

**Report of the
Comptroller and Auditor General
of India**

for the year ended March 2012

**Performance Audit
on
Administration of
Penalty and Prosecution**

**UNION GOVERNMENT
Department of Revenue - DIRECT TAXES
No. 28 of 2013**

Laid on the table of Lok Sabha/Rajya Sabha on 18 फरवरी 2014.....

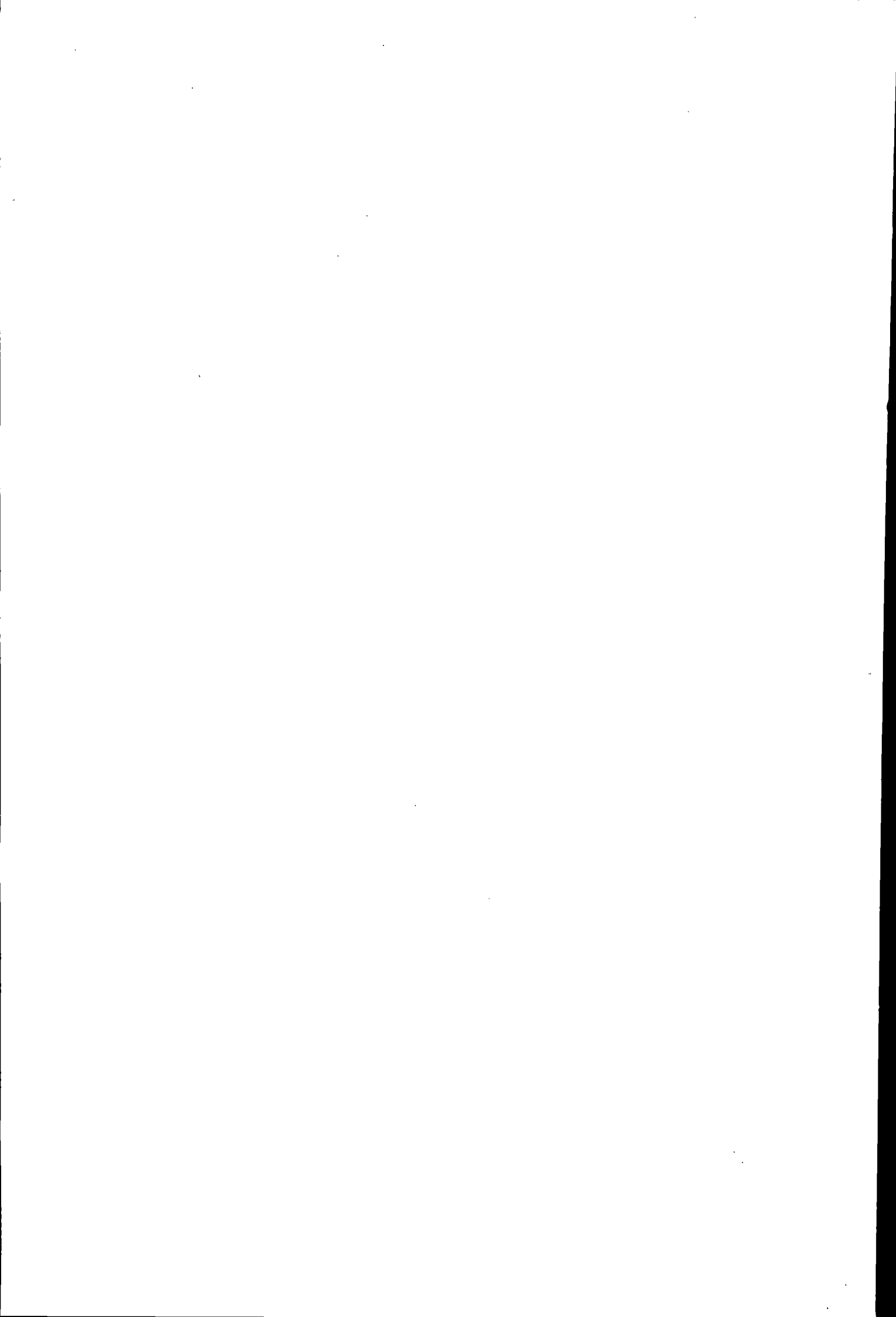
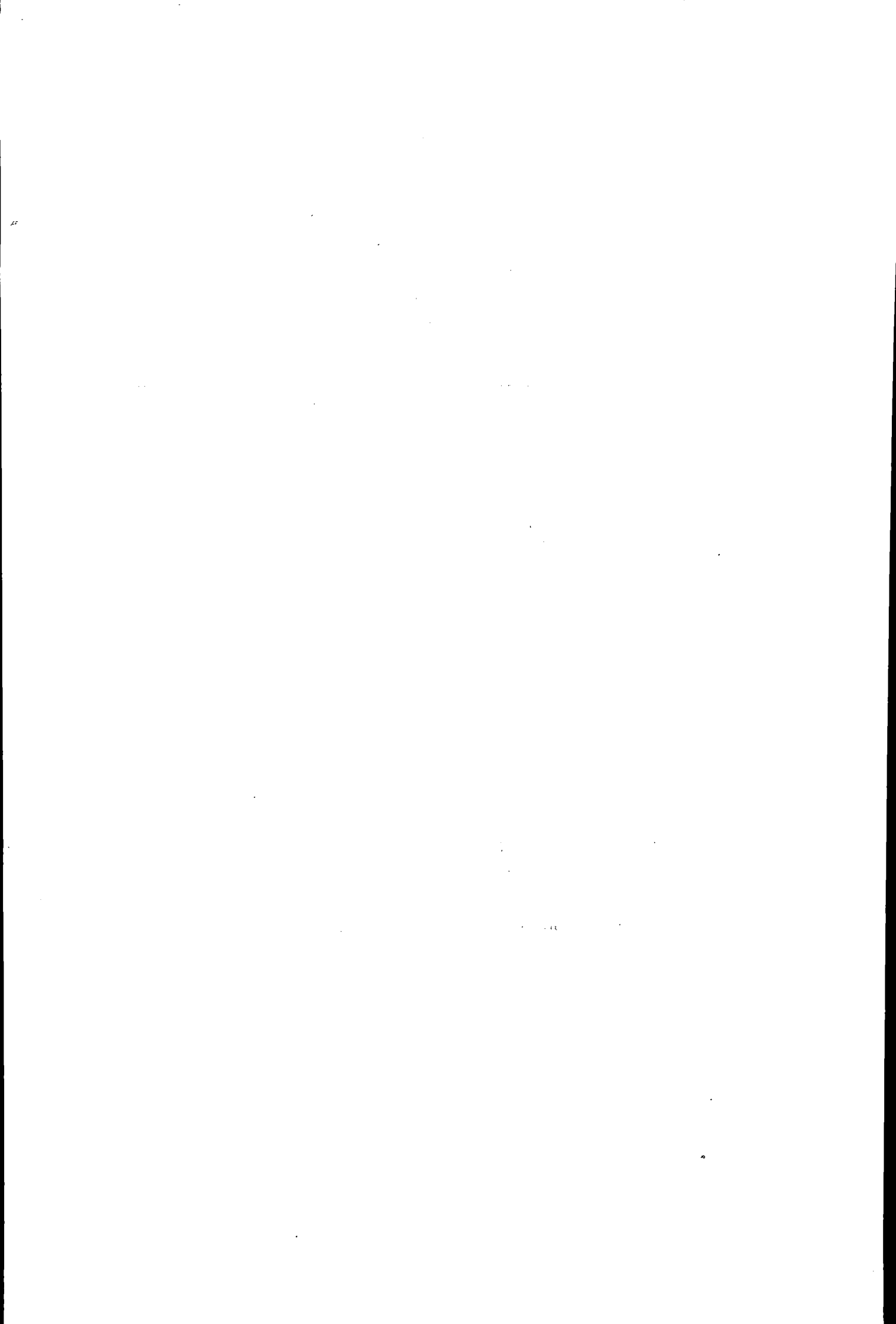


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Preface

The Report for the year ended March 2012 containing the results of the performance audit of Administration of Penalty and Prosecution has been prepared for submission to the President under Article 151(1) of the Constitution of India.

The audit of Revenue Receipts – Direct Taxes of the Union Government is conducted under Section 16 of the Comptroller and Auditor General of India (Duties, Powers and Conditions of Service) Act, 1971.

Our findings are based mainly on test audit conducted from August to December 2012.

Executive Summary

- The Income Tax Act, 1961 (Act) proposes imposition of penalty on an assessee, if the Assessing Officer (AO)/Commissioner of Income Tax-Appeals/Commissioner of Income Tax (CIT) is satisfied that there has been non-compliance with or violation of law and there is no reasonable cause for failure. Chapter XXII of the Act declares certain acts of omission and/or commission as punishable offences. Offences and Prosecution under the Act are read in conjunction with other laws such as Indian Penal Code (IPC), Code of Criminal Procedure (Cr PC) and Indian Evidence Act (IEA).
- The Wanchoo Committee Report of 1975 recommended that Income Tax Department (ITD) needs to evolve and pursue vigorous prosecution policies and emphasized that monetary penalties may always not be enough. The White Paper on Black Money of May 2012 by Ministry of Finance (Ministry) described that taxpayers may be willing to take a calculated risk of tax evasion and it may be more effectively deterred by effective prosecution. A committee headed by the Chairman of Central Board of Direct Taxes (CBDT) constituted in May 2011 recommended establishment of special judicial set up within the existing framework as also amendments to various fiscal statutes so that they become stronger. In response to these, ITD has also taken several efforts to streamline and strengthen the deterrent mechanisms against tax evasion in general and income tax in particular.
- As penalty and prosecution are important deterrent mechanisms, we felt it necessary to examine the administration and implementation of penalty and prosecution machinery, by the CBDT and its field formations for combating tax evasion. We sought to achieve this by examining current structures, its utilization and effectiveness. Our objective for examining penalty provisions inter alia was to whether the mechanism for administration and levy of penalties for various defaults existed and is functional and had a deterrent effect on tax evasion. In respect of prosecution, our focus was to examine the functional efficiency of the prosecution mechanism at various levels in ITD.

Administration and Levy of Penalty

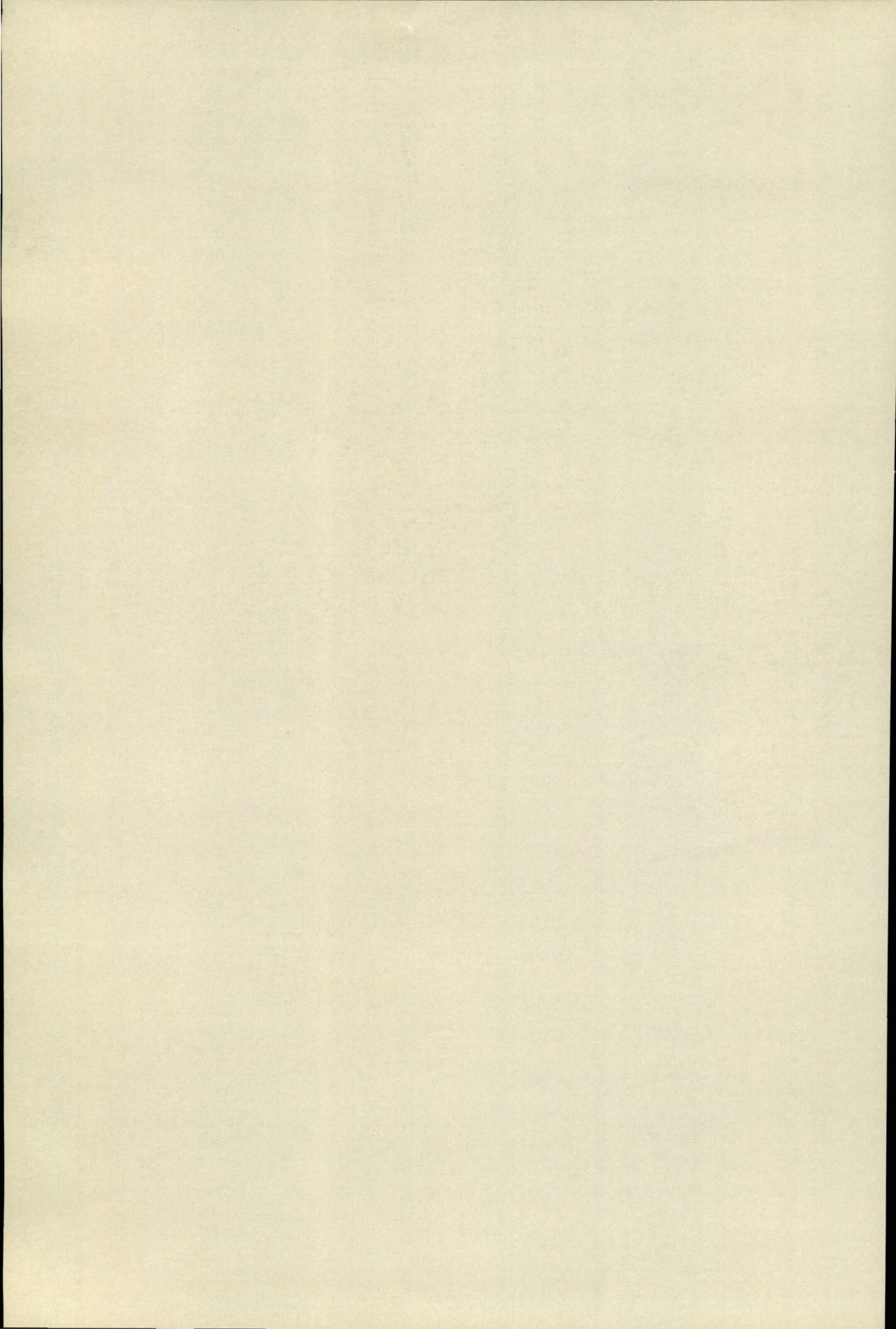
- We studied the initiation and levy of penalty across all the States in audit during August 2012 and December 2012. We found that the ITD delayed in completion of penalty proceedings which led to potential loss of revenue (*paragraph 2.3*). ITD did not apply penalty as per provisions of the Act in cases such as (a) non-complying with filing requirements covering Income Tax Returns, Tax Audit Reports, Books of Accounts; (b) concealment

of income and (c) failure to provide return for TDS/TCS (*paragraphs 2.12, 2.14 and 2.15*). ITD did not apply penalty provisions for cash transaction which led to tax effect of ₹ 56.60 crore (*paragraph 2.16*). We also found that the Act is silent on time-limit for initiation of penalties though it provides time-limit for completion of penalty proceedings (*paragraph 2.8*).

Administration of Prosecution

- We attempted to study the mechanism of prosecution as measured by the functional efficiency at various levels *vis-a-vis* roles and responsibilities fixed at various levels. Since prosecution was enforceable at the instance of the Court, the interplay with the judicial machinery was also part of our study.
- Our study revealed mismatches at every stage of selection, initiation, pursuance and disposal of cases as also at every level of monitoring and coordination. To handle prosecution cases, CBDT has not ensured posting of appropriate officers as Nodal Officers in its field formations (*paragraph 3.2.1*). There are discrepancies in figures of pending cases as reported by Officer in-charge (Prosecution) to CBDT questioning the authenticity and reliability of prosecution data (*paragraph 3.2.3*). ITD has not performed physical verification of prosecution records since FY 08 streamlining the record maintenance (*paragraph 3.2.4*). Nodal Officers have not maintained the prosecution registers despite various instructions issued by CBDT (*paragraph 3.2.5*). ITD has not given adequate priority in launching of prosecution as indicated by delay in initiation of cases and by not launching the prosecution even in approved cases (*paragraph 3.3*).
- Prosecution cases are being pursued on companies which have already been liquidated or have been declared sick by BIFR (*paragraphs 3.4.6 and 3.4.7*). CBDT is wasting resources in pursuing cases under repealed sections of the Act, dead assesseees etc. (*paragraph 3.4.3*). CBDT did not utilize the prosecution mechanism for ensuring tax compliance under section 276CC of the Act (*paragraph 3.4.5*).
- We found that ITD's nominees are not attending regular hearing in the Courts impacting disposal of cases (*paragraph 3.5.2*). ITD has poor records maintenance and inadequate monitoring of prosecution cases pending in the Courts (*paragraph 3.5.3*). Poor record maintenance and delay in timely production of evidences has led to acquittal of assesseees in prosecution related offences (*paragraph 3.6*). The enforcement of CBDT's policy and procedures on Prosecution Counsels has not been effective and has impacted the pursuance of cases (*paragraph 3.7*).

- ITD did not use the compounding of offences as alternate dispute resolution mechanism effectively to reduce the litigation and realize the due revenue (*paragraph 3.9*). ITD has acted not in consonance with the spirit of National Litigation Policy by wasting prosecution machinery on technical offences (*paragraph 3.10*). Prosecution machinery of ITD was used to handle individual assesseees and low money value cases, not against systematically organized entities (*paragraph 3.11*). Central Economic Intelligence Bureau established for gathering, collation and dissemination of information among tax gathering agencies like CBDT, CBEC etc. has not worked in coordinated manner to arrest tax evasion by prosecution (*paragraph 3.12*).
- Therefore, ITD did not apply penalty as per provisions of the Act effectively. ITD has also not given adequate priority to the prosecution in tackling tax evasion and prosecution mechanism is not working effectively and efficiently.



Summary of Recommendations

With reference to administration and levy of penalty

1. The entire process of initiation, levy and order of penal proceedings to be duly recorded so that proceedings do not suffer from procedural infirmities.
2. The Ministry may ensure that concealment of income is penalized as per the Act.
3. The Ministry may put in appropriate mechanisms to ensure that tax demands are collected on time and defaults penalized.
4. The Ministry may ensure coordination between various wings within ITD so that revenue efforts are synergized.
5. The Ministry may put in a mechanism for ensuring appropriate penalties for cash transactions relating to loans and deposits beyond prescribed limits.

With reference to administration of Prosecution

6. The Ministry needs to ensure instituting a more robust mechanism for identifying cases for prosecution which takes into account timeliness; quantum of tax evasion; and contemporary impact.
7. CBDT should ensure posting of a designated and experienced Nodal officer to handle prosecution at the field level with independent charge. CBDT is to ensure periodical interaction amongst authorities (like quarterly) so that status of a case is ascertainable at any point of time.
8. CBDT should take up work of cleaning of records and data bases to ascertain actual pendency and status of prosecution cases at various levels. CBDT should ensure maintenance of updated prosecution records at all levels.
9. CBDT should ensure periodical physical verification of prosecution related files.
10. Ministry needs to streamline the mechanism for appointment and evaluation of departmental counsels representing the ITD before judicial authorities. The remuneration rates also need a relook in accordance with the tasks associated so as to avail and retain the services of experienced counsels.

11. The Ministry may ensure regular coordination with the judicial machinery.
12. CBDT should perform one time exercise to identify the stage of pendency of all cases in the various Courts and follow it actively for resolution.
13. CBDT should consider compounding offences before launching the prosecution proceedings so that revenues are collected.
14. CBDT should deploy prosecution machinery for high impact cases and avoid focussing on low impact cases.

Chapter 1: Introduction

1.1 Introduction

The Income Tax Act, 1961 (Act) proposes imposition of penalty on an assessee, if the Assessing Officer (AO)/Commissioner of Income Tax-Appeals/Commissioner of Income Tax (CIT) is satisfied that there has been non-compliance with or violation of law and there is no reasonable cause for failure. The maximum penalty under the present laws is levying of penalty up to three times the tax proposed to be evaded with or without prosecution of the offender. The provisions also provide for AO or any other authority to waive/drop any proceedings initiated subject to fulfillment of conditions.

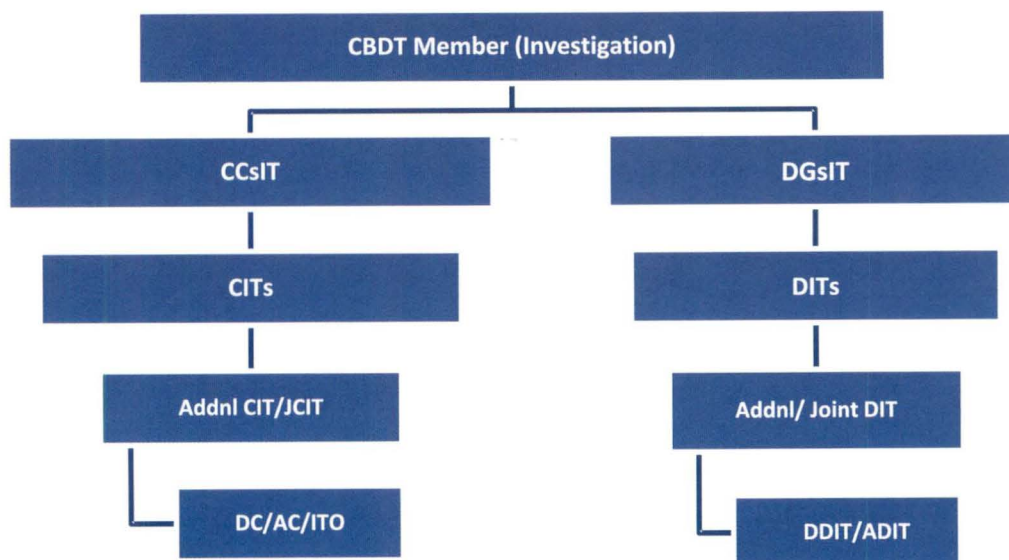
The Prosecution provisions contained in Chapter XXII of the Act, declares certain acts of omission and/or commission as punishable offences. Offences and Prosecution under the Act are read in conjunction with other laws such as Indian Penal Code (IPC), Code of Criminal Procedure (Cr PC) and Indian Evidence Act (IEA).

1.2 Organizational set up

The Central Board of Direct Taxes (CBDT) is the apex body in Department of Revenue (DoR) under Ministry of Finance (Ministry) charged with the administration of Direct Taxes. Member (Investigation) in the CBDT is responsible for technical and administrative matters relating to prevention and detection of tax evasion, including all matters falling under Chapter XXI of the Act and corresponding provisions of other Direct Tax Acts.

Income Tax Department (ITD) which functions under supervision and control of CBDT is divided into regions, and each region is headed by a Chief Commissioner of Income Tax (CCIT) or a Director General of Income Tax (DGIT). Commissioners/Directors of Income Tax (CIT/DIT) head the assessment functions which are carried out through the Additional CIT/DIT, JCIT/JDIT and DDIT/DC/ADIT/AC/ITO. Officers carrying out assessment functions and those other authorities specified in the Act can levy penalties for acts of omission or commission by assesseees. The organogram of ITD for administration and levy of penalty is as follows:

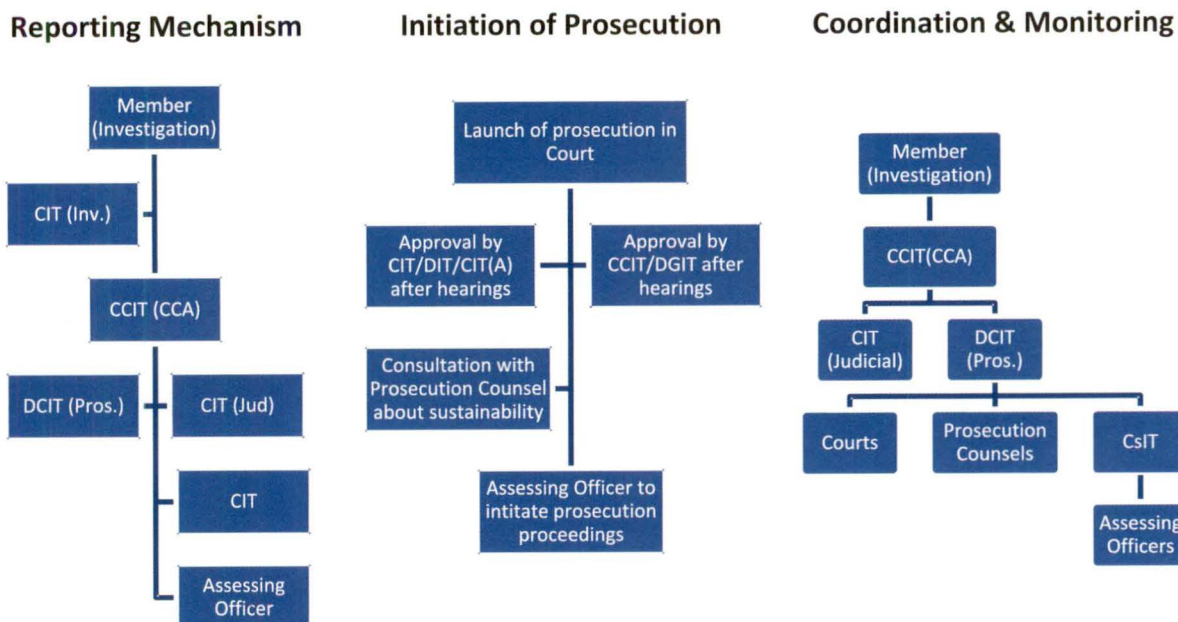
Chart 1.1 : Organogram of Penalty



Member (Investigation) in the CBDT has the overall charge of prosecution work in the ITD. He is assisted by CIT (Inv), Director (Inv) and DDIT (Prosecution). This set up handles the MIS reports, monitoring and functioning of the prosecution in the ITD.

The prosecution wing in the field functions under CCsIT with CIT (Judicial) as the Controlling Authority. DCIT (Prosecution) under CIT (Judicial) assisted by Inspectors and other staff is the Nodal Officer to attend to the day to day functions. The organogram of the prosecution work in CBDT and field formation of ITD is as follows:

Chart 1.2 : Organogram of Prosecution



1.3 Why we chose this topic

The Wanchoo Committee report of 1975 recommended that ITD needs to evolve vigorous prosecution policies and pursue it. It also stated that monetary penalties may always not be enough. The White Paper on Black Money of May 2012 published by Ministry of Finance described that taxpayers may be willing to take a calculated risk of tax evasion and may even justify it as a 'commercial risk'. Such calculated risk taking may be more effectively deterred by effective prosecution. A committee headed by the Chairman of CBDT constituted in May 2011 for examining ways to strengthen laws to curb the generation of black money in the country, its legal transfer abroad and its recovery recommended *inter alia* establishment of special judicial set up within the existing framework as also amendments to various fiscal statutes so that they become stronger. ITD has also taken several efforts to streamline and strengthen the deterrence mechanisms against tax evasion in general and income tax in particular.

As penalty and prosecution are important deterrent mechanisms, we felt it necessary to examine the administration and implementation of penalty and prosecution machinery, by the CBDT and its field formations for combating tax evasion. We sought to achieve this by examining current structures, its utilization and effectiveness.

The status of penalty proceedings during the last five years is indicated below:

Table 1.1: Status of penalty proceedings (in numbers)

Particulars	FY 09	FY 10	FY 11	FY 12
1. Total scrutiny assessments done	5,38,505	4,29,585	4,55,212	3,69,320
2. Total penalty proceedings pending	2,28,696	2,49,071	2,34,795	2,56,414
3. Disposal of penalty proceedings	69,692	81,208	1,46,337	85,661
4. Balance of penalty proceedings	1,59,004	1,67,863	1,67,314	1,70,753

Source: Central Board of Direct Taxes

The table data indicates that penal provisions are being invoked almost in fifty *percent* of the assessments carried out in scrutiny cases done every year. Cases are selected for scrutiny assessments based on pre determined parameters where there is a preponderance of escapement of income from tax.

The status of prosecutions is as follows:

Table 1.2: Status of Prosecution cases

Financial Year	Prosecution launched	Cases decided	Convictions	Compounded	Acquitted
FY 08	263	280	11	13	256
FY 09	162	146	14	13	119
FY 10	312	599	32	291	276
FY 11	244	356	51	83	222
FY 12	209	593	14	397	182
Total number of cases pending as of March 2013:				3,088	
Total number of complaints as of March 2012:				10,538	

Source: Central Board of Direct Taxes

The above table shows that acquittals in prosecution cases are high.

Timeliness and adequacy for disposal of prosecution cases are important. Supreme Court underlining the need for timely disposal of cases has stated:

A suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust¹.

In this back ground, we felt that a performance study of the working of deterrent mechanisms on tax manipulation and evasion seemed to be in order.

1.4 Objectives of the Review

The objectives of our audit were as follows: -

A In respect of Penalty

- a. Whether the mechanism for administration and implementation of penalties for various defaults existed and are functional,
- b. Whether penalty proceedings indeed have the deterrent effect on tax evaders as measured by the incidence of penalty.

¹ Radheyshyam Kejriwal vs. State Of West Bengal (Criminal Appeal No. 1097 of 2003) 18.02.2011 Supreme Court.

B In respect of Prosecution

- a. Whether the tool of prosecution has been used only in the rarest of rare cases,
- b. Whether functional efficiency of the prosecutions mechanism at various levels exists,
- c. Whether prosecutions have had the necessary impact in curbing tax evasion.

1.5 Scope and methodology of audit

In this Performance Audit, we studied whether the provisions on the Penalty and Prosecution have been appropriately deployed and judiciously operated to effect tax deterrence. We audited all the 18 CCsIT (CCA) regions covering all the States.

We examined prosecution procedures with focus on administrative and implementation mechanisms and their effectiveness. The review envisaged examination of assessments concluded during FY 10, FY 11 and FY 12 for penalty proceedings. As regards prosecution, we examined all cases which were decided by way of conviction, acquittal, compounding during FY 10, FY 11 and FY 12. In respect of live cases, we examined fifty *per cent* of the cases.

We examined the records available with the jurisdictional AOs and Offices handling prosecution under the CCsIT (CCA). In a few cases, we also correlated with the jurisdictional Courts where cases were purported to be pending. Certain records and reports were also examined in the CBDT to correlate the data being sent by jurisdictional officers, as per monitoring mechanisms laid out.

1.6 Discretionary power

Unlike the levy of interest which is compensatory in nature, imposition of a penalty does not follow ipso facto on the commission of a default. As per the Act, competent authority has the discretion not to levy the penalty if the assessee can show reasonable cause. It is implicit that when the statute confers a power, it is to be exercised in a reasonable manner for the purpose for which it was conferred. Penalty proceedings may be initiated by the Assessing Officer (AO) only on his satisfaction which should be absolute and based on definite information.

1.7 Legal provisions

Chapter XXI and XXII of the Act detail the powers of ITD for imposition of penalty and institution of prosecution for a variety of defaults/offences committed by the assessee. Various circulars issued by the CBDT from time to time also prescribe modalities for prosecution. Sections 271 to 272BBB deal with levy of penalty for different defaults committed, whereas Sections 275A to 280 relate to offences and prosecution. (See **Annex A** for details).

1.8 Acknowledgement

We held an entry conference with the Member (Audit & Judicial) in November 2012 in which we explained the audit objectives, scope, methodology and thrust areas of audit examination. The Indian Audit and Accounts Department acknowledges the cooperation of ITD in facilitating the audit.

We held the Exit Conference in October 2013 with the Ministry/CBDT wherein we discussed our findings and recommendations. We have incorporated the views expressed by the Ministry/CBDT in the Report.

Chapter 2: Administration and Levy of Penalty

A. Administration of Penalty

2.1 Introduction

The main object of penal provisions in the Act is to enforce compliance of law and also act as deterrence against defaults. Penal provisions need to be invoked judiciously wherever necessary, as prescribed in the Act. Penalty may be imposed only if it is proved that the assessee has consciously made the concealment or furnished inaccurate particulars of his income² and not merely because it is lawful to do so as discretion is given to the authority³.

2.2. Record maintenance

The Manual of Procedures (Volume II) of the CBDT prescribes two separate set of records, one for regular assessment charges⁴ and another for Tax Deducted at Source (TDS) Wings. The registers provide for capturing details of penalty proceedings including service of notices, initiation, imposition, limitation date, completion, tax sought to be evaded, quantum of penalty leviable and levied, passing of orders, results of appeals, revisions etc. The discrepancies noticed in record maintenance are shown in Box 2.1.

Box 2.1: Discrepancies in records maintenance

a. Maintenance of Penalty registers

We observed that in 15 states⁵ penalty registers were either not maintained in the prescribed format or where maintained, were not updated. In the absence of penalty registers, ITD is not in a position to ensure that penalty proceedings initiated have been followed up and necessary action taken.

b. Utilization of IT Modules for record keeping

Assessment of Tax (AST) module of ITD Application provides an option for maintenance of data online which would enable easy retrievability and follow up. We noticed that in Delhi charge out of 36 units, in 10 assessment units, information relating to penalty was not being recorded in the AST module.

² Dillip N.Shroff Vs CIT (2007) 291 ITS 519(SC)

³ Hindustan Steel Ltd Vs. State of Orissa 83 ITR 26 (1972)

⁴ Two registers-One for penalties u/s 271 and another for all other sections in ITNS 159A and ITNS 159 format.

⁵ Bihar, Chattisgarh, Delhi, Gujarat, Haryana, Jammu & Kashmir, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Odisha, Punjab, Rajasthan, Uttar Pradesh, and Uttarakhand.

ITD delayed in completion of penalty proceedings which led to potential loss of revenue.

2.3 Timely completion of proceedings

Section 275 of the Act has laid down that penalty proceedings shall be completed normally within six months from the end of the year in which proceedings were initiated. In case where the assessment is in appeal, then the AO shall complete penalty proceedings within one year from the end of the year in which the appellate decision is received by him.

We found that in 27 cases relating to the states of Andhra Pradesh, Assam, Bihar, Gujarat, Karnataka and Tamil Nadu, the proceedings had not been completed on time resulting in a potential loss of revenue of ₹ 4.38 crore (See Box 2.2).

Box 2.2: Illustrative cases on delay in timely completion of penalty proceedings

- a. In Tamil Nadu DIT (IT) Chennai, penalty proceedings initiated in the assessment of **M/s Bank of Ceylon** in February 2010 was still pending as of December 2012 involving a potential non levy of penalty of ₹ 1.02 crore.
- b. In CIT Central-I of Bihar Patna, in 56 cases where penalty proceedings had been initiated between December 2006 to March 2009, the Penalty Register indicated as 'kept in abeyance till the disposal of appeal'. No further status on these cases was available as of March 2013 in records of ITD. Our examination of related records showed that in six cases, decision was taken and in two cases additions had been set aside.

Thus, we found that the proceedings were not being completed within prescribed time limit diluting the impact of the proceedings.

The Ministry stated (October 2013) that the cases are being examined.

2.4 Issue of notices in wrong cases

Section 271 (1)(c) of the Act provides that AO or the CIT in the course of any proceedings is satisfied that any person has concealed the particulars of his income or furnished inaccurate particulars, then he shall be liable to pay penalty ranging from 100 to 300 *per cent* of the tax sought to be evaded. Penalty proceedings need to be initiated at the time of issuing the order of assessment. Discrepancies in issuance of notices are shown in Box 2.3.

Box 2.3: Notices issued in wrong cases

- a. We noticed that in Gujarat, CIT-II Vadodara charge in eight⁶ cases, though the assessment order contains no direction for initiation of penalty u/s 271(1)(c), notices were issued. When we pointed out this, ITD stated (November 2012) that the notices were issued by mistake.
- b. In CIT-TDS Patna/TDS Circle, Bihar, in three cases⁷ demand notices for payment of taxes and penalty were issued to Banks and Government bodies for non-payment of taxes though relevant amounts had already been remitted into Government accounts. ITD replied (November 2012) that these occurred due to technical mismatches.

Thus, due diligence was not being carried out while issuing notices for penalty proceedings.

The Ministry stated (October 2013) that the cases are being examined.

2.5 Incorrect invocation of penalty proceedings

Under section 271AAA of the Act, undisclosed income unearthed during searches conducted on or after 1 June, 2007, attract penalty at the rate of ten *per cent* of the undisclosed income for the year when the action of search took place. For undisclosed income of other years, penalty u/s 271(1)(c) equal to tax sought to be evaded would be applicable (See Box 2.4).

Box 2.4: Illustrative case on incorrect invocation of penalty proceedings

In Maharashtra Mumbai charge (DCCC 46 under CIT Central-IV), **Vivek Talwar** consequent to search offered undisclosed income of ₹ 22 crore and ₹ 5.25 crore pertaining to AY 10 and AY 11 to tax. However, penalty u/s 271AAA was initiated in both AYs in contravention to the provisions cited supra, instead of restricting its application to AY 11 only. Invoking wrong penal section for AY 10 resulted in short levy of penalty of ₹ 5.28 crore. The penalty should have been levied under section 271(1)(C) for AY 10.

The Ministry stated (October 2013) that the cases are being examined.

2.6 Collection of penalty demands

Section 220 of the Act provides that any amount of tax payable specified in a notice of demand u/s 156 shall be paid within thirty days of the service of the notice. We found that demands raised in penalty orders were not being properly monitored in two states to ensure collection, details of which are given in Table 2.1.

⁶1. Mew Electricals Pvt. Ltd., 2. Sun Petrochemicals Pvt. Ltd., 3. Prakash Financial Services Pvt. Ltd., 4. Samir Surgitek Pvt. Ltd., 5. Universal Esters Ltd., 6. Prime Ceramic Pvt. Ltd., 7. Taskant Oil Pvt. Ltd. and 8. Shilchar Technologies Ltd.

⁷1. SBI, Main Branch, Patna; 2. Bihar Rajya Pul Nirman Nigam Ltd., Patna; 3. Bankipur Head Post Office, Patna

Table 2.1: Non monitoring of demands raised

State	Period	Demand pending collection ₹ in crore
Bihar	AY 95 to AY 12	64.22
Karnataka	AY 04 to AY 12	6.37

2.7 Representation of assesseees in penalty proceedings

As per section 274 of the Act, the competent authority for levy of penalty for TDS defaults is the jurisdictional JCIT. Our examination of the administrative set up revealed that the mechanisms devised to give a fair hearing to the assesseees were not available in the state of Bihar. Office of JCIT-TDS, Patna, summoned 11 assesseees located in far off places like Darbhanga under TDS-ward, Muzaffarpur for hearings at Patna. The distance from Patna averaged above 200 kilometers making representation in front of departmental authorities impractical in terms of money and time. The entire exercise may or may not yield any revenue to the ITD but would definitely result in inconveniencing assesseees rendering the entire process of interaction ineffective.

Administrative arrangements may need to be reworked for rendering the process more effective.

Act is silent on time-limit for initiation of penalties though it provides time-limit for completion of penalty proceedings.

2.8 No time limit for initiation of penalty proceedings

Section 275 of the Act prescribes certain time limits for completion of penalty proceedings to ensure that proceedings do not drag on indefinitely. However, the Act is silent on any time-limit for initiation of penalties. Manual of Procedure (Vol-II) only prescribes that if the competent authority during the course of a proceeding under the Act is satisfied that the person is guilty of contravening the relevant statutory provisions, the penalty initiation should be carried out along with the assessment order. The initiation of penalty proceedings starts with issue of notice under section 274 of the Act.

In Delhi CIT (TDS) charge, we found that in 28 cases pertaining to AY 11 and 116 cases pertaining to AY 12, proceedings were yet to be initiated. ITD stated that there is no time-limit for initiation of penalty under the Act. In absence of clear provision for prescribed time limit to initiate penalty proceedings, these cases remained pending.

2.9 Sustainability index of Penalties levied

2.9.1 TDS Units

Penalties to be effective have to be used sparingly and decisively so that the required impact is achieved. Penalty proceedings have to be initiated only in deserving cases after due investigation so that levy of penalty becomes obvious. We sought to examine whether the initiation and levy of penalty had been done in a routine manner or after due application of mind.

Table 2.2: Penalties in TDS units

Details	Proceedings initiated in FY 12		
	States		
	Andhra Pradesh	Uttar Pradesh	Uttarakhand
1. Number of ITD units	54	64	11
2. Number of penalties initiated	715	1,398	414
3. Number of penalties levied	119	371	6
4. Number of penalties dropped	NA	547	158
5. Number of penalties pending	NA	480	250

There was hardly any appreciation of the cases attracting penalty. Proceedings were being initiated routinely in all cases where additions had been made in scrutiny assessments. Interpretative issues where the Courts have expressed divergent opinion, disallowances based on earlier precedents etc seldom attract penalty. We found that these penalty proceedings had been dropped in majority of the cases casting doubts on the very selection of cases for levy.

2.9.2 Categories of penalties

Penalties are leviable for concealment of income as well as other shortfalls. Details of the penalties levied are given in table below:

Table 2.3: Analysis of penalty proceedings (in numbers)

Particulars	FY 09	FY 10	FY 11	FY 12
1. Total scrutiny assessments done	5,38,505	4,29,585	4,55,212	3,69,320
2. Total penalty proceedings pending	2,28,696	2,49,071	2,34,795	2,56,414
3. Disposal of penalty proceedings	69,692	81,208	1,46,337	85,661
4. Balance of penalty proceedings	1,59,004	1,67,863	1,67,314	1,70,753

Source: Central Board of Direct Taxes

Thus more than fifty percent of the cases are not resulting in any penalties. Scrutiny proceedings in themselves are a long drawn process. Penalty proceedings which follow scrutiny are also tedious involving resubmission or furnishing additional material. The following conclusions emerge:

- a. Penalty proceedings are being initiated in every alternate scrutiny proceedings. It is not clear whether the large number of penal proceedings indicate real tax evasion cases or is a pointer towards confusion in the interpretation of the Act by the assessee and the ITD.
- b. Even after considerable examination of the affairs of the assessee, the ITD has failed to levy penalty in more than fifty percent of the cases indicating wasteful expenditure and compliance cost to the assessee as well as to the ITD.

Our analysis in ITD Karnataka of penalties imposed under penalties for concealment and other penalties revealed the following:

1. Penalty imposed	a. Imposition for concealment	3,402	3,807
	b. Other penalties	405	
2. Penalty dropped			2,548
3. Penalty pending	a. Below 6 months	5,054	8,144
	b. Above 6 months	3,090	
4. Unreconciled cases			274

Out of 3,884 cases test checked in selected units, additions were made in 1,935 cases and penalty proceedings were initiated in 1,487 cases (77%). Penalty was imposed in 89 cases (5%) amounting to ₹ 108.69 crore. However, penalties were collected only in 10 cases amounting to ₹ 1.79 crore which was less than 2% of the penalty demanded. As ITD could not sustain the penalties proceedings initiated, 869 cases were dropped at AO level based on the reply of the assessee as well as in appeal at various levels.

Thus we could not derive an assurance on the selection of cases for penalty or sustenance of the levy in initiated/completed cases as they were either being dropped or were being set aside in appeals.

2.10 Penalties under Wealth Tax Act

2.10.1 Non levy of penalty under Wealth Tax Act

The net wealth chargeable to tax comprises certain assets specified under section 2(ea) of the Wealth Tax Act subject to adjustment of any debt owned by the assessee in relation to any of the specified assets on the valuation date. The charge of the wealth tax is on the assets net of liabilities. Defaults in filing and compliance requirements attract interest and penalties.

We found that there were no instances of levy of penalty under the Wealth Tax Act in the states of Delhi, Karnataka, Kerala, Maharashtra, Madhya Pradesh, Uttar Pradesh and Uttarakhand.

2.10.2 Penalty for failure to furnish wealth tax returns

Under the Wealth Tax Act, failure to furnish returns of wealth attracts penalties ranging from ₹ 1,000 to ₹ 25,000. Concealment of wealth chargeable to tax attracts penalty at the rate of 100 to 500 *per cent* of the wealth tax sought to be evaded.

We found that in 39 cases in four states⁸ that the assesses had not filed wealth tax return despite having wealth beyond taxable limit involving a short levy of ₹ 67.67 lakh (See Box 2.5).

Box 2.5: Illustrative case on assessee not filing wealth tax return

Assessment of **M/s Lalchand Jewellers (P) Ltd** for AY 10 was completed in scrutiny manner in December 2011, in Odisha, CIT Bhubaneswar. The assessment revealed that assessee held motor cars valuing ₹ 1.21 crore. Neither did the assessee file his wealth tax return nor did AO initiate proceedings. Failure to do so resulted in short levy of ₹ 3.10 lakh (Tax of ₹ 1.55 lakh and penalty of ₹ 1.55 lakh). ITD agreed to examine the issue (December 2012).

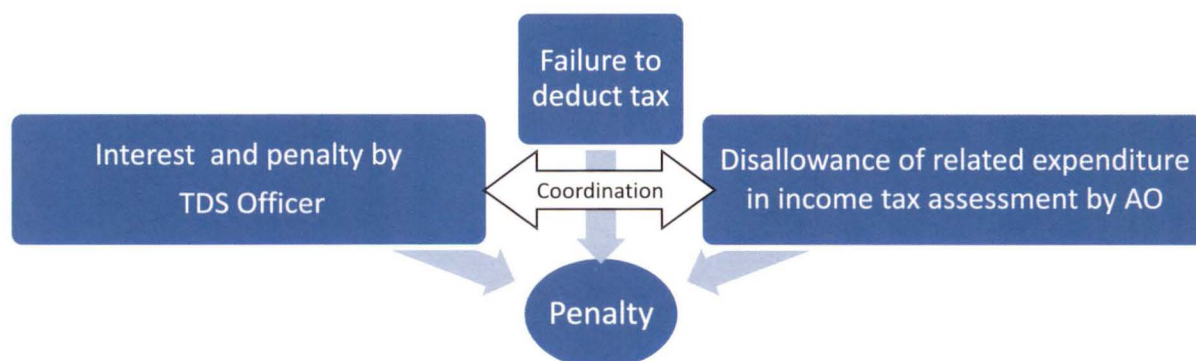
The Ministry stated (October 2013) that the cases are being examined.

ITD did not have co-ordination between TDS and Assessment Wing which led to non intimation of information on TDS to jurisdictional AO for disallowing relatable expenditure in income tax assessment.

2.11 Dissemination of information

2.11.1 Co-ordination between TDS wing and Assessment wing

Under section 139 of the Act, every assessee is liable to file a return of income which reveals the incomes earned by him and the taxes payable/paid thereon. Where an assessee in the course of his activities (business or profession) makes payments to others on which tax has been deducted at source, assessee shall file a return of TDS indicating the payments made and tax deducted from such payments.



⁸ Andhra Pradesh, Odisha, Uttar Pradesh, Chhattisgarh

2.11.2 Penalties by TDS Officers

Failure to deduct tax at source on taxable payments made by assesseees or failure to remit TDS would attract levy of penalty. This also attracts disallowance u/s 40(a)(ia) of the Act. Hence any TDS officer passing penalty orders for non deduction or short deduction of tax shall intimate the jurisdictional AO to disallow the relatable expenditure in income tax assessment.

We observed in nine states⁹ in 241 cases, TDS officers had detected instances of non deduction of tax at source involving tax effect of ₹ 109.69 crore (See Box 2.6).

Box: 2.6: Illustrative cases on non levy of penalty by AO for non deduction of TDS

- a. In Maharashtra, jurisdictional TDS Officer of CIT (TDS), Pune had completed 103 assessments during AY 09 to AY 12 of which there were TDS defaults in 78 cases. However, except for four cases involving TDS default of ₹ two lakh, other cases were not referred to the concerned AOs for disallowance u/s 40(a)(ia).
- b. In Kerala, CIT II Kannur charge, the TDS wing under DCIT, Circle-1 on verification of the accounts of the Academy of Medical Sciences, detected non deduction of TDS of ₹ 3.90 crore on lease rent amounting to ₹ 6.50 crore paid to the Kerala State Co-operative Hospital Complex Ltd. No penalty proceedings had been initiated resulting in non levy of penalty of ₹ 3.90 crore.
- c. In Maharashtra, 79 surveys conducted by the TDS Wing yielded 58 cases of TDS/TCS defaults involving short/non deduction of TDS/TCS of ₹ 14.50 crore. These were not referred to AO for disallowances in assessment.
- d. In Gujarat, two cases¹⁰ involving an expenditure of ₹ 126.62 crore were detected by jurisdictional TDS Wings under CIT (TDS), Ahmedabad, where tax had not been deducted at source. Failure to disallow the expenditure resulted in potential non levy of ₹ 42.87 crore. Similarly in 14 other cases¹¹ under seven CIT charges disallowances of ₹ 6.35 crore had not been penalized by levy of applicable penalties involving a potential levy of ₹ 40 lakh.

Thus, the mechanism to share information between Assessment Wings and the TDS wings was dysfunctional.

⁹ Assam, Gujarat, Maharashtra, Kerala, Odisha, Rajasthan, Tamil Nadu, Uttar Pradesh and Uttarakhand

¹⁰ Vodafone West Limited (AY 10); Gujarat Ambuja Exports Limited (AY 10 to AY 13).

¹¹ 1 Sudip A Patel, 2 P P Patel, 3. Vision Corporation Ltd. 4. Healthy Foods and Beverages, 5 Siemens Healthcare Diagnostic Ltd 6 Austin Engg. Co. Ltd., 7 Vinay Solvent Extuction Co., 8 Kalidas P Vanik, 9 Shantilal Nagardas & Co., 10 GMM Pfaulder Ltd. 11 Chhatriya Dehydred Onion Exports, 12 Gujarat Telelink Ltd., 13 Shanti Construction Co., and 14 M/s Banyan & Berry Alloys Ltd.

2.11.3 Failure to comply with TDS and TCS provisions and disallowances by AOs

Section 40 (a)(ia) of the Act provides that failure to deduct tax at source on taxable payments made to others during the course of business or profession results in disallowance of the related expenditure as also attracts penal interest.

We observed 337 cases in 17 states¹² involving tax effect of ₹ 65.97 crore where the provisions relating to TDS/TCS were violated (See Box 2.7).

Box 2.7: Illustrative cases on violation of TCS/TDS provisions

- a. In Delhi CIT(IT) Charge, no penalty proceeding had been initiated though **M/s Hewitt Associates (India) Pvt. Ltd** had not deducted tax at source amounting to ₹ 1.40 crore as evidenced from assessment order for AY 08 completed in October 2011 at an income of ₹ 42.17 crore under various sections¹³.
- b. Similarly, in Karnataka, CIT (IT), Bangalore charge, penalty of ₹ 1.40 crore had not been levied on **M/s Ansys Software Pvt. Ltd** for AY 08 though the assessee failed to deduct tax at source whilst making royalty payment of ₹ 13.67 crore. The assessment was concluded after scrutiny in December 2010.
- c. In Andhra Pradesh, Hyderabad charge no penalty had been levied on **M/s. National Mineral Development Corporation Ltd** for AY 09 though AO had disallowed ₹ 25.22 crore in scrutiny assessment order u/s 143(3) read with section 147 on commission payments. The total tax effect worked out to ₹ 7.23 crore. This included short TDS of ₹ 2.85 crore, interest of ₹ 1.51 crore and penalty of ₹ 2.85 crore.
- d. In West Bengal CIT -III, Kolkata charge, penalty of ₹ 58.72 lakh had not been levied on **M/s Britannia Industries Ltd.** though assessee had failed to deduct tax from contractual payment of ₹ 22.19 crore. This was evidenced from scrutiny assessment order for AY 08 of October 2011.
- e. In Delhi CIT-VI charge, no penal proceedings had been initiated on **M/s Vangelz Technologies Pvt. Ltd.**, though assessee had deducted tax of ₹ 42.45 lakh during AY 10 but not remitted it into the Government account. This was evidenced from 3CD report available in scrutiny assessment order of December 2011. Non initiation of proceedings resulted in non levy of penalty of ₹ 42.45 lakh.
- f. In Delhi CIT Central III charge, though expenditure relating to amounts on which tax had not been deducted at source had been disallowed in the assessment of **M/s Paradise Infrastructure Pvt Ltd**, no penalties had been levied resulting in non levy of penalty of ₹ 35.61 lakh. AY 10 was completed after scrutiny at a loss of ₹ 551.56 lakh in December 2011.

¹² Andhra Pradesh; Bihar; Delhi; Haryana; Himachal Pradesh; Jammu & Kashmir; Jharkhand; Karnataka; Kerala; Madhya Pradesh; Maharashtra; Odisha; Punjab; Tamil Nadu; Uttar Pradesh; Uttarakhand; and West Bengal.

¹³ 194C, 194J, 194I and 195

Disallowances were not being properly followed up by levy of applicable penalties. Ministry may ensure coordination between various wings within ITD so that revenue efforts are synergized.

The Ministry stated (October 2013) that the cases are being examined.

B. Levy of penalty

ITD did not apply penalty as per provisions of the Act in cases such as (a) non-complying with filing requirements covering Income Tax Returns, Tax Audit Reports, Books of Accounts; (b) concealment of income and (c) failure to provide return for TDS/TCS.

2.12 Failure to comply with filing requirements covering Income Tax Returns, Tax Audit reports, books of accounts etc.

Section 271A of the Act provides that every assessee is required to maintain books of accounts and related records failing which he will be liable to pay penalty of ₹ 25,000. Penalty at the rate of one and half percent of total sales (or ₹ 1 lakh, whichever is less) is leviable u/s 271B where assessee fails to get his accounts audited as provided u/s 44AB when turnover exceeds ₹ 60 lakh. Failure to furnish return of income by due dates would attract penalty at rate of ₹ 5,000 under section 271F of the Act. Entities specified u/s 139(4) are required to file their return of income within specified dates. Failure to do so attracts penalty at rate of ₹ 100 per day u/s 272 (A)(2e) where the default continues.

We found 344 cases where there was non-maintenance of books of accounts, non filing of returns, failure to have books of accounts audited. However, AOs did not levy applicable penalties amounting to ₹ 85 lakh in 17 states¹⁴.

2.13 Failure to comply with assessment procedures

Section 271(1)(b) of the Act provides that where an assessee fails to comply with notices issued by ITD u/s 115WD or 115WE or 142(1) or 143(2), then penalty of ₹ 10,000 shall be leviable for each such failure.

We found that in 303 cases though assessee had not complied with the notices of the ITD, penalties had not been levied. Penalty leviable on this count in 11 states¹⁵ amounted to ₹ 68.80 lakh.

2.14 Failure to levy penalty for concealment of income

Section 271(1) (c) of the Act provides that if an assessee has concealed the particulars of income or furnished inaccurate particulars of such income, then he is liable for penalty ranging from 100 to 300 *per cent* of the tax sought to be evaded.

¹⁴ Andhra Pradesh; Bihar; Delhi; Gujarat; Haryana; Himachal Pradesh; Karnataka; Kerala; Maharashtra; Madhya Pradesh Odisha; Punjab; Rajasthan; Tamil Nadu; Uttar Pradesh; Uttarakhand and West Bengal.

¹⁵ Andhra Pradesh, Assam, Bihar, Gujarat, Jharkhand, Karnataka, Odisha, Punjab, Rajasthan, Uttar Pradesh and Uttarakhand.

We observed that in 214 cases in 14 states¹⁶ involving tax effect of ₹ 73.20 crore where the provisions of above section were violated (See Box 2.8).

Box 2.8: Illustrative cases on failure to levy penalty for concealment of income

- a. In Uttar Pradesh, Kanpur CIT II charge, penalty proceedings initiated for furnishing inaccurate particulars of expenditure amounting to ₹ 117.21 crore by **M/s Uttar Pradesh Financial Corporation** during scrutiny assessment (for AY 09 completed in December 2010) were neither dropped nor did the assessee furnish any replies resulting in non-levy of minimum penalty of ₹ 36.21 crore.
- b. In Madhya Pradesh, CIT II, Jabalpur charge, assessment (AY 10 completed in November 2011) of **M/s M.P. Power Trading Co. Ltd** was completed allowing expenditure incurred towards payment of income tax of ₹ 53.78 crore and liability towards Fringe Benefit Tax of ₹ one crore. Neither did ITD disallow these non-admissible amounts nor were applicable penalties levied. Minimum penalty leviable in this case works out to ₹ 18.62 crore.
- c. In Tamil Nadu CIT Central, Chennai AO while performing scrutiny assessment for AY 08 complete in December 2009, computed penalty leviable on **P.S. Rajeshwari** for concealment of income and failed to take into account the additions made in respect of capital gains (₹ 6.95 crore) resulting in non-levy of penalty of ₹ 1.56 crore.

Thus no penalties had been levied though there was concealment of income.

The Ministry stated (October 2013) that the cases are being examined.

2.15 Failure to file returns for tax deducted at source

Section 272A(2k) of the Act provides that if any person fails to deliver or cause to be delivered a copy of the TDS return or TCS return within the time specified due date as per prescribed proforma, then he shall pay a penalty of ₹ 100 per day during which the failure continues.

We found that though assessee had failed to file their returns for TDS or TCS affected by them, no applicable penalties had been levied. The mistake in 2,175 cases across six states¹⁷ resulted in short levy of penalty of ₹ 5.13 crore.

ITD did not apply penalties provisions for cash transaction which led to tax effect of ₹ 56.60 crore

2.16 Failure to levy penalty for cash transactions

Section 269SS of the Act provides that no person shall accept from any other person any loan or deposit of ₹ 20,000 or more otherwise than by an account payee cheque or draft. Acceptance of such amounts would attract penalty u/s 271D equal to the amount of loan/deposit. Section 269T provides that no

¹⁶ Andhra Pradesh, Assam, Bihar, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, Tamil Nadu, Uttar Pradesh, Uttarakhand and West Bengal.

¹⁷ Bihar, Himachal Pradesh, Haryana, Punjab, Uttar Pradesh and Uttarakhand

person shall pay any other person any loan or deposit of ₹ 20,000 or more otherwise than by an account payee cheque or draft. Such payments would attract penalty u/s 271E equal to the amount of loan/deposit.

We found that in 134 cases spanning 16 states¹⁸ involving tax effect of ₹ 88.10 crore these provisions were violated (See Box 2.9).

Box 2.9: Illustrative cases of non levy of penalty for cash transactions

- a. In Madhya Pradesh CIT Bhopal charge, cash repayment of loans amounting to ₹ 1.55 crore by **M/s RVR Technologies Ltd.** during AY 10 had been indicated in the Auditors Report. Scrutiny order was passed in October 2012. Neither were reasons provided by the assessee for infringements nor were penalty proceedings initiated. The omission resulted in non levy of penalty of ₹ 1.55 crore.
- b. In Karnataka, CIT III Bengaluru charge, **M/s BJV Hotels Ltd**, had accepted and repaid a loan of ₹ 12.15 crore and ₹ 6.15 crore respectively as per Auditors Report during AY 08 and AY 10 respectively. Scrutiny order was passed in November 2009 and September 2011 respectively. Neither were reasons provided by the assessee for infringements nor were penalty proceedings initiated. The omission resulted in non levy of penalty of ₹ 18.30 crore (₹ 12.15 crore u/s 271 D and ₹ 6.15 crore u/s 272 E).
- c. In Odisha Bhubhaneshwar charge, **Charanjit Singh Grewal**, had accepted a loan or deposit of ₹ 18.28 crore as per Auditors Report during AY 10. Scrutiny order was passed in November 2009. Neither were reasons provided by the assessee for infringements nor were penalty proceedings initiated. The omission resulted in non levy of penalty of ₹ 18.28 crore.
- d. In Uttar Pradesh CIT Central Kanpur charge, **Ramji Mehrotra** had accepted a loan or deposit of ₹ 1.02 crore as per Auditors Report during AY 09. Scrutiny order was passed in April 2010. Neither were reasons provided by the assessee for infringements nor were penalty proceedings initiated. The omission resulted in non levy of penalty of ₹ 1.02 crore.

Ministry may put in a mechanism for ensuring appropriate penalties for cash transactions.

The Ministry stated (October 2013) that the cases are being examined.

2.17 Failure to pay applicable taxes

Section 221 provides that when an assessee is in default in making a payment of tax, he shall be liable to pay penalty (in addition to the arrear tax) as AO may direct not exceeding the amount of tax remaining unpaid (including interest).

¹⁸ Andhra Pradesh, Assam, Chattisgarh, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Madhya Pradesh, Odisha, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, Uttarakhand, and West Bengal.

We observed 586 cases in nine states¹⁹ involving tax effect of ₹ 116.78 crore where the above provisions were violated (See Box 2.10).

Box 2.10: Illustrative cases on failure to pay applicable taxes

a. In Karnataka CIT II Bengaluru charge, assessment (AY 10 concluded after scrutiny in December 2011) of **M/s. Trishul Buildtech Infrastructure Pvt. Ltd.**, revealed that self-assessment tax of ₹ 23.06 crore had been left unpaid for which no penalty proceedings were initiated. The omission resulted in non-levy of penalty of ₹ 23.06 crore.

b. In Uttar Pradesh CIT II Kanpur charge, verification of tax demands revealed that **M/s UPSIDC Ltd** had not deposited taxes for AY 06 and AY 08 amounting to ₹ 1.13 crore and ₹ 8.06 crore even after lapse of three to five years from the date of issue of notice, but ITD did not invoke the penalty provisions. The omission resulted in non-levy of maximum penalty amounting to ₹ 9.19 crore for both AYs.

Ministry may put in place appropriate mechanisms to ensure that tax demands are collected on time and defaults penalized.

The Ministry stated (October 2013) that the cases are being examined.

2.18 Recommendations

We recommend that

1. The entire process of initiation, levy and order of penal proceedings to be duly recorded so that proceedings do not suffer from procedural infirmities.

The Ministry stated (October 2013) that the system of monitoring penalties exists in the ITD and accepted that there is a scope for improvement. The Ministry further stated that with re-structuring of ITD and introduction of the Income Tax Business Application (ITBA), it would take care of the maintenance of proper record and facilitate better MIS and monitoring.

The Ministry further stated (November 2013) that new ITBA application envisages a separate module for administration and levy of Penalty and have broadly five components viz (i) Identifying the Penalty leviable cases, (ii) Initiation of Penalty, (iii) Processing of Penalty cases, (iv) Disposal of Penalty and (v) Generation of MIS reports and linking with the respective registers.

2. The Ministry may ensure that concealment of income is penalized as per the Act.

¹⁹ Andhra Pradesh, Bihar, Haryana, Himachal Pradesh, Jammu & Kashmir, Karnataka, Odisha, Punjab and Uttar Pradesh

The Ministry while describing the existing law and procedure for initiation and levy of penalties stated (October 2013) that additions made in the assessment proceedings would not automatically justify imposition of penalty and no penalty is leviable if the assessee proves reasonable cause. However, the facts and circumstances of individual cases pointed out by audit would be looked into.

3. The Ministry may put in appropriate mechanisms to ensure that tax demands are collected on time and defaults penalized.

The Ministry while describing the existing procedure for monitoring the recovery of tax demands stated (October 2013) that as per the Central Action Plan of FY 2013-14, CBDT has devised strategies to augment revenue. However, through the ITBA, a stricter monitoring of defaults and penalising would be possible. Also, specific instances pointed out by audit would be looked into for appropriate action.

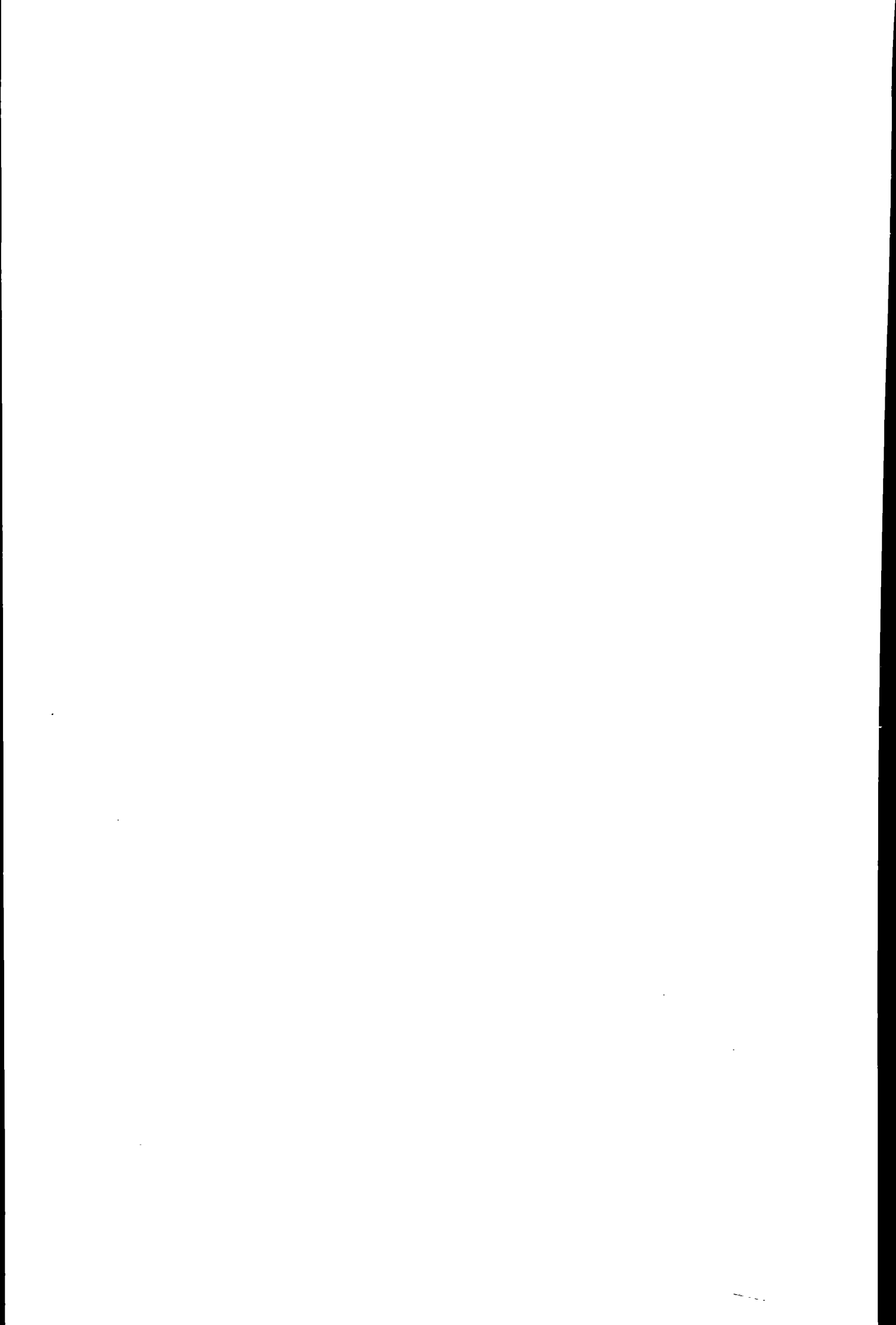
4. The Ministry may ensure coordination between various wings within ITD so that revenue efforts are synergized.

The Ministry stated (October 2013) that Directorate of Income Tax (TDS), New Delhi has been entrusted to coordinate between various wings. The Ministry, while noting that the system of sharing of information is dysfunctional, stated that guidelines to strengthen the same would be issued.

The Ministry further stated (November 2013) that to improve coordination between the TDS Wing and Assessment Wing, CBDT has already issued instructions to the field offices for proper and immediate exchange of information after the receipt of draft Audit Report.

5. The Ministry may put in a mechanism for ensuring appropriate penalties for cash transactions relating to loans and deposits beyond prescribed limits.

The Ministry stated (October 2013) that the appropriate systems and provisions are in place. However, with the introduction of ITBA, the mechanism would be strengthened. Specific instances pointed out by audit would be looked into for appropriate action.



Chapter 3: Administration of Prosecution

3.1 Introduction

The prosecution provisions contained in Chapter XXII of the Act declaring certain acts of omission/or commission as punishable offences are most potent weapons in the armoury of the ITD to tackle tax evasion. The objectives of these provisions is to punish the offences found guilty of tax evasion and other tax related offences and to instill fear of law in minds of those who may even contemplate evading payment of legitimate taxes.

3.2 Monitoring and co-ordination set up

CBDT has prescribed various registers and periodical returns to be compiled by the incumbent jurisdictional officers and submit it through CCIT, Cadre Controlling Authority (CCA). Member (Investigation) in the CBDT who is aided by CIT (Investigation) and subordinate officers is responsible for monitoring relating to prosecution policy administration and implementation.

CCIT (CCA) is the overall in-charge for all prosecution matters of the region. Every CCIT (CCA) has a post of DCIT (Prosecution) under him who will be the Nodal Officer for discharging prosecution related functions. For the purpose of compilation of reports and maintenance of records the Zonal CIT (Judicial) has functional control over the Nodal Officer.

DCIT (Prosecution) is responsible for co-ordination of prosecution cases between AO and the Prosecution Counsel and monitors the disposal of all petitions relating to compounding, details of all cases filed/pending under each CIT in the region etc. DCIT (Prosecution) prepares Monthly Progress Report (MPR) of prosecution work in prescribed Form A in respect of the CCA Charge. All aspects relating to reports are monitored by CIT (Judicial).

CBDT has not ensured posting of appropriate officers as Nodal Officers to handle prosecution cases.

3.2.1 Nodal Officer for handling prosecution

Posting of a senior officer of Deputy Commissioner rank as Nodal Officer to handle prosecution related matters is to ensure a one point contact for all round coordination within ITD and interface with relevant authorities in the Economic Offences Court.

Our study revealed that due seriousness was not given for posting of a senior and experienced officer to the post of Nodal Officer adversely affecting the entire process of prosecution. This has serious implication on the entire process of prosecution. We found that officers ranging from the rank of ITO to the rank of JCIT were handling prosecution related matters and in many

cases were holding concurrent/additional charges to the detriment of prosecution which is shown in Table 3.1.

Table 3.1: Nodal Officers handling prosecution

States	Whether DCIT posted	Nodal Officer handling
1. Andhra Pradesh	✓	DCIT
2. Assam	×	ACIT(Tech)
3. Bihar	×	ITO (Tech/Hqrs)
4. Jharkhand	×	ITO (Statistics)
5. Delhi	✓	DCIT
6. Gujarat	✓	DDIT
7. Haryana	✓	DCIT(Tech)
8. Himachal Pradesh	×	ITO (Hqrs)
9. Jammu & Kashmir	×	ITO (Hqrs)
10. Karnataka	✓	ITO (Prosecution)
11. Kerala	×	DCIT (Hqrs)
12. Madhya Pradesh	×	ACIT(Tech)
13. Maharashtra	×	DCIT (Coord.)/ ITO (Jud)/ ITO (Hqrs)
14. Orissa	×	ITO (Tech)
15. Punjab	×	DCIT(Tech)
16. Rajasthan	×	DCIT(Tech)
17. Tamil Nadu	×	JCIT(Hqrs)
18. Uttar Pradesh	×	ITO (Tech)/ACIT(Jud)
19. Uttarakhand	×	ITO (Hqrs)
20. West Bengal	✓	DCIT(Judicial & Prosecution)

We found that CIT (Judicial), Western Zone, Mumbai was not carrying out all the functions envisaged in the administrative set up for prosecution. On an audit query, the concerned office replied that its jurisdiction covered Mumbai region only and not the entire Western Region. They stated that the work of collection and compilation of data were being handled by the co-ordination section of CCIT (CCA).

We also found that out of the three Cadre Controlling CCsIT in Maharashtra viz. Mumbai, Pune and Nagpur, only CCIT (CCA), Mumbai was operating the post of DCIT (Prosecution).

Absence of a Nodal Officer has affected reporting and thereby monitoring the prosecution process in the ITD jurisdiction.

3.2.2 MIS reports to the CBDT

CCIT (CCA) is required to send a Monthly Progress Report (MPR) on the 10th of the following month and a Quarterly Progress Report (QPR) on 15th of the month following the quarter and an Annual Report within 45 days after the end of the financial year²⁰. For easy collation and interpretation, formats for reports have been prescribed. CBDT had reiterated the requirement for adherence to the guidelines for effective monitoring²¹.

²⁰ No.285/04/2009-IT(Inv.I)/127 dated 20th September 2011

²¹ No. F.No.285/04/2009-IT (Inv. I) dated 20 Nov 2011 by Member (Investigation), CBDT

Table 3.2: Submission of various prescribed reports

States	Timely submission			Prescribed format	Correct Reporting
	Monthly Return	Quarterly Return	Annual Return		
1. Andhra Pradesh	x	x	x	✓	✓
2. Assam	✓	✓	✓	✓	✓
3. Bihar	x	x	x	✓	x
4. Jharkhand	x	x	x	✓	x
5. Delhi	✓	✓	✓	✓	✓
6. Gujarat	x	✓	x	✓	✓
7. Haryana	x	x	x	✓	✓
8. Himachal Pradesh	x	x	x	x	x
9. Jammu & Kashmir	x	x	x	x	x
10. Karnataka	✓	✓	x	✓	x
11. Kerala	x	x	x	x	✓
12. Madhya Pradesh	x	x	x	x	x
13. Maharashtra	x	x	x	✓	x
14. Orissa	x	x	x	x	x
15. Punjab	x	x	x	x	x
16. Rajasthan	✓	✓	✓	✓	✓
17. Tamil Nadu	x	x	x	x	✓
18. Uttar Pradesh	x	x	x	x	x
19. Uttarakhand	x	x	x	x	x
20. West Bengal	✓	✓	x	✓	x

Our study revealed that most of charges were deficient in their reporting. Reports were incomplete, incorrect, not updated or did not confirm to the approved formats. One such example is of the State of Maharashtra where the prosecution process is spread across three offices viz. CCIT (CCA) Pune, CCIT (CCA) Mumbai and CCIT (CCA) Nagpur. CIT (Judicial) Western Zone would coordinate for reporting purposes. We found that there has been consistent erroneous reporting right since 2008 and the actual number of cases is not ascertainable as of date which is detailed in Table 3.3.

Table 3.3 : Discrepancies in reporting by CCIT (CCA), Mumbai

FY	Pendency of cases
FY 08	6,221
FY 09	6,229
FY 10	4,199
FY 11	4,043
FY 12	3,825
Submission to Public Accounts Committee in FY 12	4,148
Figures given to Audit for FY 12	374
Reports of CBDT	425

Absence of Nodal Officers has affected reporting and thereby monitoring the prosecution process in the ITD as actual number of cases pending is unascertainable.

There are discrepancies in figures of pending cases as reported by Officer in-charge (Prosecution) to CBDT, questioning the authenticity and reliability of prosecution data.

3.2.3 Reports by CCIT (CCA)

The DCIT (Prosecution) in the respective regions are required to provide accurate and updated position on all cases proposed, pending and disposed of to the CCIT (CCA) who in turn reports to the CBDT. We found flaws in the reporting mechanism which is as follows:

Table 3.4: Discrepancies in figures of pending cases

FY 12	Total pending cases as reported to		Remarks of Officer in-charge (Prosecution)
	CCIT (CCA)	Audit [§]	
1. CIT 18, Mumbai	90	12	Error in reporting
2. CCIT Nasik	33	54	Error in reporting
3. CIT 2 Nasik	21	21	11 cases not readily traceable.
4. CIT Aurangabad	19	19	16 cases are not readily traceable
5. CIT II Lucknow	3	21	Only 16 cases pending in Prosecution register
6. CIT Ghaziabad	30	30	Only 5 case records available
7. CIT II Agra	39	39	No case records available
8. CIT I Kanpur	84	54	No case records available
9. CCIT (CCA) Patna	307	113	13 cases already settled ²²
10. CIT I Jalandhar	55	20	No reply
11. CIT III Ludhiana	17	13	No reply

§ As per register/files maintained by the officer in-charge of prosecution in CCIT (CCA) office

Audit scrutiny revealed that in January 2013, CIT I Jalandhar, provided a list of 55 pending cases without complete/relevant details. We attempted to collect the available information on these cases with the jurisdictional AOs which revealed that there were only 20 cases pending. CIT I Jalandhar later confirmed the same in April 2013. Further, CIT III Ludhiana, replied again in April 2013, after physical verification that only 13 cases were pending with them. Thus the reporting even at the basic stage was erroneous.

²² Quashed or discharged or acquitted or withdrawn

ITD has not performed physical verification of prosecution records since FY 08.

3.2.4 Physical verification of prosecution records

In order to safeguard the interests of revenue as also check the availability of crucial records relating to pending cases, CBDT had directed physical verification of prosecution records. This was necessary as a variety of Officers/Offices are involved in handling records viz. AO, jurisdictional CCIT, CCIT (CCA)/ DCIT (Prosecution), Prosecution Counsel, Courts and CIT (Judicial). The last such exercise was carried out in FY 08. There is no data on whether similar exercise has been carried out subsequently and results thereof.

The above discrepancies in reporting as well as non-availability of records reinforces the need for periodical physical verification of records.

Nodal Officers have not maintained the prosecution registers despite various instructions issued by CBDT.

3.2.5 Non-Maintenance of prosecution Registers

As per ITD's instructions²³, details of cases where prosecution has been initiated should be maintained in a separate Register²⁴. Cases pending over long period because of non-availability of assessee, inability to serve notice on the accused etc may be transferred to a separate register at the instance of the Court called the 'Long Pending Register'. Rules and regulations for transferring cases are prescribed in the relevant rules and practice code of the respective State Criminal Rules of Practice²⁵.

We sought to examine whether registers were being maintained in prescribed formats and data on cases transferred to 'Long Pending Register' was indeed available with the ITD and was being regularly followed up with the Court. This data is to be maintained to ensure monitoring of ongoing prosecution as also long pending cases. Nodal Officer is required to maintain such registers/data. Audit findings are summarized in Table 3.5.

²³ Para 34.2.1 of Chapter 9 of Manual of Office Procedure Volume II

²⁴ Register of pending prosecution cases prescribed in Annexure IX

²⁵ For example Karnataka - Chapter IV of The Karnataka Criminal Rules of Practice, 1968; Kerala - Rule 36 and 37 of The Criminal Rules of Practice (Travancore- Cochin State)

Table 3.5: Maintenance and monitoring of Registers/data

States	Whether all prescribed registers maintained	Details of cases transferred to Long pending register	Regular monitoring (Submission to higher authority)
1. Andhra Pradesh	✓	✓	✓
2. Assam	×	×	×
3. Bihar	×	×	×
4. Jharkhand	×	×	×
5. Delhi	×	×	×
6. Gujarat	×	×	✓
7. Haryana	×	×	×
8. Himachal Pradesh	×	×	×
9. Jammu & Kashmir	×	×	×
10. Karnataka	✓	✓	✓
11. Kerala	✓	✓	✓
12. Madhya Pradesh	×	×	×
13. Maharashtra	×	×	×
14. Orissa	×	×	×
15. Punjab	×	×	×
16. Rajasthan	×	×	×
17. Tamil Nadu	×	×	×
18. Uttar Pradesh	×	×	×
19. Uttarakhand	×	×	×
20. West Bengal	×	×	×

When we sought to analyse the reasons for such unreconciled data on pending cases, we found inadequacies in the maintenance of primary record like the Prosecution Register. We found that adequate importance was not given to maintain registers which was designed to ensure proper monitoring and availability of up to date details in a centralized format. In the absence of registers, we could not derive an assurance that the data being maintained was complete and correct and depicted the current status. Long Pending register which was meant to focus on old cases was also not maintained in most of the charges impeding follow up action.

3.2.6 Database of pending cases

We sought data on pending prosecution cases from the ITD as well as CBDT for detailed analysis which is as shown below:

Table 3.6: Data on pending prosecution cases

States	CCIT (CCA)	Pending cases as on March 12		Case records requisitioned by Audit	Case records not available	Cases produced and audited
		CBDT	Field Offices			
1. Andhra Pradesh	Hyderabad	37	38	38	0	38
2. Assam	Guwahati	21	15	15	14	1
3. Bihar	Patna	347	113	59	34	25
4. Delhi	Delhi	192	192	103	16	87
5. Gujarat	Ahmedabad	351	351	178	0	178
6. Haryana	North Western	308	74	50	8	42
7. Himachal Pradesh	Region, Chandigarh		7	7	0	7
8. Jammu & Kashmir			18	18	0	18
9. Punjab			193	193	82	111
10. Jharkhand	Patna	0	119	119	107	12
11. Karnataka	Bengaluru	50	50	50	0	50
12. Kerala	Kochi	28	24	24	0	24
13. Madhya Pradesh	Bhopal	88	88	88	67	21
14. Maharashtra	Mumbai	374	233	173	4	169
	Nagpur	80		56	2	54
	Pune	156		82	41	41
15. Orissa	Bhubhaneshwar	55	53	48	33	15
16. Rajasthan	Jaipur	108	108	23	0	23
17. Tamil Nadu	Chennai	154	127	127	0	127
18. Uttar Pradesh	Kanpur	328	202	197	140	57
	Lucknow	57				
19. Uttarakhand	Kanpur	22	22	22	15	7
20. West Bengal	Kolkata	307	293	152	0	152
Total		3,063	2,320	1,822	563	1,259

Perusal of the above data revealed the following:

- a. There are 18 CsIT handling assessment in Uttar Pradesh. Based on original records/files available with them, they reported to audit that there are 202 cases pending in Courts, whereas CBDT has stated that there are 385 pending cases.
- b. In Jharkhand, of the 119 pending cases, only 12 records relating to cases launched in FY 12 were made available. CCIT Ranchi did not make available any records relating to prosecution other than list of pending cases. CIT Hazaribagh stated that records were not readily available whereas CIT Jamshedpur stated that records may be obtained from concerned AOs as no records were maintained in CIT's office. However, we found that 74 and nine cases were pending in CIT Hazaribagh and CIT Jamshedpur respectively.

- c. CCIT (CCA) Bhopal did not provide data and the relevant records inspite of several reminders during the period November 2012 to March 2013 though the CBDT had directed for enabling the audit study. Finally, only during May 2013 some files were made available to us by the CsIT. In fact the office had also not responded to the directions of the CBDT for updated information. It is not clear whether records are available and/ or are complete in all aspects.
- d. ITD in Karnataka reported (September 2013) that the number of cases pending as of 31 March 2012 was 59 as against 50 reported earlier.
- e. ITD in Orissa reported (September 2013) that the number of cases pending as of 31 March 2012 was 71 as against 53 reported earlier.
- f. ITD in Maharashtra reported (September 2013) that the number of cases pending as of 31 March 2012 was 404 as against 233 reported earlier.
- g. ITD in West Bengal reported (September 2013) that the number of cases pending as of 31 March 2012 was 400 as against 293 reported earlier.

Data provided at the field level and those provided by CBDT do not match. We were unable to ascertain the actual number of cases or the sections under which they were being proceeded against.

ITD has not given due priority in launching of prosecution as indicated by delay in initiation of cases and by not launching the prosecution even in approved cases.

3.3 Initiation of prosecution cases

The Act provides that where assessee is in default of fulfillment of obligations, even after providing reasonable opportunities, then coercive measures including prosecution could be resorted to bring the errant assessee to order. Procedures for prosecution have been laid out in the Act as also various instructions/circulars issued from time to time. We sought to examine whether ITD had followed the procedures laid out in letter and spirit of the Act. Our study revealed the following:

3.3.1 Delay in initiation of cases

CBDT guidelines of April 2008 provide that prosecution needs to be filed within a reasonable period and preferably within 60 days of confirmation by the Appellate Authorities. We collected and analysed data regarding the time gap between the commitment of offence and the date of actual initiation of

prosecution proceedings in Court. The study revealed delays ranging from 5 to 48 years as detailed below:

Table 3.7: Delay in initiation of prosecution cases

States	Within time prescribed	Upto 5 years	5-10 years	10-15 years	15-48 years	Total
1. Andhra Pradesh	37	1	0	0	0	38
2. Assam	0	0	14	1	0	15
3. Bihar	13	23	14	37	26	113
4. Jharkhand	14	46	19	11	29	119
5. Delhi	0	95	42	29	26	192
6. Gujarat	0	201	96	35	24	356
7. Haryana	0	32	13	3	2	50
8. Himachal Pradesh	1	4	2	0	0	7
9. Jammu & Kashmir	0	5	1	0	0	6
10. Karnataka	0	40	9	1	0	50
11. Kerala	2	12	6	8	0	28
12. Madhya Pradesh	0	14	28	31	15	88
13. Maharashtra	0	248	77	34	45	404
14. Orissa	6	15	5	6	21	53
15. Punjab	0	71	47	16	59	193
16. Rajasthan	27	27	29	14	11	108
17. Tamil Nadu	0	89	32	4	2	127
18. Uttar Pradesh	1	55	64	23	59	202
19. Uttarakhand	0	4	2	1	15	22
20. West Bengal	0	249	124	32	18	423
Total	101	1,231	624	286	352	2,594

In case of Punjab, Maharashtra and Jharkhand, figures for 15-48 years include cases where no details of date of initiation are available. In Uttar Pradesh and Uttarakhand dates of initiation of proceedings were not available in 60 and 15 cases respectively and date has been taken as last of the AY to which complaint relates.

The above table shows that time taken to initiate prosecution has been too long in many cases reducing their relevance and impact (See Box 3.1).

Box 3.1: Illustrative cases on delay in initiation of prosecution case

a. In Tamil Nadu CIT Chennai, in the case of **J. Devarajulu**, a complaint was filed in March 1995 for AY 84 and AY 85 u/s 276 C for unexplained investment to the extent of ₹ 40.50 lakhs in shares. The first Non-Bailable Warrant (NBW) was issued in September 2003 and a second one in June 2009. A formal requisition was also sent to the Commissioner of Police, Chennai to take action in January 2012. Delayed action has led to protracted litigation jeopardizing the interests of revenue.

b. In Maharashtra CIT I Pune charge, prosecution on **Kolte Shridhar Bhaurao** for AY 96 was filed in March 2010, 15 years after the commitment of offence and seven years from the confirmation of penalty by the ITAT.

The Ministry stated (October 2013) that the cases are being examined.

3.3.2 Non launching of prosecution even in approved cases

Prosecution cases need to be followed closely and cases filed expeditiously immediately after approval by the competent authorities. Though the period of limitation u/s 468 of the IPC is not applicable to the Act, still the Courts have ruled²⁶ that prosecution is liable to be quashed on the ground of unreasonable delay. Box 3.2 shows that prosecution was not launched in approved cases.

Box 3.2: Illustrative cases of non launching of prosecution in approved cases

- a. In CIT, Bhubaneswar we found that in 37 cases proposed for launching of prosecution by different AOs during the period 1974 to 2000, no decisions were conveyed by the competent authorities in 35 cases as evidenced from records (October 2012). Of the remaining two cases where approvals were accorded to launch prosecution, no cases were filed.
- b. CCIT Bhubaneswar had directed CIT (Cuttack) in January 2011 to launch prosecution in 19 cases where penalties had been confirmed in first appeal [CIT (Appeals)]. CIT (Cuttack) in turn addressed AOs to take action in February 2011. We found that no further action to launch prosecution has been taken even as of December 2012.
- c. In Orissa, CIT Bhubaneswar, the High Court acquitted the assessee, **M/s Sabitri Art Printers** charged u/s 276 and 277 of the Act. Proposal for an SLP in the Supreme Court was approved by CBDT in February 1996 but no such petition seems to have been filed even as of October 2012 when we last examined the records.
- d. In Orissa CIT Bhubaneswar, prosecution against **M/s Palo & Co** was approved in March 1992 u/s 276C and 277 for the AY 89. In June 1992, CIT, Bhubaneswar ordered ACIT, Berhampur to file the case with jurisdictional court. We found that no case had been filed as of October 2012 when we last examined the records.
- e. In Karnataka, Bengaluru CIT TDS charge, no prosecution case has been filed on **M/s Perfectus Technology Solutions Pvt Ltd** till date (December 2012) though approval was granted in July 2009 by CIT (TDS).

The Ministry stated (October 2013) that the cases are being examined.

²⁶ KMA Ltd v. T Sundara Rajan ITO [(1996) Tax LR 248 (Bom)]; Srinivas Pal v. Union Territory of Arunachal Pradesh [AIR (1988) SC 1729]; Smt. Vijayashanthi v ACIT dated 04.03.2011

3.3.3 Incorrect selection and pursuance of case

In Tamil Nadu CIT Chennai charge, the case of **Jagdishlal Kanyalal**, a complaint was filed in February 1992 for not obtaining income tax clearance certificate prior to sale/transfer of property. We found that the assessee had been declared insolvent by the Madras High Court in December 1991 itself and all his assets had been taken over by the receiver. The property was sold by the official assignee in August 1998. Despite this, a Proclamation was filed in July 2009, March 2010 and the hearing with case adjournments have been conducted up to August 2010.

3.3.4 Assessment years to which prosecution relate

We sought to analyze the assessment years to which the offence related in the pending cases. Table 3.8 shows that very old cases are still pending.

Table 3.8: AY to which pending cases relate

States	Before 1970	1971-80	1981-90	1991-00	2001-10	Not available	Total
1. Andhra Pradesh	0	0	0	9	29	0	38
2. Assam	0	0	15	0	0	0	15
3. Bihar	0	0	17	76	20	0	113
4. Jharkhand	0	0	12	74	13	20	119
5. Delhi	1	25	68	40	46	12	192
6. Gujarat	0	25	153	59	43	76	356
7. Haryana	0	5	26	6	8	5	50
8. Himachal Pradesh	0	0	0	0	7	0	7
9. Jammu & Kashmir	0	0	0	2	16	0	18
10. Karnataka	0	0	2	12	36	0	50
11. Kerala	0	0	9	7	8	0	24
12. Madhya Pradesh	12	6	9	8	13	0	48
13. Maharashtra	13	71	173	65	63	19	404
14. Orissa	0	6	25	6	15	1	53
15. Punjab	4	20	84	36	49	0	193
16. Rajasthan	0	8	16	40	44	0	108
17. Tamil Nadu	0	5	24	96	2	0	127
18. Uttar Pradesh	1	30	102	29	35	5	202
19. Uttarakhand	0	6	8	6	2	0	22
20. West Bengal	11	50	169	18	72	0	320
Total	42	257	912	589	521	138	2,459

Initiating and sustaining prosecution in cases relating to such old assessment years becomes difficult due to a variety of reasons. Availability of evidence as well as witnesses is compromised when such old cases come up for hearing in courts. The expected socio-economic impact of deterrence is also reduced. Revenue collectable if any may also be lost due to intervening events. Under the circumstances, CBDT may like to evaluate the continuance of such cases.

CBDT pursues wasteful cases instead of deploying its resources on fruitful tasks.

3.4 Pursuance of Prosecution cases

3.4.1 Cases under repealed sections

The Supreme Court in the case of General Finance Company Vs. CIT²⁷ in 2002 had ruled that continuance of proceedings was not sustainable where prosecution had been initiated under sections which had subsequently been repealed from the Act. Law Ministry in their opinion to the CBDT (December 2008) on pursuance of cases launched under repealed sections had counseled that '*prosecutions cannot be continued by invoking the provisions of section 6 of the General Clauses Act*'. Table 3.9 shows cases under repealed section of the Act.

Table 3.9: Number of cases under repealed sections

States	276E	276DD
1. Gujarat	0	3
2. Haryana	1	5
3. Maharashtra [§]	1	4
4. Madhya Pradesh	0	0
5. Punjab	0	1
6. Uttar Pradesh	12	38
7. West Bengal	1	13
Total	15	64

§ No details of section available in seven cases

We found that even after 11 years of the Supreme Court judgment and five years of opinion from the Ministry of Law, 76 cases were still being pursued frittering away valuable time and resources of ITD. Hence ITD should initiate the process of withdrawing prosecution under section 321 of the Code of Criminal Procedure.

3.4.2 Cases where penalty/additions had been dropped

AOs need to closely coordinate with the relevant prosecution authorities and keep them updated on the latest happenings in the case especially those involving appeals on additions and levy of penalty based on which prosecution proceedings have been initiated. The Supreme Court has held that the matter which has been adjudicated or settled by the Tribunal need not be dragged into criminal courts, unless and until the act of the appellant could have been described as culpable²⁸. CBDT had instructed²⁹ that where quantum additions or penalty had been deleted by the Departmental Appellate authorities, then steps must be taken to withdraw prosecution.

²⁷ 257 ITR 338 (2002)

²⁸ KC Builders 265 ITR 562

²⁹ Guidelines for withdrawal of prosecution F.No.285/16/90-IT(inv)/43 dated 14.05.1996

We found that in 19 cases covering six states³⁰ the relevant additions/disallowances based on which prosecutions had been launched had been deleted by appellate authorities. No updation was available with the officers handling prosecution. Thus, inadequate coordination resulted in frittering away of valuable resources. Some of the illustrative cases are shown in Box 3.3.

Box 3.3: Illustrative cases where penalty/additions dropped

a. In Maharashtra Mumbai charge the ITAT in the case of **M/s Bombay Mercantile Co-operative Bank Ltd** deleted the additions made in April 2005 and the same was upheld by the High Court in July 2008. No SLP was filed with the Supreme Court as per the legal opinion (December 2008). However, ITD persisted with the prosecution proceedings till the case was disposed of in favour of assessee in April 2012. Records revealed that 26 hearings took place from the date of decision of ITAT between August 2007 to April 2012.

b. In Maharashtra Mumbai charge, the ITAT in the case of **M/s Vijay Sarvgod** deleted (Sep 2002) the additions made in the assessment proceedings on merits. ITD did not prefer any appeal against this order for five years. Subsequently, appeal filed in the High Court in November 2007 was rejected as time barred. Even after a lapse of 10 years of the deletion of quantum addition by ITAT, ITD persisted with the prosecution proceedings. As per records³¹ 56 hearings took place between September 2002 and June 2010.

c. In Tamil Nadu, Chennai charge the ITAT in case of **M. Nandagopal**³² deleted the additions and penalties levied in the assessment. ITD's appeal to the High Court as well as SLP to the Supreme Court was rejected (July 2001) on merits. Even after the dismissal of SLP, approximately 30 hearings were held upto March 2013 with ACMM, Chennai without bringing the fact of rejection of appeals to their notice. A non-bailable warrant (NBW) was also issued in August 2011 against the assessee. Even after dismissal of SLP in July 2001, the Senior Special Public Prosecutor, in his opinion, stated that this is a fit case for pursuing the Prosecution proceedings, in December 2001.

d. In Delhi CIT I charge, the case of **K. P. Kumar**, for AY 75, prosecution was initiated u/s 276C(1)/277 on the basis of raid conducted by Custom Official in the year 1994. However, the additions made in the assessments based on Customs raid was set aside by the ITAT in October 1993 itself. ITD has not contested the orders of the ITAT. The complaint was finally dismissed as withdrawn in January 2012 after about 18 years.

The Ministry stated (October 2013) that the cases are being examined.

³⁰ Delhi-1, Gujarat-6, Haryana-1, Maharashtra-8, Tamil Nadu-1, Uttarakhand-1, West Bengal-1 Total 19 cases. In Gujarat, of the six cases, in three cases even the Court had ordered discharge but still cases were shown as pending.

³¹ Bill submitted by the Prosecution Counsel

³² PAN:AADPN2678L(EOCC No. 51/92 & 194/92)

3.4.3 Cases on dead assessees

Death of the assessee abates the prosecution proceedings though proceedings for tax recovery may continue if there exists a tax demand and assessee has left behind an estate (See Box 3.4).

Box 3.4: Prosecution proceedings against dead assessees

- a. In Maharashtra CIT-13 Mumbai charge, the case of **M/s Bombay Woven Wire Netting Works** and **J. Gandhi** prosecution proceedings have not abated even though the only known director/partner died in 2002 resulting in infructuous expenditure on legal fees and wastage of valuable resources of the department and that of the Court.
- b. In Madhya Pradesh, CIT Ujjain charge, the cases of **M/s Ramgopal Bapulal** (Firm) was being pursued though working partner had died in May 2005. Similarly, case of **Ratanlal Hargundas** was being pursued before CJM Indore though assessee died in November 2000. Incidentally, ITAT had also deleted the additions based on which prosecution was launched.
- c. In Rajasthan, CIT Jaipur charge, the prosecution against **Dr. G.D.Tripathi Pilani** was launched in March 2006 for offences relating to AY 98 u/s 276C and 277. Though assessee was dead as of March 2013, prosecution case is still being pursued before Economic Offences Court, Jaipur. Similarly, prosecution case of **Surendra Gadia** launched in May 2010 for offences relating to AY 01 was being pursued before Economic Offences Court, Jaipur though assessee was dead as of March 2013. In CIT Central, Jaipur charge, prosecution against **Shyam Sunder Tantia**, Sriganaganagar, was launched in March 2011 for offences relating to AY 04 to AY 10 u/s 276CC. The case was being pursued though the assessee was dead as of October 2012.
- d. In Gujarat CCIT (CCA) Ahmedabad charge, prosecution in the case of **Narainsingh G. Rajput** launched for offences relating to AY 86 and AY 76 were being pursued before Economic Offences Court though assessee was dead as of October 2010.
- e. In Tamil Nadu CCIT (CCA) Chennai charge, prosecution in the case of **Narayanaprasad Gupta** launched u/s 276C(1) for offences relating to AY 80 were being pursued before Economic Offences Court though assessee was dead as of August 2012.
- f. In Punjab CIT I Ludhiana charge, prosecution was launched in the cases of **Vijay Tangari**, **Gudmandi**, **Tek Chand**, **Ludhiana** and **Ram Murti Sood**, **Ludhiana** in March 2008, March 2005 and July 1987 respectively. The cases have been indicated as pending as of January 2013 though the assessees were dead.

The Ministry stated (October 2013) that the cases are being examined.

3.4.4 Transfer of cases between income tax jurisdictions though prosecution case pending

Section 127 of the Act provides that the assessment jurisdiction of an assessee can be changed after due process. However, such action when prosecution has been launched would vitiate the proceedings as AO filing the suit is a party to the prosecution. Moreover, all aspects of the investigation, filing of case, attending to Courts etc would have to be done by the initiating AO.

We found original income tax jurisdictions were being changed even though prosecution cases had already been initiated in the Courts.

Table 3.10: Transfer of cases between different IT jurisdiction

Assessee	Original IT jurisdiction	Prosecution pending	Transferred to
1. Shaw Wallace & Co Ltd	CIT I Kolkata	CMM & MM Kolkata	CIT III Bengaluru
2. Rajeev Chawla	CIT Bhopal	ACMM Bhopal	CIT Indore
3. Vijay Kumar Patil	CIT Bhopal	ACMM Bhopal	CIT I Pune
4. Salimar Housing Finance Ltd	CIT Bhopal	ACMM Bhopal	CIT I Mumbai

We found that the case of **M/s Shaw Wallace & Co. Ltd.** was not on the pending list at CCIT (CCA), Bengaluru. We were unable to ascertain either from CCIT (CCA) Kolkata or from CCIT (CCA), Bengaluru as to who was pursuing the case and if so, what was its status.

Further, cases mentioned as transferred from CIT Bhopal (Sr No 3 & 4) were not available in the list of pending cases from ITD Maharashtra (December 2012). Thus we were unable to ascertain as to who is actually handling or the current status of the case.

The Ministry stated (October 2013) that the cases are being examined.

CBDT did not utilize the prosecution mechanism for ensuring tax compliance under section 276CC.

3.4.5 Cases under section 276CC

The Act provides that where a person willfully fails to furnish a return of income even though he has taxable income and relevant taxes have not been paid, he is liable for prosecution. This is intended to ensure that assessee voluntarily comply with the Act. We found that there were 316 pending cases initiated u/s 276CC for failure to furnish income tax return (See table 3.11).

Table 3.11: Pending cases for failure to furnish ITR

States	Number of cases	Subsequent returns	Returns for AY 10 to 12
1. Andhra Pradesh	2	✓	✓
2. Bihar	10	×	×
3. Delhi [§]	24	×	×
4. Gujarat	54	×	×
5. Haryana	3	×	×
6. Jammu & Kashmir	10	×	×
7. Karnataka [@]	18	✓	✓
8. Madhya Pradesh	12	×	×
9. Maharashtra*	31	×	×
10. Orissa	2	×	×
11. Punjab	10	×	×
12. Rajasthan	36	✓	✓
13. Tamil Nadu	10	✓	✓
14. Uttar Pradesh	46	×	×
15. Uttarakhand	5	×	×
16. West Bengal	43	×	×

§ Details of subsequent returns were available only in eight cases. In three cases returns were not being filed.

@ Subsequent returns were filed in seven cases, not filed in eight cases and no information in three cases.

* Subsequent returns was filed only in two cases.

As penal provisions are intended to not only punish wrong doings of the doers but also instill in them the regimen of voluntary compliance, we attempted to examine whether these assesseees had filed their income tax returns during subsequent years after initiation of prosecution. We also checked whether these assesseees had come into the mainstream of tax payers in terms of filing returns during the latest three years (AY 10 to AY 12).

We could not succeed in our attempts as no such details were forthcoming from the available records with officers handling prosecution in CCIT/CIT offices. It is not clear to ITD as to where assesseees are currently assessed to tax or whether they have filed the relevant income tax returns during the last three years. Thus, the very purpose of mainstreaming errant tax payers was not achieved.

Prosecution cases are being pursued on companies which have already been liquidated or have been declared sick by BIFR.

3.4.6 Cases against liquidated companies

The Companies Act, 1956 provides for winding up a company under various circumstances. In special circumstances enumerated in the Companies Act, the proceedings are monitored by the jurisdictional High Courts. A company

may be wound up for 'commercial insolvency'³³. In a winding up certain unsecured debts like revenues, taxes, cess, rates and duties get preferential payments³⁴ over other debts.

Section 178 provides that AO is required to notify the Official Liquidator regarding the amounts sufficient to discharge tax obligations of the liquidated company. The Liquidator is personally liable for the company's tax dues after intimation by AO subject to the priorities of any other dues.

We found that in cases where income tax prosecution is pending, the jurisdictional High Courts have already passed orders for winding up of companies. Details of a few cases are given in Table 3.12.

Table 3.12: Pending prosecutions cases in liquidated companies

Assessee	Pending	Liquidation particulars
1. Fit Tight Nut and Bolts Pvt. Ltd	CCIT (CCA) Mumbai	Vide CP No 519/1985 dated 18.01.1987
2. Madhav Lal & Co Pvt. Ltd.	CCIT (CCA) Mumbai	Vide CP No 407/1985 dated 12.02.1986
3. Megaware Computers Ltd.	CCIT (CCA) Mumbai	Vide CP No 79/1991 dated 17.07.1998
4. Esskay Pharmaceuticals Ltd.	CCIT (CCA) Ahmedabad	Vide Case No 289/1997 dated 11.03.2004

Source: List of companies in liquidation as on 30.11.2008 www.companyliquidator.gov.in

The ITD is still following up these cases in Prosecution Courts without actual updates on their status. In the absence of primary data with the ITD, there was nothing on record to show that revenue claims³⁵ had indeed been lodged with the Official Liquidator during the winding up proceedings, thus jeopardizing the interests of revenue.

3.4.7 Cases against companies under Board for Industrial and Financial Reconstruction-BIFR

The Government, in order to tackle the problem of industrial sickness, set up BIFR under the purview of Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). It is a quasi-judicial body under Ministry of Finance, for revival and rehabilitation of potentially sick undertakings and for closure/liquidation of non-viable and sick industrial companies.

We found that in the following cases where income tax prosecution is pending, the BIFR has already passed orders for closure/liquidation. Details of a few cases are given below:

³³ Section 433(e) of Companies Act 1956

³⁴ Section 529A and 530 of Companies Act 1956

³⁵ Creditor petitions

Table 3.13: Pending prosecution cases where closure/liquidation order passed by BIFR

Assessee	Pending	Liquidation particulars
1. Eastern Paper Mills Ltd.	CCIT(CCA) Kolkata	Vide Case No 3/1989 dated 12.11.1991
2. Metal Box	CCIT(CCA) Kolkata	Vide Case No 34/1988 dated 07.09.2009
3. Electra (India) Ltd.	CCIT(CCA) Kanpur	Vide Case No 134/1998 dated 07.08.2000
4. J.K.Synthetics	CCIT(CCA) Kanpur	Vide Case No 22/1998 dated 23.05.2012
5. Hari Om Steel Pvt. Ltd.	CCIT (CCA) Kanpur	Vide CP No 234/2002 dated 25.02.2013 Declared sick in November 2006
6. Magnesite & Minerals	CCIT (CCA) Lucknow	Vide CP No 302/1987 dated 24.08.2000
7. Apex Electrical Pvt. Ltd.	CCIT(CCA) Ahmedabad	Vide Case No 223/2002 dated 17.04.2013
8. Esskay Pharmaceuticals Ltd.	CCIT (CCA) Ahmedabad	Vide Case No 215/1998 dated 09.04.2003
9. Hynoup Food & Oil Industries	CCIT (CCA) Ahmedabad	Vide Case No 130/2003 dated 10.10.2006
10. Labh Construction & Ind. Ltd.	CCIT (CCA) Ahmedabad	Vide Case No 62/2007 dated 05.05.2011
11. Sarabhai Machinery Baroda	CCIT (CCA) Ahmedabad	Vide Case No 143/1998 dated 18.09.1990
12. Trisuns Chemicals Ind. Pvt. Ltd.	CCIT (CCA) Ahmedabad	Vide Case No 85/2006 dated 23.12.2009
13. Dairy Den Ltd.	CCIT (CCA) Ahmedabad	Vide Case No 169/2005 dated 20.09.2006
14. Incorporated Engineers Ltd.	CCIT (CCA) Ahmedabad	Vide Case No 221/2004 dated 21.08.2006
15. Jyothi Chemicals & Industries Ltd.	CCIT (CCA) Ahmedabad	Vide Case No 211/1988 dated 31.08.1994

Source: <http://www.bifr.nic.in/asp/list.asp>

The status of tax dues on these companies is unclear. The jurisdictional officer in CCIT (CCA) Kolkata stated that no records in the case (SI No 1 & 2) were available. The office stated (July 2013) that the matter had been taken up with jurisdictional Commissioners for data.

Cases referred to the BIFR ought to have been appropriately dealt with in the Prosecution Court. Failure to do so not only resulted in wastage of resources for following up cases but also resulted clogging up of judiciary in lower courts.

The Ministry stated (October 2013) that no recovery proceedings can be initiated in respect of such cases as they are under the purview of Sick Industrial Companies (Special Provisions) Act, 1985. They further stated that action would be taken to file miscellaneous application under the SICA seeking to lift the embargo on recovery proceedings. In respect of the case relating to Magnesite & Minerals, the relevant records are being traced.

3.4.8 Other cases

a. Cases on assesseees who had left India

In Madhya Pradesh, CIT Ujjain charge, two cases of **F.A. Noorie** was being pursued though, assessee had left the country for Muscat in 1997 itself.

b. Cases on incorrect persons

In Jharkhand, CIT Hazaribagh charge prosecution of **Ram Kumar Ojha** was launched in the Economic Offences Court of Dhanbad u/s 277 for AY 90 during FY 91. Tax demands of ₹ 46.15 lakh for four assessment years were pending [₹ 36.08 lakh being interest u/s 220(2)]. As per records in ITD, the offender had also been raided by the State Government authorities but the search party did not recover any valuable belongings. A perusal of the records reveal that the jurisdictional ITO, based on visits and enquiries, had reported to CBDT in July 2004 that the offender had become mentally retarded and the family had no source of income. It was also suggested that action may be taken to write off the demands on humanitarian grounds. In spite of protracted correspondence, the prosecution case is still pending with no further action. As per the Prosecution Counsel (July 2009), the case has been disposed of in May 2008.

The basis on which prosecution was launched is unclear as even on date of launching prosecution, assessee had no ascertainable assets which otherwise could have been attached for tax recovery.

c. Proposal for prosecution was sent twice in same case

Section 26 of the General Clauses Act³⁶ provides that an offender shall not be liable to be prosecuted or punished twice for the same offence. Supreme Court reinforced the applicability of this provision to prosecution under the Act also³⁷.

In Bihar CIT-II, Patna, prosecution against **Ramavtar Singh** for AY 85 and AY 89 was initiated once again u/s 276C in June 2011 without taking into cognizance the earlier case³⁸ filed in 1992. No reasons were forthcoming either from the records or any specific reply provided to the audit query.

d. Launching prosecution though demand paid

The Act provides that prosecution for an offence shall be at the instance of the jurisdictional Chief Commissioner or Commissioner after due process. It should be discernible from the order sanctioning prosecution that the concerned authority has applied his mind on the materials available to him in a substantive, real and honest manner (See Box 3.5).

³⁶ Applicable to all prosecution cases including those under Income Tax Act 1961

³⁷ TS Baliah V. TS Rangachari, ITO Madras 72 ITR787 (SC) 1968

³⁸ Complaint case No. 424(C)92 and 423(C)92

Box 3.5: Illustrative case on prosecution case though demand paid

In Bihar CIT-II Patna prosecution against **Raj Kumari Kataruka** was launched in March 2006 for non payment of tax of ₹ 10.36 lakh u/s 276C. We found that assessee had already paid all the demands as of February 2006 itself and the ITD issued a 'No demand Certificate' in September 2006 at the instance of the assessee. Departmental Standing Counsel had also pointed out the fact only in February 2007 indicating that there was no application of mind at any stage viz. either during approval by CCIT or before filing of the case by Standing Counsel. Case is still ongoing.

e. Cases against persons not related to offence

As per section 278B(1) of the Act, prosecution on offences committed by companies shall be launched against the person responsible for conduct of business of the company. Details of the responsible person must be correctly ascertained and proceeded against (See Box 3.6).

Box 3.6: Illustration on case against person not related to the offence

In Karnataka, CIT TDS, Bengaluru prosecution initiated against **Shashi Nambiar**, Managing Director of **M/s BST Limited** for the period FY 01 was dismissed as Shashi Nambiar was not the Managing Director (responsible officer) during the relevant period.

The Ministry stated (October 2013) that the cases are being examined.

3.5 Interface with Courts

Box 3.7: The Supreme Court's guidelines for expeditious disposal of cases - A. R. Antulay's case³⁹

Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible. Right to speedy trial encompasses all stages, viz. investigation, inquiry, trial, appeal, revision and retrial.

The accused's concerns underlying speedy trial are: worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and undue delay may result in impairment of the ability to defend himself due to non availability of witness.

Non-availability of witnesses, disappearance of evidence by lapse of time really work against the interest of the prosecution. As is often pointed out, "delay is a known defence tactic". Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Therefore, in every case, where the Right to speedy trial is alleged to have been infringed, the first question to be put and answered is who is responsible for the delay?

³⁹ (1992) 1 SCC 225

Courts have ruled that speedy trial is the right of the accused and no efforts should be spared to decide the guilt or otherwise of the accused. ITD's instructions provide that liaison should be maintained by the Nodal Officer with the Complainant officer, AO and the Departmental witnesses so that unnecessary adjournments from ITD's side in the prosecution cases are avoided. The Nodal Officer should keep track of stay granted by the higher Courts and get them vacated on time.

Ministry in their submission to the Public Accounts Committee had stated that slow disposal of cases was on account of overburdening of the Courts, low priority to tax evasion cases, frequent adjournments taken etc.

In the light of the above, we sought to examine the interplay between the jurisdictional Prosecution Officers on the following criteria:

- a. Availability of data on the Court proceedings
- b. Attendance to the Court proceedings
- c. Appearance of Departmental witnesses
- d. Interface with Prosecution Counsels
- e. Follow up on the Court proceedings

3.5.1 Pendency of cases at various courts

ITD has initiated prosecution proceedings in various courts, details of which are as follows:

Table 3.14: Pendency of cases in various courts (as of March 2012)

States	Upto 5 years	5-10 years	10-15 years	15-48 years	Total
1. Andhra Pradesh	38	0	0	0	38
2. Assam	0	0	0	15	15
3. Bihar	10	11	6	86	113
4. Jharkhand	12	0	7	100	119
5. Delhi	56	62	13	61	192
6. Gujarat	83	42	14	217	356
7. Haryana [§]	9	4	1	36	50
8. Himachal Pradesh	5	2	0	0	7
9. Jammu & Kashmir	17	1	0	0	18
10. Karnataka	38	10	2	0	50
11. Kerala	16	1	0	6	23
12. Madhya Pradesh [@]	13	19	4	48	88
13. Maharashtra [§]	85	46	23	250	404
14. Orissa [§]	15	0	0	38	53
15. Punjab [§]	40	20	9	124	193
16. Rajasthan [§]	55	29	3	21	108
17. Tamil Nadu	2	6	71	48	127
18. Uttar Pradesh [§]	20	26	17	139	202
19. Uttarakhand [§]	3	2	2	15	22
20. West Bengal	13	60	30	322	425
Total	530	341	202	1,530	2,603

[@] Information relating to 40 cases not provided by ITD Madhya Pradesh

[§] Cases above 15 years include cases where no details of date of initiation are available.

The data shows that majority of the cases are pending for more than 15 years in the Courts and have no contemporary relevance. As cases are initiated after a lapse of time, their further delay in the Courts due to various reasons vitiates the entire process making it meaningless. Delay raises doubts on the veracity and sustainability of cases apart from indicating the performance efficiency of the prosecution process and machinery in the ITD. Ministry may like to analyse the reasons for these delays.

Nodal Officers or ITD's nominees are not attending regular hearing in the Courts impacting disposal of cases.

3.5.2 Appearances in hearings

The Court may grant time to the parties, and may adjourn the hearing for reason to be recorded in writing, if sufficient cause is shown; provided that no such adjournment shall be granted more than three times to a party during hearing of the suit⁴⁰. We sought to examine whether the ITD had a system in place to see that the Court proceedings do not prolong due to Departmental inadequacies.

Table 3.15: Details of the Court's proceedings of prosecution cases

States	Ready availability of information regarding			
	Current status of case with designated officer	Hearings and adjournmet	Hearings attended by Prosecution Counsel	Hearings attended by Nodal Officer
1. Andhra Pradesh	✓	✓	✓	✓
2. Assam	x	x	Not Available	x
3. Bihar	x	x	x	x
4. Jharkhand	x	x	x	x
5. Delhi	✓	✓	✓	✓
6. Gujarat	x	x	x	x
7. Haryana	x	x	x	x
8. Himachal Pradesh	x	x	x	x
9. Jammu & Kashmir	x	x	x	x
10. Karnataka	✓	x	✓	x
11. Kerala	✓	✓	✓	✓
12. Madhya Pradesh	x	x	x	x
13. Maharashtra	x	x	x	x
14. Orissa	x	x	x	x
15. Punjab	x	x	x	x
16. Rajasthan ⁵	x	x	x	x
17. Tamil Nadu	✓	✓	✓	x
18. Uttar Pradesh	x	x	x	x
19. Uttarakhand	x	x	x	x
20. West Bengal	x	x	x	x

§ No details made available by the ITD

⁴⁰ Rule 1 of Order XVII of Code of Civil Procedure, 1908 (C.P.C.) – Adjournments

Our examination revealed the followings:

- a. In West Bengal charge, a crosscheck of 39 cases records revealed that the last date of hearing was prior to FY 2000. What happened thereafter is not on record. Though these cases have been shown as pending by the ITD in West Bengal, in the absence of updated records or follow up details, it is not possible to comment whether these cases are ongoing, stayed, disposed of or withdrawn. Efforts by the Nodal Officer for following up with the Court to expedite hearing is also not available.
- b. In Maharashtra, the ITD had maintained note sheet of court proceedings in 18 charges. Table 3.16 reveals the test check by the audit.

Table 3.16: Details of Prosecution cases in Maharashtra

Charge	FY	No. of cases	Court hearings, attendance and adjournments			
			Total	Prosecution Counsel	Nodal officer	Adjournments
CCIT I	FY 10	11	36	4	4	NA
	FY 11	10	40	2	2	NA
	FY 12	11	47	10	10	NA
CCIT II	FY 10	20	129	124	4	95
	FY 11	21	115	112	2	82
	FY 12	19	118	110	1	77
CCIT VII	FY 10	39	137	135	19	2
	FY 11	41	141	137	17	3
	FY 12	41	153	149	21	2
CCIT XI	FY 10	11	103	103	30	4
	FY 11	12	125	125	33	4
	FY 12	14	220	171	44	3
CCIT XIII	FY 10	8	101	93	0	3
	FY-11	10	115	107	0	3
	FY 12	10	120	116	0	12

Adjournments due to non availability of witness/Prosecution counsel. NA - not available

Analysis of the above data indicates:

- a. Nodal officers or their nominees are not attending the hearings on a regular basis. Prosecution Counsels have not been attending all the hearings.
- b. Adjournments need to be analysed in detail for expediting the Court process.

ITD has poor records maintenance and inadequate monitoring of prosecution cases pending in the Courts.

3.5.3 Cases pending in the High Courts

As per records made available to audit by ITD, 167 cases are pending at the various High Courts. We sought to examine the status of these cases.

We found that the status of these cases like last and next hearing, stage of cases and other related information were not available with the ITD. In the absence of updated information, we attempted checking with the website of the respective High Courts and assessment records available with AO.

Table 3.17: Cases pending in High Courts

States	Cases in High Court	
	Updated data readily available	No of cases
1. Andhra Pradesh	✓	No cases
2. Assam	×	Not available
3. Bihar	×	62
4. Delhi ⁵	×	21
5. Gujarat	×	Not available
6. Haryana	✓	11
7. Himachal Pradesh	×	0
8. Jammu & Kashmir	×	Not available
9. Jharkhand	×	Not available
10. Karnataka	×	2
11. Kerala	×	8
12. Madhya Pradesh [%]	×	18
13. Maharashtra	×	Not available
14. Orissa	×	2
15. Punjab	×	23
16. Rajasthan	×	Not available
17. Tamil Nadu	✓	2
18. Uttar Pradesh	×	Not available
19. Uttarakhand	×	Not available
20. West Bengal	×	18
Total		167

§ Of the total 192 cases pending prosecution, details were received only in 90 cases of which 21 are stayed by the High Courts

% Of the total 88 cases pending prosecution, details were received only in 47 cases of which 18 are stayed by the High Courts

Important function of the Nodal Officer inter alia includes liaison with the Complainant officer, AO and the Departmental witness to avoid unnecessary delays and keeping track of stay granted by the Courts and get them vacated in time. The CCIT (CCA) is also required to closely monitor the progress in pending cases. We found that no such attention was being accorded to cases that are purported to have been stayed by the jurisdictional High Courts. In many states there was no data as to the stage at which the case has reached. Some of the cases are illustrated in Box 3.8.

Box 3.8: Illustrative cases on inadequacies in monitoring

a. In Kerala charge, when ITD sought data from Prosecution Counsel on cases stayed by the High Court. He in turn requested the ITD to provide details of the same. Our independent examination in six cases purported to be pending in High Court beyond ten years revealed that five cases had already been disposed of by the High Court.

b. In Bihar, Patna, the orders of the Economic Offences Court (March 2006) on **M/s V. Kumar & Co.** had been quashed by the High Court in December 2009. ITD accepted the decision of the High Court and no SLP was filed. However, the case is still shown as pending as of November 2012. Further, though 62 cases were pending in the High Courts⁴¹, 19 cases had been shown as disposed of in reports (October 2012) to CBDT.

c. In Maharashtra CIT (TDS) Mumbai charge, in the case of **M/s Pharmax India Ltd.** the Mumbai High Court had dismissed the case in April 2004. Prior to this, the offence had been compounded in January 2003 itself. The jurisdictional AO had also requested for withdrawing the case. Still the case is being shown as pending and being pursued⁴².

d. In Delhi CIT II charge, the case of **M/s Citi Bank** filed with Additional Chief Metropolitan Magistrate (ACMM) Delhi in March 1990 for the AY 85 was kept pending as stayed by the Delhi High Court. The case was pending in the lower court for want of order of the High Court as of January 2013, despite a lapse of 22 years.

e. In Delhi CIT III charge, the case of **M/s S.N. Bhatia & Co. Pvt. Ltd.** filed with ACMM Delhi in March 1990 for the AY 82. Trial Court ruled in favour of revenue in March 1991. On appeal by the assessee, the Delhi High Court set aside the orders of the Trial Court in November 2011. However, the case is still shown as pending in lower Court as of January 2013.

f. In Delhi CIT III charge, the case of **M/s R.N. Sahni & Others** filed with ACMM Delhi in March 1990 for the AY 90 for wrongful claim of depreciation in income tax assessment. On appeal, the ITAT set aside the penalties (November 2001) imposed during the assessment. Further appeal by revenue was set aside by the Delhi High Court in March 2009. Thus, penalties levied in the assessment based on which prosecution had been launched were set aside. However, the related prosecution proceedings are still shown pending in lower court as of January 2013.

g. In Punjab CIT Bathinda charge, prosecution in the case of **M/s G.S. Arora & Sons** for additions and penalties relating to AY 89 was launched u/s 276C/277 and the case is shown as pending in the High Court of Punjab and Haryana. We found⁴³ that additions/penalties had already been set aside by the High Court in its decision of August 2010⁴⁴. As the additions/penalties have been set aside, prosecution on the same would be unsustainable. Still no action has been taken to settle the case.

h. In CIT I Ahmedabad, criminal prosecution in the case of **M/s Ochhavlal & Co** and its partners was launched in March 1984 u/s 276C and 277 of the Act for concealment of income. Pending proceedings in the Economic Offences Court, the

⁴¹ As per letter of Prosecution Counsel

⁴² As evidenced from file notings of July 2011 that case is adjourned.

⁴³ Website of the High Court of Punjab and Haryana (<http://lobis.nic.in/phhc/showfile.php?sno=0>)

⁴⁴ ITA No 256 of 2003 dated 30.08.2010.

assessee filed an application offering the concealed income to tax under an Amnesty Scheme announced in February 1986⁴⁵ and paid the relevant taxes⁴⁶. The application of the assessee was rejected by the ITD on the ground that the concealed income was detected by the ITD and not a voluntary disclosure by the assessee. On appeal by the assessee, the Gujarat High Court ruled that the rejection was ultra vires of the Amnesty Scheme and directed the ITD to reconsider the application of the assessee afresh vide order of December 1998. We found that nothing is forthcoming from the records on action taken on the directions of the High Court of Gujarat. Even as of November 2009, CCIT (CCA) Ahmedabad was seeking clarity from the CBDT about action to be taken in the case. The case is still pending (March 2013) inspite of actionable directions by the High Court of Gujarat in December 1998 itself.

i. In Jharkhand CIT Jamshedpur, charge prosecution against **M/s Tata Robins Frazer** complaint, was filed before the Special Court (Economic Offences) at Jamshedpur [Case No. C/l 441 of 1992 June 20, 1992] based on additions and disallowances made in the assessment for AY 84. On appeal by the assessee the quantum additions were set aside and penalty modified. Based on this, assessee filed an application with the High Court of Jharkhand for quashing the criminal proceedings pending in the Economic Offences Court, Jamshedpur. The High Court based on fact ruled in January 2005 that the original order of assessment having been modified the criminal proceeding pending before the Court of Special Judge (Economic Offence) at Jamshedpur is quashed. However, ITD Jharkhand has stated (January 2013) that prosecution is still pending in Economic Offences Court.

j. In Jharkhand CIT Jamshedpur, charge prosecution against **M/s Jamshedpur Engineering and Machine Manufacturing Co Private Limited (JEMCO)** was launched vide Complaint Case No. 1 of 1994 u/s 276C and 277 of the Act based on additions and disallowances made in assessment for AY 90. Patna High Court vide its order of February 1995 set aside the case against the Directors of the Company, as there is no averment that any of these Directors was in charge of, or responsible for the conduct of the business of the company at the relevant time. As such, on this ground, the prosecution of the Directors for the offence u/s 276C and 277 of the Act is not permissible in law and, accordingly, the same is quashed. JEMCO got merged with The Indian Steel & Wire Products Ltd (ISWP) and became its division in 1990. In December 2003, ISWP along with JEMCO was taken over by Tata Steel as its subsidiary. However, ITD Jharkhand has stated (January 2013) that prosecution is still pending in Economic Offences Court.

k. In West Bengal CCIT IV Kolkata charge, prosecution launched on **M/s Hanuman Sugar Industries Limited** in 1985 u/s 276B and 278B for offences relating to AY 79 to AY 83 has been quashed by the jurisdictional High Court. However, ITD West Bengal has stated (January 2013) that prosecution is still pending in Economic Offences Court.

⁴⁵ The scheme was notified on 14-2-1986 to be effective from 17-2-1986 vide Circular No.451 dt 17.02.1986

⁴⁶ ITO Ward 2(2) Ahmedabad letter to CCIT I Ahmedabad dated 14.10.2008

l. In West Bengal CCIT II Kolkata charge, prosecution launched on **M/s Iron Tea Trading Co. Limited** in March 1991 u/s 277 for offences relating to AY 87 has been quashed by the jurisdictional High Court. However, ITD Jharkhand has stated (January 2013) that prosecution is still pending in Economic Offences Court.

m. In Haryana CCIT NWR charge, the cases of **M/s Shiv Kumar Ramesh Kumar, Sirsa; M/s Chaudhary Cotton Ginning & Processing Mill, Dabwali and M/s Dashmesh Ice Factory, Nilokheri** were still being shown as pending even though the High Court of Punjab and Haryana had disposed of these cases in April 2005, April 2005 and November 2001 respectively.

n. In Punjab CIT Jalandhar charge, prosecution launched u/s 276B and 277 in the case of **Ashwani Shoor and Avatar Chand** have already been disposed by the Punjab and Haryana High Court vide orders of March 2009⁴⁷ and June 2007⁴⁸ respectively. In the case of **M/s Dua Karyana Store**, the High Court has disposed the case in July 2012⁴⁹ whereas the same is still being shown as pending as of Jan 2013.

The Ministry stated (October 2013) that the cases are being examined.

3.5.4 Disposed cases still being pursued

As no prosecution files were forthcoming from ITD Jharkhand and ITD Haryana, we attempted to verify the status of cases with the jurisdictional Economic Offences Court.

We found from the list of 119 live cases provided in January 2013 by **CCIT Ranchi** that 42 cases relating to CIT Hazaribagh had already been disposed of by the Economic Offences Court, Dhanbad as of 2005 itself. No such status is available with ITD Jharkhand.

We found from the list of 50 live cases provided in January 2013 by **CCIT (NWR), Haryana** that five cases⁵⁰ had already been disposed of by the Economic Offences Court, Sirsa earlier to 2004 itself. However, these cases are still been shown as pending.

3.5.5 Non production of evidence in Court

Section 101 of the Evidence Act, 1872-Burden of proof explains that 'Whoever desires any Court to give judgment as to any liability dependent on the existence of facts which he asserts must prove that those facts exist'. Thus the burden of providing adequate and complete proof lies on the ITD when it initiates proceedings to prosecute a person (See Box 3.9).

⁴⁷ Criminal revision 2403 of 2004/CRR 2404 of 2004.

⁴⁸ 492 MA of 2000.

⁴⁹ Criminal revision 155 of 2006.

⁵⁰ CIT Rohtak - M/s Vasudev Chunnilal Rewari (Oct 2001); M/s Raj Metal, Rewari (Oct 2002); M/s Paras & Co, Mahendragarh (June 2004); CIT Hissar - M/s Harinder Singh & Co. Bhiwani (Jan 2003); and CIT Karnal - M/s Aggarwal Rice Mills Nising (March 2002)

Box 3.9: Illustrative cases where ITD failed to provide evidence

- a. In Uttar Pradesh CIT I Agra charge, in the case of **Goverdhan Lal Sachdeva**, prosecution was launched for AY 03 u/s 276C/277 in November 2006. ITD was unable to produce the required evidence in the Court and hence evidence in the case was stopped by May 2008 u/s 244 of the Code of Criminal procedure. No further action is forthcoming.
- b. In Karnataka, CIT III Bengaluru charge, the prosecution case of **M/s S.S.S. Projects Ltd** filed in March 2009 has been adjourned ten times for want of production of evidence by the ITD. Prosecution Counsel as late as December 2012 was requesting the ITD to make available relevant documents for production in Court.

The above cases not only depicted the inadequacy in monitoring but also the poor coordination between the Counsels and ITD resulting in delay in disposing the cases.

The Ministry stated (October 2013) that the cases are being examined.

3.5.6 Cases pending for want of updates

In Delhi CIT II charge the case of **Inder Singh Kohli**, HUF for the AY 95 was initiated in March 1998 for concealment of income wherein a penalty was imposed. On appeal by the assessee, CIT (Appeals) in April 1999 deleted the penalty based on which prosecution had been initiated. ITD challenged the order before the ITAT in July 1999 and the ACMM (September 2000) adjourned the proceedings till the decision of the ITAT. Till October 2009, the outcome of the decision was not furnished to the Counsel. No further action has been taken (January 2013). ITD stated that current status of appeal is being updated (February 2013).

In Jharkhand CIT Ranchi charge, prosecution against **Humanyu Ahmad**, Gaya was launched in January 1984 in the EOC, Patna. The EOC sought original sanction order for prosecution issued u/s 279(1) which is still to be provided as of May 2013.

The Ministry stated (October 2013) that the cases are being examined.

Poor record maintenance and delay in timely production of evidences has led to acquittal of assesseees in prosecution related offences.

3.6 Analysis of disposed cases

A large number of cases have resulted in acquittal of assesseees as in a criminal petition the standard of evidence is very high and the offence has to be proved beyond reasonable doubt. Therefore, robust record maintenance, safeguarding and timely production of evidence, adequate education of

witnesses on the case and rigorous coordination of ITD with all concerned is required. Our examination of few disposed cases revealed the following:

Table 3.18.: Illustration of disposed cases

Assessee	Case details	Audit Observation
Bihar		
1. Yogendra Prasad	AY 76 EOC No 133C/88	No record furnished to Prosecution Counsel resulting in acquittal by the Court.
Maharashtra		
2. Dynacraft Machines Co	CIT (TDS), Mumbai Case No 218 to 222/S/92 AY 81 to AY 84	Neither was Prosecution Counsel present nor could the ITD Officer make relevant submissions resulting in dismissal (August 2007).
Delhi		
3. Ajay Multi Project Pvt. Ltd	AY 85 to AY 87 u/s 276C (2) was launched in 1993 involving 30 complaints	Dismissed the case (April 2012) as ITD failed to produce the records in original even after several opportunities.
4. Smt. Vimla Devi Sethi	Accused apprehended with unaccounted Indian and Foreign currency (₹ 4.16 lakh). Prosecution u/s 276C and 277 for the AY 90 launched in the year 1991.	Neither any of the witnesses in whose presence the alleged recovery was effected nor any documentary proof were proved on record. Case dismissed due to non availability of relevant evidence in January 2010.
5. Sarit Kumar Jain	Six complaints were filed in March 1987 relating to non-payment of tax, interest and penalty. Three complaints filed for non-accountal of advance payments for sale of property.	First six complaints dismissed as they were filed under wrong provisions which were not in force at the time of commitment of the offence. Next three complaints dismissed as no evidence like sale receipt or other documents were produced in Court. Cases dismissed in August 2010.
6. M/s Steri Mould (P) Ltd	AY 99 for the offences u/s 276C (1)/277 r.w.s 278B in 2004	ACMM, Delhi in March 2009 acquitted the assessee as the ITD failed to levy penalty u/s 271(1)(C) after initiation. The Court ruled that there was no case for framing any charge and ITD had to forego the case.
7. M/s D.D. Kochar & Sons	AY 77 and AY 78 for offences u/s 276C/277 launched in 1981 for concealment of ₹ 19,763.	ITAT on appeal by the assessee had remanded the assessment back to AO for reassessment in December 1991. Even after 19 years, no fresh assessment was made. ACMM dismissed the case in January 2010 as offenders to be prosecuted u/s 276/277, the concealment should be more than ₹ 25,000 and also no fresh assessment was made.

The Ministry stated (October 2013) that the cases are being examined.

3.6.1 Age wise pendency of cases

Delays in the context of justice denotes the time consumed in the disposal of case, in excess of the time within which a case can be reasonably expected to be decided by the Court. A procedure which does not provide trial and disposal within a reasonable period cannot be said to be just, fair and reasonable⁵¹. Our examination of delay/pendency at various stages revealed the following:

Table 3.19: Age analysis of pending cases

	Upto 5 years	5-10 years	10-15 years	Above 15 years	Total
Number of Cases	530	341	202	1,530	2,603

State wise details are available in Table 3.14

A majority of the cases are pending for more than 15 years and relate to AYs which are still older and thus have no contemporary relevance. As cases are initiated after a lapse of time, their further delay in the Courts due to various reasons vitiates the entire process making it meaningless. Delay raises doubts on the veracity and sustainability of cases apart from indicating the performance efficiency of the prosecution process and machinery in the ITD.

Ministry may like to analyse the reasons for these delays. It is necessary that CBDT explore the principle of discretionary prosecution as against the principle of obligatory prosecution unless public interest is involved. Alternate Dispute Resolution in the form of Compounding and Settlement Commission needs to be utilized to optimum potential to reduce the pendency of cases.

The enforcement of CBDT's policy and procedures on the Prosecution Counsels has not been effective and has impacted the pursuance of cases.

3.7 Prosecution Counsel

The Supreme Court of India⁵² defines the role and functions of a public prosecutor as under:

- a. The prosecution of an offender is the duty of the executive which is carried out through the institution of the Public Prosecutor.
- b. Discretion to withdraw from prosecution is that of the Public Prosecutor and that of none else and he cannot surrender this discretion to anyone. The Government may suggest to the Public Prosecutor to withdraw a case, but it cannot compel him and ultimately the discretion and the judgment of the Public would prevail.

⁵¹ Hon'ble Shri Y.K. Sabharwal, Chief Justice Of India ; 25th July, 2006 Justice Sobhag Mal Jain Memorial Lecture

⁵² Sheonandan Paswan v State of Bihar (AIR 1983 SC 1994)

c. The Public Prosecutor may withdraw from prosecution on the ground of paucity of evidence and also on the other relevant grounds in order to further the broad ends of public justice, public order and peace.

d. The Public Prosecutor is an officer of the Court and responsible to it.

As per instruction⁵³ issued by CBDT, a Prosecution Counsel shall be appointed after going through the process prescribed. Apart from the Court related proceedings, the Prosecution Counsel also provide legal opinion regarding sustainability of the case before initiating prosecution. Renewal of terms of the Prosecution Counsels is based on their performance for which CBDT has prescribed an evaluation report to be filed by CCIT (CCA).

The performance of the Prosecution Counsels shall be reviewed by jurisdictional CsIT whose cases have been represented by the Prosecution Counsels on a quarterly basis and report in Proforma-C shall be submitted to CIT (Judicial)/ CCIT before 15th of the month following the end of each quarter. On the basis of reports, the CCIT shall review the performance of the Prosecution Counsels for every financial year and send an annual report to CBDT in Proforma-D before 30th June of the following year.

3.7.1 Appointment of the Prosecution Counsel

We collected data on appointment of the Prosecution Counsels and their work which is shown in Table 3.20.

Table 3.20: Appointment and work done by the Prosecution Counsels

States	Existence of Prosecution Counsel for all cases	Appointment approved by CBDT	Submission of Monthly reports by Counsels	Objective evaluation of Prosecution Counsels	Timely submission of evaluation Reports by CCIT (CCA) to CBDT
1. Andhra Pradesh	✓	✓	✓	✓	✓
2. Assam	×	✓	×	×	×
3. Bihar	✓	×	×	×	×
4. Jharkhand	×	×	×	×	×
5. Delhi	✓	✓	✓	✓	✓
6. Gujarat	✓	✓	×	✓	✓
7. Haryana	✓	×	×	×	×
8. Himachal Pradesh	✓	×	×	×	×
9. Jammu & Kashmir	×	✓	×	×	×

⁵³ Annexure-II of instruction No.8/2007 issued vide F.No.2791 Misc.145/2006-IT.

10. Karnataka	✓	✓	x	x	x
11. Kerala	✓	✓	✓	✓	✓
12. Madhya Pradesh	x	✓	x	x	x
13. Maharashtra	✓	✓	x	x	x
14. Orissa	x	x	x	x	x
15. Punjab	x	✓	x	x	x
16. Rajasthan	x	✓	x	x	x
17. Tamil Nadu	✓	x	x	x	x
18. Uttar Pradesh	x	x	x	x	x
19. Uttarakhand	x	x	x	x	x
20. West Bengal	x	x	x	x	x

Our analysis across states revealed that the process of appointment of experienced Prosecution Counsels to handle ITD cases was wanting on several fronts.

CBDT instructions provide that the Prosecution Counsels need to furnish to ITD monthly statement about the cases represented by him before the High Court or any other authority. We found that such reports were wanting in many ITD jurisdictions. There were no details of engagement of the Prosecution Counsels or who would be handling which cases in the relevant Court. This impacted the follow up and monitoring of cases leading to wasteful litigation and expenditure.

3.7.2 Current status of appointment of the Prosecution Counsels

Every case for prosecution needs to be handled by a designated Prosecution Counsel appointed for the purpose after due process. As per CBDT Instructions⁵⁴, proposals for renewal of term of counsels were required to be sent three months prior to the expiry of their term. Renewal of term was to be done for a maximum period of three years. We found various shortfalls in appointment of the Counsels. In several cases the Prosecution Counsels had not been appointed for prolonged periods or were working without valid appointments from the ITD, details of which is in Table 3.21.

⁵⁴ No.1986 dt.03/07/2000 and No.8/2007 dated 30.08.2007

Table 3.21: Appointment of Prosecution Counsels

CCIT/CIT charge	Appointment of prosecution counsels
1. Ahmedabad	Proposal submitted in March 2010. Approval awaited from CBDT.
2. Vadodara	Proposal submitted in March 2010. Approval awaited from CBDT.
3. Surat	No prosecution counsel since April 2003. Renewal proposal sent in January 2010, rejected in 2013.
4. Rajkot	No Prosecution Counsel appointed between January 2007 and November 2009. 52 cases were pending during the period.
5. Jaipur	No Prosecution Counsel since July 1992. Approval awaited from CBDT.
6. Chennai	Prosecution Counsel functioning with provisional authority since September 2005.
7. Shillong and Guwahati	No Prosecution Counsel since March 1999.
8. Patna	Prosecution Counsel working without valid authorization between the periods July 1994 – Jan 2008 and April 2006 – Jan 2013.
9. Rohtak and Karnal	No Prosecution Counsel since 1996. Term of existing counsel not renewed.
10. Moradabad	No Prosecution Counsel appointed since April 2004.
11. Ghaziabad	No Prosecution Counsel appointed since May 2009. Approval awaited from CBDT.

Ministry may like to correct the situation urgently so that the interests of revenue are not jeopardized.

The Ministry stated (October 2013) that the cases are being examined.

3.7.3 Appointment of the Prosecution Counsel at the Court's instance

Appointment of a Prosecution Counsel was to be automatic to handle cases as and when they come up for hearings in the Court.

In Maharashtra Pune CIT (TDS) charge, in the case of **M/s Novion Ltd**, it was noticed that even though CCIT, Thane directed in January 2003 to launch prosecution u/s 276B, proceedings were initiated only in March 2006. No Prosecution Counsel was appointed for the case till March 2012. The appointment was done in March 2012 only when the Court threatened to dismiss the case on this ground. However, the newly appointed Counsel was also not attending the case (December 2012).

3.7.4 Payments to the Prosecution Counsels

Payment of fees of Prosecution Counsel is made at predetermined rates for various categories like effective and non effective hearings, similar cases, settled cases etc⁵⁵. Since payment for services availed would also affect the performance of the Prosecution Counsels, we sought to examine the

⁵⁵ Instruction No.1925 dt.31/03/1995

quantum and periodicity of payments. Our examination of expenditure incurred in various charges revealed the following:

Table 3.22.: Details of payment to Prosecution Counsels

States	Complete case details available	Payments made	Applicable rates
1. Andhra Pradesh	✓	✓	✓
2. Assam	x	✓	x
3. Bihar	✓	✓	✓
4. Jharkhand	x	✓	✓
5. Delhi	✓	✓	✓
6. Gujarat	x	✓	x
7. Haryana	✓	x	x
8. Himachal Pradesh	✓	x	x
9. Jammu & Kashmir	x	✓	x
10. Karnataka	✓	✓	x
11. Kerala	✓	✓	✓
12. Madhya Pradesh	x	✓	x
13. Maharashtra	x	x	x
14. Orissa	x	x	x
15. Punjab	x	✓	x
16. Rajasthan	x	✓	x
17. Tamil Nadu	✓	✓	x
18. Uttar Pradesh	x	x	x
19. Uttarakhand	x	x	x
20. West Bengal	x	x	x

- a. In Uttar Pradesh CIT – Central, Kanpur charge, though two cases were pending and scheduled for hearing, no expenditure was incurred on fees to the Counsels in the years 2007-12. In the absence of any payment to Counsels, the pursuance of the cases could not be ensured.
- b. In Gujarat CCIT, Surat charge, fees to the Prosecution Counsel was made in excess of the rates prescribed by CBDT.
- c. In Tamil Nadu CCIT Chennai charge, K. Ramasamy, was appointed as the Prosecution Counsel at higher rates⁵⁶ of remuneration for specific cases handled by him given their nature. A perusal of the payments made upto December 2011 revealed that application of higher rate in 40 bills (other than applicable cases) alone resulted in excess payment of ₹ 49.23 lakh.
- d. In West Bengal Kolkata, payments to the Prosecution Counsels for the period 2004-2011 is still pending settlement as of December 2012.

⁵⁶ ₹ 5,000 per effective hearing; ₹ 1,000 per non effective hearing; reading perusal fee at rate of ₹ 1,000; Clerkage and other miscellaneous charges at the rate 10 per cent of total expenses etc.

- e. In Haryana CIT Rohtak and Karnal charge, payments to the Prosecution Counsels for the period 2007-12 had been made, though details of their appointment like approval from CBDT were missing.

The Ministry stated (October 2013) that the cases are being examined.

3.7.5 Infertuous expenditure on payment to prosecution counsels

CBDT has fixed higher rates of remuneration⁵⁷ for substantive hearing⁵⁸ given the additional tasks discharged during the course of the same. Appeals, revision or petition arising from one common judgment or order will be considered together as one case if they are heard together. Where there are two or more cases (but not more than 10 cases) involving substantially identical questions of law or facts, one such case will be treated as main case and the others as connected cases. Payments are regulated accordingly.

Audit scrutiny of payment of the Prosecution Counsels files revealed the followings:

- a. In Maharashtra Mumbai CIT 14 and CIT 18 charge, we found that claims had been submitted with no differentiation noted between substantive and non substantive hearings. Claims lodged at effective hearings rate even when concerned judge was on leave or when the Court had a holiday or witnesses were absent or case was not listed or papers not traceable etc. With the ITD not attending to all the Court hearings or without updated records, it was not clear as to how payments to the Prosecution Counsels were being regulated.
- b. In Maharashtra Mumbai CIT 13 charge, professional fees had been paid at double the rates in the case of **M/s. Rameshchand Nihalchand & Co. and Naresh R. Chhada** which resulted in excess payment to the extent of ₹ 1.26 lakh. There was no categorization between effective and non effective hearings. On further scrutiny of the case record of **M/s. Rameshchand Nihalchand & Co.**, it was noticed that three bills out of total of four bills against which payment was made, was made to the Prosecution Counsel for the period between May 2009 and November 2011. Hence, instead of treating one complaint as main case and other two cases as connected cases involving identical questions of law or facts pertaining to three different AYs, each case was treated as different and payments were made.

⁵⁷ Instruction No 8/2007, dated August 30, 2007.

⁵⁸ Substantial and Effective hearing has been defined as a hearing in which either one or both the parties involved in a case are heard by the Court. If the case is mentioned and adjourned or only directions are given or only judgment is delivered by the Court, it would not constitute a substantial and effective hearing.

- c. In Maharashtra, CIT 13 Mumbai charge, two Prosecution Counsels (A.S. Inamdar and Ms. Aneesa A. Gulab) had been appointed for the prosecution case of Naresh R. Chheda. Payment had been made to the Counsels though service was rendered only by A.S. Inamdar. Two different complaints were filed for the same fact and issue pertaining to same AY. This resulted in a cascading effect in terms that the Prosecution Counsels had been paid for four hearings even when there were only two hearings.
- d. In Maharashtra, CIT 12 Mumbai charge, claims submitted by A.S. Inamdar (in the case of Krishnakant L. Dalal) for the period January 2001 and December 2011 involving seven complaints having identical questions of law or facts pertaining to AYs from 71 to AY 76. Instead of treating one case as main and other three as connected cases, they had been billed separately. The Counsel had submitted the bill even for periods handled by the other Counsels.

The Ministry stated (October 2013) that the cases are being examined.

ITD has not maintained complete and reliable MIS data on prosecution cases.

3.8 Current Status of cases

It is necessary that CBDT should coordinate within and outside ITD in a timely manner to ensure that tax evaders are prosecuted. We sought to examine whether ITD had updated position on the cases shown as pending in the MIS Reports sent to the CBDT. DCIT-Prosecution (or any other Officer in-charge) was to be the custodian of all original records on prosecution proceedings. Our examination was based on the following criteria:

- a. Availability of guard files and relevant documents⁵⁹ with officer in-charge of prosecution.
- b. Availability of information on hearings last hearing and next date proposed.
- c. Details of seized impounded material.
- d. Existence of assessee as depicted by filing of income tax returns.
- e. Pendency of cases.

Our examination of records and data revealed the following:

⁵⁹ Relevant documents prescribed vide Instruction No 1618 dated 03 June 1985 include documents for proving guilt of accused; list of names of witnesses and their statements u/s 131; list of relevant judgments, Circulars etc; inventory of all information; copy of opinion of standing counsel etc

Table 3.23: Maintenance of records with details

States	Guard files	Previous & next hearings	Existence of assessee	Filing of returns	Details of seized material
1. Andhra Pradesh	✓	✓	✓	✓	✓
2. Assam	x	x	x	x	x
3. Bihar	x	x	x	x	x
4. Jharkhand	x	x	x	x	x
5. Delhi	✓	✓	✓	✓	✓
6. Gujarat	x	✓	✓	x	x
7. Haryana	✓	x	x	x	x
8. Himachal Pradesh	x	x	x	x	x
9. Jammu & Kashmir	x	x	✓	x	x
10. Karnataka	✓	✓	✓	✓	x
11. Kerala	x	x	x	x	x
12. Madhya Pradesh	x	x	x	x	x
13. Maharashtra [§]	x	✓	x	x	x
14. Orissa	x	x	x	x	x
15. Punjab	x	x	x	x	x
16. Rajasthan	x	✓	✓	✓	x
17. Tamil Nadu	✓	✓	✓	✓	✓
18. Uttar Pradesh	x	x	x	x	x
19. Uttarakhand	x	x	x	x	x
20. West Bengal	x	x	x	x	x

§ Information only partially available.

Table 3.23 shows that necessary records with updated data were not available in a majority of the cases. The ITD was not even clear as to who would be maintaining the relevant records. We found the following:

- a. On requisitioning the relevant files for examination, CIT-Dehradun stated that only approval is accorded in the prosecution cases and such case record were available with the concerned AO.
- b. In Bihar, Patna charge, of the 59 pending cases⁶⁰ requisitioned in audit (April 2013) only 25 cases were produced to audit. Whereabouts of other 34 cases is not known to the ITD.
- c. In Delhi CIT I charge, the case of **M/s Sangam Iron and Steel** was dismissed by EOC in December 2002 as ITD failed to produce witness and original records. Revision petition filed in March 2003 is still pending.
- d. In Maharashtra CIT (TDS) Mumbai charge, in the case of **M/s Bharat Cables (P) LTD** except for verification report no other documents were available either with the ITD or with the Court.

⁶⁰ 21 at CIT I Patna and 38 in CIT II Patna

Thus, we could not derive an assurance that the relevant data and documents crucial for achieving prosecution of offenders were available completely with any officer in the ITD.

The Ministry stated (October 2013) that the cases are being examined.

ITD did not use the compounding of offences as alternate dispute resolution mechanism effectively to reduce the litigation and realize the due revenue.

3.9 Compounding of offences

Compounding in the context of the Criminal Law means forbearance from the prosecution as a result of an amicable settlement between the parties. The victim is prepared to condone the offensive conduct of the accused who became chastened and repentant. Law needs to be attuned to take note of such situations and to provide a remedy to terminate the criminal proceedings as also relieve the Courts of the burden of accumulated cases. Primarily, what needs to be taken into account is the nature, magnitude and consequences of the Crime⁶¹. By an amendment of 2005 in the CrPC, the concept of plea bargaining has been introduced⁶². Plea-bargaining is available only for offences that are penalised by imprisonment below seven years. Thus, it is imperative that the ITD consider all requests for compounding expeditiously.

3.9.1 Disposal of compounding petitions

As per the revised guidelines⁶³ for compounding offences issued by CBDT in May 2008, the compounding petition should be disposed by the CCIT/DGIT, as far as possible, within 180 days of its receipt. In cases where compounding is accepted, the CCIT/DGIT will intimate the assessee the amount of compounding charges to be deposited if any within 180 days. The assessee should pay the requisite compounding charges within 60 days of receipt of such intimation. Final orders shall be passed within 30 days of payment of compounding charges. This circular was made applicable to both pending and future cases.

⁶¹ Compounding of (IPC) Offences Report No. 237 Law Commission December 2011

⁶² Ss. 265 A- 265 L, Code of Criminal Procedure

⁶³ Instruction no. 285/90/2008-IT(Inv.)/12

Table 3.24: Time taken for disposal of compounding application

States	Upto 180 days	180-365 days	1 to 3 years	More than 3 years
1. Andhra Pradesh	0	0	0	0
2. Assam	0	0	0	0
3. Bihar	0	1	0	0
4. Chandigarh	0	0	0	0
5. Jharkhand	NA	NA	NA	2
6. Delhi	4	5	7	2
7. Gujarat	0	0	2	2
8. Himachal Pradesh	0	0	0	0
9. Jharkhand	0	0	0	0
10. Karnataka	1	4	1	0
11. Kerala	0	0	4	0
12. Madhya Pradesh	0	0	0	0
13. Maharashtra	0	0	0	0
14. Odisha	0	0	0	0
15. Punjab	0	0	0	0
16. Rajasthan	0	0	53	42
17. Tamil Nadu	0	0	0	0
18. Uttarakhand	0	0	0	0
19. Uttar Pradesh	0	0	3	0
20. West Bengal	2	2	0	0
Total	7	11	70	48
NA Not available				

Table 3.25 indicates that ITD took more time to dispose the compounding application than prescribed by CBDT (See Box 3.10).

Box 3.10: Illustrative case on delay in taking action on compounding application

In Tamil Nadu Chennai charge, **M/s Standard Fire Works Pvt.Ltd**, Sivakasi had entered into a sale agreement with **M/s Cee Dee Yes Housing and Financing Ltd** without obtaining a No Objection certificate from ITD. Prosecution proceedings were initiated in June 2002⁶⁴ u/s 269UC of the Act. In August 2002, assessees opted for compounding of the offence and compounding fees was worked out at ₹ 70 lakh in November 2004 on each assessee being at rate of five *per cent* of the value of transaction (valued at ₹ 14 crore). No further action was taken to implement the order.

We found that fresh compounding petitions were preferred by the assessees in November 2008 and January 2010. By this time fresh guidelines for compounding

⁶⁴ EOCC No. 576/02

had been issued⁶⁵ wherein compounding fees were substantially reduced. ITD finally decided to accept and compound the offence. Compounding fee realized was ₹ 11.60 lakh and ₹ 12.70 lakh respectively. Failure to take timely action on the petitions resulted in loss of revenue of ₹ 1.16 crore.

The Ministry stated (October 2013) that the cases are being examined.

3.9.2 Compounding and stage of prosecution

CBDT has issued various guidelines for compounding of offences, the last comprehensive one being in May 2008⁶⁶. The powers of compounding an offence has been delegated to the jurisdictional CCIT/DGIT except a few categories of assessee and offences. The compounding fees have been substantially reduced. An offence may be compounded at any stage before or after institution of proceedings subject to conditions prescribed. The clause 'at any stage' has been the subject matter of contention. Table 3.26 shows cases that compounding is being done even where conviction has been passed in lower courts or additions upheld.

Table 3.25: Compounding of prosecution after the Court's decision

Assessee and Charge	Prosecution particulars	Compounding details	Remarks
1. Dasari Narayan Rao, CCIT(CCA) Chennai	Trial Court (Additional Chief Metropolitan Magistrate EO I vide CC No 154/89) convicted the assessee for offence u/s 276CC of the Act. Assessee filed further appeal in High Court of Chennai.	Application filed in December 2003. The High Court of Chennai in its order on WP No 32734 of 2005 directed that the compounding petition be taken up on merits.	Compounding petition accepted in December 2005.
2. M/s Dahadwala Family Trust, CCIT(CCA) Chennai	Trial Court (Additional Chief Metropolitan Magistrate EO II vide EOCC No 133 to 161/1988 on 10.06.1998) convicted the assessee for offence u/s 276B of the Act. Principal Sessions Judge confirmed the conviction vide order in CA Nos 113 to 141/1988 vide order dated 17.04.2006). Assessee filed further appeal in High Court of Chennai.	Application filed in August 2012. The Senior Special Public Prosecutor for the Govt in his opinion of December 2012 quoting the precedence of compounding after conviction in the cases of Dr. K. Jagadeeshan, Mrs Umayal Ramanathan and Dasari Naryana Rao has also recommended for compounding.	Compounding petition accepted in February 2013.
3. Jyoti Laxman Konkar CCIT (CCA) Bengaluru	Prosecution initiated for concealment of income u/s 276 C. SLP filed in Supreme Court for levy of penalty on concealment of income dismissed vide SLP Civil 14810/2006 in September 2006.	Compounding petition filed in April 2008.	Compounding petition accepted in December 2010.

⁶⁵ Instruction No F No 285/90/2008 – IT (Inv)/12 dated 16.05.2008

⁶⁶ Instruction quoted above

Ministry may like to ensure that every opportunity to settle disputes and collect due revenues be explored in all cases if otherwise not prohibited under law or against public interest so that resources of the ITD and of the Judiciary are relieved for more important activities.

The Ministry stated (October 2013) that the cases are being examined.

3.9.3 Delays in passing compounding orders

We found that acceptance of compounding applications of assesseees were being unduly delayed without valid purpose or reasons. This resulted in infructuous expenditure as well as wastage of valuable resources of ITD and the Court. Details of a few cases are given in Table 3.26.

Table 3.26: Delay in acceptance of compounding applications

Assessee and Charge	Compounding application particulars	Acceptance
Tamil Nadu		
1. KJ Joy, Chennai	July 1997, October 2004 and February 2012. Arrears of tax cleared in November 2004. Non bailable warrant issued in March 2006 was returned undelivered due to ill health of the assessee. Action on petition not forthcoming between 2005-11.	Accepted in November 2012.
2. M.S.Paul, Chennai	Compounding petition and consent letter filed in November 2000 and June 2010 for prosecution filed in January 1991. Non-bailable warrant issued on the assessee in 1991, was not executed.	No action has been taken on either application (March 2013).
Maharashtra		
3. M/s Dravya Finance, CIT TDS Mumbai	Compounded in January 2010	Shown as pending as of March 2013
4. M/s Vileparle Sanjivani Co-operative Housing Society Ltd, CIT TDS Mumbai	Compounding petition in December 2001 and compounding fees were remitted in August 2005.	Even after 12 years of submission of petition and eight years of payment of applicable fees, case is still pending.
5. M/S Vikram Ahuja Exports Pvt Ltd & Others, CIT 5 Mumbai	34 hearings took place in the court of law (hearings details incomplete).	Compounded after six years and 11 months from the date of receipt of application.
6. Dharti J Shroff, CIT 12 Mumbai,	August 2006 and October 2008. AO and Range Officer had favourably recommended the case in October 2008 and November 2008 respectively.	Compounding still pending.

7. M/s Abha Advertising Pvt. Ltd., CIT 2 Mumbai	January 1997, January 2009 and August 2009.	Compounded in February 2011 after 13 years of first application.
8. M/s Winter Investments Co CIT TDS Mumbai	Compounding petition filed in August 2007	Compounding still pending.
Gujarat		
9. M/s Somtex Yarns Pvt. Ltd., CIT Ahmedabad	Filed in February 2011, approved in July 2011 and fees paid in September 2011.	Compounding still pending (December 2012).
10. Roopa D. Shah & Lavanya D. Shah CIT Ahmedabad	Two petitions filed in April 2008	Compounding still pending (December 2012).
11. Sushil K. Jalan CIT Ahmedabad	Petitions filed in April 2008	Compounding still pending (December 2012).
Uttarakhand		
12. M/s Kailash Medical Hall, CIT Dehradun	Compounding fees in respect of two cases were remitted in June 2004.	Even after nine years of payment of applicable fees, case is still pending.
Uttar Pradesh		
13. Tilak Raj Sharma CCIT Kanpur	Compounding petitions filed in October 2009	Compounding still pending (March 2013).
14. Smt Smita Shrivastav CCIT Kanpur	Compounding petitions filed in March 2010	Compounding still pending (March 2013).
15. M/s Jain Collections Agra CCIT Kanpur	Compounding petitions filed in June 2010	Compounding still pending (March 2013).

Thus, ITD is unwilling to settle even those cases which fulfill the criteria laid down in CBDT's circulars resulting in wasteful expenditure, infructuous work as also clogging of the Court proceedings.

The Ministry stated (October 2013) that the cases are being examined.

ITD has not acted in consonance with National Litigation Policy

3.10 National Litigation Policy

The National Litigation Policy (June 2010) of Ministry of Law, is based on the recognition that the Government and its various agencies are the predominant litigants in the Courts and the Tribunals in the country. Its aim is to

transform Government into an efficient and responsible litigant. This policy is also based on the recognition that it is the responsibility of the Government to protect the rights of citizens; to respect fundamental rights and those in charge of the conduct of Government litigation should never forget this basic principle.

Offences punishable under sections 275, 276B, 276BB, 276DD, 276E, 277 and 278 of the Act have been classified as technical offences⁶⁷. Table 3.27 shows pending cases in the Courts under various punishable sections across the state.

Table 3.27: Pending prosecution cases relating to technical offences

State	276B	276 DD	276E	Others	Total
1. Andhra Pradesh	1	0	0	0	1
2. Assam	0	0	0	0	0
3. Bihar	4	2	0	0	6
4. Jharkhand	0	0	0	0	0
5. Delhi	25	0	0	0	25
6. Gujarat	14	0	0	0	14
7. Haryana	0	5	1	0	6
8. Himachal Pradesh	0	0	0	0	0
9. Jammu & Kashmir	0	0	0	0	0
10. Karnataka	2	0	0	43	45
11. Kerala	3	0	0	0	3
12. Madhya Pradesh	7	0	0	0	7
13. Maharashtra	83	3	4	1	91
14. Odisha	1	1	0	27	29
15. Punjab	80	1	0	0	81
16. Rajasthan	1	0	0	0	1
17. Tamil Nadu	12	0	0	0	12
18. Uttarakhand	0	0	0	0	0
19. Uttar Pradesh	29	38	12	0	79
20. West Bengal	43	13	1	0	57
Total	305	63	18	71	457

Jharkhand - No case records available; Maharashtra - Details of income tax section not available in 24 cases.

⁶⁷ Instruction No: 5206 dated 30.9.1994 and F. No 285/90/2008-IT (Inv)/12 dated 16.05.2008

A study of the cases pending across the states reveals that a large number of cases of technical offences are pending litigation in the Courts. In terms of NLP, the Government needs to be a responsible litigant. 'Responsible Litigant' implies that litigation will not be resorted to for the sake of litigating and that technical points will not be taken and shall be discouraged. Under the circumstances, it is not clear as to what action has been taken to clear/dispose of these cases involving technical offences.

Prosecution machinery of ITD was used to handle individual assesseees and low money value cases, not against systematically organized entities.

3.11 Selection of cases for prosecution

As per Wanchoo Committee Report, ITD is to ensure that selected cases represent a cross section of the society, different regions and all walks of life viz. persons in employment, profession, trade, industry etc. The thrust of prosecution by revenue administration is intended to have a demonstrative impact across the society that tax evasion would be dealt with an iron hand. Greater stress is laid on offences involving tax frauds, fabrication of evidence and major defaults⁶⁸. Accordingly, it is imperative for the field formations, in particular the sanctioning authority, to implement prosecution provisions keeping in view the overall compliance philosophy. We sought to examine whether the above objective had been applied in letter and spirit whilst initiating prosecution on the following parameters:

3.11.1 Value of tax evasion involved in pending cases

As revenue administration is primarily meant for mopping up due revenues to the government, all its activities also are largely based upon the money value involved. As prosecution is in a different league of operation, it is imperative that such extreme steps are taken only in cases involving large tax impact. Our study revealed the following:

⁶⁸ Instruction No 5051 dated 07 February 1991

Table 3.28: Prosecution cases with money value involved

States	Below 1 lakh	1-3 lakh	3-5 lakh	5-10 lakh	10-25 lakh	25-50 lakh	50-100 lakh	Above 1 crore	Not quant ified	Total
1. Andhra Pradesh	2	2	1	3	6	0	3	21	0	38
2. Assam	1	1	1	0	0	0	0	0	12	15
3. Bihar	0	0	1	2	1	3	0	7	99	113
4. Jharkhand	NA	NA	NA	NA	NA	NA	NA	NA	NA	119
5. Delhi	7	15	7	25	14	22	9	10	83	192
6. Gujarat	60	54	13	22	15	8	15	19	150	356
7. Haryana	14	4	5	0	0	2	0	0	25	50
8. Himachal Pradesh	1	0	0	2	1	0	0	0	3	7
9. Jammu & Kashmir	4	2	0	1	2	2	1	2	4	18
10. Karnataka	11	10	1	4	4	5	0	4	11	50
11. Kerala	1	5	0	2	1	1	2	1	11	24
12. Madhya Pradesh	8	6	4	6	3	0	0	0	21	48
13. Maharashtra	76	37	10	12	18	11	8	12	220	404
14. Orissa	4	10	5	5	1	0	0	0	28	53
15. Punjab	43	27	9	12	2	2	4	0	93	192
16. Rajasthan	1	1	0	0	0	0	0	0	106	108
17. Tamil Nadu	73	4	0	5	5	3	2	2	33	127
18. Uttar Pradesh	11	5	3	4	2	0	0	3	174	202
19. Uttarakhand	2	1	1	0	0	0	0	0	18	22
20. West Bengal	89	52	11	17	10	15	16	27	62	299

Jharkhand : No case records available

We found that a large number of cases related to tax evasions below ₹ 10 lakh or those where no money value had been quantified. Details of revenue involved were not available even in cases launched for suspected tax evasion. Ministry may like to review the basis on which prosecution cases are being launched and its actual impact on revenue.

3.11.2 Prosecution on low value cases

As per the Court's judgment, the grant of sanction for prosecution is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to the persons against frivolous prosecutions and must therefore be strictly complied⁶⁹ (See Box 3.11 and Table 3.29).

⁶⁹ Mohd. Iqbal Ahmed v. State of Andhra Pradesh [AIR (1976) SC 677, 679] and Balram Swain v. State of Orissa [(1991) 1 SCC 510 (SC)]

Box 3.11: Illustrative cases of prosecution of low value case.

In Tamil Nadu CIT TDS Chennai charge, prosecution was initiated on 70 assesseees (all Government servants), in February 2000 for an offence u/s 276 C(2) for incorrect claim of deduction u/s 80DDB based on certificates issued by doctors as a result of which tax was deducted at a lower sum. Tax sought to be evaded was quantified at ₹ 4,500 in each case. The complaint extrapolated and estimated the loss of revenue at ₹ 75 lakh.

The assesseees, before receipt of the copy of the complaint paid the tax dues of ₹ 2,576 subsequent to which summons were issued from the Court in June, 2000. The assesseees also submitted applications for compounding. Compounding fees was fixed at ₹ 4,950 which was paid by the assesseees. In January 2005, the Prosecution Counsel supported a lenient view as applicable taxes and fees had been paid. ITO (TDS) also supported the view (December 2004 and June 2005).

Audit scrutiny revealed that Prosecution had been launched on the assesseees even before due date of filing of return under the preconceived notion that assesseees intended to defraud revenue. Tax loss was comparatively too meager to be proceeded with prosecution. Prosecution had been initiated enmass on a set of people without going into the merits of individual cases. The reasoning was blurred that there was mass tax evasion going on, whereas the provisions of the Act are prescriptive to grave cases. What could have been achieved by a rectification (u/s 154) or scrutiny [143 (2)] notice was needlessly escalated for prosecution. The nature and number of cases have clogged the ITD machinery as also the time of the Courts towards no purpose.

The Ministry stated (October 2013) that the cases are being examined.

3.11.3 Purpose of prosecution

The primary purpose of revenue statutes is to collect revenue legally due and all other purposes become secondary or supportive to this primary cause. Under the circumstances we sought to analyse the cases on the following criteria:

- a. Whether prosecution had been launched on habitual offenders or were based on sporadic individual events.
- b. Whether there were cases indicating a system or design to defraud revenue on sustained basis with impact over a period of time
- c. Cases detected new assesseees or were initiated on existing assesseees.

The basis or value on which prosecution has been initiated in a large number of cases does not indicate systemic effort at defrauding revenue. A Ministry Report of May 2012⁷⁰ highlights how black money is generated and the

⁷⁰ White Paper on Black Money

efforts to tackle the same. The report highlights the action taken⁷¹ after a High Powered Committee was constituted under orders from the Court. No such cases involving systemic fraud were in the pending list of prosecution prior to FY 09.

Supreme Court has ruled that the purpose of revenue statutes should be to collect revenue and not to punish. Ruling in the case⁷² of Central Excise and Customs Act, the Supreme Court held that *'the language of the Scheme of Central Excise Act seems to suggest that the main object of the enactment of the said Act was the recovery of excise duties and not really to punish for infringement of its provisions'*.

We collected data on assessee wise number of complaints across the state which is shown in table below:

Table 3.29: Category wise cases

State	Individuals	Firms	Corporate	Others	Total
1. Andhra Pradesh	12	1	25	0	38
2. Assam	7	1	0	7	15
3. Bihar [§]	41	18	5	49	113
4. Jharkhand	75	16	21	7	119
5. Delhi	56	15	49	43	163
6. Gujarat	181	67	88	20	356
7. Haryana	12	28	4	6	50
8. Himachal Pradesh	3	4	0	0	7
9. Jammu & Kashmir	16	1	1	0	18
10. Karnataka	40	5	5	0	50
11. Kerala	14	8	2	0	24
12. Madhya Pradesh	28	8	12	0	48
13. Maharashtra [§]	155	109	128	12	404
14. Orissa	6	3	1	43	53
15. Punjab	56	84	24	29	193
16. Rajasthan	56	16	36	0	108
17. Tamil Nadu	120	0	7	0	127
18. Uttar Pradesh	101	70	22	9	193
19. Uttarakhand	12	10	0	0	22
20. West Bengal	146	80	124	0	350
Total	1,137	544	554	216	2,451

§ Others includes cases where no details of status were available.

⁷¹ Due to the five pronged strategy and other efforts made by the government in last two financial years [FY 2009-12], we have achieved substantial success both in getting information of illicit money parked outside the country and in stopping transfer of illicit money outside the country.

⁷² Om Prakash & Anr vs Union of India & Anr. on 30 September, 2011.

The above table indicates that the complaints are adversely biased against individuals and not against corporate, or systematically organized entities though the scope for large scale evasion is more endemic in the latter.

Audit is of the opinion that organised fraud and high impact cases need to be focused upon such entities as the tax evasion quantified in frauds by individuals is very meager.

On low value cases, the Ministry stated (November 2013) that these are part of larger malaise and needs to be tackled to confront systematic malpractices.

The Ministry has not ensured the coordination among various institutions under Central Economic Intelligence Bureau to arrest tax evasion by prosecution.

3.12 Coordination amongst Enforcement agencies

The Central Economic Intelligence Bureau (CEIB) was established to facilitate coordination amongst the Enforcement Agencies dealing with economic offences and ensure operational coordination amongst them. The agencies were to formulate a coordinated strategy for action against tax evaders. As prosecution is one of the major tools of revenue administration, we sought to examine the interplay between the enforcement agencies implementing Direct and Indirect tax regimes. We attempted to examine whether there were cases involving coordinated efforts at least where prosecution had been launched as the impact of tax evasion under one revenue statute would also impact other revenue statutes.

Table 3.30: Prosecution under CBDT and CBEC

State	Direct Taxes	Indirect Taxes			Total
		Customs	Central Excise	Service Tax	
Delhi	192	141	43	NA	184
Gujarat	351	NA	423	NA	423
Karnataka	59	37	10	NA	47
Maharashtra	404	467	NA	NA	467
Tamil Nadu	127	NA	53	NA	53

NA Not available

We were not able to find one single case which was common to enforcement agencies under the ITD or the Central Excise and Customs Department. Though technical offences covering reporting obligations under the revenue Acts are different, those initiated for suspected tax evasion should have attracted similar action under other revenue statutes which is absent. Thus, the cases being initiated do not address systemic frauds against revenue but individual and stray instances.

We were unable to derive an assurance that coordinated efforts were being made at least in this important aspect of tax evasion which warranted prosecution of an assessee.

3.13 Recommendations

We recommend that

1. The Ministry needs to ensure instituting a more robust mechanism for identifying cases for prosecution which takes into account timeliness; quantum of tax evasion; and contemporary impact.

The Ministry while describing the existing procedure, stated (October 2013) that Central Action Plan 2013-14 lays down targets in respect of identification of appropriate cases. The level of review/monitoring in some cases has been escalated upto level of zonal Members of CBDT. They have constituted a committee in June 2013 to review the Prosecution Manual 2009 and suggest ways and means to strengthen the prosecution mechanism.

2. CBDT should ensure posting of a designated and experienced Nodal officer to handle prosecution at the field level with independent charge. CBDT is to ensure periodical interaction amongst authorities (like quarterly) so that status of a case is ascertainable at any point of time.

The Ministry stated (October 2013) the ongoing re-structuring of the ITD is expected to improve the situation.

3. CBDT should take up work of cleaning of records and data bases to ascertain actual pendency and status of prosecution cases at various levels. CBDT should ensure maintenance of updated prosecution records at all levels.

The Ministry stated (October 2013) that the ongoing re-structuring of the ITD and implementation of ITBA, would facilitate maintenance of proper records and follow up action. They stated that ITBA would be operational by April 2015.

The Ministry further stated (November 2013) that new ITBA is developing functionalities for the Administration of Prosecution and covers the provisions for Prosecution viz (i) Capability to record evidence, (ii) Maintain escalation matrix, (iii) Ability to obtain approval from the CCIT, (iv) Capacity to capture comments at each level of organizational hierarchy, (v) Ability to issue show cause notice and

(vi) Ability for AO to make changes in accordance with the jurisdictional session Court order.

4. CBDT should ensure periodical physical verification of prosecution related files.

The Ministry stated that (October/November 2013) that instruction to its field formation would be issued.

We feel that CBDT should ensure effective monitoring of these instructions.

5. Ministry needs to streamline the mechanism for appointment and evaluation of departmental counsels representing the ITD before judicial authorities. The remuneration rates also need a relook in accordance with the tasks associated so as to avail and retain the services of experienced counsels.

The Ministry stated (October 2013) that the draft of detailed instruction for appointment of Prosecution Counsels has been sent to Ministry of Law and Justice for concurrence and matter is being followed up.

6. The Ministry may ensure regular coordination with the administrative authorities in the Courts so that cases are properly represented.

The Ministry stated (October 2013) that CBDT has asked its field formations to ensure regular coordination with the administrative authorities in the Courts for expeditious disposal of prosecution cases.

We feel that CBDT may ensure that the coordination mechanism is effective.

7. CBDT should perform one time exercise to identify the stage of pendency of all cases in the various Courts and follow it actively for resolution.

The Ministry stated (October 2013) that CBDT has initiated such an exercise in respect of pending cases.

8. CBDT should consider compounding offences before launching the prosecution proceedings so that revenues are collected.

The Ministry described (October 2013) the existing mechanism for compounding of offences.

We feel that the existing mechanism should be implemented in letter and spirit.

9. CBDT should deploy prosecution machinery for high impact cases and avoid focussing on low impact cases.

The Ministry stated (October 2013) that the steps to streamline prosecution machinery are being taken.

New Delhi

Dated: 13 December 2013



(MANISH KUMAR)

Principal Director (Direct Taxes)

Countersigned

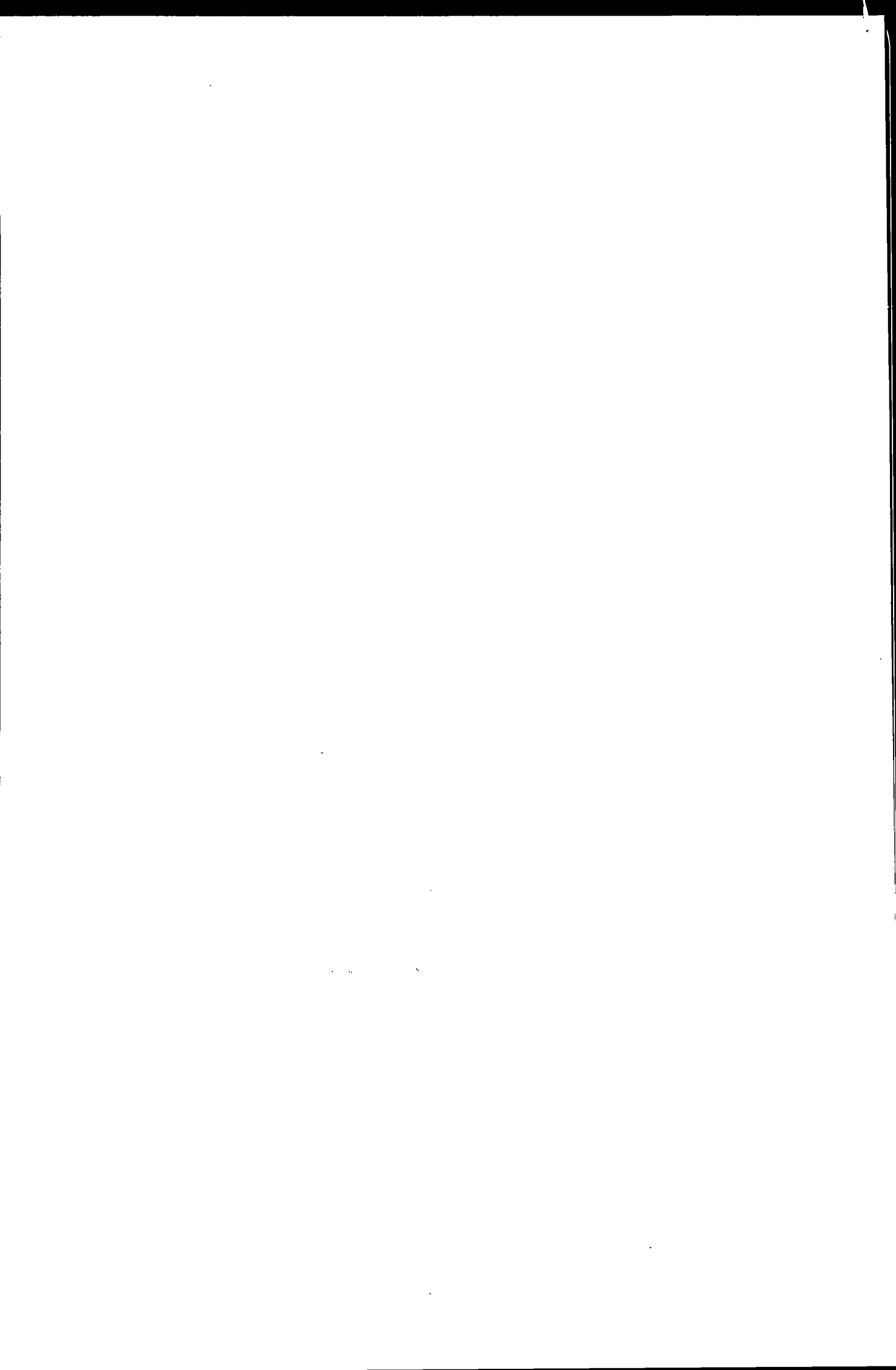


New Delhi

Dated: 13 December 2013

(SHASHI KANT SHARMA)

Comptroller and Auditor General of India



Annex A

Penalty and Prosecution provisions under Income Tax Act

Penalty Provisions

Section	Brief of the provisions	Minimum Penalty	Maximum Penalty
140A(3)	Failure to pay income tax and/or, interest in accordance with Section 140A(1)	Such amount as the AO may impose.	Tax in arrear
221(1))	Default in making payment of tax within prescribed time	Such amount as the AO may impose.	Tax in arrear
271(1)(b)	Failure to comply with a notice under section 142(1) or 143(2) or with a direction issued under section 142(2A)	₹ 10,000 for each failure.	₹ 10,000 for each failure
271(1)(c)/ (d)	Concealment of particular income or furnishing of inaccurate particulars of income.	100 per cent of tax sought to be evaded.	300 per cent of tax sought to be evaded.
271A	Failure to keep or maintain information or documents etc. as required u/s 44AA	₹ 25,000	₹ 25,000
271AA	Failure to maintain information or documents etc. in respect of international transactions.	Two per cent of the value of such transaction.	-
271AAA	Undisclosed income in the case of Search (applicable from 01/06/2007).	10 per cent of the undisclosed income of the specified previous year.	-
271B	Failure to get the accounts audited u/s 44AB or furnish such information as required u/s 44AB.	Half per cent of the total sales turn over or gross sales.	₹ 1,00,000
271BA	Failure to submit the report u/s 92E	₹ 1,00,000	-
271C	Failure to deduct tax as required u/s 192 to 195 or, failure to pay the tax as required u/s 115-O(2) or second proviso to section 194B.	Amount of tax such person failed to deduct or pay.	-
271CA	Failure to collect the tax at source.	100 per cent of tax such person failed to collect.	-
271D	Accepting loan or deposit in contravention to the provision of section 269SS.	Amount of loan or deposit accepted.	-

271E	Repayment of loan or deposit in contravention to the provision of section 269T.	Amount of loan or deposit paid.	-
271F	Failure to furnish return of income as required by section 139(1) before the end of relevant AY.	₹ 5,000	-
271FA	Failure to furnish Annual Information return within prescribed time as required by section 285BA(1).	₹ 100 for every day of failure	-
271FB	Failure to furnish the return of Fringe Benefits.	₹ 100 for every day of failure	-
271G	Failure to furnish information or documents u/s 92D.	Two <i>per cent</i> of value of such transaction	-
272A(1)(a)	Failure to answer any question put to any person by an Income Tax Authority.	₹ 10,000 for each default.	₹ 10,000 for each default.
272A(1)(b)	Failure to sign any statement made by a person in course of income tax proceedings.	₹ 10,000 for each default.	₹ 10,000 for each default.
272A(1)(c)	Failure to comply with summons issued u/s 131(1) to give evidence or produce documents.	₹ 10,000 for each default.	₹ 10,000 for each default.
272A(2)	<p>Failure to comply with a notice</p> <ul style="list-style-type: none"> • u/s 94; to give notice of discontinuation of business/ profession u/ 176(3); • to furnish return/ statements mentioned in sections 133,206,206C, or 285B; • to allow inspection of registers referred in section 134; • to furnish return of income u/s 139(4C) or 139(4A) or to deliver in due time a declaration mentioned in section 197A or 206C(1A); • to furnish certificate as required u/s 203 or 206C; <ul style="list-style-type: none"> • to deduct and pay tax u/s 226; to furnish statement as required u/s 192(2C); • to deliver a copy of statement of TDS/ TCS u/s 200(3)/ 206C(3); • to deliver return u/s 206A. 	₹ 100 for every day during which defaults continues.	₹ 100 for every day during which defaults continues.

272AA	Failure to comply with section 133B.	Any fine up to ₹ 1,000 ₹ 1,000	
272B	Failure to comply with section 139A.	₹ 10,000	-
272BB(1)	Failure to comply with section 203A.	Up to ₹ 10,000.	₹ 10,000
272BB(1A)	Failure to quote Tax Deduction or Tax Collection Account Number. (From 1/6/2006).	₹ 10,000	-
272BBB	Failure to comply with the provision of section 206CA (from 1/06/2002 but before 1/10/2004).	₹ 10,000	-
273A / AA	These sections empower the CIT to grant immunity from penalty.		
273 B	Penalty not to be imposed in certain cases if assessee proves that there was reasonable cause for the said-failure.		
274	Procedure for imposing Penalties		
275	Bar of limitation for imposing Penalties		

Prosecution Provisions

Section	Nature of offences	Punishment Rigorous imprisonment
275A	Dealing with seized assets: contravention of prohibitory /order for constructive seizure u/s 132(3)/ second proviso u/s 132 (1).	Up to two years & fine
275B	Failure to comply with the provisions of Section 132 (1) (iib), in relation to affording facilities to inspect.	Up to two years & fine
276	Fraudulent removal, concealment, transfer or delivery of any property to thwart tax recovery.	Up to two years & fine
276A	Failure to comply with provisions of 278(1) & 278(3).	Up to two years & fine
276B	Failure to pay tax to the credit of the Central Government (TDS) or failure to pay to the Government tax u/s 115-O	Three Months & fine
276BB	Failure to pay the tax collected at source	Three months & fine
276C(1)	Willful attempt to evade tax, penalty or interest	If tax evaded exceeds ₹ One lakh, six months to seven years & fine, otherwise:
276C(2)	Willful attempt to evade the payment of any tax, penalty or interest.	Three months to three years & fine
276CC	Willful failure to furnish return of income u/s 139(1)/ 142/148 or 153A or 115WD(1)/115WH(FBT)	Do
276D	Willful failure to produce accounts and documents as directed by issue of notice under section 142(1)	Up to one year or fine @ ₹ four to 10 for each day of default or both.
277	Making a false statement in verification or delivering a false account or statement	If tax evaded exceeds ₹ one lakh six months, otherwise: three & fine
277A	Falsification of books of accounts or documents etc.	Three months (and fine)
278	Abetment to make false statement or declaration	If tax evaded exceeds ₹ one lakh, six months , otherwise: three months & fine
278A	Punishment 2 nd and subsequent offences in cases of certain defaults	Six months for every offence
278B & 278C	Offences committed by companies, firm, HUF, criminal liability of managing director, managing partner, kartha or any such officer, who willfully committed the offences for the company/firm/HUF.	Same as in the case of the company/firm/HUF
280(1)	Disclosure by a public servant in contravention of section 138(2)	Any period of six months & fine

Penalty provisions under Wealth Tax Act

Section	Brief of the provisions	Minimum Penalty	Maximum Penalty
15B(3)	Failure to pay tax or interest payable on self-assessment.	Not exceeding 100 <i>per cent</i> of tax in arrears.	-
18 (1)(ii)	Failure to comply with the notice u/s 16(2) or (4) without reasonable cause	₹ 1,000	₹ 25,000
18(1)(iii)	Concealment of wealth	100 <i>per cent</i> of tax sought to be evaded	500 <i>per cent</i> of tax sought to be evaded
18A(1)(a), (b) and (c)	Failure to answer question (i) legally bound, (ii) sign statement, (iii) comply with summons	₹ 500 for each failure	₹ 10,000 for each failure
18A9(2)	Failure to furnish statement	₹ 100 per day of failure	₹ 200 per day of failure
32	Default in payment of tax	Not exceeding 100 <i>per cent</i> of tax in arrears.	

Abbreviations

AC	Assistant Commissioner of Income Tax
ACMM	Additional Chief Metropolitan Magistrate
AO	Assessing Officer
AST	Assessment Information System
AY	Assessment Year
BIFR	Board for Industrial and Financial Reconstruction
CBDT	Central Board of Direct Tax
CCIT	Chief Commissioner of Income Tax
CCIT (CCA)	Chief Commissioner of Income Tax (Cadre Controlling Authority)
CEIB	Central Economic Intelligence Bureau
CIT	Commissioner of Income Tax
Cr PC	Criminal Procedure Code
DDIT	Deputy Director of Income Tax
DGIT	Director General of Income Tax
EOC	Economic Offences Court
FY	Financial Year
ITAT	Income Tax Appellate Tribunal
ITD	Income Tax Department
ITO	Income Tax Officer
JCIT	Joint Commissioner of Income Tax
JDIT	Joint Director of Income Tax
MIS	Management Information System
MOP	Manual of Procedures
MPR	Monthly Progress Report
NLP	National Litigation Policy
PA	Performance Audit
PAN	Permanent Account Number
QPR	Quarterly Progress Report
TCS	Tax Collected at Source
TDS	Tax Deducted at Source
