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ASSESSMENT OF ENTITIES ENGAGED IN HEALTH AND ALLIED SECTOR

MINISTRY OF FINANCE (DEPARTMENT OF REVENUE)

PUBLIC ACCOUNTS COMMITTEE
(2018-19)

ONE HUNDRED AND THIRD REPORT

SIXTEENTH LOK SABHA

LOK SABHA SECRETARIAT
NEW DELHI

PAC NO. 2137

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LOK SABHA SECRETARIAT
NEW DELHI

July, 2018 /Ashadha, 1940 (Saka)

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***To be appended at the time of printing.**

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Shri Mallikarjun Kharge - Chairperson

MEMBERS

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2. **Shri Subhash Chandra Baheria**
3. **Shri Sudip Bandyopadhyay**
4. **Shri Prem Singh Chandumajra**
5. **Shri Gajanan Chandrakant Kirtikar**
6. **Shri Bhartruhari Mahtab**
7. **Smt. Riti Pathak**
8. **Shri Ramesh Pokhriyal "Nishank"**
9. **Shri Janardan Singh Sigriwal**
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11. **Shri Gopal Shetty**
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16. **Prof. M. V. Rajeev Gowda**
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20. **Shri Sukhendu Sekhar Roy**
21. **Vacant**
22. **Vacant**

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2. **Shri T. JayaKumar - Director**
3. **Smt. Bharti S.Tuteja - Deputy Secretary**

COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE (2017-18)

Shri Mallikarjun Kharge - Chairperson

MEMBERS

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21. **Vacant**[6]
22. **Vacant**[7]

[1] Shri Neiphiu Rioh Ceased to be a Member of Committee consequent upon acceptance of his resignation from Lok Sabha w.e.f. 22 February, 2018.

[2] Shri Naresh Agrawal ceased to be a Member of Committee consequent upon his retirement from Rajya Sabha on 2 April, 2018

[3] Shri Satyavrat Chaturvedi ceased to be a Member of Committee consequent upon his retirement from Rajya Sabha on 2 April, 2018

[4] Elected w.e.f. 29 December, 2017 in lieu of vacancy caused due to retirement of Shri Shantaram Naik.

[5] ceased to be a Member of Committee consequent upon his retirement from Rajya Sabha on 18 August, 2017 and re-elected w.e.f. 29 December, 2017.

[6] Shri Ajay Sancheti ceased to be a Member of Committee consequent upon his retirement from Rajya Sabha on 2 April, 2018

[7] Shri Bhupender Yadav ceased to be a Member of Committee consequent upon his retirement from Rajya Sabha on 3 April, 2018

Sub-Committee – III (Direct and Indirect Taxes) of the PAC (2017-18)

Convenor :	1.	Shri Nishikant Dubey
Alternate Convenor :	2.	Shri Satyavrat Chaturvedi
Members :	3.	Shri Shivkumar C. Udasi
	4.	Shri Bhupender Yadav
	5.	Shri Sukhendu Sekhar Roy
	6.	Shri Ajay Sancheti

INTRODUCTION

I, the Chairman, Public Accounts Committee, having been authorised by the Committee, do present this One Hundred and Third Report (Sixteenth Lok Sabha) on **"Assessment of Entities Engaged in Health and Allied Sector"** based on C&AG Report No. 27 of 2017 Union Government - relating to the Ministry of Finance (Department of Revenue).

2. The Report of Comptroller and Auditor General of India for the year ended March 2017, was laid on the Table of the House on 28th July, 2017.

3. The Public Accounts Committee (2017-18) selected the subject and allocated the same to Sub-Committee-III (Direct and Indirect Taxes) for detailed examination and report thereon. The Sub-Committee took evidence of the representatives of the Ministry of Finance (Department of Revenue) on the subject at their sitting held on 16 November, 2017 and 13 March, 2018. The Sub-Committee of PAC (2017-18) considered and adopted this Report at their sitting held on 2 April, 2018. The Report was considered and adopted by the Public Accounts Committee (2017-18) during their sitting held on 10 April, 2018. The Report was again considered and adopted by the Public Accounts Committee (2018-19) during their sitting held on 10 April, 2018. The Minutes of the Sittings form Appendices to the Report.

4. For facility of reference and convenience, the Observations and Recommendations of the Committee have been printed in **bold** and form Part- II of the Report.

5. The Committee thank their predecessor Committee (2017-18) and the Sub-Committee-III (Direct and Indirect Taxes) for taking oral evidence of the Ministry and obtaining information on the subject.

6. The Committee would also like to express their thanks to the representatives of the Ministry of Finance (Department of Revenue) for tendering evidence before the Sub-Committee and furnishing the requisite information to the Committee in connection with the examination of the subject.

7. The Committee place on record their appreciation of the assistance rendered to them in the matter by the office of the Comptroller and Auditor General of India.

NEW DELHI;
18 July, 2018
27Ashadha, 1940 (*Saka*)

MALLIKARJUN KHARGE
Chairperson,
Public Accounts Committee.

REPORT

PART I

I. INTRODUCTORY

Indian healthcare sector is one of the fastest growing service areas and has witnessed significant growth in terms of revenue and employment generation in recent years. With liberalization of the economy, the per capita income had increased manifolds, which in turn increased the demand for high value quality health services. The public infrastructure for providing health related services is not sufficient to cater to the increasing demands of quality health services in the country. The healthcare sector in India comprises both private and public sectors. The private sector provides nearly 80 per cent of outpatient care and about 60 per cent of inpatient care. The private health care sector comprises organizations that operate both on profit and not-for-profit basis. The "not-for-profit" organizations include healthcare service providers such as Non-Government Organizations (NGO's), charitable institutions, trusts, etc. The private sector in India has a dominant presence in medical education and training, hospital infrastructure and ancillary service areas such as medical technology and diagnostics. As per sector-wise data of the Department of Industrial Policy and Promotion , the share of foreign direct investment (FDI) inflows in "hospitals and diagnostic centres" has been increasing at an accelerating rate. This sector attracted FDI of ` 23,169.91 crore between April 2000 and September 2016 . The Private Health Expenditure as a percentage of GDP has shown an increasing trend during FY 2011-12 to 2013-14, growing respectively at the rates of 3.21 per cent, 3.24 per cent and 3.28 per cent respectively during these three years. GDP at factor cost at current prices in the year 2013-14 was estimated at ` 104.73 lakh crore, growing itself at the rate of 11.5 per cent over the first revised estimates of GDP of ` 93.89 lakh crore for 2012-13, which in turn grew at 11.9 per cent over the second revised estimates of GDP for 2011- 12 of ` 83.91 lakh crore. This translates into an expansion of the private healthcare expenditure by more than ` 35,000 crore and ` 39,000 crore during the two years 2012-13 and 2013-14 respectively. However, despite this remarkable expansion, the number of corporate assessees in the categories viz. Medical Professionals, Nursing Homes, Speciality Hospitals had actually declined in FY 2012-13 and then increased marginally

in FY 2013-14. The assessees engaged in the business of Private Hospitals, Nursing Homes/Medical clinics, Medical Colleges/Research Institutes, Diagnostic Centres, Pathological labs, Medical supplies agencies/stores etc. are governed by all the provisions of the Income Tax Act that are generally applicable to the different class of assessees viz. Companies, Firms, Trusts, Charity firms, Association of Persons, Hindu Undivided families, Individuals etc. Further, the Income Tax Act provides specific tax incentives to hospitals. It provides a five year tax holiday in respect of profits derived from the business of operating and maintaining hospitals located anywhere in India other than the excluded areas subject to certain conditions, besides deduction of capital expenditure incurred in connection with setting up of new hospitals, also subject to certain conditions. Further, it allows higher rate of depreciation on medical equipment to incentivize the hospitals to upgrade their healthcare infrastructure and to provide access to patients to the latest technology.

2. The healthcare infrastructure is divided into the following segments:

Hospitals, which include government hospitals and private hospitals. The government hospitals include primary healthcare centres, district hospitals and general hospitals. The private hospitals include nursing homes/medical clinics, mid-tier and top-tier private hospitals. It also includes hospitals run by trusts, charitable institutions and NGOs;

Medical Colleges/Research Institutes;

Clinical Establishment which include small clinics providing healthcare services without nursing aids and poly-clinic services;

Diagnostics Centres/Pathological Labs which comprise businesses and laboratories that offer analytic or diagnostic and pathological laboratory services; and

Medical Equipment and Supplies which include establishments primarily engaged in medical equipment management and supplies such as surgical, dental, orthopaedic, ophthalmologic, laboratory, consumables etc.

Among the professionals engaged in delivery of healthcare services, there are all types of surgeons, doctors (all disciplines), nurses and allied health professionals (AHPs) viz. technologists, radiologists etc.

3. The distinguishing characteristics of the sector are

i. The health sector has witnessed a robust annual growth of 15 per cent

ii. The sector is projected to grow from ` 684,000 crore in 2015 to ` 823,700 crore in 2018 with a Compounded Annual Growth Rate of 12.1 per cent

iii . The fees charged by health professionals, private hospitals, nursing homes, medical clinics, medical colleges, diagnostic centres, pathological labs, medical supply stores etc. for their services are mostly received in cash, which is a high-risk area with potential for evasion of tax.

iv. As this sector is expanding very fast, the sources of investment for acquisition of assets require proper verification to plug the loopholes on any possible transfer of money from untaxed sources or unaccounted funds for such investments.

4. The C&AG Report No. 27 of 2017 contains significant results of the performance audit of assessment of Private Hospitals, Nursing Homes/Medical Clinics, Medical Colleges/Research Institutes, Diagnostic Centres, Pathological labs and other Medical supplies agencies/stores etc. of the Department of Revenue – Direct Taxes of the Union Government in 2012-13 to 2015-16. The instances mentioned in this Report are those, which came to notice in the course of test audit for the period 2012-13 to 2015-16 conducted during the period July 2016 to November 2016.

5. The objective of the audit was to:

- ascertain whether the objectives of introduction of tax incentives specific to private hospitals, nursing homes/medical clinics, medical colleges/research institutes, diagnostic centres, pathological labs, medical supplies agencies/stores etc. have been achieved optimally and whether adequate monitoring mechanism is in place;

- derive an assurance that the existing systems and controls are adequate to promote compliance of provisions specific to the healthcare institutions and medical professionals under the Act as well as compliance to general provisions of the Income Tax Act;
- examine whether all the private hospitals, nursing homes/medical clinics, medical colleges/research institutes, diagnostic centres, pathological labs, medical supplies agencies/stores etc. were covered in the tax net of the Income Tax Department (ITD) and to ascertain whether the efforts made by ITD to strengthen the tax base were adequate.

6. The audit covered:

i) The examination of data held by Income Tax Department and detailed examination of assessment cases of the assessees engaged in the business of Private Hospitals, Nursing Homes/Medical Clinics, Medical Colleges/ Research Institutes, Diagnostic Centres, Pathological Labs, Medical Supplies Agencies/Stores etc., for ascertaining compliance to the provisions of the Income Tax Act, 1961.

ii) Collection of data and information from other sources viz. registering bodies, Directorates of Investigation, Intelligence & Criminal Investigation etc.. The data so obtained from these sources were issued to the Commissioners of Income Tax to ascertain whether the entities were subject to tax assessment.

iii) Survey through issue of questionnaire to: a) the Controlling Officers of CGHS/DGHS/PSUs that empanel Private Hospitals, Nursing Homes/Medical Clinics, Medical Colleges/Research Institutes, Diagnostic Centres, Pathological labs, Medical supplies agencies/stores and Authorised Medical Attendants (AMAs) to ascertain whether such empanelled healthcare facilities/professionals were within the income tax net; and b) other registering authorities and healthcare institutions to ascertain whether the conditions for registration as a healthcare facility/professional included reporting on the income tax registration status.

7. The audit scrutiny revealed that

a. Despite the availability of systems viz. Income Tax Payer Data Management System (ITDMS), Non-filers Monitoring System (NMS), Project Insight and other versatile tools for analyzing data collected from external sources for widening of tax base, audit noticed that these have not been effectively utilized/ implemented for strengthening the tax base in private healthcare sector and for identifying the stop-filers and non-filers. The existing tools could not be used to cross-verify whether medical professionals and medical companies/healthcare facilities registered with other registering agencies were effectively covered in the income tax net. Absence of any system of such cross-verification points to the possibility of potential assessees remaining outside the tax net.

b. Businesses under healthcare sector like medical clinics, diagnostic centres, pathological labs and other medical supplies agencies/stores under the existing allocation of codes based on the nature of business with respect to healthcare assessees were not codified. This negatively impacts monitoring and vigilance of the healthcare sector as well as collection and sharing of relevant information on sector-specific issues.

c. There was no mechanism in existence for the identification of non-filers through NMS in Delhi, Kerala, Rajasthan, Tamil Nadu states. The NMS module also did not have any provision for generating reports based on the nature of business.

d. Surveys, though an effective tool for strengthening tax base as well as deterrence against evasion, were not utilised at all in some states during FYs 2012-13 to 2015-16 by ITD.

e. ITD has not undertaken any impact analysis to assess the outcome of relief provided to assessees engaged in the private healthcare sector.

f. The Income Tax Act does not prescribe any measurable parameters to assess the extent of charitable activities being undertaken by any hospital trust availing the benefit of exemptions under the Act. This gives rise to a possibility of assessees availing exemption without actually performing any charitable function. Audit noticed that hospitals in Maharashtra have availed unjustified exemptions amounting ` 249.66 crore involving revenue impact of ` 77.14 crore.

g. In Maharashtra, out of eighty seven cases falling under stand-alone hospital category, the section 80G certificates were available only in 10 per cent of cases. In the absence of section 80G certificates, it was not clear as to how the Assessing Officers cross-verified the donation receipts vis-à-vis the claims. There is no provision in the ITD module to enable validation of section 80G certificates by Assessing Officers as in done in the case of TDS certificates under TRACES.

h. The provision under section 35AD of the Act does not specify the allowability of deduction on capital investments in cases where the value of land and building were not separable, resulting in allowance of excess deduction and loss of revenue.

i. Exemptions were allowed to ineligible assessees engaged in trading/commercial activities, as well as instances of incorrect allowance of accelerated depreciation on items not classified under life-saving medical equipment, incorrect allowance of deduction under section 80IB of the IT Act on incomes from non-hospital activities and irregular allowance of deduction on provisioning rather than on actual capitalization under section 35AD of the Act.

j. The provisions relating to depreciation on machinery and plants as well as depreciation on other assets and amortisation of preliminary expenses were allowed erroneously. Provisions relating to allowances of business expenditure, tax deducted at source (TDS), minimum alternate tax (MAT) and set off of carry forward losses were not followed correctly by the ITD during assessment.

k. The Assessing officers omitted to obtain details of cases where cash receipt and payments were made in contravention to sec 269SS and 269T and also failed to initiate penalty proceedings. The computation and allowance of capital gains/losses were not carried out according to the provisions of the Act. In some cases, incomes of the assessees were not considered in accordance with the laid down provisions of the Act.

l. The “referral fees” paid to the doctors by the private hospitals, nursing homes, diagnostic centres etc. for referring patients and payments made on account of “advertisement expenses” by the medical practitioners were allowed, although such expenditure has been held as disallowable and “unethical” as per CBDT’s directives and laws of regulatory bodies.

8. In the process of examination of the subject, the Sub-Committee-III of PAC on Direct and Indirect Taxes , which was allocated the subject for indepth examination , obtained Background Notes and detailed written replies from the Income Tax Department, Central Board of Direct Taxes, Department of Revenue. They also took oral evidence of the representatives of Department. Based on written and oral depositions by the Department, the Committee examined the subject in detail and reached certain conclusions as enumerated in the succeeding paragraphs.

II. Mechanism available with ITD for widening of tax base

As per Action Plan for the year 2016-17 of CBDT, the strategy for widening tax base inter-alia includes devising and pursuing region-specific strategies, efficient handling of information without valid Permanent Account Number (PAN) and ensuring compliance from identified non-filers. ITD uses various tools of assessment and information-based investigations for detecting tax evasion. The Non-filers Monitoring System was introduced by ITD to identify the nonfilers/stop-filers from the PAN holders who have not filed/stopped filing their returns. ITD also undertakes survey operations to collect evidence of tax evasion. The Department receives data relating to cash transactions in bank accounts, registered immovable property below the circle rate and capital market transactions in the form of Annual Information Return (AIR), which is analysed to identify cases of tax evasion. To enhance the performance of the ITD, as well as to increase the revenue of the government, ITD envisaged an integrated data mining tool that would allow them to search for tax information across different internal and external sources. The Income Tax Payer Data Management System (ITDMS) assists in generating a 360-degree profile of an entity by compiling information from all data sources such as AIR, TDS and the Central Information Branch (CIB) that helps the government to track tax payments of individuals. ITDMS is used for analysing data gathered from AIRs, PAN database, ITD applications etc. to unearth illegal transactions. ITDMS is a data mining tool used by ITD for detection of potential cases of tax evasion. This tool has been implemented in all the offices of DGIT (Investigation) in ITD. ITD has also initiated Project Insight for data mining, collection, collation and processing of information on high value transactions for effective risk management with a view to widening and deepening the tax base. Despite the availability of the above systems and

versatile tools for analyzing data collected from external sources for widening of tax base, audit noticed that these have not been effectively utilized/implemented for strengthening the tax base in private healthcare sector

III. Non-filers Monitoring System (NMS) and action taken on NMS data

The Non-filers Monitoring System (NMS) was implemented by ITD to prioritize action on non-filers with potential tax liabilities. This project was initiated in February 2013 to identify PAN holders who have not filed their returns based on specific information available in its databases viz. the Annual Information Return (AIR), Central Information Branch (CIB) or TDS/TCS returns. In healthcare sector, the income (payment) is received largely in form of cash and without any deduction of TDS. Such cash receipts or payments are not being captured by any third party in AIR. Thus NMS is not able to identify/ track the high value cash transactions occurring in the private healthcare sector. CBDT has notified standard operating procedure for processing and monitoring cases of 'Non-filers of IT Returns' identified by the Directorate of Systems under the NMS cycles after which notices under section 142(1)/148 of the Income Tax Act were to be issued in appropriate cases. In order to ascertain compliance to instructions issued by CBDT, details of the action taken in the Commissionerates were examined by Audit in respect of non-filers identified by the ITD itself. The detailed lists of non-filers along with action taken thereof could be furnished in respect of West Bengal, Assam and Gujarat only, where out of 18,333 cases, ITD had closed 3,627 cases and the remaining 14,706 cases were "under verification/action pending" or were yet to be closed. Audit found that no such process of identification of on non-filers through NMS existed in Delhi, Kerala, Rajasthan, Tamil Nadu states. In West Bengal, out of 808 cases, in case of 668 non-filers, the AOs were yet to initiate proceedings under section 142(1) read with section 148 in Assessment Information System (AST) of ITD. For such cases, verification or any further action was pending even after the expiry of periods ranging from one year to two years from the identification of the assessees. In the remaining 140 cases, it could not be ascertained whether the assessees were engaged in business/profession of private healthcare sector. It was seen that by Audit that the NMS module also did not have any provision for generating reports based on

the nature of business (Code-wise). The codewise information in respect of healthcare sector hence could not be furnished by ITD.

11. When asked about the efforts made to widen the tax net, the ITD replied that

"The Department has devised multipronged strategy to bring potential assessees within the tax net. Widening the tax base is one of the major focus areas for ITD. The ITD has already implemented Non-filers Monitoring System (NMS) to prioritize action on non-filers with potential tax liability. This project was initiated in February 2013 to identify PAN holders who have not filed their returns based on specific information available in its databases viz. the Specified Financial Transactions (SFT), Central Information Branch (CIB) or TDS/TCS returns. Till date 6 NMS cycles have been implemented identifying 2.16 crores non-filers having potential tax liability. CBDT has recently assigned target for new return filers for A.Y.2017-18 at 1.25 crores."

"The NMS identifies non-filers who are likely to have potential tax liability. Once returns are filed by such non-filers, returns pertaining to health sector can be segregated on the basis of 4 business codes assigned to this sector. However, on the suggestion of the Hon'ble PAC, a letter has been written to Ministry of Health to make it mandatory for the registering entities to quote their PAN in the registration form itself so that this data can be used/matched with the data of return filers, thereby immediately flagging non-filers from the health sector. This will improve monitoring of this sector."

12. During audit, efforts were made to assess the efficacy of the existing systems and mechanisms available and operating within the Income Tax Department (ITD) for bringing Private Hospitals, Nursing Homes, Medical Professionals, Diagnostic Centres, Pathological labs and other Medical supplies agencies/stores in the medical service sector in the income tax net. Audit collected information through survey questionnaire on likely assessees in respect of 26 states from different third party sources viz. various registering bodies, government agencies, besides official websites etc. Data were collected through survey questionnaires from the respective Controlling Officers of the above agencies to ascertain whether the healthcare facilities/ professionals empanelled with them were covered by the income tax net. The data of probable assessees (approximately 3,20,733 records with respect to 26 states) so obtained from the sources were segregated according to jurisdictions and issued to the respective Pr.CsIT/CsIT of

ITD23 (May 2016 to December 2016) for verifying the income tax registration status of such assessees and to identify the nonfilers/stop-filers among them, if any. However, any attempt to identify such status through cross verification of such data with the income tax assessee database records proved by and large unsuccessful

13. On being asked about the inadequacy of the existing mechanisms in ITD for strengthening and widening of tax base for identification of probable assessees engaged in business/profession in the private healthcare sector, the ITD submitted that

"*The current system in the Department did not allow name-based search without PAN and expressed difficulty to manually search and identify assessees under respective jurisdictions. "*

"In the present Finance Bill we have introduced a new clause that if any non-individual entity is having any interaction, any transaction of more than ` 2.5 lakh, they will have to obtain PAN compulsorily meaning thereby that every trust or every firm or small entities also will have to have PAN, if their transactions are more than ` 2.5 lakh including the beneficiaries and the settler of the trust. That is a very big clause which we have brought in this Finance Bill. With this, at least the health sector and other entities will also come under the tax net as far as this issue is concerned."

"Population of PAN by name matching is a very challenging and time-consuming activity as address mentioned during registration may be different than the address available in the PAN database. Furt her, the registration of the medical clinics, pathological labs, medical supplies stores may be taken in the name of proprietary concern whereas the PAN may be in the name of individual.
Under Project Insight an advanced analytical solution is being rolled out wherein it will be possible to select matching PAN by applying various PAN imputation rules. A letter has been written to Ministry of Health to make it mandatory to registering entities to quote their PAN in the registration form itself so that external data can be used/matched with the Income-tax data.

The final implementation of the Project Insight will be duly informed."

14. When asked about the efforts being made to make the quoting of PAN mandatory, the ITD replied that

"Letter was sent to the Secretary, Health Ministry. It was informed by Health Ministry that only CGHS is under their control for which necessary directions have been issued to all offices. Subsequently, letters under the signature of the Secretary (Finance) were also sent to the Chief Secretaries of 29 States and 7 Union Territories. Responses from 4 States and 1 UT have been received."

15. The Chairman, CBDT during the course of evidence submitted that

"Sir, we have got a full system called Non-Filers Management System. We do not have a system that we go after a hospital or a provision shop. We have got our parameters and we get the data from different specified authorities who are sending us the data. There are many entities like banks, mutual funds etc. Now, a new section has been introduced that if anybody is investing more than ` 2 lakh, we get that information also. Then, we match it and then we find out as to who are the non-tax payers. We issue them notices saying that according to our data, you should have filed the return, but you have not filed the return. In six cycles, we have got something around two crore assesses. We have issued two crore new notices to them as we found new assesses. You will find a very systematic increase in the number of returns. I think, three years before, we had only 3.7 crore assesses and by this March end, we are going to have 6 crore assesses. So it is the whole system. It is not that one particular trade we are going to catch. We are moving ahead from 3.7 crore assesses to 6 crore assesses by the end of this month. Already more than 5 crore returns have been received So, there are systems existing. We should not see very minutely that hospital has not been covered or a particular trade has not been covered. This is the whole system. If a person is a doctor or a compounder, if he has purchased a property worth more than ` 30 lakh, we will get a report from the system, we will find out whether he has filed the return or not. If he has not filed the return, we will issue the notice. We are doing surveys also and we are doing searches also. It is not that we are leaving the doctors. Recently, in Uttar Pradesh we have done search on a doctor's house where we found ` 4 crore in cash. In another case, in Mumbai, a pharmaceutical company paid freebies to the doctors and we covered doctors. So, we have a system of finding out such cases. We cannot enter into everybody's house."

IV. Allocation of specific jurisdiction for assessment and codes to assessees related to healthcare sector

Allocation of specific jurisdiction and proper codification of different businesses in the healthcare sector are essential for proper monitoring, collection and sharing of relevant information as also for the expert handling of sector-specific issues in the course of assessment. Specified jurisdiction/codification based on the nature of business/income for a growing sector like health is also essential for the Department to carry out quality assessment, better monitoring and improved vigilance. the Department has codified the healthcare sector assessees under three categories, viz. (a) '604' covering 'Medical Professionals', (b) '605' covering 'Nursing Homes' and (c) '606' covering 'Specialty Hospitals'. Thus, businesses under health sector like Medical Clinics, Diagnostic Centres, Pathological labs and other Medical supplies agencies/stores are not codified. Further, the jurisdictional CIT (COs) in states could not even furnish the data pertaining to these three existing codes, stating that their offices had no facility to generate the requested report. Audit noticed that the corporate and non-corporate assessees engaged in business/ profession of Private Hospitals, Nursing Homes etc. were distributed geographically/alphabetically, independent of the nature of business, for assessment purpose amongst the Assessing Officers in Gujarat, Maharashtra, Rajasthan, Tamil Nadu and West Bengal states. Only the assessments of (i)'noncorporate assessees' engaged in the Medical Profession/stores in Pune, Mumbai (Maharashtra), Kolkata (West Bengal) and Delhi and (ii) 'corporate assessees' engaged in healthcare business in Bengaluru, were being done in specified jurisdictions.

17. When asked about the absence of sector specific information in respect of non/ stop filers, the ITD replied that

"Non-filer monitoring system (NMS) of ITD identifies the non-filers based on significant financial transactions reported to the ITD by the reporting entities. The NMS cycle is run on the data submitted to the Department by various information submitting entities like SFT, CIB, TDS/TCS return. It is not possible to generate sector wise details of non-filers. However, such details can be generated for stop filers on the basis of business codes quoted by the tax payers while filing their income tax returns. The ITD has specific codes for following sectors relating to health care business:

(i) Drugs and Pharmaceuticals- 0105
(ii) Medical Professionals – 0604
(iii) Nursing Homes – 0605
(iv) Speciality Hospitals - 0606

During the course of Oral Evidence, the Chairman, CBDT has assured the Hon'ble PAC that business code will be assigned to standalone Medical Clinics, Diagnostics Centres, and Pathological Labs from the next financial year.

The new codes for Medical Clinics, Diagnostic Centres, Pathological labs and Medical Supplier Agencies/Stores will be operational from the next financial year. For these, suitable changes in the Income Tax return form will also be made.With the implementation of new four codes, the health sector will be allocated 8 codes (including 4 existing codes). This will ensure that maximum number of persons associated with health sectors are covered within one of these 8 codes. As regards NMS, it will be able to capture ''stop filers'' from this sector on the basis of ''codes'' mentioned in the last return filed

The formal mechanism of sharing information between ITD and State Registration Authorities can only be made possible through legislation. However, information can always be shared by such authorities with the ITD. The Department also, as and when required, seeks information from such authorities by invoking relevant provisions in the Act."

18. Audit noticed that there was a mismatch in the number of corporate taxpayers registered with the ITD as compared to the number of active companies registered with the ROC, even though all of them were required to file tax returns mandatorily, pointing to the possibility of existence of non-filers, who could otherwise have been detected in case ITD had a system of checking the PAN status with the external databases of other Government agencies. Thus the ITD could not effectively utilize the existing tools for identifying potential tax payers or non-filers/ stop-filers from the databases of other registering bodies. Audit, attempted to ascertain through a questionnaire based survey whether the private healthcare facilities and AMAs empanelled with PSUs were within the income tax net. ITD could not furnish any information on the existence of these units

in their tax net in the absence of PAN details. Here also, the existing tools could not be utilized effectively to widen the tax base as per the existing strategy of the ITD.

19. On the issue of mismatch in the number of corporate taxpayers registered with the ITD as compared to the number of active companies registered with the ROC

"ITD database capture the information on the basis of high value transactions which is a source, based on the information sent by the external reporting agencies viz. Banks, Registrars of immovable properties, credit card companies etc. These information are utilised by the Department and are cross verified with the data of the existing tax payers and also for identifying potential tax payers."

V. Selection criteria for scrutiny

The Intelligence and Criminal Investigation(I&CI) wing/Investigation wing of the Department collects, collates and disseminates information under section 285BA40 of the Income Tax Act, 1961 (Annual Information Return-AIR) as well as other information under the Compulsory Central Information Branch(CIB) codes. Audit sought information to ascertain the efforts made by them for strengthening the tax base in healthcare sector. ITD informed that no information was collected in respect of private hospitals, nursing homes etc. during FY 2012-13 to 2015-16, in any of the states except in Punjab where only 5 cases of assessees engaged in healthcare sector were noticed and brought into the tax net by the Investigation wing. ITD uses Computer Aided Scrutiny Selection (CASS) for selection of cases for scrutiny in a centralized manner, based on the risk analysis and 360-degree data profiling of tax payers. Prior to the introduction of CASS in November 2004 and even till the AY 2012-13, trust hospitals having annual receipts of more than ` 5 crore were required to be compulsorily selected for scrutiny assessments. After the introduction of online filing of ITR 7 (Returns for Trusts and Charitable Institutions) with effect from AY 2013-14, selection of such cases is now being done through CASS. However, the Assessing Officer can still exercise discretion for manual selection under specified circumstances. In CIT (Exemption), Pune case records, the selection criteria for CASS were indicated in general terms like “Large receipts reported by trust for charitable purposes”, “Large amount spent on charity”, “Large cash deposits” etc. Audit noticed that some assessees having significant gross

receipts (e.g. Mahatma Gandhi Mission, Aurangabad, having a turnover of ` 1,635 crore (AY 2013-14), Terna Public Trust (Terna Medical College and Research Centre's Sahyadri Hospital) having gross receipts of ` 89 crore (FY 2013-14)), were not selected for scrutiny during AY 2012-13. Neither did the Assessing Officer utilise his powers of manual selection despite the turnover of the assessees being high and far above the earlier prescribed threshold. In PCIT-Siliguri, West Bengal, in case of Dr. Chhang's Super Specialty Hospital Private Limited, although the assessee had earned high incomes during the FYs 2009-10 to 2012-13, it was not selected for scrutiny during AY 2010-11, though selected for the subsequent years (AYs 2011-12, 2012-13 and 2013-14). Similarly, in PCIT-Exemption, Kolkata, in case of Kothari Welfare Institute, the assessee despite having very high income during FY 2010-11, was not selected for scrutiny during the subsequent year AY 2011-12, when the income had dropped significantly but still remained high.

21. On the query regarding non selection of cases of very high income during scrutiny, the ITD submitted

"There are already several systems in the Department to monitor the progress in all the sectors filing ITR with the Income tax Department like review, inspection, watching financial result of the companies/print media. "

"Further, there is already a system through which the Banks report the high value cash transactions to the ITD through the Specified Financial Transactions (SFT). In addition to this the Banks also send information of high value cash/non-cash transaction through Suspicious Transaction Reports (STR) to the Financial Intelligence Units (FIU) under the Finance Ministry, which are passed on to the ITD. These informations are duly verified by the Income-tax Department and appropriate proceeding/action is initiated in cases of suspicious/unexplained cash transactions. In the high risk cases, on the basis of potential intelligence information Searches u/s 132 and Surveys u/s 133A are carried out. **"**

"The department believes mainly in non-intrusive methods for tax compliance. Only in exceptional cases based on actionable intelligence & specific information,

surveys & searches are conducted. Whenever such information has been received in respect of health care sectors, searches/surveys have been carried out on them. "

VI. Tax incentives available for private healthcare facilities under Income Tax Act

Tax incentives encourage the growth of private sector investment and serve as important policy tools for achieving economic and social objectives. The assessees engaged in the business of running hospitals, nursing homes, medical research institutes etc. can avail of reliefs and incentives under sections 10 (23C), 11, 35AD and 80IB (11B/11C) of the Income Tax Act. As per data furnished by the Department of Revenue, the amount of revenue foregone on account of weighted deduction in case of hospitals under section 35AD and on building and operating private hospitals in rural areas under section 80IB(11B) amounted to ` 5,418.91 crore and ` 7.04 crore respectively The ITD has not undertaken sector-specific analysis of revenue foregone under section 35AD to assess the impact of the incentives provided to different sectors including healthcare. The revenue foregone under section 80IB (11B/11C) is not very significant indicating that the incentive has been availed by very few assessees thereby defeating the purpose of introduction of this legislation. Audit sought the details of the number of assessees availing deductions under sections 35AD and 80IB (11B/11C), but the same could not be furnished by the Department. Audit noticed that despite the considerable volumes of revenue foregone, no proper monitoring mechanism was in place. There were also discrepancies in the application of the provisions of income tax related to profit-linked/ investment-linked tax incentives specific to the healthcare sector. The specific tax incentives provided by Government have a definite revenue impact and can be viewed as an indirect subsidy to tax payers, also referred to as 'tax expenditures'. The revenue impact of tax incentives was assessed by way of 'Revenue Foregone', now termed as 'Revenue Impact of Tax Incentives under the Central Tax System'. The quantum of revenue foregone is the chief parameter to assess the impact of tax deduction which is treated as a measure of tax expenditure incurred for the promotion of organised activity (viz. creation of infrastructural facilities, accelerated depreciation as an incentive for capital investment) in the targeted sector.

23. On being asked about the impact analysis, the CBDT stated that

"*Direct tax concessions were provided by the Government as part of overall fiscal incentives to realise the macroeconomic objectives and to achieve policy goals of development and growth in various sectors of economy. No such quantitative exercise had been undertaken by the Department to assess the outcome of reliefs provided to private hospitals, medical colleges/research institutes, diagnostic centres etc. Further, CBDT had not undertaken any evaluation study/ specific analysis or research to assess the impact of tax incentives. However, feedback on the implementation and effectiveness of the existing provisions of the Income Tax Act were received from field authorities, tax payers and various stakeholders from time to time. It further informed that the feedback formed the basis for any intervention if required from the CBDT by way of legislative amendments or through notifications and circulars. "*

24. The ITD further replied that

"*It is further stated that administrative ministries were requested to provide an impact assessment study in respect of tax concessions provided for the sectors under their jurisdiction and provide a detailed cost-benefit analysis on, inter alia, the following aspects:*

I. additional investment made and resultant increase in manufacturing/economic activity in case of both greenfield and brownfield projects;
II. additional employment generated;
III. additional exports made;
IV. improved affordability and resultant increase in demand of the concerned products made in the country.

In this connection, it may be mentioned here that the Ministry of Shipping has intimated that the presumptive taxation scheme called "Tonnage Tax" for calculating shipping related profits has led to increase in the fleet of ships by 100% and a growth of 60% in the gross tonnage between 2004 and 2016. Moreover, there have been several indirect benefits to the economy through generation of additional employment and increase in foreign direct investment."

VII. Systemic Issues

The private healthcare sector comprises organizations working both on commercial basis for profit and on not-for-profit basis. The 'not-for-profit' healthcare sector includes Non-Government Organisations (NGOs), charitable trusts etc. A large number of hospitals and medical institutions enjoy the benefit of exemption either under section 11 or under section 10(23C). However many institutions which are not running for charitable purpose escape taxation by virtue of the fact that they are registered as Trusts and claim exemption under Income Tax Act. Income of a charitable trust is exempt according to the provisions of sections 11, 12 and 13. The trust should be one established in accordance with law and its objects should fall within the definition of the term "Charitable purpose". Section 2(15) of the Income Tax Act defines charitable trust as to include relief of the poor, education, medical relief, preservation of environment and preservation of monuments or places or objects of artistic or historic interest and the advancement of any other object of general public utility. It was seen that the appellate Income Tax authorities had allowed exemptions to trusts as there was no performance-specific bar in the Income Tax Act to deny such exemption. In Maharashtra, charitable trusts are governed by the Bombay Public Trust Act, 1950 (BPT Act) and while granting the registration under section 12AA of the Income Tax Act, the ITD requires the trusts to produce proof of registration under the BPT Act. Under section 41AA of the BPT Act, the Bombay High Court in 2004 introduced a scheme of measurable charity under which all charitable trust hospitals registered under the BPT Act, 1950, and having annual expenditure of more than ` 5 lakh were required to fulfil following conditions: a) Reserve 10 per cent of the total number of operational beds for indigent patients and provide medical treatment to these indigent patients free of cost. b) Reserve 10 per cent of the beds for the weaker section patients for treatment at concessional rate. c) Earmark 2 per cent of total patient billing as Indigent Patient Fund (IPF) to be utilised on the treatment of indigent patients. It was further required that the Trust shall not ask for any deposit in case of admission of indigent patients. Audit analysed a sample of ten trust hospitals situated in Maharashtra on the basis of data supplied by the Charity Commissioner, Mumbai. The information was also obtained in

respect of nine other cases through other sources and also through field audits. Audit examination revealed that the conditions specified in the BPT Act were not fulfilled in some cases, though exemptions were allowed to such trusts.

26. The Income Tax Act, however, does not identify non-compliance with the BPT Act as a ground to deny exemption and the Income Tax Act does 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 are 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 assessees changes under state laws, it could not be ascertained whether ITD had any mechanism to deal with the exemptions already allowed in such cases.

27. The C & AG of India in its report number 4 of the year 2016 for the Government of Maharashtra placed before Maharashtra State Assembly pointed out several irregularities in respect of the charitable activities carried out by these hospitals in Maharashtra vide chapter number III. It was stated in the report that hospitals avail Government benefits without performing activities as specified under the Bombay Public Trust Act, 1950. These hospitals have availed non-justified exemption amounting ` 249.66 crore involving revenue impact of ` 77.14 crore.

28. On being asked about absence of measurable parameters the ITD replied

"The ITD grants exemptions after thoroughly verifying the aims &objectives of any charitable trust. Section 2(15) of the Act defines "charitable purpose". The exemptions are allowed to the entities once they fulfil the conditions laid down under the Act. As such, there is no procedure in place to consult the State Registration Authority. However, if the State Govt. finds that a certain Charitable Institution is not fulfilling the criteria for charity, it can cancel their registration and inform the ITD for further necessary action. In this regard please refer to answer to question no. 26 above. Breach of BPT Act 1950, cannot be a ground for not allowing exemption to the claiming entities once they have been found to have fulfilled all the necessary conditions laid down under the Act."

29. The ITD further stated that

"*Prescribing a certain percentage of their services to be dedicated to the poor will not serve any purpose since we have to depend upon self-certification and there cannot be any mechanism to verify the same.*

Similarly, regular inspections will lead to 'Inspector Raj' and open up opportunities for rent seeking behavior. Further, there are sufficient in-built checks and balances to ensure that the income is applied for the objects of the trusts under the Income-tax Act, 1961. In view of the above, the suggestions are not acceptable."

30. However, the Secretary, DoR in his submission during evidence stated that

"Unless the country is going to restrict the definition of 'charitable activity' by putting strict conditionality or we say, at least, that if 50 per cent of the patients being served by charitable institutions have to be below the poverty line. Are we going to put such a conditionality in the definition, then, yes, we will be greatly benefited. All this misuse will go away.."

VIII. Exemption allowed to trust hospitals engaged in non-charitable activities

A charitable institution can also be engaged in non-charitable activities. As per Section 11(4A), deductions under section 11 shall not be admissible in relation to any income, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or the institution and separate books of accounts are maintained by such trust or institution in respect of such business. Section 10(23C)(via) of the Act provides that exemption to the trust is available if it exists "solely" for philanthropic purpose and not for purposes of profit. Further, section 13 specifies situations in which the exemptions can be denied to trusts. Audit noticed two cases in West Bengal and Maharashtra states where the Department allowed exemptions to trust hospitals where the activities indicated the fact of their being run for profit/ non charitable purposes.

32. When asked about the grant of exemptions to the trusts being run on profitable/ charitable purposes, the ITD replied

"The charitable nature of trust is verified by concerned CIT(Exemptions) before grant of registration u/s 12AA. The CIT(Exemptions) satisfies himself about object of the trust or institution and the genuineness of its activities by making necessary enquiry/verification as required u/s 12AA(b) before grant of registration."

IX. Overlapping nature of section 10(23C) and section 11 of Income Tax Act

As per section 10(23C), the income of certain funds, Universities, educational institutions, hospitals, etc., that deal with philanthropy works are not to be included in the total income. Section 11 of the Act governs the grant of exemption to income of a charitable trust or institution. Thus Section 10(23C) and section 11 of the Income Tax Act, 1961 are overlapping in nature. Though, the contours of both the sections are more or less the same, absence of clear definitions and boundaries, besides existence of overlapping provisions covering the same purposes (philanthropy or charity) in both sections leave scope for confusion and varying interpretations, allowing the assesses to take unfair advantage of excluding the income or claiming exemption utilising one of these two provisions that suits them. The statute renders itself amenable to misuse by permitting an assessee to claim similar benefits under both the sections. Audit noticed instances, as illustrated below, where Assessing Officers allowed exemption under one section while disallowing exemption on the grounds of existence of profit motive under another. In CIT (Exemption) Mumbai, scrutiny-assessments of Breach Candy Hospital Trust for the AY 2012-13 and National Health and Education Society for AY 2013- 14 were completed in March 2015 and March 2016 respectively. In the case of Breach Candy Hospital, it was observed that the assessee had claimed and was allowed exemption under both the sections i.e. section 11 and 10(23C). In the case of National Health and Education Society, the Assessing officer did not allow exemption under section 10(23C) stating the reason that the hospital trust did not exist “solely” for philanthropic purposes and was engaged in business for making profit, but was alternatively allowed exemption under section 11 as per the claim made by the assessee.

34. When asked about the overlapping nature of two sections, the ITD submitted that

"The Department makes necessary enquiry/verification before grant of exemption under relevant sections i.e. Section 11, 10(23C) etc., as per the conditions prescribed in the Income Tax Act. Though the provisions of the two sections are overlapping so far as purposes (philanthropy or charity) are concerned, conditions prescribed in the Act are to be fulfilled for these two sections separately which are to be examined by the Assessing officer/CIT at the time of grant of exemption/approval. Hence, there is no possibility of misuse by permitting an assessee to claim similar benefits under both the sections."

"Further, the Board has already issued a circular no. 14 of 2015 dated 17.08.2015, which explains that Section 10(23C)(vi) does not prescribe any stipulation which makes registration u/s 12AA a mandatory pre or post condition. In fact, provisions of section 11 and 10(23C) are two parallel regimes and operate independently in their respective realms although some of the compliance criteria may be common to both. Hence obtaining prior registration before granting approval u/s 10(23C) cannot be insisted upon. However, in case of a trust or an institution having obtained registration u/s 12AA as well as approval u/s 10(23C)(vi), if registration is withdrawn at some point of time due to certain adverse findings, the withdrawal of approval u/s 10(23C)(vi) shall not be automatic but will depend upon whether these adverse findings also impact the conditions necessary to keep approval u/s 10(23C)(vi) alive."

"Another issue was raised regarding 1023C and Section 11. This was also debated during this year's budget meetings. But as we have already set up a task force for rewriting the Act, this is under active consideration of that particular Committee, and we have referred the matter to that Committee ."

35. The ITD further stated that

"*The powers in respect of approval under section 10 (23C) and registration under section 12A of the Income Tax Act were earlier vested with different authorities. However, with effect from FY 2014-15, these powers have been combined and vested*

with a single authority, viz. CIT (Exemption) who would be deciding the eligibility for exemption under both the sections to reduce the scope of any assessee availing exemptions under the alternate section if denied exemption under one section."

X. Maintenance of databases of charitable trusts/ institutions

The ITD maintains a database on exempt entities on its official website containing details of entities viz. name, address, state, city, jurisdiction, section under which registered, date of order etc. Structuring of the database of tax exempt entities maintained by the ITD in more detailed manner and establishing their linkage with the ITRs of the trusts would facilitate streamlining of assessment and detection of tax evasion. ITD may consider adopting the global best practices in respect of maintaining databases on exempt entities.

37. On the issue of database relating to health sector, the ITD stated that

"The ITD does not select specific sector based information. The tools available with the Department cover various SFT/CIB codes through which information related to all sectors is collectively captured. "

"Further, the ITD stated that it has not made any estimation of the probable number of medical clinics in the county. "

"As regards revenue foregone by way of deductions u/s 35AD/80IB(11B), this exercise is undertaken every year by the Department."

"As per the figures available on website Indiabudget.gov.in, revenue impact for deduction u/s 35AD has increased to ` 1,890.84 cr. during FY 2015-16 as compared to ` 1,790.57 cr. in FY 2014-15. These figures are incorporated in the budget after the feedback given by the Income Tax Department."

XI. Donations not being watched properly

Deduction under section 80G of the Income Tax Act is a taxation tool to help donee trusts to receive funds to further their charitable objectives. It also helps donors to claim the amounts of donation as deductions, resulting in lowering of their tax liability. One of the conditions for registration for availing tax benefits under section 80G stipulated that receipts issued to the donor should bear the 'Reference Number' and 'Date of the order'. Audit noticed that out of eighty seven cases falling under stand-alone hospital category, the section 80G certificates were available in 10 per cent of cases. In the remaining cases, only a list of donations received was available. In cases having representative receipts, audit noticed instances, where nature of donation or mode of receipts was not on record. In the absence of section 80G certificates, it was not clear as to how the Assessing Officers cross-verified the donation receipts vis-à-vis the claims. The 80G donation aspect needs more attention from the Department as it entails revenue foregone on account of exemption to recipients and also deduction to donors. In the absence of mechanism for cross verification of claims made by donors and donees, the chances of ineligible assessees getting deduction cannot ruled out. There is no provision in the ITD module to enable validation of section 80G certificates by Assessing Officers on similar lines as in done in the case of TDS certificates under TRACES.

39. On being asked about the feasibility of issuing certificates under Section 80G, the ITD replied that

"It may further be mentioned here that the automated generation of 80G certificates on similar lines as under TRACES would not be feasible to implement and would be extremely complicated for small donors and small exempt organizations who would have to submit a statement to the Department and then obtain a certificate to be given to the donor. However, there is provision in the Income tax return for providing PAN/TAN of the donee so as to enable to check the correctness of the claim while processing the case by the Department. The limit of cash donation has been reduced from ` 10,000/- to ` 2,000/- w.e.f. 01.04.2018, thereby minimizing scope for claim of bogus donations."

XII. Lacuna in section 35AD of Income Tax Act

As per section 35AD of the Income Tax Act, expenditure incurred on the acquisition of any land or goodwill or financial instrument is not eligible for any deduction under section 35AD. Audit noticed that due to ambiguity in the Act, the AOs had allowed deduction under section 35AD on the value of land in cases where it is included in the total cost of the building as where the two values are not separable has not been clarified.

41. The ITD, in response to the query relating to lacuna in Sec 35AD, replied

"The Department has taken a considered view that the cost of land cannot be reduced from the cost of building (which includes cost of land as well) while making a claim u/s 35AD. However, the department is considering to issue clarification in cases where the construction has been done only on a very small portion of the land indicating thereby the intention of the taxpayer to take undue advantage of the said section."

XIII. Incorrect allowance of exemption for trading/commercial activities

In Maharashtra, audit noticed instances where trust hospitals were operating pharmacy stores in the hospital premises and were generating huge amounts of surplus on the sale of medicines. The margins of profits earned on the sale of medicines constituted major portion of their total surplus generated during a year. The Department, in the case of Jaslok Hospital and Hinduja Hospital (AY 2013-14) had taxed pharmacy income as business income. However, in seven such cases (listed in Appendix-1), the Department had not taxed the huge surplus generated from pharmacy business, despite the issues being identical in nature. This resulted in underassessment of income of ` 72.65 crore involving tax effect of ` 21.86 crore.

XIV Other irregularities in allowance of exemption to hospital trusts

Sections 11, 12 and 13 of the Income Tax Act contain provisions governing the grant or withdrawal of registration, conditions for allowability of exemption to trusts or institutions in respect of income derived from property held under trust and voluntary contributions. Disposal of trust properties by trustees through unethical means is one of the concerns for the legislation governing the trusts. Income Tax Act also addresses

such concerns under section 13(2)(c). As per the provisions, if any part of income or property held under the trust is applied directly or indirectly for the benefit of any person referred to in sub-section 3 thereof, then the exemption benefit would not be available to the trust. Audit noticed instances of incorrect allowance of exemption on income of trust in contravention of conditions stipulated in the Act. In Maharashtra, Rajasthan and Uttar Pradesh states, audit noticed 17 cases involving tax effect of ` 32.87 crore ,where the AOs had irregularly allowed exemption under section 11 of the Act.

XV. Irregular allowance of depreciation/expenses resulting in double deduction

As per the judgement of the Hon'ble Supreme Court of India in the case of Escorts Ltd. vs Union of India where a full deduction has been allowed in relation to a capital asset (under section 11 of the Act), no depreciation is to be allowed under section 32 on the same asset. It was further held that in the absence of clear statutory indication to the contrary, the statute should not be read so as to permit the assessee two simultaneous deductions. The Kerala High Court (2012) also supported the above view. However, it was additionally held that if the assessee had claimed depreciation in such cases, then in order to reflect the true income available for application for charitable purposes, it should write back the depreciation amount in the account to form part of its income. Otherwise such notional claim becomes unaccounted cash surplus for the assessee outside its books of accounts . In Maharashtra, audit noticed six cases where the Department had allowed depreciation along with capital expenditure on assets as application of income resulting in double deduction of ` 44.67 crore involving potential tax effect of ` 22.19 crore. In one case, the Department had disallowed depreciation of ` 27.97 crore in the assessment order but did not add back the same to taxable income while completing the assessment.

XVI Irregular allowance of accelerated depreciation on life saving medical equipment

As per section 32 of the Income Tax Act, in respect of depreciation on 'machinery and plant' (life-saving medical equipment), the deductions shall be allowed at the rate of 40 per cent of the written down value of the relevant assets. Audit noticed 33 cases

involving tax effect of ` 3.91 crore in 15 states where the AO had allowed irregular depreciation in contravention of the laid down provisions.

XVII Irregular allowance of deduction under section 35AD

As per Section 35AD (1)(a) & (b), an assessee shall be allowed deduction at the specified rate, in respect of any expenditure of capital nature incurred for the purposes of any specified business during the previous year in which he commences operations of his specified business, if (a) expenditure is incurred prior to the commencement of its operations; and (b) amount is capitalized in the books of account of the assessee on the date of commencement of its operations. However, as per section 35AD(5)(ab) of the IT Act, deduction is allowable only if the assessee commences operation on or after 01 April 2010. Also sub section (2) of Section 35AD inter-alia lays down different conditions when deduction is not allowable viz. (i) if the business is set up by splitting up or the reconstruction of a business already in existence; (ii) if it is set up by transfer to the specified business of machinery or plant previously used for any purpose etc. Audit noticed five cases involving tax effect of ` 4.60 crore in six states where the AO had allowed irregular deduction under section 35AD in contravention of such provisions.

XVIII Irregular allowance of deduction under section 80IB

As per the Section 80IB(11C) of the IT Act, profits from the business of operating and maintaining a hospital shall be allowed deduction of hundred per cent of profits and gains for a period of five consecutive assessment years, beginning with the initial assessment year, if (i) a hospital was constructed and started functioning at any time during the period beginning on 01 April 2008 and ending on 31 March 2013; (ii) the hospital has at least one hundred beds for patients; (iii) construction of the hospital was in accordance with the regulations of the local authority; and (iv) assessee furnishes, along with the return of income, a report of audit in such form as may be prescribed. Audit noticed seven cases involving tax effect of ` 5.30 crore in four states where the

AOs had allowed irregular deductions in contravention of the provisions under section 80IB.

On being asked about the grant of irregular exemptions, the ITD stated that

"Exemption/deduction is allowed to the claiming entities only when they fulfil all the conditions laid out under the Act. The trust/institution is registered under the Act only when the Commissioner of Income Tax satisfies himself about the objects of the trust/institution and the genuineness of its activities. The assessing officers are expected to apply the law correctly. However, they being quasi-judicial authorities sometimes they interpret the law as per their understanding inspite of the best efforts by the Department to impart them with adequate training programs / instructions/ circulars / latest relevant case laws on the issue. It may, however, be mentioned here that after creation of the charge of CCIT (Exemption), chances of such mistakes on account of incorrect application of law are likely to be minimal. "

XIX Irregular allowance of unlawful expenditure

As per CBDT directive dated August 2012, claim for any expense incurred in providing freebies to medical practitioners in violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 shall be inadmissible under section 37(1) of the Income Tax Act, being an expense prohibited by the law. It has been judicially held that any commission paid to private doctors for referring patients was prohibited by law and hence not to be allowed as business expenditure. Audit noticed in 19 cases in eight states in which AO had allowed such expenditure in contravention to such provisions involving tax effect of ` 5.56 crore. Further, in nine cases in Maharashtra, audit noticed that advertisement and business promotion expenses of ` 52.21 crore were allowed by the Department although advertising has been deemed as “unethical” practice as per Para 6139 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulation, 2002 and Para 6(1) 140 of Homoeopathic Practitioners - (Professional Conduct, Etiquette & Code of Ethics) Regulations. This resulted in undercharge of tax of ` 16.93 crore in such cases.

49. The ITD on the issue of freebies submitted that

"The assessing officers have been advised not to allow such unlawful expenditure in future. Circular no. 5/2012 has already been issued by the CBDT in this regard."

The Chairman, CBDT, during evidence stated that the provision in the law is such that if the expenditure is not wholly and exclusively for the purpose of business, if there is any other purpose, then Section 37 comes in.

50. The Chairman, CBDT in his submission before the Committee stated that

"*Recently, we conducted a search in Mumbai. I can narrate that. I will not mention the name. We found that something like this was being paid to the doctors. We also simultaneously searched doctors that they were not showing that particular benefits in their return of income tax. These benefits were going to them through CSR. Ultimately, the doctors also surrendered that income. But the Income Tax Department cannot go through all four lakh doctors in this country."*

51. On the issue of the overlapping sections and misuse of exemptions, the Secretary DoR stated that

"My personal view is that exemptions always lead to distortions in the system. They lead a greater incentive for doing certain things irregularly by people. So, ideally, we should have a simpler income tax law in which there is just a simple tax rate and the compliance is very simple. But when the tax laws are met with so many other social objectives of the Government, then it does become very complicated Act not only for the purpose of compliance management but also for the purpose of ensuring that in the implementation there are no gaps and ensuring that nobody cheats the Government. It becomes a very challenging thing for the administration to do that. That is why, we have got so many cases of some kind of problems in the compliance management when we try to look at all these cases. We are trying to use more of technology to ensure that the loopholes are all plugged by technology. But still beyond a point it is not possible to simply go by technology. We are also split between the objective of not having interventionist kind of manual audit and inspection vis-à-vis a need for keeping a

complete check. That also is an objective where we are split. As of now, we are restricting our audits to only one per cent of the total number of cases in Income Tax and we have to ensure that all cases of irregularities are covered in this one per cent itself. It is not possible and it is not desirable also to have a larger set of audit being done because that will create its own problems in the field. So, this is another challenge that we have. "

52. The Chairman, CBDT stated that

"We have already set up a committee to re-write the law. the Committee is supposed to submit its report by May The Committee is examining the Direct Tax Code, the earlier Code and the new suggestions."

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PART II

OBSERVATIONS/RECOMMENDATIONS

1. Indian healthcare sector, one of the fastest growing service areas has witnessed significant growth in terms of revenue and employment generation in recent years. The health sector has witnessed a robust annual growth of 15 per cent and is projected to grow from ` 684,000 crore in 2015 to ` 823,700 crore in 2018 with a Compounded Annual Growth Rate (CAGR) of 12.1 per cent. The healthcare sector in India comprises both private and public sectors. The private sector in India has a dominant presence in medical education and training, hospital infrastructure and ancillary service areas such as medical technology and diagnostics and provides nearly 80 per cent of outpatient care and about 60 per cent of inpatient care. The private health care sector comprises organizations that operate both on profit and not-for-profit basis. The "not-for-profit" organizations include healthcare service providers such as Non-Government Organizations (NGO's), charitable institutions, Trusts, etc. The assessees engaged in the business of Private Hospitals, Nursing Homes/Medical clinics, Medical Colleges/Research Institutes, Diagnostic Centres, Pathological labs, Medical supplies agencies/stores etc. are governed by all the provisions of the Income Tax Act that are generally applicable to the different class of assessees viz. Companies, Firms, Trusts, Charity firms, Association of Persons, Hindu Undivided families, Individuals etc. Further, the Income Tax Act provides specific tax incentives to hospitals viz five year tax holiday in respect of profits derived from the business of operating and maintaining hospitals located anywhere in India other than the excluded areas, besides deduction of capital expenditure incurred in connection with setting up of new hospitals, subject to certain conditions. It also allows higher rate of depreciation on medical equipment to incentivize the hospitals to upgrade their healthcare infrastructure and to provide access to patients to the latest technology. The Committee note that though there was expansion of the private healthcare expenditure by more than `35,000 crore and `39,000 crore during the two years 2012-13 and 2013-14 respectively, the number of corporate assessees in the categories viz. Medical Professionals, Nursing Homes, Speciality Hospitals had actually declined in FY 2012-13 and then increased marginally in FY 2013-14. The audit covered assessment cases relating

to Private Hospitals, Nursing Homes/Medical Clinics, Medical Colleges/Research Institutes, Diagnostic Centres, Pathological Labs, Medical Supplies Agencies/Stores etc., including those running on 'not-for-profit basis', and healthcare delivery professionals and the cases of scrutiny assessments, appeal and rectification cases completed during the period 2012-13 to 2015-16. The Committee's examination of the subject and their observations/recommendations on the issues raised relating to the Income Tax Department (ITD), CBDT, Department of Revenue brought out in the Audit Report are detailed in the succeeding paragraphs.

2. The Committee note that Income Tax Payer Data Management System (ITDMS), Non-filers Monitoring System (NMS), Project Insight have not been effectively utilized/ implemented for identifying the stop-filers and non-filers and to cross-verify whether medical professionals and medical companies/healthcare facilities registered with other registering agencies were effectively covered in the income tax net. The Committee further note that the absence of system of cross-verification points to the possibility of potential assessees remaining outside the tax net. The Committee note from the reply of the Ministry that the Income Tax Department has implemented Non-Filers Monitoring System (NMS) which identifies non-filers based on significant financial transactions reported to the ITD by Central Information Branch (CIB), Specified Financial Transactions (SFT) and TDS/ TCS returns etc. The Ministry has further submitted that it is not possible to generate sector wise details of non-filers, however, sector wise stop filers can be identified on the basis of codes quoted by the tax payers while filing their income tax returns. The Committee are of the view that since most of the Bank accounts have been seeded with Aadhar, the ITD may also make use of the Aadhar numbers to identify non-filers. Further, ITD may seek information from the registering agencies on periodical basis to ensure that the new entrants are not evading taxes. The Committee while noting that the ITD has written to all the State Governments for making quoting of PAN mandatory at the time of registration opine that furnishing registration numbers of the asseessees be made mandatory while filing of Income Tax Returns to enable cross-verification. The Committee while noting that Project Insight, an advanced analytical solution is being rolled

out wherein it will be possible to select matching PAN by applying various PAN imputation rules desire that the same may be implemented at the earliest and the Committee be apprised thereof.

3. The Committee observe that with the rise in popularity of systems of alternative medicines, the practice in these fields are flourishing. The Committee are of the view that the data available with agencies like Central Council of Indian Medicine and other registering agencies for medical professionals engaged in the practice of alternate medicines be also analysed to identify the non-filers. However, the Committee while noting that demand for alternative medicines has increased opine that tax incentives be given to only those manufacturers who comply with quality control standards.

4. The Committee observe that the fees charged by health professionals, private hospitals, nursing homes, medical clinics, medical colleges, diagnostic centres, pathological labs, medical supply stores etc. for their services are mostly received in cash, which has a potential for evasion of tax. The Committee are of the view that an estimation of the probable number of medical professionals, private hospitals, diagnostic labs, medical supply stores etc. in the country would be useful to gauge the efficacy of the measures taken by the Department to broaden the tax base in the health sector and, therefore, desire that the ITD may in coordination with the Ministry of Health and Family Welfare, Ministry of Statistics and Programme Implementation and State Governments collect authentic and accurate data and apprise the Committee thereof.

5. The Committee note that ITD has specific codes for four sectors relating to health care business i.e. Drugs and Pharmaceuticals, Medical Professionals, Nursing Homes, and, Specialty Hospitals. The Committee further note from the reply of the Ministry that the new codes, as pointed out by the Audit, for, Medical Clinics, Diagnostic Centres, Pathological labs and Medical Supplier Agencies/Stores will be operational from the next financial year. The Committee expect that this addition will ensure that maximum number of persons associated with health sector are covered within one of these 8 codes and will enable monitoring and vigilance of the healthcare sector as well as collection and

sharing of relevant information on sector-specific issues. The Committee are of the view that it may also be ensured that the entities engaged in medical education, medical research and those practicing alternative medicine are covered under the coding system to ensure comprehensive monitoring of the sector. The Committee also desire that the entities seeking exemption under the health sector may be given a sub code to analyse the revenue impact of the tax incentives.

6. The Committee note that the Income Tax Act,1961 does not prescribe any measurable parameters to assess the extent of charitable activities being undertaken by any hospital/Trust availing the benefit of exemptions under the Act which gives rise to a possibility of assessees availing exemption without actually performing any charitable function. The Committee observe that under section 41AA of the Bombay Public Trust Act, 1950 (BPT Act), the Bombay High Court in 2004 introduced a scheme of measurable charity under which all charitable Trust hospitals registered under the BPT Act, 1950, and having annual expenditure of more than ` 5 lakh were required to a) Reserve 10 per cent of the total number of operational beds for indigent patients and provide medical treatment to these indigent patients free of cost. b) Reserve 10 per cent of the beds for the weaker section patients for treatment at concessional rate. c) Earmark 2 per cent of total patient billing as Indigent Patient Fund (IPF) to be utilised on the treatment of indigent patients. It was further required that the Trust shall not ask for any deposit in case of admission of indigent patients. The Committee further note that the conditions specified in the judgement were not fulfilled in some cases, however, exemptions were allowed to such trusts as the Income Tax Act does not identify non-compliance with the BPT Act as a ground to deny exemption. The Committee observe from the reply of the ITD that prescribing a certain percentage of their services to be dedicated to the poor will not serve any purpose since ITD has to depend upon self-certification and there cannot be any mechanism to verify the same. The Committee are dismayed to note that the Trusts that are not fulfilling the criteria for charity prescribed under governing Acts of the State are able to claim exemptions under the Income Tax Act. The Committee are of the considered view that tax exemptions are the contribution of the Government

towards the charitable cause and therefore, the charitable activities being undertaken by those seeking exemption need to be measured to justify the same. The Committee, therefore, desire that the exemption to the Trusts be only allowed on production of a certificate from a competent authority, as prescribed under the governing Act, as to the fulfilling of the requirements by that Trust. The Committee while opining that self certification is a facilitation step and cannot be an excuse for not implementing a new measure exhort the ITD to fix measurable parameters, on the lines of BPT Act, for charitable activities to justify the exemptions given to the Trusts/ Hospitals and install a robust mechanism for verifying the charitable activities carried out by any Trust/ Hospital.

7. The Committee note that as per section 10(23C), the income of certain funds, Universities, educational institutions, hospitals, etc., that deal with philanthropy works are not to be included in the total income and Section 11 of the Act governs the grant of exemption to income of a charitable trust or institution. The Committee further note that Section 10(23C) and section 11 of the Income Tax Act, 1961 are overlapping in nature and cover the same purposes (philanthropy or charity) leaving scope for confusion and varying interpretations that allows the assesses to take unfair advantage of excluding the income or claiming exemption utilising one of these two provisions that suits them. The Committee observe that absence of clear definitions renders the provisions amenable to misuse. The Committee note from the reply of the ITD that though the provisions of the two sections are overlapping so far as purposes (philanthropy or charity) are concerned, conditions prescribed in the Act are to be fulfilled for these two sections separately which are to be examined by the Assessing officer/CIT at the time of grant of exemption/approval. The Committee are of the view that the Assessing officers should ensure that two sections are not misused by those trusts/ hospitals who have not applied their income for charitable purposes since it defeats the object of the law. The Committee, therefore, desire that to eliminate possibility of misuse by permitting an assessee to claim similar benefits under both the sections, specific instructions may be issued/ reiterated.

8. The Committee further note that Section 11(c) of Income Tax Act, 1961 provides that the income derived from property held under trust/hospital created for a charitable purpose which tends to promote international welfare in which India is interested to the extent such income is applied for such purposes outside India shall not be included in the total income. The Committee are of the view that a charitable purpose which tends to promote international welfare in which India is interested is a subjective phrase, open to different interpretations, which needs to be aptly verified. The Committee are, therefore, of the view that the Trust may obtain a certificate from the Ministry of External Affairs stating that the income has actually been applied for such a purpose that promotes international welfare in which India is interested for claiming such exemption. The Committee desire that the details of all beneficiaries who have been sponsored by the hospitals/ trusts for availing benefits outside India during last five years may be furnished to the Committee within three months of the presentation of the Report to the House.

9. The Committee observe that the specific tax incentives provided by Government have a definite revenue impact and can be viewed as an indirect subsidy to tax payers, also referred to as 'tax expenditures'. The revenue impact of tax incentives was assessed by way of 'Revenue Foregone', now termed as 'Revenue Impact of Tax Incentives under the Central Tax System'. The quantum of revenue foregone is the chief parameter to assess the impact of tax deduction which is treated as a measure of tax expenditure incurred for the promotion of organised activity (viz. creation of infrastructural facilities, accelerated depreciation as an incentive for capital investment) in the targeted sector. The Committee note that the ITD has not undertaken any impact analysis to assess the outcome of relief provided to assessees engaged in the private healthcare sector. The Committee note from the reply of ITD that direct tax concessions were provided by the Government as part of overall fiscal incentives to realise the macroeconomic objectives and to achieve policy goals of development and growth in various sectors of economy and no such quantitative exercise had been undertaken by the Department to assess the outcome of reliefs provided to private hospitals, medical colleges/research institutes, diagnostic centres etc.

The Committee are of the considered view that sector specific information will enable the ITD to analyse the sector specific issues and efficacy/ misuse of the sector specific provisions. The Committee are of the view that with computerization, the analysis of the information collected from various sources has become easier and therefore, desire that necessary modifications/ additions may be made in the forms to be filled by the assessees to enable sector specific analysis.

10. Further, the Committee observe that the ITD has requested administrative ministries to provide an impact assessment study in respect of tax concessions provided for the sectors under their jurisdiction and provide a detailed cost-benefit analysis on additional investment made and resultant increase in manufacturing/economic activity in case of both greenfield and brownfield projects; additional employment generated; additional exports made; improved affordability and resultant increase in demand of the concerned products made in the country. The Committee expect that the ITD will follow-up on this request with the Ministries concerned and provide a comprehensive analysis to the Committee in six months from the presentation of this Report to the House.

11. The Committee note that donation u/s 80G entails revenue foregone on account of exemption to recipients and also deduction to donors. As per Audit out of eighty seven cases falling under stand-alone hospital category, the section 80G certificates were available only in 10 per cent of cases. The Committee further note that in absence of section 80G certificates, it was not clear as to how the Assessing Officers cross-verified the donation receipts vis-à-vis the claims. Further, there is no provision in the ITD module to enable validation of section 80G certificates by Assessing Officers on similar lines as in done in the case of TDS certificates under TRACES. The Committee note from the reply of the ITD that the automated generation of 80G certificates on similar lines as under TRACES would not be feasible to implement and would be extremely complicated for small donors and small exempt organizations who would have to submit a statement to the Department and then obtain a certificate to be given to the donor. However, there is a provision in the Income tax return for providing

PAN/TAN of the donee so as to enable checking of the correctness of the claim while processing the case by the Department. The Committee are of the view that the ITD may issue specific instructions to be followed while giving and receiving donations. The list of the donors should invariably have either PAN/ Aadhar number quoted against each of them and the ITD before allowing deduction/ exemption make a test check of a prescribed percentage of donors on random basis and the donees to ensure correctness of the claims.

12. The Committee note that the referral fees paid to the doctors by private hospitals, nursing homes, diagnostics centres etc. for referring patients and payments made on account of advertisement expenses by the medical practitioners were allowed, although such expenditure has been held as disallowable and "unethical" as per CBDT's directives and Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 read with Homoeopathic Practitioners - (Professional Conduct, Etiquette & Code of Ethics) Regulations respectively. The Committee , however, observe that despite the directives in this regard, such benefits are still being distributed, though in other forms. The Committee are of the view that in order to ensure transparency in the business activities, such expenses, being related to promotion of business, be allowed to be incurred from the profits after tax of the hospitals/pharmaceutical and allied industries and similarly, these may be made taxable in the hands of the beneficiaries.

13. The Committee note that the provision under section 35AD of the Act does not specify the allowability of deduction on capital investments in cases where the value of land and building are not separable, resulting in allowance of excess deduction and loss of revenue. The Committee note from the reply of the ITD that that the cost of land cannot be reduced from the cost of building (which includes cost of land as well) while making a claim u/s 35AD. The Committee while noting that the department is considering to issue clarification in cases where the construction has been done only on a very small portion of the land indicating thereby the intention of the taxpayer to take undue advantage of the said section are of the view that such clarification will again lead to different interpretations as

to the area covered for excluding the value of land by the Assessing Officers. The Committee, therefore, desire that DG (Exemptions) may be given the responsibility for making assessment of cases where construction has been done only on a very small portion of the land.

14. The Committee also note the cases where exemptions were allowed to ineligible assessees engaged in trading/commercial activities; incorrect allowance of accelerated depreciation on items not classified under life-saving medical equipment; incorrect allowance of deduction under section 80IB of the IT Act on incomes from non-hospital activities; irregular allowance of deduction on provisioning rather than on actual capitalization under section 35AD of the Act. The Committee are of the view that the provisions specifically related to the allowance of exemptions are being interpreted differently by the Assessing Officers. The Committee desire that besides strengthening internal audit to ensure consistency in interpretation, regular brain storming sessions for assessing officers be conducted to enable intensive group discussion on issues that arise while implementing the laws. The Committee further desire that detailed and specific instructions may be issued to the assessing officers on the issue of allowing exemptions, and be directed to exercise caution in such cases.

Further, the Committee note from the reply of the ITD that assessing officers being quasi-judicial authorities sometimes interpret the law as per their understanding inspite of the best efforts by the Department to impart them with adequate training programs / instructions/ circulars / latest relevant case laws on the issue. The Committee are of the view, that , strict action against those responsible for violation of laid down procedures and laws acts as a deterrent and, therefore, desire that exemplary punitive action may be taken against such officials. The Committee, therefore, exhort the ITD to make a thorough review of the cases pointed out by Audit and take stringent action against the officials found responsible for allowing exemptions incorrectly. The Committee also desire that a consolidated statement of the specific cases pointed out by the Audit, the final action taken by the ITD in each of such cases be furnished to the Committee within one month of the presentation of this Report to the House.

15. The Committee note the instances where trusts having significant amount of gross receipts had not been selected for scrutiny. The Committee observe that many trusts are only being formed for claiming exemptions and charitable objectives are only a pretext to cover up transactions or intentions of those involved. The Committee are therefore, of the view that since assessment of charitable trusts is a high risk area, larger number of cases be selected for scrutiny to ensure that exemptions are not misused. The Committee, further, desire that in order to minimize such misuse, penalties may be imposed on trusts failing to fulfill their objectives, repeatedly.

16. The Committee during their deliberations on the subject found that exemptions allowed by the Government were being misused by a fairly large number of assessees. Further, overlapping provisions and absence of clear definitions have led to different interpretations by the Assessing Officers. The Secretary in his submission stated that exemptions always lead to distortions in the system and , therefore, there should be a simple Income Tax Law with simple tax rate for greater compliance. The Committee also note that a new committee has been constituted to re-write the law by May, 2018. The Committee are of the view that the Direct Tax Code, 2010 and the Report of the Standing Committee on Finance thereon should be examined in right perspective and expect that the new committee will give its report after giving due consideration to the recommendations of Standing Committee of Finance. The Committee desire to be apprised of its suggestions made by the new committee.

NEW DELHI;
18 July, 2018
27Ashadha, 1940 (*Saka*)

MALLIKARJUN KHARGE
Chairperson,
Public Accounts Committee.