

Chapter II: Audit Mandate, Products and Impact

2.1 Authority of the CAG for audit of receipts

Article 149 of the Constitution of India provides that the Comptroller and Auditor General of India (CAG) shall exercise such powers and perform such duties in relation to the accounts of the Union and of the states and of any other authority or body as may be prescribed by or under any law made by the Parliament. The Parliament passed the Comptroller and Auditor General's DPC Act (CAG's DPC Act) in 1971. Section 16 of the CAG's DPC Act authorises CAG to audit all receipts (both revenue and capital) of the Government of India and of Governments of each State and Union Territory having a legislative assembly and to satisfy himself that the rules and procedures are designed to secure an effective check on the assessment, collection and proper allocation of revenue and are being duly observed. Regulations on Audit & Accounts, 2007 (Regulations) lay down the principles for Receipt Audit.

2.2 Examination of systems and procedures and their efficacy

2.2.1 Audit of receipts includes an examination of the systems and procedures and their efficacy mainly in respect of:

- a. identification of potential tax assesseees, ensuring compliance with laws as well as detection and prevention of tax evasion;
- b. exercise of discretionary powers in an appropriate manner including levy of penalties and initiation of prosecution;
- c. appropriate action to safeguard the interests of the Government on the orders passed by departmental appellate authorities;
- d. any measures introduced to strengthen or improve revenue administration;
- e. amounts that may have fallen into arrears, maintenance of records of arrears and action taken for the recovery of the arrears;
- f. pursuit of claims with due diligence and to ensure that these are not abandoned or reduced except with adequate justification and proper authority.

2.2.2 To achieve the above, we examined the assessments completed by the Income Tax Department (ITD) in the financial year 2017-18. In addition, some assessments which were completed in earlier years were also taken up for examination.

2.2.3 The ITD undertakes scrutiny assessments in respect of a sample of returns filed by the assessee as per the Income Tax Act, 1961. The income tax returns (ITRs) are selected for scrutiny through Computer Aided Scrutiny Selection (CASS) on the basis of parameters identified and pre-defined by the ITD. These cases are then closely examined in respect of claims of deductions, losses, exemptions etc. to arrive at the correct assessments to ensure that there is no evasion of taxes. The assessee is given the opportunity to substantiate his claim with evidence failing which the assessing officer (AO) makes the assessment as deemed appropriate. The work of processing, completion and rectification of assessment order in respect of scrutiny cases is done by the AO in Assessment Information System (AST)/Income Tax Business Application (ITBA) module. AST/ITBA undertakes calculation of tax, calculation of interest under various sections of the Act, time barring checks etc. In the case of scrutiny assessments, rectification, appeal effect orders, figures are data-fed to the system by the AOs based on the orders. The payments made by assessee in respect of TDS/TCS and advance tax etc. are auto populated from 26AS application and OLTAS application respectively.

On the basis of examination of scrutiny assessment cases, Audit noticed that despite irregularities of certain types being pointed out repeatedly in the audit reports, there are continued occurrences of these irregularities in following the tax laws and instructions and directives of CBDT during scrutiny assessments completed by the AOs, raising questions about the efficiency of tax administration. Some of these cases are discussed in the subsequent paragraphs.

2.2.4 A total of 545.89 lakh returns were filed during the FY 2017-18²⁶. In the same FY the ITD completed 2,99,232 scrutiny assessments in those units which were audited during audit plan of FY 2018-19. Out of the 2,99,232 scrutiny assessments, we checked 2,72,110 assessment cases. Apart from this, we also audited during FY 2018-19, 60,129 cases out of 1,59,388 cases of scrutiny assessments completed in financial years prior to 2017-18. Total number of scrutiny assessments audited during 2018-19 was 3,32,239 and the number of scrutiny assessments in which audit noticed errors was 19,768. The incidence of errors in assessments checked in audit during FY 2018-19 was 5.95 *per cent* which was less than the previous year's 6.45 *per cent*. Out of cases of scrutiny assessments audited by us, Internal Audit of ITD had checked 18,747 cases. As we have seen only a limited number of assessment cases/records as per our sample, the Ministry needs to verify this in entirety and not only in the cases of sample.

²⁶ Total number of returns filed during FY 2016-17 were 444.02 lakh.

2.2.5 State-wise incidence of errors in assessments are given in *Appendix-2.1*. Table 2.1 below shows details of 11 states with highest percentage of assessments with errors where more than 10,000 assessments were checked in audit during FY 2018-19.

Table 2.1: Details of 11 states with highest incidence or assessments with errors where more than 10,000 assessments were checked					(₹ in crore)
State	Assessments			Total revenue effect of the audit observations	Percentage of assessments with errors
	completed in units selected for audit during 2018-19	checked in audit during 2018-19	with errors		
a. Tamil Nadu	23,843	20,466	1,899	2,373.66	9.28
b. Karnataka	12,737	12,342	1,071	6,380.78	8.68
c. Madhya Pradesh	25,626	20,091	1,512	4,750.27	7.53
d. Andhra Pradesh & Telangana	25,620	22,160	1,548	1,412.90	6.99
e. Kerala	11,080	10,770	725	251.16	6.73
f. Gujarat	16,291	15,923	1,049	2,146.06	6.59
e. West Bengal	42,078	39,632	2,271	2,313.85	5.73
g. Maharashtra	1,60,227	75,596	3,502	18,816.02	4.63
h. Rajasthan	15,530	14,988	665	170.26	4.44
g. Delhi	42,378	32,794	1,372	1,373.40	4.18
j. Uttar Pradesh	26,617	26,257	884	1,127.25	3.37

This indicates that Tamil Nadu (9.28 *per cent*) has the highest percentage of assessments with errors followed by Karnataka (8.68 *per cent*). The ITD needs to take corrective action in respect of errors noticed in the assessments.

2.2.6 Table 2.2 below shows the details of observations noticed in local audit during FY 2018-19.

Table 2.2: Tax wise details of observations in assessments		(₹ in crore)
Category	No. of Observations	Tax effect (TE)
a. Corporation tax (CT) and Income tax (IT)	21,266	44,920.89 ²⁷
b. Other Direct taxes (ODT)	267	11.25
Total	21,533	44,932.14

Note: The above findings and all subsequent findings are based exclusively on audit of selected assessments.

2.2.7 Table 2.3 below shows the category-wise details of observations related to underassessment in respect of Corporation Tax and Income Tax. *Appendix-2.2* indicates details in respect of sub-categories under them.

²⁷ Includes 393 cases of over assessment with tax effect of ₹ 752.25 crore.

Table 2.3: Category-wise details of Observations related to under assessments		(₹ in crore)	
Category	No. of Observations	Tax effect	
a. Quality of assessments	7,504	9,768.64	
b. Administration of tax concessions/exemptions/deductions	6,407	18,533.62	
c. Income escaping assessments due to errors	2,536	6,939.74	
d. Others	4,426	8,926.64	
Total	20,873	44,168.64	

2.3 Persistent and pervasive irregularities in respect of Corporation Tax and Income Tax assessments cases

The instances of non-compliance and irregularities noticed during audit examination of assessment cases completed by the AOs are brought out in our Compliance Audit Report-Department of Revenue-Direct Taxes every year. An irregularity may be considered persistent if it occurs year after year. It becomes pervasive, when it affects the entire system and is distributed over many assessment jurisdictions. We have been pointing out various irregularities with respect to assessment of corporation and income tax cases in the Compliance Audit Reports year after year, and some of these irregularities seem to be both persistent and pervasive including those relating to:

- (i) irregularities in allowing depreciation/business losses/capital losses etc.,
- (ii) instances of incorrect allowance of business expenditure,
- (iii) Excess or irregular refunds/interest on refunds, and
- (iv) Errors under special provisions including MAT/Tonnage Tax etc.

Recurrence of irregularities, despite being pointed out repeatedly in audit reports, is not only indicative of non-seriousness on the part of the Department in instituting appropriate systems to prevent recurrence of such repetitive errors. It also points the lack of effective monitoring and absence of an institutional mechanism to respond to the systematic and structural weaknesses leading to leakages of revenue. The audit observations included in the Compliance Audit Report²⁸ during the years 2015-16, 2016-17 and 2017-18 alongwith draft paragraphs (DPs) issued to the Ministry during 2019-20 were analysed to examine the persistence and pervasiveness of irregularities. Though the irregularities noticed in different states showed no

28 C&AG's Compliance Audit Report (Union Government – Department of Revenue – Direct Taxes) no. 2 of 2017 (for the year ended March 2016), no. 40 of 2017 (for the year ended March 2017) and no. 9 of 2019 (for the year ended March 2018).

distinctive pattern of occurrences among the states, they were occurring more frequently in some states than others; their occurrences were seen to be consistently high in Maharashtra.

Cases of such irregularities reported in the above mentioned categories are discussed below.

2.3.1 Administration of tax concessions/exemptions/deductions—Irregularities in allowing depreciation/business losses/capital losses etc.

We noticed irregularities related to incorrect allowance and set-off of business losses, capital losses and unabsorbed depreciation, incorrect allowance of depreciation etc. The nature of such irregularities included:

- (i) incorrect allowance of set-off of brought forward business losses and unabsorbed depreciation where no loss in respect of earlier assessment years (AYs) was available,
- (ii) adoption of incorrect figures viz. earlier years' business loss adopted as returned loss in current AY,
- (iii) incorrect allowance of carry forward of business loss although ITR for the said AY was filed after due date of filing of return, and
- (iv) double deduction on account of depreciation etc.

Such irregularities occurred due to non-correlation of assessment records which indicates failure of the AOs in applying due diligence and to comply with the law. Irregularities noticed in allowance of depreciation/business losses/capital losses etc. during 2015-16 to 2017-18, as brought out in the Compliance Audit Reports of past three years along with findings of the current year Audit Report (2018-19) are summarised in the Table 2.4 below.

Table 2.4: Irregularities noticed in allowing depreciation/business losses/capital losses etc.								(₹ in crore)	
Assessment	Audit Report for the year ended								
	March 2016		March 2017		March 2018		March 2019		
	No. of errors	Tax Effect	No. of errors	Tax Effect	No. of errors	Tax Effect	No. of errors	Tax Effect	
CT	71 ²⁹	590.75	81 ³⁰	1,144.10	66 ³¹	1,796.86	75	2,655.15	
IT	9	15.72	9	24.41	7 ³²	9.19	14	21.29	

29 Andhra Pradesh & Telangana, Bihar, Delhi, Gujarat, Haryana, Jharkhand, Karnataka, Kerala, Maharashtra, Odisha, Rajasthan, Tamil Nadu and West Bengal.

30 Andhra Pradesh & Telangana, Delhi, Gujarat, Haryana, Jharkhand, Karnataka, Kerala, Maharashtra, Odisha, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal

31 Andhra Pradesh & Telangana, Assam, Delhi, Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, Tamil Nadu, UT Chandigarh, Uttar Pradesh and West Bengal

32 Bihar, Delhi, Rajasthan, Maharashtra and West Bengal.

During 2015-16, the non-compliance on this account was found highest in Maharashtra at 63 per cent of the total tax effect of DPs on Corporation Tax related to incorrect allowance of depreciation/business losses/capital losses etc. During 2016-17, it was found highest in Andhra Pradesh & Telangana (36 per cent) and Maharashtra (32 per cent). During 2017-18, irregularities on this account were found highest in Maharashtra (58 per cent) and during 2018-19 these were highest in Bihar (38.6 per cent) and Maharashtra (34 per cent). Further, tax effect of irregularities which was ₹ 590.75 crore in March 2016 increased to ₹ 2,655.15 crore in March 2019 showing an increase of more than 300 per cent over the period.

In respect of Income Tax, such irregularities were found to be highest in Maharashtra at 68 per cent of the total tax effect of DPs on Income Tax related to incorrect allowance of depreciation/business losses/capital losses etc. during 2015-16. During 2016-17 the tax effect on this account was found highest in Bihar (67 per cent) and in Maharashtra during 2017-18 (67 per cent). During 2018-19, these irregularities were highest in Bihar (30 per cent).

2.3.2 Administration of tax concessions/exemptions/deductions - Incorrect allowance of business expenditure

We noticed irregularities related to incorrect allowance of ineligible claims of business expenditure viz. capital expenditure, unpaid claims and provisions deemed as unascertained liability etc. Errors in incorrect allowance of expenditure noticed during 2015-16 to 2017-18, as brought out in the Compliance Audit Reports of past three years along with findings of the current year Audit Report (2018-19) are summarised in the Table 2.5 below.

Assessment	Audit Report for the year ended							
	March 2016		March 2017		March 2018		March 2019	
	No. of errors	Tax Effect	No. of errors	Tax Effect	No. of errors	Tax Effect	No. of errors	Tax Effect
CT	47 ³³	514.09	50 ³⁴	478.67	48 ³⁵	875.47	49	764.39

During 2015-16, such irregularities were highest in Maharashtra (23 per cent of the total tax effect of DPs related to incorrect allowance of business expenditure) and Andhra Pradesh & Telangana (30 per cent). During 2016-17 the non-compliance on this account was found highest in Maharashtra

33 Andhra Pradesh & Telangana, Assam, Delhi, Gujarat, Haryana, Karnataka, Maharashtra, Odisha, Punjab, Tamil Nadu and West Bengal.

34 Andhra Pradesh & Telangana, Delhi, Gujarat, Karnataka, Kerala, Maharashtra, Odisha, Rajasthan, Tamil Nadu and West Bengal.

35 Andhra Pradesh & Telangana, Karnataka, Kerala and Maharashtra.

(64 per cent) whereas in 2017-18 such non-compliance was highest in Maharashtra (60 per cent) and Tamil Nadu (28 per cent). During 2018-19, irregularities on this account were highest in Maharashtra (47 per cent) and Karnataka (22.5 per cent).

2.3.3 Quality of Assessments – Excess or irregular refunds/interest on refunds

We noticed irregularities emanating from excess or irregular refunds or interest on refunds caused by computing errors, not considering the refund already issued/adjusted, excess computation of interest on refund, etc. Errors noticed in this category during 2015-16 to 2017-18 as brought out in the Compliance Audit Reports of past three years along with findings of the current year Audit Report (2018-19) are summarised in the Table 2.6 below.

Assessment	Audit Report for the year ended							
	March 2016		March 2017		March 2018		March 2019	
	No. of errors	Tax Effect	No. of errors	Tax Effect	No. of errors	Tax Effect	No. of errors	Tax Effect
CT	6 ³⁶	49.46	6 ³⁷	50.35	4 ³⁸	30.98	5	1114.29
IT	NIL	NIL	NIL	NIL	NIL	NIL	1	0.11

During 2015-16, such irregularities were highest in Kerala (78 per cent of the total tax effect of DPs on Corporation Tax and Income Tax related to excess or irregular refunds/interest on refunds) and Maharashtra (17 per cent) whereas in 2016-17, it was found highest in Karnataka (78 per cent) and Maharashtra (22 per cent). During 2017-18, it was found 100 per cent in Maharashtra. During 2018-19, these irregularities were highest in Karnataka (99.6 per cent)³⁹.

2.3.4 Income escaping assessment due to errors – Irregularities under special provisions including MAT/Tonnage Tax etc.

We noticed irregularities related to errors in levying tax under special provisions of the Act due to:

- (i) errors in computation of book profit,
- (ii) not considering the expenditure disallowed under normal provisions for computing book profit,
- (iii) not considering the specified expenditure for computing book profit,

36 Andhra Pradesh & Telangana, Bihar, Delhi, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Odisha, Tamil Nadu and West Bengal.

37 Karnataka and Maharashtra

38 Maharashtra.

39 Wherever significance is mentioned, it is only with reference to the total tax effect and not in relation to the number of cases.

(iv) tax levied under normal provisions instead of special provisions, etc.

Errors noticed under special provisions of the Act during 2015-16 to 2017-18, as brought out in the Compliance Audit Reports of past three years along with findings of the current year Audit Report (2018-19) are summarised in the Table 2.7 below.

Table 2.7: Errors under special provisions including MAT/Tonnage Tax etc. (₹ in crore)								
Assessment	Audit Report for the year ended							
	March 2016		March 2017		March 2018		March 2019	
	No. of errors	Tax Effect	No. of errors	Tax Effect	No. of errors	Tax Effect	No. of errors	Tax Effect
CT	13 ⁴⁰	62.35	1 ⁴¹	2.06	28 ⁴²	100.43	22	447.85
IT	NIL	NIL	NIL	NIL	1 ⁴³	0.22	2	1.26

During 2015-16, the non-compliance on this account was found highest⁴⁴ in Uttar Pradesh (52 *per cent* of the total tax effect of DPs on Corporation Tax and Income Tax related to errors noticed under special provisions including MAT/Tonnage Tax etc.) and Maharashtra (23 *per cent*). In 2016-17, the non-compliance was 100 *per cent* in Maharashtra whereas in 2017-18 such non-compliance was highest in Maharashtra (48 *per cent*) and in Karnataka (13 *per cent*). During 2018-19, these irregularities were highest in Delhi (68.8 *per cent*). These cases have been reported as DPs for Audit Report 2018-19. Further, tax effect of errors increased to ₹ 447.85 crore in March 2019 from ₹ 62.35 crore in March 2016 showing an increase of more than 600 *per cent* during the period.

Non-compliance of tax laws and instructions and directives of CBDT is one of the major risk areas affecting the efficiency of tax administration. In order to improve the same, the departmental systems and processes have significantly been computerised over the years for efficient processing and improved compliance at all stages of assessment. The ITD selects cases through CASS on the basis of pre-defined parameters for detailed scrutiny to be done by AO. During scrutiny assessment, AO calls for required information from the assessee and examines them in the light of applicable provisions of the Act. However, as seen from the above analysis, the risks of non-compliance still exists in above areas as indicated by the continuing occurrence of the similar types of irregularities over time, despite these being pointed out by audit from

40 Delhi, Gujarat, Rajasthan, Maharashtra, Tamil Nadu, Uttar Pradesh and West Bengal.

41 Maharashtra

42 Andhra Pradesh & Telangana, Delhi, Gujarat, Karnataka, Maharashtra, Odisha, Rajasthan, Tamil Nadu and West Bengal.

43 UTs of Jammu & Kashmir; and Ladakh

44 Wherever significance is mentioned, it is only with reference to the total tax effect and not the number of cases.

year to year and there seems to be no system to make the AOs more accountable for minimising, if not eliminating, repetition of similar or identical errors.

Conclusion and Recommendation

From the above analysis and also from our past experiences, it is clear that the required systems and processes to minimise the risk of recurrence and repetition of similar types of errors in computation of taxable income, once they are pointed out in audit, is absent in the Department. Once such an irregularity noticed in assessment completed by the AO has been pointed out in audit, it is expected that appropriate checks should be instituted by the Department to prevent recurrence of similar types of irregularities and errors in assessment in future, especially in view of the fact that now even the scrutiny assessments are being carried out by the AOs on the system, which is not seen to be the case.

It is recommended that the IT Department may (i) fix accountability on the part of the AOs (ii) accordingly improve the mapping of the business rules of their system to ensure that the risk of recurrences of similar types of irregularities are minimised, besides instituting systems and procedural checks to ensure this.

2.4 Audit products and response to audit

2.4.1 We elicit response from the audited entities at different stages of audit. As per provision of Regulations 193 on completion of field audit, we issue the local audit report (LAR) to ITD for comments.

2.4.2 Table 2.8 below depicts the position of number of observations included in the LAR issued during FY 2016-17 to FY 2018-19 and replies received thereto and observations accepted (as on 31 March of respective financial year).

Financial Year	Observations raised	Reply received		Reply not received	Percentage of Observations accepted	Percentage of reply not received
		Observations Accepted	Observations not accepted			
2016-17	22,579	4,074	3,546	14,959	53.46	66.25
2017-18	24,502	3,983	2,882	17,637	58.02	71.98
2018-19	21,533	3,357 ⁴⁵	2,743	15,433	55.03	71.67

⁴⁵ 1,236 - Observations accepted and remedial action taken; 2,121- Observations accepted but remedial action not taken

From the above Table 2.8, it can be seen that percentage of replies not received increased consistently from 66.25 *per cent* in FY 2016-17 to 71.67 *per cent* in FY 2018-19.

2.4.3 Table 2.9 below shows the position of pending observations.

Table 2.9: Details of outstanding audit observations (₹ in crore)								
Period	CT		IT		ODT		Total	
	No.	TE	No.	TE	No.	TE	No.	TE
Upto Mar 2017	15,845	58,688.78	12,305	8,923.22	1,855	361.24	30,005	67,973.24
March 2018	6,370	21,241.47	7,443	3,903.89	308	227.76	14,121	25,373.12
March 2019	3,407 ⁴⁶	18,817.95	5,448	7,362.39	136	7.97	8,991	26,188.31
Total	25,622	98,748.20	25,196	20,189.50	2,299	596.97	53,117	1,19,534.67

The accretion in pendency in replies to audit findings each year has resulted in accumulation of 53,117 cases involving revenue effect of ₹ 1,19,534.67 crore as of 31 March 2019.

The Audit Regulations 202 and 203 require establishment of system and procedures to ensure adequate, constructive and timely action on audit observations included in Inspection Reports/Audit Notes and establishment of audit committees for monitoring and ensuring compliance and settlement of pending audit observations. The Department's efforts to ensure that replies to audit are sent in the prescribed period have not been satisfactory. Provisions of the Audit Regulations need to be observed in letter and spirit by the ITD.

2.4.4 We issue significant and high value cases noticed in audit to the Ministry for comments before inclusion in the Audit Report as per provision of Regulations 205 to 209. We give six weeks to the Ministry to offer their comments on cases issued to them before their inclusion in the Audit Report. We have included 393 high value cases in Chapter III and IV of this Report, out of which replies were received for 190 cases as of 30 June 2020. The Ministry/ITD accepted 174 cases⁴⁷ (91.5 *per cent*) having tax effect of ₹ 2,326.90 crore (92.8 *per cent*) while it did not accept 16 cases⁴⁸ having tax effect of ₹ 180.75 crore. Replies to remaining 203 cases having tax effect of ₹ 5,873.14 crore were not received. Table 2.10 shows category wise details of these cases⁴⁹.

46 Observations become pending after six months of issue of the observations

47 Ministry -96.cases; ITD -78 cases

48 Ministry -7 cases; ITD - 9 cases

49 Sub-categories-wise details are given in Appendix-2.3

Table 2.10 Category-wise details of errors of high value cases							(₹ in crore)
Category	CT		IT		Total		
	No.	TE	No.	TE	No.	TE	
a. Quality of assessments	51	1,477.60	29	19.05	80	1,496.65	
b. Administration of tax concessions/exemptions/ deductions	176	5,456.76	30	121.72	206	5,578.48	
c. Income escaping assessments due to errors	77	1,043.41	17	26.27	94	1,069.68	
d. Overcharge of tax/interest	12	232.66	1	3.32	13	235.98	
Total	316	8,210.43	77	170.36	393	8,380.79	

2.4.5 Chapters III and IV bring out details of errors in assessments in respect of Corporation Tax and Income Tax respectively. Besides, Chapter V brings out our report on a subject specific compliance audit (SSCA) on 'Interest under sections 234A, 234B, 234C and 244A of the Act'. The Chapter points out that the interest was wrongly computed either due to systemic deficiencies in AST or due to incorrect interventions/computation by the AOs. Availability of manual intervention in AST was misused by AOs by way of modifying the interest at excess amount which led to blockade of refund of the assessee. The system deficiency with respect to calculation of interest still persisted in the new application, i.e. Income Tax Business Application.

2.4.6 In addition, a long draft paragraph on 'Long Term Capital Gain on Penny Stocks' has been separately included in Chapter VI of this Report. The chapter includes audit observations from a test check of cases pertaining to Mumbai jurisdiction on the deficiencies in assessments of claim of Long Term Capital Gain (LTCG) by the beneficiaries identified by the Directorate of Income Tax (Investigation) Kolkata in its report 'Project Bogus LTCG/STCL through BSE Listed Penny Stocks', and absence of controls, if any.

2.5 Audit impact

Amendments at the instance of Audit

2.5.1. We analyse the impact of Audit resulting into amendments to the Income Tax Act and Rules framed thereunder, based on our observations/recommendations. During FY 2017-18, Performance Audit Report viz. Report No. 27 of 2017 – 'Assessment of Private Hospitals, Nursing Homes/Medical Clinics, Medical Colleges/Research Institutes, Diagnostic Centres, Pathological labs and other Medical supplies agencies/stores' was placed in the Parliament. Following paragraphs 2.5.2 to 2.5.5 enumerate the impact of Audit.

2.5.2. Audit examination of a sample of trust hospitals situated in Maharashtra revealed that the conditions specified in the Bombay Public Trust

Act, 1950 (BPT Act) were not fulfilled in some cases though exemptions were allowed to such trusts⁵⁰. The Income Tax Act, however, did not identify non-compliance with the BPT Act as a ground to deny exemption and the Income Tax Act did not have its own criteria to identify and classify charitable institutions on the basis of measurable and quantifiable parameters, like those described under the BPT Act. Under such circumstances, trusts that were not fulfilling the criteria for charity prescribed under governing Acts of the State were able to claim exemptions under the Income Tax Act. Further in cases where registration status of the trust assessee changes under state laws, it could not be ascertained whether ITD had any mechanism to deal with the exemptions already allowed in such cases.

2.5.3. In a move to discourage such trusts from deviating from their objects, an amendment has been made in section 12AA of the Act in 2019 to empower the PCIT to cancel the registration of a trust violating the requirements of any other law, which was material for the purpose of achieving the objects after affording a reasonable opportunity of being heard.

2.5.4. Audit noticed⁵¹ that section 80G certificates (receipts issued by the donees to donors for donation) were available in 10 *per cent* of cases. In the remaining cases, only a list of donations received was available. In the absence of section 80G certificates, it was not clear as to how the AOs cross-verified the donation receipts vis-à-vis the claims. In the absence of mechanism for cross verification of claims made by donors and donees, the chances of ineligible assessee getting deduction could not be ruled out. Therefore, the Audit recommended⁵² that CBDT may consider the possibility of introducing automated generation of 80G certificates above a certain threshold.

2.5.5. To address the above issue, Section 80G has been amended in 2020 to provide that entities receiving donations shall file a statement of the donation received and shall issue a certificate to the donor.

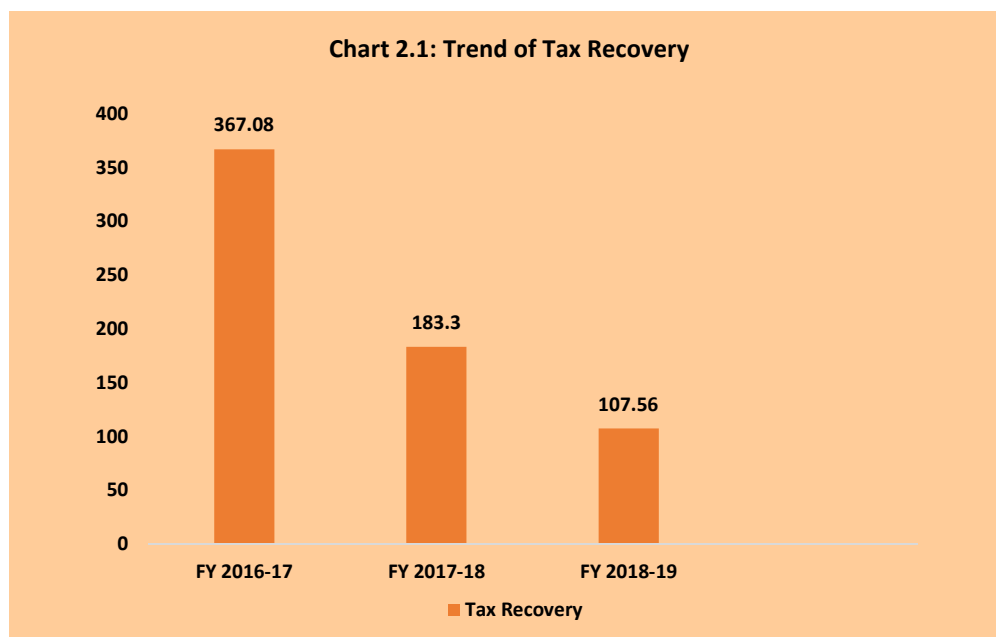
2.6. Recovery at the instance of audit

The ITD recovered ₹ 657.94 crore in the last three years (Chart 2.1) from demands raised to rectify the errors in assessments that we pointed out. This includes ₹ 107.56 crore recovered in FY 2018-19.

50 Para no.3.2.1 of Report No. 27 of 2017

51 Para no.3.2.5 of Report No. 27 of 2017

52 Para No. 3.5(iii) of Report No. 27 Of 2017



2.7 Time barred cases

2.7.1 Table 2.11 below shows the details of time-barred cases⁵³ during FY 2016-17 to FY 2018-19.

Table 2.11: Details of time-barred cases			(₹ in crore)
Year of Report	Cases	Tax effect	
2016-17	2,243	1,637.81	
2017-18	2,739	2,735.17	
2018-19	1,961	2,237.05	

2.7.2 During FY 2018-19, 1,961 cases with tax effect of ₹ 2,237.04 crore became time-barred for remedial action, of which Odisha alone account for 28.91 *per cent* of this tax effect followed by West Bengal at 26.29 *per cent*. *Appendix-2.4* indicates state-wise details of such cases for FY 2018-19. Responsibility may be fixed for not taking remedial action in time in such cases. The Department should ensure that remedial action is taken in time so that such incidences do not recur in future.

2.8 TDS Mismatch

Tax deducted at source (TDS) aims to ensure collection of revenue at the instance of the transaction. TDS collection which was ₹ 3.43 lakh crore in FY 2016-17 increased to ₹ 4.51 lakh crore in FY 2018-19 and now contributes more than 35 *per cent* to the gross direct taxes collections, emphasizing its ever-growing importance. TDS on salary payment is the biggest component of TDS and has been around 43 *per cent* in the last three years.

⁵³ Notice under section 148 cannot be issued for reopening the case after six years from the end of the relevant AY.

2.8.1 TDS Mismatch cases

TDS has twin purposes namely collection of tax in advance i.e. before the end of financial year (i.e. 31st March) and creation of a foot print of the transaction so that the income, associated with the transaction, in the hands of the recipient does not go untraced or unreported. There are three elements to it:

- a. The party making the payment (Deductor);
- b. The party receiving the payment (Deductee); and
- c. The Income Tax Department.

An assessee may file his return of income as per details available with him in Form 16/16A and 26AS. However, the tax credit is given by the Income Tax Department (ITD) according to the details available in its Tax Information Network (TIN) (which contains details of advance tax, self-assessment tax, regular tax and *inter alia* TDS payments). Whenever the TDS deduction claimed by the assessee does not match with that in the TIN, it is a case of mismatch of TDS. Due to such mismatch TDS credit is denied to the assessee (taxpayer) despite receipt of the revenue by the ITD or presence of Form 16/16A issued by deductor in support of his claim. This results in disallowance of refunds and also in creation of infructuous demands for tax resulting in avoidable harassment to the taxpayer.

The TDS mismatch cases for the FY 2016-17 to FY 2018-19 are given below:

Table 2.12: PAN status wise difference between TDS amount available in Form 26AS and reported in ITR (₹ in crore)				
FY	PAN status ⁵⁴	Number of PAN where TDS mismatch reported by ITR	TDS Amount Claimed	TDS Amount available in Form 26AS
2016-17	P	2,27,738	1,772.42	1,249.04
	Others	1,07,344	11,344.63	10,361.63
	Total	3,35,082	13,117.05	11,610.67
2017-18	P	11,73,933	6,580.21	5,854.92
	Others	1,90,642	12,095.03	10,431.68
	Total	13,64,575	18,675.24	16,286.60
2018-19	P	2,318	2.12	2.19
	Others	3	0.01	0.02
	Total	2,321	2.13	2.21
Grand Total		17,01,978	31,794.42	27,899.48
Source: ITD				

It can be seen from the above that the majority of the assesseees who face the TDS mismatch issues are individual taxpayers, majorly being salaried individuals.

⁵⁴ P – Individuals; Others include company, Association of Persons, Body of Individuals, Firm, Government Authority, HUF, Artificial Juridical Person, Local Authority;

2.8.2 Nature of TDS Mismatches

The TDS mismatches are due to the difference in the amount available in Form 26AS and that claimed by the assessee through his ITR. TDS mismatch may be on account of (i) amount in Form 26AS is more than the amount claimed through ITR by the assessee and (ii) amount claimed by the assessee in ITR is more than the amount in Form 26AS.

The number of cases where the amount available in Form 26AS was less than TDS amount claimed by the individual assessee during FYs 2016-17 to 2018-19 was 65 per cent of total TDS mismatch cases.

Table 2.13 below shows cases where amount available in Form 26AS was more than the amount of TDS amount claimed by the Individual assessee during FY 2016-17 to FY 2018-19.

Table 2.13: Difference where TDS amount available in Form 26AS was higher than ITR				(₹ in crore)
FY	Number of PAN where TDS mismatch reported by ITR	TDS Amount Claimed	TDS Amount available in Form 26AS	Diff (TDS amount available in Form 26AS - TDS amount claimed)
2016-17	64,972	203.42	325.19	121.77
2017-18	4,26,851	1,681.10	1,765.30	84.20
2018-19	1,441	0.90	1.44	0.54
Grand Total	4,93,264	1,885.42	2,091.93	206.51

Source: ITD

Table 2.14 below shows cases where the amount available in Form 26AS was less than TDS amount claimed by the Individual assessee during FYs 2016-17 to 2018-19.

Table 2.14: Difference where TDS amount available in Form 26AS was lower than ITR				(₹ in crore)
FY	Number of PAN where TDS mismatch reported by ITR	TDS Amount Claimed	TDS Amount available in Form 26AS	Diff (TDS amount available in Form 26AS-TDS amount claimed)
2016-17	1,62,766	1,569.00	923.85	(-) 645.15
2017-18	7,47,082	4,899.11	4,089.62	(-) 809.49
2018-19	877	1.22	0.75	(-) 0.47
Grand Total	9,10,725	6,469.33	5,014.22	(-) 1,455.11

Source: ITD

The difference in the amount under 26AS and claimed through ITR, indicates that the tax deductors, as mandated under the Act did not provide the complete information to ITD on the tax deducted, as claimed by the assessee through their return or the assessee did not claim the correct amounts.

The possible reasons for mismatch of TDS amount may be – the deductor did not deposit TDS on time, file the quarterly TDS return on time, incorrect amount entered in the TDS return, quoted incorrect PAN, the deductor's TAN wrongly entered in ITR, mistake in selecting assessment year. It may also include cases of assesseees who were not required to pay tax or file the ITR.

Therefore, ITD did not allow credit for TDS which resulted into either raising demand or not releasing refunds by ITD, causing harassment to the assesseees, especially individual assesseees.

Therefore, to examine the reasons for mismatch of TDS claims and corrective measures taken by the Department to match the claim of the individual salaried taxpayer, a study on 'Income Tax Demands raised on account of TDS mismatch', with focus on salary class assesseees, was taken up in June 2019.

2.8.3 We had called for deductor-wise data relating to unconsumed challans and amount involved, PAN-wise granular data relating to TDS credit mismatch etc. from the ITD in June 2019. The partial data relating to the TDS mismatch was received in October 2019 and without the information on AO (assessment) jurisdiction. Therefore, the data could not be used for audit planning. CPC-TDS, subsequently informed that they did not have the information on the assessment jurisdiction of the cases of TDS mismatch provided by them.

We also tried to analyze the issue through test check. The study was started (September 2019) for a limited number of jurisdictions viz. Bengaluru, Delhi, Hyderabad, Mumbai and Jaipur. Audit was able to identify 2,264 assesseees having TDS mismatch from jurisdictional AOs (one circle and two wards from each jurisdiction) of salary circle.

However, we could not, further, examine the assessment records of the sample selected as the assessment records were not available with the jurisdictional assessing officers as the same was not pushed to them by the CPC-Bengaluru, even after two years of the assessment year. Therefore, the assessment records were sought from the CPC-Bengaluru (November 2019 and January 2020). The relevant information has not been provided by the CPC-Bengaluru (July 2020).

Consequently, the reasons for the TDS mismatches, status of their resolution, the mode of the resolution, efforts of the department, as well as correctness and completeness of information shared by ITD etc. could not be ascertained in audit.

Inability of the department to furnish relevant information to complete the audit has prevented the C&AG from fulfilling his constitutional mandate.

The ITD needs to ascertain whether the mismatches were due to the IT systems or the failure of deductors in furnishing correct returns/ information. It needs to be ascertained in how many cases the ITD raised demand from the taxpayers because of the mismatch, as such causing harassment to the taxpayer. In cases of failure of the deductors, necessary action may be taken against the defaulting deductors under the Act by ITD. ITD also needs to examine the mismatch to ensure that no tax is levied on the persons who are not required to pay tax.

The ITD needs to provide relevant data to audit, so that the audit could be conducted.

2.9 Non-production of records

2.9.1 We scrutinize assessment records under section 16 of the C&AG's (DPC) Act, 1971 with a view to securing an effective check on the assessment and collection of taxes and examining that regulations and procedures are being duly observed. It is also incumbent on ITD to expeditiously produce records and furnish relevant information to Audit.

2.9.2 The ITD did not produce 17,992 records out of 3,61,430 records⁵⁵ requisitioned during FY 2018-19 (4.98 per cent) which is an improvement over FY 2017-18 (8.27 per cent). Non-production of records has increased significantly in Assam, UTs of Jammu & Kashmir; and Ladakh, and Tamil Nadu during FY 2018-19 over previous year.

Appendix 2.5 shows the details of non-production of records during FY 2016-17 to FY 2018-19. Table 2.15 shows details of records not produced to audit pertaining to same assesseees in three or more consecutive audit cycles.

Table 2.15: Records not produced to Audit in three or more audit cycles	
States	Records not produced
a. Odisha	4

In FY 2018-19, four records pertaining to same assesseees in one state were not produced to audit in last three or more consecutive audit cycles.

2.9.3 Directorate of Income Tax (Systems) instructed all PCCITs/CCIT(CCA) to send a Status Report, of verification of returns in cases where assesseees had returned income of more than ₹ one crore from agriculture, to DGIT(Systems) after examination of aspects such as whether tax payer may have made a data entry error while filling up the return.

In Report no. 9 of 2019 of the C&AG of India under chapter-5 on 'Assessments relating to Agriculture income' we had pointed out difference in amount of

⁵⁵ Includes 21,000 records not produced in earlier years and requisitioned again during current audit cycle

agricultural income as per the ITR filed by the assessee and the amount entered in AST system in 36 cases due to errors at data entry level in respect of agriculture income above one crore for which status report had been called for from 136 PsCIT by audit. Even after a duration of one year from placement of the report the Status reports from 82 PsCIT are still awaited (June 2020).

As the data entry errors reported above were based on information furnished by only few selected Commissionerates compliance to furnishing of status reports to DsGIT(System) could not be ascertained in all the Commissionerates selected for audit. Consequently, the status of corrections in respect of data entry errors in agricultural income in AST database for agricultural income claims greater than ₹ one crore could not be verified.

Thus, Audit could not discharge its constitutional mandate due to non-production of records.