the content already produced by the production house. The first condition would be covered under the provision of Section 194C whereas the payments of second nature would fall under other TDS provisions of Chapter XVII B of the Act. |
| 05 of 2016 dated 29-02-2016 | CBDT has clarified that no TDS is attracted on payments made by television channels/ newspaper companies to the advertising agency for booking or procuring of or canvassing for advertisements. Further, 'commission' referred to in Question No.27 of Circular No.715 dated 08.08.1995 does not refer to payments by media companies to advertising companies for booking of advertisements but to payments for engagement of models, artists, photographers, sportspersons, etc. and, therefore, is not relevant to the issue of TDS. |

Relevant Judicial Decisions:

| Case details | Citation of the decision | Gist |
|--|--|---|
| Firoz Nadiadwala Vs. Additional CIT - 11(1), Mumbai | ITA No. 7977 /Mum/2011 (ITAT Mumbai Bench 'F') | It was held that the interest on loan borrowed specifically for production of a film which was not released during year was not allowable, and should be carried forward to next year as cost of production in terms of rule 9A. |
| Sagar Sardhadi Vs. ITO, Ward 11(1)(4), Mumbai | ITA No. 5525/ Mum/2010, ITAT Mumbai Bench 'E' | It was held that the cost of production of film can be allowed as deduction only when conditions as specified under rule 9A are satisfied, and such deduction cannot be permitted by adopting an indirect method of reducing the value of film. |
| Malayala Manorama Co. Ltd. Vs. ACIT Circle - 1, Kottayam | ITA Nos. 429 & 481 of 2010 | It was held that where equipment purchased for starting FM radio broadcasting services could not put to use till end of relevant financial year as licence could not be obtained from Ministry, depreciation thereon cannot be allowed. Further, where assessee could |

| | | |
|--|---|--|
| | | not generate any income during year from films in respect of which it acquired television rights, deduction for cost of their acquisition could not be allowed |
| DCIT, Central Cir-24, Mumbai Vs. Salman Khan | ITA No.2836 & 2837/Mum /2008 | It was held that where some personal complaints had been lodged against assessee which had got nothing to do with his professional activities, expenditure incurred in defending against those allegations was definitely of personal nature and, such expenditure could not be allowed against income from business and profession |
| Jalan Distributors (P.) Ltd. Vs CIT, Kolkata | Supreme Court of India [2016] | The Tribunal has rejected the assessee's claim of interest expenditure u/s 36(1)(iii) where it was paid against security deposit given to the landlord for taking business premises on rent, however, the assessee could not submit any evidence to prove that said premises was used for its business premises. The High Court upheld the order of Tribunal and SLP filed against it was dismissed by the Supreme Court of India. |
| Salim Akhtar Vs ACIT-11(1), Mumbai | ITA No.907 / Mum /2012; ITAT Mumbai Bench 'E' | It was held that where assessee having purchased distribution right of a film from sister concern at a very high price on minimum guarantee basis, entered into agreement with another sister concern for exhibition of said film on commission basis, there was a valid basis with revenue authorities that the transaction in question was device, and loss, thus, was self-inflicted in order to reduce assessee's taxable income earned from production of another film and, therefore, penalty order passed for raising a false claim of set off of loss was valid. |
| Vishesh Entertainment Ltd. Vs ACIT, Circle-11(1), Mumbai | ITA No. 305/ MUM 2009 ITAT, Mumbai Bench 'F' | The Tribunal held that the assessee failed to substantiate its claim of sending the person, who was the son of a major shareholder, for training abroad for benefit of its business and expenditure incurred on training was rightly disallowed by authorities below. |
| ACIT vs. Seven Arts Films | ITA No.1291/ Mds /2013. ITAT Chennai Bench | It was held that where assessee, a filmproducer, paid compensation to exhibitors of its films which did not do well in theaters resulting loss to exhibitors, such payment not being to |

| | | |
|--|--|--|
| | | discharge any legal obligations but to protect assessee's goodwill, would be treated as capital expenditure. |
| DCIT, 8(3)(1), Mumbai Vs United Home Entertainment (P.) Ltd. | ITA No. 1977/ Mum/ 2015 ITAT Mumbai Bench 'F' | It was held that where the programs (assets) without incurring dubbing costs, could not be utilised for earning revenue, all expenditure incurred would amount to be capital expenditure and would form part of cost of acquisition rights under license and should be amortised along with cost of license. |

Appendix-2
(Refer Para 1.6)
Sample Size

| Name of the State | Number of PCsIT/CsIT Selected | Total Number of Assessment Units | Units Selected |
|----------------------------|-------------------------------|----------------------------------|----------------|
| Andhra Pradesh & Telangana | 12 | 123 | 30 |
| Bihar | 3 | 81 | 24 |
| Chhattisgarh | Nil | Nil | Nil |
| Delhi | 19 | 365 | 94 |
| Gujarat | 15 | 289 | 42 |
| Haryana | 6 | 116 | 23 |
| Himachal Pradesh | 1 | 21 | 3 |
| J&K | 1 | 18 | 3 |
| Jharkhand | 3 | 81 | 13 |
| Karnataka and Goa | 12 | 194 | 73 |
| Kerala | 6 | 131 | 36 |
| Madhya Pradesh | 3 | 47 | 47 |
| Maharashtra | 23 | 282 | 88 |
| North East Region | 3 | 22 | 14 |
| Odisha | 5 | 54 | 14 |
| Punjab | 11 | 236 | 29 |
| Rajasthan | 9 | 98 | 29 |
| Tamil Nadu | 18 | 284 | 80 |
| Uttar Pradesh | 11 | 328 | 43 |
| Uttarakhand | 1 | 48 | 21 |
| West Bengal | 14 | 150 | 60 |
| Total | 176 | 2,968 | 766 |

Basis of selection: Aggregated data was provided by DGIT (Systems) with respect to AO charges. 100 *per cent* Corporate Circles, minimum 25 *per cent* Central Circles/non-Corporate Circles/mixed Circles and minimum 5 *per cent* Wards were selected for audit⁶⁴. The dedicated film circles/wards⁶⁵ were compulsorily selected for audit. All scrutiny, appeal and rectification cases were audited from the selected units for FYs 2013-14 to 2016-17.

64 For Maharashtra, the parameters of selection were-Minimum 50 *per cent* Corporate Circle, minimum 25 *per cent* Central Circle, minimum 10 *per cent* non-corporate/mixed circles and minimum 5 *per cent* Wards

65 For Maharashtra, minimum 50 *per cent* Film Wards

Appendix-3
(Refer Para 1.7)
Non Production of Records

| State | PCIT/CIT Charge | Number of cases identified and requisitioned | Number of cases produced | Number of cases not produced |
|----------------------------|-----------------------|--|--------------------------|------------------------------|
| Karnataka | PCIT-1, Bangaluru | 46 | 34 | 12 |
| | PCIT-2, Bangaluru | 167 | 151 | 16 |
| | PCIT-3, Bangaluru | 17 | 14 | 3 |
| | PCIT-4, Bangaluru | 33 | 28 | 5 |
| | PCIT-5, Bangaluru | 32 | 30 | 2 |
| | PCIT-7, Bangaluru | 17 | 13 | 4 |
| Haryana | PCIT, Gurgaon | 46 | 45 | 1 |
| Tamil Nadu | PCIT-10, Chennai | 855 | 760 | 95 |
| Kerala | PCIT-1, Kochi | 47 | 46 | 1 |
| | PCIT, Kottayam | 57 | 56 | 1 |
| Andhra Pradesh & Telangana | PCIT/CIT-6, Hyderabad | 282 | 270 | 12 |
| Odisha | PCIT-1, Bhubaneswar | 40 | 39 | 1 |
| Uttar Pradesh & Uttrakhand | PCIT-2, Lucknow | 43 | 41 | 2 |
| Maharashtra | PCIT (C)-2, Mumbai | 132 | 128 | 4 |
| | PCIT-13, Mumbai | 64 | 61 | 3 |
| | PCIT-14, Mumbai | 76 | 74 | 2 |
| | PCIT-16, Mumbai | 1,904 | 1,901 | 3 |
| | PCIT-3, Mumbai | 27 | 24 | 3 |
| | PCIT-7, Mumbai | 91 | 88 | 3 |
| West Bengal | PCIT-2, Kolkata | 13 | 12 | 1 |
| | PCIT-11, Kolkata | 16 | 15 | 1 |
| Total | | 4,005 | 3,830 | 175 |

Appendix-4
(Refer Para 3.8)
Mismatch in the data provided by DGIT (Systems) and
Assessment Charge data

| DCIT | | FY 2013-14 | FY 2014-15 | FY 2015-16 | FY 2016-17 |
|---------------------------------|---|---------------|---------------|---------------|---------------|
| Circle 14(1), Hyderabad | No. of Scrutiny Assessment of Entertainment Sector as per DGIT System | 0 | 43 | 51 | 44 |
| | No. of Scrutiny Assessment of Entertainment Sector as per D & CR Register | 0 | 53 | 76 | 69 |
| | Variation in number of cases | 0 | 10 | 25 | 25 |
| Ward 14(5), Hyderabad | No. of Scrutiny Assessment of Entertainment Sector as per DGIT System | 0 | 34 | 50 | 34 |
| | No. of Scrutiny Assessment of Entertainment Sector as per D & CR Register | 0 | 80 | 66 | 56 |
| | Variation in number of cases | 0 | 46 | 16 | 22 |
| Circle 2(3)(1), Bengaluru | No. of Scrutiny Assessment of Entertainment Sector as per DGIT System | 10 | 8 | 15 | 20 |
| | No. of Scrutiny Assessment of Entertainment Sector as per D & CR Register | 12 | 11 | 30 | 28 |
| | Variation in number of cases | 2 | 3 | 15 | 8 |
| Ward 2(3)(5), Bengaluru | No. of Scrutiny Assessment of Entertainment Sector as per DGIT System | 5 | 13 | 14 | 15 |
| | No. of Scrutiny Assessment of Entertainment Sector as per D & CR Register | 4 | 17 | 19 | 24 |
| | Variation in number of cases | -1 | 4 | 5 | 9 |
| Circle 16(1), Mumbai | No. of Scrutiny Assessment of Entertainment Sector as per DGIT System | 162 | 231 | 275 | 282 |
| | No. of Scrutiny Assessment of Entertainment Sector as per D & CR Register | 293 | 238 | 416 | 376 |
| | Variation in number of cases | 131 | 7 | 141 | 94 |
| Circle 20(1), Chennai | No. of Scrutiny Assessment of Entertainment Sector as per DGIT System | 96 | 93 | 111 | 98 |
| | No. of Scrutiny Assessment of Entertainment Sector as per D & CR Register | 152 | 212 | 187 | 131 |
| | Variation in number of cases | 56 | 119 | 76 | 33 |

| | | | | | |
|------------------------------------|---|-----------|-----------|----------|-----------|
| Ward 20(5), Chennai | No. of Scrutiny Assessment of Entertainment Sector as per DGIT System | 22 | 24 | 22 | 33 |
| | No. of Scrutiny Assessment of Entertainment Sector as per D & CR Register | 37 | 45 | 31 | 60 |
| | Variation in number of cases | 15 | 21 | 9 | 27 |

Abbreviations

| | |
|-----------|--|
| ACIT | Assistant Commissioner of Income Tax |
| Addl. CIT | Additional Commissioner of Income Tax |
| AO | Assessing Officer |
| AY | Assessment Year |
| CBDT | Central Board of Direct Tax |
| CBEC | Central Board of Excise and Customs |
| CCIT | Chief Commissioner of Income Tax |
| CIT | Commissioner of Income Tax |
| CIT (A) | Commissioner of Income Tax (Appeal) |
| DC (CC) | Deputy Commissioner (Central Circle) |
| DCIT | Deputy Commissioner of Income Tax |
| DGIT | Director General of Income Tax |
| FY | Financial Year |
| ITAT | Income Tax Appellate Tribunal |
| ITBA | Income Tax Business Application |
| ITD | Income Tax Department |
| ITO | Income Tax Officer |
| MAT | Minimum Alternate Tax |
| PA | Performance Audit |
| PAN | Permanent Account Number |
| PCCIT | Principal Chief Commissioner of Income Tax |
| PCIT | Principal Commissioner of Income Tax |
| PCIT (E) | Principal Commissioner of Income Tax (Exemption) |
| TDS | Tax Deducted at Source |

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