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Institute of Public Auditors of India
223, 2nd Floor, 'C' Wing, AGCR Building,
I.P. Estate, New Delhi-110002
Ph.: 91-011-23702330, 23702290, 23454326, 23702369
Fax: 91-011-23702295
E-mail: ipai.hq@gmail.com, ipai@bol.net.in
Website: www.ipaiindia.org

The Institute of Public Auditors of India (IPAI)

The Institute of Public Auditors of India (IPAI) was established in 1996 with the main objective of assisting the authorities in establishing sound accounting, auditing and financial management practices. The Institute has established itself as a leading Institute in the country in the areas of management consultancy, audit and investigative examination, evaluation of programmes, system appraisals and setting up systems for efficient functioning of the organisation / departments of the central and state governments and local bodies. IPAI has a presence across the country through its eighteen Regional Chapters located at Ahmedabad, Allahabad, Bangalore, Bhopal, Bhubaneshwar, Chandigarh, Chennai, Guwahati, Hyderabad, Jaipur, Kolkata, Lucknow, Mumbai, Patna, Ranchi, Shimla, Srinagar and Thiruvanthapuram. Each Chapter is equippred to undertake consultancy assignments and organize training programmes.

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FROM THE PRESIDENT'S DESK

The first issue of the Journal after the constitution of new Central Council in April 2015, now in your hand, covers a wide spectrum particularly issues relevant for Governance and Performance Audit. IPAI is publishing its Journal for over 10 years and 18 issues have been published so far. The Journal disseminates knowledge and professional information to a wide readership. I request our esteemed readers to contribute for this Journal. Articles should broadly cover aspects relating to Public Accountably, Financial Management, Accounts, Audit, Public Administration with focus on Good Governance.

Institute encourages critical thinking, research and originality in interpretation and presentation of views and factual correctness of the information adduced in the articles for our Journal. I would request you to send two printed copies of the article alongwith a soft copy in a word processing format. It is our policy that the articles published in the IPAI Journal do not contain any criticism of the administrative policies of the CAG of India.

I am pleased to acknowledge contribution by authors and the newly formed Editorial Board. I feel the readers will find the Journal stimulating and interesting. I welcome comments on the articles and suggestions for improving the quality of Journal.

ANUPAM KULSHRESHTHA

EDITORIAL

The Editorial Board constituted in April 2015, is happy to present its first issue of the IPAI Journal. Democracy lives and dies with free and fair elections. The issue features a speech delivered by Shri V.S. Sampath former Chief Election Commissioner for T. Narasimhan Memorial Lecture at Chennai in March 2015 organized by Tamil Nadu Chapter of IPAI. He shared his views on holding the elections in India in a free and fair manner. He mentioned that the Commissions' effort had always been to ensure that the political government stays within its limits in terms of new policy initiatives that may have the potential of influencing the electorates or provide any significant gains. It is this balance that gives all parties the confidence of free and fair election and makes Indian election truly the gold standard in Election Management worldwide.

In our usual feature Auditor's Notebook ShriDharamVir discusses two subjects: Fiscal federalism Patriarchal, Cooperative and Competitive; and CAG and Accountability.

On fiscal federalism, the author describes the paradigm shift in the financial relations between the Union and the States, following the award of the Fourteenth Finance Commission and its implementation in the Union budget 2015-16, from patriarchal federalism that considered the States as supplicants to a cooperative relationship that regards the States as partners in the process of national development. He also suggests that the States should be incentivized for competitively securing best value for money by developing quantitative and monitor able indicators in matters of fiscal discipline, financial management and programme performance.

The second subject deals with the age-old question: who audits audit. The author is quite emphatic that any suggestion for audit of CAG's accounts by an agency other than the CAG will invite the wrath of Articles 149 and 151 of the Constitution. Nevertheless the CAG's organization is not immune from legislative oversight since its budget is subject to scrutiny by the Standing Committee and the Estimates

Committee of the Parliament while it is accountable for exceeding its budget as well as for significant shortfalls in expenditure.

An evaluation of the effectiveness of social welfare programmes poses a challenge since the benefits of such schemes fructify over a long duration of time and are not easy to delineate. Shri T. Sethumadhavan in his article has focussed on increasing public awareness of the role of government and need for transparency in administration. Performance audit is increasingly becoming citizen-centric and will have to focus more on the effectiveness of social welfare programmes vis-à-vis the aspirations of the people. Although social auditing is a transparent audit process which involves the beneficiaries themselves, the thrust of social audit, as devised, is to verify the economy and compliance aspects of public expenditure made available for the relevant programme. According to the author an exercise such as the Citizen Report Cards (CRC) devised by the Public Affairs Centre (PAC) in Bangalore and replicated in some developing countries at the initiative of the World Bank appears to offer a viable alternative. The feasibility of amalgamating beneficiary feedback through a well-structured beneficiary survey conducted with the help of experts as in CRC will provide significant value addition to performance auditing and deserves active consideration. However, reconciling the audit rigour of performance audit with amorphous character of citizen survey will be a real challenge to the protagonists of this amalgamation.

Performance audit is total audit in the sense that it is value for money audit which encompasses programme effectiveness which can come through efficient implementation keeping least cost in view without compromising the objective of effectiveness. Shri L.V. Sudhir Kumar in his article reviewed literature on performance auditing. Studies conducted by several scholars through review of performance audits carried out in different countries indicate that there can be different shades of performance audit. Attempts have been made over time to expand it to include everything from economy, effectiveness to policy. While some researchers have pointed out the extent of overlap between compliance aspects and performance aspects in the

performance audit reports, others have examined the influence of financial auditing on the performance audit. The author, however, highlights that the issue at the core of performance audit is operational efficiency.

It is not an exaggeration to say that governance to be delivering has to convert itself into e-governance. E-Governance is not just a buzz word or mantra but the in - thing in governance now. Whether in government functioning or corporate domain, it is all about digital India taking giant strides. In his article, Shri K. P. Shashidharan reviews critically the recent CAG's Report No. 20 of Union Government on Ministry of Communication and Information Technology, specifically Chapter 4 of the Report which evaluates the projects undertaken by Department of Electronics and Information Technology.

As in every government project, e-governance projects have faced time over run, cost overrun, quality issues and non-coordinated, ineffective functioning of Central, State/UT governments and allied agencies involved in implementation of the project. Laxity in monitoring and taking timely steps for preventive and corrective actions is reflected in every process and stage of execution. The author feels that it is high time government improves its project implementation approach and methodology. There may be need for better accountability amongst the bureaucrats and those who are charged with authority, power and responsibility to execute government projects on time.

In the Document section, we have included an informative and interesting document on "The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015". The current political and economic scene is abuzz with the word Black Money with the Government declaring its intention to unearth black money inside and outside the country. This is in keeping with our practice to present to readers a document of current relevance.

AJIT PATNAIK
Editor

GOVERNANCE IN ELECTIONS IN INDIA

V. S. Sampath*

I deem it my privilege to be invited to deliver the 3rd (late) T. Narasimhan memorial lecture on a subject relating to good governance and accountability. I am fortunate to have personally met and interacted with Shri Narasimhan sometime in 1980 when he was the Accountant General, Andhra Pradesh.

It is a noble endeavor and fitting tribute to the memory of Shri Narasimhan that the Institute of Public Auditors of India is organizing the lecture event on every memorial day of ShriNarasimhan on a topic related to good governance and accountability. I am very happy to share with you today some of my thoughts on Governance in elections.

As you may be aware, I retired as the Chief Election Commissioner of India after spending nearly six years in the Commission, and having supervised two general elections and all the state elections at-least once (and some like Maharashtra, Jharkand, Haryana and Delhi more than once). During my tenure, I always worked as the senior most member of a three member commission. Keeping in view the spirit of the multi-member commission, I never took to expressing my views individually in public and preferred to let the decisions of the Commission speak for themselves.

Each CEC has his own style of functioning and attempts to leave his legacy on the working of the commission. During my

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* Address by Shri V.S. Sampath, former Chief Election Commissioner of India at the 3rd T. Narasimhan Memorial Lecture organized by IPAI Tamil Nadu Chapter on 14th March 2015 at Chennai.

tenure, I have tried to make the EC evolve from being a politician centric poll watchdog to a techno-savvy voter centric organization. In my talk today, I will endeavour to give you some insights into the working of the Commission, with specific examples:-

Governance in elections is looked at in two of its distinct aspects. One is the governance of elections (i.e. the core function of election commission of India, election management). The other one is governance during elections – governance of the state or center which goes to polls, the governance of which will indirectly but significantly devolve on the Election Commission by virtue of operation of model code of conduct.

Governance of election – Election Management Article 324

Article 324 of the Constitution vests in the Commission the responsibility of conducting elections to the Houses of Parliament and State Legislatures and to the office of President and Vice-President.

Constitution also provides that the President or the Governor shall make available to the Election Commission such staff as may be necessary for the discharge of the functions conferred on the Commission.

The Election Commission draws the staff required for the conduct of elections from the Govt., Govt. Undertakings, Educational Institutions, Local Authorities, Govt. Companies, etc. The requirement of manpower for conducting elections for a vast country like ours is huge. For manning the polling stations alone (which number close to a million), the strength of staff required is about 5 million. An equal number would be required to provide other logistic support and security etc. In fact, India is unique in having government staff to conduct elections. However, to ensure neutrality of such staff, their total disciplinary control during the period of elections vests in the Commission. It is in fact this factor which accounts for very low cost in management of elections (less than a dollar per elector).

The election commission is not just a body of three commissioners operating from the Nirvachan Sadan in New Delhi. It is an organic body of Election Commissioners; Chief Electoral officers in state headquarters; District Magistrates and Superintendents of Police in Districts Sub Divisional and Taluka level officers going right down to the village with Booth level officers at the level of polling stations.

The credit for free and fair elections must go to everyone of them.

Security Factor

Security for conduct of the poll is a very important component in election management. While security for elections may be taken as given in today's circumstances, there was a time when rigging and booth capturing were widely prevalent during the elections. It is by making proper security arrangements the election commission could establish its credentials over a period of time ensuring free and fair elections. The central police force has become an essential component of security arrangements. In initial years most of the security was provided by state police forces. However, increasingly, the political parties, not of the ruling dispensation, started expressing serious want of confidence in the state police forces. Commission had to look to central police forces increasingly.

There was a time in early 1990s when the central government was reluctant to provide a single company of CPF for one of the elections. The matter had to be escalated to the Supreme Court. On the direction of the Supreme Court, the Home Ministry had to discuss the requirement of security forces with the Election Commission to provide adequate central police force for the election. This practice continues ever since and meeting with Home Secretary is one of the pre-requisites before election schedules are announced by the Commission.

Pro-active Election Expenditure monitoring

The Commission has in recent years started the pro-active exercise of monitoring the election expenditure of the candidates. Several teams of static and moving squads are formed for tracking expenditure and to combat illegal activities like attempt to bribery, distribution of goodies, etc. The Commission's teams have been able to intercept large amount of illegal cash (Over Rs. 300 crores during the 2014 General Elections) and liquor and even narcotics items set for distribution to the electors.

For enhancing the transparency and accountability in election management in the field, the Commission appoints Election Observers who are senior officers from a different State. The Observers play a pivotal role in ensuring free and fair election.

Free Hand to Indian Bureaucracy during election process

The success of the Indian Election is the success of the Indian bureaucracy. It is the much-maligned bureaucracy, which never gets its rightful due, that conducts flawless elections time after time. This is a question that has engaged the attention of political observers – how is it that the bureaucracy which is often accused to be slow and sluggish most of the time, becomes time bound and execution oriented during election time? Theories abound, but my personal view is that the Indian bureaucracy succeeds in the conduct of elections because the Election Commission gives them a free hand in managing the process. The degree of political interference that is witnessed in normal times is absent.

I have always endeavoured to uphold this freedom of decision-making, and insulating the poll-bureaucracy from political pushes and pulls. There have been several instances, even one where a prime ministerial candidate was denied permission for a rally at a particular venue by a young 35 year old district magistrate in Varanasi on security grounds. When the issue was brought to our notice, we took stock of the facts, and we stood by

the DM and his decision solidly, even in the face of criticism by the affected parties. The many senior and distinguished civil servants in this audience would agree that the best judge of law and order and security in a district is the district magistrate. All that we did as Election Commission, on that day, the day when we were monitoring the run-up to elections to another 70 parliamentary constituencies in the next phase of election due in 48 hours, was to examine whether the district administration had exercised due diligence in coming to their conclusion and whether the action was bona fide.

As Commission, we never allowed ourselves to be cowed down by the cacophony of criticism but stood by what we believed to be bona fide decision of the District Magistrate. One of my younger colleagues confided many months later that the bureaucracy in the field was anxiously watching how the Commission was going to respond to the **criticism against and demands for action** on the district administration, and whether we would stand by them. I am happy to inform today that we did not let them down.

Governance during elections

Model Code of Conduct

Free and fair elections form the bed-rock of democracy, which is a basic feature of the Constitution of India. Free and fair elections envisage that there is level playing field for the contestants. All of them should have an equal opportunity of presenting their policies and programmes to voters. The Model Code of Conduct (MCC) ensures such level playing field. The MCC is a set of norm for conduct and behavior on the part of the Parties and candidates, in particular. The uniqueness of the MCC is the fact that this was a document that originated and evolved with the consent and consensus of political parties. However, over a period of time even day to day administrative matters such as posting and transfer of officers and even promotions in some cases get referred to the Commission for approval.

Evolution of the Model Code

The origin of the MCC dates back to 1960 when the MCC started as a small set of Dos and Don'ts for the Assembly **elections** in Kerala in 1960. The Code covered conducting of election meetings/processions, speeches, slogans, posters and placards. In 1962 Lok Sabha General Election, the Commission circulated the code to all the recognized political parties and the State Governments were requested to secure the acceptance of the Code by the Parties. This continued in the subsequent elections.

For the Assembly elections in 1974 and the 1977 LokSabha general election, the Code was circulated to the political parties. In 1979, Election Commission, in consultation with the political parties further amplified the code, **adding a new Section placing restrictions on the "Party in power"** so as to prevent cases of abuse of position of power to get undue advantage over other parties and candidates. In 1991, the code was consolidated and re-issued in its present form.

Present Code

The present Code contains guidelines for political parties and candidates, regarding General conduct, stipulating that there shall be no attack on private life, no appeal to communal feelings, discipline and decorum to be maintained in public meetings and processions etc. The code also imposes restraints on party in power against misuse of Official machinery and facilities of government besides prohibiting ministers and other authorities in announcing grants or new schemes.

MCC got the judicial recognition of the highest court of land in *Union of India Vs.Harbans Singh Jalal and Others* [SLP (Civil) No.22724 of 1997)] decided on26.04.2001. This appeal arose from a decision of the High Court of Punjab and Haryana in which the High Court held that the Commission could enforce the model code of conduct from the date of announcement of election schedule by the Election Commission. The Union of India which challenged the

High Court's order arrived at a settlement with the Commission that the MCC would come into force from the date of announcement of election. The Commission also agreed that the gap between the date of announcement of election and the date of notification would ordinarily not be more than 3 weeks. More recently in another judgment (BalajiSubramaniam's case on election freebies) the Supreme Court has again held that the Model Code comes into operation from the date the Commission announces the election schedule.

Even during the short period when MCC is in operation, the ongoing development activities are not stopped and are allowed to proceed unhindered, and only the new projects which have not taken off on the ground that have to be deferred till the completion of elections. If there is any work that cannot wait for any reason like relief work on account of any calamity, etc), the matter can be referred to the Commission for clearance.

Challenges in 2014 - 15

One of the major challenges in recent times was the elections to the state of Jammu & Kashmir. Apart from the usual challenges of extremism and border tension, this time around, we also had to contend with devastating floods in the Kashmir valley (and Srinagar in particular). We were faced with a dilemma – do we let the electoral process continue and risk being seen as insensitive to the distress of the people, or do we stall the process which would have led to president's rule? This would have also resulted in break in the cycle of elections in the sensitive border state. One of the major decision points in this case was the criticism that relief efforts for flood victims would be affected during the model code period. However, we took a conscious decision to let relief activities continue unhindered and proceed with the electoral process. There were even veiled threats that if we proceeded with elections, there would be zero participation by the people in the affected areas. But we believed that the right of the people to exercise their mandate

should not be delayed or placed in abeyance. By taking special care that relief efforts were not hampered in any manner and with the untiring efforts of the poll machinery and the security forces, the elections were peacefully conducted. I take great pride that the people responded to our efforts with their whole-hearted participation, and the voter turnout was among the highest ever. In the recent few weeks though, I was amused to note that a senior leader chose to give credit across the border for the successful conduct of the J&K elections though the credit goes to the entire election machinery which includes all security forces .Another noteworthy feature in recent times is the completely peaceful and highly participative elections to the Jharkhand State Assembly in 2014, which is traditionally plagued by LWE activities

Governmental Decisions and the Election Commission

A major part of the governance component during the election period involves monitoring matters coming under the MCC – both aspects relating to activities of political parties and candidates as well as governmental decisions.

At one stage, the Commission observed that even matters related to armed forces were being referred to the Commission for clearance. There was the instance of appointment of new Naval Chief being referred to the Commission for its clearance. Then, as a policy, the Commission informed the Govt. that matters related to armed forces need not be referred to the Commission. However even this did not prevent the Government of the day from making a reference to us for clearance of the appointment of the Army chief. In keeping with its established convention of not interfering with matters pertaining to armed forces, the Commission allowed the process to continue.

Some of the toughest moments came when we have been asked to sit in judgment over economic decisions taken after the onset of the model code period. As a **civil servant** with **some** experience in economic ministries, I understand the time value of

these decisions. However, at the back of our mind, there is also the consideration that these decisions could have been taken much earlier, and are being taken at this time to influence public opinion. In such times, the Commission has been guided by the following parameters –

- If the decision is to be taken by an independent body (like bank licenses by the RBI under a statute), we usually do not step in.
- If systemic changes take place as part of a policy framework already set in motion (such as the increase of diesel and petrol prices in a deregulated regime), such changes are not interfered with.
- However, if a decision of the political government is likely to impact the mindset of people in the poll-going areas, we usually defer the decision to after the elections. For instance, during the elections in Kerala, we found that the state was enumerating new beneficiaries for a scheme under PDS that had been announced much before the elections. While we did not object to the continuance of the scheme, we were inclined to stop new enumerations, as such enumerations had the effect of influencing the mind of ~~any~~ new beneficiaries.

While we take flak for deferring decisions during the elections, in our defence, we must also state that several of the decisions that come for our approval do not even fall under the restrictions under the model code of conduct. Several routine and administrative issues come to the Commission for ~~our~~ approval, and in a large election like the General Election 2014, our machinery was inundated with such routine issues that should never have been referred to us in the first place. At one stage, we had to issue instructions that the references should be routed through the Cabinet Secretary in **Centre** and the Chief Secretaries in states

who should filter them and send only those issues to the Commission which would come under the ambit of the MCC.

Some people hold the view that the MCC which is not a statutory code lacks teeth and is not effective. Some have even demanded statutory status for MCC. The Commission is completely within its power to issue any directions to make free and fair elections happen. For the first time in the history of the Commission, we issued prohibition orders against some leaders in UP and Bihar when we found an increase in hate speeches in the 2014 general elections. They were prevented from addressing further public meetings during the elections. If MCC had been a statutory matter, no judicial process can react in a matter of 48 – 72 hours. Apart from silencing further such hate speeches, this created a precedent for swift and decisive action by the Commission to further the cause of free and fair elections.

Conclusion

In conclusion, I must say that the Commission's effort has always been to hold the delicate balance between the carrying on of day-to-day administration and at the same time, to ensure that the political government stays within its limits in terms of new policy initiatives that may have the potential of influencing the electors or provide any significant electoral gains. It is this balance that gives all parties the confidence of free and fair elections, and makes Indian elections truly the gold standard in Election management world-wide.

AUDITOR'S NOTEBOOK

FISCAL FEDERALISM: PATRIARCHAL, COOPERATIVE AND COMPETITIVE; (II) CAG AND ACCOUNTABILITY

Dharam Vir*

(i) Fiscal federalism: patriarchal, cooperative, competitive

The evolution of fiscal federalism in India has been generally characterized by increasingly larger transfer of resources from the Union Government to the States, though, to recall an interesting nugget of history, for some years prior to 1929 the sub-national jurisdictions (Provinces) were actually required to contribute to the Central kitty. Post independence the inherently unitary bias of the Constitution has resulted in skewed distribution of financial powers between the Union and the State Governments with a mismatch between their respective revenue raising powers vis avis their spending obligations (Seventh Schedule). Recognizing this, the Constitution mandates the setting up of a neutral body called the Finance Commission every five years (or even earlier) to make recommendations regarding the distribution of net proceeds of Union taxes between the Union and the State Governments (Article 280). The Commission is also mandated to make recommendations regarding the amount of grants-in-aid to the States as may be in need of assistance (Article 275).

Although the Constitution recognizes two categories of

*Shri Dharam Vir is a former Deputy Comptroller & Auditor General of India

expenditure viz; expenditure on revenue account and other expenditure (Article 112), the advent of planned development and the creation of the now-defunct Planning Commission saw the super-imposition of a distinction between Plan and non-Plan expenditure over the aforesaid categories. The terms of reference of successive Finance Commissions have generally excluded Plan assistance for devolution of resources to the States; a majority recommendation of the Third Finance Commission for bringing Plan as well as non-Plan expenditure within the scope of the recommendations of the Finance Commission was not accepted by Government.

Consequently, there have been two types of transfers of Union Government resources to the States; Finance Commission devolutions and grants and other transfers to the State Governments to meet Plan (and to a limited extent, non-Plan) expenditure; with the involvement of the Planning Commission. While in some cases, these relate to subjects that fall in List III—Concurrent List--of the Seventh Schedule, the Constitutional authority for the non- Finance Commission grants for subjects falling in the State list is provided by Article 282 of the Constitution in terms of which the Union Government may make any grants for any public purpose notwithstanding that the purpose is not one with respect to which the Union legislature may make laws. Article 282 thus provides the Constitutional authority for Union Government intervention in subjects like public health and sanitation; hospitals and dispensaries; water supplies, irrigation storage and canals, hydroelectric projects, drainage and embankments; fisheries; roads and bridges (other than national highways) ; money lending and relief of agricultural indebtedness etc. which are otherwise outside the jurisdiction of the Union Government. Several amendments to the Constitution which placed additional subjects like forests; population control and family planning; and education in the Concurrent List also expanded the scope for Union interventions.

Non- Finance Commission grants have been transmitted to the State Governments through several 'windows', like Normal Plan Assistance for State Plans, Additional Central Assistance for State Plans, Additional Central Assistance for implementation of externally assisted projects, Additional Central assistance for Centrally Sponsored Schemes etc. Some of these were formula-driven but many were discretionary in nature. The formula-driven grants were basically untied grants, while the other grants are generally considered discretionary. Also different types of fund-sharing arrangements were attached to non-Finance Commission grants requiring the States to make appropriate matching contributions. Over the years the non-Finance Commission transfers have overwhelmed the Finance Commission grants making the State Governments what the Justice Sarkaria Commission described as 'supplicants' instead of 'participants' in the process of national development[1]. The position had got accentuated with the proliferation of Centrally Sponsored Schemes; their number having risen to 147 at the end of the Eleventh Five Year Plan before these were collapsed into 70 schemes from 2014-15 following the implementation of Chaturvedi committee report[2].

To put the above in perspective, in some of the years the non-Finance Commission transfers almost equaled the Finance Commission transfers inclusive of the States' share of Union Taxes. Also, within the non-Finance Commission transfers, the share of discretionary transfers came to overshadow the formula-driven transfers. The pre-2014-15 practice of direct transfer of Union assistance to the implementing agencies for the Centrally Sponsored Schemes bypassing the State Government budgets further eroded the fiscal autonomy of the State Governments. A writer has even described this situation as one of financial imperialism of the Centre perpetrated mainly through an extra Constitutional body i.e. the Planning Commission[3]

[1] Report of the Commission on Centre State Relations

[2] Government of India: Report on the Committee on Restructuring of Centrally Sponsored Schemes

[3] Centre State Financial Relations in India edited by Dr. R K Sinha

The above has been a source of grievance with the State Governments; it not merely reduced their fiscal space and denied them the resources needed to devise and implement schemes that would meet the aspirations of the people in respect of subjects falling in the State List of the Seventh Schedule, but also saddled them with 'one- hat- fits- all-heads' type of schemes irrespective of the local requirements at the same time being discriminatory against States that were unable to find the necessary matching contributions in the Central scheme configuration. The distinction between Plan and non- Plan grants put a premium on Plan expenditure at the cost of essential maintenance expenditure. The dispensation introduced an element of uncertainty in the State budgets; sometimes the amount of Central assistance could be ascertained only after the State budgets had been prepared, presented and passed. Budget implementation too suffered because of endemic delays in the release of Central assistance, sometime even on the last day of the financial year. Frequently, political considerations also guided the Central grants. The practice of direct release of Central assistance to the State/district level implementing agencies diminished the comprehensiveness of State budgets, besides raising issues of accountability[4].

Accountability also suffered in general because of the divorce between authority (to formulate, design and fund, vesting in the Union) and accountability(for implementation that rested with the States) while at the Union level the multiplicity of agencies involved in the release of funds further led to the diffusion of accountability. The reliability of Government accounts was also compromised; while the Central releases are shown as expenditure, in actual practice large amounts remain unspent with the State Governments and the implementing agencies. These and related issues had been highlighted in Union Government's own Economic Surveys from time to time, besides being commented in the CAG's Audit reports.

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[4]DharamVir Implementation of Central Schemes : need for reforms in the Architecture of Public Financial Management and Accountability Indian Journal of Public Audit and Accountability January-June 2009

The States have also expressed discomfort even with the Finance Commission grants since in their view such grants remain frozen over the award period and do not permit their participation in any post Finance Commission future buoyancy in the Union receipts. The States have also been uncomfortable with the additional conditions which are attached by the Union Government with such grants. On the other hand the Union Government has had reservations about the Finance Commission grants because of possible duplication of transfers.

A careful reading of the relevant provisions of the Constitution might suggest that the principal instrument of ensuring equitable distribution of resources between the Union and the State Governments to redress vertical imbalances is through devolution of proceeds of Union taxes as recommended by the Finance Commission, while the other Finance Commission transfers are for specific purposes and so to say top up grants to States that may be in need of assistance for meeting their revenue deficits or for upgradation of capacities in specific areas of administration. Incidentally, while the Finance Commission provisions appear under 'Distribution of resources between the Union and the States' in Chapter I Part XIII of the Constitution, Article 282, which provides the Constitutional authority for several categories of Plan grants to States appears under 'Miscellaneous Financial Provisions'. Article 282 of the Constitution follows Section 150 of Government of India Act, 1935. According to the Expert Committee which examined the Financial Provisions of the Draft Constitution in 1947 this provision was needed 'since in the developmental stage of the country it will be necessary for the Centre to make specific purpose grants to the Provinces'. The Committee did not specifically look into the implications of two separate provisions in the Constitution for channelizing Union grants. **The minutes of the meetings of the Drafting Committee as well as proceedings of the Consembly do not provide evidence of any extensive deliberations on Article 282; in any case the over-use if not abuse of the provision could** not have been anticipated.

Be that as it may, States' persistent pleas to successive Finance Commissions for enhanced share in the Union taxes only resulted in such increases in small homeopathic doses and stood at 32 per cent of the net divisible pool prior to the Fourteenth Finance Commission. Unencumbered by the baggage of Plan non-Plan distinction by virtue of its terms of reference, and keeping in view the need for rebalancing the roles of the Union and States in economic management in general and fiscal management in particular and in line with the Seventh Schedule of the Constitution, the Fourteenth Finance Commission by majority of four to one has recommended raising States' share in Union taxes to 42 per cent thereby increasing the flow of unconditional transfers to the States. At the same time the Finance Commission grants have been restricted to meet the revenue deficits of fiscally challenged States and for disaster management and for grants to local bodies leaving sufficient fiscal space with the Union for intervention by way of schemes that have strong externalities.

This heralds a paradigm shift in Union State relations in favour of cooperative fiscal federalism bringing about greater symmetry between the resources and spending obligations of the State Governments who can plan, design, formulate and implement public welfare schemes in sectors like health, education and social welfare specifically tailored to their own local requirements. The formula- driven devolution will lead to a reduction in the dependence of the States on the discretionary transfers from the Union, bring about greater alignment between power and accountability and at the Union level may also result in rightsizing of sprawling bureaucracy hitherto engaged in planning, designing, financing and monitoring of developmental activities that are rightfully in the domain of the States.With disarming felicity the Finance Commission has described the new dispensation as change with continuity since according to its calculations it does not significantly alter the over-all extent of Union transfers to the States but merely alters the composition of the envelope with a bias in favour of non-discretionary transfers. There is also the implicit sub-

text that the reduced involvement of the Union Government in social sector schemes will be compensated by the States from their enhanced resources because of the additional Union Government tax devolutions.

The recommendations of the Finance Commission are reflected in the Union Government budget for 2015-16 with complete discontinuance of transfers like Central Grants for State Plan Schemes, delinking of eight schemes from Union Government support, and changed fund-sharing pattern for 24 schemes while the Central support for 31 schemes which arise out of legal obligations or are for the benefit of economically and socially marginalized sections of the society remains unaltered[5]. The elimination or reduced budgetary allocations for several of the existing schemes in sectors like health, education and social welfare has been a source of criticism, sometimes even from within the Government. However it ignores the implicit sub-text that the restricted involvement of the Union Government in social sector schemes because of reduced fiscal space will expectedly be compensated by the States, if desired under differently tailored schemes from their considerably augmented resources becoming available to them because of the additional Union Government tax devolutions. The revised scheme of Union transfers to the States has also been criticized on the ground that it might put the States at a disadvantage in years of under-performance of Union Taxes. This is disingenuous if not sophistry since irrespective of the devolution formula the amount that can be transferred to the States depends on what the Union gets in its kitty.

It has also been apprehended that despite the enhanced devolution of Union taxes, some of the less-endowed States might not be able to find resources to fully meet the minimum requirements of social sector spending. Ordinarily the fiscal disabilities of individual States would appear to have been factored in while fixing the amounts of revenue deficit grants by the Finance Commission which have been calculated on the basis of a normative assessment of their revenues and expenditures over the

[5]Expenditure Budget Vol. I 2015-16

award period. If some of the States are nevertheless in need of assistance, the Union will no doubt provide a leg up from its own resources on need basis in the spirit of true cooperative federalism. This will be in line with the intent of Article 282 of the Constitution as visualized by the Expert Committee. The Union is also expected to assist the States in transition management, considering that the acceptance of the Finance Commission report was announced in February 2015 when the State budgets were in an advanced stage of preparation and the revised dispensation has been rather abruptly implemented from 2015-16[6]. Incidentally, the lone member of the Finance Commission who recorded a minute of dissent to the Commission's report did not have any issue with the direction of majority recommendations but merely advocated a gradual approach. Interestingly, tucked in the Union budget for 2015-16 is a lump sum provision of Rs. 20000 crore under the head 'Central Assistance to States for which no details are given[7]. During evidence before the Parliament's Standing Committee the Secretary clarified that this amount would be disbursed to the Stares on the recommendations of the NITI Ayog. The Committee did not appear satisfied with the explanation and observed that there was an element of obfuscation and non-transparency in the matter[8].

Cooperative federalism will get further boost because of a de novo strategy to the whole issue of Centrally Sponsored Schemes which nevertheless continue to have a place in fiscal federalism because of their externalities. In this connection the Finance Commission has emphasized the need for minimization of discretion, improving the design of transfers and avoidance of duplication of effort. Currently a group of Chief Ministers is looking into the matter under the auspices of the NITI Ayog and the exercise may not merely result in a further reduction in the number

[6] According to the Fiscal Policy Strategy Statement tabled with the Budget 2015-16, in order to make the transition non-disruptive allocations have been provided to meet the financial requirements in the initial part of the year pending completion of structural stages in the designs of schemes in which the Union Government will reduce its involvement.

[7] Expenditure Budget Vol. II 2015-16

[8] Tenth Report of the Standing Committee on Finance (2014-15)Demands for Grants 2015-16

of such schemes but also an out-of-box approach that allows the States a choice to opt out of a particular scheme in favour of an equivalent amount of unconditional cash grant.

It is also desirable that the States are consulted in advance about any new scheme, which should be introduced only after adequate pilot testing and validation. Additionally, every scheme should have a sunset clause beyond which it automatically gets discontinued; such a sunset clause could even be State-specific with provision for cash grant to the concerned State in case the scheme is continued in other State(s).

There is also the apprehension that the States may use the additional resources becoming available to them because of enhanced tax devolution on populist schemes. This smacks of a patriarchal approach that considers the States as perpetual adolescents, never growing up, and ignores the reality of an emerging aspirational India that is no longer content with temporary gratification by way of freebees but looks forward to enduring improvement in the quality of life driven by a rising revolution of expectations. In any case the track record of many States in fiscal management is by no means inferior to that of the Union Government as evidenced by their compliance with their Fiscal Responsibility and Budget Management legislations. Also, it is worth recalling that in the first flush of liberalization of the economy in the nineties the States vied with each other in making themselves attractive investment destinations by offering fiscal and other concessions, sometimes excessive, that led to the coinage of the phrase 'race to the bottom'. While this may have been used in a pejorative sense, it also provided an indication of the sense of earnestness of the State Governments to competitively attract investment for rapid development.

With a focus on job creation and make-in-India, the Union Government has since notified Assessment Framework for State Level Reforms Enabling Ease of Doing Business that measures the ease of doing business in States and competitively spurs them

towards greater effort for facilitating business. Likewise, the States need to be encouraged towards excellence in utilization of their resources by appropriately devised quantifiable and monitorable indicators in matters of fiscal discipline, financial management and programme performance. A few templates like outcome budgeting and results framework document are already available for this purpose and are being implemented by several States. P E F A which is a multi-agency programme sponsored by a consortium of institutions like the World Bank, the International Monetary Fund, the European Union etc has developed a Public Financial Management Performance Measurement Framework designed to assess the public financial management in different countries. These can be further fine-tuned under the auspices of the NITI Ayog for voluntary adoption by the States. Appropriately incentivized this will promote competitive fiscal federalism with light touch hand-holding by the Union Government. In the spirit of true cooperative federalism the States are also encouraged to share their best practices with each other.

(i) CAG and Accountability

This is a sequel to "CAG and the legislature: some tentative thoughts on the rules of engagement" that appeared in Auditor's Notebook in the January-June 2014 issue of the Indian Journal of Public Audit and Accountability.

In the background of attitude towards the CAG of certain sections of the PAC and the JPC which looked into the 2G case as narrated in the firsthand account by Vinod Rai[9] in his book "Not Just an Accountant" the earlier article considered the question whether the committees of the legislature were competent to call the CAG for evidence. It was conceded, to recall what the first CAG had averred before the PAC, that "for all that is included in the Audit Reports, the ultimate responsibility is that of the Auditor General who countersigns the Report"[10]. It was also not disputed that the audit reports are subject to scrutiny by the PAC and that the PAC is

[9] Comptroller and Auditor General of India 2008-2013
[10] Statement made by V. Narhari Rao before the PAC on May 22, 1951

entitled to satisfy itself about the veracity and maintainability of audit findings and seek such clarifications as it may consider necessary for that purpose from the CAG's organization before taking on the executive. However, the PAC is primarily concerned with the accountability of *the executive.* So also a JPC is constituted to examine the acts of omission of the *executive* and any reference to an audit report can at best be incidental. Having regard to the position of the CAG as enshrined in the Constitution, the well-settled and time honoured traditional role of the CAG being that of an advisor to the PAC, its friend, philosopher and guide or its acting hand, and the prima facie view expressed by the Ministry of Law in an earlier case relating to the Bihar fodder scam, it was felt that the committees were not authorized to summon the CAG as a witness. In this respect the rules of engagement between the CAG and the PAC should follow the rules prescribed for summoning a Minister for evidence; i.e. the PAC is prohibited from calling a Minister for evidence but the Chairman (and not the entire PAC) can have a talk with him and that too after the evidence-taking is over. It was also argued that the committees should not summon officers of the CAG's organization for evidence since the latter did not enjoy the safeguards that could ensure their functioning without fear or favour. Since similar situations might arise in future as well, the previous article concluded with the suggestion that the position should be but on a firmer footing by incorporating necessary provision in the relevant rules.

Is the CAG's organization then an unaccountable institution?

The question 'who will guard the guardians' or 'who audits audit' is as old as the institution of audit itself.

In recent times the matter was raised by Appleby[11] who asked the question "Who examines the Audit Department with a scrutiny more significant than mere auditing?" Apparently he had in mind a scrutiny of the Audit Department that goes into the performance of this Constitutional institution vis a vis its mandate or so to say a

[11] Appleby Paul H. Reexamination of India's Administrative System with Special Reference to Government's Commercial and Industrial Enterprises, 1956

performance audit of the Audit Department. In 2002, the National Commission to Review the Working of the Constitution had recommended the introduction of a system of external audit of the CAG's organization 'to fulfil the canons of accountability'. More recently, V. K.Shunglu, a former CAG (1996-2002) in a report to the then Prime Minster recommended[12] that the accounts of the CAG should be audited by a professional auditor appointed by the PAC.

However, any suggestion for audit *of accounts* of the CAG's organization is likely to face the wrath of Articles 149 and 151 of the Constitution and be held to be ultra vires of these provisions in terms of which the CAG alone is authorized to audit Government accounts, including the accounts of the CAG's organization, and submit audit report thereon to the President/Governor. The position is well-settled in the light of the opinion of the Attorney General given[13] at the time of drafting of the CAG's (Duties, Powers and Conditions of Service) Act, 1971. In this connection it also bears to be recalled that the pre-1972 practice of endorsing copies of CAG's financial sanctions to a specifically designated officer in the Ministry of Finance (called Auditor of CAG's Sanctions) was discontinued after the Act came into force.

It also needs to be noted that CAG's organization is constantly engaged in introspection with a view to internal reform and rejuvenation benchmarking its procedures and practices against global best practices. Several in-house committees have looked at its procedures and practices from time to time for delivery of better quality output. The periodic conferences of Accountants General provide an excellent opportunity of sharing experiences and brain storming. The organization has comprehensive and well-documented procedures by way of manuals, supplemented by assignment -specific audit plans in accordance with which audit is

[12]Vinod Rai ibid. V. K Shunglu was appointed in October 2010 to examine the weaknesses in management, alleged misappropriation, irregularities, wasteful expenditure and wrongdoing in the conduct of the Commonwealth Games, 2010

[13]Vinod Rai ibid.

conducted and systems and procedures are in place by way of peer review and Audit Quality Management Framework that provide assurance that audit is conducted accordingly. The audit findings are subjected to multi-layered scrutiny and the field formations are regularly inspected by way of internal audit. Strategic Plans and annual audit plans are designed to ensure optimum utilization of resources. The organization is rated quite high in the international audit fraternity. In 2002 the organization opened itself to scrutiny by the National Audit Office London. In 2012 the organization arranged an international peer review by a team of global leaders from the United State, Canada, Australia, the Netherlands and Denmark and placed the report of peer review in the public domain. An Audit Advisory Board comprising eminent persons from diverse walks of public life advises the CAG on matters relating to audit, including potential audit topics and focus areas[14]. The International Peer Review had described this mechanism as a good practice that shows CAG's openness to external advice[15].

Having said this it is not as if the organization is immune from scrutiny of the Parliament. In this connection it needs to be borne in mind that apart from performing the audit function, the organization is also responsible for compilation of accounts of most of the State Governments. Questions have been asked in the Parliament about the non-audit functions performed by the organization including questions relating to its internal administration. This is what might be described as issue-related accountability of the organization. The Parliament's Official Language Committee periodically monitors the implementation of the use of Hindi in the official work of the organization both at the Head office level as well as at the level of the field formations.

Also the budget of the organization is subject to scrutiny by Parliament, more so since the charged portion of the budget constitutes only a small fraction of the total budget. Even the charged portion of the budget is not precluded from parliamentary discussion but it is not put to vote.

[14]Audit Advisory Boards have been established at the State level also.

[15]Peer Review Report October 2012

There are two committees of the Parliament that examine the budget estimates of Government namely the Departmentally Related Standing Committees and the Committee on Estimates. The Departmentally Related Standing Committee considers the Demands for Grants of the concerned Ministry and makes a report on the same to the House even as it is not permitted to consider matters relating to its day to day administration.

The scrutiny by the other committee namely the Estimates Committee is more broad-based. The Committee is mandated to report what economies, improvements in organization, efficiency or administrative reforms can be affected as well as to suggest alternative policies in order to bring about efficiency and economy in administration,

Also the accounts of the CAG's organization are subject to examination of the PAC and the CAG's organization must explain to the PAC the reasons for any excess expenditure over the budgetary provision for regularization. Likewise the organization is required to furnish explanations for any significant savings or delay in surrender of such savings.

It is indeed a measure of confidence in the CAG's organization, with its robust internal discipline and in-house mechanism for constant introspection, reforms and rejuvenation that neither the Departmentally Related Standing Committee nor the Estimates Committee has ever elected to scrutinize the budget of the CAG's organization. However, if ever the committees decide to look into the budget of the CAG's organization, it should not be necessary to call the CAG personally for evidence and the evidence of the organization can be led by the Deputy Comptroller and Auditor-General, an officer in the rank and pay of Secretary to Government, who is the chief of staff of the organization[16]. Also the Committees will undoubtedly be mindful of the special position of the institution under the Constitution and the laws that grant it

[16]The budget of the Indian Audit and Accounts Department is presented as one of the Demands for Grants of the Ministry of Finance and technically speaking the Government Secretary should be summoned for evidence but given the special position of the CAG's organization, the evidence of the IAAD will have to be led by the Deputy Comptroller and Auditor-General.

complete functional independence, particularly to decide upon the scope and extent of audit and reporting.

Besides the institutional accountability there is the question of the personal accountability of the CAG. This is governed by and to be regulated in accordance with Article 148 read with Article 124 of the Constitution. This involves an address by at least twenty percent of members of either House to its respective Presiding Officer (Speaker or the Vice-President of India as the case may be) independent application of mind by the Presiding Officer, a detailed inquiry into the alleged act(s) of misbehavior/incapacity of the CAG by a two-member committee of judges appointed by the Supreme Court and a final approval of any action proposed to be taken by both Houses of Parliament by a majority of total membership of each House and two thirds of the members present and voting. The very stringent nature of the process is a tribute to the farsighted vision of the founding fathers to have anticipated the importance of the institution of the CAG, the vulnerabilities he could be exposed to and to firewall the institution against any unwarranted onslaughts as the institution takes on cases which get invested with political overtones.

PERFORMANCE AUDIT OF SOCIAL WELFARE PROGRAMMES : AMALGAMATING BENEFICIARY FEEDBACK

T. Sethumadhavan*

Performance audit is the most effective tool in the custody of public auditors in the pursuit of the Supreme Audit Institutions (SAI) to promote public accountability. Performance auditing involves the examination of public investments in social welfare schemes and programmes, among others, from the angle of economy, efficiency and effectiveness. While economy and efficiency can be assessed more or less accurately by comparing with established norms and performance indicators, an evaluation of the effectiveness of the scheme, which is the basic objective of the implementation of the welfare programmes per se, is a more difficult task since the results of the investment may fructify over a long period of time, may not be entirely evident in precise terms for estimation, or merged with other benefits as would defy delineation.

Citizen at the Centre of Public Investments

While addressing the Indian Information Service Probationers, Shashikant Sharma, Comptroller & Auditor General of India (CAG)[1] recently reiterated that public services have become more citizen-centric and that people expect better quality, timely delivery and efficient management in delivery of services. He also pointed out that technological advances, social media and

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*The author is Former Vice President, IPAI & Formerly Member, Audit Advisory Board of the CAG of India

[1]Press Release by the Office of the CAG of India uploaded on the website of CAG.

Right to Information (RTI) have raised the aspirations of the people; citizens are increasingly becoming more alert and were demanding better governance and accountability. He further asserted that expenditure on social sector could make a good impact on the socio-economic life of the people if the money is utilized timely, efficiently and correctly. Public auditors, he clarified, were giving emphasis to social audit as it involved participation of beneficiaries of public services at the grass root level.

Increasing Relevance of Social Audit in the Implementation of Welfare Schemes

Social audit, when integrated with public audit, will indeed lend value addition to performance audit which has, over time, become the mainstay of SAIs and functions as the most effective tool to hold governments and their representatives to public accountability. In the words of C.P.C. Artuno Gonzalez de Aragon, Auditor General of Mexico and Chairman, INTOSAI Governing Council Board (2009), public auditors should always bear in mind the social element of their work to which they are committed and that does credit to them all. "In a true democracy there is one overriding principle, the people are in command, their agents obey, are accountable and submit to a higher control. We at INTOSAI are convinced of the role that SAIs play as a mirror and conscience of the society, to which they are duty-bound and have the privilege to serve".

In an emerging economy like ours, the aspirations of the people are enormous. It is but natural for citizens to expect the State to ensure reasonable and equitable living standards including good infrastructure facilities and adequate civic services. As mentioned by the CAG of India above, the level of awareness of the common man on aspects of public accountability has reached an all-time high thanks to the electronic media highlighting, among other things, instances of administrative failures, inadequate service deliveries and widespread corruption in governmental agencies entrusted with the task of delivering public goods and services. In

such a scenario, public audit is increasingly seen as the most objective and effective institutional mechanisms available to foster public accountability. This in turn casts a heavy responsibility on the shoulders of public auditors; more so in the arena of social sector investments, namely, while analysing public expenditures related to social welfare programmes and schemes which directly impact people at large.

International Standards of Supreme Audit Institutions

The International Standards of SAIs (ISSAI-3000-3001) reiterate the need for public auditors to focus on analyses of the efficacy of public expenditures in the social sector with particular emphasis on the quality of services provided. According to the Standards, a common objective of most governments these days is to improve the quality of public services in tandem with people's expectations of what constitutes quality, often in comparison with the services they receive from the private sector. "To promote improvements of this type, many governments have embarked on modernization programs to deliver better services that are, for instance, more easily accessible and convenient, provide citizens with more choices, and are delivered more quickly. *The quality of public services is an increasingly important issue, which members of parliaments and governments across the world expect the SAIs to address in their performance audit reports". (Emphasis added.).*

The need to keep the interests of the citizens who are the beneficiaries of social welfare schemes promoted by governments and public agencies at the centre of the objectives of performance audit has been succinctly brought out by INTOSAI in its Appendix to ISSAI 3100 in the following words: "It is important to consider the interests of citizens in performance auditing. Citizens are a source of ideas for performance auditing, a source of demand for performance auditing, and users of performance audit reports. They may be contacted directly or through non-government organizations that represent them".

Social Audit and Beneficiary Participation

Social audit has been recognized as an effective means of involving the beneficiaries of welfare programmes in assessing the economy and efficiency of such programmes in order to promote public accountability. The basic premise of social audit is that "when information about budgets, allocation of funds, expenditure details etc. are demystified and placed in the public domain and read out in front of the primary stakeholders/ beneficiaries and the officials concerned, it results in effective public accountability of the authorities concerned at the cutting edge level of public administration"[2]. According to the Ministry of Rural Development[3], social audit is the auditing of a scheme by the primary stakeholders or with their active involvement and includes the facilitation and verification of facts on the ground by taking into account the relevant official records, verification by beneficiaries at the meeting, recording the evidence of the beneficiaries, and discussing the findings as Social Audit Reports in public assemblies in the presence of independent observers. The main thrust of social audit is thus the audit of the implementation of the social welfare schemes by involving the beneficiaries themselves and in the presence of independent observers, more by way of an added independent audit (by the stakeholders themselves)with an effective and spontaneous follow up mechanism. Even though lapses and failures in implementation such as lack of economy, improper expenditures, wastes and frauds, deficient and faulty accounting etc. will form part of the social audit findings, it will appear that the system does not specifically provide for a structured evaluation of the quality of services including the extent of realization of the people's expectations through the implementation of the relevant programme or scheme as such.

Social Audit Rules under MGNAREGA

The Mahatma Gandhi National Rural Employment

[2]Forging New Partnership Between CAG'S Audit and Social Audit : Soumya Kidambi and Vivek Ramkumar, Workshop on Social Audit-Roadmap For Effective Public Accountability, IPAI (2011)

[3]Ministry of Rural Development; Operational Guidelines (2006) of the Mahatma Gandhi National Rural Employment Guarantee Act.

Guarantee Audit of schemes Rules, 2011 (Social Audit Rules) issued by the Ministry of Rural Development in consultation with the CAG of India establish the process and procedures for social audit of the MGNAREGA schemes. The Rules provide for the audit of accounts of the scheme by appointed auditors and make social audit an integral part of the scheme. Under the scheme, social audit will be a process independent of any other process of audit undertaken by the implementing agency; and the officials concerned are legally obliged to make available all requisite information and documents for the social audit. In the course of the social audit, the resource persons appointed for the purpose should verify, among other things, all accounts-related documents and records, but *they may also* assess the quantity and the quality of the work done. In other words, the emphasis of social audit is on the regularity, compliance and propriety of the expenditures with a view to verify that the payments for the works undertaken (under the scheme) were made on time, made as per rules and correctly and judiciously. The process prescribed for social audit, thus, will appear to be more in the nature of a financial and compliance audit of the accounts of the relevant programme carried out with the involvement of the beneficiaries themselves with a view to ensure that the expenditure was actually incurred and the money was really spent in line with the objectives planned under the scheme and that there was no leakage or fraud of the funds made available. Perhaps, the Social Audit Rules need to be strengthened further by bestowing added emphasis on a review of beneficiary satisfaction and feedback; provided of course, the necessary skill could be inducted.

Social Audit and PRI Audit

The extent of recognition accorded by the CAG of India to social audit in the context of the audit of Panchayati Raj Institutions (PRI)can be gauged from the elaborate instructions detailed in the Manual of Instructions for Audit of PRI. The Manual states that the concept of social audit has been accepted as a powerful way of

securing accountability; social audit is a scrutiny and analysis of the working of a public agency vis-à-vis its social relevance from the perspective of majority of the people in whose name and for whose cause the institutional system is promoted and legitimized. The Manual incorporates the processes to be followed by public auditors in evaluating social audits; but mainly includes checks to verify whether the concerned social audits were held and followed up as per the established procedures. It will be worthwhile to consider whether the manual provisions may be augmented to align social audits as an integral part of the PRI Audit by enlarging the scope of PRI audit.

Recommendations of the CAG's Task Force

The feasibility and procedures for factoring social audits into performance audit were considered in detail by a Task Force appointed by the CAG in 2010 under the chairmanship of the then Deputy CAG, Narendra Singh. The Task Force Report concluded that the need for social audit has grown in the recent years in view of the steady shift in the pattern of the devolution of Central funds and functions relating to socio economic schemes to local bodies, including the direct transfer of funds to them. The Task Force inferred that social audits ensure (i) the stakeholders' role in the grass root level implementation of public programs; (ii) verification of deliverables; and(iii) accountability of implementing agencies. In addition, social audits are also recognized as a safeguard against corruption and frauds. According to the Task Force, the objectives and processes adopted for social audits will fit into the audit objectives of one or other of the three fundamental types of audit, namely, financial audit, compliance audit and performance audit, and as a result, social audit has to be viewed as a technique to broaden the depth and/or spread of the public audit rather than as another distinct form of audit. In conclusion, the Task Force recommended synergizing of social audit with public audits in respect of audit planning and implementation, inclusion of social audit findings in CAG's reports

after due validation and adopting social audit tools in compliance and performance audits as well.

While the recommendations of the Task force are valuable and need to be internalized as part of the audit procedures and processes, it must be borne in mind that the factoring of the social audit in the manner and form it is practised now will stop short of the need for an effective and comprehensive evaluation of the quality and standards of service delivery vis-à-vis the aspirations of the people, which has to be part of the exercise to verify programme effectiveness, namely the outcome of the programmes.

Going beyond Social Audit: Citizen Report Cards (CRC)

In other words, social audit though forms an extremely useful additional tool of audit and public accountability, there is need to evaluate the level of beneficiary satisfaction in juxtaposition with their aspirations and expectations in a more structured manner; which could be factored into performance auditing since, as brought out above, the thrust of social audit does not necessarily seem to meet the need for an intensive evaluation of the outcomes planned by the planners of the programmes. In order to internalize this exercise, therefore, there is merit in looking at some other alternatives. In this context, the technique of Citizen Report Cards (CRC) devised and successfully implemented by the Public Affairs Centre (PAC), a Non-Government Organization (NGO) in Bangalore, which has since been adopted by several developing countries to evaluate the quality of public services, primarily in urban local bodies, at the initiative of the World Bank appears to be a useful model worth exploring.

Basic Features and Methodology of Citizen Report Cards

PAC devised CRC more as a system to evaluate the quality and adequacy of civic facilities with a view to effecting improvements by creating civic awareness and promoting community participation. 'CRC is a simple but powerful tool to provide public agencies with systematic feedback from users of

public services. By collecting feedback on the quality and adequacy of public services from actual users, CRC provides a rigorous basis and a proactive agenda for communities, civil society organizations and local governments to engage in a dialogue with service providers to improve the delivery of services'[4].

CRC was a novel civic initiative and the brainchild of the well-known social activist and management expert Dr. Samuel Paul, Founding Chairman of PAC. For the first time, CRC was implemented in 1994 in Bangalore and covered six localities and 480 middle- income and 330 low-income households. The findings of the first CRC generated substantial media and public attention. This was followed up by CRCs in the National capital of Delhi and was later repeated in Bangalore in 1999 and 2003.Eight public agencies providing services to the citizens in Bangalore were subjected to the survey in the first CRC itself. 'The CRC addressed critical themes in the delivery of public services such as access to services, quality and reliability of services, problems encountered by users of services and responsiveness of the service providers in addressing these problems, transparency in service provisions like disclosure of service quality standards and norms, and costs incurred in using a service including hidden costs such as bribes. CRCs also provided a summative satisfaction score that captured the totality of critical service-related parameters'[5]. In view of its appeal and visible effectiveness in highlighting the standard of public services and utilities, World Bank recommended the process to several developing countries in Asia and Africa including Bangladesh, the Philippines, Sri Lanka, Ukraine and Vietnam. PAC has been assisting in such exercises by providing manpower resources and training support.

According to the World Bank, CRCs are client feedback surveys that provide a quantitative measure of user perception on the quality, efficiency and adequacy of different public services.

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[4] Web Site of PAC

[5] PAC and CRCs: Website of PAC

"Beyond the process of executing a survey, CRC involves effort at dissemination and institutionalization that make them effective instruments to exact public accountability."[6] CRCs should be seen as a critique on the standards of the services provided by public authorities as ascertained from the beneficiaries themselves who are the best judges and are able to conclude them against their own aspirations as also based on their in situ experiences.

In view of the beneficiary participation, the CRCs provide an excellent means of promoting public accountability partly because the opinion of the public on the services are brought out into public domain as also because they receive excellent media coverage. According to the World Bank, the idea was "to mimic the private sector practice of obtaining customer feedback and to apply it to the context of public services. Just as a teacher scores the student performance on different subjects in a school report card, CRC data aggregates scores given by users for the quality and satisfaction with different services like health, education, police etc. or scores on different performance criteria of a given service such as availability, access, quality and reliability. The findings thus present a collective quantitative measure of overall satisfaction and quality of services over an array of indicators."[7]

In order to make CRC a successful and reliable exercise, there are certain pre-requisites to be built into its process, namely, a thorough understanding of the relevant programme and established performance indicators, ability to design a very precise and structured questionnaire to elicit beneficiary feedback, technical and physical capability in terms of skill and resources to conduct the survey, capability to consolidate the survey results and to analyse them in depth and to draw valid, objective and unbiased conclusions arising from them. As brought out by the International Budget Partnership[8], the challenges include "the requirement of a strong lead institution, evaluation of the socio-political context (relationship among different sectors of society must be conducive

[6] World Bank on Citizen Report Cards (CRC): World Bank Reports.

[7] World Bank, ibid

[8] "PAC develops CRC in India"

to the use of CRC), advocacy strategy, technical skills, consideration of costs".

Citizen Report Cards as a Source of Evidence in Performance Audit

There will be valid apprehensions regarding the integration of a system such as CRC into performance auditing since audit is an entirely accurate, document-based exercise and audit findings are necessarily supported by "key documents". There is no denying that a process such as CRC, howsoever structured and systematically planned and carried out may nevertheless include an element of subjectivity and may even include some, however limited be, fractional views. Keeping in mind the need for caution, however, and considering that the inclusion of the findings of a beneficiary survey carried out impartially and scientifically will enrich the performance audit reports in no small measure, it will be clear that the advantage of such integration will far outweigh its exclusion. As pointed out by Dr. Samuel Paul in his monograph "Holding State to Account: Citizen Monitoring in Action", "there is no way to define the outcomes of government's policies and services. Often, policy makers report on outcomes in terms of physical achievements, outputs, and growth rates. While each of these measures captures aspects of outcomes, a summative measure of outcomes needs to reflect the quality and other attributes of the service that gives satisfaction to its users".

Performance Auditing Guidelines [9] issued by the CAG of India recognize independent surveys and evaluation as possible sources of evidence in the course of performance audit. The Guidelines also envisage surveys through independent agencies as one of the acceptable mode of evidence. A survey can be defined as a "systematic collection of information from a defined population, usually by means of interviews or questionnaires administered to a sample of units in the population. Questionnaires are mainly used to collect facts that are not available in any other way and that are

[9] Performance Auditing Manual, CAG of India: Types of Evidence and sources of Evidence. (Chapter 5; Evidence and Documentation).

important as a reference to substantiate a view point".[10] The Guidelines further observe that in cases of surveys through independent agencies, credibility of the agency selected for the survey is critical for sustaining the competence of the evidence. Further, surveys are to be treated as corroborative or secondary evidence. According to the Guidelines, and correctly so, evidence is necessarily persuasive, and what is relevant as a criteria is whether the evidence (in this case, based on a well-structured and well-designed survey of beneficiaries) is enough, relevant and reliable information to persuade a reasonable person to infer that the findings and conclusions arrived at are warranted and fully supported.

In most social welfare schemes and programmes, the performance indicators will revolve around the provision of a service which the society is bound to make available to the targeted population, but do not exist and these will invariably be co-related to the aspirations of the people. The question is whether and to what extent, at the end of the day, the beneficiaries are satisfied with the quality and adequacy of the services provided (and planned for); and there is no doubt that a review or an evaluation of the programme per se will be incomplete without an exposition of the level of satisfaction derived by the beneficiaries themselves as a result of the programme implementation. It is in this context that a technique like CRCs will come into play: and indeed play an effective role.

Conclusion

The above discussion brings out mainly two broad conclusions, namely, that (1) an evaluation of the quality and adequacy of the intended benefits of social welfare programmes and schemes as experienced by the beneficiaries who are the major stakeholders will add significant value addition to performance audit and (2) that the manner in which social audits are designed and conducted at present, though remarkably transparent and

[10] International Standards of Supreme Audit Institutions (ISSAT) 3100; Auditing Standard 2.1-18)

objective, will not necessarily meet the above objective in entirety. In such a context, an alternate process such as the Citizen Report Card (CRC) will prove to be an effective and alternative tool to evaluate the extent of beneficiary satisfaction in terms of quality and adequacy of the services provided and will add significant weightage to performance auditing of social welfare programmes. This is however not to argue that CRC may be employed as a process or form part of all performance audits; but there is reasonable ground to consider inclusion of the findings of CRC (in terms of beneficiary satisfaction or as representing the quality and adequacy of the services derived from the specific scheme) in the performance audit concerned though in a selective manner. Further, considering that the general performance auditor may not have the skill and necessary training as also the required resources including time to undertake CRC surveys by themselves, the need for inducting the necessary skill into the audit stream by appropriate alternatives may be worth exploring.

ARE THERE DIFFERENT TYPES OF PERFORMANCE AUDITS?

L.V. Sudhir Kumar*

Performance audits or value for money (VFM) audits revolve around three elements, economy, efficiency and effectiveness which are referred to as 3Es. Within performance audit or VFM audits, the economy audit focusses on examination of input in terms of how well the cost of the resources are minimised. An efficiency audit examines the relationship between output and input used to produce products or services. An effectiveness audit focuses on the extent to which goals are achieved. Even though VFM audits are oriented towards 3Es, they often take other directions. One of them is focus on the systems or controls. Another is goal-related audit. Yet another one is policy audit carried out in UK and Canada, for example a review of whether or not an Olympic Games has achieved its anticipated financial success etc. Over time attempts have made to expand it to include everything from economy to policy.

Performance management brought a different form of accountability. It focuses on demonstrable indicators of success and failure of the activity, program and policy. Legislative oversight over executive traditionally revolved around the forms of the accountability. Conventional forms of accountability involved emphasis on exceptional events or instances of non-compliance with the established rules and procedures. The logic of conventional accountability is more of exposing malfeasance or nonfeasance and punishment. Expanding VFM audit to include

*Shri L.V. Sudhir Kumar, IAAS, is presently Director General, National Academy of Audit & Accounts, Shimla.

audit of entity's adherence to legislation, rules and policies helped public sector auditors to have assurance on to what extent those responsible have met the compliance and thus the traditional accountability requirement. Auditing accountability is viewed as judging how well those responsible at different levels attained the relevant performance goals and met other requirements for which they are fully accountable. Authors such as Lonsdale observed that opinions differ on whether and to what extent compliance orientation may be included in performance audits. Studies indicated that compliance audit has been included in performance audits by SAI Sweden, Denmark, and Canada etc. Gronlund and Svardsten reviewed 150 Performance Audit Reports of Swedish National Audit Office to identify the types of VFM audits and degree of compliance audit. They observed that in 40 audits there was a strong degree of compliance and in 60 audits there is an element of compliance. In 50 audits there was no element of compliance, however 35 of them are systems audit and goal related and policy related audits.

Barrett, English, Morin, Radcliffe argued that reporting against the 3Es will be difficult without the audited entity having suitable performance measures in place. Because of this limitation, performance auditors tend to focus on checking rules and regulations instead of reviewing and analysing the 3Es in their entirety. Gronlund and Svardsten observed that two-thirds of PA projects in Sweden had some degree of compliance audits. Studies by Skærbæk in Denmark found similar results. Johnsen in Norway found that they were similar to public accounting. Glynn in reviewing value-for-money audits in six countries—Australia, Canada, the UK, New Zealand, the US and Sweden—showed that by the early 1980s there was no standard approach covering all the aspects of value-for-money audits. Hamburger and English refer to Auditor Generals adopting strikingly different interpretations of what PAs are and how they should be conducted.

Performance auditing was public sector auditor's response to

the government's adoption of performance management concepts in delivering the services. These reforms did not have any standard or uniform set of performance management techniques or practices. Even the New Public Management (NPM) had its own variants. The extent of influence of these reforms on the governments and the way they responded varied from country to country from time to time. To an extent this influenced the performance audits in each of the Supreme Audit Institutions. Guthrie & Parker in 1997 analysing 25 years history of performance auditing in Australian National Audit Office (ANAO) concluded that changes in performance audit terminology and concepts changed over time. Bowerman in 1996 with reference to ANAO said that it is possible to identify different approaches to value for money audit and to some extent match those to certain sets of circumstances.

Performance management broadly involved defining the policy, program objectives, output, outcome, linking input to them, effective measurement mechanisms, standards of performance and output etc. Performance audit examined the programs and policies with reference to their economy, efficiency and effectiveness. Kells & Hodge, Everett and others argued that 3Es are not very clear in distinguishing their different deliverables from an operational context. Guthrie & Parker, Chambers & Rand and others observed that auditors face problems in evaluating these elements in practice largely due to their ambiguous meanings and characteristics. Lindeberg and others found that auditors face difficulties in establishing credible versions of what constitutes the 3Es that can be applied uniformly. Some auditors are accused of using arbitrary best practice criteria. Pollitt and others observed that VFM audit sometimes takes on a different focus distorting their original intentions. These different focuses include a review of compliance and an organization's procedures, accountability, probity issues.

Kells in 2010 identified a few authors who argued that the concept of performance auditing is not well or widely understood

(Barzelay, 1996), that its precise meaning is unresolved (Barzelay, 1997), that its nuts and bolts are hotly debated (Power, 2000), or that it is the oddball in the auditing family (Lindeberg, 2007). Authors have also noted that the nature of performance auditing is ambiguous (Lindeberg, 2007) or remains an open question (Keen, 1999), and that it is a continually unfolding drama (Guthrie & Parker, 1999).

Some researchers argued that use of different terminologies such as value-for-money audits, comprehensive audits, efficiency audits, effectiveness audits and project audits led to different emphases. They led to confusion in establishing what actually constitutes performance audit. They say, more needs to be done to clearly establish what constitutes the 3Es for an organisation and a framework on which one can identify and establish relation between input, process and output.

Different concepts of criteria brought their own interpretation of performance auditing. Lonsdale and others observed that performance audit brought-in the concepts of criteria, evidence, methods from financial audit and equated the acceptable standard of evidence to that of financial audit and compliance audit. A number of researchers have argued about inadequacy or limitation of kind of criteria used. Reichborn-Kjennerud and Johnsen found that using limited criteria for evaluation of an organization's performance affected the scope of audit questions and evidence to be collected. Jine & Dunjia commented that the criteria for conducting VFM audits are ambiguous because they are subjective and depend on the auditor's judgment. Barrett and Pollitt pointed out the challenges of finding a balance between qualitative and quantitative criteria for evaluating outcomes. The nature of audit process (that came in from financial audit) created difficulties for performance audit. The limited nature of collecting evidence restricted the results and quality of performance audit. Lapsley & Pong argued that value for money auditors generally do not provide an accurate explanation of different events as they require evidence from several sources.

There are other issues as well. Kells, Reeve, Flesher & Zarzeski and others observed that performance audit is a very time-consuming process. The nature of the audit requires a long process of planning and fieldwork before credible reports can be generated. Tillema & Ter Bogt observed that this time lag results in reducing the interests of the stakeholders of the subject. Qualification, experience and professionalism of the staff conducting performance is identified as major issues by several authors like Barrett. Lapsley and Pong identified lack of training for VFM audit leading to deficient understanding of the performance of public Organisations. Chambers and Rand's findings identified need for members with different backgrounds.

Khalili et al., and Haidarinejad et al pointed out that the level of acceptance of the benefits of VFM studies by the management has an impact on the development of VFM audit. Performance audit is very intrusive in nature and require constant interaction with the management at various levels of the organisation throughout the audit process. DeVries, Morin, Weets argued that positive interaction between auditor and auditee is an important element in the success of performance audits. Roussy emphasized that intrusive nature of such audit could lead to resistance from managers. Kells, Funnell and Wade found that auditors and auditees have contradictory perceptions of performance audit. Loocke and Put were in favour of performance auditors and auditees acting like partners. Morin's research on Quebec governmental organizations showed that the auditors' good relationships with managers had a positive impact on the performance audit.

Lack of commitment by the management in public sector organisations to improve the operational performance could be a reason for resistance. Managers themselves may be imprisoned by ambiguous governance paradigms, absence of strategic direction given to them, unsuitable organizational structures. Kells, Everett and Johnsen et al Van der Knaap emphasized adequate governance guidelines and a clear orgnisational structure as obligatory

elements in conducting performance audits. Barrett observed that if an organization did not have a culture of developing goals and objectives, the performance auditors would tend to focus on less important matters, or compliance issues. Chambers and Rand say that auditors should be aware of management objectives in order to be able to design their audit plan and set their audit objectives.

Elnaz Vafaei and Joe Christopher argued that ambiguous meanings and characteristics of the 3Es are causing problems in evaluating them. With the result, some audits tend to focus only on a part of the wider picture or take on a different focus. This is also compounded by the governance paradigm of those Organisations that shape the boundaries of 3Es to be audited. Different terminologies to describe performance audit led to lack of uniformity over nature of criteria leading to variety of them. This in turn led to multiple methodologies. Auditor's ability to understand the operational processes, their skills and ability to examine and analyse etc., also contributed to it.

Intrusive nature of performance audit may not be welcomed by all the managers. Organization may not have the culture of subjecting its performance to an evaluation or even improving performance. This may be a result of absence of a culture of good governance in the government as a whole. Success of performance is dependent on the extent of interaction between the auditor and the audited entity and where the audited entity is willing to improve the performance of the organization. In the absence, compliance related criteria find place in an ongoing performance audit eliminating the need to understand how the inputs get processes lead to output and what factors can lead to improvements in the process.

The above indicate that there are different levels of 3Es and thus different deliverables from performance audit. Concept of performance audit needs to be more clearly defined. The following is the definition given by Waring and Morgan.

'Performance auditing is a systematic, objective assessment of the accomplishments or processes of a government program or activity for the purpose of determining its effectiveness, economy or efficiency.'

INTOSAI in its ISSAIs defines it by stating that performance auditing is concerned with the audit of economy, efficiency and effectiveness and embraces:

a. Audit of economy of administrative activities in accordance with sound administrative principles and practices and management policies

b. Audit of the efficiency of utilisation of human, financial and other resources, including examination of information systems, performance measures and monitoring arrangements, and procedures followed by audited entities for remedying identified deficiencies and

c. Audit of effectives of performance in relation to achievement of the objectives of the audited entity, and audit of the actual impact of activities compared with intended impact.

The following is the definition of 3Es from the Australian Auditing and Assurance Standard Board.

'Efficiency' means the use of resources such that output is optimized for any given source inputs, or input is minimized for any given quantity and quality of output.

'Effectiveness' means the achievement of objectives or other intended effects of activities at a program or entity level.

'Economy' means the acquisition of the appropriate quality and quantity of resources at the appropriate time and at the lowest prices.

Key component of the performance is the 'use of resources or inputs in an efficient way' so that the same inputs produce more output or less input produce the same output. 'Use' is the process

activity, operation or intervention. 'Operations' and/or 'processes' are key words. How well the operations/processes are planned and how efficiently they are carried out is the subject of study. Economy and effectiveness are consequences of efficient operations, improved processes. Effectiveness is the output or intended results coming out of the operations/processes, their planning, designing and execution.

Economy results from efficiency in operations or improved processes. Efficient operations and improved processes consume less input to produce the same out. This is how the 'economy' is needed to be understood in performance audit. Viewed in this light, the definition of economy used by Australian Auditing and Assurance Standards Board is misleading. Economy arising out of acquisition of appropriate quality and quantity of inputs at lowest price is far wider definition of the economy and does not serve to understand 'economy' implied in the performance audit.

Public sector auditors carry out compliance audit. Such compliance audit covers aspect of to what extent the entities could safeguard public money from being wasted while acquiring of resources. Such waste would happen if acquired at higher cost, quantities more than required etc. Governments have put in place the rules for public procurement with the intention that resources to be used in public service are acquired economically in appropriate quantity, quality, at right price. Duplicating this aspect of compliance audit in the performance audit results in avoidable overlap between two types of audit. All the rules that auditors come across in compliance are oriented towards safeguard of resources from theft, abuse, misuse resulting in loss or waste. These rules are meant to secure economy of the public expenditure. The economy aspect of performance audit is the result of improved operational performance. Not from the acquisition part. In the above definition availability of right quantity at the right place at the right time is the performance aspect. Acquiring at the lowest price is compliance aspect. However, if the managers are able to identity an equally

useful substitute input that costs lesser, economy arising out of that is an aspect of performance audit.

Nothing prevents an audit assignment to include 'economy' aspect related to compliance audit in the performance audit. But such inclusion has the potential of distracting the auditor from examining the possibility of economy arising out of efficiency in performance. Weak compliance with procurement rules or lack of robust procurement rules leading to waste is a serious issue for public sector auditors of several countries. It should be a separate audit assignment or a separate component of an audit assignment.

Performance audit in a way presumes that those issues are already taken care by the organisations and the government. Waring and Morgan argued that the decision to implement a performance audit program should be predicated on the existence of certain prerequisites that form the foundation from which to apply accountability to government actions and omissions. Adamolekun and Madavo include in the list, the rule of law, clearly defined government organisations with well understood roles and responsibilities, the existence of policy planning and budgeting structures. Allen Schick in 1998 made the following recommendations.

Before you insist that financial mangers efficiently use the resources available to them, you should adopt and implement predictable budgets.

Before you introduce performance budgeting or outcome budgeting, you should foster an environment that supports and demands performance.

Before you seek to control outputs, you should control inputs.

Performance audit is viewed as an evaluation of performance management: how well the program is managed, how well the service delivery activities are managed etc. In fact, it goes even further. It assumes that programs are reasonably well-managed.

Performance audit is an attempt to examine them and see what more improvements can be made. That is how performance audits are expected to invariably come with recommendations. Had it been about non-compliance with procurement rules resulting in waste, the recommendation would be 'make the manager comply with rules' or 'punish the manager for not complying with the rules'. These do not qualify to be called recommendations. Compliance audit and financial audits are meant to provide assurance about to what extent those rules are followed (resources are adequately safeguarded if followed) and to what extent the financial reporting is in compliance with applicable financial reporting framework (assuming that financial report is reliable if compliant with). Coming up with recommendations is unique to performance auditing. They are about what aspects of planning, designing the process, operations, activity, or program can be improved, what are reasons that are hindering the possibility of improvement and how they can be improved. Certain programs and service delivery activities might not have produced the intended results or output in spite of reasonably decent efforts by the management. Performance audit would like to identify the causes and reasons for non-achievement of intended results and recommend measures to achieve them. The cause may lie in deficiencies in planning, designing, execution or may be due to some external factor beyond the control of management. Several stakeholders, both positive and negative, would be directly or indirectly involved in the entire policy cycle.

The key phrase in the performance audit is 'operational performance'. It is about operations, activities, processes, steps, tasks that convert the input to output. It covers planning, designing, decision making and execution of the operations, activities and processes. Productivity benchmarks, output targets, performance indicators that auditors come across in performance audit should not be equated with rules he finds in compliance audit. Efficiency is subject to several conditions. There is always scope for improvement. Compliance with rules is mandatory, whether

complied or not. It is a different issue that certain rules (input controls) may constrain achieving the performance targets (output controls). However in public sector governance both sets of controls are equally important aspects of accountability. Trade-off and balance between them have been the feature of good governance.

Benchmarks, targets, performance indicators are dynamic measuring instruments. Audit finding such as falling short of targets, not achieving the stated performance objectives output etc., strictly speaking does not qualify to be performance audit. Ability to identify which aspect of performance for what causes and reasons led to short fall, ability to convince the reader with well-reasoned argument and propose implementable recommendation is the feature of performance audit.

ISSAI 3000 says performance audit does not have its roots in the form of auditing common to the private sector. Its roots lie in the need for wide-ranging analysis of economy, efficiency and effectiveness of government programs. An overview and insight into the government activities and ability to influence and improve its performance are important.

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CAG's REPORT : AUDITING E-GOVERNANCE

K.P. Shashidharan*

The world is now rapidly changing over to digital and cloud based Communication Information Technology (CIT) applications. Internet of Things (IoT) is increasingly becoming Internet of Everything (IoY) in the borderless global village. Any investment in the direction of CIT application needs to be perceived as a right investment; but the choice of appropriate technology required for the purpose, procurement decisions, project planning, implementation, monitoring, review, timely and economic, effective, efficient execution of the project, taking prompt corrective and preventive actions to achieve the envisaged outcome both in qualitative and quantitative parameters must become the crux of audit analytics and analysis to derive useful practical recommendations for the government to follow in future.

Where huge investment for high priority domain is audited, the audit teams need to absorb the intent of the government and look at in a holistic way before getting into the choice of appropriate technology, decision making process, selection of the vendors and procurement methodology, compliance of applicable regulations at every stage and evaluation of the project implementation cycle.

The Comptroller and Auditor General (CAG)'s Report No. 20 of 2015 on Union Government was placed before the Parliament recently. The CAG's Report contains audit findings on Ministry of Communication and Information Technology. This article confines to audit findings on Department of Electronics & Information

* The author an alumnus from the London School of Economics is former Director General, Office of the Comptroller and Auditor General of India, New Delhi.

Technology, based on audit review of creation of Infrastructure for National e-Governance Plan (NeGP) and Delivery of Services to common citizens through Common Service Centres (CSCs)

The vision, mission and objectives of e-governance are stated as under on the website of Ministry of Communication and Information Technology : **Vision**" e-Development of India as the engine for transition into a developed nation and an empowered society. **Mission** To promote e-Governance for empowering citizens, promoting the inclusive and sustainable growth of the Electronics, IT & ITeS industries, enhancing India's role in Internet Governance, adopting a multipronged approach that includes development of human resources, promoting R&D and innovation, enhancing efficiency through digital services and ensuring a secure cyber space.

Objectives

- e-Government: Providing e-infrastructure for delivery of e-services
- e-Industry: Promotion of electronics hardware manufacturing and IT-ITeS industry
- e-Innovation / R&D: Implementation of R&D Framework - Enabling creation of Innovation/ R&D Infrastructure in emerging areas of ICT & E/Establishment of mechanism for R&D translation
- e-Learning: Providing support for development of e-Skills and Knowledge network
- e-Security: Securing India's cyber space
- e-Inclusion: Promoting the use of ICT for more inclusive growth
- Internet Governance: Enhancing India's role in Global Platforms of Internet Governance.

NeGP vision is stated on NeGP website as;"Make all Government services accessible to the common man in his locality, through common service delivery outlets, and ensure efficiency, transparency, and reliability of such services at affordable costs to realise the basic needs of the common man". NeGP is intended to offer services to citizens, business, government, state, and e-transactions. There are mission mode projects and varied other projects, components and initiatives to create the requisite infrastructure and to provide required knowledge for collaboration to outreach every citizen in the country including man and woman on the streets.

The objectives of the government are no doubt laudable indeed: e-government, e-industry, e-innovation, e-security, e-inclusion and Internet governance. The government wants to transform lives of the citizens by 'Simple, Moral, Accountable, Responsive and Transparent (SMART) governance. When the Union Cabinet approved the e-governance project in May 2006, the primary vision was stated to "make all government services accessible to the common man in his locality, through common service delivery outlets and ensure efficiency, transparency and reliability of such services at affordable costs to realize the basic needs of the common man". The citizens should be entitled to good governance through Communication Information Technology applications.

The attributes of good governance for sustainable development go beyond SMART governance. They are clearly articulated by UNDP. Firstly, there should be participation of all men and women in decision making process directly or through representatives. Secondly, the 'Rule of Law' must rule. This means rule according to law, rule under law and also rule according to 'higher' law, meaning thereby certain unwritten universally acceptable 'principles of fairness, morality, justice that transcend human legal system'. Thirdly, good governance is based on transparency ensuring free flow of information, accessible to the

people concerned. Fourthly, institutions and processes must be for serving all stakeholders. Fifthly, good governance is based on evolving broad consensus and resolving conflicts based on what is in the best interests of the people. Sixthly, all men and women must have equal opportunities and level playing field to improve or maintain their well-being. Seventhly, governance infrastructure, processes and institutions must be efficient effective and economic to produce best possible outcome from the resources. Eighthly, decision-makers in government must be accountable and civil society organisations accountable to the public and to the stakeholders. Ninthly, leaders and the public must act up on based on strategic vision, a broad and long-term perspective on human development, understanding the underlying historical, cultural and social complexities.

E-governance must inevitably lead to less government and more governance. Application of correct CIT should capture the quintessence of good governance for sustainable development. National e-Governance Programme was conceived as a centralized project monitored by the central government with decentralized implementation through the States and Union Territories. Responsibility of the Department of Electronics and Information Technology (DeitY) is to facilitate by providing necessary technical assistance to Ministries and State Governments/Union Territories for implementation of the component schemes of NeGP. The States and UTs are responsible for actual implementation of the plan. The Cabinet paper spelt out clearly creation of right institutional mechanisms, core infrastructure with right policies, standards and legal framework for adaptation and channelizing the private sector technical and financial resources into NeGP efforts.

The expenditure under the NeGP was to be shared between Central and State Government with 60 per cent as DeitY share in the form of Grants-in-aids (GIA) and 40 per cent as State share through Planning Commission as Additional Central Assistance (ACA) for State Wide Area Network (SWAN). In respect of State

Data Centre Scheme, the ratio was 36 per cent as GIA and 64 per cent as ACA and for the CSC and State Service Delivery Gateway (SSDG) the ratio of Central and State share was equal.

NeGP aimed towards making all government services accessible to the common man at an affordable cost through creation and implementation of core and support infrastructure in the form of SWAN, SDC, SSDG and CSCs. DeitY, as the nodal department, was to provide guidance to the States/ Union Territories for implementation of the component schemes of NeGP and closely monitoring the progress. Audit found that none of the States could adhere to the time frame proposed for the projects. Lack of synchronization in the execution of projects had led to delays in e-delivery of services. The pace of utilization of the infrastructure like SWAN and SDC in furthering e-governance in ten States selected for Audit was found to be slow.

Implementation of SWAN

The SWAN is intended to act as the converged backbone network for data, voice and video communications across a state catering to its entire information communication requirements. The scheme is to connect the State Head Quarter (SHQ) with all District Head Quarters (DHQ) and all Block Head Quarters (BHQ) with minimum 2 Mbps leased line. The objective of the Scheme was to create a secure close user group (CUG) government network for the purpose of delivering 3 Mega Byte per second. SWAN was to be implemented in 29 States and six Union Territories (UTs) and as of March 2013, '27 States and three UTs had implemented the project completely and in one State and three UTs implementation was in advanced stage. Goa had opted out of the scheme as they had established their own Broadband Network for e-Governance.

Despite passage of eight years since the approval (March 2005) of SWAN scheme by CCEA, SWAN could not be rolled out in pan India. Haryana was the first State to commission SWAN (August 2007) under NeGP after a delay of eight months from the

scheduled timeline. Though the 30 States/UTs had completed SWAN and four States/UTs are in advance stage of implementation, delay ranging from eight months to seventy four months was noticed in all the States/UT. SWAN is a vital element of the core infrastructure for supporting the e-Governance initiatives of the Government and was designed to cater to the governance, information and communication requirements of all the State Departments. Delayed completion of SWAN schemes in the States resulted in postponement of the achievements of the vision of the e-governance programme'.

Network Operators

SWAN implementation through Public Private Partnership (PPP) Model, State/UT identifies a suitable PPP model (BOO, BOOT etc.) and selects an appropriate agency through competitive bidding process for outsourcing the establishment, operation and maintenance of the network. Total payments to the network operator are apportioned into 20 equal Quarterly Guaranteed Returns (QGRs). All the ten States selected had opted for PPP implementation model. Though the agreement with the network operators provides for imposition of penalty for failure on the part of BOOT operator / Network operator to adhere to conditions of contract and penalty calculated on the full value of the QGR/contract value should have been levied as per the contract conditions, penalty was not levied for non adherence of contractual provisions by the operators.

The date of successful commissioning of SWAN is taken on the basis of Final Acceptance Test (FAT) certificate to be issued by the TPA agencies. Appointment of TPA was mandatory and TPA was responsible for providing assurance that performance of the network was as per the Service Level Agreement (SLA) with the network operator and the bandwidth service provider. Out of the ten States audited, only Andhra Pradesh, Gujarat, Karnataka and Kerala appointed TPAs before the Acceptance Testing of SWAN

and the remaining six states did not appoint TPA before commissioning of the network. The networks were accepted by the States without confirming that the network operator had complied with the provisions of the SLA.

DeitY informed that timely completion of the scheme was hampered mainly on account of delay in site finalization and handing over; State level administrative delays. As per SDC scheme, one government application was required to be used for the Final Acceptance Test (FAT) in every SDC, but in certain States FAT application was not ready or changed by the State during SDC implementation. Delays in bid process and issues in Bid evaluation; delayed internal approvals and contract signing at the State level should have been promptly addressed at State level in the Project Implementation Committee and State Apex Committee

Every Data Centre in the State should have well defined Disaster Recovery and Business Continuity plan (DR&BCP) along with appropriate data backup and recovery infrastructure. They also need to conduct regular Disaster Recovery Testing, Drills and Disaster Recovery Plan updating. However, only Tamil Nadu and Kerala had taken some initiative for Disaster Recovery Plan.

Non Availability of Government to Citizen (G2C) services

The NeGP vision is to "make all Government services accessible to the common man in his locality, through common service delivery outlets and ensure efficiency, transparency and reliability of such services at affordable costs to realize the basic needs of the common man". The CSCs were established with an intention to provide single window points for Government to Citizen (G2C) services and Business to Citizen (B2C) services.

In Assam, although 15 Government to citizen services were mandated to be provided through CSCs, a maximum of nine services were provided due to delay in creation of related infrastructure. Delivery of services leveraging the infrastructures (SWAN, SDC and CSC) would be delayed as most of the State

mission mode projects (MMPs23) were at various stages of desig and development and actual implementation of MMPs would tak an additional 3 to 4 years. This delay caused to adopting a alternative strategy to use the IT infrastructure SWAN, SDC an CSC for quick delivery of services. Accordingly, a ne infrastructure viz. SSDG was to be created immediately across th States/UTs to provide a single gateway to citizen for servic delivery.

Mission Mode Project (MMP)

MMP is an individual project within NeGP with clear defined objectives, scope and implementation time line an milestones as well as measurable outcomes and service levels e.g Land records, Police, Agriculture, Health and Education. Th timeline prescribed for the implementation of the project for Sta Portal, SSDG and e-forms specified 12 months for the system 'go-live'; but surprisingly, the finalization of RFP was delayed most of the States with Gujarat not signing agreement an Karnataka not finalizing the RFP even after lapse of more than tw years of approval.

As of March 2013, out of the ten selected States, the SSD component was under implementation in eight States and wa launched in two States (Himachal Pradesh and Tamil Nadu Reported reasons by DeitY were delays in RFP finalizatio bidding, selection of implementing agencies, Departmen approvals on the requirement documents as well as other proje documents.

The date for SSDG implementation was different fo States/UTs. The scheme was approved in December 2008 but co not be implemented fully even now, the date of successf commissioning of SWAN.

The Programme Management Structure for NeGP approv by CCEA inter alia envisaged State level Apex Committee head by the Chief Secretaries to allocate resources, set priority amon

projects and resolve inter-departmental issues properly. The Apex Committees, thus, had to perform effective oversight functions for the efficient roll out of e-governance initiatives in a State. It was observed that the State Apex Committees of Assam and Haryana had not met even once since their formation in June 2009 and February 2010 respectively. In Himachal Pradesh, the Apex Committee had met three times since its formation in March 2006 while in Tamil Nadu, the Apex Committee had met only twice since its inception in April 2005. Similarly, from the details made available to Audit, it was seen that except in the States of Andhra Pradesh and Gujarat, the meetings of the Committees designated for monitoring the implementation of SDC and SSDG schemes were inadequate during the period covered in Audit.

Implementation issues in relation to various infrastructure schemes under NeGP, as discussed in the Report include delays in completion of SWAN project, absence of synchronized implementation of core projects like SWAN and SDC, absence of sufficient Government to citizen services pointed to the fact that monitoring of e-governance initiatives at the State level was inadequate. CAG's Report No. 20 of 2015 (page 113) concludes that "The National e-Governance Plan approved in 2006 aimed towards making all Government services accessible to the common man in his locality at an affordable cost. The vision of NeGP was to be achieved through creation and implementation of core and support infrastructure in the form of SWAN, SDC, SSDG and CSCs. DeitY, as the nodal department, was assigned the pivotal role of providing guidance to the States/UTs for implementation of the component schemes of NeGP and closely monitoring the progress. Audit observed that none of the States could adhere to the time frame proposed for the projects. There was lack of synchronization in the execution of projects leading to delays in e-delivery of services".

Audit finds that the infrastructure like SWAN and SDC, though created for e-governance is still to be effectively utilized for

e-governance in ten States selected for Audit. In the digital world of today, it is important to create essential state of the art technology for good governance. It may not be possible to evaluate the return on investment in areas of good governance objectively like private sector or corporate but proper training and involvement of users, effective, efficient, most economic and appropriate technology and process must be adopted. Effective monitoring and timely corrective and preventive action needs to be ensured. Lack of knowledge and preparedness to use the technology cannot be tolerated in a developing country like India where extreme poverty, mass suicides of farmers due to agriculture debts and lack of basic livelihood for millions of citizens exist even now. There should have been effective monitoring at DeitY at every stage from Central to the lowest level of implementation for timely creation and optimum utilization of the infrastructure under NeGP for delivering services to common citizen as envisaged in the Cabinet paper. The shortcomings in the implementation and utilization of the infrastructure projects as reported by CAG needs to be used as a feedback and valuable lessons for future execution of projects.

Conclusion

Good e-governance is critical to accelerated sustainable development process in the digital world. Inherent conflicts in sustainable development between economic priorities, environmental preservation and most importantly people's livelihood and social justice need to be resolved by engaging the stakeholders. Whether it is land acquisition, or construction of dams, nuclear reactors, highways, oil and gas exploration, mining or any development activities, it is important to engage the people who are impacted by the government policy and resolve the issue amicably for the larger interests of the community.

As in every government project, e-governance projects have faced time over run, cost overrun, quality issues and non-coordinated, ineffective functioning of Central, State/UT

governments and allied agencies involved in implementation of the project. Laxity in monitoring and taking timely steps for preventive and corrective actions is reflected in every process and stage of execution. It is high time government improves its project implementation approach and methodology. There may be need for better accountability amongst the bureaucrats and those who are charged with authority, power and responsibility to execute government projects on time.

DOCUMENT :

THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX ACT, 2015

(NO. 22 OF 2015)

[26*th May,* 2015.]

An Act to make provisions to deal with the problem of the Black money that is undisclosed foreign income and assets, the procedure for dealing with such income and assets and to provide for imposition of tax on any undisclosed foreign income and asset held outside India and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title, extent and commencement.

1. (1) This Act may be called the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

(2) It extends to the whole of India.

(3) Save as otherwise provided in this Act, it shall come into force on the 1st day of April, 2016.

Definitions

2. In this Act, unless the context otherwise requires,—

(1) "Appellate Tribunal" means the Appellate Tribunal constituted under section 252 of the Income-tax Act;

(2) "assessee" means a person, being a resident other than not ordinarily resident in India within the meaning of clause (*6*) of section 6 of the Income-tax Act, by whom tax in respect of undisclosed foreign income and assets, or any other sum of money, is payable under this Act and includes every person who is deemed to be an assessee in default under this Act;

(3) "assessment" includes reassessment;

(4) "assessment year" means the period of twelve months commencing on the 1st day of April every year;

54 of 1963.

(5) "Board" means the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963;

43 of 1961.

(6) "Income-tax Act" means the Income-tax Act, 1961;

(7) "participant" means—

(a) a partner in relation to a firm; or

(b) a member in relation to an association of persons or body ofindividuals;

(8) "prescribed" means prescribed by rules made under this Act;

(9) "previous year" means—

(a) the period beginning with the date of setting up of a business andending with the date of the

closure of the business or the 31st day of Marchfollowing the date of setting up of such business, whichever is earlier;

(b) the period beginning with the date on which a new source of incomecomes into existence and ending with the date of closure of the business or the31st day of March following the date on which such new source comes intoexistence, whichever is earlier;

(c) the period beginning with the 1st day of the financial year and endingwith the date of discontinuance of the business other than business referred toin clause (*b*) or dissolution of an unincorporated body or liquidation of a company,as the case may be; or

(d) the period of twelve months commencing on the 1st day of April of the relevant year in any other case,

and which immediately precedes the assessment year.

(10) "resident" means a person who is resident in India within the meaning of section 6 of the Income-tax Act;

(11) "undisclosed asset located outside India" means an asset (including financial interest in any entity) located outside India, held by the assessee in his name or in respect of which he is a beneficial owner, and he has no explanation about the source of investment in such asset or the explanation given by him is in the opinion of the Assessing Officer unsatisfactory;

(12) "undisclosed foreign income and asset" means

the total amount of undisclosed income of an assessee from a source located outside India and the value of an undisclosed asset located outside India, referred to in section 4, and computed in the manner laid down in section 5;

(13) "unincorporated body" means—

(a) a firm;

(b) an association of persons; or

(c) a body of individuals;

(14) "value of an undisclosed asset" shall have the meaning assigned to it insub-section (*2*) of section 3;

(15) all other words and expressions used herein but not defined and defined inthe Income-tax Act shall have the meanings respectively assigned to them in that Act.

CHAPTER II

BASIS OF CHARGE

Charge of tax.

3. *(1)* There shall be charged on every assessee for every assessment year commencing on or after the 1st day of April, 2016, subject to the provisions of this Act, a tax in respect of his total undisclosed foreign income and asset of the previous year at the rate of thirty per cent. of such undisclosed income and asset:

Provided that an undisclosed asset located outside India shall be charged to tax on its value in the previous year in which such asset comes to the notice of the Assessing Officer.

(2) For the purposes of this section, "value of an undisclosed asset" means the fairmarket value

of an asset (including financial interest in any entity) determined in suchmanner as may be prescribed.

Scope of total undisclosed foreign income and asset.

4. *(1)* Subject to the provisions of this Act, the total undisclosed foreign income and asset of any previous year of an assessee shall be,—

(a) the income from a source located outside India, which has not been disclosed in the return of income furnished within the time specified in *Explanation* 2 to sub-section (*1*) or under sub-section (*4*) or sub-section (*5*) of section 139 of the Income-tax Act;

(b) the income, from a source located outside India, in respect of which a return is required to be furnished under section 139 of the Income-tax Act but no return of income has been furnished within the time specified in *Explanation* 2 to sub-section (1) or under sub-section (*4*) or sub-section (*5*) of section 139 of the said Act; and

(c) the value of an undisclosed asset located outside India.

(2) Notwithstanding anything contained in sub-section (*1*), any variation made in the income from a source outside India in the assessment or reassessment of the total income of any previous year, of the assessee under the Income-tax Act in accordance with the provisions of section 29 to section 43C or section 57 to section 59 or section 92C of the said Act, shall not be included in the total undisclosed foreign income.

(3) The income included in the total undisclosed foreign income and asset under this Act shall not

form part of the total income under the Income-tax Act.

Computation of total undisclosed foreign income and asset.

5. *(1)* In computing the total undisclosed foreign income and asset of any previous year of an assessee,—

(i) no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee, whether or not it is allowable in accordance with the provisions of the Income-tax Act;

(ii) any income,—

(a) which has been assessed to tax for any assessment year under theIncome-tax Act prior to the assessment year to which this Act applies; or

(b) which is assessable or has been assessed to tax for any assessmentyear under this Act,

shall be reduced from the value of the undisclosed asset located outside India, if, the assesse furnishes evidence to the satisfaction of the Assessing Officer that the asset has beenacquired from the income which has been assessed or is assessable, as the case may be, totax.

(2) The amount of deduction referred to in clause (*ii*) of sub-section (*1*) in case of an immovable property shall be the amount which bears to the value of the asset as on the firstday of the financial year in which it comes to the notice of the Assessing Officer, the sameproportion as the assessable or assessed foreign income bears to the total cost of the asset.

Illustration

A house property located outside India was acquired by an assessee in the previous year 2009-10 for fifty lakh rupees. Out of the investment of fifty lakh rupees, twenty lakh rupees was assessed to tax in the total income of the previous year 2009-10 and earlier years. Such undisclosed asset comes to the notice of the Assessing Officer in the year 2017-18. If the value of the asset in the year 2017-18 is one crore rupees, the amount chargeable to tax shall be A-B=C

where,

A=Rs.1 crore, B=Rs. (100 x 20/50) lakh= Rs.40 lakh, C=Rs. (100-40) lakh=Rs.60 lakh.

CHAPTER III

TAX MANAGEMENT

Tax authorities.

6. *(1)* The income-tax authorities specified insection 116 of the Income-tax Act shall bethe tax authorities for the purposes of this Act.

(2) Every such authority shall exercise the powers and perform the functions of a tax authority under this Act in respect of any person within his jurisdiction.

(3) Subject to the provisions of sub-section(*4*), the jurisdiction of a tax authority under this Act shall be the same as he has under the Income-tax Act by virtue of orders or directions issued under section 120 of that Act (including orders or directions assigning the concurrent jurisdiction) or under any other provision of that Act.

(4) The tax authority having jurisdiction inrelation to an assessee who has no income assessable to income-tax under the Income-tax Act shall be the tax authority having jurisdiction in respect of the area in which the assessee resides or carries on its businessor has its principal place of business.

(5) Section 118 of the Income-tax Act and any notification issued thereunder shall apply in relation to the control of tax authorities as they apply in relation to the control of the corresponding income-tax authorities, except to the extent to which the Board may, by notification in the Official Gazette, otherwise direct in respect of any tax authority.

Change of incumbent.

7. (1) The tax authority who succeeds another authority as a result of change in jurisdiction or for any other reason, shall continue the proceedings from the stage at which it was left by his predecessor.

(2) The assessee in such a case may be given an opportunity of being heard, if he so requests in writing, before passing any order in his case.

Powers regarding discovery and production of evidence.

5 of 1908.

8. (1) The prescribed tax authorities shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

(a) discovery and inspection;

(b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;

(c) compelling the production of books of account and other documents; and

(d) issuing commissions.

(2) For the purposes of making any inquiry or investigation, the prescribed tax authority shall be vested with the powers referred to in sub-section (1), whether or not any proceedings are pending before it.

(3) Any tax authority prescribed for the purposes of sub-section (1) or sub-section (2) may, subject to the rules made in this behalf, impound any books of account or other documents produced before it and retain them in its custody for such period as it thinks fit.

(4) Any tax authority below the rank of Commissioner shall not—

(a) impound any books of account or other documents without recording his reasons for doing so; or

(b) retain in his custody any such books or documents for a period exceeding thirty days without obtaining the approval of the Principal Chief Commissioner orthe Chief Commissioner or the Principal Commissioner or the Commissioner.

Proceedings before tax authorities to be judicial proceedings.

9. (1) Any proceeding under this Act before a tax authority shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 and for the purposes of section 196 of the Indian Penal Code.

45 of 1860.

2 of 1974.

(2) Every tax authority shall be deemed to be a civil court for the purposes of section 195, but not for

the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973.

Assessment. **10.** *(1)* For the purposes of making an assessment or reassessment under this Act, the Assessing Officer may, on receipt of an information from an income-tax authority under the Income-tax Act or any other authority under any law for the time being in force or on coming of any information to his notice, serve on any person, a notice requiring him on a date to be specified to produce or cause to be produced such accounts or documents or evidence as the Assessing Officer may require for the purposes of this Act and may, from time to time, serve further notices requiring the production of such other accounts or documents or evidence as he may require.

(2) The Assessing Officer may make such inquiry, as he considers necessary, for the purpose of obtaining full information in respect of undisclosed foreign income and asset of any person for the relevant financial year or years.

(3) The Assessing Officer, after considering such accounts, documents or evidence, as he has obtained under sub-section (*1*), and after taking into account any relevant material which he has gathered under sub-section (*2*) and any other evidence produced by the assessee, shall by an order in writing, assess the undisclosed foreign income and asset and determine the sum payable by the assessee.

(4) If any person fails to comply with all the terms of the notice under sub-section(*1*), the

Assessing Officer shall, after taking into account all the relevant material whichhe has gathered and after giving the assessee an opportunity of being heard, make theassessment of undisclosed foreign income and asset to the best of his judgment anddetermine the sum payable by the assessee.

Time limit for completion of assessment and reassessment.

11. *(1)* No order of assessment or reassessment shall be made under section 10after the expiry of two years from the end of the financial year in which the notice undersub-section (*1*) of section 10 was issued by the Assessing Officer.

(2) Notwithstanding anything contained in sub-section (*1*), an order of fresh assessment in pursuance of an order passed under section 18 setting aside or cancelling an assessment, may be made at any time before the expiry of the period of two years from the end of the financial year in which the order under section 18 is received by the Principal Commissioner or the Commissioner.

(3) The provisions of sub-section (*1*) shall not apply to the assessment or reassessment made in consequence of, or to give effect to, any finding or direction contained in an order under section 15 or section 18 or section 19 or section 22 of this Act or in an order of any court in a proceeding otherwise than by way of appeal under this Act and such assessment or reassessment may, subject to the provisions of sub-section (*2*), be completed at any time before the expiry of the period of two years from the end of the financial year in which such order

is received by the Principal Commissioner or the Commissioner.

Explanation 1.—In computing the period of limitation for the purpose of this section–

(i) the time taken in reopening the whole or any part of the proceeding; or

(ii) the period during which the assessment proceeding is stayed by an order or injunction of any court; or

(iii) the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A of the Income-tax Act or under section 73 of this Act and ending with the date on which the Principal Commissioner or the Commissioner last receives, the information so requested or a period of one year, whichever is less,

shall be excluded:

Provided that where immediately after the exclusion of the aforesaid time or period, the period of limitation referred to in sub-sections (*1*), (*2*) and (*3*) available to the Assessing Officer for making an order of assessment or reassessment, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.

Explanation 2.—Where, by an order referred to in sub-section (*3*), any undisclosed foreign

income and asset is excluded from the total undisclosed foreign income and asset for an assessment year in respect of an assessee, then, an assessment of such undisclosed foreign income and asset for another assessment year shall, for the purposes of section 10 and this section, be deemed to be one made in consequence of, or to give effect to, any finding or direction contained in the said order.

Rectification of mistake.

12. *(1)* A tax authority may amend any order passed by it under this Act so as to rectify any mistake apparent from the record.

(2) No amendment under this section shall be made after a period of four years from the end of the financial year in which the order sought to be amended was passed.

(3) The tax authority shall not make any amendment, which has the effect of enhancing the undisclosed foreign income and asset or reducing a refund or otherwise increasing the liability of the assessee, unless the authority concerned has given to the assessee an opportunity of being heard.

(4) The tax authority concerned may make an amendment under this section—

(a) on its own motion; or

(b) on an application made to it by the assessee or, as the case may be, by the Assessing Officer.

(5) Any application received by the tax authority for amendment of an order shall be decided within a period of six months from the end of the month in which such application is received by it.

(6) In a case where the order has been made in an appeal or revision, the power of the tax authority to amend the order shall be restricted to matters other than those decided in appeal or revision.

Notice of demand.

13. Any sum payable in consequence of any order made under this Act shall be demanded by a tax authority by serving upon the assessee a notice of demand in such form and manner as may be prescribed.

Direct assessment or recovery not barred.

14. Nothing in this Chapter shall prevent either the direct assessment of the person on whose behalf or for whose benefit the undisclosed income from a source located outside India is receivable or undisclosed asset located outside India is held, or the recovery from such person of the tax or any other sum of money payable in respect of such income and asset.

Appeals to the Commissioner (Appeals).

15. *(1)* Any person, – (*a*) objecting to the amount of tax on undisclosed foreign income and asset for which he is assessed by the Assessing Officer; or (*b*) denying his liability to be assessed under this Act; or (*c*) objecting to any penalty imposed by the Assessing Officer; or (*d*) objecting to an order of rectification having the effect of enhancing the assessment or reducing the refund; or (*e*) objecting to an order refusing to allow the claim made by the assessee for a rectification under section 12, may appeal to the Commissioner (Appeals).

(2) Every appeal shall be filed in such form and verified in such manner and be accompanied by a fee as may be prescribed.

(3) An appeal shall be presented within aperiod of thirty days from —

(a) the date of service of the notice of demand relating to the assessment or penalty, or

(b) the date on which the intimation of the order sought to be appealed against is served in any other case.

(4) The Commissioner (Appeals) may admit an appeal after the expiration of the period referred to in sub-section (3)—

(a) if he is satisfied that the appellant had sufficient cause for not presenting it within that period, and

(b) the delay in preferring the appeal does not exceed a period of one year.

(5) The Commissioner (Appeals) shall hear and determine the appeal and, subject to the provisions of this Act, pass such orders as he thinks fit and such orders may include an order enhancing the assessment or penalty:

Provided that an order enhancing the assessment or penalty shall not be made unless the assessee has been given a reasonable opportunity of being heard.

Procedure to be followed in appeal.

16. (1) The Commissioner (Appeals) shall fix a date and place for the hearing of the appeal, and shall give notice of the same to the appellant and the Assessing Officer against whose order the appeal is preferred.

(2) The following shall have the right to be heard at the hearing of the appeal, namely:—

(a) the appellant, either in person or by an authorised representative;

(b) the Assessing Officer, either in person or by a representative.

(3) The Commissioner (Appeals) may adjourn the hearing of the appeal whenever he considers it necessary or expedient to do so.

(4) The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit.

(5) The Commissioner (Appeals) may, during the proceedings before him, direct the Assessing Officer to make an inquiry and report to him on the points arising out of anyquestion of law or fact.

(6) The Commissioner (Appeals) may, at the hearing of an appeal, allow the appellantto go into any ground of appeal not specified in the grounds of appeal, if the Commissioner (Appeals) is satisfied that the omission was not wilful or unreasonable.

(7) The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons therefor.

(8) Every appeal preferred under section 15 shall be heard and disposed of by the Commissioner (Appeals) as expeditiously as possible and endeavour shall be made to dispose of such appeal within a period of one year from the end of the financial year in which the appeal is preferred.

(9) On the disposal of the appeal, the Commissioner (Appeals) shall communicate the order passed by him to the assessee and to

the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner.

Powers of Commissioner (Appeals).

17. *(1)* In disposing of an appeal, the Commissioner (Appeals) shall have the following powers, namely:—

(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment;

(b) in an appeal against an order imposing a penalty, he may confirm or cancel such order;

(c) in any other case, he may determine the issues arising in the appeal and pass such orders thereon, as he thinks fit.

(2) The Commissioner (Appeals) may consider and decide any matter which was not considered by the Assessing Officer.

(3) The Commissioner (Appeals) shall not enhance an assessment or a penalty unless the appellant has been given an opportunity of being heard.

(4) In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before him by the appellant.

Appeals to Appellate Tribunal.

18. *(1)* Any assessee aggrieved by an order passed by the Commissioner (Appeals) under section 15, or an order passed by the Principal Commissioner or the Commissioner under any provision of this Act, may appeal to the Appellate Tribunal against such order.

(2) The Principal Commissioner or the Commissioner may, if he objects to any order passed by the Commissioner (Appeals) under any provision of this Act, direct the Assessing Officer to appeal to the Appellate Tribunal against the order.

(3) Every appeal under sub-section (1) or sub-section (2) shall be filed within a period of sixty days from the date on which the order sought to be appealed against is communicated to the assessee or to the Principal Commissioner or the Commissioner, as the case may be.

(4) The Assessing Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the Commissioner (Appeals) has been preferred under sub-section (1) or sub-section (2) by the other party may, notwithstanding that he may not have appealed against such order or any part thereof, within thirty days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the Commissioner (Appeals), and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).

(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the period referred to in sub-section (3) or sub-section (4), if—

(a) it is satisfied that there was sufficient cause for not presenting it within that period; and

the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner.

Powers of Commissioner (Appeals).

17. *(1)* In disposing of an appeal, the Commissioner (Appeals) shall have the following powers, namely:—

(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment;

(b) in an appeal against an order imposing a penalty, he may confirm or cancel such order;

(c) in any other case, he may determine the issues arising in the appeal and pass such orders thereon, as he thinks fit.

(2) The Commissioner (Appeals) may consider and decide any matter which was not considered by the Assessing Officer.

(3) The Commissioner (Appeals) shall not enhance an assessment or a penalty unless the appellant has been given an opportunity of being heard.

(4) In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before him by the appellant.

Appeals to Appellate Tribunal.

18. *(1)* Any assessee aggrieved by an order passed by the Commissioner (Appeals) under section 15, or an order passed by the Principal Commissioner or the Commissioner under any provision of this Act, may appeal to the Appellate Tribunal against such order.

(2) The Principal Commissioner or the Commissioner may, if he objects to any order passed by the Commissioner (Appeals) under any provision of this Act, direct the Assessing Officer to appeal to the Appellate Tribunal against the order.

(3) Every appeal under sub-section (1) or sub-section (2) shall be filed within a period of sixty days from the date on which the order sought to be appealed against is communicated to the assessee or to the Principal Commissioner or the Commissioner, as the case may be.

(4) The Assessing Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the Commissioner (Appeals) has been preferred under sub-section (1) or sub-section (2) by the other party may, notwithstanding that he may not have appealed against such order or any part thereof, within thirty days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the Commissioner (Appeals), and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).

(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the period referred to in sub-section (3) or sub-section (4), if—

(a) it is satisfied that there was sufficient cause for not presenting it within that period; and

(b) the delay in filing the appeal does not exceed a period of one year.

(6) An appeal to the Appellate Tribunal shall be filed in such form, and verified in such manner, and shall, except in the case of an appeal referred to in sub-section (2) or a memorandum of cross-objections referred to in sub-section (4), be accompanied by a fee as may be prescribed.

(7) Subject to the provisions of this Act, in hearing and making an order on any appeal under this section, the Appellate Tribunal shall exercise the same powers and follow the procedure as it exercises and follows in hearing and making an order on any appeal under the Income-tax Act.

Appeal to High Court.

19. (1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law.

(2) The Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or an assessee, may file an appeal to the High Court on being aggrieved by any order passed by the Appellate Tribunal and such appeal shall be —

(a) filed within a period of one hundred and twenty days from the date on which the order appealed against is received by the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the assessee;

(b) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(3) The High Court may admit an appeal after the expiry of the period of one hundred and twenty days referred to in sub-section (2), if it is satisfied that there was sufficient cause for not filing the appeal within that period.

(4) If the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question.

(6) Notwithstanding anything in sub-sections (4) and (5), the High Court may exercise its power to hear the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question of law.

(7) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(8) The High Court may determine any issue which —

(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on the question of law referred to in sub-section (1).

5 of 1908. (9) The provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court shall,

so far as may be, apply in the case of appeals under this section.

(10) When the High Court delivers a judgment in an appeal filed before it under sub-section (7), effect shall be given to the order passed on the appeal by the Assessing Officer on the basis of a certified copy of the judgment.

Case before High Court to be heard by not less than two judges.

20. (1) An appeal filed before the High Court shall be heard by a Bench of not less than two Judges of the High Court and shall be decided in accordance with the opinion of such Judges or if the Bench is of more than two Judges, by the majority of such Judges.

(2) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall then be heard upon that point only by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

Appeal to Supreme Court.

21. An appeal shall lie to the Supreme Court from any judgment of the High Court delivered under section 19 which the High Court certifies to be a fit case for appeal to the Supreme Court.

Hearing before Supreme Court.

5 of 1908.

22. (1) The provisions of the Code of Civil Procedure, 1908, relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under section 21 as they apply in the case of appeals from decrees of a High Court.

(2) The costs of the appeal shall be in the discretion of the Supreme Court.

(3) Where the judgment of the High Court is varied

or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in sub-section(*10*) of section 19.

Revision of orders prejudicial to revenue.

23. *(1)* The Principal Commissioner or the Commissioner may, for the purposes of revising any order passed in any proceeding under this Act before any tax authority sub ordinate to him, call for and examine all available records relating thereto.

(2) The Principal Commissioner or the Commissioner may, after giving the assesse an opportunity of being heard, pass an order (hereinafter referred to as the revision order) as the circumstances of the case justify, if he is satisfied that the order sought to be revised is erroneous in so far as it is prejudicial to the interests of the revenue.

(3) The Principal Commissioner or the Commissioner may make, or cause to be made, such inquiry as he considers necessary for the purposes of passing an order under sub-section (*2*).

(4) The revision order passed by the Principal Commissioner or the Commissioner under sub-section (*2*) may have the effect of enhancing or modifying the assessment but shall not be an order cancelling the assessment and directing a fresh assessment.

(5) The power of the Principal Commissioner or the Commissioner under sub-section (*2*) for revising an order shall extend to such matters as have not been considered and decided in any appeal.

(6) No order under sub-section (2) shall be made after the expiry of a period of two years from the end of the financial year in which the order sought to be revised was passed.

(7) Notwithstanding anything in sub section (6), an order in revision under this section may be passed at any time in respect of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, the High Court or the Supreme Court.

(8) In computing the period of limitation under sub-section (6), the following shall not be included, namely:—

(a) the time taken in giving an opportunity to the assessee to be reheard under section 7; or

(b) any period during which any proceeding under this section is stayed by an order or injunction of any court.

(9) Without prejudice to the generality of the foregoing provisions, an order passed by a tax authority shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if in the opinion of the Principal Commissioner or the Commissioner—

(a) the order is passed without making inquiries or verification which, should have been made; or

(b) the order has not been made in accordance with any order, direction or instruction issued by the Board; or

(c) the order has not been passed in accordance with any decision, prejudicial to the assessee,

rendered by the jurisdictional High Court or the Supreme Court in the case of the assessee or any other person under this Act or the Income-tax Act.

(10) In this section, "record" shall include all records relating to any proceeding under this Act available at the time of examination by the Principal Commissioner or the Commissioner.

Revision of other orders.

24. *(1)* The Principal Commissioner or the Commissioner may, either *suomotu*or on an application made by the assessee, for the purposes of revising any order passed by an authority subordinate to him, other than an order to which section 23 applies, call for and examine all available records relating thereto.

(2) The Principal Commissioner or the Commissioner may pass an order, as he considers necessary, which is not prejudicial to the assessee.

(3) The power of the Principal Commissioner or the Commissioner under sub-section (*2*) to revise an order shall not extend to such order—

(a) against which an appeal has not been filed but the time for filing an appeal before the Commissioner (Appeals) has not expired;

(b) against which an appeal is pending before the Commissioner (Appeals); or

(c) which has been considered and decided in any appeal.

(4) The assessee shall make the application for revision of any order referred to in subsection(*1*), within a period of one year from

the date on which the order sought to be revised was communicated to him, or the date on which he otherwise came to know of it, which ever is earlier.

(5) The Principal Commissioner or the Commissioner may, if he is satisfied that the assessee was prevented by sufficient cause from making the application within the period of one year, admit an application made after the expiry of one year but before expiry of two years from the date referred to in sub-section (*4*).

(6) Every application by an assessee for revision under this section shall be accompanied by such fees as may be prescribed.

(7) No order under sub-section (*2*) shall be made after the expiry of—

(a) a period of one year from the end of the financial year in which an application is made by the assessee under sub-section (*4*); or

(b) a period of one year from the date of the order sought to be revised, if the order is revised *suomotu* by the Commissioner.

(8) In computing the period of limitation under sub-section (*7*), the following shall not be included, namely:—

(a) the time taken in giving an opportunity to the assessee to be reheard under section 7; or

(b) any period during which any proceeding under this section is stayed by an order or injunction of any court.

(9) An order by the Principal Commissioner or the Commissioner declining to interfere shall, for

the purposes of this section, be deemed not to be an order prejudicial to the assessee.

Tax to be paid pending appeal.

25. Notwithstanding any appeal preferred to the High Court or the Supreme Court, the tax shall be paid in accordance with the assessment made under this Act.

Execution of order for costs awarded by Supreme Court.

26. The High Court may, on petition made for the execution of the order in respect of the costs awarded by the Supreme Court, transmit such order for execution to any court sub ordinate to it.

Amendment of assessment on appeal.

27. Where as a result of an appeal under section 15 or section 18, any change is made in the assessment of a body of individuals or an association of persons or an order for new assessment of a body of individuals or an association of persons is made, the Commissioner (Appeals) or the Appellate Tribunal, as the case may be, shall pass an order authorising the Assessing Officer either to amend the assessment made or make a fresh assessment on any member of the body or association.

Exclusion of time taken for obtaining copy.

28. In computing the period of limitation prescribed for an appeal under this Act, the day on which the notice of the order was served upon the assessee without serving a copy of the order, the time taken for obtaining a copy of such order, shall be excluded.

Filing of appeal by tax authority

29. *(1)* The Board may, from time to time, issue orders, instructions or directions to other tax authorities, fixing such monetary limits as it may deem fit, for the purpose of regulating the

filing of appeal by any tax authority under this Chapter.

(2) Where, in pursuance of the orders, instructions or directions issued under subsection(1), a tax authority has not filed any appeal on any issue in the case of an assesse for any financial year, it shall not preclude such authority from filing an appeal on the same issue in the case of—

(a) the same assessee for any other financial year; or

(b) any other assessee for the same or any other financial year.

(3) Notwithstanding that no appeal has been filed by a tax authority pursuant to the orders or instructions or directions issued under sub-section (1), it shall not be lawful for an assessee, being a party in any appeal, to contend that the tax authority has acquiesced in the decision on the disputed issue by not filing an appeal in any case.

(4) The Appellate Tribunal, hearing such appeal, shall have regard to the orders, instructions or directions issued under sub-section (1) and the circumstances under which such appeal was filed or not filed in respect of any case.

(5) Every order, instruction or direction which has been issued by the Board fixing monetary limits for filing an appeal shall be deemed to have been issued under sub-section (1) and the provisions of sub-sections (2), (3) and (4) shall apply accordingly.

Recovery of tax dues by

30. (1) Any amount specified as payable in a notice of demand under section 13 shall be paid within a

Assessing Officer.

period of thirty days of the service of the notice, to the credit of the Central Government in such manner as may be prescribed.

(2) Where the Assessing Officer has any reason to believe that it will be detrimental to the interests of revenue, if the period of thirty days referred to in sub-section (*1*) is allowed, he may, with the previous approval of the Joint Commissioner, reduce such period as he deems fit.

(3) The Assessing Officer may, on an application made by the assessee, before the expiry of a period of thirty days or the period reduced under sub-section (*2*) or during the pendency of appeal with the Commissioner (Appeals), extend the time for payment, or allow payment by instalments, subject to such conditions as he may think fit to impose in the circumstances of the case.

(4) An assessee shall be deemed to be an assessee in default, if the tax arrear is not paid within the time allowed under sub-section (*1*) or the period reduced under sub-section (*2*) or extended under sub-section (*3*), as the case may be.

(5) Where an assessee defaults in paying any one of the instalments within the time fixed under sub-section (*3*), he shall be deemed to be an assessee in default in respect of the whole of the then outstanding amount.

(6) The Assessing Officer may, in a case where no certificate has been drawn up under section 31 by the Tax Recovery Officer, recover the amount in respect of which the assessee is in default, or is deemed to be in default, by any one

or more of the modes provided in section 32.

(7) The Tax Recovery Officer shall be vested with the powers to recover the tax arrear on drawing up of a statement of tax arrear under section 31.

Recovery of tax dues by Tax Recovery Officer.

31. (1) The Tax Recovery Officer may draw up under his signature a statement of tax arrears of an assessee referred to in sub-section (4) or sub-section (5) of section 30, in such form, as may be prescribed (such statement hereafter in this Chapter referred to as"certificate").

(2) The certificate under sub-section (1) shall stand amended from time to time consequent to any proceeding under this Act and the Tax Recovery Officer shall recover the amount so modified.

(3) The Tax Recovery Officer may rectify any mistake apparent from the record.

(4) The Tax Recovery Officer shall have the power to extend the time for payment, or allow payment by instalments, subject to such conditions as he may think fit to impose in the circumstances of the case.

(5) The Tax Recovery Officer shall proceed to recover from the assessee the amount specified in the certificate by one or more of the modes referred to in section 32 or in the Second Schedule to the Income-tax Act.

(6) It shall not be open to the assessee to dispute the correctness of any certificate drawn up by the Tax Recovery Officer on any ground whatsoever, but it shall be lawful for the Tax Recovery Officer to cancel the certificate if, for any reason, he thinks it necessary so to do.

Mode of recovery of tax dues.

32. *(1)* The Assessing Officer or the Tax Recovery Officer may require the employer of the assessee to deduct from any payment to the assessee such amount as is sufficient to meet the tax arrear from the assessee.

(2) Upon requisition under sub-section (*1*), the employer shall comply with the requisition and shall pay the sum so deducted to the credit of the Central Government in such manner as may be prescribed.

5 of 1908. *(3)* Any part of the salary, exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure, 1908, shall be exempt from any requisition made under sub-section (*1*).

(4) The Assessing Officer or the Tax Recovery Officer may, by notice in writing, require any debtor of the assessee to pay such amount, not exceeding the amount of debt, as is sufficient to meet the tax arrear of the assessee.

(5) Upon receipt of the notice under sub-section (*4*), the debtor shall comply with the requisition and shall pay the sum to the credit of the Central Government in such manner as may be prescribed within the time (not being before the debt becomes due to the assessee) specified in the notice.

(6) A copy of the notice issued under sub-section (*4*) shall be forwarded to the assesse at his last address known to the Assessing Officer or the Tax Recovery Officer and in the case of a joint account, to all the joint holders at their last addresses known to the Assessing Officer or the Tax Recovery Officer.

(7) It shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary if the notice under sub-section (*4*) is issued to a post office, banking company, insurer or any other person.

(8) Any claim in respect of any property, in relation to which a notice under subsection(*4*) has been issued, arising after the date of the notice, shall be void as against any demand contained in the notice.

(9) A person to whom a notice under sub-section (*4*) has been issued, shall not be required to pay the amount of tax arrear specified therein, or part thereof, if he objects to it by a statement on oath that the sum demanded, or any part thereof, is not due to the assesse or that he does not hold any money for, or on account of, the assessee.

(10) The person referred to in sub-section (*9*) shall be personally liable to the Assessing Officer or the Tax Recovery Officer, as the case may be, to the extent of his own liability to the assessee on the date of the notice, or to the extent of the liability of the assessee for any sum due under this Act, whichever is less, if it is discovered that the statement made by him was false in any respect.

(11) The Assessing Officer or the Tax Recovery Officer may amend or revoke any notice issued under sub-section (*4*) or extend the time for making any payment in pursuance of such notice.

(12) The Assessing Officer or the Tax Recovery Officer shall grant a receipt for any amount paid in compliance with a notice issued under sub-section (*4*), and the person so paying shall be fully discharged from his liability to the assessee to the extent of the amount so paid.

(13) Any person discharging any liability to the assessee after receipt of a notice under sub-section (*4*) shall be personally liable to the Assessing Officer or the Tax Recovery Officer to the extent of his own liability to the assessee so discharged or to the extent of the liability of the assessee for any sum due under this Act, whichever is less.

(14) The debtor to whom a notice under sub-section (*4*) is sent shall be deemed to bean assessee in default, if he fails to make such payment and further proceedings may be initiated against him for the realisation of the amount in the manner provided in this section and the Second Schedule to the Income-tax Act.

(15) The Assessing Officer or the Tax Recovery Officer may apply to the court, in whose custody there is money belonging to the assessee, for payment to him of the entire amount of such money or if it is more than the tax arrear, an amount sufficient to meet the

(16) The Assessing Officer or the Tax Recovery Officer shall effect the recovery of any tax arrear in the same manner as attachment, distraint and sale of any movable property under the Second Schedule to the Income-tax Act, if he is so authorised by the Principal Chief Commissioner or the Chief Commissioner, or

the Principal Commissioner or the Commissioner, by general or special order.

(17) In this section,—

(a) "debtor", in relation to an assessee, means,—

(i) any person from whom any money is due, or may become due, to the assessee; or

(ii) any person who holds, or may subsequently hold, any money for, or on account of, the assessee; or

(iii) any person who holds, or may subsequently hold, any money for, or on account of, the assessee jointly with any other person;

(b) shares of the joint holders in the account shall be presumed, until the contrary is proved, to be equal.

Tax Recovery Officer by whom recovery of tax dues is to be effected

33. (1) The Tax Recovery Officer competent to take action under section 31 shall be the Tax Recovery Officer—

(a) within whose jurisdiction—

(i) the assessee carries on his business;

(ii) the principal place of business of the assessee is situate;

(iii) the assessee resides; or

(iv) any movable or immovable property of the assessee is situate; or

(b) who has been assigned jurisdiction under section 6.

(2) The Tax Recovery Officer, referred to in sub-section (1), may send a certificate, in such manner as may be prescribed, specifying the tax

arrear to be recovered, to another TaxRecovery Officer within whose jurisdiction the assessee resides or has property, if the first mentioned Tax Recovery Officer—

(a) is not able to recover the entire amount by sale of the property, movable or immovable, within his jurisdiction; or

(b) is of the opinion that, for the purpose of expediting, or securing, the recovery of the whole, or any part, of the amount under this Chapter, it is necessary to send such certificate.

(3) The second-mentioned Tax Recovery Officer shall, on receipt of the certificate, assume jurisdiction for recovery of the amount of tax arrear specified therein and proceed to recover the amount in accordance with the provisions of this Chapter.

Recovery of tax dues in case of a company in liquidation.

34. *(1)* The liquidator shall inform the Assessing Officer, who has jurisdiction to assess the undisclosed foreign income and asset of the company, of his appointment within a period of thirty days of his becoming the liquidator.

(2) The Assessing Officer shall, within a period of three months from the date on which he receives the information, intimate to the liquidator the amount which, in his opinion, would be sufficient to provide for any tax arrears or any amount which is likely to become payable thereafter, by the company under this Act.

(3) The liquidator—

(a) shall not part with any of the assets of the company, or the properties, in his custody until

he has been intimated by the Assessing Officer under sub-section (*2*);and

(b) on being so intimated, shall set aside an amount equal to the amount intimated.

(4) Upon receipt of the intimation from the Assessing Officer under sub-section (*2*),the amount so intimated shall, notwithstanding anything in any other law for the time being in force, be the first charge on the assets of the company remaining after payment of the following dues, namely:—

(a) workmen's dues; and

18 of 2013. *(b)* debts due to secured creditors to the extent such debts under clause (*iii*) of the proviso to sub-section (*1*) of section 325 of the Companies Act, 2013 are *paripassu* with such dues.

(5) The liquidator shall be personally liable for the payment of the amount payableby the company, if he—

(a) fails to inform in accordance with sub-section (*1*); or

(b) fails to set aside the amount as required by sub-section (*3*).

(6) The obligations and liabilities attached to the liquidator under this section shall attach to all the liquidators jointly and severally in a case where there is more than one liquidator.

(7) The provisions of this section shall prevail over anything to the contrary contained in any other law for the time being in force.

(8) In this section,—

(a) "liquidator" in relation to a company which is being wound up, whether under the orders of a court or otherwise, shall include a receiver of the assets of the company;

(b) "workmen's dues" shall have the meaning assigned to it in section 325 of the Companies Act, 2013. *18 of 2013.*

Liability of manager of a company.

35. (1) Every person being a manager at any time during the financial year shall be jointly and severally liable for the payment of any amount due under this Act in respect of the company for the financial year, if the amount cannot be recovered from the company.

(2) The provisions of sub-section (*1*) shall not apply, if the manager proves that non-recoverycannot be attributed to any neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

18 of 2013. (3) The provisions of this section shall prevail over anything to the contrary contained in the Companies Act, 2013.

18 of 2013. (4) In this section, "manager" shall include a managing director and both shall have the meaning respectively assigned to them in clause (*53*) and clause (*54*) of section 2 of the Companies Act, 2013.

Joint and several liability of participants

36. (1) Every person, being a participant in an unincorporated body at any time during the financial year, or the representative assessee of the deceased participant, shall be jointly and severally liable, along with the unincorporated body, for payment of any amount payable by the unincorporated body under this Act and all the

provisions of this Act shall apply accordingly.

(2) In case of a limited liability partnership, the provisions of sub-section (*1*) shall not apply, if the partner proves that non-recovery cannot be attributed to any neglect, misfeasance or breach of duty on his part in relation to the affairs of the partnership.

6 of 2009.

(3) The provisions of this section shall prevail over anything to the contrary contained in the Limited Liability Partnership Act, 2008.

Recovery through State Government

37. If the recovery of tax in any area has been entrusted to a State Government under clause (*1*) of article 258 of the Constitution, the State Government may direct, with respect to that area or any part thereof, that tax shall be recovered therein with, and as an addition to, any municipal tax or local rate, by the same person and in the manner as the municipal tax or local rate is recovered.

Recovery of tax dues in pursuance of agreements with foreign countries or specified territory.

38. (*1*) The Tax Recovery Officer may, in a case where an assessee has property in a country or a specified territory outside India, forward a certificate to the Board for recovery of the tax arrears from the assessee, where the Central Government or any specified association in India has entered into an agreement with that country or territory under section 90 or section 90A of the Income-tax Act or under sub-sections (*1*), (*2*) or sub-section (*4*) of section 73 of this Act, as the case may be, for the purposes of recovery of tax.

(2) On receipt of the certificate under sub-section (*3*) from the Tax Recovery Officer,the Board

may take such action thereon as it may deem appropriate having regard to theterms of the agreement with such country or a specified territory.

Recovery of suit or under other law not affected

39. *(1)* The several modes of recovery specified in this Chapter shall not affect in anyway—

(a) any other law for the time being in force relating to the recovery of debts dueto the Government; or

(b) the right of the Government to institute a suit for the recovery of the tax arrears from the assessee.

(2) It shall be lawful for the Assessing Officer, or the Government, to have recourseto any such law or suit, notwithstanding that the tax arrears are being recovered from the assessee by any mode specified in this Chapter.

Interest for default in furnishing return and payment or deferment of advance tax.

40. *(1)* Where the assessee has any income from a source outside India which has not been disclosed in the return of income furnished under sub-section *(1)* of section 139of the Income-tax Act or the return of income has not been furnished under the said sub section, interest shall be chargeable in accordance with the provisions of section 234A of the Income-tax Act.

(2) Where the assessee has any undisclosed income from a source outside India and the advance tax on such income has not been paid in accordance with Part C of Chapter XVII of the Income-tax Act, interest shall be chargeable in accordance with the provisions of sections 234B and 234C of the Income-tax Act

CHAPTER IV

PENALTIES

Penalty in relation to undisclosed foreign income and asset.

41. The Assessing Officer may direct that in a case where tax has been computed under section 10 in respect of undisclosed foreign income and asset, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him, a sum equal to three times the tax computed under that section.

Penalty for failure to furnish return in relation to foreign income and asset.

42. If a person, being a resident other than not ordinarily resident in India within the meaning of clause (*6*) of section 6 of the Income-tax Act, who is required to furnish a return of his income for any previous year, as required under sub-section (*1*) of section 139 of the Income-tax Act or by the provisos to that sub-section, and who at any time during such previous year,—

(i) held any asset (including financial interest in any entity) located outside India as a beneficial owner or otherwise; or

(ii) was a beneficiary of any asset(including financial interest in any entity)located outside India; or

(iii) had any income from a source located outside India,

and fails to furnish such return before the end of the relevant assessment year, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of ten lakh rupees:

Provided that this section shall not apply in respect of an asset, being one or more bank accounts having an aggregate balance which

does not exceed a value equivalent to five hundred thousand rupees at any time during the previous year.

Explanation.– For determining the value equivalent in rupees of the balance in an account maintained in foreign currency, the rate of exchange for calculation of the value in rupees shall be the telegraphic transfer buying rate of such currency as on the date for which the value is to be determined as adopted by the State Bank of India constituted under the State Bank of India Act, 1955.

23 of 1955.

Penalty for failure to furnish in return of income, an information or furnish inaccurate particulars about an asset (including financial interest in any entity) located outside India.

43. If any person, being a resident other than not ordinarily resident in India within the meaning of clause (*6*) of section 6 of the Income-tax Act, who has furnished the return of income for any previous year under sub-section (*1*) or sub-section (*4*) or sub-section (*5*) of section 139 of the said Act, fails to furnish any information or furnishes inaccurate particulars in such return relating to any asset (including financial interest in any entity) located outside India, held by him as a beneficial owner or otherwise, or in respect of which he was a beneficiary, or relating to any income from a source located outside India, at any time during such previous year, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of ten lakh rupees:

Provided that this section shall not apply in respect of an asset, being one or more bank accounts having an aggregate balance which does not exceed a value equivalent to five

hundred thousand rupees at any time during the previous year.

Explanation.—The value equivalent in rupees shall be determined in the manner provided in the *Explanation* to section 42.

Penalty for default in payment of tax arrear.

44. *(1)* Every person who is an assessee in default, or an assessee deemed to be in default, as the case may be, in making payment of tax, and in case of continuing default by such assessee, he shall be liable to a penalty of an amount, equal to the amount of tax arrear.

(2) An assessee shall not cease to be liable to any penalty under sub-section *(1)*merely by reason of the fact that before the levy of such penalty he has paid the tax.

Penalty for other defaults

45. *(1)* A person shall be liable to a penalty if he has, without reasonable cause, failed to—

(a) answer any question put to him by a tax authority in the exercise of its powers under this Act;

(b) sign any statement made by him in the course of any proceedings under this Act which a tax authority may legally require him to sign;

(c) attend or produce books of account or documents at the place or time, if he is required to attend or to give evidence or produce books of account or other documents, at certain place and time in response to summons issued under section 8.

(2) The penalty referred to in sub-section *(1)* shall be a sum which shall not be less than fifty thousand rupees but which may extend to two lakh rupees.

Procedure.

46. *(1)* The tax authority shall, for the purposes of imposing any penalty under this Chapter, issue a notice to an assessee requiring him to show cause why the penalty should not be imposed on him.

(2) The notice referred to in sub-section (*1*) shall be issued—

(a) during the pendency of any proceedings under this Act for the relevant previous year, in respect of penalty referred to in section 41;

(b) within a period of three years from the end of the financial year in which the default is committed, in respect of penalties referred to in section 45.

(3) No order imposing a penalty under this Chapter shall be made unless the assesse has been given an opportunity of being heard.

(4) An order imposing a penalty under this Chapter shall be made with the approval of the Joint Commissioner, if—

(a) the penalty exceeds one lakh rupees and the tax authority levying the penalty is in the rank of Income-tax Officer; or

(b) the penalty exceeds five lakh rupees and the tax authority levying the penalty is in the rank of Assistant Commissioner or Deputy Commissioner.

(5) Every order of penalty issued under this Chapter shall be accompanied by a notice of demand in respect of the amount of penalty imposed and such notice of demand shall be deemed to be a notice under section 13.

Bar of limitation for imposing penalty.

47. *(1)* No order imposing a penalty under this Chapter shall be passed after the expiry of a period of one year from the end of the financial year in which the notice for imposition of penalty is issued under section 46.

(2) An order imposing, or dropping the proceedings for imposition of, penalty under this Chapter may be revised, or revived, as the case may be, on the basis of assessment of the undisclosed foreign income and asset as revised after giving effect to the order of the Commissioner (Appeals), the Appellate Tribunal, the High Court or the Supreme Court or order of revision under section 23 or section 24.

(3) An order revising or reviving the penalty under sub-section (*2*) shall not be passed after the expiry of a period of six months from the end of the month in which order of the Commissioner (Appeals), the Appellate Tribunal, the High Court or the Supreme Court is received by the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the order of revision under section 23 or section 24 is passed.

(4) In computing the period of limitation for the purposes of this section, the following time or period shall not be included—

(a) the time taken in giving an opportunity to the assessee to be reheard under section 7; and

(b) any period during which a proceeding under this Chapter for the levy of penalty is stayed by an order, or injunction, of any court.

CHAPTER V

OFFENCES AND PROSECUTIONS

Chapter not in derogation of any other law or any other provision of this Act.

48. *(1)* The provisions of this Chapter shall be in addition to, and not in derogation of, the provisions of any other law providing for prosecution for offences thereunder.

(2) The provisions of this Chapter shall be independent of any order under this Act that may be made, or has not been made, on any person and it shall be no defence that the order has not been made on account of time limitation or for any other reason.

Punishment for failure to furnish return in relation to foreign income and asset.

49. If a person, being a resident other than not ordinarily resident in India within the meaning of clause (*6*) of section 6 of the Income-tax Act, who at any time during the previous year, held any asset (including financial interest in any entity) located outside India as a beneficial owner or otherwise, or was a beneficiary of such asset or had income from a source outside India and wilfully fails to furnish in due time the return of income which he is required to furnish under sub-section (*1*) of section 139 of that Act, he shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine:

Provided that a person shall not be proceeded against under this section for failure to furnish in due time the return of income under sub-section (*1*) of section 139 of the IncometaxAct if the return is furnished by him before the expiry of the assessment year.

Punishment for failure to furnish in return of income, any information about an asset (including financial interest in any entity) located outside India.

50. If any person, being a resident other than not ordinarily resident in India within the meaning of clause (*6*) of section 6 of the Income-tax Act, who has furnished the return of income for any previous year under sub-section (*1*) or sub-section (*4*) or sub-section (*5*) of section 139 of that Act, wilfully fails to furnish in such return any information relating to an asset (including financial interest in any entity) located outside India, held by him, as a beneficial owner or otherwise or in which he was a beneficiary, at any time during such previous year, or disclose any income from a source outside India, he shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine.

Punishment for wilful attempt to evade tax.

51. *(1)* If a person, being a resident other than not ordinarily resident in India within the meaning of clause (*6*) of section 6 of the Income-tax Act, wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under this Act, he shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to ten years and with fine.

(2) If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall, without prejudice to any penalty that maybe imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the court, also be liable to fine.

(3) For the purposes of this section, a wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person—

(i) has in his possession or control any books of account or other documents(being books of account or other documents relevant to any proceeding under this

(ii) makes or causes to be made any false entry or statement in such books of account or other documents; or

(iii) wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or

(iv) causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof.

Punishment for false statement in verification.

52. If a person, makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine.

Punishment for abetment.

53. If a person abets or induces in any manner another person to make and deliver an account or a statement or declaration relating to tax payable under this Act which is false and which he either knows to be false or does not believe to

be true or to commit an offence under sub-section (*1*) of section 51, he shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine.

Presumption as to culpable mental state.

54. *(1)* In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—In this sub-section, "culpable mental state" includes intention, motive or knowledge of a fact or belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Prosecution to be at instance of Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

55. *(1)* A person shall not be proceeded against for an offence under section 49 to section 53 (both inclusive) except with the sanction of the Principal Commissioner or Commissioner or the Commissioner (Appeals), as the case may be.

(2) The Principal Chief Commissioner or the Chief Commissioner may issue such instructions, or directions, to the tax authorities referred to in sub-section (*1*) as he may think fit for the institution of proceedings under this section.

(3) The power of the Board to issue orders, instructions or directions under this Act shall include the power to issue orders, instructions or directions (including instructions or directions to obtain its previous approval) to other tax authorities for the proper initiation of proceedings of offences (including an authorisation to file and pursue complaints by one or more Inspectors of tax) under this section.

Offences by companies

56. (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Nothing in sub-section (1) shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(3) Notwithstanding anything in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(4) Where an offence under this Act has been committed by a person, being a company, and the punishment for such offence is imprisonment and fine, then, without prejudice to sub-section (*1*) or sub-section (*3*), such company shall be punished with fine and every person, referred to in sub-section (*1*), or the director, manager, secretary or other officer of the company referred to in sub-section (*3*), shall be liable to be proceeded against and punished in accordance with the provisions of this Act.

(5) In this section—

(a) "company" means a body corporate, and includes—

(i) an unincorporated body;

(ii) a Hindu undivided family;

(b) "director", in relation to—

(i) an unincorporated body, means a participant in the body;

(ii) a Hindu undivided family, means an adult member of the family; and

(iii) a company, means a whole-time director, or where there is no such director, any other director or manager or officer, who is in charge of the affairs of the company.

Proof of entries in records or documents.

57. (*i*) The entries in the records, or other documents, in the custody of a tax authority shall be admitted in evidence in any proceeding for the prosecution of any person for an offence under this Chapter.

(2) The entries referred to in sub-section (*1*) may be proved by the production of—

(a) the records or other documents (containing such entries) in the custody of the tax authority; or

(b) a copy of the entries certified by that authority under its signature, as true copy of the original entries contained in the records or other documents in its custody.

Punishment for second and subsequent offences.

58. If any person convicted of an offence under section 49 to section 53 (both inclusive)is again convicted of an offence under any of the aforesaid provisions, he shall be punishable for the second and every subsequent offence with rigorous imprisonment for a term which shall not be less than three years, but which may extend to ten years and with fine which shall not be less than five lakh rupees, but which may extend to one crore rupees.

CHAPTER VI

TAX COMPLIANCE FOR UNDISCLOSED FOREIGN INCOME AND ASSETS

Declaration of undisclosed foreign asset.

59. Subject to the provisions of this Chapter, any person may make, on or after the date of commencement of this Act but on or before a date to be notified by the Central Government in the Official Gazette, a declaration in respect of any undisclosed asset located outside India and acquired from income chargeable to tax under the Income-tax Act for any assessment year prior to the assessment year beginning on 1st day of April, 2016—

(a) for which he has failed to furnish a return under section 139 of the Income-tax Act;

(b) which he has failed to disclose in a return of income furnished by him under the Income-tax Act before the date of commencement of this Act;

(c) which has escaped assessment by reason of the omission or failure on the part of such person to make a return under the Income-tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise.

Charge of tax.

60. Notwithstanding anything contained in the Income-tax Act or in any Finance Act, the undisclosed asset located outside India and declared under section 59 within the time specified therein shall be chargeable to tax at the rate of thirty per cent. of value of such undisclosed asset on the date of commencement of this Act.

Penalty.

61. Notwithstanding anything contained in the Income-tax Act or in any Finance Act, the person making a declaration of undisclosed asset located outside India shall, in addition to tax charged under section 60, be liable to penalty at the rate of one hundred per cent. of such tax.

Manner of declaration.

62. *(1)* A declaration under section 59 shall be made to the Principal Commissioner or the Commissioner and shall be in such form and shall be verified in such manner as may be prescribed.

(2) The declaration shall be signed,—

(i) where the declarant is an individual, by the individual himself; where such individual is absent from India, by the individual concerned

or by some person duly authorised by him in this behalf; and where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;

(ii) where the declarant is a Hindu undivided family, by the *karta*, and where the *karta* is absent from India or is mentally incapacitated from attending to his affairs, byany other adult member of such family;

(iii) where the declarant is a company, by the managing director thereof, or where for any unavoidable reason such managing director is not able to sign the declaration or where there is no managing director, by any director thereof;

(iv) where the declarant is a firm, by the managing partner thereof, or where for any unavoidable reason such managing partner is not able to sign the declaration, or where there is no managing partner as such, by any partner thereof, not being a minor;

(v) where the declarant is any other association, by any member of the association or the principal officer thereof; and

(vi) where the declarant is any other person, by that person or by some other person competent to act on his behalf.

(3) Any person, who has made a declaration under sub-section *(1)* in respect of his asset or as a representative assessee in respect of the asset of any other person, shall not be entitled to make any other declaration, under that sub-section in respect of his asset or the asset of such other

person, and any such other declaration, if made, shall be deemed to be void.

Time for payment of tax.

63. *(1)* The tax payable under section 60 and penalty payable under section 61 in respect of the undisclosed asset located outside India, shall be paid on or before a date to be notified by the Central Government in the Official Gazette.

(2) The declarant shall file the proof of payment of tax and penalty on or before the date notified under sub-section (*1*), with the Principal Commissioner or the Commissioner before whom the declaration under section 59 was made.

(3) If the declarant fails to pay the tax in respect of the declaration made under section 59 on or before the date notified under sub-section (*1*), the declaration filed by him shall be deemed never to have been made under this Chapter.

Undisclosed foreign asset declared not to be included in total income.

64. The amount of undisclosed investment in an asset located outside India declared in accordance with section 59 shall not be included in the total income of the declarant for any assessment year under the Income-tax Act, if the declarant makes the payment of tax referred to in section 60 and the penalty referred to in section 61 by the date notified under sub-section (*1*) of section 63.

Undisclosed foreign asset declared not to affect finality of completed assessments.

27 of 1957

65. The declarant shall not be entitled, in respect of undisclosed asset located outside India declared or any amount of tax paid thereon, to reopen any assessment or reassessment made under the Income-tax Act or the Wealth-tax Act, 1957 or claim any set off or relief in any appeal,

reference or other proceeding in relation to any such assessment or reassessment.

Tax in respect of voluntarily disclosed asset not refundable.

66. Any amount of tax paid under section 60 or penalty paid under section 61 inpursuance of a declaration made under section 59 shall not be refundable.

Declaration not admissible in evidence against declarant.

67. Notwithstanding anything contained in any other law for the time being in force, nothing contained in any declaration made under section 59 shall be admissible in evidence against the declarant for the purpose of any proceeding relating to imposition of penalty, other than the penalty leviable under section 61, or for the purposes of prosecution under the Income-tax Act or the Wealth-tax Act, 1957 or the Foreign Exchange Management Act,1999 or the Companies Act, 2013 or the Customs Act, 1962.

27 of 1957. 42 of 1999. 18 of 2013. 52 of 1962.

Declaration by misrepresentation of facts to be void.

68. Notwithstanding anything contained in this Chapter, where a declaration has been made by misrepresentation or suppression of facts, such declaration shall be void and shall be deemed never to have been made under this Chapter.

Exemption from wealth tax in respect of assets specified in declaration

69. *(1)* Where the undisclosed asset located outside India is represented by cash(including bank deposits), bullion or any other assets specified in the declaration made under section 59—

27 of 1957.

(a) in respect of which the declarant has failed to furnish a return under section14 of the Wealth-tax Act, 1957 for the assessment year commencing on or before the1st day of April, 2015; or

(b) which have not been shown in the return of net wealth furnished by him for the said assessment year or years; or

(c) which have been understated in value in the return of net wealth furnished by him for the said assessment year or years,

27 of 1957.

then, notwithstanding anything contained in the Wealth-tax Act, 1957 or any rules made thereunder,—

(I) wealth-tax shall not be payable by the declarant in respect of the assets referred to in clause (*a*) or clause (*b*) and such assets shall not be included in his net wealth for the said assessment year or years;

(II) the amount by which the value of the assets referred to in clause (*c*) has been understated in the return of net wealth for the said assessment year or years, to the extent such amount does not exceed the voluntarily disclosed income utilised for acquiring such assets, shall not be taken into account in computing the net wealth of the declarant for the said assessment year or years.

Explanation.—Where a declaration under section 59 is made by a firm, the assets referred to in clause (*I*) or, as the case may be, the amount referred to in clause (*II*) shall not be taken into account in computing the net wealth of any partner of the firm or, as the case may be, in determining the value of the interest of any partner in the firm.

(2) The provisions of sub-section (*1*) shall not apply unless the conditions specified insub-sections

the time for, or on the basis of, the first review under sub-section (*3*) of that section,or on the basis of the report of the Advisory Board under section 8, read withsub-section (*6*) of section 12A, of the said Act; or

(iv) such order of detention has not been set aside by a court of competent jurisdiction;

45 of 1860.
61 of 1985.
37 of 1967.
49 of 1988.

(b) in relation to prosecution for any offence punishable under Chapter IX or Chapter XVII of the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967, the Prevention of Corruption Act, 1988;

27 of 1992.

(c) to any person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.

(d) in relation to any undisclosed asset located outside India which has been acquired from income chargeable to tax under the Income-tax Act for any previous year relevant to an assessment year prior to the assessment year beginning on the 1st day of April, 2016—

(i) where a notice under section 142 or sub-section (*2*) of section 143 or section 148 or section 153A or section 153C of the Income-tax Act has been issued in respect of such assessment year and the proceeding is pending before the Assessing Officer; or

(ii) where a search has been conducted under section 132 or requisition has been made under section 132A or a survey has been carried out under section 133A of the Income-tax Act in a previous year and a notice under subsection(*2*)

have been acquired or made in the year in which a notice under section 10 is issued by the Assessing Officer and the provisions of this Act shall apply accordingly.

CHAPTER VII

GENERAL PROVISIONS

Agreement with foreign countries or specified territories.

73. *(1)* The Central Government may enter into an agreement with the Government of any other country—

(a) for exchange of information for the prevention of evasion or avoidance of taxon undisclosed foreign income chargeable under this Act or under the corresponding law in force in that country, or investigation of cases of such evasion or avoidance;

(b) for recovery of tax under this Act and under the corresponding law in force in that country.

(2) The Central Government may enter into an agreement with the Government of any specified territory outside India for the purposes specified in sub-section (*1*).

(3) The Central Government may, by notification, make such provisions as may be necessary for implementing the agreements referred to in sub-sections (*1*) and (*2*).

(4) Any specified association in India may enter into an agreement with any specified association in the specified territory outside India for the purposes of sub-section (*1*) and the Central Government may by notification make such provisions as may be necessary for adopting and implementing such agreement

(5) Any term used but not defined in this Act or in the agreement referred to in sub-sections (*1*), (*2*) or sub-section (*4*) shall, unless the context otherwise requires, and is not inconsistent with the provisions of this Act or the agreement, have the meaning assigned to it in the notification issued by the Central Government and such meaning shall be deemed to have effect from the date on which the said agreement came into force.

Service of notice generally.

74. (*1*) The service of any notice, summons, requisition, order or any other communication under this Act (herein referred to in this section as "communication") may be made by delivering or transmitting a copy thereof, to the person named therein,—

(*a*) by post or by such courier service as may be approved by the Board;

5 of 1908.

(*b*) in such manner as provided under the Code of Civil Procedure, 1908 for the purposes of service of summons;

21 of 2000.

(*c*) in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000; or

(*d*) by any other means of transmission of documents, including fax message or electronic mail message, as may be prescribed.

(*2*) The Board may make rules providing for the addresses including the address for electronic mail or electronic mail message to which the communication referred to in sub-section (*1*) may be delivered or transmitted to the person named therein.

21 of 2000.

(3) In this section, the expressions "electronic mail" and "electronic mail message"shall have the same meanings as assigned to them in the *Explanation* to section 66A of the Information Technology Act, 2000.

Authentication of notices and other documents.

75. (1) A notice or any other document required to be issued, served or given for thepurposes of this Act by any tax authority shall be authenticated by that authority.

(2) Every notice or other document to be issued, served or given for the purposes of this Act by any tax authority shall be deemed to be authenticated, if the name and office of a designated tax authority is printed, stamped or otherwise written thereon.

(3) In this section, a designated tax authority shall mean any tax authority authorised by the Board to issue, serve or give such notice or other document after authentication in the manner as provided in sub-section (2).

Notice deemed to be valid in certain circumstances.

76. (1) A notice which is required to be served upon a person for the purposes of assessment under this Act shall be deemed to have been duly served upon him in accordance with the provisions of this Act, if the person has appeared in any proceeding or co-operatedin any inquiry relating to an assessment.

(2) The person, referred to in sub-section (1), shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was—

(a) not served upon him;

(b)

(c)

(3)

Appearance by approved valuer in certain matters.

77. (1

Appearance by authorised representative.

78.

(b) not served upon him in time; or

(c) served upon him in an improper manner.

(3) The provisions of this section shall not apply, if the person has raised the objection before the completion of the assessment.

Appearance by approved valuer in certain matters.

77. (1) Any assessee who is entitled or required to attend before any tax authority or the Appellate Tribunal, in connection with any matter relating to the valuation of any asset, may attend through a valuer approved by the Principal Commissioner or the Commissioner in accordance with such rules as may be prescribed.

(2) The provisions of sub-section (1) shall not apply in a case where the assessee is required to attend personally for examination on oath or affirmation under section 8.

Appearance by authorised representative.

78. (1) Any assessee who is entitled or required to attend before any tax authority or the Appellate Tribunal, in connection with any proceeding under this Act, may attend through an authorised representative.

(2) The provisions of sub-section (1) shall not apply in a case where the assessee is required to attend personally for examination on oath or affirmation under section 8.

(3) In this section, "authorised representative" means a person authorised by the assessee in writing to appear on his behalf, being—

(a) a person related to the assessee in any manner, or a person regularly employed by the assessee;

(b) any officer of a scheduled bank with which the

assessee maintains a current account or has other regular dealings;

(c) any legal practitioner who is entitled to practice in any civil court in India;

(d) an accountant;

(e) any person who has passed any accountancy examination recognised in this behalf by the Board; or

(f) any person who has acquired such educational qualifications as may be prescribed.

(4) The following persons shall not be qualified to represent an assessee under sub-section (1), namely:—

(a) a person who has been dismissed or removed from Government service;

(b) a legal practitioner, or an accountant, who is found guilty of misconduct in his professional capacity by any authority entitled to institute disciplinary proceedings against him;

(c) a person, not being a legal practitioner or an accountant, who is found guilty of misconduct in any tax proceedings by such authority as may be prescribed.

(5) The Principal Chief Commissioner or the Chief Commissioner may, by an order in writing, specify the period upto which the disqualification under sub-section (4) shall continue, having regard to the nature of misconduct and such disqualification shall not exceed—

(i) in case of clauses (a) and (c) of sub-section (4), a period of ten years;

38 of 1949.

Rounding off of income, value of asset and tax.

Congnizance of offences.

Assessment not to be invali on certain grounds.

(ii) in case of clause (*b*) of sub-section (*4*), the period for which the legal practitioner or an accountant is not entitled to practice.

(*6*) A person shall not be allowed to appear as an authorised representative, if he has committed any fraud or misrepresented the facts which resulted in loss to the revenue and that person has been declared as such by an order of the Principal Chief Commissioner or the Chief Commissioner.

Explanation.—In this section, "accountant" means a chartered accountant as defined in clause (*b*) of sub-section (*1*) of section 2 of the Chartered Accountants Act, 1949 who holds a valid certificate of practice under sub-section (*1*) of section 6 of that Act.

38 of 1949.

Rounding off of income, value of asset and tax.

79. (*1*) The amount of undisclosed foreign income and asset computed in accordance with this Act shall be rounded off to the nearest multiple of one hundred rupees.

(*2*) Any amount payable or receivable by the assessee under this Act shall be rounded off to the nearest multiple of ten rupees.

(*3*) The method of rounding off under sub-section (*1*) or sub-section (*2*), shall be such

as may be prescribed

Congnizance of offences.

80. No court inferior to that of a metropolitan magistrate or a magistrate of the First Class shall try any offence under this Act.

Assessment not to be invalid on certain grounds.

81. No assessment, notice, summons or other proceedings, made or issued or taken or purported to have been made or issued or taken

in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defector omission in such assessment, notice, summons or other proceeding if such assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.

Bar of suits in civil courts.

82. *(1)* No suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under this Act.

(2) No prosecution, suit or other proceeding shall lie against the Government or any officer of the Government, for anything in good faith done or intended to be done, under this Act.

Income-tax papers to be available for purposes of this Act.

83. Notwithstanding anything contained in the Income-tax Act, all information contained in any statement or return made or furnished under the provisions of that Act or obtained or collected for the purposes of the said Act may be used for the purposes of this Act.

Application of provisions of Income - tax Act.

84. The provisions of clauses (*c*) and (*d*) of sub-section (*1*) of section 90, clauses (*c*)and (*d*) of sub-section (*1*) of section 90A, sections 119, 133, 134, 135, 138, Chapter XV and sections 237, 240, 245, 280, 280A, 280B, 280D, 281, 281B and 284 of the Income-tax Act shall apply with necessary modifications as if the said provisions refer to undisclosed foreign income and asset instead of to income-tax.

Power to make rules.

85. *(1)* The Board may, subject to the approval of the Central Government, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner of determination of the value of an undisclosed foreign asset referred to in sub-section (2) of section 3;

(b) the tax authority to be prescribed for any of the purposes of this Act;

(c) the form and manner of service of a notice of demand under section 13;

(d) the form in which any appeal, revision or cross-objection may be filed under this Act, the manner in which they may be verified and the fee payable in respect thereof;

(e) the form in which the Tax Recovery Officer may draw up the statement of tax arrears under sub-section (1) of section 31;

(f) the manner in which the sum is to be paid to the credit of Central Government under sub-section (2) or sub-section (5) of section 32;

(g) the manner in which the Tax Recovery Officer shall send a certificate referred to in sub-section (2) of section 33;

(h) the form in which a declaration referred to in sub-section (1) of section 62 is to be made and the manner in which it is to be verified;

(i) the means of transmission of documents under clause (d) of sub-section (1) of section 74;

(j) the procedure for approval of a valuer by the Principal Commissioner or the Commissioner under section 77;

(k) the educational qualifications required, to be an authorised representative under clause (*f*) of sub-section (*3*) of section 78;

(l) the tax authority under clause (*c*) of sub-section (*4*) of section 78;

(m) the method of rounding off of the amount referred to in sub-section (*1*) or sub-section (*2*) of section 79;

(n) any other matter which by this Act is to be, or may be, prescribed.

(3) The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date of commencement of this Act and no retrospective effect shall be given to any rule so as to prejudicially affect the interest of assessees.

(4) The Central Government shall cause every rule made under this Act to be laid as soon as may be after it is made before each House of Parliament while it is in session for atotal period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previouslydone under that rule.

Power to remove difficulties

86. *(1)* If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty :

Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of this Act come into force.

(2) Every order made under this section shall be laid before each House of Parliament.

Amendment of section 2 of Act 54 of 1963.

87. In section 2 of the Central Boards of Revenue Act, 1963, in sub-clause (*1*) ofclause (*c*),—

(a) in item (*vii*), the word "and" occurring at the end shall be omitted; and

(b) after item (*ix*) as so amended, the following item shall be inserted, namely:—

"(*x*) the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015; and"

Amendment of Act of 15 of 2013.

45 of 1860

88. In the Prevention of Money-laundering Act, 2002, in the Schedule, in Part C, after entry (3), relating to the offences against property under Chapter XVII of the Indian Penal Code, the following entry shall be inserted, namely:—

"(*4*) The offence of wilful attempt to evade any tax, penalty or interest referred to in section 51 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition ofTax Act, 2015."

DR. SANJAY SINGH,
Secretary to the Govt. of India

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INSTITUTE OF PUBLIC AUDITORS OF INDIA

223, 2nd Floor, 'C' Wing, AGCR Building, I.P. Estate, New Delhi-110002
Ph.: 91-011-23702330, 23702290, 23702369, 23454326; Fax: 91-011-23702295
E-mail: ipai.hq@gmail.com, ipai@bol.net.in • Website: www.ipaiindia.org

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