I-T Dept Gets More Teeth to Conduct Special Audit

When DLF Commercial Projects Corporation a partnership firm in which India's largest real estate firm, DLF, held 74% filed its income-tax returns in September 2009,declaring a loss of.20.1 crore, the assessing officer could not understand certain transactions. One such transaction was. 3,717 crore received as advances by DLF Commercial from its parent, on which it paid no interest and invested this amount in more than 100 firms.

The assessing officer ordered a special audit a relook at the company's accounts by an auditor appointed and paid for by the I-T department. DLF Commercial objected to this special audit in the Delhi High Court, and won the decision in October 2012.In recent years, several frontline companies have challenged the I-T departments special audit in court Nokia India, Hero MotoCorp and Sahara India are three other examples. But the ability of corporate to resist such an oversight audit might be weakened following a widening in the scope of the law. Effective from June 1,the I-T department can order such audits on six counts, against two counts earlier (see graphic).Accounting professionals say that while this gives more teeth to the I-T department to order special audits, it also raises the spectre of harassment if these powers were used more as a rule than as an exception. This move is surely a weapon in hands of I-T department to gather exhaustive facts of transactions and would lead to more instances of special audit, says Himanshu Parekh, partner-global international corporate tax with KPMG. These (six) provisions should be reviewed at the earliest by the I-T department and the government should bring in appropriate control measures so that the assessing officer cannot misuse these provisions by calling for a special audit without adequate justification.

Previously, an assessing officer could call on a special audit only on two counts: a company's accounts were complex or there was a revenue loss to the exchequer. In most cases, companies went to court, and won. When asked why the company opposed the special audit, a DLF spokesperson replied: Our stand has been validated through the Delhi High Court judgment. The court order shows that DLF argued that a day before the special audit was ordered, the assessing officer had written an internal note stating that DLF Commercial had clarified the apparent complexities noticed. DLF accessed this document through a right to information (RTI) request. Elsewhere, in the Swadeshi Cotton Mills case, the court ruled that a special audit cannot be ordered based on a cursory look.In another case involving Sahara India, the court said the responsibility to scrutinise the accounts cannot be shifted from the assessing officer. Companies have even gone to court after a special audit. A case in point is Hero MotoCorp, where the special auditor found non-compliance with the Income Tax Act and accounting standards. It estimated the company's taxable income to be.4,485 crore, against.1,198 crore declared by Hero. The case is currently in the Delhi High court, which has asked the I-T department not to act on special auditors findings until it rules on Heros petition. When asked about the special audit, Hero declined comment.

We don't wish to comment as the matter is sub judice, a company spokesperson said. The government touched on such court rulings while announcing the amendment to the special audit provisions. Its Budget 2013 documents stated: The expression nature and complexity of the accounts has been interpreted in a very restrictive manner by various courts. So, it justified an assessing officer calling a special audit on four more counts: large volume of transactions, doubts about their authenticity, multiplicity of transactions and specialised nature of business activity. The move may help the department in big cases/ scam cases, says Prashant Khatore, tax partner with Ernst & Young. Speaking on the condition of anonymity, an I-T official who had earlier worked in the transfer pricing division says: Often we find external auditors including this in their report, as informed to us by the management. A special audit will help us go deep into the transactions and see whether the company has concealed any income or violated any accounting provisions. Parekh of KPMG feels, even with the wider ambit, companies will contest such audits in the court. The question would certainly remain whether the amendment overrides the parameters laid down by the courts for the initiation of a special audit, he says. Before calling a special audit, an assessing officer still needs permission from the commissioner or chief commissioner, and has to give the company in question a chance to explain the transactions. Further, a special audit has to be completed in 60 days, extendable to 90 days. According to Khatore, an assessing officer assesses around 200 cases a year, and may not have the bandwidth to pore through and verify voluminous transactions. In such instances, assessing officers can fall back on a special audit. When we call for information, companies send large sets of documents, says a senior I-T tax official who tried using a special audit, not wanting to be named. In one instance, they occupied every available space in my room. Its not practically possible to go through them.

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