Chapter 1 : Introduction

1.1 Several companies that were having large profit from business and distributing substantial portion of the income to their shareholders as dividend, were reducing their tax liability by availing various deductions and exemptions etc. available in the Act. Such companies referred to as "Zero Tax Companies" were attempted to be brought into tax net by introduction of section 115J by Finance Act 1987, which was withdrawn by Finance Act 1990. It was re-introduced by introducing section 115JA by Finance Act, 1996 with effect from 1 April 1997, which was further revised from 1 April 2001 by introducing a new section 115JB whereby the companies had to pay tax on their book profit/deemed income at a rate prescribed by the Government from time to time. The provision of credit of tax paid by the companies under section 115JA/115JB was also made for set off in subsequent years as per provisions of section 115JAA.

The special provisions commonly referred to as Minimum Alternate Tax (MAT) have been amended from time to time for increasing the tax base considering economic growth in different sectors viz. banking, insurance and finance etc. The latest amendment was done by Finance Act 2016 which is effective from 1 April 2017 by which the units located in an international financial services centre and deriving income solely in convertible foreign exchange were also brought within the ambit of MAT.

1.2 Why we chose the topic

The corporate assessees, irrespective of their income level are required compulsorily to file their income tax returns annually. However, total number of corporate assessees filing returns with the ITD[1] was much less as compared to the number of working companies registered with Registrar of Companies. The ITD's efforts to bring such assessees into the tax net needed to be examined in audit.

Certain ambiguities in the interpretation of legislative provisions/ adjustments to net profit or loss as per profit and loss account for the computation of book profit have been observed in audit for which ITD's directions to resolve the ambiguities and implementation of directions required to be verified.

Earlier we had conducted a performance audit on this topic and results/findings thereof were featured in Chapter I of C&AG's Report No. 13

[1] Income Tax Department

of 2004. There was a need to ascertain whether deficiencies pointed out earlier, have been addressed appropriately by the CBDT.

1.3 Audit Objectives

The performance audit was conducted with the objectives of examining whether:

(i) there are any systemic issues including any ambiguity or lacuna in the special provisions resulting in nullifying/reducing the tax liability;

(ii) ITD was complying with the provisions relating to MAT and, if not, determining the underassessment/loss of revenue and other irregularities due to mistakes in assessment;

(iii) ITD has taken adequate steps to identify the companies not filing tax returns and bring them into tax net;

(iv) the objective of introduction of special provision to bring zero tax-paying companies into tax net have been achieved.

1.4 Legal Framework

The scheme of taxation under MAT is covered under section 115JB of the Income Tax Act, 1961 whereas the provisions relating to carry forward and set off of MAT credit are enumerated in section 115JAA of the Act. A brief of relevant provisions is given in **Appendix 1**.

1.5 Audit Scope and Sample Size

The performance audit covered cases of scrutiny assessments, appeal and rectification completed during the financial years 2012-13 to 2015-16. We also checked summary assessment records in respect of the selected cases where scrutiny assessment was not completed till the date of audit. We selected top 12 CIT charges in terms of assessed income for each of the category A States[2] and top 5 CIT charges for each of the category B States[3] from the Assessing Officer (AO) wise aggregated data provided by the Director General of Income Tax (DGIT) (Systems), New Delhi for the performance audit. In the selected CIT charges, 100 *per cent* DCIT/ACIT charges and 20 *per cent* of the ITO charges were selected for audit. Finally we selected 877 assessment units for audit in the 150 selected CIT charges **(Appendix 2)**.

[2] Andhra Pradesh, Delhi, Gujarat, Karnataka, Maharashtra, Tamil Nadu, West Bengal and Uttar Pradesh

[3] Assam, Bihar, Chhattisgarh, Goa, Haryana, Himachal Pradesh, Jammu & Kashmir, Jharkhand, Kerala, Odisha, Punjab, Rajasthan, Uttarakhand and UT Chandigarh

1.6 Audit Methodology

An entry conference with CBDT was held on 9 August 2016 wherein we explained the audit objectives, scope of audit and the main focus areas of the performance audit.

We sought the details relating to corporate assessees from DGIT (Systems). ITD initially supplied summary data aggregated at CIT level (July 2016). Later on the same data was provided aggregated at assessing officer level (September 2016) which helped us in sample selection of the assessment units but did not serve the purpose of identifying the individual cases pertaining to MAT within the selected assessment units. We, therefore, compiled the data from Demand and Collections Registers available in assessment units selected for the performance audit. We examined the assessment records of corporate assessees in these selected assessment units.

We also approached the regional Registrar of Companies (ROCs)/ Ministry of Corporate Affairs, New Delhi (November 2016) to obtain the details of companies registered with them and details of active companies along with the details of profit declared for comparison of the data from the two sources. Results of the audit examination were conveyed to the concerned AOs for their comments.

We issued draft performance audit report to the CBDT on 10 April 2017 for their comments. An Exit Conference was held on 1 June 2017 where the recommendations made by the Audit and the CBDT's response thereon were discussed. The conclusions/decisions based on the discussion in the Exit Conference have been appropriately incorporated in the Report.

1.7 Non production of records

We approached the ITD to provide the details of companies filing return of income, companies being assessed under MAT during the selected financial years under various charges, non-filers identified and action taken thereupon and the details of companies paying nil taxes under normal as well as MAT provisions.

ITD supplied the summary data[4] and not the granular data, as a result of which, we had to compulsorily select the cases manually for audit from the Demand and Collection Registers in each assessing charge for each of the

4 "Proforma B_Tax115JB_GE_GTL_AO_1433_1"; "Proforma B_Tax115JB_LT_GTL_AO_1433_1"; "Proforma B_Tax115JB_GE_GTL_AO_1" and "Proforma B_Tax115JB_LT_GTL_AO_1".

selected financial years. This was time consuming and acted as a constraint in conducting the audit.

Audit requisitioned 15,677 records, out of which ITD produced 11,293 records only. Non-production of records worked out to 27.96 percent. In Gujarat, Karnataka and Goa, Delhi, Maharashtra and Himachal Pradesh, non-production of records ranged from 27.93 *per cent* to 62 *per cent*. Further, ITD did not produce any records in four assessment charges each in Mumbai[5] and in Delhi[6] despite repeated follow-up. **Appendix 3** depicts the details of non-production of records.

In January 2017, DGIT (System) provided data relating to 60,227 companies which despite having profit as per profit and loss account for the period FY 2012-13 to 2015-16[7] were paying nil taxes under normal provisions as well as under MAT. Providing this data so late served very limited purpose as the field work for the performance audit had already been completed by then.

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[5] DCIT4(1)(1), DCIT4(1)(2), ITO 10(1)(1) and ITO 10(1)(2)

[6] Circle 25(1), Circle 25(2), Circle 5(1) and Ward 25(3)

[7] E-mail dated 17-01-2017 from AD(S), office of the ADG (System)-3, New Delhi to DGACR, New Delhi