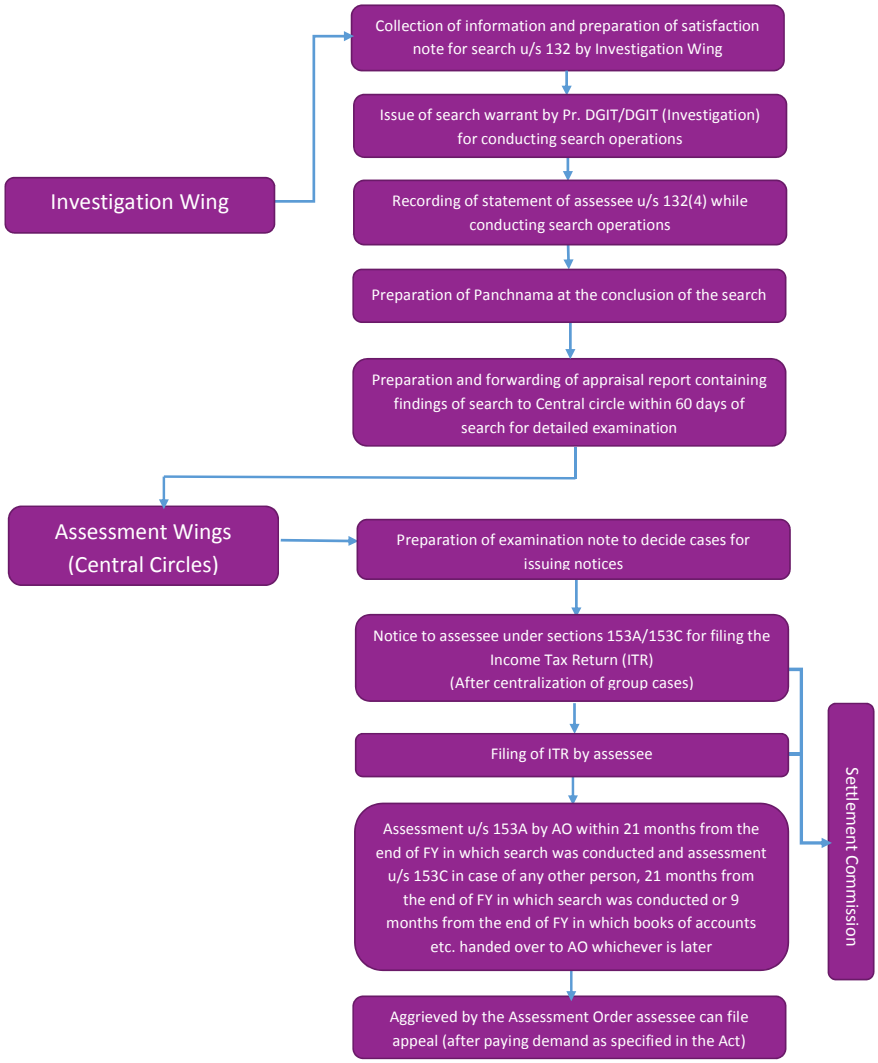
Chapter 2: Systemic deficiencies in the assessments and extent of compliance with existing provisions of the Act/Rules/Circulars in making assessments

2.1 In this chapter, Audit attempted to ascertain whether there were any systemic deficiencies relating to assessments of searched Groups covering all the related assessees and sustainability of additions made in Group cases at appellate stage in respect of assessments pertaining to search and seizure cases. Besides, audit also examined whether the department complied with all the provisions of the Act/Rules in completing the assessments.

2.2 The flow chart given below shows the process of search and seizure operations and procedure to be followed by central circles as well as subsequent appeal process:

Chart No. 1 Search and Seizure Operations in Income Tax Department



Note: Assessee can go to settlement commission after fulfilling certain conditions as specified in the Act where the proceeding for assessment or reassessment u/s 153A/153C of the Act have been initiated.

2.3 Systemic deficiencies and Compliance to the provisions

During examination of records in respect of search assessments, audit noticed 1291 observations involving monetary impact of ₹3729.28 crore relating to adequacy and effectiveness of provisions relating to search and seizure, centralization of cases, lack of uniformity in making additions during assessments, non-compliance of CBDT's instructions/orders, escaping of income due to non-assessment of relevant assessment year covered in search/prior period of search, non-completion of assessments within specified time limit, non-levy of penalty, extent of compliance of provisions other than search and seizure and other issues given in the table below. We also analysed the data relating to sustainability of additions at appellate stage/Settlement commission. Detailed audit findings in this regard are discussed in succeeding paragraphs. Table below gives a numerical overview of the audit findings:

Table No. 2: Observations relating to systemic deficiencies and compliance to the provisions of the Act

Nature of observations	No. of Cases	Tax Effect (₹ in crore)
Adequacy and effectiveness of provisions relating to Search and Seizure	147	135.82
Centralisation of assessments of Search groups/assessees	386	0
Lack of uniformity in making additions during assessments	78	916.83
Non-compliance of CBDT's instructions/orders	85	134.19
Escaping of income due to non-assessment of relevant assessment year covered in search/prior period of search	10	2.80
Non completion of assessments within specified time	1	0
Non levy of penalty	145	976.54
Extent of compliance of provisions other than search and seizure	369	1532.44
Other issues	70	30.66
Total	**1291**	**3729.28**

2.4 Adequacy and effectiveness of provisions relating to Search and Seizure

The Act read with various circulars and instructions issued by the CBDT provided the conditions of admissibility of expenditure, deductions to be followed by the assessees. The Assessing Officers (AOs) were expected to verify the compliance thereto during assessment proceedings or other relevant departmental proceedings. During the performance audit of search and seizure we came across the absence/inadequacy of certain provisions in

the Act which allowed the assessee to take undue benefit and also affected the quality of assessments.

We noticed 147 cases in eight states[2] involving tax effect of ₹135.82 crore where there were loopholes/deficiency in the provisions of the Act in respect of search assessments. These deficiencies mainly relate to absence of specific provisions in respect of carry forward/set off of losses against undisclosed income, time limit for issue of notice under section (u/s) 153A/153C of the Act, disallowance of capital loss related to bogus transactions.

The cases relating to above deficiencies/loopholes are discussed in detail in succeeding paragraphs.

2.4.1 Carry forward/set off of losses against undisclosed income

Undisclosed income was assessed under section 158BA(2) of the Act prior to June 2003. Explanation to section 158BA(2) of the Act provided that (a) the assessment made under this section shall be in addition to the regular assessment in respect of each previous year included in the block period; (b) the total undisclosed income relating to the block period shall not include the income assessed in any regular assessment as income of such block period; (c) the income assessed in the block assessment shall not be included in the regular assessment of any previous year included in the block period. Thus, the undisclosed income of the block period could not be adjusted against the regular loss, as the assessment made under block assessment shall be in addition to the regular assessment in respect of each previous year included in the block period. The assessment of undisclosed income is to be done under amended section 153A/153C of the Act with effect from June 2003. However, provisions of section 153A/153C of the Act do not restrict the assessee from adjusting loss in a regular assessment against the undisclosed income as could be restricted under section 158BA prior to June 2003 due to which assessee is taking undue benefit by adjusting its loss in regular assessment with undisclosed income. Thus, undisclosed income detected in the search and seizure operations did not add any revenue to the exchequer in such cases which defeats the purpose of search and seizure operations.

We noticed 42 cases in six states[3] where in the absence of specific provision of prohibiting set off of loss of regular assessment against undisclosed income in amended section 153A/153C of the Act, AO allowed set

[2] AP & Telangana, Assam, Bihar, Gujarat, Maharashtra, Odisha, Punjab and West Bengal

[3] Assam, Bihar, Gujarat, Maharashtra, Odisha and West Bengal

off/adjustment of losses of regular assessment against the undisclosed income detected during search. As a result, tax of ₹ 130.32 crore could not be levied. Three cases are illustrated below:

- In Maharashtra Pr. CIT (Central), Pune charge, a search in the case of a company of a Group was conducted in September 2015 and the assessment was completed for the AYs 2012-13 to 2016-17 u/s 144 r.w.s. 153A of the Act in August 2018. The AO had made additions of ₹ 399.71 crore on account of undisclosed income and also allowed adjustment of loss of ₹ 277.32 crore against this undisclosed income for the aforesaid assessment years. Thus, due to absence of provision for not allowing set off of losses of the previous/earlier years against the undisclosed income, tax of ₹ 83.20 crore could not be levied.

- In West Bengal, Pr. CIT Central-1, Kolkata charge, a search was conducted in March 2015 in case of a company of a Group. During search, the assessee disclosed u/s 132(4) of the Act of ₹ 10.85 crore earned in cash from hedging coal activity for AY 2015-16. This disclosure was shown under the head miscellaneous income in P&L A/c of that year. Audit observed that the assessee filed the return of income at loss of ₹ 56.07 crore after adjusting aforesaid disclosed income of ₹ 10.85 crore. The AO finalised the assessment u/s 153A r.w.s. 143(3) of the Act in March 2016 determining total loss of ₹ 47.91 crore after disallowing depreciation of ₹ 8.16 crore. Thus, in the absence of the specific provision in the Act, the AO allowed set off of loss against the undisclosed income of ₹ 10.85 crore. As a result, tax of ₹ 3.52 crore on undisclosed income could not be levied.

- In West Bengal, PCIT Central-2, Kolkata charge, a search was conducted in March 2015 in case of a company of a Group. During search the assessee disclosed income of ₹ 25.13 crore on oath u/s 132(4) of the Act. This disclosure was shown under the head Revenue from Operation in P&L A/c for the year 2015. Audit observed that the assessee filed return of income at Nil after adjusting loss of ₹ 5.85 crore and deduction of ₹ 19.28 crore. In absence of specific provision in the Act, AO, while finalizing the assessment in December 2016 u/s 143(3) of the Act allowed the same and tax of ₹ 8.29 crore on undisclosed income could not be levied.

Thus, in the absence of specific provision for not allowing set off of losses against the income detected in search operations resulted in leakage of revenue.

We, therefore, recommend that the CBDT may introduce suitable provision for not allowing set off of losses of previous years/earlier years assessed in regular assessments against the undisclosed income detected during search and seizure.

The CBDT stated (June 2020) that the observation of C&AG is already incorporated in law due to which no further action is required.

The CBDT may examine the adequacy of the current provisions with respect to bogus purchase, inflated invoices etc. as undisclosed income from these do not get covered under the existing provisions.

2.4.2 Absence of prescribed time limit for issue of notice u/s 153A/153C of the Act

There is no specific time limit prescribed in the Act for issue of notice u/s 153A/153C of the Act. However, section 153B of the Act provides that the AO shall pass an order of assessment within a period of two years[4] from end of financial year in which last authorization u/s 132 of the Act for search was executed.

The matter of non-specification of time limit for issue of notices under section 158BD was pointed out in CAG's earlier Audit Report No. 7 of 2006 but the same was not resolved even in amended section 153A/153C of the Act.

We noticed 98 cases in three states[5] where AO issued notices u/s 153A/153C of the Act to the assessee after period ranging from five months to 21 months from the end of previous year in which search was conducted. Further, in two out of 98 cases, notice u/s 153C of the Act was issued just before four days from the date of completion of assessment. Thus there were considerable delays in issue of notices. As a result, the time left for completion of assessment was not enough for in depth examination of all the issues pointed out during search operations and also having risk of human error, which could eventually affect the quality of search assessments.

We reiterate that the CBDT may introduce a time limit for issuing notices under amended section 153A/153C of the Act.

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4 21 months with effect from 01.04.2017

5 Odisha, Punjab and West Bengal

The CBDT stated (June 2020) that the issue shall be examined by TPL Division.

2.4.3 Absence of provision of disallowance of capital loss related to bogus transaction

Section 74 of the Act provides that if in any assessment year, the net results of the computation under the head 'Capital gains' is loss to the assessee, the whole loss shall be carried forward to the following assessment for set off. However, there is no provision in the Act regarding disallowing capital loss related to bogus transaction.

For evading tax, bogus bills are prepared to show inflated expenses in the books of accounts. It involves obtaining bogus/inflated invoices from the so called bill masters who make bogus vouchers and charge nominal commission for the facility. We had highlighted such issues as a long para on "Fictitious sales/purchase by shell companies/Hawala operators" in CAG report no. 2 of 2017. Although the Ministry has taken the remedial action in respect of the illustrated cases it has yet to evolve mechanism to prevent re-occurrence of such lapses in future.

We noticed seven cases in Maharashtra where the AO allowed carry forward of capital loss generated on bogus transaction involving tax of ₹ 5.50 crore. One case is illustrated below:

- In Maharashtra, Pr.CIT (Central)-II, Mumbai charge, a search was conducted in the case of a company of a Group in August 2014 and the assessment was completed u/s 153A read with section 143(3) of the Act in December 2016 determining nil income. Audit noticed that the assessee claimed carry forward of capital loss of ₹ 3.73 crore on sale of shares of another company for ₹ 87.40 lakh, which was acquired in AY 2012-13 for ₹ 4.6 crore. The department had treated this transaction as bogus and disallowed the same in the assessment for AY 2012-13 stating that the assessee was a paper entity. As the department itself had treated this transaction as bogus, capital loss of ₹ 3.73 crore generated on sale of such shares should also have been treated as bogus and carry forward of capital loss should have been disallowed. Omission resulted in incorrect claim of carry forward of capital loss involving potential tax of ₹ 80.59 lakh.

  The department stated (August 2019) as the total income has been assessed at Nil there is no loss available under any head of income to be

considered for the purpose of carry forward. The capital loss claimed by the assessee was disallowed once the total income was assessed at nil. The reply of the department is not acceptable on the grounds that there is no specific comment of the AO in the assessment order about the allowability or non allowability of the carry forward of loss claimed by the assessee. The assessment order should be speaking one and allowable or non-allowable should be specifically mentioned. Further, in one different case the department noted the audit observation for future reference.

Thus, there is a need to address the issue with reference to disallowability of capital loss related to bogus transaction so as to check the generation of black money/tax evasion.

We, therefore, recommend that the CBDT may examine whether these are errors of omission or commission and take necessary action as per law in that regard.

2.5 Centralised assessment of searched group covering all the related assessees

As per the CBDT instruction no. 8, dated 14 August 2002 and para No. 6.45 to 6.48 of Search and Seizure Manual, the search cases shall be centralized in central charges to facilitate coordinated and sustained investigations. As far as possible, the assessments should be taken up group-wise to ensure a holistic approach as well as to ensure that no income remains un-assessed due to any confusion or doubt regarding the hands in which it is to be assessed.

During the performance audit, we noticed that the department did not centralise cases for assessments in respect of 42 groups out of total number of 185 groups in 12 states[6] due to which issues relating to these assessees pointed out in Appraisal Report could not be addressed as detailed in the table below:

[6] Assam, Bihar, Delhi, Gujarat, Jharkhand, Maharashtra, Madhya Pradesh and Chhattisgarh, Odisha, Punjab, Tamil Nadu, Uttar Pradesh and Uttrakhand and West Bengal

Table No. 3: Details of cases where centralization of assessees was not done			
Sl. No.	**State**	**No. of Groups**	**No. of assessees not centralised**
1.	Assam	1	14
2.	Bihar	4	44
3.	Delhi	9	40
4.	Gujarat	2	25
5.	Jharkhand	3	35
6.	Maharashtra	14	161
7.	MP & Chhattisgarh	1	7
8.	Odisha	2	7
9.	Punjab	1	6
10.	Tamil Nadu	1	9
11.	UP & Uttarakhand	1	22
12.	West Bengal	3	16
	Total	**42**	**386**

Three cases are illustrated below:

- In Tamil Nadu in PCIT Central 2 Coimbatore charge, a search was conducted in the case of a Group in September 2014 and the unaccounted income was quantified as ₹ 68.42 crore as per the Appraisal Report. It was suggested in the Appraisal Report that the unaccounted income of ₹ 68.42 crore is to be assessed in the hands of 12 persons. However, it was noticed that nine assessees out of 12 assessees involving undisclosed income of ₹ 3.14 crore were neither centralized for assessment nor was the information communicated to the jurisdictional assessing officers as required under section 153C of the Act. As a result, undisclosed income of ₹ 3.14 crore pointed out in search could not be assessed and brought to tax.

- In Chhattishgarh, Pr.CIT (Central), Bhopal charge, a search was conducted in the case of a Group in October 2012. It was observed from Appraisal Report of the Group that "In Raigarh District of Chhattisgarh, land of over 800 acres was purchased initially in the name of the individuals at the rate of around ₹ 0.50 lakh/acre and within a short span of two years, the same has been transferred to a company, of the Group concern, at the rate of over ₹ 20 lakh per acre. The purchase price of the company is about 40 times the purchase price paid by the individuals. The AO was advised to enquire and investigate this issue. Audit noticed that the case was not centralized for the assessments. The AO did not initiate any action u/s 153C/147 of the Act against the company either. As a result, genuineness of investment of ₹ 160 crore (800 acres x ₹ 20 lakh) of the assessee could not be corroborated.

The department stated (June 2019) that the scope of Appraisal Report and obligation of the AO is limited to the findings of the search. Further, suggestions if any, are within the realm of AO, for the action at the end if deemed fit. Mere passing of information without any documents in possession does not bind AO to take action. It may be noted that no documents were found and seized which throw light on the escapement of income.

The reply of the department is not tenable in the light of CBDT's instruction no. F.No.286/161/2006-IT(Inv.II) dated 22 December 2006 wherein it is stated that if the AO is not in agreement with any findings/conclusions drawn in Appraisal Report, the matter should be brought to the knowledge of the Range head who should resolve it with the concerned Addl./Joint DIT(Inv.). If considered necessary, the CIT(Central) may also resolve the issue with DIT(Inv.).

- In Maharashtra, Pr.CIT(C)-3, Mumbai charge, a search was conducted between September 2013 and November 2013 in the case of a Group. After search the cases of the Group were centralised in Dy, CIT, Central Circle 5(1), Mumbai. However, audit noticed that 11 cases involving money value of ₹ 63.09 crore detected during search were not centralised for assessment though the centralization of these cases was suggested in the Appraisal Report. Further, Audit could not find any evidence of forwarding the requisite information in respect of these cases to respective jurisdictional AO for assessments as per required procedure. As a result, Audit could not ascertain from the available records whether the assessments were done in these cases in their respective charges and issues pointed out in Appraisal Report were addressed. Reasons for non-centralisation of these cases were not intimated to audit.

Thus, due to non-centralisation of search cases in central circle, in-depth examination of the issues relating to undisclosed income and credit worthiness of transactions etc. pointed out in the Appraisal Report could not be addressed/verified with corroborative evidence which affected the quality of assessments. Further, in the case of non-centralization of assessees, audit could not ascertain whether all the income of the respective assessees was assessed. If it was not so, the very purpose of search and seizure operations would be defeated. Also, in the case of non-centralization it is difficult for department to ensure that all the income of the searched assessee have been assessed and brought to tax.

We, therefore, recommend that ITD may strengthen the mechanism for monitoring of compliance of existing instructions of the CBDT regarding centralisation of all the search cases in central circles, so that all the issues pointed out in Appraisal Report could be addressed and assessment made more effective.

The CBDT stated (June 2020) that the purpose of centralisation is to ensure that all cases directly connected with the Group searched are assessed at one place to prevent any loss of revenue and to facilitate a proper assessment. But this does not necessarily mean that the related parties are also to be centralized.

Audit is of the view that all the assessees related to issues pointed out in Appraisal Report may be centralized and their assessments should be completed in a nameless/faceless manner, where the assessees as well as AOs are not aware of each other's identities, to ensure transparency in the assessments.

2.6 Sustainability of additions made in Group cases at appellate stage

2.6.1 Sustainability at appellate stage

The issue relating to low percentage of sustenance of additions made in search assessments at appellate stage was also highlighted in CAG's Report No. 7 of 2006.

During the course of the present performance audit, we noticed that 84 Groups out of 185 Groups had preferred appeal before different appellate authorities against the additions made in the assessment orders. Audit observed that 76.5 *per cent* of additions made in assessments did not stand the test of judicial scrutiny in appeals at (CIT (A)/ITAT). Further in 19 Groups, non-sustainability was 100 *per cent* at appellate stage. Audit scrutiny of the appellate orders revealed that major reasons for deletion of additions at appellate stage were as under:

- Existing judgments were not considered by AO during assessment.
- Provisions/sections under which additions made were not clearly mentioned in assessment order.
- The content of the statement of the assessee recorded under oath u/s 132(4) of the Act during search operations used against the assessee

as adverse evidence has neither been provided to the assessee nor reproduced in the assessment order which is irregular and contrary to the principles of natural justice.

- All documents found during search were related to the transactions which were already disclosed by the assessee.
- Additions were based on the assumptions instead of seized documents/papers.
- The addition of undisclosed income was made in assessment year other than the relevant assessment year.

Total additions made during assessments vis a vis additions sustained at appellate stage in respect of 84 Groups out of 185 Groups are shown in the table below:

Table No. 4 : Additions made during assessments vis a vis additions sustained at appellate stage

Sr. No.	Name of the charge	No of Group	Addition for assessee of Group made at assessment stage (₹ in crore)	Addition remained after CIT(A)/ITAT effect (₹ in crore)	Percentage of addition sustained after CIT(A)/ITAT effect
1	Andhra Pradesh & Telangana	1	228.49	94.54	41.37
2	Bihar	4	68.01	0.04	0.1
3	Chhattisgarh	1	2687.59	2687.56	100
4	Delhi	15	11746.34	1965.80	16.70
5	Gujarat	7	2055.41	130.29	6.3
6	Karnataka	4	417.13	0	0
7	Kerala	4	203.24	23.33	11.5
8	Madhya Pradesh	2	166.16	111.14	66.9
9	Maharashtra	10	2114.08	301.46	14.3
10	Odisha	4	320.49	24.25	7.6
11	Rajasthan	5	1358.50	50.96	3.8
12	Tamil Nadu	16	2225.14	246.72	11.1
13	Uttarakhand	1	26.74	1.35	5.0
14	Uttar Pradesh	1	101.59	3.17	3.1
15	West Bengal	9	1246.79	216.79	17.39
	Total	**84**	**24965.7**	**5857.4**	**23.46**

It can be seen from the table above that against the total addition of ₹ 24965.70 crore ₹ 5857.40 crore only was sustained at appellate stage. Overall sustainability of undisclosed income was 23.5 *per cent* (Approx.).

Undisclosed income of ₹ 19108.30 crore did not sustain at appellate stage mainly due to reasons such as additions were made (a) relating to transactions based on the documents found during search which were already disclosed by the assessee, (b) based on assumptions, (c) in assessment year other than the relevant assessment year. Further, provisions/sections under which additions made were not clearly mentioned in assessment order etc.

We also observed that in case of 19 Groups out of aforesaid 84 Groups additions sustained at appellate stage out of ₹1476.42 crore made during assessments was nil as shown in the table below:

Table No. 5 : Nil sustenance of additions at appellate stage

Sr. No.	Name of the Charge	No of Group	Addition for assessee of Group made at assessment stage (₹. in crore)	Addition remained after CIT(A)/ITAT effect. (₹ in crore)
1	Andhra Pradesh & Telangana	3	610.69	0
2	Bihar	3	65.42	0
3	Delhi	1	16.60	0
4	Gujarat	1	158.50	0
5	Karnataka	4	417.13	0
6	Kerala	1	0.50	0
7	Maharashtra	2	68.26	0
8	Rajasthan	1	65.43	0
9	Tamil Nadu	2	73.17	0
10	West Bengal	1	0.72	0
	Total	**19**	**1476.42**	**0**

An analysis of the reasons listed above for low sustainability of additions made during search assessments clearly indicates poor diligence before initiating the search in terms of information and requisite research etc. The low sustainability also casts a doubt on the entire process.

We recommend that the Department may like to ensure that the search warrants are issued after proper examination of the information available, research and due diligence in a manner which is above suspicion as search

and seizure involves lot of harassment to the assessees and their families. The possibility of role of judicial body may also be explored. The CBDT may also analyse the reasons for low sustainability and fix the responsibility of the concerned officers.

2.6.2 Sustainability of additions made on the basis of statement made by assessee on oath

Statement of the assessee is recorded during and after search u/s 132(4) of the Act. The statements so recorded are of strong evidentiary value and binding on the person searched unless retracted on valid grounds. Retraction of statements is permissible only if made within a reasonable period of time and burden of proof lies on the retractor to prove that the statements were recorded under duress or undue influence.

Audit noticed that additions of ₹26.42 crore were made on the basis of statement recorded u/s 132(4) of the Act in four Groups in Bihar, Madhya Pradesh and Odisha charges whereas only ₹4.13 crore (15.6 *per cent*) was sustained at the appellate stage as detailed in the table below:

Table No. 6 : Sustainability of additions made on the basis of statement made by assessee on oath

Sr. No.	Name of the charge	No of Group	Addition for assessee of Group made at assessment stage on the basis of statement u/s 132(4) (₹ in lakh)	Addition remained after CIT(A)/ITAT effect (₹ in lakh)
1	Bihar	2	2073	4
2	Madhya Pradesh	1	409	409
3	Odisha	1	160	0
Total		**4**	**2642**	**413**

2.7 Lack of uniformity in making additions/adoption of assessed income/revised income during search assessments

We noticed 78 cases in eight states where AOs, while finalizing the assessments, did not take uniform stand in making additions on account of bogus purchases, accommodation entries and in adoption of figures of assessed income/revised income. The additions were made arbitrarily either on lump sum amount basis or different percentage ranging from five *per cent* to 50 *per cent* under similar circumstances without proper justification

involving tax effect of ₹ 916.83 crore which may result in loss to the exchequer as well as non-sustenance of additions at appellate stage.

2.7.1 Addition of lump sum amount / percentage basis without proper justification

Under the provisions of the Act, the AO is required to make an assessment for determining the total income or loss and determine the tax payable by the assessee correctly on the basis of such assessment. In case of search assessment, it should be taken up group-wise to ensure a holistic approach as well as to ensure that no income remains unassessed due to any confusion or doubt regarding the hands in which it is to be assessed.

We noticed 72 cases in seven states[7] of inconsistency in making additions by the AOs at the time of assessments of search and seizure cases u/s 153A/153C of the Act viz. on lump sum amount/percentage basis without proper justification with tax effect of ₹ 856.03 crore. Three cases are illustrated below:

- In Maharashtra, Pr. CIT (Central)-I, Mumbai charge, a search was conducted in November 2011 in the case of a company of the Group and the assessment for AY 2011-12 was completed u/s 143(3) r.w.s 153A r.w.s 144C of the Act in April 2015 determining income at ₹ 196 crore. Audit observed that the assessing officer, while finalising the assessment, made addition of ₹ 43.54 crore only on the basis of gross profit ratio at the rate of 8.40 *per cent* of alleged bogus purchases of ₹ 518.36 crore instead of entire sum of bogus purchases. Omission resulted in under assessment of income of ₹ 474.81 crore involving tax effect of ₹ 198.73 crore. Further, the Commissioner (Appeal), while confirming the additions, also held that the addition made by AO is only a part of alleged bogus purchase, technically AO could disallow entire sum.

  Department did not accept (August 2019) the audit observation stating that since the quantitative details were disputed during search as well as assessment proceedings, the accommodation entry cannot be treated as 100 *per cent* bogus purchase as it would result in reduction of sale. Accordingly addition on account of profit embedded therein was added. Also, comment of CIT(A) was only a obiter dictum.

[7] Bihar, Gujarat, Jharkhand, Maharashtra, Madhya Pradesh and Chhattisgarh, Odisha, Uttar Pradesh and Uttarakhand

Reply of the Department is not acceptable as the statements were given under oath during search. The evidences gathered clearly proved that these parties have provided only accommodation entries for a consideration/commission to the willing parties. When entire modus operandi of these entities is that of only providing bogus and accommodation entries in the books and in fact the actual purpose of transaction is that of tax avoidance and introduction of unaccounted money into books, the whole amount of alleged bogus purchase detected should have been added. Further, CIT(A) also stated that the addition made by AO was only a part of alleged bogus purchase. Technically AO could disallow entire sum but only a part of same is disallowed as one proportionate to profit rate.

- In Bhubaneswar, Pr.CIT (Central) Visakhapatnam charge, a search was conducted in the case of a Group in April 2012 and the assessment was completed in March 2015. Audit observed in 40 cases of the aforesaid Group that AO, while finalizing the assessments, made additions on account of bogus expenditures. Audit examination revealed that the additions made by AO during search assessments ranged from five *per cent* to 50 *per cent* on estimation basis though the nature of expenditure was similar and assessments charges were also same.

- In Maharashtra, Pr. CIT (Central), Nagpur charge, a search was conducted in August 2012 in the case of a company of a Group and the assessment was completed u/s 143(3) r.w.s. 153A of the Act in March 2016. Audit observed that the assessee had made purchases of large quantities of soya bean seeds in every single transaction from Unregistered Dealers (URD) for AYs 2007-08 to 2013-14 and made payments through bearer cheques. Assessee had not furnished any documents such as PAN, identity and address of sellers, valid invoices etc.to prove genuineness of purchases. However, the AO, while finalizing the assessment, disallowed purchases from URD by fixing threshold limit of 200 tons for AYs 2007-08 to 2008-09, 2010-11 to 2012-13 and 150 tons for AYs 2009-10 and 2013-14 without specifying any reasons for the same. As the assessee did not furnish any substantial evidence for purchases from URD, the entire purchases from URD were required to be disallowed. Omission resulted in underassessment of income of ₹ 444.53 crore involving tax effect of ₹ 240.76 crore.

Thus, there was no uniformity in making additions by AO despite the fact that the grounds of additions were same and in some cases even the assessment

charges were also same. Further, no justifications were given by AOs in their assessment orders for arriving at the different percentage of additions especially in similar issues. In absence of proper justification, the additions made by AOs might be inadequate, subjective and arbitrary and also may not be sustained at appellate stage.

2.7.2 Inconsistency in adoption of figures of assessed/revised income while computing income in search cases where assessment has already been finalized

Under the provisions of 153A read with section 143(3) of the Act, the AO, after verifying the genuineness of the undisclosed income determined on the basis of material discovered during search shall assess or reassess the total income of the assessee. However, in case of search assessment, there is no clarity in the provision whether the higher income already assessed under regular assessment would be taken as starting point or the income declared u/s 153A/153C of the Act for computation of income.

We noticed six cases in three states[8] where AO, while finalizing the search assessment, adopted lower income returned in response to the notice issued u/s 153A/153C of the Act for computation of income instead of adopting higher income already assessed u/s 143(3) of the Act as had been done in 14 other cases in Maharashtra. Thus, the department did not take uniform stand in adoption of income for computation in search assessments involving tax effect of ₹ 60.80 crore. One case is illustrated below:

- In Tamil Nadu, Pr. CIT (Central) 2, Chennai charge, a search was conducted in the case of a company of a Group in September 2012. Audit observed that the original assessment of the assessee for the AY 2008-09 was completed u/s 143(3) of the Act in March 2013, in Kolkata determining total income of ₹ 95.39 crore after making addition of identical amount towards unexplained cash credit relating to share capital and premium. However, the AO, while finalizing the assessment u/s 153C of the Act in March 2015, computed income at nil as retuned by the assessee instead of ₹ 95.39 crore already assessed u/s 143(3) of the Act. The addition was also confirmed by the CIT(A) in December 2017. Omission of not considering the assessed income resulted in underassessment of income of ₹ 95.39 crore involving tax effect of ₹ 57.72 crore. Whereas in the case of a company in Maharashtra, Pr. CIT

[8] Gujarat, Maharashtra and Tamil Nadu

(Central-2), Mumbai charge, the AO, while finalizing the assessment for AY 2011-12 u/s 153A r.w.s 143(3) of the Act, adopted income already assessed in regular assessment u/s 143(3) of the Act for computation of income.

Thus, the department did not take consistent stand while computing income in search cases. The department computed the income either by considering income already assessed u/s 143(3) of the Act/Order giving effect to CIT(A)'s or returned income u/s 153A/153C/143(1) of the Act.

We, therefore, recommend that the CBDT may examine the reasons for wide variations in the applicability of the same law under similar conditions and find a solution to ensure consistency in making assessments. The CBDT may also investigate whether these are errors of omission or commission and take necessary action as per law in that regard.

2.8 Non-compliance of CBDT instructions/orders

2.8.1 Stay of demand/filing of appeal with High Court

Board vide O.M. N0.404/72/93-ITCC dated 29 February 2016, wherein. inter alia, vide para 4(A) it had been laid down that in a case where the outstanding demand is disputed before CIT(A), the AO shall grant stay of demand till disposal of first appeal on payment of 20 *per cent* of the disputed demand.

The AO is also required to comply with the instructions/orders issued by the CBDT from time to time in respect of escalation of appeal to the next higher judicial authority.

We noticed 21 cases of non-compliance of CBDT's instructions/orders such as allowing appeal without collecting the requisite demand and non-filing of appeal in the High Court despite the directions of DGIT (Investigation), in two states[9]. Cases are illustrated below:

i) In Maharashtra, Pr. CIT (Central)-II, Mumbai charge, a search was conducted in the case of a company of a Group in September 2014. The assessment for AY 2009-10 was completed u/s 153A r.w.s 143(3) in October 2016 determining total income of ₹237.56 crore and demand notice u/s 156 of the Act raising demand of ₹149.71 crore was issued. The

[9] Maharashtra and West Bengal

assessee filed an appeal against the assessment order and applied for granting a stay of the demand but the AO revised the demand to 50 *per cent* of its original demand. Audit examination revealed that the department did not ensure collection of requisite demand from the assessee before admitting the appeal. However, the appeal proceedings continued and finally decided ignoring the pre-condition of payment of demand. Order giving effects to the CIT (A)'s order was also passed. Thus, the department did not collect the demand as per prescribed procedure which clearly indicated non-compliance of Board's instructions. Department stated that the AO was well within his power to refer the case of the assessee to Pr.CIT to decide the quantum/proportion of the demand to be paid by the assessee as lump sum payment for granting a stay of the balance demand.

The reply is not tenable as the AO had revised the demand to 50 *per cent* of its original demand considering application of the assessee for granting of stay of the demand. Even though the demand was not collected from the assessee and the proceedings of appeal continued which was finally decided by the CIT(A).

ii) In West Bengal, PCIT Central-2, Kolkata charge, a search was conducted in the case of a company of a Group in March 2014 and the assessment (Block Assessment) for AYs: 2008-09 to 2014-15 was completed in March 2016. The AO, during assessment proceedings, rejected the books of accounts of the assessee and made addition of ₹ 109.28 crore for aforesaid AYs as undisclosed sales. The assessee preferred appeal before CIT (Appeal) in March 2016 against the assessment order. The CIT (Appeal) deleted all additions on undisclosed sales made by the AO. Further, ITAT Kolkata upheld the order of the CIT(Appeal). Audit noticed that the DGIT (Investigation), WB, Sikkim & NER approved for filing of appeal in the High Court. However, there was nothing on record confirming filing of the appeal before High Court. Meanwhile, the limitation to file the appeal expired in November 2017. The department did not confirm whether appeal before High Court had been filed or not. This indicated that DGIT (Investigation)'s order was not followed in this case.

2.8.2 Dropping of penalty proceedings u/s 271(1)(c)/271AAB of the Act without the approval of higher authority

According to section 153D of the Act, no order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner in respect of each assessment year referred to in section 153A/153B of the Act except with the approval of the Joint Commissioner. The CBDT has issued instruction no. 1886 of July 1991 that assessment and penalty orders in search cases will be passed with the prior approval of the concerned DCIT. Where penalty u/s 271 (1)(c) of the Act is not to be initiated, or is to be dropped after initiation, the same will be done with the approval of the DCIT**.** It is pertinent to mention here that DCIT was the range head before reorganization of Income Tax Department and now the range head is JCIT/Addl. CIT.

We noticed 64 cases in Andhra Pradesh where AO dropped penalty proceedings under sections 271(1)(c)/271AAB of the Act without approval of higher authority with revenue impact of ₹ 134.19 crore. One such case is illustrated below:

- In Andhra Pradesh, Pr. CIT (Central), Hyderabad charge, a search was conducted in the case of a company in May 2013 and the assessment was completed in January 2015. Audit noticed penalty proceedings amounting to ₹ 17.11 crore for the AYs 2008-09 to 2011-12 were initiated and later on dropped without the approval of higher authority. Thus, the CBDT's instruction requiring approval of higher authority in case of dropping of initiated penalty proceedings was not adhered to. Department stated that the CBDT's instruction was issued prior to restructuring and re-organization of the Income Tax Department. Only levy of penalty is to be done by the approval of the range head u/s 274 of the Act. In case of searches after 01 June 2007, explanation 5A of section 271(1)(c) of the Act is applicable and the said instruction is not relevant. Section 153D of the Act speaks of the approval of the Additional CIT only in respect of completion of assessment, which is different from penalty proceedings.

The reply is not tenable because both levying and dropping of penalty in search cases involve analysis of assessee's contentions and submissions by both the Assessing Officer and the Range head based on merit of the case and available facts. Further, as the said circular is still in vogue at present and hence, dropping of penalty initiated in searched cases without the approval

of Joint Commissioner or Additional Commissioner is against the intent of the instruction.

2.9 Escaping of income due to non-assessment of relevant assessment year covered in search/prior period of search

As per section 153A/153C of the Act, the AO shall assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and for the relevant assessment year.

We noticed 10 cases in three states[10] where AO did not assess the income of the relevant assessment year covered under search involving tax of ₹2.80 crore. Three cases are illustrated below:

(i) In Tamil Nadu, Pr.CIT (Central 2), Chennai charge, a search was conducted in September 2014 in the case of an assessee of a Group. Audit observed that the assessment for the AY 2014-15 was completed u/s 153C r.w.s 143(3) of the Act in December 2016. It was further observed from the assessment order of AY 2014-15 that undisclosed income of ₹ 74 lakh was required to be brought to tax during the AY 2015-16 in the hands of the assessee. Audit examination revealed that though notice for the AY 2015-16 u/s 143(3) r.w.s 153A of the Act was issued in October 2016, assessment has not been completed so far (August 2019). Thus, there was escaping of income of ₹74 lakh involving a tax effect of ₹ 21.06 lakh. The department stated (June 2019) that since the audit observation raised prima facie appears to be correct, the issue would be examined and appropriate remedial action would be taken.

(ii) In Tamil Nadu, Pr. CIT (Central 2), Chennai charge, a search was conducted u/s 132 of the Act in October 2014 in the case of an individual of a Group. The assessee had agreed that an amount of ₹15 lakh and ₹18.71 lakh were paid in May 2011 and November 2011 respectively to another individual in cash out of undisclosed income from a company. Audit observed from the assessment records that notice issued in October 2015 under section 153A for AY 2012-13 was withdrawn and proposal for initiating proceedings u/s 147 of the Act was submitted in November 2016. However, no assessment was made. The Department stated that the income of ₹ 33 lakh was offered as income by the company for the AY 2012-13 by a revised return.

[10] Maharashtra, Tamil Nadu and West Bengal

Reply of the department is not tenable as audit observation is with regard to omission to complete the reopened assessment for the purpose of assessing the undisclosed income. Further, no evidence was produced to audit in support of the fact that the income of ₹ 33 lakh was offered by the company.

(iii) In Maharashtra, Pr. CIT (Central)-II, Mumbai charge, a search was conducted in December 2014 in the case of a company of a Group and the assessment for AY 2009-10 was completed u/s 153A r.w.s 143(3) of the Act in November 2016 determining loss of ₹ 1.17 lakh. The assessee had received share premium of ₹ 8.60 crore prior to the period covered under search i.e, before AY 2009-10. Audit examination revealed that the same was not taxed, even though there was finding that the companies that had given share premium to the company are shell companies fraudulent in nature which was set up to give accommodation entries in lieu of cash. Omission resulted in non-levy of minimum tax of ₹ 2.58 crore. Department stated (August 2019) that audit objection is not acceptable as a limitation is put for assessing or reassessing income for six prior years and not beyond that.

Department's reply is not tenable as there is no consistent stand for assessing undisclosed income related to prior period. In Pr. CIT(Central-2) Mumbai charge, in the case of other assessees for the AY 2008-09 undisclosed income related to prior period was assessed u/s 147 of the Act by re-opening the case.

2.10 Non completion of assessments within specified time limit

Section 153B(1)(b) of the Act provides that, the AO shall make an order of assessment or reassessment, in respect of the assessment year relevant to the previous year in which search is conducted within a period of two years from the end of the financial year in which the last of the authorisations for search were executed. Further, in a case where an application made before the Income Tax Settlement Commission is rejected by it or is not allowed to be proceeded with by it, the period commencing from the date on which an application is made before the Settlement Commission and ending with the date on which the order is received by the Pr. Commissioner or Commissioner is not to be considered for the period for completing assessment.

We noticed one case in Punjab where AO did not complete the search assessments within the specified time. As a result, these assessments may

not be sustainable at appeal stage which eventually may result in loss to the exchequer, defeating the very purpose of search operations. Case is illustrated below:

- In Punjab, CIT (Central) Ludhiana charge, a search was conducted on 03 April 2012 in the case of a Group. Audit noticed from the records that assessment was to be completed on or before 31 March 2015. However, the assessment was completed on 27 July 2016 i.e. 16 months beyond the stipulated date of completion.

2.11 Non levy of penalty

As per explanation 5A(ii) to section 271(1)(c) of the Act, where in the course of search initiated u/s 132 of the Act, the assessee has not declared any income, he shall be deemed to have concealed the particulars of his income or furnished inaccurate particulars of income. Penalty @ 100 *per cent* (up to maximum 300 *per cent*) shall be levied on tax sought to be evaded by way of concealment of particulars of income.

Further, section 271AAB of the Act provides that the AO may direct that, in a case where search has been initiated u/s 132 of the Act on or after 1st day of July 2012, the assessee shall pay by way of penalty a sum which shall not be less than thirty *per cent* but which shall not exceed ninety *per cent* of the undisclosed income of the specified previous year, if it is not covered by the provisions of clauses (a) and (b), in addition to tax.

We noticed 145 cases in 12 states[11] where AO, while finalizing the search assessments, did not levy penalty of ₹ 976.54 crore though the same was leviable. Three cases are illustrated below:

i) In Andhra Pradesh, Pr. CIT(C), Hyderabad charge, a search was conducted in the case of an assessee in March 2012 and the assessment was completed in March 2015. It was detected during the search operations that the assessee was involved in suppression of income by way of inflating expenditure. Moreover, the assessee also admitted undisclosed income on oath u/s 132(4) of the Act during search which was not declared in the return of income filed u/s 153A of the Act. The department has gathered evidence relating to undisclosed income. However, despite having sufficient evidence the penalty of ₹ 1.63 crore

[11] Andhra Pradesh & Telangana, Assam, Bihar, Delhi, Gujarat, Haryana, Maharashtra, Punjab, Tamil Nadu, Tripura, Uttar Pradesh & Uttrakhand and West Bengal

(at the minimum rate of 30 *per cent*) u/s 271AAB of the Act for AY 2012-13 was not levied by the Department.

Department stated (July 2019) that since the department and the assessee were in appeal before ITAT which was still pending, penalty proceedings u/s 271AAB of the Act were kept in abeyance as per the provisions of section 275 of the Act. Hence non levy of penalty u/s 271AAB of the Act does not arise at this stage. The same will be decided on receipt of the ITAT order.

The department's reply is not tenable on the ground that in another case, the assessee appealed against penalty proceedings for all the assessment years, but even pending appeal, penalty was levied for AYs 2011-12 and 2013-14. Further, it has been judicially held in the case of PCIT Kanpur Vs Sandeep Chandak that when assessee in course of search makes a statement in which he admits undisclosed income and specifies the manner in which such income has been derived, then provisions of section 271AAB of the Act would automatically attract.

ii) In Delhi, Pr. CIT (Central)-2, Delhi charge, the assessment of an individual for the assessment year 2014-15 was completed after scrutiny u/s 143(3) of the Act in March, 2016 determining an income of ₹ 473.77 crore. Audit noticed that in the assessment order, the AO had recorded that the assessee had failed to file true and correct return of income and issued a penalty notice dated 31 March 2016 u/s 271AAB of the Act. However, penalty was not levied in this case even after the appeal filed by the assessee on assessed tax was dismissed by CIT(A) on 18 September 2017. This omission resulted in non-levy of minimum penalty of ₹ 142.13 crore.

Department stated (October 2019) that the decision of keeping penalty proceeding in abeyance was taken well within the time i.e. before 31 March 2019, prescribed u/s 275 of the Act (within one year from the end of the financial year in which the order of CIT(A) is received by the Pr. CIT).

Reply of the Department is not tenable because CIT (A) had passed its order in favour of the revenue in September 2017 and the same was received by the CIT (Central)-2 in September 2017 itself and therefore penalty should have been levied on or before 31 March 2019 instead of keeping penalty in abeyance.

iii) In Tamil Nadu, PCIT (Central 2) Chennai Charge, a search was conducted in December 2015 in the case of a company of a Group and assessment was completed in December 2017. It was found from Appraisal Report that the assessee had indulged in cash loan receipts and payments of ₹ 5.97 crore and ₹3.70 crore respectively during the AYs 2009-10 to 2016-17 in contravention to the provisions of section 269SS and 269T of the Act. Audit noticed that the ITD had levied penalty of ₹ 72.92 lakh and ₹ 30.40 lakh for AY 2011-12 only. Omission to invoke above provisions for remaining AYs i.e. 2009-10, 2010-11 and 2012-13, 2014-15 to 2016-17 resulted in non-levy of penalty of ₹ 5.24 crore and ₹ 3.27 crore respectively.

2.12 Extent of compliance of provisions other than search and seizure

We noticed 369 cases in 19 states[12] involving tax effect of ₹ 1532.44 crore where AO while finalizing the search assessments, did not assess unexplained credit, levied tax on normal provisions instead of leviable under special provisions of section 115JB of the Act, computed short demand, charged tax at a rate less than the prescribed rate, short levied interest, surcharge and did not disallow expenditure related to exempt income, allowed incorrect MAT credit etc. Cases are illustrated below:

2.12.1 Incorrect computation of income and tax/interest/surcharge

Under the provisions of the Act, the AO is required to make an assessment for determining the total income or loss and determine the tax payable by the assessee correctly on the basis of such assessment.

(a) In Tamil Nadu, Pr. CIT (Central)-2, Chennai charge, a search was conducted in the case of an individual of a Group in May 2012. The assessee was the proprietor of two entities. Audit examination of the assessment records revealed that the assessee had included in her capital account, a sum of ₹ 55.28 crore debit balance and ₹ 1.16 crore credit balance for both the above entities for AY 2008-09. It was also revealed that in addition to this, the assessee also added a sum of ₹ 17.11 crore to the capital account in his consolidated statement of affairs without proper explanation. The AO, while finalizing the search assessments in March 2015, did not examine this aspect.

[12] Andhra Pradesh & Telangana, Assam, Bihar, Chandigarh, Delhi, Gujarat, Haryana, Jharkhand, Karnataka, Kerala, Madhya Pradesh & Chhattisgarh, Maharashtra, Odisha, Punjab, Rajasthan, Tamil Nadu, Tripura, Uttar Pradesh & Uttarakhand and West Bengal

Omission resulted in non-assessment of unexplained credit involving tax effect of ₹ 8.84 crore including interest u/s 234B of the Act.

Department replied that there was no incriminating material on account of search detected for the relevant AY. Further, no remedial action could be taken as per the provisions of the Act for the AY 2008-09, as the time had already been barred by limitation.

Reply of the department is not tenable on the ground that block assessment u/s 153A of the Act covered the AY 2008-09 also and at the time of search assessments, the AO was required to assess or reassess the total income of the assessee in respect of all the assessment years covered under block assessment.

(b) In Delhi, Pr. CIT (Central)-3, Delhi charge, a search was conducted in the case of a company in October 2012 and the assessment of the assessee for the AY 2009-10 was completed u/s 153A of the Act in March 2016 determining an income of ₹240.53 crore under normal provision and at ₹204.25 crore under special provision of section 115JB of the Act. The tax of ₹81.76 crore was charged on income under normal provision which was rectified to ₹23.14 crore under special provision in January 2017. An order giving effect to CIT(A) order was passed under section 250 in July 2017. Audit examination revealed that the AO, while passing the order passed u/s 250 of the Act, charged the tax of ₹ 4.18 crore under normal provision. However, the tax (₹23.14 crore) under special provisions of 115JB was more than tax on normal provision. The mistake resulted in short levy of tax of ₹18.96 crore. Department accepted (October 2019) the observation and rectified the mistake by passing order u/s 154 of the Act in October 2019.

(c) In Tamil Nadu, Pr. CIT (Central)-2, Chennai charge, a search was conducted in respect of an assessee, ex-trustee of trust 'A' and trust 'B' and one of the present trustees of trust 'C' in September 2014.. The assessee had not filed the return of income u/s 139 for the AY 2009-10. In response to the notice issued u/s 153C of the Act on 28 October 2016, the assessee filed the return of income on 23 November 2016 admitting an income of ₹ 0.56 lakh. The assessment was completed in December 2016 u/s 153C r.w.s. 143(3) of the Act determining income of ₹ 4.56 crore. Audit examination revealed that AO, while computing tax demand of the assessee wrongly calculated demand of ₹69.64 lakh only instead of correct demand of ₹ 4.32 crore including interest. This resulted in short levy of tax of ₹3.62 crore. Department

accepted the audit observation and remedial action was taken u/s 154 of the Act in June 2019.

(d) In Karnataka, Pr. CIT (Central) Bengaluru charge, a search was conducted in case of a Group in February 2015 and the assessment was concluded in December 2017. Audit examination revealed that while computing the tax demand of assessee for the AY 2013-14, undisclosed long term capital gain of ₹ 435.72 crore was charged at normal rate of 20 *per cent* as against applicable rate of 30 *per cent* u/s 115BBE of the Act. This resulted in a short levy of tax by ₹ 75.04 crore.

(e) In West Bengal, PCIT Central-2, Kolkata charge, a search was conducted in the case of a company of a Group, for the AY 2014-15 (Block Assessment) in March 2016 and the assessment was completed in December 2017. Audit noticed that surcharge was levied at the rate of 5 *per cent* instead of applicable rate of 10 *per cent* on taxable income of ₹ 117.83 crore, which resulted in under charge of surcharge of ₹ 1.82 crore excluding interest. The department accepted (November 2018) the audit observation and rectified the mistake by passing order u/s 154 of the Act in November 2018.

(f) In Chhattisgarh, Principal CIT (Central) Bhopal charge, a search was conducted in the case of a company of a Group in October 2012. The AO completed the assessment for the AY 2012-13 u/s 153A r.w.s. 144 of the Act in November 2016 determining income of ₹ 493.82 crore. Audit examination revealed that the assessee had filed return of income on 30 September 2012 u/s 139(1) of the Act but did not file return in response to notice issued on 31 May 2013 u/s 153A of the Act. The AO, while finalizing the assessment, levied interest u/s 234A of the Act of ₹ 50.05 crore instead of ₹ 64.12 crore. It was also observed that interest u/s 234B of the Act was levied ₹ 57.04 crore instead of ₹ 87.58 crore. The omission resulted in short levy of interest to the extent of ₹ 44.61 crore.

(g) In Rajasthan, PCIT, Central Jaipur charge, a search was conducted in the case of an assessee in August 2015 and the assessment of for AY 2011-12 was completed in December 2017 u/s 153A r.w.s 143(3) of the Act determining income of ₹ 667.88 lakh. We noticed that the interest of ₹ 48.61 lakh charged u/s 234B (3) of the Act instead of leviable of ₹ 178.72 lakh. This resulted in short levy of interest of ₹ 130.10 lakh. The department rectified the mistake vide order u/s 154 of the Act (July 2018).

(h) In Tamil Nadu, Pr. CIT (Central)-2, Chennai charge, a search was conducted in the case of a company of a Group in December 2015 and the assessment for the AY 2015-16 was completed u/s 153C r.w.s. 143(3) of the Act in December 2017 determining income of ₹ 411.56 crore. The assessment was further rectified u/s 154 of the Act in March 2019 giving relief to ₹ 338.53 crore u/s 40a(ia) of the Act. Audit examination revealed that the AO, while rectifying the assessment computed above relief incorrectly to ₹ 338.53 crore to the assessee as against the correct relief of ₹ 312.92 crore. This resulted in excess allowance of ₹ 25.61 crore involving tax of ₹ 12.53 crore including interest. The department rectified the mistake u/s 154 of the Act in June 2019.

(i) In Karnataka, Pr. CIT (Central), Bengaluru charge, a search of a Group was conducted in December 2013 and the assessment was completed in March 2016. In the assessment completed in March 2016 for AY 2014-15, it was seen that expenditure of ₹ 40.83 crore (@0.5 *per cent* of average investment of ₹ 8167.58 crore) related to exempt income u/s 14A of the Act read with rule 8D was not disallowed which resulted in escapement of income to the extent of ₹ 40.83 crore and consequential short levy of tax of ₹ 21.72 crore.

2.12.2 Irregular deduction allowed

As per provision of section 80 IB (10)[13] of the Act, the amount of deduction in the case of an undertaking developing and building housing projects, approved before 31st day of March 2008 by a local authority shall be 100 *per cent* of the profits derived in the previous year relevant to any assessment year from such housing project if, in a case where a housing project has been approved by the local authority on or after the 1st day of April 2005, within five years from the end of the financial year in which the housing project is approved by the local authority.

In Haryana, Pr.CIT (Central) Gurugram charge, a search was conducted in the case of a Group in February 2014 and the assessment was completed in March 2016. Audit examination revealed that the assessee claimed and was allowed deduction of ₹ 29.58 crore u/s 80IB(10) of the Act during AYs 2010-11 to 2013-14 in respect of sale of flats of the housing project on the basis of occupancy certificate. It was also noticed that no completion

[13] The date of completion of construction of the housing projects shall be taken to be the date on which the completion certificate in respect of such housing project is issued by the local authority.

certificate was issued by the local authority and this fact was also mentioned in Appraisal Report but the assessment was completed without production of completion certificate. Therefore, as per provision of the Act, the deduction under 80IB of the Act of ₹ 29.58 crore was required to be disallowed and added back to the income of the assessee for non-obtaining of completion certificate from competent authority. The omission resulted in underassessment of income of ₹ 29.58 crore involving tax effect of ₹ 9.63 crore including interest.

2.12.3 Inadmissible allowance of deduction u/s 80IB

Section 80IB(10) of the Act provides deduction to an undertaking engaged in developing and building housing projects subject to fulfilment of specified conditions.

In West Bengal, PCIT Central-2, Kolkata charge, a search was conducted in case of a company of a Group[14] (AY:2010-11, Block Assessment) in March 2016 and the assessment was completed in December 2017. The assessee claimed deduction u/s 80IB of the Act of ₹ 57.47 crore for two housing projects which was allowed during assessment u/s 153A of the Act. Audit found that the AO disallowed the claim for deduction u/s 80IB for the same two projects in AYs 2009-10, 2011-12 to 2013-14 due to failure of the assessee to furnish basic details and explanations required to examine the claim and violation of condition of Section 80IB(10) of the Act. But the AO in AY-2010-11 had allowed claim of ₹ 57.47 crore u/s 80IB of the Act in deviation to the assessments made in other AYs. Inadmissible allowance of deduction u/s 80IB of the Act resulted in underassessment of income of ₹ 57.47 crore involving tax effect of ₹ 19.54 crore.

The department stated (November 2018) that claim of deduction u/s 80IB of the Act for AY 2010-11 could not be disallowed as it had not been disallowed by the AO in the assessment completed u/s 143(3) of the Act and no addition can be made during the assessment u/s 153A in absence of any incriminating material. The Department further stated that condition in section 80IB(10) of the Act regarding allotment of not more than one unit to any person not being an individual was inserted by Finance Act 2009 and was not applicable for AY 2010-11.

The reply is not acceptable on the grounds that if the assessee was not eligible for deduction u/s 80IB of the Act the department could initiate

[14] FY-2017-18

remedial measure u/s 263 of the Act or any other provisions of the Act to safeguard the revenue. Further, the Ministry of Finance in their notes on clauses (Clause 37 of the Bill seeking amendment to section 80IB of the Act) categorically stated that this will take effect from 1st April 2010 and will accordingly apply in relation to the AY 2010-11. Hence, ITD's contention that amendments were not applicable to AY 2010-11 is not correct.

2.12.4 Incorrect carry forward of MAT credit u/s 115JAA

Section 115JAA (1A) of the Act, provides that, where any amount of tax is paid under sub-section (1) of section 115JB of the Act by an assessee, being a company for the assessment year commencing on the 1st day of April, 2006 and any subsequent assessment year, then, credit in respect of tax so paid shall be allowed to him in accordance with the provisions of this section.

- In Delhi, Pr. CIT(Central)-3, Delhi charge, a search was conducted in the case of a company in February 2014 and the assessment of the assessee for the AY 2013-14 was completed u/s 153A of the Act in December 2016 determining an income of ₹ 127.32 crore. The assessed income was revised to ₹ 115.15 crore while giving effect to appeal order u/s 250 of the Act in March 2018. Audit noticed that after allowing adjustment of MAT credit of ₹ 1.53 crore in the current year, the assessee was allowed to carry forward the balance MAT credit of ₹ 90.43 crore instead of ₹ 74.70 crore. This mistake resulted in incorrect carry forward of MAT credit by ₹ 15.73 crore, involving potential tax effect of ₹ 15.73 crore.

  The Department furnished (September 2019) a working sheet, of carry forward of MAT credit over the years, along with reply. The reply of the Department is not tenable because in the working sheet the Department has allowed MAT credit of AYs 2002-03 onwards while, the assessee has claimed MAT credit for AYs 2006-07 onwards in the return. The Department has not furnished any document in support of the figures shown in working sheet.

2.12.5 Incorrect carry forward of business loss

Section 72 of the Act provides that, where for any assessment year, the net result of the computation under the head "Profits and gains of business" is a loss to the assessee, not being a loss sustained in a speculation business, and such loss cannot be or is not wholly set off against income under any head of income in accordance with the provisions of section 71 of the Act, so much of

the loss as has not been so set off or, where he has no income under any other head, the whole loss shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year.

- In Delhi, Pr. CIT(Central)-3, Delhi charge, a search was conducted in the case of a company in February 2014 and the assessment of the assessee for the AY 2008-09 was completed u/s 153A of the Act in March 2016 determining an income of ₹ 3.17 crore under normal provision and ₹ 1.84 crore under special provision of the Act. Prior to this, assessment was completed u/s 143(3) of the Act in December 2010 at an income of ₹ 3.17 crore. While giving effect of CIT(A) order dated 07 October 2011, a business loss of ₹ 1.78 crore was set off against available income (to the extent of income available) and balance business loss of ₹ 3.54 crore was allowed to be carried forward to be set off in future assessment year. Audit noticed that as per the tax audit report, there was a business loss of ₹ 2.59 crore only available for set off in the assessment year 2008-09, as such, after setting off loss of ₹ 1.78 crore a balance business loss of ₹ 0.82 crore was available to be carried forward to be set off in future assessment year. However, the Department has allowed a loss of ₹ 3.54 crore to be carried forward which resulted in incorrect carry forward of loss of ₹ 2.72 crore involving potential tax effect of ₹ 92.36 lakh. The Department replied (August 2019) that on the basis of order of CIT(A) the assessee has a loss of ₹ 7.90 crore in the AY 2007-08 to be carried forward. The reply is not tenable because during the examination of records of AY 2007-08 it was found that no order has been passed by the Department to give effect of said appeal order. There is no contrary evidence to reject the amount of available balance depicted in the Tax Report. Assessment records for AY 2007-08 also confirms the figure reported in the Tax Audit Report.

The omissions and mistakes pointed out in Para no. 2.8 to 2.12 show that provisions laid down in the Act were not duly complied with by AOs while finalizing the search assessments. This indicates that the assessment procedure is not robust to ensure the compliance of the provisions of the Act and to plug in possible revenue loss to the exchequer.

The CBDT may investigate whether these are errors of omission or commission and take necessary action as per law in that regard.

2.13 Other issues

We noticed 53 cases in three states, where AO did not comply with the provisions such as non-referring of cases to Transfer Pricing Officer (TPO), Action on offence committed by Chartered Accountant in IT Act, Delay in action on Entry provider, Assessment without filing of IT Return, Prior approval of Joint Commissioner not taken before passing assessment order, etc. during search assessments.

We also noticed 17 cases in three states involving tax effect of ₹ 30.66 crore relating to non-disallowance of cash payments towards capital expenditure, non-levy of penalty for loan advancing in cash, non-levy of interest u/s 234B in respect of senior citizen.

Four cases relating to non compliance are illustrated below:

2.13.1 Assessment without filing of IT Return

As per section 139(1) of the Act, every person being a company shall on or before the due date, furnish a return of his income during the previous year

We noticed that AO completed the assessment in the case of an assessee for AYs 2008-09 to 2011-12 without filing of return of income by the assessee. The same is illustrated below:

- In Maharashtra Pr. CIT (Central)-III, Mumbai charge, a search was conducted in September 2013 in the case of a company of a Group. In response to the notice u/s 153A of the Act, the authorised representative submitted that the assessee company was incorporated on 21 January 2008 and was closed on 09 February 2011 but there was no business activity, no bank account was opened and no financial statements were prepared. Therefore, no return of income was filed by the assessee for the AYs 2008-09 to 2011-12. The submission of the assessee was accepted and the assessment was completed u/s 153A read with section 143(3) of the Act in March 2016 determining nil income without the return of income. Further, the penalty u/s 271F of the Act was also not levied for non-filing of return. Department stated (August 2019) that compliance of notice 153A of the Act should have been made. However in this case there was no business activity, no income and hence no loss of revenue. Since there was no income and no tax, prosecution proceedings could also be not initiated.

Department's reply is not acceptable as the name of assessee was in the list of cases to be covered u/s 153A of the Act and as per the provision of the Act the assessee was required to file the return.

2.13.2 Prior approval of Joint Commissioner not taken before passing assessment order

As per provision of section 153D of the Act, no order of assessment or re-assessment shall be passed by an Assessing Officer below the rank of Joint Commissioner in respect of each assessment year referred to in clause (b) of section 153A of the Act or the assessment year referred to in clause (b) of sub-section (1) of section 153B of the Act, except with the prior approval of the Joint Commissioner.

In Bihar, Pr. CIT (Central), Patna charge, a search was conducted of an assessee of a Group in October 2015 and assessment was completed for AY 2014-15 in April 2017 determining an income of ₹ 3.30 crore. It was noticed that draft assessment of ₹ 84.04 lakh was approved by the JCIT, however final assessment was completed at ₹ 3.30 crore after addition of ₹ 2.46 crore which was found not approved by the JCIT.

2.13.3 Non application of seized assets against the outstanding demand

Section 132B (1)(ii) &(iii) of the Act provides that the amount of any existing liability under this Act may be recovered out of the seized money and if no money was seized or if the seized money is insufficient for complete discharge of the said liabilities, the other seized assets should be applied for recovery of remaining liabilities in accordance with provision u/s 132B(1)(iii) of the Act.

In Odisha, Pr. CIT (Central) Visakhapatnam charge, audit observed that assets valuing ₹ 15.53 crore and foreign currency of $1330 along with cash of ₹ 65.50 lakh was seized from 13 assessee in five groups during search conducted in September 2014, October 2013, August 2015, February 2016 and April 2012 respectively. Audit examination of assessment records relating to aforesaid Groups revealed that AO adjusted only ₹ 65.50 lakh which was cash seized during the search against the aggregate demand of these assessees of ₹ 7.58 crore leaving a balance of ₹ 6.92 crore. Though, the assets valuing ₹ 14.87 crore and foreign currency of $1330 were lying in the custody of the department, the AO did not adjust it with the outstanding demand of ₹ 6.92 crore.

2.13.4 Action on non-filer PAN

The CBDT introduced[15] a Non-filers Monitoring System (NMS) as a pilot project to prioritize on non-filers with potential tax liabilities using the system. This system identifies the non-filer from the ITD database (Annual Information Return, Central Information Branch and TDS/TCS returns etc.) who have PAN.

In Maharashtra, Pr.CIT (Central-3) charge, a search was conducted in December 2015 in the case of an assessee of the Group. Audit noticed that one of the assessees of the Group, a partnership firm, was dissolved in FY 2010-11 and subsequently taken over by the assessee and thus the erstwhile firm became a proprietary concern of the assessee. Audit noticed that although the partnership firm was no longer in existence, its PAN was in operation and tax of ₹ 27.68 lakh was deducted at source as seen from 26AS of that partnership firm for the AYs 2011-12 to 2016-17 but the return was not being filed by the partnership firm for the aforesaid AYs also. The department did not initiate any action in this regard and NMS also did not identify this case as non-filer.

2.13.5 Referring of case to TPO

Section 92CA of the Act provides that where the AO considers it necessary or expedient so to do, he may refer the computation of ALP in relation to an international transaction or specified domestic transaction to the TPO.

We noticed nine assessment cases in respect of two assessees in Maharashtra where AO did not refer the case to TPO despite satisfying all the conditions for referring the case to TPO. Cases relating to one assessee are illustrated below:

- In Maharashtra, Pr. CIT (Central) -2, Mumbai a search u/s 132 of the Act and survey action u/s 133A of the Act was conducted in March 2015 in the case of a company of a Group and the assessment was completed u/s 143(3) r.w.s. 153A of the Act in December 2017. Audit noticed that during the AYs 2009-10 to 2013-14 and 2015-16, assessee was involved in Domestic Tariff Area (DTA) sales as well as in Export sales. The export sales with related party situated in Dubai was of ₹ 2800.88 crore for AYs 2009-10 to 2013-14 and 2015-16 which was 91.95 to 100 *per cent* of the

[15] Instruction 14 of 2013 dated 23.09.2013

export sales. The assessee was involved in a sizable amount of international transactions with related party and the required Accountant's report under section 92E of the Act was not filed/furnished. Even after satisfying the conditions for referring to the TPO for determining the Arm's length price within the meaning of section 92E of the Act, the case was not referred to TPO. This may have revenue impact.

2.13.6 Action on offence committed by Chartered Accountant in IT Act

Section 288 of the Act provides that if any person who is a legal practitioner or an Accountant is found guilty of misconduct in his professional capacity by an authority {Institute of Chartered Accountant of India (ICAI)} entitled to institute disciplinary proceedings against him, an order passed by ICAI shall have effect in relation to his right to attend before an income tax authority as it has in relation to his right to practice as a legal practitioner or Accountant, as the case may be.

We noticed 18 cases in Maharashtra where no penalty was initiated on Chartered Accountant for not reporting deficiency during regular audit of books of accounts, tax audit reports, etc. so as to address the same during regular assessment itself. Two cases are illustrated below:

i) In Maharashtra Pr. CIT (Central), Pune charge, a search in the case of a company of a Group was conducted in October 2015. After search, the case was referred for special audit u/s 142(2A) of the Act, to Chartered Accountants. This case was also referred to other Chartered Accountants for Special Investigative Audit by Central Bank of India. Many discrepancies were reported in these two reports. During search assessment u/s 153A r.w.s. 144 of the Act for the AYs 2010-11 to 2016-17, the department disallowed ₹ 608.26 crore on account of various discrepancies noticed in these reports. Audit observed that though the irregularities were in knowledge of AO, the department did not initiate any action against the Chartered Accountant who had certified the assessees' Books of Accounts, Tax Audit Report and Form - 3CEB etc. regularly.

ii) In Maharashtra Pr. CIT (Central)-IV, Mumbai charge, a search was conducted in October 2012 in the case of a company of a Group. During search, it was found that assessee Group has claimed excess deduction u/s 35(2AB) of the Act for AYs 2010-11 to 2013-14 by booking the raw material expenses in the R&D account whereas the raw material has

actually been consumed at the factories. Assessee accepted that expenses on consumables relating to other facilities have been wrongly booked in the books of Advent R&D centre due to which there has been excess claim of deduction u/s 35(2AB) by the assessee. However, the same was disallowed during assessment u/s 153A r.w.s. 143(3) of the Act in March 2015. The assessee being a listed company, its Books of Accounts, Tax Audit Report and Form - 3CL were regularly certified by the Chartered Accountant and no discrepancy were reported in those reports. Thus, the Books of Accounts of the assessee did not reflect the true and fair view of day to day affair of the assessee. In spite of discrepancy noticed in certificates, department did not initiate any proceedings against the Chartered Accountant. Initially, the department did not accept the audit observation stating that in the instant case no proceeding could be initiated as the case was subjudice. The department further stated that the action is being completed now.

2.13.7 Delay in action on Entry provider

No fixed time-line has been prescribed in the Act for taking necessary action even in proved case of accommodation entry provider indulging in providing bogus bills.

We noticed seven assessment cases in respect of one assessee in Maharashtra where the department had inordinately delayed the action on accommodation entry provider and the case is illustrated below:

- In Maharashtra, Pr. CIT (Central), Nagpur charge, a search was conducted in the case of a company of a Group in December 2012. Audit noticed from Appraisal Report and Assessment Order that the assessee indulged in bogus unregistered dealer URD purchase of raw material and also bogus share application money etc. All these bogus bills were arranged through accommodation entry provider Chartered Accountant. It can be seen from the approval of sanction/authorisation u/s 279(1) of the Act that department has concluded that the Chartered Accountant has willfully and intentionally enabled the assessee to evade tax and have willfully and intentionally abetted the assessee to commit an offence u/s 276C (1) of the Act. The sanction / authorisation for prosecution of the Chartered Accountant u/s 277A & 278 of the Act was issued on 08 October 2018 and authorised the Asst. Commissioner of Income Tax, Central Circle 2(2), Nagpur to institute a criminal complaint in the court of competent jurisdiction for the AYs 2007-08 to 2013-14. After lapse of

three and half years from the date of assessment (i.e., 30 March 2015) and 6 years and 10 months from the date of search (i.e., actual knowledge of providing accommodation entries), the sanction/ authorisation to institute a criminal complaint was issued. A criminal complaint has been filed before the Hon'ble Judicial Magistrate, at Nagpur for prosecuting the Chartered Accountant vide RCC dated 30 January 2019. Thus, the department has inordinately delayed the prosecution procedure.

2.14 Conclusion

Absence of certain explicit specific provisions in the Act allowed the assessee to take undue benefit. These provisions included carry forward/set off of losses against undisclosed income, time limit for issue of notice u/s 153A/153C of the Act which resulted in less time for assessment having risk of human error which could eventually affect the quality of assessment, disallowance of capital loss related to bogus transaction.

The department did not centralize all cases in central charges to facilitate in-depth examination of issues pointed out in investigation to make the assessment more effective. Additions made by the ITD in search assessments either did not sustain completely or sustained at very low percentage at appellate stage and also there was neither uniformity nor proper justification in making additions. The ITD did not take consistent stand in adopting the starting figure viz income already assessed u/s 143(3) of the Act /order giving effect to CIT(A)'s or returned income u/s 153A/153C/143(1) of the Act for computation of income in search cases. The department allowed irregularly adjustment of undisclosed income against the loss in regular assessment. The department did not comply with the existing CBDT instructions/circulars and did not take cognizance of recommendations given in Appraisal Report while finalizing the assessments. Most of the issues pointed out in earlier CAG's Audit Report No. 7 of 2006 still persisted.

2.15 Recommendations

Audit recommends that:

(i) the CBDT may introduce suitable provision for not allowing set off of losses of previous years/earlier years assessed in regular assessments against the undisclosed income detected during search and seizure.

(Paragraph 2.4.1)

The CBDT stated (June 2020) that the observation of C&AG is already incorporated in law due to which no further action is required.

The CBDT may examine the adequacy of the current provisions with respect to bogus purchase, inflated invoices etc. as undisclosed income from these do not get covered under the existing provisions.

(ii) Audit reiterates that the CBDT may introduce a time limit for issuing notices under amended section 153A/153C.

(Paragraph 2.4.2)

The CBDT stated (June 2020) that the issue shall be examined by TPL Division.

(iii) the CBDT may examine whether these are errors of omission or commission and take necessary action as per low in that regard.

(Paragraph 2.4.3)

(iv) ITD may strengthen the mechanism for monitoring of compliance of existing instructions of the CBDT regarding centralisation of all the search cases in central circles, so that all the issues pointed out in Appraisal Report could be addressed and assessment made more effective.

(Paragraph 2.5)

The CBDT stated (June 2020) that the purpose of centralisation is to ensure that all cases directly connected with the Group searched are assessed at one place to prevent any loss of revenue and to facilitate a proper assessment. But this does not necessarily mean that the related parties are also to be centralized.

Audit is of the view that all the assessees related to issues pointed out in Appraisal Report may be centralized and their assessments should be completed in a nameless/faceless manner, where the assessees as well as AOs are not aware of each other's identities, to ensure transparency in the assessments.

(v) the Department may like to ensure that the search warrants are issued after proper examination of the information available, research and due diligence in a manner which is above suspicion as search and seizure involves lot of harassment to the assessees and their families. The possibility of role of judicial body may also be explored. The CBDT

may also analyse the reasons for low sustainability and fix the responsibility of the concerned officers.

(Paragraph 2.6)

(vi) *the CBDT may examine the reasons for wide variations in the applicability of the same law under similar conditions and find a solution to ensure consistency in making assessments. The CBDT may also investigate whether these are errors of omission or commission and take necessary action as per law in that regard.*

(Paragraph 2.7, 2.8 to 2.12)