

ASSESSMENT OF ENTITIES ENGAGED IN HEALTH & ALLIED SECTOR

[Action Taken by the Government on the Observations/Recommendations of the Committee contained in their One Hundred and Third Report (16th Lok Sabha)]

**MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

**PUBLIC ACCOUNTS COMMITTEE
(2019-20)**

THIRD REPORT

SEVENTEENTH LOK SABHA



**LOK SABHA SECRETARIAT
NEW DELHI**

PAC NO. 2183

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PUBLIC ACCOUNTS COMMITTEE
(2019-20)

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MINISTRY OF FINANCE (DEPARTMENT OF REVENUE)



सत्यमेव जयते

Presented to Lok Sabha on: 6.12.2019

Laid in Rajya Sabha on: 6.12.2019

**LOK SABHA SECRETARIAT
NEW DELHI**

December, 2019/ Agrahayana, 1941 (Saka)

CONTENTS

	PAGE
COMPOSITION OF THE PUBLIC ACCOUNTS COMITTEE (2019-20)	(i)
INTRODUCTION	(ii)
CHAPTER I Introductory	1-17
CHAPTER II* Observations/Recommendations which have been accepted by the Government	—
CHAPTER III* Observations/Recommendations which the Committee do not desire to pursue in view of the replies received from Government	—
CHAPTER IV* Observations/Recommendations in respect of which replies of the Government have not been accepted by the Committee and which require reiteration	—
CHAPTER V Observations/Recommendations in respect of which Government have furnished interim replies	18-19

APPENDICES

I	Minutes of the seventh sitting of Public Accounts Committee (2019-20) held on 19.11.2019.	20
II	Minutes of the ninth sitting of Public Accounts Committee (2019-20) held on 3.12.2019.	22
III	Analysis of the Action Taken by the Government on the Observations/Recommendations of the Public Accounts Committee contained in their Forty-seventh Report (Sixteenth Lok Sabha)	24

* Not included to the cyclostyled copy of the Report.

COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE
(2019-20)

Shri Adhir Ranjan Chowdhury - Chairperson.

MEMBERS

LOK SABHA

2. Shri T. R. Baalu
3. Shri Subhash Chandra Baheria
4. Shri Sudheer Gupta
5. Smt. Darshana Vikram Jardosh
6. Shri Bhartruhari Mahtab
7. Shri Ajay (Teni) Misra
8. Shri Jagdambika Pal
9. Shri Vishnu Dayal Ram
10. Shri Rahul Ramesh Shewale
11. Shri Rajiv Ranjan Singh alias Lalan Singh
12. Dr. Satya Pal Singh
13. Shri Jayant Sinha
14. Shri Balashowry Vallabhaneni
15. Shri Ram Kripal Yadav

RAJYA SABHA

16. Shri Rajeev Chandrasekhar
17. Prof. M. V. Rajeev Gowda
18. Shri Naresh Gujral
19. *Vacant**
20. Shri C. M. Ramesh
21. Shri Sukhendu Sekhar Ray
22. Shri Bhupender Yadav

SECRETARIAT

1. Shri Abhijit Kumar - Additional Secretary
2. Smt. M.L.K. Raja - Director
3. Smt. Bharti S. Tuteja - Additional Director
4. Dr. Sheetal Kapoor - Committee Officer

* Shri Bhubaneswar Kalita ceased to be a Member of Committee consequent upon his resignation from Rajya Sabha on 05 August, 2019

INTRODUCTION

I, the Chairperson, Public Accounts Committee (2019-20), having been authorised by the Committee, do present this Third Report (Seventeenth Lok Sabha) on Action Taken by the Government on the Observations/Recommendations of the Committee contained in their One Hundred and Third Report (Sixteenth Lok Sabha) on '**Assessment of Entities Engaged in Health & Allied Sector**' relating to the Ministry of Finance (Department of Revenue).

2. The One Hundred and Third Report was presented to Lok Sabha/laid on the table of Rajya Sabha on 19 July, 2018. Replies of the Government to the Observations/Recommendations contained in the Report were received on 9 August, 2019. The Committee considered the draft Report on the subject and thereafter adopted the Report at their sitting held on 3 December, 2019. Minutes of the Sittings form appendices to the Report.

3. For facility of reference and convenience, the Observations and Recommendations of the Committee have been printed in thick type in the body of the Report.

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

5. An analysis of the Action Taken by the Government on the Observations/Recommendations contained in the One Hundred and Third Report (Sixteenth Lok Sabha) is given at Appendix-III.

NEW DELHI;
3 December, 2019
12 Agrahayana, 1941 (Saka)

Adhir Ranjan Chowdhury
Chairperson
Public Accounts Committee

CHAPTER - I

REPORT

This Report of the Public Accounts Committee deals with the Action Taken by the Government on the Observations and Recommendations of the Committee contained in their One Hundred and Third Report (16th Lok Sabha) on "**Assessment of Entities Engaged in Health & Allied Sector** " based on the C&AG Report No. 27 of 2017 Union Government relating to the Ministry Finance (Department of Revenue).

2. The One Hundred and Third Report was presented to Lok Sabha/laid on the table of Rajya Sabha on 19.07.2018. It contained sixteen Observations/Recommendations. The Action Taken Notes on all the Observations/Recommendations have been received from the Ministry of Finance (Department of Revenue) and are categorized as under:

- (i) Observations/Recommendations which have been accepted by the Government:

Para Nos. 1, 2, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15 and 16

Total: 13
Chapter – II

- (ii) Observations/Recommendations which the Committee do not desire to pursue in view of the replies received from the Government:

NIL

Total: NIL
Chapter – III

- (iii) Observations/Recommendations in respect of which replies of the Government have not been accepted by the Committee and which require reiteration:

Para Nos. 3 and 12

Total: 2
Chapter – IV

- (iv) Observations/Recommendations in respect of which Government have furnished interim replies/no replies:

Para Nos. 4

Total: 1
Chapter -V

3. The detailed examination of the subject by the Committee had revealed certain shortcomings/deficiencies on the part of the Ministry of Finance which *inter-alia* included lack of data on non-filers, issues relating to alternate medicines, absence of 80 G certificates, absence of data for sector specific analysis, disallowance of expenditure on account of referral fees paid by medical practitioners, absence of information on beneficiaries under international welfare etc. The Committee had accordingly given their observations/recommendations in their One Hundred and Third Report.

4. The Action Taken notes furnished by the Ministry of Finance have been reproduced in the relevant chapters of this Report. The Committee will now deal with action taken by the Government on their Observations/Recommendations which either needs reiteration or merit comments.

5. The Committee desire that action taken note in respect of Observations/Recommendations contained in Chapter I and final action taken reply in respect of the Recommendation contained in Chapter V for which interim reply have been given by the Government may be furnished to them within six months of the presentation of the Report to the House.

Data on non-filers

Recommendation (Para No. 3)

6. The Committee had observed that with the rise in popularity of systems of alternative medicines, the practices in these fields are flourishing. The Committee were of the view that the data available with agencies like Central Council of Indian Medicine and other registering agencies for medical professionals engaged in the practice of alternate medicines be also analyzed to identify the non-filers. However, the Committee while noting that demand for alternative medicines has increased had opined that tax incentives be given to only those manufacturers who comply with quality control standards.

7. The Ministry in their Action Taken Notes have stated as under:-

"Vide the Finance Act 2016, the government has phased-out or grandfathered all profit linked deductions which were earlier available to the manufacturing sector. There is no specific tax incentive currently allowed for manufacturing activity in pharmaceutical sector. However, certain profit-linked deductions continue to be allowed under Chapter VI-A of the Act.

Hence, the recommendation for giving tax incentives to drug manufacturing companies who comply with quality control standards is not found acceptable in accordance with the stated policy of the Government of phasing out deductions and exemptions."

8. The Committee had observed that with the rise in popularity of systems of alternative medicines, the practices in these fields are flourishing and accordingly desired that the data available with agencies like Central Council of Indian Medicine and other registering agencies for medical professionals engaged in the practice of alternate medicines be analyzed to identify the non-filers. The Committee while noting that the Ministry has not replied to their recommendation adjure it to take urgent steps to scrutinize the data available with the registering agencies to bring forth the details of the non-filers and apprise the Committee thereof within one month of the presentation of this Report to the House.

9. Further, the Committee had recommended in their original Report that tax incentives be allowed to only those manufacturers who have complied with quality control standards implying thereby that any tax incentive be allowed only after verifying that the pharmaceutical manufacturer has adhered to certain quality control norms. The Committee are of the firm opinion that those alternative medicinal preparations should comply with consistent standards to improve the quality of the drugs in general so as to provide them an international platform and to effectively utilize their untapped potential. The Committee while reiterating their earlier recommendation that tax incentives be allowed to only those

manufacturers who have complied with quality control standards also desire that deductions even under Chapter VI A, as indicated by the Ministry, be allowed only to those manufacturers who adhere to quality control norms.

Overlapping nature of Section 10 (23C) and Section 11

Recommendation (Para No. 7)

10. The Committee in their original report had noted that under section 10(23C), the income of certain funds, Universities, educational institutions, hospitals, etc., that deal with philanthropy works is not to be included in the total income and similarly, Section 11 of the Act governs the grant of exemption to income of a charitable trust or institution. The Committee had opined that Section 10(23C) and section 11 of the Income Tax Act, 1961 are overlapping in nature and cover the same purposes (philanthropy or charity) leaving scope for confusion and varying interpretations that allows the assesses to take unfair advantage of excluding the income or claiming exemption; utilizing one of these two provisions that suits them. The Committee observed that absence of clear definitions renders the provisions amenable to misuse. The Committee noted from the reply of the ITD that though the provisions of the two sections are overlapping so far as purposes (philanthropy or charity) are concerned, conditions prescribed in the Act are to be fulfilled for these two sections separately which are to be examined by the Assessing officer/CIT at the time of grant of exemption/approval. The Committee were of the view that the Assessing officers should ensure that two sections are not misused by those trusts/hospitals who have not applied their income for charitable purposes since it defeats the object of the law. The Committee, therefore, had desired that to eliminate possibility of misuse by permitting an assessee to claim similar benefits under both the sections, specific instructions may be issued/ reiterated.

11. The Ministry in their Action Taken Notes have stated as under:-

“Section 11 (7) was inserted in the Act vide Finance (No. 2) Act, 2014 which provides that where a trust or an institution has been granted registration for purposes of availing exemption under section 11, and the registration is in force for a previous year, then such trust or institution cannot claim any exemption under any provision of section 10 other than that relating to exemption of agricultural income and income exempt under

section 10(23C). Hence, there is no legal bar on a trust registered u/s 12AA to be approved u/ s 10(23C) or vice versa and consequently avail benefit under either of the two sections subject to the fulfillment of the conditions specified in the respective provisions of the Act.

Vide circular No. 14/2015 it has already been stated that provisions of section 11 and 10(23C) are two parallel regimes and operate independently in their respective realms although some of the compliance criteria may be common to both. An entity has to fulfill the eligibility criteria for claim of exemption u/ s section 11 or 10(23C) independently of each other and the entities claiming such exemption are examined by the prescribed approving authorities for such claim made by them. Hence, the present legal framework being clear and unambiguous, no further need arises to issue any instructions or further clarification in the matter."

12. While vetting the said ATNs, the Audit made the following comments:-

"Ministry had stated during Exit Conference (May 2017) that the powers to grant approval under section 10 (23C) and for registration under section 12A of the Income Tax Act have been combined and vested with a single authority, viz. CIT (Exemption) who would be deciding the eligibility for exemption under both the sections to reduce the scope of any assessee availing exemptions under the alternate section if denied exemption under one section. It is reiterated that, in view of the risks involved, this needs careful monitoring."

13. In their further comments to the above said audit observations, the Ministry stated as under:

"Noted, the Circular No. 14/2015 has already been uploaded on official website for effective use by officers concerned."

14. The Committee had noted that Section 10(23C) and Section 11 of the Income Tax Act, 1961 are over-lapping in nature & cover the same purposes (philanthropy or charity) leaving scope for confusion & varying interpretations that allow the assessees to claim exemption, utilizing one of

these two provision that suits them. The Committee, therefore, had desired Income Tax Department to eliminate possibility of misuse by issuing or reiterating specific instructions in this regard. The Committee note from the reply of the Ministry that an entity has to fulfill the eligibility criteria for claim of exemption u/s section 11 or 10(23C) independently of each other and the entities claiming such exemption are examined by the prescribed approving authorities for such claim made by them. The Committee further note from the observation of the Audit that the powers to grant approval under section 10 (23C) and for registration under section 12A of the Income Tax Act have since been combined and vested with a single authority, viz. CIT (Exemption) who would be deciding the eligibility for exemption under both the sections to reduce the scope of any assessee availing exemptions under the alternate section if denied exemption under one section. The Committee observe that though both the sections are intended to operate independently of each other, the cases pointed out by the Audit indicate that exemption under one section was given while disallowing the same on the grounds of existence of profit motive under another. While welcoming the initiative of the Government whereby the powers to grant approval under section 10 (23C) and for registration under section 12A of the Income Tax Act have been combined and vested with a single authority, viz. CIT (Exemption), the Committee desire that a robust monitoring mechanism may be developed and the assessing officers be well anchored to identify and monitor cases so that the benefits under both Section 10(23C) and Section 11 of the Income Tax Act, 1961 to a particular assessee in a given assessment year are ruled out.

Lack of details of beneficiaries sponsored by the charitable hospitals/ trusts

Recommendation (Para no. 8)

15. The Committee noted that Section 11(c) of Income Tax Act, 1961 provides that the income derived from property held under trust/hospital created for a

charitable purpose which tends to promote international welfare in which India is interested to the extent such income is applied for such purposes outside India shall not be included in the total income. The Committee were of the view that a charitable purpose which tends to promote international welfare in which India is interested is a subjective phrase, open to different interpretations, which needs to be aptly verified. The Committee were, therefore, of the view that the Trust may obtain a certificate from the Ministry of External Affairs stating that the income has actually been applied for such a purpose that promotes international welfare in which India is interested for claiming such exemption. The Committee had desired that the details of all beneficiaries who have been sponsored by the hospitals/ trusts for availing benefits outside India during last five years may be furnished to the Committee within three months of the presentation of the Report to the House.

16. The Ministry in their Action Taken Notes have stated as under:-

"The information relating to details of beneficiaries availing benefits outside India during the last five years, is not possible as such information is not captured in the return of Income. However, cases coming for scrutiny are examined for allowability of such expenses, if such expenses are shown in books of accounts."

17. While vetting the said ATNs, the Audit made the following comments:-

"As desired by PAC, the details of scrutiny assessments where issues pointed out by PAC have been examined viz. the details of all beneficiaries who have been sponsored by the hospitals/ trusts for availing benefits outside India during last five years, may be provided."

18. In their further comments to the above said audit observations, the Ministry stated as under:

"As intimated by the field charges, no case pertaining to Health & Allied sector with respect to implications of Section 11(C) of the Income Tax Act, 1961 has been reported. Therefore, the report may be treated as NIL."

19. The Committee had noted that Section 11(c) of Income Tax Act, 1961 provides that the income derived from property held under trust/hospital created for a charitable purpose which tends to promote international welfare in which India is interested to the extent such income is applied for

such purposes outside India shall not be included in the total income. The Committee had desired that the Trust/ hospital may obtain a certificate from the Ministry of External Affairs stating that the income had actually been applied for such a purpose that promotes international welfare in which India is interested for claiming such exemption. The Committee are unhappy to note that the Ministry has not responded to their specific recommendation and desire that the reply of the Ministry to the same may be submitted within one month of the presentation of this Report. The Committee further desire that all income pertaining to charitable hospitals/ trusts should be included in the total income and waivers / rebates / deductions/ exemptions may be allowed following verification by the Ministry of External Affairs.

20. The Committee, further, note from the reply of the Ministry that information relating to details of beneficiaries availing benefits outside India during the last five years, is not possible as such information is not captured in the return of Income. While noting that there is no mechanism to identify the beneficiaries under Section 11(c) , the Committee desire that disclosure of the details of the expenditure incurred on the beneficiaries who have been sponsored by the hospitals/ trusts for availing benefits outside India may be made mandatory to ensure transparency and fairness in such sponsorships. The Committee further recommend that a mechanism be also put in place to verify the genuineness of the beneficiaries sponsored by the charitable hospitals/trusts claiming benefits under the Income Tax Act, 1961.

Need for sector specific analysis

Recommendation (Para No. 9)

21. The Committee in their original report had observed that the specific tax incentives provided by Government have a definite revenue impact and can be

viewed as an indirect subsidy to tax payers, also referred to as 'tax expenditures'. The revenue impact of tax incentives was assessed by way of 'Revenue Foregone', now termed as 'Revenue Impact of Tax Incentives under the Central Tax System'. The quantum of revenue foregone is the chief parameter to assess the impact of tax deduction which is treated as a measure of tax expenditure incurred for the promotion of organized activity (viz. creation of infrastructural facilities, accelerated depreciation as an incentive for capital investment) in the targeted sector. The Committee had noted that the Income Tax Department (ITD) has not undertaken any impact analysis to assess the outcome of relief provided to assesseees engaged in the private healthcare sector. The Committee had further noted from the reply of ITD that direct tax concessions were provided by the Government as part of overall fiscal incentives to realize the macroeconomic objectives and to achieve policy goals of development and growth in various sectors of economy and no such quantitative exercise had been undertaken by the Department to assess the outcome of reliefs provided to private hospitals, medical colleges/research institutes, diagnostic centres etc. The Committee were of the considered view that sector specific information would enable the ITD to analyze the sector specific issues and efficacy/ misuse of the sector specific provisions. The Committee had opined that with computerization, the analysis of the information collected from various sources has become easier and therefore, had desired that necessary modifications/ additions should be made in the forms to be filled by the assesseees to enable sector specific analysis.

22. The Ministry in their Action Taken Notes have stated as under:-

"Income Tax Return Forms for the Assessment Year 2018-19 were modified and many new sub-codes were provided to entities related to the Health Sector which *inter-alia* includes General Hospitals, Speciality and super speciality hospitals, Diagnostic centres. Hence, now it has become easier to do sector specific analysis."

23. While vetting the said ATNs, the Audit made the following comments:

"Although Ministry has stated that ITR forms for AY 2018-19 were modified and many new sub-codes were provided to entities related to the Health Sector and sector specific analysis will become easier; it is reiterated that sector-specific impact analysis may be undertaken to assess the outcome of relief provided to assesseees engaged in the private healthcare sector."

24. In their further comments to the above said audit observations, the Ministry stated as under:

“Noted.”

25. While observing that quantum of revenue foregone is the chief parameter to assess the impact of tax deduction which is treated as a measure of tax expenditure incurred for the promotion of organized activity in the targeted sector, the Committee have noted that the Income Tax Department has not undertaken any impact analysis to assess the outcome of relief provided to assessees engaged in the private healthcare sector. The Committee note from the reply of the Ministry that from the Assessment Year 2018-19, IT return forms have been modified to include many new sub codes to the entities related to the Health Sector and that it has now become easier to do the sector specific analysis. The Committee while acknowledging the initiative of the ITD to modify the Income Tax Returns, desire that the sector specific analysis may now be taken up urgently to analyze the efficacy/misuse of sector specific tax deduction/tax subsidy as this will go a long way in ensuring efficient use of tax incentives and enabling modifications or any other additions needed thereto.

Absence of Section 80G Certificates

Recommendation (Para No. 11)

26. The Committee had noted that donation u/s 80G entails revenue foregone on account of exemption to recipients and also deduction to donors. As per Audit, out of eighty seven cases falling under stand-alone hospital category, the section 80G certificates were available only in 10 per cent of cases. The Committee had further noted that in the absence of section 80G certificates, it was not clear as to how the Assessing Officers cross-verified the donation receipts vis-à-vis the claims. Further, there is no provision in the ITD module to enable validation of section 80G certificates by Assessing Officers on similar lines as is done in the case of TDS certificates under TRACES. According to ITD, the automated

generation of 80G certificates on similar lines as under TRACES would not be feasible to implement and would be extremely complicated for small donors and small exempt organizations who would have to submit a statement to the Department and then obtain a certificate to be given to the donor. However, there was a provision in the Income tax return for providing PAN/TAN of the donee so as to enable checking of the correctness of the claim while processing the case by the Department. The Committee were of the view that the ITD may issue specific instructions to be followed while giving and receiving donations. The list of the donors should invariably have either PAN/ Aadhar number quoted against each of them and the ITD before allowing deduction/ exemption make a test check of a prescribed percentage of donors on random basis and the donees to ensure correctness of the claims.

27. The Ministry in their Action Taken Notes have stated as under:-

"Currently, the donor availing deduction under section 80G is required to file the details of PAN of the donee and the amount of donation in his/her return of income but the donee entity registered u/s 12AA or approved u/ s 10(23C) in receipt of donation is not required to file the donor wise details of such donation received. A mechanism akin to TRACES system for matching of each claim of donation u/ s 80G by donor to the income disclosed by donee would require a scheme similar to Centralised Processing of Statement scheme as in the case of TRACES, the legislative backing for which has to be provided.

Under the current provisions of the Act, no format for the manner in which receipt of donation received has been prescribed in the Act/rules. However, under the sub-rule (3) of Rule 17CA, format of a receipt to be issued by an electoral trust in respect of donation received has been specified.

Further, w.e.f 01.04.2018 no deduction u/ s 80G shall be allowed in respect of any cash donation exceeding two thousand rupees. Accordingly, all donations above the sum of two thousand rupees will be through the banking channel and thereby recording the details of the donors."

28. The Committee while noting that there is no provision in the Income Tax Department module to enable validation of section 80G certificates by Assessing Officers on similar lines as is done in the case of TDS certificates under TDS Reconciliation, Analysis and Correction Enabling System (TRACES) had desired that the ITD may issue specific instructions to be followed while giving and receiving donations and the list of the donors should invariably have either Permanent Account Number (PAN) or Aadhar number quoted against each of them. The Committee had also desired that ITD before allowing deduction/ exemption should make a test check of a prescribed percentage of donors on random basis to ensure correctness of the claims. The Committee note from the reply of the Ministry that though the donor availing deduction under section 80G is required to file the details of PAN of the donee and the amount of donation in his/her return of income but an entity registered u/s 12AA or approved u/s 10(23C) in receipt of donation is not required to file the donor wise details of such donation received. The Committee further, note from the reply of Ministry that w.e.f 01.04.2018 no deduction u/s 80G shall be allowed in respect of any cash donation exceeding two thousand rupees and accordingly, all donations above the sum of two thousand rupees will be through the banking channel and thereby recording the details of the donors. The Committee are of the considered opinion that the Government should also ensure that the entities registered under Section 12AA and 10(23C) maintain a list of donors with either their PAN or Aadhar numbers quoted against each of them. Further, since donations up to two thousand rupees are still allowed in cash, receipts issued to such donors should also mandatorily have PAN/Aadhar quoted against them. Such a step would ensure transparency in giving/ receiving donations and also leave a trail for audit.

Disallowance of expenditure incurred on freebies

Recommendation (Para No. 12)

29. The Committee had noted that the referral fees paid to the doctors by private hospitals, nursing homes, diagnostics centres etc. for referring patients and payments made on account of advertisement expenses by the medical practitioners were allowed, although such expenditure has been held as disallowable and “unethical” as per CBDT’s directives and Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 read with Homoeopathic Practitioners - (Professional Conduct, Etiquette & Code of Ethics) Regulations respectively. The Committee, however, observed that despite the directives in this regard, such benefits are still being distributed, though in other forms. The Committee were of the view that in order to ensure transparency in the business activities, such expenses, being related to promotion of business, be allowed to be incurred from the profits after tax of the hospitals/pharmaceutical and allied industries and similarly, these may be made taxable in the hands of the beneficiaries.

30. The Ministry in their Action Taken Notes have stated as under:-

"CBDT has issued Circular No. 5/2012 dated 1.8.2012 titled “Inadmissibility of Expenses incurred in providing freebies to Medical Practitioner by Pharmaceutical and allied Health Sector Industry”. Para 3 of the said states that:

Section 37(1) of Income Tax Act provides for deduction of any revenue expenditure (other than those failing under sections 30 to 36) from the business Income if such expense is laid out/expended wholly or exclusively for the purpose of business or profession. However, the explanation appended to this sub-section denies claim of any such expense, if the same has been incurred for a purpose which is either an offence or prohibited by law.

Thus, the claim of any expense incurred in providing above mentioned or similar freebies in violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 shall be inadmissible under section 37(1) of the Income Tax Act being an expense prohibited by the law. This disallowance shall be made in the hands of such pharmaceutical or allied health sector Industries or other assessee which has provided aforesaid freebies and claimed it as a deductible expense in its accounts against income.”

31. Hence, it is clear from the above paragraph that now when such expenses are disallowed under Sec. 37(1), it implies that such expenses shall have to be incurred from profits after tax of the hospitals/pharmaceutical and allied industries. In other words, disallowance of expenditure under the Income-tax Act means that such expenditure cannot be reduced from the taxable profits.

32. As regards to the other issue of such expenditure to be made taxable in the hands of the beneficiaries, attention is sought to Paragraph 4 of the said Circular:

"It is also clarified that the sum equivalent to value of freebies enjoyed by the aforesaid medical practitioner or professional associations is also taxable as business income or income from other sources as the case may be depending on the facts of each case. The Assessing Officers of such medical practitioner or professional associations should examine the same and take an appropriate action.

This may be brought to the notice of all the officers of the charge for necessary action.

Hence, it is clear from the above paragraph that the aggregate amount of such expenses is taxable in the hands of the beneficiaries as per extant law.

Accordingly, no action needs to be taken on the recommendation of the committee."

33. While vetting the said ATNs, the Audit made the following comments

"CBDT circular no.5/2012 dated 1.08.2012 has not specified disallowance of items of expenditure other than freebies given by pharmaceutical or allied healthcare industries that are deemed as unlawful under the Acts, rules and regulations specific to private healthcare sector assesseees. It is reiterated that the Assessing Officers are taking divergent views due to the lack of clarity in CBDT instructions in this regard. Hence the CBDT may issue further necessary clarifications to ensure uniformity and consistency in assessments, even without amending the law. Action taken in this regard may be intimated to audit."

34. In their further comments to the above said audit observations, the Ministry stated as under:

"In this regard, it is stated that CBDT's Circular No. 5/2012 not only covers the freebies but it covers all kind of expenses which are prohibited under Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 ('MCI Regulations') including referral fee. In this regard, Para no.3 of the CBDT Circular No.5/2012 is reproduced as below:

Quote

3. Section 37(1) of Income Tax Act provides for deduction of any revenue expenditure (other than those failing under sections 30 to 36) from the business Income if such expense is laid out/expended wholly or exclusively for the purpose of business or profession. However, the explanation appended to this sub-section denies claim of any such expense, if the same has been incurred for a purpose which is either an offence or prohibited by law.

*Thus, the claim of any expense incurred in providing above mentioned or **similar freebies in violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 shall be inadmissible under section 37(1) of the Income Tax Act being an expense prohibited by the law.** This disallowance shall be made in the hands of such pharmaceutical or allied health sector Industries or other assessee which has provided aforesaid freebies and claimed it as a deductible expense in its accounts against income.*

Unquote

Further, it is also relevant to refer to para no.6.4.1 and 6.4.2 of the MCI Regulations 2002 which prohibits receipt of any consideration or return for referring, recommending a patient. The relevant paras of the MCI guidelines are reproduced as below: -

Quote

6.4 Rebates and Commission:

6.4.1 A physician shall not give, solicit, or receive nor shall he offer to give solicit or receive, any gift, gratuity, commission or bonus in consideration of or return for the referring, recommending or procuring of any patient for medical, surgical or other treatment. A physician shall not directly or indirectly, participate in or be a party to act of division, transference,

assignment, subordination, rebating, splitting or refunding of any fee for medical, surgical or other treatment.

6.4.2 *Provisions of para 6.4.1 shall apply with equal force to **the referring, recommending or procuring by a physician or any person, specimen or material for diagnostic purposes or other study/work.** Nothing in this section, however, shall prohibit payment of salaries by a qualified physician to other duly qualified person rendering medical care under his supervision.*

Unquote

In view of the above position, it is stated that there is no ambiguity in CBDT's Circular No.5/2012 as it covers all kind of expenses which are prohibited under MCI Regulations,2002 including the referral fee which are prohibited under said guidelines. Accordingly, no action needs to be taken on the recommendations of the Audit.

35. The Committee had noted that the referral fees paid to the doctors by private hospitals, nursing homes, diagnostics centres etc. for referring patients and payments made on account of advertisement expenses by the medical practitioners were allowed, although such expenditure has been held as disallowable and “unethical” as per CBDT’s directives and Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 read with Homoeopathic Practitioners - (Professional Conduct, Etiquette & Code of Ethics) Regulations respectively. The Committee had, however, observed that despite the directives in this regard, such benefits were still being distributed, though in other forms. The Committee in their original report had observed that in order to ensure transparency in the business activities, such expenses, being related to promotion of business, be allowed to be incurred from the profits after tax of the hospitals/pharmaceutical and allied industries and similarly, these may be made taxable in the hands of the beneficiaries. The Committee note from the reply of the Ministry that the claim of any expense incurred in providing above mentioned or similar freebies in violation of the provisions of Indian

Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 shall be inadmissible under section 37(1) of the Income Tax Act being an expense prohibited by the law. This disallowance shall be made in the hands of such pharmaceutical or allied health sector industries or other assessee which has provided aforesaid freebies and claimed it as a deductible expense in its accounts against income. Further, the Committee note that the sum equivalent to value of freebies enjoyed by the aforesaid medical practitioner or professional associations is also taxable as business income or income from other sources as the case may be depending on the facts of each case. The Committee desire the Ministry to provide number of cases where the expenses claimed by private hospitals, nursing homes, diagnostics centres etc. for referring patients and other freebies were disallowed by the Department in last three years and similarly the number of cases where such income was added to the medical practitioners' income and the action taken against them as stated above.

36. The Committee, further, reiterate that though the MCI has termed freebies and such other expenditure as "unethical", the practice is, however, widely prevalent. The Committee feel that mere disallowance of expenses without taking any action against those giving and receiving such prohibited expenses will not help in curbing the malpractice. The Committee, therefore, strongly feel that, instead of terming such expenses 'unethical' and only disallowing them, the emphasis should rather be on transparency and to ensure the same, disclosure of such freebies by both the parties may be made mandatory which will, in turn, rule out the possibility of any tax gap arising out of such freebies.

CHAPTER V

OBSERVATIONS/RECOMMENDATIONS IN RESPECT OF WHICH GOVERNMENT HAVE FURNISHED INTERIM REPLIES

Observations/Recommendations

The Committee observed that the fees charged by health professionals, private hospitals, nursing homes, medical clinics, medical colleges, diagnostic centres, pathological labs, medical supply stores etc. for their services are mostly received in cash, which has a potential for evasion of tax. The Committee were of the view that an estimation of the probable number of medical professionals, private hospitals, diagnostic labs, medical supply stores etc. in the country would be useful to gauge the efficacy of the measures taken by the Department to broaden the tax base in the health sector and, therefore, desired that the ITD may in coordination with the Ministry of Health and Family Welfare, Ministry of Statistics and Programme Implementation and State Governments collect authentic and accurate data and apprise the Committee thereof.

[Observations/Recommendation No. 4 of 103th Report of the Public
Accounts Committee (16th Lok Sabha)]

Action Taken by the Ministry

The process of collecting authentic data is being done upon after consultation with respective stakeholders. Besides the Department collects information from time to time to widen tax base and as well as to deepen the tax base. The information received from various sources is processed for various suitable actions, provided under the Income Tax Act.

*This has been vetted by Audit vide their letter No. 167/RADT/52-2016/Vol.VI
dated 08/04/2019.*

Audit's vetting comments on Ministry's ATN

Ministry may provide the details of action taken by Income Tax Department to co-ordinate with Ministry of Health and Family Welfare, Ministry of Statistics and Programme Implementation and State Governments with the objective of widening and deepening of the tax base in the healthcare sector may be intimated.

Reply on vetting comments of Audit by Ministry of Finance

The Department is considering the availability of information, scope, mechanism and terms of the MoU to be signed with regard to data exchange with the Ministry of

Health and Family Welfare. Officers of Ministry of Statistics & Programme Implementation (MoSPI) visited this Directorate of Income Tax Systems to discuss the format of data requested by MoSPI for 7th Economic Census and other modalities. Department would propose to MOSPI to share information with PAN of Medical Professionals collected during its door to door survey.

[Ministry of Finance F.No. 246/07/2016-A
& PAC-II dated 9 August, 2019]

NEW DELHI;
3 December, 2019
12 Agrahayana, 1941 (Saka)

Adhir Ranjan Chowdhury
Chairperson
Public Accounts Committee

MINUTES OF THE SEVENTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (2019-20) HELD ON 19 NOVEMBER, 2019.

The Committee sat from 1600 hrs. to 1715 hrs. on 19 November, 2019 in Committee Room 'C', Parliament House Annexe, New Delhi.

PRESENT

Shri Adhir Ranjan Chowdhury - Chairperson

MEMBERS

LOK SABHA

2. Shri T. R. Baalu
3. Shri Subhash Chandra Baheria
4. Shri Sudheer Gupta
5. Shri Bhartruhari Mahtab
6. Shri Rahul Ramesh Shewale
7. Dr. Satya Pal Singh
8. Shri Jayant Sinha

RAJYA SABHA

9. Shri Rajeev Chandrasekhar
10. Shri C. M. Ramesh
11. Shri Bhupender Yadav

LOK SABHA SECRETARIAT

1. Shri M.L.K. Raja - Director
2. Smt. Bharti S. Tuteja - Additional Director
3. Smt. Anju Kukreja - Deputy Secretary

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

1. Smt. Anita Pattanayak - DAI (RC)
2. Smt. Meenakshi Gupta - DAI (CRA)
3. Smt. Sangeeta Choure - DG (Accounts)
4. Shri Sunil Dadhe - DGA (CE)
5. Shri K. Srinivasan - DGA (RC)
6. Shri Deepak Anurag - DGA (Cord.)

2. At the outset, the Chairperson welcomed the Members and the representatives of the Office of the C&AG of India to the sitting of the Committee. The Chairperson then apprised the Members that the meeting has been convened for (i) Briefing by Audit on the proposal of Ministry of Finance (Department of Expenditure) seeking approval of the Committee for **"Revision of ceilings for Exception Reporting in Appropriation Accounts"** ; and (ii) Consideration and adoption of the Draft Reports on the subjects:- (a) Action taken by the Government on the Recommendations/Observations of the Committee contained in their 95th Report (16th Lok Sabha) on **"Health and Family Welfare"**; and (b) Action taken by the Government on the Recommendations/Observations of the Committee contained in their 103rd Report (16th Lok Sabha) on **"Assessment of Entities Engaged in Health & Allied Sector"**.

3.	****	****	****	****
4.	****	****	****	****
5.	****	****	****	****
6.	****	****	****	****

7. Thereafter, the Committee took-up for consideration and adoption aforementioned draft Reports. The draft Reports could not be adopted as the Members sought more time to go through them. Chairperson invited written suggestions, if any, from the Members for inclusion in draft Reports within seven days and desired that the draft Reports may be taken up for consideration and adoption, subsequently.

8. The Chairperson thanked the Members and the representatives of the C&AG of India for attending the sitting.

The Committee then adjourned.

MINUTES OF THE NINTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (2019-20) HELD ON 3 DECEMBER, 2019.

The Committee sat from 1530 hrs. to 1605 hrs. on 3 December, 2019 in Committee Room No. '2', Block A, Extension Building, Parliament House Annexe, New Delhi.

PRESENT

Shri Adhir Ranjan Chowdhury - Chairperson

MEMBERS

LOK SABHA

2. Shri T.R. Baalu
3. Shri Subhash Chandra Baheria
4. Shri Sudheer Gupta
5. Smt. Darshana Vikram Jardosh
6. Shri Ajay (Teni) Misra
7. Shri Jagdambika Pal
8. Shri Rahul Ramesh Shewale
9. Shri Rajiv Ranjan Singh alias Lalan Singh
10. Dr. Satya Pal Singh

RAJYA SABHA

11. Prof. M.V. Rajeev Gowda
12. Shri Sukhendu Sekhar Ray
13. Shri Bhupender Yadav

LOK SABHA SECRETARIAT

1. Shri M.L.K. Raja - Director
2. Smt. Bharti S. Tuteja - Additional Director
3. Shri U.C. Bhardwaj - Additional Director

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

- | | | | |
|----|-----------------------|---|--------------------|
| 1. | Smt. Anita Pattanayak | - | Dy. CAG (RC) |
| 2. | Shri Parag Prakash | - | Dy. CAG (Accounts) |
| 3. | Smt. Meenakshi Gupta | - | Dy. CAG (CRA) |
| 4. | Smt. Sangeeta Chaure | - | DG-Accounts |
| 5. | Shri S. Dadhe | - | DG (DGACE) |
| 6. | Shri Sandeep Lall | - | PD-PC |

2. At the outset, Hon'ble Chairperson welcomed the Members and Audit officials and stated that the following three draft reports may be taken up for consideration and adoption:-

- (i) Action taken by the Government on the Recommendations/Observations of the Committee contained in their 95th Report (16th Lok Sabha) on "Health and Family Welfare";
- (ii) Action taken by the Government on the Recommendations/Observations of the Committee contained in their 103rd Report (16th Lok Sabha) on "Assessment of Entities Engaged in Health & Allied Sector"; and
- (iii) Revision of ceilings for Exception Reporting in Appropriation Accounts.

The Committee adopted the draft Reports without any modification and authorised the Chairperson to finalise the Report in the light of factual verification done by the Audit.

- | | | | | |
|----|------|------|------|------|
| 3. | **** | **** | **** | **** |
| 4. | **** | **** | **** | **** |
| 5. | **** | **** | **** | **** |
| 6. | **** | **** | **** | **** |
| 7. | **** | **** | **** | **** |

The Committee then adjourned.

APPENDIX-III
(Vide Paragraph 5 of Introduction)

ANALYSIS OF THE ACTION TAKEN BY THE GOVERNMENT ON THE OBSERVATIONS/RECOMMENDATIONS OF THE PUBLIC ACCOUNTS COMMITTEE CONTAINED IN THEIR ONE HUNDRED AND THIRD REPORT (SIXTEENTH LOK SABHA)

(i) Total number of Observations/Recommendations	-	16
(ii) Observations/Recommendations of the Committee which have been accepted by the Government:	-	Total : 13 Percentage:81%
Para Nos. 1,2,5,6,7,8,9,10,11,13,14,15 and 16		
(iii) Observations/Recommendations which the Committee do not desire to pursue in view of the reply of the Government:	-	Total : 0 Percentage:0%
-Nil-		
(iv) Observations/Recommendations in respect of which replies of the Government have not been accepted by the Committee and which require reiteration:	-	Total : 02 Percentage:13%
Para Nos. 3 and 12		
(v) Observations/Recommendations in respect of which the Government have furnished interim replies/no replies:	-	Total : 01 Percentage:6%
Para Nos. 4		

