Executive Summary

This performance audit covered the assessment of assessees 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 assessees 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 assessees 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 assessees 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 assessees 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)