

Chapter 2

Efficacy in implementation of TDS/TCS provisions

2.1 The present chapter deals with the issues relating to the TDS/TCS provisions of the Act and relevant rules. We examined the verification cases of TDS circles/wards and scrutiny assessments of assessment charges to see efficacy of all stakeholders in complying with the provisions of the Act relating to TDS/TCS. We found mistakes in 1,481 cases involving tax effect of ₹ 2,952.27 crore which have been discussed in this Chapter.

2.2 Failure to impose interest by the AO(TDS) on non/short deduction/collection of tax

Audit examination revealed that in respect of section 201(1A)/206C(7) of the Act, 168 cases were noticed where the tax deductors/collectors were in default for non/short deduction and collection of tax and therefore, liable to pay interest. This resulted in non/short depositing of tax including interest amounting to ₹ 902.16 crore. Four such illustrative cases are shown in Box 2.1.

Box 2.1: Illustrative cases relating to failure to impose interest by the AO(TDS) on non/short deduction/collection of tax

Section 201(1) of the Act provides that any person, who is required to deduct any sum in accordance with the provisions of the Act, does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, then, such person, shall be deemed to be an assessee in default in respect of such tax. Further, section 201(1A) provides that such person shall be liable to pay simple interest at one per cent for every month or part of the month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted and at one and one-half per cent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid.

a. In Delhi, CIT(TDS)-I charge, the verification order of M/s KMP Expressways Limited for financial year 2011-12 was passed under section 201(1)/201(1A) in March 2014. Audit examination revealed that though the assessee company had not deposited tax deducted at source of ₹ 7.00 crore to Government Account, ITD did not levy interest under section 201(1A) on account of non-deposit of TDS. The omission resulted in non-depositing of tax of ₹ 12.04 crore including interest. The ITD replied (May 2016) that CIT (TDS) passed the order under section 263 setting aside the order passed under section 201(1).

b. In Karnataka, CIT(TDS) charge, the verification order of M/s Kingfisher Airlines Limited, for the financial year 2010-11 was passed under section 201(1)/201(1A) in July 2014. Audit noticed that ITD levied interest under section 201(1A) at ₹ 6.23 crore instead of ₹ 10.22 crore. The mistake resulted in short levy of interest of ₹ 3.99 crore.

Section 206C(1) provides that every person, being a seller shall, at the time of debiting the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of any goods of the nature specified in the Act, a sum equal to the specified percentage of such amount as income-tax. Further, section 206C(7) provides that if the person responsible for collecting tax does not collect the tax or after collecting the tax fails to pay it as required under this section, he shall be liable to pay simple interest at the rate of one per cent per month or part thereof on the amount of such tax from the date on which such tax was collectible to the date on which the tax is actually paid.

c. In Karnataka, CIT TDS charge, the Monitoring Committee (MC) constituted by the Hon'ble Supreme Court of India in its order dated 01 September 2011, directed to sell existing stock of Iron ore and Manganese ore in mining leases, stockyards in the districts of Bellary, Tumkur and Chitradurga of Karnataka through e-auction. The MC had made total sale of Iron ore of ₹ 17,310.00 crore during FYs 2012-13 to 2014-15. Audit scrutiny revealed that neither the MC collected tax at source nor did the CIT(TDS), Bangalore initiate necessary proceedings against the MC for failing to collect the tax at source. The omission resulted in non-collection of tax at source of ₹ 173.10 crore.

d. In Odisha, CIT(TDS) charge, the audit noticed from the records of Office of the Dy. Director of Mines, Jajpur Road (tax collector) that ₹ 718.56 crore was received as royalty from lessees of mines other than the public sector companies during FYs 2012-13 to 2014-15. It was found that tax collector did not file tax collection statement for all quarters except the first quarter of 2012-13. It was noticed that tax collector had not collected tax at source on ₹ 718.56 crore. The omission resulted in non-collection of tax of ₹ 14.37 crore.

The levy of interest under section 201(1A)/206C(7) by the ITD act as a deterrent against non-compliance with respect to timely deduction/collection of tax and depositing the same into Government account. Non/short levy of interest on the defaulting tax deductors by the AO(TDS) makes the implementation of the provisions weak.

2.3 Failure to initiate penalty proceedings

Audit examination revealed that in respect of section 271C/271CA of the Act 311 cases were noticed where penalty proceedings were not initiated by the ITD against the tax deductors on account of non-deduction/collection of tax at source. Two such illustrative cases are shown in Box 2.2.

Box 2.2: Illustrative cases relating to failure to initiate penalty proceedings

Section 271C of the Act provides that if any person fails to deduct the whole or any part of the tax as required under the provisions of chapter XVII-B or pay the whole or any part of the tax as required by or under the second proviso to section 194B or sub-section (2) of section 115-O, then such person shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such person failed to deduct or pay. Further, as per section 271CA, if any person fails to collect the whole or any part of the tax as required under Chapter XVII-BB, then, such person shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such person failed to collect.

a. In Maharashtra, CIT (TDS) Thane charge, in the case of M/s Blue Star Realtors (P) Limited, an order was passed for the AY 2014-15 under section 201(1)/201(1A) determining demand of ₹ 3.22 crore in February 2015 for non-deduction of tax under section 194A at the rate of 10 per cent on interest payment of ₹ 32.19 crore. However, it was noticed that no action was initiated by the AO to impose penalty.

The DCIT (TDS) Circle, Thane replied (February 2016) that a proposal had been sent to the competent authority for initiation of penalty proceedings.

b. In Delhi, CIT-VI charge, scrutiny assessment of M/s Turner General Entertainment Network India Limited for the AY 2011-12 was completed in March 2014. The assessee had added ₹ 54.49 crore under section 40(a)(ia) in returned income due to non-deduction of tax. Audit noticed that no action was initiated to impose penalty. The ITD accepted the observation and initiated penalty proceedings by issuing notice to assessee.

The intention of penal provisions in the Act is to enforce compliance of law and also work as deterrence against tax defaulters. Such instances of non-compliance weaken the deterrent effect of the provisions.

2.4 Failure to initiate prosecution proceedings

Audit noticed that AO(TDS) did not invoke provisions of section 276B/276BB/278A against 343 deductors where tax was deducted/collected at source but not deposited within due date attracting prosecution proceedings under the Act. Two such illustrative cases are shown in Box 2.3.

Box 2.3: Illustrative cases relating to failure to initiate prosecution proceedings

Section 276B/276BB or 278A provides that all cases where TDS/TCS is deducted/collected but not deposited within due date, as prescribed, are punishable under the law. As per CBDT's Standard Operating Procedure (SOP) for prosecution, cases of TDS/TCS defaults, where amount of tax deducted/collected is ₹ one lakh and more and same is not deposited by the due date prescribed under the Act shall mandatorily be processed for prosecution in addition to the recovery. Further, cases where the tax deducted/collected is between ₹ 25,000 and ₹ one lakh and the same is not deposited by the due date may be processed for prosecution depending upon the facts and circumstances of the case. The CIT(TDS) is the competent authority to accord sanction under section 279(1) for prosecution referred by AO(TDS).

a. In Andhra Pradesh, CIT(TDS) charge, a survey in the case of M/s IVRCL Limited was conducted for FY 2012-13 in January 2013. Further, the verification orders were passed under section 201(1)/201(1A) in February 2013 and in January 2014. The AO in his order of February 2013 raised the demand of ₹ 18.20 crore on account of non-deposit of tax deducted at source into the Government Account within the prescribed time. Audit noticed that ITD had not initiated prosecution proceeding under section 276B. The ITD replied (December 2015) that reference for initiation of proceedings would be made to CIT(TDS).

b. In Karnataka, CIT(TDS) charge, a survey in the case of M/s Bruhat Bangalore Mahanagara Palike was conducted in November 2014 for FY 2014-15. Further, the verification order was passed under section 201(1) and 201(1A) in February 2015. Audit noticed that though the deductor was in default of non-remittance of the tax deducted at source of ₹ 2.36 crore, the AO sent a proposal for initiation of penalty under section 271C/271H but failed to initiate prosecution proceedings under section 276B. The ITD replied (February 2016) that appropriate remedial action would be taken.

The intention of provisions of prosecution is to punish the tax defaulter found guilty of non-depositing of tax within due date and to instill fear of law in minds of those who may contemplate evading depositing of legitimate taxes. Such instances of non-compliance indicate the weakness in the implementation of these provisions thus weakening its deterrent effect.

During exit conference, the CBDT stated that prosecution proceedings are initiated generally against top defaulters only so that they can be followed up effectively taking into account constraint of manpower in ITD. However, measures are being taken for issuing notices against all the tax defaulters.

2.5 Failure to disallow the expenditure by the AO affects the quality of assessments

Audit examination revealed that in respect of section 40(a)(ia) of the Act, 128 cases were noticed where the Assessing Officer (AO) allowed the expenditure in contravention of the provisions there under even though tax deducted at source was not deducted or deducted but not deposited before the due date of filing of return on such payments. Further, in respect of section 195 of the Act, 27 cases were noticed where the AOs allowed the expenditure in contravention of the provisions there under on which tax was not deducted at source. The mistakes in 155 cases resulted in short levy of tax of ₹ 2026.42 crore. Five such illustrative cases are shown in Box 2.4.

Box 2.4: Illustrative cases relating to failure to disallow the expenditure by the AO

Section 40(a)(ia) of the Act provides that no deduction of expenditures is allowed in computing the income chargeable under the head "Profits and gains of business or profession", on which tax is deductible at source under chapter XVII-B 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).

a. In Karnataka, CIT Range-1 charge, scrutiny assessment of M/s Bangalore Electricity Supply Company Limited for assessment year (AY) 2010-11 was completed in March 2013. Since assessee company had not deducted TDS on 'interest paid to consumers', AO disallowed expenses of ₹ 10.54 crore. Audit noticed that AO adopted the figure of ₹ 10.54 crore as against actual expenditure of ₹ 101.54 crore debited in the profit and loss account towards 'interest paid to consumers'. The mistake resulted in short disallowance of expenditure of ₹ 91.00 crore involving short levy of tax of ₹ 30.93 crore.

b. In Delhi, CIT-V charge, scrutiny assessment of M/s Primus Buildwell Private Limited, for the AY 2010-11 was completed in March 2013. Audit noticed that the assessee company had deducted TDS of ₹ 1.01 crore under section 194C in March 2010 but the same was deposited to Government account in January 2012 i.e., after the due date of filing of return. However, AO failed to disallow the amount involved of ₹ 50.52 crore which led to short levy of tax of ₹ 23.35 crore including interest.

c. In Maharashtra, CIT-I Charge, the scrutiny assessment of assessee company M/s Housing Development Finance Corporation Limited, for AY 2010-11 was completed in February 2013. Audit noticed from the records (Form 26AS) of M/s Nuclear Power Corporation of India Limited (NPCL) that though the assessee company had paid interest of ₹ 28.68 crore to NPCL, Tax at source was not deducted under section 194A for the same payment. However, no addition was made by AO under section 40(a)(ia). The mistake resulted in under assessment of income to that extent involving short levy of tax of ₹ 9.75 crore.

Section 195(1) of the Act provides that any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest or any other sum chargeable under the provisions of this Act (not being income chargeable under the head salaries) shall, at the time of credit of such income to the account of the payee or at the time of payment, whichever is earlier, deduct income-tax thereon at the rates in force. Further, as per explanation-2 inserted by the Finance Act, 2012 with retrospective effect from 01.04.1962, it has been clarified that the obligation to comply with sub-section (1) and to make deduction there under applies and shall be deemed to have always applied and extends and shall be deemed to have always extended to all persons, resident or non-resident, whether or not the non-resident person has (i) A residence or place of business or business connection in India; or (ii) Any other presence in any manner whatsoever in India.

d. In Karnataka, CIT Range-1, the scrutiny assessment of M/s Ansys Software Private Limited for AY 2011-12 was completed under section 143(3) read with section 92CA in February 2015. Audit noticed that AO allowed the business expenditure incurred towards purchase of “software licenses and technical enhancements including technical support fees” from Ansys Inc., USA and Ansys UK Limited, amounting to ₹ 21.89 crore even though the tax at source had not been deducted under section 195. Omission to disallow this expenditure had resulted in short levy of tax of ₹ 10.69 crore including interest.

e. In Haryana, Principal CIT(TDS)-2, scrutiny assessment of a firm, M/s Sat International was completed in December 2014. Audit noticed that the firm had paid ₹ 82.07 lakh and ₹ 10.26 lakh towards telecommunication services and consultancy charges respectively to foreign company without deducting TDS under section 195. The omission resulted in under assessment of income of ₹ 92.33 lakh involving tax effect of ₹ 28.53 lakh.

Failure by the AO to disallow expenditure due to non deduction of tax or tax deducted but not deposited by the assessee, affects the quality of assessments.

During exit conference, the CBDT stated that matter would be examined and the above cases would be taken up on the priority basis.

2.6 Failure to deduct tax at source on sale of immovable property

Audit identified, in respect of section 194-IA of the Act 108 cases, where the ITD failed to notice the default of tax deductors who were liable to deduct tax at source on sale of immovable property. This is despite the fact that the information on the transactions of sale/purchase of immovable property exceeding ₹ 50 lakh were reported to the ITD through Annual Information Return (AIR). This resulted in non/short deduction of tax at source of ₹ 23.69 crore including interest. Two such illustrative cases are shown in Box 2.5.

Box 2.5: Illustrative cases on failure to deduct tax at source sale of immovable property

Section 194-IA of the Act provides that any person being a transferee, responsible for paying to a resident transferor any sum by way of consideration for transfer of any immovable property (other than agricultural land), shall at the time of credit of such sum to the account of the transferor or at the time of payment of such sum in cash or by issue of a cheque or demand draft or by any mode, whichever is earlier, deduct an amount equal to one per cent of such sum as income tax thereon, provided the consideration for transfer is not less than ₹ 50 lakh.

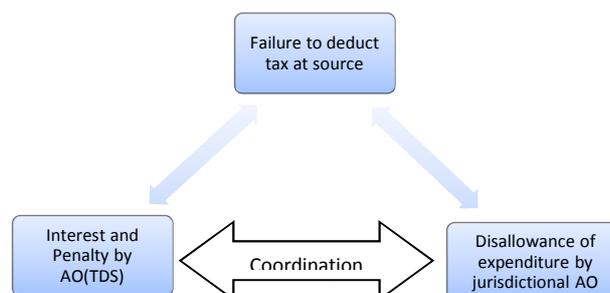
a. In Tamil Nadu, a test-check of property registration documents maintained at the offices of the District Registrar for Registration, Saidapet and Royapettah, Chennai revealed that in 63 cases during the period 01 June 2013 to 31 March 2015, the purchasers had not deducted tax at source from payments made to the sellers even though the consideration for transfer of property exceeded ₹ 50 lakhs. The ITD also failed to initiate action against the tax defaulters. The omission resulted in non-deduction of tax at source of ₹ 2.76 crore including interest. The ITD replied (February 2016) that CPC (TDS) Vaishali had sent CCA wise list of buyers of immovable property (reported through AIR) who have not filed 26QB for the FY 2013-14 and FY 2014-15 and the action would be taken.

b. In Kerala, CIT(TDS) Kochi charge, Audit noticed that a property was sold by M/s Common Wealth Trust Limited to M/s Pumic Projects and Properties at a cost of ₹ 7.65 crore in September 2013 and the SRO Chalappuram, Calicut shared this high value transaction through Annual Information Return (AIR) with the ITD. Audit further noticed that the tax at source had not been deducted on such transaction and the ITD failed to initiate action against tax defaulter despite the fact that the transaction was already in the notice of the ITD. The omission resulted in non-deduction of tax at source of ₹ 7.65 lakh.

Such instances indicate weakness in implementation of the provisions relating to levy of tax deducted at source relating to sale/purchase of immovable property.

2.7 Lack of Co-ordination between assessment and TDS units

The AO(TDS) may pass the information relating to the cases where he notices non-compliance of TDS provisions to the concerned assessment units for disallowance of expenditure under the provisions of the Act. Similarly, where jurisdictional AO notices the non-compliance of TDS provisions, he may pass such information to the concerned TDS units for necessary action related to collection of taxes.



Audit noticed in 369 cases that there was lack of coordination between assessment units and TDS units as information with regard to TDS provisions was not being shared for compliance. One such illustrative case is shown in Box 2.6.

Box 2.6: Illustrative case relating to lack of Co-ordination between assessment and TDS units

a. In Bihar, CIT(TDS) Patna charge, AO completed the assessment of a Co-operative society, Tirhut Dugdh Utpadak Sahkari Sangh Limited for AYs 2012-13, 2013-14 and 2014-15 in December 2014, wherein transport expenditure of ₹ 10.65 crore (₹ 2.72 crore + ₹ 3.26 crore + ₹ 4.67 crore) was incurred without deducting tax at source under section 194C. As the tax at source had not been deducted, the matter should have been referred to the concerned assessment unit for disallowance of expenditure under section 40(a)(ia) of the Act, which was not done.

Thus, there was lack of coordination between assessment units and TDS units as information is not being shared in order to ensure compliance to various TDS provisions of the Act.

During exit conference, the CBDT stated that the process of such information sharing between TDS Unit and Jurisdictional Unit has been initiated through CPC (TDS) & Income Tax Business Application (ITBA) linkage. The process is in initial stages and will gradually be scaled up to give greater information flow.

2.8 Failure to take into account income by the AOs against the tax deducted at source

Audit examination revealed that in 27 cases the assessee had not shown related receipt from which the tax was deducted into account in computing the total income for their income tax returns. The AOs also did not take into account the same while computing the taxable income of the assessee leading to less credit of taxable income thus affecting the quality of assessments. One such illustrative case is shown in Box 2.7.

Box 2.7: Illustrative case relating to non-compliance of provision of section 198

Section 198 of the Act provides that all sums deducted in accordance with the Chapter XVII shall, for the purpose of computing the income of an assessee, be deemed to be income received: Provided that sum being the tax paid, under sub-section (1A) of section 192 for the purpose of computing the income of an assessee, shall not be deemed to be income received.

In Assam, Pr. CIT-II Guwahati charge, the assessment of the assessee, Rishi Kumar Gupta for the AY 2011-12 was completed under section 143(3)/153A in March 2015. Audit scrutiny of Form 26AS³ revealed that the assessee had gross receipts of ₹ 8.87 crore and the total tax was deducted at source of ₹ 0.19 crore. However, the assessee had shown total gross receipt of ₹ 4.12 crore only and TDS of ₹ 0.19 crore was claimed by the assessee. Thus, there was an understatement of gross receipts of ₹ 4.75 crore leading to less credit of taxable income.

Thus, AO failed to utilize the information of income of assessee available during regular assessment affecting the quality of assessments.

2.9 Conclusion

The non/short levy of interest under section 201(1A)/206C(7) on the defaulting tax deductors by the AO(TDS) makes the implementation of the provisions weak. Non-initiation of penalty and prosecution under section 271C/271CA and 276B/276BB/278A respectively weaken the deterrent effect of the provisions. The failure by the AO to disallow expenditure though tax was not deducted at source or deducted but not deposited by the assessee, affects the quality of assessments. The deductors failed to deduct tax at source on sale of immovable property in 108 cases. Such instances indicate weakness in implementation of the provisions relating to levy of tax deducted at source relating to sale/purchase of immovable property. There was lack of coordination between assessment units and TDS units as information is not being shared in order to ensure compliance to various TDS provisions of the Act. The AO failed to utilize the information of income of assessee available during regular assessment affecting the quality of assessments.

2.10 Recommendation

Audit recommends that

- a. The CBDT may ensure sharing of information among TDS units and respective Jurisdictional assessment units so that revenue collection efforts are synergized.

The CBDT stated (December 2016) that the process of such information sharing between TDS Unit and Jurisdictional Unit has been initiated through CPC (TDS) and ITBA linkage. The process is in initial stages and will gradually be scaled up to give greater information flow.

³ Form 26AS is a consolidated annual tax statement which has all tax related information (TDS, TCS, Refund etc.) and their corresponding income associated with a PAN.