

**SUMMARY OF KEY FINDINGS AND RECOMMENDATIONS IN THE
CAG'S PERFORMANCE AUDIT REPORT ON INCOME TAX SEARCH AND
SEIZURE ASSESSMENTS (Report No.14 of 2020)**



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Performance Audit Report No.14 of 2020 on Search and Seizure Assessments in Income Tax Department, Union Government, Department of Revenue - Direct Taxes by the Comptroller and Auditor General of India.

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Overview:-

Search and Seizure is a very powerful tool available with the Income Tax Department to unearth any concealed income or valuables and to check the tendencies of tax evasion thereby mitigating the generation of black money. Authority and power to conduct search and seizure operations is strident and caustic power authorized by law to be taken recourse to when the conditions mentioned under different clauses of Section 132 (1) of the Act are satisfied. The jurisdictional facts that have to be established before a search under Section 132 (1) of the Act can be authorised are that (i) the authority issuing the authorisation is in possession of some credible information, other than surmises and conjectures (ii) that the authority has reason to believe

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that the conditions stipulated in clauses (a), (b) and (c) of Section 132 (1) qua the person searched exist; and (iii) the said information has nexus to such belief. Section 153A provides for the procedure for completion of assessment in case of a person where a search is initiated under Section 132 or books of account or other documents or any assets are requisitioned under Section 132A after 31st May, 2003.

Performance Audit conducted by the Comptroller and Auditor General of India :-

The CAG of India conducted the performance audit on search and seizure assessments in Income Tax Department with the objective to examine (i) the extent of compliance with the existing provisions of the Act/Rules /Circular/Instructions in making such assessments and also to point out systemic deficiency, if any, in these assessments; and (ii) the efforts made by the department in coordinating with other Government agencies/different wings of the department to disseminate information during the course of assessment, regarding undisclosed income detected during search and seizure operations (iii) Sustainability of additions made in assessments in search and seizure cases at the appellate stage (iv) Implementation of the recommendations made in the CAG Report No.7 of 2006. The Performance Audit (PA) covered the search assessments completed during the financial years 2014-15 to 2017-18. Total 1417 number of Groups were assessed during the period 2014-15 to 2017-18 by different field offices under the CAG's audit jurisdiction. Out of this audit universe sample of 185 Groups was drawn. The audit team checked 24,869 assessment records with assessed income of 1,71,503.78 crore during the performance audit wherein they issued 1659 observations related to absence of provisions in the Act, non-compliance to the Income Tax provisions, non-centralisation of search assesseees, nonuniformity in making additions, non-implementation of the recommendations given in the Appraisal Report during search assessments and non-levy of penalty etc. having tax effect of 4150.02 crore. Besides, the

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audit team also analysed the sustainability of additions made during search assessments.

Key observations of the Performance Audit report on Income Tax Search and Seizure Assessments:-

1. The Income Tax Department did not centralise all cases in respect of certain groups for assessments due to which issues relating to the assessee's pointed out in Appraisal Report could not be addressed.
2. **76.5 per cent of additions made in search assessments did not stand the test of judicial scrutiny in appeals at the level of CIT (A)/ITAT. There were cases where sustainability of additions made in the assessment orders was nil at appellate stage.**
3. Assessing Officers did not take uniform stand in making additions on account of bogus purchases, accommodation entries and in adoption of figures of assessed income/revised income. The additions were made arbitrarily either on lump sum amount basis or different percentage ranging from five per cent to 50 per cent under similar circumstances without proper justification. There were cases of non-compliance of CBDT's instructions/orders. Provisions related to levy of penalty, allowances of deductions/expenses/set off and carry forward of losses/MAT etc. were not followed correctly.
4. There was a delay ranging from one month to 14 months in handing over of Appraisal Report along with seized material to the AO.
5. Verification of source/genuineness of the transaction pointed out in Appraisal Report was not done and undisclosed income recommended in the Appraisal Report was not added. Coordination with other wings of ITD to resolve the issues pointed out in Appraisal report was not there. Useful information was not shared by ITD with other government agencies/authorities or vice versa either directly or through REIC.

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6. Action Notes based on comprehensive and methodical examination of seized material, were not prepared by the AO.
7. Separate Narrative Reports were not prepared and sent to the Member (Investigations).

Para-wise findings as detailed in CAG's performance report no.14 of 2020 are summarized herein under :-

- Audit noticed cases where there were loopholes/deficiency in the provisions of the Act in respect of search assessments. These deficiencies mainly relate to absence of specific provisions in the Act/Rules.

(Paragraph 2.4)

- Audit noticed that the department did not centralise all cases in respect of certain groups for assessments due to which issues relating to the assessee's pointed out in Appraisal Report could not be addressed.

(Paragraph 2.5)

- Audit observed in respect of certain Groups that 76.5 *per cent* of additions made in assessments did not stand the test of judicial scrutiny in appeals at the level of CIT (A)/ITAT. We also observed cases where sustainability of additions made in the assessment orders was nil at appellate stage.

(Paragraph 2.6)

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

(Paragraph 2.7)

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- Audit noticed cases of non-compliance of CBDT's instructions/orders such as allowing appeal without collecting the requisite demand and non-filing of appeal in the High Court despite the directions of DGIT (Investigation). Audit also noticed cases where AO dropped penalty proceedings under sections 271(1)(c)/271AAB of the Act without approval of higher authority.

(Paragraph 2.8)

- Audit observed cases where, AO did not assess the income of the relevant assessment year covered under search.

(Paragraph 2.9)

- Audit noticed cases where AO, while finalizing the search assessments, did not levy penalty though the same was leviable.

(Paragraph 2.11)

- Audit noticed cases where AO while finalizing the search assessments, did not assess unexplained credit, levied tax on normal provisions instead of leviable under special provisions of section 115JB of the Act, computed short demand, charged tax at a rate less than the prescribed rate, short levied interest, surcharge and did not disallow expenditure related to exempt income, allowed incorrect MAT credit etc.

(Paragraph 2.12)

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

(Paragraph 2.13)

- Audit observed delay ranging from one month to 14 months in handing over of Appraisal Report along with seized material to the AO. This inordinate delay in handing over seized materials may result in less time for assessment which

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has attendant risk of human error for hasty completion of assessment thus affecting the quality of assessments.

(Paragraph 3.1.1)

- Audit noticed cases where AO did not verify the source/genuineness of the transaction pointed out in Appraisal Report and did not add undisclosed income recommended in the Appraisal Report, unsecured loan/advance received from entry provider, entire undisclosed income pointed out in Appraisal Report was not assessed, expenditure was not added back to the income of the assessee for want of evidence of TDS, action was not initiated by the department despite receipt of search folders and materials. Though the department was required to coordinate with other wings of ITD viz Investigation wing, TDS circle etc. in these cases and resolve the issues before finalization of the assessments but the same was not done.

(Paragraph 3.1.2)

- Audit noticed cases where AO had not made addition of undisclosed income admitted by the assessee or disallowed the expenditure based on the statement made on oath during the course of search and also had not resolved the matter with the Investigation Wing.

(Paragraph 3.1.3)

- Audit noticed cases where other government agencies i.e. REIC and CBEC did not share information with ITD. As a result, AO could not address the issues like removal of stocks without payment of excise duty, purchases in cash without invoices/bills and genuineness of sources of investment etc. either in search assessments or finalized assessment without examining the requisite information which may be prejudicial to the interest of revenue.

(Paragraph 3.2.1)

- Audit observed that the information relating to advancing of loans to the paper companies, wrong claim of PSI subsidy/sales tax subsidy was not shared by ITD with other government agencies/authorities either directly or through REIC.

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(Paragraph 3.2.2)

- Audit observed in certain Groups where Action Notes based on comprehensive and methodical examination of seized material, were not prepared by the AO. Audit also observed that Separate Narrative Reports were not prepared and sent to the Member (Investigations).

(Paragraph 3.3)

- Audit noticed cases that though the information relating to sellers of land/flat/commodities had been pointed out in the respective Appraisal Report, who could be potential assesseees. Yet Department did not initiate any action in this regard. The department also did not confirm whether these sellers were in the tax net of the department and regularly filing the return.

(Paragraph 3.4)

CAG's recommendations as detailed in CAG's performance report no.14 of 2020 are summarized herein under :-

Audit recommended that:

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

(Paragraph 2.4.1)

- The CBDT stated (June 2020) that the observation of C&AG is already incorporated in law due to which no further action is required. The CBDT may examine the adequacy of the current provisions with respect to bogus purchase, inflated invoices etc. as undisclosed income from these do not get covered under the existing provisions.
- *Audit reiterates that the CBDT may introduce a time limit for issuing notices under amended section 153A/153C.*

(Paragraph 2.4.2)

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

- *the CBDT may examine whether these are errors of omission or commission and take necessary action as per law in that regard.*

(Paragraph 2.4.3)

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

(Paragraph 2.5)

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

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

- *the Department may like to ensure that the search warrants are issued after proper examination of the information available, research and due diligence in a manner which is above suspicion as search and seizure involves lot of harassment to the assessees and their families. The possibility of role of judicial body may also be explored. The CBDT may also analyse the reasons for low sustainability and fix the responsibility of the concerned officers.*

(Paragraph 2.6)

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

(Paragraph 2.7, 2.8 to 2.12)

- *CBDT may put in place a mechanism so as to ensure that Appraisal Report along with seized material be handed over to assessment wing within stipulated time so that AO could have sufficient time to examine all the issues pointed out in Appraisal Report.*

(Paragraph 3.1.1)

- *the CBDT may put in place a mechanism so as to ensure that the issues pointed out in Appraisal Report are duly addressed during assessment.*

(Paragraph 3.1.2)

- *ITD may strengthen its assessment procedure to make effective use of provision 132(4) of the Act.*

(Paragraph 3.1.3)

- The CBDT agreed (June 2020) to examine the audit recommendation.

- *ITD may strengthen the mechanism of sharing of information amongst different wings of the Department as well as with other Government agencies and ensure its timeliness for effective assessments and prevent undue benefit to the assesseees.*

(Paragraph 3.2)

- The CBDT stated (June 2020) that the existing practices/mechanisms already provide for effective sharing of information within the Department as well as with other Government agencies and the Board has issued various instructions from time to time directing the field formations concerned to adhere strictly to the timeline. However, the CBDT agreed that the mechanism in place needs to be strengthened.

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- *the CBDT may fix responsibility where Action Note/Separate Narrative Report is not prepared and further appropriate action be taken so that objective of search and seizure operations is not defeated.*

(Paragraph 3.3)

- *ITD may devise a system to track the new assesseees added in the tax net consequent upon search operations/assessments and also to watch that these assesseees are tax compliant.*

(Paragraph 3.4)

- The CBDT stated (June 2020) that after obtaining the report from Pr. CIT, they will find out the lapses and ensure that the same do not occur in future.

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ABOUT CA.MOHIT GUPTA

Mr. Mohit Gupta is a Fellow Member of the Institute of Chartered Accountants of India, a commerce graduate from prestigious Ramjas College, Delhi University and an alumni of St. Xavier's School, New Delhi. He is practicing as a Chartered Accountant for more than 15 years and managing the Direct Tax Advisory and Litigation practice of M/s. Dhanesh Gupta & Co., Chartered Accountants, New Delhi a renowned Chartered Accountancy firm in the core domain of direct taxation established in 1978.

His forte is handling Income Tax Search and Seizure matters, matters before the Income Tax Settlement Commission and other direct tax litigation matters. As on today, he has wide experience of handling Income Tax Search and Seizure Cases, representing matters before the Income Tax Settlement Commission, ITAT and other appellate tribunals. He has been contributing articles in various professional magazines/journals and addressing various seminars on topics relating to Income Tax Search and Seizure, Income Tax Settlement Commission and other allied tax matters. He has to his credit plethora of well researched articles out of which many have appeared in leading journals. In Addition to the above, Mr. Mohit Gupta is a Special Auditor of the Income Tax Department and has carried out numerous Special Audits across the country on being appointed by the Income Tax Department which have plugged tax evasions, tax base erosion and other tax manipulative practices and in turn facilitated the Income Tax Department to collect huge tax revenues. Mr. Mohit Gupta has also been appointed as Special Auditor under other tax statutes and by other Investigation Agencies of the Government of India. Mr. Mohit Gupta, authored the periodical Newsletter on Income Tax Search and Seizure. The said newsletter contained well researched write ups / articles and judicial developments on the matters of Direct Taxation. The newsletter was circulated both electronically and otherwise.

Recently, in the year 2016, Mr. Mohit Gupta have authored two comprehensive books on the Income Declaration Scheme'2016, titled as "Law Relating to Income Declaration Scheme'2016". His books provided at one place the entire gamut of the Law relating the Income Declaration Scheme '2016 and set to rest all the queries that arose before, during and after the course of making the declaration under the Income Declaration Scheme'2016. The books received an extremely overwhelming response from the readers including the proposed tax payers, tax administration, tax professionals, corporate houses and academicians. The said books were released by erstwhile Hon'ble Union Finance Minister, Shri. Arun Jaitley, Shri. Arjun Ram Meghwal, Minister of State for Finance and the Chairman of Central Board of Direct Taxes and many other dignitaries.

Due to his continuous desire to always rise on the learning curve, he always have a quest and quench to read more, learn more and perform even more.

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