

Assessment of Assesseees in Entertainment Sector

MINISTRY OF FINANCE

PUBLIC ACCOUNTS COMMITTEE
(2022-23)

FIFTY-FIRST REPORT

SEVENTEENTH LOK SABHA



LOK SABHA SECRETARIAT
NEW DELHI

PAC NO. 2279

FIFTY-FIRST REPORT

PUBLIC ACCOUNTS COMMITTEE
(2022-23)

(SEVENTEENTH LOK SABHA)

**ASSESSMENT OF ASSESSEES IN
ENTERTAINMENT SECTOR**

MINISTRY OF FINANCE



Presented to Lok Sabha on: 20.07.2022

Laid in Rajya Sabha on: 20.07.2022

LOK SABHA SECRETARIAT
NEW DELHI

July, 2022 /Shraavan, 1944 (Saka)

CONTENTS

	PAGES
COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE (2022-23)	(iii)
COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE (2021-22)	(iv)
COMPOSITION OF THE SUB-COMMITTEE – IV (FINANCE) OF THE PUBLIC ACCOUNTS COMMITTEE (2021-22)	(v)
INTRODUCTION	(vi)

REPORT

PART-I

I	Introduction	1
II	COORDINATION EFFORT WITHIN/OUTSIDE THE DEPARTMENT AND EXPANSION OF TAX BASE	2
	A. Tax base of assesseees related to entertainment sector under different codes (Para 2.1)	8
	B Co-ordination within the Department (Para 2.2)	10
	Verification of cash transactions (Para 2.2.2)	14
	Effectiveness of creating dedicated Film Circles/wards (Para 2.2.3)	16
	C Co-ordination with other State/Central Government Departments (Para 2.3)	17
	Co-ordination with State Governments (Para 2.3.1)	17
	D Role of survey in strengthening/widening of tax base (Para 2.4)	19
III	INTERNAL CONTROL AND AMBIGUITY IN THE PROVISIONS OF THE ACT/RULES	22
	A Verification of transactions in respect of films shot abroad (Para 3.1)	22
	B Verification of transactions of inter-related parties and revenues earned by movie producers (Para 3.2)	23
	C Variation in treatment of cost of production paid to foreign line producer (Para 3.3)	27
	D Variation in treatment of write off of inventory of film rights and pre-operative expenses (Para 3.4)	29
	E Absence of provision of TDS on purchase of distribution rights of movies under production (Para 3.5)	30
	F Absence of provision on amortization of franchisee fee (Para 3.6)	30
	G Lack of mechanism for monitoring and utilization of Form 52A	32

	(Para 3.7)	
IV	COMPLIANCE ISSUES RELATING TO PROVISIONS OF INCOME TAX ACT	34
	Absence of justification in making additions (Para 4.2)	35
	Income escaping assessment (Para 4.3)	36
	(a) Unexplained credit not brought to tax (Para 4.3.1)	36
	(b) Income not offered for tax (Para 4.3.2)	40
	Incorrect/ irregular allowance of expenses and deductions(Para 4.4)	43
	(a) Non/short deduction or non-deposit of TDS (Para 4.4.1)	43
	(b) Allowance of deductions without fulfilling the prescribed conditions	46
	(c) Expenses not allowable under various provisions of the Act (Para 4.4.3)	50
	Irregular set off/carry forward of losses (Para 4.5)	52
	(a) Losses adjusted against additions made under section 68 and 69 of the Act (Para 4.5.1)	53
	(b) Excess set off of losses (Para 4.5.2)	55
	(c) Irregular allowance of carry forward of losses (Para 4.5.3)	56
	Mistakes in computation of book profit under section 115JB and MAT credit under section 115JAA of the Act .	59
	(a) Under assessment of book profits (Para 4.6.1)	59
	(b) Irregular allowance of MAT credit under section 115JAA (Para 4.6.2)	62
	Mistakes in computation of tax (Para 4.7)	63
	(a) Mistakes in levy of tax/surcharge/interest (Para 4.7.1)	63
	(b) Incorrect grant of TDS credit/ relief under section 90/91 (Para 4.7.2)	66
	(c) Mistake in computation due to adoption of wrong figures (Para 4.7.3)	68
	PART – II	
	OBSERVATIONS/RECOMMENDATIONS	73-86
	APPENDICES	
I.	Minutes of the First sitting of the Sub-Committee – IV (Finance) of Public Accounts Committee (2021-22) held on 08-09-2021.	
II.	Minutes of the Fifth sitting of the Sub-Committee – IV (Finance) of Public Accounts Committee (2021-22) held on 22-10-2021.	
III.	Minutes of the Sixth sitting of the Sub-Committee – IV (Finance) of Public	

	Accounts Committee (2021-22) held on 23-11-2021.
IV.	Minutes of the Eighth sitting of the Sub-Committee – IV (Finance) of Public Accounts Committee (2021-22) held on 28-04-2022.
V.	Minutes of the Third sitting of the Public Accounts Committee (2022-23) held on 15-06-2022.

**COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE
(2022-23)**

Shri Adhir Ranjan Chowdhury - Chairperson

M E M B E R S

L O K S A B H A

2. Shri T. R. Baalu
3. Shri Subhash Chandra Baheria
4. Shri Bhartruhari Mahtab
5. Shri Jagdambika Pal
6. Shri Pratap Chandra Sarangi
7. Shri Vishnu Dayal Ram
8. Shri Rahul Ramesh Shewale
9. Shri Gowdar Mallikarjunappa Siddeshwara
10. Dr. Satya Pal Singh
11. Shri Brijendra Singh
12. Shri Jayant Sinha
13. Shri Balashowry Vallabhaneni
14. Shri Ram Kripal Yadav
15. Shri Shyam Singh Yadav

R A J Y A S A B H A

16. Shri Shaktisinh Gohil
17. Shri Bhubaneswar Kalita
18. Dr. Amar Patnaik
19. Shri C. M. Ramesh
- 20.* ~~Shri Vijaysai Reddy~~
21. Dr. M. Thambidurai
22. Dr. Sudhanshu Trivedi

SECRETARIAT

1. Shri T. G. Chandrasekhar - Additional Secretary
2. Shri Tirthankar Das - Director
3. Smt. Bharti S. Tuteja - Director
4. Shri Girdhari Lal - Deputy Secretary
5. Ms. Pragya Nama - Assistant Committee Officer

* Due to retirement of Shri Vijaysai Reddy on 21.6.2022.

**COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE
(2021-22)**

Shri Adhir Ranjan Chowdhury - Chairperson

M E M B E R S

L O K S A B H A

2. Shri T. R. Baalu
3. Shri Subhash Chandra Baheria
4. Shri Sudheer Gupta
5. Shri Bhartruhari Mahtab
6. Shri Jagdambika Pal
7. Shri Vishnu Dayal Ram
8. Shri Pratap Chandra Sarangi¹
9. Shri Rahul Ramesh Shewale
10. Shri Gowdar Mallikarjunappa Siddeshwara²
11. Shri Rajiv Ranjan Singh alias Lalan Singh
12. Dr. Satya Pal Singh
13. Shri Jayant Sinha
14. Shri Balashowry Vallabhaneni
15. Shri Ram Kripal Yadav

R A J Y A S A B H A

16. Shri Shaktisinh Gohil
17. Shri Bhubaneswar Kalita
18. Dr. C.M. Ramesh
19. Shri Sukhendu Sekhar Ray
20. Dr. M. Thambidurai
21. Shri V. Vijayasai Reddy³
22. Dr. Sudhanshu Trivedi⁴

¹ Elected w.e.f. 29.07.2021 *vice* Smt. Darshana Jardosh, MP appointed as Minister of State w.e.f. 07.07.2021.

² Elected w.e.f. 29.07.2021 *vice* Shri Ajay Kumar Mishra, MP appointed as Minister of State w.e.f. 07.07.2021.

³ Elected w.e.f. 09.08.2021 *vice* Shri Rajeev Chandrasekhar, MP appointed as Minister of State w.e.f. 07.07.2021.

⁴ Elected w.e.f. 09.08.2021 *vice* Shri Bhupender Yadav, MP appointed as Union Minister w.e.f. 07.07.2021.

COMPOSITION OF THE SUB COMMITTEE-IV (FINANCE) OF PAC
(2021-22)

- | | | | |
|----|------------------------------------|---|--------------------|
| 1. | Shri Adhir Ranjan Chowdhury | - | Chairperson |
| 2. | Shri Bhartruhari Mahtab | - | Convenor |
| 3. | Shri Subhash Chandra Baheria | - | Member |
| 4. | Dr. C.M. Ramesh | - | Member |
| 5. | Dr. M. Thambidurai | - | Member |
| 6. | Shri V. Vijayasai Reddy | - | Member |

INTRODUCTION

I, the Chairperson, Public Accounts Committee (2022-23) having been authorized by the Committee, do present this Fifty First Report (Seventeenth Lok Sabha) on "Assessment of Assesseees in Entertainment Sector" based on C&AG Report No. 1 of 2019 relating to the Ministry of Finance.

2. The C&AG Report No. 1 of 2019 was laid on the Table of the House on 08.07.2019.

3. Public Accounts Committee (2021-2022) selected the aforesaid subject and allocated the same to Sub-Committee — IV (Finance) for examination and Report.

4. The Sub-Committee-IV (Finance) of Public Accounts Committee (2021-22) took briefing by Audit on 31.08.2021. Thereafter, Sub-Committee took oral evidence of the representatives of the Ministry of Finance and Central Board of Direct Taxes on the aforementioned subject on 22.10.2021 and 23.11.2021 respectively.

5. The Sub-Committee-IV (Finance) of PAC (2021-22) first considered and adopted the Draft Report on the aforementioned subject at their Sitting held on 28.04.2022. Then the Draft Report was placed before the Public Accounts Committee (2022-2023) for consideration and adoption. The Committee adopted the same at their Sitting held on 15.06.2022. The Minutes of the Sittings are appended to the Report.

6. For facility of reference and convenience, the Observations and Recommendations of the Committee have been printed in thick type and form Part- II of the Report.

7. The Committee thank the predecessor Committee for taking oral evidence and obtaining information on the subject.

8. The Committee would like to express their thanks to the representatives of the Directorate General of Trade Remedies under Ministry of Commerce and Industry and the Ministry of Finance for tendering evidence before them and furnishing the requisite information to the Sub-Committee-IV (Finance) of Public Accounts Committee (2021-2022) in connection with the examination of the subject.

9. The Committee also place on record their appreciation of the assistance rendered to them in the matter by the Committee Secretariat and the Office of the Comptroller and Auditor General of India.

NEW DELHI
July, 2022
Ashadha, 1944 (Saka)

ADHIR RANJAN CHOWDHURY
Chairperson,
Public Accounts Committee

PART-I

Introduction

Entertainment sector consists of different segments under its fold such as television, radio, music, event management, films, animation and visual effects, broadcasting, sports and amusement etc. This sector has witnessed a strong growth in the last five years making it one of the fastest growing sectors in India.

2. The C&AG Report No. 1 of 2019 for the year that ended on March 2018 contains significant results of the performance audit of Assessment of Assesseees in Entertainment Sector of the Department of Revenue – Direct Taxes of the Union Government from 2013-14 to 2016-17.

3. Public Accounts Committee (2021-2022), selected the aforesaid C&AG Report and allocated the same to one of their Sub-Committees viz. Sub-Committee – IV (Finance) for examination and report.

4. The Sub-Committee - IV (Finance) of the Public Accounts Committee (2021-22) considered the subject for detailed examination, took oral evidences of the representatives of Ministry of Finance (Department of Revenue) on 22.10.2021 and 23.11,2021 and obtained written replies on the same. Based on the oral evidence and written replies, the Sub-Committee examined the subject in detail.

5. The assesseees engaged in the business of entertainment sector are governed by all the provisions of the Income Tax Act that are generally applicable to the different class of assesseees viz. Companies, Firms, Trusts, Individuals etc. Further, the Income Tax Act/rules provide specific tax incentives to the assesseees of entertainment sector. It provides deduction in respect of professional income from foreign sources in case of author, playwright, artist, musician and actor; being a resident in India. It also allows deduction in respect of expenditure on production and on acquisition of distribution rights of feature films.

6. When asked to give an overview of the systems, internal controls and processes being followed in the Ministry/ CBDT to ensure effective assessment of assesseees of Entertainment Sector, the Department of Revenue(DoR), in a written reply stated as under:

“As part of internal control mechanism Internal Audit is conducted on cases selected by the Systems Directorate based on Audit Potential Index.Copy of Internal Audit Instruction no. 06 of 2017 is enclosed as Annexure.”

7. On being asked about the monitoring mechanism available in the Ministry/ CBDT to ensure compliance with the provisions of the Income Tax Act/Rules in relation to entertainment sector by the Assessing Officers, DoR explained in a written reply as under:

“Assessments completed are test checked by way of Internal Audit and Review. Copy of Instruction on No. 15/2008 dated 04/11/2008 is enclosed as Annexure.”

8. When the Committee desired to know about the supporting mechanism that has been provided to the Assessing officers to effect quality assessments, DoR in a written reply stated as under:

“For educating and enlightening the assessing officers, the department undertakes several measures which include imparting of training to them by Direct Taxes Regional Training Institutes (DTRTIs) and Ministerial Staff Training Units (MSTUs) across India. Further, various books, e.g., 'Techniques of Investigation for Assessment' and 'Let Us Share', containing specific instances of assessment cases and certain best practices in various areas, are published. These are supplemented with specific guidance notes/instructions that are issued from time to time. All these measures guide the assessing officers in field in effecting quality assessments. For in-depth understanding of functioning of entertainment sector, related issues, scope of tax evasion and methods of investigation involved in assessment of assesseees of entertainment sector, film industry in particular, a chapter had been added under the topic "Motion Picture Industry" in "Techniques of Investigation" manual released by Central Board of Direct Taxes (CBDT) in 2019 for further guidance of the Assessing Officers. Also, Instructions for comprehensive verification of issues in assessment of Entertainment Sector have been issued to the field authorities vide letter F.No. 225/215/2018-ITA-II dated 06.10.2021 (copy enclosed as Annexure).”

9. In reply to a question that since the Entertainment sector is expanding very fast and is a significant source of revenue to the Government, what efforts have been made to coordinate within the department and with other Central/State Government departments to identify the probable assesseees and to widen the tax base and check evasion of Income tax, DoR explained in a written reply as under:

- “The sector specific data is not maintained, however, the following measures have been taken by the Government to identify probable assesseees and to widen the tax base :
- The Income Tax Department has implemented the Non- Filer Monitoring System(NMS) which assimilates and analyses in-house information as well as transactional data received from third-parties, including Statement of Financial Transaction(SFT), Tax Deduction at Source (TDS) and Tax Collection at Source(TCS) statements, Intelligence, Criminal Investigation (I & CI) data and Social Media etc. to identify such persons/entities who have undertaken high value financial transactions but have not filed their returns.

- The Income-tax Department has launched 'Project Insight' to strengthen the non-intrusive information driven approach to increasing tax compliance. Project Insight's focus is on three goals namely:
 - a) Promote voluntary compliance and deter non-compliance.
 - b) To impart confidence that all eligible persons pay appropriate tax.
 - c) To promote fair and judicious tax administration.
- With the help of these tools, data is collected from multiple sources including social media, to assemble a profile of the taxpayer. In addition, the Non-filers Monitoring System (NMS) focuses attention on non-filers who have undertaken high value financial transactions but have not filed their returns.
- The mechanism for collection and verification of financial information has been broadened to include data in respect of various types of high-value transactions received from banks and financial institutions and high-value expenditure received from commercial establishments in the form of Statements of Financial Transaction (SFT). A revised Form 26AS incorporating high-value transactions from Statement of Financial Transactions (SFTs) has been introduced.
- Quoting of Permanent Account Number (PAN) has been made mandatory for specified transactions in respect of property, shares, bonds, insurance, foreign travel and, demat account, etc.
- In order to inter-alia widen the scope of tracking high value transactions; the Government has permitted the Aadhaar number to be used interchangeably in lieu of PAN in more than 100 forms.
- The scope of TDS/TCS has been further expanded for widening the tax base by bringing several new transactions into the ambit of Tax Deduction at Source (TDS) and Tax Collection at Source (TCS). These transactions include large cash withdrawal, foreign remittance, purchase of luxury cars, sale of goods, acquisition of immovable property, etc.
- The Department has also signed Memoranda of Understanding (MoU) with Ministry of Micro, Small and Medium Enterprises (MoMSME), Central Board of Indirect Taxes and Customs (CBIC) and SEBI to enable cross seeding of information and inter-agency cooperation in order to identify tax loopholes and widen the tax net and prevent revenue leakages.
- In addition to the above measures the Department seeks to bring more non-filers into the tax net by formulating region-specific strategies by the field authorities for identifying potential non-filers, holding of outreach

programmes to encourage voluntary compliance and extensive use of mass media for creating awareness, issuing statutory notices to enforce compliance, simplification in income-tax returns and filing process to encourage voluntary filing.

- E-mails and SMS reminders are issued to taxpayers to file their return and pay their due taxes.
 - The Department has set up Taxpayers' Lounges at various events/trade fairs/ exhibitions to generate tax awareness among the general public. Apart from generating awareness, tax payers' services like information of PAN and other services are provided to facilitate ease of tax compliance.
 - The Income-tax Department has launched publicity campaigns on TV Channels, Radio, Print Media, Cinema Halls and on Social Media to spread awareness among citizens regarding due dates for filing Returns, TDS Return, Payment of taxes and PAN-Aadhaar linkage. Brochures have also been distributed to the general public through the Department's Aayakar Sewa Kendras (ASK) all over India to spread awareness and increase voluntary compliance.
- 1) The Income Tax Department (ITD) conducts suitable action in the relevant cases, as per the provisions of the Income Tax Act, 1961, on various persons who may be engaged in diversified business activities across different sectors, including entertainment sector. ITD takes all necessary measures to tackle tax evasion by way of sector specific legislative provisions and administrative measures to encourage tax compliance. It also undertakes enforcement action in requisite cases which includes search and seizure actions, surveys, assessment of income, levy of tax and penalty and filing of prosecution complaints before criminal courts, whichever is applicable as per direct tax laws.
 - 2) All the field formations of the Income Tax Department (ITD) share relevant information regarding violation of provisions of any statute noticed during the course of enforcement actions like search & seizure and survey operations, with the relevant Law Enforcement Agencies (LEAs). Similarly, ITD receives information with respect to tax evasion from other LEAs. Further, Central Economic Intelligence Bureau (CEIB) shares details of relevant cases investigated by other LEAs with Income Tax Department and such sharing leads to getting acquainted with the new and emerging trends with respect to tax evasion, including cases pertaining to Entertainment Sector.
 - 3) MOUs with CBIC, CGST and some State Governments are in place for exchange of information.

- 4) Further, various notifications under Section 138 of the Income-tax Act, 1961, notifying other agencies for sharing of information by the Specified Income Tax Authorities have been issued from time to time.
- 5) Further, CBDT, vide order u/s 285BB r.w. sub-Rule (2) of the Rule 114-1 dated 26.10.2021, has authorized the Director General of Income-tax (Systems) to upload information in his possession viz Foreign Remittance Information, Information in ITR of other tax payers, Information on off-market transactions, etc., in the Annual Information Statement (AIS) in Form 26AS in the electronic filing account registered by the assessee in the designated portal. (Copy enclosed as Annexure).
- 6) In relation to widening of tax base, various measures have been undertaken including widening the scope of tax deduction and tax collection at source, promotion of digital transactions and discouraging cash transactions. The same are discussed as under:
 - i. TDS on certain cash withdrawals: The finance (No.2) Act, 2019 has inserted section 194N in the Income Tax Act, 1961 (the Act) to provide for levy of TDS @ 2% on cash withdrawal exceeding Rs. 1 crore from a Bank/Post office account. To ensure filing of return and to keep track on cash withdrawals by the non-filers, the Finance Act, 2020 lowered the threshold of cash withdrawal to Rs. 20 lakh and also mandated TDS at the higher rate of 5% on cash withdrawal exceeding Rs. 1 crore by non-filers. These above measures were taken to discourage cash transactions in the economy.
 - ii. Reduction in rate of deemed profit: The rate of deemed profit under presumptive scheme for small businesses has been reduced from 8% to 6% in respect of digital turnover.
 - iii. Mandatory facility for prescribed electronic mode of payment: It has been provided that every business entity having turnover exceeding Rs.50 crore shall provide facility for accepting payment through the prescribed electronic modes on which no Merchant Discount Rate (MDR) shall be charged.
 - iv. Prohibition of cash transactions: Cash receipt of rupees two lakh or more has been prohibited. The limit of cash donation to charitable organization has been reduced from Rs. 10,000/- to Rs. 2,000/-. Acceptance of cash donations exceeding Rs. 2000/- has been prohibited for political parties. The limit for cash business expenditure has been reduced from Rs. 20,000/- to Rs. 10,000/-.

- v. Expansion of scope of TDS/TCS: For widening the net of Tax Deduction at source (TDS) and Tax collection at source(TCS) several new transaction were brought into its ambit. These transactions include huge cash withdrawal, foreign remittance, purchase of luxury car, e-commerce participants, sale of goods, acquisition of immovable property, etc. Further, TDS at the rate of 0.1% on payment made for purchase of goods by a buyer (having sales/turnover of Rs.10 crore or more in the financial year preceding the year in which the sale is made) to a person during the financial year exceeding Rs. 50 Lakhs has also been introduced by the finance Act, 2021.
 - vi. Higher rate of TDS in case of Non-filers: In order to promote furnishing of income-tax returns, by the Finance Act, 2021, a special provision has been inserted to the Act to deduct/collect tax at higher rates in case of certain persons who have not filed their income tax return for both of the preceding two previous years and the tax deducted/collected was greater than Rs. 50,000 in each of the two years.
- 7) In addition to above, the scope of Specified Financial Transaction has been further widened so as to generate more information about various transactions which are undertaken by the taxpayers. The above measures are expected to widen the tax net by bringing in more information, aiding in pre-filling of Income-tax Returns and data matching.”
10. When asked about the monitoring mechanism that is in place to ensure that the different assessment units of ITO across the country work in coordinated and cohesive manner, DoR in a written reply (~~Q5-15.11.2021~~) stated as under:
- “Guidance is provided to the Assessing Officers by way of training, publication of books (e.g., 'Techniques of Investigation for Assessment', 'Let us Share') and issuance of instructions/guidance notes.”
11. In response to a querywhether the mechanism is available to access/ share the information in respect of assessee amongst the different assessment units,DoR explained in a written reply as under:
- “Based on the specific facts of the cases and the revenue implications of the transactions with the parties assessed in different assessment units, the Assessing Officer decides the nature of information that is fit for further sharing.ADG(S) – 2 and DGIT (Systems) are the competent authority to decide the nature of information that is worth sharing. Further, with effect from 01.04.2021, an Explanation has been provided in section 148 of the Income Tax Act, which reads as follows:

Explanation 1.- for the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,-

- (i) Any information flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;

This is under process of implementation.”

12. On being enquired on the manner of ensuring that information so shared was appropriately taken into account by ITO units while undertaking scrutiny assessments, DoR in a written reply stated as under:

“Instructions are issued from time to time for time-bound processing of information received by Assessing Officers from different sources like 1& CI, Investigation Wing, other AOs, third parties and for regular monitoring by the Range-heads of the action taken by the Assessing Officers.”

13. The Committee observed that surveys are an effective tool for strengthening tax base as well as a deterrence against evasion. In this regard, when the Committee sought to ascertain details of efforts made to undertake surveys during the last five years and the criteria followed while identifying assesseees for surveys, DoR in a written reply (Q8) stated as under:

“Survey action u/s 133A of the Income Tax Act, 1961 is one of the mechanisms available with the Income Tax Department to ensure that people at large comply with the tax provisions. From time to time, necessary directions have been issued to the field formations with respect to conducting of surveys in different sectors of business. However, since it is a coercive tool, it is used only in appropriate cases with the motive of detecting tax evasion and creating necessary deterrence. It is further pertinent to mention that Survey actions are carried out only in cases where credible and incriminating evidence related to tax evasion is available with the Department. Details of survey actions undertaken during last 5 years across all sectors are tabulated, as under:

S No.	F.Y	No. of Surveys
1	2017-18	13547
2	2018-19	15401
3	2019-20	12720
4	2020-21	426
5	2021-22(up to	116

	Sep,2021)	
Total		42210

II COORDINATION EFFORT WITHIN/OUTSIDE THE DEPARTMENT AND EXPANSION OF TAX BASE

A. Tax base of assesseees related to entertainment sector under different codes (Para 2.1)

14. Allocation of specific codes to different businesses is essential for proper monitoring, collection and sharing of relevant information as also expert handling of sector-specific issues in the course of assessment. ITD has allocated codes to the assesseees engaged in entertainment sector under six categories (901 Entertainment Industry [Cable T.V. productions] 0902 Entertainment Industry [Film distribution] 0903 Entertainment Industry [Film laboratories] 0904 Entertainment Industry [Motion Picture Producers] 0905 Entertainment Industry [Television Channels] 0906 Entertainment Industry [Others]. Of six categories, five categories have been assigned to Film & television sector while one category has been allotted for 'others' which covers assesseees associated with sports, film, event management, cable business, animation etc.

15. According to Audit, code wise data of assesseees available in the website of ITD showed that during FYs 2013-14, only 13 per cent of assesseees in entertainment sector were falling under five categories assigned to Film & television sector whereas a significant proportion, i.e., 87 per cent of assesseees in entertainment sector were falling in 'others' category of entertainment sector. Further, Audit scrutiny revealed that additions made during scrutiny assessments under code 906 [Others (Entertainment sector)] as a proportion of total additions made in cases relating to entertainment sector continuously increased from 66.71 per cent in FY 2013-14 to 80.62 per cent in FY 2016-17. However, the number of cases selected for scrutiny assessments as a proportion of total scrutiny assessments in cases relating to entertainment sector under code 906 increased from 62.74 per cent in FY 2013-14 to 67.82 per cent in FY 2016-17.

16. Audit noticed that the number of cases selected for scrutiny assessments under the business code 906 [Others (Entertainment sector)] was not commensurate with the additions made in scrutiny assessments of cases under this code during FYs 2013-14 to FYs 2016-17. As a number of segments of the entertainment sector, viz. sports, event management, artist, animation, cable business etc. are clubbed under this code; segment specific refinement of assesseees may not be possible for selection under scrutiny and monitoring purposes.

17. On being questioned as to how segment specific refinement of assesseees of various segments clubbed under the business code 906 [Others (Entertainment

sector)] is ensured for selection under scrutiny and monitoring purposes, DoR in a written reply submitted as under:

“CASS parameters are finalised by the Board based on recommendation of CASS Committee so constituted every year for this purpose. The Committee duly considers feedback given by the field officers in form of suggestions and case level feedback functionality on the Business Application ITBA. Further, the scenarios and selection against each scenario, inter-alia, is based on the threshold values, category of rules and limitation of overall number of cases keeping in view of the prevailing work load and other relevant factors. As regards the possibility of Centralised risk identification of cases of sub-categories under a particular business code such as 906 in the instant case under a risk Rule/parameter framework, it is possible only when:

- a) Specific data fields identifying and attributable to these business sub-sectors are available in ITRs.
- b) Specific Third party or TDS data which is closely related to and associated to transactions in these particular sub-sectors is readily available.
- c) Such data from two different sources or fields is comparable either directory or in terms of ratios so as to ascertain a sub-sector specific risk parameter.

At present, these above-mentioned factors limit the segment specific refinement of the mentioned set of assesseees pertaining to Entertainment sector under a Computer Assisted Centralised risk parameterbased scrutiny selection process.”

18. When asked whether there was any proposal mooted for allocating separate codes to film artists and to emerging segments in entertainment industry viz. sports, event management etc. in pursuance of the audit observation, DoR in a written reply submitted as under:

“Separate codes have been allotted in the Income-tax return forms from AY2021-22. New codes include that of film artists, event management, sports management, etc. (as per Table below.)

Sector	Sub-sector	Code
Professional	Medical Profession	16019_1
	Film Artist	16020
	Other professional services n.e.c	16019
Culture & sports	Sports Management	20023_1

	Other Sporting activities n.e.c	20023
	Other recreational activities n.e.c	20024
Other services	Event management	21008_1
	Other services n.e.c	21008

From the above, it can be observed that necessary amendment in the income-tax forms have been carried out to further refine the categories of taxpayers belonging to entertainment sector so as to obtain more refined results.”

B Co-ordination within the Department (Para 2.2)

19. The assessing units in ITD are structured in such a way so as to administer the different provisions of the Act pertaining to levy and collection of direct taxes. While regular assessments / re-assessments under the various provisions of the Act viz. 143(3), 147, 263, etc., are carried out in corporate/ non-corporate assessment circles and wards, search and seizure related assessments under sections 153A, 153C, etc., are concluded in central circles. Assessments under Tax Deducted at Source (TDS) and International taxation provisions are carried out by designated AO (TDS) and AO (International Taxation) respectively. Further, for the purpose of efficient correlation between related assessee records and for effective cross-verification of information pertaining to assessments between personalities of film/TV industry, the ITD has created dedicated film/media assessing units.

20. Audit noticed in 11 cases in Karnataka and Maharashtra involving tax effect of Rs. 201.96 crore that the information in respect of assessees was not shared amongst different charges of ITD at the time of completing the assessment, thereby impacting the quality of assessment. Three such cases illustrated by Audit are as under:

- (i) **Charge: PCIT-10, Mumbai**
Assessee: M/s JMD Telefilms Industries Ltd.
Assessment Years: 2014-15 and 2015-16

The scrutiny assessments for AYs 2014-15 and 2015-16 of the assessee was completed in December 2016 at income of ₹ 1.26 crore and ₹ 1.78 crore respectively. Audit noticed that an investigation report of PDIT (Investigation), Kolkata on “Bogus LTCG through penny stock companies” was sent to DGIT (Investigation), Mumbai vide letter dated 27 April 2015 wherein the details of the penny stock companies and their modus operandi were explained and the concerned DGsIT were requested to disseminate the report to the AOs through the CCsIT concerned. Audit further noticed that the assessee (M/s JMD Telefilms

Industries Ltd.) was one of the penny stock companies as per the Kolkata investigation report. However, while completing the scrutiny assessments in December 2016, AO did not take any cognizance of information of PDIT (Investigation), Kolkata, indicating that either the information was not shared with AO by the CCIT or the AO had not taken any action on the shared information. Thus, sharing of information by the Kolkata unit of ITD was not effectively utilized by the assessment charge of Mumbai office, thereby impacting the quality of scrutiny assessments.

- (ii) **Charge: PCIT-11, Mumbai**
Assessee: M/s Stellar Interactive Media Pvt. Ltd. (SIMPL)
Assessment Year: 2013-14

As per Section 68 of the Act, where any sum is found credited in the book of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the AO, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year. The scrutiny assessment of the assessee was completed in March 2016 at income of ₹ 27.73 lakh. During the assessment proceedings, AO had sent letter to DCIT, Circle 8(2), Kolkata on 10 March 2016 to verify the identity, genuineness and the credit worthiness of the M/s Sahara Universal Mining Corp. Ltd. (SUMCL), as the assessee had received share application money along with premium of ₹ 579.28 crore from M/s SUMCL, Kolkata. Local verification by the audit revealed that the DCIT(8), Kolkata did not share the required information with the AO, who in turn, completed the assessment on 30 March 2016 without adding back the unexplained amount of ₹ 579.28 crore to the income of the assessee. Considering the substantial amount involved, the AO could have verified the genuineness of transaction through third party data source, viz. data available with Ministry of Corporate Affairs (MCA) while completing the scrutiny assessment. Thus, both the AOs failed to ensure verification of genuineness before completion of scrutiny assessment of assessee. Had the information been shared between two assessment charges of the ITD, the unexplained amount of ₹ 579.28 crore would have been added back to the income of the assessee and amount of ₹ 187.95 crore be brought to tax. This is indicative of the fact that sharing of information between the different charges of the ITD was not effective leaving the scope of leakage of revenue.

- (iii) **Charge: PCIT-25, Mumbai**
Assessee: Sameer Baijnath Joshi
Assessment Year: 2011-12

As per Section 50B of the Act, any profits or gains arising from the slump sale effected in the previous year shall be chargeable to income-tax as capital gains arising from the transfer of long-term capital assets and shall be deemed to be the income of the previous year in which the transfer took place. The assessee had filed its return of Income for AY 2011-12 in September 2011 declaring total income of ₹ 33.51 lakh and the same was assessed in a summary manner under section 143(1) of the Act. Audit scrutiny of another assessee, viz. M/s Recept Entertainment Pvt. Ltd. (REPL) revealed that the assessee (Sameer B Joshi) had sold on slump sale basis his business undertakings, viz. 'Chandan Cinema' and 'Chandan Cinema Canteen', to REPL at an agreed value of ₹ 38.84 crore vide agreement dated 7th February 2011. In lieu of the above business undertakings, M/s REPL issued equity share of like amount of ₹ 38.84 crore to the assessee. Since, the above transfer was done on slump sale basis; the capital gain was required to be taxed in the hand of the transferor, i.e., Sameer Joshi, as per the provisions of Section 50B. However, the assessee had not offered any capital gain on account of above transaction as per his return of income filed in September 2011. Audit also noticed from the Income Tax Return (ITR) of Sameer B. Joshi for AY 2011-12 that there was increase in capital amounting to ₹ 10.65 crore, however, the source of increase in capital/investment could not be ascertained from the details available in ITR. Audit further noticed that the Assessing Officer (AO) of REPL, instead of intimating to AO of Circle 25(3), intimated the AO of Circle 21(2), Mumbai on 13 June 2014 about the slump sale made by the assessee (Sameer B. Joshi) to verify the above transactions. However, AO of Circle 21(2), Mumbai had not taken any action stating that the case did not pertain to his charge. AO of Circle 21(2) Mumbai neither took any action nor referred the case to AO of Circle 25(3) to safeguard the interest of revenue. Had the information been sent to the actual assessment charge, i.e., Circle 25(3), the above transaction would have been brought to tax. This indicated lack of co-ordination within the different assessment units of ITD. The case for AY 2011-12 has become time barred which led to loss of revenue of ₹ 11.95 crore excluding interest.

21. In respect of aforesaid cases pointed out by Audit, Ministry furnished the status of follow-up action taken by them as under:

S. No.	Name of Assessee/PAN	A.Y.	Pr. CCIT	PCIT Charge	Status
1	JMD Telefilms Industries Ltd./ AAACA4340C	2014-15 and 2015-16	Mumbai	PCIT-10, Mumbai	Objection has Not been Accepted by the Ministry. CAG's Vetting

					Comments to ATN sent, have been received by the Ministry for further comments, which are under process.
2	Stellar Interactive Media Pvt. Ltd. (SIMPL)/ AAGCS4196N	2013-14	Mumbai	PCIT-11, Mumbai	Objection has been accepted by the Ministry. Remedial action has been completed. ATN has been sent to C&AG and the matter is settled via C&AG letter dated 05-03-2020.
3	Sameer Baijnath Joshi	2011-12	Mumbai	PCIT-25, Mumbai	Objection has Not been Accepted by the Ministry. ATN have been sent to C&AG for vetting.

22. On being further asked to furnish the details of remedial action that has been taken in respect of the assessee 'Stellar Interactive Media Private Limited' consequent upon acceptance of the Audit objection, mentioned above, Chairman, CBDT while tendering evidence informed as under:

"..... remedial action had been taken by passing order under Section 143(3) read with Section 263 of the Act dated 28.12.2018.....Order 263 is a revisionary power with the Commissioner of Income Tax, which was invoked and under-assessments were set right."

23. When asked about the remedial steps taken by ITD for strengthening the mechanism for sharing and cross verification of needful information in the Department to ensure quality assessment, DoR in a written reply stated as under: (Q11 15.11.2021)

"Extant practices/ mechanisms provide for sharing of information. Further, E-assessment scheme, 2019 was rolled in 2019. Subsequently, the same was implemented in a full-fledged manner in the year 2020 by launch of Faceless Assessment Scheme,2019, which is presently incorporated in the Income-tax Act,1961 (Act) under Section 144B. As per section 144B of the Act, all the assessment proceedings, including the scrutiny assessments of cases related to film and television industry unless centralised, are conducted electronically in a faceless manner, through team- based assessment. Specialised units

such as Assessment Units, Verification Units, Technical Units and Review Units have been put in place for optimum utilization of the resources through economies of scale and functional specialization. This is a team-based assessment procedure, where the Assessment Unit can request verification by the Verification Unit and seek technical assistance from the Technical Unit in order to prepare a speaking order. Under this Scheme, the process of Review has been built to facilitate an error-free assessment order. As a business intelligence solution, ITD has rolled out Insight Platform which provided comprehensive view of all the information related to a particular tax payer to ITD charges. Using the platform, the ITD charges can access the information reported both by the taxpayer as well as the third party sources. The platform also offers the functionality to get access to the information related to group entities, if required. Using this platform the assessing officers can access all the required information in respect of a taxpayer, available with the department.”

24. In this regard, Chairman, CBDT while tendering evidence added as under:

“..with the insight, the business intelligence application of the Department in place, 360 degree profiling of any Assessee with regard to the related party information, his transactions all across the business place in which he is engaged in, is available to the Assessing Officer, which was not possible at the time of 2013-14 to 2016-17, where the Audit work was completed. This is the only reason as to why we feel confident at this point in time that with the business intelligence solutions available to the Assessing Officer, there will be a plenty of information, which will be available to the Assessing Officer to make use of them.”

(b) Verification of cash transactions (Para 2.2.2)

25. As per section 40A (3) of the Act, where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees, no deduction shall be allowed in respect of such expenditure.

26. During the examination of cases selected for sample, Audit noticed in five cases in three States that cash transactions were conducted among related parties. However, efforts were not made by the AO to obtain the details of corresponding parties and to pass the information to the jurisdictional AOs. Two cases illustrated by Audit are as under:

- (i) **Charge: PCIT-6, Hyderabad**
Assessee: K. Venugopal (Proprietor of M/s KV Films)
Assessment Year: 2012-13

The scrutiny assessment of the assessee was completed in March 2015 at income of ₹ 1.29 crore. Audit noticed from the ledger account of the assessee that assessee had received a consideration of ₹ 2.92 crore in cash against sale of various movie rights, however, details of purchasers were not available in the records. Audit further noticed that the AO had not obtained the details of the film rights purchasers, from whom the cash payments were received by the assessee, to pass on the information to jurisdictional AOs of purchaser. Not obtaining and sharing of information by the AO with the jurisdictional AO prevented verification of cash transactions and disallowance of the same against the purchaser under section 40A(3) of the Act. ITD replied (January 2018) that though there was no specific violation in the case of the assessee, efforts would be made to obtain the details from the assessee and forward the same to the jurisdictional AO. The reply of the ITD is not tenable as cash transactions, being a major source of unaccounted income, must be verified for quality scrutiny assessment and the details of persons making payment in cash needs to be shared with respective AOs to prevent possible leakage of revenue.

(ii) **Charge: PCIT-10, Chennai**
Assessee: M/s Thirupathi Brothers Film Media
Assessment Year: 2013-14

Audit noticed from assessment records of the assessee that during survey, the assessee had admitted to have received ₹ 2.45 crore in cash from M/s Studio Green during FY 2012-13. Audit cross verified the assessment records of M/s Studio Green for AY 2013-14 and found that AO (assessing M/s Studio Green) had not added back the amount of expenses for which payment was made in cash by the M/S Studio Green to M/s Thirupathi Andhra Pradesh &Telengana, Maharashtra and Tamilnadu Report No. 1 of 2019 (Performance Audit) 12 Brothers Film Media, violating the section 40A(3) of the Act. Had the information of cash transaction been shared by AO of assessee, i.e., M/s Thirupathi Brothers Film Media to the jurisdictional AO, assessing M/S Studio Green, trail of such transactions would have been detected for prevention of possible leakage of revenue.

27. When the Committee sought the comments of the DoR and status of follow-up action taken by them in respect of each case, Ministry furnished the following information:

S. No.	Name of Assessee/PAN	A.Y.	Pr. CCIT	PCIT Charge	Status
1.	K. Venugopal (Proprietor of M/s KV Films)/ ALJPK4369C	2012-13	A.P. Telengana	PCIT-6, Hyderabad	Objection has Not been Accepted by the Ministry. ATN have been

					sent to C&AG for vetting.
2.	Thirupathi Brothers Film Media/AACCT95 79N	2013-14	Tamil Nadu	PCIT-10, Chennai	Objection has been accepted by the Ministry. Remedial action has been initiated. CAG's Vetting Comments to ATN sent, have been received by the Ministry for further comments, which are under process.

28. In response to a question over efforts made by the Ministry for ensuring non-recurrence of lapses in such cases in future, DoR in a written reply, supplemented as under:

“...with the introduction of the Faceless E-Assessment Scheme in the Department, the concept of jurisdiction based assessment has been done away with. E-assessment scheme, 2019 was rolled in 2019. Subsequently, the same was implemented in a full-fledged manner in the year 2020 by launch of Faceless Assessment Scheme, 2019, which is presently incorporated in the Income-tax Act, 1961 (Act) under Section 144B. As per section 144B of the Act, all the assessment proceedings, including the scrutiny assessments of cases related to film and television industry unless centralised, are conducted electronically in a faceless manner, through team-based assessment. Specialised units such as Assessment Units, Verification Units, Technical Units and Review Units have been put in place for optimum utilization of the resources through economies of scale and functional specialization. This is a team-based assessment procedure, where the Assessment Unit can request verification by the Verification Unit and seek technical assistance from the Technical Unit in order to prepare a speaking order.”

(c) Effectiveness of creating dedicated Film Circles/wards (Para 2.2.3)

29. With a view to having an overall control on the assessments and to achieve greater co-ordination and effective handling of the assessments of assesseees related to Film industry, dedicated Film Circles have been created in Mumbai, Chennai, Bengaluru and Hyderabad as maximum number of films are produced in these places.

30. Audit noticed that despite specific film circles/wards created to assess all the assesseees of film and television industry in dedicated units, sufficient efforts were not made by the ITD to assess them in the designated circles/wards, thereby defeating

the purpose of cross-verification of related transactions and prevention of possible leakages of revenue.

31. When asked whether sharing of needful information amongst different charges of ITD has been factored into the environment of Income Tax Business Application (ITBA) since then, DoR in a written reply stated as under:

"ITD has rolled out Insight Platform which provided comprehensive view of all the information related to a particular tax payer to ITD charges. Using the platform, the ITD charges can access the information reported both by the taxpayer as well as the third party sources. The platform also offers the functionality to get access to the information related to group entities, if required. Using this platform the assessing officers can access all the required information in respect of a taxpayer, available with the department."

C Co-ordination with other State/Central Government Departments (Para 2.3)

32. According to section 131(1) of the Income Tax Act, 1961 (Act), AOs shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908, including, inter alia, "compelling the production of books of account and other documents". Further, ITD Manual of Office Procedure prescribed by CBDT entrusts ITD with the responsibility to liaise with other Government departments and agencies like Enforcement Directorate, Customs and Central Excise Department, Central Economic Intelligence Bureau, Sales tax and Trade tax Departments, State Excise Departments, District Administration, Government agencies dealing with economic offences and police authorities to enable income-tax authorities to get hold of vital information on assesseees, both existing as well as potential.

(a) Co-ordination with State Governments (Para 2.3.1)

33. Audit test checked and cross examined the entertainment tax deposited by the assesseees and the income offered as per Income Tax Act in respect of two assesseees, viz. M/s Movie Times Cineplex Pvt. Ltd. and M/s M2K Entertainment Pvt. Ltd. as under:

- (i) Charge: PCIT-6, Delhi**
Assessee: M/s Movie Times Cineplex Pvt. Ltd.
Assessment Years: 2011-12 to 2014-15

The assessee engaged in the business of running two multiplex cinemas in Delhi had offered income of ₹ 127.95 crore (exclusive of entertainment tax) in its Profit & Loss Account for AYs 2011-12 to 2014-15 from the sale of tickets. However, audit noticed from the information provided by the Entertainment Tax Department, Delhi, that the assessee had deposited entertainment tax of ₹ 46.01 crore against the two cinema halls during the

above period. As such, taking into consideration the applicable 20 per cent entertainment tax on sale of tickets, the corresponding income generated by the cinema halls worked out to ₹ 230.06 crore. Thus, there was underreporting of income of ₹ 102.11 crore (₹ 230.06 crore - ₹ 127.95 crore) involving tax effect of ₹ 43.93 crore including interest. ITD had initiated remedial action under section 148 of the Act in March 2018.

(ii) Charge: PCIT-6, Delhi
Assessee: M/s M2K Entertainment Pvt. Ltd.
Assessment Years: 2011-12 to 2014-15

The assessee engaged in the business of running two multiplex cinemas in Delhi had offered income of ₹ 39.72 crore (exclusive of entertainment tax) in its Profit & Loss Account for AYs 2011-12 to 2014-15 from the sale of tickets. However, audit noticed from the information provided by the Entertainment Tax Department, Delhi, that the assessee had deposited entertainment tax of ₹ 19.36 crore against the two cinema halls during the above period. As such, taking into consideration the applicable 20 per cent entertainment tax on sale of tickets, the corresponding income generated by the cinema halls worked out to ₹ 96.80 crore. Thus, there was under reporting of income of ₹ 57.08 crore (₹ 96.80 crore - ₹ 39.72 crore) involving tax effect of ₹ 24.06 crore including interest. ITD replied (February 2018) that assessee had checked its records and performance reports submitted to entertainment tax department, however, it could not locate any figure of entertainment tax collected and deposited as shown by the audit and there might be some error in picking-up the figures. The reply was not tenable as the AO had relied upon the statement of assessee and not verified the entertainment tax deposited by the assessee with the state department for cross-verification of income offered by the assessee in its Income Tax Return (ITR).

34. When the Committee sought the comments of the DoR and status of follow-up action taken by them in respect of each case pointed out by Audit, Ministry furnished the following information:

S. No.	Name of Assessee/PAN	A.Y.	Pr. CCIT	PCIT Charge	Status
1.	Movie Times Cineplex Pvt. Ltd./AAECM2182N	2011-12 to 2014-15	Delhi	PCIT 6, Delhi	The objection has been accepted. Remedial action has been initiated. ATN is under process.
2.	M2K Entertainment Pvt. Ltd./AADCM0608C	2011-12 to 2014-15	Delhi	PCIT 6, Delhi	For AY 2011-12 & 2012-13 Objection has not been Accepted by the Ministry. For AY 2013-14 & 2014-15 Objection has

					been Accepted by the Ministry and remedial action has been initiated. ATN is under process.
--	--	--	--	--	---------------------------------------------------------------------------------------------

35. Elaborating further on the remedial action taken by DoR in respect of Movie Times Cineplex Pvt. Ltd, the Chairman, CBDT while tendering evidence stated as under:

"the Income Tax had initiated remedial action under Section 148 in March 2018 but ... it was examined and found that the issue raised by the audit has not been taken into account. So, that is the reason that that particular order has now been set aside to be done afresh. So, the action under Section 263 was taken in this case because we have accepted the audit objection."

36. Audit noticed instances where ITD did not utilise available sources effectively for collection and analysis of data from other Central and State Government departments.

37. On being asked about the steps that have been taken by the Board to strengthen the mechanism for co-ordination with external agencies, DoR in a written reply stated as under:

"All the field formations of the Income Tax Department share relevant information regarding violation of provisions of any statute noticed during the course of enforcement actions like search & seizure and survey operations, with the relevant Law Enforcement Agencies (LEA). Specific instructions have been issued to field formations to share with CEIB (Central Economic Intelligence Bureau) the information with respect of search & seizure and survey actions, related assessment orders, appeal orders, prosecutions, etc. within the prescribed timelines. The information is being shared by the field formations directly with CEIB so that appropriate information network/database of offenders may be created and shared by CEIB with other LEAs. CEIB also shares details of relevant cases investigated by other LEAs with Income Tax Department and such sharing leads to getting acquainted with the new and emerging trends with respect to tax evasion."

D Role of survey in strengthening/widening of tax base (Para 2.4)

38. Sections 133A and 133B of the Income Tax Act empower the ITD to conduct surveys to gather information relating to the financial transactions of the assessee. Survey enables ITD to identify new assessees, stop filers and detect tax evasions. Audit scrutiny revealed that 25 surveys were conducted in six states wherein additions/disclosures of ₹ 262.17 crore were made. However, no surveys were conducted in 13 States during FY 2013-14 to 2016-17 in entertainment

sector. No information was received with respect to survey conducted in Gujarat state.

39. As regards the reasons for not conducting surveys in some States at all, DoR in a written reply stated as under:

“The Income Tax Department (ITD) conducts suitable action in the relevant cases as per the provisions of the Income Tax Act, 1961 on various persons who may be engaged in diversified business activities across different sectors, including entertainment sector. Survey actions u/s 133A of the IT Act, 1961 are being conducted by the Department based on credible and incriminating evidence related to tax evasion. Survey actions are carried out based on credible and actionable information available in a particular case irrespective of the location of the person concerned. The data pertaining to survey actions is maintained region-wise and not state-wise. The details of the survey actions carried out, region-wise is as under:-

Region	States Covered	Number of Surveys carried out					Total
		Y 2017-18	Y 2018-19	Y 2019-20	Y 2020-21	FY 2021-22 (up to Sep, 2021)	
Ahmedabad	Gujarat	64	71	1125	19	0	2879
Bangalore	Karnataka & Goa	532	342	976	38	8	3896
Bhopal	Madhya Pradesh & Chhattisgarh	50	13	426	27	0	1516
Bhubaneswar	Odisha	8	8	19	0	0	95
Chandigarh	Haryana, Himachal Pradesh, Punjab, UT of J&K and	86	199	507	45	4	2641

	chandigarh						
Chennai	Tamil Nadu & Puducherry	405	302	1177	27	0	3911
Delhi	Delhi	17	541	1151	24	3	3536
Guwahati	All North Eastern States	75	85	129	0	0	489
Hyderabad	Andhra Pradesh, Telangana	83	84	924	54	5	2290
Jaipur	Rajasthan	63	004	628	30	0	2525
Kanpur	Uttar Pradesh (West)	99	83	171	0	0	953
Kochi	Kerala	10	22	171	1	0	604
Kolkata	West Bengal & Sikkim	030	445	759	15	3	3252
Lucknow	Uttar Pradesh (East)	24	91	369	18	15	1317
Mumbai	Maharashtra	966	740	1794	31	16	5547
Nagpur	Maharashtra	10	69	389	0	0	1068
Patna	Bihar & Jharkhand	55	34	410	20	0	1719
Pune	Maharashtra	29	119	1336	64	41	3289
I&CI	-	01	89	259	13	21	683

Further, it is to be noted that the potential cases for survey action in entertainment sector might be more in few selected cities and States, as this sector is more concentrated in such cities and States."

III INTERNAL CONTROL AND AMBIGUITY IN THE PROVISIONS OF THE ACT/RULES

A Verification of transactions in respect of films shot abroad (Para 3.1)

40. For shooting a feature film in foreign locations, Indian production houses hire the services of foreign line production companies (line producers i.e. the resident companies which are registered in that specific country). The pre and/or post production expenses incurred by the foreign line producers are reimbursed by the assessee (Indian production house) on the basis of the agreement entered into between them and all the expenses reimbursed to the line producer are being claimed as expenditure by the assessee in its profit and loss account. Further, in most of the countries like United Kingdom (UK), Italy, Spain, Australia, Mauritius etc. there is an incentive scheme run by the respective Governments for film production houses with a view to promote tourism and provide employment opportunities in their respective countries. Tax treaties signed under section 90 of the Act contain mechanism under the 'exchange of information' by virtue of which AO can make request to foreign jurisdiction for verification of production cost reimbursed by Indian film producer to foreign line producers and quantum of subsidies/incentives from foreign Government under section 90 of the Act.

41. Audit found that verification of the expenses as claimed by the Indian film production houses on account of production cost payment made to the foreign line producers was not being done during assessment proceedings. This is indicative of deficient monitoring mechanism, leaving the scope of irregular claim of expenses by the assessee to reduce tax liability.

42. Commenting upon the audit observation, DoR in a written reply stated as under:

"The assessment of a case involves verification of the transactions entered into by the assessee with third parties which is decided by the assessing officer depending upon the facts of the case including quantum of the transaction, whether paid through banking channels or cash, etc. However, it may be added here that CBDT, vide order U/S 285BB read with sub-Rule (2) of the Rule 114-1 dated 26.10.2021, has authorized the Director General of Income-tax (Systems) to upload information in his possession viz Foreign Remittance Information, Information in ITR of other tax payers, etc., in the Annual Information Statement (AIS) in Form 26AS in the electronic filing account registered by the assessee in the designated portal. (Copy enclosed)

43. Audit noticed that verification of the incentive/subsidy received by the Indian film production houses from Foreign Governments was not being done during assessments, thereby, leaving the scope of suppression of profits by disclosing less incentive/subsidy. (Para 3.1.2)

44. When questioned on the corrective measures that may have been taken to strengthen the existing assessment mechanism, DoR in a written reply stated as under:

"To strengthen the existing assessment mechanism, the department undertakes several measures which include imparting of training to the Assessing Officers by Direct Taxes Regional Training Institutes (DTRTIs) and/or Ministerial Staff Training Units (MSTUs) across India. Further, various books e.g., 'Techniques of Investigation for Assessment', 'Let Us Share', containing specific instances of assessment cases and certain best practices in various areas, are published. These are supplemented with specific guidance notes/instructions that are issued from time to time. For in-depth understanding of functioning of entertainment sector, related issues, scope of tax evasion and methods of investigation involved in assessment of assessee of entertainment sector, film industry in particular, a chapter had been added under the topic "Motion Picture Industry" in "Techniques of Investigation" manual released by Central Board of Direct Taxes (CBDT) in 2019 for further guidance of the Assessing Officers. Instructions for comprehensive verification of issues in assessment of Entertainment Sector have been issued to the field authorities vide letter F.No. 225/215/2018-ITA-II dated 06.10.2021 (copy enclosed as **Annexure**). Further, instructions regarding ensuring the receipt of Form No. 52A from producers of cinematograph films as per section 285B of the Income-tax Act, 1961 r.w. Rule 121A of the Income-tax Rules 1962 have been issued to the field authorities vide letter F.No. 225/215/2018-ITA-II dated 12.10.2021 (copy enclosed as **Annexure**).

B Verification of transactions of inter-related parties and revenues earned by movie producers (Para 3.2)

45. The film industry consists of the technological and commercial institutions of filmmaking, artists and allied service providers. Considering the involvement of multiple parties in making the movies, it is important that the information furnished by an assessee is utilized to cross-verify the correctness of the information given by another assessee having transactions with the former (related party) to avoid the evasion of tax. Further, when different accounting methods are adopted by the inter-related parties of film industry, then comprehensive verification of the transactions is required to safeguard the interest of revenue.

46. Audit noticed in the case of an assessee, viz. M/s Gemini Industries and Imaging Ltd. (PCIT-10, Chennai) that excess exemption was allowed due to different accounting methods adopted by inter-related parties. The case is illustrated below:

Charge: PCIT-10, Chennai

Assessee: M/s Gemini Industries and Imaging Ltd.

Assessment Years: 2008-09 to 2014-15

Section 10(2A) of the Act provides that in the case a person being a partner of a firm which is separately assessed as such, his share in the total income of the firm shall not be included in computing the total income of previous year. The scrutiny assessments of the assessee for AYs 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 were completed in January 2010, December 2011, March 2013, March 2014, March 2015, March 2016 and December 2016 respectively at income of ₹ (-) 4.39 crore, ₹ 1.58 crore, ₹ 4.16 crore, ₹ 29.71 crore, ₹ 14.19 crore, ₹ 38.89 crore and ₹ (-) 0.60 crore respectively. Audit noticed that the assessee had claimed and was allowed exemption under section 10(2A) of ₹ 195.50 crore towards share of profit received from M/s Anand Cine Service (firm) for the AYs 2008-09 to 2014-15. However, for the AYs 2008-09 to 2014-15, the firm had shown total profit of ₹ 26.44 crore out of which ₹ 25.57 crore pertained to the share of profit of the assessee. In this context, it was seen from notes to account of the assessee that share of profit from the firm was recognized on accrual basis whereas the firm followed cash system of accounting. As the objective behind exemption under section 10(2A) is to avoid double taxation, the profit which was credited by the assessee in their profit and loss account over and above the profit from the firm was not eligible for exemption under section 10(2A) and was required to be taxed in the hand of the assessee. As such, there was excess allowance of exemption under section 10(2A) by ₹ 169.93 crore (₹ 195.50 crore - ₹ 25.57 crore) with consequent short levy of tax of ₹ 74.52 crore including interest.

47. Regarding status of follow- up action taken by DoR in respect of each case pointed out by Audit, Ministry furnished the following:

Name of Assessee/PAN	A.Y.	Pr. CCIT	PCIT Charge	Reference
Gemini Industries and Imaging Ltd./AAACG7890 H	2008-09 to 2014-15	Chennai	PCIT-10, Chennai	Objection has Not been Accepted by the Ministry. CAG's Vetting Comments to ATN sent, have been received by the Ministry for further comments. ATN in

				<p>this regard has been sent to C&AG for vetting comments.</p>
--	--	--	--	--------------------------------------------------------------------

48. As regards the remedial action taken by DoR in respect of Gemini Industries and Imaging Ltd., the Chairman, CBDT while deposing before the Committee further stated as under:

“... this case has been ordered to be wound up, and the High Court of Tamil Nadu had ordered for liquidation of the company in 2016. We are in touch with the official liquidator for getting all the records of the assessee concerned. .. The legal issue will be like this, whether a firm can have two sets of accounts, one, for taxes and the second for reporting its share of profit to the company. ...”

49. On being asked about the instructions, if any issued by CBDT to AOs for cross verification of correctness of information upon adoption of different accounting methods by inter- related parties, DoR in a written reply stated as under:

“Vide para 2.3 of letter F.No. 225/215/2018-ITA-II dated 06.10.2021, instructions were issued to the field authorities on the issue of adoption of different accounting methods by inter-related parties for cross verification of correctness of information given by other assessees having transactions with the inter-related parties to avoid the evasion of tax.”

50. DoR in a written reply added as under:

“Further, vide order u/s 285BB read with sub-Rule (2) of the Rule 114-I dated 26.10.2021, CBDT has authorized the Director General of Income-tax (Systems) to upload information in his possession viz Foreign Remittance Information, Information in ITR of other tax payers, Information on off-market transactions, etc., in the Annual Information Statement (AIS) in Form 26AS in the electronic filing account registered by the assessee in the designated portal (Copy enclosed Annexure).”

51. In film industry, a producer is the key person who makes the profit from sale of various rights (distribution rights, satellite rights, music rights, sponsorship revenue etc.) of film produced by him. The receipts of the producer mainly come from the distributors. The producer sells the distribution rights broadly in three ways – (i) Minimum guarantee basis (ii) Outright lease and (iii) Advance and commission clause lease which relate to overflow. Out of these, under the third arrangement, if the earnings of film exceed the specified limit, the surplus receipt (called ‘overflow’) is shared by the distributor and the producer according to the ratio specified in the agreement between them.

52. Audit scrutiny revealed that in Maharashtra, out of 28 production houses, Audit test checked the records of three production houses where the assessee had furnished the gross amount from sale of film rights, however, no details were provided by the assessee whether the income offered was on account of minimum guarantee or was from overflow of revenue or whether the income was inclusive of overflow. One case of monitoring of revenue from overflow illustrated by Audit is indicated below:

Charge: PCIT-16, Mumbai

Assessee: M/s Dharma Production Pvt. Ltd. (DPPL)

Assessment Years: 2011-12 to 2014-15

The assessee had provided the general conditions of the agreement under which it had to receive the income. No bifurcation of actual amount received against overflow was available on record. As a result, the amount received from overflow could not be ascertained. We also noticed in the same charge that another assessee had given the details of income earned by sale of various rights of films and had also given the details of share received from overflow of revenue separately. However, the AO did not enquire about the overflow received in case of M/s DPPL. In the Income Tax Act/Rules, no specific form has been prescribed for the producer to submit the details of revenue earned from overflow as well as from various rights of movie, though there is a specific provision (Section 285B) in the Act which makes it mandatory for a producer to submit the details of payments in a statement (Form No. 52A) made by him or due from him to each person who is engaged by him in production of movie. Hence, whether the producer has offered the correct income from film as well as overflow of receipt is not ascertainable due to absence of mechanism mandating full disclosure of income earned from various rights of movie.

53. In this regard, Ministry furnished the status of action taken by them as under :

Name of Assessee/PAN	A.Y.	Pr. CCIT	PCIT Charge	Reference
Dharma Production Pvt. Ltd./ AAACD3889K	2011-12 to 2014-15	Mumbai	PCIT 16, Mumbai	Objection has been accepted by the Ministry and the matter is settled via C&AG letter dated 18-11-2019

54. As regards the present status of action taken by DoR in respect of Dharma Production Pvt. Ltd, the Chairman, CBDT during the evidence held on 23.11.2021 further stated as under:

“This is a case where there was no objection with regard to any revenue loss per se, but the Audit has stated that there is no bifurcation of actual amount received against overflow. As a result, the amount received from the overflow could not be ascertained. The Audit says that another assessee has given the details of the income by sale of various rights of the films and has also given the details of the share received from the overflow of revenue separately. However, the Assessing Officer did not inquire about the overflow received in the case of Dharma Productions. Now the answer to the Audit has been given by the Department stating inter alia that there is no exact reference of any revenue loss in this case, although there are various forms in which the taxpayer may be allowed to present its surplus from exertion of a particular right or a contractual obligation.”

55. Audit found that there was no monitoring mechanism to examine the details of revenue earned from overflow and from various movie rights by the film producers. Thus, there was risk of evasion of tax due to possibility of underreporting of income by the producers.

56. On seeking comments of the Ministry/ CBDT on the aforesaid Audit observation, DoR in a written reply stated as under:

“Vide para 2.4 of letter F. No. 225/215/2018-ITA-II dated 06.10.2021, instructions were issued to the field authorities for verification of income of movie producers from overflow and from other movie rights to avoid the evasion of tax (Copy enclosed as Annexure).”

C Variation in treatment of cost of production paid to foreign line producer (Para 3.3)

57. Section 9(1)(vii) of the Act provides that income by way of fees for technical services payable by a person who is a resident, outside India or for the purpose of making or earning any income from any source outside India, shall be deemed to accrue or arise in India. Further, as per explanation 2 to Section 9(1)(vii) of the Act, ‘fees for technical services’ means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services.

58. Audit found that there was lack of uniformity while applying provisions of withholding tax in respect of payments made to foreign line producers, reason being lack of clarity in treatment of such payments as administrative charge or fee for technical services.

59. Commenting upon the above observation of Audit, DoR in a written reply stated as under:

“As per provisions, section 90(2) of the Income-tax Act (Act), where there is a Double Taxation Avoidance Agreement (DTAA), then in relation to an assessee to whom such DTAA applies, the provisions of the Act shall apply to

the extent such provisions are more beneficial to the assessee. Thus, whether a payment is considered Fees for Technical Services depends on provisions of the Act read with the definition of FTS under the relevant DTAA. The definition of Fees for Technical Services varies across DTAAAs. Some DTAAAs have a "make available clause", while the others do not. The extract of the relevant provisions in some DTAAAs is reproduced here:

India-US DTAA

"...."fees for included services" means payments of any kind to any person in consideration for the rendering of any technical or consultancy services (including through the provision of services of technical or other personnel) if such services:

(a) are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 3 is received; or

(b) make available technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a technical plan or technical design..."

India-Australia DTAA

The India -Australia DTAA does not have a separate provision for Fees for Technical Services, and the same is included in Royalties:

"The term "royalties" in this Article means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for :

...

(g)the rendering of any services (including those of technical or other personnel), which make available technical knowledge, experience, skill, know-how are processes or consist of the development and transfer of a technical plan ardesign; but that term does not include payments or credits relating to services mentioned in sub-paragraphs (d) and (g) that are made;

(h)for services that are ancillary and subsidiary, and inextricably and essentially linked, to a sale of property,

(i) for services that are ancillary and subsidiary to the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships or aircraft in international traffic;..."

India China DTAA :

"The term "Fees for technical services" as used in this Article means any payment for the provision of services of managerial, technical or consultancy nature by a resident of a Contracting State in the other Contracting State, but does not include payment for activities mentioned in paragraph 2(k) of Article 5 and Article 15 of the Agreement....."

As can be seen, the definition is different for each DTAA and hence, the treatment of payments will depend upon the DTAA under consideration and the facts of the case. There can, therefore, be no uniformity in treatment of the payments as FTS and it can vary from case to case

Vide para 3.1 of instruction dated 06.10.2021, instructions were issued to the field authorities for examination of the agreements between parties to verify the nature of payment made to ascertain whether the post-production payments amount to 'Fees from technical services', triggering withholding tax applicability (Copy enclosed as Annexure).

Further, Explanation 1(d) to Section 9(1)(i) of the Income Tax Act, 1961 provides that in the case of a non-resident, no income shall be deemed to accrue or arise in India to such individual, firm or company through or from operations which are confined to the shooting of any cinematograph film in India"

D Variation in treatment of write off of inventory of film rights and pre-operative expenses (Para 3.4)

60. Audit also noticed that there was no uniformity in allowing pre-operative expenses by the assessing officers despite the facts and circumstances being similar in nature indicating inconsistent approach adopted by assessing officers in similar cases.

61. When asked whether CBDT has issued any fresh guidelines to AOs to ensure consistency in the approach in allowing pre-operative expenses by them in similar cases, DoR in a written reply stated as under:

"E-assessment Scheme, 2019 was rolled in 2019. Subsequently, the same was implemented in a full fledged manner in the year 2020 by launch of Faceless Assessment Scheme, 2019, which is presently incorporated in the Income-tax Act, 1961 (Act) under Section 144B. As per section 144B of the Act, all the assessment proceedings, including the scrutiny assessments of cases related to film and television industry unless centralised, are conducted electronically in a faceless manner, through team-based assessment. Specialised units such as Assessment Units, Verification Units, Technical Units and Review Units have been put in place for optimum utilization of the resources through economies of scale and functional specialization. This is a team-based

assessment procedure, where the Assessment Unit can request verification by the Verification Unit and seek technical assistance from the Technical Unit in order to prepare a speaking order. Under this Scheme, the process of Review has been built to facilitate an error-free assessment order. It may further be added that allowance of pre-operative expenses is decided by the AO on a case to case basis, depending upon facts of each case while following judicial discipline.”

E Absence of provision of TDS on purchase of distribution rights of movies under production (Para 3.5)

62. Audit found that though there is a provision of TDS under section 194C on payment against 'production of programmes for broadcasting and telecasting' no such provision existed for payment against purchase of distribution rights of movies under production. Thus, there is risk of escapement of income as payment details do not get reflected in Form 26AS of the assessee (producer).

63. When asked about the action being taken by the CBDT for inclusion of distribution/production of movies for the purpose of TDS under section 194C, DoR in a written reply stated as under:

“The above suggestion would require an amendment in the Act the same will be examined during the ensuing Budgetary exercise.

F Absence of provision on amortization of franchisee fee (Para 3.6)

64. Audit noticed from test check of scrutiny assessment cases of five Indian Premier League (IPL) franchisees in two states that they had purchased the IPL franchise rights from Board of Control for Cricket in India (BCCI) in the year 2008 for a period of 10 years and they had to pay equal annual installment of franchisee fee to BCCI in order to sustain the right. Audit further noticed that three franchisee companies (ISPL, KRSPL and GMRSP) were claiming such installment as revenue expenditure whereas two franchisee companies (JICPL and RCSPL), though paying franchisee fee in installments, had capitalized the entire bid amount and were claiming depreciation on it @ 25 per cent. The ITD had treated it as intangible asset and allowed depreciation @ 25 percent on the amount of installments paid. CIT (A) Mumbai has sustained the stand of ITD in the case of ISPL. However, the higher appellate authorities have adopted different views in this respect where, Income Tax Appellate Tribunal (ITAT) Mumbai had treated the installment of franchisee fee as revenue in nature and ITAT Bangalore in the case of GMRSP had ordered to capitalize the entire bid amount (instead of annual installments actually paid) and allowed depreciation @ 25 per cent thereon.

65. Audit found that there was no uniformity in allowance of franchisee fee, as paid by Indian Premier league (IPL) franchisee to Board of Control for Cricket in India (BCCI), by the ITO, resulting in litigation of the matter and various appellate

authorities treating such franchisee fee differently due to absence of specific provision in the Act to deal with such expenses.

66. As regards the aforesaid Audit observation, DoR in a written reply stated as under:

“The higher appellate authorities have adopted different views on the issue of franchise fee expenses. Income Tax Appellate Tribunal (ITAT), Mumbai had treated the installment of franchisee fee as revenue in nature in the case of M/s Indiawin Sports Pvt Ltd V PCIT(Central) -3, Mumbai and ITAT Bangalore in the case of M/s GMAR Sports Pvt Ltd V PCIT(central), Bengaluru had ordered to capitalize the entire bid amount (instead of annual installments actually paid) and allowed depreciation @ 25 per cent thereon. The exact nature of the payment of franchise fee made has to be analysed on a case-to-case basis by the Assessing Officer depending on the nature of agreement signed between the parties, nature of rights obtained against the franchise fee, frequency of payment made whether annual or one-time payment while following judicial discipline. Therefore, it may not be possible to issue uniform standardized guidelines on this issue. As different views have been taken by various appellate authorities and the nature of franchise fee payment made by the assessee has to be examined on a case-to-case basis before arriving at a conclusion whether it is revenue or capital in nature. It may further be added that the department has filed an appeal before the Hon'ble High Court of Bombay on this issue with the following substantial question of law:

“Whether on facts, in circumstances of the case and in law, the Hon'ble ITAT is right in holding that the expenditure incurred on the account of franchise fees for securing the right to participate in Indian Premier League as Revenue Expenditure whereas the provisions of Section 32(1)(ii) and that of section 55(2)(a) of the Income Tax Act, 1961 evidently provide that franchise and right to carry on any business are capital in nature?”

67. When asked about the action taken by the CBDT to remove confusion and the scope of misinterpretation by the AOs and also to guard against possible misuse, DoR in a written reply stated as under:

“E-assessment Scheme, 2019 was rolled out in 2019. Subsequently, the same was implemented in a full-fledged manner in the year 2020 by launch of Faceless Assessment Scheme, 2019, which is presently incorporated in the Income-tax Act, 1961 (Act) under Section 144B. As per section 144B of the Act, all the assessment proceedings, including the scrutiny assessments of cases related to film and television industry unless centralised, are conducted electronically in a faceless manner, through team based assessment. Specialised units such as Assessment Units, Verification Units, Technical Units and Review Units have been put in place for optimum utilization of the

resources through economies of scale and functional specialization. This is a team- based assessment procedure, where the Assessment Unit can request verification by the Verification Unit and seek technical assistance from the Technical Unit in order to prepare a speaking order. Under this Scheme, the process of Review has been built to facilitate an error-free assessment order.”

68. As regards the stand taken by DoR in the absence of provision on amortization of franchisee fee, the Chairman, CBDT during the evidence held on 23.11.2021 further stated as under:

“... We have seen the development of issues with regard to amortization fee, how the AO has taken the review, and how the Commissioner, the Tribunal and the High Courts have interpreted in that manner. ..The issue here is that the franchise fee is not just one kind of lumpsum payment by an assessee. In the field of commerce, business, and trade, there are various instances in which lumpsum payment is made. For example, in the NHAI related cases, when the bidders get contracts for building roads, there is a view now that the payment of that lumpsum fees to NHAI also partakes the character of intangible rights. So, there is a lot of thought and a lot of litigation going on in these kinds of payments. So, the nature of payment is such that the AO is bound to go by the litigation and the status of litigation of his jurisdictional tribunal and the High Court. To our mind, issuing an omnibus direction, omnibus instructions or circular on franchise fee at this point of time, may not be in the best interest of development of law on this aspect.”

G Lack of mechanism for monitoring and utilization of Form 52A (Para 3.7)

69. Section 285B was introduced, to check inflation of expenditure by the film producers and enable the Department to get information about the recipients of payment for necessary action. Under this section, every person carrying on production of cinematograph film is required to furnish to the jurisdictional Assessing Officer a statement in Form 52A providing particulars of all payments of over ₹ 50,000 in aggregate, made by him or due from him to the persons engaged by him in the production, for each financial year or part of it, till completion of production, within 30 days from the date of completion of production or within 30 days from the end of the financial year, whichever is earlier. In case of default, penalty under section 272A (2)(c) is leviable @ ₹ 100 per day.

70. Audit found that despite acceptance of recommendation (made in their earlier report No. 36 of 2010-11) by the Ministry for inclusion of PAN of payee in Form 52A, no action has been taken by the ITD in this regard. Audit also found control weaknesses in respect of Form 52A wherein submission of Form 52A was not being monitored and the details of production cost disclosed by film producer in Form 52A was not being properly verified during assessment.

71. On being asked about the reasons for non-implementation of the recommendation made by Audit for inclusion of PAN of payee in Form 52A even as yet, DoR in a written reply stated as under:

“In this regard, it is to state that the amendment of form 52A of the Income-tax Rules, 1962 (the Rules) is under process. In addition to above, the suggestion relating to extending the disclosure requirements for other assesseees apart from film producers, it may be noted that it would require amendment in the Act and the same will be examined during the Budgetary Exercise.”

72. Audit observed in two assessment cases in two States that there was mismatch in the details of payments shown in Form 52A and the amounts accounted for in Profit & Loss Account. The payment details indicated in Form 52A were lesser than those indicated in Profit and loss account and the assessments were completed based on the higher amounts of expenditure recognized in the Profit and Loss Account. One case illustrated by Audit is indicated below:

Charge: CIT-6, Hyderabad
Assessee: Veera Venkata Danayya Dasari
Assessment Year: 2013-14

The assessment of the assessee was completed in March 2016 at an income of ₹ 4.24 crore. The assessee had produced two films viz “Nayak” and “Cameraman Gangatho Rambabu” during FY 2012-13 relevant to AY 2013-14 and claimed production expenses against these movies. Audit noticed that assessee had claimed ₹ 4.59 crore as production expenses in the profit and loss account, whereas the payment shown by the assessee in Form 52A was ₹ 2.87 crore only. Thus, there was a variation of ₹ 1.72 crore between Form 52A and Profit & Loss Account. However, AO did not correlate the information furnished in Form 52A with production expenses claimed by the assessee while completing the assessment. The ITD replied (January 2018) that Form 52A reflected the payments made above ₹ 50,000 up to the date of filing while the payments made post filing of Form 52A were not reflected in the same. Further, the expenditure debited to Profit and Loss account and Form 52A were not comparable figures as both could relate to different periods of time. Merely because expenditure was not reflected in Form 52A, the same could not be disallowed.

Explaining their position in the matter, Ministry furnished the following:

Name of Assessee/PAN	A.Y.	Pr. CCIT	PCIT Charge	Reference
Veera Venkata DanayyaDasari/A DSPD2567L	2013-14	Hyderabad	PCIT-6, Hyderabad	Objection has Not been Accepted by the Ministry. ATN has been sent to C&AG for vetting comments.

73. As regards the present status of action taken by DoR in the matter, the Chairman, CBDT during the evidence held on 22.10.2021 further stated as under:

“...This is with regard to section 285B read with section 121A which only enjoins upon the producer to give the details of expenses in respect of payee progressively in excess of Rs. 50,000 only. That could be other expenses in a group of expenses, not against a particular payee but which will fall below Rs. 50,000 in a period of time in a particular year. Now, those expenses are not being captured at this moment in time under the Form 52A. That is the reason why Form 52A cannot supplant what the requirement of a Profit and Loss Account is. So, the exposure and coverage of Form 52A being limited, the Department urges the C&AG to accept that there could be other expenses which are not there in Form 52A but which could find a mention in the Profit and Loss Account. That is why we have not so far accepted and are contesting the version of the C&AG with regard to shortfall in the expenses in the Profit and Loss Account as compared to Form 52A.”

74. As regards inclusion of PAN of the payee in form 52A, the Secretary (Revenue) and Chairperson, CBDT clarified during the evidence held on 22.10.2021 as under:

“it does not require any amendment in the Act and hence will be done shortly.”

75. About the steps taken by the Ministry/CBDT to monitor the submission of Form 52A and compulsory verification of details of cost disclosed by the film producers in form 52A, DoR in a written reply submitted as under:

“Vide para no. 4 of letter F.No. 225/215/2018-ITA-II dated 12.10.2021 (Copy enclosed as Annexure) issued to the field authorities, the Assessing Officers have been instructed to ensure the receipt of Form No.52A from the producers of the cinematographic films as per relevant provisions of the Income-tax Act, 1961. Further, amendment to form 52A and its digitization is under process.”

IV COMPLIANCE ISSUES RELATING TO PROVISIONS OF INCOME TAX ACT

76. Audit noticed that in 592 cases the provisions of the Act were not followed correctly involving tax effect of ₹ 1,922.93 crore. The mistakes noticed in assessments and corresponding tax effect is given below:

Nature of Mistakes	No. of Cases	Tax Effect (₹ in crore)
Absence of justification in making additions	208	-

Income escaping assessment	83	643.39
Incorrect/ irregular allowance of expenses and deductions	179	826.75
Irregular claim/ set off/ carry forward of losses	31	80.81
Mistakes in computation of book profit u/s 115JB and MAT credit u/s 115JAA	25	91.38
Mistakes in computation of tax and other issues	66	280.60
Total	592	1,922.93

B Absence of justification in making additions (Para 4.2)

77. While making additions to the income of assesseees on ad hoc basis, AOs were adopting different approaches in respect of disallowance although the grounds of the additions were same. Audit noticed 208 assessment cases in five states where there was no uniformity in making additions to the income of assesseees on ad hoc basis in the assessment orders. These additions were largely made on percentage basis ranging from 5 per cent to 20 per cent on ad hoc basis for varied reasons such as 'want of vouchers', unsubstantiated expenses, absence of third party vouchers etc. However, no specific justification or the basis of additions was recorded in the assessment orders by the AOs for the differential treatment even though the grounds of addition were same.

78. Illustrations on the above subject matter in respect of Maharashtra and Karnataka States as put forth by Audit are indicated below:

- (i) Audit noticed in 129 cases in the Film Circle (ACIT-16(1), Mumbai) in Maharashtra that the additions to the tune of ₹ 13.75 crore were made on ad hoc basis where (i) addition of only 1 per cent of total expenses was made in two assessment cases; (ii) 2.5 per cent of total expenses was added in one assessment case; (iii) lump sum addition of ₹ 1 lakh to ₹ 1.50 lakh was made in four assessment cases; while in remaining 122 cases, there were variation in the additions made by AOs ranging from 5 per cent to 50 per cent.
- (ii) Audit noticed in 55 assessment cases in Karnataka that the additions to the tune of ₹ 9.86 crore were made on ad hoc basis. These additions were largely made on percentage basis ranging from 5 per cent to 20 per cent. In 28 cases, additions were made in terms of amounts only. No specific justification or basis of additions was recorded by AOs in the assessment orders.

79. When asked about the instructions if any issued to ensure that assessment orders are self explanatory (speaking orders) while arriving at ad-hoc additions, DoR in a written reply submitted as under:

“.. Vide O.M dated 12.09.2019 issued vide F.No. 225.215.2019-ITA-II, it has been intimated that with the implementation of ITBA (Income-tax Business Application) the Assessing Officer is required to follow a more detailed and comprehensive approach while making additions/disallowances to compute taxable income which in turn has reduced the scope of error. Further, all the assessment proceedings, including the scrutiny assessments of cases related to film and television industry unless centralised, are conducted electronically in a faceless manner, through team based assessment. Specialised units such as Assessment Units, Verification Units, Technical Units and Review Units have been put in place for optimum utilization of the resources through economies of scale and functional specialization. This is a team-based assessment procedure, where the Assessment Unit can request verification by the Verification Unit and seek technical assistance from the Technical Unit in order to prepare a speaking order. Under this Scheme, the process of Review has been built to facilitate an error-free assessment order.”

C Income escaping assessment (Para 4.3)

80. Sections 28 to 59 of the Act deal with the manner in which the income from any business, profession, capital gains and other sources have to be computed. Deductions allowable against these sources of income are required to be disallowed and added back to the income of the assessee to fulfill the conditions prescribed in the Act. Audit noticed instances where provisions related to allowances of deductions/expenses/set off and carry forward of losses/MAT etc. were not followed correctly by the ITD. Audit also found the cases where the assessing officers committed mistakes in computation of tax during assessment.

(a) Unexplained credit not brought to tax (Para 4.3.1)

81. As per Section 68 of the Act, where any sum is found credited in the books of an assessee and the AO found no explanation about the nature and source thereof or the explanation offered by the assessee is not, in the opinion of the AO, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that year. In this regard, four cases illustrated by Audit are below as under:

- (i) Charge: PCIT-16, Mumbai**
Assessee: M/s M. I. Marathi Media Ltd.
Assessment Year: 2013-14

The scrutiny assessment was completed in February 2016 at a loss of ₹6.56 crore. The assessee had credited an amount of ₹ 88.24 crore as interest free inter corporate deposit received from M/s Prosperity Agro India Ltd. (PAIL) in AY 2013-14. However, the Balance Sheet of PAIL did

not reflect any such deposit given to the assessee. Hence, the entry in assessee's books denotes an unexplained credit and the same should have been added to the income of assessee under the provisions of Section 68. Omission to do so had resulted in short levy of tax of ₹ 38.65 crore including interest.

(ii) Charge: PCIT-10, Chennai
Assessee: M/s Gemini Industries and Imaging Ltd.
Assessment Year: 2012-13

The scrutiny assessment was completed in March 2015 at an income of ₹ 14.19 crore. In FY 2011-12 the assessee had issued 36,00,010 shares of face value of ₹ 100 and premium at ₹ 900 per share to three persons as shown below:

Sl. No.	Name of person	No. of shares as on 31/03/2011	Shares issued in 2011-12	No. of shares as on 31/03/2012
1	A. Ravishankar Prasad	9,25,000	24,69,295	33,94,295
2	A. Manohar Prasad	29,09,794	5,04,705	34,14,499
3	P.Kiran	-	6,26,010	6,26,010
	Total	38,34,794	36,00,010	74,34,804

82. However, Audit noticed from the records of A. Manohar Prasad that his actual investment in the assessee company was at ₹ 34.15 crore only as on 31 March 2012 (₹ 100 x 34,14,499 shares) which indicated that he had not paid any premium for the shares allotted to him. However, a premium of ₹ 45.42 crore was shown as received by the assessee from Manohar Prasad. Similarly, from the records of A. Ravishankar Prasad, audit noticed that that no such investment was made by him in the assessee company. However, an investment of ₹ 246.93 crore including premium (₹ 1,000 x 24,69,295 shares) has been shown against his name. Therefore, the face value and premium of ₹ 292.35 crore (₹ 45.42 crore + ₹ 246.93 crore) shown in the books of assessee were in nature of unexplained cash credit under section 68 of the Act and should have been added back to assessed income. The omission had resulted in short levy of tax to the tune of ₹ 118.11 crore including interest. Besides, audit noticed that the opening balance of share premium amounting to ₹ 233.77 crore was also not paid by above mentioned share-holders. Therefore, the share premium amount of ₹ 233.77 crore shown in the balance sheet for the year 2011-12 by the assessee was also required to be treated as unexplained cash credit under section 68 of the Act and required to be added back to assessed income of the assessee company. The omission had resulted in short levy of tax to the tune of ₹ 103.15 crore including interest.

(i) Charge: PCIT-1, Hyderabad
Assessee: M/s Arka Leisure & Media Entertainment Pvt. Ltd.
Assessment Year: 2013-14

The scrutiny assessment was completed in March 2016 at a loss of ₹ 19.39 crore. Audit noticed that the assessee had shown in its books of accounts (as on 31 March 2013) an amount of ₹ 15.22 crore and ₹ 14.99 crore being share premium received from M/s Agri Gold Farm Estates India Private Limited (AGFEIPL) and M/s Dream Land Ventures India Private Limited (DLVIPL) respectively. However, the books of account of AGFEIPL showed 'nil' investment in assessee company, while, as per books of account of DLVIPL, it had invested only ₹ 8.40 crore as against ₹ 14.99 crore shown in the books of the assessee. Thus, there was a difference of ₹ 21.81 crore in the books of the assessee to that of the books of two allottee companies with respect to the amount invested in shares. Consequently, the excess amount of ₹ 21.81 crore shown in the books of assessee should have been treated as unexplained credits under section 68 of the Act and added back to the income of assessee. The omission resulted in underassessment of income of ₹ 21.81 crore involving tax effect of ₹ 7.07 crore.

(iv) Charge: PCIT-1, Bhubaneswar
Assessee: M/s N.K Media Ventures (P) Ltd.
Assessment Years: 2012-13 & 2014-15

The scrutiny assessments were completed in March 2015 and December 2016 determining loss of ₹ 5.68 crore and ₹ 6.15 crore respectively. Audit noticed that the share application money of ₹ 2.80 crore and ₹ 3.35 crore and unsecured loan of ₹ 3.74 crore and ₹ 4.57 crore were shown in the Balance Sheet as at 31 March 2012 and 31 March 2014 respectively. However, neither the assessee had furnished documentary evidence in support of the share application money/unsecured loans nor the same was called for by the AO during the scrutiny assessment. In the absence of verification of the above, share application Money of ₹ 6.15 crore (₹ 2.80 crore + ₹ 3.35 crore) and unsecured loan of ₹ 8.30 crore (₹ 3.74 crore + ₹ 4.56 crore) were required to be added to the income as unexplained cash credit. Omission had resulted in incorrect allowance of unexplained cash credit to the extent of ₹ 14.45 crore (₹ 6.15 crore + ₹ 8.30 crore) involving total tax effect of ₹ 4.98 crore including interest.

83. When the comments of DoR were sought and the status of follow-up action taken by them in respect of each case as pointed out by audit, the Ministry furnished the following information:

S. No.	Name of Assessee/PAN	A.Y.	Pr. CCIT	PCIT Charge	Reference
1	M. I. Marathi Media Ltd./AAICS3594E	2013-14	Mumbai	PCIT 16 , Mumbai	The objection has Not been Accepted by the ministry however remedial action has been initiated. CAG's Vetting Comments to ATN sent, have been received by the Ministry for further comments, which are under process.
2	Gemini Industries and Imaging Ltd./AAACG7890H	2012-13	Tamil Nadu	PCIT-10, Chennai	Objection has Not been Accepted by the Ministry. The ATN has been sent to C&AG for vetting comments.
3	Arka Leisure & Media Entertainment Pvt. Ltd./AAECA5086B	2013-14	A. P. & Telangana	PCIT-1, Hyderabad	Objection has been partly accepted by the Ministry. Remedial action has been initiated. CAG's Vetting Comments to ATN sent, have been received by the Ministry for further comments which are under process.
4	N.K Media Ventures (P) Ltd. AACCN4076C	2012-13 & 2014-15	Odisha	PCIT-1, Bhubaneswar	Objection has been accepted by the Ministry and the matter is settled via C&AG letter dated 14-1-2020

(b) Income not offered for tax (Para 4.3.2)

84. In 65 assessment cases in 14 states involving tax effect of ₹ 338.08 crore, it was found that the ITD had not brought to tax the amount which was realized as income of the assessee under various provisions of the Act. Four cases are illustrated below:

(i) Charge: PCIT(Central)-3, Mumbai

Assessee: M/s The Board of Control for Cricket in India (BCCI)

Assessment Years: 2010-11 to 2014-15

As per Rule 115 of the Income Tax Rules, the rate of exchange for the calculation of the value in rupees of any income accruing or arising to the assessee in foreign currency shall be the Telegraphic Transfer (TT) buying rate of such currency as on the date on which the tax was required to be deducted. The scrutiny assessments of the assessee for AYs 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 were completed in February 2013, December 2013, December 2013, March 2016 and December 2016 at assessed income of ₹874.18 crore, ₹856.83 crore, ₹1,304.57 crore, ₹1,371.65 crore and ₹1,131.09 crore respectively. As per the clause of 'Invitation to Tender' for auction of IPL franchise, BCCI had to receive the installments of franchisee fee in Indian Rupees converted at the TT selling exchange rate published by the SBI at the time of payment. Audit noticed that the installments were paid by franchisees in Indian rupees by using same exchange rate of 1 USD = 40 INR (Exchange rate as on the date of agreement with franchisee) for every year. However, BCCI did not recover the fee as per current prevailing exchange rate. Similarly, the ITD also had not assessed the income considering the provisions of Rule 115. As such, income of BCCI from franchisee fee from FY 2009-10 to 2013-14 was received less by ₹325.78 crore resulting in short levy of tax of ₹ 100.67 crore.

(ii) Charge: PCIT-2, Bengaluru

Assessee: M/s Kasthuri Medias Pvt. Ltd.

Assessment Year: 2014-15

As per Section 50C of the Act, if a property is sold below the value fixed by the stamp valuation authority, then the value assessed by such authority shall be the deemed value of consideration for the purpose of calculating capital gain. The scrutiny assessment of the assessee was completed in December 2016 at a loss of ₹ 7.41 crore. The assessee, while computing the capital gain, had adopted a consideration of ₹ 1.50 crore on sale of commercial property as against the fair market value of ₹ 4.52 crore as per stamp valuation authority and the same was also allowed by the AO. This had resulted in under assessment of capital gain of ₹ 2.59 crore (net of indexed cost of acquisition of ₹ 1.93 crore) with consequent tax effect of ₹ 58.60 lakh.

(iii) **Charge: CIT (Exemptions), Chandigarh**
Assessee: M/s Himachal Pradesh Cricket Association
Assessment Year: 2014-15

The scrutiny assessment was completed in December 2016 at an income of ₹12.30 crore. Audit noticed that during the year, assessee had received consideration amounting to ₹ 11.24 crore from BCCI which was not offered as income and considered as advance in their books. Whereas the TDS of ₹ 22.47 lakh on the said amount was claimed by the assessee and also allowed by the ITD while computing the tax. The mistake had resulted in escapement of income of ₹ 11.24 crore involving tax effect of ₹ 5.08 crore escaping assessment.

(iv) **Charge: PCIT-1, Lucknow**
Assessee: Ganga Dutta Upadhyaya
Assessment Year: 2012-13

The scrutiny assessment was completed in March 2015 at an income of ₹26.92 lakh. Audit noticed that the assessee had received total income of ₹ 10.90 crore as reflected in its 26AS, however, it had accounted ₹ 7.93 crore only in the profit and loss account and claimed the entire TDS of ₹ 15.63 lakh deducted thereon. The AO did not add back the remaining amount of ₹ 2.97 crore to the income of the assessee. The omission had resulted in underassessment of income of ₹ 2.97 crore involving tax effect of ₹ 1.24 crore.

85. Elaborating on the action taken by DoR in respect of each of the aforesaid cases as pointed out by audit, the Ministry furnished the following information:

S. No.	Name of Assessee/PAN	A.Y.	Pr. CCIT	PCIT Charge	Reference
1.	The Board of Control for Cricket in India (BCCI)/AAATB0186A	2010-11 to 2014-15	Mumbai	PCIT (Central)-3, Mumbai	Objection has Not been Accepted by the Ministry. CAG's Vetting Comments to ATN sent, have been received by the Ministry for further comments. The ATN wrt to these further

S. No.	Name of Assessee/PAN	A.Y.	Pr. CCIT	PCIT Charge	Reference
					comments of the C&AG, has been sent to C&AG for vetting.
2.	Kasthuri Medias Pvt. Ltd./ AACCK828 1A	2014-15	Karnataka & Goa	PCIT-2, Bengaluru	Objection has been accepted by the Ministry and the matter is settled via C&AG letter dated 18-11-2019
3.	Himachal Pradesh Cricket Association/ AAAAH068 5B	2014-15	Chandigarh	CIT (Exemptions), Chandigarh	Objection has been accepted by the Ministry. Remedial action has been initiated. CAG's Vetting Comments to ATN sent, have been received by the Ministry for further comments ATN sent to C&AG w.r.t to such further comment
4.	Ganga Dutta Upadhyaya/ AAHPU622 8M	2012-13	UP (East)	PCIT-1, Lucknow	Objection has been accepted by the Ministry. Remedial action has been completed. CAG's Vetting Comments to ATN sent, have been received by the Ministry for further comments ATN sent to C&AG w.r.t to such

S. No.	Name of Assessee/P AN	A.Y.	Pr. CCIT	PCIT Charge	Reference
					further comment

D Incorrect/ irregular allowance of expenses and deductions(Para 4.4)

86. Provisions of the Act allow the assessee to claim various expenses and deductions on fulfillment of certain prescribed conditions. If these conditions were not fulfilled, the corresponding expense/deductions were required to be disallowed by the assessing officer. It was noticed that in 179 cases involving tax effect of ₹ 826.75 crore, incorrect/irregular allowance of expenses and deductions were made by ITD.

(a) Non/short deduction or non-deposit of TDS (Para 4.4.1)

87. As per Section 40(a)(ia) of the Act, no deduction of expenditure is allowed in computing the income chargeable under the head "Profits and gains of business or profession" on which tax is deductible at source and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in section 139(1).

88. Audit noticed in 50 assessment cases in 14 states involving tax effect of ₹ 591.25 crore that the assessees had claimed expenses although the applicable TDS thereon was not deducted or, after deduction, not deposited to the government account within prescribed time limit. However, the ITD had not disallowed these expenses. Five cases are illustrated below:

- (i) **Charge: PCIT-4, Chennai**
Assessee: M/s New Generation Media Corporation Pvt. Ltd.
Assessment Year: 2014-15

The scrutiny assessment of the assessee was completed in December 2016 at a loss of ₹ 43.66 lakh. The assessee had claimed the expenses of ₹ 8.36 crore towards 'design & development and service charges' and ₹ 11.25 crore towards 'equipment hire charges' on which TDS was not deducted and the same was confirmed from Form 26Q as well as 26AS of corresponding assesseees. However, the expenditure was not disallowed under section 40(a)(ia) of the Act. The omission had resulted in underassessment of ₹ 19.61 crore with consequent short levy of tax of ₹ 8.86 crore including interest.

- (ii) **Charge: PCIT-1, Hyderabad**

Assessee: Celebrity Cricket League
Assessment Years: 2012-13 & 2014-15

The scrutiny assessments of the assessee for AY 2012-13 and AY 2014-15 were completed in March 2015 and September 2016 at a loss of ₹ 24.86 crore and at nil income respectively. Audit noticed from Form 26Q as well as books of accounts of the assessee that the assessee had claimed 'professional or technical services' amounting to ₹ 5.77 crore and ₹ 5.49 crore in AY 2012-13 and AY 2014-15 respectively on which TDS was not deducted. However these expenditure were not disallowed under section 40a(ia) of the Act. Omission had resulted in underassessment of ₹ 5.77 crore and ₹ 5.49 crore with consequent short levy of tax of ₹ 1.78 crore and ₹ 1.70 crore (aggregated tax effect of ₹ 3.48 crore) for AY 2012-13 and AY 2014-15 respectively.

(iii) Charge: PCIT (Central), Bengaluru
Assessee: K. Manju
Assessment Years: 2007-08 to 2012-13

The scrutiny assessments for AY 2007-08 to 2012-13 were completed in March 2014 at income of ₹ 1.10 crore, ₹ 1.14 crore, ₹ 1.57 crore, ₹ 0.76 crore, ₹ 3.64 crore and ₹ 1.26 crore respectively. Audit noticed that AO, while discussing the assessment order, had disallowed the expenditure of ₹ 6.83 crore from AY 2008-09 to 2012-13, on which no tax was deducted at source. However, while computing the taxable income, the same was not added back to the income of the assessee. Further, AO had adopted the undisclosed income of the assessee at ₹ 2.23 crore instead of ₹ 6.84 crore, resulting in under assessment of income of ₹ 4.62 crore. The omissions had resulted in under assessment of income of ₹ 11.45 crore involving a tax effect of ₹ 6.09 crore.

(iv) Charge: PCIT, Panaji
Assessee: Goa Cricket Association
Assessment Years: 2009-10, 2010-11 & 2011-12

The scrutiny assessments for AYs 2009-10, 2010-11 and 2011-12 were re-opened under section 147 wherein the claim of exemption under section 11 on the ground of non-registration of the assessee as a charitable trust as per the provisions of section 12AA was disallowed. Before the conclusion of the re-opened proceedings for the said AYs, the TDS Officer communicated (December 2012) that the assessee was in default in deduction of TDS under sections 194C, 194J and 194-I of the Act. Despite timely communication, the AO did not act on the information received for disallowing the related expenditure aggregating to ₹ 17.03 crore. The

omission resulted in short computation of income of equal amount involving short levy of tax aggregating to ₹ 9.19 crore.

- (v) **Charge: PCIT-1, Kolkata**
Assessee: R. P. Techvision (India) Pvt. Ltd.
Assessment Year: 2013-14

The audit noticed from Tax Audit Report that total tax of ₹ 21.05 crore was deducted by the assessee while making payments for commission, contractors, fee for professional & technical service and rent but the same was not deposited to the Government Account. It was further noticed that out of ₹ 21.05 crore, only ₹ 59.01 lakh was disallowed during scrutiny assessment completed in March 2016. Thus, the balance amount of ₹ 20.46 crore was required to be added back for not depositing the TDS to Government Account. Irregular allowance of expenditure of ₹ 20.46 crore resulted in under assessment of income of ₹ 20.46 crore involving short levy of tax of ₹ 6.64 crore.

When the comments of DoR were sought and the status of follow-up action taken by them in respect of each case as pointed out by audit, the Ministry furnished the following details:

S. No.	Name of Assessee/PAN	A.Y.	Pr. CCIT	PCIT Charge	Reference
1.	New Generation Media Corporation Pvt Ltd./ AAKCS4085 J	2014-15	Tamil Nadu	PCIT-10, Chennai	Objection has Not been Accepted by the Ministry. ATN sent to C&AG for vetting comment
2.	Celebrity Cricket League/ AAEC206 8P	2012-13 & 2014-15	Hyderabad	PCIT (Central), Hyderabad	Objection has been partly accepted by the Ministry. ATN sent to C&AG for vetting comment.
3.	K. Manju/AJXP K1430E	2007-08 to 2012-13	Karnataka & Goa	PCIT, Central, Bengaluru	Objection has been partly accepted by the Ministry. ATN sent to C&AG for vetting comment.

S. No.	Name of Assessee/PAN	A.Y.	Pr. CCIT	PCIT Charge	Reference
4.	Goa Cricket Association/ AAAAG2351D	2009-10, 2010-11 & 2011-12	Karnataka & Goa	PCIT-Panaji	Objection has been not accepted by the Ministry and the matter is settled via C&AG letter dated 18-11-2019.
5.	R P Techvision (India) Pvt. Ltd./ AADCR0950Q	2013-14	W. B. & Sikkim	PCIT-1, Kolkata	Objection has been accepted by the Ministry and the matter is settled via C&AG letter dated 14-11-2019.

(b) Allowance of deductions without fulfilling the prescribed conditions.

Audit noticed in 48 assessment cases in 10 States that assesseees were allowed excess deduction resulting in loss of revenue of ₹ 68.10 crore. Four cases are illustrated below:

- (i) Charge: PCIT (Exemption), Kolkata
Assessee: M/s Cricket Association of Bengal
Assessment Year: 2012-13 to 2014-15**

As per Section 13(8) read with provision of section 2(15) of the Act, advancement of any other object of general public utility shall not be a charitable purpose if it involves the carrying on of any activity in the nature of trade, commerce or business in any assessment year, the exemption under section 11 of the Act is not applicable for that assessment year. The scrutiny assessments of the assessee for AYs 2012-13, 2013-14 and 2014-15 were completed in November 2014, January 2016 and December 2016 respectively at an income of ₹ Nil after allowing exemption under section 11 of the Act. The assessee had claimed and was allowed exemption of ₹ 34.75 crore under section 11 of the Act from AY 2012-13 to AY 2014-15 although it had received subsidy of ₹98.02 crore from BCCI which was commercial in nature and, hence the AO should have disallowed the exemption claimed by the assessee and brought the same to tax. It is pertinent to mention that in the case of BCCI and other eight state cricket associations, AO had considered their activities as commercial after hosting of Indian Premier League (IPL) and disallowed the exemption and taxed the subsidies received from BCCI as commercial receipts. However, in the instant case, AO had allowed the exemption to the assessee, i.e., M/s Cricket Association of Bengal despite the transaction being

commercial in nature. The mistake had resulted in underassessment of income of ₹ 34.75 crore for AY 2012-13 to AY 2014-15 with consequent short levy of tax of ₹ 13.71 crore including interest. The ITD in its reply (March 2018) stated that the assessee-society is a member of the national body, Board of Control for Cricket in India (BCCI), which regulates and promotes the sport of cricket in India and the main object of the assessee-society is to promote the sport of cricket in the State of West Bengal. The assessee, being a State Cricket Association, is entitled to revenue on sale of tickets, advertisement, contractual income etc. when it conducts international matches. It is entitled to all in-stadia sponsorships, advertisements and beverage revenue, etc. It earns income under the following head:- (1) Subscription from members (2) Sale of tickets (3) Revenue from advertisements (4) Receipts from BCCI (5) Interest from bank deposits (6) Revenue from contractual payments like beverage. It uses all these incomes to promote the sport of cricket in the State of West Bengal. The assessee-society, being a member of BCCI, hosts the matches which are conducted by BCCI and sell tickets to the cricket viewers. The role of the assessee is only to provide stadium for conducting matches. Other than that, it has no role in conducting the international matches and Indian Premier League matches. The other activity of the assessee-society is to conduct training programmes, inter-university, inter-school and inter-association matches and provide coaching classes for college students at district level in the State of West Bengal. Expenditures involved in such activities were met out of surplus funds remaining with the assessee- society. It also receives funds from BCCI for meeting these expenditures, being the host. Therefore, it cannot be said that the assessee is conducting any business activity. In view of the above, proviso to Section 2(15) of the Act is not applicable and the assessee is eligible for exemption under Section 11 of the Act for all the assessment years under consideration. The reply of the department is not tenable as the department itself stated that the assessee sold its advertisement rights and other commercial rights to various corporate to borne the expenditure for one day matches, T-20 matches and Indian Premier League matches. As the assessee sold its advertisement rights and commercial rights to various corporates, the income from such sale of advertisement rights and commercial rights were required to be considered as commercial income. Further, deduction of TDS under section 194C by the BCCI implies that the payment made by the BCCI to the assessee was purely on contractual basis. So, the receipt from the BCCI was required to be treated as commercial income of the assessee. Hence, as per provisions of Section 2(15) of the Income Tax Act, 1961 the assessee was not eligible for exemption of tax.

- (ii) **Charge: CIT-6, Hyderabad**
Assessee: M/s Sri Venkateswara Cine Chitra Pvt. Ltd.
Assessment Year: 2013-14

The scrutiny assessment of the assessee was completed in March 2016 at nil income. The assessee had offered income of ₹ 13.86 crore and claimed production cost of ₹ 15.70 crore against the movie 'Ongole Gita' which was released on 1st February 2013. As the film was not released within 90 days before the end of the financial year, the assessee was eligible for claiming cost of production only to the extent of ₹ 13.86 crore as per the provisions of Rule 9A. However, AO allowed full expenditure of ₹ 15.70 crore on account of production cost to the assessee. The mistake had resulted in allowing excess expenditure of ₹ 1.84 crore with short levy of tax of ₹ 59.74 lakh. The ITD partially accepted audit observation (January 2018) stating that the publicity and positive prints expenses of ₹ 87.65 lakh included in the production cost were otherwise allowable under section 37 of IT Act. The reply is not tenable. As per rule 9A, the cost of production has to be restricted to the extent of income realized by the assessee.

- (iii) Charge: PCIT-3, Mumbai**
Assessee: M/s Cinepolis India Pvt. Ltd.
Assessment Year: 2014-15

The scrutiny assessment was completed in December 2016 at a loss of ₹ 15.16 crore. Audit noticed that the Government of Punjab, Bihar, Maharashtra and Madhya Pradesh had exempted the assessee from collection of entertainment tax due to which the assessee treated the collection of entertainment tax of ₹ 13.08 crore as capital receipt and claimed exemption thereon. The said claim of exemption was also allowed by the AO. However, it was seen from the 'Entertainment Tax Exemption Agreements' entered into between the assessee and the states that the said exemption was related to the multiplex projects which required heavy capital and long gestation period to make profits. Consequently, the amount of exemption received by the assessee on account of entertainment tax was required to be adjusted against the block of assets of multiplex under the provision of explanation 10 of Section 43(1) of the IT Act. Omission had resulted in underassessment of income of ₹ 13.08 crore with consequent potential tax effect of ₹ 4.44 crore.

- (iv) Charge: PCIT-2, Bengaluru**
Assessee: M/s Big Animation India Pvt. Ltd.
Assessment Years: 2013-14 & 2014-15

The scrutiny assessments for AY 2013-14 and AY 2014-15 was completed in February 2016 & July 2016 at a loss of ₹ 20.54 crore and ₹ 24.06 crore respectively. Audit noticed that during the AY 2014-15, the assessee had debited in the profit and loss account the operational expenses of ₹ 23.96 crore which included ₹ 19.33 crore towards amortised cost of

movies. Out of the above amount, ₹ 15.34 crore pertained to the 50 per cent amortised cost of animated movie titled as 'Krishna and Kans'. However, the accounting policy of the assessee envisaged amortization of the inventories cost of release movies & serials over a period of 10 years on straight line basis, commencing from the year in which it was licensed for broadcasting. However, for the movie 'Krishna and Kans', the cost was amortised over the period of two years i.e. ₹ 15.34 crore being 50 per cent of total cost was amortised each in two assessment years (AY 2013-14 and AY 2014-15) which was irregular, as it was required to be amortised over the period of 10 years. Omission to do so has resulted in underassessment of income of ₹ 24.54 crore involving cumulative tax effect of ₹8.16 crore in both the assessment years.

89. When the comments of DoR and the status of follow-up action taken by them were sought in respect of each case as pointed out by audit, the Ministry furnished the following:

S. No.	Name of Assessee/ PAN	A.Y.	Pr. CCIT	PCIT Charge	Reference
1.	Cricket Association of Bengal/ AAATC378 1G	2012-13 to 2014-15	W. B. & Sikkim	CIT (Exemption) Kolkata	Objection has been accepted by the Ministry. Remedial action has been initiated. CAG's Vetting Comments to ATN sent, have been received by the Ministry for further comments. ATN sent to C&AG w.r.t to such further comment
2.	Sri Venkateswara Cine Chitra Pvt. Ltd./AANC S2258Q	2013-14	Hyderabad	PCIT-6, Hyderabad	Objection has been partly accepted by the Ministry. ATN sent to C&AG w.r.t to such further comment.
3.	Cinapolis India Pvt. Ltd./AADCC20 76J	2014-15	NWR	PCIT, Gurugram	Objection has been Accepted by the Ministry. Remedial action has been initiated. ATN is under process.

4.	Big Animation India Pvt Ltd/ AAFCA37 35Q	2013-14 & 2014-15	Karnataka & Goa	PCIT-2, Bengaluru	Objection has Not been accepted by the Ministry and the matter is settled via C&AG letter dated 18-11-2019
----	------------------------------------------	-------------------	-----------------	-------------------	------------------------------------------------------------------------------------------------------------

(c) Expenses not allowable under various provisions of the Act (Para 4.4.3)

90. Audit noticed in 81 assessment cases in 15 states that though the expenses were not allowable to the assessees under various provisions of the Act, the ITD had allowed the expenses leading to the short demand of ₹ 167.41 crore. Four cases are illustrated below:

- (i) Charge: PCIT-2, Ahmedabad**
Assessee: M/s Fuse Plus Media Pvt. Ltd.
Assessment Year: 2011-12

The scrutiny assessment of the assessee was completed in January 2014 at an income of ₹ 6.59 crore. The assessee had debited an amount of ₹ 2.26 crore towards 'Product Development Expenses' which was capital in nature as the assessee had derived enduring benefit from it. Hence, the same was required to be capitalised. Omission had resulted in under- assessment of income of ₹ 1.70 crore (after giving the benefit of depreciation @ 25 per cent being an intangible assets) with consequent short levy of tax of ₹ 75.49 lakh.

- (ii) Charge: CIT-4, Hyderabad**
Assessee: M/s Prakash Arts Pvt. Ltd.
Assessment Years: 2013-14 to 2014-15

The scrutiny assessments of the assessee were completed in March 2016 and November 2016 at an income of ₹ 3.92 crore and ₹ 4.06 crore respectively. The assessee had incurred expenditure of ₹ 16.12 crore (₹ 12.95 crore towards 'Hoarding erection & maintenance' and ₹ 3.17 crore towards 'Bus shelter erection & maintenance'). Since the above expenses were in nature of capital expenditure, the same were required to be capitalised. The omission had resulted in excess allowance of expenditure of ₹13.70 crore (after giving the benefit of depreciation @ 15 per cent being plant and machinery) with consequential short demand of ₹ 3.96 crore.

- (iii) Charge: CIT-2, Delhi**
Assessee: M/s Bharti Telemedia Ltd.
Assessment Year: 2013-14

Audit noticed that the assessee had debited interest expenses of ₹43.20 crore under the head 'Finance Cost' in profit and loss accounts during AY 2013-14. The above expenses included ₹ 16.40 crore towards interest provision on disputed entertainment tax and ₹ 26.80 crore towards interest provision on disputed licence fee. Thus, the expenses being unascertained liability should have been disallowed and added back to the income of the assessee. Omission to do so had resulted in over assessment of loss amounting to ₹ 43.20 crore involving potential tax effect of ₹ 14.02 crore. The ITD in its reply (October 2017) stated that the provisions were recognised when the company had a present obligation as result of past event and determined based on the best estimates required to settle the obligation at the balance sheet date. It had also quoted a decision of Hon'ble ITAT in case of M/s Bharti Airtel Services Ltd. The reply was found not to be acceptable. As per notes to profit & loss accounts, the interest expenses were the provision of contingent nature created during the year, and hence, the same was not allowable. The decision quoted by ITD was relating to provision made by the assessee in respect of diminution in the value of stock and hence, it was not relevant in the instant case.

- (iv) **Charge: PCIT-16, Mumbai**
Assessee: M/s UTV Software Communication Ltd.
Assessment Year: 2012-13

The scrutiny assessment was completed in March 2016 at nil income. Audit noticed that the assessee had taken short term borrowing of ₹ 113.76 crore and claimed interest expense of ₹ 88.84 crore. As per Cash Flow Statement for AY 2011-12, the assessee had capitalised interest of ₹ 34.72 crore (i.e. approximately 57.81 *per cent* of total interest) in the books of account and claimed remaining interest expenses of ₹ 25.33 crore as revenue expenditure. Audit also noticed that the assessee had inventory i.e. Capital Work in Progress (CWIP) of ₹ 402.24 crore in the AY 2012-13 (Previous Year ₹ 555.70 crore) and also there was no change in accounting method during current year. Hence, the proportionate interest of ₹ 50.63 crore (57 per cent of the total interest of ₹ 88.84 crore) against the CWIP should have been capitalised during AY 2012-13 also. Omission had resulted in under assessment of income of ₹ 50.63 crore involving short levy of tax of ₹ 22.34 crore including interest.

91. When the comments of DoR and the status of follow-up action taken by them in respect of each case as pointed out by audit were sought, the Ministry furnished the following details:

S. No.	Name of Assessee/PAN	A.Y.	Pr. CCIT	PCIT Charge	Reference
1.	Fuse Plus Media Pvt. Ltd./ AABCF1024 B	2011-12	Gujarat	PCIT-2, Ahmedabad	Objection has Not been Accepted by the Ministry. CAG's Vetting Comments to ATN sent, have been received by the Ministry for further comments. Further comments are under process.
2.	Prakash Arts Pvt. Ltd./ AADCP883 5C	2013-14 to 2014-15	Hyderabad	PCIT 4, Hyderabad	Objection has been partly accepted by the Ministry. Remedial action has been initiated. CAG's Vetting Comments to ATN sent, have been received by the Ministry for further comments. Further comments are under process.
3.	Bharti Telemedia Ltd./ AADCB014 7R	2013-14	Delhi	PCIT 2, Delhi	Objection has Not been Accepted by the Ministry. Remedial action has been initiated. ATN is under process.
4.	UTV Software Communication Ltd. / AAACU412 2G	2012-13	Mumbai	PCIT 16 , Mumbai	Objection has Not been Accepted by the Ministry and the matter is settled via C&AG letter dated 18-11-2019.

E Irregular set off/carry forward of losses (Para 4.5)

92. Audit noticed in 31 cases involving tax effect of ₹ 80.81 crore where irregular set off/ carry forward of losses were allowed by ITD. The cases are discussed in succeeding paragraphs:

(a) Losses adjusted against additions made under section 68 and 69 of the Act (Para 4.5.1)

93. As per Section 115BBE of the Act, where the total income of an assessee includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, the income-tax payable shall be the aggregate of (a) the amount of income-tax calculated on income referred to in the above sections, at the rate of 30 *per cent*; and (b) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (a). It also stipulates that notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) of sub-section (1).

94. Audit noticed in seven cases in Delhi and Maharashtra states that the additions made by AOs were set off against the losses, which was in contravention of the Section 115BBE of the Act. The mistake had resulted in loss of revenue of ₹ 24.31 crore. Three cases are illustrated below:

- i. **Charge: PCIT (Central)-1, New Delhi**
Assessee: M/s International Recreation & Amusement Ltd.
Assessment Year: 2015-16

The scrutiny assessment of the assessee was completed in December 2016 at an income of ₹ 2.50 crore. The AO made additions of ₹ 34.53 crore to the income of the assessee on account of "Unaccounted Cash Receipts" under section 68 of the Act which was required to be taxed @ 30 *per cent* as per provision of sub section (1) of Section 115 BBE of the Act. However, current year loss of ₹ 32.03 crore was set off against the above additions. The mistake had resulted in under-assessment of income of ₹ 32.03 crore involving short levy of tax of ₹ 13.17 crore including interest. ITD replied (March 2018) that the said provision is applicable only from the AY 2017-18 onwards and this case been assessed for AY 2015-16. Reply of the department is not tenable as provision for non-deduction of any expenditure or allowance was already there in section 115BBE when it was introduced by Finance Act 2012. The losses in current year are arrived at after allowing business expenditure. Hence, current year losses cannot be set-off against the income assessed under section 68 of the Act. Moreover, ITD has found the same issue acceptable and re-opened the case under section 148 in respect of M/s INX News Pvt. Ltd. which is illustrated below.

- ii. **Charge: PCIT-3, Delhi**
Assessee: M/s INX News Private Limited
Assessment Year: 2013-14

The scrutiny assessment was completed in March 2016 at nil income after setting off of brought forward losses of ₹ 36.85 crore. Audit noticed that AO had added an amount of ₹ 12.20 crore to the income of assessee on account of "Share Application Money" under section 68 treating it as bogus transfer of money. However, the AO allowed the set off of brought forward losses against the above additions made under section 68. The mistake had resulted in under assessment of income of ₹ 12.20 crore involving short levy of tax of ₹ 5.38 crore including interest. ITD had initiated remedial action under section 148 of the Act in March 2018.

iii. Charge: PCIT-16, Mumbai

Assessee: M/s Naurang Godavari Entertainment Ltd.

Assessment Year: 2013-14

The scrutiny assessment of the assessee was completed in March 2016 at an income of ₹ 7.84 crore. The AO had made addition of ₹ 13.56 crore under section 68 of the Act and ₹ 1.70 crore under other provisions of the Act. However, the business loss of ₹ 7.42 crore which was required to be set off against addition of ₹ 1.70 crore, had been set off against the total addition, resulting in underassessment of income of ₹ 5.72 crore with consequent short levy of tax of ₹ 2.52 crore including interest.

95. When the comments of DoR and the status of follow-up action taken by them in respect of each case as pointed out by audit were sought, the Ministry furnished the following:

S. No.	Name of Assessee/PAN	A.Y.	Pr. CCIT	PCIT Charge	Reference
1.	International Recreation & Amusement Ltd./AACCI4901M	2015-16	Delhi	PCIT-4, Delhi (earlier PCIT 1, Delhi)	Objection has Not been Accepted by the Ministry and the matter is settled via C&AG letter dated 14-1-2020
2.	INX News Private Limited./AABCI6212J	2013-14	Delhi	PCIT 3, Delhi	Objection has Not been Accepted by the Ministry and the matter is settled via C&AG letter dated 13-09-

					2021
3.	Naurang Godavari Entertainment Ltd./ AAMCS9423J	2013-14	Mumbai	PCIT 16 , Mumbai	Objection has been Accepted by the Ministry and the matter is settled via C&AG letter dated 05-03-2020

96. On the objections not accepted by the Ministry, Chairman CBDT, during the oral evidence stated as under:

"... These cases do not suffer from the liability cost under Section 115BBE. This statute prevented such kind of a treatment. That is why, these two points -- which have been raised by the Audit -- have not been accepted.

(b) Excess set off of losses (Para 4.5.2)

97. Under section 72 of the Income Tax Act, 1961, where the net result of computation under the head 'Profits & Gains of Business or Profession' is a loss to the assessee and such loss cannot be wholly set off against income under any other head of the relevant year, so much of the loss as had not been set off shall be carried forward to the following assessment year/years, to be set off against the profits and gains of business or profession of those years. Audit noticed in 13 assessment cases in six states that excess set off of the losses was allowed resulting in short demand of tax/ interest of ₹ 24.21 crore. Three cases are illustrated below:

- (i) **Charge: PCIT-16, Mumbai**
Assessee: M/s Star Entertainment Media Ltd.
Assessment Year: 2013-14

The scrutiny assessment was completed in March 2016 at an income of ₹ 40.52 crore which was rectified in May 2016 under section 154 of the Act at an income of ₹ 27.66 crore. The AO had allowed the set off of brought forward losses of ₹ 49.63 crore as against available losses of ₹ 18.64 crore. As such, there was excess set off of losses of ₹ 30.99 crore involving short levy of tax of ₹ 13.02 crore including interest.

- (ii) **Charge: CIT-1, Kochi**
Assessee: M/s Indo Asian News Channel Pvt. Ltd.
Assessment Year: 2014-15

The scrutiny assessment was completed in November 2016 at nil income after setting off of losses pertaining to AY 2011-12 of ₹ 75.17 lakh and

AY 2012-13 of ₹3.97 crore. However, as per assessment order of AY 2012-13, the income was assessed at ₹ 5.50 crore, hence, set off of losses pertaining to AY 2012-13 against current year income was irregular. The mistake had resulted in excess allowance of losses of ₹3.65 crore (after allowing loss for AY 2011-12 of ₹ 75.17 lakh and for AY 2013-14 of ₹ 31.03 lakh) involving short levy of tax of ₹ 1.58 crore including interest. ITD in its reply (January 2018) stated that in AY 2012-13, addition was made under section 68 of the Act on protective basis, hence set off of loss relating to AY 2012-13 was in order. Reply of the ITD is not tenable as there was no loss for AY 2012-13 to be carried forward in the subsequent years.

- (iii) **Charge: PCIT-16, Mumbai**
Assessee: M/s Crest Animation Studios Ltd.
Assessment Year: 2011-12

The scrutiny assessment was completed in May 2015 at an income of ₹ 113.79 crore. Audit noticed that the AO had allowed the set off of business loss of ₹ 19.22 crore as against the available losses of ₹ 8.99 crore. The mistake had resulted in underassessment of ₹ 10.23 crore involving tax effect of ₹ 4.65 crore.

(c) Irregular allowance of carry forward of losses (Para 4.5.3)

98. Audit observed in 11 assessment cases in eight states that excess losses were allowed for carry forward for future set off resulting in potential loss of revenue of ₹ 32.29 crore. Three cases are illustrated below:

- (i) **Charge: PCIT-3, Kolkata**
Assessee: M/s Bangla Entertainment Pvt. Ltd.
Assessment Year: 2011-12

The scrutiny assessment of the assessee was completed in March 2014 at a loss of ₹ 5.80 crore. Audit noticed that the assessee had filed return of income for AY 2011-12 beyond the time limit prescribed under section 139(1). Hence the loss was not allowable to be carried forward under the provisions of section 80. However, the assessee was allowed to carry forward the loss. This had resulted in irregular allowance of carry forward of loss of ₹ 5.80 crore involving potential tax effect of ₹1.79 crore. ITD accepted the objection (January 2016) and took remedial action under section 263 of Act.

- (ii) **Charge: PCIT, Trivandrum**
Assessee: M/s Asianet Satellite Communications Ltd.
Assessment Year: 2014-15

The scrutiny assessment was completed in December 2016 at nil income. Audit noticed that the AO had allowed unabsorbed depreciation of ₹ 178.72 crore as against the available unabsorbed depreciation of ₹ 120.46 crore to be carried forward to subsequent year. As such, there was excess carry forward of unabsorbed depreciation of ₹ 58.26 crore involving potential short levy of tax of ₹ 18.96 crore. ITD rectified the mistake under section 154 of the Act (January 2018).

- (iii) **Charge: PCIT-13, Mumbai**
Assessee: M/s Super Fight Promotions Pvt. Ltd.
Assessment Year: 2014-15

The scrutiny assessment was completed in November 2016 at a loss of ₹ 2.73 crore. Audit noticed that there was change in share holding pattern of the assessee company due to which it was not eligible for carry forward of the available losses for the subsequent years under section 79 of the Income Tax Act. However, the assessee had claimed and the AO allowed the brought forward loss of ₹ 10.10 crore, resulting in underassessment of income of ₹ 10.10 crore involving tax effect of ₹ 3.12 crore.

99. When the comments of DoR were sought and the status of follow-up action taken by them in respect of each case as pointed out by audit, the Ministry furnished the following:

S. No.	Name of Assessee/PAN	A.Y.	Pr. CCIT	PCIT Charge	Reference
1.	Bangla Entertainment Pvt. Ltd./AADCB0467E	2011-12	Mumbai	PCIT 12, Mumbai	Objection has been Accepted by the Ministry and the matter is settled via C&AG letter dated 16-10-2019
2.	Asianet Satellite Communications Ltd./AAECA5548E	2014-15	Kerala	PCIT, Trivandrum	Objection has been Accepted by the Ministry and the matter is settled via C&AG letter dated 18-11-2019
3.	Super Fight Promotions Pvt. Ltd./AAQCS7985M	2014-15	Mumbai	PCIT 13, Mumbai	Objection has Not been Accepted by the Ministry. CAG's Vetting Comments to ATN sent, have been received by the

S. No.	Name of Assessee/PAN	A.Y.	Pr. CCIT	PCIT Charge	Reference
					Ministry for further comments. ATN sent to C&AG w.r.t to such further comment

100. During the oral evidence held on 23.11.2021, with respect to the case pertaining to M/s Star Entertainment Media Ltd, Chairman CBDT stated as under:

"...This objection has not been accepted. In our reply, we have stated that the amount of loss for the assessment year 2009-10 and 2010-11 -- which the audit is accepting -- is Rs. 86.62 crore. Out of that, the amount of loss adjusted for assessment year 2011-12 and 2012-13 is Rs. 35.73 crore and Rs. 1.25 crore. These two losses of 2011-12 and 2012-13 arose because of an order under Section 250 dated 12.01.2017 and 06.02.2017. After appropriating these two losses, the total loss adjusted till 2012-13, was Rs. 37 crore. So, the total loss available for adjustment against total income for assessment year 2013-14 is Rs. 49.62 crore. So, this has entirely been adjusted in assessment year 2013-14." ~~Verbatim 23.11.2021 (Page no 5)~~

101. As regards the case related to the Bangla Entertainment Private Limited regarding irregular allowance of carry forward of losses, Chairman CBDT further stated as under:

"The Audit's view was accepted by the Jurisdictional AO and he disallowed the loss carry forward. But the ITAT, Kolkata gave an order on 23rd August, 2017 saying that there was indeed an international transaction and hence, it quashed the order giving effect to Section 263. I will tell you the subsequent events. The assessee's registered office was shifted to Mumbai and in Mumbai, the TPO examined this case and decided whether an appeal is to be filed against the order of the ITAT, Kolkata. On 18.12.2017, the TPO gave an opinion that there was indeed an international transaction involved in this case. Hence, he suggested not to file an appeal to the hon. High Court. So, this has been examined threadbare and it was found that there was an international transaction. The subsequent events show that the assessee was right in filing the return in November. So, the relief was given."

102. Regarding the case pertaining to Asianet Satellite Communications Private Limited, Chairman CBDT further stated as under:

"The assessment under Section 143(3) of the Act dated 19.12.2016 was rectified under Section 154 on 01.12.2017 by reworking the amount of depreciation to be carried forward to the subsequent years at Rs. 120.46 crore. On further verification, it was also noticed that the depreciation eligible for carry forward was only Rs. 110.16 crore. Therefore, the notice under

Section 154 was issued and served upon the assessee. The assessee did not raise any objection to the rectification and on the facts on this case, order under Section 154 dated 01.12.2017 was passed on 19.01.2018 by revising the depreciation eligible for carry forward to subsequent years to Rs. 120.16 crore. Rectification has been made as per the observations of the Audit and it has been accepted.

103. With regard to the case related to Super Fight Promotions Private Limited, Chairman CBDT further stated as under:

“This is a case where the interpretation of Section 79 has been put to question by Audit. The Audit says that the scrutiny assessment was completed at a loss of Rs. 2.73 crore. The Audit also says that there was a change in shareholding of the assessee’s company due to which it was not eligible for carry forward of the available losses to the subsequent years under Section 79 of the Act. However, the assessee had claimed and the AO had allowed to bring forward the loss of Rs. 10.10 crore resulting in under assessment of income of Rs. 10.10 crore involving tax amount of Rs. 3.12 crore. Objection has been accepted principally for the reason that there is Section 79(2)(a) which says that transfer of shares by way of gift to any relative of the shareholder is outside the Section 79. In this case, Shri Ripu Sudan Kundra was a shareholder and has transferred the shares to Shrimati Shilpa Kundra, legally wedded wife. Therefore, the losses have been correctly brought over. So, this has not been accepted. ...”

F Mistakes in computation of book profit under section 115JB and MAT credit under section 115JAA of the Act

104. Section 115JB of the Act specifies the manner of computing the book profits in cases where the tax under normal provision is less than that of MAT provision. Further, as per section 115JAA(1A) of the Income Tax Act, where any amount of tax is paid under section 115JB(1) or minimum alternate tax (MAT) by an assessee, credit in respect of tax so paid shall be allowed to him in accordance with the provisions of this section. Further, the set-off in respect of brought forward tax credit shall be allowed for any assessment year to the extent of the difference between the tax on his total income and the tax which would have been payable under the provisions of section 115JB.

(a) Under assessment of book profits (Para 4.6.1)

105. Audit noticed in 21 cases in Gujarat, Karnataka and Maharashtra that there was mistake in computation of income under section 115JB resulting in underassessment of income and consequent short demand of tax/ interest of ₹87.30 crore. Three cases are illustrated below:

- (i) Charge: PCIT-3, Bengaluru,
Assessee: M/s IDG Media Pvt. Ltd.**

Assessment Years: 2013-14 & 2014-15

The scrutiny assessment was completed in December 2015 and March 2016 at nil income for both AYs. Audit noticed that though the assessee had adjusted the unabsorbed depreciation of ₹ 1.64 crore against the book profit of AY 2012-13, it again claimed the same unabsorbed depreciation while computing the book profits for the AYs 2013-14 and 2014-15. The same was also allowed by the AO. This had resulted in underassessment of book profit aggregating to ₹ 3.28 crore involving tax effect of ₹ 69.75 lakh.

**(ii) Charge: PCIT-16, Mumbai
Assessee: M/s Bang Bang Films Pvt. Ltd.
Assessment Year: 2014-15**

The scrutiny assessment of the assessee was completed in October 2016 at a loss of ₹ 1.52 crore. Audit noticed that the assessee had not routed the consideration of ₹ 22.28 crore on transfer of business on slump sale basis through profit and loss account but directly shown it in the computation of income for adjusting the loss. As such profit and loss was not prepared in accordance with the provisions of Part II and III of Schedule VI of the Companies Act 1956. This had resulted in underassessment of book profits by ₹ 17.62 crore (₹ 22.27 crore - ₹ 4.66 crore i.e. loss as per P&L account) with consequent short levy of tax of ₹ 4.85 crore including interest.

**(iii) Charge: PCIT-11, Mumbai
Assessee: M/s Scod 18 Networking Pvt. Ltd.
Assessment Year: 2014-15**

The scrutiny assessments were completed in December 2016 at an income of ₹ 10.44 crore. Audit noticed that in AY 2014-15, the assessee had changed its accounting policy pertaining to treatment of Set Top Box (STB) due to which assessee adjusted surplus amount of ₹ 21.85 crore from reserves. Further, as per Accounting Standard (AS)-06, any changes the resultant surplus or deficit in past year due to change in depreciation method should be charged to Profit & Loss Accounts which was not done. Omission to do so had resulted in underassessment of income of ₹21.85 crore involving tax effect of ₹ 4.58 crore.

106. When the comments of DoR and the status of follow-up action taken by them in respect of each case as pointed out by audit were asked for, the Ministry furnished the following:

S. No	Name of Assessee/PAN	A.Y.	Pr. CCIT	PCIT Charge	Reference
-------	----------------------	------	----------	-------------	-----------

S. No	Name of Assessee/PAN	A.Y.	Pr. CCIT	PCIT Charge	Reference
1.	IDG Media Pvt. Ltd./ AABCI3234N	2013-14 & 2014-15	Karnataka & Goa	PCIT-3, Bengaluru	Objection has Not been Accepted by the Ministry and the matter is settled via C&AG letter dated 05-03-2020
2.	Bang Bang Films Pvt. Ltd./ AADCB2398C	2014-15	Mumbai	PCIT 16 , Mumbai	Objection has Not been Accepted by the Ministry and the matter is settled via C&AG letter dated 18-11-2019
3.	Scod 18 Networking Pvt. Ltd./ AALCS6147C	2014-15	Mumbai	PCIT 11, Mumbai	Objection has been Accepted by the Ministry. Remedial action has been initiated. CAG's Vetting Comments to ATN sent, have been received by the Ministry for further comments, which are under process.

107. In respect to the 'Bang Bang Films Private Limited' case, the Chairman CBDT during the oral evidence conducted on 23.11.2021 mentioned the following:

"This is a case with regard to a particular source of income which has not been routed through the P&L account. Audit says that the scrutiny assessment of the assessee was completed in October, 2016 at a loss of Rs. 1.52 crore. Audit noticed that assessee had not routed the consideration of Rs. 22.28 crore and transfer of business is shown through the Profit and Loss Account but directly shown it in the computation of income for adjusting the loss. As such, profit and loss were not prepared in accordance with the provisions of Part 2 and 3 of Schedule VI of the Companies Act, 1956. This had resulted in under assessment of booked profits by Rs. 17.62 crore with a consequent short tax levy of Rs. 4.85 crore including interest. A reply is awaited. Now, the issue here is the audit would say that any income or surplus which is not routed through P&L Account needs to be reworked and recomputed, reassessed in the manner which is provided in the Act. Audit in all likelihood is looking at Section 115 JB in order that the booked profit is enlarged and Section 115 JB is invoked in this case. Sir, in this case, there is a binding decision of the Supreme Court of Apollo Tyres Ltd Vs. CIT, 2002 which says whether it is Section 115J or 115 JA or 115 JB, the same ratio should apply. What is not mandated within the powers of the ITO cannot be exercised by him. Companies Act are prepared in accordance with the rules which are framed under the Companies Act. And the format and layout of the

P&L account and balance sheet is in terms of that Act. To look at, decide and make a statement that the layout of the P&L account is not accordance with the Companies Act is not within the purview of the AOs powers. What is disallowable and what is to be added to the book profit is in terms of Section 115J or Section 115JA or Section 115JB. That particular item, that surplus on sale, which is routed through the balance sheet is not part of the clauses in 115J or 115JA or 115JB and it could have been added to the book profit in order to enlarge the book profit. That is the only reason. The Supreme Court's binding decision in 255 ITR 273 in Apollo Tyres case would not approve of the kind of assessment which the CAG would be wanting in this case. The binding decision of Apollo Tyres prevents from looking at the accounts of the assessee for the purposes of determination whether these are in terms of the Companies Act or not.”

108. As regards 'Scod 18 Networking Private Limited' case, the Chairman CBDT during the oral evidence conducted on 23.11.2021 mentioned the following:

“In this case, there was a reply. The reply had said that it has been accepted but I will tell you that there are some changes over here and also change in date. Proposals seeking approvals and remedial action under Section 147 has been received on 21.04.2021 and approval has been accorded for re-opening. Remedial action under Section 147 in this case is getting time barred on 31.03.2022. Remedial action has been initiated and it will be taken”.

(b) Irregular allowance of MAT credit under section 115JAA (Para 4.6.2)

109. Audit noticed in four cases in Gujarat, Maharashtra and Tamil Nadu States that assesseees were allowed excess set off of MAT credit of ₹ 4.08 crore. One case is discussed below:

Charge: CIT-10, Chennai
Assessee: M/s Mavis Satcom Ltd.
Assessment Year: 2012-13

The AO had allowed MAT credit of ₹ 2.11 crore relating to AY 2012-13 although the assessee had paid tax under normal provisions in that year and there was no MAT credit available for set off. The mistake had resulted in loss of revenue of ₹ 2.87 crore including interest.

110. Upon seeking the comments of DoR and the status of follow-up action taken by them in respect of each case as pointed out by Audit, the Ministry furnished the following information:

Name of Assessee/ PAN	A.Y.	Pr. CCIT	PCIT Charge	Reference
Mavis Satcom Ltd./ AACCM212 7K	2012- 13	Tamil Nadu	PCIT- central 2, Chennai	Objection has been Accepted by the Ministry. Remedial action has been initiated. CAG's Vetting Comments to ATN sent, have been received by the Ministry for further comments, which are under process.

G Mistakes in computation of tax (Para 4.7)

111. Audit noticed mistakes in computation of tax and other issues in 66 cases involving tax effect of ₹ 280.60 crore as discussed in succeeding paragraphs.

(a) Mistakes in levy of tax/surcharge/interest (Para 4.7.1)

112. Audit noticed in 29 assessment cases in 11 states that there was mistake in computation of tax/interest resulting in loss of revenue of ₹ 144.76 crore. Seven cases are illustrated below:

(i) Charge: PCIT-16, Mumbai

Assessee: M/s Star India Pvt. Ltd.

Assessment Year: 2012-13

The scrutiny assessment of the assessee was completed in January 2017 at an income of ₹ 898.79 crore. Audit noticed that the AO had levied interest of ₹ 2.52 crore under section 234B of the Act, instead of ₹ 59.93 crore which resulted in short levy of interest of ₹ 57.41 crore.

(ii) Charge: PCIT (Central)-3, Mumbai

Assessee: M/s The Board of Control for Cricket in India Assessment Year: 2014-15

The scrutiny assessment of the assessee was completed in December 2016 at an income of ₹ 1131.09 crore. Audit noticed that though the assessed income was more than ₹ one crore, the surcharge @ 10 per cent was not levied. Omission had resulted in loss of revenue of ₹ 34.95 crore.

(iii) Charge: PCIT (Exemption), Ahmedabad

Assessee: M/s Gujarat Cricket Association

Assessment Year: 2014-15

The scrutiny assessment was completed in December 2016 at an income of ₹ 83.56 crore. Audit noticed that though the income was more than ₹ one crore, the AO had not levied the surcharge. This had resulted in loss of revenue of ₹ 2.78 crore. ITD had initiated remedial action under section 154 of the Act in September 2017.

**(iv) Charge: CIT (Exemptions),
Chandigarh Assessee: M/s Haryana Cricket Association
Assessment Year: 2012-13**

The scrutiny assessment was completed in March 2015 at an income of ₹ 27.29 crore. Audit noticed that surcharge was not levied which led to short demand of ₹ 57.34 lakh.

**(v) Charge: PCIT, Hyderabad
Assessee: M/s Orissa Cricket Association
Assessment Year: 2012-13**

The scrutiny assessment was completed in March 2015 at an income of ₹ 25.94 crore. Audit noticed that the tax of ₹ 10.88 crore was leviable. However, ITD levied tax of ₹ 10.23 crore resulting in short levy of tax of ₹ 64.29 lakh.

**(vi) Charge: PCIT-16, Mumbai
Assessee: M/s Zee Entertainment Enterprises Ltd.
Assessment Year: 2011-12**

The scrutiny assessment was completed in February 2016 at an income of ₹ 835.96 crore. Audit noticed that assessment was rectified under section 154 by disallowing MAT credit allowed during scrutiny assessment. While computing tax demand in the rectification order, the AO erroneously computed tax at ₹ 138.44 crore instead of actual tax liability of ₹ 173.95 crore resulting in short levy of tax of ₹ 35.51 crore. Further, there was also short levy of interest under section 234D of ₹ 70.48 lakh on refund issued earlier. The mistakes resulted in short levy of tax ₹ 36.21 crore.

**(vii) Charge: PCIT (Central)-3, Delhi
Assessee: M/s Pearls Broadcasting corporation Ltd.
Assessment Year: 2011-12**

The block assessment of the assessee was completed in March 2016 at an income of ₹ 83.11 crore. Audit noticed that the AO had raised the total demand of tax of ₹ 38.37 crore instead of correct amount of ₹ 44.72 crore due to short levy of interest under section 234B(3) and non-levy of interest under section 234A(3). The mistakes had resulted in short levy of demand of ₹ 6.35

crore. ITD had accepted the observation and rectified the mistake under section 154 of the Act in September 2017.

113. When the comments of DoR and the status of follow-up action taken by them in respect of each case as pointed out by audit were called for, the Ministry furnished the following:

S. No.	Name of Assessee/PAN	A.Y.	Pr. CCIT	PCIT Charge	Reference
1.	Star India Pvt. Ltd./AAA CN1335 Q	2012-13	Mumbai	PCIT 16 , Mumbai	Objection has been accepted by the Ministry and the matter is settled via C&AG letter dated 18-11-2019
2.	The Board of Control for Cricket in India (BCCI)/ AAATB0 186A	2014-15	Mumbai	PCIT (Central)-3, Mumbai	Objection has been accepted by the Ministry and the matter is settled via C&AG letter dated 22/02/2021
3.	Gujarat Cricket Association/ AAAAG1 205C	2014-15	Gujarat	CIT (Exemption), Ahmedabad	Objection has been accepted by the Ministry and the matter is settled via C&AG letter dated 18-11-2019
4.	Haryana Cricket Association/AAB CH7770 G	2012-13	NWR	CIT (Exemptions), Chandigarh	Objection has been accepted by the Ministry and the matter is settled via C&AG letter dated 14-1-2020
5.	Orissa Cricket Association/ AAAAO0 319F	2012-13	A. P. & Telangana	CIT (Exemptions), Hyderabad	Objection has been accepted by the Ministry and the matter is settled via C&AG letter dated 14-1-2020
6.	Zee Entertainment Enterprises Ltd./AAA	2011-12	Mumbai	PCIT 16 , Mumbai	Objection has been partly accepted by the Ministry and the matter is settled via C&AG letter dated 18-11-2019

S. No.	Name of Assessee/PAN	A.Y.	Pr. CCIT	PCIT Charge	Reference
	CZ0243R				
7.	Pearls Broadcasting corporation Ltd./ AAECPO 515E	2011-12	Delhi	PCIT-7, Delhi	Objection has been accepted by the Ministry and the matter is settled via C&AG letter dated 13-09-2021

114. In respect of 'Gujarat Cricket Association' case, Chairman CBDT in the oral evidence taken on 23.11.2021 mentioned the following :

"the surcharge has been levied and the objection had been accepted." Verbatim 23.11.2021"(Page no 11)

(b) Incorrect grant of TDS credit/ relief under section 90/91 (Para 4.7.2)

115. Audit noticed in seven cases in Karnataka, Kerala and Maharashtra states that the AO had incorrectly allowed the TDS credit/ relief under section 90/91 resulting in loss of revenue of ₹ 23.51 crore. One case is illustrated below:

Charge: PCIT (Central)-2, Mumbai

Assessee: M/s Sony Pictures Networks India Pvt. Ltd.

Assessment Year: 2012-13

The scrutiny assessment was completed in January 2017 at an income of ₹ 434.21 crore. Audit noticed that the assessee had claimed and was allowed foreign tax credit relief of ₹ 21.52 crore under section 90 of the Act on royalty income of ₹ 324 crore received from Multi Screen Media Singapore (MSMS) on which no tax was deducted in Singapore by MSMS. However, it was seen from profit and loss account as well as 3CEB Report that no royalty income was received by the assessee from Multi Screen Media Singapore (MSMS) during the Assessment year. Since, Singapore incentive scheme covered only royalty payment for nil withholding tax whereas other payments made by a Singapore entity required withholding tax for which credit in India was allowed. Thus the tax credit claimed by the assessee should have been disallowed. Omission had resulted in loss of revenue of ₹ 21.52 crore.

116. About the status of action taken by DoR on aforesaid audit observation, the Ministry furnished the following:

Name of Assessee/PAN	A.Y.	Pr. CCIT	PCIT Charge	Reference
Sony Pictures Networks India Pvt. Ltd./AAB CS1728D	2012-13	Mumbai	PCIT (Central) 2, Mumbai	Objection has Not been Accepted by the Ministry. CAG's Vetting Comments to ATN sent, have been received by the Ministry for further comments, which are under process.

117. In this regard, Chairman CBDT during the oral evidence conducted on 23.11.2021 further stated as follows:

"We gave a reply saying that it was a royalty income and that DTAA with Singapore would allow such tax credit. Audit looked at the reply. Then Audit's reply is at column (C) of the said report. Audit now says that although the assessee has considered the income from MSMS as royalty income, however no income tax was deducted by MSMS as the same company has obtained ARI certificate under Section 61 of the Economic Expansion Incentive Scheme of nil rate of TDS in Singapore. For that, as per article 25(2) of the India-Singapore DTAA read with Section 90 of the IT Act, assessee was eligible to claim credit in India of an amount equal to Singapore tax paid on such licensing income as no tax was deducted by Singapore Government not paid by the assessee on such income in Singapore, the assessee is not eligible for any credit in India under the Foreign Tax Relief under Section 90 of the Act. In view of the above, the para stands. This is the latest reply of the Audit. Whether it is royalty or no royalty, that is not accepted by the Audit saying that this is royalty. All it says that when tax was not paid in Singapore, why did it claim relief in India? These are what are known, in Income Tax language, are the tax pairing clauses which are available to few nations. Singapore, at that point in time, under article 25(2) and 25(3), I will read out article 25 as it existed at that point in time, it says that where a resident of India derives income which in accordance with the provisions of this Agreement may be taxed in Singapore, India shall allow as a deduction from the tax on the income of that resident an amount equal to the Singapore tax paid whether directly or by deduction. Now, what is Singapore tax paid is also said here in 25(3). It says 'for the purpose of paragraph 2 of this article Singapore tax paid shall be deemed to include any amount of tax which would have been paid but for the deduction or exemption of Singapore tax granted under the provisions of Economic Expansion Incentive relief from the income tax Act. It has got an ARI certificate from the Singapore authority from the Minister of Singapore. Article 25.3 says that Singapore tax paid would include any amount of tax which would have been payable. It would have been

payable but for this certificate from the Singapore authorities. That is the reason as to why under the tax pairing clauses under the DTAA with Singapore that the tax credit was allowed (Verbatim 23.11.2021 (Page no 13))”

(c) Mistake in computation due to adoption of wrong figures (Para 4.7.3)

118. Audit observed in 30 assessment cases in eight states that the AO had adopted wrong figures in assessment which led to loss of revenue of ₹ 112.33 crore. Seven cases are illustrated below:

(i) Charge: PCIT-16, Mumbai
Assessee: M/s Crest Animation Studios Ltd.
Assessment Year: 2011-12

The scrutiny assessment was completed in May 2015 at an income of ₹ 113.79 crore. Audit noticed that the AO had made addition of ₹ 111.97 crore to the income of assessee while completing the assessment. The addition, inter alia, includes amount of ₹ 89.16 crore (being 50 *per cent* of 'other expenses' of ₹ 178.32 crore) against which the assessee did not offer any explanation. Audit further noticed from the Income Tax Return (ITR) of the assessee that it had already added back an amount of ₹ 170.06 crore to its income which was included in other expenses of ₹ 178.32 crore. Thus, the AO should have disallowed 50 *per cent* of ₹ 8.26 crore (₹ 178.32 crore - ₹ 170.06 crore), i.e., ₹ 4.13 crore. The AO, however, disallowed ₹ 89.16 crore instead of ₹ 4.13 crore. The mistake had resulted in over assessment of income of ₹ 85.03 crore (₹ 89.16 crore - ₹ 4.13 crore) involving excess levy of tax of ₹ 70.61 crore including interest and penalty.

(ii) Charge: PCIT-1, Baroda
Assessee: M/s Divine Multimedia (India) Limited
Assessment Year: 2013-14

The scrutiny assessment was completed in March 2016 at an income of ₹ 2.41 crore. Audit noticed that the AO had mentioned in the assessment order the unverifiable transaction of ₹ 7.48 crore in respect of seven parties, to be added to the income of assessee. However, while computing the taxable income, AO adopted the unverifiable amount of ₹ 2.13 crore instead of ₹ 7.48 crore, resulting in under assessment of income of ₹ 5.35 crore with consequent short levy of tax of ₹ 2.36 crore including interest. ITD had accepted the audit observation and initiated the remedial action under section 154 of the Act in April 2018.

(iii) Charge: PCIT-2, Bengaluru

Assessee: M/s Siddaramanna Shailendra Babu

Assessment Year: 2012-13

The scrutiny assessment of the assessee was completed in March 2015 at a loss of ₹ 5.74 crore. Audit noticed that AO adopted the figure of returned loss at ₹11.52 crore as against the actual loss of ₹ 1.15 crore and after making the addition of ₹ 5.78 crore the AO determined the loss at ₹ 5.74 crore instead of income of ₹ 4.63 crore. The mistake had resulted in underassessment of income of ₹ 4.63 crore as well as allowing incorrect carry forward of loss of ₹ 5.74 crore with consequent total tax effect of ₹ 3.70 crore.

(iv) **Charge: PCIT-10, Chennai**

Assessee: M/s Thirupathi Brothers Film media Pvt. Ltd.

Assessment Year: 2012-13

The scrutiny assessment of the assessee was completed in March 2015 at an income of ₹ 3.93 crore. Audit noticed that the assessee filed revised return of income at ₹ 3.93 crore as against original return of income of ₹ 1.92 crore. However, in assessment order, income was taken at ₹ 1.93 crore instead of correct revised income of ₹ 3.93 crore. The mistake had resulted in short assessment of income amounting to ₹ 2 crore with consequent total tax effect of ₹ 88.25 lakh including interest. ITD rectified the mistake under section 154 of the Act (October 2017).

(v) **Charge: PCIT (Central)-3, Mumbai**

Assessee: M/s The Board of Control for Cricket in India (BCCI)

Assessment Years: 2014-15

The scrutiny assessment was completed in December 2016 at assessed income of ₹ 1,131.09 crore. Audit noticed that assessee had credited ₹ 108.02 crore towards 'Income from Media Rights' which was net of TV and other production cost of ₹ 59.32 crore. However, while computing the income, the assessee had again claimed the production cost of ₹ 59.32 crore as expenses and the same was allowed by AO. The mistake had resulted in under assessment of Income of ₹ 59.32 crore involving short levy of tax of ₹ 20.16 crore.

(vi) **Charge: CIT-10, Chennai**

Assessee: M/s Mavis Satcom Ltd.

Assessment Year: 2012-13

The scrutiny assessment was completed in March 2015 at an income of ₹ 5.46 crore. Audit noticed that the AO had adopted the income of ₹ 2.26 crore as per original return of income instead of revised return of income of ₹ 8.59 crore while computing the taxable income. The

mistake had resulted in under assessment of income of ₹ 6.33 crore involving short levy of tax of ₹ 2.79 crore including interest.

(vii) **Charge: PCIT-3, Delhi**

Assessee: M/s Digivision Entertainment Pvt. Ltd.

Assessment Year: 2014-15

The scrutiny assessment of the assessee was completed in December 2016 at a loss of ₹ 7.76 crore. Audit noticed that assessee had filed its return of income at 'nil' after setting off of brought forward losses of ₹ 7.76 crore of previous AYs. As such, the income should have been assessed at nil income as against allowing loss of ₹ 7.76 crore. The mistake had resulted in irregular allowance of carry forward of loss of ₹ 7.76 crore involving potential tax effect of ₹ 2.64 crore. The ITD had initiated the remedial action under section 154 of the Act in March 2018.

119. When the response of DoR and the status of follow-up action taken by them in respect of each case as pointed out by audit were asked for, the Ministry furnished the following:

S. No.	Name of Assessee/P AN	A.Y.	Pr. CCIT	PCIT Charge	Reference
1.	Crest Animation Studios Ltd./ AACCC6134 C	2011-12	Mumbai	PCIT 16 , Mumbai	Objection has been accepted by the Ministry and the matter is settled via C&AG letter dated 18-11-2019
2.	Divine Multimedia (India) Limited./AA ACG7700L	2013-14	Gujarat	PCIT-1, Baroda	Objection has been accepted by the Ministry and the matter is settled via C&AG letter dated 18-11-2019
3.	Siddaraman na Shailendra Babu/ AAVPB6549 C	2012-13	Karnataka & Goa	PCIT-2, Bengaluru	Objection has been accepted by the Ministry and the matter is settled via C&AG letter dated 18-11-2019

S. No.	Name of Assessee/PAN	A.Y.	Pr. CCIT	PCIT Charge	Reference
4.	Thirupathi Brothers Film media Pvt. Ltd./ AACCT9579 N	2012-13	Tamil Nadu	PCIT-10, Chennai	Objection has Not been Accepted by the Ministry. The matter is settled via C&AG letter dated 03-02-2021
5.	The Board of Control for Cricket in India (BCCI)/ AAATB0186 A	2014-15	Mumbai	PCIT (Central)-3, Mumbai	Objection has been accepted by the Ministry and the matter is settled via C&AG letter dated 22/02/2021
6.	Mavis Satcom Ltd./ AACCM2127 K	2012-13	Tamil Nadu	PCIT-central 2 , Chennai	Objection has been accepted by the Ministry. CAG's Vetting Comments to ATN sent, have been received by the Ministry for further comments, which are under process.
7.	Digivision Entertainment Pvt. Ltd./ AACCD7493 H	2014-15	Delhi	PCIT-3, Delhi	Objection has been accepted by the Ministry. Remedial action has been completed and the matter is settled via C&AG letter dated 21.10.2021.

120. Regarding 'Crest Animation Studios Limited' case mentioned above, Chairman CBDT in the oral evidence tendered on 23.11.2021 stated as follows:

"..the mistake of over-assessment has been accepted. Remedial action has been initiated and the final order has also been passed on 6.7.2018."

121. When asked whether, apart from cases test checked by Audit, the Ministry had carried out any review of the similar cases, DoR in a written reply submitted as under:

"The Review of cases is done only at level of field formations, which would take necessary action in the light of specific actionable comments as applicable, made in the C&AG report. With the launch of faceless e-assessment scheme, a specialized unit, namely, Review Unit has been created which reviews cases before assessment order is passed. As per available data, internal audit has been conducted in 1035 cases."

122. In this regard, the Ministry in a written reply added as under:

"Observations of C&AG have been intimated to various Pr. CCsIT with a request that a careful perusal of the same may be done so as not to commit the same mistakes, as observed, in future assessments of the cases in the entertainment sector."

PART-II

OBSERVATIONS / RECOMMENDATIONS OF THE COMMITTEE

Introductory

Entertainment sector being one of the fastest growing sectors in India is a significant source of revenue to the Government. According to an EY report, the Indian media and entertainment sector stood at ₹ 1.38 trillion in 2020 and is estimated at ₹ 1.73 trillion in 2021. Further, it is projected to grow to ₹ 2.23 trillion by 2023 due to acceleration of digital adoption among users across geographies. The sector comprises of different sub-sectors under its fold viz. television, radio, music, event management, films, animation and visual effects, broadcasting, sports and amusement etc.

Significant results of the performance audit of the assessment of assessee engaged in key sub-sectors of entertainment sector which include cases of scrutiny assessment, appeal and rectification completed during the period 2013-14 to 2016-17 are contained in the C&AG Report No.1 of 2019 for the year that ended on March 2018. Of the total of 13,031 assessments made in the period by the ITD, Audit checked 6,516 assessment records (approx. 50 per cent) with assessed income of ₹ 47,979.44 crore and noticed 726 instances (approx. 11 per cent of the audited sample) concerning systemic and compliance issues which involve a tax effect of ₹ 2,267.82 crore, thereby causing loss of revenue to the Government. Some of the issues contained in the Report have been examined by the Committee and commented upon suitably in the succeeding paragraphs.

Entertainment Sector - A Potential Segment of increased Revenue Generation

The Committee note that in view of the fast paced growth being witnessed in the Entertainment sector, the Ministry has taken various initiatives to identify probable assessee and to widen the tax base. The measures or initiatives taken include *inter alia*, implementation of Non-filers Monitoring System (NMS) to focus attention on non-filers who have undertaken high value financial transactions but have not filed their returns; launch of 'Project Insight' to strengthen the non-intrusive information driven approach to increasing tax compliance; permitting the Aadhaar number to be used interchangeably in lieu of PAN in more than 100 forms; bringing several new transactions into the ambit of Tax Deduction at Source (TDS) and Tax Collection at Source (TCS); formulation of strategies by the field authorities for identifying potential non-filers; holding of outreach programmes to encourage voluntary compliance and extensive use of mass media for creating awareness; issuing statutory notices to enforce compliance, simplification in income-tax returns and filing process to encourage voluntary filing; signing Memoranda of Understanding (MoU) with Ministry of Micro, Small and Medium

Enterprises (MoMSME), Central Board of Indirect Taxes and Customs (CBIC) and SEBI for promotion of digital transactions and discouraging cash transactions. The Committee acknowledge the appropriateness of the initiatives taken by the Ministry. Nevertheless, as the Entertainment sector is expanding at a very rapid pace and is likely to be a significant and important source of revenue to the Government, the Committee desire that the Ministry earnestly continue with their endeavours in fine tuning the systems for checking evasion of income tax by enhancing coordination between various agencies of Government and by providing a platform to the field workers for sharing their experiences. The Committee, while expressing the opinion that a bottom-up approach would go a long way in improving the e-systems desire that an internal mechanism where AOs share experiences/ feedback that would enable in plugging loopholes and ensure better co-ordination may also be developed.

Verification of Assessment cases/records

2. The Committee note that out of total of 13,031 scrutiny assessments completed by the ITD during the financial years 2013-14 to 2016-17, Audit checked 6,516 assessment records (approx. 50 per cent) with assessed income of ₹ 47,979.44 crore and noticed 726 instances concerning systemic and compliance issues that involve a tax effect of ₹ 2,267.82 crore, thereby resulting in loss of revenue. Audit had pointed out that as a limited number of assessment cases/records as per sample were seen, the Ministry needed to verify the cases in entirety. The Committee note that apart from cases test checked by Audit, the Ministry had carried out review of 1035 cases of similar nature. Further, to ensure compliance with the provisions of the Income Tax Act/Rules in relation to entertainment sector by the Assessing Officers, assessments completed in ITD are test checked by way of Internal Audit and Review. As part of internal control mechanism, Internal Audit is conducted on cases selected by the Systems Directorate based on Audit Potential Index. With the launch of faceless e-Assessment scheme, a specialized unit, namely, Review Unit has been created which reviews cases before the assessment order is passed. The Committee are of the considered opinion that parameters used for selection of cases need to be reviewed particularly in view of the fact that Audit noticed systemic and compliance issues in approximately 11 per cent of the audited sample. Moreover, while taking note of the velocious developments in entertainment sector, the Committee feel that parameters for selecting cases for scrutiny assessment may require frequent updating/revision. The Committee, therefore, recommend that the Ministry refine the parameters used in selection of cases based on new and emerging trends and their own experiences on a regular basis so that lapses are detected and rectified promptly. The Committee opine that a robust risk management

system will result in effectively highlighting systemic and compliance issues in the assessments, thereby helping in preventing loss of revenue to the Government.

Systemic and Compliance issues illustrated by Audit

3. The Committee note that of the 726 instances concerning systemic and compliance issues noticed by Audit during scrutiny of assessment records, 59 occasions have been illustrated which *inter alia* related to matters such as : Lack of mechanism for monitoring and utilization of Form 52 A; income not offered for tax; non/short deduction or non-deposit of TDS; allowance of deductions without fulfilling the prescribed conditions; expenses not allowable under various provisions of the Act; losses adjusted against additions made under section 68 and 69 of the Act etc. The Committee note that of these 59 instances, the Ministry has accepted Audit objections in as many as 35 cases which involve a tax effect of ₹ 962.51 crore (including 3 cases in respect of which Audit has not indicated tax effect). As regards the remaining cases in respect of which objections raised by Audit have not been accepted by the Ministry, the ATNs thereto are reportedly either under process on the part of the Ministry for further comments or vetting by C&AG. Considering the fact that the financial implication involved is large, the Committee desire that the Ministry take necessary action for expeditious settlement of remaining audit paras. The Committee also desire that the Ministry may ensure time-based scrutiny of assessment records so that the same may be brought up for settlement at the earliest and loss of revenue prevented. The Committee would like to be apprised of the concrete efforts made by the Ministry in this direction.

Tax base of assesseees related to entertainment sector under different codes

4. The Committee note that for selection under scrutiny and monitoring purposes, ITD has allocated codes to the assesseees engaged in entertainment sector under six categories. Of the six categories, five categories have been assigned to Film & television sector while one category, which is code numbered 0906 has been allotted for 'others' which covers assesseees associated with sports, film, event management, cable business, animation etc. Audit scrutiny revealed that code wise data of assesseees available in the website of ITD showed that during FYs 2013-14, 87 per cent of assesseees in entertainment sector were falling in 'others' category of entertainment sector. Further, proportion of additions made during scrutiny assessments under code 906 against total additions made in cases relating to entertainment sector continuously increased from 66.71 per cent in FY 2013-14 to 80.62 per cent in FY 2016-17. However, the number of cases selected for scrutiny assessments

under the business code 906 was not commensurate with the additions made in scrutiny assessments of cases under this code during FYs 2013-14 to FYs 2016-17 i.e. 62.74 per cent in FY 2013-14 to 67.82 per cent in FY 2016-17. Due to this anomaly, Audit observed that as a number of segments of the entertainment sector, viz. sports, event management, artist, animation, cable business etc. are clubbed under this code, segment specific refinement of assesseees may not be possible for selection for scrutiny and monitoring purposes. The Committee note from the related information furnished by the Ministry that Centralised risk identification of cases of sub-categories under a particular business code such as 906 in the instant case under a risk Rule/parameter framework is possible only when (a) Specific data fields identifying and attributable to these business sub-sectors are available in ITRs; (b) Specific Third party or TDS data which is closely related to and associated to transactions in these particular sub-sectors is readily available; and (c) Such data from two different sources or fields is comparable either directly or in terms of ratios so as to ascertain a sub-sector specific risk parameter. Presently, these factors limit the segment specific refinement of the mentioned set of assesseees under a Computer Assisted Centralised risk parameter based scrutiny selection process. Further, the Committee note that separate codes have been allotted in the Income-tax return forms from AY2021-22 viz. new codes for film artists, event management, sports management, etc. and that necessary modifications in the income-tax forms have been carried out to further refine the categories of taxpayers belonging to entertainment sector so as to obtain more refined results. The Committee desire the CBDT to take effective steps to address the other limiting factors to ensure refinement of sub-sector specific risk parameters by methodical collection, retrieving, sorting and sharing of relevant information from various sources. To keep a constant watch over the rising number of high-risk assesseees' cases in new and emerging segments of the entertainment sector viz. Augmented and Virtual Reality, social videos, cloud gaming, podcasting etc., the Committee desire that the codes may be further reviewed and rationalized so as to ensure improved vigilance and identification of high-risk assesseees for detailed scrutiny.

Information Sharing Mechanism

5. The Committee note that there are instances where information pertaining to the assessee such as information on cash transactions was not shared amongst different charges of Income Tax Department (ITD), which impacts the quality of assessment. As regards the manner in which AOs access/share the information in respect of assesseees amongst the different assessment units, DoR explained that based on the specific facts of the cases and the revenue implications of the transactions with the parties assessed in different assessment units, the Assessing Officer decides the nature of

information that is fit for further sharing. The Committee have been further informed that to ensure that information so shared is appropriately taken into account by ITO units while undertaking scrutiny assessments, instructions are issued from time to time for time-bound processing of information received by Assessing Officers from different sources such as Investigation Wing, other AOs, third parties as well as the Intelligence and Criminal Investigation Data for regular monitoring by the Range-heads of the action taken by the Assessing Officers. The fact that the nature of information that is fit for further sharing with different assessment units is decided by the AOs leaves a possibility where useful information pertaining to the assessee may not be shared amongst different charges of Income Tax Department which would have the effect of undermining the purpose of cross-verification of related transactions. The Committee, therefore, recommend that SOPs/guidelines for sharing of inter-departmental and intra-departmental information during the course of assessments may be formulated and made available on an on-line platform for easy access of the concerned.

Co-ordination with other State/Central Government Departments (Para 2.3)

6. ITD Manual of Office Procedure prescribed by CBDT entrusts ITD with the responsibility to liaise with other Government departments and agencies to enable income-tax authorities to get hold of vital information on assessees, both existing as well as potential. Audit noticed instances where ITD did not utilise available resources effectively for collection and analysis of data from other Central and State Government departments especially in case of two Delhi based entities for Assessment years 2011-12 to 2014-15 where non sharing of information reportedly lead to tax effect of ₹ 67.99 crore including interest. Moreover Audit also pointed out that lack of coordination with Registrar of Copyrights resulted in the royalty income of ₹ 38.28 crore and ₹ 39.67 crore in the AYs 2013-14 and 2014-15 respectively not being brought to tax. In this regard, DoR informed the Committee that all the field formations of the Income Tax Department share relevant information regarding violation of provisions of any statute noticed during the course of enforcement actions like search & seizure and survey operations, with the relevant Law Enforcement Agencies (LEA). Further, specific instructions have been issued to field formations to share with Central Economic Intelligence Bureau (CEIB) the information with respect of search & seizure and survey actions, related assessment orders, appeal orders, prosecutions, etc. within the prescribed timelines. The information is being shared so that appropriate information network/database of offenders may be created and shared by CEIB with other LEAs. DoR also added that CEIB shares details of relevant cases investigated by other LEAs with Income Tax Department which has the effect of getting acquainted with the new and emerging trends in regard to tax evasion. Further,

CBDT is undertaking measures for facilitating exchange of data regarding revenue collection of assessees among various agencies such as integrating the important financial fields in Income-Tax Returns and GST Returns. Moreover, to facilitate seamless exchange of data between CBDT and Goods and Services Network (GSTN), an MoU was signed between CBDT and GSTN incorporating the modalities of exchange and handling of data, maintaining its confidentiality etc. The process of exchange of data will help in cross verification of figures disclosed by the assessees in the ITR and GST returns. The Committee, while expressing appreciation for the initiatives taken to strengthen the coordination mechanism with Central Economic Intelligence Bureau, Law Enforcement Agencies and Goods and Services Network, desire that endeavours should also be made to liaise with District Administration, and other Government agencies concerned with economic offences for enabling seamless exchange of data with Income Tax Department. This will further improve the database of assessees/ offenders and will help in cross verification of figures disclosed by them during the assessment process.

Quality Assessment Mechanism

7. The Committee have noted instances where AOs have made scrutiny assessment of original ITRs instead of revised returns in cases where revised returns were filed by the assessees. The Committee note from the information furnished by the Ministry on the matter that ITD has since rolled out Insight Platform for comprehensive view of all the information related to a particular tax payer to ITD charges. Using the platform, the ITD charges can access the information reported both by the taxpayer as well as the third party sources. The platform also offers the functionality to get access to the information related to group entities, if required. Using this platform the assessing officers can access all the required information in respect of a taxpayer, available with the department. The Committee while expressing dismay on the shortcomings in exercising due diligence on the part of AOs hope that the new system/ Insight Platform will be effective in addressing these issues. The Committee also desire that necessary efforts be made for holding educational seminars/ workshops for the AOs for effective use of new systems. Further, to avoid recurrence of such lapses, the Committee desire that explanation be sought from AOs in this regard and necessary action be taken to strengthen the review system in the E-assessment scheme, 2019.

Role of Survey in Strengthening/Widening of Tax Base

8. The Committee note that Sections 133A and 133B of the Income Tax Act, 1961 (the Act) empower the ITD to conduct surveys to gather information relating to the financial transactions of the assessee. Audit scrutiny revealed

that 25 surveys were conducted in six States wherein additions/disclosures of ₹ 262.17 crore were made. However, no surveys were conducted in 13 States during FY 2013-14 to 2016-17 in entertainment sector. Moreover, no information was received with respect to surveys conducted in the State of Gujarat. Explaining the reasons for not conducting surveys in some States at all, DoR stated that the Income Tax Department (ITD) conducts suitable action in the relevant cases as per the provisions of the Act on various persons who may be engaged in diversified business activities across different sectors, including entertainment sector. Survey actions u/s 133A of the Act are being conducted by the Department based on credible and incriminating evidence related to tax evasion. Survey actions are carried out based on credible and actionable information available in a particular case irrespective of the location of the person concerned. According to DoR, the data pertaining to survey actions is maintained region-wise and not State-wise. Further, the potential cases for survey action in entertainment sector might be more in a few selected cities and States, as the entertainment sector is more concentrated in certain cities and States. In this regard, the Committee are of the view that the survey not only enables ITD to detect tax evasions but also to identify potential and new assesseees. The Committee are of the opinion that surveys not only lead to gathering important information in respect of assesseees but also help in enhancing compliance of tax laws by creating an effective deterrence. In this regard, the Chairperson, CBDT while tendering evidence assured the Committee that surveys will be conducted to strengthen the tax base of the entertainment sector. The Committee would like to be apprised of the number of surveys so conducted during the last three years and the total additions/disclosures of unaccounted income made as a result thereof.

Verification of Transactions in respect of Films Shot Abroad

9. The Committee note that for shooting a feature film in foreign locations, Indian production houses hire the services of foreign line production companies (line producers i.e. the resident companies which are registered in that specific country). The pre and/or post production expenses incurred by the foreign line producers are reimbursed by the assessee (Indian production house) on the basis of the agreement entered into between them and all the expenses reimbursed to the line producer are being claimed as expenditure by the assessee in its profit and loss account. Audit found that verification of the expenses as claimed by the Indian film production houses on account of production cost payment made to the foreign line producers was not being done during assessment proceedings. Considering the involvement of multiple parties in making movies such as technological and commercial institutions of filmmaking, artists and allied service providers, the Committee feel it to be important that the information furnished by an assessee is utilized

to cross-verify the correctness of the information given by other assessees having transactions with the former (related party) so as to prevent the possibility of evasion of tax. Further, the Committee note that different accounting methods are adopted by the inter-related parties of film industry due to which comprehensive verification of the transactions is required to safeguard the interest of revenue. In this regard, DoR submitted that the assessment of a case involves verification of the transactions entered into by the assessee with third parties which is decided by the assessing officer depending upon the facts of the case including the quantum of the transaction, whether paid through banking channels or cash, etc. Moreover, CBDT, vide order U/S 285BB read with sub-Rule (2) of the Rule 114-1 dated 26.10.2021, has authorized the Director General of Income-tax (Systems) to upload information in his possession viz Foreign Remittance Information, Information in ITR of other tax payers, etc., in the Annual Information Statement (AIS) in Form 26AS in the electronic filing account registered by the assessee in the designated portal. The Committee are of the view that these initiatives will help in cross-verification of the transactions carried out by the assessees with third parties and will enhance the supporting mechanism in place for AOs. The Committee further hope that necessary instructions will be imparted to the AOs to keep themselves updated with the latest case laws so that they are well acquainted to tackle and address the various ways of tax evasion.

Monitoring Mechanism

10. In the film industry, a Producer is the key person who makes profit from sale of various rights of films produced by him. The receipts of the Producer mainly come from the Distributors. The Producer sells the distribution rights broadly in three ways – (i) Minimum guarantee basis (ii) Outright lease and (iii) Advance and commission clause lease which relates to overflow. Of these, if the earnings of a film exceed the specified limit, the surplus receipt (called 'overflow') is shared by the Distributor and the Producer according to the ratio specified in the agreement between them. Of the 28 production houses Audit test checked in the State of Maharashtra, the records of three production houses where the assessees had furnished the gross amount from sale of film rights, revealed that no details were provided by the assessees on : whether the income offered was on account of minimum guarantee or from overflow of revenue or the income was inclusive of overflow. Audit found that there was no monitoring mechanism to examine the details of revenue earned from overflow and from various movie rights by the film producers. Thus, there was risk of evasion of tax due to possibility of underreporting of income by the producers. On the aforesaid Audit observation, DoR submitted that instructions were issued to the field authorities for verification of income of

movie producers from overflow and from other movie rights with a view to avoid and prevent evasion of tax. The Committee note that audit scrutiny reveals that scant regard was displayed to the instructions and guidelines issued from time to time. In the opinion of the Committee, mere issue of instructions to the field authorities for comprehensive verification of issues in assessment of Entertainment Sector would not serve the purpose unless and until the instructions are followed in letter and spirit. The Committee, therefore, desire that while taking urgent action to address the loopholes in the monitoring mechanism, inquiry should also be instituted to ascertain the reasons for recurrence of such lapses despite instructions being issued repeatedly from the authorities concerned and accountability fixed against the erring officials.

Variation in treatment of cost of production paid to foreign line producer, treatment of write off of inventory of film rights

11. The Committee note the Audit observation in regard to lack of uniformity while applying provisions of withholding tax in respect of payments made to foreign line producers, the reason being lack of clarity in treatment of such payments as administrative charge or as fee for technical services (FTS). As per explanation 2 to Section 9(1)(vii) of the Act, 'fees for technical services' means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services. As regards lack of uniformity in application of Section 9(1)(vii) of the Act, as per the submission made by DoR in terms of the provisions of section 90(2) of the Act, in cases where there is a Double Taxation Avoidance Agreement (DTAA), stipulations of which are applicable to the assessee, the provisions of the Act shall apply to the extent to which such provisions/stipulations are more beneficial to the assessee. Thus, whether a payment is considered as FTS depends on the provisions of the Act read with the definition of FTS under the relevant DTAA. The definition of FTS varies across DTAAs. The Committee have, thus, have been apprised that there can be no uniformity in treatment of the payments as FTS which can vary from case to case. Notwithstanding the submissions of DoR, there is also no denying the fact that there exists scope for misinterpretation as regards treatment of such payments as administrative charges or as fee for technical services which may ultimately result in leakage or loss of tax revenue. The Committee, therefore, feel that the Ministry needs to ensure that before assessing income of such nature, the AOs are provided with proper orientation to the provisions of the Act with a view to removing confusion on such provisions/issues. Further, there is also a need for the AOs to be instructed to exercise due diligence in such assessments so that the interest of the revenue is safeguarded.

Variation in treatment of write off of inventory of film rights and pre-operative expenses

12. Audit also noticed that there was lack of uniformity in allowing 'pre-operative expenses' by the AOs despite the facts and circumstances being similar in nature. This is indicative of inconsistent approach adopted by the AOs in identical cases. As per DoR, allowance of pre-operative expenses is decided by the AO on a case to case basis, depending upon facts of each case while following judicial discipline. DoR further added that under the Faceless Assessment Scheme all the assessment proceedings, including the scrutiny assessments of cases related to film and television industry, unless centralised, are conducted electronically, through team-based assessment. Under this Scheme, the process of Review has been built to facilitate an error-free assessment order. The Committee desire that clear instructions for the allowance of pre operative expenses in various scenarios may be issued and the Assessing officers encouraged to share information on a specified platform, as already emphasized upon, in case new issues are involved. The Committee also trust that with the launch of Faceless Assessment Scheme, a uniform approach will be adopted for assessment of similar cases.

Absence of provision of TDS on purchase of distribution rights of movies under production

13. The Committee note from Audit revelation that though there is a provision of TDS under section 194C on payment against 'production of programmes for broadcasting and telecasting' no such provision existed for payment against purchase of distribution rights of movies under production. Thus, there is risk of not declaring the income as payment details do not get reflected in Form 26AS of the assessee (producer). As per Audit, in the absence of TDS provision on distribution rights of under production movies, it is left on the discretion of the producers to offer the advance as income which results in difficulty for ITD in the tracking of income received by the producers from the distributors. As regards the action taken for inclusion of distribution of movies for the purpose of TDS under section 194C, DoR submitted that the suggestion would require an amendment in the Act, and the matter will be examined during the Budgetary exercise. The Committee, therefore, desire that the appropriate action may be initiated in this regard to ensure that such amounts do not escape levy of tax.

Absence of provision on amortization of franchisee fee

14. Audit found that there was no uniformity in treatment of franchisee fee, as paid by Indian Premier league (IPL) franchisees to Board of Control for

Cricket in India (BCCI), for taxation. From a test check of scrutiny assessment cases of five Indian Premier League (IPL) franchisees in two States, Audit noticed that the franchisees purchased the IPL rights from Board of Control for Cricket in India (BCCI) in the year 2008 for a period of 10 years, for sustaining which they had to pay equal annual installment of franchisee fee to BCCI. These five franchisees are M/s Jaipur IPL Cricket Pvt. Ltd. (JICPL) in PCIT (Central)-1, Mumbai, M/s Knight Riders Sports Pvt. Ltd. (KRSPL) in PCIT (Central)-2, Mumbai, M/s India win Sports Pvt. Ltd. (ISPL) in PCIT (Central)-3, Mumbai, M/s Royal challengers Sports (P) Ltd. (RCSPL) in PCIT-5, Bengaluru and M/s GMR Sports Pvt. Ltd. (GMRSP) in PCIT (Central), Bengaluru. While three franchisee companies (ISPL, KRSPL and GMRSP) were claiming such installments as revenue expenditure, two of them (JICPL and RCSPL), though paying franchisee fee in installments, had treated the entire bid amount as capital expenditure and were claiming depreciation @ 25 per cent. The ITD, Mumbai allowed the depreciation on the amount of installments paid and the CIT (A) Mumbai sustained the stand of ITD in the case of ISPL. Yet, the higher appellate authorities have adopted different views/approach in this regard. While the Income Tax Appellate Tribunal (ITAT), Mumbai treated the payment of installment of franchisee fee 'as revenue in nature' ITAT, Bangalore in the case of GMRSP, ordered capitalizing the entire bid amount (instead of annual installments actually paid) and permitted depreciation thereon. On this, the DoR have stated that the exact nature of the payment of franchise fee made has to be analysed on a case-to-case basis by the AOs depending on the nature of agreement signed between the parties, nature of rights obtained against the franchise fee, frequency of payment made viz. whether annual or one-time payment, while following judicial discipline. Therefore, it has been felt that it may not be possible to issue uniform standardized guidelines on this issue. The Committee are constrained to observe that due to absence of specific provisions in the Act to deal with expenses such as franchise fee, the matter has been treated differently at different levels and as such the issue was litigated. The Committee have been apprised by the Ministry that as different views have been taken by various appellate authorities and the nature of franchise fee payment made by the assessee has to be examined on a case-to-case basis before arriving at a conclusion whether it is 'revenue' or 'capital' in nature, the department has filed an appeal before the Hon'ble High Court of Bombay on this issue with the following substantial question of law: "Whether on facts, in circumstances of the case and in law, the Hon'ble ITAT is right in holding that the expenditure incurred on the account of franchise fees for securing the right to participate in Indian Premier League as Revenue Expenditure whereas the provisions of Section 32(1)(ii) and that of section 55(2)(a) of the Income Tax Act, 1961 evidently provide that franchise and right to carry on any business are capital in nature?" In light of the fact that the matter is *sub-judice*, the Committee desire that CBDT keep the Committee apprised of the progress /final outcome of the case.

Lack of appropriate mechanism for monitoring and utilization of Form 52A

15. The Committee note that Section 285B was introduced to check inflation of expenditure by the film producers and enable the Department to get information about the recipients of payment for necessary action. Under this Section, every person carrying on production of cinematograph film is required to furnish to the jurisdictional Assessing Officer a statement in Form 52A providing particulars of all payments of over ₹ 50,000 in aggregate, made by him or due from him to the persons engaged by him in the production, for each financial year or part of it, till completion of production, within 30 days from the date of completion of production or within 30 days from the end of the financial year, whichever is earlier. Audit found that despite accepting the recommendation made by Audit in 2010-11, the Ministry had not included the PAN of payee as part of Form 52A. The Committee further note that there were weaknesses in regard to control in Form 52A whereby submission of the form was not being monitored and the details of production cost as disclosed by the film producer was not being properly verified during assessment. Audit observed that there was a mismatch in the details of payments as shown in Form 52A and the amounts accounted for in Profit & Loss Account in two assessment cases in two States. The payment details indicated in Form 52A were lesser than those indicated in Profit and loss account and the assessments were completed based on the higher amounts of expenditure recognized in the Profit and Loss Account. Regarding the steps taken by the Ministry/CBDT in addressing the matter, the DoR submitted that the Assessing Officers have been instructed to ensure the receipt of Form No.52A from the producers of the cinematographic films as per relevant provisions of the Income-tax Act, 1961. Following the Committee having taken up the matter, Form 52A has since been comprehensively revised, vide Notification dated 23.11.2021. The PAN of the Payee along with other details have been included in the new format. The Committee, while appreciating the initiatives taken by the Ministry desire that the form be digitized and integrated with the ITBA so as to enable cross verification of information. Further, monitoring mechanism to verify the details of production cost disclosed by the film producer in Form 52A need to be strengthened to ensure strict compliance of the instructions issued from time to time.

Absence of Justification in Making Additions

16. Audit scrutiny also revealed that there was no uniformity in the approach adopted by the AOs, while making additions to the income of assesseees on ad hoc basis. Lack of uniformity in making additions to the income of assesseees was noticed by Audit in 208 assessment cases in five states. The additions to the 'income of the assessee were made largely on percentage basis ranging from five to 20 per cent on ad hoc basis for varied reasons such as 'want of vouchers', unsubstantiated expenses, absence of

third party vouchers etc. Yet, no specific justification was recorded in the Assessment Order for making the additions. As regards the efforts being made towards ensuring that assessment orders are self-explanatory (speaking orders) while arriving at ad-hoc additions, DoR submitted to the Committee that with the implementation of ITBA (Income-tax Business Application) the Assessing Officer is required to follow a more detailed and comprehensive approach while making 'additions of income' or 'deciding on disallowances' to compute taxable income. This has reportedly resulted in reducing the scope of error. Further, all the assessment proceedings, including the scrutiny assessments of cases related to film and television industry, unless centralised, are conducted electronically in a faceless manner, through team based assessment. Specialised units such as Assessment Units, Verification Units, Technical Units and Review Units have been put in place for optimum utilization of the resources through economies of scale and functional specialization. This, as per the information furnished by DoR is a team-based assessment procedure, where the Assessment Unit can request for verification by the Verification Unit and seek technical assistance from the Technical Unit for the purpose of preparing a Speaking Order. Under this Scheme, the process of Review has been built in to facilitate error-free assessment orders. The Committee trust that with the implementation of ITBA (Income-tax Business Application), the issue of adopting diverse approaches in making additions to the income of assesseees on *ad-hoc* basis/disallowing in the assessment orders will be addressed to a significant extent. The Committee would like to be apprised of the effectiveness of ITBA in addressing the issues highlighted by audit.

Impact Assessment of ITBA

17. The Committee have been repeatedly apprised of the measures taken by the Ministry particularly of the ITBA which is being termed as a revolutionary development in the process of income tax assessment. The Committee would emphasize in this regard that ITBA being a mere tool can be effective only to an extent, as per design, and may thus be not treated as a panacea. The Committee, while expressing hope that the new system addresses the systemic lacunae, would also emphasize on the aspect that no software can parallel human cognitive abilities. In light of the above, the Committee would like to stress on the need for undertaking an Impact Assessment exercise to ascertain the utility of ITBA, the problem areas and the loopholes that may arise in the application. The Committee believe that this will help enhance the effectiveness of ITBA and also minimize instances of evasion of tax.

Conclusion

18. There has been a phenomenal growth in Entertainment Sector in the form of new segments such as short video platforms, digital streaming services, OTT, Animation, VFX, podcasts, audio-books and mobile and video games alongside other existing sub-sectors such as Television, Print, Films, Sports, Radio, and Music etc. To sum up the implications of the fast paced growth of the sectors on tax revenue generation, the Committee are of the opinion that increased affluence and changing lifestyles have contributed towards making the Indian entertainment industry a sunrise sector for the economy, with high potential for increased revenue generation. However, the dynamic nature of the Industry poses a challenge of maintaining a balance in growth of new sectors viz-a-viz ensuring that tax revenue is correspondingly enhanced with the rise in avenues of income. Considering these aspects, the Committee recommend that to curb tax evasion, a mechanism be brought in place for continuous review of the possible sources of revenue being generated in the sector and update the systems so as to keep pace with the contemporary developments taking place in entertainment sector. While appreciating the initiatives taken by the Ministry such as Faceless Assessment Scheme, implementation of Non-filers Monitoring System (NMS); launch of 'Project Insight' to strengthen the non-intrusive information driven approach to increasing tax compliance; permitting the Aadhaar number to be used interchangeably in lieu of PAN in more than 100 forms, the Committee emphasize upon the need for fine tuning the e-systems coupled with efforts on rationalization of Business codes used for ITR forms, refinement of information sharing mechanism and strengthening monitoring mechanism. The Committee also look towards witnessing the effectiveness of ITBA in enhancing transparency and accountability for better implementation of the Income Tax Act and enhancing the reach of Income tax authorities to better target the evolving areas of entertainment sector.

MINUTES OF THE SITTING OF SUB-COMMITTEE – IV (FINANCE) OF PUBLIC ACCOUNTS COMMITTEE (2021-22) HELD ON 8th SEPTEMBER, 2021.

The Sub-Committee - IV (Finance) met on Wednesday, the 8th September, 2021 from 1100 hrs. to 1230 hrs. in Committee Room 'D', Parliament House Annexe, New Delhi.

PRESENT

Shri Bhartruhari Mahtab - **Convenor**

MEMBERS

LOK SABHA

2. Shri Subhash Chandra Baheria

RAJYA SABHA

3. Dr. C.M Ramesh

4. Shri V. Vijayasai Reddy

LOK SABHA SECRETARIAT

1. Shri TG Chandrasekhar - Joint Secretary
2. Shri Tirthankar Das - Director
3. Smt. Bharti S. Tuteja - Additional Director

REPRESENTATIVES OF THE OFFICE OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA

1. Shri K. R. Shriram - Dy.CAG
2. Ms. Monika Verma - Director General
3. Shri Kartikay Mathur - Director General
4. Shri S. V. Singh - Principal Director

2. At the outset, Hon'ble Convenor, Sub-Committee - IV (Finance) welcomed the Members and Officials from C&AG Office to the Sitting of the Sub-Committee convened to have briefing by Audit on the subjects; i) "Assessment of Assesseees in Entertainment Sector" based on C&AG Report No. 1 of 2019; (ii) Exemption without verification of supporting documents"; "Incorrect reflection of agricultural income in ITD Database"; "Status of Verification by the Department" and "Compliance issues - Mistakes in Assessments" based on Paras 5.9.2, 5.9.3, 5.9.4 and 5.9.5 of C&AG Report No. 9 of 2019 respectively; and (iii) "Levy of Anti - Dumping Duty (ADD) on imports" based on Chapter III of C&AG Report No. 17 of 2019.

3. Thereafter, the officials of C&AG of India sought permission of the Hon'ble Convenor to make PowerPoint presentation on the subject matter. The Audit firstly briefed the Sub-Committee about the observations contained in C&AG Report No. 1 of 2019 on "Assessment of Assesseees in Entertainment Sector" and their important recommendations viz. a. allocation of separate codes to film artist and to emerging segments in entertainment industry to ensure better monitoring, improved vigilance and identification of assesseees for detailed scrutiny; b. strengthening of the existing mechanism for sharing and cross-verification of needful information within the department to ensure quality assessments; c. effective coordination with external agencies such as central/state revenue departments/authorities for cross verification of revenue collection figures disclosed by assesseees in its ITRs; d. issue of instructions to Assessing Officers for comprehensive verification of transactions with respect to cases involving: i. reimbursement of production cost by Indian producers to foreign line producers ii. receipt of quantum of subsidies/incentives by Indian producers from foreign governments and iii. adoption of different accounting methods by inter related parties of this sector and revenues earned by movie producers by way of various movie rights etc.

4. The Members then sought clarifications on issues like, mandatorily following the same accounting method without bringing out any amendment in the Act; mismatch of database due to partial digitalization and manual handling; action taken by the Ministry on the recommendations of Audit, etc.

5. Thereafter, Audit officers briefed the Committee on important observations made in Paras 5.9.2, 5.9.3, 5.9.4 and 5.9.5 of C&AG Report No. 9 of 2019 on "Exemption without verification of supporting documents"; "Incorrect reflection of agricultural income in ITD Database"; "Status of Verification by the Department" and "Compliance issues - Mistakes in Assessments" respectively. Audit briefed the Committee on need to re-examine not only the remaining scrutiny cases, but also all cases where income has been allowed as agricultural income above Rs.10 lakh or more; mismatch noticed between the exemptions allowed in the assessment order vis-à-vis that reflected in the ITD database; need for inquiring into persistent data entry errors; need to examine existence of manual system of assessment when an electronic system of assessment has been introduced; and steps taken towards elimination of actual interface with the taxpayers. Audit also highlighted non-compliance issues such as, incorrect exemption granted for income derived from agricultural land, incorrect allowance of exemption for partial agricultural income, excess allowance of replantation expenditure due to adoption of incorrect export turnover and exemption granted to non-agricultural income on account of sale of fish, goat, dry grapes, milk etc.

6. The Members, while acknowledging the suggestions of Audit, sought clarification on issues like systematic safeguards that were in place to check if unaccounted income/black money was being brought by the assessee into the financial system under the garb of agricultural income; reasons for data entry errors cited by the Department etc.

7. Thereafter, Audit officers briefed the Committee on important observations made in Chapter III of C&AG Report No. 17 of 2019 on "Levy of Anti -Dumping Duty (ADD) on imports". Audit highlighted issues like bills of entry being cleared through the system under the Custom's Risk Management System (RMS) based clearance in the ICES; inability of RMS to detect the specific conditions of ADD that were not met by the imports effected under many of the bills of entry test checked; several instances of escapement of levy and instances of non-compliance with the conditions of the anti-dumping that were noticed which resulted in non/short levy of anti-dumping duty amounting to ₹ 86.69 crore etc.. The Audit further stated that the Department accepted the observations which had a revenue implications of ₹ 53 crore and reported recovery of ₹ 1.20 crore.

8. The Members, while acknowledging the suggestions of Audit desired that representatives of the Ministries/ Departments concerned may be called for evidence on the subjects under examination.

9. The Convenor thanked the officials of C&AG of India for assisting the Sub-Committee during the deliberations.

10. Thereafter, the Sub-Committee also decided to take evidence of the representatives of Ministry of Finance and CBDT at their next Sitting to be held on 15.09.2021 on "Exemption without verification of supporting documents"; "Incorrect reflection of agricultural income in ITD Database"; "Status of Verification by the Department" and "Compliance issues - Mistakes in Assessments" based on Paras 5.9.2, 5.9.3, 5.9.4 and 5.9.5 of C&AG Report No. 9 of 2019

The Sub-Committee, then, adjourned.

MINUTES OF THE SITTING OF SUB-COMMITTEE – IV (FINANCE) OF PUBLIC ACCOUNTS COMMITTEE (2021-22) HELD ON 22nd OCTOBER, 2021.

The Sub-Committee - IV (Finance) met on Wednesday, the 22nd October, 2021 from 1530 hrs. to 1730 hrs. in Committee Room 'D', Parliament House Annexe, New Delhi.

PRESENT

Shri Bhartruhari Mahtab - **Convenor**

MEMBERS

LOK SABHA

2. Shri Subhash Chandra Baheria

RAJYA SABHA

3. Dr. M Thambidurai

LOK SABHA SECRETARIAT

1. Shri TG Chandrasekhar - Joint Secretary
2. Shri Tirthankar Das - Director
3. Smt. Bharti S. Tuteja - Additional Director

REPRESENTATIVES OF THE OFFICE OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA

1. Shri K. R. Shriram - Dy.CAG
2. Ms. Monika Verma - Director General
3. Shri S. V. Singh - Principal Director

REPRESENTATIVES OF THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE) AND CENTRAL BOARD OF DIRECT TAXES

1. Shri Tarun Bajaj - Secretary(Revenue)
2. Sh J.B. Mohapatra - Chairman, CBDT
3. Mrs. Sangeeta Singh - Member (CBDT)
4. Mrs. Garima Bhagat - CIT, A&J, CBDT
5. Mrs. Sunita Verma - CIT(OSD), A&PAC, CBDT

2. At the outset, Hon'ble Convenor, Sub-Committee - IV (Finance) welcomed the Members and Officials from C&AG Office to the Sitting of the Sub-Committee convened to have briefing by the representatives of Ministry of Finance (Department of Revenue) and Chairperson, Central Board of Direct Taxes on the subject "Assessment of Assesses in Entertainment Sector (DT)" based on C&AG Report No. 1 of 2019.

3. The Convenor then asked the Audit officers to share updated information on the action taken by the Ministry on the shortcomings pointed out and suggestions made by the Audit on the subject under examination.

4. Members sought certain clarifications regarding the Audit findings which were replied to by the officials of C&AG.

5. Members of the Committee also observed that briefing by the officers of C&AG of India serves as an important input for the Reports of Public Accounts Committee and desired that deliberation with C&AG's office be invariably recorded by the Reporters.

6. Thereafter, the representatives of the Ministry of Finance (Department of Revenue) and CBDT were called in.

7. The Convenor then, welcomed the Secretary (Revenue), Chairperson, CBDT and officials of Ministry of Finance (Department of Revenue). In his Introductory remarks, the Convenor, while pointing out various Audit observations, stressed upon the need for better co-ordination within/outside the Department, strengthening of internal controls and taking steps to adhere to the provisions of Income Tax Act. Impressing upon the witnesses to treat the proceedings of the Committee as confidential, the Convenor asked the representatives of Ministry of Finance (Department of Revenue) to brief the Committee on the remedial action taken by the DoR / CBDT on the Audit observations.

8. The Secretary (Revenue) thereafter, gave a brief overview of the various related issues and the corrective action taken by the Ministry/ CBDT on the Audit observations.

9. Then, the Convenor and Members of the Committee sought clarification on various issues which *inter-alia* included remedial steps taken by the Board for strengthening the mechanism for sharing and cross verification of information within the Department to ensure quality assessment; reasons for not conducting surveys in some States at all; reasons for non-implementation of the recommendation made by Audit for inclusion of PAN of payee in Form 52A; instructions if any, issued by the Ministry/CBDT to ensure that assessment orders are self-explanatory (speaking orders) in cases where AO makes an addition to the income of the assesses on ad-hoc basis; apart from cases test checked by Audit, whether any review of similar cases has been conducted by the Ministry, reasons for not allowing access to ITBA by Audit.

10. The Secretary (Revenue) and Chairperson, CBDT responded to some of the queries raised by the Members which included *inter alia* efforts made for seamless exchange of data between CBDT and GSTN, launching of E-Assessment Scheme,2019, allocation of a separate code to film artistes and emerging segments in entertainment industry, implementation of ITBA requiring AOs to follow a more detailed and comprehensive approach while making assessments, issuing of standard guidelines to all assessing officers on non-enforcement of ad-hoc additions; status of remedial action being taken by the Ministry on the audit findings. As regards inclusion of PAN of the payee in form 52A, the Secretary (Revenue) and Chairperson, CBDT clarified that it does not require any amendment in the Act and hence will be done shortly. Further, with respect to the observation of the audit on non-conducting of surveys in some States at all, it was assured to the Committee that more surveys will be conducted to strengthen the data base of the entertainment sector.

11. The Convenor asked the Ministry to furnish written replies to the queries raised by the Members as well as to the list of points provided by the Committee Secretariat within 15 days. The Convenor thanked the Secretary (Revenue) and Chairperson, CBDT for appearing before the Committee and furnishing valuable information on the subject.

12. The Committee also decided to have further briefing by the Ministry of Finance (Department of Revenue) and Chairperson, Central Board of Direct Taxes on the same subject at their next Sitting.

The witnesses, then, withdrew.

A copy of the verbatim proceedings of the sitting has been kept on record.

The Committee then adjourned.

MINUTES OF THE SITTING OF SUB-COMMITTEE – IV (FINANCE) OF PUBLIC ACCOUNTS COMMITTEE (2021-22) HELD ON 23RD NOVEMBER, 2021.

The Sub-Committee - IV (Finance) met on Tuesday, the 23rd November, 2021 from 1100 hrs. to 1245 hrs. in Committee Room No. '2', Parliament House Annexe, Extension Building, New Delhi.

PRESENT

Shri Bhartruhari Mahtab - **Convenor**

MEMBERS

LOK SABHA

2. Shri Subhash Chandra Baheria

LOK SABHA SECRETARIAT

1. Shri TG Chandrasekhar - Joint Secretary
2. Shri Tirthankar Das - Director
3. Smt. Bharti S. Tuteja - Additional Director

REPRESENTATIVES OF THE OFFICE OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA

1. Shri K. R. Shriram - Dy.CAG
2. Shri Stephen Hongray - Director General
3. Shri S. V. Singh - Principal Director

REPRESENTATIVES OF THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE) AND CENTRAL BOARD OF DIRECT TAXES

1. Sh J.B. Mohapatra - Chairman, CBDT
2. Mrs. Sangeeta Singh - Member (CBDT)

3. Mr. Raman Chopra - JS(TPL)-11 Mrs.
4. Mrs. Garima Bhagat - CIT, A&J, CBDT
5. Mrs. Sunita Verma - CIT(OSD), A&PAC, CBDT

2. At the outset, Hon'ble Convenor, Sub-Committee - IV (Finance) welcomed the Members and Officials from C&AG Office to the Sitting of the Sub-Committee convened to have further briefing by the representatives of Ministry of Finance (Department of Revenue) and Chairperson, Central Board of Direct Taxes on the subject "Assessment of Assesses in Entertainment Sector (DT)" based on C&AG Report No. 1 of 2019. . 3. Thereafter, the representatives of the Ministry of Finance (Department of Revenue) and CBDT were called in.

4. The Convenor then, welcomed the Chairperson, CBDT and officials of Ministry of Finance (Department of Revenue) and CBDT. In his Introductory remarks, the Convenor, while referring to earlier briefing meeting held on 22.10.2021 on the same subject wherein the Ministry of Finance(Department of Revenue) and CBDT had touched upon action taken by them on some of the Audit observations, desired to be apprised of the status of action on the remaining Audit findings, as contained in the Audit Report. Impressing upon the witnesses to treat the proceedings of the Committee as confidential, the Convenor asked the Ministry of Finance (Department of Revenue)/CBDT to brief the Committee on the remedial action taken by the DOR / CBDT on the Audit observations.

5. Thereafter, the Chairperson, CBDT, while giving an updated statistical status of the action taken by the Ministry / CBDT on the Audit observations *vis-a-vis* response of the Audit, elaborated important illustrative cases as covered in the Audit Report. The Chairperson, CBDT also shared view/comment of the CBDT on certain specific questions arising from the last sitting of the Committee held on 22.10.2021 on the subject matter.

6. Then, the Convenor and Members of the Committee sought clarification on various issues which *inter-alia* included extent to which the Ministry! CBDT gained from recoveries made after the rectification in respect of all the cricket associations in pursuance of the audit objections; details of tax pairing clauses which are available to countries other than Singapore; whether remedial action taken by CBDT covers the issue raised by Audit; reasons for making scrutiny assessment on original ITR instead of revised returns in the event of filing of the revised returns and any explanation sought from AO in this regard; strategy followed for reopening of the cases; any adverse point noted by the Internal Audit during scrutiny of 1035 cases which has been completed so far out of 6,515 cases following suggestion of the Audit.

7. The Chairperson, CBDT responded to some of the queries raised by the

Members which included *inter alia* efforts being made for good quality of selection of the cases and the 360 degree profiling on Insight, including the related party transactions and the information from the reporting entities under Section 285BA; tightening of discretionary power of AOs as regards reopening of cases by way of inclusion of relevant provisions in the Finance Act. The Chairperson, CBDT also assured to furnish written replies to the questions which remained unanswered during the sitting.

8. The Convenor asked the Ministry to furnish written replies to the queries raised by the Members within two weeks. The Convenor thanked the Chairperson, CBDT for appearing before the Committee and furnishing valuable information on the subject.

The witnesses, then, withdrew.

A copy of the verbatim proceedings of the sitting has been kept on record.

The Committee then adjourned.

**MINUTES OF THE THIRD SITTING OF THE PUBLIC ACCOUNTS COMMITTEE
(2022-23) HELD ON THE 15TH JUNE, 2022.**

The Public Accounts Committee (2022-23) met on Wednesday, the 15th June, 2022 from 1100 hrs to 1610 hrs. in Committee Room 'D', Parliament House Annexe, New Delhi.

PRESENT

Shri Adhir Ranjan Chowdhury ---- CHAIRPERSON

Members

Lok Sabha

2. Shri Subhash Chandra Baheria
3. Shri Bhartruhari Mahtab
4. Shri Pratap Chandra Sarangi
5. Shri Rahul Ramesh Shewale
6. Shri Brijendra Singh
7. Shri Rajiv Ranjan Singh alias Lalan Singh
8. Dr. Satya Pal Singh -- In Chair (from 1100 hrs to 1230 hrs.)
9. Shri Balashowry Vallabhaneni
10. Shri Shyam Singh Yadav

RAJYA SABHA

11. Dr. Amar Patnaik
12. Dr. C. M. Ramesh
13. Shri V. Vijayasai Reddy
14. Dr. Sudhanshu Trivedi

LOK SABHA SECRETARIAT

1. Shri T.G.Chandrashekhar -- Additional Secretary
2. Shri Tirthankar Das -- Director
3. Smt. Bharti S.Tuteja -- Director
4. Dr. Yumnam Arun Kumar -- Additional Director

REPRESENTATIVES OF THE OFFICE OF THE COMPTROLLER AND AUDITOR

GENERAL OF INDIA

1. Shri R.G.Viswanathan -- Dy. C&AG
2. Ms. Ritika Bhatia -- Director General

3. Shri Deepak Kapoor -- Director General
4. Shri S.V.Singh -- Director General

REPRESENTATIVES OF THE MINISTRY OF HOUSING AND URBAN AFFAIRS

1. Shri Kamran Rizvi -- Additional Secretary
2. Shri Rahul Kashyap -- Director, Delhi Div.
3. Smt. Archana Agarwal -- Member Secretary (NCRPB)
4. Shri Jagdish Parwani -- Director, NCRPB

2.	XXX	XXX	XXX	XXX
3.	XXX	XXX	XXX	XXX
4.	XXX	XXX	XXX	XXX
5.	XXX	XXX	XXX	XXX
6.	XXX	XXX	XXX	XXX
7.	XXX	XXX	XXX	XXX
8.	XXX	XXX	XXX	XXX
9.	XXX	XXX	XXX	XXX
10.	XXX	XXX	XXX	XXX
11.	XXX	XXX	XXX	XXX
12.	XXX	XXX	XXX	XXX
13.	XXX	XXX	XXX	XXX
14.	XXX	XXX	XXX	XXX
15.	XXX	XXX	XXX	XXX

XXXX XXXX XXXX

16. The Committee resumed their Sitting from 1400 hrs and sat till 1610 hrs.

XXX

PART-B

**REPRESENTATIVES FROM THE OFFICE OF THE COMPTROLLER AND
AUDITOR GENERAL OF INDIA**

Sl. No.	Name	Designation
1.	Shri Rakesh Mohan	Dy. CAG
2.	Shri S.V. Singh	Director General

18. At the outset, the Chairperson, welcomed the Members and Audit Officers to the Sitting of the Committee, convened (i) to take further oral evidence of the representatives of the Ministry of Jal Shakti, Department of Water Resources, River Development and Ganga Rejuvenation on the subject "Ground Water Management and Regulation" based on C&AG Report No. 9 of 2021 and (ii) to consider and adopt the following two draft Reports:-

- (i) XXXXXXXX
- (ii) "Assessment of Assesseees in Entertainment Sector (DT)" based on C&AG Report No. 1 of 2019.

19. Before commencing the evidence of the representatives of the Ministry on the subject "Ground Water Management and Regulation", the Committee took up the aforesaid two Reports for consideration. Following some deliberations, the Committee adopted the afore-mentioned draft Reports without any modification. The Committee also authorized the Chairperson to finalise the Reports on the basis of factual verification and present the same to Parliament.

20. XXX XXX XXX XXX.

21. XXX XXX XXX XXX.

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

22.	XXX	XXX	XXX	XXX
23.	XXX	XXX	XXX	XXX.
24.	XXX	XXX	XXX	XXX.
25.	XXX	XXX	XXX	XXX.
26.	XXX	XXX	XXX	XXX.
27.	XXX	XXX	XXX	XXX

The Committee then adjourned.

(A copy of the verbatim proceedings of the sitting has been kept on record.)