

SIT on Black Money: Historic Decision of the Modi Government

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The first cabinet decision of the newly elected government to set up a high level Special Investigation Team (SIT) to bring back the black money deposited abroad would prove to be a historic step for ploughing back the country's wealth illicitly stashed abroad, for the welfare of people and for the rapid development of the country. The amount of black money stashed abroad and the monies being brought back as export income or foreign investment either through round tripping or by money laundering it to white, if retrieved, may touch Rs. 100 lac crores. The figure is subject to variance as various estimates give differing figures of black money stashed in various tax havens ranging between \$ 350 billion (Rs. 21 lacs crores) to \$ 1.45 trillion (Rs. 87 lacs crores). The most baffling figure of black money is the oft quoted figure of \$ 1.456 trillion being quoted from a "Swiss Banking Association Report of 2006", which was later denied by the association. Indeed after hotting up of the issue of black money, a large part of it has either been brought back by round tripping as export income or foreign investment in white or has been moved to other tax havens. According to subsequent estimates of the 'Global Financial Integrity' (a non-profit organization), the estimated value of illicit financial flows held abroad by Indians - Individuals and companies - is around \$ 500 billion (Rs. 30 lakh crores). As per Konrad Hummler, Chairman of the Swiss Private Bankers Association, 1 trillion out of 2.8 trillion Swiss Francs was black money in 2011. Wikileaks founder Jullian Assange alleges that a major part of it belongs to Indians. Therefore, an amount of around \$ 500 billion may belong to Indians. It would be a boon for the 1.2 billion people of Bharat, to bring back the precious wealth of the country which would help to enhance our welfare spendings, build world class infrastructure, modernize our defence forces, renovate the nation's technology and improve our agriculture which is the life line for half of our population. It should also be borne in mind that, the amount of black money stashed in Swiss Banks is fast declining, as the Indian account holders have been withdrawing their illicit money either to deposit in other tax havens like Bahamas and Liechtenstein to evade action or to whiten it through round tripping as export earning or as foreign investment.

In technical terms, the term 'black money' refers to income which has not been reported or disclosed to public authorities. But, it would also include money earned from illegal activities like crime (such as drug trafficking, smuggling, human trafficking etc.) and corruption. Various estimates made from time to time, since 1960s have reported the quantum of black money being generated in the economy to be between 20 to 40 percent of the GDP. But, It would be a mis-assumption that all black money flown out is lying in the offshore bank accounts alone. In reality a large portion of the black money flowing out illegally is also being brought back into India through 'Round Tripping' as white, either as export income or as foreign investment or via other means of laundering as upto 70% of FDI flows into India have been through tax havens. Likewise, ever since the issue of black money has hotted up, India's exports are booming, despite an unprecedented stagnation in the world economy. These exports of non-conventional products to non-conventional destinations, since 2010-11, are even beating China. Official data for 2010-11 show a huge increase of \$ 30 billion in engineering goods, while engineering companies falling in the BSE 500 list (The Top 500 companies of the Bombay Stock Exchange) show an export increase of only \$ 1.38 billion. Who generated these balance exports of \$ 28 billion? Minor companies not listed on stock exchanges or Ghost companies? Likewise, export of metals and metal products increased from \$ 13 billion to \$ 29 billion. But, the export growth for these items by the BSE 500 companies is less than a billion dollar. Export of copper articles more than quadrupled to Rs. 36700 crore. The importing countries are also non-conventional importers of brass and copper wares and engineering goods. One such new destination for brassware handicrafts is China, which is not a normal buyer of such products. Anomalies have been pointed out by the researchers of Kotak Securities in the inflows from Foreign Institutional Investors (FIIs). Official inflows in 2010-11 were shown at \$ 22 billion. But, the data of EPFR Global (an International authority providing fund flows and asset allocation data to financial institutions around the world) shows inflows of only \$ 4.5 billion, leaving a gap of \$ 17.5 billion against official data, open to apprehension of round tripping of illicit flow of black money.

The 21 member SIT constituted to trace, track and retrieve the black money has acted very swiftly to chart out the roadmap of how to proceed for bringing this wealth of the nation, illicitly held abroad, in its very first meeting, held within a week of its constitution on Monday, June 2, 2014. According to the terms of reference for the SIT, this Justice M.B. Shah headed team, will investigate all matters with respect to unaccounted monies being stashed in foreign banks by Indians or other entities operating in India, and would also prepare a comprehensive plan, including creation of the institutional structure that will enable the country to fight the battle against unaccounted money. The team will have jurisdiction in cases where investigations have begun, are pending or waiting to be initiated and that which have been completed.

Baseless and unfounded apprehensions are being expressed in certain quarters about the SIT's chances of success in bringing back the black money stashed in the foreign banks by unscrupulous businessmen, corrupt politicians and bureaucrats, drug traffickers, terror outfits and other criminal elements. But the honest political conviction, reflected in the act of constituting

the team itself, along with all other positive signals bodes well for the success of the team. The points which give us confidence are:

- (i) The team is headed by the former Supreme Court Judge M.B. Shah known for the swiftness he showed in the cases about illegal mining, and is co-headed by another former Supreme Court Judge Arijit Pasayat. Both are known for their objectivity, boldness and transparency.
- (ii) The team has the most elite team of top officers of ten different investigative and enforcement agencies to ensure that no loopholes may perpetuate. They include Secretary of the Department of Revenue, an RBI Deputy Governor, IB Director, Director of Enforcement Directorate, Director CBI, CBDT Chairman and Director General of the Narcotics Control Bureau. Besides, the D.G., Directorate of Revenue intelligence, Director of Financial Intelligence Unit, Secretary, Research and Analysis Wing (RAW); and a Joint Secretary (Foreign tax and tax Research) are also members in the team.
- (iii) The constitution of SIT was indeed pending from the year 2011 as the UPA government was explicitly opposing it. Since it has been formed in the first ever cabinet meeting of the new Modi-led government, is a clear signal that the new government is committed to do whatever it can and should, to bring back country's money and book the culprits.
- (iv) Switzerland, while buckling under international pressure, has also signed the OECD's Multilateral Convention on Mutual Administrative Assistance in Tax Matters. The convention, which has now been signed by 58 countries, including India, provides for sharing of information and mutual cooperation among all its signatories. It would help India to get information on black money. Besides, in October 2010, Switzerland's Federal Act on the Restitution of Assets of Politically Exposed Persons (PEPs), obtained by Unlawful Means (commonly referred to as the Return of Illicit Assets Act or "RIAA") was also passed by both houses of the Swiss Parliament. It had also become effective w.e.f. February 1, 2011. Switzerland has already returned over \$1.6 billion lying in various Swiss Bank Accounts – money which was illegally obtained and stashed by Politically Exposed Persons. India can also provide the Swiss Federal Criminal agencies clues, for scrutiny with due diligence, necessary to establish the link of the money to the depositor and its origin, and can get back the money stashed by corrupt politicians under this law.
- (v) Moreover, the global milieu has also turned resolutely against the opaque banking secrecy norms of tax havens. The US in 2001 enacted new money laundering laws, requiring sharing of information between financial institutions and enforcement agencies. Such a law can also be framed by India for tracking terror funding and black money. The recent endeavours of the G20 in April 2009 to press for counter-measures against tax havens and non-cooperative financial centres that had agreed to internationally-accepted tax standards on sharing tax information, but had not substantially implemented them would also help the SIT. At the G20 meet in Seoul last year, the usefulness of initiatives and statistics of subsequent significant increases in revenues from tax evaders across the globe was also pushed to enhance the process of exchange of information.
- (vi) India and Switzerland have also signed a pact amending the existing double taxation avoidance agreement that will make it easier for New Delhi to gain access to information on suspect bank accounts, possibly paving the way to recovering billions of dollars in undeclared wealth. In case of non co-operation by the Swiss authorities or any other tax haven, India may even declare that nation a Non-Cooperative Jurisdiction, which would result in suspending tax benefits available under the bilateral tax treaty. If a sovereign request is sent, any tax haven cannot deny to share the information on the pretext of notifying a person or seeking his consent. The information has to be shared under Article 26 of the treaty signed with Switzerland, which overrides Swiss domestic laws.
- (vii) India can also put pressure on Switzerland through G20 to yield information about the illicit money. Besides, we have the option of invoking Section 94(A) of the Income-Tax Act and declare Switzerland a Non-Cooperative Jurisdiction. Last year, India had declared Cyprus a Non-Cooperative Jurisdiction and suspended tax benefits available under the bilateral tax treaty signed in 1994. Indeed, under bilateral tax agreements, countries have a legal obligation to exchange such information as is necessary, particularly for the prevention of fraud or evasion of taxes.

Since the illicit earnings are being remitted as black money and are being siphoned back as white and is being employed in real estate, gold etc. a vigil on this aspect is also indispensable. Since money gets best multiplied in India, and this easy money is causing a boom in asset prices is serious. For instance, when housing prices doubled in the US after 2002, it proved a bubble. In India, these have risen tenfold and are continuing to grow, just by virtue of the whitened black money of corrupt politicians and bureaucrats finding way in real estate. Likewise, the share price index, the 'Dow Jones Index' in New York is barely higher today than in 2000, but the sensx in India is up by 7-8 times. Thus, this return of black money as white is pushing up land and stock prices to diffy heights. To track and curb this parallely, either the terms of the SIT may also be expanded or a separate team may be constituted with expertise to track such round tripping. If it is not done so, the SIT has the discretion to tackle it. w