

## Chapter 1: Introduction

**1.1** Search and Seizure is a very powerful tool available to Income Tax Department (ITD) to unearth any concealed income or valuables and to check the tendencies of tax evasion thereby mitigating the generation of black money. Search operations are exploratory exercises on the basis of information with the Income Tax Department to find hidden income and wealth in cases of tax payers, who have not disclosed their true financial state of affairs in discharge of their tax obligations. Seizure implies taking possession of assets, which have not been disclosed to the Income-tax Department and of accounts/documents, papers which contain details of unaccounted wealth/income not disclosed to the income tax authorities. The Income Tax Department resorts to search and seizure only in cases where there is sufficient reason to believe that the person concerned would not disclose the true picture of his income in the normal course of filing of return and regular assessment.

Section 132 of the Income-tax Act, 1961 (the Act) empowers income tax authorities to carry out a search and seizure of books of accounts, documents, cash, jewellery etc. Further, section 132A of the Act empowers certain income tax authorities to requisition books of accounts, documents etc. Besides, CBDT also issued instructions/circulars from time to time to facilitate search and seizure operations/assessments.

### **1.2 Why we chose this topic**

It was noticed that the search operations conducted by department brought ₹ 10288 crore of undisclosed income to tax in 2014-15 which increased to ₹ 15497 crore in 2016-17, thus, highlighting a significant growth of 51 *per cent* increase in undisclosed income on account of search conducted in 2016-17 as compared to 2014-15.

A performance audit on search and seizure was conducted and included in the CAG Report No.7 of 2006 wherein low sustainability of additions made in assessments in search and seizure cases at the appellate stage due to deficiency in investigation and assessment was pointed out and accordingly it was recommended that Board may examine the reasons leading to relief allowed at appellate stage and take suitable steps to address it. As such, it was important for Audit to carry out a follow up. Accordingly, we selected this topic for performance audit to examine the extent of:

- a. Sustainability of additions made in assessments in search and seizure cases at the appellate stage.
- b. Implementation of the recommendations made in the CAG Report No.7 of 2006.

### 1.3 Audit Objectives

The objectives of conducting the performance audit are:

- To examine the extent of compliance with the existing provisions of the Act / Rules / circular/instructions in making such assessments and also to point out systemic deficiency, if any, in these assessments.
- To examine the efforts made by the department in coordinating with other Government agencies/different wings of the department to disseminate information during the course of assessment, regarding undisclosed income detected during search and seizure operations.

### 1.4 Legal Framework

Legal provisions relating to the taxation of assesseees searched along with relevant and circular/instructions of the CBDT are listed below:

<b>Table No. 1 : Relevant provisions of the Income Tax Act</b>	
<b>Section / Rule</b>	<b>Contents.</b>
Section 131.	Power regarding discovery, production of evidence, etc.
Section 132 read with Rule 112.	Power to search and seizure.
Section 132(4).	Statement under oath.
Section 132A read with Rule 112A & 112D.	Inquiry, Power to Requisition books of account, etc.
Section 132B read with Rule 112C.	Application of seized or requisitioned assets.
Section 153A.	Assessment in case of search or requisition.
Section 153C.	Assessment of income of any other person.
Section 153B.	Time limit for completion of assessment under section 153A.
Section 153D	Prior approval necessary for assessment in case of search / requisition.
Section 245C.	Application to settlement commission.
Section 246(1) (ba)	Appeal to Commissioner (Appeals)
Section 271(1)(c)	Penalty for concealed income.
Section 271AAB.	Penalty where search has been initiated.
	All other provisions of the Act shall apply in assessment completed under section 153A.

### 1.5 Scope of Audit and Sample size.

The Performance Audit (PA) covered the search assessments completed during the financial years 2014-15 to 2017-18. The PA also covered those cases where the first appeal had been adjudicated till the time of audit to analyse the reasons for non-sustainability of the additions at the appeal stage. The search assessment records were examined not only for the block of six assessment years but also for the assessment year relevant to previous year in which the search was conducted.

Total 1417 number of Groups were assessed during the period 2014-15 to 2017-18 by different field offices under our audit jurisdiction. Details are given in Appendix -1. Out of this audit universe sample of 185 Groups was drawn. A minimum of 20 Group cases by each of Delhi, Mumbai, Kolkata, Chennai offices (including branch offices) and a minimum of 15 Group cases by each of Ahmedabad, Bengaluru, Chandigarh, Hyderabad and Lucknow offices (including branch offices) were selected for this performance audit.

### 1.6 Audit Methodology and Approach

- i. An entry conference was held with the ITD/CBDT on 15 March 2019 wherein audit objectives, scope of audit and main focus areas of the Performance Audit were explained to ITD.
- ii. Statistical information for the period 2014-15 to 2017-18 was collected from Central Circle Commissionerates in respect of the assessees searched and assessed in their jurisdiction under various assessment charges.
- iii. We selected 185 Groups out of 1417 Groups assessed (**Appendix 1**) during the period 2014-15 to 2017-18 from information collected from field formations of ITD for detailed examination. The sample was selected on the basis of assessed income of the Groups by arranging the same in descending order by each of our field audit offices.
- iv. We also analysed to ascertain whether the additions made by the assessing officer in the assessment sustained at the appellate stage. If not, the reasons for non-sustenance were also ascertained.
- v. Results of audit examination during PA were conveyed to respective commissionerates for their comments. Replies wherever received have suitably been incorporated in the report.
- vi. Draft performance audit report was first issued to the CBDT on 13 February 2020 for their comments.

- vii. An exit conference was held on 17 June 2020 with the CBDT. The results of the discussion have been suitably incorporated in the Performance Audit Report.
- viii. The revised draft Performance Audit report after incorporating replies/comments of the CBDT/Ministry was issued to the Ministry again on 08 July 2020.

### **1.7 Non production of records**

We approached the DGIT (System) in June 2018 to provide aggregated data as well as assessee wise data including undisclosed income and additions made, in respect of search and seizure assessments completed during 2014-15 to 2017-18. DGIT (System) informed (August 2018) that data was not available with them and suggested to contact the Investigation Wing of the ITD directly. The Investigation wing also showed their inability to provide the requisite data/information in the desired format. In view of the non-availability of the data with DGIT (Systems) as well as Investigation Wing, Audit selected the cases by collecting data from local PCIT (Central) offices in respect of the assessees searched and assessed in its jurisdiction under various assessment charges.

We audited 24,869 records, in respect of 185 selected Groups. Non-production of records was three *per cent*, details of which are given in **Appendix 2**. The main reasons for non-production of records as stated by the department were non availability due to decentralisation of the assessees, records not readily traceable, records lying with different appellate authorities for hearing etc.

### **1.8 Acknowledgement**

We acknowledge the co-operation of the Income Tax Department (Department) in providing the necessary records/information and facilitating the conduct of this performance audit.

### **1.9 Audit findings**

We checked 24,869 assessment records with assessed income of ₹ 1,71,503.78 crore during the performance audit<sup>1</sup>. We issued 1659 observations related to absence of provisions in the Act, non-compliance to the Income Tax provisions, non-centralisation of search assessees, non-

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<sup>1</sup> CBDT informed in October 2019 after completion of the field audit that total number of search assessments completed during the period 2014-15 to 2017-18 was 1,37,197.

uniformity in making additions, non-implementation of the recommendations given in the Appraisal Report during search assessments and non-levy of penalty etc. having tax effect of ₹4150.02 crore. Besides, we also analysed the sustainability of additions made during search assessments. Since audit of only a sample of cases has yielded errors of ₹4150.02 crore, the Department needs to get the remaining cases audited internally. The department also needs to try to ascertain the reasons for such errors and fix the identified systematic faults. The responsibility also needs to be fixed where the errors have happened as an act of omission or commission. Audit findings are discussed in detail in succeeding chapters.

During the present performance audit, we also conducted follow up of audit findings and implementation of audit recommendations included in CAG's Report No. 7 of 2006 on performance audit on the effectiveness of Search and Seizure Operations. We found that issues pointed out earlier relating to low sustainability of additions at appellate stage, non-utilisation of statements recorded under section 132(4) of the Act in an effective manner for assessing undisclosed income, time limit for issuing notice under section 153A/153C of the Act etc. still persist. Same have been suitably incorporated at appropriate places in succeeding Chapters.