

**PRESS INFORMATION BUREAU
GOVERNMENT OF INDIA**

RELEVANT PORTIONS OF THE SECOND REPORT OF THE SPECIAL INVESTIGATION TEAM (SIT) ON BLACK MONEY RELEASED; ON THE DIRECTIONS OF SIT, CBDT DIRECTS VARIOUS ASSESSING OFFICERS TO FINALIZE THE ASSESSMENTS FOR ALL ACTIONABLE CASES (427), WHOSE NAMES ARE APPEARING IN THE HSBC LIST RECEIVED BY THE DEPARTMENT

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Agrahayana 21, 1936

Placed below are the relevant portions of the Second Report of the Special Investigation Team (SIT) on Black Money which was recently submitted by the SIT to the Hon'ble Supreme Court:

- I. In response to the directions issued by the SIT, CBDT has directed various Assessing Officers to finalize the assessments for all actionable cases (427), whose names are appearing in the HSBC list received by the Department.

As per the information received from France, there are in all 628 persons/entities (except in 2 cases where the same names have appeared twice). Out of these 628 persons/entities, amounts/balances are shown against 339 persons and no amounts/ balances are shown against 289 persons/entities. In respect of the latter category also, further investigations and assessments are being taken to logical end.

Out of the said 628 persons, 201 are either non-residents or non-traceable, leaving 427 persons' cases as actionable cases.

The amount involved in these cases as per details available in the information received, is about **Rs.4,479 crores** approximately (\$ converted @ Rs.45). Out of these, **Department has finalized assessment of 79 assessees (involving more than 300 assessments)**. An amount of **Rs.2,926 crores** has been brought to tax towards the undisclosed balances in the accounts relating to these persons. For the said amount, these assessees have been levied tax and interest at the appropriate rates. Penalty proceedings under Section 271 (1)(c) of the Income Tax Act, 1961 (I.T. Act) have been initiated in 46 cases. Such penalties have been levied in 3 cases so far. With regard to the other assessees, proceedings are pending.

Further, **prosecutions have been initiated in 6 cases u/s. 276C (1)** of the Income Tax (I.T.) Act for willful attempt to evade taxes and in **5 cases, proceedings have been initiated u/s. 276D of the I.T. Act** on account of willful failure to furnish information in response to the notices issued by the Income Tax Department.

Show Cause Notices for filing prosecution have been issued in 10 more cases and further action would be taken at the earliest.

In other cases, necessary action is being expedited and substantial progress is expected in coming months.

- II. Apart from HSBC list, further actions taken by various agencies on the basis of directions given by SIT:-

1. Directorate of Revenue Intelligence:—

- a) Details have been furnished in respect of 31 cases of iron ore export cases.

In 11 cases, the concerned parties have admitted the undervaluation and before issuance of show cause notices, paid Rs.116.73 crores. Further action would be taken, in accordance with law.

In 10 cases, show cause notices have been issued. Preparation of show cause notice is in progress after completion of investigation in other cases.

- b) In respect of other categories of trades, investigation is pending in 33 cases. In some cases, references have been made to Financial Intelligence Unit – India (FIU-IND), ED and CBDT. **According to the agency, the total amount involved could be Rs. 14957.95 crores.**

2. Directorate of Enforcement:—

- a) From the details furnished by Directorate of Enforcement in relation to mining cases, on the basis of previous illegal mining of iron ore reports relating to Orissa, Goa and Karnataka, action has been taken. In one case of Orissa, accused persons were taken into custody by the Enforcement Directorate and **properties worth more than Rs. 400 crores have already been identified and are under process of attachment.** Regarding other cases, the efforts are on to get the data from the Director of Intelligence Bureau and State Government.
- b) **In respect of Karnataka, 3 attachment orders have been passed attaching deposits in bank worth Rs.54.84 crores, properties (Rs.37 crores) and shares (Rs.904.13 crores)** and the orders have been confirmed by the adjudicating authority.
- c) Further efforts have been made to ascertain whether any other proceeds of crime exist so that they can be provisionally attached. In respect of Goa and Jharkhand, the preliminary scrutiny and investigation is in progress.
- d) It has been pointed out that because of stay order passed by the Hon'ble Kolkata High Court, the Directorate is facing difficulty in taking coercive action in Ponzi/chit fund scheme cases.
- e) In respect of certain other cases, prosecution complaints have been filed. **In case of one group case in Jharkhand, provisional attachment orders attaching properties worth Rs. 452.43 crores were passed and adjudicating authority has confirmed attachment of properties worth Rs. 263.73 crores.**
- f) 5 Letters Rogatories (LRs) have been issued by the PMLA Court. Replies to 4 LR's are pending while 1 LR has been returned and effort is being made to issue fresh LR.
- g) In another mining case in Karnataka, **provisional attachment for Rs.884.13 crores have been issued and confirmed by the adjudicating authority.** Appeals are pending.

- h) In respect of another group cases of Andhra Pradesh, **provisional attachment orders for Rs.1093.10 crores have been confirmed by the adjudicating authority.** It is directed that necessary steps be taken immediately for realization of the amounts involved.

In respect of most of the above noted cases, the CBDT has reported about the actions taken by the assessing officers.

SUGGESTIONS AND RECOMMENDATIONS FOR TAKING ACTION TO CONTROL BLACK MONEY

1. Suggestion made by Financial Action Task Force (FATF) on TBML in its report, as quoted above, that Data Analysis & Research for Trade Transparency System adopted by USA requires to be adopted and accepted, as it would control over/under invoicing to some extent. There should be institutional mechanism through a dedicated set up which examines mismatch between export/import data with corresponding import/export data of other countries on at least a quarterly, if not a monthly basis.
2. It is established since years that over invoicing or under invoicing is known method for stashing black money outside the country. Main question is how to control this malady. If there is proper vigilance to a large extent by the Customs Department, mis-invoicing can be controlled because, now-a-days, price of various goods/machineries is known in the international markets. For this, data is also published and is available on computer at any point of time. Hence, it was suggested that in a Bill of Export/shipping Bills, an entry should be included, namely, what is the international market price of the goods/machineries which were sought to be exported. The said suggestion is under consideration and is likely to be implemented within short time.
3. Further, it is of utmost necessity to curb the creation of fake/bogus bills. One important step which can be taken to curb this menace is to make declaring of PAN number mandatory for all sales, where payment is in cash or through bank, above a value of Rs. One lakh. The purchaser would also be under obligation to ensure that the invoices he gets have the PAN number of the seller.

Further, considering the fact that at present, purchase or sale of goods/services by cash is rampant, which undoubtedly utilizes/generates unaccounted money in the society. For this purpose, a suitable rule is required to be brought under I.T. Rule 114 B made under Section 139 A (5) of the IT Act. By such amendment, purchaser is required to disclose his identity either by PAN number or UID (Aadhar card) or any other centrally recognized documents of identity.

Transactions relating to purchase and sale of goods, provision of services of any nature where the payment/consideration is Rs. One lakh or above, either by cash or cheque, may be covered under this rule.

4. It is suggested that for regulating the possession and transportation of cash, particularly putting a limitation on cash holdings for private use and including

provisions for confiscation of cash held beyond prescribed limits, provision in the Act should be made. It is to be stated that a number of European countries bar any cash transaction above a particular limit. This can be done in India too. Again, while implementing the suggestions, to ensure that small transactions, which make a bulk of common man's daily transactions, are not affected and for that, a threshold limit could be kept.

Further, for holding of cash/currency notes also, there should be a limit, by prescribing a reasonable threshold, may be Rs.10 lacs or Rs.15 lacs. This would control holding of unaccounted money to a large extent. This would also control transfer of unaccounted cash from one destination to other, which at present is rampant, may be by Angadias or by other means.

5. The aforesaid suggestion is also in conformity with the observations in the case of *Rajendran Chingaravelu vs. UoI*, in CA No.7914 of 2009; ORDER DATED November 24, 2009 (320 ITR 1)) by the Hon'ble Supreme Court. Therein, it had been observed that *"The nation is facing terrorist threats. Transportation of large sums of money is associated with distribution of funds for terrorist activities, illegal pay offs, etc. There is also rampant circulation of unaccounted black money destroying the economy of the country."*

This is known to all concerned and, therefore, suggestion made above, be implemented.

6. Financial Action Task Force (FATF) on Money laundering recommends "tax crimes" to be made a predicate offence so that action can be taken under Prevention of Money Laundering Act, 2002. There are more than 25 countries in the world which have made "tax crimes" as a predicate offence. The Government needs to seriously examine the issue and take steps to make "tax crimes" as a predicate offence. To prevent any hardship to salaried or small tax payer, a high threshold of say, more than Rs.50 lakh of tax evasion could be considered as being a predicate offence.
7. Foreign Exchange Management Act, 1999 (FEMA) provides for confiscation of any property held abroad, if found to be held in violation of Section 4 of the Act. For various reasons, it is difficult to proceed against property held abroad. To strengthen the provisions, S. 13 and S. 37 need to be amended to provide for seizure and confiscation of property of equivalent value within the country, if it is held that property held abroad is in violation of Section 4 of FEMA.
8. FIU is uniquely positioned as the national center for receiving, analyzing and disseminating information related to suspected cases of money laundering. Its unique architecture connects it to the entire financial sector on one hand to law enforcement authorities and on the other through an electronic network that makes it possible for information to flow freely in a secure environment. Further, FIU is also connected to the other FIUs of the world through the Egmont Secure Web which makes it possible to access information in foreign jurisdictions. This unique architecture can be harnessed to exchange actionable intelligence on proceeds of crime. Some recommended measures are as follows:-
 - a. FIU should be given access to law enforcement information (i.e. information about perpetrators of crime) that can be shared with the reporting entities to locate proceeds of crime laundered in the financial

system. This will be in line with the FATF standards which require that *“FIU should have access to widest possible range of financial, administrative and law enforcement information.”*

- b.** The latest amendments to the PML Rules (2013) have introduced a new report to be furnished to FIU every month i.e. Cross Border Wire Transfer Report in respect of all transactions of more than Rs. Five lakh whose origin or destination is in India. As FIU builds this database over a period of time, the information could be used, in conjunction with information available with other relevant agencies, to analyze suspected cases of cross border illicit financial flows, which have been identified by the OECD and other global bodies as a major area of concern, especially as they relate to significant transfer of funds from developing countries.
- c.** FIU's international network (Egmont Group) should be fully harnessed to exchange information/intelligence on proceeds of crime transferred abroad. However, for this to be successful, utmost importance should be given to following protocol for international exchange of information so that it is done in a sustainable and credible manner.
- d.** The law enforcement authorities, through the FIU, invest in improving reporting entities capacity to identify and report suspicious transactions. Substantial proceeds of crime may be laundered in the domestic financial system but the reporting entities may be constrained by lack of access to information on perpetrators of crime. Facilitating access to such information, through FIU, and sharing red flag indicators for suspected proceeds of crime would lead to better quality, actionable intelligence/information from the reporting entities.
- e.** Post investigation, feedback should be shared jointly with FIU and reporting entities in order to develop better understanding of money laundering trends and typologies, which in turn will improve capacity to identify and report suspicious transactions. There should be a more dynamic interaction among between the stakeholders, i.e., reporting entities, FIU and the law enforcement authorities, which are part of the same value chain.
- 9.** Malady of present enforcement system may be organic problem which leads to increase in corruption and that corruption money is always unaccounted. On occasions, officers fear to take appropriate action for various reasons. These can be controlled only by appropriate directions by the concerned Ministry that in a case where a person is involved in offence relating to taxation or money laundering, evasion of duty and levies, then in such cases, higher officers should not intervene in midst of investigations.
- 10.** It appears that for one or other reasons, Enforcement Directorate attaches the property of a defaulting assessee, then income tax department is not in position to recover the income tax dues, as it is

contended that the property is attached by ED. This appears to be unreasonable. Income tax dues are also amount payable to the Central Government and this problem can be sorted out easily by mentioning in the attachment order passed by the E.D. that it would be open for the Income Tax Department to recover its dues in respect of the attached property. There can not be any conflict of interest between two Departments of Central Government. **For this, even statutory rule can be made, if required.**

11. It appears that, in number of cases, income tax dues or other duty recoveries are stayed without referring to the law laid down by the Hon'ble Court; namely Siliguri Municipality Vs. Amulandu Das, AIR 1984 SC 653, Somariyas Trading Co. Pvt. Ltd. Vs. S. Samuel AIR 1985 SC 61, Asstt. Collector Vs. Dunlop India Ltd., (1985) 19 ELT 22 and Benara Valves Ltd. Vs. Commissioner Central Excise, (2006) (204 ELT) 513. **It is also noticed that in many cases, even at the show cause notice stage, stay orders are passed staying further proceedings which delay the entire process.** Hence, it is submitted that the aforesaid ratio of the judgments may be reiterated.

12. At present, for entering into financial/business transactions, persons have option to quote their PAN or UID or Passport number or driving license or any other proof of identity. However, there is no mechanism/system at present to connect the data available with each of these independent proofs of ID. It is suggested that these data bases be interconnected. This would assist in identifying multiple transactions by one person with different IDs. A central KYC Registry should be established with all law enforcement agencies, Registrar of Companies and financial institutions having access to its database.

13. As suggested in first report, at least 5 Additional Chief Judicial Magistrates Courts in Mumbai are required to be established for deciding approx. 5000 pending IT prosecution cases. It appears that without direction by the Hon'ble Court, it would be difficult to establish 5 Courts as suggested. For the establishment of 5 courts, Central Government shall bear the entire cost.

Finally, we submit that appropriate directions may be issued to the Central Government for implementation of suggestions/recommendations made above so that substantive result could be achieved in curbing the menace of black money and stashing thereof in foreign tax havens.

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CHAIRMAN**

**DR. JUSTICE ARIJIT PASAYAT (RETD.)
VICE-CHAIRMAN**
